

# Wisconsin Administrative Register

No. 666



Publication Date: June 14, 2011

Effective Date: June 15, 2011



Legislative Reference Bureau  
<http://www.legis.state.wi.us/rsb/code.htm>



## WISCONSIN ADMINISTRATIVE REGISTER

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

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## Emergency Rules Now in Effect

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

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

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

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

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

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

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

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

**1. 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

**2. EmR1048** — Rule adopted to repeal and recreate **Chapter ATCP 20**, relating to seed labeling and sales.

#### Finding of Emergency

Pursuant to sections 93.07 (1) and 94.45 (6), Stats. This emergency rule is also adopted pursuant to the nonstatutory provision in 2009 Wis. Act 28, section 9103 (3).

2009 Wis. Act 28 repealed outdated seed standards effective January 1, 2011, and authorized DATCP to adopt new standards by rule. A non-statutory provision, contained in section 9103 (3) of Act 28, authorized DATCP to adopt interim rules by the emergency rulemaking procedure under s. 227.24, Stats., without a finding of emergency. Under this non-statutory provision, the interim rules may remain in effect until July 1, 2011 or until the effective date of proposed “permanent” seed rules, whichever date is earlier.

**Publication Date:** January 1, 2011  
**Effective Dates:** January 1, 2011 through July 1, 2011  
**Hearing Date:** January 11, 2011

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### Children and Families (3)

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

**1. 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

**2. EmR1050** — Rule adopted to repeal **Chapter DCF 38** and revise **Chapter DCF 56**, relating to foster care.

#### Finding of Emergency

The Department of Children and Families finds that an emergency exists and that an emergency rule is necessary for the immediate preservation of the public peace, health, safety,

or welfare. A statement of facts constituting the emergency is:

In the Child and Family Services Review of Wisconsin's child welfare system this past year, the federal Administration for Children and Families found that Wisconsin is not operating in substantial conformity with a number of federal requirements. In response to this review, the department has submitted a program improvement plan that commits the department to complete implementation of the levels of care system and the child assessment tool throughout the first quarter of 2011. Implementation must begin immediately to meet this deadline and subsequent dependent deadlines in the remaining 2 years of the program improvement plan.

**Publication Date:** January 1, 2011  
**Effective Dates:** January 1, 2011 through May 30, 2011  
**Extension Through:** July 29, 2011  
**Hearing Date:** February 8, 15, 28, 2011

**3. EmR1106** — Rule adopted to revise **Chapters DCF 52, 54, and 57**, relating to regulation of rates charged by residential care centers for children and youth, child-placing agencies, and group homes.

#### Finding of Emergency

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

2009 Wisconsin Act 28 directed the department to implement rate regulation effective January 1, 2011. Implementation was delayed and this rule is phasing-in rate regulation at the earliest feasible date.

**Publication Date:** April 18, 2011  
**Effective Dates:** April 18, 2011 through September 16, 2011  
**Hearing Date:** May 18, 2011

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## Commerce

### *Financial Resources for Businesses and Communities, Chs. Comm 100–149*

**1. 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 14, 2010 through April 12, 2011  
**Extension Through:** June 11, 2011  
**Hearing Date:** February 15, 2011

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## Government Accountability Board

**EmR1049** — Rule adopted to amend **section GAB 1.28**, relating to the definition of the term “political purpose.”

#### Finding of Emergency

The Government Accountability Board amends s. GAB 1.28 (3) (b), Wis. Adm. Code, relating to the definition of the term “political purpose.” Section GAB 1.28 as a whole continues to clarify the definition of “political purposes” found in s. 11.01 (16) (a)1., Stats., but repeals the second sentence of s. GAB 1.28 (3) (b) which prescribes communications presumptively susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate.

This amendment to s. GAB 1.28 (3) (b) is to the rule that was published on July 31, 2010 and effective on August 1, 2010, following a lengthy two year period of drafting, internal review and study, public comment, Legislative review, and consideration of U.S. Supreme Court decisions. Within the context of ch. 11, Stats., s. GAB 1.28 provides direction to persons intending to engage in activities for political purposes with respect to triggering registering and reporting obligations under campaign financing statutes and regulations. In addition, the rule provides more information for the public so that it may have a more complete understanding as to who is supporting or opposing which candidate or cause and to what extent, whether directly or indirectly.

Pursuant to §227.24, Stats., the Government Accountability Board finds an emergency exists as a result of pending litigation against the Board and two decisions by the United States Supreme Court: *Federal Election Commission (FEC) v. Wisconsin Right to Life, Inc. (WRTL II)*, 550 U.S. 549 (2007) and *Citizens United v. FEC*, 558 U.S. \_\_\_, (No. 08–205) (January 21, 2010). Following the effective date of the August 1, 2010 rule, three lawsuits were filed seeking a declaration that the rule was unconstitutional and beyond the Board's statutory authority: one in the U.S. District Court for the Western District of Wisconsin, one in the U.S. District Court for the Eastern District of Wisconsin, and one in the Wisconsin Supreme Court. On August 13, 2010, the Wisconsin Supreme Court temporarily enjoined enforcement of the August 1, 2010 rule, pending further order by the Court.

In the lawsuit in the U.S. District Court for the Western District of Wisconsin, the parties previously executed a joint stipulation asking the Court to permanently enjoin application and enforcement of the second sentence of s. GAB 1.28 (3) (b). On October 13, 2010, the Court issued an Opinion and Order denying that injunction request. In denying the injunction, the Court noted that “G.A.B. has within its own power the ability to refrain from enforcing, or removing altogether, the offending sentence from a regulation G.A.B. itself created” and emphasized that “removing the language — for example, by G.A.B. issuing an emergency rule — would be far more ‘simple and expeditious’ than asking a federal court to permanently enjoin enforcement of the offending regulation.” *Wisconsin Club for Growth, Inc. v. Myse*, No. 10–CV–427, slip op. at 2 (W.D. Wis. Oct. 13, 2010). The Court further noted that staying the case would give the Board time to resolve some or all of the pending issues through further rulemaking. *Id.*, slip op. at 14.

In addition, the Board, through its litigation counsel, has represented to the Wisconsin Supreme Court that it does not intend to defend the validity of the second sentence of s. GAB 1.28 (3) (b) and that it would stipulate to the entry of an order by that Court permanently enjoining the application or enforcement of that sentence.

This amendment brings s. GAB 1.28 (3) (b) into conformity with the above stipulation, with the representations that have been made to the Wisconsin Supreme Court, and with the suggestions made in the October 13, 2010, Opinion and Order of the U.S. District Court for the Western District of Wisconsin. The Board finds that the immediate adoption of this amendment will preserve the public peace and welfare by providing a simple and expeditious clarification of the meaning of s. GAB 1.28 for litigants, for the regulated community, and for the general public and by doing so in advance of the 2011 Spring Election and any other future elections.

**Publication Date:** January 7, 2011  
**Effective Dates:** January 7, 2011 through June 5, 2011  
**Hearing Date:** February 16, 2011

### Insurance (3)

**1. EmR1042** — Rule to create **section 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 an emergency rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. Facts constituting the emergency are as follows:

Beginning 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  
**Extension Through:** June 26, 2011  
**Hearing Date:** January 25, 2011

**2. EmR1043** — Rule to amend **section Ins 3.37 (1) to (5) (intro)**; and to create **sections Ins 3.37 (2m), (3m), (4m) and (5m), and 3.375**, 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:

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  
**Extension Through:** June 26, 2011  
**Hearing Date:** January 25, 2011

**3. EmR1101** — Rule adopted to revise **section Ins 6.07 (4) and (9)**, relating to readability and electronic access to insurance policies and affecting small business.

#### Finding of Emergency

The Commissioner of Insurance finds that an emergency exists and that an emergency rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. Facts constituting the emergency are as follows: the cost of implementing the Flesch scores and electronic access to policies significantly exceeded anticipated costs for the insurance industry; a review of state resources indicates insufficient staff to timely review the volume of health insurance policy filings resulting from the flesch score requirement; and it is anticipated the federal department of Health and Human Services (“HHS”) will use National Association of Insurance Commissioners recommendations for the development of standards for a uniform summary of benefits and coverage explanation for all potential policyholders and enrollees. Repealing these provisions now before costly system overhauls will save both the industry and the state significant resources. Further, although it was anticipated that the National Association of Insurance Commissioners was planning to implement a national readability standard, such movement has stalled negating the amendment to prior Flesch readability scores.

The changes contained in this emergency rule will restore prior standards and ease financial constraints for the insurance industry.

**Publication Date:** February 9, 2011  
**Effective Dates:** February 9, 2011 through July 8, 2011  
**Hearing Date:** May 3, 2011

### Natural Resources (4)

*Fish, Game, etc., Chs. NR 1—*

**1. EmR1036** — Rule adopted to create **section 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 Date:** October 25 to 29, 2010

**2. EmR1039** (DNR # IS-49-10(E)) — Rule adopted to create sections 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

**3. EmR1045** (DNR # IS-07-11(E)) — Rule to repeal section NR 40.02 (28m); to amend section NR 40.04 (3m), and to repeal and recreate section NR 40.07 (8), (all as created by Natural Resource Board emergency order EmR1039, DNR # IS-49-10(E)), 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:** December 13, 2010  
**Effective Dates:** December 13, 2010 through  
*See bold text above*

**4. EmR1107** — Rule to amend section NR 25.09 (2) (b) 2. a. and f., and create section NR 25.09 (1) (b) 11., relating to commercial fishing in outlying waters.

