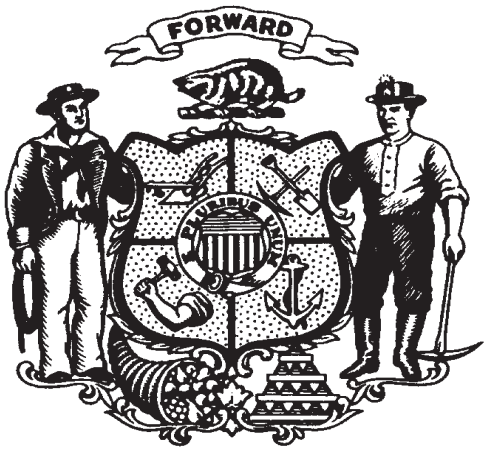
# Wisconsin Administrative Register

## No. 587

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# Emergency rules now in effect

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

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

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

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

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

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

## 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.

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|---|---|
| **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.

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

## 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:

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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.

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| **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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| **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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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.

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| **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.

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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.

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| **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.

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| **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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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.

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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.

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| **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.

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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.

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| **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.

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Without clear procedures and standards established by emergency rule, many more people may request exemption determinations, slowing the decisions on individual permit applications.

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| **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.

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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.

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| **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.

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| **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.

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

## 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.

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| **Publication Date:** | **June 30, 2004** |
| **Effective Date:** | **June 30, 2004** |
| **Expiration Date:** | **November 27, 2004** |
| **Hearing Date:** | **September 13, 2004** |

## Regulation and Licensing (2)

1. 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.

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| **Publication Date:** | **July 3, 2004** |
| **Effective Date:** | **July 3, 2004** |
| **Expiration Date:** | **November 30, 2004** |
| **Hearing Date:** | **October 1, 2004** |

2. 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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| **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.

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| **Publication Date:** | **September 17, 2004** |
| **Effective Date:** | **September 17, 2004** |
| **Expiration Date:** | **January 14, 2005** |

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.

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| **Publication Date:** | **September 17, 2004** |
| **Effective Date:** | **September 17, 2004** |
| **Expiration Date:** | **January 14, 2005** |

## 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 god 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.

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| **Publication Date:** | **November 4, 2004** |
| **Effective Date:** | **November 4, 2004** |
| **Expiration Date:** | **See 2003 Wis. Act 280** |
| **Hearing Date:** | **November 15, 2004** |

## 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.

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| **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.

# Scope statements

## Agriculture, Trade and Consumer Protection

**Subject**

The Department proposes to amend ch. ATCP 21, relating to plant pests, import controls and quarantine for Emerald Ash Borer, Sudden Oak Death and Asian Longhorned Beetle.

*Objective of the rule.* Emerald Ash Borer, Sudden Oak Death and Asian Longhorned Beetle are highly destructive foreign plant pests that threaten Wisconsin's agricultural and forest resources. This rule will establish import controls on plants, plant products, soils or other materials that are likely to harbor these pests.

**Policy Analysis**

The Department has plant inspection and pest control authority under s. 94.01, Stats. The Department may by rule impose quarantines and other restrictions in the importation and movement of serious plant pests, or items that may spread serious plant pests. The Department may regulate imports to the state, as well as movements within and from the state.

Emerald Ash Borer, *Agrilus planipennis*, is an exotic pest that endangers Wisconsin's 628 million ash trees and ash tree resources. This insect has the potential to destroy entire stands of ash, and can result in substantial losses to forest ecosystems and urban trees. Damages can cause great harm to the state's tourism and timber industries.

Sudden Oak Death, *Phytophthora ramorum*, is a harmful fungus that has been found in fifteen plant species, ranging from oaks to rhododendrons. It has caused the death of thousands of mature oaks in California and Oregon. There is no known treatment that kills the fungus without killing the plant. Oaks typically die within a few months after symptoms appear.

Asian Longhorned Beetle, *Anoplophora glabripennis*, is a serious threat to many important commercial tree species in Wisconsin. It has the potential to damage the lumber, maple syrup, nursery, commercial fruit, and tourism industries, and could cause very large economic losses.

Among other things, this rule will:

- Define coverage and key terms.
- Regulate the import or movement of specified items ("regulated items") from areas infested with Emerald Ash Borer, Sudden Oak Death or Asian Longhorned Beetle. This rule will focus on "regulated items" that have a substantial risk of carrying these destructive pests.
- Provide exemptions for items that have been inspected and certified by duly authorized pest control officials.
- Make technical changes in existing plant pest rules, as necessary.

**Entities affected by the rule**

This rule will provide important protection for Wisconsin resources and industries. It will impose restrictions on some buyers, sellers and shippers of regulated items originating from infested areas. For example, this rule could affect the import, intrastate movement and export of certain nursery and lumber products from infested areas. It may all affect property owners in infested areas.

**Policy Alternatives**

If DATCP and APHIS do nothing, the Emerald Ash Borer, Sudden Oak Death and Asian Longhorned Beetle will spread unimpeded into this state, and throughout the state. This will cause grave damage to Wisconsin's resources and economy.

Although APHIS could take federal action to prevent the spread of these plant pests, federal quarantines would likely be statewide in nature. That could cause unnecessary disruption of Wisconsin's economy.

There is no guarantee that DATCP rules will completely prevent the import and spread of these pests, but the rules offer the best available control alternative at this time. The Department can design its rules to achieve the greatest impact without unnecessary cost or disruption to Wisconsin citizens and affected industries.

**Comparison to federal regulations**

Under the federal Plant Protection Act, the Animal and Plant Health Inspection Service of the U.S. Department of Agriculture (USDA−APHIS) has the responsibility for excluding, eradicating and controlling serious plant pests, including the Emerald Ash Borer, Sudden Oak Death and the Asian Longhorned Beetle. If an affected state does not have a quarantine program that meets APHIS standards, APHIS may quarantine the entire state.

A statewide quarantine would be unnecessarily restrictive and would obstruct interstate trade. This rule will establish more specifically targeted controls, consistent with APHIS standards, in order to protect Wisconsin resources and avoid blanket statewide federal quarantines.

**Statutory authority**

Sections 93.07 and 94.01, Stats.

**Staff time required**

The Department of Agriculture, Trade and Consumer Protection estimates that it will use approximately 0.1 FTE staff time to develop these rules. This includes time required for investigation and analysis, rule drafting, preparing related documents, coordinating advisory committee meetings, holding public hearings, and communicating with affected persons and groups. The Department will use existing staff to develop this rule.

## Agriculture, Trade and Consumer Protection

**Subject**

The Department proposes to revise ch. ATCP 156, relating to certified seed potatoes.

*Objective of the rule.* Update current rules regulating the certification and transport of Wisconsin certified seed potatoes. Updates are most necessary in those portions of the current rule relating to the use of biotechnology and seed potato transportation.

**Policy Analysis**

DATCP and the College of Agricultural and Life Sciences at the University of Wisconsin collaborate on the administration of the Wisconsin Seed Potato Certification Program. The minimum standards and other regulations are contained in ATCP 156, Wis. Adm. Code.

Seed potatoes are potatoes that farmers plant in order to propagate mass quantities of potatoes for commercial consumption. Seed potatoes are tubers and not true seed, and therefore, once a seed potato is planted, it regenerates its parent plant rather than growing into a genetically unique organism. Each new generation of potato plants is more and more likely to pass pathogens and defects from one generation to the next.

The certification process subjects seed potatoes in Wisconsin to rigorous inspection and grading criteria. It requires that pathogen loads be kept to a minimum and enlists the expertise of UW−Madison faculty and staff to produce disease−free seed potatoes that Wisconsin growers purchase and propagate in large quantities. DATCP in conjunction with UW−Madison then certify the quality of the seed potatoes produced by conducting field inspections and grading the seed potatoes based on their quality. Once certified, these seed potatoes can be sold at a premium price to commercial potato farmers who can make efficient production decisions based on full knowledge of the quality of the seed potatoes purchased.

DATCP has adopted rule under ch. ATCP 165, Wis Adm. Code, to regulate the certification, transport, and sale of certified seed potatoes. DATCP proposes to revise its current rules to:

- More adequately address the availability of biotechnology in making more accurate quality determinations and in providing a way to determine the extent of the presence of pathogens so as to avoid the unnecessary revocation of certification or destruction of crops.
- Allow for changes in the mode of transport of seed potatoes that appreciates current market dynamics while not compromising on quality determinations of the seed potatoes being traded.
- Other technical changes as necessary.

**Entities affected by the rule**

Seed potato producers are directly affected by both the current rule and the proposed modifications. Customers of these producers – farms that grow potatoes for consumption − are secondarily affected. Both groups benefit from clear and scientifically up−to−date regulatory standards.

**Policy Alternatives**

No change. If DATCP takes no action, current rules will remain in effect. This may result in unnecessary financial loss to growers because the current rule does not recognize advances in testing techniques that have occurred since the rule was first promulgated. Enforcing decisions to revoke certification may be difficult because the costs and benefits associated with the presence of various pathogens are inappropriately addressed by the current regulations.

**Comparison to federal regulations**

There are no federal programs (current or proposed) that compare with Wisconsin's seed potato certification program. There are some states (most notably: Minnesota, California, Maine, North Dakota and New York) that have programs similar to Wisconsin's seed potato certification program.

**Statutory authority**

Sections 93.07, 93.09 and 100.14, Stats.

**Staff time required**

The Department of Agriculture, Trade and Consumer Protection estimates that it will use approximately 0.4 FTE staff to develop this rule. This includes time required for investigation and analysis, rule drafting, preparing related documents and holding public hearing. The Department will use existing staff to develop this rule.

## Agriculture, Trade and Consumer Protection

**Subject**

Animal health, including aquaculture, the control of Johne's disease in cattle and goats, animal health fees and technical rule changes.

*Objective of the rule.* This rule will modify current animal health rules. Among other things, this rule may address:

- Fish health, and the import and movement of live fish.
- Johne's disease control, including the reimbursement of testing costs and the alignment of Wisconsin's program with the federal program.
- Adjust animal health fees, as necessary, to address a potential deficit in DATCP's animal health program revenue accounts.
- Technical changes to current animal health rules.

**Policy Analysis**

Aquaculture

DATCP regulates fish health, including fish farms, fish imports and fish movement, under s. 95.60, Stats. Current rules focus on fish farms, rather than live fish dealers. Fish dealers buy from fish farms or harvest from the wild, and transport fish for sale to fish farms, bait shops, or lake associations for stocking.

Fish dealer activities may have a significant impact on fish health, yet they are not covered by the same health requirements as fish farms. This could compromise the health of the fish industry and waters of the state.

Unlike livestock transport vehicles, there are no vehicle identification requirements for vehicles that transport live fish. This makes it difficult to identify transport vehicles and enforce fish health regulations.

Among other things, this rule will:

- Regulate fish dealers to protect fish health and waters of the state.
- Regulate the import and movement of fish, including imports by fish dealers. This may include identification requirements for fish transport vehicles, changes in fish import permit requirements, and changes in the fish import permit process.

Johne's Disease Control

Johne's disease is a serious disease of cattle and goats, and is a major concern for Wisconsin's dairy industry. DATCP administers a voluntary Johne's disease testing program for cattle and goats under s. 95.197, Stats. Herd owners may have their herds tested and classified for Johne's disease, and may receive reimbursement for laboratory testing costs.

Individual herd management plans are important for a successful Johne's disease control program. The state program currently focuses on testing and does not have any herd management requirements. Although testing can be an important part of a control program, testing alone will not control Johne's disease.

A new national Johne's disease program focuses on herd management, with or without testing. Federal funding is based on the state's level of participation in the national program. Failure to align with the national program may jeopardize future federal funding for Johne's disease control

in Wisconsin. Federal funding currently helps to support DATCP staffing for Johne's disease, training for private veterinarians, and Johne's disease testing.

