Wisconsin Administrative Register

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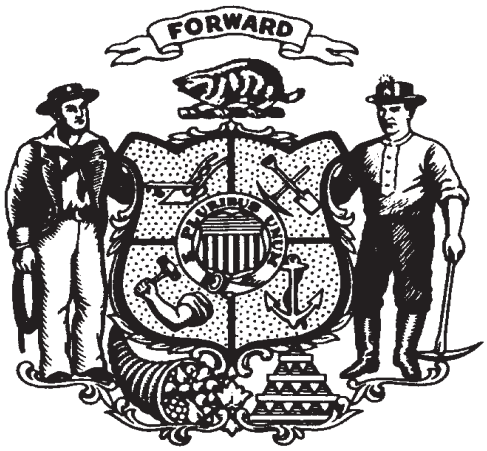

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Emergency rules now in effect

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.

Elections Board

Rules adopted creating **s. ElBd 1.395**, relating to the use of funds in a federal campaign committee that has been converted to a state campaign committee and relating to the use of those converted funds whose contribution to the federal committee would not have been in compliance with Wisconsin law if the contribution had been made directly to a state campaign committee.

Finding of Emergency

The Elections Board finds that an emergency exists in the recent change in federal law that permits the transfer of the funds in a federal candidate campaign committee's account to the candidate's state campaign committee account and finds that a rule is necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency is as follows:

Since the Bi−Partisan Campaign Reform Act of 2002 (BICRA), transfers of funds from a federal campaign committee to a state campaign committee had not been authorized under federal law. In November, 2004, Congress amended the Federal Election Campaign Act, (H.R. 4818, s.532(3) and 532(4), to permit the transfer of a federal candidate's campaign committee's funds to the candidate's state campaign committee, if state law permitted, and subject to the state law's requirements and restrictions.

Because of Congress' action in November, 2004, money which had not been available to a state committee under BICRA, and which might not have qualified for use for political purposes in a state campaign because of its source or because of other noncompliance with state law, could now be transferred to a state committee, if state law permitted. Wisconsin law, under the Board's current rule, ElBd 1.39, Wis. Adm. Code, allows for conversion of federal campaign committees, and their funds, to a state campaign committee without regard to the source of those funds and without regard to contribution limitations.

Restricting the use of such money to that money which has been contributed to the candidate's federal committee, under circumstances in which the contribution would have complied with Wisconsin law if it had been given directly to the Wisconsin campaign committee, is found to be in the public interest.

Publication Date:	**February 3, 2005**
Effective Date:	**February 3, 2005***
Expiration Date:	**July 3, 2005**
Hearing Date:	**May 18, 2005**

***** On February 9, 2005, the Joint Committee for Review of Administrative Rules suspended this emergency rule.

Health and Family Services (2)
(Health, Chs. HFS 110—)

1. Rules adopted revising **ch. HFS 113,** relating to certification of first responders.

Finding of emergency

The Department of Health and Family Services finds that an emergency exists and that the adoption of an emergency rule is necessary for the immediate preservation of the public, health, safety and welfare. The facts constituting this emergency are:

Currently, first responders are restricted in their provision of emergency medical services (EMS) to performing defibrillation. These amended rules are primarily being published by emergency order to allow first responders to also use the following 2 potentially life−saving skills:

1. Non−visualized airway, to treat patients who are either not breathing or their airway has been compromised due to trauma or other means; and

2. The administration of epinephrine, for patients who have suffered a severe allergic reaction.

The Department intends to immediately follow this emergency rule with an identical proposed permanent rulemaking order.

Publication Date:	**June 6, 2005**
Effective Date:	**June 6, 2005**
Expiration Date:	**November 3, 2005**
Hearing Date:	**June 27, 2005**
Hearing Date:	**June 27, 2005**

2. Rules adopted amending **ss. HFS 119.07 (6) (b) to (d) and 119.15 (1) and (3),** relating to operation of the health insurance risk−sharing plan.

Exemption from finding of emergency

Section 149.143 (4), Stats., permits the Department to promulgate rules required under s. 149.143 (2), Stats., by using emergency rulemaking procedures, except that the Department is specifically exempted from the requirement under s. 227.24 (1) and (3), Stats., that it make a finding of emergency. These are the emergency rules. Department staff consulted with the Health Insurance Risk−Sharing Plan (HIRSP) Board of Governors on April 22, 2005 regarding the rules, as required by s. 149.20, Stats.

The State of Wisconsin in 1980 established a Health Insurance Risk−Sharing Plan (HIRSP). HIRSP provides major medical health insurance for persons who are covered under Medicare because they are disabled, persons who have tested positive for HIV, and persons who have been refused coverage or who cannot get coverage at an affordable price in the private health insurance market because of their mental or physical health conditions. Also eligible for coverage are persons who recently lost employer−sponsored insurance coverage if they meet certain criteria. According to state law, HIRSP policyholder premium rates must fund sixty percent of plan costs, except for costs associated with premium and deductible reductions. The remaining funding for HIRSP is to be provided by insurer assessments and adjustments to provider payment rates, in co−equal amounts.

HIRSP Plan 1 is for policyholders that do not have Medicare. Ninety−one percent of the 18,530 HIRSP policies in effect in February 2005 were enrolled in Plan 1. Plan 1 has Option A ($1,000 deductible) or Option B ($2,500 deductible). The rates for Plan 1 contained in this rulemaking order increase an average of 15.0% for policyholders not receiving a premium reduction. The average rate increase for policyholders receiving a premium reduction is 12.1%. Rate increases for individual policyholders within Plan 1 range from 7.0% to 16.8%, depending on a policyholder's age, gender, household income, deductible and zone of residence within Wisconsin. By law, Plan 1 rate increases reflect and take into account the increase in costs associated with Plan 1 claims.

HIRSP Plan 2 is for persons eligible for Medicare because of a disability or because they become age−eligible for Medicare while enrolled in HIRSP. Plan 2 has a $500 deductible. Nine percent of the 18,530 HIRSP policies in effect in February 2005 were enrolled in Plan 2. The rate increases for Plan 2 contained in this rulemaking order increase an average of 20.3% for policyholders not receiving a premium reduction. The average rate increase for policyholders receiving a premium reduction is 17.3%. Rate increases for individual policyholders within Plan 2 range from 11.2% to 22.2%, depending on a policyholder's age, gender, household income and zone of residence within Wisconsin. Plan 2 premiums are set in accordance with the authority and requirements set out in s. 149.14 (5m), Stats.

Publication Date:	**June 15, 2005**
Effective Date:	**June 15, 2005**
Expiration Date:	**October 12, 2005**
Hearing Date:	**July 11, 2005**

Natural Resources
(Fish, Game, etc., Chs. NR 1−)

Rules were adopted revising **s. NR 20.33 (5) (c),** relating to the closure of sturgeon spearing on the Lake Winnebago system.

Finding of emergency

The Department of Natural Resources find that an emergency exists and a rule is necessary for the immediate preservation of the public health, safety or welfare. The facts constituting this emergency are:

During the 2004 sturgeon spearing on Lake Winnebago, spearers harvested a record 1,303 sturgeon on opening day, exceeding the season harvest cap for adult female sturgeon. the spearing season lasted only two days and resulted in an overall harvest of 1,854 sturgeon. The total harvest included 822 males, 348 juvenile females, and 684 adult females, 509 of which came on opening day, exceeding the harvest cap of 425. Population reduction due to overharvest of lake sturgeon could take years to reverse given the life history of lake sturgeon.

Publication Date:	**February 2, 2005**
Effective Date:	**February 2, 2005**
Expiration Date:	**July 2, 2005**
Hearing Date:	**February 23, 2005**

Natural Resources (2)
(Environmental Protection − Water Regulation, Chs. NR 300—)

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

Finding of emergency

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

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

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

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

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

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

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

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

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

2. Rules adopted creating **ch. NR 328, subch. III,** relating to shore erosion control on rivers and streams.

Finding of emergency

SECTION 2. FINDING. 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 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 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 as exempt from a permit, or under a general permit. There are no statutory exemptions for shore protection on rivers and streams. Without emergency rules to create general permits, all shore protection projects on rivers and streams require an individual permit with an automatic 30−day public notice. The required 30−day comment period will unnecessarily delay projects that otherwise could go ahead with prescribed conditions established in a general permit.

To carry out the intention of Act 118 to speed decision−making but not diminish the public trust in state waters, these emergency rules are required to establish general permits to be in effect for the 2005 construction season, with specific standards for shore erosion control structures on rivers and streams.

Publication Date: **April 8, 2005**
Effective Date: **May 1, 2005**
Expiration Date: **September 28, 2005**
Hearing Date: **May 16, 2005**

Revenue

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

Finding of emergency

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

Pursuant to s. 70.32 (2r) (c), the assessment of agricultural land is assessed according to the income that could be generated from its rental for agricultural use. Wisconsin Chapter Tax 18 specifies the formula that is used to estimate the net rental income per acre. The formula estimates the net income per acre of land in corn production based on a 5−year average corn price per bushel, cost of corn production per bushel and corn yield per acre. The net income is divided by a capitalization rate that is based on a 50 year average interest rate for a medium−sized, 1−year adjustable rate mortgage and net tax rate for the property tax levy two years prior to the assessment year.

For reasons of data availability, there is a three−year lag in determining the 5−year average. Thus, the 2003 use value is based on the 5−year average corn price, cost and yield for the 1996−2000 period, and the capitalization rate is based on the 5−year average interest rate for the 1998−2002 period. The 2005 use value is to be based on the 5−year average corn price, cost and yield for the 1998−2002 period, and the capitalization rate is to be based on the 2000−2004 period.

The data for the 1998−2002 period yields negative net income per acre due to declining corn prices and increasing costs of corn production. As a result, reliance on data for the 1998−2002 period will result in negative use values.

The department is issuing this emergency rule in order to ensure positive and stable assessments of agricultural land for 2005.

Publication Date: **December 29, 2004**
Effective Date: **December 29, 2004**
Expiration Date: **May 28, 2005**
Hearing Date: **May 26, 2005**
Extension Through: **July 26, 2005**

Workforce Development (2)
(Labor Standards, Chs. DWD 270−279)

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

Finding of emergency

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

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

Analysis Prepared by the Department of Workforce Development

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

Statutes interpreted: Sections 103.01 and 103.02, Stats.

Section 103.02, Stats., provides that "no person may be employed or be permitted to work in any place of employment or at any employment for such period of time during any day, night or week, as is prejudicial to the person's life, health, safety or welfare." Section 103.01 (3), Stats., defines "place of employment" as "any manufactory, mechanical or mercantile establishment, beauty parlor, laundry, restaurant, confectionary store, or telegraph or telecommunications

office or exchange, or any express or transportation establishment or any hotel."

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

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

Nonmedical home care companion employees who are employed by a third−party, commercial agency are covered by the overtime provision in s. DWD 274.03. Section DWD 274.03 applies to all employees who are subject to the chapter and not exempt under ss. DWD 274.04 or 274.08. The chapter applies to companion employees of a commercial agency because under s. DWD 274.015 a commercial agency is considered a mercantile establishment. Section DWD 270.01 (5) defines a mercantile establishment as a commercial, for−profit business. The chapter does not apply to companion employees of a nonprofit agency or a private household. In addition, none of the exemptions to the overtime section in ss. DWD 274.04 or 274.08 apply to companion employees of a commercial agency.

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

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

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

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

2. Rules adopted revising **ch. DWD 272,** relating to increasing Wisconsin's minimum wages.

Finding of emergency

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

The federal minimum wage has fallen to its lowest inflation−adjusted value of all time. When wages are so low that workers and their families can't afford their most basic needs, society, particularly taxpayers, bears tremendous costs due to poverty−related educational failure, workforce failure, and citizenship failure. An adequate minimum wage supports workers, helps strengthen families and communities, and promotes the state's overall economic and fiscal health.

Publication Date:	**May 25, 2005**
Effective Date:	**June 1, 2005**
Expiration Date:	**October 29, 2005**
Hearing Date:	**June 14, 2005**

Scope statements

Barbering and Cosmetology Examining Board

Subject

Removing household bleach as a disinfectant.

Policy analysis

Objective of the rule. By removing sodium hypochlorite (bleach) from the rules would clarify to the licensee that it is not considered a high−level disinfectant and should not be relied upon to destroy all bacterial contaminants to a safe level as judged by public health requirements. The Center for Disease Control (CDC) and the EPA do not consider bleach as disinfectant/sterilizing for submersion and should only be used for household type applications and should not be referenced as a disinfectant.

Disinfection is the destruction of pathogenic and other kinds of microorganisms by physical or chemical means. Disinfection is less lethal than sterilization, because it destroys the majority of recognized pathogenic microorganisms, but not necessarily all microbial forms (e.g., bacterial spores). Disinfection does not ensure the degree of safety associated with sterilization processes.

Disinfectant products are divided into two major types: hospital and general use. Hospital type disinfectants are the most critical to infection control and are used on medical and dental instruments, floors, walls, bed linens, toilet seats, and other surfaces. General disinfectants are the major source of products used in households, swimming pools, and water purifiers.

The active ingredient in household bleach is not registered for use as a high−level disinfectant by the EPA. Therefore, household bleach is not an appropriate high−level disinfectant. High level disinfectants must be labeled as an EPA registered antimicrobial pesticide. High−level disinfectants must be labeled as an EPA registered antimicrobial pesticide. The CDC has also stated when studying the product Clorox that it was not considered a high−level disinfectant.

There are several factors that make bleach unreliable as a high−level disinfectant. One is the water being used. How hard the water is makes a great difference in the dilution results. The porousness and the bio−load of the surface that is bleached also will cause variations in its effectiveness. There also needs to be extreme accuracy when diluting the bleach and if there is not, certain bacterial spores will not be killed. Bleach also cannot make claims about efficacy. Bleach labels do not say what it will kill, as other disinfectants do.

Comparison with federal requirements

The federal government does not regulate barbers and cosmetologists, and a search of the United States Code Services (USCS) and the Code of Federal Regulations (CFR) returned no entries for sterilization, disinfectants or bleach for barbers and/or cosmetologists.

Statutory authority

Sections 15.08 (5) (b) and 227.11 (2), Stats.

Staff time required

Total: 150 hours.

Entities affected by the rule

Licensed establishments − barbering and cosmetology, aesthetics, electrology and manicuring.

Higher Educational Aids Board

Subject

Objective of the rule. Mandated by 2001 a. 16 and required for proper administration of the program.

Policy analysis

The 2001 Wisconsin Act 16 created s. 39.393 which provides loans to Wisconsin residents who are enrolled at least half−time at an eligible in−state institution that prepares them to be licensed as either a RN or LPN nurse. The Wisconsin Higher Educational Aids Board (HEAB) administers this program under s. 39.393.

Comparison with federal requirements

These rules are not intended to address any proposed or existing federal regulations.

Statutory authority

Section 39.393, Stats.

Staff time required

Estimated hours of staff time − 30 hours.

Entities affected by the rule

Wisconsin residents attending post−secondary institutions of higher education.

Natural Resources

Subject

Objective of the rule. Rules that classify and regulate invasive species.

Policy analysis

The rules will group invasive species into different categories and regulate as necessary the importation, possession, sale and transport of invasive species in order to prevent established invasive species from spreading.

Statutory authority

Sections 23.09 (2), 23.11, 23.22, 29.014 (1), and 227.11 (2) (a), Stats.

Staff time required

1.5 years.

Comparison with federal requirements

Existing federal regional and state classification systems were examined and components of those models were incorporated, as appropriate.

Entities affected by the rule

Affected parties may include the plant nursery industry & agriculture industries, fish farmers, bait dealers, aquarium

and ornamental fish dealers, game farms, landowners, anglers, and gardeners.

Natural Resources

Subject

Objective of the rule. On May 18, 2005, the federal Clean Air Mercury Rule (CAMR) was promulgated. This rule establishes mercury control requirements for new and existing coal−fired utility boilers. The rule sets a declining cap on mercury emissions in two distinct phases, 2010 and 2018, for each state. A national trading program has been developed as an option for states to achieve their mercury emission cap. New sources (those that commence construction after January 30, 2004) must meet a standard of performance (pounds of mercury per megawatt−hour) and any mercury emissions from these new sources must also be accommodated under the state mercury cap.

From the date of promulgation states have eighteen (18) months to submit to the United States Environmental Protection Agency (USEPA) a state plan to meet the requirements of the CAMR. Failure to submit a state plan by November 18, 2006, will result in the imposition of a federal plan to implement the CAMR in Wisconsin.

Policy analysis

An acceptable state plan must meet the requirements of section 111, Standards of Performance for New Stationary Sources, of the federal Clean Air Act. This would include a description of the control measures that will meet the statewide mercury budget and fully adopted rules with the CAMR compliance dates and monitoring, recordkeeping and reporting provisions. States may join the national trading program by adopting the components of the model trading rule USEPA has developed.

State Mercury Rule Interaction

On October 1, 2004, Wisconsin began implementing requirements to reduce mercury emissions from coal−fired boilers operated by major electric utilities in the state. These requirements are included in Chapter NR 446, Control of Mercury Emissions, Wis. Adm. Code. The reduction requirements and compliance schedule in the state rule are more restrictive than the CAMR. Although states are not prohibited from having more stringent requirements than CAMR, the state rule requires that the Department adopt revisions to reflect federal requirements within eighteen (18) months of the promulgation of federal mercury standard. This would include adoption of the federal emission limitations as well as administrative requirements such as monitoring, reporting and recordkeeping.

Flexibility in the CAMR

The CAMR allows states the flexibility to determine how to achieve the required mercury reductions including whether to join the national trading program that would allow interstate trading of mercury allowances. In addition, each state must determine how to allocate the mercury budget that USEPA established to the affected utility units and companies. The 2010 to 2017 annual budget for Wisconsin is 1,780 pounds of mercury which declines to 702 pounds of mercury in 2018 and thereafter. A critical issue is the distribution of this allocation among the four affected electric utilities in the state.

