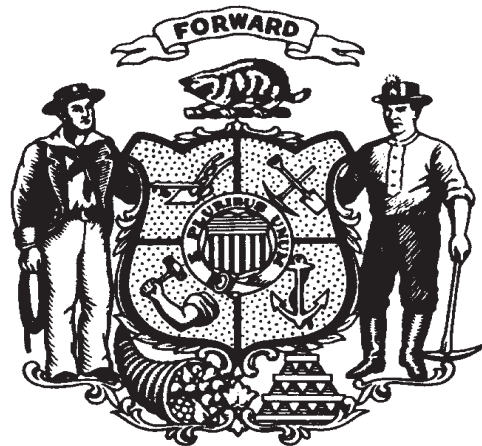


Wisconsin Administrative Register

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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

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

Corrections

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
 [See Notice this Register]

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 (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

- 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

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 19, 2002
Effective Date: July 1, 2002
Expiration Date: November 28, 2002

Natural Resources (2) (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

- Rules adopted revising s. NR 20.20 (73) (j) 4., relating to sport fishing for yellow perch in Lake Michigan and Lake Michigan tributaries.

Finding of emergency

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

Yellow perch reproduction has been poor in Lake Michigan since 1990, leading to the closure of commercial fishing and severe limitations on sport fishing. Reproduction was moderately good in 1998, and reproduction by fish spawned in that year now provides the best hope for an early recovery of the population. This rule is needed to adequately protect fish spawned in 1998 during the 2002 spawning season.

Publication Date: April 15, 2002

Effective Date: April 15, 2002

Expiration Date: September 12, 2002

Hearing Date: April 8, 2002

Natural Resources

(Environmental Protection – General, Chs. NR 100—)

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

Pharmacy Examining Board

Rules adopted revising **chs. Phar 1 and 2**, relating to a pharmacy internship program.

Finding of emergency

2001 Wis. Act 16 creates and amends rules relating to a pharmacy internship program.

Section 3608L of Wis. Act 16, Wis. Stats. s. 450.045, which had previously authorized a Pharmacy Internship Board to implement and oversee the practice of pharmacy in this state by pharmacy interns prior to receiving licensure from the Pharmacy Examining Board.

Section 2154 of Wis. Act 16 mandates that effective December 31, 2001, the repeal of Wis. Stats. s. 450.045 becomes effective. As of December 31, 2001, there will currently be pharmacy interns still serving internships in this state and additional pharmacy students beginning January 1, 2001, who will seek to begin an internship program. However, no standards or oversight will be in place by administrative rule of the Pharmacy Examining Board which is now charged with authority for the pharmacy internship process.

The administrative rule-making process will not allow rules to be in place as of January 1, 2002, without the use of the emergency rule procedure. The emergency rule is needed therefore to effect a transfer of oversight from the extinguished Pharmacy Internship Board to the Pharmacy Examining Board as of January 1, 2001.

Publication Date: December 30, 2001
Effective Date: January 1, 2002
Expiration Date: May 31, 2002
Hearing Date: February 12, 2002
Extension Through: July 29, 2002

Public Instruction

Rules adopted revising **ch. PI 35**, relating to the Milwaukee parental choice program.

Finding of emergency

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

In the past, private schools that intended to participate in the Milwaukee parental choice program were required to submit to the state superintendent a notice of intent to participate by May 1, 2001 Wis. Act 16 changed the submission date of the notice from May 1 to February 1. The rules allow a private school to choose from a variety of student application periods. The student application period chosen by the private school must be indicated on its notice. Because the

notice is due at the department by February 1, emergency rules must be in place as soon as possible.

Publication Date: January 28, 2002
Effective Date: January 28, 2002
Expiration Date: June 27, 2002
Hearing Date: April 9, 2002
Extension Through: August 25, 2002

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

Workforce Development

(Unemployment Compensation, 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: September 11, 2002
Hearing Dates: July 15, 16 & 17, 2002

Scope statements

Health and Family Services

Subject

The Department proposes to change some of the provisions in ch. HFS 78 so the Telecommunication Assistance Program (TAP) requirements are better integrated with the requirements of the Public Service Commission's Telecommunications Equipment Purchase Program (TEPP). To accomplish this, the Department proposes to replace the Department–issued vouchers of unspecified amounts, subject to \$600 and \$5,500 limitations, with one standard voucher amount of \$100. The \$100 Department–issued voucher could be used by eligible applicants to pay the TEPP–required \$100 copayment, thereby better integrating the operation of the two state assistance programs. Through its proposed rules, the Department will also propose:

- decreasing the minimum period a person must wait before reapplying to the Department for a voucher from four years to three;
- removing the limit on the number of persons in a household that may receive assistance under the TAP program; and
- updating the chapter's terminology.

Policy Analysis

Wisconsin has two programs that deaf and hard of hearing persons may use to obtain financial assistance for purchasing telecommunications equipment. The Public Service Commission (PSC) administers one program and the Department of Health and Family Services administers the other. Both programs receive periodic legislative appropriations from which the financial assistance is provided to successful applicants. The PSC TEPP program's funding is substantially larger than that available for the Department's TAP program. Moreover, the PSC TEPP program requires only a \$100 copayment for the purchase of telecommunications equipment. Consequently, the Department will propose modifying the ch. HFS 78 TAP program rules to better integrate their use for the TEPP program copayment. In so doing, the TAP program's more limited resources may be conserved, thereby extending the TAP program benefits to a greater number of potential recipients.

The current rules also limit TAP program financial assistance to one person per household. That constraint has prevented other household members with otherwise qualifying needs from receiving TAP program assistance. The Department will propose modifications to the rule that remove the one person per household constraint.

Finally, given that ch. HFS 78 has not been substantively modified since its creation in 1985, the Department also proposes to update the terminology used in the rule.

Statutory authority

The Department's authority to promulgate these rules is under s. 46.297 (4), Stats.

Staff time required

The Department estimates that it will take approximately 25 hours of staff time to draft the rulemaking order.

Health and Family Services

Subject

This Statement of Scope is a revision of one originally published in the Wisconsin Administrative Register on December 15, 2001. The original Statement of Scope proposed creating a new section of ch. HFS 94, entitled "Patient Rights and Resolution of Patient Grievances" that only addressed policies regarding the circumstances under which the superintendent of a facility housing a sexually violent person placed at the facility under s. 980.065, Stats., may allow that person to leave the grounds of the facility under escort. In the course of drafting the initial rulemaking order, the Department determined that ch. HFS 95 was a more appropriate place for the proposed provisions. Given that decision, the Department also wants to use this as an opportunity to make several minor amendments to ch. HFS 95, based on the Department's operating experience to date administering ch. HFS 95. Therefore, given the redirected and expanded scope of the initial proposed rules, the Department is issuing this revised Statement of Scope.

Policy Analysis

2001 Wis. Act 16 (the biennial budget bill) created a new section of ch. 980, Stats., to address circumstances under which a person committed to either the Wisconsin Resource Center or the Sand Ridge Secure Treatment Center could be allowed to temporarily leave the facility for selected reasons, such as death–bed visits and funerals. The law directs the Department of Health and Family Services to promulgate rules for the administration of this new section. The rules the Department would develop would establish the policies and procedures under which the superintendent of a facility could allow a patient detained or committed under ch. 980, Stats., to leave the grounds of the facility under escort.

In addition to the preceding change, the Department intends to use this opportunity make some minor changes in ch. HFS 95 so that the rules more closely reflect comparable rules issued by the department of Corrections. The principal proposal is to change the defined term "non–lethal force" in s. HFS 95.03 (13) to the term "less than lethal force."

