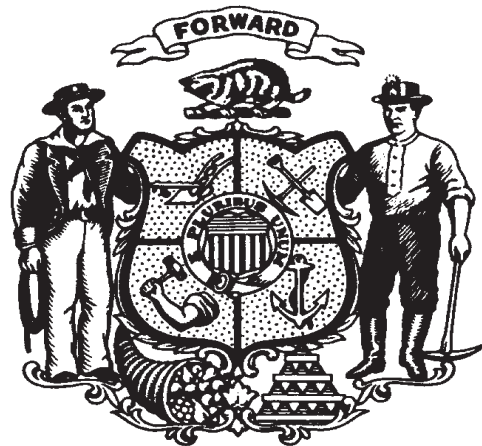


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Emergency rules now in effect

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

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 (3) (Fish, Game, etc., Chs. NR 1–)

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

Finding of emergency

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

Section 3. Defines CWD.

Section 4. Defines the CWD eradication zone.

Section 5. Defines the CWD intensive harvest zone.

Section 6. Defines the CWD management zone.

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

Section 8. Defines a section of land.

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

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

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

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

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

Section 15. Updates exceptions to the muzzleloader season.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 35. Defines bird feeding devices and structures.

Section 36. Defines small mammals.

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

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

Publication Date: July 3, 2002
Effective Date: July 3, 2002
Expiration Date: November 30, 2002
Hearing Date: August 12, 2002

- Rules 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

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

Finding of emergency

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

Publication Date: July 8, 2002
Effective Date: July 8, 2002
Expiration Date: December 5, 2002
Hearing Date: August 19, 2002

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

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 Insurance, Chs. DWD 100–150)

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

Exemption from finding of emergency

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

Analysis Prepared by the Department of Workforce Development

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

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

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

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

Increasing the time frame within which a claimant may file a timely initial unemployment insurance benefit claim would reduce disparate treatment of claimants in like situations by removing the subjectivity of finding “exceptional circumstances” before allowing late claims and ease an

increasing workload for the unemployment insurance division. The institution of this change would eliminate approximately 67% of untimely filing issues. This would translate into savings of 5 to 6 full–time employees (FTEs). These positions would then be able to turn attention and time to resolving other eligibility issues at a time when the unemployment insurance division is currently experiencing a sharp increase in workload and anticipates continued increase over the next three years.

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

Publication Date: April 14, 2002
Effective Date: April 14, 2002
Expiration Date: September 11, 2002
Hearing Dates: July 15, 16 & 17, 2002

Scope statements

Accounting Examining Board

Subject

The paper–and–pencil Uniform Certified Public Accountant Examination will be replaced by a computer–based examination.

Policy Analysis

Objective of the Rule. Effective January 2004, the current paper–and–pencil Uniform CPA Examination will be replaced by a computer–based examination. This will result in the need to modify provisions of the code that define some aspects of examination administration.

The proposed rules will make it consistent with the new administrative processes that will be part of the computer–based examination.

The proposed rules will define new procedures in the following areas:

Accy 3.03 (1) – Eliminate reference to a specific passing grade and replace it with a reference to a “passing grade established by the board.”

Accy 3.06 – Redefine the conditions under which a candidate may sit for a section of the examination, receive credit for previously completed sections of the examination, and the timeframe for completion of all sections of the examinations.

Accy 3.07 – Redefine the guidelines under which candidates will receive credit for sections of the examination they complete prior to the effective date of the new examination.

Accy 3.11 – Eliminate the opportunity to review Uniform CPA examination results, while retaining the option for review of the jurisdictional ethics examination.

Statutory authority

Sections 15.08 (5) (b), 227.11 (2) and 442.04, Stats.

Staff time required

125 hours.

Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors Examining Board

Subject

Jurisdictional written examination for professional engineers.

Policy Analysis

Objective of the rule. To authorize the Examining Board of Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors to expand the Wisconsin jurisdictional written examination to include testing for knowledge of Wisconsin statutes and administrative codes and the legal standards related to the practice of professional engineers.

The proposed rules will authorize the Professional Engineer Section to require this additional area of testing. The section would then work with the Office of Education and Examination, in the Department of Regulation and Licensing,

to develop test questions and scoring criteria. The section recommends creating a new provision under s. A–E 4.08 (1) (d).

Statutory authority

Section 15.08 (5) (b) and 227.11 (2), Stats.

Staff time required

125 hours.

Corrections

Subject

Rule amendment to update ch. DOC 303, relating to discipline.

Policy Analysis

The Department of Corrections proposes to review this rule as part of an ongoing mission to refine the Department’s administrative rules and enhance their clarity, efficiency and function in light of today’s fiscal and institutional environments.

This rule underwent significant changes that became effective on January 1, 2001. After more than a year working with this rule, the department has had time to identify more necessary additions, improvements and corrections that should be made in order to streamline and clarify the rule, adapt to developments in the law, and provide for optimum institutional procedure.

While the department does not anticipate significant policy changes in this rule, subjects contemplated include improvements to documentation procedures, updates in terminology, revision of current offenses and specification of additional offenses. For example the department will examine inmate misconduct of a passive rather than active nature and inmate misconduct which has the potential for financial as well as physical impact on a victim.

The proposed rule would also make any necessary changes in light of statutory updates and current caselaw, as well as changes upon evaluation of the rule’s current effectiveness.

Statutory authority

Sections 227.11 (2), 301.02, and 301.03, Stats.

Staff time required

It is anticipated that 100 hours of staff time may be necessary to review and revise the administrative rule, including drafting, cost estimates, public hearings and complying with rule making requirements. Other than staff time, it is anticipated that the resources to develop the rule will be minimal.

Corrections

Subject

Rule amendment to update DOC 316, relating to medical, dental and nursing copayment charge.

Policy Analysis

Objective of the rule. The Department of Corrections proposes to amend and increase the medical, dental and nursing copayment charge for a self–initiated contact by an inmate.

On July 26, 2002, Governor McCallum signed into law 2001 Wisconsin Act 109 requiring the Department of Corrections to amend administrative code in order to charge a copayment of at least \$7.50 per self-initiated medical or dental visit for each person to whom section 302.386(1) of the statutes applies. There are no policy alternatives to discuss as this rule amendment is required by 2001 Wisconsin Act 109.

Statutory authority

Sections 227.11 (2), 301.02, 301.03, and 302.386(4) Stats.

Staff time required

It is anticipated that 40 hours of staff time may be necessary to review and revise the administrative rule, including drafting, cost estimates, public hearings and complying with rule making requirements. Other than staff time, it is anticipated that the resources to develop the rule will be minimal.

Ethics Board

Subject

Chapter Eth 1, relating to the identification of a topic of a lobbying communication.

Policy Analysis

The preliminary objective is to describe the information a lobbying principal must furnish to the Ethics Board in order to identify, pursuant to s. 13.67, Stats., a topic of a lobbying communication that relates to an attempt to influence administrative action.

