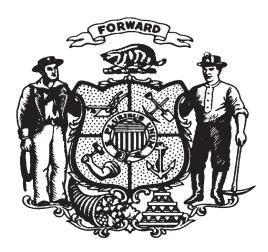
# Wisconsin Administrative Register

No. 646



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# WISCONSIN ADMINISTRATIVE REGISTER

The Wisconsin Administrative Register is published twice monthly by the Legislative Reference Bureau.

Questions, comments, or corrections should be directed to:

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

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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 <u>www.legis.state.wi.us/rsb/code</u>.

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.

<b>Publication Date:</b>	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.

<b>Publication Date:</b>	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.

<b>Publication Date:</b>	April 9, 2009
Effective:	April 22, 2009 through
	September 18, 2009
<b>Extension Through:</b>	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.

<b>Publication Date:</b>	March 2, 2009	
Effective:	March 2, 2009 through July 29, 2009	
Extension Through: November 26, 2009		
(except ss. Comm 5.30 (1) and	d 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.

<b>Publication Date:</b>	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.

<b>Publication Date:</b>	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.

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

#### Health Services

#### Health, Chs. DHS 110—

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

#### **Finding of Emergency**

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

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

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

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

<b>Publication Date:</b>	October 16, 2009
Effective:	October 19, 2009 through March 17, 2010
Hearing Date:	November 18, 2009
(See the Notic	e in this Register)

# **Insurance** (4)

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.

<b>Publication Date:</b>	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

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

#### **Finding of Emergency**

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

Beginning January 1, 2010, care management organizations are required to obtain a permit from the commissioner to provide services under the Family Care program. In order to ensure no gap in services to enrollees, organizations and the office need to complete and accept applications for permits prior to January 1, 2010. Promulgation of this rule will permit the timely filing and review of permittees. Publication Date: October 9, 2009

Effective:

October 10, 2009 through March 10, 2010

# **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.

<b>Publication Date:</b>	August 22, 2009
Effective:	September 1, 2009 through January 28, 2010
Hearing Date:	November 4, 2009

### 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.

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

# **Public Defender Board**

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

#### **Finding of Emergency**

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

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

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

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

Publication Date:	October 3, 2009
Effective:	October 3, 2009 through March 1, 2010
Hearing Date:	November 16, 2009
(See the Notic	e in this Register)

# **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.

<b>Publication Date:</b>	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.

<b>Publication Date:</b>	September 11, 2009
Effective:	September 11, 2009
	through February 7, 2010

# **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

 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.

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

# Revenue (3)

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.

<b>Publication Date:</b>	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

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

#### **Finding of Emergency**

The Department of Revenue finds that an emergency exists and that an emergency rule is necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency is: The emergency rule is to reflect changes in Wisconsin's tax laws due to the adoption of penalties for failure to produce records.

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

Publication Date:October 19, 2009Effective:October 19, 2009 through<br/>March 17, 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.

<b>Publication Date:</b>	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.

<b>Publication Date:</b>	July 1, 2009
Effective:	July 1, 2009 through November 27, 2009
Hearing Date:	August 14, 2009

# **Scope Statements**

# **Natural Resources**

Fish, Game, etc., Chs. NR 1—

#### Subject

Revises Chapter NR 51, Wis. Adm. Code, relating to the administration of grants provided through the Knowles–Nelson Stewardship Program.

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

The Stewardship program was reauthorized in the 2007–09 biennial budget (2007 Wis. Act 20). Chapter NR 51 has not been reviewed or updated to reflect changes, modifications or housekeeping needs to the Stewardship Grants program since 2001, which was just after Stewardship was reauthorized last time.

In addition, 2007 Wis. Act 20 created a new "Grants to counties for land acquisition" subprogram; new rules for this new program will be incorporated into ch. NR 51.

#### **Policy Analysis**

Chapter NR 51, Wis. Adm. Code, needs to be updated to reflect any changes made to the grants provisions of the reauthorized Knowles Nelson Stewardship Program. This includes developing grant criteria and eligibility requirements for the new county grants program created in 2007 Wis. Act 20. This new provision allows counties, under certain circumstances, to apply for stewardship grants where funding for the grant would come from General Acquisition Funds.

This section of the statutes reads:

"23.0953 Grants to counties for land acquisition.

(1) In this section, "nature–based outdoor recreation" has the meaning given by the department by rule under s. 23.0917 (4) (f).

(2) (a) Beginning with fiscal year 2010–11 and ending with fiscal year 2019–20, the department shall establish a grant program under which the department may award a grant to a county for any of the following:

1. Acquisition of land for a county forest under s. 28.11.

2. Acquisition of land for a project that promotes nature–based outdoor recreation or conservation and for which the department is requesting the county's assistance.

(b) Grants under this section shall be awarded from the appropriation under s. 20.866 (2) (ta), and, for purposes of s. 23.0917, shall be treated as moneys obligated from the subprogram under s. 23.0917 (3).

(3) Each county receiving a grant under this section shall provide matching funds that equal at least 50 percent of the acquisition costs.

(4) A county may not convert the land, or any rights in the land, acquired with grant moneys awarded under sub. (2) (a) 2. to a use that is inconsistent with the type of nature–based outdoor recreation or conservation activity for which the grant was awarded unless the natural resources board approves the conversion."

The expected modifications and housekeeping changes involving existing NR 51 are expected to be minor and no proposals for major changes to the rule are anticipated.

#### **Statutory Authority**

Sections 23.0917, 23.0916, 23.9165 (*Warren Knowles–Gaylord Nelson stewardship 2000 program*) and 23.0953 (*Grants to counties for land acquisition*), Wis. Stats.

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

There are no existing or proposed federal regulations that govern the administration of the Knowles–Nelson Stewardship grant programs.

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

Entities eligible for Stewardship Grants include: cities, villages, towns, counties, lake sanitary districts as defined in s.30.50 (4q), Wis. Stats., and public inland lake protection and rehabilitation districts; and nonprofit conservation organizations as defined in s. 23.0955 (1), Wis. Stats. All of these entities are affected by this rule and they will have varying levels of interest in any modifications of existing rule language. The counties and the Wisconsin County Forests Association will be very interested in the development of the new subchapter for grants to counties. The Stewardship Advisory Council will also work with the Department on proposed rule changes.

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

The Department anticipates spending approximately 1,000 hours of existing staff time for rule revision. This time includes meeting with the Stewardship Advisory Council, drafting the rule, taking the rule to statewide public hearings, preparation for meetings with the Natural Resources Board, legislative review, and rule adoption. The reauthorized Stewardship Program takes effect on July 1, 2010 and I expect this rule process to be completed by then.

#### **Contact Information**

Amy Bradley, Stewardship Local Assistance Grant Manager
DNR — Bureau of Facilities and Land
P.O. Box 7921
Madison, WI 53707
608–267–0497
Amy.Bradley@Wisconsin.gov

Kim Wright, Stewardship NCO Grant Manager DNR — Bureau of Facilities and Land P.O. Box 7921 Madison, WI 53707 608–266–0868 Kimberlee.Wright@Wisconsin.gov

# **Public Instruction**

# Subject

Revises Chapter PI 8, relating to waiver of school hours specified under s. 121.02 (1) (f) 2., Stats.

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

As required in 2009 Wisconsin Act 42, the proposed rules will establish criteria for waiving the requirement to schedule at least the number of hours of direct pupil instruction specified under s. 121.02 (1) (f) 2., Stats., to address either of the scenarios listed below.

### **Policy Analysis**

2009 Wisconsin Act 42 allows exemptions for school boards in meeting the 180 school day requirement by: 1) allowing a school district administrator to close a school due to a threat to the health or safety of pupils or school personnel, but not including inclement weather, unless the school board determines otherwise and 2) allowing the department of health services (in addition to a local health officer) to close a school. The Act also requires the department to promulgate

rules establishing criteria for waiving the number of hours required of direct pupil instruction specified under s. 121.02 (1) (f) 2., Stats., if a school is closed for either reason stated above.

### **Statutory Authority**

Section 118.38 (2) (bm), Stats.

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

N/A

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

School districts.

#### 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.

### Health Services Health, Chs. DHS 110— CR 09–085

On October 13, 2009, the Department of Health Services submitted a proposed rule–making order to the Wisconsin Legislative Council Rules Clearinghouse.

#### Analysis

The proposed order revises Chapter DHS 163, relating to requirements for conducting lead–safe renovations in target housing and child–occupied facilities.

