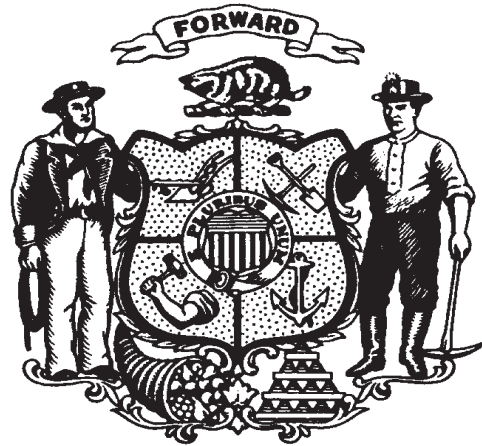


# Wisconsin Administrative Register

No. 575



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## Emergency rules now in effect

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

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

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

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

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

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

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

1. Rules adopted creating **s. ATCP 11.72 (15), (16), (17) and (18)**, relating to importing, selling, offering to sell, allowing public access to or disposal of prairie dogs or any mammal known to have been in contact with a prairie dog since April 1, 2003.

#### Finding of emergency

(1) During May and June 2003, at least 12 people in Wisconsin have developed illnesses within one to two weeks after the people have had contact with prairie dogs. Symptoms of the human illness include fever, cough, rash and swollen lymph nodes. Several of these people have needed to be hospitalized.

(2) Preliminary laboratory results indicate that the cause of the human illness is an orthopox virus that could be transmitted by prairie dogs. Some of the pet prairie dogs have exhibited signs of illness. There have been reports of other mammals that have come in contact with prairie dogs also exhibiting signs of illness.

(3) It is necessary to reduce the opportunities for human interaction with prairie dogs or other mammals that have been in contact with prairie dogs in order to protect the health, safety and welfare of Wisconsin residents. Therefore, the Wisconsin Department of Agriculture, Trade and Consumer Protection is adopting this emergency rule to protect the health, safety and welfare of the public.

**Publication Date:** June 12, 2003  
**Effective Date:** June 12, 2003  
**Expiration Date:** November 9, 2003  
**Hearing Date:** July 15, 2003

2. Rules adopted revising **s. ATCP 11.72 (15), (16), (17) and (18)**, relating to importing, selling, offering to sell, allowing public access to or disposal of prairie dogs or any rodent from Africa.

#### Finding of emergency

1. As a result of the outbreak of an orthopox virus later identified as monkey pox in Wisconsin, the department adopted an emergency rule in early June, 2003.

2. Since the June, 2003 emergency rule was adopted, there has been additional information learned about the origins of the infected animals and the actual form of orthopox virus responsible for the symptoms. As a result of this new information, the department has been able to refine its identification of animals that should be subject to the prohibitions previously imposed.

3. After the department adopted the emergency rule (albeit before the rule was published) the CDC and FDA adopted their joint order that indicates the animals of concern are prairie dogs and African rodents.

4. The CDC and FDA joint order confirms the threat to humans from exposure to prairie dogs and African rodents.

5. This amended emergency rule provides consistency between the CDC and FDA joint order and Wisconsin's emergency rule.

6. The Wisconsin Department of Agriculture, Trade and Consumer Protection seeks to provide the greatest protection for Wisconsin citizens while creating the least acceptable disruption to their lives and businesses. Therefore, the Wisconsin Department of Agriculture, Trade and Consumer Protection adopts an amended emergency rule to protect the health, safety and welfare of the public.

**Publication Date:** July 24, 2003  
**Effective Date:** July 24, 2003  
**Expiration Date:** November 9, 2003  
**Hearing Date:** September 3, 2003

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### Chiropractic Examining Board

Rules adopted revising **ch. Chir 2**, relating to passing and retaking the practical examination.

#### Finding of emergency

The Chiropractic Examining Board finds that preservation of the public peace, health, safety or welfare necessitates putting the rule amendments described into effect prior to the time the amendments would take effect if the agency complied with the notice, hearing and publication requirements established for rule-making in ch. 227, Stats. The facts warranting adoption of these rule amendments under s. 227.24, Stats., are as follows:

On December 19, 2002, the Chiropractic Examining Board adopted the national practical examination conducted by the

National Board of Chiropractic Examiners as the board's practical examination for determining clinical competence in Wisconsin. The board has determined that the national practical examination is a better measure of competence than was the state examination previously administered by the board and that the public health, safety and welfare warrant that the national practical examination be instituted immediately. The rule changes herein conform to the terminology used in the board's rule with the textual description of the national practical examination and resolve doubts about the examination grades issued to applicants who complete the national practical examination.

The national practical examination describes the examination parts in different terms than are used in s. Chir 3.02, although the national practical examination covers the practice areas described in the existing rule. The rule amendments to s. Chir 2.03 (2) (intro.) resolve this difference.

This order deletes the reference in the board's current rule to passing "each part" of the examination. The national practical examination has one part and an applicant receives one grade for the part. In utilizing the national examination, the board approves the grading and grading procedures of the National Board of Chiropractic Examiners. Grade review procedures in s. Chir 2.09 are superfluous and the rule is repealed. The rule requiring reexamination is modified to avoid confusion over examination parts. The board is proceeding with promulgating these rule changes through a proposed permanent rule-making order.

**Publication Date:** June 28, 2003  
**Effective Date:** June 28, 2003  
**Expiration Date:** November 25, 2003  
**Hearing Date:** October 16, 2003

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## Employment Relations Commission

Rules adopted amending ss. **ERC 1.06 (1) to (3), 10.21 (1) to (5) and 20.21 (1) to (4)**, relating to increased filing fees.

### Finding of emergency

The Employment Relations Commission finds that an emergency exists and that rules are necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency is as follows:

1. The Employment Relations Commission has a statutory responsibility in the private, municipal and state sectors for timely and peaceful resolution of collective bargaining disputes and for serving as an expeditious and impartial labor relations tribunal.

2. Effective July 26, 2003, 2003 Wisconsin Act 33 reduced the Employment Relations Commission's annual budget by \$400,000 in General Program Revenue (GPR) and eliminated 4.0 GPR supported positions. These reductions lowered the Employment Relations Commission's annual base GPR funding level and the number of GPR supported positions by more than 16%.

Act 33 also abolished the Personnel Commission and transferred certain of the Personnel Commission's dispute resolution responsibilities to the Employment Relations Commission.

3. 2003 Wisconsin Act 33 increased the Employment Relations Commission's Program Revenue (PR) funding and positions by \$237,800 and 2.0 PR positions respectively. The revenue to support these increases will be provided by

increasing existing filing fees for certain dispute resolution services.

4. Unless the emergency rule making procedures of s. 227.24, Stats., are utilized by the Employment Relations Commission to provide the increased filing fee revenue needed to support the 2.0 PR positions, the Commission's ability to provide timely and expeditious dispute resolution services will be significantly harmed.

The emergency rules increase existing filing fees for Commission dispute resolution services in amounts necessary to fund 2.0 Program Revenue positions as authorized by 2003 Wisconsin Act 33.

Sections 111.09, 111.71, 111.94, 227.11 and 227.24., Stats., authorize promulgation of these emergency rules.

**Publication Date:** August 25, 2003  
**Effective Date:** September 15, 2003  
**Expiration Date:** January 22, 2004  
**Hearing Date:** November 20, 2003

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## Financial Institutions – Securities

Rules adopted revising **ch. DFI–Sec 4**, relating to conforming Wisconsin's Securities Law rules concerning broker–dealer books and records to federally–mandated standards under the Securities Exchange Act.

### Finding of emergency

The Division of Securities of the Department of Financial Institutions for the State of Wisconsin finds that an emergency exists and that the attached rules are necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency follows:

Congress in its passage of the National Securities Markets Improvement Act ("NSMIA") in 1996 prohibited state securities regulators from establishing or enforcing under their state securities laws or rules, record-keeping requirements for securities broker–dealers that are inconsistent with, or not required by, the U.S. Securities and Exchange Commission ("SEC").

