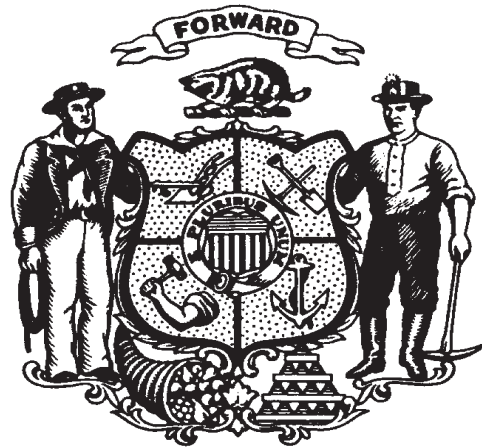


# Wisconsin Administrative Register

No. 637



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Questions, comments, or corrections should be directed to:

Bruce Hoesly (608) 266-7590  
email: [bruce.hoesly@legis.wisconsin.gov](mailto:bruce.hoesly@legis.wisconsin.gov)

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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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### Children and Families

(Formerly Workforce Development)

#### Family Supports, Chs. DWD 12 to 59

**EmR0821** — Rules adopted creating **ss. DWD 40.02 (12m), 40.05, and DWD 40 Appendix D** (renumbered DCF 150.02 (12m), 150.05 and DCF 150 Appendix D, effective 12-1-08), relating to establishment of birth cost orders based on child support guidelines.

#### Finding of Emergency

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

The federal Office of Child Support Enforcement (OCSE) has notified Wisconsin that OCSE will not certify the state's request for federal income tax refund offset for birth cost orders that have not been set in accordance with the child support guidelines in Chapter DWD 40, which take into consideration the payer's ability to pay.

Federal income tax refund offset is one of the primary tools for collection of birth cost orders owed to the State of Wisconsin. In calendar year 2007, the child support program collected \$11,481,000 in birth costs through federal income tax refund offset. Of the nearly \$11.5 million collected, approximately \$6.62 million was returned to the federal government to reimburse Medicaid costs, \$1.72 million was used by county child support agency programs to benefit children in the state, and the remaining \$3.14 million was returned to the state Medicaid program.

**Publication Date:** June 27, 2008

**Effective:** June 27, 2008 through  
November 23, 2008

**Hearing Date:** July 29, 2008

**Extension Through:** December 31, 2008

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### Commerce

#### Fee Schedule, Ch. Comm 2

**EmR0837** — Rule adopted revising **s. Comm 2.68**, relating to public swimming pool and water attraction plan review and inspection fees.

#### 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. Implementation of the federal Virginia Graeme Baker Pool and Spa Safety Act necessitates most existing public swimming pools and water attractions to undergo physical modifications to reduce the risk of entrapment at suction outlets.

2. The Virginia Graeme Baker Pool and Spa Safety Act has a compliance date of December 19, 2008.

3. The department estimates that 3,700 existing pools and water attractions will need to be modified in order to comply with the federal act.

4. The current department plan review fees and inspection fees under s. Comm 2.68 reflect an estimated average time and cost to provide those services. For the types of pool and water attraction modifications necessary to comply with the Virginia Graeme Baker Pool and Spa Safety Act, the department believes that the time and cost to provide the service will be below the averages reflected under the current fee structure of section Comm 2.68.

5. The department believes that a temporary fee reduction to facilitate plan review and inspection relative to the Virginia Graeme Baker Pool and Spa Safety Act is in alignment with the direction provided under s. 101.19, Stats., of keeping fees consistent with the costs of providing service.

**Publication Date:** December 15, 2008

**Effective:** December 15, 2008  
through May 13, 2009

**Hearing Date:** January 8, 2009

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## Commerce

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

### *Wisconsin Commercial Building Code, Chs. Comm 60–66*

**EmR0826** — Rules adopted to renumber s. **Comm 66.0911**; to amend s. **Comm 20.24 (1) and (2)**; and to create ss. **Comm 21.095, 20.24 Table 20.24–14, 62.1200, 62.3500 (3) (e), 66.0911 (title) and (2)**, relating to carbon monoxide alarms and affecting small business.

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

Under the nonstatutory provisions of 2007 Wisconsin Act 205, the Department of Commerce is directed to issue emergency rules that implement provisions of the Act. The Act specifically states: “Notwithstanding section 227.24 (1) (a) and (3) of the statutes, neither the department of commerce or the department of health services is required to provide evidence that promulgating rules under this subsection as emergency rules is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency for the rules promulgated under this subsection.”

The Act mandates the installation and maintenance of carbon monoxide alarms in buildings accommodating certain types of residential occupancies and within which fuel burning appliances are located. Residential occupancies include tourist rooming houses, bed and breakfast establishments, and any public building that is used for sleeping or lodging, such as, hotels, motels, condominiums, apartment buildings, dormitories, fraternities, sororities, convents, seminaries, community based residential facilities, home shelters, but not hospitals and nursing homes. The Act requires the installation of carbon monoxide alarms in new buildings as of October 1, 2008. The owners of existing buildings will have until April 1, 2010 to install the carbon monoxide alarms. The Act also provides for the omission of carbon monoxide alarms in certain instances which are further clarified by the administrative rules.

**Publication Date:** September 10, 2008  
**Effective:** October 1, 2008 through February 27, 2009  
**Hearing Date:** October 14, 2008

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## Commerce (2)

### *Financial Resources for Businesses and Communities, Chs. Comm 104–135*

- EmR0823** — Rules adopted amending **Comm Table 108.6–1, sections Comm 108.07 (5), 108.22 (1), and 154.06 (intro.)**, relating to emergency assistance grants in the community development block grant program, and affecting small businesses.

#### **Finding of Emergency**

The Department of Commerce finds that an emergency exists and that adoption of the rule included in this order is necessary for the immediate preservation of public health, safety, and welfare. The facts constituting the emergency are as follows.

Currently under sections Comm 108.06, 108.07, and 108.22 of the Wisconsin Administrative Code, as promulgated under sections 560.04, 560.045, and 560.9809 of the Statutes, the Department may annually use up to 5 percent of its federal Community Development Block Grant (CDBG) funds to repair or replace public infrastructure or

facilities, or for emergency services necessitated by a natural disaster or catastrophic event. Also under sections Comm 108.07 and 108.22, the maximum amount of CDBG funds that the Department can award to any local government for a natural disaster or catastrophic event is \$500,000.

Currently under section Comm 154.06, as promulgated under sections 560.02 (4) and 560.9809 (2) of the Statutes, the Department may annually use up to \$2,000,000 of CDGB funds to address emergency housing needs caused by natural disasters or catastrophic events.

Because of the unprecedented levels of damage to public infrastructure and facilities from the severe storms and widespread flooding that occurred throughout the State in June 2008, the need for emergency assistance to communities far exceeds the \$1.35 Million of CDBG funding that results from the above 5-percent limit, and the need for emergency housing assistance for low and moderate income households far exceeds the above \$2,000,000. Communities and households in 28 of the 30 counties where the Governor has declared a state of emergency are eligible for this CDBG program assistance.

This emergency rule repeals the above limits of 5 percent, \$500,000 and \$2,000,000. This will enable the Department to (1) use any available CDBG funds for emergency assistance with repairing or replacing public infrastructure and facilities, and with repairing or replacing homes damaged by the severe storms and flooding; and (2) base the award amounts on the scope of the damages and destruction in the community and on the funds available.

**Publication Date:** July 16, 2008  
**Effective:** July 16, 2008 through December 12, 2008  
**Hearing Date:** August 27, 2008  
**Extension Through:** February 10, 2009

- EmR0831** — Rules adopted creating section **Comm 113.03 (4)**, relating to allocation of volume cap on tax-exempt private activity bonds.

#### **Finding of Emergency**

The Department of Commerce finds that an emergency exists and that adoption of the rule included in this order is necessary for the immediate preservation of public welfare.

The facts constituting the emergency are as follows. Because of widespread disruption of the housing markets, Congress has enacted the Housing and Economic Recovery Act of 2008 (the “Act”), which contains various relief measures relating to housing. Section 3021 of the Act creates a special one-time additional allocation of volume cap for calendar year 2008, to be used for the issuance of single-family housing bonds and multifamily housing bonds no later than December 31, 2010.

Under section 560.032 of the Statutes, the Department of Commerce is charged with allocating to Wisconsin issuers the private activity bond volume cap allocated to Wisconsin under the Internal Revenue Code of 1986, 26 USC 146. This emergency rule is necessary to implement the special allocation of volume cap under the Act, as described above.

Pursuant to section 227.24 of the Statutes, this rule is adopted as an emergency rule to take effect upon publication in the official state newspaper and filing with the Legislative Reference Bureau.