Legal challenge to CAMR

Wisconsin is one of eleven states that have filed a lawsuit challenging the cap and trade approach in the CAMR to achieve mercury emission reductions. The contention is that this approach is inappropriate for a hazardous air pollutant like mercury because meaningful reductions can be significantly delayed and local mercury deposition may not be addressed. These same states, in a separate action, have also challenged USEPA's decision not to regulate mercury emissions from coal−fired power plants under the provisions of section 112, Hazardous Air Pollutants, of the federal Clean Air Act. USEPA chose instead to use the provisions in section 111 of the federal Clean Air Act that allows a more flexible compliance schedule and approach to achieving emission reductions than section 112 provisions. The outcome of these actions may affect this rule revision.

Statutory authority

Sections 111 (a), (b), (c) and (d) of the Clean Air Act [42 USCS sec. 7411 (a), (b), (c), and (d)] and Sections 285.11, 285.13, 285.17 and 285.27, Wis. Stats.

Staff time required

It is estimated that 500 hours will be needed to develop this rule revision.

Comparison with federal requirements

The state mercury rule in Chapter NR 446 has different mercury emission reductions and compliance determination requirements. The purpose of this action is to revise the state rule to mirror the federal CAMR requirements.

Entities affected by the rule

The federal CAMR rule affects new and existing coal−fired utility boilers in the state that serve a generator larger than 25 MW that produces electricity for sale. Also affected is any coal−fired co−generation unit that supplies more than 1/3 of its potential electric output capacity and more than 25 MW electrical output to a utility for sale.

A preliminary analysis of the applicability of the CAMR indicates that 48 coal−fired boilers operated by eight electric utilities in the state may be subject to its provisions. The utilities affected are Alliant Energy, Dairy Power Cooperative, Madison Gas & Electric Company, Manitowoc Public Utilities, MidAmerican Energy Company, WE Energies, Wisconsin Public Service Corporation and Xcel Energy.

Nursing Home Administrator Examining Board

Subject

Approval and acceptance of academic course work completed at accredited colleges and universities as fulfilling the continuing education hours required for renewal of the nursing home administrator certificate of registration.

Objective of the rule. Under the current rules, in order for a licensee to obtain credit for continuing education course work completed at an accredited college or university, the course work must be approved by the National Association of Boards of Examiners of Long Term Care Administrators (NAB). The board proposes to revise the rules to state that certain programs offered by accredited colleges and universities will be acceptable for continuing education hours without having to be approved by NAB.

Policy analysis

Wis. Admin. Code § NHA 3.02 (1) states that every nursing home administrator shall complete 24 hours in approved continuing education programs in each biennial renewal

period. Section NHA 3.02 (1m) states that, except as provided in s. NHA 3.03 (4), continuing education programs must be approved by the National Association of Boards of Examiners of Long Term Care Administrators (NAB).

The board proposes to revise the rules to state that certain programs offered by accredited colleges and universities will be acceptable for continuing education hours without having to be approved by NAB. The board also proposes to limit the number of continuing education hours that may be claimed for course work completed at accredited colleges and universities to 18 contact hours within the 2−year renewal period immediately preceding the date of renewal. In addition, the subject matter of the programs will be limited to specific areas that are relevant to the practice of nursing home administration.

Statutory authority

Sections 15.08 (5) (b), 227.11 (2), 456.07, Wis. Stats.

Comparison with federal requirements

There is no existing or proposed federal legislation.

Staff time required

200 hours.

Entities affected by the rule

Nursing home administrators obtaining credit for continuing education course work.

Tourism

Subject

Ch. Tour 1 − relating to the joint effort. marketing program.

Objective of the rule. The single objective of the rule is to allow for a second consecutive year of funding for Existing Event projects under the Joint Effort Marketing tourism grant program.

Policy analysis

The Joint Effort Marketing program provides for grants to non−profit organizations engaged in tourism activities that are directed at increasing tourism spending. Grant funds may be used for the development of publicity, the production and media placement of advertising and direct mailings that are part of a project and overall advertising plan of the applicant organization intended to increase tourism in Wisconsin.

Funding may be used for advertising of an event, for advertising of a sales promotion and for destination marketing advertising that is not tied to an event or promotion, but which is directed at extending the tourism market for the applicant and which has been identified by the Department as a market for the state.

If the project advertises an existing event, the rules require that the advertising be placed in a new geographic market, or reach a new demographic market, or the use of media where advertising for the event has not previously been placed. Existing Event projects are limited to one year of funding.

The proposal would allow the department to fund a second consecutive year of an existing event project.

The policy alternatives are to leave the program regulations as they are or to adopt the change being proposed.

Entities affected by the rule

Wisconsin non−profit and tourism organizations which choose to apply for a Joint Effort Marketing grant in the Existing Event category.

Comparison with federal requirements

None.

Statutory authority

The statutory authority for the rule is s. 41.17 (4) (g), Stats.

Staff time required

The Department estimates that it will take approximately 10 hours of staff time on the rule, which includes discussing the rule with the Council on Tourism and interested members of Wisconsin's tourism industry.

The contact person for this rulemaking is Abbie Hill, telephone number 608/261−6272, Email at ahill@travelwisconsin.com

Transportation

Subject

Objective of the rule. This rule making will bring the Department's administrative rules into sync with the agency's reorganized structure.

Policy analysis

DOT was reorganized effective May 31, 2005. As part of that reorganization, DOT's various district boundaries for its motor vehicles, state patrol, and transportation infrastructure divisions were reduced to 5 and consistent boundaries were established for all 5. In doing so, the Department now began calling these districts "regions."

Consistent with s. 84.01 (3), Stats., the various administrative rules promulgated by DOT all refer to "districts" rather than "regions." This rule making proposes to amend the Administrative Code to substitute the term "region" for "district," or equate the two terms, consistent with DOT's new five geographic regional structure.

This rule making will eliminate any possible confusion that could be caused by rules that refer to "districts" when DOT's organizational chart now calls its 5 districts "regions."

Comparison with federal requirements

No federal regulation applies.

Entities affected by the rule

None

Statutory authority

ss. 84.01 (3) and 227.11, Stats.

Staff time required

40 hours .

Submittal of rules to legislative council clearinghouse

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

Elections Board

Rule Submittal Date

On June 10, 2005, the Wisconsin Elections Board submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Subject

To create s. ElBd 1.46 (3), relating to the identification of individual contributors on campaign finance reports.

Agency Procedure for Promulgation

The Elections Board is following the 30−day notice procedure, under s. 227.16 (2) (e), Stats., for the promulgation of these rules.

Contact Information

George A. Dunst, legal counsel
608−266−8005

Health and Family Services

Rule Submittal Date

On May 26, 2005, the Department of Health and Family Services submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Subject

To repeal s. HFS 107.12 (2) (b) and (3) (d); to repeal and recreate s. HFS 107.113 (5) (d); and to create s. HFS 107.113 (5) (g) and 107.12 (4) (f) and (g), relating to private duty nursing and respiratory care service benefits covered by the Wisconsin Medical Assistance program, and affecting small businesses.

Federal statutes or regulations which require adoption of or are relevant to the substance of proposed rules:

42 CFR pt. 440.70 provides the regulatory authority to provide home health services under the Medicaid program. The federal regulation is less detailed than the proposed rule. The Department believes that its proposed administrative rule changes are necessary to ensure that the private duty nursing provided to Medicaid recipients ensure quality care and the judicious use of the Medical Assistance funds the Department is responsible for managing.

Court decisions directly relevant to the proposed rule:

None known.

Agency Procedure for Promulgation

A public hearing is required; however, a public hearing has not yet been scheduled for this proposed rule.

Contact Information

For substantive questions on rules contact:

Al Matano
Division of Health Care Financing
P.O. Box 309
Madison, WI 53702
608−267−6848
matana@dhfs.state.wi.us

For small business considerations contact:

Rosie Greer
608−266−1279
greerrj@dhfs.state.wi.us

For rules processing information contact:

Rosie Greer
608−266−1279
greerrj@dhfs.state.wi.us

Insurance

Rule Submittal Date

In accordance with ss. 227.14 and 227.15, Stats., the Office of the Commissioner of Insurance is submitting a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse on June 15, 2005.

Subject

These changes will affect ch. Ins 9, s. Ins 3.67 and s. Ins 18.03, Wis. Adm. Code, relating to revised requirements for defined network and preferred provide plans.

Agency Procedure for Promulgation

The date for the public hearing is July 27, 2005.

Contact Information

A copy of the proposed rule may be obtained from the web site at:

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

or by contacting Inger Williams, Services Section, Office of the Commissioner of Insurance, at (608) 264−8110. For additional information, please contact Julie E. Walsh at (608) 264−8101 or e−mail at Julie.Walsh@oci.state.wi.us in the OCI Legal Unit.

Natural Resources

Rule Submittal Date

On June 13, 2005, the Department of Natural Resources submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Subject

The proposed rules affect chapter NR 10, relating to the migratory game bird season.

Agency Procedure for Promulgation

Public hearings are required and will be held on August 8, 9, 10 and 11, 2005. The organizational unit responsible for the promulgation of the proposed rules is the Bureau of Wildlife Management.

Contact Information

Kurt Thiede

608−267−2452

Natural Resources

Rule Submittal Date

On June 8, 2005, the Department of Natural Resources submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

The proposed rules affect chapter NR 64, relating to all−terrain vehicle noise testing procedures.

Agency Procedure for Promulgation

A public hearing is required and will be in August 2005. The organizational unit responsible for the promulgation of the proposed rules is the Bureau of Law Enforcement.

Contact Information

Karl Brooks

608−266−7820

Natural Resources

Rule Submittal Date

On June 8, 2005, the Department of Natural Resources submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Subject

The proposed rules affect chapter NR 64, relating to all−terrain vehicle registration exemption.

Agency Procedure for Promulgation

A public hearing is required and will be held in August 2005. The organizational unit responsible for the promulgation of the proposed rules is the Bureau of Law Enforcement.

Contact Information

Karl Brooks

608−266−7820

Natural Resources

Rule Submittal Date

On June 13, 2005, the Department of Natural Resources submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

The proposed rules affect chapter NR 115, relating to minimum standards for county shoreland zoning ordinances.

Agency Procedure for Promulgation

Public hearings are required and will be held on July 12, 13, 14, 19, 21, 26, 27 and 28, August 2 and 4, 2005. The organizational unit responsible for the promulgation of the proposed rules is the Bureau of Watershed Management.

Contact Information

Toni Herkert

608−266−0161

Natural Resources

Rule Submittal Date

On June 8, 2005, the Department of Natural Resources submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

The proposed rules affect chapter NR 400, 424 and 438, relating to excluding additional organic compounds for the volatile organic compound (VOC) definition and to VOC emission limits for yeast manufacturing.

Agency Procedure for Promulgation

A public hearing is required and will be held on July 11, 2005. The organizational unit responsible for the promulgation of the proposed rules is the Bureau of Air Management.

Contact Information

Farrokh Ghoreishi

608−266−7718

Revenue

Rule Submittal Date

On June 14, 2005 the Wisconsin Department of Revenue submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Subject

The proposed rule makes amendments to the assessment of agricultural property.

Agency Procedure for Promulgation

A public hearing on the proposed rule is required and will be scheduled.

The Office of the Secretary is primarily responsible for the promulgation of the proposed rule.

Contact Information

If you have questions, please contact:

Scott Shields

Division of State and Local Finance

Telephone (608) 266−2317

E−mail: sshields@dor.state.wi.us

Workforce Development

Rule Submittal Date

On June 13, 2005, the Department of Workforce Development submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

Statutory authority: Sections 104.04 and 227.11 (2), Stats.

The proposed rules affect chapter DWD 272, relating to increasing Wisconsin's minimum wages.

Agency Procedure for Promulgation

A public hearing is required and will be held on June 14, 2005. The organizational unit responsible for the promulgation of the proposed rules is the DWD Equal Rights Division.

Contact Information

Elaine Pridgen

Telephone: (608) 267−9403

Email: elaine.pridgen@dwd.state.wi.uw

Rule−making notices

Notice of Proposed Rule
Elections Board
[CR 05−061]

NOTICE IS HEREBY GIVEN that pursuant to ss. 5.05 (1) (f) and 227.11 (2) (a), Stats., and interpreting ss.11.06 (1) and (5), 11.22 (2) (c) and 11.23 (3), and 11.24 (2), Stats., and according to the procedure set forth in s.227.16 (2) (e), Stats., the State of Wisconsin Elections Board will adopt the following rules as proposed in this notice without public hearing unless within 30 days after publication of this notice, **July 1, 2005**, the Elections Board is petitioned for a public hearing by 25 persons who will be affected by the rule; by a municipality which will be affected by the rule; or by an association which is representative of a farm, labor, business, or professional group which will be affected by the rule.

Analysis Prepared by State Elections Board

Statutory authority: ss. 5.05 (1) (f) and 227.11 (2) (a).

Statutes interpreted: ss. 11.06 (1) and (5), 11.22 (2) (c) and 11.23 (3), and 11.24 (2).

Section 11.06 (5), Stats., requires that "A registered individual or treasurer of a group or committee shall make a good faith effort to obtain all required information" on each campaign finance report. The rule prescribes the standard for what constitutes a "good faith effort to obtain all required information" under the statute, and prescribes the consequences for a registrant's acceptance of a contribution for which the registrant has not "obtained all required information," under the statute. To constitute "good faith" compliance, a registrant has 60 days (from the due date of the report) in which to obtain all required information, or return any contribution for which that information has not been obtained. The failure to provide the required information or return the contribution within the 60 day period constitutes a violation of s. 11.06 (1), Stats., subjecting the registrant to a possible forfeiture and a requirement to return any such contribution in excess of $250.

Pursuant to the authority vested in the State of Wisconsin Elections Board by ss. 5.05 (1) (f) and 227.11 (2) (a), Stats., the Elections Board hereby creates s. ElBd 1.46 (3), interpreting ss. 11.06 (1) and (5), 11.22 (2) (c) and 11.23 (3), and 11.24 (2), Stats., as follows:

SECTION 1. ElBd 1.46 (3) is created to read:

(3) (a) A registrant who files a campaign finance report which does not disclose all of the contributor information required by s.11.06 (1) (a) or (b), Stats., shall, not later than 60 days after the due date for that report, notify the filing officer of all the information required for each contribution included on that report. A registrant who provides the required information or who returns the contribution to the contributor, within 60 days of the due date for the report, shall be considered to have made good faith compliance under s.11.06 (5), Stats. and shall not be considered to have violated s.11.06 (1), Stats. A registrant who does not provide the required information and does not return the contribution, within 60 days of the due date for the report shall be considered to have failed to show good faith compliance under s.11.06 (5), Stats., and shall be considered to have violated s.11.06 (1), Stats., and shall be required to divest itself of any such contribution or contributions in excess of $250.

(b) Divestiture of an unacceptable contribution under this section shall consist of returning the contribution to the contributor, or paying the amount of the contribution to the Common School Fund or to any other bona fide charity.

(c) The divestiture of the contribution after 60 days from the due date of the report shall –not preclude the Board's imposition of any civil penalties under s.11.60, Stats., if the egregious nature of the circumstances warrant prosecution.

(d) The committee's disposition of the illegal contribution shall be reported on its next succeeding campaign finance report.

Initial Regulatory Flexibility Analysis

The creation of this rule does not affect business.

Fiscal Estimate

The creation of this rule has no fiscal effect.

Contact Person

George A. Dunst, Legal Counsel
State Elections Board
132 E. Wilson Street
P.O. Box 2973
Madison, Wisconsin 53701−2973
Phone 266−0136

Notice of Hearings
Health and Family Services
(Medical Assistance, Chs. 100−]
[CR 05−033]

NOTICE IS HEREBY GIVEN that pursuant to ss. 49.45 (2) (a) 11. b., and (10) and 227.11 (2), Stats., interpreting ss. 49.45 (2) (a) 11. a., and (10), 49.46 (2) (a) 2., and (b) 1., Stats., the Department of Health and Family Services will hold public hearings to consider the repeal of s. HFS 107.07 (2) (c); the renumbering of s. HFS 105.06; the amendment of ss. HFS 105.01 (5) (a) 1., 105.06 (title), 107.07 (2) (a) (intro.) 1. to 4. and (b); the repeal and recreation of s. HFS 107.07 (1), (3) and (4); and the creation of ss. HFS 105.06 (1) (title) and (2), 107.07 (1m), (2) (a) 5. to 8. and (4m), relating to coverage of dental services under the Medical Assistance program, and affecting small businesses.

Hearing Information

The public hearings will be held:

Wednesday, **July 13, 2005**, 10:00 a.m. to 12:00 noon
1300 W. Clairemont Ave., Rooms 158/185
Eau Claire, WI

Thursday, **July 14, 2005**, 10:00 a.m. to 12:00 noon
1 West Wilson Street, Room B−145
Madison, WI

Friday, **July 15, 2005**, 10:00 a.m. to 12:00 noon
141 NW Barstow, Room 15
Waukesha, WI

Tuesday, **July 19, 2005**, 10:00 a.m. to 12:00 noon

2894 Shawano Ave.

Lake Michigan Community Conference Room

Green Bay, WI

The hearing sites are fully accessible to people with disabilities. If you are hearing or visually impaired, do not speak English, or have circumstances that might make communication at a hearing difficult and if you, therefore, require an interpreter or a non−English, large print or taped version of the hearing document, contact the person at the address or phone number given above at least 10 days before the hearing. With less than 10 days notice, an interpreter may not be available.

