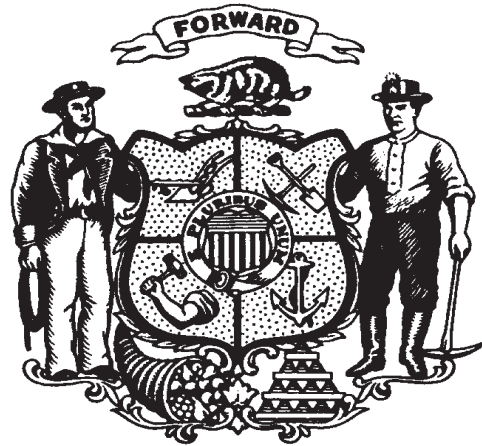


# Wisconsin Administrative Register

No. 557



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## Table of contents

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**Emergency rules now in effect.****Pages 4 to 9**

Agriculture, Trade and Consumer Protection:

Rules relating to chronic wasting disease in cervids.

Rules adopted revising **ch. ATCP 96**, relating to milk producer security. **[First Appearance]**

Commerce:

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

Rules relating to brownfields redevelopment grants.

Rules relating to Wisconsin technology zone program.

Health &amp; Family Services:

Health, Chs. HFS 110—

Rules relating to prescription drug coinsurance coverage.

Natural Resources:

Fish, Game, etc., Chs. NR 1—

Rules relating to sturgeon spearing on the Lake Winnebago system.

Rules relating to sport fishing for yellow perch in Lake Michigan and Lake Michigan tributaries.

Pharmacy Examining Board:

Rules relating to a pharmacy internship program.

Public Instruction:

Rules relating to the Milwaukee parental choice program.

Transportation:

Rules relating to the issuance of driver's licenses and identification cards.

State Treasurer:

Rules relating to the Wisconsin College Savings Program Board.

Volunteer Fire Fighter and Emergency Medical Technician Service Award Board:

Rules relating to the length of service award program.

Workforce Development:

Prevailing Wage Rates, Chs. DWD 290–294

Rules relating to wage rates and payment and performance assurance requirements.

Unemployment Compensation, Chs. DWD 100–150

Rules relating to extension of the time period allowed for filing an initial claim for unemployment insurance benefits.

**Scope statements.****Pages 10 to 12**

Elections Board:

Rule revising ch. ElBd 6, relating to the method in which campaign finance reports must be filed in electronic format.

Health and Family Services:

Rule revising ch. HFS 132, relating to the licensure and regulation of nursing homes.

Public Service Commission:

Rules revising ch. PSC 133, relating to the construction and placing into operation of facilities by natural gas utilities.

Transportation:

Rule revising ch. Trans 130, relating to fees for disabled parking identification placards.

Rules revising ch. Trans 276, relating to highways on which long combination vehicles may operate.

Veterans Affairs:	Rules creating ch. VA 16, relating to the award of grants to counties that are not served by transportation services.
Workforce Development:	Rules amending ch. DWD 80, relating to worker's compensation technical corrections.

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

Accounting Examining Board:	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:	Relating to animal health.
Medical Examining Board:	Relating to sexual contact with a patient as unprofessional conduct.
Revenue:	Relating to waste treatment property.
Transportation:	Relating to allowing the operation of double bottoms and certain other vehicles on specified highways.

**Rule-making notices.****Pages 14 to 23**

Agriculture, Trade and Consumer Protection:	Hearing to consider rules relating to the spread of chronic wasting disease. Hearing to consider rules relating to milk producer security. Hearing to consider rules relating to animal health.
Barbering and Cosmetology Examining Board:	Hearing to consider rules relating to cutting, disinfectants, disinfection, massaging, delegated medical procedures, body piercing, tattooing, tanning booths, managers, relocation of establishments, sterilization and forfeitures.
Medical Examining Board:	Rescheduled hearing to consider rules relating to defining failing to cooperate in a timely manner in an investigation as unprofessional conduct. Hearing to consider rules relating to sexual contact with a patient as unprofessional conduct.
Transportation:	Hearing to consider revision of ch. Trans 276, relating to operation of over-size vehicles on certain highways.

**Submittal of proposed rules to the legislature.****Page 24**

Financial Institutions:	(CR 02-034) – Ch. DFI-CU 72
Pharmacy Examining Board:	(CR 01-134) – Chs. Phar 2 and 17
Psychology Examining Board:	(CR 02-021) – Ch. Psy 2
Revenue:	(CR 01-143) – Chs. Tax 2 and 11
Transportation:	(CR 02-028) – Ch. Trans 139 (CR 02-029) – Ch. Trans 154

**Rule orders filed with the revisor of statutes bureau.****Page 25**

Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors Examining Board:	(CR 01-092) – Ch. A-E 6
Commerce:	(CR 01-142) – Ch. Comm 110

Financial Institutions – Savings Institutions:	(CR 02–006) – S. DFI–SL 16.06 (CR 02–022) – S. DFI–SB 16.03 (8)
Health and Family Services:	(CR 01–016) – Chs. HFS 172 and 195 to 198
Natural Resources:	(CR 01–146) – Ch. NR 47
Volunteer Fire Fighter & EMT Service Award Board:	(CR 01–123) – Ch. VFF–EMT 1

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## Emergency rules now in effect

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

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### 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

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## **Commerce (2)**

### **(Financial Assistance for Businesses and Communities) (Chs. Comm 105-128)**

1. Rules adopted revising **ch. Comm 110** relating to brownfields redevelopment grants.

#### **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.

The facts constituting the emergency are as follows. Under section 3628 of 2001 Wis. Act 16, the Department must begin accepting applications from trustees and nonprofit organizations, for brownfields redevelopment grants. And, under section 3630 of the Act, the Department must begin disallowing use of the grant funds to pay either delinquent real estate taxes or lien claims of the Department of Natural Resources or the federal Environmental Protection Agency.

The Department's rules for administering the brownfields grant program are currently contained in ch. Comm 110 Wis. Adm. Code. These current rules do not recognize trustees and nonprofit organizations as eligible applicants, and do not include disallowing grant funds for payments on either back taxes, or on state or federal lien claims.

In November, the Department expects to begin promulgating permanent rules for making ch. Comm 110 consistent with Act 16. Due to the mandatory rulemaking procedures under ch. 227, Stats., the permanent rules are not expected to become effective until July 1, 2002. In order to comply with Act 16 by accepting applications and issuing grants for trustees and nonprofit organizations prior to then, emergency rules reflecting these changes are needed, as included herein. These emergency rules also address the above disallowance for grant proceeds, and include some minor updating of the ch. Comm 110 criteria for submitting grant applications and for filing subsequent financial and program reports.

Pursuant to s. 227.24, Stats., this rule is adopted as an emergency rule to take effect upon publication in the official state newspaper and filing with the Secretary of State and Revisor of Statutes.

**Publication Date:** October 27, 2001  
**Effective Date:** October 27, 2001  
**Expiration Date:** March 26, 2002  
**Hearing Date:** January 11, 2002  
**Extension Through:** May 24, 2002

2. Rules adopted creating **ch. Comm 107**, relating to Wisconsin technology zone program.

**Finding of emergency**

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

Facts constituting the emergency are as follows:

- In accordance with s. 560.02 (4), Stats., the department of Commerce has the responsibility to promulgate rules to provide for the attraction, promotion and expansion of high–technology business in the state.

- Section 560.96, Stats., makes available certain tax benefits for certified businesses within the 8 designated technology zones. Tax benefits are available to certified businesses if their tax year begins on or after January 1, 2002.

- In response to a downturn in the economy and recent economic forecasts, Governor McCallum has prioritized the need to promulgate these rules as part of his economic stimulus package.

- The technology zone program will address several action items identified by the 2000 Wisconsin Economic Summit to ensure Wisconsin’s short– and long–term economic vitality and success, including:

1. Combating the state’s ‘brain drain’ by increasing high tech jobs.

2. Linking Wisconsin’s research expertise with Wisconsin firms to grow clusters of high–tech jobs.

3. Linking economic strategies across regions for power through collaboration.

- This emergency rule is being created in order that the process of designating the 8 technology zones be commenced as soon as possible and that such eligible businesses may become certified and participate in the tax benefits through the Wisconsin Technology Zone Program.

**Publication Date:** December 5, 2001  
**Effective Date:** December 5, 2001  
**Expiration Date:** May 4, 2002  
**Hearing Date:** January 11, 2002  
**Extension Through:** July 2, 2002

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## Health & Family Services

### (Health, Chs. HFS 110—)

Rules adopted creating s. **HFS 119.07 (6m)**, relating to prescription drug coinsurance coverage.

**Exemption from finding of emergency**

These are emergency rules creating s. HFS 119.07 (6m), Wis. Admin. Code to establish for prescription drug coverage a drug benefit separate from the medical benefits for the Health Insurance Risk–Sharing Plan (HIRSP) as authorized by s. 149.14 (5) (e), Stats., as amended by 2001 Wis. Act 16, and s. 149.146 (2) (am) 5., Stats., as created by 2001 Wis. Act 16. Section 9123 (9w) of the Act authorizes the department to use the emergency rulemaking procedures under s. 227.24, Stats., to promulgate these rules, exempts the department from making a finding of emergency, and from providing evidence that promulgating these rules as an emergency rule is necessary for the preservation of public peace, health, safety, or welfare.

The HIRSP Board of Governors on September 13, 2001, approved the coinsurance rate and out–of–pocket limits established in these rules, as required by s. 149.14 (5) (e)

Stats., as amended by 2001 Wis. Act 16 and s. 149.146 (2) (am) 5, Stats., as created by 2001 Wis. Act 16.

