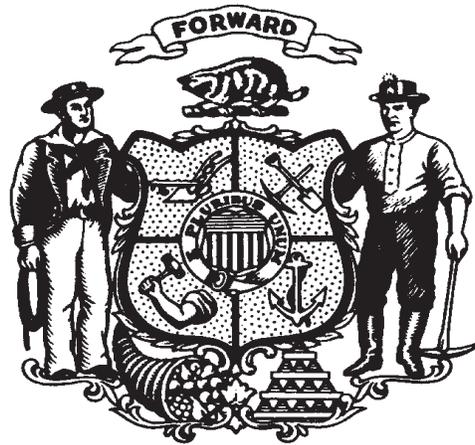


# Wisconsin Administrative Register

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Questions, comments, or corrections should be directed to:

Bruce Hoesly (608) 266-7590  
email: [bruce.hoesly@legis.state.wi.us](mailto:bruce.hoesly@legis.state.wi.us)

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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 & Consumer Protection (2)

1. **EmR0804** – Creating **subch. IV of Ch. ATCP 161**, relating to the “buy local” grant program created under s. 93.48, Stats.

#### Exemption From Finding of Emergency

DATCP has general authority under s. 93.07 (1), Stats., to interpret laws under its jurisdiction. Section 93.48 (1), Stats., specifically requires DATCP to adopt rules for the “buy local” grant program. Section 9103(3i) of 2007 Wisconsin Act 20 (biennial budget act) authorizes DATCP to adopt temporary emergency rules without the normal “finding of emergency,” pending the adoption of “permanent” rules. This temporary emergency rule implements the “buy local” grant program on an interim basis, pending the adoption of “permanent” rules.

**Publication Date:** February 22, 2008  
**Effective Date:** February 22, 2008  
**Expiration Date:** May 1, 2009  
**Hearing Date:** May 30, 2008

2. **EmR0822** – Rules adopted revising **Ch. ATCP 10**, relating to diseases of fish and farm–raised deer.

#### Finding of Emergency

(1) The Wisconsin department of Agriculture, Trade and Consumer Protection (“DATCP”) administers Wisconsin’s animal health and disease control programs, including programs to control diseases of fish and farm–raised deer.

##### Disease Testing of Fish

(2) DATCP regulates fish farms, including fish farms operated by the Wisconsin Department of Natural Resources (“DNR”). DATCP also regulates the import, movement and disease testing of fish.

(3) Viral hemorrhagic septicemia (VHS) is a serious disease of fish. VHS was first reported in Wisconsin on May 11, 2007, after the Wisconsin Veterinary Diagnostic Laboratory confirmed positive samples from freshwater drum (sheepshead) in Little Lake Butte des Mortes (part of the Lake Winnebago system). VHS was subsequently found in Lake Winnebago, and in Lake Michigan near Green Bay and Algoma. The source of VHS in these wild water bodies is not known. VHS has not yet been reported in any Wisconsin fish farms. VHS can be fatal to fish, but is not known to affect human beings.

(4) Current DATCP rules require health certificates for fish and fish eggs (including bait) imported into this state, for fish and fish eggs stocked into waters of the state, and for fish and fish eggs (including bait species) moved between fish farms in this state. *Import* health certificates must include VHS testing if the import shipment includes salmonids (salmon, trout, etc.) or originates from a state or province where VHS is known to occur. VHS testing is *not* currently required for fish or fish eggs stocked into waters of the state from Wisconsin sources, for bait fish or eggs originating from Wisconsin sources, for fish or fish eggs moved between fish farms in Wisconsin, or for non–salmonids imported from states where VHS has not yet been found.

(5) Because VHS has now been found in waters of the state, it is necessary to expand current VHS testing requirements. Because of the urgent need to minimize the spread of VHS in this state, it is necessary to adopt VHS testing requirements by emergency rule, pending the adoption of a “permanent” rule.

##### Disease–Free Herd Certification of Farm–Raised Deer Herds

(6) DATCP registers farm–raised deer herds in this state. DATCP also regulates the import, movement and disease testing of farm–raised deer. Under current DATCP rules, DATCP may certify a farm–raised deer herd as brucellosis–free or tuberculosis–free, or both, based on herd test results provided by the farm–raised deer keeper. Certification is voluntary, but facilitates sale and movement of farm–raised deer.

(7) Under current rules, a tuberculosis–free herd certification is good for 3 years, but a brucellosis–free herd certification is good for only 2 years. There is no compelling veterinary medical reason for the difference. A rule change (extending the brucellosis–free certification term from 2 to 3 years) is needed to harmonize the certification terms, so that farm–raised deer keepers can conduct simultaneous tests for both diseases. Simultaneous testing will reduce testing costs and limit stress on tested deer. An emergency rule is needed to avoid some unnecessary costs for farm–raised deer keepers this year, pending the adoption of permanent rules.

