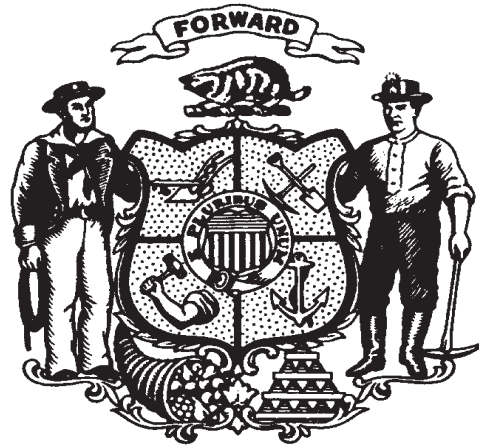


# Wisconsin Administrative Register

No. 558



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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

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

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:** July 23, 2002

**Publication Date:** April 15, 2002  
**Effective Date:** April 15, 2002  
**Expiration Date:** September 12, 2002  
**Hearing Date:** April 8, 2002

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## Elections Board

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

### Finding of emergency

The Elections Board finds that an emergency exists in the implementation of the requirement of s. 11.21 (16), Stats., that each registrant for whom the board serves as filing officer and who or which accepts contributions in a total amount or value of \$20,000 or more during a campaign period, shall file each required campaign finance report in an electronic format, and finds that the attached rule is necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency is as follows:

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

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

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## Natural Resources

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

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.

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## Natural Resources

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

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

### Finding of emergency

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

**Publication Date:** May 10, 2002  
**Effective Date:** May 10, 2002  
**Expiration Date:** October 7, 2002

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## Pharmacy Examining Board

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

### Finding of emergency

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

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

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



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

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

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### Public Instruction

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

#### Finding of emergency

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

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

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

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### 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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### 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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**Workforce Development**  
**(Public Works Construction Projects**  
**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  
**Extension Through:** July 29, 2002

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## Scope statements

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### Agriculture, Trade and Consumer Protection

#### Subject

Captive Wild Animals, Animal Markets, Animal Dealers and Animal Truckers. *Objectives of the rule.* Update and clarify current rules to implement the provisions of 2001 Wis. Act 56. This rule may address the following:

- Identify what animals are domestic animals.
- Exchange of disease information between department of natural resources and department of agriculture, trade and consumer protection about diseases that do or could affect wild animals in Wisconsin.
  - Contents and use of certificates of veterinary inspection.
  - Regulation of hunting preserves for deer and elk.
  - Disease testing requirements for farm-raised deer.
  - Other disease control provisions for farm-raised deer.
  - Provisions related to farm-raised gamebirds.
- Provisions to implement licensing of animal markets, animal dealers and animal truckers.
- Any other provision needed to implement 2001 Wis. Act 56.

#### Policy Analysis

The new “captive wildlife” law, 2001 Wis. Act 56, requires the department of agriculture, trade and consumer protection to adopt rules to implement the statute. The department will seek to promulgate rules that balance the myriad interests while protecting the health of animals in this state.

#### Policy alternatives

There are no alternatives. The law requires the department to promulgate rules. If the department does not do so, it will not be in compliance with the law.

#### Statutory authority

DATCP proposes to revise chapters ATCP 10, 11 and 12, Wis. Adm. Code under authority of ss. 93.07 (1), (10m), 95.22 (2), 95.45 (4) (c), 95.55 (1) (b) 2., 95.55 (6), 95.57 (1), (2), 95.68 (4), (8), 95.69 (2m), (4), (8), 95.71 (5), and (8), Stats.

#### Staff time required

DATCP estimates that it will use approximately 1.5 FTE staff to develop this rule. This includes time required for investigation and analysis, rule drafting, preparing related documents, coordinating advisory committee meetings, holding public hearings and communicating with affected persons and groups. DATCP will use existing staff to develop this rule.

### Corrections

#### Subject

Rule amendment to ch. DOC 328 relating to Adult Field Supervision and collection of supervision fees from offenders.

#### Policy Analysis

*Objective of the rule.* The objective of this proposed rule is to amend current language related to supervision fees. Pursuant to s. 304.074 (2) Stats., the Department has authority

to collect “at least \$1 per day, if appropriate” from offenders on supervision. The current proposed budget reform bill, Assembly Bill 1, contains language directing the Department to “have a goal of receiving at least \$2 per day, if appropriate, from each person who is on probation, parole, or extended supervision...” While this language potentially doubles the amount the Department may collect in supervision fees, the Department is limited by the Administrative Code. The current ch. DOC 328 establishes a set fee schedule with a maximum collection of \$45 per month. While Assembly Bill 1 has not passed the Legislature and has not been signed into law, the Department anticipates the need to raise supervision fees based on the current budgetary confines and the clear intent of Assembly Bill 1.

Chapter DOC 328 has not been updated since 1996. Six years having past since the supervision fee rates were considered and established in ch. DOC 328.

#### Statutory authority

Sections 227.11 (2) (a), and 304.074 (5) Stats.

#### Staff time required

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

### Financial Institutions – Division of Securities

#### Subject

Annual rule revision process for the Rules of the Division of Securities, Department of Financial Institutions, relating to the Wisconsin Uniform Securities Law.

*Objective of the rule.* The Division’s annual rule revision process is conducted for the following purposes in 2002:

(1) Adopting new rules or amending existing rules, relating to the securities broker-dealer, agent, investment adviser, and investment adviser representative licensing provisions, to thereby effectively regulate new securities licensing developments that have occurred in the securities industry and marketplace that require regulatory treatment;

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

(3) Adding several recent or newly-amended North American Securities Administrators Association (“NASAA”) securities registration policies to the current list of NASAA securities registration policies contained in existing rule s. DFI-Sec 3.03 (4), because the disclosure related provisions of such policies may be used by the Division for purposes of reviewing the adequacy of prospectus disclosures in securities registration applications filed with the Division.

**Policy Analysis**

Existing and new policies contained in the proposed rules include:

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

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

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

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

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

**Statutory authority**

Sections 551.63 (1) and (2), 551.27 (10), 551.32 (1) (a), (b) (c), (1s), (4), (7) and (8), and 551.33 (6), Wis. Stats.

**Staff time required**

Estimated time to be spent by state employees to develop the rules—25 hours. No other resources are necessary.

**Natural Resources****Subject**

All–terrain vehicle (ATV) sheriff patrol reimbursement deadline dates, the equipment reimbursement allowance in s. NR 64.15 and a revision to s. NR 50.12 pertaining to the snowmobile sheriff patrol “notice of intent to patrol” filing deadline.

**Policy Analysis**

The Department provides a patrol reimbursement program to county sheriff patrols that conduct law enforcement activities directly related to all–terrain vehicle and snowmobile law enforcement activities. The Department is required by code to send claim packets (forms) to patrols that

participate in the reimbursement program by a certain date. The Department is also required to send three sets of the packet to each sheriff patrol participating in the grant program. Patrols that participate in the grant program must submit deadline specific records showing expenditures. Patrols must also notify the Department of their intentions to be reimbursed by the use of a form known as a Notice of Intent to Patrol. Patrols participating in the grant program must be reimbursed by the Department prior to a specific date. The time period that patrols work and may make claims for reimbursement is specifically listed. The above requirements are detailed in s. NR 64.15 and the snowmobile intent to patrol deadline is listed in s. NR 50.12. A proposed change in ch. NR 64 will bring consistency to both programs by allowing up to \$1000 reimbursement for non–capital ATV equipment.

**Statutory authority**

Section 227.11 (2) (a), Stats.

**Staff time required**

Approximately 20 hours of Department time will be needed.

**Natural Resources****Subject**

Revisions to ch. NR 50 pertaining to operation and funding of municipal boat patrols.

**Policy Analysis**

The Winnebago County Sheriff is requesting to have Lake Winnebago included as a waterway where patrols are authorized to have up to 3 law enforcement officers per patrol boat per s. NR 50.13 (1m) (b) 2., Wis. Adm. Code. This change would impact the patrols operated by the Calumet, Fond du Lac and Winnebago County Sheriff Departments.

