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WISCONSIN ADMINISTRATIVE REGISTER

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Emergency Rules Now in Effect

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

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

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

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

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

Copies of emergency rule orders can be obtained from the promulgating agency. The text of current emergency rules can be viewed at www.legis.state.wi.us/rsb/code.

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

Agriculture, Trade and Consumer Protection (2)

1. **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
Hearing Date: May 25, 2010

(See the Notice in this Register)

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

3. **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

4. **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
Hearing Date: May 26, 2010
(See the Notice in this Register)

5. **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

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

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

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

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

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

2. **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 www.willwisconsin.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

Insurance (5)

1. **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

2. **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 31, 2010
Hearing Date: December 3, 2009

3. **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.)
Hearing Date: May 26, 2010
 (See the Notice in this Register)

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

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

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: June 29, 2010
Hearing Date: November 16, 2009

Public Instruction (2)

1. **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

2. **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)

- 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

- 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)

- 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: June 27, 2010
Hearing Dates: December 1 and 15, 2009

- 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: July 15, 2010
Hearing Dates: December 10 and 21, 2009

- 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
Extension Through: July 19, 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

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

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

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

Scope Statements

Administration

Subject

Creates Chapter Adm 24, relating to debarment, suspension, and ineligibility of Department of Administration contractors.

Objective of the Rule

The purpose of the proposed rule is to set forth the policies and procedures governing debarment and suspension of contractors from state construction contracts involving the Department of Administration.

Policy Analysis

Pursuant to s. 16.85, Stats., the Wisconsin Department of Administration is responsible for the supervision of all engineering, architectural services or construction work performed by, or for, the state in the construction and acquisition of new buildings or improvements and additions to existing buildings. The Department solicits bids from, awards contracts to, and approves subcontracts with, responsible business concerns and individuals as prescribed in Chapters Adm 20 and 21. The Department proposes creating a rule similar to Trans 504 adopted by the Department of Transportation (DOT) for debarment and suspension of contractors from state construction contracts involving DOT. The department has determined that the proposed rule is in the public interest to protect the government from contractor misconduct.

Statutory Authority

Sections 16.004 (1) and 16.855 (15), Wis. Stats.

Comparison with Federal Regulations

Subpart 9.4, of Title 48 of the Federal Acquisition Regulations prescribes policies and procedures governing the debarment and suspension of contractors for cause by federal government agencies. These regulations also provide for the listing of contractors debarred, suspended, proposed for debarment and declared ineligible, and sets forth the consequences of this listing.

Entities Affected by the Rule

Prospective bidders responding to the Department's proposals for specific construction projects.

Estimate of Time Needed to Develop the Rule

Approximately 80 hours of department staff time will be needed to promulgate the rules.

Contact Information

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Financial Institutions — Securities

Subject

Revises Chapters DFI–Sec 1, 2, 4, 5, 8 and 32, making minor revisions to securities law and franchise law administrative code sections.

Policy Analysis

The purpose of the rule is to bring these sections into conformity with Wisconsin securities statutes which were substantially revised in 2008 with the adoption of the Uniform Securities Act of 2002, as well as reflect current industry and regulatory practices. Matters affected include statutory citations, definitions, securities registration exemptions, prohibited conduct involving investment adviser solicitation activities, electronic filings, appearances and defaults, and amendments to franchise registration statements.

Statutory Authority

Sections 551.406 (5), 551.412 (5), 551.605 (1), 553.31 (1), 553.58 (1) and 227.11 (2), Stats.

Comparison with Federal Regulations

Section 203(e) and (f), and 206(4)–3 of the Investment Advisers Act of 1940.

Entities Affected by the Rule

Issuers of securities exempt from registration, securities broker–dealers, investment advisers and entities soliciting persons to be clients of investment advisers, federal and state securities regulatory authorities, securities self–regulatory organizations, and franchisors amending their franchise registrations.

Estimate of Time Needed to Develop the Rule

100 hours.

Contact Information

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Insurance

Subject

Revises section Ins 51.01, relating to the risk–based capital of health insurers, property and casualty insurers, and fraternal insurers.

Objectives of the Rule

The objective of the proposed rule is to improve the monitoring of insurer solvency by modifying the risk–based capital (RBC) requirements so that the definition of a company action level event includes a trend test for property and casualty insurers, and a trend test for health insurers, and the removal of the exemption for fraternal insurers.

Policy Analysis

Currently ch. Ins 51 requires property and casualty insurers and health insurers to calculate their authorized control level RBC in accordance with the National Association of Insurance Commissioners (NAIC) instructions. The NAIC has amended the instructions for property and casualty insurers and for health insurers to include a trend test. Currently ch. Ins 51 does not include the trend tests in the definition of a company action level event, an event in which a company is required to submit a corrective plan. Currently a company action level event occurs if a health insurer's or a property and casualty insurer's adjusted capital is less than 2.0 times the authorized control level RBC, and more than 1.5 times the authorized control level RBC. Under the proposed rule a company action level event would also occur if the insurer's adjusted capital is between 2.0 and 3.0 times the authorized control level RBC and the insurer triggers the negative trend test determined in accordance with the NAIC instructions.

Currently, fraternal insurers are exempt from the RBC filing requirements, unless the commissioner finds that inclusion of fraternal insurers would improve solvency monitoring. The proposed rule would remove the general exemption for fraternal insurers and fraternal insurers would be subject to the same RBC reporting requirements as life insurers.

Statutory Authority

Sections 601.01, 611.19 (1), 614.19, 618.21, 623.02 and 623.11, Stats.

Comparison with Federal Regulations

There are no federal regulations which address the subject matter of the proposed rule.

Entities Affected by the Rule

The proposed rule affects health insurers and property and casualty insurers that are subject to risk–based capital calculation, and affects fraternal insurers by making them subject to risk–based capital reporting requirements.

Estimate of Time Needed to Develop the Rule

100 hours and no other resources are necessary.

Natural Resources

Environmental Protection — General, Chs. NR 100—

(DNR # WT–29–09)

Subject

Revises Chapter NR 114, relating to certification requirements of waterworks and wastewater treatment plant operators; and to the certification of septage servicing operators.

Policy Analysis

The Department is proposing revisions to Ch. NR 114 Subchapter I Certification Requirements of Waterworks and Wastewater Treatment Plant Operators. As a result of advances/changes in wastewater and computer technologies, there are now many ways for operators to receive education and training to gain knowledge and competency in the wastewater profession besides through examination alone. The Department plans to review and clarify the wastewater treatment plant classifications and subclasses, and possibly propose changes in the certification exam process and

certification requirements for wastewater treatment plant operators.

The Department also proposes to revise Ch. NR 114 Subchapter II Certification of Septage Servicing Operators. The Department proposes amendments to clarify code language to better reflect general requirements for newly certified operators and career advancement certification levels. Also proposed is the removal of outdated grandfathering language.

Statutory Authority

Section 281.17 (3), Wis. Stats., authorizing the Department to establish a program for the certification of operators of water systems, wastewater treatment plants and septage servicing vehicles.

Comparison with Federal Regulations

Surrounding states including Illinois, Michigan, Minnesota and Iowa all have licensing programs for domestic septage. Though not specifically required by 40CFR part 503 regulations, most states operate a license/certificate program for septage service operators, though some delegate to individual counties or municipalities. Record keeping, certification of pathogen reduction, vector attraction requirements, odor control, crop restrictions, nutrient management, and protection to the environment are the main points of emphasis in typical state septage programs.

Entities Affected by the Rule

Entities affected by this rule amendment include:

1. Wisconsin Wastewater Operators Association (WWOA) that serves over 2,000 wastewater treatment plant professionals serving municipalities and industries throughout the state.
2. Wisconsin Rural Water Association (WRWA) that supports water & wastewater systems and operators.
3. Central States Water Environment Association (CSWEA) whose objectives include advancement of technology in the design and management of water quality systems and facilities and to promote sound policy in matters relating to the water environment.
4. Wisconsin Liquid Waste Carriers Association (WLWCA) that represent septage hauling businesses servicing portable toilets and private septic systems, septage hauling businesses that transport liquid wastes to treatment plants, and those that dispose liquid wastes through land application.
5. Others affected by the rule include septage servicing operators not represented by the WLWCA.
6. Technical colleges across the state, private trainers and consultants.
7. Septage disposal administrators at the county level.

Another possible affected entity is Department of Workforce Development (DWD) that would be involved in the creation of a state approved Wastewater Treatment Plant Operator Apprenticeship Program. This is likely to provide another method for training operators, especially for larger facilities, and a possible means to obtain an advanced certification level.

Estimate of Time Needed to Develop the Rule

The estimated time to develop the rule will likely be 18–24 months. During this time, the Department plans to meet with operator trainer stakeholders in the state as well as form a NR 114 Technical Advisory Committee (TAC) in the development of this rule revision.

Contact Information

The Department wastewater program contact is:

Jack Saltes

101 S. Webster St., Madison, WI

Phone: 608-264-6045

Email: Jack.Saltes@wisconsin.gov

The Department septage servicing program contact is:

Fred Hegeman

101 S. Webster St., Madison, WI

Phone: 608-267-7611

Email: Fredrick.Hegeman@wisconsin.gov

The Department administrative program contact is:

Kelly Thompson

101 S. Webster St., Madison, WI

Phone: 608-266-8948

Email: Kelly.Thompson@wisconsin.gov

Veterans Affairs**Subject**

Revises Chapter VA 2 to allow for the repair or replacement of devices used for “Dental Care”, “Hearing Care”, or “Vision Care”. This rule relates to the provision of the Assistance to Needy Veterans Grant program.

Objective of the Rule

The Board of Veterans Affairs has determined that the department needs to provide veterans with replacement “Dental Care”, “Hearing Care and” “Vision Care” devices. The department intends to establish specific criteria for replacement or repair of lost or broken dentures, hearing aids and glasses relating to the purpose of administering the Assistance to Needy Veterans Grant program.

The rule will define the amount of available funds and frequency of repair or replacement of “Dental Care”, “Hearing Care” and “Vision Care” devices available under the Assistance to Needy Veterans Grant program. The department wants to provide clarification for all parties who may seek benefits, assist veterans in seeking benefits and the department regarding the scope of benefits available in this program and to administer the program in accordance with the policies of the Board of Veterans Affairs.

Policy Analysis

Under current program rules, there is no provision for repairing or replacing devices used to provide “Dental Care”, “Hearing Care” or “Vision Care”. The current statutes do not provide additional opportunities to use the program where a veteran has lost or damaged dentures, hearing aids or eyewear after a veteran has exhausted initial eligibility for “Dental Care”, “Hearing Care” or “Vision Care”. The goal of the program is to provide approximately the same level of care regarding “Dental Care”, “Hearing Care”, and “Vision Care” that is available under the United States Department of Veterans Affairs (USDVA) health care program to those veterans who could not qualify for that program. The USDVA provides eligible veterans with repairs of damaged or lost dentures, hearing aids or eyewear if specific criteria are met. The department believes that providing repair or replacement of devices used for “Dental Care”, “Hearing Care” and “Vision Care” in accordance with care offered by the United States Department of Veterans Affairs will provide clarification of the scope of treatment available and allow the program to function in accordance with the policies established by the Board of Veterans Affairs.

Statutory Authority

Section 45.03 (1) and 45.40 (3m), Stats.

Comparison with Federal Regulations

The Assistance to Needy Veterans Grant program is administered entirely under the authority of state law. The U.S. Department of Veterans Affairs provides health care for eligible veterans in accordance with Title 38 of the U.S. Code and Title 38 of the Code of Federal Regulations. All veterans applying for benefits under this program are required to apply for the same benefits from the U.S. Department of Veterans Affairs and to use that agency’s services if found eligible. Any veteran who does not apply for benefits from that agency or does not accept benefits from that agency if eligibility is established is ineligible for the program. There is no other existing or proposed federal regulation that has any direct bearing upon the proposed rule.