Among other things, this rule may:

• Align Wisconsin's Johne's disease program with the national program.

• Restructure the administration of financial assistance for Johne's disease testing.

• Address testing and sampling protocols, as necessary.

• Require permanent identification of Johne's positive animals.

Animal Health Fees

DATCP currently charges fees for animal health licenses, registrations and forms. DATCP may revise fees by rule. This rule may revise fees, as necessary, to address a potential deficit in animal health program revenue accounts.

Technical Changes

This rule may make technical changes to a number of current animal health rules.

**Comparison to federal regulations**

Currently, there are no federal fish health regulations for fish dealers. All fish health regulations are administered by states. Other states in the North Central Region have requirements for fish dealers, haulers and their vehicles, although these regulations vary considerably. The federal Lacey Act regulates movement of injurious species of fish (and other animals), but not fish diseases.

The federal government recently established a voluntary bovine Johne's disease control program. Federal funds are provided to states whose programs align with the national program. Failure to align Wisconsin's program with the national program may result in a loss of federal funding (see above).

Adjacent states have adopted the national program, which focuses on herd management and education. Illinois quarantines herds with a positive test until the herd has entered into the state's Johne's disease control program.

**Entities affected**

The rule will provide important protection for Wisconsin resources and industries. It will impose restrictions on some buyers, sellers and haulers of fish and possibly add fees for some permits and certificates. It will change the requirements that cattle and goat producers must meet in order to receive reimbursement for Johne's disease testing. Overall, the rule changes will benefit the health of Wisconsin's fish and livestock.

## Policy alternatives

Aquaculture

If DATCP takes no action, current rules would remain in effect. Current rules focus on fish farms rather than fish dealers. Failure to regulate fish dealers (and imports by fish dealers) may risk introduction of fish diseases and may put fish farms at a competitive disadvantage.

Johne's Disease Control

If DATCP takes no action, current rules will remain in effect. That may result in inconsistency with the national Johne's disease program, and may jeopardize federal funding for Wisconsin's program. Rule changes can ensure consistency, and can improve the administration of reimbursement payments to livestock operators.

**Statutory alternatives**

None at this time

**Staff time required**

DATCP estimates that it will use approximately 0.50 FTE staff to develop this rule. This includes time required for investigation and analysis, rule drafting, preparing related documents, coordinating advisory committee meetings, holding public hearings and communicating with affected persons and groups. DATCP will use existing staff to develop this rule. The department may also need additional personnel to administer the programs.

**DATCP Board authorization**

DATCP may not begin drafting this rule until the Board of Agriculture, Trade and Consumer Protection (Board) approves this scope statement. The Board may not approve this scope statement sooner than 10 days after this scope statement is published in the Wisconsin Administrative Register. If the Board takes no action on the scope statement within 30 days after the scope statement is presented to the Board, the scope statement is considered approved. Before DATCP holds public hearings on this rule, the Board must approve the hearing draft. The Board must also approve the final draft rule before the department adopts the rule.

## Natural Resources

**Subject**

The Bureau of Wildlife Management is proposing rules affecting chs. NR 1, 10, 12, 16, 17, 19 and 27, relating to wildlife management

*Objective of the rule.* These rule changes are minor and non−controversial in nature. The intent of these rule changes is to provide clarification to existing rules, simplify regulations, and update administrative code language made obsolete or unnecessary due to technological advancements. The rules specifically help to clarify administrative aspects of the wildlife damage abatement and claims program. The rules also clarify regulations associated with the use and design of cable restraints. They provide for flexibility for deer that are incorrectly tagged during special hunts. The proposed rules update code language pertaining to the administration, sale and submittal of licenses and special applications. Finally, there are a number of minor changes to the sections of code relating to licenses issued under the authority of ch. 169, Stats., waterfowl hunting definitions, muzzleloaders, crossbows, group deer hunting, trapping methods and tagging, turkey tagging, deer registration and tagging.

**Policy Analysis**

There are no significant policy issues associated with this rule package. Every year the department promulgates a rule order that contains changes that are considered to be minor, non−controversial. This package known as the annual housekeeping order helps to correct inaccuracies and simplify existing regulations.

**Entities affected by the rule**

Although these rules relate to deer, bear, turkey as well as various captive wildlife licensees, because of the corrective and non−controversial nature of these changes no groups will be significantly impacted.

**Comparison to federal regulations**

Federal regulations allow states to manage the wildlife resources located within their boundaries provided they do not conflict with regulations established in the Federal Register. None of these rule changes violate or conflict with the provisions established in the Federal Code of Regulations.

**Statutory authority**

Sections 29.014 and 29.889 (2), Stats.

**Staff time required**

204 hours.

## Natural Resources

**Subject**

The Bureau of Wildlife Management is proposing rules affecting chs. NR 10, 12, 15 and 45 relating to hunting, trapping, agricultural damage and use of public lands. These rule changes are proposed for inclusion on the 2005 Spring Hearing questionnaire. These proposals include:

- Establishing a deer hunting season at Kohler−Andrae State Park
- Establishing a "no entry wildlife refuge" at the Turtle Valley Wildlife Area
- Increasing pheasant hunter access fees at the Richard Bong Recreational Area
- Creating consistent standards for body−gripping type traps (conibear size restrictions)
- Transferring the authority for establishment of the deer season on the Apostle Islands to the National Park Service, and allowing the Park Service to limit access to the Apostle Islands for trapping.
- Requiring the owner to identify tree stands used on state owned lands.
- Prohibiting the use of electronic turkey decoys for turkey hunting.
- Prohibiting the tagging, collaring or marking and release of wild animals without the Department's permission
- Eliminating the bear hunting "no dog zone" in bear management zone A.
- Creating a subzone in bear management zone C where the use of dogs would be allowed
- Eliminating the requirement for bear hunters to declare willingness to their interest to participate in agricultural damage and nuisance situations and modification of the application deadline.
- Allowing "Long Term" Class B disabled permit holders to participate in disabled hunts
- Allowing landowners to hunt on lands open to disabled hunts

*Objective of the rule.* To offer deer, bear and disabled hunters more hunting opportunities and to simplify application procedures and regulatory requirements. In addition, these rules include provisions to effectively manage wildlife populations and to assure that hunters and trappers are offered a quality hunting experience.

**Policy Analysis**

A majority of the rule changes included in this order do not deviate from current Department policy on the management of wildlife, hunting and trapping. The deer season proposed for Kohler−Andre State Park is consistent with the seasons established at other parks where hunting is feasible and practical. Deer hunting has and continues to be an effective tool for managing deer populations in our state parks. It also allows for increased use and recreational opportunities for hunters in these parks. Another issue related to state properties is the use of tree stands. It is currently legal to use portable tree stands on state property provided they are removed at the end of hunting hours daily. To assure that the requirement to remove these daily is complied with, the Department is proposing that these devices are marked in a similar way as waterfowl blinds or ice fishing shelters are currently required to be marked. The No−entry wildlife refuge proposed for Turtle Valley will allow for a resting area for waterfowl during the duck hunting season as do other refuges established around the state. The managing of the deer seasons and access to the Apostle Islands for trapping is also consistent with the standards and agreements established at other Federal properties in the state, such as Fort McCoy.

Bear hunting with trailing dogs continues to be an effective method in managing bear populations in the state. In addition, it is a recreational opportunity and hunting method that continues to flourish in this state. Last year the Department removed a "no−dog" hunting area in portions of Lincoln, Langlade and Oneida counties. This year at the request of bear hunters by way of last year's Spring Hearings, we again propose the elimination of the "no−dog" hunting zone which existed in zone B in the western portions of Lincoln county and eastern portions of Taylor and Price counties. Additionally, at the request of bear hunters in far western Wisconsin, by way of another 2004 Spring Hearing advisory question the Department proposes the creation of a subzone in zone C that would allow the use of dogs south of Hwy. 8 in portions of Dunn, St. Croix, Polk, Barron and Chippewa counties.

The Department continues to strive to offer those hunters that are faced with the challenges of a disability opportunities to participate in hunting. This rule package contains two proposals that deviate from past department policies. First, the department has not allowed those with temporary disabilities (Class B) to participate in special hunts that those with permanent disabilities (Class A) and sight disabilities (Class C) can participate in. The department is proposing to lift this restriction to allow more individuals, specifically those that have a longer−term but not a permanent disability, the opportunity to participate in the special deer and turkey hunts for those with a disability. Secondly, it has been a policy that on private lands where disabled hunts are scheduled no other hunting is allowed. This rule change would make it an option for those landowners who host a disabled hunt, to small game or deer hunt on their property.

**Entities affected by the rule**

Deer, bear, turkey, waterfowl, and pheasant hunters, trappers, landowners, non−hunting outdoor enthusiasts, state park users and disabled hunters will all be affected by these rules.

**Comparison to federal regulations**

Federal regulations allow states to manage the wildlife resources located within their boundaries provided they do not conflict with regulations established in the Federal Register. None of these rule changes violate or conflict with the provisions established in the Federal Code of Regulations.

**Statutory authority**

Sections 1.026 (1) (b), 23.09 (2) (b), 23.091, 29.014, 29.089 (3), 29.091, 29.193 (2) and 29.889 (2), Stats.

**Staff time required**

265 hours.

## Natural Resources

**Subject**

Rules relating to promulgation of a methodology for placing waters on the state's Impaired Waters List (303(d) List).

**Policy Analysis**

Periodically, every state is required to submit to EPA its list of impaired waters. This list is generally referred to as the

303(d) list. EPA recently approved the 2004 list for Wisconsin. The designation of a water as impaired carries a regulatory expectation for no increase in future pollution loads to that water body. Included with the list is a prioritization of the waters based on a potential timetable for completion of a Total Maximum Daily Load (TMDL). The development of a TMDL will identify where additional pollutant reductions are needed.

Currently, waters are placed on the 303(d) list in accordance with a guidance document. The objective of this rule is to codify that process and to provide methodology where a water quality criterion (a key element of a water quality standard) is not clearly established for a specific pollutant. The code will identify the protocols of data collection for assessing whether a water body is not meeting water quality standards or its designated use. The intent is to avoid having anecdotal information or minimal data result in a decision to add a water body to the list. A similar process will be needed to determine what constitutes reasonable data to remove a water body from the list. The alternative to providing a codified methodology would be to continue using the current guidance or to follow EPA guidance, both of which are less substantial and more subjective than needed for consistent application across the state.

The current guidance will be reviewed and expanded where appropriate. From this guidance a draft code will be written.

**Entities affected by the rule**

Parties who have an interest in, or will be affected by, this code will be invited to have representatives on an advisory committee during the rule development process including, at a minimum, municipalities, environmental organizations, and the building industry.

**Statutory authority**

The decision to establish a process in code is not due to a state statutory requirement. The need to provide a list of impaired waters has been part of the Clean Water Act since its inception. It wasn't until the late 1980s that EPA required submittal of the first list. Since then a number of national court cases determined the direction EPA would take with regard to the importance and use of this list.

**Staff time required**

The process should take two years to final rule promulgation.

## Veterans Affairs

**Subject**

The Department proposes to amend chs. VA 4 and 12, relating to the home improvement and personal loans programs.

*Objective of the rule.* Certain requirements imposed under the existing rules will be modified so as to streamline the application procedure. Underwriting criteria will be modified to assure that the loans are more secure. The objective is twofold. The application procedure will be more user−friendly, while assuring that higher quality loans will be made to provide revenue for the veterans trust fund.

**Policy Analysis**

The Department monitors its programs routinely. In the case of its loan programs, it reviews current practice to assure that the procedure is not too cumbersome for the applicant and that the loans ultimately made are likely to be repaid. The most recent reviews indicate that certain modifications to the loan programs would assist the department in accomplishing these objectives.