Statutory authority

Section 980.067, Stats., as created by 2001 Wis. Act 16.

Staff time required

30 hours to develop rules for department–level review.

Insurance

Subject

Section Ins 17.40 – relating to primary insurer's duty to provide timely notice to the patient's compensation fund of filing of out–of–state medical malpractice action against Wisconsin provider.

Policy Analysis

(a) A statement of the objective of the proposed rule: To require primary health care liability insurers to provide timely notice to the patient's compensation fund of the filing of out–of–state medical malpractice action against a Wisconsin provider, so the fund may investigate and take appropriate steps to resolve or defend the action.

(b) A description of existing policies relevant to the rule and of new policies proposed to be included in the rule and an analysis of policy alternatives:

Section 655.27(5)(a) 2. of the Wisconsin statutes provides a person filing an out of state action against a health care provider may recover from the fund only if the fund is notified of the action within 60 days of service of process on the health care provider or the employee of the health care provider.

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

In several recent cases, primary carriers have failed to give timely notice to the fund of the commencement of an out-of-state medical malpractice action potentially affecting the fund. A rule is needed to require primary carriers in these circumstances to give timely notice to the fund so the fund is able to timely investigate and respond as appropriate to these claims.

Statutory authority

Sections 655.27 (5) (a) 2., 655.27 (5) (b) and 655.004

Staff time required

An estimate of the amount of time that state employees will spend to develop the rule and a description of the other resources necessary to develop the is 30–40 hours.

Public Defender

Subject

Section PD 1.04 (5) – relating to the certification for appellate cases.

Policy Analysis

Section 977.02 (5) requires that the State Public Defender Board promulgate rules establishing procedures to assure that representation of indigent clients by the private bar at the initial stages of cases assigned under this chapter is at the same level as the representation provided by the State Public Defender. Section PD 1.04 (5) is the original rule relating to appellate certification that was promulgated as required by statute. Based on agency experience and research the OSPD considers it a “best practice” to provide a period of provisional certification during which supervisory staff review private bar performance on appellate appointments.

The proposed rule would amend s. PD 1.04 (5) to provide for provisional certification of private attorneys seeking to take appellate appointments to allow for performance reviews by agency supervisors.

Statutory authority

Section 977.02 (5), Stats.

Statute interpreted: s. 977.08 (3), Stats.

Staff time required

Estimated amount of time agency employees will spend developing the proposed rule: 20 hours. No other resources are necessary.

Public Defender

Subject

Sections PD 2.01, 2.02, 2.03, 2.08, 3.03, 3.038, 3.039, 3.05, 3.055 and 3.06 – relating to determinations of indigency.

Policy Analysis

The proposed changes to the administrative code comply with ch. 977 Stats. and serve to clarify and simplify the process of determining the financial eligibility of prospective clients. A number of the amendments replace references to indigency or indigent with eligibility or eligible. Chapter 977, Stats. provides a statutory financial eligibility standard for appointment of counsel by the agency, which is different from a constitutional determination of indigency by a court. The purpose of these amendments is to resolve the confusion between the constitutional concept of indigency and the use of the word in the context of state public defender representation. The contemplated amendments of this type would affect chs. PD 2 and 3.

The contemplated amendments to ch. PD 3 will simplify the form and process of eligibility determinations. Simplification of the form and process of eligibility determinations allows more cost-effective use of staff time. The contemplated amendments to revise how the rules treat some non-liquid assets will not affect many applicants according to the agency’s database of E-forms. In addition, a survey of lending institutions has been instructive on the treatment of certain non-liquid assets. The contemplated amendments would be consistent with the treatment of non-liquid assets by W2. Likewise, contemplated amendments to remove some currently allowable expenses would affect only expenses that are rarely determinative of eligibility.

The contemplated amendment to s. PD 3.055 simply clarifies that the state public defender should treat voluntary reduction in hours the same as quitting a job when the action is motivated by the intent to qualify for state public defender assigned counsel.

Other contemplated changes to ch. PD 3 would conform the rules to current law and practice. Removing references to partial indigency is an example. The concept of partially indigent is no longer relevant to adult applicants for state public defender assignment of counsel. The concept of a partially indigent applicant predated the collections program initiated in 1996. Prior to 1996, applicants found indigent paid nothing and applicants found partially indigent were required to pay something towards the cost of representation. Under the current collections program all eligible applicants are subject to the collections program.

Other changes relate to conforming the rules to current law in the juvenile and mental health areas. At one time children entitled to appointment of counsel under the juvenile or mental health laws were required to complete an eligibility evaluation. Current law does not require a determination of eligibility for children entitled to appointment of counsel. The adult applicant for appointment of counsel who lacks the mental capacity to understand the contents of the eligibility evaluation form or the process presents a difficult situation for staff. Unlike the applicant who is unwilling to provide the required information, the mentally ill or developmentally disabled client is usually unable to provide reliable information. It is often possible for staff to obtain reliable information from family or medical staff regarding the person’s income and assets. A change in the rules would allow staff to be more efficient in their eligibility determinations.

Statutory authority

Sections 977.02 (2m) and (3) and 977.05 (4) and (5) Stats.

Statutes interpreted: ss. 977.06, 977.07 and 977.075 Stats.

Staff time required

Estimated amount of time agency employees will spend developing the proposed rule: 20 hours. No other resources are necessary.

Submittal of rules to legislative council clearinghouse

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

Corrections

Rule Submittal Date

On June 27, 2002, the Department of Correction submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

Statutory Authority: ss. 301.02, 301.03 (1) (2) and 227.11 (2), Stats.

Statute Interpreted: ss. 304.073 and 304.074, Stats.

The proposed rule–making order relates to ch. DOC 328, adult field supervision.

Agency Procedure for Promulgation

A public hearing is required under s. 227.16 (1), Stats., and will be scheduled at a later date.

The Division of Community Corrections is the organization unit that is primarily responsible for promulgation of the rule.

Contact Person

Julie Kane
Assistant Legal Counsel
(608) 240–5015

promulgate administrative rules for the disbursement of \$100,000 annually to counties not receiving transportation services from the Wisconsin Department of Disabled American Veterans. The proposed rules will identify the application procedures and establish eligibility criteria for the purpose of equitably distributing the \$100,000 among the eligible counties.

The proposed rule creates ch. VA 16 and relates to grants to counties that are not served by transportation services provided by the WI Department of Disabled American Veterans for the purpose of developing, maintaining and expanding transportation services.

Agency Procedure for Promulgation

A public hearing is required.

The Office of the Secretary is primarily responsible for preparing the rule.

Contact Person

John Rosinski
Chief Legal Counsel
Telephone: (608) 266–7916

Transportation

Rule Submittal Date

On June 26, 2002, the Department of Transportation submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

Statutory Authority: s. 227.14 (4m), Stats.

The proposed rule–making order relates to ch. Trans 200, tourist–oriented directional signs.

Agency Procedure for Promulgation

A public hearing is required and scheduled for July 30, 2002.

The Division of Transportation Infrastructure Development, Bureau of Highway Operations.

Contact Person

Julie Johnson, Paralegal, (608) 266–8810.

Workforce Development

Rule Submittal Date

On June 28, 2002, the Department of Workforce Development submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

Statutory Authority: ss. 102.15 (1) and 227.11 (2), Stats.

The proposed rules affect ch. DWD 80, relating to worker’s compensation procedures on claim, payment after an order, reports by expert witnesses, and statement of employee.

Agency Procedure for Promulgation

A public hearing is required and will be held on August 2, 2002. The organizational unit responsible for the promulgation of the proposed rules is the DWD Worker’s Compensation Division.

