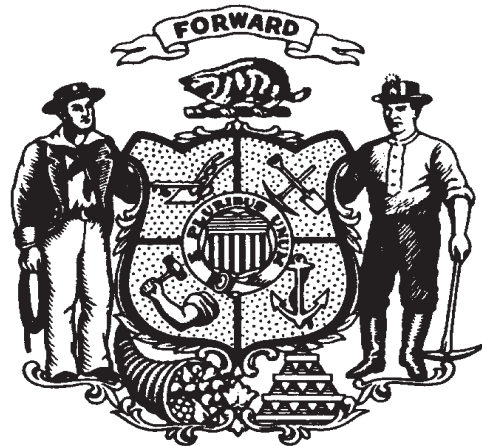


Wisconsin Administrative Register

No. 634



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Legislative Reference Bureau
<http://www.legis.state.wi.us/rsb/code.htm>

New Material

Commerce:	<i>Financial Resources for Businesses and Communities, Chs. Comm 104—</i> Introduction Page; Table of Contents; Pages 81; 83 to 90; 90-1 to 90-2
Insurance:	Pages 35 to 146-28
Natural Resources:	<i>Fish, Game, etc., Chs. NR 1—</i> Pages 401 to 412-1
Regulation and Licensing:	Pages 49 to 50
Transportation:	Pages 309 to 310
Veterinary Examining Board:	Introduction Page; Pages 1; 13 to 15; 21 to 22

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Instructions for Inserting New Material in the Wisconsin Administrative Code

Volume		Code	Pages removed	Pages inserted	Removed chapters	Inserted chapters
5	Comm	Commerce—Financial Resources for Businesses & Communities, Chs. Comm 104—	Introduction Page Table of Contents 81 83 to 88 _____	Introduction Page Table of Contents 81 83 to 90 90-1 to 90-2	_____ _____ Comm 131 Comm 131 Appx _____	_____ _____ Comm 131 Comm 131 Appx Comm 132
10	Ins	Insurance	35 to 146-10	35 to 146-28	Ins 3	Ins 3
11	NR	Natural Resources—Fish, Game, etc., Chs. NR 1—	401 to 412-1	401 to 412-1	NR 46	NR 46
16	RL	Regulation and Licensing	49 to 50	49 to 50	RL 16	RL 16
17	Trans	Transportation	309 to 310	309 to 310	Trans 250	Trans 250
18	VE	Veterinary Examining Board	Introduction Page 1 13 to 15 21 to 22	Introduction Page 1 13 to 15 21 to 22	_____ VE 1 VE 7 VE 10	_____ VE 1 VE 7 VE 10

Table of Contents

Emergency Rules Now in Effect.**Pages 5 to 10**

Agriculture, Trade and Consumer Protection:

Creates subch. IV of Ch. ATCP 161, relating to the “buy local” grant program. **EmR0804**

Revises Ch. ATCP 10, relating to diseases of fish and farm-raised deer. **EmR0822**

Children and Families:

(Formerly Workforce Development)

Family Supports, Chs. DWD 12–59

Repeals emergency rule EmR0807, relating to child care enrollment underutilization. **EmR0814**

Creates ss. DWD 40.02 and 40.05 and DWD 40 Appendix D, relating to the establishment of birth cost orders based on child support guidelines. **EmR0821**

Commerce:

Uniform Dwelling, Chs. Comm 20–25***Wisconsin Commercial Building Code, Chs. Comm 60–66***

Revises Chs. Comm 20, 21, 62 and 66, relating to carbon monoxide alarms and affecting small business. **EmR0826**

Financial Resources for Businesses and Communities, Chs. Comm 104–135

Revises Ch. Comm 108 and s. Comm 154.06 (intro.), relating to emergency assistance grants in the community development block grant program, and affecting small businesses. **EmR0823**

Creates s. Comm 113.03 (4), relating to allocation of volume cap on tax-exempt private activity bonds. **EmR0831**

Corrections:

Revises s. DOC 332.19, relating to a sex offender registration fee. **EmR0812**

Financial Institutions – Securities:

Revises Chs. DFI–Sec 4, 5 and 10, relating to misleading designations or certifications regarding special expertise in the financial or retirement needs of seniors. **EmR0829**

Government Accountability Board:

Repeals and recreates Ch. GAB 4, relating to observers at a polling place or other location where votes are being cast, counted or recounted. **EmR0830**

Health Services:

(Formerly Health and Family Services)

Health, Chs. HFS 110—

Creates Ch. HFS 119, relating to training and qualifications for EMTs, first responders, and individuals providing instruction. **EmR0825**

Natural Resources:

Fish, Game, etc., Chs. NR 1—

Revises ss. NR 10.01 (1) and 10.06 (5), relating to the 2008 migratory game bird seasons and waterfowl hunting zones. **EmR0824**

Environmental Protection—General, Chs. NR 100—

Revises Ch. NR 198, relating to grants for the control of aquatic invasive species. **EmR0809**

Pharmacy Examining Board:	Revises Ch. Phar 13, relating to the regulation of wholesale prescription drug distributors. EmR0815
Public Instruction:	Revises Ch. PI 37, relating to grants for national teacher certification and master educator licensure. EmR0813 Revises Ch. PI 30, relating to state special education aid for certain pupil services personnel. EmR0816
Regulation and Licensing:	Revises s. RL 161.04, relating to examinations for substance abuse professionals. EmR0819 Creates s. RL 91.01 (3) (k), relating to training and proficiency in the use of automated external defibrillators for certification as a massage therapist or bodyworker. EmR0827 Revises ss. RL 180.02 and 181.01, relating to training and proficiency in the use of automated external defibrillators for licensure as a licensed midwife. EmR0828
Revenue:	Creates ss. Tax 8.03 and 8.05, relating to registration of wine collectors and the creation and organization of small winery cooperative wholesalers. EmR0820
Transportation:	Creates Ch. Trans 263, relating to multiple trip overweight permits for vehicles transporting granular roofing materials. EmR0818
Scope Statements.	Pages 11 to 13
Commerce:	<i>Amusement Rides, Ch. Comm 34</i> Revises Ch. Comm 34, relating to zip lines–amusement rides.
Health Services: (Formerly Health and Family Services)	<i>Mgmt., Technology and Strategic Finance, Chs. HFS 1—</i> Revises Ch. HFS 10, relating to confidentiality requirements prohibiting disclosure of personally identifying information about a client without the client’s informed consent.
Insurance:	Revises ss. Ins 17.01 (3), 17.28 (3) (c) and (6), relating to fiscal 2010 fund fees, provider classifications, and mediation panel fees and affecting small business. Revises s. Ins 17.26 (3) (c), relating to future medical expense accounts. Revises s. Ins 17.28 (3e), relating to defining circumstances under which employee–health care practitioner would not have fund coverage for providing health care services not “under direction or supervision of a physician or nurse anesthetist”.
Military Affairs — Division of Emergency Management:	Revises Ch. WEM 1, relating to fees for facilities housing hazardous chemicals, hazardous materials, and extremely hazardous substances.

Submittal of Rules to Legislative Council Clearinghouse.

Pages 14 to 15

Commerce:

Financial Resources for Businesses and Communities, Chs. Comm 104—

Housing Assistance, Chs. Comm 150—

Revises Chs. Comm 108 and 154, relating to emergency assistance grants in the Community Development Block Grant program. **CR 08–096**

Financial Institutions–Securities:

Revises Chs. DFI–Sec 4, 5, and 10, relating to making it a dishonest or unethical practice for securities licensees to make use of misleading designations or certifications purporting to demonstrate special expertise in the financial or retirement needs of seniors. **CR 08–095**

Health Services:

(Formerly Health and Family Services)

Mgmt., Technology and Strategic Finance, Chs. HFS 1—

Revises Ch. HFS 12 to specify crimes for which an entity must disclose a conviction to a client or the client's guardian of a caregiver who provides personal care services in the client's personal residence. **CR 08–098**

Community Services, Chs. HFS 30—

Repeals and recreates Ch. HFS 97 to adopt Ch. DOC 310, except where stated, as the process for handling Wisconsin Resource Center inmate complaints. **CR 08–097**

Rule–Making Notices.

Pages 16 to 27

Chiropractic Examining Board:

Hearing to consider rules revising Chs. Chir 1 to 3 and 5, relating to continuing education and requirements for proficiency in the use of automated external defibrillators. **CR 08–093**

Commerce:

Financial Resources for Businesses and Communities, Chs. Comm 104—

Housing Assistance, Chs. Comm 150—

Hearing to consider rules revising Chs. Comm 108 and 154, relating to emergency assistance grants in the Community Development Block Grant program. **CR 08–096**

Government Accountability Board:

Hearing to consider emergency rules revising Ch. GAB 4, relating to observers at a polling place or other location where votes are being cast, counted or recounted. **EmR0830**

Health Services:

(Formerly Health and Family Services)

Community Services, Chs. HFS 30—

Hearing to consider rules revising Ch. HFS 97 to adopt Ch. DOC 310, except where stated, as the process for handling Wisconsin Resource Center inmate complaints. **CR 08–097**

Regulation and Licensing:

Hearing to consider emergency rules revising s. RL 161.04, relating to examinations for substance abuse professionals. **EmR0819**

Hearing to consider permanent rules revising s. RL 161.04, relating to examinations for substance abuse professionals. **CR 08–094**

Rule Orders Filed with the Legislative Reference Bureau.

Pages 28 to 29

Agriculture, Trade and Consumer Protection:

Revises Chs. ATCP 10, 12 and 17, relating to animal health and disease control. **CR 07–107**

	Revises Chs. ATCP 42, 55 and 57, relating to meat and inedible animal by-products. CR 07-116
Commerce:	<i>Fee Schedule, Ch. Comm 2</i> <i>Licenses, Certifications and Registrations, Ch. Comm 5</i> Revises Chs. Comm 2 and 5, relating to program revenue fees. CR 08-039
	<i>Elevators, Escalators and Lift Devices, Ch. Comm 18</i> Revises Chs. Comm 5, 18 and 21, relating to technical requirements for conveyances and licensing of installers of residential conveyances. CR 08-030
Health Services:	<i>Health, Chs. HFS 110—</i> Repeals Ch. HFS 129 and creates Ch. DHS 129, relating to certification and training of nurse aides, home health aides, medication aides, feeding assistants, and hospice aides. CR 08-042
Insurance:	Revises ss. Ins 6.79 and 8.10, relating to advisory councils and committees. CR 08-064
Natural Resources:	<i>Environmental Protection—Air Pollution Control, Chs. NR 400—</i> Revises Chs. NR 439, 446 and 484, relating to the control of mercury emissions from electrical generating units. CR 07-036
Pharmacy Examining Board:	Revises Chs. Phar 12 and 13, relating to the regulation of wholesale prescription drug distributors. CR 08-051
Physical Therapists Affiliated Credentialing Board:	Revises Chs. PT 2, 3 and 9, relating to examination waivers and temporary licenses. CR 08-049
Public Instruction:	Creates Ch. PI 16, relating to four-year-old kindergarten grants. CR 08-018
	Revises Ch. PI 30, relating to state special education aid for certain pupil services personnel. CR 08-052
Transportation:	Creates Ch. Trans 263, relating to multiple trip overweight permits for vehicles transporting granular roofing materials. CR 08-058
	Revises Ch. Trans 117, relating to the occupational licensing program. CR 08-072
Workforce Development:	<i>Unemployment Insurance, Chs. DWD 100-150</i> Revises Ch. DWD 136, relating to wages exempt from unemployment insurance levy and affecting small businesses. CR 08-059
Rules Published with this Register and Final Regulatory Flexibility Analyses.	Pages 30 to 31
Sections Affected by Rule Revisions and Corrections.	Page 32
Executive Orders.	Page 33

Emergency Rules Now in Effect

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

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

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

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

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

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

Beginning with rules filed with the Legislative Reference Bureau in 2008, the Legislative Reference Bureau will assign a number to each emergency rule filed, for the purpose of internal tracking and reference. The number will be in the following form: EmR0801. The first 2 digits indicate the year of filing and the last 2 digits indicate the chronological order of filing during the year.

Agriculture, Trade & Consumer Protection (2)

1. **EmR0804** – Creating **subch. IV of Ch. ATCP 161**, relating to the “buy local” grant program created under s. 93.48, Stats.

Exemption From Finding of Emergency

DATCP has general authority under s. 93.07 (1), Stats., to interpret laws under its jurisdiction. Section 93.48 (1), Stats., specifically requires DATCP to adopt rules for the “buy local” grant program. Section 9103(3i) of 2007 Wisconsin Act 20 (biennial budget act) authorizes DATCP to adopt temporary emergency rules without the normal “finding of emergency,” pending the adoption of “permanent” rules. This temporary emergency rule implements the “buy local” grant program on an interim basis, pending the adoption of “permanent” rules.

Publication Date: February 22, 2008
Effective Date: February 22, 2008
Expiration Date: May 1, 2009
Hearing Date: May 30, 2008

2. **EmR0822** – Rules adopted revising **Ch. ATCP 10**, relating to diseases of fish and farm-raised deer.

Finding of Emergency

(1) The Wisconsin department of Agriculture, Trade and Consumer Protection (“DATCP”) administers Wisconsin’s animal health and disease control programs, including programs to control diseases of fish and farm-raised deer.

Disease Testing of Fish

(2) DATCP regulates fish farms, including fish farms operated by the Wisconsin Department of Natural Resources (“DNR”). DATCP also regulates the import, movement and disease testing of fish.

(3) Viral hemorrhagic septicemia (VHS) is a serious disease of fish. VHS was first reported in Wisconsin on May 11, 2007, after the Wisconsin Veterinary Diagnostic Laboratory confirmed positive samples from freshwater drum (sheepshead) in Little Lake Butte des Mortes (part of the Lake Winnebago system). VHS was subsequently found in Lake Winnebago, and in Lake Michigan near Green Bay and Algoma. The source of VHS in these wild water bodies is not known. VHS has not yet been reported in any Wisconsin fish farms. VHS can be fatal to fish, but is not known to affect human beings.

