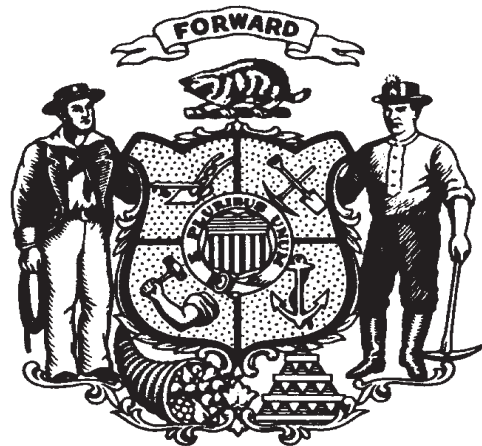


# Wisconsin Administrative Register

No. 568



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## Emergency rules now in effect

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

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

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

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

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

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

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### Agriculture, Trade & Consumer Protection

Rules adopted revising **chs. ATCP 10 and 11** relating to chronic wasting disease in cervids.

#### Finding of emergency

(1) Chronic wasting disease is a contagious disease known to affect several species of the cervid family, including elk, white-tailed deer, black-tailed deer, red deer and mule deer. The disease is always fatal. At the present time, there is no scientific evidence to suggest that chronic wasting disease is transmitted to non-cervids or to humans. But there is limited scientific knowledge about the disease, and this lack of knowledge has contributed to public concerns.

(2) The cause of chronic wasting disease is not fully understood. The disease appears to be related to aberrant protein molecules called prions. By an unknown mechanism, prions apparently cause other protein molecules in the cervid brain to take aberrant forms. The disease causes microscopic vacuoles (holes) in the brain. Diseased cervids become emaciated, display abnormal behavior patterns, and experience loss of bodily functions.

(3) Science does not understand how chronic wasting disease is spread. It is thought that infected cervids can transmit the disease to other cervids, either directly or by contaminating their environment. It appears that cervid-to-cervid contact facilitates the spread of the disease.

(4) On February 27, 2002, the national veterinary services laboratory informed Wisconsin that it had confirmed chronic wasting disease for the first time in this state. The laboratory confirmed the disease in test samples collected from 3 free-ranging white-tailed deer killed by hunters during the

November 2001 gun deer season. The Wisconsin Department of Natural Resources (DNR) collected these samples as part of a statewide disease surveillance program. With the voluntary cooperation of hunters, DNR collected test samples from deer killed and registered by hunters at selected hunting registration sites around the state. DNR collected a total of 345 samples statewide, including 82 samples at the Mt. Horeb registration station. The 3 deer that tested positive for chronic wasting disease were all registered at the Mt. Horeb station. The 3 deer were shot in close proximity to each other in Vermont Township in Dane County. We do not know how the 3 deer were exposed to chronic wasting disease, nor do we know the extent of infection in the free-ranging herd.

(5) We do not know whether any captive cervids in Wisconsin are infected with chronic wasting disease (there are no findings to date). If captive cervids are infected, the close proximity of cervids within a captive herd may facilitate the spread of disease within the herd. The movement of infected cervids between herds may spread the disease to other herds. Contact between free-ranging and captive cervids may also spread the disease.

(6) Persons importing captive cervids to Wisconsin must obtain an import permit from the Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP). Importers must identify the herd of origin and the herd of destination. A veterinarian must certify that the cervids appear to be in good health, and that they have been tested for tuberculosis and brucellosis. There is no chronic wasting disease testing requirement, because there is no way to test live cervids for the disease.

(7) Since 1995, a total of 2,604 captive cervids have been legally imported into Wisconsin. This includes 2,020 elk, 191 whitetail deer, 12 mule deer and 387 other cervids. Chronic wasting disease has been found in free-ranging herds or in some captive herds in Colorado, Nebraska, Oklahoma, Kansas, Montana, South Dakota, and Wyoming. Since 1995, a total of 410 captive cervids have been legally imported to Wisconsin from these states. Most other states lack active chronic wasting disease surveillance programs, so the full extent of the disease is not known with certainty.

(8) DATCP currently registers captive cervid herds, other than white-tail deer herds. DNR currently licenses captive white-tail deer herds. Since 1998, DATCP has sponsored a voluntary program to monitor for chronic wasting disease among the captive herds that it registers. Approximately 50 herd owners currently participate in this program.

(9) Since chronic wasting disease was confirmed in this state, there has been widespread public concern about the disease. The public has expressed concern about the health of free-ranging deer and elk, and about potential threats to humans, livestock and deer-related businesses. Hunters and consumers have expressed food safety concerns. There is currently no scientific evidence to suggest that chronic wasting disease is transmissible to non-cervids or to humans. But there is limited scientific knowledge about the disease, and this lack of knowledge has contributed to public concerns.

(10) In order to protect the public peace, health, safety and welfare, it is necessary to take immediate steps to prevent and control the spread of chronic wasting disease in this state. Among other things, it is necessary to impose further controls on the import and movement of captive cervids and to implement a mandatory monitoring program. DATCP may adopt rules to implement these measures.



(11) Normal rulemaking procedures require up to a year or more to complete. A temporary emergency rule is needed to protect the public peace, health, safety and welfare, pending the adoption of longer-term rules. This emergency rule will implement essential prevention and control measures on an immediate, interim basis.

**Publication Date:** April 9, 2002  
**Effective Date:** April 9, 2002  
**Expiration Date:** September 6, 2002  
**Hearing Date:** May 22, 2002  
**Extension Through:** May 31, 2003

**Commerce**  
**(Financial Resources for Bus. and Communities,**  
**Chs. Comm 105–128)**

Rules were adopted revising **ch. Comm 108**, relating to the use of rapid response funds in economically depressed areas of Wisconsin to preserve economic development.

**Finding of emergency**

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

**Analysis of Rules**

Statutory Authority: ss. 560.02 (4) and 560.04, Stats.  
 Statute Interpreted: s. 560.04, Stats.

Pursuant to s. 560.04, Stats., the Department of Commerce (Commerce), as a part of its comprehensive duties involving community development and economic development, administers federal funds in the form of grants to eligible communities related to economic development. Under current rules, the maximum amount of funds that may be awarded to a community is \$1 million per calendar year and the maximum amount that a business may borrow from a local government under the economic development program is also \$1 million during any 5-year period. The timing and dollar limitations specified in the rules are barriers to providing a comprehensive and rapid response to changing economic conditions in a community.

Given the uncertainty inherent in today's marketplace, Commerce would like to maximize the use of federal community development block grant funds to positively impact local economies. Under the rules, as currently structured, Commerce's ability to respond rapidly to actual or potential plant closings or relocations in a specific geographical region is limited. The following emergency rule will allow Commerce to respond more rapidly to changing economic conditions.

This rule provides Commerce, working collaboratively with local communities, the ability to quickly respond to changing economic conditions due to potential plant closings, business relocations, layoffs, and other economic factors that could negatively affect the economic conditions in the community and state.

**Publication Date:** March 22, 2003  
**Effective Date:** March 22, 2003  
**Expiration Date:** August 19, 2003

**Employee Trust Funds**

Rules adopted amending **s. ETF 20.25 (1) (a) and (2)** regarding the date as of which annual post-retirement annuity

adjustments under ss. 40.27 (2) and 40.28 (2), Stats., will occur.

**Finding of emergency**

The Department of Employee Trust Funds, Employee Trust Fund Board, Teachers Retirement Board and Wisconsin Retirement Board find that an emergency exists and that an administrative rule is necessary for the immediate preservation of the public welfare. A statement of the facts constituting the emergency is:

Without emergency rule-making it will not be possible to avoid short-term harm to individual WRS annuitants who will already bear the effects of the market downturn though a zero percent fixed annuity dividend and a double-digit negative variable change.

The first annuity dividends actually affected by the 2002 rule-making (CR #02-049) are the dividends otherwise payable on March 1, 2003. Projections indicate that the fixed division dividend will likely be 0%, largely because of the effect of three years of market declines. The annual change to variable division annuities, which is more volatile because it reflects only the past year's market performance, will be negative and in the range of -26% to -30%. This means that the portion of an annuitant's annuity payable from the fixed division will not increase during 2003, while, if the annuitant receives a portion of his or her annuity from the variable annuity division, that portion of the annuity will be markedly reduced. Annuitants are concerned about the short-term effect of cuts to their annuities being made effective a month earlier this year than was the case in previous years.

The change from April 1 to March 1 was initiated with the best of intentions, primarily to get the additional money from dividend increases into the hands of annuitants as quickly as possible. In retrospect, the timing is unfortunate. When drafting of the rule began in early 2002, the year-end market earnings were unknown and a third consecutive year of market losses could not be predicted. The continued deterioration of investment returns in the latter part of 2002 has magnified the adverse, short-term effect of this change in the timing of dividends; that is, the size of the negative variable adjustment is larger.

**Publication Date:** February 27, 2003  
**Effective Date:** February 28, 2003  
**Expiration Date:** July 28, 2003

**Health and Family Services**  
**(Medical Assistance, Chs. HFS 100—)**

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

**Finding of emergency**

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

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

be eligible for most of the family planning services currently available under Medicaid, as described in s. HFS 107.21. Through this expansion of coverage, the Department hopes to reduce the number of unwanted pregnancies in Wisconsin.

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

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

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### Health and Family Services (3) (Health, Chs. HFS 110—)

1. Rules adopted amending **chs. HFS 110 to 113**, relating to licensing of EMT's and certification of first responders, incorporating responding to acts of terrorism as a training component.

#### Finding of emergency

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

2001 Wisconsin Act 109 amended s. 146.50 (6) (a) 2., (b) 2. and (8) (b) 3. by adding the requirement that as of January 1, 2003, to receive an initial or renewed EMS license or first responder certification, the applicant must have received training in response to acts of terrorism. Section 146.50 (6) (b) 2. of the statutes specifically directs the Department, in conjunction with the technical college system board, to promulgate rules specifying training, education, or examination requirements for training in response to acts of terrorism. The training must be completed by all persons desiring to receive an initial or renewed license or certification after January 1, 2003. To enforce and administer this statutory requirement, the Department must revise the administrative rules associated with the licensing of Emergency Medical Technicians (EMTs) – Basic and EMTs – Basic IV (found in ch. HFS 110), EMTs – Intermediate (found in ch. HFS 111), EMTs – Paramedic (found in ch. HFS 112) and First Responders (found in ch. HFS 113.)

The required rule changes will remove any question of whether the department had the authority to require persons

to receive training for acts of terrorism. Such training is needed to promote the public's health and safety and due to the statutory effective date of January 1, 2003, the department is promulgating these rule changes through an emergency order. The department is also proceeding with promulgating these rule changes on a permanent basis through a proposed permanent rulemaking order.