Contact Person

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Worker’s Compensation Division
Dept. of Workforce Development
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Veterans Affairs

Rule Submittal Date

On June 25, 2002, the Department of Veterans Affairs submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

Under the provisions of 2001 Wis. Act 16, the Department of Veterans Affairs was directed to

Rule-making notices

Notice of Hearings

Agriculture, Trade and Consumer Protection [CR 02-078]

(reprinted from 6/30/02 Wis. Adm. Register)

The State of Wisconsin Department of Agriculture, Trade and Consumer Protection announces that it will hold public hearings on its rule relating to chronic wasting disease in cervids. The department will hold four hearings at the times and places shown below. The department invites the public to attend the hearings and comment on the rule. Following the public hearings, the hearing record will remain open until August 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 Animal Health, 2811 Agriculture Drive, P.O. Box 8911, Madison, WI 53708, or by calling 608-224-4883. Copies will also be available at the hearings.

Hearing impaired persons may request an interpreter for the hearing. Please make reservations for a hearing interpreter by **July 10, 2002**, by writing to Melissa Mace, Division of Animal Health, P.O. Box 8911, Madison, WI 53708-8911, telephone (608) 224-4883. Alternatively, you may contact the Department TDD at (608) 224-5058. Handicap access is available at the hearing.

Hearings are scheduled:

Tuesday, July 16, 2002, commencing at 6:00 p.m.

UW Fond du Lac
University Center, Rm. 113
400 University Ave
Fond du Lac, WI 54935
Handicapped accessible

Thursday, July 18, 2002, commencing at 6:00 p.m.

Quality Inn
809 West Clairemont Avenue
Eau Claire, WI 54702 - 8037
Handicapped accessible

Monday, July 22, 2002, commencing at 6:00 p.m.

WI Dept. of Agriculture, Trade & Consumer Protection
Board Room
2811 Agriculture Drive
Madison, WI 53718
Handicapped accessible

Thursday July 25, 2002, commencing at 6:00 p.m.

UW Marathon County
Terrace Room NA 100
518 South 7th Avenue
Wausau, WI 54401

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

Statutory Authority: ss. 93.07 (1), 93.07 (10) and 95.20, Stats.

Statutes Interpreted: ss. 93.07 (10), 95.20, 95.22, and 95.31, Stats.

This rule regulates the import, testing, identification and movement of farm-raised deer (including deer and elk) to prevent the spread of chronic wasting disease. This rule also modifies current rules related to the registration of farm-raised deer herds in this state. The Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) administers this rule.

For the most part, this rule does not apply to wild deer or elk regulated by the Department of Natural Resources (DNR). However, this rule does regulate *imports* of wild deer and elk. This rule also requires a person to report to DATCP if farm-raised deer *or a wild deer or elk* tests positive for chronic wasting disease.

Background

Chronic wasting disease was recently discovered in the wild deer population in Wisconsin. Chronic wasting disease is a form of transmissible spongiform encephalopathy, a disease that is always fatal. It is known to affect several species of cervids, including elk, white-tailed deer, black-tailed deer, mule deer and red deer. Very little is known about the disease, but it appears to be spread by cervid-to-cervid contact. The disease may spread more readily where cervids are concentrated.

Chronic wasting disease has not been diagnosed in farm-raised deer in this state, but its presence cannot be ruled out. The disease has been diagnosed in some farm-raised herds in other states. This rule establishes a monitoring and testing program for farm-raised deer in this state. This rule also regulates imports and movement of farm-raised deer.

Registering Farm-Raised Deer Herds

DATCP currently regulates "farm-raised deer" herds in this state. Under the new captive wildlife law (2001 Wis. Act 56), captive white-tail deer will also be classified as "farm-raised deer" after January 1, 2003. This rule regulates the keeping of "farm-raised deer," including captive white-tail deer.

Under current rules, a person keeping a herd of farm-raised deer must register the herd with DATCP. A person who keeps farm-raised deer at 2 separate locations may register all of those farm-raised deer as a single herd, and may freely move farm-raised deer between the 2 locations. Under this rule, a person may no longer register herds kept at 2 locations as a single herd, but must register each location as a separate herd. This means that the person must comply with intra-state movement regulations (see below) when moving farm-raised deer between the 2 locations.

A person may register separate herds at the same location if there is "medically significant separation" of the herds. There must be adequate fencing and facilities to maintain the separation, and the herd owner must comply with intra-state movement regulations (see below) when moving farm-raised deer between the herds. A person might choose to register separate herds at the same location if, for example, the person maintains a breeding operation (from which live animals are shipped) and a separate hunting operation (from which no live animals are shipped) at that location.

Before DATCP registers 2 herds at the same location, DATCP must inspect the premises to determine whether the facilities and fencing are adequate to maintain “medically significant separation” of the herds. The herd owner must pay, in addition to the normal registration fees, a \$150 inspection fee to cover the costs of the inspection.

Under current rules, DATCP must grant or deny registration within 30 days after DATCP receives a complete application. Under this rule, if DATCP must inspect to ensure that there is “medically significant separation” between herds kept at the same location, DATCP must grant or deny the registration within 60 days after receiving a complete application.

Duties of Herd Owners

A person keeping farm–raised deer must comply with this rule. The person must keep complete herd records, including records related to animals entering or leaving the herd. The person may not add a cervid to the herd unless the cervid is imported in compliance with this rule, or moved from another registered herd in compliance with this rule. The person may not accept into the herd, on a temporary or permanent basis, any cervid from a wild herd. DATCP may deny, suspend or revoke a registration certificate for cause, including violations of this rule.

Importing Deer and Elk to Wisconsin

Under current rules, no person may import a deer, elk or other cervid into Wisconsin without a permit from DATCP. The importer, or a veterinarian acting on behalf of the importer, may apply for an import permit. The applicant must identify the herd of origin and the herd of destination. Current import rules apply to wild cervids as well as farm–raised deer.

This rule clarifies that DATCP will not issue a written import permit until DATCP receives a certificate of veterinary inspection completed by a federally accredited veterinarian. The certificate must identify each cervid to be imported, and must certify one of the following:

- The cervid originates from a herd monitored for at least 5 years under a state–approved chronic wasting disease herd certification program that complies with federal uniform methods and rules.
- The cervid originates from a herd that meets all the following criteria:
 - Herd members have all been born in the herd or kept in the herd for at least one year.
 - Herd members have not been added from any outside source, or exposed to cervids from any outside source, in the past year.
 - There have been no clinical signs of chronic wasting disease in the herd for the past 5 years.
 - Animal health officials in the state of origin have access to herd records for the past 5 years, including records of deaths and causes of death.
 - If the cervid is imported after December 31, 2003, the animal originates from a herd that is enrolled in a state–approved chronic wasting disease program that complies with federal uniform methods and rules:

* Animals imported in 2004 must originate from herds enrolled for at least one year.

* Animals imported in 2005 must originate from herds enrolled for at least 2 years.

* Animals imported in 2006 must originate from herds enrolled for at least 3 years.

* Animals imported in 2007 must originate from herds enrolled for at least 4 years.

* Animals imported in 2008 and subsequent years must originate from herds enrolled for at least 5 years.

Moving Live Farm–Raised Deer from Herds in Wisconsin

Under current rules, no person may move a live farm–raised deer from a herd in this state without a certificate of veterinary inspection. A Wisconsin certified veterinarian must certify that the farm–raised deer has tested negative for tuberculosis (there are some exceptions). Under this rule:

- The veterinarian must also certify that the herd of origin has shown no clinical signs of chronic wasting disease in the last 12 months. The veterinarian must be the herd veterinarian for the herd of origin.
- The herd of origin must be enrolled in Wisconsin’s herd monitoring program (see below). The required length of enrollment will increase over time:
 - Beginning in 2004, the herd must have been enrolled for at least one year.
 - Beginning in 2005, the herd must have been enrolled for at least 2 years.
 - Beginning in 2006, the herd must have been enrolled for at least 3 years.
 - Beginning in 2007, the herd must have been enrolled for at least 4 years.
 - Beginning in 2008, the herd must have been enrolled for at least 5 years.