(4) Current DATCP rules require health certificates for fish and fish eggs (including bait) imported into this state, for fish and fish eggs stocked into waters of the state, and for fish and fish eggs (including bait species) moved between fish farms in this state. Import health certificates must include VHS testing if the import shipment includes salmonids (salmon, trout, etc.) or originates from a state or province where VHS is known to occur. VHS testing is *not* currently required for fish or fish eggs stocked into waters of the state from Wisconsin sources, for bait fish or eggs originating from Wisconsin sources, for fish or fish eggs moved between fish farms in Wisconsin, or for non-salmonids imported from states where VHS has not yet been found.

(5) Because VHS has now been found in waters of the state, it is necessary to expand current VHS testing requirements. Because of the urgent need to minimize the spread of VHS in this state, it is necessary to adopt VHS testing requirements by emergency rule, pending the adoption of a “permanent” rule.

Disease-Free Herd Certification of Farm-Raised Deer Herds

(6) DATCP registers farm-raised deer herds in this state. DATCP also regulates the import, movement and disease testing of farm-raised deer. Under current DATCP rules, DATCP may certify a farm-raised deer herd as brucellosis-free or tuberculosis-free, or both, based on herd test results provided by the farm-raised deer keeper. Certification is voluntary, but facilitates sale and movement of farm-raised deer.

(7) Under current rules, a tuberculosis-free herd certification is good for 3 years, but a brucellosis-free herd certification is good for only 2 years. There is no compelling veterinary medical reason for the difference. A rule change (extending the brucellosis-free certification term from 2 to 3 years) is needed to harmonize the certification terms, so that farm-raised deer keepers can conduct simultaneous tests for both diseases. Simultaneous testing will reduce testing costs and limit stress on tested deer. An emergency rule is needed to avoid some unnecessary costs for farm-raised deer keepers this year, pending the adoption of permanent rules.

Publication Date: July 9, 2008
Effective Date: July 9, 2008
Expiration Date: December 6, 2008
Hearing Date: August 1, 2008

Children and Families (2)

(Formerly Workforce Development)

Family Supports, Chs. DWD 12 to 59

1. **EmR0814** – Rule adopted repealing EmR0807 affecting s. **DWD 56.04**, relating to child care enrollment underutilization.

Finding of Emergency

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

The Department implemented the child care enrollment underutilization emergency rule as a cost-saving measure effective March 30, 2008. 2007 Wisconsin Act 226 provides \$18.6 million to address the fiscal year 2007–08 Wisconsin Shares funding shortfall. The Governor's veto message directs the Department of Workforce Development to "suspend the current attendance-based rule for the remainder of fiscal year 2007–08." The Department is repealing the enrollment underutilization emergency rule and will be withdrawing the corresponding proposed permanent rule.

Publication Date: May 25, 2008
Effective Date: May 25, 2008
Expiration Date: October 22, 2008
Hearing Date: June 27, 2008

2. **EmR0821** – Rules adopted creating ss. **DWD 40.02 (12m), 40.05, and DWD 40 Appendix D**, relating to establishment of birth cost orders based on child support guidelines.

Finding of Emergency

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

The federal Office of Child Support Enforcement (OCSE) has notified Wisconsin that OCSE will not certify the state's request for federal income tax refund offset for birth cost orders that have not been set in accordance with the child support guidelines in Chapter DWD 40, which take into consideration the payer's ability to pay.

Federal income tax refund offset is one of the primary tools for collection of birth cost orders owed to the State of Wisconsin. In calendar year 2007, the child support program collected \$11,481,000 in birth costs through federal income tax refund offset. Of the nearly \$11.5 million collected, approximately \$6.62 million was returned to the federal government to reimburse Medicaid costs, \$1.72 million was used by county child support agency programs to benefit children in the state, and the remaining \$3.14 million was returned to the state Medicaid program.

Publication Date: June 27, 2008
Effective Date: June 27, 2008
Expiration Date: November 24, 2008
Hearing Date: July 29, 2008

Commerce

Uniform Dwelling, Chs. Comm 20–25
Wisconsin Commercial Building Code, Chs. Comm 60–66

EmR0826 – Rules adopted to renumber s. **Comm 66.0911**; to amend s. **Comm 20.24 (1) and (2)**; and to create ss. **Comm 21.095, 20.24 Table 20.24–14, 62.1200, 62.3500 (3) (e), 66.0911 (title) and (2)**, relating to carbon monoxide alarms and affecting small business.

Exemption From Finding of Emergency

Under the nonstatutory provisions of 2007 Wisconsin Act 205, the Department of Commerce is directed to issue emergency rules that implement provisions of the Act. The Act specifically states: "Notwithstanding section 227.24 (1) (a) and (3) of the statutes, neither the department of commerce or the department of health services is required to provide evidence that promulgating rules under this subsection as emergency rules is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency for the rules promulgated under this subsection."

The Act mandates the installation and maintenance of carbon monoxide alarms in buildings accommodating certain types of residential occupancies and within which fuel burning appliances are located. Residential occupancies include tourist rooming houses, bed and breakfast establishments, and any public building that is used for sleeping or lodging, such as, hotels, motels, condominiums, apartment buildings, dormitories, fraternities, sororities, convents, seminaries, community based residential facilities, home shelters, but not hospitals and nursing homes. The Act requires the installation of carbon monoxide alarms in new buildings as of October 1, 2008. The owners of existing buildings will have until April 1, 2010 to install the carbon monoxide alarms. The Act also provides for the omission of carbon monoxide alarms in certain instances which are further clarified by the administrative rules.

Publication Date: September 10, 2008
Effective Date: October 1, 2008
Expiration Date: February 28, 2009
Hearing Date: October 14, 2008

Commerce (2)

Financial Resources for Businesses and Communities, Chs. Comm 104–135

1. **EmR0823** – Rules adopted amending **Comm Table 108.6–1, sections Comm 108.07 (5), 108.22 (1), and 154.06 (intro.)**, relating to emergency assistance grants in the community development block grant program, and affecting small businesses.

Finding of Emergency

The Department of Commerce finds that an emergency exists and that adoption of the rule included in this order is necessary for the immediate preservation of public health, safety, and welfare. The facts constituting the emergency are as follows.

Currently under sections Comm 108.06, 108.07, and 108.22 of the Wisconsin Administrative Code, as promulgated under sections 560.04, 560.045, and 560.9809 of the Statutes, the Department may annually use up to 5 percent of its federal Community Development Block Grant (CDBG) funds to repair or replace public infrastructure or

facilities, or for emergency services necessitated by a natural disaster or catastrophic event. Also under sections Comm 108.07 and 108.22, the maximum amount of CDBG funds that the Department can award to any local government for a natural disaster or catastrophic event is \$500,000.

Currently under section Comm 154.06, as promulgated under sections 560.02 (4) and 560.9809 (2) of the Statutes, the Department may annually use up to \$2,000,000 of CDGB funds to address emergency housing needs caused by natural disasters or catastrophic events.

Because of the unprecedented levels of damage to public infrastructure and facilities from the severe storms and widespread flooding that occurred throughout the State in June 2008, the need for emergency assistance to communities far exceeds the \$1.35 Million of CDBG funding that results from the above 5-percent limit, and the need for emergency housing assistance for low and moderate income households far exceeds the above \$2,000,000. Communities and households in 28 of the 30 counties where the Governor has declared a state of emergency are eligible for this CDBG program assistance.

This emergency rule repeals the above limits of 5 percent, \$500,000 and \$2,000,000. This will enable the Department to (1) use any available CDBG funds for emergency assistance with repairing or replacing public infrastructure and facilities, and with repairing or replacing homes damaged by the severe storms and flooding; and (2) base the award amounts on the scope of the damages and destruction in the community and on the funds available.

Publication Date: July 16, 2008
Effective Date: July 16, 2008
Expiration Date: December 16, 2008
Hearing Date: August 27, 2008

- 2. **EmR0831** – Rules adopted creating section **Comm 113.03 (4)**, relating to allocation of volume cap on tax-exempt private activity bonds.

Finding of Emergency

The Department of Commerce finds that an emergency exists and that adoption of the rule included in this order is necessary for the immediate preservation of public welfare.

The facts constituting the emergency are as follows. Because of widespread disruption of the housing markets, Congress has enacted the Housing and Economic Recovery Act of 2008 (the “Act”), which contains various relief measures relating to housing. Section 3021 of the Act creates a special one-time additional allocation of volume cap for calendar year 2008, to be used for the issuance of single-family housing bonds and multifamily housing bonds no later than December 31, 2010.

Under section 560.032 of the Statutes, the Department of Commerce is charged with allocating to Wisconsin issuers the private activity bond volume cap allocated to Wisconsin under the Internal Revenue Code of 1986, 26 USC 146. This emergency rule is necessary to implement the special allocation of volume cap under the Act, as described above.

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 and filing with the Legislative Reference Bureau.

Publication Date: September 27, 2008
Effective Date: September 27, 2008
Expiration Date: February 24, 2009
Hearing Date: October 27, 2008

Corrections

EmR0812 – Rules adopted revising **s. DOC 332.19**, relating to the establishment of a sex offender registration fee to partially offset the costs of monitoring persons who are required to register as sex offenders.

Finding of Emergency

The department of corrections finds that an emergency exists and that rules included in this order are necessary for the immediate preservation of public peace, health, safety and welfare. A statement of the facts constituting the emergency is: 2007 WI Act 20, section 3132, amended s. 301.45 (10), Stats., in three ways which requires an immediate amendment of s. DOC 332.19.

First, the newly amended s. 301.45 (10), Stats., expands the persons whom the department of corrections may require to pay an annual sex offender registration fee. Previously, the department was limited to assessing the fee only against those persons who were required to register and who were in its custody or under its supervision as a person on probation, parole, or extended supervision. The new law permits the department to require all persons who are required to register as a sex offender to pay an annual fee.

Second, the new law limits the use of the collected sex offender fees to partially offset the costs of monitoring sex offenders. Previously, the department was authorized to use the collected fees to partially offset the costs of monitoring those persons on probation, parole, or extended supervision, regardless of whether they were required to register as sex offenders.

Third, the legislature increased the maximum annual rate from \$50 to \$100. If the rule is not amended promptly and immediately, the department will not be able to collect the fees which are to be used to offset the costs of monitoring persons who are required to register as sex offenders. This could result in a lessening of supervision due to budget limitations.

The purpose of the emergency rule is to amend the current rule to require all persons who are required to register as sex offenders under s. 301.45 to pay the annual fee which is used to partially offset the costs of monitoring registrants. The emergency rule also increases the annual rate to \$100. The permanent rule process has been started. However, the permanent rule process will take approximately nine months to complete. Emergency rules are necessary to respond promptly to the collection of fees while permanent rules are being developed.

Publication Date: May 15, 2008
Effective Date: May 15, 2008
Expiration Date: October 12, 2008
Hearing Date: July 24, 2008

Financial Institutions – Securities

EmR0829 – Rules adopted to **amend s. DFI–Sec 4.06 (2) (i) and to create ss. DFI–Sec 4.06 (1) (v), 5.06 (14) and Chapter DFI–Sec 10**, relating to making it a dishonest or unethical practice for securities licensees to make use of misleading designations or certifications purporting to demonstrate special expertise in the financial or retirement needs of seniors.

Finding of Emergency

The Division of Securities of the Department of Financial Institutions for the State of Wisconsin finds that an emergency exists and that the rules are necessary for the immediate

preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency follows:

The Division is taking immediate, emergency–rule action to protect seniors in Wisconsin from being misled through the use by securities licensees of designations and credentials that imply or represent that a person has special expertise, certification, or training in financial planning for seniors, but where such designations and/or credentials are either non–existent or do not involve significant education, testing, training or experience, and in reality are marketing ploys.

Publication Date: September 15, 2008
Effective Date: September 15, 2008
Expiration Date: February 12, 2009

Government Accountability Board

EmR0830 – Rules adopted repealing and recreating **Chapter GAB 4**, relating to observers at a polling place or other location where votes are being cast, counted or recounted.

Finding of Emergency

Pursuant to section 227.24, Stats., the Government Accountability Board finds that an emergency exists in the Board's May 5, 2008 decision to decline to reaffirm the administrative rule section ElBd 4.01 because the rule was inconsistent with the requirements of its enabling statute, s. 7.41, Stats. The statute states that any member of the public is allowed to be present at the polls on Election Day to observe; however, it does not specify standards of conduct they must abide by.

The Board further finds that given the intense interest in the fall election, the expected high turnout, the increasing use of observers in the polling place, and the comments of municipal and county clerks regarding the obstacles observers can pose to the orderly conduct of elections, it is necessary to codify standards to regulate the observers' conduct and that the attached rule governing observer conduct must be adopted prior to the fall elections to ensure the public peace and safety with respect to the administration of the fall elections.

Publication Date: September 26, 2008
Effective Date: September 26, 2008
Expiration Date: February 23, 2009
Hearing Date: November 11, 2008

Health Services

(Formerly Health and Family Services)

Health, Chs. HFS 110—

EmR0825 – Rule adopted creating **Chapter HFS 119**, to require emergency medical technicians, first responders, and individuals who provide instruction to emergency medical technicians and first responders to complete training on the use of automated external defibrillators and to specify the content of the training, qualifications of providers, and frequency with which training is to be completed, and affecting small businesses.

Exemption From Finding of Emergency

The legislature by 2007 Act 104 provides the department with an exemption from a finding of emergency to adopt these emergency rules.

Publication Date: August 29, 2008
Effective Date: September 1, 2008
Expiration Date: January 29, 2009

Natural Resources

Fish, Game, etc., Chs. NR 1—

EmR0824 – Rule adopted revising ss. **NR 10.01 (1) (b), (g), (h), (u) and (v) and 10.06 (5)**, relating to the 2008 migratory game bird seasons and waterfowl hunting zones.

