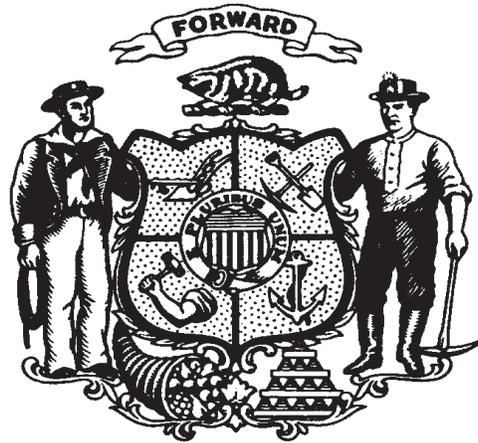


Wisconsin Administrative Register

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Emergency rules now in effect

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

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

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, 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 (2)

1. 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

2. Rules adopted revising **ch. ATCP 96** relating to milk producer security.

Finding of emergency

(1) The Legislature, in 2001 Wis. Act 16, repealed and recreated Wisconsin's agricultural producer security program. The new program is codified in ch. 126, Stats. (the "new law"). The new law takes effect, for milk contractors, on May 1, 2002. The new law is intended to protect milk producers against catastrophic financial defaults by milk contractors.

(2) The new law applies to milk contractors, including dairy plant operators, producer agents and other milk handlers, who procure producer milk in this state. Under the new law, milk contractors must be licensed by the Wisconsin department of agriculture, trade and consumer protection (DATCP). Milk contractors must pay license fees and do one or more of the following:

(a) Contribute to Wisconsin's agricultural producer security fund, to help secure milk payments to milk producers.

(b) File security with DATCP.

(c) File financial statements with DATCP, showing that the contractor meets minimum financial standards specified in ch. 126, Stats.

(3) The new law regulates producer agents (who market milk and collect payment for milk producers, without taking title to the milk), but treats them differently than other milk contractors. Producer agents may have lower fund participation requirements, and may file smaller amounts of security, than other milk contractors. The program may provide correspondingly less compensation to producers if a producer agent defaults.

(4) It is important to clarify the following matters before the new law takes effect for milk contractors on May 1, 2002:

(a) The treatment of dairy plant operators who provide custom processing services to milk producers, without marketing or taking title to milk or dairy products.

(b) The treatment of producer agents. Under s. 126.51, Stats., DATCP must adopt rules for milk contractors who wish to qualify as producer agents under the new law.

(c) The treatment of persons who market only processed dairy products for milk producers, without procuring, marketing or processing raw producer milk.

(d) The method by which milk contractors calculate and report milk payment obligations, for the purpose of calculating fund assessments and security requirements under the new law.

(5) Under s. 126.81 (4), Stats., DATCP may require milk contractors to disclose their security and fund contribution status to milk producers. It is important for milk contractors to begin making these disclosures soon after the new law takes effect, so that producers can evaluate the financial risk

associated with milk procurement contracts. Disclosures are important, because not all milk contractors are required to participate in the agricultural security fund or file security with DATCP.

(6) It is not possible, by normal rulemaking procedures, to adopt these essential clarifications and disclosure requirements by May 1, 2002. DATCP must, therefore, adopt them by emergency rule. This emergency rule is needed to implement the new law, to protect the financial security of milk producers, to preserve fair competition in the dairy industry, and to avoid unnecessary confusion and expense for dairy businesses.

Publication Date: April 29, 2002
Effective Date: April 29, 2002
Expiration Date: September 26, 2002
Hearing Date: May 16, 2002
Extension Through: November 24, 2002

Commerce

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

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

Finding of emergency

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

Facts constituting the emergency are as follows:

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

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

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

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

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

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

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

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

Corrections (2)

1. Rules adopted revising **ch. DOC 328**, relating to adult field supervision.

Finding of emergency

The department of corrections finds that an emergency exists and that rules are necessary for preservation of the public peace, safety and welfare. A statement of the facts constituting the emergency is: Pursuant to s. 304.074 (2) Stats., the department has authority to collect "at least \$1 per day, if appropriate" from offenders on supervision. However, the current proposed budget reform bill, Assembly Bill 1, directs the department to amend supervision fees and provides, in relevant part, the following:

"...the department of corrections shall promulgate the rules that are required under s. 304.074 (5) of the statutes and that set rates under s. 304.074 (2) of the statutes. The rules shall take effect on July 1, 2002."

"...the rules shall require the department to have a goal of receiving at least \$2 per day, if appropriate, from each person who is on probation, parole, or extended supervision and who is not under administrative supervision, as defined in s. 304.74 (1) (a) of the statutes, or minimum supervision, as defined in s. 304.74 (1) (b) of the statutes."

While the language and potential requirements of Assembly Bill 1 doubles the amount the department may collect in supervision fees, the current Administrative Code limits the department's efforts to do so. The current ch. DOC 328 establishes a set fee schedule with a maximum collection of \$45 per month.

As proposed, the budget reform bill requires the department to rely upon the collection of an increased amount of supervision fees. If the department remained without administrative rule authority to collect the increased fees on July 1st, the department, and clearly the public, would be significantly impacted by the loss of revenue. The proposed budget has anticipated and relied upon such increase in establishing budgetary guidelines for the department of corrections.

This situation requires the department to effect an emergency rule rather than complying with the notice, hearing, legislative review and publication requirements of the statutes. Complying with the standard promulgation procedures for a permanent rule could easily delay the department's ability to collect the necessary fees by seven months to one year. This delay would have a substantial impact on the department because more than 85% of the department's supplies and services budget will be funded by program revenue generated from supervision fees collected in the next fiscal year. This revenue provides for a variety of essential departmental functions, including rent for approximately 114 probation and parole offices, vehicles that enable probation and parole agents to conduct home visits on offenders, extradition of absconders, and computers that enable agents to conduct such critical functions as pre-sentence investigation reports. If the department were somehow hindered in the attempt to perform these functions it would obviously affect the department's ability to adequately supervise offenders and ultimately result in a

breakdown in the department's ability to help protect the public.

This order:

- Raises the department's supervision fee goal to at least \$2 per day, if appropriate, from all offenders under supervision by the department.
- Eliminates the distinction between offenders supervised by the department on administrative and minimum supervision and offenders who are deemed medium, maximum and high risk as it relates to supervision fees. All offenders under supervision by the department will pay, based on their ability, according to one supervision-fee scale.

Publication Date: July 2, 2002
Effective Date: July 2, 2002
Expiration Date: November 28, 2002
Hearing Dates: July 29 & 30, 2002

2. 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

Elections Board

Rules adopted amending **s. EIBd 6.05** relating to filing campaign reports by electronic transmission.

Finding of emergency

The Elections Board finds that an emergency exists in the implementation of the requirement of s. 11.21 (16), Stats., that each registrant for whom the board serves as filing officer and who or which accepts contributions in a total amount or value of \$20,000 or more during a campaign period, shall file each required campaign finance report in an electronic format, and finds 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 as follows:

With the close of the legislature's 2001–02 biennial session, it is now apparent that the Board will not receive an additional appropriation to develop a software program that enables registrants to file reports that integrates with the agency's information management system. Implementing an alternate means to permit registrants to comply with s. 11.21 (16), Stats., is necessary for use of campaign finance reports filed in 2002 and thereafter. Filings in electronic format will improve the welfare of Wisconsin's citizens by making campaign finance information more readily available to citizens, candidates, journalists and advocacy groups. Filing reports electronically is the only viable means of ensuring that the public has the information necessary to participate in the selection of our governmental leaders.

Publication Date: June 1, 2002
Effective Date: June 1, 2002
Expiration Date: October 29, 2002

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

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

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

1. Rules adopted revising **ch. HFS 119**, relating to 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. Department staff consulted with the Health Insurance Risk–Sharing Plan (HIRSP) Board of Governors on April 17, 2002 on the rules, as required by s. 149.20, Stats.

Analysis prepared by the Department of Health and Family Services

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

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.

One type of medical coverage provided by HIRSP is the Major Medical Plan. This type of coverage is called Plan 1. Eighty–eight percent of the 13,645 HIRSP policies in effect in March 2002, were of the Plan 1 type. Plan 1 has Option A (\$1,000 deductible) or Option B (\$2,500 deductible). The rate increases for Plan 1 contained in this rulemaking order increase an average of 25.4%. This produces policyholder premiums that are equivalent to 150% of the industry standard, the minimum allowed by statute. Rate increases for specific policyholders range from 19.2% to 27.8%, depending on a policyholder's age, gender, household income, deductible and zone of residence within Wisconsin. These rate increases reflect general and industry–wide premium increases and take into account the increase in costs associated with Plan 1 claims. For example, recent annual industry standard premium rates have increased by approximately 35%. HIRSP costs have risen by a smaller amount, hence the smaller rate increases for HIRSP, relative to the industry standard. According to state law, HIRSP premiums must fund 60% of plan costs and cannot be less than 150% of the amount an individual would be charged for a comparable policy in the private market.

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. Twelve percent of the 13,645 HIRSP policies in effect in March 2002, were of the Plan 2 type. The rate increases for Plan 2 contained in this rulemaking order increase an average of 30.8%. Rate increases for specific policyholders range from 23.3% to 33.5%, depending on a policyholder's age, gender, household income and zone of residence within Wisconsin. These rate increases reflect general and industry–wide cost increases and adjust premiums to a level in accordance with the authority and requirements set out in s. 149.14 (5m), Stats.

