

Wisconsin Administrative Register

No. 566



Publication Date: February 14, 2003

Effective Date: February 15, 2003



Revisor of Statutes Bureau
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Madison, Wisconsin 53703-3233

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Emergency rules now in effect

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

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

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

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

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

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

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 Assistance to Businesses and Communities, Chs. Comm 105 to 128)

The Wisconsin Department of Commerce proposes an order to create **ch. Comm 118** relating to the Agricultural Development Zone Program.

Finding of emergency

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

Facts constituting the emergency are as follows:

1. In accordance with s. 560.798 (5), Stats., the Department of Commerce has the responsibility to promulgate rules for the operation of an agricultural development zone to provide for the attraction, promotion, retention, and expansion of agricultural businesses in the state.

2. Section 560.798 (3), Stats., makes available certain tax benefits for certified business within an agricultural development zone; tax credits first apply to tax years beginning on or after January 1, 2003.

3. Commerce, being the agency with primary authority for economic development in the state, recognizes that there is a verified need to attract, promote retain, and expand Wisconsin agricultural businesses. For example, over the past 50 years, Wisconsin has experienced an average of six dairy farms leaving production each day.

4. In the year 2001, state milk production declined by more than one billion pounds, resulting in a near 5% decline in milk production.

5. Western states have increased their cheese production, while Wisconsin experiences declining milk production and dairy processing activities; this program would immediately assist Wisconsin in regaining it's prominence in dairy and dairy processing production.

6. The creation of this program combined with other economic development programs in the state is expected to increase the competitiveness of the Wisconsin dairy industry.

This emergency rule is being created in order that the process of designating an agricultural development zone be commenced as soon as possible and that such eligible businesses may become certified and participate in the tax benefits through the Agricultural Development Zone Program.

Publication Date: August 13, 2002
Effective Date: August 13, 2002
Expiration Date: January 10, 2003
Hearing Date: October 16, 2002
Extension Through: March 10, 2003

Corrections

Rules adopted amending **ch. DOC 316**, relating to medical, dental and nursing copayment charges.

Exemption from finding of emergency

The department of corrections adopts this emergency rule pursuant to the statutory requirements of 2001 Wis. Act 109. The Act provides, in relevant part:

“Using the procedure under section 227.24 of the statutes, the department of corrections shall promulgate the rules that are required under section 302.386 (4) (a) of the statutes relating to the deductible, coinsurance, copayment, or similar charge that must be imposed under section 302.386 (3) (b) of the statutes.”

and,

“Notwithstanding section 302.386 (3) (b) of the statutes, the rules shall require the department to require that, subject to the exception and waiver provisions under section 302.386 (3) (c) of the statutes, each person to whom section 302.386 (1) of the statutes applies pay a deductible, coinsurance, copayment, or similar charge of at least \$7.50 for each request that the person makes for medical or dental services.”

Currently, the department's administrative rules provide for a \$2.50 copayment under such circumstances as described above. This emergency rule raises the copayment to \$7.50 as directed by 2001 Wis. Act 109.

In addition, pursuant to 2001 Wis. Act 109 the department makes no finding of emergency in promulgating this rule. 2001 Wis. Act 109 expressly exempts the department from the statutory requirements to do so.

Publication Date: September 3, 2002
Effective Date: September 3, 2002
Expiration Date: January 31, 2003
Hearing Date: November 18, 2002
Extension Through: March 31, 2003

Health and Family Services (2) (Medical Assistance, Chs. HFS 100—)

1. Rules adopted creating **ch. HFS 109**, relating to SeniorCare.

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 high cost of prescription drugs in Wisconsin and nationwide are especially burdensome on the elderly, many of whom live on a fixed income. Through 2001 Act 16, Wisconsin has addressed the problem those increasingly high costs pose to the elderly by creating section 49.688 of the statutes. Section 49.688 directs the Department to develop and administer the program of prescription drug benefits for the elderly that has come to be known as “SeniorCare.” The statute also directs the Department to develop administrative rules for implementing SeniorCare, which the Department has done by creating a new chapter of administrative rules, HFS 109. The rules address a variety of issues associated with operating the program in accordance with section 49.688, Stats., including specifying:

- what prescription drugs are covered;
- who is eligible for benefits and services;
- how the Department determines household income for the program's eligibility determination;

- how the Department monitors compliance by pharmacists and pharmacies; and
- mechanisms for preventing fraud and abuse.

The Department drafted these rules to parallel the prescription drug provisions of the existing Medicaid rules in chs. HFS 101 to 108. The Department developed the program's administrative elements in consultation with an advisory committee composed of representatives of physicians, counties, seniors and pharmacies.

While the Department is currently in the process of promulgating ch. HFS 109 as permanent rules, s. 49.688 (5) (a) and (7) (a), Stats., mandate the initiation of some SeniorCare program elements beginning on September 1, 2002. To meet this deadline, the Department is issuing ch. HFS 109 as emergency rules to preserve the public welfare.

