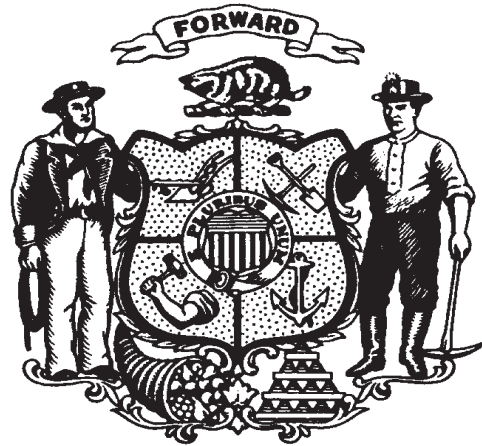


# Wisconsin Administrative Register

No. 588



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

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

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

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

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

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

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### Commerce

Rules were adopted creating **ch. Comm 129**, relating to technology commercialization programs.

#### Finding of Emergency

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

1. In accordance with sections 560.205 (3) and 560.275 (7), Stats., the department has the responsibility to promulgate rules to administer an Early Stage Business Investment Program and a Technology Commercialization Grant and Loan Program.

2. Section 560.205 (1) and (2), Stats., makes available certain tax benefits for investors in early stage businesses for tax years beginning after December 31, 2004.

3. Section 560.275 (2), Stats., makes available grant and loan program funds appropriated as of July 1, 2004.

4. The department, being the agency with primary authority for economic development in the state, recognizes that there is a verified need to assist the development of high growth early stage technology businesses. Wisconsin has historically ranked low in the development of new start–ups and in the attraction of risk capital.

5. The department recognizes that promulgating this emergency rule will alleviate the need for investors to defer investments into qualified new businesses while they wait for the promulgation of the permanent rule. Such a circumstance would effectively halt new investment into early stage high tech companies in Wisconsin, a result that would be contrary to the intent of the legislation.

6. In addition, the department recognizes that without promulgating this emergency rule, the department would likely be unable to fully utilize the funds made available to benefit early stage businesses.

7. Finally, the department recognizes that without promulgating this emergency rule, Wisconsin's early stage businesses would be unable to compete fairly to attract much–needed risk capital and federal research dollars to Wisconsin.

<b>Publication Date:</b>	<b>December 2, 2004</b>
<b>Effective Date:</b>	<b>December 2, 2004</b>
<b>Expiration Date:</b>	<b>May 1, 2005</b>

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### Insurance

Rules adopted revising **ch. Ins 17**, relating to annual patients compensation fund and mediation fund fees for the fiscal year beginning July 1, 2004.

#### Finding of emergency

The commissioner of insurance (commissioner) finds that an emergency exists and that promulgation of an emergency rule is necessary for the preservation of the public peace, health, safety or welfare. The facts constituting the emergency are as follows:

Actuarial and accounting data necessary to establish PCF fees is first available in December of each year. It is not possible to complete the permanent fee rule process in time for the patients compensation fund (fund) to bill health care providers in a timely manner for fees applicable to the fiscal year beginning July 1, 2004.

The commissioner expects that the permanent rule corresponding to this emergency rule, clearinghouse No. 04–032, will be filed with the secretary of state in time to take effect October 1, 2004. Because the fund fee provisions of this rule first apply on July 1, 2004, it is necessary to promulgate the rule on an emergency basis. A hearing on the permanent rule, pursuant to published notice thereof, was held on May 18, 2004.

**Publication Date:** June 22, 2004  
**Effective Date:** July 1, 2004  
**Expiration Date:** November 28, 2004

**Natural Resources (4)**  
**(Fish, Game, etc., Chs. NR 1–)**

1. Rules adopted revising **chs. NR 10 and 19**, relating to the regulation of baiting and feeding to control and manage chronic wasting disease and bovine tuberculosis.

**Finding of emergency**

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to protect the public health, safety and welfare. The state legislature has delegated to the department rule – making authority in 2001 Wisconsin Act 108 to control the spread of Chronic Wasting Disease (CWD) in Wisconsin. CWD, bovine tuberculosis and other forms of transmissible diseases pose a risk to the health of the state’s deer herd and citizens and is a threat to the economic infrastructure of the department, the state, it’s citizens and businesses. The state legislature has also delegated to the department rule – making authority in 2003 Wisconsin Act 240 to regulate feeding of wild animals for non–hunting purposes including recreational and supplemental feeding. These restrictions on deer baiting and feeding need to be implemented through the emergency rule procedure to help control and prevent the spread of CWD, bovine tuberculosis and other forms of transmissible diseases in Wisconsin’s deer herd.

**Publication Date:** June 10, 2004  
**Effective Date:** June 10, 2004  
**Expiration Date:** November 7, 2004  
**Hearing Date:** August 25 and 26, 2004  
**Extension Through:** January 5, 2005

2. Rules adopted amending **s. NR 25.09 (2) (b) 2. e.**, relating to commercial fishing with trap nets in Lake Michigan.

**Finding of emergency**

The use of the emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to protect public peace, health, safety or welfare. A statement of facts constituting the emergency is: The rule change will clarify the boundaries of the trap net area and thus reduce or prevent potential user conflicts between recreational and commercial fishers in the Manitowoc/Two Rivers area by changing the locations where commercial trap nets may be set from June 28 to Labor Day.

**Publication Date:** June 28, 2004  
**Effective Date:** June 28, 2004  
**Expiration Date:** November 25, 2004  
**Hearing Date:** August 2, 2004

3. Rules adopted creating **ss. NR 1.05, 1.06 and 1.07**, relating to Natural Resources Board policies on protection and management of public waters.

**Finding of emergency**

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

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

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

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

- Wording of exemptions and temporary grading jurisdiction puts lakes and streams at risk. Without standards as intended and described in the new law, exempted activities and grading along shorelines will cause inadvertent but permanent destruction of fish and wildlife habitat, loss of natural scenic beauty and reduced water quality. Rights of neighboring property owners may also be harmed. Cumulatively over one or two construction seasons, these impacts will have immediate and permanent effects on Wisconsin’s water–based recreation and tourism industry.

**Publication Date:** August 24, 2004  
**Effective Date:** August 24, 2004  
**Expiration Date:** January 21, 2005  
**Hearing Date:** September 28, 2004

4. Rules adopted revising **ch. NR 10**, relating to the 2004 migratory game bird seasons.

**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 31, 2004  
**Effective Date:** August 31, 2004  
**Expiration Date:** January 28, 2005  
**Hearing Date:** October 13, 2004

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## Natural Resources (11)

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

1. Rules adopted revising **ch. NR 300** and repealing **ch. NR 322**, relating to timelines and procedures for exemptions, general permits and individual permits for activities in navigable waterways.

#### Finding of emergency

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

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

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

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

- Wording of exemptions and temporary grading jurisdiction puts lakes and streams at risk. Without standards as intended and described in the new law, exempted activities and grading along shorelines will cause inadvertent but permanent destruction of fish and wildlife habitat, loss of natural scenic beauty and reduced water quality. Rights of neighboring property owners may also be harmed. Cumulatively over one or two construction seasons, these impacts will have immediate and permanent effects on Wisconsin’s water–based recreation and tourism industry.

To carry out the intention of the Legislature that 2003 Act 118 to speed decision–making but not diminish the public

trust in state waters, these emergency rules are required to establish definitions, procedures and substantive standards for exemptions, general permits and jurisdiction under the new law.

**Publication Date:** April 19, 2004  
**Effective Date:** April 19, 2004\*  
**Expiration Date:** September 16, 2004  
**Hearing Date:** May 19, 2004  
**Extension Through:** January 13, 2005

\*On June 24, 2004, the Joint Committee for Review of Administrative Rules suspended s. NR 310.17 (4) (a).

2. Rules adopted revising **ch. NR 320**, relating to the regulation of bridges and culverts in or over navigable waterways.

#### Finding of emergency

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

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

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

- Wording of exemptions and temporary grading jurisdiction puts lakes and streams at risk. Without standards as intended and described in the new law, exempted activities and grading along shorelines will cause inadvertent but permanent destruction of fish and wildlife habitat, loss of natural scenic beauty and reduced water quality. Rights of neighboring property owners may also be harmed. Cumulatively over one or two construction seasons, these impacts will have immediate and permanent effects on Wisconsin’s water–based recreation and tourism industry.

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**Publication Date:** August 24, 2004  
**Effective Date:** August 24, 2004  
**Expiration Date:** January 21, 2005  
**Hearing Date:** September 28, 2004

3. Rules adopted revising **ch. NR 323**, relating to fish and wildlife habitat structures in navigable waterways.

#### **Finding of emergency**

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

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

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

Wording of exemptions and temporary grading jurisdiction puts lakes and streams at risk. Without standards as intended and described in the new law, exempted activities and grading along shorelines will cause inadvertent but permanent destruction of fish and wildlife habitat, loss of natural scenic beauty and reduced water quality. Rights of neighboring property owners may also be harmed. Cumulatively over one or two construction seasons, these impacts will have immediate and permanent effects on Wisconsin’s water–based recreation and tourism industry.

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

**Publication Date:** April 19, 2004  
**Effective Date:** April 19, 2004  
**Expiration Date:** September 16, 2004  
**Hearing Date:** May 19, 2004  
**Extension Through:** January 13, 2005

4. Rules adopted revising **ch. NR 325**, relating to boathouses and fixed houseboats in navigable waterways.

#### **Finding of emergency**

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

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

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

Wording of exemptions and temporary grading jurisdiction puts lakes and streams at risk. Without standards as intended and described in the new law, exempted activities and grading along shorelines will cause inadvertent but permanent destruction of fish and wildlife habitat, loss of natural scenic beauty and reduced water quality. Rights of neighboring property owners may also be harmed. Cumulatively over one or two construction seasons, these impacts will have immediate and permanent effects on Wisconsin’s water–based recreation and tourism industry.