Under Wisconsin's lobbying law, s. 13.67, Stats., a lobbying principal must identify to the Ethics Board each topic of a lobbying communication that is proposed administrative rule that has been numbered. Section 13.67 requires that a principal describe each topic with reasonable specificity, sufficient to identify the subject matter of the lobbying communication and whether the communication is an attempt to influence legislative or administrative action, or both. Section 13.685 (4), Stats., requires that the Ethics Board, by rule, define what constitutes a topic. The proposed rule describes the type of information that a lobbying principal must provide to satisfy the statutory identification requirement with respect to a topic of a lobbying communication that relates to an attempt to influence administrative rulemaking.

Statutory authority

Section 13.685 (4), Stats.

Staff time required

The anticipated time commitment is 60 hours.

Ethics Board

Subject

Chapter Eth 1, relating to the meaning of a solicitation under s. 13.625, Stats..

Policy Analysis

The preliminary objective is to define circumstances and highlight activities that can constitute a solicitation under s. 13.625 (3), Stats.

Under Wisconsin's lobbying law, s. 13.625 (3), Stats., no candidate for an elective state office, elective state official, agency official, or legislative employee may solicit anything of pecuniary value from a lobbyist or principal, except as

specifically permitted. A solicitation may take many forms. Whether a particular communication is a solicitation or not may not always be clear. The proposed rule will establish criteria and standards for determining whether a communication or activity is a solicitation circumscribed by statute.

Statutory authority

Section 19.48 (1), Stats.

Staff time required

The anticipated time commitment is 60 hours.

Health and Family Services

Subject

The Department proposes to modify ch. HFS 45, relating to the licensing of family day care centers and ch. HFS 46, relating to the licensing of group day care centers. Chapter HFS 45 applies to centers caring for between 4 and 8 children, while ch. HFS 46 applies to centers caring for 9 or more children. These modifications would:

1. Incorporate new statutory requirements under s. 48.67, Stats., for training of child care providers in the most recent medically accepted method of reducing the risk of Sudden Infant Death Syndrome.

2. Bring both chapters of rules into conformance with other legislation relating to Caregiver Background Checks (s. 48.685, Stats.) and the Clean Indoor Air Act (s. 101.123 (2) (bm), Stats.)

3. Revise the rules to reflect current generally accepted safety practice in child care.

4. Modify portions of ch. HFS 45 to make those provisions consistent with ch. HFS 46.

5. Revise the licensing administration section of chs. HFS 45 and 46 to reflect changes in the ways the Department issues a license and create provisions that would allow the Department to bar consideration of an application if the applicant has had a previous license revoked or application denied for a substantive reason.

6. Change the name of programs from day care centers to child care centers.

Policy Analysis

With minor exceptions, the Department has not revised ch. HFS 45, relating to licensing rules for family day care centers, since 1989. Since that time, several events have suggested or required the modification of ch. HFS 45. First, in 1997, the Department created ch. HFS 46, relating to licensing of group day care centers. Not surprisingly, these two chapters of rules address similar topics and, in the Department's judgement, should contain comparable requirements, including ones related to definitions, licensing procedures and penalties and sanctions. Second, since 1989, changes in the child safety practices standards have become generally accepted. For example, cardiopulmonary resuscitation training for childcare providers has become standardized. Finally, 2001 Wis. Act 16 amended s. 48.67, Stats., to require that all child care centers licensed to care for children under 1 year of age must receive training in the most recent medically accepted practice to reduce the risk of Sudden Infant Death Syndrome. Similarly, ch. HFS 46 needs to be revised to reflect recent generally accepted child care practices standards in addition to 2001 Wis. Act 16. In developing these rules, the Department will consult with the Department of Workforce Development's Office of Child Care, the agency responsible for developing rules for certified child care homes.

Statutory authority

Section 48.67, Stats.

Staff time required

About 120 hours of staff time to research, write and review the proposed changes to the licensing rules.

Parole Commission**Subject**

Rule amendment to update ch. PAC 1, relating to parole procedure, to conform to current law, terminology, prison population and requirements of parole commission operations.

Policy Analysis

Objective of the rule. The administrative rules relating to parole procedures have not been evaluated and updated since they were created in 1993, despite minor amendments in 1995. With over 8 years of experience working with these rules, and given statutory changes, increased prison populations, and necessary parole procedures, the commission proposes to update the rule.

Chapter PAC 1 relates to the structure of the parole procedure in Wisconsin, the functions of discretionary parole, eligibility for parole, parole consideration and parole

commission recommendations. The commission plans to review and revise these existing rules to ensure that they conform with existing law, technology, terminology, prison populations and requirement of the parole commission operations. The commission plans to revise the rule to provide the necessary flexibility and tools to allow parole commission members a better opportunity to meet statutory responsibilities of conducting parole interviews timely, legally, and effectively, thereby more adequately serving the needs of the inmates, the legislature, and society. In addition, the commission will examine the procedures afforded inmates when a recommended parole grant is cancelled due to a variety of circumstances.

Statutory authority

Sections 227.11 (2), 304.06 (1) (e), and 304.06 (1) (em), Stats.

Staff time required

It is anticipated that 150 hours of staff time may be necessary to review and revise the administrative rule, including drafting, cost estimates, public hearings and complying with rule making requirements. Other than staff time, it is anticipated that the resources to develop the rule will be minimal.

Submittal of rules to legislative council clearinghouse

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

Emergency Management

Rule Submittal Date

On July 17, 2002 the Department of Military Affairs, Wisconsin Emergency Management submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The statutory authority for ch. WEM 4, relating to a hazardous materials transportation registration program, no longer exists, and this proposal repeals ch. WEM 4 in its entirety. The proposal to amend ch. WEM 6 would modify reimbursement procedures to reflect a change in statutory language allowing reimbursement for potential releases of hazardous materials as well as to actual releases. It would also require regional and local response teams to utilize an agency–approved hazardous materials incident response matrix to be eligible for reimbursement under ch. WEM 6 and would establish limits for reimbursement of potential releases. The proposed change would also clarify that administrative costs are eligible for reimbursement and that costs recovered from responsible parties would be placed in the emergency response supplement under s. 20.465 (3) (dr) Stats.

Agency Procedure for Promulgation

A hearing will be held on August 27, 2002.

Contact Person

If you have any substantive questions regarding the proposed rule, please contact William Clare at 242–3220, at Wisconsin Emergency Management.

Health and Family Services

Rule Submittal Date

On July 25, 2002 the Department of Health and Family Services submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

Escorted leaves for ch. 980 patients. The Department of Health and Family Services proposes to amend ch. HFS 95 in response to the creation of a new section 980.067 of the Wisconsin statutes through 2001 Wis. Act 16 (the biennial budget bill). Section 980.065 of the statutes requires the Department to place persons determined to be sexually violent at selected facilities administered by the Department. Section 980.067 authorizes the superintendent of a facility at which a sexually violent person resides to allow that person to leave the grounds of the facility under escort. Section 980.067 also directs the Department to promulgate rules that express the policies and procedures for its administration of this process.

