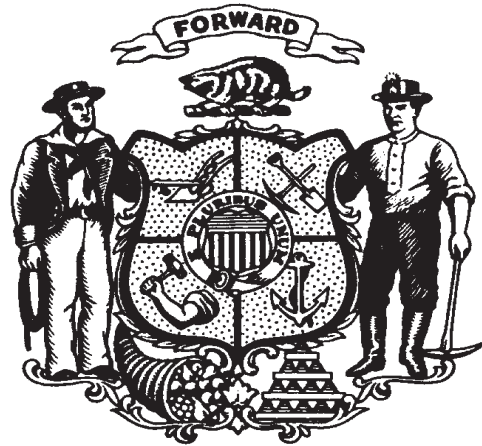


# Wisconsin Administrative Register

No. 571



Publication Date: July 14, 2003

Effective Date: July 15, 2003



Revisor of Statutes Bureau  
Suite 800, 131 West Wilson Street  
Madison, Wisconsin 53703-3233

## The 2001 – 02 Wisconsin Statutes and Annotations are now available in bound volumes or on the *WisLaw*<sup>®</sup> CD-ROM

### Bound Volumes:

Prices for the 2001 – 02 Wisconsin Statutes and Annotations bound volumes are detailed below. Any sales tax due must be added to these prices:

Hard Cover <u>With Postage</u>	Hard Cover <u>Without Postage</u>	Soft Cover <u>With Postage</u>	Soft Cover <u>Without Postage</u>
<b>\$151.00</b>	<b>\$144.00</b>	<b>\$126.00</b>	<b>\$120.00</b>

Send orders to the Document Sales and Distribution Section at the address below or call (608) 266–3358. Unless exempt by law, all sales are subject to 5% state sales tax and, where applicable, 0.5% county sales tax and 0.1% stadium tax. Prepayment is required for all orders. Payments by check, money order, or credit card should be made payable to WI Department of Administration. Credit card orders using either VISA or MasterCard may be placed by calling (800) 362–7253 or (608) 264–9419.

### *WisLaw*<sup>®</sup> CD-ROM:

Up-to-date *WisLaw*<sup>®</sup> CD-ROMs are released quarterly by the Revisor of Statutes Bureau. *WisLaw*<sup>®</sup> contains:

- Wisconsin Statutes and Annotations with Index
- Table of Cross-References and Table of Sections Affected by Acts
- Wisconsin Administrative Code with Index, Administrative Register, and Emergency Rules
- Executive Orders
- Wisconsin Acts with Index
- Supreme Court Rules and Internal Operating Procedures
- Recent Opinions of the Attorney General with Index
- Wisconsin Constitution with Annotations and Index
- U.S. Constitution
- Wisconsin Town Law Forms
- Wisconsin Code of Military Justice

All of the above *WisLaw*<sup>®</sup> Infobases are substantially integrated with hypertext links. The statutes now feature thousands of links between administrative rules and their authorizing statutes. State agencies are using *WisLaw*<sup>®</sup> for their legal research. *WisLaw*<sup>®</sup> is distributed by the Document Sales and Distribution Section to state agencies that submit a complimentary annual subscription form.

*WisLaw*<sup>®</sup> is available only by annual subscription. *WisLaw*<sup>®</sup> End-user license and subscription order forms are available at Document Sales or at <http://www.legis.state.wi.us/rsb>. CDs will be delivered only upon receipt of a signed license and subscription form and full payment. An annual subscription plus a license for no more than one simultaneous user costs \$99. Licenses for no more than 4 simultaneous users or for no more than 10 simultaneous users cost \$149 or \$199, respectively. Shipping is included. Unless exempt by law, all sales are subject to 5% state sales tax and, where applicable, 0.5% county sales tax and 0.1% Wisconsin stadium sales tax.

Orders by FAX will **not** be accepted; call (608) 266–3358 or TTY (608) 264–8499 or write to:

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

---



---

## Table of contents

---



---

**Emergency rules now in effect.****Pages 4 to 10**

Agriculture, Trade and Consumer Protection:

Rules relating to importing, selling, offering to sell, allowing public access to or disposal of prairie dogs or any mammal known to have been in contact with a prairie dog since April 1, 2003.

Chiropractic Examining Board:

Rules relating to passing and retaking the practical examination.

Commerce:

Financial Resources for Businesses & Communities, Chs. Comm 105–128

Rules relating to the use of rapid response funds in economically depressed areas of Wisconsin.

Employee Trust Funds:

Rules relating to the date as of which annual post–retirement annuity adjustments will occur.

Financial Institutions – Securities:

Rules relating to conforming Wisconsin’s rules concerning broker–dealer books and records to federally–mandated standards.

Health and Family Services:

Medical Assistance, Chs. HFS 100—

Rules relating to the Medicaid Family Planning Demonstration Project.

Health, Chs. HFS 110—

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 relating to critical access hospitals.

Rules relating to operation of the health insurance risk–sharing plan.

Higher Educational Aids Board:

Rules relating to the Talent Incentive Program Grant.

Insurance:

Rules relating to annual patients compensation fund and mediation fund fees and to establishing a rate of compensation for fund peer review council members and consultants.

Natural Resources:

Fish, Game, etc., Chs. NR 1—

Rules relating to the control and management of chronic wasting disease.

Rules relating to captive wildlife.

Rules relating to the control and management of chronic wasting disease.

**Scope statements.**

Health and Family Services:

**Pages 11 to 12**

Rules relating to ch. HFS 107, to permit greater flexibility to providers and recipients in scheduling private duty nursing (PDN) and respiratory care services (RCS) benefits covered by Wisconsin Medical Assistance (MA).

Veterans Affairs:

Rules relating to the Military Funeral Honors Program.

Veterinary Examining Board:

Rules relating to requirements for postgraduate training permit.

Rules relating to special use authorization to humane societies and animal shelters permitting them to acquire controlled substances for the exclusive purpose of euthanizing animals in their care.

Rules relating to requirements for delegation of veterinary medical acts by veterinary students, certified veterinary technicians and unlicensed veterinary assistants.

**Submittal of rules to the legislative council clearinghouse.****Page 13**

Employee Trust Funds:

Rule affecting ch. ETF 20, relating to the annuity dividend effective date.