**Publication Date:** September 27, 2008  
**Effective:** September 27, 2008 through February 23, 2009  
**Hearing Date:** October 27, 2008



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## Corrections

**EmR0835** — Rules adopted creating **s. DOC 332.20**, relating to establishing a reimbursement fee to offset the costs of monitoring persons subject to global positioning system tracking or passive positioning system tracking.

### Finding of Emergency

The department of corrections finds that an emergency exists and that rules included in this order are necessary for the immediate preservation of public peace, health, safety and welfare. A statement of the facts constituting the emergency is:

Under 2005 WI Act 431, section 8, the legislature requires certain persons who have been convicted of a serious child sex offense, who have been found not guilty of a serious child sex offense by reason of mental disease or mental defect, or who are the subject of notification under s. 301.46 (2m) (am), Stats., to be placed on lifetime tracking under a global positioning system (GPS) or a passive positioning system (PPS). The legislature also authorized the department to establish a rule to require persons who are subject to GPS tracking or PPS tracking to pay the cost of tracking.

If the rule is not created promptly and immediately, the department will not be able to collect the fees which are to be used to offset the costs of the tracking program, which could result in a lessening of tracking due to budget limitations.

The purpose of the emergency rule is to require all persons who are subject to tracking to pay the tracking fee which is used to offset the costs of the tracking program. 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 collection of tracking fees while permanent rules are being developed.

**Publication Date:** November 12, 2008  
**Effective:** November 12, 2008  
 through April 10, 2009  
**Hearing Date:** December 11, 2008

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## Financial Institutions — Securities

**EmR0829** — Rules adopted to **amend s. DFI–Sec 4.06 (2) (i) and to create ss. DFI–Sec 4.06 (1) (v), 5.06 (14) and Chapter DFI–Sec 10**, relating to making it a dishonest or unethical practice for securities licensees to make use of misleading designations or certifications purporting to demonstrate special expertise in the financial or retirement needs of seniors.

### Finding of Emergency

The Division of Securities of the Department of Financial Institutions for the State of Wisconsin 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 the facts constituting the emergency follows:

The Division is taking immediate, emergency–rule action to protect seniors in Wisconsin from being misled through the use by securities licensees of designations and credentials that imply or represent that a person has special expertise, certification, or training in financial planning for seniors, but where such designations and/or credentials are either non–existent or do not involve significant education, testing, training or experience, and in reality are marketing ploys.

**Publication Date:** September 18, 2008  
**Effective:** September 18, 2008  
 through February 14, 2009

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## Government Accountability Board

**EmR0830** — Rules adopted repealing and recreating **Chapter GAB 4**, relating to observers at a polling place or other location where votes are being cast, counted or recounted.

### Finding of Emergency

Pursuant to section 227.24, Stats., the Government Accountability Board finds that an emergency exists in the Board's May 5, 2008 decision to decline to reaffirm the administrative rule section EIBd 4.01 because the rule was inconsistent with the requirements of its enabling statute, s. 7.41, Stats. The statute states that any member of the public is allowed to be present at the polls on Election Day to observe; however, it does not specify standards of conduct they must abide by.

The Board further finds that given the intense interest in the fall election, the expected high turnout, the increasing use of observers in the polling place, and the comments of municipal and county clerks regarding the obstacles observers can pose to the orderly conduct of elections, it is necessary to codify standards to regulate the observers' conduct and that the attached rule governing observer conduct must be adopted prior to the fall elections to ensure the public peace and safety with respect to the administration of the fall elections.

**Publication Date:** September 26, 2008  
**Effective:** September 26, 2008  
 through February 22, 2009  
**Hearing Date:** November 11, 2008

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## Health Services (2)

(Formerly Health and Family Services)

*Management & Technology & Strategic Finance,  
 Chs. HFS (DHS) 1—*

- EmR0832** — Rule adopted to repeal **s. HFS (DHS) 12.03 (15) and to create ss. HFS (DHS) 12.03 (20m), 12.115 and Table HFS (DHS) 12.115**, relating to background checks of individuals who provide personal care services, and affecting small businesses.

### Finding of Emergency

The Department of Health Services finds that an emergency exists and that the adoption of an emergency rule is necessary for the immediate preservation of the public health, safety and welfare. The facts constituting the emergency are as follows:

2007 Wisconsin Act 172 requires the department to specify by rule, the crimes, a conviction of which an entity must disclose to a client or a client's guardian before the caregiver provides the client with personal care services in the client's home. Act 172 also requires the department to define the term "substitute caregiver". Under s. 50.065 (2m) (d), Stats., as created by 2007 Wisconsin Act 172, the department created a list of crimes required and also as required defined the term "substitute caregiver".

Effective November 1, 2008, entities, including home health agencies and temporary employment agencies, are required under s. 50.065 (2m) (d), Stats., to disclose to the client or the client's guardian, the assigned caregiver's convictions of crimes specified by the department by rule.

**Publication Date:** October 20, 2008  
**Effective:** November 1, 2008 through  
 March 31, 2009  
**Hearing Date:** January 6, 2009

**Publication Date:** August 29, 2008  
**Effective:** September 1, 2008 through  
 January 28, 2009  
**Hearing Date:** December 11, 2008  
**Extension Through:** March 29, 2009

2. **EmR0834** — Rules adopted amending s. HFS (DHS) 10.23 (2) (d) 2., relating to confidentiality requirements of the Family Care program that prohibit benefit specialists from disclosing personally identifying information about a client without the client's informed consent, unless required by law.

#### Finding of Emergency

The Department of Health Services finds that an emergency exists and that adoption of an emergency rule is necessary for the immediate preservation of the public health, safety and welfare. The facts constituting the emergency are as follows:

Chapter HFS 10 is the department's rule that guides the implementation of the department's Family Care program. Included in these provisions are standards for confidentiality which prohibit disability benefit specialists from disclosing personally identifying information about a client without the client's consent unless required by law. Because disability benefit specialists are permissive reporters, and thus not required to report abuse, neglect, or financial exploitation of elder adults and adults at risk under ss. 46.90 (4) (ar) and 55.043 (1m) (br), Stats., s. HFS 10.23 (2) (d) 2., effectively prevents disability benefits specialists from making such disclosures.

Amending s. HFS 10.23 (2) (d) 2., to allow disability benefit specialists to report abuse, neglect, or financial exploitation under ss. 46.90 (4) (ar) and 55.043 (1m) (br), Stats., would help to ensure that elder adults and adults-at-risk who may have been abused, neglected, or financially exploited are brought to the attention of the abuse, neglect and exploitation response systems outlined under ss. 46.90 and 55.043, Stats.

**Publication Date:** November 3, 2008  
**Effective:** November 3, 2008 through  
 April 1, 2009  
**Hearing Date:** January 27, 2009

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### Health Services

(Formerly Health and Family Services)

#### *Health, Chs. HFS 110—*

**EmR0825** — Rule adopted creating Chapter HFS 119, to require emergency medical technicians, first responders, and individuals who provide instruction to emergency medical technicians and first responders to complete training on the use of automated external defibrillators and to specify the content of the training, qualifications of providers, and frequency with which training is to be completed, and affecting small businesses.

#### Exemption From Finding of Emergency

The legislature by 2007 Act 104 provides the department with an exemption from a finding of emergency to adopt these emergency rules.

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### Military Affairs — Wisconsin Emergency Management

**EmR0836** — Rule adopted revising Chapter WEM 1, relating to fee revisions to facilities housing hazardous chemicals, hazardous substances, and extremely hazardous substances as defined in s. WEM 1.02 (5).

#### Finding of Emergency

The Wisconsin Division of Emergency Management (WEM)/State Emergency Response Commission finds that an emergency exists and that a rule revision is necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of facts constituting an emergency is as follows:

Emergency response to and planning for accidental or purposeful releases of dangerous chemicals will be compromised by a significant reduction of money available to fund emergency management activities at the county level. County emergency management agencies will be unable to fully comply with state and federal laws. Wisconsin Emergency Management would also experience substantial reductions in capabilities to assist local units of government with their state and federally required responsibilities. Sufficient funding of the county grant program and WEM activities is necessary to protect and defend the citizens of Wisconsin from accidental releases and releases caused by terrorist actions.