These requirements do not apply to any of the following:

- A farm–raised deer moved directly to slaughter if it is tested for chronic wasting disease.
- A farm–raised deer moved by or under the control of DNR.
- A farm–raised deer moved between institutions that are accredited by the American association of zoological parks and aquariums.

Mandatory Testing in Wisconsin

This rule requires chronic wasting disease testing of farm–raised deer. There is no test available for live farm–raised deer. Tests must be conducted on brain tissue collected from dead farm–raised deer. Tests are only effective on farm–raised deer at least 16 months old. This rule requires herd owners to have all the following tested for chronic wasting disease:

- All farm–raised deer at least 16 months old that are shipped to slaughter.
- All farm–raised deer at least 16 months old whose carcasses (or any part of whose carcasses) leave the herd premises.

A herd owner enrolled in Wisconsin’s herd monitoring program (see below) must also test farm–raised deer at least 16 months old that die on the herd premises, even if their carcasses do not leave the herd premises. No live farm–raised deer may be shipped from a herd unless that herd is enrolled in the monitoring program.

Test Standards and Reports

This rule spells out standards for official chronic wasting disease testing in this state. Under this rule:

- Test samples must be collected by a DATCP–certified veterinarian, a DATCP employee, an employee of the animal and plant health inspection service of the United States department of agriculture (APHIS), or another person approved by DATCP. The person must complete training approved by DATCP.
- Test samples must be collected according to standard veterinary procedure, and tested at a laboratory approved by DATCP or APHIS.

- Veterinarians and others must report to DATCP if test results are positive for chronic wasting disease. This reporting requirement applies to voluntary tests, as well as required tests. Persons receiving positive test results must report within one day, and confirm the report in writing within 10 days.

Quarantine and Condemnation

Under this rule, if a farm-raised deer tests positive for chronic wasting disease, DATCP must quarantine the herd. DATCP will conduct an epidemiological evaluation to determine the appropriate disposition of farm-raised deer in the herd. DATCP may condemn farm-raised deer exposed to the disease, and may direct the disposition of their carcasses. The herd owner may apply for statutory indemnity payments. If the owner of a farm-raised deer is eligible, indemnities will normally cover 2/3 of the appraised value of the condemned farm-raised deer, but not more than \$1500 for each animal.

Herd Monitoring Program

This rule establishes a herd monitoring program for chronic wasting disease. This program supplements the mandatory testing requirements described above. No live farm-raised deer may be shipped from a herd unless that herd is enrolled in the monitoring program (see above). A herd owner who wishes to enroll in the program must do all the following:

- Complete an application form.
- Provide a report of a herd census completed not more than 30 days before the application date. The census report must include all the following:
 - The number, species and sex of farm-raised deer in the herd.
 - The number of farm-raised deer at least one year old.
 - The number of farm-raised deer less than one year old.
 - The official individual identification (ear tag number or other approved identification) of each farm-raised deer that is at least one year old.
- Provide a statement from the herd veterinarian. The veterinarian must certify that he or she is the herd veterinarian, and that no farm-raised deer in the herd has shown any clinical signs of chronic wasting disease in the past 12 months.

DATCP must grant or deny the application within 30 days. A herd is enrolled in the program when DATCP accepts the herd owner's application. The herd owner must do all the following to remain in the program:

 - Identify each farm-raised deer in the herd, with official individual identification, before the farm-raised deer is one year old.
 - Test every farm-raised deer that dies or is shipped to slaughter, if that farm-raised deer is at least 16 months old. This testing requirement applies, regardless of whether the carcass leaves the herd premises.
 - Notify the herd veterinarian within 24 hours after the herd owner observes any signs or symptoms of chronic wasting disease.
 - Provide an annual statement from the herd veterinarian. The herd veterinarian must submit the annual statement to DATCP, within 30 days before or after the herd enrollment anniversary date. The veterinarian must certify that he or she is the herd veterinarian, and that no farm-raised deer in the herd has shown any clinical signs of chronic wasting disease since the last annual statement.
 - File a report of an annual herd census. The herd owner must complete the annual census within 30 days before or after the enrollment anniversary date, and must file the report

within 10 days after completing the census. The census report must include all the following:

- The number, species and sex of farm-raised deer in the herd.
 - The number of farm-raised deer at least one year old, and the number less than one year old.
 - The official individual identification of each farm-raised deer that is at least one year old.
 - The number, species and sex of farm-raised deer added to the herd since the last reported herd census. The report must indicate whether these new farm-raised deer were born into the herd or added from another source. If farm-raised deer were added from another source, the report must identify the source from which they were obtained.
 - The number of farm-raised deer that left the herd since the last reported herd census. The report must explain how each farm-raised deer left the herd, including all the following:
 - * Whether the farm-raised deer died on the premises, was shipped to slaughter, or was shipped live other than to slaughter.
 - * If the farm-raised deer was shipped live other than to slaughter, the name of the person to whom it was shipped and the place to which it was shipped.
 - * If the farm-raised deer died on the premises, the animal's age and the disposition of its carcass. If the carcass left the premises, the report must identify the carcass destination or recipient. If the animal was at least 16 months old, the report must include a chronic wasting disease test report.
 - * If the farm-raised deer was shipped to slaughter, the animal's age and the name and address of the slaughter establishment. If the farm-raised deer was at least 16 months old, the report must include a chronic wasting disease test report.
 - Maintain all the following records for at least 5 years, and make those records available to DATCP for inspection and copying upon request:
 - A record of each farm-raised deer added to the herd from another source, including:
 - * The species, age and sex of the animal.
 - * The name and address of the person from whom the animal was obtained.
 - * The address of the herd from which the animal was obtained.
 - A record of each farm-raised deer leaving the herd, including all the following:
 - * Whether the animal died on the premises, was shipped to slaughter, or was shipped live other than to slaughter.
 - * If the animal was shipped live other than to slaughter, the name of the person to whom it was shipped and the place to which it was shipped.
 - * If the animal died on the premises, the apparent cause of death, the animal's age, and the disposition of the animal's carcass. If the carcass left the premises, the record must identify the carcass destination or recipient.
 - * If the animal was shipped to slaughter, the animal's age and the name and address of the slaughter establishment.
- A copy of all records received from the herd veterinarian related to veterinary services provided to the herd.

Fiscal Estimate

See p. 16, 6/30/02 Wis. Adm. Register.

Initial Regulatory Flexibility Analysis

See p. 17, 6/30/02 Wis. Adm. Register.

Notice of Hearings

Corrections [CR02–093]

NOTICE IS HEREBY GIVEN that pursuant to ss. 227.11 (2) (a), 302.02, 301.03 (2), Stats., the department of corrections proposes the following rules relating to adult field supervision:

Hearing Information

On the following dates, public hearings will be held relating to the permanent proposed rule for ch. DOC 328 relating to adult field supervision as well as the identical emergency rule effective July 2, 2002:

Date & Time Location

July 29, 2002
Monday
9:00 a.m. – 11:00 a.m.
Wood County Courthouse
400 Market Street
Room 210B (Second Floor)
Wisconsin Rapids, WI

July 30, 2002
Tuesday
9:00 a.m.–11:00 a.m.
State Office Building
141 N.W. Barstow Street
Room 137 A
Waukesha, WI

The public hearing sites are accessible to people with disabilities.