Following passage of NSMIA, the SEC commenced a rule-making process that spanned a several-year period (including a 1998 reproposal of the entirety of the proposed rules for a new public comment period), culminating in adoption in late 2001 of an extensive series of broker–dealer books and records rules for effectiveness commencing May 2, 2003. The SEC's revised books and records rules cover a comprehensive series of areas, including: (1) customer account records; (2) order ticket information; (3) customer complaints; (4) mandated reports and audits; (5) compliance manuals; (6) records maintenance, retention, production and access; and (7) records required to be maintained at a firm's home office and at "local" offices.

Because of the preemptive effects of federal law under NSMIA, all of the existing provisions of the Wisconsin administrative rules in Chapter SEC 4 under the Wisconsin Securities Law dealing with broker–dealer books and records covering the information categories (1) to (6) described above are superseded by the federal rules established by the SEC that became effective today, May 2, 2003. Additionally, certain existing Wisconsin Rule of Conduct provisions tied to the existing Wisconsin books and records rules need to be revised appropriately.

Consequently, it is necessary to immediately revise and amend Wisconsin's broker–dealer books and records rules to conform to the federal rules that now have become effective,

and to remove inconsistent requirements contained in the existing Wisconsin books and record-keeping rules. A subcommittee of the North American Securities Administrators Association (“NASAA”), an organization comprised of the securities administrators of all 50 states, including Wisconsin, has reviewed the impact of the SEC’s books and record-keeping rules on existing state securities law licensing rules, and recommended that states utilize the incorporation-by-reference-of-the-federal-rule treatment as set forth in this Order Adopting Emergency Rules.

Accordingly, the emergency rules do the following:

(1) Under Section 1, the entirety of the existing Wisconsin general books and records requirement for licensed broker-dealers as set forth in rules DFI–Sec 4.03 (1) to (4) (that particularizes the types of required books and records, and prescribes records retention periods), is repealed and recreated to incorporate by reference the new, superseding, federal rules adopted by the SEC contained in sections 17a–3 and 4 under the Securities Exchange Act. New sub. (1) requires a firm to retain the books and records cross-referenced in federal SEC rules 17a–3 and 4, and new sub. (2) incorporates by reference the records preservation and retention requirements in federal SEC rule 17a–4. New subsections (3) and (4) replace the current Wisconsin rules in DFI–Sec 4.03 (3) and (4) [that prescribe branch office records and retention requirements], with language which provides that the books and records required to be prepared and maintained at broker-dealer offices triggering the definition of “branch office” under current rule DFI–Sec 1.02 (7) (a), are the same records prescribed under the new federal provisions in new federal Rule 17a–3, and must be held for the retention periods specified in new federal Rule 17a–4.

(2) Section 2 repeals current Wisconsin rule DFI–Sec 4.03 (6) [which permitted broker-dealers to utilize alternative records to satisfy the principal office and branch office records required in existing rules DFI–Sec 4.03 (1) and (3)], because under NSMIA, states no longer have the authority to permit alternative forms of broker-dealer records different from the records prescribed by federal law.

(3) Section 3 is a renumbering of current rule DFI–Sec 4.03 (7) to reflect the repeal of DFI–Sec 4.03 (6) in Section 2 above.

(4) Under Section 4, the existing Wisconsin Rule of Conduct provision in DFI–Sec 4.05 (5) [requiring broker-dealers to provide customers with prescribed new account information and subsequent amendments to such information] is amended to both substitute a cross-reference to the new federal provision on that subject in SEC rule 17a–3(a)(17) under the Securities Exchange Act of 1934, and to repeal language in the Wisconsin rule inconsistent with federal provisions.

**Publication Date:** May 7, 2003  
**Effective Date:** May 7, 2003  
**Expiration Date:** October 4, 2003  
**Hearing Date:** August 11, 2003  
**Extension Through:** November 30, 2003

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### Health and Family Services

(Management, Technology, Chs. HFS 1—)

Rules adopted revising **ch. HFS 15**, relating to assessments on occupied, licensed beds in nursing homes and intermediate care facilities for the mentally retarded (ICF–MR).

### Exemption from finding of emergency

The legislature by section 9124 (3) (b) of 2003 Wisconsin Act 33 provides an exemption from a finding of emergency for the adoption of the rule.

### Analysis prepared by the Department of Health and Family Services

2003 Wisconsin Act 33 modified section 50.14 of the Wisconsin Statutes, relating to assessments on occupied, licensed beds in nursing homes and intermediate care facilities for the mentally retarded (ICF–MR.)

Under section 50.14 of the Wisconsin Statutes, nursing facilities (nursing homes and ICF–MRs) are assessed a monthly fee for each occupied bed. Facilities owned or operated by the state, federal government, or located out of state are exempt from the assessment. Beds occupied by a resident whose nursing home costs are paid by Medicare are also exempt. The rate, specified in section 50.14 (2) of the statutes, was \$32 per month per occupied bed for nursing homes and \$100 per month per occupied bed for ICF–MRs.

2003 Wisconsin Act 33 made the following changes to section 50.14:

1. It broadened the scope of which types of long-term care facilities must pay a monetary assessment to the Department by:

- eliminating exemptions from being subject to the assessments of facilities owned or operated by the state or federal government, and beds occupied by residents whose care is reimbursed in whole or in part by medicare under 42 USC 1395 to 1395ccc; and

- eliminating the exclusion of unoccupied facility beds from facility bed count calculations.

2. It increased the per bed fee limit the Department may charge subject ICF–MRs, from \$100 per bed to \$435 per bed in fiscal year 2003–04 and \$445 per bed in fiscal year 2004–05.

3. It increased the per bed fee limit the Department may charge subject nursing homes, from \$32 per bed to \$75 per bed.

4. It establishes the requirement that amounts collected in excess of \$14.3 million in fiscal year 2003–04, \$13.8 million in fiscal year 2004–05, and, beginning July 1, 2005, amounts in excess of 45% of the amount collected be deposited in the Medical Assistance Trust Fund.

5. It specifies that facility beds that have been delicensed under section 49.45 (6m) (ap) 1. of the statutes, but not deducted from the nursing home’s licensed bed capacity under section 49.45 (6m) (ap) 4. a., are to be included in the number of beds subject to the assessment.

In response to these statutory changes, by this order, the Department is modifying chapter HFS 15 accordingly.

The Department is also proceeding with promulgating these rule changes on a permanent basis through a proposed permanent rulemaking order.

**Publication Date:** July 28, 2003  
**Effective Date:** July 28, 2003  
**Expiration Date:** December 25, 2003  
**Hearing Date:** October 15, 2003

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### Health and Family Services

(Medical Assistance, Chs. HFS 100—)

Rules adopted revising **chs. HFS 101 to 107**, relating to the Medicaid Family Planning Demonstration Project.



**Finding of emergency**

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

On June 25, 1999, the Department submitted a request for a waiver of federal law to the Centers for Medicare and Medicaid Services (CMS), the agency within the United States Department of Health and Human Services that controls states' use of Medicaid funds. On June 14, 2002, the Centers for Medicaid and Medicare granted the waiver, effective January 1, 2003. The waiver allows the state to expand Medicaid services by providing coverage of family planning services for females of child-bearing age who would not otherwise be eligible for Medicaid coverage. Under the waiver, a woman of child-bearing age whose income does not exceed 185% of the federal poverty line will be eligible for most of the family planning services currently available under Medicaid, as described in s. HFS 107.21. Through this expansion of coverage, the Department hopes to reduce the number of unwanted pregnancies in Wisconsin.