**Publication Date:** December 1, 2008  
**Effective:** December 1, 2008 through  
 April 29, 2009  
**Hearing Dates:** December 18 and 19, 2008

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### Natural Resources

#### *Fish, Game, etc., Chs. NR 1—*

**EmR0824** — Rule adopted revising ss. NR 10.01 (1) (b), (g), (h), (u) and (v) and 10.06 (5), relating to the 2008 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 30, 2008  
**Amendment:** September 26, 2008  
**Effective:** August 30, 2008 through  
 January 26, 2009  
**Hearing Date:** October 27, 2008

**Publication Date:** June 18, 2008  
**Effective:** June 18, 2008 through  
 November 14, 2008  
**Hearing Date:** November 11, 2008  
**Extension Through:** March 14, 2009

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## Natural Resources

### *Environmental Protection – General, Chs. NR 100—*

**EmR0809** — Rule adopted to repeal s. NR 198.15 (2), to renumber s. NR 198.12 (6) to (10), to amend ss. NR 198.11, 198.14 (1) (e) and (f) 2., 198.23 (5) to (7), 198.33 (5), and 198.44 (5) and to create ss. NR 198.12 (6) and (7), 198.33 (6) and subch. V of ch. NR 198, relating to grants for the control of aquatic invasive species.

#### Finding of Emergency

The substantial increase in grant funding is a strong message from the Legislature that concern over the welfare of our public waters is growing, along with the expectation that these additional funds be put to work as soon as possible. The appropriation from which these funds are spent is a biennial appropriation, meaning that any unspent funds at the end of the biennium automatically lapse back to the Water Resources Account of the Conservation Fund. The timeline for permanent rule promulgation and the lack of staff to provide support to eligible sponsors may impede the Department's ability to fully and responsibly invest the authorized spending by the end of the biennium because of the current rule's limitations. An emergency rule will help to minimize or eliminate the amount of funds that are lapsed.

**Publication Date:** April 7, 2008  
**Effective:** July 1, 2008 through  
 November 27, 2008  
**Hearing Dates:** July 22 to August 5, 2008  
**Extension Through:** March 27, 2009

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## Regulation and Licensing (3)

- EmR0819** — A rule adopted revising s. RL 161.04, relating to examinations for substance abuse professionals.

#### Finding of Emergency

The department has made a finding of emergency. The current rules require an applicant for a clinical substance abuse counselor credential to pass an oral examination. The company that produced that examination is not giving that examination after June 1, 2008. This emergency rule creates a time period for a transition to enable a category of applicants to get a clinical substance abuse counselor credential. Persons holding a clinical substance abuse counselor credential can apply for a supervisory credential. There is a strong need for more supervisors in this field because services can only be provided under supervision. This rule will enable more applicants to receive a supervisor credential and is therefore necessary to maintain the health, safety and welfare of the public.

- 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 February 6, 2009  
**Hearing Date:** November 26, 2008

- 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 February 6, 2009  
**Hearing Date:** November 26, 2008

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## Revenue

**EmR0820** — Rule adopted creating ss. Tax 8.03 and 8.05, relating to the registration of wine collectors, establishing standards of eligibility for registration as a wine collector, specifying the form and manner of notice required prior to the sale of wine by a wine collector, and the creation and organization of small winery cooperative wholesalers.

#### Exemption From Finding of Emergency

The legislature by Section 50 of 2007 Wisconsin Act 85 provides an exemption from a finding of emergency for the adoption of the rule.

**Publication Date:** June 26, 2008  
**Effective:** June 26, 2008 through July 1, 2010 or the date on which permanent rules take effect, whichever is sooner.

### Transportation

**EmR0833** — Rule adopted revising **Chs. Trans 325, 326 and 327**, relating to motor carrier safety, and hazardous material transportation safety.

#### Finding of Emergency

The Department of Transportation finds that an emergency exists and that an emergency rule is necessary for the immediate preservation of the public peace, health, safety or welfare. Recently enacted commercial motor carrier safety regulations apply to drivers and carriers transporting property and passengers by commercial vehicles in interstate commerce and enhance highway safety. It is imperative the industry operates under a single set of safety regulations to minimize confusion that could result in inadvertent noncompliance or application of an outdated safety standard. Also pursuant to 49 CFR 350.331(d), States are required to adopt compatible laws or rules to remain eligible for Motor Carrier Safety Assistance Program funding. Currently, Wisconsin receives approximately \$4 million in such funding, which is used to administer various highway safety programs, and that funding and the safety programs it supports will be in jeopardy if Wisconsin does not implement these changes immediately. The Motor Carriers Association has urged the Department to implement these changes as it will help ensure uniformity and increased highway safety.

**Publication Date:** November 5, 2008  
**Effective:** November 5, 2008 through April 3, 2009  
**Hearing Date:** December 2, 2008

### Workforce Development

*Public Works Construction Contracts,  
Chs. DWD 290–294*

**EmR0838** – Rules adopted revising s. **DWD 290.155 (1)**, relating to the adjustment of thresholds for application of prevailing wage rates.

#### Finding of Emergency

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

Adjusting the thresholds for application of the prevailing wage rate requirements by emergency rule ensures that the adjustments are effective on a date certain that is prior to the time of year that project requests are generally submitted to the Department and applicability of the prevailing wage law is determined. The adjustment avoids imposing an additional administrative burden on local governments and state agencies caused by an effective decrease of the thresholds due solely to inflation in the construction industry. If these new thresholds are not put into effect by emergency rule, the old thresholds will remain effective for approximately six to seven months, until the conclusion of the permanent rule-making process. The thresholds are based on national construction cost statistics and are unlikely to be changed by the permanent rule-making process.

**Publication Date:** December 29, 2008  
**Effective:** January 1, 2009 through May 30, 2009  
**Hearing Date:** February 12, 2009

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## Scope Statements

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

#### **Subject**

Revises Chapter ATCP 75, relating to retail food establishments.

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

This rule will modify DATCP's retail food establishment administrative rule under ch. ATCP 75, Wis. Adm. Code, and the appended Wisconsin Food Code. The current rule sets standards for food safety practices at retail food stores such as grocery stores, supermarkets and convenience stores.

This rule may do all of the following:

- Work with the Department of Health Services (DHS) to update the state's retail food code. DATCP and DHS have adopted a common retail food code under chs. ATCP 75 and HFS 196, Wis. Adm. Code. Chapter ATCP 75 covers retail food establishments such as grocery stores, supermarkets and convenience stores. Chapter HFS 196 regulates food service establishments (restaurants). Both rules are based on the federal Model Food Code published by the U.S. Food and Drug Administration (FDA).
- Incorporate updates from the 2009 federal Model Food Code into the state retail food code.
- Clarify licensing requirements for retail food businesses.
- Make technical changes and practical improvements, as necessary.
- Maintain consistency between DATCP and DHS rules, and improve consistency where possible.

#### **Policy Analysis**

The Department of Agriculture, Trade and Consumer Protection and the Department of Health Services adopted uniform retail food rules, based on the federal Model Food Code, effective February 2001. This has helped to eliminate conflicting regulatory requirements, especially for businesses that combine grocery and restaurant operations. It has reduced confusion for business owners, and has eliminated duplicative licensing and inspection.

The federal Model Food Code is revised and published every four (4) years. Rule revisions are needed to incorporate changes in the federal Model Food Code, and to make the rules as clear and practical as possible. DATCP and DHS will collaborate on the proposed changes, with input from affected businesses.

#### **Policy Alternatives**

Do nothing. If DATCP does nothing, Wisconsin's retail food code will be out of step with the current federal Model Food Code. The code will not be as clear, or as practical, as it could be. Wisconsin's retail food industry may be put at a competitive disadvantage, and may incur unnecessary costs. Food code provisions may no longer be based on the latest science, and there may be less effective and efficient protection for food consumers.

#### **Statutory Authority**

Sections 93.07(1), 97.30 (5) and 227.14 (1s), Stats.

### **Comparison with Federal Regulations**

There is no federal law related to retail food establishments or restaurants. The United States Food and Drug Administration publishes the federal Model Food Code as a model for states to use in developing their retail food establishment and restaurant regulations.

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

This rule will revise regulations for retail food establishments licensed and inspected by DATCP or its local city and county agents.

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

DATCP estimates that it will use approximately 0.5 FTE staff time to develop this rule change. This includes research, drafting, preparing related documents, holding public hearings, and communicating with affected persons and groups. DATCP will assign existing staff to develop this rule.

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

#### **Subject**

Revises Chapter ATCP 91, relating to selling commodities by weight, measure and count.

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

Repeal the current methods of sale for commodities, and adopt the methods of sale established by the national institute of standards and technology (NIST) for sale of commodities.

#### **Policy Analysis**

DATCP regulates the methods of sale of commodities sold in Wisconsin in ch. ATCP 91, Wis. Adm. Code. The methods of sale required by DATCP for various types of commodities is different than the NIST guidelines for methods of sale of commodities. The NIST guidelines for methods of sale of commodities have been adopted by 45 other states. Businesses that sell commodities in Wisconsin must adjust their methods from the methods of sale they follow in most other states. The department proposes that it adopt the NIST guidelines for methods of sale of commodities in Wisconsin. By adopting the NIST guidelines, these businesses will be able to save the cost of adjusting their methods to comply with Wisconsin law. In addition, consumers will be more familiar with the Wisconsin methods of sale if they harmonize with those of other states, and uniformity of methods will facilitate compliance efforts.