**Entities affected by the rule**

The rule will affect applicants for the home improvement and personal loan programs.

**Comparison to federal regulations**

The home improvement and personal loan programs are operated under the authority of state law. There are no existing or proposed federal regulations that address the activities to be regulated by the rule.

**Statutory authority**

Sections 45.35 (3), 45.356 (7), and 45.73, Stats.

**Staff time required**

Approximately 40 hours of Department of Veterans Affairs staff time will be needed to promulgate the rules.

## Veterans Affairs

**Subject**

The Department proposes to amend ch. VA 13, relating to the veterans assistance program.

*Objective of the rule.* The Department seeks to expand the veterans assistance program to allow limited funding for at risk veterans that would enable the veteran to reside at either the Department's southeastern Wisconsin community−based residential (CBRF) and residential care apartment complex (RCAC) facilities.

**Policy Analysis**

Under s. 45.37 (18), Stats., eligible persons may reside at the Department's CBRF and RCAC facilities in southeastern Wisconsin if the person has sufficient income and resources, and applies those resources, to cover the cost of providing care to those individuals. Under s. 45.357, Stats., the Department has broad authority to provide assistance to eligible persons who served in the U. S. Armed Forces who have needs based upon homelessness, incarceration, or other circumstances as defined by rule. The Department is authorized to designate the assistance available under the statutory language. Coordinating the Department's authority to provide services to these individuals with its goal of increasing the census at the southeastern facilities would accomplish several worthwhile goals of the Department.

**Entities affected by the rule**

The rule will affect applicants for the veterans assistance program.

**Comparison to federal regulations**

The state veterans' cemeteries are operated under the authority of state law. There are no existing or proposed federal regulations that address the activities to be regulated by the rule.

**Statutory authority**

Section 45.357 (1), Stats.

**Staff time required**

Approximately 25 hours of Department of Veterans Affairs staff time will be needed to promulgate the rules.

# Submittal of rules to legislative council clearinghouse

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

## Insurance

**Rule Submittal Date**

On October 28, 2004, the Office of the Commissioner of Insurance submitted a proposed rule to the Legislative Council Rules Clearinghouse.

**Subject Matter**

The proposed rule−making order affects ch. Ins 3, relating to Medicare supplement, replacement, cost−sharing, select, Advantage and Medicare Part D prescription drug plans.

**Agency Procedure for Promulgation**

The date for the public hearing is November 30, 2004.

**Contact Information**

A copy of the proposed rule may be obtained from the WEB sites 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 Julie E. Walsh at (608) 264−8101 or e−mail at *Julie.Walsh@oci.state.wi.us* in the OCI Legal Unit.

## Regulation and Licensing

**Rule Submittal Date**

On November 1, 2004, the Department of Regulation and Licensing submitted a proposed rule to the Legislative Council Rules Clearinghouse.

**Subject Matter**

Statutory Authority: ss. 227.11 (2), 452.07, 452.10 (4), 452.12 (3), 452.133 and 452.135, Stats.

The proposed rule−making order relates to supervision by real estate brokers.

**Agency Procedure for Promulgation**

A public hearing is required and will be held on December 2, 2004 at 10:30 a.m. in Room 179A, 1400 East Washington Avenue, Madison, Wisconsin, 53702.

**Contact Person**

Pamela Haack, Paralegal

Office of Administrative Rules

(608) 266−0495

Pamela.haack@drl.state.wi.us

## Transportation

**Rule Submittal Date**

On October 29, 2004, the Department of Transportation submitted a proposed rule to the Legislative Council Rules Clearinghouse.

**Subject Matter**

The proposed rule−making order affects 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 scheduled for December 1, 2004.

The Division of Transportation Infrastructure Development, Bureau of Highway Operations, is the organizational unit responsible for promulgation of the proposed rule.

**Contact Information**

Julie A. Johnson, Paralegal

608 266−8810

## Veterans Affairs

**Rule Submittal Date**

On November 1, 2004 the Wisconsin Department of Veterans Affairs submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse amending s. VA 14.02 (1) (a) and (b), 14.02 (2) and creating s. VA 14.02 (1) (c) of the Wisconsin Administrative Code.

The proposed rule relates to the determination of interment fees and assessments at the state veterans cemeteries.

**Subject Matter**

The proposed rule changes are intended to provide the department flexibility in updating the interment fees and burial container assessments for burials at the state veterans cemeteries. The interment fees were previously set in 1996. Costs have increased. The proposed changes will enable the department to periodically reset the interment fees for a dependent child, spouse, or surviving spouse of an eligible veteran as well as the assessment made against a funeral director for the applicable burial chamber. Additionally, the proposal enables the department to charge a disinterment fee for the removal of remains buried in the cemeteries. Finally, the proposal enables the department to waive the fee for a spouse or surviving spouse who resides at a state veterans home at the time of death whenever the estate is insufficient to pay the fee.

There is no current or pending federal regulation that has an impact on this issue. There are no similar rules in adjacent states. However, fees are set by some states outside of the rulemaking process. This rule has no regulatory aspect, has no effect upon small businesses, nor any significant impact upon the private sector.

**Agency Procedure for Promulgation**

A public hearing is required and will be held on December 3, 2004. The Office of the Secretary is primarily responsible for preparing the rule.

Contact Person:

John Rosinski
Chief Legal Counsel
Telephone (608) 266−7916

## Veterinary Examining Board

**Rule Submittal Date**

On November 1, 2004, the Veterinary Examining Board submitted a proposed rule to the Legislative Council Rules Clearinghouse.

**Analysis**

Statutory Authority: ss. 15.08 (5) (b), 227.11 (2) and 453.03, Stats.

The proposed rule−making order relates to renewal, conduct and continuing education for veterinarians and veterinary technicians.

**Agency Procedure for Promulgation**

A public hearing is required and will be held on December 1, 2004 at 11:30 a.m. in Room 179A, 1400 East Washington Avenue, Madison, Wisconsin, 53702.

**Contact Person**

Pamela Haack, Paralegal
Office of Administrative Rules
(608) 266−0495
Pamela.haack@drl.state.wi.us

## Workforce Development

**Rule Submittal Date**

On October 29, 2004, the Department of Workforce Development submitted a proposed rule to the Legislative Council Rules Clearinghouse.

**Subject Matter**

The proposed rule−making order affects ch. DWD 12 and 56, relating to public assistance overpayment collection.

**Agency Procedure for Promulgation**

A public hearing is required and will be held on November 29, 2004.

The Division of Workforce Solutions is the organizational unit primarily responsible for promulgation of the proposed rule.

**Contact Information**

Elaine Pridgen
608 267−9403
email: elaine.pridgen@dwd.state.wi.us

# Rule−making notices

## Notice of Hearing

### Insurance

### [CR 04−121]

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 s. Ins 3.39, Wis. Adm. Code, relating to Medicare supplement, replacement, cost−sharing, select, advantage and Medicare D prescription drug plans.

**Hearing Information**

| | |
|---|---|
| Date: | **November 30, 2004** |
| Time: | 1:00 p.m., or as soon thereafter as the matter may be reached |
| Location: | Office of the Commissioner of Insurance<br>2nd Floor<br>125 South Webster Street<br>Madison, Wisconsin |

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 14th day after the date for the hearing stated in this Notice of Hearing.

Written comments should be sent to:

Julie E. Walsh
Legal Unit − OCI Rule Comment for Rule Ins 3.39
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:** Sections 185.983 (1m), 600.03, 601.01 (2), 609.01 (1g) (b), 625.16, 628.34 (12), 628.38, 631.20 (2), 632.73 (2m), 632.76 (2) (b), 632.81, 632.895 (6) and (9), Stats.

**2. Statutory authority:** Sections 600.03 (28p), 601.41, 628.34, and 632.81, Stats.

**3. OCI's authority:** The Centers For Medicare and Medicaid (CMS) has delegated through the National Association of Insurance Commissioners, (NAIC) the function of regulating insurers offering Medicare supplement, replacement, cost, select and Medicare Part D prescription drug plan insurance products in accordance with NAIC Model laws. This rule replaces the use of the name Medicare + Choice with Medicare Advantage, due to a federal change in the name of the program. The rule implements the requirement that by January 1 2006, Medicare supplemental, replacement, cost−sharing, select and Advantage plans cannot offer a Medicare Part D prescription drug benefit, except as permitted by s. 632.895 (6), Stat., due to the fact that Wisconsin is one of three states that has been granted a waiver from being required to offer the standard plans as described by CMS.

**4. Related statutes or rules:** The Medicare supplement, replacement, cost−sharing, select plans are currently regulated through s. Ins 3.39, Wis. Adm. Code including the appendices. This rule modifies s. Ins 3.39 and several appendices in order to comply with the federal and NAIC requirements related to the MMA to the extent Wisconsin need comply due to the status of being a waiver state. Section 632.895 (6), Stats., requirement for prescription drugs remain a mandated benefit for insurers offering Medicare supplement, replacement, cost−sharing, and select plans since Wisconsin is a waiver state and as such, is permitted to continue requiring this benefit.

**5. Plain language analysis and summary:** The federal Medicare Prescription Drugs, Improvement and Modernization Act (MMA) of 2003 was signed into law on December 8, 2003. It provided that the National Association of Insurance Commissioners (NAIC) had nine months to make changes to the NAIC Medicare Supplement Model Regulation. The amendments to the NAIC Model Regulation were adopted September 8, 2004.

The MMA created Medicare Part D for outpatient prescription drug coverage and made changes to basic Medicare supplement, Medicare replacement and Medicare select policies (Medigap policies). Medigap policies are policies purchased by Medicare beneficiaries to cover Medicare deductibles and selected services that Medicare does not cover. Medicare establishes eligibility rules, benefits and coverage limits. Medigap policies are designed to supplement only those benefits covered by the Medicare program for Medicare eligible beneficiaries.

The proposed rule incorporates the NAIC Model Regulation to Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act into Wisconsin's current Medicare supplement rules. The proposed rule would create two high deductible Medicare supplement policies basic Medicare supplement policies and Medicare select policies. It would revise the standards for Medigap policies to eliminate outpatient prescription drug coverage for those who enroll in Medicare Part D; and prohibit the sale of outpatient prescription drug coverage in Medigap policies after December 30, 2005, when Medicare Part D comes into effect, except to the extent required under s. 632.895, Stats.

The proposed rule allows individuals currently covered by Medigap policies that provide outpatient prescription drug coverage the opportunity to maintain their current coverage. However, the federal MMA provides that insured individuals who choose to maintain existing coverage with the drug benefit will be subject to a penalty if they decide to apply for Medicare Part D coverage after January 1, 2006.

Failure to amend the current rule will mean that persons turning 65 or qualifying for Medicare due to disability will not be able to purchase in Wisconsin coverage that supplements payment by Medicare.

In order to meet the deadlines required by the MMA and to implement the requirements of the NAIC Model regulation, the OCI has created a task list of activities necessary to ensure that Wisconsin continues to maintain a competitive Medigap insurance market for its Medicare beneficiaries. In addition to drafting amendments to s. Ins 3.39, Wis. Adm. Code, and assisting with the timely adoption of these amendments, implementing the proposed rule will require that the OCI review and approve riders and new Medigap policy forms. To

assist insurance companies in filing riders and policy forms, the OCI will edit its existing Medigap policy form checklist and publish the revised checklist on its website. The OCI will draft bulletins for insurers explaining the requirements for compliance and policy form approval. The OCI will also publish information in "*WIN*" (Wisconsin Insurance Newsletter), its agents' newsletter, and produce periodic additional information for agents as deemed necessary.