The Department through this rulemaking order proposes to amend 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 rulemaking 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 2001. 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, 2002. The total annual contribution to the HIRSP budget provided by an adjustment to the provider payment rates is \$24,750,178. The total annual contribution to the HIRSP budget provided by an assessment on insurers is \$26,003,305. On April 17, 2002, the HIRSP Board of Governors approved the calendar year 2001 reconciliation process. The Board also approved the HIRSP budget for the plan year July 1, 2002 through June 30, 2003.

Publication Date: June 17, 2002
Effective Date: July 1, 2002
Expiration Date: November 28, 2002
Hearing Date: July 15, 2002

- Rules adopted revising **chs. HFS 152 to 154**, relating to the Wisconsin Chronic Disease Program.

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 Wisconsin Chronic Disease Program (WCDP) is the payer of last resort for working poor persons with medical problems relating to chronic renal disease, cystic fibrosis or hemophilia. The Department administers the WCDP. The WCDP reimburses beneficiaries' dialysis and transplant services, home supplies, lab and x-ray services and kidney donor services for chronic renal disease recipients. Cystic fibrosis recipients are eligible for reimbursement of hospital services, certain physician services, lab and x-ray services, prescription medication and some home supplies. Recipients with hemophilia receive reimbursement for blood derivatives and supplies necessary for home infusion. The program's annual \$5 million budget is entirely state funded. About 90% of the budget (\$4.5 million) funds the care of chronic renal disease recipients, of which 60% (\$2.7 million) is for drugs. Drug costs are increasing at a rate of at least 10% per year. The Wisconsin 2001-03 biennial budget does not provide for increases of this magnitude. Consequently, the WCDP will likely have an estimated shortfall of between \$700,000 and \$900,000 in the 2001-03 biennium.

To mitigate the projected budgetary shortfall, the Department will be emphasizing generic drugs and implement an expanded drug rebate program. Both of these efforts can be accomplished through Department policy changes. In addition, WCDP drug copayment amounts must be increased. The Department's administrative rules governing WCDP currently limit the drug copayment amounts to the \$1 used by the Wisconsin Medicaid Program.

To further mitigate the effect of increased drug costs on the WCDP program, the Department is also increasing the WCDP prescription drug copayment amounts to \$5 for generic drugs and \$10 for brand name drugs. These new copayment amounts resemble those used by commercial health insurers and were determined by the Department in consultation with the Chronic Renal Disease Program Advisory Committee. While the Department is currently in the process of promulgating these amendments to the permanent rules, the Department must implement these changes immediately to preserve the public welfare. Therefore, the Department is issuing these identical amendments as an emergency order.

The proposed rules potentially affect approximately 6,500 individuals with chronic renal disease, 200 individuals with hemophilia and 150 individuals with cystic fibrosis. Approximately 41% of persons enrolled in the program received state-funded benefits in 2000-01. The rest either incurred no expenses that were covered under these programs, or their expenses did not exceed the required deductibles.

Publication Date: July 1, 2002
Effective Date: July 1, 2002
Expiration Date: November 28, 2002
Hearing Date: July 11, 2002

Insurance

Rules adopted revising **ch. Ins 17**, relating to annual patients compensation fund and mediation fund fees for the fiscal year beginning July 1, 2002 and relating to the Wisconsin health care insurance plan's primary limits.

Finding of emergency

The commissioner of insurance (commissioner) finds that an emergency exists and that promulgation of an 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, 2002.

The commissioner expects that the permanent rule corresponding to this emergency rule, clearinghouse No. 02-035, will be filed with the secretary of state in time to take effect September 1, 2002. Because the fund fee provisions of this rule first apply on July 1, 2002, 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 3, 2002.

Publication Date: June 20, 2002
Effective Date: July 1, 2002
Expiration Date: November 28, 2002

Natural Resources (3)

(Fish, Game, etc., Chs. NR 1-)

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

Finding of emergency

Sections 1 and 2. Defines an archery hunt as it relates to the special chronic wasting disease (CWD) control and management hunts.

Section 3. Defines CWD.

Section 4. Defines the CWD eradication zone.

Section 5. Defines the CWD intensive harvest zone.

Section 6. Defines the CWD management zone.

Section 7. Defines adequate public notice and information as it relates to defining a new CWD eradication zone.

Section 8. Defines a section of land.

Section 9. Defines a shotgun hunt as it relates to the special CWD control and management hunts.

Section 10. Modifies those deer management units participating in the regular deer gun season framework.

Sections 11 and 12. Modifies those state park properties that have a more restrictive deer season harvest limit and season framework.

Section 13. Defines all of the metro deer management units as Zone “M” and eliminates deer management unit 76M from the list of metro units which have a standard deer season framework and harvest limits.

Section 14. Updates exceptions to the regular deer archery season.

Section 15. Updates exceptions to the muzzleloader season.

Section 16. Creates the Special CWD management control hunt earn–a–buck seasons and framework for the gun and archery hunts in the deer management units, portions of deer management units and state parks that are included in the CWD management and intensive harvest zones.

Sections 17 and 18. Exempts units that are participating in the special CWD herd reduction hunts from the one–day youth antlerless deer hunt and the special herd control hunts.

Section 19. Authorizes the use of aircraft by the department to harvest, spot, rally and drive deer to help with the depopulation of deer within the eradication zone after all other control measures have been considered and also authorizes the use of buckshot from or with the aid of aircraft.

Sections 20 and 21. Prohibits the use of bait statewide for hunting and provides exceptions to allow baiting for bear hunting by imposing bait site, permit and date restrictions, and also allows the use of liquid scents for deer hunting.

Section 22. Requires participants in the CWD herd reduction hunts to comply with blaze orange clothing requirements.

Section 23. Modifies the overwinter populations for the deer management units that are included in the CWD management zones and identifies 5 new units that are created as the result of splitting the units when defining the boundaries of the CWD zones.

Section 24. Creates special CWD deer permits that authorize the harvesting of deer within the CWD management zones and creates a permit that will be issued to hunters to replace their carcass tag should they shoot a deer that appears to be diseased while hunting and defines the conditions for their use.

Section 25. Develops transportation and sampling guidelines for deer harvested within and outside of the CWD management zones.

Section 26. Develops registration guidelines for deer harvested within the CWD management zones.

Section 27. Updates state park properties that may conduct firearm, muzzleloader and late bow seasons.

Section 28. Establishes deer seasons and weapon restrictions for specific state park properties.

Section 29. Creates a map that identifies the CWD management zone and the CWD intensive harvest zone.

Section 30. Provides the department with the authority to utilize additional measures when necessary, within their legislative authority, to control the spread of CWD in the state.

Section 31 and 32. Authorizes the shooting of deer in waterfowl closed areas that are located within the CWD management zones.

Section 33 and 34. Identifies deer within the CWD eradication zone as causing a nuisances and authorizes the department to issue permits to landowners and their permittees to harvest deer during periods defined by the department throughout the year and defines the parameters of their issuance and guidelines for their use.

Section 35. Defines bird feeding devices and structures.

Section 36. Defines small mammals.

Section 37. Prohibits feeding of wildlife and outlines exceptions for birds and small mammals.

Section 38. Creates a free state park hunting access permit that is required to hunt in the state parks participating in the special CWD control hunts.

Publication Date: July 3, 2002

Effective Date: July 3, 2002

Expiration Date: November 30, 2002

Hearing Date: August 12, 2002

- Rules were 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. 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: July 8, 2002

Effective Date: July 8, 2002

Expiration Date: December 5, 2002

Hearing Date: August 19, 2002

- Rules adopted revising ch. NR 10, relating to the 2002 migratory game bird season.

Finding of emergency

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to protect the public welfare. The federal government and state legislature have delegated to the appropriate agencies rule–making authority to control the hunting of migratory birds. The State of Wisconsin must comply with federal regulations in the establishment of migratory bird hunting seasons and conditions. Federal regulations are not made available to this state until mid–August of each year. This order is designed to bring the state hunting regulations to conformity with the federal regulations. Normal rule–making procedures will not allow the establishment of these changes by September 1. Failure to modify our rules will result in the failure to provide hunting opportunity and continuation of rules which conflict with federal regulations.

Publication Date: August 30, 2002
Effective Date: August 30, 2002
Expiration Date: January 27, 2003
Hearing Date: September 26, 2002

Natural Resources (2)

(Environmental Protection – General Chs. NR 100—)

1. Rules adopted creating **ch. NR 109**, relating to aquatic plant management.

Finding of emergency

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to protect the public welfare. Many lake communities traditionally manage aquatic plants on the waters of the state to allow navigation and other beneficial recreational water use activities and to control invasive aquatic species. Without aquatic plant management, many bodies of water would be inaccessible due to excessive growth of invasive aquatic plants like Eurasian water milfoil and purple loosestrife and native aquatic plant communities would be threatened. 2001 WI Act 16 included new statutory language, s. 23.24, Stats., for the protection of native aquatic plant communities and control of invasive plant species. The new law prohibits a person from managing aquatic plants without a valid aquatic plant management permit issued under this chapter. This order is designed to allow beneficial aquatic plant management activities to continue on waters of state through the 2002 open-water, growing season. Normal rule-making procedures will not allow the establishment of these rules for the 2002 open-water, aquatic plant-growing season. Failure to create NR 109 will result in unnecessary threats to valued native aquatic plant communities by invasive species and loss of navigation and beneficial recreational activities on Wisconsin lakes, rivers and wetlands.