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

**Publication Date:** April 19, 2004  
**Effective Date:** April 19, 2004  
**Expiration Date:** September 16, 2004  
**Hearing Date:** May 19, 2004  
**Extension Through:** January 13, 2005

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

#### **Finding of emergency**

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to protect the public health, safety and welfare. The Wisconsin

Legislature recently enacted 2003 Wisconsin Act 118, to streamline the regulatory process for activities in public trust waters. The state has an affirmative duty to administer the new law in a manner consistent with the public trust responsibilities of the State of Wisconsin under Article IX, Section I of the Wisconsin Constitution.

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

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

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

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

6. Rules adopted revising **ch. NR 328**, relating to shore erosion control of inland lakes and impoundments.

#### **Finding of emergency**

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

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

**Publication Date:** August 24, 2004  
**Effective Date:** August 24, 2004  
**Expiration Date:** January 21, 2005  
**Hearing Date:** September 28, 2004

7. Rules adopted revising **ch. NR 329**, relating to miscellaneous structures in navigable waterways.

#### **Finding of emergency**

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

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

Until general permits are created by rule, any activity which is not exempt requires an individual permit with an

automatic 30–day public notice. The required 30–day comment period will unnecessarily delay hundreds of construction projects that otherwise could go ahead with specified conditions for protecting lakes and streams (for example, all new riprap and culvert applications currently require public notices).

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

Wording of exemptions and temporary grading jurisdiction puts lakes and streams at risk. Without standards as intended and described in the new law, exempted activities and grading along shorelines will cause inadvertent but permanent destruction of fish and wildlife habitat, loss of natural scenic beauty and reduced water quality. Rights of neighboring property owners may also be harmed. Cumulatively over one or two construction seasons, these impacts will have immediate and permanent effects on Wisconsin’s water–based recreation and tourism industry.

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

**Publication Date:** August 24, 2004  
**Effective Date:** August 24, 2004  
**Expiration Date:** January 21, 2005  
**Hearing Date:** September 28, 2004

8. Rules adopted revising **ch. NR 340**, and creating **ch. NR 343**, relating to regulation of construction, dredging, and enlargement of an artificial water body.

#### **Finding of emergency**

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

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

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

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

Wording of exemptions and temporary grading jurisdiction puts lakes and streams at risk. Without standards as intended and described in the new law, exempted activities and grading along shorelines will cause inadvertent but permanent destruction of fish and wildlife habitat, loss of natural scenic beauty and reduced water quality. Rights of neighboring property owners may also be harmed. Cumulatively over one or two construction seasons, these impacts will have immediate and permanent effects on Wisconsin’s water–based recreation and tourism industry.

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

**Publication Date:** August 24, 2004  
**Effective Date:** August 24, 2004  
**Expiration Date:** January 21, 2005  
**Hearing Date:** September 28, 2004

9. Rules adopted revising **ch. NR 345**, relating to dredging in navigable waterways.

#### **Finding of emergency**

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

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

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

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

Wording of exemptions and temporary grading jurisdiction puts lakes and streams at risk. Without standards as intended and described in the new law, exempted activities

and grading along shorelines will cause inadvertent but permanent destruction of fish and wildlife habitat, loss of natural scenic beauty and reduced water quality. Rights of neighboring property owners may also be harmed. Cumulatively over one or two construction seasons, these impacts will have immediate and permanent effects on Wisconsin's water-based recreation and tourism industry.

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

**Publication Date:** August 24, 2004  
**Effective Date:** August 24, 2004  
**Expiration Date:** January 21, 2005  
**Hearing Date:** September 28, 2004

10. Rules adopted repealing s. NR 340.02 (2), (8) and (19) and to creating ch. NR 341, relating to regulation of grading on the bank of a navigable waterway.

#### **Finding of emergency**

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

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

- Until general permits are created by rule, any activity which is not exempt requires an individual permit with an automatic 30-day public notice. The required 30-day comment period will unnecessarily delay hundreds of construction projects that otherwise could go ahead with specified conditions for protecting lakes and streams.

- Wording of exemptions and temporary grading jurisdiction puts lakes and streams at risk. Without standards as intended and described in the new law, exempted activities and grading along shorelines will cause inadvertent but permanent destruction of fish and wildlife habitat, loss of natural scenic beauty and reduced water quality. Rights of neighboring property owners may also be harmed. Cumulatively over one or two construction seasons, these impacts will have immediate and permanent effects on Wisconsin's water-based recreation and tourism industry.

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

**Publication Date:** May 19, 2004  
**Effective Date:** May 19, 2004  
**Expiration Date:** October 16, 2004  
**Hearing Date:** June 16, 2004  
**Extension Through:** February 12, 2005

11. Rules adopted creating ch. NR 310, relating to procedures for exemptions, general permits and individual permits for activities in navigable waterways.

#### **Finding of emergency**

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

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

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

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

- Wording of exemptions and temporary grading jurisdiction puts lakes and streams at risk. Without standards as intended and described in the new law, exempted activities and grading along shorelines will cause inadvertent but permanent destruction of fish and wildlife habitat, loss of natural scenic beauty and reduced water quality. Rights of neighboring property owners may also be harmed. Cumulatively over one or two construction seasons, these impacts will have immediate and permanent effects on Wisconsin's water-based recreation and tourism industry.

**Publication Date:** August 24, 2004  
**Effective Date:** August 24, 2004  
**Expiration Date:** January 21, 2005  
**Hearing Date:** September 28, 2004

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### **Public Instruction**

Rules were adopted revising ch. PI 35, relating to financial reporting requirements under the Milwaukee Parental Choice Program.

**Finding of emergency**

The Department of Public Instruction finds an emergency exists and that a rule is necessary for the immediate preservation of the public welfare. A statement of the facts constituting the emergency is:

Per 2003 Wisconsin Act 15, the provisions under the rule must take effect beginning in the 2004–05 school year. Because some of the reporting requirements must be made by August 1, the rule must be in place as soon as possible to give the private schools enough notice to meet such requirements.

**Publication Date: June 30, 2004**  
**Effective Date: June 30, 2004**  
**Expiration Date: November 27, 2004**  
**Hearing Date: September 13, 2004**  
**Extension Through: January 25, 2005**

**Publication Date: July 3, 2004**  
**Effective Date: July 3, 2004**  
**Expiration Date: November 30, 2004**  
**Hearing Date: October 1, 2004**  
**Extension Through: January 28, 2005**

- Rules adopted creating **ch. RL 150 to 154**, relating to the licensure and regulation of athlete agents.

**Exemption from finding of emergency**

SECTION 4. Nonstatutory provisions of 2003 Wisconsin Act 150 states in part:

(2) The department of regulation and licensing may, using the procedure under section 227.24 of the statutes, promulgate the rules under section 440.9935 of the statutes, as created by this act, for the period before permanent rules become effective, but not to exceed the period authorized under section 227.24 (1) (c) and (2) of the statutes. Notwithstanding section 227.24 (1) (a), (2) (b), and (3) of the statutes, the department is not 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 findings of emergency for rules promulgated under this subsection.

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

Statutes authorizing promulgation: s. 227.11 (2), Stats., and ss. 440.99, 440.991, 440.915, 440.992, 440.9925, 440.993, 440.9935, 440.994, 440.9945, 440.995, 440.9955, 440.996, 440.9975, 440.998 and 440.999, Stats., as created by 2003 Wisconsin Act 150.

Statutes interpreted: Chapter 440, Subchapter XII.

This emergency rule is promulgated pursuant to 2003 Wisconsin Act 150. This Act grants the Department of Regulation and Licensing the authority to create rules relating to the licensure and regulation of athlete agents.

In this order adopting emergency rules the Department of Regulation and Licensing creates rules relating to the licensure of athlete agents. These rules are as a result of 2003 Wisconsin Act 150 which enacted the Uniform Athlete Agents Act. Chapters RL 150 to 154 establish requirements and standards for registration and the practice of registered athlete agents. The rules specify the registration requirements for temporary and permanent registration, renewal requirements, and prohibited conduct for athlete agents.

SECTION 1 creates Chapter RL 150 which sets forth the statutory authority and the definitions for the proposed rules.

SECTION 2 creates Chapter RL 151 which sets forth the application process and requirements for an initial certificate of registration, including the application process for a temporary certificate of registration.

SECTION 3 creates Chapter RL 152 which sets forth the application process and requirements for renewal of a certificate of registration.

SECTION 4 creates Chapter RL 153 which outlines the standards of practice which apply to a credential holder.

SECTION 5 creates Chapter RL 154 which defines unprofessional conduct.

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## Regulation and Licensing (2)

- Rules were adopted repealing **ss. RL 31.035 (1m) and 31.036 (1m)**; and creating **ss. RL 4.01 (3g), (3r) and (5m), 4.07 and 4.09**, relating to criminal background investigations of applicants.

**Exemption from finding of emergency**

SECTION 4, Nonstatutory provisions., of 2003 Wisconsin Act 151 states: “(1) The department of regulation and licensing may, using the procedure under section 227.34 of the statutes, promulgate the rules under section 440.03 (13) (b) of the statutes, as created by this act, for the period before permanent rules become effective, but not to exceed the period authorized under section 227.24 (1) (c) and (2) of the statutes. Notwithstanding section 227.24 (1) (a), (2) (b), and (3) of the statutes, the department is not required to provide evidence that promulgating a rule under this subsection as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under this subsection.”

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

This emergency rule is promulgated pursuant to 2003 Wisconsin Act 151. Act 151 was created in response to federal Public Law 92–544, which required authorization by state statute to continue the FBI’s policy of honoring state requests for criminal background reports.

Act 151 modifies the authority of the Department of Regulation and Licensing to conduct criminal background checks of applicants and requires rule-making by the Department to conduct investigations whether an applicant for or holder of any credential issued by the Department has been charged with or convicted of a crime. The emergency rule preserves the ability of the Department to continue its practice of conducting criminal background investigations of applicants and credential holders.