Publication Date: September 1, 2002
Effective Date: September 1, 2002
Expiration Date: January 29, 2003
Hearing Date: October 10, 2002
Extension Through: March 29, 2003

2. 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 Medicare and Medicaid 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, section 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

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

1. Rules adopted creating s. HFS 115.04 (9) to (13), relating to screening newborn infants for congenital disorders.

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:

The early identification of particular congenital and metabolic disorders that are harmful or fatal to persons with the disorders is critical to mitigating the negative effects of such disorders. Therefore, Wisconsin Statute 253.13 requires that every infant born be subjected to blood tests for congenital and metabolic disorders, as specified in administrative rules promulgated by the Department. Parents, however, may refuse to have their infants screened for religious reasons. The Department has issued ch. HFS 115, Screening of Newborns for Congenital and Metabolic Disorders, to administer this statutory requirement. Currently, s. HFS 115.04 lists eight congenital and metabolic disorders for which the state hygiene laboratory must test newborn blood samples.

In determining whether to add or delete disorders from the list under s. HFS 115.04, s. HFS 115.06 directs the Department to seek the advice of persons who have expertise and experience with congenital and metabolic disorders. For this purpose, the Department established the Wisconsin Newborn Screening Umbrella Advisory Group. Section HFS 115.06 also lists six criteria on which the Department must base its decision to add to or delete disorders from s. HFS 115.04. These criteria are:

1. Characteristics of the specific disorder, including disease incidence, morbidity and mortality.
2. The availability of effective therapy and potential for successful treatment.
3. Characteristics of the test, including sensitivity, specificity, feasibility for mass screening and cost.
4. The availability of mechanisms for determining the effectiveness of test procedures.
5. Characteristics of the screening program, including the ability to collect and analyze specimens reliably and promptly, the ability to report test results quickly and accurately and the existence of adequate follow-up and management programs.
6. The expected benefits to children and society in relation to the risks and costs associated with testing for the specific condition.

In consideration of these criteria, the Wisconsin Newborn Screening Umbrella Advisory Group recently recommended that the Department add five aminoacidopathies, i.e., amino acid-related disorders, to the eight disorders currently screened for and listed in s. HFS 115.04. These disorders are:

- Maple Syrup Urine Disease;
- Homocystinuria;
- Tyrosinemia;
- Citrullinemia; and

- Argininosuccinic Acidemia.

Persons with these disorders can experience serious medical consequences such as failure-to-thrive, developmental delays, seizures, mental retardation and death.

The additional costs associated with these five additional screening tests is less than a dollar per baby screened because the amino acids in the blood sample are measured simultaneously with the acylcarnitines for Fatty Acid Oxidation and Organic Acidemias. In the absence of this screening, the Department estimates the annual Wisconsin costs for these disorders to be \$144,909. The Department also estimates the annual Wisconsin costs of this screening to be \$29,134. Therefore, the cost benefit from these five screening tests is \$115,775.

The Advisory Group also recommended that the Department immediately begin screening newborns for these additional disorders. Before this testing can begin, the Department must change its rules to add the five new disorders to the existing list under s. HFS 115.04. Permanent rules require six or more months to take effect. Collectively, these disorders occur, on average, once in every 30,000 births. Given an annual birthrate of about 68,000 in Wisconsin, delaying the effective date of these rules by six or more months may result in one to three persons being born with one of these five disorders and that fact escaping detection. To eliminate this possibility and ensure that newborn testing begins as soon as possible, the Department has chosen to promulgate this rule change on an emergency basis while the Department promulgates a permanent rule.

While the Department is currently in the process of promulgating these amendments to the permanent rules, the Department must implement these changes immediately to preserve the public health. Therefore, the Department is issuing these identical amendments as an emergency order.

Publication Date: October 12, 2002
Effective Date: October 12, 2002
Expiration Date: March 11, 2003
Hearing Date: December 17, 2002

2. 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 section 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

3. 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 chapter 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, section 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, section 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 section HFS 163.15 (3), for determining when a lead-based paint hazard exists.

4. The Department is modifying section 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 section 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

Insurance

Rules adopted amending s. **Ins 3.39**, relating to Medicare Supplement insurance policies.

Finding of emergency

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

These changes clarify the persons eligible who have the right to have policies guaranteed issued. The changes track the recent revisions in the NAIC model act implementing the Medicare, Medicaid and SCHIP Benefits Improvement and Protection Act ("BIPA"), by January 1, 2003. In order to provide more certainty and provide guaranteed issue to the appropriate persons in Wisconsin, it is necessary that the changes be put into effect as soon as possible. In addition, since insurers are required to be in compliance with the Federal law, implementing this rule effective on the same date will allow insurers to modify their policies one time rather than two.

The Commissioner is sending contemporaneously with this Emergency Rule, the permanent rule, Clearinghouse No. 02-118, to the Legislature for review. A hearing on the permanent rule, pursuant to published notice thereof, was held on November 7, 2002. The Office has received comment and revised the rule as necessary to incorporate comments from the public and as contained within the Clearinghouse Report.