Publication Date: May 10, 2002
Effective Date: May 10, 2002
Expiration Date: October 7, 2002
Hearing Dates: July 22, 23, 24 & 25, 2002

2. Rules adopted creating **ch. NR 173**, relating to the administration of the brownfield green space and public facilities grant program.

Finding of emergency

This rule is being promulgated as an emergency rule in accordance with s. 227.24, Stats. This rule sets forth the procedures required to award grants that will be used to remediate environmental contamination in order to protect public health and restore the environment. It is necessary to follow the emergency rule procedures because if the standard procedures were followed the rule would not take effect in time to have the money awarded and encumbered within the 2003 fiscal year. As a result, the appropriation would lapse and funding would not be available to fund the environmental remediation of properties around the state.

Publication Date: August 29, 2002
Effective Date: August 29, 2002
Expiration Date: January 26, 2003
Hearing Date: October 11, 2002

Public Instruction

Rules were adopted repealing **chs. PI 13 and 16** and creating **ch. PI 13** relating to limited-English proficient pupils.

Finding of emergency

The Department of Public Instruction finds that an emergency exists and that a rule is necessary for the immediate preservation of the public welfare. A statement of the facts constituting the emergency is:

- School boards and charter schools will be administering the 4th, 8th, and 10th grade Wisconsin Knowledge and Concept Examinations (WKCE) under s. 118.30, Stats., in November 2002. In order for school boards to make a determination as to whether a limited-English proficient pupil should take a WKCE test or take an alternate assessment, rules need to be in place as soon as possible.

- The U. S. Department of Education has required the assessment procedures of LEP pupils be in place prior to administration of these tests. If the assessment/testing procedures are not in place by November 2002, Wisconsin could lose more than \$130 million in federal Title I funds.

Publication Date: October 1, 2002
Effective Date: October 1, 2002
Expiration Date: February 28, 2003

State Treasurer

Rules adopted creating **ch. Treas 1** relating to the Wisconsin College Savings Program Board.

Exemption from finding of emergency

Section 15 (1), 2001 Wis. Act 7 provides an exemption from a finding of emergency for the adoption of ch. Treas 1.

Analysis prepared by the Office of the State Treasurer

Statutory authority: Section 14.64 (2) (e), Stats., and section 15, 2001 Wis. Act 7.

Statutes interpreted: s. 14.64 *et seq.*, Stats.

The Wisconsin College Savings Program Board establishes a rule for the operation of the College Savings Program. The rule is designed to grant flexibility to program participants wherever possible, while enabling the State and its private-sector partners to administer the program in a manner that protects the program's financial integrity and viability. Maintaining eligibility as a "qualified tuition program" pursuant to section 529 of the Internal Revenue Code [26 USC 529] is another primary objective. "529" programs are eligible for a number of federal tax benefits that are attractive to families saving for future college costs. Significant features of the rule are addressed below:

Sections Treas 1.03, 1.04 and 1.05 describe who may open an account and how to open an account. Section Treas 1.06 discusses designating a successor owner and describes how to change ownership of an account. Sections Treas 1.07 and 1.08 define the account beneficiary and how to change the beneficiary on an account.

Section Treas 1.09 details how to make contributions to an account, including minimum and maximum contribution limits, and how to "rollover" an account balance to another section 529 program. IRS requirements relating to investment direction are also detailed.

Sections Treas 1.11, 1.12 and 1.13 describe account withdrawals, distributions and refunds. Special circumstances are also provided for in these sections, such as the death or disability of the beneficiary or receipt of a scholarship by a beneficiary. Section Treas 1.14 sets forth conditions under which the Board may terminate an owner's account. Sections Treas 1.15 and 1.16 address related fees and penalties.

Publication Date: January 7, 2002
Effective Date: January 7, 2002
Expiration Date: See Section 15, 2001 Wis. Act 7
Hearing Date: March 5, 2002

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

Workforce Development

(Unemployment Insurance, Chs. DWD 100–150)

Rules adopted amending s. DWD 129.01 (1), relating to extension of the time period allowed for filing an initial claim for unemployment insurance benefits.

Exemption from finding of emergency

Pursuant to 2001 Wis. Act 35, s. 72 (2) (b), the Department is not required to provide evidence that promulgating this rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency for this rule.

Analysis Prepared by the Department of Workforce Development

Statutory authority: s. 108.08 (1), Stats. and 2001 Wis. Act 35, s. 72 (2) (b).

Statute interpreted: s. 108.08 (1), Stats.

Pursuant to s. 108.08 (1), Stats., a claimant must give notice to the department with respect to a week of unemployment "within such time and in such manner as the department may by rule prescribe" in order to receive benefits for that particular week.

Under the current s. DWD 129.01 (1), a claimant must file his or her initial claim for benefits no later than the close of the week in which the claimant intends the claim to start. For example, a claimant who files two weeks late cannot obtain unemployment benefits retroactively unless the department waives the time limit under the exceptional circumstances provision in s. DWD 129.01 (4). This emergency rule extends the time period for filing an initial claim by seven days beyond the end of the week for which the claimant expects to get the benefits.

Increasing the time frame within which a claimant may file a timely initial unemployment insurance benefit claim would reduce disparate treatment of claimants in like situations by removing the subjectivity of finding "exceptional circumstances" before allowing late claims and ease an increasing workload for the unemployment insurance division. The institution of this change would eliminate approximately 67% of untimely filing issues. This would translate into savings of 5 to 6 full-time employees (FTEs). These positions would then be able to turn attention and time to resolving other eligibility issues at a time when the unemployment insurance division is currently experiencing a sharp increase in workload and anticipates continued increase over the next three years.

The telephone initial claims system allows the department to be more lenient in proscribing filing deadlines due to its expanded accessibility and speed in identifying and resolving eligibility issues. Programming changes to the telephone initial claims system are estimated to require 50 hours at approximately \$50 to \$60 per hour for a total of \$2500 to \$3000.

Publication Date: April 14, 2002
Effective Date: April 14, 2002
Expiration Date: See 2001 Wis. Act 35, Section 72 (2) (b)
Hearing Dates: July 15, 16 & 17, 2002

Scope statements

Dentistry Examining Board

Subject.

Dental specialty.

Policy Analysis

Objective of the rule. This change would indicate that if the American dental association recognizes the dental specialty the board would not need to approve it. The note which lists the specialties would be deleted.

This change would not require the board to approve every new specialty when there is one developed in the future.

Statutory authority

Sections 15.08 (5) (b), 227.11 (2) and 447.04 (1) (a) 6. and (2) (a) 6., Stats.

Staff time required

100 hours.

Dentistry Examining Board

Subject

License to practice as a faculty member at a school of dentistry.

Policy Analysis

Objective of the rule. Create rules relating to the new legislation to grant faculty licenses.

Policy Analysis

To create rules relating to new legislation authorizing the Dentistry Examining Board to grant a license to practice dentistry as a faculty member at a school of dentistry in this state.

Statutory authority

Sections 15.08 (5) (b), 227.11 (2) and 447.04 (1) (c), Stats.

Staff time required

100 hours.

Financial Institutions—Credit Unions

Subject

Participation loan authority and parity with federal credit unions.

Policy Analysis

Objective of the rule. To amend ss. 70.01 and 70.02, Stats., by removing parity provisions, amend s. 70.05, Stats., by modifying an originating lender requirement and amend s. 70.06, Stats., by removing a participation lender requirement. The rule facilitates state–chartered credit union in engaging in certain loan participation contracts. The promulgation of this rule has been approved by the Credit Union Review Board.

Statutory authority

Sections 186.115 (1) and (2), 186.235 (8), and 227.11 (2), Stats.

Staff time required

40 hours.

Financial Institutions—Credit Unions

Subject

Annual audits and verification of member accounts by state–chartered credit unions.

Policy Analysis

Objective of the rule. To create ch. DFI—CU 73. The purpose of the rule is to prescribe certain responsibilities of state–chartered credit unions regarding audits and accounts. The rule provides general responsibilities for boards of directors for financial reporting; sets forth criteria for audit requirements, certain auditors and audit reports; provides financial statement audit alternatives; and establishes procedures for verification of accounts and passbooks. The promulgation of this rule has been approved by the Credit Union Review Board.

Statutory authority

Sections 186.115 (1) and (2), 186.235 (8), and 227.11 (2), Stats.

Staff time required

40 hours.

Hearing and Speech Examining Board

Subject.

Revision and clarification relating to the practice of speech–language pathologists and audiologists.

Policy Analysis

Objective of the rule. Clarify and update administrative rules. Recommended changes relate to the:

- Amendment of s. HAS 6.14 (3) (a) to change the percentage of direct observation and supervision of the clinical services requirement after the first 90 days from “not less than 25%” to “not less than 10%.”⁰

- Revision of ch. HAS 6 to include definitions relating to the practice of audiologist and to create additional grounds for discipline for audiologist and speech–language pathologists.

- Revision of chs. HAS 2, 3, 4 and 5 to clarify that those chapters relate only to the regulation of hearing instrument specialists and do not relate to the regulation of audiologists and speech–language pathologists.

