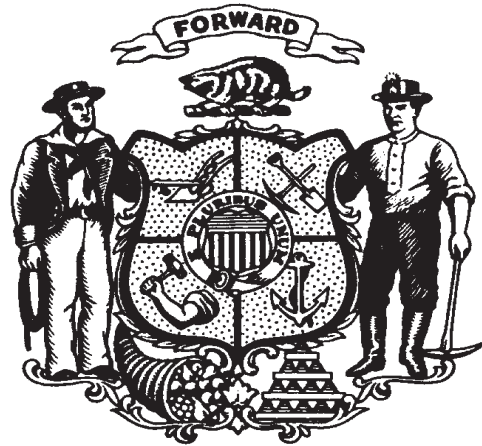


Wisconsin Administrative Register

No. 560



Publication Date: August 31, 2002
Effective Date: September 1, 2002



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

The 1999–2000 Wisconsin Statutes and Annotations can be ordered now in bound volumes or on the *WisLaw*[®] CD–ROM

Bound Volumes:

Prices for the 1999–2000 Wisconsin Statutes and Annotations bound volumes are detailed below. Any sales tax due must be added to these prices:

Hard Cover <u>With Postage</u>	Hard Cover <u>Without Postage</u>	Soft Cover <u>With Postage</u>	Soft Cover <u>Without Postage</u>
\$142.00	\$135.00	\$117.00	\$110.00

Send orders to the Document Sales and Distribution Section at the address below or call (608) 266–3358. Unless exempt by law, all sales are subject to 5% state sales tax and, where applicable, 0.5% county sales tax and 0.1% stadium tax. Prepayment is required for all orders. Payments by check, money order, or credit card should be made payable to WI Department of Administration. Credit card orders using either VISA or MasterCard may be placed by calling (800) 362–7253 or (608) 264–9419. The bound volumes of the statutes will be available in late November 2000.

WisLaw[®] CD–ROM:

Up-to-date *WisLaw*[®] CD–ROMs are released quarterly by the Revisor of Statutes Bureau. *WisLaw*[®] contains:

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

All of the above *WisLaw*[®] Infobases are substantially integrated with hypertext links. *WisLaw*[®] utilizes the Windows 95 versions of Folio Views search and retrieval software. Folio is used by 75 of the top 80 legal publishers. State agencies are using *WisLaw*[®] for their legal research. *WisLaw*[®] is distributed by the Document Sales and Distribution Section to requesting state agencies on a complimentary basis.

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

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

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

Table of contents

Emergency rules now in effect.	Pages 3 to 9
Agriculture, Trade and Consumer Protection:	Rules relating to chronic wasting disease in cervids. Rules relating to milk producer security.
Commerce:	<u>Financial Resources for Businesses and Community, Chs. Comm 105–128</u> Rules creating ch. Comm 118 , relating to the Agricultural Development Zone Program. [First Appearance]
Corrections:	Rules relating to adult field supervision.
Elections Board:	Rules relating to filing campaign reports by electronic transmission.
Health and Family Services:	<u>Health, Chs. HFS 110—</u> Rules relating to the Health Insurance Risk–Sharing Plan. Rules relating to the Wisconsin Chronic Disease Program.
Insurance:	Rules relating to annual patients compensation fund and mediation fund fees and to the Wisconsin health care insurance plan’s primary limits.
Natural Resources:	<u>Fish, Game, etc., Chs. NR 1—</u> Rules relating to the control and management of chronic wasting disease. Rules relating to sport fishing for yellow perch in Lake Michigan and Lake Michigan tributaries. Rules relating to commercial fishing in Lake Superior. <u>Environmental Protection – General, Chs. NR 100—</u> Rules relating to aquatic plant management.
State Treasurer:	Rules relating to the Wisconsin College Savings Program Board.
Veterans Affairs:	Rules amending s. VA 12.02 (7) and (16) , relating to the maximum loan amount under the personal loan program. [First Appearance]
Workforce Development:	<u>Unemployment Insurance, Chs. DWD 100–150</u> Rules relating to extension of the time period allowed for filing an initial claim for unemployment insurance benefits.
Scope statements.	Pages 10 to 12
Commerce:	Rules amending ch. Comm 70, relating to historic buildings. Rules creating ch. Comm 118, relating to the Agricultural Development Zone Program.
Health and Family Services:	Rule creating ch. HFS 118, relating to the development and operation of Wisconsin’s Statewide Trauma Care System.