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

The State of Wisconsin in 1981 established a Health Insurance Risk–Sharing Plan for the purpose of making health insurance coverage available to medically uninsured residents of the state. HIRSP health insurance coverage includes prescription drug coverage. Currently, two major issues affect HIRSP prescription drug coverage. The first issue is that pharmacies have difficulty determining the financial liability of HIRSP policyholders. The second issue is that the current system of HIRSP reimbursement to policyholders for prescription drug costs is financially burdensome to HIRSP policyholders. To resolve these issues, the department proposes to implement effective January 1, 2002, new coinsurance provisions for HIRSP’s drug benefit that will clarify the financial liability of HIRSP policyholders for covered prescription drug costs and eliminate the process of reimbursing policyholders for prescription drug expenses by establishing policyholders’ minimum and maximum out–of–pocket costs for covered prescription drugs.

The proposed rules will affect approximately 12,000 HIRSP policyholders statewide.

**Publication Date:** December 20, 2001  
**Effective Date:** January 1, 2002  
**Expiration Date:** May 31, 2002  
**Hearing Date:** January 29, 2002

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## Natural Resources (2)

### (Fish, Game, etc., Chs. NR 1–)

1. Rules adopted revising **ch. NR 20**, relating to sturgeon spearing on the Lake Winnebago system.

**Finding of emergency**

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

Winter spear harvest of sturgeon has continued to exceed the total allowable harvest goals due to an increase in spearing pressure and the current format of the season, which allows continued spearing for 1 day following the announcement of the season closure (when 80% of the total allowable harvest is reached). Harvest on the final day of the 2001 season resulted in a final harvest that exceeded the total allowable harvest by 52%. An emergency order is needed to protect the sturgeon population by preventing continued overharvest of female sturgeon during the 2002 season while permanent rules are being developed. The early closure should reduce spearing effort by 40%, which should decrease the daily harvest and reduce the risk of exceeding the total allowable harvest on the final day of the season.

**Publication Date:** December 14, 2001  
**Effective Date:** December 14, 2001  
**Expiration Date:** May 13, 2002  
**Hearing Date:** January 14, 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

### Pharmacy Examining Board

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

#### Finding of emergency

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

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

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

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

**Publication Date:** December 30, 2001  
**Effective Date:** January 1, 2002  
**Expiration Date:** May 31, 2002  
**Hearing Date:** February 12, 2002

### 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

### Transportation

Rules adopted amending **s. Trans 102.15**, relating to the issuance of driver's licenses and identification cards.

#### Finding of emergency

This rule is adopted in response to the September 11, 2001, terrorist hijackings in the United States, and are intended to help uncover any possible terrorist attempting to obtain identification documents through the Wisconsin Department of Transportation. On November 21, 2001, the New York Times reported that to support their terrorism, terrorists finance applications for political asylum and thus implant terrorist cells in Western Europe. This rule change could interrupt terrorists who have applied for or received asylum in the United States and who attempt to obtain Wisconsin identification documents.

Because of the urgency of current government efforts directed at taking steps to interrupt terrorist workings, this order adopting an emergency rule shall take effect as provided below.

**Publication Date:** December 21, 2001  
**Effective Date:** December 21, 2001  
**Expiration Date:** May 20, 2002  
**Hearing Date:** February 15, 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

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## Volunteer Fire Fighter and Emergency Medical Technician Service Award Board

Rules adopted creating **ch. VFF–EMT 1**, relating to the length of service award program.

### Exemption from finding of emergency

Section 10 (3) (a), 1999 Wis. Act 105.

### Analysis prepared by the Department of Administration:

Statutory authority: ss. 16.004 (1) and 16.25 (2), (3), (4) and (5), Stats.

Statutes interpreted: s. 16.25 *et seq.*, Stats.

Pursuant to section 16.25 (2) through (5), Stats., the Volunteer Fire Fighter and Emergency Medical Technician Service Award Board (“Board”) is required to establish by rule a program (“Length of Service Awards Program” or “Program”) to provide length of service awards, as described in 26 USC 457 (e) (11), to volunteer firefighters (“VFF”) and municipalities that operate volunteer fire departments or contract with volunteer fire companies, and to volunteer emergency medical technicians (“EMT”). To the extent permitted by federal law, the Program is to be designed to treat length of service awards as a tax–deferred benefit under the Internal Revenue Code. The rules are to include design features for the Program, the requirements for and the qualifications of private sector entities that are eligible to provide administrative services and investment plans under the Program, and an appeal. Significant features of the rule are addressed below:

Section VFF–EMT 1.04 describes eligibility requirements for municipalities wishing to participate in the program, such as adopting a resolution or ordinance authorizing participation, developing standards for determining the service required of the individuals it sponsors in order to qualify for municipal contributions and providing for circumstances where municipalities wish to jointly operate, or contract with, the same volunteer fire department or volunteer fire company.

Section VFF–EMT 1.05 sets forth requirements and procedures for municipal contributions made on behalf of eligible volunteers, and for the state’s matching contribution (up to \$250 per eligible individual annually).

Section VFF–EMT 1.06 sets forth the parameters for municipal contributions for prior service rendered before the municipality began participating in the Program. The minimum contribution for prior service is set at \$100, and those contributions may spread over a number of years. A separate accounting is required for these prior service payments.

Section VFF–EMT 1.07 sets forth the Program’s vesting requirements and the various permutations possible between full and partial vesting periods and the minimum age requirement (age 60) for payout. Section VFF–EMT 1.07 (1) establishes that 20 years service is required to fully vest and, upon reaching age 60, the award must be paid. (This requirement insures that the benefit maintains its tax deferred status.) Section VFF–EMT 1.07 (2) provides that a fully vested individual age 60 or older may continue to provide service toward a new length of service award under a new account but, for IRS rule purposes, contributions must be paid immediately and cannot accumulate. Section VFF–EMT 1.07 (3) provides for partial vesting after 10 years’ service. Should the individual perform more than 10 but less than 20 years’ service, upon reaching age 60, he or she will receive only 50% of the net asset value of the benefit account for the first 10 years of service rendered, and an additional 5% for each year thereafter, up to 19 years. Section VFF–EMT 1.07 (7) allows an individual to provide simultaneous service to two or more separate municipalities but, in such cases, only one year of service credit may be earned.

Section VFF–EMT 1.09 details the notice and procedure for when a VFF–EMT ceases performing service for one participating municipality and begins performing service for another municipality, which utilizes a different program administrator or vendor. Such a transfer is allowed, but the account will be frozen and a new one started with the new program administrator. However, any accumulated years of credited service will continue to count toward the vesting requirements. Section VFF–EMT 1.10 allows for benefits to be received both upon disability, or to the beneficiaries upon death of the VFF–EMT.

Section VFF–EMT 1.12 sets forth minimum program administrator qualifications. These include five years of experience providing a length of service award program, adequate marketing and enrollment services capabilities, various accounting and record keeping procedures and abilities, membership in good standing in various organizations customary in the program administrator’s or investment manager’s industry that provides protection against loss, and overall financial strength.

Section VFF–EMT 1.13 provides for the administration of plans offered by a program administrator under a contract with the Board, and standard provisions to be included. These include compliance with all pertinent state and federal statutes, rules and regulations, mandatory full disclosure to the Board of all fees and commissions earned directly and indirectly on the operations of the program, audits, and data processing system failure and administrative service interruption contingency plans. Also important are the required annual statements to participating municipalities and the individuals they sponsor, detailing all contributions made and the fees commissions, and charges paid that affect the individual’s account.

Section VFF–EMT 1.17 provides for a two–step appeals process in which a VFF–EMT may first protest service credit

issues to the participating municipality, which may consult with the program administrator. Any decision of the municipality may be reviewed at the Board's discretion. An individual who has a substantial interest affected by a Board decision may appeal directly in writing to the Board. All Board decisions are final.

**Publication Date:** September 21, 2001  
**Effective Date:** September 21, 2002  
**Expiration Date:** February 18, 2002  
**Hearing Date:** December 27, 2001  
**Extension Through:** June 17, 2002

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### Workforce Development

#### (Prevailing Wage Rates, Chs. DWD 290–294)

Rules adopted revising **ch. DWD 290** and creating **ch. DWD 293**, relating to the adjustment of thresholds for application of prevailing wage rates and payment and performance assurance requirements.

#### Finding of emergency

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

The Department of Workforce Development is acting under its statutory authority to adjust thresholds for the application of prevailing wage laws on state or local public works projects and the application of payment and performance assurance requirements for a public improvement or public work. The thresholds are adjusted in proportion to any change in the construction cost index since the statutes were effective or the last adjustment.

If these new thresholds are not put into effect by emergency rule, the old thresholds will remain effective for approximately six to seven months, until the conclusion of the permanent rule-making process. The thresholds are based on national construction cost statistics and are unlikely to be changed by the permanent rule-making process. The department is proceeding with this emergency rule to adjust the thresholds of the application of the prevailing wage rates to avoid imposing an additional administrative burden on local governments and state agencies caused by an effective decrease of the thresholds due solely to inflation in the construction industry. The department is proceeding with this emergency rule to adjust the thresholds of the application of the payment and performance assurance requirements in s. 779.14, Stats., to avoid imposing an additional administrative burden on contractors for the same reason. Adjusting the thresholds by emergency rule will also ensure that the adjustments are effective on a date certain that is prior to the time of year that the relevant determinations are generally made.