**Publication Date:** July 9, 2008  
**Effective Date:** July 9, 2008  
**Expiration Date:** December 6, 2008  
**Hearing Date:** August 1, 2008

**Publication Date:** June 27, 2008  
**Effective Date:** June 27, 2008  
**Expiration Date:** November 24, 2008  
**Hearing Date:** July 29, 2008

### Children and Families (2)

(Formerly Workforce Development)

#### *Family Supports, Chs. DWD 12 to 59*

1. **EmR0814** – Rule adopted repealing EmR0807 affecting s. **DWD 56.04**, relating to child care enrollment underutilization.

#### **Finding of Emergency**

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

The Department implemented the child care enrollment underutilization emergency rule as a cost–saving measure effective March 30, 2008. 2007 Wisconsin Act 226 provides \$18.6 million to address the fiscal year 2007–08 Wisconsin Shares funding shortfall. The Governor’s veto message directs the Department of Workforce Development to “suspend the current attendance–based rule for the remainder of fiscal year 2007–08.” The Department is repealing the enrollment underutilization emergency rule and will be withdrawing the corresponding proposed permanent rule.

**Publication Date:** May 25, 2008  
**Effective Date:** May 25, 2008  
**Expiration Date:** October 22, 2008  
**Hearing Date:** June 27, 2008

2. **EmR0821** – Rules adopted creating ss. **DWD 40.02 (12m), 40.05, and DWD 40 Appendix D**, relating to establishment of birth cost orders based on child support guidelines.

#### **Finding of Emergency**

The Department of Workforce Development 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:

The federal Office of Child Support Enforcement (OCSE) has notified Wisconsin that OCSE will not certify the state’s request for federal income tax refund offset for birth cost orders that have not been set in accordance with the child support guidelines in Chapter DWD 40, which take into consideration the payer’s ability to pay.

Federal income tax refund offset is one of the primary tools for collection of birth cost orders owed to the State of Wisconsin. In calendar year 2007, the child support program collected \$11,481,000 in birth costs through federal income tax refund offset. Of the nearly \$11.5 million collected, approximately \$6.62 million was returned to the federal government to reimburse Medicaid costs, \$1.72 million was used by county child support agency programs to benefit children in the state, and the remaining \$3.14 million was returned to the state Medicaid program.

### Commerce

#### *Licenses, Certifications, etc., Ch. Comm 5*

Rules adopted revising **Ch. Comm 5**, relating to licensing of elevator contractors and installers.

#### **Exemption From Finding of Emergency**

Under the nonstatutory provisions of 2005 Wis. Act 456, the Department of Commerce was directed to issue emergency rules that implement provisions of the Act. The Act specifically states: “Notwithstanding section 227.24 (1) (a) and (3) of the statutes, the department of commerce is not required to provide evidence that promulgating rules under this subsection as emergency rules is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency for the rules promulgated under this subsection.”

The Act mandates the licensing of elevator contractors and installers. Under the Act no person may engage in the business of installing or servicing conveyances or working on a conveyance unless licensed as of June 1, 2007. These emergency rules are being adopted in order to provide the elevator industry the ability to comply with licensing aspects of the Act and continue working until permanent rules are implemented.

**Publication Date:** June 1, 2007  
**Effective Date:** June 1, 2007  
**Expiration Date:** See section 7 (2), 2005 Wis. Act 456  
**Hearing Date:** June 27, 2007

### Commerce (2)

#### *Financial Resources for Businesses and Communities, Chs. Comm 104–135*

1. **EmR0802** – Creating **Ch. Comm 132**, relating to implementing a program for certifying applicants and allocating dairy manufacturing facility investment tax credits, and affecting small businesses.

#### **Finding of Emergency**

The Department of Commerce finds that an emergency exists and that adoption of the rule included in this order is necessary for the immediate preservation of public welfare.

The facts constituting the emergency are as follows. Under sections 71.07 (3p) (b), 71.28 (3p) (b), and 71.47 (3p) (b) of the Statutes, as created in 2007 Wisconsin Act 20, a taxpayer may claim a dairy manufacturing facility investment credit for dairy manufacturing modernization or expansion during taxable years beginning after December 31, 2006. Sections 71.07 (3p) (a) 3., 71.28 (3p) (a) 3., and 71.47 (3p) (a) 3. of the Statutes define dairy manufacturing modernization or expansion as “constructing, improving, or acquiring buildings or facilities, or acquiring equipment, for dairy manufacturing . . . if acquired and placed in service in this state during taxable years that begin after December 31, 2006, and before January 1, 2015.” Section 71.07 (3p) (c) 2m. a. of the

Statutes states that the maximum amount of credits that may be claimed in fiscal year 2007–08 is \$600,000.