**Publication Date:** December 31, 2002  
**Effective Date:** December 31, 2002  
**Expiration Date:** May 30, 2003  
**Hearing Date:** February 17, 2003

2. Rules adopted revising **ch. HFS 163**, relating to certification for the identification, removal and reduction of lead-based paint hazards.

#### Finding of emergency

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

The presence of lead in paint and soil is believed to contribute to the level of lead found in the blood of persons, particularly children, living in the area. The federal Environmental Protection Agency (EPA) maintains regulations intended to reduce environmental lead hazards principally by:

- Specifying the thresholds for an environment to be considered as presenting a lead-based paint hazard; and
- Requiring training and certification of persons who perform lead hazard reduction activities or lead investigation activities so those persons are best able to prevent exposure of building occupants to hazardous levels of lead.

The federal government may authorize a state to administer its own lead training and certification program if the state has regulations governing certification of persons for the identification, removal and reduction of lead-based paint hazards that are as protective as those specified in the EPA regulations.

In Wisconsin, the Department of Health and Family Services administers the lead training and certification program. The Department has established administrative rules under ch. HFS 163 to guide its administration of the program. In 2000, the Department began work to extensively revise ch. HFS 163 to implement 1999 Wisconsin Act 113, which established a program for registering lead-free and lead-safe properties. The proposed rule was released for public review and comment on December 12, 2000. On January 5, 2001, in volume 66, number 4 of the Federal Register (66 FR 1206-1239), the EPA published regulations that established standards for lead-based paint hazards under 40 CFR Part 745, Subparts D and L, and required states with authorized lead training and certification programs under 40 CFR Part 745, Subpart Q, to implement the regulations by February 5, 2003. Because the proposed rule had already been released for public review and comment and the EPA standards for lead-based paint hazards would affect the lead-safe property standards under ch. HFS 163, the Department decided to educate the public about the new EPA standards for lead-based paint hazards before revising the rule to reflect the new EPA standards. If Wisconsin is to continue administering its program of training and certification of persons performing lead abatement and lead investigation activities (in lieu of a program operated by the EPA), the Department must revise ch. HFS 163 by February 3, 2003 to comply with those most recent and final federal regulations at 40 CFR Part 745, Subparts D, L and Q.

If the Department does not make these changes to ch. HFS 163, Wisconsin could lose some or all of its Federal lead grant



funding and EPA's authorization for the Department's lead program. Since the federal regulation provides the first measurable definition of a lead-based paint hazard, the Department needs to adopt this definition in order to protect the state's citizens.

The most significant modification to the rules pertains to the permissible level of residual lead dust in window troughs. The current lead-safe property standards expressed under s. HFS 163.42 allow a higher level of lead dust in window troughs than is permissible in corresponding EPA regulations and also do not require properties to be free of soil-lead hazards. Making the changes to s. HFS 163.42 through this order will mean that persons removing lead-based paint hazards may need to clean window troughs more thoroughly to reduce the dust-lead levels and also may need to cover bare soil. Most lead investigation professionals in Wisconsin already perform lead investigation work in conformance with the more stringent lead levels specified in EPA's regulations to ensure a more protective environment for residents, especially when conducting clearance following abatement activities. Conformance with the more stringent EPA regulations is also currently required when lead hazard reduction work is performed using federal funds. Since most lead investigation professionals already use the more protective EPA standards, the rule changes should have little effect on persons conducting lead investigation or abatement activities.

Among the changes the Department is making through this order, the most significant are the following:

1. Prior to this order, s. HFS 163.14 (5) (c) 8. required that, following lead abatement, a window well or trough may contain no more than 800 micrograms of lead dust per square foot. The revised EPA regulations specify a maximum level of 400 micrograms per square foot. To comply with federal regulations, the Department is reducing the permissible threshold to 400 micrograms per square foot.

2. Prior to this order, s. HFS 163.15 (2) specified that a lead hazard is present in soil when the arithmetic mean for laboratory results for samples of bare soil is equal to or greater than 2,000 parts per million. The EPA revised regulations state that a lead hazard is present in soil when bare soil in a play area contains total lead content equal to or exceeding 400 parts per million or when bare soil in the rest of the yard contains an average of 1,200 parts per million of lead. To comply with the federal regulations, the Department is reducing the permissible threshold to that specified by the EPA.

3. The Department is adding standards, as s. HFS 163.15 (3), for determining when a lead-based paint hazard exists.

4. The Department is modifying s. HFS 163.42 (1) (b) and (c) to require that all exterior painted components, regardless of their height above the ground, be free of deteriorated paint unless the paint is proved to be lead-free.

5. The Department is revising its standards for lead-safe property under s. HFS 163.42 (1) (f) and (j) to reflect these lower levels for lead in dust and soil.

6. Finally, the Department is revising s. HFS 163.42 (1) (j) to require that there be no soil-lead hazard on registered lead-safe property.

**Publication Date:** January 3, 2003  
**Effective Date:** January 3, 2003  
**Expiration Date:** June 2, 2003  
**Hearing Date:** April 2, 2003

3. Rules adopted revising **ch. HFS 124**, relating to critical access hospitals.

#### **Finding of emergency**

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

The federal Rural Hospital Flexibility Program promotes the continued viability of rural hospitals by allowing qualifying hospitals to receive cost-based reimbursement for their services if the hospital qualifies for and is approved to convert to what is known as a Critical Access Hospital (CAH). In Wisconsin, subchapter VI of ch. HFS 124 governs the Department's designation and regulation of CAHs. Designation as a CAH and receipt of cost-based reimbursement promotes the hospital's continued viability. To date, 25 hospitals in Wisconsin have transitioned to CAH status, thereby ensuring continued acute care access for many rural residents.

The Department recently learned that the tenuous financial condition of St. Mary's Hospital in Superior jeopardizes its continued operation and places it in imminent danger of closing unless the hospital can be designated as a CAH and receive cost-based reimbursement. The closure of St. Mary's would reduce Douglas County residents' accessibility to acute care. Moreover, the loss of the facility would have a significant detrimental effect on the county because St. Mary's annual payroll is between \$7-8 million and it employs the equivalent of about 160 persons full-time.

Federal regulations permit a hospital in an urban area such as Superior to be reclassified as a critical access hospital if the hospital is located in an area designated as rural under state law or regulation. The Department has determined that the current provisions in ch. HFS 124 preclude St. Mary's from being reclassified as a rural hospital and designated as a necessary provider of health services to area residents. However, St. Mary's Hospital meets "necessary provider" status in the Wisconsin Rural Health Plan based on economic, demographic and health care delivery in its service area. Therefore, through this rulemaking order, the Department is modifying provisions in subchapter VI of ch. HFS 124 to permit St. Mary's Hospital to be classified as a rural hospital and begin the approval process for designation as a Critical Access Hospital.

**Publication Date:** March 21, 2003

**Effective Date:** March 21, 2003

**Expiration Date:** August 18, 2003

**Hearing Date:** June 20, 2003

[See Notice This Register]

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### **Higher Educational Aids Board**

Rules adopted amending s. HEA 5.05 (2), relating to the eligibility of those on active duty military service.

#### **Finding of emergency**

The Wisconsin Higher Educational Aids Board 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 the facts constituting the emergency is:

The 1989 Wisconsin Act 31 created s. 39.435 which provides for Talent Incentive Program Grants to Wisconsin residents who meet criteria established by the statute and administrative code. The Wisconsin Higher Educational Aids Board (HEAB) administers this program under s. 39.435 and under ch. HEA 5. According to the administrative rules, a

student must be continuously enrolled from semester to semester and year to year to continue to receive this grant after their initial year. Under current rules, exceptions to this requirement may only be made for medical reasons.

Recently, students who have returned from active duty military service and resumed enrollment at a college or university have begun to request exceptions to the continuous enrollment requirement. This situation is not addressed in the current administrative rules, because the break in these students' enrollment was not due to medical reasons.

Unless the Board changes its rules, participating students who have been called up to active duty military service will permanently lose their eligibility in this program. Because this grant targets the most financially-needy and educationally-disadvantaged students, the loss of eligibility will cause a hardship to those students who rely most heavily on financial assistance.

The emergency rule procedure is being used to ensure that students who have returned from active duty military service and resumed enrollment during the current academic year, 2002–2003, will not permanently lose their eligibility in this program.

**Publication Date:** April 4, 2003  
**Effective Date:** April 4, 2003  
**Expiration Date:** September 1, 2003

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

1. Rules adopted revising **chs. NR 10 and 45**, relating to the control and management of chronic wasting disease.

##### **Finding of emergency**

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to protect the public health, safety and welfare. The state legislature has delegated to the department rule-making authority in 2001 Wisconsin Act 108 to control the spread of Chronic Wasting Disease (CWD) in Wisconsin. CWD poses a risk to the health of the state's deer herd and citizens and is a threat to the economic infrastructure of the department, the state, its citizens and businesses.

**Publication Date:** July 3, 2002  
**Effective Date:** July 3, 2002  
**Expiration Date:** November 30, 2002  
**Hearing Date:** August 12, 2002  
**Extension Through:** April 30, 2003 (part)  
September 1, 2003 (part)

2. Rules adopted repealing and recreating **s. NR 20.20 (49) (d) and (61) (c)**, relating to the closure of carp fishing on Cedar Lake and connected waters in Polk and St. Croix counties.

##### **Finding of emergency**

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

Spring viremia of carp virus is of international animal health concern. The virus affects fishes in the minnow family in nature. Minnows are extremely important forage fish for many important sport fishes in Wisconsin and are also

important to the bait and aquaculture industries. Assuring the health of minnow populations and preventing the spread to other waters is important in preserving the welfare of Wisconsin citizens by protecting popular and economically valuable sport and bait fisheries. Little is currently known about the extent of the virus and until we can increase our knowledge, this closure will limit the potential spread from transport of fish and/or their parts and fluids.

**Publication Date:** October 3, 2002  
**Effective Date:** October 3, 2002  
**Expiration Date:** March 2, 2003  
**Hearing Date:** November 11, 2002  
**Extension Through:** April 30, 2003

3. Rules adopted revising **chs. NR 16 and 19** and creating **ch. NR 14**, relating to captive wildlife.

##### **Finding of emergency**

2001 Wis. Act 56 was not enacted until April of 2002. It required standards for captive animals held under licenses issued under ch. 169, Stats., to be in place by January 1, 2003, the effective date of the change from licensing under ch. 29, Stats., to ch. 169, Stats. As the use of the permanent rule process would not allow these standards to be in place by January 1, 2003, the Department had no choice but to use the emergency rule procedures. Failure to have standards in place would result in the lack of humane care standards for wild animals held in captivity and the lack of pen standards necessary to prevent the interactions between captive and wild animals.