#### **Policy Alternatives**

No change to the current methods of sale for commodities. If the current methods of sale remain in force, these methods will continue to be different than the NIST guidelines followed by most states. Businesses that sell commodities in Wisconsin will continue to be required to adjust their methods of sale in Wisconsin. Wisconsin consumers familiar with methods of sale in other states will still need to adjust their understanding of these methods when purchasing commodities in Wisconsin.

#### **Statutory Authority**

Sections 93.07 (1), 98.07 (3) and 98.07 (4), Stats.

### Comparison with Federal Regulations

There are no federal laws that establish methods of sale for commodities.

### Entities Affected by the Rule

Businesses that sell commodities in Wisconsin will have to adjust their methods of sale to comply with the methods of sale provided by the NIST guidelines and required in most other states.

### Estimate of Time Needed to Develop the Rule

DATCP estimates that it will use approximately 0.1 FTE staff time to develop and adopt this rule. This includes research, drafting, preparing related documents, holding public hearings, and communicating with affected persons and groups. DATCP will assign existing staff to develop this rule.

## Insurance

### Subject

Revises section Ins 2.81, Wis. Adm. Code, relating to use of the 1980 CSO Standard Ordinary Life Valuation Mortality Table.

### Objective of the Rule

The proposed rule will establish for preneed funeral life insurance products minimum mortality standards for reserves and nonforfeiture values, and require use of the 1980 Commissioners Standard Ordinary (CSO) Life Valuation Mortality Table for use in determining the minimum standard of valuation reserves and the minimum standard nonforfeiture values for preneed funeral insurance products.

### Policy Analysis

The existing requirements are contained primarily in s. 623.06 (2) (am) 3., Stats., and s. Ins 2.80 (4) (a) and (b), and subch. V of Ch. Ins 50, Wis. Adm. Code. Section 2.81, Wis. Adm. Code, sets forth the requirements for the use of the 2001 Commissioners Standard Ordinary (CSO) Mortality table by insurers, meeting prescribed conditions, in determining minimum reserve liabilities and minimum nonforfeiture values, which may be used for policies issued on or after January 1, 2005, and before January 1, 2009, and which shall be used for policies issued on or after January 1, 2009. Research completed by the Deloitte University of Connecticut Actuarial Center commissioned by the Society of Actuaries as a part of a study of preneed mortality determined that the 2001 CSO Mortality Table produces inadequate reserves for policies issued to fund funeral services and expenses. Funeral policies are regulated under s. 632.415, Stats. The proposed rule is under consideration as it has been recommended by the NAIC.

### Statutory Authority

Sections 601.41 (3), 601.42 (3) and Chapter 623, Stats.

### Comparison with Federal Regulations

The office is unaware of any proposed or existing federal regulation that is intended to address the activities to be regulated by this proposed rule.

### Entities Affected by the Rule

The proposed rule will affect insurers which offer preneed funeral life insurance products.

### Estimate of Time Needed to Develop the Rule

200 hours and no other resources are necessary

## Insurance

### Subject

Revises section Ins 6.90, Wis. Adm. Code, relating to designations or certifications purporting to demonstrate special expertise in the financial or retirement needs of seniors and affecting small business.

### Objective of the Rule

The purpose of this proposed rule is to set forth standards to protect consumers from misleading and fraudulent marketing practices with respect to the use of senior-specific certifications and professional designations in the solicitation, sale or purchase of, or advice made in connection with an insurance product.

### Policy Analysis

Existing law generally prohibits misrepresentation in the sale of insurance. This proposed rule is intended to prohibit Wisconsin intermediaries from using misleading senior designations or certifications.

### Statutory Authority

Sections 601.41 (3) and 628.34 (12), Stats.

### Comparison with Federal Regulations

There is currently no federal regulation of the use of senior specific designations or certifications in the sale of insurance products. The proposed rule is based on a "Model Regulation on the Use of Senior-Specific Certifications and Professional Designations in the Sale of Life Insurance and Annuities" developed by the National Association of Insurance Commissioners ("NAIC Model Regulation") and given final approval by the full NAIC membership, including Wisconsin, at the NAIC's Fall National Meeting in September 2008. The new model follows the approach for regulating senior-specific designations taken in the model rule adopted on April 1, 2008 by the North American Securities Administrators Association (NASAA).

### Entities Affected by the Rule

Insurance Intermediaries, organizations providing training and certification for senior-specific designations, and insurers.

### Estimate of Time Needed to Develop the Rule

200 hours and no other resources are necessary

## Natural Resources

### *Fish, Game, etc., Chs. NR 1—*

### Subject

Revises Chapters NR 10, 16 and 19, relating to housekeeping changes to the rules relating to hunting, trapping and captive wild animals.

### Objective of the Rule

These rule changes relate to hunting, trapping and captive wild animals and are minor and unlikely to be controversial. The intent is to correct drafting errors, provide clarification to existing rules, simplify regulations, and update administrative code language and references. Specifically, these rules will clarify ammunition types which may be used for deer hunting, update a cross reference to clarify that

hunting is allowed on the day before October or December firearm deer hunts, make earn-a-buck regulations consistent for disabled archery and firearm hunters, update educational trapping opportunity language, update deer transportation rules, update a migratory bird rule cross reference, update and correct trap type and placement rules, and eliminate unit-wide disabled turkey hunter participation limits. Finally, this rule will update wildlife rehabilitation code.

#### **Policy Analysis**

Every year the department promulgates a rule order that contains changes that are considered to be minor and non-controversial. This package, known as the annual housekeeping order, helps to correct inaccuracies and clarify existing regulations. Policy issues affected by this rule are ones which have already been addressed decided by previous rulemaking.

#### **Statutory Authority**

Sections 29.014, 29.053(3), 29.063, 169.24 and 169.02, Stats.

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

Federal regulations allow states to manage the wildlife resources located within their boundaries provided they do not conflict with regulations established in the Federal Register. None of these rule changes violate or conflict with the provisions established in the Federal Code of Regulations.

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

Groups and individuals who are likely to be interested in the outcome of these rule changes include hunters, trappers and wildlife rehabilitators. However, because of the corrective and non-controversial nature of these changes no groups will be significantly impacted.

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

150 hours.

#### **Contact Information**

Scott Loomans  
101 S Webster Street  
Madison, WI 53707  
608-267-2452  
scott.loomans@wisconsin.gov

## **Workforce Development**

### ***Migrant Labor, Ch. DWD 301***

#### **Subject**

Revises section DWD 301.07 (11) and (16), relating to migrant labor camps — outside stairways and shower facilities.

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

DWD is considering changes to the rules for migrant labor camps which would specify that, when the housing consists of a mobile or manufactured home, the exterior stairways shall have handrails, and the housing unit and all exterior stairways and handrails shall be firmly anchored to the ground and to each other, and that stairways and handrails shall be maintained in good repair. DWD is also considering a rule to specify that common use shower facilities for men must be equipped with a movable partition or divider to permit the separation of children from adults. Both of these proposals have come from the Governor's Council on Migrant Labor.

#### **Policy Analysis**

The current rules for migrant labor camps contain other requirements for the housing provided to migrant workers, but do not cover these two specific topics.

#### **Statutory Authority**

Sections 103.905 (1), 103.005 (1), and 227.11, Stats.

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

There is no existing or proposed federal regulation which addresses these issues.

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

The proposed rule will affect the operators of migrant labor camps, which are subject to annual inspections by the DWD before the issuance of certificates of operation.

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

20 hours.

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# Submittal of Rules to Legislative Council Clearinghouse

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

## **Agriculture, Trade and Consumer Protection** **CR 09–002**

On January 7, 2009, the Department of Agriculture, Trade and Consumer Protection submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

### **Analysis**

The proposed order revises Chapter ATCP 139, relating to consumer product safety.

### **Agency Procedure for Promulgation**

A public hearing is required and will be held on February 12, 2009. The department's Division of Trade and Consumer Protection is primarily responsible for this rule.

### **Contact Information**

Michelle Reinen  
608–224–5160

## **Workforce Development** **Public Works Construction Contracts,** **Chs. DWD 290–294** **CR 09–001**

On January 14, 2009, the Department of Workforce Development submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

### **Analysis**

The proposed order revises s. DWD 290.155 (1), relating to the adjustment of thresholds for application of prevailing wage rates.

### **Agency Procedure for Promulgation**

A public hearing is required and will be held on February 12, 2009. The Equal Rights Division is the organizational unit that is primarily responsible for promulgation of the rule.