Department rules for the operation of the Family Planning Demonstration Project must be in effect before the program begins. The program statute, s. 49.45 (24r) of the statutes, became effective on October 14, 1997. It directed the Department to request a federal waiver of certain requirements of the federal Medicaid Program to permit the Department to implement the Family Planning Demonstration Project not later than July 1, 1998, or the effective date of the waiver, whichever date was later. After CMS granted the waiver, the Department determined that the Family Planning Demonstration Project could not be implemented prior to January 1, 2003, and CMS approved this starting date. Upon approval of the waiver, the Department began developing policies for the project and subsequently the rules, which are in this order. The Department is publishing the rules by emergency order so the rules take effect in February 2003, rather than at the later date required by promulgating permanent rules. In so doing, the Department can provide health care coverage already authorized by CMS as quickly as possible to women currently not receiving family planning services and unable to pay for them. The Department is also proceeding with promulgating these rule changes on a permanent basis through a proposed permanent rulemaking order.

**Publication Date:** January 31, 2003  
**Effective Date:** January 31, 2003\*  
**Expiration Date:** June 30, 2003  
**Hearing Dates:** April 25 & 28, 2003

\* The Joint Committee for Review of Administrative Rules suspended this emergency rule on April 30, 2003

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## Health and Family Services

(Health, Chs. HFS 110—)

Rules were adopted revising **ch. HFS 144**, relating to immunization of students.

**Finding of emergency**

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

The Department has a rulemaking order (CR03–033) containing a variety of relatively minor changes to over a dozen chapters of administrative rules administered by the Department. The Department had anticipated that CR03–033 would be in effect on or before September 1, 2003. One of the proposed changes in CR03–033 is a provision that changes school immunization standards. Clearinghouse Rule 03–033 has been delayed for reasons unrelated to the provisions in this order. Consequently, the identical provisions in CR03–033 will not be in effect on September 1, 2003. For reasons stated subsequently in this analysis, unless these changes to the minimum immunization requirements in chapter HFS 144, Immunization of Students, are in effect September 1, 2003, needless confusion and unintended effects will result.

In 2002, the Department's Wisconsin Immunization Program requested minor language changes to chapter HFS 144 as part of a planned "omnibus" rulemaking order containing a variety of proposed relatively minor changes. The HFS 144 proposed rule changes affect time sensitive vaccine requirements and were made so the Department's immunization requirements adhere to new vaccine recommendations made by the federal Centers for Disease Control and Prevention's Advisory Committee on Immunization Practices (ACIP.) For example, the current requirement for Measles–Mumps–Rubella vaccine (MMR) is two doses with the first dose received on or after the first birthday. New ACIP recommendations allow a 4–day grace period so children receiving doses four days before their first birthday would be compliant. The current requirements in chapter HFS 144 do not accept as valid a dose of MMR that was given even one day prior to the first birthday. Similar time sensitive changes impact the vaccine requirement for a dose of DTaP vaccine after the fourth birthday and a dose of Hib vaccine after the first birthday.

These changes need to be in place before the start of the new 2003–04 school year. Although the changes are minor in nature, they have a significant effect on the law's enforcement at the day care and school level. Again, using MMR as an example, without the change, the school will count the child that received the MMR one day before the first birthday as non-compliant. Non-compliance can, pursuant to s. 252.04 (5), Stats., result in exclusion from school or, pursuant to s. 252.04 (6), Stats., the name of the non-complaint student being turned over to the local district attorney's office for possible court action against the parents. Therefore, the child will either need to be re-immunized or the parent will need to sign a waiver, pursuant to s. 252.04 (3), Stats. The re-immunization requirement puts the school at odds with the health care provider that is currently acting in accordance with the revised ACIP recommendations. The signing of a waiver is not a desirable option as the school reporting process to the Department counts that child as waiving all vaccine requirements and will yield misleading information as to the Immunization Law compliance level of Wisconsin day care and student populations. The Department's Immunization Program sends Immunization Law packets to the schools in mid–August. These packets include the information the schools need for enforcement of the law when school starts in September. It is imperative that the Department have the rule changes in place before the start of the school year and include the information in the school packets. Therefore, the Department is issuing this emergency order to allow school districts and health professionals to act in a timely manner.

**Publication Date:** August 15, 2003  
**Effective Date:** August 15, 2003  
**Expiration Date:** January 12, 2004  
**Hearing Date:** September 12, 2003

**Publication Date:** August 29, 2003  
**Effective Date:** August 29, 2003  
**Expiration Date:** January 26, 2004  
**Hearing Date:** October 14, 2003

### Insurance

Rules adopted creating **s. Ins 8.49**, relating to Small Employer Uniform Employee Application.

#### Finding of emergency

The Commissioner of Insurance finds that an emergency exists and that the rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. Facts constituting the emergency are as follows:

The rule and the uniform small employer application are required by statute to be available by August 1, 2003. Due to implementation of 45 CFR 164 of HIPAA privacy provisions for covered entities, including health plans, and the commissioner's efforts to obtain clarification regarding authorization for release of personally identifiable health information provisions from the Office of Civil Rights a Division of Centers Medicare & Medicaid Services charged with enforcement of the privacy portions of HIPAA, it is not possible to complete the permanent rule process in time to meet the statutory requirement.

The commissioner intends to file the permanent rule corresponding to this emergency rule, clearinghouse No. 03–055, with the secretary of state within the next 150 days. Because the uniform application form is required to be available by August 1, 2003, it is necessary to promulgate the rule on an emergency basis. A hearing on the permanent rule was held on July 11, 2003, in accordance with s. 227.17, Wis. Stat., and the commissioner has had benefit of reviewing public comments and the clearinghouse report prior to issuing this emergency rule.

**Publication Date:** August 1, 2003  
**Effective Date:** August 1, 2003  
**Expiration Date:** December 29, 2003

### Natural Resources (2) (Fish, Game, etc., Chs. NR 1–)

1. Rules were adopted revising **ch. NR 10**, relating to the 2003 migratory game bird season.

#### 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.

2. Rules were adopted revising **ch. NR 10**, relating to Chronic Wasting Disease (CWD) in Wisconsin.

#### 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, its citizens and businesses. 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:** September 11, 2003  
**Effective Date:** September 11, 2003  
**Expiration Date:** February 8, 2004  
**Hearing Date:** October 13, 2003

### Revenue

Rule adopted revising **s. Tax 18.07**, relating to the 2004 assessment of agricultural land.

#### Finding of emergency

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

Pursuant to s. 70.32 (2r) (c), Stats., the assessment of agricultural land is assessed according to the income that could be generated from its rental for agricultural use. Wisconsin Chapter Tax 18 specifies the formula that is used to estimate the net rental income per acre. The formula estimates the net income per acre of land in corn production based on a 5–year average corn price per bushel, cost of corn production per bushel and corn yield per acre. The net income is divided by a capitalization rate that is based on a 5–year average interest rate for a medium–sized, 1–year adjustable rate mortgage and net tax rate for the property tax levy two years prior to the assessment year.

For reasons of data availability, there is a three–year lag in determining the 5–year average. Thus, the 2003 use value is based on the 5–year average corn price, cost and yield for the 1996–2000 period, and the capitalization rate is based on the 5–year average interest rate for the 1998–2002 period. The 2004 use value is to be based on the 5–year average corn price, cost and yield for the 1997–2001 period, and the capitalization rate is to be based on the 1999–2003 period.

The data for the 1997–2001 period yields negative net income per acre due to declining corn prices and increasing costs of corn production. As a result, reliance on data for the 1997–2001 period will result in negative use values.

The department is issuing this emergency rule in order to ensure positive and stable assessments of agricultural land for 2004.

**Publication Date:** October 3, 2003  
**Effective Date:** October 3, 2003  
**Expiration Date:** March 1, 2004

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### **Workforce Development (Workforce Solutions, Chs. DWD 11—59)**

Rules adopted revising **ch. DWD 59**, relating to the child care local pass–through program.