- Revision of rules relating to clarity, grammar, punctuation, and use of plain language.

Policy Analysis

Existing policies are reflected in chs. HAS 1 to 8, Wis. Adm. Code. The proposal would do the following:

- Amend s. HAS 6.14 (3) (a) to change the percentage of direct supervision provided by speech–language pathologists to unlicensed individuals from “not less than 25%” to “not less than 10%.” This proposed revision reflects the national standard of practice for speech–language pathologists.

- Revise s. HAS 6.18 as it relates to the practice of audiology, to state that failure to maintain proper calibration

of audiometric equipment, maintain adequate records of certification of calibrations for a period of 5 years and failure to clearly state the full terms of sale on all receipts, as required under s. 459.24 (3m) (a), Stats., constitutes grounds for discipline.

Statutory authority

Sections 15.08 (5) (b), 227.11 (2), 459.24 and 459.34, Stats.

Staff time required

80 hours.

Medical Examining Board

Subject

To create licensure for perfusionists and creates the Perfusionist Examining Council to serve the Medical Examining Board in an advisory capacity.

Policy Analysis

Objective of the rule. Establish the procedure for licensure of perfusionists and the requirements for completion of continuing education.

Policy analysis.

2001 Wisconsin Act 89 does the following:

- Defines “perfusion” and “perfusionist.”
- Establishes requirements for licensure as a perfusionist.
- Provides for temporary licensure of perfusionists.
- Charges the board to promulgate rules requiring continuing education for perfusionists.
- Creates a grandfathering provision for persons who have practiced perfusion for ten years prior to January, 1, 2004.

Statutory authority

Sections 15.08 (5) (b) and 227.11 (2), Stats., and ss. 448.02, 448.04 and 448.40 and 447.04 (1) (c), Stats., as created by 2001 Wisconsin Act 89.

Staff time required

100 hours.

Nursing Board

Subject

Practice of nurse–midwifery (2001 Wisconsin Act 52).

Policy Analysis

Objective of the rule. 2001 Wisconsin Act 52 makes a number of changes to the provisions affecting nurse–midwives, including amending the definition of “practice of nurse–midwifery,” modifying the requirements for physician oversight, and requiring that licensed nurse–midwives carry malpractice insurance in an amount determined by rules to be promulgated by the Board of Nursing. This proposed rule brings the existing nurse–midwife rules into conformity with the provisions of Act 52, and establishes requirements relating to malpractice coverage for nurse–midwives. The proposed rule would eliminate inconsistencies between the nursing board’s rules and Act 52.

Statutory authority

Sections 15.08 (5) (b), 227.11 and 441.15, Stats.

Staff time required

150 hours.

Pharmacy Examining Board

Subject

Transfer of prescriptions.

Policy Analysis

Objective of the rule. The objective of amending s. Phar 7.05 is to:

- Address confusion in the profession regarding the meaning of the words “pharmacies” and “pharmacy” as applied to out–of–state pharmacies.
- Clarify that non–controlled prescription drugs are also contemplated within s. Phar 7.05, pertaining to the unlimited transfer of prescription order information.
- Clarify that transferred prescription order information must include DEA registration numbers when appropriate.
- Clarify the use of a computerized system for recordkeeping in the transfer process.

The board’s intent in previously drafting revisions to s. Phar 7.05 (3), (4) and (5) was to modify and streamline the prescription order transfer process to reflect the mobility of patients and provide greater access to patient care. The proposed amendments are intended to further clarify the prescription order transfer process.

Statutory authority

Sections 15.08 (5) (b), 227.11 (2), 450.03 (2) and 450.04 (3).

Staff time required

It is estimated that 100 hours will be needed to amend the rules.

Affect on Budget, Staff or Uniform Policies or Procedures of the Department

The proposed rules will have no affect on the budget, staff or uniform policies or procedures of the Department of Regulation and Licensing.

Physical Therapists Affiliated Credentialing Board

Subject

2001 Wisconsin Act 70, relating to the practice of physical therapy.

Policy Analysis

Objective of the rule. 2001 Wisconsin Act 70 makes a number of changes to the provisions affecting the practice of physical therapy, including the following:

- Creation of licensure for physical therapist assistants and establishment of requirements for licensure.
- Requiring promulgation of rules establishing a code of ethics.
- Requiring promulgation of rules requiring an applicant for renewal to demonstrate continuing competence.
- Establishing a duty to refer to other health care providers if symptoms and conditions require health care services other than physical therapy.

Creating new bases for disciplinary action, including sexual misconduct, as

Policy Analysis

The proposed rule change would eliminate inconsistencies between the board’s rules and 2000 Wisconsin Act 52, establish licensure procedures for physical therapist assistants, and satisfy the legislative mandate to create rules relating to continuing competence.

Statutory authority

Sections 15.08 (5) (b) and 227.11 (2), Stats., and ss. 448.527, 448.55, 448.56, 448.564 and 448.567, as created by 2001 Wisconsin Act 70.

Staff time required

200 hours.

Transportation**Subject**

Uniformity of traffic citations.

Policy Analysis

Objective of the rule. Amend Ch. Trans 114 to:

- Adopt a revised uniform traffic citation form.
- Adopt an automated format for the uniform traffic citation.
- Clarify that chs. 340 and 343, Stats., definitions apply in the chapter.
- Eliminate burdensome court certification requirements.
- Update references to previous versions of the form.

Statutory authority

Section 345.11 (4), Stats.

Staff time required

35 hours.

Workforce Development**Subject**

Unemployment insurance availability.

Policy Analysis

The proposed rule will reduce the number of hours that a claimant must be available for full–time suitable work to be eligible for unemployment insurance from 35 hours to 32 hours. A significant percentage of the modern workforce does not work 35 to 40 hours per week, often due to child care or other obligations.

Statutory authority

2001 Wisconsin Act 35, s. 72 (2) (a) and ss. 108.14 (2) and 227.11 (2) (a), Stats.

Staff time required

40 hours.

Submittal of rules to legislative council clearinghouse

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

Accounting Examining Board

Rule Submittal Date

On September 27, 2002, the Accounting Examining Board submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

Statutory Authority: ss. 15.08 (5) (b), 227.11 (2) and 442.10 (3), Stats.

The proposed rule–making order relates to definitions and independence in professional practice.

Agency Procedure for Promulgation

A public hearing will be held on October 18, 2002 at 10:00 a.m. in Room 180, 1400 East Washington Avenue, Madison, Wisconsin 53702.

Contact Person

Pamela Haack, Paralegal
Office of Administrative Rules
(608) 266–0495

Accounting Examining Board

Rule Submittal Date

On September 27, 2002, the Accounting Examining Board submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

Statutory Authority: ss. 15.08 (5) (b), 227.11 (2) and 442.087 (3), Stats.

The proposed rule–making order relates to peer reviews.

Agency Procedure for Promulgation

A public hearing will be held on October 18, 2002 at 10:00 a.m. in Room 180, 1400 East Washington Avenue, Madison, Wisconsin 53702.

Contact Person

Pamela Haack, Paralegal
Office of Administrative Rules
(608) 266–0495

Agriculture, Trade and Consumer Protection

Rule Submittal Date

On October 1, 2002, the Department of Agriculture, Trade and Consumer Protection submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

Statutory Authority: s. 227.15, Stats.

The proposed rule–making order relates to inspection and certification service fees and Hemlock Woolly Adelgid Import Controls.

Agency Procedure for Promulgation

The department will hold a public hearing on this rule after the Rules Clearinghouse completes its review. The department's Agricultural Resource Management is primarily responsible for this rule.

Contact Person

Paula Noel
(608) 224–4574

Health and Family Services

Rule Submittal Date

On September 16, 2002, the Department of Health and Family Services submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

Statutory Authority: s. 253.12 (3) (a), Stats.

The proposed rule–making order affects ch. HFS 116, relating to the birth defect prevention and surveillance system.

Beginning in 1989, the Department of Health and Family Services administered a program that collects, analyzes and disseminates information about adverse neonatal outcomes, birth defects, developmental disabilities and other severe disabilities in children from birth to age 6. The program was known as the Birth Defect Outcome and Monitoring Program.

1999 Wisconsin Act 114, enacted on May 8, 2000, replaced the Birth Defect Outcome and Monitoring Program with the Birth Defect Prevention and Surveillance System. The new system has several differences from the previous reporting program:

1. The definitions of reportable conditions under Act 114 differ from the old statute language. A birth defect is defined as a structural deformation, disruption or dysplasia, or an inherited or biochemical disease.

2. Only birth defects in infants and children up to the age of 2 must be reported to the Department.

3. The list of persons who must report a birth defect to the Department is expanded beyond physicians to include pediatric specialty clinics. Hospitals may, but are not required to report birth defects to the Department.

4. The Department becomes responsible for establishing and maintaining an up–to–date registry of birth defects that have occurred in Wisconsin in the previous 10 years.

5. A new entity known as the Council on Birth Defect Prevention and Surveillance is created for the purpose of making recommendations to the Department regarding the establishment of the registry, the Department's administrative rules and the content of the reports required from medical care providers. Beginning in April 2002, the Council is to biennially report to the legislature on the utilization and progress of the registry.

1999 Wisconsin Act 114 maintains the preexisting mechanisms that ensure the confidentiality of data by

requiring parental or guardian written consent before reporting or releasing an infant's or a child's name and address.