Ethics Board:

Rule affecting ch. Eth 1, relating to the identification of a lobbying communication that relates to an attempt to influence legislative action.

Transportation:

Rule affecting ch. Trans 327, relating to motor carrier safety requirements.

Rule affecting chs. Trans 325 and 326, relating to motor carrier safety regulations.

**Rule–making notices.****Page 14 to 16**

Employee Trust Funds:

Hearing to consider revision to ch. ETF 20, relating to the annuity dividend effective date.

Health and Family Services:

Community Services, Chs. HFS 30—  
Hearings to consider revision to chs. HFS 45 and 46, relating to family and group child care centers.

Transportation:

Hearing to consider revision to ch. Trans 327, relating to motor carrier safety requirements.

Notice of proposed rule revising chs. Trans 325 and 326, relating to motor carrier safety regulations.

**Submittal of proposed rules to the legislature.****Page 17**

Commerce:

(CR 02–129) – Chs. Comm 2, 81–85 and 91

Insurance:

(CR 03–038) – Ch. Ins 17

Medical Examining Board:

(CR 03–023) – Ch. Med 22

Veterans Affairs:

(CR 03–045) – Ch. VA 13

Workforce Development:

(CR 03–022) – Ch. DWD 40

**Rule orders filed with the revisor of statutes bureau.**

**Page 18**

Agriculture, Trade and Consumer Protection:

(CR 02-141) – Chs. ATCP 90 to 92

Higher Educational Aids Board:

(CR 02-148) – Ch. HEA 5

Public Instruction:

(CR 02-151) – Ch. PI 23

---



---

## 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](http://www.legis.state.wi.us/rsb/code).*

---

### Agriculture, Trade and Consumer Protection

Rules adopted creating **s. ATCP 11.72 (15), (16), (17) and (18)**, relating to importing, selling, offering to sell, allowing public access to or disposal of prairie dogs or any mammal known to have been in contact with a prairie dog since April 1, 2003.

#### Finding of emergency

(1) During May and June 2003, at least 12 people in Wisconsin have developed illnesses within one to two weeks after the people have had contact with prairie dogs. Symptoms of the human illness include fever, cough, rash and swollen lymph nodes. Several of these people have needed to be hospitalized.

(2) Preliminary laboratory results indicate that the cause of the human illness is an orthopox virus that could be transmitted by prairie dogs. Some of the pet prairie dogs have exhibited signs of illness. There have been reports of other mammals that have come in contact with prairie dogs also exhibiting signs of illness.

(3) It is necessary to reduce the opportunities for human interaction with prairie dogs or other mammals that have been in contact with prairie dogs in order to protect the health, safety and welfare of Wisconsin residents. Therefore, the Wisconsin Department of Agriculture, Trade and Consumer Protection is adopting this emergency rule to protect the health, safety and welfare of the public.

**Publication Date:** June 12, 2003  
**Effective Date:** June 12, 2003  
**Expiration Date:** November 9, 2003  
**Hearing Date:** July 15, 2003

---

### Chiropractic Examining Board

Rules adopted revising **ch. Chir 2**, relating to passing and retaking the practical examination.

#### Finding of emergency

The Chiropractic Examining Board finds that preservation of the public peace, health, safety or welfare necessitates putting the rule amendments described into effect prior to the time the amendments would take effect if the agency complied with the notice, hearing and publication requirements established for rule-making in ch. 227, Stats. The facts warranting adoption of these rule amendments under s. 227.24, Stats., are as follows:

On December 19, 2002, the Chiropractic Examining Board adopted the national practical examination conducted by the National Board of Chiropractic Examiners as the board's practical examination for determining clinical competence in Wisconsin. The board has determined that the national practical examination is a better measure of competence than was the state examination previously administered by the board and that the public health, safety and welfare warrant that the national practical examination be instituted immediately. The rule changes herein conform to the terminology used in the board's rule with the textual description of the national practical examination and resolve doubts about the examination grades issued to applicants who complete the national practical examination.

The national practical examination describes the examination parts in different terms than are used in s. Chir 3.02, although the national practical examination covers the practice areas described in the existing rule. The rule amendments to s. Chir 2.03 (2) (intro.) resolve this difference.

This order deletes the reference in the board's current rule to passing "each part" of the examination. The national practical examination has one part and an applicant receives one grade for the part. In utilizing the national examination, the board approves the grading and grading procedures of the National Board of Chiropractic Examiners. Grade review procedures in s. Chir 2.09 are superfluous and the rule is repealed. The rule requiring reexamination is modified to avoid confusion over examination parts. The board is proceeding with promulgating these rule changes through a proposed permanent rule-making order.

**Publication Date:** June 28, 2003  
**Effective Date:** June 28, 2003  
**Expiration Date:** November 25, 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  
**Hearing Date:** June 16, 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  
**Hearing Date:** August 8, 2003  
**[See Notice This Register]**

---

## Financial Institutions – Securities

Rules adopted revising **ch. DFI-Sec 4**, relating to conforming Wisconsin's Securities Law rules concerning broker-dealer books and records to federally-mandated standards under the Securities Exchange Act.

#### Finding of emergency

The Division of Securities of the Department of Financial Institutions for the State of Wisconsin finds that an emergency exists and that the attached rules are necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency follows:

Congress in its passage of the National Securities Markets Improvement Act ("NSMIA") in 1996 prohibited state securities regulators from establishing or enforcing under their state securities laws or rules, record-keeping requirements for securities broker-dealers that are inconsistent with, or not required by, the U.S. Securities and Exchange Commission ("SEC").

Following passage of NSMIA, the SEC commenced a rule-making process that spanned a several-year period (including a 1998 reproposal of the entirety of the proposed rules for a new public comment period), culminating in adoption in late 2001 of an extensive series of broker-dealer books and records rules for effectiveness commencing May 2, 2003. The SEC's revised books and records rules cover a comprehensive series of areas, including: (1) customer

account records; (2) order ticket information; (3) customer complaints; (4) mandated reports and audits; (5) compliance manuals; (6) records maintenance, retention, production and access; and (7) records required to be maintained at a firm's home office and at "local" offices.