Publication Date: December 16, 2002

Effective Date: December 16, 2002

Expiration Date: May 14, 2003

Natural Resources (5)

(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 1, 2003

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 effects 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

3. Rules adopted amending **s. NR 25.06 (1) (a) 1. to 3.**, relating to commercial fishing in Lake Superior.

Finding of emergency

The waters of Lake Superior were not part of the extensive off–reservation treaty rights litigation known as the Voigt case. The parties stipulated that the Lake Superior rights would be dealt with, to the extent possible, by agreement rather than litigation. This rule represents the implementation of the most recent negotiated amendments to the agreement between the State and the Red Cliff and Bad River Bands. These amendments incorporate the results of a new population estimate that was not available previously. In order to comply with the terms of the agreement, the State must change its quotas and commercial fishing regulations at the earliest possible date. Failure of the State to do so will not only deprive state fishers of increased harvest opportunities available under the agreement, but could also jeopardize the agreement, putting the entire Lake Superior fishery at risk of litigation.

Publication Date: November 1, 2002
Effective Date: November 1, 2002
Expiration Date: March 31, 2003
Hearing Date: December 13, 2002

4. 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

5. 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, it’s 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

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
 [See Notice This Register]

Veterans Affairs

Rules adopted amending s. VA 12.02 (7) and (16), relating to the maximum loan amount under the personal loan program.

Finding of Emergency

The Department of Veterans Affairs 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 the facts constituting the emergency is as follows:

The Department administers a personal loan program that may be used by veterans and their dependents for various statutory purposes. The purposes include debt consolidation, payment of delinquent child support, education expenses, and medical and funeral expenses, and the purchase of a mobile home or business property. The current maximum loan amount, set by the Department at sec. VA 12.02 (7), Wis. Adm. Code, is \$10,000. The permissible statutory maximum loan amount may be \$15,000, as set by the Department by administrative rule.

The Department proposes to raise the amount to the statutory maximum for several compelling reasons. Raising the maximum loan amount will help stimulate the economy by providing additional resources for veterans and their families. Due to the state of the economy, veterans and their families have a significant need for financial assistance in the form of below market interest rate loans. Additionally, the personal loan program is the primary source of revenue for the veterans trust fund. Immediate infusion of additional assets in the form of personal loans will provide significant financial support for the trust fund. It is expected that increasing the maximum loan amount will result in approximately \$4,000,000 of new loan assets over the 8-month period in which it would take to promulgate this rule change using the regular promulgation procedure.

Publication Date: August 5, 2002
Effective Date: August 5, 2002
Expiration Date: January 2, 2003
Hearing Date: December 6, 2002
Extension Through: March 2, 2003

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
 [See Notice This Register]

Scope statements

Commerce

Subject

Ch. Comm 30, relating to wildland fires and general update.

Objective of the proposed rule. To update the provisions of the Department's administrative rules relating to the occupational safety and health standards for public sector employees engaged in wildland firefighting. This update will include a review of current practices and standards related to wildland firefighting. This update will also include a general update of chapter Comm 30, including a review of nationally recognized standards related to firefighter safety and health.

Policy analysis

Section 101.055, Stats., requires the Department to provide public sector employees with safety and health protection at least equivalent to that afforded to private sector employees under standards adopted by the federal Occupational Safety and Health Administration. Chapter Comm 30 establishes and further delineates safety and health standards for public sector fire department employees and specifies minimum safety procedures for those individuals involved in fire suppression, rescue and related activities. This particular update will specifically address wildland firefighting. The alternative of not updating Chapter Comm 30 would result in public sector employees not being provided with safety and health protection equivalent to that afforded to private sector employees.

Statutory authority

Section 101.055 (3), Stats.

Staff time required

The Department estimates that it will take approximately 500 hours to develop this rule. This time includes forming and meeting with a subcommittee, meeting with an advisory council, then drafting the rule and processing the rule through public hearings, legislative review and adoption. The Department will assign existing staff to develop the rule. There are no other resources necessary to develop the rule.

Commerce

Subject

Ch. Comm 32, relating to public employee safety and health.

Objective of the proposed rule. To update the provisions of the Department's administrative rules relating to occupational safety and health standards for public employees. This update will include adoption by reference of the current applicable federal Occupational Safety and Health Administration (OSHA) standards.

Policy analysis

Section 101.055, Stats., requires the Department to provide public sector employees with safety and health protection at least equivalent to that afforded to private sector employees under standards adopted by the federal Occupational Safety and Health Administration (OSHA). Currently, chapter

Comm 32 adopts the 2001 edition of the federal OSHA safety and health standards. The proposed rule would adopt the 2003 edition of the federal OSHA safety and health standards. Wisconsin modifications to the OSHA standards may also be included in the proposed rule. The alternative of not updating chapter Comm 32 would result in public employees not being provided with safety and health protection at least equivalent to that afforded to private sector employees.

Statutory authority

Section 101.055 (3), Stats.

Staff time required

The Department estimates that it will take approximately 200 hours to develop this rule. This time includes research, meeting with an advisory council, drafting the rule and related documents, and processing the rule through public hearings and legislative review. The Department will assign existing staff to develop the rule. There are no other resources necessary to develop the rule.

Insurance

Subject

Regarding Section Ins 4.10, Wis. Adm. Code, relating to requirements for the Wisconsin Insurance Plan ("WIP")

Objective of the proposed rule. To make a change in the governing committee size and membership groups and to make changes to certain administrative requirements of the plan including the time period in which a hearing should be held.

Policy analysis

The current board makeup is too large for the plan. A smaller size, as recommended by the current board, would allow more streamlined administration. Some of the current requirements for the administration of the plan need to be reviewed. One such modification would be to allow more time to schedule hearings as permitted by the Statutes.

