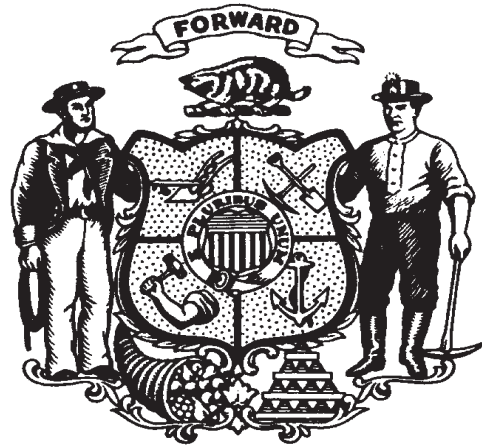


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Table of contents

Emergency rules now in effect.	Pages 4 to 10
Agriculture, Trade and Consumer Protection:	Rules relating to chronic wasting disease in cervids.
Commerce:	<u>Financial Resources for Businesses & Communities; Chs. Comm 105–128</u> Rules adopted revising ch. Comm 108 , relating to the use of rapid response funds in economically depressed areas of Wisconsin. [First Appearance]
Corrections:	Rules relating to medical, dental and nursing copayment charges.
Employee Trust Funds:	Rules relating to the date as of which annual post–retirement annuity adjustments will occur.
Health and Family Services:	<u>Medical Assistance, Chs. HFS 100—</u> Rules relating to SeniorCare. Rules relating to the Medicaid Family Planning Demonstration Project. <u>Health, Chs. HFS 110—</u> Rules relating to licensing of EMTs and certification of first responders, incorporating responding to acts of terrorism as a training component. Rules relating to certification for the identification, removal and reduction of lead–based paint hazards. Rules adopted revising ch. HFS 124 , relating to critical access hospitals. [First Appearance]
Insurance:	Rules relating to eligibility of persons who have the right to have policies guaranteed issued.
Natural Resources:	<u>Fish, Game, etc., Chs. NR 1—</u> Rules relating to the control and management of chronic wasting disease. Rules relating to the closure of carp fishing on Cedar Lake and connected waters in Polk and St. Croix counties. Rules relating to commercial fishing in Lake Superior. Rules relating to captive wildlife. Rules relating to the control and management of chronic wasting disease.
Nursing:	Rules relating to malpractice insurance coverage for nurse–midwives.
Veterans Affairs:	Rules relating to the maximum loan amount under the personal loan program.

Workforce Development:	<u>Public Works Construction Contracts, Chs. DWD 290–294</u> Rules relating to the annual adjustment of thresholds for application of prevailing wage rates.
Scope statements.	Pages 11 to 13
Financial Institutions:	Rules relating to s. DFI–Bkg 73.03 (8), adjustment service companies conducting business by mail.
Health and Family Services:	Rules relating to ch. HFS 124, critical access hospitals.
Natural Resources:	Rules relating to ch. NR 116, costs of floodproofing nonconforming structures. Rules relating to ch. NR 140, public health groundwater quality standards for arsenic. Rules relating to s. NR 404.04, ambient air quality standards. Rules relating to ch. NR 809, arsenic in drinking water.
Transportation:	Rules relating to chs. Trans 175, 176 and 177, statutory requirement of businesses to have operating authority, file sample forms and file proof of liability insurance with the Department of Transportation. Rules relating to ch. Trans 139, motor vehicle trade practices. Rules relating to chs. Trans 305 and 149, inspections and titling of homemade and replica vehicles and inspections of rebuilt salvage vehicles.
Submittal of rules to the legislative council clearinghouse.	Page 14
Health and Family Services:	Relating to a variety of department rules.
Revenue:	Relating to ch. Tax 12, Notice of Assessment and exempt solar and wind energy systems.
Rule–making notices.	Pages 15 to 16
Health and Family Services:	<u>Medical Assistance, Chs. HFS 100—</u> Hearings to consider rules relating to operation of the family planning waiver program.
Higher Educational Aids Board:	Hearing to consider rules relating to the administration of the Talent Incentive Program Grant.
Submittal of proposed rules to the legislature.	Page 17
Agriculture, Trade and Consumer Protection:	(CR 02–121) – Ch. ATCP 21
Natural Resources:	(CR 03–015) – Chs. NR 10 and 15
Public Instruction:	(CR 02–151) – Ch. PI 23
Rule orders filed with the revisor of statutes bureau.	Page 18
Agriculture, Trade and Consumer Protection:	(CR 02–078) – Chs. ATCP 10, 11 and 12
Barbering and Cosmetology:	(CR 02–058) – Chs. BC 1 to 4 and 10