Agency Procedure for Promulgation

A public hearing will be scheduled at a later time.

Contact Person

Susan Uttech at 267-3561

Sally Meyer at 267-9510

Insurance

Rule Submittal Date

On September 27, 2002, the Office of the Commissioner of Insurance submitted a proposed rule to

the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule-making order affects s. Ins 3.39, relating to Medicare supplement insurance.

Agency Procedure for Promulgation

A public hearing will be held on November 7, 2002.

Contact Person

A copy of the proposed rule may be obtained from the OCI Internet WEB site at:

<http://www.state.wi.us/agencies/oci/ocirules.htm> or by contacting Inger Williams, Services Section, Office of the Commissioner of Insurance, at (608) 264-8110.

For additional information, please contact: Julie E. Walsh at (608) 264-8101 or e-mail at: **Julie.Walsh@oci.state.wi.us** in the OCI Legal Unit.

Rule–making notices

Notice of Hearings

Agriculture, Trade and Consumer Protection [CR 02–121]

Rule Related to Plant Inspection and Pest Control.

The State of Wisconsin Department of Agriculture, Trade and Consumer Protection announces that it will hold public hearings on a proposed rule to repeal s. ATCP 21.05 (3) (c); to renumber s. ATCP 21.01 (10) to (15); to repeal and recreate s. ATCP 21.05 (3) (a) and (b) and to create s. ATCP 21.01 (9) and (10) and s. ATCP 21.16; relating to plant pests and certification and service fees. The department will hold two hearings at the time and places shown below. The department invites the public to attend the hearings and comment on the proposed rule. Following the public hearing, the hearing record will remain open until December 2, 2002, for additional written comments.

You may obtain a free copy of this rule by contacting the Wisconsin Department of Agriculture, Trade and Consumer Protection, Division of Agricultural Resource Management, 2811 Agriculture Drive, P.O. Box 8911, Madison WI 53708, or by calling (608) 224–4574. Copies will also be available at the hearings.

Hearing impaired persons may request an interpreter for these hearing. Please make reservations for a hearing interpreter by October 22, 2002, by contacting Paula Noel, Division of Agricultural Resource Management, P.O. Box 8911, Madison, WI 53708–8911, telephone (608) 224–4574 or email paula.noel@datcp.state.wi.us. Alternatively, you may contact the Department TDD at (608) 224–5058. Handicap access is available at the hearings.

Hearing Date, Time and Location

Tuesday, October 29, 2002, 1:00 p.m. until 3:00 p.m.

WI Dept. of Agriculture, Trade & Consumer Protection
Room 266

2811 Agriculture Drive
Madison, WI 53718

Handicapped accessible

Wednesday, October 30, 2002, 1:00 p.m. until 3:00 p.m.

WI Dept. of Natural Resources Service Center

5301 Rib Mountain Road
Wausau, WI 54401

Handicapped accessible

Analysis Prepared by the Department of Agriculture, Trade and Consumer Protection

Statutory authority: ss. 93.07 (1) and (12), 94.01 and 94.76, Stats.

Statutes interpreted: ss. 93.06 (1m) and (1p), 93.07 (12) and (13), 94.01, 94.11, 94.50 and 94.76, Stats.

This rule modifies fees for plant inspection and certification services. It also establishes import controls on hemlock plants and plant products, to prevent the introduction of a serious hemlock pest in this state.

Fees for Plant Inspection and Certification

The Wisconsin department of agriculture, trade and consumer protection (DATCP) inspects plants, plant products and bees (apiaries) at the request of persons who wish to export those products. DATCP provides this inspection service, for a fee, under ch. 94, Stats. Based on its inspection, DATCP certifies that the plants, plant products or bees are

apparently free of harmful diseases and pests. DATCP establishes inspection and certification fees by rule. This rule modifies DATCP's current fee formula. This rule will increase fees for some requesters, and reduce fees for others.

Under the current fee formula, DATCP charges for mileage (32.5¢ per mile), food and lodging costs, plus \$20 per hour for staff time. There is a minimum fee of \$20 per inspection. Because most inspectors are based in Madison, charges increase with distance from Madison. DATCP also charges a fee of \$15 per certificate issued. Current fees do not cover indirect costs related to general pest surveys, trapping and testing, although those activities provide important information for the certification process.

This rule establishes a new "flat" fee of \$50 for each inspection certificate that it issues. There will be no other charge for inspection, travel, food or lodging costs (except for field inspections of crops). The flat fee will cover these costs, as well as a portion of DATCP's indirect costs for pest surveys, pest trapping and laboratory analysis. The flat fee is expected to generate approximately \$30,000 in additional revenues for the program as a whole.

This rule establishes a lower fee of \$15 for certificates that merely certify the identity or origin of plants or plant materials, without certifying that they are disease-free or pest-free. This rule maintains the current fee of \$15 for ginseng shipment certificates issued under s. 94.50 (3), Stats.

The following table shows the current and proposed fees.

Activity or Certificate	Current Fee	Proposed Fee
Requested inspections of plants, plant products, bee colonies and related materials.	\$20/hour for inspection and travel time plus vehicle mileage, meal and lodging expenses. Minimum charge is \$20.	No separate fee, except for field inspections of crops (see below). Aggregate costs are covered by certificate charges (see below).
Field inspection of crops such as corn, sunflowers, soybeans, onions, potatoes, snap beans and turf.	\$1.50 per acre (minimum \$50), plus mileage, food and lodging expenses.	\$1.50 per acre (minimum \$50) plus mileage, food and lodging expenses.
Certification that materials are disease-free or pest-free (phytosanitary certificate, plant health certificate or apiary inspection certificate).	\$15 per certificate.	\$50 per certificate.
Ginseng shipment certificate.	\$15 per certificate.	\$15 per certificate.

Hemlock Woolly Adelgid; Import Controls

DATCP regulates the movement of plant pests under s. 94.01(1), Stats. Currently, the states of Alaska, California, Oregon and Washington, and portions of 13 other states, are infested with hemlock woolly adelgid. Hemlock woolly adelgid is a serious pest that kills native and ornamental hemlock trees, an important Wisconsin resource. This rule prohibits imports of the following items from infested areas identified in the rule:

- Hemlock seedlings or nursery stock.

- Hemlock logs or lumber with bark.
- Uncomposted hemlock chips with bark.
- Uncomposted hemlock bark.

This prohibition does not apply if any of the following apply:

- A pest control official in the state of origin inspects the imported items and certifies any of the following in a phytosanitary certificate that accompanies the import shipment:

- That the items originate from non-infested premises and have not been exposed to hemlock woolly adelgid.

- That the items were found, at the time of inspection, to be free of hemlock woolly adelgid.

- That the items have been effectively treated to destroy hemlock woolly adelgid. The phytosanitary certificate shall specify the pesticide or other treatment used.

- That the items are produced, processed, stored, handled or used under conditions, described in the phytosanitary certificate, that effectively preclude the transmission of hemlock woolly adelgid.

- The items are imported under a written agreement between the importer and DATCP. DATCP may cancel the agreement at any time. The agreement must specify import terms and conditions including:

- The name and address of the importer and import recipient.

- The proposed source and destination of each import shipment.

- The proposed import dates or time period.

- The items to be imported in each proposed shipment.

- The proposed size and frequency of import shipments.

- The proposed method of import.

- Required import conditions that will, in the department's opinion, effectively prevent the spread of hemlock woolly adelgid.

These import controls imposed by the rule would have some costs in terms of notifying affected industries but could be absorbed by existing staff. The department will present information through development of written material, press releases, and cooperative efforts with affected industries. Ongoing duties would be to monitor industry compliance with the rule. Industry compliance is already monitored for other sections of ATCP 21 and this new section would be a small addition.

Fiscal Estimate

The changes in the inspection and certification service fees would increase revenues to a program revenue account. Existing fees do not cover actual expenses of the program. The new fee structure will allow the department to recover the cost of administering the phytosanitary program.

Initial Regulatory Flexibility Analysis

Fees for Plant Inspection and Certification & Hemlock Woolly Adelgid; Import Controls

This rule repeals and recreates Wisconsin's current Inspection and Certification rules. This rule creates a fee of \$50.00 per certificate, which will include mileage, meals, lodging and staff time for inspection and travel. The current fee for certification is \$15.00 for a certificate, plus mileage (.325 cents/mile), meals, lodging and staff time (\$20.00/hour, with a \$20.00 minimum) for inspection and travel.

This rule also creates import controls for hemlock woolly adelgid, a serious pest of hemlock trees in the eastern US. This insect has been intercepted on nursery stock in other states and can possibly be spread by logs, mulch or bark chips of hemlock trees.

Small Businesses Affected by this Rule

A "small business," as defined in s. 227.114 (1) (a), Stats., means a business entity, including its affiliates, which is independently owned and operated and not dominant in its field, and which employs fewer than twenty-five full-time employees or which has gross annual sales of less than \$2,500,000.

Small nurseries and sole proprietors shipping interstate or internationally are the small businesses that will be affected by this rule.

Effects on Small Business

This rule may have some impact on nurseries in Wisconsin that purchase hemlock nursery stock from states infested with hemlock woolly adelgid, because costs incurred by nurseries in other states to meet our requirements may be passed along to the receiving nurseries in Wisconsin. There would be no extra skills required since nurseries deal with similar certificates for other plant pests.