To assist Medigap insurance consumers, the OCI will edit its "*Wisconsin Guide to Health Insurance for People with Medicare,*" and redraft its "*Medicare Supplement Insurance Approved Policies*" booklet to include new policies that meet the requirements of During 2005, the OCI will also develop and publish consumer information, and make presentations to consumers advocacy organizations, insurance agents, trade organizations and insurance companies. The OCI has assigned three insurance examiners and a insurance supervisor with the responsibility for reviewing and approving Medigap policy forms, reviewing advertising materials, for drafting consumer, insurer and agent information, and for making presentations to Medigap consumers, agents, insurers and other interested parties.

**6. Summary of and comparison with existing federal regulations:** The Medicare program was created in 1965 under the Title XVIII of the Social Security Act. Medicare is the national health insurance program for people age 65 or older, some people under age 65 with disabilities, and people with end−stage renal disease (ESRD).

The Omnibus Budget Reconciliation Act (OBRA) of 1990 required that Medigap policies sold to Medicare beneficiaries conform to 10 standardized benefit packages, identified as Plans A through J. States were required to adopt the federal standards for Medigap policies available to their Medicare beneficiaries

Wisconsin was one of three states that received a waiver from the federal standardization regulations regarding Medicare supplement insurance policies. Wisconsin's Medicare beneficiaries were allowed to purchase Medigap policies that consisted of a basic benefit plan with optional riders.

Federal legislation called the Medicare Prescription Drugs, Improvement and Modernization Act (MMA) of 2003 was signed into law on December 8, 2003. It provides significant changes to the Medicare program, including creating Medicare Part D for outpatient prescription drug coverage and requiring changes to Medicare supplement policies that are regulated by state insurance departments. The MMA also required that the National Association of Insurance Commissioners (NAIC) amend its NAIC Model Regulation to Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act by September 8, 2004.

Specifically, the MMA required that the NAIC Model Regulation be revised to include the following:

1. Add two new plans called K and L to the standard Medigap plans A through J,

2. Revise the standard H, I and J Medigap plans to eliminate prescription drug coverage for those who enroll in Medicare Part D,

3. Prohibit the sale of outpatient prescription drug coverage in Medigap policies after December 30, 2005, when Medicare Part D becomes comes into effect,

4. Make any other changes to the NAIC Model Regulation that might be required as a result of the federal legislation,

The NAIC Model Regulation to Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act was adopted by the NAIC on September 8, 2004.

Wisconsin's Medicare supplement rule, s. Ins 3.39, Wis. Adm. Code, currently requires that Medigap policies include a catastrophic coverage for 80% of outpatient prescription drug charges that exceed $6,250 per calendar year. In addition, three Medigap policies offer an optional outpatient prescription drug rider.

The proposed rule is based on the NAIC Model Regulation as adopted September 8, 2004. The proposed rule:

1. Creates two new high deductible basic Medicare and Medicare select policies,

2. Eliminates outpatient prescription drug coverage under basic Medicare supplement, Medicare replacement, and Medicare select insurance plans,

3. Prohibits the sales of outpatient prescription drug coverage under Medicare supplement, Medicare replacement, and Medicare select insurance plans after December 30, 2004, except to the extent required under s. 632.895, Stats., and

4. Makes other changes to the proposed rule as a result of the federal legislation.

**7. Comparison of similar rules in adjacent states:**

Iowa: Iowa makes available to its Medicare beneficiaries Medigap policies A through J as required by the Medicare reform provisions under OBRA 1990 and the prior NAIC Model Regulation. Iowa will have to amend its regulations to create new Medigap plans K and L, and to eliminate prescription drug coverage under its standard H, I and J Medigap policies for those who enroll in Medicare Part D. It also will have to amend its regulations to include the prohibitions and other changes under MMA.

Illinois: Illinois makes available to its Medicare beneficiaries Medigap policies A through J as required by the Medicare reform provisions under OBRA 1990, and the prior NAIC Model Regulation. Illinois will have to amend its regulations to create new Medigap plans K and L, and to eliminate prescription drug coverage under its standard H, I and J Medigap policies for those who enroll in Medicare Part D. It also will have to amend its regulations to include the prohibitions and other changes under MMA.

Minnesota: Minnesota, like Wisconsin, received a waiver from the federal standardization regulations. Minnesota makes available to its Medicare beneficiaries two standardized policies (basic and extended basic), both of which may include optional riders to cover prescription drugs. Minnesota will have to amend its Medicare supplement regulations to create two cost−sharing (high deductible) plans, and eliminate the optional riders that cover prescription drugs. It also will have to amend its regulations to include the prohibitions and other changes under MMA.

Michigan: Michigan makes available to its Medicare beneficiaries Medigap policies A through J as required by the Medicare reform provisions under OBRA 1990, and the prior NAIC Model Regulation. Michigan will have to amend its regulations to create new Medigap plans K and L, and to eliminate prescription drug coverage under its standard H, I and J Medigap policies for those who enroll in Medicare Part D. It also will have to amend its regulations to include the prohibitions and other changes under MMA.

**8. Factual data and analytical methodologies:** The Medicare Prescription Drugs, Improvement and Modernization Act (MMA) of 2003 required that the NAIC amend the NAIC Model Regulation to Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act.

The NAIC Senior Issues Task Force drafted amendments to the NAIC Model Regulation that were adopted by the NAIC on September 8, 2004. Prior to adoption, the

amendments to the NAIC Model Regulation were subject to review and comment by state insurance departments, insurance companies, insurance trade groups, consumer advocates, and the CMS.

The CMS is the federal agency responsible for administering the Medicare program. CMS data indicates that Medicare currently covers 40 million Americans, 806,000 of whom are Wisconsin residents. An estimated 27 percent of Medicare beneficiaries are covered by Medigap policies.

Information collected by the OCI indicates that 40 insurance companies offer basic Medicare supplement, Medicare replacement and Medicare select (Medigap) policies to Wisconsin consumers eligible for Medicare due to age or disability. In addition, there are 25 insurance companies that have Medigap policyholders although the companies no longer market Medigap coverage in Wisconsin. At year end 2003, there were 308,875 Wisconsin Medicare beneficiaries with Medigap policies. The majority of these Wisconsin Medicare beneficiaries have Medigap policies that will be affected by the Medigap reforms under the MMA.

A 2000 report by CMS, Office of Research, Development, and Information, based on 1999 Medicare data indicates that Medicare paid 53% of the health care expenses of persons 65 or over, and private health insurance, including Medicare supplement policies paid 12% of these health care expenses. The report indicated that overall annual medical expenses per Medicare beneficiaries equaled $9,573. The involuntary withdrawal from the Medigap market by insurance companies due to Wisconsin's failure to amend its Medicare supplement rule will significantly affect payment of medical expenses to Wisconsin hospitals and providers.

**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:** OCI reviewed financial statements and other reports filed by life, accident and health insurers and determined that none qualify as small businesses.

Wisconsin currently has 40 insurance companies offering basic Medicare supplement, Medicare replacement and Medicare select insurance plans. None of these insurers meet the definition of a small business.

**10. Fiscal impact on the private sector:** The proposed rule will not significantly impact the private sector. Insurers offering Medigap policies (basic Medicare supplement, Medicare replacement, and Medicare select policies) will incur costs associated with developing new Medigap policies and marketing materials, mailing riders and explanatory materials to existing policyholders and reprogramming claim processing systems. However, these costs are offset by the insurers' ability to continue offering Medigap policies to Wisconsin consumers.

The MMA prohibits insurance companies and insurance agents from marketing in Wisconsin current Medigap policies after December 31, 2005. Failure to amend s. Ins 3.39, Wis. Adm. Code, will mean that Wisconsin Medicare beneficiaries will not have access to coverage that supplements Medicare benefits.

**11. Effect on small business:** This rule does not have a significant impact on regulated small businesses as defined in s. 227.114 (1), Wis. Stat. OCI maintains a database of all licensed insurers in Wisconsin. Included with that information required to be submitted to OCI, the database includes information submitted by the companies related to premium revenue and employment. In an examination of this database, OCI identified that 40 insurance companies offer basic Medicare supplement, Medicare replacement and Medicare select (Medigap) policies to Wisconsin consumers eligible for Medicare due to age or disability and none of those companies qualify by definition as a small business. In addition, there are 25 insurance companies that have Medigap policyholders although the companies no longer market Medigap coverage in Wisconsin, again, none of these 25 companies qualify by definition as a small business.

**Fiscal Estimate**

There will be no state or local government fiscal effect.

**Initial Regulatory Flexibility Analysis**

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

The OCI small business coordinator is Eileen Mallow and may be reached by phone at (608) 266−7843 or at email address: *Eileen.Mallow@oci.state.wi.us*

**Copy of Rule and 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 |
| Address: | 125 South Webster St – 2nd Floor<br>Madison WI 53702 |
| Mail: | PO Box 7873, Madison WI 53707−7873 |

## Notice of Hearing
### Regulation and Licensing
### [CR 04−124]

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Department of Regulation and Licensing in ss. 227.11 (2), 452.07, 452.10 (4), 452.12 (3), 452.133 and 452.135, Stats., and interpreting ss. 452.12 (3) and 452.135, Stats., the Department of Regulation and Licensing will hold a public hearing at the time and place indicated below to consider an order to repeal ss. RL 17.02 (1), (2), and (4), 17.09, 17.10 and 17.11; to amend ss. RL 17.04, 17.08 (1) and 17.12 (1); and to create ss. RL 17.02 (4g) and (4r), 17.08 (1m) and (3) to (5), relating to supervision by real estate brokers.

**Hearing Date, Time and Location**

| | |
|---|---|
| Date: | **December 2, 2004** |
| Time: | 10:30 a.m. |
| Location: | 1400 East Washington Avenue<br>Room 179A<br>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, 2004, to be included in the record of rule−making proceedings. Analysis prepared by the Department of Regulation and Licensing.

**Analysis**

Statutory authority

Statutes authorizing promulgation: ss. 227.11 (2), 452.07, 452.10 (4), 452.12 (3), 452.133 and 452.135, Stats.

Statutes interpreted: ss. 452.12 (3) and 452.135, Stats.

**Explanation of agency authority:**

Section 3608 dp, contained in 2001 Wisconsin Act 16, repealed former Wis. Stats. § 452.12 (3) (b), Stats., which provided that if a broker maintained any branch office in this state, each branch office must be under the direct−full time supervision of a broker. The broker maintaining the branch office was responsible for the acts and conduct of all brokers, salesperson and time−share salesperson employed at the branch office. Section 3608 dm, contained in 2001 Wisconsin Act 16, amended former Wis. Stats. § 452.12 (3) to provide that each broker shall supervise and is responsible for the acts of any broker, salesperson or time−share salesperson employed by the broker. The proposed amendments to Chapter RL 17 remove rules relating to the supervision of principal offices (s. RL 17.09), supervision of branch offices (s. RL 17.10), and supervision outside of principal or branch office (s. RL 17.11), and replace these sections with a defined "supervising broker" who is responsible for the supervision of licensed employees under s. RL 17.08. The scope of supervision contained in s. RL 17.08 is amended to provide for the reasonable review of documents. Additional sections are added to s. RL 17.08 describing the manner and effect of a delegation of supervision duties to a supervising broker.

**Plain language analysis:**

SECTIONS 1 and 2 repeal definitions which are no longer applicable.

SECTION 3 creates definitions of "reasonable review" and "supervising broker."

SECTION 4 changes the spelling of "employe" to "employee."

SECTION 5 amends the scope of a broker−employer's duty to supervise employees.

SECTION 6 creates s. RL 17.08 (1m) to require that documents or records related to a transaction shall be reviewed by the supervising broker prior to the closing of a transaction.

SECTION 7 creates s. RL 17.08 (3) to require that a broker−employer that is a business entity shall delegate the duty to supervise licensed employees to a supervising broker. Section RL 17.08 (4) is created to provide that a broker−employer who is not a business entity will be deemed to be the supervising broker in the absence of a delegation of the duty to supervise licensed employees to another supervising broker. And s. RL 17.08 (5) is created to set forth the requirements of a broker−employer's delegation of the duty to supervise licensed employees to a supervising broker.