Section 560.207 of the Statutes, as likewise created in 2007 Wisconsin Act 20, requires the Department to (1) implement a program for certifying taxpayers as eligible for the dairy manufacturing facility investment credit, (2) determine the amount of credits to allocate to those taxpayers, and (3) in consultation with the Department of Revenue, promulgate rules to administer the program. No other provisions are established in the Statutes regarding the specific process for taxpayers to use in applying for the credits, and for the Department of Commerce to use in certifying eligible taxpayers and in allocating the credits.

Because of enactment of 2007 Wisconsin Act 20, a number of entities that may be eligible for the tax credits have contacted the Department with inquiries concerning the process for applying for the credits, for expenditures that have been incurred during taxable years that began after December 31, 2006.

Entities that may be eligible for the tax credits for the 2007–08 fiscal year face near–term time constraints for filing their tax returns with the Department of Revenue. Although the Department of Commerce has begun promulgating the permanent rule that is required by 2007 Act 20, the time periods in chapter 227 of the Statutes for promulgating permanent rules preclude the permanent rule from becoming effective in time to readily accommodate claiming the tax credits for the 2007–08 fiscal year. This emergency rule will enable the Department of Commerce to establish an application, certification, and tax credit allocation process for the entities that need to soon file their tax returns for taxable years beginning after December 31, 2006.

**Publication Date:** February 4, 2008  
**Effective Date:** February 4, 2008  
**Expiration Date:** July 3, 2008  
**Hearing Date:** May 14, 2008  
**Extension Through:** October 31, 2008

- EmR0823** – Rules adopted amending **Comm Table 108.6–1, sections Comm 108.07 (5), 108.22 (1), and 154.06 (intro.)**, relating to emergency assistance grants in the community development block grant program, and affecting small businesses.

#### **Finding of Emergency**

The Department of Commerce finds that an emergency exists and that adoption of the rule included in this order is necessary for the immediate preservation of public health, safety, and welfare. The facts constituting the emergency are as follows.

Currently under sections Comm 108.06, 108.07, and 108.22 of the Wisconsin Administrative Code, as promulgated under sections 560.04, 560.045, and 560.9809 of the Statutes, the Department may annually use up to 5 percent of its federal Community Development Block Grant (CDBG) funds to repair or replace public infrastructure or facilities, or for emergency services necessitated by a natural disaster or catastrophic event. Also under sections Comm 108.07 and 108.22, the maximum amount of CDBG funds that the Department can award to any local government for a natural disaster or catastrophic event is \$500,000.

Currently under section Comm 154.06, as promulgated under sections 560.02 (4) and 560.9809 (2) of the Statutes, the Department may annually use up to \$2,000,000 of CDGB funds to address emergency housing needs caused by natural disasters or catastrophic events.

Because of the unprecedented levels of damage to public infrastructure and facilities from the severe storms and widespread flooding that occurred throughout the State in June 2008, the need for emergency assistance to communities far exceeds the \$1.35 Million of CDBG funding that results from the above 5–percent limit, and the need for emergency housing assistance for low and moderate income households far exceeds the above \$2,000,000. Communities and households in 28 of the 30 counties where the Governor has declared a state of emergency are eligible for this CDBG program assistance.

This emergency rule repeals the above limits of 5 percent, \$500,000 and \$2,000,000. This will enable the Department to (1) use any available CDBG funds for emergency assistance with repairing or replacing public infrastructure and facilities, and with repairing or replacing homes damaged by the severe storms and flooding; and (2) base the award amounts on the scope of the damages and destruction in the community and on the funds available.

**Publication Date:** July 16, 2008  
**Effective Date:** July 16, 2008  
**Expiration Date:** December 16, 2008  
**Hearing Date:** August 27, 2008

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### **Corrections**

**EmR0812** – Rules adopted revising **s. DOC 332.19**, relating to the establishment of a sex offender registration fee to partially offset the costs of monitoring persons who are required to register as sex offenders.

#### **Finding of Emergency**

The department of corrections finds that an emergency exists and that rules included in this order are necessary for the immediate preservation of public peace, health, safety and welfare. A statement of the facts constituting the emergency is: 2007 WI Act 20, section 3132, amended s. 301.45 (10), Stats., in three ways which requires an immediate amendment of s. DOC 332.19.