The outlying water patrols have requested that the Department set a minimum cap for funding of patrol hours per arrest for the outlying patrols as was done for the inland water patrols. This would affect the 10 outlying water patrols that are currently operating under this program and the 3 Lake Winnebago patrols listed above.

**Statutory authority**

Sections 30.79 and 227.11 (2) (a), Stats.

**Staff time required**

Approximately 5 hours of Department time will be needed.

**Social Workers, Marriage and Family Therapists and Professional Counselors Examining Board****Subject**

To promulgate rules needed to implement 2001 Wisconsin Act 80.

**Policy Issues**

Newly–enacted Wisconsin Act 80 creates a number of changes that affect social workers, marriage and family therapists and professional counselors, and the statutory changes become effective on November 1 2002. Most of the changes are related to the practice of psychotherapy.

**Policy Analysis**

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

**Statutory authority**

Sections 15.08 (5) (b), 227.11 (2), and 457.03, Stats.

**Staff time required**

100 hours.

**Social Workers, Marriage and Family Therapists and Professional Counselors Examining Board****Subject**

To create rules to define and regulate e-therapy.

**Policy Issues**

Social work, marriage and family therapy and professional counseling are beginning to be offered via the internet. To protect the public, it is important to clarify that the provision of such services is subject to the same regulation as is the provision of identical services in a face-to-face setting.

**Policy Analysis**

Rules are required to define the provision of e-therapy and to clarify that the provision of clinical social work services, marriage and family therapy, and professional counseling to a Wisconsin resident via e-therapy services constitutes the practice of clinical social work, marriage and family therapy, or professional counseling, and requires licensure in this state.

**Statutory authority**

Sections 15.08 (5) (b), 227.11 (2), and 457.03, Stats.

**Staff time required**

100 hours.

**Transportation****Subject**

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

**Policy Analysis**

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

The proposed changes would eliminate a lot of illegal signing in regards to the agricultural growers' produce stands and give them an avenue in which they would have the opportunity to get directional signage on the STH system.

**Statutory authority**

Section 86.196 (2), Stats.

**Staff time required**

Approximately 80 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.*

### Agriculture, Trade and Consumer Protection

#### Rule Submittal Date

On May 29, 2002, the Department of 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 chs. ATCP 10 to 12, chronic wasting disease.

#### Agency Procedure for Promulgation

The department will hold public hearings on this rule after the Rules Clearinghouse completes its review.

#### Contact Person

Melissa Mace, (608) 224-4883.

### Commerce

#### Rule Submittal Date

On May 29, 2002, the Department of Commerce submitted a proposed rule to the Legislative Council Rules Clearinghouse.

#### Analysis

Statutory Authority: ss. 227.14 (4m) and 227.17, Stats.

The proposed rule-making order relates to ch. Comm 16, electrical construction.

#### Agency Procedure for Promulgation

A public hearing is required and hearings will be held on June 27, 28 and July 2, 2002.

#### Contact Person

Ronald Acker, (608) 267-7907.

### Commerce

#### Rule Submittal Date

On May 30, 2002, the Department of Commerce submitted a proposed rule to the Legislative Council Rules Clearinghouse.

#### Analysis

Statutory Authority: ss. 227.14 (4m) and 227.17, Stats.

The proposed rule-making order relates to chs. Comm 20 to 25, uniform dwelling code.

#### Agency Procedure for Promulgation

A public hearing is required and hearings will be held on July 8, 9, and 10, 2002.

#### Contact Person

Duane Hubeler, (608) 266-1390.

### Elections Board

#### Rule Submittal Date

On May 24, 2002, the State Elections Board submitted a proposed rule to the Legislative Council Rules Clearinghouse.

#### Analysis

The subject matter of the proposed rule relates to Ch. ElBd 9, the procedure for challenging the ballot of an elector at a polling place.

#### Agency Procedure for Promulgation

A public hearing is not scheduled. The 30-day notice process will be used for this proposal. George A. Dunst, legal counsel for the State Elections Board is the agency person responsible for internally processing these rules.

#### Contact Person

If you have any questions, you may contact George A. Dunst at (608) 266-0136.

### Elections Board

#### Rule Submittal Date

On June 3, 2002, the State Elections Board submitted a proposed rule to the Legislative Council Rules Clearinghouse.

#### Analysis

The subject matter of the proposed rule relates to Ch. ElBd 6, filing campaign reports in electronic format.

#### Agency Procedure for Promulgation

A public hearing is not scheduled. The 30-day notice process will be used for this proposal. George A. Dunst, legal counsel for the State Elections Board is the agency person responsible for internally processing these rules.

#### Contact Person

If you have any questions, you may contact George A. Dunst at (608) 266-0136.

### Health and Family Services

#### Rule Submittal Date

On May 22, 2002, The Department of Health and Family Services submitted a proposed rule to the Legislative Council Rules Clearinghouse.

#### Analysis

Statutory Authority: ss. 49.68, 49.683 and 49.685, Stats.

The proposed rule-making order relates to Wisconsin Chronic Disease Program in chs. HFS 152 to 154.

The Wisconsin Chronic Disease Program (WCDP) is the payer of last resort for adult working poor persons with medical problems relating to chronic renal disease, adult cystic fibrosis or hemophilia. The Department administers the WCDP. The WCDP reimburses beneficiaries' dialysis and transplant services, home supplies, lab and x-ray services and kidney donor

services for chronic renal disease recipients. Adult cystic fibrosis recipients are eligible for reimbursement of hospital services, certain physician services, lab and x-ray services, prescription medication and some home supplies. Recipients with hemophilia receive reimbursement for blood derivatives and supplies necessary for home infusion. The program's annual \$5 million budget is entirely state funded. About 90% of the budget (\$4.5 million) funds the care of chronic renal disease recipients, of which 60% (\$2.7 million) is for drugs. Drug costs are increasing at a rate of at least 10% per year. The Wisconsin 2001-03 biennial budget does not provide for increases of this magnitude. Consequently, the WCDP will likely have an estimated shortfall of about \$900,000 in the 2001-03 biennium. Generic drugs will be emphasized and an expanded drug rebate program will be implemented. In addition, WCDP drug copayment amounts need to be increased. The Department's administrative rules governing WCDP currently limit the drug copayment amounts to the \$1 used by the Wisconsin Medicaid Program.

The proposed new WCDP prescription drug copayment amounts are \$5 for generic drugs and \$10 for brand name drugs. These new copayment amounts resemble those used by commercial health insurers and were determined by the Department in consultation with the Chronic Renal Disease Program Advisory Committee.

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

#### **Agency Procedure for Promulgation**

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

#### **Contact Person**

Randy McElhose, (608) 267-7127.

### **Transportation**

#### **Rule Submittal Date**

On June 3, 2002, the Department of Transportation submitted a proposed rule to the Legislative Council Rules Clearinghouse.

#### **Analysis**

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

The proposed rule-making order relates to ch. Trans 401, construction site erosion control and storm water management procedures for department actions.

#### **Agency Procedure for Promulgation**

A public hearing is required and will be held on July 12, 2002.

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

#### **Contact Person**

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

### **Transportation**

#### **Rule Submittal Date**

On June 3, 2002, the Department of Transportation submitted a proposed rule to the Legislative Council Rules Clearinghouse.

#### **Analysis**

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

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

#### **Agency Procedure for Promulgation**

A public hearing is required and will be held on July 5, 2002.

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

#### **Contact Person**

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

### **Transportation**

#### **Rule Submittal Date**

On June 3, 2002, the Department of Transportation submitted a proposed rule to the Legislative Council Rules Clearinghouse.

#### **Analysis**

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

The proposed rule-making order relates to ch. Trans 327, motor carrier safety requirements.

#### **Agency Procedure for Promulgation**

A public hearing is required and will be held on July 9, 2002.

The Division of State Patrol, Bureau of Field Services and Training, is responsible for promulgation of the proposed rule.

#### **Contact Person**

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

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## Rule-making notices

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### Notice of Hearings

#### Commerce (Electrical, Ch. Comm 16)

[CR 02-072]

NOTICE IS HEREBY GIVEN that pursuant to ss. 101.02 (1), 101.63 (1), 101.73 (1) and 101.82, Stats., the Department of Commerce will hold public hearings on proposed rules revising Ch. Comm 16, relating to electrical construction.