**Publication Date:** December 20, 2002  
**Effective Date:** January 1, 2003  
**Expiration Date:** May 31, 2003  
**Hearing Date:** January 16, 2003

4. Rules adopted revising **ss. NR 10.07 (2), 12.06 and 19.60**, relating to the control and management of chronic wasting disease.

##### **Finding of emergency**

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to protect the public health, safety and welfare. The state legislature has delegated to the department rule-making authority in 2001 Wisconsin Act 108 to control the spread of Chronic Wasting Disease (CWD) in Wisconsin. CWD poses a risk to the health of the state's deer herd and citizens and is a threat to the economic infrastructure of the department, the state, its citizens and businesses. This rule is needed to reduce the deer herd in the CWD eradication zone further than accomplished through the hunting seasons to help prevent the spread of CWD.

Initial Applicability. This emergency rule repeals and recreates portions of the original CWD emergency rule order (WM-32-02 (E)) which was adopted by the Natural Resources Board in June 2002. The effective period of this emergency rule will coincide with the effective period of the original CWD emergency rule order which has been extended by the Legislative Joint Committee on the Review of Administrative Rules until April 1, 2003, pursuant to 2001, Wisconsin Act 108.

**Publication Date:** January 11, 2003  
**Effective Date:** January 11, 2003  
**Expiration Date:** April 1, 2003  
**Hearing Date:** February 11, 2003

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## Nursing

Rules adopted creating s. N 4.10, relating to malpractice insurance coverage for nurse–midwives.

### Exemption from finding of emergency

Under Section 13 of 2001 Wisconsin Act 52, the Board of Nursing is directed to use the procedure under s. 227.24, Stats., in promulgating the rules required under s. 441.15 (5) (b) of the statutes. Under that procedure, the Board of Nursing may promulgate this rule for the period before permanent rules become effective. The Board of Nursing need not provide evidence of the necessity of preservation of the public peace, health, safety, or welfare in promulgating this rule.

### Analysis prepared by the Department of Regulation

Statutes authorizing promulgation: ss. 15.08 (5) (b) and 227.11 (2), Stats., and ss. 441.15 (2) (c), 441.15 (3) (a) 3. and 441.15 (5), as created by 2001 Wisconsin Act 52, and s. 441.15 (3) (bm), as amended by 2001 Wisconsin Act 52.

Statutes interpreted: s. 441.15 (2) (c), 441.15 (3) (a) 3., 441.15 (3) (bm) and 441.15 (5) (b), Stats.

2001 Wisconsin Act 52 makes a number of changes to the provisions affecting nurse–midwives, including that licensed nurse–midwives carry malpractice insurance in an amount determined by rules to be promulgated by the Board of Nursing. This rule establishes those requirements relating to malpractice coverage for nurse–midwives.

Using the procedure under s. 227.24, Stats., the Board of Nursing will promulgate the rules as created by 2001 Wisconsin Act 52, for the period before permanent rules become effective.

**Publication Date:** November 5, 2002  
**Effective Date:** November 5, 2002  
**Expiration Date:** April 4, 2003  
**Hearing Date:** March 7, 2003  
**Extension Through:** June 2, 2003

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## Workforce Development

### (Public Works Const. Contracts, Chs. DWD 290–294)

Rules adopted amending s. DWD 290.155 (1), relating to the annual adjustment of thresholds for application of prevailing wage rates.

### Finding of Emergency

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

The Department of Workforce Development is acting under its statutory authority to annually adjust thresholds for the application of prevailing wage laws on public works projects. The thresholds are adjusted in accordance with any change in construction costs since the last adjustment. The last adjustment was initially by emergency rule in January 2002 based on changes in the construction cost index in 2001. The Department uses the construction cost index in the December issue of the *Engineering News–Record*, a national construction trade publication, to determine the change in construction costs over the previous year. The current construction cost index indicates a 2.7% increase in construction costs in 2002. This increase in construction costs results in an increase in the threshold for application of the prevailing wage laws from \$36,000 to \$37,000 for single–trade projects and from \$175,000 to \$180,000 for multi–trade projects.

If these new thresholds are not put into effect by emergency rule, the old thresholds will remain effective for approximately 7 months, until the conclusion of the permanent rule–making process. Between January 1, 2003, and August 1, 2003, a single–trade project with a minimum estimated project cost of more than \$36,000 but less than \$37,000 or a multi–trade project with an estimated cost of more than \$175,000 but less than \$180,000 would not be exempt from the prevailing wage laws, as they would be if the emergency rule were promulgated. The threshold adjustments for application of the prevailing wage laws are based on national construction cost statistics and are unlikely to be changed by the permanent rule–making process. The Department is proceeding with this emergency rule to avoid imposing an additional administrative burden on local governments and state agencies.

**Publication Date:** December 27, 2002  
**Effective Date:** January 1, 2003  
**Expiration Date:** May 31, 2003  
**Hearing Date:** February 27, 2003



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## Scope statements

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### Administration

#### Subject

*Objective of Proposed Rule.* To amend chs. WGC 1 through 24, Wis. Adm. Code, relating to the regulation of greyhound racing and pari-mutuel wagering.

#### Policy analysis

The Department proposes to revise chs. WGC 1 through 24 to reflect an ability to exercise its regulatory oversight functions in an effective and efficient manner consistent with contemporary regulatory and industry standards. The department has the responsibility to provide regulatory oversight of greyhound racing and pari-mutuel wagering in Wisconsin through its Division of Gaming. The current rules, which were promulgated by the Division's predecessor agencies: Wisconsin Gaming Board, Wisconsin Gaming Commission and Wisconsin Racing Board, require revision and updating to adequately address the welfare, health and safety of racing animals, to promote regulatory compliance and to preserve the integrity of pari-mutuel wagering.

#### Statutory authority

Section 562.02 (1) , Stats.

#### Staff time required

The department estimates that it will take approximately 600 hours to research, draft and promulgate these rules.

### Administration

#### Subject

*Objective of Proposed Rule.* To amend chs. WGC 41 through 44 and to create ch. Game 45, of the Wis. Adm. Code relating to the regulation of charitable gaming.

#### Policy analysis

Through the authority given under s. 563.04, Stats., the department is proposing to create ch. Game 45, Class "A" Licensee Raffle Tickets and to revise chs. WGC 41 through 44. The department's proposal is in response to 2001 Wis. Act. 16, authorizing the department to promulgate rules that allow for the sale of equal shares of a single raffle ticket to one or more purchasers under a Class A raffle license under s. 563.92 (1m), Stats.

At a minimum, proposed ch. Game 45 and revised chs. WGC 41 through 44 will address the following:

- Identify the criteria for the sale of a single raffle ticket to more than one purchaser.
- Outline the process for the sponsoring organization purchasing any unsold shares of a raffle ticket.
- Provide standards for the reporting of all sold and unsold shares of a single raffle ticket.
- Establish the process for awarding raffle prizes to one or more persons holding a share(s) in a winning raffle ticket.

The department intends to review existing administrative code provisions relevant to the proposed rule and amend such policies as necessary to bring each chapter into compliance with ss. 563.92 (1m), 563.93 (2), and (9), Stats., as created or amended by 2001 Wisconsin Act 16. Furthermore, the department will revise chs. WGC 41 through 44 to update rules promulgated by predecessor agencies to promote

regulatory compliance and ensure the highest standards of integrity in the conduct of charitable gaming.

#### Statutory authority

Section 563.04, Stats.

#### Staff time required

The department estimates that it will take approximately 100 hours to research, draft and promulgate these rules.

### Agriculture, Trade and Consumer Protection

#### Subject

Corn Marketing Order.

*Objective of the Rule.* Amend Wisconsin's current Corn Marketing Order (ATCP 143). The Corn Marketing Order currently imposes assessments on corn producers in order to fund market development, research and educational programs. This rule will increase current assessment rates, and change current assessment coverage.

#### Policy analysis

DATCP may adopt marketing orders for agricultural commodities under ch. 96, Stats., and ch. ATCP 140, Wis. Adm. Code. DATCP adopts and amends marketing orders by rule. Marketing orders, and marketing order amendments, must be approved in a referendum of affected producers.

A semi-autonomous marketing board, elected by affected producers, administers each marketing order (subject to the terms of the marketing order and other applicable rules). The marketing board spends producer assessments, collected under the marketing order, for purposes specified in the marketing order.

DATCP has adopted a Corn Marketing Order under ch. ATCP 143, Wis. Adm. Code. The Wisconsin Corn Promotion Board, a producer-elected marketing board, administers the Corn Marketing Order. Under the marketing order, corn producers pay assessments on all corn produced and sold into commercial channels. Handlers, who purchase corn from producers, collect the assessments and pay them to the Wisconsin Corn Promotion Board. The Board uses the assessments to fund market development, research and educational programs related to corn.

The Wisconsin Corn Promotion Board has asked DATCP to amend the current Corn Marketing Order. In response to that request, DATCP proposes to consider the following amendments to the current marketing order:

- Increase the current assessment rate (the current rate is 1/10<sup>th</sup> of a cent per bushel of corn).
- Clarify assessment requirements related to sales involving producers who are also grain dealers.
- Collect assessments on all corn that producers sell into commercial channels in this state, regardless of where the corn is grown.
- Exempt out-of-state sales of corn produced in this state.
- Other changes as necessary.

#### Policy alternatives

If DATCP takes no action, the current Corn Marketing Order will remain in effect without change. The Wisconsin Corn Promotion Board asserts that current assessment rates

are inadequate, and that there is a need to change the way that assessments are collected.

Before DATCP makes any change to the Corn Marketing Order, DATCP must hold hearings and submit the proposed changes to a referendum of affected producers. DATCP has not yet determined the exact changes, if any, that it will propose.

**Statutory authority**

DATCP proposes to amend ch. ATCP 143, Wis. Adm. Code, under the authority of s. 93.07 and ch. 96, Stats.

**Staff time required**

DATCP estimates that it will use approximately 0.5 FTE staff to develop this rule. This includes time involved in establishing a producer list, drafting rules, communicating with affected parties, holding public hearings, preparing documents and conducting a producer referendum. DATCP will use existing staff to develop this rule.

**Commerce**

**Subject**

The Use of Rapid Response Funds in Economically Depressed Areas of Wisconsin to Preserve Economic Development.

*Objective of the rule.* This rule will provide Commerce, working collaboratively with local communities, the ability to quickly and more effectively respond to changing economic conditions due to potential plant closings, business relocations, layoffs, and other economic factors that could negatively affect the economic conditions in the community and state.

**Policy analysis**

Pursuant to s. 60.04, Stats., the Department of Commerce (Commerce), as a part of its comprehensive duties involving community development and economic development, administers federal funds in the form of grants to eligible communities related to economic development. Under current rules, the maximum amount of funds that may be awarded to a community is \$1 million per calendar year and the maximum amount that a business may borrow from a local government under the economic development program is also \$1 million during any 5-year period. The timing and dollar limitations specified in the rules are barriers to providing a comprehensive and rapid response to changing economic conditions in a community. Also, by rule, the availability of funds for planning purposes is limited to 2% of available federal funds. Under the proposed rule, available funds for planning activities are increased from 2% to 10 %.

