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WISCONSIN ADMINISTRATIVE REGISTER

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Emergency Rules Now in Effect

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.

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.

Agriculture, Trade and Consumer Protection (2)

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

Finding of Emergency

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

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

Publication Date: August 22, 2009

Effective: August 22, 2009 through January 18, 2010

Hearing Dates: September 29 and 30, 2009

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

Finding of Emergency

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

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

Publication Date: September 14, 2009

Effective: September 14, 2009 through February 10, 2010

Hearing Date: October 15, 2009

Children and Families

Family and Economic Security, Chs. DCF 101–153

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

Finding of Emergency

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

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

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

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

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

Children and Families

Family and Economic Security, Chs. DCF 101–153
Early Care and Education, Chs. DCF 201–252

EmR0908 — Rules adopted amending s. DCF 101.09 (3) (b) and creating ss. DCF 101.09 (3) (b) 1. b., 101.26 (3), and 201.08 (2) (g), relating to Wisconsin Works and Wisconsin Shares disregard of temporary census income.

Finding of Emergency

The Department of Children and Families 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:

Disregarding income earned from temporary employment with the U.S. Census Bureau in determining Wisconsin Works and Wisconsin Shares eligibility and child care copayments is necessary for the public welfare to ensure Wisconsin has a broad pool of available workers to help ensure an accurate Census count, particularly in historically undercounted low-income neighborhoods. Census work is currently ongoing.

Publication Date: May 28, 2009
Effective: June 1, 2009 through October 28, 2009
Hearing Date: July 14, 2009

Commerce

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

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

Finding of Emergency

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

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

2. Under Chapters 101 and 145 of the statutes, the department of commerce has oversight over the design,

construction, alteration and maintenance of public buildings and places of employment, one- and two- family dwellings, public swimming pools and public water attractions in order to protect public safety, health and welfare and the waters of the state.

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

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

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

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

Commerce

Uniform Dwelling, Chs. Comm 20–25

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

Finding of Emergency

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

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

2. The U.S. Department of Energy's Building Energy Codes Program develops and distributes REScheck software. The software program simplifies and clarifies residential code compliance with the Model Energy Code (MEC) and the

International Energy Conservation Code (IECC). REScheck software makes it easier for designers, builders, product manufacturers and code officials to comply with energy codes based on the IECC or ASHRAE/IESNA Standard 90.1 requirements. Also, REScheck can be tailored to meet state–specific codes.

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

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

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

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

Commerce

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

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

Exemption From Finding of Emergency

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

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

Corrections

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

Finding of Emergency

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

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

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

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

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

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

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

Financial Institutions — Banking

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

Exemption From Finding of Emergency

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

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

Insurance (3)

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

Finding of Emergency

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

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

If these new Act 28 requirements apply to commercial liability insurance and commercial umbrella policies which insure only hired and non–owned automobiles (“HNO”) under the policy, this creates a significant problem. Some of these insurers do not have authority to write auto insurance which is needed to write uninsured (“UM”) and underinsured coverage (“UIM”). Other insurers offering the commercial umbrella and commercial liability HNO have not ever written UM/UIM coverages because the current rules exempt them. Insurers have also stated that obtaining reinsurance for this is a problem.

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

Publication Date: September 9, 2009
Effective: November 1, 2009 through March 30, 2010

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

Exemption From Finding of Emergency

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

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

Publication Date: September 26, 2009
Effective: September 26, 2009 through February 22, 2010

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

Exemption From Finding of Emergency

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

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

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

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

Publication Date: October 1, 2009
Effective: October 2, 2009 through October 1, 2010

Natural Resources

Fish, Game, etc., Chs. NR 1–

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

Finding of Emergency

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to protect the public welfare. The federal government and state legislature have delegated to the appropriate agencies rule–making authority to control the hunting of migratory birds. The State of Wisconsin must comply with federal regulations in the establishment of migratory bird hunting seasons and conditions. Federal regulations are not made available to this state until mid–August of each year. This order is designed to bring the state hunting regulations to conformity with the federal regulations. Normal rule–making procedures will not allow the establishment of these changes by September 1. Failure to modify our rules will result in the

failure to provide hunting opportunity and continuation of rules which conflict with federal regulations.

Publication Date: August 22, 2009
Effective: September 1, 2009 through January 28, 2010
Hearing Date: November 4, 2009
 (See the Notice in this Register)

Natural Resources

Environmental Protection — Water Regulation, Chs. NR 300—

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

Finding of Emergency

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

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

Pharmacy Examining Board

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

Finding of Emergency

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

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

First, under s. Phar 4.02 (1) and (3), an applicant is required to take and pass the Multi–State Pharmacy Jurisprudence Examination (MPJE) and the North American Pharmacist Licensure Examination (NAPLEX). Both of these examinations test competencies that relate to subject areas

that are also tested in the practical examination. As a result, applicants are required to take an additional examination, and pay an additional examination fee. In some instances, this step may also result in a delay in the processing of applications for licensure.

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

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

Public Defender Board

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

Finding of Emergency

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

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

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

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

Publication Date: October 3, 2009
Effective: October 3, 2009 through
 March 1, 2010

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

Public Instruction (2)

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

Exemption From Finding of Emergency

Pursuant to Section 9139 (3) of the nonstatutory provisions of 2009 Wisconsin Act 28, the Department of Public Instruction is not required to provide evidence that this rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency.

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

(Except Section 1)

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

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

Exemption From Finding of Emergency

Pursuant to Section 9139 (2x) of the nonstatutory provisions of 2009 Wisconsin Act 28, the Department of Public Instruction is not required to provide evidence that this rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency.

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

Public Service Commission

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

Finding of Emergency

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

Regulation and Licensing (2)

1. **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

2. **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 (2)

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

Finding of Emergency

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

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

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

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

Finding of Emergency

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

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

Publication Date: September 30, 2009
Effective: October 1, 2009 through February 27, 2010

Transportation

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

Finding of Emergency

The Department of Transportation finds that an emergency exists and that an emergency rule is necessary for the immediate preservation of public health and safety. Current federal law at 23 USC 406 provides safety belt performance grants to a state that has in effect and is enforcing a conforming primary safety belt use law for all passenger motor vehicles. A grant of federal funds estimated at roughly \$15,000,000 are available if this state is eligible on or before September 30, 2009; a secondary grant based on “share of unallocated funds,” estimated at not more than \$1,000,000,

may be available if this state is eligible on or before June 30, 2009. The Wisconsin Legislature is currently deliberating a primary safety belt use law as part of the executive biennial budget bill, 2009 Assembly Bill 75, with the aim of qualifying for safety belt performance grants. Were the law timely enacted, this state could remain ineligible for safety belt performance grants because Department rules allow persons other than physicians to grant medical exemptions from safety belt use requirements. Immediate action is necessary to avoid forfeiting approximately \$16,000,000 in federal funds for highway safety activities. Increased use of safety belts has been shown to reduce the severity of injuries sustained in motor vehicle collisions, and limiting the medical use exemption to physicians would increase use of safety belts.

