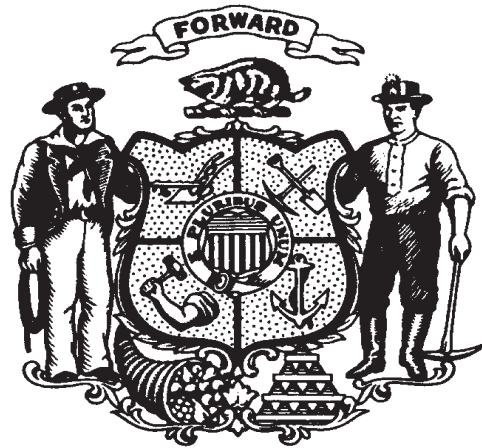


Wisconsin Administrative Register

No. 617



Publication Date: May 31, 2007

Effective Date: June 1, 2007



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

New material

Agriculture, Trade and Consumer Protection:	Pages 329 to 362; 363 to 387
Architects, Engineers, Designers and Surveyors:	Pages 17 to 19
Commerce:	<u>Financial Resources for Business and Communities, Chs. Comm 104 to 131</u> Table of Contents; Pages 1 to 6–2; 7 to 8–5
Natural Resources:	<u>Environmental Protection – General, Chs. NR 100—</u> Table of Contents; Pages 237; 411; 441 to 450–3 <u>Environmental Protection – Air Pollution Control, Chs. NR 400—</u> Pages 27 to 36–1; 37 to 56–22; 81 to 84 <u>Environmental Protection – Solid Waste Management, Chs. NR 500—</u> Pages 149 to 158–1
Occupational Therapists Affiliated Credentialing Board:	Entire Code
Optometry Examining Board:	Entire Code
Public Instruction:	Table of Contents; Pages 84–1; 133 to 137
Public Service Commission:	Table of Contents; Pages 109 to 110
University of Wisconsin System:	Entire Code

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Instructions for inserting new material in the Wisconsin Administrative Code

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5	Comm	Commerce – Financial Res., etc., Chs. Comm 104–131	Table of Contents — 1 to 7	Table of Contents 1 to 6–2 7 to 8–5	— — Comm 105	— Comm 104 Comm 105
11	NR	Natural Resources–Environmental Protection–General Chs. NR 100—	Table of Contents 237 to 240 411 to 414 441 to 450–1	Table of Contents 237 411 441 to 450–3	— NR 127 NR 160 NR 166	— NR 127 NR 160 NR 166
13	NR	Natural Resources–Environmental Protection–Air Pollution Control, Chs. NR 400—	27 to 36 37 to 56–21 81 to 83	27 to 36–1 37 to 56–22 81 to 84	NR 406 NR 407 NR 410	NR 406 NR 407 NR 410
14	NR	Natural Resources–Environmental Protection–Solid Waste, Chs. NR 500—	149 to 158–1	149 to 158–1	NR 520	NR 520
15	OT	Occupational Therapists Affiliated Credentialing Board	Entire Code	Entire Code	OT 1 OT 2 OT 3 OT 4 OT 5	OT 1 OT 2 OT 3 OT 4 OT 5

Volume		Code	Pages removed	Pages inserted	Removed chapters	Inserted chapters
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15	PI	Public Instruction	Table of Contents — 133 to 137	Table of Contents 84-1 133 to 137	— — PI 40	— PI 30 PI 40
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18	UWS	University of Wisconsin System	Entire Code	Entire Code	UWS 1 UWS 2 UWS 3 UWS 4 UWS 5 UWS 6 — UW 8 UWS 9 UWS 10 UWS 11 UWS 12 UWS 13 UWS 14 UWS 15 UWS 16 UWS 17 UWS 18 UWS 19 UWS 20 UWS 21 UWS 22	UWS 1 UWS 2 UWS 3 UWS 4 UWS 5 UWS 6 UWS 7 UWS 8 UWS 9 UWS 10 UWS 11 UWS 12 UWS 13 UWS 14 UWS 15 UWS 16 UWS 17 UWS 18 UWS 19 UWS 20 UWS 21 UWS 22

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

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

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

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

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

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

Agriculture, Trade & Consumer Protection (2)

1. Rules adopted creating **ch. ATCP 112**, relating to credit report security freezes.

Finding of Emergency

(1) The Wisconsin department of agriculture, trade and consumer protection ("DATCP") will administer s. 100.54, Stats. as of January 1, 2007. DATCP is required under s. 100.54 (12), Stats. to adopt rules related to identification required of consumers requesting credit report security freezes.

(2) As of January 1, 2007, s. 100.54, Stats. will be in effect, however without an emergency rule the statute will be unclear regarding what constitutes proper identification for purposes of creating a security freeze, temporarily releasing a security freeze or permanently removing a security freeze from a consumer credit report.

(3) DATCP is adopting this emergency rule for the sole purpose of allowing consumers to clearly place a security freeze on their consumer credit report while the permanent rulemaking process is completed.

Publication Date: January 19, 2007
Effective Date: January 19, 2007
Expiration Date: June 18, 2007
Hearing Date: February 12, 2007

2. Rules adopted creating **s. ATCP 21.20**, relating to voluntary certification of firewood dealers.

Finding of Emergency

(1) The Wisconsin department of natural resources ("DNR") has adopted rules, under s. NR 45.04 (1) (g), to restrict the movement of firewood into Wisconsin state parks. The DNR rules are designed to prevent the spread of exotic pests, such as Emerald Ash Borer, that may inhabit firewood. The DNR rules prohibit the possession of firewood in a state park unless the firewood comes from within 50 miles from the park, or from a more distant source approved by the Department of Agriculture, Trade and Consumer Protection ("DATCP").

(2) The DNR rules effectively prohibit a firewood dealer located more than 50 miles from a state park from supplying firewood to that state park, except as authorized by DATCP. That prohibition may work a substantial hardship on firewood dealers who normally supply significant quantities of firewood to parks located more than 50 miles away.

(3) This rule creates a voluntary certification program for firewood dealers who obtain their wood from Wisconsin and agree to treat the wood for potential pests such as Emerald Ash Borer. Certified firewood dealers may supply firewood to Wisconsin state parks, even though they are located more than 50 miles from those parks.

(4) DATCP is adopting this rule as a temporary emergency rule, pending completion of "permanent" rulemaking proceedings. DATCP cannot complete permanent rules in time for the 2007 camping season. Without this emergency rule, certain firewood dealers may experience unnecessary financial hardship during the 2007 camping season, because they will be precluded from supplying firewood to state parks more than 50 miles away. This emergency rule allows those firewood dealers to continue supplying firewood to more distant state parks, subject to sourcing and treatment requirements that are reasonably designed to prevent the spread of serious exotic pests.

Publication Date: May 23, 2007
Effective Date: May 23, 2007
Expiration Date: September 20, 2007

Commerce (Financial Resources for Businesses and Communities, Chs. Comm 104–131)

Rules adopted creating **ch. Comm 135**, relating to tax credits and exemptions for internet equipment used in the broadband market.

Exemption From Finding of Emergency

These rules establish the criteria for administering a program that will (1) certify businesses as temporarily eligible for tax credits and exemptions for Internet equipment used in the broadband market, and (2) allocate up to \$7,500,000 to these businesses for these tax credits and exemptions.

Pursuant to section 227.24 of the statutes, this rule is adopted as an emergency rule to take effect upon publication in the official state newspaper. In accordance with section 17 (1) (d) of 2005 Wisconsin Act 479, this rule will remain in effect until January 1, 2008, or until the Department reports its certifications and determinations under this rule to the Department of Revenue, whichever is sooner.

The rules specify who is eligible for the income and franchise tax credits and the sales and use tax exemptions in this program, for Internet equipment used in the broadband market. Eligible equipment is also specified, along with how to apply for the certifications and allocations. Parameters for allocating the authorized total of \$7,500,000 are likewise specified. These parameters emphasize (1) efficiently initiating broadband Internet service in areas of Wisconsin that otherwise are not expected to soon receive this service, and (2) encouraging economic or community development. The rule chapter also describes the time-specific legislative oversight that is established in 2005 Act 479 for these allocations, and describes the follow-up reports that the Act requires from every person who receives a sales or use tax exemption under this chapter.

Publication Date: February 20, 2007
Effective Date: February 20, 2007
Expiration Date: See section 17 (1) (d) 2005 Wis. Act 479
Hearing Date: March 26, 2007

Dentistry Examining Board

Rules were adopted amending **ch. DE 11**, relating to better identifying the different levels of anesthesia, including nitrous oxide, anxiolysis, conscious sedation-enteral, conscious sedation-parenteral, deep sedation, and general anesthesia, and the requirements for each level.

Finding of Emergency

The board finds that failure to delay the effective date of CR04-095, from January 1, 2007, to July 1, 2007, will create a danger to the public health, safety and welfare. The extra six months are needed to allow the implementation of the rule to occur and to ensure the continued use of conscious sedation for dental patients.

Publication Date: December 21, 2006
Effective Date: December 29, 2006
Expiration Date: May 28, 2007
Hearing Date: January 31, 2007

Elections Board

Rules adopted creating **s. EIBd 3.50**, relating to pricing of voter information available from the Statewide Voter Registration System.

Exemption From Finding of Emergency

The Elections Board finds that under Section 180 of the non-statutory provisions of 2005 Wisconsin Act 451, in subsection (4), the Elections Board may promulgate emergency rules under s. 227.24, Stats., implementing s. 6.36 (6), Stats., as created by Wisconsin Act 451. Notwithstanding s. 227.24 (1) (c) and (2), Stats., emergency rules promulgated under subsection (4) remain in effect until the date on which permanent rules take effect. Notwithstanding s. 227.24 (1) (a) and (3), Stats., the Elections Board is not required to provide evidence that promulgating a rule under subsection (4) as an emergency rule is necessary for the preservation of public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under subsection (4).

This amended rule interprets ss. 5.02 (14) and (17), 6.27, 6.275, 6.29, 6.33, 6.34, 6.35, 6.36, 6.40, 6.45, 6.46, 6.48, 6.50, 6.54, 6.55, 6.56, and 6.57, Stats. The rule requires that persons who request copies of information from the Statewide Voter registration System must pay, for each such copy, a charge calculated under the provisions of the rule.

At the present time, the Elections Board is limited, in the fee that it can charge for information provided by the Statewide Voter registration System, to the fee set by s. 19.35 (3), Stats.: “the actual, necessary, and direct cost of reproduction and transcription of the record.” In order to recover both the cost of reproduction and the cost of maintaining the list at the state and local level, rather than having its charge be limited to the amount currently provided under the public records law, the Board needs an immediate rule reflecting both cost components required by the new statute.

Publication Date: May 12, 2007
Effective Date: May 12, 2007
Expiration Date: See section 180 (4), 2005 Wis. Act 451
Hearing Date: June 11, 2007

Health and Family Services (Community Services, Chs. HFS 30—)

Rules adopted revising **ch. HFS 51**, relating to the adoption of children to include preadoption training requirements that will apply to private adoptions, international adoption, and adoptions of children with special needs and affecting small businesses.

Finding of Emergency

The Department of Health and Family Services finds that an emergency exists and that rules are necessary for the immediate preservation of the public peace, health, safety or welfare. The facts constituting the emergency are as follows:

On April 10, 2006, the Wisconsin State Legislature enacted 2005 Wisconsin Act 293, which amended s. 48.84, Stats., to require first-time adoptive parents to receive preadoption training before a child may be placed for adoption by a court pursuant to s. 48.833, Stats., or before a prospective adoptive parent may petition for placement of a child for adoption under s. 48.837, Stats., or before a proposed adoptive parent may bring a child into Wisconsin for an international adoption under s. 48.839, Stats. The Act further requires the Department to promulgate rules that establish the number of hours and topics covered in the training of first-time adoptive parents. The training must cover issues that may confront adoptive parents in general and that may confront adoptive parents of special needs or international children.

The Act requires the rules to be effective April 1, 2007. Because the rules apply not only to the Department which administers the special needs adoption program with the assistance of private agencies under contract with the Department, and with the cooperation of county human and social service agencies, but also to private agencies that handle domestic adoptions and international adoptions, the Department has invested a significant amount of time gathering information from agencies regarding what training is currently provided to preadoptive parents. The Department conducted written and follow-up telephone surveys with private agencies to determine what content was currently being taught, and the format used for training. The Department’s Adoption Services Committee met over several months to determine the curriculum for special needs

adoption, the competencies that would be required for all training programs, the number of hours and the documentation that would be required in the training. In addition, the Department reviewed the proposed Hague Convention (federal) training requirements for proposed adoptive parents of international children to assure that Wisconsin's training requirements for first-time pre-adoptive parents would meet or exceed those requirements.