**Publication Date:** December 27, 2001  
**Effective Date:** January 1, 2002  
**Expiration Date:** May 31, 2002  
**Hearing Date:** February 27, 2002

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### Workforce Development

#### (Unemployment Compensation, Chs. DWD 100–150)

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

#### Exemption from finding of emergency

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

#### Analysis Prepared by the Department of Workforce Development

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

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

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

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

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

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

**Publication Date:** April 14, 2002  
**Effective Date:** April 14, 2002  
**Expiration Date:** September 11, 2002

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## Scope statements

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### Elections Board

#### Subject

Amend s. ElBd 6.05 regarding the method or manner in which campaign finance reports must be filed in electronic format.

#### Policy Analysis

Because of the non–availability of electronic filing through the methods provided in the Elections Board’s current rule, ch. ElBd 6, the Board seeks to amend its rule to accommodate an alternative electronic filing system, the rule may need to be amended again.

#### Statutory authority

Sections 5.05 (1) (f) and 227.11 (2) (a), Stats.

#### Staff time required

10 hours.

### Health and Family Services

#### Subject

The Department proposes to amend ch. HFS 132, relating to the licensure and regulation of nursing homes. The revisions will update the chapter to reflect and incorporate waivers and variances the Department has previously issued to nursing homes. The Department also proposes to eliminate rule provisions that are obsolete due to changes in nursing home standards of practice and state statutes applicable to nursing homes.

#### Policy Analysis

The Department proposes to revise ch. HFS 132 to reflect current practice standards, federal regulations, changes to ch. 50, Stats., and previous memos and waivers issued by the Department’s Bureau of Quality Assurance. Changes the Department will be proposing relate to the following:

#### 1. Requirements for employees and residents regarding communicable disease issues:

The Department plans to amend provisions relating to communicable disease issues and health certification in ss. HFS 132.42 (3) (a) and (4), 132.51 (2) (b) and 132.52 (2) (c). The Department previously has granted waivers of these provisions because they conflict with federal law and do not reflect current nursing home standards of practice.

#### 2. Training requirements in employee development:

The training provisions in s. HFS 132.44 (1) (b) have been superseded by nurse aide training requirements under both federal regulations (42 CFR 483.75 (g)) and state law (s. 146.40, Stats.). The rules will be revised to reflect current regulatory and state law provisions.

#### 3. Requirements for medical record staff services:

State personnel requirements for medical records staff are more prescriptive than the corresponding federal requirements. Consequently, the Department previously waived the requirement in s. HFS 132.45 (3) (b) for a full time records staff employee. The Department also plans to revise the record requirements related to resident assessment documentation because some of those requirements are

encompassed in s. HFS 132.60 (8), under resident care planning.

#### 4. Hospice patients residing in nursing homes:

The Department proposes to update the rules to reflect waivers the Department previously issued relating to hospice patients who elect to receive hospice services while residing in a nursing home.

#### 5. Requirements in the areas relating to “services” including resident care, admission procedures, resident assessment and care planning, medical services, nursing services, dietary services, pharmacy services, dental services and activities:

The Department has waived some of the existing rules because they are more restrictive than applicable federal regulations. The Department proposes to revise the rules to reflect nursing homes’ use of the resident assessment instrument as specified in federal regulations. Recent changes to ch. 50, Stats., in several areas, such as nurse staffing, also require changes to the rule provisions.

#### 6. Previously issued waivers relating to the transmittal of medical orders:

The Department previously issued a waiver to nursing homes to allow the transmission of physician or dentist orders through an unlicensed person employed by the physician or dentist or employed at the physician’s or dentist’s clinic. The Department plans to amend s. HFS 132.66 (1) (d) to reflect this previously issued waiver allowing physician assistants and nurse practitioners to give orders for skilled care residents for blood, lab, and radiology services. The change will maintain consistency between state and federal requirements.

#### 7. Life safety, design and construction:

The Department proposes to amend s. HFS 132.812 (1) to reflect changes to the state building code promulgated by the Department of Commerce. Specifically, chs. Comm 50 to 64 and 69 have changed to chs. Comm 61 through 65. In addition, the federal Centers for Medicare and Medicaid Services (CMS) formally adopted by reference the 1985 edition of the Life Safety Code. However, the 1985 edition is not reflected in existing s. HFS 132.82. The Department proposes to amend the rules to reference the 1985 edition of the Life Safety Code.

The provisions in s. HFS 132.84 regarding staff work stations and communication systems need to be updated to allow nursing facilities to incorporate modern design, new program concepts and current technology in the facility environment. Specifically, the Department is proposing to amend the provisions in s. HFS 134.84 (3) (c) and (d) that require the nurse station to be centrally located. The Department also proposes to modify the prescriptive requirements for a hard–wired nurse call system in s. HFS 134.84 (4). Amending this provision will allow for alternative resident and staff communications systems that are listed and approved by a nationally recognized testing laboratory.

#### Statutory authority

The Department’s authority to promulgate these rule changes is found in s. 50.02 (2) (a), Stats.

**Staff time required**

The Department estimates it will take approximately six months and 240 hours of staff time to draft the proposed revisions to ch. HFS 132. During this period, Bureau of Quality Assurance staff will develop and review the proposed changes with a variety of internal and external parties.

**Public Service Commission****Subject**

Administrative rules relating to the construction and placing into operation of facilities by natural gas utilities. These provisions are in ch. PSC 133, Wis. Adm. Code.

**Policy Analysis**

The Commission will consider revisions designed to update rules governing the construction and placing into operation of facilities by natural gas utilities. The current rules chapter sets out when a certificate of authority is required before a natural gas utility may construct facilities, what information is required in an application for a certificate and the procedure for processing an application. The current rules also require a certificate of authority when a natural gas utility seeks to extend service into a new municipality.

The current chapter has not been the subject of a complete review since 1959. Revising the conditions under which a certificate of authority is required will update project code dollar thresholds that trigger the requirement and modernize other conditions that may trigger the requirement.

**Statutory authority**

Sections 196.02 (1) and (3), 196.49, 196.50 and 227.11, Stats.

**Staff time required**

The Commission estimates that fewer than 200 hours of staff time will be required to develop the rules. No additional resources are likely to be needed in order to complete this project.

**Transportation****Subject**

*Objective of the rule.* The Division of Motor Vehicles accommodates persons who have a disability that limits or impairs the ability to walk. Disabled persons may receive a portable disabled parking identification placard, which allows parking in a specially reserved parking space. Disabled persons pay a fee of \$6 per placard, which is good for 4 years. A number of class action lawsuits have been filed against states (including Wisconsin) that charge a fee for disabled parking identification placards. These lawsuits allege that the practice of charging a fee for disabled parking identification placards violates the Americans with Disabilities Act (ADA). A settlement ended the Wisconsin lawsuit. Judge Nichol signed an order dismissing the case. Jason, et al. v. Wisconsin DOT, Case No. 97-CV-3137, Dane County Circuit Court, April 15, 2002. The Department proposes to discontinue charging the placard fee on July 1, 2003, by amending ch. Trans 130.

**Policy Analysis**

Currently, DMV charges \$6 for a disabled parking placard, which is good for 4 years, as authorized by s. 343.51 (1), Stats., and s. Trans 130.04 (1), Wis. Adm. Code. Pursuant to a court order and stipulation, DMV will discontinue charging a fee for permanent placards effective July 1, 2003.

**Statutory authority**

Section 343.51 (1), Stats.

**Staff time required**

50 hours.

**Transportation****Subject**

*Objective of the rule.* This proposal will amend ch. Trans 276, which establishes a network of highways on which long combination vehicles may operate, by adding 5 highway segments to the network and removing 1 segment. The actual segments being proposed to add to the network are:

STH 121 from USH 53 in Pigeon Falls to STH 95

STH 164 from I-43 to STH 36

STH 20 from STH 36 to I-94

STH 28 from STH 57 to STH 32

STH 28 from STH 32 in Sheboygan Falls to I-43 in Sheboygan

The segment proposed to be removed from the designated long truck route network is:

STH 32 from STH 28 to STH 23

**Policy Analysis**

Federal law requires the Department of Transportation to react within 90 days to requests for changes to the long truck route network. Wisconsin state law requires that the Department use the administrative rule process to deal with changes to the long truck route network. Chapter Trans 276 is an existing rule set up for long truck routes. The Department has received a requests from Best Express, LLC in Osseo, Carol's Permit Service, Inc., in Big Bend, Kreilkamp Trucking, Inc., and the City of Sheboygan Falls to add these highway segments. The City of Sheboygan Falls requested the removal of the above-mentioned segment.

**Statutory authority**

Section 348.07 (4), Stats.

**Staff time required**

It is estimated that state employees will spend 40 hours on the rule-making process, including research, drafting and conducting a public hearing.

**Veterans Affairs****Subject**

Creation of ch. VA 16 of the Wis. Adm. Code – Relating to the award of grants to counties that are not served by transportation services provided by the Wisconsin Department of Disabled American Veterans for the purpose of developing, maintaining, and expanding transportation services for veterans.

*Objective of the rule.* The proposed rule would specify the application procedures and eligibility criteria for transportation grants to counties not provided transportation services by the Wisconsin Department of Disabled American Veterans.

**Policy Analysis**

Through the enactment of 2001 Wis. Act 16, the Department of Veterans Affairs was directed to provide an annual grant of \$100,000 to the Wisconsin Department of Disabled American Veterans for the purpose of providing transportation services to veterans. The Department of Veterans Affairs was also directed to promulgate rules for the

annual disbursement of an additional \$100,000 among those counties not receiving transportation services from the Wisconsin Department of Disabled American Veterans. The proposed rules will identify the application procedures counties must follow and establish the eligibility criteria so that the \$100,000 can be equitably distributed among the eligible counties.