The alternative to changing the requirements would be to keep them as they currently exist.

Statutory authority

Section 619.01, Stats., allows the commissioner to set the requirements for risk-sharing plans such as WIP to serve residual markets.

Staff time required

40 hours.

Natural Resources

Subject

The Department is proposing to amend Chapter NR 64 which pertains to the administration of the all-terrain vehicle program. Specifically the Department will amend the maximum rates for reimbursement of eligible expenses for the maintenance of both summer and winter all-terrain vehicle trails covered under Department financial aid agreements.

Policy analysis

Currently the recreation committee of the Wisconsin County Association together with representatives of the

organized all-terrain vehicle community have been discussing issues surrounding all-terrain vehicle recreation and the all-terrain vehicle trail grants program. One of the conclusions they have reached is that the maximum rates of reimbursement are too low. Particularly for summer trails, the cost of maintaining the trails for safe and enjoyable use has far surpassed the current rates indicated in the rule. This has caused considerable hardship for county agencies attempting to provide all-terrain vehicle riding opportunities in leaner times. The current reimbursement rates have been in effect since 1999 and have only been amended once since 1986.

The proposed change will be developed in cooperation with the Wisconsin County Forest Association, the Wisconsin All-Terrain Vehicle Association and the Department's Off-Road Vehicle Advisory Council.

Statutory authority

Section 23.33 (9), Stats.

Staff time required

Approximately 88 hours will be needed by Department staff to promulgate and implement the proposed rule changes. The Department anticipated seeking authorization for a hearing from the Board in April 2003, and seeking adoption of the rule changes in August 2003.

Regulation and Licensing

Subject

Revision of chs. RL 90 to 94 to reflect newly created statutory requirements for certification and practice as a certified massage therapist or bodyworker.

Objective of the rule. To implement the statutory provisions of 2001 Wisconsin Act 74.

Policy analysis

The proposed revisions to chs. RL 90 to 94 are necessary to implement newly created ch. 460, Stats., pursuant to 2001 Wisconsin Act 74, governing the certification of massage therapists and bodyworkers. The proposed rules will in part modify the requirements necessary for qualified applicants, reciprocal certification, acceptable training programs, waivers of education requirements, renewals, acts constituting unprofessional conduct, and the handling of complaints by the department relating to specified allegations of sexual misconduct.

Statutory authority

Section 227.11 (2) and ch. 460, Stats.

Staff time required

80 hours.

Tax Appeals Commission

Subject

Objective of the rule. To clarify, for both the public and the Commission, the status of cases pending before the Commission and to alleviate the Commission's storage of non-active files.

Policy analysis

Currently, when several petitioners appeal to the Commission from several actions of the Department of Revenue or the Department of Transportation ("Departments") involving the same or similar issues, they will commonly file a single Petition for Review with all of their names on it. The Commission assigns this single petition several docket numbers (i.e., case numbers), one for each petitioner.

This type of filing provides the eventual likelihood of antiquated and ambiguous record keeping, to the detriment of some petitioners and the Commission. When one or more of these appeals are disposed of (for ex., settled, canceled, withdrawn), the title of the case remains the same, and petitioners who no longer have disputes with the Departments continue to have their names and docket numbers on the caption of the case. This is deceptive as to who is still in litigation, and it perpetuates antiquated information being provided to the public. It also presents a storage problem for the Commission, which may not archive the non-active cases until *all* the cases are resolved.

This rule requires that a single petition for review be filed with the Commission in all but 2 instances. A petition with multiple names may be filed where (1) more than one person is affected by the Departments' action (for ex., an LLC and its members); or (2) the case involves spouses on the same issue (for ex., deductibility or taxability of support payments).

This proposal is similar to a procedural rule of the U. S. Tax Court.

Statutory authority

Section 227.11 (2) (b), Stats., authorizes the Commission to prescribe procedures in connection with administering s. 73.01, Stats.

Staff time required

20 to 30 hours.

Submittal of rules to legislative council clearinghouse

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

Public Instruction

Rule Submittal Date

On January 30, 2003, the Wisconsin Department of Public Instruction submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

The proposed rule creates Subchapter II of ch. PI 7, relating to pupil transportation.

Agency Procedure for Promulgation

Public hearings will be scheduled. The Division for Finance and Management is primarily responsible for promulgation of this rule.

Contact

If you have questions regarding this rule, you may contact Merry Larsen, School Administration Consultant, at (608) 266-2146.

Transportation

Rule Submittal Date

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

The proposed rule affects ch. Trans 2, relating to elderly and disabled transportation capital assistance program.

Agency Procedure for Promulgation

A public hearing is scheduled for March 4, 2003. The Division of Transportation Investment Management, Bureau of Transit and Local Roads is primarily responsible for promulgation of this rule.

Contact

If you have questions regarding this rule, you may contact Julie a. Johnson, Paralegal, at (608) 266-8810.

Workforce Development

Rule Submittal Date

On February 3, 2003, the Wisconsin Department of Workforce Development submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

The proposed rule affects ch. DWD 290, relating to the annual adjustment of thresholds for application of prevailing wage rates.

Agency Procedure for Promulgation

A public hearing is required and will be held on February 27, 2003.