Written comments may be submitted at the public hearing, or in lieu of attending a public hearing written comments can be submitted by regular mail or email to the contact person listed below. Written comments may also be submitted to the Department using the Wisconsin Administrative Rules Internet website at the web address listed below.

Deadline for Comment Submission

The deadline for submitting comments is **4:30 p.m., on Friday, July 29, 2005.**

Analysis Prepared by the Department of Health and Family Services

The proposed order revises the Department's rules for coverage of dental services by the MA program to update dental terminology, accommodate the current national dental procedure codeset, improve the organization of s. HFS 107.07, substantially reduce the number of services requiring prior authorization, and change the coverage status of several services, including for sealants, and alveoplasty and osteoplasty (2 types of oral surgery).

The removal of alveoplasty and osteoplasty from the non−covered services category to the category of services covered with prior authorization will permit reimbursement of dentists for these services. Currently, only physicians are allowed reimbursement for these surgeries.

In addition, the proposed order revises ss. HFS 105.01 (5) and (6), to allow for the individual certification of dental hygienists and describes services that may be reimbursed by Medicaid when provided by Medicaid certified dental hygienists.

Effect on Small Business (Initial Regulatory Flexibility Analysis)

The proposed rules will affect dental hygienists who perform services as independent contractors, and dentists. The Department believes that the proposed rules will have a positive effect on dental hygienists performing services as independent contractors, and dentists. Dental hygienists will enjoy increased opportunities to independently contract their services. Dentists will experience a reduction in paperwork and administrative staff time associated with participation in Wisconsin Medicaid and BadgerCare. The proposed rules do not impose reporting requirements or schedules.

Fiscal Estimate

The Department does not anticipate that the proposed rules will affect local government or private sector costs. The Department does, however, anticipate that the proposed rules will increase costs to the Department. The GPR share of increased costs was calculated at the SFY 2004 blended rate of 36.4%, and based on the following assumptions that have been updated since April 14, 2005, when the original fiscal estimate was submitted, with proposed rules, to the Legislative Council Clearinghouse. The updated fiscal estimate is attached to this notice of hearing.

Assumptions used in Arriving at Fiscal Estimate

Certifying Dental Hygienists as MA Providers

(1) 10 hygienists employed by local health departments, or other allowable practice settings, would certify as Medicaid providers in first year of biennium; 10 additional would begin in second year. (Some additional hygienists currently billing under HealthCheck nursing agency provider numbers could shift to individual certification, but this shift would have no net fiscal effect.)

(2) Hygienists would treat an average of 16 MA enrolled children per month and 10 MA enrolled adults per month.

(3) Hygienists would provide an average of 1 evaluation, 2 fluorides, and 4 sealants per MA−enrolled child per year, and an average of 1 evaluation, 4 cleanings, and 4 fluorides per MA−enrolled adult per year.

Revising Prior Authorization for Dental MA Program

(1) Services where PA was denied, or returned and not resubmitted (estimated to be 50% of returned details) under old rules would be paid under new rules.

(2) Quantity of services requested on denied or returned and not resubmitted requests is equal to the weighted average of quantity of services requested on approved requests. Services that are requested for multiple years are performed at the maximum allowable number of times per year.

(3) This estimate does not assume an increase in the number of Medicaid−certified dentists due to the rule change. However, to the extent that this rule change increases the number of dentists participating in Medicaid, the cost of the change would increase.

Long Range Fiscal Implications

Dental Hygienists

(1) Increased cost of approximately $938,000 AF ($341,000 GPR) in the 2005−2007 biennium, assuming a March 2006 effective date.

(2) Long−term costs may decline as future disease burden declines due to increased provision of early preventive treatment.

Prior Authorization

(1) Increased cost of approximately $460,000 AF ($168,000 GPR) in the 2005−2007 biennium, assuming a March 2006 effective date.

For More Information

A copy of the full text of the rules and the updated fiscal estimate, and other documents associated with this rulemaking may be obtained, at no charge, from the Wisconsin Administrative Rules website at http://adminrules.wisconsin.gov. At this website you can also register to receive email notification whenever the Department posts new information about this rulemaking and, during the public comment period, you can submit comments on the rulemaking order electronically and view comments that others have submitted about the rule.

A copy of the full text of the rule and the updated fiscal estimate may also be obtained by contacting the Department's representative listed below:

Andrew Snyder, Dental Policy Analyst
Division of Health Care Financing
Bureau of Fee−for−Service Health Care Benefits
1 West Wilson Street
P.O. Box 309
Madison, WI 53701−0309
(608) 266−9749
snydea@dhfs.state.wi.us

Small Business Regulatory Coordinator:
Rosie Greer
Greerrj@dhfs.state.wi.us
608−266−1279

Notice of Hearing
Insurance
[CR 05−059]

Notice is hereby given that pursuant to the authority granted under s. 601.41 (3), Stats., and the procedures set forth in under s. 227.18, Stats., OCI will hold a public hearing to consider the adoption of the attached proposed rulemaking order affecting ch. Ins 9, Wis. Adm. Code, relating to defined network and preferred provider plans and may affect small businesses.

Date: **July 27, 2005**

Time: 1:00 p.m., or as soon thereafter as the matter may be reached

Place: OCI, Room 227, 125 South Webster St 2nd Floor, Madison, WI

Written comments or comments submitted through the Wisconsin Administrative Rule website at: https://adminrules.wisconsin.gov on the proposed rule will be considered. The deadline for submitting comments is 4:00 p.m. on the 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 9

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: Section 600.01 (1) (b) 3. cm., s. 601.01 (1), (2), (3), and (10), ch. 609 and s. 632.85, Stats.

2. Statutory authority: Sections 601.41 (3), 609.20, and 609.38, Stats.

3. Explanation of the OCI's authority to promulgate the proposed rule under these statutes: The Commissioner of Insurance is authorized to promulgate rules under s. 601.41 and 609.20, Stats. Section 609.20, Stats., permits the Commissioner to promulgate rules relating to preferred provider plans and defined network plans in order to ensure enrollee access to health care services and ensure continuity of health care while recognizing the differences between preferred provider plans and defined network plans.

4. Related Statutes or rules: There are no related statutes or rules.

5. The plain language analysis and summary of the proposed rule: Many of the proposed revisions to sections within s. Ins 3.67, ch. Ins 9 and s. Ins 18 are due to a change in terminology. The term "managed care plan" has been replaced with "defined network plan" in Ch. 609, Stats., established by 2001 Wisconsin Act 16, therefore, necessitating change within the insurance administrative code. In addition many revisions have been made to Ch. Ins 9 to reflect the changes enacted by 2001 Wisconsin Act 16 including modifications reflecting the unique nature of preferred provider plans and changes in the market place since 2001 including regulatory changes that enhance consumer protection enacted by surrounding states.

Finally, the proposed rule reflects numerous modifications arising from a cooperative effort of the Commissioner and representatives from the insurance industry. Since November 2004, four public working meetings have been held to discuss each section of the proposed rule. Each public meeting was attended by the Commissioner and his staff and representatives from the Wisconsin Association of Life and Health Insurers (WALHI), Council for Affordable Healthcare and Wisconsin Association of Provider Networks (WAPN) as well as representatives from no less than seven (7) domestic and non−domestic health insurers. Additional work groups comprised of representatives from industry and the Office met two additional times to work on the ancillary provider language and criteria for preferred provider plans. Participants at the open meetings were invited to comment and make recommendations or specific modifications to the proposed rule. Candid discussion provided both the Commissioner and the industry opportunity to voice support or concerns over each section of the rule. The public working meetings also gave both industry and the Commissioner the opportunity to share its respective views of the marketplace. Discussion often focused on how proposed and revised language affects the industry and its ability to function in the marketplace with the guiding statutory requirements and consumer concerns as reflected in complaints received by the OCI to maintain the proper balance in the proposed regulations. At each meeting revisions that had previously been discussed were reviewed, comment invited with extensive dialogue from both industry and OCI. At the end of the last working public meeting held May 9, 2005, the Commissioner invited written comment on the entire proposed rule. The comment period was intended to provide industry with time to reflect on the proposed rule and offer specific thoughtful revisions or recommendations and then permit the Commissioner time to review the suggested revisions and recommendations prior to issuing the Notice of Hearing for the rule. The culmination of those meeting, including written comments received throughout the last year, is reflected in this proposed rule.

The proposed rule defines preferred provider plans starting with the definition at s. 609.01, Wis. Stats., and clarifies and interprets the statutory requirements. Insurers offering preferred provider plans cannot require a referral to obtain coverage for care from either a participating or nonparticipating provider. If the preferred provider uses utilization management, including preauthorization or similar methods, for denying access to or coverage of the services of nonparticipating providers without just cause and with such frequency as to indicate a general business practice, such methods shall result in the plan being treated by the Commissioner as a defined network plan and subject to all requirements of a defined network plan. The Commissioner recognizes that the utilization management and preauthorization as appropriate tools for controlling costs of the insurer and may protect enrollees from incurring additional costs for care. Therefore the proposed rule does not prohibit or limit the proper use of utilization management or preauthorization. OCI will, however, track insurers' use of these tools through complaints and market conduct examination to determine if the insurer has developed a pattern, without just cause, for denying coverage. If such a pattern is uncovered then the insurer would be subject to regulation as a defined network plan.

The proposed rule reflects the amendments within Ch. 609, Stats., by delineating unique reporting and other regulatory requirements between insurers that offer preferred provider plans versus other types of defined network plans. Significant provisions that demonstrate the unique regulatory treatment between defined network and preferred provider plans

include: defined network plans are required to have quality assurance plans containing standards relating to access to care and continuity and quality of care while preferred provider plans are required to conduct remedial action plans and to develop procedures for remedial action to address quality problems; defined network plans must notify affected enrollees upon the termination of the provider from the plan and preferred providers may contract with another entity or providers to notify the enrollees of the termination, although the preferred provider does remain ultimately responsible for ensuring notifications are sent; defined network plans must report data similar to HEDIS for consumer information and preferred provider plans do not; both defined network plans and preferred provider plans are required to have sufficient number and type of providers within the network to adequately deliver all covered services, however, defined network plans must comply with all access standards while preferred provider plans need to have at least one participating primary care provider and one participating provider that has an expertise in obstetrics and gynecology that is accepting patients but the preferred provider plan need not offer a choice of participating providers.

In order for preferred provider plans to be regulated under the less rigorous regulatory requirements, the preferred provider plan must comply with the proposed regulatory requirements. Preferred provider plans must provide covered benefits without requiring the enrollee to obtain a referral or directing provider selection through the use of incentives including financial. The Commissioner recognizes that certain covered services may appropriately be best provided through contracted providers, for example the use of "Centers of Excellence" for transplants or cancer treatment. Further the mandated benefit for immunizations requires the insurer to offer as a covered benefit immunizations but the insurer need only cover the benefit when the immunization is given by a participating provider. Finally, some insurers offer services beyond the mandated limits as covered benefits with a greater disparity in coverage and may limit the expanded benefits to services received from participating providers. Therefore, the proposed rule creates a narrow exception to permit specific, limited services to be covered by participating providers with a greater disparity in coverage than when the services are provided by nonparticipating providers including the possibility of coverage only when the services are performed by a participating provider (i.e. immunizations).

As recognized by both the industry and by the Commissioner, deductibles and coinsurance are appropriate tools to steer enrollees towards participating providers. Although an appropriate tool, the differences between the deductible and coinsurance that an enrollee is required to pay when services are performed by a participating provider as compared nonparticipating providers should only be enough to create the incentive to utilize preferred providers. The Commissioner over the past year has received and reviewed numerous comments on where the line should be drawn to create the proper balance between the insurers desire to steer enrollees towards participating providers yet not so great that as a result enrollees are exposed to potentially significant financial penalties.

Therefore, the proposed rule requires the insurers offering preferred provider plans that desire to be subject only to the lesser regulatory requirements of preferred provider plans to comply with the following: coverage of the same benefits, unless specifically excepted, with the insurer paying not less than 60% coinsurance and the enrollee paying not more than 40% coinsurance for services performed by a nonparticipating provider. As an alternate, the insurer may pay not less than 50% coinsurance and the enrollee pay not more than 50% coinsurance for the services performed by a nonparticipating provider when the insurer provides the enrollee with a disclosure of limited coverage. Failure of the insurer to offer 60% coinsurance coverage without a disclosure notice or 50% coinsurance coverage with the disclosure notice will result in the insurer being treated as a defined network plan and not eligible for the lesser regulatory standards.

Additionally, the insurer offering a preferred provider plan that applies a coinsurance percentage when services are performed by nonparticipating providers at a different percentage than the coinsurance percentage that is applied when the services are performed by participating providers shall have the difference be no greater than 30%. If the percent difference is greater than 30% the insurer is required to provide the enrollee with a disclosure notice. If an insurer offering a preferred provider plan applies a deductible that is different for participating providers than for nonparticipating providers, the deductible for the same services when performed by a nonparticipating provider must be no more than 2 times greater or no more than $2000 more than the deductible that is applied when performed by a participating provider. If the insurer applies a deductible for services performed by a nonparticipating provider that is greater than 2 times or is more than $2000 different than the deductible that is applied when performed by participating providers, the insurer is required to provide the enrollee with a disclosure notice. The disclosure notice that is required to be given is contained within the rule and is similar to the notice provided in the state of Illinois.

A preferred provider plan must apply material exclusions, maximum limits or conditions to services regardless if the services are performed by either participating or nonparticipating providers and offers or uses no other incentives than the financial incentives of coinsurance and deductibles described above to encourage its enrollees to use participating providers. The exception to this requirement is for the steering of enrollees to Centers of Excellence for transplants and specified disease treatment services and immunizations pursuant to s. 632.895 (14), Stats., when insurer comply with disclosure requirements at the time the product is marketed, purchased and within the policy form in a prominent location.

Preferred provider plans shall include within the participating provider contracts a provision requiring the participating provider that schedules an elective procedure or other scheduled non−emergent care to fully disclose to the enrollee at the time of scheduling the name of each provider that will or may participate in the delivery of care and whether each provider is a participating or nonparticipating provider. The insurer shall include a disclosure, in a form consistent with the language contained in Appendix D, which informs enrollees of potential financial implications of using nonparticipating providers and to encourage the enrollee to contact the insurer for assistance in locating an appropriate participating provider. The intent of this requirement is to address the frequent complaint from Wisconsin consumers alleging that although the enrollee sought care from a participating surgeon at a participating hospital, the ancillary providers including anesthesiology or other specialist was nonparticipating and as a result the enrollee incurred large, unexpected medical bills. It is expected that with additional information in advance of the needed service, enrollees will be able to work with insurers and providers to make the best informed medical and financial decisions.

Preferred provider plans are not required to have a quality assurance program and are instead subject to remedial action plans as mentioned earlier. The remedial action plan requires the insurer offering the preferred provider plan to develop

procedures for taking effective and timely remedial actions to address issues arising from access to and continuity of care. The proposed rule requires the remedial action plan to contain at least all of the following: designation of a senior−level staff person responsible for oversight of the plan, a written plan for the oversight of any function that is delegated to other contracted entities, a procedure for periodic review of the insurer's performance or the performance of a contracted entity, periodic and regular review of grievances, complaints and OCI complaints, a written plan for maintaining the confidentiality of protected information, documentation of timely correction of access to and continuity of care issues identified in the plan to include the date the insurer was aware of the issue, the type of issue, the person responsible for the development and management of the plan, the remedial action plan utilized in each situation, the outcome of the action plan, and the established time frame for reevaluation of the issue to ensure resolution and compliance with the remedial action plan

Emergency medical care treatment coverage was identified by the Commissioner as another specific type of service for which the Office frequently receives complaints from Wisconsin consumers. This form of regulation is found in the surrounding states and is most similar to the regulation in Iowa. To further clarify the prudent person mandate for coverage of emergency medical care, the proposed rule contains requirements for both insurers offering defined network plans and preferred provider plans that provide emergency medical care treatment as a covered benefit. These insurers shall provide that treatment as though the provider was a participating provider when the enrollee cannot reasonably reach a preferred provider or is admitted for inpatient care even if the care is provided by a nonparticipating provider. The plans must reimburse the provider at the nonparticipating provider rate and apply any deductibles, coinsurance or other costsharing provisions, if applicable, at the participating provider rate.

Defined network plans and preferred provider plans are both required to annually certify compliance with applicable access standards. Defined network plans and preferred providers plans must both provide covered benefits by plan providers with reasonable promptness with respect to geographic location, hours of operation waiting times for appointments in provider offices and after hour's care reflecting the usual practice in the local area with geographic availability reflecting the usual medical travel times within the community. This requirement is not new and does not require insurers to mandate to participating providers the provider's hours of operation. Rather when the insurer is required to reply to the Office, the insurer must demonstrate that the hours of operation waiting time for appointments and after hours care of the participating providers is reasonable based upon the geographic location and usual medical travel times within that community.

The Commissioner finds that the circumstances of insurers offering group or blanket health insurance policy require that the insurer offering the policy otherwise exempt from Chs. 600 to 646, Stats., under s. 600.01 (1) (b) 3., Stats., in order to provide adequate protection to Wisconsin enrollees and the public those insurers shall comply with s. Ins 9.34 (2) and s. 609.22 (2), Stats., when it covers 100 or more residents of this state under a policy that is otherwise exempt under s. 600.01 (1) (b) 3., Stats.

Finally, the proposed rule includes several new definitions of terms that were requested by the industry to assist in clarifying relationships between insurers and providers and to clarify what entities are subject to specific requirements.

The proposed rule would be enforced under ss. 601.41, 601.64, 601.65, Stats., or ch. 645, Stats., or any other enforcement provision of chs. 600 to 646, Stats. This proposed rule includes a significantly delayed applicability date to give insurers amply time to comply with the various provisions including sufficient time to submit to the OCI forms for approval prior to use.