Regulation and Licensing: Rules needed to regulate music, art and dance therapy.

Transportation: Rule amending ch. Trans 110, relating to ignition interlock devices (IIDs) and a statewide ignition interlock program.

Submittal of proposed rules to the legislature.**Page 13**

Corrections: (CR 02-038)– Ch. DOC 310

Health and Family Services: (CR 02-070) – Chs. HFS 152, 153 and 154
(CR 02-083) – Ch. HFS 119

Social Workers, Marriage and Family Therapists and Professional Counselors Examining Board: (CR 02-105) – Chs. SFC 1 to 8 and 10 to 19

Rule orders filed with the revisor of statutes bureau.**Page 14**

Elections Board: (CR 02-071) – Ch. EIBd 7

Employee Trust Funds: (CR 02-049) – Ch. ETF 20

Health and Family Services: (CR 00-091) – Ch. HFS 112

Insurance: (CR 02-035) – Ch. Ins 17

Natural Resources: (CR 00-162) – Ch. NR 809
(CR 02-014) – Ch. NR 20
(CR 02-017) – Ch. NR 10
(CR 02-018) – Chs. NR 10, 15 to 17

Regulation and Licensing: (CR 02-030) – Ch. RL 128

Transportation: (CR 02-056) – Ch. Trans 276

Rules published with this register and final regulatory flexibility analyses.**Pages 15 to 16****Sections affected by rule revisions and corrections.****Page 17****Sections affected by revisor's corrections not published.****Page 18****Executive orders.****Page 19**

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

Commerce

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

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

Finding of emergency

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

Facts constituting the emergency are as follows:

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

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

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

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

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

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

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

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

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-)

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

2. 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

3. 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

State Treasurer

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

Exemption from finding of emergency

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

Analysis prepared by the Office of the State Treasurer

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

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

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

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

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

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

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

Veterans Affairs

Rules adopted amending s. VA 12.02 (7) and (16), relating to the maximum loan amount under the personal loan program.

Finding of Emergency

The Department of Veterans Affairs finds that an emergency exists and that a rule is necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency is as follows:

The Department administers a personal loan program that may be used by veterans and their dependents for various statutory purposes. The purposes include debt consolidation, payment of delinquent child support, education expenses, and medical and funeral expenses, and the purchase of a mobile home or business property. The current maximum loan amount, set by the Department at sec. VA 12.02(7), Wis. Adm. Code, is \$10,000. The permissible statutory maximum loan amount may be \$15,000, as set by the Department by administrative rule.

The Department proposes to raise the amount to the statutory maximum for several compelling reasons. Raising the maximum loan amount will help stimulate the economy by providing additional resources for veterans and their families. Due to the state of the economy, veterans and their families have a significant need for financial assistance in the form of below market interest rate loans. Additionally, the personal loan program is the primary source of revenue for the veterans trust fund. Immediate infusion of additional assets in the form of personal loans will provide significant financial support for the trust fund. It is expected that increasing the maximum loan amount will result in approximately \$4,000,000 of new loan assets over the 8-month period in which it would take to promulgate this rule change using the regular promulgation procedure.

Publication Date: August 5, 2002
Effective Date: August 5, 2002
Expiration Date: January 2, 2003

Workforce Development

(Unemployment Insurance, Chs. DWD 100–150)

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

Exemption from finding of emergency

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

Analysis Prepared by the Department of Workforce Development

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

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

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

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

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

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

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

Scope statements

Commerce

Subject

Chapter Comm 70, relating to historic buildings.

Policy Analysis

Objective of the rule. The objective of the rule is to revise the provisions of the Department's administrative rules relating to the renovation, alteration and reuse of historic buildings. The revision is intended to update the current method of evaluating historic buildings for compliance with building construction requirements without compromising the historic significance of the structures.

