

# 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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### 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 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 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

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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



**Commerce**

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

**EmR0904** — Rule adopted revising **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.

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

**Commerce**

*Elevators, Escalators and Lift Devices, Ch. Comm 18*

**EmR0901**— Rule adopted repealing **s. Comm 18.1702 (8)**, relating to a wear and fatigue monitoring system and a device that protects against suspension loss for electric traction elevators that use smaller sized wire ropes.

**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. The recent revision of chapter Comm 18, Elevators, Escalators and Lift Devices, references and adopts the 2007 edition of the national standard ASME A17.1, developed by the American Society of Mechanical Engineers. Effective January 1, 2009, the regulations include a provision, s. Comm 18.1702 (8), that requires a wear and fatigue monitoring system and a device that protects against suspension loss for electric traction elevators using smaller sized wire ropes.

2. The department included the wear and fatigue monitoring system and protection device requirements in anticipation that the next edition of the national ASME A17.1 standard would incorporate a similar provision. The department developed s. Comm 18.1702 (8) based on code language being proposed by the national standard ASME A17.1 Committee.

3. The wear and fatigue monitoring system and the device to protect against suspension loss were not incorporated into the next version of the ASME A17.1. The ASME A17.1 Committee withdrew the section because of implementation concerns, and at this time it is unclear what the final section on suspension ropes and their connections in elevators will include.

4. Because the department adopts by reference the national standard ASME A17.1, it recognizes that without promulgating this emergency rule, there could be confusion in what constitutes recognized safe practices for a monitoring system and protection against suspension loss for electric traction elevators. The department believes that repealing s. Comm 18.1702 (8) will keep the Wisconsin code in alignment with the most current edition of ASME A17.1 and still promote safety.

**Publication Date:** February 5, 2009  
**Effective:** February 5, 2009 through July 4, 2009  
**Hearing Date:** March 2, 2009

**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 the date permanent rules become effective  
**Hearing Date:** October 14, 2008

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### Commerce

#### *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:** April 11, 2009

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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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## Government Accountability Board

**EmR0902** — Rule adopted amending **s. GAB 6.05**, relating to filing campaign finance reports in electronic format.

### Finding of Emergency

The Government Accountability Board amends s. GAB 6.05, Wis. Adm. Code, relating to filing campaign finance statements in electronic format. The amended rule creates a uniform requirement and restricts registrants to an “electronic format” compatible with the Board’s electronic filing system for filing campaign finance reports.

Pursuant to s. 227.24, Stats., the Government Accountability Board finds an emergency exists because the Board’s January 18, 2008 decision to implement the use of a new electronic filing system, and the technical requirements thereof, conflicts with the technical electronic format filing permitted by the previous rule. In effect, the current electronic filing system cannot work without a uniform and restricted electronic format that is compatible with the new electronic filing system.

The Board adopts the legislature’s policy findings of s. 11.001, Stats., emphasizing that one of the most important sources of information to voters about candidates is available through the campaign finance reporting system. The Board further finds that it is necessary to codify a uniform electronic format filing requirement to ensure the proper operation of the current electronic filing system so that the campaign finance information is available to voters. The amended rule, GAB 6.05, must be adopted immediately to ensure the public peace and welfare with respect to the administration of current and future elections.

**Publication Date:** February 5, 2009  
**Effective:** February 5, 2009 through July 4, 2009  
**Hearing Date:** March 20, 2009

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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 30, 2009  
**Hearing Date:** January 6, 2009  
**Extension Through:** May 29, 2009

- 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  
**Extension Through:** May 31, 2009

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## 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  
**Hearing Dates:** April 8, 2009

### 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

(See the Notice in this Register)

- 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

**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.

### Wisconsin Technical College System Board

**EmR0905** — Rule adopted revising **Ch. TCS 17**, relating to training program grant funds appropriated in 2009 Wisconsin Act 2.

#### Finding of Emergency

The Wisconsin Technical College System Board 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 the facts constituting an emergency is:

The 2009 Wis. Act 2 (the 2007–09 budget repair bill) provided an additional \$1,000,000 GPR to the existing annual appropriation of \$3,000,000 GPR for the training program grants authorized in Wis. Stats. §§ 20.292(1)(eh) and 38.41. These funds were provided to address a critical need of Wisconsin employers for skills training and education necessary to protect the state's economic vitality and health, with a special emphasis on advanced manufacturing and welding.

The Act requires the WTCS Board to award these funds by June 30, 2009 or the end of the current 2008–09 fiscal year. In addition, TCS 17.06(1), *Wis. Adm. Code* requires that district boards or employers receiving skills training or education under the grant shall contribute matching funds, other than in-kind matching funds, equal to at least 25% of total approved project costs.

Due to declining economic conditions and reduced business revenues, technical college districts report that employers are withdrawing participation in approved training

grants because of an inability to fund the 25% match. Therefore, to ensure that business and incumbent workers in need of skills training and other education may access these services and that appropriated funds are distributed to technical college districts for this purpose before the end of the fiscal year, emergency administrative rules eliminating the 25% match requirement must be established immediately.

**Publication Date:** March 20, 2009  
**Effective:** March 20, 2009 through August 16, 2009

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### **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 Subchapter V of Chapter ATCP 161, relating to economic development grants; financial statements and contract compliance.

#### Objective of the Rule

This rule implements 2007 Wisconsin Act 125, which requires new accountability measures related to state economic development grants and loans. Under Act 125, DATCP must adopt rules to do all of the following (other agencies that make economic development grants and loans must adopt similar rules):

- Require persons receiving more than \$100,000 in economic development grants or loans to submit verified financial statements to DATCP, and to make supporting documentation available for DATCP inspection.
- Establish procedures that will allow DATCP to withhold payments to, recover funds from, or impose financial penalties on grant or loan recipients who submit false information to DATCP or fail to honor the terms of a grant or loan contract. The new procedures must include new contract provisions that will allow DATCP to impose penalties on grant or loan recipients who fail to honor contract obligations.