The amendments to ch. HFS 95 being proposed by the Department 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. The Department has proposed that these reasons be limited to the following:

- To privately visit a dying or deceased relative as defined in s. 48.02 (15), Stats.;
- To receive medical services that are not provided at the facility;
- To engage in pre–placement activities when the patient has a proposed or approved supervised release plan under s. 980.08 (5), Stats.; and
- For other purposes consistent with the therapeutic interests of the patient and the security interests of the facility and the community.

The proposed rules also identify considerations a facility director must take into account in his or her decision to allow a patient detained or committed under ch. 980 of the statutes to leave the facility. The proposed rules also give the director the discretion to limit patients to one visit per relative.

Agency Procedure for Promulgation

Public hearings under ss. 227.16, 227.17 and 227.18, Stats.; approval of rules in final draft form by the DHFS Secretary; and legislative standing committee review under s. 227.19, Stats.

Contact Person

James Yeadon, 266–5525.

Public Defender

Rule Submittal Date

On July 26, 2002 the Office of the State Public Defender submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The Wisconsin State Public Defender Board proposes an order to repeal ss. PD 2.08 (3) and 3.038 (1) (b); to renumber and amend s. PD 3.038 (1) (c); to amend ss. PD 2.01, 2.02, 2.03, 2.08, 3.03, 3.038 (1) (a), 3.038 (1) (b), 3.039, 3.05, 3.055 and 3.06, all relating to determinations of eligibility. The rule changes clarify language, eliminate obsolete references, and make other changes that promote staff efficiencies.

Agency Procedure for Promulgation

A public hearing is required and is scheduled for August 26, 2002. The organizational unit primarily responsible for promulgation of the rule is the agency legal counsel.

Contact Person

If you have questions regarding this rule, you may contact:

Deborah M. Smith
Legal Counsel
(608) 261–8856

Public Defender**Rule Submittal Date**

On July 26, 2002, the Office of the State Public Defender submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The Wisconsin State Public Defender Board proposes an order to amend s. PD 1.04 (5) relating to the certification for appellate cases. The amendment would allow for provisional certification and performance review of attorneys seeking appellate certification. The rule would also allow the Director of the Appellate Division to place an attorney previously certified for appellate cases on provisional certification status in lieu of decertification. The proposed rule would also correct two cross references in s. PD 1.04 (5).

Agency Procedure for Promulgation

A public hearing is required and is scheduled for August 26, 2002. The organizational unit primarily responsible for promulgation of the rule is the agency legal counsel.

Contact Person

If you have questions regarding this rule, you may contact:

Deborah M. Smith
Legal Counsel
(608) 261–8856

Public Instruction**Rule Submittal Date**

On July 19, 2002, the Wisconsin Department of Public Instruction submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule amends ch. PI 25, relating to children at risk of not graduating from high school.

Agency Procedure for Promulgation

The proposed rules are modified to conform to current statutory language. Therefore, pursuant to s. 227.16 (2) (b), Stats., the department will not hold public hearings regarding these rules.

Contact Person

The Division for Academic Excellence is primarily responsible for promulgation of this rule. If you have

questions regarding this rule, you may contact Beth Lewis, Children at Risk Coordinator, at 608/267–1062.

Regulation and Licensing**Rule Submittal Date**

On July 18, 2002, the Department of Regulation and Licensing submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

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

The proposed rule–making order relates to extension of disciplinary action time limits for the Medical Examining Board.

Agency Procedure for Promulgation

A public hearing is required and will be held on August 26, 2002 at 10:00 a.m. in Room 179A, 1400 East Washington Avenue, Madison, WI 53702.

Contact Person

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

Social Workers, Marriage and Family Therapists and Professional Counselors Examining Board**Rule Submittal Date**

On July 10, 2002, the Examining Board of Social Workers, Marriage and Family Therapists and Professional Counselors submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

Statutory Authority: ss. 15.08 (5) (b) and 227.11 (2), Stats. and ch. 457, Stats., as repealed and recreated by 2001 Wis. Act 80.

The proposed rule–making order relates to changes made as a result of 2001 Wis. Act 80, practitioners of psychotherapy.

Agency Procedure for Promulgation

A public hearing is required and will be held on August 12, 2002 at 10:00 a.m. in Room 179A, 1400 East Washington Avenue, Madison, WI 53702.

Contact Person

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

Rule–making notices

Notice of Hearing Emergency Management [CR 02–106]

Wisconsin Emergency Management is proposing to repeal ch. WEM 4, relating to the hazardous materials transportation registration program and to amend ch. WEM 6 relating to reimbursement procedures for regional and local emergency response teams.

This public hearing is being held in order to comply with administrative rule procedures which require a public hearing to be held on proposed rules.

NOTICE IS HEREBY GIVEN that pursuant to ss. 166.20 (2) (a), (b), (bm) and (bs), and 227.11 (2) (a), Stats., and interpreting ss. 166.20 (1) (f) (fm) (g), (ge) (gi) (k), (2) (bm) and (bs), 166.215 (2) and (3) and 166.22, Stats., Wisconsin Emergency Management will hold a public hearing to consider the repeal of ch. WEM 4 relating to the hazardous materials transportation program and to consider amendments to ch. WEM 6 relating to reimbursement procedures for regional and local emergency response teams. The public hearing is scheduled as follows:

Hearing Date, Time and Location

Date: August 27, 2002
Time: 10:00 a.m.
Location: Department of Military Affairs
 Auditorium
 2400 Wright Street
 Madison, Wisconsin

Persons making oral statements are requested to submit their comments in writing either at the time of the hearing or no later than August 30, 2002. Persons unable to make an oral statement may submit written comments which will have the same weight and effect as oral statements presented at the hearings. All written comments should be submitted to William Clare, Wisconsin Emergency Management, 2400 Wright Street, P.O. Box 7865, Madison, WI 53707–7865 and must be received no later than August 30, 2002. Persons with questions regarding this proposed rule may contact William Clare at the above address or phone 608–242–3220.

The hearing site is fully accessible to people with disabilities.

Analysis Prepared By Wisconsin Emergency Management

Statutory Authority: ss. 166.20 (2) (a), (b), (bm) and (bs), and 227.11 (2) (a), Stats.

Statute Interpreted: s. 166.20 (1) (f) (fm) (g), (ge) (gi) (k), (2) (bm) and (bs), 166.215 (2) and (3), and 166.22, Stats.

Plain Language Summary

The statutory authority for ch. WEM 4, relating to a hazardous materials transportation registration program, no longer exists, and this proposal repeals ch. WEM 4 in its entirety. The proposal to amend ch. WEM 6 would modify reimbursement procedures to reflect a change in statutory language allowing reimbursement for potential releases of hazardous materials as well as to actual releases. It would also require regional and local response teams to utilize an agency–approved hazardous materials incident response

matrix to be eligible for reimbursement under ch. WEM 6 and would establish limits for reimbursement of potential releases. The proposed change would also clarify that administrative costs are eligible for reimbursement and that costs recovered from responsible parties would be placed in the emergency response supplement under s. 20.465 (3) (dr) Stats.