Section 101.121, Stats., requires the Department to develop alternative standards for the preservation or restoration of buildings or structures designated as historic buildings. Chapter Comm 70, Historic Buildings Code, establishes alternative building requirements that facilitate preserving or restoring buildings or structures designated as historic buildings, encourages energy conservation, permits cost-effective approaches to historic preservation and restoration, provides for the health, safety and welfare of occupants and visitors, and provides reasonable access for people with disabilities.

The Historic Buildings Code uses a safety evaluation methodology that is based upon certain aspects of the current Commercial Building Code. The Department adopted the International suite of building codes, including the International Building Code® (IBC), as the base construction standards in Wisconsin as of July 1, 2002. Chapter Comm 70 was also updated to cross-reference the applicable code sections in the new IBC relating to the building safety parameters used in the historic building evaluation method. In order that the Historic Buildings Code remains reasonable and focused on its statutory objectives, the Division needs to evaluate and update the code and its standards.

The alternative of not evaluating and revising the historic building code may result in several consequences, including:

1. The elimination of other alternatives to help preserve, restore and reuse historic and older existing buildings Wisconsin.
2. The imposition of over-burdensome or unreasonable standards.
3. The risk of deficient or inadequate standards that do not fulfill statutory objectives.

Statutory authority

Sections 101.02 (1) and (15), and 101.121, Stats.

Staff time required

The Department estimates that it will take approximately 920 hours to develop these rules. This time includes forming and meeting with an advisory council, researching and drafting the rule, and processing the rules from public hearing to adoption. The Department will assign existing staff to develop the rule. There are no other resources necessary to develop the rule.

Commerce

Subject

Chapter Comm 118, relating to the Agricultural Development Zone Program.

Policy Analysis

Objective of the Rule. The 2001 Wis. Act 16 provides for Commerce to administer a program for the attraction, promotion, retention, and expansion of agricultural businesses in the state.

Through the authority given in s. 560.798, Stats., Commerce is hereby proposing to create administrative rules, ch. Comm 118 — Agricultural Development Zone Program. This chapter shall at least address the following:

- Creation of the process for application and designation of an agricultural development zone.
- Provisions for a means for modification of the boundary of an agricultural development zone.
- Creation of the process for application and certification of agricultural businesses within an agricultural development zone.
- Establishment of criteria for eligibility to certify agricultural businesses.
- Creation of the process to determine and claim tax benefits and notify the Department of Revenue.

Existing policies. Commerce, being the state agency with primary authority for economic development in the state, recognizes that there is a verified need to attract, promote retain, and expand Wisconsin agricultural businesses. For example, over the past 50 years, Wisconsin has experienced an average of six dairy farms leaving production each day. In the year 2001, state milk production declined by more than one billion pounds, resulting in a near 5% decline in production. Western states have increased their cheese production, while Wisconsin experiences declining milk production and dairy processing activities; this program would assist Wisconsin in regaining its prominence in dairy and dairy processing production.

New policies. This is a new Wisconsin program initiative for the attraction, promotion, retention, and expansion of agricultural businesses in the state.

Policy alternatives. The alternative of not creating the code chapter will result negatively in the State's ability to maintain a world-class dairy production and milk processing state. The creation of this program combined with other economic development programs in the state is expected to increase the competitiveness Wisconsin's dairy industry.

Statutory authority

Section 560.798, Stats.

Staff time required

The time estimated to develop the rule is as follows:

Rule drafting and internal processing to announce public hearings = 82 hrs.

Conducting public hearings and summarizing hearing comments = 40 hrs.

Preparing rules in final draft form for legislative review = 44 hrs.

Meet with Legislators on subject rules = 4 hrs.

Prepare rule for adoption and file adopted rule = 30 hrs.

Total hours = 200

Health and Family Services

Subject

The Department proposes to create ch. HFS 118, rules governing the development and operation of Wisconsin's Statewide Trauma Care System. The system's objective is to reduce death and disability resulting from traumatic injury by decreasing the incidence of trauma, providing optimal care of trauma victims and their families, and collecting and assessing trauma-related data.

