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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 (3)

1. 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
Extension Through: November 17, 2010
Hearing Date: May 25, 2010

2. EmR1038 — Rule adopted to create **section ATCP 21.21**, relating to restricting the import of certain plants, wood and wood products to prevent the introduction of thousand cankers disease of walnut trees into this state.

Finding of emergency

(1) Thousand cankers disease is an emerging fungal disease that can be carried by the walnut twig beetle (the beetle is native to this country). The disease poses a serious threat to black walnut trees, an important forest species in Wisconsin. Black walnut is known for its highly valuable lumber, which is used for finished products such as furniture, musical instruments and gun stocks. There are approximately 18.5 million black walnut trees in Wisconsin, with over 13% of them located in the southeastern part of the state. Wisconsin businesses export over \$4 million in black walnut products annually.

(2) Thousand cankers disease was first observed in New Mexico in the 1990's. The disease has spread throughout the western United States, causing dieback and mortality in black walnut trees. In July, 2010, the disease was also confirmed in

the Knoxville, Tennessee area. The Tennessee infestation is the first confirmed infestation east of the Mississippi River, the native range of the black walnut tree.

(3) Thousand cankers disease is currently known to exist in the states of Arizona, California, Colorado, Idaho, Nevada, New Mexico, Oregon, Tennessee, Utah and Washington. The disease has not yet been found in Wisconsin.

(4) Thousand cankers disease may be spread by the movement of firewood, nursery stock, and unfinished or untreated wood products. It is important to restrict the import of host materials from infested areas, to prevent the disease from being introduced into Wisconsin. The disease, if introduced into Wisconsin, could cause great damage to Wisconsin's economically–important and environmentally important walnut forest resource.

(5) It is important to restrict the import of host materials from infested areas as soon as possible. Without this emergency rule, host materials may be imported into Wisconsin from infested areas without adequate safeguards to prevent the introduction of thousand cankers disease into this state.

(6) It would take over a year to adopt the necessary import restrictions by the normal rulemaking procedure prescribed in ch. 227, Stats. DATCP is therefore adopting this temporary emergency rule under s. 227.24, Stats., pending the adoption of a more “permanent” rule by the normal rulemaking procedures. This temporary emergency rule is necessary to protect the public peace, health, safety and welfare, and to help prevent the introduction of a serious plant disease in this state, pending the adoption of a “permanent” rule by the normal procedure.

Publication Date: November 1, 2010

Effective Dates: November 1, 2010 through March 30, 2011

3. EmR1040 — Rule adopted to create Chapter **ATCP 53**, relating to agricultural enterprise areas.

Exemption from Finding of Emergency

Under s. 91.84(2), the department may use the procedure under s. 227.24 to promulgate a rule designating an agricultural preservation area or modifying or terminating the designation of an agricultural preservation area. Notwithstanding s. 227.24(1)(c) and (2), a rule promulgated under that subsection remains in effect until the department modifies or repeals the rule. Notwithstanding s. 227.24(1)(a) and (3), the department is not required to determine that promulgating a rule under that subsection 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 under that subsection.

The department views s. 91.84(2) as authority to adopt permanent rules that shall be published immediately in the Wisconsin Administrative Code.

Publication Date: November 9, 2010

Effective Dates: January 1, 2011 until the Department modifies or repeals the rule

Children and Families

Safety and Permanence, Chs. DCF 37–59

EmR1034 — Rule adopted to create sections **DCF 57.485 and 57.49 (1) (am)**, relating to determination of need for new group homes.

Exemption From Finding of Emergency

Section 14m (b) of 2009 Wisconsin Act 335 provides that the department is not required to provide evidence that promulgating a rule under s. 48.625 (1g), Stats., 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.

Section 14m (b) also provides that notwithstanding s. 227.24 (1) (c) and (2), Stats., an emergency rule promulgated under s. 48.625 (1g), Stats., remains in effect until the permanent rules promulgated under s. 48.625 (1g), Stats., take effect.

Publication Date: September 2, 2010

Effective Dates: September 2, 2010 through the date permanent rules become effective

Hearing Date: October 21, 2010

Children and Families

Early Care and Education, Chs. DCF 201–252

EmR1027 — Rule adopted revising **Chapter DCF 201**, relating to child care subsidy program integrity.

Finding of Emergency

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

The Department of Children and Families has determined that significant disparities currently exist between DCF 201 and the intent of 2009 Wisconsin Acts 28 and 77 regarding Wisconsin Shares program integrity efforts. The recent efforts of the legislature and the department to address child care fraud and program integrity are estimated to save \$100 million over the course of the biennium. Currently over \$7.1 million of child care provider overpayments have yet to be collected due to the lack of authority to use basic collections practices such as tax intercept, wage levy, and property liens. This rule will permit the department to more aggressively collect on these debts, strengthen the department's ability to further tighten requirements for child care providers wishing to do business with the Wisconsin Shares program, and better enforce the rules of the program. These changes will result in continued fiscal savings as well as ensure better quality child care for the children of Wisconsin.

Publication Date: July 9, 2010

Effective Dates: July 9, 2010 through December 5, 2010

Extension Through: December 31, 2010

Hearing Date: August 6, 2010

Commerce

Wis. Commercial Building Code, Chs. Comm 60–66

EmR1022 — Rule adopted creating s. **Comm 62.0400 (5)**, relating to no smoking signs.

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 2009 Wisconsin Act 12, s. 101.123, Stats., is to take effect July 5, 2010.
2. Under the Act, the department is to establish by rule uniform characteristics for no smoking signs.
3. Under the Act, the responsibilities of person in charge of a public conveyance or at a location where smoking is prohibited include the posting of no smoking signs.
4. The department believes that the emergency rules are necessary in order to clarify the minimum no smoking sign characteristics so that persons in charge may fulfill the statutory obligations.

Publication Date: June 28, 2010

Effective Dates: July 5, 2010 through December 1, 2010

Hearing Date: July 26, 2010

Commerce (4)

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

1. EmR1019 — Rule adopted to create **Chapter Comm 135**, relating to tax credits for investments in food processing plants and food warehouses.

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. Under sections 71.07 (3rm), 71.28 (3rm) and 71.47 (3rm) of the Statutes, as created in 2009 Wisconsin Act 295, a taxpayer may claim a tax credit for investments in food processing plants and food warehouses during taxable years beginning after December 31, 2009.

Section 560.2056 (4) of the Statutes, as likewise created in 2009 Wisconsin Act 295, requires the Department to (1) implement a program for certifying taxpayers as eligible for the food processing plant and food warehouse investment credit, (2) determine the amount of credits to allocate to those taxpayers, and (3) in consultation with the Department of Revenue, promulgate rules to administer the program. No other provisions are established in the Statutes regarding the specific process for taxpayers to use in applying for the credits, and for the Department of Commerce to use in certifying eligible taxpayers and in allocating the credits.

Because of enactment of 2009 Wisconsin Act 295, a number of entities that may be eligible for the tax credits have contacted

the Department with inquiries concerning the process for applying for the credits, for expenditures that have been or will be incurred during taxable years that began after December 31, 2009. In addition, section 71.07 (3rm) of the Statutes includes a \$1,000,000 tax–credit allocation that became available on May 27, 2010, and expires on June 30, 2010.

Although the Department of Commerce has begun promulgating the permanent rule that is required by 2009 Act 295, the time periods in chapter 227 of the Statutes for promulgating permanent rules preclude the permanent rule from becoming effective in time to accommodate allocating the tax credits for the 2009–10 fiscal year. This emergency rule will enable the Department of Commerce to establish an application, certification, and tax credit allocation process for the entities that will be eligible for the allocation that expires on June 30, 2010.

Publication Date: June 8, 2010

Effective Dates: June 8, 2010 through November 4, 2010

Extension Through: January 3, 2011

Hearing Date: August 17, 2010

2. EmR1026 — Rule adopted creating **Chapter Comm 139**, relating to rural outsourcing grants.

Exemption From Finding of Emergency

The Legislature, by Section 45 (1) (b) of 2009 Wisconsin Act 265, 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: July 2, 2010

Effective Dates: July 2, 2010 through November 28, 2010

Extension Through: January 27, 2011

Hearing Date: October 13, 2010

3. EmR1041 — Rule adopted creating **Chapter Comm 103**, relating to certification of disabled–veteran–owned businesses, and affecting small businesses.

Exemption From Finding of Emergency

The Legislature, by SECTION 101 (1) in 2009 Wisconsin Act 299, 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: November 14, 2010

Effective Dates: November 15, 2010 through April 13, 2011

4. EmR1044 — Rule adopted to revise **Chapter Comm 139**, relating to rural outsourcing grants.

Exemption From Finding of Emergency

The Legislature, by SECTION 45 (1) (b) of 2009 Wisconsin Act 265, 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: November 28, 2010
Effective Dates: November 28, 2010 through April 26, 2011

Government Accountability Board (2)

1. EmR1016 — Rule adopted to create **section GAB 1.91**, relating to organizations making independent disbursements.

Finding of Emergency

Pursuant to s. 227.24, Stats., the Government Accountability Board finds an emergency exists as a result of the United States Supreme Court decision *Citizens United v. FEC*, 558 U.S. ___, (No. 08–205)(January 21, 2010). Within the context of ch. 11, Stats., the rule provides direction to organizations receiving contributions for independent disbursements or making independent disbursements. Comporting with *Citizens United*, this emergency rule order does not treat persons making independent disbursements as full political action committees or individuals under s. 11.05, Stats., for the purposes of registration and reporting. With respect to contributions or in-kind contributions received, this emergency rule order requires organizations to disclose only donations “made for” political purposes, but not donations received for other purposes.

The Board adopts the legislature’s policy findings of s. 11.001, Stats., emphasizing that one of the most important sources of information to voters about candidates is available through the campaign finance reporting system. The Board further finds that it is necessary to codify registration, reporting and disclaimer requirements for organizations receiving contributions for independent disbursements or making independent disbursements so that the campaign finance information is available to voters. The rule must be adopted immediately to ensure the public peace and welfare with respect to the administration of current and future elections.

Publication Date: May 20, 2010
Effective Dates: May 20, 2010 through October 16, 2010
Extension Through: December 15, 2010
Hearing Date: August 30, 2010

2. EmR1035 — Rule adopted to repeal and recreate **Chapter GAB 4**, relating to observers at a polling place or other location where votes are being cast, counted or recounted.