Because of the preemptive effects of federal law under NSMIA, all of the existing provisions of the Wisconsin administrative rules in Chapter SEC 4 under the Wisconsin Securities Law dealing with broker–dealer books and records covering the information categories (1) to (6) described above are superseded by the federal rules established by the SEC that became effective today, May 2, 2003. Additionally, certain existing Wisconsin Rule of Conduct provisions tied to the existing Wisconsin books and records rules need to be revised appropriately.

Consequently, it is necessary to immediately revise and amend Wisconsin's broker–dealer books and records rules to conform to the federal rules that now have become effective, and to remove inconsistent requirements contained in the existing Wisconsin books and record–keeping rules. A subcommittee of the North American Securities Administrators Association ("NASAA"), an organization comprised of the securities administrators of all 50 states, including Wisconsin, has reviewed the impact of the SEC's books and record–keeping rules on existing state securities law licensing rules, and recommended that states utilize the incorporation–by–reference–of–the–federal–rule treatment as set forth in this Order Adopting Emergency Rules.

Accordingly, the emergency rules do the following:

(1) Under Section 1, the entirety of the existing Wisconsin general books and records requirement for licensed broker–dealers as set forth in rules DFI–Sec 4.03 (1) to (4) (that particularizes the types of required books and records, and prescribes records retention periods), is repealed and recreated to incorporate by reference the new, superseding, federal rules adopted by the SEC contained in sections 17a–3 and 4 under the Securities Exchange Act. New sub. (1) requires a firm to retain the books and records cross–referenced in federal SEC rules 17a–3 and 4, and new sub. (2) incorporates by reference the records preservation and retention requirements in federal SEC rule 17a–4. New subsections (3) and (4) replace the current Wisconsin rules in DFI–Sec 4.03 (3) and (4) [that prescribe branch office records and retention requirements], with language which provides that the books and records required to be prepared and maintained at broker–dealer offices triggering the definition of "branch office" under current rule DFI–Sec 1.02 (7) (a), are the same records prescribed under the new federal provisions in new federal Rule 17a–3, and must be held for the retention periods specified in new federal Rule 17a–4.

(2) Section 2 repeals current Wisconsin rule DFI–Sec 4.03 (6) [which permitted broker–dealers to utilize alternative records to satisfy the principal office and branch office records required in existing rules DFI–Sec 4.03 (1) and (3)], because under NSMIA, states no longer have the authority to permit alternative forms of broker–dealer records different from the records prescribed by federal law.

(3) Section 3 is a renumbering of current rule DFI–Sec 4.03 (7) to reflect the repeal of DFI–Sec 4.03 (6) in Section 2 above.

(4) Under Section 4, the existing Wisconsin Rule of Conduct provision in DFI–Sec 4.05 (5) [requiring broker–dealers to provide customers with prescribed new account information and subsequent amendments to such information] is amended to both substitute a cross–reference to the new federal provision on that subject in SEC rule

17a–3(a)(17) under the Securities Exchange Act of 1934, and to repeal language in the Wisconsin rule inconsistent with federal provisions.

**Publication Date:** May 7, 2003  
**Effective Date:** May 7, 2003  
**Expiration Date:** October 4, 2003  
**Hearing Date:** August 11, 2003

---

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

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

#### Finding of emergency

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

On June 25, 1999, the Department submitted a request for a waiver of federal law to the Centers for Medicare and Medicaid Services (CMS), the agency within the United States Department of Health and Human Services that controls states' use of Medicaid funds. On June 14, 2002, the Centers for Medicaid and Medicare granted the waiver, effective January 1, 2003. The waiver allows the state to expand Medicaid services by providing coverage of family planning services for females of child–bearing age who would not otherwise be eligible for Medicaid coverage. Under the waiver, a woman of child–bearing age whose income does not exceed 185% of the federal poverty line will be eligible for most of the family planning services currently available under Medicaid, as described in s. HFS 107.21. Through this expansion of coverage, the Department hopes to reduce the number of unwanted pregnancies in Wisconsin.

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

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

\* The Joint Committee for Review of Administrative Rules suspended this emergency rule on April 30, 2003



## Health and Family Services (4)

### (Health, Chs. HFS 110—)

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

#### Finding of emergency

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

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

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

**Publication Date:** December 31, 2002  
**Effective Date:** December 31, 2002  
**Expiration Date:** May 30, 2003  
**Hearing Date:** February 17, 2003  
**Extension Through:** July 28, 2003

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

#### Finding of emergency

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

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

- Specifying the thresholds for an environment to be considered as presenting a lead-based paint hazard; and

- Requiring training and certification of persons who perform lead hazard reduction activities or lead investigation activities so those persons are best able to prevent exposure of building occupants to hazardous levels of lead.

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

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

If the Department does not make these changes to ch. HFS 163, Wisconsin could lose some or all of its Federal lead grant funding and EPA's authorization for the Department's lead program. Since the federal regulation provides the first measurable definition of a lead-based paint hazard, the Department needs to adopt this definition in order to protect the state's citizens.

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

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

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

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

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

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

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

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

**Publication Date:** January 3, 2003  
**Effective Date:** January 3, 2003  
**Expiration Date:** June 2, 2003  
**Hearing Date:** April 2, 2003  
**Extension Through:** July 31, 2003

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

#### **Finding of emergency**

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

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

The Department recently learned that the tenuous financial condition of St. Mary’s Hospital in Superior jeopardizes its continued operation and places it in imminent danger of closing unless the hospital can be designated as a CAH and receive cost–based reimbursement. The closure of St. Mary’s would reduce Douglas County residents’ accessibility to acute care. Moreover, the loss of the facility would have a

significant detrimental effect on the county because St. Mary’s annual payroll is between \$7–8 million and it employs the equivalent of about 160 persons full–time.

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

**Publication Date:** March 21, 2003  
**Effective Date:** March 21, 2003  
**Expiration Date:** August 18, 2003  
**Hearing Date:** June 20, 2003

4. Rules adopted revising **ch. HFS 119**, relating to operation of the health insurance risk–sharing plan.

#### **Exemption from finding of emergency**

Section 149.143 (4), Stats., permits the Department to promulgate rules required under s. 149.143 (2) and (3), Stats., by using emergency rulemaking procedures, except that the Department is specifically exempted from the requirement under s. 227.24 (1) and (3), Stats., that it make a finding of emergency.