Commerce:	(CR 02-127) – Ch. Comm 34
Health and Family Services:	(CR 02-154) – Chs. HFS 101 and 109
Natural Resources:	(CR 02-096) – Ch. NR 25
	(CR 02-098) – Chs. NR 50 and 64

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 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

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: May 30, 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 (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: May 28, 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 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, 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
Hearing Dates: April 25 & 28, 2003
 [See Notice this Register]

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 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

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 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

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 chapter 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 chapter 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

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, it 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 10, 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
Extension Through: April 30, 2003

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
Hearing Date: January 16, 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 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.

Publication Date: November 5, 2002

Effective Date: November 5, 2002

Expiration Date: April 4, 2003

Hearing Date: March 7, 2003

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: May 1, 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

Scope statements

Financial Institutions

Subject

Section DFI—Bkg 73.03 (8), relating to adjustment service companies conducting business by mail.

Policy analysis

The objective of the rule is to repeal s. DFI—Bkg 73.03 (8). The purpose of the rule is to end a prohibition that a license shall not conduct a business by mail outside of the State of Wisconsin. This current section is out-of-date. At the time the section was promulgated, all adjustment service companies doing business in Wisconsin were located in Wisconsin. As the adjustment service industry has evolved since the promulgation of this section, almost one-half of all licensees are now located outside of Wisconsin, and almost one-half of all debtor funds are handled by licensees located outside of Wisconsin. The existence of this section serves no regulatory purpose and may have a negative impact on the regulated entity.

Statutory authority

Sections 218.02 (9) and 227.11 (2), Stats.

Staff time required

40 hours.

Health and Family Services

Subject

To modify subchapter VI of ch. HFS 124, relating to critical access hospitals to permit St. Mary's Hospital in Superior to be classified as a rural hospital and begin the approval process for designation as a Critical Access Hospital and to make needed minor changes so subch. VI more accurately reflects federal regulations.

Policy analysis

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 chapter 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 a number of other criteria about the area served and its economic and demographic characteristics. Therefore, through an emergency rulemaking order, the Department modified provisions in subchapter VI of chapter 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. This Statement of Scope signals the Department's intent to propose to replace the emergency rules with permanent rules that not only incorporate the emergency order, but several other needed changes in subchapter VI.

Statutory authority

Sections 50.36 (1) and 227.11 (2) (a), Stats.

Staff time required

The Department anticipates no more than 10 hours of staff time will be required for this promulgation.

Natural Resources

Subject

Proposed revisions to ch. NR 116, pertaining to costs of floodproofing nonconforming structures.

Policy analysis

The Bureau of Watershed Management has submitted a Rule Agenda/Board Action Checklist seeking approval to proceed with revisions to ch. NR 116, Wis. Admin. Code, pertaining to costs of floodproofing nonconforming structures. This request is in response to a motion passed in February by the Joint Committee for Review of Administrative Rules (JCRAR), requesting that the Department amend ch. NR 116 to provide that ordinary maintenance and repairs, in a floodplain, to a nonconforming building or a building with a nonconforming use includes floodproofing. In response to the motion, the Department has agreed to begin the rule revision process.

Current Department policy does not include costs associated with floodproofing a nonconforming floodplain structure as "ordinary maintenance and repair." These costs have always been considered to be structural modifications and as such, have been limited to 50% of the assessed value of the structure, which is consistent with how other structural modifications, repairs and additions have been treated.

In response to the JCRAR motion, the Department will hold public hearings to solicit input on whether floodproofing costs should be excluded from the definition of structural repairs and modifications and not be counted against the 50% limit which is imposed on nonconforming structures.

Statutory authority

Section 87.30, Stats.

Staff time required

Approximately 80 hours will be needed by the Department.

Natural Resources

Subject

Section NR 140.10, Wis. Adm. Code, public health groundwater quality standards for arsenic.