Finding of Emergency

The Government Accountability Board repeals and recreates chapter GAB 4, Election observers, to establish guidelines for election inspectors and observers alike regarding observation by “any member of the public” of the public aspects of the voting process and regarding the conduct of observers at polling places and other locations where observation of the public aspects of the voting process may take place. The Board 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:

Pursuant to s. 227.24, Stats., the Government Accountability Board finds that an emergency exists in the Board’s May 5, 2008 decision to decline to reaffirm the administrative rule EIBd 4.01 because the rule was

inconsistent with the requirements of its enabling statute, s. 7.41, Stats. The statute states that any member of the public is allowed to be present at the polls on Election Day to observe; however, it does not specify standards of conduct by which observers must abide.

The Board further finds that given the public interest in the 2010 General Election, the expected high turnout, the increasing use of observers in the polling place, and the comments of municipal and county clerks regarding the obstacles observers can pose to the orderly conduct of elections, it is necessary to codify standards to regulate the observers’ conduct and that the attached rule governing observer conduct must be adopted prior to the General Election to ensure the public peace and safety with respect to the administration of the fall elections.

Publication Date: September 24, 2010
Effective Dates: September 24, 2010 through February 20, 2011
Hearing Date: December 13, 2010

(See the Notice in this Register)

Insurance (4)

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
Extension Through: December 31, 2010
Hearing Date: December 8, 2009

2. 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 January 7, 2011
Hearing Date: May 5, 2010

3. EmR1042 — Rule to create **Ins. 3.35**, relating to colorectal cancer screening coverage and affecting small business.

Finding of Emergency

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

Beginning December 1, insurers offering disability insurance policies and self-insured governmental plans are required to offer coverage for colorectal cancer screening. In order to ensure there is no gap in coverage the office needs to promulgate guidance as directed s. 632.895 (16m) (d), Stats., in advance of the initial implementation date.

Publication Date: November 29, 2010
Effective Dates: November 29, 2010 through April 27, 2011

4. EmR 1043 — Rule to amend s. **Ins 3.37 (1) to (5) (intro); and to create s. Ins 3.37 (2m), (3m), (4m) and (5m), and 3.375**, Wis. Adm. Code, relating to health insurance coverage of nervous and mental disorders and substance use disorders, and affecting small business.

Exemption From Finding of Emergency

The legislature by s. 632.89 (4) (b) 2., Stats., provides an exemption from a finding of emergency for adoption of the rule. Section 632.89 (4) (b) 2., Stats., reads as follows:

s. 632.89 (4) (b) 2. Using the procedure under s. 227.24, the commissioner may promulgate the rules under subd. 1., for the period before the effective date of any permanent rules promulgated under subd.1., but not to exceed the period authorized under 227.24 (1) (c) and (2). Notwithstanding s. 227.24 (1) (a), (2) (b), and (3), the commissioner is not required to provide evidence that promulgating a rule under this subdivision as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to make a finding of emergency for a rule promulgated under this subdivision.

Publication Date: November 29, 2010
Effective Dates: November 29, 2010 through April 27, 2011

Military Affairs

EmR1030 — Rule adopted to create **Chapter DMA 1**, relating to military family financial aid.

Exemption From Finding of Emergency

Under 2009 Wisconsin Act 28, section 9136, a Finding of Emergency is not required for this emergency rule. The relevant portion of 2009 Act 28 reads as follows:

2009 Wisconsin Act 28, Section 9136. Nonstatutory provisions; Military Affairs.

(2c) EMERGENCY RULE; MILITARY FAMILY FINANCIAL AID. Using the procedure under section 227.24 of the statutes, the department of military affairs shall promulgate the rules described under section 321.45 (2) of the statutes, as created by this act, for the period before the permanent rules become effective, but not to exceed the period authorized under section 227.24 (1) (c) and (2) of the statutes. Notwithstanding section 227.24 (1) (a), (2) (b), and (3) of the statutes, **the department of military affairs is not required to provide evidence that promulgating a rule under this subsection 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 the rules promulgated under this subsection.** [Emphasis added]

Publication Date: July 26, 2010
Effective Dates: July 26, 2010 through December 22, 2010
Hearing Date: October 13, 2010

Natural Resources (5)

Fish, Game, etc., Chs. NR 1—

1. EmR1028 — Rule adopted to amend s. **NR 10.104 (7) (a)**, relating to the use of archery deer hunting licenses.

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. Deer populations are well below goal in much of northeast Wisconsin, causing great concern from hunters and others who value deer. This rule is one of the ways the department is trying to rebuild the populations there. The federal government and state legislature have delegated to the

appropriate agencies rule–making authority to control and regulate hunting wild animals. The State of Wisconsin must provide publications describing the regulations for deer hunting to approximately 250,000 archery deer hunters prior to the start of the season. These regulations must be legally in effect prior to printing nearly 1 million copies of the regulations publication. The timeline for the permanent version of this rule will not have it in effect in time for these deadlines.

Publication Date: July 8, 2010
Effective Dates: July 8, 2010 through December 4, 2010
Hearing Date: August 30, 2010

2. EmR1033 — Rule adopted to revise section **NR 10.01 (1)**, relating to hunting and the 2010 migratory game bird seasons and waterfowl hunting zones.

Finding of Emergency

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

Publication Date: September 1, 2010
Effective Dates: September 1, 2010 through January 28, 2011
Hearing Date: October 26, 2010

3. EmR1036 — Rule adopted to create s. **NR 40.04 (2) (g)** relating to the identification, classification and control of invasive species.

Exemption From Finding of Emergency

Section 227.24 (1) (a), Stats., authorizes state agencies to promulgate a rule as an emergency rule without complying with the notice, hearing and publication requirements under ch. 227, Stats., if preservation of the public peace, health, safety or welfare necessitates putting the rule into effect prior to the time it would take effect if the agency complied with the procedures. However, s. 23.22 (2t) (a), Stats., authorizes the department to promulgate emergency rules to identify, classify, or control an invasive species without having to provide evidence that an emergency rule is necessary for the preservation of public peace, health, safety, or welfare or to provide a finding of emergency. **In addition, such emergency rules may remain in effect until whichever of the following occurs first: the first day of the 25th month beginning after the effective date of the emergency rule, the effective date of the repeal of the emergency rule, or the date on which the permanent rule identifying, classifying, or controlling the invasive species, promulgated under s. 23.22 (2) (b) 6., Stats., takes effect.**

Publication Date: September 29, 2010
Effective Dates: September 29, 2010 through: *See bold text above*
Hearing Dates: October 25 to 29, 2010

4. EmR1037 — Rule adopted to create s. **NR 27.03 (3) (a)** relating to adding cave bats to Wisconsin’s threatened species list.

Finding of Emergency

The emergency rule procedure, pursuant to s. 227.24, Wis. Stats., is necessary and justified in establishing rules to protect the public welfare. The proposed rule change seeks to provide protection to Wisconsin cave bat species, which face the imminent threat of white–nose syndrome. White–nose syndrome has spread across 14 states and 2 Canadian provinces in the last 3 years, spreading up to 800 miles per year. Mortality rates of affected bat colonies reach 100%. The disease was located last spring within 225 miles of the Wisconsin’s southern boarder and 300 miles from the northern boarder. Because the known dispersal distance of the little brown bat is 280 miles, an affected cave is now located within the dispersal range of Wisconsin little brown bats. Listing the cave bat species before white–nose syndrome has been detected in Wisconsin will allow the Department time to work collaboratively with stakeholders to ensure that appropriate conservation measures are developed and in place when white–nose syndrome is first detected. Because of the speed of white–nose syndrome, the Department would not have time to develop appropriate conservation measures if normal rule–making procedures were used and listing was delayed until after white–nose syndrome was detected in Wisconsin. Based on the current location and known rate of spread of the disease, we anticipate the presence of white–nose syndrome in Wisconsin as early as January 2011.

Publication Date: September 29, 2010
Effective Dates: September 29, 2010 through February 25, 2011
Hearing Dates: October 25 to 29, 2010

5. EmR1039 — Rule adopted to create s. **NR 40.02 (7g), (7r), (25m), (28m) and (46m), 40.04 (3m) and 40.07 (8)** relating to the identification, classification and control of invasive bat species.

Exemption From Finding of Emergency

Section 227.24 (1) (a), Stats., authorizes state agencies to promulgate a rule as an emergency rule without complying with the notice, hearing and publication requirements under ch. 227, Stats., if preservation of the public peace, health, safety or welfare necessitates putting the rule into effect prior to the time it would take effect if the agency complied with the procedures. However, s. 23.22 (2t) (a), Stats., authorizes the department to promulgate emergency rules to identify, classify, or control an invasive species without having to provide evidence that an emergency rule is necessary for the preservation of public peace, health, safety, or welfare or to provide a finding of emergency. **In addition, such emergency rules may remain in effect until whichever of the following occurs first: the first day of the 25th month beginning after the effective date of the emergency rule, the effective date of the repeal of the emergency rule, or the date on which the permanent rule identifying, classifying, or controlling the invasive species, promulgated under s. 23.22 (2) (b) 6., Stats., takes effect.**

Publication Date: November 3, 2010
Effective Dates: November 3, 2010 through
See bold text above
Hearing Date: November 29, 2010
 (See Notice Register 658, October 31, 2010)

Regulation and Licensing (4)

1. EmR0827 — Rule adopted creating s. **RL 91.01 (3) (k)**, relating to training and proficiency in the use of automated external defibrillators for certification as a massage therapist or bodyworker.

Exemption From Finding of Emergency

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

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

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

Exemption From Finding of Emergency

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

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

3. EmR1031 — Rule adopted revising **Chapters RL 110 to 116**, relating to the regulation of professional boxing contests.

Exemption From Finding of Emergency

The Department of Regulation and Licensing, pursuant to 2009 Wisconsin Act 111, is not required to provide evidence 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: August 25, 2010
Effective Dates: September 1, 2010 through
 January 28, 2011
Hearing Date: September 20, 2010

4. EmR1032 — Rule adopted creating **Chapters RL 192 to 196**, relating to the regulation of mixed martial arts sporting events.

Exemption From Finding of Emergency

The Department of Regulation and Licensing, pursuant to 2009 Wisconsin Act 111, is not required to provide evidence 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: August 26, 2010
Effective Dates: September 1, 2010 through
 January 28, 2011
Hearing Date: September 20, 2010

Technical College System Board

EmR1025 — Rule adopted to amend **Chapter TCS 17**, relating to training program grant funds.

Finding of Emergency

The Wisconsin Technical College System Board 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 an emergency is:

In May 2010, the Wisconsin C.O.R.E. Jobs Act provided an additional \$1 million GPR for the training program grants authorized in Wis. Stats. §§ 20.292 (1) (eh) and 38.41. These funds were provided to address a critical need of Wisconsin employers for skills training and education necessary to protect the state's economic vitality and health, with a special emphasis on advanced manufacturing and welding.