SECTION 1. Chapter WEM 4 is repealed.

SECTION 2. WEM 6.02 (1), (2) and (12) are amended to read:

WEM 6.02 (1) “Authorized level A response team” means a regional emergency response team, a member of such team and a local agency that contracts with the division for the provision of regional response team services pursuant to a designation under s. 166.215 (1), Stats.

WEM 6.02 (2) “Authorized level B response team” means a local county emergency response team, a member of such a team, and the city, county, village or town that contracts to provide the emergency response team to the county pursuant to a designation under s. 166.21 (2m) (e), Stats.

WEM 6.02 (12) “Responsible party” means any person, as defined in s. 299.01(10), Stat. or 42 USC 9607(a), who ~~possesses or controls a hazardous substance that is released or discharged or who causes the release or discharge of a hazardous substance~~ is responsible for the emergency involving a release or potential release of a hazardous substance under s. 166.215 (3) or 166.22 (4), Stats. or a person who is found to have abandoned containers, as defined under s. 292.41 (1), Stats., that are releasing or discharging a hazardous substance to which a response team was called to respond.

SECTION 3. WEM 6.04 (1), (2), (3) are amended to read:

WEM 6.04 (1) Reimbursement for vehicles and apparatus at uniform rates established ~~in the contracts~~ for regional hazardous material response team services or the rate established by the reviewing entity for the authorized level B response Team;

WEM 6.04 (2) Response team personnel expenses which may reflect replacement personnel costs and indirect charges and costs for wage, fringe, death and duty disability retirement benefits; ~~and~~

WEM 6.04 (3) Necessary and reasonable emergency expenses related to response team services rendered based on actual expenditures;

SECTION 4. WEM 6.04 (4) is created to read:

WEM 6.04 (4) Administrative costs incurred to collect response costs from a responsible party.

(a) For a level B response to an emergency in which there is a potential release of a hazardous substance, the maximum eligible reimbursement cost may not exceed \$500 for the initial response assessment except as provided under s. 6.04 (4) (b).

(b) Costs that exceed \$500 for a level B response to an emergency, in which there is a potential release of a hazardous substance and for which a hazardous substance is present, shall be justified and documented.

(c) Response teams are not eligible for reimbursement costs that exceed \$500 for level B responses where the bill of lading or manifest indicate that a hazardous substance is not

present and for which the bill of lading or manifest is readily accessible to the response team during the emergency response.

SECTION 5. WEM 6.05 (4) (a), (b), (c) are renumbered WEM 6.05 (4) (b), (c), (d).

SECTION 6. WEM 6.05 (4) (a) is created to read:

WEM 6.05 (4) (a) The hazardous materials incident response matrix used by a regional or local response team to determine the initial response to an emergency.

SECTION 7. WEM 6.05 (5) (g) is created to read:

WEM 6.05 (5) (g) The hazardous materials incident response matrix was used by the regional or local emergency response team to determine the appropriate initial response to the emergency.

SECTION 8. WEM 6.12 is amended to read:

If costs subsequently are recovered from responsible parties or other sources after the response team has received reimbursement from the division, the response team shall return the recovered costs to the division, for deposit into the state transportation fund emergency response supplement under s. 20.465 (3) (dr) Stats.

SECTION 9. WEM 6.13 (1) (intro) is created to read: WEM 6.13 (1) (intro) The regional and local response team appeals process is as follows:

SECTION 10. WEM 6.13 (1) to (5) are renumbered to read 6.13 (1) (a) to (e):

SECTION 11. WEM 6.13 (2) is created to read:

WEM 6.13 (2) The responsible party appeals process is as follows:

(a) A responsible party shall have 30 days after a final determination by the reviewing entity under s. 166.22 (5) (c) in which to file an appeal with the division.

(b) A responsible party may appeal emergency response costs of a potential release of a hazardous substance for which a hazardous substance is present that exceed \$500.

(c) Following an appeal to the division, a responsible party may then request a problem resolution process in which the adjutant general of the department of military affairs reviews the response team claim and issues a decision based on those materials or meets with the parties to negotiate an acceptable resolution.

SECTION 12. WEM 6.13 (note) is amended to read:

Note: A claim for reimbursement form, DMA Form 96 (4/97) ~~and, an expedited reimbursement claim form, DMA Form 59 (4/97), and a Hazardous Materials Incident Response Matrix, DMA Form 1060,~~ can be obtained by contacting the Hazardous Materials Safety/Transportation Coordinator, Wisconsin Emergency Management, 2400 Wright Street, Room 213, P.O. Box 7865, Madison, WI 53707–7865, telephone 608–242–3228. The completed reimbursement claim, Hazardous Materials Incident Response Matrix, and supporting documentations shall be mailed to the Hazardous Materials Safety/Transportation coordinator, Wisconsin Emergency Management, 2400 Wright Street, Room 213, P.O. Box 7865, Madison, WI 53707–7865.

Fiscal Estimate

The statutory authority for ch. WEM 4 has been repealed. The previous version of ch. WEM 4 was determined to be unconstitutional by the Wisconsin Court of Appeals and the current version has not been enforced since that time. There are no costs associated with the repeal of ch. WEM 4. The amendments to ch. WEM 6 allow for the State of Wisconsin and local and regional emergency response teams to collect

emergency response costs from the responsible party in the event of a potential release of a hazardous material. A responsible party is currently responsible for costs associated with the emergency response to a release of a hazardous material. This rule clarifies that necessary response costs include the potential release of a hazardous material. Money collected by the State of Wisconsin under this rule will be deposited into the emergency response supplement. Money collected by response teams would be used to offset their costs. There are several such incidents annually and the ability to collect these costs means that they would be paid by the responsible party if identified and able to pay. It is estimated that costs to respond to a potential release would typically be \$500 or less. This could mean a decrease in payments from the emergency response supplement.

Initial Regulatory Flexibility Analysis

The statutory authority for ch. WEM 4 has been repealed. The previous version of ch. WEM 4 was determined to be unconstitutional by the Wisconsin Court of Appeals and the current version has not been enforced since that time. The repeal of ch. WEB 4 will have no effect on small business.

The amendments to WEM 6 allow for the State of Wisconsin and local and regional emergency response teams to collect emergency response costs from the responsible party in the event of a potential release of a hazardous material. A responsible party is currently responsible for costs associated with the emergency response to a release of a hazardous material. This rule clarifies that necessary response costs include the potential release of a hazardous material. It is estimated that costs to respond to a potential release would typically be \$500 or less. To date there have not been more than 3 such incidents annually. This rule change will not have a significant economic impact on a substantial number of small businesses.