Policy Analysis

Trauma is a sudden physical injury caused by the application of an external force or violence, such as a motor vehicle accident, a fall or a blow from a blunt or penetrating instrument. Trauma is the leading cause of death in Wisconsin among people under age 35 and is the fourth leading cause of death among the general Wisconsin population. Trauma care may, directly or indirectly, affect all Wisconsin residents and visitors. Section 146.56, Stats., directs the Department of Health and Family Services to develop and implement a statewide trauma care system. Through a statewide trauma system, health care and public safety participants will best be able to respond to and address the needs of trauma victims and their families. The Statewide Trauma Advisory Council, established under s. 15.197 (25), Stats., and appointed by the Secretary of the Department of Health and Family Services, has been collaborating with the Department for the past two years towards the development and implementation of Wisconsin's Statewide Trauma Care System. Wisconsin's Statewide Trauma Care System, when fully implemented, will enhance community health through an organized system of injury prevention, acute care and rehabilitation that is fully integrated with the public health care system in a community.

The Department's proposed rules will contain all of the following:

1. A method by which to classify the emergency care capabilities of all Wisconsin hospitals.
2. Policies guiding the development and use of Regional Trauma Advisory Councils for the purpose of developing, implementing and monitoring the trauma care system.
3. Policies governing the establishment and operation of a statewide trauma registry; triage and transfer protocols among trauma care providers; and the promotion of improved trauma provider performance.

Data collected from the state trauma registry on injury incidence, patient care and outcomes will help identify problems and evaluate the performance of the existing trauma care system. Through this information, communities will be able to assess the nature of trauma injuries in Wisconsin and establish appropriate injury prevention programs to reduce the occurrence of injuries, expedite patients' recovery and minimize the lasting effects of injuries.

Statutory authority

The Department's statutory authority to promulgate ch. HFS 118, relating to Wisconsin's Statewide Trauma Care System is under ss. 146.56 (2) and 227.11 (2), Stats.

Staff time required

The Department estimates it will take 160 hours of staff time to develop initial proposed rules. The Department will consult with the State Trauma Advisory Council and trauma experts during the drafting of the rules, as well as trauma care participants with a particular expertise in trauma and EMS.

Regulation and Licensing

Subject

To promulgate rules needed to implement the sections of 2001 Wisconsin Act 80 that regulate music, art and dance therapy.

Policy Analysis

Newly-enacted 2001 Wis. Act 80 creates a number of changes that affect music, art and dance therapists, most specifically the creation of licenses for music, art and dance therapists to practice psychotherapy. The statutory changes become effective on November 1, 2002, and rules need to be in place by that time.

Rule changes are needed to implement the statutory changes created by 2001 Wisconsin Act 80, including some rules that are specifically referred to in the Act.

Statutory authority

Sections 15.08 (5) (b), 227.11 (2) and 440.03 (14), Stats.

Staff time required

125 hours of state employee time.

Transportation

Subject

This rule making will amend DOT administrative rules, relating to ignition interlock devices (IIDs) and driver licensing, to implement a statewide ignition interlock program and to develop a pilot project. The proposed statewide IID program will update reporting requirements for vendors and service providers to improve coordination and cooperation between the Department, assessment agencies and law enforcement.

Policy Analysis

Section 110.10, Stats., as created by 1999 Wis. Act 109, requires DOT to provide for all of the following by rule:

- (1) Create a process for the selection of persons to install, service and remove IIDs from motor vehicles;
- (2) Provide for a periodic review of the fees charged to the owner of a vehicle for the installation, service and removal of an IID;
- (3) Require IID providers in Wisconsin to establish pilot programs involving the voluntary use of IIDs;
- (4) Require IID providers to provide DOT and designated law enforcement any IID installation, tampering, service and failure reports in a timely manner; and
- (5) Require IID providers to notify DOT of any IID tampering, circumvention, bypass or violation resets and other relevant data recorded in the IID's memory, with DOT subsequent notification to the assessment agency of such information.

In this rule making, DOT proposes to meet these requirements as follows:

- (1) **Create a process for the selection of persons to install, service and remove IIDs from motor vehicles.** Current rules require manufacturers of IIDs to carry product

liability insurance and agree to indemnify the state for claims arising out of the use of IIDs. No other criteria for determining whether a person is qualified to install, service or remove IIDs exist.

