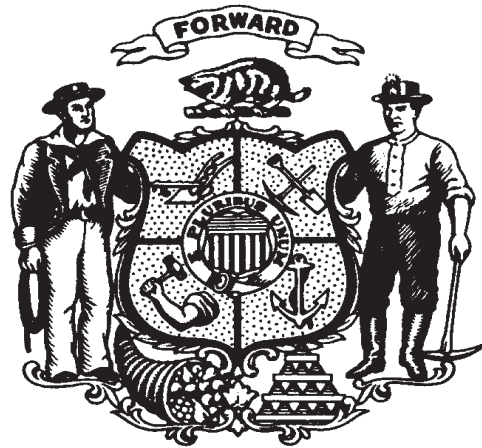


# Wisconsin Administrative Register

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## WISCONSIN ADMINISTRATIVE REGISTER

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## Emergency Rules Now in Effect

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*Under s. 227.24, Stats., state agencies may promulgate rules without complying with the usual rule-making procedures. Using this special procedure to issue emergency rules, an agency must find that either the preservation of the public peace, health, safety or welfare necessitates its action in bypassing normal rule-making procedures.*

*Emergency rules are published in the official state newspaper, which is currently the Wisconsin State Journal. Emergency rules are in effect for 150 days and can be extended up to an additional 120 days with no single extension to exceed 60 days.*

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

*Extension of the effective period of an emergency rule is granted at the discretion of the Joint Committee for Review of Administrative Rules under s. 227.24 (2), Stats.*

*Notice of all emergency rules which are in effect must be printed in the Wisconsin Administrative Register. This notice will contain a brief description of the emergency rule, the agency finding of emergency or a statement of exemption from a finding of emergency, date of publication, the effective and expiration dates, any extension of the effective period of the emergency rule and information regarding public hearings on the emergency rule.*

*Copies of emergency rule orders can be obtained from the promulgating agency. The text of current emergency rules can be viewed at [www.legis.state.wi.us/rsb/code](http://www.legis.state.wi.us/rsb/code).*

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

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

1. **EmR1003** — Rule adopted revising **ss. ATCP 60.15 and 60.20**, relating to somatic cell standards for dairy goat milk.

#### Finding of Emergency

Recently, the National Conference of Interstate Milk Shippers voted to relax the standard for somatic cells in grade A goat milk, from 1,000,000 somatic cells per ml to 1,500,000 per ml. The United States Food and Drug Administration accepted this change and will include it in the next edition of the Interstate Pasteurized Milk Ordinance. The United States Department of Agriculture is adopting the same standard for grade B goat milk, as part of its standards for “Milk for Manufacturing Purposes and its Production and Processing.”

Wisconsin rules currently establish a limit of 1,000,000 somatic cells per ml in goat milk, which is more stringent than the new national standard of 1,500,000 per ml. The more stringent Wisconsin standard, if not modified to conform to the new national standard, will put Wisconsin dairy goat milk producers at a significant financial, operational, and competitive disadvantage compared to producers in other states.

This emergency rule modifies Wisconsin’s current standard, and makes it consistent with the new national standard. The department of agriculture, trade and consumer protection (DATCP) is adopting this rule as a temporary emergency rule, pending rulemaking proceedings to modify the standard on a more “permanent” basis. “Permanent” rulemaking proceedings normally require over a year to complete. This emergency rule is needed to mitigate a potential hardship to Wisconsin producers of dairy goat milk, pending the adoption of “permanent” rules.

**Publication Date:** February 4, 2010

**Effective Dates:** February 4, 2010  
through July 3, 2010

2. **EmR1012** — Rule adopted to create **section ATCP 70.03 (7) (e) and (f)**, relating to food processing plant license exemptions for certain home-canners and maple sap processors.

#### Finding of Emergency

(1) The Department of Agriculture, Trade and Consumer Protection (DATCP) administers state food processing plant license requirements under s. 97.29, Stats.

(2) Recent legislation (2009 Act 101, enacted on February 4, 2010) created a limited exemption from food processing plant license requirements under s. 97.29, Stats., for persons who home-can limited quantities of acidic, acidified or fermented vegetable and fruit products for retail sale at community and social events or at farmers’ markets.

(3) Home-canned food products, if not properly canned, may pose a risk of serious food safety hazards such as botulism.

(4) DATCP has received many requests for clarification of the new license exemption under Act 101. In order to facilitate compliance and protect consumers from potentially serious food safety hazards, DATCP must adopt administrative rules to clarify the scope, application and terms of the new license exemption.

(5) Implementing rules are urgently needed because of the seriousness of the potential food safety hazards, and the seasonal nature of the farmers’ markets and other events at which home-canned products may be sold. The normal rulemaking process takes over a year to complete, and cannot be completed in time for this summer’s farmers’ markets (which begin as early as mid-April or May). Persons who wish to sell home-canned food products must clearly understand the scope of the license exemption, and the food safety standards that must be met in order to qualify.

(6) This temporary emergency rule clarifies the scope, application and terms of the new license exemption under Act 101, pending the completion of “permanent” rules by the normal rulemaking process. This emergency rule is needed to protect the public health, safety and welfare, and to facilitate fair and orderly implementation of the new license exemption.

(7) This emergency rule also exempts, from food processing plant license requirements under s. 97.29, Stats., a person who collects and processes relatively small quantities of maple sap to produce maple syrup or concentrated maple sap for sale to other processors for further processing. These small-scale processing activities pose minimal food safety risks, and the current license requirement

imposes an unnecessary cost and compliance burden. An emergency rule is needed to relieve these cost and compliance burdens for the maple sap collection and processing season that typically begins in March. This emergency rule creates a temporary license exemption, pending the completion of “permanent” rules by the normal rulemaking process. This emergency rule clearly defines the scope, application and terms of the exemption, in order to protect public health, safety and welfare.

**Publication Date:** April 22, 2010  
**Effective Dates:** April 22, 2010 through September 18, 2010

## Children and Families

### *Safety and Permanence, Chs. DCF 37–59*

**EmR0937** — Rule adopted revising **Chapters DCF 56 and 58**, relating to foster care and kinship care.

#### 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:

2009 Wisconsin Act 28 assumes that court-ordered kinship care relatives will be applying for a license to operate a foster home beginning after January 1, 2010, and continuing throughout 2010. This rule creates the first two levels of the new levels of care system for foster care. The newly-licensed kinship care relatives will be incorporated into the foster care program. Licensing these relatives will allow the state to claim an additional \$6.5 million in Title IV-E funds for 2010. Act 28 appropriates this \$6.5 million to be expended in 2011.

**Publication Date:** December 30, 2009  
**Effective Dates:** January 1, 2010 through May 30, 2010  
**Hearing Dates:** March 17, March 31, April 8, 2010

## Commerce

### *Fee Schedule, Ch. Comm 2*

**EmR0934** — Rule adopted revising **Chapter Comm 2**, relating to public swimming pool and water attraction plan review and inspection fees.

#### Finding of Emergency

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

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

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

3. The department estimates that 3,700 existing pools and water attractions will need to be modified in order to comply with the federal act. As of December 1, 2009, approximately 1,800 pool modifications have been submitted to the department for review and approval.

4. There are claims that the availability of parts to make the necessary modifications is limited.

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

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

**Publication Date:** January 1, 2010  
**Effective Dates:** January 1, 2010 through May 30, 2010  
**Hearing Date:** January 21, 2010

## Commerce (5)

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

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

2. **EmR0931** — Rule adopted creating Chapter Comm 136, relating to midwestern disaster area bonds.

#### Finding of Emergency

The Department of Commerce finds that an emergency exists and that an emergency rule is necessary for the immediate preservation of public welfare. The facts constituting the emergency are as follows.

Between June 14 and July 9, 2008, thirty Wisconsin counties were declared major disaster areas by the President as a result of severe storms, tornados or flooding in 2008 that caused extensive damage to communities, residents, businesses, the economy and critical infrastructure. Subsequently, the federal Heartland Disaster Tax Relief Act of 2008 was enacted, authorizing the Governor of Wisconsin to designate up to

\$3,830,112,000 in Qualified Midwestern Disaster Area Bonds, which must be issued before January 1, 2013, for the purpose of encouraging economic development and recovery in the 30 counties.

To implement the provisions this federal Act, Governor Jim Doyle issued Executive Order #288, directing the Department to promulgate rules for allocating Wisconsin's Qualified Midwestern Disaster Area Bonding Authority, and including the necessary provisions to ensure that bonds are allocated to eligible projects on the basis of providing assistance to areas in the order in which the assistance is most needed. This rule is the result of that directive.

**Publication Date:** November 9, 2009  
**Effective Dates:** November 9, 2009 through April 7, 2010  
**Extension Through:** June 6, 2010  
**Hearing Date:** January 25, 2010

- EmR1006**— Rule adopted to create **Chapter Comm 137**, relating to reallocations for recovery zone facility bonds as established under the federal American Recovery and Reinvestment Act of 2009, and affecting small businesses.

**Exemption From Finding of Emergency**

The Legislature, by Section 5 (1) (b) in 2009 Wisconsin Act 112, exempts the Department from providing evidence that this emergency rule is necessary for the preservation of public peace, health, safety or welfare; and exempts the Department from providing a finding of emergency for the adoption of this rule.

**Publication Date:** March 5, 2010  
**Effective Dates:** March 5, 2010 through August 1, 2010  
 (subject to 2009 Wis. Act 112, s. 5)  
**Hearing Date:** May 13, 2010  
 (See the Notice in this Register)

- EmR1008** — Rule adopted to create **Chapter Comm 124** relating to the Forward Innovation Fund, and affecting small businesses.

**Exemption From Finding of Emergency**

The Legislature, by Section 9110 (8) of 2009 Wisconsin Act 28, exempts the Department from providing evidence that this emergency rule is necessary for the preservation of public peace, health, safety or welfare; and exempts the Department from providing a finding of emergency for the adoption of this rule.

**Publication Date:** March 22, 2010  
**Effective Dates:** March 22, 2010 through July 1, 2010

- EmR1013** — Creates **Chapter Comm 121**, relating to the small business innovation research assistance program, and affecting small businesses.

**Exemption From Finding of Emergency**

The Legislature, by Section 9110 (16u) of 2009 Wisconsin Act 28, exempts the Department from providing evidence that this emergency rule is necessary for the preservation of public peace, health, safety or welfare; and exempts the Department from providing a finding of emergency for the adoption of this rule.

**Publication Date:** April 21, 2010  
**Effective Dates:** April 21, 2010 through September 17, 2010

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**Corrections**

**EmR0939** — Rule adopted revising **Chapter DOC 302**, relating to sentence calculations and prison release and to administrative review of inmate classification decisions.

**Finding of Emergency**

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

Under 2009 Wisconsin Act 28, the legislature provides for the release of inmates from prison if certain criteria are met. The Department is responsible for implementing several of those procedures. Specifically, the department is responsible for implementing the early release programs under: (1) s PAT (2) ERP/CIP (3) CER (4) Risk reduction (5) 75%/85%. In addition, the department is revising section 302.18 to facilitate the review of inmates for purposes of early release.

If the rule is not created promptly and immediately, the Department will not be able to proceed in reviewing inmates under these various release procedures. This could result in significant delay in the implementation of the statutory provisions which will negatively impact the ability of the Department to manage the inmate population in a safe and effective manner. In addition, a delay will affect the management and control of inmate population levels of correctional facilities with the resources necessary to maintain public safety.

The purpose of the emergency rule is to implement newly created statutory provisions providing for release of inmates under specified circumstances. The permanent rule process has been started. However, the permanent rule process will take approximately nine months to complete. Emergency rules are necessary for a prompt implementation of the legislative mandates concerning the release of inmates meeting established criteria while the permanent rules are being developed.

**Publication Date:** December 31, 2009  
**Effective Dates:** December 31, 2009 through May 29, 2010  
**Hearing Date:** February 25, 2010

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**Earned Release Review Commission**

(Formerly Parole Commission)

**EmR0940** — Rule adopted revising **Chapter PAC 1**, relating to the release of inmates through parole or other procedures.

**Finding of Emergency**

The Wisconsin Earned Release Review Commission finds that an emergency exists and that emergency rules are necessary for the immediate preservation of public peace, health, safety and welfare. A statement of facts constituting the emergency is:

Under 2009 Wisconsin Act 28, the legislature provides for the release of inmates from prison if certain criteria are met. The Earned Release Review Commission (formerly the Parole Commission) is responsible for implementing several of those procedures. Specifically, the commission is responsible for considering the early release of inmates under: (1) section 304.06 (1) (bg) 1. and 2., Stats., after the inmate has served the term of confinement of their bifurcated sentence less positive adjustment time, (2) section 304.06 (1) (bg) 3. and 4., Stats., after the inmate has served either 75 % or 85 % of their term of confinement, depending on the offense for which the inmate was sentenced, and (3) section 302.1135 (2) (a), (b), and (c), Stats., based on age or extraordinary health.

If the rule is not created promptly and immediately, the commission will not be able to proceed in reviewing inmates under these various release procedures. This could result in significant delay in the implementation of the statutory provisions which will negatively impact the ability of the department of corrections to manage the inmate population in a safe and effective manner. In addition, a delay will affect the management and control of inmate population levels of correctional facilities with the resources necessary to maintain public safety.

The purpose of the emergency rule is to implement newly created statutory provisions providing for release of inmates under specified circumstances. 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 to the legislatively recognized need to review inmates who meet the requirements under the statutes for potential release while the permanent rules are being developed.

**Publication Date:** December 31, 2009  
**Effective Dates:** December 31, 2009 through May 29, 2010  
**Hearing Date:** February 23, 2010

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### Employee Trust Funds

**EmR0938** — Rule adopted revising **Chapters ETF 10, 20 and 40**, relating to the implementation of benefit changes mandated in 2009 Wisconsin Act 28; specifically, domestic partner benefits and the expansion of health insurance coverage to adult dependents up to the age of 27 years.

#### Finding of Emergency

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

ETF cannot promulgate a permanent rule in compliance with the mandated changes by January 1, 2010, which is the effective date of the domestic partnership and the health insurance provisions of 2009 Wisconsin Act 28. Without an emergency rule in place, the ability of ETF to enroll and cover participants' domestic partners and to provide health insurance to adult dependents would be seriously impaired. ETF would be unable to provide health insurance and other benefits to domestic partners and adult dependents.

**Publication Date:** December 28, 2009  
**Effective Dates:** January 1, 2010 through May 30, 2010  
**Hearing Date:** February 12, 2010

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### Health Services

#### *Medical Assistance, Chs. DHS 101— Health, Chs. DHS 110—*

**EmR0932** — Rule adopted revising **Chapters DHS 105, 106 and 133**, relating to personal care agencies and providers, and affecting small businesses.

#### Exemption From Finding of Emergency

The legislature by 2009 Wis. Act 28, Section 9122 (2), provides an exemption from a finding of emergency to adopt these emergency rules.

**Publication Date:** December 16, 2009  
**Effective Dates:** December 16, 2009 through May 14, 2010

(Subject to 2009 Wis. Act 28, Section 9122 (2))

**Hearing Dates:** February 3, 2010 and May 12, 2010

(See the Notice in this Register)

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### Health Services (2)

#### *Health, Chs. DHS 110—*

- EmR1004** — Rule adopted to create **sections DHS 195.145 and 197.145**, relating to carbon monoxide detectors in hotels, motels, tourist rooming houses and bed and breakfast establishments, and affecting small businesses.

#### Finding of Emergency

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

Section 101.149 (2) and (3), Stats., requires the owners of lodging establishments, including hotels, tourist rooming houses, and bed and breakfast establishments that were constructed on or before October 1, 2008, or had plans reviewed by the department of commerce before October 1, 2008, to, not later than April 1, 2010, install carbon monoxide detectors in every residential building that has a fuel-burning appliance, unless, pursuant to s. 101.149 (5), Stats., the building does not have an attached garage and all fuel-burning appliances in the building have sealed combustion units that are either covered by the manufacturer's warranty against defects or are inspected under rules promulgated by DHS.