### **Contact Information**

Howard Bernstein, Legal Counsel  
Dept. of Workforce Development  
Room A400, GEF 1  
201 East Washington Avenue  
Madison, WI  
Telephone: 608–266–9427  
Email: Howard.Bernstein@dwd.wisconsin.gov



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## Rule-Making Notices

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### Notice of Hearing

#### Agriculture, Trade and Consumer Protection

**CR 09-002**

The Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) announces that it will hold a public hearing on a proposed amendment to Chapter ATCP 139, Wis. Adm. Code, relating to consumer product safety.

#### Hearing Information

<u>Date</u>	<u>Location</u>
<b>February 12, 2009</b> At 10:00 AM	WI Dept. of Agriculture, Trade and Consumer Protection 2811 Agriculture Drive Board Room, 1 <sup>st</sup> Floor Madison, WI 53718

Hearing impaired persons may request an interpreter for these hearings. Please make reservations for a hearing interpreter by February 2, 2009, by writing to Michelle Reinen, Division of Trade and Consumer Protection, P.O. Box 8911, Madison, WI 53708-8911, [michelle.reinen@wi.gov](mailto:michelle.reinen@wi.gov), telephone (608) 224-5160. Alternatively, you may contact the DATCP TDD at (608) 224-5058. Handicap access is available at the hearings.

#### Submission of Written Comments

DATCP will hold the public hearing at the time and location shown above. DATCP invites the public to attend the hearing and comment on the rule. Following the hearing, the hearing record will remain open until Friday, February 27, 2009 for additional written comments. Comments may be sent to the Division of Trade and Consumer Protection at the address below, by email to [michelle.reinen@wi.gov](mailto:michelle.reinen@wi.gov) or online at <https://apps4.dhfs.state.wi.us/admrules/public/Home>.

To provide comments or concerns relating to small business, you may also contact DATCP's small business regulatory coordinator Keeley Moll at the address above, or by emailing to [Keeley.Moll@datcp.state.wi.us](mailto:Keeley.Moll@datcp.state.wi.us) or by telephone at (608) 224-5039.

#### Copies of Proposed Rule

You may obtain a free copy of this proposed rule by contacting the Wisconsin Department of Agriculture, Trade and Consumer Protection, Division of Trade and Consumer Protection, 2811 Agriculture Drive, P.O. Box 8911, Madison, WI 53708. You may also obtain copies by calling (608) 224-5160 or emailing [michelle.reinen@wi.gov](mailto:michelle.reinen@wi.gov). Copies will also be available at the hearing. To view the proposed rule online, go to: <https://apps4.dhfs.state.wi.us/admrules/public/Home>.

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

The Department of Agriculture, Trade and Consumer Protection (DATCP) administers state laws to protect consumers from hazardous consumer products, including hazardous household substances and toys. DATCP has adopted consumer product safety rules under ch. ATCP 139,

Wis. Adm. Code. This rule updates and reorganizes current rules, and bans the sale of certain products that pose an unreasonable hazard which cannot be adequately cured by product labeling.

#### *Statutes interpreted*

Sections 100.37, 100.42 and 100.20, Stats.

#### *Statutory authority*

Sections 93.07 (1), 100.37 (2), 100.42 (2), and 100.20 (2), Stats.

#### *Explanation of agency authority*

DATCP has general authority, under s. 93.07(1), Stats., to interpret laws under its jurisdiction. DATCP has authority, under s.100.37, Stats., to regulate hazardous substances including toys and other articles intended for use by children. DATCP has authority under s. 100.42, Stats., to regulate unsafe consumer products. DATCP also has broad authority, under s. 100.20, Stats., to regulate unfair methods of competition and unfair trade practices in business.

#### *Related statutes*

DATCP administers several consumer product safety statutes including s. 100.37, Stats. (hazardous household substances), 100.42, Stats. (consumer product safety), 100.41, Stats. (flammable fabrics) and 100.43, Stats. (poison prevention packaging).

#### *Background*

The Department of Agriculture, Trade and Consumer Protection (DATCP) administers state laws to protect consumers from hazardous consumer products, including hazardous household substances and toys. DATCP has adopted consumer product safety rules under ch. ATCP 139, Wis. Adm. Code. Current DATCP rules do all of the following:

- Require warning labels on certain products.
- Ban certain products that pose serious hazards which cannot be adequately cured by labeling. Most of these products are also banned by federal rules.
- Provide exemptions for certain small packages and minor hazards.

DATCP last updated its consumer product safety rules 8 years ago. Since then, the federal consumer product safety commission and DATCP have identified serious product safety hazards that are not addressed by current DATCP rules. This rule does all of the following:

- Reorganizes and clarifies current rules.
- Bans certain products, because they pose serious safety hazards that cannot be adequately cured by labeling (see below). Some of these products are also banned by federal rules.
- Provides that violations of consumer product safety rules also constitute unfair business practices under s. 100.20, Stats.

#### *Rule content*

Current DATCP rules ban a number of dangerous consumer products, including dangerous children's products (most of the products are also banned by federal rules). This rule reorganizes and clarifies a number of the current product bans, without substantially altering those bans. This rule also adds new bans related to the following consumer products:

*Lawn darts that can cause puncture wounds*

Current DATCP rules ban “lawn darts” that are intended for use by children. The current DATCP rules are based on federal rules (16 CFR 1500.18(a)(4)). Recently, the federal Consumer Product Safety Commission adopted additional rules (16 CFR 1306) to ban “lawn darts” labeled for adult use, because those “lawn darts” are often used by children and pose a serious puncture wound hazard to children *and* adults.

Consistent with current federal rules, this rule bans all “lawn darts,” regardless of whether they are intended for use by children or adults.

*Infant walkers that may propel infants down stairways*

Current DATCP rules and federal rules (16 CFR 1500.18(a)(6)) ban hazardous infant walkers, but do not address stair–fall hazards. There is a voluntary industry standard (ASTM standard) for stair–fall protection, but some manufacturers and importers are not complying. The federal consumer product safety commission has documented that most “baby walker” incidents now involve children falling down stairs.

This rule bans infant walkers that are banned by 16 CFR 1500.18(a)(6) and that fail to meet the stair–fall protection standard in ASTM standard F 977–07 (“Standard Consumer Safety Specification for Infant Walkers”). This rule applies to infant walkers, also known as “baby walkers,” “baby bouncers,” and “walker jumpers,” that are propelled by infants. It does *not* apply to baby strollers that are propelled by attending adults.

*Toys with magnets that can be swallowed and can cause serious intestinal injury or death*

Small and powerful rare–earth magnets are now widely used in toys, building sets and jewelry. As the number of products with magnets has increased, so has the number of serious injuries to children. In several reported incidents, magnets have fallen out of toys and been swallowed by children. Swallowed magnets can attract separately–swallowed metal objects through intestinal walls, and get trapped in place. The trapped magnets can twist or pinch the intestines, and can cause holes, blockages, infection and death if not treated properly and promptly. These injuries are difficult to diagnose. In the United States over the past 3 years, there have been 86 reported injuries, one reported death, and about 8 million magnetic toys recalled.

This rule bans products which contain magnets that may be swallowed by a child. The ban does *not* apply to toys that comply with 15 USC 2056b which adopts ASTM standard 963–07 (“standard consumer safety specification for toy safety”). Nor does it apply to toys in which the magnets are used only as internal parts of motors, relays, speakers or other electrical components, provided that the magnetic action is not part of the play pattern of the toy.

*Cribs that can strangle or suffocate infants*

Over the past 20 years, more than 1,100 children have died from crib–related injuries in the United States, and more than 11,600 children are hospitalized with crib–related injuries each year. Current federal rules (16 CFR 1500.18(13) and (14)) ban cribs and related enclosures that fail to comply with applicable federal standards under 16 CFR 1508 and 1509 (the federal rules apply to cribs manufactured after 1974 and 1983, respectively).

This rule bans baby cribs and related enclosures that are currently banned by federal law under 16 CFR 1500.18(13) or (14).

*Yo–yo elastic tether toys that can strangle children*

Yo–yo elastic tether toys, often called “yo–yo waterballs,” have a weighted object attached to a stretchable elastic cord that can extend to over 2 feet. (These “yo–yo waterballs” are different from traditional yo–yos, which do not have stretchable elastic cords). Instructions tell children to “throw the ball into the air and try and catch it,” encouraging a lasso–like movement. But the weighted object is heavy enough to generate significant momentum when swung like a lasso, which makes the toy difficult to control. In Wisconsin, there have been 7 reported incidents in which children became unconscious after the cord wrapped tightly around the child’s neck and cut off circulation. In other cases, children have suffered broken blood vessels affecting eyes, face and head areas. Illinois, New Jersey, the United Kingdom and Australia have already banned this toy from sale.