**Publication Date:** October 5, 2004  
**Effective Date:** October 5, 2004  
**Expiration Date:** March 4, 2005  
**Hearing Date:** November 12, 2004

## Revenue (2)

1. Rules adopted creating s. **Tax 2.99**, relating to the dairy investment credit.

### Finding of emergency

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

The emergency rule is to clarify the following terms as they apply to the dairy investment credit:

- “amount the claimant paid in the taxable year,”
- “dairy farm modernization or expansion,”
- “milk production,” and
- “used exclusively related to dairy animals.”

It is necessary to promulgate this rule order to remove the threat of inappropriate credit claims and the revenue loss to the state as a result of clarification of the above terms being absent in the statutes.

**Publication Date:** September 17, 2004  
**Effective Date:** September 17, 2004  
**Expiration Date:** January 14, 2005  
**Hearing Date:** December 28, 2004  
[See Notice This Register]

2. Rules adopted creating s. **Tax 3.04**, relating to the subtraction from income allowed for military pay received by members of a reserve component of the armed forces.

### Finding of emergency

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

Section 71.05 (6) (b) 34, Stats., provides that a subtraction from income may be claimed for “any amount of basic, special, and incentive pay received from the federal government by a person who is a member of a reserve component of the U.S. armed forces, after being called into active federal service under the provisions of 10 USC 12302 (a) or 10 USC 12304, or into special state service authorized by the federal department of defense under 32 USC 502 (f), that is paid to the person for a period of time during which the person is on active duty.”

Included under 32 USC 502 (f) are persons who are serving on active duty or full–time duty in the active guard reserve (AGR) program. Discussion between the departments of revenue and military affairs and legislative personnel revealed that it was not intended that these persons benefit from the subtraction provided for in s. 71.05 (6) (b) 34, Stats.

It is necessary to promulgate this rule order to remove the threat of inappropriate subtractions from income and the

revenue loss to the state as a result of information contained in the statutes that implies persons who are serving on active duty or full–time duty in the active guard reserve program are eligible to claim the subtraction from income for military pay received by members of a reserve component of the armed forces.

**Publication Date:** September 17, 2004  
**Effective Date:** September 17, 2004  
**Expiration Date:** January 14, 2005  
**Hearing Date:** December 28, 2004  
[See Notice This Register]

## Transportation (2)

1. Rules adopted creating **ch. Trans 135**, relating to creation of a school bus oxidation catalyst grant program in certain counties.

### Exemption from finding of emergency

The Legislature, by Section 2r of 2003 Wis. Act 220, provides an exemption from a finding of emergency for the adoption of the rule.

### Analysis prepared by the Department of Transportation

**Plain Language Analysis:** 2003 Wis. Act 220 requires the Wisconsin Department of Transportation, in consultation with the Wisconsin Department of Natural Resources, to develop and administer a program to provide grants for the purchase and installation of oxidation catalysts on school buses customarily kept in the counties identified in s. 110.20 (5), Stats.: Kenosha, Milwaukee, Ozaukee, Racine, Sheboygan, Washington and Waukesha. Act 220 amends s. 20.395 (5) (hq), Stats., to provide funds for the grant program under WisDOT’s vehicle inspection/maintenance (I/M) program appropriation.

**Publication Date:** September 1, 2004  
**Effective Date:** September 1, 2004  
**Expiration Date:** See Section 2r 2003 Wis. Act 220  
**Hearing Date:** September 14, 2004

2. Rules adopted revising **ch. Trans 112**, relating to medical standards for driver licensing and general standards to school bus endorsements.

### Exemption from finding of emergency

The Legislature, by Section 30 of 2003 Wis. Act 280, provides an exemption from a finding of emergency for the adoption of the rule.

### Analysis prepared by the Department of Transportation

Under current law, a person may not operate a school bus without a school bus endorsement issued by the Department of Transportation (DOT). DOT may issue a school bus endorsement to a person’s valid motor vehicle operator’s license if the person meets certain qualifications, including being free of conviction for certain crimes. A school bus endorsement is valid for the eight–year duration of the person’s operator’s license. Under certain circumstances, DOT must cancel the operator’s license of a person to whom a school bus endorsement has been issued.

2003 Wisconsin Act 280 modified the existing criminal history requirements, and imposed additional requirements for the initial issuance or renewal of a school bus

endorsement. That act prohibits DOT from issuing or renewing a school bus endorsement to an applicant if the applicant has been convicted of or adjudicated delinquent for any specified disqualifying crime or offense within a prior minimum specified time. These disqualifying crimes and offenses and minimum time periods for disqualification include those specified under current statutes, including various crimes against children. The act also authorizes DOT to specify by rule additional disqualifying crimes and offenses and the time period during which the disqualification applies.

Prior to Act 280, persons were not eligible for a school bus endorsement if he or she has been convicted of listed offenses (including a felony or an “offense against public morals”) within the past five years, if the circumstances of the offense are “substantially related” to the circumstances of operating a school bus, or was convicted of specified offenses (including OWI and operating with a suspended or revoked license) within the past two years, regardless of whether the circumstances of the offense are “substantially related” to the circumstances of operating a school bus. Thus, Act 280 lengthened the periods of disqualification for some offenses, and listed some offenses that arguably are not “substantially related” to the circumstances of operating a school bus.

This rule establishes three periods of disqualification from eligibility for a school bus driver endorsement for conviction of listed felonies and misdemeanors. A lifetime disqualification is imposed on any person convicted of violent crimes resulting in death or serious physical injury to another, of sex offenses involving children and other vulnerable persons, or of other crimes involving predation or victimization of children or other vulnerable persons. A five–year disqualification is imposed on any person convicted of other crimes against life and bodily security, of other crimes against children, of crimes involving use of a motor vehicle, including operating while intoxicated (OWI), of possession of illegal weapons or of similar offenses likely to result in serious injury to others. A two–year disqualification is imposed on any person convicted of negligent operation of a motor vehicle, of obstructing emergency and rescue personnel or of other crimes.

Many of the listed offenses comprise felonies and misdemeanors. Under the rule, if a person provides evidence to the Department that his or her conviction of a listed offense is a misdemeanor conviction, the disqualification period is shortened to the next shorter disqualification period. However, there is no reduced disqualification period for misdemeanor sexual assault convictions, and the minimum period of disqualification for any listed offense (whether felony or misdemeanor) is two years.

The rule requires the Department to conduct a criminal history record search of every applicant for initial issuance or renewal to determine whether the person is convicted of disqualifying offenses. Although a school bus endorsement is renewed every eight years, DOT must conduct a criminal history search four years after the person obtains a school bus endorsement and, if appropriate, cancel the endorsement.

The rule also requires any person applying for initial issuance or renewal of a school bus endorsement to certify whether he or she has been convicted of any disqualifying offense, and allows the department to disqualify the person for the appropriate period based on that certification.

The rule requires any person who has resided in another state within the previous two years to notify the department of those other states, and requires the department to make a good faith effort to obtain the criminal history records from those other states, including submitting the persons fingerprints to the Department of Justice for a nationwide criminal history search.

The rule allows DOT to require every applicant for initial issuance or renewal of a school bus endorsement to provide two sets of fingerprints, and to pay fees for the two criminal history records searches that will be completed at initial issuance or renewal, and four years after the person obtains the school bus endorsement.

This rule also makes minor changes to medical standards for school bus drivers not required under 2003 Wis. Act 280, including the following:

1. Allows physician to certify driver is following treatment plan for cerebrovascular function, without such certification of the patient.
2. Shortens from 12 to 6 months the period during which a school bus driver must be free of any cerebrovascular incident.
3. Eliminates the 12 month period during which school bus driver must be free of destructive behavior or suicidal tendencies, instead making eligible a driver who is free of such behaviors or tendencies at the time of application.
4. Provides that a license restriction imposed on a physician’s recommendation may be lifted only by the physician that recommended the restriction or by the Department following its evaluation of the person’s ability to drive.
5. Provides that a person who does not meet minimum waiting periods following certain medical disqualifications cannot request a medical review board assessment of those disqualifications, because those waiting periods cannot be waived.

<b>Publication Date:</b>	<b>November 4, 2004</b>
<b>Effective Date:</b>	<b>November 4, 2004</b>
<b>Expiration Date:</b>	<b>See 2003 Wis. Act 280</b>
<b>Hearing Date:</b>	<b>November 15, 2004</b>

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

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

#### **Finding of emergency**

The Department of Workforce Development finds that an emergency exists and that 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:

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

#### **Analysis Prepared by the Department of Workforce Development**

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

Statutes interpreted: Sections 103.01 and 103.02, Stats.

Section 103.02, Stats., provides that “no person may be employed or be permitted to work in any place of employment or at any employment for such period of time during any day, night or week, as is prejudicial to the person’s life, health, safety or welfare.” Section 103.01 (3), Stats., defines “place

of employment” as “any manufactory, mechanical or mercantile establishment, beauty parlor, laundry, restaurant, confectionary store, or telegraph or telecommunications office or exchange, or any express or transportation establishment or any hotel.”

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

Section 103.02, Stats., directs that the “department shall, by rule, classify such periods of time into periods to be paid for at the rate of at least one and one–half times the regular rates.” Under s. DWD 274.03, “each employer subject to this chapter shall pay to each employee time and one–half the regular rate of pay for all hours worked in excess of 40 hours per week.” Section DWD 274.04 lists 15 types of employees who are exempt from this general rule and s. DWD 274.08 provides that the section is inapplicable to public employees.

Nonmedical home care companion employees who are employed by a third–party, commercial agency are covered by the overtime provision in s. DWD 274.03. Section DWD 274.03 applies to all employees who are subject to the chapter and not exempt under ss. DWD 274.04 or 274.08. The chapter applies to companion employees of a commercial agency because under s. DWD 274.015 a commercial agency is considered a mercantile establishment. Section DWD 270.01 (5) defines a mercantile establishment as a commercial, for–profit business. The chapter does not apply to companion employees of a nonprofit agency or a private household. In

addition, none of the exemptions to the overtime section in ss. DWD 274.04 or 274.08 apply to companion employees of a commercial agency.