SECTION 8 repeals sections related to the supervision of principal and branch offices and the supervision of licensed employees outside of principal or branch offices.

SECTION 9 changes the spelling of "employe" to "employee."

**Comparison with adjacent states:**

Minnesota Rules Chapter 2805

2805.1000 RESPONSIBILITIES OF BROKERS.

Subpart 1. Supervision of personnel. Brokers shall adequately supervise the activities of their salespersons and employees. Supervision includes the ongoing monitoring of listing agreements, purchase agreements, other real estate−related documents which are prepared or drafted by the broker's salespersons or employees or which are otherwise received by the broker's office, and the review of all trust account books and records. If an individual broker maintains more than one place of business, each place of business shall be under the broker's direction and supervision. If a partnership or corporate broker maintains more than one place of business, each place of business shall be under the direction and supervision of an individual broker licensed to act on behalf of the partnership or corporation. The primary broker shall maintain records specifying the name of each broker responsible for the direction and supervision of each place of business. If an individual broker, who may be the primary broker, is responsible for supervising more than one place of business, the primary broker shall, upon written request of the commissioner, file a written statement specifying the procedures which have been established to assure that all salespersons and employees are adequately supervised. Designation of another broker to supervise a place of business does not relieve the primary broker of the ultimate responsibility for the actions of licensees.

Illinois Administrative Code

Title 68, Section 1450.125 Managing Broker Responsibilities

a) The sponsoring broker shall inform OBRE in writing of the name and certificate number of all managing brokers employed by the sponsoring broker and the office or branch offices each managing broker is responsible for managing. Each managing broker shall have an active license as a broker.

b) The sponsoring broker shall be responsible for issuing sponsor cards. However, the sponsoring broker may delegate that responsibility to one or more managing brokers.

c) Upon written request within 15 days after the loss of a managing broker, OBRE shall issue a written authorization to allow the continuing operation of a licensed office or branch office, provided that the sponsoring broker or representative under a duly executed power of attorney assumes responsibility, in writing, for the operation of the office and agrees to personally supervise the operations. No authorization shall be valid for more than 60 days unless extended by OBRE for good cause and upon written request by the sponsoring broker. Good cause includes circumstances as sales under contract pending closing, loss of livelihood for sales associates, and undue hardship caused to sellers.

d) When a managing broker receives a renewal application from OBRE for a licensee supervised by the managing broker or employed by the sponsoring broker of the manager, he shall notify the licensee of the receipt, personally within 7 days or by certified or registered mail or other signature restricted delivery service within 10 days. The notice shall also inform the licensee that any unprocessed renewal form will be returned to OBRE by the manager broker. When a managing broker receives a renewal application from OBRE for a licensee not supervised by the managing broker or employed by the sponsoring broker of the managing broker, the renewal form shall immediately be returned to OBRE.

e) All managing brokers shall notify OBRE on business letterhead of any change of business address of the offices they manage within 24 hours of any change. Change of address is required for all offices and branch offices. A license returned to OBRE for the reason described in this subsection shall remain in good standing until the new licenses are issued and in the possession of the licensee.

f) OBRE will honor the Order of a court of competent jurisdiction appointing a legal representative for the sole purpose of closing out the affairs of a deceased broker or a broker who has been adjudicated disabled, who was a sole proprietor, until the real estate brokerage is closed but not to actively engage in the brokerage business as defined in Section 1−10 of the Act.

Section 1450.130 Supervision

a) A managing broker shall exercise reasonable supervision over the activities of licensees and unlicensed assistants working in those offices managed by the managing broker. This would include:

1) the implementation of office policies and procedures established by the sponsoring broker;

2) training of licensees or unlicensed assistants;

3) assisting licensees as necessary in real estate transactions;

4) supervising those special (escrow) accounts over which the sponsoring broker has delegated responsibility to the managing broker in order to ensure compliance with the special (escrow) account provisions of the Act and this Part;

5) supervising all advertising of any service for which a license is required;

6) familiarizing sponsored licensees with the requirements of federal and state laws relating to the practice of real estate; and

7) compliance with this Part for licensees and offices under his/her supervision.

b) The sponsoring broker shall remain ultimately responsible for compliance with this Part. The sponsoring broker shall name a managing broker for every office.

Iowa Administrative Code−IAC Real Estate Commission [193E]

193E—7.10(543B) Agency−designated broker responsibilities. The following conditions and circumstances, together with the education and experience of licensed and unlicensed employees and independent contractors, shall be considered when determining whether or not the designated broker has met the supervisory responsibilities as set forth by Iowa Code section 543B.62, subsection (3), paragraph *"b."*

7.10(1) When making a determination, the commission may consider, but is not limited to consideration of, the following:

a. Availability of the designated broker/designee to assist and advise regarding brokerage related activities;

b. General knowledge of brokerage−related staff activities;

c. Availability of quality training programs and materials to licensed and unlicensed employees and independent contractors;

d. Supervisory policies and practices in the review of competitive market analysis, listing contracts, sales contracts and other contracts or information prepared for clients and customers;

e. Frequency and content of staff meetings;

f. Written company policy manuals for licensed and unlicensed employees and independent contractors;

g. Ratio of supervisors to licensed employees and independent contractors; and

h. Assignment of an experienced licensee to work with new licensees.

7.10(2) The designated broker shall disseminate, in a timely manner, to licensed employees and independent contractors all regulatory information received by the brokerage pertaining to the practice of real estate brokerage.

193E—7.11(543B) Supervision required. An employing or affiliated broker is responsible for providing supervision of any salesperson or broker associate employed by or otherwise associated with the broker as a representative of the broker. The existence of an independent contractor relationship or any other special compensation arrangement between the broker and the salesperson or broker associate shall not relieve either the broker or the salesperson or broker associate of duties, obligations or responsibilities required by law.

7.11(1) Each salesperson and broker associate shall keep the broker fully informed of all activities being conducted on behalf of the broker and any other activities that might impact the broker's responsibilities. However, the failure of the salesperson or broker associate to keep the broker fully informed shall not relieve the broker of duties, obligations or responsibilities required by law.

Michigan – Administrative Rules

R 339.22310 Supervision.

Rule 310. A broker or associate broker shall supervise the work of a licensee. Supervision shall include, at a minimum, all of the following:

(a) Direct communication in person or by radio, telephone, or electronic communication on a regular basis.

(b) Review of the practice of the supervised licensee.

(c) Review of the supervised licensee's reports.

(d) Analyses and guidance of the licensee's performance in regulated activities.

(e) Provision of written operating policies and procedures.

Indiana Administrative Code

876 IAC 1−1−3 Definitions.

Authority: IC 25−34.1−2−5/ IC 25−34.1−2−5.1

Affected: IC 25−34.1−3−2; IC 25−34.1−5

Sec. 3. (a) The definitions in this section apply throughout this title.

(i) "Principal broker" means the individual broker, including the broker designated as representative of a corporation or partnership whom the commission shall hold responsible for the actions of licensees who are assigned to the principal broker.

876 IAC 1−1−18 Supervision of office by licensed broker; branch offices; notice by principal broker.

Authority: IC 25−34.1−2−5

Affected: IC 25−34.1−3−3.1; IC 25−34.1−3−4.1

Sec. 18. Every real estate office or real estate branch office whether operated as a corporation, partnership, or sole proprietorship, shall be directed, supervised, and managed by a licensed real estate broker. The office or branch office shall constitute the managing broker's principal and sole place of real estate business. Said managing broker may be the principal broker in cases where there is only one office. The principal broker must submit to the commission a Branch Office Registration Form prior to the opening of any branch office. Said principal broker shall notify the commission when any licensee associated with said principal broker transfers from one branch office to another branch office within the same association. *(Indiana Real Estate Commission; Rule 19; filed Sep 28, 1977, 4:30 pm: Rules and Regs. 1978, p. 799; filed Mar 13, 1980, 2:30 pm: 3 IR 647; filed Dec 11, 1986, 10:40 am: 10 IR 877; readopted filed Jun 29, 29, 2001, 9:56 a.m.: 24 IR 3824)*

**Anticipated costs incurred by private sector**

None.

**Effect on small business**

These proposed rules will be reviewed by the department through its small business review advisory committee to determine whether there will be a significant economic impact on a substantial number of small businesses, as defined in s. 227.114 (1) (a), Stats.

**Agency contact person**

Pamela Haack, Paralegal, Department of Regulation and Licensing, 1400 East Washington Avenue, P.O. Box 8935, Madison, WI 53708−8935. Phone: 608−266−0495. E−mail address: pamela.haack@drl.state.wi.us.

**Fiscal estimate**

The Department of Regulation and Licensing will incur $500 in costs for staff to print and distribute the rule change.

Copies of this rule are available without cost by making a request to the Department of Regulation and Licensing, Office of Administrative Rules, P.O. Box 8935, Madison, Wisconsin 53708−8935, telephone number 608−266−0495, e−mail address: pamela.haack@drl.state.wi.us.

## Notice of Hearing
## Transportation
## [CR 04−122]

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 ch. Trans 276, Wis. Adm. Code, relating to allowing the operation of double bottoms and certain other vehicles on certain specified highways.

**Hearing Information**

Date: **December 1, 2004**

Time: **11:00 a.m.**

Location: Transportation District 5
3550 Mormon Coulee Road
Mississippi Conference Room
LaCrosse, Wisconsin

(Parking is available for persons with disabilities)

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

**Analysis Prepared by the Department of Transportation**

Statutory authority: Sections 85.16 (1) and 348.07 (4), Stats.

Statute interpreted: Section 348.07 (4), Stats.

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), Stats., and s. 348.08 (1), Stats. This act created ss. 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 § 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 § 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.

This rule amends s. Trans 276.07 (6) and creates s. Trans 276.07 (31g), Wis. Adm. Code, to add four segments of highway to the designated highway system established under s. 348.07 (4), Stats. The actual highway segments that this rule adds to the designated highway system are:

| Hwy. | From | To |
|---|---|---|
| STH 27 . . . | STH 171 at Mt. Sterling | USH 14 S. of Viroqua |
| CTH S . . . | CTH B . . . . . | 7258 CTH S |
| CTH B . . . | USH 53 . . . . . | CTH S |
| CTH P . . . | USH 2 . . . . . | CTH B |

The long trucks to which this 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 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.

**Note:** [1] The rule text often achieves these objectives by consolidating individual segments into contiguous segments with new end points. In order to determine the actual highway segment added, it is necessary to compare the combined old designations with the combined new designation.

**Note:** [2] 45−foot buses are allowed on the National Network and Interstate system by Federal law. Section 4006(b) of the Intermodal Surface Transportation Efficiency Act of 1991.

**Comparison with Rules in Adjacent States**

None of the states adjacent to Wisconsin (Michigan, Minnesota, Illinois and Iowa) have administrative rules relating to long truck routes in their states.

**Summary of Factual Data and Analytical Methodologies Used and How the Related Findings Support the Regulatory Approach Chosen**

Due to the federal requirement that requests for access to the designated highway system in a state be decided within 90 days of the request, a proposed rule making to add requested routes is initiated without investigation. The public hearing and Department investigation undertaken in preparation for the hearing provide the engineering and economic data needed to make a final decision on whether to withdraw the proposal or proceed to final rule making.

**Effect on Small Business and, if applicable, any Analysis and Supporting Documentation used to Determine Effect on Small Businesses**

The provisions of this 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. 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.

**Submission of Comments**

The public record on this proposed rule making will be held open until close of business the day of the hearing to permit the submission of comments in lieu of public hearing testimony or comments supplementing testimony offered at the hearing. Any such comments should be submitted to Ashwani Sharma, Department of Transportation, Bureau of Highway Operations, Room 501, P. O. Box 7986, Madison, WI 53707−7986. You may also contact Mr. Sharma by phone at (608) 266−1273.

