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## WISCONSIN ADMINISTRATIVE REGISTER

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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.*

*Occasionally the Legislature grants emergency rule authority to an agency with a longer effective period than 150 days or allows an agency to adopt an emergency rule without requiring a finding of emergency.*

*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 or a statement of exemption from a 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).*

*Beginning with rules filed with the Legislative Reference Bureau in 2008, the Legislative Reference Bureau will assign a number to each emergency rule filed, for the purpose of internal tracking and reference. The number will be in the following form: EmR0801. The first 2 digits indicate the year of filing and the last 2 digits indicate the chronological order of filing during the year.*

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### Agriculture, Trade and Consumer Protection (2)

1. **EmR0913** — Rule adopted revising s. ATCP 21.17, relating to the quarantines of Brown County and Kenosha County for emerald ash borer.

#### Finding of Emergency

On July 24, 2009, APHIS identified emerald ash borer in Brown County. On August 12, 2009, APHIS identified emerald ash borer in Kenosha County. Emerald ash borer is an exotic pest that poses a dire risk to the ash forest. When APHIS declares quarantine, DATCP has regulatory authority for import controls and quarantine for emerald ash borer under ATCP 21.17. It is anticipated that APHIS will declare quarantines for Brown County and Kenosha County but that it will take up to six weeks for APHIS to act. A six week delay until enactment of the federal quarantines leaves too much time for businesses or individuals to move potentially emerald ash borer infested material out of the county to areas of Wisconsin or other states that are not infested with emerald ash borer.

DATCP is adopting this rule as a temporary emergency rule, pending completion of federal quarantine regulations. DATCP does not anticipate completing a permanent rule.

**Publication Date:** August 22, 2009  
**Effective:** August 22, 2009 through January 18, 2010  
**Hearing Dates:** September 29 and 30, 2009

2. **EmR0922** — Rule adopted revising s. ATCP 21.17, relating to the quarantines of Milwaukee County, Racine County and Waukesha County for emerald ash borer.

#### Finding of Emergency

On August 28, 2009, APHIS identified emerald ash borer in Milwaukee County, near the borders of Racine County and Waukesha County. Emerald ash borer is an exotic pest that poses a dire risk to the ash forest. When APHIS declares quarantine, DATCP has regulatory authority for import controls and quarantine for emerald ash borer under ATCP 21.17. It is anticipated that APHIS will declare quarantines for Milwaukee County, Racine County and Waukesha County but that it will take up to six weeks for APHIS to act. A six week delay until enactment of the federal quarantines leaves too much time for businesses or individuals to move potentially emerald ash borer infested material out of the county to areas of Wisconsin or other states that are not infested with emerald ash borer.

DATCP is adopting this rule as a temporary emergency rule, pending completion of federal quarantine regulations. DATCP does not anticipate completing a permanent rule.

**Publication Date:** September 14, 2009  
**Effective:** September 14, 2009 through February 10, 2010  
**Hearing Date:** October 15, 2009

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### Children and Families

#### *Family and Economic Security, Chs. DCF 101–153*

- EmR0906** — Rule adopted revising ss. DCF 120.05, 120.07 and 120.08, relating to emergency assistance for needy families.

#### Finding of Emergency

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

The recent large increase in foreclosures has caused tenants living in rental properties that are in foreclosure to lose their housing. Under the current rule, these tenants are not eligible for Emergency Assistance due to impending homelessness and would only be able to receive assistance if they became homeless. This emergency rule will allow these tenants to receive assistance for impending homelessness and avoid the additional expense and trauma of homelessness.

The current maximum payment amounts for Emergency Assistance due to homelessness and impending homelessness are insufficient to allow a smaller family to obtain or retain a permanent living accommodation. Increasing the payments for smaller households immediately will help them obtain or retain a permanent living accommodation with fewer resources from other sources and may prevent homelessness for these families.

The current rule has no maximum payment amount for Emergency Assistance due to an energy crisis. All other categories of assistance have a maximum payment based on group size. This emergency rule requires that families first exhaust resources available through the Wisconsin Home Energy Program and sets a maximum payment amount for assistance available for Emergency Assistance due to energy crisis to make better use of the program’s limited funds.

**Publication Date:** April 9, 2009  
**Effective:** April 22, 2009 through September 18, 2009  
**Extension Through:** November 17, 2009  
**Hearing Date:** June 11, 2009

**Publication Date:** March 2, 2009  
**Effective:** March 2, 2009 through July 29, 2009  
**Extension Through:** November 26, 2009  
(except ss. Comm 5.30 (1) and 61.295 (2))  
**Effective:** July 1, 2009 through November 27, 2009  
**Hearing Date:** March 31, 2009

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### Commerce

#### *Licenses, Certifications and Registrations, Ch. Comm 5 Wis. Commercial Building Code, Chs. Comm 60–66*

**EmR0904** — Rule adopted creating **ss. Comm 5.30 and 61.295**, relating to building contractor registration.

#### **Finding of Emergency**

The Department of Commerce finds that an emergency exists within the state of Wisconsin and that adoption of an emergency rule is necessary for the immediate preservation of the public health, safety and welfare. A statement of the facts constituting the emergency is as follows:

1. Under Chapter 560 of the Statutes, the department of commerce is charged with facilitating the establishment and retention of business enterprises in Wisconsin, and with seeking closer cooperation and coordination between units of state government, so that the economy of the state may continue to develop fully and meet citizen and community needs.

2. Under Chapters 101 and 145 of the statutes, the department of commerce has oversight over the design, construction, alteration and maintenance of public buildings and places of employment, one- and two- family dwellings, public swimming pools and public water attractions in order to protect public safety, health and welfare and the waters of the state.

3. The department has proposed an administrative rule that would require the registration of various types of building contractors not already credentialed by the department under existing administrative rules. Under the proposed rules contractors must be registered with the department by January 1, 2010. A public hearing on that proposal was held on January 21, 2009.

4. The proposed rule has three main benefits to Wisconsin: first, it will enhance the department’s ability to communicate with and educate building contractors throughout the state about their obligations to limit safety and health risks for the citizens of Wisconsin; second, it will enhance the ability of the department to cooperate and coordinate with the Department of Workforce Development relative to their administration of unemployment insurance and workers compensation insurance programs; and third, it will enhance the ability of the department to cooperate and coordinate with the Department of Revenue relative to their administration of the state income tax program.

5. Due to the current economic circumstances, the department has determined that the implementation for building contractor registration should be July 1, 2009 in order for the benefits to be in effect for the 2009 building construction season.

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### Commerce

#### *Uniform Dwelling, Chs. Comm 20–25*

**EmR0917** — Rule adopted revising **Ch. Comm 22**, relating to energy conservation.

#### **Finding of Emergency**

The Department of Commerce finds that an emergency exists within the state of Wisconsin and that adoption of an emergency rule is necessary for the immediate preservation of the public health, safety and welfare. A statement of the facts constituting the emergency is as follows.

1. Recently, chapter Comm 22, relating to energy conservation, was repealed and recreated to bring the Wisconsin requirements in line with the national model energy code. Effective April 1, 2009, chapter Comm 22 incorporates new prescriptive requirements that apply to individual components such as walls, windows, skylights, doors and ceilings. Within that subsection is section Comm 22.31 (2) (a), that allows the use of a “total dwelling thermal envelope” method, and (2) (b), that allows the use of REScheck software, version 4.1.0, or later, to calculate compliance with the Uniform Dwelling Code thermal envelope requirements.

2. The U.S. Department of Energy’s Building Energy Codes Program develops and distributes REScheck software. The software program simplifies and clarifies residential code compliance with the Model Energy Code (MEC) and the International Energy Conservation Code (IECC). REScheck software makes it easier for designers, builders, product manufacturers and code officials to comply with energy codes based on the IECC or ASHRAE/IESNA Standard 90.1 requirements. Also, REScheck can be tailored to meet state-specific codes.

3. The department included the REScheck software edition requirement in anticipation that Version 4.1.0 would be compatible with the current code. Working with Pacific Northwest Laboratories, who contracts with the U.S. Department of Energy to develop the REScheck software, the department developed state-specific energy calculations that were not incorporated into REScheck software until Version 4.2.2. The calculations that reflect the current code are identified in the software as “Wisconsin 2009.” Versions prior to 4.2.2 do not have the code choice “Wisconsin 2009.”

4. Previous versions of REScheck, including Version 4.1.0, do not meet nor support the requirements of Wisconsin’s current energy code. In fact, Version 4.1.0 includes other values, such as gross wall trade-offs and appliance credits that are not included in chapter Comm 22 that became effective April 1, 2009.

5. The department recognizes that without promulgating this emergency rule, there would be confusion and miscalculations surrounding the use of Version 4.1.0 and other previous and out-of-date versions of REScheck software to calculate compliance with Uniform Dwelling Code thermal envelope requirements.

**Publication Date:** September 5, 2009  
**Effective:** September 5, 2009 through February 1, 2010  
**Hearing Date:** October 21, 2009

### Commerce

#### *Financial Resources for Businesses and Communities, Chs. Comm 104—*

**EmR0910** — Rule adopted to create **Chapter Comm 100**, relating to tax benefits for job creation, capital investment, employee training, and corporate headquarters.

#### **Exemption From Finding of Emergency**

The Legislature, by section 9110 (4) in 2009 Wisconsin Act 2, exempts the Department from providing evidence that this emergency rule is necessary for the preservation of the public peace, health, safety or welfare; and exempts the Department from providing a finding of emergency for the adoption of this rule.

**Publication Date:** June 30, 2009  
**Effective:** June 30, 2009 through July 1, 2010 or the date permanent rules take effect, whichever is sooner  
**Hearing Date:** September 15, 2009

### Corrections

**EmR0920** — Rule adopted revising s. **DOC 309.466**, relating to inmate release accounts.

#### **Finding of Emergency**

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

Under 2009 WI Act 28, an increased number of inmates are being considered for release. In addition, the department has developed a number of release initiatives to address an inmate's successful transition from incarceration to community life. As part of those initiatives, there are costs associated with that transition, including acquiring housing, employment, and transportation. For example, an inmate must have a social security card, a driver's license or state identification card, the first months rent and security deposit for an apartment, and civilian clothing.

Under the current rule, an inmate may only use release account funds for "adequate clothing for release" and for "out-of-state release transportation." In addition, the rule limits the maximum amount of money which can be saved in the release account to \$500.00. The emergency rule immediately permits the use of release account money for a wide variety of purchases, including fees associated with obtaining a driver's license or state identification card, housing, and a mode of transportation (bus tickets, vehicle, bicycle, etc.). In the past the Department has borne some of these costs, despite an inmate having the money in his or her release account. Given the initiatives of reentry and release, an inmate should be responsible for these expenditures.

In addition, the emergency rule raises the limit on release accounts from \$500.00 to \$5,000.00. Since the current limit was established, the cost of living in the community has risen. The department seeks this change to reflect the significant

costs of housing, transportation, and food and other necessities.

If the rule is not created promptly and immediately, the department will not be able to use inmate release account funds to pay for items which inmates need in preparation for their release to the community. The purpose of the emergency rule is to permit inmates to use release account funds for a greater range of expenditures related to their release from incarceration and transition back into the community. The permanent rule process has been started. However, the permanent rule process will take approximately nine months to complete. Emergency rules are necessary to respond promptly to the need to use inmate funds, not state funds, while permanent rules are being developed.

**Publication Date:** September 10, 2009  
**Effective:** September 10, 2009 through February 6, 2010  
**Hearing Date:** October 14, 2009

### Financial Institutions — Banking

**EmR0907** — Rule adopted to create **Chapter DFI–Bkg 47** and to repeal **Chapter DFI–Bkg 41**, relating to the transition from a registration system to a license system.

#### **Exemption From Finding of Emergency**

The legislature by section 9117 of 2009 Wisconsin Act 2 provides an exemption from a finding of emergency for the adoption of the rule.

**Publication Date:** May 4, 2009  
**Effective:** *Section 1:* 5–4–09 through 7–1–11  
*Section 2:* 9–1–09 through 7–1–11  
*Section 3:* 1–10–10 through 7–1–11  
**Hearing Date:** June 10, 2009

### Health Services

#### *Health, Chs. DHS 110—*

**EmR0928** — Rule adopted to revise **Chapter DHS 163**, relating to requirements for conducting lead–safe renovation activities in pre–1978 housing and child–occupied facilities, and affecting small businesses.

#### **Finding of Emergency**

The Department of Health Services (department) finds that an emergency exists and that the adoption of an emergency rule is necessary for the continuity of regulations relating to lead hazard exposure in Wisconsin. The facts constituting the emergency are as follows:

Under ch. DHS 163, the department, as Wisconsin's public health agency, regulates lead hazard reduction and lead management activities in pre–1978 housing (target housing) and child–occupied facilities. The rules include standards for certification of individuals and companies conducting these activities, accreditation of lead training courses and approval of instructors, and work practices. In addition to the department's authority under chs. 250 and 254, Stats., to regulate lead hazards, the department has authorization from the Environmental Protection Agency (EPA) to regulate lead hazard reduction and management activities in lieu of the EPA administering federal regulations in Wisconsin.

On April 22, 2008, the EPA issued rules under 40 CFR 745 to establish requirements for training renovators, other renovation workers, and dust sampling technicians; for certifying renovators, dust sampling technicians, and renovation firms; for accrediting providers of renovation and dust sampling technician training; and for renovation work practices (and associated recordkeeping requirements) that disturb paint in target housing and child–occupied facilities. Under the EPA regulations, beginning on April 22, 2010, persons who perform renovation activities for compensation, including repair and painting activities, that disturb paint in target housing and child–occupied facilities must be certified, properly trained, and follow specific work practices to prevent lead contamination. The EPA will begin accepting applications for certification from individuals and companies on October 22, 2009.

States that promulgate rules that conform to the EPA standards on or before October 22, 2009, may accept applications for certification in lieu of the EPA. Otherwise, on October 22, 2009, the EPA will begin accepting these applications and the associated fees from Wisconsin companies and individuals. Such an occurrence may cause confusion among the regulated community and property owners, and would impede the department’s ability to continue to administer a viable lead hazard reduction program if covered persons begin complying with the EPA certification requirements before state requirements are implemented. Promulgating rules before October 22, 2009, will help to avoid any unnecessary complexity for covered persons that may be caused by overlapping state and federal regulations that address lead–based paint hazards in target housing and child–occupied facilities.

**Publication Date:** October 16, 2009  
**Effective:** October 19, 2009  
 through March 17, 2010  
**Hearing Date:** November 18, 2009

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### Insurance (5)

1. **EmR0918** — Rule adopted to revise **Chapter Ins 6**, relating to exempting commercial umbrella and commercial liability policies covering only hired and non–owned autos from having to offer or include uninsured and underinsured motorist coverage.

#### Finding of Emergency

The Commissioner of Insurance finds that an emergency exists and that an emergency rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. Facts constituting the emergency are as follows:

Act 28 (2009) modified the requirements for auto insurance in Wisconsin. Most of these new provisions go into effect on November 1, 2009. These modifications did not specifically address the issue of insurers who write commercial liability insurance and commercial umbrella policies which insure only hired and non–owned automobiles (“HNO”) under the policy but do not insure any automobiles owned by the insured.

If these new Act 28 requirements apply to commercial liability insurance and commercial umbrella policies which insure only hired and non–owned automobiles (“HNO”) under the policy, this creates a significant problem. Some of these insurers do not have authority to write auto insurance which is needed to write uninsured (“UM”) and underinsured coverage (“UIM”). Other insurers offering the commercial

umbrella and commercial liability HNO have not ever written UM/UIM coverages because the current rules exempt them. Insurers have also stated that obtaining reinsurance for this is a problem.

This issue was addressed in 1997 when an emergency rule was promulgated and modifications to Ins 6.77 were enacted in response to various court cases. In that process, commercial insurers who wrote liability policies that covered only HNO were exempted from the requirement to offer or include UM/UIM coverage. This emergency rule would continue this exemption so that the market for commercial liability insurance and commercial umbrella policies is not disrupted.

**Publication Date:** September 9, 2009  
**Effective:** November 1, 2009 through  
 March 30, 2010  
**Hearing Date:** December 8, 2009

(See the Notice in this Register)

2. **EmR0923** — Rule adopted to create **section Ins 3.36**, Wis. Adm. Code, relating to treatment of autism spectrum disorders and affecting small business.

#### Exemption From Finding of Emergency

The Commissioner of Insurance pursuant to s. 632.895 (12m) (f) 2., Stats., need not find that an emergency exists nor provide evidence that promulgating a rule is necessary for the preservation of the public peace, health, safety or welfare.

Specifically, s. 632.895 (12m) (f), Wis. Stats., requires the commissioner to define “intensive–level services,” “nonintensive–level services,” “paraprofessional,” and “qualified” for purposes of providing services under this subsection. The statute further authorizes that the commissioner may promulgate rules governing the interpretation or administration of this subsection.

**Publication Date:** September 26, 2009  
**Effective:** September 26, 2009  
 through February 22, 2010  
**Hearing Date:** December 2, 2009

(See the Notice in this Register)

3. **EmR0925** — Rule adopted to create **section Ins 3.75**, relating to continuation of group health insurance policies.

#### Exemption From Finding of Emergency

Under 2009 Wisconsin Act 11, section 9126, a Finding of Emergency is not required for this emergency rule. The relevant portion of 2009 Act 11 reads as follows:

**2009 Wisconsin Act 11, SECTION 9126. Nonstatutory provisions; Insurance.**

(4) CONTINUATION COVERAGE RULES. (a) Notwithstanding section 632.897 of the statutes and subsections (1), (2), and (3), the commissioner of insurance may promulgate rules establishing standards requiring insurers to provide continuation of coverage for any individual covered at any time under a group policy who is a state eligible individual to whom subsection (2) or (3) applies or an assistance eligible individual, as defined under section 3001 (a) (3) of the federal act, including rules governing election or extension of election periods, notice, rates, premiums, premium payment, application of preexisting condition exclusions, and election of alternative coverage.

(b) The commissioner may promulgate the rules under paragraph (a) as emergency rules under section 227.24 of the statutes. Notwithstanding section 227.24 (1) (c) of the

statutes, emergency rules promulgated under this paragraph may remain in effect for one year and may be extended under section 227.24 (2) of the statutes. Notwithstanding section 227.24 (1) (a) and (3) of the statutes, **the commissioner is not required to provide evidence that promulgating a rule under this paragraph as an emergency rule is necessary for the preservation of public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under this paragraph.** [Emphasis Added]

**Publication Date:** October 1, 2009  
**Effective:** October 2, 2009  
 through October 1, 2010  
**Hearing Date:** December 8, 2009

(See the Notice in this Register)

4. **EmR0927** — Rule adopted to create **Chapter Ins 57**, relating to care management organizations and affecting small business.

#### Finding of Emergency

The Commissioner of Insurance finds that an emergency exists and that an emergency rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. Facts constituting the emergency are as follows:

Beginning January 1, 2010, care management organizations are required to obtain a permit from the commissioner to provide services under the Family Care program. In order to ensure no gap in services to enrollees, organizations and the office need to complete and accept applications for permits prior to January 1, 2010. Promulgation of this rule will permit the timely filing and review of permittees.

**Publication Date:** October 9, 2009  
**Effective:** October 10, 2009  
 through March 10, 2010  
**Hearing Date:** December 3, 2009

(See the Notice in this Register)

5. **EmR0930** — Rule adopted to create **section Ins 3.34**, relating to insurance coverage of dependents to age 27 and affecting small business.

#### Finding of Emergency

The Commissioner of Insurance finds that an emergency exists and that an emergency rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. Facts constituting the emergency are as follows: the Commissioner is aware that insurers, employers and consumers are interpreting the state mandate inconsistently so without this rule consumers will not be treated similarly when the law becomes effective on January 1, 2010; the Commissioner has received numerous inquiries from insurers, consumers and employers seeking clarity of terms and guidance on interpretation and implementation of the law as many employers are entering open enrollment for the 2010 plan year.

These changes will be effective the day following publication in the official state newspaper and a permanent rule will start the permanent rule process to achieve uniformity in interpretation therefore protecting the public, informing employers, and guiding insurers in the state.

**Publication Date:** October 30, 2009  
**Effective:** October 31, 2009 through  
 March 29, 2010  
**Hearing Date:** December 9, 2009  
 (See the Notice in this Register)

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### Natural Resources

#### *Fish, Game, etc., Chs. NR 1—*

**EmR0914** — Rule adopted to revise **Chapter NR 10**, relating to hunting and the 2009 migratory game bird seasons and waterfowl hunting zones.

#### 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. The federal government and state legislature have delegated to the appropriate agencies rule-making authority to control the hunting of migratory birds. The State of Wisconsin must comply with federal regulations in the establishment of migratory bird hunting seasons and conditions. Federal regulations are not made available to this state until mid–August of each year. This order is designed to bring the state hunting regulations to conformity with the federal regulations. Normal rule-making procedures will not allow the establishment of these changes by September 1. Failure to modify our rules will result in the failure to provide hunting opportunity and continuation of rules which conflict with federal regulations.

**Publication Date:** August 22, 2009  
**Effective:** September 1, 2009 through  
 January 28, 2010  
**Hearing Date:** November 4, 2009

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### Natural Resources

#### *Environmental Protection — Water Regulation, Chs. NR 300—*

**EmR0915** — A rule adopted revising **Chapters NR 335 and 336**, relating to grants for dam maintenance, repair, modification, or abandonment and removal.

#### Finding of Emergency

The substantial increase in bonding for the dam grant programs is a strong message from the legislature that concern for public welfare from unsafe dams is growing, as well as the desire to help dam owners, including the owners of the many dams damaged during the flooding in 2007 and 2008. In order to protect the public and provide this financial assistance, these additional funds should be put to work as soon as possible. The timeline for permanent rule promulgation will impede the Department's ability to accept applications and commit funding to dam safety projects until at least June 2010, which would delay most projects until late 2010 or 2011. The emergency rules will allow immediate implementation of modifications that will allow a grant application cycle to be conducted yet this fall and allow most projects to be constructed during the 2010 construction season or before.

**Publication Date:** August 28, 2009  
**Effective:** August 28, 2009 through  
 January 24, 2010

### Pharmacy Examining Board

**EmR0903** — A rule adopted repealing s. Phar 4.02 (2), relating to the practical examination.

#### Finding of Emergency

The Pharmacy Examining Board finds that, under s. 227.24 (1), Stats., the repeal of s. Phar 4.02 (2) is required for the preservation of the public peace, health, safety and welfare.

Currently, under s. Phar 4.02 (2), the board administers a practical examination to determine an applicant's competence in compounding and dispensing medications, which includes consultation of patients. The board has determined that this examination is no longer needed because the competencies tested in the examination are also tested in two other national examinations that applicants are required to take in order to obtain a license in Wisconsin. The board has also determined that the practical examination requirement may contribute to the shortage of pharmacists in Wisconsin.

First, under s. Phar 4.02 (1) and (3), an applicant is required to take and pass the Multi–State Pharmacy Jurisprudence Examination (MPJE) and the North American Pharmacist Licensure Examination (NAPLEX). Both of these examinations test competencies that relate to subject areas that are also tested in the practical examination. As a result, applicants are required to take an additional examination, and pay an additional examination fee. In some instances, this step may also result in a delay in the processing of applications for licensure.

Second, in reference to the shortage of pharmacists in Wisconsin, the board has found that populations in rural areas and in certain city neighborhoods are underserved. The board believes that, because of its practical examination requirement, potential applicants from other states are declining to seek licensure in Wisconsin. Wisconsin is one of only four states that require a practical examination. None of the states that border Wisconsin have a practical examination requirement.

**Publication Date:** February 28, 2009  
**Effective:** February 28, 2009 through  
 July 27, 2009  
**Extension Through:** November 24, 2009  
**Hearing Date:** April 8, 2009

### Public Defender Board

**EmR0926** — Rule adopted to create **Chapter PD 8**, Discovery Payments, relating to the maximum fees that the state public defender may pay for copies of discovery materials in criminal proceedings, proceedings under Chapter 980, Wis. Stats., and other proceedings in which the state public defender provides legal representation.

#### Finding of Emergency

These rules are promulgated under s. 227.24 (1) (a), Stats., because the magnitude of the shortfall in the state public defender's appropriation for transcripts, discovery, and interpreters in both years of the current biennium constitutes an emergency that requires implementation of a rule earlier than a permanent rule could take effect if the agency were to

comply with the applicable notice, hearing, legislative–review, and publication requirements.