The fee increase for certificates (\$15 to \$50) may decrease the number of certificates issued by a small amount. Some businesses, mostly larger enterprises, request certificates as a sort of insurance policy; the country to which they are exporting doesn't require a certificate but having one expedites the importation of the commodity. Many of the companies will pass the increased cost onto their customers.

Small businesses may see more efficient turnaround time in receiving their certificates since no calculations will need to be made by the department concerning mileage, meals, hours and lodging. Small nursery businesses receiving plant health certificates may reconsider their current practice of requesting the certificate if they don't ship nursery stock interstate because of the increase in the fee.

Notice of Hearings

Agriculture, Trade and Consumer Protection [CR 02-113]

(reprinted from 9/30/02 Wis. Adm. Register)

Rule related to agricultural producer security.

The State of Wisconsin Department of Agriculture, Trade and Consumer Protection announces that it will hold public hearings on a proposed rule relating to agricultural producer security. This rule implements Wisconsin's new agricultural producer security law, ch. 126 Stats. The department will hold three hearings at the time and places shown below. The department invites the public to attend the hearings and comment on the proposed rule. Following the public hearing, the hearing record will remain open until November 22, 2002 for additional written comments.

You may obtain a free copy of this rule by contacting the Wisconsin Department of Agriculture, Trade and Consumer Protection, Division of Trade and Consumer Protection, 2811 Agriculture Drive, P.O. Box 8911, Madison WI 53708, or by calling (608) 224-4928. Copies will also be available at the hearings.

Hearing impaired persons may request an interpreter for these hearing. Please make reservations for a hearing interpreter by **October 4, 2002**, by writing to Kevin LeRoy, Division of Trade and Consumer Protection, P.O. Box 8911, Madison, WI 53708-8911, telephone (608) 224-4928. Alternatively, you may contact the Department TDD at (608) 224-5058. Handicap access is available at the hearings.

Hearing Date, Time and Location

Tuesday, October 15, 2002, 10:30 a.m. – 12:30 p.m.

Green Bay State Office Building
200 North Jefferson Street

Room152-A

Green Bay, WI 54301

Handicapped accessible

Thursday October 17, 2002, 10:30 a.m. – 12:30 p.m.

WDATCP Regional Office

3610 Oakwood Hills Parkway

Eau Claire, WI 54701-7754

Handicapped accessible

Tuesday October 22, 10:30 a.m. – 12:30 p.m.

Wisconsin Department of Agriculture, Trade and Consumer Protection

Board Room

2811 Agriculture Drive

Madison, WI 53718

Analysis prepared by the Department of Agriculture, Trade and Consumer Protection

Statutory Authority: ss. 93.07 (1), 97.20 (4), 100.20 (2), 126.49, 126.51 and 126.81, Stats.

Statutes Interpreted: ss. 93.15, 97.20, 100.20 and 100.22, Stats., and ch.126, Stats.

This rule implements Wisconsin's new agricultural producer security law (ch. 126, Stats., created by 2001 Wis. Act 16). The new law is designed to protect agricultural producers against catastrophic financial defaults by grain dealers, grain warehouse keepers, milk contractors and vegetable contractors. The Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) administers the new law. This rule amends and repeals current rules, and creates new rules consistent with the new law.

Chapter 126, Stats., regulates "contractors" including grain dealers, grain warehouse keepers, milk contractors and vegetable contractors. Contractors must be licensed by DATCP. In most cases, licensed contractors must contribute to Wisconsin's agricultural producer security fund ("fund"). In some cases, fund participation is voluntary. If a contributing contractor defaults on payments to producers, the fund may partially compensate those producers. Fund contributions are based, in part, on the contractor's financial condition.

Some contractors must file security in addition to, or in lieu of, fund contributions. If the contractor defaults, DATCP may use the security to pay a portion of the producer claims. Security requirements are based on the contractor's financial condition and practices. Contractors who are disqualified from the fund, based on financial condition, must file security with DATCP.

Grain Dealers

General. This rule requires grain dealers to comply with the new law, ch. 126, Stats. This rule supplements the new law, and amends or repeals rules that no longer apply.

Financial Statements; Disclosures. Under ch. 126, Stats., a grain dealer must file annual financial statements with DATCP if the grain dealer does any of the following:

- Annually pays more than \$500,000 for producer grain procured in this state.
- Procures any producer grain in this state under deferred payment contracts.

Grain dealers who are not required to file financial statements with DATCP may choose to file voluntarily. For example, grain dealers with favorable financial ratios may file voluntary financial statements to qualify for lower fund assessments. A grain dealer's financial ratios, including the grain dealer's debt to equity ratio, may affect the following:

- The grain dealer's eligibility to participate in the fund.
- The amount that the grain dealer must contribute to the fund.

- Whether or not the grain dealer must file security with DATCP.

Under this rule, a grain dealer's financial statement must disclose and describe all of the following:

- All notes, mortgages or other long-term liabilities that are not due or payable within one year.
- Any of the following items that are counted as assets in the financial statement:
 - Any non-trade note or account receivable from an officer, director, employee, partner, or stockholder, or from a member of the family of any of those individuals.
 - Any note or account receivable from a parent organization, a subsidiary, or an affiliate other than an employee.
 - Any note or account that has been receivable for more than one year, unless the grain dealer has established an offsetting reserve for uncollectable notes and accounts receivable.

Debt to Equity Ratio; Liability Adjustments. This rule allows grain dealers to make certain liability adjustments when calculating their debt to equity ratio for purposes of ch. 126, Stats. Grain dealers may deduct the following amounts when calculating their liabilities for this purpose:

- Amounts borrowed from a lending institution and deposited with a commodities broker to hedge grain transactions.
- Amounts borrowed from a lending institution to buy grain that has been shipped, if the grain dealer maintains a collectible account receivable on the balance sheet.
- Amounts borrowed from a lending institution to buy grain that is held in inventory and shown as inventory on the balance sheet date.
- Amounts borrowed from a lending institution to buy grain that is held in inventory, if the grain dealer has entered into a contract to sell the grain.
- Amounts borrowed from a lending institution to pay for fertilizer, pesticides, herbicides or seed that the grain dealer holds in inventory on the balance sheet date.

Financial Statement Attachments. Some of the financial disclosures required by ch. 126, Stats., and this rule may be made in notes or attachments to the financial statement. Under this rule, an attachment to a reviewed or audited financial statement must satisfy the following requirements:

- The attachment must be on the letterhead of the certified public accountant who reviewed or audited the financial statement.
- The certified public accountant who reviewed or audited the financial statement must certify, in the attachment, whether the attachment is reviewed or audited.

Security Disclosures to Producers. This rule requires grain dealers to make security disclosures to grain producers, so that producers understand the extent to which grain payments are secured by the agricultural producer security program. This rule specifies the form in which grain dealers must make the disclosures. A grain dealer must make the disclosures to a producer at all the following times:

- When the grain dealer first procures grain from the producer.
- The first time the grain dealer procures grain from the producer in each new license year.
- The first time the grain dealer procures grain from the producer after any change in circumstances that requires a different disclosure (for example, after a grain dealer begins contributing to the fund).

Grain Warehouse Keepers

General. This rule requires grain warehouse keepers to comply with the new law, ch. 126, Stats. This rule

supplements the new law, and amends or repeals rules that no longer apply.

Grain Warehouse Licensing. Under ch. 126, Stats., grain warehouse license and fee requirements are based on the grain warehouse capacity. This rule spells out a standard method for calculating grain warehouse capacity, based on the volume of the grain warehouse and a grain “pack factor” specified in this rule.

Under this rule, an applicant for a grain warehouse license must submit a sworn and notarized statement certifying that the information provided in the license application is complete and accurate.

Financial Statements; Disclosure Requirements. Under ch. 126, Stats., a grain warehouse keeper must file a financial statement with DATCP if the grain warehouse keeper has total warehouse capacity of more than 300,000 bushels. Other grain warehouse keepers may file *voluntary* financial statements to qualify for lower fund assessments. A grain warehouse keeper’s financial ratios, including the warehouse keeper’s debt to equity ratio, may affect the following:

- The warehouse keeper’s eligibility to participate in the fund.
- The amount that the warehouse keeper must contribute to the fund.
- Whether or not the warehouse keeper must file security with DATCP.

Under this rule, a grain warehouse keeper’s financial statement must disclose and describe all the following:

- All notes, mortgages or other long-term liabilities that are not due or payable within one year.
- Any of the following items that are counted as assets on the financial statement:
 - Any non-trade note or account receivable from an officer, director, employee, partner, or stockholder, or from a member of the family of any of those individuals.
 - Any note or account receivable from a parent organization, a subsidiary, or an affiliate, other than an employee.
 - Any note or account that has been receivable for more than one year, unless the grain dealer has established an offsetting reserve for uncollectible notes and accounts receivable.

- The total number of bushels of grain in the warehouse keeper’s warehouse.
- The total number of bushels of grain forwarded to another warehouse keeper.
- The total number of bushels of grain the warehouse keeper is obligated to store for depositors.
- The warehouse keeper’s net grain position for each type of grain.