**Statutory authority**

Section 45.43 (7m).

**Staff time required**

Approximately 80 hours of Department of Veterans Affairs staff time will be needed to promulgate the rules. Additionally, under section 9157 (7e) of 2001 Wis. Act 16, the Department of Veterans Affairs is directed to work jointly with the Department of Administration to develop the most cost-effective methods of providing transportation services for veterans. Accordingly, additional staff time will be required at the Department of Administration for review of the proposed rules.

**Workforce Development****Subject**

DWD 80, Worker's compensation technical corrections.

**Policy Analysis**

There are no policy changes proposed. The rule will make the following technical corrections:

- Update a reference to a renumbered statute in s. DWD 80.05 (1).
- Update s. DWD 80.15 on payments after an order to comply with s. 102.18 (1) (e), Stats., as created by 2001 Wis. Act 37.
- Update s. DWD 80.21 (4) regarding notice deadlines for hearing testimony on a wage earning impairment to comply with s. 102.17 (7) (b), Stats.
- Repeal s. DWD 80.24 on a statement by an employee because this topic is now covered by s. 102.123, Stats., as created by 2001 Wis. Act 37.

**Statutory authority**

Sections 102.15 (1); 102.18 (1) (e) and 102.123, Stats., as created by 2001 Wis. Act 37; s. 102.17 (7) (b); and s. 227.11, Stats.

**Staff time required**

35 hours.

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## Submittal of rules to legislative council clearinghouse

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

### Accounting Examining Board

#### Rule Submittal Date

On April 15, 2002, the Accounting Examining Board submitted a proposed rule to the Legislative Council Rules Clearinghouse.

#### Analysis

Statutory Authority: ss. 15.08 (5) (b) and 227.11 (2), Stats., and s. 442.08 (3), Stats. as amended by 2001 Wis. Act 16.

The proposed rule–making order relates to the definition of “ownership interest” for the purpose of determining eligibility of firms for a license as a certified public accounting firm.

#### Agency Procedure for Promulgation

A public hearing is required and will be held on May 17, 2002 at 9:30 a.m. in Room 180, 1400 East Washington Avenue, Madison, WI 53702.

#### Contact Person

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

### Agriculture, Trade and Consumer Protection

#### Rule Submittal Date

On April 26, 2002, Agriculture, Trade and Consumer Protection submitted a proposed rule to the Legislative Council Rules Clearinghouse.

#### Analysis

Statutory Authority: s. 227.15, Stats.

The proposed rule–making order relates to animal health.

#### Agency Procedure for Promulgation

The department will hold a public hearing on this rule on June 3, 2002.

#### Contact Person

The department’s Animal Health Division is primarily responsible for this rule. If you have questions, you may contact Melissa Mace at 608–224–4883.

### Medical Examining Board

#### Rule Submittal Date

On April 30, 2002, the Medical Examining Board submitted a proposed rule to the Legislative Council Rules Clearinghouse.

#### Analysis

Statutory Authority: ss. 15.08 (5) (b), 227.11 (2) and 448.20 (1), Stats.

The proposed rule–making order relates to sexual contact with a patient as unprofessional conduct.

#### Agency Procedure for Promulgation

A public hearing is required and will be held on June 19, 2002, at 8:30 a.m. in Room 179A, 1400 East Washington Avenue, Madison, WI, 53702.

#### Contact Person

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

### Revenue

#### Rule Submittal Date

On April 17, 2002, the Department of Revenue submitted a proposed rule to the Legislative Council Rules Clearinghouse.

#### Analysis

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

The proposed rule–making order affects ss. Tax 11.11 and 12.40, relating to waste treatment property.

#### Agency Procedure for Promulgation

A public hearing is not required. The proposed rule will be published under the 30–day notice procedures, pursuant to s. 227.16 (2) (e), Stats.

#### Contact Person

Rebecca Boldt at 608–266–6785.

### Transportation

#### Rule Submittal Date

On May 1, 2002, the Department of Transportation submitted a proposed rule to the Legislative Council Rules Clearinghouse.

#### Analysis

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

The proposed rule–making order affects ch. Trans 276, relating to allowing the operation of double bottoms and certain other vehicles on specified highways.

#### Agency Procedure for Promulgation

A public hearing is required and is scheduled for June 14, 2002.

The Division of Transportation Infrastructure Development, Bureau of Highway Operations is responsible for promulgation of the proposed rule.

#### Contact Person

Julie A. Johnson, Paralegal, (608) 267–3703.

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## Rule-making notices

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### Notice of Hearing

#### Agriculture, Trade and Consumer Protection

*(reprinted from April 30, Wis. Adm. Register)*

The State of Wisconsin Department of Agriculture, Trade and Consumer Protection announces that it will hold a public hearing on its emergency rule relating to chronic wasting disease in cervids. The department will hold one hearing at the time and place shown below. The department invites the public to attend the hearing and comment on the emergency rule. Following the public hearing, the hearing record will remain open until May 24, 2002, for additional written comments.

You may obtain a free copy of this emergency rule by contacting the Wisconsin Department of Agriculture, Trade and Consumer Protection, Division of Animal Health, 2811 Agriculture Drive, P.O. Box 8911, Madison, WI 53708, or by calling 608-224-4883. Copies will also be available at the hearing.

Hearing impaired persons may request an interpreter for the hearing. Please make reservations for a hearing interpreter by **May 15, 2002**, by writing to Melissa Mace, Division of Animal Health, P.O. Box 8911, Madison, WI 53708-8911, telephone (608) 224-4883. Alternatively, you may contact the Department TDD at (608) 224-5058. Handicap access is available at the hearing.

One hearing is scheduled:

**Wednesday, May 22, 2002, at 7:00 p.m.**

Prairie Oaks State Office Building, Board Room

2811 Agriculture Drive

Madison, WI 53708

Handicapped accessible

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

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

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

This emergency rule regulates the import, keeping and movement of cervids, including deer and elk, to prevent the spread of chronic wasting disease. The Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) administers this rule. This rule applies to captive cervids, including farm-raised deer and captive white-tail deer. This rule does not apply to free-ranging deer or elk regulated by the Department of Natural Resources (DNR).

#### Background

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

Chronic wasting disease has not been diagnosed in captive cervids in this state, but its presence cannot be ruled out. The disease has been diagnosed in some captive herds in other states. This rule establishes a monitoring and testing program

for captive cervids in this state. This rule also regulates imports and movement of captive cervids.

#### Importing Cervids to Wisconsin

Under current rules, no person may import a captive cervid into Wisconsin without a permit from DATCP. The importer, or a veterinarian acting on behalf of the importer, may apply for an import permit. The applicant must identify the herd of origin and the herd of destination.

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

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

#### Moving Live Cervids from Herds in Wisconsin

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

Under this rule:

- The veterinarian must also certify that the herd of origin has shown no signs or symptoms of chronic wasting disease in the last 12 months. The veterinarian must be the herd veterinarian for the herd of origin.
- The herd of origin must be enrolled in Wisconsin's herd monitoring program (see below).
- These requirements do not apply to any of the following:
  - A cervid moved directly to slaughter if the cervid is tested for chronic wasting disease.
  - A cervid moved between 2 locations operated by the same herd owner, and covered by the same farm-raised deer herd registration.
  - A cervid moved by or under the control of DNR.
  - A cervid moved between institutions that are accredited by the American association of zoological parks and aquariums.

#### Mandatory Testing in Wisconsin

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



- All captive cervids at least 16 months old that are shipped to slaughter.

- All captive cervids at least 16 months old whose carcasses (or any part of whose carcasses) leave the herd premises.

A herd owner enrolled in Wisconsin's herd monitoring program (see below) must also test cervids at least 16 months old that die on the herd premises, even if their carcasses do not leave the herd premises. Live cervids may not be shipped from herds that are not enrolled in the monitoring program (see above).

### Test Standards and Reports

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

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

- Test samples must be collected according to standard veterinary procedure, and tested at a laboratory approved by DATCP or APHIS.

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

### Quarantine and Condemnation

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

### Herd Monitoring Program

This rule establishes a herd monitoring program for chronic wasting disease. This program supplements the mandatory testing requirements described above. Live cervids may not be shipped from herds that are not enrolled in the monitoring program (see above). A herd owner who wishes to enroll in the program must do all the following:

- Complete an application form.
- Provide a report of a herd census completed not more than 30 days before the application date. The census report must include all the following:
  - The number, species and sex of cervids in the herd.
  - The number of cervids at least one year old.
  - The number of cervids less than one year old.
  - The official individual identification (ear tag number or other approved identification) of each cervid that is at least one year old.

- Provide a statement from the herd veterinarian. The veterinarian must certify that he or she is the herd veterinarian, and that no cervid in the herd has shown any signs or symptoms of chronic wasting disease in the past 12 months.

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

- Identify each cervid in the herd, with official individual identification, before the cervid is one year old.

- Test every cervid that dies or is shipped to slaughter, if that cervid is at least 16 months old. This testing requirement applies, regardless of whether the cervid's carcass leaves the herd premises.

- Notify the herd veterinarian within 24 hours after the herd owner observes any signs or symptoms of chronic wasting disease.

- Provide an annual statement from the herd veterinarian. The herd veterinarian must submit the annual statement to DATCP, within 30 days before or after the herd enrollment anniversary date. The veterinarian must certify that he or she is the herd veterinarian, and that no cervid in the herd has shown any signs of chronic wasting disease since the last annual statement.