As a result of this extensive collaboration with stakeholders, development of the proposed training requirements has been unusually long and now requires the training requirements to be implemented as an emergency rule in order to meet the legislated date of April 1, 2007, the date adoptive parents must begin receiving preadoptive training.

This emergency rules are substantially similar to the proposed permanent rules except in the hours of training required. Under the emergency order, adoption agencies are required to provide adoptive parents with 2 hours of orientation and 10 hours of training. The proposed permanent rule requires adoption agencies to provide 2 hours of orientation and 16 hours of training. Stakeholder agencies have indicated that the additional 5 months under the emergency rule will allow them to prepare all proposed adoptive parents to meet the orientation and training requirements under the proposed permanent rules.

Publication Date: March 31, 2007
Effective Date: April 1, 2007
Expiration Date: August 29, 2007
Hearing Date: April 27, 2007

Health and Family Services (Medical Assistance, Chs. HFS 100—)

Rules adopted revising **ch. HFS 107**, relating to benefits covered by the Wisconsin Medical Assistance program, 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:

A recent revision to s. HFS 107.07 (2), the prior authorization subsection of the dental services section of the Medicaid Administrative Code, caused a result which was not intended by the Department. To correct this error, the Department is promulgating rules to clarify that the Department's intent is to require prior authorization for orthodontia and other services provided under early and periodic screening, diagnosis and treatment (EPSDT) services. The medical necessity of these services is determined by the Department based on information submitted by the provider. Thus, it is necessary to require prior authorization to determine the appropriateness of providing these services to an individual recipient.

In the previous rulemaking (Clearinghouse Rule 05-033) the prior authorization requirement was removed for most procedures that had high rates of approval (greater than 75%). The change was intended to reduce the staff time required for dental offices to process prior authorization requests. The Department did not intend to remove the requirement for prior authorization for orthodontia and other services. The

Department specifically stated, in Clearinghouse Rule 05-033, that "Procedures where appropriate pricing requires a high degree of clinical knowledge (e.g., orthodontics and TMJ surgery), and procedures with strict time limitations (e.g., dentures) are also proposed to retain prior authorization."

The language that was adopted, however, has been interpreted by at least one dentist to mean that prior authorization is no longer required to provide orthodontia to recipients. This interpretation was upheld by an administrative law judge in an administrative hearing. The Department believes that the interpretation of the administrative law judge could open up the Department to being required to pay for procedures that are purely cosmetic. Because the intent of the Department and the language adopted, as recently interpreted, had opposite effects, the Department is promulgating rules to revise section s. HFS 107.07 to clarify the intent of the rule.

A basic concept of the Medicaid program is that services must be medically necessary to be reimbursable. Allowing the existing rule language to remain in its present form could require reimbursement for orthodontia that is not medically justified.

Publication Date: April 30, 2007
Effective Date: April 30, 2007
Expiration Date: September 27, 2007

Natural Resources (4) (Fish and Game, etc., Chs. NR 1—)

1. Rules adopted amending **s. NR 1.21** and creating **s. NR 1.26**, relating to contracting for timber sale establishment services on state land.

Exemption From Finding of Emergency

As provided in section 13 of 2005 Wis. Act 166, "Notwithstanding section 227.24 (1) (a) and (3) of the statutes, the department is not required to provide a finding of emergency for a rule promulgated under this subsection."

Section 1 of the proposed rule distinguishes between timber sales related tasks that can be contracted and functions that Department staff must perform to protect the resource and assure compliance with regulations and property master plans. The purpose is to divide technical activities that are appropriate for contracting from administration of finance, policy and compliance issues. The rule defines bidding and payment procedures for the contracted services, including prequalification of bidders based on experience with timber sales and related forest inventory work. Section 2 makes technical corrections in the definition of educational requirements for cooperating foresters. The change would make educational requirements for cooperating foresters and department foresters identical, including the allowance of training equivalent to that obtained at a college accredited by the Society of American Foresters.

Publication Date: February 6, 2007
Effective Date: February 6, 2007
Expiration Date: July 6, 2007
Hearing Date: March 21, 2007

2. Rules adopted creating **s. NR 45.075**, relating to declaring natural emergencies on forested lands owned by the state and under the jurisdiction of the department.

Exemption From Finding of Emergency

As provided in section 13 of 2005 Wis. Act 166, notwithstanding s. 227.24, Stats., the Department is not required to provide a finding of emergency for this rule and the emergency rule will remain in effect until a permanent rule is promulgated.

Rule FR-11-07(E) specifies those emergencies on forested land under the jurisdiction of the department over which the chief state forester shall have management authority. This rule describes causes of unforeseen damage or threat of damage to trees that could lead the chief state forester to declare an emergency and assume management authority. Included in the list of damaging agents that could lead to the declaration of an emergency are those required by the legislature: invasive species, pest infestation, disease, and damage to timber from fire, snow, hail, ice, or wind. The rule states that when declaring and responding to an emergency, the chief state forester shall consider the purpose of and management plan for the affected property in his or her decisions. This rule, however, would allow the chief state forester to take actions not described in the management plan for a property if that were the most appropriate response to the emergency. Finally, this rule describes the processes by which the declaration of the state of emergency shall be made effective, canceled or modified.

Publication Date: February 6, 2007

Effective Date: February 6, 2007

Expiration Date: July 6, 2007

Hearing Date: March 21, 2007

3. Rules adopted revising **chs. NR 19 and 20**, relating to the control of fish diseases and invasive species.

Finding of Emergency

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

The World Health Organization for Animal Health (OIE) lists viral hemorrhagic septicemia (VHS) as a "notifiable" disease, meaning that outbreaks must be reported immediately. VHS has been discovered in the Great Lakes, and is moving from the lower lakes (Ontario and Erie), where it has already caused large-scale fish kills, via Huron, where it has been present since 2005, to the upper lakes (Michigan and Superior). Lake Michigan is connected to the Mississippi River by the Chicago Sanitary and Ship Canal and Illinois River, allowing fish and fish diseases to reach the Mississippi drainage. Twenty-seven species of Wisconsin fish have been identified as susceptible by the OIE or USDA APHIS, including most of our most important recreational and commercial species. The VHS virus can be transported from affected areas to areas where it is not yet present via live fish, fish eggs, refrigerated or frozen dead fish, or water where infected fish have been present. The presence of VHS virus in the Great Lakes is therefore a threat to the public health or safety or to the environment.

Publication Date: April 8, 2007

Effective Date: April 8, 2007

Expiration Date: September 5, 2007

Hearing Date: May 3, 10 and 17, 2007

4. Rules adopted revising **chs. NR 19 and 20**, relating to the control of fish diseases and invasive species.

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 World Health Organization for Animal Health (OIE) lists viral hemorrhagic septicemia (VHS) as a "notifiable" disease, meaning that outbreaks must be reported immediately. VHS has been discovered in the Great Lakes, and is moving from the lower lakes (Ontario and Erie), where it has already caused large-scale fish kills, via Huron, where it has been present since 2005, to the upper lakes (Michigan and Superior). Lake Michigan is connected to the Mississippi River by the Chicago Sanitary and Ship Canal and Illinois River, allowing fish and fish diseases to reach the Mississippi drainage. Twenty-seven species of Wisconsin fish have been identified as susceptible by the OIE or USDA APHIS, including most of our most important recreational and commercial species. The VHS virus can be transported from affected areas to areas where it is not yet present via live fish, fish eggs, refrigerated or frozen dead fish, or water where infected fish have been present. The presence of VHS virus in the Great Lakes is therefore a threat to the public health or safety or to the environment.

This emergency rule clarifies and expands the emergency rules put into effect on April 8, 2007.

Publication Date: May 2, 2007

Effective Date: May 2, 2007

Expiration Date: September 5, 2007

Hearing Date: June 11, 2007

[See Notice this Register]

Transportation

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

Exemption From Finding of Emergency

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

Plain language analysis

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

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

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

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

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

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

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

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

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

Workforce Development (2) **(Workforce Solutions, Chs. DWD 11 to 59)**

1. Rules adopted revising s. DWD 56.06, relating to child care rates and affecting small businesses.

Finding of Emergency

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

The child care subsidy budget estimates that the child care subsidy program will have a tight budget by the end of fiscal year 06-07. This is due to flat federal funding, rising

caseload, and increased provider costs. To begin to address the tight budget, the Department will not increase the child care subsidy maximum rates for 2007. This emergency rule will maintain the maximum rates at 2006 levels.

Publication Date: January 22, 2007
Effective Date: January 22, 2007
Expiration Date: June 21, 2007
Hearing Date: May 7, 2007

2. Rules adopted revising ch. DWD 56, relating to child care enrollment underutilization.

Finding of Emergency

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

The child care subsidy budget is expected to have a substantial deficit by the end of state fiscal year 2006-07. While many factors will have an impact on the program's final fiscal balance, current spending patterns at current rates suggest that the program will exceed its 06-07 budget authorization by approximately \$46 million. This rule will provide for more efficient use of the program's limited funding.

Publication Date: April 1, 2007
Effective Date: April 1, 2007
Expiration Date: August 29, 2007

Workforce Development **(Public Works Construction,** **Chs. DWD 290-294)**

Rules adopted amending s. DWD 290.155 (1), relating to the adjustment of thresholds for application of prevailing wage rates.

Finding of Emergency

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

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

Publication Date: December 28, 2006
Effective Date: January 1, 2007
Expiration Date: May 31, 2007
Hearing Date: February 19, 2007

Scope statements

Agriculture, Trade and Consumer Protection

Subject

Ch. ATCP 50 – Soil and water resource management.

Objective of the rule. This rule will modify DATCP's soil and water resource management program under ch. ATCP 50, Wis. Adm. Code. The current program addresses soil and water conservation on farms, county soil and water programs, grants to counties, cost-share grants to landowners, standards for soil and water professionals, local regulation, and standards for cost-shared practices.

This rule may do all of the following:

- Modify farm conservation standards and requirements.
- Modify farm conservation cost-share standards and requirements.
- Clarify policy related to cost-share grants to landowners other than farmers.
- Modify standards and procedures for DATCP grants to counties.
- Modify standards and requirements related to county land and water resource management plans (LWRM plans).
- Modify certification standards for agricultural engineering practitioners.
- Make other changes, clarifications and updates as necessary.

Policy Analysis

DATCP administers Wisconsin's soil and water conservation program under ch. 92, Stats. DATCP has adopted rules for the program under ch. ATCP 50, Wis. Adm. Code. DATCP comprehensively revised ch. ATCP 50 effective in 2002. This rule will update the current rules, based on nearly 5 years of experience with rule implementation.

Farm Conservation Standards and Requirements

Current DATCP rules spell out conservation standards for farms. The standards incorporate Department of Natural Resources (DNR) standards for nonpoint source pollution control. DNR has published a rulemaking scope statement (Wis. Adm. Register No. 610), announcing that it plans to modify those standards. Among other things, DNR is proposing to add or update standards related to buffer strips, manure runoff and manure storage facility closures.

Under s. 281.16, Stats., DATCP must prescribe conservation practices and technical standards to implement DNR nonpoint pollution standards. If DNR modifies its standards, this rule will modify DATCP rules as necessary to implement the modified DNR standards. This rule may also make other changes to current conservation standards.

Cost-Share Standards and Requirements

Under current law, enforcement of conservation standards on farms is generally contingent on cost-sharing (there are some exceptions). Current DATCP rules spell out cost-sharing standards and procedures. Some of the current standards and procedures have been somewhat difficult for counties to implement, and have not provided adequate clarity

for landowners. Among other things, current rules do not clearly articulate DATCP policy related to cost-sharing for landowners other than farmers. DATCP may modify current cost-share standards and procedures, where appropriate, to facilitate clear and practical cost-share implementation.

Grant Allocations to Counties

Current DATCP rules spell out standards and procedures for allocating conservation staffing and cost-share grant funds to counties. The current rules are designed to ensure a transparent and fiscally accountable allocation system. Grants are based on an annual grant allocation plan that identifies the amount allocated to each county. The current rules provide a basic minimum level of funding for every county that has adopted an LWRM plan. Remaining funds are allocated between counties on a discretionary, competitive basis. Generally speaking, DATCP does not have statutory authority to distribute grant funds to entities other than counties.

This rule may refine current grant allocation standards and procedures, as appropriate. Among other things, this rule may expand the share of grant funds that are allocated between counties on a discretionary competitive basis, based on statewide water quality priorities. This rule may make other changes, as appropriate, to streamline the grant process and ensure effective use of grant funds. This rule will not expand the types of entities that may receive grant funds from DATCP, unless the legislature gives DATCP statutory authority to award grants to those entities.