Section 254.74 (1) (am), Stats., requires DHS to promulgate rules under which DHS would conduct inspections of sealed combustion units for carbon monoxide emissions, and rules that specify the conditions under which DHS may issue orders to correct violations of s. 101.149 (2) or (3), Stats.

**Publication Date:** March 1, 2010  
**Effective Dates:** April 1, 2010 through August 28, 2010  
**Hearing Dates:** April 21, 23, 27, 28, 30, 2010

- EmR1009** — Rule adopted to revise **Chapter DHS 137**, relating to anatomical gifts and the Wisconsin Donor Registry.

#### Finding of Emergency

The Department of Health Services finds that an emergency exists and that the adoption of an emergency rule

is necessary for the immediate preservation of the public health, safety and welfare. The facts constituting the emergency are as follows:

There are over 105,000 people in the United States on the national waiting list for organ transplants including 1,500 in Wisconsin. Due to the limited availability of organs for transplantation, 18 people die each day in the United States.

As part of Wisconsin's response to the need for increased organ and tissue donation, the department, as authorized under s. 157.06 (20), Stats., has established the Wisconsin Donor Registry (Donor Registry).

The Donor Registry will make it easier for Wisconsin residents to become donors and for procurement organizations to identify donors, and thus it should increase the supply of available organs and tissues, which may save the lives of persons awaiting transplant.

Promulgating the rules for the Donor Registry as emergency rules will enable department-authorized procurement organizations to quickly determine whether a person who is at or near death has a record of gift. In addition, the Donor Registry makes it possible for individuals to immediately make anatomical gifts.

The Donor Registry will become available for use by the public upon the effective date of these emergency rules and may be accessed by the public at [yesIwillwisconsin.com](http://yesIwillwisconsin.com). Substantially identical permanent rules are being proposed concurrent to this emergency order.

**Publication Date:** March 29, 2010  
**Effective Dates:** March 29, 2010 through August 25, 2010  
**Hearing Date:** May 5, 2010

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**Insurance (5)**

- 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 Dates:** October 2, 2009 through October 1, 2010  
**Hearing Date:** December 8, 2009

- 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 Dates:** October 10, 2009 through March 10, 2010  
**Extension Through:** May 9, 2010  
**Hearing Date:** December 3, 2009

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

**Finding of Emergency**

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

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

**Publication Date:** October 30, 2009  
**Effective Dates:** October 31, 2009 through March 29, 2010  
**Extension Through:** May 28, 2010  
**Hearing Date:** January 14, 2010

4. **EmR0945** — Rule adopted revising **section Ins 3.75**, relating to the 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:** January 7, 2010  
**Effective Dates:** January 8, 2010  
through June 6, 2010  
**Hearing Date:** May 5, 2010

5. **EmR1005** — A rule adopted creating **section Ins 3.36**, 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.

**Publication Date:** March 8, 2010  
**Effective Dates:** March 8, 2010  
through August 4, 2010

(subject to s. 632.895 (12m) (f), Stats.)

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### Natural Resources

#### *Fish, Game, etc., Chs. NR 1—*

**EmR1010** — A rule adopted amending **NR 10.104 (4) (b)**, relating to deer management unit population goals.

#### 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 state legislature has delegated rule-making authority to the department to manage the white-tailed deer herd to conserve it and to ensure citizens of

this state continued opportunities for good hunting. Population goal revisions in this rule order, and identical proposed permanent rules, are necessary in order to allow consideration of current recommendations from biologists and recent public input when setting the 2010 deer hunting season framework. Normal rule-making procedures will not allow establishment of revised population goals in time for use in setting the 2010 deer hunting season framework. Failure to modify population goals will result in a deer season framework and antlerless quotas that are based on goals established in 2005. Using the old goals would result in a deer season framework and permit levels considered unacceptable to the majority of the hunting public.

**Publication Date:** April 3, 2010  
**Effective Dates:** April 3, 2010 through  
August 30, 2010

**Hearing Date:** May 19, 2010

(See the Notice in this Register)

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### Natural Resources

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

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

#### Finding of Emergency

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

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

**Extension Through:** May 24, 2010

**Hearing Date:** April 15, 2010

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### Natural Resources

#### *Environmental Protection — Hazardous Waste Management, Chs. NR 600—*

**EmR1007** — A rule adopted revising **section NR 660.10**, relating to hazardous waste management.

#### Exemption From Finding of Emergency

Section 289.67 (2) (de), Stats., as created by 2009 Wisconsin Act 28 (the 2009–2011 biennial budget bill), requires the department to promulgate by rule definitions of “large quantity generator” and “small quantity generator” for purposes of the hazardous waste generator fees established by s. 289.67 (2) (b) 1., Stats., as amended by 2009 Wisconsin Act 28.

Section 9137 (2), a non-statutory provision in 2009 Wisconsin Act 28, authorizes the department to promulgate the required definitions using emergency rule making procedures, but is not required to provide evidence that promulgating a rule under that subsection as an emergency rule is necessary for the preservation of public peace, health, safety, or welfare and is not required to

**Publication Date:** March 17, 2010  
**Effective Dates:** March 17, 2010 through July 1, 2011  
**Hearing Date:** April 26, 2010

### 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 Dates:** October 3, 2009 through March 1, 2010  
**Extension Through:** April 30, 2010  
**Hearing Date:** November 16, 2009

### Public Instruction (2)

- EmR0933** — Rule adopted to create **Chapter PI 39**, relating to grants for tribal language revitalization.

#### Finding of Emergency

The Department of Public Instruction finds that an emergency exists and that the adoption of an emergency rule is necessary for the immediate preservation of the public welfare. The facts constituting the emergency are as follows:

The tribal language revitalization grant program under s. 115.745, Stats., was created under 2009 Wisconsin Act 28. The Act became effective June 30, 2009, and appropriated \$247,500 annually beginning in the 2009–10 school year. In order for school districts to develop applications and for the department to review the applications and grant awards in time for the program to operate in the second semester of the school year, rules must be in place as soon as possible to establish application criteria and procedures.

**Publication Date:** December 15, 2009  
**Effective Dates:** December 15, 2009 through May 13, 2010  
**Hearing Date:** January 15, 2010

- EmR0936** — Rule adopted to create **section PI 8.01 (4)**, relating to waiver of school hours.

#### Finding of Emergency

The Department of Public Instruction finds that an emergency exists and an emergency rule is necessary for the immediate preservation of the public welfare. The facts constituting the emergency are as follows:

2009 Wisconsin Act 42 requires the department to promulgate rules establishing 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. if school is closed for a reason specified in s. 115.01 (10) (a) 2. or 3. The Act became effective October 21, 2009. Therefore, rules must be in place as soon as possible to establish the waiver procedure and criteria for the current school year.

**Publication Date:** December 21, 2009  
**Effective Dates:** December 21, 2009 through May 19, 2010  
**Hearing Date:** February 1, 2010

### Public Service Commission

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

#### Finding of Emergency

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

**Publication Date:** September 11, 2009  
**Effective Dates:** September 11, 2009  
through February 7, 2010  
**Extension Through:** April 18, 2010  
**Hearing Date:** December 2, 2009

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

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

#### Exemption From Finding of Emergency

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

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

### Revenue (6)

1. **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 Dates:** October 1, 2009 through  
February 27, 2010  
**Extension Through:** April 28, 2010  
**Hearing Dates:** December 1 and 15, 2009

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

#### Finding of Emergency

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

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

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

**Publication Date:** October 19, 2009  
**Effective Dates:** October 19, 2009 through  
March 17, 2010  
**Extension Through:** May 16, 2010  
**Hearing Dates:** December 10 and 21, 2009

3. **EmR0935** — Rule adopted to create **section Tax 1.16**, relating to the financial record matching program.

#### 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 creation of the financial record matching program.

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

**Publication Date:** December 22, 2009  
**Effective Dates:** December 22, 2009  
through May 20, 2010  
**Hearing Date:** February 11, 2010



4. **EmR0943** — Rule adopted to revise **Chapter Tax 2**, relating to apportionment and nexus.

#### 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:

In 2009, the Wisconsin Legislature enacted Acts 2 and 28, both of which contained substantial changes to Wisconsin's corporation franchise and income tax laws. Most of these changes are effective retroactively to taxable years beginning on or after January 1, 2009. Emergency rules are needed to add certainty about the scope and application of the newly enacted statutes as soon as possible so that taxpayers can file their returns accordingly.

**Publication Date:** December 31, 2009  
**Effective Dates:** December 31, 2009 through May 29, 2010  
**Hearing Date:** February 25, 2010

5. **EmR1001** — Rule adopted revising **Chapter Tax 2**, relating to combined reporting for corporation franchise and income tax purposes.

#### Finding of Emergency

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

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

**Publication Date:** January 15, 2010  
**Effective Dates:** January 15, 2010 through June 13, 2010  
**Hearing Date:** February 25, 2010

6. **EmR1002** — Rule adopted to create **section Tax 1.17**, relating to the ambulatory surgical center assessment.

#### Exemption From Finding of Emergency

The legislature by Section 9143 (4u) of 2009 Wisconsin Act 28 provides an exemption from a finding of emergency for the adoption of the rule.

**Publication Date:** January 19, 2010  
**Effective Dates:** January 19, 2010 through June 16, 2010  
 (Subject to 2009 Wis. Act 28, Section 9143 (4u))  
**Hearing Date:** February 11, 2010

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### Veterans Affairs

- EmR0944** — Rule adopted to amend **section VA 2.02 (2)**, relating to the veterans tuition reimbursement program.

#### Finding of Emergency

The Wisconsin Department of Veterans Affairs 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 removal of the existing deadline for completing and receiving an application for the tuition fee reimbursement program has left the department unable to budget the available resources for this program to ensure maximum coverage for eligible veterans throughout the fiscal year. The department is requesting emergency rules to ensure applications can be processed in a responsive manner and to allow the department to properly manage the program's biennial budget and ensure the welfare of all eligible veterans. The emergency rule will address the need for an application deadline while the department completes the promulgation for a permanent rule for the program.

**Publication Date:** January 4, 2010  
**Effective Dates:** January 4, 2010 through June 2, 2010  
**Hearing Date:** March 10, 2010

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### Workforce Development

#### *Labor Standards, Chs. DWD 270–279*

- EmR1011** — Rule adopted to create **Chapter DWD 273**, relating to the regulation of traveling sales crews.

#### Finding of Emergency

The Department of Workforce Development 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 statute which provides for the regulation of traveling sales crews became effective on April 1, 2010. The Department has completed its work on the proposed administrative rule which implements the statute, and submitted the proposed rule in final form for legislative review on April 13, 2010. Putting the provisions of the proposed rule into effect during the legislative review period will allow the Department to take any enforcement action that might be needed if there are complaints during this period about the operation of traveling sales crews without the permits required by statute.

**Publication Date:** April 19, 2010  
**Effective Dates:** April 19, 2010 through September 15, 2010

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### Workforce Development (2)

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

1. **EmR0941** — Rule adopted to create **section DWD 290.20**, relating to the thresholds for the requirement of prevailing wage rates.

### Finding of Emergency

The Department of Workforce Development 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 most recent state budget legislation, 2009 Wisconsin Act 28, contained amendments to the state laws which require the payment of prevailing wage rates for work done on projects of public works and, in a new statute, for work done on private projects which receive more than \$1,000,000 of public direct financial assistance. The new provisions become effective on January 1, 2010.

The prevailing wage laws require that when a state agency or local governmental unit contracts for the erection, construction, remodeling, repairing, or demolition of a public works project it must obtain a prevailing wage rate determination from the Department of Workforce Development and require that the contractors and subcontractors on the project pay their employees in accordance with the wage rates established by the determination. Under the law as it existed before the enactment of 2009 Act 28, a prevailing wage rate determination was required for any project with an estimated cost of at least \$48,000 (for a single-trade project) or \$234,000 (for a multi-trade project). Act 28 changes these amounts to an estimated project cost of at least \$25,000. Act 28 has also created a new statute, s. 66.0904, Stats., which requires that a private developer obtain and comply with a prevailing wage rate determination for a private project that receives at least \$1,000,000 in direct financial assistance from a local governmental unit.

The state and local governmental units and private developers who may be subject to these new requirements of the prevailing wage laws need immediate guidance as to the manner in which the Department will apply the January 1, 2010 effective date to new projects. This rule provides that guidance by establishing that the new threshold requirements

will apply to projects for which a request for bids is issued or a contract is negotiated after January 1, 2010.

**Publication Date:** December 29, 2009  
**Effective Dates:** January 1, 2010 through May 30, 2010

2. **EmR0942** — Rule adopted to amend **section DWD 293.02**, relating to the adjustment of thresholds for payment and performance assurance bond requirements and affecting small businesses.

### Finding of Emergency

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

**Publication Date:** December 29, 2009  
**Effective Dates:** January 1, 2010 through May 30, 2010  
**Hearing Date:** March 31, 2010

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## Scope Statements

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### Agriculture, Trade and Consumer Protection

#### Subject

Creates Chapter ATCP 53, relating to the Farmland Preservation Program — Agricultural Enterprise Area (AEA) Designation.

#### Objectives of the Rule

This rule will designate Agricultural Enterprise Areas (AEAs) under s. 91.84, Wis. Stats. An AEA is a contiguous land area, devoted primarily to agricultural use, which is locally targeted for agricultural preservation and agricultural development. DATCP may designate AEAs based on local petitions. This rule may designate up to 15 AEAs totaling no more than 200,000 acres.

The designation of an AEA does not, by itself, control or restrict land use. However, farmers within a designated AEA are eligible to enter into voluntary farmland preservation agreements with DATCP under s. 91.69, Stats. Under a farmland preservation agreement, the farmer may claim income tax credits under s. 71.613, Stats., in return for keeping land in agricultural use. Under current law, *only* farmers located within an AEA are eligible to enter into farmland preservation agreements with DATCP.

#### Policy Analysis

AEAs are designed to preserve agricultural land and promote agricultural development, including agriculture-related business, investment and innovation. An AEA may be part of a broader local strategy to promote agriculture and related development.

The land area comprising an AEA must be located within a farmland preservation area designated in the county's certified farmland preservation plan. An AEA may include non-agricultural as well as agricultural land, but must be primarily devoted to agricultural use.

DATCP may designate an AEA based on a local petition. The petition must be signed by every affected county, town and municipality, and by at least 5 farm owners within the AEA (other interested persons, including other farmers, businesses and community groups, may also sign the petition). Other farms may be included within the AEA, and the owners of those farms may enter into farmland preservation agreements with DATCP, regardless of whether the farm owners signed the original petition to create the AEA.

A petition must comply with s. 91.86, Stats., and must show that the proposed AEA complies with applicable requirements under s. 91.84, Stats. This rule will designate AEAs selected by DATCP based on competing local petitions. DATCP will designate AEAs in consultation with a panel that includes independent reviewers. DATCP may choose among competing petitions, and may reject petitions as it deems appropriate.

#### Policy Alternatives

The AEA program is a key part of the Working Lands Initiative enacted in 2009 Wis. Act 28. If DATCP takes no

action to implement the AEA program, the full benefits of the Working Lands Initiative will not be realized. The Working Lands initiative is designed to preserve farmland, promote agricultural and related development, encourage sound land use planning, minimize land use conflicts, promote soil and water conservation, encourage agricultural investment, and help farms stay economically viable.

Under current law, only farmers in designated AEAs may enter into farmland preservation agreements with DATCP and obtain tax credits under those agreements. If DATCP fails to designate AEAs by rule, as contemplated by current law, farmers will be deprived of that opportunity. Local governments and agriculture-related businesses will also be deprived of a significant land use and business development tool.