Entities Affected by the Rule

The amended rules will affect veterans applying for the benefit, the department, providers of “Dental Care”, “Hearing Care”, and “Vision Care”, and county veterans’ service officers.

Estimate of Time Needed to Develop the Rule

Approximately 15 hours of Department of Veterans Affairs staff time will be needed to promulgate the rule.

Submittal of Rules to Legislative Council Clearinghouse

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

Agriculture, Trade and Consumer Protection **CR 10-045**

On April 21, 2010, the Department of Agriculture, Trade and Consumer Protection submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed order revises Chapter ATCP 127, relating to the addition of cell phone numbers to Wisconsin's Telemarketing "No Call" list.

Agency Procedure for Promulgation

A public hearing is scheduled for June 8, 2010. The Department's Office of Legal Counsel is primarily responsible for promulgation of the rule.

Contact Information

Michelle Reinen
Phone: (608) 224-5160

Commerce

Financial Resources for Businesses and Communities, Chs. Comm 100— CR 10-044

On April 21, 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 124, relating to the Forward Innovation fund.

Agency Procedure for Promulgation

A public hearing is scheduled for May 26, 2010. The Department's Division of Business Development is primarily responsible for promulgation of the rule.

Contact Information

Sam Rockweiler, Code Development Consultant
Phone: (608) 266-0797
Email: sam.rockweiler@wisconsin.gov

Insurance **CR 10-043**

On April 20, 2010, the Office of the Commissioner of Insurance submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed order creates section Ins 3.36, relating to autism spectrum disorders and affecting small business.

Agency Procedure for Promulgation

A public hearing is scheduled for May 26, 2010.

Contact Information

A copy of the proposed rule may be obtained from the Web site at: <http://oci.wi.gov/ocirules.htm> or by contacting:

Inger Williams
Public Information and Communications
Phone: (608) 264-8110

For additional information, please contact:

Julie E. Walsh, OCI Legal Unit
Phone: (608) 264-8101
Email: Julie.walsh@wisconsin.gov

Natural Resources **Fish, Game, etc., Chs. NR 1— CR 10-051**

(DNR # WM-02-10)

On April 30, 2010, the Department of Natural Resources submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed order revises Chapters NR 8, 10, 12, and 17, relating to the 2010 Wildlife Management Bureau housekeeping rule, relating to license and permit procedures, game and hunting, wildlife damage and nuisance control, and dog trials and training.

Agency Procedure for Promulgation

A public hearing is scheduled for June 7, 2010.

Contact Information

Scott Loomans
Bureau of Wildlife Management
Phone: (608) 267-2452

Natural Resources

Environmental Protection — Air Pollution Control, Chs. NR 400— CR 10-046

(DNR # AM-06-10)

On April 29, 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 410, relating to the increase of asbestos inspection fees and the addition of fees for review of revised notifications and inspection of fire training burns.

Agency Procedure for Promulgation

Public hearings are scheduled for June 3 and 4, 2010.

Contact Information

Robert B. Eckdale
Bureau of Air Management
Email: Robert.Eckdale@wisconsin.gov

Natural Resources

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

CR 10-047

(DNR # AM-09-10)

On April 29, 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 410, relating to fees for reviewing permit applications for construction of air pollution sources.

Agency Procedure for Promulgation

Public hearings are scheduled for June 7, 8, and 9, 2010.

Contact Information

Robert B. Eckdale
Bureau of Air Management
Email: Robert.Eckdale@wisconsin.gov

Natural Resources

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

CR 10-048

(DNR # AM-12-10)

On April 29, 2010, the Department of Natural Resources submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed order revises Chapters NR 400, 405, and 406, relating to permit requirements relating to non-federal Class I areas.

Agency Procedure for Promulgation

Public hearings are scheduled for June 7 and 9, 2010.

Contact Information

Robert B. Eckdale
Bureau of Air Management
Email: Robert.Eckdale@wisconsin.gov

Natural Resources

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

CR 10-049

(DNR # AM-13-10)

On April 29, 2010, the Department of Natural Resources submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed order revises Chapters NR 484 and 485, relating to the vehicle inspection and maintenance program.

Agency Procedure for Promulgation

A public hearing is scheduled for June 10, 2010.

Contact Information

Robert B. Eckdale
Bureau of Air Management
Email: Robert.Eckdale@wisconsin.gov

Natural Resources

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

CR 10-050

(DNR # AM-16-10)

On April 29, 2010, the Department of Natural Resources submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed order revises Chapters NR 400, 404 to 408, and 484, relating to permit requirements related to fine particulate matter (PM_{2.5}) emissions.

Agency Procedure for Promulgation

Public hearings are scheduled for June 7, 8, and 9, 2010.

Contact Information

Robert B. Eckdale
Bureau of Air Management
Email: Robert.Eckdale@wisconsin.gov

Rule–Making Notices

Notice of Hearing

Agriculture, Trade and Consumer Protection

EmR1012

The Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) announces that it will hold a public hearing on its emergency rule to revise section ATCP 70.03, relating to food processing plant license exemptions. DATCP adopted a temporary emergency rule, effective April 22, 2010, to create license exemptions for certain small–scale home canners and maple syrup processors. DATCP is also soliciting public input to assist DATCP in developing “permanent” rules related to food processing plant license exemptions (DATCP has not yet proposed “permanent” rules).

Hearing Information

Tuesday, May 25, 2010

9:30 a.m. – 12:30 p.m.

WI Dept. of Agriculture, Trade & Consumer Protection
2811 Agriculture Drive – Board Room, 1st Floor
Madison, WI 53718

DATCP will hold the public hearing at the time and location shown above. DATCP invites the public to attend the hearing and comment on the emergency rule (summarized below). DATCP also seeks public input for the development of proposed “permanent” rules, including answers to the following questions:

- Should small–scale processors of other types of foods also be exempted from food processing plant license requirements?
- If so, what food types? Under what conditions?
- If not, why not?
- Should food processors claiming exemption be required to register with DATCP and obtain a registration certificate, to help farmers market operators and others verify their license status?

Accessibility

Hearing impaired persons may request an interpreter for these hearings. Please make reservations for a hearing interpreter by May 7, 2010, by writing to Deb Mazanec, Division of Food Safety, P.O. Box 8911, Madison, WI 53708–8911; e–mailing to Debbie.mazanec@wi.gov or by phone at (608) 224–4712. Alternatively, you may contact the DATCP TDD at (608) 224–5058. Handicap access is available at the hearings.

Submittal of Written Comments

Following the hearing, the hearing record will remain open until **Monday, June 7, 2010** for additional written comments. Comments may be sent to DATCP’s Division of Food Safety at the address below, by email to Debbie.mazanec@wi.gov or online at <http://AdminRules.Wisconsin.gov/>

Copies of Emergency Rule

You may obtain free copies of the temporary emergency rule by contacting the Wisconsin Dept. of Agriculture, Trade and Consumer Protection, Division of Food Safety, 2811 Agriculture Drive, P.O. Box 8911, Madison, WI 53708. You may also obtain copies by calling (608) 224–4712 or e–mailing deb.mazanec@wi.gov. Copies will also be available at the hearing. To view the proposed rule online, go to: <http://adminrules.wisconsin.gov/Keeley.Moll@datcp.state.wi.us>.

Analysis Prepared by Department of Agriculture, Trade and Consumer Protection

The Department of Agriculture, Trade and Consumer Protection (DATCP) administers state food processing plant license requirements under s. 97.29, Stats. This temporary emergency rule exempts the following persons from licensing under s. 97.29, Stats., subject to certain conditions:

- An individual who home–cans acidic, acidified or fermented vegetable or fruit products for retail sale at a community or social event, farmers’ market or farm roadside stand, and receives no more than \$5,000 from those sales in any license year. This exemption implements the statutory exemption created by 2009 Wis. Act 101.
- A person who processes maple sap to create maple syrup or concentrated maple sap that the person sells only to other processors for further processing, and who receives no more than \$5,000 from those sales in any license year. DATCP is adopting this temporary emergency rule pending the adoption of a “permanent” rule to cover the same matters.
- This emergency rule is needed to implement 2009 Act 101, to provide clear guidance to home canners who wish to sell their products to the public, and to protect the public against potentially serious food safety risks.
- This emergency rule is also needed to relieve certain maple sap processors from unnecessary cost and compliance burdens, while ensuring adequate food safety protection.
- A temporary emergency rule is needed now because a “permanent” rule cannot be completed in time for this year’s farmers market and maple syrup production seasons.
- This emergency rule will take effect immediately upon publication in the official state newspaper, and will remain in effect for 150 days. The Legislature’s Joint Committee for Review of Administrative Rules may extend this emergency rule for up to 120 additional days.

Statutes interpreted

Sections 97.09 (4), 97.29 and 227.24, Stats.

Statutory authority

Sections 93.07 (1), 97.09 (4), 97.29 (1) (g) 8. and (5), and 227.24, Stats.

Explanation of agency authority

- DATCP has broad general authority, under s. 93.07(1), Stats., to interpret laws under its jurisdiction.

- Under s. 97.09(4), Stats., DATCP may establish and enforce standards governing the production, processing, packaging labeling, transportation, storage, handling, display, sale, including retail sale, and distribution of foods that are needed to protect the public from the sale of adulterated or misbranded foods.
- Under s. 97.29(1)(g)8. and (5), Stats., DATCP may spell out food processing plant license requirements and exemptions.
- DATCP is authorized to adopt temporary emergency rules under s. 227.24, Stats., if emergency rules are needed to protect the public health, safety or welfare pending the adoption of “permanent” rules on the same subject.

Related statutes and rules

DATCP administers Wisconsin’s food safety and labeling laws under ch. 97, Stats., including food processing plant license requirements under s. 97.29, Stats. (as modified by 2009 Wis. Act 101). DATCP has adopted food processing plant licensing rules under ch. ATCP 70, Wis. Adm. Code.

A person who processes food for sale or distribution is generally required to hold a state food processing plant license under s. 97.29, Stats. (there are certain exemptions). Persons who are engaged in dairy or meat processing, or who operate retail food establishments, must be licensed under other statutes. Local food license and zoning regulations may apply in some cases.

2009 Wis. Act 101 exempted, from state licensing under s. 97.29, Stats., persons who home–can acidic, acidified or fermented vegetable or fruit products for retail sale at a community or social events or farmers’ markets, provided that the person receives no more than \$5,000 from those sales during the license year. Act 101 does not exempt those persons from other state license requirements that may apply, nor does it exempt them from local licensing or zoning ordinances that may apply.

Plain language analysis

Home Canning for Retail Sale

Under this emergency rule, a person who home–cans acidic, acidified or fermented vegetable or fruit products for retail sale at a community or social event, farmers’ market or farm roadside stand is exempt from a food processing plant license under s. 97.29, Stats, if all of the following apply:

- The person is an individual, not a legal entity such as a corporation.
- The individual receives no more than \$5,000 during the license year from those sales. If 2 or more individuals home–can acidic, acidified or fermented vegetable or fruit products at the same home address, none of those individuals qualifies for the license exemption unless their combined gross receipts from the sale of those products totals no more than \$5,000.
- The canned products have an equilibrium pH value of 4.6 or lower. The individual must test the first batch of canned product produced according to each separate recipe used by the individual in each license year, to verify that canned products produced according to that recipe meet this pH requirement. The individual must keep, for at least 2 years, a record of each pH test.
- The individual registers annually with DATCP. There is no cost to register, and the registrant is not required to obtain a registration certificate from DATCP.