Notice of Hearing

Public Defender

[CR 02–109]

Notice is hereby given that pursuant to s. 977.02 (2m) and 977.02 (3) Stats., and interpreting s. 977.07 Stats., the Office of the State Public Defender will hold a public hearing at 315 North Henry Street, 2nd Floor, in the city of Madison, Wisconsin, on the **26th day of August 2002**, from 1:00 p.m. to 3:00 p.m. to consider the amendment of a rules, ss. PD 2.08 (3), 3.038 (1) (b), 3.038 (1) (c), 2.01, 2.02, 2.03, 2.08, 3.03, 3.038 (1) (a), 3.039, 3.05, 3.055 and 3.06, related to determinations of indigency. Reasonable accommodations will be made at the hearing for persons with disabilities.

Analysis Prepared by the Office of the State Public Defender

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 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 amendments to s. PD 3.03 (1) (c) and 3.03 (2) are intended to 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 amendments to s. PD 3.03 (1) (c) affect few

applicants according to our database of eligibility determinations. In addition, a survey of lending institutions has demonstrated that money is rarely loaned on the basis of vehicles of \$10,000 or less in equity. The amendments are consistent with the treatment of non-liquid assets by W2. Likewise, the amendments to s. PD 3.03 (2) remove expenses that are rarely determinative of eligibility. Further, if these debts are reduced to formal court judgments they may be considered under the general category of court-ordered obligations. The 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. The repeal of s. PD 3.038 (1) (b) conforms the rule to current law and practice. The repeal of s. PD 3.038 (1) (b) reflects the fact that 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. The amendment to s. PD 3.05 (1) conforms the rule to current law and practice. 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. Providing this exception to subsection (1) allows staff to be more efficient in their eligibility determinations.

Statutory authority for rule: s. 977.02 (2m) and (3), Stats.

Statute interpreted: s. 977.07, Stats.

Fiscal Estimate

It is anticipated that the rule changes will have no fiscal impact. Copies of the full fiscal estimates are freely available from the contact person.

Initial Regulatory Flexibility Analysis

The proposed amendment would not have a regulatory effect on small businesses.

Contact Person

For copies of the proposed amendment to the rule, or if you have questions, please contact Deborah Smith, Legal Counsel, 315 North Henry Street, Madison, WI 53703-3018; (608) 261-8856.

Written Comments

Written comments regarding this rule may be submitted in addition to or instead of verbal testimony at the public hearing. Such comments should be addressed to the contact person at the address stated above, and must be received by August 26, 2002.

Notice of Hearing

Public Defender

[CR 02-110]

NOTICE IS HEREBY GIVEN that pursuant to s. 977.02 (5), Stats., and interpreting s. 977.08 (3) Stats., the Office of the State Public Defender will hold a public hearing at 315 North Henry Street, 2nd Floor, in the city of Madison, Wisconsin, on the **26st day of August 2002**, from 9:00 a.m. to 11:00 a.m. to consider the amendment of a rule, s. PD 1.04 (5), related to the certification for appellate cases. Reasonable accommodations will be made at the hearing for persons with disabilities.

Analysis Prepared by the Office of the State Public Defender

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. This review of performance of private bar attorneys would be similar to that required for staff attorneys. The proposed amendment would help to assure that representation by the private bar is at the same level as representation provided by the State Public Defender.

The proposed rule would amend s. PD 1.04 (5) to provide for provisional certification of private attorneys seeking to be certified for appellate appointments to allow for performance reviews by agency supervisors. The proposed rule would also allow the Director of the Appellate Division to place an attorney previously certified for appellate cases on provisional certification status in lieu of decertification.

The proposed rule would also correct two cross references in s. PD 1.04 (5).

Statutory authority for rule: s. 977.02 (5) Stats.

Statutes interpreted: s. 977.08 (3) Stats.

Fiscal Estimate

It is anticipated that the rule changes will have no fiscal impact. Copies of the full fiscal estimates are freely available from the contact person.

Initial Regulatory Flexibility Analysis

The proposed amendment would not have a regulatory effect on small businesses.

Contact Person

For copies of the proposed amendment to the rule, or if you have questions, please contact Deborah Smith, Legal Counsel, 315 North Henry Street, Madison, WI 53703-3018; (608) 261-8856.

Written Comments

Written comments regarding this rule may be submitted in addition to or instead of verbal testimony at the public

hearing. Such comments should be addressed to the contact person at the address stated above, and must be received by August 26, 2002.

Notice of Hearing **Regulation and Licensing** **(CR 02–103)**

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Department of Regulation and Licensing in ss. 227.11 (2) and 448.02 (cm), Stats., and interpreting s. 448.02 (cm), Stats., the Department of Regulation and Licensing will hold a public hearing at the time and place indicated below to consider an order create ch. RL 222, relating to the extension of disciplinary action time limits for the Medical Examining Board.

Hearing Date, Time and Location

Date: August 26, 2002
Time: 10:00 A.M.
Location: 1400 East Washington Avenue
Room 179A
Madison, Wisconsin

Appearances at the Hearing

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but are urged to submit facts, opinions and argument in writing as well. Facts, opinions and argument may also be submitted in writing without a personal appearance by mail addressed to the Department of Regulation and Licensing, Office of Administrative Rules, P.O. Box 8935, Madison, Wisconsin 53708. Written comments must be received by August 27, 2002 to be included in the record of rule-making proceedings.

Analysis prepared by the Department of Regulation and Licensing

Statutes authorizing promulgation: ss. 227.11 (2) and 448.02 (cm), Stats.

Statutes interpreted: s. 448.02 (cm), Stats.

Section 448.02 (3) (cm), Stats., establishes certain time limits for the Medical Examining Board to initiate disciplinary action against physicians. The board may request the Secretary of the Department of Regulation and Licensing to grant an extension to those time limits. This proposed rule-making order describes how a request is made and the factors to be considered in determining whether to grant an extension.

The request for an extension must be made in writing and shall include the nature and date of the investigation, the extension of time to determine whether a physician is guilty of unprofessional conduct or negligence, and the reasons why the board has not made a decision within the time specified.

Section RL 222.02, Wis. Adm. Code, creates definitions of terms used in the statutes. The four definitions are “allegation involving the death of a patient;” “board;” “initiate disciplinary action;” and “initiating an investigation.”

Section RL 222.03, Wis. Adm. Code, summarizes the information needed for a request. In determining whether a specified extension of time is necessary for the board to determine whether there is probable cause for the extension the secretary shall take into consideration the nature and complexity of the investigation, the quantity and quality of evidence, the cause of any delays in the investigation, and the extent to which the person will be prejudiced by an extension of time.

The board may initiate disciplinary action against a physician no later than one year after initiating an investigation involving the death of a patient and no later than 3 years after initiating an investigation of any other allegation, unless the board shows that an extension of time is necessary.

Fiscal Estimate

1. The anticipated fiscal effect on the fiscal liability and revenues of any local unit of government of the proposed rule is: \$0.00.