#### Policy Analysis

DATCP has rules governing its state-funded economic development grant and loan programs. DATCP enters into contracts with most grant and loan recipients, and those contracts include contract terms, conditions, and remedies for noncompliance. However, current DATCP rules and contracts do not include specific Act 125 requirements related to verified financial statements and contract penalties.

DATCP is required to comply with the specific rulemaking and contract requirements in Act 125. Noncompliance is not an option.

#### Policy Alternatives

If the Department takes no action, it will fail to meet the requirements of s. 93.07 (18) (a) 6. and 7., Stats., of 2007 Act 125. There is no statutory alternative at this time.

#### Statutory Authority

Section 93.07 (1) and (18) (b) 6. and 7., Stats.

#### Comparison with Federal Regulations

- Federal statutes under 31 USC 6304 require contracts for many federal grants.
- Many federal grant programs have regulations to ensure grant accountability, including regulations related to grant contracts, contract performance, financial accountability, and remedies for noncompliance.

- Administering agencies may deny, suspend or terminate payments to grant recipients who fail to comply with grant contract terms.
- If a grant recipient makes false or misleading statements to obtain a grant or benefit, the agency may collect civil forfeitures and assessments that are well in excess of the fraudulently-obtained grant or benefit payments.

#### Entities Affected by the Rule

This rule will affect entities that apply for and receive economic development grants or loans from DATCP. DATCP (Division of Agricultural Development) makes economic development grants and loans to a variety of persons including farmers; dairy, meat and food processors; entrepreneurs seeking to develop new agricultural products or markets; agricultural distributors; non-profit local and regional food organizations; educational institutions; agricultural business consultants and others. Funding for these grants and loans comes from both state and federal funding sources.

This rule will affect a number of current DATCP grant programs including:

- *The Agricultural Development and Diversification (ADD) grant program* under s. 93.46 (2) (b), Stats. The ADD grant program makes about 10–20 grants a year, mainly to small businesses and start-ups, to promote agricultural development and diversification. The maximum award is \$50,000 and matching funds are required.
- *The “Buy Local” grant program* under s. 93.48, Stats. The “Buy Local” program funds projects to increase local sales of Wisconsin agricultural products. The program made 7 grants in its first year. The maximum award is \$50,000 and a 33% “match” is required.
- *The Value Added Dairy Initiative* is a cooperative federal–state–private initiative, funded mainly by federal dollars, to promote dairy innovation and grow the state’s dairy industry. Over 300 grants have been awarded to dairy farmers, dairy processors and other local organizations. A small number of loans have been awarded to (small– to medium–sized) dairy processors for projects that are not eligible for grants.
- *Grazing Grants*. Federal and state dollars fund research, education and technical assistance to support the development and expansion of managed intensive grazing. Recipients include individual farmers, regional conservation and development organizations, educational institutions and others.

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

The staff time needed to develop the rules is expected to range from 100 to 200 hours, depending upon the associated complexity. This anticipates a 12–month period for research, rule drafting, and processing the rules through public hearings, communicating with affected persons and groups, legislative review, and adoption. There are no other resources



necessary to promulgate the rules. DATCP will use existing staff to develop this rule.

## **Commerce**

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

#### **Subject**

Creates Chapter Comm 100 and revises Chapters Comm 107, 112 and 118, relating to tax benefits for job creation, capital investment, employee training, and corporate headquarters.

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

This rulemaking is primarily intended to (1) consolidate five of the Department's job-development-zone tax-credit programs into a single, statewide program, to be consistent with the portions of 2009 Wisconsin Act 2 that address these programs; and (2) establish procedures for implementing sections 560.701 to 560.706 of the statutes, as enacted in 2009 Act 2, relating to tax benefits for job creation, capital investment, employee training, and corporate headquarters. This rulemaking may also include updating the current rules to make them consistent with current industry and administrative practices, and with any pending legislation affecting these programs and activities.

#### **Policy Analysis**

The Department has various rules for administering several economic development programs, but those rules typically do not include the expected rule text for targeting these tax benefits for job-creation, capital investment, employee training, and corporate headquarters, to where they will have the most impact.

The alternative of not promulgating these rules would result in chapters Comm 107, 112, and 118 continuing to be inconsistent with overriding, recently enacted criteria in 2009 Wisconsin Act 2; and would conflict with the directive in Act 2 to promulgate rules for implementing sections 560.701 to 560.706 of the statutes.

#### **Statutory Authority**

Sections 227.11 (2) (a), 560.706 (2), 560.785 (1) and (2), 560.798 (5), and 560.96 (5), Stats.

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

In researching federal tax incentives, the Department and the Department of Revenue found that there are no tax credits at the federal level that are exactly like the corresponding credits in 2009 Wisconsin Act 2. The following two federal tax credits may apply to the activities under section 560.702 of the Statutes which will be addressed by the proposed rules, but these federal tax credits are structured differently than the credits in Act 2.

Job creation that is eligible for tax benefits under section 560.702 (1) of the Statutes may also qualify for the federal consolidated Work Opportunity Tax Credit – which includes tax credits for an employer that hires an individual who is: (1) a qualifying Hurricane Katrina employee, (2) a member of a qualifying family with long-term or recent receipt of Temporary Assistance to Needy Families payments, (3) a qualifying food stamp recipient, (4) a qualifying veteran, (5) a qualifying ex-felon, (6) a resident of a designated community, (7) a qualifying summer youth employee, (8) a qualifying recipient of vocational rehabilitative services, or (9) a qualifying recipient of Supplemental Security income.