The state public defender was initially provided a base budget of \$60,000 in 1995 for discovery payments, which at that time consisted mostly of photocopies and some photographs. In the 1999–2001 budget act, this appropriation was increased to \$150,000, based on a presumptive rate for photocopies of \$0.20 per page. In the 2001–2003 biennial budget act, this appropriation was subjected to a five percent funding reduction, leaving a base budget for discovery payments of \$142,500.

The public defender received discovery bills totaling \$717,000 for the fiscal year that ended June 30, 2009. Although discovery costs are caseload driven, this represents a nearly five–fold increase since 2001 and is due primarily to two factors. First, in the past many counties and municipalities did not bill the state public defender for copies of discovery materials. Because local budgets have come under increasing pressure, most now do so. Second, 2005 Wisconsin Act 60 resulted in more widespread use of audio and video recordings of interrogations by law enforcement, copies of which must be provided to the defense.

The public defender board's requests for cost–to–continue budget increases for discovery payments in 2007–2009 and in 2009–2011 were not funded. Instead, the FY 2009–2011 budget act reduced this appropriation by 1%, leaving a base budget of \$141,100, and directed the board to promulgate rules to address the funding shortfall.

**Publication Date:** October 3, 2009  
**Effective:** October 3, 2009 through  
 March 1, 2010  
**Hearing Date:** November 16, 2009

### Public Instruction (2)

1. **EmR0916** — A rule adopted revising ss. **PI 35.03 and 35.05**, relating to establishing a fee under the Milwaukee Parental Choice Program.

#### Exemption From Finding of Emergency

Pursuant to Section 9139 (3) of the nonstatutory provisions of 2009 Wisconsin Act 28, the Department of Public Instruction is not required to provide evidence that 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.

**Publication Date:** September 1, 2009  
**Effective:** September 1, 2009 through  
 January 28, 2010

(Except Section 1)

**Effective:** October 1, 2009 through  
 February 27, 2010  
**Hearing Date:** October 26, 2009

2. **EmR0921** — Rule adopted to create **Chapter PI 15**, relating to revenue limit exemptions for energy efficiencies.

#### Exemption From Finding of Emergency

Pursuant to Section 9139 (2x) of the nonstatutory provisions of 2009 Wisconsin Act 28, the Department of Public Instruction is not required to provide evidence that 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.

**Publication Date:** September 4, 2009  
**Effective:** September 4, 2009 through January 31, 2010  
**Hearing Date:** November 9, 2009

### Public Service Commission

**EmR0919** — Rule adopted to create **Chapter PSC 172**, relating to the police and fire protection fee created under 2009 Wisconsin Act 28.

#### Finding of Emergency

The Commission finds that an emergency exists and that an emergency rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. The police and fire protection fee, which must go into effect September 1, 2009, (2009 Wisconsin Act 28 section 9441) will be used to replace shared revenue payments for such services. To ensure the public peace, health, safety, and welfare of the citizens of Wisconsin, it is vital for funding of police and fire protection services to continue smoothly, quickly, and unimpeded. Thus, it is necessary for the rule administering the fee to be implemented as soon as possible.

**Publication Date:** September 11, 2009  
**Effective:** September 11, 2009 through February 7, 2010

### Regulation and Licensing (2)

- EmR0827** — Rule adopted creating **s. RL 91.01 (3) (k)**, relating to training and proficiency in the use of automated external defibrillators for certification as a massage therapist or bodyworker.

#### Exemption From Finding of Emergency

Section 41 (2) (b) of the nonstatutory provisions of 2007 Wisconsin Act 104 provides that notwithstanding section 227.24 (1) (a) and (3) of the statutes, the department of regulation and licensing is not required to provide evidence that promulgating a rule as an emergency 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 a rule promulgated to implement 2007 Wisconsin Act 104. Notwithstanding s. 227.24 (1) (c) and (2) of the statutes, these emergency rules will remain in effect until the date on which the final rules take effect.

**Publication Date:** September 10, 2008  
**Effective:** September 10, 2008 through the date on which the final rules take effect  
**Hearing Dates:** November 26, 2008  
 April 13, 2009

- EmR0828** — Rules adopted to **amend s. RL 181.01 (2) (c); and to create ss. RL 180.02 (1m), (3m) and (11), 181.01 (1) (d), (2) (c) 1. and 2.**, relating to training and proficiency in the use of automated external defibrillators for licensure as a licensed midwife.

#### Exemption From Finding of Emergency

Section 41 (2) (b) of the nonstatutory provisions of 2007 Wisconsin Act 104 provides that notwithstanding section 227.24 (1) (a) and (3) of the statutes, the department of

regulation and licensing is not required to provide evidence that promulgating a rule as an emergency 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 a rule promulgated to implement 2007 Wisconsin Act 104. Notwithstanding s. 227.24 (1) (c) and (2) of the statutes, these emergency rules will remain in effect until the date on which the final rules take effect.

**Publication Date:** September 10, 2008  
**Effective:** September 10, 2008 through the date on which the final rules take effect  
**Hearing Date:** November 26, 2008

### Revenue (3)

- EmR0912** — Rule adopted revising **Chapter Tax 2**, relating to combined reporting for corporation franchise and income tax purposes.

#### Finding of Emergency

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

The function of the Wisconsin Department of Revenue is to administer the Wisconsin tax laws. These laws, and tax policy for raising revenue, are determined by the State Legislature. The State Legislature recently enacted numerous items of tax legislation, affecting individuals and businesses alike. Some of these apply retroactively to January 1, 2009. Emergency rules are needed, not only to address the risk of revenue loss, but to add more clarity and certainty about the scope and application of the newly enacted statutes.

**Publication Date:** August 8, 2009  
**Effective:** August 8, 2009 through January 4, 2010  
**Hearing Dates:** September 25, 2009 and October 16, 2009

- EmR0924** — Rule adopted revising **Chapter Tax 11**, relating to sale and use tax.

#### Finding of Emergency

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

The changes made by the emergency rule must be effective October 1, 2009, to be in conformity with the Streamlined Sales and Use Tax Agreement. In order to meet this deadline, it is necessary to promulgate this rule as an emergency rule.

**Publication Date:** September 30, 2009  
**Effective:** October 1, 2009 through February 27, 2010  
**Hearing Dates:** December 1 and 15, 2009

(See the Notice in this Register)

- EmR0929** — Rule adopted to create sections **Tax 2.85 and 11.90**, relating to failure to produce records.

#### Finding of Emergency

The Department of Revenue finds that an emergency exists and that an emergency rule is necessary for the immediate

preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency is:

The emergency rule is to reflect changes in Wisconsin's tax laws due to the adoption of penalties for failure to produce records.

It is necessary to promulgate this rule order to provide guidance so that the penalties can be administered in a fair and consistent manner.

**Publication Date:** October 19, 2009  
**Effective:** October 19, 2009 through March 17, 2010

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### Transportation

**EmR0909** — Rule adopted amending section **Trans 315.03 (1) (a) and (c)**, relating to safety belt medical use exemption.

#### Finding of Emergency

The Department of Transportation finds that an emergency exists and that an emergency rule is necessary for the immediate preservation of public health and safety. Current federal law at 23 USC 406 provides safety belt performance grants to a state that has in effect and is enforcing a conforming primary safety belt use law for all passenger motor vehicles. A grant of federal funds estimated at roughly \$15,000,000 are available if this state is eligible on or before September 30, 2009; a secondary grant based on "share of unallocated funds," estimated at not more than \$1,000,000, may be available if this state is eligible on or before June 30, 2009. The Wisconsin Legislature is currently deliberating a primary safety belt use law as part of the executive biennial budget bill, 2009 Assembly Bill 75, with the aim of qualifying for safety belt performance grants. Were the law timely enacted, this state could remain ineligible for safety belt performance grants because Department rules allow persons other than physicians to grant medical exemptions from safety belt use requirements.

Immediate action is necessary to avoid forfeiting approximately \$16,000,000 in federal funds for highway safety activities. Increased use of safety belts has been shown to reduce the severity of injuries sustained in motor vehicle collisions, and limiting the medical use exemption to physicians would increase use of safety belts.

**Publication Date:** June 25, 2009  
**Effective:** June 25, 2009 through November 21, 2009  
**Hearing Date:** September 8, 2009

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### Veterans Affairs

**EmR0911** — Rule adopted to revise section VA 2.01, relating to the assistance to needy veterans grant program.

#### Finding of Emergency

The Wisconsin Department of Veterans Affairs finds that an emergency exists and that the rules are necessary for the immediate preservation of the public peace, health, safety, or welfare. A statement of facts constituting the emergency is: The economic recession in effect for the last fiscal year has adversely affected the veteran population. Many veterans have lost their employment or had their scope of employment reduced. In addition to losing employment, many veterans have seen their health care reduced or eliminated. In order to serve the largest population of veterans and ensure minimal health care for that population, the department is requesting emergency rules to define "vision care and to limit the eligibility, by available funding, for "dental care", "hearing care", and "vision care". These eligibility limitations, which address the cost, type and frequency of care available under the program, will allow more veterans in need to access the limited resources of this program.

**Publication Date:** July 1, 2009  
**Effective:** July 1, 2009 through November 27, 2009  
**Hearing Date:** August 14, 2009

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## Scope Statements

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### Administration

#### Subject

Creates a new chapter relating to the administrative procedures for the Wisconsin Covenant Scholars Program.

#### Objective of the Rule

Mandated by 2009 Wisconsin Act 28 and required for proper administration of the Wisconsin Covenant Scholars Program.

#### Policy Analysis

The 2009 Wisconsin Act 28 requires the Department of Administration (DOA), instead of the Wisconsin Higher Education Aids Board (HEAB), to promulgate rules for the implementation of the Wisconsin Covenant Scholars Program and submit proposed rules to Legislative Council staff no later than the first day of the twelfth month beginning after the effective date of the bill. The Act also requires DOA to promulgate rules establishing criteria for designation as a Wisconsin Covenant Scholar by the Office of the Wisconsin Covenant Scholars Program (OWCSP).

The 2007 Wisconsin Act 20 created s. 39.437, Wis. Stats., which provides grants to Wisconsin Covenant Scholars who are enrolled at least half–time at an eligible in–state institution. HEAB administers this program with the assistance of the OWCSP under s. 39.437, Wis. Stats.

#### Statutory Authority

Section 39.437 (5), Wis. Stats.

#### Comparison with Federal Regulations

These rules are not intended to address any proposed or existing federal regulations.

#### Entities Affected by the Rule

Wisconsin residents designated as Wisconsin Covenant Scholars by OWCSP attending post–secondary institutions of higher education in Wisconsin.

#### Estimate of Time Needed to Develop the Rule

We estimate approximately 72 hours of staff time will be needed to promulgate the rules.

#### Contact Information

Amy Bechtum, Director  
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P.O. Box 7869  
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(608) 261–8652

### Agriculture, Trade and Consumer Protection

#### Subject

Revises Chapters ATCP 10, 12 and 15, Wis. Adm. Code, relating to animal health and disease control, and humane officer training.

#### Objective of the Rule

This rule will modify current animal health rules. Among other things, this rule may:

- Update current rules related to animal markets, animal dealers, animal truckers and animal transport vehicles, including rules related to livestock identification and records, and facility standards.
- Update current rules related to the approved import feedlot licensing process.
- Create a mechanism for a shipment of animals moving within the state under special conditions with written consent of the State Veterinarian but without meeting the intra state movement requirements.
- Revise current rules related to farm–raised deer. Among other things, this rule may incorporate new federal rules related to chronic wasting disease (CWD).
- Implement new statutory authority to include a re–inspection fee for entities licensed or registered by the division.
- Update current rules and fees related to the training and certification of humane officers.
- Modify quarantine rules to include procedures for quarantine of fomites and quarantine of geographic areas in addition to individual premises.
- Revise current rules related to fish farms. Among other things, this rule may update recordkeeping, movement and health certification requirements and clarify types.
- Update rules pertaining to importing circus, rodeo, racing and menagerie animals.
- Update rules pertaining to fairs and exhibitions.
- Update rules pertaining to veterinarian certification programs and the fees assessed for the certification.
- Update import requirements for Tuberculosis, and Brucellosis across applicable species to reflect changes in the federal Tuberculosis and Brucellosis programs.
- Make other miscellaneous changes to current animal health rules.

#### Policy Analysis

##### *Animal Markets, Dealers and Truckers*

DATCP regulates animal markets, animal dealers, animal truckers and animal transport vehicles under ss. 95.68, 95.69, 95.71 and 95.71(4), Stats. This rule may update current rules to improve animal disease control and clarify existing rules. Among other things, this rule may clarify current requirements related to facility standards, and recordkeeping requirements.

##### *Farm–raised Deer*

DATCP currently regulates persons who keep, move or import farm–raised deer (deer, elk and other cervids). Current rules include regulations related to deer farms, hunting preserves, disease monitoring (including CWD monitoring), identification and movement of farm–raised deer, and reporting and recordkeeping requirements.

This rule may update current rules, based on experience to date under those rules. This rule may also incorporate new

federal rules proposed by the United States Department of Agriculture, including rules related to CWD monitoring, testing for interstate movement, and state certification of CWD herd status.

Under current rules, all keepers of farm–raised deer must register with DATCP. Registration fees are based on the number of deer in the registered herd. This rule may revise the current fee structure to reflect the purposes for which a herd is kept.

Among other things, this rule may:

- Align Wisconsin farm–raised deer regulations with federal standards.
- Modify identification requirements for farm–raised deer herds.
- Modify registration requirements and fees for farm–raised deer herds.

#### ***Fish Farms***

DATCP currently registers premises that are operated as fish farms and regulates the movement of fish into and around Wisconsin. Current rules include regulations related to recordkeeping, importing fish or fish eggs, introducing fish or fish eggs to waters of the state and disease monitoring of fish or fish eggs moved into and around the State.

Under current rules, all fish farm facilities must register with DATCP. Registration requirements vary, depending on fish farm type (for example, whether the fish farm offers fee fishing, or ships live fish or fish eggs). Among other things this rule may:

- Clarify fish farm registration categories and requirements, including the process for changing a fish farm’s registration category during a registration year.
- Modify health certification requirements.
- Modify recordkeeping requirements.

#### ***Technical Changes***

This rule may make a number of miscellaneous, largely technical, changes to current animal health rules.

#### ***Policy Alternatives***

##### ***Animal Markets, Animal Dealers and Animal Truckers***

If DATCP takes no action, current rules will remain in effect. Failure to update rules may make it more difficult to trace animals in the event of an animal disease outbreak.

##### ***Farm–raised Deer***

If DATCP takes no action, current rules will remain in effect. When the national CWD program is implemented, current Wisconsin rules will be inconsistent with federal standards. Among other things, that may limit export opportunities for the farm–raised deer industry. Current state rules do not adequately address all of the issues that have come to light, in recent years, related to the control of CWD in farm–raised deer.

#### ***Fish Farms***

If DATCP takes no action, current rules will remain in effect. Some of the current rules are rather cumbersome and may have limited health benefits. Modifications could facilitate administration and compliance, and could provide equivalent protection.

#### ***Statutory Authority***

Sections 93.07 (1) and (10) and 173.27, Stats., and ch. 95, Stats.

#### **Comparison with Federal Regulations**

Most animal health regulations are adopted and administered at the state level. However, the U.S. Department of Agriculture (USDA) administers federal regulations related to the interstate movement of animals, particularly with respect to certain major diseases. States regulate intrastate movement and imports to the state. States certify the disease status of certain herds, at the request of herd owners, to facilitate interstate movement of animals from those herds. States also license and regulate entities such as animal markets, animal dealers and animal truckers (regulations vary by state).

State regulation of interstate animal movement is generally consistent with federal standards, where applicable. However, states may impose additional import requirements if those requirements are reasonably designed to prevent the spread of disease, and do not impose an unreasonable burden on interstate commerce.

Wisconsin’s current rules related to farm–raised deer are consistent with applicable federal rules. However, USDA is proposing changes to federal rules related to CWD in farm–raised deer. The proposed federal rules may modify current testing and monitoring requirements for interstate movement, and may modify current identification requirements for interstate movement. DATCP may modify current state rules, as necessary, to be consistent with the new federal rules.

USDA has less well–developed programs for new or localized diseases, or emerging animal–based industries. States often take a lead role in developing programs to address new animal health issues and disease threats (farm–raised deer and fish diseases, for example), particularly if those issues or threats have a more local or regional focus. Wisconsin’s program related to fish and farm–raised deer are perhaps the leading programs in the nation, and have provided models for proposed federal programs.

#### **Entities Affected by the Rule**

The rule will provide important health protection for the Wisconsin livestock industry. This rule will have a direct impact on animal markets, animal dealers, animal truckers, veterinarians, livestock operators, keepers of farm–raised deer and certified humane officers. In some cases, this rule may add to current regulations, but in other cases this rule may streamline or eliminate current regulations.

#### **Estimate of Time Needed to Develop the Rule**

DATCP estimates that it will use approximately 0.80 FTE staff to develop this rule. That 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. DATCP may need additional personnel to administer this rule, once the rule is adopted.

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

##### **Subject**

Revises Chapter ATCP 30, relating to atrazine pesticide applications.

##### **Objective of the Rule**

Regulate the use of atrazine pesticides to protect groundwater and assure compliance with Wisconsin’s Groundwater Law. Update current rule to reflect

groundwater–sampling results related to atrazine obtained during the past year. Reorganize current rule to accommodate any new or expanded prohibition area (PA).

### **Policy Analysis**

DATCP must regulate the use of pesticides to assure compliance with groundwater standards under ch. 160, Stats. Groundwater standards are established by the Department of Natural Resources under ch. NR 140, Wis. Adm. Code. DNR has established a groundwater enforcement standard of 3 µg/liter for atrazine and its chlorinated metabolites.

DATCP must prohibit atrazine uses that result in groundwater contamination levels that exceed the DNR enforcement standard under s. 160.25, Wis. Stats. DATCP must prohibit atrazine use in the area where groundwater contamination has occurred unless DATCP determines to a reasonable certainty, based on the greater weight of credible evidence, that alternative measures will achieve compliance with the DNR enforcement standard.

Currently, under ch. ATCP 30, Wis. Adm. Code, the use of atrazine is prohibited in 101 PAs (approximately 1,200,000 acres), including large portions of the Lower Wisconsin River Valley, Dane County and Columbia County. The current rules also restrict atrazine use rates and handling practices, including the timing of applications, on a statewide basis. The statewide restrictions are designed to minimize the potential for groundwater contamination, as required under s. 160.25, Wis. Stats.

Over the next year, DATCP may identify additional wells containing atrazine and its chlorinated metabolites at and above the current DNR enforcement standard. In order to comply with ch. 160, Wis. Stats., DATCP must take further action to prohibit or regulate atrazine use in the areas where these wells are located. DATCP proposes to amend ch. ATCP 30, Wis. Adm. Code to add PAs or take other appropriate regulatory action in response to any new groundwater findings.

### **Policy Alternatives**

No change. If DATCP takes no action, current rules will remain in effect. But that will not adequately protect groundwater or meet DATCP's statutory obligations in areas (if any) where there may be new groundwater contamination findings.

### **Statutory Authority**

Sections 93.07, 94.69, and 160.19 through 160.25, Stats.

### **Comparison with Federal Regulations**

Pesticides and pesticide labels must be registered with the federal Environmental Protection Agency ("EPA"). Persons may not use pesticides in a manner inconsistent with the federal label. The current federal label for atrazine advises that atrazine should not be used on permeable soils with groundwater near the soil surface. Wisconsin has clearer, more definite restrictions on atrazine use, based on actual findings of groundwater contamination in this state.

EPA is proposing federal rules that would require states to create pesticide management plans for pesticides that have the potential to contaminate groundwater. Wisconsin's current regulatory scheme for atrazine pesticides would likely comply with the proposed federal rules.

### **Entities Affected by the Rule**

Residents whose private wells are located in a newly proposed or expanded PA would be affected by the proposed rule. Atrazine users in a newly proposed or expanded PA would also be affected by the proposed rule. Dealers, distributors and manufacturers of atrazine who service areas covered by new or expanded PAs may be affected by a reduction in atrazine sales. Commercial pesticide applicators must be aware of atrazine PAs in order to avoid illegal applications. The proposed action will not have any effect on consumers.

### **Estimate of Time Needed to Develop the Rule**

DATCP estimates that it will use approximately 0.5 FTE staff to develop this rule. This includes investigation, 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.

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

### **Subject**

Revises Chapter ATCP 60, relating to somatic cell limits in dairy goat milk.

### **Objective of the Rule**

This rule will modify current rules for dairy farms producing goat milk. This rule will change the current somatic cell limit for goat milk, to make it consistent with the current national standard established by the Interstate Pasteurized Milk Ordinance (PMO).

### **Policy Analysis**

DATCP administers Wisconsin's milk safety program under ch. 97, Stats. DATCP has adopted rules for dairy farms under ch. ATCP 60, Wis. Adm. Code, including dairy farms producing goat milk. The current rules regulate the safety, wholesomeness and quality of milk. Among other things, the current rules establish somatic cell limits for goat milk.

This rule will change the current somatic cell limit for goat milk, to make it consistent with the current national standard established by the Interstate Pasteurized Milk Ordinance (PMO). State rules must be consistent with the PMO in order for Wisconsin to ship milk in interstate commerce.

### **Policy Alternatives**

If DATCP takes no action, current rules will remain in effect. Maintaining the current limits for somatic cells in goat milk will adversely affect goat milk producers and processors by jeopardizing sales of goat milk and fluid milk products in interstate commerce.

There are no statutory alternatives at this time.

### **Statutory Authority**

Sections 93.07 (1), and 97.22 (8) (a), Stats.

### **Comparison with Federal Regulations**

The states have entered into an interstate agreement, in cooperation with the U.S. Food and Drug Administration (FDA), to establish minimum standards for Grade A milk and fluid milk products. Those minimum standards are spelled out in the PMO. Only Grade A milk and fluid milk products may be shipped in interstate commerce. Under the terms of the interstate agreement, FDA may decertify a state that fails to comply with the PMO. Other states may then refuse to accept shipments of milk or fluid milk products from the decertified state.

The PMO was recently modified to change the somatic cell count limits for Grade A goat milk. The U.S. Department of Agriculture is making equivalent changes in its standards for the production of Grade B milk, which may be used to produce non–fluid products such as cheese.

#### **Entities Affected by the Rule**

This rule will affect goat milk producers and dairy plants that process goat milk.

#### **Estimate of Time Needed to Develop the Rule**

DATCP estimates that it will use the equivalent of 0.10 FTE staff to revise this rule. This includes rule drafting, preparing related documents, holding public hearings and communicating with affected persons and groups. DATCP will use existing staff to develop this rule.

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

#### **Subject**

Revises Chapter ATCP 127, relating to the telemarketing “No Call” list.

#### **Objective of the Rule**

Implement 2007 Wis. Act 226 which, among other things, allows Wisconsin residents to add their mobile phone numbers (not just “land line” phone numbers) to the state’s telemarketing “No Call” list. Adopt rule changes to implement Act 226, and make minor technical updates as needed.

#### **Policy Analysis**

DATCP currently administers Wisconsin’s telemarketing “No Call” list under s. 100.52, Stats. The law prohibits telemarketers from making unwanted calls to phone numbers that Wisconsin residents have listed on the “No Call” list.

2007 Wisconsin Act 226 modified s. 100.52, Stats. Among other things, Act 226 authorizes Wisconsin residents to list mobile telephone numbers (not just “land line” phone numbers) on the “No Call” list. The law change reflects the growing use of mobile phones, and the importance of protecting mobile phone owners as well as “land line” phone owners from unwanted telemarketing calls.

DATCP has already expanded the “No Call” list to include mobile phone numbers, per Act 226, but has not yet brought its “No Call” rules into conformity with the new statute. This rule will modify current “No Call” rules under ch. ATCP 127, Wis. Adm. Code, to reflect the changes made by Act 226. This rule may also make minor technical updates to current “No Call” rules. This rule will not make any major changes to current “No Call” program operations, which have already been revised to reflect Act 226.

#### **Policy Alternatives**

DATCP is obligated to update its rules to reflect current statutes. Failure to do so would lead to confusion for consumers and businesses. This rule is needed to ensure consistent application of “No Call” regulations.

#### **Statutory Authority**

Sections 100.52 and 100.20 (2), Stats.

#### **Comparison with Federal Regulations**

Federal regulations also prohibit telemarketers from making calls to persons listed on a federal “No Call” list.

Mobile phone numbers, as well as “land line” numbers, may be included on the federal list.

Wisconsin’s “No Call” law predates the federal law. Wisconsin regulations are similar to, but not identical to, the federal regulations (Wisconsin regulations are slightly more protective of consumers). Wisconsin coordinates its “No Call” program with the federal program.