Analysis Prepared by the Department of Corrections

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 section 304.074 (5) of the statutes and that set rates under section 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 section 304.74 (1) (a) of the statutes, or minimum supervision, as defined in section 304.74 (1) (b) of the statutes.”

The department published an emergency rule on July 2, 2002, in anticipation of the fore–mentioned statutory requirements. This permanent rule proposal follows.

While the language and potential requirements of Assembly Bill 1 doubles the amount the department may collect in supervision fees, the current Adm. 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.

This rule:

- 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.

SECTION 1. DOC 328.043 is repealed.

SECTION 2. DOC 328.045(1) , (2) (intro) and (2)(c) are amended to read:

DOC 328.045 ~~Medium, maximum and high risk~~ Offenders under supervision by the department.

(1) OFFENDER PAYMENT. An offender ~~on medium supervision as defined under s. DOC 328.04(4) (b) or maximum supervision as defined under s. DOC 328.04(4)(a) or high risk~~ who is under supervision by the department shall pay a supervision fee.

(2) SUPERVISION FEE. The department shall set a supervision fee for an offender based on the offender’s ability to pay with the goal of receiving at least \$1–2 per day, if appropriate, and shall do all of the following:

(c) Charge a supervision fee according to the following table:

| Table DOC 328.045 | Category | Gross Monthly Income | Supervision Fee | Maximum Rate | |
|-------------------|--------------------|----------------------|-----------------|--------------|---------|
| I | \$0–599.99 | 800.00 | \$10.00 | 20.00 | \$30.00 |
| II | \$600.00 or more | 801.00–1,500.00 | \$30.00 | 40.00 | 45.00 |
| III | \$1,501.00 or more | | \$60.00 | | |

Initial Regulatory Flexibility Analysis

These rules are not expected to have an effect on small businesses.

Fiscal Estimate

In FY 01 the DOC collected \$5,884,800 in supervision fees. This revenue is used to provide a variety of essential Division of Community Corrections (DCC) services including rent, vehicles for home visits, extradition of absconders, and upgrading computers utilized by DCC staff.

According to the new rule, offenders at all supervision levels will pay according to one supervision–fee scale. The new fee schedule will range from \$20 to \$60 per month depending on an offender’s monthly income. DOC may exempt offenders from the fee schedule if the offender meets certain criteria. It is estimated that the new fee schedule will generate an additional \$5,884,800 annually in supervision fee revenue. (A full copy of the fiscal estimate may be obtained through the contact person listed below.)

Contact Person

Julie Kane (608) 240–5015
Office of Legal Counsel
P.O. Box 7925
Madison, WI 53707–7925

If you are hearing or visually impaired, do not speak English, or have 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

Written comments on the proposed rules received at the above address no later than August 5, 2002, will be given the same consideration as testimony presented at the hearing.

Notice of Hearing

Financial Institutions – Division of Securities

NOTICE IS HEREBY GIVEN that pursuant to sections 551.63 (1) and (2), 551.27 (10), 551.32 (1) (a), (b), (c), (1s), (4), (7) and (8), and 551.33 (6), Stats., the Division of

Securities of the Department of Financial Institutions will hold a public hearing at 345 West Washington Avenue, 4th Floor Conference Room, at 10:00 a.m. on **Tuesday, August 20, 2002** to consider the adoption, amendment and repeal of rules in connection with its annual review of the administrative rules of the Division of Securities relating to the operation of ch. 551, Stats., the Wisconsin Uniform Securities Law.

Written comments in lieu of public hearing testimony may be submitted which must be received no later than the hearing date and should be addressed to the Administrator of the Division of Securities, 345 West Washington Avenue, PO Box 1768, Madison Wisconsin, 53701.

Statutory Authority: ss. 551.63 (1) and (2), 551.27 (10), 551.32 (1) (a), (b), (c), (1s), (4), (7) and (8), and 551.33 (6), Stats.

Statutes Interpreted: ss. 551.27 (10), 551.32 (1) (a), (b), (c), (1s), (4), (7) and (8), and 551.33 (6), Stats.

Analysis Prepared by the Division of Securities

The rulemaking procedures under ch. 227, Stats. are being implemented for the purpose of effectuating the Division's annual review of the Rules of the Division of Securities. The Division's annual rule revision process for 2002 is conducted for the following purposes: (1) Adopting new rules or amending existing rules, relating to the securities broker-dealer, agent, investment adviser, and investment adviser representative licensing provisions, to thereby effectively regulate new securities licensing developments that have occurred in the securities industry and marketplace that require regulatory treatment; (2) Repealing certain now-outdated interim rule provisions (or sections thereof) promulgated in 2001 that, at the time, established deadlines for filing initial and renewal license applications with the Division by investment advisers and investment adviser representatives using the national, electronic database of the Investment Adviser Registration Depository; and (3) Adding several recent or newly-amended North American Securities Administrators Association ("NASAA") securities registration policies to the current list of NASAA securities registration policies contained in existing rule s. DFI-Sec 3.03 (4), because the disclosure related provisions of such policies may be used by the Division for purposes of reviewing the adequacy of prospectus disclosures in securities registration applications filed with the Division.

A summary of the subject matter and nature of the more significant of the rule revisions follows:

1. Providing for the electronic filing procedure for licensure in Wisconsin of investment adviser representatives using the national, electronic database of the Central Registration Depository made available for use by all states as of March 2002.

2. Creating new subsections under the Licensing Period rules in s. DFI-Sec 4.07 (2) for securities agents and in s. DFI-Sec 5.07 (2) for securities agents qualified to perform the functions of an investment adviser representative, relating to the failure to comply with continuing education requirements recently adopted by the National Association of Securities Dealers ("NASD") and national securities exchanges, to provide that a license is not effective if the person's status with the NASD or a national securities exchange is deficient for failure to meet continuing education requirements.

3. Amending the language in a number of existing licensing procedure rules to clarify that initial and renewal licenses of investment advisers remain subject to filing under the Investment Adviser Registration Depository.

4. Repealing certain now-outdated interim rule provisions (or sections thereof) promulgated in 2001 that, at the time, established deadlines for filing initial and renewal license applications with the Division by investment advisers and investment adviser representatives using the national, electronic database of the Investment Adviser Registration Depository.

5. Adding to the current list of NASAA securities registration policies contained in existing rule s. DFI-Sec 3.03 (4), Wis. Adm. Code, that may be used by the Division for purposes of reviewing the adequacy of prospectus disclosures in securities registration applications filed with the Division, the NASAA Statements of Registration Policy relating to Mortgage Program Guidelines, Omnibus Guidelines, General Obligation Financing by Religious Denominations/Church Extension Fund Guidelines, and the amended version of the NASAA Statement of Policy Regarding Church Bonds as adopted by the NASAA membership in April, 2002.

Each Section that adopts, amends or repeals a rule is followed by a separate Analysis which discusses the nature of the revision as well as the reason for it.

A copy of the entirety of the proposed rule revisions to be considered may be obtained upon request to the Division of Securities, Department of Financial Institutions, 345 West Washington Avenue, 4th Floor, P.O. Box 1768, Madison, Wisconsin 53701. Additionally, the full text of the proposed rule revisions is available on-line at the DFI Website: www.wdfr.org/securities&franchising.