The WTCS Board is required to award these funds by June 30, 2011, the end of the current 2009–11 biennium. In addition, s. TCS 17.06 (1), Wis. Adm. Code, requires that district boards or employers receiving skills training or education under the grant shall contribute matching funds, other than in-kind matching funds, equal to at least 25% of total approved project costs.

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

Publication Date: July 2, 2010
Effective Dates: July 2, 2010 through
 November 28, 2010
Extension Through: December 31, 2010
Hearing Date: September 28, 2010

Scope Statements

Employee Trust Funds

Subject

Revises Chapters ETF 10, 11, 20, 40, 41, 50, 52, 60, and 70 relating to making technical changes by deleting unnecessary notes following certain rules, including references to receipt and transmission of documents by email and fax, making address changes, listing ETF's website address, updating names of state agencies, deleting terms no longer used in Chapter 40, Stats., or ETF rules, updating cross references to statutes and rules, eliminating certain restrictions on spouse beneficiaries, and making other technical and minor substantive changes.

Objective of the Rule

ETF proposes to update the administrative rules in each administrative code chapter promulgated by ETF.

Policy Analysis

ETF is responsible for administering the benefit programs authorized under Chapter 40, Stats. The purpose of this rulemaking is to make the necessary technical updates and corrections to existing ETF rules.

Statutory Authority

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

Comparison with Federal Regulations

No existing or proposed federal regulation addresses the contemplated rule changes.

Entities Affected by the Rule

The new rules will affect members, subscribers, their beneficiaries and dependents who interact with ETF regarding the benefit programs administered by ETF.

Estimate of Time Needed to Develop the Rule

State employees will spend an estimated 40 hours to develop these rules.

Natural Resources

Fish, Game, etc., Chs. NR 1—

(DNR # WM-02-11)

Subject

Revises Chapters NR 10, 15, 16 and 19. (2011 housekeeping rule scope statement).

Objective of the Rule

The Bureau of Wildlife Management recommends promulgating administrative rules modifying chapters NR 10, 15, 16 and 19 related to game and hunting, game refuges, captive wildlife and miscellaneous fur, fish, game and outdoor recreation.

Policy Analysis

Every year the department promulgates a rule order that contains changes that are considered to be minor and non-controversial. This package, known as the annual housekeeping order, helps to correct inaccuracies and clarify

existing regulations. Policy issues affected by this rule are ones which have already been addressed decided by previous rulemaking.

The Bureau of Wildlife Management recommends promulgating administrative rules that modify sections of chapters NR 10 15m 16 and 19, Wis. Admin. Code. These rule changes related to hunting, trapping and captive wild animals and are minor and unlikely to be controversial. 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. Specifically, these rules will; make archery deer registration in CWD zone consistent with other areas, legalize 10 gauge chamber inserts used in 8 gauge shotguns for migratory bird hunting, clarify existing interpretation of baiting regulations related to the use of milk, eggs, and definition of an animal part or byproduct, allow DNR customer I.D. number on cable restraint tags, update to be consistent with new statutory provisions of "Green Fur Bill", amend the geographical description of Vernon Marsh refuge, and clarify that the rehabilitation requirements for basic license holders also apply to volunteers who are assisting advanced license holders.

Statutory Authority

Sections 29.011, 29.014, 29.091, 29.192, 29.331, 29.335, 169.24, and 227.11, Stats.

Comparison with Federal Regulations

Federal regulations allow states to manage the wildlife resources located within their boundaries provided they do not conflict with regulations established in the Federal Register. None of these rule changes violate or conflict with the provisions established in the Federal Code of Regulations.

Entities Affected by the Rule

Hunters, trappers and wildlife rehabilitators are the principal groups that will be affected by this rulemaking.

Estimate of Time Needed to Develop the Rule

306 hours.

Contact Person

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Natural Resources

Fish, Game, etc., Chs. NR 1—

(DNR # WM-01-11)

Subject

Revising Chapters NR 10 and 45. (2011 Spring hearing).

Objective of the Rule

The Bureau of Wildlife Management recommends promulgating administrative rules modifying Chapters NR 10 and 45 related to game and hunting and DNR managed lands.

Policy Analysis

These rule changes are proposed for inclusion on the 2011 Spring Hearing rules package and questionnaire. This rule

package will create and amend hunting and trapping regulations, captive wildlife rules and the management of department lands.

Specifically, these rules would; prohibit preseason marking of trap locations, extend each spring turkey hunting period from 5 to 7 days, repeal the sunset of the extended fall turkey season in Zones 1 – 5, extend the archery deer hunting season to include the 9 days of the traditional November firearm season, modify elk seasons dates for a September instead of December hunt, allow all day pheasant hunting on weekends at stocked 2:00 p.m. closure properties, establish that submission of bear carcass samples for research may be required, eliminate blaze orange requirements during an elk hunting season, allow rifles for deer hunting in Waupaca County, establish or modify deer hunting seasons at individual state parks, establish that landowners may kill a cougar that is in the act of killing a domestic animal, and prohibit target shooting on DNR lands in Manitowoc, Pierce and St. Croix counties.

Statutory Authority

Sections 29.011, 29.014, 29.063, 169.38 and 227.11 Stats.

Comparison with Federal Regulations

Federal regulations allow states to manage the wildlife resources located within their boundaries provided they do not conflict with regulations established in the Federal Register. None of these rule changes violate or conflict with the provisions established in the Federal Code of Regulations.

Entities Affected by the Rule

Hunters, trappers, recreational users of DNR lands and certain deer farmers are the principal groups that will be affected by this rulemaking.

Estimate of Time Needed to Develop the Rule

306 hours.

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Natural Resources *Fish, Game, etc., Chs. NR 1—*

(DNR # FH–03–11)

Subject

Revises Chapters NR 20 and 23, relating to proposed fishing regulation changes for 2011 Spring Fish and Wildlife Rules Hearings.

Objective of the Rule

The proposed rule would make modifications to portions of Chapters NR 20 and 23, pertaining to recreational fishing regulations on inland waters and Wisconsin–Michigan boundary waters.

Policy Analysis

The department is beginning the process of recommending changes to Wisconsin administrative code related to recreational fishing regulations. These changes are proposed to better protect and enhance the State’s fish resources. The department anticipates requesting hearings to these changes in January 2011, and holding hearings, if approved, in April 2011 as part of the department’s annual spring fish & wildlife rules hearings.

Statutory Authority

Sections 29.014 and 29.041 Stats.

Comparison with Federal Regulations

Authority to promulgate fishing regulations is granted to States. No federal regulations apply to the proposed changes in regulation recreational fishing activity.

Entities Affected by the Rule

The proposed rule changes will affect recreational anglers.

Estimate of Time Needed to Develop the Rule

The department anticipates spending approximately 320 hours in the rule development process.

Contact Person

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Natural Resources *Fish, Game, etc., Chs. NR 1—* (DNR # FH–50–10)

Subject

Revising Chapter NR 25, relating to commercial trap netting in Lake Michigan.

Objective of the Rule

This rulemaking pertains to commercial trap netting in Wisconsin waters of Lake Michigan. It attempts to address safety concerns regarding trap nets.

Policy Analysis

Department policy reflects Legislative intent in attempting to accommodate both sport and commercial fishing in Lake Michigan. Trap nets are fixed structures on the lake bottom that can pose a risk to sport trollers whose lures and downriggers can become entangled in the trap net ropes. This raises the question of when and where trap nets should be allowed.

Statutory Authority

Sections 29.041, 20.014 (1), 29.519 (1) (b), and 227.11 (2) (a), Stats.

Comparison with Federal Regulations

Rules will be drafted in response to petitions received by the Department calling for restrictions on trap netting in the southern part of Wisconsin’s Lake Michigan waters. Two alternative rules were proposed by petitioners: one would ban trap nets during June through August in all of commercial fishing Zone 3; the other would ban trap nets during June through August from between lines of latitude drawn five miles north of and five miles south of each of three ports – Manitowoc, Two Rivers, and Sheboygan. The rules will include alternate or additional approaches recommended by the Department to address trap net use.

Entities Affected by the Rule

The rules will directly affect only the commercial fishers who use the trap nets. They will indirectly affect sport trollers who fish in the waters where trap nets may or may not be allowed.

Estimate of Time Needed to Develop the Rule

One week.

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Natural Resources

Fish, Game, etc., Chs. NR 1—

Environmental Protection, Chs. NR 400—

Environmental Protection, Chs. NR 500—

(DNR # AM–05–11)

Subject

Revises Chapters NR 30, 429, 502 and 506, relating to open burning requirements.

Objective of the Rule

The objective of the proposed rule revisions is to make the Department’s forestry (*ss. NR 30.03 and 30.04*), air (*s. NR 429.04*) and solid waste (*ss. NR 502.11 and 506.04*) open burning rules consistent with each other, and to provide clarity for the definitions, exemptions and procedures listed in *s. NR 429.04*.

Some of the open burning rules are inconsistent with each other or outdated, which often causes confusion for interested stakeholders. For example, *s. NR 429.04 (1) (e)*, states that burning small amounts of dry combustible rubbish (not to include wet combustible rubbish, garbage, oily substances, asphalt, plastic or rubber products), except where prohibited by local ordinance, is exempt from the prohibition of open burning. The words “small” and “rubbish” are not defined, thus the Department is frequently challenged on the interpretation of this exemption. Differences between the open burning rules often create confusion. For example, the open burning exemptions listed in *s. NR 502.11 (2) (b)*, conflict with those listed in *s. NR 429.04 (1) (i) and (h)*.

The Department has identified at least 26 inconsistencies or needed rule clarifications within the current forestry, air and solid waste open burning rules. The Department proposes to revise the air open burning rule and provide references in the solid waste and forestry rules to the air rule where appropriate. This should help eliminate confusion and the inconsistent interpretation of the current open burning rules.

Policy Analysis

The purpose of this proposed rule revision is to improve the clarity and effectiveness of the Department’s existing open burning rules. In providing clarity, some previous misconceptions regarding the rules will be addressed. The Department’s current policies on what is appropriate for open burning will be discussed.

Statutory Authority

State law authority: Sections 26.12 (5), 285.11 (1) and 289.06 (1), Stats.

Comparison with Federal Regulations

The Department is not aware of any existing or proposed federal regulations regarding open burning. The

Environmental Protection Agency (EPA) has typically encouraged state and local governments to address this issue. For example, in August 2003, EPA release a brochure entitled, “State and Local Governments Are Key to Reducing Backyard Burning.”