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

Veterans Affairs

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

Finding of Emergency

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

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

Scope Statements

Insurance

Subject

Creates section Ins 3.75, Wis. Adm. Code, relating to continuation of group health insurance policy coverage for employees and their dependents and affecting small business.

Objective of the Rule

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

Policy Analysis

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

Statutory Authority

Sections 601.41 (3), 601.42, and 632.897, Stats., and Section 9126 of 2009 Wisconsin Act 11.

Comparison with Federal Regulations

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

Entities Affected by the Rule

Insurers issuing group health insurance products, including insurers offering small employer group health insurance and insurance intermediaries soliciting such products may be affected by this rule.

Estimate of Time Needed to Develop the Rule

200 hours and no other resources are necessary.

Insurance

Subject

Revises sections Ins 6.05 and 6.07, Wis. Adm. Code, relating to filing of insurance forms and insurance policy language simplification and affecting small business.

Objective of the Rule

Consider changes in administrative rules required to adopt the National Association of Insurance Commissioners (NAIC) uniform insurance rate and form transmittal documents and uniform product coding and changes to the certification used to report insurance policy language simplification.

Policy Analysis

Currently Ch. Ins 6 requires the use of rate and form transmittal documents that are unique to the State of Wisconsin and for use in Wisconsin only. It is the intent to adopt language and conform to the nationally accepted uniform insurance form listing and to modify rules relating to rate and form transmittal documents. By adopting the uniform language and form file listings, Wisconsin will require insurers to utilize the nationally accepted uniform rate and form transmittal documents. All other states will be utilizing these uniform rate and form transmittal documents. Failure to require the use of these uniform rate and form transmittal documents will result in confusion and duplication efforts for insurers and may constitute grounds for the imposition of federal regulation.

Additionally, the policy form language that is permitted to be used in Wisconsin assumes a higher level of education of the consumer than is required of forms used in other states. As part of the review of each product line of insurance and the readability of the forms, an advisory council will recommend revision to the Flesch score requirements and format modifications to decrease consumer confusion.

Statutory Authority

Sections 601.42, 631.20, 631.22, and 631.61, Stats.

Comparison with Federal Regulations

There is currently no federal regulation of insurance form and rate listing or standardization of readability of policies. A working group of the NAIC is being formed to recommend national standards for readability.

Entities Affected by the Rule

Insurance companies, rate service organization and third party filers contracted to file forms, rates and insurance policy certification forms for insurance companies.

Estimate of Time Needed to Develop the Rule

200 hours and no other resources are necessary.

Natural Resources

Environmental Protection — Air Pollution Control, Chs. NR 400—

Subject

Revises Chapter NR 400, relating to the definition of the term volatile organic compound (VOC).

Objective of the Rule

Chapter NR 400, Wis. Adm. Code, establishes a set of definitions for terms commonly used throughout chs. NR 400 to 499. Section NR 400.02 (162), defines the term “volatile

organic compound” (VOC) as any organic compound which participates in atmospheric photochemical reactions. Included as part of the current definition is a list of certain organic compounds with negligible photochemical reactivity that have been excluded by the U.S. Environmental Protection Agency (EPA) from the regulatory definition of VOC. Section NR 400.02 (162) (a), currently includes 50 such excluded compounds.

The purpose of the proposed rule revision is to add dimethyl carbonate and propylene carbonate to the list of excluded compounds in s. NR 400.02 (162) (a). EPA has determined that these two compounds make a negligible contribution to tropospheric ozone formation. As such, EPA has recently excluded these two compounds from its regulatory definition of VOC through a January 21, 2009 Federal Register notice (74 FR 3437). The final rule became effective on February 20, 2009. The proposed revision of s. NR 400.02 (162) (a), would be consistent with this federal action.

Policy Analysis

The Bureau of Air Management does not expect to deal with major policy decisions related to this proposed rule revision. Adding dimethyl carbonate and propylene carbonate as excluded compounds is consistent with past actions taken by the Department to ensure consistency between the state and federal VOC definitions.

Statutory Authority

Section 285.11(6), Wis. Stats., requires the Department of Natural Resources to develop a plan for the prevention, abatement and control of air pollution. For ozone control, the plan must conform with the Clean Air Act and federal regulations. Since VOCs are a precursor to ozone, having the state definition of VOC conform to the federal definition is consistent with s. 285.11 (6), Wis. Stats.

Comparison with Federal Regulations

The proposed addition of dimethyl carbonate and propylene carbonate to the list of excluded compounds in s. NR 400.02 (162) (a), Wis. Adm. Code, is consistent with EPA’s action taken on January 21, 2009, which excluded these compounds from the federal regulatory definition of VOC in 40 CFR 51.100(s) (74 FR 3437). These two compounds have been shown to make a negligible contribution to tropospheric ozone formation.

Entities Affected by the Rule

The Department expects that the primary entity affected by this rule revision would be the paint and coating manufacturers. Dimethyl carbonate and to a lesser degree propylene carbonate may be useful in the formulation of paints and coatings. There are several other organizations that may not be directly affected by the rule, but are likely to have an interest in this rule revision including Wisconsin Manufacturers and Commerce, environmental organizations such as Clean Wisconsin and Sierra Club, and public health organizations.

This proposed rule revision may create an incentive for certain entities, such as paint and coating manufacturers, to use these compounds in place of other more highly reactive organic compounds.

Estimate of Time Needed to Develop the Rule

A total of about 66 hours is needed for drafting and internal review of the proposed changes.

Contact Information

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Natural Resources

Environmental Protection — Air Pollution Control, Chs. NR 400—

Subject

Revises Chapter NR 488, relating to records requirements for refrigerant recovery from salvaged or dismantled refrigeration equipment.

Objective of the Rule

The Bureau of Air Management proposes to revise ch. NR 488, Wis. Adm. Code, record keeping requirements. Persons or facilities who perform refrigerant recovery services on equipment to be salvaged or dismantled and owned by another person will need to provide copies of records to the owner regarding their work with each piece of equipment serviced. The facility performing this service is already required to develop and keep these records. The proposed rule will provide important records to the owners of the equipment being serviced and will assist limited Department staff to verify compliance at the location where refrigerant recovery actually occurs. The proposed revision may also include minor changes to ch. NR 488 to clarify rule requirements. Other rule provisions may need to be changed if germane and appropriate to accomplish the action described above.