Policy analysis

Amendments are being proposed to Wisconsin Administrative Code ch. NR 140, Groundwater Quality to revise state groundwater quality standards for arsenic. Ch. NR 140, Wis. Adm. Code, establishes Wisconsin state groundwater quality standards for both substances of public health concern and for substances of public welfare concern. Arsenic is a NR 140 substance of public health concern.

Chapter NR 140, was adopted by the Natural Resources Board in 1985 to comply with Wisconsin Statute ch. 160. Chapter 160, Stats., was created in May of 1984, as part of the 1983 Wisconsin Act 410 (The Groundwater Bill), and requires the Department to develop groundwater quality standards for substances detected in, or having a reasonable probability of entering, the groundwater resources of the state.

The existing state groundwater quality standards for arsenic are, a preventive action limit (PAL) of 5 mg/L, and an enforcement standard (ES) of 50 mg/L. The federal drinking water maximum contaminant level (MCL) for arsenic has recently been reduced from 50 mg/L to 10 mg/L. Chapter 160, Stats., requires that federal numbers be considered in establishing state groundwater quality standards. The Department has therefore requested that the Department of Health and Family Services review the new federal MCL for arsenic and make recommendations for revisions to existing NR 140 groundwater quality standards for this substance.

State groundwater quality standards apply to all regulated facilities, practices and activities which may impact groundwater quality. Revisions to state groundwater quality standards for arsenic may impact groundwater clean-up actions at facilities, practices, and activities where this substance is a contaminant of concern.

Statutory authority

Sections 160.07, 160.11, 160.13, 160.15 and 281.12 (1), 281.15 (1) and (2) and 281.19 (1), Stats.

Staff time required

Approximately 462 hours will be needed by the Department.

Natural Resources

Subject

Section NR 404.04 pertaining to ambient air quality standards.

Policy analysis

National Ambient Air Quality Standards are established by USEPA for criteria pollutants. USEPA is required to periodically review these standards to see if they are sufficient to be protective of public health. These ambient air quality standards are incorporated into the Wisconsin Administrative Code in NR 404.04.

USEPA has established new ambient air quality standards for an 8-hour ozone concentration and for fine particulate matter (PM_{2.5}). USEPA has also revised the precision of the standards for sulfur oxides and nitrogen dioxide.

Statutory authority

Section 285.11 (6) and s. 285.21 (1) Wis. Stats.

Staff time required

The Department will need approximately 115 hours.

Natural Resources

Subject

Arsenic in Drinking Water – Need to begin work to adopt arsenic regulation into the State Safe Drinking Water code Chapter NR 809.

Policy analysis

The Federal Arsenic Rule sets a revised standard for arsenic in drinking water. The old standard of 50 parts per billion (ppb) has been revised downward to 10 ppb. All community and nontransient noncommunity water systems must meet the new standard by January of 2006. WDNR was originally required to adopt the rule by December 2002. We are requesting an extension from USEPA to adopt the rule not later than December 2004. As such, we need to begin work on the rule now to ensure we meet the extended rule adoption deadline date of December 2004.

Statutory authority

Federal Safe Drinking Water Act (42 USC 300f to 300j–26). Chapters 280 and 281 Wisconsin Statutes.

Staff time required

Approximately 176 hours will be needed by the Department.

Transportation

Subject

Objective of the rule. Chs. Trans 175, 176 and 177 deal with the statutory requirement of certain businesses to have operating authority, file sample forms and file proof of liability insurance with the Wisconsin Department of Transportation. Due to industry changes since deregulation, computer evolution, on-line access and changes within the Single State Registration System, amendments to chs. Trans 175, 176 and 177 are necessary. The proposed rule making would reflect these changes. The Department may decide to combine these three chapters into one chapter.

Policy analysis

Several changes are needed to eliminate obsolete references or outdated or archaic language.

Several changes are needed to recognize changed business processes which have occurred over the past several years. These include updating references to methods of filing, and communication between carrier and the Department, to eliminate methods that are no longer used and to add electronic method; and clarifying when a carrier is “inactive” for purposes of record retention.