#### **Entities Affected by the Rule**

This rule will affect mobile phone owners, as well as businesses that may wish to make telemarketing calls to mobile phone owners. This rule will clarify the application of Wisconsin’s “No Call” law and rules, consistent with law changes contained in 2007 Wis. Act 226.

#### **Estimate of Time Needed to Develop the Rule**

DATCP estimates that it will use approximately .20 FTE staff time to develop this rule. This includes research, drafting, preparing related documents, holding public hearings, coordinating advisory council discussions and communicating with affected persons and groups. DATCP will assign existing staff to develop this rule.

### **Barbering and Cosmetology Examining Board**

#### **Subject**

Revises section BC 2.025, relating to certain services constituting medical procedures that barbering and cosmetology licensees may perform pursuant to authority delegated by a physician.

As written, this rule presently outlines/specifies training and supervision requirements, which may be outside the jurisdiction of the board. The rule needs to be modified and/or clarified to ensure the promotion of safe and competent practice in the areas of laser hair–removal, micro–dermabrasion, chemical exfoliation, and other delegated medical procedures as may be defined within the scope of medical practice.

#### **Objective of the Rule**

To modify and/or refine the provisions included in s. BC 2.025 referring to the delegation of certain medical procedures and the training and supervision of these practices, so that the rules correctly reflect the jurisdiction that the board has in governing these procedures.

#### **Policy Analysis**

The current rule provides authority for the board to require training in certain procedures that would fall under the scope of “medical practice.” This includes the use of lasers for laser–hair removal, microdermabrasion and chemical exfoliation. As this training would fall under the purview of a physician’s license, the board does not have jurisdiction over training in this area.

As a delegated procedure, supervision is also delegated to the attending physician. Current language provides the standard for physician supervision in s. BC 2.025 (1), but it is unclear whether this supervision is to be under the scope of “general supervision” as defined in BC 1.01 (7) or if the physician needs to directly inspect procedures.

#### **Statutory Authority**

Sections 15.08 (5) (b), 227.11 (2) and 454.08, Stats.

#### **Comparison with Federal Regulations**

There is no existing or proposed federal regulation that is intended to address the activities to be regulated by the rule.

**Entities Affected by the Rule**

Barbering and cosmetology licensees performing certain delegated medical procedures, physicians supervising delegated medical practices.

**Estimate of Time Needed to Develop the Rule**

200 hours.

**Insurance****Subject**

Creates Ins 3.34, Wis. Adm. Code, relating to coverage of dependents to age 27 and affecting small business.

**Objective of the Rule**

2009 Wis. Act 28 created s. 632.885, Stats., a new health insurance mandate for coverage of adult dependents between the ages of 17 and 27. The commissioner is aware that insurers, employers and consumers are interpreting the mandate inconsistently that may result in disparate treatment of adult dependents without guidance and clarity through this proposed rule.

**Policy Analysis**

Currently dependents of insureds participating in small employer or group health plans require inclusion of dependents typically through age 24 if the dependent is a full–time student. Dependents who are disabled prior to turning 18 also have continuing access to health insurance through a parent’s health plan. However, this is the first mandate to specify an end age and additionally addresses adult dependents that are called to active duty while a full–time student.

**Statutory Authority**

Sections 600.01 (2), 601.41 (3), 628.34 (12), Stats.

**Comparison with Federal Regulations**

There is no existing federal regulation although both houses are working on proposals containing similar extension of coverage to adult dependents.

**Entities Affected by the Rule**

All disability insurers, including limited–scope dental and vision plans and self–insured governmental plans including state, county, city, town, village or school district. Intermediaries assisting insureds will need to be aware of and comply with the rule and mandate.

**Estimate of Time Needed to Develop the Rule**

200 hours and no other resources are necessary

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

Creates Chapter PSC 128, relating to wind siting rules.

**Objective of the Rule**

2009 Wisconsin Act 40 (Act 40) establishes statewide criteria for the installation or use of a wind energy system with a nominal operating capacity of less than 100 megawatts, and helps ensure consistent local procedures for such systems. Act 40 requires the Commission to promulgate a variety of rules that specify the conditions a city, village, town, or county (political subdivision) may impose on such a system. If a

political subdivision chooses to regulate such systems, its ordinances may not be more restrictive than the Commission’s rules.

**Policy Analysis**

Act 40 identifies several areas that these rules must cover and several areas that they may cover. It requires that the rules include provisions dealing with the decommissioning of wind energy systems, including restoration of the site, and setback requirements that reasonably protect against health effects that are associated with wind energy systems.

Act 40 also requires rules that specify the information and documentation to be provided in an application for approval, the procedure to be followed by a political subdivision in reviewing the application, the information and documentation to be kept in a political subdivision’s record of its decision, as well as the requirements and procedures for enforcing restrictions included in the rule. The rules must also require the owner of a wind energy system with a nominal operating capacity of at least one megawatt to maintain proof of financial responsibility ensuring the availability of funds for decommissioning the system.

The rules may also include provisions dealing with issues such as visual appearance, electrical connections to the power grid, interference with radio, telephone or television signals, maximum audible sound levels, and lighting.

Currently, an electric generating facility with a nominal operating capacity of 100 megawatts or more may not be constructed unless the Commission grants a certificate of public convenience and necessity. Act 40 requires the Commission to consider the restrictions specified in these rules when determining whether to grant a certificate of public convenience and necessity. The rules may also require the Commission to consider the conditions specified in these rules when determining whether to grant a public utility a certificate of authority for a wind farm smaller than 100 megawatts.

Act 40 also creates a 15–person Wind Siting Council that will, among other things, advise the Commission in the drafting of these rules.

**Statutory Authority**

Sections 196.02 (1) and (3), 227.11, and newly–created 196.378 (4g), Stats.

**Comparison with Federal Regulations**

There are a number of federal laws that interact with the issues in this rulemaking, although the Commission is not aware of any that deal with the substance of them; that is, the minimum requirements that a political subdivision may impose. A few of the federal laws that may inter–relate include the National Environmental Policy Act, 42 USC 4321 *et. seq.*, the Endangered Species Act, 16 USC 1531–1544, and 14 CFR Pt. 77, which requires a Federal Aviation Administration airspace study before constructing certain types of projects.

**Entities Affected by the Rule**

Affected entities include cities; villages; towns; counties; persons and entities that own, want to construct, or want to host wind energy systems; and landowners near such proposed wind energy systems.

**Estimate of Time Needed to Develop the Rule**

The Commission estimates that approximately 800 hours of Commission staff time will be required in this rulemaking.

## **Regulation and Licensing — Auctioneer Board**

### **Subject**

Revises section RL 128.04, relating to approval of course providers for auctioneers' continuing education (CE).

### **Objective of the Rule**

The board seeks to add to its list of approved CE course providers appraisers that are approved by the Appraiser Qualifications Board (AQB) of the Appraisal Foundation to teach a 7 hour update course relating to the Uniform Standards of Professional Appraisal Practice (USPAP).

### **Policy Analysis**

The board recognizes auctioneers registered in this state who are currently practicing auctioneering, and who have engaged in such practice for at least 5 years and attorneys who are engaged in the field of auctioneering–related law. Addition of another course provider would not diminish CE opportunities for auctioneers that are not appraisers. It would expand CE options for dual licensees.

### **Statutory Authority**

Sections 227.11 (2), 480.04 (1) and 480.08 (6), Stats.

### **Comparison with Federal Regulations**

There is no existing or proposed federal regulation that is intended to address the activities to be regulated by the rule.

### **Entities Affected by the Rule**

Appraisers licensed as auctioneers, auctioneers' continuing education course providers, the Auctioneer Board and the Department of Regulation and Licensing.

### **Estimate of Time Needed to Develop the Rule**

100 hours.

## **Tourism**

### **Subject**

Creates Chapter Tour 3, relating to grants to municipalities and organizations for regional tourist information centers.

### **Policy Analysis**

The Department of Tourism proposes to specify the use of funds, define application procedures, contracts and reporting requirements for the administration of the grant program for regional tourist information centers.

### **Statutory Authority**

Section 41.16, Stats.

### **Comparison with Federal Regulations**

There are no applicable federal regulations.

### **Entities Affected by the Rule**

Wisconsin municipalities and non–profit organizations that operate tourist information centers.

### **Estimate of Time Needed to Develop the Rule**

Approximately 50 hours of staff time.

### **Contact Information**

Laura Muenich  
(608) 261–8764  
lmuenich@travelwisconsin.com

## **Veterans Affairs**

### **Subject**

Amends section VA 2.02 (2), relating to the date by which an application for the Tuition Reimbursement Program (VET–ED) must be completed and delivered to the department.

### **Objective of the Rule**

The repeal of the statutory requirement to complete and deliver an application for the Tuition Reimbursement program administered under s. 45.20 (2) (c) 2. a., Stats., requires the department to implement a rule regarding the date by which an application for the Tuition Reimbursement Program (VET–ED) must be completed and delivered to the department. The use of an application deadline which follows the close of a semester, term or class has proven to be unacceptable for estimating the use of monies in a timely manner, resulting in a consistent inability to correctly gauge the usage of the program and adjust reimbursement levels accordingly.

The department will identify a time period for completion and reception of applications which will allow the department to project the approximate expenditure anticipated for a given semester in advance of the actual reimbursement of all completed grant applications. The amendment of the rule will provide a date for initial submission of the grant application as well as providing a basis for late submissions of the application to be accepted. As the majority of applications involve the reimbursement for a semester or a term, the department will be able to calculate the approximate potential usage of the program in any semester or term prior to the conclusion of that semester or term and adjust reimbursement levels accordingly.

### **Policy Analysis**

Under the prior statutory requirement, the application was not required to be submitted until 60 days following the completion of the class, term or semester. The department was unable to accurately predict budgetary expenditures based on the structure of the process, as some potential requests for reimbursement were not made prior to the end of the fiscal year. The statute allows the department the flexibility of adjusting the level of reimbursement, with a specific exception for 100% disabled veterans, between a 100% reimbursement and no reimbursement. The prior process limited the ability to vary the reimbursement level because the projected usage was not available until after all applications had been initiated and completed. The department believes it will be able to manage the budgeted funds in a manner more consistent with good accounting practices and effectuate the policies of the Board of Veterans Affairs if the process requires identification of a potential reimbursement within the first 60 days of the start of the semester, term or class rather than within 60 days following the end of the semester, term or class. The department believes it will be able to adjust reimbursement levels, if necessary, for any semester, term or class based on the receipt of this information at the earlier date proposed under this amended rule.

### **Statutory Authority**

Section 45.20 (2) (c) 2. a., Stats.

### **Comparison with Federal Regulations**

There is no existing or proposed federal regulation that has any direct bearing upon the proposed rule.

**Entities Affected by the Rule**

The amended rule will affect veterans applying for tuition reimbursement under the program. It will also affect the school veterans certifying officials and county veterans service officers who assist individuals with initiating and completing applications for reimbursement under this program.

**Estimate of Time Needed to Develop the Rule**

Approximately 5 hours of Department of Veterans Affairs staff time.

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# Submittal of Rules to Legislative Council Clearinghouse

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

## Accounting Examining Board CR 09–100

On October 29, 2009, the Accounting Examining Board submitted a proposed rule–making order to the Wisconsin Legislative Council Rules Clearinghouse.

### Analysis

The proposed order revises Chapters Accy 7 and 8, relating to granting certificates to applicants pursuant to an international mutual recognition agreement.

### Agency Procedure for Promulgation

A public hearing is required and will be held on December 10, 2009.

### Contact Information

Pamela Haack, Paralegal  
Department of Regulation and Licensing  
Division of Board Services  
(608) 266–0495  
Pamela.haack@wisconsin.gov

## Health Services Health, Chs. DHS 110— CR 09–089

On October 21, 2009, the Department of Health Services submitted a proposed rule–making order to the Wisconsin Legislative Council Rules Clearinghouse.

### Analysis

The proposed order revises Chapter DHS 124, relating to forfeitures, anatomical gifts, and automatic external defibrillator (AED) training for hospitals.

### Agency Procedure for Promulgation

A public hearing is required, but has not yet been scheduled for this proposed rule.

### Contact Information

For substantive questions on rules contact:

Rachel Currans–Sheehan  
(608) 266–3262

Small Business Regulatory Review Coordinator:

Rosie Greer  
(608) 266–1279  
greerrj@dhs.state.wi.us

## Hearings and Appeals CR 09–101

On October 30, 2009, the Division of Hearings and Appeals submitted a proposed rule–making order to the Wisconsin Legislative Council Rules Clearinghouse.

### Analysis

The proposed order revises Chapter HA 2, relating to the procedure for hearings for revoking or not revoking various types of community supervision by the Department of Corrections.

### Agency Procedure for Promulgation

A public hearing is required, but has not yet been scheduled for this proposed rule.

### Contact Information

Diane E. Norman  
Administrative Assistant  
(608) 266–7668  
diane.norman@wisconsin.gov

## Insurance CR 09–095

On October 29, 2009, the Office of the Commissioner of Insurance submitted a proposed rule–making order to the Wisconsin Legislative Council Rules Clearinghouse.

### Analysis

The proposed order creates section Ins 3.34, relating to coverage of dependents to age 27 and affecting small business.

### Agency Procedure for Promulgation

A public hearing is required and is scheduled for December 9, 2009.

### Contact Information

A copy of the proposed rule may be obtained from the Web site at: <http://oci.wi.gov/ocirules.htm> or by contacting Inger Williams, Public Information and Communications, Office of the Commissioner of Insurance, at (608) 264–8110.

For additional information, please contact Julie E. Walsh at (608) 264–8101 or e–mail at [julie.walsh@wisconsin.gov](mailto:julie.walsh@wisconsin.gov) in the OCI Legal Unit.

## Insurance CR 09–094

On October 29, 2009, the Office of the Commissioner of Insurance submitted a proposed rule–making order to the Wisconsin Legislative Council Rules Clearinghouse.

**Analysis**

The proposed order creates section Ins 3.36, relating to treatment of autism spectrum disorders and affecting small business.

**Agency Procedure for Promulgation**

A public hearing is required and is scheduled for December 2, 2009.

**Contact Information**

A copy of the proposed rule may be obtained from the Web site at: <http://oci.wi.gov/ocirules.htm> or by contacting Inger Williams, Public Information and Communications, Office of the Commissioner of Insurance, at (608) 264–8110.

For additional information, please contact Julie E. Walsh at (608) 264–8101 or e–mail at [julie.walsh@wisconsin.gov](mailto:julie.walsh@wisconsin.gov) in the OCI Legal Unit.

**Insurance  
CR 09–096**

On October 29, 2009, the Office of the Commissioner of Insurance submitted a proposed rule–making order to the Wisconsin Legislative Council Rules Clearinghouse.

**Analysis**

The proposed order creates section Ins 3.75, relating to continuation of group insurance policies.

**Agency Procedure for Promulgation**

A public hearing is required and is scheduled for December 8, 2009.

**Contact Information**

A copy of the proposed rule may be obtained from the Web site at: <http://oci.wi.gov/ocirules.htm> or by contacting Inger Williams, Public Information and Communications, Office of the Commissioner of Insurance, at (608) 264–8110.

For additional information, please contact Robert Luck at (608) 266–0082 or e–mail at [robert.luck@wisconsin.gov](mailto:robert.luck@wisconsin.gov) in the OCI Legal Unit.

**Insurance  
CR 09–097**

On October 29, 2009, the Office of the Commissioner of Insurance submitted a proposed rule–making order to the Wisconsin Legislative Council Rules Clearinghouse.

**Analysis**

The proposed order revises section Ins 6.77, relating to exempting commercial umbrella and commercial liability policies covering only hired and non–owned autos from having to offer or include uninsured and underinsured motorist coverage.

**Agency Procedure for Promulgation**

A public hearing is required and is scheduled for December 8, 2009.

**Contact Information**

A copy of the proposed rule may be obtained from the Web site at: <http://oci.wi.gov/ocirules.htm> or by contacting Inger Williams, Public Information and Communications, Office of the Commissioner of Insurance, at (608) 264–8110.

For additional information, please contact Robert Luck at (608) 266–0082 or e–mail at [robert.luck@wisconsin.gov](mailto:robert.luck@wisconsin.gov) in the OCI Legal Unit.

**Insurance  
CR 09–093**

On October 29, 2009, the Office of the Commissioner of Insurance submitted a proposed rule–making order to the Wisconsin Legislative Council Rules Clearinghouse.

**Analysis**

The proposed order creates Chapter Ins 57, relating to care management organizations and affecting small business.

**Agency Procedure for Promulgation**

A public hearing is required and is scheduled for December 3, 2009.

**Contact Information**

A copy of the proposed rule may be obtained from the Web site at: <http://oci.wi.gov/ocirules.htm> or by contacting Inger Williams, Public Information and Communications, Office of the Commissioner of Insurance, at (608) 264–8110.

For additional information, please contact Julie E. Walsh at (608) 264–8101 or e–mail at [julie.walsh@wisconsin.gov](mailto:julie.walsh@wisconsin.gov) in the OCI Legal Unit.

**Natural Resources**

*Environmental Protection — Air Pollution Control,  
Chs. NR 400—  
CR 09–088*

On October 23, 2009, the Department of Natural Resources submitted a proposed rule–making order to the Wisconsin Legislative Council Rules Clearinghouse.

**Analysis**

The proposed order revises Chapters NR 404, 438, and 484, relating to ambient air quality standards for ozone and lead and new reporting requirements for lead compounds.

**Agency Procedure for Promulgation**

A public hearing is required and is scheduled for December 1, 2009.

**Contact Information**

Robert B. Eckdale  
Bureau of Air Management  
(608) 266–2856  
[Robert.Eckdale@wisconsin.gov](mailto:Robert.Eckdale@wisconsin.gov)

**Pharmacy Examining Board  
CR 09–098**

On October 29, 2009, the Pharmacy Examining Board submitted a proposed rule–making order to the Wisconsin Legislative Council Rules Clearinghouse.

**Analysis**

The proposed order amends sections Phar 6.08, 7.12, and 8.12, relating to security systems, utilization reviews, and prescription orders transmitted by facsimile machines.

**Agency Procedure for Promulgation**

A public hearing is required and will be held on December 2, 2009.

**Contact Information**

Pamela Haack, Paralegal  
 Dept. of Regulation and Licensing  
 Division of Board Services  
 (608) 266–0495  
 Pamela.haack@wisconsin.gov

**Pharmacy Examining Board  
 CR 09–099**

On October 29, 2009, the Pharmacy Examining Board submitted a proposed rule–making order to the Wisconsin Legislative Council Rules Clearinghouse.

**Analysis**

The proposed order creates section Phar 7.095, relating to remote dispensing sites.

**Agency Procedure for Promulgation**

A public hearing is required and will be held on December 2, 2009.

**Contact Information**

Pamela Haack, Paralegal  
 Dept. of Regulation and Licensing  
 Division of Board Services  
 (608) 266–0495  
 Pamela.haack@wisconsin.gov

**Public Service Commission  
 CR 09–086**

On October 22, 2009, the Public Service Commission submitted a proposed rule–making order to the Wisconsin Legislative Council Rules Clearinghouse.

**Analysis**

The proposed order creates Chapter PSC 172, relating to the police and fire protection fee created under 2009 Wisconsin Act 28.

**Agency Procedure for Promulgation**

A public hearing will be held on December 2, 2009. The Telecommunications Division of the Commission is the organizational unit responsible for the promulgation of the rule.

**Contact Information**

Dennis Klaila  
 Docket Coordinator  
 (608) 267–9780

**Revenue  
 CR 09–087**

On October 22, 2009, the Department of Revenue submitted a proposed rule–making order to the Wisconsin Legislative Council Rules Clearinghouse.

**Analysis**

The proposed order creates sections Tax 2.85 and 11.90, relating to changes in Wisconsin’s tax laws due to the adoption of penalties for failure to produce records. It also

provides guidance to Department employees and taxpayers so that the penalties can be administered in a fair and consistent manner. This includes providing a standard response time, a standard for noncompliance, and penalty waiver provisions.

**Agency Procedure for Promulgation**

A public hearing is required and will be scheduled. The Office of the Secretary is primarily responsible for the promulgation of the proposed rule.

**Contact Information**

Dale Kleven  
 Income, Sales and Excise Tax Division  
 (608) 266–8253  
 dale.kleven@revenue.wi.gov

**Revenue  
 CR 09–090**

On October 28, 2009, the Department of Revenue submitted a proposed rule–making order to the Wisconsin Legislative Council Rules Clearinghouse.

**Analysis**

The proposed order revises Chapter Tax 11, relating to sales and use tax.

**Agency Procedure for Promulgation**

A public hearing is required. Two hearings have been scheduled; the first for December 1, 2009, and the second for December 15, 2009. The Office of the Secretary is primarily responsible for the promulgation of the proposed rule.

**Contact Information**

Dale Kleven  
 Income, Sales and Excise Tax Division  
 (608) 266–8253  
 dale.kleven@revenue.wi.gov

**Veterans Affairs  
 CR 09–091**

On October 29, 2009, the Department of Veterans Affairs submitted a proposed rule–making order to the Wisconsin Legislative Council Rules Clearinghouse.

**Analysis**

The proposed order revises section VA 2.01, relating to the assistance to needy veterans grant program.

The creation of VA 2.01 (1) (u) and VA 2.01 (1) (v) will establish a definition for the vision care assistance available under this program. The creation of VA 2.01 (3) (d), VA 2.01 (3) (e), VA 2.01 (3) (f), and VA 2.01 (3) (g) will establish program limitations for the aid offered through the program. The program is intended to provide health care assistance to those veterans who are not eligible for the federal assistance offered to veterans. The current program rules do not provide program limitations or direction for health care professionals in providing necessary services to eligible veterans. The creation of a definition for "vision care" and the creation of specific program limitations will allow veterans to receive a reasonable modicum of the benefits available to those veterans eligible for federal assistance. All care offered through the program will have monetary and frequency limitations imposed upon the available services

**Agency Procedure for Promulgation**

A public hearing is required and will be scheduled at a later time. The Office of the Secretary is primarily responsible for the promulgation of the proposed rule.

**Contact Information**

James A. Stewart  
Chief Legal Counsel  
30 W. Mifflin Street — P.O. Box 7843  
Madison, WI 53707–7843  
Telephone: (608) 266–3733  
e–mail: jimmy.stewart@dva.state.wi.us

**Veterans Affairs  
CR 09–092**

On October 29, 2009, the Department of Veterans Affairs submitted a proposed rule–making order to the Wisconsin Legislative Council Rules Clearinghouse.

**Analysis**

The proposed order revises section VA 1.11, relating to the duties and powers of the Secretary.

The amendment of s. VA 1.11 (1) (a) will limit employment, after January 1, 2011, in the positions of commandant or administrator, division of homes to individuals who are licensed as skilled nursing home administrators by the State of Wisconsin or who obtain such licensure within 90 days of initiating employment in the position. The department believes that this requirement will provide better management and more accountability for the skilled nursing facilities. The repeal of VA 1.11 (8) will realign the direction of the commandants from direct supervision by the Secretary to direct supervision by the Administrator, Division of Homes.

**Agency Procedure for Promulgation**

A public hearing is required and will be scheduled at a later time. The Office of the Secretary is primarily responsible for the promulgation of the proposed rule.

**Contact Information**

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Chief Legal Counsel  
30 W. Mifflin Street — P.O. Box 7843  
Madison, WI 53707–7843  
Telephone: (608) 266–3733  
e–mail: jimmy.stewart@dva.state.wi.us

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## Rule–Making Notices

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### Notice of Hearing Accounting Examining Board

CR 09–100

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Accounting Examining Board in ss. 15.08 (5) (b), 227.11 (2) and 442.01, Stats, the Accounting Examining Board will hold a public hearing at the time and place indicated below to consider an order to renumber and amend section Accy 8.04 (intro.), (1), (2) and (3); and to create sections Accy 7.05 (1) (c) and 8.05, relating to granting certificates to applicants pursuant to an international mutual recognition agreement.

#### Hearing Information

**Date:** December 10, 2009  
**Time:** 9:30 a.m.  
**Location:** 1400 East Washington Avenue  
 Room 121A  
 Madison, Wisconsin

#### Appearances at the Hearing and Submission of Written Comments

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but are urged to submit facts, opinions and argument in writing as well. Facts, opinions and argument may also be submitted in writing without a personal appearance by mail addressed to Pamela Haack, Paralegal, Department of Regulation and Licensing, 1400 East Washington Avenue, Room 152, P.O. Box 8935, Madison, Wisconsin 53708–8935, or by email to [pamela.haack@wisconsin.gov](mailto:pamela.haack@wisconsin.gov). Written comments must be received by December 18, 2009, to be included in the record of rule–making proceedings.