Capital investments that are eligible for tax benefits under section 560.702 (2) of the Statutes may also qualify for the federal Investment Credit – which includes tax credits for any qualifying rehabilitation of older structures, solar or geothermal energy equipment, advanced coal projects, and gasification projects.

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

These rules may affect any entity that desires to receive these tax benefits.

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

The staff time needed to develop the rules is expected to range from 200 to 400 hours, depending upon the associated complexity. This includes research, rule drafting, and processing the rules through public hearings, legislative review, and adoption. There are no other resources necessary to promulgate the rules.

## **Commerce**

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

#### **Subject**

Revises Chapter Comm 129, relating to tax credits for angel investments and early stage seed investments.

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

This rulemaking is primarily intended to update chapter Comm 129 to make it consistent with the portions of 2007 Wisconsin Act 20 and 2009 Wisconsin Act 2 that address tax credits for angel investments and early stage seed investments, as regulated by the Department under section 560.205 of the Statutes. This rulemaking may also include updating chapter Comm 129 to make it consistent with current industry and administrative practices, and with any pending legislation affecting these tax credits.

#### **Policy Analysis**

The Department has various rules for administering several economic development programs, but those rules do not include the expected rule text for determining (1) which businesses are eligible to become certified as a qualified new business venture for angel investments, (2) which angel or early stage seed investments qualify for corresponding tax credits, (3) the maximum amount of the tax credits, and (4) transferability of the early stage seed investment tax credits.

The alternative of not promulgating these rule changes would result in chapter Comm 129 continuing to be inconsistent with overriding, recently enacted criteria in section 560.205 of the Statutes.

#### **Statutory Authority**

Sections 560.205 (3) (d) and 227.11 (2) (a), Stats.

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

Neither the Department nor the Department of Revenue is aware of any existing or proposed federal regulation that applies these tax credits.

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

These rule changes may affect any entity that elects to become or is certified as a qualified new business venture for angel investments, and any early stage seed investment fund manager that elects to become or is certified by the Department, under section 560.205 of the Statutes. The rule changes may also affect any investor in Department-accepted



early stage seed investment funds that are managed by these certified fund managers, who desires to sell or otherwise transfer the corresponding tax credits.

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

The staff time needed to develop the rule changes is expected to range from 80 to 160 hours, depending upon the associated complexity. This includes research, rule drafting, and processing the rules through public hearings, legislative review, and adoption. There are no other resources necessary to promulgate the rules.

### **Commerce**

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

#### **Subject**

Revises Chapter Comm 132, relating to meat processing and dairy manufacturing facility investment credits.

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

The proposed rules would implement the provisions of 2009 Wisconsin Act 2 that relate to certifying applicants and allocating to them tax credits for investments in meat processing facilities or for investments by dairy cooperatives in dairy manufacturing facilities.

#### **Policy Analysis**

The Department has rules for several other programs associated with tax credits, but none of those programs relate specifically to investments in meat processing facilities or to investments by dairy cooperatives in dairy manufacturing facilities. Chapter Comm 132 currently addresses tax credits for investments in dairy manufacturing facilities, other than by dairy cooperatives.

The proposed rules are expected to address (1) the eligibility requirements for applicants; (2) the documentation that must be submitted by applicants to become certified as eligible for the investment credits, and to receive acceptance of the incurred expenses for modernization or expansion; (3) the Department's response to the submitted documentation; and (4) use of the Department's response when filing a claim with the Department of Revenue for the corresponding tax credit. The proposed rules may be included either entirely in chapter Comm 132, or partly there and partly in a new Comm chapter for meat processing facilities.

The alternative of not promulgating these rules would conflict with directives in sections 560.207 (4) and 560.208 (4) of the Statutes that require this promulgation, in consultation with the Department of Revenue.

#### **Statutory Authority**

Sections 227.11 (2) (a), 560.207 (4), and 560.208 (4), Stats.

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

Neither the Department nor the Department of Revenue is aware of any existing or proposed federal tax credits that are similar to these tax credits.

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

The proposed rules may affect entities that incur expenses relating to modernization or expansion of meat processing facilities, or to members of dairy cooperatives that incur expenses relating to modernization or expansion of dairy manufacturing facilities.

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

The staff time needed to develop the rules is expected to range from 200 to 300 hours, depending upon the associated complexity. This includes research, rule drafting, and processing the rules through public hearings, legislative review, and adoption. There are no other resources necessary to promulgate the rules.

### **Natural Resources**

#### ***Fish, Game, etc., Chs. NR 1—***

#### **Subject**

Revises Chapter NR 10, relating to the establishment of the 2009 migratory game bird hunting seasons.

#### **Policy Analysis**

Each year the department promulgates a rule order establishing the hunting seasons for species such as ducks and geese based on a framework that is offered to states by the US Fish & Wildlife Service. The timeline for promulgating this rule is compressed because of the need to coordinate with the federal rule making process. In late July department staff attend the Mississippi Flyway Council (MFC) Technical and Council meetings where they will receive proposed season framework options from the service. Staff will then work with other states in our Flyway to develop recommendations that are voted upon by the MFC. Proposals that are passed at the MFC meeting are forwarded to the service for consideration by their regulations committee in late July.

Once the USFWS's final framework is available (approximately August 1), department staff will summarize waterfowl population status and regulation information for Wisconsin citizens. This information is presented and public comments are received from the Migratory Committee of the Conservation Congress and a public meeting (Post-Flyway Meeting) of interest groups and individuals. The following week, public hearings will be held around the state to solicit additional input. The Department then promulgates a permanent and emergency rule simultaneously in order to open the waterfowl seasons in September.