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 276.07 (6) is amended to read:

| Route | From | To |
|---|---|---|
| STH 25 | Minnesota Line | STH 48 |
| STH 26 | IH 90 at Janesville | USH 151 S.E. of Waupun |
| STH 26 | USH 151 N.E. of Waupun | USH 41 S.W. of Oshkosh |
| STH 27 | USH 18 in Prairie du Chien | ~~STH 171 at Mt. Sterling~~ USH 14 S. of Viroqua |
| STH 27 | USH 14 S.E. of Viroqua | STH 40 in Radisson |
| STH 28 | STH 33 in Horicon | IH 43 in Sheboygan |
| STH 29 | USH 10 in Prescott | STH 35 in River Falls |
| STH 29 | IH 94 W. of Elk Mound | USH 53 at Chippewa Falls |
| STH 29 | 124 S. of Chippewa Falls | USH 41 in Green Bay |
| STH 29 | USH 141 at Bellevue | STH 42 in Kewaunee |

**Section 2.** Trans 276.07 (31g) is created to read:

**(31g)** DOUGLAS COUNTY:

| | | |
|---|---|---|
| CTH B | USH 53 | CTH S |
| CTH P | USH 2 | CTH B |
| CTH S | CTH B | 7258 CTH S |

## Notice of Hearing

### Veterans Affairs

### [CR 04−126]

Notice is hereby given that the Department of Veterans Affairs will hold a public hearing on the **3rd day of December, 2004**, at 9:30 a.m., in the 8th 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) and 45.358 (3m), Stats.

Statute interpreted: s. 45.358, Stats.

The proposed rule changes are intended to provide the department flexibility in adjusting burial fees that may be charged dependents, spouses, and surviving spouses as well as assessments made for the provision of burial containers.

The proposed rule would permit the department to adjust fees and assessments based up to the current cost of providing the benefit.

There is no current or pending federal regulation that has an impact on this issue. There are no similar rules in adjacent states. However, cemetery fees are set by some states outside of the rulemaking process. This rule has no regulatory aspect to it, has no effect upon small businesses, nor any significant fiscal effect upon the private sector.

**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 expected to result in an increase in revenue in FYE 05 of approximately $38,400.

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

**Contact Person**

John Rosinski (608) 266−7916

John.rosinski@dav.state.wi.us

## Notice of Hearing

### Veterinary Examining Board

### [CR 04−125]

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Veterinary Examining Board in ss. 15.08 (5) (b), 227.11 (2) and 453.03, Stats., and interpreting s. 453.062, Stats., the Veterinary Examining Board will hold a public hearing at the time and place indicated below to consider an order to repeal ss. VE 10.05 and 10.06; to amend ss. VE 1.02 (intro.), 7.055 (title), (intro.), (1) and (2), 7.06 (22), 9.035 (title), (intro.), (1) and (2); 9.05 (12), and 10.01; and to repeal and recreate ss. VE 10.02, 10.03 and 1.04, relating to renewal, conduct and continuing education for veterinarians and veterinary technicians.

**Hearing Date, Time and Location**

| | |
|---|---|
| **Date:** | **December 1, 2004** |
| Time: | 11:30 A.M. |
| Location: | 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, or by e−mail to pamela.haack@drl.state.wi.us. Written comments must be received by December 13, 2004 to be included in the record of rule−making proceedings.

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

Statutory authority:

Statutes authorizing promulgation: ss. 15.08 (5) (b), 227.11 (2) and 453.03, Stats.

Statutes interpreted: s. 453.062, Stats.

**Explanation of agency authority**

2003 Wisconsin Act 103 created continuing education for veterinarians and veterinary technicians in Wisconsin and granted rule−making authority to the Veterinary Examining Board to require training and continuing education sufficient to assure competency of veterinarians and veterinary technicians in the practice of veterinary medicine.

**Plain language analysis**

The board herein sets forth requirements for continuing education applicants attesting to continuing education completion on license renewal applications to the Department of Regulation and Licensing, defines program and course approval standards, program and course content prerequisites, and subject matter acceptability requirements. It limits the circumstances under which a continuing education waiver may be granted, describes the consequences resulting from failure to complete the continuing education requirements on time and what is allowed when the department audits continuing education. For course providers, it explains what is required for courses and programs to be approved, validation, monitoring, certification and recordkeeping requirements.

SECTION 1 amends s. VE 1.02 (intro.) to include chapter VE 10.

SECTIONS 2 and 3 amend ss. VE 7.055 and 7.06 (22) to require continuing education to be completed when a veterinarian applies to renew a credential 5 or more years after it expired, and maintains the provision which states that falsely certifying compliance with the pesticide continuing education requirement constitutes unprofessional conduct.

SECTIONS 4 and 5 amend ss. VE 9.035 and 9.05 (12) to require continuing education to be completed when a veterinary technician applies to renew a credential 5 or more years after it expired, and maintains the provision which states that falsely certifying compliance with the pesticide continuing education requirement constitutes unprofessional conduct.

SECTION 6 sets forth the statutory authority and purpose of new continuing education and certification requirements for veterinarians and veterinary technicians. The current pesticide continuing education rule is repealed and recreated in SECTION 7.

SECTION 7 describes and limits what the continuing education shall relate to, including provisions allowing 5 of the 30 veterinarian and veterinary technician hours on non−scientific topics, 5 hours from an education provider that is not approved under s. VE 10.03 (4) for veterinarians and 3 hours for veterinary technicians. Also, this section of the rule defines continuing education hour as 50 minutes of contact time and limits a waiver of the continuing education requirements to certain exceptional circumstances. It further limits application of credits to the preceding 2−year licensure or certification period, exempts applicants from having to report for the period prior to the first expiration date after a license is initially issued or renewed, prohibits practice as a veterinarian or veterinary technician when continuing education is not completed by the renewal date, and requires all veterinarians and veterinary technicians to maintain records of continuing education hours for five years from the date the certification is signed. The board may conduct an

audit to check for compliance with specified documentation of completion requirements. In addition, the evidence required to verify completion of continuing education hours is spelled out by delineating the criteria a continuing education program or course must meet to be acceptable, including subject matter pertinent to veterinary medicine or veterinary technology, attendance and course completion validations for the program or course sponsor, modalities and methods of delivery. It lists providers in the rule whose approval of programs will be recognized by the board for the 25 hours that must be approved for veterinarians and the 12 hours for veterinary technicians.

SECTION 8 repeals ss. VE 10.05 and 10.06.

**Comparison with adjacent states**

Based upon the requirements for renewing a credential in Illinois, Minnesota and Iowa, the continuing education requirements set forth in the proposed rules are consistent with the requirements in those states. Veterinarians and veterinary technicians are not required to complete continuing education hours in Michigan. Note that veterinary technicians are not required to be licensed in Minnesota.

**Summary and comparison of existing or proposed federal regulation**

None. Establishing continuing education requirements and monitoring for compliance for veterinarians is a regulatory activity undertaken by the individual states.

**Factual data and analytical methodologies:**

The Veterinary Examining Board examined models of continuing education from other Wisconsin regulatory boards, from the American Association of Veterinary State Boards, and from national and state associations. The board received input from the Department of Regulation and Licensing Office of Education and Examinations and members of the public in public meetings. The board considered availability of courses, availability of department and board resources, and impact on the licensee.

The Veterinary Examining Board defined general content requirements, numbers of hours required to be related to scientific topics, and amount of credit to be granted for activities such as authorship of published works. The board established approved provider requirements, necessary documentation requirements, procedures for verification of continuing education upon renewal, and procedures for maintaining documentation to enable audit of compliance with the requirement. The board retained the statutory requirements for continuing education or certification from persons who use or repackage pesticides for use by others.

The regulatory approach chosen for the rule was to describe the requirements for licensees and course providers in a way that would enable the parties to determine on their own whether a particular type of continuing education would be acceptable. The model does not require particular continuing education courses to be approved by the board in advance. One goal of this approach was to accomplish the implementation of the continuing education requirement and resulting maintenance of currency and prevention of public harm without incurring substantial ongoing regulatory management costs for the program.

**Private sector fiscal effect**

The Department of Regulation and Licensing has determined that this rule has no significant fiscal effect on the private sector.

**Agency contact person**

Pamela Haack, Paralegal, Department of Regulation and Licensing, 1400 East Washington Avenue, P.O. Box 8935, Madison, WI 53708. Phone 608−266−0495.

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**Final Regulatory Flexibility Analysis**

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

**Fiscal Estimate**

The Department of Regulation and Licensing will $500 in costs for staff to print and distribute the rule change.

Copies of this rule are available without cost by making a request to the Department of Regulation and Licensing, Office of Administrative Rules, P.O. Box 8935, Madison, Wisconsin 53708, telephone number 608−266−0495, e−mail address: pamela.haack@drl.state.wi.us

## Notice of Hearing

### Workforce Development

### (Workforce Solution, Chs. DWD 11 − 59)

### [CR 04−123]

NOTICE IS HEREBY GIVEN that pursuant to Sections 49.161, 49.195, and 227.11, Stats., the Department of Workforce Development proposes to hold a public hearing to consider rules relating to the public assistance overpayment collection and affecting small businesses.

**Hearing Information**

Monday, **November 29, 2004** at 1:30 p.m.

GEF 1 Building, Room B103

201 E. Washington Avenue

Madison

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

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

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

Statutory authority: Sections 49.161, 49.195, and 227.11, Stats.

Statutes interpreted: Sections 49.155, 49.161, 49.195, and 49.85 Stats.

Relevant federal law: 45 CFR 233.20(a)(13), 45 CFR 98.60, 45 CFR 98.65, 45 CFR 98.66(a)

**Explanation of agency authority**

- Section 49.195, Stats., directs the Department to promptly recover *all* overpayments of the following: (a) benefits under the former Aid to Families with Dependent

Children (AFDC) program; (b) subsidized employment benefits and custodial parent of infant grants under the Wisconsin Works (W−2) program; (c) child care benefits; and (d) W−2 transportation assistance. Section 49.195, Stats., directs the Department to create rules to collect overpayments that have not already been collected under ss. 49.161, Stats., and 49.19 (17), Stats., and to implement administrative warrant and execution and levy procedures as an additional method of collecting overpayments.

• Section 49.161, Stats., requires the Department to collect overpayment of benefits paid to trial job, community service job (CSJ), and transitional placement (W−2T) participants. For current CSJ and W−2T participants, the overpayment is collected by reducing the amount of the individual's monthly benefit payment by no more than 10% if the overpayment was due to client error or agency error. For trial job participants, the value of the benefit liable for recovery may not exceed the amount that the Department paid in wage subsidies to that participant while the participant was ineligible to participate. If a benefit overpayment is the result of an intentional program violation of W−2 employment positions, custodial parent of an infant grants, child care benefits, or transportation assistance, the Department may deduct the following from the monthly W−2 employment position benefit: (a) for overpayments of less than $300, 10% of the amount of the monthly benefit payment; (b) for overpayments of at least $300 but less than $1,000, $75; (c) for overpayments of at least $1,000 but less than $2,500, $100; and (d) for overpayments of $2,500 or more, $200.

• Federal regulations require states to collect any AFDC overpayment.

• Federal policy allows only expenses that benefit the program to be charged against a federal grant. This policy requires overpayments of all types to be recovered because overpayments, whether by fraud or error, do not benefit the program.

• Federal policy directs states to recoup AFDC and Temporary Assistance to Needy Families (TANF) overpayments from current TANF benefits.