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

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

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

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



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## Scope statements

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### **Marriage and Family Therapists, Professional Counselors and Social Work Examining Board**

#### **Subject**

Post–graduate education and field experience for licensure as a clinical social worker.

*Objective of the rule.* Currently, an applicant for licensure as a clinical social worker must provide evidence that during the applicant’s degree program, 1) he or she followed a course of studies with a clinical focus, and 2) completed a supervised field placement. The proposed rule changes would define post–graduate education and experience that could be recognized for licensure purposes.

#### **Policy analysis**

The rule changes will implement the legislative mandate in 2003 Wisconsin Act 301, which addresses the overly restrictive language of s. 457.08 (4), Stats., that requires an applicant for clinical social worker licensure to have had a clinical social work concentration and supervised clinical field training” as part of the master’s or doctorate degree program.” The language of 2003 Wisconsin Act 301 permits that clinical focus and field training to be obtained either in the graduate program or afterward.

#### **Statutory authority**

Sections 15.08 (5) (b), 227.11 (2), 457.02 and 457.08 (4) (b), 2., Wis. Stats.

#### **Staff time required**

120 hours.

#### **Impact on small businesses and the private sector**

The department has determined that these proposed rules will have no significant fiscal effect on the private sector.

#### **Factual data and analytical methodologies**

The department relied on information about graduate programs in social work from Wisconsin schools. Faculty from five of those schools comprised part of an Ad Hoc Committee that discussed and drafted the requirements for the Social Worker Section.

#### **Existing or proposed federal legislation**

The federal government does not regulate clinical social workers. The USCS refers to clinical social workers only in a discussion of evidentiary privileges in the Federal Rules of Evidence. The profession is mentioned in the CFR only as authorized providers of certain services, though certain code sections provide definitions of who qualifies as a clinical social worker.

In general, the federal code relies on state licensure. However, 8 CFR 216.5 adds the following: “A clinical social worker who is not licensed only because the state in which he or she practices does not provide for licensing will be considered a licensed professional recognized by the Service if he or she is included in the Register of Clinical Social Workers published by the National Association of Social Workers or is certified by the American Board of Examiners in Clinical Social Work.” (see very similar language in 32 CFR 199.6).

42 CFR Part 5 Appendix 2 says: “(iv) Clinical social worker means an individual who:

(A) Is certified as a clinical social worker by the American Board of Examiners in Clinical Social Work, or is listed on the National Association of Social Workers’ Clinical Register, or has a master’s degree in social work and two years of supervised clinical experience; and

(B) Is licensed to practice as a social worker, if required by the State of practice.”

42 CFE 410.73 contains the most detailed definition:

“(a) Definition: clinical social worker. For purposes of this part, a clinical social worker is defined as an individual who

–  
(1) Possesses a master’s or doctor’s degree in social work;  
(2) After obtaining the degree, has performed at least 2 years of supervised clinical social work; and

(3) Either is licensed or certified as a clinical social worker by the State in which the services are performed or, in the case of an individual in a State that does not provide for licensure or certification as a clinical social worker –

(i) Is licensed or certified at the highest level of practice provided by the laws of the State in which the services are performed; and

(ii) Has completed at least 2 years or 3,000 hours of post master’s degree supervised clinical social work practice under the supervision of a master’s degree level social worker in an appropriate setting such as a hospital, SNF, or clinic.”

These definitions, which do not require a clinical focus for the graduate studies or a supervised clinical field placement, are less restrictive than Wisconsin law, and the rule changes proposed here will bring Wisconsin requirements a step closer to the federal requirements.

### **Transportation**

#### **Subject**

*Objective of the rule.* This proposed rule making would amend chs. Trans 254 and 255, which establishes standards and procedures for issuance of single and multiple trip oversize or overweight permits, and chs. Trans 260 and 261, which establishes standards and procedures for the issuance of single and multiple trip permits for mobile home and modular buildings. The necessary modifications would give the permit issuing authority permission to allow dimensions of a vehicle or load to exceed 11 feet in width, 13 ½ feet in height, or 100 feet in length on the Milwaukee Freeway under extraordinary circumstances when, in the opinion of the issuing authority, public health and welfare is better served, and to impose additional conditions to promote the safe operation of the vehicle and load when necessary.

Structural members are currently being manufactured for the initial stages of construction of the Marquette Interchange Reconstruction project. These beams and girders exceed the transport limits detailed above. These steel and concrete bridge components must be delivered to the construction site

beginning in February 2005. Chs. Trans 254, 255, 260 and 261 must be modified prior to that date to permit the transporting of these loads on the Milwaukee Expressway system.

#### Policy analysis

Current administrative rules have size limitations that prevent the use of the Milwaukee Expressway for vehicles or loads or dimensions greater than 11 feet in width, 13½ feet in height, or 100 feet in length. These limitations have severe consequences for the reconstruction of the Marquette Interchange. Construction of this project requires the transporting of steel and concrete bridge components larger than these dimensions to the construction site.

Without this administrative rule modification, the alternatives are either to: (a) transport these oversize loads on the city surface street system which will have greater safety impacts and increase potential damage to local roadways not designed to carry these types of loads; or (b) reduce the size of these structural members (beams and girders) to meet these size limitations which will significantly increase the project costs and the time required to complete the project.

Routing these oversized loads on the Milwaukee surface street system may not be possible due to the load lengths and the turning radiuses required. If the street geometry does allow the movement, these street systems may not be designed to carry the weight of such loads. Doing so will result in unsafe conditions and possible permanent damage to the surface street system.

#### Comparison to federal regulations

None

#### All entities affected by the rule

City of Milwaukee; Milwaukee County; Milwaukee County Sheriff's Department; Milwaukee Port Authority; City of Glendale; City of Greenfield; City of West Allis; City of Wauwatosa; City of Oak Creek; Village of Fox Point; Village of River Hills; Wisconsin based motor carriers; Wisconsin Department of Transportation (Divisions of Motor Vehicles, State Patrol, and Transportation Districts).

#### Statutory authority

ss. 348.26 (2) and (4) and 348.27 (2) and (7), Stats.

#### Staff time required

80 hours.

## Transportation

#### Subject

*Objective of the rule.* This proposal will amend ch. Trans 276, which establishes a network of highways on which long combination vehicles may operate, by adding one highway segment to the network. The actual segment being proposed is:

STH 95 from Arcadia to Blair

#### Policy analysis

Federal law requires the Department of Transportation to react within 90 days to requests for changes to the long truck route network. Wisconsin state law requires that the Department use the administrative rule process to make changes to the long truck route network. Chapter Trans 276 is an existing rule set up for long truck routes. The

Department has received a request from Ashley Distribution Services, Ltd., in Arcadia, WI, to add this highway segment.

#### Comparison to federal regulations

In the Surface Transportation Assistance Act of 1982 (STAA), the federal government acted under the Commerce clause of the United States Constitution to provide uniform standards on vehicle length applicable in all states. The length provisions of STAA apply to truck tractor–semitrailer combinations and to truck tractor–semitrailer–trailer combinations. (See Jan. 6, 1983, Public Law 97–424, § 411) The uniform standards provide that:

- No state shall impose a limit of less than 48 feet on a semitrailer operating in a truck tractor–semitrailer combination.
- No state shall impose a length limit of less than 28 feet on any semitrailer or trailer operating in a truck tractor–semitrailer–trailer combination.
- No state may limit the length of truck tractors.
- No state shall impose an overall length limitation on commercial vehicles operating in truck tractor–semitrailer or truck tractor–semitrailer–trailer combinations.
- No state shall prohibit operation of truck tractor–semitrailer–trailer combinations.

The State of Wisconsin complied with the federal requirements outlined above by enacting 1983 Wisconsin Act 78 which amended s. 348.07 (2) and 348.08 (1), Stats. This act created s. 348.07 (2) (f), (fm), (gm) and 348.08 (1) (e) to implement the federal length requirements. In 1986 the legislature created s. 348.07 (2) (gr), Stats., to add 53 foot semitrailers as part of a two vehicle combination to the types of vehicles that may operate along with STAA authorized vehicles. (See 1985 Wisconsin Act 165)

The vehicles authorized by the STAA may operate on the national system of interstate and defense highways and on those federal aid primary highways designated by regulation of the secretary of the United States Department of Transportation. In 1984 the USDOT adopted 23 CFR Part 658 which in Appendix A lists the highways in each state upon which STAA authorized vehicles may operate. Collectively these highways are known as the National Network. In 1983 Wisconsin Act 78, the legislature enacted s. 348.07 (4), Stats., which directs the Wisconsin Department of Transportation to adopt a rule designating the highways in Wisconsin on which STAA authorized vehicles may be operated consistent with federal regulations.

The Department of Transportation first adopted ch. Trans 276 of the Wisconsin Administrative Code in December of 1984. The rule is consistent with 23 CFR Part 658 in that the Wisconsin rule designates all of the highways in Wisconsin that are listed in 23 CFR Part 658 as part of the National Network for STAA authorized vehicles. The federal regulation does not prohibit states from allowing operation of STAA authorized vehicles on additional state highways. The rule making authority granted to the Wisconsin Department of Transportation in s. 348.07 (4), Stats., allows the DOT to add routes in Wisconsin consistent with public safety. The rule making process also provides a mechanism to review requests from businesses and shipping firms for access to the designated highway system for points of origin and delivery beyond 5 miles from a designated route. A process to review and respond to requests for reasonable access is required by 23 CFR Part 658.

**All entities affected by the rule**

The rule will affect the requesters of the routes to be designated and other operators of commercial motor vehicles.

**Statutory authority**

Section 348.07 (4), Stats.