#### Statutory Authority

Section 91.84, Stats.

#### Comparison with Federal Regulations

None.

#### Entities Affected by the Rule

##### *Farmers and Other Landowners*

This rule will benefit farmers and landowners in the designated AEA's. The designation of an AEA does not, by itself, control or restrict land use. However, an owner of farmland in an AEA may enter into a voluntary farmland preservation agreement with DATCP. Under a farmland preservation agreement, the landowner may claim income tax credits under s. 71.613, Stats., in return for keeping land in agricultural use and implementing soil and water conservation practices. An agreement remains in effect for 15 years, and applies only to the land covered by the agreement.

Designation of an AEA may be part of a broader local strategy to protect farmland and promote agricultural development. Designation may foster agricultural investment, and promote collaborative working relationships among landowners, agriculture-related businesses and local governments. It may also promote a more secure and attractive climate for agricultural continuity and agriculture-related investment. Farmland preservation and conservation practices may also benefit other landowners.

##### *Counties, Towns and Municipalities*

This rule will benefit counties, towns and municipalities in which AEAs are designated. DATCP will only designate AEAs in counties, towns and municipalities that affirmatively support the AEA designation (as indicated in the local petition requesting the AEA designation).

An AEA designation may be part of a broader local strategy to protect farmland and promote agricultural and related development. County and local governments can use the AEA designation to support local farmland preservation and development plans. County and local governments may adopt zoning ordinances, offer economic development incentives, and take other local actions to supplement the AEA and foster agricultural preservation and development.

### *Agriculture–Related Business*

This rule may benefit a wide range of agriculture–related businesses. This rule may benefit businesses, such as food processing and farm supply businesses, which may be located in or attracted to a designated AEA. By protecting and promoting agriculture, this rule may also benefit a wide range of agricultural service providers, regardless of whether those providers maintain facilities in the AEA. For example, this rule may benefit farm supply organizations, nutrient management planners, soil testing laboratories, agricultural engineers, construction contractors, food processors, testing laboratories, and agri–tourism interests.

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

DATCP estimates that it will use the equivalent of 0.5 FTE staff to develop this rule. This anticipates investigation and analysis, rule drafting, preparing related documents, holding public hearings and communicating with affected persons and groups. DATCP will use existing staff to develop this rule.

DATCP may not begin drafting this rule until the Board of Agriculture, Trade and Consumer Protection (Board) approves this scope statement. The Board may not approve this scope statement sooner than 10 days after this scope statement is published in the Wisconsin Administrative Register. If the Board takes no action on the scope statement within 30 days after the scope statement is presented to the Board, the scope statement is considered approved. Before DATCP holds public hearings on this rule, the Board must approve the hearing draft. The Board must also approve the final draft rule before the department adopts the rule.

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

### **Subject**

Revises Chapter ATCP 157, relating to the honey standard of identity, deceptive sales of products represented as “honey,” and the Wisconsin certified honey program.

### **Objectives of the Rule**

This rule will clarify and facilitate the enforcement of current laws, including ss. 97.02, 97.03 and 97.10 (1), Stats., which prohibit the sale of adulterated or misbranded honey. This rule will also implement newly–enacted 2009 Wisconsin Act 169 which, in conjunction with other laws, requires DATCP to do all of the following:

- Establish a legal *standard of identity* for all honey sold in Wisconsin. Under Act 169, DATCP must establish a legal standard that is consistent with the model standard contained in the international *Codex Alimentarius* (2001 edition published by the United Nations Food and Agriculture Organization and the World Health Organization).
- Prohibit the sale in this state, as “honey,” of any product that fails to meet the honey standard of identity.
- Create a “Wisconsin Certified Honey” program. A seller may advertise, label and sell a product as “Wisconsin Certified Honey” if all of the following apply:
  - The product meets the honey standard of identity.
  - Laboratory testing, prescribed by DATCP rule, indicates that the product meets the honey standard of identity.
  - The seller reports the results of the required laboratory tests to DATCP.
  - The product is produced in this state.

### **Policy Analysis**

#### *Adopt a Standard of Identity for Honey*

Currently, there is no detailed state or federal standard of identity for honey. The international *Codex Alimentarius* includes a detailed model standard of identity for honey. The *Codex* model standard specifically prohibits the addition of non–honey adulterants, and includes standards for moisture content, sugar level and more. Under s. 100.187, as created by 2009 Wis. Act 169, this rule must adopt the *Codex* model standard as the legal standard of identity for all honey sold in Wisconsin.

#### *Prohibit the Sale, as “Honey,” of any Product that Fails to Meet the Identity Standard*

This rule will prohibit any person from selling in this state, as “honey,” any product that fails to meet the honey standard of identity established by this rule.

Some products sold as “honey” have been shown to contain a variety of non–honey ingredients such as rice syrup, high fructose corn syrup and other artificial sweeteners obtained from sources other than honey. Dangerous contaminants such as the antibiotic chloramphenicol have also been detected in samples of honey imported from foreign countries. Approximately 2/3 of the honey consumed in the United States is imported from other countries.

Current state laws, under s. 97.02, 97.03 and 97.10(1), Stats., prohibit the sale of adulterated or misbranded food. A clear standard of identity will, in the case of adulterated or misbranded honey, facilitate proof of violations. Under current law, DATCP may investigate potential law violations, and may inspect, sample and test food products for compliance. DATCP may seek to prosecute law violations in court, under ss. 97.72 and 97.73, Stats. DATCP may also issue holding orders and stop sale orders under s. 97.12, Stats., to prohibit the sale of adulterated or seriously misbranded products.

Section 100.183, Stats., currently prohibits deceptive representations in the advertising or sale of food. A seller who represents, as “honey,” a product that fails to meet an applicable honey standard of identity could be charged with a violation of this statute. DATCP may investigate potential violations. DATCP may seek to prosecute law violations in court, under s. 100.26(1), Stats.

Section 100.187, as created by 2009 Wis. Act, prohibits a person from selling a product as “honey” unless the product complies with the standard of identity that DATCP is required to establish under this rule. DATCP may investigate potential violations and may bring a court injunction action against a violator. In addition, any person who suffers (and can prove) damages as a result of the violation may bring a private lawsuit against the violator. The plaintiff may recover any proven damages (or \$1,000, whichever is greater), plus reasonable attorney fees, from the violator.

#### *Create a “Wisconsin Certified Honey” Program*

This rule will create a “Wisconsin Certified Honey” program, as required by s. 100.187, Stats. (created by 2009 Wis. Act 169). Under such a program, a seller may advertise, label and sell a product as “Wisconsin Certified Honey” if all of the following apply:

- The product meets the honey standard of identity created by this rule.
- Laboratory testing, prescribed by this rule, indicates that the product meets the honey standard of identity.
  - This rule will specify minimum testing requirements, which may include requirements related to the scope

and frequency of product sampling and testing, the types of laboratory tests to be performed on test samples, and the sampling and laboratory test methods to be used.

- This rule may specify minimum qualifications for laboratories conducting tests required under this rule. These may include laboratory certification requirements under s. 93.12, Stats., and ch. ATCP 77, Wis. Adm. Code, if testing includes public health testing.
- The results of the required laboratory tests are reported to DATCP. This rule may identify the person responsible for reporting (seller, or laboratory operator on behalf of seller), and the required method, frequency and timeliness of reporting.
- The product is produced in this state. This rule may interpret what is meant by the phrase “produced in this state.”

### Policy Alternatives

DATCP is required to adopt rules to implement 2009 Wisconsin Act 169, so its policy options are limited. However, DATCP does have some latitude to determine compliance details under the “Wisconsin Certified Honey” program (testing requirements, reporting requirements, definition of “Wisconsin-produced,” etc.).

### Statutory Authority

Sections 93.07 (1), 97.09 and 100.187, Stats.

### Comparison with Federal Regulations

Currently, there is no federal standard of identity of honey. Current federal laws, like current Wisconsin laws, prohibit the sale of adulterated or misbranded food. The United States Food and Drug Administration administers most of the applicable federal laws, but has not given any significant attention or priority to honey.

### Entities Affected by the Rule

#### *Honey Producers and Sellers.*

- Sellers of Wisconsin-produced honey may participate in the “Wisconsin Certified Honey” program created by this rule (participation is voluntary). Participation may add value for some sellers, but testing and reporting requirements will apply.
- Persons who sell pure honey in this state (regardless of whether the pure honey is produced in this state or elsewhere) may be relieved of unfair competition from persons who deceptively sell blended or adulterated products as “honey.”
- This rule will not establish specific testing requirements for “honey,” other than “Wisconsin Certified Honey.” However, sellers will be subject to potential prosecution or private lawsuits if they sell, as “honey,” a blended or adulterated product that fails to meet the honey standard of identity under this rule. Sellers may need to strengthen their current quality controls (or supplier quality controls) to ensure that their products meet the honey standard of identity or are labeled as something other than “honey.”

#### *Honey Consumers.*

This rule will help protect consumers against adulterated or misbranded products that are deceptively represented as “honey,” and will help consumers make better product and value comparisons. The “Wisconsin Certified Honey”

program may help consumers who prefer to buy high quality Wisconsin-produced products.

### Estimate of Time Needed to Develop the Rule

DATCP estimates that it will use the equivalent of .3 FTE staff to develop and adopt this rule (does not include subsequent rule administration or enforcement). This includes preliminary study and analysis; rule drafting; preparing related documents; coordinating advisory committee input if any; holding public hearings and responding to issues raised at hearings; coordinating DATCP Board and legislative review, coordinating rule referral and publication, and communicating with affected persons and groups. DATCP will use existing staff to develop and adopt this rule.

DATCP may not begin drafting this rule until the Board of Agriculture, Trade and Consumer Protection (Board) approves this scope statement. The Board may not approve this scope statement sooner than 10 days after this scope statement is published in the Wisconsin Administrative Register. If the Board takes no action on the scope statement within 30 days after the scope statement is presented to the Board, the scope statement is considered approved. Before DATCP holds public hearings on this rule, the Board must approve the hearing draft. The Board must also approve the final draft rule before the department adopts the rule.

## Children and Families

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

### Subject

Revises Chapter DCF 101, relating to Wisconsin Works subsidized private sector employment.

### Policy Analysis

Section 49.147 (4m), Stats., as created by 2009 Wisconsin Act 28, provides that the department shall establish and administer a subsidized private sector employment program for Wisconsin Works (W-2) participants. Participants will work in projects that the department determines serve a useful public purpose or projects in which the cost is partially or wholly offset by the revenue generated. Participants will be paid minimum wage for each hour worked and may participate in a project for a maximum of 6 months, with an opportunity for an extension.

The Department may begin operating a subsidized private sector employment program only if the program is structured so that all of the following occur:

- The total cost for a participant in the program does not exceed what the total cost would be for the participant in a W-2 community service job placement.
- Cash flow to a participant in the subsidized private sector employment program, including the advance payment of any tax credit, will not be less than what the cash flow would be to the participant in the community service job program.
- The Department determines that administering the program as provided in s. 49.147 (4m), Stats., is permitted under federal law or under a waiver approved by the federal Department of Health and Human Services.

The proposed rules will implement a subsidized private sector employment program for W-2 participants. The Department has determined that administering the program as provided in s. 49.147 (4m), Stats., is permitted under federal law.

**Statutory Authority**

Sections 49.147 (4m) and 227.11 (2), Stats.

**Comparison with Federal Regulations**

Under 45 CFR Part 261, Ensuring that Recipients Work, a parent receiving assistance under Temporary Assistance to Needy Families (TANF) must engage in work activities when a state has determined that the individual is ready to engage in work. Subsidized private sector employment is a work activity. Subsidized private sector employment means employment in the private sector for which the employer receives a subsidy from TANF or other public funds to offset some or all of the wages and costs of employing an individual.

**Entities Affected by the Rule**

W-2 agencies, W-2 participants, and entities that are work sites for the program

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

150 hours.

**Contact Information**

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**Employee Trust Funds****Subject**

Revises Chapter ETF 20, relating to the application of Section 401(a)(17) of the Internal Revenue Code (IRC).

**Objectives of the Rule**

ETF seeks to clarify how the Department administers Section 401(a)(17) of the Internal Revenue Code as provided in s. 40.03 (2) (t), Stats.

**Policy Analysis**

ETF is responsible for ensuring that the Wisconsin Retirement System (WRS) complies with all applicable provisions of the IRC. One such provision is Section 401(a)(17), which limits the annual compensation on which a WRS participant's benefits and contributions can be based. The purpose of this rule is to codify how ETF applies the 401(a)(17) limits to partial years of earnings, and how "weighted average" 401(a)(17) limits are applied to participants whose benefits are based on fiscal year earnings (July 1 – June 30) rather than calendar year earnings.

**Statutory Authority**

Sections 40.03 (2) (i), (t) and 227.11 (2), Stats.

**Comparison with Federal Regulations**

Section 401(a)(17) of the IRC limits the annual compensation on which a WRS participant's benefits and contributions can be based to a specific dollar amount, which the Internal Revenue Service adjusts annually according to changes in the cost of living index. None of the contemplated rule changes violate or conflict with IRC provisions.

**Entities Affected by the Rule**

The new rules will affect WRS participating employees whose annual WRS earnings exceed the earnings limitations in Section 401(a)(17) of the IRC and whose benefits are calculated based on a fiscal year annual earnings period, and

participating employees who have partial years of earnings that exceed those earnings limitations. This rule will also affect the WRS employers by which these participants are employed.

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

State employees will spend an estimated 35 hours to develop these rules.

**Natural Resources**

*Fish, Game, etc., Chs. NR 1—*  
(DNR # WM-21-10, WM-22-10(E))

**Subject**

Revises Chapter NR 10, pertaining to seasons and daily bag limits for migratory game bird hunting.

**Policy Analysis**

This rule order will establish the 2010 migratory bird hunting seasons. In late July Department staff attend the Mississippi Flyway Council (MFC) Technical and Council meetings where they will receive proposed season framework options from the U.S. Fish and Wildlife Service (USFWS). Staff will then work with other states in our Flyway to develop recommendations that are voted upon by the MFC. Proposals that are passed at the MFC meeting are forwarded to the FWS for consideration by the Service Regulations Committee (SRC) in late July. Department staff will contact the FWS following the SRC meeting to obtain the latest season recommendations.

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

**Statutory Authority**

Sections 29.014, 29.041, 29.192 and 227.11, Stats.

**Comparison with Federal Regulations**

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

**Entities Affected by the Rule**

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

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

Approximately 500 hours will be needed by the department prior to and following the hearings.

**Contact Information**

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**Natural Resources*****Environmental Protection — General, Chs. NR 100—***

(DNR # WT-29-10)

**Subject**

Revises Chapters NR 108, 110 and 150, relating to sewerage system plan review modifications for workload reduction.

**Objectives of the Rule**

The Department of Natural Resources proposes to comprehensively review current code requirements and procedures for the planning and design of sewerage systems, with the primary goal of identifying workload reduction measures associated with program implementation.

Although the primary goal is to re-write the rules for improved effectiveness and efficiency (which may involve reducing the overall extent of regulation), there are also new or emerging issues that will be considered that may result in proposals for new or modified requirements.

**Policy Analysis**

The majority of ch. NR 110 technical standards have not been revised over the past 25 years so the code will be critically examined in order to re-structure is more effectively and improve process efficiency. Chapter NR 110 contains extensive technical requirements that apply broadly. Significant staff time is invested just to maintain and support the process requirements. Section 281.41(2), Stats., allows the department to promulgate rules which may modify the required scope and detail of submitted plans or to exempt certain types of systems from plan review. As a result, both review procedures and the overall content of the codes may be changed.