#### **Finding of emergency**

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

2003 Wisconsin Act 33 allocated federal child care funds in a manner that assumes an increase in the match rate paid by local governments and tribes receiving grants under the child care local pass–through program. Budget documents prepared by the Legislative Fiscal Bureau specify that the budget option chosen requires that local governments and tribes contribute matching funds at a rate of 52% in 2003–2004, and slightly higher in 2004–2005. Chapter DWD 59 currently requires a minimum match rate of the state’s federal medical assistance percentage rate, which is approximately 42%. The match rate for the pass–through program must be increased immediately so Wisconsin does not lose valuable federal child care dollars. These dollars help preserve the welfare of the state by ensuring that low–income families have access to quality affordable child care.

2003 Wisconsin Act 33 also reduced funding to the child care local pass–through program by 86%. Chapter DWD 59 requires a 2–step grant process wherein current grantees receive up to 75% of the funds under a noncompetitive process for 2 years following the receipt of the initial grant, and can apply, along with any eligible jurisdiction in the state, for the remaining 25% as initial grantees. The dramatically reduced funding for the pass–through program renders the current Chapter DWD 59 requirement to fund continuing grants while reserving funds for a new statewide request for proposals unwieldy, wasteful, and obsolescent. If the current process remains in place, it would not only waste state and local staff resources on extremely low–value administrative processes, it would waste public funds at a time when they are in short supply. This could further undermine state and local efforts to ensure a reasonable supply of reliable and quality child care for families who depend on this service in order to work. This emergency rule allows all available dollars to be used for continuing grants if there is insufficient funding to provide continuing grants of at least 50% of the eligible grantees’ initial grant levels from the previous 2 grant cycles.

These changes are ordered as an emergency rule so they are effective before the new grant cycle begins on October 1, 2003. Delaying the next grant cycle until the permanent rule is effective is not a viable option because local governments need to know whether they will receive continued funding or will be forced to dismantle ongoing programs and lay–off staff when the current grant cycle ends on September 30. Also, federal law requires that the federal funds be matched and

spent within the federal fiscal year of October 1 to September 30.

**Publication Date:** October 7, 2003  
**Effective Date:** October 7, 2003  
**Expiration Date:** March 5, 2004  
**Hearing Date:** November 12, 2003

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### **Workforce Development (Civil Rights, Chs. DWD 218–225)**

Rules adopted repealing **chs. PC 1, 2, 4, 5 and 7** and revising **chs. DWD 218 and 225** and creating **ch. DWD 224**, relating to the transfer of personnel commission responsibilities to the equal rights division.

#### **Finding of emergency**

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

2003 Wisconsin Act 33 transfers the responsibility for processing certain employment–related complaints against state respondents from the Personnel Commission (PC) to the Equal Rights Division (ERD) effective upon publication of 2003 Wisconsin Act 33. The ERD needs rules governing the procedures for processing these complaints effective immediately to ensure that service is not seriously delayed by this administrative change. The PC expects to transfer approximately 200 pending cases to ERD immediately.

2003 Wisconsin Act 33 transfers responsibility from the PC to ERD for 9 different types of employment–related complaints against state respondents. The ERD has had responsibility for processing complaints against nonstate respondents for 8 of the 9 types of complaints. This order makes minor amendments to existing rules to include state respondents and creates a new rule chapter on whistleblower protection for state employees, which is the one issue that ERD has not previously handled because the law does not apply to nonstate respondents. The newly–created whistleblower rules are similar to the existing fair employment rules.

A nonstatutory provision of 2003 Wisconsin Act 33 transfers existing PC rules to ERD. This order repeals those rules. Adopting the PC rules would result in different procedures for cases against state respondents and nonstate respondents for no logical reason. The dual system would be difficult to administer and confusing to complainants, many of whom are pro se. Even if ERD adopted the PC rules, an emergency rule would be necessary to remove confusing irrelevant and obsolete information.

This order repeals the PC rules and revises ERD rules by emergency rule to ensure that a clear, logical, and fair process is in place for handling the newly–transferred responsibilities for protecting Wisconsin’s workforce from discrimination and retaliation.

**Publication Date:** August 5, 2003  
**Effective Date:** August 5, 2003  
**Expiration Date:** January 2, 2004  
**Hearing Date:** October 27, 2003

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## Scope statements

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### Health and Family Services

#### Subject

The Department proposes to modify ch. HFS 132, relating to the licensure and regulation of nursing homes and ch. HFS 134, relating to the licensure and regulation of facilities serving people with developmental disabilities. These administrative rule chapters have many similar requirements and both are administered by the Department's Bureau of Quality Assurance (BQA.) Given the similarity of provisions in both chapters, the Department proposes to promulgate these rule modifications through a single "long-term care facility" rulemaking order.

#### Policy analysis

The existing policies in chapters HFS 132 and 134 need updating to reflect changes that have occurred in service delivery and technology, and changes in applicable federal or state law. More specifically, the Department intends to propose rules that include the following changes:

Updating the terms defined in both chapters to reflect current use of terminology. The Department will propose changes to current definitions based on suggestions made by BQA program staff, professional healthcare associations and other interested parties.

Eliminating obsolete rule provisions to reflect current standards of care and practice. The Department will propose amending s. HFS 132.31 (1) (k), entitled "Rights of residents; Abuse and restraints" and s. 132.60 (6) (b), entitled "Resident care; Physical and chemical restraints; Orders required" to reflect federal regulatory language and recent research that has shown that restraints can be more harmful than helpful.

Updating the rules to reflect and incorporate waivers and variances previously issued by the Department. The Department has previously waived some of the existing provisions in chs. HFS 132 and HFS 134 because they conflict with federal law and do not reflect current nursing home standards of practice. The Department will reflect these waivers and variances in rule.

Updating the life safety, design and construction information where applicable. The federal Centers for Medicare and Medicaid Services has formally adopted, by reference, the 2000 edition of the Life Safety Code (LSC) of the National Fire Protection Association (NFPA.) All health care facilities referenced in the federal regulation are required to comply by September 11, 2003. Adoption of the 2000 edition removes all prior editions of the LSC, specifically the 1967, 1973, 1981 and 1985 editions of the NFPA 101 from the federal register. The Department also intends to update the physical plant requirements in both chapters.

Finally, the Department will take this opportunity to also propose making a variety of minor, technical changes that have little or no substantive effect on those regulated by the rules. Examples of these types of changes include correcting outdated agency names or addresses, spelling errors, and cross-references.

#### Statutory authority

The Department's authority to promulgate these rule changes is found in s. 50.02 (2) (a), Stats.

#### Staff time required

The Department anticipates that about 160 hours of staff time will be required to draft the proposed rulemaking order.

### Health and Family Services

#### Subject

The Department proposes to make minor or technical changes to a variety of its administrative rules in a single rulemaking order. The 2003 Omnibus Order will cover proposed changes to the following Department administrative rule chapters:

- HFS 10, relating to family care;
- HFS 13, relating to reporting and investigation of caregiver misconduct;
- HFS 52, relating to residential care centers for children and youth;
- HFS 54, relating to child-placing agencies;
- HFS 55, relating to day camps for children and day care programs established by school boards;
- HFS 57, relating to group foster care;
- HFS 59, relating to shelter care for children;
- HFS 83, relating to community-based residential care facilities;
- HFS 94, relating to patient rights and resolution of grievances;
- HFS 124, relating to hospitals;
- HFS 131, relating to hospices;
- HFS 132, relating to nursing homes;
- HFS 134, relating to facilities for the developmentally disabled;
- HFS 136 relating to embalming standards;
- HFS 145, relating to control of communicable diseases;
- HFS 181, relating to reporting of blood test results; and
- HFS 252, relating to electronic benefit transfer.