Policy Analysis

Chapter NR 488 regulates persons who salvage or dismantle any type of equipment that is designed to contain certain refrigerants that deplete the ozone layer or contribute to global warming. These persons are prohibited from releasing the refrigerants; instead, they must properly recover any remaining refrigerants from the equipment using approved equipment operated by qualified technicians. The facility recovering these refrigerants must be registered with the DNR and keep detailed records of the identity of each piece of equipment salvaged and the date they remove the refrigerant or the date they determine that no refrigerant remained in the unit.

Under current industry practices, many persons provide this service to others. This revision expands the scope of record keeping to require those who perform this service for others to provide the same detailed records described above, which they already must generate and keep, to the owners of the salvaged equipment they have serviced. For example, some businesses are hired by vehicle salvage yards to check each vehicle for refrigerant and recover any remaining refrigerants. When buildings are demolished, a company is often hired to recover refrigerants from the buildings’ air conditioning system(s). The service provider is usually asked to leave copies of the records regarding their determination and recovery actions for each piece of equipment serviced. This revision will make provision of these records a requirement.

In either case, the person supplying the equipment should have a record showing who was actually responsible for processing each piece of equipment. This documentation is especially useful in cases where there are questions concerning the proper processing of any piece of equipment they have delivered. This rule revision will assist to assure that documentation is provided for each piece of equipment.

Statutory Authority

Sections 227.11 (2) (a), 285.11 (1) and 285.59 (5) (a) and (6), Wis. Stats.

Comparison with Federal Regulations

Current federal regulations (40 CFR Part 82) prohibit the release of regulated refrigerants from any equipment being prepared for disposal or recycling. The persons who prepare this equipment must recover any remaining refrigerants using a qualified recovery machine.

Under both state and federal regulations, the owner or operator of a solid waste landfill or metal recycling facility must obtain a written and signed statement from each supplier verifying that the refrigerant has been properly removed from any equipment prior to delivery to their facility. The federal regulations do not require that persons or facilities who actually perform the refrigerant recovery on equipment owned by another person supply the owner with specific records regarding their service on any particular piece of equipment. However, the person supplying this equipment to a final disposal destination must either have such a record regarding each piece delivered, or contractually state that each piece has been properly recovered prior to delivery. This rule revision will provide those specific records or "back up" the contractual statement.

Entities Affected by the Rule

Affected facilities can include: vehicle and appliance salvagers, scrap metal processors, Heating, Ventilation and Air Conditioning (HVAC) businesses that retire refrigeration and air conditioning systems, and demolition contractors or others who arrange for air conditioners or other equipment at demolition sites to be evacuated before recycling or demolition. The facility salvaging or dismantling equipment owned by another party will be required to provide records of their refrigerant services. Many of these facilities are small businesses.

Estimate of Time Needed to Develop the Rule

Approximately 270 staff hours of time will be needed to develop the rule revision.

Contact Information

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Public Defender Board

Subject

Creates Chapter PD 8, relating to payments for copies of discovery materials provided to staff and private attorneys appointed to represent state public defender clients in legal proceedings.

Objective of the Rule

Section 977.02 (9), Stats., effective July 1, 2009, directs the state public defender board to promulgate rules "establishing

the maximum fees that the state public defender may pay for copies, in any format, of materials that are subject to discovery in cases in which the state public defender or counsel assigned under s. 977.08 provides legal representation."

These rules are intended to provide notice to the counties and municipalities of the applicable fees that will be paid, ensure consistency among all providers of discovery materials, and establish a procedure for the state public defender to follow if the applicable appropriation is depleted before the end of the biennium. The rules may:

- Establish maximum rates for the common formats in which the state public defender presently receives discovery materials;
- Specify that the state public defender does not pay for the labor costs, postage costs, transmittal costs or other ancillary costs related to compiling, preparing or providing discovery materials;
- Provide the state public defender with the authority to reduce or suspend payments for discovery materials when the applicable appropriation is insufficient to continue payments at the maximum rate; and
- Specify that the state public defender may set a maximum rate not to exceed the actual, necessary, and direct cost of producing discovery materials that are provided in a format not directly addressed in the rule.

Policy Analysis

The state public defender appoints attorneys to represent financially eligible persons in cases where they have a constitutional or a statutory right to an attorney at state expense. *See* ch. 977, Stats. sections 971.23 and 980.036, Stats., require a district attorney or other prosecuting attorney to disclose certain materials and information, referred to generally as "discovery materials," to opposing parties or their attorneys within specified time limits. Sections 971.23 (10) and 980.036 (10) require the state public defender to pay for the copies of discovery materials disclosed to appointed defense counsel if the provider charges a fee for them.

The 2009–2011 biennial budget, 2009 Wisconsin Act 28, requires the state public defender board to promulgate administrative rules establishing the maximum fees that the state public defender may pay for copies of discovery materials in any format and to consider information regarding the actual, necessary, and direct cost of producing copies of materials that are subject to discovery when establishing the maximum fees that the public defender may pay for them. *See* s. 977.02 (9), Stats.

This rulemaking authority responds to two problems that the state public defender has encountered regarding the specific appropriation for transcripts, interpreter fees, and discovery costs: 1) this appropriation has been insufficient since fiscal year 2001–2002, and 2) counties and municipalities have charged different amounts for similar items, such as photocopies and DVDs, resulting in disputes over the reasonableness of some of the bills submitted to the state public defender.

Policy Alternative

The state public defender has no policy alternative. If the statutory directive to promulgate rules is disregarded, the appropriation for transcripts, discovery and interpreters will be depleted before the end of the fiscal year.

The state public defender was initially provided a base budget of \$60,000 in 1995 for discovery payments, which at that time consisted mostly of photocopies and some

photographs. In the 1999–2001 budget act, this appropriation was increased to \$150,000, based on a presumptive rate for photocopies of \$0.20 per page. In the 2001–2003 biennial budget, this appropriation was subjected to a five percent funding reduction, leaving a base budget for discovery payments of \$142,500.

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

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

Statutory Authority

Sections 971.23 (10), 977.02 (9) and 980.036 (10), Stats.

Comparison with Federal Regulations

There are no federal regulations concerning payment by the public defender for copies of discovery materials furnished to an attorney appointed to provide legal representation in the Wisconsin state courts.

Entities Affected by the Rule

Prosecutors, law enforcement agencies, counties and municipalities.

Estimate of Time Needed to Develop the Rule

The public defender estimates it will take 200 hours of employee time to develop the rule. No other resources are necessary.

Public Instruction

Subject

Revises Chapter PI 35, relating to the Milwaukee Parental

Choice Program teacher license waiver.

Objective of the Rule

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

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

Policy Analysis

There are no existing relevant policies and no new policies to be included in the administrative rule.

The department is required to promulgate rules under s. 119.23 (2) (a) 6. c., Stats., and Section 9139 Nonstatutory provisions (4r) under 2009 Wis. Act 28. Therefore, there are no alternatives to rule promulgation.

Statutory Authority

Section 119.23 (2) (a) 6. c., Stats., and 2009 Wis. Act 28.