2. The projected anticipated state fiscal effect during the current biennium of the proposed rule is: \$0.00.

3. The projected net annualized fiscal impact on state funds of the proposed rule is: \$0.00.

Initial Regulatory Flexibility Analysis

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

Copies of Rule and Contact Person

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

Notice of Hearing **Revenue** **(CR 99–101)**

Notice is hereby given that, pursuant to s. 227.11 (2) (a), Stats., and interpreting ss. 77.51 (17m) and (21m), 77.52 (2) (a) 5. and 5m., (2m) and (3m) and 77.525, Stats., the Department of Revenue will hold a public hearing at the time and place indicated below, to consider the amendment of sales tax rules relating to communication services.

Hearing Information

The hearing will be held at 9:00 a.m. on **Monday, August 26, 2002**, in Room 6N–8 (6th floor) of the State Revenue Building, located at 2135 Rimrock Road, Madison, Wisconsin.

Handicap access is available at the hearing location.

Analysis prepared by the Department of Revenue

Statutory authority: s. 227.11 (2) (a), Stats.

Statutes interpreted: ss. 77.51 (17m) and (21m), 77.52 (2) (a) 5. and 5m., (2m) and (3m) and 77.525, Stats.

SECTION 1. Tax 11.66 (title) is revised, to remove cable television system services and to clarify that the section applies to telecommunications services and telecommunications message services.

SECTION 2. Tax 11.66 (1) (a) is repealed. This definition is no longer needed because of the repeal of Tax 11.66 (4) (d).

SECTIONS 3 AND 4. Tax 11.66 (1) (b) is renumbered Tax 11.66 (1) (a) and new sub. (1) (b) is created, to provide a reference to the statutory definition of “telecommunications services.”

SECTIONS 5 TO 8. Tax 11.66 (2) (intro.), (a) and (b) (intro.) and 1. to 5. are renumbered Tax 11.66 (2) (a) (intro.), 1. and 2. (intro.) and a. to e. and new sub. (2) (intro.), (a) (title) and (b) are created, to clarify the content of sub. (2) and list the types of services discussed in Tax 11.66.\

Tax 11.66 (2) (a) 1. as renumbered is revised and examples are added, to reflect the tax treatment of certain telecommunications services that originate or terminate in Wisconsin.

SECTIONS 9 TO 14. Tax 11.66 (3) (title) and (intro.) are revised, sub. (3) (d) is repealed, sub. (3) (a), (b), (c) and (e) to (L) and (m) are renumbered sub. (3) (a) 1., 2., 3., 4. to 11. and 15. and sub. (3) (a) (intro.) is created, to clarify the content of sub. (3) and to remove cable television system services from Tax 11.66 because they are taxed separately from telecommunications services.

Tax 11.66 (3) (a) 1. as renumbered and the example are revised, to reflect the tax treatment of certain telecommunications services that originate or terminate in Wisconsin, as a result of the amendment of s. 77.52 (2) (a) 5., Stats., by 1997 Wis. Act 27.

SECTION 15. Tax 11.66 (3) (a) 12., 13. and 14. are created, to list additional services.

Tax 11.66 (3) (b) is created, to list telecommunications message services as taxable services, as a result of the creation of s. 77.52 (2) (a) 5m., Stats., by 1997 Wis. Act 27.

SECTIONS 16 AND 17. Tax 11.66 (4) (intro.) and (c) are revised, to correct grammar and punctuation in conformity with Legislative Council Rules Clearinghouse standards, and to clarify that the sale of the services to the reseller are nontaxable because they are resold.

Tax 11.66 (4) (a) is revised and sub. (4) (d) is repealed and recreated, and the example at the end of sub. (4) (d) is removed, to reflect the tax treatment of certain telecommunications services which originate or terminate in Wisconsin, as a result of the amendment to s. 77.52 (2) (a) 5., Stats., by 1997 Wis. Act 27.

SECTIONS 18 TO 20. Tax 11.66 (4) (e) is repealed to remove nonmechanical telephone answering services from the listing of nontaxable services, as a result of the creation of s. 77.52 (2) (a) 5m., Stats., by 1997 Wis. Act 27. Sub. (4) (f) is renumbered sub. (4) (e) and revised to clarify that the sale of the services to the interexchange carrier are nontaxable because they are resold.

Tax 11.66 (5) is renumbered Tax 11.66 (7) and new sub. (5) is created, to reflect the tax treatment of prepaid telephone calling cards and authorization numbers, as a result of the amendment to s. 77.52 (2) (a) 5., Stats., and the creation of s. 77.52 (3m), Stats., by 1997 Wis. Act 237.

Tax 11.66 (6) is created, to reflect the credit for taxes paid to other states, as a result of the creation of s. 77.525, Stats., by 1997 Wis. Act 27.

SECTION 1. Tax 11.66 (title) is amended to read:

Tax 11.66 (title) **Telecommunications and CATV telecommunications message services.**

SECTION 2. Tax 11.66 (1) (a) is repealed.

SECTION 3. Tax 11.66 (1) (b) is renumbered Tax 11.66 (1) (a).

SECTION 4. Tax 11.66 (1) (b) is created to read:

Tax 11.66 (1) (b) “Telecommunications services” has the same meaning as in s. 77.51 (21m), Stats. **Note to Revisor:** Move the note that follows Tax 11.66 (1) (b) before renumbering to follow Tax 11.66 (1) (a) as renumbered, and add the following note after Tax 11.66 (1) (b) as created:

Note: Telecommunications services as defined in s. 77.51 (21m), Stats., “means sending messages and information transmitted through the use of local, toll and wide–area telephone service; channel services; telegraph services; teletypewriter; computer exchange services; cellular mobile telecommunications service; specialized mobile radio; stationary two–way radio; paging service; or any other form of mobile and portable one–way or two–way communications; or any other transmission of messages or

information by electronic or similar means between or among points by wire, cable, fiber optics, laser, microwave, radio, satellite or similar facilities. “Telecommunications services” does not include sending collect telecommunications that are received outside of the state.”

SECTION 5. Tax 11.66 (2) (intro.) and (a) are renumbered Tax 11.66 (2) (a) (intro.) and 1. and as renumbered Tax 11.66 (2) (a) 1. is amended to read:

Tax 11.66 (2) (a) 1. The service originates or terminates in Wisconsin.

Note to Revisor: Add the following examples at the end of Tax 11.66 (2) (a) 1. as renumbered:

Examples: 1) Mary Jones places a telephone call from her home in Wisconsin to Bill Jones in Illinois. The call originated in Wisconsin since it was placed from a telephone in Wisconsin.

2) Mary Jones receives a collect call at her home in Wisconsin. The call was placed by Bill Jones from a telephone in Illinois. The call terminated in Wisconsin since it was received in Wisconsin.

3) Company A contracts with Telecommunications Provider B for use of a telecommunications channel to send data from Company A’s bank, located in Milwaukee, Wisconsin, to Company A’s automated teller machines or “ATMs,” located in Waukesha, Wisconsin, and to send data from its ATMs in Waukesha to its bank in Milwaukee. The charge by Telecommunications Provider B to Company A is based on a certain amount of dedicated channel capacity available to Company A on the telecommunications channel, regardless of the volume of data transmitted or number of transmissions made by Company A. Telecommunications Provider B refers to this service as “private line service.” This service originates and terminates in Wisconsin.