#### The public hearings will be held as follows:

##### Thursday, June 27, 2002 @ 10:00 a.m.

Room BO213, Business Building  
Waukesha County Technical College  
800 Main Street  
Pewaukee

##### Friday, June 28, 2002 @ 10:00 a.m.

Room 3B, Thompson Commerce Center  
201 West Washington Avenue  
Madison

##### Tuesday, July 2, 2002 @ 11:00 a.m.

Room 105, Eau Claire State Office Building  
718 West Clairemont Avenue  
Eau Claire

Interested persons are invited to appear at the hearings and present comments on the proposed rules. Persons making oral presentations are requested to submit their comments in writing. Persons submitting comments will not receive individual responses. The hearing record on this proposed rulemaking will remain open until July 12, 2002, to permit submittal of written comments from persons who are unable to attend a hearing or who wish to supplement testimony offered at a hearing. Written comments should be submitted to Ronald Acker, Department of Commerce, P.O. Box 2689, Madison, WI 53701-2689.

These hearings are held in accessible facilities. If you have special needs or circumstances that may make communication or accessibility difficult at the hearing, please call (608) 266-8741 or (608) 264-8777 (TTY) at least 10 days prior to the hearing date. Accommodations such as interpreters, English translators, or materials in audio tape format will, to the fullest extent possible, be made available upon request by a person with a disability.

#### Analysis Prepared by the Department of Commerce

Statutory Authority: Sections 101.02 (1), 101.63 (1), 101.73 (1) and 101.82, Stats.

Statutes Interpreted: Sections 101.63 (1), 101.73 (1), 101.82 and 101.865, Stats.

Chapter Comm 16, Electrical Code, establishes safety and health requirements for the installation of electrical wiring, communication systems and electrical equipment in places of employment, public buildings, dwellings and other premises such as carnivals, parking lots, mines, trenches, mobile homes and recreational vehicles. The chapter incorporates by reference the National Fire Protection Association (NFPA)

standard NFPA 70 – National Electrical Code (NEC). In addition, the chapter includes amendments that clarify or supplement the electrical standards contained in the NEC. Chapter Comm 16 also establishes rules for the electrical inspection of farms, public buildings and places of employment.

The proposed rules consist of an update of ch. Comm 16, including the incorporation by reference of the 2002 edition of the NEC. The proposed rules do not contain any revisions to the current rules for the electrical inspection of farms, public buildings and places of employment.

The following is a summary of the major changes in the proposed rules. [The numbers in brackets indicate where the rule change can be found in the rule draft.]

1. Deleting several Wisconsin amendments to the NEC as a result of changes in the 2002 edition of the NEC. For example, because of changes in NEC 300.7 (A) of the 2002 NEC relating to sealing of raceways exposed to different temperatures, s. Comm 16.295 is being deleted.

2. Revising the rules relating to the application of the code by clarifying the requirements relating to existing installations and by adding requirements for repairs. [ss. Comm 16.03 (3) and (4)]

3. Adding a requirement in dwelling units for installation of GFCI protection at sinks where receptacles are installed to serve countertop surfaces and are located within 6 feet of the sink. [s. Comm 16.20 (1)]

4. Adding requirements in other than dwelling units for installation of GFCI protection at outdoor receptacles and at sinks where receptacles are installed to serve countertop surfaces and are located within 6 feet of the sink. [s. Comm 16.20 (2)]

5. Allowing the option of engineering supervision when calculating branch-circuit, feeder and service sizes. [s. Comm 16.23]

6. Revising the supplemental electrode rule by requiring 2 supplemental made electrodes for all installations, not just for one- and 2-family dwellings. [s. Comm 16.26 (2)]

7. Adding a requirement for a supplemental equipment grounding conductor for a metallic raceway installed in direct contact with earth, in concrete slabs or floors poured on earth, or in exterior concrete walls below grade. [s. Comm 16.275]

8. Deleting the NEC requirement for a warning ribbon to identify the location of underground service conductors that are not encased in concrete. [s. Comm 16.294]

9. Adding a clarification for who is a qualified person to monitor and service a transformer installation over 600 volts. [s. Comm 16.39 (1)]

10. Deleting the NEC exception allowing mechanical ventilation to be used to exempt the area up to 18 inches above the floor from being classified a hazardous area in commercial garages. [s. Comm 16.392]

11. Adding a requirement for a service disconnecting means with overcurrent protection at the service point for electrically driven or controlled irrigation machines. [s. Comm 16.438]

12. Adding a new rule to clarify that a person can request the Department to perform an electrical plan review. [s. Comm 16.52]



The proposed rules have been developed with the assistance of the Electrical Code Advisory Council. The members of that citizen advisory council are as follows:

Name	Representing
Terry Fameree	Intern'l Assn. of Electrical Inspectors
David Hansen	Dept of Agriculture, Trade & Consumer Protection
Ronald L. Jahnke	NECA, Wisconsin Chapter
Ronald Janikowski	Intern'l Assn of Electrical Inspectors
Charles L. Johansen	Wisconsin Builders Association
James D. Looch	Wisconsin Public Service Commission
Richard Lynes	Assoc. Builders & Contractors of WI
Ronald E. Maassen	NECA, Milwaukee Chapter
Robert Molde	Wisconsin Utilities Association
Ken Peterson	WI Electric Cooperative Association
Paul Welnak	Wisconsin State AFL-CIO

### Initial Regulatory Flexibility Analysis

1. Types of small businesses that will be affected by the rules.

Any business involved with the installation of electrical wiring, communication systems or electrical equipment will be affected by the rules.

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

There are no reporting, bookkeeping or other procedures required for compliance with the rules.

3. Types of professional skills necessary for compliance with the rules.

There are no professional skills necessary for compliance with the rules.

### Environmental analysis

Notice is hereby given that the Department has considered the environmental impact of the proposed rules. In accordance with ch. Comm 1, the proposed rules are a Type III action. A Type III action normally does not have the potential to cause significant environmental effects and normally does not involve unresolved conflicts in the use of available resources. The Department has reviewed these rules and finds no reason to believe that any unusual conditions exist. At this time, the Department has issued this notice to serve as a finding of no significant impact.

### Fiscal Estimate

The Safety and Buildings Division is responsible for administering and enforcing ch. Comm 16. The proposed rules do not contain any changes in the Division's fees charged for administering and enforcing ch. Comm 16. Also, the proposed rules will not create any additional workload costs. Therefore, the proposed rules will not have any fiscal effect on the Division. Local municipalities may voluntarily enforce ch. Comm 16, and they have the authority to offset any costs by charging appropriate fees.

### Copies of Rule and Contact Person

The proposed rules and an analysis of the proposed rules are available on the Internet at the Safety and Buildings Division web site at:

[www.commerce.state.wi.us/SB/SB-HomePage.html](http://www.commerce.state.wi.us/SB/SB-HomePage.html). Paper copies may be obtained without cost from Roberta Ward, Department of Commerce, Program Development Bureau, P.O. Box 2689, Madison, WI 53701-2689, Email [rward@commerce.state.wi.us](mailto:rward@commerce.state.wi.us), telephone (608) 266-8741 or (608) 264-8777 (TTY). Copies will also be available at the public hearings.

## Notice of Hearings

### Commerce (Uniform Dwelling, Chs. Comm 20 – 25) [CR 02-077]

NOTICE IS HEREBY GIVEN that pursuant to ss. 101.02 (1), 101.63 (1), 101.64 (3), 101.72 and 101.74 Stats., the Department of Commerce will hold public hearings on proposed rules relating to the Uniform (1-2 Family) Dwelling Code, Chs. Comm 20-25.