Several changes clarify Department policy. These include clarifying which carriers are covered by these requirements; clarifying the difference between a company name change and a sale of the company for purposes of authority transfer; clarifying terms so that definitions are consistent with other Department motor carrier programs; clarifying time periods for submission of documents; clarifying the difference between having and having on file; and clarifying certain required lease provisions.

Statutory authority

Chapters 121—Subch. IV, 194, 227—Subch. II, 340, 341 and 344, Stats.

Staff time required

Approximately 120 hours.

Transportation

Subject

Objective of the rule. This rule making will amend ch. Trans 139, relating to motor vehicle trade practices, by revising the disclosure requirements regarding dealership service fees.

Trans 139 permits licensed Wisconsin motor vehicle dealers to charge customers a reasonable fee for services performed related to compliance with state and federal laws, verifications and public safety. Dealers must also justify the fee that they are charging, and disclose this fee to consumers.

Service fee disclosures currently required by ch. Trans 139 include:

- Service fee amount on the Dealer Supplemental Price Label for new cars
- Service fee amount and prescribed disclaimer language to the effect of “This is not a government fee...” on the Motor Vehicle Purchase Contract, Pre–lease Agreement and Lease Order Form

Additional service fee disclosure required by DOT policy statement.

The proposed rule change will codify the requirement to disclose service fee amount on the WI Buyers Guide. It will also create an alternative form for disclosing the service fee amount on a new car, in those instances where the Dealer Supplemental Price Label would not otherwise be needed on the vehicle, except to disclose a service fee.

The policy alternatives are to increase the disclosure requirements for service fees, or to maintain the rule in its current form. Revising the disclosure requirements will provide a more efficient disclosure alternative for those dealerships that choose to implement a service fee.

Statutory authority

Section 218.0152 (1), Stats., as created by 1999 Wis. Act 31 ss. 248 to 253.

Staff time required

Approximately 40 hours.

Transportation

Subject

Objective of the rule. This rule making will amend that portion of ch. Trans 305 relating to inspections and titling of homemade and replica vehicles, and ch. Trans 149 pertaining to inspections of rebuilt salvage vehicles. 2001 Wis. Act 109 amended s. 341.268, Stats., to exclude motorcycles from the definition of “replica” vehicle. After October 1, 2002, all motorcycles built by individuals or by unlicensed

manufacturers must be titled as “homemade” vehicles. This rule making will clarify what type of inspection will be required before a homemade vehicle, including a motorcycle may be registered and will reduce the number of receipts needed to document the source of parts used in constructing a homemade motorcycle or repairing a salvage motorcycle at the time of inspection.

Policy analysis

Current law allows only homemade vehicles and vehicles that replicate a vehicle 20 or more model years old to qualify for “hobbyist” registration plates. Amended statutory language eliminates the “replica” definition for motorcycles and expands the “homemade” definition to include motorcycles that reproduce a vehicle originally made by another manufacturer. Existing Division of Motor Vehicle titling policies will be changed to conform to the statutory definitions and applicable forms will be changed to provide for issuance of “hobbyist” plates only to “homemade” motorcycles that reproduce vehicles originally made by another manufacturer where the vehicle reproduced is 20 or more model years old. A homemade motorcycle of any age which does not resemble any previously manufactured vehicle will continue to qualify for hobbyist plates.

Current policies require that all homemade vehicles be inspected. Because 2001 Wis. Act 109 amended the definition of “homemade vehicle” to include motorcycles previously titled as replica vehicles, all motorcycles built by individuals or non–licensed manufacturers and titled after October 1, 2002 must be inspected by an inspector trained and authorized under s. 342.07, Stats. It is proposed that chs. Trans 149 and 305 be amended to clarify that inspections of homemade vehicles, including motorcycles, are to be conducted in the same manner as inspections of repaired salvage vehicles. Currently, if a salvage motor vehicle is inspected under ch. Trans 149, the owner pays an \$80.00 inspection fee. The inspections for homemade vehicles will have no fee since there is no statutory provision for charging a fee. It is further proposed to amend ch. Trans 149 to provide that the requirement for receipts for motorcycle parts be raised from the current \$50.00 to \$150.00 in order to capture information on major part purchases and to eliminate receipts for minor, non–essential motorcycle parts.