- File a report of an annual herd census. The herd owner must complete the annual census within 30 days before or after the enrollment anniversary date, and must file the report within 10 days after completing the census. The census report must include all the following:

- The number, species and sex of cervids in the herd.
- The number of cervids at least one year old, and the number of cervids less than one year old.
- The official individual identification of each cervid that is at least one year old.

- The number, species and sex of cervids added to the herd since the last reported herd census. The report must indicate whether these new cervids were born into the herd or added from another source. If cervids were added from another source, the report must identify the source from which the cervids were obtained.

- The number of cervids that left the herd since the last reported herd census. The report must explain how each cervid left the herd, including all the following:

- \* Whether the cervid died on the premises, was shipped to slaughter, or was shipped live other than to slaughter.

- \* If the cervid was shipped live other than to slaughter, the name of the person to whom it was shipped and the place to which it was shipped.

- \* If the cervid died on the premises, the cervid's age and the disposition of its carcass. If the carcass left the premises, the report must identify the carcass destination or recipient. If the cervid was at least 16 months old, the report must include a chronic wasting disease test report.

- \* If the cervid was shipped to slaughter, the cervid's age and the name and address of the slaughter establishment. If the cervid was at least 16 months old, the report must include a chronic wasting disease test report.

- Maintain all the following records for at least 5 years, and make those records available to DATCP for inspection and copying upon request:

- A record of each cervid added to the herd from another source, including:

- \* The species, age and sex of the cervid.
- \* The name and address of the person from whom the cervid was obtained.

- \* The address of the herd from which the cervid was obtained.

- A record of each cervid leaving the herd, including all the following:

- \* Whether the cervid died on the premises, was shipped to slaughter, or was shipped live other than to slaughter.

\* If the cervid was shipped live other than to slaughter, the name of the person to whom it was shipped and the place to which it was shipped.

\* If the cervid died on the premises, the apparent cause of death, the cervid's age, and the disposition of the cervid's carcass. If the carcass left the premises, the record must identify the carcass destination or recipient.

\* If the cervid was shipped to slaughter, the cervid's age and the name and address of the slaughter establishment.

– A copy of all records received from the herd veterinarian related to veterinary services provided to the herd.

### **Fiscal Estimate**

This emergency rule establishes a monitoring and testing program for captive cervids in this state. This rule also regulates imports and movement of captive cervids. DATCP will need additional staff to:

- Investigate and monitor movement of cervids into and around the state of Wisconsin.
- Compile evidence and enforce the rules, as necessary.
- Create and maintain complete files for all captive cervid farms.
- Collect samples for testing, and train individuals to collect samples.
- Create a data management system to track and monitor chronic wasting disease and herd data.

These costs will be ongoing. Only a portion of the costs will be incurred during the temporary duration of the emergency rule. DATCP is proposing a “permanent” rule which will incorporate similar provisions. The short-term annual costs during the term of the emergency rule will be approximately \$2,401,504.00. Long-term costs will be much greater, but have not yet been fully analyzed.

### **Regulatory Flexibility Analysis**

The department will prepare a regulatory flexibility analysis on its proposed permanent rule relating to chronic wasting disease in cervids.

## **Notice of Hearing**

### **Agriculture, Trade and Consumer Protection**

*(reprinted from April 30, Wis. Adm. Register)*

The State of Wisconsin Department of Agriculture, Trade and Consumer Protection announces it will hold a public hearing on an emergency rule relating to milk producer security. The department invites the public to attend and comment on the emergency rule. Following the public hearing, the hearing record will remain open until June 16, 2002 to receive additional written comments.

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

Hearing impaired persons may request an interpreter for this hearing. Please make reservations for a hearing interpreter by May 9, 2002 either by writing to Kevin LeRoy, Division of Trade and Consumer Protection, PO Box 8911, Madison, WI 53708-8911 (telephone 608-224-4928) or by calling the Department TDD at 224-5058.

### **The hearing is scheduled at:**

**Thursday, May 16, 1:30 p.m.**

Wisconsin Department of Agriculture, Trade and Consumer Protection  
Board Room

2811 Agriculture Drive

Madison, WI 53718

Handicapped accessible

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

Statutory Authority: ss. 93.07 (1), 126.51, 126.81 (1) and (2), and 227.24, Stats.

Statutes Interpreted: Ch.126, Stats.

This emergency rule implements Wisconsin's new agricultural producer security law (ch. 126, Stats.), as it applies to milk contractors. The new law is designed to protect milk producers against catastrophic financial defaults by milk contractors who procure producer milk in this state. The Legislature enacted the new law in 2001 Wis. Act 16.

The new law applies to milk contractors, including dairy plant operators, producer agents and other milk handlers. Among other things, the new law creates an agricultural producer security fund, financed by milk contractor fees. The Department of Agriculture, Trade and Consumer Protection (DATCP) administers this law. The law takes effect, for milk contractors, on May 1, 2002.

This emergency rule:

- Clarifies the treatment of dairy plant operators who provide custom processing services for milk producers, without marketing or taking title to milk or processed dairy products.

- Clarifies the treatment of producer agents who market milk and collect milk payments on behalf of producers, without taking title to the milk.

- Clarifies the treatment of persons who market only processed dairy products for producers, without procuring, marketing or processing any raw producer milk.

- Clarifies the method by which milk contractors calculate and report milk payment obligations, for the purpose of calculating fund assessments and security requirements.

- Requires milk contractors to disclose their security and fund contribution status to producers.

### **Background**

Under the agricultural producer security law, a milk contractor who procures producer milk in this state must be licensed by DATCP. To be licensed, a contractor must do one of the following:

- Contribute to the agricultural producer security fund (“fund”). If a contributing milk contractor defaults on payments to producers, the fund may partially compensate those producers. Producer agents (who market milk and collect milk payments for producers without taking title to the milk) may have lower fund participation requirements than other milk contractors. If a producer agent defaults, the fund may also make smaller payments to producers.

- File security with DATCP, to secure a portion of the contractor's milk payment obligations to producers. Producer agents may file a smaller amount of security than other milk contractors, so there may be less security if a producer agent defaults.

- File financial statements with DATCP, showing that the milk contractor meets minimum financial standards. If a milk contractor is licensed on the basis of the contractor's financial statement, the contractor is not required to contribute to the fund or file security with DATCP. The fund will not pay producers if the contractor defaults, nor will DATCP have any security to pay producers.

### **Custom Processing for Milk Producers**

This emergency rule clarifies that ch. 126, Stats., does not apply to a dairy plant operator who takes temporary custody

of producer milk for the sole purpose of providing custom processing services to milk producers, provided that all the following apply:

- The producers retain title to the milk and to the processed dairy products made from that milk.
- The operator does not market the milk or processed dairy products, but promptly delivers the processed dairy products to the producers or their agent for consumption or marketing.
- The operator does not commingle producer–owned milk or dairy products with other milk or dairy products.
- The operator provides the custom processing services under a written contract with each producer or the producer’s agent. The contract must clearly and conspicuously disclose that:
  - The producer retains title to the milk and dairy products.
  - The producer’s milk shipments are not secured under ch. 126, Stats.

### **Producer Agents**

This emergency rule clarifies that a milk contractor does not qualify as a producer agent, for purposes of ch. 126, Stats., unless all the following apply:

- The milk contractor procures producer milk in this state solely as the agent of the milk producers.
- The milk contractor does not take title to the producer milk, or to any dairy products made from the producer milk.
- The milk contractor markets the producer milk under a written contract with each milk producer. The contract must clearly and conspicuously disclose all the following:
  - That the milk contractor does not take title to the producer’s milk, or any dairy products made from that milk.
  - That the milk contractor receives payments on behalf of the producer, and holds them in trust for the producer.
  - The terms and conditions of payment to the producer.
  - The procedure by which the milk contractor will receive payment on behalf of the producer and make payments to the producer, including any trust fund arrangement.
  - The milk contractor’s compensation for serving as the producer’s agent, and the method by which the milk contractor will receive that compensation from the milk producer.
  - A milk security disclosure statement (see below).
- The milk contractor does not process, as a producer agent, more than 5 million pounds of producer milk in any month.
- The milk contractor gives, to each recipient of producer milk marketed by the contractor, a written invoice stating that the milk is producer milk not owned by the milk contractor.
- The milk contractor files a monthly report with DATCP. The milk contractor must file the report on or before the 25th day of the month. The report must include all the following:
  - The name and address of each person to whom the milk contractor marketed, in the preceding month, producer milk procured in this state.
  - The total pounds of producer milk that the milk contractor marketed to each person in the preceding month.
  - The milk contractor’s total milk payment obligation to milk producers for producer milk that the contractor marketed in the preceding month.

### **Persons Marketing Processed Dairy Products for Milk Producers**

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

### **Milk Payment Report by License Applicant**

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

### **Milk Security Disclosure Statement**

This emergency rule requires milk contractors to make milk security disclosures to milk producers, pursuant to s. 126.81 (4), Stats., so that producers understand the extent to which milk payments are backed by the agricultural producer security program. The milk contractor must give the disclosure when the milk contractor first procures milk from the producer, and again in June of each year. The disclosure must consist of one of the following written statements:

- The following statement if the milk contractor contributes to the fund (and is not a producer agent who also files security):

#### **IMPORTANT NOTICE**

[Name of milk contractor] contributes to Wisconsin’s Agricultural Producer Security Fund. This fund helps ensure that milk producers will be paid for the milk they ship to contributing contractors. If a contributing contractor fails to pay a producer, the fund may pay up to 80% of the first \$60,000 of the producer’s unpaid milk payment claim, and up to 75% of any additional unpaid milk payroll claim.