#### Finding of Emergency

The Department of Natural Resources finds that an emergency exists and the foregoing rules are necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of facts constituting the emergency is: Commercial trap nets in Lake Michigan pose a hazard to the safety of recreational fishermen trolling submerged fishing lines. The preservation of public safety requires appropriate measures to assure that recreational boaters can know the location of trap nets and are able to release themselves from entanglement with the commercial nets. Accordingly, this NRB Order requires that 1) boat operators engaged in trolling with downriggers carry wire cutters on board capable of severing fishing line or downrigger cable, 2) the enhanced net marking requirements on Lake Michigan be applied to trap nets on Lake Superior, 3) all parts of trap nets set in Zone 3 of Lake Michigan between June 29 and Labor Day be within designated areas, and 4) the marking of trap nets in Lake Michigan be enhanced by the use of reflective tape on buoy staffs.

**Publication Date:** May 23, 2011 (corrected)  
**Effective Dates:** May 23, 2011 through  
 October 19, 2011 (corrected)  
**Hearing Date:** June 27, 2011

(See the Notice in this Register)

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### Natural Resources

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

**EmR1046** (DNR # AM-48-10(E)) — The Wisconsin Natural Resources Board proposes an emergency order to amend section NR 407.02 (4) (b) (intro.), and Table 3 in 407.05 (5) and to create sections NR 400.02 (74m), 400.03 (3) (om), and (4) (go) and (ki), 405.02 (28m), 405.07 (9), 407.02 (8m) and 407.075, relating to major source permitting thresholds for sources of greenhouse gas emissions and affecting small business.

#### 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. Preservation of the public welfare necessitates putting the forgoing rules into effect prior to the time that it would take if the Department complied with normal procedures.

On April 1, 2010, the U.S. EPA promulgated the first emission standard for gases contributing to climate change, i.e., greenhouse gases or GHG, which will become effective on January 2, 2011. While these standards target automobile emissions, under the Clean Air Act, this action will unintentionally subject stationary sources across the country to complex prevention of significant deterioration (PSD) and Title V permitting and emission control requirements. U.S. EPA attempted to mitigate this unintended effect by promulgating additional rules, which became effective on June 3, 2010, limiting applicability of the permitting requirements. However, Wisconsin sources will not be affected by the new U.S. EPA rules since existing state statute and administrative code do not contain the same applicability limiting provisions. State rules consistent with those at the federal level must be in effect on January 2, 2011 in order to provide the relief U.S. EPA intended for Wisconsin sources.

Without these proposed emergency rules, many sources, including municipal landfills, hospitals, asphalt plants, wastewater treatment plants, small wood fired boilers and agricultural digesters, will be considered major emissions sources of GHG, and therefore subject to the permit and emission control requirements for GHG. These permit and control requirements were never intended or designed to address the type or size of sources that could now be affected. Without the proposed changes, the existing rules would have the potential to overwhelm DNR permitting staff, divert resources away from significant environmental issues, and delay issuance of construction permits for critical projects for expanding businesses.

Therefore, the Department finds that the proposed emergency rules are necessary and appropriate for the preservation of the public welfare.

**Publication Date:** December 15, 2010  
**Effective Dates:** December 15, 2010 through May 15, 2011  
**Extension Through:** July 13, 2011  
**Hearing Date:** January 21, 2011

### Regulation and Licensing (3)

**1. EmR0827** — Rule adopted creating **section 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 Date:** November 26, 2008  
 April 13, 2009

**2. EmR0828** — Rules adopted to amend **section RL 181.01 (2) (c)**; and to create **sections 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. EmR1102** — Rule adopted creating **Chapters RL 200 to 202**, relating to governing professional conduct of individuals licensed as sign language interpreters, and for the treatment of state resident licensure exemption requests.

#### Finding of Emergency

2009 Wisconsin Act 360 created laws regulating the practice of sign language interpreting, and became effective on December 1, 2010. Under the act, codified at s. 440.032, Stats., individuals practicing as sign language interpreters must now be licensed by the department, and must comply with a code of professional conduct to be promulgated by the department. The new law also provides for exemptions from the licensure requirement under certain circumstances, and requires the council to promulgate rules establishing the criteria and procedures for granting state resident exemptions. As s. 440.032, Stats., is already in effect, an emergency rule is necessary to implement the law pending promulgation of a similar permanent rule.

**Publication Date:** March 16, 2011  
**Effective Dates:** March 16, 2011 through August 12, 2011  
**Hearing Date:** May 3, 2011

### Regulation and Licensing — Barbering and Cosmetology Examining Board

**EmR1047** — Rule adopted to revise **Chapters BC 9 and 11**, relating to late renewal and continuing education.

#### Finding of Emergency

The rule as currently promulgated fails to adequately protect the public to the extent that several provisions are underdeveloped, ambiguous or silent. As a result, inconsistent interpretations and contradictory information has led to significant confusion within the profession. Given that the rules require licensees to comply by March 31, 2011, the errors and omissions need to be addressed immediately so licensees can receive adequate training to provide safe and competent services to the public, and comply with the requirements for renewal of a license.

**Publication Date:** December 23, 2010  
**Effective Dates:** December 23, 2010 through May 21, 2011  
**Extension Through:** July 20, 2011  
**Hearing Date:** April 4, 2011

### Regulation and Licensing — Veterinary Examining Board

**EmR1103** — Rule adopted to revise **sections VE 2.01 (2), 3.03 (intro) and (5)**, relating to the requirements for the initial licensure of veterinarians, specifically, the procedures for, and the types of examinations required.

**Finding of Emergency**

As currently written, the veterinary examining board rules regarding licensure candidates' deadlines for submission of applications to take the North American Veterinary Licensing Examination (NAVLE) do not align with the deadlines established by the National Board of Veterinary Medical Examiners (NBVME). The rules thus also conflict with the deadlines defined in the board's NBVME NAVLE agreement. The rules state that a candidate shall file a completed NAVLE application with the board at least 60 days prior to the date of the scheduled examination. However, NAVLE's deadlines require submission of applications approximately 115 days ahead of the examination date. This inconsistency between the rules and NAVLE's deadlines will likely cause significant confusion for licensure candidates. At worst, it could preclude a candidate from taking the particular NAVLE he or she applies for due to missing the application deadline. In addition, recently-passed legislation now allows foreign veterinary graduates to show evidence of successful completion of the Program for the Assessment of Veterinary Education Equivalence (PAVE) as an alternative to the American Veterinary Medical Association (AMVA) Educational Commission for Foreign Veterinary Graduates Certification (ECFVGC) program. The board adopts this emergency rule effecting the necessary changes pending the promulgation of a similar permanent rule.

**Publication Date:** March 28, 2011  
**Effective Dates:** March 28, 2011 through August 24, 2011  
**Hearing Date:** May 25, 2011

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**Revenue (2)**

**1. EmR1104** — Rule adopted creating **section Tax 2.957**, relating to income and franchise tax credits and deductions for businesses that relocate to Wisconsin.

**Finding of Emergency**

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

The emergency rule is to reflect changes in Wisconsin's tax laws due to the creation of income and franchise tax credits and deductions for businesses that relocate to Wisconsin.

It is necessary to promulgate this rule order so that these credits and deductions, created to help bring much needed jobs to Wisconsin, may be administered in a fair and consistent manner.

This rule is therefore promulgated as an emergency rule and shall take effect upon publication in the official state newspaper. Certified copies of this rule have been filed with the Legislative Reference Bureau, as provided in s. 227.24, Stats.

**Publication Date:** April 7, 2011  
**Effective Dates:** April 7, 2011 through September 3, 2011  
**Hearing Date:** June 14, 2011

**2. EmR1105** — Rule adopted creating **section Tax 3.05**, relating to income and franchise tax deductions for job creation.

**Finding of Emergency**

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

The emergency rule is to reflect changes in Wisconsin's tax laws due to the creation of income and franchise tax deductions for job creation.

It is necessary to promulgate this rule order so that these deductions, created to help bring much needed jobs to Wisconsin, may be administered in a fair and consistent manner.

This rule is therefore promulgated as an emergency rule and shall take effect upon publication in the official state newspaper. Certified copies of this rule have been filed with the Legislative Reference Bureau, as provided in s. 227.24, Stats.

**Publication Date:** April 7, 2011  
**Effective Dates:** April 7, 2011 through September 3, 2011  
**Hearing Date:** June 14, 2011

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## Scope Statements

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### Public Service Commission

#### Subject

Applications for Service and the Fair and Accurate Credit Transactions Act.

#### Objective of the Rule

The Fair and Accurate Credit Transactions Act of 2003<sup>1</sup> (FACT) included a number of changes to the Fair Credit Reporting Act.<sup>2</sup> Many of these changes addressed identity theft risks and plans that companies must develop to ensure the identity of those who already have accounts, or who open new accounts, with the company.

In reviewing the rules for the various industries that the commission regulates, it was discovered that, under some circumstances those rules could interfere with a company's ability to meet the FACT requirements. This rulemaking will review the parts of chs. PSC 113, 134, and 185 that deal with applications for service, disconnections and other relevant subjects, and make changes to ensure that they do not interfere with a company's ability to comply with FACT.