- The individual completes a home–canning safety course, or follows a written recipe (including ingredients and canning procedures) that reliably ensures the safety of each home–canned product.
- The individual discloses to potential buyers, by means of a sign or placard, that the canned products “are homemade in a kitchen that has not been subject to state inspection.”
- Each canned product is properly labeled to include all of the following:
 - The name and address of the individual who canned the product.
 - The date on which the product was canned.
 - The following statement: “This product was made in a home not subject to state licensing or inspection.”
 - A list of ingredients in descending order of prominence (major ingredients must be of vegetable or fruit origin). The list must include the common name of any ingredient that originates from milk, eggs, fish, crustacean shellfish, tree nuts, wheat, peanuts or soybeans.
- The individual keeps a complete written record of every batch of canned product.
 - The batch record must include the name of the product, the product recipe (including procedures and ingredients), the amount of the product batch canned and sold, the canning and sale dates, the sale location, gross sales receipts, the results of any pH test conducted on the product, and the disposition of any product not sold.
 - The individual must keep the record for at least 2 years after the individual sells or otherwise disposes of the product, and must make that record available to DATCP for inspection and copying upon request.

Maple Sap Processed for Sale to Other Processors

Under this rule, a person who processes maple sap to produce maple syrup or concentrated maple sap for sale to another processor for further processing is exempt from licensing under s. 97.29, Stats., if all of the following apply:

- The person receives less than \$5,000 from those sales in a license year.
- The person registers annually with DATCP. There is no cost to register, and the registrant is not required to obtain a registration certificate from DATCP.
- The person keeps a written record of each sale, retains that record for at least 2 years, and makes the record available to DATCP for inspection and copying upon request. The record must include the name and address of the purchaser, the date of sale, the amount of maple syrup or concentrated maple sap sold, and the sale price.

Comparison with federal regulations

There is no federal law that addresses these issues, or compels DATCP to adopt this emergency rule.

Comparison with rules in adjacent states

Minnesota:

Minnesota exempts a person from licensing as a food processor if the person produces less than \$5,000 of non–potentially hazardous food or less than \$5,000 of home–canned acidified food. Home–canned acidified foods may only be sold at community or social events or farmers’ markets in Minnesota. A point–of–sale placard and the product label must disclose that the product was produced in an unlicensed and uninspected home setting. The product label must also disclose the name and address of the processor

and the date the goods were processed. Wisconsin's new law (2009 Act 101) was influenced by Minnesota's law.

Illinois and Michigan:

Illinois and Michigan have no laws related to home-processed foods. All food processed for sale to the public in Illinois and Michigan must be processed in a licensed facility.

Iowa:

In Iowa, individuals may annually process up to \$20,000 in potentially-hazardous baked goods (including soft pies and bakery products with a custard or cream filling) at a licensed "home food establishment" for sale on the premises (the bakery goods may be consumed elsewhere). Individuals may sell non-potentially hazardous home-baked goods at a farmers' market, without a license. Canning and processing of low acid or acidified foods must be done in a licensed commercial establishment.

Summary of data and analytical methodologies

This emergency rule is not based on any specialized data or analytical methodologies. Portions of this rule (such as pH requirements for home-canned food sold to the public) are based on well-established food science and public health principles.

Small Business Impact

This emergency rule implements 2009 Wis. Act 101, which removes license requirements for certain home-canners who wish to sell their products to the public at community or social events, farmers' markets and farm roadside stands. The food safety standards in this rule will help protect the public from serious food safety hazards (including botulism) that may be associated with improperly home-canned products. The prevention of food safety problems promotes public confidence, and benefits the entire food industry including home-canners.

This emergency rule may encourage some home-canning hobbyists to sell their home-canned products at community or social events, at farmers' markets, or at their own farm roadside stands. That may have an adverse competitive impact on licensed canners who currently supply those sales outlets, although the adverse effect is likely to be minimal. Larger food canning businesses that supply canned food for the mass consumer market will not be significantly affected by this emergency rule.

This rule also exempts certain small maple sap processors from licensing under s. 97.29. The exemption will relieve those processors from unnecessary licensing costs and compliance burdens, while ensuring adequate food safety protection.

Small business regulatory coordinator

To provide comments or concerns relating to small business, you may also contact DATCP's small business regulatory coordinator Keeley Moll at the address below, or by emailing to Keeley.Moll@wi.gov or by telephone at (608) 224-5039.

Environmental Impact

This rule will not have any significant environmental impact.

Fiscal Estimate

This rule will not have a significant fiscal impact on the state of Wisconsin or on local governments.

Agency Contact Person

Questions and comments related to this rule may be directed to:

Debbie Mazanec
Dept. of Agriculture, Trade and Consumer Protection
P.O. Box 8911
Madison, WI 53708-8911
Telephone (608) 224-4712
E-Mail: debbie.mazanec@wi.gov

Notice of Hearing

Agriculture, Trade and Consumer Protection CR 10-045

The Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) announces that it will hold a public hearing on a proposed rule to revise Chapter ATCP 127, Wis. Adm. Code, relating to adding cell numbers to Wisconsin's Telemarketing "No Call" List.

Hearing Information

Tuesday, June 8, 2010

2:00 p.m. to 4:00 p.m.

Dept. of Agriculture, Trade and Consumer Protection
2811 Agriculture Drive, Board Room (CR-106)
Madison, Wisconsin, 53718-6777

Hearing impaired persons may request an interpreter for these hearings. Please make reservations for a hearing interpreter by June 11, 2010, by writing to Michelle Reinen, Division of Trade and Consumer Protection, P.O. Box 8911, Madison, WI 53708-8911, Michelle.reinen@wi.gov, telephone (608) 224-5160. Alternatively, you may contact the DATCP TDD at (608) 224-5058. Handicap access is available at the hearings.

Submittal of Written Comments

DATCP invites the public to attend the hearing and comment on the rule. Following the hearing, the hearing record will remain open until **Friday, June 25, 2010** for additional written comments. Comments may be sent to the Division of Trade and Consumer Protection at the address below, by email to Michelle.reinen@wi.gov or online <https://health.wisconsin.gov/admrules/public/Home>.

Copies of Proposed Rule

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

Analysis Prepared by Department of Agriculture, Trade and Consumer Protection

The Department of Agriculture, Trade and Consumer Protection (DATCP) administers the Wisconsin's telemarketing "No Call" law, s. 100.52, Stats. The "No Call"

law authorizes DATCP to create a list of telephone numbers of Wisconsin residents who do not want to receive telemarketing calls.

The law prohibits telemarketers from calling the listed numbers. Telemarketers must register with DATCP, and receive copies of the periodically–updated “No Call” list. DATCP has adopted rules to interpret and administer the “No Call” law, and prohibit unfair telemarketing practices. The rules are contained in ch. ATCP 127, Wis. Adm. Code.

When first enacted, the “No Call” law only authorized DATCP to include residential “land line” numbers on the “No Call” list. 2007 Act 226 changed the law to allow the inclusion of commercial mobile service numbers (cell phone numbers) on the “No Call” list. DATCP has already implemented that law change. This rule merely updates current rules to reflect current law and practice.

Statutes interpreted

Sections 100.20 (2) and 100.52, Wis. Stats.

Statutory authority

Sections 93.07 (1), 100.20 (2) and 100.52, Wis. Stats.

Explanation of agency authority

DATCP has general authority, under s. 93.07(1), Stats., to interpret laws under its jurisdiction. DATCP has authority, under s. 100.52, Stats., to create a list of the telephone numbers of residential consumers with landline service and consumers with cell phone service who do not want to receive telemarketing calls and prohibit telemarketing calls made to telephone numbers on the list. DATCP also has broad authority, under s. 100.20, Stats., to regulate methods of competition and trade practices in business.

Related rules or statutes

Chapter ATCP 127, subchapter II, Wis. Adm. Code, which is promulgated under the authority of s. 100.20(2), Wis. Stats., regulates the sales practice of persons who solicit consumers over the telephone.

Rule content

This rule does all of the following:

- Changes the definition of “residential telephone customer” to “covered telephone customer” and defines this term to mean “an individual in this state who receives basic local exchange service or commercial mobile service from a telecommunications utility.”
- Changes the definition of “nonresidential telephone customer” to “noncovered telephone customer” and defines this term to mean “a person, other than a covered customer, who receives telecommunications service from a telecommunications utility.”
- Amends the definition of “telephone call” to include a voice communication “through the use of commercial mobile service.”
- Clarifies that the definition of “telecommunications utility” includes a person who provides commercial mobile service.
- Renumbers the definitions and amends other parts of the rule to reflect changes in the definitions.

Comparison with federal regulations

Congress, the federal communications commission, and the federal trade commission have created a federal “No Call” list that includes cell phone numbers as well as land line numbers. The federal “No Call” regulations are not identical

to Wisconsin regulations, and in some cases would allow calls that Wisconsin prohibits. However, the federal regulations do not preempt the more protective Wisconsin regulations.

Comparison with rules in adjacent states

Surrounding states, including Minnesota, Iowa, Illinois and Michigan have all adopted the federal “No Call” list as the state list. Indiana, like Wisconsin, maintains its own “No Call” list (the Indiana list, like the federal and Wisconsin lists, includes cell phone as well as land line numbers).

Small Business Impact

This rule will have few, if any, negative impacts on business. This rule simply updates the definitions and coverage of current rules to reflect law changes already enacted by the Legislature and implemented by DATCP.

To provide comments or concerns relating to small business, you may also contact DATCP’s small business regulatory coordinator Keeley Moll at the address below, or by emailing to keeley.moll@wi.gov; telephone at (608) 224–5039.

Fiscal Estimate

This rule will have no significant fiscal impact on DATCP or local units of government.

Agency Contact Person

Questions and comments related to this rule may be directed to:

Michelle Reinen, Program & Policy Analyst
 Department of Agriculture, trade and Consumer Protection
 P.O. Box 8911
 Madison, WI 53708–8911
 Phone: (608) 224–5160
 EMail: michelle.reinen@wisconsin.gov

Notice of Hearing Commerce

Financial Resources for Businesses and Communities, Chs. Comm 100— EmR1008, CR 10–044

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 124, relating to the Forward Innovation Fund, and affecting small businesses.

Hearing Information

The public hearing will be held as follows:

<u>Date and Time:</u>	<u>Location:</u>
May 26, 2010 Wednesday At 9:00 a.m.	Thompson Commerce Center Third Floor, Room 3B 201 West Washington Avenue Madison

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.

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 28, 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. 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 124” 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, or at telephone (608) 266–0797, or at Contact Through Relay. Copies will also be available at the public hearing.

Analysis Prepared by the Department of Commerce

Statutes interpreted

Sections 560.30 to 560.305.

Statutory authority

Sections 227.11 (2) (a) and 560.301, 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 560.301 of the Statutes requires the Department to promulgate rules for administering the Forward Innovation Fund, as established under subchapter II of chapter 560 of the Statutes.

Related statute or rule

The Department has various rules for administering several economic development programs, but those rules do not specifically include the rule text in this order for providing grants and loans that will fund innovative proposals to strengthen inner cities; rural municipalities; entrepreneurship; and industrial, academic and artistic clusters.

Plain language analysis

Under 2009 Wisconsin Act 28, the Department’s Minority Business Development Fund and Community–Based Economic Development Fund were merged into the Forward Innovation Fund – and the corresponding rules in this order are expected to foster innovative start–up, expansion or retention of minority businesses and businesses in economically distressed areas. The rules in this order also address grants and loans for other entities that undertake innovative projects for strengthening inner cities; rural municipalities; entrepreneurship; and industrial, academic and artistic clusters.

Comparison with federal regulations

The U.S. Commerce Department is creating an Office of Innovation and Entrepreneurship and launching a National Advisory Council on Innovation and Entrepreneurship, to promote high–growth entrepreneurship in America. The mission is to maximize the economic potential of new ideas by removing barriers to entrepreneurship, and to foster the development of high–growth and innovation–based businesses. The Office will drive policies that help entrepreneurs translate new ideas, products and services into economic growth. The Office will focus on the following areas:

- Encouraging entrepreneurs through education, training, and mentoring.
- Improving access to capital.
- Accelerating technology commercialization of federal research and development.
- Strengthening interagency collaboration and coordination.
- Providing data, research and technical resources for entrepreneurs.
- Exploring policy incentives to support entrepreneurs and investors.