### **Agency Procedure for Promulgation**

A public hearing is required and will be held on November 18, 2009.

#### **Contact Information**

For substantive questions on rules contact: Shelley Bruce, Asbestos & Lead Certification Supervisor DHS Division of Public Health 1 W. Wilson Street, Room 137 Madison WI 53703 Phone: 608–267–0928 Fax: 608–266–9711 Email: Shelley.Bruce@wisconsin.gov

Small Business Regulatory Review Coordinator: Rosie Greer Phone: 608–266–1279 Email: greerrj@dhs.state.wi.us

# **Rule–Making Notices**

# **Notice of Hearing**

Health Services Health, Chs. DHS 110— EmR0928 — CR 09–085

NOTICE IS HEREBY GIVEN that pursuant to ss. 250.04 (7), 250.041, 254.115, 254.15, 254.167, 254.172, 254.176 (1) and (3), 254.178 (2) and 254.179, Stats., the Department of Health Services will hold a public hearing on emergency and proposed permanent rules to consider Chapter DHS 163, relating to requirements for conducting lead–safe renovation activities in pre–1978 (target housing) and child–occupied facilities, and affecting small businesses.

# Hearing Information

Date and Time	<b>Location</b>
November 18, 2009	Department of Health Services
1:00 p.m. – 3:00 p.m.	1 West Wilson Street
	Room B139
	Madison, Wisconsin

# Accessibility

# English

DHS is an equal opportunity employer and service provider. If you need accommodations because of a disability or need an interpreter or translator, or if you need this material in another language or in an alternate format, you may request assistance to participate by contacting Shelley Bruce at 608–266–9711. You must make your request at least 7 days before the activity.

# Spanish

DHFS es una agencia que ofrece igualdad en las oportunidades de empleo y servicios. Si necesita algún tipo de acomodaciones debido a incapacidad o si necesita un interprete, traductor o esta información en su propio idioma o en un formato alterno, usted puede pedir asistencia para participar en los programas comunicándose con Shelley Bruce al número 608–266–9711. Debe someter su petición por lo menos 7 días de antes de la actividad.

# Hmong

DHFS yog ib tus tswv hauj lwm thiab yog ib qhov chaw pab cuam uas muab vaj huam sib luag rau sawv daws. Yog koj xav tau kev pab vim muaj mob xiam oob qhab los yog xav tau ib tus neeg pab txhais lus los yog txhais ntaub ntawv, los yog koj xav tau cov ntaub ntawv no ua lwm hom lus los yog lwm hom ntawv, koj yuav tau thov kev pab uas yog hu rau Shelley Bruce ntawm 608–266–9711. Koj yuav tsum thov qhov kev pab yam tsawg kawg 7 hnub ua ntej qhov hauj lwm ntawd.

# **Agency Contact Person**

Shelley Bruce, Asbestos & Lead Certification Supervisor DHS Division of Public Health Asbestos & Lead Section 1 W. Wilson St., Room 137 Madison WI 53703 Phone: 608–267–0928 Fax: 608–266–9711 Email: Shelley.Bruce@wisconsin.gov

# Submission of Written Comments

Comments may be submitted to the agency contact person listed above or to the Wisconsin Administrative Rules Website at <u>www.adminrules.wisconsin.gov</u> until November 19, 2009, 4:30 p.m.

# **Copies of the Rule and Fiscal Estimate**

A copy of the rules and the full fiscal estimate may be obtained from the department by downloading the documents from www.adminrules.wisconsin.gov or by contacting:

Shelley Bruce, Asbestos & Lead Certification Supervisor DHS Division of Public Health Bureau of Environmental & Occupational Health Asbestos & Lead Section 1 W. Wilson St., Room 137 Madison WI 53703 Phone: 608–267–0928 Fax: 608–266–9711 Email: Shelley.Bruce@wisconsin.gov

# Analysis Prepared by the Department of Health Services

# Statutes interpreted

Section 254.172 (1), Stats.

# Statutory authority

Sections 250.04 (7), 250.041, 254.115, 254.15, 254.167, 254.172, 254.176 (1) and (3), 254.178 (2) and 254.179, Stats.

# Explanation of agency authority

- 1. Wis. Stat. s. 227.11 (2) (a) provides state agencies with general rulemaking authority to promulgate rules interpreting the provisions of any statute enforced or administered by the agency if the agency considers it necessary to effectuate the purpose of the statute.
- 2. Wis. Stat. s. 250.04 (7) authorizes fines of \$10 to \$100 for violations of rules promulgated by department related to any matter under its supervision that are necessary to provide efficient administration and to protect health. This includes lead hazard reduction.
- Wis. Stat. s. 250.041 authorizes the department to issue, deny or suspend certifications under Wis. Stat. § 254.176 for a person who performs lead hazard reduction or a lead management activity, or who supervises these activities.
- 4. Wis. Stat. s. 254.172 authorizes the department to promulgate rules governing lead hazard reduction that it determines are consistent with federal law.
- 5. Wis. Stat. s. 254.176 (1) and (2) authorizes the department to establish to certification requirements by rule, with the exception of individuals who are licensed, certified or registered by the Department of Commerce (Comm) under Wis. Stat. ch. 145, for certain plumbing and fire protection system activities, within the scope of their Comm credential; and companies that are registered with the Comm under Wis. Stat. § 101.178, to perform heating, ventilating or air conditioning installation or servicing activities, within the scope of their Comm registration. In my opinion these limited certification exceptions do not

affect application and enforcement of the lead renovation training and safe practice requirements for these individuals and companies. The DHS certification process requires applications and fees that are separate and distinct from any training required.

- 6. Wis. Stat. s. 254.15 directs the department to develop and implement a comprehensive statewide lead poisoning or lead exposure and treatment program that includes rules for lead hazard reduction requirements, and related certification, accreditation and approval requirements. Wis. Stat. § 254.115 authorizes the denial, nonrenewal and revocation of a certification in specified circumstances.
- 7. Wis. Stat. s. 254.167 authorizes the department to promulgate rules to specify procedures for investigating, testing or sampling painted, varnished or other finished surfaces that may contain lead.
- 8. Wis. Stat. s. 254.178 directs the department to promulgate rules establishing requirements for accreditation of lead training courses and approval of lead instructors.
- 9. Wis. Stat. s. 254.179 directs the department to promulgate rules to establish the standards for a premises, dwelling or dwelling unit to be issued a certificate of lead–free status.

#### Related statute or rule

Chs. NR 404, 415, 429, 445, 500 to 538, and 660 to 679; Ch. 145, Stats., and s. 101.178, Stats.

#### Plain language analysis

The rules under this order require individuals, companies, and government agencies who perform or offer to perform renovation activities to be certified by the department, be trained and have appropriately trained staff, to distribute renovation information, keep records, and to follow the appropriate work practices when conducting renovation activities in dwellings constructed prior to 1978 (target housing) and child-occupied facilities, including common areas, constructed before 1978 that provide child care services, preschools, or public or private schools. The rules also require that training providers implement training course curriculum for renovation training and receive renovation training course accreditation from the department before offering renovation training courses and that course instructors meet the qualifications and receive approval before teaching renovation training courses.

The rules promulgated under this order are similar to the requirements under 40 §§ CFR 745.80 to 745.91 and 745.225, the EPA requirements for training, certification, work practices and recordkeeping to perform renovation activities, except that unlike current EPA regulation, 40 CFR § 745.82 (c), the rules under this order do not permit a property owner to exempt a contractor from following work practice requirements by signing an acknowledgement that no pregnant woman or child under age 6 resides in the dwelling. The department determined not to include a similar provision in this order in anticipation of EPA's agreement under an August 2009 negotiated settlement to issue a notice of proposed removal of this provision by October 20, 2009, and promulgate final rules by April 22, 2010.

The rules apply to an estimated 756,000 pre-1978 Wisconsin facilities, 754,000 of which are dwelling units,

either rental housing, owner–occupied housing, or housing that meets the definition of child–occupied facility. Approximately 2,000 facilities are child–occupied facilities in pre–1978 public or commercial buildings. Based on EPA and census data, the department estimates that annually there will be approximately 35,000 children under age 6 affected by the rule. These children are projected to receive considerable benefits due to this regulation. Since 1996, more than 44,000 Wisconsin children have been identified as lead poisoned. Nearly one in every 20 children who entered the Wisconsin school system in the fall of 2006 was known to have been lead poisoned. The rules promulgated under this order are intended to minimize exposure to lead–based paint hazards created during renovation, repair, and painting activities in target housing and child–occupied facilities.