6. Summary of and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:

There is no existing or proposed federal regulation that is intended to address the issues presented within the proposed rule. There is federal regulation for issuers of Medicare Advantage, a means of delivering Medicare Part A and B benefits through preferred provider organizations, formally known as Medicare + Choice. States are preempted from regulating issuers of Medicare Advantage, however the Centers for Medicare & Medicaid did provide regulations that included access requirements which are similar to the requirements incorporated in the OCI proposed rule

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

Iowa: Iowa statute §514C.16, requires a carrier which provides coverage for emergency services to be responsible for charges for emergency services furnished outside any contractual provider network or preferred provider network for covered individuals. Iowa Administrative Code s. 191−27.4 (1)(a), requires a health benefit plan which provides for incentives for covered persons to use the health care services of a preferred provider to contain a provision that if a covered person receives emergency services specified in the preferred provider arrangement and cannot reasonably reach a preferred provider, emergency services rendered during the course of the emergency will be reimbursed as though the covered person had been treated by a preferred provider, subject to any restrictions which may govern payment by a preferred provider for emergency services. Iowa statute §514B and Administrative Code 191−40.21, require HMOs to reimburse a provider of emergency services after a review of the care and may not deny reimbursement solely on the grounds that the services were provided by non−contracted providers.

Iowa statute §514F.3 requires the commissioner of insurance to adopt rules for preferred provider contracts and organizations and to adopt rules related to preferred provider arrangements. Iowa statute §514K.1 requires HMOs, organized delivery systems or an insurer using a preferred provider arrangement to provide to its enrollees written information that at a minimum must include the following; a description of the plan's benefits and exclusions, enrollee cost−sharing requirements, list of participating providers, disclosure of drug formularies, explanation for accessing emergency care services, policy for addressing investigational or experimental treatments, methodologies used to compensate providers, performance measures as determined by the commissioner and information on how to access internal and external grievance procedures. In addition the Iowa department must annually publish a consumer guide providing a comparison by plan on performance measures, network composition, and other key information to enable consumers to better understand plan differences.

Iowa Administrative Code 191−27.3 (1), requires preferred provider arrangements to establish the amount and manner of payment to a preferred provider, the mechanisms designed to minimize cost of the health benefits plan and ensure reasonable access to covered services under the preferred provider arrangement. Iowa Administrative Code

191−27.4 (1) (b), requires preferred provider plans to contain a provision that clearly identifies the differentials in benefit levels for health care services of preferred providers and non−preferred providers. Iowa Administrative Code 191−27.4 (2), requires that if a health benefit plan provides difference in benefit levels payable to preferred providers compared to other providers, such difference shall not unfairly deny payment for covered services and shall be no greater than necessary to provide a reasonable incentive for covered persons to use the preferred provider.

Illinois: Illinois statutory code 215 ILCS 5/370o, requires any preferred provider contract to provide the enrollee emergency care coverage regardless of whether the emergency care is provided by a preferred or non−preferred provider and the coverage shall be at the same benefit level as if the service or treatment had been rendered by a plan provider. Section 215 ILCS 5/370i, sec. (a) prohibits policies from containing provisions that would unreasonably restrict the access and availability of health care services for the enrollee. Section 215 ILCS 134/40, sec. 40 (d) requires health care plan to pay for services of a specialist with the enrollee only responsible for the services as though the services were provided by an in−network provider when the plan does not have the specialist that the enrollee needs for the care of an on−going specific condition. The primary care physician arranges for the enrollee to see a specialist that is within a reasonable distance and travel time and the primary provider notifies the plan of the referral.

The information required to be provided to consumers are contained in s. 215 ILCS 134/15, that requires annual reporting of participating health care providers in the plan's service area and in addition to basic terms of the plan, includes disclosure of out−of−area coverage, if any, financial responsibility of enrollees including co−payments, deductibles, premium and any other out−of−pocket expenses, continuity of care, appeal rights and mandated benefits. Illinois Administrative Code s. 5420.40, requires disclosure so that a person can compare the attributes of various health care plans based upon a description of coverage. This disclosure includes that 2 appendices are completed that detail specific copayments, deductibles, and other cost−sharing provisions for services that must be included with the policy for consumer information.

In addition to the worksheets that provide consumers with detailed information, Illinois statutory code s. 215ILCS 5/356z.2, also requires an insurer that issues or renews a individual or group accident and health policy and arranges, contracts with or administers contracts with providers whereby the beneficiary are provided an incentive to use the services of such provider must include the following disclosure of limited benefits in its contracts and evidence of coverage:

WARNING, LIMITED BENEFITS WILL BE PAID WHEN NON−PARTICIPATING PROVIDERS ARE USED. You should be aware that when you elect to utilize the services of a non−participating provider for a covered service in non−emergency situations, benefit payments to such non−participating provider are not based upon the amount billed. The basis of your benefit payment will be determined according to your policy's fee schedule, usual and customary charge (which is determined by comparing charges for similar services adjusted to the geographical are where the services are performed), or other method as defined by the policy. YOU CAN EXPECT TO PAY MORE THAN THE COINSURANCE AMOUNT DEFINED IN THE POLICY AFTER THE PLAN HAS PAID ITS REQUIRED PORTION. Non−participating providers may bill members for any amount up to the billed charge after the plan has paid its portion of the bill. Participating providers have agreed to accept discounted payment for services with no additional billing to the member other than co−insurance and deductible amounts. You may obtain further information about the participating status of professional providers and information on out−of−pocket expenses by calling the toll free telephone number on your identification card. (Emphasis in original.)

Illinois statute s. 215 ILCS 134/80 requires health care plans have procedures for quality assessment program including in s. (3) and (4) that require plans have a procedure for remedial action to correct quality problems that have been verified in accordance with the written plan's methodology and criteria, including written procedures for taking appropriate corrective action and follow−up measures implemented to evaluate the effectiveness of the action plan.

Illinois Administrative Code s. 5420.50 requires that all provider agreements contain provisions providing for advance notice from providers when terminating from the plan and requirements that the plan notify affected enrollees on a timely basis. The notice provided to the enrollee must contain information on how enrollees are to select a new health care provider.

Minnesota: Minnesota statute s. 62A.049, prohibits an accident and sickness policy from requiring prior authorization in cases of emergency confinement or emergency treatment. The enrollee or authorized representative must notify the insurer as soon as reasonably possible. Section 62Q.55 requires managed care organizations including preferred provider organization, to provide enrollees with available and accessible emergency services. Services shall be covered whether provided by participating or nonparticipating providers and whether provided within or outside the health plan's service area. Section 62D.20 and s. 4685.0700, Minnesota Administrative Code, require HMOs to provide out−of−area services including for emergency care.

Minnesota statute s. 62Q.49 (subd. 2) (a), requires all health plans to clearly specify how the cost of health care used to calculate any co−payments, coinsurance or lifetime benefits will be affected by the contracting in which health care providers agree to accept discounted charges. Section 62Q.49, further any marketing or summary materials must prominently disclose and clearly explain the provisions relating to co−payments, coinsurance or maximum lifetime benefits.

Minnesota statute s. 62Q.58, requires that if an enrollee receives services from a nonparticipating specialist because a participating specialist is not available, the services must be provided at no additional cost to the enrollee beyond what the enrollee would otherwise pay for services received from a participating specialist.

Minnesota statute s. 62Q.746, permits the department to request and the health plan to provide the following information including how the plan determines who are eligible to participating in the network, the number of full−time equivalent physicians, by specialty, non−physician providers and allied health providers used to provide services and summary data that is broken down by type of provider reflecting actual utilization of network and non−network practitioners and allied professionals by enrollees of the plan.

Michigan: Michigan statute s. 500.3406k, requires an expense−incurred hospital, medical or surgical policy that provides coverage for emergency health services, including an HMO plan, shall provide coverage for medically necessary services provide to an enrollee for the sudden onset of a medical condition that manifests itself by signs and symptoms

of sufficient severity, that the absence of immediate care could reasonably be expected to result in serious jeopardy to health without prior authorization.

Insurers that contract with providers are governed by the Prudent Purchaser Act of 1984 including preferred provider organization (MCL 550.50 et seq.). The organization that contracts with providers shall annually report to the commissioner basic utilization of the providers (MCL 550.56). Under MCL 550.53, organizations that contract with providers to control costs and utilization may limit the number of providers to the number necessary to assure reasonable levels of access to health care services, located within reasonable distance.

8. A summary of the factual data and analytical methodologies that OCI used in support of the proposed rule and how any related findings support the regulatory approach chosen for the proposed rule:

The rule as drafted by OCI is intended to ensure enrollee access to health care services, ensure continuity of health care and ensure that enrollees fully understand the products offered including deductibles, co−payment and other cost−sharing measures that when combined with premium payments will permit the enrollee to make better product selection and provider choices. The proposed rule achieves these goals while recognizing the differences between preferred provider plans and defined network plans. In addition to the statutory amendments necessitating the rule, the OCI identified several key consumer and regulatory issues through a review of complaints filed with the agency involving insurers offering preferred provider plans (PPOs) that the proposed rule addresses through required disclosures to enrollees, disclosure to the OCI, coverage of emergency services and adequate access to participating providers.

The complaint review involved complaints filed for the period January 1, 2003 through May 31, 2004. The OCI reviewed only complaints identified in the agency data system as group health coverage. The OCI identified 936 PPO complaints. These complaints involved claim administration (83%), marketing (2%), underwriting (9%), policyholder service (5%) and "other" complaints (1%).

The OCI found that 33 complaints involved ancillary providers. These complaints involve PPO plans that have participating provider contracts with hospitals but do not have contracts with the anesthesiologists, radiologists, pathologists and emergency medicine physicians associated with in−network hospitals. Enrollees either were not aware that the ancillary providers were non−participating providers or did not have an option but to use the non−participating providers due to location or medical necessity. The result to these enrollees was significant out−of−pocket expenses as some PPOs have 30% or more differential between participating and non−participating providers and may also have higher co−payments or other cost−sharing provisions when services are performed by non−participating providers.

During this same period of time, the OCI identified 15 complaints involving emergency services that were subject to non−participating deductibles and co−payments. Although some insurers waive the deductible and co−payments billed by nonparticipating providers for rendering emergency care services, many insurers leave enrollees financially responsible for significant, unexpected, medical expenses.

The OCI also identified 19 complaints that involved changes in the provider networks, 2 complaints involving limits in the available participating network, 18 involving the enrollee's lack of understanding of PPO plan requirements with 71 complaints grouped under the heading of "other" which includes UCR determinations, and pre−certification or pre−authorization issues.

In addition the complaint review, the OCI in a cooperative effort of the Commissioner met with representatives from the insurance industry. Since November 2004, four public working meetings have been held to discuss each section of the proposed rule. Each public meeting was attended by the Commissioner and his staff and representatives from the Wisconsin Association of Life and Health Insurer, Council for Affordable Healthcare and Wisconsin Association of Provider Networks as well as representatives from no less than seven (7) domestic and non−domestic health insurers. Additional work groups comprised of representative from industry and the Office met two additional times to work on the ancillary provider language and criteria for preferred provider plans. Participants in the open meetings were invited to comment and make recommendations or specific modifications to the proposed rule. Candid discussion provided both Commissioner and the industry opportunity to voice support or concerns over each section of the rule. The public working meetings also gave both industry and the Commissioner the opportunity to share its respective views of the marketplace. Discussion often focused on how proposed and revised language affects the industry and its ability to function in the marketplace with the guiding statutory requirements and consumer concerns as reflected in complaints received by the OCI to maintain the proper balance in the proposed regulations. At each meeting revisions that had previously been discussed were reviewed, comment invited with extensive dialogue from both industry and OCI. At the end of the last working public meeting held May 9, 2005, the Commissioner invited written comment on the entire proposed rule. The comment period was intended to provide industry with time to reflect on the proposed rule and offer specific thoughtful revisions or recommendations and then permit the Commissioner time to review the suggested revisions and recommendations prior to issuing the Notice of Hearing for the rule. The culmination of those meeting, including written comments received throughout the last year, is reflected in this proposed rule.

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:

This rule may have an effect on only one (1) regulated small business as defined in s. 227.114 (1), Wis. Stats., that is an LSHO and authorized to only write 10% of its premium as a preferred provider plan. OCI maintains a database of all licensed insurers in Wisconsin. Included with the 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 only one insurer with annual premium volume of less than $5 million that would be affected by this proposed rule.

This one insurer would incur a one−time expense associated with filing new policy forms, modifying provider contracts and implementing remedial action plan procedures related to quality problems. It is possible that the one insurer might need to minimally modify its computer system to the extent necessary to incorporate emergency medical care rendered by nonparticipating providers. These one−time expenses are not considered to be of significant cost and therefore will not have a significant economic impact on the one insurer.

Further, the proposed rule has a delayed applicability date for new policies to January 1, 2007 and renewing policies to January 1, 2008. The significantly delayed applicability will allow the insurer to spread any cost that it may incur over time

thus reducing any effect the rule might have on the one insurer. The delay will also give the insurer ample time to make necessary modifications to forms or contracts also minimizing any affect of the rule on the small business insurer.

10. If these changes may have a significant fiscal effect on the private sector, the anticipated costs that will be incurred by private sector in complying with the rule:

This rule is not expected to have a significant fiscal effect on the private sector regulated by OCI. The majority of insurers offering defined network plans, including health maintenance organizations and most preferred provider plans currently offer insurance coverage that complies with the minimum standards proposed in the amendments to ch. Ins 9, Wis. Adm. Code. The proposed rule does not prohibit or require insurers offering preferred provider plans to redesign any existing plan. Insurers may continue selling and servicing policies that contain coinsurance, deductibles or other cost−sharing methods, however those plans may be required to include disclosure notices that will need to be filed with the Office prior to use. In addition insurers offering defined network, preferred provider plans will be required to submit to the OCI emergency medical care coverage language that is compliant with the regulation.

Insurers offering preferred provider plans will likely need to incur a one−time expense to modify existing contracts with participating providers through an addendum to comply with advance notice to enrollees regarding providers' plan status when elective procedures are scheduled. Additionally, the insurers may need to file updated forms and implement remedial action plans to address quality problems. It is possible that insurers might need to minimally modify existing computer systems for payment of emergency medical care services provided by nonparticipating providers.

Insurers may find a cost saving resulting from the rule through the receipt of fewer complaints from enrollees, employers and providers, and use fewer resources investigating and responding to complaints and grievances, and in preparing and documenting files for external review. Further, with significantly delayed applicability dates, insurers will have ample time to make necessary modifications including sufficient time to file any necessary form filings thereby reducing any possible effect of the proposed rule.

11. A description of the Effect on Small Business:

This rule may effect one small business regulated by the Office but should not have a significant economic impact . OCI identified one insurer that is an LSHO authorized to write no more than 10% of its premium from preferred provider business that had annual premium volume of less than $5 million, however the effect would not have a significant economic impact on that insurer for the reasons stated in above.

The insurer that may be affected by the proposed rule will incur a one−time expense related to the filing of compliant policy forms, modifying provider contracts and implementing a remedial action plan procedure related to quality problems. The proposed rule also includes a significantly delayed applicability date allowing the one insurer ample time for necessary modifications and to spread any associated costs over time thus limiting any effect the rule might have.

12. Agency contact person:

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

Phone: (608) 264−8110

Email: Inger.Williams@OCI.State.WI.US

Address: 125 South Webster St – 2nd Floor Madison WI 53702

Mail: PO Box 7873, Madison WI 53707−7873

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

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

Mailing address:

Julie E. Walsh

Legal Unit − OCI Rule Comment for Rule INS 9

Office of the Commissioner of Insurance

PO Box 7873

Madison WI 53707−7873

Street address:

Julie E. Walsh

Legal Unit − OCI Rule Comment for Rule INS 9

Office of the Commissioner of Insurance

125 South Webster St – 2nd Floor

Madison WI 53702

WEB Site: **http://oci.wi.gov/ocirules.htm**

Initial Regulatory Flexibility Analysis

Notice is hereby further given that pursuant to s. 227.114, Stats., the proposed rule may have an affect on small businesses. The initial regulatory flexibility analysis is as follows:

a. Types of small businesses affected:

There is only one (1) regulated small business that may be affected by this rule that is a Limited Service Health Organization (LSHO) authorized to write no more than 10% of its premium from preferred provider plan business. The proposed rule would not have a significant economic impact on that one insurer as the one−time expense for filing updated forms, modifying provider contracts and implementing a procedure for remedial action plan related to quality problems are not considered significant. The one insurer might also need to minimally modify its computer system to incorporate coverage for emergency medical care from nonparticipating providers, but this would not considered to be a significant expense.

The affected insurer will have until January 1, 2007 for newly issued policies and until January 1, 2008 for renewing policies to comply with the proposed regulatory requirements. This delay will allow the insurer to spread any incurred cost over time thus reducing any potential financial effect of the rule and will permit more than sufficient time to modify forms and implement procedures necessary to comply with the proposed rule without being overly burdensome to the insurer.

b. Description of reporting and bookkeeping procedures required:

To the extent that the one LSHO small business provides a preferred provider plan, it will be required to comply with the preferred provider plan requirements and will incur a one−time expense associated with filing new policy forms, modifying provider contracts and implementing remedial action plan procedures related to quality problems. It is possible that the one insurer might also need to minimally modify its computer system for services rendered by nonparticipating providers for emergency medical care. The

one insurer will have ample time within which to comply with the regulations due to significantly delayed applicability of the proposed rule.

c. Description of professional skills required:

The proposed rule does not impose additional professional skill requirements that it does not already possess.