#### Policy analysis

Administrative rules have the full force and effect of law. Administrative rulemaking, also known as "rule promulgation," is an agency function that has been delegated to the agency by the legislature. Agency rulemaking is governed by subchapter II of ch. 227, Stats. Given that agency-issued rules impose legal requirements on others or set legal conditions for others so the agency can administer programs authorized by statute, the process of permanent rulemaking by agencies is methodical and lengthy.

For a variety of reasons, the Department periodically needs to make minor revisions to its administrative rules. Often, the revisions have little or no substantive effect on those regulated by the rules. While such revisions may be made as part of

larger, substantive modifications to a particular chapter of rules, the time and expense associated with a rule promulgation effort usually precludes such minor, individual chapter changes. Therefore, the Department plans to issue, as a single proposed rulemaking order, minor changes to a variety of chapters of its administrative rules.

#### **Statutory authority**

Section 227.11 (2), Stats.

#### **Staff time required**

The Department anticipates that about 80 hours of staff time will be required to draft, review and revise the proposed rulemaking order.

### **Natural Resources**

#### **Subject**

The Department is proposing to amend s. NR 50.09, the portion of ch. NR 50 that deals with the snowmobile trail grants program. Specifically, the Department proposes to change the shape, color and size of the snowmobile directional arrow used in marking snowmobile trails. The Department will also take the opportunity to update an older rule provision regarding the maximum per mile reimbursement rate for maintenance to match the amount currently outlined in statute.

#### **Policy analysis**

The various signs used in the snowmobile trail program have been referenced in the administrative code since the late 70's. With the exception of two signs, the trail blazer and the directional arrow, the federal Manual on Uniform Traffic Control Devices (MUTCD) has served as the basis for the shape and color of the snowmobile trail signage. Historically, the minimum sizing of the signs was reduced so as not to cause confusion for motorists in the vicinity of snowmobile trails, i.e., along field edges, road crossings, etc. Over the last several years, the Department has been receiving comments on the difficulty of distinguishing the difference between the 6" x 6" trail blazer and the 9" x 9" directional arrow, both orange in color and a diamond in shape. Perhaps it's a comment on the changes in visual acuity of a "graying" snowmobile enthusiast population. This issue has also been highlighted by the popularity of the introduction and use of 12" x 12" yellow/black chevron signs in higher speed sweeping corners and sharp turn situations. After a number of discussions within the organized snowmobile community, there has been consensus that a change from a 9" x 9" orange/black diamond with arrow symbol to a 6" x 12" yellow/black rectangle with arrow symbol would increase both visibility and recognition of the sign. This change would also bring the directional arrow shape and color of the sign into conformance with the MUTCD.

The statutes currently specify that the per mile maximum for maintenance is \$250. The existing rule contains a provision a reference to the maximum as \$200. The rule will be changed to remove the incorrect figure and replace it with a reference to the statutorily defined amount.

#### **Statutory authority**

Sections 227.11 (2) (a) and s. 350.12 (4), Stats.

#### **Staff time required**

Approximately 73 hours will be needed by Department staff to promulgate and implement the proposed rule changes. Staff anticipates seeking authorization for a public hearing in

January 2004 and seeking adoption of the rule changes in May 2004.

### **Revenue**

#### **Subject**

Section Tax 2.49, relating to apportionment of net business income of interstate finance companies

*Objective of the rule.* The objectives of the proposed rule are to:

- Reflect law changes relating to the apportionment of income by financial organizations.
- Provide an apportionment formula for brokerage houses and underwriters.
- Address changes in the financial services industry that make it difficult to apply the current rule to the financial services industry as it exists today.

#### **Policy analysis**

The department is using the current rule to apportion the income of financial organizations other than brokerage houses and underwriters. New policies are being proposed to reflect law changes requiring financial organizations to use an apportionment formula consisting solely of a sales factor and including brokerage houses and underwriters in the definition of a financial organization. In addition, a new policy is being proposed to conform to methods used by other states to allocate receipts received by financial institutions among the states. If the rules are not changed, they will be incorrect in that they will not reflect current law, including the legislative directive to promulgate new rules for financial organizations.

#### **Statutory authority**

Section 227.11 (2) (a), Stats., and section 33, 2003 Wisconsin Act 37.

#### **Staff time required**

The department estimates it will take approximately 200 hours to develop this rule order

### **Transportation**

#### **Subject**

*Objective of the Rule.* Chapter Trans 233, relating to division of land abutting a state trunk highway or connecting highway, was revised effective February 1, 2001. WisDOT has been working cooperatively with many affected interests and legislators to refine the implementation of ch. Trans 233 through a four–step process, in brief:

- Education, Training, Meetings
- Specific Responses to Questions
- Uniform Implementation
- Refine Rule As Necessary

This proposed rule revision is intended to implement conceptual agreements by WisDOT for clarification or modification of the rule as part of this continuing cooperative process "for the safety of entrance and departure from the abutting [highways] and for the preservation of the public interest and investment in the [highways]."

#### **Policy analysis**

Chapter Trans 233 was established in 1956 and required amendments in 1999 for consistency with existing laws, new developments in land use and transportation planning principles, and for clarification and uniformity. In 2001, Trans

233 was amended again in response to WisDOT's cooperative efforts with many affected interests and legislators to refine the implementation of Trans 233. The objective of this revision is to promulgate agreements reached with many affected interests and legislators. This rule amendment will incorporate portions of WisDOT's Facilities Development Manual that implement ch. Trans 233, will require transportation impact analyses in certain circumstances, and will clarify that a land divider is not required to submit plans for a conceptual review prior to dividing land.

#### **Statutory authority**

Sections 236.12 (2) (a), 236.13 (1) (e), and 236.12 (3), Stats.

Sections 84.25, 84.29, 84.295, and 86.07, Stats.

Sections 1.11, 80.01 (3), 84.01 (29), and 84.106, Stats.

#### **Staff time required**

DEVELOP THE RULE:

Approximately 3 days for each member of a 6–member development team to continue meeting with the public and consider the proposed rule after it is drafted, and 4 days for initial and 2 days for final policy articulation and drafting by two persons. There will be coordination required with interest groups in order to obtain review and comment and establish appropriate public hearing(s) at convenient locations. Other reviews and approvals will be handled in the normal course of WisDOT business.

## **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 3 highway segments to the network. The actual segments being proposed are:

STH 60 from USH 12 at Sauk City to USH 14 at Spring Green

STH 60 from USH 18 at Bridgeport to USH 61 at Boscobel

STH 39 from USH 151 at Mineral Point to USH 18 at Edmund

#### **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 deal with 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 Con–Way Central Express in Stoughton, WI, to add these highway segments.

#### **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.

## **Workforce Development**

#### **Subject**

Chapter DWD 80, Worker's Compensation.

#### **Policy analysis**

The rule will make the following changes:

- Require self–insured employers and insurance companies to submit supplemental reports for all reported claims regardless of whether they meet the lost–time definition.
- Require self–insured employers and insurance companies to provide notice of denial to the department and employees for claims that are initially reported and paid but later denied.
- Repeal the requirement that insurers and self–insured employers provide copies of notice of investigation of claims to the department and clarify that the notice of denial or investigation of claims is to be sent to the employee, along with a statement advising the employee of the right to a hearing before the department and if additional medical or other information is needed to complete the investigation.
- Allow the department to require self–insured employers and insurance carriers to submit all or selected information in reports or amendments to reports to be filed via electronic, magnetic, or other media satisfactory to the department.
- Establish when payment for compensation for permanent disability must begin in cases in which the self–insured employer or insurance carrier concedes liability but disputes the extent of permanent disability.
- Allow the department to seek reimbursement from uninsured employers for claim administration expenses when payments are made from the Uninsured Employers Fund.
- Permit insurance carriers to give notice of cancellation or termination of insurance policies to the Wisconsin Compensation Rating Bureau by facsimile machine transmission, electronic mail, or any electronic, magnetic, or other medium approved by the department.
- Require self–insured employers and insurance carriers to raise disputes over liability or the extent of disability affecting the reasonableness of fee determinations and give notice within 30 days after receiving a completed bill from a healthcare provider unless there is good cause for the delay in providing this notice.
- Require self–insured employers and insurance carriers to raise disputes over liability or the extent of liability affecting the necessity of treatment and give notice within 60 days after receiving a bill from the healthcare provider unless there is good cause for the delay in providing this notice.