- The following statement if the milk contractor is required to file security with DATCP and is not a producer agent:

#### **IMPORTANT NOTICE**

[Name of milk contractor] does not participate in Wisconsin’s Agricultural Producer Security Fund. We have filed security with the State of Wisconsin to cover part, but not all, of our milk payment obligations to milk producers. The security equals at least 75% of the largest amount that we owed producers at any time during our last completed fiscal year. The security is in the following form(s): [specify forms of security].

- The following statement if the milk contractor does not contribute to the fund or file security with DATCP, but is licensed solely on the basis of the contractor’s financial statement:

#### **IMPORTANT NOTICE**

[Name of milk contractor] does not participate in Wisconsin’s Agricultural Producer Security Fund, and has not filed security with the State of Wisconsin to secure payments to milk producers. Our financial statement shows positive equity, a current ratio of at least 1.25 to 1.0, and a debt–to–equity ratio of no more than 2.0 to 1.0.

- The following statement if the milk contractor is a producer agent who does not contribute to the fund and is required to file security with DATCP:

#### **IMPORTANT NOTICE**

[Name of milk contractor] does not participate in Wisconsin's Agricultural Producer Security Fund. We have filed security with the State of Wisconsin to cover part, but not all, of our milk payment obligations to milk producers. The security equals 15% of the largest amount that we owed to producers at any time during our last completed fiscal year. The security is in the following form(s): [specify forms of security].

- The following statement if the milk contractor is a producer agent who contributes to the fund and files security with DATCP:

**IMPORTANT NOTICE**

[Name of milk contractor] contributes to Wisconsin's Agricultural Producer Security Fund as a producer agent. If we fail to pay a producer, the fund may pay up to 15% of the producer's allowed claim.

**Fiscal Estimate**

The department does not expect this emergency rule to have any material fiscal effect.

**Regulatory Flexibility Analysis**

The department will prepare and publish its proposed regulatory flexibility analysis permanent rule to create ch. ATCP 96, Wis. Adm. Code.

## Notice of Hearing

### Agriculture, Trade and Consumer Protection [CR 02-054]

The State of Wisconsin Department of Agriculture, Trade and Consumer Protection announces that it will hold a public hearing on a proposed rule to revise current animal health rules under chs. ATCP 10-12 Wis. Adm. Code. The department will hold one hearing at the time and place shown below. The department invites the public to attend the hearing and comment on the rule. Following the public hearing, the hearing record will remain open until June 7, 2002, for additional written comments.

You may obtain a free copy of this rule by contacting the Wisconsin Department of Agriculture, Trade and Consumer Protection, Division of Animal Health, 2811 Agriculture Drive, P.O. Box 8911, Madison, WI 53708, or by calling 608-224-4883. Copies will also be available at the hearing.

Hearing impaired persons may request an interpreter for the hearing. Please make reservations for a hearing interpreter by **May 27, 2002**, by writing to Melissa Mace, Division of Animal Health, P.O. Box 8911, Madison, WI 53708-8911, telephone (608) 224-4883. Alternatively, you may contact the Department TDD at (608) 224-5058. Handicap access is available at the hearing.

One hearing is scheduled:

**Monday, June 3, 2002, commencing at 11:00 a.m.**

Prairie Oaks State Office Building, Board Room

2811 Agriculture Drive

Madison, WI 53708

Handicapped accessible

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

Statutory Authority: ss. 93.07 (1), and 95.197 (2), Stats.

Statute Interpreted: s. 95.197, Stats.

This rule modifies current animal health rules under chs. ATCP 10-12, Wis. Adm. Code. The Wisconsin department of agriculture, trade and consumer protection (DATCP) administers these rules.

### Disease Testing; General

Current rules require disease testing of certain animals. According to current rules, required tests must be conducted at a DATCP laboratory or at a laboratory approved by the animal and plant health inspection service of the United States department of agriculture (USDA-APHIS). However, DATCP no longer operates Wisconsin's animal health laboratories (the labs are currently operated by the University of Wisconsin). This rule modifies current testing requirements to state that tests must be conducted at laboratories *approved* by DATCP or USDA-APHIS.

Under current rules, veterinarians testing for certain diseases must report the test results to DATCP unless the test sample is analyzed at a DATCP laboratory. This rule modifies the current rules to reflect the fact that DATCP no longer operates Wisconsin's animal health laboratories. Under this rule, a veterinarian must report certain test results to DATCP unless the laboratory analyzing the test sample simultaneously reports the test result to DATCP and the veterinarian.

### Testing Live Fish and Fish Eggs

Under current rules, an accredited veterinarian or fish health inspector must issue a health certificate for the following:

- Live fish or fish eggs imported into Wisconsin.
- Farm-raised fish released into the waters of the state.

Under current rules, whenever salmonid fish or salmonid fish eggs are imported or released, the health certificate must state that the salmonids are free of whirling disease. But there is no reliable way to test for whirling disease in salmonid *eggs*. This rule therefore eliminates the whirling disease testing requirement for salmonid *eggs* (the testing requirement still applies to live fish).

### Bovine Tuberculosis

USDA-APHIS classifies states according to the prevalence of bovine tuberculosis within each state. Classifications affect interstate movement of animals. USDA-APHIS previously classified states with a prevalence greater than .1% as "non-modified accredited" states, but now classifies them as "modified accredited" states. This rule incorporates the new federal terminology.

### Equine Infectious Anemia

Under current rules, tests for equine infectious anemia (EIA) must be performed by an accredited veterinarian or a veterinarian employed by DATCP or USDA-APHIS. This rule allows a technician employed by DATCP or USDA-APHIS to perform routine screening tests for EIA if the technician is working under the direct supervision of a veterinarian employed by DATCP or USDA-APHIS.

Under current rules, a horse may not be exhibited at a fair or show unless it has tested negative for EIA within the preceding 12 months. Under this rule, the horse must have tested negative for EIA during the same calendar year in which the horse is exhibited, except that a horse may be exhibited in January if it tested negative during the preceding calendar year. This is consistent with current rules related to permanent imports.

### Cervids

This rule modifies current rules related to cervids (including deer and elk):

- Under current rules, a cervid may not be imported to Wisconsin unless it has tested negative for brucellosis within the preceding 30 days. This rule changes the pre-import brucellosis testing requirements by incorporating federal *Uniform Methods and Rules* adopted by USDA-APHIS

effective September 30, 1998. This will make Wisconsin import requirements consistent with federal requirements.

- Under current rules, a cervid may not be moved within Wisconsin unless it has tested negative for tuberculosis within the preceding 90 days. There are several current exceptions to this requirement. This rule creates an additional exception, for cervids originating from a certified tuberculosis–free herd.

- Under current rules, captive deer must test negative for tuberculosis within 90 days before they are moved within Wisconsin. White–tailed deer are exempt from this requirement. This rule repeals the current exemption, so that captive white–tail deer will also be subject to the TB testing requirement before they are moved within this state.

- This rule requires any veterinarian or diagnostic laboratory that finds evidence of chronic wasting disease in deer in Wisconsin to report it to DATCP within one day after making the finding.

#### **Poultry Testing and Identification**

Under current rules, DATCP may certify a poultry flock as “U.S. pullorum–typhoid clean,” and may certify a turkey flock as “mycoplasma–gallisepticum clean,” based on test samples collected by an authorized agent of DATCP. Under current rules, DATCP’s agent must individually identify tested birds when collecting test samples for these purposes. This rule clarifies that the birds must be identified with leg bands or wing bands.

Under this rule, if DATCP’s agent tests 25 or more birds, DATCP’s agent may forego individual identification if the owner or the owner’s agent isolates the test group from other birds in the flock. The owner or the owner’s agent must keep the test group isolated until DATCP authorizes their release from isolation. If one or more of the tested birds tests positive for disease, the owner or the owner’s agent must submit all of the isolated birds for further testing or disposition.

#### **“Pullorum–Typhoid Clean” Poultry Flocks**

Under current rules, poultry used for breeding purposes and poultry eggs used for hatching must originate from a flock that is tested annually *and* classified “U.S. pullorum–typhoid clean” under the national poultry improvement plan. This rule retains the source flock classification requirement, but eliminates the annual testing requirement. Flock testing must still be consistent with the national poultry improvement plan.

This change will make it possible for a new breeding flock to claim the “U.S. pullorum–typhoid clean” status of its parent flock until the new flock can be tested and certified in its own right. It will also make Wisconsin rules consistent with those of other states and USDA–APHIS.

#### **“Mycoplasma Gallicepcticum Clean” Turkey Flocks**

Under current rules, turkeys used for breeding purposes and turkey eggs used for hatching must originate from a flock that is tested annually *and* classified “Mycoplasma gallicepcticum clean” under the national poultry improvement plan. This rule retains the source flock classification requirement, but eliminates the annual testing requirement.

Flock testing must still be consistent with the national poultry improvement plan. This change will make it possible for a new breeding flock to claim the “Mycoplasma gallicepcticum clean” status of its parent flock until the new flock can be tested and certified in its own right. It will also make Wisconsin rules consistent with those of other states and USDA–APHIS.

#### **Poultry Quarantines**

Under current rules, DATCP must quarantine poultry flocks classified as “reactor,” “infected” or “suspect” flocks under the national poultry improvement plan. Quarantined birds may only be moved to slaughter. DATCP may release a quarantine following 2 negative flock tests conducted at least 21 days apart.