The Minority Business Development Agency in the U.S. Commerce Department has recently allocated \$900,000 to seven minority business centers across the country to increase minority business access to contracting opportunities under the federal American Recovery and Reinvestment Act (ARRA). The funding will allow each center to hire at least one business development specialist to focus exclusively on ARRA to ensure minority businesses have access to federal, state and local contracting opportunities that are expected to create jobs, jumpstart growth and rebuild the economy.

Comparison with rules in adjacent states

None of the adjacent states were found to have rules that are likewise primarily directed at innovatively fostering business and community investment, job creation and retention, workforce development, and diversification of the state’s economy, particularly in economically distressed areas and through minority businesses. However, the following programs in the adjacent states for enhancing community–based economic development and minority businesses appear to address some of the activities that are expected to occur under these proposed rules, for achieving this objective.

Michigan:

Michigan helps minority–owned businesses access State purchasing contracts by requiring bidders on State construction contracts to submit an equal–employment–opportunity plan. This plan describes in detail the equal–employment–opportunity efforts that the potential contract recipient has engaged in.

The Michigan State Housing Development Authority Board oversees several community and faith–based grant programs that focus on rural housing and economic development, housing counseling, community reinvestment, and Community Development Block Grants.

Minnesota:

Minnesota supports minority and inner–city business development through a Small Business Administration (SBA) Microloan program. The program helps women, low–income individuals, and minority entrepreneurs and

business owners operate successful businesses, particularly in economically distressed areas. The SBA makes direct loans to eligible intermediary lenders who then make short-term loans to start-up, newly established, and growing small-business concerns. The loans can range from a few hundred dollars to \$35,000. The SBA also makes grants to eligible intermediary lenders for providing marketing, management, and technical assistance to their borrowers.

Minnesota also assists economic-development efforts of a certain size in a specific area through a Certified Development Company loan program that provides joint federal and private-sector financing to small businesses – which creates jobs, increases the local tax base, and expands business-ownership opportunities. Long-term fixed-asset financing is provided by a Certified Development Company in conjunction with a second loan from a commercial lender.

Iowa:

Iowa does not appear to have a business-development program for minority-owned businesses, other than a certification program that is similar to Wisconsin's. However, Iowa has a grant program that is designed to assist low- to moderate-income entrepreneurs and microenterprises. A microenterprise is defined as a start-up, home-based or self-employed business which has five or fewer employees and which encounters barriers to obtaining business development assistance or to securing financing from conventional lending sources. Microenterprise development programs differ from traditional small business development programs by focusing on low- to moderate-income and low-wealth individuals, and on economically distressed communities and neighborhoods.

Iowa's community-based economic development programs range from Community Development Block Grant programs and Neighborhood Stabilization Grants to initiatives that support energy efficiency and conservation. They provide technical assistance and grant-writing workshops to assist communities in securing federal grants. Like Wisconsin, Iowa has a Mainstreet/Downtown program that funds renewal efforts for aged buildings and infrastructure.

Illinois:

The Illinois Business Enterprise Program promotes economic development for diverse businesses – such as those owned by minorities, women, and persons with disabilities – and awarded nearly \$400 million to BEP-certified firms in 2009. The Illinois BEP-certification program operates very similarly to the Wisconsin minority-business certification program. The primary intent is to connect minority-business owners with State procurement opportunities, although in Illinois, State agencies and universities are encouraged to spend at least 19 percent of their procurement budgets with BEP-certified companies.

Illinois also has an Office of Urban Assistance that addresses the pressing economic needs of residents, businesses and stakeholders in the State's urban areas. The Office oversees an Employment Opportunities Grant Program; and implements new strategies such as an Urban Weatherization Initiative and an innovative, community-based Illinois Fresh Food Financing Initiative. The Office is also responsible for (1) incentivizing new industrial enterprises to locate in the urban areas of Illinois, thereby stimulating local economies and creating jobs; (2) gathering and providing information on revitalization efforts

in urban areas to public and private entities; (3) recommending and formulating policies that result in the reconstruction of urban economies; and (4) recommending urban economic policies to the General Assembly and Governor relating to a wide variety of topics including housing, urban youth unemployment, and business incubators.

Summary of factual data and analytical methodologies

The data and methodology for developing these rules were derived from and consisted of (1) applying the corresponding provisions in 2009 Wisconsin Act 28; (2) incorporating applicable best practices the Department has developed in administering similar programs for economic development and business development; and (3) reviewing Internet-based sources of related federal, state, and private-sector information.

Analysis and supporting documents used to determine effect on small business

The primary document that was used to determine the effect of the rules on small business was 2009 Wisconsin Act 28. The proposed rules and the applicable portion of this Act apply their private-sector requirements only to entities that choose to pursue a corresponding grant or loan. 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 grants and loans for entities that undertake innovative projects for strengthening inner cities; rural municipalities; entrepreneurship; and industrial, academic and artistic clusters.

Initial regulatory flexibility analysis

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

Businesses choosing to pursue grants and loans for undertaking innovative projects for strengthening inner cities; rural municipalities; entrepreneurship; and industrial, academic and artistic clusters.

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. Grants and loans that are awarded may be issued in conjunction with contracts that require periodic reporting of the ensuing performance.

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

Small business regulatory coordinator

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

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

Although the rules will newly result in review of documentation relating to applications and reports for grants or loans under this chapter, 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 entities that choose to pursue obtaining grants or loans under this chapter.

State fiscal effect

None.

Local government fiscal effect

None.

Long-range fiscal implications

None known.

Agency Contact Person

Mark Richardson
Wisconsin Department of Commerce
Division of Business Development
P.O. Box 7970, Madison, WI 53703
Phone: (608) 267-0770
E-mail: Mark.Richardson@wi.gov

Notice of Hearing

Insurance

EmR1005, CR 10-043

NOTICE IS HEREBY GIVEN That pursuant to the authority granted under s. 601.41 (3), Stats., and the procedures set forth in ss. 227.18 and 227.24 (4), Stats., the Office of the Commissioner of Insurance (OCI) will hold a public hearing to consider the emergency rules and proposed permanent rules to create section Ins 3.36, Wis. Adm. Code, relating to autism spectrum disorders treatment and affecting small business.

Hearing Information

Date: May 26, 2010

Time: 1:00 p.m., or as soon thereafter as the matter may be reached

Place: OCI, Room 227, 2nd Floor
125 South Webster Street
Madison, WI

Submittal of Written Comments

Written comments can be mailed to:

Julie E. Walsh
Legal Unit – OCI Rule Comment for Rule Ins 336
Office of the Commissioner of Insurance
PO Box 7873
Madison WI 53707-7873

Written comments can be hand delivered to:

Julie E. Walsh
Legal Unit – OCI Rule Comment for Rule Ins 336
Office of the Commissioner of Insurance
125 South Webster St – 2nd Floor
Madison WI 53703-3474

Comments can be emailed to:

Julie E. Walsh
julie.walsh@wisconsin.gov

Comments submitted through the Wisconsin Admin. Rule Web site at: <http://adminrules.wisconsin.gov> on the proposed rule will be considered.

The deadline for submitting comments is 4:00 p.m. on the 10th day after the date for the hearing stated in this Notice of Hearing.

Copies of Proposed Rule and Fiscal Estimate

A copy of the full text of the proposed rule changes, analysis and fiscal estimate may be obtained from the OCI internet Web site at <http://oci.wi.gov/ocirules.htm> or by contacting Inger Williams, Public Information and Communications, OCI, at: inger.williams@wisconsin.gov, (608) 264-8110, 125 South Webster Street — 2nd Floor, Madison WI or PO Box 7873, Madison WI 53707-7873.

Analysis Prepared by the Office of the Commissioner of Insurance

Statutes interpreted

Sections 600.01, 628.34 (12), 632.895 (12m) Stats.

Statutory authority

Sections 600.01 (2), 601.41 (3), 601.42, 628.34 (12), 632.895 (12m), Stats.

Explanation of agency authority

The statutes all relate to the commissioner's authority to promulgate rules regulating the business of insurance as it relates to disability insurance products. Specifically, s. 632.895 (12m) (f), Wis. Stats., requires the commissioner to define "intensive-level services," "nonintensive-level services," "paraprofessional," and "qualified" for purposes of providing services under this subsection. The statute further authorizes that the commissioner may promulgate rules governing the interpretation or administration of this subsection.

Related statutes or rules

There are no other statutes or rules that mandate services for autism spectrum disorders. This rule creates a new section to implement the newly created mandate pursuant to 2009 Wis. Act 28.

Plain language analysis and summary of the proposed rule

Under 2009 Wisconsin Act 28, the Commissioner is required pursuant to s. 632.895 (12m), Stats., to define four terms: intensive level services, non-intensive level services, qualified, and paraprofessionals; and may draft rules that relate to the interpretation or administration of section.

To ensure clear understanding of current provider qualifications and treatment options for autism spectrum disorders, the Commissioner established the Autism Working Group. The work group was charged with advising the Commissioner on definitions for the four required terms and making recommendations on how the statute should be implemented. The group was composed of parents, providers, insurers, legislators and advocates. Administrators

of the Waiver program at the Department of Health Services also participated. The group met every other week beginning June 23rd, 2009 until September 10th, 2009 and continues meeting on a quarterly basis.

The Waiver program was used as a baseline to discuss the implementation of the new mandate. Current literature on autism spectrum disorders and information from other states was presented to the working for review and consideration. Because the research and literature in the realm of autism treatments is rapidly evolving, the working group recommended defining “evidence–based” and “behavioral” rather than creating a list of approved therapies that could readily become outdated.

The proposed rule includes definitions of intensive level evidence–based behavioral therapy and non–intensive level evidence–based therapy. Based upon current research, the rule limits intensive level services to children aged 2 to 9 as this period of time has shown to be the optimum time for gains for individuals diagnosed with autism spectrum disorders. Building from the Waiver program, the working group developed a comprehensive regulation.

The proposed rule contains criteria necessary for one to be considered a qualified provider, qualified professional, qualified therapist and qualified paraprofessional. The criteria include a combination of educational, professional and specific training with individuals diagnosed with autism spectrum disorders and, for qualified paraprofessionals, specific requirements for supervised implementation of a treatment plan for the insured. The rule includes provisions to permit individuals who are currently providing services through the department’s Waiver program to be deemed qualified for up to two years and to permit insurers and self–funded plans to contract with these individuals who are experienced but may not meet the “qualified” requirements. The proposed rule differentiates between treatment providers for intensive versus nonintensive–level services. For a psychiatrist, psychologist, social worker certified or licensed to practice psychotherapy or a professional working under the supervision of an outpatient mental health clinic to be considered qualified to provide intensive–level services, the rule delineates a combination of education, training and experience with individuals diagnosed with autism spectrum disorders.

A current, valid state–issued license or certificate is necessary in order for a psychiatrist, psychologist, social worker certified or licensed to practice psychotherapy, speech pathologist, or occupational therapist to be qualified to provide nonintensive–level services or to implement an intensive–level treatment plan. For a person who is a qualified professional working under the supervision of an outpatient mental health clinic, the clinic must be certified under s. 51.038, Stats., in order for the professional to provide nonintensive–level services or to implement an intensive–level treatment plan.

The proposed rule also establishes requirements for paraprofessionals, individuals who may only provide services while working under the supervision of a psychiatrist, psychologist or social worker certified or licensed to practice psychotherapy.

The rule also handles several administrative concerns. It allows insurers to deny claims they believe to be fraudulent, exclude travel time from the required hours of treatment and allocated dollars for treatment and permits dispute resolution through independent review organizations.

Comparison with federal regulations

Autism Treatment Acceleration Act of 2009 (S. 819, H.R. 2413) was proposed in May. If passed, Section 12 will require all insurance companies to provide coverage for evidence–based, medically–necessary autism treatments and therapies. A comparison of final federal requirements and state law and regulation will be reviewed if this act is passed.

Additionally, the “Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008” (29 U.S.C. 1185a), requires group health plans that offer both medical and surgical benefits and mental health or substance use disorder benefits to ensure financial and treatment limitations are no more restrictive than the predominant financial requirements applied to substantially all medical and surgical benefits covered by the plan. Further, the federal law does not permit separate cost–sharing requirements that are applicable only with respect to mental health or substance–use disorder benefits.