• An administrative agency generally possesses a common law right to recover erroneous payments of public funds. *See Kenosha County Department of Social Services v. Kenosha National Bank,* 95 Wis.2d 275, 290 N.W.2d 693 (1980). An agency may sue to exercise its common law right of recovery or it may administratively reclaim the funds pursuant to a statute or rule. The case *Mack v. Wisconsin Department of Health and Family Services*, 231 Wis. 2d 644, 605 N.W.2d 651 (Ct. App. 1999) stands for the proposition that an agency may administratively recoup a benefit overpayment from current benefits based on a properly promulgated administrative rule even if a statute does not specifically provide for recoupment. Based on this authority, the Department proposes to extend the right to recoup overpayments of child care benefits, AFDC, custodial parent of an infant grants, and transportation assistance from current W−2 payments in cases of client error and administrative error, in addition to cases of intentional program violation.

**Summary of proposed rule.** A county, tribal governing body, W−2 agency, or the Department shall determine whether a public assistance overpayment has been made and if so, the amount of the overpayment. The county, tribal governing body, W−2 agency, or Department shall send notice of the overpayment at the address of a liable person as it appears on the records of the Department. Documentation that a county, tribal governing body, W−2 agency, or the Department properly mailed the notice to the address of the person as it appears on the records of the Department and it was not returned as undeliverable shall be prima facie evidence that notice was delivered and received. The Department shall give the person an opportunity for review following the fact−finding and hearing procedure if the person received the overpayment under the W−2 program or for a hearing under ch. 227, Stats., if the person received an overpayment under the child care or AFDC programs.

Liability shall extend to any parent, nonmarital coparent, or stepparent whose family receives W−2, child care, or AFDC benefits during the period that he or she is a member of the same household, but his or her liability is limited to such period. Liability for repayment of the overpayment shall be joint and several.

The Department currently has authority to recoup overpayments of benefits paid based on participation in a W−2 CSJ or W−2T employment position from a monthly benefit of a current participant, regardless of the reason for the overpayment. In cases of intentional program violation, the Department may also recoup overpayments of custodial parent of an infant grants, child care benefits, or transportation assistance from a monthly W−2 grant. The proposed rule extends the Department's authority to allow recoupment of overpayments of AFDC, custodial parent of an infant grant, child care benefits, and transportation assistance from a current W−2 benefit, regardless of the reason for the overpayment.

A debt shall be considered delinquent if the Department does not receive a debtor's payment by the due date 3 times over the life of the debt. A delinquent debt may be subject to warrant and execution, levy, and tax intercept. A delinquent debt retains delinquent status regardless of any future payment on the debt.

If a debt for repayment of an overpayment is delinquent and no appeal rights are pending, Section 49.195 (3m), Stats., authorizes the Department to issue a warrant that is considered in all respects a final judgment constituting a perfected lien upon the person's right, title, and interest in all real and personal property located in the county in which the warrant is entered. The Department shall provide the debtor with notice and an opportunity for a hearing under ch. 227, Stats, when a warrant has been issued, before property is seized, and before seized property is sold. The debtor may request a hearing under ch. 227, Stats., within 20 days from the date on the notice. The appeal shall be limited to questions of prior payment of the debt that the Department is proceeding against and mistaken identity of the debtor. The Department shall not withdraw the warrant based on a hearing request when a warrant is issued or cease enforcement before property is seized based on a hearing request. If a hearing is requested after property is seized, the seized property may not be sold before the hearing decision is issued or the hearing request is withdrawn. When the amount set forth in the warrant and all costs due the Department have been paid, the Department shall issue a satisfaction of the warrant. Statutory exemption rights in ss. 815.18 (3) and 815.20, Stats., apply to this administrative warrant and execution procedure.

If a debt for repayment of an overpayment is delinquent and no appeal rights are pending, Section 49.195 (3n), Stats., authorizes the Department to levy on personal property belonging to the debtor, including wages due and deposits in a financial institution account. The Department shall first send a notice of intent to levy at least 10 days prior to the levy, personally or be any type of mail service that requires a signature of acceptance. Notice prior to levy is not required for a subsequent levy on any debt of the same debtor within one year of the date of service of the original levy. Next, the Department shall serve the levy upon the debtor and 3rd party in possession of property to which the debtor has rights. The debtor may appeal the levy proceeding under ch. 227, Stats., within 20 days from the date on the service of levy. The appeal

shall be limited to questions of prior payment and mistaken identity of the debtor. The levy is not stayed pending an appeal where property is secured through the levy.

Within 20 days from the service of the levy upon a 3rd party, the 3rd party shall file an answer with the Department stating whether the 3rd party is in possession of or obligated with respect to property or rights to property of the debtor, including a description of the property or the rights to property and the nature and dollar amount of any such obligation. The 3rd party shall, upon demand of the Department, surrender the personal property or rights or discharge the obligation to the Department, except that part of the personal property or rights which is, at the time of the demand, subject to any prior attachment or execution under any judicial process.

If levied personal property that has been surrendered to the Department is not a liquid asset in the form of cash, check, or an equivalent that can be applied to the debt without a sale of the asset, the Department shall provide the debtor with notice and an opportunity for a hearing under ch. 227, Stats., before surrendered property is sold. The debtor may request a hearing under ch. 227, Stats., within 20 days from the date on the notice. The appeal shall be limited to questions of prior payment of the debt that the Department is proceeding against and mistaken identity of the debtor. If a hearing is requested, surrendered property may not be sold before the hearing decision is issued or the hearing request is withdrawn.

The debtor is entitled to an exemption from levy of the greater of a subsistence allowance of 75% of the debtor's disposable earnings then due and owing or a amount equal to 30 times the federal minimum hourly wage for each full week of the debtor's pay period and the first $1,000 of an account in a depository institution.

Any appeal based on a notice received in a warrant and execution or levy proceeding or a notice of intent to certify a debt for set−off against a state tax refund shall be limited to questions of prior payment of the debt that the Department is proceeding against and mistaken identity of the debtor. The minimum amount that must be due before warrant and execution and levy procedures may be commenced is $300. The Department may waive recovery of an overpayment if the Department has made reasonable efforts to recover the overpayment from the debtor and determines it is no longer cost effective to continue overpayment recovery efforts.

The notice and hearing requirements in the warrant and execution and levy sections were designed to comply with s. 49.195 (3s), Stats., which requires a hearing or review (1) after a warrant has been issued and before the warrant has been executed; (2) before property is levied under both the warrant and execution and levy procedures; and (3) after levied property is seized and before it is sold. In addition, Section 49.195 (3), Stats., directs that the Department's collection rules include notification procedures similar to those established for child support collections. According to the Legislative Fiscal Bureau summary for 1999 Wisconsin Act 9 (page 1540), this provision means that notification is required at the following points in the collection process: (a) when the Department first determines that an overpayment has been made; (b) after the Department has issued a warrant that acts as a lien upon the person's right, title and interest in all real and personal property located in the county in which the warrant is entered; (c) after issuing an execution of a warrant or enforcing a levy upon a financial account or other personal property; (d) prior to levy upon real property; and (e) prior to issuing an execution to sell the property.

The child care administration rules are also amended to incorporate the general public assistance overpayment rules affecting parents in s. DWD 12.23. The proposed rule provides that a child care administrative agency or the Department shall take all reasonable steps necessary to recover from a parent funds when the parent was not eligible for that level of child care benefit and the overpayment benefited the parent by causing the parent to pay less for child care expenses than the parent otherwise would have been required to pay under child care assistance program requirements, regardless of the reason for the overpayment.

An overpayment to a parent includes excess child care funds paid when there was a change in family eligibility circumstances that was significant enough that it would have resulted in a smaller child care benefit or ineligibility for a child care benefit due to any reason, including the parent failed to report a change within 10 days or the parent was absent from an approved activity without good cause, while the child was in the care of the provider. The child care worker shall determine good cause if the approved activity is unsubsidized employment. A parent's absence from unsubsidized employment shall be considered good cause if the parent is using employer−approved sick time, personal time, or vacation time and the child is in care for no more than the hours authorized.

The rule on collecting overpayments from child care providers is clarified to state that the provider is responsible for the overpayment when the overpayment benefited the provider by causing the provider to receive more child care assistance than otherwise would have been paid on the family's behalf under child care assistance program requirements and the overpayment did not benefit the parent by causing the parent to pay less for child care expenses than the family otherwise would have been required to pay under child care assistance program requirements. Overpayments from providers are collected by making an offset from current or future funds under the Department's control that are payable to the provider of no more than 50% per payment.

**Summary of related federal law.** Federal AFDC regulations require states to collect any overpayment. Federal public assistance overpayment collection policy regarding benefits provided under the Aid to Families and Children program and programs funded by Temporary Assistance to Needy Families block grants is in the U.S. Department of Health and Human Services, Administration for Children and Families, Program Instruction Transmittal No. TANF−ACF−PI−2000−2 (http://www.acf.dhhs.gov/programs/ofa/pi002.htm). This memo specifies that the requirement for states to recover all remaining AFDC overpayments remains in place and that AFDC overpayments will be recouped from current TANF benefits if the recipient is still receiving cash assistance or through a cash repayment from former recipients. TANF overpayments are also to be recouped from current recipients or through cash repayment from former recipients.

The state child care assistance program receives funding from TANF and the Child Care Development Fund (CCDF). CCDF regulations specifically provide that states shall recover child care payments that are the result of fraud and the payments shall be recovered from the party responsible for committing the fraud. In addition, CCDF regulations provide that any expenditure not made in accordance with statutory provisions, regulatory provisions, or with the approved plan may be disallowed and must be repaid to the federal government. According to staff at the federal Department of Health and Human Services (DHHS), overpayments are not considered to be expended in accordance with the federal CCDF statute or regulations.

In addition, DHHS staff have informed the Department that a similar provision that applies to all federal grant programs also applies to funds received under the CCDF grant. OMB Circular A−87 on Cost Principles for State and Local Governments provides that only costs that benefit a federal

grant program may be charged to that program. All overpayments, whether by fraud or error, are not considered to benefit the program and do not meet the federal cost allowability test.

**Comparison with rules in adjacent states.** Minnesota. All TANF overpayments are recoverable regardless of the reason for the overpayment. All adults are jointly and individually liable. An appeal based on the fact or amount of an overpayment must occur based on the original notice not in an appeal of a recoupment. Recoupment of AFDC and TANF overpayments from current TANF recipients is specifically authorized. AFDC and TANF overpayments, excluding overpayments based on agency error, become judgments by operation of law 90 days following a properly served notice, with the full power of enforcement of a civil judgment. Child care overpayments are recouped from child care assistance or collected through voluntary repayment or civil court action. Child care overpayments are collected regardless of the reason for the overpayment.

Illinois. Recoupment of AFDC and TANF overpayments from current TANF recipients is specifically authorized. Overpayments are collected regardless of reason for overpayment. Child care overpayments are collected by reductions in future payments or public assistance benefits.

Michigan. Overpayments are recouped from benefits of any adults who were a group member when the overpayment occurred or collected through voluntary repayment agreements or court action. All TANF monthly benefit overpayments must be repaid regardless of the reason for the overpayment. A person who is determined to have received child care benefits as a result of the misrepresentation of his or her circumstances may be required to reimburse the agency for any benefits received for which the person was not eligible. A child care provider who bills the agency for more child care than he or she actually provided may be required to reimburse the agency in cash or from current and future provider payments.

Iowa. Overpayments are collected through voluntary repayment, recoupment, and tax intercept. An appeal is allowed based only on the first notice of overpayment. Overpayments are collected regardless of the reason for the overpayment.

**Summary of factual data and analytical methodologies.** The warrant and execution and levy procedures are outlined in statute and were developed to be similar to the warrant and execution and levy procedures used by the Unemployment Insurance program to collect UI benefit overpayments and delinquent unemployment insurance taxes. The proposed rule adds the required hearings and sets the threshold for use of the procedure. As of September 30, 2004, the total receivables that will be subject to warrant and execution and levy procedures is $25 million, with approximately $20.4 million in AFDC receivables, $1.5 million in general W−2 receivables, and $3.7 million in child care receivables.