4) Assume the same facts as example 3, except the telecommunications channel is used by Company A to send data from its bank in Wisconsin to its ATMs located in Illinois. The telecommunications channel is also used by Company A to send data from its ATMs located in Illinois to its Wisconsin bank. This service originates and terminates in Wisconsin.

SECTION 6. Tax 11.66 (2) (intro.) and (a) (title) are created to read:

Tax 11.66 (2) (intro.) **GENERAL.** This subsection describes the conditions under which telecommunications services and telecommunications message services are taxable. The conditions are as follows:

(a) (title) *Telecommunications services.*

SECTION 7. Tax 11.66 (2) (b) (intro.) and 1. to 5. are renumbered Tax 11.66 (2) (a) 2. (intro.) and a. to e.

SECTION 8. Tax 11.66 (2) (b) is created to read:

Tax 11.66 (2) (b) *Telecommunications message services.* Telecommunications message services that consist of recording telecommunications messages and transmitting them to the purchaser of the service or at that purchaser’s direction are taxable, except that those services are not taxable if either of the following apply:

1. They are merely an incidental element of another service that is sold to the purchaser and is not taxable.

2. The situs of the service is outside this state. The situs of a telecommunications message service is the location where the customer, or someone at the direction of the customer, receives the message.

SECTION 9. Tax 11.66 (3) (title) and (intro.) are amended to read:

Tax 11.66 (3) (title) **TAXABLE TELECOMMUNICATIONS SERVICES.**

(intro.) ~~Telecommunications services which Gross receipts that are subject to Wisconsin sales or use tax include gross receipts from the sale of the following services:~~

SECTION 10. Tax 11.66 (3) (a) is renumbered Tax 11.66 (3) (a) 1. and amended to read:

Tax 11.66 (3) (a) 1. Local and toll service and Wide–Area Telecommunications Service ~~, or WATS, including intrastate private line service, or “WATS.”~~

Note to Revisor: Replace the example at the end of sub. (3) (a) 1. as renumbered with the following:

Example: Company JKL, headquartered in Milwaukee, has branch offices in Madison, Green Bay, Chicago and Minneapolis. Company JKL contracts with a telecommunications company for use of telecommunications channels to send messages between and among its Milwaukee office and the branch offices. Company JKL has exclusive use of the channels while using them. The telecommunications company sells use of the telecommunications channels to other parties while Company JKL is not using them. The charges by the telecommunications company to Company JKL are based on a certain amount of dedicated channel capacity available to Company JKL on the telecommunications channels. Increasing capacity requires a higher charge. The telecommunications service is charged to a service address in Wisconsin. The telecommunications company refers to this service as “private line service.” The charges by the telecommunications company to Company JKL for this service are subject to Wisconsin sales or use tax. A credit may be allowed, against the Wisconsin sales or use tax, for tax paid to Illinois or Minnesota. See sub. (6).

SECTION 11. Tax 11.66 (3) (a) (intro.) is created to read: Tax 11.66 (3) (a) (intro.) Telecommunications services, including:

SECTION 12. Tax 11.66 (3) (b) and (c) are renumbered Tax 11.66 (3) (a) 2. and 3.

SECTION 13. Tax 11.66 (3) (d) is repealed.

SECTION 14. Tax 11.66 (3) (e) to (L) and (m) are renumbered Tax 11.66 (3) (a) 4. to 11. and 15.

Note to Revisor: Add the following note at the end of Tax 11.66 (3) (a) 15. as renumbered:

Note: Refer to sub. (5) regarding the sale of rights to purchase telecommunications services.

SECTION 15. Tax 11.66 (3) (a) 12., 13. and 14. and (b) are created to read:

Tax 11.66 (3) (a) 12. Call forwarding services.

13. Caller ID services.

14. Internet access services.

(b) Telecommunications message services, including:

1. Nonmechanical telephone answering services.

Examples: 1) A real estate business, whose employees spend considerable periods of time away from its office, contracts with Company A to answer incoming telephone calls during periods when employees are not available to answer the telephone. Employees of Company A receive the calls to the real estate office by telephone, take messages from incoming callers and transmit the messages to the real estate company or particular employees in that company. The service provided by Company A is not an incidental element of another service sold by the company that is not a taxable service. Company A’s charge for this service is subject to Wisconsin sales or use tax.

2) Company B employs an office management service that provides receptionist, typing, filing, scheduling, bookkeeping and similar services. Employees of the office management

service also answer and route incoming telephone calls. When calls cannot be routed, the office management service takes and transmits messages to the appropriate person. This answering service is only a small part of the total services provided.

The telephone answering service provided as a part of the office management service is not subject to Wisconsin sales or use tax because it is incidental to the office management service provided and that office management service is not taxable.

2. Security monitoring services that consist of recording a telecommunications message and notifying the customer or local authorities of the message.

3. Electronic mail services.

4. Mechanical or electronic voice messaging and telephone answering services.

Example: Company A provides its customers access to an office message system computer through which a customer can deposit or retrieve telephone messages using a touch–tone telephone. The service may be used as a message center, a call forwarding service or an answering service. Messages are stored in the computer, and the customer may send or retrieve messages, reply to a message directly, reroute messages to others, broadcast messages to a wider group, save selected messages and cancel messages no longer needed. The service is available 24 hours a day, and the customer accesses the computer either through a toll–free telephone number or a local telephone number. The service provided by Company A is not an incidental element of another service sold by the company that is not a taxable service. Company A’s charges for this service are subject to Wisconsin sales or use tax.

SECTION 16. Tax 11.66 (4) (intro.), (a) and (c) are amended to read:

Tax 11.66 (4) (intro.) NONTAXABLE SERVICES. Gross receipts from the sale of or charge for the following services are not taxable:

(a) Interstate or international telecommunications service if the service ~~originates from another state or country or if the service originates in Wisconsin but is charged to a service address in another state or country.~~

(c) Access Transfers of access services, Measured Toll Service, or MTS, and or “MTS,” and Wide–Area Telecommunications Service, or WATS, services resellers or “WATS,” services to resellers who purchase, repackage, and resell the services to customers. The reseller is liable for sales tax on its final retail sales of those services.

SECTION 17. Tax 11.66 (4) (d) is repealed and recreated to read:

Tax 11.66 (4) (d) Services that are obtained by means of a toll–free number, that originate outside Wisconsin and terminate in Wisconsin.

Note to Revisor: Remove the example that follows Tax 11.66 (4) (d) before its repeal.

SECTION 18. Tax 11.66 (4) (e) is repealed.