Fiscal Estimate

Types of small businesses that could be affected by certain of the rule revisions are:

Broker-dealer and investment adviser licensees under the Wisconsin Uniform Securities Law with fewer than 25 full-time employees who meet the other criteria of s. 227.114 (1) (a), Stats. The proposed revisions to the securities broker-dealer and investment adviser Rules of Conduct provisions are applicable equally to all broker-dealers and investment advisers because the requirements involved are for the protection and benefit of Wisconsin customers of those firms. All Wisconsin customers of securities broker-dealers and investment advisers are entitled to the public investor protection benefits of the licensing Rules of Conduct requirements, irrespective of the size of the firm providing the securities services. Under the rule revision procedure of the Division of Securities, a copy of the proposed rule revisions is mailed to each broker-dealer licensed in Wisconsin, as well as to each investment adviser licensed or notice-filed in Wisconsin, notifying them of the proposed revisions and soliciting written comments or attendance at the public hearing regarding the proposed rules.

A summary of the fiscal effects of the proposed rule revisions is as follows: (i) No one-time revenue fluctuations; (ii) No annual fiscal effects; (iii) No long-range fiscal implications; (iv) No fiscal effect on local units of government.

Initial Regulatory Flexibility Analysis:

1. Types of small businesses that could be affected by certain of the rule revisions are:

Broker-dealer and investment adviser licensees under the Wisconsin Uniform Securities Law with fewer than 25 full-time employees who meet the other criteria of s. 227.114 (1) (a), Stats. The proposed revisions to the securities broker-dealer and investment adviser Rules of Conduct provisions are applicable equally to all broker-dealers and investment advisers because the requirements involved are

for the protection and benefit of Wisconsin customers of those firms. All Wisconsin customers of securities broker–dealers and investment advisers are entitled to the public investor protection benefits of the licensing Rules of Conduct requirements, irrespective of the size of the firm providing the securities services. Under the rule revision procedure of the Division of Securities, a copy of the proposed rule revisions is mailed to each broker–dealer licensed in Wisconsin, as well as to each investment adviser licensed or notice–filed in Wisconsin, notifying them of the proposed revisions and soliciting written comments or attendance at the public hearing regarding the proposed rules.

2. Reporting, bookkeeping and other procedures required for compliance with the rules.

No reporting, bookkeeping, or other procedures applicable to broker–dealers or investment advisers were added in this rulemaking package. In contrast, certain existing investment adviser reporting requirements (relating to filing with the Division copies of an investment adviser’s federal Form ADV) were repealed.

Contact Person

A copy of the full text of the proposed rule revisions and fiscal estimate may be obtained from:

Randall E. Schumann – (608) 266–3414
 Legal Counsel for the Division of Securities
 Department of Financial Institutions
 345 West Washington Avenue, 4th Floor
 P. O. Box 1768
 Madison, WI 53701

Additionally, the full text of the proposed rule revisions is available on–line at the DFI Website:
www.wdfi.org/securities&franchising.

Notice of Hearing

Public Instruction [CR 01–069]

NOTICE IS HEREBY GIVEN That pursuant to ss. 115.996, 118.30 (2) (b) 2., and 227.11 (2) (a), Stats., and interpreting subch. VII of ch. 115 and 22. 118.30 and 121.02 (1) (r), Stats., the Department of Public Instruction will hold a public hearing as follows to consider the repeal of chs. PI 13 and 16 and recreation of ch. PI 13, relating to limited–English proficient pupils. The hearing will be held as follows:

Date and Time and Location

July 30, 2002 Madison
 4:00 – 5:00 p.m. GEF 3 Building
 125 South Webster St.
 Room 041

The hearing site is fully accessible to people with disabilities. If you require reasonable accommodation to access this meeting, please call Timothy Boals, Education Consultant, Bilingual/ESL programs, at (608) 267–1290 or leave a message with the Teletypewriter (TTY) at (608) 267–2427 at least 10 days prior to the hearing date. Reasonable accommodation includes materials prepared in an alternative format, as provided under the Americans with Disabilities Act.

Copies of Rule and Contact Person

The administrative rule is available on the internet at <http://www.dpi.state.wi.us/dpi/dfm/pb/leprule.html>. A copy of the proposed rule and the fiscal estimate may be obtained by sending an email request to lori.slauson@dpi.state.wi.us or by writing to:

Lori Slauson, Administrative Rules and Federal Grants
 Coordinator

Department of Public Instruction
 125 South Webster Street
 P.O. Box 7841
 Madison, WI 53707

Written comments on the proposed rules received by Ms. Slauson at the above address no later than August 2, 2002, will be given the same consideration as testimony presented at the hearing. Comments submitted via email will not be accepted as formal testimony.

Analysis by the Department of Public Instruction

On June 12, 2001, the department submitted modifications to Chapter PI 16, Wis. Admin. Code, relating to testing of pupils with limited–English proficiencies and disabilities (CHR 01–069). However, as a result of on–going negotiations with the U. S. Department of Education, the department is now making germane modifications to CHR 01–069. The following paragraphs describe the original rule proposal (CHR 01–069) and the modifications made to CHR 01–069:

Original Rule Proposal (CHR 01–069):

Under s. 118.30, Stats., the state superintendent must adopt or approve examinations designed to measure pupil attainment of knowledge and concepts in the 4th, 8th, and 10th grades. Currently, the rules establish criteria and procedures to determine whether a pupil with limited–English proficiency (LEP) or a pupil having an exceptional educational need or EEN (now referred to as child with a disability) may be exempt from taking a test under s. 118.30, Stats.

The proposed rules:

- Repeal the criteria and procedures relating to testing children with disabilities. In 1998, the legislature made sweeping changes to the statutes regarding special education for children with disabilities. The legislature also repealed most state rules regarding special education contained in ch. PI 11, Wis. Adm. Code. The reduction in state rules was intended to eliminate conflicts between the rules and the new state statute and federal law. In addition, in an effort to reduce regulatory complexity and potential incongruence between state rule and federal law, the department eliminated rules in areas adequately addressed by state statute or federal law. Because the provisions in the current rule under ch. PI 16 conflict with provisions in state statute and federal law, the proposed rule repeals the subchapter relating to testing children with disabilities. New rule language in this area is not necessary because testing and assessment issues relating to children with disabilities are already comprehensively addressed in state and federal special education statutes and regulations.

- Ensure that all LEP pupils participate in the Wisconsin Knowledge and Concept Examinations (WKCE) unless it is determined, on a case by case basis, that such tests would not be a valid and reliable indicator of the pupil’s academic knowledge and skills. The statutes require the state superintendent to set criteria by rule, regarding the testing of LEP pupils. The current rules conflict with federal regulations under the Elementary and Secondary Education Act because the rules automatically exempt LEP pupils at lower English proficiency levels from taking any of the Wisconsin Knowledge and Concept Examinations (WKCE).

- Ensure that LEP pupils who do not participate in the WKCE are provided with a department–approved alternate assessment.

- Clarify that exempting a pupil from taking the WKCE may not be used as the sole criterion in determining grade

promotion, eligibility for courses or programs, eligibility for graduation or eligibility for postsecondary education opportunities. Current rule language could be interpreted to require school districts to promote or graduate an LEP pupil if the pupil is exempt from taking a standardized test.

- Clarify that the criteria under this chapter also apply to the 4th grade test administered under s. 118.30, Stats. At the time the rules were originally developed, only the 8th and 10th grade tests were being administered under s. 118.30, Stats. Since that time, the 4th grade test was added to the WKCE administered under s. 118.30, Stats., and the rules should be changed accordingly.

- Change the term “limited-English speaking” to “limited-English proficient” to be consistent with statutory terminology under s. 115.955 (7), Stats.