#### Copies of Proposed Rule

Copies of this proposed rule are available upon request to Pamela Haack, Paralegal, Department of Regulation and Licensing, Division of Board Services, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708, or by email at [pamela.haack@wisconsin.gov](mailto:pamela.haack@wisconsin.gov).

#### Analysis Prepared by the Department of Regulation and Licensing

##### *Statutes interpreted*

Section 442.05, Stats.

##### *Statutory authority*

Sections 15.08 (5) (b), 227.11 and 442.01, Stats.

##### *Explanation of agency authority*

The Accounting Examining Board is granted the authority to promulgate rules to grant certificates to applicants who are certified to practice under the laws of a foreign country.

##### *Related statute or rule*

There are no other statutes or rules other than those listed above.

#### *Plain language analysis*

This proposed rule–making order would enable the board to grant certified public accountant certificates and licenses to applicants who are certified to practice by a foreign credentialing authority that is a signatory to the International Mutual Recognition Agreement (MRA) that has been entered into by the National Association of State Boards of Accountancy (NASBA) and the American Institute of Certified Public Accountants (AICPA).

SECTION 1 creates a provision that enables the board to grant a certificate to an applicant who meets the requirements under newly created s. Accy 8.05. Current rules allow candidates holding certifications from foreign countries to be granted a certificate by the Accounting Examining Board if they meet specified criteria.

SECTION 2 renumbers and amends existing provisions to make clear that certification through the MRA is an additional and separate route to certification for foreign candidates.

SECTION 3 creates a route to licensure for accountants who hold a credential from a foreign credentialing authority that is a signatory to the MRA. A foreign credentialing authority may not be a signatory to the MRA until the International Qualifications Appraisal Board (IQAB) has found that the requirements to obtain the foreign credential are substantially equivalent to the requirements used in the United States. The IQAB is jointly created by the NASBA and the AICPA. The MRA is currently being used by other states and a number of foreign credentialing authorities.

An applicant who has a credential from an authority that is a current signatory to the MRA must still meet other qualifications to receive a credential from this state. The applicant's credential must be in good standing and the applicant must pass the state professional ethics examination. The state examination covers state laws and professional standards of conduct. The applicant must have successfully completed the International Qualification Examination (IQEX). The IQEX is an examination prepared by the AICPA to test the applicant's knowledge of the differences between the accounting standards used in the United States and the accounting standards used in other countries. The IQEX covers ethics, professional and legal responsibilities, business law, uniform commercial code, federal taxation and accounting issues, business structure, accounting and reporting for governmental and not–for–profit organizations, and recent regulatory issues.

#### *Comparison with federal regulations*

This is not an area which is regulated by federal law or subject to any proposed federal legislation. The standards for state licensure are regulated by each state.

#### *Comparison with rules in adjacent states*

##### *Illinois:*

Educational standards for foreign applicants must be substantially equivalent to those in effect in the state and the applicant must have a license in the foreign country. [www.idfpr.com](http://www.idfpr.com)

*Iowa:*

Specific educational requirements must be met or other requirements which the board determines are substantially equivalent.

[www.state.ia.us/government/com/prof/account/home.html](http://www.state.ia.us/government/com/prof/account/home.html)

*Michigan:*

Educational qualifications must be earned at an institution accredited by the North Central Association of Colleges and Schools or other equivalent education.

[www.michigan.gov/dleg](http://www.michigan.gov/dleg)

*Minnesota:*

Educational qualifications must be earned at an institution accredited by an accrediting agency listed with the United States Department of Education or approved by the board.

[www.boa.state.mn.us](http://www.boa.state.mn.us)

**Summary of factual data and analytical methodologies**

As outlined above, current rules allow candidates holding certifications from foreign countries to be granted a certificate by the Accounting Examining Board if they meet specified criteria. Rule changes to ch. Accy 7 relating to certified public accountant education requirements and ch. Accy 8 relating to endorsement qualifications, will serve to clarify an additional and separate route to certification for foreign candidates.

**Analysis and supporting documents used to determine effect on small business**

This rule change will not affect or impact adversely small businesses.

Section 227.137, Stats., requires an “agency” to prepare an economic impact report before submitting the proposed rule–making order to the Wisconsin Legislative Council. The Department of Regulation and Licensing is not included as an “agency” in this section.

**Anticipated costs incurred by the private sector**

The department finds that this rule has no significant fiscal effect on the private sector.

**Small Business Impact**

These proposed rules were reviewed and discussed by the department’s Small Business Review Advisory Committee which determined that the rules will have no significant economic impact on a substantial number of small businesses, as defined in s. 227.114 (1), Stats. The Department’s Regulatory Review Coordinator may be contacted by email at [hector.colon@wisconsin.gov](mailto:hector.colon@wisconsin.gov), or by calling 608–266–8608.

**Fiscal Estimate**

The department estimates that this rule will require staff time in the Division of Professional Credentialing and the Division of Management Services. The total one–time salary and fringe costs are estimated at \$2,865.

**Agency Contact Person**

Pamela Haack, Paralegal, Department of Regulation and Licensing, 1400 East Washington Avenue, Room 152, P.O. Box 8935, Madison, Wisconsin 53708; telephone 608–266–0495; email at [pamela.haack@wisconsin.gov](mailto:pamela.haack@wisconsin.gov).

**Notice of Hearing****Insurance****EmR0918 — CR 09–097**

NOTICE IS HEREBY GIVEN that pursuant to the authority granted under s. 601.41 (3), Stats., and the procedures set forth under s. 227.18, Stats., the Office of the Commissioner of Insurance (OCI) will hold a public hearing to consider emergency rules and the adoption of proposed permanent rules revising section Ins 6.77, Wis. Adm. Code, relating to exempting commercial general liability policies from offering uninsured and underinsured motorist coverage.

**Hearing Information**

**Date:** December 8, 2009

**Time:** 10:00 a.m., or as soon thereafter as the matter may be reached

**Place:** OCI, Room 227  
125 South Webster Street, 2<sup>nd</sup> Floor  
Madison, WI

**Submission of Written Comments**

Written comments can be mailed to:

Robert Luck  
Legal Unit – OCI Rule Comment for Rule Ins 677  
Office of the Commissioner of Insurance  
PO Box 7873  
Madison WI 53707–7873

Written comments can be hand delivered to:

Robert Luck  
Legal Unit – OCI Rule Comment for Rule Ins 677  
Office of the Commissioner of Insurance  
125 South Webster St – 2<sup>nd</sup> Floor  
Madison WI 53703–3474

Comments can be emailed to:

Robert Luck  
[robert.luck@wisconsin.gov](mailto:robert.luck@wisconsin.gov)

Web site: <http://oci.wi.gov/ocirules.htm>

Comments submitted through the Wisconsin Admin. Rule Web site at: <http://adminrules.wisconsin.gov> on the proposed rule will be considered.

The deadline for submitting comments is 4:00 p.m. on the 14<sup>th</sup> day after the date for the hearing stated in this Notice of Hearing.

**Copy of Proposed Rule and Contact Person**

A copy of the full text of the proposed rule changes, analysis and fiscal estimate may be obtained from the OCI internet Web site at <http://oci.wi.gov/ocirules.htm> or by contacting Inger Williams, OCI Services Section, at:

Phone: (608) 264–8110  
Email: [inger.williams@wisconsin.gov](mailto:inger.williams@wisconsin.gov)  
Address: 125 South Webster St – 2<sup>nd</sup> Floor,  
Madison WI 53703–3474  
Mail: PO Box 7873, Madison, WI 53707–7873

**Analysis Prepared by the Office of the Commissioner of Insurance (OCI)****Statutes interpreted**

Sections 600.01, 628.34 (12) and 632.32, Stats.

**Statutory authority**

Sections 601.41 (3), 601.42, 628.34 (12) and 631.01 (5), Stats.

**Explanation of agency authority**

Section 631.05, Stats, allows the Commissioner to “exempt any class of insurance contract or insurer from any or all of the provisions of this chapter and ch. 632 if the interests of Wisconsin insureds or creditors or of the public of this state do not require such regulation.” These types of policies have never offered UM/UIM or MedPay coverage and thus this would continue the status quo. The exemption is required so that the market for commercial liability insurance and commercial umbrella policies is not disrupted. The commissioner has previously exercised this authority in adopting and amending Ins 6.77, Wis. Admin. Code.

**Related statutes or rules**

Section Ins 6.77, Wis. Adm. Code

**Plain language analysis and summary of the proposed rule**

This rule would exempt commercial liability insurance and commercial umbrella policies which cover only HNO from the requirement to offer or include UM/UIM coverages. This would continue the current regulatory requirements for these policies.

**Comparison with federal regulations**

None

**Comparison of similar rules in adjacent states****Illinois:**

215 ILCS 5/143a In *Hartbarger v. Country Mut. Ins. Co.*, 107 Ill. App. 3d 391, it was found that this section was enacted to insure a minimum amount of uninsured motorist protection, but did not give the authority to rewrite unambiguous provisions of an umbrella policy in order to expand the maximum coverage afforded plaintiff.

**Iowa:**

Iowa Code § 321A.21 Primary insurance is purchased to be the first tier of insurance coverage while an umbrella policy is intended to cover only catastrophic losses that exceed the insured’s required primary insurance limit. “Umbrella” policies are not included under Iowa Code § 321A.21, the financial responsibility statute. *Jalas v. State Farm Fire & Cas. Co.*, 505 N.W.2d 811, 1993 Iowa Sup. LEXIS 211 (Iowa 1993).

**Michigan:**

Michigan is a no–fault state and thus is not comparable to Wisconsin.

**Minnesota:**

Minnesota is a no–fault state and thus is not comparable to Wisconsin.

**Summary of factual data and analytical methodologies**

The rule continues the status quo.

**Analysis and supporting documentation used to determine effect on small businesses**

The change will continue the existing practice used by insurers issuing commercial umbrella and commercial liability policies covering only HNO. As such, it will have no impact. Small businesses may not be able to obtain general

liability insurance or be required on short notice to have to find another carrier for their business insurance.

**Small Business Impact**

This rule will have little or no effect on small businesses. The lack of this change would likely disrupt small business insurance and thus their operation.

**Small business regulatory coordinator**

The OCI small business coordinator is Eileen Mallow and may be reached at phone number (608) 266–7843 or at email address [eileen.mallow@wisconsin.gov](mailto:eileen.mallow@wisconsin.gov)

**Fiscal Estimate****Summary**

This rule will continue the status quo and thus would not affect any revenues or expenses of OCI.

**Private sector fiscal impact**

This rule change will have no significant effect on the private sector regulated by OCI and will continue the status quo regarding insurers and small businesses.

**State or local government fiscal impact**

There will be no state or local government fiscal effect.

**Long–range fiscal implications**

None.

**Notice of Hearing****Insurance****EmR0923 — CR 09–094**

NOTICE IS HEREBY GIVEN that pursuant to the authority granted under s. 601.41 (3), Stats., and the procedures set forth under ss. 227.18 and 227.24 (4), Stats., the Office of the Commissioner of Insurance (OCI) will hold a public hearing to consider emergency rules and proposed permanent rules creating section Ins 3.36, Wis. Adm. Code, relating to autism spectrum disorders treatment and affecting small business.

**Hearing Information**

**Date:** December 2, 2009  
**Time:** 2:00 p.m., or as soon thereafter as the matter may be reached  
**Place:** OCI, Room 227  
 125 South Webster Street, 2<sup>nd</sup> Floor  
 Madison, WI

**Submission of Written Comments**

Written comments can be mailed to:

Julie E. Walsh  
 Legal Unit – OCI Rule Comment for Rule Ins 336  
 Office of the Commissioner of Insurance  
 PO Box 7873  
 Madison WI 53707–7873

Written comments can be hand delivered to:

Julie E. Walsh  
 Legal Unit – OCI Rule Comment for Rule Ins 336  
 Office of the Commissioner of Insurance  
 125 South Webster St – 2<sup>nd</sup> Floor  
 Madison WI 53703–3474

Comments can be emailed to:

Julie E. Walsh  
julie.walsh@wisconsin.gov

Web site: <http://oci.wi.gov/ocirules.htm>

Comments submitted through the Wisconsin Admin. Rule Web site at: <http://adminrules.wisconsin.gov> on the proposed rule will be considered.

The deadline for submitting comments is 4:00 p.m. on the 14<sup>th</sup> day after the date for the hearing stated in this Notice of Hearing.

### **Copy of Proposed Rule and Contact Person**

A copy of the full text of the proposed rule changes, analysis and fiscal estimate may be obtained from the OCI internet Web site at <http://oci.wi.gov/ocirules.htm> or by contacting Inger Williams, OCI Services Section, at:

Phone: (608) 264–8110  
Email: [inger.williams@wisconsin.gov](mailto:inger.williams@wisconsin.gov)  
Address: 125 South Webster St – 2<sup>nd</sup> Floor,  
Madison WI 53703–3474  
Mail: PO Box 7873, Madison, WI 53707–7873

### **Analysis Prepared by the Office of the Commissioner of Insurance (OCI)**

#### ***Statutes interpreted***

Sections 600.01, 628.34 (12), 632.895 (12m), Stats.

#### ***Statutory authority***

Sections 600.01 (2), 601.41 (3), 601.42, 628.34 (12), 632.895 (12m), Stats.

#### ***Explanation of agency authority***

The statutes all relate to the commissioner’s authority to promulgate rules regulating the business of insurance as it relates to disability insurance products. Specifically, s. 632.895 (12m) (f), Wis. Stats., requires the commissioner to define “intensive–level services,” “nonintensive–level services,” “paraprofessional,” and “qualified” for purposes of providing services under this subsection. The statute further authorizes that the commissioner may promulgate rules governing the interpretation or administration of this subsection.

#### ***Related statutes or rules***

There are no other statutes or rules that mandate services for autism spectrum disorders. This rule creates a new section to implement the newly created mandate pursuant to 2009 Wis. Act 28.

#### ***Plain language analysis and summary of the proposed rule***

Under 2009 Wisconsin Act 28, the Commissioner is required pursuant to s. 632.895 (12m), Stats., to define four terms: intensive level services, non–intensive level services, qualified, and paraprofessionals; and may draft rules that relate to the interpretation or administration of section.

To ensure clear understanding of current provider qualifications and treatment options for autism spectrum disorders the Commissioner established the Autism Working Group. The work group was charged with advising the Commissioner on definitions for the four required terms and making recommendations on how the statute should be implemented. The group was composed of parents, providers, insurers, and advocates. Administrators of the Waiver program at the Department of Health services also

participated. The group met every other week beginning June 23<sup>rd</sup>, 2009 until September 10<sup>th</sup>, 2009

The Waiver program was used as a baseline to discuss the implementation of the new mandate. Current literature on autism spectrum disorders and information from other states was presented to the working for review and consideration. Because the research and literature in the realm of autism treatments is rapidly evolving, the working group recommended defining “evidence–based” and “behavioral” rather than creating a list of approved therapies that could readily become outdated.

The proposed rule includes definitions of intensive level behavioral therapy and non–intensive level therapy. Based upon current research, the rule limits intensive level services to children aged 2 to 9 as this period of time has shown to be the optimum time for gains for individuals diagnosed with autism spectrum disorders. Building from the waiver program, the working group developed a comprehensive regulation.

The proposed rule contains criteria necessary for one to be considered qualified provider, qualified professional, qualified therapist and qualified paraprofessional. The criteria include a combination of educational, professional and specific training with individuals diagnosed with autism spectrum disorders and for qualified paraprofessionals specific requirements for supervised implementation of a treatment plan for the insured. The rule includes provisions to permit individuals who are currently providing services through the department’s waiver program to be deemed qualified for up to two years and permit insurers and self–funded plans to contract with these individuals who are experienced but may not met the “qualified” requirements.

The rule also handles several administrative concerns. It allows insurers to deny claims they believe to be fraudulent, exclude travel time from the required hours of treatment and allocated dollars for treatment and permits dispute resolution through independent review organizations.

#### ***Comparison with federal regulations***

Autism Treatment Acceleration Act of 2009 (S. 819, H.R. 2413) was proposed in May. If passed, Section 12 will require all insurance companies across the country to provide coverage for evidence–based, medically–necessary autism treatments and therapies. If passed a comparison of final federal requirements and state law and regulation will need to be reviewed.

Additionally, the “Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008” (29 U.S.C. 1185a), requires for group health plans that offer both medical and surgical benefits and mental health or substance use disorder benefits to ensure financial and treatment limitations are no more restrictive than the predominant financial requirements applied to substantially all medical and surgical benefits covered by the plan. Further the federal law does not permit separate cost sharing requirements that are applicable only with respect to mental health or substance use disorder benefits. Federal guidance is due early 2010 on the Mental Health Equity Act of 2008. Wisconsin’s law is broader than the federal act but will need to be reviewed when the federal regulations are finally promulgated and effective.

#### ***Comparison of similar rules in adjacent states***

##### ***Illinois:***

Public Act 95–1005 requires private insurers cover autism benefits for children under 21 years of age. No rule–making

accompanied this law, however, the statute does include Applied Behavioral Analysis, intervention, and modification as a part of the covered behavioral treatments. The law is subject to pre-existing condition limitations. It is also subject to denials based on medical necessity.

*Iowa:*

A bill, SF 1 was introduced in the Iowa legislature this year but did not pass. There are no other similar laws or rules in Iowa.

*Michigan:*

Two bills – HB 4183 and 4176 – requiring autism coverage, have passed the Michigan House; however, they are not expected to reach a vote this year. There are no other similar laws or rules in Michigan.

*Minnesota:*

Section 62A.3094 was enacted and became effective August 1, 2009. The mandate requires coverage for the diagnosis, evaluation, assessment and medically necessary care for autism spectrum disorders including intensive behavior therapy, behavior services, speech therapy, occupational therapy, physical therapy and medications.

***Summary of factual data and analytical methodologies***

The Commissioner created an advisory Autism Working Group to assist in the development of workable definitions of “intensive” and “nonintensive” level services; “qualified” providers and “paraprofessionals.” The advisory working group was comprised of providers, insurers, advocates, parents of autistic children and representatives from the Department of Health Services familiar with the Medicaid waiver program for autism services. The working group met seven times between June 23 and September 10, 2009. This proposed rule reflects the advisory working group’s recommendations.

***Analysis and supporting documentation used to determine effect on small businesses***

There are no insurers offering disability insurance or state or local governmental self-funded entities that meet the definition of a small business.

**Small Business Impact**

The rule will have little or no effect on small businesses.

***Small business regulatory coordinator***

The OCI small business coordinator is Eileen Mallow and may be reached at phone number (608) 266–7843 or at email address [eileen.mallow@wisconsin.gov](mailto:eileen.mallow@wisconsin.gov)

**Fiscal Estimate**

***Private sector fiscal impact***

This rule change will have no significant effect on the private sector regulated by OCI.

***State or local government fiscal impact***

None.

***Long-range fiscal implications***

None.

**Notice of Hearing**

**Insurance**

**EmR0925 — CR 09–096**

NOTICE IS HEREBY GIVEN that pursuant to the authority granted under s. 601.41 (3), Stats., and the procedures set forth under s. 227.18, Stats., the Office of the Commissioner of Insurance (OCI) will hold a public hearing to consider emergency rules and the adoption of proposed permanent rules creating section Ins 3.75, Wis. Adm. Code, relating to continuation of group insurance policies.

**Hearing Information**

**Date:** December 8, 2009

**Time:** 10:30 a.m., or as soon thereafter as the matter may be reached

**Place:** OCI, Room 227  
125 South Webster Street, 2<sup>nd</sup> Floor  
Madison, WI

Written comments can be mailed to:

Robert Luck  
Legal Unit – OCI Rule Comment for Rule Ins 375  
Office of the Commissioner of Insurance  
PO Box 7873  
Madison WI 53707–7873

Written comments can be hand delivered to:

Robert Luck  
Legal Unit – OCI Rule Comment for Rule Ins 375  
Office of the Commissioner of Insurance  
125 South Webster St – 2<sup>nd</sup> Floor  
Madison WI 53703–3474

Comments can be emailed to:

Robert Luck  
[robert.luck@wisconsin.gov](mailto:robert.luck@wisconsin.gov)

Web site: <http://oci.wi.gov/ocirules.htm>

Comments submitted through the Wisconsin Admin. Rule Web site at: <http://adminrules.wisconsin.gov> on the proposed rule will be considered.

The deadline for submitting comments is 4:00 p.m. on the 14<sup>th</sup> day after the date for the hearing stated in this Notice of Hearing.

**Copy of Proposed Rule and Contact Person**

A copy of the full text of the proposed rule changes, analysis and fiscal estimate may be obtained from the OCI internet Web site at <http://oci.wi.gov/ocirules.htm> or by contacting Inger Williams, OCI Services Section, at:

Phone: (608) 264–8110  
Email: [inger.williams@wisconsin.gov](mailto:inger.williams@wisconsin.gov)  
Address: 125 South Webster St – 2<sup>nd</sup> Floor,  
Madison WI 53703–3474  
Mail: PO Box 7873, Madison, WI 53707–7873

**Analysis Prepared by the Office of the Commissioner of Insurance (OCI)**

***Statutes interpreted***

Sections 600.01 and 628.34 (12), Stats.

***Statutory authority***

Sections 601.41 (3), 601.42, 632.897, Stats., s. 9126 of 2009 Wisconsin Act 11 and the American Recovery and Reinvestment Act of 2009, P.L. 111–5.

**Explanation of agency authority**

2009 Act 11 specifically permits the commissioner to enact this rule.

**Related statutes or rules**

Sections 632.746 and 632.897, Stats.

**Plain language analysis and summary of the proposed rule**

The United States Department of the Treasury, Internal Revenue Service published an interpretation of the American Recovery and Reinvestment Act of 2009 that provided a continuation election opportunity for covered employees including former employees when an employer discontinues a group health plan. The proposed rule will consider continuation coverage election options for employees that meet the requirements of s. 632.897, Stat., or s. 9126 of 2009 Wisconsin Act 11 whose employer or former employer discontinues the group health insurance policy. The proposed rule will consider election and eligibility criteria for continuation of coverage through a group policy.

**Comparison with federal regulations**

The United States Department of the Treasury, Internal Revenue Service published in a frequently asked question and answer format the question of continuation rights for employees and their dependents when employers discontinue a group policy and determined that eligible employees would be able to elect continuation coverage that may be eligible for premium subsidy under the American Recovery and Reinvestment Act of 2009. There is no current state rule or policy on this specific issue.

**Comparison of similar rules in adjacent states****Illinois:**

None.

**Iowa:**

None.

**Michigan:**

None.

**Minnesota:**

None.

**Summary of factual data and analytical methodologies**

This proposed rule would enact for Wisconsin insureds the ability to elect continuation of coverage when an employer discontinues group health insurance consistent with the Internal Revenue Service's interpretation of the American Recovery and Reinvestment Act of 2009.

**Analysis and supporting documentation used to determine effect on small businesses**

The rule imposes no substantial requirements on small employers but would allow discontinued employees of small employer who have group insurance the ability to elect continuation of health insurance coverage.

**Small Business Impact**

This rule does not impose any additional requirements on small businesses and will have little or no negative effect on them.

**Small business regulatory coordinator**

The OCI small business coordinator is Eileen Mallow and may be reached at phone number (608) 266–7843 or at email address [eileen.mallow@wisconsin.gov](mailto:eileen.mallow@wisconsin.gov)

**Fiscal Estimate****Private sector fiscal impact**

This rule change will have no significant negative effect on the private sector regulated by OCI but will allow numerous people to continue group health insurance that would not be able to without this change.

**State or local government fiscal impact**

There will be no state or local government fiscal effect.

**Long–range fiscal implications**

None.

**Notice of Hearing****Insurance****EmR0927 — CR 09–093**

NOTICE IS HEREBY GIVEN that pursuant to the authority granted under s. 601.41 (3), Stats., and the procedures set forth under s. 227.18, Stats., the Office of the Commissioner of Insurance (OCI) will hold a public hearing to consider emergency rules and the adoption of proposed permanent rules creating Chapter Ins 57, Wis. Adm. Code, relating to care management organizations and affecting small business.