Debt to Equity Ratio; Liability Adjustments. This rule allows grain warehouse keepers to make certain liability adjustments when calculating their debt to equity ratio for purposes of ch. 126, Stats. Grain warehouse keepers may deduct, from their liabilities, the following amounts:

- Amounts borrowed from a lending institution and deposited with a commodities broker to hedge grain transactions.
- Amounts borrowed from a lending institution to buy grain that the grain warehouse keeper has sold and shipped, if the grain warehouse keeper maintains a collectible account receivable on the balance sheet.
- Amounts, borrowed from a lending institution, that are secured by grain that the grain warehouse keeper owns, holds in inventory on the balance sheet date, and shows as inventory on the balance sheet.

- Amount borrowed from a lending institution to pay for fertilizer, pesticides, herbicides or seed that the grain dealer holds in inventory on the balance sheet date.

Financial Statement Attachments. Some of the financial disclosures required by ch. 126, Stats., and this rule may be made in notes or attachments to the financial statement. Under this rule, an attachment to a reviewed or audited financial statement must satisfy the following requirements:

- The attachment must be on the letterhead of the certified public accountant who reviewed or audited the financial statement.
- The certified public accountant who reviewed or audited the financial statement must certify, in the attachment, whether the attachment is reviewed or audited.

Security Disclosures to Producers. This rule requires grain warehouse keepers to make security disclosures to grain producers, so that producers understand the extent to which producer grain in storage is backed by the agricultural producer security program. This rule specifies the form in which grain warehouse keepers must make the disclosures. A grain warehouse keeper must give disclosures to a producer at all the following times:

- When the grain warehouse keeper first receives grain from the producer.
- The first time the grain warehouse keeper receives grain from the producer in each new license year.
- The first time the grain warehouse keeper receives grain from the producer after any change in circumstances that requires a different disclosure (for example, after a grain warehouse keeper begins contributing to the fund).

Milk Contractors

General. This rule requires milk contractors to comply with the new law, ch. 126, Stats. This rule supplements the new law, and amends or repeals rules that no longer apply. This rule does *not* change current rules related to milk price discrimination.

Financial Statements; Disclosure Requirements. Under ch. 126, Stats., a milk contractor must file a financial statement with DATCP if the milk contractor has more than \$1.5 million in annual milk payroll obligations to producers. Other milk contractors may file *voluntary* financial statements in order to avoid paying fund assessments or to qualify for lower fund assessments. A milk contractor’s financial ratios, including the contractor’s debt to equity ratio, may affect the following:

- The milk contractor’s eligibility to participate in the fund.
- The amount that the milk contractor must contribute to the fund.
- Whether or not the milk contractor must file security with DATCP.

Under this rule, a milk contractor’s financial statement must disclose and describe all of the following:

- All notes, mortgages or other long-term liabilities that are not due or payable within one year.
- Any of the following items that are counted as assets in the financial statement:
 - Any nontrade note or account receivable from an officer, director, employee, partner, or stockholder, or from a member of the family of any of those individuals.
 - Any note or account receivable from a parent organization, a subsidiary, or an affiliate, other than an employee.
 - Any note or account that has been receivable for more than one year, unless the milk contractor has established an offsetting reserve for uncollectible notes and accounts receivable.

Debt to Equity Ratio; Liability Adjustments. This rule allows milk contractors to make certain liability adjustments when calculating their debt to equity ratios, *but only for the purpose of determining fund assessments*. When calculating their liabilities, milk contractors may deduct amounts borrowed from lending institutions in order to carry “aged cheese” in inventory for the period required by the federal standard of identity for that cheese. “Aged cheese” means cheese for which the federal standard of identity prescribes an aging period of at least 4 months.

Financial Statement Attachments. Some of the financial disclosures required by ch. 126, Stats., and this rule may be made in notes or attachments to the financial statement. Under this rule, an attachment to a reviewed or audited financial statement must satisfy the following requirements:

- The attachment must be on the letterhead of the certified public accountant who reviewed or audited the financial statement.
- The certified public accountant who reviewed or audited the financial statement must certify, in the attachment, whether the attachment is reviewed or audited.

Security Disclosures to Producers. This rule requires milk contractors to make security disclosures to milk producers, so that producers understand the extent to which milk payments are backed by the agricultural producer security program. This rule specifies the form in which the milk contractor must make the disclosures. A milk contractor must give the disclosures to a producer at all the following times:

- When the milk contractor first procures milk from the producer.
- In June of each year.

Custom Processing for Milk Producers; Exemption. This rule clarifies that ch. 126, Stats., does not apply to a dairy plant operator who takes temporary custody of producer milk for the sole purpose of providing *custom processing* services to milk producers, provided that all the following apply:

- The producers retain title to the milk and to the processed dairy products made from that milk.
- The operator does not market the milk or processed dairy products, but promptly delivers the processed dairy products to the producers or their agent for consumption or marketing.
- The operator does not commingle producer-owned milk or dairy products with other milk or dairy products.
- The operator provides the custom processing services under a written contract with each producer or the producer’s agent. The contract must clearly and conspicuously disclose that:

- The producer retains title to the milk and dairy products.
- The producer’s milk shipments are not secured under ch. 126, Stats.

Producer Agents. Chapter 126, Stats., regulates milk contractors who buy producer milk, or who market producer milk as producer agents. A *producer agent* is a person who markets producer milk for producers without taking title to that milk. Under ch. 126, *producer agents* may have lower security and fund participation requirements than other milk contractors. This rule clarifies that a milk contractor does not qualify as a *producer agent*, for purposes of ch. 126, Stats., unless all the following apply:

- The milk contractor procures producer milk in this state solely as the agent of the milk producers.
- The milk contractor does not take title to the producer milk, or to any dairy products made from the producer milk.
- The milk contractor markets the producer milk under a written contract with each milk producer. The contract must clearly and conspicuously disclose all the following:

- That the milk contractor does not take title to the producer’s milk, or any dairy products made from that milk.
- That the milk contractor receives payments on behalf of the producer, and holds them in trust for the producer.
- The terms and conditions of payment to the producer.
- The procedure by which the milk contractor will receive payment on behalf of the producer and make payments to the producer, including any trust fund arrangement.
- The milk contractor’s compensation for serving as the producer’s agent, and the method by which the milk contractor will receive that compensation from the milk producer.

– A security disclosure statement (see below).

- The milk contractor does not process, as a producer agent, more than 5 million pounds of producer milk in any month.
- The milk contractor gives, to each recipient of producer milk marketed by the contractor, a written invoice stating that the milk is producer milk not owned by the milk contractor.
- The milk contractor files a monthly report with DATCP. The milk contractor must file the report on or before the 25th day of the month. The report must include all the following:
 - The name and address of each person to whom the milk contractor marketed, in the preceding month, producer milk procured in this state.
 - The total pounds of producer milk that the milk contractor marketed to each person in the preceding month.
 - The milk contractor’s total milk payment obligation to milk producers for producer milk that the contractor marketed in the preceding month.

Marketing Processed Dairy Products for Milk Producers. This rule clarifies that ch. 126, Stats., does not apply to a person who markets only *processed dairy products* for milk producers, provided that the person does not procure, market or process any *raw producer milk*.

Milk Payroll Report; Clarification. Under ch. 126, Stats., an applicant for an annual milk contractor license must report (1) the applicant’s total annual payment obligation to milk producers, and (2) the largest obligation incurred at any time during the applicant’s last fiscal year. The reported amounts are used to determine fund assessments and security requirements, if any. This rule clarifies that the applicant must report (1) the total amount paid for milk procured during the applicant’s last fiscal year, and (2) the largest amount paid for milk procured in any single month during the last fiscal year.

Pay Statements to Milk Producers. Under current rules, dairy plant operators must provide pay statements to milk producers. A pay statement identifies the producer and pay period, the amount of milk received, the grade of the milk, milk test results, the milk price and price adjustments, the gross amount due, the average gross pay per hundredweight less hauling charges, deductions from the gross amount due, and the net amount due.

This rule re-codifies, but does not change, current pay statement requirements for dairy plant operators. This rule requires all milk contractors, not just dairy plant operators, to provide pay statements to milk producers.

Milk Contractor Records. Under current rules, dairy plant operators must keep certain records, including records of milk receipts and payments. This rule re-codifies, but does not change, current record keeping requirements for dairy plant operators. This rule requires all milk contractors, not just dairy plant operators, to keep records.

Milk Price Discrimination. Current rules prohibit milk price discrimination by dairy plant operators. This rule does *not* extend the current rules to apply to other milk contractors. This rule updates some cross-references in the current rules, but does not change the current rules.

Vegetable Contractors

General. This rule requires vegetable contractors to comply with the new law, ch. 126, Stats. This rule supplements the new law, and amends or repeals rules that no longer apply.

Financial Statement; Disclosures. Under ch. 126, Stats., a vegetable contractor must file annual financial statements with DATCP if the vegetable contractor incurs more than \$500,000 per year in contract obligations to producers. Other vegetable contractors may file *voluntary* financial statements in order to avoid paying fund assessments or to qualify for lower fund assessments. A vegetable contractor's financial ratios may affect the following:

- The vegetable contractor's eligibility to participate in the fund.
- The amount that the vegetable contractor must contribute to the fund.
- Whether or not the vegetable contractor must file security with DATCP.