#### Comparison with federal regulations

40 CFR §§ 745.80 to 745.91, Subpart E, relating to residential property renovation establishes requirements for performing renovation activities in residential dwellings and child–occupied facilities, including training of renovators and dust sampling technicians, certification of renovators, dust sampling technicians and renovation firms, provision of pre–renovation information to owners and occupants, renovation work practices, and recordkeeping.

40 CFR § 745.225, Subpart L, relating to accreditation of training programs establishes accreditation requirements for training courses that renovators and dust sampling technicians must complete for certification, including curriculum contents and the application and approval process for courses.

The department's rules under ch. DHS 163 are consistent with the EPA requirements under 40 CFR §§ 745.80 to 745.91 and 745.225, and meet the requirements for EPA authorization under 40 CFR §§ 745.320 to 329 to implement and enforce the renovation, repair and painting requirements in Wisconsin in lieu of the EPA enforcing federal regulations in Wisconsin.

#### Comparison with rules in adjacent states

#### Illinois

Illinois does not have a lead renovator rule but is in the early study phase for regulatory development, including reviewing statutory authority and rulemaking options. A final renovation rule is expected sometime in late 2011.

#### Iowa

Iowa has a rule that requires pre–renovation education (lead renovation information distribution to owners/occupants), which is one subsection of the EPA renovation rule under 40 CFR 745 Subpart E. Iowa is in the final stages of full renovation rule development and plans to have an emergency renovation rule published by November 18, 2009.

#### Michigan

Michigan does not have a lead renovator rule but is in the early stages of developing a renovator rule.

#### Minnesota

Minnesota recently received legislative approval through a statutory change to develop a renovator rule that is consistent with the federal renovator rule and is just starting the rule–making process as of August 2009 with the goal to publish a final rule before the end of 2010.

# Summary of factual data and analytical methodologies

The department referred to all of the following to draft the rules in this order and the small business fiscal impact analysis:

- EPA regulations, 40 CFR §§ 745.80 to 745.91 and 745.225 relating to renovations and relating to training providers, and 745.320 to 339, relating to requirements that qualify states and tribes to implement these requirements in lieu of the EPA. 40 CFR §745 is commonly known as the renovation, repair and painting rule.
- The EPA's Final Regulatory Flexibility Analysis for the Lead: Renovation Repair, and Painting Program, March 1, 2008 (Document ID EPA–HQ–OPPT–2005).
- The EPA's "Economic Analysis for the TSCA Lead Renovation, Repair and Painting Program Final Rule for Target Housing and Child–Occupied Facilities", March 2008.
- Letter dated May 5, 2008, from the U.S. Government Accountability Office, Associate General Counsel Robert J. Cramer, to the U.S. Senate Committee on Environment and Public Works and the U.S. House of Representatives Committee on Energy and Commerce reporting on "a major rule promulgated by the [EPA]".
- Criteria adopted by the department and approved by the Wisconsin Small Business Regulatory Review Board to determine whether the department's proposed rules would have a significant economic impact on a substantial number of small businesses. Pursuant to the department's criteria, a proposed rule would have a significant economic impact on a substantial number of small businesses if at least 10% of the businesses affected by the proposed rules are small businesses and if operating expenditures, including annualized capital expenditures, increase by more than the prior year's consumer price index or revenues are reduced by more than the prior year's consumer price index. For the purposes of this rulemaking, 2008 is the index year. The consumer price index is compiled by the U.S. Department of Labor, Bureau of Labor Statistics and for 2008 is 3.8 percent.
- The 2002 Economic Census –Geographic Series (Wisconsin), which is compiled by the U.S. Census Bureau every 5 years for each year ending in "2" and "7" and contains the latest available economic data compiled on businesses located in Wisconsin. (The U.S. Census Bureau's data release schedule for the 2007 Economic Census –Geographic Series is November 2009–July 2010.)
- Section 227.114 (1) (a), Stats., which defines "small business" as a business entity, including its affiliates, which is independently owned and operated and not dominant in its field, and which employees 25 or fewer full-time employees or which has gross annual sales of less than \$5,000,000.
- Under ss. 227.13 and 254.174, Stats., the department established and met with a lead technical advisory committee (LTAC) to review and advise the department on the rule revisions. The LTAC includes representatives of the renovation industry, rental housing industry, school districts, local health departments, local housing and community development agencies, non-profits that assist homeowners, tribal programs, daycares and other state agencies.

Represented groups included:

- 1. Renovators: WI Builders Association (WBA) and National Assn. of the Remodeling Industry (NARI)
- 2. Weatherization: Project Home
- 3. Property owners: WI Apartment Association, SE Wisconsin Apartment Association, WI Realtors Assn.
- 4. WI Building Inspectors Association
- 5. Lead training providers
- 6. Environmental consultants
- 7. HeadStart
- 8. Non-profit: Dominican Center for Women (neighborhood development & housing rehab in Milwaukee)
- 9. Department of Administration, Division of Energy Services (weatherization funding)
- 10. School Districts: Milwaukee and Racine
- 11. Local Health Departments: Milwaukee and Madison/Dane County
- 12. Local Housing Agencies: Chippewa County Housing Authority, Waukesha Community Development and City of Sheboygan Building Inspection
- 13. Department of Commerce, Division of Housing and Division of Safety & Buildings
- 14. Department of Children and Families, Division of Early Care and Education
- 15. Department of Health Services, Childhood Lead Poisoning Prevention Program and Medical Officer

LTAC members reviewed the EPA regulations and the department's conceptual language for revisions to ch. DHS 163, including definitions, certification requirements, work practice and recordkeeping responsibilities, and training course requirements. The department fully considered comments and advice from the LTAC when developing the rule revisions.

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

# Small businesses affected by the rule

A business is considered a small business if it is a business entity, including its affiliates, which is independently owned and operated and not dominant in its field, and which employees 25 or fewer full–time employees or which has gross annual sales of less than \$5,000,000. As indicated by the revenue and employee information provided by the 2002 U.S. Economic Census for Wisconsin, stated below, it is likely that a majority of the businesses affected by the rule are small businesses as defined under Wis. Stat. § 227.114 (1) (a).

The department conservatively estimates that at least 15,000 businesses will be affected by this rule, including contractors and trades (such as painters, electricians, plumbers, HVAC, siders and roofers); private schools, child care and preschool providers; and rental property owners and property management companies. This information is based on approximately 10,000 dwelling contractors certified by the department of commerce in Wisconsin, approximately 2,000 other trades, an estimated 3,000 rental property owners and managers of pre–1978 housing units and estimated 1,200 daycares and preschools in pre–1978 facilities.

# CONSTRUCTION INDUSTRY

NAICS	Subsector	Business Description: Primary Responsibility	Number of Establish– ments	Dollar Value of Work Done	Number of Employees	Includes Businesses that Meet the WI Definition of Small Business
236118	Residential Remo- delers: remodeling general contractors, operative remodel- ers, remodeling design-build firms, and remodeling project construc- tion management firms	Remodeling construction (includ- ing additions, alterations, recon- struction, maintenance, and repair work) of houses and other resi- dential buildings (single–family and multifamily).	1,508	\$704,991,000	6,151	Yes
23611	Residential Building Construction	Construction or remodeling and renovation of single-family and multifamily residential buildings. Included in this industry are resi- dential housing general contrac- tors (i.e., new construction, remodeling or renovating existing residential structures), operative builders and remodelers of resi- dential structures, residential project construction management firms, and residential design- build firms.	4,003	\$4,146,381,000	19,073	Yes
23813	Framing Contractors	Structural framing and sheathing using materials other than struc- tural steel or concrete new work, additions, alterations, mainte- nance, and repairs.	430	\$196,482,000	2,464	Yes
23816	Roofing Contractors	Roofing. This industry also includes establishments treating roofs (i.e., spraying, painting, or coating) and installing skylights. The work performed may include new work, additions, alterations, maintenance, and repairs.	709	\$501,773,000	4,958	Yes
23817	Siding Contractors	Installing siding of wood, alumi- num, vinyl or other exterior finish material (except brick, stone, stucco, or curtain wall). This industry also includes establish- ments installing gutters and downspouts. The work performed may include new work, additions, alterations, maintenance, and repairs.	395	\$148,778,000	1,877	Yes
238150	Glass and Glazing Contractors	Installing glass panes in prepared openings (i.e., glazing work) and other glass work for buildings. The work performed may include new work, additions, alterations, maintenance, and repairs.	47	\$114,996,000	808	Yes