OCI Small Business Regulatory Coordinator

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

Contact Person

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

Notice of Hearing

Marriage and Family Therapy, Professional Counseling and Social Work Examining Board

[CR 05−051]

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Marriage and Family Therapy, Professional Counseling and Social Work Examining Board in ss. 15.08 (5) (b), 227.11 (2) and 457.14, Wis. Stats., and interpreting s. 457.10 (3), 457.11 and 457.14, Wis. Stats., the Marriage and Family Therapist Section will hold a public hearing at the time and place indicated below to consider an order to amend ss. MPSW 16.03 and 17.01, relating to supervised clinical practice and temporary licenses issued by the Marriage and Family Therapist Section.

Hearing Date, Time and Location

Date:	**August 1, 2005**
Time:	9:30 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 Legal Counsel, P.O. Box 8935, Madison, Wisconsin 53708, or by email to pamela.haack@drl.state.wi.us. Written comments must be received on or before August 11, 2005 to be included in the record of rule−making proceedings.

Analysis prepared by the Department of Regulation and Licensing

Statutes interpreted: Sections 457.10 (3), 457.11 and 457.14, Stats.

Statutory authority: Sections 15.08 (5) (b), 227.11 (2) and 457.03 (1), Stats.

Explanation of agency authority: The Marriage and Family Therapist Section has the authority under s. 457.03, Stats., to establish minimum standards for supervised clinical training. Those standards are set forth with specificity in s. MPSW 16.03. They currently require one hour of face−to−face supervision for each 10 hours of supervised practice. The use of the term "supervised practice" has been confusing for applicants. As a result, the term "client contact" is being substituted to better clarify what is actually needed and should therefore remedy any confusion.

The Marriage and Family Therapist Section has the authority under s. 457.14, Stats., to issue temporary certificates and temporary licenses. More specifically, s. MPSW 17.01 provides that a temporary marriage and family therapist license is valid for nine months or until the applicant's examination scores are released, whichever occurs first. It also provides for a renewal of the temporary license, not to exceed nine months. This proposal puts fewer restrictions on the renewal provisions for the temporary license thereby accommodating the practical realities that applicants typically face while attempting to obtain their permanent license.

Related statute or rule: There are no other statutes or rules.

Plain language analysis:

SECTION 1. The rules currently require one hour of face−to−face supervision for each 10 hours of supervised practice. The use of the term "supervised practice" has been confusing for applicants. Section MPSW 16.03 is amended to substitute "supervised practice" with "client contact" to better clarify that supervisees must receive the minimum one hour of face−to−face supervision for each 10 client contact hours.

SECTION 2. The rules currently provide that a marriage and family therapist temporary license is valid for nine months or until the applicant's examination scores are released, whichever occurs first and also provides for a renewal not to exceed nine months. Section MPSW 17.01 is amended to grant one renewal of the temporary license, and to permit a holder of a temporary license to place it "on hold."

Analysis and supporting documents used to determine effect on small business or in preparation of economic impact report:

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

Fiscal Effect

The proposed rule will have no impact on the department's funds.

Effect on Small Business

Pursuant to s. 227.114 (1) (a), Stats., these proposed rules will have no significant economic impact on a substantial number of small businesses. The Department's Small Business Regulatory Review Coordinator may be contacted by email at christopher.klein@drl.state.wi.us, or by calling (608) 266−8608.

Agency Contact Person

Pamela Haack, Department of Regulation and Licensing, Office of Legal Counsel, 1400 East Washington Avenue, Room 171, P.O. Box 8935, Madison, Wisconsin 53708−8935. Telephone: (608) 266−0495. Email: pamela.haack@drl.state.wi.us.

Place where comments are to be submitted and deadline for submission

Comments may be submitted to Pamela Haack, Department of Regulation and Licensing, 1400 East Washington Avenue, Room 171, P.O. Box 8935, Madison, Wisconsin 53708−8935.

Email: pamela.haack@drl.state.wi.us. Comments must be received on or before August 11, 2005, to be included in the record of rule−making proceedings.

TEXT OF RULE

SECTION 1. MPSW 16.03 is amended to read:

MPSW 16.03 Supervised clinical practice. The person whose practice is being supervised shall receive a minimum of one hour of face−to−face supervision for each 10 client contact hours ~~of supervised practice~~. ~~Practice of marriage and family therapy which occurs as part of the requirements for obtaining a master's or doctoral degree in marriage and family therapy or a substantially related field shall not be considered to fulfill any part of the postgraduate supervised practice requirement.~~ Only those individuals who hold a valid marriage and family therapist training certificate may begin accumulating hours towards their postgraduate supervised practice requirements.

SECTION 2. MPSW 17.01 is amended to read:

MPSW 17.01 Temporary license. The marriage and family therapist section may issue a temporary license permitting a person who has completed the educational and supervised practice requirements for eligibility for a license as a marriage and family therapist upon payment of the fee for the temporary license and application for the next available examination to use the title "marriage and family therapist" and to practice marriage and family therapy. The temporary license is valid for a period not to exceed 9 months from the date of its issuance~~, or the date on which examination scores are released, whichever comes sooner. The marriage and family therapists section may grant one renewal of the temporary license in cases of hardship, for a period not to exceed 9 months or the date of the release of scores from the next available examination after the date of renewal of the temporary license, whichever occurs sooner. A person who fails the licensure examination shall immediately return the temporary license to the marriage and family therapists section. The marriage and family therapists section may not grant or renew a temporary license to an applicant who has failed the licensure examination~~ and it may be renewed once upon receipt of a written request and any required renewal fee. If a temporary license is returned to the department prior to its expiration along with a written request that it be placed on hold, the temporary license may later be reissued to the holder for the remainder of the 9 month period.

Notice of Hearings
Natural Resources
(Fish, Game, etc.)
[CR 05−057]

NOTICE IS HEREBY GIVEN that pursuant to ss. 29.014 and 227.11 (2) (a), Stats., interpreting ss. 29.014 and 29.041, Stats., the Department of Natural Resources will hold public hearings on revisions to ch. NR 10, Wis. Adm. Code, relating to the 2005 migratory game bird seasons. The proposed order establishes the season length and bag limits for the 2005 Wisconsin migratory game bird seasons. Under international treaty and federal laws, migratory game bird seasons are closed unless opened annually via the U.S. Fish and Wildlife Service regulations process. The public hearings will be held after the U.S. Fish and Wildlife Service's final draft framework is available.

For ducks, it is anticipated that for the 2005 season the state will be divided into two waterfowl hunting zones each with 60−day seasons. The season begins at noon September 24 and continues for 60 consecutive days in the north, closing on November 22. In the south the season begins at noon on October 1 and continues through October 9, followed by a 5−day split, and then reopens on October 15 and continues through December 4. The daily bag limit is 6 ducks including no more than: 4 mallards, of which only one may be a hen, one black duck, one pintail (from Sept. 24 (noon) – Oct. 23 in the North and from Oct. 1 (noon) – Oct. 9 and Oct. 15 – Nov. 4 in the south), one canvasback (from Oct. 15 – Nov. 13 statewide), 2 wood ducks, 2 redheads and 3 scaup.

For Canada geese, the state is apportioned into 3 goose hunting zones: Horicon, Collins and Exterior. Other special goose management subzones within the Exterior Zone include Brown County, Burnett County, Rock Prairie and the Mississippi River. Season lengths are: Collins Zone − 64 days (3 periods, first period beginning September 16); Horicon Zone − 92 days (4 periods, first period beginning September 16); Exterior Zone − 92 days (North: Sept. 17 – 23 and Sept. 24 (noon) – Dec. 17 and South: Sept 17 – Sept. 30 and Oct 1 (noon) – Dec. 17); and Mississippi River subzone − 70 days (Oct. 1 (noon) – Oct. 9 and Oct. 15 − Dec. 14). The Burnett County subzone is closed to Canada goose hunting. The statewide daily bag limit for Canada geese in the Horicon and Collins Zones is 2 birds per day during the open seasons within each zone. In the Exterior zone and its subzones the daily bag limit will be 1 bird per day until Oct. 31, and from Nov. 1 to the end of the season in each zone or subzone the daily bag limit will be 2 birds per day.

In addition, the rule includes the elimination Horicon Intensive Management Subzone and its corresponding goose hunting blind restrictions.

NOTICE IS HEREBY FURTHER GIVEN that the Department is requesting specific public input on:

Placement of the waterfowl hunting zone line, if the Department continues to have only the north and south zones.

Waterfowl hunting zone locations if the Department is granted additional zone/split options.

NOTICE IS HEREBY FURTHER GIVEN that pursuant to s. 227.114, Stats., it is not anticipated that the proposed rule will have an economic impact on small businesses. The Department's Small Business Regulatory Coordinator may be contacted at: SmallBusinessReg.Coordinator@dnr.state.wi.us or by calling (608) 266−1959.

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

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

Monday, **August 8, 2005** at 7:00 p.m.
Basement Auditorium, La Crosse Co. Admin. Bldg.
400 4th St. North
La Crosse

Tuesday, **August 9, 2005** at 7:00 p.m.
DNR Northern Region Headquarters
107 Sutliff Ave.
Rhinelander

Wednesday, **August 10, 2005** at 7:00 p.m.
Room 310, Green Bay City Hall
100 N. Jefferson St.
Green Bay

Thursday, **August 11, 2005** at 7:00 p.m.

Nagawicka Conference Room, Radisson Suites

Hwy. J and I−94

Pewaukee

NOTICE IS HEREBY FURTHER GIVEN that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of information material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Kurt Thiede at (608) 267−2452 with specific information on your request at least 10 days before the date of the scheduled hearing.

Fiscal Effect

The proposed changes will not result in any significant changes in spending or revenue.

The proposed rule and fiscal estimate may be reviewed and comments electronically submitted at the following Internet site: adminrules.wisconsin.gov. Written comments on the proposed rule may be submitted via U.S. mail to Mr. Ken Van Horn, Bureau of Wildlife Management, P.O. Box 7921, Madison, WI 53707. Comments may be submitted until August 11, 2005. Written comments whether submitted electronically or by U.S. mail will have the same weight and effect as oral statements presented at the public hearings. A personal copy of the proposed rule and fiscal estimate may be obtained from Mr. Van Horn.

Notice of Hearings
Natural Resources
(Environmental Protection−General)
[CR 05−058]

NOTICE IS HEREBY GIVEN that pursuant to ss. 59.692, 227.11 (2) (a) and 281.31, Stats., interpreting ss. 59.69, 59.692 and 281.31, Stats., the Department of Natural Resources will hold public hearings on revisions to ch. NR 115, Wis. Adm. Code, relating to minimum standards for county shoreland zoning ordinances. The proposed revisions are intended to meet the statutory objectives of the program, while providing certainty and flexibility to counties and property owners. Changes include adding definitions to the rule for clarity; establishing standards for multi−unit residential development, mobile home parks and campgrounds; providing exemptions for certain activities from shoreland setback and shoreland vegetation standards; establishing impervious surface standards; and replacing the "50% rule" for nonconforming structures with a standard based on the size and location of structures. These changes will significantly decrease the number of variances granted by counties, allowing certain activities to be allowed with a simple administrative permit by the county. Substantive changes include:

Language is added to advance the statutory purposes of the program found in s. 281.31 (1), Stats.

Language is added recognizing that this rule only establishes minimum standards for county shoreland zoning ordinances, and counties may adopt more protective regulations to adequately protect local resources.

Language consistent with s. 59.692(7), Stats., is added to clarify how this rule impacts lands annexed or incorporated by cities and villages.

Language clarifying the authority of the town shoreland zoning ordinances is added.

Language clarifying the applicability of ch. NR 115 in areas under the jurisdiction of ch. NR 118 is added.

The number of definitions was increased from 13 to 52 to help provide consistency in interpretation of county shoreland zoning ordinances

The requirement for land division review is changed from the creation of "3 or more lots" to the creation of "one or more lots" to ensure that all new lots created meet minimum lot size requirements. This standard was added to protect prospective property owners and ensure that all lots have a buildable area.

If new lots are created that are divided by a stream or river, one side of the lot must meet minimum lot size requirements and density standards. No portion of a lot or parcel divided by a navigable stream may be developed unless that portion of the lot or parcel meets or is combined to meet the minimum lot size requirements and density standards. This provision will ensure that development only takes place on lots or parcels which meet minimum lot size requirements, again safeguarding property owners.

Counties may adopt standards to regulate substandard lots in common ownership.

Minimum lot size and density standards are established for multi−unit residential development, mobile home parks, campgrounds and other types of uses.

Counties may request the approval of an alternative regulation for campgrounds that is different than the minimum standards in ch. NR 115. Counties utilizing this option must demonstrate how the alternative regulation would achieve the statutory purposes of the program.

Counties are granted the flexibility to regulate keyhole lots.

New lot width measurement is developed which will accommodate irregular shaped lots.

Counties are granted the flexibility to regulate backlots in the shoreland zone.

Outlots may be created as part of a subdivision plat or certified survey map.

Counties may request the approval of standards for alternative forms of development with reduced lot sizes and development densities for planned unit developments, cluster developments, conservation subdivisions, and other similar alternative forms of development if they include, at a minimum, a required shoreland setback of more than 75 feet and a larger primary buffer than is required in s. NR 115.15 (2).

Language is added to address structures exempted by other state or federal laws from the shoreland setback standards.

Provisions are added to allow counties to exempt 15 types of structures from the shoreland setback, an increase from 3 exempted structures.

The construction of new dry boathouses is prohibited.

Standards are established to qualify a lot for a reduced setback and two methods of calculating the reduced setback are provided. Counties may also request approval of an alternative setback reduction formulate, demonstrating how the alternative is as effective in achieving the purposes of s. 281.31 (1) and (6), Stats.

Language governing management of shoreland vegetation in the primary shoreland buffer is improved, resulting in a more functional buffer protection habitat and water quality.

Tree and shrubbery pruning is allowed. Removal of trees and shrubs may be allowed if exotic or invasive species, diseased or damaged, or if an imminent safety hazard, but must be replaced.

Provisions are added to allow counties to exempt 7 types of activities from the shoreland vegetation provisions.

A formula to calculate the vegetative buffer mitigation requirements for existing multiple−unit developments was added to proportionately mitigate based on the intensity of the project.

A formula for the width of access corridors is provided, replacing the "30 feet in any 100 feet" provision, which was confusing if a lot had less than 100 feet of frontage.

Existing lawns may be maintained indefinitely in the primary shoreland buffer, unless a property owner decides to initiate one of 5 actions that require restoration of the primary shoreland buffer.

Best management practices must be implemented and maintained that, to the maximum extent practicable, result in no increase in storm water discharge from impervious surfaces.

If a project results in a lot being covered with 20% or more impervious surfaces, the shoreland buffers must be preserved or restored in compliance with the standards in s. NR 115.15 (applies only to lots with lands within 75 feet of the ordinary high water mark).

An erosion control and revegetation plan is required for land disturbing activities to minimize erosion and sedimentation caused by the activity.

A county permit is required for land disturbing activities in the shoreland zone if the project includes 2,000 square feet or more of land.

Counties shall exempt from the permit requirement activities that have already received permits from other identified permitting authorities.

Counties may require a wetland buffer to minimize the impacts of land disturbing activities to prevent damage to wetlands.

The "50% rule" is removed, and a standard for the regulation of nonconforming structures based on the location and size of structures is used.

Unlimited ordinary maintenance and repairs is allowed on nonconforming structures.

Structural alternations are allowed on nonconforming structures if mitigation is implemented as specified by the county.

Expansion and replacement of nonconforming accessory structures is prohibited, unless located in a campground or mobile home park, and certain standards are satisfied.

Expansions of nonconforming principal structures is allowed is the structure is set back at least 35 feet from the ordinary high water mark, if the footprint cap is not exceeded, if mitigation is implemented as specified by the county and if other standards are met.

Replacement of nonconforming principal structures is allowed on the existing foundation anywhere within the shoreland setback area, and on new foundations if the structure is setback at least 35 feet from the ordinary high water mark, if mitigation is implemented as specified by the county, and if other standards are met.

Replacement of nonconforming principal structures is prohibited if the structure has no foundation, the foundation extends below the ordinary high water mark or the structure extends over the ordinary high water mark.

Counties shall adopt a mitigation system that is roughly proportional to the impacts of activities proposed.

NOTICE IS HEREBY FURTHER GIVEN that pursuant to s. 227.114, Stats., it is not anticipated that the proposed rule will have an economic impact on small businesses. The Department's Small Business Regulatory Coordinator may be contacted at: SmallBusinessReg.Coordinator@dnr.state.wi.us or by calling (608) 266−1959.

NOTICE IS HEREBY FURTHER GIVEN that the Department has prepared an Environmental Assessment in accordance is s. 1.11, Stats., and ch. NR 150, Wis. Adm. Code, that has concluded that the proposed rule is not a major state action which would significantly affect the quality of the human environment and that an environmental impact statement is not required.

NOTICE IS HEREBY FURTHER GIVEN that the Department will hold question and answer session from 4:30 p.m. until 5:45 p.m. prior to each hearing. Department staff will be available to answer questions regarding the proposed rules.

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

Tuesday, **July 12, 2005** at 6:00 p.m.
Chippewa Valley Technical College
620 Clairemont Avenue
Eau Claire

Wednesday, **July 13, 2005** at 6:00 p.m.
Wis. Indianhead Technical College
2100 Beaser Avenue
Ashland

Thursday, **July 14, 2005** at 6:00 p.m.
Egg Harbor Room, Landmark Resort
7643 Hillside Road
Egg Harbor

Tuesday, **July 19, 2005** at 6:00 p.m.
Western WI Technical College
304 6th Street North
La Crosse

Thursday, **July 21, 2005** at 6:00 p.m.
Sentry World Theater
1800 North Point Drive
Stevens Point

Tuesday, **July 26, 2005** at 6:00 p.m.
UW Washington County
400 University Drive
West Bend

Wednesday, **July 27, 2005** at 6:00 p.m.
Grand Chute Town Hall
1900 Grand Chute Boulevard
Grand Chute

Thursday, **July 28, 2005** at 6:00 p.m.
Nicolet Technical College
County Highway G
Rhinelander

Tuesday, **August 2, 2005** at 6:00 p.m.
Lake Lawn Resort
2400 East Geneva Street
Delavan

Thursday, **August 4, 2005** at 6:00 p.m.
Oak Hall Room, Fitchburg Community Center
5520 Lacy Road
Fitchburg

NOTICE IS HEREBY FURTHER GIVEN that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of information material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Toni Herkert at (608) 266−0161 with specific information on your request at least 10 days before the date of the scheduled hearing.