Comparison with Federal Regulations

Not applicable.

Entities Affected by the Rule

Private schools participating under the MPCP program.

Estimate of Time Needed to Develop the Rule

The amount of time needed for rule development by department staff and the amount of other resources necessary are indeterminable. The time needed to create the rule language itself will be minimal. However, the time involved with guiding the rule through the required rule promulgation process is fairly significant. The rule process takes more than six months to complete.

Submittal of Rules to Legislative Council Clearinghouse

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

Commerce

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

CR 09–082

On September 28, 2009, the Department of Commerce submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed order revises Chapter Comm 129, relating to tax credits for angel investments and early stage seed investments.

Agency Procedure for Promulgation

A public hearing is required and will be held on October 27, 2009. The Division of Business Development is primarily responsible for promulgation of the rules.

Contact Information

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Code Development Consultant
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Natural Resources

Fish, Game, etc., Chs. NR 1—

CR 09–083

On September 28, 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 25, relating to commercial fishing in outlying waters and affecting small business.

Agency Procedure for Promulgation

A public hearing is required and will be held on October 26, 2009. The Bureau of Fisheries Management is primarily responsible for promulgation of the rules.

Contact Information

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Bureau of Fisheries Management
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Public Instruction

CR 09–084

On October 1, 2009, the Department of Public Instruction submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed order creates section PI 35.07, relating to establishing a temporary, nonrenewable waiver from the requirement that a teacher have a bachelor's degree in order to teach in a private school under the Milwaukee Parental Choice Program.

Agency Procedure for Promulgation

Public hearings will be scheduled. The Division for Finance and Management is primarily responsible for promulgation of this rule.

Contact Information

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Rule–Making Notices

Notice of Hearing Commerce

Financial Resources for Businesses and Communities, Chs. Comm 104— CR 09–082

NOTICE IS HEREBY GIVEN that pursuant to section 560.205 (3) (d) of the Statutes, the Department of Commerce will hold a public hearing on proposed rules revising Chapter Comm 129, relating to tax credits for angel investments and early stage seed investments, and affecting small businesses.

Hearing Information

The public hearing will be held as follows:

<u>Date and Time:</u>	<u>Location:</u>
October 27, 2009 Tuesday At 10:00 A.M.	Thompson Commerce Center Third Floor, Room 3B201 West Washington Avenue Madison, Wisconsin

This hearing will be held in an accessible facility. If you have special needs or circumstances that may make communication or accessibility difficult at the hearing, please call Sam Rockweiler at (608) 266–0797 or at Contact Through Relay at least 10 days prior to the hearing date. Accommodations such as interpreters, English translators, or materials in audio tape format will, to the fullest extent possible, be made available upon a request from a person with a disability.

Appearance at Hearing and Submission of Written Comments

Interested persons are invited to appear at the hearing and present comments on the proposed rules. Persons making oral presentations are requested to submit their comments in writing, via e–mail. Persons submitting comments will not receive individual responses. The hearing record on this rulemaking will remain open until October 30, 2009, to permit submittal of written comments from persons who are unable to attend the hearing or who wish to supplement testimony offered at the hearing. E–mail comments should be sent to sam.rockweiler@wi.gov. If e–mail submittal is not possible, written comments may be submitted to Sam Rockweiler, Department of Commerce, Division of Environmental and Regulatory Services, P.O. Box 14427, Madison, WI 53708–0427.

Copies of Proposed Rules

The proposed rules and an analysis of the rules are available on the Internet by entering “Comm 129” in the search engine at the following Web site: <http://adminrules.wisconsin.gov>. Paper copies may be obtained without cost from Sam Rockweiler at the Department of Commerce, Division of Environmental and Regulatory Services, P.O. Box 14427, Madison, WI 53707, or at sam.rockweiler@wi.gov, or telephone (608) 266–0797, or at Contact Through Relay. Copies will also be available at the public hearing.

Analysis Prepared by Department of Commerce

Statutes interpreted

Section 560.205, as modified by 2007 Wisconsin Act 20 and 2009 Wisconsin Act 2, and section 560.208, Stats., as created by 2009 Wisconsin Act 28.

Statutory authority

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

Explanation of agency authority

Section 227.11 (2) (a) of the Statutes authorizes the Department to promulgate rules interpreting the provisions of any Statute administered by the Department. Section 560.205 (3) (d) directs the Department to promulgate rules for administering the corresponding statutory requirements for angel investment tax credits and early stage seed investment tax credits.

Related statute or rule

Several statutes and other departmental rules address tax incentives for business development in Wisconsin. For example, (1) Sections 560.70 to 560.7995 of the Statutes and Chapters Comm 100, 107, 112 and 118 address statewide tax–credit programs for job creation, capital investment, employee training and corporate headquarters; and (2) several other sections of Chapter 560 and other Comm chapters address more–narrowly targeted business development incentives, such as for film productions, dairy manufacturing facilities, and fuel and electricity used in manufacturing.

Plain language analysis

The rules in this order would (1) revise the eligibility requirements for these tax credits, (2) newly enable insurers to apply for these tax credits, (3) substantially increase the aggregate amount of investment in a qualified new business venture that may qualify for the tax credits, (4) substantially increase the aggregate amount of tax credits that may be claimed, (5) newly require investments to be maintained for at least 3 years, (6) newly enable transferring the credits to another person, (7) newly enable carrying forward the early stage tax credits, and (8) newly enable the Department to require a grant or loan origination fee.

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.

Comparison with rules in adjacent states

Minnesota

Minnesota offers various tax credit programs, but none that are similar to the Early Stage Business Investment program in Wisconsin. Minnesota has no rules addressing loan and grant origination fees for its economic development programs.

Iowa

Iowa offers a University–Based Research Utilization Program to provide tax credits to businesses and university employees to promote the adoption of new technology developed at the state universities. Businesses must be utilizing technology based on patents awarded to Iowa State

University, the University of Iowa, or the University of Northern Iowa and be less than 1 year old. Researchers who developed the intellectual property utilized by the business are also eligible for up to 10 percent of the businesses tax liability in individual income tax credits. Administrative rules for this program are available in the Iowa Administrative Code, 261–Chapter 63. Further information is available through the Iowa Department of Economic Development Web site at www.iowalifechanging.com. Iowa has no rules addressing loan and grant origination fees for its economic development programs.

Illinois

Illinois offers various tax credit programs, but none that are similar to the Early Stage Business Investment program in Wisconsin. Illinois has no rules addressing loan and grant origination fees for its economic development programs.

Michigan

Michigan offers a High–Tech and High Wage MEGA Tax Credit program that provides tax credits to promote the development of high–tech businesses in traditional and emerging industries. A business is eligible for tax credits to offset their Michigan business tax liability. Tax credit amounts are based on job creation. There are no rules for the program, however guidelines can be found through the Michigan Economic Development Corporation’s Web site at www.themedc.org. Michigan has no rules addressing loan and grant origination fees for its economic development programs.