**Staff time required**

It is estimated that state employees will spend 40 hours on the rule-making process, including research, drafting and conducting a public hearing.

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## Submittal of rules to legislative council clearinghouse

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

### Commerce

#### Rule Submittal Date

On November 22, 2004, the Department of Commerce submitted a proposed rule to the Legislative Council Rules Clearinghouse.

#### Subject Matter

The proposed rule–making order affects ch. Comm 113, relating to volume cap allocation council.

#### Agency Procedure for Promulgation

A public hearing is required and will be held on January 3, 2005.

#### Contact Information

Jamie Wall  
Division Administrator  
608–267–0770  
Email: [jwall@commerce.state.wi.us](mailto:jwall@commerce.state.wi.us)

### Insurance

#### Rule Submittal Date

In accordance with s. 227.14 and 227.15, Stats., the Office of the Commissioner of Insurance is submitting a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse on November 23, 2004.

#### Subject Matter

These changes will affect Chapter Ins 5, Wis. Adm. Code, relating to administrative hearing procedures for OCI.

#### Agency Procedure for Promulgation

The date for the public hearing is January 5, 2005.

#### Contact Information

A copy of the proposed rule may be obtained via the Web site at:

<http://oci.wi.gov/ocirules.htm>

or by contacting Inger Williams, Services Section, Office of the Commissioner of Insurance, at (608) 264–8110. For additional information, please contact Robert Luck at (608) 266–0082 or e–mail at [Robert.Luck@oci.state.wi.us](mailto:Robert.Luck@oci.state.wi.us) in the OCI Legal Unit.

### Insurance

#### Rule Submittal Date

In accordance with s. 227.14 and 227.15, Stats., the Office of the Commissioner of Insurance is submitting a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse on December 1, 2004.

#### Subject Matter

These changes will affect Chapter Ins 14, Wis. Adm. Code, relating to vehicle protection plans.

### Agency Procedure for Promulgation

The date for the public hearing is January 11, 2005.

#### Contact Information

A copy of the proposed rule may be obtained via the Web site at:

<http://oci.wi.gov/ocirules.htm>

or by contacting Inger Williams, Services Section, Office of the Commissioner of Insurance, at (608) 264–8110. For additional information, please contact Robert Luck at (608) 266–0082 or e–mail at [Robert.Luck@oci.state.wi.us](mailto:Robert.Luck@oci.state.wi.us) in the OCI Legal Unit.

### Public Instruction

#### Rule Submittal Date

On November 16, 2004, the Wisconsin Department of Public Instruction submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

#### Subject Matter

The proposed rule repeals subchapter II of Chapter PI 24, relating to the student achievement guaranteed in education program.

#### Agency Procedure for Promulgation

Public hearings will be scheduled.

#### Contact Information

The Division for Reading and Student Achievement is primarily responsible for promulgation of this rule. If you have questions regarding this rule, you may contact Janice Zmrazek, SAGE Program Coordinator, (608) 266–2489, [janice.zmrazek@dpi.state.wi.us](mailto:janice.zmrazek@dpi.state.wi.us)

### Transportation

#### Rule Submittal Date

On November 24, 2004, the Wisconsin Department of Transportation submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

#### Subject Matter

The proposed rule–making order affects ch. Trans 129, relating to motorcycle licensing and courses.

#### Agency Procedure for Promulgation

The proposed rule was noticed under s. 227.16 (2) (e), Stats.

The Division of State Patrol/Transportation Safety is the organizational unit responsible for promulgation of the proposed rule.

#### Contact Information

Julie A. Johnson, Paralegal  
608–266–8810

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## Rule–making notices

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### Notice of Hearing

#### Commerce

#### (Financial Resources for Business and Communities)

[CR 04–130]

NOTICE IS HEREBY GIVEN that pursuant to s. 15.04 (1) (c), Stats., the Department of Commerce will hold a public hearing on proposed rules under chapter Comm 113, relating to the Volume Cap Allocation Council.

#### The public hearing will be held as follows:

Date and Time:

**Monday, January 3, 2005**

10:00 a.m.

Location:

Room 3C, Thompson Commerce Center

201 West Washington Avenue

Madison

Interested persons are invited to appear at the hearing and present comments on the proposed rules. Persons making oral presentations are requested to submit their comments in writing. Persons submitting comments will not receive individual responses. The hearing record on this proposed rulemaking will remain open until **January 7, 2005**, to permit submittal of written comments from persons who are unable to attend the hearing or who wish to supplement testimony offered at the hearing. Written comments should be submitted to Ronald Acker, at the Department of Commerce, Program Development Bureau, P.O. Box 2689, Madison, WI 53701–2689, or Email at racker@commerce.state.wi.us.

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

#### Analysis

Statutory Authority: Section 15.04 (1) (c), Stats.

Statutes Interpreted: Section 15.04 (1) (c), Stats.

General Summary

Section 15.04 (1) (c), Stats., authorizes department heads to create and appoint any council or committee as the operation of the department requires. The Volume Cap Allocation Council was created by the department to assist in evaluating volume cap applications and to make recommendations to the department secretary on volume cap allocation. The council is advisory only in that the department secretary makes the final decisions on cap allocation.

The proposed rules eliminate the Volume Cap Allocation Council as part of the review and evaluation process for volume cap allocation for Industrial Revenue Bond financing. Elimination of the council will result in a more efficient approval process and will not eliminate any final decision–making entity.

#### Federal Comparison

There is no existing or proposed federal regulation that addresses the elimination of the Volume Cap Allocation Council.

#### State Comparison

An Internet search of adjacent states' rules found the following information relating to the volume cap allocation process.

- The Illinois Finance Authority administers the volume cap allocation program and uses a Project Review Committee to review applications and make recommendations to the Authority's Board.
- The Iowa Finance Authority administers the volume cap allocation program and does not use a review council/committee.
- The Michigan Department of Treasury, Local Audit and Finance Division administers the volume cap allocation program; there is no information regarding a review council/committee.
- The Minnesota Rural Finance Authority administers the volume cap allocation program and does not use a review council/committee.

#### Environmental Analysis

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

#### Initial Regulatory Flexibility Analysis

1. Types of small businesses that will be affected by the rules.

There are no types of small businesses that will be affected by the rules.

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

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

3. Types of professional skills necessary for compliance with the rules.

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

4. Rules have a significant economic impact on small businesses.

Yes, rules submitted to Small Business Regulatory Review Board.

The proposed rules and an analysis of the proposed rules are available on the Internet at the Safety and Buildings Division Web site at [www.commerce.wi.gov/SB/](http://www.commerce.wi.gov/SB/). Paper copies may be obtained without cost from Roberta Ward, at the Department of Commerce, Program Development Bureau, P.O. Box 2689, Madison, WI 53701–2689, or Email at [rward@commerce.state.wi.us](mailto:rward@commerce.state.wi.us), or at telephone (608)

266–8741 or (608) 264–8777 (TTY). Copies will also be available at the public hearing.

The small business regulatory coordinator for the Department of Commerce is Carol Dunn, who may be contacted at telephone (608) 267–0297, or Email at cdunn@commerce.state.wi.us.

### **Fiscal Estimate**

The proposed rules have no effect on revenues or costs for state or local government in the administration and enforcement of chapter Comm 113.

The proposed rules have no fiscal effect on the private sector.

## **Notice of Hearing**

### **Insurance**

#### **[CR 04–131]**

Notice is hereby given that pursuant to the authority granted under s. 601.41 (3), Stats., and the procedures set forth in under s. 227.18, Stats., OCI will hold a public hearing to consider the adoption of the attached proposed rulemaking order affecting Chapter Ins 5, Wis. Adm. Code, relating to administrative hearing procedures for OCI.

### **Hearing Information**

Date: **January 5, 2005**

Time: 10:00 a.m., or as soon thereafter as the matter may be reached.

Place: OCI, 2<sup>nd</sup> Floor, 125 South Webster Street, Madison, WI

Written comments or comments submitted through the Wisconsin Administrative Rule website at: <https://adminrules.wisconsin.gov> on the proposed rule will be considered. The deadline for submitting comments is 4:00 p.m. on the 14<sup>th</sup> day after the date for the hearing stated in this Notice of Hearing.

Written comments should be sent to:

Mr. Robert Luck

Legal Unit – OCI Rule Comment for Rule 5

Office of the Commissioner of Insurance

PO Box 7873

Madison WI 53707–7873

### **Analysis Prepared by the Office of the Commissioner of Insurance (OCI)**

1. Statutes interpreted: ss. 227.45 (7), 227.46, 600.01 (2), 601.41 (3), 601.42, 628.34 (12), Stats.

2. Statutory authority: ss. 600.01, 628.34 (12), Stats.

3. Explanation of the OCI's authority to promulgate the proposed rule: OCI has set standards for the conduct of administrative hearings it holds. The existing rule has been in existence since 1996 and this change is clarification of some specific parts of that rule.

4. Related Statutes or rules: See statutes interpreted in #1 above.

5. The plain language analysis and summary of the proposed rule: This rule identifies specific sanctions allowed by the statutes and in circuit court and reinforces that they are available for use in administrative proceedings where a party defaults, fails to comply with a subpoena or fails to comply with discovery orders. Those additional sanctions are striking the pleadings, awarding expenses, imposing a forfeiture and any other statutory sanction allowed. Since the existing rule

referenced certain penalties and not others, questions were from time to time raised regarding whether other statutory sanctions could be applied. The changes also specifically reference that the ALJ may consider and grant orders for summary judgement.

The rule sets a standard of “excusable neglect” for a Respondent to obtain relief from their default. The rule specifically lists penalties for failing to comply with discovery orders including striking the pleadings, awarding expenses, ordering a forfeiture on the Respondent, taking the allegations as true without further proof or hearing. Since the state of Wisconsin has sovereign immunity, monetary penalties cannot be imposed against the state.

In addition, the current address listed in the rule or OCI is corrected.