Finding of Emergency

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

Publication Date: August 30, 2008
Amendment: September 26, 2008
Effective Date: August 30, 2008
Expiration Date: January 27, 2009
Hearing Date: October 27, 2008

Natural Resources

Environmental Protection – General, Chs. NR 100—

EmR0809 – Rule adopted to repeal s. **NR 198.15 (2)**, to renumber s. **NR 198.12 (6) to (10)**, to amend ss. **NR 198.11, 198.14 (1) (e) and (f) 2., 198.23 (5) to (7), 198.33 (5), and 198.44 (5)** and to create ss. **NR 198.12 (6) and (7), 198.33 (6) and subch. V of ch. NR 198**, relating to grants for the control of aquatic invasive species.

Finding of Emergency

The substantial increase in grant funding is a strong message from the Legislature that concern over the welfare of our public waters is growing, along with the expectation that these additional funds be put to work as soon as possible. The appropriation from which these funds are spent is a biennial appropriation, meaning that any unspent funds at the end of the biennium automatically lapse back to the Water Resources Account of the Conservation Fund. The timeline for permanent rule promulgation and the lack of staff to provide support to eligible sponsors may impede the Department's ability to fully and responsibly invest the authorized spending by the end of the biennium because of the current rule's limitations. An emergency rule will help to minimize or eliminate the amount of funds that are lapsed.

Publication Date: April 7, 2008
Effective Date: July 1, 2008
Expiration Date: November 28, 2008
Hearing Dates: July 22 to August 5, 2008
Extension Through: January 26, 2009

Pharmacy Examining Board

EmR0815 – Rule adopted revising **Ch. Phar 13**, relating to the regulation of wholesale prescription drug distributors.

Finding of Emergency

The Board has made a finding of emergency. The Board finds that failure to have the proposed rules in effect on June 1, 2008, the effective date of the applicable provisions of 2007 Wisconsin Act 20, will create a danger to the public health, safety and welfare, by disrupting the wholesale distribution of prescription drugs in the state of Wisconsin.

Publication Date: May 29, 2008
Effective Date: June 1, 2008
Expiration Date: October 29, 2008
Hearing Date: July 23, 2008
Extension Through: December 27, 2008

Public Instruction (2)

- EmR0813** – A rule is adopted revising **Ch. PI 37**, relating to grants for national teacher certification and master educator licensure.

Finding of Emergency

The Department of Public Instruction finds that an emergency exists and that the adoption of an emergency rule is necessary for the immediate preservation of the public welfare. The facts constituting the emergency are as follows:

The new provisions modifying the grants for the national teacher certification program under 2007 Wisconsin Act 20, the biennial budget bill, took effect October 27, 2007. In order to establish the new application criteria and procedures to award grants to eligible applicants in the 2007–08 school year, emergency rules must be in place as soon as possible.

Publication Date: May 17, 2008
Effective Date: May 17, 2008
Expiration Date: October 14, 2008
Hearing Date: July 23, 2008
Extension Through: December 12, 2008

- EmR0816** – A rule adopted revising **Ch. PI 30**, relating to state special education aid for certain pupil services personnel.

Finding of Emergency

The Department of Public Instruction finds that an emergency exists and that the adoption of an emergency rule is necessary for the immediate preservation of the public welfare. The facts constituting the emergency are as follows:

The new provisions under 2007 Wisconsin Act 221 modifying the percentage of the salaries of licensed school nurses, licensed school social workers, licensed school psychologists, and licensed school counselors that are eligible for state aid reimbursement first applies to state aid distributed in the 2008–09 school year. In order to establish instructions this spring as to how school districts are to account for these pupil services staff on special education claim forms, rules must be in place as soon as possible.

Publication Date: May 30, 2008
Effective Date: May 30, 2008
Expiration Date: October 27, 2008
Hearing Date: July 14, 2008
Extension Through: December 25, 2008

Regulation and Licensing (3)

- EmR0819** – A rule adopted revising **s. RL 161.04**, relating to examinations for substance abuse professionals.

Finding of Emergency

The department has made a finding of emergency. The current rules require an applicant for a clinical substance abuse counselor credential to pass an oral examination. The company that produced that examination is not giving that examination after June 1, 2008. This emergency rule creates a time period for a transition to enable a category of applicants to get a clinical substance abuse counselor credential. Persons holding a clinical substance abuse counselor credential can apply for a supervisory credential. There is a strong need for more supervisors in this field because services can only be provided under supervision. This rule will enable more applicants to receive a supervisor credential and is therefore necessary to maintain the health, safety and welfare of the public.

Publication Date: June 18, 2008
Effective Date: June 18, 2008
Expiration Date: November 15, 2008
Hearing Date: November 11, 2008

- EmR0827** – Rule adopted **creating s. RL 91.01 (3) (k)**, relating to training and proficiency in the use of automated external defibrillators for certification as a massage therapist or bodyworker.

Exemption From Finding of Emergency

Section 41 (2) (b) of the nonstatutory provisions of 2007 Wisconsin Act 104 provides that notwithstanding section 227.24 (1) (a) and (3) of the statutes, the department of regulation and licensing is not required to provide evidence that promulgating a rule as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated to implement 2007 Wisconsin Act 104. Notwithstanding s. 227.24 (1) (c) and (2) of the statutes, these emergency rules will remain in effect until the date on which the final rules take effect.

Publication Date: September 10, 2008
Effective Date: September 10, 2008
Expiration Date: February 7, 2009

- EmR0828** – Rules adopted to **amend s. RL 181.01 (2) (c); and to create ss. RL 180.02 (1m), (3m) and (11), 181.01 (1) (d), (2) (c) 1. and 2.**, relating to training and proficiency in the use of automated external defibrillators for licensure as a licensed midwife.

Exemption From Finding of Emergency

Section 41 (2) (b) of the nonstatutory provisions of 2007 Wisconsin Act 104 provides that notwithstanding section 227.24 (1) (a) and (3) of the statutes, the department of regulation and licensing is not required to provide evidence that promulgating a rule as an emergency rule is necessary for

the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated to implement 2007 Wisconsin Act 104. Notwithstanding s. 227.24 (1) (c) and (2) of the statutes, these emergency rules will remain in effect until the date on which the final rules take effect.

Publication Date: September 10, 2008
Effective Date: September 10, 2008
Expiration Date: February 7, 2009

Revenue

EmR0820 – Rule adopted creating ss. **Tax 8.03 and 8.05**, relating to the registration of wine collectors, establishing standards of eligibility for registration as a wine collector, specifying the form and manner of notice required prior to the sale of wine by a wine collector, and the creation and organization of small winery cooperative wholesalers.

Exemption From Finding of Emergency

The legislature by Section 50 of 2007 Wisconsin Act 85 provides an exemption from a finding of emergency for the adoption of the rule.

Publication Date: June 26, 2008
Effective Date: June 26, 2008
Expiration Date: July 1, 2010 or the date on which permanent rules take effect, whichever is sooner.

Transportation

EmR0818 – A rule adopted creating **Ch. Trans 263**, relating to multiple trip overweight permits for vehicles transporting granular roofing materials.

Exemption From Finding of Emergency

The Legislature, by 2007 Wisconsin Act 171, Section 6 (2), provides an exemption from a finding of emergency for the adoption of the rule.

Publication Date: July 1, 2008
Effective Date: July 1, 2008
Expiration Date: July 1, 2009 or the date on which permanent rules take effect, whichever is sooner.
Hearing Date: July 30, 2008

Scope Statements

Commerce

Amusement Rides, Ch. Comm 34

Subject

Revises Chapter Comm 34, relating to zip lines — amusement rides.

Objective of the Rule

The objective of the rule is to update chapter Comm 34, Amusement Rides, to include minimum standards for the design, construction, operation and maintenance of zip lines to reflect current industry safety practices.

Policy Analysis

To protect public safety and health, Chapter Comm 34 establishes minimum standards and practices for the design, construction, installation, operation, inspection and maintenance of amusement rides. The code also specifically addresses bungee jumping operations and go-kart, dune buggy and all-terrain vehicle operations, but it does not address zip lines, which typically consist of a pulley suspended on a cable mounted on an incline. Zip lines are designed to enable a user propelled by gravity to traverse from the top to the bottom of the inclined cable, usually made of stainless steel, by holding on or attaching to the freely moving pulley. The provisions of chapter Comm 34 apply retroactively to existing amusement rides.

The alternative of not revising the code would result in no rules and not being up-to-date with current industry practices, therein, possibly exposing zip line riders to potential safety and health risks.

Statutory Authority

Sections 101.02 (2) and 101.17, Stats.

Entities Affected by the Rule

The rule will affect any entity, private or public, that owns and operates existing zip lines, including those that are part of larger rope courses. The rule will also affect any entity which proposes to design and install a new zip line either individually or as part of a rope course.

Comparison with Federal Regulations

The US Consumer Product Safety Commission under the Consumer Product Safety Act has jurisdiction over portable amusement rides. The commission has not developed any specific standard for portable amusement rides. At times the commission has issued various safety bulletins regarding operation, repair, maintenance or set-up for specific rides, but a web search found nothing related to zip lines or rope courses.

Estimate of Time Needed to Develop the Rule

The department estimates approximately 200 hours will be needed to perform the review and develop any needed rule changes. This time includes forming and meeting with an advisory council, drafting the rule changes and processing the changes through public hearings, legislative review, and adoption. The department will assign existing staff to perform

the review and develop the rule changes, and no other resources will be needed.

Health Services

(Formerly Health and Family Services)

Management, Technology and Strategic Finance, Chs. HFS 1—

Subject

Revises Chapter HFS 10, Family Care, relating to confidentiality requirements prohibiting disclosure of personally identifying information about a client without the client's informed consent.

Policy Analysis

Chapter HFS 10, is the department's rule that guides the implementation of the department's Family Care program. Included in these provisions are standards for confidentiality which prohibit disability benefit specialists from disclosing personally identifying information about a client without the client's consent unless required by law. Because disability benefit specialists are permissive reporters, and thus not required to report abuse, neglect, or financial exploitation of elder adults and adults at risk under ss. 46.90 (4) (ar) or 55.043 (1m) (br), Stats., s. HFS 10.23 (2) (d) 2., effectively prevents disability benefit specialists from making such disclosures.

The department's responsibilities for adult protective services are outlined under s. 55.02, Stats., and include requirements for the department to develop and operate a coordinated, statewide system for protective services and protective placements in cooperation with county departments. Section 55.01 (6r), Stats., defines protective services to include identification of individuals in need of services to keep the individual safe from abuse, neglect or financial exploitation.

The department intends to revise s. HFS 10.23 (2) (d) 2., to add language that would permit disability benefit specialists to report abuse, neglect, or financial exploitation of elder adults and adults-at-risk without violating that section's non-disclosure provisions.

Statutory Authority

Section 46.288 (1) and 227.11 (2), Stats.

Entities Affected by the Rule

Elder adults and disabled adults, aging and disability resource centers, counties, elder adults/adults-at-risk agencies, and disability benefit specialists and their supervising attorneys.

Comparison with Federal Regulations

42 USC 3058i (b) 8 (A), directs the state Unit on Aging (DHS/Bureau of Aging and Disability Resources) to promote the development of an elder abuse, neglect, and exploitation (ANE) to, among other requirements, include administrative procedures as may be necessary or appropriate to ensure that the state will deal effectively with ANE cases in the state and, to coordinate the programs with other state and local programs and services for the protection of vulnerable adults, including adult protective services.

Estimate of Time Needed to Develop the Rule

40 hours

Contact Person

Jane Raymond
Bureau of Aging and Disability Resources
608-266-2568

Insurance**Subject**

Revises sections Ins 17.01 (3), 17.28 (3) (c) and (6), Wis. Adm. Code, relating to fiscal 2010 fund fees, provider classifications, and mediation panel fees and affecting small business.

Objective of the Rule

To establish the annual fees that participating health care providers must pay to the Injured Patients and Families Compensation Fund as required by s. 655.27 (3), Wis. Stat., for the fiscal year beginning, July 1, 2009. The proposed rule will update the listing of provider specialities (ISO Codes) by assessment class and will establish the mediation panel fees for fiscal year 2010 commencing July 1, 2009.

Policy Analysis

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

Statutory Authority

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

Entities Affected by the Rule

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

Comparison with Federal Regulations

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

Estimate of Time Needed to Develop the Rule

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

Insurance**Subject**

Revises section Ins 17.26 (3) (c), Wis. Adm. Code, relating to future medical expense accounts.

Objective of the Rule

To clarify and (or through definition) define the types of medical expenses that are subject to being deposited into future medical accounts and are payable by the Injured Patients and Families Compensation Fund from the future medical expense accounts as required by s. 655.015, Wis. Stat., and s. Ins 17.26 (3) (c), Wis. Adm. Code.

Policy Analysis

Currently, s. Ins. 17.26 (3) (c) defines medical expenses to mean "charges for medical services, nursing services,

medical supplies, drugs and rehabilitation services that are incurred after the date of a settlement, panel award or judgment". The term medical is not defined and requires clarification. In addition, with the advent of changes in the practice of medicine since the current rule was promulgated, updates are needed to the rule to reflect those changes including the types of medical services being provided to patients and the settings in which such services are typically provided.

Statutory Authority

Sections 601.41 and 655.015, Wis. Stats.

Entities Affected by the Rule

This rule may affect injured parties awarded future medical expenses resulting from a judgment or settlement.

Comparison with Federal Regulations

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

Estimate of Time Needed to Develop the Rule

100 hours estimated state employee time to promulgate this rule; other resources will include the review and recommendation of the Injured Patients and Families Compensation Fund Board of Governors and its Committees.

Insurance**Subject**

Revises section Ins 17.28 (3e), Wis. Adm. Code, relating to defining circumstances under which employee-health care practitioner would not have fund coverage for independent practice, that is, providing health care services not "under direction or supervision of a physician or nurse anesthetist".

Objective of the Rule

To clarify and define eligibility criteria for employee-health care practitioners that provide services under the direction and supervision of physicians pursuant to s. 655.005 (2) (a), Wis. Stats.

Policy Analysis

Currently, s. Ins. 17.28 (3e), Wis. Adm. Code by reference to s. 655.005 (2) (a), Stats., states a health care provider does not have fund coverage for any employee who is a "health care practitioner who is providing health care services that are not in collaboration with a physician under s. 441.15 (2) (b) or under the direction and supervision of a physician or nurse anesthetist." However, there is no definition of "under the direction and supervision".