Under current DATCP rules, every county must adopt an approved LWRM plan in order to qualify for state funding. Among other things, the LWRM plan must identify county conservation priorities and strategies. Under current rules, a county must update its LWRM plan every 5 years. This rule may modify current standards for LWRM plans, including standards to improve consistency with statewide water quality objectives.

Agricultural Engineering Practitioners; Certification Standards

Current DATCP rules spell out standards and procedures for certifying agricultural engineering practitioners who design, install or approve agricultural engineering practices funded by DATCP. The current rules are largely based on standards adopted by the United States Department of Agriculture, Natural Resources Conservation Service (NRCS). The NRCS standards are updated on a regular basis. This rule may update DATCP rules, based in part on changes to the NRCS standards.

Policy Alternatives

If DATCP takes no action, current rules will remain in effect. Some current rule provisions are outdated in certain respects, and may not adequately address stakeholder needs. The current rules do not address possible changes in DNR standards related to nonpoint source pollution. Some current rule provisions may hinder effective future operation of the DATCP programs, or may limit DATCP's ability to respond to changing conditions. Some provisions may also hinder future coordination of federal, state and local conservation programs.

Statutory Authority

Sections 92.05 (3) (c) and (k), 92.14 (8), 92.15 (3) (b), 92.16, 92.18 (1), 93.07 (1), and 281.16 (3) (b) and (c), Stats.

Staff Time Required To Develop The Proposed Rule

DATCP estimates that it will use the equivalent of 1.0 FTE staff to revise this rule. This anticipates an 18 month period for investigation and analysis, rule drafting, preparing related documents, coordinating advisory committee meetings, holding public hearings and communicating with affected persons and groups. DATCP will use existing staff to develop this rule.

Entities That May Be Affected By The Proposed Rules

County Conservation Programs. This rule may revise standards and procedures for county conservation programs, including funding standards and procedures. New grant allocation procedures may ultimately affect grant allocations between counties (this rule will not directly alter grant allocations). Some counties may need to revise their LWRM plans. County staff may need to become familiar with modified conservation standards and procedures. Rule changes may affect the certification of county agricultural engineering practitioners.

Farmers and Other Landowners. Farmers may be affected by changes to current farm conservation standards and requirements. Farmers may also be affected by changes to current cost-share standards and procedures. To the extent that this rule may ultimately affect grant allocations between counties, farmers in those counties may also be affected. This rule may also affect non-farmer landowners, to the extent that it clarifies DATCP cost-share policy related to those landowners.

Farm-Related Businesses. Farm supply organizations, nutrient management planners, soil testing laboratories, agricultural engineering practitioners, agricultural engineers, construction contractors and others provide goods and services to farmers related to farm conservation. Those entities may be affected by this rule, including changes related to conservation standards and cost-share grants to farmers.

Comparison With Federal Regulations

NRCS Conservation Standards:

NRCS has adopted standards for conservation practices cost-shared by NRCS. Current DATCP rules incorporate many NRCS standards by reference. In most cases, the standards apply only to conservation practices cost-shared with DATCP funds. But in some cases (such as nutrient management), DATCP rules incorporate the NRCS standards as mandatory pollution control standards. Enforcement of these mandatory standards is generally contingent on cost-sharing (there are limited exceptions).

NRCS standards vary, to some extent, between states. NRCS coordinates its Wisconsin standard-setting process with DATCP, DNR and others. For purposes of Wisconsin's soil and water conservation program, DATCP may incorporate NRCS standards as written or may modify the standards as appropriate. DATCP tries to ensure that state standards are reasonably consistent with NRCS standards.

This rule may modify current DATCP rules that incorporate NRCS standards by reference. This rule may incorporate updated NRCS standards, or may modify NRCS standards to make them more clear or workable in Wisconsin's soil and water conservation program.

Agricultural Engineering Practitioners; NRCS Certification Standards:

NRCS certifies agricultural engineering practitioners who design, install or approve agricultural engineering practices cost-shared by NRCS. DATCP certifies practitioners who perform similar functions under DATCP rules. DATCP rules are based on NRCS standards (but include some modifications based on Wisconsin program needs). DATCP works with NRCS and county land conservation departments to ensure that standards are reasonably consistent and meet federal, state and local needs.

Federal Conservation Funding:

The United States Department of Agriculture administers a number of federal programs that offer voluntary conservation incentives to farmers. The Environmental Quality Incentives Program (EQIP) is a key program offering cost-sharing for conservation improvements, including nutrient management plans, manure storage improvements and others.

Other programs, such as the Conservation Reserve Program (CRP) and the Conservation Reserve Enhancement Program (CREP) also provide cost-sharing and other incentives for conservation practices. DATCP attempts to coordinate state conservation funding programs with relevant federal programs.

Agriculture, Trade and Consumer Protection

Subject

Ch. ATCP 74 – Retail food establishments, local government regulation, and cost reimbursement.

Objective of the rule. Increase the reimbursement rate that DATCP receives for training, technical assistance, and evaluation services that DATCP provides to agent cities and counties that license and inspect retail food establishments on behalf of DATCP. The higher reimbursement rate is needed to cover DATCP costs, which currently exceed reimbursement amounts. This rule will restore the reimbursement rate to the former rate of 20%, which is the rate authorized under s. 97.41 (5), Stats.

Policy Analysis

DATCP licenses and inspects retail food establishments under s. 97.30, Stats. Under s. 97.41, Stats., DATCP may contract with a city or county ("local agent") to license and inspect retail food establishments in that locality on behalf of DATCP. Retail food establishments licensed by a local agent do not require a separate license from DATCP. A local agent may establish its own license fee, which may be higher than the state fee that would have applied if DATCP had licensed the retail food establishments directly.

DATCP trains local agent staff, establishes local agent performance standards, and evaluates the consistency and adequacy of local agent performance. The local agent reimburses DATCP for its training, evaluation and other services. DATCP rules specify a reimbursement rate to cover DATCP costs. The reimbursement rate is calculated as a percentage of the *state* license fee for retail food establishments, even if the local license fee is higher.

The statutes authorize DATCP to charge a maximum reimbursement rate of 20%. DATCP originally charged 20%, but in 2000 DATCP reduced the rate to 10%. The 10% rate has not been adequate to cover DATCP costs for the services

it provides to local agents. The problem is magnified by an expansion in the local agent program. In 2000, there were only 21 local agents compared to 37 today. The current inadequate reimbursement rate, combined with growing local agent participation, has produced a substantial DATCP budget deficit.

This rule will restore the reimbursement rate to the former rate of 20%, which is the rate authorized under s. 97.41 (5), Stats. DATCP projects that the higher rate will generate adequate revenue to cover, but not exceed, DATCP's actual and reasonable costs. Under s. 97.41 (4) (b), Stats., DATCP may not require reimbursement in excess of actual and reasonable DATCP costs.

Policy Alternatives

Do nothing. If DATCP does not increase the local agent reimbursement rate, local reimbursement will not cover actual and reasonable costs and DATCP's local agent program will fall further into deficit. That situation is not sustainable. DATCP will have to cancel local agent contracts or fail its statutory and contract obligation to train and evaluate local agents. There are no statutory alternatives at this time. Section 97.41 (5), Stats., authorizes a reimbursement rate of up to 20%.

Statutory Authority

Sections 93.07 (1), 97.41 (2) and 97.41 (5), Stats.

Staff Time Required To Develop The Proposed Rule

DATCP estimates that it will use approximately 0.1 FTE staff time to develop and adopt this rule. This includes research, drafting, preparing related documents, holding public hearings, and communicating with affected persons and groups. DATCP will assign existing staff to develop this rule.

Entities That May Be Affected By The Proposed Rules

Local agents will be responsible for paying the increased reimbursement rate. However, local agents may increase license fees for local retail food establishments to cover the higher reimbursement rate. See s. 97.41 (4) (a), Stats.

Comparison With Federal Regulations

There are no federal laws governing the cost reimbursement rate that DATCP charges to local agents that license retail food establishments on behalf of DATCP.

Natural Resources

Subject

The Department is proposing a change to Ch. NR 20 regarding the inland hook and line harvest of lake sturgeon. This proposal recommends increasing the minimum length limit from 50" to 60" and reducing the season length from 6 weeks to 4 weeks.

Policy Analysis

The Department is beginning the process of recommending changes to Ch. NR 20, Wis. Adm. Code, relating to hook and line lake sturgeon harvest. In June, the Department will be seeking Natural Resources Board approval to implement an emergency rule that will be in effect for the 2007 hook and line lake sturgeon season. The Department proposes that the permanent rule will be promulgated through the Conservation Congress Spring Hearing process.

Statutory Authority

Sections 29.014, 29.041, 227.24, and 29.192, Stats.

Staff Time Required To Develop The Proposed Rule

The Department anticipates spending approximately 40 hours in the rule development process.

Entities That May Be Affected By The Proposed Rules

Recreational anglers (resident and nonresident) and the small businesses (bait shops, sporting goods and convenience stores) that support lake sturgeon fisheries will be affected by the proposed rule.

Comparison With Federal Regulations

Authority to promulgate fishing regulations is granted to states. No federal regulations apply to the proposed changes in regulating recreational fishing activities.

Contact

Questions may be addressed to:

Mike Staggs
101 S. Webster Street
PO Box 7921
Madison, WI 53707-7921
608.267.0796
Mike.staggs@wisconsin.gov

Submittal of rules to legislative council clearinghouse

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

Elections Board

On May 3, 2007 the State Elections Board submitted proposed rules to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The rules will create s. ElBd 3.50, relating to pricing of voter registration data obtained from the Statewide Voter Registration System.

Agency Procedure for Promulgation

The State Elections Board wishes to promulgate this rule pursuant to the 30-day notice procedure under s. 227.16 (2) (e), Stats.

Contact Person

George A. Dunst, Legal Counsel
(608) 266-0136

Public Service Commission

On May 9, 2007 the Public Service Commission submitted proposed rules to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule deals with what must be included in an electric utility construction application.

Agency Procedure for Promulgation

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

rule. A public hearing will be held on Thursday, June 21, 2007, at 9:30 a.m. at the Public Service Commission Building at 610 North Whitney Way, Madison, WI.

Contact Person

Terri Kosobucki
Docket Coordinator
(608) 267-3595
terri.kosobucki@psc.state.wi.us

Workforce Development

On May 15, 2007 the Department of Workforce Development submitted proposed rules to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rules affect ch. DWD 56, relating to child care enrollment underutilization and affecting small businesses.

Agency Procedure for Promulgation

A public hearing is required and will be held on June 20, 2007. The organizational unit responsible for the promulgation of the proposed rules is the DWD Division of Workforce Solutions.

Contact Person

Elaine Pridgen
Telephone: (608) 267-9403
Email: elaine.pridgen@dwd.state.wi.us

Rule-making notices

Notice of Hearing Cemetery Board [CR 07-050]

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Department of Regulation and Licensing in s. 440.905, Stats., as created by 2005 Wisconsin Act 25, and interpreting s. 440.905, Stats., will hold a public hearing at the time and place indicated below to consider an order to repeal chs. RL 50 and 51; and to create chs. CB 1 and 2, relating to the regulation of cemetery authorities, cemetery salespersons, and cemetery preneed sellers.

Hearing Date, Time and Location

Date: **June 19, 2007**
 Time: 9:45 A.M.
 Location: 1400 East Washington Avenue
 (Enter at 55 North Dickinson Street)
 Room 121A
 Madison, Wisconsin

Appearances at the Hearing

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but are urged to submit facts, opinions and argument in writing as well. Facts, opinions and argument may also be submitted in writing without a personal appearance by mail addressed to the Department of Regulation and Licensing, Office of Legal Counsel, P.O. Box 8935, Madison, Wisconsin 53708. Written comments must be received by June 22, 2007, to be included in the record of rule-making proceedings.

Analysis Prepared by Dept. of Regulation and Licensing

Statutes interpreted: Section 440.905, Stats.

Statutory authority: Section 440.905, Stats., as created by 2005 Wisconsin Act 25.

Explanation of agency authority: The Cemetery Board is authorized to promulgate rules under s. 440.905, Stats., as created by 2005 Wisconsin Act 25.

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

Plain language analysis: Portions of the cemetery statutes were recently amended by the Legislature as a result of 2005 Wisconsin Act 25. The most notable change was the creation of a cemetery board. The board was given specific authority to promulgate rules relating to the regulation of cemetery authorities, cemetery salespersons, and cemetery preneed sellers. However, these rules substantively mirror the prior rules that existed under the jurisdiction of the Department of Regulation and Licensing.