The proposed rule and fiscal estimate may be reviewed and comments electronically submitted at the following Internet site: adminrules.wisconsin.gov. Written comments on the proposed rule may be submitted via U.S. mail to Toni Herkert, Bureau of Watershed Management, P.O. Box 7921, Madison, WI 53707. Comments may be submitted until August 12, 2005. Written comments whether submitted electronically or by U.S. mail will have the same weight and effect as oral statements presented at the public hearings. A personal copy of the proposed rule and fiscal estimate may be obtained from Ms. Herkert.

Notice of Hearing
Natural Resources
(Environmental Protection−Air Pollution Control)
[CR 05−055]

NOTICE IS HEREBY GIVEN that pursuant to ss. 227.11 (2) (a) and 285.11, Stats., interpreting s. 285.11 (6), Stats., the Department of Natural Resources will hold a public hearing on revisions to ss. NR 400.02 (162) and 424.05, Wis. Adm. Code, relating to the definition of "Volatile Organic Compounds" or "VOC" and VOC emission control requirements for yeast manufacturing facilities. The Department is proposing the revision to the definition of "VOC" in s. NR 400.02 (162) to be consistent with EPA's federal definition at 40 CFR 51.100(s). The revision includes adding four compounds to the list of compounds excluded from the definition of VOC and exclusion of one further compound from the definition but only for purposes of VOC emission limitation or content requirements and not for purposes of all recordkeeping, emission reporting, and inventory requirements. The Department is also proposing to revise the VOC emission control requirements for yeast manufacturing in s. NR 424.05 to address an inconsistency with requirements in the national emission standards for hazardous air pollutants for yeast manufacturing at 40 CFR part 63 Subpart CCCC.

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

a. Types of small businesses affected: facilities using t−butyl acetate or products that contain t−butyl acetate and emit VOCs in excess of 6000 pounds per year

b. Description of reporting and bookkeeping procedures required: Identical to requirements for compliance with the current rule

c. Description of professional skills required: Identical to requirement for compliance with the current rule

The Department's Small Business Regulatory Coordinator may be contacted at:

SmallBusinessReg.Coordinator@dnr.state.wi.us or by calling (608) 266−1959.

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

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

Monday, **July 11, 2005** at 1:00 p.m.
Room 140−141, DNR Southeast Region Headquarters
2300 N. Dr. Martin Luther King Jr. Drive
Milwaukee, WI

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

Fiscal Effect

There is no fiscal impact anticipated.

The proposed rule and fiscal estimate may be reviewed and comments electronically submitted at the following Internet site: adminrules.wisconsin.gov. Written comments on the proposed rule may be submitted via U.S. mail to Mr. Farrokh Ghoreishi, Bureau of Air Management, P.O. Box 7921, Madison, WI 53707. Comments may be submitted until July 11, 2005. Written comments whether submitted electronically or by U.S. mail will have the same weight and effect as oral statements presented at the public hearings. A personal copy of the proposed rule and fiscal estimate may be obtained by contacting Proposed Rules, Bureau of Air Management, P.O. Box 7921, Madison, WI 53707, phone: (608) 266−7718; FAX (608) 267−0560.

Notice of Hearing
Regulation and Licensing
[CR 05−050]

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Department of Regulation and Licensing in s. 227.11 (2), Wis. Stats., and interpreting ss. 440.03 (1), (2) and 440.04 (7), Wis. Stats., the Department of Regulation and Licensing will hold a public hearing at the time and place indicated below to consider an order to amend ss. RL 1.03 (4), 1.04 (title), 1.05 (title), 1.07 (intro.) and (3), 1.08 (1) and (4), 1.09 (5), 1.11 and 1.12; and to create ss. RL 1.03 (1g) and (1r),

1.04 (3), 1.05 (3) and 1.09 (5m), relating to cheating on an examination and breach of examination security.

Hearing Date, Time and Location

Date:	**July 12, 2005**
Time:	10:00 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 Legal Counsel, P.O. Box 8935, Madison, Wisconsin 53708, or by email to pamela.haack@drl.state.wi.us. Written comments must be received on or before July 25, 2005 to be included in the record of rule−making proceedings.

Analysis prepared by the Department of Regulation and Licensing

Statutes interpreted: Sections 440.03 (1), (2) and 440.04 (7), Stats.

Statutory authority: Section 227.11 (2), Stats.

Explanation of agency authority: Section 440.04 (7), Stats., provides that the secretary of the Department of Regulation and Licensing, "…provide examination development, administration, research and evaluation services as required." The general duties and powers of the department, s. 440.03 (1), Stats., provides that, "The department may promulgate rules defining uniform procedures to be used by the department…for receiving, filing and investigating complaints, for commencing disciplinary proceedings and for conducting hearings." In promulgating rules concerning cheating on examinations or breach of examination security, the department seeks to codify its practices and policies concerning these matters.

Related statute or rule: Sections 440.07, 440.974 (1) (a), 443.12 (1), 446.03 (1), 447.07, 448.06 (2), 455.09 (1) (d), and 456.10 (1) (c), Stats.

Plain language analysis: The Department of Regulation and Licensing, its attached examining boards and affiliated credentialing boards currently administer over 25,000 examinations per year. Cheating and maintaining examination security are a growing problem. These rule changes provide uniform procedures for providing due process while codifying existing practices and policies in the handling and adjudication of cases of cheating or breaches of examination security.

Current Wisconsin credentialing board rules vary in specificity and are not updated to deal with current technology. The department finds it necessary to create a uniform standard and procedure for dealing with the instances of cheating that would combine best practices into one regulation, and would, in addition, avoid the need to update and promulgate separate identical rules for each credentialing authority.

SECTION 1. Definitions are created for the terms "breach of examination security" and "cheating on an examination." The definition of "breach of examination security" is meant to address the intentional removal from an examination site and/or theft of examination, or theft of examination questions either for personal use or for profit. It should be noted that the development of such questions is an expensive activity and a breach of the security of the examination questions necessitates developing new questions. The definition of "cheating on an examination" attempts to capture the numerous variants of cheating that have been experienced by examination specialists.

SECTION 2. The definition of "denial review proceeding" is broadened to include use of class 1 proceedings to determine whether an individual has cheated on an examination or there has been a breach of examination security.

SECTION 3. The definition of "office of examinations" is created to indicate that the reference is to the Department of Regulation and Licensing's office of examinations.

SECTION 4. The title of s. RL 1.04 is amended to indicate that the consequences of cheating or a breach of examination security are treated therein.

SECTION 5. The range of consequences which may be imposed is indicated. Notice that distribution of information concerning the imposition of consequences for cheating or for breach of examination security is indicated. Notice that facilitation by a barber or cosmetology school or instructor in cheating or breach of security of an examination is indicated.

SECTION 6. The title of s. RL 1.05 is amended to indicate that the consequences of cheating or a breach of examination security are treated therein.

SECTION 7. Section RL 1.05 (3) is created to provide for notice to an individual following a determination by the office of examinations that there is probable cause to believe that the individual has cheated on an examination or breached the security of an examination.

SECTION 8. The Request for Hearing section at s. RL 1.07 is amended to include requests after a determination that an individual has cheated on or breached the security of an examination.

SECTION 9. The Review of Request for Hearing section at s. RL 1.08 (1) is amended to include Requests for Hearing based on determinations of cheating or a breach of examination security. Section RL 1.08 (4) is amended to indicate that the office of examinations has the burden of proof by satisfactory evidence in class 1 hearings concerning cheating on or breach of security of examinations.

SECTION 10. Section RL 1.09 (5) is amended to include the office of examinations in this subsection which indicates what evidence may be presented and considered at hearing.

SECTION 11. Section RL 1.09 (5m) instructs the hearing presiding officer to insure that the examination security is maintained during the proceedings.

SECTION 12. Section RL 1.11 is amended to indicate that an individual's failure to appear at their hearing constitutes a waiver of the right to appeal the decision of the credentialing authority. Section RL 1.12 is amended to allow for withdrawal of a request for hearing on a determination of cheating on or breach of the security of an examination.

Summary of factual data and analytical methodologies: Cheating on licensing examinations is an ongoing and significant problem. Instances of cheating have increased in recent years with the advent of new technology.

Three well−publicized recent national examples are: The Federation of State Boards of Physical Therapy sued 4 candidates for trading more than 100 questions from the national licensing examination via an Internet chat room. The National Association of Boards of Pharmacy suspended its Educational Equivalency Examination for seven months after determining that 15 foreign candidates traded 200 national examination questions on 2 web sites in Korea and India. The National Board of Podiatric Medical Examiners refused to validate scores from four U.S. schools after determining that

hundreds of students traded examination material by email and study guides.

Numbers of instances have been increasing at the state credentialing level, as well. In the twenty years from 1981 to 2001, there were 6 identified instances of cheating on record at the Department. There were about 15,000 administrations per year at the start of that period, gradually increasing to about 25,000 administrations today. In the four years since 2001, there have been 8 instances of cheating identified on state credentialing examinations. These instances include instances of identical answer sheets, missing booklets and copying questions to remove them from the room.

The increasing culture of cheating has been noted in the recent book by Gregory Cizek, Cheating on Tests, c 1999, Lawrence Erlbaum and Associates, and numerous articles such as, "New Calculators Force NCEES to Tighten Exam Security Policy," Engineering Times, Feb 2004; "Exam Security and High−Tech Cheating", The Bar Examiner, vol 67, no 3, c 1998. The online publication, "Cheating in the News" publishes five to ten recent articles each month about cheating around the world, often on state assessments of high school performance or college entrance examinations.

Analysis and supporting documents used to determine effect on small business or in preparation of economic impact report: The department finds that this rule has no significant fiscal effect on the private sector.

Fiscal Estimate

The department estimates the right to appeal may be used to require one hearing a year. The projected value of the staff time to conduct one hearing of this type is $300.

Effect on Small Business

Pursuant to s. 227.114 (1), Stats., these proposed rules will have no significant economic impact on a substantial number of small businesses. The Department's Small Business Regulatory Review Coordinator may be contacted by email at christopher.klein@drl.state.wi.us, or by calling (608) 266−8608.

Agency Contact Person

Pamela Haack, Department of Regulation and Licensing, Office of Legal Counsel, P.O. Box 8935, 1400 East Washington Avenue, Madison, Wisconsin 53708−8935. Email pamela.haack@drl.state.wi.us.

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

Comments may be submitted to Pamela Haack, Department of Regulation and Licensing, Office of Legal Counsel, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708−8935; email pamela.haack@drl.state.wi.us. Comments must be received on or before July 22, 2005 to be included in the record of rule−making proceedings.

TEXT OF RULE

SECTION 1. RL 1.03 (1g) and (1r) are created to read:

RL 1.03 (1g) "Breach of examination security" means any of the following:

(a) Removing from the examination room any examination materials without authorization.

(b) Reproducing, or assisting a person in reproducing, any portion of the credentialing examination by any means and without authorization.

(c) Paying a person to take the credentialing examination to discover the content of any portion of the credentialing examination.

(d) Obtaining examination questions or other examination materials, except by specific authorization before, during, or after an examination.

(e) Using, or purporting to use, improperly obtained examination questions or materials to instruct or prepare an applicant for the credentialing examination.

(f) Selling, distributing, buying, receiving or having unauthorized possession of any portion of a future, current, or previously administered credentialing examination.

(1r) "Cheating on an examination" includes but is not limited to:

(a) Communicating with other persons inside or outside of the examination room concerning examination content using any means of communication while the examination is being administered.

(b) Copying the answers of another applicant, or permitting answers to be copied by another applicant.

(c) Substituting another person for the applicant who writes one or more of the examination answers or papers in the place of the applicant.

(d) Referring to "crib notes," textbooks or other unauthorized information sources inside or outside the examination room while the examination is being administered.

(e) Disclosing the nature or content of any examination question or answer to another person prior to, during, or subsequent to the conclusion of the examination.

(f) Removing or attempting to remove any examination materials, notes or facsimiles of examination content such as photo, audiovisual, or electronic records from the examination room.

(g) Violating rules of conduct of the examination.

SECTION 2. RL 1.03 (4) is amended to read:

RL 1.03 (4) "Denial review proceeding" means a class 1 proceeding as defined in s. 227.01 (3) (a), Stats., in which a credentialing authority reviews either a decision to deny a completed application for a credential or a determination of cheating on an examination or breach of examination security.

SECTION 3. RL 1.03 (7) is created to read:

RL 1.03 (7). "Office of examinations" means the office of examinations in the department.

SECTION 4. RL 1.04 (title) is amended to read:

RL 1.04 (title) Examination failure: retake and hearing, consequences of cheating on an examination or breach of examination security.

SECTION 5. RL 1.04 (3) is created to read:

RL 1.04 (3)

Consequences imposed for cheating on an examination or for committing a breach of examination security shall be related to the seriousness of the offense and may include, but not be limited to; denial of grades; entering of a failing grade on all examinations in which cheating occurred; restrictions on reexamination; or denial of licensure. If more than one applicant is involved in a connected offense of cheating on an examination or breach of examination security, each applicant knowingly involved is subject to the consequences in this section.

(a) Restrictions on reexamination may include denying the applicant the right to retake the examination for a specified period of time, or the imposition of a permanent bar on reexamination.

(b) The department may provide information on the consequences imposed upon an applicant to other jurisdictions where the applicant may apply for credentialing or examination.

(c) ~~-~~If an approved or credentialed school or instructor is found to have facilitated actions constituting cheating on an examination or breach of examination security, the school or instructor may be subject to disciplinary action or revocation of approval.

SECTION 6. RL 1.05 (title) is amended to read:

RL 1.05 (title) Notice of intent to deny ~~and,~~ notice of denial and notice of cheating on an examination or breach of examination security.

SECTION 7. RL 1.05 (3) is created to read:

RL 1.05 (3) NOTICE OF CHEATING ON AN EXAMINATION OR BREACH OF EXAMINATION SECURITY. If after an investigation the office of examinations determines there is probable cause to believe that an applicant has cheated on an examination or breached examination security and the office of examinations and the applicant cannot agree upon a consequence acceptable to the credentialing authority, the office of examinations shall issue a notice of cheating on an examination or breach of examination security. The notice shall:

(a) Include the name and address of the applicant, the examination involved, and a statement identifying with reasonable particularity the grounds for the conclusion that the applicant has cheated on an examination or breached examination security.

(b) Be mailed to the applicant at the address provided in the materials submitted by the applicant when applying to take the examination. Notice is effective upon mailing.

SECTION 8. RL 1.07 (intro.) and (3) are amended to read:

RL 1.07 Request for hearing. (intro.) An applicant may request a hearing within 45 calendar days after the mailing of a notice of denial by the credentialing authority or notice of cheating on an examination or breach of examination security by the office of examinations. The request shall be in writing and set forth all of the following:

(3) A specific description of the mistake in fact or law that constitutes reasonable grounds for reversing the decision to deny the application for a credential or for reversing a determination of cheating on an examination or a determination of breach of examination security. If the applicant asserts that a mistake in fact was made, the request shall include a concise statement of the essential facts that the applicant intends to prove at the hearing. If the applicant asserts a mistake in law was made, the request shall include a statement of the law upon which the applicant relies.

SECTION 9. RL 1.08 (1) and (4) are amended to read:

RL 1.08 (1) REVIEW OF REQUEST FOR HEARING. Within 45 calendar days of receipt of a request for hearing, the credentialing authority or its designee shall grant or deny the request for a hearing on a denial of a credential or on a determination of cheating on an examination or a determination of breach of examination security. A request shall be granted if requirements in s. RL 1.07 are met, and the credentialing authority or its designee shall notify the applicant of the time, place and nature of the hearing. If the requirements in s. RL 1.07 are not met, a hearing shall be denied, and the credentialing authority or its designee shall inform the applicant in writing of the reason for denial. For purposes of a petition for review under s. 227.52, Stats., a request is denied if a response to a request for hearing is not issued within 45 calendar days of its receipt by the credentialing authority.

(4) BURDEN OF PROOF. The applicant has the burden of proof to show by evidence satisfactory to the credentialing authority that the applicant meets the eligibility requirements set by law for the credential. The office of examinations has the burden of proof to show by satisfactory evidence that the applicant cheated on an examination or breached examination security.

SECTION 10. RL 1.09 (5) is amended to read:

RL 1.09 (5) EVIDENCE. The credentialing authority, the office of examinations and the applicant shall have the right to appear in person or by counsel, to call, examine and cross−examine witnesses and to introduce evidence into the record. If the applicant submits evidence of eligibility for a credential which was not submitted to the credentialing authority prior to denial of the application, the presiding officer may request the credentialing authority to reconsider the application and the evidence of eligibility not previously considered.

SECTION 11. RL 1.09 (5m) is created to read:

RL 1.09 (5m) CONFIDENTIALITY OF EXAMINATION RECORDS. The presiding officer shall take appropriate precautions to preserve examination security in conjunction with the conduct of a hearing held pursuant to this section.

SECTION 12. RL 1.11 and 1.12 are amended to read:

RL 1.11 Failure to appear. In the event that neither the applicant nor his or her representative appears at the time and place designated for the hearing, the credentialing authority may take action based upon the record as submitted. By failing to appear, an applicant waives any right to appeal ~~before~~ the action taken by the credentialing authority ~~which denied the license~~.