At this time it is uncertain what specific modifications may be proposed but it is expected that policy changes, such as exempting certain project types from review, could occur. Chapter NR 108 contains the definition of a "Reviewable Project" and the requirements and procedures for plan submittals. The code needs revision to change steps in the review procedures, or plan format and content, or to change which project types are subject to plan review.

The environmental review procedures in ch. NR 150 would need to be correspondingly revised if certain systems or projects are exempted from plan review. Other ch. NR 150 environmental review procedure changes for specific plan review actions may be proposed as a measure to simplify plan reviews.

The goal of considering changes is efficient use of state and local government staff resources to focus on today's priority water quality issues.

**Statutory Authority**

Sections 1.11, 227.11 (2), 281.41, Wis. Stats.

**Comparison with Federal Regulations**

Sewerage system plan review and approval is required per s. 281.41, Wis. Stats., but this statute also allows certain types of systems to be exempted by rule. Certain plan reviews are, however, required as part of the financial assistance statutory requirements of Subchapter V, ch. 281, Statutes. The USEPA also approves the plan review program as part of their program delegation agreement with WDNR. Any proposed code revisions will be coordinated with the USEPA and the Department's Clean Water Fund program. Draft USEPA guidelines affecting wet weather flow issues at sewerage systems will be considered in the revision process.

**Entities Affected by the Rule**

The rule revisions would affect owners of sewerage systems regulated under ch. NR 110. Wastewater systems defined as "private sewage systems" per ch. 145, Wis. Stats., and industrial waste treatment facilities are not regulated by chs. NR 108 and NR 110. The owners of "sewerage systems" are primarily municipalities but any other non-municipally owned sewerage system that treats non-industrial wastewater is also subject to ch. NR 110 and would be affected. These types of facilities can include development such as resorts, recreational facilities, highway oriented commercial facilities, and institutions such as hospitals, prisons and schools.

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

Nine months to Green Sheet for hearing authorization, with hearings in January 2011 and an anticipated effective date of August, 2011.

**Contact Information**

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**Natural Resources*****Environmental Protection — Wisconsin Pollutant Discharge Elimination System, Chs. NR 200—***

(DNR # WT-28-10)

**Subject**

Revises Chapter NR 211, relating to general pretreatment requirements.

**Objectives of the Rule**

Chapter NR 211, General Pretreatment Requirements, will be amended to conform with federal rules found at 40 CFR 403. Changes to other rule chapters that are germane to the proposed revisions may be proposed.

**Policy Analysis**

The purpose of this action is to revise NR 211 to conform to changes in federal pretreatment standards. NR 211 establishes wastewater pretreatment standards and requirements for industrial users of publicly owned treatment works (POTWs). The proposed revisions will reflect recent

modifications to the federal General Pretreatment Regulations at 40 CFR 403. This action will revise Wisconsin Administrative Code with no changes in the existing policy of maintaining consistency with federal regulations.

The majority of revisions will be based on EPA's "Pretreatment Streamlining Rule," (70 FR 60134 (10/14/2005).) and are intended to reduce the regulatory burden for EPA, WDNR, the delegated POTWs, and the regulated industries without adversely affecting environmental protection. The proposed revisions will allow for reductions in sampling and inspection frequencies at certain smaller industries with good compliance records, waive monitoring requirements for pollutants that are not present, allow for greater flexibility in sampling procedures as well as other minor miscellaneous changes.

### Statutory Authority

The work is authorized by Wis. Stat. ss. 283.11 and 283.21 (2), and is expected to take place during spring of 2010. This action will bring NR 211 into compliance with federal rules which have been codified in 40 CFR 403.

### Comparison with Federal Regulations

The Department intends to make the rules consistent with federal regulations.

### Entities Affected by the Rule

Affected groups include: POTWs, and industries that discharge wastewater into POTWs.

### Estimate of Time Needed to Develop the Rule

The department estimates that approximately 200 hours of existing staff time will be needed to develop these recommended rule changes.

### Contact Information

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## Natural Resources

*Environmental Protection—General, Chs. NR 100—  
Environmental Protection—Water Supply, Chs. NR 800—  
(DNR # DG-24-10, DG-25-10, DG-26-10)*

### Subject

Revises Chapter NR 142 and creates Chapters NR 850, 854, 856, 858, 860 and 864, relating to the Great Lakes—St. Lawrence River Basin Water Resources Compact.

### Objectives of the Rule

On May 27, 2008 Governor Doyle signed 2007 Wisconsin Act 227, which contains Wisconsin's ratification of the Great Lakes—St. Lawrence River Basin Water Resources Compact (Compact); regulates water use in the Wisconsin portion of the Great Lakes Basin; implements the Compact in Wisconsin, and establishes other state water use programs.

The proposed set of administrative rules to implement 2007 Wisconsin Act 227 will include: a rule to implement a statewide water conservation and efficiency program; a rule to implement a statewide water use registration and reporting

requirement; a rule to implement a statewide water supply service area planning program; a rule to implement a water use permitting system in the Great Lakes basin, along with a rule to determine water loss from consumptive use; and a rule related to public participation for water use permitting and diversion applications. Affected and proposed chapters of the Wisconsin Administrative Code include: NR 142, NR 850, NR 854, NR 856, NR 858, NR 860, and NR 864.

In addition, the 2009–11 biennial budget (2009 Wisconsin Act 28), directs the Department to promulgate a rule specifying a fee on persons who withdraw more than 50,000,000 gallons of water per year from the Great Lakes basin. Great Lakes basin withdrawals include withdrawals from waters of the state—surface water and groundwater—within the land area of the State that drains to Lake Michigan or Lake Superior. Persons who withdraw more than 50,000,000 gallons per year within the Great Lakes basin are likely to include primarily public water systems, power companies, and other large industrial or commercial facilities. Revenue generated from the fee will be deposited to a program revenue appropriation used to fund Compact implementation. Revenue to the appropriation will also include that generated from a statutory fee of \$125 to be charged annually to any person—statewide—with a water supply system capable of withdrawing an average of 100,000 gallons per day or more in any 30-day period. Act 28 directed that the provisions of the Act related to these fees takes effect on January 1, 2011.

The earlier statement of scope is amended to include information related to promulgating a rule related to the above-mentioned fee, and to update you on the revised schedule for promulgating the rules necessitated by 2007 Wisconsin Act 227.

### Policy Analysis

Act 227 expanded the state's authority to manage water quantity throughout the state. Act 227 directs the Department to develop and implement several new requirements related to water use in the state, including:

- Statewide registration and annual reporting for water systems with the capacity to withdraw an average of 100,000 gallons of water per day (GPD) or more in any 30-day period;
- Developing and implementing a statewide water conservation and efficiency program;
- Developing and implementing a water use permitting program within the Great Lakes basin for all water systems that withdraw an average of 100,000 GPD or more in any 30-day period;
- Establishing a water supply service area planning process for public water systems serving a population of 10,000 or more;
- Instituting a public participation process for requests for diversions of Great Lakes water and for certain water use permits;
- Developing a database of water use information and publishing a report of the information on a regular basis.

The proposed set of rules outlined above will address all elements of the Compact implementing legislation that mandate rule development.

### Statutory Authority

Sections 281.343, 281.345, 281.346, and 281.348, Wis. Stats.



**Comparison with Federal Regulations**

There are no existing federal requirements regulating water use in the Great Lakes basin comparable to the Compact. The Compact was specifically negotiated to address weaknesses in prior federal law (specifically the Water Resources Development Act, 42 USC 1962d – 20.) Nothing in the Compact contradicts 42 USC 1962d – 20.

**Entities Affected by the Rule**

Any person with a water supply system (e.g. well(s) or surface water withdrawal) with the capacity to withdraw an average of 100,000 gallons–per–day or more in any 30–day period will be affected by these rules. Any person with a water supply system that actually withdraws an average of 100,000 gallons–per–day or more in any 30–day period will have to annually report water usage; and, if the system is located in the Great Lakes basin, the person must have a water use permit on or before December 8, 2011. In addition, as volumes of withdrawals increase, regulatory reviews of the application

for withdrawal become more stringent. Operators of public water supply systems serving a population of 10,000 or more will be affected by the water supply service area planning rule. Public water supply systems, power producers, and industrial or commercial operations using large volumes of water will be affected by the fee rule. Finally, the rules—particularly the water conservation and efficiency rule—will be of interest to a variety of groups concerned with sustainable water use.

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

4000 hours.

**Contact Information**

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# Submittal of Rules to Legislative Council Clearinghouse

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

## **Commerce**

### ***Financial Resources for Businesses and Communities, Chs. Comm 100—***

#### **CR 10–041**

On April 13, 2010, the Department of Commerce submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

#### **Analysis**

The proposed order creates Chapter Comm 137, relating to reallocations for recovery zone facility bonds.

#### **Agency Procedure for Promulgation**

A public hearing is required and will be held on May 13, 2010. The Division of Business Development is responsible for promulgation of the rules.

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## **Natural Resources**

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

#### **CR 10–042**

On April 9, 2010, the Department of Natural Resources submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

#### **Analysis**

The proposed order revises Chapter NR 45, relating to the use of department properties.

#### **Agency Procedure for Promulgation**

Public hearings will be held on May 17 and 18, 2010.

## **Contact Information**

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Bureau of Legal Services  
Phone: (608) 267–7456

## **Transportation**

### **CR 10–040**

On April 13, 2010, the Department of Transportation submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

#### **Analysis**

The proposed order revises Chapter Trans 101, relating to the demerit point system and graduated driver license restriction extensions.

#### **Agency Procedure for Promulgation**

A public hearing is required and will be held on May 20, 2010. The Division of Motor Vehicles, Citations and Withdrawals Section is primarily responsible for promulgation of the rules.

#### **Contact Information**

Julie A. Johnson, Paralegal  
Phone: (608) 267–3703  
Email: Julie1.Johnson@dot.wi.gov

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## Rule-Making Notices

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### Notice of Hearing

#### Commerce

#### *Financial Resources for Businesses and Communities, Chs. Comm 100—*

#### EmR1006, CR 10–041

NOTICE IS HEREBY GIVEN that pursuant to section 560.033 of the Statutes, the Department of Commerce will hold a public hearing on emergency rules and proposed permanent rules to create Chapter Comm 137, relating to reallocations for recovery zone facility bonds, and affecting small businesses.

#### Hearing Information

The public hearing will be held as follows:

<u>Date and Time:</u>	<u>Location:</u>
<b>May 13, 2010</b>	Thompson Commerce Center
Thursday	Third Floor
At 10:00 a.m.	201 West Washington Avenue Madison, Wisconsin

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

#### Appearances at Hearing and Submittal of Written Comments

Interested persons are invited to appear at the hearing and present comments on the emergency rules and proposed permanent rules. Persons making oral presentations are requested to submit their comments in writing, via e-mail. Persons submitting comments will not receive individual responses. The hearing record on this rulemaking will remain open until **May 17, 2010**, to permit submittal of written comments from persons who are unable to attend the hearing or who wish to supplement testimony offered at the hearing.

E-mail comments should be sent to [sam.rockweiler@wi.gov](mailto:sam.rockweiler@wi.gov). If e-mail submittal is not possible, written comments may be submitted to Sam Rockweiler, Department of Commerce, Division of Environmental and Regulatory Services, P.O. Box 14427, Madison, WI 53708–0427.

#### Copies of Emergency Rules and Proposed Permanent Rules

The emergency rules and proposed permanent rules and an analysis of the rules are available on the Internet by entering “Comm 137” in the search engine at the following Web site: <https://health.wisconsin.gov/admrules/public/Home>. Paper copies may be obtained without cost from Sam Rockweiler at the Department of Commerce, Division of Environmental and Regulatory Services, P.O. Box 14427, Madison, WI

53707, or at [sam.rockweiler@wi.gov](mailto:sam.rockweiler@wi.gov), or at telephone (608) 266–0797, or at Contact Through Relay. Copies will also be available at the public hearing.

#### Analysis Prepared by Department of Commerce

##### *Statutes interpreted*

Section 560.03, Stats.

##### *Statutory authority*

Sections 227.11 (2) (a) and 560.033, Stats.

##### *Explanation of agency authority*

Section 227.11 (2) (a) of the Statutes authorizes the Department to promulgate rules interpreting the provisions of any Statute administered by the Department. Section 560.033 (1) of the Statutes directs the Department to establish by rule, a system for reallocating waived allocations for recovery zone facility bonds — as defined under 26 USC 1400U–3(b)(1) — to the authorities and local governmental units which are defined in section 66.1104 (1) (a) and (b) of the Statutes. Section 560.033 (3) of the Statutes authorizes the Department to place any condition on these reallocations that the Department deems is in the best interest of the State.

##### *Related statute or rule*

Chapter Comm 113 contains rules relating to allocating volume cap on tax-exempt private activity bonds for manufacturing and housing, pursuant to 26 USC 146.

Chapter Comm 136 establishes a procedure by which the Governor can designate tax-exempt Midwestern disaster area bonds that can be issued by, or on behalf of, the State or any political subdivision thereof, under the federal Heartland Disaster Tax Relief Act of 2008. These are private activity bonds that are designed to facilitate the recovery and rebuilding of areas which were declared major disaster areas in 2008.

##### *Plain language analysis*

The rules in this order establish a system for reallocating all of the federal recovery zone facility bond allocations that are not used by June 1, 2010, to the authorities and local governmental units which are defined in section 66.1104 (1) (a) and (b) of the Statutes, as created in 2009 Wisconsin Act 112. This reallocation system includes deadlines that are designed to result in complete use of the federal bond allocation prior to its expiration on December 31, 2010.

##### *Comparison with federal regulations*

Current federal law, including the American Recovery and Reinvestment Act of 2009 (ARRA), authorizes certain local governments to issue several different types of tax-exempt bonds, including recovery zone facility bonds. The amount of bonds that may be issued is limited. Through each State, the ARRA allocates to counties, and to cities with a population of at least 100,000, the limited amount of recovery zone facility bonds that may be issued. The ARRA also authorizes these counties and cities to then waive some or all of their allocation, in which case the State in which the local units are located may reallocate the waived allocation to other units of government in that State.

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

Minnesota, Illinois, Iowa and Michigan have not yet promulgated any rules relating to counties or cities waiving allocations for recovery zone facility bonds. As a result, each county or city within those States may have developed their own requirements or guidelines for utilizing their portion of the State's recovery zone facility bond allocation.

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

The data and methodology for developing these rules were derived from and consisted of (1) reviewing 2009 Wisconsin Act 112 and the corresponding criteria in section 1401 of the federal American Recovery and Reinvestment Act of 2009, Public Law 111-5; and (2) incorporating applicable best practices the Department has developed in administering similar programs for economic development and business development.

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

The primary documents that were used to determine the effect of the rules on small business were 2009 Wisconsin Act 112 and the corresponding criteria in section 1401 of the federal American Recovery and Reinvestment Act of 2009.

No economic impact report was prepared.

***Small Business Impact***

The rules are expected to result in only beneficial effects on small business because the rules only address tax-exempt private activity bonds that allow businesses to finance certain depreciable capital projects in areas which are designated by the bond issuers as having significant poverty, unemployment, rate of home foreclosures, or general distress.

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

***Initial regulatory flexibility analysis***

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

Any business choosing to pursue tax-exempt private activity bonds that are designed to finance certain depreciable capital projects in areas which are designated by the bond issuers as having significant poverty, unemployment, rate of home foreclosures, or general distress.

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

An application form prescribed by the Department must be completed and submitted to the Department by any authority or local governmental unit, as defined in section 66.1104 (1) (a) and (b) of the Statutes, that desires to receive a reallocation of the bonding authority.

*Types of professional skills necessary for compliance with the rules.*

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

*Rules have a significant economic impact on small businesses?*

No.