#### Policy Analysis

Chapters PSC 113, 134, and 185 contain service rules for the electric, gas and water industries. Changes will be proposed to ensure that these rules do not interfere with a company's ability to comply with FACT. The changes will allow a utility to refuse service if an applicant fails to provide adequate identity documentation, something that is not allowed under existing rules.

#### Statutory Authority

This rule is authorized under ss. 196.02 (1) and (3), 196.37 (2) and 227.11.

#### Comparison with Federal Regulations

Various provisions of FACT, the Fair Credit Reporting Act, 31 CFR 103.121, 16 CFR chs. 614 and 681, and 31 CFR 103.121, all address identity theft risk identification and prevention. This rulemaking will use these to revise rules about applications for service, disconnections and other relevant subjects.

<sup>1</sup> Pub. L. No. 108-159, 117 Stat. 1952.

<sup>2</sup> 15 U.S.C. § 1681.

#### Entities Affected by the Rule

All electric, gas and water companies regulated by the commission will be affected.

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

The commission estimates that approximately 100 hours of commission staff time will be required in this rulemaking.

### Revenue

#### Subject

Creates section Tax 11.10, relating to tax exemption for wind, solar, and certain gas powered products.

#### Objective of the Rule

The objective of the proposed rule changes is to interpret the sales and use tax exemption provided in s. 77.54 (56), Stats., created effective July 1, 2011.

#### Policy Analysis

Existing policies are as set forth in the rules. No new policies are being proposed, other than to reflect law changes. If the rules are not changed, they will be incorrect in that they will not reflect current law or current Department policy.

#### Statutory Authority

Section 227.11 (2) (a), 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

Persons selling, purchasing, storing, using, or otherwise consuming certain energy-producing wind, solar, and gas powered products and the electricity or energy they produce.

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

The department estimates it will take approximately 100 hours to develop this rule order

#### Agency Contact

Dale Kleven

Phone: (608) 266-8253

[dale.kleven@revenue.wi.gov](mailto:dale.kleven@revenue.wi.gov)

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# Submittal of Rules to Legislative Council Clearinghouse

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

**Commerce**  
*Plumbing, Chs. Comm 81–87*  
**CR 11–031**

On May 25, 2011, the Department of Commerce submitted proposed rules to the Legislative Council Rules Clearinghouse.

**Analysis**

This proposed rule-making order revises Chapters Comm 81 to 84, relating to private onsite wastewater treatment systems (POWTS).

**Agency Procedure for Promulgation**

A public hearing is required and will be held on June 27, 2011 at 10:30 a.m. The departments Safety and Buildings Division is primarily responsible for promulgation of the proposed rule.

**Contact Information**

Roman Kaminski, Program Manager  
Department of Commerce  
Phone: (715) 345-5334  
Email: [roman.kaminski@wisconsin.gov](mailto:roman.kaminski@wisconsin.gov)

**Natural Resources**  
*Fish, Game, etc., Chs. NR 1–*  
**CR 11–030**

(DNR # WM-02-11)

On May 26, 2011, the Department of Natural Resources submitted proposed rules to the Legislative Council Rules Clearinghouse.

**Analysis**

This proposed rule-making order revises Chapters NR 10, 15, 19 and 45, relating to wildlife management 2011 Housekeeping Rule.

**Agency Procedure for Promulgation**

A public hearing is required and will be held on June 28, 2011. The departments Bureau of Wildlife Management is primarily responsible for promulgation of the rule.

**Contact Information**

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

**Natural Resources**  
*Fish, Game, etc., Chs. NR 1–*  
**CR 11–032**

(DNR # WM-11-11)

On June 1, 2011, the Department of Natural Resources submitted proposed rules to the Legislative Council Rules Clearinghouse.

**Analysis**

This proposed rule-making order revises Chapter NR 10, relating to the 2011 migratory bird hunting seasons and bag limits.

**Agency Procedure for Promulgation**

Public hearings will be held August 1, 2, 3 and 4, 2011. The departments Bureau of Wildlife Management is primarily responsible for promulgation of the proposed rule.

**Contact Information**

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

**Regulation and Licensing**  
**CR 11–029**

On May 25, 2011, the Department of Regulation and Licensing submitted proposed rules to the Legislative Council Rules Clearinghouse.

**Analysis**

This proposed rule-making order revises section RL 128.03 and creates section RL 128.04, relating to auctioneer continuing education.

**Agency Procedure for Promulgation**

A public hearing is required and will be held on July 19, 2011. The departments Division of Board Services is primarily responsible for promulgation of the proposed rule.

**Contact Information**

Sharon Henes, Paralegal  
Department of Regulation and Licensing  
Division of Board Services  
Phone: (608) 261.2377  
Email: [Sharon.Henes@wisconsin.gov](mailto:Sharon.Henes@wisconsin.gov)

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## Rule–Making Notices

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### Notice of Hearing

#### Commerce

#### *Plumbing, Chs. Comm 81–87* CR 11–031

NOTICE IS HEREBY GIVEN that pursuant to sections 101.02 and 145.02, Stats., the Department of Commerce will hold a public hearing on proposed rules under Chapters Comm 81 to 84 relating to the design, installation or construction, inspection and maintenance of private onsite wastewater treatment systems (POWTS).

#### Hearing Information

The public hearing will be held as follows:

<u>Date and Time</u>	<u>Location</u>
<b>June 27, 2011</b> Monday at 10:30 A.M.	Thompson Commerce Building Third Floor Conference Room #3B 201 W. Washington Avenue Madison, WI 53703

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 (608) 266–8741 or (608) 264–8777 (TTY) at least 10 days before the hearing date. Accommodations such as interpreters, English translators, or materials in audio tape format will, to the fullest extent possible, be made available upon a request from a person with a disability.

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

Interested persons are invited to appear at the hearing and present comments on the proposed rules. Persons making oral presentations are requested to submit their comments in writing. Persons submitting comments will not receive individual responses. The hearing record on this proposed rulemaking will remain open until **July 11, 2011**, to permit submittal of written comments from persons who are unable to attend the hearing or who wish to supplement testimony offered at the hearing. Written comments should be submitted to Roman Kaminski, at the Department of Commerce, P.O. Box 2689, Madison, WI 53701–2689, or email at [roman.kaminski@wisconsin.gov](mailto:roman.kaminski@wisconsin.gov).

#### Copies of Proposed Rule

The proposed rules and an analysis of the proposed rules are available on the Internet at the Safety and Buildings Division website at [www.commerce.wi.gov/SB/](http://www.commerce.wi.gov/SB/). Paper copies may be obtained without cost from Norma McReynolds, at the Department of Commerce, P.O. Box 2689, Madison, WI 53701–2689, or email at [norma.mcreeynolds@wisconsin.gov](mailto:norma.mcreeynolds@wisconsin.gov), or at telephone (608) 267–7907 or (608) 264–8777 (TTY). Copies will also be available at the public hearing.

#### Analysis Prepared by the Department of Commerce

##### *Statute(s) interpreted*

Sections 101.02 (1), 145.02 (3) and (4), 145.12 (5) (a) and 145.20, Stats., as affected by 2009 Wisconsin Act 392.

##### *Statutory authority*

Chapters 101 and 145, Stats., as affected by 2009 Wisconsin Act 392.

##### *Explanation of agency authority*

Under the statutes cited, the Department of Commerce has the responsibility to protect public health, safety, and welfare in the design and construction of public buildings, places of employment and one– and 2–family dwellings and their components. Section 145.02, Stats., specifically grants the department general authority to protect public health, safety and welfare by establishing reasonable and effective standards for Private Onsite Wastewater Treatment Systems (POWTS). Section 145.20, Stats., delineates the responsibilities and duties of governmental units administering and enforcing the laws and rules pertaining to POWTS. In addition, 2009 Wisconsin Act 392 specifically directs the department to address the inventory and maintenance of private sewage systems.

##### *Related statute or rule*

None.

##### *Summary of proposed rules*

The proposed rules establish the requirements for the inventory and maintenance of POWTS as reflected in the statutory mandates of 2009 Wisconsin Act 392. The rules require the following:

Governmental units shall conduct, complete and maintain an inventory of all POWTS located in their jurisdiction by October 1, 2013.

Governmental units shall develop and implement a POWTS maintenance program by October 1, 2015.

In addition, the proposed rules include technical revisions to address code inconsistencies and new technologies.

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

An Internet–based search of the *Code of Federal Regulations* (CFR) and the *Federal Register* found two existing federal regulations that address some aspects of private sewage systems:

1. **40 CFR 144.80(e)** – Under federal regulations, private sewage systems are classified as Class V Wells, Shallow Injection Wells. Specifically, 40 CFR 144.3, defines “Sanitary Waste” as including domestic wastewater. Chapter Comm 83 addresses treatment and dispersal of domestic wastewater. Also, 40 CFR 144.3, defines “Wells or Injection Wells” as including certain septic systems. Class V regulations specifically address “Large Capacity Septic Systems” which are defined as systems receiving sanitary wastes from multiple dwellings or from non–residential establishments where the system has a capacity to serve 20 or more person per day. These systems are “authorized by rule” provided they meet two minimum federal requirements: a) The owner or operator submits basic inventory information, and b) the injectate (wastewater) cannot endanger underground sources of drinking water. Chapter Comm 83, Wis. Adm. Code, addresses Private Onsite Wastewater Treatment Systems (POWTS) which

include septic systems that serve all structures residential and non-residential regardless of capacity. Owner information is required as part of the permitting process. Section 145.13, Wis. Stats., requires that chapter Comm 83, Wis. Adm. Code, comply with the provisions of chapter 160, Wis. Stats. Chapter NR 140, Wis. Adm. Code, contains a list of substances that have preventative action limits and enforcement standards. This list is more specific than the current federal regulations. Chapter Comm 83, Wis. Adm. Code, incorporates the applicable provisions of chapter 160, Wis. Stats., and chapter NR 140, Wis. Adm. Code.