SECTION 1 sets forth the authority for the ch. CB 1 and also sets forth the requirements for becoming licensed as a cemetery authority, a cemetery preneed seller, and a cemetery salesperson. SECTION 1 also creates ch. CB 2 that sets forth the authority for the filing of cemetery annual reports. It also identifies the filing date as well as a filing exception for religious cemeteries.

SECTION 2 repeals chs. RL 50 and 51, which are being replaced with chs. CB 1 and 2. This change was necessary as

a result of 2005 Wisconsin Act 25, which created a Cemetery Board and gave the board authority to promulgate rules relating to the regulation of cemetery authorities, cemetery salespersons, and preneed sellers.

Comparison with federal regulation: There is no existing or pending federal regulation relating to cemetery authorities, cemetery preneed sellers, and cemetery salespersons.

Comparison with rules in adjacent states:

Illinois: Cemeteries are licensed and regulated by the Illinois Comptroller's Office. For more information see the Illinois website at: www.ioc.state.il.us/CemeteryCare/

Michigan: Cemeteries are required to register and are regulated by the state Cemetery Commissioner. For more information see the Michigan website at: www.michigan.gov/commerciallicensing (then click on "Cemeteries")

Minnesota: Statutes impose requirements for cemeteries, but licensure/regulation is not required. For more information see the Minnesota website at: www.ag.state.mn.us/

Iowa: Cemeteries are required to register and are regulated by the Iowa Insurance Commissioner's Office. For more information see the Iowa website at: www.iid.state.ia.us/

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

Analysis and supporting documents used to determine effect on small business: The proposed rules would reflect the newly created statutory requirements that transferred authority relating to the regulation of cemetery authorities, cemetery salespersons, and cemetery preneed sellers from the department to the newly created Cemetery Board. The rules will merely be updated to reflect recent statutory changes that are already in effect. There are 98 cemetery authorities, 191 cemetery salespersons, and 181 cemetery preneed sellers currently licensed in Wisconsin. Of these licensees, a significant percentage of them are probably small businesses. This rule change will not have an effect on small business, however, as the rule changes will merely reflect the current statutory requirements.

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

Fiscal Estimate

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

Effect on Small Business

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

Agency contact person:

Pamela Haack, Paralegal, Department of Regulation and Licensing, Office of Legal Counsel, 1400 East Washington Avenue, Room 152, P.O. Box 8935, Madison, Wisconsin

53708–8935. Telephone: (608) 266–0495.
Email: pamela.haack@drl.state.wi.us.

Place to Submit Comments and Deadline for Submission

Comments may be submitted to Pamela Haack, Paralegal, Department of Regulation and Licensing, 1400 East Washington Avenue, Room 152, P.O. Box 8935, Madison, Wisconsin 53708–8935, or by email at pamela.haack@drl.state.wi.us. Comments must be received on or before June 22, 2007 to be included in the record of rule-making proceedings.

Text of Rule

SECTION 1. Chapters CB 1 and 2 are created to read:

Chapter CB 1

AUTHORITY AND APPLICATIONS FOR LICENSURE

CB 1.01 Authority. The rules in this chapter are adopted pursuant to ss. 227.11 (2) and 440.905, Stats.

CB 1.02 Applications for cemetery authority, cemetery salesperson and preneed seller. (1) OTHER INFORMATION. In addition to the information which the board must require of applicants for registration as a cemetery authority, a cemetery salesperson or a preneed seller pursuant to ss. 440.91 and 440.92, Stats., the board may require all of the following:

(a) Information about any crimes committed by the applicant and any charges pending against the applicant.

(b) Information about any surrender, resignation, cancellation or denial of an application for a credential or any disciplinary action taken against a credential held by the applicant in Wisconsin or another licensing jurisdiction.

(c) Information about any disciplinary action pending against the applicant in any jurisdiction and relating to a credential held by the applicant.

(d) Information about any suits or claims ever having been filed against an applicant as a result of professional services rendered by the applicant in connection with cemetery operations.

(2) BASIS FOR DENIAL OF APPLICATION. The board may limit or deny an application for registration as a cemetery authority, cemetery salesperson or preneed seller for any of the grounds for which the department may discipline a credential holder under s. 440.93, Stats.

Chapter CB 2

FILING OF ANNUAL REPORTS BY CEMETERY AUTHORITIES AND PRENEED SELLERS

CB 2.01 Authority. This chapter is adopted pursuant to ss. 157.62 (2) and (7), 157.63, 227.11 (2) and 440.92 (6) (k), Stats.

CB 2.02 Filing of annual reports. Cemetery authorities required to file an annual report under s. 157.62 (2), Stats., and preneed sellers required to file an annual report under s. 440.92 (6), Stats., shall do so on or before March 1 of each year.

CB 2.03 Reporting period. The annual reports and certifications in lieu of annual reports shall be made on a calendar year basis unless the board, upon request, approved a different reporting period.

CB 2.04 Religious society exemption. A cemetery authority of a cemetery that is affiliated with a religious society organized under ch. 187, Stats., or that religious society may file a certification in lieu of an annual report

under s. 157.63 or 440.92 (9), Stats. The certification shall be filed on or before the 60th day after the last day of the reporting period.

Note: Forms for the annual report and certification may be obtained upon request from and shall be filed with the Department of Regulation and Licensing, Division of Credentialing Processing, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708.

SECTION 2. Chs. RL 50 and 51 are repealed.

Notice of Proposed Rule Elections Board [CR 07–043]

NOTICE IS HEREBY GIVEN that pursuant to ss. 5.05 (1) (f) and 227.11 (2) (a), Stats., and interpreting ss. 5.02 (14) and (17), 6.27, 6.275, 6.29, 6.33, 6.34, 6.35, 6.36, 6.40, 6.45, 6.46, 6.48, 6.50, 6.54, 6.55, 6.56, and 6.57, Stats., and according to the procedure set forth in s. 227.16 (2) (e), Stats., the State of Wisconsin Elections Board will adopt the following rule as proposed in this notice without public hearing unless, within 30 days after publication of this notice on **May 31, 2007**, the Elections Board is petitioned for a public hearing by 25 persons who will be affected by the rule; by a municipality which will be affected by the rule; or by an association which is representative of a farm, labor, business, or professional group which will be affected by the rule.

Analysis prepared by State Elections Board

Statute(s) interpreted: ss. 5.02 (14) and (17), 6.27, 6.275, 6.29, 6.33, 6.34, 6.35, 6.36, 6.40, 6.45, 6.46, 6.48, 6.50, 6.54, 6.55, 6.56, and 6.57, Stats.

Statutory authority: ss. 5.05 (1) (f), 6.36 (6), and 227.11 (2) (a), Stats.

Related statute(s) or rule(s): s. 19.35, Stats.

Explanation of agency authority: This amended rule interprets ss. 5.02 (14) and (17), 6.27, 6.275, 6.29, 6.33, 6.34, 6.35, 6.36, 6.40, 6.45, 6.46, 6.48, 6.50, 6.54, 6.55, 6.56, and 6.57, Stats. The rule requires that persons who request copies of information or data from the Statewide Voter registration System must pay, for each such copy, a charge calculated under the provisions of the rule according to the schedule established by the rule.

At the present time, the Elections Board is limited, in the fee that it can charge for information provided by the Statewide Voter registration System, to the fee set by s. 19.35 (3), Stats.: “the actual, necessary and direct cost of reproduction and transcription of the record.” In order to recover both the cost of reproduction and the cost of maintaining the list at the state and local level, rather than having its charge be limited to the amount currently provided under the public records law, the Board needs an immediate rule reflecting both cost components as required by new statute, s. 6.36, Stats. The legislature in s. 6.36 (6), Stats., has directed the Board to promulgate that rule.

Plain language analysis: The rule provides the methods by which the Elections Board staff will calculate the pricing to fulfill requests for voter registration data that are contained within the Statewide Voter Registration System.

Comparison with existing or proposed federal regulations: The federal government does not have a voter registration system and does not provide voter registration data for which it could exact a charge.

Comparison with rules in adjacent states: Illinois, Iowa, Michigan and Minnesota all have voter registration data

systems which collect a charge for data comparable to Wisconsin's.

Summary of factual data and analytical methodologies:

The legislature has directed the board to calculate a cost of data and record reproduction and a cost of list maintenance and build those costs into its charges for copies of voter registration data and records. Those are the only data or methodology that affects the rule.

Analysis for effect on small business: The rule will have no effect on small business or economic impact.

Agency 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;
(george.dunst@seb.state.wi.us)

Submission of Comments and Deadline for Comments

Comments should be submitted to:

State Elections Board
17 West Main Street, P.O. Box 2973
Madison, Wisconsin 53701-2973
Phone 266-0136; (elections.state.wi.us)

Deadline for submission: **June 4, 2007.**

Text of Rule

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 s. EIBd 3.50, and interprets ss. 5.02 (14) and (17), 6.27, 6.275, 6.29, 6.33, 6.34, 6.35, 6.36, 6.40, 6.45, 6.46, 6.48, 6.50, 6.54, 6.55, 6.56, and 6.57, Stats.:

SECTION 1. EIBd 3.50 is created to read:

EIBd 3.50 Charges for voter registration data.

(1) Definitions. As used in this rule:

(a) "Custom report" means a report that is not programmed to run in the Statewide Voter Registration System at the time a request for the report is made.

(b) "Election official" has the same meaning as provided in s. 5.02 (4e), Stats.

(c) "Official registration list" has the same meaning as provided in s. 6.36, Stats.

(d) "Protected information" means any information that is protected from general public disclosure by ss. 6.36 (1) (b) 1. a., and 6.47, Stats.

(e) "Report" means a defined list of related voter registration data records generated from the Statewide Voter Registration System.

(f) "Voter Registration Data" means data contained in the official registration list.

(g) "Voter Registration Data Record" means a set of related information requested from the official registration list which consists of a core data element and related attributes. A core data element is the basic unit of data that is being requested, including, but not limited to, a voter name, candidate, election official, or address. The related attributes consist of pieces of data associated with that core data element.

(2) The official registration list shall be open to public inspection consistent with the requirements of ss. 6.36, 6.45 through 6.47, and ss. 19.31 through 19.36, Stats.

(3) Any person may obtain, from the official registration list, voter registration data that is not protected information, upon payment of the applicable charges.

(4) The charge for reports in electronic format is a \$25 base fee per report plus \$5 for the first 1,000 voter registration data records in the report, plus \$5 for each additional 1,000 voter registration data records, rounded to the nearest thousand. The maximum charge for an electronic report is \$12,500.

(5) The charge for a paper copy of a report is \$.25 per page, plus the cost of postage and shipping.

(6) Any request for a report or custom report submitted to the State Elections Board shall either be made in writing by the requester or shall be reduced to writing by the board's staff. Any request by the board for payment in advance for the report requested shall include a copy of the report request in writing as submitted by the requester or as memorialized by the board's staff.

(7) Any person may request a copy of the poll list used at an election from the municipal or county clerk who has custody of the list. The cost of a copy of a poll list provided by a municipal or county clerk shall be a fee determined by that clerk not to exceed the cost of reproduction.

(8) The state elections board, its staff, and each municipal or county election official shall take steps to ensure that any protected information contained in the Statewide Voter Registration System, or on a poll list, is not made available for public inspection.

(9) If a request for voter registration data requires a custom report, and the elections board staff determines that it can produce the report, the cost of producing the custom report charged to the requester shall be calculated by the board's staff on a case-by-case basis and shall include, in addition to the costs articulated in subs. (4) or (5), including any applicable costs of handling and mailing, costs of reproduction, including programming costs; and the costs of maintenance of the SVRS as authorized by s. 6.36 (6), Stats. Requests fulfilled under this subsection are not subject to the maximum charge limitations in subs. (4) and (5).

(10) The fees received from requests for voter registration data will remain with the municipality, county, or the State Election Board, whoever produces and provides the report.

Initial Regulatory Flexibility Analysis

The creation of this rule does not affect business.

Fiscal Estimate

The creation of this rule has no fiscal effect.

Notice of Hearing

Health and Family Services

(Community Services, Chs. HFS 30—)

(Health, Chs. HFS 110—)

[CR 07-042]

NOTICE IS HEREBY GIVEN that pursuant to ss. 50.02 (2) (ad) and 227.11 (2) (a), Stats., and interpreting ss. 50.02 (2) (ad) and 55.14, Stats., the Wisconsin Department of Health and Family Services proposes to repeal and recreate HFS 83.04 (50) and to create HFS 83.04 (33m) and (49m); HFS 83.07 (7m) and Note; HFS 88.02 (14m), (27g), and (27r); HFS 88.03 (4) (c) and Note; HFS 89.13 (17m), (25g), (25r); HFS

89.53 (4) (c) and Note; HFS 132.13 (10m), (25g), (25r); HFS 132.14 (9) and Note; HFS 134.13 (18m), (38g), and (38r); and HFS 134.14 (5r) and Note, rules relating to facility reporting of involuntary administration of psychotropic medication under s. 55.14, Stats., and affecting small businesses

Hearing Date(s) and Location(s)

Date and Time	Location
June 13, 2007	Wilson Street State Office Bldg.
11:00 AM – 1:00 PM	1 West Wilson Street Room 1150 A Madison, WI

The hearing site is fully accessible to people with disabilities. If you are hearing impaired, do not speak English or have circumstances that might make communication a hearing difficult; you require an interpreter or a non-English large print or taped version of the proposed rules, contact the person at the address or telephone number given below at least 10 days before the hearing. With less than 10 days notice, an interpreter may not be available.