This rule bans yo–yo elastic tether toys that do not comply with the standards for yo–yo elastic tether toys established by 15 USC 2056b which adopts ASTM standard 963–07 (“standard consumer safety specification for toy safety”).

*Toys containing excessive concentrations of lead, which can cause serious long–term health effects*

Recently enacted federal law (15 USC 1278a) treats as a hazardous substance any children’s products that contain more lead than 600 parts per million beginning 180 days after August 14, 2008, 300 parts per million beginning on the date that is one year after August 14, 2008, and 100 parts per million beginning on the date that is 3 years after August 14, 2008.

This rule bans children’s products, containing lead, which are treated as banned hazardous substances under 15 USC 1278a. This ban does not apply to any of the following:

- Electronic devices, including batteries, which meet alternative federal standards related to lead exposure.
- A product component that is fully covered or encased (by something more than paint or electroplating), so that the component is inaccessible to a child despite normal and reasonably foreseeable use and abuse of the product.

*Comparison with federal regulations*

The following federal regulations apply to consumer products that are newly banned under this rule (federal regulations also apply to some products banned by current DATCP rules):

- *Lawn darts.* Lawn darts intended for use by children are currently banned under 16 CFR 1500.18(a)(4). Lawn darts intended for use by adults are currently banned under 16 CFR 1306. This rule bans lawn darts, consistent with the federal bans.
- *Infant walkers.* 16 CFR 1500.18(a)(6) bans infant walkers which have exposed parts capable of amputating, crushing, lacerating, fracturing, bruising, or causing hematomas or other injuries to fingers, toes, or other parts of a young child’s anatomy. This rule bans infant walkers that are banned by the federal rules. The current federal ban does not address “stair–fall” hazards. This rule bans infant walkers that fail to comply with recognized industry standards related to “stair–fall” protection (ASTM standard F 977–07).
- *Toys with magnets.* Newly–enacted 15 USC 2056b adopts ASTM standard 963–07 (“standard consumer safety specification for toy safety”) which establishes standards for, among other things, toys with magnets that may be swallowed by a child. This rule bans toys with magnets

that do not comply with the standards established by 15 USC 2056b.

- *Baby cribs.* 16 CFR 1508 and 16 CFR 1509 bans baby cribs that do not meet federal standards intended to reduce the risk of injury. This rule bans cribs that are banned by federal rules
- *Yo-yo elastic tether toys.* Newly-enacted 15 USC 2056b adopts ASTM standard 963-07 (“standard consumer safety specification for toy safety”) which establishes standards for, among other things, yo-yo elastic tether toys. This rule bans yo-yo elastic tether toys that do not comply with the standards established by 15 USC 2056b.
- *Lead in children’s products.* 15 USC 1278a treats as a hazardous substance any children’s products that contain more lead than 600 parts per million beginning 180 days after August 14, 2008, 300 parts per million beginning on the date that is one year after August 14, 2008, and 100 parts per million beginning on the date that is 3 years after August 14, 2008. This rule bans children’s products containing excessive lead, consistent with the federal law.

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

Wisconsin has a fairly well-developed consumer product safety program, with broad authorizing legislation modeled after federal law. Wisconsin statutes authorize DATCP, as Wisconsin’s equivalent of the federal consumer product safety commission, to issue orders and adopt rules regulating dangerous consumer products.

Surrounding states have less comprehensive consumer product safety programs, and fewer administrative options for regulating dangerous consumer products. Surrounding states tend to regulate consumer product safety on a more *ad hoc* basis, with special legislation aimed at specific products. However, several surrounding states have banned many of the same products that are newly banned under this rule.

#### **Lawn darts**

None of the surrounding states has banned lawn darts under state law.

#### **Infant walkers**

Illinois and Michigan ban infant walkers that are the subject of federal product recalls. The federal consumer protection safety commission has published an industry guidance stating that it will seek to recall infant walkers that fail to comply with relevant federal standards or ASTM standards.

#### **Magnets in toys**

Illinois and Michigan ban toys with magnets if the toys are the subject of a federal recall. The federal consumer protection safety commission has recalled 17 toys since 2007 because the toys contained magnets that could detach and be swallowed or aspirated. Those toys are accordingly banned in Illinois and Michigan.

#### **Cribs**

Illinois, Minnesota and Michigan have adopted “safe crib” laws that ban unsafe cribs, including cribs banned by this rule.

#### **Elastic tether toys**

Illinois bans elastic tether toys, also known as “yo-yo waterballs” (New Jersey has a similar ban).

#### **Lead in children’s products**

Illinois and Michigan ban children’s products containing more than 600 ppm lead by weight. None of the other surrounding states regulates the lead content of children’s

products. However, some other states have enacted more stringent bans:

- Washington bans children’s products containing more than 90 ppm lead by weight.
- Connecticut bans children’s products containing more than 300 ppm lead by weight (or 100 ppm after 2 years). The Connecticut law is consistent with federal legislation and this rule.

#### **Data and analytical methodologies**

DATCP relies on incident data from consumer complaints and from the federal consumer product safety commission. DATCP uses test methods prescribed by federal rules, or by relevant industry standards (ASTM standards, published by ASTM International).

#### **Small Business Impact**

This rule may have an adverse impact on some businesses that manufacture, sell or distribute articles banned by this rule. Some of those businesses may be “small businesses.”

#### **Manufacturing Industry**

This rule creates new regulations which prohibit the sale of consumer products that do not meet federal regulations or the current industry consensus standards for baby walkers, toys containing magnets, yo-yo elastic tether toys, cribs, and toys containing lead. In addition, the rule bans the sale of lawn darts.

This rule will require manufactures to change designs and formulas for their products if they do not currently comply with the federal regulations and current industry consensus standards if they plan to distribute product to Wisconsin. As the federal regulations have been in place for some time, most manufacturers already have systems in place to verify that current and new product complies with the federal standards. In addition, many manufactures actively participate in the process for developing the industry consensus standards and are already complying with those standards. Finally, as many states already have laws in place requiring cribs to meet current industry consensus standards and governing lead levels in toys, manufacturers are currently developing products that are in compliances with those states. Those products would also be in compliance with this rule. \This rule will benefit the manufacturing industry by providing clear guidance in designing and selling a compliant and safe product. Providing federal and industry consensus standards in the rule will provide industry with a clear understanding of how it may comply with Wisconsin safety standards. It will also provide for harmonious standards among various governing bodies making it easier for manufactures to comply.

#### **Retailers**

This rule creates new regulations which prohibit the sale of consumer products that do not meet federal regulations or the current industry consensus standards for baby walkers, toys containing magnets, yo-yo elastic tether toys, cribs, and toys containing lead. In addition, the rule bans the sale of lawn darts.

Under current rules, retailers are already prohibited from selling a number of unsafe and hazardous products in Wisconsin. This rule will add to that list, however, many of the products being added are already regulated by federal rules. Those products that are not currently regulated by federal rules, and are either banned in other states or have industry consensus standards to guide retailers on what is considered a safe product. In addition, many retailers actively participate in the process for developing the industry

consensus standards and are already purchasing products that comply with those standards.

For many years national retailers have needed to have systems in place to assure the products they sell in Wisconsin are in compliance with Wisconsin laws. By including federal and industry consensus standard in the rule retailers will be able to request certificates of compliance with Wisconsin laws from distributors and manufactures when buying product for sale. In addition, they will be able to confer with testing laboratories to assure that product complies with Wisconsin law when designing and ordering product for their own store labels.

#### *Accommodation for Small Business*

Overall, this rule prohibits the sale of unsafe toys and other articles that present a hazard and unreasonable risk of personal injury. In many cases, these children's products, as well as several of the children's products currently banned by the rule, have become regulated by the federal rules. In addition, industry consensus standards have been developed which further describe the types of durable children's products, toys and toy components that create unacceptable hazards. This rule will provide clear guidance for individual businesses, including small businesses, in designing and selling a compliant and safe product that will comply with the rule. Overall, this rule has few adverse impacts on small business.

This rule may have some adverse effects on some small businesses (especially resale and thrift stores). If consumers have any consumer products in their homes which do not comply with the rule and donate them to a resale or thrift store, the store will have an obligation to determine if the product is in compliance with the rule. If the product is not in compliance with the rule they will not be permitted to sell the product in Wisconsin. This could create an increase in the volume of refuse a store has to process.

However, over the years the department has worked with resale and thrift stores on various education campaigns to decrease the amount of unsafe product that is turned around. The department has created a poster that highlights 12 unsafe products, including products covered by this rule, to educate both store employees and consumers who donate goods. These campaigns have helped the stores make safe product available to consumers. These posters will be available for resale and thrift store owners to post.