**Hearing Information**

**Date:** December 3, 2009

**Time:** 10:00 a.m., or as soon thereafter as the matter may be reached

**Place:** OCI, Room 227  
125 South Webster Street, 2<sup>nd</sup> Floor  
Madison, WI

**Submission of Written Comments**

Written comments can be mailed to:

Julie E. Walsh  
Legal Unit – OCI Rule Comment for Rule Ins 57  
Office of the Commissioner of Insurance  
PO Box 7873  
Madison WI 53707–7873

Written comments can be hand delivered to:

Julie E. Walsh  
Legal Unit – OCI Rule Comment for Rule Ins 57  
Office of the Commissioner of Insurance  
125 South Webster St – 2<sup>nd</sup> Floor  
Madison WI 53703–3474

Comments can be emailed to:

Julie E. Walsh  
[julie.walsh@wisconsin.gov](mailto:julie.walsh@wisconsin.gov)

Web site: <http://oci.wi.gov/ocirules.htm>

Comments submitted through the Wisconsin Admin. Rule Web site at: <http://adminrules.wisconsin.gov> on the proposed rule will be considered.

The deadline for submitting comments is 4:00 p.m. on the 14<sup>th</sup> day after the date for the hearing stated in this Notice of Hearing.

**Copy of Proposed Rule and Contact Person**

A copy of the full text of the proposed rule changes, analysis and fiscal estimate may be obtained from the OCI internet Web site at <http://oci.wi.gov/ocirules.htm> or by contacting Inger Williams, OCI Services Section, at:

Phone: (608) 264–8110  
 Email: inger.williams@wisconsin.gov  
 Address: 125 South Webster St – 2<sup>nd</sup> Floor,  
 Madison WI 53703–3474  
 Mail: PO Box 7873, Madison, WI 53707–7873

### **Analysis Prepared by the Office of the Commissioner of Insurance (OCI)**

#### ***Statutes interpreted***

Sections 600.01, 628.34 (12), ch. 648, Stats.

#### ***Statutory authority***

Sections 600.01 (2), 601.41 (3), 601.42, 628.34 (12), 648.10 (1), Stats.

#### ***Explanation of agency authority***

2009 Wisconsin Act 28 created chapter 648, Wis. Stat., establishing the regulation of care management organizations. The statute specifically authorizes the commissioner to promulgate rules that are necessary to carry out the intent of the statute with consultation with the department. These proposed rules are the result of numerous discussions with the department and incorporate effective regulatory tools modified appropriately for care management organizations.

#### ***Related statutes or rules***

The proposed rule is consistent with and related to existing financial regulations including, chs. Ins 9, 40 and 50, Wis. Adm. Code.

#### ***Plain language analysis and summary of the proposed rule***

Ch. 648, Wis. Stats., was created to establish financial regulation of care management organizations that provide and coordinate services for the Family Care program. Family Care is a Wisconsin Medicaid program that was designed to provide cost–effective, comprehensive and flexible long–term care that fosters consumers’ independence and quality of life, while recognizing the need for interdependence and support. Family Care improves the cost–effective coordination of long–term care services by creating a single flexible benefit that includes a large number of health and long–term care services that are typically only available separately. Enrollees have access to specific health care services offered by Medicaid as well as long–term care services in the Home and Community–Based Waivers and the state–funded Community Options Program.

Family Care is a public program operated by the Wisconsin Department of Health Services (“Department”), that contracts with both private and public plans to provide consumers an option for coverage of long–term care services beyond fee–for–service and the self–directed supports waiver. The care management organizations receive a fixed capitated amount per enrollee from the Department through the waiver programs. However, due to the nature of the organizations and the structure of the plan, care management organizations, unlike insurers, may be less able to build and draw upon reserves both during the expansion periods and due to the potential for unforeseen expenditures.

The proposed rule implements ch. 648, Stats., financial regulatory oversight of the care management organizations in coordination with the Department to ensure the organizations use sound financial tools when commencing operations and

ongoing oversight of the financial condition of the organizations. Specifically the proposed rule establishes minimum financial standards, financial reporting requirements, regulatory examinations and restricted reserves for care management organizations in the event of an insolvency.

#### ***Comparison with federal regulations***

There is no existing or proposed federal regulation related to oversight of care management organizations.

#### ***Comparison of similar rules in adjacent states***

##### *Illinois:*

None.

##### *Iowa:*

None.

##### *Michigan:*

None.

##### *Minnesota:*

None.

#### ***Summary of factual data and analytical methodologies***

The Office engaged along with the Department of Health Services engaged PricewaterhouseCoopers to analyze the necessary reserves and regulatory structure for the Family Care program. In addition the office reviewed care management organizations’ financial information, coordinated the proposed regulatory scheme with current oversight provided by the Department and reviewed accounting principles best suited for care management organizations

#### ***Analysis and supporting documentation used to determine effect on small businesses***

The Office worked with the Department of Health Services to determine the rule’s effect on small businesses that are care management organizations.

#### ***Small Business Impact***

This rule will have minimal to no effect on small businesses that are care management organizations. This rule may effect small businesses that are care management organizations seeking a permit from the commissioner. The office worked closely with the Department to minimize the impact on the care management organizations and will share information between departments so not to overly burden care management organizations

#### ***Small business regulatory coordinator***

The OCI small business coordinator is Eileen Mallow and may be reached at phone number (608) 266–7843 or at email address [eileen.mallow@wisconsin.gov](mailto:eileen.mallow@wisconsin.gov)

#### ***Fiscal Estimate***

##### ***Private sector fiscal impact***

This rule change will have no significant effect on the private sector regulated by OCI.

##### ***State or local government fiscal impact***

There will be no state or local government fiscal effect.

##### ***Long–range fiscal implications***

None.

## Notice of Hearing

### Insurance

#### EmR0930 — CR 09–095

NOTICE IS HEREBY GIVEN that pursuant to the authority granted under s. 601.41 (3), Stats., and the procedures set forth under s. 227.18, Stats., subject to the Commissioner’s approval of the Statement of Scope, the Office of the Commissioner of Insurance (OCI) will hold a public hearing to consider emergency rules and adoption of proposed permanent rules creating section Ins 3.34, Wis. Adm. Code, relating to coverage of dependents to age 27 and affecting small business.

#### Hearing Information

**Date:** December 9, 2009  
**Time:** 1:00 p.m., or as soon thereafter as the matter may be reached  
**Place:** OCI, Room 227  
 125 South Webster Street, 2<sup>nd</sup> Floor  
 Madison, WI

#### Submission of Written Comments

Written comments can be mailed to:

Julie E. Walsh  
 Legal Unit – OCI Rule Comment for Rule Ins 334  
 Office of the Commissioner of Insurance  
 PO Box 7873  
 Madison WI 53707–7873

Written comments can be hand delivered to:

Julie E. Walsh  
 Legal Unit – OCI Rule Comment for Rule Ins 334  
 Office of the Commissioner of Insurance  
 125 South Webster St – 2<sup>nd</sup> Floor  
 Madison WI 53703–3474

Comments can be emailed to:

Julie E. Walsh  
[julie.walsh@wisconsin.gov](mailto:julie.walsh@wisconsin.gov)

Web site: <http://oci.wi.gov/ocirules.htm>

Comments submitted through the Wisconsin Admin. Rule Web site at: <http://adminrules.wisconsin.gov> on the proposed rule will be considered.

The deadline for submitting comments is 4:00 p.m. on the 14<sup>th</sup> day after the date for the hearing stated in this Notice of Hearing.

#### Copy of Proposed Rule and Contact Person

A copy of the full text of the proposed rule changes, analysis and fiscal estimate may be obtained from the OCI internet Web site at <http://oci.wi.gov/ocirules.htm> or by contacting Inger Williams, OCI Services Section, at:

Phone: (608) 264–8110  
 Email: [inger.williams@wisconsin.gov](mailto:inger.williams@wisconsin.gov)  
 Address: 125 South Webster St – 2<sup>nd</sup> Floor,  
 Madison WI 53703–3474  
 Mail: PO Box 7873, Madison, WI 53707–7873

#### Analysis Prepared by the Office of the Commissioner of Insurance (OCI)

##### *Statutes interpreted*

Sections 600.01, 628.34 (12), 632.885, Stats.

##### *Statutory authority*

Sections 600.01 (2), 601.41 (3), 601.42, 628.34 (12), Stats.

##### *Explanation of agency authority*

The commissioner is authorized by s. 601.41, Stats., to propose rules in accordance with s. 227.11 (2), Stats., in order for the commissioner to administer and enforce the insurance statutes. Since passage of 2009 Wis. Act 28, the commissioner has been made aware of dramatic differences in interpretation and approaches to implementation that necessitate rule making.

##### *Related statutes or rules*

None.

##### *Plain language analysis and summary of the proposed rule*

The proposed rule interprets and implements the requirements of s. 632.885, Stats., by clarifying and defining eligibility criteria and providing guidance as to how insurers and self–insured health plans are to determine an adult child’s eligibility for coverage. The proposed rule clarifies that the mandate applies to individual and group health insurance, limited–scope health insurance including vision and dental plans as well as self–insured health plans. The rule also clarifies that this mandate does not apply to certain insurance products including long–term care and Medigap policies. Further, as described in the applicability provisions of 2009 Wis. Act 28, the rule states when the mandate first applies, including the initial applicability for collectively bargained health plans.

The proposed rule provides clarity through definitions of “premium contribution” and “premium amount.” The commissioner received the greatest volume of inquiries seeking guidance on how the premium comparison was to be conducted. The proposed rule simplifies and guides insurers and self–insured plans on exactly what is to be compared for this element of eligibility determination.

Guidance is provided regarding to whom an offer of coverage for an eligible adult child is to be given and reinforces the statutory provision that it is only the applicant or the insured who determines whether or not an eligible dependent is added to his or her health plan. The rule further informs insurers and self–insured plans on prohibited practices that would unduly restrict an otherwise eligible dependent from coverage contrary to the intent of the statute.

Specifically the rule provides specific guidance to insurers offering individual health insurance products as compared to insurers or self–insured health plans offering group health insurance coverage. Insurers offering individual health insurance may rate, may utilize pre–existing condition waiting periods and may apply elimination riders to an eligible adult child but may not impose such limitations as coverage would be rendered illusory. Insurers offering group health insurance or limited–scope insurance and self–insured health plans must comply with s. 632.746, Stat., with regards to pre–existing condition waiting periods and application of creditable coverage. The rule also requires insurers and self–insured health plans to treat an eligible adult child as a new entrant and provide annually at least a 30–day enrollment period.

Finally, the rule clarifies s. 632.885 (2) (a) 3. and (b) 3., Stats. An adult child is an eligible adult child when the child is between the ages of 17 and 27, is not married and who is not eligible for his or her employer sponsored coverage or whose employer does not offer health insurance to its employees. An adult child who has been called to federal active duty is an

eligible adult child when a full–time student, less than 27 years of age when called to active duty. The rule clarifies that the adult child will have up to 12 months after completing active duty to apply for full–time student status at an institution of higher education, and that if the adult child is called more than once in four years of the first call to active duty, insurers and self–insured health plans may only use the adult child’s age at the time of the first call to active duty when determining eligibility.

#### **Comparison with federal regulations**

There is no existing regulation directly related to this new mandate. The federal government, US House and Senate are currently debating health insurance reform and at this time the office is aware that some of the proposals will be revised to contain similar requirements for extending coverage to adult children, but none have passed as of this date.

#### **Comparison of similar rules in adjacent states**

##### *Illinois:*

215 ILCS 5/356z.12 provides parents with the option of keeping unmarried dependents on their health care insurance up to age 26. Parents with dependents who are veterans can keep dependents on the plans up to age 30. The veterans must be unmarried, must be Illinois residents, and must have received a discharge other than dishonorable. Veterans do not have to be enrolled as full–time students.

##### *Iowa:*

Iowa Code § 509.3 and Iowa Code § 514E.7 requires that health insurance providers continue to cover unmarried children under their parents’ coverage provided that the child: 1) is under the age of 25 and a current resident of Iowa, 2) is a full–time student, or 3) has a disability. Iowa Code § 509A.13.B, effective July 1, 2009, allows reenrollment of the same children in previously existing coverage under certain circumstances.

##### *Michigan:*

No comparable regulations found. Michigan Code § 500.3406g prohibits the denial of enrollment on certain grounds for plans offering dependent coverage, and § 500.3406h addresses the eligibility of parents for dependent coverage and the health coverage of children through noncustodial parents. § 500.2264 provides exception for the termination of dependent coverage at specified age if a child is incapable of self–support due to mental or physical disability.

##### *Minnesota:*

Minnesota Chapter 62E.02 Defines “dependent” as a spouse or unmarried child under age 25, or a dependent child of any age who is disabled.

##### *Ohio:*

(information only) Ohio Rev. Code § 1751.14, as amended by 2009 OH H 1 allows an unmarried, dependent child who is an Ohio resident or a full–time student to remain on parent’s insurance up to age 28, or without regard to age if they are incapable of self–sustaining employment due to disability.

#### **Summary of factual data and analytical methodologies**

The commissioner reviewed existing interpretation of terms used within the new mandate that are used in other areas of the statutes and administrative code for consistency. Further the commissioner considered the intent of the mandate and proposed rules that furthered that intent.

#### **Analysis and supporting documentation used to determine effect on small businesses**

Although there are some limited–scope health insurers that may meet the definition of a small business, the effect on the insurers will not be significant since insurers will be able to assess and collect premium for the inclusion of the eligible adult child or may apply limitations on coverage. Intermediaries, some of whom may meet the definition of a small business will need to become familiar with this regulation but will not significantly effect those persons.

#### **Small Business Impact**

This rule does not impose any additional requirements on small businesses and will have little or no effect on them.

#### **Small business regulatory coordinator**

The OCI small business coordinator is Eileen Mallow and may be reached at phone number (608) 266–7843 or at email address [eileen.mallow@wisconsin.gov](mailto:eileen.mallow@wisconsin.gov)

#### **Fiscal Estimate**

##### **Private sector fiscal impact**

This rule change will have no significant effect on the private sector regulated by OCI.

##### **State or local government fiscal impact**

There will be no state or local government fiscal effect.

##### **Long–range fiscal implications**

None.

## **Notice of Hearing**

### **Natural Resources**

#### ***Fish, Game, etc., Chs. NR 1— CR 09–024***

NOTICE IS HEREBY GIVEN that pursuant to ss. 29.014, 29.089, 29.193, 29.197, 29.597, 169.085, 169.24, and 227.11, Stats., the Department of Natural Resources will hold public hearings on revisions to Chapters NR 10 and 19, Wis. Adm. Code relating to hunting, trapping regulations and wildlife rehabilitation.

#### **Hearing Information**

The hearing will be held on:

**Date:** December 15, 2009

**Time:** 6:00 p.m..

**Location:** Schmeeckle Reserve  
2419 North Point Drive  
Stevens Point, WI 54481

Pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Scott Loomans at (608) 267–2452 with specific information on your request at least 10 days before the date of the scheduled hearing.

#### **Copies of Proposed Rule and Submittal of Written Comments**

The proposed rule and fiscal estimate may be reviewed and comments electronically submitted at the following Internet site: <http://adminrules.wisconsin.gov>. Written comments on the proposed rule may be submitted via U.S. mail to Mr. Scott Loomans, Bureau of Wildlife Management, P.O. Box 7921,

Madison, WI 53707. Comments may be submitted until December 16, 2009. Written comments whether submitted electronically or by U.S. mail will have the same weight and effect as oral statements presented at the public hearings. A personal copy of the proposed rule and fiscal estimate may be obtained from Mr. Loomans.

#### **Agency Contact Person**

Scott Loomans  
101 South Webster Street, PO Box 7921  
Madison, WI 53707–7921  
(608) 267–2452  
scott.loomans@wisconsin.gov

#### **Analysis Prepared by Department of Natural Resources**

##### *Statutes interpreted*

Sections 29.014, 29.089, 29.193, 29.197, 29.597, 169.085, 169.24, and 227.11, Stats.

##### *Statutory authority*

Sections 29.014, 29.089, 29.193, 29.197, 29.597, 169.085, 169.24, and 227.11, Stats.

##### *Plain language analysis*

The intent of these rule changes is to correct drafting errors, provide clarification to existing rules, simplify regulations, and update administrative code language and references. Policy issues affected by this rule are ones which have already been addressed by previous rulemaking.

In addition, the proposed rule will place a 2–year sunset provision on a rule promulgated by the 2009 spring hearing package that splits the bobcat hunting and trapping seasons into two separate permit periods. The sunset provision would cause the bobcat season to revert to a single permit period beginning on the Saturday nearest October 17 and continuing through December 31 in 2011 unless the sunset is lifted by rule.

The proposed rules will also:

1. Clarify that access permits are required of deer hunters at Lake Wissota state park.
2. Clarify that the harvest of deer of either sex is allowed by archery and gun hunters who possess disabled hunting permits, making this regulation consistent with the law that applies to disabled hunters during firearm seasons.
3. Clarify that, where it is legal to place bait for hunting deer, bait may be placed on the day before the archery season as is currently allowed on the day before the gun seasons.
4. Remove the prohibition of hunting deer with full metal jacketed, nonexpanding type bullets so that only nonexpanding type bullets are prohibited.
5. Establish that the prohibition of hunting and firearm discharge on the day before the firearm deer season applies only to the traditional nine–day deer season.
6. Establish that velvet antlers may be possessed in a CWD zone and clarifies that antlers being transported out of a CWD zone must be free of brain tissue but hair or hide does not need to be removed.
7. Incorporate by reference the definitions for a section of federal regulations that are already incorporated into Wisconsin code related to baiting migratory game birds.

8. Eliminate an unnecessary cross reference.
9. Eliminate confusing and unnecessary language and clarifies that, where body–gripping type traps from 60 to 75 square inches in size are prohibited, larger traps are also prohibited.
10. Eliminate an unnecessary gear requirement; relaxing mechanical locks are not needed on snares.
11. Eliminate a limit on participation by disabled hunters during turkey seasons that is no longer needed with only seven turkey management zones.
12. Correct an omission in the name of a deer management unit.
13. Include trapping as an educational outdoor skills activity for which certain exemptions are available so that this rule language will be consistent with statute.
14. Clarify that volunteer wildlife rehabilitators may only serve in a limited capacity on wildlife rehabilitation activities.
15. Correct the number of a subdivision.
16. Update wildlife rehabilitation code language so that it is consistent with proposed changes to the list of threatened and endangered species.

##### *Related statute or rule*

There are no state rules or statutes currently under promulgation that directly relate to the provisions that are proposed in this administrative order.

##### *Comparison with federal regulations*

These state rules and statutes do not relieve individuals from the restrictions, requirements and conditions of federal statutes and regulations. Regulating the hunting and trapping of native species has been delegated to state fish and wildlife agencies. Additionally, none of the proposed rules exceed the authorities granted to states in 50 CFR part 10.

##### *Comparison with rules in adjacent states*

These rule change proposals do not represent significant policy changes and do not differ significantly from surrounding states. All surrounding states have regulations and rules in place for the management and recreational use of wild game and furbearer species that are established based on needs that are unique to that state's resources and public desires.

##### *Summary of factual data and analytical methodologies*

This rule order is necessary to correct inconsistencies created through the promulgation of other rules and statutes, update code language, correct previous drafting errors, and to clarify existing administrative code language. The rule changes included in this order do not deviate from current department policy on the management of wildlife and the regulation of hunting and trapping.

##### *Analysis and supporting documentation used to determine effect on small businesses*

These rules are applicable to individual sportspersons and impose no compliance or reporting requirements for small businesses, and no design or operational standards are contained in the rule.

##### **Small Business Impact**

Pursuant to s. 227.114, Stats., it is not anticipated that the proposed rules will have a significant economic impact on small businesses.

The Department's Small Business Regulatory Coordinator may be contacted at [SmallBusiness@dnr.state.wi.us](mailto:SmallBusiness@dnr.state.wi.us) or by calling (608) 266–1959.

### Environmental Analysis

The Department has made a preliminary determination that this action does not involve significant adverse environmental effects and does not need an environmental analysis under ch. NR 150, Wis. Adm. Code. However, based on the comments received, the Department may prepare an environmental analysis before proceeding with the proposal. This environmental review document would summarize the Department's consideration of the impacts of the proposal and reasonable alternatives.

### Fiscal Estimate

#### Summary

The intent of these rule changes is to correct drafting errors, provide clarification to existing rules, simplify regulations, and update administrative code language and references. The department anticipates no fiscal effect from these proposed rule changes.

#### State fiscal effect

None.

#### Local government fiscal effect

None.

#### Long–range fiscal implications

No long–range fiscal implications are anticipated.

### Notice of Hearing

#### Natural Resources

##### *Environmental Protection — Air Pollution Control, Chs. NR 400— CR 09–088*

NOTICE IS HEREBY GIVEN That pursuant to ss. 227.16 and 227.17, Stats, the Department of Natural Resources, hereinafter the DNR, will hold a public hearing on proposed revisions to Chapters NR 404, 438, and 484, relating to ambient air quality standards for ozone and lead and new reporting requirements for lead compounds on the date and at the time and location listed below.

The proposed revisions relate to issues for State Implementation Plan approvability, and the State Implementation Plan developed under s. 285.11 (6), Stats., will be revised.

### Hearing Information

**Date:** December 1, 2009 (Tuesday)  
**Time:** 1:00 p.m.  
**Location:** DNR Southeast Region Headquarters  
 Room 140–141  
 2300 N. Dr. Martin Luther King Jr. Dr.  
 Milwaukee, WI

Reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Contact Robert Eckdale in writing at the DNR, Bureau of Air Management, P.O. Box 7921, Madison, WI 53707; by E–mail to [Robert.Eckdale@wisconsin.gov](mailto:Robert.Eckdale@wisconsin.gov); or by calling (608) 266–2856. A request must include specific information and be received at least 10 days before the date of the scheduled hearing.

### Copies of Proposed Rule

The proposed rule and supporting documents, including the fiscal estimate, may be viewed and downloaded from the Administrative Rules System Web site which can be accessed through the link provided on the Proposed Air Pollution Control Rules Calendar at <http://www.dnr.state.wi.us/air/rules/calendar.htm>. If you do not have Internet access, a copy of the proposed rule and supporting documents, including the fiscal estimate, may be obtained free of charge by contacting Robert B. Eckdale, Bureau of Air Management Rules Coordinator, by e–mail at [robert.eckdale@wisconsin.gov](mailto:robert.eckdale@wisconsin.gov) or by calling (608) 266–2856.

### Submission of Written Comments

Comments on the proposed rule must be received on or before Monday, December 14, 2009. Written comments may be submitted by mail, fax, E–mail, or through the Internet and will have the same weight and effect as oral statements presented at the public hearing. Written comments and any questions on the proposed rules should be submitted to:

Larry Bruss  
 Department of Natural Resources  
 Bureau of Air Management (AM/7)  
 101 S. Webster Street  
 Madison, WI 53703  
 Phone: (608) 267–7543  
 Fax: (608) 267–0560  
 E–mail: [Larry.Bruss@wisconsin.gov](mailto:Larry.Bruss@wisconsin.gov)  
 Internet: Use the Adm. Rules System Web site accessible through the link provided on the Proposed Air Pollution Control Rules Calendar at  
<http://www.dnr.state.wi.us/air/rules/calendar.htm>

### Analysis Prepared by Department of Natural Resources

#### Statute interpreted

Section 285.21 (1) (a), Stats. The State Implementation Plan developed under s. 285.11(6), Stats., is revised.

#### Statutory authority

Sections 285.11 (1) and (6) and 285.21 (1) (a), Stats.

#### Explanation of agency authority

The Department is required under s. 285.21 (1) (a), Stats., to promulgate by rule ambient air standards similar to, but not more restrictive than the national ambient air quality standards (NAAQS). The Department is also authorized under s. 285.11 (1) and (6), Stats., to promulgate rules and establish control strategies in order to prepare and implement the State Implementation Plan for the prevention, abatement and control of air pollution in the state.

#### Related statute or rule

There are no related statutes that are not identified above.

#### Plain language analysis

Chapter NR 404, Wis. Adm. Code, contains ambient air standards which are intended to be the same as the federal NAAQS promulgated by EPA, as is required under s. 285.21(1)(a), Stats. Chapter NR 438, Wis. Adm. Code, establishes requirements for submission of reports for owners or operators of air contaminant sources related to the ambient air standards that are employed by the Department. The Clean Air Act requires EPA to review the latest scientific information every five years and promulgate NAAQS which are designated to protect public and public welfare. In 2008, EPA strengthened the 8–hour ozone NAAQS to 0.075 ppm and revised the NAAQS for lead from 1.5 micrograms/cubic meter ( $\mu\text{g}/\text{m}^3$ ) to 0.15  $\mu\text{g}/\text{m}^3$ .

The Department is proposing to amend chs. NR 404 and 438, Wis. Adm. Code, to maintain consistency with the federal NAAQS. Specifically, the proposed rule revisions would: A) adopt the ozone and lead NAAQS into ch. NR 404, Wis. Adm. Code; and B) incorporate the corresponding lead reporting requirements into ch. NR 438, Wis. Adm. Code.