***Environmental Impact***

The Department has considered the environmental impact of the proposed rules. In accordance with chapter Comm 1, the proposed rules are a Type III action. A Type III action

normally does not have the potential to cause significant environmental effects and normally does not involve unresolved conflicts in the use of available resources. The Department has reviewed these rules and finds no reason to believe that any unusual conditions exist. At this time, the Department has issued this notice to serve as a finding of no significant impact.

***Fiscal Estimate******Assumptions used in arriving at fiscal estimate***

Although the rules will result in review of documentation relating to reallocations for recovery zone facility bonds, the time needed for these reviews is expected to be spent by current employees. Therefore, the proposed rules are not expected to have any significant fiscal effect on the department.

The proposed rules are not expected to impose any significant costs on the private sector because the rules address submittal of documentation, and other activities, only by governmental units that choose to pursue obtaining recovery zone facility bonding authority which is reallocated by the Department.

***State fiscal effect***

None.

***Local government fiscal effect***

None.

***Long-range fiscal implications***

None known.

***Agency Contact Person***

Steven Sabatke  
Wisconsin Department of Commerce  
Bureau of Business Finance and Compliance  
P.O. Box 7970  
Madison, WI, 53707-7970  
Phone: (608) 267-0762  
Email: Steven.Sabatke@Wisconsin.gov

***Notice of Hearing***

(2nd Hearing)

***Health Services***

***Medical Assistance, Chs. DHS 101—***

***Health, Chs. DHS 110—***

***EmR0932, CR 09-107***

NOTICE IS HEREBY GIVEN that pursuant to ss. 49.45 (2) (a) 11., (10) and (42) and 227.11 (2), Stats., the Department of Health Services will hold a **second** public hearing on emergency and proposed permanent rules to consider revisions to Chapters DHS 105, 106 and 133 (no additional changes are being proposed for chs. DHS 106 and 133), relating to Medical Assistance certification for personal care agencies and providers, and affecting small businesses.

**The Department of Health Services is conducting a second public hearing on chs. DHS 105, 106 and 133 to give the public an opportunity to comment on additional proposed revisions to s. DHS 105.17 (1f) and (5) (ar). The proposed provisions would, under certain circumstances, require separate approval of a branch office from the parent agency and would require counties, Independent Living Centers (ILC) and federally recognized American Indian tribes or bands to provide identifying information about the personal care provider and contract agencies.**

For further explanation, see the analysis prepared by the Department of Health Services, listed in the “Plain language analysis” and the “Analysis and supporting documents used to determine effect on small business” sections in this public hearing notice.

No additional changes or amendments have been made to the initial proposed rule. The Department will respond to comments received from the February 3, 2010, hearing and the second public hearing scheduled for May 12, 2010, at one time, in one document. Comments received from both public hearings will be given equal consideration. Changes made to the proposed rule by the Department in response to public comments will be published on the Wisconsin Administrative Rules website.

### Hearing Information

#### Date and Time:

May 12, 2010  
10:00 a.m. – 12:00 p.m.

#### Location:

Dept. of Health Services  
Wilson State Office Building  
1 West Wilson Street  
Room 950B  
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 Pat Benesh at (608) 264-9896. You must make your request at least 7 days before the activity.

#### *Spanish*

DHS 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 alternativo, usted puede pedir asistencia para participar en los programas comunicándose con Pat Benesh al número (608) 264-9896. Debe someter su petición por lo menos 7 días de antes de la actividad.

#### *Hmong*

DHS yog ib tus tswv hauj lwm thiab yog ib qhov chaw pab cuam nas 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 Pat Benesh ntawm (608) 264-9896. Koj yuav tsum thov qhov kev pab yam tsawg kawg 7 hnub ua ntej qhov hauj lwm ntawd.

### Copies of the Proposed Rules

A copy of the rules may be obtained from the department at no charge by downloading the documents from [www.adminrules.wisconsin.gov](http://www.adminrules.wisconsin.gov) or by contacting:

Pat Benesh, Quality Assurance Program Spec-Senior  
Division of Quality Assurance  
1 West Wilson St., Room 534  
Madison, WI 53701  
Phone: 608-264-9896  
Fax: 608-267-0352  
Email: [patricia.benesh@wisconsin.gov](mailto:patricia.benesh@wisconsin.gov)

### Submittal of Written Comments

Comments may be submitted to the agency contact person listed above or to the Wisconsin Administrative Rules Website at [www.adminrules.wisconsin.gov](http://www.adminrules.wisconsin.gov) until May 13, 2010, 4:30 p.m.

### Analysis Prepared by the Department of Health Services

#### *Statute interpreted*

Sections 49.45 (42) (c) and (d) 3., Stats.

#### *Statutory authority*

Sections 49.45 (2) (a) 11., (10) and (42) and 227.11 (2), Stats.

#### *Explanation of agency authority*

Section 49.45 (2) (a) 11., Stats., authorizes the department to establish criteria for certification of providers of Medical Assistance, certify providers who meet certification criteria and promulgate rules to implement the statute.

Section 49.45 (10), Stats., authorizes the department to promulgate rules consistent with its duties in administering Medical Assistance, including its duties relating to reimbursement for personal care services by certified providers.

Section 49.45 (42) (c), Stats., allows the department to charge a fee to certify a provider of personal care services that is not an independent living center (ILC), county department, a federally recognized American Indian tribe or band in Wisconsin or a licensed home health agency.

Section 227.11 (2) (a), Stats., allows agencies to promulgate rules interpreting the provision of any statute enforced or administered by the agency if the agency considers it necessary to effectuate the purpose of the statute.

#### *Related statute or rule*

Chapters DHS 101, 106, and 107.

#### *Plain language analysis*

The department proposes standards by which to certify freestanding personal care agencies, county departments, home health agencies, federally recognized American Indian tribe or band in Wisconsin, and ILCs as personal care providers. The proposed rules includes certification requirements for persons that want to directly bill and be reimbursed by the Medical Assistance program for the personal care services provided to recipients of Medical Assistance. The rules include new provisions that all personal care providers must follow. The new provisions are:

- Provide employee orientation, evaluation and health screening, including tuberculosis.
- Train staff regarding infection control and prevention.
- Provide client rights, including determination of client appropriateness for service, provisions of rights and notice of how to file a complaint with the department.
- Require a service agreement and a notice and criteria for discharge.
- Promptly notify the physician of a significant change in condition.

Since the first public hearing that was held on February 3, 2010, the Department made additional proposed revisions to s. DHS 105.17.

Based on experience with other programs that provide services to clients statewide, the Department proposes under s. DHS 105.17 (5) (ar) to require separate approval of branch

offices if the Department determines that the branch office, because the volume of services provided or the distance between the branch office and the parent agency, cannot adequately share supervision and administration with the parent agency.

Additionally, the Department proposes under s. DHS 105.17 (1f) to require counties, ILCs and tribes or bands to provide identifying information about the personal care provider and those agencies and individuals that provide Medicaid personal care services through a contract with the provider. This data base will allow the Department to organize, store and retrieve information about personal care services provided in Wisconsin for various reporting and planning activities. The proposal does not affect home health agencies because the Department already collects this information from home health agencies through the license process and annual report process.

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

Section 440.167 of 42 CFR contains the requirements for providing personal care services to Medicaid recipients. Section 440.167 does not provide detail on the types of agencies which are allowed to provide personal care services or to directly bill the Medicaid program for reimbursement.

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

##### *Illinois:*

Wisconsin offers personal care as an optional Medicaid state plan service, but Illinois does not. Illinois does offer some types of personal care services under waivers.

##### *Minnesota:*

Both Minnesota and Wisconsin offer personal care as an optional Medicaid state plan service. Wisconsin is in the middle of the 3 states in terms of the settings where the personal care services benefit may be provided. In Wisconsin, the services may be provided in the home or in community-based residential setting in facilities of 20 beds or less. Minnesota provides the service in the home, in community-based residential settings, in schools, and in the workplace.

##### *Iowa:*

Wisconsin offers personal care as an optional Medicaid state plan service, but Iowa does not. Iowa does offer some types of personal care services under waivers.

##### *Michigan:*

Both Michigan and Wisconsin offer personal care as an optional Medicaid state plan service. Michigan is one of only 2 states nationwide (the other is New Jersey) that covers assistive devices or equipment under the PCS benefit. Nationwide, 17 of the 25 states that offer personal care services (71%) allow some kind of consumer direction for the PCS benefit. Michigan allows it to some extent (as does Minnesota). Wisconsin very recently began offering a self-directed personal care option on a very limited basis to participants in the self-directed program known as IRIS (Include, Respect, I Self-Direct).

Wisconsin is in the middle of the 3 states in the region terms of the settings where the personal care services benefit may be provided. Michigan is more restrictive than Wisconsin, as the service may only be provided in the home. In Wisconsin, the services may be provided in the home or in community-based residential setting in facilities of 20 beds or less.

Minnesota is the most stringent of the 3 states in terms of who may authorize the use of personal care services. Minnesota requires a statement of medical need from a physician and an assessment as to need by a public health nurse. In Michigan, physicians, social workers, case managers, physician assistants, and nurse practitioners may all authorize personal care services. Wisconsin only allows personal care services when authorized by a physician.

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

The department relied on all of the following sources to determine the impact on small businesses, specifically personal care agencies to draft the rules:

1. The Department met with the Home Care Advisory Committee (HCAC) and reviewed the initial draft of the rule. This committee is composed of representatives of the Wisconsin Personal Services Association (WPSA), Wisconsin Homecare Organization (WHO), Professional Homecare Providers (PHP), subcontracted personal care agencies, ILCs, home health agencies.

2. The 2002 Economic Census – Wisconsin Geographic Series, 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 (2007 data is not yet published–October 2009) compiled on businesses located in Wisconsin.

3. Criteria adopted by the Department and approved by the Wisconsin Small Business Regulatory Review Board to determine whether the Department’s rules have a significant economic impact on a substantial number of small businesses. Pursuant to the Department’s criteria, a rule will have a significant economic impact on a substantial number of small businesses if at least 10% of the businesses affected by the rules are small businesses and if operating expenditures, including annualized capital expenditures, increase by more than the prior year’s consumer price index or reduces revenues 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; the preliminary rate for the Midwest in 2008 is currently estimated at 3.9 percent.

4. Section 227.114 (1) (a), Wisconsin Stats. defines “small business” as a business entity, including its affiliates, which is independently owned and operated and not dominant in its field, and which employs 25 or fewer full-time employees or which has gross annual sales of less than \$5,000,000.

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

The North American Industry Classification System (NAICS) includes personal care agencies in the Health Care and Social Assistance sector, (sector 62) and further defined in sub-sector 6216 home health agencies (home based services). This industry sector comprises establishments primarily engaged in providing skilled nursing services in the home, along with a range of the following: personal care services; homemaker and companion services; physical therapy; medical social services; medications; medical equipment and supplies; counseling; 24-hour home care; occupation and vocational therapy; dietary and nutritional services; speech therapy; audiology; and high-tech care, such as intravenous therapy. Employment statistics and revenue data are not readily available for the personal care agency share of these major health care providers. The DQA has no data on personal care agencies, as these are not currently regulated by the agency. Based on the limited data available,

it is estimated that 70 personal care agencies will initially seek certification from the department. The number of small business entities is unknown. Certification is required for these agencies to qualify for reimbursement from the Medicaid program. Currently, personal care agencies are reimbursed for services through counties or other third-party Medicaid providers.

This emergency order makes it possible for personal care agencies to bill the Wisconsin Medicaid program directly by complying with certification requirements in the Medicaid regulations. The overall outcome for the small businesses affected by the rules should be positive.

2009 Act 28, the 2009–11 biennial budget bill, expands the types of entities that can be certified by the department as Medicaid personal care providers. In particular, personal care agencies other than counties, Tribes, home health agencies, and Independent Living Centers can be certified directly as Medicaid providers. This emergency rule amends the existing Medicaid personal care certification rule, DHS 105, to implement the biennial budget provisions.

Counties, Tribes, home health agencies, and Independent Living Centers that are already Medicaid certified personal care providers under the prior statutory provisions, can remain personal care providers, without initiating or going through an application process.

In addition to specifying the certification procedures for independently certified personal care agencies, the emergency rule also updates requirements and includes new requirements for personal care providers to strengthen the protection of clients' health, safety, and rights. These changes apply both to existing certified personal care providers and to personal care agencies that seek certification under the Act 28 provisions. Based on consultations with personal care providers, these new requirements are best practices that have generally already been adopted by providers. For this reason they are not expected to impose new workload on providers.

The fiscal impact on small business as defined in s. 227.114 (1), Stats., should be minimal. The items listed below have been identified as potentially increasing revenues or costs to personal care providers.

#### *Independent personal care agency certification*

The provisions of the emergency rule will allow personal care agencies that provide services under contract with a county, Tribe, home health agency, or independent living center to become independently certified and bill the Medicaid program directly for personal care services. In addition, other agencies that do not currently serve Medical Assistance recipients will be able to be certified as Medical Assistance providers, begin serving Medical Assistance recipients, and be reimbursed for their services. The rule provisions would increase revenues for agencies that seek to be certified.

#### *Application and annual fee*

Personal care agencies that seek Medicaid certification under the provisions of Act 28 will be required to pay an initial application fee and an annual fee. Fees will be established by the Department's Division of Quality Assurance and may be periodically revised. The amount of the annual fee will be based on a number of factors including revenues from operations. The Division of Quality Assurance anticipates that initially the application fee will be \$300. It is anticipated the annual fee will range from a minimum of \$500, not to

exceed \$2,500 and will be based on the annual revenue of the freestanding personal care agency.

If an agency is required by the Department to separately certify a branch office, the agency will be required to pay an initial application fee and an annual fee for the separately certified entity. The amount of the annual fee for branch office certification will be based on a number of factors including revenues from operations. The Division of Quality Assurance anticipates that initially the application fee and the annual fee will be the same as for the parent agency and will be based on the annual revenue of the freestanding personal care agency.

#### *Provision of Information*

Counties, ILCs and federally recognized American Indian tribes or bands will be required to provide, in a format approved by the Department, identifying information about the personal care provider and those agencies and individuals that provide Medicaid personal care services through a contract with the personal care provider. This information will enable the Department to develop and maintain a data base of certified personal care providers to organize, store and retrieve information about personal care services provided in Wisconsin for various reporting and planning activities. The proposed rule does not include home health agencies because the Department already collects this information from home health agencies through the license application process and the annual report. It is estimated that the average time to complete this information will be 30 minutes at an estimated cost of \$14.

#### *Minimize Risk of Infection*

The first substantive revision requires agencies to provide staff training and proper supplies to minimize the risk of infection and to monitor for compliance. This requirement is expected to result in minimal costs to providers because many personal care providers in Wisconsin already provide staff training and monitoring to meet current standards of practice and Centers for Disease Control (CDC) guidelines. Any provider that does not meet this standard is able to access information from CDC's web site to train their staff and start their monitoring program. Additional costs for sundry supplies (e.g., gloves, masks, etc.) are expected to be minimal.

#### *Communicable disease screening*

Personal care providers will be required to ensure that employees are screened for the presence of clinically apparent communicable diseases, including tuberculosis, within 90 days before the employee has direct client contact. This standard is similar to employee health screening requirements for nursing homes, home health agencies, hospices, hospitals, facilities for the developmentally disabled and restaurants. *The Journal of American Medical Association* (April 19, 2000) identifies health care workers as a group at risk for acquiring tuberculosis. Pulmonary tuberculosis is a contagious disease that is usually spread through the coughing and sneezing of an infected person. Transmission of the infection usually occurs only after prolonged exposure. It is important for persons in high risk groups to be tested to ensure they are free from infectious disease to prevent exposure and spread of the disease to clients and to identify the need for treatment.