#### **Statutory Authority**

Section 29.014, 29.041, 29.192 and 227.11, Stats.

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

Under international treaty and federal law, migratory game bird seasons are closed unless opened annually through the USFWS regulations process. As part of the federal rule process, the service proposes a duck harvest-management objective that balances hunting opportunities with the desire to achieve waterfowl population goals identified in the North American Waterfowl Management Plan (NAWMP). Under this harvest-management objective, the relative importance of hunting opportunity increases as duck populations approach the goals in the NAWMP. Thus, hunting opportunity is maximized when the population is at or above goals. Other factors such as habitat are also considered. The Regular Canada goose season is based on the allowable Mississippi Valley Population (MVP) harvest which will be determined based on the spring breeding population goal for that population and the spring population estimate obtained from an aerial survey of the MVP breeding range. All the proposed modifications included in this rule order are consistent with these parameters and guidelines which are annually established by the Fish and Wildlife Service in 50 CFR part 20.

**Entities Affected by the Rule**

These rules will impact migratory game bird hunters and those who enjoy viewing waterfowl in Wisconsin.

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

Approximately 500 hours will be needed by the Department to develop the rule prior to and following the hearings.

**Contact Information**

Kent Van Horn, Migratory Birds Specialist  
101 South Webster Street  
PO Box 7921  
Madison, WI 53707-7921  
Phone: (608) 266-8841  
Email: Kent.Vanhorn@wisconsin.gov

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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.*

**Architects, Landscape Architects, Professional  
Engineers, Designers and Land Surveyors  
Examining Board  
CR 09–030**

On April 6, 2009, the Examining Board of Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

**Analysis**

The proposed order revises section A–E 6.03, relating to administrative code and statute citations for land surveying experience.

**Agency Procedure for Promulgation**

A public hearing is not required under s. 227.16 (2) (e), Stats. A 30-day notice will be published in the Wisconsin Administrative Register.

**Contact Information**

Pamela Haack, Paralegal  
Phone: (608) 266–0495  
Email: Pamela.haack@wisconsin.gov

**Natural Resources  
Fish, Game, etc., Chs. NR 1–  
CR 09–031**

On April 13, 2009, the Department of Natural Resources submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

**Analysis**

The proposed order revises Chapter NR 46, relating to stumpage rates and administration of the Forest Crop Law and the Managed Forest Law.

**Agency Procedure for Promulgation**

A public hearing is scheduled for May 13, 2009.

**Contact Information**

Kathy Nelson  
Bureau of Forest Land Management  
Email: Kathryn.Nelson@wisconsin.gov

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## Rule-Making Notices

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### Notice of Hearing Natural Resources

#### *Fish, Game, etc., Chs. NR 1— CR 09-031*

NOTICE IS HEREBY GIVEN that pursuant to ss. 77.06 (2), 77.82 (2m) and (4), 77.88 (2) (d) 2., 77.91 (1) and 227.11 (2) (a), Stats., the Department of Natural Resources will hold a public hearing on revisions to Chapter NR 46, Wis. Adm. Code, relating to the administration of the Forest Crop Law and the Managed Forest Law.

#### Hearing Information

The hearing will be held on:

#### May 13, 2009

Wednesday at 10:00 AM	Video conference participation will be available at:  Room 139, State Office Building, 718 W. Clairemont Avenue, Eau Claire  Room 618, State Office Building, 200 N. Jefferson Street, Green Bay  Room G11, Natural Resources State Office Building, 101 S. Wilson Street, Madison  Communications Art Center, UW- Stevens Point, 1101 Reserve Street, Stevens Point
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Pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of information material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Kathy Nelson at (608) 266-3545 with specific information on your request at least 10 days before the date of the scheduled hearing.

#### Copies of Proposed Rule, Submission of Written Comments, and Agency Contact Person

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 Ms. Kathy Nelson, Forest Tax Section, Bureau of Forest Management, P.O. Box 7921, Madison, WI 53707. Comments may be submitted until May 29, 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 Ms. Nelson.

#### Analysis Prepared by Department of Natural Resources

##### *Statutes interpreted*

Section 77.06 (2) and subch. VI of ch. 77, Stats.

##### **Statutory authority**

Sections 77.06 (2), 77.82 (2m) and (4), 77.88 (2) (d) 2., 77.91 (1) and 227.11 (2) (a), Stats.

#### *Summary of proposed rule*

The proposed rule:

- Revises the annual stumpage rates for the period between November 1, 2009 and October 31, 2010 as required in ss. 77.06(2) and 77.91(1), Stats. While the statewide averages increased slightly, there are fluctuations between market zones and individual prices. Of all total 624 prices calculated, 173 (28%) increased, 188 (30%) decreased and 263 (42%) stayed the same.
- Amends the petition requirements in NR 46.16 (5). Petition requirements are being changed to streamline the administration and processing of new MFL entries. The rule would be modified to allow entries of land per municipality except in cases where lands must cross municipality lines to meet eligibility requirements.
- Amends management plan requirements in NR 46.18 (5): Deadlines to submit management plans for DNR approval are being changed to make the two application deadlines similar to each other. Landowners with management plans prepared by DNR foresters must return their signed plans by August 1. A change in this deadline to August 15 is proposed to make the certified plan writer and DNR deadline the same for landowners to turn in completed management plans.

#### **Small Business Impact**

The proposed rule may have an impact on small businesses. The initial regulatory flexibility analysis is as follows:

##### *Initial regulatory flexibility analysis*

*Types of small businesses affected:* Any business with land enrolled in either the Managed Forest Law or the Forest Crop Law or wishing to enroll land under the Managed Forest Law.