2. **40 CFR Part 122** – Under federal regulations, large private sewage systems require National Pollutant Discharge Elimination System (NPDES) permits which currently are administered by the Department of Natural Resources under its Wisconsin Pollutant Discharge Elimination System (WPDES) program. The WPDES permit process is modeled after the NPDES permit process.

There are no proposed federal regulations that address the inventory and maintenance of POWTS as mandated by 2009 Wisconsin Act 392 or the other matters being clarified under this proposed rulemaking project.

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

An Internet-based search for private sewage system regulations in the states of Illinois, Iowa, Michigan and Minnesota found the following:

- **Illinois** administrative code, Title 77: Public Health, Chapter I: Department of Public Health, Subchapter r: Water and Sewage, Part 905 Private Sewage Disposal Code regulates all private sewage disposal systems. The Division of Environmental Health's Environmental Engineering Section reviews and approves plans for private sewage disposal systems before construction. There are about 90 local health departments in Illinois that review sewage disposal system construction plans, either by authority of a local ordinance or as an "agent" of the department. In addition, the division licenses about 2,500 individuals to either install or pump out private sewage disposal systems.
- **Iowa's** Environmental Protection Commission regulates private sewage disposal systems. Requirements relating to the design, location, installation, use and maintenance of installation private sewage systems can be found in Chapters 64 and 69 of the Iowa Administrative Code. In March 2009, the commission amended Chapter 64, "Wastewater Construction and Operation Permits," and adopted a new Chapter 69, "Private Sewage Disposal Systems." Provisions were added for tank abandonment, grease interceptors and permits by rule. A new rule was added pertaining to inspection of septic systems at the time of transfer of property. Other new provisions include requiring a final inspection on a new system installation and requiring counties to enter basic information about that system into the state onsite wastewater database system.
- **Michigan** does not have a statewide onsite sewage system code. The Michigan Department of Environmental Quality under the authority of Part 22 Groundwater Quality Rules established the 1994 version of "The Michigan Criteria for Subsurface Sewage Disposal." These criteria are used by the Michigan Department of Environmental Quality and

by 44 local health departments that develop their own rules to regulate single- and two-family systems.

- **Minnesota** statute, Chapter 115 relating to water pollution control and sanitary districts, establishes rules for "Individual and Alternative Discharging Sewage Treatment Systems." The rules require counties to adopt local ordinances "containing minimum standards and criteria for the design, location, installation, use, maintenance, and closure of subsurface sewage treatment systems."

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

In developing the proposed rules, the department reviewed the provisions under 2009 Wisconsin Act 392 in conjunction with the department's broad authority under Chapters 101 and 145, Stats., to establish building and construction codes that establish minimum standards for the protection of public health, safety and welfare.

The methodology for the proposed revisions of chapters Comm 81 to 84 relating to POWTS, included a review and assessment by staff of code issues that require clarification.

In addition, the review and assessment process involved the participation of the Private Onsite Wastewater Treatment System (POWTS) Advisory Code Council. The members represent the many stakeholders involved in the private sewage system industry including designers, contractors, regulators, academics and manufacturers. The department gathered information and recommendations from the 11-member POWTS Advisory Code Council on the potential impacts of the administrative and technical requirements of the code. (A listing of the POWTS Advisory Code Council is provided at the end of this analysis.)

#### **Effect on Small Business Including Analysis and Supporting Documents Used to Determine Effect on Small Business**

The department believes the proposed rules will have a minimal additional impact on small business. The proposed rules implement the mandates imposed by 2009 Wisconsin Act 392. The Act affects governmental units (counties) and establishes deadlines for the completion of an inventory of private sewage systems within their jurisdictions. The department does not believe the rules will increase the effect on small businesses more than that imposed by the Act.

An economic impact report has not been required pursuant to s. 227.137, Stats.

#### *Small business regulatory coordinator*

The small business regulatory coordinator for the Department of Commerce is Carol Dunn, who may be contacted at telephone (608) 267-0297, or email at [carol.dunn@wisconsin.gov](mailto:carol.dunn@wisconsin.gov).

#### *Initial regulatory flexibility analysis*

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

The proposed rules will affect any business involved with the ownership, design, construction and installation, inspection, repair and maintenance of private onsite wastewater treatment systems. The proposed rules implement the mandates imposed by 2009 Wisconsin Act 392. The Act affects governmental units (counties) and establishes deadlines for the completion of an inventory of private sewage systems within their jurisdictions. The department does not believe the rules will increase the effect on small businesses more than that imposed by the Act.

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

There are no additional reporting, bookkeeping or other procedures required for compliance with the rules.

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

There are no additional professional skills necessary for compliance with the rules.

- Rules have a significant economic impact on small businesses.

No. Rules not submitted to Small Business Regulatory Review Board.

### Environmental Impact

Notice is hereby given that the Department has prepared a preliminary Environmental Assessment (EA) on the proposed rules. The preliminary recommendation is a finding of no significant impact. Copies of the preliminary EA are available from the Department on request and will be available at the public hearings. Requests for the EA and comments on the EA should be directed to:

Division of Department of Commerce  
P.O. Box 2689  
Madison, WI 53701  
Telephone (608) 266-8741  
or TTY (608) 264-8777

Written comments will be accepted until **July 11, 2011**.

### Fiscal Estimate

#### State fiscal effect

None.

#### Local government fiscal effect

No local government costs.

#### Assumptions used in arriving at fiscal estimate

The Safety and Buildings Division is responsible for administering and enforcing rules relating to the design, installation or construction, inspection and maintenance of private onsite wastewater treatment systems. The proposed rules consist of updates of chapters Comm 81 to 84 relating to private sewage systems.

The proposed rules implement the mandates imposed by 2009 Wisconsin Act 392. The Act affects governmental units (counties) by setting deadlines for the completion of an inventory of private sewage systems within their jurisdictions. However, Act 392 does not impose any additional responsibilities that would have a fiscal effect.

#### Anticipated costs incurred by the private sector

The proposed rules will not have a significant effect on the private sector.

#### Long-range fiscal implications

No long-range fiscal implications are anticipated.

### Agency Contact Person

Roman Kaminski, Program Manager,  
[roman.kaminski@wisconsin.gov](mailto:roman.kaminski@wisconsin.gov), (715) 345-5334.

## Notice of Hearing Natural Resources Fish, Game, etc., Chs. NR 1— CR 11-030

(DNR # WM-02-11)

NOTICE IS HEREBY GIVEN that pursuant to sections 23.09 (2) (b), 29.011, 29.014, 29.063 (3), 29.335, 29.361, and 227.11, Stats, the Department of Natural Resources will hold public hearings on revisions to Chapters NR 10, 15, 19 and 45, Wis. Adm. Code, relating to game and hunting, game refuges and the use of department managed properties.

### Hearing Information

#### Date and Time

**June 28, 2011**  
Tuesday  
at 1 P.M.

#### Location

Natural Resources State Office  
Building (GEF-2), Room 608  
101 South Webster Street  
Madison, WI 53703

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

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

The proposed rule and fiscal estimate may be reviewed and comments electronically submitted at the following Internet site: <http://adminrules.wisconsin.gov>. Written comments on the proposed rule may be submitted via U.S. mail to Mr. Scott Loomans, Bureau of Wildlife Management, P.O. Box 7921, Madison, WI 53707. Comments may be submitted until **June 29, 2011**. Written comments whether submitted electronically or by U.S. mail will have the same weight and effect as oral statements presented at the public hearings. A personal copy of the proposed rule and fiscal estimate may be obtained from Mr. Loomans.

### Analysis Prepared by the Department of Natural Resources

#### Statutory authority and explanation of agency authority

Statutes that authorize the promulgation of this rule order include ss. 23.09 (2) (b), 29.011, 29.014, 29.063 (3), 29.335, 29.361, and 227.11, Stats. These sections grant rule making authority to the department to manage department lands, establish open and closed seasons for hunting and to establish other regulations for hunting and trapping. All rules promulgated under this authority are subject to review under ch. 227, Stats.

#### Statute(s) interpreted and explanation

In promulgating this rule, ss. 23.09 (2) (b), 29.011, 29.014, 29.063 (3), 29.335, 29.361 and 227.11, Stats., have been interpreted as providing the department with the authority to make these housekeeping clarifications. Statutes establish trap tagging requirements, which were updated by 2009 Act 38, and provisions in administrative code are no longer needed.

#### Plain language analysis

The intent of these rule changes is to correct drafting errors, provide clarification to existing rules, simplify regulations,



and update administrative code language and references. Policy issues affected by this rule are ones which have already been addressed by previous rulemaking. The proposed rules will:

1. Clarify that the definitions of “animal part or animal byproduct” and “carcass” apply to bear baiting regulations as well as to deer baiting and feeding. These sections also clarify that eggs are not legal to use as bear bait and milk is, consistent with current interpretation. Lastly, this proposal clarifies that the term carcass includes domestic as well as wild animal carcasses.

2. Relax the deer registration requirement in the CWD management zone so that it is consistent with the registration requirements for archery hunters in the rest of the state.