NAICS	Subsector	Business Description: Primary Responsibility	Number of Establish– ments	Dollar Value of Work Done	Number of Employees	Includes Businesses that Meet the WI Definition of Small Business
23821	Electrical Contractors	Installing and servicing electrical wiring and equipment. Electrical contractors included in this indus- try may include both the parts and labor when performing work. Electrical contractors may per- form new work, additions, alter- ations, maintenance, and repairs.	1,174	\$1,599,245,000	14,335	Yes
23822	Plumbing, Heating, and Air–Condition- ing Contractors	Installing and servicing plumb- ing, heating, and air-conditioning equipment. Contractors in this industry may provide both parts and labor when performing work. The work performed may include new work, additions, alterations, maintenance, and repairs.	1,839	\$2,643,604,000	20,425	Yes
23831	Drywall and Insulation Contractors	Drywall, plaster work, and build- ing insulation work. Plaster work includes applying plain or orna- mental plaster, and installation of lath to receive plaster. The work performed may include new work, additions, alterations, maintenance, and repairs.	533	\$471,329,000	5,461	Yes
23832	Painting and Wall Covering Contractors	Interior or exterior painting or interior wall covering. The work performed may include new work, additions, alterations, maintenance, and repairs.	841	\$276,551,000	4,023	Yes
23833	Flooring Contractors	Installation of resilient floor tile, carpeting, linoleum, and hard wood flooring. The work per- formed may include new work, additions, alterations, mainte- nance, and repairs.	323	\$183,469,000	1,618	Yes
23839	Other Building Finishing Contractors	Building finishing trade work (except drywall, plaster and insulation work; painting and wall covering work; flooring work; tile and terrazzo work; and finish carpentry work). The work performed may include new work, additions, alterations, or maintenance and repairs.	144	\$65,831,000	835	Yes
23835	Finish Carpentry Contractors	Finish carpentry work. The work performed may include new work, additions, alterations, maintenance, and repairs.	1,088	\$468,750,000	4,689	Yes

NAICS	Subsection	Business Description: Primary Responsibility	Number of Establish– ments	Revenue	Number of Employees	Includes Businesses that Meet the WI Definition of Small Business
53111	Lessors of Residential Buildings and Dwellings	Lessors of buildings used as residences or dwellings, such as single-family homes, apartment buildings, and town homes. Included in this industry are owner-lessors and establishments renting real estate and then acting as lessors in subleasing it to others. The establishments in this industry may manage the property themselves or have another estab- lishment manage it for them.	1,019	\$737,415,000	5,270	Yes
53131	Real Estate Property Managers	Managing real property for others. Management includes ensuring that various activities associated with the overall operation of the property are performed, such as collecting rents, and overseeing other services (e.g., maintenance, security, trash removal).	510	\$323,257,000	4,871	Yes
531311	Residential Property Managers	Managing residential real estate for others.	398	\$235,558,000	4,034	Yes

# REAL ESTATE INDUSTRY

# SOCIAL ASSISTANCE (CHILD CARE) INDUSTRY

NAICS	Subsection	Business Description: Primary Responsibility	Number of Establish– ments	Receipts	Number of Employees	Includes Businesses that Meet the WI Definition of Small Business
6244	Child Day Care Services	Providing day care of infants or children. These establishments generally care for preschool children, but may care for older children when they are not in school and may also offer prekindergarten educational programs	1,666	\$478,195,000	17,357	Yes

# WASTE MANAGEMENT AND REMEDIATION INDUSTRY

NAICS	Subsection	Business Description: Primary Responsibility	Number of Establish– ments	Sales	Number of Employees	Includes Businesses that Meet the WI Definition of Small Business
5629102	Asbestos Abate- ment and Lead Paint Removal	Asbestos abatement or lead paint removal	25	\$24,152,000	296	Yes

#### Other persons or entities affected by the rule

Other persons and entities that will be affected by the rule are children and families, public school districts, and state and local governments.

# Costs to small businesses

Under the provisions of ch. DHS 163 relating to pre-renovation education and lead-based paint renovation, small businesses will have increased expenses, including certification fees, recordkeeping and other administrative costs, information distribution expenses and work practice (equipment and supplies) costs.

The department reviewed the regulatory requirements for EPA authorization under 40 CFR 745 and identified the costs to businesses under the EPA regulations and the department rules under this order. The department also used the 2002 U.S. Economic Census to help determine the effect on small businesses. In addition, the department reviewed and used relevant portions of EPA's economic analysis to determine the costs and benefits to Wisconsin.

In its analysis, the EPA analyzed the economic impact of compliance on small entities by evaluating the number of companies that would experience the impact and the size of the impact. Average annual compliance costs as a percentage of average annual revenues were used to assess the potential average cost of the rule on small businesses and small governments. EPA estimated that the average compliance costs for small businesses would be 0.7% of annual revenues. For small non-profits such as private schools and pre-schools, the costs would be 0.1% of annual expenditures. EPA based these estimates on an average compliance cost of approximately \$35 per renovation. Even if the actual average cost per renovation is double EPA's estimate, or \$70 per job, this would translate to only 1.4% of annual revenue for contractors and 0.2% for nonprofits, and would be below the 2008 CPI of 3.8%.

Upon review of the information, the department has determined, however, that the actual costs to renovators are indeterminate because of the number of variables involved, including:

- The size of the project/amount charged to customer to conduct the renovation the larger the project/more charged to conduct the project, the lower the cost of compliance as a percent of the overall cost of the job.
- Number of jobs conducted by the renovator the more jobs a renovator conducts in a month or year the lower the overall cost of compliance per job.
- Cost of equipment and supplies whether more expensive equipment such as a HEPA vacuum is already owned or must be purchased and whether supplies are purchased in bulk or in smaller amounts.
- Generally larger, more active renovators will be affected less by the costs of compliance than smaller, less active renovators.

The costs to businesses under this rule would be similar to the costs to businesses under the EPA regulations if the EPA implemented its regulations in Wisconsin. The cost elements in the EPA regulations and this order are the same. A discussion of the cost elements follows:

#### Certification fees

Under the current rule, companies conducting lead-hazard reduction and lead-investigation activities are required to be certified by the department and to pay a certification fee of \$75 every 2 years (\$37.50 per year). Certification of companies performing only renovation activities is currently optional unless the work will be conducted in a state-registered lead-safe home. Under the revised rule, company certification will be required for companies that conduct renovations for compensation in pre-1978 housing or child-occupied facilities. Renovation companies will pay the current fee of \$75 for a 2-year certification.

Licensed plumbers and HVAC workers are not required to pay the fee and become certified under the rule, but are required to comply with all other provisions relating to regulated work under the chapter, including training, recordkeeping and work practices.

#### Accreditation of training courses

Under the rule, the current 1–day lead–safe work course is being converted to the 1–day lead–safe renovator course. Training providers that are already accredited to provide the lead–safe work course will be allowed to convert their course to the lead–safe renovator course with no additional fee. The department will require only a minimal paper submittal to accomplish the transition from the lead–safe work to lead–safe renovator course. The lead–safe renovator refresher course is new and training providers wishing to offer it submit an application to the department with a \$125 application and a \$100 accreditation fee. The application fee is a one–time fee and the accreditation fee is payable every 2 years.

Other costs to training providers are not expected to change, including existing fees for renewing accreditation (\$200 for 2 years for the lead–safe renovator course), and administrative costs to notify the department of scheduled classes, verify student identities, take student pictures, submit student information and pictures to the department, and keep required course and student records. These requirements are not revised under the rule except to reduce the requirement to view 2 forms of student ID to view only 1 form of photo ID per student.

The EPA provides complete curriculum materials for both the initial and refresher renovator courses, including instructor and student manuals, free for download from its website, thus minimizing course preparation costs for training providers. This curriculum is acceptable for use in Wisconsin. The EPA fees for training course accreditation are \$560 for accreditation of the initial renovator course and \$400 for the refresher course. Re–accreditation is required every 4 years at a cost of \$340 for the initial and \$310 for the refresher. Compared over 8 years, Wisconsin fees are \$85 less than EPA's fees for a company offering both the initial and the refresher renovator courses.