The State of Wisconsin in 1981 established a Health Insurance Risk–Sharing Plan (HIRSP) for the purpose of making health insurance coverage available to medically uninsured residents of the state. HIRSP offers different types of medical care coverage plans for residents. According to state law, HIRSP policyholder premium rates must fund sixty percent of plan costs. The remaining funding for HIRSP is to be provided by insurer assessments and adjustments to provider payment rates, in co–equal twenty percent amounts.

One type of medical coverage provided by HIRSP is the Major Medical Plan. This type of coverage is called Plan 1. Eighty–nine percent of the 16,445 HIRSP policies in effect in March 2003, were of the Plan 1 type. Plan 1 has Option A (\$1,000 deductible) or Option B (\$2,500 deductible). The rates for Plan 1 contained in this rulemaking order increase an average of 10.6% for policyholders not receiving a premium reduction. The average rate increase for policyholders receiving a premium reduction is 18.5%. Rate increases for individual policyholders within Plan 1 range from 5.4% to 20.9%, depending on a policyholder’s age, gender, household income, deductible and zone of residence within Wisconsin. Plan 1 rate increases reflect general and industry–wide premium increases and take into account the increase in costs associated with Plan 1 claims.

A second type of medical coverage provided by HIRSP is for persons eligible for Medicare. This type of coverage is called Plan 2. Plan 2 has a \$500 deductible. Eleven percent of the 16,445 HIRSP policies in effect in March 2003, were of the Plan 2 type. The rate increases for Plan 2 contained in this rulemaking order increase an average of 15.6% for policyholders not receiving a premium reduction. The average rate increase for policyholders receiving a premium reduction is 23.8%. Rate increases for individual policyholders within Plan 2 range from 9.9% to 26.5%, depending on a policyholder’s age, gender, household income

and zone of residence within Wisconsin. Plan 2 rate increases reflect general and industry-wide cost increases and take into account the increase in costs associated with Plan 2 claims. Plan 2 premiums are also set in accordance with the authority and requirements set out in s. 149.14 (5m), Stats.

The Department through this order amends ch. HFS 119 in order to update HIRSP premium rates in accordance with the authority and requirements set out in s. 149.143 (2) (a), Stats. The Department is required to set premium rates by rule. HIRSP premium rates must be calculated in accordance with generally accepted actuarial principles.

The Department through this order is also increasing total HIRSP insurer assessments and reducing provider payment rates, in accordance with the authority and requirements set out in s. 149.143 (2) (a) 3. and 4., Stats. With the approval of the HIRSP Board of Governors and as required by statute, the Department reconciled total costs for the HIRSP program for calendar year 2002. The Board of Governors approved a methodology that reconciles the most recent calendar year actual HIRSP program costs, policyholder premiums, insurance assessments and health care provider contributions collected with the statutorily required funding formula.

By statute, the adjustments for the calendar year are to be applied to the next plan year budget beginning July 1, 2003. The total annual contribution to the HIRSP budget provided by an assessment on insurers is \$35,444,109. The total annual contribution to the HIRSP budget provided by an adjustment to the provider payment rates is \$39,170,353. On April 9, 2003, the HIRSP Board of Governors approved the calendar year 2002 reconciliation process. On May 19, 2003 the Board approved the HIRSP budget for the plan year July 1, 2003 through June 30, 2004.

The department's authority to amend these rules is found in s. 149.143 (2) (a) 2., 3., 4., and (3), Stats., and s. 227.11 (2) Stats. The rule interprets ss. 149.142, 149.143, 149.146, and 149.165, Stats.

**Publication Date:** June 24, 2003  
**Effective Date:** July 1, 2003  
**Expiration Date:** November 28, 2003  
**Hearing Date:** July 15, 2003

---

### Higher Educational Aids Board

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

#### Finding of emergency

The Wisconsin Higher Educational Aids Board finds that an emergency exists and that the attached rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. A statement of the facts constituting the emergency is:

The 1989 Wisconsin Act 31 created s. 39.435 which provides for Talent Incentive Program Grants to Wisconsin residents who meet criteria established by the statute and administrative code. The Wisconsin Higher Educational Aids Board (HEAB) administers this program under s. 39.435 and under ch. HEA 5. According to the administrative rules, a student must be continuously enrolled from semester to semester and year to year to continue to receive this grant after their initial year. Under current rules, exceptions to this requirement may only be made for medical reasons.

Recently, students who have returned from active duty military service and resumed enrollment at a college or university have begun to request exceptions to the continuous

enrollment requirement. This situation is not addressed in the current administrative rules, because the break in these students' enrollment was not due to medical reasons.

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

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

**Publication Date:** April 4, 2003  
**Effective Date:** April 4, 2003  
**Expiration Date:** September 1, 2003  
**Hearing Date:** April 25, 2003

---

### Commissioner of Insurance

Rules adopted revising ch. Ins 17, relating to annual patients compensation fund and mediation fund fees for the fiscal year beginning July 1, 2003 and relating to establishing a rate of compensation for fund peer review council members and consultants.

#### 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 or welfare. The facts constituting the emergency are as follows:

Actuarial and accounting data necessary to establish PCF fees is first available in January of each year. It is not possible to complete the permanent fee rule process in time for the patients compensation fund (fund) to bill health care providers in a timely manner for fees applicable to the fiscal year beginning July 1, 2003.

The commissioner expects that the permanent rule corresponding to this emergency rule, clearinghouse No. 03-039, will be filed with the secretary of state in time to take effect October 1, 2003. Because the fund fee provisions of this rule first apply on July 1, 2003, it is necessary to promulgate the rule on an emergency basis. A hearing on the permanent rule, pursuant to published notice thereof, was held on May 14, 2003.

**Publication Date:** June 11, 2003  
**Effective Date:** July 1, 2003  
**Expiration Date:** November 28, 2003

---

### Natural Resources (3) (Fish, Game, etc., Chs. NR 1-)

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

#### Finding of emergency

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to protect the public health, safety and welfare. The state legislature has delegated to the department rule-making authority in 2001



Wisconsin Act 108 to control the spread of Chronic Wasting Disease (CWD) in Wisconsin. CWD poses a risk to the health of the state's deer herd and citizens and is a threat to the economic infrastructure of the department, the state, its citizens and businesses.