#### The public hearings will be held as follows:

##### Monday, July 8, 2002 @ 10:30 a.m.

Fox Valley Technical College – Room A119-A1825  
North Bluemound Drive, Appleton, WI (Park in North Lot,  
Enter Building at Entrance 15)

##### Tuesday, July 9, 2002 @ 10:00 a.m.

Tommy G. Thompson Commerce Ctr Conference Room  
3B (Third Floor)  
201 West Washington Avenue, Madison, WI

##### Wednesday, July 10, 2002 @ 11:00 a.m.

Eau Claire State Office Building  
Room 105718 West Clairemont Avenue, Eau Claire, WI

Interested persons are invited to appear at the hearings and present comments on the proposed rules. Persons making oral presentations are requested to submit their comments in writing. Persons submitting comments will not receive individual responses. The hearing record on this proposed rulemaking will remain open until Friday, July 19, 2002, to permit submittal of written comments from persons who are unable to attend a hearing or who wish to supplement testimony offered at a hearing. Written comments should be submitted to Duane Hubeler, Department of Commerce, Program Development Bureau, P.O. Box 2689, Madison, WI 53701-2689, Email [dhubeler@commerce.state.wi.us](mailto:dhubeler@commerce.state.wi.us).

These hearings are held in accessible facilities. If you have special needs or circumstances that may make communication or accessibility difficult at the hearing, please call (608) 266-8741 or (608) 264-8777 (TTY) at least 10 days prior to the hearing date. Accommodations such as interpreters, English translators, or materials in audio tape format will, to the fullest extent possible, be made available upon request by a person with a disability.

#### Analysis Prepared by the Department of Commerce

Statutory Authority: ss. 101.02 (1), 101.63 (1), 101.64 (3), 101.72 and 101.74 Stats.

Statutes Interpreted: ss. 101.02 (1), 101.63 (1), 101.64 (3), 101.72 and 101.74 Stats.

Under the statute sections listed above, the Department of Commerce has the responsibility to adopt rules that establish standards for the construction of 1- and 2-family dwellings. Sections 101.63 (5) and 101.73 (8), Stats., require the department to review these rules on a biennial basis. This proposed order is the result of the latest review. The vast majority of these proposed rule changes are intended to clarify current policies and requirements. There are new requirements proposed for exit distribution on the first floor. The section on adopted standards is reformatted and updated. New requirements are proposed for floor framing and floor overhangs. Various changes are made to the energy conservation requirements in ch. Comm 22 to bring the Wisconsin requirements in line with the national model energy code. Code sections that are substantially changed under this order are listed below:

Comm 20.24 – Reformats and revises adopted standards;  
 Comm 21.02 – Adds performance language related to total load path;

Comm 21.03 (1) (a) – Clarifies that the two required exits from the first floor must be doors;

Comm 21.03 (1) (e) – Adds requirements for exit separation on the first floor;

Comm 21.04 (3) (a) and (c) – Decreases the allowed openings in stairway handrails or guardrail from 6 to 4 inches;

Comm 21.04 (3) (b) 3. – Allows handrails to be placed on either side of a winding stairway if certain conditions are met;

Comm 21.05 (5) (b) – Clarifies a condition where safety glazing is required;

Comm 21.12 – Clarifies grading requirements;

Comm 21.125 (4) – Clarifies that the owner is responsible for removing erosion control measures once the site is stabilized;

Comm 21.18 (1) (d) – Adds requirements for fastening floor framing to the sill plate;

Comm 21.22 (6) – Adds requirements for cantilevered floors;

Comm 21.24 (3) – Adds and clarifies locations that require flashing;

Comm 22.03 – Clarifies requirements for determining R-values for materials;

Comm 22.195 – Adds requirements for heat traps on water heaters;

Comm 22.24 – Adds and clarifies requirements for skylight shaft walls;

Comm 22.35 (4) (b) – Simplifies the input values for HVAC controls;

Comm 22.35 (7) – Clarifies air infiltration allowances; and

Comm 22.35 (8) – Allows for the consideration of the R-value of adjacent soil in basement wall thermal performance under certain conditions.

### **Initial Regulatory Flexibility Analysis**

1. Types of small businesses that will be affected by the rules.

All one- and two-family dwellings constructed in the state are required to comply with these rules. Contractors, tradespeople, material suppliers, and other small businesses have been affected by these rules since their inception. The current package of changes should have very little additional impact.

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

There are no additional reporting or bookkeeping procedures required as a result of these rules.

3. Types of professional skills necessary for compliance with the rules.

There are no additional skills necessary to comply with these rules.

### **Environmental analysis**

Notice is hereby given that the Department has considered the environmental impact of the proposed rules. In accordance with ch. Comm 1, the proposed rules are a Type III action. A Type III action normally does not have the potential to cause significant environmental effects and normally does not involve unresolved conflicts in the use of available resources. The Department has reviewed these rules and finds no reason to believe that any unusual conditions exist. At this time, the Department has issued this notice to serve as a finding of no significant impact.

### **Fiscal Estimate**

There are no requirements in this proposal that should effect staffing levels.

### **Copies of Rule and Contact Person**

The proposed rules and an analysis of the proposed rules are available on the Internet at the Safety and Buildings Division web site at:

[www.commerce.state.wi.us/SB/SB-HomePage.html](http://www.commerce.state.wi.us/SB/SB-HomePage.html). Paper copies may be obtained without cost from Roberta Ward, Department of Commerce, Program Development Bureau, P.O. Box 2689, Madison, WI 53701-2689, Email [rward@commerce.state.wi.us](mailto:rward@commerce.state.wi.us), telephone (608) 266-8741 or (608) 264-8777 (TTY). Copies will also be available at the public hearings.

## **Notice of Proposed Rule**

### **Elections Board**

[CR 02-071]

NOTICE IS HEREBY GIVEN that pursuant to ss. 5.05 (1) (f), 5.93, and 227.11 (2) (a), Stats., and interpreting ss. 6.02, 6.03, 6.92, 6.93, 6.935, 6.94, and 6.95, Stats., and according to the procedure set forth in s.227.16 (2) (e), Stats., the State of Wisconsin Elections Board will adopt the following rule as proposed in this notice without public hearing unless within 30 days after publication of this notice, on **June 15, 2002**, the Elections Board is petitioned for a public hearing by 25 persons who will be affected by the rule; by a municipality which will be affected by the rule; or by an association which is representative of a farm, labor, business, or professional group which will be affected by the rule.

### **Analysis Prepared by the State Elections Board**

Statutory authority: s. 5.05 (1) (f), s. 5.93 and s. 227.11 (2) (a), Stats.

Statutes interpreted: ss. 6.02, 6.03, 6.92, 6.93, 6.935, 6.94, and 6.95, Stats.

The rule interprets ss. 6.02, 6.03, 6.92, 6.93, 6.935, 6.94, and 6.95, Stats. The rule establishes the procedure for and the method by which an elector's ballot is challenged at a polling place and the method by which the elector's eligibility to vote is tested. The rule also codifies the method used to process the ballot of a challenged elector, including the creation of a written record for each challenge.

Section 6.92 of the Wisconsin Statutes provides that the Elections Board shall determine, by rule, the questions which are appropriate to test a person's qualifications to vote if that person is challenged as unqualified at a polling place. Chapter EIBd 9 establishes those questions based on the voting qualification provisions of ss. 6.02 and 6.03, Stats. The rule establishes the specific procedure whereby an inspector or an elector may challenge a voter's qualifications at a polling place; the procedure for determining the voter's eligibility to vote; and the procedure for identifying, by mark, and voting the challenged voter's ballot. The rule also establishes what shall be included in the written record that must be made by the polling place inspectors for each challenge.

Pursuant to the authority vested in the State of Wisconsin Elections Board by ss. 5.05 (1) (f), 5.93, and 227.11 (2) (a), Stats., the Elections Board hereby creates Rule EIBd 9.01, 9.02, 9.03, 9.04, 9.05, and 9.06 interpreting ss. 6.02, 6.03, 6.92, 6.93, 6.935, 6.94, and 6.95, Stats., as follows:

SECTION 1. EIBd 9.01, 9.02, 9.03, 9.04, 9.05, and 9.06 are created to read:

#### **ELBD 9.01 INSPECTOR MAKING CHALLENGE**

Any inspector may challenge for cause any person offering to vote whom the inspector knows or suspects is not a

qualified elector. For purposes of challenge, cause is defined as one of the following: non-citizenship; age (the challenged elector is not at least 18 years of age); non-residency; felony conviction; adjudication of incompetence; a bet or wager on the election; or a previous vote in the same election. If a person is challenged as unqualified by an inspector:

(1) One of the inspectors shall administer the following oath or affirmation of veracity to the person: "You do solemnly swear (or affirm) that you will fully and truthfully answer all questions put to you regarding your place of residence and qualifications as an elector of this election."