The Equal Rights Division is primarily responsible for the promulgation of the proposed rules.

Contact

Elaine Pridgen
(608) 267-9403
e-mail: elaine.pridgen@dwd.state.wi.us

Rule-making notices

Notice of Hearing

Administration

[CR 03-002]

Notice is hereby given that pursuant to ss. 16.004 (1), 16.358 (2) and 227.11 (2) (a), Stats., and interpreting s. 16.358, Stats., the Department of Administration will hold a public hearing to consider amendments to ch. Adm 19 of the Wisconsin Administrative Code, relating to small cities community development block grants for housing.

Hearing Information

Date: **March 6, 2003**
 Time: 1:00 p.m. to 3:00 p.m.
 Location: Portage County Annex
 1462 Strongs Avenue
 Stevens Point, WI

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but are also urged to submit facts, opinions and arguments in writing as well. Written comments from persons unable to attend the public hearing, or who wish to supplement testimony offered at the hearings, should be directed to: Donna Sorenson, Department of Administration, P.O. Box 7864, Madison, WI 53707-7864. Written comments must be received by March 13, 2003, to be included in the record of rule-making proceedings.

Fiscal Estimate

The proposed rule is not expected to have any state fiscal effect. The current grant application process, including an intensive survey of potential beneficiaries is very complex. Most applicants (local units of government) do not have the necessary staff and expertise and must spend \$5,000 to \$8,000 to hire a consultant to complete the survey and application for them. Participating consultants estimate the actual cost of writing the grant application to be approximately twice what they charge their clients. In the most recent funding year, approximately 85% of the applicants hired consultants. The balance of the applications were written "in house." The proposed rule amendment, had it been enacted for the most recent round of funding, would have saved local units of government who hired a consultant to write their application at total of at least \$145,000. Localities writing their own applications would have saved an estimated 150 staff hours each.

Contact Person:

Donna Sorenson
 Department of Administration
 101 E. Wilson St., 10th Floor
 P.O. Box 7864
 Madison, WI 53707-7864
 (608) 266-2887

Proposed Order of the Department of Administration

The Department of Administration proposes an order to repeal s. Adm 19.02 (6) and (7) and to repeal and recreate ss. Adm 19.04, 19.05 and 19.08, relating to small cities community development block grants for housing.

Analysis prepared by the Department of Administration

Statutory Authority: ss. 16.004 (1), 16.358 (2) and 227.11, Stats.

Statute Interpreted: s. 16.358, Stats.

The Department proposes to modify the rule to streamline and simplify the grant application process for communities within the State. The proposed amendment will reduce the steps and paperwork that a community must complete before it can apply for funds. Under the proposed rule, applications would be grouped by region with census data utilized to rank them according to need, ensuring an equitable geographic distribution of funds.

The majority of CDBG funds will be used for the rehabilitation of low- to moderate-income housing units. The set-aside for Emergency Assistance will be continued and a new set-aside for special projects will be established. The purpose of these changes is to allow communities to request CDBG funds based on the need within their community, not in an effort to score points so they can be funded.

Initial Regulatory Flexibility Analysis:

There will be no significant impact on small businesses.

TEXT OF RULE:

SECTION 1: Adm 19.02(6) and (7) are repealed.

SECTION 2: Adm 19.04, 19.05 and 19.08 are repealed and recreated to read:

Adm 19.04 Housing rehabilitation and homeownership assistance. Applicants shall be compared and rated by the department based upon the department's evaluation of the proposal's consistency with s. 16.31, Stats., and 24 CFR part 570, and the scoring criteria in the CDBG application package. Applicants shall be eligible to receive funding for housing rehabilitation, homeownership assistance, and housing-related public facilities based on established and documented need and the applicant's ability to complete the proposed activities. The department shall ensure that awarded grant funds are reasonably balanced among geographic areas of the state.

Adm 19.05 Application process. The department shall make funds available annually as those funds are made available by the federal department of housing and urban development. To receive funds under the program, an eligible applicant shall submit an application which is complete and in the format required by the department. The department shall make housing rehabilitation and homeownership assistance awards to fundable applications on an annual basis. The department shall make special project awards to eligible applicants as projects are ready for funding under the criteria established by the department and as funding becomes available.

Adm 19.08 Special projects. The department may use at least \$750,000 annually from the program for special housing projects. Funds not awarded within 12 months may be included in the funding available for housing rehabilitation and homeownership activities under s. Adm 19.04. The department shall make special project awards to eligible applicants as projects are ready for funding under the criteria established by the department and as funding becomes available.

Notice of Hearing

Nursing

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Board of Nursing in ss. 15.08 (5) (b) and 227.11 (2) Stats., and ss. 441.15 (2) (c), 441. (3) (a) 3. and 411/15 (5), as created by 2001 Wisconsin Act 52, and s. 441.15 (3) (bm), Stats., as amended by 2001 Wisconsin Act 52, and interpreting ss. 441.15 (2) (c), 441.15 (3) (a) 3., 441.15 (3) (bm) and 441.15 (5) (b), Stats., the Board of Nursing will hold a public hearing at the time and place indicated below to consider an emergency rule relating to malpractice insurance coverage for nurse-midwives.