Entities Affected by the Rule

The main purpose of the proposed rule revisions is to improve the clarity and effectiveness of the Department’s open burning regulations. Those stakeholders eligible for the open burning exemptions, as currently written, will most likely have an interest in any proposed rule revisions. There are several other organizations that may not be directly affected by the rule, but are likely to have an interest in this rule revision, including Wisconsin Manufacturers and Commerce, environmental organizations, such as Clean Wisconsin and Sierra Club, and public health organizations.

Estimate of Time Needed to Develop the Rule

A total of about 244 hours is needed for drafting and internal review of the proposed changes.

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Natural Resources

Environmental Protection–Investigation and Remediation of Environmental Contamination, Chs. NR 700—

(DNR # RR–04–11)

Subject

Revises Chapter NR 700, relating to contaminated sites investigation and cleanup rules.

Objective of the Rule

This supplemental scope statement has been prepared for 2 reasons. First, we are combining 3 separate pink sheets related to proposed changes to the NR 700 series into a single rulemaking effort in order to more efficiently utilize staff resources. Second, several statutory and policy changes have occurred that were not identified in any of the previous scope statements. This document identifies the major changes that are being addressed by this rulemaking effort.

The NR 700 rule series provides the comprehensive requirements for investigation and remediation of contaminated property. Although additions and revisions to the rule have been made since it was originally promulgated over 15 years ago, those changes tended to be focused on very specific issues. As a result, the many statutory, policy and technical changes that have occurred since that time are the subject of these proposed revisions.

Policy Analysis

There are a number of policy issues that are being addressed by these proposed rule changes. A summary of the major changes include:

Implementation of ch. 292.12 – On June 3, 2006 the Legislature passed Wisconsin Act 418. This legislation authorized the agency with administrative authority over a contaminated site to impose requirements as a condition of approving remedial action or issuing a case closure letter

when residual contamination remains on the site. Prior to the passage of this legislation, deed restrictions were used as the mechanism to ensure that conditions at the site remained protective over time. Numerous chapters throughout the NR 700 series require modification to remove references to deed restrictions and include language that specifies the new requirements.

Simple Site Process – When the NR 700 rule series was originally promulgated it included provisions that allowed for “simple sites” to be closed through a self certification process without formal DNR review and approval. This approach was only seldom used since the vast majority of responsible parties wanted regulatory signoff to document that they had adequately completed the cleanup process. It is proposed to remove the simple site process from the rule.

Site Ranking – Chapter NR 710 was originally established to provide DNR with a process for ranking sites with environmental contamination. This rule is being proposed for elimination in part because the statutory provision for DNR to inventory sites was repealed and the process for scoring a site using the hazard ranking system is no longer needed to determine the environmental priority of a site.

Management of Contaminated Soil – There are currently 3 sections in ch. NR 718 that address management of contaminated soil (NR 718.11, NR 718.13, and 718.14). These sections have overlapping and sometimes inconsistent requirements. The rule is being revised to consolidate all of the provisions into one section (NR 718.12) as well as clarifying the requirements that apply.

Determining Soil Cleanup Standards – Revisions to ch. NR 720 (Soil Cleanup Standards) are being made in order to be consistent with changes made by U.S. EPA to the methodology for calculating site specific soil cleanup standards.

Sustainability of Cleanups – Provisions are being added to ch. NR 722 (Standards for Selecting Remedial Actions) that require an evaluation of sustainability once the preferred option has been selected.

Restructuring ch. NR 726 – This rule, which covers case closure requirements, is lengthy and complicated. In order to make the provisions easier to find and understand it is proposed to create 2 new rules. The first rule, NR 725, would cover pre-closure issues including specific notification requirements to property owners when continuing obligations will be necessary. The other rule, NR 727, would address post closure issues including modification of existing post closure obligations. In addition to moving existing requirements, it is proposed to add several new requirements including notification of DNR when the land use/zoning changes, when the exposure assumptions that were used to obtain closure change, or when an engineering control or structural impediment are removed. Finally, several provisions are being added to address sites with vapor intrusion issues.

Streamlining ch. NR 746 – This rule was originally promulgated in 2001 to provide an alternative process for certain petroleum contaminated sites to obtain closure. This rule provided detailed requirements related to performing Site Investigations, along with specifying risk screening and closure criteria for certain petroleum contaminated sites with the primary goal of minimizing the costs associated cleanup of petroleum contaminated sites. In practice, these provisions were seldom used and as a result this rule language is being proposed for deletion. In addition, Appendix A of this rule provides for use of a statistical test for evaluating whether

groundwater contamination is stable or receding. There are technical problems associated with those tests that often render the results inconclusive or inaccurate and therefore the entire Appendix is being proposed for elimination.

Changes to the Fee Table – The fee table in ch. NR 749 is being restructured such that similar types of DNR assistance are grouped together. The fees are being raised to account for increased costs that have occurred since the rules were originally promulgated over 12 years ago.

Statutory Authority

Sections 227.11 (2) (a), 281.19 (1), 285.11 (1), 285.17, 291.05 (6) (f) and chs. 289 and 292, Wis. Stats.

Comparison with Federal Regulations

With several minor exceptions, the proposed revisions are not based on changes to Federal regulations. An example of one of the minor exceptions is summarized as follows: EPA publishes testing protocols for soil and groundwater samples. The NR 700 series has references to these test methods which are being updated to include the most recent federal version.

Entities Affected by the Rule

The entities affected by these rule changes include responsible parties and others who are conducting investigation and cleanup of contaminated property. Environmental attorneys, consultants, local units of government and industries will be potentially impacted by these proposed changes.

Estimate of Time Needed to Develop the Rule

It is estimated that the rule will become effective in March, 2012.

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Pharmacy Examining Board

Subject

Develop initial administrative rules relating to creating a prescription drug monitoring program (PDMP) pursuant to 2009 Wisconsin Act 362 and implemented pursuant to 450.19 and 961.31, Wisconsin Statutes, as necessary to meet minimum grant requirements to be eligible for grant funding for implementation of the program.

Objective of the Rule

To implement the statutory provisions of 2009 Wisconsin Act 362 creating 450.19 (5). This section requires the department to submit grant applications to Harold Rogers Prescription Drug Monitoring Program as well as NASPER (42 USC 380g–3) to fund the establishment and operation of the program. The grants have minimum requirements that must be met to be eligible for funding. To meet these requirements it is necessary for the Pharmacy Examining Board to develop portions of the PDMP, as outlined below.

1. Under, 450.19 (1), determine the Schedules of substances to include in the PDMP.
2. Under 450.19 (2) (b), identify the data elements the PDMP shall require to be contained in a record documenting the dispensing of a prescription drug. These elements shall be minimally consistent with standards established by the

American Society for Automation in Pharmacy (ASAP), version 4.1 or higher.

3. Under 450.19 (2) (c), determine limitations on the disclosure of records and specify the circumstances under which entities may obtain or receive records as well as meet minimum requirements for authentication and certification as recommended by NASPER.

4. Under 450.19 (d), determine minimum database security standards taking into account:

a. Standards set forth in regulations promulgated under section 262 of Health Insurance Portability and Accountability Act of 1996 (Pub. L. 104–91; 110 Stat. 2033).

b. Technical safeguard standards of the HIPAA Security Rule under 45 CFR 164.312.

c. The Federal substance abuse confidentiality law (42 U.S.C. 290dd–2) and regulations under 42 CFR Part 2.

d. Server and firewall configuration as well as back up and restore needs.

e. Consideration of encryption needs for web–based applications.

5. Under 450.19 (2) (e), determine the frequency of reporting from practitioners or pharmacists of records to the board.

6. Determine health information interoperability standards using the Integrated Justice Information System’s NIEM XML standard. Determine how the PDMP will achieve interoperability with at least one geographically bordering state.

7. Develop a performance assessment to help determine whether goals are achieved or being achieved.

Policy Analysis

2009 Wisconsin Act 362 created 450.19. To receive federal funding as required by 450.19 (5), it is necessary for the Pharmacy Examining Board to determine certain portions of the PDMP’s administrative rules. Without determining some minimum requirements, the department will be unable to submit a successful grant application.

Statutory Authority

Wis. Stat. § 450.19 (2) and § 450.19 (5), Stats., as created by 2009 Wisconsin Act 362.

Wis. Stat. § 961.31.

Comparison with Federal Regulations

There is no current federal law or pending legislation establishing a federal prescription drug monitoring program. While this is not an area specifically regulated on a federal basis, by virtue of the federal grant programs, there will be some consistency across states as to what such programs require, how such programs will operate, and the ability to transfer information between states.

Entities Affected by the Rule

Practitioners and pharmacists that will be required to generate records and submit data regarding prescriptions and patients whose information may be reported to practitioners, pharmacists, public health or law enforcement.

Estimate of Time Needed to Develop the Rule

400 hours.

Pharmacy Examining Board

Subject

Revises Chapter Phar 1, relating to changing “north American pharmacy licensing examination” to “North American Pharmacist Licensure Examination” (NAPLEX) – Phar 1.02 (7).

Changes “American council on pharmaceutical education” to “Accreditation Council for Pharmacy Education” (ACPE).

Objective of the Rule

To specifically reference the name of the examination currently required of applicants for licensure – the “North American Pharmacist Licensure Examination (NAPLEX); and, to change the reference from the “American Council on Pharmaceutical Education” to the “Accreditation Council for Pharmacy Education” (ACPE).

Policy Analysis

The rule will specifically reference the name of the examination currently required of applicants for licensure; the “North American Pharmacist Licensure Examination” (NAPLEX) is already referenced as NAPLEX elsewhere in the code and statutes.

The name of the organizational organization which is responsible for approving a majority of pharmacist education required for licensure and continuing education required for renewal was changed in 2003 from the “American Council on Pharmaceutical Education” to the “Accreditation Council for Pharmacy Education” (ACPE). The relevant rules should be updated to reflect the change.

Statutory Authority

Sections 15.08 (5) (b), 227.11 (2) and 454.02 (3) (d) and (e), Stats.

Comparison with Federal Regulations

There is no existing or proposed federal regulation that is intended to address the activities to be regulated by the rule.

Entities Affected by the Rule

Pharmacist license applicants, preceptors, pharmacies, pharmacy schools, and the Department of Regulation and Licensing.

Estimate of Time Needed to Develop the Rule

40 hours.

Pharmacy Examining Board

Subject

Increasing the internship hours required from 1500 hours to 1740 hours – Phar 17.02 (5).

Changes student non–academic internship requirements – Phar 17.07 (1) and (2).

Objective of the Rule

To increase the amount of hours of internship needed from 1500 hours to 1740 hours for all classes of internships and to change student non–academic internship requirements.