6. Summary of and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule: There are no federal regulations which address Wisconsin administrative hearings.

7. Comparison of similar rules in adjacent states as found by OCI: Iowa: Section 17A.12 the presiding officer may enter a default decision or proceed to take evidence in the absence of the default party. If the defaulting party wishes to contest the default, they must show “good cause” for the default.

Illinois: Statutory section 750 ILCS 25/10 permits the administrative hearing officer to proceed to hear the case based on the testimony of the petitioner and other evidence and make a decision. The Respondent can attempt to contest the default by filing a motion within 14 days of the default order.

Minnesota: Rule sections 1400.6000 and 1400.8560 deal with default situations and both allow the ALJ to take all allegations as true without further proof and to enter an appropriate order based on those facts.

Michigan: MI Admin. Code R 28.4013 (2004) Rule 13. If a party fails to appear after proper service of notice, the department, if no adjournment is granted, may proceed with the hearing and make its decision in the absence of the party.

Indiana: Section 312 IAC 3–1–9 allows a Natural Resources Commission administrative law judge to enter a proposed order of default or proposed order of dismissal (Note: No provision could be found that specifically applied to insurance contested cases)

8. A summary of the factual data and analytical methodologies that OCI used in support of the proposed rule and how any related findings support the regulatory approach chosen for the proposed rule: This rule identifies certain motions, penalties and other administrative provisions which the statutes specifically allowed. The existing rule referenced some, but not all of these. This rule amendment makes clear that all statutory sanctions apply.

9. Any analysis and supporting documentation that OCI used in support of OCI's determination of the rule's effect on small businesses under s. 227.114: Since the rule clarifies administrative procedures for Respondents who are in default or disobedient to orders issued by the administrative law judge, there is no significant effect on small businesses.

10. If these changes may have a significant fiscal effect on the private sector, the anticipated costs that will be incurred by private sector in complying with the rule: Not Applicable because there is no significant effect.

11. A description of the Effect on Small Business: None.

12. Agency contact person: A copy of the full text of the proposed rule changes, analysis and fiscal estimate may be obtained from the WEB sites at: <http://oci.wi.gov/ocirules.htm>

or <https://adminrules.wisconsin.gov> or by contacting: Inger Williams, Services Section, OCI, at:

Phone: (608) 264–8110  
 Email: [Inger.Williams@OCI.State.WI.US](mailto:Inger.Williams@OCI.State.WI.US)  
 Address: 125 South Webster St – 2nd Floor  
 Madison WI 53702

Mail: PO Box 7873, Madison WI 53707–7873

13. Place where comments are to be submitted and deadline for submission: The deadline for submitting comments is 4:00 p.m. on the 14th day after the date for the hearing stated in the Notice of Hearing.

Mailing address:

Mr. Robert Luck  
 Legal Unit – OCI Rule Comment for Rule 5  
 Office of the Commissioner of Insurance  
 PO Box 7873  
 Madison WI 53707–7873

Street address:

Mr. Robert Luck  
 Legal Unit – OCI Rule Comment for Rule nnn  
 Office of the Commissioner of Insurance  
 125 South Webster St – 2nd Floor  
 Madison WI 53702  
 WEB Site: <http://oci.wi.gov/ocirules.htm>

### **Initial Regulatory Flexibility Analysis**

This rule does not impose any additional requirements on small businesses.

### **OCI Small Business Regulatory Coordinator**

The OCI small business coordinator is Eileen Mallow and may be reached at phone number (608) 266– 7843 or at email address [Eileen.Mallow@oci.state.wi.us](mailto:Eileen.Mallow@oci.state.wi.us)

### **Contact Person**

A copy of the full text of the proposed rule changes, analysis and fiscal estimate may be obtained from the OCI internet WEB site at <http://oci.wi.gov/ocirules.htm> or by contacting Inger Williams, Services Section, OCI, at: [Inger.Williams@OCI.State.WI.US](mailto:Inger.Williams@OCI.State.WI.US), (608) 264–8110, 125 South Webster Street – 2<sup>nd</sup> Floor, Madison WI or PO Box 7873, Madison WI 53707–7873.

### **Fiscal Analysis**

For Rule Ins 5 relating to administrative hearing procedures for OCI. There will be no state or local government fiscal effect.

This rule will have no significant effect on the private sector regulated by OCI. If anything, this rule should slightly reduce OCI costs by securing compliance with discovery rulings by the ALJ. These sanctions should reduce slightly the time and effort it takes OCI to bring administrative matters to a conclusion. The only effect on private sector, regulated entities would be penalties for those entities that do not comply with valid discovery orders, default in a hearing being held involving that entity or not complying with other orders after an administrative proceeding has been commenced. The private sector entity may have sanctions imposed on them, including monetary penalties.

If anything, this rule should slightly reduce agency costs by securing compliance with discovery rulings by the ALJ. These sanctions should reduce the time and effort it takes OCI to bring hearings to a conclusion where a party refuses to

participate in the action or comply with orders issued in the prosecution of that action.

## **Notice of Hearing**

### **Insurance**

#### **[CR 04–133]**

Notice is hereby given that pursuant to the authority granted under s. 601.41 (3), Stats., and the procedures set forth in under s. 227.18, Stats., OCI will hold a public hearing to consider the adoption of the attached proposed rulemaking order affecting ch. Ins 14, Wis. Adm. Code, relating to vehicle protection plans.

### **Hearing Information**

Date: **January 11, 2005**  
 Time: 10:00 a.m., or as soon thereafter as the matter may be reached  
 Place: OCI, Room 227  
 125 South Webster St 2<sup>nd</sup> Floor  
 Madison, WI

Written comments or comments submitted through the Wisconsin Administrative Rule website at: <https://adminrules.wisconsin.gov> on the proposed rule will be considered. The deadline for submitting comments is 4:00 p.m. on the 14<sup>th</sup> day after the date for the hearing stated in this Notice of Hearing.

Written comments should be sent to:

Robert Luck  
 Legal Unit – OCI Rule Comment for Rule Ins 14  
 Office of the Commissioner of Insurance  
 PO Box 7873  
 Madison WI 53707–7873

### **Analysis Prepared by the Office of the Commissioner of Insurance (OCI)**

1. Statutes interpreted: ss. 100.203, 600.01, 628.34(12) and 632.185 Stats.

2. Statutory authority: ss. 100.203, 600.01 (2), 601.31 (1) (km), 601.41 (3), 601.42, 628.34 (12) and 632.185, Stats.

3. Explanation of the OCI's authority to promulgate the proposed rule under these statutes: These statutes define certain requirements for vehicle protection plans to be implemented by the Office of the Commissioner of Insurance. The statutes specifically require the Office to set the fees to be paid for regulation. These plans would currently be regulated as full fledged insurers and thus these statutes and implementing rule will lessen substantially the costs to the plans and the regulations that they are subject to.

4. Related Statutes or rules: None.

5. The plain language analysis and summary of the proposed rule: This rule implements new statutes regulating vehicle protection plans by setting the fees which the statutes required be set by rule by the commissioner. The fees are set at a level to attempt to cover the agencies costs incurred in relation to the review, data storage, monitoring and regulation of these plans.

6. Summary of and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule: No federal regulation addresses the activities of vehicle protection plans.

7. Comparison of similar rules in adjacent states as found by OCI:

Iowa: There is no similar rule in Iowa.

Illinois: Warranties on vehicle protection products are not considered insurance pursuant to s. 155.39, Illinois Insurance Code. Consequently, such products are not regulated by the Illinois Insurance Department.

Minnesota: There is no similar rule in Minnesota.

Michigan: There is no similar rule in Michigan.

8. A summary of the factual data and analytical methodologies that OCI used in support of the proposed rule and how any related findings support the regulatory approach chosen for the proposed rule: This rule implements the provisions of 2003 Wisconsin Act 302.

9. Any analysis and supporting documentation that OCI used in support of OCI's determination of the rule's effect on small businesses under s. 227.114: Given the following facts, OCI has determined that detailed analysis of the rule's effect on small business was not reasonable or necessary.

1) This rule does not impose any additional requirements on small businesses beyond those required or allowed by the applicable statutes.

2) The applicable statutes and the proposed rule actually reduce the regulatory burden on warrantors offering vehicle protection product warranties. Prior to the enactment of the statutes, such warrantors were subject to a much broader range of regulation because the warranties being offered are considered to be an insurance product.

3) Given that the statutes requiring the registration of warrantors offering vehicle protection product warranties have not yet become effective, it is not possible to accurately determine to what extent such warrantors are small businesses.

10. If these changes may have a significant fiscal effect on the private sector, the anticipated costs that will be incurred by private sector in complying with the rule: As described above, this rule does not impose any additional requirements on small businesses beyond those required or allowed by the applicable statutes and in fact implements statutory provisions that reduce anticipated costs that would otherwise apply in the absence of the statutory provisions.

11. A description of the Effect on Small Business: This rule will have little or no effect on small businesses.

12. Agency contact person: A copy of the full text of the proposed rule changes, analysis and fiscal estimate may be obtained from the WEB sites at: <http://oci.wi.gov/ocirules.htm> or by contacting Inger Williams, OCI Services Section, at:

Phone: (608) 264–8110

Email: [Inger.Williams@OCI.State.WI.US](mailto:Inger.Williams@OCI.State.WI.US)

Address: 125 South Webster St – 2<sup>nd</sup> Floor  
Madison WI 53702

Mail: PO Box 7873, Madison WI 53707–78731

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

The deadline for submitting comments is 4:00 p.m. on the 14<sup>th</sup> day after the date for the hearing stated in the Notice of Hearing.

**Mailing address:**

Robert Luck

Legal Unit – OCI Rule Comment for Rule 15

Office of the Commissioner of Insurance

PO Box 7873

Madison WI 53707–7873

Street address:

Robert Luck

Legal Unit – OCI Rule Comment for Rule 15

Office of the Commissioner of Insurance

125 South Webster St – 2<sup>nd</sup> Floor

Madison WI 53702

WEB Site: <http://oci.wi.gov/ocirules.htm>

**Initial Regulatory Flexibility Analysis**

This rule does not impose any additional requirements on small businesses.