Place Where Written Comments May be Submitted

Written comments may be submitted at the public hearing or submitted to the contact person listed below. Comments may also be made using the Wisconsin Administrative Rule Website at <http://adminrules.wisconsin.gov>.

Deadline for Comment Submission

The deadline for submitting comments to the Department is 4:30 p.m. on **June 20, 2007**.

Analysis Prepared by the Department of Health and Family Services

Nursing homes; facilities for the developmentally disabled; community-based residential facilities; adult family homes; and residential care apartment complexes are required to comply with s. 55.14, Stats., relating to involuntary administration of psychotropic medication to an individual pursuant to court ordered protective services.

Section 50.02 (2) (ad), Stats., requires the Department to promulgate rules that require these facilities to provide, to the Department, information necessary to determine the facilities' compliance with s. 55.14, Stats.

The Department proposes to revise chs. HFS 83, 88, 89, 132, and 134 consistent with the requirements of s. 50.02 (2) (ad), Stats., by requiring facilities to report information to the Department about the facility's involuntary administration of psychotropic medication to clients. Definitions of "involuntary administration of psychotropic medication"; "protest"; and "psychotropic medication" from s. 55.14 (1) (a), (c) and (d) Stats., are included in each rule to assist in interpreting the rule requirement and to reduce cross-referencing to the statute.

Effect on Small Business (Initial Regulatory Flexibility Analysis)

Affected Industry Description.

The proposed rules will affect nursing homes; facilities for the developmentally disabled; community-based residential facilities; adult family homes; and residential care apartment complexes. These entities are included in the North American Industry Classification System (NAICS) Health Care and Social Assistance sector, (sector 62) and further defined in sub-sector 623 Nursing and Residential Care Facilities. Industries in the Nursing and Residential Care Facilities sub-sector generally provide residential care combined with

either nursing, supervisory, or other types of care as required by the residents.

Overall, the NAICS 2002 data reports nearly 2,200 facilities in Wisconsin will be affected by these rule changes. These facilities received \$2.7 Billion in revenue in 2002 and employed 72,000 people, and are operated by governmental entities, and private entities such as churches, corporations, partnerships, limited liability companies, and sole proprietorships. Using several sources including published monthly rates for various health care providers, DHFS databases, and standard industry published ratios, the Department estimates that 1,180 of the 2,200 (53 percent) facilities listed in NAICS data are small businesses. The following is an analysis of each facility type:

Community-Based Residential Facilities (CBRF)

Community-based residential facilities provide care, treatment and services above the level of room and board, but not including nursing care. These services include supervision and supportive services included leisure time activities, community activities, health monitoring, medication administration, and transportation services. Community-based residential facilities represent approximately 60 percent of the NAICS establishments, 30 percent of the \$2.7 Billion in annual receipts, and 33 percent of the 72,000 employees in this sub-sector.

Data obtained from the Adult Programs Information System (APIS) database on March 22, 2007 records 1,390 CBRFs as currently licensed to operate in Wisconsin. Approximately 680 (48 percent) of the facilities have 5 to 8 licensed beds and meet the definition of small business. CBRFs are operated by governmental entities, and private entities such as churches, corporations, partnerships, limited liability companies, and sole proprietorships.

Adult Family Homes (AFH)

Adult Family Homes are places where 3 or 4 adults live and receive care and treatment above the level of room and board, but not including nursing care. These services include supervision, recreational activities, assistance with activities of daily living and health monitoring.

Adult family homes represent approximately 33 percent of the NAICS establishments and approximately 6 percent of the \$2.7 Billion in annual receipts in this sub-sector. Data obtained from the Adult Programs Information System (APIS) database on March 22, 2007 records 1,069 AFHs as currently licensed to operate in Wisconsin. This is an increase from 688 facilities since 2002. All adult family homes are licensed for 3 or 4 beds and meet the definition of small business. AFH entities are operated by governmental entities, and private entities such as churches, corporations, partnerships, limited liability companies, and sole proprietorships.

Residential Care Apartment Complexes (RCAC)

Residential care apartment complexes are facilities that provide independent apartments with an individual lockable entrance and exit, a kitchen, an individual bathroom, sleeping area. RCACs provide no more than 28 hours of supportive, personal and nursing services per week to their tenants.

RCACs represent approximately 147 of the NAICS establishments, employing 2,400, and \$95 Million in annual receipts in this sub-sector during 2002. Data obtained from the Adult Programs Information System (APIS) database on March 22, 2007 records 205 RCACs as currently registered or licensed to operate in Wisconsin. Approximately 25 percent of the RCACs meet the definition of small businesses. RCAC entities are operated by governmental entities, and private entities such as churches, corporations, partnerships, limited liability companies, and sole proprietorships.

Nursing Homes

The Department licenses approximately 340 private and 60 government owned nursing homes. Nursing homes primarily provide medical care and nursing services to restore individuals to their rehabilitative potential. The Department estimates that 10% of the privately owned facilities meet the definition of small business.

Facilities for the Developmentally Disabled (FDD)

Facilities in this sub-sector provide residential care to people with developmental disabilities. The care provided is a mix of health and social services, with an emphasis on active treatment for habilitation. The Department currently records 22 licensed FDDs. Various governmental agencies operate 14 FDDs, four are non-profit entities, two are owned by individuals, one for-profit corporation and one limited liability corporation. Based on available Department data, 4 FDDs (18 percent) meet the definition of small business with 30 or fewer beds.

Reporting requirement

Nursing homes; facilities for the developmentally disabled; community-based residential facilities; adult family homes; and residential care apartment complexes are required to comply with s. 55.14, Stats., relating to involuntary administration of psychotropic medication to an individual pursuant to court ordered protective services. Section 50.02 (2) (ad), Stats., requires the Department to promulgate rules that require these facilities to provide, to the Department, information necessary to determine the facilities' compliance with s. 55.14, Stats. The Department proposes to revise chs. HFS 83, 88, 89, 132, and 134 consistent with the requirements of s. 50.02 (2) (ad), Stats., by requiring facilities to report to the Department about the facility's compliance under s. 55.14, Stats.

The Department estimates that it will take facilities an additional 15 minutes per client who receives involuntary administration of psychotropic medications, to provide the additional information; less if the facility does not administer psychotropic medications. Based on a 15 minute assessment per client, the direct salary and fringe cost of compliance should be about \$8 annually per client who involuntarily receives the medication. The time required to complete the reports will increase incrementally with the number of individuals who are administered psychotropic medications involuntarily. The number of clients who may be subject to involuntary administration of psychotropic medication under s. 55.14, Stats., is unknown. All facilities are assumed to have adequate administrative or nursing personnel to comply with the proposed rule; there would not be a need to hire additional staff. The costs of compliance with the proposed rules for any facility should not increase operating expenditures, or decrease revenues by more than the 2006 consumer price index of 3.2 percent.

The costs identified above result from the creation of s. 50.02 (2) (ad), Stats., in 2005 Act 264, rather than this proposed rule.

Pursuant to the foregoing analysis, the proposed rule will affect a substantial number of small businesses, but the rule would not have a significant economic impact on those businesses.

Small Business Regulatory Coordinator

Rosie Greer

Greerj@dhfs.state.wi.us

608-266-1279

Fiscal Estimate

State and county government operated, and privately owned nursing homes; facilities for the developmentally disabled; community-based residential facilities; adult family homes; and residential care apartment complexes are required to comply with s. 55.14, Stats., relating to involuntary administration of psychotropic medication to clients. Section 50.02 (2) (ad), Stats., requires the Department to promulgate rules that require these facilities to provide, to the Department, information necessary to determine the facilities' compliance with s. 55.14, Stats.

The proposed rules would require facilities to report the required information on forms provided by the Department at intervals determined by the Department. This would require the Department to review the information submitted by the facilities and may require the Department to conduct follow-up investigations to determine compliance. Any costs associated with these increased responsibilities would be minimal and can be absorbed within the existing budget.

The Department estimates that it will take facilities an additional 15 minutes per client who receives involuntary administration of psychotropic medications, to provide the additional information; less if the facility does not administer psychotropic medications. Based on a 15 minute assessment per client, the direct salary and fringe cost of compliance should be about \$8 annually per client who involuntarily receives the medication. The time required to complete the reports will increase incrementally with the number of individuals who are administered psychotropic medications involuntarily. The number of clients who may be subject to involuntary administration of psychotropic medication under s. 55.14, Stats., is unknown. All facilities are assumed to have adequate administrative or nursing personnel to comply with the proposed rule; there would not be a need to hire additional staff. The costs of compliance with the proposed rules for any facility should not increase operating expenditures, or decrease revenues by more than the 2006 consumer price index of 3.2 percent.

The costs identified above result from the creation of s. 50.02 (2) (ad), Stats., in 2005 Act 264, rather than this proposed rule.

Obtaining Copies of Rules and Fiscal Estimate

A copy of the full text of the rules and the fiscal estimate can be obtained at no charge from the Wis. Adm. Rules Website at: <http://adminrules.wisconsin.gov> or by contacting the person listed below.

Contact Person

Pat Benesh

Department of Health and Family Services

Division of Quality Assurance

1 West Wilson Street, Room 1150

Madison, WI 53701-7185

Phone: (608) 264-9896 fax, (608) 267-0352

e-mail: Benespa@dhfs.state.wi.us

Notice of Hearing**Natural Resources****(Fish, Game, etc., Chs. NR 1—)**

NOTICE IS HEREBY GIVEN THAT pursuant to ss. 23.09 (2) (intro.), 23.091, 23.11 (1), 23.22 (2) (a) and (b) 6., 27.01 (2) (j), 29.041, 227.11 (2) (a) and 227.24 (1) (a), Stats., interpreting ss. 23.09 (2) (intro.), 23.22 (2) (a), 29.014 (1), 29.041 and 227.11 (2) (a), Stats., the Department of Natural

Resources will hold public hearings on Natural Resources Board Emergency Order No. FH-25-07(E) which revises chs. NR 19 and 20, Wis. Adm. Code, pertaining to control of fish diseases and invasive species. This emergency order was published on May 2, 2007 and revised Natural Resources Board Emergency Order FH-22-07(E) which took effect on April 7, 2007. This rule will aid the Department in controlling the spread of viral hemorrhagic septicemia virus (VHS) in the following ways: Natural Resources Board Emergency Order FH-25-07(E) does the following:

1. Clarifies definitions of “live fish” and “live fish eggs” for purposes of the previously adopted emergency rules.
2. Clarifies the prohibition of the transport of live fish away from waters of the Great Lakes and Mississippi River drainages by stating that the prohibition also includes any fish possessed on those waters of the banks or shores of those waters.
3. Clarifies and expands what equipment must be drained of water after removal from waters within the Great Lakes and Mississippi River drainages.
4. Expands the emergency measures to ban the use of potentially infected fish, fish by-products and fish meal as bait in crayfish traps.
5. Clarifies limitations on use of imported live bait by permitting the use of imported live bait from Minnesota or Iowa on the Mississippi River and allowing minnows that die during a fishing trip to be considered live bait for purposes of these rules.

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

June 11, 2007	Auditorium, Logan High School
Monday	1500 Ranger Drive
at 5:00 p.m.	La Crosse

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

Submission of Comments and Copy of Rule

The emergency rule and fiscal estimate may be reviewed and comments electronically submitted at the following Internet site: <http://adminrules.wisconsin.gov>. Written comments on the proposed rule may be submitted via U.S. mail to Mr. Bill Horns, Bureau of Fisheries Management and Habitat Protection, P.O. Box 7921, Madison, WI 53707. Comments may be submitted until June 15, 2007. Written comments whether submitted electronically or by U.S. mail will have the same weight and effect as oral statements presented at the public hearings. A personal copy of the emergency rule and fiscal estimate may be obtained from Mr. Horns.