Policy Analysis

The National Association of Boards of Pharmacy (NABP) approved the following at its 104th meeting in August, 2008: “The applicant demonstrates that at least 1,500 hours, and effective January 1, 2012, at least 1,740 hours, of practical

pharmacy experience under the instruction of a licensed pharmacist have been acquired.” Bylaws, Article II, Section 2 (a) (iv). <http://www.nabp.net/ftpfiles/NABP01/ReportCBL07.pdf>.

An undergraduate or postgraduate pharmacy degree from an Accreditation Council for Pharmacy Education (ACPE) school or college of pharmacy is the basic requirement for applicants to be considered for a credential. Most countries require a four or five year course for a Bachelor’s degree in pharmacy or in science (in pharmacy). In 1990, the American Association of Colleges of Pharmacy (AACP) mandated that a doctor of pharmacy degree would be the new first professional degree in the United States beginning with the class of 2001, replacing the Bachelor’s degree. This involves completion of four years at an accredited school or college of pharmacy, including practical experience. Most applicants have completed an undergraduate degree but many are admitted after completing two years of undergraduate pharmacy prerequisites. The required number of hours of required practical experience, or internship, varies by state.

Pharmacy students are allowed to participate in two different kinds of internships to meet the internship requirement; academic and non–academic. Students are not allowed to double count internship hours but can supplement academic internship hours with student non–academic internship hours. This type of internship allows students to practice pharmacy under the direct supervision of a

supervising pharmacist. The supervising pharmacist must be licensed in this state. Direct supervision means immediate, on premises availability to continually coordinate, direct and inspect, at first hand, the practice of another. Students are currently eligible to participate in a non–academic student internship if they have successfully completed their second year of pharmacy school and are enrolled in a professional bachelor’s of science degree in pharmacy or doctor of pharmacy degree program in Wisconsin or another state. Changing the requirement to allow for flexibility in the degree of experience the student participating in an internship like this will allow more students to participate and gain practical experience.

Statutory Authority

Sections 15.08 (5) (b), 227.11 (2) and 450.02 (3) (d) and (e), Stats.

Comparison with Federal Regulations

None.

Entities Affected by the Rule

Pharmacist license applicants, preceptors, pharmacies, pharmacy schools, and the Department of Regulation and Licensing.

Estimate of Time Needed to Develop the Rule

It is estimated that 120 staff hours will be needed to promulgate this rule.

Submittal of Rules to Legislative Council Clearinghouse

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

Employee Trust Funds CR 10–137

On November 16, 2010, the Department of Employee Trust Funds submitted a proposed rule–making order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed order revises section ETF 20.055, relating to waiver of spousal/domestic partner consent on Wisconsin Retirement System benefit applications.

Agency Procedure for Promulgation

A public hearing is required and will be held on February 10, 2011. The Department Policy Analyst is primarily responsible for preparing the proposed rule.

Contact Information

Linda Owen, Policy Analyst
Office of Policy, Privacy and Compliance
Phone (608) 261–8164
Email: Linda.Owen@etf.state.wi.us

Employee Trust Funds CR 10–138

On November 16, 2010, the Department of Employee Trust Funds submitted a proposed rule–making order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed order revises section ETF 10.75, relating to power of attorney.

Agency Procedure for Promulgation

A public hearing is required and will be held on February 3, 2011. The Department Policy Analyst is primarily responsible for preparing the proposed rule.

Contact Information

Linda Owen, Policy Analyst
Office of Policy, Privacy and Compliance
Phone (608) 261–8164
Email: Linda.Owen@etf.state.wi.us

Public Defender Board CR 10–133

On November 18, 2010, the Wisconsin Public Defender Board (SPD) submitted a proposed rule–making order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed order revises Chapter PD 3, relating to the determination of indigency eligibility for the assignment of publicly appointed counsel.

Agency Procedure for Promulgation

A public hearing is required and will be held on January 5, 2010.

Contact Information

Kathy Pakes, Legal Counsel
2nd Floor
315 N. Henry Street
Madison, WI 53703
Phone (608) 261–0633
Email: pakesk@opd.wi.gov

Public Defender Board CR 10–134

On November 18, 2010, the Wisconsin Public Defender Board (SPD) submitted a proposed rule–making order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed order revises Chapter PD 6, relating to the determining, collecting, and processing the payments received from persons as payment for legal representation.

Agency Procedure for Promulgation

A public hearing is required and will be held on January 5, 2010.

Contact Information

Kathy Pakes, Legal Counsel
2nd Floor
315 N. Henry Street
Madison, WI 53703
Phone (608) 261–0633
Email: pakesk@opd.wi.gov

Public Instruction CR 10–139

On November 29, 2010, the Wisconsin Department of Public Instruction submitted a proposed rule–making order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed order revises Chapter PI 6, relating to establishing public library audit requirements.

Agency Procedure for Promulgation

A public hearings will be scheduled. The Division for Libraries, Technology, and Community Learning is primarily responsible for promulgation of the rule.

Contact Information

Michael Cross, Director
Public Library Development
Phone (608) 267–9225
Email: Michael.cross@dpi.wi.gov

Public Instruction
CR 10–140

On November 29, 2010, the Wisconsin Department of Public Instruction submitted a proposed rule–making order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed order revises Chapter PI 6, relating to public librarian certification requirements.

Agency Procedure for Promulgation

A public hearings will be scheduled. The Division for Libraries, Technology, and Community Learning is primarily responsible for promulgation of the rule.

Contact Information

Michael Cross, Director
Public Library Development
Phone (608) 267–9225
Email: Michael.cross@dpi.wi.gov

Public Instruction
CR 10–141

On November 29, 2010, the Wisconsin Department of Public Instruction submitted a proposed rule–making order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed order revises Chapter PI 46, relating to training requirements for individuals administering nonprescription and prescription drug products to pupils.

Agency Procedure for Promulgation

A public hearings will be scheduled. The Division for Learning Support: Equity and Advocacy is primarily responsible for promulgation of the rule.

Contact Information

Doug White, Director
Student Services/Prevention and Wellness
Phone (608) 266–5198
Email: douglas.white@dpi.wi.gov

Regulation and Licensing
CR 10–135

On November 17, 2010, the Real Estate Appraisers Board submitted a proposed rule–making order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed order revises Chapter RL 80–86, relating to licensure, continuing education, professional conduct.

Agency Procedure for Promulgation

A public hearing is required and is scheduled for February 23, 2011.

Contact Information

Kris Anderson, Paralegal
Department of Regulation and Licensing
Division of Board Services
Phone (608) 261–2385
Email: Kristine1.Anderson@wisconsin.gov

Regulation and Licensing
CR 10–136

On November 18, 2010, the Department of Regulation and Licensing submitted a proposed rule–making order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed order revises Chapters RL 24 and 25, relating to definitions applicable to real estate brokers, duties of brokers, broker disclosure requirements, written proposals, and ethical and educational requirements.

Agency Procedure for Promulgation

A public hearing is required and is scheduled for February 17, 2011.

Contact Information

Kris Anderson, Paralegal
Department of Regulation and Licensing
Division of Board Services
Phone (608) 261–2385
Email: Kristine1.Anderson@wisconsin.gov

Transportation
CR 10–142

On November 29, 2010, the Department of Transportation submitted a proposed rule–making order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed order revises Chapter Trans 132, relating to temporary operation plates or permits.

Agency Procedure for Promulgation

A public hearing is required and is scheduled for February 6, 2011. The Department's Division of Motor Vehicles Bureau of Vehicle Services is primarily responsible for promulgation of the rule.

Contact Information

Rhonda Alley, Department of Transportation
Division of Motor Vehicles, Bureau of Vehicle Services
Room 253
P.O. Box 7911
Madison, WI 53707–7911
Phone: (608)–264–7396
Email: Rhonda.Alley@wisconsin.gov

Rule–Making Notices

Notice of Hearing Employee Trust Funds CR 10–137

NOTICE IS HEREBY GIVEN the Wisconsin Department of Employee Trust Funds (ETF) proposes an order pursuant to section 227.14, Stats., to amend section ETF 20.055 relating to the waiver of spousal/domestic partner consent on Wisconsin Retirement System benefit applications.

Hearing Information

A public hearing on the proposed rule will be held at the time and location below:

<u>Date and Time:</u>	<u>Location:</u>
February 10, 2011	Department of Employee Trust Funds
Thursday 2:00pm	Conference Room GA 801 W. Badger Road Madison, WI 53713

Persons wishing to attend should come to the reception desk up the stairs (or by elevator) from the main entrance to the building.

Copies of Proposed Rule

Copies of the proposed rule are available without cost from the Office of the Secretary, Department of Employee Trust Funds, P.O. Box 7931, Madison, WI 53707–7931. The telephone number is: (608) 266–1071.

Submittal of Written Comments

Comments may be submitted to the contact person no later than 4:30 p.m., Central Standard Time, on **February 21, 2010**.

Analysis Prepared by the Department of Employee Trust Funds

Statute(s) interpreted

Sections 40.24 (7) and 40.25 (3m), Stats., relating to ETF waiving the requirement for a spouse's/domestic partner's signature on Wisconsin Retirement System benefit applications.

Statutory authority

Sections 40.03 (2) (i), (ig), (ir), and 227.11 (2) (a), Stats.

Explanation of statutory authority

By statute, the ETF Secretary is expressly authorized, with appropriate board approval, to promulgate rules required for the efficient administration of any benefit plan established in ch. 40 of the Wisconsin statutes. Each state agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency if the agency considers it necessary to effectuate the purpose of the statute.

Related statute(s) or rule(s)

There are no other rules that clarify the circumstances under which ETF will accept a participant's documentation and certification that a participant is unable to obtain a

spouse's/domestic partner's signature on a Wisconsin Retirement System benefit application.

Plain language analysis

If a participant has been married for at least one full year at the time a retirement benefit begins, s. 40.24 (7), Stats., requires a spouse's/domestic partner's signature on Wisconsin Retirement System retirement benefit applications unless the participant selects a joint and survivor annuity with the spouse as the named survivor. Section 40.25 (3m) Stats., requires a spouse's/domestic partner's signature on Wisconsin Retirement System separation benefit applications, and on lump sum retirement benefit applications when the participant is not restricted to a lump sum retirement benefit.

Both ss. 40.24 (7) and 40.25 (3m), Stats., provide that ETF may waive the requirement for a spouse's/domestic partner's signature in situations where the participant's spouse's or domestic partner's signature cannot be obtained. Section ETF 20.055 currently restricts ETF to waiving the spousal/domestic partner's signature only in cases where either the spouse/domestic partner has been declared incompetent or the participant does not know the spouse's/domestic partner's whereabouts for at least 90 days. The proposed amendment would increase ETF's flexibility to waive the spousal/domestic partner consent requirement if the participant submits evidence to the department's satisfaction that the spouse's/domestic partner's signature is unobtainable. This flexibility is more consistent with the statutory language and intent than the current rule.