#### ***Comparison with federal regulations***

The federally–enforced NAAQS are contained in Title 40, Part 50 of the Code of Federal Regulations (40 CFR Part 50). The purpose of these proposed rules is to make the State–enforced ambient air standards for ozone and lead in ch. NR 404, Wis. Adm. Code, consistent with the corresponding federal NAAQS, as required under s. 285.21(a), Stats.

#### ***Comparison with rules in adjacent states***

These proposed rule revisions are designed to make Wisconsin’s ambient air quality standards consistent with federal NAAQS, which are effective and enforced throughout the United States. Consequently, these proposed rules would be identical to the ambient air standard regulations in effect in the adjacent states.

#### ***Summary of factual data and analytical methodologies***

The EPA, through its Clean Air Scientific Advisory Committee has conducted exhaustive reviews and assessments on the health science of air pollution impacts to human health and welfare. This research has yielded NAAQS that are based upon sound health science designed to protect public health and welfare. The Department is accepting this extensive federal research as this order’s factual data and analytical methodologies. Information on the federal rule changes are obtained from the federal registers published on March 27, 2008 (Vol. 73, No. 60) for ozone and on November 12, 2008 (Vol. 73, No. 219) for lead.

#### ***Analysis and supporting documents used to determine effect on small business***

In light of the statutory requirement to promulgate by rule new ambient air quality standards similar to but not more restrictive than the federal standards, the Department relies on the federal data and the analytical methodologies EPA used to develop and promulgate the national ambient air quality standards. EPA analysis establishes that NAAQS do not have significant impacts upon small entities, including small businesses because NAAQS themselves impose no regulations upon small entities. Information on the analysis and supporting documents used to determine effect on small entities are contained in the EPA’s Regulatory Impact Analysis (RIA) docket EPA–HQ–OAR–2007–0225 for the ozone NAAQS and RIA docket EPA–HQ–OAR–2006–0735 for the lead NAAQS.

An economic impact report has not been requested.

#### **Small Business Impact**

The promulgation of the ozone and lead ambient air quality standards would not have any direct effect on businesses, including those defined as small business. Following the promulgation of the ozone and lead air quality standards, the EPA will determine if any areas in the state should be designated as nonattainment for either of the new air quality standards. The Department is required to develop an air quality management state implementation plan (SIP) to ensure that all ambient air quality standards are attained and maintained in all areas of the state. The future development of that SIP to address ozone and lead may result in emission limitations being developed for specific source categories or

implementing emission control technologies which may affect businesses, including small businesses. Any prospective SIP revisions would occur through the development of additional rules, which would include analyses of the rules’ potential effects on the private sector, including small businesses.

#### **Environmental Analysis**

The DNR has made a preliminary determination that adoption of the proposed rules would not involve significant adverse environmental effects and would not need an environmental analysis under ch. NR 150, Wis. Adm. Code. However, based on the comments received, the DNR may prepare an environmental analysis before proceeding. This analysis would summarize the DNR’s consideration of the impacts of the proposal and any reasonable alternatives.

#### **Fiscal Estimate**

##### ***Summary***

The proposed rules will not have any direct economic impact on the private sector. If, in the future, EPA were to designate any areas in the state as non–attainment areas for either of the proposed ambient air quality standards, it could become necessary to develop rules to control emissions of ozone precursors or lead. If such rules become necessary, any potential economic impact to the private sector will be evaluated at that time.

##### ***State fiscal effect***

None.

##### ***Local government fiscal effect***

None.

### **Notice of Hearing Pharmacy Examining Board CR 09–098**

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Pharmacy Examining Board in ss. 15.08 (5) (b), 227.11 (2) and 450.02 (3) (a), (b), (d) and (e), Stats., the Pharmacy Examining Board will hold a public hearing at the time and place indicated below to consider an order to amend sections Phar 6.08, 7.12 (2) (f) and 8.12 (2) (b), relating to security systems, utilization reviews, and prescription orders transmitted by facsimile.

#### **Hearing Information**

**Date:** December 2, 2009  
**Time:** 9:30 a.m.  
**Location:** 1400 East Washington Avenue  
 (Enter at 55 North Dickinson Street)  
 Room 121A  
 Madison, Wisconsin

#### **Appearances at the Hearing and Submission of Written Comments**

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but are urged to submit facts, opinions and argument in writing as well. Facts, opinions and argument may also be submitted in writing without a personal appearance by mail addressed to Pamela Haack, Paralegal, Department of Regulation and Licensing, 1400 East Washington Avenue, Room 152, P.O. Box 8935, Madison, Wisconsin 53708–8935, or by email to [pamela.haack@wisconsin.gov](mailto:pamela.haack@wisconsin.gov). Comments must be received on or before December 2, 2009, to be included in the record of rule–making proceedings.

**Copies of Proposed Rule**

Copies of this proposed rule are available upon request to Pamela Haack, Paralegal, Department of Regulation and Licensing, Division of Board Services, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708, or by email at [pamela.haack@wisconsin.gov](mailto:pamela.haack@wisconsin.gov).

**Analysis Prepared by the Department of Regulation and Licensing****Statutes interpreted**

Sections 450.02 (3) (b), 450.06 (2) (b), 450.09 (3) and 450.11 (1) and (2), Stats.

**Statutory authority**

Sections 15.08 (5) (b), 227.11 (2) and 450.02 (3) (a), (b), (d) and (e), Stats.

**Explanation of agency authority**

The Pharmacy Examining Board has the authority under s. 450.02 (3) (d), Stats., to promulgate rules necessary for the administration of ch. 450, Stats., and under s. 450.02 (3) (a) to (c), Stats., relating to the distribution and dispensing of drugs; establishment of security standards for pharmacies, and establishment of minimum standards for the practice of pharmacy.

**Related statute or rule**

There are no other statutes or rules other than those listed above.

**Plain language analysis**

SECTION 1 amends s. Phar 6.08 to clarify that a pharmacy is required to have a centrally monitored alarm system. The current rules permit a pharmacy to have an alarm system in the immediate physical structure within which a pharmacy is located.

SECTION 2 amends s. Phar 7.12 (2) (f) to clarify that the reference to “drug initialization” used in the rule should read “drug utilization.”

SECTION 3 amends s. Phar 8.12 (2) (b) to clarify that prescription orders may be transmitted by a facsimile machine in instances in which a patient “meets the eligibility requirements for placement in a long term care facility,” but elects to reside at home. Under the current rules a pharmacist may not dispense a schedule II controlled substance pursuant to a prescription order transmitted by a facsimile machine unless certain conditions stated in s. Phar 8.12 (1) are satisfied and all the conditions set forth in s. Phar 8.12 (2) (a) to (c) are met.

**Comparison with federal regulations**

There is no existing or proposed federal regulation.

**Comparison with rules in adjacent states****Illinois:***Pharmacy Alarms, Security.*

Section 1330.75 Security Requirements. a) Whenever the pharmacy (prescription area) is not occupied by a registrant, the pharmacy (prescription area) must be secured and inaccessible to non–licensed persons (employees and public). This may be accomplished by measures such as walling off, locking doors, and electronic security equipment, as approved by the Division.

*Utilization Review.*

Not applicable. Rule corrects a drafting error.

*Faxing Schedule II Controlled Substance Prescriptions.*

Neither the statutes nor rules establish prima facie permission for pharmacists to dispense schedule II controlled substances faxed by a practitioner on behalf of patients residing in–home that are eligible for nursing home placement.

**Iowa:***Pharmacy Alarms, Security.*

657—6.7(124,155A) Security. While on duty, each pharmacist shall be responsible for the security of the prescription department, including provisions for effective control against theft of, diversion of, or unauthorized access to prescription drugs, records for such drugs, and patient records as provided in 657—Chapter 21.

6.7(1) Department locked. The prescription department shall be locked by key or combination so as to prevent access when a pharmacist is not on site except as provided in subrule 6.7(2).

6.7(2) Temporary absence of pharmacist. In the temporary absence of the pharmacist, only the pharmacist in charge may designate persons who may be present in the prescription department to perform technical and nontechnical functions designated by the pharmacist in charge. Activities identified in subrule 6.7(3) may not be performed during such temporary absence of the pharmacist. A temporary absence is an absence of short duration not to exceed two hours. In the absence of the pharmacist, the pharmacy shall notify the public that the pharmacist is temporarily absent and that no prescriptions will be dispensed until the pharmacist returns.

8.5(3) Secure barrier. The pharmacy department shall be surrounded by a physical barrier capable of being securely locked to prevent entry when the department is closed. A secure barrier may be constructed of other than a solid material with a continuous surface if the openings in the material are not large enough to permit removal of items from the pharmacy department by any means. Any material used in the construction of the barrier shall be sufficient strength and thickness that it cannot be readily or easily removed, penetrated, or bent. The plans and specifications of the barrier shall be submitted to the board for approval prior to the start of construction. The board may also require on–site inspection of the facility or pharmacy department prior to the pharmacy’s opening or relocation. The pharmacy department shall be closed and secured in the absence of the pharmacist except as provided in rule 657—6.7(124,155A) or 657—7.6(124,155A). [4/4/2007]

*Utilization Review.*

Not applicable. Rule corrects a drafting error.

*Faxing Schedule II Controlled Substance Prescriptions.*

Neither the statutes nor rules establish prima facie permission for pharmacists to dispense schedule II controlled substances faxed by a practitioner on behalf of patients residing in–home that are eligible for nursing home placement.

**Michigan:***Pharmacy Alarms, Security.*

R 338.482 Housing of pharmacy.

(3) All pharmacies that occupy less than the entire area of the premises owned, leased, used, or controlled by the licensee shall be permanently enclosed by partitions from the floor to the ceiling. All partitions shall be of substantial construction and shall be securely lockable so that drugs and devices that can only be sold by a pharmacist are unobtainable during the absence of the pharmacist. Identification of this department by the use of the words “drug,” “medicines,” or “pharmacy” or by the use of a similar term or combination of terms shall be restricted to the area that is registered by the board. The pharmacy department shall be locked when the pharmacist is not in the establishment.

*Utilization Review.*

Not applicable. Rule corrects a drafting error.

*Faxing Schedule II Controlled Substance Prescriptions.*

Neither the statutes nor rules establish prima facie permission for pharmacists to dispense schedule II controlled substances faxed by a practitioner on behalf of patients residing in–home that are eligible for nursing home placement.

*Minnesota:*

*Pharmacy Alarms, Security.*

6800.0700 PHARMACY, SPACE, AND SECURITY.

Subpart 1 D. The pharmacy must be surrounded by a continuous partition or wall extending from the floor to the permanent ceiling, containing doors capable of being securely locked to prevent entry when the pharmacy is closed.

*Utilization Review.*

Not applicable. Rule corrects a drafting error.

*Faxing Schedule II Controlled Substance Prescriptions.*

Neither the statutes nor rules establish prima facie permission for pharmacists to dispense schedule II controlled substances faxed by a practitioner on behalf of patients residing in–home that are eligible for nursing home placement.

***Summary of factual data and analytical methodologies:***

The board recognized the need to tighten security requirements so that all pharmacies, even if they are located within a larger structure that is alarmed, would be equipped with an alarm. The board was contacted about the barriers to providing care to long term pharmacy care patients who receive care at home. As a result of a subsequent discussion during a board meeting, the board decided to change its controlled substances faxing rule.

***Analysis and supporting documents used to determine effect on small business***

Requiring all pharmacies to be alarmed may have an impact on small businesses, but its primary impact is on chain or hospital pharmacies that are more typically inside a larger structure. The faxing change will assist small businesses in providing care to long term care patients at home.

Section 227.137, Stats., requires an “agency” to prepare an economic impact report before submitting the proposed rule–making order to the Wisconsin Legislative Council. The Department of Regulation and Licensing is not included as an “agency” in this section.

**Small Business Impact**

These proposed rules were reviewed and discussed by the department’s Small Business Review Advisory Committee which determined that the rules will have no significant economic impact on a substantial number of small businesses, as defined in s. 227.114 (1), Stats.

The Department’s Regulatory Review Coordinator may be contacted by email at [hector.colon@wisconsin.gov](mailto:hector.colon@wisconsin.gov), or by calling 608–266–8608.

**Fiscal Estimate**

**Summary**

The department estimates that this rule will require staff time in the Division of Professional Credentialing. The total one–time salary and fringe costs are estimated at \$266.

**Anticipated costs incurred by private sector**

The department finds that this rule has no significant fiscal effect on the private sector.

**Agency Contact Person**

Pamela Haack, Paralegal, Department of Regulation and Licensing, 1400 East Washington Avenue, Room 152, P.O. Box 8935, Madison, Wisconsin 53708; telephone 608–266–0495; email at [pamela.haack@wisconsin.gov](mailto:pamela.haack@wisconsin.gov).

**Notice of Hearing**

**Pharmacy Examining Board**

**CR 09–099**

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Pharmacy Examining Board in ss. 15.08 (5) (b), 227.11 (2), 450.02 (3) (d) and 450.062, Stats., the Pharmacy Examining Board will hold a public hearing at the time and place indicated below to consider an order to create section Phar 7.095, relating to remote dispensing sites.

**Hearing Information**

**Date:** December 2, 2009

**Time:** 9:30 a.m.

**Location:** 1400 East Washington Avenue  
(Enter at 55 North Dickinson Street)  
Room 121A  
Madison, Wisconsin

**Appearances at the Hearing and Submission of Written Comments**

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but are urged to submit facts, opinions and argument in writing as well. Facts, opinions and argument may also be submitted in writing without a personal appearance by mail addressed to Pamela Haack, Paralegal, Department of Regulation and Licensing, Division of Board Services, 1400 East Washington Avenue, Room 152, P.O. Box 8935, Madison, WI 53708–8935, or by email to [pamela.haack@wisconsin.gov](mailto:pamela.haack@wisconsin.gov). Comments must be received on or before December 2, 2009, to be included in the record of rule–making proceedings.

**Copies of Proposed Rule**

Copies of this proposed rule are available upon request to Pamela Haack, Paralegal, Department of Regulation and Licensing, Division of Board Services, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708, or by email at [pamela.haack@wisconsin.gov](mailto:pamela.haack@wisconsin.gov).

## **Analysis Prepared by Department of Regulation and Licensing**

### ***Statutes interpreted***

Sections 450.06 (1) and 450.062, Stats.

### ***Statutory authority***

Sections 15.08 (5) (b), 227.11 (2), 450.02 (3) (d) and 450.062, Stats.

### ***Explanation of agency authority***

The board is authorized under s. 450.02 (3) (d), Stats., to promulgate rules necessary for the administration of ch. 450, Stats., and under s. 450.062, Stats., to promulgate rules relating to the establishment and operation of remote dispensing sites.

### ***Related statute or rule***

Section Phar 7.09 relates to the use of automated dispensing systems.

### ***Plain language analysis***

SECTION 1 creates s. Phar 7.095, which sets forth the process and procedures for establishing and operating remote dispensing sites.

As stated in s. 450.06 (1), Stats., except as provided in rules adopted by the board under s. 450.062, Stats., no pharmacist may dispense at any location that is not licensed as a pharmacy by the board. The board is proposing to adopt these rules to set forth the process and procedures for establishing and operating remote dispensing sites.

The proposed rules include definitions for “health care facility,” “managing pharmacist,” “practitioner,” “remote dispensing site,” and “supervising pharmacy.” The proposed rules also clarify that a remote dispensing site shall not be licensed as a pharmacy and that no person may use or display certain titles in connection with the operation of a remote dispensing site. In addition, the proposed rules identify where remote dispensing sites may be located; the requirements for operating remote dispensing sites; the requirements for dispensing; the responsibilities of managing pharmacists, and the requirements for pharmacy technicians and interns.

### ***Comparison with federal regulations***

There is no existing or proposed federal regulation.

### ***Comparison with rules in adjacent states***

#### ***Illinois:***

Statutes: Section 225 ILCS 85

Rules: Section 1330.98

Illinois’ statutes provide a significant amount of detail as to tele–pharmacy, remote prescription processing, common electronic filing, automated dispensing and storage systems, and centralized prescription filling. Tele–pharmacy is included as part of the definition of the practice of pharmacy. Tele–pharmacy models must meet a set of conditions regarding pharmacist responsibility, technician training, supervision and patient counseling. Remote prescription processing, or “outsourcing” occurs when at least one of eight listed functions are identified. Conditions under which remote prescription processing may occur are also specified, including ownership, electronic filing and record maintenance provisions. The statutes are very detailed regarding automated pharmacy systems/remote dispensing. Subjects covered include: security; procedures; confidentiality; designated personnel; storage (temperature, proper containers, handling outdated drugs), dispensing and

delivery, home pharmacy supervision and re–stocking of systems that use removable cartridges. The rules provide additional detail for automated dispensing and storage systems, including provisions relating to documentation, storage, security, record keeping, stocking, proper containers, and quality assurance.

#### ***Iowa:***

Rules: Chapters 9 and 18.

Chapter 9 of Iowa’s rules relates to automated medication dispensing systems, including: pharmacist responsibilities; quality assurance; policies and procedures; system, site and process requirements; dispensing and distributing; security and confidentiality; records; error identification and logging; verification and accuracy; reporting; and outpatient automated medication dispensing. Chapter 18 addresses centralized filling and processing, including: system qualifications; labeling; legal compliance; patient notification; originating pharmacy compliance; policies and procedures; and records.

#### ***Michigan:***

Statutes: Section 333.17753, Michigan Public Health Code

Rules: Chapter 338

Michigan’s statutes include a section on centralized prescription filling, which lists the record–keeping, security and quality improvement conditions that apply to outsourcing. The rules state that a license is required at each separate location where drugs are prepared or dispensed.

#### ***Minnesota:***

Statutes: Section 150.01

Rules: Section 6800.0800, 2600, 4075, 6600

Minnesota’s statutes define central service pharmacy as a pharmacy that may provide dispensing functions, drug utilization review, packaging, labeling, or delivery of a prescription product to another pharmacy for the purpose of filling a prescription. Minnesota’s rules provide definitions for community and hospital satellite pharmacies. Plans for satellite pharmacies must be submitted to the board for approval. The rules also specify the requirements for vending machines (responsibility, policies and procedures), centralized processing and filling (ownership, filing, policy and procedures manual, records, tracking of drugs, security, quality improvement, counseling and notification), and freedom of choice.

### ***Summary of factual data and analytical methodologies***

The board created a committee to draft remote dispensing guidelines after 2007 Wisconsin Act 202 (Senate Bill 409) became effective. The committee met once and devised several safeguards to protect the public. Since the remote dispensing model departs from the traditional dispensing model, the board sought to address drug security, training and supervision of remote site staff, privacy, labeling and quality assurance in the context of remote site dispensing. The final guidelines, which have been written into this rule draft, are the result of committee discussions and recommendations that were finalized by the full board.

### ***Analysis and supporting documents used to determine effect on small business***

This rule will have an impact on small businesses, though it is not clear exactly what impact it will have. The board received correspondence expressing concerns and suggesting that the remote sites will adversely impact chain and

independent pharmacies in the region, making it more difficult to compete. One pharmacy owner suggested protective language in the remote dispensing rules that would disallow remote sites within a pre–determined radius of existing pharmacies. The board took up the concerns at its July 22, 2009 meeting and deliberated on the benefits and costs of the legislation, noting that its primary purpose is to increase access to prescription drugs. The board also noted that small business concerns were heard while the legislation was pending, resulting in Amendment 1 to Senate Bill 409, which limited remote dispensing to sites specifically identified in the legislation. It was noted in testimony that there is a likelihood that small businesses will benefit from new ventures with clinics and practitioners. The board also considered other possibilities, such as improved care coordination and the increased likelihood of patients to fill prescriptions at a remote site located at a health clinic.

Section 227.137, Stats., requires an “agency” to prepare an economic impact report before submitting the proposed rule–making order to the Wisconsin Legislative Council. The Department of Regulation and Licensing is not included as an “agency” in this section.

### **Small Business Impact**

These proposed rules were reviewed and discussed by the department’s Small Business Review Advisory Committee which determined that these rules will have no significant economic impact on a substantial number of small businesses, as defined in s. 227.114 (1), Stats.

The Department’s Regulatory Review Coordinator may be contacted by email at [hector.colon@drl.state.wi.us](mailto:hector.colon@drl.state.wi.us), or by calling (608) 266–8608.

### **Fiscal Estimate**

#### **Summary**

The department estimates that this rule will require staff time in the Division of Board Services. The total on–going salary and fringe costs are estimated at \$7,100.

#### **Anticipated costs incurred by private sector**

The department finds that this rule has no significant fiscal effect on the private sector.

### **Agency Contact Person**

Pamela Haack, Paralegal, Department of Regulation and Licensing, Division of Board Services, 1400 East Washington Avenue, Room 152, P.O. Box 8935, Madison, Wisconsin 53708; telephone 608–266–0495; email at [pamela.haack@wisconsin.gov](mailto:pamela.haack@wisconsin.gov).

## **Notice of Hearing Public Defender Board CR 09–067**

NOTICE IS HEREBY GIVEN that pursuant to ss. 977.02 (5), (6) and (8), and 977.03 (3), Stats., the State Public Defender (SPD) will hold a public hearing to consider a proposed order to revise Chapter PD 1, relating to the certification of private bar attorneys to accept appointments to provide legal representation for state public defender clients.

### **Hearing Information**

SPD will hold a public hearing at the time and place shown below.

### **November 30, 2009**

1:00 pm to 3:00 pm

SPD Administrative Office, Banoul Conference Room  
315 N. Henry Street, 2<sup>nd</sup> Floor  
Madison, Wisconsin 53703

Handicap accessibility is in the rear of the building. If you require communication accommodation at the hearing, please call Marla Stephens, (414) 227–4891, at least 10 days prior to the hearing date.

### **Appearances at Hearing and Submission of Written Comments**

Interested persons are invited to attend the hearing and comment on the proposed rule. Persons appearing may make an oral presentation and are requested to submit their comments in writing. Written comments on the proposed rule will be accepted into the record and receive the same consideration as testimony presented at the hearing if they are received by Monday, December 7, 2009. Written comments should be addressed to: Marla Stephens, SPD, PO Box 7923, Madison, WI 53707–7923, or by email: [stephensm@opd.wi.gov](mailto:stephensm@opd.wi.gov).

### **Copies of Proposed Rule**

To view the proposed rule and certification application forms online, go to: <http://www.wisspd.org/html/appellate/PropPD1.asp>. You may contact Marla Stephens at [stephensm@opd.wi.gov](mailto:stephensm@opd.wi.gov) or by telephone at (414) 227–4891 to request a copy of the proposed rule and certification application forms be sent to you by U.S. mail. Copies of the rule and certification application forms will also be available at the hearing.

### **Analysis Prepared by the State Public Defender Board *Statutes interpreted***

Sections 977.02 (5) and (6), 977.03 (3), 977.05 (4) and (5), and 977.08 (1) to (3), Stats.

#### **Statutory authority**

Sections 977.02 (5), (6) and (8), and 977.03 (3), Stats.

#### **Explanation of Agency Authority**

Sections 977.05 (4) and (5) and 977.08 (1) require the state public defender to appoint attorneys to represent indigent clients in specified cases. Section 977.08 (2) and (3) require the state public defender to notify all attorneys that they may be appointed to provide legal representation to state public defender clients, to review the qualifications of attorneys seeking appointment, and to certify lists of attorneys qualified to accept appointments. Section 977.02 (5) allows the state public defender board to promulgate rules that establish procedures to assure that the legal representation of indigent clients by the private bar at the initial stages of cases assigned under ch. 977 is at the same level as the representation provided by the state public defender. Section 977.02 (6) allows the state public defender board to establish rules to accommodate the handling of certain potential conflict of interest cases by the office of the state public defender. Section 977.03 (3) allows the state public defender board to promulgate rules to establish procedures under which the state public defender may appoint attorneys based upon the state public defender’s evaluation of the attorneys’ performance. Section 977.02 (8) allows the state public defender board to perform all other duties necessary and incidental to the performance of any duty enumerated in ch. 977, Stats.