#### Recordkeeping

The rule requires renovators to create and maintain certain records, including the written contract for services; any lead paint inspection reports received from a certified lead inspector or risk assessor; written or printed evidence of distributing the required information pamphlet (such as a signed acknowledgement statement or a certificate of mailing); a written record of compliance with the rule requirements for each renovation activity conducted, including on-the-job training for uncertified workers, posting of warning signs, containment of work areas, waste handing, cleaning and post-renovation cleaning verification; documentation of training for each uncertified worker; documentation of emergency renovations that are not required to meet all of the renovation requirements under the rule; documentation of use of a recognized chemical paint test kit, if used; written clearance report if dust-wipe clearance is performed, and the company's certificate of approval from the department. The administrative costs for creating and maintaining these records will require some adjustment by many renovators, but not all records are required for all jobs. An estimate for the time needed to create and maintain these records would be less than 1 additional hour, and for less complex jobs, less than 1/2 additional hour per job. At \$15 per hour for administrative office help, this translates to less than \$7.50 to \$15 per job. These expenses would also be incurred under the EPA regulation.

Other persons certified under the rule, such as lead abatement contractors and lead investigators, already are required to keep many records. These requirements were found in many locations in the rule and these were consolidated in the revised rule into the new recordkeeping section under DHS 163.13 (3). No new costs are associated with recordkeeping for these regulated groups.

#### Information distribution

Renovators under the revised rule are required to distribute the pamphlet, Renovate Right, to property owners, occupants, child–occupied facility owners, operators and to parents of children attending the child–occupied facility. The costs include the time to prepare and ensure that the pamphlet is received by obtaining a signed acknowledgement of receipt or certificate of mailing, and by posting in common areas of multi–family housing or in child–occupied facilities where parents would be likely to see the information.

The pamphlet, *Renovate Right*, may be downloaded free from the EPA website and printed in-house for minimal expense or sent out for professional printing at the renovator's discretion. Costs associated with distribution are expected to be minimal as most renovators work directly with the owner/occupant and have ample opportunity to provide the required material. Copy and distribution expenses would also be incurred under the EPA regulation.

#### Work practices

For renovators, there will be certain work practice expenses associated with this new rule, including possible purchase of certain equipment and supplies. These might include a HEPA vacuum, HEPA-attachments for high-speed machines such as sanders and grinders, disposable plastic sheeting, disposable dry and wet cleaning cloths and mops. Many renovators already use HEPA vacuums, but many others would need to purchase one or more.

#### Cost–Benefits

Since 1996, more than 44,000 Wisconsin children have been identified as lead poisoned. Nearly one in every 20 children who entered the Wisconsin school system in the fall of 2006 was known to have been lead poisoned.

Lead interferes with the normal development of a child's brain and can result in significant learning disabilities and other behavior and health problems. Lead poisoning is associated with a greater chance that a child will experience problems in school due to learning difficulties and failure. Children who are lead poisoned show a 15% decrease in reading scores and 14% decrease in mathematical scores on performance tests in 3<sup>rd</sup> grade. These learning problems can lead to higher rates of high school dropout, teen pregnancy and juvenile delinquency. The reduction in impaired cognitive function and other serious illnesses in children and adults a health effects from lead exposure are expected to result in quantifiable benefits nationwide.

According to the EPA, in its March 2008, economic analysis, its regulations under 40 CFR 745 would result in quantified benefits of approximately \$700 million to \$1,700 million in the first year nationwide, including other avoided health effects in children and adults that are not included in the net benefits estimates. Using EPA's conclusions, the department has determined that the estimated net benefits to Wisconsin would be \$1 million to \$20 million in the first year based on children's IQ benefits alone.

These health effects include impaired cognitive function in children and several serious illnesses in children and adults. EPA estimated the benefits of avoided incidence of IQ loss due to reduced lead exposure to children under the age of 6. There are not sufficient data to develop dose–response functions for other health effects in children or for pregnant women.

#### **Small Business Impact**

At least 10% of the businesses affected by this order are small businesses; however, the rules will not have a significant economic impact on those businesses.

#### Small business regulatory coordinator

Rosie Greer rosie.greer@dhs.wisconsin.gov 608-266-1279

#### **Fiscal Estimate**

#### State government

DHS will require 2.0 FTE (1.0 License/Permit Program Associate and 1.0 Environmental Health Specialist-Sr.) for the increased work load of administering the lead-safe renovation program, at an estimated cost of \$119,600. The positions will be funded by program revenue, from fees charged for lead-safe renovator and company certification, and will not require GPR. Positions will be filled as revenue generated by the program becomes available. The positions will review and process certification applications, provide outreach and technical assistance to individuals and businesses, conduct inspections and complaint investigations, and engage in enforcement activities when necessary.

There are other potential costs to state agencies and the University of Wisconsin system if these agencies do their own renovation work in target housing or a child–occupied facility, including any state–operated residential or day–treatment facility with children under age six. Costs to the state would not include certification costs, from which government is exempt, but could include training, equipment and supplies needed to comply with the containment and cleaning requirements under the regulation. It is not possible to estimate these potential costs but they are not expected to be significant.

*Revenue.* The Department estimates that, with full compliance, an estimated 15,000 companies will become certified for renovation work at a cost of \$75 per company for a 2–year certification. Department rules require any individual who performs renovation work to be a Department–certified company. Companies that conduct regulated renovation activities are required to have at least one lead–safe renovator on their staff. As a result, an estimated 15,000 individual lead–safe renovators will have to become certified at a cost of \$50 each for a 2–year certification. If all regulated companies and renovators are compliant, the state will receive an additional \$900,000 PR annually.

However, full compliance will not be immediate and will require adequate agency staffing to provide compliance assistance and enforcement actions, when warranted, to increase the overall compliance rate over time. The Department assumes that there will be 8–10% compliance in the first year, with annual revenue at \$75,000. Compliance will increase by 10% to 15% (\$100,000 to \$150,000) per year in subsequent years. At 50% compliance, the program's revenues will be approximately \$475,000 annually and, at 70% compliance, approximately \$650,000 annually. The Department's goal is to achieve 50% compliance by the fifth year of implementation and increase it to at least 70% compliance statewide over the next five years.

# Local government

The renovation rule may have an effect on some local governments, including public school districts and day cares operated by local governments or school districts. Governmental entities are exempt from certification fees. If the government entity does its own regulated renovation work, however, there would be additional costs as a result of this rule. The costs would include training and such work practice costs as equipment and supplies. There may also be higher costs to government facilities for work performed by a paid contractor as a result of this rule. These costs are not expected to be significant. The EPA has concluded that the federal regulations do not significantly, uniquely, or primarily affect small governments, nor do the federal regulations impose a different burden on small governments than on other entities.

#### Small business

Under the provisions of DHS 163 relating to pre-renovation education and lead-based paint renovation, small businesses will have increased expenses, including certification fees, recordkeeping and other administrative costs, information distribution expenses and work practice (equipment and supplies) costs.

### Certification fees:

Under the current rule, companies conducting lead-hazard reduction and lead-investigation activities are required to be certified by the department and to pay a certification fee of \$75 every 2 years (\$37.50 per year). Certification of companies performing only renovation activities is currently optional unless the work will be conducted in a state-registered lead-safe home. Under the revised rule, company certification will be required for companies that conduct renovations for compensation in pre-1978 housing or child-occupied facilities. Renovation companies will pay the current fee of \$75 for a 2-year certification.

Licensed plumbers and HVAC workers are not required to pay the fee and become certified under the rule but are required to comply with all other provisions relating to regulated work under the chapter, including training, recordkeeping and work practices. For others, the individual certification fee of \$50 every 2 years remains without revision and will apply to certified lead–safe renovators. Businesses are not required to pay these fees for their employees.

#### Accreditation of training courses:

Under the rule, the current 1–day lead–safe work course is being converted to the 1–day lead–safe renovator course. Training providers that are already accredited to provide the lead–safe work course will be allowed to convert their course to the lead–safe renovator course with no additional fee. The department will require only a minimal paper submittal to accomplish the transition from the lead–safe work to lead–safe renovator course. The lead–safe renovator refresher course is new and training providers wishing to offer it submit an application to the department with a \$125 application and a \$100 accreditation fee. The application fee is a one–time fee and the accreditation fee is payable every 2 years.

Other costs to training providers are not expected to change, including existing fees for renewing accreditation (\$200 for 2 years for the lead–safe renovator course), and administrative costs to notify the department of scheduled classes, verify student identities, take student pictures, submit student information and pictures to the department, and keep required course and student records. These requirements are not revised under the rule except to reduce the requirement to view 2 forms of student ID to view only 1 form of photo ID per student.