The proposed rule provides authority for the Department to recoup AFDC overpayments from a current W−2 participant's grant. Federal policy directs states to collect overpayments in this manner where an AFDC debt is owed by a current TANF recipient. The case *Mack v. Department of Health and Family Services* also supports the Department's authority to promulgate a rule to allow recoupment even if a statute does not specifically provide for recoupment. Overpayment recovery by recouping from current benefits is the most efficient method of collection. With the implementation of authority to recoup AFDC overpayments from current W−2 participants, $500,000 in receivables will be subject to recoupment.

The proposed rule also provides clear authority for the Department to recoup child care overpayments from a W−2 participant's grant, regardless of the reason for the overpayment. Section 49.161, Stats., currently allows recoupment when the overpayment was caused by intentional program violation. The current s. DWD 56.04 (5)(a) states that a child care administrative agency shall take all reasonable steps necessary to recoup or recover from a parent any child care assistance that the parent was not eligible to receive. The proposed rule clarifies that the recoupment will be from a W−2 participant's monthly grant and not from the child care subsidy payments that are sent to the child care providers.

The Department does not recoup child care overpayments owed by a parent from the subsidy payments sent to the child care provider because collection of the debt that had been owed by the parent to the Department would become the responsibility of the provider to collect from the parent. Recouping debts owed by parents from checks to providers may make providers less willing to care for children of families who receive assistance through the child care program. Approximately 20% of recipients of child care assistance receive a W−2 grant. With implementation of authority to recoup child care overpayments from W−2 grants, $740,000 will be subject to recoupment. Child care overpayments owed by parents who are not receiving a W−2 grant will be collected by voluntary repayment agreements, tax intercept, warrant and execution, and levy.

The proposed rule must require that all overpayments be collected regardless of whether they were caused by administrative error, client error, or intentional program violation because s. 49.195 (3), Stats., directs the Department to collect *all* public assistance overpayments. An amendment to 1999 Wisconsin Act 9 that would have prohibited the Department from collecting overpayments based on agency error was vetoed by the Governor. In addition, federal policy provides that expenditures not in accordance with program requirements may not be charged against a federal grant.

The proposed rule specifically states that liability for an overpayment extends to any parent, nonmarital coparent, or stepparent during the period that he or she is a member of the household. This provision clarifies that *Richland County Department of Social Services v. McHone*, 95 Wis.2d 108, 288 N.W.2d 879 (Ct. App. 1980) applies only to recovery of aid when an individual receives a windfall under s. 49.195 (1), Stats. The one sentence note following s. 49.195, Stats., that summarizes the case states that "recovery may be had only from a parent who immediately received aid" or the parent whose name was on the benefit check. A reading of the case shows that this holding was based only on the language in sub. (1) that starts "if any parent at the time of receiving aid." This language does not appear in the overpayment collection sections of s. 49.195, Stats., or the proposed rule. Under the proposed rule, in general a parent whose income must be included in determining financial eligibility is jointly and severally liable for an overpayment.

**Effect on small business.** The proposed rule will affect small businesses that are a third party in possession of or obligated with respect to property or rights to property of a debtor. Generally, this will be an employer served with a levy to garnish a debtor's wages. Section 49.195 (3n) (t), Stats., provides that a third party is entitled to a levy fee of $5 for each levy in any case where property is secured through the levy.

Except as employers of debtors, private W−2 agencies will not be affected by the rule because the additional warrant and execution and levy and recoupment collection procedures in the rule will be implemented by the Department and not W−2 agencies.

The rule adds clarifying language on collecting overpayments from child care providers but the additional language is based on current policy.

**Anticipated costs incurred by private sector.** The proposed rule will not have a significant fiscal effect on the private sector.

**Fiscal Effect**

I. Subsection (3) of s. 49.195 of the Statutes directs DWD to promptly recover all overpayments made under the AFDC and W−2 programs, including child−care subsidies available to low−income working parents as well as W−2 participants. In part, this rule more completely implements the portion of s.49.195 (3) directing DWD to promulgate rules to implement that subsection and to include in the rule, "notification procedures similar to those established for child support collections." It is assumed that any increased cost of these notification procedures provided for by this rule is not significantly different than the costs of procedures currently in effect. No separate fiscal effect on revenues received is attributed solely to portions of the rule relating to the basic direction to recover overpayments under these programs, since DWD is already doing that, pursuant to authority in statute, administrative rule, common law, and the conditions of acceptance of the federal funds used for these programs. Much of this rule merely updates and clarifies existing policies, procedures and administrative rules, particular those portions revising DWD 56.04 (5) pertaining to recovery of child−care assistance overpayments (which is the fastest−growing category of collections) and portions of the repeal and recreation of DWD 12.23 relating to recoveries from current W−2 recipients.

II. Section 49.195 also provides DWD authority to 1) create administrative liens against real and personal property that may be executed at the county level by sheriff's sale and, 2) collect public assistance debts and the expenses of their collection by levy against certain assets of a debtor which are in the possession of a third party, typically an employer in a position to withhold them from wages otherwise payable to the debtor. These statutory provisions are not subject to a specific rulemaking requirement except that s. 49.195 (3s) states that DWD shall specify by rule when requests for reviews, hearings, and appeals under the section may be made and describes points in the processes when hearing or review opportunities must be addressed by the rule. Since these lien and levy provisions of the Statutes have not yet been implemented, the costs associated with such requests are unknown. However, also since the lien and levy provisions have not yet been implemented, the fiscal effect of this rule with respect to overpayments collected is assumed to be identical to the revenues associated with implementing the underlying statutory provisions as projected in DWD's 05−07 biennial budget recommendations.

There are two general collection trends for overpayment receivables: AFDC collections are still the largest program category of receivables, but a declining revenue source. This rule will decrease the rate of decline or temporarily increase collections, after which they will eventually taper off. Alternatively, child−care overpayment recoveries have been growing, reflecting growth in appropriations for the subsidy program. As child care collections become a larger proportion of recoveries, the lien and levy collection processes outlined in this rule will become more important because the majority of child−care subsidy recipients are working but not receiving other department−administered funds that could be offset to recover overpayments.

III. In its 2005−07 biennial budget recommendations, DWD estimated that the "gross" additional collections (for all affected programs) attributable to lien and levy implementation would be $375,000 in 2005−06 and $1,000,000 in 2006−07. However, this would be reduced to $357,273 in 2005−06 and $952,727 in 2006−07 without a statutory change to reduce the need to "write off" the amount of reduced recoveries attributable to a current−law provision allowing 3rd parties to retain $5 from the proceeds of a levy. The fiscal effect estimated for this rule uses the lower amount because, unlike the 2005−07 recommendations, it does not include the effect of the proposed statutory change.

IV. While implementation of the lien and levy provisions is planned for November 2005, the gross revenues assumed for 2005−06 are lower than those assumed for 2006−07 due to the assumption that it may be necessary for staff to gain familiarity with the new procedures before their full impact is seen. Therefore, the $952,727 is taken as the starting point for calculating the annualized impact at full implementation for purposes of this estimate. 61% of gross collections was assumed to be AFDC ($581,163) and the remaining 39% ($371,564) W−2 or child−care related. While the majority of the latter is likely to be child−care related, this difference is not important for purposes of this fiscal note because the state retains 100% of the W−2 and child−care recoveries crediting them to the appropriation for federal block−grant aids for re−expenditure on these programs. AFDC recoveries, on the other hand, are split three ways: The federal government receives a share of these revenues paid directly to it. Counties and tribes are allowed by statute to retain 15% of the AFDC overpayments they recover that were not due to administrative error. Those revenues are paid directly to them from the non−federal share of collections, and the net state share, approximately 26% of gross AFDC recoveries, is credited to the program−revenue appropriation at s.20.445 (3) (L): $581,163 X 26% = $151,100 in additional revenue for this appropriation. Neither the county share of AFDC revenues ($581,163 X 15% = $87,200) nor the federal share is reflected as a state revenue or expenditure; only the net state share is reflected as state revenues.

V. W−2 and child−care recoveries do not truly represent "additional" state revenues since they do not increase the block grants Wisconsin receives for these purposes; however, since they are often attributable to expenditures in a previous biennium, they may represent revenues in addition to the block grant amounts budgeted within a particular fiscal year or biennium. Therefore, this fiscal note portrays the annualized fiscal effect as including additional federal revenues. DWD's 2005−07 budget request proposes to recognize that aspect by creating a new appropriation.

VI. Counties are the only level of local government affected by this rule. Clerks of circuit courts may experience increased costs to the extent DWD increases its use of liens, and county sheriffs may experience increased costs to the extent the department proceeds to execute lien warrants by selling real or personal property located within a county. However, s.49.195 (3m) of the Statutes provides for clerks of courts to submit fee amounts to DWD to be added to the amount of the warrant, which should minimize any net cost to a county. In addition, since counties receive 15% of most AFDC collections, they may receive additional offsetting revenues to the extent that this rule increases AFDC collections.

VII. No increased administrative costs are associated with the portion of this rule that merely updates, or places in rule, existing DWD collections policies and procedures. The department has not prepared estimates of the one−time or ongoing increased costs of lien and levy implementation. Since the would be paid from existing appropriations for administration of TANF programs and program revenue from the state share of AFDC collections, it is assumed for purposes of this estimate that the primary net effect is to increase state

and county revenues compared to the revenue trends that would occur absent the provisions of this rule.

**Contact Information**

The proposed rules are available at the web site http://adminrules.wisconsin.gov by typing "public assistance overpayment" in the search engine. This site allows you to view documents associated with this rule's promulgation, register to receive email notification whenever the Department posts new information about this rulemaking order, and submit comments and view comments by others during the public comment period. You may receive a paper copy of the rule by contacting:

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**Written Comments**

Written comments on the proposed rules received at the above address, email, or through the http://adminrules.wisconsin.gov web site no later than December 1, 2004, will be given the same consideration as testimony presented at the hearing.

**Small Business Regulatory Coordinator**

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# Rule orders filed with the revisor of statutes bureau

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

**Commerce**
**(CR 04−068)**

An order affecting ch. Comm 87, relating to the private sewage system replacement or rehabilitation grant program.

Effective 2−1−05.

**Financial Institutions—Securities**
**(CR 04−074)**

An order affecting chs. DFI−Sec 1 and 5, relating to Wisconsin securities law licensing requirements for investment advisers having custody of customer funds or securities.

Effective 1−1−05.

**Health and Family Services**
**(CR 03−052)**

An order affecting chs. HFS 45 and 46, relating to family and group child care centers and affecting small businesses.

Effective 3−1−05.

**Health and Family Services**
**(CR 04−055)**

An order creating ch. HFS 118, relating to Wisconsin's statewide trauma care system.

Effective 1−1−05.

**Insurance**
**(CR 04−071)**

An order affecting chs. Ins 2 and 50, relating to prescribing mortality tables and actuarial opinions, analysis and reports.

Effective 1−1−05 and 12−31−05.

**Insurance**
**(CR 04−079)**

An order affecting ch. Ins 18, relating to annual adjustment to the minimum necessary cost or payment to access independent review under a health benefit plan.

Effective 1−1−05.

**Transportation**
**(CR 04−004)**

An order affecting ch. Trans 152, relating to Wisconsin interstate fuel tax and international registration program.

Effective 1−1−05.

**Workforce Development**
**(CR 04−010)**

An order affecting ch. DWD 270, relating to child labor.

Effective 12−1−04.

**Workforce Development**
**(CR 04−082)**

An order affecting ch. DWD 12, relating to the grievance procedure for resolving complaints of employment displacement under the Wisconsin Works program and affecting small business.

Effective 12−1−04.

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