3. Eliminate the April 10 elk permit application deadline in order to allow more time for people to submit applications. A new deadline will not be established by rule.

4. Allow the use of no. 8 gauge shotguns for waterfowl hunting as long as the gun is modified so that the chamber cannot hold cartridges larger than no. 10 gauge and no larger cartridges are possessed.

5. Repeal trap tagging information that is unnecessary because there is a specific statutory requirement and because 2009 ACT 38 allowed use of a department issued customer identification number instead of name and address information.

6. Correct the location information of Vernon Marsh Wildlife Management area in Waukesha County to include acreage in an additional township.

7. Clarify that the prohibition on the placement of personal property on department lands also applies to items left out to mark or “reserve” trap locations if the season is not open.

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

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

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

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

#### ***Federal regulatory analysis***

These state rules and statutes do not relieve individuals from the restrictions, requirements and conditions of federal statutes and regulations. Regulating the hunting and trapping of native species has been delegated to state fish and wildlife agencies. Additionally, none of the proposed rules exceed the authorities granted to states in 50 CFR part 10.

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

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

#### **Effect on Small Business**

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

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

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

#### **Environmental Impact**

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

#### **Fiscal Estimate**

##### ***State fiscal effect***

Increase costs—may be possible to absorb within agency’s budget.

##### ***Local government fiscal effect***

No local government costs.

##### ***Fund sources affected***

SEG.

##### ***Assumptions used in arriving at fiscal estimate***

Annually the department updates administrative code language to correct inconsistencies, update outdated language and provide clarification where appropriate. The department anticipates no fiscal impact. This year, the department is proposing changes that would:

- Clarify that the definitions of “animal part or animal byproduct” and “carcass” are general definitions not limited to deer baiting regulations.
- Relax deer registration requirements in the CWD management zone.
- Eliminate the April 10 elk permit application deadline in order to allow more time for people to submit applications.
- Allow the use of no. 8 gauge shotguns for waterfowl hunting when the gun is modified for no. 10 gauge cartridges.
- Repeal a trap tagging requirement that is unnecessary because there is a specific statutory requirement.
- Correct the location information of Vernon Marsh Wildlife Management area in Waukesha County.
- Clarify that volunteer wildlife rehabilitators are subject to the same restrictions as basic license holders.
- Clarify that the prohibition on the placement of personal property on department lands also applies to items left out to mark or “reserve” trap locations if the season is not open.

##### ***Long-range fiscal implications***

No long range fiscal implications are anticipated.

##### ***Anticipated costs incurred by the private sector***

These rules, and the legislation which grants the department rule making authority, do not have a significant

fiscal effect on the private sector. Additionally, no significant costs are associated with compliance to these rules.

### Agency Contact Person

Scott Loomans, 101 South Webster St., P.O. BOX 7921,  
Madison, WI 53707-7921. (608) 267-2452,  
[scott.loomans@wisconsin.gov](mailto:scott.loomans@wisconsin.gov).

## Notice of Hearing

### Natural Resources

*Fish, Game, etc., Chs. NR 1—*

**CR 11-032**

(DNR # WM-11-11)

NOTICE IS HEREBY GIVEN that pursuant to sections 29.014, 29.041 and 227.11 (2) (a), Stats., the Department of Natural Resources will hold public hearings on revisions to Chapter NR 10, Wis. Adm. Code, relating to the 2011 migratory game bird seasons and waterfowl hunting zones. Season dates and bag limits will be set for ducks and Canada geese. Under international treaty and federal law, migratory game bird seasons are closed unless opened annually via the U.S. Fish and Wildlife Service regulatory process. Because of the timing of Wisconsin's rule process and the U.S. Fish and Wildlife Service rule process, the actual season lengths, dates and bag limits cannot be determined at this time for much of the rule.

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

### Hearing Information

NOTICE IS HEREBY FURTHER GIVEN that the hearings will begin at **7:00 p.m.** at each of the following locations:

<b>Date and Time</b>	<b>Location</b>
<b>August 1, 2011</b> Monday at 7 P.M.	State Office Building Rooms B-19 and B-20 3550 Mormon Coulee Road La Crosse, WI 54601
<b>August 2, 2011</b> Tuesday at 7 P.M.	Spoooner Agricultural Research Station W6646 Hwy. 70 Spoooner, WI 54801
<b>August 3, 2011</b> Wednesday at 7 P.M.	Agricultural Services Center Main Conference Room 3369 West Brewster Street Appleton, WI 54914
<b>August 4, 2011</b> Thursday at 7 P.M.	Comfort Suites Lake Country Thunder Bay Room N14 W24121 Tower Place Pewaukee, WI 53072

Pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon

request. Please call Scott Loomans at (608) 267-2452 with specific information on your request at least 10 days before the date of the scheduled hearing.

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

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

Written comments on the proposed rule may be submitted via U.S. mail to Mr. Kent Van Horn, Bureau of Wildlife Management, P.O. Box 7921, Madison, WI 53707 or by email to [kent.vanhorn@wisconsin.gov](mailto:kent.vanhorn@wisconsin.gov). Comments may be submitted until **August 4, 2011**. Written comments whether submitted electronically or by U.S. mail will have the same weight and effect as oral statements presented at the public hearings. A personal copy of the proposed rule and fiscal estimate may be obtained from Mr. Van Horn.

### Analysis Prepared by the Department of Natural Resources

#### Plain language analysis

This rule order establishes the season length and bag limits for the 2011 Wisconsin migratory game bird seasons. For ducks, the state is divided into two zones each with 60-day seasons. The season begins at 9:00 a.m. September 24 and continues for 60 consecutive days in the north, closing on November 22. In the South the season begins at 9:00 a.m. on October 1 and continues through October 9, followed by a 5-day split, and then reopens on October 15 and continues through December 4. The daily bag limit is 6 ducks including no more than: 4 mallards, of which only 1 may be a hen, 1 black duck, 1 canvasback, 3 wood ducks, 2 scaup, 2 pintails and 2 redheads.

For Canada geese, the state is apportioned into 2 goose hunting zones, Horicon and Exterior. Other special goose management subzones within the Exterior Zone include Brown County and the Mississippi River. Season lengths are: Horicon Zone – 92 days (2 hunting periods, first period beginning September 16 and the second on October 31); Exterior Zone in the northern duck zone – 85 days (Sept. 17 – Dec. 10); Exterior Zone in the southern duck zone – 85 days (Sept. 17 – Oct. 9 and Oct. 15 – Dec. 15) and Mississippi River subzone – 85 days (Oct. 1 – Oct. 9 and Oct. 15 – Dec. 29). The statewide daily bag limit for Canada geese in all zones is 2 birds per day during the open seasons within the zones.

This rule establishes that the youth waterfowl hunting season will be held on September 17 and 18.

This proposal may establish a new duck hunting zone configuration. At the time of submittal of this hearing notice to the Legislative Reference Bureau, the USFWS had not determined if they can give our state the option of reconfiguring duck hunting zones because they are engaged in a concurrent rule making process. If the USFWS does not grant Wisconsin's request to change duck hunting zones, the department will not propose a Section 3 in this board order when we request adoption and will not take public input on Section 3 at public hearings.

If the USFWS does grant Wisconsin's request to change duck hunting zone configurations, the department will request public input at hearings on three new alternatives. Under all three alternatives, the Northern Zone duck hunting season would not change from the dates listed in this proposal. The Canada goose hunting season would be modified so that

it is also closed during the closed period in duck zones that have split seasons.

The first alternative the department will take comments on is to create a new, third duck hunting zone that consists of Mississippi River areas west of the Burlington Northern Railroad tracks. Under this scenario, the season dates in this zone would include a split when hunting is not allowed that is four days longer than the current five day split. The duck season dates would be October 1 to 9, reopening on October 19 and continuing through December 8 for a 60 day season.

The second alternative is to create a new, third duck hunting zone that consists of the Lake Michigan areas east of a line beginning 500 feet from shore, not including Green Bay. Under this scenario, the season dates in this zone would not include a split or closed period. The season would begin on October 15 and continue through December 13 for a 60 day season.

A third alternative is to create two new zones, one that consists of Lake Michigan and one that consists of the Mississippi River as described above. Under this scenario, the USFWS proposes to only allow continuous straight seasons with no opportunities for splits or closed periods during the season. Under this scenario the 60 day season in the Mississippi River zone would open on October 8 and continue through December 6. In Lake Michigan, it would open on October 15 and close on December 13. In the South Zone, it would open on October 1 and continue through November 29.

A fourth alternative that the department will request input on is the existing zones and season dates.

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

Under international treaty and Federal law, migratory game bird seasons are closed unless opened annually via the U.S. Fish and Wildlife Service (USFWS) regulations process. As part of the Federal rule process, the USFWS proposes a duck harvest-management objective that balances hunting opportunities with the desire to achieve waterfowl population goals identified in the North American Waterfowl Management Plan (NAWMP). Under this harvest-management objective, the relative importance of hunting opportunity increases as duck populations approach the goals in the NAWMP. Thus, hunting opportunity would be maximized when the population is at or above goals. Additionally, while USFWS believes that the NAWMP's population goals would tend to exert a conservative influence on overall duck harvest-management. Other factors, such as habitat, are to be considered.

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

predetermined low level during the 5-year period, the stable season framework would be adjusted.