RL 1.12 Withdrawal of request. A request for hearing may be withdrawn at any time. Upon receipt of a request for withdrawal, the credentialing authority shall issue an order affirming the withdrawal of a request for hearing on the denial or on the determination of cheating on an examination or determination of breach of examination security.

Notice of Hearing
Transportation
[CR 05−060]

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

July 15, 2005 at 10:00 a.m.

Transportation Southeast Region

141 NW Barstow Street, Room 338A−B

Waukesha, WI

(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 Wisconsin Department of Transportation

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

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

Plain Language Analysis and Summary of, and Preliminary Comparison with, Existing or Federal Regulation. 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 § 348.07 (2), Stats., and § 348.08 (1), Stats. This act created §§ 348.07 (2) (f), (fm), (gm) and 348.08 (1) (e) to implement the federal length requirements. In 1986 the legislature created § 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 Trans 276.07 (11) and (24), Wisconsin Administrative Code, to add two segments of highway to the designated highway system established under s. 348.07 (4), Stats. The actual highway segment that this rule adds to the designated highway system is:

Hwy.	From	To
STH 175	CTH P S. of Theresa	STH 60
STH 50	IH 43	USH12

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 highway. 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 segment. 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 segment provided neither trailer is longer than 28 feet, 6 inches. Semitrailers up to 53 feet long may also be operated on this highway segment 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.

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 a highway segment 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. The Department's Regulatory Review Coordinator may be contacted by e−mail at reggie.newson@dot.state.wi.us, or by calling (608) 264−6669.

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.

Contact Person and Place Where Comments are to be Submitted and Deadline for Submission: 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.

Notice of Hearing
Transportation
[CR 05−062]

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

July 29, 2005 at 11:00 a.m.

Transportation Northeast Region

944 Vanderperren Way

Lake Michigan/Green Bay Conference Rooms

Green Bay, WI

(Parking is available for persons with disabilities)

Analysis Prepared by the Wisconsin Department of Transportation

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

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

Plain Language Analysis and Summary of, and Preliminary Comparison with, Existing or Federal Regulation. 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 § 348.07 (2), Stats., and § 348.08 (1), Stats. This act created §§ 348.07 (2) (f), (fm), (gm) and 348.08 (1) (e) to implement the federal length requirements. In 1986 the legislature created § 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 Trans 276.07 (12), Wisconsin Administrative Code, to add one segment of highway to the designated highway system established under s. 348.07 (4), Stats. The actual highway segment that this rule adds to the designated highway system is:

Hwy.	From	To
STH 57	Sturgeon Bay	Sister Bay

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 highway. 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 segment. 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 segment provided neither trailer is longer than 28 feet, 6 inches. Semitrailers up to 53 feet long may also be operated on this highway segment 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.

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 a highway segment 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. The Department's Regulatory Review Coordinator may be contacted by e−mail at reggie.newson@dot.state.wi.us, or by calling (608) 264−6669.

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.

Contact Person and Place Where Comments are to be Submitted and Deadline for Submission: 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.

Submittal of proposed rules to the legislature

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

Agriculture, Trade and Consumer Protection

(CR 04−140)

Ch. ATCP 40, relating to fertilizer and related products.

Insurance

(CR 05−028)

Ch. Ins 17, relating to annual injured patients and families compensation fund fees.

Natural Resources

(CR 05−015)

Ch. NR 20, relating to fishing on the inland, outlying and boundary waters of Wisconsin.

Natural Resources

(CR 05−017)

Ch. NR 10, relating to hunting and trapping regulation changes.

Revenue

(CR 05−035)

Ch. Tax 18, relating to 2005 agricultural use value.

Transportation

(CR 05−034)

Ch. Trans 117, relating to CDL occupational licenses.

Workforce Development

(CR 05−056)

Ch. DWD 272, relating to increasing Wisconsin's minimum wages.

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.

Employee Trust Funds
(CR 04−104)

An order affecting ch. ETF 10, relating to the receipt of facsimile and electronic mail communications by the department.

Effective 8−1−05.

Transportation
(CR 05−019)

An order affecting ch. Trans 28, relating to expanding eligibility for Harbor Assistance Program grants to private owners of harbor facilities.

Effective 8−1−05.

Workforce Development
(CR 04−123)

An order affecting chs. DWD 12 and 56, relating to public assistance overpayment collection.

Effective 8−1−05.

Rules published with this register and final regulatory flexibility analyses

The following administrative rule orders have been adopted and published in the ***June 30, 2005,*** *Wisconsin Administrative Register. Copies of these rules are sent to subscribers of the complete Wisconsin Administrative Code and also to the subscribers of the specific affected Code.*

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

Agriculture, Trade and Consumer Protection (CR 04−096)

An order affecting ch. ATCP 75, relating to retail food establishments. Effective 7−1−05.

Summary of Final Regulatory Flexibility Analysis

This rule is not expected to have a major impact on small businesses. The rule benefits businesses by defining previously undefined terms and clarifying rules to reduce error in interpretation.

The rule will assist small businesses that have combined operations. Under this rule change, a grocery store that contains a restaurant section will no longer be subjected to different rule requirements due to differences in the food code regulating retail food establishments and the food code regulating restaurants.

The rule clarifies but does not substantially alter current rules related to the regulation and licensing of retail food establishments. Retail food establishments can implement this rule with existing personnel, and it is likely that many establishments will have already implemented the requirements contained in this rule.

Summary of Comments by Legislative Review Committees

On February 21, 2005, DATCP transmitted the above rule for legislative committee review. The rule was assigned to the Senate Committee on Health, Children, Families, Aging and Long Term Care and to the Assembly Committee on Public Health. Neither the Assembly Committee on Public Health nor the Senate Committee on Health, Children, Families, Aging and Long Term Care took any action on the rule during their review period.

Commerce (CR 04−108)

An order affecting ch. Comm 129, relating to technology commercialization programs. Effective 7−1−05.

Summary of Final Regulatory Flexibility Analysis

2003 Wisconsin Act 255 directed the department to promulgate rules to administer an early stage business investment program and a technology commercialization grant and loan program. The proposed rules of Clearinghouse Rule No. 04−108 are minimum requirements to meet the directives of Act 255, and any exceptions from compliance for small businesses would be contrary to the Statutory objectives which are the basis for the rules. Small businesses have the option to apply for tax credits or grants and loans under the 2 programs.

Summary of Comments by Legislative Review Committees

No comments were received.

Commerce (CR 04−134)

An order affecting chs. Comm 5, 96 to 98, relating to manufactured home dealer and salesperson licenses. Effective 7−1−05.

Summary of Final Regulatory Flexibility Analysis

Sections 101.951 and 101.952, Stats., direct the Department to issue licenses to and regulate manufactured home dealers and salespersons through the promulgation of administrative rules. The proposed rules of Clearinghouse Rule No. 04−134 are minimum requirements to meet the directive of the Statutes, and any exceptions from compliance for small businesses would be contrary to the Statutory objectives which are the basis for the rules.

Summary of Comments by Legislative Review Committees

No comments were received.

Employment Relations (CR 04−139)

An order affecting chs. ER 1, 3, 4, 8, 10, 18, 29, 34 and 44, relating to the references to the Compensation Plan, day care providers, the Entry Professional Program, paid leave to vote, continuous service, reinstatement, sick leave credit restoration, annual leave schedules, annual leave options, personal holidays, catastrophic leave, paid leave for bone marrow or organ donation, project compensation, hiring above the minimum and supervisor training. Effective 7−1−05.

Summary of Final Regulatory Flexibility Analysis

The proposed rule changes affect only persons employed by or who seek employment with the State of Wisconsin. The rule changes will not affect small business.

Summary of Comments by Legislative Review Committees

No comments were received.

Employment Relations − Merit, Recruitment and Selection (CR 04−138)

An order affecting chs. ER−MRS 1, 8, 12, 14, 15, 16, 17, 22, 24, 27, 32 and 34, relating to the Entry Professional Program, submission of notices and requests to the administrator, promotional appointments and pay,

involuntary transfers, periods of eligibility for reinstatement, the definition of "state property", acting assignments and obsolete references, correct cross−references, clarifying language and other minor, technical changes. Effective 7−1−05.

Summary of Final Regulatory Flexibility Analysis

The proposed rule changes affect persons employed by or who seek employment with the State of Wisconsin. The rule changes will not affect small business. There will be no anticipated costs that would be incurred by the private sector.

Summary of Comments by Legislative Review Committees

No comments were received.

Financial Institutions − Banking (CR 05−012)

An order affecting chs. DFI−Bkg 40, 41, 42, 44 and 45, relating to definitions, applicability requirements, registrations, annual audits and reports, trust accounts, ethical and competent practice, education, examination, brokerage agreements and consumer disclosures. Effective 7−1−05.

Summary of Final Regulatory Flexibility Analysis

This proposed rule will have no adverse impact on small businesses.

Summary of Comments by Legislative Review Committees

No comments were received.

Health and Family Services (CR 04−093)

An order affecting ch. HFS 196 and Appendix, relating to restaurants and the Wisconsin Food Code. Effective 7−1−05.

Summary of Final Regulatory Flexibility Analysis

The proposed rule changes clarify the existing rule's intent and, in some cases, gives restaurants increased flexibility to utilize current science in food safety. The proposed changes to ch. HFS 196 will have little or no fiscal impact on Wisconsin restaurants and will not add any business costs. The proposed rule changes principally clarify rule intent and allow flexibility for restaurant compliance.

Summary of Comments by Legislative Review Committees

No comments were received.

Health and Family Services (CR 04−142)

An order affecting ch. HFS 148, relating to the cancer drug repository. Effective 7−1−05.

Summary of Final Regulatory Flexibility Analysis

The proposed rules will affect only the pharmacies and medical facilities that elect to participate in the cancer drug repository program, including those that meet the definition of small business under s. 227.114 (1), Stats. Except for certain form requirements, the proposed rules do not impose reporting or recordkeeping requirements, or performance, operational, or design standards beyond what may be already required under s. 450.11, Stats., and ch. Phar 7 relating to pharmacies; s. HFS 124.15 relating to hospitals; and ch. Med 17, relating to physicians. Medical facilities and pharmacies that elect to participate in the cancer drug repository program may incur additional costs for inspection, storage, dispensing, distribution, and destruction of expired donated drugs or supplies. The handling fee allowed under s. 255.056, Stats., and the proposed rules may help to offset these costs.

Summary of Comments by Legislative Review Committees

The Senate Committee on Health, Children, Families, Aging and Long Term Care requested modifications to s. HFS 148.08, to increase the maximum handling fee limit of 250%. The Department increased the maximum handling fee limit to 300% as reflected in the final order.

Insurance (CR 04−121)

An order affecting ch. Ins 3, relating to Medicare supplement, cost, select, Medicare Advantage and Medicare Part D. Effective 7−1−05.

Summary of Final Regulatory Flexibility Analysis

The Office of the Commissioner of Insurance has determined that this rule will not have a significant economic impact on a substantial number of small businesses and therefore a final regulatory flexibility analysis is not required.

Summary of Comments by Legislative Review Committees

No comments were received.

Insurance (CR 04−131)

An order affecting ch. Ins 5, relating to administrative hearing procedures. Effective 7−1−05.

Summary of Final Regulatory Flexibility Analysis

The Office of the Commissioner of Insurance has determined that this rule will not have a significant economic impact on a substantial number of small businesses and therefore a final regulatory flexibility analysis is not required.

Summary of Comments by Legislative Review Committees

No comments were received.

Insurance (CR 04−133)

An order affecting ch. Ins 14, relating to vehicle protection product warranties. Effective 7−1−05.

Summary of Final Regulatory Flexibility Analysis

The Office of the Commissioner of Insurance has determined that this rule will not have a significant economic impact on a substantial number of small businesses and therefore a final regulatory flexibility analysis is not required.

Summary of Comments by Legislative Review Committees

No comments were received.

Natural Resources (CR 04−102)

An order affecting ch. NR 410, relating to asbestos permit exemption fees and inspection fees. Effective 7−1−05.

Summary of Final Regulatory Flexibility Analysis

The proposed rule was created with the notion that the majority of businesses affected are small businesses. Wisconsin is delegated authority by the U.S. Environmental Protection Agency to regulate the National Emission

Standards for Hazardous Air Pollutants for asbestos, and cannot be less stringent than federal regulations. The concerns that small business had with the sample analysis fees were the logistics of collecting the fees from the correct party and cost effectiveness. Due to successful efforts to reduce these costs internally, repeated public concerns and a cost−benefit analysis that indicated limited returns, the Department has chosen to remove this portion of the proposed rule revision.

Summary of Comments by Legislative Review Committees

The proposed rules were reviewed by the Assembly Committee on Natural Resources and the Senate Committee on Natural Resources and Transportation. On March 30, 2005, the Assembly Committee on Natural Resources held a public hearing. On April 7, 2005, the Senate Committee on Natural Resources and Transportation held a public hearing. No comments or requests for modifications were received as a result of these hearings.

Natural Resources
(CR 04−112)

An order affecting ch. NR 20, relating to live well standards for participants in the bass fishing tournament pilot program. Effective 7−1−05.

Summary of Final Regulatory Flexibility Analysis

The proposed rules do not regulate small businesses. Therefore, a final regulatory flexibility analysis was not required.

Summary of Comments by Legislative Review Committees

The proposed rules were reviewed by the Assembly Committee on Natural Resources and the Senate Committee on Natural Resources and Transportation. On March 20, 2005, the Assembly Committee on Natural Resources held a public hearing. No comments or requests for modifications were received as a result of this hearing.

Natural Resources
(CR 04−113)

An order affecting chs. NR 500, 502, 544 and 545, relating to recycling.

Effective 7−1−05.

Summary of Final Regulatory Flexibility Analysis

Because no new regulations are being introduced, the Department does not anticipate any increased or new impact on small business currently affected by state and local recycling requirements. The proposed rule language expands the scope of flexibility by facilitating the process by which a responsible unit can switch to a single stream collection system.

Summary of Comments by Legislative Review Committees

The proposed rules were reviewed by the Assembly Committee on Natural Resources and the Senate Committee on Natural Resources and Transportation. On March 30, 2005, the Assembly Committee on Natural Resources held a public hearing. No comments or requests for modifications were received as a result of this hearing.

Public Instruction
(CR 04−129)

An order affecting ch. PI 24, relating to the payment of state aid under the student achievement guarantee in education (SAGE) program. Effective 7−1−05.

Summary of Final Regulatory Flexibility Analysis

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

Summary of Comments by Legislative Review Committees

No comments were received.

Regulation and Licensing
(CR 04−110)

An order affecting chs. RL 150 to 154, relating to the licensure and regulation of athlete agents. Effective 7−1−05.

Summary of Final Regulatory Flexibility Analysis

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

Summary of Comments by Legislative Review Committees

No comments were received.

Regulation and Licensing
(CR 04−124)

An order affecting ch. RL 17, relating to supervision by real estate brokers. Effective 7−1−05.

Summary of Final Regulatory Flexibility Analysis

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

Summary of Comments by Legislative Review Committees

No comments were received.

Transportation
(CR 04−100)

An order affecting ch. Trans 102, relating to proof of identification. Effective 7−1−05.

Summary of Final Regulatory Flexibility Analysis

The proposed rule will have no adverse impact on small businesses.

Summary of Comments by Legislative Review Committees

No comments were received.

Transportation
(CR 05−009)

An order affecting chs. Trans 254 and 255, relating to the standards and procedures for the issuance of single and multiple trip oversize and overweight permits.

Effective 7−1−05.

Summary of Final Regulatory Flexibility Analysis

The proposed rule is expected to have no significant effect on small business practices or net worth of small businesses.

Summary of Comments by Legislative Review Committees

No comments were received.

Sections affected by rule revisions and corrections

The following administrative rule revisions and corrections have taken place in **June 2005,** and will be effective as indicated in the history note for each particular section. For additional information, contact the Revisor of Statutes Bureau at (608) 266−7275.