The federal government issued interim final rules implementing the Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA) on February 5, 2010. Although the interim rules do not specifically define what constitutes a mental health condition, the newly issued rules provide some guidance to states and insurers. The MHPAEA rules are first effective July 1, 2010 to newly–issued plans or upon the renewal, extension or modification on or after July 1, 2010. The MHPAEA rules require mental health benefits to be defined within the plan by the issuer in accordance with federal and state law and consistent with generally recognized independent standards of current medical practice including the most current version of the Diagnostic and Statistical Manual of Mental Disorders (DSM). The DSM, most current version IV, contains diagnostic criteria for “autistic disorder.” Although there is no direct federal guidance that autism spectrum disorders are subject to federal parity requirements, it is the position of the Commissioner that parity for autism services does apply to group health plans with more than 50 employees based upon preliminary review of the regulations.

Wisconsin’s law is broader than the federal law, as it mandates inclusion of mental health, alcohol and other substance abuse benefits. Further, Wisconsin’s autism treatment mandate applies to individual, small employer and governmental self–funded health plans in addition to group health plans with more 50 employees. The individual, small employer and governmental self–funded plans will remain subject to these mandates as they are not regulated by the federal government.

Comparison of similar rules in adjacent states

Illinois:

Public Act 95–1005 requires private insurers cover autism benefits for children under 21 years of age. No rule–making accompanied this law, however, the statute does include Applied Behavioral Analysis, intervention, and modification as a part of the covered behavioral treatments. The law is subject to pre–existing condition limitations. It is also subject to denials based on medical necessity.

Iowa:

A Bill, SF 1, was introduced in the Iowa legislature this year but did not pass. There are no other similar laws or rules in Iowa.

Michigan:

Two bills, HB 4183 and 4176, requiring autism coverage, have passed the Michigan House; however, they are not expected to reach a vote this year. There are no other similar laws or rules in Michigan.

Minnesota:

Section 62A.3094 was enacted and became effective August 1, 2009. The mandate requires coverage for the diagnosis, evaluation, assessment and medically necessary care for autism spectrum disorders including intensive evidence-based behavior therapy, behavior services, speech therapy, occupational therapy, physical therapy and medications.

Summary of factual data and analytical methodologies

The Commissioner created an advisory Autism Working Group to assist in the development of workable definitions of “intensive” and “nonintensive” level services; “qualified” providers and “paraprofessionals.” The advisory working group was comprised of providers, insurers, advocates, parents of autistic children and representatives from the Department of Health Services familiar with the Medicaid Waiver program for autism services. The working group met seven times between June 23 and September 10, 2009, and continues to meet quarterly. This proposed rule reflects the advisory working group’s recommendations.

Analysis and supporting documentation used to determine rule’s effect on small businesses

There are no insurers offering disability insurance or state or local governmental self-funded entities that meet the definition of a small business.

Small Business Impact

This rule will have little or no effect on small businesses and does not impose any additional requirements on small businesses.

Small business regulatory coordinator

The OCI small business coordinator is Eileen Mallow and may be reached at phone number (608) 266-7843 or at email address eileen.mallow@wisconsin.gov.

Fiscal Estimate

This rule change will have no significant effect on the private sector regulated by OCI.

There will be no state or local government fiscal effect

Agency Contact Person

Inger Williams, OCI Services Section
 Address: 125 South Webster Street, 2nd Floor
 Madison WI 53703-3474
 Mail: PO Box 7873
 Madison, WI 53707-7873
 Phone: (608) 264-8110
 Email: inger.williams@wisconsin.gov

Notice of Hearing**Natural Resources****Fish, Game, etc., Chs. NR 1—****CR 10-051**

(DNR # WM-02-10)

NOTICE IS HEREBY GIVEN that pursuant to ss. 29.011, 29.014, 29.024, 29.03, 29.053(3), 29.192, 29.193, 29.885,

169.21, 169.39 and 227.11, Stats., the Department of Natural Resources will hold a public hearing to consider revisions to Chapters NR 8, 10, 12 and 17, Wis. Adm. Code relating to license and permit procedures, game and hunting, wildlife damage and nuisance control and dog trials and training.

Hearing Information**Date and Time:**

June 7, 2010
 Monday
 at 2:00 PM

Location:

Natural Resources State Office Bldg.
 Room 613
 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 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 8, 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
 Statutory authority**

Sections 29.011, 29.014, 29.024, 29.03, 29.053(3), 29.192, 29.193, 29.885, 169.21, 169.39 and 227.11, Stats.

Statutes interpreted

Sections 29.011, 29.014, 29.024, 29.03, 29.053(3), 29.192, 29.193, 29.324, 29.592, 29.885, 169.21, 169.39 and 227.11, Stats.

Plain language rule analysis

The intent of these rule changes is to correct drafting errors, provide clarification to existing rules, simplify regulations, and update administrative code language and references. Policy issues affected by this rule are ones which have already been addressed by previous rulemaking. The proposed rules will:

1. Allow customers to request free hard copies of turkey, pheasant, trout, waterfowl or salmon stamps through the phone, a designated county clerk’s office, or any department office that provides counter service.
2. Update agency contact information and requirements for administration of the Wildlife Violator Compact Program.
3. Clarify that a person who may only hunt with a mentor, and the mentor with whom they are hunting, can group hunt for deer even though they are only allowed to possess or control one firearm jointly. The season must be open for both hunters, they must be hunting within arms reach of one another, and both must possess the proper licenses and permits. This is consistent with s. 29.324, Stats., related to group hunting and simplifies the explanation of how this law applies during a mentored hunt.

4. Eliminate extraneous deer hunting season language and add a cross reference to update language following the 2006 sunset of a two-year experiment with seasons that did not include October antlerless only deer hunts.

5. Eliminate the description of where hunting is allowed at Big Bay state park because it is unnecessary and the only state park for which such language is established in code.

6. Update a cross reference related to the hours when hunting is allowed.

7. Clarify that in addition to .410 shotguns, it is also illegal to hunt deer, bear or elk with handguns which fire .410 shotgun slugs.

8. Update cross references related to deer registration and deer carcass tags in the CWD zone.

9. Clarify that enforcement action can be taken against a person who fails to report bobcat harvest as required.

10. Repeal a redundant, unnecessary prohibition on hunting from a roadway specifically for wild turkeys.

11. Clarify that when the assistant to a disabled hunter uses a firearm to aid in retrieval of a deer or turkey that has been shot by the disabled hunter, the assistant needs to possess a deer hunting license or any license that authorizes hunting when retrieving a turkey.

12. Clarify that disabled hunters participating in special hunts may tag a deer of either sex with their gun buck carcass tag and additional antlerless deer if they possess valid tags for that unit.

13. Move a provision to a more proper location in order to simplify code language about the removal of nuisance animals.

14. Clarify that a federal permit for the removal of certain nuisance animals can serve as the state permit in order to reduce paperwork. The state could still review permits.

15. Clarify that deer may be shot under the authority of nuisance permits on the day before the opening of nine day gun season in the CWD Management Zone where other firearm hunting is also allowed on that day. Outside the CWD Management Zone, hunting with firearms for species other than waterfowl would continue to be prohibited.

16. Clarify that hunters under the authority of damage and nuisance program permits can retain more than one deer when authorized by the department.

17. Clarify that pen standards apply to captive coyote, fox and rabbit when being transported or for the purpose of health care or treatment and special handling needs. These standards already apply for animals possessed under the authority of Ch. NR 16 related to captive wildlife and to bear, bobcat and raccoon possessed under the authority of Ch. NR 17, dog trials and training.

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. Additionally, none of the proposed rules exceed the authorities granted to states in 50 CFR part 10.

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.

Summary of factual data and analytical methodologies

This rule order is necessary to correct inconsistencies created through the promulgation of other rules and statutes, update code language, correct previous drafting errors, and to clarify existing administrative code language. The rule changes included in this order do not deviate from current department policy on the management of wildlife and the regulation of hunting and trapping.

Small Business Impact

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

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

Environmental Impact

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

Fiscal Estimate

State fiscal effect

None.

Local government fiscal effect

None.

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.

Long-range fiscal implications

None are anticipated.

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

Notice of Hearings

Natural Resources

***Environmental Protection — Air Pollution Control,
Chs. NR 400—
CR 10-046***

(DNR # AM-06-10)

NOTICE IS HEREBY GIVEN That pursuant to ss. 227.16 and 227.17, Stats, the Department of Natural Resources, hereinafter the Department, will hold public hearings on amending and creating rules affecting Chapter NR 410, relating to increased and new fees for asbestos notifications and inspections and affecting small business.

Hearing Information

Date and Time:	Location:
June 3, 2010 Thursday at 1:30 PM	Natural Resources State Office Bldg. Room G09 101 S. Webster St. Madison, WI
June 4, 2010 Friday at 11:00 AM	Northcentral Technical College Main Building, Room E101 1000 West Campus Drive Wausau, WI

Reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Contact Robert B. Eckdale in writing at the Department of Natural Resources, Bureau of Air Management (AM/7), 101 S Webster, Madison, WI 53707; by E-mail to Robert.Eckdale@wisconsin.gov; or by calling (608) 266-2856. A request must include specific information and be received at least 10 days before the date of the scheduled hearing.

Copies of the 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 which can be accessed through the link provided on the Proposed Air Pollution Control Rules Calendar at <http://www.dnr.state.wi.us/air/rules/calendar.htm>. 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 Robert B. Eckdale, Department of Natural Resources, Bureau of Air Management (AM/7), 101 S. Webster St., Madison, WI 53703, or by calling (608) 266-2856.

Submittal of Written Comments

Comments on the proposed rule must be received on or before **June 8, 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:

William Baumann
Department of Natural Resources
Bureau of Air Management (AM/7)
101 S. Webster Street, Madison, WI 53703
Phone: (608) 267-7542

Fax: 608 267-0560

E-mail: William.Baumann@wisconsin.gov

Internet: Use the Administrative Rules System Web site accessible through the link provided on the Proposed Air Pollution Control Rules Calendar at <http://dnr.wi.gov/air/rules/calendar.htm>

Analysis Prepared by the Department of Natural Resources

Statute interpreted

Section 285.69 (3), Stats.

Statutory authority

Sections 227.11 (2a), 285.11 (1), and 285.69 (3), Stats.

Explanation of agency authority

Sections 227.11 (2) (a) and 227.14 (1), Stats., expressly convey rulemaking authority. Section 285.69 (3), Stats., conveys authority to establish fees for specified department activities, and sets maximum levels for those fees.

Related statute or rule

Chapter NR 447 contains regulations related to asbestos abatement activities.

Plain language analysis

The rules amended and created by this proposed order increase fees for certain Department of Natural Resources (Department) asbestos regulatory activities, and create new fees for asbestos regulatory activities related to fire training burns and revised asbestos notifications. These additional fees will offset decreases in federal United States Environmental Protection Agency (EPA) Air Pollution Control grant funds that had previously been used to fund (in part) Department asbestos regulatory activities.

Comparison with federal regulations

Chapter NR 447 contains asbestos regulatory requirements, which parallel corresponding federal regulations. The rule changes and additions proposed in this order change the fees used to fund Department asbestos regulatory activities, but do not affect the underlying regulatory requirements themselves. There is no federal counterpart to the ch. NR 410 fee rule.

Comparison with rules in adjacent states

Illinois, Iowa, Michigan, and Minnesota each operate federally delegated asbestos programs. Iowa, Michigan, and Minnesota each fund their respective asbestos programs with federal grant funds. Illinois, similar to Wisconsin, funds their asbestos program activities through fees charged for asbestos notifications. Illinois fees are \$150 per notification, regardless of other factors (size of project, etc.). If a notification is received late, an additional \$300 is charged to the contractor. Lab analysis costs may be charged to the owner or operator in large enforcement cases, along with employee overtime costs that result from enforcement cases.