DOT proposes to meet the legislative requirements by establishing criteria for the selection of an installer or service technician including background checks for criminal history, technical training and other relevant criteria. Training requirements should reduce the risk of an installer damaging an IID customer's vehicle and help ensure safe installation practices. The criminal history checks requirement would be used to screen persons convicted of sexual offenses, fraud, or repeat OWI violations, to protect the public and prevent repeat OWI offenders from learning how to circumvent the devices.

(2) **Provide for a periodic review of the fees charged to the owner of a vehicle for the installation, service and removal of an IID.** The proposed rule making will establish a schedule for vendors to submit their fee schedule to DOT for review, with administrative followup procedures for non-compliance. The Department proposes to require IID vendors to notify DOT of any changes to their fee schedule (before/within X days after) changes to the fees. DOT will post a list of authorized IID vendors and their fees on its internet site. Any changes in fees would be posted on the Department internet site before the fees become effective so the customers can compare the services and rates of authorized vendors.

The policy alternatives are to require vendor notification of fee schedule changes periodically to DOT or conducting site visits. Conducting site visits would consume scarce administrative resources. Submission of fee schedule changes to DOT for internet posting allows the Department to monitor fee changes and thereby address consumer protection concerns. Additionally, monitoring IID program fee schedule changes by requiring the posting of vendor fees on DOT's internet site allows the Department to effectively utilize limited administrative resources.

(3) **Require IID providers in Wisconsin to establish pilot programs involving the voluntary use of IIDs.** IID vendors may already install IIDs on vehicles of persons who are not required by law to have such a device on their vehicle. DOT proposes to gather data from vendors who install IIDs on vehicles of persons who are not required by law to have the device on their vehicle. The Department proposes to collect vendor data to facilitate possible future study to determine whether IID voluntary use reduces drunk driving among non-regulated population (e.g., company fleet vehicle drivers, teenage drivers, and first offense OWI offenders).

The alternative to requiring that vendors share data with DOT is to continue current practice whereby vendors may install IIDs on vehicles of persons who are not required by law to have the device on their vehicle without reporting. However, absent a requirement that vendors participate in the program and report information to DOT, the Department would not be able to effectively gather the data and potentially study the effects of IID voluntary use in that population.

(4) **Require IID providers to provide DOT and designated law enforcement any IID installation, tampering, service and failure reports in a timely manner.** Currently, IID vendors or service providers are required to share installation, removal, tampering, circumvention,

bypass and violation reset reports with local law enforcement. Vendors or service providers must report within three working days installation or removal of IIDs to the Department or to the sheriff of the county where the driver resides. The vendor or service provider reports the removal or installation in a specific form designated by the Division of Motor Vehicles, which is mailed to the DMV office in Madison.

To address the timeliness concern expressed in s. 110.10 (4), Stats., DOT proposes to review the time periods for submission of the reports in the current rule. The Department may also require IID installers to electronically report installation, removal, or any indication of tampering, circumvention, bypass and violation resets when installing, removing or servicing IIDs to DOT, law enforcement and district attorneys.

Without reporting timelines DOT, law enforcement and district attorneys would be unable to respond on a timely fashion to potential IID violations. Untimely reports make it difficult for law enforcement to allocate resources to investigate possible violations. Requiring installers or service providers to electronically report installation, removal, tampering, circumvention, bypass and violation resets may prove to be an effective way to distribute the information to DOT, law enforcement and district attorneys at minimum taxpayer cost.

(5) **Require IID providers to notify DOT of any IID tampering, circumvention, bypass or violation resets and other relevant data recorded in the IID's memory, with DOT subsequent notification to the assessment agency of such information.** DOT proposes the establishment of a mechanism for notification of the assessment agency that administers the IID violator's driver safety plan. When vendor or service provider reports indicate IID tampering, circumvention, bypass, violation resets, or removal, DOT will make such information available to the assessment agency.

The Department also proposes to consider screening reports gathered by vendors, or have vendors screen reports before its submission to DOT, so that only reports that appear to definitely establish a violation are reported to the assessment agency.

An alternative to DOT screening reports is to provide all reports to assessment agencies and allow them to do the screening. This alternative could bury assessment agencies in paper, consume their limited resources and detract from their main purpose. Removal, tampering, circumvention, bypass and violation resets reports from vendors may lead to licensing actions by the Department or non-compliance findings by assessment agencies or treatment facilities.