Modifications to CHR 01-069:

In December 2000, the department received correspondence from the U. S. Department of Education relating to certain aspects of Wisconsin’s assessment system that “must be addressed in order for Wisconsin to remain eligible to receive Title I funds.” Wisconsin receives more than \$130 million annually in Title I funds. The following is a summary of the department’s plan, in part, to fully implement the assessment and accountability provisions under Title I through a timeline waiver agreement with the U.S. Department of Education:

- The department will work with school districts to increase the number of LEP pupils participating in the state assessment system (WKCE and WRCT).

- All students will be included in the assessment system, either by participation in the state assessments (with or without accommodations) or by participation in alternate assessments, with results incorporated into school and district accountability determinations.

- Additional accommodations will be provided, and administrative rules will be modified to ensure that all LEP pupils are appropriately assessed.

- Alternate assessments will be provided for LEP pupils who are not able to demonstrate at least some of the knowledge and skills on the WKCE. Guidance as to who should participate in these assessments will be provided to districts.

In an effort to comply with U. S. Department of Education’s timeline waiver agreement and to organize school district requirements relating to LEP pupils, the germane modifications to CHR 01-069 include:

- Repealing chs. PI 13 and 16 and recreating and reorganizing the provisions under these chapters into a new ch. PI 13. The intent is to have all LEP pupil information under one chapter, rather than two chapters, making it easier for schools to find relevant information. The original modifications to ch. PI 13 proposed under CHR 01-069 remain intact but are now reorganized. Also, the provisions under ch. PI 16 for the most part remain intact except for the following:

- The definitions used in determining the English proficiency level of an LEP pupil have been modified and a new definition, level 6 – formerly LEP now fully English proficient, has been added.

- School boards are required to use a department-approved assessment in determining the English proficiency level of an LEP pupil.

- Ensuring that all LEP pupils participate in the Wisconsin Reading Comprehension Test (WRCT) required under s. 121.02 (1) (r), Stats., unless it is determined, on a case

by case basis, that such tests would not be a valid and reliable indicator of the pupil’s academic knowledge and skills. Although the department does not have specific statutory authority to set criteria by rule regarding the testing of LEP pupils for the WRCT as it does with the WKCE, criteria for administering this test to LEP pupils are included for the following reasons:

- For consistency, criteria should be the same when determining whether or not to administer any statutorily required test to an LEP pupil.

- Under the federal No Child Left Behind Act (which reauthorized Title I), schools must annually assess math and reading skills in grades 3 through 8, and testing criteria for LEP pupils must be specified. To meet the provisions under the Act, the department will administer the WRCT in the 3rd grade and LEP pupils will continue to be included in that testing as specified in this rule.

- Requiring certain information and assurances that were formerly required under chs. PI 13 and 16 to now be required in a school board’s policy.

Fiscal Estimate

Chapter PI 16 establishes criteria relating to the testing of limited-English proficient (LEP) pupils in the 4th, 8th, and 10th grade assessments under s. 118.30, Stats. Currently, the state administrative rules exempt LEP pupils at lower proficiency levels from taking these tests. The proposed rules eliminate the automatic exemption of such pupils and require that all LEP pupils be tested unless it has been determined, on a case by case basis, that such tests would not be a valid and reliable indicator of the pupil’s academic knowledge and skills. School districts may incur new costs if a translator is used to administer a standardized test to a pupil who is currently exempt. Additional costs will vary within each district depending on its decisions about whether to administer standardized tests and on its population of LEP pupils. However, since most school districts already offer these services to LEP pupils who are taking tests, as well as other services, these new costs are not expected to be significant.

Districts that meet the criteria under subch. VII of ch. 115, Stats., are eligible to be partially reimbursed by state bilingual-bicultural aids for costs resulting from implementing LEP programs. It is important to note that if the exemption of LEP pupils at lower English proficiency levels continues, the State of Wisconsin could lose more than \$130 million in federal Title I funds because the U.S. Department of Education has found this practice to be out of compliance with federal regulations.

These proposed rules are not expected to result in new costs for the department.

Initial Regulatory Flexibility Analysis

The proposed rules are not anticipated to have a fiscal effect on small businesses as defined under s. 227.114 (1) (a), Stats.

Notice of Hearing

Transportation [CR 02-092]

NOTICE IS HEREBY GIVEN that pursuant to s. 86.196 (2), Stats., and interpreting s. 86.196 (2), Stats., the Department of Transportation will hold a public hearing in **Room 144-B** of the Hill Farms State Transportation Building, 4802 Sheboygan Avenue, Madison, Wisconsin on the **30th day of July, 2002, at 1:00 p.m.** to consider the

amendment of ch. Trans 200, Wis. Adm. Code, relating to tourist-oriented directional signs.

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

The public record on this proposed rule making will be held open until close of business August 2, 2002, to permit the submission of written comments from persons unable to attend the public hearing or who wish to supplement testimony offered at the hearing. Any such comments should be submitted to John Noll, Department of Transportation, Bureau of Highway Operations, Room 501, P. O. Box 7986, Madison, WI 53707–7986.

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

Analysis Prepared by the Wisconsin Department of Transportation

Statutory Authority: 86.196 (2), Stats.

Statute Interpreted: 86.196 (2), Stats.

General Summary of Proposed Rule

This proposed rulemaking will amend ch. Trans 200, relating to Tourist–Oriented Directional Signs (TODS), to include agricultural produce stands and Christmas tree farms in the TODS program qualifications as “seasonal attractions.” The proposed amendments will establish criteria for signing the seasonal attraction types of businesses and provide minimum criteria for the advisory council for uniform evaluation and assessment of applications to make their recommendations to the Department to approve or deny applications.

Currently there is nothing covering “seasonal attractions” for the TODS program as far as agricultural produce stands and Christmas tree farms. The rule does cover seasonal tourist attractions but they must be open 3 consecutive months to qualify. The agricultural produce stands and Christmas tree farms would only be open less than 60 consecutive days. The Department of Agriculture would like the Department to help the people who have produce stands along the highway on premises to be able to put up some sort of temporary or permanent signage.

Fiscal Impact

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

Initial Regulatory Flexibility Analysis

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

Copies of Proposed Rule

Copies of the rule may be obtained upon request, without cost, by writing to John Noll, Department of Transportation, Bureau of Highway Operations, Room 501, P. O. Box 7986, Madison, WI 53707–7986, or by calling (608) 266–0318. Hearing–impaired individuals may contact the Department using TTY (608) 266–3096. Alternate formats of the proposed rule will be provided to individuals at their request.

Notice of Hearing

Workforce Development (Chs. DWD 80 – 82) [CR 02–094]

NOTICE IS HEREBY GIVEN that pursuant to ss. 102.15 (1) and 227.11, Stats., the Department of Workforce Development proposes to hold a public hearing to consider ch. DWD 80 relating to worker’s compensation procedures on claim, payment after an order, reports by expert witnesses, and statement of employee.

Hearing Information

Friday, August 2, 2002 at 10:00 a.m.

GEF 1 Bldg., Room B105
201 E. Washington Avenue
Madison

Interested persons are invited to appear at the hearing and will be afforded the opportunity to make an oral presentation of their positions. Persons making oral presentations are requested to submit their facts, views, and suggested rewording in writing.

Visitors to the GEF 1 building are requested to enter through the left East Washington Avenue door and register with the customer service desk. The entrance is accessible via a ramp from the corner of Webster Street and East Washington Avenue. If you have special needs or circumstances that may make communication or accessibility difficult at the hearing, please call (608) 267–6704 at least 10 days prior to the hearing date. Accommodations such as ASL interpreters, English translators, or materials in audiotape format will be made available on request to the fullest extent possible.

Analysis Prepared by the Department of Workforce Development

Statutory authority: s. 102.15 (1), Stats.