Hearing Date, Time and Location

Date: **March 7, 2003**
 Time: 9:15 a.m.
 Location: 1400 East Washington Avenue
 Room 179A
 Madison, Wisconsin

Appearances at the Hearing

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but are urged to submit facts, opinions and argument in writing as well. Facts, opinions and argument may also be submitted in writing without a personal appearance by mail addressed to the Department of Regulation and Licensing, Office of Administrative Rules, P.O. Box 8935, Madison, Wisconsin 53708. Written comments must be received by March 21, 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) and 227.11 (2), Stats., and ss. 441.15 (2) (c), 441.15 (3) (a) 3. and 411.15 (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.

TEXT OF RULE

SECTION 1. N 4.10 is created to read:

N 4.10 Malpractice insurance coverage. (1) Nurse-midwives shall maintain in effect malpractice insurance evidenced by one of the following:

(a) Personal liability coverage in the amounts specified in s. 665.23 (4), Stats.

(b) Coverage under a group liability policy providing individual coverage for the nurse-midwife in the amounts set forth in s. 655.23 (4), Stats.

(2) Notwithstanding sub. (1), malpractice insurance is not required for any of the following:

(a) A nurse-midwife who practices as an employee of this state or a governmental subdivision, as defined under s. 180.0103, Stats.

(b) A nurse-midwife who practices as an employee of the federal public health service under 42 USC 233 (g).

(c) A nurse-midwife who does not provide care for patients.

(3) A nurse-midwife shall submit to the board satisfactory evidence that he or she has in effect malpractice insurance required by sub. (1) at the time established for credential renewal under s. 440.08 (2) (a) 50., Stats.

Fiscal Estimate

The estimated cost associated with enforcement of the rule is \$1,250 annually. This cost is based on the annual review of evidence of insurance and follow-up with credential holders where appropriate.

(125 holders @ \$10.00/holder = \$1,250.00.

Notice of Hearing

Nursing

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Board of Nursing in 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), Stats., as created by 2001 Wisconsin Act 52, and s. 441.15 (3) (bm), Stats., as amended by 2001 Wisconsin Act 52, and interpreting ss. 441.15 (2) (c), 441.15 (3) (bm) and 441.15 (5) (b), Stats., the Board of Nursing will hold a public hearing at the time and place indicated below relating to the practice of nurse-midwives.

Hearing Date, Time and Location

Date: **March 7, 2003**
 Time: 9:15 a.m.
 Location: 1400 East Washington Avenue
 Room 179A
 Madison, Wisconsin

Appearances at the Hearing

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but are urged to submit facts, opinions and argument in writing as well. Facts, opinions and argument may also be submitted in writing without a personal appearance by mail addressed to the Department of Regulation and Licensing, Office of Administrative Rules, P.O. Box 8935, Madison, Wisconsin 53708. Written comments must be received by March 21, 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) and 227.11 (2), Stats., and ss. 441.15 (2) (c), 441.15 (3) (a) 3. and 441.15 (5), Stats., as created by 2001 Wisconsin Act 52, and s. 441.15 (3) (bm), Stats., as amended by 2001 Wisconsin Act 52.

Statutes interpreted: s. 441.15 (2) (c), 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 these rules. Also, throughout the rule-making order words are capitalized in accordance with the Administrative Rules Procedural Manual at s. 1.01 (4), on page 3 on the Manual.

Section 1 is amended to include the malpractice insurance requirements.

Section 2 is amended to update the definition of complications that are consistent with the standards of practice of the American College of Nurse-Midwives.

Section 3 creates a definition of collaboration.

Section 4 amends the definition of formal written agreement to written agreement.

Sections 5 and 6 repeal requirements that are no longer required.

Section 7 renumbers a subsection.

Section 8 updates the requirements for licensure and Section 9 amends the application procedures for licensure. Section 9 also, and Section 10 provides a second certification council.

Sections 11 and 12 modify the scope of practice relating to referrals.

Section 13 creates the malpractice insurance coverage for nurse–midwives.

Fiscal Estimate

The estimated cost associated with enforcement of this rule is \$1,250 annually. This cost is based on the annual review of evidence of insurance and follow–up with credential holders where appropriate. (125 holders @\$10.00 = \$1,250.00)

Initial Regulatory Flexibility Analysis

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

Copies of Rule and Contact Person

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

Notice of Hearings

Physical Therapists

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Physical Therapists Affiliated Credentialing Board in ss. 15.085 (5) (b) and 227.11 (2), Stats., and ss. 448.527, 448.55, 448.564 and 448.567, Stats., as created by 2001 Wisconsin Act 70, and interpreting ss. 448.527, 448.55, 448.56, 448.564 and 448.567, Stats., the Physical Therapists Affiliated Credentialing Board will hold a public hearing at the time and place indicated below to consider an order to repeal the Notes following PT 1.03 (1) (c) and (1) (d) 4., to renumber and amend PT 3.01 (4) and 6.01 (1) (intro.); to amend PT 1.01, 1.02 (intro.), (2) and (6), 1.03 (1) (intro.), (c), (d) (intro.), 2., (2), (3) (a) to (d) and the Note following PT 1.03 (3) (d), 2.01(1) (h), (i), (6) (a) and (b), (8) (intro.), 3.01 (1) and (3), ch. PT 5 (title), 5.01 (title) and (intro.), (5) and (6), 5.02(title), (intro.), (1), (2), (4) to (6) and (8) to (9), 7.01, 7.02 (1), 8.01; and to create a Note following PT 1.03 (2), 2.04, 3.01 (4), (6) and (7), 4.01 (1) (d), 5.02 (10), 6.01 (1) (a) to (c), (2) and (3), 7.02 (19), (20), (21), 7.03 and 7.04 and Chapter PT 9, relating to physical therapists and physical therapy aides.