Given the uncertainty inherent in today's marketplace, Commerce would like to maximize the use of federal community development block grant funds to positively impact local economies. Under the rules, as currently structured, Commerce's ability to effectively respond to actual or potential plant closings or relocations in a specific geographical region is limited. The proposed rule will allow Commerce to respond in a more comprehensive manner to rapidly changing economic conditions.

**Statutory authority**

Sections 560.02 (4) and 560.04, Stats.

Statute Interpreted: s. 560.04, Stats.

**Staff time required**

Rule drafting and internal processing to announce public hearings	20 hours
Conducting public hearings & summarizing hearing comments	8 hours
Preparing rules in final draft form for legislative review	8 hours
Prepare rule for adoption and file adopted rule	4 hours
<b>Total:</b>	<b>40 hours</b>

**Insurance**

**Subject**

Regarding s. Ins 2.07, Wis. Adm. Code, relating to Replacement of Life Insurance or Annuity Contracts; Disclosure Requirements.

*Objective of the rule.* The purpose of this rule is to protect the interests of life insurance and annuity purchasers by establishing minimum standards of conduct to be observed in replacement or financed purchase transactions.

**Policy analysis**

A description of existing policies relevant to the rule and of new policies proposed to be included in the rule and an analysis of policy alternatives: This rule expands the coverage of marketing practices addressed under current rules to assure that purchasers receive adequate information and to reduce the opportunity for misrepresentation and incomplete disclosure.

**Statutory authority**

Sections 601.41 (3) and 628.34 Stats.

**Staff time required**

100 hours.

**Insurance**

**Subject**

Regarding s. Ins 2.18, Wis. Adm. Code, relating to Senior Protection In Annuity Transactions

*Objective of the rule.* The purpose of this rule is to set forth minimum standards and procedures for insurers and insurance intermediaries who make recommendations to insurance consumers aged sixty-five (65) years or older on transactions involving annuity products. The requirements of this section are in addition to and not a substitute for the requirements set forth in ss. Ins 2.14, 2.15, 2.16 and 2.17.

**Policy analysis**

A description of existing policies relevant to the rule and of new policies proposed to be included in the rule and an analysis of policy alternatives: This rule addresses marketing practices not specifically covered under current rules. The provisions of this rule shall apply to any recommendation involving a senior insurance consumer and the sale, surrender, or other disposition of an annuity.

**Statutory authority**

Sections 601.41 (3) and 628.34 Stats.

**Staff time required**

100 hours.



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## Submittal of rules to legislative council clearinghouse

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

### 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 April 7, 2003.

These changes will affect Section Ins 17.01 (3), 17.28 (6) and 17.285 (4), Wis. Adm. Code, relating to annual patients compensation fund and mediation fund fees beginning July 1, 2003 and establishing rate of compensation for fund peer review council.

#### Agency Procedure for Promulgation

The date for the public hearing is May 14, 2003.

#### Contact

A copy of the proposed rule may be obtained from the OCI internet WEB site at: <http://www.state.wi.us/agencies/oci/ocirules.htm> or by contacting Inger Williams, Services Section, Office of the Commissioner of Insurance, at (608) 264-8110. For additional information, please contact Alice M. Shuman-Johnson at (608) 266-9892 or e-mail at [Alice.Shuman-Johnson@oci.state.wi.us](mailto:Alice.Shuman-Johnson@oci.state.wi.us) in the OCI Legal Unit.

### 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 April 7, 2003.

These changes will affect s. Ins 17.40 (1), (2), (3) and (4), Wis. Adm. Code, relating to requiring primary insurers and self-insurers to provide notice to the patients compensation fund of the filing of an out-of-state malpractice action against Wisconsin insured provider.

#### Agency Procedure for Promulgation

The date for the public hearing is May 14, 2003.

#### Contact

A copy of the proposed rule may be obtained from the OCI internet WEB site at: <http://www.state.wi.us/agencies/oci/ocirules.htm> or by contacting Inger Williams, Services Section, Office of the Commissioner of Insurance, at (608) 264-8110. For additional information, please contact Alice M. Shuman-Johnson at (608) 266-9892 or e-mail at [Alice.Shuman-Johnson@oci.state.wi.us](mailto:Alice.Shuman-Johnson@oci.state.wi.us) in the OCI Legal Unit.

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## Rule-making notices

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### Notice of Hearing

#### Health and Family Services (Health, Chs. HFS 110—) [CR 03-041]

Notice is hereby given that, pursuant to ss. 50.36 (1), 227.11 (2) (a) and 227.24 (4), Stats., the Department of Health and Family Services will hold a public hearing to consider both the emergency rules and proposed permanent rules amending ss. HFS 124.38 (4), 124.39 (1) (intro), (a), (b) and (e), (2) (a) and (3), 124.40 (2) (b) and (3) and 124.41 and creating ss. HFS 124.38 (5) and 124.40 (2) (c), relating to critical access hospitals.

#### Hearing Information

The public hearing will be held:

**Friday, June 20, 2003, 9:00 a.m. to Noon**

Superior Public Library

1530 Tower Ave.

**Superior, WI**

The hearing site is fully accessible to people with disabilities. Parking for people with disabilities is available on site.

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

The federal Rural Hospital Flexibility Program promotes the continued viability of rural hospitals by allowing qualifying hospitals to receive cost-based reimbursement for their services if the hospital qualifies for and is approved to convert to what is known as a Critical Access Hospital (CAH). In Wisconsin, subchapter VI of ch. HFS 124 governs the Department's designation and regulation of CAHs. Designation as a CAH and receipt of cost-based reimbursement promotes the hospital's continued viability. To date, 25 hospitals in Wisconsin have transitioned to CAH status, thereby ensuring continued acute care access for many rural residents.

The Department recently learned that the tenuous financial condition of St. Mary's Hospital in Superior jeopardizes its continued operation and places it in imminent danger of closing unless the hospital can be designated as a CAH and receive cost-based reimbursement. The closure of St. Mary's would reduce Douglas County residents' accessibility to acute care. Moreover, the loss of the facility would have a significant detrimental effect on the county because St. Mary's annual payroll is between \$7-8 million and it employs the equivalent of about 160 persons full-time.

Federal regulations permit a hospital in an urban area such as Superior to be reclassified as a critical access hospital if the hospital is located in an area designated as rural under state law or regulation. The Department has determined that the current provisions in ch. HFS 124 preclude St. Mary's from being reclassified as a rural hospital and designated as a necessary provider of health services to area residents. However, St. Mary's Hospital meets "necessary provider" status in the Wisconsin Rural Health Plan based on economic, demographic and health care delivery in its service area. Therefore, the Department is proposing to modify provisions in subchapter VI of ch. HFS 124 to permit St. Mary's Hospital to be classified as a rural hospital and begin the approval

process for designation as a Critical Access Hospital. To permit St. Mary's to initiate its transition to a critical access hospital, the Department issued a similar emergency order that became effective on March 21, 2003. Through this proposed permanent order, the Department is also modifying several other provisions in subch. VI of ch. HFS 124 to more closely reflect current federal regulations, the October 2001 Wisconsin Rural Hospital Flexibility Program Implementation Plan and to change the name of the federal Health Care Financing Administration to the Centers for Medicare and Medicaid Services.

#### Contact Person

The initial proposed rules upon which the Department is soliciting comments and which will be the subject of this hearing are posted at the Department's administrative rules website at:

[http://www.dhfs.state.wi.us/News/Rules/ProposedFinal\\_Rules/Proposed\\_Rule\\_Index.htm](http://www.dhfs.state.wi.us/News/Rules/ProposedFinal_Rules/Proposed_Rule_Index.htm).

To find out more about the hearing, or to comment on the proposed rule, please write or phone:

Cheryl Bell-Marek

Division of Disability and Elder Services

P.O. Box 2969

Madison, WI 53701-2969

608-264-9896 or,

if you are hearing impaired,

(608) 266-1511 (TDD)

[bellmcj@dhfs.state.wi.us](mailto:bellmcj@dhfs.state.wi.us)

If you are hearing or visually impaired, do not speak English, or have other personal circumstances which might make communication at the 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 above. A person requesting a non-English or sign language interpreter should make that request at least 10 days before the hearing. With less than 10 days notice, an interpreter may not be available.

Written comments on the proposed rule received at the above address no later than Wednesday, **June 23, 2003**, will be given the same consideration as testimony presented at the hearing.

#### Fiscal Estimate

A hospital may be designated as a critical access hospital if it satisfies federal and state requirements including requirements specified under ss. HFS 124.37 through 124.41.

Section HFS 124.39 (1) of the Wisconsin Administrative Code specifies state eligibility requirements for designation as a critical access hospital. A hospital must meet all of the following:

(a) A nonprofit or public hospital approved by the department to operate as a hospital.

(b) Located in an area outside of a metropolitan statistical area as defined in 42 USC 1395ww(d).

(c) Located more than a 35-mile drive from another hospital or certified by the department under sub. (2) as a necessary provider of health care services to residents in the area.

(d) A hospital that has a provider agreement to participate in Medicare in accordance with 42 CFR 485.612.

(e) A hospital that has not been designated by the federal health care financing administration as an urban hospital for the purposes of Medicare reimbursement.

A hospital that satisfies all criteria under s. HFS 124.39 (1) except that it is located more than 35 miles from another hospital can be designated under s. HFS 124.39 (2) as a necessary provider and meet all criteria under s. HFS 124.39 (1). Designation as a necessary provider under s. HFS 124.39 (2) is contingent on meeting criteria s. HFS 124.39 (1) (a), (b), (d), and (e).

The proposed rule change would expand the criteria for necessary providers under s. HFS 124.39 (2) to rural hospitals, defined as hospitals located in a county that has at least a portion of a rural census tract of a metropolitan statistical area as determined under the most recent version of the Goldsmith Modification as provided in 42 CFR 412.103(a)(1), that meet the criteria under s. HFS 123.39 (1) (a), (d) and (e).

Two counties in Wisconsin currently fall under Goldsmith Modification criteria: Douglas and Marathon. Three hospitals are located in these counties: St. Mary's in Superior, and NorthCentral Health Care Facility and Wausau Hospital in Wausau. None of these hospitals currently meet the requirements for a critical access hospital under s. HFS 124.40. However, St. Mary's has expressed an interest in delicensing a number of its hospital beds. If St. Mary's were to delicense 137 beds, it would meet the requirements under 124.40 and could gain critical access hospital status under the proposed change.