SECTION 19. Tax 11.66 (4) (f) and (5) are renumbered Tax 11.66 (4) (e) and (7) and as renumbered Tax 11.66 (4) (e) is amended to read:

Tax 11.66 (4) (e) Transfers of services, commonly called “access services,” to an interexchange carrier which permit the origination or termination of telephone messages between a customer in this state and one or more points in another telephone exchange, and which are resold by the interexchange carrier. The interexchange carrier is liable for sales tax on its final retail sales of those services.

SECTION 20. Tax 11.66 (5) and (6) are created to read:

Tax 11.66 (5) PREPAID TELEPHONE CALLING CARDS AND AUTHORIZATION NUMBERS.

(a) The sale of rights to purchase telecommunications services, including purchasing reauthorization numbers, by paying in advance and by using an access number and authorization code, is subject to Wisconsin sales or use tax.

(b) The situs of the sale of the rights to purchase telecommunications services is as follows:

1. If the sale takes place at a retailer's place of business, the situs of the sale is that place of business.

2. If the sale does not take place at a retailer's place of business and an item that will implement the right to purchase telecommunications services, such as a calling card, is shipped, the situs of the sale is the customer's shipping address.

3. If the sale does not take place at a retailer's place of business and no item that will implement the right to purchase telecommunications services is shipped, the situs of the sale is the customer's billing address.

(6) **CREDIT FOR TAX PAID TO ANOTHER STATE.** Any person who is subject to the tax under s. 77.52 (2) (a) 5., Stats., on telecommunications services that terminate in Wisconsin and who has paid a similar tax on the same services to another state may reduce the amount of the tax remitted to Wisconsin by an amount equal to the similar tax properly paid to another state on those services or by the amount due Wisconsin on those services, whichever is less. That person shall refund proportionally to the persons to whom the tax under s. 77.52 (2) (a) 5., Stats., was passed on an amount equal to the amounts not remitted.

Note to Revisor: 1) Replace the first note at the end of Tax 11.66 with the following:

Note: Section Tax 11.66 interprets ss. 77.51 (17m) and (21m), 77.52 (2) (a) 5. and 5m., (2m) and (3m) and 77.525, Stats.

2) In the third note at the end of Tax 11.66: remove part (b); renumber parts (c) to (h) to be parts (b) to (g); remove the word "and" before part (g) as renumbered; and add the following to the end of the note:

; (h) Certain telecommunications message services became taxable December 1, 1997, pursuant to 1997 Wis. Act 27; (i) Telecommunications services originating outside Wisconsin,

terminating in Wisconsin and charged to a service address in Wisconsin, except certain services obtained by means of a toll-free number, became taxable December 1, 1997, pursuant to 1997 Wis. Act 27; (j) Credit for sales tax properly paid to another state on interstate telecommunications services became effective October 14, 1997, pursuant to 1997 Wis. Act 27; (k) Sales of rights to purchase telecommunications services became taxable August 1, 1998, pursuant to 1997 Wis. Act 237; and (L) The repeal of the exemption for interstate "private line" service, as defined in Tax 11.66 (1) (a), September 1997 Register, and described in Tax 11.66 (4) (d), September 1997 Register, became effective **[Revisor insert effective date of rule order]**.

Initial Regulatory Flexibility Analysis

This proposed rule order does not have a significant economic impact on a substantial number of small businesses.

Fiscal Estimate

The proposed order updates the Department of Revenue's administrative code relating to telecommunications services and telecommunications message services. The changes incorporate recent law changes, clarify existing language to reflect the Department's current position, and alter style and format to conform to Legislative Council Clearinghouse standards. These rule changes do not have a fiscal effect.

Comments on the Rule

Interested persons are invited to appear at the hearing and may make an oral presentation. It is requested that written comments reflecting the oral presentation be given to the department at the hearing. Written comments may also be submitted to the contact person shown below no later than August 26, 2002, and will be given the same consideration as testimony presented at the hearing.

Contact Person

Mark Wipperfurth
 Department of Revenue
 Mail Stop 6–40
 2135 Rimrock Road
 PO Box 8933
 Madison WI 53708–8933
 Telephone (608) 266–8253
 E–mail mwipperf@dor.state.wi.us.

Submittal of proposed rules to the legislature

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

**Accounting Examining Board
(CR 02–052)**

Ch. Accy 1, relating to the definition of “ownership interest” for the purpose of determining eligibility of firms for a license as a certified public accounting firm.

**Agriculture, Trade and Consumer Protection
(CR 01–124)**

Ch. ATCP 80, relating to dairy plants and diary laboratories.

**Agriculture, Trade and Consumer Protection
(CR 01–125)**

Ch. ATCP 60, relating to dairy farms.

**Agriculture, Trade and Consumer Protection
(CR 02–036)**

Ch. ATCP 127, relating to telemarketing “no call” list.

**Elections Board
(CR 02–082)**

Ch. EIBd 6, relating to filing campaign finance reports in an electronic format.

**Hearings and Appeals
(CR 02–024)**

Ch. HA 1, relating to the procedure and practice for contested case hearings.

**Insurance
(CR 02–043)**

Ch. Ins 8, relating to publication of health insurance rates for small employers.

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

Ch. Med 10, relating to defining failing to cooperate in a timely manner in an investigation as unprofessional conduct.

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

Ch. Med 10, relating to defining sexual contact with a patient as unprofessional conduct.

**Public Service Commission
(CR 02–027)**

Ch. PSC 113, relating to service rules for electric utilities.

**Transportation
(CR 02–079)**

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

**Workforce Development
(CR 02–088)**

Ch. DWD 129, relating to extension of the time period allowed for filing an initial claim for unemployment insurance benefits.

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 01–090)**

An order affecting ch. ATCP 50, relating to soil and water resource management.

Effective 10–1–02

**Natural Resources
(CR 00–025)**

An order creating ch. NR 153, relating to the targeted runoff management grant program and ch. NR 155, relating to the creation of the urban nonpoint source and storm water management grant program.

Effective 10–1–02

**Natural Resources
(CR 00–026)**

An order creating ch. NR 152, relating to model ordinances for construction site erosion control and post–construction storm water management.

Effective 10–1–02

**Natural Resources
(CR 00–027)**

An order creating ch. NR 151, relating to runoff pollution performance standards.

Effective 10–1–02

**Natural Resources
(CR 00–028)**

An order affecting ch. NR 120, relating to the priority watershed management program.

Effective 10–1–02

**Natural Resources
(CR 00–034)**

An order affecting ch. NR 243, relating to animal feeding operations.

Effective 10–1–02

**Natural Resources
(CR 00–035)**

An order affecting ch. NR 216, relating to stormwater discharge permits to certain construction sites, industrial facilities and municipalities.

Effective 10–1–02

**Natural Resources
(CR 00–036)**

An order creating ch. NR 154, relating to best management practices, conditions and technical standards to be used in administering cost sharing under chs. NR 153 and 155.

Effective 10–1–02

**Natural Resources
(CR 01–054)**

An order affecting ch. NR 326, relating to the regulation of swim rafts and the definition of “impoundment” and “similar conveyance”.

Effective 9–1–02

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