Summary of factual data and analytical methodologies

The Asbestos Program is funded by asbestos inspection and permit exemption review fees paid by persons who perform asbestos abatement as part of nonresidential demolition and certain renovation projects. In addition, asbestos program funding has been supplemented by the equivalent of 2.0 full time employees (FTE) from the EPA federal Air Pollution Control grant (105 grant). Asbestos program fees currently fund 2.0 permanent FTE, two half-time limited term employee (LTE) field inspection

positions, and four contracts with the following government agencies to perform inspections on behalf of the Department's Air Management Asbestos Program: City of Menasha; City of Milwaukee, Sauk County, and Waushara County. Due to declining levels of 105 grant funds, that funding source can no longer be used to fund asbestos program activities. Consequently, additional asbestos fee revenue is needed to replace 2.0 FTE of funding from the 105 grant, and thus maintain present levels of asbestos program staffing and public health protection activities.

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

Asbestos related regulatory requirements are not changed by the proposed rules. The proposed rules do increase notification fees for asbestos related projects. See "Effect on small business" section below.

Small Business Impact

Asbestos related regulatory and reporting requirements will not be changed by the proposed rules. The proposed rules will increase notification fees for asbestos related renovation and demolition activities. The fees increases vary according to the quantity of asbestos involved in a renovation or demolition project, and the increases range from \$60 per project for small projects (less than 160 square feet or less than 260 linear feet of asbestos containing material) to \$575 per project for very large projects (more than 5000 combined linear and square footage of asbestos containing materials). On the order of 1600 project notifications are received annually. It is not possible to predict the number of these projects that will be undertaken by small businesses.

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

Environmental Impact

The Department has made a preliminary determination that adoption of the proposed rules would not involve significant adverse environmental effects and would not need an environmental analysis under ch. NR 150, Wis. Adm. Code. However, based on comments received, an environmental analysis may be prepared before proceeding. This analysis would summarize the Department's consideration of the impacts of the proposal and any reasonable alternatives.

Fiscal Estimate

The 2009–11 Budget Bill increased asbestos inspection fees to: \$135 for small asbestos abatement projects, defined as 160 square feet to 260 linear feet; \$350 for medium, defined as involving greater than 160 square feet or 260 linear feet but less than 1,000 combined feet; \$575 for large, defined as greater than or equal to 1,000 combined feet but less than 5,000 combined feet, and \$1,200 for extra large, defined as greater than 5,000 combined feet. These new fees are approximately a 60% increase from the current fees. The bill also created a new \$100 fee for notification revisions and a new \$100 fee for community fire training burns. Finally, the bill provided supporting statutory language for the above–mentioned fees and for the Department to charge double inspection fees to a project for which a notice of an asbestos renovation or demolition activity was not provided, as required by the Department.

It is projected that the increased fees will generate \$246,400 annually.

Agency Contact Person

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Notice of Hearings

Natural Resources

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

CR 10–047

(DNR # AM–09–10)

NOTICE IS HEREBY GIVEN That pursuant to ss. 227.16 and 227.17, Stats, the Department of Natural Resources, hereinafter the Department, will hold a public hearing on revising Chapter NR 410, relating to fees for reviewing applications for construction of air pollution sources and affecting small business.

Hearing Information

Date and Time:

Location:

June 7, 2010
Monday
at 3:00 PM

Natural Resources State Office Bldg.
Room G09
101 S. Webster Street
Madison, WI

June 8, 2010
Tuesday
at 2:00 PM

Havenwoods — Auditorium
6141 N. Hopkins
Milwaukee, WI

June 9, 2010
Wednesday
at 2:30 PM

Northcentral Technical College
Main Building, Room E101
1000 West Campus Drive
Wausau, WI

Reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Contact Robert B. Eckdale in writing at the Department of Natural Resources, Bureau of Air Management (AM/7), 101 S Webster, Madison, WI 53707; by E–mail to Robert.Eckdale@wisconsin.gov; or by calling (608) 266–2856. A request must include specific information and be received at least 10 days before the date of the scheduled hearing.

Copies of the 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 which can be accessed through the link provided on the Proposed Air Pollution Control Rules Calendar at <http://www.dnr.state.wi.us/air/rules/calendar.htm>. 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 Robert Eckdale, Department of Natural Resources, Bureau of Air Management (AM/7), 101 S. Webster St., Madison, WI 53703, or by calling (608) 266–2856.

Submittal of Written Comments

Comments on the proposed rule must be received on or before **June 14, 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:

Andrew Stewart
 Department of Natural Resources
 Bureau of Air Management (AM/7)
 101 S. Webster Street, Madison, WI 53703
 Phone: 608 266–6876
 Fax: 608 267–0560
 E–mail: Andrew.Stewart@wisconsin.gov
 Internet: Use the Administrative Rules System Web site accessible through the link provided on the Proposed Air Pollution Control Rules Calendar at <http://dnr.wi.gov/air/rules/calendar.htm>

Analysis Prepared by the Department of Natural Resources**Statutes interpreted**

Sections 227.11 (2), 285.11 (1) and (6), 285.14 (1), Stats. The State Implementation Plan developed under s. 285.11(6), Stats., is revised.

Statutory authority

Sections 285.11, 285.69 (1) and (1d), Wis. Stats.

Explanation of agency authority

Section 227.11 (2) (a), Stats., gives state agencies general rulemaking authority. Section 285.11, Stats., gives the Department authority to promulgate rules consistent with ch. 285, Stats. Section 285.69 gives the department the authority to promulgate rules for the payment and collection of reasonable fees for construction permit related activities.

Related statute or rule

None.

Plain language analysis

The proposal is to increase fees for construction permit related actions to ensure that the new source review program has adequate funding to perform it's duties in accordance with requirements and deadlines mandated under s. 285.61, Wis. Stats.

Comparison with federal regulations

Existing federal regulations require, but do not set, fees for review of construction permit applications. Section 110(a)(2)(E)(i) of the Clean Air Act requires that any government who wishes to carry out a State Implementation Plan have “adequate personnel, funding, and authority under State law to do so.” Wisconsin’s new source review program is an approved part of the State Implementation Plan and therefore requires adequate funding. US EPA last approved a revision to Wisconsin’s State Implementation Plan for a fee related provision on March 11, 2008. [73 FR 12893].

Comparison with similar rules in adjacent states

Other state agencies were contacted to obtain information regarding their air permit programs. While an attempt was made to do a direct comparison, it proves to be difficult since the funding sources and fee structures differ from state to state. No state was able to provide accurate, average costs of different types of construction permit reviews. Based on the review conducted, it appears that fees proposed in this order are similar to those being charged for similar activities in adjacent states having a fee based construction permit program.

Illinois and Indiana:

Illinois and Indiana have similar programs to Wisconsin where their new source review program is funded mainly by construction permit fees. Illinois last raised their fees in 2004, Indiana in 2007.

Michigan:

Michigan relies on general funding for their new source review program. Communications with Michigan indicate there have been internal proposals in Michigan to establish permit fees to help fund the new source review program, but none have moved forward at this time.

Minnesota:

Minnesota currently has a proposal to raise construction permit fees and to structure the fees much like Wisconsin, Illinois, and Indiana. Their proposal would have core activities paid through permit fees. Major reasons given for their proposal to raise fees are that the cost and complexity associated with new source review has increased significantly over the years. Minnesota’s current fee structure attempts to base the amount on the level of effort needed to review and issue the air permit. Iowa funds its new source review program through grants and general funds. There are two local Iowa air pollution control agencies that do charge construction permit fees to fund new source review.

Comparisons for fees common to adjacent states

	Illinois	Indiana	Minnesota	Wisconsin (current)	Wisconsin (proposed)
Initial Application Fee	\$5,000	No fee	No fee	\$1,350	\$7,500
BACT/LAER Determination	\$5,000	\$4,375	\$4,275	\$2,700	\$4,500
Case by case MACT Determination	\$5,000	No fee	No fee	\$2,700	\$4,500
Detailed Modeling Analysis	No fee	\$4,375	\$4,275	\$3,200	\$4,500
Public Hearing	\$10,000	\$625	No fee	\$150	\$950
Application for Major Modification	\$8,000/\$12,000	\$10,000	No fee	\$8,000	\$12,000

Summary of factual data and analytical methodologies

Data related to revenues generated by new source fees for FY05–FY09, along with projected work load and costs to administer the new source review program, were used to develop and support this order.

Annual new source review program cost

Estimates were made as to the type and number of construction permit reviews to be conducted in the upcoming fiscal year. For each of these, the level of program effort required to complete each type of review was determined. These levels of efforts then were used to estimate the annual cost to administer the construction permit program, taking into account estimated costs for program staff.

Individual fee increases

A 30% increase was applied to fees last revised in 1999 to account for inflation over the last 11 years. An additional increase was also applied to each fee category to better reflect the level of effort associated with the fee related action. Estimates were made as to the number of fee related actions associated with each type of permit review. These estimates were used in conjunction with the proposed fee to determine that the projected future revenue is sufficient to cover the annual program cost.

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

The same information described under number 8. was used to determine the effect on small business. No economic impact report has been requested.

Small Business Impact

The cost to small business to obtain a minor construction permit is proposed to increase in the range of 30 to 75 percent depending on the air regulations applicable to the project. The current cost of a minor construction permit sometimes associated with small business, ranges from \$6,000 to \$8,000.

Many small businesses are able to qualify for coverage under general or registration permits in lieu of needing to obtain a minor construction permit. Currently there is no charge for review and issuance for this type of coverage. New fees are being proposed in this order for reviewing and issuing coverage under a general or registration construction permit, establishing the fee for a general construction permit at \$1,500 and a registration construction permit at \$1,000.

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

Environmental Impact

The Department has made a preliminary determination that adoption of the proposed rules would not involve significant adverse environmental effects and would not need an environmental analysis under ch. NR 150, Wis. Adm. Code. However, based on comments received, an environmental analysis may be prepared before proceeding. This analysis would summarize the Department's consideration of the impacts of the proposal and any reasonable alternatives.

Fiscal Estimate

A revenue increase to the state of \$1,334,307 is projected based on a four year actual average for revenue generated through new source review fees for FY2006–2009 of \$1,647,293.

This proposal does not seek to authorize an increase to Chapter 20 spending authority.

Agency Contact Person

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Notice of Hearings**Natural Resources****Environmental Protection — Air Pollution Control,
Chs. NR 400—****CR 10–048**

(DNR # AM–12–10)

NOTICE IS HEREBY GIVEN That pursuant to ss. 227.16 and 227.17, Stats, the Department of Natural Resources, hereinafter the Department, will hold public hearings on creating rules affecting Chapters NR 400, 405, and 406, relating to permit requirements for Class I areas, and affecting small business.

Hearing Information**Date and Time:**

June 7, 2010
Monday
at 2:00 PM

Location:

Natural Resources State Office Bldg.
Room G09
101 S. Webster Street
Madison, WI

June 9, 2010

Wednesday
at 1:30 PM

Northcentral Technical College
Main Building, Room E101
1000 West Campus Drive
Wausau, WI

Reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Contact Robert B. Eckdale in writing at the Department of Natural Resources, Bureau of Air Management (AM/7), 101 S Webster, Madison, WI 53707; by E-mail to Robert.Eckdale@wisconsin.gov; or by calling (608) 266–2856. A request must include specific information and be received at least 10 days before the date of the scheduled hearing.

Copies of the 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 which can be accessed through the link provided on the Proposed Air Pollution Control Rules Calendar at <http://www.dnr.state.wi.us/air/rules/calendar.htm>. 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 Robert Eckdale, Department of Natural Resources, Bureau of Air Management (AM/7), 101 S. Webster St., Madison, WI, 53703, or by calling (608) 266–2856.