Hearing Date, Time and Location

Date: **March 4, 2003**
 Time: 9:00 a.m.
 Location: 1400 East Washington Avenue
 Room 179A
 Madison, WI

Appearances at the Hearing

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but are urged to submit facts, opinions and argument in writing as well. Facts, opinions and argument may also be submitted in writing without a personal appearance by mail addressed to the Department of Regulation and Licensing, Office of Administrative Rules, P.O. Box 8935, Madison, Wisconsin 53708. Written comments must be received by March 21, 2003 to be included in the record of rule–making proceedings.

Analysis prepared by the Department of Regulation and Licensing.

Statutes authorizing promulgation: ss. 15.085 (5) (b) and 227.11 (2), Stats., and ss. 448.527, 448.55, 448.56, 448.564 and 448.567, Stats., as created by 2001 Wisconsin Act 70.

Statutes interpreted: ss. 448.527, 448.55, 448.56, 448.564 and 448.567, Stats.

This proposed rule–making order implements 2001 Wisconsin Act 70, relating to the licensing of physical therapists and physical therapist assistants and granting rule–making authority. The Act makes a number of changes to the provisions affecting the practice of physical therapy and physical therapist assistants, as well as requirements relating to continuing education.

Section 1 amends the authority to include the amended and new statutory language brought about by Act 70.

Section 2 amends the definitions of “FSBPT” and “physical therapy aide.”

Section 3 simply adds two words for clarification.

Section 4 repeals a Note that no longer is needed.

Section 5 is amended to include the physical therapist assistants’ requirements.

Section 6 repeals a Note that is no longer needed.

Section 7 is amended to include the physical therapist assistant’s requirements.

Section 8 creates a Note that refers to foreign graduate evaluation services.

Section 9 is amended to include the physical therapist assistant requirements and also amends the Note providing the change in the Commission on Accreditation.

Section 10 is amended to include the physical therapist assistant educational programs.

Section 11 creates the examination requirements.

Section 12 is amended to include the physical therapist assistant examination.

Section 13 is amended to repeal outdated information.

Sections 14 and (15) are amended to clarify the supervision of a person holding a temporary license.

Section 16 is created to provide a letter from an organization or facility requesting the applicant’s services.

Sections 17, 18 and 19 amend the requirements of supervision of physical therapist assistants and physical therapy aides, such as the description of aspects of patient care; examinations, supervision; and patient related tasks.

Section 20 repeals some services for referrals and Section 21 creates types of services for referrals.

Section 22 amends several statutory sites.

Section 23 is created to include other conduct that relates to unprofessional conduct.

Section 24 amends a statutory site.

Section 25 creates Chapter 9, continuing education that includes definitions, requirements, standards for approval of

continuing education programs, tables of activities that qualify for continuing education hours, and the number of hours, and what constitutes proof of attendance at continuing education programs that may be required for renewal.

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.

Initial Regulatory Flexibility Analysis

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

Copies of Rule and Contact Person

Copies of this proposed rule are available without cost upon request to: Pamela Haack, Department of Regulation and Licensing, Office of Administrative Rules, 1400 East Washington Avenue, Room 171, P.O. Box 8935, Madison, Wisconsin 53708 (608) 266–0495, or by e–mail at pamelahaack@drl.state.wi.us.

Notice of Hearing

Transportation

[CR 03–007]

NOTICE IS HEREBY GIVEN that pursuant to ss. 85.15 (1), 85.22 (3) (h) and 227.11 (2), Stats., and interpreting s. 85.22, Stats., the Department of Transportation will hold a public hearing in **Room 951** of the Hill Farms State Transportation Building, 4802 Sheboygan Avenue, Madison, Wisconsin on the **4th day of March, 2003, at 11:00 a.m.**, to consider the amendment of ch. Trans 2, Wisconsin Administrative Code, relating to the elderly and disabled transportation capital assistance program.

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

The public record on this proposed rule making will be held open until March 14, 2003, to permit the submission of written comments from persons unable to attend the public hearing or who wish to supplement testimony offered at the hearing. Any such comments should be submitted to Diane Poole, Department of Transportation, Bureau of Transit and Local Roads, Room 951, P.O. Box 7913, Madison, WI 53707–7913.

Parking for persons with disabilities and an accessible entrance are available on the north and south sides of the Hill Farms State Transportation Building.

Analysis prepared by the Wisconsin Department of Transportation

Statutory Authority: ss. 85.15 (1), 85.22 (3) (h) and 227.11 (2), Stats.

Statutes Interpreted: s. 85.22, Stats.