This rule modifies current quarantine provisions. Under this rule, quarantined birds moved to slaughter must be accompanied by a USDA permit for movement of restricted animals, form VS 1–27. This rule repeals the current requirement for releasing a quarantine (2 negative flock tests at least 21 days apart). Instead, the quarantine order will spell out quarantine release terms, based on surrounding circumstances.

#### **Poultry Diseases; Test Reports**

This rule changes current poultry disease reporting requirements, consistent with the national poultry improvement plan:

- Under current rules, a veterinarian who diagnoses pullorum in poultry must report the disease to DATCP within 10 days after it is diagnosed. This rule shortens the reporting deadline from 10 days to one day.

- This rule adds a reporting requirement for mycoplasma meleagridis. Under this rule, a veterinarian who diagnoses this disease in poultry must report the disease to DATCP within one day after it is diagnosed.

#### **Dogs and Cats**

Under current rules, a dog or cat imported to Wisconsin must be accompanied by a certificate of veterinary inspection. The certificate must disclose the rabies vaccination status of the animal. If the dog or cat has never been vaccinated, or is due for re–vaccination, it must be vaccinated by a licensed veterinarian within 30 days after it enters the state or within 30 days after it reaches 4 months of age, whichever is later.

The Legislature recently modified the rabies vaccination statute. Under the new statute, a dog or cat may be vaccinated (with an appropriate vaccine) before the animal reaches 4 months of age, and must be vaccinated before the animal reaches 5 months of age. This rule modifies the current rules to conform to the new statute. Under this rule, if an imported dog or cat has never been vaccinated, or is due for re–vaccination, it must be vaccinated by a licensed veterinarian within 30 days after it enters the state or before it reaches 5 months of age, whichever is later.

#### **Fiscal Estimate**

The rule will not have a major impact on State or Local government resources. This rule integrates minor state law changes that have already been enacted into rule, and creates consistency within animal health rules, and with federal programs and with other states. Increases in workload will be absorbed by existing staff.

#### **Regulatory Flexibility Analysis**

##### **Rule Description**

The rule modifies current animal health rules, including rules related to animal disease, animal movement and livestock markets. This rule updates a number of current rules. Among other things, this rule:

- Modifies current disease testing and reporting requirements to reflect the fact that DATCP no longer operates Wisconsin’s animal health laboratories (the labs are currently operated by the University of Wisconsin).

- Modifies current import testing requirements for fish, eliminating a whirling testing requirement for salmonid *eggs* (because no reliable test exists). The testing requirement still applies to live fish.

- Updates bovine tuberculosis import requirements to reflect new federal terminology (no substantive change).

- Makes technical changes to current testing requirements for equine infectious anemia (EIA).

- Modifies current rules related to cervids (including deer and elk):

- Modifies pre-import brucellosis testing requirements to make them consistent with federal *Uniform Methods and Rules*.

- Modifies pre-import tuberculosis testing requirements to create an exemption for cervids originating from certified tuberculosis-free herds.

- Modifies current TB testing requirements for *intrastate* movement of captive deer. This rule extends the current testing requirement to white-tail deer (current rules exempt white-tails).

- Requires veterinarians and diagnostic laboratories to report any findings of chronic wasting disease within one day.

- Modifies current testing, identification and classification procedures under voluntary programs to certify poultry flocks free of pullorum-typhoid and mycoplasma-gallisepticum.

- Modifies current rules related to poultry quarantines. Under this rule, a permit must accompany quarantined birds moved to slaughter. This rule repeals current requirements for quarantine release (2 negative flock tests at least 21 days apart). Instead, the quarantine order will spell out quarantine release terms, based on surrounding circumstances.

- Changes current poultry disease reporting requirements, consistent with the national poultry improvement plan:

- Under current rules, a veterinarian who diagnoses pullorum in poultry must report it to DATCP within 10 days. This rule shortens the reporting deadline from 10 days to one day.

- This rule adds a reporting requirement for mycoplasma meleagridis. A veterinarian who diagnoses this disease must report it to DATCP within one day.

- Modifies current rabies vaccination requirements for imported dogs and cats, based on recent statutory changes. Under this rule, if an imported dog or cat has never been vaccinated, or is due for re-vaccination, it must be vaccinated by a licensed veterinarian within 30 days after it enters the state or before it reaches 5 months of age, whichever is later.

#### **Small Businesses Affected by this Rule**

This rule affects livestock owners and veterinarians. Some of these persons are “small businesses” as defined in s. 227.114 (1) (a), Stats.

#### **Effects on Small Business**

This rule will have a slight impact on small business. This rule eliminates some unnecessary burdens by making Wisconsin rules more consistent with federal rules. In some cases, this rule imposes slight additional record keeping and reporting requirements on veterinarians, but these requirements are necessary to protect Wisconsin livestock.

## **Notice of Hearing**

### **Barbering and Cosmetology Examining Board [CR 02-058]**

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Barbering and Cosmetology Examining Board in ss. 15.08 (5) (b) and 227.11 (2), Stats., and interpreting ss. 454.01, 454.04, 454.15 and 454.08, Stats., the Barbering and Cosmetology Examining Board will hold a public hearing at the time and place indicated below to consider an order to revise chs. BC 1 to 4 and 10, relating to, cutting, disinfectants, disinfection, massaging, delegated medical procedures, body piercing, tattooing, tanning booths, managers, relocation of establishments, sterilization and forfeitures.

#### **Hearing Date, Time and Location**

Date: **June 3, 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 June 25, 2002 to be included in the record of rule-making proceedings.

Analysis prepared by the Department of Regulation and Licensing.

Statutes authorizing promulgation: ss. 15.08 (5) (b) and 227.11 (2), Stats.

Statutes interpreted: ss. 454.01, 454.04, 454.15 and 454.08, Stats.

In this proposed rule-making order of the Barbering and Cosmetology Examining Board, the board makes changes relating to laser hair removal, microdermabrasion and chemical skin peels, tattooing, body piercing and tanning booths, limitations on the use of lancets, massages for cosmetic purposes, and non-evasive cutting.

The current law does not clearly address issues pertaining to laser hair removal, microdermabrasion and chemical skin peels. The law pertaining to body piercing, tattooing and tanning booths is clearly stated in statutes and rules enforced by the Department of Health and Family Services; therefore the board proposes to add these subjects to its rules. The rules permit the use of lancets; however, the rules do not adequately address the sterilization and disposal of lancets. The rules define “manicuring” to include “massaging” that is limited to the hands, feet or nails of the human body. The rules also define “manicuring” to include “cutting” that is limited to the hands, feet or nails of the human body.

The proposed rules will identify procedures, such as laser hair removal services, microdermabrasion and certain chemical skin peels that may only be done as directed, supervised and inspected by a physician who has the power to direct, decide and oversee the implementation of the client

services provided. The proposed rules will prescribe formal written protocols.

In this proposed rule-making order the board clarifies the disinfection expectations for barbering and cosmetology, aesthetics, electrology and manicuring implements. These changes will provide a clearer explanation of what disinfection will protect the health, safety and welfare of the citizenry of Wisconsin. Refining the disinfection definition and the process of disinfection, can do this.

The Barbering and Cosmetology Examining Board's policy is to prohibit the use of methyl methacrylate monomer (MMA) in liquid form, or any cosmetic or nail service product formulated with MMA as one of its ingredients. It should not be used by any manicurist, nail technician, practitioner, manager or in any establishment in providing services or products to patrons. MMA, or any product containing MMA as an ingredient, should not be present on the premises of any establishment. Any use of MMA or any product containing MMA, as well as selling, stocking or storing such substance or product, may result in disciplinary action against all licensees involved. Increased reports and complaints concerning MMA have prompted the board to prohibit the use of MMA in the practice of barbering and cosmetology and manicuring.

Section BC 3.02 currently requires a licensed manager to be identified for every establishment. A proposed rule change would allow an establishment to operate temporarily without a manager if a manager resigns and the owner actively seeks a replacement.

Section BC 3.06 currently requires application for a new establishment license whenever an establishment changes ownership or location. Practitioners who rent a chair or booth and who relocates to a different chair or booth within the same establishment should not be required to obtain a new establishment license.

#### **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), 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**

### **Medical Examining Board [CR 02-008]**

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Medical Examining Board in ss. 15.08 (5) (b), 227.11 (2) and 448.40 (1), Stats., and interpreting ss. 448.015 (4) and 448.02 (3), Stats., the Medical Examining Board will hold a public hearing at the time and place indicated below to consider an order to create s. Med 10.02 (2) (zc), relating to defining failing to cooperate in a timely manner in an investigation as unprofessional conduct.

#### **Hearing Date, Time and Location**

**Date:** May 21, 2002

*(rescheduled from April 24, 2002)*

**Time:** 8:30 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 June 7, 2002 to be included in the record of rule-making proceedings.

#### **Analysis prepared by the Department of Regulation and Licensing.**

Statutes authorizing promulgation: ss. 15.08 (5) (b), 227.11 (2) and 448.40 (1), Stats.

Statutes interpreted: ss. 448.015 (4) and 448.02 (3), Stats.

The Medical Examining Board wants to include as unprofessional conduct the failure of a credential holder to cooperate in a timely manner with an investigation. The board wants it to be unprofessional conduct on the part of the credential holder for failing to cooperate by providing information the board has requested in a pending investigation within 30 days and be able to charge that credential holder with unprofessional conduct for failing to cooperate. The board has attempted on several occasions to obtain information from a credential holder on a complaint the board has received which they wish to investigate further but need information from the credential holder.