If St. Mary's were to gain critical access hospital status, it would be eligible for inpatient and outpatient hospital cost-based reimbursement under fee-for-service Medicaid (MA), as well as increased federal Medicare payments. Under cost-based reimbursement, it is estimated St. Mary's would receive an MA increase of \$285,200 AF (\$118,400 GPR) annually. This increase includes the effect of eliminating Metropolitan Border Status Supplement payments. St. Mary's currently receives \$152,500 AF in MA payments under the Metropolitan Border Status Supplement. Under cost-based reimbursement, St. Mary's would not be eligible for supplemental MA payments.

In addition, the Department would lose approximately \$2,500 PR annually in bed licensing fees from St. Mary's due to the 137 delicensed beds.

Due to estimated increased MA payments and loss of bed licensing fees, this change has a state fiscal estimate of \$287,700 AF (\$118,400 GPR). This change has no fiscal effect for local governments.

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

The rule changes will not affect small businesses as "small business" is defined in s. 227.114 (1) (a), Stats.

### **Notice of Hearing**

#### **Insurance [CR 03-038]**

Notice is hereby given that pursuant to the authority granted under s. 601.41 (3), Stats., and the procedure set forth in under s. 227.18, Stats., OCI will hold a public hearing to consider the adoption of the attached proposed rulemaking order affecting s. Ins. 17.40 (1), (2), (3) and (4), Wis. Adm. Code requiring primary insurers and self-insurers to provide notice to the patients compensation fund of the filing of an

out-of-state medical malpractice action against an insured Wisconsin health care provider.

#### **Hearing Information**

Date: **May 14, 2003**

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

Place: Room 223, OCI, 125 S. Webster, Madison, WI

Written comments on the proposed rule will be accepted into the record and receive the same consideration as testimony presented at the hearing if they are received at OCI within 3 days following the date of the hearing. Written comments should be addressed to: Alice M. Shuman-Johnson, OCI, PO Box 7873, Madison WI 53707.

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

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

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

A copy of the full text of the proposed rule changes and fiscal estimate may be obtained from the OCI internet WEB site at <http://www.state.wi.us/agencies/oci/ocirules.htm> or by contacting:

Inger Williams, Services Section

Office of the Commissioner of Insurance

(608) 264-8110

or at

121 East Wilson Street

PO Box 7873

Madison WI 53707-7873.

#### **Analysis Prepared by the Office of the Commissioner of Insurance**

Statutory authority: ss., 601.41 (3), 655.004, Stats.

Statutes interpreted: ss. 655.27 (5) (a) 2. and 655.27 (5) (b), Stats.

Section 655.27 (5) (a) 2. of the Wisconsin statutes provides a person filing an action outside this state against a health care provider may recover from the patients compensation fund ("fund") only if the fund is notified of the action within 60 days of service of process on the health care provider or the employee of the health care provider when the rules of procedure of the jurisdiction in which the action is brought do not permit naming the fund as a party. Section 655.27 (5) (a) 2. further provides the board of governors may extend this 60 day time limit if it finds that enforcement of the time limit would be prejudicial to the purposes of the fund and would benefit neither insureds nor claimants.

Section 655.27 (5) (b) provides it is the responsibility of the insurer or self-insurer for the health care provider who is also covered by the fund to provide an adequate defense of the fund, to act in good faith and in a fiduciary relationship with respect to any claim affecting the fund.

In several recent cases, primary carriers have not given timely notice to the fund of the commencement of an out-of-state medical malpractice action potentially affecting the fund. This rule requires primary carriers and self-insurers to give written notice to the fund within 60 days of the primary insurer or self-insurer's first notice of the filing of an action outside this state, or within 60 days of service of process on the health care provider or employee thereof, whichever is later in time, so the fund is able to timely investigate and respond as appropriate to these claims. The rule also specifies the failure of the insurer or self-insurer to give timely notice will result in the board of governors denying fund coverage for the claim if it finds: a) the fund was prejudiced by the failure to give timely notice, and b) it was reasonably possible

to give notice within the time limit. This standard of a finding of prejudice and that it was reasonably possible to give timely notice is patterned after a similar standard set forth in s. 631.81, Wis. Stats. The rule also provides if it was reasonably possible to give notice within the time limit and the board of governors denies fund coverage under s. 17.40 (3) of the rule, the failure to give notice constitutes bad faith on the part of the insurer or self-insurer in violation of s. 655.27 (5) (b), Wis. Stats.

#### **Fiscal Estimate**

The Patients Compensation Fund (Fund) is a segregated fund. The proposed rule has no fiscal effect to the Fund or GPR.

### **Notice of Hearing**

#### **Insurance [CR 03-039]**

Notice is hereby given that pursuant to the authority granted under s. 601.41 (3), Stats., and the procedure set forth in under s. 227.18, Stats., OCI will hold a public hearing to consider the adoption of the attached proposed rulemaking order affecting s. Ins. 17.01 (3), 17.28 (6) and 17.285 (4), Wis. Adm. Code relating to annual patients compensation fund and mediation fund fees for the fiscal year beginning July 1, 2003 and relating to establishing a rate of compensation for fund peer review council members and consultants.

#### **Hearing Information**

Date: **May 14, 2003**

Time: 11:00 a.m., or as soon thereafter as the matter may be reached

Place: Room 223, OCI, 125 S. Webster, Madison, WI

Written comments on the proposed rule will be accepted into the record and receive the same consideration as testimony presented at the hearing if they are received at OCI within 3 days following the date of the hearing. Written comments should be addressed to: Alice M. Shuman-Johnson, OCI, PO Box 7873, Madison WI 53707

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

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

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

A copy of the full text of the proposed rule changes and fiscal estimate may be obtained from the OCI internet WEB site at <http://www.state.wi.us/agencies/oci/ocirules.htm> or by contacting Inger Williams, Services Section, Office of the Commissioner of Insurance, at (608) 264-8110 or at 121 East Wilson Street, PO Box 7873, Madison WI 53707-7873.

#### **Analysis Prepared by the Office of the Commissioner of Insurance**

Statutory authority: ss. 601.41 (3), 655.004, 655.275 (10), 655.27 (3) (b), and 655.61, Stats.

Statute interpreted: s. 655.27 (3), Stats.

The commissioner of insurance, with the approval of the board of governors (board) of the patients compensation fund (fund), is required to establish by administrative rule the annual fees which participating health care providers must pay to the fund. This rule establishes those fees for the fiscal year beginning July 1, 2003. These fees represent a 5% increase compared with fees paid for the 2002-03 fiscal year. The board approved these fees at its meeting on February 26, 2003, based on the recommendation of the board's actuarial and underwriting committee.

The board is also required to promulgate by rule the annual fees for the operation of the patients compensation mediation

system, based on the recommendation of the director of state courts. This rule implements the funding level recommendation of the board's actuarial and underwriting committee by establishing mediation panel fees for the next fiscal year at \$19.00 for physicians and \$1.00 per occupied bed for hospitals, representing no increase from 2002-03 fiscal year mediation panel fees.

This rule also creates s. Ins. 17.285 (14) that establishes a rate of compensation for fund peer review council members and consultants of \$250 per meeting attended or \$250 per report filed by consultant based on the consultant's review of a file.

#### **Fiscal Estimate**

The Patients Compensation Fund (Fund) is a segregated fund. Annual Fund fees are established to become effective each July 1, based on actuarial estimates of the Fund's needs for payment of medical malpractice claims. The proposed fees were approved by the Fund's Board of Governors at its February 26, 2003 meeting.

There is no effect on GPR.

Estimated revenue from fees, for fiscal year 2003-2004, is approximately \$28.8 million, which represents a 5% increase to fiscal year, 2002-2003 fee revenue.

### **Notice of Hearings**

#### **Natural Resources (Fish, Game, etc., Chs. NR 1—)**

NOTICE IS HEREBY GIVEN that pursuant to ss. 29.041, 29.014 (1), 29.519 (1) (b) and 227.11 (2) (a), Stats., interpreting ss. 29.041, 29.014 (1) and 29.519 (1) (b), Stats., the Department of Natural Resources will hold public hearings on revisions to s. NR 25.09, Wis. Adm. Code, relating to commercial netting of whitefish in Lake Michigan. Under current rules, commercial whitefish trap nets must be removed from waters of Lake Michigan south of Kewaunee from June 28 through Labor Day. The proposed rule would allow summer trap netting south of Kewaunee in two limited areas, one near Manitowoc and Two Rivers and one near Sheboygan. The maximum number of nets that can be used by any individual license holder in those areas during summer would be limited to three. New net marking requirements are created.

NOTICE IS HEREBY FURTHER GIVEN that pursuant to s. 227.114, Stats., the proposed rule may have an impact on small businesses.

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

a. Types of small businesses affected: Commercial fishers of whitefish.

b. Description of reporting and bookkeeping procedures required: No new procedures.

c. Description of professional skills required: No new skills.

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.

#### **Hearing Information**

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



**Wednesday, May 14, 2003 at 7:00 p.m.**

Main Ballroom, Great Lake Water Institute,  
UW–Milwaukee  
600 E. Greenfield Avenue  
Milwaukee, WI

**Thursday, May 15, 2003 at 7:00 p.m.**

Lake Michigan Conference Room  
Lakeshore Tech. College  
1290 North Ave.  
Cleveland, 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 Bill Horns at (608) 266–8782 with specific information on your request at least 10 days before the date of the scheduled hearing.

**Fiscal Estimate**

None anticipated.

**Contact Person**

Written comments on the proposed rule may be submitted to Mr. Bill Horns, Bureau of Fisheries Management and Habitat Protection, P.O. Box 7921, Madison, WI 53707 no later than May 19, 2003. Written comments will have the same weight and effect as oral statements presented at the hearings. A copy of the proposed rule (FH–46–02) and fiscal estimate may be obtained from Mr. Horns.

**Notice of Hearings**

**Natural Resources**  
**(Fish, Game, etc., Chs. NR 1—)**  
**[CR 03–034]**

NOTICE IS HEREBY GIVEN that pursuant to ss. 20.370 (1) (cr), 77.06 (2), 77.91 (1) and 227.11 (2) (a), Stats., interpreting ss. 77.06 (2), 77.82 and 77.91 (1), Stats., the Department of Natural Resources will hold public hearings on revisions to ch. NR 46, Wis. Adm. Code, relating to the administration of the Forest Crop Law and the Managed Forest Law. The proposed rule will repeal and recreate s. NR 46.30 (2) (a) to (c) to revise the annual stumpage values used to calculate severance and yield taxes due on timber cut during the period from November 1, 2003 through October 31, 2004. Thirteen separate zones reflect varying stumpage values for different species and products across the state. The average price change for sawtimber is a 6.7% increase over current rates. The pulpwood prices are, on the average, decreased 3.3%.