(2) The inspector shall then ask only those of the following questions which are appropriate to test the person's qualifications based on the cause for the challenge:

- a. Are you a United States Citizen?
- b. Are you at least 18 years of age?
- c. For at least the 10 days before this election, have you resided in, or been a resident of, the ward or election district from which you seek to vote?
- d. Are you currently disqualified from voting for any of the following reasons:

1. A felony conviction for which you are still serving probation or are on parole.
2. A judge's ruling that you are incapable of voting.
3. Having made a bet or wager on this election.
4. Having voted previously in this election.

(3) If the challenge is withdrawn, the challenge procedure is halted, but a written record of the procedural steps taken, up to the withdrawal, is preserved. (See s. 9.05 of this chapter)

(4) If the challenge is not withdrawn after the person offering to vote has answered the questions, one of the inspectors, before issuing the ballot, shall administer to the challenged elector the following oath or affirmation of eligibility: "You do solemnly swear (or affirm) that: you are 18 years of age; you are a citizen of the United States; you are now and for 10 days have been a resident of this ward except under s. 6.02 (2); you have not voted at this election; you have not made any bet or wager or become directly or indirectly interested in any bet or wager depending upon the result of this election; you are not on any other ground disqualified to vote at this election."

(5) If the person challenged refuses to take the oath or affirmation of eligibility, the inspectors shall not issue a ballot to the person challenged.

(6) If the person challenged refuses to answer fully any relevant questions put to him or her by the inspector under this chapter, or the answers to the questions given by the person indicate that the person does not meet the voting qualification requirements, the inspectors shall not issue a ballot to the person challenged.

(7) If the person challenged answers fully all relevant questions put to the elector by the inspector under this chapter, takes the oath or affirmation of eligibility, fulfills the registration requirements, where applicable, and the answers to the questions given by the person indicate that the person meets the voting qualification requirements, the challenged elector shall be issued a ballot and the voting procedure under s. 9.03 of this chapter shall be followed.

#### ELBD 9.02 ELECTOR MAKING CHALLENGE IN PERSON

Any elector may challenge for cause any person offering to vote whom the elector knows or suspects is not a qualified elector. Any elector who abuses the right to challenge under s. 6.925, Stats., may be subject to sanctions available to

inspectors under s. 7.41 (3), Stats. For purposes of challenge, cause is defined as one of the following: non-citizenship; age (the challenged elector is not at least 18 years of age); non-residency; felony conviction; adjudication of incompetence; a bet or wager on the election; or a previous vote in the same election. If a person is challenged as unqualified by an elector:

(1) One of the inspectors shall administer the following oath or affirmation of veracity to the challenging elector: "You do solemnly swear (or affirm) that you will fully and truthfully answer all questions put to you regarding the challenged person's place of residence and qualifications as an elector of this election."

(2) The inspector shall ask the challenger if he or she is an elector and then ask only those of the following questions which are appropriate to determine the qualifications of the challenged elector:

- a. Why do you believe that the challenged elector is not a United States Citizen?
- b. Why do you believe that the challenged elector is not at least 18 years of age?
- c. Why do you believe that the challenged elector has not, for at least the 10 days before this election, resided in, or been a resident of, the ward or election district from which he or she seeks to vote?
- d. For which of the following reasons, and why, do you believe the challenged elector is currently disqualified from voting:

1. A felony conviction for which the challenged elector is still serving probation or is on parole.
2. A judge's ruling that he or she is incapable of voting.
3. Having made a bet or wager on this election.
4. Having voted previously in this election.

(3) One of the inspectors shall then administer the oath or affirmation of veracity to the challenged elector under this chapter and ask the challenged elector only the questions under s. 9.01 (2) of this chapter which are appropriate to test the elector's qualifications based on the cause for the challenge.

(4) One of the inspectors shall then ask the challenging elector if he or she withdraws the challenge. If the challenge is withdrawn, the challenge procedure is halted, but a written record of the procedure up to the withdrawal is preserved. (See s. 9.05 of this chapter)

(5) If the challenge is not withdrawn after the person offering to vote has answered the questions, one of the inspectors, before issuing the ballot, shall administer to the challenged elector the following oath or affirmation of eligibility: "You do solemnly swear (or affirm) that: you are 18 years of age; you are a citizen of the United States; you are now and for 10 days have been a resident of this ward except under s. 6.02 (2); you have not voted at this election; you have not made any bet or wager or become directly or indirectly interested in any bet or wager depending upon the result of this election; you are not on any other ground disqualified to vote at this election."

(6) If the person challenged refuses to take the oath or affirmation of eligibility, the inspectors shall not issue a ballot to the person challenged.

(7) If the person challenged refuses to answer fully any relevant questions put to him or her by the inspector under this chapter, or the answers to the questions given by the person indicate that the person does not meet the voting qualification requirements, the inspectors shall not issue a ballot to the person challenged.

(8) If the person challenged answers fully all relevant questions put to the elector by the inspector under this chapter, takes the oath or affirmation of eligibility, fulfills the registration requirements, where applicable, and the answers to the questions given by the person indicate that the person meets the voting qualification requirements, the challenged elector shall be issued a ballot and the voting procedure under s. 9.03 of this chapter shall be followed.

#### ELBD 9.03 VOTING PROCEDURE FOR CHALLENGED ELECTORS

Whenever the inspectors under ss. 6.92 to 6.94, Stats., determine to receive the vote of a person who has been challenged under this chapter, they shall give the elector a ballot. Before giving the elector the ballot, the inspectors shall write on the back of the ballot the serial number of the challenged person corresponding to the number kept at the election on the registration or poll list, or other list maintained under s. 6.79, Stats. If lever or direct record voting machines are used in the municipality where the person is voting, the person's vote may be received only upon an absentee ballot furnished by the municipal clerk which shall have the corresponding serial number from the registration or poll list or other list maintained under s. 6.79, Stats., written on the back of the ballot before the ballot is deposited. The inspectors shall indicate on the voter list the reason for the challenge. The challenged ballots shall be counted under ss. 5.85 or 7.51 (2) (c), Stats.

#### ELBD 9.04 CHALLENGING THE ABSENT ELECTOR

The vote of any absent elector may be challenged for cause and the inspectors shall have all the power and authority given them to hear and determine the legality of the ballot the same as if the ballot had been voted in person. One of the inspectors shall administer the following oath or affirmation of veracity to the elector challenging the absentee elector's ballot: "You do solemnly swear (or affirm) that you will fully and truthfully answer all questions put to you regarding the challenged person's place of residence and qualifications as an elector of this election"; and shall ask the challenger if he or she is an elector and then shall ask only those questions provided in s. 9.01 (2) of this chapter which are appropriate to test the qualifications of the challenged elector.

#### ELBD 9.05 RECORDING THE CHALLENGE

The inspectors shall make a written record of all challenges at the polling place, whether or not a ballot is issued to the challenged elector. The written record shall contain the name and address of the challenger; the name, address and serial number of the challenged elector; the cause for the challenge; the questions asked of the elector and the elector's responses to those questions. The written record shall also contain the questions asked of the challenger; the challenger's responses to those questions and whether or not the challenge was withdrawn. The record shall note whether or not the challenged elector took the oath or affirmation of eligibility.

#### ELBD 9.06 REVIEW BY A BOARD OF CANVASSERS

The municipal board of canvassers may decide any challenge when making its canvass under s. 7.53, Stats. If the returns are reported under s. 7.60, Stats., a challenge may be reviewed by the county board of canvassers. If the returns are reported under s. 7.70, Stats., a challenge may be reviewed by the chairperson of the board or the chairperson's designee. The decision of any board of canvassers or of the chairperson or chairperson's designee may be appealed under s. 9.01, Stats. The standard for disqualification specified in s. 6.325, Stats., shall be used to determine the validity of challenged ballots.