*Description of reporting or bookkeeping procedures required:* No procedures not already required.

*Description of professional skills required:* No new skills are required.

##### *Small business regulatory coordinator*

The Department's Small Business Regulatory Coordinator for this rule may be contacted at [quinn.williams@wisconsin.gov](mailto:quinn.williams@wisconsin.gov) or by calling (608) 266-1318.

#### **Environmental Impact**

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**

##### *Assumptions used in arriving at fiscal estimate*

This proposed rule change addresses the annual stumpage rate changes used in the calculation of severance and yield tax collections under Forest Cop Law (FCL) and Managed Forest Law (MFL) when timber is harvested from the private lands enrolled in the programs.

There is an undetermined impact in revenues to local municipalities. Timber prices have been variable from 2007 through 2008. The average statewide prices for sawlogs have increased 3%, with a range of a 21% increase to a 15% decrease. The average statewide prices for cords have increased 1%, with a range of a 10% increase to a 7% decrease. Prices for mixed products (mixture of sawlogs and cords for red pine, white pine and spruce) have dropped 12%, with a range of a 14% increase and a 31% decrease. Piece products (posts and poles) had a 12% increase in prices, with some market zones having an increase in prices of 96%. The increase in piece prices appears to be due to the additional reporting of piece products more than fluctuations in the markets. Only 12 of the available 143 piece product values were reported in the past year. This reporting is more than past years' reporting, so it is possible that piece products may be undervalued in some market zones.

While the statewide averages increased slightly, there are fluctuations between market zones and individual prices. Of all total 624 prices calculated, 173 (28%) increased, 188 (30%) decreased and 263 (42%) stayed the same.

The severance and yield tax collected in CY 2008 was \$1,734,479. This value is 17% lower than it was in CY 2006. Timber harvest volumes are down since CY 2007 by the following amounts:

Cordwood	Down 11%
Fuelwood	Down 5%
Sawlogs	Down 11%
Mixed Product	Up 510%
Piece Products	Down 43%
Christmas Trees	Down 16%

Reporting of mixed products increased most likely due to the awareness that private landowners may sell red pine, white pine and white spruce in this fashion. Based on the very small statewide increase in timber prices an estimated \$3,090.00 will be collected for municipalities.

Estimates are based on the average change in rates for private land timber sales across species and zone for each product type (cordwood, sawtimber and mixed), the volumes reported and paid for in CY 2008, and the assumption that the volume and the ratio of the cordwood and sawtimber will remain the same. Actual impact for a county and municipality will vary by the number of harvests completed and the actual species and products cut.

Other requested changes in NR 46 will streamline the implementation of the MFL program. Requests to enter lands based on municipal lines except for when lands must be combined with other lands in adjacent municipalities will have no impact on local or state finances.

Requests to change the plan completion dates will have no financial impact on local or state finances.

***State fiscal effect***

None.

***Types of local governmental units affected***

Towns, villages, cities, counties.

***Fund sources affected***

SEG.

***Affected Chapter 20 appropriations***

Section 20.370 (1) (cr), Stats.

***Long-range fiscal implications***

None.



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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.*

### **Chiropractic Examining Board** **CR 08–093**

A rule-making order revising Chapters Chir 1, 2, 3, and 5, relating to continuing education and requirements for proficiency in the use of automated external defibrillators.

### **Corrections** **CR 08–105**

A rule-making order creating section 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.

### **Commerce**

#### *Elevators, Escalators and Lift Devices, Ch. Comm 18* **CR 09–012**

A rule-making order revising section Comm 18.1702, relating to suspension ropes and their connections serving elevators.

### **Insurance** **CR 09–004**

A rule-making order revising sections Ins 17.01 (3) and 17.28 (3) (c) and (6), relating to fiscal year 2010 fund fees, provider classifications, and mediation panel fees.

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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.*

### Commerce

*Licenses, Certifications and Registrations, Ch. Comm 5*

#### CR 08-092

Revises section Comm 5.73, relating to liquefied gas suppliers.  
Effective 6-1-09.

### Commerce

*Uniform Dwelling, Chs. Comm 20-25*

*Wis. Commercial Building Code, Chs. Comm 60-66*

#### CR 08-085

Revises Chapters Comm 20, 21, 62 and 66, relating to carbon monoxide alarms.  
Effective 6-1-09.

### Health Services

*Community Services, Chs. DHS 30-*

#### CR 08-097

Revises Chapter DHS 97, relating to complaint procedures for inmates of the Wisconsin Resource Center.  
Effective 6-1-09.

### Health Services

*Health, Chs. DHS 110-*

#### CR 08-082

Revises Chapter DHS 119, relating to training in the use of automated external defibrillators for emergency medical technicians, first responders, and individuals who provide instruction to emergency medical technicians and first responders, and affecting small businesses.  
Effective 6-1-09.

### Natural Resources

*Environmental Protection — Wis. Pollutant Discharge Elimination System, Chs. NR 200-*

#### CR 08-076

Revises Chapter NR 219, relating to analytical test methods and procedures.  
Effective 6-1-09.

### Transportation

#### CR 08-113

Revises sections Trans 126.01, 126.02, and 126.04, relating to municipal or county vehicle registration fee.  
Effective 6-1-09.

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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 April 30, 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.*

### **Agriculture, Trade and Consumer Protection** **CR 08-075**

Revises Chapters ATCP 3, 12, 21, 29, 30, 31, 33, 40, 42, 50, 51, 55, 57, 60, 70, 75, 92, 103, 118, 123, 124, 136 and 160, relating to minor and technical rule changes. Effective 5-1-09.