Other revisions are necessary to bring the rule into compliance with the statutory changes in 2001 Wis. Act 109. The areas revised include: a change creating a permanent opportunity for landowners to convert Forest Crop Law contracts to Managed Forest Law contracts; a change in the application fee from \$20 to \$100 for those landowners applying without submitting a qualifying management plan; and clarification of what constitutes a qualifying management plan.

NOTICE IS HEREBY FURTHER GIVEN that pursuant to s. 227.114, Stats., the proposed rule may have an impact on small businesses.

**Initial Regulatory Flexibility Analysis**

a. Types of small businesses affected: Small private forest landowners and forest industries enrolled under the Forest Crop Law and Managed Forest Law.

b. Description of reporting and bookkeeping procedures required: No new procedures.

c. Description of professional skills required: No new skills.

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.

**Hearing Information**

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

**Tuesday, May 13, 2003 at 10:30 a.m.**

CS/G3 Conference Room, 3<sup>rd</sup> Floor, GEF #3  
125 S. Webster Street, Madison

**Wednesday, May 14, 2003 at 9:00 a.m.**

Wetland Room, Bay Beach Wildlife Area  
1660 E. Shore Drive  
Green Bay

**Thursday, May 15, 2003 at 1:00 p.m.**

Room 158, DNR Region Headquarters  
1300 W. Clairemont  
Eau Claire

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 Linda DePaul at (608) 266–3545 with specific information on your request at least 10 days before the date of the scheduled hearing.

**Fiscal Estimate**

The new 2003 stumpage rate schedule includes an average 6.7% increase in sawtimber prices and a decrease of 3.3% in cordwood prices. The severance and yield tax collection in CY 2002 was \$1,439,594.43. Of this, about 20% of the gross revenue is from sawtimber harvests. Eighty percent of the revenue was related to cordwood harvests. As a result, a 6.7% increase in sawtimber prices will produce an increase in gross revenue of about \$19,291. A 3.3% decrease in cordwood values will generate a decrease of \$38,005 in revenue. The net result would be a decrease of \$18,714. The gross receipts are shared between the municipality and state, with each receiving approximately 50%. The municipality in turn shares 20% of their receipts with the county.

The net fiscal impact is based on the assumption that the volume and ratio of pulpwood and sawtimber will remain the same this year as last year.

The net fiscal effect of the rule change will be about \$9,357 decrease in state revenue and a \$9,357 decrease in local revenue. The state revenue received from severance and yield taxes are deposited in the Forestry account of the Conservation Fund.

**Contact Person**

Written comments on the proposed rule may be submitted to Ms. Linda DePaul, Bureau of Forestry, P.O. Box 7921,



Madison, WI 53707 no later than May 17, 2003. Written comments will have the same weight and effect as oral statements presented at the hearing. A copy of the proposed rule (FR-18-03) and fiscal estimate may be obtained from Ms. DePaul.

**Notice of Hearing**  
**Natural Resources**  
**(Air Pollution Control, Chs. NR 400—)**  
**[CR 03-037]**

NOTICE IS HEREBY GIVEN that pursuant to ss. 227.11 (2) (a), 285.11 and 285.27 (2), Stats., interpreting s. 285.27 (2), Stats., the Department of Natural Resources will hold a public hearing on revisions to chs. NR 460, 465 and 484, Wis. Adm. Code, including the creation of Appendix NNNN to ch. NR 460 and subch. III to ch. NR 465, Wis. Adm. Code, relating to national emission standards for hazardous air pollutants for facilities that apply surface coatings to large appliances. The Department proposes to adopt existing national emission standards for hazardous air pollutants (NESHAP). This NESHAP became effect on July 23, 2002 when it was published in the Federal Register as 40 CFR 63 Subpart NNNN. Section 285.27 (2), Stats., requires the Department to promulgate NESHAPs into the Wisconsin Administrative Code.

**Initial Regulatory Flexibility Analysis**

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. Since the proposed rule simply mirrors the federal requirements, it will not have an additional adverse impact on small businesses.

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:

**Tuesday, May 20, 2003 at 1:30 p.m.**

Room 511, GEF #2  
101 South Webster St.  
Madison, 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 Estimate**

None anticipated.

**Contact Person**

Written comments on the proposed rule may be submitted to Mr. Robert Eckdale, Bureau of Air Management, P.O. Box 7921, Madison, WI 53707 no later than June 2, 2003. Written comments will have the same weight and effect as oral statements presented at the hearing. A copy of proposed rule (AM-17-03) and its fiscal estimate may be obtained from

Proposed Rules, Bureau of Air Management, P.O. Box 7921, Madison, WI 53707, Phone: (608) 266-7718 or FAX: (608) 267-0560.

**Notice of Hearing**  
**Pharmacy Examining Board**  
**[CR 01-075]**

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Pharmacy Examining Board in ss. 15.08 (5) (b), 227.11 (2) and 450.02 (2) and (3), Stats., and interpreting ss. 450.01 (7) and (16), 450.02 (2) and (3) and 450.09, Stats., the Pharmacy Examining Board will hold a public hearing at the time and place indicated below to consider an order to create s. Phar 7.12, relating to the requirements for an approved central fill system. This is the second public hearing held on these proposed rules. The first hearing was held on September 11, 2001.

**Hearing Date, Time and Location**

Date: **May 14, 2003**  
Time: 9:15 a.m.  
Location: 1400 East Washington Avenue  
Room 179A  
Madison, WI

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but are urged to submit facts, opinions and argument in writing as well. Facts, opinions and argument may also be submitted in writing without a personal appearance by mail addressed to the Department of Regulation and Licensing, Office of Administrative Rules, P.O. Box 8935, Madison, Wisconsin 53708. Written comments must be received by May 30, 2003 to be included in the record of rule-making proceedings.

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

Statutes authorizing promulgation: ss. 15.08 (5) (b), 227.11 (2) and 450.02 (2) and (3), Stats.

Statutes interpreted: ss. 450.01 (7) and (16) (b), 450.02 (2) and (3) and 450.09, Stats.

The objective of this proposed rule-making order is to specify the requirements for an approved central fill system. Integrated health systems, business entities comprising common ownership of multiple pharmacies and pharmacies desiring to enter contractual relationships with outside vendors have an interest in increasing patient convenience and lowering cost of service based upon the central filling of prescription orders for dispensing. The intent of such rules is to preserve the integrity of the dispensing process by addressing the issues of ownership of inventory, patient confidentiality, consultation, security, accuracy and accountability which must be maintained in any approved central fill system.

A "central fill pharmacy" is defined as a pharmacy licensed in this state acting as an agent of an originating pharmacy to fill or refill a prescription order. The "originating pharmacy" is a pharmacy licensed in this state that uses a central fill pharmacy to fill or refill a prescription order for purposes of dispensing by the originating pharmacy.

The central fill pharmacy and originating pharmacy may only process a request for the filling or refilling of a prescription received by an originating pharmacy when the requirements of this section are met. The central fill pharmacy must either have the same owner as the originating pharmacy or a contract with the originating pharmacy outlining the services and responsibilities. The central fill

pharmacy shall maintain a record of all originating pharmacies, including name, address and DEA number, for which it processes a request for the filling or refilling of a prescription order received by the originating pharmacy. The record shall be made available upon request for inspection by the board or its agent. Also, both pharmacies must maintain a written protocol delineating each pharmacy's assumption of responsibility for compliance with the prescription drug compounding and dispensing requirements of chs. Phar 7 and 8. The originating pharmacy shall remain responsible for compliance with the prescription drug compounding and dispensing requirements of chs. Phar 7 and 8 which are not assumed in writing by the central fill pharmacy pursuant to a filling protocol. The originating pharmacy will always remain solely responsible for the patient consultation and transfer requirements of s. Phar 7.01 (1) (e) and (em) where the prescription drug is not delivered by an agent of the pharmacist to a patient's residence. Certain functions in the dispensing process may not be performed by the central fill pharmacy unless it shares a common central processing unit with the originating pharmacy. These functions are the medication profile record review of the patient, drug utilization review, refill authorizations, interventions and drug interactions. The prescription label attached to the container of all dispensed drugs shall contain the name and address of the originating pharmacy as the licensed facility from which the prescribed drug or device was dispensed for purposes of s. 450.11 (4) (a) 1., Stats. The date on which the prescription was dispensed for purposes of s. 450.11 (4) (a) 2., Stats., shall be the date on which the central fill pharmacy filled the prescription order.

The originating pharmacy remains responsible for original recordkeeping of all prescription orders as required by state and federal law. All original and refill requests received by the central fill pharmacy are required to be treated as prescription orders for purposes of filing and recordkeeping as required by state and federal law. Each pharmacy is required to maintain records to identify each of its pharmacists responsible for receiving and reviewing prescription orders and compounding and dispensing pursuant to a prescription order and to track the prescription order during each step in the dispensing process. Both pharmacies are required to adopt a joint written quality assurance program to monitor and evaluate the quality and appropriateness of patient care, pursue opportunities to improve patient care, resolve identified problems and insure compliance with the central fill rule. A system for using a central fill pharmacy not otherwise in conformance with this rule may be permitted if reviewed and approved by the board.

#### **Fiscal Estimate**

1. The anticipated fiscal effect on the fiscal liability and revenues of any local unit of government of the proposed rule is: \$0.00.
2. The projected anticipated state fiscal effect during the current biennium of the proposed rule is: \$0.00.
3. The projected net annualized fiscal impact on state funds of the proposed rule is: \$0.00.

#### **Final Regulatory Flexibility Analysis**

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

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

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

## **Notice of Proposed Rulemaking**

### **Tax Appeals Commission [CR 03-040]**

NOTICE IS HEREBY GIVEN That pursuant to ss. 73.01 (5) (b) and 227.11 (21), Stats., and interpreting s. 73.01 (5) (b), Stats., and according to the procedure set forth in s. 227.16 (2) (e), Stats., the Tax Appeals Commission will create s. TA 1.15 (2m), relating to petitions for review, as proposed in this notice, without public hearing unless, within 30 days after publication of this notice May 1, 2003, the Tax Appeals Commission is petitioned for a public hearing by 25 natural persons who will be affected by the rule; a municipality which will be affected by the rule; or an association which is representative of a farm, labor, business or professional group which will be affected by the rule.

#### **Analysis by the Tax Appeals Commission**

Statutory authority: s. 73.01 (5) (b), Stats.

Statute interpreted: s. 73.01 (5) (b), Stats.

An appeal to the tax appeals commission is, in most cases, preceded by either the department of revenue or department of transportation issuing an assessment to a person, or by a person filing a claim for refund of a tax or fee. If a person disagrees with the assessment, the person may ask the department to reconsider. The document requesting reconsideration is commonly in letter form and is called a "petition for redetermination."