Revisions

Agriculture, Trade & Consumer Protection

Ch. ATCP 75

S. ATCP 75.02 (3) (d)

Commerce

Ch. Comm 5

S. Comm 5.003 (6m), (6s), (8m), (11), (17m), (26m), (27e), (27m), (27s), (27w), (32e), (32h), (46m), (47m) and (48s)
S. Comm 5.02 Table
S. Comm 5.06 Table
S. Comm 5.323
S. Comm 5.325

Chs. Comm 96, 97 and 98 (Entire chapters)

Ch. Comm 129

Employment Relations

Ch. ER 1

S. ER 1.02 (5m)

Ch. ER 3

S. ER 3.03 (4)

Ch. ER 4 (Entire chapter)

Ch. ER 8

S. ER 8.03

Ch. ER 10

S. 10.02 (4)

Ch. ER 18

S. ER 18.02 (2) (b), (3) (c), (5) (b) and (c)
S. ER 18.03 (5) (a)
S. ER 18.04 (4) (d)
S. ER 18.11
S. ER 18.15 (1) (c), (2) (b), (3) (b) and (4g)
S. ER 18.17

Ch. ER 29

S. ER 29.02
S. ER 29.03 (1), (6) (a), (am), (b) and (2m)

Ch. ER 34

S. ER 34.05 (4) to (8)

Ch. ER 44

S. ER 44.03 (1) and (2)
S. ER 44.07 (2) (a)
S. ER 44.08

Employment Relations − Merit Recruitment & Selection

Ch. ER−MRS 1

S. ER−MRS 1.02 (3)

Ch. ER−MRS 8

S. ER−MRS 8.26

Ch. ER−MRS 12

S. ER−MRS 12.01
S. ER−MRS 12.07

Ch. ER−MRS 14

S. ER−MRS 14.02 (5)
S. ER−MRS 14.03 (1)
S. ER−MRS 14.04
S. ER−MRS 14.05

Ch. ER−MRS 15

S. ER−MRS 15.03
S. ER−MRS 15.04
S. ER−MRS 15.05
S. ER−MRS 15.06
S. ER−MRS 15.07 (1)

Ch. ER−MRS 16

S. ER−MRS 16.025 (1), (2) and (4) (a)
S. ER−MRS 16.03 (6) (c)
S. ER−MRS 16.035 (1) to (3)
S. ER−MRS 16.04 (2)
S. ER−MRS 16.05
S. ER−MRS 16.06

Ch. ER−MRS 17

S. ER−MRS 17.03
S. ER−MRS 17.04 (3) and (4)
S. ER−MRS 17.05

Ch. ER−MRS 22

S. ER−MRS 22.06 (2)
S. ER−MRS 22.08 (2) (a) and (b) and (3) (a) and (c)
S. ER−MRS 22.09 (2) (a) to (c)
S. ER−MRS 22.10 (intro.) and (4)
S. ER−MRS 22.11 (1), (1m), (2) and (3)

Ch. ER−MRS 24

S. ER−MRS 24.03 (7)

Ch. ER−MRS 27

S. ER−MRS 27.01
S. ER−MRS 27.02 (1), (2), (4) (a) and (4m)
S. ER−MRS 27.03 (1)
S. ER−MRS 27.04 (1)
S. ER−MRS 27.05 (1)

Ch. ER−MRS 32

S. ER−MRS 32.04

Ch. ER−MRS 34
S. ER−MRS 34.08 (2) to (4)

Financial Institutions − Banking

Ch. DFI−Bkg 40
S. DFI−Bkg 40.02
S. DFI−Bkg 40.03
S. DFI−Bkg 40.04
Ch. DFI−Bkg 41
S. DFI−Bkg 41.01 (2) to (5)
S. DFI−Bkg 41.02 (1) and (2)
S. DFI−Bkg 41.03
Ch. DFI−Bkg 42
S. DFI−Bkg 42.02
S. DFI−Bkg 42.03
Ch. DFI−Bkg 43
S. DFI−Bkg 43.01 (2)
S. DFI−Bkg 43.02
S. DFI−Bkg 43.03
S. DFI−Bkg 43.04
Ch. DFI−Bkg 44
Ch. DFI−Bkg 45

Health and Family Services

Ch. HFS 148 (entire chapter)
Ch. HFS 196
S. HFS 196.02
S. HFS 196.03 (1g), (1r), (4m) and (6)
S. HFS 196.04 (1) (b), (d), (e) and (2) (b)
S. HFS 196.045
S. HFS 196.05 (2) (a) and (b)
S. HFS 196.07

Insurance

Ch. Ins 3
S. Ins 3.39 (1) (c), (2) (f), (3), (4) (intro.) and (a), (4m) (a), (b) and (d), (5) (c) to (o), (7), (14) (a), (c), (j) and (m), (15), (16) (a), (c) and (e), (21) (a) and (e), (22) (a) to (f) and (i), (23) (a) and (c), (25) (a) to (c), (26), (27), (29), (30), (33), (34) (a) to (c), (e) and (f)
Ch. Ins 5
S. Ins 5.17 (5)
S. Ins 5.21 (1) and (2) (intro.) and (e) to (g)
S. Ins 5.25 (1) (c)
S. Ins 5.27 (4)
Ch. Ins 7
S. Ins 7.02
Ch. Ins 14
Ch. Ins 15
S. Ins 15.01 (3) (d)
Ch. Ins 18
S. Ins 18.02 (1)
S. Ins 18.10 (3)

Natural Resources

Ch. NR 20
S. NR 20.40 (1) (am) and (d), (6) (d) and (f), and (6m)
Ch. NR 410
S. NR 410.05 (2) (a), (b) and (3) (a) to (d)
Ch. NR 500
S. NR 500.03 (19) and (140)
Ch. NR 502
S. NR 502.05 (3) (g)
S. NR 502.06 (2) (ar), (4) (e), (eg), and (er)
S. NR 502.07 (2f)
S. NR 502.08 (2) (b), (f), (fg), and (fr)
Ch. NR 544
S. NR 544.01
S. NR 544.02
S. NR 544.03 (1), (2), (6m), (7), (8), (12), (12m), (16), (17), (20), (21), (24), (25), (27m), (28m), (31), (31g), (31r), (33m), (37), (39), (39g), (40), and (41)
S. NR 544.04 (intro.), (1), (6), (7), (9g), (9r), and (10)
S. NR 544.05 (1) (a), (b) and (c), (2) and (3)
S. NR 544.06 (1), (2) (b) and (c)
S. NR 544.07
S. NR 544.08 (1), (2) (intro.), (c), (g), (h), (k) and (m), (3) (intro.) and (c)
S. NR 544.09
S. NR 544.10 (1), (2) (d) and (i)
SS. NR 544.11 to 544.17
Ch. NR 545 (Entire chapter)

Public Instruction

Ch. PI 24
S. PI 24.01 (3)
Ss. PI 24.015 to 24.03

Regulation and Licensing

Ch. RL 17
S. RL 17.02 (1), (2), (4), (4g), (4r)
S. RL 17.04
S. RL 17.08 (1), (3) to (5)
S. RL 17.09
S. RL 17.10
S. RL 17.11
S. RL 17.12 (1)
Chs. RL 150 to 154 (Entire chapters)

Transportation

Ch. Trans 102
S. Trans 102.02 (7m)
S. Trans 102.025
S. Trans 102.03 (2m)
S. Trans 102.15 (2) (c) (intro.), (3) (a) and (b), (4) (a), (c), (4m), (5) (a), (b), (bm), (d) and (7)
Ch. Trans 254
S. Trans 254.12 (6)
Ch. Trans 255
S. Trans 255.12 (7)

Editorial corrections

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

Commerce

Ch. Comm 117

S. Comm 114.02 (6)
S. Comm 116.02 (4)
S. Comm 116.037 (2)
S. Comm 117.02 (5)

Employment Relations − Merit Recruitment and Selection

Ch. ER−MRS 27

S. ER−MRS 27.02 (2)

Insurance

Ch. Ins 5

S. Ins 5.03 (5)
S. Ins 5.33 (1) (j)
S. Ins 5.45 (1) (b)

Transportation

Ch. Trans 254

S. Trans 254.11 (4) (intro.)
S. Trans 254.12 (2)

Ch. Trans 255

S. Trans 255.12 (2)

Executive orders

The following are recent Executive Orders issued by the Governor.

Executive Order 97. Relating to a proclamation declaring a state of emergency.

Executive Order 98. Relating to a proclamation that the flag of the United States and the flag of the State of Wisconsin be flown at half−staff as a mark of respect for peace officers who have given their lives in the line of duty.

Executive Order 99. Relating to issuance of general obligation bonds for the Veterans Home Loan Program and appointment of hearing officer.

Executive Order 100. Relating to a proclamation that the flag of the United States and the flag of the State of Wisconsin be flown at half−staff on Memorial Day.

Executive Order 101. Relating to the development and promotion of biobased industry.

Executive Order 102. Relating to a proclamation that the flag of the United States and the flag of the State of Wisconsin be flown at half−staff as a mark of respect for Specialist Kyle Hemauer of the Virginia Army National Guard who lost his life during Operation Enduring Freedom.

Executive Order 103. Relating to a proclamation that the flag of the United States and the flag of the State of Wisconsin be flown at half−staff as a mark of respect for Sergeant Mark Maida of the United States Army who lost his life during Operation Iraqi Freedom.

Executive Order 104. Relating to a proclamation that the flag of the United States and the flag of the State of Wisconsin be flown at half−staff as a mark of respect for Chief Warrant Officer 2 Joshua Scott of the United States Army who lost his life during Operation Iraqi Freedom.

Executive Order 105. Relating to a proclamation that the flag of the United States and the flag of the State of Wisconsin be flown at half−staff as a mark of respect for Specialist Eric Poelman of the United States Army who lost his life during Operation Iraqi Freedom.

Public notices

Health and Family Services
(Parental Fee for Children's Long Term Support Waivers)

2003 Act 33 (the 2003−2005 biennial budget) directed the Department of Health and Family Services (DHFS) to implement a parental fee for children's long−term support services, including the Children's Long−Term Support Medicaid Home and Community−Based Services Waivers (CLTS Waivers). Federal Medicaid rules permit states to impose fees on Medicaid clients for a service that is Medicaid funded. However, such a fee is permissible only if the state imposes the same fee for the same service provided through other government programs in the state. Wisconsin will, therefore, assess a fee for children's long−term support services provided through the CLTS Waivers, other Medicaid (MA) Home and Community−Based Services Waivers including the Community Integration Placement (CIP) Waiver, the Community Options Program, the Family Support Program, and other long−term supports. Medicaid Fee−for−Service benefits will not be affected by the fee.

The fee schedule will assess a fee for families at or above 330 percent of federal poverty level (FPL), beginning at one percent of service costs and increasing to 41 percent of service costs at incomes near 2000 percent of poverty. The fee will be calculated for families exceeding the 330 percent of FPL threshold by considering parental income, with allowances for a child's disability expenses and family size. County support and service coordination and administrative costs will be excluded for purposes of calculating the fee. The fee will be instituted beginning July 1, 2005. County staff or their agents administering children's long−term support programs will work with each family participating in eligible programs to assess the fee.

Families will be required to submit a declaration of income, family size and other required information within two−weeks of their county's request for such information. Once the county calculates the parental fee liability and informs the family, the family will have 30 days to make a decision about continuing services and incurring liability for the associated parental fee.

Proposed Change

The proposed change is to institute a system of parental fees for children's long−term support services.

Copies of the Proposed Change:

A copy of the proposed change may be obtained free of charge by calling or writing as follows:

Regular Mail

Beth Wroblewski

Bureau of Developmental Disabilities Services

Division of Disability and Elder Services

P.O. Box 7851

Madison, WI 53701−7851

Phone

Beth Wroblewski

(608) 266−7469

FAX

(608) 261−6752

Attention: Beth Wroblewski

E−Mail

wroblbm@dhfs.state.wi.us

Written Comments:

Written comments are welcome. Written comments on the proposed changes may be sent by FAX, e−mail, or regular mail to the Division of Disability and Elder Services. The FAX number is (608) 261−6752. The e−mail address is wroblbm@dhfs.state.wi.us. Regular mail can be sent to the above address. All written comments will be reviewed and considered.

The written comments will be available for public review between the hours of 7:45 a.m. and 4:30 p.m. daily in Room 418 of the State Office Building, 1 West Wilson Street, Madison, Wisconsin.

Health and Family Services

(Medical Assistance Reimbursement of Physician Administered Drugs)

The State of Wisconsin reimburses providers for services provided to Medical Assistance recipients under the authority of Title XIX of the Social Security Act and ss. 49.43 to 49.47, Wisconsin Statutes. This program, administered by the State's Department of Health and Family Services, is called Medical Assistance (MA) or Medicaid. Federal statutes and regulations require that a state plan be developed that provides the methods and standards for reimbursement of covered services. A plan that describes the reimbursement system for the services (methods and standards for reimbursement) is now in effect.

Proposed Change

The Wisconsin Department of Health and Family Services is proposing to modify the reimbursement methodology for physician administered injectable drugs. This change will utilize new sources of drug pricing and clinical drug indication information in order to establish payment rates and requirements for these services. Additional sources of information include wholesale prices, average sale prices and other information available in the marketplace. The Department is based on a provision of the pending 2005−07 state budget bill. The proposal involves no change in services and the benefits remain the same.

The proposed will be effective for dates of service on and after July 1, 2005. If enacted the fiscal effect of the budget bill proposal will be savings of $740,400 GPR and $1,058,900 FED for a total of $1,799,300 all funds (AF) in SFY 2005−06.

Copies of the Proposed Change:

A copy of the proposed change may be obtained free of charge by calling or writing as follows:

Regular Mail

Pharmacy Policy Unit

Bureau of Fee−for−Service Health Care Benefits

Division of Health Care Financing

P.O. Box 309

Madison, WI 53701−0309

FAX

(608) 266−1096

Attention: Pharmacy Policy Unit

Written Comments:

Written comments are welcome. Written comments on the proposed changes may be sent by FAX, e−mail, or regular mail to the Department. The FAX number is (608) 266−1096. The e−mail address is pederrj@dhfs.state.wi.us. Regular mail can be sent to the above address. All written comments will be reviewed and considered.

The written comments will be available for public review between the hours of 7:45 a.m. and 4:30 p.m. daily in Room 350 of the State Office Building, 1 West Wilson Street, Madison, Wisconsin. Revisions may be made in the proposed changed methodology based on comments received.

Health and Family Services

(Medical Assistance Reimbursement of Hospitals)

The state of Wisconsin covers legend and non−legend drugs and drug products and reimburses pharmacies for services provided to low−income persons under the authority of Title XIX of the Federal Social Security Act and sections 49.43 to 49.47 and 49.688, Wisconsin Statutes. The Wisconsin Department of Health and Family Services administers this program, which is called Medical Assistance or Medicaid.

Federal statutes and regulations require a state plan that indicates Medicaid covered services and limits to coverage.

A state plan is in effect that indicates coverage of drugs and drug products for medically needy and categorically needy Medicaid recipients and reimbursement policy for pharmacy services. The Department is proposing to make changes in the provisions contained in the state plan that apply to coverage of drugs and drug products and reimbursement policies.

Multi−State Preferred Drug List − Supplemental Rebates and Prior Authorization

The Federal government has clarified that states may enter into multi−state supplemental rebate agreements with pharmaceutical manufacturers and that states may impose prior authorization requirements related to supplemental rebate agreements for covered outpatient drugs.

The State will extend prior authorization to drugs as allowed under state law.

In addition, the State will enter into negotiations for multi−state supplemental rebates from manufacturers for drugs and drug products covered under Medicaid and SeniorCare. Expected savings are indeterminate at this time.

Copies of Proposed Changes

When available, a copy of the proposed state plan changes may be obtained free of charge by calling or writing as follows:

Mail:

James J. Vavra, Director

Bureau of Fee−for−Service Health Care Benefits

Division of Health Care Financing

P.O. Box 309

Madison, WI 53701−0309

Written Comments

Written comments are welcome. Written comments on the proposed changes may be sent by FAX, e−mail, or regular mail to the Division of Health Care Financing. The FAX number is (608) 266−1096. The e−mail address is pederrj@dhfs.state.wi.us. Regular mail can be sent to the above address. All written comments will be reviewed and considered.

The written comments will be available for public review between the hours of 7:45 a.m. and 4:30 p.m. daily in Room 350 of the State Office Building, 1 West Wilson Street, Madison, Wisconsin. Revisions may be made in the proposed changed methodology based on comments received.

Health and Family Services

(Medical Drug Coverage and Reimbursement)

The State of Wisconsin reimburses hospitals for medical services provided to low−income persons under the authority of Title XIX of the Federal Social Security Act and Chapter 49.43 to 49.47, Wisconsin Statutes. The Wisconsin Department of Health and Family Services administers this program that is called Medicaid or Medical Assistance (MA). Federal statutes and regulations require state plans, one for outpatient services and one for inpatient services, that provide the methods and standards for paying for hospital outpatient and inpatient services.

State plans are now in effect for the reimbursement of outpatient hospital services and inpatient hospital services. The Department is proposing to make changes to the provisions contained in the Medicaid inpatient and outpatient hospital state plans effective July 1, 2005 to implement proposed provisions pending the approval of the 2005−2007 Wisconsin state budget act, and maintain compliance with federal payment limits, and for administrative efficiencies.

Outpatient Hospital Services

Proposed changes in the state plan for reimbursement for outpatient services may include:

1. Remove the Border Metropolitan Statistical Area Supplement. The hospitals that once qualified for this adjustment are now Critical Access Hospitals. As such, they are paid at cost, which now makes them ineligible for the supplement.

2. Remove the Hold Harmless provision from the rate per visit calculation. Eliminating this provision would result in an equitable allocation of the across−the−board rate increase as all providers would receive the same percentage of Medicaid costs in the outpatient rate.

3. Limit reimbursement for therapy services provided in an outpatient hospital setting from the OP rate per visit to the rates paid to therapy providers.

Implementation of the above changes to the State Plan for outpatient services are expected to reduce payments by an estimated $4,375,000 All Funds ($2,529,625 FED, $1,845,375 GPR) due to reclassification of therapy services claims, and increase payments by an estimated $5,926,600 All Funds ($3,426,600 FED, $2,500,000 GPR) for general outpatient rate increase for state fiscal year 2005−2006.

Inpatient Hospital Services

Proposed changes in the state plan for reimbursement for inpatient services may include:

1. Change the trimpoint for outlier payments. Create one trimpoint for acute care hospitals.

2. Change methodology and maximum amount available for the General Assistance Disproportionate Share Hospital Allowance.

3. Remove the Critical Access Hospitals (CAHs) from the appendix for hospitals qualifying for exemption from capital cost reduction. This calculation does not affect the CAHs.

Implementation of the above changes to the State Plan for inpatient services are expected to decrease expenditures by $200,000 all−funds ($115,640 Fed, and $84,360 GPR).

Copies of Proposed Changes

Copies of the proposed changes will be sent to every county social services or human service department main office where they will be available for public review. For more information, interested persons may fax or write to:

Hospitals, Physicians and Clinics Section

Division of Health Care Financing

P.O. Box 309

Madison, WI 53701−0309

Fax: (608) 266−1096

Written Comments

Written comments on the proposed changes are welcome and should be sent to the above address. The comments received on the changes will be available for public review between the hours of 7:45 a.m. and 4:30 p.m. at:

Division of Health Care Financing

Room 350, State Office Building

One West Wilson Street

Madison, WI

The State of Wisconsin
Department of Administration
Bureau of Document Services
Document Sales and Distribution Section
P.O. Box 7840
Madison, Wisconsin 53707−7840

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