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

This rule makes minor or technical changes to a number of current DATCP rules. This rule does all of the following:

##### *Electronic Processing of License Applications; Cost Recovery*

Authorizes DATCP to assess a \$3 fee for electronic licensing transactions (in addition to other license fees), to cover DATCP's electronic licensing costs. Electronic processing, if offered, is offered as a voluntary option for license applicants.

##### *Agricultural Chemical Cleanup Program; Surcharge Adjustment*

Reduces current agricultural chemical cleanup program surcharges paid by pesticide and fertilizer license holders, consistent with 2007 Wisconsin Act 20 (biennial budget act). DATCP has already implemented the reduced statutory surcharges (this rule merely conforms current rules to the new statutory amounts).

##### *Atrazine Use Regulations*

Revises the format of current maps showing some of the land areas where application of atrazine pesticides is currently prohibited by rule (this rule does not change the actual prohibition areas).

Restores a provision inadvertently deleted from the atrazine rule in a prior rulemaking proceeding, when the rule was modified for other reasons. The restored provision allows farmers (outside prohibition areas) to apply an additional 0.5 lbs. of atrazine per acre on medium- or fine-textured soils (up to 1.5 lbs. per acre rather than 1.0 lb. per acre) if no atrazine was applied in the preceding year. The restored provision is consistent with the way that DATCP has always administered the atrazine rule, so there will be no change in actual use practices.

##### *Pesticide Manufacturers and Labelers Fees*

Clarifies that a current rule prohibiting refunds of pesticide license fees does not prohibit certain reimbursements that are authorized by statute and paid as credits against the next year's license fees.

##### *Land and Water Conservation Program*

Updates technical standards incorporated by reference in current land and water conservation rules (ATCP 50). This rule does not substantially alter current standards or requirements.

Gives DATCP more latitude to extend land and water conservation funding for county cost-share contracts with landowners that were signed, but not completed, during the preceding year (extends signing deadline from December 1 to December 31).

Extends the current mid-year deadline for counties to file cost-share reimbursement requests with DATCP (from June 1 to July 1).

Updates current standards for the certification of agricultural engineering practitioners under the land and water conservation program, consistent with current standards published by the United States Department of Agriculture, Natural Resource Conservation Service ("NRCS").

Updates current standards used by certified soil testing laboratories under the land and water conservation program, consistent with updated standards published by the University of Wisconsin-Extension and University of Wisconsin-Madison.

##### *Meat Inspection*

Corrects erroneous cross-references to federal meat inspection regulations in state meat inspection rules.

##### *Bio-Diesel Plants*

Clarifies that a bio-diesel plant is not required to hold a grease processor license, provided that the plant does not produce grease or other products for human or animal consumption.

##### *Dairy Inspection*

Changes, from 7 days to 14 days, the time period within which dairy plants must report high somatic cell counts in goat milk and take follow-up samples related to high bacterial counts.

##### *Weights and Measures*

Updates technical standards incorporated by reference in current packaging and labeling and weights and measures rules (ATCP 90 & 92), including the latest standards published by the National Institute of Standards and Technology.

##### *Car Rental Notices*

Incorporates statutory provisions requiring car rental companies to notify prospective renters if the rental company may charge the renter's credit card for forfeitures and other costs incurred but not paid by the renter for nonmoving traffic violations (parking tickets).

##### *Fair Premium Aids*

Authorizes DATCP to pay county and district fair premium aids based on total county and district fair premiums paid (current rule requires payment based on total premiums less entry fees).

*Other Technical Changes*

Modifies current *notes* to reflect the fact that rules and related documents are now filed with the legislative reference bureau, not the revisor of statutes or secretary of state (the revisor of statutes office was eliminated by 2007 Wis. Act 20).

Corrects minor errors in current rules.

Makes minor organizational, drafting and terminology changes.

**Summary of Comments by Legislative Review Committees**

On January 12, 2009, DATCP transmitted the above rule for legislative review. The rule was assigned to the Senate Committee on Agriculture and Higher Education and to the Assembly Committee on Agriculture. The Senate Committee on Agriculture and Higher Education did not hold a hearing and took no action. The Assembly Committee on Agriculture did not hold a hearing and took no action. The legislative review period expired on February 27, 2009.

**Employee Trust Funds****CR 08-079**

Repeals and recreates section ETF 40.01, relating to continued group health insurance coverage of an insured dependent after the death of the insured employee or annuitant. Effective 5-1-09.

**Summary of Final Regulatory Flexibility Analysis**

The proposed rule has no significant effect on small businesses because only governmental employers and their employees may participate in the benefit programs under ch. 40 of the statutes administered by the Department of Employee Trust Funds.

**Summary of Comments by Legislative Review Committees**

No comments were received.

**Military Affairs —  
Wisconsin Emergency Management  
CR 08-106**

Amends sections WEM 1.03 and 1.04, relating to fees. Effective 5-1-09.

**Summary of Final Regulatory Flexibility Analysis***Effect on Small Business:*

Facilities with 11 or more employees would experience a fee change. Under s. 166.20 (7) (d), Stats., facilities with fewer than the equivalent of 10 full-time employees are exempt from inventory fees and the one-time emergency planning fee.

*Types of Small Businesses That Will Be Affected By the Rule:*

Small businesses as defined in s. 227.114 (5), Stats. and s. 166.20 (5) to (5m) that do not meet the fee exemption in s. 166.20 (7) (d).

*Reporting, Bookkeeping and Other Procedures Required For Compliance With The Rule:*

No new reporting, bookkeeping and other procedures are required for compliance with the rule.