If a department denies a claim for refund, partially or entirely, the department will issue a notice of the denial. The claimant may ask the department to reconsider the denial. The document requesting reconsideration is commonly in letter form and is called a "petition for redetermination."

If a department denies a petition for redetermination, it will issue a "notice of action." The person aggrieved by the denial may then file an appeal ("petition for review") with the tax appeals commission.

This proposed rule requires each person filing a petition for review with the tax appeals commission to file a separate petition. However, two or more persons may file a single petition for review if each person is aggrieved by a department action (ex., two related corporations are the subject of a single assessment; or a married couple appeal on the same issue with respect to a joint income tax return).

The Wisconsin tax appeals commission proposes an order to create s. TA 1.15 (2m), relating to petitions for review.

SECTION 1. TA 1.15(2m) is created to read:

TA 1.15(2m) A separate petition for review shall be filed with the commission by an aggrieved party from each notice of action of the department of revenue or the department of transportation on a petition for redetermination, except that a single petition for review may be filed by more than one person if each person is aggrieved by the department's action; a separate filing fee shall accompany each petition for review.

SECTION 2. INITIAL APPLICABILITY. This rule first applies to a petition for review filed with the tax appeals commission on the effective date of this rule.

SECTION 3. EFFECTIVE DATE. This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22(2)(intro), Stats.

NOTE: Examples of how the proposed rule will be administered follow:

(1) The department of revenue denies 5 petitions for redetermination of 5 unrelated people on a similar or the same issue. Each person must file a separate petition for review with the commission and pay a filing fee.

(2) The department of revenue denies one petition for redetermination of a corporation and its subsidiary, or a limited liability company ("LLC") and one of its members, on similar or related issues. The corporation and its subsidiary, and the LLC and its member, may file a single petition for review with the commission and pay a single filing fee.

(3) The department of revenue issues an assessment to a married couple with respect to a tax issue arising out of their joint income tax return, then denies the married couple's petition for redetermination. The married couple may file a single petition for review with the commission and pay a single filing fee.

**Initial Regulatory Flexibility Analysis**

A "small business," as defined under s. 227.114 (1), Stats.,

which files an appeal with the tax appeals commission will be affected by this rule. However, the statute prescribing appeal procedures (s. 73.01) does not authorize treating a small business differently from any other person filing an appeal. The impact on a small business will be negligible.

**Fiscal Estimate**

This proposed rule has no fiscal effect on the state or any county, city, village, town, school district, technical college district or sewerage district.

**Contact Person**

Thomas M. Boykoff, Commissioner  
(608)266-1391

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## Submittal of proposed rules to the legislature

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

**Health and Family Services  
(CR 02-155)**

Chs. HFS 110 to 113, relating to the licensing of emergency medical technicians and the certification of

first responders to incorporate responding to acts of terrorism as a training component required for initial or renewed licensure or certification.

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## Rule orders filed with the revisor of statutes bureau

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

**Pharmacy Examining Board  
(CR 02-140)**

An order affecting ch. Phar 2, relating to filing completed applications for examinations.  
Effective 6-1-03.

**Pharmacy Examining Board  
(CR 02-150)**

An order affecting ch. Phar 2, relating to notarized photographs.  
Effective 6-1-03.

**Pharmacy Examining Board  
(CR 03-005)**

An order affecting ch. Phar 2, relating to admission requirements for all required professional examinations.  
Effective 6-1-03.

**Transportation  
(CR 03-004)**

An order affecting ch. Trans 403, relating to the Loan Repayment Incentive Grant Program.  
Effective 6-1-03.

**Workforce Development  
(CR 03-008)**

An order affecting ch. DWD 290, relating to the annual adjustment of thresholds for application of the prevailing wage rates.  
Effective 6-1-03.



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## Rules published with this register and final regulatory flexibility analyses

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*The following administrative rule orders have been adopted and published in the April 30, 2003, 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 02-113)**

An order affecting chs. ATCP 98 to 101, relating to agricultural producer security. Effective 5-1-03.

#### **Summary of Final Regulatory Flexibility Analysis**

##### ***Agricultural Producers (farmers)***

This rule will benefit agricultural producers by improving and clarifying the producer security program. Contractors will be required to disclose their status in the fund to producers. This will help producers evaluate the risks of doing business with certain contractors.

##### ***Grain Dealers***

This rule will benefit some grain dealers by allowing them to make certain liability adjustments when calculating their debt to equity ratios for purposes of ch. 126, Stats. This could reduce fund assessments for some grain dealers.

Some grain dealers may incur additional accounting costs in order to comply with financial statement disclosure requirements in this rule. However, these requirements are needed for effective implementation of the agricultural producer security law.

##### ***Grain Warehouse Keepers***

This rule will benefit some grain warehouse keepers, by allowing them to make certain liability adjustments when calculating their debt to equity ratio for purposes of ch. 126, Stats. This could reduce fund assessments for some warehouse keepers.

Some grain warehouse keepers may incur additional accounting costs in order to comply with the financial statement disclosure requirements. However, these requirements are needed for effective implementation of the agricultural producer security law.

##### ***Milk Contractors***

This rule will benefit cheesemakers who provide "custom processing" services to milk producers. "Custom processors" are typically small businesses that make cheese and other dairy products from producer milk but do not take title to the milk. This rule clarifies that the Agricultural Producer Security Law does not apply to cheesemakers who are solely engaged in "custom processing".

Cheesemakers that specialize in "aged cheese" will also benefit from this rule. The rule allows them to deduct liabilities (such as bank loans) incurred in order to hold aged cheese in inventory. This could reduce fund assessments for cheesemakers making aged cheese.

This rule will impose some additional financial statement disclosure requirements on milk contractors. This may lead to some increased accounting costs. However, these

requirements are needed for the effective implementation of the agricultural producer security law.

Finally, this rule spells out minimum requirements for milk contractors who wish to qualify as producer agents. These requirements are no more burdensome than what is required under current law.

##### ***Vegetable Contractors***

This rule will impose some additional financial statement disclosure requirements on vegetable contractors. This may lead to some increased accounting costs. However, these requirements are needed for the effective implementation of the agricultural producer security law.

#### **Summary of Comments of Legislative Standing Committees**

On January 30, 2003, DATCP transmitted the above rule for legislative committee review. The rule was assigned to the Assembly Committee on Agriculture and the Senate Committee on Agriculture, Financial Institutions and Insurance. Neither Committee took any action on the rule during the review period.

### **Commerce (CR 02-002)**

An order affecting chs. Comm 2, 34, 81, 82, 84 and 90, relating to the Wisconsin Uniform Plumbing Code; Fees; Amusement Rides; and Design and Construction of Public Swimming Pools. Effective 5-1-03.

#### **Summary of Final Regulatory Flexibility Analysis**

In response to comments from small businesses the rule revisions now include:

- Creation of a stormwater infiltration fee, and the plan review for cross connection control device was eliminated and replaced by requiring registration.
- Inspection for pool construction by Commerce vs. DHFS, the agency that previously conducted these inspections.
- Allowance of approval of alternative standards.
- Performance standards for wastewater reuse or stormwater use, clarification of stormwater discharge points.
- Clarification of several drain waste and vent requirements.

The proposal to eliminate the water quality management (WQM) letter was raised by the HCA of Wisconsin; the agency deleted this proposed change from the draft.

Pool designers and contractors voiced concerns that the pool construction inspection may delay inspections and require additional time spent on the site with enforcement staff. The agency believes the inspection will circumvent problems prior to DHFS licensure.

### Summary of Comments of Legislative Standing Committees

No comments were received.

#### Commerce (CR 02-072)

An order affecting ch. Comm 16, relating to electrical construction. Effective 5-1-03.

#### Summary of Final Regulatory Flexibility Analysis

Sections 101.63 (1), 101.73 (1) and 101.82, Stats., direct the Department to promulgate rules for the construction and inspection of electrical construction in dwellings, public buildings and places of employment. The proposed rules of Clearinghouse Rule No. 02-072 are minimum requirements to meet the directives 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 of Legislative Standing Committees

No comments were received.

#### Corrections (CR 02-123)

An order affecting ch. DOC 316, relating to medical, dental and nursing copayment charge. Effective 5-1-03.

#### Summary of Final Regulatory Flexibility Analysis

These proposed rules do not affect small businesses.

#### Summary of Comments of Legislative Standing Committees

No comments were received.

#### Educational Approval Board (CR 02-135)

An order affecting chs. EAB 1, 3, 4, 7, 8, 10 and 11, relating to the regulation of for-profit postsecondary schools; out-of-state, non-profit colleges and universities; and in-state, non-profit institutions incorporated after 1991. Effective 5-1-03.

#### Summary of Final Regulatory Flexibility Analysis

These proposed rules do not affect small businesses.

#### Summary of Comments of Legislative Standing Committees

No comments were received.

#### Employee Trust Funds (CR 02-126)

An order affecting ch. ETF 10, relating to participation in the variable division of the trust fund. Effective 5-1-03.

#### Summary of Final Regulatory Flexibility Analysis

The department anticipates that the provisions of this proposed rule will have no direct adverse affect on small businesses.

#### Summary of Comments of Legislative Standing Committees

No comments were received.

### Health and Family Services (CR 02-154)

An order affecting chs. HFS 101 and 109, relating to assistance for the purchase of prescription drugs by persons aged 65 and older. Effective 5-1-03.

#### Summary of Final Regulatory Flexibility Analysis

The rules for the SeniorCare program apply to the department, to families that are applicants or recipients of the health care coverage provided by SeniorCare and to county social service or human service departments that take applications and determine eligibility for SeniorCare. The rules will not directly affect small businesses as "small business" is defined in s. 227.114 (1) (a), Stats.

#### Summary of Comments of Legislative Standing Committees

The Assembly Committee on Aging and Long-Term Care and the Senate Committee on Health, Children, Families, Aging and Long-Term Care held a joint hearing on the final proposed rule on March 6, 2003. Subsequently, the Senate Committee waived its jurisdiction over the rule on March 11th and the Senate Committee did the same on March 13th. Neither committee asked the department to modify the proposed rule.

#### Insurance (CR 02-118)

An order affecting ch. Ins 3, relating to Medicare supplement insurance policies. Effective 5-1-03.

#### 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 of Legislative Standing Committees

The legislative standing committees had no comments on this rule.

#### Natural Resources (CR 02-096)

An order affecting ch. NR 25, relating to commercial fishing in Lake Superior. Effective 5-1-03.

#### Summary of Final Regulatory Flexibility Analysis

The proposed rules affect Lake Superior commercial fishers. No additional compliance or reporting requirements will be imposed as a result of these rule changes.

#### Summary of Comments of Legislative Standing Committees

The rule was reviewed by the Assembly Committee on Natural Resources and the Senate Committee on Environment and Natural Resources. The Assembly Committee on Natural Resources held a public hearing on March 5, 2003. No modifications to the rule were requested.