At the time of submittal of this rule and hearing notice to the Legislative Council Clearinghouse and to the Reference Bureau, the USFWS had not determined if they can give our state the option of reconfiguring duck hunting zones because they are engaged in a concurrent rule making process to revise 50 CFR 20. If the USFWS does not modify their rules allowing Wisconsin to change duck hunting zones, the department will not propose a Section 3 in this board order when we request adoption and will not take public input on Section 3 alternatives at public hearings.

Except as described above, proposed modifications included in this rule order are consistent with these parameters and guidelines which are annually established by the USFWS in 50 CFR 20.

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

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

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

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

In addition to the annual waterfowl hunting regulation process described below, 2011 is the open window to change state duck hunting zones as allowed by the USFWS every 5 years. Since 1991, the USFWS has regulated how states can arrange duck hunting zones and season splits. A season split is a temporary closure of the hunting season in order to extend the hunting later in the duck season. The USFWS has allowed 3 configurations of duck zones and splits; 1)One statewide zone with the annual option to have 2 season splits, 2)Two zones with the annual option for 1 season split in each zone, 3)Three zones without the option for a split. Each zone can have a unique size or shape but must be contiguous and the boundaries clear.

Wisconsin has always selected the 2 zone with split option to provide a north and south duck hunting zone. Over the years, we have moved our zone line but always maintained a general north and south separation recognizing the

differences in weather and hunting opportunities. While we have worked with the USFWS restrictions on duck hunting zones it has been our consistent position that the configuration of duck zones is an issue of hunter opportunity and satisfaction which does not have significant impact on duck populations, therefore, states should be allowed to manage zones without federal regulation. We have provided comment to the USFWS with this position over the years but the USFWS has maintained control over state duck hunting zones. In August, 2010 the USFWS announced their intent to offer 2 additional duck hunting zone options; 3 zones with splits and 4 zones without splits. Unfortunately, the federal implementation of these new opportunities has moved slower than planned and there is still uncertainty whether it will be implemented in 2011 or delayed. Potential configurations are described in SECTION 3 of the rule order. If one of these new options is selected it is likely that the season structure for the north and south zones will experience only minor changes from that in this proposed rule order while 1–2 new season structures will be offered in the new zones.

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

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

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

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

**Effect on Small Business**

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

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

***Small business regulatory coordinator***

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

**Environmental Impact**

The Department has made a determination that this action does not involve significant adverse environmental effects and does not need an environmental analysis under ch. NR 150, Wis. Adm. Code.

**Fiscal Estimate**

***State fiscal effect***

No state fiscal effect.

***Local government fiscal effect***

No local government fiscal effect.

***Long-range fiscal implications***

None.

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

None.

**Summary**

Because this proposal does not differ significantly from the season frameworks available in previous years, there are no new expenditures, record keeping requirements, or processes created.

**Agency Contact Person**

Scott Loomans, Bureau of Wildlife Management, (608) 267–2452, [Scott.Loomans@wisconsin.gov](mailto:Scott.Loomans@wisconsin.gov).

**Notice of Hearing**

**Natural Resources**

***Fish, Game, etc., Chs. NR 1—***

**EmR1107**

(DNR # FH–10–11(E))

NOTICE IS HEREBY GIVEN THAT pursuant to sections 29.014 (1), 29.041, 29.519 (1m) (b), and 227.11 Wis. Stats., the Department of Natural Resources will hold public hearings on an emergency rule to revise Chapter NR 25, Wis. Adm. Code, relating to the use and marking of commercial fishing trap nets in Lake Michigan and Lake Superior.

**Hearing Information**

NOTICE IS HEREBY FURTHER GIVEN that the hearing will be held on:

**Date and Time**

**June 27, 2011**  
Monday  
at 5 to 7 P.M.

**Location**

Lake Michigan Room  
Lakeshore Technical College  
2190 North Avenue  
Cleveland, WI 53015

**Date and Time**

**June 27, 2011**  
Monday  
at 5 to 7 P.M.

**Location**

DNR Field Station  
141 South 3<sup>rd</sup> Street  
Bayfield, WI 54814  
(conference call held concurrently with hearing in Cleveland)

Pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of information material in an alternative format, will be provided for qualified individuals with disabilities upon request.

Please call William Horns at (608) 266-8782 with specific information on your request at least 10 days before the date of the scheduled hearing.

### **Submittal of Written Comments**

The emergency rule and fiscal estimate may be reviewed and comments electronically submitted at the following Internet site: <http://adminrules.wisconsin.gov>. If you do not have Internet access, a personal copy of the proposed rule and supporting documents, including the fiscal estimate, may also be obtained from William Horns, Bureau of Fisheries Management, P.O. Box 7921, Madison, WI 53707 or by e-mail to [William.Horns@wisconsin.gov](mailto:William.Horns@wisconsin.gov).

Written comments on the proposed rule may be submitted via U.S. mail to William Horns. Comments may be submitted until **June 23, 2011**. Written comments, whether submitted electronically or by U.S. mail, will have the same weight and effect as oral statements presented at the public hearings.

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

#### *Plain language analysis*

SECTION 1. of the Order prohibits persons from trolling with downriggers on the Great Lakes without direct and immediate access to a wire cutter or other device capable of severing any line pulled behind the boat.

SECTION 2. of the Order establishes net-marking requirements for Lake Superior that are identical to the net-marking requirements for Lake Michigan.

SECTION 3. of the Order specifies that from June 29 to Labor Day south of a line extending from the Lake Michigan shoreline along 44°52'30" north latitude all parts of trap nets must be in water 150 feet or shallower and 60 feet or deeper.

SECTION 4. of the Order revises net-marking requirements for Lake Michigan by requiring that staffs be marked with reflective tape.

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

The department is not aware of any existing or proposed federal regulation that would govern commercial fishing in Wisconsin's waters of Lake Michigan and Green Bay or Lake Superior.

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

Trap nets are not used in Illinois or Minnesota waters of the Great Lakes, and of course Iowa has no Great Lakes waters.

The State of Michigan has uniform trap net-marking requirements for all of its Great Lakes Waters (parts of Lakes Superior, Michigan, Huron, and Erie). Those net-marking requirements are similar but not identical to those proposed here for Wisconsin waters of Lakes Michigan and Superior.

The Michigan Department of Natural Resources and Environment has the authority to limit trap netting by individual license holders if and when conflicts arise. Pursuant to that authority the MDNRE prohibits trap nets during June, July, and August in one area near Tawas on Lake Huron.

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

SECTION 1 and 3 of the rule reflect an effort by the department to take steps to minimize the risk of conflicts between sport trollers and commercial trap nets. SECTION 2 and SECTION 4 modify net-marking requirements for

Lake Superior and Lake Michigan. Those changes reflect the judgment of Fisheries and Law Enforcement staff following examination of Great Lakes accident data, discussions with appropriate sport and commercial advisory groups, and internal discussions. The rule was amended in response to public comment.

#### *Analysis and supporting documentation that the agency used in determination of the rule's effect on small businesses*

We know that small businesses engaged in commercial fishing and wholesale fish dealing may be affected by the rule. We currently have no basis for quantifying the economic impacts of the rule. However, in testimony at public hearings on the rule, Lake Michigan commercial fishers indicated that the time and area restrictions set out in the original version of the rule might have an impact on their catch, and thus have a negative economic impact. These and other comments are reflected in the changes made to the rule.

### **Effect on Small Business, Including How the Rule Will Be Enforced**

This rule is of interest to commercial fishers and was initiated in response to the expressed concerns of recreational fishers. The impact on commercial fishers is discussed above.

The rule will be enforced by department Conservation Wardens under the authority of chapters 23 and 29, Stats., through routine patrols, record audits of wholesale fish dealers and commercial fishers and follow up investigations of citizen complaints.

Pursuant to s. 227.114, Stats., it is not anticipated that the rule will have a significant economic impact on small businesses. Small businesses engaged in commercial fishing and wholesale fish dealing may be affected by the rule. However, the Department currently has no basis for quantifying the economic impacts of the rule.

#### *Small business regulatory coordinator*

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

### **Environmental Impact**

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

### **Fiscal Estimate**

#### *State fiscal effect*

No state fiscal effect.

#### *Local government fiscal effect*

No local government costs.

### **Agency Contact Person**

William Horns  
Department of Natural Resources  
P.O. Box 7921  
Madison, WI 53707-7921  
Telephone: (608) 266-8782  
E-mail: [William.Horns@wisconsin.gov](mailto:William.Horns@wisconsin.gov)

**Notice of Hearing**  
**Natural Resources**  
*Fish, Game, etc., Chs. NR 1—*  
**EmR1109**

(DNR # WM-15-11(E))

NOTICE IS HEREBY GIVEN that pursuant to sections 29.014, 29.177, 227.11 and 227.24 Stats., interpreting sections 29.014, 29.177, and 227.11, Stats., the Department of Natural Resources will hold public hearings on an emergency rule to revise Chapter NR 10 Wis. Adm. Code relating to deer hunting seasons and carcass tag use. The State Natural Resources Board adopted this emergency rule on April 27, 2011 in order to be able to implement the rule for the 2011 seasons.