#### Initial Regulatory Flexibility Analysis

The creation of this rule does not affect business.

#### Fiscal Estimate

The creation of this rule has no fiscal effect.

#### Contact Persons

George A. Dunst  
Legal Counsel, State Elections Board  
132 E. Wilson St., P. O. Box 2973  
Madison, WI 53701-2973; Phone 266-0136

### Notice of Proposed Rule

#### Elections Board [CR 02-082]

NOTICE IS HEREBY GIVEN that pursuant to ss. 5.05 (1) (f) and 227.11 (2) (a), Stats., and interpreting ss. 11.21 (2), 11.21 (9), 11.21 (16), 11.31 (6) and 20.510 (1) (i), Stats., and according to the procedure set forth in s. 227.16 (2) (e), Stats., the State of Wisconsin Elections Board will adopt the following rules as proposed in this notice without public hearing unless within 30 days after publication of this notice, the Elections Board is petitioned for a public hearing by 25 persons who will be affected by the rule; by a municipality which will be affected by the rule; or by an association which is representative of a farm, labor, business, or professional group which will be affected by the rule.

#### Analysis Prepared by the State Elections Board

Statutory authority: ss. 5.05 (1) (f) and 227.11 (2) (a)

Statutes interpreted: ss. 11.21 (2), 11.21 (9), 11.21 (16), 11.31 (6) and 20.510 (1) (i).

This amended rule interprets ss. 11.21 (2), 11.21 (9), 11.21 (16), 11.31 (6) and 20.510 (1) (i), Stats. The rule provides standards for those registrants who are required to file campaign finance reports in electronic format and those registrants who may elect to file campaign finance reports in electronic format. The current rule requires the registrant to use software designated by the Elections Board or software that meets the Board's specifications for a standard file format. The amendment to the rule, by limiting the term "electronic format," requires specified registrants to file campaign finance reports in one of three specified formats that are commercially available — a computer data file created using Access or Excel software or software that produces a delimited text file.

Pursuant to the authority vested in the State of Wisconsin Elections Board by ss. 5.05 (1) (f) and 227.11 (2) (a), Stats., the Elections Board hereby creates Rule EIBd 6.05 interpreting ss. 11.21 (2), 11.21 (9), 11.21 (16), 11.31 (6) and 20.510 (1) (i), Stats., as follows:

SECTION 1. EIBd 6.05 is amended to read:

#### ELBD 6.05 FILING CAMPAIGN FINANCE REPORTS IN ELECTRONIC FORMAT

(1) Definitions: As used in this rule

(c) "Electronic format" means computer diskette, ~~modem,~~ or other means of electronic transfer, ~~a computer data file created using Access or Excel software designated by the board or software that meets the board's specifications for a standard file format produces a delimited text file.~~

(2) ~~Beginning with any campaign finance report filed on or after July 1, 1999, a~~Any registrant who files with the state elections board and who accepts contributions or makes disbursements in a total amount or value of \$20,000 or more during a campaign period shall file each campaign finance report that is required to be filed by ch. 11, Stats., in an electronic format.

(5) ~~If a A registrant uses its own software to file electronically, it must shall~~ submit a trial report to the board before the end of the report period to determine if the software ~~can generate a report is~~ in a format that ~~is compatible with meets~~ the board's ~~campaign finance data base requirements set out in this rule.~~

### Initial Regulatory Flexibility Analysis

The creation of this rule does not affect business.

### Fiscal Estimate

The creation of this rule has no fiscal effect.

### Contact Person

George A. Dunst  
Legal Counsel, State Elections Board  
132 E. Wilson Street, P.O. Box 2973  
Madison, Wisconsin 53701-2973; Phone 266-0136

## Notice of Hearing

### Transportation

[CR 02-080]

NOTICE IS HEREBY GIVEN that pursuant to ss. 110.07, 110.075, 194.38, 194.43 and 227.11, Stats., and interpreting ss. 110.07 and 110.075, and ch. 194, Stats., the Department of Transportation will hold a public hearing in Room 551 of the Hill Farms State Transportation Building, 4802 Sheboygan Avenue, Madison, WI on the **9th day of July, 2002, at 9:00 a.m.** to consider the amendment of ch. Trans 327, Wis. Adm. Code, relating to motor carrier safety requirements.

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

The public record on this proposed rule making will be held open until close of business the day 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 comments should be submitted to Charles Teasdale, Department of Transportation, Division of State Patrol, Room 551, P. O. Box 7912, Madison, WI 53707-7912.

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

### Analysis Prepared by the Wisconsin Department of Transportation

STATUTORY AUTHORITY: ss. 110.07, 110.075, 194.38, 194.43 and 227.11, Stats.

STATUTES INTERPRETED: ss. 110.07 and 110.075, and ch. 194, Stats.

This rule making will amend ch. Trans 327, relating to intrastate motor carrier safety regulations, to bring it into compliance with the most recent changes to the Federal Motor Carrier Safety Regulations in effect on November 1, 2002. Amendment of this rule will assure State Patrol inspectors and troopers are enforcing the most recent Federal Motor Carrier Safety regulations for intrastate carriers. The update of this rule will also keep the Department in compliance to qualify for continued Motor Carrier Safety Assistance Program (MCSAP) funding.

The Department annually updates ch. Trans 327 to keep current with the most recent changes to 49 CFR parts 390, 391, 392, 393, 396 and 397.

### Fiscal Estimate

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

### Initial Regulatory Flexibility Analysis

This proposed rule will have minimal adverse impact on small businesses.

### Copies of Rule and Contact Person

Copies of the proposed rule may be obtained upon request, without cost, by writing to Charles Teasdale, Division of State Patrol, P. O. Box 7912, Room 551, Madison, WI 53707-7912, or by calling (608) 264-9963. Alternate formats of the proposed rule will be provided to individuals at their request.

## Notice of Hearing

### Transportation

[CR 02-079]

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.

### The public hearing will be held as follows:

#### July 5, 2002 @ 9:00 a.m.

Hill Farms State Transportation Building  
4802 Sheboygan Avenue  
Room 419  
Madison, WI

(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 Trans 276.07 (5) to (7), (21) and (24), Wis. Adm. Code, to add six segments of highway to the designated highway system established under s. 348.07 (4), Stats., and to remove one segment of highway. The actual highway segments that this proposed rule adds to the designated highway system are:

Hwy.	From	To
STH 121	USH 53 in Pigeon Falls	STH 95
STH 164	I-43	STH 36
STH 20	STH 36	I-94
STH 28	STH 57	STH 32
STH 28	STH 32/Sheboygan Falls	I-43 in Sheboygan
STH 28	USH 45 in Kewaskum	STH 144 S. of Boltonville

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

**Hwy. From To**  
**STH 32 STH 28 STH 23**

## Notice of Hearing

### Transportation

[CR 02-081]

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, 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 Wis.

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 Estimate

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

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.

NOTICE IS HEREBY GIVEN that pursuant to ss. 30.12 (4), 84.01 (2) and (5), 84.03 (9) (a) and (10), 84.06 (1) and (2) (b), 85.02, 85.075, 85.16 (1), 85.19 (1), 86.07 (2), 86.25 (2), 86.32, 114.31 (7) and 227.11 (2), Stats., and interpreting ss. 30.12 (4), 84.01 (2) and (5), 84.013 (1), 84.03 (9) (a) and (10), 84.06 (1) and (2) (b), 85.02, 85.075, 85.095 (1) (b), 85.16 (1), 85.19 (1), 86.07 (2), 86.25 (2), 86.31 (1) (b), 86.32, 114.31 (7), 227.11 (2) and 283.01 (20), Stats., the Department of Transportation will hold a public hearing in Room 421 of the Hill Farms State Transportation Building, 4802 Sheboygan Avenue, Madison, Wisconsin on the **12th day of July, 2002, at 10:00 a.m.**, to consider the amendment of ch. Trans 401, Wis. Adm. Code, relating to construction site erosion control and storm water management procedures for department actions.