Summary of factual data and analytical methodologies

The data and methodology for developing these rules were derived from and consisted of (1) incorporating the criteria in 2007 Wisconsin Act 20 and 2009 Wisconsin Acts 2 and 28; (2) incorporating applicable best practices the Department has developed in administering similar programs for business development and tax–credit verification; and (3) reviewing Internet–based sources of related federal, state, and private–sector information.

Analysis and supporting documents used to determine effect on small business

The primary documents that were used to determine the effect of the rules on small business were 2007 Wisconsin Act 20 and 2009 Wisconsin Acts 2 and 28. These Acts apply their private–sector requirements only to businesses and individuals for which a corresponding tax credit is desired.

Small Business Impact

The rules are not expected to impose significant costs or other adverse impacts on small businesses because the rules address submittal of documentation, and other activities, only by applicants that choose to pursue tax credits for angel investments and early stage seed investments.

Small business regulatory coordinator

Any inquiries for the small business regulatory coordinator for the Department of Commerce can be directed to Sam Rockweiler, as listed above.

Initial regulatory flexibility analysis

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

Businesses and individuals that choose to pursue tax credits for angel investments and early stage seed investments, as established under ss. 71.07 (5b) and (5d), 71.28 (5b), 71.47 (5b), 76.638, and 560.205 of the Statutes.

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

A certified fund manager who authorizes a fund member to sell or otherwise transfer a credit to another person would need to report the transfer to the Department.

Types of professional skills necessary for compliance with the rules.

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

Rules have a significant economic impact on small businesses?

No.

Environmental Impact

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

Fiscal Estimate

Assumptions used in arriving at fiscal estimate

The applicant information and Departmental review thereof that are addressed in the rules are substantially similar to the currently required information and review — and therefore are not expected to have any significant fiscal effect on the Department.

The rules are not expected to impose any significant costs on local governments or the private sector, because preparation of the submittal information that is addressed in the rules is not expected to have a significant new cost.

State fiscal effect

None.

Local government fiscal effect

None.

Long–range fiscal implications

None known.

Agency Contact Person

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Wisconsin Department of Commerce
Division of Business Development
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Amended Notice of Hearings

Natural Resources

Fish, Game, etc., Chs. NR 1—

(Originally published Register September 30, 2009 No. 645)

CR 09–078

NOTICE IS HEREBY GIVEN that pursuant to ss. 29.014, 29.063, 29.177 and 227.11, Stats., the Department of Natural Resources will hold public hearings on revisions to Chapter

NR 10, Wis. Adm. Code, relating to the seasons for hunting deer.

Hearing Information

The public hearings will begin at 6:30 p.m. with an informational presentation and overview of the proposed rule. Public comments and statements will be accepted beginning at 7:00 p.m.:

- October 14, 2009** Crivitz Village Hall
800 Henriette Ave, PO 727
Crivitz
- October 15, 2009** Onalaska High School Field House
700 Hilltopper Place
Onalaska, WI 54650
- October 21, 2009** Lussier Family Heritage Center —
Main Level, 3101 Lake Farm Road
Madison
- October 21, 2009** James Williams Middle School
915 Acacia Lane
Rhineland
- October 21, 2009** Ashland AmericInn Conf. Center,
3009 Lakeshore Drive E.
Ashland
- October 26, 2009** Fox Valley Technical College,
Appleton Campus, Room C190
1825 North Bluemound Drive
Appleton
- October 26, 2009** Chippewa Valley Technical College
Auditorium, Room M103
620 W. Clairemont Ave.
Eau Claire
- October 28, 2009** Waukesha County Technical College
Room C051/C057
800 Main Street
Pewaukee
- October 28, 2009** Spooner High School Auditorium
801 County A
Spooner
- November 3, 2009** Portage County Courthouse Annex
Conf. Room 1, 1462 Strongs Ave.
Stevens Point

NOTICE IS HEREBY FURTHER GIVEN That an additional public meeting/hearing will begin at 6:30 p.m. with an informational presentation and overview of the proposed rule. Public comments and statements will be accepted beginning at 7:00 p.m. at the following location and time:

- October 27, 2009** **Sturtevant Natural Resources
Office Building
9531 Rayne Road, Suite 4
Sturtevant**

Pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Scott Loomans at (608) 267–2452 with

specific information on your request at least 10 days before the date of the scheduled hearing.

Submission of Written Comments and Copies of Proposed Rule

The proposed rule and fiscal estimate may be reviewed and comments electronically submitted at the following Internet sites: <http://adminrules.wisconsin.gov> or <http://dnr.wi.gov/>. Written comments on the proposed rule may be submitted via U.S. mail to Mr. Keith Warnke, Bureau of Wildlife Management, P.O. Box 7921, Madison, WI 53707. Comments may be submitted until November 3, 2009. Written comments whether submitted electronically or by U.S. mail will have the same weight and effect as oral statements presented at the public hearings. A personal copy of the proposed rule and fiscal estimate may be obtained from Mr. Warnke.

Analysis Prepared by Department of Natural Resources

Statutes interpreted

Sections 29.014 , 29.063, 29.177 and 227.11, Stats.

Statutory authority

Sections 29.014, 29.063, 29.177 and 227.11, Stats.

Plain language analysis

These proposed rules establish the deer season framework for hunting with archery gear, firearms and muzzleloaders.

November firearm season	Statewide 16–day season beginning two Saturdays prior to the Thanksgiving holiday. CWD zone would use the same dates. Season would be the normal bucks plus variable quota system
Archery seasons	Opens statewide on the Saturday closest to September 15 and continues through the Thursday immediately prior to November firearm season. Statewide season reopens on 1 st day of the November gun season and continuing through the 2 nd Sunday in January. In herd–control units, the archery season would continue through January 31. Bonus buck incentive for all hunters beginning December 26 through January 31 in herd control units. CWD zone would use the same dates.
Youth season	Statewide 5–day, either–sex season beginning the 2 nd Saturday in October. Saturday through Wednesday.
Early muzzleloader season	Statewide 5–day, antlerless–only by permit beginning the 2 nd Saturday in October. Saturday through Wednesday.
October herd control firearm seasons	Herd control units only. 5–day, antlerless–only season beginning the 2 nd Saturday in October. CWD October season would use same dates. Saturday through Wednesday. When October herd control seasons are held on lands that are part of the Kettle Moraine State Forest, the five–day season will begin on the Thursday nearest October 27.
Late muzzleloader season	Statewide 7–day season beginning the Monday immediately following the November firearm season (Bucks plus quota). CWD zone would use the same dates.