The average time to complete the pre-employment screening is estimated to be 30 minutes, at an estimated cost of \$14 per employee. Although not required by rule, this may

encourage providers to complete a tuberculosis skin test, at an average cost of \$50 each.

#### *Training and Orientation*

The rules will require an estimated additional 4 hours of training and orientation for personal care workers (PCWs) and registered nurses. It is estimated that the average hourly rate is \$28.00 salary and fringe. Estimated per staff costs are \$116 per affected employee.

#### *Discharge summary*

The proposed rules require the completion of a discharge summary for all clients. It is estimated that a registered nurse will need 10 minutes to complete this requirement. The per-client cost is estimated at \$7 (\$40 per hour salary and fringe x 10 minutes).

#### **Small Business Impact**

The proposed rule will affect at least 10% of the small businesses affected by the rule, but the rules will not have a significant negative economic impact on those businesses.

#### *Small business regulatory coordinator*

Rosie Greer  
Email: [rosie.greer@dhs.wisconsin.gov](mailto:rosie.greer@dhs.wisconsin.gov)  
Phone: 608-266-1279

#### **Fiscal Estimate**

A copy of the full fiscal estimate may be obtained from the department's contact person listed below upon request.

#### **Agency Contact Person**

Pat Benesh, Quality Assurance Program Spec-Senior  
Division of Quality Assurance  
1 West Wilson St., Room 534  
Madison, WI 53701  
Phone: 608-264-9896  
Fax: 608-267-0352  
Email: [patricia.benesh@wisconsin.gov](mailto:patricia.benesh@wisconsin.gov)

### **Notice of Hearings**

#### **Natural Resources**

#### *Fish, Game, etc., Chs. NR 1— CR 10-042*

NOTICE IS HEREBY GIVEN That pursuant to ss. 23.091, 23.09 (2) (intro), 23.11 (1), 23.28 (3), 23.293, 27.01 (2) (j), 27.01 (10) (b) and (f), 227.11 (2) (a) and 23.33 (4) (b), Stats., the Department of Natural Resources, hereinafter the Department, will hold a public hearing on a rule revising Chapter NR 45, relating to the use of department properties.

Chapter NR 45, Wis. Adm. Code, which is the principle rule governing the conduct of visitors to the properties and facilities owned, acquired by easement, or leased by the department. The rule revision contains a number of fee changes relative to camping, and an increase in commercial use permit fees to address the continued costs of providing quality services. The proposed rule will also clarify the term "edible fruits" for collection, removing invasive plants without a permit, collection of dead and down wood below the ordinary high water mark, evictions from state properties, allowing designated roads in northern state forest properties as ATV route when authorized by the property master plan, allowing uncased bows and firearms when crossing the

Glacial Drumlin state trail adjacent to the Lake Mills wildlife area when engaged in legal hunting. The rule also addresses launching of motor boats on portions of a water body when there are restrictions on the property's master plan, fee waivers for state park admission for holders of National park service pass program, requirement of vehicle admission fee at Parfey's Glen state natural area and creates a ban on glass containers at Straight Lake state park and prohibits the launching of motorboat and gasoline powered ice augers on Straight and Rainbow lakes and establishes the creation of a slow-no-wake area in the "narrows" of the Dells of the Wisconsin river. This also includes housekeeping changes regarding the Department's property management rules.

#### **Hearing Information**

##### Date and Time

**May 17, 2010** – Monday  
at 5:00 p.m., with the  
record held open until at  
least 6:00 p.m.

##### Location

DNR Executive Offices  
101 S. Webster Street  
Room G09  
Madison, WI 53707

**May 18, 2010** – Tuesday  
at 5:00 p.m., with the  
record held open until at  
least 6:00 p.m.

Woodruff Town Hall  
1418 1<sup>st</sup> Avenue  
Woodruff, WI 54568

Reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Contact Andy Janicki in writing at the Department of Natural Resources, P. O. Box 7921, 101 S. Webster St., LF/6, Madison, WI 53707; by E-mail to [Andrew.Janicki@wisconsin.gov](mailto:Andrew.Janicki@wisconsin.gov) or by calling (608) 267-7490. A request must include specific information and be received at least 10 days before the date of the scheduled hearing.

#### **Copies of Proposed Rules and Fiscal Estimate**

The proposed rule and supporting documents, including the fiscal estimate, may be viewed and downloaded from the Administrative Rules System Web site at <http://adminruleswisconsin.gov>. If you do not have Internet access, a printed copy of the proposed rule and supporting documents, including the fiscal estimate, may be obtained free of charge by contacting: Kathryn Fitzgerald, Department of Natural Resources, LF/6, PO Box 7921, 101 S. Webster Street, Madison, WI 53707 or by calling (608) 267-2764.

#### **Submittal of Written Comments**

Comments on the proposed rule must be received on or before **May 21, 2010**. Written comments may be submitted by U.S. mail, fax, E-mail, or through the Internet and will have the same weight and effect as oral statements presented at the public hearing. Written comments and any questions on the proposed rules should be submitted to: Kathryn Fitzgerald, Department of Natural Resources, LF/6, 101 S. Webster Street, Madison, WI 53707 or by calling (608) 267-2764.

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

##### *Statutes interpreted*

Sections 23.091, 23.09 (2) (intro), 23.11 (4), 23.17, 23.175, 23.28 (3), 23.293, 23.33 (4) (b), 27.01 (2) (i) and (j), 27.01 (10) (f) and 28.04 (2), Stats.



**Statutory authority**

Sections 23.091, 23.09 (2) (intro), 23.11 (1), 23.28 (3), 23.293, 27.01 (2) (j), 27.01 (10) (b) and (f), 227.11 (2) (a) and 23.33 (4) (b), Stats.

**Explanation of agency authority**

In addition to the general authority granted by s. 227.11 (2) (a), Stats., to implement and interpret its statutory authority, the Department of Natural Resources has specific grants of rule making authority in chs. 23 and 27, Stats., to manage its properties.

**Related statute or rule**

All Wisconsin DNR property management regulations are found in this chapter.

**Plain language analysis**

Chapter NR 45 is the principal rule governing the conduct of visitors to the properties and facilities owned, acquired by easement, or leased by the Department of Natural Resources (DNR). This chapter is reviewed and revisions proposed by staff on a regular basis. This rule revision contains a number of fee and policy changes relative to camping and other uses of DNR land. The increased fees address the continued costs of providing quality services.

An amended rule clarifies that collection of edible plants without a permit is for personal consumption, clarify the term “edible fruits,” and remove the prohibition on collecting edible fruit on state natural areas.

The definitions include the Coulee Experimental state forest as a “northern state forests” so that the code provisions governing the northern state forests cover this property. An amended rule prohibits fires on the Coulee Experimental state forest.

A created rule makes it permissible to remove invasive plants without a permit.

A created rule prohibits the collection of dead and down wood located below the ordinary high water mark of the northern flowage properties for ecological and aesthetic purposes.

An amended rule governs evictions from DNR lands to prevent an evicted individual from entering a different state park, forest, or recreation area for a specified period after being evicted in order to alleviate law enforcement problems.

An amended rule clarifies that contractual agreements permit concessions or special events rather than commercial use permits.

An amended rule allows DNR to designate roads within northern state forest properties as ATV routes when the property master plan authorizes this use.

An amended rule clarifies that the exception to the requirement that firearms must be unloaded and enclosed in a case only applies on the portions of a property that are open to hunting.

A created rule allows uncased bows and firearms when crossing the Glacial Drumlin State Trail adjacent to lands that are part of the Lake Mills Wildlife Area.

An amended rule permits camping on state-owned sandbars on the Lower Chippewa River and limits the number of campers at the Turtle Flambeau Scenic Waters Area group campsites.

A created rule prohibits the launching or removal of motorboats on those portions of waterbodies located within

DNR properties when the property’s master plan restricts the use of motorboats.

An amended rule reorganizes the list of fee areas at state forests and eliminates two fee areas from the list.

An amended rule repeals the fee waivers for state park admission for holders of the National Park Service pass program. Instead, waivers will be given utilizing general statutory authority and guidance found in internal policy documents.

An amended rule categorizes all state forest campgrounds as type “A” to allow for an increase in camping fees per s. 27.01 (10), Stats.

An amended rule increases camping fees by \$3.00 due to local market conditions for Rock Island State Park and 5 state forest campgrounds as allowed by NR 45.12(2)(b)5.

An amended rule increases the fee for commercial use permits, and for use of the indoor group camp at Wyalusing State Park.

A created rule establishes fees, based on site amenities including the number of electrical pedestals, for the new outdoor group campground at Council Grounds State Park.

An amended rule repeals specified rates for renting entire campgrounds at Devil’s Lake State Park.

A created rule establishes a slow–no–wake area in the “narrows” of the Dells of Wisconsin River State Natural Area for public safety reasons.

An amended rule establishes closed hours for the newly acquired Gibraltar Rock State Natural Area for safety reasons.

An amended rule allows the addition of state natural areas to areas where vehicle admission receipts are required, adds Parfrey’s Glen State Natural Area to the list of properties requiring a vehicle admission fee, and allows people to explore beyond the end of the designated trail at Parfrey’s Glen State Natural Area in response to the loss of an established trail due to flooding.

A created Rule establishes rules of conduct at Yellowstone Lake Wildlife Area’s shooting range and defines the term “range officer.”

A created rule establishes rules to implement the master plan for Straight Lake State Park including a ban on glass containers, a motorboat prohibition on Straight and Rainbow Lake, and a prohibition of gasoline powered ice augers.

A created rule establishes special event and boat mooring fees at Lakeshore State Park and operations of the marina.

A created rule prohibits target shooting within the Thornapple River sturgeon spawning area in Rusk County for public safety reasons.

**Comparison with federal regulations**

These rules are consistent with the requirements for land that is acquired or managed all or in part with Pittman Roberts, Sport Fish Restoration, and Land and Water Conservation Act funding.

**Comparison with rules in adjacent states****Information pertinent to camping fees in state forests:****Illinois:**

- Family campsite fees range from \$10 per night to \$20 per night.
- Illinois pricing varies by location.
- There is no mention of fee differentials due to market forces.

*Minnesota:*

- Family campsite fees range from \$12 per night to \$18 per night.
- Minnesota sets a range of pricing for different types of state parks.
- Minnesota prices their "Familiar Favorites" campsites at the \$18 fee.

*Iowa:*

- Family campsite fees in Iowa range from \$11 to \$16 per night.
- Iowa charges a camping differential fee based on the time of year.

*Michigan:*

- Family campsite fees in Michigan range from \$10 to \$33 per night.
- Campsite prices do not vary by season or day of the week.

*Information pertinent to state park proposals:**Illinois:*

- North Point Marina is a comparable facility to Lakeshore state park. Vessels visiting North Point Marina 30 feet and under are charged a minimum daily rate of \$40. There is an additional per foot, per day charge not to exceed \$2 for each foot of vessel over 30 feet. Each seventh consecutive day leased under a temporary permit is free. 17 Ill. Adm. Code 220.60(c)
- Rules allow the Department to evict campers and refuse to permit a person to re-enter the eviction site or park for a period of up to 365 days from such eviction. 17 Ill. Adm. Code 130.150
- Rates for adult outdoor group camps are \$4 per day with a \$40 minimum charge

*Iowa:*

- No Great Lakes moorages.
- Department of natural resources officers are given authority to refuse camping privileges and to rescind any and all camping permits for cause. 571 IAC 62.8(461A)
- Group camp fees are facility dependent with a wide range of fees depending on amenities and size. Some facilities require a deposit as well.
- Special events require a permit.

*Minnesota:*

- Does not charge moorage fees at state parks.
- People in violation of rules are subject to immediate removal and any other appropriate legal action, to include revocation of permits issued. Minn. R. 6100.0525
- Group camp fees are \$50–\$75 per night or \$3 per camper per night, whichever is greater. A minimum non-refundable deposit of \$50 per night reserved is charged for all class III group camps at the time the reservation is made. The balance of fees is due at time of arrival.
- Special use requires a permit with proof of insurance.

*Michigan:*

- At comparable moorage sites, \$24–\$27 for vessels 24 feet and under, plus \$1–\$2 for each additional foot. <http://www.midnrreservations.com>

- People in violation of rules are subject to eviction and revocation of camping permit in addition to any other penalties prescribed by law. Mich. Admin. Code R 299.929
- Campground fees range dependent on amenities and location. For groups rustic cabins are available for \$60–\$80 a night.
- Permit is required for commercial operations. Land use permit is dependent on the event and the volume of people. Minimum of \$50 is required for permit on medium intensity and for ranges depending on services for all intensity of use. Permit review, staff monitoring, and land use fees are all add-ons for the permit. The permit may range from free (\$0) to a maximum of \$950.

*Summary of factual data and analytical methodologies**Information pertinent to camping fees in state forests:*

Five northern state forest campgrounds are added to the current fifteen state parks where fees will be raised by \$3 per night from \$12 to \$15 in response to market conditions. The new Northern state forest campgrounds added to this list are: Crystal Lake, Clear Lake, Firefly Lake and Musky Lake campgrounds in the Northern Highland American Legion State Forest (NHAL) and Castle Mound campground in the Black River state forest. The locations of these state forests include popular tourism destinations.

All other state forest campgrounds in six northern state forests are added to the Class "A" category where fees will be raised by \$3 per night from \$9 to \$12.

A survey of the markets surrounding the Northern State Forest campgrounds being adjusted for market conditions reveals that prices are much higher for non-state forest campsites per night compared to state forest sites. The increase brings the Northern State Forests in line with current public camping facilities.

*Surrounding market prices:*

<b>Campground Ownership</b>	<b>Fee Range</b>
Wisconsin State Parks	\$12 – \$15
National Forests	\$12 – \$15
County Parks	\$10 – \$22
Private Campgrounds	\$18 – \$50

*Information pertinent to other state park proposals:*

The fee structures being set up in most of the park areas are specific to the area and facilities.

Wyalusing is the only WSPS property with indoor group dormitory style camping, and the current rate is well below the existing market for accommodations of like type. Charging a rate that is close to market-based of \$6 a person a day and \$300 minimum will help to close the existing price and expense gap while simultaneously providing a cost effective option for groups. Current capacity for the indoor group camp is 108; with the \$200 minimum rate set based upon a 50 person occupancy. Property staff report that it is not uncommon for groups as small as 10 to reserve the group campground. This still only results in costs of \$20/night/person that is significantly lower than what exists in the private sector given amenities at the location. The DNR recently upgraded this facility without increasing the cost to rent; consequently, an increase is warranted at this time and is unlikely to significantly affect demand for this group camp. While these fees are higher for this campground, the fee is lower than rates charged in the private sector and remains an economical choice for groups or families to utilize.

Devil's Lake is the only property that specifies a rate for renting the entire campground in ch. NR 45, Admin. Code. The current rate is well below the existing market for accommodations of like type in the market area and significantly lower than if the sites were reserved separately. Deleting this code provision will allow the department to charge a more market based rate as authorized by s. 27.01(10)(f) Stats., and help to close the existing fiscal gap to operate the campground.

There is precedent for charging a special rate for particular campsites or campgrounds based upon amenities offered. Council Grounds state park recently opened three new group campsites, and the existing group camping fees are well below the market value for accommodations of like type in the market area. These sites include electrical hookups, dedicated toilet buildings and other amenities. By charging the existing group camping rate the Department believes these sites are under-valued. The new fees were calculated utilizing the current camping fee structure, plus the cost of the electrical pedestals with a premium for the amenities. These changes are unlikely to affect demand for these campsites and the change will make rates competitive based upon the amenities offered. While the fees are higher for these select campsites, the fee is competitive with rates charged in the private sector and still remains an economical choice for groups or families to utilize.