This rule making, in addition to the foregoing, is also intended to: (1) improve administrative procedures to enable ignition interlock providers to comply with regulatory requirements more efficiently, (2) update regulations regarding the responsibilities of the Department, vendors and service providers, and (3) establish driver license processes related to drivers whose operating privileges or vehicles are subject to IID restrictions.

Statutory authority

Section 110.10, Stats., as created by 1999 Wis. Act 109.

Staff time required

Approximately 120 hours.

Submittal of proposed rules to the legislature

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

**Corrections
(CR 02-038)**

Ch. DOC 310, relating to complaint procedures.

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

Chs. HFS 152, 153 and 154, relating to Wisconsin Chronic Disease Program.

**Health and Family Services
(CR 02-083)**

Ch. HFS 119, relating to operation of the health insurance risk-sharing plan (HIRSP).

**Social Workers, Marriage and Family Therapists and
Professional Counselors Examining Board
(CR 02-105)**

Chs. SFC 1 to 8 and 10 to 19, relating to practitioners of psychotherapy.

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.

**Elections Board
(CR 02-071)**

An order affecting ch. ElBd 7, relating to approval of electronic voting equipment.
Effective 10-1-02

**Employee Trust Funds
(CR 02-049)**

An order affecting ch. ETF 20, relating to the annuity dividend effective date and the proration of annuity dividends.
Effective 10-1-02

**Health and Family Services
(CR 00-091)**

An order affecting ch. HFS 112, relating to approval of emergency medical technician-paramedic operational plans.
Part Effective 10-1-02

**Insurance
(CR 02-035)**

An order affecting 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.
Effective 10-1-02

**Natural Resources
(CR 00-162)**

An order affecting ch. NR 809, relating to public notification requirements for public water systems.
Effective 10-1-02

**Natural Resources
(CR 02-014)**

An order affecting ch. NR 20, relating to fishing on the inland and outlying waters of Wisconsin.
Effective 10-1-02; 3-1-03; 4-1-03

**Natural Resources
(CR 02-017)**

An order affecting ch. NR 10, relating to hunting.
Effective 10-1-02; 1-5-03

**Natural Resources
(CR 02-018)**

An order affecting chs. NR 10, and 15 to 17, relating to hunting, trapping and captive wildlife.
Effective 10-1-02

**Regulation and Licensing
(CR 02-030)**

An order affecting ch. RL 128, relating to education requirements prior to first renewal, courses and examinations, approval of educational programs, courses and instructors.
Effective 10-1-02

**Transportation
(CR 02-056)**

An order affecting ch. Trans 276, relating to allowing the operation of double bottoms and certain other vehicles on certain specified highways.
Effective 10-1-02

Rules published with this register and final regulatory flexibility analyses

The following administrative rule orders have been adopted and published in the August 31, 2002, Wisconsin Administrative Register. Copies of these rules are sent to subscribers of the complete Wisconsin Administrative Code and also to the subscribers of the specific affected Code.

For subscription information, contact Document Sales at (608) 266-3358.

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

An order affecting ch. ATPC 80, relating to pathogen tests on ready-to-eat dairy products.

Effective 9-1-02

Summary of Final Regulatory Flexibility Analysis

The Department of Agriculture, Trade and Consumer Protection (DATCP) licenses and inspects dairy plants under s. 97.20, Stats. Current DATCP rules under s. ATPC 80.56 (4), Wis. Adm. Code, require dairy plant operators to report to DATCP the results of any microbiological test that confirms the presence of a pathogenic organism in a pasteurized or ready-to-eat dairy product. The current reporting requirement discourages pathogen testing, because test reports become public records that may be open to public inspection even if the affected products are withheld from sale.

This proposed rule repeals this counterproductive reporting requirement, and creates alternative rules that will provide better public health protection and encourage more pathogen testing. The proposed changes are already in effect under an emergency rule which the department adopted. The rule will make the temporary rule changes permanent. Under this rule:

- A dairy plant operator may not sell or distribute any ready-to-eat dairy product in which a microbiological test has confirmed the presence of a pathogenic organism or toxin.

- A dairy plant operator must report test results that confirm the presence of pathogens or toxins in ready-to-eat dairy products unless all the following apply:

- The tested product bears a product code or production lot number.