Summary of, and comparison with, existing or proposed federal regulations

There are no existing federal regulations that specifically address how public retirement plans administer a spousal/domestic partner consent requirement.

Comparison with rules in adjacent states

Employees of public employers in adjacent states do not participate in the Wisconsin Retirement System. The participants in the various public retirement plans in each state are subject to their own plans' spousal and/or domestic partner consent requirements where applicable.

Summary of factual data and analytical methodologies

The proposed rule amendment is intended to bring ETF's waiver of spousal/domestic partner consent rule into closer harmony with the statutes, and provide ETF with the greater flexibility authorized in the statutes.

Analysis and supporting documents used to determine effect on small businesses

The rule does not have an effect on small businesses because private employers and their employees do not participate in, and are not covered by, the Wisconsin Retirement System.

Effect on Small Business

There is no effect on small business.

Fiscal Estimate

The rule will have a minimal fiscal effect, in that it will require minor changes to ETF's procedures with respect to waiving the requirement for spousal/domestic partner consent on Wisconsin Retirement System benefit applications. Any costs are anticipated to be insignificant, and the Department can absorb these costs within the existing base budget. The rule will not create any additional fiscal impact on any county, city, village, town, school district, technical college district, or sewerage districts. The rule will not create any additional fiscal impact on the state for the current biennium. The rule will not have any fiscal impact on the private sector.

Agency Contact Person

Linda Owen, Policy Analyst, Department of Employee Trust Funds, 801 W Badger Rd, Madison, WI 53713–7931, P.O. Box 7931 (use ZIP Code 53707 for PO Box). Phone: 608–267–2847; e-mail: linda.owen@etf.state.wi.us.

Notice of Hearing Employee Trust Funds CR 10–138

NOTICE IS HEREBY GIVEN that the Wisconsin Department of Employee Trust Funds (ETF) proposes an order pursuant to section 227.14, Stats., to repeal and recreate section ETF 10.75, relating to the implementation of statutory changes related to power of attorney for finances and property pursuant to 2009 Wisconsin Act 319.

Hearing Information

A public hearing on the proposed rule will be held at the time and location below:

<u>Date and Time:</u>	<u>Location:</u>
February 3, 2011 Thursday 2:00pm	Department of Employee Trust Funds Conference Room GA 801 W. Badger Road Madison, WI 53713

Persons wishing to attend should come to the reception desk up the stairs (or by elevator) from the main entrance to the building.

Copies of Proposed Rule

Copies of the proposed rule are available without cost from the Office of the Secretary, Department of Employee Trust Funds, P.O. Box 7931, Madison, WI 53707–7931. The telephone number is: (608) 266–1071.

Submittal of Written Comments

Comments may be submitted to the contact person no later than 4:30 p.m., Central Standard Time, on **February 14, 2010**.

Analysis Prepared by the Department of Employee Trust Funds

Statute(s) interpreted

Various statute sections in ch. 244, Stats., relating to uniform power of attorney.

Statutory authority

Sections 40.03 (2) (i), (ig), (ir), and 227.11 (2) (a), Stats.

Explanation of agency authority

By statute, the ETF Secretary is expressly authorized, with appropriate board approval, to promulgate rules required for the efficient administration of any benefit plan established in ch. 40 of the Wisconsin statutes. Each state agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency if the agency considers it necessary to effectuate the purpose of the statute.

Related statute(s) or rule(s)

There are no other rules that clarify how ETF will administer Chapter 40, Stats., benefits with respect to power of attorney. 2009 Wisconsin Act 319 contains changes to the statutes relating to power of attorney for property and finances.

Plain language analysis

2009 Wisconsin Act 319 updates provisions related to the uniform power of attorney for property and finances. Rule changes are necessary to bring ETF's treatment of power of attorney documents into harmony with the new statutes, including:

A rule clarifying how the department will process conflicting transaction requests from co-agents when the principal has granted authority to execute such transactions to multiple agents.

A rule specifying how the department will implement the 10–day deadline for rejecting power of attorney documents and requests provided in 2009 Wisconsin Act 319.

A rule specifying the department's treatment of an agent's request to execute a transaction when the power of attorney document is incomplete or certification is required.

A rule clarifying that a power of attorney does not automatically terminate when a domestic partnership established under Chapter 40, Stats., is terminated.

Summary of, and comparison with, existing or proposed federal regulations

There are no existing federal regulations that specifically address how states process and administer power of attorney.

Comparison with rules in adjacent states

All states except Louisiana have adopted the Uniform Power of Attorney Act, although each state may incorporate additional provisions into their own power of attorney laws. If a power of attorney was executed in a state other than Wisconsin, the department would abide by that state's laws with respect to the authority and powers granted in the power of attorney document.

Summary of factual data and analytical methodologies

2009 Wisconsin Act 319 amended Wisconsin's statutes governing uniform power of attorney for finances and property. The proposed rule change is intended to bring ETF's power of attorney rule into harmony with the amended statutes.

Analysis and supporting documents used in determination of effect on small businesses

The rule does not have an effect on small businesses because private employers and their employees do not participate in, and are not covered by, the Wisconsin Retirement System.

Effect On Small Business

There is no effect on small business.

Fiscal Estimate

The rule will have a minimal fiscal effect, in that it will require minor changes to ETF's procedures with respect to

reviewing power of attorney documents. Any costs are anticipated to be insignificant, and the Department can absorb these costs within the existing base budget. The rule will not create any additional fiscal impact on any county, city, village, town, school district, technical college district, or sewerage districts. The rule will not create any additional fiscal impact on the state for the current biennium. The rule will not have any fiscal impact on the private sector.

Agency Contact Person

Linda Owen, Policy Analyst, Department of Employee Trust Funds, 801 W Badger Rd, Madison, WI 53713–7931, P.O. Box 7931 (use ZIP Code 53707 for PO Box); Phone: 608–267–2847; e–mail: linda.owen@etf.state.wi.us

Notice of Hearing Public Defender Board CR 10–133

NOTICE IS HEREBY GIVEN that the State of Wisconsin Public Defender Board (SPD) announces that it will hold a public hearing on the revision of Chapter PD 3, Indigency Criteria, relating to the determination of eligibility for the assignment of publicly appointed counsel.

Hearing Information

The State Public Defender will hold a public hearing at the time and location below:

Date and Time:	Location:
January 5, 2011 Wednesday 9:30am–11:30	SPD Administrative Office Banoul Conference Room 315 N. Henry St., 2nd Floor Madison, WI 53703

Handicap accessibility is in the rear of the building. If you require communication accommodation at the hearing, please call Kathy Pakes, (608) 261–0087, at least 10 days prior to the hearing date.

Appearances at the Hearing and Submittal of Written Comments

Interested persons are invited to attend the hearing and comment on the rule. Persons appearing may make an oral presentation and are requested to submit their comments in writing. Written comments on the rule will be accepted into the record and receive the same consideration as testimony presented at the hearing if they are received by **December 13** at 9:30. Written comments should be addressed to: Kathy Pakes, SPD, PO Box 7923, Madison, WI 53707–7923, or by email: pakesk@opd.wi.gov.

Copies of Proposed Rule

To view the rule online, go to: <http://www.wisspd.org/CAR.asp>

To view the rule fiscal note online, go to: <http://legis.wisconsin.gov/2009/data/fe/AB–395fe.pdf>

You may contact Kathy Pakes at pakesk@opd.wi.gov or by telephone at (608) 266–0087 to request a copy (at no cost) of the rule and fiscal note be sent to you by U.S. mail. Copies of the rule and fiscal note will also be available, at no cost, at the hearing.

Analysis Prepared by the Public Defender Board

Statute(s) interpreted

Sections 977.02 (5); 977.06 (1), 977.07 (1) Stats.

Statutory authority

Sections 977.02 (3) and (5), 977.08 (1); 977.06 (1) (a) and (2) (a); 977.02 (3) (a)–(d), Stats.

Explanation of agency authority

The State Public Defender’s Office (SPD) provides constitutionally–mandated legal representation to persons who meet financial eligibility standards. Under the current eligibility standards, which have not been updated since 1987, a person charged with a felony offense, grossing \$290 per week (working 40 hours a week at minimum wage of \$7.25 per hour), with two children, assets of \$300, and a car worth \$2,000, does not qualify for the State Public Defender.

Those who do not qualify for State Public Defender Representation and cannot afford an attorney are provided an attorney, at county expense. Since 1987, as the cost of living has increased, the number of persons who do not meet the SPD eligibility standards, and who are unable to afford counsel, has increased. Wisconsin counties reported spending nearly \$7.6 million in 2008 to appoint counsel for these indigent individuals.

Recognizing the burden to the counties and need to revise the financial eligibility criteria, 2009 Wisconsin Act 164, published March 29, 2010, mandated that financial eligibility standards for public defender representation be consistent with income guidelines of Wisconsin Works (W2). To carry out these changes, Act 164 directs the Wisconsin State Public Defender Board to promulgate rules regarding the revised determination of indigency. In promulgating these rules Act 164 directs the SPD to consider the costs of effective representation for the type of case in which a person seeks representation, and to consider a person’s assets in the manner described in s. 49.145 Stats., (Wisconsin Works).

Related statute(s) or rule(s)

None.

Plain language analysis

Tying eligibility for representation to W2 (sec. 49.145 (3) (a) Stats.) increases the number of clients served by the State Public Defender Agency.

An increase in the number of persons who qualify for representation by the State Public Defender has a corresponding decrease in the costs to counties. This is because counties are required to provide counsel for those individuals who do not qualify for state public defender representation and cannot afford to retain an attorney. Act 164 shifts, to a large extent, the responsibility of providing representation for the “working poor” from the counties to the State.

Summary of, and comparison with, existing or proposed federal regulation

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

Comparison with rules in adjacent states

Iowa:

Iowa Code sec. 815.9

Eligibility for public defender representation is tied to the United State poverty level as defined by the most recently revised poverty income guidelines published by the United

States department of health and human services. Generally, a person with an income level at or below 125% of the federal poverty guidelines will qualify for public defender representation. Persons with an income of 125% to 200% of the federal poverty guidelines may qualify for public defender representation if the court finds not appointing counsel would cause the person substantial hardship.

Illinois:

Does not have a statewide public defender system. The counties bear the cost of representation. Indigency determinations are made on a county by county basis.