Statutory Authority

Sections 601.41 (3), 655.004, 655.001 (7t) and 655.005 (2) (a), Wis. Stats.

Entities Affected by the Rule

All health care provider participants in the Fund as set forth in s. 655.002 (1), Stats., and other health care practitioners that may be included or excluded based upon the final definitions.

Comparison with Federal Regulations

There is no existing or proposed federal regulation addressing any medical malpractice fund like the Wisconsin IP&FC Fund.

Estimate of Time Needed to Develop the Rule

80 to 120 hours estimated state employee time to promulgate this rule; other resources will include the review and recommendations of the IP&FCF Board of Governors and its Advisory Committee on Fund participation issues.

Military Affairs — Division of Emergency Management**Subject**

Revises Chapter WEM 1 relating to fees for facilities housing hazardous chemicals, hazardous materials, and extremely hazardous substances.

Objective of the Rule

The objective is to make certain that grants to county governments are funded at a level that will ensure ongoing chemical emergency planning and response locally. Additionally, state staff and oversight are essential and must continue to be funded at present levels in order to appropriately support local units of government. Furthermore, state planning, exercising, training and response activities for chemical emergencies need to be funded at current levels in order to meet federally mandated criteria and state law. Due to a projected shortfall of funds to sustain the program at current levels, a fee increase is necessary.

The intent of the rule is to increase fees to facilities housing hazardous chemicals, hazard materials, and extremely hazardous substances to the extent that grants to counties will continue to be funded. Furthermore, state activities would be funded adequately at current levels to support counties with planning and response to chemical emergencies. The funding to counties assists with salaries for planning staff, planning activities, exercise activities, and response activities which are all mandated to counties by federal and state law. Counties must submit a Plan of Work in order to receive grant awards and must complete the work in order to receive grant dollars.

Policy Analysis

As a result of the chemical release in Bopal India in 1987 which killed and injured thousands of individuals and a similar accident within the United States four months later, Congress implemented The Emergency Planning & Community Right-to-Know Act (EPCRA) in 1988 which is an unfunded mandate requiring states to designate a State Emergency Response Commission (SERC), appoint Local Emergency Planning Committees (LEPCs) at the local level, collect chemical information from facilities, provide chemical information to first responders and the public, and much more. Since Wisconsin is a local control state, much of this responsibility would fall to local units of government. In order to comply with the federal law and to assist local units of government with the planning, training, exercising and

response requirements and to provide funds for administration of the program at the state level, the Wisconsin Legislature in 1989 adopted the federal law as state law and gave the SERC the authority to collect fees from facilities that store hazardous materials, hazardous chemical or extremely hazardous substances.

In 1990, the SERC promulgated Chapter WEM 1 relating to fees to facilities housing hazardous chemicals, hazardous materials and extremely hazardous substances. The fees were modest and took into consideration the needs of small business by exempting from fees those facilities which have 10 or fewer employees. That exemption will still be applicable should this rule be adopted. The fees have not increased since the initial promulgation of WEM 1 in 1990. Wisconsin Emergency Management (WEM) and the SERC have successfully stretched every dollar that is collected from facilities over the last few years, knowing that eventually action would be necessary to increase fees to keep the program a very successful program functioning and improving. The SERC is facing a serious shortfall of funds needed to sustain Emergency Planning Citizens Right to Know Act (EPCRA) activities.

A moderate increase will insure that planning and response activities at the county level as well as state support functions will continue at a level that will protect and defend the citizens, and environment of the state of Wisconsin from an accidental or intentional chemical release.

The alternative to the proposed amendment to Chapter WEM 1 is a serious reduction in grants to counties to fund their staff and associated administrative needs required to carry out state and federal law with regard to planning and response to chemical emergencies. Planning, training, exercising and response activities at the state level will also be greatly reduced due to lack of adequate funds to support local units of government and to support EPCRA program requirements.

Statutory Authority

Section 166.20 (7) (a), Stats.

Entities Affected by the Rule

Facilities that house hazardous chemicals, hazardous substances and extremely hazardous substances to include certain small businesses that have in excess of 11 employees.

Comparison with Federal Regulations

Wisconsin adopted the federal law as state law and included in state law fees to facilities that house hazardous chemicals, hazardous materials, and extremely hazardous substances in order to fund the federal mandate and provide grant monies to counties so they can comply with federal and state law.

Estimate of Time Needed to Develop the Rule

Approximately 6 months from the time of the agency hearing in December, 2008.

Submittal of Rules to Legislative Council Clearinghouse

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

Commerce

*Financial Resources for Businesses and Communities,
Chs. Comm 104—
Housing Assistance, Chs. Comm 150—
CR 08–096*

On October 7, 2008, the Department of Commerce submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed order revises Chapters Comm 108 and 154, relating to emergency assistance grants in the Community Development Block Grant (CDBG) Program.

Agency Procedure for Promulgation

A public hearing is required and is scheduled for November 13, 2008. The Division of Housing and Community Development is responsible for promulgation of the rules.

Contact Information

Sam Rockweiler
Code Development Consultant
608–266–0797
sam.rockweiler@wi.gov

Financial Institutions–Securities

CR 08–095

On October 3, 2008, the Department of Financial Institutions submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed order revises Chapters DFI–Sec 4, 5, and 10, relating to making it a dishonest or unethical practice for securities licensees to make use of misleading designations or certifications purporting to demonstrate special expertise in the financial or retirement needs of seniors.

Agency Procedure for Promulgation

A public hearing is required and is scheduled for November 18, 2008.

Contact Information

Mark Schlei
608–267–1705
Mark.Schlei@dfi.wisconsin.gov

Health Services

(Formerly Health and Family Services)

*Management and Technology and Strategic Finance,
Chs. HFS 1—
CR 08–098*

On October 14, 2008, the Department of Health Services submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

Revises Chapter HFS (DHS) 12 to specify crimes for which an entity must disclose a conviction to a client or the client's guardian of a caregiver who is assigned to provide personal care services to a client in the client's personal residence. The proposed rule also defines the term "substitute caregiver".

Agency Procedure for Promulgation

A public hearing is required but has not yet been scheduled.

Contact Information

For substantive questions on rules contact:

Pat Benesh, QA Program Spec.–Senior
DHS Division of Quality Assurance
1 West Wilson Street, Rm. 1150
Madison, WI 53701
Phone: 608–264–9896
Fax: 608–267–7119
Email: Patricia.Benesh@Wisconsin.gov

Small Business Regulatory Review Coordinator:

Rosie Greer
608–266–1279
greerrj@dhs.state.wi.us

Health Services

(Formerly Health and Family Services)

*Community Services, Chs. HFS 30—
CR 08–097*

On October 15, 2008, the Department of Health Services submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

Repeals and recreates Chapter HFS (DHS) 97 to adopt Chapter DOC 310, except where stated, as the process for handling Wisconsin Resource Center inmate complaints.

Agency Procedure for Promulgation

A public hearing is scheduled for November 25, 2008.

Contact Information

For substantive questions on rules contact:

Byran Bartow
Wisconsin Resource Center
1505 North Drive, Box 16
Winnebago, WI 54985
920-236-4180
Bartobd@dhfs.state.wi.us.

Small Business Regulatory Review Coordinator:

Rosie Greer
608-266-1279
greerrj@dhs.state.wi.us

Rule-Making Notices

Notice of Hearing Chiropractic Examining Board CR 08-093

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Chiropractic Examining Board in ss. 15.08 (5) (b) and 227.11 (2), Stats., and s. 446.02 (3g) (b) and (3r), Stats., 2007 Wisconsin Act 104, the Chiropractic Examining Board will hold a public hearing at the time and place indicated below to consider an order to create Chir 1.02 (1m), 2.02 (6) (c), 3.02 (1) (e), 3.03 (1) (i), 5.01 (1) (h), and 5.02 (1m) and (7), relating to continuing education and requirements for proficiency in the use of automated external defibrillators.

Hearing Information

Date: November 20, 2008
Time: 8:30 a.m.
Location: 1400 East Washington Avenue
 (Enter at 55 North Dickinson Street)
 Room 121A
 Madison, Wisconsin

Analysis Prepared by the Department of Regulation and Licensing

Statutes interpreted

Section 446.02 (2) (b) 3., Stats.

Statutory authority

Sections 15.08 (5) (b) and 227.11 (2), Stats., and s. 446.02 (3g) (b) and (3r), Stats., 2007 Wisconsin Act 104.

Explanation of agency authority

2007 Wisconsin Act 104 created a requirement that chiropractors have proficiency in the use of automated external defibrillators. The Act requires the board to promulgate rules to implement the new requirement.

Related statute or rule

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

Plain language analysis

2007 Wisconsin Act 104 created a requirement that chiropractors have current proficiency in the use of an automated external defibrillator (AED) to obtain a license to practice chiropractic in Wisconsin. A chiropractor will have to have current proficiency in the use of an AED to obtain an initial license, a renewal license, the reinstatement of a license, and a license by an applicant who is licensed in another jurisdiction.

The rule defines “current proficiency in the use of an automated external defibrillator” as having successfully completed instruction in the use of an AED by an individual, organization or institution of higher education that is approved by the Department of Health Services within the 24 months immediately prior to application.

This rule allows chiropractors to count one credit earned in an AED course toward the 40 credits of continuing education required in each biennium. It also requires the Chiropractic Examining Board to approve as continuing education

programs the AED courses that are approved by the Department of Health Services.

SECTION 1 creates the definition of “current proficiency in the use of an automated external defibrillator.”

SECTION 2 creates the requirement that an applicant for an initial license be currently proficient in the use of an automated external defibrillator.

SECTION 3 creates the requirement that to renew a license or for the reinstatement of a license, chiropractors must be currently proficient in the use of an automated external defibrillator.

SECTION 4 creates the requirement that an applicant, who is licensed in another jurisdiction, be currently proficient in the use of an automated external defibrillator.

SECTION 5 creates a provision that allows chiropractors to count one hour of an automated external defibrillator course toward their biennial continuing education requirement.

SECTION 6 requires the board to approve as a continuing education program any course that provides instruction in the use of an automated external defibrillator that is approved under s. 46.03 (38), Stats. SECTION 6 also excepts automated external defibrillator courses from the current requirement that only the parts of a continuing education program which relate to improving the clinical skills of a chiropractor and are generally taught at the undergraduate or postgraduate level may be counted as continuing education credit hours.

Comparison with federal regulations

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

Comparison with rules in adjacent states

Minnesota:

Minnesota does not require proficiency and training as a requirement for licensure and renewal of Minnesota chiropractic licenses.

Michigan:

Michigan does not require proficiency and training as a requirement for licensure and renewal of Michigan chiropractic licenses.

Illinois:

Illinois does not appear to require proficiency and training as a requirement for licensure and renewal of Illinois chiropractic licenses.

Iowa:

Iowa does not require proficiency and training as a requirement for licensure and renewal of Iowa chiropractic licenses.

Summary of factual data and analytical methodologies

2007 Wisconsin Act 104 created a requirement for applicants for an initial credential as a chiropractor and as a qualification for renewal to be proficient in the use of automated external defibrillators (AEDs) through the completion of an approved instruction program prior to initial certification. This requirement of the Act has been set forth in the newly created rule provisions, as directed by the legislature.

Analysis and supporting documents used to determine effect on small business

Training for AED certification and renewal of certification may vary. The Madison Wisconsin Chapter of the American Red Cross (Badger Chapter) offers to professionals AED/CPR initial certification for \$80.00 and \$52.00 for review. Both trainings are valid for one year. Based on these figures, AED certification for a licensed chiropractor could cost approximately \$132.00 for the licensure biennium and less so in subsequent bienniums (initial biennium in which AED certification was achieved: \$132.00 initial certification plus \$52.00 for review). A price sheet obtained from the Badger Chapter of the American Red Cross for January to December of 2008 is attached.

As of July 2008, there were 2,153 Wisconsin chiropractors with active licenses to practice.

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

Small Business Impact

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

Fiscal Estimate

Summary

The department estimates that this rule will require staff time in the Office of Legal Counsel, Division of Management Services, Office of Exams, and the Division of Professional Credentialing. The total one-time salary and fringe costs are estimated at \$4,501. The total on-going salary and fringe costs are estimated at \$3,265.

Anticipated costs incurred by private sector

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

Submission of Written Comments

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but are urged to submit facts, opinions and argument in writing as well. Facts, opinions and argument may also be submitted in writing without a personal appearance by mail addressed to Pamela Haack, Paralegal, Department of Regulation and Licensing, Office of Legal Counsel, 1400 East Washington Avenue, Room 152, P.O. Box 8935, Madison, Wisconsin 53708–8935, or by email to pamela.haack@drl.state.wi.us. Comments must be received on or before November 24, 2008, to be included in the record of rule-making proceedings.

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; telephone 608–266–0495; email at pamela.haack@drl.state.wi.us.

Text of Proposed Rule

SECTION 1. Chir 1.02 (1m) is created to read:

Chir 1.02 (1m) “Current proficiency in the use of an automated external defibrillator” means that a person has successfully completed a course of instruction in the use of an automated external defibrillator provided by an individual, organization or institution of higher education approved to provide the instruction under s. 46.03 (38), Stats., within the 24 months immediately prior to application.

SECTION 2. Chir 2.02 (6) (c) is created to read:

Chir 2.02 (6) (c) Evidence that the applicant has current proficiency in the use of an automated external defibrillator.

SECTION 3. Chir 3.02 (1) (e) is created to read:

Chir 3.02 (1) (e) Evidence that the applicant has current proficiency in the use of an automated external defibrillator.

SECTION 4. Chir 3.03 (1) (i) is created to read:

Chir 3.03 (1) (i) Has current proficiency in the use of an automated external defibrillator.

SECTION 5. Chir 5.01 (1) (h) is created to read:

Chir 5.01 (1) (h) One credit of course work completed to become proficient in the use of an automated external defibrillator as required in ss. Chir 2.02 (6) (c), 3.02 (1) (e) and 3.03 (1) (i), may be counted as a continuing education credit hour.