**OCI Small Business Regulatory Coordinator**

The OCI small business coordinator is Eileen Mallow and may be reached at phone number (608) 266– 7843 or at email address [Eileen.Mallow@oci.state.wi.us](mailto:Eileen.Mallow@oci.state.wi.us)

**Contact Person**

A copy of the full text of the proposed rule changes, analysis and fiscal estimate may be obtained from the OCI internet WEB site at <http://oci.wi.gov/ocirules.htm> or by contacting Inger Williams, Services Section, OCI, at: [Inger.Williams@OCI.State.WI.US](mailto:Inger.Williams@OCI.State.WI.US), (608) 264–8110, 125 South Webster Street – 2<sup>nd</sup> Floor, Madison WI or PO Box 7873, Madison WI 53707–7873.

**Fiscal Estimate**

Vehicle protection plans doing business in this state will be regulated by OCI. This regulation will consist of, at least, reviewing new registrations to do business in this state, reviewing forms used, reviewing the financial responsibility requirements, recording information about these plans in to data systems, reviewing annual renewal registrations, dealing with complaints about such plans and taking administrative action regarding possible violations of law by these plans. All these activities require agency resources.

The statutes allow OCI to charge registration fees and late filing fees to attempt to recover at least some of the costs of regulation. It is unknown how many of these plans will register. Each plan registering will pay an initial fee of \$250 and an annual registration fee of \$250. If 25 plans register, the annual revenue would be \$6250. If 50 plans register, the annual revenue would be \$12,500. There is no way to know how many plans will register in the next year but a guess would be between 25 and 50 so 37 was taken as the number registering for the calculation of revenues of \$9,250.

The calculation of the costs incurred by the agency will be dependent on the number of plans registering. There will be initial start–up costs to modify existing database systems to accommodate these plans. In addition, the review of initial registrations, forms and financial responsibility requirements will have to be made. These costs will not be substantial and will be absorbed by the agency within the existing budget. If a significant number of these plans register, the agency may have to request additional personnel to deal with them.

**Notice of Hearing**

**Revenue**

**[CR 04–115]**

Notice is hereby given that, pursuant to s. 227.11 (2) (a), Stats., and interpreting ss. 71.07 (3n), 71.28 (3n) and 71.47 (3n), Stats., the Department of Revenue will hold a public hearing at the time and place indicated below, to consider the creation of rules relating to the dairy investment credit.

**Hearing Information**

The hearing will be held at 9:00 A.M. on Tuesday, **December 28, 2004**, in the Events Room (1<sup>st</sup> floor) of the



State Revenue Building, located at 2135 Rimrock Road, Madison, Wisconsin.

Handicap access is available at the hearing location.

### Comments on the Rule

Interested persons are invited to appear at the hearing and may make an oral presentation. It is requested that written comments reflecting the oral presentation be given to the department at the hearing. Written comments may also be submitted to the contact person shown below no later than January 4, 2004, and will be given the same consideration as testimony presented at the hearing.

### Contact Person

Dale Kleven  
 Department of Revenue  
 Mail Stop 6–40  
 2135 Rimrock Road  
 P.O. Box 8933  
 Madison, WI 53708–8933  
 Telephone (608) 266–8253  
 E–mail [dkleven@dor.state.wi.us](mailto:dkleven@dor.state.wi.us)

### Analysis by the Department of Revenue

Statute interpreted: ss. 71.07 (3n), 71.28 (3n) and 71.47 (3n), Stats.

Statutory authority: s. 227.11 (2) (a), Stats.

Explanation of agency authority: Each agency may promulgate rules interpreting the provisions of any statute enforced or administered by it, if the agency considers it necessary to effectuate the purpose of the statute.

Related statute or rule: ss. 71.07 (3n), 71.28 (3n) and 71.47 (3n), Stats.

Plain language analysis: This proposed rule order clarifies the following terms as they apply to the dairy investment credit:

- “amount the claimant paid in the taxable year,”
- “dairy farm modernization or expansion,”
- “milk production,” and
- “used exclusively related to dairy animals.”

Summary of, and comparison with, existing or proposed federal regulation: There is no existing or proposed federal regulation that is intended to address the activities to be regulated by the rule.

Comparison with rules in adjacent states: The department is not aware of a similar rule in an adjacent state.

Summary of factual data and analytical methodologies: 2003 Wisconsin Act 135 created the dairy investment credit, available to dairy producers who are modernizing or expanding their operations. Soon after its creation, questions began to arise concerning the credit and its qualifications. As a result of this, it was requested that the department publish guidelines for dairy producers and tax return preparers concerning the credit. The department determined that to effectively provide guidance on the credit, it would be necessary to clarify some of the terms used in the credit’s statutory language. In consultation with legislative personnel, the department developed clarifying language and used it to create this proposed rule order.

Analysis and supporting documents used to determine effect on small business: The department has prepared a fiscal estimate regarding this proposed rule order. It was determined that there is not a significant fiscal effect on small business.

Anticipated costs incurred by private sector: This proposed rule order does not have a significant fiscal effect on the private sector.

Effect on small business: This proposed rule order does not have a significant fiscal effect on small business.

Agency contact person: Please contact Dale Kleven at (608) 266–8253 or [dkleven@dor.state.wi.us](mailto:dkleven@dor.state.wi.us), if you have any questions regarding this proposed rule order.

### Text of Rule

SECTION 1. Tax 2.99 is created to read:

Tax 2.99 Dairy investment credit. (1) PURPOSE. This section clarifies certain terms as they apply to the dairy investment credit under ss. 71.07 (3n), 71.28 (3n), and 71.47 (3n), Stats.

(2) DEFINITIONS. In this section and in ss. 71.07 (3n), 71.28 (3n), and 71.47 (3n), Stats.:

(a) “Amount the claimant paid in the taxable year” means the purchase price of facilities or equipment acquired and first placed in service in this state during taxable years that begin after December 31, 2003, and before January 1, 2010.

(b) “Dairy farm modernization or expansion” has the meaning as given in ss. 71.07 (3n), 71.28 (3n), and 71.47 (3n), Stats. “Dairy farm modernization or expansion” refers only to those facilities or equipment in this state used exclusively on the claimant’s dairy farm related to the dairy animals located on the claimant’s dairy farm. “Dairy farm modernization or expansion” does not include the purchase of:

1. Equipment used for raising crops for sale.
2. Vehicles licensed for highway use, snowmobiles, and all–terrain vehicles.

(c) “First placed in service” has the meaning as given under Treas. Reg. s. 1.167 (a)–11 (e) (1) (i) for purposes of computing depreciation.

Note: Treas. Reg. s. 1.167 (a)–11 (e) (1) (i) provides, in part, that property is first placed in service when first placed in a condition or state of readiness and availability for a specifically assigned function.

(d) “Milk production” means the activity of producing and handling milk on the claimant’s dairy farm in this state for human consumption, but does not include activities such as transporting, pasteurizing, or homogenizing milk or making butter, cheese, ice cream or other dairy products.

(e) “Used exclusively related to dairy animals” means used in this state on the claimant’s dairy farm to the exclusion of all other uses except for other uses not exceeding 5% of total use.

Note: Section Tax 2.99 interprets ss. 71.07 (3n), 71.28 (3n), and 71.47 (3n), Stats.

Note: Sections 71.07 (3n), 71.28 (3n), and 71.47 (3n), Stats., were created by 2003 Wis. Act 135, effective for taxable years that begin after December 31, 2003, and before January 1, 2010.

### Initial Regulatory Flexibility Analysis

This proposed rule order does not have a significant economic impact on a substantial number of small businesses.

## Notice of Hearing

### Revenue

[CR 04–116]

Notice is hereby given that, pursuant to s. 227.11 (2) (a), Stats., and interpreting s. 71.05 (6) (b) 34., Stats., the Department of Revenue will hold a public hearing at the time and place indicated below, to consider the creation of rules relating to the subtraction from income allowed for military

pay received by members of a reserve component of the armed forces.

### Hearing Information

The hearing will be held at 1:00 P.M. on Tuesday, **December 28, 2004**, in the Events Room (1<sup>st</sup> floor) of the State Revenue Building, located at 2135 Rimrock Road, Madison, Wisconsin.

Handicap access is available at the hearing location.

### Comments on the Rule

Interested persons are invited to appear at the hearing and may make an oral presentation. It is requested that written comments reflecting the oral presentation be given to the department at the hearing. Written comments may also be submitted to the contact person shown below no later than January 4, 2004, and will be given the same consideration as testimony presented at the hearing.

### Contact Person

Dale Kleven  
 Department of Revenue  
 Mail Stop 6–40  
 2135 Rimrock Road  
 P.O. Box 8933  
 Madison, WI 53708–8933  
 Telephone (608) 266–8253  
 E–mail [dkleven@dor.state.wi.us](mailto:dkleven@dor.state.wi.us)

Notice is hereby given that, pursuant to s. 227.11 (2) (a), Stats., and interpreting s. 71.05 (6) (b) 34., Stats., the Department of Revenue will hold a public hearing at the time and place indicated below, to consider the creation of rules relating to the subtraction from income allowed for military pay received by members of a reserve component of the armed forces.

### Analysis by the Department of Revenue

Statute interpreted: s. 71.05 (6) (b) 34, Stats.

Statutory authority: s. 227.11 (2) (a), Stats.

Explanation of agency authority: Each agency may promulgate rules interpreting the provisions of any statute enforced or administered by it, if the agency considers it necessary to effectuate the purpose of the statute.

Related statute or rule: s. 71.05 (6) (b) 34, Stats.