General Summary of Proposed Rule. Chapter Trans 2 establishes the Department's administrative interpretation of s. 85.22, Stats., including the administration of assistance under the federal sec. 5310 program (formerly sec. 16), and prescribes administrative policies and procedures for implementing the elderly and disabled transportation capital

assistance program authorized under s. 85.22, Stats. The purpose of this rule making is to clarify existing provisions of the rule as well as incorporate changes to reflect current program policy and conditions and improve program administrative procedures.

This proposed rule:

Changes the grant cycle from a one–year cycle to a two–year cycle. This streamlines the program generating both a time and cost saving to both the Department and our grantees.

Attempts to assure that applicants will not duplicate existing services regardless of how they are funded.

Clarifies that application materials are sent to the Department as we plan to have applications materials come directly to the central office rather than the districts to further streamline the process. The exact location will be printed in the application.

Provides the Department with flexibility in assigning point values to the application questions. By doing this the Department will be able to adjust the importance of the criteria based on current transportation needs and trends getting the best possible candidates for today's market. All criteria and point values will continue to be printed in the application so the applicant knows in advance the weight of each question.

Other amendments include minor language changes.

Fiscal Effect

No fiscal impact is anticipated from the promulgation of this proposed rule. It is hoped that the Department will be able to get better vehicle prices by buying larger quantities – thus stretching program dollars.

Initial Regulatory Flexibility Analysis

This proposed rule has no significant impact on small businesses.

Copies of Proposed Rule

Copies of the rule may be obtained upon request, without cost, by writing to Diane Poole, Department of Transportation, Bureau of Transit and Local Roads, Room 951, P. O. Box 7913, Madison, WI 53707–7913, or by calling (608) 266–0189. Hearing–impaired individuals may contact the Department using TDD (608) 266–3351. Alternate formats of the proposed rule will be provided to individuals at their request.

Notice of Hearing

Workforce Development

(Public Works Construction, Chs. DWD 290–294)

[CR 03–008]

NOTICE IS HEREBY GIVEN that pursuant to ss. 66.0903 (5) and 103.49 (3g), Stats., the Department of Workforce Development proposes to hold a public hearing to consider the emergency rule and permanent rule amendment of s. DWD 290.155 (1), relating to the annual adjustment of thresholds for application of prevailing wage rates.

Hearing Information

February 27, 2003

Thursday, 1:30 p.m.

MADISON

G.E.F. 1 Building, Room H305

201 E. Washington Avenue

Interested persons are invited to appear at the hearings and will be afforded the opportunity to make an oral presentation of their positions. Persons making oral presentations are

requested to submit their facts, views, and suggested rewording in writing.

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

Analysis Prepared by the Department of Workforce Development

Statutory authority: Sections 66.0903(5) and 103.49(3g), Stats.

Statutes interpreted: Sections 66.0903(5) and 103.49(3g), Stats.

The state prevailing wage laws require that when a state agency or local governmental unit contracts for the construction of a public works project it must obtain a prevailing wage rate determination from the Department of Workforce Development and require that the contractors and subcontractors on the project pay their employees in accordance with those wage rates. Under ss. 66.0903(5) and 103.49(3g), Stats., and the current s. DWD 290.155(1), the state prevailing wage rate laws do not apply to any single-trade public works project for which the estimated cost is below \$36,000, and it does not apply to any multi-trade public works project for which the estimated cost is below \$175,000.

Under ss. 66.0903(5) and 103.49(3g), Stats., and s. DWD 290.15, the Department is required to adjust the dollar amounts of the thresholds each year in proportion to any change in construction costs since the thresholds were last determined. The threshold adjustment is based on changes in the construction cost index published in the *Engineering News-Record*, a construction trade publication. The proposed

rule adjusts the thresholds from \$36,000 to \$37,000 for single-trade projects and from \$175,000 to \$180,000 for multi-trade projects based on a 2.7% increase in the construction cost index between December 2001 and December 2002.

Rule Text

SECTION 1. DWD 290.155(1) is amended to read:

DWD 290.155(1) This chapter does not apply to any single-trade public works project for which the estimated cost of completion is below ~~\$36,000~~ \$37,000, and any multi-trade public works project for which the estimated cost of completion is below ~~\$175,000~~ \$180,000.

Initial Regulatory Flexibility Analysis

The proposed rule does not affect small business.

Fiscal Impact

Under the proposed rule, a state agency or local governmental unit contracting for the construction of a single-trade public works project that costs more than \$36,000 but less than \$37,000 or a multi-trade project that costs more than \$175,000 but less than \$180,000 will not be covered by the prevailing wage requirement.

Contact Information

For substantive questions concerning the proposed rule, call Mike Dixon, Construction Wage Standards Section Chief, at (608) 266-0028.

Written Comments

Written comments on the proposed rules received at the following address no later than **February 28, 2003**, will be given the same consideration as testimony presented at the hearing.

Elaine Pridgen
Office of Legal Counsel
Dept. of Workforce Development
P.O. Box 7946
Madison, WI 53707-7946
(608) 267-9403

Submittal of proposed rules to the legislature

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

**Agriculture, Trade and Consumer Protection
(CR 02-113)**

Chs. ATCP 98 to 101, relating to agricultural producer security.

**Commerce
(CR 02-127)**

Ch. Comm 34, relating to amusement rides and attractions.

**Corrections
(CR 02-123)**

Ch. DOC 316, relating to medical, dental and nursing copayment charge.

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