SECTION 6. Chir 5.02 (1m) and (7) are created to read:

Chir 5.02 (1m) The board shall approve a continuing education program that is approved under s. 46.03 (38), Stats., to provide instruction in the use of an automated external defibrillator.

(7) This section does not apply to programs approved under s. 46.03 (38), Stats., to provide instruction in the use of an automated external defibrillator.

Notice of Hearing

Commerce

Financial Resources for Businesses and Communities,

Chs. Comm 104—

Housing Assistance, Chs. Comm 150—

CR 08–096

NOTICE IS HEREBY GIVEN that pursuant to ss. 560.02 (4), 560.04, 560.045, and 560.9809, Stats., the Department of Commerce will hold a public hearing on proposed rules under Chapters Comm 108 and 154, relating to emergency assistance grants in the community development block grant program.

Hearing Information

The public hearing will be held as follows:

<u>Date and Time</u>	<u>Location</u>
November 13, 2008	Thompson Commerce Center
Thursday	Third Floor, Room 3B
10:00 a.m.	201 West Washington Avenue
	Madison

This hearing will be held in an accessible facility. If you have special needs or circumstances that may make communication or accessibility difficult at the hearing, please call Sam Rockweiler at (608) 266–0797 or at Contact Through Relay at least 10 days prior to the hearing date. Accommodations such as interpreters, English translators, or materials in audio tape format will, to the fullest extent possible, be made available upon a request from a person with a disability.

Analysis Prepared by the Department of Commerce

Statutes interpreted

Sections 560.02 (4), 560.04, 560.045, and 560.9809, Stats.

Statutory authority

Sections 560.02 (4), 560.04, 560.045, and 560.9809, Stats.

Explanation of agency authority

The Department is the designated agency to administer the federally funded Small Cities Community Development Block Grant (CDBG) Program for Wisconsin. These CDBG funds can be used statewide, except in “entitlement” communities that also receive annual CDBG funding directly from the US Department of Housing and Urban Development (cities with populations above 50,000 and, with only a few exceptions, Milwaukee, Dane, and Waukesha Counties). Federal regulations require that the Department submit an Annual Plan describing the State’s intended use and distribution of the CDBG funds based on any State regulations and public input. The Wisconsin administrative rules that are authorized by the above statutes set forth the criteria, process, and limitations for distributing CDBG funds.

Related statute or rule

The Department has statutes and rules for other programs associated with housing assistance and community development, but none of these programs fund emergency assistance for housing repair or public infrastructure/facility repair or replacement.

Plain language analysis

The proposed rules in this order would repeal limits on emergency assistance grants in the CDBG Program. This will enable the Department to (1) use any available CDBG funds for emergency assistance with repairing or replacing public infrastructure and facilities, and with repairing or replacing homes damaged by the severe storms and flooding; and (2) base the award amounts on the scope of the damages and destruction in the community and on the funds available.

Comparison with federal regulations

24 CFR 570.483(d) allows the Department to use CDBG funds for activities that address the national objective of meeting an “urgent local need.” The criteria under this objective specify that the funded activities must be designed to alleviate existing conditions which pose a serious and immediate threat to the health or welfare of the community, and which are of recent origin or recently became urgent. In addition, the Department must determine that the state grant recipient is unable to finance the activity on its own, and that other sources of funding are not available to carry out the activity.

Comparison with rules in adjacent states

Michigan:

Michigan does not set aside or limit the use of CDBG funds for emergency assistance in either state statute or administrative rule or in their Annual Plan submittal to HUD. In the event of a disaster, Michigan amends their Annual Plan to enable CDBG funds to be used for emergency assistance as needed.

Minnesota:

Minnesota does not set aside CDBG funds for emergency assistance in either state statute or administrative rule or in their Annual Plan submittal to HUD. In the event of a disaster, Minnesota amends their Annual Plan to enable CDBG funds to be used for emergency assistance. The Minnesota Small

Cities Development Program does have a policy to limit CDBG funding to \$1.4 million per community for each event.

Iowa:

Iowa does not set aside or limit the use of CDBG funds for emergency assistance by state statute or administrative rule. The current Iowa Annual Plan sets aside 5 percent of the CDBG annual allocation for emergency assistance. Iowa amends their Annual Plan if additional funds are needed.

Illinois:

Illinois does not set aside or limit the use of CDBG funds for emergency assistance in either state statute or administrative rule or in their Annual Plan submittal to HUD. In the event of a disaster, Illinois amends their Annual Plan to enable CDBG funds to be used for emergency assistance as needed.

Summary of factual data and analytical methodologies

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

Analysis and supporting documents used to determine effect on small business

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

Small Business Impact

Summary

The amended rules are not expected to adversely effect small business. Grants to repair or replace public infrastructure and facilities would only have a positive impact.

Initial Regulatory Flexibility Analysis

Types of small businesses that will be affected by the rules

Businesses that receive payments from funds which become available because of the rules.

Reporting, bookkeeping and other procedures required for compliance with the rules

No new reporting, bookkeeping or other procedures are necessary for compliance with the rules.

Types of professional skills necessary for compliance with the rules

No new professional skills are necessary for compliance with the rules.

Rules have a significant economic impact on small businesses

No.

Environmental Impact

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

Fiscal Estimate

Summary

Due to limited funding, the overall number of CDBG grant awards is not expected to change significantly. The increased workload for grant specialists processing and underwriting more emergency assistance grants will be offset by a decrease

in non-emergency grant applications. Therefore, the proposed rule revisions are not expected to have any significant fiscal effect on the Department.

The proposed rules will not impose any significant costs on local governments or the private sector, because CDBG emergency assistance grants also include administrative funds for the local government.

State fiscal effect

None

Local fiscal effect

None

Long-range fiscal implications

None known

Submission of Written Comments

Interested persons are invited to appear at the hearing and present comments on the proposed rules. Persons making oral presentations are requested to submit their comments in writing, via e-mail. Persons submitting comments will not receive individual responses. The hearing record on this rulemaking will remain open until November 17, 2008, to permit submittal of written comments from persons who are unable to attend the hearing or who wish to supplement testimony offered at the hearing. E-mail comments should be sent to srockweiler@commerce.state.wi.us. If e-mail submittal is not possible, written comments may be submitted to Sam Rockweiler, Department of Commerce, Division of Environmental and Regulatory Services, P.O. Box 14427, Madison, WI 53708-0427.

Copies of Proposed Rules

The proposed rules and an analysis of the rules are available on the Internet by entering "Comm 108" in the search engine at the following Web site: <http://adminrules.wisconsin.gov>. Paper copies may be obtained without cost from Sam Rockweiler at the Department of Commerce, Division of Environmental and Regulatory Services, P.O. Box 14427, Madison, WI 53707, or at srockweiler@commerce.state.wi.us, or at telephone (608) 266-0797, or at Contact Through Relay. Copies will also be available at the public hearing.

Agency Contact Person

Jeanne Storm, Wisconsin Department of Commerce, Division of Housing and Community Development, P.O. Box 7970, Madison, WI, 53707-7970; telephone (608) 264-6110; e-mail Jeanne.Storm@Wisconsin.gov.

Any inquiries for the small business regulatory coordinator for the Department of Commerce can be directed to Sam Rockweiler, as listed above.

Notice of Hearing

Government Accountability Board

EmR0830

NOTICE IS HEREBY GIVEN that pursuant to sections 5.05 (1) (f) and 227.11 (2) (a), Stats., and interpreting section 7.41, Stats., the Government Accountability Board will hold a public hearing to consider adoption of an emergency rule to repeal and recreate Chapter GAB 4, Wis. Adm. Code, relating to observers at a polling place or other location where votes are being cast, counted or recounted.

Hearing Information

The hearing will be held:

Date: November 11, 2008

Time: 9:30 a.m.

Location: Government Accountability Board Office
7 West Main Street
Madison, Wisconsin

Analysis Prepared by the Government Accountability Board

Statute interpreted

Section 7.41, Stats.

Statutory authority

Sections 5.05 (1) (f), 5.93 and 227.11 (2) (a), Stats.

Explanation of agency authority

This rule repeals Chapter GAB 4, Observers, which interprets s. 7.41 of the Wisconsin Statutes, as amended by 2005 Wisconsin Act 451.

This rule recreates Chapter GAB 4, Election observers, interpreting s. 7.41 of the Wisconsin Statutes – Public's right to access. The board is empowered by s. 7.41 (5), Stats., to promulgate rules consistent with the supervisory authority of a chief inspector at any polling place on election day, regarding the proper conduct of individuals exercising the right under s. 7.41, Stats., to readily observe all public aspects of the voting process in an election.

Existing Chapter GAB 4 (formerly Chapter EIBd 4), was adopted to implement s. 7.39, Stats., relating to the appointment of election observers at polling places in a municipality. Subsequent to the enactment of s. 7.39, Stats., the legislature enacted a much broader statute, s. 7.41, Stats., that expanded the class of persons who may observe the proceedings at a polling place to include "any member of the public." Because any member of the public has the right to observe merely by being present, appointment as an observer was no longer necessary, thereby rendering s. 7.39, Stats., obsolete and necessitating its repeal. Consequently, the legislature repealed s. 7.39, Stats., in 1999 Wisconsin Act 182.

In 2005 Act 451, the Wisconsin Legislature expanded the number of locations at which observers had the right to observe to include "the office of any municipal clerk whose office is located in a public building on any day that absentee ballots may be cast in that office, or at an alternate site under s. 6.855 on any day that absentee ballots may be cast at that site for the purpose of observation of an election and the absentee ballot voting process."

The Government Accountability Board now needs to promulgate a new rule implementing the new, amended s. 7.41, Stats., by setting forth standards of conduct applicable to persons who are present at a polling place, or elsewhere, for the purpose of observing all public aspects of an election, including voting, and the counting and canvassing of ballots.

Related statute or rule

Sections 5.35 (5), 7.37 (2) and 12.13 (3) (x), Stats., relating to maintaining order at the polling place, and other locations where observation of the public aspects of the voting process is taking place, and enforcing compliance with the lawful commands of the inspectors at the polling place.

Plain language analysis

This rule repeals and recreates rule chapter GAB 4, relating to observers and observation of the public aspects of the voting process at polling places and other locations where observation of the public aspects of the voting process is taking place.

Comparison with federal regulations

Observers and observation of the voting process is a matter of state regulation, not federal regulation. Consequently, no federal legislation or regulation applies to observers in Wisconsin or any other state.

Comparison with rules in adjacent states

The States of Illinois, Iowa, Michigan and Minnesota all have legislation that allows persons to observe at the polling places in that state, but none of those states allows any member of the public to show up at a polling place and observe because each of those states requires prospective observers to register with the municipal clerk before the election and receive authorization to observe.

Summary of factual data and analytical methodologies

Adoption of the rule was not predicated on any factual data or analytical methodologies, but on observation eliminating provisions of the former Ethics Board's and Elections Board's rules that were inconsistent with the provisions or intent of the new law merging those agencies into the new Government Accountability Board.

Analysis and supporting documents used to determine effect on small business

Preparation of an economic impact report is not required. The Government Accountability Board does not anticipate that the repeal and recreation of the described provisions will have an economic impact.

Small Business Impact

The creation of this rule does not affect business.

Fiscal Estimate

The creation of this rule has no fiscal effect.

Agency Contact Person

Michael Haas
Staff Counsel, Government Accountability Board
17 West Main Street, P.O. Box 2973
Madison, Wisconsin 53701-2973
Phone 608-266-2094

Submission of Written Comments

Comments may be submitted to the Government Accountability Board, 17 West Main Street, P.O. Box 2973, Madison, WI 53701-2973; (elections.state.wi.us)

Text of Proposed Rule

SECTION 1. Chapter GAB 4, Observers, is repealed.

SECTION 2. Chapter GAB 4, Election Observers, is recreated to read:

Election Observers

GAB 4.01 Observers at the polling place. (1) In this chapter:

- (a) "Board" means the Government Accountability Board.
- (b) "Chief inspector" means the chief inspector at a polling place, under s. 7.30 (6) (b), Stats., or the election official that the chief inspector designates to carry out the responsibilities of the chief inspector under this chapter.
- (c) "Clerk" means the municipal or county clerk, the executive director of the board of election commissioners, or the official designated by the clerk or director to carry out the election responsibilities under this chapter.
- (d) "Communications media" has the meaning given in s. 11.01(5), Stats.
- (e) "Electioneering" has the meaning given in s. 12.03 (4), Stats.

(f) "Member of the public" means any individual who is present at any polling place, or in the office of any municipal clerk whose office is located in a public building on any day that absentee ballots may be cast in that office, or at an alternate site under s. 6.855, Stats., on any day that absentee ballots may be cast at that site, for the purpose of observation of an election or the absentee ballot voting process, excluding a candidate appearing on the ballot at that polling place or a registered write-in candidate, for an office voted on at that polling place or other location.

(g) "Public aspects of the voting process" means the election activities that take place at a polling place, or other observation location, that includes waiting in line to vote by inspectors, the election day registration process, the recording of electors under s. 6.79 Stats., the elector's receipt of a ballot, the deposit of the ballot into the ballot box, a challenge to an elector's right to vote, the issuing of a provisional ballot, and the counting and reconciliation process.

(2) Any member of the public intending to exercise the right to observe an election under s. 7.41, Stats., shall notify the chief inspector of that intent upon entering the voting area of a polling place. The observers shall sign a form acknowledging they understand the applicable rules and will abide by them. The observers shall also list their full name, street address and municipality, and the name of the organization or candidate the observer represents, if any, on the form. The inspector shall attach the form to the Inspectors' Statement, EB-104. The chief inspector shall provide the observer with a name tag supplied by the board which reads "Election Observer." Observers shall wear this name tag at all times when they are inside the polling place.

(3) To ensure the orderly conduct of the election, the chief inspector may reasonably limit the number of observers representing a particular organization or candidate.

(4) The chief inspector shall direct the observer to an area of the polling place designated by the chief inspector as an observation area.