- The operator withholds, from sale or distribution, all ready-to-eat products that bear that product code or production lot number.

Under current rules, a dairy plant operator must keep records of all pathogen and toxin test results. This rule requires no additional recordkeeping or other procedures for dairy plants. Small dairy plants will need no additional professional skills or assistance in order to comply with this rule.

This permanent rule will have minimal financial impact on the dairy industry.

Summary of Comments of Legislative Standing Committees

On February 15, 2002, DATCP transmitted the above rule for legislative committee review. The rule was assigned to the Senate Committee on Agriculture, Environmental Resources and Campaign Finance Reform and to the Assembly Committee on Agriculture.

- The Senate committee took no action on this rule during the review period.

- The Assembly committee took no action on this rule during the review period.

Financial Institutions – Credit Unions (CR 02-034)

An order affecting ch. DFI-CU 72, relating to member business loans.

Effective 9-1-02

Summary of Final Regulatory Flexibility Analysis

Pursuant to s. 227.19 (3m), a final regulatory flexibility analysis is not required.

Summary of Comments of Legislative Standing Committees

No comments were received.

Financial Institutions – Division of Securities (CR 02-041)

An order affecting ch. DFI-Sec 4, relating to bank sales of certificates of deposit of third-party banks.

Effective 9-1-02

Summary of Final Regulatory Flexibility Analysis

No final regulatory flexibility analysis is included on the basis that the Division of Securities has determined, after complying with s. 227.016 (1) to (5), Stats., that the rules will not have a significant economic impact on a substantial number of small businesses.

Summary of Comments of Legislative Standing Committees

No comments were received.

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

Summary of Final Regulatory Flexibility Analysis

The primary manufacturer, Rave Sports of St. Paul, Minnesota, does not qualify as a small business as it is dominant in its field within the meaning of s. 227.114, Stats. Department staff have worked with them to minimize significant economic impacts.

Summary of Comments of Legislative Standing Committees

The proposed rules were reviewed by the Assembly Committee on Natural Resources and the Senate Committee on Insurance, Tourism and Transportation. On April 10,

2002, the Assembly Committee on Natural Resources held a public hearing. Following that hearing, the Committee asked the Department to consider modifications to the proposed rule. As a result of negotiations with the Committee, s. NR 326.08 (2) (a) and (b) was revised. The exception created for swim rafts which are completely removed from the water on a daily basis or placed in a swim area will be only from the finding in sub. (1) and not the entire section. This will clarify that the exemption in sub. (2) (b) for protective covers, diving boards, ladders and slides also applies to swim rafts that are pulled out of the water or placed in swim areas. In addition, the reference to the height requirement in s. NR 326.08 (2) (b) is changed to height limitation to more accurately reflect the intent of the provision.

**Psychology Examining Board
(CR 02-021)**

An order affecting ch. Psy 2, relating to the scheduling of examinations.

Effective 9-1-02

Summary of Final Regulatory Flexibility Analysis

These rules will have no significant economic impact on a substantial number of small businesses, as defined in s. 227.114 (1) (a), Stats.

Summary of Comments of Legislative Standing Committees

No comments were received.

**Public Instruction:
(CR 02-023)**

An order affecting ch. PI 35, relating to the Milwaukee parental choice program.

Effective 9-1-02.

Summary of Final Regulatory Flexibility Analysis

These rules will have no significant economic impact on a substantial number of small businesses, as defined in s. 227.114 (1) (a), Stats.

Summary of Comments of Legislative Standing Committees

No comments were received.

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

An order affecting ch. PSC 116, relating to the cost of fuel for electric public utilities.

Effective 9-1-02

Summary of Final Regulatory Flexibility Analysis

The proposed rule would apply to electric public utilities as defined by s. 196.20 (4) (a) (2), Stats. The proposed rule will not affect small businesses as defined in s. 227.114, Stats.

Summary of Comments of Legislative Standing Committees

No comments were received.

**Workforce Development
(CR 02-039)**

An order affecting ch. DWD 15, relating to child support cooperation for Wisconsin works.

Effective 9-1-02

Summary of Final Regulatory Flexibility Analysis

Privately-run W-2 agencies will be affected by the rule change, but the rule will not have significant economic impact because there is no material change from current procedures.