First, the newly amended s. 301.45 (10), Stats., expands the persons whom the department of corrections may require to pay an annual sex offender registration fee. Previously, the department was limited to assessing the fee only against those persons who were required to register and who were in its custody or under its supervision as a person on probation, parole, or extended supervision. The new law permits the department to require all persons who are required to register as a sex offender to pay an annual fee.

Second, the new law limits the use of the collected sex offender fees to partially offset the costs of monitoring sex offenders. Previously, the department was authorized to use the collected fees to partially offset the costs of monitoring those persons on probation, parole, or extended supervision, regardless of whether they were required to register as sex offenders.

Third, the legislature increased the maximum annual rate from \$50 to \$100. If the rule is not amended promptly and immediately, the department will not be able to collect the fees which are to be used to offset the costs of monitoring persons who are required to register as sex offenders. This could result in a lessening of supervision due to budget limitations.

The purpose of the emergency rule is to amend the current rule to require all persons who are required to register as sex offenders under s. 301.45 to pay the annual fee which is used to partially offset the costs of monitoring registrants. The emergency rule also increases the annual rate to \$100. The

permanent rule process has been started. However, the permanent rule process will take approximately nine months to complete. Emergency rules are necessary to respond promptly to the collection of fees while permanent rules are being developed.

**Publication Date:** May 15, 2008  
**Effective Date:** May 15, 2008  
**Expiration Date:** October 12, 2008  
**Hearing Date:** July 24, 2008

### Health Services

(Formerly Health and Family Services)

#### *Management & Technology & Strategic Finance, Chs. HFS 1—*

**EmR0810** – Rule adopted amending ss. **HFS 10.55 (1) and 10.56 (2)**; and creating ss. **HFS 10.55 (1m) and 10.56 (2m)**, relating to fair hearings and continuation of benefits pending the outcome of a grievance, Department review, or fair hearing under the family care program.

#### **Finding of Emergency**

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

2007 Wisconsin Act 20 eliminates entitlement to non–Medicaid eligibility for Family Care, which could result in some Family Care enrollees being determined ineligible and disenrolled from the program.

In addition, the federal Centers for Medicare and Medicaid Services (CMS) has restricted the Family Care benefit for enrollees at the non–nursing home level of care.

Currently, under ss. HFS 10.55 and 10.56, persons whose services are terminated may request a hearing and continuation of benefits during an appeal. Individuals who appeal the loss of non–Medicaid eligibility or reduction of services as a result of the restriction of the benefit for people eligible at the non–nursing home level of care will lose the appeal because the change in law and federal policy makes it clear that they are no longer entitled to those benefits. In addition, if benefits continued during an appeal, the individual would be responsible for repayment of the cost of continued services. Therefore, the right to appeal is of no real benefit.

HFS 10.56 (2) gives enrollees whose services are reduced or terminated the option to request continuation of services during a fair hearing, grievance, or Department review of the termination or reduction of services. For individuals appealing the loss of non–Medicaid eligibility, or termination or reduction of services as a result of the restriction of the benefit for people eligible at the non–nursing home level of care, continuation of services will be counter–productive to the welfare of the appellant, because the termination and reduction of benefits will have resulted from a change in law. The appellant will lose the appeal and as a result of the loss, be responsible for the cost of the continued services, which may be significant as costs could be in the thousands of dollars.

Under this emergency order, the Department is providing an exception to the right to a fair hearing and continuation of services during a fair hearing, grievance, or Department review when Family Care benefits are reduced or terminated by an act of the federal government or the state legislature and

the individual whose benefits have been terminated or reduced does not dispute that he or she falls within the category of persons for whom the benefit was reduced or terminated. The Department has determined that appeals and continuation of benefits under these circumstances would be detrimental to the welfare of approximately 730 individuals and should be prevented.

**Publication Date:** April 7, 2008  
**Effective Date:** April 7, 2008  
**Expiration Date:** September 4, 2008  
**Hearing Date:** May 12, 2008

### Health Services

(Formerly Health and Family Services)

#### *Health, Chs. HFS 110—*

**EmR0825** – Rule adopted creating **Chapter HFS 119**, to require emergency medical technicians, first responders, and individuals who provide instruction to emergency medical technicians and first responders to complete training on the use of automated external defibrillators and to specify the content of the training, qualifications of providers, and frequency with which training is to be completed, and affecting small businesses.

#### **Exemption From Finding of Emergency**

The legislature by 2007 Act 104 provides the department with an exemption from a finding of emergency to adopt these emergency rules.