The EPA provides complete curriculum materials for both the initial and refresher renovator courses, including instructor and student manuals, free for download from its website, thus minimizing course preparation costs for training providers. This curriculum is acceptable for use in Wisconsin. The EPA fees for training course accreditation are \$560 for accreditation of the initial renovator course and \$400 for the refresher course. Re–accreditation is required every 4 years at a cost of \$340 for the initial and \$310 for the refresher. Compared over 8 years, Wisconsin fees are \$85 less than EPA's fees for a company offering both the initial and the refresher renovator courses.

### Recordkeeping:

The rule requires renovators to create and maintain certain records, including the written contract for services; any lead paint inspection reports received from a certified lead inspector or risk assessor; written or printed evidence of distributing the required information pamphlet (such as a signed acknowledgement statement or a certificate of mailing); a written record of compliance with the rule requirements for each renovation activity conducted, including on-the-job training for uncertified workers, posting of warning signs, containment of work areas, waste handing, cleaning and post-renovation cleaning verification; documentation of training for each uncertified worker; documentation of emergency renovations that are not required to meet all of the renovation requirements under the rule; documentation of use of a recognized chemical paint test kit, if used; written clearance report if dust-wipe clearance is performed, and the company's certificate of approval from the department. The administrative costs for creating and maintaining these records will require some adjustment by many renovators, but not all records are required for all jobs. An estimate for the time needed to create and maintain these records would be less than 1 additional hour, and for less complex jobs, less than 1/2 additional hour per job. At \$15 per hour for administrative office help, this translates to less than \$7.50 to \$15 per job. These expenses would also be incurred under the EPA regulation.

Other persons certified under the rule, such as lead abatement contractors and lead investigators, already are required to keep many records. These requirements were found in many locations in the rule and these were consolidated in the revised rule into the new recordkeeping section under DHS 163.13 (3). No new costs are associated with recordkeeping for these regulated groups.

#### Information distribution:

Renovators under the revised rule are required to distribute the pamphlet, "Renovate Right," to property owners, occupants, child–occupied facility owners, operators and to parents of children attending the child–occupied facility. The costs include the time to prepare and ensure that the pamphlet is received by obtaining a signed acknowledgement of receipt or certificate of mailing, and by posting in common areas of multi–family housing or in child–occupied facilities where parents would be likely to see the information.

The pamphlet, "Renovate Right," may be downloaded free from the EPA website and printed in-house for minimal expense or sent out for professional printing at the renovator's discretion. Costs associated with distribution are expected to be minimal as most renovators work directly with the owner/occupant and have ample opportunity to provide the required material. Copy and distribution expenses would also be incurred under the EPA regulation.

#### Work practices:

For renovators, there will be certain work practice expenses associated with this new rule, including possible purchase of certain equipment and supplies. These might include a HEPA vacuum, HEPA-attachments for high-speed machines such as sanders and grinders, disposable plastic sheeting, disposable dry and wet cleaning cloths and mops. Many renovators already use HEPA vacuums, but many others would need to purchase one or more.

Actual costs to renovators is indeterminate because of the number of variables involved, including:

- The size of the project/amount charged to customer to conduct the renovation the larger the project/more charged to conduct the project, the lower the cost of compliance as a percent of the overall cost of the job.
- Number of jobs conducted by the renovator the more jobs a renovator conducts in a month or year the lower the overall cost of compliance per job.
- Cost of equipment and supplies whether more expensive equipment such as a HEPA vacuum is already owned or must be purchased and whether supplies are purchased in bulk or in smaller amounts.
- Generally larger, more active renovators will be affected less by the costs of compliance than smaller, less active renovators.

EPA analyzed the economic impact of compliance on small entities by evaluating the number of companies that would experience the impact and the size of the impact. Average annual compliance costs as a percentage of average annual revenues were used to assess the potential average cost of the rule on small businesses and small governments. EPA estimated that the average compliance costs for small businesses would be 0.7% of annual revenues. For small non–profits such as private schools and pre–schools, the costs would be 0.1% of annual expenditures. EPA based these estimates on an average compliance cost of approximately \$35 per renovation. Even if the actual average cost per renovation is double EPA's estimate, or \$70 per job, this would translate to only 1.4% or annual revenue for contractors and 0.2% for nonprofits.

The fees that Wisconsin will charge for lead–safe company certification will be lower than those charged by EPA. Current state fees for company certification are lower than federal EPA fees and no fee revisions are being requested with this rule revision. Company certification fees will remain at \$75 for 2–years (\$37.50 per year). Comparable federal fees are \$300 for a company certification for 5 years (\$60 per year). State penalties for non–compliance are also considerably lower than federal penalties. The highest federal penalty fee is \$37,500 per violation; the highest state penalty fee is \$1,000 per violation.

#### State government fiscal effect

Increase existing revenues. Increase in costs may be possible to absorb within agency's budget.

#### Fund sources affected

FED and PRO.

### Affected Ch. 20, Stats. appropriations

Section 20.435 (1) (gm) and (n), Stats.

#### *Local government fiscal effect* Indeterminate. Increase costs.

*Local government units affected* School districts.

#### Private sector fiscal effect

Indeterminate. Revenues may have significant economic impact on a substantial number of small businesses.

No increase in costs. May have significant economic impact on a substantial number of small businesses.

#### Long-range fiscal implications

None known.

# Notice of Hearing Public Defender Board EmR0926

The State of Wisconsin Public Defender Board (SPD) announces that it will hold a public hearing on its emergency rule 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 Wis. Stat. Chapter 980, and other proceedings in which the state public defender provides legal representation.

#### **Hearing Information**

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

#### November 16, 2009

10:00 am to 3:00 pm SPD Administrative Office, Banoul Conference Room 315 N. Henry Street, 2<sup>nd</sup> Floor Madison WI 53703

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

# Appearances at Hearing and Submission of Written Comments

Interested persons are invited to attend the hearing and comment on the emergency rule. Persons appearing may make an oral presentation and are requested to submit their comments in writing. Written comments on the emergency rule will be accepted into the record and receive the same consideration as testimony presented at the hearing if they are received by Monday, November 16, 2009. Written comments should be addressed to: Marla Stephens, SPD, PO Box 7923, Madison, WI 53707–7923, or by email: stephensm@opd.wi.gov.

### **Copies of Emergency Rule**

To view the emergency rule online, go to: <u>http://www.wisspd.org/PD8ER09-25-2009.pdf</u>

To view the emergency rule fiscal note online, go to: <u>http://www.wisspd.org/FiscalEstimatePD8-20091001.pdf</u>.

You may contact Marla Stephens at <u>stephensm@</u> <u>opd.wi.gov</u> or by telephone at (414) 227–4891 to request a copy of the rule and fiscal note be sent to you by U.S. mail. Copies of the rule and fiscal note will also be available at the hearing.

# Analysis Prepared by the State Public Defender Board

### Statutes interpreted

Sections 971.23, 977.02 (9), 977.05, 977.08, 980.036 (10), Stats.

### Statutory authority

Sections 227.24, 971.23 (10), 977.02 (9), 980.036 (10), Stats.

### Explanation of agency authority

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."

### Related statute or rule

None

### Plain language 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* Chapter 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 an opposing party or his or her counsel within specified time limits. Subsections 971.23 (10) and 980.036 (10), Stats., require the state public defender to pay for the copies of discovery materials disclosed to appointed counsel if the provider charges a fee for them.

This emergency rules order implements the 2009 Wisconsin Act 28 requirement that the state public defender board promulgate administrative rules establishing the maximum fees that the state public defender may pay for copies of discovery materials in any format.

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) the 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.

The emergency rules 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 emergency rules:

- 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 to the attorneys, staff or private, appointed under s. 977.08;
- 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.

### Comparison with federal regulations

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

#### Comparisons with rules in adjacent states

In general, most states require prosecutors to provide copies of all discovery materials under mandatory discovery laws.

Minnesota and Iowa have implemented statewide public defender programs, but only Minnesota has a statute relating to public defenders and discovery costs. Specifically, Minnesota statutes section 611.271 (2008) states that when discovery materials are requested by a public defender, no fee can be charged for police reports, photographs, copies of existing grand jury transcripts, audiotapes, videotapes, copies of existing transcripts of audiotapes or videotapes, and, in child protection cases, reports prepared by local welfare agencies. Iowa public defenders, on the other hand, are charged for most discovery materials obtained from the prosecutor. The cost of discovery varies depending on the county prosecutor.