December firearm season	Central Forest & Farmland zones. 4–day, antlerless–only season beginning the Thursday immediately following the late muzzleloader season. Appropriate antlerless permit required. CWD zone would use the same dates.
Holiday herd control firearm season	Central Forest & Farmland zones. Herd control units only, 10–day antlerless–only season beginning December 26 th . CWD zone would use same dates
Bonus buck incentive	Hunters harvesting an antlerless deer in herd control units beginning on December 26 with this incentive are eligible for a bonus buck tag valid through the end of all deer seasons.
Public/private land tags	Herd control units only and only outside of the CWD Management Zone. Herd control tags will be specific to public or private lands. Public land tags will be issued based on the percentage of public land within herd control units.

Related rule or statute

One administrative rule that is currently under promulgation, CR 09–024, the annual wildlife management housekeeping rule, would amend language in section 2. of this board order. This board order reflects that proposed change.

Comparison with rules in adjacent states

All of Wisconsin’s surrounding states use hunting seasons to provide hunting opportunities and to manage white–tailed deer herds. All of the surrounding states utilize a range of hunting seasons and allow the use of archery equipment, firearms and muzzleloading firearms at certain times. The seasons proposed in this rule order do not vary significantly from the hunting opportunities that are available in other states.

Illinois

The Illinois archery season in most of the state runs from October 1–January 17 except that it is closed during the firearm deer season. Illinois has two periods for firearm deer hunting. The first firearm season in 2009 is November 20, 21, 22 and the second season is December 3, 4, 5, 6. The Illinois muzzleloader only season will be December 11, 12, 13 in 2009.

Iowa

There are two archery hunting periods, the first is October 1–Dec. 4 and the second is December 21–January 10, 2010. Iowa also has two periods for firearm hunting, December 5–9 and December 12–20. Iowa’s two muzzleloader only hunting periods are October 17–25 and December 21–January 10.

Michigan

Michigan has two archery hunting periods, the first beginning on October 1 and continuing through November 14 and the second running December 1–January 1. The Michigan firearm season begins on November 15 and continues through November 30. Michigan’s muzzleloader–only seasons vary in three zones, all occurring in December and vary from 10 to 17 days in length.

Minnesota

Minnesota’s archery season runs from September 19 to December 31. Minnesota’s firearm season begins on

November 7 and continues to November 15 or 22 depending on the zone. The muzzleloader–only season runs from November 28 to December 13.

Comparison with federal regulations

These state rules and statutes do not relieve individuals from the restrictions, requirements and conditions of federal statutes and regulations. Regulating the hunting and trapping of native species has been delegated to state fish and wildlife agencies.

Summary of factual data and analytical methodologies

Deer affect nearly every Wisconsin citizen’s life in some way. Many of these effects are significant from a recreational, economic, and/or social perspective. There are over 650,000 gun deer hunters and 250,000 bow hunters in Wisconsin. Regulations which require the harvest of an antlerless deer before a buck, called earn–a–buck, have been implemented where necessary to reduce deer populations since 2004. In May of 2009 the department, general public, and members of a committee created by the Natural Resources Board were charged with working together to recommend a deer hunting season structure that could be an effective alternative to earn–a–buck regulations. Acceptable alternatives must be shown to be effective for deer population management and supported by hunters and landowners and able to be evaluated through established benchmarks. The committee’s recommended season structures are the basis for construction of this rule proposal.

The committee arrived at its recommendations after evaluating the expected effectiveness of each season component using conservation warden and biologist/wildlife manager input on enforceability and effectiveness, while also taking into consideration the acceptable level of hunter and landowner support needed to ensure participation in herd control seasons. Effectiveness was defined as the ability of a season or incentive to maintain herd populations at or near goal. This includes requiring the ability to allow targeted herd control to reduce over population while also allowing the flexibility to protect from over harvest in units that are at or below goal.

The guidelines for deer management in Wisconsin are established by administrative rule and require consideration of the following criteria; 1) carrying capacity relative to habitat and winter severity, 2) hunter success and public deer viewing opportunities, 3) ecological and economic impacts of deer browsing, 4) disease transmission. 5) concern for deer–vehicle collisions 6) Chippewa treaty harvest, 7) hunter access, 8) ability to keep the herd in a unit at goal, 9) tolerable levels of crop damage.

Small Business Impact

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

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

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

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

Summary

The proposed new season framework is a significant modification to the existing structure. The Department already administers hunting seasons for firearm, archery, and muzzleloader hunters, therefore, it is anticipated that the amount of effort and expense that the Department incurs while administering the deer seasons will be similar for the proposed new season framework.

State fiscal effect

None.

Local government fiscal effect

None.

Long–range fiscal implications

None.

Agency Contact Person

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Notice of Hearing Natural Resources

Fish, Game, etc., Chs. NR 1— EmR0914

NOTICE IS HEREBY GIVEN that pursuant to ss. 29.014, 29.041, 29.197 and 227.11 (2) (a), Stats., the Department of Natural Resources will hold a public hearing on emergency rules to revise Chapter NR 10, Wis. Adm. Code, relating to the 2009 migratory game bird seasons and waterfowl hunting zones. This emergency order took effect on September 1, 2009.

Hearing Information

<u>Date and Time:</u>	<u>Location:</u>
November 4, 2009 Wednesday At 1:00 P.M.	Room 608, DNR Central Office 101 South Webster Street Madison

Pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Kent Van Horn at (608) 266–8841 with specific information on your request at least 10 days before the date of the scheduled hearing.

Copies of Emergency Rule and Submission of Written Comments

The emergency rule and fiscal estimate may be reviewed and comments electronically submitted at the following Internet site: <http://adminrules.wisconsin.gov>. Written comments on the proposed rule may be submitted via U.S.

mail to Mr. Kent Van Horn, Bureau of Wildlife Management, P.O. Box 7921, Madison, WI 53707 or by email to kent.vanhorn@wisconsin.gov. Comments may be submitted until November 5, 2009. Written comments whether submitted electronically or by U.S. mail will have the same weight and effect as oral statements presented at the public hearings. A personal copy of the proposed rule and fiscal estimate may be obtained from Mr. Van Horn.

Analysis Prepared by Department of Natural Resources

Statutes interpreted

Sections 29.014, 29.041 and 29.885, Stats.

Statutory authority

Sections 29.014, 29.041, 29.197 and 227.11 (2) (a), Stats.

Plain language analysis

This rule order establishes the season length and bag limits for the 2009 Wisconsin migratory game bird seasons and updates administrative code related to the waterfowl and other youth hunting seasons to be consistent with the provisions of 2009 ACT 39. For ducks, the state is divided into two zones each with 60–day seasons. The season begins at 9:00 a.m. September 26 and continues for 60 consecutive days in the north, closing on November 24. In the South the season begins at 9:00 a.m. on October 3 and continues through October 11, followed by a 5–day split, and then reopens on October 17 and continues through December 6. The daily bag limit is 6 ducks including no more than: 4 mallards, of which only 1 may be a hen, 1 black duck, 1 pintail, 1 canvasback, 3 wood ducks, 2 scaup and 2 redheads.