(5) The observation area shall be situated to enable observers to observe all public aspects of the voting process during the election. When physically feasible within the polling place, the observation area shall be not less than 6 feet nor more than 12 feet from the table at which electors are announcing their name and address and being issued a voter number. If observers are unable to hear the electors stating their name and address, the poll workers shall repeat the name and address. If necessary to ensure all public aspects of the process are readily observable, the chief inspector shall set up additional observation areas near the election-day registration table and area where elector challenges are handled.

(6) Observers shall comply with the chief inspector's lawful commands or shall be subject to removal from the polling place.

(7) All of the observers' questions and challenges shall be directed to the chief inspector.

(8) Upon receiving a challenge to a voter's ballot at the polling place, the chief inspector shall follow the challenge procedure in Chapter GAB 9, Wis. Adm. Code. The challenge shall be recorded on the Challenge Documentation Form, EB-104c.

(9) If any observer engages in any loud, boisterous, or otherwise disruptive behavior that, in the opinion of the chief inspector, threatens the orderly conduct of the election or interferes with voting, the chief inspector shall warn the offending observer(s) that such conduct shall cease or the observer shall have to leave the polling place.

(10) If, after receiving the warning provided in sub. 9, the offending observer does not cease the offending conduct, the chief inspector shall order the offending observer to depart the polling place. If the offending observer declines or otherwise fails to comply with the chief inspector's order to depart, the chief inspector shall summon local law enforcement to remove the offending observer.

(11) While in the polling place, observers shall keep conversation to a minimum and shall try to conduct whatever conversation is necessary at a low enough volume to minimize distraction to electors and to the election inspectors and any other election officials. Failure to adhere to this subsection shall result in a warning under sub. 9 and, if the conduct continues, removal under sub. 10.

(12) Observers shall be permitted to view the poll lists, excluding the confidential portions of the lists maintained under ss. 6.35 (4) and 6.79 (6), Stats., as long as doing so does not interfere with or distract electors under s. 5.35 (5) Stats. Observers shall not be permitted to make a photocopy or take photographs of the poll lists on election-day.

(13) Observers shall not be permitted to handle an original version of any official election document.

(14) Observers shall not engage in electioneering as defined in s.12.03, Stats. If an observer violates s. 12.03, Stats., the chief inspector shall issue a warning under sub. 9 and, if the conduct continues, shall order the offending observer to depart the polling place or suffer removal under sub. 10.

(15) Observers shall not use a cellular telephone or other wireless communication device inside the voting area to make voice calls. Such use shall result in a warning under sub. 9 and, if the conduct continues, shall result in removal under sub. 10. Text messaging and other non-audible uses of such a device are permissible.

(16) Observers shall not engage in any conversation with election officials or other electors concerning a candidate, party, or question appearing on the ballot. Such conversation constitutes electioneering under s. 12.03, Stats., and shall result in a warning under sub. 9 and, if the conduct continues, removal under sub. 10. The chief inspector may order that other conversation be minimized if it is disruptive or interferes with the orderly conduct of the election.

(17) The restrictions on voter contact under sub. 16 shall not be construed to prevent any observer from assisting an elector under s. 6.82, Stats., provided that the elector requests the observer's assistance, and provided that the assistance meets the other requirements of s. 6.82, Stats., and the observer qualifies to provide assistance under that statute.

(18) Observers shall not wear any clothing or buttons having the name or likeness of a candidate, party, or referendum group appearing on the ballot or having text which describes, states, or implies that the observer is a governmental official or has any authority related to the voting process. Wearing such apparel at the polling place constitutes a violation of s. 12.03, Stats., and shall result in a warning under sub. 9 and, if the observer refuses to comply with the chief inspector's order, shall result in removal under sub. 10.

(19) Observers may not use any video or still cameras inside the polling place while the polls are open for voting. Failure to adhere to this subsection shall result in a warning under sub. 9 and, if the conduct continues, removal under sub. 10.

(20) After the polls close, candidates are allowed to be present and the prohibition of video and still cameras does not

apply unless it is disruptive or interferes with the administration of the election.

GAB 4.02 Observers at the municipal clerk's office. (1) Observers shall be permitted to be present at the municipal clerk's office, provided the clerk's office is located in a public building, or an alternate site for absentee voting designated under s. 6.855, Stats., on any day that absentee ballots may be cast in the office.

(2) Observers shall conform their conduct to the requirements of s. GAB 4.01. The municipal clerk shall exercise the authority of the chief inspector under s. GAB 4.01 to regulate observer conduct.

(3) The clerk shall establish observation areas to allow observers to view all public aspects of the absentee voting process. The observers need not be allowed behind the counter in the clerk's office.

(4) All of the observers' questions shall be directed to the clerk.

(5) If any observer engages in any loud, boisterous, or otherwise disruptive behavior that, in the opinion of the clerk, threatens the orderly conduct of the election or interferes with voting, the clerk shall issue a warning under s. GAB 4.01 (9) and, if the observer does not cease the offending conduct, order the observer's removal under s. GAB 4.01 (10).

(6) Observers may not use any video or still camera inside the clerk's office.

GAB 4.03 Observers at the central counting location. (1) In a municipality using a central counting location under s. 5.86, Stats., observers shall be permitted to be present at the central counting location.

(2) Observers shall conform their conduct to the requirements of s. GAB 4.01. The municipal clerk shall exercise the authority of the chief inspector under s. GAB 4.01 to regulate observer conduct.

(3) The clerk shall establish observation areas to allow observers to view all public aspects of the counting process.

(4) If any observer engages in any loud, boisterous, or otherwise disruptive behavior that, in the opinion of the clerk, threatens the orderly conduct of the count, the clerk shall issue a warning under s. GAB 4.01 (9) and, if the observer does not cease the offending conduct, order the observer's removal under s. GAB 4.01 (10).

(5) Observers shall be permitted to use a video or still camera inside the central count location unless it is disruptive or interferes with the administration of the election.

(6) All of the observers' questions and challenges shall be directed to the clerk.

GAB 4.04 Observers at absentee ballot canvass. (1) In a municipality using a central absentee ballot canvass location under s. 7.52, Stats., observers shall be permitted to be present at the canvass location.

(2) Observers shall conform their conduct to the requirements of s. GAB 4.01. The board of absentee ballot canvassers shall exercise the authority of the chief inspector under s. GAB 4.01 to regulate observer conduct.

(3) The board of absentee ballot canvassers shall establish observation areas to allow observers to view all public aspects of the canvassing process.

(4) If any observer engages in any loud, boisterous, or otherwise disruptive behavior that, in the opinion of the board of absentee ballot canvassers, threatens the orderly conduct of the count, the board of absentee ballot canvassers shall issue a warning under s. GAB 4.01 (9) and, if the observer does not cease the offending conduct, order the observer's removal under s. GAB 4.01 (10).

(5) Observers shall be permitted to use a video or still camera inside the absentee canvass location unless it is disruptive or interferes with the administration of the absentee ballot canvass.

(6) All of the observers' questions and challenges shall be directed to the member of the board of absentee ballot canvassers designated to receive questions and challenges.

GAB 4.05 Observers at absentee voting locations described in s. 6.875, Stats. (1) One observer from each of the two political parties whose candidate for governor or president received the greatest number of votes in the municipality, in the last general election, may accompany the special voting deputies to absentee voting locations described in s. 6.875, Stats.

(2) Observers shall conform their conduct to the requirements of s. GAB 4.01. The special voting deputies shall exercise the authority of the chief inspector under s. GAB 4.01 to regulate observer conduct.

(3) The special voting deputies shall establish observation areas to allow observers to view all public aspects of the absentee voting process.

(4) If any observer engages in any loud, boisterous, or otherwise disruptive behavior that, in the opinion of the special voting deputies, threatens the orderly conduct of the absentee voting process, the special voting deputies shall issue a warning under s. GAB 4.01 (9) and, if the observer does not cease the offending conduct, order the observer's removal under s. GAB 4.01 (10).

(5) Observers shall not be permitted to use a video or still camera inside the voting location.

(6) All of the observers' questions shall be directed to the special voting deputies.

GAB 4.06 Observers at a recount. (1) Pursuant to s. 9.01 (1) (b) 11., Stats., the recount of any election shall be open to any interested member of the public including candidates and their counsel.

(2) Observers shall conform their conduct to the requirements of s. GAB 4.01. The board of canvassers shall exercise the authority of the chief inspector under s. GAB 4.01 to regulate observer conduct.

(3) The board of canvassers may limit observers to a designated area, but the observers shall be positioned so that they can see the poll lists and each individual ballot as it is counted. If there is not room for all observers to view the ballots as they are being counted, visual preference shall be given to the candidates or their representatives.

(4) If any observer engages in any loud, boisterous, or otherwise disruptive behavior that, in the opinion of the board of canvassers, threatens the orderly conduct of the count, the board of canvassers shall issue a warning under s. GAB 4.01 (9) and, if the observer does not cease the offending conduct, order the observer's removal under s. GAB 4.01 (10).

(5) Observers shall be permitted to use a video or still camera inside the recount location unless it is disruptive or interferes with the administration of the election.

(6) All of the observers' questions and challenges shall be directed to the member of the board of canvassers designated to receive questions and challenges.

GAB 4.07 Communications media observers. (1) Observers from communications media organizations shall identify themselves and the organization they represent to the chief inspector upon arriving at the polling place. The inspector shall record that information on the inspectors' statement, EB-104.

(2) Communications media observers shall be permitted to use video and still cameras provided there is no objection from the chief inspector or a voter who may be photographed and the cameras are not used in a manner that allows the observer to see or record how an elector has voted.

GAB 4.08 Polling Place Accessibility Assessments. (1) This section applies to disability advocates and other individuals authorized by the board to assess the compliance of a polling place with s. 5.25 (4) (a), Stats.

(2) When practical, groups and individuals observing under this section shall notify the clerk at least 24 hours in advance of their intent to assess polling place accessibility.

(3) Disability advocate observers shall be allowed out of the designated observation area to take accessibility measurements to ensure compliance with polling place accessibility requirements unless it is disruptive or interferes with the administration of the election.

(4) Disability advocate observers shall be allowed to take photos and video to document compliance with the accessibility requirements unless it is disruptive or interferes with the administration of the election.

(5) Disability advocate observers shall be allowed to wear shirts or name tags identifying themselves as disability advocate observers.

(6) Election officials, including poll workers, shall facilitate the work of disability advocates in making their accessibility assessments.

Notice of Hearing Health Services

(Formerly Health and Family Services)
Community Services, Chs. HFS 30—
CR 08-097

NOTICE IS HEREBY GIVEN that pursuant to s. 46.056 (1) and 227.11 (2) (a), Stats., the Wisconsin Department of Health Services proposes to repeal and recreate Chapter DHS 97, relating to complaint procedures for inmates of the Wisconsin Resource Center.

Hearing Information

<u>Date and Time</u>	<u>Location</u>
November 25, 2008 9:00 to 11:00 a.m.	Wisconsin Resource Center Administration Building Room AB-102 1505 North Drive Winnebago, 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 at 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.

Analysis Prepared by the Department of Health Services

Statute interpreted

Section 46.056 (1), Stats.

Statutory authority

Sections 46.056 (1) and 227.11 (2) (a), Stats.

Explanation of agency authority

Section 46.056 (1) Stats., authorizes the Department of Health Services (DHS) to establish the Wisconsin Resource

Center (WRC) and gives DHS the responsibility for administering WRC as a correctional institution. Chapter 227.11 (2) (a), Stats., gives state agencies general rulemaking authority to effectuate the purpose of a statute enforced or interpreted by the agency.

Related statute or rule

Ch. DOC 310

Plain language analysis

DHS proposes to repeal and recreate ch. DHS 97 to adopt ch. DOC 310, except where stated, as the process for handling inmate complaints in order to facilitate the following:

1. Eliminate the need for coordination and duplication of effort to keep ch. DHS 97 and ch. DOC 310 synchronized.
2. Eliminate ambiguity about the applicability of ch. DOC 310 to WRC inmates.
3. Allow the Department of Corrections (DOC) to continue to be involved in decision-making regarding inmate complaints at WRC for the purposes of continuity.
4. Eliminate the confusion that s. DHS 97.14 causes by bringing the DHS Secretary into the decision-making process, but not linking that decision to that of the DOC Secretary.

DHS administers the Wisconsin Resource Center under s. 46.056 (1), Stats., as a correctional institution that provides psychological evaluations, specialized learning programs, and training and supervision for inmates whose behavior poses a serious threat to themselves or others in state prisons and whose mental health needs can be met at WRC. The inmates housed at WRC are prison inmates under the authority of DOC and are secured by DOC correctional officers.

Although existing ch. DHS 97 largely parallels the process for handling inmate complaints under ch. DOC 310, there is ambiguity about the applicability of ch. DOC 310 to the inmates at WRC. There are also issues with coordination and duplication of efforts when ch. DOC 310 is revised, in maintaining ch. DHS 97. Therefore, DHS and DOC have determined that the interests and input of the DHS can be best accommodated by repealing and recreating ch. DHS 97 to adopt ch. DOC 310, and address only necessary differences.

Comparison with federal regulations

DHS knows of no federal regulations that relate to the subject matter of ch. DHS 97. There are certain federal statutory standards a state correctional grievance system must meet in order for state inmates to be required to exhaust those administrative remedies before filing a federal lawsuit challenging conditions of confinement. DHS believes the process established under ch. DOC 310 and the proposed rules satisfy those federal statutory requirements.

Comparison with rules in adjacent states

Minnesota:

Rule 2911.2900 only requires a grievance procedure. The actual procedure is not codified in the administrative code.

Iowa:

IAC 50.21 (3) only requires a grievance procedure. The actual procedure is not codified in the administrative code.

Michigan:

Michigan Admin Code R. 791.718 concerning grievances only requires a grievance procedure. The actual procedure is not codified in the administrative code.

Illinois:

77 Ill. Adm. Code 504.800 to 504.870 includes Illinois' inmate grievance process. The process is substantially similar to the grievance process under ch. DOC 310.