Notice of Hearing

Natural Resources

(Air Pollution Control, Chs. NR 400—)

[CR 07-045]

NOTICE IS HEREBY GIVEN that pursuant to ss. 227.11 (2) (a), 285.11 (1), 285.27 (2) (a) and 227.14 (1m) (a), Stats., interpreting ss. 285.11 (6), 285.27 (2) (a) and 227.14 (1m) (a),

Stats., the Department of Natural Resources will hold a public hearing on amendments to ch. NR 484 and the creation of NR 460, Appendix JJJJ and ch. NR 465, subch. III, Wis. Adm. Code, relating to national emission standards for hazardous air pollutants for paper and other web surface coating processes. The U.S. EPA promulgated the national emission standards for hazardous air pollutants (NESHAP) for the surface coating of paper and other web on December 4, 2002. Section 285.27 (2) (a), Stats., requires the Department to promulgate NESHAP into the administrative code.

The proposed rule will regulate the emissions of hazardous air pollutants from facilities which are major sources of federal HAPs and which conduct surface coating of paper and other web (affected sources). These include facilities which manufacture the following products: pressure-sensitive tapes and labels, flexible vinyl, photographic film, decorative and industrial laminates, abrasive products and specialty papers. The rule specifies emission limits for organic HAP and operating limits for emission control devices.

Existing affected sources had until December 5, 2005 to achieve compliance. Thus all existing sources must be in compliance by now. New or reconstructed affected sources must achieve compliance “immediately upon start-up”. Sources have until their final compliance date to reduce HAP emissions below the major source level and thereby avoid the rule. Sources may also become a synthetic minor HAP source to avoid the rule by obtaining the complying with a federally enforceable permit that restricts HAP emissions prior to the final compliance date.

The proposed rule is identical to the federal NESHAP, except for punctuation, capitalization, numbering, and non-substantive wording and organizational changes made to accommodate state rule form and style requirements and, in some cases, to improve clarity.

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

a. Types of small businesses affected: Any small business which is a major source of HAP emission and which operates one or more web coating lines will be affected by the rule.

b. Description of reporting and bookkeeping procedures required: All affected sources must submit initial notifications, notification of compliance status, and semiannual compliance reports. All affected sources must develop a startup, shutdown and malfunction (SSM) plan. All affected sources must keep all records and documentation relevant to compliance with the rule, including copies of all notifications and reports submitted, performance test results, monitoring data and SSM plans.

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

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

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

environmental review document would summarize the Department's consideration of the impacts of the proposal and reasonable alternatives.

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

June 12, 2007	Room 511, GEF #2
Tuesday	101 South Webster Street
at 3:00 p.m.	Madison

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

Submission of Comments and Copy of Rule

The proposed rule and supporting documents, including the fiscal estimate may be viewed and downloaded and comments electronically submitted at the following Internet site: <http://adminrules.wisconsin.gov>. (Search this Web site using the Natural Resources Board Order No. AM-08-07. Written comments on the proposed rule may be submitted via U.S. mail to Mr. Eric Mosher, Bureau of Air Management, P.O. Box 7921, Madison, WI 53707 or by e-mail to Eric.Mosher@wisconsin.gov. Comments may be submitted until June 29, 2007. Written comments whether submitted electronically or by U.S. mail will have the same weight and effect as oral statements presented at the public hearings. If you do not have Internet access, a personal copy of the proposed rule and supporting documents, including the fiscal estimate may be obtained from Robert Eckdale, Bureau of Air Management, P.O. Box 7921, Madison, WI 53707 or by calling (608) 266-2856.

Notice of Hearing Public Service Commission [CR 07-044]

NOTICE IS GIVEN That the Public Service Commission of Wisconsin proposes an order to revise chs. PSC 111 and 112, Wis. Adm. Code, relating to information to be included in an electric utility construction application, as a result of 2003 Wisconsin Act 89. Pursuant to s. 227.16 (2) (b), Stats., the Commission will hold a public hearing in the Amnicon Falls Hearing Room at the Public Service Commission Building, 610 North Whitney Way, Madison, Wisconsin, on **Thursday, June 21, 2007** at 9:30 a.m. This building is accessible to people in wheelchairs through the Whitney Way (lobby) entrance. Handicapped parking is available on the south side of the building.

Analysis Prepared by Public Service Commission

Statutory authority: ss. 196.02 (3), 196.025, 196.491 and 227.11 (2), Stats.

Statute interpreted: s. 196.491, Stats.

A. Objective of the Rule

This rulemaking docket has been initiated to allow the Commission to revise provisions in Chapters PSC 111 and 112 as a result of statutory changes enacted in 2003 Wisconsin Act 89. Act 89 revised statutory provisions relating to utility

construction projects and agency review of the applications for authority to proceed with utility construction projects.

B. Analysis of the Proposed Revisions

Act 89 directs the Commission to promulgate rules to specify information to be included in an application to construct a high-voltage transmission line that may be eligible for expedited review by the Commission. Act 89 also creates new priorities for siting electric transmission lines, and requires utilities to consider using brownfield sites to the extent practicable. Additionally, this rulemaking considers other revisions to rules relating to the application process to reflect Act 89 provisions. These revisions include information needed to conduct a joint environmental review with the Department of Natural Resources, various construction related terminology, allowing utilities to begin urgently necessary work in case of emergency, and the provision of complete construction applications to area clerks and libraries.

C. Comparison with Federal Regulations

The Commission is not aware of any federal regulations in this area.

D. Comparison with Similar Rules in Adjacent States.

Existing statutes require that, within ten days of an applicant filing an application for a project that requires a Certificate of Public Convenience and Necessity, the Commission send a copy of the application to the clerk in each municipality and town in which the proposed facility is located and to the main library in such county. The proposed rule change would specify that this mailing be done *after* the application is determined to be complete, in order to avoid sending multiple versions of the application or multiple supplements to the application. The state of Ohio also requires that applications for new transmission lines or generation facilities be sent to local officials and libraries in the affected area after the application is determined, by the Ohio Power Siting Board, to be complete and ready for review.

Wisconsin Act 89 included a requirement for a pre-application consultation between the applicants and Public Service Commission and Wisconsin Department of Natural Resources staff before filing applications under Wis. Stat. §§ 196.49 and 196.491. One of the proposed rule changes acknowledges this requirement and provides guidance to the applicant about the scope of this consultation. Ohio's administrative rules also describe pre-application consultations between the applicants and the regulatory agencies.

Similar to some surrounding states (Minnesota, Iowa, Ohio), the current rules regarding applications for high-voltage transmission lines or large generating facilities state that applicants must file complete information for at least two proposed sites or routes. The Commission is proposing a rule change that would allow applicants, under certain circumstances, to submit fully developed information for only one site if the proposed generating project involves: modifying, rebuilding, replacing, or repowering an existing facility; using an existing brownfield site; or constructing a cogeneration facility located at the steam host's existing industrial plant. Also, Wisconsin Act 89 also provides for an expedited review process for electric transmission projects that involve adding conductors to existing structures if all related construction activity takes place within an existing transmission line right-of-way. The proposed rule changes describe the application information needed for an expedited review and limit the information requirements for filing to the proposed route the applicants plan to use. In Iowa, application

requirements can be waived if it is determined that the public interest would not be adversely affected by a proposed project and in Ohio the requirement for fully developed information for an alternative site or route can be waived for good cause.

Wisconsin Act 89 established priority corridors that must be considered in routing new high-voltage transmission lines and specified that brownfield sites must be used to the extent practicable for new electric generating facilities. The Commission's proposed rule change would require that project applications must explain how applicants considered the siting priorities for new high-voltage transmission lines and brownfield sites for large generation facilities. The state of Iowa also has designated "priority corridors" for siting high-voltage transmission lines and requires project applicants that submit proposals that deviate from these corridors to provide an explanation of why use of the corridors is not practicable or reasonable.

The current rule for applications filed under Wis. Stat. s. 196.49 contains a definition for the term "begin construction." Wis. Stat. s. 196.491 contains a slightly different definition for the term "commencement of construction." The proposed rules use the same definition for "begin construction" and "commencement of construction." This definition, which allows surveying or collection of geological data to ascertain foundation conditions or site suitability prior to project authorization, is similar to definitions for this term found in the rules of adjacent states, including Minnesota, Iowa, Michigan, and Ohio.

A proposed addition in s. PSC 112.075, Wis. Adm. Code, related to emergency work was requested by Wisconsin utilities to allow necessary work in a speedy manner when an emergency situation occurs. Without such a provision a utility would, strictly speaking, be in violation of rule if it responded to an emergency without going through the procedures outlined in the rule. A similar rule applies to Wisconsin natural gas and water utilities. The notification requirement would ensure that this process was applied only in true emergencies. Finally, a requirement for Public Service Commission notification about new construction staging areas and access roads not described in a project application was added to chs. PSC 111 and 112, Wis. Adm. Code. This requirement provides clear direction to utilities during project construction and reduces the potential for adverse environmental impact. Language pertaining to the two topics, emergency work or establishment of construction staging areas, was not found in reviewing utility-related statutes or rules in surrounding states although the Commission is aware that California has an emergency work provision.

Written Comments

Any person may submit written comments on these proposed rules. The hearing record will be open for written comments from the public, effective immediately, and until **Friday, July 6, 2007 at noon (Thursday, July 5, 2007 at noon, if filed by fax)**. All written comments must include a reference on the filing to docket 1-AC-216. File by one mode only.

Industry: File comments using the Electronic Regulatory Filing system. This may be accessed from the Commission's website, <http://psc.wi.gov>.

Members of the Public:

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

If filing by mail, courier, or hand delivery: Address comments to Sandra J. Paske, Secretary to the Commission,

Public Service Commission, P.O. Box 7854, Madison, WI 53707-7854, FAX (608) 266-3957.

If filing by fax: Send fax comments to (608) 266-3957. Fax filing cover sheet MUST state "Official Filing," the docket number 1-AC-216, and the number of pages (limited to 25 pages for fax comments).

Contact Person

Questions regarding this matter should be directed to Terri Kosobucki, Docket Coordinator at (608) 267-3595 or terri.kosobucki@psc.state.wi.us. Media questions should be directed to Linda Barth, Director of Governmental and Public Affairs at (608) 266-9600. Hearing or speech-impaired individuals may also use the Commission's TTY number, if calling from Wisconsin (800) 251-8345, if calling from outside Wisconsin (608) 267-1479.

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

Copy of Rule

A copy of this entire notice including the text of the proposed rule may be accessed from the electronic regulatory filing portion of the Commission's website (psc.wi.gov).

Initial Regulatory Flexibility Analysis

This rulemaking does not affect small businesses.

Fiscal Estimate

This rulemaking will no have any fiscal effect and will not have a significant effect on the private sector.

Notice of Hearing Workforce Development (Workforce Solutions, Chs. DWD 11—) [CR 07-046]

NOTICE IS HEREBY GIVEN that pursuant to ss. 49.155 and 227.11 (2) (a), Stats., the Department of Workforce Development proposes to hold a public hearing to consider rules relating to child care enrollment underutilization and affecting small businesses.

Hearing Information

June 20, 2007	MADISON
Wednesday	G.E.F. 1 Building, A415
1:30 p.m.	201 E. Washington Avenue

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

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

Analysis Prepared by the Department of Workforce Development

Statutory authority: Sections 49.155 and 227.11 (2) (a), Stats.

Statutes interpreted: Section 49.155, Stats.

Related statutes or rules: Section 48.65, Stats., and Chs. HFS 45, 46, and 55; Section 48.651, Stats., and Ch. DWD 55

Explanation of agency authority. The Department administers the child care subsidy program under s. 49.155, Stats., and reimburses child care providers for services provided pursuant to s. 49.155 (3m), Stats.

Summary of the rule. The current s. DWD 56.04 (2) (d) provides that a child care administrative agency shall authorize payment to licensed group and family day care centers based on authorized units of service except as follows:

- The agency may authorize payment to licensed providers based on units of service used by each child up to the maximum number of authorized units, with the reimbursement rate increased by 10% to account for absent days, if the schedule of child care to be used is expected to vary widely.
- The agency may authorize payment to licensed providers based on units of service used by each child, up to the maximum number of authorized units, if the agency has documented 3 separate occasions where the provider significantly overreported the attendance of a child.

The current methodology for authorizing payment to licensed providers has caused the child care subsidy program to pay for significant amounts of time when care is not actually being provided. This rule attempts to control costs by reducing payments to licensed child care providers for authorized child care services that are significantly underused. The rule will repeal the presumption of enrollment authorization for licensed providers and provides that a local child care administrative agency shall authorize on either an enrollment or attendance basis as follows:

- The agency shall authorize the number of hours needed on an enrollment basis if the need for care is anticipated to be approximately the same number of hours each week.
- The agency shall authorize payment based on the hours of actual attendance by each child if the need for care is anticipated to vary from week to week or if the child has a history of variable attendance.
- The agency may authorize payment on the hours of actual attendance if the agency has documented 3 separate occasions where the provider significantly overreported the attendance of a child.