**Publication Date:** August 29, 2008  
**Effective Date:** September 1, 2008  
**Expiration Date:** January 29, 2009

### Insurance

**EmR0817** – Rule adopted revising **Ch. Ins 3**, relating to long–term care plans including the long–term care partnership program qualifying 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 State of Wisconsin will be implementing the Wisconsin Partnership Program effective January 1, 2009, the date approved by the federal government in accordance with the Department of Health and Family Services' application for participation. As part of the enabling statute as amended, the state requires that all insurance intermediaries receive specific training prior soliciting any long–term care products on or after January 1, 2009. In order to minimize the impact of the additional training, the proposed rule permits the training, if approved, to qualify for continuing education therefore, intermediaries can meet two training requirements simultaneously. For training to be approved and courses offered prior to January 1, 2009, the office needs to promulgate this rule to provide the guidelines necessary for creation and submission of training programs. Therefore the office must promulgate this rule as an emergency rule.

In addition, in order for insurers to offer products intended to qualify for the Wisconsin partnership program, such products shall be submitted to the office prior to use. The

insurers must submit those products sufficiently in advance of January 1, 2009, so that there is time for review by the office and implementation time for the insurers. These changes include modifications to s. Ins 3.455 including repealing and recreating the applicable definitions and modifying the conversion requirements; modifications to s. Ins 3.46 including deletion of the blanket exemption for group long–term care products replaced with narrow exceptions, modification to the marketing and advertising requirements with notable new requirements for insurers and intermediaries to submit to OCI marketing and advertisement material prior to use, new group insurance requirements, modifications to the permissive limitations and exclusions, disclosures, replacement requirements, reporting requirements for insurers added regarding suitability; conversion modifications, incontestability and standards for marketing. The appendices to s. Ins 3.46 have also been repealed and recreated and now include several reporting forms for tracking suitability, rescissions, claims denial, replacement and lapses by state to be filed by insurers. As noted above, the major addition to s. Ins 3.46 is the intermediary training requirement as required by s. 628.348 (1), Stats. Finally, the changes also include a new section, s. Ins 3.465 and appendices, related to the Wisconsin Partnership Program that is to be available beginning January 1, 2009.

A combined rule hearing will be held for both the emergency and permanent rule on June 16, 2008.

**Publication Date:** June 2, 2008  
**Effective Date:** June 3, 2008  
**Expiration Date:** October 3, 2008  
**Hearing Date:** June 16, 2008

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## Natural Resources

### *Fish, Game, etc., Chs. NR 1—*

**EmR0824** – Rule adopted revising ss. NR 10.01 (1) (b), (g), (h), (u) and (v) and 10.06 (5), relating to the 2008 migratory game bird seasons and waterfowl hunting zones.

#### Finding of Emergency

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

**Publication Date:** August 30, 2008  
**Effective Date:** August 30, 2008  
**Expiration Date:** January 27, 2009  
**Hearing Date:** October 27, 2008

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## Natural Resources

### *Environmental Protection – General, Chs. NR 100—*

**EmR0809** – Rule adopted to repeal s. NR 198.15 (2), to renumber s. NR 198.12 (6) to (10), to amend ss. NR 198.11, 198.14 (1) (e) and (f) 2., 198.23 (5) to (7), 198.33 (5), and 198.44 (5) and to create ss. NR 198.12 (6) and (7), 198.33 (6) and subch. V of ch. NR 198, relating to grants for the control of aquatic invasive species.

#### Finding of Emergency

The substantial increase in grant funding is a strong message from the Legislature that concern over the welfare of our public waters is growing, along with the expectation that these additional funds be put to work as soon as possible. The appropriation from which these funds are spent is a biennial appropriation, meaning that any unspent funds at the end of the biennium automatically lapse back to the Water Resources Account of the Conservation Fund. The timeline for permanent rule promulgation and the lack of staff to provide support to eligible sponsors may impede the Department's ability to fully and responsibly invest the authorized spending by the end of the biennium because of the current rule's limitations. An emergency rule will help to minimize or eliminate the amount of funds that are lapsed.

**Publication Date:** April 7, 2008  
**Effective Date:** July 1, 2008  
**Expiration Date:** November 28, 2008

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## Pharmacy Examining Board

**EmR0815** – Rule adopted revising Ch. Phar 13, relating to the regulation of wholesale prescription drug distributors.

#### Finding of Emergency

The Board has made a finding of emergency. The Board finds that failure to have the proposed rules in effect on June 1, 2008, the effective date of the applicable provisions of 2007 Wisconsin Act 20, will create a danger to the public health, safety and welfare, by disrupting the wholesale distribution of prescription drugs in the state of Wisconsin.