Submission of Written Comments

Comments on the proposed rule must be received on or before **June 14, 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:

Steve Dunn

Department of Natural Resources

Bureau of Air Management (AM/7)

101 S. Webster Street, Madison, WI 53703

Phone: 608 267–0566

Fax: 608 267–0560

E–mail: Steven.Dunn@wisconsin.gov

Internet: Use the Administrative Rules System Web site accessible through the link provided on the Proposed Air Pollution Control Rules Calendar at <http://dnr.wi.gov/air/rules/calendar.htm>

Analysis Prepared by the Department of Natural Resources

Statute interpreted

The State Implementation Plan developed under s. 285.11 (6), Stats., is revised.

Statutory authority

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

Explanation of agency authority

Section 227.11 (2) (a), Stats., gives state agencies general rulemaking authority. Section 285.11 (1), Stats., gives the Department authority to promulgate rules consistent with ch. 285, Stats. Section 285.11 (6), Stats., requires the Department to develop a plan for abatement of air pollution in the State. The permitting program, in general, and these regulations specifically, is part of that plan.

These rules are based on federal rules as well as a 1999 Final Agreement reached between the State and the Forest County Potawatomi Community (FCPC).

Related statute or rule

The FCPC Class I area was established as part of a Federal Implementation Plan approved by USEPA in an April 29, 2008 Federal Register Notice.

Plain language analysis

This rule is being proposed to amend portions of Department rules to incorporate the federal re–designation of certain parcels of the Forest County Potawatomi Community Reservation as a non–Federal Class I area for the prevention of significant deterioration (PSD) of air quality, and to include portions of a 1999 Final Agreement reached between the State and the Forest County Potawatomi Community concerning the Class I area.

A Class I area is defined in ch. NR 405, Wis. Adm. Code. In general, the PSD program is designed to preserve air quality in Class I areas such as national parks and other areas meeting National Ambient Air Quality Standards. Class I areas are subject to lower allowable increases in ambient concentrations of particulate matter, sulfur dioxide, and nitrogen dioxide.

Comparison with federal regulations

In an April 29, 2008, Federal Register Notice, the USEPA established the FCPC Class I area. The Department and the FCPC have agreed to provisions impacting the FCPC Class I area that USEPA stated, in the April 29, 2008, notice, need to be promulgated as part of the State’s Implementation Plan for controlling air pollution in order to be effective for federal purposes.

Comparison with similar rules in adjacent states

There are no non–federal Class I areas or non–federal Class I rules in any of these states.

Summary of factual data and analytical methodologies

The proposed rule is based on the federal re–designation of the FCPC Reservation lands to non–federal Class I, and the Final Agreement.

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

An analysis of the effect of the proposed rules on small business was not performed since the proposed rule only impacts major sources of air pollution in the State and conforms to federal requirements. Major sources of air pollution are not typically small businesses.

Small Business Impact

These rules should not have a significant economic impact on small business because major air pollution sources do not generally meet the definition of a small business.

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

Environmental Impact

The Department has made a preliminary determination that adoption of the proposed rules would not involve significant adverse environmental effects and would not need an environmental analysis under ch. NR 150, Wis. Adm. Code. However, based on comments received, an environmental analysis may be prepared before proceeding. This analysis would summarize the Department’s consideration of the impacts of the proposal and any reasonable alternatives.

Fiscal Estimate

The proposed rules amend the existing air permitting rules to include a non–federal Class air quality area. The Department already processes air permits which may impact existing Class I areas and expects no significant change in permit workload as a result of this rule.

Agency Contact Person

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Notice of Hearing Natural Resources

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

CR 10–049

(DNR # AM–13–10)

NOTICE IS HEREBY GIVEN That pursuant to ss. 227.16 and 227.17, Stats., the Department of Natural Resources, hereinafter the Department, will hold a public hearing on proposed rules revising Chapters NR 484 and 485, relating to the motor vehicle inspection and maintenance program and affecting small business. The proposed revisions relate to issues for State Implementation Plan approvability; and the State Implementation Plan developed under s. 285.11 (6), Stats., will be revised.

Hearing Information

Date and Time: **Location:**
June 10, 2010 Mead Public Library
 Thursday Rocca Meeting Room
 at 1:30 PM 710 North 8th Street
 Sheboygan, WI

Reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Contact Robert B. Eckdale in writing at the Department of Natural Resources, Bureau of Air Management (AM/7), 101 S Webster, Madison, WI 53707; by E-mail to Robert.Eckdale@wisconsin.gov; or by calling (608) 266-2856. A request must include specific information and be received at least 10 days before the date of the scheduled hearing.

Copies of the 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 which can be accessed through the link provided on the Proposed Air Pollution Control Rules Calendar at <http://www.dnr.state.wi.us/air/rules/calendar.htm>. 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 Robert B. Eckdale, Department of Natural Resources, Bureau of Air Management (AM/7), 101 S. Webster St., Madison, WI, 53703, or by calling (608) 266-2856.

Submittal of Written Comments

Comments on the proposed rule must be received on or before Monday, **June 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:

Chris Bovee
 Department of Natural Resources
 Bureau of Air Management (AM/7)
 101 S. Webster Street, Madison, WI 53703
 Phone: 608 266-5542
 Fax: 608 267-0560
 E-mail: Christopher.Bovee@wisconsin.gov

Internet: Use the Administrative Rules System Web site accessible through the link provided on the Proposed Air Pollution Control Rules Calendar at <http://dnr.wi.gov/air/rules/calendar.htm>

Analysis Prepared by the Department of Natural Resources

Statute interpreted

Sections 110.20 (13) (b), 285.11 (6) and 285.30 (2), Wis. Stats. The State Implementation Plan developed under s. 285.11 (6), Stats., is revised.

Statutory authority

Sections 110.20 (13) (b), 227.11 (2) (a), 285.11 (1) and 285.30 (2), Wis. Stats.

Explanation of agency authority

Section 110.20 (13)(b), Stats., gives the Department authority to establish the amount of the repair cost limit for the

vehicle inspection and maintenance program. Section 227.11 (2) (a), Stats., gives agencies general rulemaking authority. Section 285.11(1), Stats., gives the Department authority to promulgate rules consistent with ch. 285, Stats. Section 285.30 (2), Stats., provides authority for the Department to adopt and revise emission limitations for motor vehicles.

Related statute or rule

The related statutes are ss. 110.20, 110.21, and 285.30, Stats. These sections specify requirements for motor vehicle emission inspections in Wisconsin. The first two sections apply to the Department of Transportation and the third section applies to the Department of Natural Resources. A related rule is ch. Trans 131, Wis. Adm. Code. This chapter establishes the Department of Transportation's administrative interpretation of s. 110.20, Stats., relating to a motor vehicle emissions inspection program.

Plain language analysis

A motor vehicle inspection and maintenance (I/M) program has been in effect in southeastern Wisconsin since 1984. The program is presently operating in the seven counties of Kenosha, Milwaukee, Ozaukee, Racine, Sheboygan, Washington, and Waukesha. Initially, all vehicles were inspected by measuring tailpipe emission levels. Since July of 2001, however, all model year 1996 and newer cars and light trucks were inspected by scanning the vehicles' computerized second generation on-board diagnostic (OBD-II) systems. As of July, 2008, the program dropped tailpipe testing entirely and thereby inspected all vehicles by scanning the OBD-II systems. This change was the result of statutory changes in the 2007-2009 biennial budget which exempted from the I/M program the model years of vehicles not federally-required to be equipped with the OBD-II technology (model year 1995 and older cars and light trucks and model year 2006 and older heavy trucks).

Throughout the history of the I/M program, a vehicle failing the tailpipe test was eligible for a waiver of compliance if the cost of repairs to the vehicle exceeded the applicable repair cost limit and if other conditions specified in Trans 131, Wis. Adm. Code, were met. Prior to July, 2009, the program did not allow such waivers, referred to as "cost waivers", for vehicles failing the OBD-II inspection. The repair cost limits are currently provided in s. NR 485.045, Wis. Adm. Code.

This rule is being proposed in response to two issues relating to the issuing of cost waivers: (1) the lower repair cost limits currently in effect for vehicles registered in Sheboygan County and (2) the I/M program's policy change to allow cost waivers for vehicles failing the OBD-II inspection, starting July, 2009. Descriptions of these two issues follow:

Sheboygan County:

For all I/M program counties except Sheboygan, the repair cost limit is \$787 (\$450 in 1989, adjusted annually for inflation, using the federal consumer price index). In Sheboygan County the repair cost limit is fixed at \$200 for vehicles of a 1981 or newer model year and at \$75 for older vehicles. Sheboygan County has had lower repair cost limits since its nonattainment classification established in 1992 was at a lower level than that for the other six counties. However, ozone levels in Sheboygan County have not improved as much as in the other six counties, in part due to the aid of federally-mandated reformulated gasoline in the other six counties. Presently, Sheboygan County has the highest ozone levels in the seven-county I/M program area.

OBD:

Prior to July, 2009, the I/M program did not issue any cost waivers for vehicles failing the OBD–II inspection. Cost waivers were not issued for OBD–II failures because the Wisconsin Department of Transportation had interpreted s. Trans 131.05 (1) (j), Wis. Adm. Code, to mean that to pass a waiver equipment inspection, which is a prerequisite for receiving a waiver, the OBD–II system’s malfunction indicator light (MIL) must be operational and non–active (that is, not lit). Such a condition could not exist when a vehicle fails the OBD–II inspection. Therefore, no cost waivers were issued for vehicles failing the OBD–II inspection and once the I/M program became OBD–II–only in July of 2008, the program did not issue any cost waivers at all.

Prior to the I/M program becoming OBD–II–only in July, 2008, the program also provided an alternative test, allowing a vehicle to be inspected regardless of the MIL status. However, now that the program administers only the OBD–II test, the DOT’s Office of General Counsel has determined that DOT’s prior interpretation of s. Trans 131.05(1)(j), Wis. Adm. Code, was contrary to s. 110.20(13), Wis. Stats., since it prevented issuing a cost waiver to every inspected vehicle, regardless of the amount spent on repairs. Consequently, since July, 2009, the DOT has been implementing its new interpretation, thereby allowing cost waivers for vehicles failing by means of a lit MIL. The DOT is also in the process of amending Trans 131.05(1)(j), Wis. Adm. Code, to allow a cost waiver in certain circumstances even if a vehicle’s MIL is unable to be turned off; thereby conforming their rule to statutory language.

For the six I/M program counties other than Sheboygan, the DNR is projecting that the resumption of cost waivers would not increase emission levels in those six counties above those projected in the Wisconsin’s state implementation plan (SIP) for attaining and maintaining ozone air quality standards. However, the DNR is projecting that the current lower cost limits for Sheboygan County would increase the motor vehicle emissions in Sheboygan County by four percent, enough to exceed the emissions projected in the SIP. Raising the repair cost limit for Sheboygan County to the level used for the other six I/M program counties would enable Sheboygan County to achieve the emission levels projected in the SIP.

Rule summary

The DNR is proposing to expand the coverage of the inflation–adjusted, currently \$787, repair cost limit in s. NR 485.045, Wis. Adm. Code, to all counties subject to the I/M program, thereby raising the lower limits for Sheboygan County.

The DNR is also proposing to repeal the emission limitations in s. NR 485.04, Wis. Adm. Code, for the following tests:

- Evaporative system integrity (pressure) test
- Evaporative system purge test
- Steady–state tests

These tests provide no significant additional information regarding vehicle emission performance beyond that already provided by the OBD–II scans. Furthermore, the two evaporative system tests have never been conducted by the I/M program and are intrusive, involving the cutting or crimping of fuel vapor lines. The steady–state tests were

effective early in the I/M program, but are no longer conducted. These tests are poor at identifying and diagnosing emission problems in today’s vehicles.

Comparison with federal regulations

The proposed rule is consistent with the federal clean air act and the federal regulations for motor vehicle inspection and maintenance programs under that act. These regulations are found in 40 CFR 51.350 to 51.373.

Comparison with similar rules in adjacent states

Illinois is the only adjacent state that has a vehicle inspection and maintenance program. In Illinois the repair cost limit for a waiver is \$450. Thus, the state of Illinois has not adjusted its repair cost limit for the increase in the federal consumer price index since 1989.