This rule is needed to protect consumers from unsafe toys and other articles that present a hazard and unreasonable risk of personal injury. A majority of the products contained in the rule are intended for use by children. Children are at a disadvantage as they are unable to evaluate risk.

Although this rule may have some adverse effects on some small businesses, those effects are generally minimal and are outweighed by the need to prevent the potential for injury and death. DATCP has not exempted small businesses, because the risk of injury and death is unrelated to business size.

#### **Fiscal Estimate**

This rule will not have significant fiscal impact on DATCP or local units of government.

## **Notice of Hearing**

### **Workforce Development**

#### ***Public Works Construction Contracts,***

#### ***Chs. DWD 290–294***

#### **EmR0838 and CR 09–001**

NOTICE IS HEREBY GIVEN that pursuant to ss. 66.0903 (5) and 103.49 (3g), Stats., the Department of Workforce Development proposes to hold a public hearing on emergency and proposed permanent rules to consider the amendment of s. DWD 290.155 (1), relating to the adjustment of thresholds for application of prevailing wage rates.

#### **Hearing Information**

<u>Date</u>	<u>Location</u>
<b>February 12, 2009</b>	G.E.F. 1 Bldg., B103
Thursday	201 East Washington Avenue
1:30 PM	Madison, WI

Interested persons are invited to appear at the hearing and will be afforded the opportunity to make an oral presentation of their positions. Persons making oral presentations are requested to submit their facts, views, and suggested rewording in writing.

Visitors to the GEF 1 building are requested to enter through the left East Washington Avenue door and register with the customer service desk. The entrance is accessible via a ramp from the corner of Webster Street and East Washington Avenue. If you have special needs or circumstances regarding communication or accessibility at the hearing, please call (608) 267-9403 at least 10 days prior to the hearing date. Accommodations such as ASL interpreters, English translators, or materials in audiotape format will be made available on request to the fullest extent possible.

#### **Copies of Proposed Rule**

The proposed rules are available at the web site <http://adminrules.wisconsin.gov> by typing "prevailing wage" in the search engine. This site allows you to view documents associated with this rule's promulgation, register to receive email notification whenever the Department posts new information about this rulemaking order, and submit comments and view comments by others during the public comment period. You may receive a paper copy of the rule by contacting:

Howard Bernstein  
Office of Legal Counsel  
Dept. of Workforce Development  
P.O. Box 7946  
Madison, WI 53707-7946  
(608) 266-9427  
[Howard.Bernstein@dwd.wisconsin.gov](mailto:Howard.Bernstein@dwd.wisconsin.gov)

#### **Submission of Written Comments**

Written comments on the proposed rules received at the above address, email, or through the <http://adminrules.wisconsin.gov> web site no later than February 12, 2009, will be given the same consideration as testimony presented at the hearing.

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

### ***Statutes interpreted***

Sections 66.0903 (5) and 103.49 (3g), Stats.

### ***Statutory authority***

Sections 66.0903 (5), 103.49 (3g), and 227.11, Stats.

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

The prevailing wage laws require that when a state agency or local governmental unit contracts for the erection, construction, remodeling, repairing, or demolition of a public works project it must obtain a prevailing wage rate determination from the Department of Workforce Development and require that the contractors and subcontractors on the project pay their employees in accordance with those wage rates. Sections 66.0903 (5) and 103.49 (3g), Stats., set initial estimated project cost thresholds for application of the prevailing wage rate requirements and direct the Department to adjust the thresholds each year in proportion to any change in construction costs since the thresholds were last determined. Pursuant to s. DWD 290.15, the Department adjusts the thresholds based on changes in the construction cost index published in the *Engineering News-Record*, a national construction trade publication.

### ***Summary of the proposed rule***

Section DWD 290.155 (1) currently provides that the prevailing wage rate requirements do not apply to any single-trade public works project for which the estimated cost of completion is below \$45,000 and do not apply to any multi-trade public works project for which the estimated cost of completion is below \$221,000. This rule adjusts the thresholds from \$45,000 to \$48,000 for a single-trade project and from \$221,000 to \$234,000 for a multi-trade project based on a 5.71% increase in the construction cost index between December 2007 and December 2008.

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

The federal prevailing wage law applies to a federal public works project for which the contract is greater than \$2,000. This threshold is in statute and is rarely adjusted.

### ***Comparison with laws in adjacent states***

#### ***Minnesota***

Minnesota has a statutory threshold of \$2,500 for a single-trade project and \$25,000 for a multi-trade project.

#### ***Illinois***

Illinois does not have a threshold in its prevailing wage law. The law covers public works projects and defines public works projects as projects financed under various other specified laws.

#### ***Michigan***

Michigan does not have a threshold in its prevailing wage law. The law covers projects that must be bid and relies on other agencies to determine the thresholds for what projects must be bid.

#### ***Iowa***

Iowa does not have a prevailing wage law.

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

The thresholds are increased based on the national inflation rate in the construction industry. The Department uses the construction cost index in the *Engineering News-Record*, a national construction trade publication, to determine the inflation rate.

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

The proposed rule does not affect small businesses.

### ***Fiscal Estimate***

Under the proposed and emergency rules, a state agency or local governmental unit contracting for the construction of a single-trade public works project that costs more than \$45,000 but less than \$48,000 or a multi-trade project that costs more than \$221,000 but less than \$234,000 will not be covered by the prevailing wage requirement.

### ***Agency Contact Person***

Julie Eckenwalder, Section Chief, Construction Wage Standards Section, (608) 266-3148, [Julie.Eckenwalder@dwd.wisconsin.gov](mailto:Julie.Eckenwalder@dwd.wisconsin.gov).

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## Submittal of Proposed Rules to the Legislature

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

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

#### **CR 08–075**

A rule-making order revising Chapters ATCP 3, 10, 12, 21, 29, 30, 31, 33, 40, 42, 50, 51, 55, 57, 60, 70, 75, 90, 92, 103, 118, 123, 124, 136 and 160, relating to minor and technical rule changes.

### **Financial Institutions — Securities**

#### **CR 08–095**

A rule-making order revising Chapters DFI–Sec 4, 5, and 10, relating to making it a dishonest or unethical practice for securities licensees to make use of misleading designations or certifications purporting to demonstrate special expertise in the financial or retirement needs of seniors.

### **Military Affairs — Wisconsin Emergency Management**

#### **CR 08–106**

A rule-making order revising Chapter WEM 1, relating to fees assessed to facilities that house hazardous materials and extremely hazardous substances.

### **Natural Resources**

#### *Fish, Game, etc., Chs. NR 1—*

#### **CR 08–046**

A rule-making order revising Chapter NR 47, relating to the county forest administration grant program.

### **Natural Resources**

#### *Fish, Game, etc., Chs. NR 1—*

#### **CR 08–060**

A rule-making order revising Chapter NR 25, relating to wholesale fish dealing and commercial fishing in outlying waters and affecting small business.

### **Natural Resources**

#### *Environmental Protection — General, Chs. NR 100—*

#### **CR 08–063**

A rule-making order revising Chapters NR 190, 191, 195 and 198, relating to lake and river protection and aquatic invasive species control grants.

### **Transportation**

#### **CR 08–080**

A rule-making order revising Chapter Trans 145, relating to neighborhood electric vehicles.

### **Transportation**

#### **CR 08–100**

A rule-making order revising Chapters Trans 325, 326 and 327, relating to motor carrier safety, and hazardous material transportation safety.

### **Transportation**

#### **CR 08–101**

A rule-making order revising Chapter Trans 276, relating to the operation of certain 2–vehicle combinations on certain highways without a permit.

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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.*

### **Health Services**

*Health, Chs. DHS 110—*

#### **CR 08-036**

Repeals and recreates Chapter DHS 159, relating to the training and certification of individuals performing regulated asbestos abatement activities, the certification of companies providing regulated asbestos activities, the accreditation of asbestos training courses, the approval of asbestos training instructors, and the responsibilities of designated school asbestos coordinators, and affecting small businesses.  
Effective 5-1-09.

### **Workforce Development**

*Labor Standards, Chs. DWD 270-279*

#### **CR 08-069**

Revises Chapter DWD 272, relating to increasing Wisconsin's minimum wages.  
Effective 3-1-09.

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# Rules Published with this Register and Final Regulatory Flexibility Analyses

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*The following administrative rule orders have been adopted and published in the **January 31, 2009**, Wisconsin Administrative Register. Copies of these rules are sent to subscribers of the complete Wisconsin Administrative Code and also to the subscribers of the specific affected Code.*

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

## Health Services

### *Community Services, Chs. DHS 30—*

#### **CR 07-095**

Revises Chapter DHS 83, relating to community-based residential facilities (CBRFs). Effective 4-1-09.