#### **Related statute or rule**

None

**Plain language analysis**

The ethical rules in Supreme Court Rules Chap. 20, Rules of Professional Conduct for Attorneys, prohibit conflicts of interest and require zealous representation. Consequently, the state public defender appoints some cases to private attorneys who are not employees. Because the state public defender does not have direct oversight of the legal representation provided in these cases, the state public defender uses other means, including certification lists, to ensure that the private attorneys are competent to represent clients in different types of cases. The proposed rules modify certification criteria and procedures to:

- Update the certification lists to reflect changes in substantive and procedural law.
- Permit the state public defender to exercise discretion to certify, recertify, sanction, suspend, caution, place conditions upon or decertify a private attorney for cause.
- Establish criteria for the exercise of discretion.
- Permit the state public defender to consider an attorney's prior disciplinary record and other conduct, in addition to experience and education, when making certification decisions.
- Require an attorney to reapply for certification after decertification or voluntary removal from any certification list.
- Permit the state public defender to require a period of provisional certification to allow the state public defender to monitor the representation provided to clients.
- Permit the state public defender to suspend case appointments to an attorney pending an investigation into performance or billing.
- Permit the state public defender to disclose information about an investigation after the investigation is concluded.

**Comparison with federal regulations**

There are no existing or proposed federal regulations that address the activities of the proposed rules.

**Comparison with rules in adjacent states****Iowa:**

*Appointment:* Appellate courts appoint the State Appellate Defender. At the trial court level, the State Public Defender files a notice with a district court clerk in each county served by the public defender designating which local public defender office shall receive notice of appointment of cases. This designee shall be appointed by the court to represent all the eligible indigents in all of the cases and proceedings specified in the designation. The State Public Defender may notify the trial court that the public defender designee will not provide legal representation in certain cases. The State Public Defender may contract with private attorneys and nonprofit organizations for the provision of legal services to indigent persons.

*Certification/Standards for Private Attorneys:* The State Public Defender may confer with judges, attorneys and others having knowledge about the attorney's competence, effectiveness, trustworthiness and ability to provide services. Also, the State Public Defender may conduct additional investigation as deemed warranted. The information received may be considered when deciding to award an initial contract or renew a contract for legal services with a private attorney.

**Illinois:**

*Appointment:* Appeals are appointed by the appellate court to the State Appellate Defender. Trial court judges appoint the local public defender office.

*Certification/Standards for Private Attorneys:* Appellate cases: An attorney licensed to practice law in Illinois who has prior criminal appellate experience or an attorney who is a member or employee of a law firm which has at least one member with that experience may submit a bid to the State Appellate Defender to receive cases. Prospective bidders must furnish legal writing samples that are deemed acceptable to the State Appellate Defender. Trial cases: No written qualifications and standards or on-going legal education requirements were found.

**Michigan:**

*Appointment:* Appellate courts determine eligibility and appoint the State Appellate Defender Office to cases. The trial courts determine eligibility and appoint local public defense agencies to represent the indigent.

*Certification/Standards for Private Attorneys:* The State Appellate Defender Office has initial qualification requirements and on-going training requirements. The trial courts vary by county as to qualifications and on-going training requirements. For example, Wayne County (Detroit) appoints the Legal Aid and Defender of Detroit and does not appear to have published qualification standards or on-going training requirements for private attorneys who wish to be appointed to public defender cases. Oakland County (Pontiac) inquires about criminal law experience and education and requests the names of judges and attorneys for references as part of the initial qualification. Also, Oakland County requires private attorneys to agree to attend on-going training related to criminal law. Macomb County (Mt. Clemons) has an Indigent Assignment List Selection Committee that reviews attorney applications and assigns attorneys to a level. An attorney must apply to this Committee to move to a higher level. Also, Macomb County requires annual training of one continuing legal education credit or three mini-seminars relating to criminal law.

**Minnesota:**

*Appointment:* The trial and appellate courts appoint cases. The trial court judge appoints the district public defenders' offices in the jurisdiction in which the charge is filed. There are ten judicial districts in Minnesota. The district public defender cannot be required to make the eligibility determination or investigate the availability of assets. If a conflict of interest or other situation exists, the court can appoint to private attorneys who have contracts for appointments with the district public defender's office.

*Certification/Standards for Private Attorneys:* The Chief Public Defender in each of the districts reviews the qualifications of a private attorney who applies for a contract to accept appointments of public defender cases. There are no published standards for that review.

**Summary of factual data and analytical methodologies**

None.

**Analysis and supporting documents used to determine effect on small business**

None.

**Small Business Impact**

None.

**Fiscal Estimate**

No fiscal estimate is required.

**Agency Contact Person**

Marla Stephens  
315 N. Henry Street, 2<sup>nd</sup> Floor  
P.O. Box 7923, Madison, Wisconsin 53707–7923  
Phone: 414.227.4891  
Email: stephensm@opd.wi.gov

**Notice of Hearing**  
**Public Defender Board**  
**CR 09–068**

NOTICE IS HEREBY GIVEN that pursuant to ss. 51.60, 51.605, 55.105, 55.107, 977.02 (2m), (3), (4m) and (4r), and 977.075 Stats., the State Public Defender (SPD) will hold a public hearing to consider the proposed order to revise Chapters PD 2, 3, and 6, relating to representation by the state public defender of persons detained under Ch. 51 or 55, Stats., or subject to involuntary administration of psychotropic medication without a predetermination of financial eligibility.

**Hearing Information**

SPD will hold a public hearing at the time and place shown below.

**November 30, 2009**

10:00 a.m. to Noon  
SPD Administrative Office, Banoul Conference Room  
315 N. Henry Street, 2<sup>nd</sup> Floor  
Madison, Wisconsin 53703

Handicap accessibility is in the rear of the building. If you require communication accommodation at the hearing, please call Marla Stephens, (414) 227–4891, at least 10 days prior to the hearing date.

**Appearances at Hearing and Submission of Written Comments**

Interested persons are invited to attend the hearing and comment on the proposed rule. Persons appearing may make an oral presentation and are requested to submit their comments in writing. Written comments on the proposed rule will be accepted into the record and receive the same consideration as testimony presented at the hearing if they are received by Monday, December 7, 2009. Written comments should be addressed to: Marla Stephens, SPD, PO Box 7923, Madison, WI 53707–7923, or by email: [stephensm@opd.wi.gov](mailto:stephensm@opd.wi.gov).

**Copies of Proposed Rule**

To view the proposed rule and fiscal note online, go to: <http://www.wisspd.org/html/appellate/PropPD236.aspstephensm@opd.wi.gov>. You may contact Marla Stephens at [stephensm@opd.wi.gov](mailto:stephensm@opd.wi.gov) or by telephone at (414) 227–4891 to request a copy of the proposed rule and fiscal note be sent to you by U.S. mail. Copies of the rule and fiscal note will also be available at the hearing.

**Analysis Prepared by the State Public Defender Board****Statutes interpreted**

Sections 51.60, 51.605, 55.105, 55.107, 977.075 (1g), (4), 977.085 (3), Stats.

**Statutory authority**

Sections 51.60, 51.605, 55.105, 55.107, 977.02 (2m), (3), (4m) and (4r), and 977.075, Stats.

**Explanation of agency authority**

Section 977.02 (2m) allows the state public defender board to promulgate rules regarding eligibility for legal services for persons who are entitled to be represented by counsel without a determination of indigency. Sections 977.02 (4m) and 977.075 allow for the state public defender board to establish rules setting the maximum amount a person subject to 51.605 or 55.107 must pay as reimbursement for legal services. Section 977.02 (4r) allows the state public defender board to promulgate rules that establish procedures to provide the department of administration with any information concerning collection of payments.

**Related statute or rule**

The proposed rules implement statutory changes relating to the appointment of counsel without a determination of indigency and the payment for representation in chapter 51 and 55 cases. Similar statutes include ss. 48.23 (4) and 938.23 (4) relating to the appointment of counsel in juvenile cases without a determination of indigency. Other similar statutes and rules include ss. 48.275, 938.275 and 977.075 and chapter PD 6 related to the payment for representation in chapter 48 and 938 cases.

**Plain language analysis**

The proposed rules implement the statutory changes that became effective July 1, 2008, affecting the state public defender's office in proceedings under chapters 51 and 55, Stats. The specific actions proposed include:

- Removing the requirement of a finding of financial eligibility by the state public defender before legal counsel is appointed for chapter 51 and 55 clients
- Removing the client's prepayment options for chapter 51 and 55 case types
- Creating a new rule for reimbursement rates for chapter 51 and 55 case types
- Requiring reports to the legislature's joint committee on finance and the department of administration regarding the collection of payments ordered under chapter 51 and 55

2007 Wisconsin Act 20 removed the requirement that persons subject to the civil commitment proceedings of chapters 51 or 55 complete a pre–representation indigency evaluation and required the public defender to appoint counsel without a determination of indigency. At the conclusion of the proceeding, the circuit court may inquire as to the person's ability to reimburse the state for the cost of representation. If the court determines that the person is able to reimburse the costs of representation, the court may order reimbursement in an amount not to exceed the maximum amount established by the public defender board, currently in Wisconsin Administrative Code PD 6.01. The court may require the public defender to conduct a determination of indigency and report the results of that determination to the court.

Any reimbursement is made to the clerk of courts for the county where the proceedings took place. The clerk of each county deposits 25% of the reimbursement payments to the county treasury and transmits the remaining 75% to the secretary of the department of administration to be credited in the public defender's private bar and investigator reimbursement appropriation. The clerks of court for each

county are required to report to the public defender by January 31 the total amounts of court–ordered reimbursement ordered and paid under chapters 51 and 55 for the previous calendar year. The effective date of these statutory provisions is July 1, 2008.

***Comparison with federal regulations***

There are no existing or proposed federal regulations that address the activities of the proposed rules.

***Comparisons with rules in adjacent states***

For all adjacent states to Wisconsin, if neither the respondent nor others provide counsel for a civil commitment hearing, the respective court appoints counsel for him or her. To compensate the attorneys for their services in the states of Minnesota, Iowa, and Illinois, the applicable court enters an order upon the county to pay the entire fee or such an amount as the respondent is unable to pay. In Michigan, the court compensates appointed counsel from court funds in an amount that is reasonable and based upon time and expenses.

***Summary of factual data and analytical methodologies***

The proposed rules implement statutory changes that went into effect on July 1, 2008.

***Analysis and supporting documents used to determine effect on small business***

None.

***Small Business Impact***

None.

***Fiscal Estimate***

***Summary***

These administrative rules conform to statutory changes that took effect on July 1, 2008, having been implemented as part of the State’s 2007–09 biennial budget act. The rules will not have any fiscal effect independent of these statutory changes. The statutory changes eliminated the requirement that a respondent in a chapter 51 proceeding or a chapter 55 proceeding complete a financial application before qualifying for representation through the State Public Defender (SPD).

The estimated fiscal effect of the legislation was summarized in the Legislative Fiscal Bureau’s Paper Number 621 (May 8, 2007). This paper (at p. 5) reviewed the average cost for chapter 51 and chapter 55 cases and the estimated number of additional cases under these chapters in which the SPD would appoint an attorney. The estimated annual cost to the SPD was \$320,500, the amount by which the SPD’s budget was increased beginning in fiscal year 2008–2009.

***State fiscal effect***

None.

***Local government fiscal effect***

None.

***Private sector fiscal effect***

None.

***Long–range fiscal implications***

As noted above, the fiscal effect stems from the statutory changes, not from the administrative rules. The two major factors that may affect the SPD’s costs from the statutory changes are 1) the number of chapter 51 and chapter 55 cases and 2) the average costs of providing representation in these cases.

**Agency Contact Person**

Marla Stephens  
315 N. Henry Street, 2<sup>nd</sup> Floor  
P.O. Box 7923, Madison, Wisconsin 53707–7923  
Phone: 414.227.4891  
Email: [stephensm@opd.wi.gov](mailto:stephensm@opd.wi.gov)

**Notice of Hearing**

**Public Instruction**

**CR 09–084**

NOTICE IS HEREBY GIVEN that pursuant to ss. 119.23 (2) (a) 6. c. and 227.11 (2) (a), Stats., the Department of Public Instruction will hold a public hearing as follows to consider proposed permanent rules to create section PI 35.07, relating to establishing a nonrenewable waiver from the requirement that a teacher have a bachelor’s degree in order to teach in a private school under the Milwaukee Parental Choice Program.

**Hearing Information**

The hearing will be held as follows:

**December 8, 2009** Milwaukee  
4:30 – 6:00 p.m. Hope Christian School — Fortis  
3601 North Port Washington Ave.  
Room 207

The hearing site is fully accessible to people with disabilities. If you require reasonable accommodation to access any meeting, please call Robert Soldner, Director, School Management Services, (608) 266–7475 or leave a message with the Teletypewriter (TTY) at (608) 267–2427 at least 10 days prior to the hearing date. Reasonable accommodation includes materials prepared in an alternative format, as provided under the Americans with Disabilities Act.

**Copies of Proposed Rule**

The administrative rule and fiscal note are available on the internet at <http://dpi.wi.gov/pb/rulespg.html>. A copy of the proposed rule and the fiscal estimate also may be obtained by sending an email request to [lori.slauson@dpi.wi.gov](mailto:lori.slauson@dpi.wi.gov) or by writing to:

Lori Slauson, Administrative Rules and Federal Grants  
Coordinator  
Department of Public Instruction  
125 South Webster Street  
P.O. Box 7841  
Madison, WI 53707

**Submission of Written Comments**

Written comments on the proposed rules received by Ms. Slauson at the above mail or email address no later than December 14, 2009, will be given the same consideration as testimony presented at the hearing.

**Analysis Prepared by Department of Public Instruction**

***Statute interpreted***

Section 119.23 (2) (a) 6. c., Stats., and Section 9139 (4r) of the nonstatutory provisions of 2009 Wisconsin Act 28.

***Statutory authority***

Sections 119.23 (2) (a) 6. c. and 227.11 (2) (a), Stats., and Section 9139 (4r) of the nonstatutory provisions of 2009 Wisconsin Act 28.

**Explanation of agency authority**

Section 119.23 (2) (a) 6. c., Stats., requires the department to, by rule, implement a process to issue a temporary, nonrenewable waiver to certain teachers that meet specific statutory requirements and who are employed by a private school participating in the Milwaukee Parental Choice Program (MPCP) program.

Section 119.23 (11), Stats., requires the department to promulgate rules to implement and administer the MPCP.

Section 227.11 (2) (a), Stats., gives an agency rule-making authority to interpret the provisions of any statute enforced or administered by it, if the agency considers it necessary to effectuate the purpose of the statute.

SECTION 9139 (4r) of the nonstatutory provisions of 2009 Wisconsin Act 28, requires the department to, no later than the first day of the 4<sup>th</sup> month beginning after the effective date of the Act (October 1, 2009), submit proposed rules to the Legislative Council staff.

**Related statute or rule**

N/A

**Plain language analysis**

2009 Wisconsin Act 28, the 2009–11 biennial budget bill, made several modifications to the Milwaukee Parental Choice Program under s. 119.23, Stats. Several of the modifications require that the department develop rules to implement the statutory provisions. One of those modifications requires the department to develop a rule setting forth the process to issue a temporary, nonrenewable waiver for eligible teachers who have been teaching in a participating private school for at least 5 consecutive years immediately preceding July 1, 2010, but do not have a bachelor's degree.

By statute, a teacher may apply for a temporary, nonrenewable waiver if he or she:

- Was employed by the private school participating in the Milwaukee Parental Choice Program (MPCP) on July 1, 2010,
- Has been teaching for at least the 5 consecutive years immediately preceding July 1, 2010, and
- Does not have a bachelor's degree from an accredited institution of higher education on July 1, 2010.

The statutes further require the applicant to submit to the department a waiver application designed by the department and a plan for satisfying the requirements under s. 119.23 (2) (a) 6. a., Stats., including the name of the accredited institution of higher education at which the teacher is pursuing or will pursue the bachelor's degree and the anticipated date on which the teacher expects to complete the bachelor's degree.

The rules include the statutory requirements described above and establish the process for requesting the temporary, nonrenewable waiver. The rules require specific information to be submitted by July 31, 2010, when applying for the waiver, including:

- Information documenting that the institution of higher education is accredited.
- The name and contact information of the accredited institution of higher learning.
- A list of specific classes to be taken to complete the bachelor's degree.

- If applicable, an official transcript showing courses already completed that count toward the bachelor's degree.
- Information demonstrating a bachelor's degree from the accredited institution of higher education can be issued within five years under the plan proposed by the applicant. Finally, no waiver granted under these rules is valid after July 31, 2015.

The Act requires the permanent rules to be submitted to the Legislative Council by October 1, 2009.

**Comparison with federal regulations**

N/A

**Comparison with rules in adjacent states**

Illinois, Iowa, Michigan, and Minnesota do not have rules relating to private school voucher programs.

**Summary of factual data and analytical methodologies**

The waiver granted under these rules is only available to teachers that meet the requirements on July 1, 2010 and valid until July 31, 2015. The information required in the rule is typical of information requested from regular teachers in determining whether they are on-track to receiving proper certification.

**Analysis and supporting documents used to determine effect on small business**

N/A

**Small Business Impact**

The proposed rules will have no significant economic impact on small businesses, as defined in s. 227.114 (1) (a), Stats.

**Fiscal Estimate****Summary**

The rule sets forth the process to issue a temporary, nonrenewable waiver for eligible teachers who have been teaching in a participating private school but do not meet the new licensing requirement created by 2009 Wis. Act 28 under s. 119.23 (2) (a) 6. a, Stats.

The rules will have no local fiscal effect and will have no significant economic impact on small businesses, as defined in s. 227.114 (1) (a), Stats.

The costs associated with the new waiver application process and review will be absorbed by the department.

**Anticipated costs incurred by private sector**

N/A

**Agency Contact Person**

Robert Soldner, Director  
School Management Services  
(608) 266–7475  
robert.soldner@dpi.wi.gov.

**Notice of Hearing****Public Service Commission**

**CR 09–086**

NOTICE IS GIVEN that pursuant to s. 227.16 (2) (b), Stats., the Commission will hold a public hearing on a proposed rule to create Chapter PSC 172 related to the police and fire protection fee created under 2009 Wisconsin Act 28.

**Hearing Information**

**Date:** **December 2, 2009**  
 Wednesday — 1:30 p.m.

**Location:** Amnicon Falls Hearing Room  
 Public Service Commission Bldg.  
 610 North Whitney Way  
 Madison, WI

**Accommodation**

This building is accessible to people in wheelchairs through the Whitney Way (lobby) entrance. Handicapped parking is available on the south side of the building.

The Commission does not discriminate on the basis of disability in the provision of programs, services, or employment. Any person with a disability who needs accommodations to participate in this proceeding or who needs to obtain this document in a different format should contact Dennis Klaila, Docket Coordinator, at (608) 267–9780 or [dennis.klaila@psc.state.wi.us](mailto:dennis.klaila@psc.state.wi.us).

**Submission of Written Comments**

Any person may submit written comments on these proposed rules. The hearing record will be open for written comments from the public, effective immediately, and until Tuesday December 15, 2009, at noon (Monday December 14, 2009, at noon, if filed by fax). All written comments must include a reference on the filing to docket 1–AC–228. File by one mode only.

**Industry:** File comments using the Electronic Regulatory Filing system. This may be accessed from the Commission’s website [psc.wi.gov](http://psc.wi.gov).

**Members of the Public:**

If filing electronically: Use the Public Comments system or the Electronic Regulatory Filing system. Both of these may be accessed from the Commission’s website: [psc.wi.gov](http://psc.wi.gov).

If filing by mail, courier, or hand delivery: Address as shown in the box below.

If filing by fax: Send fax comments to (608) 266–3957. Fax filing cover sheet MUST state “Official Filing,” the docket number 1–AC–228, and the number of pages (limited to 25 pages for fax comments).

Comments Due: <b>Tuesday December 15, 2009 Noon</b>	Address Comments to: Sandra J. Paske Secretary to the Commission Public Service Commission P.O. Box 7854 Madison, WI 53707–7854 FAX (608) 266–3957
FAX Due: <b>Monday December 14, 2009 Noon</b>	

**Agency Contact Information**

Questions regarding this matter should be directed to Dennis Klaila, Docket Coordinator, at (608) 267–9780 or [dennis.klaila@psc.state.wi.us](mailto:dennis.klaila@psc.state.wi.us).

Small business questions may be directed to Gary Evenson at (608) 266–6744 or [gary.evanson@psc.state.wi.us](mailto:gary.evanson@psc.state.wi.us).

Media questions should be directed to Tim LeMonds, Director of Governmental and Public Affairs at (608) 266–9600.

Hearing or speech–impaired individuals may also use the Commission’s TTY number, if calling from Wisconsin (800) 251–8345, if calling from outside Wisconsin (608) 267–1479.

**Analysis Prepared by the Public Service Commission of Wisconsin**

**Statute interpreted**

This rule interprets s. 196.025 (6), Stats., which imposes a police and fire protection fee on communications service connections.

**Statutory authority**

Sections 196.02 (1) and (3), 196.025 (6) (d) 1., and 227.11, Stats.

**Explanation of agency authority**

Section 227.11, Stats., authorizes agencies to promulgate administrative rules. Section 196.02 (1), Stats., authorizes the Commission to do all things necessary and convenient to its jurisdiction. Section 196.02 (3), Stats., grants the Commission specific authority to promulgate rules. Section 196.025 (6) (d) 1., Stats., allows the Commission to promulgate rules about the new police and fire protection fee.

**Related statutes or rules**

Sections 77.59 (1) to (5), (5m) except any penalty or interest provision, (6) (a), (8) and (8m) describe department of revenue audit and appeal procedures.

**Summary of rule**

This rule deals with the new police and fire protection fee. It establishes the requirements for administering the fee.

The rule states that a fee must be assessed on all retail voice communications connections including voice over internet protocol, except that no fee should be assessed on lines used internally by a communications provider, by the federal government or by tribal governments. Anyone required to assess the fee must register with the Department of Revenue (DOR), which will be collecting the fee.

For communications connections under a subscription plan (one with regularly occurring payments scheduled), the provider is required to assess 75 cents per connection, per month. If a partial month of service is provided, then the provider is to follow the same procedure it uses with county 911 fees. If the provider does not assess those fees, then it can charge the full fee amount unless its billing system can prorate it. If a customer has more than 10 connections from a particular provider, each connection above 10 is assessed .075 cents per connection, per month. If only a partial payment is received from a customer, the payment is first applied to the provider’s charges. Providers must explain the fee on the first bill on which it appears and, if it is listed separately on the bill, must identify the bill in a manner specified in the statute and in the rule.

For prepaid wireless communications connections, the provider or retailer that sells the plan must assess 38 cents per connection sold in retail sales transactions. Retail sales transactions involving prepaid wireless include the sale of a phone and airtime, as well as sales of additional airtime. Whether the source of the sale is Wisconsin is determined using a hierarchy similar to that used for sales tax purposes.

Returns must be filed with the DOR. Fees imposed during one month must be paid to DOR by the end of the following month. Extensions may be granted for good cause. Fees written off as uncollectible and those repaid when an item is returned may be deducted from a later return.

Appeals about amounts due or refunds must be filed with DOR within 60 days of the date on which a notice of amount due, notice of refund, or notice of refund claim denial is received. A request for a redetermination must be filed with DOR as well. If the communications provider or retailer wishes to pursue its appeal further, it must file an objection to the assessment with the commission, which will follow a process similar to that in s. PSC 196.85, Stats., which deals with objections to other PSC assessments.

Resellers are required to file a form with their underlying local exchange carrier certifying that the lines they have purchased will be resold. This ensures that the local exchange carrier is not held responsible for submitting fees on those lines.

Providers and retailers are required to keep records about fee assessment. DOR and the commission can audit for compliance and the commission can bring an action for uncollected fees.

#### ***Comparison with federal regulations***

The Commission is not aware of any existing or proposed federal legislation on this matter.

#### ***Comparison with rules in adjacent states***

The Commission is not aware of any similar rules in surrounding states.

#### ***Summary of factual data and analytical methodologies***

The Commission and the DOR worked together to develop this rule. The current processes used by DOR for the collection of sales and other taxes were considered while developing this rule.

#### ***Analysis and supporting documents used to determine effect on small business***

The Commission and DOR worked together to develop this rule. The steps taken by DOR to reduce the burden of tax filings on small businesses were taken into account when drafting this rule.

#### **Small Business Impact**

While the statute creating this fee and this rule will affect small businesses to some degree, the Commission is unable to estimate the number because the statute and rule apply to all telecommunications providers and to retailers that sell prepaid wireless telecommunications plans. Since the Commission does not regulate wireless telecommunications providers or retail sellers of wireless services, it does not have the data necessary to determine whether those are small businesses. However, the Commission and the Department of Revenue (DOR) worked together to develop this rule. The steps taken by DOR to reduce the burden of tax filings on small businesses were taken into account when drafting this rule.

#### **Fiscal Estimate**

##### ***Summary***

Section 196.025 (6), Stats., and thus this rule implementing it, has a fiscal impact as it will increase costs to businesses and government, although it may be possible to absorb them. The fee created by the statute will be billed to each government and business customer according to a formula based on the number of lines of service they have in groupings of 10. For government, the fee would presumably be offset by revenue collections. For small businesses, the fee would be an

additional cost of doing business or recovered in charges to customers.