Plain language analysis: This proposed rule order clarifies that the subtraction from income for military pay received by members of a reserve component of the armed forces is not available to persons who are serving on active or full–time duty in the active guard reserve (AGR) program under 32 USC 502 (f).

Summary of, and comparison with, existing or proposed federal regulation: There is no existing or proposed federal regulation that is intended to address the activities to be regulated by the rule.

Comparison with rules in adjacent states: The department is not aware of a similar rule in an adjacent state.

Summary of factual data and analytical methodologies: 2003 Wisconsin Act 183 was enacted April 7, 2004. This Act created s. 71.05 (6) (b) 34, Stats., which provides for a subtraction from income for military pay received by members of a reserve component of the armed forces. The language of s. 71.05 (6) (b) 34 provides, in part, that the subtraction is available to a person who is “called...into special state service authorized by the federal department of defense under 32 USC 502 (f)...” Included under 32 USC 502

(f) are persons who are serving on active duty or full–time duty in the active guard reserve (AGR) program. Discussion between the departments of revenue and military affairs and legislative personnel revealed that it was not intended that these persons benefit from the subtraction provided for in s. 71.05 (6) (b) 34, Stats. In light of this, a rule is being promulgated to clarify the subtraction from income provided for in s. 71.05 (6) (b) 34, Stats.

### Text of Rule

SECTION 1. Tax 3.04 is created to read:

Tax 3.04 Subtraction for military pay received by members of a reserve component of the armed forces. (1) PURPOSE. This section limits the application of the phrase “called . . . into special state service authorized by the federal department of defense under 32 USC 502 (f), that is paid to the person for a period of time during which the person is on active duty” as used in s. 71.05 (6) (b) 34., Stats., as created by 2003 Wis. Act 183.

(2) LIMITATION ON SUBTRACTION. A person who is a member of a reserve component of the U.S. armed forces, who is serving on active duty or full–time duty in the active guard reserve program under 32 USC 502 (f), does not qualify for the subtraction.

### Agency contact

Please contact Dale Kleven at (608) 266–8253 or [dkleven@dor.state.wi.us](mailto:dkleven@dor.state.wi.us), if you have any questions regarding this proposed rule order.

### Initial Regulatory Flexibility Analysis

This proposed rule order does not have a significant economic impact on a substantial number of small businesses.

### Fiscal Analysis

Analysis and supporting documents used to determine effect on small business: The department has prepared a fiscal estimate regarding this proposed rule order. It was determined that there is not a significant fiscal effect on small business.

Anticipated costs incurred by private sector: This proposed rule order does not have a significant fiscal effect on the private sector.

## Notice of Proposed Rule

### Transportation

[CR 04–132]

NOTICE IS HEREBY GIVEN that pursuant to the authority of ss. 85.16, 85.30 and 227.11, Stats., and according to the procedure set forth in s. 227.16 (2) (e), Stats., the Wisconsin Department of Transportation will adopt the following rule amending ch. Trans 129 without public hearing unless, within 30 days after publication of this notice [December 15, 2004], the Department of Transportation is petitioned for a public hearing by 25 natural persons who will be affected by the rule; a municipality which will be affected by the rule; or an association which is representative of a farm, labor, business or professional group which will be affected by the rule.

### Analysis Prepared by the Wisconsin Department of Transportation

Statutory Authority: ss. 85.16, 85.30 and 227.11, Stats.

Statutes Interpreted: ss. 85.30, 343.06 (1) (c), 343.07 (4) (b) and 343.16 (1) (a), Stats.

**Plain Language Analysis:** Section Trans 129.09 (2) (a) requires that the Experienced Rider Course (ERC) shall consist of at least eight hours of instruction which includes both class discussion and range training. The new curriculum

is five hours in length and uses discussion on the range rather than in a classroom setting. This allows the DOT Motorcycle Safety Program to implement the new Motorcycle Safety Foundation ERC curriculum and, by so doing, offer more courses with existing available funding. Any dollars saved from the shorter courses will be used to provide additional basic and experienced courses and reduce the student waiting lists at training sites.

Since curriculum change in time are more frequent lately, we are also removing the time restraints on the Basic Rider Course (BRC).

Summary of, and Preliminary Comparison with, Existing or Proposed Federal Regulation: There are no current or proposed federal regulations relating to the curriculum requirements except that the Department of Army at Fort Steward Georgia requires persons operating on base to attend and complete an approved Motor Cycle Defense Driving Course prior to operating a motorcycle or moped on base. 32 CFR 636.28(h).

#### **Comparison with Rules in Adjacent States:**

**Michigan:** R257.1706 states that there shall not be less than 7 clock hours of classroom instruction. R257.1707 states there shall not be less than 8 clock hours per student of range experience. This seems to relate to both basic and experienced courses as neither is specifically identified. They would also have too many hours required for the new ERC curriculum if implemented in Michigan.

**Minnesota:** MN rules set hours for the BRC and for a Skills Re–Test Course that we do. However, we don't have anything in rule for ERC times.

7411.0565 MOTORCYCLE LABORATORY SCHEDULE; HOURS; PROTECTIVE GEAR.

Subpart 1. Hours. A motorcycle endorsement program must provide a student who is less than 18 years old with at least ten hours of approved laboratory instruction.

Subp. 2. Hour limits. A program may offer a student no more than a total of eight hours of motorcycle instruction per day.

**Illinois:** Illinois' administrative rule is very outdated and is currently being updated. The current rule does state that "the curriculum for the Cycle Rider Safety Training Course for the novice rider shall be based upon the Motorcycle Safety Foundation's 20–hour Motorcycle Rider Course." There is no mention of the ERC at all.

**Iowa:** 761–635.2(5) states that scheduled time for instruction...shall not exceed 8 hours in any one calendar day. It does not discuss total course hours.

**Summary of Factual Data and Analytical Methodologies Used and How the Related Findings Support the Regulatory Approach Chosen:** The Highway Safety Performance Plan for 2004 – Motorcycle Safety finds that Wisconsin has a motorcycle crash problem. (See <http://www.dot.wisconsin.gov/library/publications/topic/safety/hwysafetyplan–407mc.pdf>)

The National Agenda for Motorcycle Safety finds that rider education and training compromise the centerpiece of a comprehensive motorcycle safety program, p. 17. The State of Wisconsin Motorcycle Safety Program Assessment found that rider education is an essential component of a statewide motorcycle safety program, p. 24. The Wisconsin Department of Transportation 2004 Motorcycle Safety Action Plan found that there was a waiting list and overwhelming demand for motorcycle training programs, p. 10. One of the goals of the National Agenda for Motorcycle Safety Summit meeting was to provide various level of rider education that is accessible and affordable with assured quality through ongoing long–term program evaluation.

Effect on Small Business and, If Applicable, Any Analysis and Supporting Documentation Used to Determine Effect on Small Businesses: There will be no effect on small business. You may contact the Department's small business regulatory coordinator by phone at (608) 267–3703, or via e–mail at the following website:<http://www.dot.wisconsin.gov/library/research/law/rulenotices.htm>.

Fiscal Effect and Anticipated Costs Incurred by Private Sector: The Department estimates that there will be no fiscal impact on the liabilities or revenues of any county, city, village, town, school district, vocational, technical and adult education district, sewerage district, or federally–recognized tribes or bands. The Department estimates that there will be no fiscal impact on state or private sector revenues or liabilities.

Place Where Comments are to be Submitted and Deadline for Submission: Questions about this rule and any petition for public hearing may be addressed to Ron Thompson, Department of Transportation, Division of State Patrol/Transportation Safety, Room 951, P. O. Box 7936, Madison, WI 53707–7936. You may also contact Mr. Thompson by phone at (608) 266–7855.

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

#### TEXT OF PROPOSED RULE

**SECTION 1.** Trans 129.09 (1) (a) and (2) (a) are amended to read:

Trans 129.09 (1) (a) The course shall consist of ~~at least 15 hours of instruction which includes both classroom class discussion and range instruction training.~~ At least 50% of the total hours of instruction shall consist of range ~~instruction training.~~

(2) (a) The course shall consist of ~~at least 8 hours of instruction which includes both classroom class discussion and range instruction training.~~ At least 40% of the total hours of instruction shall consist of range ~~instruction training.~~

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## Rule orders filed with the revisor of statutes bureau

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

### **Commerce (CR 04-052)**

An order affecting chs. Comm 90 and 2, relating to design and construction of public swimming pools and fees.  
Effective 2-1-05.

### **Insurance (CR 04-032)**

An order affecting ch. Ins 17, relating to annual patients compensation fund and mediation fund fees.  
Effective 2-1-05.

### **Marriage and Family Therapy, Professional Counseling and Social Work Examining Board (CR 03-098)**

An order affecting ch. MPSW 4, relating to supervised pre-certification and pre-licensure social work.  
Effective 2-1-05.

### **Marriage and Family Therapy, Professional Counseling and Social Work Examining Board (CR 04-044)**

An order affecting ch. MPSW 1, relating to alcohol and drug counseling.  
Effective 2-1-05.

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## Public notices

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### Financial Institutions – Banking

#### Notice of Interest Rate on Required Residential Mortgage Loan Escrow Accounts For 2005

Under Section 138.052 (5) (a), Stats., with some exceptions, a bank, credit union, savings bank, savings and loan association, or mortgage banker, which originates a residential mortgage loan requiring an escrow account to assure the payment of taxes or insurance, shall pay interest on the outstanding principal of the escrow.

Section 138.052 (5) (am) 2., Stats., directs the Department of Financial Institutions, Division of Banking, to determine annually the required interest rate. The rate is based on the average interest rate paid by Wisconsin depository institutions on passbook savings accounts.

The Department of Financial Institutions, Division of Banking, has calculated the interest rate required to be paid on escrow accounts under Section 138.052 (5), Stats., to be **0.72%** for 2005. This interest rate shall remain in effect through December 31, 2005.

Contact Person:

Mr. Michael J. Mach

Department of Financial Institutions

Telephone (608) 266-0451

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