#### **Summary of Final Regulatory Flexibility Analysis**

It is anticipated that all CBRFs will experience modest increased costs from one or more of the additional requirements defined above. A number of CBRFs already meet or exceed the requirements set forth in the rule and will not be affected by the rule changes. It is estimated that many of the cost increases would be less than 1% of revenue on a single bed; distributing the cost across all licensed beds further reduces the impact of increased costs to the CBRF.

Approximately 117 of the small Class C CBRFs may be required to install a sprinkler system. The cost to install a sprinkler system at these facilities will likely exceed 3.4% of operating expenses. Should these facilities need to make changes to meet other regulated areas such as emergency lighting, increased cost for training, solid doors, higher costs for an administrator, etc, this will most likely exceed the established Department cost criteria of 3.4%. Only 8.5% of all CBRFs appear to be affected by the need for sprinkler systems, the single most costly item in the rule. The affected facilities have other options available to them to address the cost of sprinklers; including downsizing to a 4 bed adult family home, or requesting a waiver from the Department.

The rule may increase costs for CBRFs modestly in several areas, however, changes in administrative reporting requirements may reduce this administrative burden. Based on available data, the increased costs for most CBRFs will be less than the 2005 CPI of 3.4%. The effect on small business CBRFs cannot be clearly defined as there are too many variables. Small CBRFs will experience a larger fiscal impact than larger facilities as the per bed impact for any single item is greater.

Based on the January 2006 data, it is estimated that 892 CBRFs (65% of all CBRFs) are small business with annual revenue less than \$5 million or 25 or fewer employees.

#### **Summary of Comments by Legislative Review Committees**

No comments were received from the Senate Committee Public Health, Senior Issues, Long Term Care and Privacy.

At the request of the Assembly Committee on Aging and Long Term Care, the Department met with the Committee to

answer questions. No further comments were received from the Committee.

## Health Services

### *Health, Chs. DHS 110—*

#### **CR 08-073**

Revises Chapters DHS 173, 175, 178, and 195 to 198, relating to tattooing and body piercing establishments, recreational and educational camps, campgrounds, hotels, motels, and tourist rooming houses, restaurants, bed and breakfast establishments, and vending of food. Effective 2-1-09.

#### **Summary of Final Regulatory Flexibility Analysis**

The fees and rule changes to chs. DHS 173, 175, 178, 195, 196, 197, and 198, will affect a substantial number of small businesses, however, the fees and rule changes will not have a significant economic impact on those businesses.

The direct impact of the fee changes on businesses is limited to the fees associated with obtaining initial and renewal licenses or permits or licenses and preinspections to operate an establishment. Licenses or permits and preinspections, and the associated fees are required by the legislature. Reinspection fees, fees for late renewal, fees for operating without a permit or license, for the majority of the entities affected by the changes are also required by the legislature. The department cannot exempt businesses from the fee requirements.

Reinspection fees, fees for late renewal, fees for operating without license or permit only affect an entity if the entity is out of compliance with the state law or regulations. Proposed fees for special condition inspections only affect persons without a license or permit who request inspection or consultation services from the department.

The rules should not add costs in addition to fees to businesses, as the rules are intended to update and clarify existing rules and statutes. The rules do not contain schedules or deadlines for compliance, reporting requirements, operational or performance standards.

#### **Summary of Comments by Legislative Review Committees**

No comments were received from the Senate Committee on Public Health, Senior Issues, Long Term Care and Privacy.

The Assembly Committee on Public Health requested a meeting with the Department. No further comments were received.



**Occupational Therapists Affiliated  
Credentialing Board  
CR 08-050**

Revises section OT 4.04, relating to occupational therapist supervision of occupational therapy assistants. Effective 2-1-09.

**Summary of Final Regulatory Flexibility Analysis**

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

**Summary of Comments by Legislative Review  
Committees**

No comments were reported.

**Public Instruction  
CR 08-044**

Revises Chapter PI 37, relating to grants for national teacher certification and master educator licensure. Effective 2-1-09.

**Summary of Final Regulatory Flexibility Analysis**

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

**Summary of Comments by Legislative Review  
Committees**

No comments were reported.

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## Sections Affected by Rule Revisions and Corrections

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The following administrative rule revisions and corrections have taken place in **January 2009**, and will be effective as indicated in the history note for each particular section. For additional information, contact the Legislative Reference Bureau at (608) 266-7590.

### Revisions

#### Health Services

**Ch. DHS 83 (Entire Chapter)**  
**Ch. DHS 83 Appendix A**  
**Ch. HFS (DHS) 173 (Entire Chapter)**  
**Ch. HFS (DHS) 175 (Entire Chapter)**  
**Ch. HFS (DHS) 178 (Entire Chapter)**  
**Ch. HFS (DHS) 195 (Entire Chapter)**  
**Ch. HFS (DHS) 196 (Entire Chapter)**  
**Ch. HFS (DHS) 197 (Entire Chapter)**  
**Ch. HFS (DHS) 198 (Entire Chapter)**

#### Occupational Therapists Affiliated Credentialing Board

**Ch. OT 4**  
 OT 4.04 (3), (4)

#### Public Instruction

**Ch. PI 37 (Entire Chapter)**

### Editorial Corrections

Corrections to code sections under the authority of s. 13.92 (4) (b), Stats., are indicated in the following listing.

#### Health Services

**Ch. DHS 83**  
 DHS 83.02 (30)  
 DHS 83.14 (1) (b)  
 DHS 83.17 (1)  
 DHS 83.18 (1) (d)  
 DHS 83.21 (1)  
 DHS 83.27 (3) (a)  
 DHS 83.30  
 DHS 83.32 (1) (a)  
 DHS 83.33 (2)  
 DHS 83.41 (3) (c)  
 DHS 83.46 (3)  
**Chs. HFS (DHS) 110 to 199 (Entire Code)**  
**Ch. HSS (DHS) 165 (Entire Chapter)**  
**Ch. HFS (DHS) 173**  
 DHS 173.07  
 DHS 173.16 (1) (a)  
**Ch. HFS (DHS) 175**  
 DHS 175.03 (3), (23)  
 DHS 175.12 (1) (b)  
 DHS 175.16 (1) (a), (2), (4) (a)  
 DHS 175.17 (2) (f)  
 DHS 175.18 (2) (c), (6)

DHS 175.21 (1)  
 DHS 175.22 (4)  
**Ch. HFS (DHS) 178**  
 DHS 178.02 (1)  
 DHS 178.03 (1)  
 DHS 178.12 (1) (a)  
 DHS 178.14 (5) (a)  
 DHS 178.21 (5)  
**Ch. HFS (DHS) 195**  
 DHS 195.03 (3), (20)  
 DHS 195.04 (4) (b), (6)  
 DHS 195.07  
 DHS 195.12 (1)  
**Ch. HFS (DHS) 196**  
 DHS 196.04 (4) (b), (6)  
 DHS 196.12  
**Ch. HFS (DHS) 197**  
 DHS 197.13 (4) (b)  
**Ch. HFS (DHS) 198**  
 DHS 198.04 (3), (4) (b)  
 DHS 198.05 (2) (e)  
 DHS 198.17 (2)  
 DHS 198.20 (1) (b)  
**Chs. HFS (DHS) 250 to 254 (Entire Code)**

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## Sections Affected by Corrections Not Published

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### Corrections under s. 13.92 (4) (b), Stats., identified in this Wis. Adm. Register.

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

Location of invalid cross-reference	Invalid cross-reference	Correction
ATCP 123.01 (14)	66.0420 (1) (x)	66.0420 (2) (x)
ATCP 123.01 (15)	66.0420 (1) (y)	66.0420 (2) (y)
DHS 12.01	50.065 (1) (ag) 1. a., (d), (f)	50.065 (1) (ag) 1. a.
DFI-Sec 24.01 (3) (c)	551.23 (12)	551.202 (15)
DFI-Sec 24.01 (4) (b)	551.22 (3), (4) and (5)	551.201 (3) (b)
DFI-SB 21.25 (1) (a)	551.25 and 551.26	551.303 and 551.304
Phar 7.04 (1) (d)	DHS 83.33 (3) (b) 2.	DHS 83.37
Tax 2.495 (2) (d)	551.02 (3)	551.102 (4)

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## Executive Orders

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**The following are recent Executive Orders issued by the Governor.**

**Executive Order 272.** Relating to Identification of Potential Cooperative Service Arrangements with Minnesota State Agencies.

**Executive Order 273.** Relating to the Allowance of Federally Funded Emergency Unemployment Benefits in Lieu of Wisconsin Supplemental Benefits.

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