#### Transportation (CR 02-080)

An order affecting ch. Trans 327, relating to motor carrier safety requirements. Effective 5-1-03.

**Summary of Final Regulatory Flexibility Analysis**

The proposed rule will have minimal adverse impact on small businesses.

**Summary of Comments of Legislative Standing Committees**

No comments were received.

**Transportation  
(CR 02-131)**

An order affecting ch. Trans 102, relating to customer identifying information. Effective 5-1-03.

**Summary of Final Regulatory Flexibility Analysis**

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

**Summary of Comments of Legislative Standing Committees**

No comments were received.

**Veterans Affairs  
(CR 02-130)**

An order affecting ch. VA 12, relating to establishing interest rates and the maximum loan amount under the personal loan program. Effective 5-1-03.

**Summary of Final Regulatory Flexibility Analysis**

These rules do not impact small businesses.

**Summary of Comments of Legislative Standing Committees**

No comments were received.

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## Sections affected by rule revisions and corrections

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The following administrative rule revisions and corrections have taken place in **April 2003**, 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 and Consumer Protection:

##### **Ch. ATCP 1**

- S. ATCP 1.01 (26)
- S. ATCP 1.03 (1) (a)

##### **Ch. ATCP 97**

- S. ATCP 97.04 (2) (b)

##### **Ch. ATCP 98 to 100** (entire chapters)

##### **Ch. ATCP 101**

- S. ATCP 101.01 (intro.)
- S. ATCP 101.08
- S. ATCP 101.20 to 101.26

##### **Ch. ATCP 161**

- S. ATCP 161.31 (8) (a) and (b)
- S. ATCP 161.32 (3) (intro.)

##### **Ch. ATCP 162**

- S. ATCP 162.02 (2)

#### Commerce:

##### **Ch. Comm 2**

- S. Comm 2.64 Table-1
- S. Comm 2.645
- S. Comm 2.66 Table
- S. Comm 2.68

##### **Ch. Comm 16**

- S. Comm 16.02 (2) (e)
- S. Comm 16.03 (3) and (4)
- S. Comm 16.065
- S. Comm 16.11 (1)
- S. Comm 16.12
- S. Comm 16.155
- S. Comm 16.17 (2) (a) and (3)
- S. Comm 16.20
- S. Comm 16.205
- S. Comm 16.215
- S. Comm 16.23
- S. Comm 16.24 (1) (a) and (b), (2) (b) and (c), (5) and (6)
- S. Comm 16.25 (1) (a) (intro.), (6) and (7), (intro.) and (b)
- S. Comm 16.26 (intro.) and (2)
- S. Comm 16.275
- S. Comm 16.294
- S. Comm 16.295
- S. Comm 16.30 (1)
- S. Comm 16.31 to 16.38
- S. Comm 16.39 (1)
- S. Comm 16.392 to 16.42
- S. Comm 16.437 to 16.44
- S. Comm 16.45 (4)
- S. Comm 16.49

S. Comm 16.52

##### **Ch. Comm 61**

S. Comm 61.39

##### **Ch. Comm 62**

S. Comm 62.2902 (1) (c)

##### **Ch. Comm 81**

S. Comm 81.01 (7e), (7m), (35m), (42), (44), (46), (51m), (56), (56e), (61m), (62m), (65m), (72e), (80), (84), (90e), (90m), (108m), (120), (134), (147), (160m), (178), (181), (187e), (193), (195), (210), (212e), (214m), (245), (246), (247), (249), (265e), (273e), (276), (277e)

S. Comm 81.20

##### **Ch. Comm 82**

- S. Comm 82.01
- S. Comm 82.015
- S. Comm 82.03
- S. Comm 82.10
- S. Comm 82.20 (1), (4), (13), (14), and Tables 1 and 2
- S. Comm 82.21 (1) (b), (d) and (2) (d)
- S. Comm 82.30 (4) (d), (5) (b), (10), (11) (a) to (d), (g), (12) (f) and Tables 1 to 6
- S. Comm 82.31 (8), (11) (a), (12) (intro.) and (a), (13) (c), (14) (j), (16) (h), (17) (a), and Tables 4 and 5
- S. Comm 82.32 (3) (c) and (4) (b)
- S. Comm 82.33 (5) (a), (7) (b), (8) (a), (c), (d), (9) (a) to (e), (g), (i) and (10)
- S. Comm 82.34 (1) to (3), (4) (a), (6) (a), (8) and (14) (b)
- S. Comm 82.35 (3) (a), (d), (g), (m) and (5) (a)
- S. Comm 82.36 (3), (5) (e), (10), (11) (a), (12), (13) (a), (14), (15) and Table 4
- S. Comm 82.37 (2) (h), (3),
- S. Comm 82.38
- S. Comm 82.40 (3), (4) (c), (7) (d), (h), (8) (b) to (d), (g) and Tables 1, 2, and 4 to 11
- S. Comm 82.41 (3) (intro.), (5) (a), (i) to (L) and Tables 1 and 2
- S. Comm 82.50
- S. Comm 82.51
- S. Comm 82.60 Table
- S. Comm 82.70
- Ch. Comm 84**
- S. Comm 84.10 Table
- S. Comm 84.15
- S. Comm 84.20 (5) (n), (6) (c)
- S. Comm 84.30 (1) (intro.), (f), (2) (intro.), (j), (4) (d) to (f), (i), (5) (a), (b), (d), and Tables 1 to 11
- S. Comm 84.40 (1) (c), (6) (b), (8) (d), (17) (d), (f), and (19)

**Ch. Comm 90**

S. Comm 90.01  
 S. Comm 90.03 (10m), (11) (h), (19), (20)  
 S. Comm 90.04 (5) (a), (6) and (7)  
 S. Comm 90.08 (8) (b)  
 S. Comm 90.10 (2)  
 S. Comm 90.11 (3) (a)  
 S. Comm 90.12 (1) (a)  
 S. Comm 90.19 (2) (b)  
 S. Comm 90.20 (1) and (4)

**Corrections:****Ch. DOC 316**

S. DOC 316.01  
 S. DOC 316.02 (1)  
 S. DOC 316.03  
 S. DOC 316.04  
 S. DOC 316.05 (intro.), (7) and (8)  
 S. DOC 316.06 (1) to (3)

**Educational Approval Board:****Ch. EAB 1**

S. EAB 1.01 (intro.), (3), (7), (10), (19m), (2), (23),  
 (26) and (29m)

**Ch. EAB 3**

S. EAB 3.02 (5) and (8)  
 S. EAB 3.03

**Ch. EAB 4**

S. EAB 4.01 (1), (2), (2m), (4m), (5), (5m), (6) (b) and  
 (7)  
 S. EAB 4.02 (1)  
 S. EAB 4.03 (1) (i) and (n)  
 S. EAB 4.04 (8)  
 S. EAB 4.06 (1), (3), (5) and (6)  
 S. EAB 4.08 (2) (b)  
 S. EAB 4.10 (1) (e), (2) (g), (5) (c), (d) and (f)

**Ch. EAB 7**

S. EAB 7.02 (intro.)  
 S. EAB 7.03 (intro.)  
 S. EAB 7.05

**Ch. EAB 8**

S. EAB 8.05 (intro.)

S. EAB 8.07 (2m) and (3)

**Ch. EAB 10**

S. EAB 10.04 (3)

**Ch. EAB 11** (Entire chapter)

**Employee Trust Funds:****Ch. ETF 10**

SS. ETF 10.30 to 10.34  
 S. ETF 10.82 (2) (b)

**Health and Family Services:****Ch. HFS 101**

S. HFS 101.03 (intro.)

**Ch. HFS 109** (Entire chapter)

**Insurance:****Ch. Ins 3**

S. Ins 3.39 (4) (a), (5) (c) and (34)

**Natural Resources:****Ch. NR 25**

S. NR 25.06 (1) (a)  
 S. NR 25.09 (1) (ah), (am), (as)

**Transportation:****Ch. Trans 102**

S. Trans 102.01  
 S. Trans 102.02 (6r)

**Ch. Trans 327**

S. Trans 327.01 (2) (c) to (h) and (4)  
 S. Trans 327.03  
 S. Trans 327.05 (5) and (6)  
 S. Trans 327.09 (6) to (13)

**Veterans Affairs:****Ch. VA 12**

S. VA 12.02 (7), (16) and (17)  
 S. VA 12.04 (1)

**Editorial corrections**

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

**Agriculture, Trade and Consumer Protection:****Ch. ATCP 1**

S. ATCP 1.01 (2), (3), (4) and (14)  
 S. ATCP 1.08 (1) (b) and (2)

**Ch. ATCP 161**

S. ATCP 161.36

**Commerce:****Ch. Comm 63**

S. Comm 63.1042 (5)

**Ch. Comm 64**

S. Comm 64.0202 (2) (b)  
 S. Comm 64.1500 (1)

**Ch. Comm 65**

S. Comm 65.0202

**Ch. Comm 90**

S. 90.08 (11) and (12) (a)

**Health and Family Services:****Ch. HFS 101**

S. HFS 101.03 (62)



**Insurance:**

**Ch. Ins 3**

S. Ins 3.67 (4)

**Veterans Affairs:**

**Ch. VA 1**

S. VA 1.06

S. VA 1.10 (1)

S. VA 1.13

S. VA 1.16

**Ch. VA 6**

S. VA 6.01 (3)

**Ch. VA 9**

S. VA 9.01 (4)

**Ch. VA 12**

S. VA 12.02 (9)

**Ch. VA 15**

S. VA 15.02 (3)

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## Sections affected by revisor's corrections not published

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**Revisor's corrections under s. 13.93 (2m) (b), Stats., identified in this Wis. Adm. Register.**

**Subscriber's note:** Please make corrections (manually) in your printed code. The affected sections are shown as corrected on the Revisor of Statutes Internet site, [Http://www.legis.state.wi.us/rsb/](http://www.legis.state.wi.us/rsb/), and on the WisLaw® CD-ROM. Printed code will be shown as corrected in its next printing.

Location of invalid cross-reference	Invalid cross-reference	Correction
Trans 253.06 (5)	chs. Trans 305 and 325 to 328	chs. Trans 305 and 325 to 327
Trans 258.06 (5)	chs. Trans 305 and 325 to 328	chs. Trans 305 and 325 to 327
Trans 305.02 (8)	chs. Trans 308, 325, 326, 327 and 328 (twice)	chs. Trans 308, 325, 326, and 327 (twice)

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## Executive orders

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**The following are recent Executive Orders issued by the Governor.**

**Executive Order 7.** Relating to the creation of the Governor's Homestead Security Council.

**Executive Order 8.** 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 Major Kevin Nave of the United States Marine Corps who lost his life during Operation Iraqi Freedom.

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