#### **Statutory authority**

Sections 102.15 (1) and 227.11, Stats.

#### **Staff time required**

75 hours.

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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.*

### Kickapoo Reserve Management Board

#### Rule Submittal Date

On October 30, 2003 the Kickapoo Reserve Management Board submitted a proposed rule to the Legislative Council Rules Clearinghouse creating s. KB 1.08 (3), Wis. Adm. Code, relating to posting areas the Kickapoo Valley Reserve off limits to hunting.

#### Analysis

Statutory authority: ss. 41.41(7)(k), Stats.

Statutes interpreted: ss. 44.41, Stats.

The Kickapoo Reserve Management Board was created in 1994 to manage the Kickapoo Valley Reserve, which encompasses approximately 7,400 acres along 14 miles of the Kickapoo River in Vernon County. The board is required by statute to manage the land for low impact recreation.

The proposed rule authorizes the board to post areas of the reserve within 300 feet of the visitor center building and within 300 feet of any maintenance buildings off limits for hunting.

#### Agency Procedure for Promulgation

A public hearing is required and scheduled for Tuesday, December 16, 2003 at 6:00 p.m. in the LaFarge Community Building, 202 North state Street, LaFarge, Wisconsin.

#### Contact

For additional information or to obtain a copy of the proposed rule contact Marcy West, Executive Director, Kickapoo Reserve Management Board at 608/625–2960.

### Public Instruction

#### Rule Submittal Date

On October 17, 2003, the Wisconsin Department of Public Instruction submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

#### Analysis

The proposed rule amends ss. PI 5.035, PI 5.04 and PI 5.05 and creates s. PI 5.037, relating to HSED/GED. Public hearings will be scheduled.

#### Agency Procedure for Promulgation

The Division for Academic Excellence is primarily responsible for promulgation of this rule.

### Contact

If you have questions regarding this rule, you may contact Robert Enghagen, HSED/GED Administrator, 267–2275 or Lori Slauson, Administrative Rules Coordinator at 267–9127.

### Public Instruction

#### Rule Submittal Date

On October 20, 2003, the Wisconsin Department of Public Instruction submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

#### Analysis

The proposed rule amends ch. PI 25, relating to the children at risk program. Public hearings will be scheduled.

The proposed rules are modified to conform to current statutory language. Therefore, pursuant to s. 227.16 (2) (b), Stats., the department will not hold public hearings regarding these rules.

#### Agency Procedure for Promulgation

The Division for Academic Excellence is primarily responsible for promulgation of this rule.

#### Contact

If you have questions regarding this rule, you may contact Beth Lewis, Children at Risk Consultant, 267–1062 or Lori Slauson, Administrative Rules Coordinator at 267–9127.

### Revenue

#### Rule Submittal Date

On October 20, the Wisconsin Department of Revenue submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

#### Analysis

The proposed rule amends s. Tax 18.07 to provide for positive 2004 use value assessments for agricultural land. The formula under the existing rule results in negative 2004 use values.

#### Agency Procedure for Promulgation

A public hearing is required and will be scheduled.

#### Contact

If you have questions, please contact:

Rebecca Boldt

Division of Research and Policy

Telephone (608) 266–6785

E–mail [rboldt@dor.state.wi.us](mailto:rboldt@dor.state.wi.us)

## **Transportation**

### **Rule Submittal Date**

On October 31, 2003, the Wisconsin Department of Transportation submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

### **Analysis**

The proposed rule amends ch. Trans 276, relating to allowing the operation of double bottoms and certain other vehicles on specified highways.

## **Agency Procedure for Promulgation**

A public hearing is required and is scheduled for December 1, 2003. The Division of Transportation Infrastructure Development, Bureau of Highway Operations is responsible for promulgation of proposed rule.

## **Contact**

If you have questions, please contact:  
Julie A. Johnson, Paralegal  
(608) 266–8810



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## Rule–making notices

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### Notice of Hearing

#### Kickapoo Reserve Management Board [CR 03–108]

NOTICE IS HEREBY GIVEN that pursuant to s. 41.41 (7) (k), Stats., the Kickapoo Reserve Management Board will hold a hearing at the time and place shown below to consider a proposed order to create s. KB 1.08 (3), relating to hunting on the Kickapoo Valley Reserve.

#### Hearing Information

The hearing will be held in the LaFarge Community Building, 202 North State Street, LaFarge, Wisconsin on **Tuesday, December 16, 2003** at 6:00 p.m.

#### Written Comments

Written comments on the proposed rules may be sent to the contact person by Thursday, December 30, 2003. Written comments will receive the same consideration as written or oral testimony presented at the hearing.

#### Analysis Prepared by the Kickapoo Reserve Management Board

Statutory authority: s. 41.41 (7) (k), Stats.

Statutes interpreted: s. 41.41, Stats.

The Kickapoo Reserve Management Board was created in 1994 to manage the Kickapoo Valley Reserve, which encompasses approximately 7,400 acres along 14 miles of the Kickapoo River in Vernon County. The board is required by statute to manage the land for low impact recreation. Hunting is one of the recreational activities that occurs on the property. Under current rules the board may close parts of the reserve by posted notice. (See s. KB 1.03 (1) (b).) The purpose of the proposed rule is to give the board specific authority to post the areas of the reserve that are within 300 feet of the visitor center building and the maintenance buildings off limits to hunting. Although s. KB 1.03 (1) (b), may provide sufficient authority, the board desires the more specific authority to remove any doubts particularly for enforcement purposes. The Board wishes to post the areas around the visitor center building and the maintenance buildings to insure the safety of visitors to the center and persons working in and around the maintenance buildings

#### Initial Regulatory Flexibility Analysis

The proposed rule will not have an effect on small business.

#### Fiscal Estimate

The proposed rule will have no fiscal effect.

#### Contact Person

For additional information about or copies of the proposed rules contact:

Marcy West, Executive Director, 608/625–2960

Kickapoo Reserve Management Board

505 North Mill Street

LaFarge, WI 54639

Pursuant to the authority vested in the Kickapoo Management Reserve Board, by s. 44.41 (7) (k), Stats., and interpreting s. 44.41, Stats., the Board hereby creates rules as follows:

SECTION 1. s. KB 1.08 (3) is created to read:

KB 1.08 (3) The board may, by posted notice, designate an area within 300 feet of the visitor center building and an area within 300 feet of any maintenance building located on the reserve to be off limits to hunting.

### Notice of Hearing

#### Marriage and Family Therapy, Professional Counseling and Social Worker Examining Board [CR 03–090]

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Marriage and Family Therapy, Professional Counseling and Social Worker Examining Board in ss. 15.08 (5) (b), 227.11 (2), and 457.03 (1), and interpreting s. 457.08, Stats., the Marriage and Family Therapy, Professional Counseling and Social Worker Examining Board will hold a public hearing at the time and place indicated below to consider an order to amend ss. MPSW 3.01 (2), 3.05 (2), 3.07 (2) and 3.09 (2), relating to a foreign degree to be equivalent to a degree from an accredited school in the United States.

#### Hearing Date, Time and Location

**December 11, 2003**

9:30 A.M.

1400 East Washington Avenue

Room 179A

Madison, Wisconsin

#### Appearances at the Hearing

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but are urged to submit facts, opinions and argument in writing as well. Facts, opinions and argument may also be submitted in writing without a personal appearance by mail addressed to the Department of Regulation and Licensing, Office of Administrative Rules, P.O. Box 8935, Madison, Wisconsin 53708. Written comments must be received by December 12, 2003, to be included in the record of rule–making proceedings.