For any week in which a child whose authorized payments are on an enrollment basis attends less than 50% of the of the authorized hours of care, payment shall be made on the basis of actual hours of attendance used, unless the agency determines that the absence is for a reason approved by the Department, such as short-term illness of the child or death in the family. This policy does not apply to a child with a special needs authorization.

Payment to certified providers is based on a child's attendance and remains unchanged in this rule.

In addition the rule increases the penalties for a provider who submits false or inaccurate attendance reports. The current s. DWD 56.04 (5) (c) allows for the child care administrative agency to refuse to issue new child care authorizations to a provider for a period of time not to exceed 6 months, revoke existing child care authorizations to the provider, or refuse to issue payment to the provider until the

violation is corrected. This rule provides additional penalties in the following situations:

- If it is the provider's second documented instance of submitting an inaccurate attendance report or the inaccurate report resulted in or would have resulted in an overpayment of \$1000 or more, the agency may refuse to issue new child care authorizations to a provider for a period of time not to exceed 1 year.
- If it is the provider's third or subsequent documented instance of submitting an inaccurate attendance report or the inaccurate report resulted in or would have resulted in an overpayment of \$5000 or more, the agency may refuse to issue new child care authorizations to a provider for a period of time not to exceed 5 years.

Summary of factual data and analytical methodologies. By paying the hourly rate for actual attendance to child care providers when attendance is under 50% of the authorized level for the child care subsidy program, the Department will avoid paying for significant amounts of time where care is not actually being provided. By comparing the amount currently paid for enrollment authorizations against the amount that would be paid if underutilized authorizations of 50% or less are paid for actual hours of care, it is estimated that the Department will realize \$20,387,000 in annual savings in federal block grant funds.

Summary of related federal regulations. NA

Comparison with rules in adjacent states:

Michigan. A provider may only receive payment for a child's hours of attendance, except for absences due to the child's illness, not to exceed 2 consecutive weeks, and state holidays.

Illinois. Payment to licensed and license-exempt child care centers are based on authorized days if the total of days attended for all publicly-funded children at the center location are 80% of the authorized days for the month.

Payment to licensed home providers are based on authorized days if the total of days attended for all children in a family are 80% of the family's authorized days for the month.

Payment to license-exempt home providers are based only on attendance.

Iowa. Payment is based on authorized days with payment allowed for a child not in attendance not to exceed 4 days per calendar month.

Minnesota. Payment is based on authorized days except child care providers may not be reimbursed for more than 25 full-day absent days per child, excluding holidays, in a fiscal year, or for more than 10 consecutive full-day absent days, unless the child has a documented medical condition that causes more frequent absences.

Effect on Small Businesses

The rule will affect small businesses but will not have a significant economic impact on a substantial number of small businesses. The Department's Small Business Regulatory Coordinator is Jennifer Jirschele, jennifer.jirschele@dwd.state.wi.us, (608) 266-1023.

Analysis used to determine effect. The Legislature and Governor set the funding level for the Wisconsin Shares Child Care Subsidy. In the current fiscal year, that amount is \$343 million, after the addition of \$30 million from the budget adjustment act.

These rules do not affect the amount of funding in the program. All of the allocated funding will be spent as subsidies for child care for the children of working families. We do not anticipate that the proposed rules will in any way

change the extent to which these dollars are spent on small businesses.

Agency Contact Person

Barbara Stiefvater, Child Care Section, (608) 266-8200, barbara.stiefvater@dwd.state.wi.us.

Place to Submit Comments and Deadline for Submission.

An electronic copy of the proposed rules is available at <http://www.dwd.state.wi.us/dwd/hearings.htm>. A copy of the proposed rules is also available at <http://adminrules.wisconsin.gov>. This site allows you to view documents associated with this rule's promulgation, register to receive email notification whenever the Department posts new information about this rulemaking order, and submit

comments and view comments by others during the public comment period. You may receive a paper copy of the rule or fiscal estimate by contacting:

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

Written comments on the proposed rules received at the above address, email, or through the <http://adminrules.wisconsin.gov> web site no later than **June 21, 2007**, will be given the same consideration as testimony presented at the hearing.

Submittal of proposed rules to the legislature

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

Commerce

(CR 06–127)

Ch. Comm 5, relating to credentials for storage of flammable, combustible, and hazardous liquids, and for cleanup of properties contaminated by petroleum-product discharges.

Health and Family Services

(CR 06–053)

Ch. HFS 132, relating to nursing homes.

Health and Family Services

(CR 07–028)

Ch. HFS 51, relating to adoption of children with special needs and pre-adoption training.

Insurance

(CR 06–117)

Ch. Ins 6, relating to underinsured (“UM”) and uninsured motorist coverage (“UIM”) in personal umbrella, personal excess, commercial automobile liability and commercial liability policies and affecting small business.

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.

Insurance**(CR 07-001)**

An order affecting ch. Ins 17, relating to peer review surcharge rates for the injured patients and families compensation fund and for the Wisconsin health care liability insurance plan.

Effective 7-1-07.

Insurance**(CR 07-002)**

An order affecting ch. Ins 17, relating to annual patients compensation fund and mediation fund fees.

Effective 7-1-07.

Natural Resources**(CR 03-118)**

An order affecting chs. NR 405, 408 and 484, relating to incorporation of federal changes to the air permitting program.

Effective 7-1-07.

Natural Resources**(CR 06-019)**

An order affecting chs. NR 406 and 410, relating to

linkage of the state air permitting programs with federal changes to the air permitting program and affecting small businesses.

Effective 7-1-07.

Workforce Development**(CR 07-003)**

An order affecting ch. DWD 290, relating to adjustment of thresholds for application of prevailing wage rates.

Effective 7-1-07.

Workforce Development**(CR 07-009)**

An order affecting chs. DWD 100 to 150, relating to unemployment insurance technical corrections.

Effective 7-1-07.

Workforce Development**(CR 07-010)**

An order affecting ch. DWD 295, relating to enforcement of indenture agreements.

Effective 7-1-07.

Rules published with this register and final regulatory flexibility analyses

*The following administrative rule orders have been adopted and published in the **May 31, 2007**, Wisconsin Administrative Register. Copies of these rules are sent to subscribers of the complete Wisconsin Administrative Code and also to the subscribers of the specific affected Code.*

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

Agriculture, Trade and Consumer Protection (CR 05-013)

An order affecting Ch. ATCP 50, relating to agricultural nutrient management. Effective 6-1-07 and 8-1-07.

Summary of Final Regulatory Flexibility Analysis

This rule modifies current rules related to nutrient management on farms. Current rules are based on nitrogen, not phosphorus. This rule incorporates federal standards based on nitrogen *and* phosphorus. Phosphorus is a key component of manure, and an important crop nutrient. But when applied in excessive amounts, it poses a serious runoff and water pollution threat. Enforcement of this rule, like the current rules, is contingent on cost-sharing.

This rule will have a significant impact on farms in this state. Many of these farms are “small businesses” as defined in s. 227.114(1), Stats. This rule may also affect the following businesses:

Nutrient management planners, including private crop consultants, farm cooperatives, and farm supply organizations that provide nutrient management planning.

- Soil and manure testing laboratories and businesses that haul manure.
- Commercial fertilizer dealers.
- Businesses that design and install farm conservation practices.

This rule will have the greatest impact on livestock operators, who may incur additional costs related to the disposal of manure (which provides more phosphorus than nitrogen, compared to crop needs). Overall effects are as follows (more detail provided below):

- Most dairy operations will be minimally affected.
- Swine operations, and beef operations with alfalfa rotations, will be affected to approximately the same degree as dairy operations.
- Crop farmers who do not use manure will not be significantly affected.
- Perennial fruit crop producers, like cranberry growers, will benefit because the new standard is more flexible.
- Some poultry operations will be significantly affected, but others will not. Most turkey and laying chicken operations will not be affected, because they are separately regulated by DNR. However, broiler chicken operations will be affected, and compliance costs may be significant. Broiler operations have not yet adopted, to any great degree, the more advanced manure management techniques used in the turkey and laying chicken sectors. However, broiler operations are often

combined with other livestock operations, and may have manure spreading options that could reduce costs.

The total statewide cost of \$6.5 million per year, divided by the total number of cropland acres in the state (about 9 million), yields an average cost of \$0.72 per cropland acre per year. Some farms will have lower costs, and others will have higher costs. Most of the costs represent increased manure hauling costs. The cost for an individual livestock operation will depend on a number of factors, but the existing level of soil-test phosphorus is critical. If livestock producers prevent further increases in soil-test phosphorus levels, and reduce soil-test phosphorus levels in high-testing soils, costs will be lower over time.

A farmer can prepare his or her own nutrient management plan, if the farmer is qualified as a nutrient management planner. However, this rule may increase demand for professional nutrient management planning services. Farmers who comply with a nutrient management plan prepared or approved by a qualified nutrient management planner (other than the farmer) are presumed to comply with the nutrient management standards in this rule. The nutrient management planner is responsible for ensuring that the plan complies with the nutrient management standards.

This rule updates and clarifies current standards for certification of soil testing laboratories, and establishes standards for manure testing laboratories. The changes will help ensure accurate laboratory testing and nutrient management recommendations. The changes will not have a significant adverse impact on the affected laboratories.

The Department of Agriculture, Trade and Consumer Protection (“DATCP”) currently administers nutrient management rules for farms. DATCP adopted the current rules in 2002, as part of a redesign of state nonpoint pollution abatement programs mandated by the Legislature.

A nutrient management plan must comply with all of the following requirements:

- It must be prepared or approved by a qualified nutrient management planner. A farmer may prepare his or her own plan if the farmer has completed a DATCP-approved training course within the preceding 4 years, or is otherwise qualified under current rules.
- It must identify the lands on which the operator will apply manure and other nutrients.
- It must be based on soil tests that determine the nutrient needs of the affected cropland. A soil test laboratory, certified by DATCP, must conduct the soil tests.
- It may not call for nutrient applications in excess of amounts needed to achieve crop fertility levels recommended by the University of Wisconsin (there are limited exceptions).

- It must comply with nutrient management standards published by the Natural Resource Conservation Service of the United States Department of Agriculture ("NRCS") and updated in September 2005.

Due to cost-share funding limitations, implementation of the new standard (like the current standard) will be largely voluntary. Information and education programs will be expanded. Cost-sharing and enforcement will be mainly targeted at farms where runoff has caused fish kills or well contamination, or which are located in highly vulnerable areas. Current cost-share funding levels make it possible to target about 20,000 acres per year (less than 1% of Wisconsin's crop acreage).

A farmer is presumed to comply with the nutrient management standards in this rule if the farmer follows a nutrient management plan that is prepared or approved by a qualified nutrient management planner other than the farmer. The nutrient management planner is responsible for ensuring that the plan complies with this rule.

Summary of Comments by Legislative Review Committees

Neither the Senate nor Assembly committees held hearings or had comments on this rule.

Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors (CR 06-057)

An order affecting Ch. A-E 6, relating to land surveyor education and experience requirements. Effective 6-1-07.

Summary of Final Regulatory Flexibility Analysis

This rule will not have an effect on small business.

Summary of Comments by Legislative Review Committees

No comments were received.

Commerce (CR 06-113)

An order affecting Ch. Comm 104, relating to the Woman-Owned Business Certification Program. Effective 6-1-07.

Summary of Final Regulatory Flexibility Analysis

As directed by s. 560.035 (1) (c), Stats., these proposed rules contain the criteria for implementing a woman-owned business certification program. These proposed rules are consistent with all of the criteria in s. 560.035 (1) (c), and they reflect the best practices the Department has developed in its current, similar program for certifying minority businesses.

The proposed rules are not expected to impose any significant, mandated costs on the private sector, because the rules only address applying for, receiving, and maintaining voluntary credentials that may enable woman-owned businesses to benefit from additional business opportunities. Although the rules and the corresponding enabling legislation do not establish procurement preferences, the rules are consistent with statutory goals for remedying the effects of past discrimination against members of targeted groups.

Summary of Comments by Legislative Review Committees

No comments were received.

Natural Resources (CR 06-023)

An order affecting Chs. NR 127 and 160, relating to the Safe Drinking Water Loan Program. Effective 6-1-07.

Summary of Final Regulatory Flexibility Analysis

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

Summary of Comments by Legislative Review Committees

No comments or modification requests were received by the Department.

Natural Resources (CR 06-025)

An order affecting Ch. NR 520, relating to balances in the Waste Management Program Revenue Account. Effective 6-1-07.

Summary of Final Regulatory Flexibility Analysis

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

Summary of Comments by Legislative Review Committees

No comments or modification requests were received by the Department.