*Types of Professional Skills:*

No new professional skills are necessary for compliance with the rule.

*Rules Have a Significant Impact on Small Business:*

No. Most small businesses with 11 or more employees are now paying the minimum annual inventory fee of \$150.00 and will see that increase by 35% annually. Small businesses with 11 or more employees who must submit the one-time planning notification will receive an increase in the fee of 35%.

**Summary of Comments by Legislative Review Committees**

No comments were received.

**Natural Resources  
Fish, Game, etc., Chs. NR 1—  
CR 06-108**

Revises section NR 20.40, relating to regulation of fishing tournaments in inland, outlying, and boundary waters of Wisconsin. Effective 5-1-09.

**Summary of Final Regulatory Flexibility Analysis**

Small businesses likely to be impacted by this rule include tournament organizers. Tournament organizers will be affected by the imposition of tournament permit fees and will potentially be impacted by the imposition of the limits on the amount of tournament activity that can take place on a particular waterbody. However, the rules do not prevent any tournament organizer from holding a tournament particularly if the organizer is flexible with regard to location and date of the tournament. Tournament organizers would need to do several activities to comply: 1) apply for a tournament fishing permit, 2) submit appropriate application fee, 3) obtain permit and comply with tournament conditions outlined in the permit, 4) complete and submit a report of tournament activities to the Department of Natural Resources within 30 days of the completion of the fishing tournament.

In addition, local businesses that cater to tournament anglers and spectators may be indirectly affected by these regulations. Local communities and businesses may be affected if tournament activity either increases or decreases as a result of these rules. Tournament activity generates local economic activity and can range from tens of thousands of dollars to approximately two million dollars depending on the type of tournament (see the Economic component of the Bass Fishing Tournament Pilot program summary for specific details). The amount of tournament activity in Wisconsin may increase as a result of these rules if they are viewed as more favorable than those of surrounding states. Conversely, the amount of tournament activity may decrease if the rules are viewed as overly restrictive. The Department has no data to answer the question of whether these rules will act to increase or decrease tournament activity and it is therefore difficult to predict the overall economic impact of these regulations although the impact may be of notable magnitude.

**Summary of Comments by Legislative Review Committees**

The rules were reviewed by the Assembly Committee on Fish and Wildlife and the Senate Committee on Transportation, Tourism, Forestry, and Natural Resources. No hearing was held during the 10 day period allocated to the committees for review. The Department did not receive any comments or requests for modification.

**Natural Resources**

*Fish, Game, etc., Chs. NR 1—*

**CR 08–046**

Revises Chapter NR 47, relating to the county forest administration grant program. Effective 5–1–09.

**Summary of Final Regulatory Flexibility Analysis**

This rule change will not affect small business.

**Summary of Comments by Legislative Review Committees**

No comments were reported.

**Regulation and Licensing**

**CR 08–094**

Revises section RL 161.04, relating to examinations for substance abuse professionals. Effective 5–1–09.

**Summary of Final Regulatory Flexibility Analysis**

This rule 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 received.

**Transportation**

**CR 08–080**

Creates Chapter Trans 145, relating to neighborhood electric vehicles. Effective 5–1–09.

**Summary of Final Regulatory Flexibility Analysis**

This rule will have no effect on small business other than limitation on NEV operation to which all NEV owners are subject.

**Summary of Comments by Legislative Review Committees**

No comments were received.

**Transportation**

**CR 08–100**

Revises Chapters Trans 325, 326 and 327, relating to motor carrier safety and hazardous material transportation safety. Effective 5–1–09.

**Summary of Final Regulatory Flexibility Analysis**

This rule will have no significant adverse effect on small businesses.

**Summary of Comments by Legislative Review Committees**

No comments were received.

**Transportation**

**CR 08–101**

Revises Chapter Trans 276, relating to allowing the operation of certain 2–vehicle combinations on certain highways without a permit. Effective 5–1–09.

**Summary of Final Regulatory Flexibility Analysis**

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

**Summary of Comments by Legislative Review Committees**

No comments were received.



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## Sections Affected by Rule Revisions and Corrections

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The following administrative code sections had rule revisions and corrections take place in **April 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

#### Agriculture, Trade and Consumer Protection

##### Ch. ATCP 3 (Entire Chapter)

##### Ch. ATCP 12

ATCP 12.08 (10)

##### Ch. ATCP 21

ATCP 21 Appendix A

##### Ch. ATCP 29

ATCP 29.11 (3) (intro.) to (c), (8)

ATCP 29.15 (4) (b)

ATCP 29.20 (6) (b)

ATCP 29.25 (5) (a)

##### Ch. ATCP 30

ATCP 30.22 (title)

ATCP 30.32

ATCP 30 Appendix A

##### Ch. ATCP 33

ATCP 33.52 (4) (a)

##### Ch. ATCP 40

ATCP 40.04 (4) (b)

ATCP 40.06 (2) (f)

##### Ch. ATCP 50

ATCP 50.01 (31)

ATCP 50.04 (3) (dm), (e)

ATCP 50.08 (5) (b)

ATCP 50.28 (5) (a)

ATCP 50.32 (7) (a)

ATCP 50.34 (6) (a)

ATCP 50.42 (2) (b) to (d)

ATCP 50.46 (2)

ATCP 50.50 (2) (d), (8) (c)

ATCP 50.56 (3) (c), (4) (a)

ATCP 50.62 (5) (e)

ATCP 50.63 (5)

ATCP 50.64 (1) (t)

ATCP 50.65 (3) (a)

ATCP 50.66 (3) (a)

ATCP 50.68 (title), (4) (a)

ATCP 50.69 (4) (a)

ATCP 50.70 (4) (b)