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

2. Rules adopted 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  
**Extension Through:** July 29, 2003

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

**Finding of emergency**

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

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

**Publication Date:** January 11, 2003  
**Effective Date:** January 11, 2003  
**Expiration Date:** April 1, 2003  
**Hearing Date:** February 11, 2003  
**Extension Through:** April 30, 2003 (part)  
 September 1, 2003 (part)

---



---

## Scope statements

---



---

### Health and Family Services

#### Subject

To amend sections HFS 107.113 and 107.12 to permit greater flexibility to providers and recipients in scheduling private duty nursing (PDN) and respiratory care services (RCS) benefits covered by Wisconsin Medical Assistance (MA).

#### Policy analysis

Chapter HFS 107 sets forth the Wisconsin MA covered services and reimbursement requirements for providers. As written, the rule limits the amount of time a nurse may provide direct PDN or RCS care to an MA recipient. This serves to assure the health, safety, and welfare of the recipient.

In particular, s. HFS 107.113 (5) (d), governing RCS, currently provides that “[s]ervices provided by one individual in excess of 12 continuous hours per day or 60 hours per week” are not covered services. The PDN rule has a similar but not identical limitation. That rule, s. HFS 107.12 (2) (b), states that PDN “is limited to 12 continuous hours in each 24 hour period and no more than 60 hours in a calendar week,” and that “[a] prior authorization request for 2 consecutive 12–hour periods shall not be approved.”

The Department has determined that strict adherence to the above requirements sometimes creates an unjustified burden to both consumers and providers. Therefore, the Department is seeking to amend the rules to reduce these restrictions.

Two committees advise the Department on issues relating to home health care. Both of these committees, the Home Care Consumer Advisory Committee and the Home Care Advisory Committee, have requested a change such as the Department is now considering. The providers affected by these requirements are home health agencies and nurses in independent practice.

#### Statutory authority

Section 49.45 (10), Stats.

#### Staff time required

Division of Health Care Financing staff estimate that rule development will require about 100 hours over the course of six to twelve months to develop and promulgate the proposed rules.

### Veterans Affairs

#### Subject

Creation of ch. VA 17 of the Wisconsin Administrative Code, relating to the Military Funeral Honors Program.

*Objective of the rule.* The proposed rule would implement the following criteria relative to the operation and management of the Military Funeral Honors Program.

- Establish a 90 day timeline from the date of honors being performed within which a veterans service organization must submit a completed reimbursement stipend form in order to receive payment.

- Scale the amount of the stipend to the level of honors performed.

- Require veterans service organizations to complete and be certified/recognized, or scheduled to complete a designated training program in order to be eligible for the state stipend reimbursement.

- Upon federal funding becoming available for reimbursement to veterans service organizations performing honors, require that the organization must first request federal reimbursement before requesting state reimbursement for honors performed that day.

- Require that any veteran being interred at a State Veterans Cemetery receive honors from the department’s honors teams, unless the veteran’s family directs otherwise.

- In order for veterans service organization to be eligible to purchase the “MFH Burial Coin” from an authorized vendor, to be given to a family when the flag is presented, the organization must be certified/recognized by completing a designated training program.

#### Policy analysis

Due to the continued increase of veteran deaths the usage of the Military Funeral Honors Program continues to increase. With the continued increase of funeral directors requesting honors through the Program and the number of veterans service organizations assisting with conducting honors, the overall program costs continue to rise. In order to provide professional and dignified honors for a veteran and his/her family, in a cost–effective manner, rules should be established for the conduct of honors and the reimbursement to organizations. The proposed rules would permit the department to more adequately address the quality of honors being provided and the standards for reimbursement.

#### Statutory authority

Sections 45.19 and 45.35 (3), Stats.

#### Staff time required

Approximately 15 hours of Department of Veterans Affairs staff time will be needed to promulgate the rules.

### Veterinary Examining Board

#### Subject

2001 Wisconsin Act 76 amended s. 453.06 (2m) (b), Stats. That section previously required an applicant for a temporary postgraduate training permit to either have completed the national licensure examination, be scheduled to take the examination or be waiting for the results of the national examination. Act 76 removed that requirement.

*Objective of the Rule.* To amend s. VE 5.03, Wis. Admin. Code, which reflects the previous requirement of s. 453.06 (2m) (b), Stats., to be consistent with 2001 Wisconsin Act 76.

#### Policy analysis

There should not be a conflict between the statute and the administrative code.

#### Statutory authority

Sections 15.08 (5) (b), 227.11 (2) and 453.03, Stats.

#### Staff time required

50 hours.



## Veterinary Examining Board

### Subject

Special use authorization to humane societies and animal shelters permitting them to acquire controlled substances for the exclusive purpose of euthanizing animals in their care.

*Objective of the Rule.* To permit humane societies, wildlife breeding organizations and wildlife research organizations to possess emergency medical kits containing controlled substances to be utilized to sedate animals in the field for the purpose of isolation, transport or emergency care.

### Policy analysis

The special use authorization issued by the Wisconsin Controlled Substances Board authorizes humane societies, wildlife breeders and wildlife research organizations to possess controlled substances only for the purpose of euthanizing animals in their care. If the purpose is only to sedate the animal for the purpose of transport, medical care or protection of the public, a veterinarian must be involved. This is often difficult or impossible on short notice. The proposed rule would permit these organizations to maintain an emergency medical kit to be utilized by authorized personnel under the oversight of a licensed veterinarian, pursuant to guidelines formulated by the U.S. Drug Enforcement Administration and provided to the Veterinary Examining Board. Availability of these kits to sedate animals in the field will benefit wildlife as well as enhancing the public health, safety and welfare.

### Statutory authority

Sections 15.08 (5) (b), 227.11 (2) and 453.03, Stats.

### Staff time required

50 hours.