For Canada geese, the state is apportioned into 3 goose hunting zones: Horicon, Collins and Exterior. Other special goose management subzones within the Exterior Zone include Brown County, Burnett County, Rock Prairie and the Mississippi River. Season lengths are: Collins Zone — 66 days (three hunting periods, September 16–October 4, October 5–25, October 26–November 20); Horicon Zone — 92 days (2 hunting periods, first period beginning September 16 and the second on November 2); Exterior Zone in the northern duck zone — 85 days (Sept. 19–Dec. 12); Exterior Zone in the southern duck zone — 85 days (Sept. 19–Oct. 11 and Oct. 17–Dec. 17) and Mississippi River subzone — 85 days (Oct. 3–Oct. 11 and Oct. 17–Dec. 31). The Burnett County subzone is closed to Canada goose hunting. The statewide daily bag limit for Canada geese in all zones is 2 birds per day during the open seasons within the zones.

The youth waterfowl hunting season dates are established and the proposal revises the youth waterfowl, turkey, and youth deer hunting season's regulations to be consistent with the provisions of 2009 Wis. Act 39. The bill and this rule allow participation by people who are age 10 or 11. Hunters who are age 10 or 11 or who have not completed a hunter safety course of instruction must hunt with a mentor who is at least 18 years of age and be within arms reach of the mentor at all times. A mentor may supervise only one hunter who is age 10 or 11 or who has not completed a hunter safety course of instruction and the hunter and mentor together may possess only one firearm or bow. This rule order clarifies that the definition of the term "accompanied by", which currently applies to 12 and 13 year old hunters at all times, also applies to all youth hunt participants who are not hunting under the more restrictive hunting mentorship program requirements.

This rule establishes that a Class A bear permit may be issued to a person who reaches the age of 10 during the bear

hunting season to be consistent with the provisions of 2009 ACT 39.

Finally, this rule updates road names in the migratory game bird hunting zone map following the completion of new highway construction. The location of the boundary is not changed.

Comparison with federal regulations

Under international treaty and Federal law, migratory game bird seasons are closed unless opened annually via the U.S. Fish and Wildlife Service (FWS) regulations process. As part of the Federal rule process, the FWS 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 would be maximized when the population is at or above goals. Additionally, while FWS believes that the NAWMP’s population goals would tend to exert a conservative influence on overall duck harvest–management. Other factors, such as habitat, are to be considered.

In the past, the regular Canada goose season was based on the allowable Mississippi Valley Population (MVP) harvest which was determined based on the spring breeding population estimate obtained from an aerial survey of the MVP breeding range as prescribed by the Mississippi Flyway MVP management plan. However, because locally produced giant Canada geese now constitute a considerable portion of the harvest in all states that also harvest Mississippi Valley Population birds, the Mississippi Flyway Council is testing the use of a standard season framework for 5 years. Beginning in the fall of 2007 and continuing through 2011, season lengths and bag limits for each MVP harvest state will remain unchanged. Each state retains the flexibility to schedule the timing of their Canada goose season. In addition, if the MVP spring population numbers dropped to a predetermined low level during the 5–year period, the stable season framework would be adjusted.

All 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 20.

Comparison with rules in adjacent states

Since migratory bird species are managed under international treaty, each region of the country is organized in a specific geographic flyway which represents an individual migratory population of migratory game birds. Wisconsin along with Minnesota, Michigan, Illinois and Iowa are members of the Mississippi Flyway. Each year the states included in the flyways meet to discuss regulations and guidelines offered to the flyways by the FWS. The FWS regulations and guidelines apply to all states within the Flyway and therefore the regulations in the adjoining states closely resemble the rules established in this rule order, and only differ slightly based on hunter desires, habitat and population management goals. However, these variations fall within guidelines and sideboards established by the FWS.

Summary of factual data and analytical methodologies

For the regular duck season, a data based process called Adaptive Harvest Management is used annually by the

USFWS and the Flyways to determine which of 3 framework alternatives best matches the current year’s data on populations and habitat (data from the spring pond and duck survey). The option of a closed season is also possible if survey conditions indicated that this is necessary for the management of duck populations. The determination of which alternative is selected is based in part on the spring wetland conditions on the breeding grounds and the Mid–Continent Mallard population. These data come from the May Pond and Breeding Waterfowl Population Surveys conducted by the USFWS and Canadian Wildlife Service on traditional survey areas as well as surveys from select states, including Wisconsin.

Wisconsin’s regular Canada goose season harvest consists of close to a 50:50 ratio between resident giant and MVP population Canada geese. As a result, the parameters of Wisconsin’s regular goose seasons are guided by the Mississippi Flyway management plans for the MVP and giant Canada goose populations and approved by the Mississippi Flyway Council and the USFWS. The health of these populations was measured with spring breeding population surveys, survival data and harvest rates obtained from banding and production studies. The surveys and studies are conducted annually and are supported by the State of Wisconsin as part of the MFC. The result of this work is reviewed annually by the MFC committee and the USFWS to measure the impact of the stable season framework trial period.

The primary elements of Wisconsin’s waterfowl regulatory process include conducting spring waterfowl surveys, participation in MFC meetings, commenting on federal proposals, and soliciting input from the public. The state process begins with Flyway meetings in February and March each year where staff provide input to the development of federal framework alternatives and requests related to the early seasons. In May and June, breeding waterfowl surveys and banding are conducted in support of the regulatory process.

In early July, staff conducted a public meeting to solicit input from interest groups, including representatives of the Conservation Congress Migratory Committee. At this meeting staff provided the attendees with breeding status information and asked for any items that they wish the department to pursue at the MFC meeting in mid July. Department staff then attended the MFC Technical and Council meetings. At this meeting staff were provided status information and the proposed framework alternative from the USFWS. Department staff then worked with the other states in our Flyway to discuss and develop proposals and recommendations that were voted upon by the MFC. Proposals that passed at the MFC meeting were forwarded to the USFWS for consideration by the Service Regulations Committee (SRC) at their meeting. The USFWS announced its final waterfowl season framework recommendation on July 31. Department staff summarized waterfowl status and regulation information for Wisconsin citizens and presented this information to the Migratory Committee of the Conservation Congress and at a public meeting (Post–Flyway Meeting) of interest groups and individuals on August 1. Staff gathered public input at these meetings regarding citizen suggestions for the development of Wisconsin’s waterfowl regulations given the federal framework. Public hearings

were held from August 3–6 around the state to solicit additional input on the proposed annual waterfowl rule.

Analysis and supporting documents used to determine effect on small business

These rules, and the legislation which grants the department rule making authority, do not have a significant fiscal effect on the private sector or small businesses. Additionally, no significant costs are associated with compliance to these rules.