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

The public record on this proposed rule making will be held open until close of business July 19, 2002, to permit the submission of written comments from persons unable to attend the public hearing or who wish to supplement testimony offered at the hearing. Any such comments should be submitted to Dan Scudder, Department of Transportation, Bureau of Environment, Room 451, P. O. Box 7965, Madison, WI 53707-7965.

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

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

STATUTORY AUTHORITY: ss. 30.12 (4), 84.01 (2) and (5), 84.03 (9) (a) and (10), 84.06 (1) and (2) (b), 85.02, 85.075, 85.16 (1), 85.19 (1), 86.07 (2), 86.25 (2), 86.32, 114.31 (7) and 227.11 (2), Stats.

STATUTES INTERPRETED: ss. 30.12 (4), 84.01 (2) and (5), 84.013 (1), 84.03 (9) (a) and (10), 84.06 (1) and (2) (b), 85.02, 85.075, 85.095 (1) (b), 85.16 (1), 85.19 (1), 86.07 (2), 86.25 (2), 86.31 (1) (b), 86.32, 114.31 (7), 227.11 (2) and 283.01 (20), Stats.

General Summary of Proposed Rule. Currently, statutes require the Department of Transportation ("DOT") to establish standards for the control of soil erosion related to highway and bridge construction that is paid with state or federal funds. The statutes also exempt transportation facility projects directed and supervised by DOT (including highway, airport, harbor, and railroad projects) from numerous environmental prohibitions, and from permit or approval requirements administered by the department of natural resources ("DNR"), if DOT coordinates the exempted project with DNR through interdepartmental cooperation.

This revised ch. Trans 401 is an integral part of a series of administrative rules and interdepartmental cooperation coordinated with DNR to strengthen Wisconsin's nonpoint source water pollution abatement programs and related water regulations. The changes to ch. Trans 401 are intended to protect the environment from nonpoint source water pollution originating from transportation facility construction and operation at least as effectively as the nonpoint source water

pollution abatement programs and related water regulations proposed by DNR (principally proposed ch. NR 151). This coordination of rules is intended to provide equal protection to the environment by prescribing similar practices for transportation projects undertaken by the state under regulation of this ch. Trans 401 and for transportation projects undertaken by local units of government under regulation of proposed ch. NR 151.

This rule revises construction site erosion control and storm water management for transportation facility projects directed and supervised by DOT. The rule also creates new "post-construction" performance standards for storm water management. More specifically, the rule (which applies only to projects directed and supervised by DOT) does all of the following:

1. Standardizes the use of devices and practices to control erosion and stormwater runoff ("best management practices" or "BMPs"). The rule accepts BMPs as tested and proven effective when applied to specified site conditions. The standards are the same as those required under proposed ch. NR151, and may be amended only jointly with DNR. Exceptions to the standards require site-specific justification.

2. Maintains the existing scheme of erosion control plans and erosion control implementation plans. DOT prepares an erosion control plan for the project site as part of a project's design. The prime contractor supplements that plan with an erosion control implementation plan ("ECIP"), which reflects borrow sites, material disposal sites and construction methods chosen by the prime contractor. DOT reviews and approves the prime contractor's ECIP in consultation with DNR. The prime contractor implements the ECIP during construction, and DOT routinely inspects the project sites to verify the BMPs' effectiveness at protecting the environment. The prime contractor must take corrective action ordered by DOT and must amend an ECIP if the BMPs are ineffective.

3. Standardizes site inspections, site inspection reporting, and corrective action orders. The rule makes the site inspection process integral to preventing environmental harm by predicated liability for discharges of pollution upon the site inspections and corrective action orders. The rule formalizes communications between DOT and the prime contractor, and resolves minor inconsistencies between DOT's standard contract specifications and ch. Trans 401. The rule details the process of ordering corrective action found during site inspections to be necessary, and the process of responding to such orders.

4. Clarifies liability for environmental harm caused by discharges of pollution from transportation facility projects. The rule specifies that the prime contractor is liable only if the prime contractor has failed to perform as required in the contract documents and if the failure was a substantial

contributing factor in causing, failing to prevent, or worsening the discharge. Whenever the prime contractor has fully performed as required, or where any failure to perform was not a substantial contributing factor, DOT will pay as a project expense all costs associated with the discharge.

5. Creates post-construction standards for stormwater management similar to those in proposed ch. NR 151. These post-construction provisions include requirements to do all of the following: avoid building transportation facilities near surface waters and to provide vegetated buffer areas where such building is unavoidable; reduce peak stormwater discharge rates from transportation facilities, and the total suspended solids carried in such runoff; encourage infiltration of runoff from transportation facilities into groundwater; reduce the amount of petroleum carried within runoff from fueling and vehicle maintenance areas; and encourage the use of vegetated swales (a low tract of land adjacent to a transportation facility) for the conveyance runoff and the removal of pollutants from runoff.

6. Establishes deadlines and standards for reducing the total suspended solids in runoff from transportation facilities located in developed urban areas. The rule requires DOT to educate DOT staff and other maintenance officials regarding nutrient, pesticide, salt and other deicing material and vehicle maintenance management activities in order to prevent runoff pollution of waters of the state.

7. Addresses utility facility projects undertaken within transportation rights-of-way. The rule harmonizes ch. Trans 401 with DOT's utility accommodation policy and with the DOT-DNR interdepartmental liaison agreement.

#### **Fiscal Estimate**

The Department estimates that there will be an annual fiscal impact on state liabilities of between \$4.4 and \$6.5 million. The Department estimates that there will be no fiscal impact on the liabilities or revenues of any county, city, village, town, school district, vocational, technical and adult education district, sewerage district, or federally-recognized tribes or bands.

#### **Initial Regulatory Flexibility Analysis**

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

#### **Copies of Rule and Contact Person**

Copies of the rule may be obtained upon request, without cost, by writing to Dan Scudder, Department of Transportation, Bureau of Environment, Room 451, P. O. Box 7965, Madison, WI 53707-7965, or by calling (608) 267-3615. Hearing-impaired individuals may contact the Department using TDD (608) 266-3096. Alternate formats of the proposed rule will be provided to individuals at their request.

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## Submittal of proposed rules to the legislature

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

**Agriculture, Trade and Consumer Protection**

(CR 01-076)

Ch. ATCP 21, relating to plant inspection and pest control.

**Financial Institutions**

(CR 02-041)

Ch. DFI-Sec 4, relating to bank sales of certificates of deposit of third-party banks.

**Natural Resources**

(CR 00-162)

Ch. NR 809, relating to public notification requirements for public water systems.

**Natural Resources**

(CR 02-018)

Ch. NR 10, relating to hunting, trapping and captive wildlife.

**Natural Resources**

(CR 02-017)

Ch. NR 10, relating to hunting.

**Natural Resources**

(CR 02-014)

Ch. NR 20, relating to fishing on the inland and outlying waters of Wisconsin.

**Natural Resources**

(CR 02-016)

Ch. NR 20, relating to trout fishing on the inland waters of Wisconsin.

**Public Instruction**

(CR 02-023)

Ch. PI 35, relating to Milwaukee parental choice program.

**Workforce Development**

(CR 02-039)

Ch. DWD 15, relating to child support cooperation for W-2.

**Workforce Development**

(CR 02-040)

Ch. DWD 19, relating to child support cooperation for food stamps.



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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.*

**Commerce  
(CR 01-087)**

An order affecting ch. Comm 10, relating to flammable and combustible liquids.  
Effective 8-1-02

**Natural Resources  
(CR 01-127)**

An order affecting ch. NR 18, relating to revisions of falconry rules.  
Partially effective 8-1-02

**Public Service Commission  
(CR 00-187)**

An order affecting chs. PSC 1 to 3, relating to practice and procedure.  
Effective 7-1-02

**Technical College System Board  
(CR 01-137)**

An order affecting chs. TCS 10 and 16, relating to residency, admissions, fee refunds and TOP grants to students.  
Effective 8-1-02

**Transportation  
(CR 02-029)**

An order affecting ch. Trans 154, relating to vehicle odometer disclosure requirements.  
Effective 8-1-02

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## Public notice

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### Health and Family Services

#### Medical Assistance Reimbursement of Nursing Homes

##### **State of Wisconsin Medicaid Nursing Facility Payment Plan: FY02-03**

The State of Wisconsin reimburses Medicaid-certified nursing facilities for long-term care and health care services provided to eligible persons under the authority of Title XIX of the Federal Social Security Act and ss. 49.43 to 49.47, Wisconsin Statutes. This program, administered by the State's Department of Health and Family Services, is called Medical Assistance (MA) or Medicaid. Federal Statutes and regulations require that a state plan be developed that provides the methods and standards for setting payment rates for nursing facility services covered by the payment system. A plan that describes the nursing home reimbursement system for Wisconsin is now in effect as approved by the Center for Medicare/Medicaid Services (CMS).