**Publication Date:** May 29, 2008  
**Effective Date:** June 1, 2008  
**Expiration Date:** October 29, 2008  
**Hearing Date:** July 23, 2008

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## Public Instruction (3)

- EmR0805** – Creating Ch. PI 16, relating to four–year–old kindergarten grants.

#### Finding of Emergency

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

The 4–year–old kindergarten grant program under s. 115.445, Stats., was created under 2007 Wisconsin Act 20. The Act became effective October 27, 2007, and appropriated \$3 million annually beginning in the 2008–09 school year. In order for school districts to develop application criteria and procedures in time for the program to operate in the upcoming school year, rules must be in place as soon as possible.

**Publication Date:** February 25, 2008  
**Effective Date:** February 25, 2008  
**Expiration Date:** July 24, 2008  
**Hearing Date:** April 17, 2008  
**Extension Through:** September 20, 2008

2. **EmR0813** – A rule is adopted revising **Ch. PI 37**, relating to grants for national teacher certification and master educator licensure.

#### Finding of Emergency

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

The new provisions modifying the grants for the national teacher certification program under 2007 Wisconsin Act 20, the biennial budget bill, took effect October 27, 2007. In order to establish the new application criteria and procedures to award grants to eligible applicants in the 2007–08 school year, emergency rules must be in place as soon as possible.

**Publication Date:** May 17, 2008  
**Effective Date:** May 17, 2008  
**Expiration Date:** October 14, 2008  
**Hearing Date:** July 23, 2008

3. **EmR0816** – A rule adopted revising **Ch. PI 30**, relating to state special education aid for certain pupil services personnel.

#### Finding of Emergency

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

The new provisions under 2007 Wisconsin Act 221 modifying the percentage of the salaries of licensed school nurses, licensed school social workers, licensed school psychologists, and licensed school counselors that are eligible for state aid reimbursement first applies to state aid distributed in the 2008–09 school year. In order to establish instructions this spring as to how school districts are to account for these pupil services staff on special education claim forms, rules must be in place as soon as possible.

**Publication Date:** May 30, 2008  
**Effective Date:** May 30, 2008  
**Expiration Date:** October 27, 2008  
**Hearing Date:** July 14, 2008

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### Regulation and Licensing (2)

1. **EmR0811** – Rule adopted amending **s. RL 16.06 (1) (a), (b) and (d)**, relating to how to use approved forms for the practice of real estate.

#### Finding of Emergency

The Department of Regulation and Licensing finds that preservation of the public peace, health, safety or welfare necessitates putting the rule amendments into effect prior to the time the amendments would take if the agency complied with the notice, hearing and publication requirements

established for rule-making in ch. 227, Stats. The facts warranting adoption of these rule amendments under s. 227.24, Stats., are as follows:

The department reviewed a proposed draft of a modified form of the residential real estate listing contract, WB–1, which contained inserted text that appeared to be or could be construed to be approved by the department. The modified form was forwarded to the department as an example of work product that was purportedly to be the subject of a continuing education class demonstrating the allowed means to modify an approved form. The modified form was shown to industry stakeholders, the department’s council on forms, and the Real Estate Board, for review and comment. All parties agreed that the modified form was, or could be, construed to be misleading based upon its formatting that the modified text was approved by the department, when in actuality, it was not. This potential for consumer confusion was agreed to be a cause for immediate rule-making to prevent modification of forms such as WB–1 in the manner submitted.

**Publication Date:** April 16, 2008  
**Effective Date:** April 16, 2008  
**Expiration Date:** September 13, 2008  
**Hearing Date:** June 26, 2008  
**Extension Through:** November 11, 2008

2. **EmR0819** – A rule adopted revising **s. RL 161.04**, relating to examinations for substance abuse professionals.

#### Finding of Emergency

The department has made a finding of emergency. The current rules require an applicant for a clinical substance abuse counselor credential to pass an oral examination. The company that produced that examination is not giving that examination after June 1, 2008. This emergency rule creates a time period for a transition to enable a category of applicants to get a clinical substance abuse counselor credential. Persons holding a clinical substance abuse counselor credential can apply for a supervisory credential. There is a strong need for more supervisors in this field because services can only be provided under supervision. This rule will enable more applicants to receive a supervisor credential and is therefore necessary to maintain the health, safety and welfare of the public.

**Publication Date:** June 18, 2008  
**Effective Date:** June 18, 2008  
**Expiration Date:** November 15, 2008

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### Revenue

**EmR0820** – Rule adopted creating ss. **Tax 8.03 and 8.05**, relating to the registration of wine collectors, establishing standards of eligibility for registration as a wine collector, specifying the form and manner of notice required prior to the sale of wine by a wine collector, and the creation and organization of small winery cooperative wholesalers.