Natural Resources (CR 06-047)

An order affecting Chs. NR 406, 407, and 410, relating to air pollution permit exemptions and air pollution permit exemption fees and affecting small business. Effective 6-1-07.

Summary of Final Regulatory Flexibility Analysis

The proposed rule will affect a number of small businesses. The proposal will exempt a number of small businesses from obtaining air pollution permits. This will, in general, lower their compliance costs and reporting requirements. The construction permit exemption for projects will benefit larger businesses with higher levels of emissions.

Summary of Comments by Legislative Review Committees

Public hearings were held and modifications were requested. On February 28, 2007, the Natural Resources Board adopted a modification that clarified that the requirement to notify the Department of the intent to operate a facility under the exemption also serves as a request for revocation of an existing permit or withdrawal of a pending permit application. The modifications were submitted to the Assembly Committee on Natural Resources and the Senate Committee on Environment and Natural Resources. No comments were received from the committees during the review period.

Natural Resources (CR 06-079)

An order affecting Chs. NR 406 and 410, relating to construction permit waivers and affecting small business. Effective 6-1-07.

Summary of Final Regulatory Flexibility Analysis

The proposed rule will not have a significant economic impact on a substantial number of small businesses. The proposed rule is not a required regulation, but rather an optional step that a small business may take, under certain circumstances, to expedite the construction of an air pollution source. Based on estimates, the Department expects to receive about 10 construction permit waiver requests annually. The fee for a waiver request is \$300. If granted a waiver, the Department believes that there could be a positive economic impact for that facility by allowing construction to start earlier than would normally be allowed.

Summary of Comments by Legislative Review Committees

Public hearings were held. The Department did not receive a request for modifications as a result of these hearings.

**Occupational Therapists Affiliated
Credentialing Board
(CR 06-115)**

An order affecting Ch. OT 3, relating to continuing education waivers. Effective 6-1-07.

Summary of Final Regulatory Flexibility Analysis

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

Summary of Comments by Legislative Review Committees

No comments were received.

**Optometry Examining Board
(CR 06-116)**

An order affecting Chs. Opt 1 and 3 to 8, relating to examinations, endorsement, delegation, TPA/DPA, renewal and continuing education relating to optometrists. Effective 6-1-07.

Summary of Final Regulatory Flexibility Analysis

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

Summary of Comments by Legislative Review Committees

No comments were received.

**Public Instruction
(CR 06-094)**

An order affecting Ch. PI 40, relating to the youth options program. Effective 6-1-07.

Summary of Final Regulatory Flexibility Analysis

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

Summary of Comments by Legislative Review Committees

No comments were received.

**Public Instruction
(CR 06-098)**

An order affecting Ch. PI 30, relating to grants for high cost special education. Effective 6-1-07.

Summary of Final Regulatory Flexibility Analysis

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

Summary of Comments by Legislative Review Committees

No comments were received.

**Public Service Commission
(CR 06-112)**

An order affecting Ch. PSC 118, relating to a renewable resource credit tracking program. Effective 6-1-07.

Summary of Final Regulatory Flexibility Analysis

The proposed rules are not expected to affect small business, as defined in s. 227.114 (1), Stats.

Summary of Comments by Legislative Review Committees

No comments were received.

**University of Wisconsin System
(CR 06-078)**

An order affecting Chs. UWS 2, 4, 7 and 11, relating to procedures for dismissal of academic staff in special cases. Effective 6-1-07.

Summary of Final Regulatory Flexibility Analysis

The proposed rules will have no effect on small business.

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 **May 2007**, and will be effective as indicated in the history note for each particular section. For additional information, contact the Revisor of Statutes Bureau at (608) 266-7275.

Revisions

Agriculture, Trade and Consumer Protection

Ch. ATCP 50

- S. ATCP 50.04 (3) (d), (dm), (f), (g) and (i)
- S. ATCP 50.48 (2) (a)
- S. ATCP 50.50 (2) (intro.), (b), (c), (d), (f), and (8)
- S. ATCP 50.62 (3) (d)
- S. ATCP 50.78 (3) (a)

Architects, Engineers, Designers and Surveyors

Ch. A-E 6

- S. A-E 6.03 (1) (a) and (b)
- S. A-E 6.04 (1) (b) and (2) (b)

Commerce

Ch. Comm 104 (Entire chapter)

Natural Resources

Ch. NR 127 (Entire chapter)

Ch. NR 160 (Entire chapter)

Ch. NR 166 (Entire chapter)

Ch. NR 406

- S. NR 406.02 (1) and (1m)
- S. NR 406.03
- S. NR 406.04 (1) (zh), (1q), (4) (h) to (j)

Ch. NR 407

- S. NR 407.03 (1m)

Ch. NR 410

- S. NR 410.03 (intro.), (1) (bm), (d) and (f)

Ch. NR 520

- S. NR 520.04 (1) (d)

Occupational Therapists Affiliated Credentialing Board

Ch. OT 3

- S. OT 3.06 (6) and (7)

Optometry Examining Board

Ch. Opt 1

- S. Opt 1.01

- S. Opt 1.02 (3) and (6)

- S. Opt 1.03

Ch. Opt 3

- S. Opt 3.01
- S. Opt 3.02 (1) (intro.)
- S. Opt 3.03
- S. Opt 3.09

Ch. Opt 4

- S. Opt 4.01 (1) to (5) and (7) to (9)
- S. Opt 4.02 (1) (intro.) and (c)
- S. Opt 4.03 (1) and (2) (intro.)

Ch. Opt 5

- S. Opt 5.02 (6)
- S. Opt 5.12

Ch. Opt 6

- S. Opt 6.01
- S. Opt 6.02 (1), (1m), (2), (3), (5) and (6)
- SS. Opt 6.03 to 6.08

Ch. Opt 7

- S. Opt 7.03
- S. Opt 7.05 (1) and (2) (intro.)

Ch. Opt 8 (Entire chapter)

Public Instruction

Ch. PI 30 (Entire chapter)

Ch. PI 40

- S. PI 40.04 (1) (a), (c) and (f), (2) (a) and (b), (3) (c), (cm), (d), (5) (a) and (e)
- S. PI 40.05 (2) (a) and (b) and (5)
- S. PI 40.055 (1) (b) and (2) to (5)
- S. PI 40.056 (1) and (3) to (5)
- S. PI 40.06 (2) (intro.)
- S. PI 40.07 (1) (c)
- S. PI 40.08 (5) (a)

Public Service Commission

Ch. PSC 118

- S. PSC 118.01
- S. PSC 118.02 (5), (7), (9), (10), (11), and (13)
- S. PSC 118.03 (2) and (3)
- S. PSC 118.04 (1), (2) (a) to (d), (g) and (3)
- S. PSC 118.05 (1), (2) (intro.), (3), (4), and (6)
- S. PSC 118.06 (1), (2), (4) (a), and (5)
- S. PSC 118.07
- S. PSC 118.08

University of Wisconsin System

- Ch. UWS 2**
- S. UWS 2.02
- Ch. UWS 4**
- S. UWS 4.09

Ch. UWS 7 (Entire chapter)

- Ch. UWS 11**
- S. UWS 11.01 (1) and (3)
- S. UWS 11.015
- S. UWS 11.08
- SS. UWS 11.101 to 11.106

Editorial corrections

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

Natural Resources

- Ch. NR 406**
- S. NR 406.04 (1) (a) and (b)
- Ch. NR 407**
- S. NR 407.03 (1) (a) and (b)

- S. UWS 4.05 (1) (h)
- Ch. UWS 5**
- S. UWS 5.11
- S. UWS 5.13 (4) (f)
- S. UWS 5.14 (3)

Public Instruction

- Ch. PI 40**
- S. PI 40.056 (2)

- Ch. UWS 11**
- S. UWS 11.03 (1)
- S. UWS 11.05 (1) (g)

University of Wisconsin System

- Ch. UWS 4**
- S. UWS 4.03

- Ch. UWS 12**
- S. UWS 12.04
- S. UWS 12.05 (1) (f)

Executive orders

The following are recent Executive Orders issued by the Governor.

Executive Order 193. Relating to the creation of the Governor's Business Council.

Executive Order 194. 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 the Victims of the Shootings at Virginia Tech University.

Executive Order 195. 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 Staff Sergeant Robert Basham of the Wisconsin Army National Guard Who Lost His Life During Operation Iraqi Freedom.

Executive Order 196. Relating to the creation of the Governor's Task Force on Campus Safety.

Executive Order 197. Relating to the creation of the Capital Area Regional Planning Commission.

Public Notice

Health and Family Services (Medical Assistance Reimbursement of Nursing Homes) State of Wisconsin Medicaid Nursing Facility Payment Plan: FY 07–08

The State of Wisconsin reimburses Medicaid–certified nursing facilities for long–term care and health care services provided to eligible persons under the authority of Title XIX of the Federal Social Security Act and ss. 49.43 to 49.47, Wisconsin Statutes. This program, administered by the State’s Department of Health and Family Services, is called Medical Assistance (MA) or Medicaid. Federal Statutes and regulations require that a state plan be developed that provides the methods and standards for setting payment rates for nursing facility services covered by the payment system. A plan that describes the nursing home reimbursement system for Wisconsin is now in effect as approved by the Centers for Medicare and Medicaid Services (CMS).

The Department is proposing changes in the methods of payment to nursing homes and, therefore, in the plan describing the nursing home reimbursement system. The changes are effective July 1, 2007.

The proposed changes would update the payment system and make various payment–related policy changes. Some of the changes are necessary to implement various budget policies in the Wisconsin 2007–2009 Biennial Budget. Some of the changes are technical in nature; some clarify various payment plan provisions.

The estimated increase in annual aggregate expenditures attributable to these changes for nursing homes serving MA residents is approximately \$15,899,106 all funds, (\$8,954,705 FFP), excluding patient liability.

The proposed changes are being implemented to comply with Wisconsin Statutes governing Medicaid payment systems, particularly s. 49.45 (6m), Wis. Stats.

The proposed changes are as follows:

1. Modify the methodology to adjust the reimbursement for nursing homes within the parameters of 2007–2009 Biennial Budget Bill and to disburse the \$15,899,106 allotted in the bills to a rate increase of approximately 2% for nursing homes. These modifications will include adjustments to the maximums, per diems, and other payment parameters in Sections 5.400, 5.500, 5.700, 5.800 and 5.900, the inflation and deflation factors in Section 5.300, and targets in Sections 3.000 and 5.000.
2. Changing references to previous years for descriptive reasons will be done where necessary.
3. Modify the labor factors listed in Section 5.410.
4. Change the dates of the definitions of base cost reporting period, common period, and rate payment year in Sections 1.302, 1.303, and 1.314 to reflect the 2007–2008 period.
5. Modify the targets in the property allowance in Section 3.532.
6. Rewrite Section 3.775 to establish protocols for disbursing Operating Deficit Reduction funds and to clarify the mechanics of the disbursement.
7. Create Section 2.140 to explain which residents will be included in the counts on the dates in Section 5.422.
8. Modify Sections 1.250–1.255, 1.270 and 3.526(e) to indicate their application only to the Operating Deficit Reduction program in Section 3.775.
9. Modify Sections 1.256 and 1.260 to indicate application only to RN, LPN, NA and Ward Clerk wages.
10. Modify Section 4.851 to allow the Department Secretary to implement the temporary evacuation provisions.
11. Implement any modifications as directed by State statutory changes or non–statutory language in the 2007–09 state budget.

12. Modify the weighting factors of the RUGs case mix index and the level of care case mix index in Section 3.100 to continue the transition RUGs as the primary case mix factor.
13. Modify Section 3.140 for special rate adjustments and recalculations after January 1, 2006.
14. Modify Section 3.900 to clarify the frequency and mechanism for case mix adjustments to the payment rates.
15. Modify Section 1.317.

Copies of the Proposed Changes

Copies of the available proposed changes and proposed rates may be obtained free of charge by writing to:

Division of Health Care Financing
Attention: Nursing Home Medicaid Payment Plan
P.O. Box 309
Madison, WI 53701-0309
or by faxing James Cobb at 608-264-7720.

The available proposed changes may be reviewed at the main office at any county department of social services or human services.

Written Comments/Meetings

Written comments on the proposed changes may be sent to the Division of Health Care Financing, at the above address. The comments will be available for public review between the hours of 7:45 a.m. and 4:30 p.m. daily in Room 350 of the State Office Building, 1 West Wilson Street, Madison, Wisconsin. Revisions may be made in the proposed changes based on comments received. There will also be public meetings to seek input on the proposed plan amendment. If you would like to be sent a public meeting notice, please write to the above address. Revisions may, also, be made in the proposed changes based on comments received at these forums.