Chapter Trans 305 will be amended to make it consistent with the statutory changes to the definition of “replica” and “homemade” vehicles enacted by 2001 Wis. Act 109.

Statutory authority

Sections 85.16 (1), 227.11 (2) (a), Stats., and s. 341.268, Stats., as amended by 2001 Wis. Act 109.

Staff time required

100 hours.

Submittal of rules to legislative council clearinghouse

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

Health and Family Services

Rule Submittal Date

On March 21, 2003, the Department of Health and Family Services submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

The proposed rule relates to a variety of department rules.

Agency Procedure for Promulgation

The department anticipates issuing a “notice of no hearing” under s. 227.16 (2) (e), Stats.; approval of rules in final draft form by the DHFS Secretary; and legislative standing committee review under s. 227.19, Stats.

Contact

Larry Hartzke
267-2943

Revenue

Rule Submittal Date

On March 24, 2003 the Wisconsin Department of Revenue submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

The proposed rule amends ss. Tax 12.075 and 12.50 relating to the Notice of Assessment and exempt solar and wind energy systems.

Agency Procedure for Promulgation

A public hearing is not required. The proposed rule will be published under the 30-day notice procedure, pursuant to s. 227.16 (2) (e), Stats.

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

Contact

If you have questions, please contact:
Erika Esser
State and Local Finance Division
Telephone (608) 266-8182
E-mail eesser@dor.state.wi.us

Rule–making notices

Notice of Hearings

Health and Family Services (Medical Assistance, Chs. HFS 100—) [CR 03–021]

Notice is hereby given that, pursuant to s. 49.45 (24r), Stats., the Department of Health and Family Services will hold public hearings to consider amendments to chs. HFS 101 to 108, relating to operation of the family planning waiver program. Through its emergency rulemaking authority under s. 224.24, Stats., the Department issued these amendments as an emergency order effective January 31, 2003. These hearings are associated with that emergency rulemaking order and an identical proposed permanent rulemaking order.

Hearing information

The public hearings will be held:

Friday, April 25, 2003 from 10:00 a.m. to noon
Portage County Courthouse Annex
1462 Strongs Ave.
Conference Room 1
Stevens Point, WI

Monday, April 28, 2003 from 10:00 a.m. to noon
Wisconsin Department of Transportation
Waukesha Transportation District 2
2000 Pewaukee Ave., Room 140
Waukesha, WI

The hearing sites are fully accessible to people with disabilities.

Analysis Prepared by the Department of Health and Family Services

The Department must create and amend selected provisions under chs. HFS 101, 102, 103 and 107, relating to Medical Assistance to implement a waiver of federal regulations that allows the Department to provide family planning coverage for females of child–bearing age. The federal waiver allows for the expansion of Medicaid services for a limited array of services to specific individuals who would not otherwise be eligible for Medicaid coverage. Through this expansion of coverage, the Department hopes to reduce the number of unwanted pregnancies in Wisconsin. 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 existing s. HFS 107.21.

Copies of Rule and Contact Person

The rules upon which the Department is soliciting comments and which will be the subject of these hearings are posted at the Department’s administrative rules website at: http://www.dhfs.state.wi.us/News/Rules/Proposed_Final_Rules/Proposed_Rule_Index.htm

To find out more about the hearings or to request a copy of the proposed rules, you may also write, phone, or e–mail:

Alfred Matano

Division of Health Care Financing

P.O. Box 309, Room 350
Madison, WI 53701–0309
608–267–6848 or, if you are hearing impaired
608–266–1511 (TTY)
matana@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 a hearing difficult and if you, therefore, require an interpreter or a non–English, large–print or taped version of the hearing document, contact the person at the address or phone number 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 rules received at the above address no later than **May 1, 2003** will be given the same consideration as testimony presented at the hearing.

Fiscal Estimate

The administrative rule will allow the implementation of a Medicaid expansion of family planning services to single women ages 15 to 44 that have annual incomes below 185% of the federal poverty level. As directed by statute, the Department applied and received federal approval for this expansion of MA eligibility.