The Department is proposing changes in the methods of payment to nursing homes and, therefore, in the plan describing the nursing home reimbursement system. The changes are effective July 1, 2002.

The proposed changes would update the payment system and make various payment-related policy changes. Some of the changes are necessary to implement various budget policies contained in the Wisconsin 2002-2004 Biennial Budget. Some of the changes are technical in nature; some clarify various payment plan provisions.

The estimated increase in annual aggregate expenditures attributable to these changes for nursing homes serving MA residents is approximately \$41,621,800 all funds, (\$24,973,080 FFP), excluding patient liability.

The proposed changes are being implemented to comply with Wisconsin Statutes governing Medicaid payment systems, particularly s. 49.45 (6m), Wis. Stats.

The proposed changes are as follows:

1. Modify the methodology to adjust the reimbursement for nursing homes within the parameters of 2002-2004 Biennial Budget Bill and to disburse the \$41,621,800 allotted in the bill to a rate increase of approximately 4.0 percent. These modifications will include adjustments to the maximums, per diems, and other payment parameters in Sections 5.400, 5.500, 5.600, 5.700, 5.800 and 5.900, changes in the occupancy percentage used to establish the minimum occupancy standard in Sections 3.030, the inflation and deflation factors in Section 5.300, and targets in Sections 3.000 and 5.000.

2. Changing references to previous years for descriptive reasons will be done where necessary.

3. Update the labor regions listed in Section 5.410.

4. Modify the minimum occupancy factor in Section 3.030.

5. Reduce the case mix weight for residents with a DD level of care in Nursing Facilities in Section 5.420.

6. Change the dates of the definitions of base cost reporting period, common period, and rate payment year in Sections 1.302, 1.303, and 1.314 to reflect the 2002-2003 period.

7. Change the phase down method in Section 4.520 for new agreements or extensions of current agreements after July 1, 2002.

8. Establish a standard per patient day amount over the formula rate during the phase down period to be reduced over extended periods in Section 4.520.

9. Establish an incentive for phasing out entire facilities in Section 4.580.

10. Increase the Exceptional Medicaid/Medicare Utilization Incentive in Section 2.710 and modify its calculation.

11. Create Section 3.031 to establish a minimum occupancy standard for facilities for the treatment of head injuries as defined in Section 4.692.

12. Modify Section 5.420 to add a case mix weight or alternate rate for residents with head injuries who require only maintenance level of care.

13. Clarify the annual bed bank loss language in Section 3.060.

14. Modify the incentive ratio in Sections 3.220, 3.251, 3.310 and 3.600.

15. Modify the targets in the property allowance in Section 3.532.

16. Modify Section 3.775 to revise the priority in sub-section A.4., modify the cost finding options for interim and final settlements, update the eligibility criteria in sub-section B, and revise the supplemental payment in sub-section C, including the definition of eligible nursing homes and the calculation of the final rate settlement.

17. Revise parameters and definitions for over-the-counter drugs in Sections 2.600.3.600, and 5.110.

18. Revise the inflation percentages for property tax and municipal fees in Section 5.710.

19. Increase the base allowance for the Exceptional Medicaid/Medicare Utilization incentive in Section 5.920.

20. Redefine the cost-based direct care cost center in Sections 2.100 and 3.100 to include only RN, LPN, certified nurse's assistants costs and the resident living staff costs. CNAs in the 90-day training period and single task workers would also be included.

21. Create a new component in direct care for ward clerks, OTC drugs and the special services on schedule 21 & 24. This would be a level of care/case mix-adjusted payment component with an incentive.

22. Modify the labor factors in section 5.410 for St. Croix and Pierce County using the Medicare hospital cost index. This index is used in determining the labor region adjustment to direct care cost targets in section 3.126.

23. Add s. 3.050 (5) to exclude beds transferred between nursing homes that are consistent with section 150.345, Wis. Statutes, in the calculation of beds for rate setting.

24. Any modifications as enacted by the Wisconsin Legislature.

#### **Copies of the Proposed Changes:**

Copies of the available proposed changes and proposed rates may be obtained free of charge by writing to:

Division of Health Care Financing

P.O. Box 309

Madison, WI 53701-0309

Attention: Nursing Home Medicaid Payment Plan

or, by faxing James Cobb at 608-264-7720.

The available proposed changes may be reviewed at the main office at any county department of social services or human services.

#### **Written Comments/Meetings:**

Written comments on the proposed changes may be sent to the Division of Health Care Financing, at the above address. The comments will be available for public review between the hours of 7:45 a.m. and 4:30 p.m. daily in Room 350 of the State Office Building, 1 West Wilson Street, Madison, Wisconsin. Revisions may be made in the proposed changes based on comments received. There will also be public meetings to seek input on the proposed plan amendment. If you would like to be sent a public meeting notice, please write to the above address. Revisions may also be made in the proposed changes based on comments received at these forums.

### **Department of Health and Family Services**

#### **Medical Assistance Reimbursement of Hospitals**

The State of Wisconsin reimburses hospitals for medical services provided to low-income persons under the authority of Title XIX of the Federal Social Security Act and Chapter 49.43 to 49.47, Wisconsin Statutes. The Wisconsin Department of Health and Family Services administers this program that is called Medicaid or Medical Assistance (MA). Federal statutes and regulations require state plans, one for outpatient services and one for inpatient services, that provide the methods and standards for paying for hospital outpatient and inpatient services.

State plans are now in effect for the reimbursement of outpatient hospital services and inpatient hospital services. The Department is proposing to make changes to the provisions contained in the inpatient plan effective July 1, 2002 to implement provisions of 2001 Act 16, the 2001-2003 state budget act, and maintain compliance with federal payment limits.

#### **Outpatient Hospital Services**

No proposed changes in the state plan for reimbursement of outpatient hospital services.

#### **Inpatient Hospital Services**

Proposed changes in the state plan for reimbursement for inpatient services may include:

1. For the payment system based on diagnosis-related groups (DRGs), adjustment of DRG weighting factors, modification of the method of determining the cost of claims for determining DRG weighting factors and adjustment of DRG weighting factors, modification of the standard DRG base rates and area wage indices.

2. Revision of the rural hospital adjustment percentages to ensure that payments do not exceed authorized funds.

3. Modification of the disproportionate share adjustment parameters to recognize a more current proportion of services provided by hospitals to Medicaid recipients.

4. For the general assistance disproportionate share supplement, adjustment of the maximum available funding, modification of the criteria for a hospital to qualify for the supplement, and modification of the methodology for distributing the available funds to qualifying hospitals in order to maintain compliance with federal payment limits and to implement provisions of the 2001-2003 state budget act.

Implementation of the above changes to the State Plan for inpatient services is expected to change the annual expenditures of the Wisconsin Medical Assistance Program by \$752,000 for state fiscal year 2002-2003.

#### **Copies of Proposed Changes and Proposed Payment Rates**

Copies of the proposed changes will be sent to every county social services or human service department main office where they will be available for public review. For more information, interested persons may fax or write to:

Hospitals, Physicians and Clinics Section

Division of Health Care Financing

P.O. Box 309  
Madison, WI 53701-0309  
Fax: (608) 266-1096

**Written Comments**

Written comments on the proposed changes are welcome and should be sent to the above address. The comments received on the changes will be available for public review between the hours of 7:45 a.m. and 4:30 p.m. at:

Division of Health Care Financing  
Room 350, State Office Building  
One West Wilson Street  
Madison, WI

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