The Commercial Use Permit is required for common or recurring, property master plan-compatible, commercial uses of parks, recreation areas, and southern forest lands. Typically, these uses involve a service that is purchased and arranged off a property but performed on the property. This fee has not been updated in over 8 years. The fee is significantly lower than the perceived value to those who use parks, trails, and southern forests commercially because of the profit generated by the commercial use. All of the surrounding states require a commercial use permit and the cost is dependent on the activity.

Lakeshore state park recently opened its boat slips, and the rates charged mirror those for accommodations of like type provided by Milwaukee county as well as those at private marinas in the area. The fee is competitive with rates charged in the public and private sector, remains an economical choice for groups or families, and is unlikely to affect demand for this facility. Lakeshore state park is an urban park that regularly hosts various special events for visitors and local businesses. This event fee structure is similar to what Milwaukee county charges. Without this fee structure, the DNR is only authorized to charge its current special event fees, which are not applicable for events of this size and at this location. Lakeshore state park is uniquely poised to host large and small-scale events, contributing to the cultural and economic vitality of downtown Milwaukee. These events could range in size from 50 to 500,000 in attendance and span multiple days. The flexible fees will be decided in advance by the manager at Lakeshore state park in conjunction with the event holder, based upon the expected attendance, activities planned and impacts to other users of the property. The fee would be mutually established well in advance of an event, thus enabling groups to budget and plan effectively for their event on the Lakeshore grounds. Under this scenario, fees for special events at Lakeshore state park would remain an economical choice for everyone from corporations to families are unlikely to affect demand for this facility, and would provide the funds necessary to staff events of this magnitude.

### ***Anticipated private sector costs***

Fees are increased for certain uses of department lands and those increased costs will be incurred by the users. Because most users camp on a relatively infrequent basis, and the increases are modest, the fee increases are not anticipated to be burdensome. Regarding the slow-no-wake proposal at the "narrows", there is one private property landowner with frontage in the section of Wisconsin River encompassed by the regulation. There is no anticipated negative effect on his property values. In a personal contact with the landowner, he expressed support for a slow no wake rule. Since his property sits on the blind corner of the Narrows, he has a long history of providing access to the river for a flagman to monitor boat traffic and signal tour boats when it was safe to proceed.

### **Small Business Impact**

One rule provision creates a slow-no-wake area on a stretch of the Wisconsin river. There are four commercial enterprises that operate boat tours in the Upper Dells on the Wisconsin river; two run both traditional tour (cruise) boats and jet boats, one runs exclusively jet boats and one only operates a tour/dinner boat. When contacted by the department, all the tour boat operators said their normal practice is to go slowly through the area anyway, so there would be no impact to them on their scheduling. They expressed support for a slow-no-wake regulation because their ability to navigate is often jeopardized by recreational watercraft attempting to jump the wakes of their boats or trying to maneuver around the larger boats at high speed. The distance of the slow-no-wake area is approximately 3,100 linear feet.

This rule does not impose performance standards, or compliance or reporting requirements for small businesses. Small business impacts from the commercial use permit fee increase will be minor as the permit fee increase is \$20 per year. Even for a very small-scale business, the cost is likely to be easily absorbed by the business, and offset by revenues generated from the business conducted on the state property. This change is not expected to dramatically increase revenues to the system; rather it updates the fee relative to the value businesses receive from doing business on system properties, and the impact their work may have on the resources or facilities at the property. The current fee is significantly below market value, remains an economical choice for businesses or families to utilize, and is unlikely to affect demand.

The Corporate Event fee at Lakeshore State Park is \$500 for less than 500 attendees and is intended to offset the additional expenses associated with sponsoring the event. The businesses impact is anticipated to be minimal for many small businesses.

The campground fee increases will not have a negative effect on nearby private campground owners. Private campground may see a small increase in visitation and associated revenue if some campers select the private provider rather than paying the increased fee. The slow-no-wake proposal is not anticipated to have a measurable effect on commercial boat operators.

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

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

### **Environmental Analysis**

This is a type III action under Chapter NR 150, Wis. Adm. Code, and neither an environmental impact statement nor an environmental assessment is required.

### Fiscal Estimate

The fee increases will increase state revenues by approximately \$246,670. A printed copy of the full fiscal estimate may be obtained by contacting Kathryn Fitzgerald, listed below.

### Agency Contact Person

Kathryn Fitzgerald, Chief  
Land Management Section  
Bureau of Facilities and Lands  
Phone: (608) 267-2764  
Email: Kathryn.Fitzgerald@Wisconsin.gov

### Notice of Hearing

#### Natural Resources

#### *Fish, Game, etc., Chs. NR 1— EmR1010*

NOTICE IS HEREBY GIVEN that pursuant to ss. 29.014, 227.11 (2) (a) and 227.24, Stats., the Department of Natural Resources will hold a public hearing on emergency rules to revise Chapter NR 10, Wis. Adm. Code, relating to deer management unit population goals. This emergency order took effect on April 3, 2010.

### Hearing Information

The hearing will be held:

#### Date and Time

**May 19, 2010**  
Wednesday  
at 2:00 p.m.

#### Location

Room G09  
DNR Central Office  
101 S. Webster Street  
Madison, WI

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

### Copies of Emergency Rule and Submittal of Written Comments

The emergency rule and fiscal estimate may be reviewed and comments electronically submitted at the following Internet site: <http://adminrules.wisconsin.gov>. Written comments on the rule may be submitted via U.S. mail to Mr. Keith Warnke, Bureau of Wildlife Management, P.O. Box 7921, Madison, WI 53707 or by email to [keithwarnke@wisconsin.gov](mailto:keithwarnke@wisconsin.gov). Comments may be submitted until **May 20, 2010**. Written comments whether submitted electronically or by U.S. mail will have the same weight and effect as oral statements presented at the public hearing. A personal copy of the emergency rule and fiscal estimate may be obtained from Mr. Warnke.

### Analysis Prepared by Department of Natural Resources

#### *Statutes interpreted*

Sections 29.014 and 29.889 (12), Stats.

#### *Statutory authority*

Sections 29.014, 227.11 (2) (a) and 227.24, Stats.

### Plain language rule analysis

Prior to the effective date of this emergency order, there were 131 deer management units with individual over winter population goals that would result in a statewide over winter population of approximately 737,000 deer. The new goals would result in an over winter population of approximately 800,000 animals. Over winter population goals and management units serve as the foundation for managing the deer herd and determining deer hunting season structures. All goals referred to in this rule are the over winter deer population goal for individual management units. The hunting season population will generally be substantially larger than the over winter population goal.

This emergency order increases deer population goals in 43 management units and lowers the goal in two.

Deer Management Unit	Current over-winter goal density	Proposed new over-winter density
2	18	20
3	16	18
6	12	18
12	17	20
13	15	17
14	14	20
15	22	25
17	15	17
18	20	22
19	20	22
20	18	20
22	20	25
22A	20	25
23	20	25
24	20	25
26	20	23
27	20	25
29B	12	15
30	15	19
33	20	25
34	17	20

Deer Management Unit	Current over-winter goal density	Proposed new over-winter density
43	15	17
49A	25	20
57	22	25
57A	25	30
59A	20	25
59B	15	25
59D	20	25
59M	10	15
60A	20	25
60B	20	25
60M	10	15
61	20	25
62A	25	30
62B	25	30
63A	25	30
64	20	25
64M	10	15
66	25	30
68B	30	25
74A	20	25
77C	15	20
77M	10	15
80B	20	25

These changes are recommended to provide hunters with more deer hunting opportunities in instances where goals are proposed for increases and to alleviate agricultural damage in

the instances where the goals have been recommended for a decrease. However, there is a concern that a higher goal with low hunter densities will increase the need for continuous herd control seasons.

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

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

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

All of Wisconsin's neighboring states have established management units for the purpose of managing deer populations. By using units with identifiable boundaries, deer populations can be monitored and kept at various population levels to more effectively control the deer herd and to address regional differences in habitat, population (human and deer) and to reduce conflict with other land uses such as residential, agricultural or forested.

#### ***Factual data and analytical methodologies***

The Department has evaluated the need for deer population goal reviews based on the following criteria: 1) Intolerable level of agricultural damage when at goal; 2) Ability of hunters to harvest enough deer to keep the population at the goal level; 3) Hunter demand for antlerless permits; 4) Vehicle-deer accident rate; and 5) buck harvest success rate; 6) Chippewa treaty harvest; 7) Hunter access to land in a deer management unit; 8) Ability to keep the deer herd in a deer management unit at goal; 9) Tolerable levels of deer damage to crops.

In addition, an Environmental Assessment was prepared in 1995. Copies of *Deer Population Goals and Harvest Management Environmental Assessment* are available from the department upon request.

#### ***Anticipated private sector costs***

These rules, and the legislation which grants the department rule making authority, do not have a significant fiscal effect on the private sector or small businesses.

#### **Small Business Impact**

These rules are applicable to individual sportspersons and impose no compliance or reporting requirements for small businesses, nor are any design or operational standards contained in the rule.

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

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

#### **Environmental Analysis**

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

#### **Fiscal Estimate**

The fiscal estimate may be reviewed at the following Internet site: <http://adminrules.wisconsin.gov>. A personal copy of the fiscal estimate may be obtained from Mr. Warnke, listed below.

#### **Agency Contact Information**

Keith Warnke  
101 S. Webster St.  
PO Box 7921  
Madison, WI 53707-7921  
Phone: (608) 264-6023  
Email: [keith.warnke@wisconsin.gov](mailto:keith.warnke@wisconsin.gov) or

Scott Loomans  
101 S. Webster St.  
PO Box 7921  
Madison, WI 53707-7921  
Phone: (608) 267-2452  
Email: [scott.loomans@wisconsin.gov](mailto:scott.loomans@wisconsin.gov)

#### **Notice of Hearings**

#### **Natural Resources**

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

(DNR # WM-15-10)

NOTICE IS HEREBY GIVEN that pursuant to ss. 29.014 and 227.11, Stats., the Department of Natural Resources will hold public hearings on revisions to Chapter NR 10, Wis. Adm. Code, relating to the use of archery deer hunting licenses.

#### **Hearing Information**

The public hearings will begin at **7:00 p.m.** at the locations listed below. Following a brief informational presentation, public comments and statements will be accepted.

**May 17, 2010** James Williams Middle School  
915 Acacia Lane  
Rhineland 54501

**May 18, 2010** DNR South Central Region Headquarters  
3911 Fish Hatchery Road  
Fitchburg 53711

**May 24, 2010** DNR Northeast Region Headquarters  
2984 Shawano Avenue  
Green Bay 54313-6727

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

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

The proposed rule and fiscal estimate may be reviewed and comments electronically submitted at the following Internet site: <http://adminrules.wisconsin.gov>. Written comments on the proposed rule may be submitted via U.S. mail to Mr. Scott Loomans, Bureau of Wildlife Management, P.O. Box 7921, Madison, WI 53707. Comments may be submitted until **June 1, 2010**. Written comments whether submitted electronically or by U.S. mail will have the same weight and effect as oral statements presented at the public hearings. A personal copy

of the proposed rule and fiscal estimate may be obtained from Mr. Loomans.

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

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

Sections 29.014, 29.171, and 227.11, Stats.

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

Sections 29.014 and 227.11, Stats.

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

The Bureau of Wildlife Management recommends promulgating administrative rules that modify a section of ch. NR 10 related to game and hunting and the use of archery deer hunting licenses.

Currently, each license which authorizes archery deer hunting includes one carcass tag that is valid for taking an antlered buck in any management unit and one tag which is valid for one antlerless deer in any management unit. This proposal would limit the areas where the antlerless carcass tag is valid to only management units for which an antlerless deer harvest quota has been established and CWD units.

Firearm deer hunters who hold Class A or C permits for hunters with disabilities can currently harvest deer of either sex. So that archery hunting regulations are consistent with firearm deer hunting regulations, Class A and C archery hunters would also continue to be able to harvest an antlerless deer with their (non-herd control) archery antlerless deer carcass tag in any unit statewide, including units with no antlerless deer quota.

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

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

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

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

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

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

#### ***Factual data and analytical methodologies***

The harvest of antlerless deer is managed by the department in order to achieve overwinter goals established in NR 10.104 Wis. Admin. Code. In management units where the deer population is below goal, the department may restrict antlerless deer harvest or establish an antlerless quota of zero. When the quota is zero in a unit, most firearm deer hunters may not harvest antlerless deer. Only archers, first year hunter safety graduates, and disabled permit holders are allowed to harvest antlerless deer when no quota has been established.

Eliminating archery hunter's ability to harvest antlerless deer in zero quota units would make regulations more consistent between the firearm and archery seasons.

#### ***Anticipated private sector costs***

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

#### **Small Business Impact**

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

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

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

#### **Environmental Analysis**

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

#### **Fiscal Estimate**

The fiscal estimate may be reviewed at the following Internet site: <http://adminrules.wisconsin.gov>. A personal copy of the fiscal estimate may be obtained from Mr. Loomans, listed below.

#### **Agency Contact Person**

Scott Loomans  
101 South Webster Street  
PO Box 7921  
Madison, WI 53707-7921  
Phone: (608) 267-2452  
Email: [scott.loomans@wisconsin.gov](mailto:scott.loomans@wisconsin.gov)

#### **Notice of Hearing**

##### **Transportation**

##### **CR 10-040**

NOTICE IS HEREBY GIVEN that pursuant to ss. 343.085 (2m) (b) 1. a. and 343.32 (2), Stats., the Department of Transportation will hold a public hearing to consider the amendment of Chapter Trans 101, Wis. Adm. Code, relating to demerit point system and graduated driver license restriction extensions.

#### **Hearing Information**

##### **Date and Time    Location**

<b>May 20, 2010</b> at 10:00 a.m.	Hill Farms State Transportation Bldg. Room 394 4802 Sheboygan Avenue Madison, WI
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This hearing is held in an accessible facility. If you have special needs or circumstances that may make communication or accessibility difficult at the hearing, please

call Reed McGinn at (608) 267-9811 with specific information on your request at least 10 days before the date of the scheduled hearing. Accommodations such as interpreters, English translators, or materials in alternative format will, to the fullest extent possible, be made available upon a request from a person with a disability to accommodate your needs.

### Submittal of Written Comments

The public record on this proposed rule making will be held open until close of business the day of the hearing to permit the submission of comments in lieu of public hearing testimony or comments supplementing testimony offered at the hearing. Any such comments should be submitted to Reed McGinn, Department of Transportation, Division of Motor Vehicles, Citations and Withdrawal Section, Room 305, P. O. Box 7917, Madison, WI 53707-7917.

To view the proposed amendments to the rule, view the current rule, and submit written comments via e-mail/internet, you may visit the following website: <http://www.dot.wisconsin.gov/library/research/law/rulenotices.htm>.

### Copies of Proposed Rule

A copy of the rule may be obtained upon request from Reed McGinn, Department of Transportation, Division of Motor Vehicles, Citations and Withdrawal Section, Room 305, P. O. Box 7917, Madison, WI 53707-7917. You may also contact Mr. McGinn by phone at (608) 267-9811 or via e-mail: [reed.mcgin@wisconsin.gov](mailto:reed.mcgin@wisconsin.gov) to obtain copies of the proposed rule. Copies will also be available at the hearing.

### Analysis Prepared by the Wisconsin Department of Transportation

#### *Statutes interpreted*

Section 343.32, Stats.

#### *Statutory authority*

Proposed Amendment #1: Section 343.085 (2m) (b) 1. a., Stats.

Proposed Amendment #2: Section 343.32 (2), Stats.