Summary of Comments of Legislative Standing Committees

No comments were received.

**Workforce Development
(CR 02-040)**

An order affecting ch. DWD 19, relating to child support cooperation for food stamps.

Effective 9-1-02

Summary of Final Regulatory Flexibility Analysis

The proposed rules do not affect small business, as defined in s. 227.114 (1), Stats.

Summary of Comments of Legislative Standing Committees

No comments were received.

Sections affected by rule revisions and corrections

The following administrative rule revisions and corrections have taken place in **August 2002**, and will be effective as indicated in the history note for each particular section. For additional information, contact the Revisor of Statutes Bureau at (608) 266-7275.

Revisions

Agriculture, Trade and Consumer Protection:

Ch. ATCP 80

- S. ATCP 80.24 (5)
- S. ATCP 80.56

Financial Institutions–Credit Unions:

Ch. DFI–CU 72 (Entire chapter)

Financial Institutions–Securities:

Ch. DFI–Sec 4

- S. DFI–Sec 4.10

Natural Resources:

Ch. NR 326

- S. NR 326.01
- S. NR 326.03 (3) to (13)
- S. NR 326.06 (1), (3) and (4)
- S. NR 326.08
- S. NR 326.09

Psychology Examining Board:

Ch. Psy 2

- S. Psy 2.02 (2) and (3)

Public Instruction:

Ch. PI 35

- S. PI 35.01
- S. PI 35.02 (2m), (8), (11) to (16)
- S. PI 35.025
- S. PI 35.03 (1) (intro.), (c), (d), (2) (intro.), (3), (5), (6) (a)
- S. PI 35.04 (1), (2), (4m), (5) (a) and (b), (6) (a) to (c), (7) (a) and (8)
- S. PI 35.043 (1) (c), (3) (a) and (b) and (4)
- S. PI 35.045 (1) (intro.), (c), (e) and (5)
- S. PI 35.046 (1) (b), (2) (b)
- S. PI 35.05 (3) (a)

Public Service Commission:

Ch. PSC 116

- SS. PSC 116.03 to PSC 116.10

Workforce Development:

Ch. DWD 15 (Entire chapter)

Ch. DWD 19 (Entire chapter)

Editorial corrections

Corrections to code sections under the authority of s. 13.93 (2m) (b), Stats., are indicated in the following listing:

Agriculture, Trade and Consumer Protection:

Ch. ATCP 80

- S. ATCP 80.08 (11) (a)

Financial Institutions–Securities:

Ch. DFI–Sec 4

- S. DFI–Sec 4.03 (1) (p)
- S. DFI–Sec 4.10 (1) (a)

Sections affected by revisor's corrections not published

Revisor's corrections under s. 13.93 (2m) (b), Stats., identified in this Wis. Adm. Register.

Subscriber's note: Please make corrections (manually) in your printed code. The affected sections are shown as corrected on the Revisor of Statutes Internet site, [Http://www.legis.state.wi.us/rsb/](http://www.legis.state.wi.us/rsb/), and on the WisLaw® CD-ROM. Printed code will be shown as corrected in its next printing.

Location of invalid cross-reference	Invalid cross-reference	Correction
ATCP 1.03 (1) (a) 2.	100.03 (18)	Delete the reference
Comm 47.02 (3) (h)	Comm 10.52 (2) to (4)	Comm 10.52 (2) to (3)
DFI-SL 21.05 (2)	DFI-Bkg 21.04	DFI-SL 21.04
NR 600.10 (2) (c)	631.08 (4) (b)	631.08 (4)

Executive orders

The following are recent Executive Orders issued by the Governor.

Executive Order 50. Relating to an amendment relating to the Governor's Pardon Advisory Board (Executive Order No. 24).

Executive Order 51. Relating to a proclamation that the flag of the United States and the flag of the state of Wisconsin be flown at half-staff as a mark of respect for the late officers Robert Etter and Stephanie Markins of the Hobart-Lawrence Police Department.

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

First Class

U.S. POSTAGE PAID

Madison, Wisconsin

Permit Number 1369

First Class Mail

*Wisconsin
Administrative
Register*

Dated Material. Please Do Not Delay!