Summary of factual data and analytical methodologies

The U. S. Environmental Protection Agency (EPA) has issued guidance for adjusting the repair cost limit for inflation: Calculation of the I/M Waiver Adjusted for CPI, Office of Mobile Sources, U.S. EPA, EPA 420–B–99–011, December, 1999, <http://www.epa.gov/otaq/epg/b99011.pdf>. The DNR has followed this guidance for calculating the repair cost limit. The consumer price index (CPI) adjustment for 1989 to 2008 was 1.7487, resulting in a repair cost limit for July, 2009, through June, 2010, of $\$450 * 1.7487 = \787 .

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

The only economic effect of the proposed rule is that the I/M–related repairs may be more expensive for some vehicles in Sheboygan County that what they would be under the current rule. The proposed rule would not affect repair costs for vehicles in the other six I/M program counties. The DNR estimates that under the proposed rule, the average cost to repair a failed vehicle during 2011 would be \$416 throughout the seven–county program area. The DNR further estimates that under the current rule the average cost to repair a failed vehicle during 2011 would be only \$200 for vehicles in Sheboygan County and the same \$416 value for vehicles in the other six I/M program counties. Thus, the proposed rule is estimated to increase the average repair cost per failed vehicle in Sheboygan County by \$216.

Small Business Impact

Small businesses that own vehicles subject to the I/M program have been and will continue to be affected by the I/M program in the same way that individual vehicle owners are affected. The proposed rule may have a small, but not significant, economic impact on those small businesses that own non–exempt vehicles registered in Sheboygan County. Improved fuel efficiency resulting from the more thorough repairs may offset some of these increased costs. The proposed rule will not impose any new requirements on small businesses.

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

Environmental Impact

The Department has made a preliminary determination that adoption of the proposed rules would not involve significant adverse environmental effects and would not need an environmental analysis under ch. NR 150, Wis. Adm. Code. However, based on comments received, an environmental analysis may be prepared before proceeding. This analysis

would summarize the Department's consideration of the impacts of the proposal and any reasonable alternatives.

Fiscal Estimate

The only fiscal effect of the proposed rule is that the I/M-related repairs may be more expensive for some vehicles in Sheboygan County than what they would be under the current rule. The proposed rule would not affect repair costs for vehicles in the other six I/M program counties. The DNR estimates that under the proposed rule, the average cost to repair a failed vehicle during 2011 would be \$416 throughout the seven-county program area. The DNR further estimates that under the current rule the average cost to repair a failed vehicle during 2011 would be only \$200 for vehicles in Sheboygan County and the same \$416 value for vehicles in the other six I/M program counties. Thus, the proposed rule is estimated to increase the average repair cost per failed vehicle in Sheboygan County by \$216. Since about seven percent of the vehicles fail the initial inspection and since vehicles are inspected every other year, the estimated annual average additional repair cost per inspected vehicle in Sheboygan County is: $\$216 * 0.07 * 0.5 = \7.56 .

The DNR estimates that the number of state and local government vehicles registered in Sheboygan County which are subject to inspection is 565 (115 for state government and 450 for local governments). Thus the total increased costs are $\$7.56 * 115 = \870 for state government and $\$7.56 * 450 = \3400 for local governments.

The proposed rule would have some fiscal effect on the private sector. The affected entities would be those having vehicles registered in Sheboygan County which are subject to inspection. The estimated fiscal effect is an average increase in annual repair costs of \$7.56 per inspected vehicle. Thus, the estimated fiscal effect for an entity having 100 vehicles registered in Sheboygan County and subject to inspection is \$756 per year.

Improved fuel efficiency resulting from the more thorough repairs may offset some of these increased costs.

Agency Contact Person

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Notice of Hearings

Natural Resources

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

CR 10-050

(DNR # AM-16-10)

NOTICE IS HEREBY GIVEN THAT pursuant to ss. 227.16 and 227.17, Stats, the Department of Natural Resources, hereinafter the Department, will hold public hearings on proposed rules to revise Chapters NR 400, 404 to 408, and 484, relating to air pollution permit requirements for fine particulate matter (PM 2.5) emissions. The proposed revisions relate to issues for State Implementation Plan approvability, and the State Implementation Plan developed under s. 285.11(6), Stats., will be revised.

Hearing Information

Date and Time:

June 7, 2010
Monday
at 2:30 PM

Location:

Natural Resources State Office Bldg.
Room G09
101 S. Webster Street
Madison, WI

June 8, 2010

Tuesday
at 1:30 PM

Havenwoods — Auditorium
6141 N. Hopkins
Milwaukee, WI

June 9, 2010

Wednesday
at 2:00 PM

Northcentral Technical College
Main Building, Room E101
1000 West Campus Drive
Wausau, WI

Reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Contact Robert B. Eckdale in writing at the Department of Natural Resources, Bureau of Air Management (AM/7), 101 S Webster, Madison, WI 53707; by E-mail to Robert.Eckdale@wisconsin.gov; or by calling (608) 266-2856. A request must include specific information and be received at least 10 days before the date of the scheduled hearing.

Copies of the 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 which can be accessed through the link provided on the Proposed Air Pollution Control Rules Calendar at <http://www.dnr.state.wi.us/air/rules/calendar.htm>. 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 Robert B. Eckdale, Department of Natural Resources, Bureau of Air Management (AM/7), 101 S. Webster St., Madison, WI 53703, or by calling (608) 266-2856.

Submission of Written Comments

Comments on the proposed rule must be received on or before Monday, **June 14, 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:

Steve Dunn
Department of Natural Resources
Bureau of Air Management (AM/7)
101 S. Webster Street, Madison, WI 53703
Phone: 608 267-0566
Fax: 608 267-0560
E-mail: steven.dunn@wisconsin.gov

Internet: Use the Administrative Rules System Web site accessible through the link provided on the Proposed Air Pollution Control Rules Calendar at <http://dnr.wi.gov/air/rules/calendar.htm>

Analysis Prepared by the Department of Natural Resources

Statute interpreted

The State Implementation Plan developed under s. 285.11 (1) and (6), Stats., is revised.

Statutory authority

Sections 227.11 (2) (a) and 285.11 (1), (16) and (17), Stats.

Explanation of agency authority

Section 227.11(2)(a), Stats., gives state agencies general rulemaking authority. Section 227.14(1m)(b), Stats., allows the Department to use the format of federal regulations in preparing a proposed rule if it determines that all or part of a state environmental regulatory program is to be administered according to standards, requirements or methods which are similar to standards, requirements or methods specified for all or part of a federal environmental program. Section 285.11(1), Stats., gives the Department authority to promulgate rules consistent with ch. 285, Stats. Section 285.11(16), Stats., requires the Department to promulgate rules, consistent with but no more restrictive than the federal clean air act, that specify the amounts of emissions that result in a stationary source being classified as a major source. Section 285.11(17) requires the Department to develop and implement rules that define the term modification in a manner consistent with the clean air act.

Related statute or rule

None.

Plain language analysis

The proposed rules contained in this order reflect changes made by the United States Environmental Protection Agency (EPA) in their regulations regarding the regulation matter less than 2.5 microns in size (PM_{2.5}). The Department needs to make this change in order to retain EPA approval of Wisconsin's air permit programs.

PM_{2.5} is proposed to be included as a pollutant used to determine whether a facility is a major source of air pollution. Additionally, increases in PM_{2.5} emissions will potentially trigger the need to obtain an air pollution control construction permit, including requirements to control emissions to levels which represent best available control technology or lowest achievable emission rate.

Additionally, the rule package includes some cleanup changes to otherwise unaffected existing rules. These changes are proposed to include up-to-date test methods and definitions in these existing rules. These changes do not change the effect or intent of these rules.

Comparison with federal regulations

The proposed PM_{2.5} rules will make the regulations consistent with the equivalent Federal rules.

Comparison with similar rules in adjacent states

The proposed rule is based on the federal rule changes. The adjacent states will all be implementing the federal rule changes.

Summary of factual data and analytical methodologies

The proposed rule is based on the federal rule changes and the data and methodologies used by USEPA in developing these rules. Some portions of the proposed rule have yet to be finalized by the USEPA. Finalization of these rule sections is expected in Spring 2010. Placeholders for these final rule additions are included in the proposed rule.

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

An analysis of the effect of the proposed rules on small business was not performed since the proposed rule only impacts major sources of air pollution in the State and conforms to federal requirements. Major sources of air pollution are not typically small businesses. Additionally, USEPA has concluded that this rule will not impact a significant number of small entities.

Small Business Impact

These rules should not have a significant economic impact on small businesses because major air pollution sources do not generally meet the definition of a small business.

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

Environmental Impact

The Department has made a preliminary determination that adoption of the proposed rules would not involve significant adverse environmental effects and would not need an environmental analysis under ch. NR 150, Wis. Adm. Code. However, based on comments received, an environmental analysis may be prepared before proceeding. This analysis would summarize the Department's consideration of the impacts of the proposal and any reasonable alternatives.

Fiscal Estimate

The Department anticipates that there will be no state fiscal effect and no local government costs as a result of the proposed rules. In addition, the Department does expect the proposed rules will have a significant fiscal impact on those private sector facilities requiring permits.

Agency Contact Person

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Submittal of Proposed Rules to the Legislature

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

Agriculture, Trade and Consumer Protection

CR 09-105

A rule-making order to revise Chapter ATCP 92, relating to weights and measures licensing fees.

Commerce

Fee Schedule, Ch. Comm 2

Boilers and Pressure Vessels, Ch. Comm 41

Mechanical Refrigeration, Ch. Comm 45

CR 10-011

A rule-making order to revise Chapters Comm 2, 41 and 45, relating to mechanical refrigeration.

Commerce

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

CR 10-007

A rule-making order to create Chapter Comm 134, relating to meat processing facility investment credits.

Commerce

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

CR 10-008

A rule-making order to revise Chapter Comm 132, relating to dairy manufacturing facility investment credits.

Transportation

CR 10-030

A rule-making order to repeal sections Trans 196.04 (1) (d) and 250.04; and to create Chapter Trans 198, relating to motor vehicle convenience fees.

Veterans Affairs

CR 09-091

A rule-making order to revise section VA 2.01, relating to the assistance to needy veterans grant program.

Rule Orders Filed with the Legislative Reference Bureau

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

Agriculture, Trade and Consumer Protection

CR 09-023

Rule revises Chapter ATCP 149, relating to the Potato Marketing Order.
Effective 7-1-10.

Architects, Engineers, Designers and Land Surveyors Examining Board

CR 09-079

Rule amends section A-E 3.05 (2), relating to entrance requirements to take the architect examination.
Effective 7-1-10.

Architects, Engineers, Designers and Land Surveyors Examining Board

CR 09-080

Rule creates Chapter A-E 12, relating to continuing education for architects.
Effective 7-1-10.

Architects, Engineers, Designers and Land Surveyors Examining Board

CR 09-081

Rule creates Chapter A-E 11, relating to continuing education for landscape architects.
Effective 7-1-10.

Financial Institutions — Credit Unions

CR 10-009

Rule creates Chapter DFI-CU 65, relating to credit union service organizations.
Effective 7-1-10.

Natural Resources

Fish, Game, etc., Chs. NR 1—

CR 09-042

(DNR # WM-13-09)

Rule revises Chapter NR 10, relating to hunting and the 2009 migratory game bird seasons and waterfowl hunting zones.
Effective 7-1-10.

Natural Resources

Fish, Game, etc., Chs. NR 1—

CR 09-051

(DNR # FH-18-09)

Rule revises Chapters NR 19 to 23, relating to fishing on the inland, outlying, and boundary waters of Wisconsin.
Effective 7-1-10.

Public Service Commission

CR 09-086

Rule creates Chapter PSC 172, relating to the police and fire protection fee.
Effective 7-1-10.

Revenue

CR 09-118

Rule creates section Tax 1.16, relating to the financial record matching program.
Effective 7-1-10.

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