Summary of factual data and analytical methodologies

The proposed rules were developed by DHS and DOC to better integrate processes for handling inmate complaints.

Small Business Impact

Chapter DHS 97 does not affect businesses.

Small business regulatory coordinator

Rosie Greer

Greerrj@dhfs.state.wi.us

608-266-1279

Fiscal Estimate

The proposed rule would not have a fiscal impact on the DHS or DOC as the change is largely technical in nature.

Submission of Written Comments

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>. The deadline for submitting comments to the Department is 4:30 p.m. on December 4, 2008.

Copies of Proposed Rules

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

Agency Contact Person

Byran Bartow

Wisconsin Resource Center

1505 North Drive, Box 16

Winnebago, WI 54985

Phone: (920) 236-4180

Email: Bartobd@dhfs.state.wi.us.

**Notice of Hearing
Regulation and Licensing
EmR0819**

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Department of Regulation and Licensing in s. 227.11 (2), Stats., and subchapter VII of ch. 440, Stats., and interpreting s. 440.88, Stats., the Department of Regulation and Licensing will hold a public hearing to consider an order adopting emergency rules to repeal RL 161.04 (3) (e); to renumber and amend RL 161.04 (3) (a) 1.; and to create RL 161.04 (3) (a) 2. and a Note following RL 161.04 (3) (a) 2., relating to examinations for substance abuse professionals.

Hearing Information

Date: November 11, 2008

Time: 9:00 A.M.

Location: 1400 East Washington Avenue
(Enter at 55 North Dickinson Street)
Room 122
Madison, Wisconsin

Analysis Prepared by the Department of Regulation and Licensing

Statutes interpreted

Section 440.88, Stats.

Statutory authority

Section 227.11 (2), Stats., and Subchapter VII of ch. 440, Stats.

Explanation of agency authority

Subchapter VII of ch. 440, Stats., Substance Abuse Counselors, Clinical Supervisors, and Prevention Specialists, directs the department to write rules that establish minimum standards and qualifications for the certification of substance abuse professionals.

Related statute or rule

Section 440.88 (3) (a), (b) and (c), Stats., and s. RL 161.04 (3) (e).

Plain language analysis

Currently, an applicant for a clinical substance abuse counselor credential must complete and pass the International Certification and Reciprocity Consortium's (IC&RC) written examination and case presentation method interview. As of June 1, 2008, the IC&RC will discontinue using the case presentation method interview and will replace it by adding a new section to its written examination. This emergency rule repeals the requirement that an applicant pass the IC&RC's case presentation method interview for applicants who take the IC&RC written examination after June 1, 2008.

This rule also creates a provision that would allow applicants for the clinical substance abuse credential, who took the IC&RC written examination before June 1, 2008, to pass either the new IC&RC written examination or the case presentation method interview until December 31, 2008. This rule will help applicants who took the written examination before June 1, 2008, qualify for a clinical substance abuse counselor credential. It gives them the choice of using the old examination system or the new. Beginning December 31, 2008, all applicants will have to pass the IC&RC's new written examination to receive a clinical substance abuse counselor credential.

SECTION 1 renumbers a provision.

SECTION 2 creates a pathway for certain applicants for a clinical substance counselor credential to meet a requirement under the law currently in effect that is being repealed by this rule.

SECTION 3 repeals a requirement for a clinical substance abuse counselor credential that is no longer being provided after June 1, 2008.

Comparison with federal regulations

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

Comparison with rules in adjacent states**Minnesota:**

In Minnesota, although licensure is available through the state and certification through the Minnesota Certification Board (MCB – a private organization), state licensure is required for practice, with exemptions for other professional licenses. The certification offered by the MCB is not recognized by the state. The MCB offers certification based upon the standards of the IC&RC, which includes supervised practice requirements, specialized education and training in substance abuse counseling, and counselor examinations. Minnesota, in part to satisfy the standards of the licensure, will accept the certificates provided by the MCB as fulfilling their licensure requirements.

Licensure in Minnesota requires the following (before July 1, 2008): an associate degree or equivalent credit hours; 270 hours of substance abuse related education; completion of either the IC&RC Case Presentation Method Oral examination or 2,000 hours of supervised practice; passage of the NAADAC or IC&RC Counselor Examination. After July 1, 2008, Minnesota requires: a bachelor's degree including 18 semester credits or 270 clock hours of substance abuse related education; either the case presentation method, or a plan for 2000 hours of professional practice or proof of 2000 hours of professional practice; passage of the NAADAC or IC&RC counselor examination.

Minnesota will continue to use the IC&RC case presentation method after the IC&RC formally discontinues the use in certification standards. The IC&RC is formally requiring all jurisdictions that elect to use the CPM examination to sign an indemnity agreement allowing states to continue to offer the examination.

Michigan:

In Michigan, substance abuse counselor certification is voluntary; however, at the county level, certification is only driven by allocating funding to county-run treatment centers, which use certified substance abuse counselors. Substance abuse counselors are certified and regulated by the Michigan Certification Board, a private agency.

Michigan no longer uses the IC&RC Case Presentation Method Oral Examination in certification procedures for their counselors.

Illinois:

Illinois mandates that licensed alcohol and drug abuse counselors are used in their state certified alcohol and drug abuse clinics. Under Illinois code: Title 77: Chapter 2060.309 part of the staffing requirements of their clinics require counselors to hold clinical certification as a Certified Alcohol and Drug Counselor issued by the Illinois Alcoholism and Other Drug Abuse Professional Certification Association (IAODAPCA).

IAODAPCA requirements are based off those of the IC&RC. The reciprocal level of the certified drug and alcohol counselor, which is analogous to Wisconsin's clinical substance abuse counselor, requires passage of the IC&RC case presentation method oral examination.

See: §20 ILCS 301/15-5, 77 Ill. Adm. Code 2060.20 et. seq.

Iowa:

The state of Iowa does not credential AODA or Substance Abuse Professionals, but does mandate the certification and use of those professions in their state certified alcohol and drug abuse clinics. Under Iowa administrative code: 641 IAC 155.21 (8) i., part of the staffing requirements of their clinics require that persons providing screening, evaluations, assessments or treatment shall be certified through the Iowa Board of Substance Abuse Certification, a private agency, or certified by an IC&RC member board in the states of Illinois, Minnesota, Nebraska, Missouri, South Dakota, and Wisconsin.

The Iowa Certification Board modeled their credentials from those requirements specified by the IC&RC. Iowa has advanced drug and alcohol counselor certification, which is analogous to our clinical substance abuse counselor certification, requires the passage of the IC&RC written counselor examination. The advanced level certification is not considered reciprocal and therefore they do not require the IC&RC oral Case Presentation Method examination. For those Iowa counselors who wish to bring their credentials in

line with IC&RC's reciprocity requirements, they were required to complete the written and oral portion of the IC&RC CPM examination.

See: §641 IAC chapter 155

Summary of factual data and analytical methodologies

The Department of Regulation and Licensing is amending the requirement for successful completion of the oral examination as a precondition for certification as a clinical substance abuse counselor because of the change in certification requirements of the International Certification & Reciprocity Consortium (IC&RC). The standards for achieving clinical substance abuse counselor certification were set so that the requirements for the certification would be equivalent of the IC&RC certified alcohol and drug counselor and further, Wisconsin utilizes their examination in the process. Elimination of the oral examination and the change in the certification standards requires Wisconsin to amend rules of certification.

Analysis and supporting documents used to determine effect on small business

Small business should not be impacted as the examination requirements, and thusly associated costs to achieve certification, are effectively reduced by the elimination of the examination. The oral examination was costly to administer and was a barrier to entry to the field. To achieve certification, a counselor must still pass the written counselor examination, but no longer must complete the oral examination.

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

Small Business Impact

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

Fiscal Estimate

Summary

The department estimates that this rule will require staff time in the Office of Legal Counsel and the Division of Professional Credentialing. The total one-time salary and fringe costs are estimated at \$1,557.

Anticipated costs incurred by private sector

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

Submission of Written comments

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but are urged to submit facts, opinions and argument in writing as well. Facts, opinions and argument may also be submitted in writing without a personal appearance by mail addressed to Pamela Haack, Paralegal, Department of Regulation and Licensing, Office of Legal Counsel, 1400 East Washington Avenue, Room 152, P.O. Box 8935, Madison, Wisconsin 53708-8935, or by email to pamela.haack@drl.state.wi.us. Comments must be received on or before November 14, 2008 to be included in the record of rule-making proceedings.

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; telephone 608-266-0495; email at pamela.haack@drl.state.wi.us.

Text of Proposed Rule

SECTION 1. RL 161.04 (3) (a) is renumbered RL 161.04 (3) (a) 1. and is amended to read:

RL 161.04 (3) (a) 1. Successful passage of the International Certification and Reciprocity Consortium Alcohol and Other Drug Abuse written counselor certification examination-; or.

SECTION 2. RL 161.04 (3) (a) 2. and a Note following RL 161.04 (3) (a) 2. are created to read:

RL 161.04 (3) (a) 2. Until December 31, 2008, an applicant who passed the International Certification and Reciprocity Consortium Alcohol and Other Drug Abuse written counselor certification examination before June 1, 2008, successful passage of either the International Certification and Reciprocity Consortium's written counselor certification examination or the case presentation method interview provided by the department.

Note: Prior to June 1, 2008, to receive a clinical substance abuse counselor credential, an applicant had to pass a written counselor examination and a case presentation method oral interview (oral examination) authorized by the International Certification & Reciprocity Consortium (IC&RC). Effective June 1, 2008, the IC&RC withdrew its authorization for the oral examination and instead requires an applicant to complete their updated written counselor examination which includes a section to replace the oral examination. Pursuant to an agreement with the IC&RC, the department will continue to offer the oral examination for applicants who took the written examination prior to June 1, 2008. Until December 31, 2008, those applicants have the choice of passing either the IC&RC's updated written counselor examination or the oral examination provided by the department.

SECTION 3. RL 161.04 (3) (e) is repealed.

Finding of Emergency

The department has made a finding of emergency. The current rules require an applicant for a clinical substance abuse counselor credential to pass an oral examination. The company that produced that examination is not giving that examination after June 1, 2008. This emergency rule creates a time period for a transition to enable a category of applicants to get a clinical substance abuse counselor credential. Persons holding a clinical substance abuse counselor credential can apply for a supervisory credential. There is a strong need for more supervisors in this field because services can only be provided under supervision. This rule will enable more applicants to receive a supervisor credential and is therefore necessary to maintain the health, safety and welfare of the public.

Notice of Hearing Regulation and Licensing CR 08-094

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Department of Regulation and Licensing in s. 227.11 (2), Stats., and subchapter VII of ch. 440, Stats., and interpreting s. 440.88, Stats., the Department of Regulation and Licensing will hold a public hearing to consider an order to repeal RL 161.04 (3) (e); to amend RL 161.04 (3) (a); and to create a Note following RL 161.04 (3) (a), relating to examinations for substance abuse professionals.

Hearing Information

Date: November 11, 2008
Time: 9:00 A.M.
Location: 1400 East Washington Avenue
 (Enter at 55 North Dickinson Street)
 Room 122
 Madison, Wisconsin

Analysis Prepared by the Department of Regulation and Licensing.**Statutes interpreted**

Section 440.88, Stats.

Statutory authority

Section 227.11 (2), Stats., and Subchapter VII of ch. 440, Stats.

Explanation of agency authority

Subchapter VII of ch. 440, Stats., Substance Abuse Counselors, Clinical Supervisors, and Prevention Specialists, directs the department to write rules that establish minimum standards and qualifications for the certification of substance abuse professionals.

Related statute or rule

Section 440.88 (3) (a), (b) and (c), Stats., and s. RL 161.04 (3) (e).

Plain language analysis

Currently, an applicant for a clinical substance abuse counselor credential must complete and pass the International Certification and Reciprocity Consortium's (IC&RC) written examination and case presentation method interview. As of June 1, 2008, the IC&RC discontinued the case presentation method interview and replaced it by adding a new section to its written examination. This proposed rule repeals the requirement that an applicant pass the IC&RC's case presentation method interview.

This proposed rule also amends the rule that requires an applicant for a clinical substance abuse counselor credential to pass the IC&RC's written examination. The amendment makes the current rule conform to a previously passed emergency rule that allowed the department to continue to administer the case presentation method interview until December 31, 2008. This rule allows applicants who passed the written examination before June 1, 2008, to qualify for a credential if they either retook the written examination after June 1, 2008, or successfully passed the case presentation method interview before January 1, 2009.

SECTION 1 amends the rule to enable applicants who passed the written examination before June 1, 2008, to meet the requirement for the credential by either successfully retaking the IC&RC's written counselor examination after June 1, 2008, or by passing the case presentation method interview before December 31, 2008.

SECTION 2 creates a Note that relates to the updated written counselor examination.

SECTION 3 repeals the requirement that an applicant for a clinical substance abuse counselor credential pass the case presentation method interview. The case presentation method interview is not being offered after December 31, 2008.

Comparison with federal regulations

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

Comparison with rules in adjacent states**Minnesota:**

In Minnesota, although licensure is available through the state and certification through the Minnesota Certification Board (MCB – a private organization), state licensure is required for practice, with exemptions for other professional licenses. The certification offered by the MCB is not recognized by the state. The MCB offers certification based upon the standards of the IC&RC, which includes supervised practice requirements, specialized education and training in substance abuse counseling, and counselor examinations. Minnesota, in part to satisfy the standards of the licensure, will accept the certificates provided by the MCB as fulfilling their licensure requirements.

Licensure in Minnesota requires the following (before July 1, 2008): an associate degree or equivalent credit hours; 270 hours of substance abuse related education; completion of either the IC&RC Case Presentation Method Oral examination or 2,000 hours of supervised practice; passage of the NAADAC or IC&RC Counselor Examination. After July 1, 2008, Minnesota requires: a bachelor's degree including 18 semester credits or 270 clock hours of substance abuse related education; either the case presentation method, or a plan for 2000 hours of professional practice or proof of 2000 hours of professional practice; passage of the NAADAC or IC&RC counselor examination.