#### *Explanation of agency authority*

Section 343.32 (2) (a), Stats., permits the Secretary to suspend a person's operating privilege if the person appears by the records of the Department to be a habitually reckless or negligent operator of a motor vehicle or to have repeatedly violated any of the state traffic laws, any local ordinance enacted under ch. 349 or any traffic laws enacted by a federally recognized American Indian tribe or band in this state if the tribal traffic laws violated strictly conform to provisions in chs. 341 to 348 or, if the offense occurred on a federal military installation located in this state, any federal law which is in strict conformity with a state traffic law. The Department has used a demerit point system to accomplish this end since 1958. The statute permits the Secretary adopt by rule a method of weighing traffic convictions by their seriousness and allows the Secretary to change that weighted scale "as experience or the accident frequency in the state makes necessary or desirable," though much flexibility in the system has been eliminated over the years by statutory amendment mandating specific assignment of demerit points, suspension of operating privileges at specific point levels and doubling of demerit point assessments for probationary drivers.

### *Related statute or rule*

Section 343.085 (2m) (b) 1. a., Stats. Only moving violations affect GDL restrictions.

### *Plain language analysis*

The proposed rule makes the following changes to Wisconsin's demerit point system:

- For consistency with GDL restrictions and for administrative efficiency, amend ch. Trans 101 to eliminate demerit point repercussions for all parking offenses. Currently, DMV attempts to distinguish between parking offenses committed on and off highway roadways. Because the traffic code does not make such distinctions, DMV wastes resources trying to figure this out from extraneous information sources. Moreover, savvy defendants convince prosecutors and courts to "change the facts" in exchange for plea agreements.

In addition, GDL restrictions cannot be extended for parking violations; Wis. Stat. s. 343.085(2m)(b)1.a. permits GDL extension only for "moving violations." Because DMV generally extends GDL restrictions for any offense that generates demerit points, the few parking offenses for which DMV assesses demerit points at present should be changed to non-point offenses.

- Permit demerit points assessed for serious traffic offenses that trigger suspensions of occupational licenses to be used in demerit point cases and potentially trigger a demerit point suspension in addition to the occupational license suspension.

In general, DMV's rule currently attempts to use a violation in only one suspension or revocation case affecting the driver's operating privilege. Persons who commit serious traffic offenses on an occupational license can have that temporary occupational license suspended. Often, the occupational license is only valid for a short period of time, so any suspension or revocation of that temporary license is of negligible deterrent value. This rule proposes to allow the demerit point repercussions from committing an offense that results in an occupational license suspension or revocation to carry over and affect the person's regular operating privilege demerit point total.

### *Comparison with federal regulations*

Driver improvement programs are state functions. There is no federal regulation in this area.

### *Comparison with rules in adjacent states*

#### *Michigan:*

Michigan does not assess demerit points for parking violations. Six or more unpaid parking tickets have zero demerit points. Michigan does not appear to distinguish between parking on and off of a highway.

#### *Minnesota:*

Minnesota law permits the state DOT to mask parking violations committed by CMV operators.

#### 171.163 COMMERCIAL DRIVER'S LICENSE RECORD KEEPING.

An agency, court, or public official in Minnesota shall not mask, defer imposition of judgment for, or allow an individual to enter into a diversion program that would prevent a conviction for a violation of a state or local traffic control law, ***except a parking violation***, from appearing on the driving record of a holder of a commercial driver's license, when the violation is committed in any type of motor vehicle, or on the

driving record of an individual who committed the violation in a commercial motor vehicle.

Under MN GDL law, parking is not a “moving violation,”  
171.04 PERSONS NOT ELIGIBLE FOR DRIVERS’  
LICENSES.

Subdivision 1. Persons not eligible. The department shall not issue a driver’s license:

(1) to any person under 18 years unless:

(i) the applicant is 16 or 17 years of age and has...not more than one conviction for a moving violation that is not crash related. “Moving violation” means a violation of a traffic regulation but does not include a parking violation, vehicle equipment violation, or warning citation;

Parking violations are not reported to the MN DOT:

171.16 COURT MAY RECOMMEND SUSPENSION.

Subdivision 1. Court to report to commissioner. Every court having jurisdiction over offenses committed under any law of this state or ordinance of a political subdivision regulating the operation of motor vehicles, shall forward to the department, within ten days, a record of the conviction of any person in the court for a violation of any laws or ordinances, except parking violations and defective vehicle equipment or vehicle size or weight violations.

*Illinois:*

Demerit points are not assessed to parking violations and are not considered a moving violation. Parking violations do not appear on the driving record.

*Iowa:*

Parking violations are not countable offenses for demerit points. Improper parking on highway is not considered a moving violation (321.354(2)).

***Factual data and analytical methodologies***

This rule is proposed simply to bring DOT’s administrative rule into compliance with statutory requirements. The

analytical methodology consisted of reviewing the statutes described and DOT’s current administrative rule, noting the inconsistency, and drafting the rule to conform to statutory requirements.

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

This rule regulates individual behavior, not small businesses, and is proposed in order to bring DOT’s existing regulations into conformity with existing statutes. Accordingly, there was no analysis or supporting documentation used. Staff simply noted that this proposal affects individual drivers and not businesses.

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

The Department expects that there will be no fiscal impact on state or private sector revenues or liabilities.

**Small Business Impact**

The demerit point rule affects individual drivers and does not create or impose any regulation upon business.

***Small business regulatory review coordinator***

The Department’s Regulatory Review Coordinator may be contacted by e-mail at [ralph.sanders@wisconsin.gov](mailto:ralph.sanders@wisconsin.gov), or by calling (414) 438-4585.

**Fiscal Estimate**

The Department estimates that there will be no fiscal impact on the liabilities or revenues of any county, city, village, town, school district, vocational, technical and adult education district, sewerage district, or federally-recognized tribes or bands.

**Agency Contact Person**

Reed McGinn  
DOT —Division of Motor Vehicles  
Citations and Withdrawal Section  
Room 305, P. O. Box 7917  
Madison, WI 53707-7917



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## Submittal of Proposed Rules to the Legislature

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

**Agriculture, Trade and Consumer Protection**  
**CR 09-054**

A rule-making order to revise Chapter ATCP 1, relating to administrative orders and contested cases.

**Employment Relations Commission**  
**CR 10-019**

A rule-making order to revise Chapters ERC 1 to 12, 14, 17, 19 to 28, 30 to 33, 40 and 50, and to create Chapters ERC 29 and 60 to 68, relating to the administration of collective bargaining laws.

**Public Defender Board**  
**CR 10-022**

A rule-making order to create Chapter PD 8, relating to payments for copies of discovery material provided to staff and private attorneys appointed to represent state public defender clients in legal proceedings.

**Revenue**  
**CR 10-005**

A rule-making order to create section Tax 1.17, relating to the ambulatory surgical center assessment.

**Workforce Development**  
***Labor Standards, Chs. DWD 270-279***  
**CR 09-110**

A rule-making order to create Chapter DWD 273, relating to traveling sales crews.

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## Rule Orders Filed with the Legislative Reference Bureau

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*The following administrative rule orders have been filed with the Legislative Reference Bureau and are in the process of being published. The date assigned to each rule is the projected effective date. It is possible that the publication date of these rules could be changed. Contact the Legislative Reference Bureau at [bruce.hoesly@legis.wisconsin.gov](mailto:bruce.hoesly@legis.wisconsin.gov) or (608) 266-7590 for updated information on the effective dates for the listed rule orders.*

### Accounting Examining Board

#### CR 09-100

Rule revises Chapters Accy 7 and 8, relating to granting certificates to applicants pursuant to an international mutual recognition agreement.  
Effective 6-1-10.

### Children and Families

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

#### CR 08-068

Rule amends section DCF 120.05 (1) (c), relating to emergency assistance for needy families.  
Effective 6-1-10.

### Commerce

#### *Fee Schedule, Ch. Comm 2*

#### CR 09-116

Rule amends section Comm 2.68, relating to public swimming pool and water attraction plan review and inspection fees.  
Effective 6-1-10.

### Health Services

#### *Management and Technology and Strategic Finance, Chs. DHS 1—*

#### CR 10-003

Rule creates Chapter DHS 19, relating to reduction or waiver of penalties for voluntary self-disclosure by a small business of actual or potential violations of rules or guidelines, and affecting small businesses.  
Effective 6-1-10.

### Health Services

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

#### CR 09-061

Rule repeals and recreates Chapter DHS 85, relating to non-profit corporations and unincorporated associations as guardians.  
Effective 6-1-10.

### Health Services

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

#### CR 09-109

Rule revises Chapter DHS 75, relating to substance abuse counselors, clinical supervisors, and prevention specialists, and affecting small businesses.  
Effective 6-1-10.

### Health Services

#### *Health, Chs. DHS 110—*

#### CR 09-115

Rule repeals Chapters DHS 117, 160 and 253, and revises Chapter DHS 172, relating to fees for copies of health care provider records, registration of sanitarians, safety, maintenance and operation of public swimming pools and water attractions, and child support cooperation for food stamps, and affecting small businesses.  
Effective 6-1-10.

### Hearings and Appeals

#### CR 09-101

Rule revises Chapter HA 2, relating to the procedure and practice for corrections hearings before the Division.  
Effective 6-1-10.

### Insurance

#### CR 09-076

Rule revises section Ins 3.39 and Appendix 3, relating to medicare supplement and replacement guarantee issue eligibility.  
Effective 6-1-10.

### Insurance

#### CR 09-093

Rule creates Chapter Ins 57, relating to care management organizations.  
Effective 6-1-10.

### Insurance

#### CR 09-095

Rule creates section Ins 3.34, relating to coverage of dependents to age 27.  
Effective 6-1-10.

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

Rule revises Chapter NR 10, relating to hunting, trapping and wildlife rehabilitation.  
Effective 6–1–10.

**Natural Resources***Fish, Game, etc., Chs. NR 1—***CR 09–053**

Rule revises section NR 10.104 (4) (b), relating to deer management unit population goals.  
Effective 6–1–10.

**Natural Resources***Fish, Game, etc., Chs. NR 1—***CR 09–103**

Rule repeals section NR 45.04 (1) (g) and creates section NR 45.045, relating to regulation of firewood entering department lands and affecting small businesses.  
Effective 6–1–10.

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

Rule revises Chapters NR 404, 438, and 484, relating to ambient air quality standards for ozone and lead, including new reporting requirements for lead compounds.  
Effective 6–1–10.

**Pharmacy Examining Board****CR 09–098**

Rule revises sections Phar 6.08, 7.12, and 8.12, relating to security systems, utilization reviews, and prescription orders transmitted by facsimile machines.  
Effective 6–1–10.

**Public Defender Board****CR 09–067**

Rule revises Chapter PD 1, relating to the certification of private bar attorneys to accept appointments to provide legal representation for state public defender clients.  
Effective 7–1–10.

**Public Defender Board****CR 09–068**

Rule revises Chapters PD 2, 3, and 6, relating to representation by the state public defender of persons detained under Chapters 51 or 55, Stats., or subject to involuntary administration of psychotropic medication without a predetermination of financial eligibility.  
Effective 6–1–10.

**Public Instruction****CR 09–106**

Rule creates Chapter PI 39, relating to grants for tribal language revitalization.  
Effective 6–1–10.

**Transportation****CR 09–113**

Rule creates Chapter Trans 148, relating to electronic recording and release of liens by non-individual creditors.  
Effective 6–1–10.

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## Rules Published with this Register and Final Regulatory Flexibility Analyses

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*The following administrative rule orders have been adopted and published in the **April 30, 2010**, Wisconsin Administrative Register. Copies of these rules are sent to subscribers of the complete Wisconsin Administrative Code and also to the subscribers of the specific affected Code.*

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

### Health Services

*Health, Chs. DHS 110—*

#### CR 09-062

Rule revises Chapter DHS 157, relating to radiation protection and affecting small business. Effective 5-1-10.

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

The revisions in x-ray regulatory requirements will affect a limited number of the small businesses that have x-ray devices, but will not have a significant economic impact on those businesses.

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

No comments were received.

### Insurance

#### CR 09-097

Rule revises section Ins 6.77, relating to exempting commercial umbrella and commercial liability policies covering only hired and non-owned autos from having to offer or include uninsured and underinsured motorist coverage. Effective 5-1-10.

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

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

The lack of this change would likely disrupt small business insurance and thus their operation.

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

No comments were reported.

### Revenue

#### CR 09-064

Rule creates sections Tax 2.60 to 2.67, relating to combined reporting for corporation franchise and income tax purposes. Effective 5-1-10.

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

This rule does not have a significant economic impact on a substantial number of small businesses.

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

No comments were reported.

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## Sections Affected by Rule Revisions and Corrections

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The following administrative code sections had rule revisions and corrections take place in **April 2010**, and will be effective as indicated in the history note for each particular section. For additional information, contact the Legislative Reference Bureau at (608) 266-7590.

### Revisions

#### Health Services

##### DHS 157

DHS 157.03 (5), (6), (32m) (a), (33) (a), (50) (intro.), (a), (c) to (e), (75r), (103r), (191), (200) (intro.), (221m), (222), (264r), (374) (c), (d), (382), (388), (402m), (407), (413), (429m)

DHS 157.05 (5) (title)

DHS 157.09 (2)

DHS 157.11 (2) (b), (h)

DHS 157.12 (1)

DHS 157.13 (1) (j), (4) (a), (g), (i), (j), (19)

DHS 157.22 (1) (c)

DHS 157.25 (2) (a)

DHS 157.29 (6) (e)

DHS 157.30 (1) (a), (6) (b), (8)

DHS 157.32 (9)

DHS 157.42 (1) (a), (b)

DHS 157.53 (1) (a)

DHS 157.61 (10), (12) (b)

DHS 157.62 (1) (b), (3) (b), (c)

DHS 157.63 (1) (a), (b), (2) (a), (b), (3) (a), (4) (c), (5) (a), (c), (6)

DHS 157.64 (1) (a), (b), (4) (b), (5) (b), (c), (6) (c), (7) (c), (8) (a) to (d)

DHS 157.65 (8) (b), (10)

DHS 157.67 (8) (b), (17) (b), (18)

DHS 157.68 (1) (intro.), (c), (2) (e), (f)

DHS 157.74 (2) (g), (L), (3)

DHS 157.76 (11), (12)

DHS 157.77 (2) (g)

DHS 157.79 (2) (c)

DHS 157.80 (2) (a)

DHS 157.81 (1), (2), (3) (c)

DHS 157.82 (2) (c), (5) (c), (6)

DHS 157.83 (1) (a), (c)

DHS 157.85 (13) (em), (14) (e), (fm), (g), (16) (g)

DHS 157.87 (2) (h)

DHS 157.88 (3) (a)

DHS 157.92 (2) (c), (3) (a), (b)

DHS 157 Appendices E, O, P, T

#### Insurance

##### Ch. Ins 6

Ins 6.77 (1), (2), (3) (ag), (4) (a), (am), (c), (6)

#### Revenue

##### Ch. Tax 2

Tax 2.60

Tax 2.61

Tax 2.62

Tax 2.63

Tax 2.64

Tax 2.65

Tax 2.66

Tax 2.67

### Editorial Corrections

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

#### Natural Resources

##### Ch. NR 219

NR 219.04 Table B Parameter No. 15

#### Revenue

##### Ch. Tax 2

Tax 2.11 (1) (b), (4)

Tax 2.49 (1), (3) (intro.)

Tax 2.495 (1), (2) (d), (3) (intro.)

Tax 2.50 (1), (3) (intro.)

Tax 2.502 (1), (3) (intro.)

Tax 2.62 (7), (8)

### Transcription Corrections

Transcription errors were corrected in the following.

##### Ch. NR 20

NR 20.20 (56) (i), (64) (d), (h)

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## Executive Orders

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

**Executive Order 311.** 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 Specialist Robert Rieckhoff of the United States Army Who Lost His Life While Serving His Country in Operation Iraqi Freedom.

**Executive Order 312.** Relating to the Creation of the Office of Health Care Reform.

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