#### Exemption From Finding of Emergency

The legislature by Section 50 of 2007 Wisconsin Act 85 provides an exemption from a finding of emergency for the adoption of the rule.

**Publication Date:** June 26, 2008  
**Effective Date:** June 26, 2008  
**Expiration Date:** July 1, 2010 or the date on which permanent rules take effect, whichever is sooner.

**Exemption From Finding of Emergency**

The Legislature, by 2007 Wisconsin Act 171, Section 6 (2), provides an exemption from a finding of emergency for the adoption of the rule.

**Publication Date:** July 1, 2008  
**Effective Date:** July 1, 2008  
**Expiration Date:** July 1, 2009 or the date on which permanent rules take effect, whichever is sooner.  
**Hearing Date:** July 30, 2008

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**Transportation**

**EmR0818** – A rule adopted creating **Ch. Trans 263**, relating to multiple trip overweight permits for vehicles transporting granular roofing materials.

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## Scope Statements

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### Commerce

*Financial Resources for Businesses and Communities,  
Chs. Comm 104—  
Housing Assistance, Chs. Comm 150—*

#### Subject

Revises Chapters Comm 108 and 154, relating to the emergency assistance grants in the Community Development Block Grant (CDBG) program.

#### Objective of the Rule

The rule would repeal current limits on emergency assistance grants in the Community Development Block Grant (CDBG) Program.

#### Policy Analysis

Under the permanent rules in sections Comm 108.06, 108.07, and 108.22, the Department may annually use up to 5 percent of its federal CDBG funds to repair or replace public infrastructure or facilities, or for emergency services necessitated by a natural disaster or catastrophic event – and the maximum amount of CDBG funds that the Department can award to any local government for a natural disaster or catastrophic event is \$500,000. Under the permanent rules in section Comm 154.06, the Department may annually use up to \$2,000,000 of CDGB funds to address emergency housing needs caused by natural disasters or catastrophic events.

Because of the unprecedented levels of damage to public infrastructure and facilities from the severe storms and widespread flooding that occurred in 2008, the need for emergency assistance to communities far exceeds the \$1.35 Million of CDBG funding which results from the above 5–percent limit, and the need for emergency housing assistance for low and moderate income households far exceeds the above \$2,000,000.

The expected proposed rules would repeal the above limits on emergency assistance grants in the CDBG Program. This will enable the Department to (1) use any available CDBG funds for emergency assistance with repairing or replacing public infrastructure and facilities, and with repairing or replacing homes damaged by the severe storms and flooding; and (2) base the award amounts on the scope of the damages and destruction in the community and on the funds available. The proposed rules may include other changes that would improve implementation of these alterations in funding.

The only policy alternative would be to not promulgate the rule changes, which would result in too little of the CDBG funding being available for the emergency assistance.

#### Statutory Authority

Sections 560.02 (4), 560.04, 560.045, and 560.9809, Stats.

#### Entities Affected by the Rule

These rules may affect entities that benefit from financial assistance for housing repair or for public infrastructure/facility repair or replacement.

### Comparison with Federal Regulations

24 CFR 570.483(d) allows the Department to use CDBG funds for activities that address the national objective of meeting an “urgent local need.” The criteria under this objective specify that the funded activities must be designed to alleviate existing conditions which pose a serious and immediate threat to the health or welfare of the community, and which are of recent origin or recently became urgent. In addition, the Department must determine that the state grant recipient is unable to finance the activity on its own, and that other sources of funding are not available to carry out the activity.

The Department is not aware of any proposed changes to these federal regulations – or of any other corresponding proposed federal regulations.

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

The staff time needed to develop the rules is expected to range from 80 to 100 hours, depending upon the associated complexity. This includes rule drafting and processing the rules through public hearings, legislative review, and adoption. There are no other resources necessary to promulgate the rules.

### Government Accountability Board

#### Subject

Revises section GAB 1.28, defining the term “political purpose”.

#### Objective of the Rule

To amend the existing rule to more clearly define that activity which is subject to regulation by chapter 11 of the Wisconsin Statutes and thereby reach pre–election activity in which clearly identified candidates are discussed in a public communication.