## Veterinary Examining Board

### Subject

Requirements for delegation of veterinary medical acts by veterinary students, certified veterinary technicians and unlicensed veterinary assistants. The proposed amendment would permit veterinarians to delegate services to unlicensed persons consisting of muscular or skeletal manipulation pursuant to a written agreement between the veterinarian and the unlicensed assistant.

*Objective of the Rule.* To permit persons with training in chiropractic or physical therapy to provide those services to animals other than humans under the general supervision of a licensed veterinarian.

### Policy analysis

Persons licensed to practice chiropractic or physical therapy are frequently providing those services to animals – often without referral or supervision by a licensed veterinarian. Additionally, veterinarians are often asked by clients to refer animals to chiropractors or physical therapists for care. Under current rules, those services may be delegated under immediate on-premises supervision of a veterinarian, which means that the veterinarian must either stand by at the place where the animal is kept while the services are provided, or that the animals be brought to the veterinary clinic. The former alternative is expensive and wasteful. The latter alternative is difficult or impossible to accomplish in the case, for example, of an equine patient. The proposed rule would legitimize what is already occurring.

### Statutory authority

Sections 15.08 (5) (b), 227.11 (2) and 453.03, Stats.

### Staff time required

50 hours.

---

---

## Submittal of rules to legislative council clearinghouse

---

---

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

### Employee Trust Funds

#### Rule Submittal Date

On June 27, 2003, the Department of Employee Trust Funds submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse affecting ch. ETF 20, relating to the annuity dividend effective date.

#### Agency Procedure for Promulgation

A public hearing is scheduled for Friday, August 8, 2003, at 1:00 p.m. in Room 2A, at the Department of Employee Trust Funds, 801 West Badger Road, Madison, Wisconsin.

#### Contact

If you have any questions, you may contact Linda Owen, Division of Retirement Services, at (608) 261-8164.

### Ethics Board

#### Rule Submittal Date

On June 26, 2003, the Wisconsin Ethics Board submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse amending s. Eth 1.03 and creating s. Eth 1.04, relating to the identification of a lobbying communication that relates to an attempt to influence legislative action.

#### Agency Procedure for Promulgation

A public hearing is required.

#### Contact

Jonathan Becker  
(608) 267-0647

### Transportation

#### Rule Submittal Date

On June 24, 2003, the Department of Transportation submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse amending ch. Trans 327, relating to motor carrier safety requirements.

#### Agency Procedure for Promulgation

A public hearing is required and scheduled for July 30, 2003.

The Division of State Patrol is the organizational unit responsible for promulgation of the proposed rule.

#### Contact

Julie A. Johnson, Paralegal  
(608) 266-8810

### Transportation

#### Rule Submittal Date

On June 24, 2003, the Department of Transportation submitted a notice of intent to adopt rule without public hearing to the Wisconsin Legislative Council Rules Clearinghouse amending chs. Trans 325 and 326, relating to motor carrier safety regulations.

#### Agency Procedure for Promulgation

A public hearing is not required.

The Division of State Patrol is the organizational unit responsible for promulgation of the proposed rule.

#### Contact

Julie A. Johnson, Paralegal  
(608) 266-8810

---



---

## Rule–making notices

---



---

### Notice of Hearing Employee Trust Funds (CR 03–062)

The Wisconsin Department of Employee Trust Funds will hold a public hearing to review this proposed rule, which amends s. ETF 20.25 (1) (a) and (2), Wis. Adm. Code, relating to the annuity dividend effective date in accordance with the provisions of s. 227.16 (1), Stats. The public hearing will be held on **Friday, August 8, 2003**, at 1:00 p.m. in Room 2A, 801 West Badger Road, Madison, Wisconsin.

The public record on this proposed rule making will be held open until 4:30 p.m. on Monday, **August 11, 2003**, to permit the submission of written comments from persons unable to attend the public hearing in person, or who wish to supplement testimony offered at the hearing. Any such written comments should be addressed to Linda Owen, Department of Employee Trust Funds, 801 West Badger Road, P.O. Box 7931, Madison, Wisconsin 53707–7931.

#### Analysis Prepared by the Department of Employee Trust Funds

Statutory Authority: s. 40.03 (1) (m), (2) (i), (7) (d) and (8) (d), Stats.

Statutes Interpreted: ss. 40.27 (2) and 40.28 (2), Stats.

Current administrative rule under s. ETF 20.25 specifies that the Wisconsin Retirement System (WRS) fixed annuity dividends and variable annuity adjustments based on surpluses and/or deficiencies in the annuity reserve shall be effective on March 1 of each year. The proposed rulemaking would change the effective date of these annuity changes to April 1 of each year. The March 1 effective date for annuitant dividends was established in order to distribute annuity increases to annuitants as quickly as possible. However, in 2003 there was a 27% variable annuity decrease and no fixed annuity adjustment. Due to the harm that implementing the variable annuity increase would cause to annuitants, an emergency rule was promulgated to leave the distribution date as April 1 for 2003. As a result of the negative investment returns during the past three years, fixed annuitant dividends are expected to be flat or negative for a number of years. Due to the financial harm that distributing negative returns one month earlier would cause to WRS annuitants, the Department proposes to permanently return the annual dividend distribution date to April 1.

#### Fiscal Estimate

The proposed rule has no fiscal impact on county, city, village, town, school district, technical college district or sewerage district fiscal liabilities and revenues. The rule itself has no anticipated state fiscal effect during the current biennium and no future side effect on state funds.

#### Initial Regulatory Flexibility Analysis

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

#### Copies of Rule and Contact Persons

Copies of this rule are available without cost by making a request to the Department of Employee Trust Funds, Office of the Secretary, P.O. Box 7931, Madison, Wisconsin 53707,

telephone (608) 266–1071. For questions about this rule making, please call Linda Owen, Policy Analyst, at (608) 261–8164.

### Notice of Hearings Health and Family Services (Community Services, Chs. HFS 30—) (CR 03–052)

NOTICE IS HEREBY GIVEN that pursuant to ss. 227.16 (1), 227.17 and 227.18, Stats., the Department of Health and Family Services will hold a public hearing to consider the proposed revision to chs. HFS 45 and 46, relating to family and group child care centers.