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

Statutes authorizing promulgation: ss. 15.085 (5) (b), 227.11 (2) and 457.03 (1), Stats.

Statutes interpreted: s. 457.08, Stats.

Under current requirements, applicants for social worker certification or licensure must have earned a social work degree from a school accredited by the Council on Social Work Education. Applicants otherwise qualified are prevented from obtaining Wisconsin certification or licensure if the applicant obtained a degree in another country. The Council on Social Work Education has a process for determining equivalency of degrees, and in fairness to graduates of foreign schools, the Social Worker Section wishes to rely on that process for accepting equivalent degrees.

Sections 1, 2, 3 and 4 amend the rules to permit the Social Worker Section to accept from applicants for social worker certification or licensure a foreign degree determined by a national accrediting organization to be equivalent to a degree from an accredited school.

**Text of Rule**

SECTION 1. MPSW 3.01 (2) is amended to read:

MPSW 3.01 (2) Verification that the school or program which awarded the social work degree was accredited by, or a pre-accreditation program of, the ~~council on social work education~~ Council on Social Work Education (CSWE), at the time the applicant graduated from the program or school, or that a degree awarded by a foreign institution of higher learning has been determined by the CSWE to be equivalent to a CSWE-accredited program.

SECTION 2. MPSW 3.05 (2) is amended to read:

MPSW 3.05 (2) Verification that the school or program which awarded the social work degree was accredited, or a ~~pre-accredited pre-accreditation program of, the council on social work education~~ Council on Social Work Education (CSWE), at the time the applicant graduated from the program or school, or that a degree awarded by a foreign institution of higher learning has been determined by the CSWE to be equivalent to a CSWE-accredited program.

SECTION 3. MPSW 3.07 (2) is amended to read:

MPSW 3.07 (2) Verification that the school or program which awarded the social work degree was accredited, or a pre-accreditation program of, the ~~council on social work education~~ Council on Social Work Education (CSWE), at the time the applicant graduated from the program or school, or that a degree awarded by a foreign institution of higher learning has been determined by the CSWE to be equivalent to a CSWE-accredited program.

SECTION 4. MPSW 3.09 (2) is amended to read:

MPSW 3.09 (2) Verification that the school or program which awarded the social work degree was accredited, or a pre-accreditation program of, the ~~council on social work education~~ Council on Social Work Education (CSWE), at the time the applicant graduated from the program or school, or that a degree awarded by a foreign institution of higher learning has been determined by the CSWE to be equivalent to a CSWE-accredited program.

**Fiscal Estimate**

There will be no additional cost to the Department of Regulation and Licensing to certify these applicant social workers than for current applicants with degrees from schools in the United States that are accredited by the Council.

**Initial Regulatory Flexibility Analysis**

These proposed rules will be reviewed by the department through its Small Business Review Advisory Committee to determine whether there will be an economic impact on a substantial number of small businesses, as defined in s. 227.114 (1) (a), Stats.

**Copies of Rule and Contact Person**

Copies of this proposed rule are available without cost upon request to: Pamela Haack, Department of Regulation and Licensing, Office of Administrative Rules, 1400 East Washington Avenue, Room 171, P.O. Box 8935, Madison, Wisconsin 53708 (608) 266–0495.

**Notice of Hearing****Marriage and Family Therapy, Professional Counseling and Social Worker Examining Board**

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Marriage and Family Therapy, Professional Counseling and Social Work Examining Board in ss. 15.08 (5) (b), 227.11 (2) and 457.03 (1), Stats., and interpreting s. 457.12, Stats., the Marriage and Family Therapy,

Professional Counseling and Social Work Examining Board will hold a public hearing at the time and place indicated below to consider an order to create s. MPSW 10.01 (1m) and (3m); to amend s. MPSW 13.01 (1), (2) (intro.), (2) and (a) to (c); and to create s. MPSW 13.01 (3), relating to qualifications to practice psychotherapy, including passage of the National Counselor Mental Health Certification Examination.

**Hearing Date, Time and Location**

**December 3, 2003**

10:00 a.m.

1400 East Washington Avenue

Room 179A

Madison, Wisconsin

**Appearances at the Hearing**

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but are urged to submit facts, opinions and argument in writing as well. Facts, opinions and argument may also be submitted in writing without a personal appearance by mail addressed to the Department of Regulation and Licensing, Office of Administrative Rules, P.O. Box 8935, Madison, Wisconsin 53708. Written comments must be received by December 13, 2003, to be included in the record of rule-making proceedings. Analysis prepared by the Department of Regulation and Licensing.

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

Statutes authorizing promulgation: ss. 15.08 (5) (b), 227.11 (2) and 457.03 (1), Stats.

Statutes interpreted: s. 457.12, Stats.

This proposed rule-making order will require, following a grace period of approximately three years, that Licensed Professional Counselors who wish to practice psychotherapy must satisfy certain educational and experience requirements and pass the National Counselor Mental Health Certification Examination (NCMHCE). Under new law effective November 1, 2002, Licensed Professional Counselors are authorized to practice psychotherapy independently. In order to ensure that an individual Licensed Professional Counselor is qualified to practice psychotherapy independently, the Professional Counselor Section wishes to require licensees who engage in psychotherapy to demonstrate certain qualifications and to pass the national clinical examination, the NCMHCE. Without this change, there will be less certainty that individual Licenses Professional Counselors are qualified to practice psychotherapy, and requiring passage of the NCMHCE will ensure greater protection of the public.

**TEXT OF RULE**

SECTION 1. MPSW 10.01 (1m) and (3m) are created to read:

MPSW 10.01 (1m) “DSM” refers to the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders.

(3m) “Psychotherapy” has the meaning given in s. 457.01 (8m), Stats. Specifically, psychotherapy involves diagnosing DSM conditions and treating persons with DSM diagnoses.

SECTION 2. MPSW 13.01 (1), (2) (intro.) and (a) to (c) are amended to read:

MPSW 13.01 (1) A After January 1, 2007, a licensed professional counselor may engage without supervision in psychotherapy or psychotherapeutic counseling only if he or she is qualified to do so by education, training ~~or~~ and experience.

(2) (intro.) Qualification A licensed professional counselor shall demonstrate qualification to engage without

supervision in psychotherapy or psychotherapeutic counseling ~~may be demonstrated by the following by submitting evidence of all of the following to the department for section approval:~~

(a) Successful completion of the ~~national counselor mental health certification examination~~ National Counselor Mental Health Certification Examination (NCMHCE);

(b) At least 180 contact hours of ~~postgraduate post-bachelor's~~ training in psychotherapy modalities; and,

(c) An affidavit by a supervisor qualified and authorized to practice psychotherapy that the individual has completed at least 3,000 hours of ~~post-master's~~ supervised clinical professional counselor practice in not less than 2 years, including at least 1,000 hours of face-to-face client contact and including DSM diagnosis and treatment of individuals.

SECTION 3. MPSW 13.01 (3) is created to read:

MPSW 13.01 (3) The definition of “professional counseling” in s. 457.01 (6), Stats., extends to the provision of psychotherapy services. A licensed professional counselor who does not practice psychotherapy and who limits his or her practice to “the application of mental health, psychological or human development principles, through cognitive, affective, behavioral or systemic intervention strategies, that address wellness, personal growth, or career development” is not required to satisfy the requirements in sub. (2).

#### Fiscal Estimate

1. The anticipated fiscal effect on the fiscal liability and revenues of any local unit of government of the proposed rule is \$0.

2. The projected anticipated state fiscal effect during the current biennium of the proposed rule is \$0.

3. The projected net annualized fiscal impact on state funds of the proposed rule is \$0.

#### Initial Regulatory Flexibility Analysis

These proposed rules will be reviewed by the department through its Small Business Review Advisory Committee to determine whether there will be an economic impact on a substantial number of small businesses, as defined in s. 227.114 (1) (a), Wis. Stat.