Currently, Medicaid and BadgerCare cover women below 185% of the federal poverty level who are either pregnant or have children. However, low–income women without children are not eligible for Medicaid or BadgerCare. Low–income women who do not qualify for these programs are unlikely to have either employer–provided insurance coverage, or sufficient personal funds to purchase family planning and reproductive health services in the private sector. They are therefore at a higher risk of unintended pregnancy. If a woman with an income below 185% federal poverty level becomes pregnant, Medicaid or BadgerCare would pay for birth costs, first year costs of the child, and other child cost and the cost for the mother.

The family planning waiver is a five–year demonstration project that will provide family planning services and ancillary family planning services, on a fee–for–service basis, to any woman between the ages of 15 and 44 whose family income does not exceed 185% of the federal poverty level. Funding for the family planning services will be funded 90% FED and 10% GPR. Funding for covered ancillary family planning services will be funded at the Medicaid matching rate.

By preventing unintended pregnancies and therefore preventing low–income women from becoming eligible for Medicaid or BadgerCare, the cost to Medicaid and BadgerCare is reduced. In the first three years years of operation, it is projected that the cost of providing the family planning services will exceed the savings. However, over the five–year a period, allowing low–income women access to family planing services, will save BadgerCare and Medicaid \$8,897,500 AF (\$1,557,100 GPR). The net cost is \$742,100 (\$129,900 GPR) in FY03 and \$1,638,100 AF (\$286,700 GPR) in FY04. The Department estimates that enrollment at the end of the five year demonstration period will reach approximately 47,000 women.

Initial Regulatory Flexibility Analysis

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

Notice of Hearing
Higher Educational Aids Board
[CR 02–148]

NOTICE IS HEREBY GIVEN That pursuant to s. 39.435, Stats, the Higher Educational Aid Board will hold a public hearing to consider amendments to ss. HEA 5.04 and 5.05 and the emergency rule amending s. HEA 5.05 of the Wisconsin Administrative Code relating to the administration of the Talent Incentive Program Grant.

The public hearing will be held:

Date, Time and Location

April 25, 2003 – 9:00 a.m. to 9:30 a.m.

State Capital, Room 201 SE

Madison, Wisconsin

The hearing is fully accessible to people with disabilities.

Analysis Prepared by the Higher Education Aids Board

The 1989 Wisconsin Act 31 created s. 39.435 which provides for 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. Current rules contain some criteria that are no longer relevant or contain unclear language that may cause otherwise eligible residents to not be considered eligible. Revising the rules eliminates obsolete language and makes clarifications that will allow fair and equitable administration of the program for all Wisconsin residents.

Statutory Authority: s. 39.435, Stats. as created by 1989 a. 31.

Initial Regulatory Flexibility Analysis

The proposed rules concern a student financial aid program and have no affect upon small business in Wisconsin.

Fiscal Estimate

The proposed revisions cause no alterations in the present allocation of funds so there is no fiscal impact.

Contact Person

To request copies of the revised rules, or for more information, please contact:

John Whitt, Talent Incentive Program Grant Coordinator

Higher Education Aid Board

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Written Comments on the revised rules received at the above address no later than **April 18, 2003** will be given the same consideration as testimony presented at the hearing.

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 02-121)**

Ch. ATCP 21, relating to plant inspection and pest control.

**Natural Resources
(CR 03-015)**

Chs. NR 10 and 15, relating to hunting and trapping regulations.

**Public Instruction
(CR 02-151)**

Ch. PI 23, relating to ESEA intradistrict safe school transfer options.

Rule orders filed with the revisor of statutes bureau

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

Agriculture, Trade and Consumer Protection (CR 02-078)

An order affecting chs. ATCP 10, 11 and 12, relating to farm raised deer and chronic wasting disease.
Effective 6-1-03.

Barbering and Cosmetology (CR 02-058)

An order affecting chs. BC 1 to 4, and 10, relating to cutting, disinfectants, disinfection, massaging, delegated medical procedures, body piercing, tattooing, tanning booths, managers, relocation of establishments, sterilization and forfeitures.
Effective 6-1-03.

Commerce (CR 02-127)

An order affecting ch. Comm 34, relating to amusement rides.
Effective 6-1-03 and 6-1-06.

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.

Natural Resources (CR 02-096)

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

Natural Resources (CR 02-098)

An order affecting chs. NR 50 and 64, relating to ATV, snowmobile and water safety patrols.
Effective 6-1-03.

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