2009 WI Act 28 created a fee to be paid by telecommunications customers for support of county costs of police and fire protection services. The fee is billed to both residential and business landline and wireless providers including those wireless providers who use pre-paid cards to obtain cellular service. This fee will be billed to state and local government customers and business customers following the definitions in the law and this rule. Federal Government offices will be exempt from the charge because of the federal supremacy clause and the various court interpretations of its applicability in situations similar to those of this fee.

The cost effect on state and local government presumably will be in turn absorbed by collections in revenue. Each government and business customer will be billed according to a formula based on the number of lines of service they have in groupings of 10. Statistics on the number of lines for governments and small businesses are not available without extensive data requests of all providers of landline and cellular services in Wisconsin.

#### ***State fiscal effect***

Increase in costs that may be possible to absorb within agency's budget.

#### ***Types of local governmental units affected***

Towns, Villages, Cities, Counties, School Districts.

#### ***Affected Ch. 20 appropriations***

None.

#### ***Long-range fiscal implications***

For government, fee offset by revenue collections.

For small business, fee would be additional cost of doing business or recovered in charges to customers.

#### **Text of Proposed Rule**

SECTION 1. PSC ch. 172 is created to read:

##### **Chapter PSC 172**

##### **Police and Fire Protection Fee on Communications Connections**

**PSC 172.01 General.** (1) PURPOSE. The purpose of this chapter is to implement the police and fire protection fee required under s. 196.025(6), Stats.

(2) EXCEPTION. Nothing in this chapter shall preclude the commission from giving special and individual consideration to exceptional or unusual circumstances and, upon investigation of the facts and circumstances involved, adopting requirements that may be other or different than those provided in this chapter.

**PSC 172.02 Definitions.** In this chapter:

(1) "Basic local voice service" means the provision to residential or business customers of an access facility, whether by wire, cable, fiber optics or radio, and essential usage within a local calling area for the transmission of high-quality 2-way interactive switched voice communication.

(2) "Commercial mobile radio service" has the meaning given in 47 USC 332 (d).

(3) "Commission" means the public service commission.

(4) "Communications provider" means a person that provides communications service.

(5) "Communications service" means any of the following:

- (a) Retail basic local voice service.
- (b) Retail wireless voice service.
- (c) Retail voice over internet protocol service.
- (6) “Communications service connection” means a link with a communications network that provides a person the ability to access that network for voice communications.
- (7) “Customer” means a person that purchases a communications service connection. “Customer” includes pay telephone providers, but excludes resellers.
- (8) “Department” means the department of revenue.
- (9) “Fee” means the police and fire protection fee imposed under s. PSC 196.025 (6).
- (10) “Official company lines” are communications service connections that are reserved for a communications provider’s internal administrative use.
- (11) “Prepaid wireless retail transaction” means the sale of a prepaid wireless communications plan with no expectation that it will be resold. A prepaid wireless retail transaction includes any of the following:
  - (a) The sale of a handset with airtime for a specified dollar amount, or for a specified period time, such as a finite number of minutes of use or days of service.
  - (b) The sale of additional airtime, including an additional finite dollar amount of service, additional minutes of use or additional days of service, whether the additional airtime was sold at a retail location, over the internet, by mail, or by telephone call.
- (12) “Prepaid wireless communications plan” means a plan for wireless voice service that provides a person the right to utilize wireless voice service, is paid for prior to use, and is sold in predetermined dollar amounts whereby a number of units declines with use of a known amount.
- (13) “Place of primary use” has the meaning given in 4 USC 124(8).
- (14) “Retailer” means a person that sells a prepaid wireless communications plan on behalf of a communications provider.
- (15) “Subscriber” means a person that enters into a subscription communications plan with a communications provider.
- (16) “Subscription communications plan” means a contract or other service agreement in which a subscriber pays a periodic rate for a communications service, including both recurring and nonrecurring charges, either paid in advance for service to be provided in the subsequent month or paid in arrears for the service previously provided.
- (17) “Voice over internet protocol service” means a service that is provided to customers with either a billing address or a place of primary use within the state, that does all of the following:
  - (a) Enables real–time, two–way voice communications.
  - (b) Employs a broadband connection from the user’s location.
  - (c) Requires internet protocol–compatible customer premises equipment.
  - (d) Permits users generally to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network.
- (18) “Wireless voice service” means commercial mobile radio service, including the resale of commercial mobile radio service but excluding mobile satellite service, that meets all of the following:

(a) The source of the sale is Wisconsin under s. PSC 172.06 (2)(b).

(b) Offers real–time, two–way switched voice service that is interconnected with the public switched network.

**PSC 172.03 Police and fire protection fee.** (1) FEE. Except as provided in sub. (2), the fee shall be imposed on all communications service connections with an assigned telephone number, including a communications service provided using a voice over internet protocol connection.

(2) EXEMPTIONS. The fee may not be imposed on the following communications service connections:

(a) Those purchased by offices and agencies of the federal government or a sovereign tribe.

(b) Those used as official company lines.

(c) Those sold to resellers that bill end–users for the communications services provided, except that the fee shall be applied by the reseller when the connection is resold to an end–user.

**PSC 172.04 Registration.** Every communications provider and retailer required to impose the fee shall register with the department, in the manner prescribed by the department, to report and remit the fees.

**PSC 172.05 Assessment of fee.** (1) SUBSCRIPTION COMMUNICATIONS PLAN. (a) *Application of fee.* A communications provider shall apply a fee of \$0.75 per month on each communications service connection established under a subscription telecommunications plan. The communications provider shall remit the fee to the department using the procedure specified in s. PSC 172.06.

(b) *Partial month of service.* If a communications provider charges a subscriber for less than a full month of subscription communications plan service, the communications provider shall assess the fee in the same way that it assesses the countywide 911 charges under s. 256.35 (3), Stats. A provider that does not assess the 911 fees may assess a full fee if its billing system does not permit the fee to be prorated.

(c) *Multi–line service.* 1. If a communications provider furnishes multiple communications service connections to a single subscriber account, the communications provider shall impose a fee according to the following schedule:

a. For subscribers with 10 or less communications service connections, \$0.75 per connection, per month.

b. For subscribers with more than 10 communications service connections, \$7.50 for the first 10 connections plus \$0.075 per service connection in excess of 10, per month.

2. a. If a subscriber receives service from more than one communications provider, the communications providers serving the subscriber may not add together the communication service connections to determine the fee imposed on the subscriber. Each communications provider shall determine the fee to be imposed on a subscriber based upon the communication service connections the provider itself provides.

b. A communications provider may not add together the communications service connections from multiple accounts to determine the fee imposed. Only service connections within an account may be added together.

(d) *Partial payments.* If a subscriber remits to the communications provider an amount less than the full amount billed to the subscriber in a given month, the communications provider shall first apply the partial payment to any amount the subscriber owes to the communications provider for the communications service provided.

(e) *Billing identification and information.* 1. On its bill, a communications provider shall identify the fee in one of the following ways:

a. List the fee separately from other charges on a subscriber's bill and identify the fee as "police and fire protection fee."

b. Combine the fee with a charge imposed under s. 256.35(3), Stats., and identify the combined fee and charge as "charge for funding countywide 911 systems plus police and fire protection fee."

c. Combine the fee with basic rates and either do not identify the fee separately, or state that the basic rate includes the "police and fire protection fee."

2. On the first bill on which the fee appears, a communications provider offering a subscription communications plan shall inform its subscribers by bill message of the following:

a. The addition of the fee to the monthly bill.

b. The purpose the fee is intended to serve.

(2) **PREPAID WIRELESS COMMUNICATION PLAN.** (a) *Application of fee.* Any retailer or communications provider that sells a Wisconsin communications service connection established under a prepaid wireless communications plan shall impose a \$0.38 fee on each prepaid wireless retail transaction. The fee does not apply to the sale of related wireless handset equipment and accessories.

(b) *Determining Wisconsin connection.* A communications provider or retailer shall determine if a communications service connection that it sells is a Wisconsin communications service connection as follows:

1. If a customer receives the purchased item at a seller's business location, the sale is sourced to that business location.

2. If a customer does not receive the purchased item at a seller's business location, the sale is sourced to the location where the customer, or the customer's designated recipient, receives the product, including the location indicated by the instructions known to the seller for delivery to the customer or the customer's designated recipient.

3. If the location of a sale of a purchased item cannot be determined under subd. 1. or 2., the sale is sourced to the customer's address as indicated by the seller's business records, if the records are maintained in the ordinary course of the seller's business and if seller's use of that address to establish the location of a sale is not in bad faith.

4. If the location of a sale of a purchased item cannot be determined under subds. 1. to 3., the sale is sourced to the customer's address as obtained during the consummation of the sale, including the address indicated on the customer's payment instrument, if no other address is available and if the seller's use of that address is not in bad faith.

5. If a customer buys a prepaid wireless communications plan and the location of the sale cannot be determined under subds. 1. to 4., the sale is sourced to the location associated with the telephone number associated with the plan, as determined by the seller.

(c) *Remission of fee.* 1. If a prepaid wireless retail transaction is completed by a retailer, that retailer shall impose the fee and remit it using the procedure specified in s. PSC 172.06.

2. If a prepaid wireless retail transaction is completed by a communications provider, that provider shall impose the fee and remit it using the procedure specified in s. PSC 172.06.

(d) *Invoice or sales receipt identification.* A communications provider or retailer may state the amount of the fee separately on a bill, invoice, sales receipt, or other document associated with the prepaid wireless retail transaction. If a retailer or communications provider lists the fee separately, it shall identify the fee as "police and fire protection fee."

(e) When a communications provider or retailer does not state the amount of the fee separately on a bill, invoice, sales receipt or other document associated with the prepaid wireless retail transaction, but establishes to the satisfaction of the commission and the department that the customer is aware that the fee is included in the total sales price of the prepaid wireless retail transaction, the sales price shall be the amount received exclusive of the fee.

Note:: For example, a 50 minute card for a prepaid wireless account is sold in a vending machine for \$20.00. A sign is conspicuously posted on the vending machine that the "Price Includes the Police and Fire Protection Fee." The sales price of the card is \$19.62, the amount paid by the customer less the fee ( $\$20.00 - \$0.38 = \$19.62$ ).

**PSC 172.06 Filing returns.** (1) **FILING.** Every person registered or required to be registered for the fee shall electronically file a return.

(2) **ACCRUAL BASIS.** A filer under sub. (a) shall collect, report and remit the fee on an accrual, or as-imposed, basis.

(3) **DUE DATE.** A filer under sub. (1) shall submit the return and remit fees to the department by the last day of the month following the month in which the fees are imposed.

(4) **EXTENSIONS.** The department may, for good cause, extend the time for making any return or remitting any amount under this chapter. The extension may not exceed one month from the due date of the return and may be granted at any time provided a request is filed with the department within or prior to the period for which the extension is requested.

**PSC 172.07 Uncollectible amounts and returns.** (1) **UNCOLLECTIBLE AMOUNTS.** (a) A filer under s. PSC 172.06 (1) may claim a deduction for an unpaid fee if all of the following are met:

1. The communications provider or retailer previously reported and remitted the fee to the department.

2. The communications provider or retailer writes off the fee as uncollectible in its books and records.

3. The unpaid fee is eligible to be deducted as a bad debt for federal income tax purposes, regardless of whether the filer is required to file a federal income tax return.

(b) A deduction shall be claimed in the period in which the filer writes off the unpaid fee as uncollectible in its books and records and in which the amount is eligible to be deducted as a bad debt for federal income tax purposes.

(c) If the filer subsequently collects, in whole or in part, any bad debt for which a deduction under par. (a) is claimed, the filer shall include the amount collected in the return filed for the period in which the amount is collected and shall remit the fee with that return.

(2) **CUSTOMER RETURNS.** A filer under s. PSC 172.06 (1) may claim a deduction for a fee that is included in a previously filed return but refunded to the purchaser in cash or in credit. The filer shall claim the deduction on the return for the period in which the refund of the fee is paid.

**PSC 172.08 Resale.** (1) (a) A reseller shall file a properly completed form PFP-211, Wisconsin Police and Fire Protection Fee Resale Certificate, with the communications

provider from which it purchases communications services to resell. The reseller shall certify that the service connections it has purchased are being, or will be, resold. The certificate shall indicate whether the certificate is for a single purchase or for continuous purchases.

(b) Within 30 days of the effective date of this rule, a reseller shall file a form under par. (a) for services it is purchasing at that time. If that form is not for continuous purchases, the reseller shall file a form under par. (a) within 10 days of purchasing additional services, for resale. If a new purchasing relationship is established after the effective date of this rule, the reseller shall file a form under par. (a) within 10 days of purchasing services for resale.

(2) When filing a return under s. PSC 172.06 (1), a communications provider selling services for resale to a reseller shall not include communications service connections or prepaid wireless retail transactions involving services for which they have received a certificate under par. (a).

(3) A reseller shall apply, collect, and remit the fee for all communications service connections that it resells to an end–user.

**PSC 172.09 Sales and use tax exemption.** The fee is not subject to Wisconsin sales or use taxes.

**PSC 172.10 Audit.** (1) The commission may audit to determine compliance with this chapter.

(2) The department may, by office or field audit and using the procedures in ss. 77.59 (1) to (5), (5m) except any penalty or interest provision, (8) and (8m), Stats, determine compliance with this chapter.

(3) The filer under s. PSC 172.06 (1) shall maintain records to substantiate the number of communications service connections subject to the fee and the number of prepaid wireless retail transactions subject to the fee, as well as records to substantiate sales for resale and uncollectible accounts.

**PSC 172.11 Appeals.** (1) A communications provider or retailer that disagrees with a notice from the department about an amount due, a refund due, or a refund claim denial relating to the fee may file an appeal with the department.

(2) A communications provider's or retailer's appeal shall be in writing and signed. The appeal shall state the facts and reasons for disagreeing with the adjustments and include supporting documents.

(3) A communications provider or retailer shall mail or fax the appeal within 60 days after receiving a notice of amount due, notice of refund, or notice of refund claim denial from the department. The appeal shall be submitted to the address or fax number provided in the notice. An appeal that is mailed is considered timely if it is postmarked on or before the due date specified and is received by the department within five days of the due date.

(4) The procedures in s. 77.59 (6) (a), Stats., shall apply to an appeal under subs. (1) to (3).

(5) (a) Within 30 days after a redetermination under sub. (4) is mailed, a communications provider or retailer may file an objection with the commission. The objection shall set out in detail the grounds upon which the objector regards the bill to be excessive or erroneous.

(b) The commission, after at least 10 days notice to the objector, shall hold a hearing on the objection. After the hearing the commission shall mail a decision by registered mail that includes the amount, if any, to be paid.

(c) If the amount to be paid under the order in par. (b) is not paid within 10 days after the determination has been sent by registered mail, the commission may proceed under s. PSC 172.12.

**PSC 172.12 Collection action authorized.** The commission may bring an action to collect any amount that is required to be remitted under this chapter.

## Notice of Hearings

### Revenue

#### EmR0924 — CR 09–090

NOTICE IS HEREBY GIVEN That pursuant to ss. 227.11 (2) (a) and 227.24, Stats., the Department of Revenue will hold public hearings to consider emergency rules and the creation of permanent rules revising Chapter Tax 11, relating to sales and use tax.

The proposed rule order will:

- Reflect the changes in Wisconsin's sales and use tax laws due to the adoption of the statutory changes needed to bring Wisconsin's sales and use tax laws into compliance with the Streamlined Sales and Use Tax Agreement
- Provide guidance to Department employees and taxpayers so that they can properly apply the Wisconsin sales and use tax laws.

### Hearing Information

The hearings will be held:

Date and Time:	Location:
<b>December 1, 2009</b> at 1:00 p.m.	Events Room State Revenue Building 2135 Rimrock Road Madison, Wisconsin
<b>December 15, 2009</b> at 1:00 p.m.	Events Room State Revenue Building 2135 Rimrock Road Madison, Wisconsin

Handicap access is available at the hearing location.

### Copies of Proposed Rules

A copy of the full text of the proposed rule order and the full fiscal estimate may be obtained at no cost by contacting the department. See *Agency Contact Person* listed below.

### Submission of Written Comments

Interested persons are invited to appear at the hearings and may make an oral presentation. It is requested that written comments reflecting the oral presentation be given to the department at the hearings. Written comments may also be submitted to the contact person shown under *Agency Contact Person* listed below no later than December 15, 2009, and will be given the same consideration as testimony presented at the hearings.

**Agency Contact Person**

Dale Kleven  
 Department of Revenue  
 Mail Stop 6–40  
 2135 Rimrock Road — PO Box 8933  
 Madison WI 53708–8933  
 Telephone: (608) 266–8253  
 E–mail: dale.kleven@revenue.wi.gov

**Analysis Prepared by Department of Revenue****Statute interpreted**

Section 71.255, Stats.

**Statutory authority**

Section 227.11 (2) (a), Stats.

**Explanation of agency authority**

Section 227.11 (2) (a), Stats., provides that each agency may promulgate rules interpreting the provisions of any statute enforced or administered by it, if the agency considers it necessary to effectuate the purpose of the statute.

**Related statute or rule**

There are no other applicable statutes or rules.

**Plain language analysis**

This proposed rule does the following:

- Reflects the changes in Wisconsin’s sales and use tax laws due to the adoption of the statutory changes needed to bring Wisconsin’s sales and use tax laws into compliance with the Streamlined Sales and Use Tax Agreement (SSUTA).
- Provides guidance to Department employees and taxpayers so that they can properly apply the Wisconsin sales and use tax laws.
- Removes incorrect and outdated information.
- Revises punctuation to improve readability and conform to Legislative Clearing House rules and requirements.
- Removes the term “gross receipts” from the rules and replaces it with “sales price,” which is a newly defined term under the SSUTA.
- Changes numerous references to “tangible personal property” that were previously contained in the rules to “tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats.” because the definition of “tangible personal property” under previous law was amended and some items that were previously included in the definition of “tangible personal property” now have the sales and use tax specifically imposed on them in new sections of the statutes, specifically secs. 77.52 (1) (b), (c), and (d), Stats.
- Renumbers various sections within the rules to improve readability.
- Adds additional information related to numerous statutory changes that were not previously reflected in the rules, including information related to new exemptions on items such as durable medical equipment for home use, mobility–enhancing equipment, prosthetic devices and food and food ingredients and certain admissions.
- Adds numerous definitions that were adopted to various rules including s. Tax 11.08, 11.09, 11.12, 11.29 and 11.66.
- Creates a new rule (s. Tax 11.945), specifically relating to the proper sourcing of transactions so a person will know whether the transaction is subject to Wisconsin sales or

use tax and adds information relating to the sourcing of leases and rentals in s. Tax 11.29.

- Adds numerous listings of taxable and nontaxable items to various rules, including s. Tax 11.08, 11.09, 11.17, 11.45 and 11.51.
- Adds additional information pertaining to exemption certificates in s. Tax 11.14.

**Comparison with federal regulations**

There is no existing or proposed federal regulation that is intended to address the activities to be regulated by the rule. However, the Streamlined Sales Tax Project (SSTP) is a nationwide project that is intended to modernize and simplify the sales and use tax reporting in the states who choose to conform their laws to the requirements contained in the Streamlined Sales and Use Tax Agreement (SSUTA). Adopting the requirements of the SSUTA will help make Wisconsin’s sales and use tax laws more uniform with the sales and use tax laws of the other states that have also conformed their laws to the requirements of the SSUTA.

**Comparison with rules in adjacent states**

Minnesota, Michigan and Iowa have conformed their laws to the requirements of the SSUTA and therefore, like Wisconsin, must administer their laws in a manner consistent with the requirements of the SSUTA. These states do this through a combination of statutory provisions and administrative rules.

Illinois has not conformed their laws to the requirements of the SSUTA and is not bound by the requirements contained in the SSUTA.

**Summary of factual data and analytical methodologies**

2009 Wisconsin Act 2 adopted statutory changes to bring Wisconsin’s sales and use tax statutes into conformity with the Streamlined Sales and Use Tax Agreement. The department has created this proposed rule to reflect these changes in Wisconsin’s sales and use tax laws.

**Analysis and supporting documents used to determine effect on small business**

As explained above, this proposed rule is created to reflect changes in Wisconsin’s sales and use tax laws. As the rule itself does not impose any significant financial or other compliance burden, the department has determined that it does not have a significant effect on small business.

**Anticipated costs incurred by private sector**

This proposed rule does not have a significant fiscal effect on the private sector.

**Small Business Impact**

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

**Fiscal Estimate**

2009 Wisconsin Act 2 adopted statutory changes to bring Wisconsin into conformity with the Streamlined Sales and Use Tax Agreement (SSUTA). The SSUTA is the result of an effort by state governments, with input from local governments and the private sector, to simplify and modernize sales and use tax administration. Under the agreement, Wisconsin must use standard definitions for sales tax purposes.

The proposed rule conforms ch. Tax 11 to current law, as modified by the Streamlined Sales and Use Tax Agreement provisions of 2009 Wisconsin Act 2. The rule provides guidance in the application of the law by providing specific

examples of items that are both included and excluded from certain SSUTA definitions. The rule provides examples of exempt durable medical equipment, exempt prosthetic devices, and exempt mobility enhancing equipment. The rule also provides several guide lists — including items typically sold by grocers that are subject to the sales tax and items typically sold by grocers that are exempt from the tax.

Since the fiscal effect of conforming Wisconsin law to the SSUTA was included in the fiscal estimate of 2009 Wisconsin Act 2, the rule has no fiscal effect.

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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.*

### **Barbering and Cosmetology Examining Board** **CR 09–065**

A rule–making order to revise Chapter BC 9 and to create Chapter BC 11, relating to renewal, reinstatement of license, and continuing education.

### **Insurance** **CR 09–055**

A rule–making order to create section Ins 17.28 (3h), relating to supervision and direction.

### **Natural Resources** ***Fish, Game, etc., Chs. NR 1—*** **CR 09–051**

A rule–making order to revise Chapters NR 19 to 23, relating to housekeeping changes to fishing regulations that clarify existing code which does not accurately reflect the intent of rules previously adopted by the Natural Resources Board.

### **Natural Resources** ***Fish, Game, etc., Chs. NR 1—*** **CR 09–053**

A rule–making order to revise Chapter NR 10, relating to deer management unit population goals.

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## Rule Orders Filed with the Legislative Reference Bureau

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*The following administrative rule orders have been filed with the Legislative Reference 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 Legislative Reference Bureau at [bruce.hoesly@legis.wisconsin.gov](mailto:bruce.hoesly@legis.wisconsin.gov) or (608) 266–7590 for updated information on the effective dates for the listed rule orders.*

**Architects, Landscape Architects, Professional  
Engineers, Designers and Land Surveyors  
Examining Board  
CR 09–030**

Rule revising section A–E 6.03, relating to land surveying experience.  
Effective 1–1–10.

**Architects, Landscape Architects, Professional  
Engineers, Designers and Land Surveyors  
Examining Board  
CR 09–032**

Rule creating Chapter A–E 10, relating to continuing education for land surveyors.  
Effective 1–1–10.

**Architects, Landscape Architects, Professional  
Engineers, Designers and Land Surveyors  
Examining Board  
CR 09–033**

Rule revising section A–E 8.03 (5), relating to the definitions of supervision, direct supervision, responsible charge, and direction and control.  
Effective 1–1–10.

**Architects, Landscape Architects, Professional  
Engineers, Designers and Land Surveyors  
Examining Board  
CR 09–034**

Rule revising section A–E 8.08 (3) and (4), relating to

failure to respond to information requests in conjunction with an investigation of a complaint filed against a registrant.  
Effective 1–1–10.

**Financial Institutions — Banking  
CR 09–060**

Rules revising Chapters DFI–Bkg 40 to 44, repealing Chapter DFI–Bkg 45, and creating Chapter DFI–Bkg 47, relating to the transition from a registration system to a license system under subch. III of Ch. 224, Stats., branch offices, mortgage broker agreements, surety bonds, and trade names.  
Effective 1–1–10; except the repeal eff. 1–1–11.

**Financial Institutions — Securities  
CR 09–056**

Rules revising Chapters DFI–Sec 1 to 5, 7 and 9, relating to minor revisions to securities sections for conformity with Wisconsin securities statutes, filings, and securities agent examination matters.  
Effective 1–1–10.

**Transportation  
CR 09–058**

Rules revising section Trans 315.03 (1), relating to safety belt medical use exemption.  
Effective 1–1–10.

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