#### **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), 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****Medical Examining Board  
[CR 02-055]**

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Medical Examining Board in ss. 15.08 (5) (b), 227.11 (2) and 448.40 (1), Wis. Stats., and interpreting s. 448.015 (4), Wis. Stats., the Medical Examining Board will hold a public hearing at the time and place indicated below to consider an order to create s. Med 10.02 (2) (zd), relating to sexual contact with a patient as unprofessional conduct.

**Hearing Date, Time and Location**

Date: **June 19, 2002**  
Time: 8:30 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 July 12, 2002 to be included in the record of rule-making proceedings.

**Analysis prepared by the Department of Regulation and Licensing.**

Statutes authorizing promulgation: ss. 15.08 (5) (b), 227.11 (2) and 448.40 (1), Stats.

Statutes interpreted: s. 448.015 (4), Stats.

The Medical Examining Board has for many years prosecuted cases involving inappropriate sexual contact between physicians and their patients under s. Med 10.02 (2) (h), Wis. Admin. Code. That section reads as follows:

Med 10.02 Definitions. . . (2) The term "unprofessional conduct" is defined to mean and include but not be limited to the following, or aiding or abetting the same:

(h) Any practice or conduct which tends to constitute a danger to the health, welfare, or safety of patient or public.

In a recent circuit court case, the board's finding of a violation of the cited section, arising from a respondent having engaged in a sexual relationship with a patient over a period of approximately eight months, was appealed based in part on the argument that the cited section was vague in terms of what it permitted and prohibited. The court agreed, reversing the board's decision and remanding the case to the board "for either further evidentiary proceedings or for

particularly specific findings as to how the danger to patient rule was violated or caused, rather, in this case by improper medical treatment."

Based upon this challenge to the board's interpretation of the so-called "danger rule," it is deemed appropriate to join most of the other health care boards in specifically prohibiting inappropriate sexual contact or behavior with a patient. Also consistent with similar rules promulgated by other affected boards, the patient's status as a patient is extended for two years beyond actual termination of services in order to obviate the possible problem of a licensee summarily suspended terminating treatment immediately upon commencement of improper personal contact with a patient.

The rules adopted in this order shall take effect on the first day of the month following publication in the Wisconsin administrative register pursuant to s. 227.22 (2) (intro.), Stats.

**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), 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****Transportation  
[CR 02-056]**

NOTICE IS HEREBY GIVEN that pursuant to ss. 85.16 (1) and 348.07 (4), Stats., interpreting s. 348.07 (4), Stats., the Department of Transportation will hold a public hearing at the following location to consider the amendment of ch. Trans 276, Wis. Adm. Code, relating to allowing the operation of double bottoms and certain other vehicles on certain specified highways:

**June 14, 2002**

Hill Farms State Transportation Building  
4802 Sheboygan Avenue  
Room 419  
Madison, WI  
9:00 a.m.

(Parking is available for persons with disabilities)

The public record on this proposed rule making will be held open until close of business on the date of the hearing to permit the submission of written comments from persons unable to attend the public hearing or who wish to supplement testimony offered at the hearing. Any such written comments should be submitted to Ashwani K. Sharma, Traffic Operations Engineer, Bureau of Highway Operations, Room 501, P. O. Box 7986, Madison, Wisconsin, 53707-7986.



**Analysis Prepared by the Wisconsin Department of Transportation**

STATUTORY AUTHORITY: ss. 85.16 (1) and 348.07 (4), Stats.

STATUTE INTERPRETED: s. 348.07(4), Stats.

General Summary of Proposed Rule. This proposed rule amends ss. Trans 276.07 (11), (16), (17), (19), (24), (28) and (38), and creates ss. Trans 276.07 (28m) and (38g), Wis. Adm. Code, to add eleven segments of highway to the designated highway system established under s. 348.07 (4), Stats. The actual highway segments<sup>1</sup> that this proposed rule adds to the designated highway system are:

Hwy.	From	To
STH 54	Port Edwards	STH 80 at Dexterville
STH 78	STH 11 in Gratiot	WI–IL Line
STH 88	STH 35	CTH E
STH 107	STH 29	STH 153
STH 153	STH 51	STH 13
CTH A	CTH E	Dorchester
CTH B	STH 73	STH 64
CTH E	STH 29	CTH O
CTH E	STH 28	STH 67
CTH O	STH 64	STH 13
CTH S	STH 53	STH 124

The long trucks to which this proposed rule applies are those with 53–foot semitrailers, double bottoms and the vehicles which may legally operate on the federal National Network, but which exceed Wisconsin’s regular limits on overall length. Generally, no person may operate any of the following vehicles on Wisconsin’s highways without a permit: A single vehicle with an overall length in excess of 40 feet<sup>2</sup>, a combination of vehicles with an overall length in excess of 65 feet, a semitrailer longer than 48 feet, an automobile haulaway longer than 66 feet plus allowed overhangs, or a double bottom. Certain exceptions are provided under s. 348.07 (2), Stats., which implements provisions of the federal Surface Transportation Assistance Act in Wisconsin.

The effect of this proposed rule will be to extend the provisions of s. 348.07 (2) (f), (fm), (gm) and (gr), and s. 348.08 (1) (e), Stats., to the highway segments listed above. As a result, vehicles which may legally operate on the federal National Network in Wisconsin will also be allowed to operate on the newly–designated highways. Specifically, this means there will be no overall length limitation for a tractor–semitrailer combination, a double bottom or an automobile haulaway on the affected highway segments.

There also will be no length limitation for a truck tractor or road tractor when operated in a tractor–semitrailer combination or as part of a double bottom or an automobile haulaway. Double bottoms will be allowed to operate on the affected highway segments provided neither trailer is longer than 28 feet, 6 inches. Semitrailers up to 53 feet long may also be operated on these highway segments provided the kingpin to rear axle distance does not exceed 43 feet. This distance is measured from the kingpin to the center of the rear axle or, if the semitrailer has a tandem axle, to a point midway between the first and last axles of the tandem. Otherwise, semitrailers, including semitrailers which are part of an automobile haulaway, are limited to 48 feet in length.

These vehicles and combinations are also allowed to operate on undesignated highways for a distance of 5 miles or less from the designated highway in order to reach fuel, food, maintenance, repair, rest, staging, terminal or vehicle assembly or points of loading or unloading.

**Fiscal Impact**

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

**Initial Regulatory Flexibility Analysis**

The provisions of this proposed rule adding highway segments to the designated system have no direct adverse effect on small businesses, and may have a favorable effect on those small businesses which are shippers or carriers using the newly–designated routes.

**Copies of Rule and Contact Person**

Copies of this proposed rule are available without cost upon request to the office of the State Traffic Engineer, P. O. Box 7986, Room 501, Madison, Wisconsin, 53707–7986, telephone (608) 266–1273. For questions about this rule making, please call Ashwani Sharma, Traffic Operations Engineer at (608) 266–1273. Alternate formats of the proposed rule will be provided to individuals at their request.

<sup>1</sup> The proposed rule text often achieves these objectives by consolidating individual segments into contiguous segments with new end points. In order to determine the actual highway segment added, it is necessary to compare the combined old designations with the combined new designation.

<sup>2</sup> 45–foot buses are allowed on the National Network and Interstate system by Federal law. Section 4006(b) of the Intermodal Surface Surface Transportation Efficiency Act of 1991.

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## Submittal of proposed rules to the legislature

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

**Financial Institutions**

(CR 02-034)

Ch. DFI-CU 72, relating to member business loans.

**Pharmacy Examining Board**

(CR 01-134)

Chs. Phar 2 and 17, relating to pharmacy internship program.

**Psychology Examining Board**

(CR 02-021)

Ch. Psy 2, relating to the scheduling of examinations.

**Revenue**

(CR 01-143)

Chs. Tax 2 and 11, relating to income returns of persons other than corporations, and to sales and use tax returns.

**Transportation**

(CR 02-028)

Ch. Trans 139, relating to motor vehicle trade practices.

**Transportation**

(CR 02-029)

Ch. Trans 154, relating to vehicle odometer disclosure requirements.

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## Rule orders filed with the revisor of statutes bureau

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*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.*

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

#### **(CR 01-092)**

An order affecting ch. A-E 6, relating to the number of required semester credits in land surveying for an applicant applying with a bachelor's degree in civil engineering.

Effective 7-1-03

### **Commerce**

#### **(CR 01-142)**

An order affecting ch. Comm 110, relating to brownfields grant program.

Effective 7-1-02

### **Financial Institutions – Savings Institutions**

#### **(CR 02-006)**

An order creating s. DFI-SL 16.06, relating to acquiring and holding stock in bank-owned banks.

Effective 7-1-02

### **Financial Institutions – Savings Institutions**

#### **(CR 02-022)**

An order creating s. DFI-SB 16.03 (8), relating to acquiring and holding stock in bank-owned banks.

Effective 7-1-02

### **Health and Family Services**

#### **(CR 01-016)**

An order affecting chs. HFS 172 and 195 to 198, relating to permit fees for the operation of public swimming pools, recreational and educational camps, campgrounds, hotels and motels, tourist rooming houses, restaurants, bed and breakfast establishments and food and beverage vending operations and commissaries.

Effective 6-1-02

### **Natural Resources**

#### **(CR 01-146)**

An order affecting ch. NR 47, relating to forest fire protection grants and sustainable forestry grants for county forests.

Effective 6-1-02

### **Volunteer Fire Fighter & EMT Service Award Board**

#### **(CR 01-123)**

An order creating ch. VFF-EMT 1, relating to a Length of Service Award Program for Volunteer Fire Fighters and Emergency Medical Technicians.

Effective 6-1-02

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