In Michigan and Illinois, the individual counties themselves establish public defender programs. In Michigan counties, the public defenders do not typically pay for any discovery costs. When they do have to pay, the public defenders only pay for the cost of copies and not the cost of labor. In the Illinois counties surveyed, when the public defenders receive discovery from the prosecutor, they do not pay any fees.

#### Summary of factual data and analytical methodologies

Pursuant to s. 977.02 (9), Stats., the public defender board "shall 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.

A significant portion of the direct cost of any copy is the media (e.g., the paper or the blank disc) on which it is provided.

In its biennial budget request for FY 2009–2011, the public defender board requested funding to increase the rate to be paid for paper discovery materials from \$0.20 to \$0.25 per page. This request was neither included in the Governor's budget, nor added to the budget bill by the legislature. The state public defender board interprets the omission of the requested funding as tacit agreement that \$0.20 per page meets or exceeds the "actual, necessary and direct cost" criteria for paper copies of discovery materials. Compare FedEx/Kinko's current retail price of \$0.08 each for up to 100 letter– or legal–size copies, and \$0.07 each for 101 to 1,000 copies. The Department of Justice charges \$0.15 per page for paper copies furnished in response to a public records request under ch. 19, Stats. Under the proposed rule, the state public defender would continue to pay up to \$0.20 per page.

The charges submitted for discovery materials provided in electronic formats vary greatly among the state's prosecutors and law enforcement agencies. For example, bills for a single compact disc (CD) range from \$3 to \$35. The retail cost of blank CDs and digital videodiscs (DVDs) is currently less than \$0.80 each. Large suppliers such as Corporate Express offer discounts to governmental units, bringing the unit cost down to less than \$0.40 each. The Department of Justice charges \$1.00 per disc for copies furnished in response to a public records request under ch. 19, Stats. Under the proposed rule, the state public defender would pay up to \$5.00 per disc.

The charges submitted for copies of photographs range from \$1.50 to \$25.00 for digital prints, from \$1.00 to \$2.00 for black and white photos, and from \$0.35 to \$2.00 for color photos. The retail cost of photograph reproductions depends upon their size. Walgreen's, a national retailer, charges \$0.19 each for less than 100 4x6 prints, \$0.15 each for 100 or more 4x6 prints, \$1.59 each for 5x7 prints and \$2.99 each for 8x10 prints. The Camera Company in Madison charges \$0.43 each for photos up to 4x6. Under the proposed rule, the state public defender would pay up to \$0.50 each for copies of photos that are 5x7 and smaller, and \$1.00 each for copies of larger photos.

The charges submitted for copies of audio and video tapes also vary greatly. Bills for a single video tape range from \$5.00 to \$46.00, and for a single audio tape from \$1.00 to \$25.00. If purchased from a state contract office supply vendor, blank audio cassette tapes range in price from \$0.42 to \$1.07 each and blank VHS video tape prices range from \$1.22 to \$3.00 each. If purchased from a retailer (Best Buy), a four–pack of audio cassette tapes costs \$5.99 (\$1.50 each), and a four–pack of VHS video tapes costs \$10.99 (\$2.75 each). Under the proposed rule, the state public defender would pay up to \$5.00 per tape.

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

The impact on counties and municipalities that provide copies of discovery materials is unknown.

#### **Small Business Impact**

Small businesses are not affected by the rule.

#### **Fiscal Estimate**

#### Summary

The State Public Defender (SPD) is statutorily authorized and required to appoint attorneys to represent indigent defendants in criminal proceedings. The SPD plays a major role in ensuring that the Wisconsin justice system complies with the right to counsel provided by both the state and federal constitutions. Any legislation that creates a new criminal offense or expands the definition of an existing criminal offense has the potential to increase SPD costs.

These administrative rules do not create a new offense, expand the scope of any criminal offense, or change any criminal penalties. The rules provide maximum rates that the SPD will pay for discovery materials, such as photocopies of police reports and audio or video recordings of interrogations. In the vast majority of cases in which the SPD provides representation, the appointed attorney must obtain and review discovery materials as part of adequate case preparation.

The SPD does not anticipate any significant fiscal impact from these rules. The SPD has a separate appropriation for discovery, interpreters, and transcripts. For the last few years, this appropriation has been insufficient to pay the necessary costs incurred by the SPD in the course of providing representation. The deficit in this appropriation has been growing, as more counties and municipalities have been recording interrogations of defendants and then billing the SPD for copies of the recordings. In some counties, these rules will lower the costs of each individual recording; however, the number of jurisdictions providing the recordings may continue to increase.

The SPD has been paying all counties \$0.20 per page for photocopies provided as discovery materials. The SPD has been paying varying amounts for other forms of discovery, such as DVDs and CDs. Some bills for recordings come from municipalities and others from counties. The SPD does not have data to estimate the specific impact of these rules on individual municipalities and counties. However, because the SPD's annual appropriation for transcript, discovery and interpreter payments was not changed as a result of this provision of 2009 Wis Act 28, the biennial budget bill, it appears that the legislative intent is that these rules will neither increase nor decrease the SPD's total payments for discovery materials.

#### Long-range fiscal implications

The rules provide a mechanism for the SPD Board to reduce the maximum rates if the appropriation in question is depleted in two consecutive years (following adoption of the rules). Thus, the rules arguably provide a safety valve to limit the total payment obligations of the SPD for discovery. The rules may also help to resolve issues that might otherwise arise regarding the rates that counties and municipalities may charge for new formats in which they provide discovery materials.

#### **Agency Contact Person**

Questions regarding these rules may be directed to:

Marla Stephens 315 N. Henry Street, 2<sup>nd</sup> Floor Madison, WI 53703 Phone: (414) 227–4891 Email: stephensm@opd.wi.gov

# **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.

Commerce Licenses, Certifications and Registrations, Ch. Comm 5 CR 09–021

Revises sections Comm 5.12 and 5.33 and the Appendix for Chapter Comm 5, relating to the assessment of forfeitures for POWTS governmental unit employees. Effective 12–1–09.

#### Health Services Management and Technology and Strategic Finance, Chs. DHS 1— CR 09–003

Revises Chapter DHS 10, relating to fair hearings and continuation of benefits pending the outcome of a grievance, department review, or fair hearing under the family care program.

Effective 12–1–09.

Natural Resources Environmental Protection — Solid Waste Management, Chs. NR 500—

#### CR 08-111

Creates Chapter NR 528, relating to the management of accumulated sediment from storm water management structures.

Effective 12–1–09.

#### Transportation CR 09–049

Revises sections Trans 510.08 and 512.06, relating to the transportation facilities economic assistance and development program, and the transportation infrastructure loan program. Effective 12–1–09.

# Rules Published with this Register and Final Regulatory Flexibility Analyses

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

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

# Agriculture, Trade and Consumer Protection CR 09–009

Revises Chapter ATCP 70, relating to food processing plants. Effective 11–1–09.

#### Summary of Final Regulatory Flexibility Analysis

For the most part, this rule merely updates and clarifies current rules and makes the rules consistent with other federal and state rules. These modifications will eliminate inconsistent and duplicative regulation, which will make it easier for food processors to comply. Generally, this rule gives affected food processors more flexibility to design effective food safety systems tailored to their operations. But in some instances, this rule provides definite compliance standards that are not provided by federal rules.

This rule requires fish processors and juice processors to implement HACCP plans. But federal rules already require HACCP plans, and there will be no added cost to affected businesses. DATCP will help train affected businesses on the implementation of HACCP plans and other food safety measures. The University of Wisconsin–Extension may offer seminars and training sessions at modest cost.

Consistent with current federal rules, this rule requires food processors to have written recall plans. This rule gives processors considerable flexibility to design recall plans that are tailored to their operations. The rule establishes general content standards, but does not impose specific content requirements. Actual recall procedures may deviate from advance plans, as circumstances warrant.

This rule incorporates current state and federal labeling requirements for processed food, including current federal requirements related to disclosure of major allergens. This rule may prompt food processors to review their labels for compliance with current law, but it does not add any major new labeling requirements.

This rule requires food processors to keep certain records related to food processing operations to help ensure food safety. Since the recordkeeping requirements are consistent with normal business practice, they will not impose significant new burdens or costs. There are no new professional skills required.