Minnesota will continue to use the IC&RC case presentation method after the IC&RC formally discontinues the use in certification standards. The IC&RC is formally requiring all jurisdictions that elect to use the CPM examination to sign an indemnity agreement allowing states to continue to offer the examination.

Michigan:

In Michigan, substance abuse counselor certification is voluntary; however, at the county level, certification is only driven by allocating funding to county-run treatment centers, which use certified substance abuse counselors. Substance abuse counselors are certified and regulated by the Michigan Certification Board, a private agency.

Michigan no longer uses the IC&RC Case Presentation Method Oral Examination in certification procedures for their counselors.

Illinois:

Illinois mandates that licensed alcohol and drug abuse counselors are used in their state certified alcohol and drug abuse clinics. Under Illinois code: Title 77: Chapter 2060.309 part of the staffing requirements of their clinics require counselors to hold clinical certification as a Certified Alcohol and Drug Counselor issued by the Illinois Alcoholism and Other Drug Abuse Professional Certification Association (IAODAPCA).

IAODAPCA requirements are based off those of the IC&RC. The reciprocal level of the certified drug and alcohol counselor, which is analogous to Wisconsin's clinical substance abuse counselor, requires passage of the IC&RC case presentation method oral examination.

See: §20 ILCS 301/15-5, 77 Ill. Adm. Code 2060.20 et. seq.

Iowa:

The state of Iowa does not credential AODA or Substance Abuse Professionals, but does mandate the certification and use of those professions in their state certified alcohol and drug abuse clinics. Under Iowa administrative code: 641 IAC 155.21 (8) i., part of the staffing requirements of their clinics require that persons providing screening, evaluations, assessments or treatment shall be certified through the Iowa

Board of Substance Abuse Certification, a private agency, or certified by an IC&RC member board in the states of Illinois, Minnesota, Nebraska, Missouri, South Dakota, and Wisconsin.

The Iowa Certification Board modeled their credentials from those requirements specified by the IC&RC. Iowa has advanced drug and alcohol counselor certification, which is analogous to our clinical substance abuse counselor certification, requires the passage of the IC&RC written counselor examination. The advanced level certification is not considered reciprocal and therefore they do not require the IC&RC oral Case Presentation Method examination. For those Iowa counselors who wish to bring their credentials in line with IC&RC's reciprocity requirements, they were required to complete the written and oral portion of the IC&RC CPM examination.

See: §641 IAC chapter 155

Summary of factual data and analytical methodologies

The Department of Regulation and Licensing is amending the requirement for successful completion of the oral examination as a precondition for certification as a clinical substance abuse counselor because of the change in certification requirements of the International Certification & Reciprocity Consortium (IC&RC). The standards for achieving clinical substance abuse counselor certification were set so that the requirements for the certification would be equivalent of the IC&RC certified alcohol and drug counselor and further, Wisconsin utilizes their examination in the process. Elimination of the oral examination and the change in the certification standards requires Wisconsin to amend rules of certification.

Analysis and supporting documents used to determine effect on small business

Small business should not be impacted as the examination requirements, and thusly associated costs to achieve certification, are effectively reduced by the elimination of the examination. The oral examination was costly to administer and was a barrier to entry to the field. To achieve certification, a counselor must still pass the written counselor examination, but no longer must complete the oral examination.

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

Small Business Impact

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

Fiscal Estimate

Summary

The department estimates that this rule will require staff time in the Office of Legal Counsel and the Division of

Professional Credentialing. The total one-time salary and fringe costs are estimated at \$1,564 for the two divisions. The ongoing salary and fringe costs for the Office of Legal Counsel are estimated at \$563.

Anticipated costs incurred by private sector:

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

Submission of Written Comments

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 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, or by email to pamela.haack@drl.state.wi.us. Comments must be received on or before November 14, 2008 to be included in the record of rule-making proceedings.

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; telephone 608-266-0495; email at pamela.haack@drl.state.wi.us.

Text of Proposed Rule

SECTION 1. RL 161.04 (3) (a) is amended to read:

RL 161.04 (3) (a) Successful passage of the International Certification Reciprocity Consortium Alcohol and Other Drug Abuse written counselor certification examination taken after June 1, 2008. If the written examination was taken before June 1, 2008, an applicant shall have either successfully passed the International Certification Reciprocity Consortium case presentation method interview before December 31, 2008, or have successfully retaken the written counselor certification examination after June 1, 2008.

SECTION 2. A Note following RL 161.04 (3) (a) is created to read:

Note: Prior to June 1, 2008, to receive a clinical substance abuse counselor credential, an applicant had to pass a written counselor examination and a case presentation method oral interview (oral examination) authorized by the International Certification & Reciprocity Consortium (IC&RC). Effective June 1, 2008, the IC&RC withdrew its authorization for the oral examination and instead requires an applicant to complete an updated written counselor examination which includes a section to replace the oral examination. Pursuant to an agreement between the department and the IC&RC, applicants who took the written examination prior to June 1, 2008, were able to complete the oral examination until December 31, 2008.

SECTION 3. RL 161.04 (3) (e) is repealed.

Rule Orders Filed with the Legislative Reference Bureau

The following administrative rule orders have been filed with the Legislative Reference 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 Legislative Reference Bureau at bruce.hoesly@legis.wisconsin.gov or (608) 266-7590 for updated information on the effective dates for the listed rule orders.

Agriculture, Trade and Consumer Protection **CR 07-107**

Revises Chapters ATCP 10, 12 and 17, relating to animal health and disease control.
Effective 12-1-08 and 7-1-09.

Agriculture, Trade and Consumer Protection **CR 07-116**

Revises Chapters ATCP 42, 55 and 57, relating to meat and inedible animal by-products.
Effective 12-1-08.

Commerce

Fee Schedule, Ch. Comm 2 *Licenses, Certifications and Registrations, Ch. Comm 5* **CR 08-039**

Revises Chapters Comm 2 and 5, relating to program revenue fees.
Effective 12-1-08.

Commerce

Elevators, Escalators and Lift Devices, Ch. Comm 18 **CR 08-030**

Revises Chapters Comm 5, 18 and 21, relating to technical requirements for conveyances and licensing of installers of residential conveyances.
Effective 1-1-09.

Health Services

(Formerly Health and Family Services) *Health, Chs. DHS 110—* **CR 08-042**

Repeals Chapter HFS 129 and creates Chapter DHS 129, relating to certification and training of nurse aides, home health aides, medication aides, feeding assistants, and hospice aides.
Effective 12-1-08 or 1-1-09.

Insurance **CR 08-064**

Revises sections Ins 6.79 and 8.10, relating to advisory councils and committees.
Effective 1-1-09.

Natural Resources

Environmental Protection—Air Pollution Control, *Chs. NR 400—* **CR 07-036**

Revises Chapters NR 439, 446 and 484, relating to the control of mercury emissions from electrical generating units.
Effective 12-1-08.

Pharmacy Examining Board **CR 08-051**

Revises Chapters Phar 12 and 13, relating to the regulation of wholesale prescription drug distributors.
Effective 12-1-08.

Physical Therapists Affiliated Credentialing Board **CR 08-049**

Revises Chapters PT 2, 3 and 9, relating to examination waivers and temporary licenses.
Effective 12-1-08.

Public Instruction **CR 08-018**

Creates Chapter PI 16, relating to four-year-old kindergarten grants.
Effective 12-1-08.

Public Instruction **CR 08-052**

Revises Chapter PI 30, relating to state special education aid for certain pupil services personnel.
Effective 1-1-09.

Transportation **CR 08-058**

Creates Chapter Trans 263, relating to multiple trip overweight permits for vehicles transporting granular roofing materials.
Effective 12-1-08.

Transportation

CR 08-072

Revises Chapter Trans 117, relating to the occupational licensing program.
Effective 12-1-08.

Workforce Development

Unemployment Insurance, Chs. DWD 100-150

CR 08-059

Revises Chapter DWD 136, relating to wages exempt from unemployment insurance levy and affecting small businesses.
Effective 12-1-08.

Rules Published with this Register and Final Regulatory Flexibility Analyses

*The following administrative rule orders have been adopted and published in the **October 31, 2008**, Wisconsin Administrative Register. Copies of these rules are sent to subscribers of the complete Wisconsin Administrative Code and also to the subscribers of the specific affected Code.*

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

Commerce CR 08-031

Creates Chapter Comm 132, relating to dairy manufacturing facility investment credits. Effective 11-1-08.

Summary of Final Regulatory Flexibility Analysis

Less stringent compliance requirements are not proposed for small-business applicants because doing so would be contrary to the statutory objectives which are the basis for the rule.

No comments were received during the public hearing stage, and only minor clarification changes were made to the rule after the hearing.

Applicants for the investment credits would be required to submit an application that includes description of the investment project and description of how the project will promote economic development – along with tax schedule DM from the Department of Revenue, detailing the type and extent of the costs in constructing, improving, or acquiring buildings or facilities, or acquiring equipment, relating to the dairy manufacturing operation. The cost for assembling and submitting this application is expected to be inconsequential.

Summary of Comments by Legislative Review Committees

No comments were received.

Commerce CR 08-037

Revises Chapter Comm 131, relating to diesel truck idling reduction grants. Effective 11-1-08.

Summary of Final Regulatory Flexibility Analysis

Less stringent compliance requirements are not proposed for small-business applicants because doing so would be contrary to the statutory objectives which are the basis for the rule.

No comments were received during the public hearing stage, and no changes were made to the rule after the hearing.

The rules do not require any new reports or other measures and investments.

Summary of Comments by Legislative Review Committees

No comments were received.

Insurance CR 08-032

Revises sections Ins 3.455, 3.46, and 3.465, relating to long-term care plans including the plans qualifying for the Wisconsin long-term care insurance partnership program and affecting small business. Effective 11-1-08.

Summary of Final Regulatory Flexibility Analysis

This rule change will have no significant effect on the private sector regulated by OCI.

Summary of Comments by Legislative Review Committees

No comments were reported.

Natural Resources CR 08-023

Revises Chapter NR 46, relating to the administration of the forest crop law and managed forest law. Effective 11-1-08.

Summary of Final Regulatory Flexibility Analysis

The Department has determined that there will be no significant impact to small businesses located in the State of Wisconsin as a result of these rule changes. The rule changes will affect woodland owners.

Summary of Comments by Legislative Review Committees

The rule was reviewed by the Assembly Committee on Forestry and the Senate Committee on Environment and Natural Resources. On August 18, 2008, the Assembly Committee on Forestry held a public hearing. As a result of that hearing, the Committee requested the Department to consider modification of s. NR 46.15 (3m) relating to the definition of "consideration". The Committee waived its jurisdiction over s. NR 46.30 (2) (a) to (d) which contains the stumpage values for forest products cut on lands entered under either the Forest Crop Law or the Managed Forest Law. Under s. 77.06 (2), Stats., the stumpage values are to take effect on November 1 of each year.

Regulation and Licensing CR 08-040

Amends section RL 16.06, relating to the usage of approved forms for the practice of real estate. Effective 11-1-08.

Summary of Final Regulatory Flexibility Analysis

These 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 reported.

**Transportation
CR 08-048**

Revises Chapter Trans 250, relating to internet and telephone call-in fees. Effective 11-1-08.

Summary of Final Regulatory Flexibility Analysis

The Department concludes that reduction of the convenience fee will reduce the cost to small businesses.

Summary of Comments by Legislative Review Committees

No comments were reported.

**Veterinary Examining Board
CR 07-051**

Revises Chapters VE 1, 7, and 10, relating to continuing education, informed consent and recordkeeping. Effective 11-1-08.

Summary of Final Regulatory Flexibility Analysis

The requirement has no impact on the bookkeeping

operations of veterinary clinics, most of which are small businesses. The rule would not disproportionately impact small business veterinarians. The patient recordkeeping requirements for all veterinarians apply irrespective of practice size.

Summary of Comments by Legislative Review Committees

The rules were reviewed by the department's Small Business Review Advisory Committee to determine whether the rules will have any significant economic impact on a substantial number of small businesses, as defined in s. 227.114 (1), Stats. The Committee determined that the fiscal impact on small businesses would be minimal and is justified by the practice improvements required by the rule.

Sections Affected by Rule Revisions and Corrections

The following administrative rule revisions and corrections have taken place in **October 2008**, and will be effective as indicated in the history note for each particular section. For additional information, contact the Legislative Reference Bureau at (608) 266-7590.

Revisions

Commerce

Ch. Comm 131

S. Comm 131.30 (1) (b)

Ch. Comm 132 (Entire Chapter)

Regulation and Licensing

Ch. RL 16

S. RL 16.06 (1), (a), (b), (d)

Insurance

Ch. Ins 3

S. Ins 3.41 (1)

S. Ins 3.455 (3) and (7) (b) to (j)

S. Ins 3.46 (2) (a), (d), (3), (4) (c), (j) to (n), (r), (5) (a), (b), (8) (c), (9) (k) to (m), (10) (f) to (j), (11) (a), (h), (14), (16) (a), (b), (19) (c), (d), (j), and (20) to (26)

S. Ins 3.465

S. Ins 3.55 (3) (cg) and (cm)

Transportation

Ch. Trans 250

S. Trans 250.04

Veterinary Examining Board

Ch. VE 1

S. VE 1.02

Ch. VE 7

S. VE 7.01 (5)

S. VE 7.06 (23)

Ch. VE 10

S. VE 10.03 (4) (g)

Natural Resources

Ch. NR 46

S. NR 46.30 (2) (a) to (d)

Editorial Corrections

Corrections to code sections under the authority of s. 13.92 (4) (b), Stats., are indicated in the following listing.

Insurance

Ch. Ins 3

S. Ins 3.37 (3) (a) to (e), (g)

S. Ins 3.455 (2) (b)

S. Ins 3.46 (3) (a)

S. Ins 3.53 (4) (b)

Transportation

Ch. Trans 250

S. Trans 250.03

Executive Orders

The following are recent Executive Orders issued by the Governor.

Executive Order 268. Relating to the Governor's Homeland Security Council.