Small Business Impact

Pursuant to s. 227.114, Stats., it is not anticipated that the proposed rule will have an economic impact on small businesses. The Department's Small Business Regulatory Coordinator may be contacted at SmallBusiness@dnr.state.wi.us or by calling (608) 266–1959.

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.

Notice of Hearing

Natural Resources

***Fish, Game, etc., Chs. NR 1—
CR 09–083***

NOTICE IS HEREBY GIVEN that pursuant to ss. 23.11 (1), 29.014 (1), 29.041, 29.519, and 227.11 (2) (a), Stats., the Department of Natural Resources will hold a public hearing on a proposed rule to amend s. NR 25.06 (2) (e) 2., relating to commercial fishing for lake whitefish in Lake Michigan, including Green Bay.

Hearing Information

The hearing will be held on:

October 26, 2009	Jane Greene Room
Monday	Door County Public Library
at 5:00 P.M.	107 S. Fourth Avenue
	Sturgeon Bay, Wisconsin

Pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call William Horns at (608) 266–8782 with specific information on your request at least 10 days before the date of the scheduled hearing.

Copies of Proposed Rule and Submission of Written Comments

The rule and fiscal estimate may be reviewed and comments electronically submitted at the following Internet site: <http://adminrules.wisconsin.gov>. Written comments on the rule may be submitted via U.S. mail to Mr. William Horns, Bureau of Fisheries Management and Habitat Protection, P.O. Box 7921, Madison, WI 53707–7921. Comments may be submitted until October 31, 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 rule and fiscal estimate may be obtained from Mr. Horns.

Analysis Prepared by Department of Natural Resources

Statutes interpreted

Sections 23.09, 29.011 (1) and (2), 29.014 (1), 29.041 and 29.519, Stats.

Statutory authority

Section 23.11 (1), 29.014 (1), 29.041, 29.519, and 227.11 (2) (a), Stats.

Rule summary

The proposal would amend section NR 25.06 (2) (e) 2., of the Wisconsin Administrative Code to increase the total allowable annual commercial harvest of lake whitefish from each of the three fishing zones in the Wisconsin waters of Lake Michigan. All three harvest limits, and therefore all individual licensee whitefish catch quotas, would be increased by 16.6 %. The overall total allowable commercial harvest for the entire lake would be increased by 410,000 pounds, or from 2,470,000 pounds to 2,880,000 pounds. For the three zones, the increases are as follows: Zone 1 — 225,518 to 262,952 pounds, Zone 2 — 2,029,662 to 2,366,569 pounds, and Zone 3 — 214,820 to 250,479 pounds. The increases for each zone are allocated according to the same proportions as the current zone allocations of the lake-wide harvest limit.

Comparison with federal regulations

Federal regulations do not apply; the State of Wisconsin has exclusive authority to regulate commercial fishing in Wisconsin waters of the Great Lakes.

Comparison of similar rules in adjacent states

Of these states the only meaningful comparison is harvest limits established for lake whitefish from Michigan waters of Lake Michigan. The Department adopted the methods employed by the State of Michigan and the Chippewa/Ottawa Resource Authority under terms of a negotiated Consent Decree issued by a United States District Court in Michigan. Iowa has no Great Lakes waters. The harvest of lake whitefish from Minnesota waters of Lake Superior is not regulated by harvest limits. There is no commercial harvest of lake whitefish from Illinois waters of Lake Michigan.

Summary of factual data and analytical methodologies

This rule was based on modern conventional methods for assessing fish populations and for setting harvest limits. Fish stocks were assessed using standard data from commercial harvests employing statistical-catch-at-age modeling. Harvest limits were set based on the estimated population using standards and methods also used for state and tribal whitefish fisheries in the State of Michigan.

Analysis and supporting documents used to determine effect on small business

Businesses engaged in commercial fishing and wholesale fish dealing may be affected by the rule. However, the Department currently has no basis for quantifying the economic impacts of the rule.

Small Business Impact

This rule is of interest to commercial fishers and was initiated in response to their expressed concerns. The rule will be enforced by Department Conservation Wardens under the authority of chapters 23 and 29, Stats., through routine

patrols, record audits of wholesale fish dealers and commercial fishers and follow up investigations of citizen complaints.

Pursuant to s. 227.114, Stats., the proposed rule may have an impact on small businesses. The initial regulatory flexibility analysis is as follows:

Initial regulatory flexibility analysis

Type of small business that will be affected by the rule.

Commercial fishing businesses will be affected.

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

None.

Professional skills necessary for compliance with the rule.

None.

Small business regulatory coordinator

The Department's Small Business Regulatory Coordinator for this rule may be contacted at Peter.Flaherty@Wisconsin.gov or by calling (608) 266–8254.

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

Summary

The proposed rule changes harvest limits for lake whitefish from three commercial fishing zones in Lake Michigan. These changes will have no fiscal impact at either the state or local level.

State fiscal effect

None.

Local government fiscal effect

None.

Submittal of Proposed Rules to the Legislature

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

Children and Families

Family and Economic Security, Chs. DCF 101–153

CR 09–059

A rule–making order to revise Chapter DCF 120, relating to emergency assistance for families with needy children.

Commerce

*Fee Schedule, Ch. Comm 2
Plumbing, Chs. Comm 81–87*

CR 09–050

A rule–making order to revise Chapters Comm 2 and 82, relating to permits to operate, registration and filing fees.

Commerce

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

CR 09–045

A rule–making order to create Chapter Comm 149, relating to statements and penalties for grant and loan programs, and penalties for tax credit programs.

Financial Institutions — Securities

CR 09–056

A rule–making order to revise Chapters DFI–Sec 1 to 5, 7, and 9, relating to minor revisions to securities administrative code sections for conformity with Wisconsin securities statutes, filings and securities agent examination matters.

Insurance

CR 09–038

A rule–making order to create section Ins 6.90, relating to the use of designations or certification purporting to demonstrate special expertise in the financial or retirement needs of seniors.

Natural Resources

Fish, Game, etc., Chs. NR 1—

CR 09–016

A rule–making order to revise Chapter NR 25, relating to commercial fishing in outlying waters and affecting small business.

Natural Resources

*Environmental Protection — Air Pollution Control,
Chs. NR 400—*

CR 09–020

A rule–making order to revise Chapters NR 406, 407, 419, 439 and 484, relating to federal hazardous air pollutant regulations, biodiesel fuel, statutory changes, and permit applications, and affecting small business.

Rule Orders Filed with the Legislative Reference Bureau

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 or (608) 266–7590 for updated information on the effective dates for the listed rule orders.

Natural Resources

Fish, Game, etc., Chs. NR 1—

CR 09–031

Revises Chapter NR 46, relating to the administration of the Forest Crop Law and Managed Forest Law.
Effective 12–1–09.

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