Under this rule, a vegetable contractor's financial statement must disclose and describe all of the following:

- All notes, mortgages or other long-term liabilities not due or payable within one year.
- Any of the following items that are counted as assets in the financial statement:
 - Any non-trade note or account receivable from an officer, director, employee, partner, or stockholder, or from a member of the family of any of those individuals.
 - Any note or account receivable from a parent organization, a subsidiary, or an affiliate, other than an employee.
 - Any note or account that has been receivable for more than one year, unless the vegetable contractor has established an offsetting reserve for uncollectable notes and accounts receivable.

Financial Statement Attachments. Some of the financial disclosures required by ch. 126, Stats., and this rule may be made in notes or attachments to the financial statement. Under this rule, an attachment to a reviewed or audited financial statement must satisfy the following requirements:

- The attachment must be on the letterhead of the certified public accountant who reviewed or audited the financial statement.
- The certified public accountant who reviewed or audited the financial statement must certify, in the attachment, whether the attachment is reviewed or audited.

Security Disclosures to Producers. This rule requires vegetable contractors to make security disclosures to producers, so those producers understand the extent to which payments are backed by the agricultural security program. This rule specifies the form in which a vegetable contractor must make the disclosures. A vegetable contractor must include the disclosures in the proposed vegetable procurement contract with each producer.

Fiscal Estimate

See page 22, 9/30/02, Wis. Adm. Register.

Small Business Analysis.

See page 22, 9/30/02, Wis. Adm. Register.

Notice of Hearing

Health and Family Services (Health – HFS 110–) [CR 02–117]

Notice is hereby given that, pursuant to s. 253.12 (3) (a), Stats., the Department of Health and Family Services will hold a public hearing to consider the repeal and recreation of

ch. HFS 116, Wis. Admin. Code, relating to a birth defect prevention and surveillance system.

Hearing Date, Time and Location

The public hearing will be held:

November 6, 2002 Conference Room 751
Wednesday State Office Building
From 2:00 p.m. to 4:00 p.m. 1 West Wilson Street
MADISON, WI

The hearing site is fully accessible to people with disabilities. Parking for people with disabilities is available in the parking lot behind the building, in the Monona Terrace Convention Center Parking Ramp or in the Doty Street Parking Ramp. People with disabilities may enter the building directly from the parking lot at the west end of the building or from Wilson Street through the side entrance at the east end of the building.

Analysis Prepared by the Department of Health and Family Services

Beginning in 1989, the Department of Health and Family Services administered a program that collects, analyzes and disseminates information about adverse neonatal outcomes, birth defects, developmental disabilities and other severe disabilities in children from birth to age 6. The program was known as the Birth Defect Outcome and Monitoring Program.

1999 Wisconsin Act 114, enacted on May 8, 2000, replaced the Birth Defect Outcome and Monitoring Program with the Birth Defect Prevention and Surveillance System. The new system has several differences from the previous reporting program:

1. The definitions of reportable conditions under Act 114 differ from the old statute language. A birth defect is defined as a structural deformation, disruption or dysplasia, or an inherited or biochemical disease.

2. Only birth defects in infants and children up to the age of 2 must be reported to the Department.

3. The list of persons who must report a birth defect to the Department is expanded beyond physicians to include pediatric specialty clinics. Hospitals may, but are not required to report birth defects to the Department.

4. The Department becomes responsible for establishing and maintaining an up-to-date registry of birth defects that have occurred in Wisconsin in the previous 10 years.

5. A new entity known as the Council on Birth Defect Prevention and Surveillance is created for the purpose of making recommendations to the Department regarding the establishment of the registry, the Department's administrative rules and the content of the reports required from medical care providers. Beginning in April 2002, the Council is to biennially report to the legislature on the utilization and progress of the registry.

1999 Wisconsin Act 114 maintains the preexisting mechanisms that ensure the confidentiality of data by requiring parental or guardian written consent before reporting an infant's or a child's name and address or releasing an infant's or a child's name and address.

Contact Person

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

http://www.dhfs.state.wi.us/News/Rules/Proposed_Final_Rules/Proposed_Rule_Index.htm.

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

Sally Meyer
Division of Public Health
Family Health Section
P.O. Box 265

Madison, WI 53701-2569

Ph. 608-267-9510 or, if you are hearing impaired,
1-800-947-3524(TTY)

Fax 608-267-3824

meysa@dhs.state.wi.us

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

Written comments on the proposed rule received at the above address no later than Wednesday, November 13, 2002, will be given the same consideration as testimony presented at the hearing.

Fiscal Estimate

The rule will not result in additional workload. Therefore, there is no cost to the state resulting from these rule changes.

Initial Regulatory Flexibility Analysis

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

Notice of Hearing

Insurance [CR 02-118]

NOTICE IS HEREBY GIVEN that pursuant to the authority granted under s. 601.41 (3), Stats., and the procedure set forth in under s. 227.18, Stats., OCI will hold a public hearing to consider the adoption of the attached proposed rulemaking order affecting s. Ins 3.39, Wis. Adm. Code, relating to Medicare supplement insurance.

Hearing Information

Date: **November 7, 2002**

Time: 10:30 a.m.

or as soon thereafter as the matter may be reached

Place: Room 23, OCI,
121 East Wilson St.
Madison, WI

Written comments on the proposed rule will be accepted into the record and receive the same consideration as testimony presented at the hearing if they are received at OCI within 14 days following the date of the hearing. Written comments should be addressed to: Julie E. Walsh, OCI, PO Box 7873, Madison WI 53707

Summary of Fiscal Estimate

There will be no state or local government fiscal effect.

Analysis Prepared by the Office of the Commissioner of Insurance

Statutory authority: s. 601.41 (3), 601.42, 628.34 (12), 628.38, 631.20, 632.76, 632.81, Stats.

Statutes interpreted: s. 600.01 (28r), 628.34 (12), Stats.

Due to changes in federal law as a result of the Medicare, Medicaid and SCHIP Benefits Improvement and Protection Act ("BIPA"), amendments are necessary in order that Wisconsin Medicare supplement insurance regulation is in compliance with the national association of insurance commissioners ("NAIC") Medicare supplement insurance minimum standards model act modifications.

Under the previous federal law and model act a potential timing gap was created such that persons who were provided

notice of cessation or termination of employee welfare benefit plans in excess of 63 days were put in an untenable position of withdrawing early from the employee welfare benefit plan that may have attractive insurance features (such as more comprehensive coverage) and switch to the Medigap policy so not to risk losing their guaranteed issue rights as they are unable to simultaneously keep a Medigap application current or delay the effective date of the policy beyond the 63 day window. The modifications to BIPA and the NAIC model act, and regulation and as reflected in the changes made to s. INS 3.39, altered time periods to provide the broadest application of when and how the guaranteed issue period is triggered and calculated for eligible persons as defined within s. Ins 3.39 (34) (b) to alleviate most of the potential problems.

Specifically, s. Ins 3.39 (34) (c), as newly created, provides that the guaranteed issue period for persons enrolled in an employee welfare benefit plan begins on the later of two dates; the date the individual receives a notice of termination or cessation of all supplemental health benefits and ends 63 days after the date of termination of the coverage. Or, if the individual was not directly notified, the date the individual received notice that a claim has been denied because the plan terminated or ceased offering insurance and ends 63 days after the date of the actual notice of the denied claim.

Section Ins 3.39 (34) (b), describes several additional distinct groups of persons who may be eligible for guaranteed issue of Medicare supplement or Medigap coverage. Several subsections within s. Ins 3.39 (34) (b) were modified slightly without significant changes. Modifications made to s. Ins 3.39 (34) (c) reference the different groups of eligible persons and specific situations that then trigger guaranteed issue rights and provides time periods specific to each situation.

Modifications were also made for extended Medicare supplement insurance guaranteed issue as a result of interrupted trial periods. Section Ins 3.39 (34) (d), describes the circumstances of how and when such an extension is applicable for eligible persons who had a Medicare supplement policy and subsequently enrolled, for the first time, in a Medicare + Choice or other described plan under s. Ins 3.39 (34) (b) 5. and 6., the manner in which the guaranteed issue period of time will be treated.

Other modifications made in this proposed rule include clarification of eligible expenses that are to include outpatient services paid under the prospective payment system and correcting references to Medicare supplement insurance and federal provisions.

Initial Regulatory Flexibility Analysis

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

Contact Person

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

Inger Williams, Services Section
Office of the Commissioner of Insurance
(608) 264-8110

or at

121 East Wilson Street
PO Box 7873
Madison WI 53707-7873

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.

**Corrections
(CR 02-038)**

An order affecting ch. DOC 310, relating to complaint procedures.
Effective 12-1-02

**Elections Board
(CR 02-082)**

An order affecting ch. ElBd 6, relating to filing campaign reports by electronic transmission.
Effective 12-1-02

**Health and Family Services
(CR 02-070)**

An order affecting chs. HFS 152, 153 and 154, relating to reimbursement for treatment of persons with chronic renal disease, hemophilia or cystic fibrosis.
Effective 11-1-02

**Medical Examining Board
(CR 02-008)**

An order affecting ch. Med 10, relating to defining "failing to cooperate in a timely manner in an investigation" as unprofessional conduct.
Effective 12-1-02

**Medical Examining Board
(CR 02-055)**

An order affecting ch. Med 10, relating to defining "sexual contact with a patient" as unprofessional conduct.
Effective 12-1-02

**Transportation
(CR 02-086)**

An order affecting ch. Trans 320, relating to calculation of fees for special events, security, traffic enforcement and escort services.
Effective 12-1-02

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