#### Hearing Information

The public hearings will be held:

Date & Time	Location
<b>July 28, 2003</b> Monday 4:00 p.m. to 7:00 p.m.	Room E102 Northcentral Technical College 1000 West Campus Dr. <b>Wausau, WI</b>
<b>August 14, 2003</b> Thursday 4:00 p.m. to 7:00 p.m.	Room 151 DHFS Southeastern Regional Office 141 NW Barstow <b>Waukesha, WI</b>

The hearing sites are fully accessible to people with disabilities.

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

The Department's administrative rules governing the licensing of day care centers are chs. HFS 45 and 46. Chapter HFS 45 applies to day care centers that care for between four and eight children under age seven. The Department currently refers to these centers as "family day care centers." Chapter HFS 46 applies to day care centers that care for nine or more children under age seven. The Department currently refers to these centers as "group day care centers."

With minor exceptions, the Department has not revised ch. HFS 45 since 1989. Since then, several events have suggested or required its modification.

1. In 1997, the Department created ch. HFS 46. Chapters HFS 45 and 46 address similar topics and should, but currently do not always, contain comparable requirements, including those related to definitions, licensing procedures and enforcement actions. Therefore, one purpose of this rulemaking order is to unify the treatment of a variety of subjects across the chapters.

2. Since 1989, a variety of child safety practices standards have changed and become generally accepted. For example, cardiopulmonary resuscitation training for childcare providers has become standardized. The Department's proposed rules for both chs. HFS 45 and 46 reflect these practices.

3. Pertinent statutory changes over the past five years relating to caregiver background checks under s. 48.685, Stats., and prohibitions on smoking under s. 101.123 (2) (bm),

Stats., are reflected in the rules. In addition, 2001 Wisconsin Act 16 amended s. 48.67, Stats., to require that all child care centers licensed to care for children under age one must receive training in the most recent medically accepted practice to reduce the risk of Sudden Infant Death Syndrome. The proposed rules describe the needed training.

4. The proposed rules reflect changes in the ways the Department issues a license and create provisions that would allow the Department to bar consideration of an application if the applicant has had a previous license revoked or application denied for a substantive reason.

5. The Department proposes to change the term "day care center" to the more descriptive term "child care center."

#### Contact Person

To find out more about the hearing or to request a copy of the proposed rules visit the Bureau of Regulation and Licensing website at [http://www.dhfs.state.wi.us/rl\\_dcfs/INDEX.HTM](http://www.dhfs.state.wi.us/rl_dcfs/INDEX.HTM) or contact:

Kimberly Hahn  
Bureau of Regulation and Licensing  
P.O. Box 8916  
Madison, WI 53708-8916  
608-266-9314  
hahnks@dhfs.state.wi.us

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

Written comments received by mail or e-mail at the above address no later than 5:00 p.m., **August 25, 2003**, will be given the same consideration as testimony presented at a hearing.

#### Fiscal Estimate

The amendments to chs. HFS 45 and 46 will not affect the revenue of state government.

#### Initial Regulatory Flexibility Analysis

The revision of ch. HFS 45 will affect family child care centers licensed to care for up to 8 children. The revisions to HFS 46 will affect group child care centers licensed to care for 9 or more children. As of June 2003 there were 3,111 licensed family child care centers and 2,399 licensed group child care centers. All programs affected by the proposed changes to the administrative code will receive a mailing from the Department indicating the dates, times and locations of scheduled public hearings as well as instructions on how to obtain a copy of the proposed revisions and the procedure to make oral or written comments regarding the revisions.

The proposed revisions to the rules expand the list of items that must be reported to the Department within a specified time frame. The reports required in the rule revision are a means by which the Department obtains information about situations occurring at a child care center or that affect children enrolled at a center which have the potential to affect the health, safety or welfare of the children enrolled in the program. These new reporting requirements are being proposed for the purpose of protecting the children in care. Therefore, the Department has not proposed specific exemptions from these reporting requirements.

The Department is also proposing rule revisions that will bring ch. HFS 45 into alignment with ch. HFS 46 and will reflect current best practices in early childhood education and care. The Department has included provisions in the rule

revisions that allow individual programs to request an exception to any given rule provided a alternative plan for protecting the health, safety and welfare of children in care is also included with the request. These exception requests are evaluated and approved on an individual basis.

### Notice of Hearing Transportation (CR 03-059)

NOTICE IS HEREBY GIVEN that pursuant to ss. 110.07, 110.075, 194.38, 194.43 and 227.11, Stats., and interpreting ss. 110.07 and 110.075, and ch. 194, Stats., the Department of Transportation will hold a public hearing in **Room 551** of the Hill Farms State Transportation Building, 4802 Sheboygan Avenue, Madison, Wisconsin on **July 30, 2003**, at **9:00 AM**, to consider the amendment of ch. Trans 327, relating to motor carrier safety requirements.

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 close of business on **Friday, August 8, 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 Charles Teasdale, Department of Transportation, Division of State Patrol, Room 551, P. O. Box 7912, Madison, WI 53707-7912.

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 Department of Transportation

Statutory Authority: ss. 110.07, 110.075, 194.38, 194.43 and 227.11, Stats.

Statutes Interpreted: ss. 110.07 and 110.075, and ch. 194, Stats.

General Summary of Proposed Rule. This rule making will amend ch. Trans 327, relating to intrastate motor carrier safety regulations, to bring it into compliance with the most recent changes to the Federal Motor Carrier Safety Regulations which will go into effect on January 4, 2004. Amendment of this rule will assure State Patrol inspectors and troopers are enforcing the most recent Federal Motor Carrier Safety Regulations for intrastate carriers. The update of this rule will also keep the Department in compliance to qualify for continued Motor Carrier Safety Assistance Program (MCSAP) funding.

The Department annually updates ch. Trans 327 to keep current with the most recent changes to 49 CFR parts 390, 391, 392, 393, 396 and 397.

#### Fiscal Estimate

The Department estimates that there will be no fiscal impact on the liabilities or revenues of any county, city, village, town, school district, vocational, technical and adult education district or sewerage district. The Department estimates that there will be no fiscal impact on state revenues or liabilities.