This rule may require some changes in some food processing facilities and operations. But for most food processors, the changes (if any) will not be large or costly. Most food processors are already complying with most of the requirements. New requirements related to hand–washing facilities will apply prospectively to newly installed facilities or newly licensed operations.

Many of the food processing plants affected by this rule are "small businesses." This rule will not have a significant adverse effect on small businesses, and it will help many small businesses by making food safety regulations clearer and more consistent. This rule does not exempt small businesses, because food safety risks affect small as well as large businesses. DATCP will help train affected businesses on the implementation of HACCP plans and other food safety measures. The University of Wisconsin–Extension may offer seminars and training sessions at modest cost.

This rule will promote food safety for the benefit of consumers *and* food processors. This rule will clarify current regulations, and make them more consistent. That will facilitate compliance by food processors. This rule will not have a significant adverse impact on affected small businesses or other affected businesses, and it is not subject to the delayed small business effective date under s. 227.22 (2) (e), Stats.

This rule will make it easier for affected businesses to understand and comply with the rules that apply to them. DATCP will send copies of the rules to all affected businesses and will offer education and training, including education and training during inspections.

# Summary of Comments by Legislative Review Committees

On May 28, 2009, DATCP transmitted the above rule for legislative review. The rule was assigned to the Senate Committee on Agriculture and Higher Education on June 2, 2009. The Senate Committee on Agriculture and Higher Education reported the rule out on July 2, 2009, with a report of no action taken by the assigned senate committee.

### Chiropractic Examining Board CR 08–093

Revises Chapters Chir 1, 2, 3 and 5, relating to continuing education and requirements for proficiency in the use of automated external defibrillators. Effective 11-1-09.

#### Summary of Final Regulatory Flexibility Analysis

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

# Summary of Comments by Legislative Review Committees

No comments were reported.

# Dentistry Examining Board CR 09–007

Revises Chapters DE 1 and 2 and repeals Chapter DE 4, relating to licensure of foreign trained dentists. Effective 11-1-09.

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

These rules will have no significant economic impact on a substantial number of small businesses, as defined in s. 227.114 (1), Stats. The Department's Regulatory Review Coordinator may be contacted by email at hector.colon@wisconsin.gov, or by calling 608–266–8608.

# Summary of Comments by Legislative Review Committees

No comments were reported.

#### **Natural Resources**

Fish, Game, etc., Chs. NR 1— CR 08–083

Revises Chapter NR 27 to remove the Trumpeter Swan from the endangered species list and Osprey from the threatened species list. Effective 11–1–09.

# Summary of Final Regulatory Flexibility Analysis

The revision to ch. NR 27, Wis. Adm. Code, pertains to rules that list plant and animal species that are Endangered and Threatened in Wisconsin. These rules are applicable to the general public but impose no compliance or reporting requirements for small businesses nor are any design or operation standards contained in the rule. Therefore, under s. 227.19 (3m), Stats., a final regulatory flexibility analysis is not required.

# Summary of Comments by Legislative Review Committees

The rules were reviewed by the Senate Committee on Transportation, Tourism, forestry and Natural Resources and Assembly Committee on Natural Resources. On March 25, 2009, the Assembly Committee on Natural Resources held a public hearing. The Department did not receive any comments or requests for modification as a result of the hearing.

# Natural Resources Fish, Game, etc., Chs. NR 1— CR 09–015

Revises Chapters NR 10, 11 and 15, relating to hunting, trapping, closed areas, and game refuges. Effective 11-1-09 in part and 2-1-10 in part.

#### Summary of Final Regulatory Flexibility Analysis

These rules are applicable to individual sportspersons and impose no compliance or reporting requirements for small business, nor are any design or operational standards contained in the rule. Therefore, under s. 227.19 (3m), Stats., a final regulatory flexibility analysis is not required.

# Summary of Comments by Legislative Review Committees

The rules were reviewed by the Assembly Fish & Wildlife Committee and the Senate Committee on Transportation, Tourism, Forestry and Natural Resources. On August 5, the Assembly Committee on Fish & Wildlife held a public hearing. On July 16, the Senate Committee on Transportation, Tourism, Forestry and Natural Resources held a public hearing. The department did not receive comments or requests for modification as a result of those hearings.

### Pharmacy Examining Board CR 09–019

Revises Chapters Phar 2 and 4, relating to the practical examination. Effective 11-1-09.

#### Summary of Final Regulatory Flexibility Analysis

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

# Summary of Comments by Legislative Review Committees

No comments were reported.

#### Veterans Affairs CR 09–026

Revises section VA 2.01 (2) (a), (b), (3) (b) and (c), relating to the Assistance To Needy Veterans Grant Program. Effective 11-1-09.

### Summary of Final Regulatory Flexibility Analysis

These rules do not appear to have any effect upon small businesses, nor any significant fiscal impact upon the private sector.

# Summary of Comments by Legislative Review Committees

No comments were reported.

# Sections Affected by Rule Revisions and Corrections

The following administrative code sections had rule revisions and corrections take place in **October 2009**, and will be effective as indicated in the history note for each particular section. For additional information, contact the Legislative Reference Bureau at (608) 266–7590.

# Revisions

# Agriculture, Trade and Consumer Protection

Ch. ATCP 70 ATCP 70.02 (6), (16) (d), (17), (17g), (17m), (18m), (19m), (20), (21m), (22), (22g), (22m), (22n), (22p), (23)ATCP 70.03 (2p), (7) (b) ATCP 70.04 (7) (b), (9) (b), (c) ATCP 70.05 (1m) ATCP 70.06 (3), (7), (7m) ATCP 70.07 (3), (5) to (7) ATCP 70.08 (2) ATCP 70.10 (5) ATCP 70.11 (4) ATCP 70.117 ATCP 70.13 ATCP 70.18 ATCP 70.185 ATCP 70.19 ATCP 70.20 ATCP 70.21 ATCP 70.22 ATCP 70.225 ATCP 70.23 ATCP 70.26 (3), (4), (4m) ATCP 70.261 ATCP 70.262 ATCP 70 Appendix

# **Chiropractic Examining Board**

Ch. Chir 1 Chir 1.02 (1m) Ch. Chir 2 Chir 2.02 (6) (c) Ch. Chir 3 Chir 3.02 (1) (e) Chir 3.03 (1) (i) Chir 3.035 (1) (c) Ch. Chir 5 Chir 5.01 (1) (h) Chir 5.02 (1m)

# **Dentistry Examining Board**

**Ch. DE 1** DE 1.02 (1), (1m) **Ch. DE 2** DE 2.01 (1) (e), (1m) DE 2.04 (1) (a) **Ch. DE 4 (Entire Chapter)** 

### **Natural Resources**

**Ch. NR 10** NR 10.001 (20) NR 10.01 (2) (c), (f). (3) (d), (e), (em), (et) NR 10.06 (9) (a), (b) NR 10.09 (1) (c) NR 10.13 (1) (b) NR 10.145 (3) (f), (8) NR 10.25 (1) (f), (3) (intro.), (4) (b), (c) NR 10.40 (4) (a), (b), (5) (a), (b) **Ch. NR 11** NR 11.032 (1) (b) NR 11.042 (2) NR 11.044 Ch. NR 15 NR 15.022 (4), (8) (b), (e) NR 15.024 (4) Ch. NR 27 NR 27.03 (2) (b), (3) (b)

# **Pharmacy Examining Board**

Ch. Phar 2 Phar 2.02 (1) (intro.) Phar 2.03 (1), (4) Phar 2.05 (1) (intro.) Phar 2.06 (3) (a), (c) Ch. Phar 4 Phar 4.02 (2)

### **Veterans Affairs**

**Ch. VA 2** VA 2.01 (2) (a), (b), (3) (b), (c)

# **Editorial Corrections**

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

Agriculture, Trade and Consumer Protection	<b>Veterans Affairs</b>
Ch. ATCP 70	Ch. VA 2
ATCP 70.02 (21m)	VA 2.01 (1) (c)
ATCP 70.07 (7)	VA 2.02 (3) (c)
ATCP 70.117 (2) (i)	VA 2.03 (4)
ATCP 70.23	
ATCP 70.26 (4m) (intro.)	

# **Executive Orders**

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

**Executive Order 292.** Relating to a Proclamation That the Flag of the United States and the Flag of the State of Wisconsin be Flown at Half–Staff as a Mark of Respect for Sergeant Ryan Adams of the Wisconsin National Guard Who Lost His Life While Serving His Country in Operation Enduring Freedom.

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