#### Copies of Rule and Contact Person

Copies of this proposed rule are available without cost upon request to: Pamela Haack, Department of Regulation and Licensing, Office of Administrative Rules, 1400 East Washington Avenue, Room 171, P.O. Box 8935, Madison, Wisconsin 53708 (608) 266–0495.

### Notice of Hearing Transportation [CR 03–109]

NOTICE IS HEREBY GIVEN that pursuant to ss. 85.16 (1) and 348.07 (4), Stats., interpreting s. 348.07 (4), Stats., the Department of Transportation will hold a public hearing at the following location to consider the amendment of chapter Trans 276, Wisconsin Administrative Code, relating to allowing the operation of double bottoms and certain other vehicles on certain specified highways.

#### Hearing Date, Time and Location

**December 1, 2003**

Hill Farms State Transportation Building

4802 Sheboygan Avenue

Room 501 (Eau Claire Conference Room)

10:00 AM

(Parking is available for persons with disabilities)

The public record on this proposed rule making will be held open until close of business on the date of the hearing to permit the submission of written comments from persons unable to attend the public hearing or who wish to supplement testimony offered at the hearing. Any such written comments should be submitted to Ashwani K. Sharma, Traffic Operations Engineer, Bureau of Highway Operations, Room 501, P. O. Box 7986, Madison, Wisconsin, 53707–7986.

#### Analysis Prepared by the Wisconsin Department of Transportation

STATUTORY AUTHORITY: ss. 85.16 (1) and 348.07 (4), Stats.

STATUTE INTERPRETED: s. 348.07 (4), Stats.

General Summary of Proposed Rule. This proposed rule amends Trans 276.07 (6), (8), (16) and (17), and creates s. Trans 276.07 (34o) and (35g), Wisconsin Administrative Code, to add seven segments of highway to the designated highway system established under s. 348.07 (4), Stats. The actual highway segments that this proposed rule adds to the designated highway system are:

Hwy.	From	To
STH 25	USH 8	STH 48
STH 35	USH 63 at Hager City	USH 10 in Prescott
CTH “E”	STH 35	USH 10
STH 78	Argyle	Mt. Horeb
STH 81	STH 78 in Argyle	CTH “N” W. of STH 78
CTH “N”	STH 81 W. of Argyle	CTH “F”
CTH “F”	CTH “N”	STH 78 in Blanchardville

The long trucks to which this proposed rule applies are those with 53-foot semitrailers, double bottoms and the vehicles which may legally operate on the federal National Network, but which exceed Wisconsin’s regular limits on overall length. Generally, no person may operate any of the following vehicles on Wisconsin’s highways without a permit: A single vehicle with an overall length in excess of 40 feet, a combination of vehicles with an overall length in excess of 65 feet, a semitrailer longer than 48 feet, an automobile haulaway longer than 66 feet plus allowed overhangs, or a double bottom. Certain exceptions are provided under s. 348.07(2), Stats., which implements provisions of the federal Surface Transportation Assistance Act in Wisconsin.

The effect of this proposed rule will be to extend the provisions of s. 348.07 (2) (f), (fm), (gm) and (gr), and s. 348.08 (1) (e), Stats., to the highway segments listed above. As a result, vehicles which may legally operate on the federal National Network in Wisconsin will also be allowed to operate on the newly-designated highways. Specifically, this means there will be no overall length limitation for a tractor–semitrailer combination, a double bottom or an automobile haulaway on the affected highway segments. There also will be no length limitation for a truck tractor or road tractor when operated in a tractor–semitrailer combination or as part of a double bottom or an automobile haulaway. Double bottoms will be allowed to operate on the affected highway segments provided neither trailer is longer than 28 feet, 6 inches. Semitrailers up to 53 feet long may also be operated on these highway segments provided the kingpin to rear axle distance does not exceed 43 feet. This distance is measured from the kingpin to the center of the rear axle or, if the semitrailer has a tandem axle, to a point midway between the first and last axles of the tandem. Otherwise, semitrailers, including semitrailers which are part of an automobile haulaway, are limited to 48 feet in length.

These vehicles and combinations are also allowed to operate on undesignated highways for a distance of 5 miles or

less from the designated highway in order to reach fuel, food, maintenance, repair, rest, staging, terminal or vehicle assembly or points of loading or unloading.

#### **Fiscal Estimate**

The Department estimates that there will be no fiscal impact on the liabilities or revenues of any county, city, village, town, school district, technical college district or sewerage district.

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

The provisions of this proposed rule adding highway segments to the designated system have no direct adverse effect on small businesses, and may have a favorable effect on those small businesses which are shippers or carriers using the newly–designated routes.

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

Copies of this proposed rule are available without cost upon request to the office of the State Traffic Engineer, P. O. Box 7986, Room 501, Madison, Wisconsin, 53707–7986, telephone (608) 266–1273. For questions about this rule making, please call Ashwani Sharma, Traffic Operations Engineer at (608) 266–1273. Alternate formats of the proposed rule will be provided to individuals at their request.

### **Notice of Hearing**

#### **Veterans Affairs [CR 03–110]**

Notice is hereby given that the Department of Veterans Affairs will hold a public hearing on the **5th day of December, 2003**, at 9:30 a.m., in the 8<sup>th</sup> floor board room at 30 West Mifflin Street in Madison, Wisconsin.

#### **Analysis Prepared by the Department of Veterans Affairs**

Statutory authority: ss. 45.35 (3), Stats.

Statute interpreted: ss. 45.19, Stats.

The creation of chapter VA 17 will enable the Wisconsin department of veterans affairs to address several issues relating to the military funeral honors program. The rule will associate the amount of the stipend payment to the level of honors performed. It will also require certification of the honors team and federal reimbursement, if available, as a condition of receipt of a stipend. It will address the availability of a state honors team for burials in a state veterans cemetery. Finally, it will provide a mechanism for the provision of a special burial coin to family members.

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

This rule is not expected to have any adverse impact upon small businesses.

#### **Fiscal Estimate**

The implementation of the rule is not expected to have any fiscal impact. However, if the local units of state veterans organizations do not choose to provide full honors, it is possible that an annual savings of \$3,000 may result

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

A copy of the proposed rules and the full fiscal estimate may be obtained by contacting:

John Rosinski

Wisconsin Department of Veterans Affairs

PO Box 7843

Madison, WI 53707–7843

(608) 266–7916

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## Submittal of proposed rules to the legislature

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

**Commerce  
(CR 03–047)**

Ch. Comm 18, relating to elevators, escalators, and lift devices.

**Insurance  
(CR 03–055)**

Ch. Ins 8, relating to small employer uniform employee health application and rule.

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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.*

**Athletic Trainers Affiliated Credentialing Board  
(CR 02–152)**

An order affecting chs. AT 1, 3 and 4, relating to consulting physicians and changing “athletic trainer” with “licensee.”

Effective 1–1–04.

**Commerce  
(CR 03–011)**

An order affecting ch. Comm 48, relating to petroleum products.

Effective 1–1–04

**Natural Resources  
(CR 02–145)**

An order affecting ch. NR 520, relating to adjusting solid waste licensing and plan review fees.

Effective 1–1–04.

**Natural Resources  
(CR 03–029)**

An order affecting ch. NR 19, relating to wildlife rehabilitation licenses and activities.

Effective 1–1–04.

**Natural Resources  
(CR 03–035)**

An order affecting ch. NR 45, relating to use regulations on department properties.

Effective 1–1–04 and 3–1–04.

**Natural Resources  
(CR 03–044)**

An order affecting ch. NR 64, relating to reimbursement of eligible expenses on all–terrain vehicle trails.

Effective 1–1–04.

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