#### Initial Regulatory Flexibility Analysis.

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

#### Copies of Proposed Rule

Copies of the proposed rule may be obtained upon request, without cost, by writing to Charles Teasdale, Division of State Patrol, P. O. Box 7912, Room 551, Madison, WI



53707-7912, or by calling (608) 266-0305. Alternate formats of the proposed rule will be provided to individuals at their request.

**Notice of Proposed Rule  
Transportation  
(CR 03-060)**

NOTICE IS HEREBY GIVEN that pursuant to the authority of ss. 110.075 (6), 194.38 (2), 194.43, 346.45 (4), and 227.11, Stats., interpreting ss. 110.07, 110.075, 194.38 and 194.43, Stats., and according to the procedure set forth in s. 227.16 (2) (e), Stats., the Wisconsin Department of Transportation will adopt the following rule amending chs. Trans 325 and 326, relating to motor carrier safety regulations, without public hearing unless, within 30 days after publication of this notice, **July 15, 2003**, the Department of Transportation is petitioned for a public hearing by 25 natural persons who will be affected by the rule; a municipality which will be affected by the rule; or an association which is representative of a farm, labor, business or professional group which will be affected by the rule.

Questions about this rule may be addressed to Charles Teasdale, Division of State Patrol, Room 551, P. O. Box 7912, Madison, WI 53707-7912, telephone (608) 266-0305.

**Analysis Prepared by the Department of Transportation**

Statutory Authority: ss. 110.075 (6), 194.38 (2), 194.43 and 346.45 (4), Stats.

Statutes Interpreted: ss. 110.07, 110.075, 194.38 and 194.43, Stats.

General Summary of Proposed Rule. This rule making will amend two existing chapters to bring them into compliance with changes to the federal regulations which go into effect on January 4, 2004. These changes are as follows:

Chapter Trans 325 adopted motor carrier safety regulations of the United States Department of Transportation in effect on June 1, 2002. This amendment changes the date from June 1, 2002 to January 4, 2004. This change allows Wisconsin to enforce the most recent motor carrier safety regulations. All vehicles operating in interstate commerce are already subject, under federal law, to any changes that have been adopted between June 1, 2002 to January 4, 2004.

Chapter Trans 326 adopted motor carrier safety requirements for transportation of hazardous materials of the United States Department of Transportation in effect on June 1, 2002. This amendment changes the date from June 1, 2002 to January 4, 2004. This change allows Wisconsin to enforce the most recent version of the motor carrier safety requirements for transportation of hazardous materials. All vehicles operating in interstate and intrastate commerce are already subject under federal law to any changes that have been adopted between June 1, 2002 to January 4, 2004.

**Fiscal Estimate**

The Department estimates that there will be no fiscal impact on the liabilities or revenues of any county, city, village, town, school district, vocational, technical and adult education district or sewerage district, or any federally-recognized tribes or bands.

**Initial Regulatory Flexibility Analysis.**

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

**Copies of Rule**

Copies of this proposed rule can be obtained, without cost, by writing to Charles Teasdale, Division of State Patrol, 4802 Sheboygan Avenue, Room 551, P. O. Box 7912, Madison, WI 53707-7912, or by calling (608) 266-0305. Alternate formats of the proposed rule will be available to individuals upon request.

**Text of Proposed Rule**

Under the authority vested in the state of Wisconsin, department of transportation, by ss. 110.075 (6), 194.38 (2), 194.43 and 346.45 (4), Stats., the department of transportation hereby proposes to amend rules interpreting ss. 110.07, 110.075, 194.38 and 194.43, Stats., relating to motor carrier safety regulations.

**SECTION 1.** Trans 325.02 (intro.) and (8) are amended to read:

**Trans 325.02 Federal rules adopted.** (intro.) The following federal motor carrier safety regulations adopted by the United States department of transportation and in effect on ~~June 1, 2002~~ January 4, 2004, are adopted by the department and shall be enforced in relation to those carriers, drivers or vehicles to which these rules apply in the same manner as though the regulations were set out in full in this chapter:

(8) Every traffic officer and state patrol inspector employed under the authority of s. 110.07, Stats., is authorized to declare vehicles and drivers out-of-service in accordance with the ~~2000~~ 2003 North American uniform out-of-service criteria.

**SECTION 2.** Trans 326.01 (intro.) and (8) are amended to read:

**Trans 326.01 Federal rules adopted.** (intro.) The following federal motor carrier safety regulations adopted by the United States department of transportation and in effect on ~~June 1, 2002~~ January 4, 2004, are adopted by the department and shall be enforced in relation to those carriers, drivers or vehicles to which these federal rules apply in the same manner as though the regulations were set out in full in this chapter:

(8) Every traffic officer and state patrol inspector employed under the authority of s. 110.07, Stats., is authorized to declare vehicles and drivers out-of-service in accordance with the ~~2000~~ 2003 North American uniform out-of-service criteria.



---

---

## Submittal of proposed rules to the legislature

---

---

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

**Commerce**  
**(CR 02-129)**

Chs. Comm 2, 81-85 and 91, relating to private onsite wastewater treatment systems and sanitation.

**Insurance**  
**(CR 03-038)**

Ch. Ins 17, relating to requiring insurers and self-insurers provide notice of the filing of an out-of-state medical malpractice action against Wisconsin health care provider.

**Medical Examining Board**  
**(CR 03-023)**

Ch. Med 22, relating to the licensure and regulation of perfusionists.

**Veterans Affairs**  
**(CR 03-045)**

Ch. VA 13, relating to the imposition of rental charges at regional transitional housing sites under the veterans assistance program.

**Workforce Development**  
**(CR 03-022)**

Ch. DWD 40, relating to child support guidelines.

---

---

## 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 02-141)**

An order affecting chs. ATCP 90 to 92, relating to weights and measures.  
Effective 9-1-03.

### **Higher Educational Aids Board (CR 02-148)**

An order affecting ch. HEA 5, relating to the Talent Incentive Program Grant.  
Effective 9-1-03.

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

An order creating ch. PI 23, relating to ESEA intradistrict safe school transfer options.  
Effective 8-1-03.

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

**First Class**

U.S. POSTAGE PAID

Madison, Wisconsin

Permit Number 1369

**First Class Mail**

*Wisconsin  
Administrative  
Register*

**Dated Material. Please Do Not Delay!**