Michigan:

Does not have a statewide public defender system. The counties bear the cost of representation. Indigency determinations are made on a county by county basis.

Minnesota:

Has a statewide public defender system. Guidelines for those persons who qualify for representation may be viewed at: <http://www.house.leg.state.mn.us/hrd/pubs/ss/ssmpds.htm>.

In Minnesota a defendant is financially unable to obtain counsel if the defendant, or a defendant's dependent (residing in the same household), receives means-tested governmental benefits, or, considering the defendant's liquid assets and current income, the defendant would be unable to pay the reasonable costs charged by a private attorney.

Upon disposition of the case, the defendant must pay a \$28 co-payment, unless the court waives the co-payment. The statute does not indicate when a court should exercise its discretion to waive the co-payment. In 2003, the Minnesota Court of Appeals held that a defendant is exempt from the co-payment and the court must waive the co-payment when a defendant is indigent or when the co-payment would cause manifest hardship on a defendant.

Summary of factual data and analytical methodologies

Act 164 directs the SPD to consider the costs of effective representation for the type of case in which a person seeks representation, and to consider a person's assets in the manner described in s. 49.145, Stats., (Wisconsin Works).

In determining the estimated cost of counsel the SPD looked to the State Bar of Wisconsin 2008 "Economics of Law Practice in Wisconsin".

Methodology used by state bar:

The Wisconsin State Bar, along with a consulting agency, and with input from members representing various practice areas developed a questionnaire designed to determine the cost of counsel in various types of cases. The questionnaire was mailed to a geographically stratified random sample of 6,160 active members. Questionnaires and reply envelopes were not coded in any way to ensure confidentiality. A follow-up reminder postcard was mailed to all members of the original sample with an email reminder. The response deadline was June 6, 2008, and questionnaires received as of June 12, 2008 were included in the analysis. A total of 1,024 total usable questionnaires were returned by members, for a 17 percent overall response rate: including 618 from private practitioners, 257 from government or public service attorneys, and 102 from corporate/in-house counsels. The response rate is what would be expected from a busy, professional audience when no monetary incentive is included and no follow-up mailing of the questionnaire is done. All usable questionnaires were audited, data entered

and analyzed by Gene Kroupa & Associates, a Madison based marketing research firm that has assisted the State Bar with other projects. The questionnaire was designed so that all attorneys were to answer Section I, private practitioners were to answer Section II, government attorneys were to answer Section III, and corporate/in-house counsels were to answer Section IV. The results for each section are based only on those who were instructed to answer that particular section. The analysis focused on differences related to practice setting, location, size, and respondent demographics.

Analysis and supporting documents used in determination of effect on small business or in preparation of economic impact report

N/A

Effect on Small Business

None

Fiscal Estimate

State fiscal effect

Increase Costs – Not possible to absorb within agency's budget.

Local fiscal effect

Decrease Costs – Mandatory.

Types of local government units affected

Counties.

Fund sources affected

GPR.

Assumptions used in arriving at fiscal estimate

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

Although this bill neither creates new criminal offenses, nor changes penalties, it would increase the number of SPD cases by updating the SPD financial eligibility criteria. These criteria have remained the same, without adjustments for inflation, since 1987, with the consequence that many applicants of low income (below the federal poverty level) do not presently qualify for SPD representation.

Because the proposed effective date is June 19, 2011, the SPD would not incur increased costs during the 2009–11 biennium. As the proposed changes are implemented, the SPD estimates additional costs in FY 2012 of \$3,800,000. The estimated annual cost attributable to the changes proposed in this bill would be \$4,100,000, once fully implemented, beginning in FY 2013. These estimates are based upon average SPD costs and a study of applications for SPD services, which showed that the SPD would provide representation in an additional 12,800 cases annually if these changes take effect. In general, the number of criminal charges filed and statewide economic conditions are significant variables affecting the number of SPD cases.

Much, if not all, of the increased costs will be offset by reductions in county expenditures for the appointment of counsel. Reports from 69 of Wisconsin's 72 counties showed county expenditures in 2008 of approximately \$6,000,000 for this type of appointment. Many applicants who exceed the

SPD's statutory financial guidelines are constitutionally eligible for appointment of counsel because it would be a substantial hardship for them to retain an attorney. The court is required to appoint counsel at county expense for these applicants. This bill would greatly decrease the number of applicants for court-appointed attorneys in criminal cases because the revised SPD financial criteria would result in SPD appointments in most of the cases in which courts currently appoint attorneys at county expense.

Counties would save the direct costs of these appointments, and county officials would not have to spend as much time administering court appointments, including auditing and paying invoices. The counties may also experience savings because in cases in which the SPD is able to appoint an attorney, the case may be resolved more quickly than if there is a delay to determine whether the court should appoint an attorney. In many cases, the prompt appointment of an attorney may result in fewer court hearings, less jail time, or both.

Agency Contact Person

Questions regarding these rules may be directed to Kathy Pakes at pakesk@opd.wi.gov or 315 N. Henry Street, 2nd Floor, Madison, WI 53703.

Notice of Hearing Public Defender Board CR 10–134

NOTICE IS HEREBY GIVEN that the State of Wisconsin Public Defender Board (SPD) announces that it will hold a public hearing on the revision of Chapter PD 6, Payment for Representation, relating to determining, collecting and processing the payments received from persons as payment for legal representation.

Hearing Information

The State Public Defender will hold a public hearing at the time and location below:

<u>Date and Time:</u>	<u>Location:</u>
January 5, 2011 Wednesday 9:30am–11:30	SPD Administrative Office Banoul Conference Room 315 N. Henry St., 2nd Floor Madison, WI 53703

Appearances at the Hearing and Submittal of Written Comments

Interested persons are invited to attend the hearing and comment on the rule. Persons appearing may make an oral presentation and are requested to submit their comments in writing. Written comments on the rule will be accepted into the record and receive the same consideration as testimony presented at the hearing if they are received by **December 13** at 9:30 a.m.. Written comments should be addressed to: Kathy Pakes, SPD, PO Box 7923, Madison, WI 53707–7923, or by email: pakesk@opd.wi.gov.

Copies of Proposed Rule

To view the rule online, go to: <http://www.wisspd.org/CAR.asp>

To view the rule fiscal note online, go to: <http://legis.wisconsin.gov/2009/data/fe/AB–395fe.pdf>

You may contact Kathy Pakes at pakesk@opd.wi.gov or by telephone at (608) 266–0087 to request a copy (at no cost) of the rule and fiscal note be sent to you by U.S. mail. Copies of the rule and fiscal note will also be available, at no cost, at the hearing.

Analysis Prepared by the Public Defender Board

Statute(s) interpreted

Sections 20.550 (1) (fb), 973.06 (1) (e), 977.02 (3), 977.02 (3) (a)–(d), 977.075, 977.076, Stats.

Statutory authority

Sections 20.550 (1) (fb), 973.06 (1) (e), 977.075, 977.02 (3) (a)–(d), 977.076, 977.085 (3), Stats.

Explanation of agency authority

The State Public Defender's Office (SPD) provides constitutionally–mandated legal representation to persons who meet financial eligibility standards. Under the current eligibility standards, which have not been updated since 1987, a person charged with a felony offense, grossing \$290 per week (working 40 hours a week at minimum wage of \$7.25 per hour), with two children, assets of \$300, and a car worth \$2,000, does not qualify for the State Public Defender.

Those who cannot afford an attorney and do not qualify for State Public Defender representation are provided an attorney at county expense. Since 1987, as the cost of living has increased, the number of persons who do not meet the SPD eligibility standards, and who are unable to afford counsel, has increased. Wisconsin counties reported spending nearly \$7.6 million in 2008 to appoint counsel for these indigent individuals.

Recognizing the burden to the counties and need to revise the financial eligibility criteria, 2009 Wisconsin Act 164, published March 29, 2010, mandated that financial eligibility standards for public defender representation be consistent with income guidelines of Wisconsin Works (W2). To carry out these changes, Act 164 directs the Wisconsin State Public Defender Board to promulgate rules regarding the revised determination of indigency. In promulgating these rules Act 164 directs the SPD to consider the costs of effective representation for the type of case in which a person seeks representation, and to consider a person's assets in the manner described in s. 49.145, Stats., (Wisconsin Works) when evaluating a persons ability to pay the costs of legal representation.

In order to carry out the mandates of Act 164, including the need for consistency within an agency's administrative rules, Chapter PD 6 (Payment for Legal Representation) is revised at the same time as Chapter PD 3 (Determination of Indigency).

Related statute(s) or rule(s)

None.

Plain language analysis

Tying eligibility for representation to W2 (sec. 49.145(3)(a) Stats.) increases the number of clients served by the State Public Defender Agency. The State Public Defender, pursuant to statute, collects payments from clients for legal representation. Revisions to Chapter PD 6 correspond to revisions in Chapter PD 3.

Summary of, and comparison with, existing or proposed federal regulation

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

Comparison with rules in adjacent states**Iowa:**

Iowa has a statewide public defender system, but no statewide collection system for recovering fees. Instead, the public defender agency notifies individual Clerks of Court of what payment is due, and the courts add this amount to the court costs.

Illinois:

Does not have a statewide public defender system. The counties bear the cost of representation. Indigency determinations and collections are made on a county by county basis.

Michigan:

Does not have a statewide public defender system. The counties bear the cost of representation. Indigency determinations and collections are made on a county by county basis.

Minnesota:

Minnesota has a statewide public defender system. Upon disposition of a case, an individual who has received public defender services shall pay the court a \$75 co–payment for representation provided by a public defender, unless the co–payment is, or has been, waived by the court. This co–payment is a civil obligation and may not be made a condition of a criminal sentence. *See* Minn. Stat. 611.17

Summary of factual data and analytical methodologies

N/A

Analysis and supporting documents used in determination of effect on small business or in preparation of economic impact report

N/A

Effect on Small Business

None.

Fiscal Estimate

The changes to Chapter PD 6 have no fiscal impact. For the fiscal impact of Chapter PD 3, and 2009 Wisconsin Act 164 generally, see: <http://legis.wisconsin.gov/2009/data/fe/AB-395fe.pdf>.

Agency Contact Person

Questions regarding these rules may be directed to Kathy Pakes at pakesk@opd.wi.gov or 315 N. Henry Street, 2nd Floor, Madison, WI 53703.

Notice of Hearing**Transportation****CR 10–142**

NOTICE IS HEREBY GIVEN that pursuant to sections 85.16 (1), 341.09 and 227.11, Stats., interpreting sections 341.04 and 341.09, Stats., the Department of Transportation will hold a public hearing to consider the amendment of Chapter Trans 132, Wisconsin Administrative Code, relating to temporary operation plates or permits.