Statutes interpreted: ch. 102, ss. 40.65, 102.123, 102.17 (1) (b), 102.18 (1) (e), 106.25, 303.07 (7) and 303.21, Stats.

Section DWD 80.05 provides that for disputes coming under the jurisdiction of the department, either party may apply for relief and the department shall make the order or award that is lawful and just under the circumstances. In addition to worker’s compensation claims under ch. 102, Stats., and duty disability under s. 40.65, Stats., the department has jurisdiction over death and disability benefits resulting from public insurrection under s. 106.25, Stats., county reforestation camps under s. 303.07 (7), Stats., and compensation to injured prisoners under s. 303.21, Stats.

The statutory section pertaining to death and disability benefits resulting from public insurrections was changed from s. 101.47, Stats., to s. 106.25, Stats., the section pertaining to county reforestation camps was changed from s. 56.07, Stats., to s. 303.07 (7), Stats., and the section for compensation to injured prisoners was changed from ss. 56.21 to 303.21, Stats.

The proposed amendment is a technical correction and does not involve policy or procedural change.

The proposed amendment deletes the references to obsolete statutory sections and updates the rule to reflect the current statutory sections for death and disability benefits resulting from public insurrections, county reforestation camps, and compensation to prisoners.

Section DWD 80.15 was created to set time limits for insurance carriers and self-insured employers to pay orders awarding benefits and payments required under ch. 102, Stats. The rule provides for payment of orders awarding compensation to be made within 21 days after the department mails a copy of the administrative law judges finding and order to that party's last known address and for amounts ordered by stipulation or compromise settlement payments within 10 days after the department mails a copy of the order to that party's last known address. Section 102.18 (1) (e), Stats., ch. 37, Laws of 2001, effective January 1, 2002, provides for a uniform 21 day payment standard for all orders including payments ordered by stipulation or compromise. The proposed amendment will require payment of all orders to be made within 21 days.

The language of the proposed amendment rule will conform the rule to the current statutory language in s. 102.18 (1) (e), Stats.

Section DWD 80.21 (4) prohibits testimony from expert witnesses concerning wage earning impairment (loss of earning capacity) to be received into evidence at a hearing unless the party offering the testimony notified the department and the other parties to the case of the intent to produce this testimony and the names of the witnesses involved. The rule requires that the notice must be given at least 30 days before a scheduled hearing.

Testimony or certified medical reports from expert witnesses offered by the party that raised the loss of earning capacity issue must be excluded from evidence under s. 102.17 (1) (b), Stats., if that party failed to notify the department and the other parties of interest at least 60 days before the hearing date of that party's intent to provide the testimony or reports and the names of the expert witnesses involved. Section 102.17 (7) (b), Stats., also provides for the exclusion from evidence testimony or reports from expert witnesses offered by a party in response to the loss of earning capacity issue, if the responding party failed to notify the department and other parties of the intent to provide the testimony or reports and the names of the expert witnesses at least 45 days before the hearing date. The department is given the authority in s. 102.17 (7) (c), Stats., to waive the 60 and 45 days notice requirements for good cause where no party is prejudiced by the delay.

The notice specified in the rule is significantly different from the notice requirements set forth in s. 102.17 (7) (b), Stats. The language of the proposed amendment will conform the rule to the current statutory notice requirements in s. 102.17 (7) (b), Stats.

Section DWD 80.24 requires that a copy of a statement must be provided to the employee when the employee gives a signed statement which in any way concerns his or her worker's compensation claim. The rule also requires that when a statement is taken by a recording device, a copy of the entire statement must be given to the employee or his or her attorney within a reasonable time after an application for hearing is filed with the actual recording available as an exhibit if a formal hearing is held. Use of the statement in any

manner in connection with the employee's claim is precluded if the employer or insurance carrier fails to comply with the rule.

Section 102.123, Stats., Chapter 37, Laws of 2001, effective January 1, 2002, codified the conditions for use of statements by employees in worker's compensation cases. Section 102.123, Stats., requires that when an employee provides an employer or insurance carrier a signed statement relating to the claim, the employer or insurance carrier must give a copy of the statement to the employee within a reasonable time. The rule does not specify a time by which the employer or insurer must give a copy of the signed statement to the employee. Section 102.123, Stats., also requires that when the statement is recorded, the employer or insurer must reduce the statement to writing after a request by the employee or his or her agent or attorney and provide a written copy of the entire statement within a reasonable time after the statement is taken. The rule specifies that the employer or insurer is required to give the employee or his or her agent or attorney a written copy of a recorded statement within a reasonable time after an application for hearing is filed. Section 102.123, Stats., does not require the filing of an application for hearing before providing a written copy of a recorded statement.

The requirements for use of statements by employees concerning claims have been codified in s. 102.123, Stats. Repeal of the rule is necessary since use of statements by employees was codified by creation of s. 102.123, Stats., and the public policy consideration of the need to avoid confusion generated by different requirements contained in the rule and s. 102.123, Stats.

Fiscal Impact

The proposed rule changes are technical corrections and have no fiscal effect.

Initial Regulatory Flexibility Analysis

The proposed rules do not affect small business as defined in s. 227.114, Stats.

Contact Information

The proposed rules are available on the DWD web site at <http://www.dwd.state.wi.us/dwd/hearings.htm>.

A paper copy may be obtained at no charge by contacting:

James O'Malley
Bureau of Legal Services
Worker's Compensation Division
Dept. of Workforce Development
201 E. Washington Avenue
P.O. Box 7901
Madison, WI 53707-7901
(608) 267-6704
jim.o'malley@dwd.state.wi.us

Written Comments

Written comments on the proposed rules received at the above address no later than August 7, 2002, will be given the same consideration as testimony presented at the hearing.

Submittal of proposed rules to the legislature

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

Commerce

(CR 02-042)

Chs. Comm 2 and 8, relating to mine safety fees.

Elections Board

(CR 02-071)

Ch. EIBd 9, relating to challenges at a polling place.

Employee Trust Funds

(CR 02-049)

Ch. ETF 20, relating to the annuity dividend effective date and the proration of annuity dividends.

Occupational Therapists Affiliated Credentialing Board

(CR 02-026)

Chs. OT 1 to 5, relating to the licensure and regulation of occupational therapists and occupational therapy assistants.

Treasurer

(CR 02-009)

Ch. Treas 1, relating to the College Savings Program (EdVest).

Transportation

(CR 02-056)

Ch. Trans 276, relating to allowing the operation of double bottoms and certain other vehicles on certain specified highways.

Rule orders filed with the revisor of statutes bureau

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

**Agriculture, Trade and Consumer Protection
(CR 01-058)**

An order affecting ch. ATCP 80, relating to pathogen tests on ready-to-eat dairy products.
Effective 9-1-02

**Financial Institutions – Credit Unions
(CR 02-034)**

An order affecting ch. DFI-CU 72, relating to member business loans.
Effective 9-1-02

**Pharmacy Examining Board
(CR 01-154)**

An order affecting ch. Phar 8, relating to requirements for the dispensing of prescription orders for schedule II controlled substances.
Effective 8-1-02

**Public Service Commission
(CR 00-180)**

An order affecting ch. PSC 116, relating to the cost of fuel for electric public utilities.
Effective 9-1-02

**Social Workers, Marriage and Family Therapists and Professional Counselors Examining Board
(CR 01-151)**

An order affecting ch. SFC 16, relating to supervised clinical practice.
Effective 8-1-02

**Social Workers, Marriage and Family Therapists and Professional Counselors Examining Board
(CR 01-153)**

An order affecting ch. SFC 3, relating to pre-certification supervised practice for independent social workers and independent clinical social workers.
Effective 8-1-02

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