ATCP 50.71 (3) (b)

aTCP 50.72 (3) (a)

ATCP 50.73 (3) (d)

ATCP 50.74 (3) (a)

ATCP 50.75 (4) (a)

ATCP 50.76 (5) (a)

ATCP 50.77 (4) (a)

ATCP 50.79 (3) (a)

ATCP 50.80 (3) (a)

ATCP 50.82 (4) (c)

ATCP 50.83 (3) (a)

ATCP 50.84 (5) (a)

ATCP 50.85 (4) (a)

ATCP 50.86 (4) (b)

ATCP 50.87 (4) (a)

ATCP 50.88 (3) (a)

ATCP 50.89

ATCP 50.90 (3) (b)

ATCP 50.91 (3) (b)

ATCP 50.92 (3) (b)

ATCP 50.93 (4) (a)

ATCP 50.94 (3) (a)

ATCP 50.95 (3) (a)

ATCP 50.96 (3) (b)

ATCP 50.97 (3) (a)

ATCP 50.98 (3) (a)

ATCP 50 Appendices A, G

##### Ch. ATCP 55

ATCP 55.07 (3) (a)

##### Ch. ATCP 57

ATCP 57.01 (17) (g)

##### Ch. ATCP 60

ATCP 60.18 (5) (b)

ATCP 60.20 (6) (b)

##### Ch. ATCP 70

ATCP 70.03 (7) (d)

##### Ch. ATCP 75

ATCP 75.03 (1), (9) (f)

##### Ch. ATCP 92

ATCP 92.02 (1)

ATCP 92.06 (1) (a), (2)

ATCP 92.22 (1) (b)

##### Ch. ATCP 103

ATCP 103.05

##### Ch. ATCP 118

ATCP 118 Chapter and Subchapter titles

ATCP 118.01 (1), (2) (intro.), (3)

ATCP 118.04

ATCP 118.10

ATCP 118.12

**Ch. ATCP 124**

ATCP 124.02 (4)

**Ch. ATCP 136**

ATCP 136.02 (4) (b)

ATCP 136.12 (3) (d)

**Ch. ATCP 160**

ATCP 160.02 (1) (a)

**Employee Trust Funds**

**Ch. ETF 40**

ETF 40.01

**Military Affairs — Wis. Emergency Management**

**Ch. WEM 1**

WEM 1.03

WEM 1.04 (1), (7)

**Natural Resources**

**Ch. NR 20**

NR 20.40

**Ch. NR 47**

NR 47.70 (title), (1), (2) (i), (3) (a), (c), (4) (c) to (f)

**Regulation and Licensing**

**Ch. RL 161**

RL 161.04 (3) (a), (e)

**Transportation**

**Ch. Trans 276**

Trans 276.07 (14), (24), (35m)

**Ch. Trans 325**

Trans 325.02 (intro.), (7g), (7r), (8)

Trans 325.15

**Ch. Trans 326**

Trans 326.01 (intro.), (7m), (8)

Trans 326.15

**Ch. Trans 327**

Trans 327.03 (intro.), (7), (11)

Trans 327.13

**Editorial Corrections**

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

**Agriculture, Trade and Consumer Protection**

**Ch. ATCP 29**

ATCP 29.11 (8) (b)

**Ch. ATCP 30**

ATCP 30.24 (10) (a)

**Ch. ATCP 55**

ATCP 55.01 (2) (a)

**Ch. ATCP 60**

ATCP 60.08 (7) (a)

**Ch. ATCP 123**

ATCP 123.01 (14), (15)

**Commerce**

**Ch. Comm 21**

Comm 21.11 (1) (b)

**Military Affairs — Wis. Emergency Management**

**Ch. WEM 1**

WEM 1.04 (1)

**Natural Resources**

**Ch. NR 20**

NR 20.40 (7) (a)

**Regulation and Licensing**

**Ch. RL 161**

RL 161.01 (1), (4)

RL 161.11 (1) (a)

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## Executive Orders

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

**Executive Order 277.** Relating to a Proclamation that the Flag of the United States and the Flag of the State of Wisconsin be Flown at Half-Staff as a Mark of Respect for Aircraft Pilot Heath Van Handel of the Wisconsin Department of Natural Resources.

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## Notice of Nonacquiescence

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**STATE OF WISCONSIN  
TAX APPEALS COMMISSION**

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OSB, INC.,	:	
Petitioner,		NOTICE OF NONACQUIESCENCE
v.	:	DOCKET NO. 02-1-460
WISCONSIN DEPARTMENT OF REVENUE,		
Respondent.	:	

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TO:	Wisconsin Tax Appeals Commission 5005 University Avenue — Suite 110 Madison, WI 53705	Legislative Reference Bureau One E. Main St., Suite 200 Madison, WI 53701-2037  (For publication in the Wisconsin Administrative Register)
	Kristina E. Somers Reinhart Boerner Van Deuren SC N16W23250 Stone Ridge Dr., PO Box 2265 Waukesha, WI 53187-2265 Attorney for Petitioner	

Pursuant to sec. 73.01 (4) (e) 2. of the Wisconsin Statutes, the Respondent (Department of Revenue) hereby gives notice that, although it is not appealing the Decisions or Orders of the Tax Appeals Commission rendered in the above-captioned matter under date of January 26, 2009 and March 16, 2009, it has adopted a position of nonacquiescence in regard to those Decisions or Orders. The effect of this action is that, although the Decisions or Orders are binding on the parties for the instant case, the Commission’s conclusions of law, the rationale and construction of statutes in the instant case are not binding upon or required to be followed by the Respondent in other cases.

Dated at Madison, Wisconsin this 2nd day of April, 2009.

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