**Hearing Information**

<u>Date and Time</u>	<u>Location</u>
<b>June 28, 2011</b> Tuesday at 2 P.M.	Natural Resources State Office Building (GEF-2), Room G09 101 South Webster Street Madison, WI 53703

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

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

The proposed rule and fiscal estimate may be reviewed at the following Internet site: <http://adminrules.wisconsin.gov>. A personal copy of the proposed rule and fiscal estimate may be obtained from Scott Loomans by email or U.S. mail. Written comments on the proposed rule may be submitted by email to [scott.loomans@wisconsin.gov](mailto:scott.loomans@wisconsin.gov) or via U.S. mail to Mr. Scott Loomans, Bureau of Wildlife Management, P.O. Box 7921, Madison, WI 53707. Comments may be submitted until June 29, 2011. Written comments whether submitted electronically or by U.S. mail will have the same weight and effect as oral statements presented at the public hearings.

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

***Plain language analysis***

The department recommends promulgating administrative rules that modify ch. NR 10 related to the use and issuance of deer tags.

Section 1 allows the department to, upon order of the secretary, distribute antlerless deer permits for the cost of issuance in designated herd control units without holding a four-day, October antlerless firearm hunt in the same units.

Sections 2 through 4 establish that the department's existing earn-a-buck regulations for deer hunters in a CWD Management Zone do not apply to use of the archery and gun buck deer carcass tags that are issued with each archery and firearm deer hunting license.

***Related statute or rule***

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

***Federal regulatory analysis***

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

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

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

*Illinois:*

The 2011 Illinois archery season in most of the state will run from October 1 – January 15 except that it is closed during the firearm deer season in some areas. Illinois has two periods for firearm deer hunting. The first firearm season in 2011 will be November 18 – 20, and the second season is December 1 – 4. The Illinois muzzleloader only season will be December 9 – 11 in 2011. Illinois will hold a youth firearm deer season on October 8 and 9. Hunters may purchase any number of antlerless permits subject to availability in county quotas but are limited to purchasing only one prior to the beginning of random daily drawings in September.

*Iowa:*

In 2010 Iowa had two archery hunting periods, the first October 1 – Dec. 3 and the second December 20 – January 10, 2011. Iowa also has two periods for firearm hunting, December 4 – 8 and December 11 – 19. Iowa's two muzzleloader only hunting periods are October 16 – 24 and December 20 – January 10. Iowa also held a deer season for youth and disabled hunters from September 18 to October 3. Iowa residents may purchase multiple antlerless tags subject only to the availability in a unit, but are limited to purchasing only 1 prior to September 15.

*Michigan:*

Michigan has two archery hunting periods, the first beginning on October 1 and continuing through November 14 and the second running December 1 – January 1. The Michigan firearm season begins on November 15 and continues through November 30. Additionally, Michigan has a 5 day early, private land only, antlerless firearm season beginning on September 16 and a 4 day youth season beginning on September 21. Michigan's muzzleloader-only seasons vary in three zones, all occurring in December and vary from 10 to 17 days in length. Hunters may purchase additional antlerless permits up to a maximum of 5 a year in some units, however additional antlerless harvest opportunity is available in some areas.

*Minnesota:*

Minnesota's 2010 archery season ran from September 18 to December 31. Minnesota's firearm season begins on November 6 and continues to November 14 or 21 depending on the zone. Additional firearm "B" seasons run from Nov. 20 – 28, Nov. 6 – 28, Oct 23 and 24, or Oct. 21 – 24 in certain areas. The muzzleloader-only season runs from November 27 to December 12. Minnesota hunters are generally limited to harvesting one buck, regardless of the number of seasons or licenses they purchase. The harvest of up to 7 antlerless deer is possible by hunting in different units and zones.

**Summary of factual data and analytical methodologies**

The harvest of antlerless deer is managed by the department in order to achieve overwinter goals established in s. NR 10.104 Wis. Admin. Code. In management units where the deer population is below goal, the department may restrict antlerless deer harvest or establish an antlerless quota of zero. In management units where the population is above goal, the department will issue a number of antlerless permits that are likely to result in harvest that helps reduce the population to its overwinter goal. Earn-a-buck regulations, which require that a hunter first harvest an antlerless deer before they can harvest a buck, are an additional tool that can be used in some units to encourage even greater harvest of antlerless deer.

In management units where the normal deer hunting season framework is not likely to reduce the population to within 20% of its overwinter goal a number of season framework options have already been established by rule. The first season framework option requires both the issuance of free (except for a \$2.00 issuance fee) antlerless deer tags and holding a four day October antlerless only firearm season beginning on the Thursday nearest October 15.

Under this proposal, the department could select either to issue free tags or to hold an October four day firearm season, but is not required to select both.

In the CWD management zone, whenever a management unit's deer population is over its established goal, the department may require that a hunter first harvest an antlerless deer before harvesting a buck. This proposal exempts a hunter from earn-a-buck requirements in filling their archery or gun buck deer carcass tag. This proposal preserves the earn-a-buck regulation as it applies to special, free permits issued in the CWD management zone.

**Effect on Small Business**

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

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

**Small business regulatory coordinator**

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

**Environmental Impact**

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

**Fiscal Estimate****State fiscal effect**

None.

**Local government fiscal effect**

None.

**Anticipated costs incurred by the private sector**

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

**Assumptions used in arriving at fiscal estimate**

The department recommends promulgating administrative rules that modify ch. NR 10 related to deer hunting seasons and the use and issuance of deer tags.

This proposal will, upon an order of the secretary, allow the department to distribute antlerless deer permits for the cost of issuance in designated herd control units without holding a four-day, October antlerless firearm hunt in the same units. Under current rules, if the department issues antlerless permits for only cost of issuance, it must also hold the four day season.

Additionally, the rule establishes that the department may not require that a hunter harvest an antlerless deer before harvesting a buck when using their archery or gun buck deer carcass tag in a CWD management zone. The harvest of additional bucks will continue to first require the harvest of an antlerless deer.

The department already administers the creation and distribution of carcass tags for deer hunting and establishes and publishes hunting season information. No new processes, record keeping, or printing requirements are created as a result of this proposal. Additionally, there are no new requirements of law enforcement as a result of this proposal. The department does not anticipate any fiscal effect from the provisions of this proposal.

**Long-range fiscal implications**

No long range fiscal implications are anticipated.

**Statement 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 rule is necessary in order to foster participation by hunters and landowners so they will continue to hunt and cooperate in CWD control and deer herd management. This rule proposal balances pressing social concerns about the quality of the deer hunt with the need for effective herd control measures such as additional antlerless deer harvest in management units that are more than 20% over population goals or simply over population goals in units that are part of the CWD Management Zone. This rule will increase harvest of bucks in the CWD zone which have a higher prevalence of CWD and, because of their greater dispersal distances, have a higher likelihood of spreading CWD. However, the rule retains a herd control tool which requires that antlerless deer be harvested before additional bucks (beyond the initial one) may be taken. The federal government and state legislature have delegated to the appropriate agencies rule-making authority to control and regulate hunting of wild animals. The State of Wisconsin must provide publications describing the regulations for deer hunting to more than 630,000 deer hunters prior to the start of the season. These regulations must be approved prior to printing nearly 1 million copies of the regulations publication.

**Agency Contact Person**

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

**Notice of Hearing  
Regulation and Licensing  
CR 11-027**

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Department of Regulation and Licensing in sections 15.08 (5) (b), 227.11 (2) (a), 440.03 (1), 448.40 (1) Stats., the Department of Regulation and Licensing will hold a public hearing at the time and place indicated below to consider an order to renumber and amend section RL 4.08 (intro), and to create section RL 4.08 (2), relating to background checks and fingerprinting.

**Hearing Information**

<u>Date and Time</u>	<u>Location</u>
<b>July 20, 2011</b> Wednesday at 8 A.M.	1400 East Washington Avenue Room 121A Madison, WI 53703

**Appearances at the Hearing and Submittal of Written Comments**

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but are urged to submit facts, opinions and argument in writing as well. Facts, opinions and argument may also be submitted in writing without a personal appearance by mail addressed to the Department of Regulation and Licensing, Division of Board Services, P.O. Box 8935, Madison, Wisconsin 53708. Written comments must be received at or before the public hearing to be held on **July 20, 2011**, to be included in the record of rule-making proceedings. Comments may be submitted to Shawn Leatherwood, Paralegal, Department of Regulation and Licensing, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708-8935, or by email to [Shancethea.L Leatherwood@wisconsin.gov](mailto:Shancethea.L Leatherwood@wisconsin.gov).

**Copies of Proposed Rule**

Copies of this proposed rule are available upon request Shawn Leatherwood, Paralegal, Department of Regulation and Licensing, Division of Board Services, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708, or by email at [Shancethea.L Leatherwood@wisconsin.gov](mailto:Shancethea.L Leatherwood@wisconsin.gov).

**Analysis Prepared by the Department of Regulation and Licensing****Statute(s) interpreted**

Sections 440.03 (13) (a), (b) and (c), and 448.05 (1) (a), Stats.

**Statutory authority**

Sections 15.08 (5) (b), 227.11 (2) (a), 440.03 (1), 448.40 (1), Stats.

**Explanation of agency authority**

Section 448.05, Stats., is enforced and administered by the Department of Regulation and Licensing (“DRL”) and the Medical Examining Board. Specifically, s. 448.40 (1), Stats., authorizes the Medical Examining Board to promulgate rules

to carry out the purposes of the Medical Examining Board subchapter. Section 448.05 (1), Stats., is in the Medical Examining Board subchapter.

Further, the Medical Examining Board is obligated under s. 15.08 (5) (b), Stats., to promulgate rules for its own guidance and for the guidance of the trade or profession to which it pertains, and define and enforce professional conduct and unethical practices not inconsistent with the law relating to the particular trade or profession.