Hearing Information

The Department of Transportation will hold a public hearing at the time and location below:

Date and Time:

January 6, 2011

Thursday

10:00am

Location:

Hill Farms State Transporta-

tion Building

Room 254

4802 Sheboygan Ave.

Madison, WI 53705

This hearing is held in an accessible facility. If you have special needs or circumstances that may make communication or accessibility difficult at the hearing, please call Rhonda Alley at (608) 264–7396 with specific information on your request at least 10 days before the date of the scheduled hearing. Accommodations such as interpreters, English translators, or materials in alternative format will, to the fullest extent possible, be made available upon a request from a person with a disability to accommodate your needs.

Copies of Proposed Rule

A copy of the rule may be obtained upon request from Rhonda Alley, Chief, Title and Registration Processing Section, Division of Motor Vehicles, Bureau of Vehicle Services, Room 253, P.O. Box 7911 Madison, WI 53707–7911. You may also contact Ms. Alley by phone at (608) 264–7396 or via e–mail: rhonda.alley@wisconsin.gov to obtain copies of the proposed rule. Copies will also be available at the hearing.

Submittal of Written Comments

The public record on this proposed rule making will be held open until close of business the day of the hearing to permit the submission of comments in lieu of public hearing testimony or comments supplementing testimony offered at the hearing. Any such comments should be submitted to Rhonda Alley, Department of Transportation, Division of Motor Vehicles, Bureau of Vehicle Services, Room 253, P. O. Box 7911, Madison, WI 53707–7911. You may also contact Ms. Alley by phone at (608) 264–7396 or via e–mail: rhonda.alley@wisconsin.gov.

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

Analysis Prepared by the Department of Transportation**Statute(s) interpreted**

Sections 341.04 and 341.09, Stats.

Statutory authority

Sections 85.16 (1), 227.11 and 341.09, Stats.

Explanation of agency authority

The Department of Transportation is authorized and required to issue temporary operation plates for motor vehicles and to specify the size, color, design, form and specification of the temporary operation plates by rule, pursuant to s. 341.09, Stats. This rule is proposed to meet those requirements.

Related statute(s) or rule(s)

Sections 340.01, 341.04, 341.12, 341.13, 341.15, Stats., and chs Trans 128 and 141.

Plain language analysis

Chapter Trans 132 specifies the size, color, design, form and specifications, and display of temporary operation plates that DOT is authorized to issue under s. 341.09, Stats.

The Division of Motor Vehicles (DMV) is developing an on–line program which will allow the public to apply for title and registration for certain vehicles electronically. To comply with s. 341.04 (1), Stats., DMV will issue a temporary operation plate that the on–line program will print on paper at the applicant’s printer and which shall be displayed in the rear window of the vehicle. The temporary plate number, vehicle description, expiration date, and owner information will be stored in the DMV database and will be available to law enforcement, real time and on–line.

This rule making amends ch. Trans 132 to specify size, color, design, form and specifications, and display of temporary operation plates that DOT will issue electronically as part of the on–line web application for electronic vehicle title and registration provided by the Department.

Summary of, and comparison with, existing or proposed federal regulation

No federal regulations apply to the activities to be regulated by the proposed rule.

Comparison with rules in adjacent states

Michigan:

Michigan does not issue temporary operation plates printed on paper at an applicant’s printer and displayed in the rear window of the vehicle.

Minnesota:

Minnesota issues temporary operation permits printed on paper and affixed in the rear window. The temporary operation permit is not printed at an applicant’s printer; instead, it is purchased from the DMV.

Illinois:

Illinois does not issue temporary operation plates printed on paper at an applicant’s printer and displayed in the rear window of the vehicle.

Iowa:

Iowa issues a temporary “in–transit” permit that is displayed in the rear window of the vehicle. The permit is not printed at an applicant’s printer; instead it is purchased in advance from the DMV and is available to dealers rather than individuals.

Summary of factual data and analytical methodologies

With an on–line title and registration process, DMV must be able to issue a temporary operation plate immediately to a person after the person completes the on–line process. This is to comply with s. 341.04 (1), Stats. Otherwise, the registrant must refrain from operating the vehicle until the metal plate arrives.

DMV has considered alternative ways to immediately provide a temporary operation plate to on–line title and registration customers. DMV has concluded that a temporary operation plate printed on paper at the customer’s printer and displayed in the rear window of the vehicle meets the requirement under s. 341.04, Stats. Since the temporary operation plate number and vehicle and owner identifying information will be available real–time on–line to law enforcement, DMV has concluded that the risk of fraud or counterfeiting is minimized.

Analysis and supporting documents used in determination of effect on small business or in preparation of economic impact report

DMV is migrating toward as many applications as feasible to be conducted electronically, which will reduce time and cost burden to small businesses as well as individuals. Currently, any vehicle purchased through a Wisconsin–licensed motor vehicle dealer will be processed electronically by the dealer. DMV is developing a web–based electronic title and registration process for “private” — non–dealer — sales. DMV will offer this option for automobiles and light trucks (8,000 lbs or less) and motorcycles, which comprise almost 94% of all vehicles in Wisconsin.

Effect on Small Business

To the extent that small businesses purchase eligible vehicles through private sales, this application will have a positive effect on small businesses. The Department’s Regulatory Review Coordinator may be contacted by e–mail at ralph.sanders@dot.wisconsin.gov, or by calling (414) 438–4585.

Fiscal Estimate

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

Anticipated costs incurred by private sector

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

Agency Contact Person

Rhonda Alley, Department of Transportation, Division of Motor Vehicles, Bureau of Vehicle Services, Room 253, P. O. Box 7911, Madison, WI 53707–7911. You may also contact Ms. Alley by phone at (608) 264–7396 or via e–mail: rhonda.alley@wisconsin.gov.

Rule Orders Filed with the Legislative Reference Bureau

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

Children and Families

Early Care and Education, Chs. DCF 201-252

CR 10-086

Revises Chapter DCF 201, relating to child care subsidy program integrity and affecting small businesses.
Effective 1-1-11.

Commerce

Uniform Dwelling, Chs. Comm 20-25

Smoke Detectors, Ch. Comm 28

CR 10-089

Revises Chapters Comm 21 and 28 relating to carbon monoxide detectors in dwellings and affecting small business.
Effective 2-1-11.

Commerce

Licenses, Certifications and Registrations, Ch. Comm 5

CR 10-090

Revises Chapter Comm 5, relating to the licensing and registration of individuals who install or alter thermal insulation for heating, ventilating, cooling, plumbing or refrigeration systems.
Effective 2-1-11.

Public Notices

Department of Agriculture, Trade and Consumer Protection Adjustments in Dollar Amounts for Repair Charges Subject to Mechanic's Liens Under Wis. Stat. § 779.41

The following notice is being submitted for publication in the Wisconsin Administrative Register as required under Wis. Stats. § 779.41(1m), created by 1995 Wisconsin Act 107.

Notice of Dollar Amount Adjustments for Repair Charges Subject to Mechanic's Liens

Under Wis. Stat. § 779.41 (1m), the Department is required to annually adjust the dollar amounts identified under §§ 779.41 sub. (1) (intro), (a), (b) and (c) 1. to 4. by the annual change in the consumer price index, all items, U.S. city average, as determined by the Bureau of Labor Statistics of the U.S. Department of Labor, and publish the adjusted figures.

The Department has determined that current dollar amounts specified under Wis. Stats. §§ 779.41 sub. (1) (intro), (a), (b) and (c) 1. to 4. shall be decreased by .4%, according to the prior year annual change in the consumer price index.

The dollar amount contained in Wis. Stats. § 779.41 (1) (intro), is adjusted to \$2,085. The dollar amounts contained in Wis. Stats. § 779.41 (1) (a) (b), and (c) 1. to 4. are adjusted to the following dollar amounts:

- (a) A trailer or semitrailer designed for use with a road tractor for charges in excess of \$6,260.
- (b) Road machinery, including mobile cranes and trench hoes, farm tractors, machines of husbandry, or off-highway construction vehicles and equipment for charges in excess of \$10,420.
- (c) A motor vehicle not included under par. (a) or (b) with a manufacturer's gross weight rating, including, with respect to road tractors, a manufacturer's gross weight rating for the combined carrying capacity of the tractor and trailer, of:
 1. More than 10,000 and less than 20,000 pounds, for charges in excess of \$4,170.
 2. 20,000 pounds or more, but less than 40,000 pounds, for charges in excess of \$8,225.
 3. 40,000 pounds or more, but less than 60,000 pounds, for charges in excess of \$13,440.
 4. 60,000 pounds or more, for charges in excess of \$16,185.

These revised dollar amounts under the mechanic's lien law shall apply to work commenced on or after January 1, 2011 for which a lien is claimed. These revised dollar amounts shall remain in effect until the first day of the first month following publication of new adjusted dollar amounts in the *Wisconsin Administrative Register*.

Contact Information:

Paul Dingee, Section Chief
Trade Practices Bureau
Department of Agriculture, Trade and Consumer Protection
2811 Agriculture Drive
P.O. Box 8911
Madison, WI 53708–8911
Telephone: (608) 224–4925
paul.dingee@wi.gov

Department of Financial Institutions Division of Banking

Notice of Interest Rate on Required Residential Mortgage Loan Escrow Accounts for 2011

Under Section 138.052 (5) (a), Stats., with some exceptions, a bank, credit union, savings bank, savings and loan association, or mortgage banker, which originates a residential mortgage loan requiring an escrow account to assure the payment of taxes or insurance, shall pay interest on the outstanding principal of the escrow.

Section 138.052 (5) (am) 2., Stats., directs the division of banking to determine annually the required interest rate. The rate is based on the average of interest rates paid on regular passbook deposit accounts by institutions under the division of banking or office of credit unions' jurisdiction.

The Department of Financial Institutions, Division of Banking, has calculated the interest rate required to be paid on escrow accounts under Section 138.052 (5), Stats., to be **0.37%** for 2011. This interest rate shall remain in effect through December 31, 2011.

Contact Person:

Mr. Michael J. Mach, Administrator
Department of Financial Institutions
Division of Banking
Telephone (608) 261-7578

Office of the Commissioner of Insurance

Insurance Commissioner Sean Dilweg has determined that one independent review organization is certified in accordance with s. 632.835 (4), Stats., and is available to effectively provide the independent reviews required for preexisting condition exclusion denial determinations and rescissions. In accordance with s. 632.835 (8) (b), Stats., the Commissioner is providing notice that effective February 15, 2011, independent review procedures for preexisting condition exclusion denial determinations and rescissions will begin operating.

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