DRL is a department in the state government, and is therefore an “agency” under s. 227.01 (1), Stats. Under s. 227.11(2) (a), Stats., it may promulgate rules interpreting the provisions of any statute enforced or administered by it, if the agency considers it necessary to effectuate the purpose of the statute. Both ss. 440.03 (13) and 448.05 (1), Stats., are enforced and administered by DRL.

Last, DRL is authorized under s. 440.03 (1), Stats., to promulgate rules defining uniform procedures to be used by the department, the attached boards, the examining boards, and the affiliated credentialing boards.

**Related statute or rule**

Section 440.03 (7) Stats., and Wis. Admin. Code § RL 4.07 (52).

**Plain language analysis**

Subject to ss. 111.321, 111.322 and 111.355, Stats., s. 448.05 (1) (a), Stats., requires that an applicant must not have an arrest or conviction record to be qualified for the grant of any license by the Medical Examining Board. Section 448.03 (13) (a), Stats., authorizes DRL to conduct investigations to determine whether applicants have arrest or conviction records and require applicants to provide any information that is necessary for the investigation. Under s. 448.03 (13) (b), Stats., DRL may investigate whether applicants to practice medicine and surgery have arrest or conviction records pursuant to rules it promulgates.

DRL promulgated Wis. Admin. Code chs. RL 4.07 and RL 4.08 to interpret s. 448.03 (13), Stats. Under chs. RL 4.07 and RL 4.08, DRL may require an applicant for physician licensure to submit fingerprints and undergo a criminal background check if “there exists reason to believe that the applicant has failed to accurately describe his or her conviction record.”

The addition to Section 1 creates a class of licensed credentials the applicants for which may be required to be photographed, submit fingerprints, and undergo criminal background checks in situations when there is not a reason to believe that an applicant has failed to accurately describe his or her conviction record.

Section 2 defines the class of licensed credentials created by the changes to Section 1. Section 2 requires applicants for a physician license to practice medicine and surgery to submit a full set of fingerprints along with their application for licensure. The fingerprints will be used to verify the applicant’s identity and conduct searches for criminal arrests and convictions in accordance with s. 440.03 (13), Stats.

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

The FBI will conduct background checks pursuant to federal law or a state law approved by the U.S. Attorney General under Public Law 92-544 (1972). DRL contacted the Crime Information Bureau of the Wisconsin Department of Justice to determine whether s. 440.03 (13), Stats., is an approved statute to authorize DRL to require background



checks of applicants to practice medicine and surgery. On January 7, 2011, Phillip Collins, Deputy Director of the Crime Information Bureau confirmed that the FBI approves s. 440.03 (13), Stats., as a statute authorizing DRL to require background checks of applicants to practice medicine and surgery.

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

##### *Illinois:*

Illinois statute requires applicants for medical licensure to provide fingerprints for a criminal background check. 225 ILCS 60/9.7. The statute further requires the Illinois Department of Professional Regulation to promulgate rules to implement the requirement. *Id.* However, a review of Illinois' application and online instructions indicates that Illinois currently does not require applicants to submit fingerprints or undergo background checks.

See <http://www.idfpr.com/dpr/WHO/med.asp>, accessed on Jan. 3, 2011.

##### *Iowa:*

Iowa administrative rules require applicants for medical licensure to pay for and provide a full set of fingerprints for state and federal criminal background checks. IAC 653-9.4 (2) p., 9.5 (3) p., 9.6 (2) j. and 8.4 (7). Iowa promulgated the administrative rules based on the federal Volunteers for Children Act, Public Law 105-251 (1998). The U.S. Attorney General already approved the Volunteers for Children Act as a basis to enable "qualified entities" to require employees and volunteers to submit fingerprints for non-law enforcement criminal background checks.

##### *Michigan:*

Michigan statute requires applicants for medical licensure to provide fingerprints for state and federal criminal background checks. MCL 333.16174 (3).

##### *Minnesota:*

Minnesota currently does not require applicants for medical licensure to undergo criminal background checks.

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

In February 2010, DRL was awarded an American Recovery and Reinvestment Act grant to lead a group of nine states to reduce barriers to the portability of physician licenses. Since the award, Wisconsin has worked with Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri and South Dakota to develop best practices to improve the licensing process of physicians. In November, the states identified requiring applicants to submit fingerprints and undergo criminal background as a best practice. The requirement conforms to longstanding recommendations by the Federation of State Medical Boards ("FSMB").

Since April 2001, FSMB has affirmed its position that it is a best practice for state medical boards to "conduct criminal

background checks as part of the licensure application process. See Federation of State Medical Boards, *Public Policy Compendium*, April 2010. The FSMB reaffirmed its position in April 2010. *Id.*

Further, as of September 2010, 35 out of 68 U.S. medical and osteopathic boards require applicants to submit fingerprints and undergo criminal background checks as part of the application process. FSMB, *Criminal Background Checks Overview by State*, Last Updated September 6, 2010, at

[http://www.fsmb.org/pdf/GRPOL\\_Criminal\\_Background\\_Checks.pdf](http://www.fsmb.org/pdf/GRPOL_Criminal_Background_Checks.pdf).

#### **Analysis and supporting documents used to determine effect on small business or in preparation of economic report**

Section 227.137, Stats., requires an "agency" to prepare an economic impact report before submitting the proposed rule-making order to the Wisconsin Legislative Council. The Department of Regulation and Licensing is not included as an "agency" in this section.

#### **Effect on Small Business**

These proposed rules will be reviewed by the department's Small Business Review Advisory Committee to determine whether the rules will have any significant economic impact on a substantial number of small businesses, as defined in s. 227.114 (1), Stats.

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

The Department's Regulatory Review Coordinator may be contacted by email at [john.murray@wisconsin.gov](mailto:john.murray@wisconsin.gov), or by calling (608) 266-8608.

#### **Fiscal Estimate**

The department estimates that the proposed rule will have no significant fiscal impact.

#### **Anticipated costs incurred by the private sector**

Every person seeking initial licensure to practice medicine and surgery in Wisconsin will incur the cost of conducting the criminal background check. The cost to the applicant of conducting a criminal background check is approximately \$56.25. The cost is the price the department charges applicants for the professions that it currently requires undergoing the same criminal background check process.

#### **Agency Contact Person**

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 P.O. Box 8935  
 Madison, Wisconsin 53708  
 telephone: 608-261-4438  
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## Submittal of Proposed Rules to the Legislature

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

**Commerce**

*Financial Resources for Businesses and Communities,  
Chs. Comm 100–149*

**CR 11–010**

Creates Chapter Comm 138, relating to woody biomass harvesting and processing credit.

**Regulation and Licensing—  
Hearing and Speech Examining Board  
CR 11–017**

Revises Chapter HAS 8, relating to continuing education

requirements.

**Regulation and Licensing—  
Radiography Examining Board  
CR 11–016**

Creates Chapters RAD 1 to 6, relating to radiography.

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## Notice of Suspension of an Administrative Rule

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The Joint Committee for the Review of Administrative Rules met in Executive Session on May 24, 2011 and adopted the following motions:

Motion on Chapters NR 406, 407 & 445

That the Joint Committee for Review of Administrative Rules suspend the following provisions included in Ch. NR 406, 407 & 445, pursuant to s. 227.26 (2) (d), Stats., effective May 24, 2011, on the basis of testimony received at its April 27, 2011 meeting, and on the grounds that these provisions included in Ch. NR 406, 407 & 445 impose an undue hardship on Wisconsin's dairy industry as stated in s. 227.19 (4) (d) 6.

406.04 (3) (e): For the purposes of determining emissions under sub.(2)(f), the owner or operator of a sources is not required to consider emissions of hazardous air contaminants associated with agricultural waste ~~prior to July 31, 2011.~~

407.03 (2) (d): The maximum theoretical emissions from the source for any hazardous air contaminant listed in Table A, B or C of s. NR 445.07 do not exceed the emission rate listed in the table for the hazardous air contaminant for the respective stack height. For the purposes of determining emissions under this paragraph, the owner or operator of a source is not required to consider emission of hazardous air contaminants associated with agricultural wastes ~~prior to July 31, 2011.~~

445.08 (3) (c): Entire provision

445.08 (6) (d):

- ~~1. The owner or operator of a source with emissions of hazardous air contaminants associated with agricultural waste and constructed or last modified on or after July 31, 2011, shall achieve compliance with any applicable requirements in s. NR 445.07 in accordance with either s. NR 445.08 (2) or (3) (c) for the agricultural waste upon startup of the source.~~
- ~~2. Emissions of hazardous air contaminants associated with agricultural waste from a source constructed or last modified prior to July 31, 2011, are exempt from the requirements in this chapter until July 31, 2011. Subsequently, the owner or operator of the source shall do both of the following if non-exempt, potential to emit emissions of a hazardous air contaminant from agricultural waste are greater than an applicable threshold in column (c), (d), (e) or (f) of Table A of s. NR 445.07:~~
  - ~~a. Achieve compliance with applicable requirements in s. NR 445.07 in accordance with either s. NR 445.08 (2) or (3) (c) no later than July 31, 2011.~~
  - ~~b. Submit the required information in accordance with sub. (7) (b).~~

Vote:

Ayes 6 (Vukmir, Ott, Leibham, Grothman, LeMahieu, Meyer)

Nays 4 (Hebl, Kessler, Risser, Taylor)

Motion Passed

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