#### Policy Analysis

Under the existing statute, (s. 11.01 (16), Stats.) and rule, (GAB 1.28), individuals and organizations that do not spend money to expressly advocate the election or defeat of a clearly identified candidate, or to advocate a vote “Yes” or vote “No” at a referendum, are not subject to campaign finance regulation under ch.11 of the Wisconsin Statutes. The term “expressly advocate” has been limited to so–called “magic words” or their verbal equivalents. The Wisconsin Supreme Court, in *WMC v. State Elections Board*, 227 Wis.2d 650 (1999), has opined that if the Elections Board wishes to adopt a more inclusive interpretation of the term “express advocacy,” it must do so by way of a rule. The United States Supreme Court, in *McConnell et al. v. FEC et al.*, (No. 02–1674), in a December 10, 2003 opinion, has said that Congress and state legislatures may regulate political speech that is not limited to “express advocacy.”

The new rule will more clearly specify communications that don’t reach the level of express advocacy, and yet are subject to regulation, and those that are not.

#### Statutory Authority

Sections 5.05 (1) (f) and (c) and 227.11 (2) (a), Stats.

### Entities Affected by the Rule

Any individual, committee, corporation, or other association or organization that wants to engage in unregulated political speech, especially political speech that names or otherwise clearly identifies a specific candidate for elective office.

### Comparison with Federal Regulations

The GAB has directed its staff to prepare for discussion a rule draft that could lead to the commencement of the rulemaking process for a rule regulating what is commonly referred to as “issue advocacy,” pursuant to the authority recognized by the United States Supreme Court in its December 10, 2003 decision: *McConnell et al. v. Federal Election Commission, et al.* (No.02–1674) and pursuant to a recent decision of the U. S. Supreme Court in *Federal Election Commission (FEC) v. Wisconsin Right to Life, Inc. (WRTL II)*, (No.06–969 and 970; Argued April 25, 2007 and decided June 25, 2007)

The *McConnell* decision is a review of relatively recent federal legislation – The Bipartisan Campaign Reform Act of 2002 (BCRA) – amending, principally, the Federal Election Campaign Act of 1971 (as amended). A substantial portion of the *McConnell* Court’s decision upholds provisions of BCRA that establish a new form of regulated political communication – “electioneering communications” – and that subject that form of communication to disclosure requirements as well as to other limitations.

In *McConnell*, the Court held that Congress and the states have (and, apparently, always have had) the authority to regulate communications that may not reach the threshold of express advocacy, but that, nevertheless, influence voting at elections. In *WRTL II*, the Court upheld a challenge to the “electioneering communication” provisions of BCRA as they applied to political communications that WRTL proposed to broadcast, but also recognized that regulation could be constitutionally applied not only to express advocacy but to its ideological cousin: the “functional equivalent” of express advocacy.

The Board is looking at the question whether it could adopt a rule that reaches speech which is subject to no other reasonable interpretation than as an exhortation to vote for or against a specific candidate.

### Estimate of Time Needed to Develop the Rule

At least 50 hours of state employees’ time.

## Health Services

(Formerly Health and Family Services)

### Health, Chs. HFS 110—

### Subject

Amends Chapter HFS 157, relating to radiation protection requirements for radiation producing machines and radioactive materials.

### Policy Analysis

Under s. 254.34 (1) (a), Stats., the Department of Health Services (formerly Department of Health and Family Services) is responsible for developing and enforcing rules governing the registration and licensing of sources of ionizing radiation in order to prohibit and prevent unnecessary radiation exposure. The Department is also responsible for complying with an agreement between Wisconsin and the

Nuclear Regulatory Commission (NRC), which transfers regulatory authority over certain radioactive materials from the NRC to the state. This agreement requires that Wisconsin revise the radioactive material parts of ch. HFS 157 within three years of any applicable changes in Title 10, Code of Federal Regulations. Because 10 CFR has been revised since the Department last revised HFS 157 in October 2006, the Department must modify the radioactive material requirements in ch. HFS 157. Radioactive materials licensees include hospitals, industrial facilities, research facilities and academic institutions (colleges and universities).

The Department also proposes to revise the parts of ch. HFS 157 pertaining to x–rays to reflect new diagnostic and therapeutic technologies, the Department’s experience administering the current rule, changes in comparable federal regulations in 21 CFR, and input provided to the Department by an advisory group. X–ray device registrants include hospitals, dental offices, chiropractic practices, veterinary facilities and industrial facilities.

The proposed rule modification will accomplish the following:

1. Incorporate the newest federal radioactive material regulations in Title 10, Code of Federal Regulations (10 CFR) into ch. HFS 157. Incorporating revisions to federal radioactive material regulations into ch. HFS 157 is required for the federal government to continue recognizing Wisconsin as an “agreement state.” An “agreement state” is a state that enters into an agreement with the Nuclear Regulatory Commission that transfers regulatory authority over certain radioactive materials to the state. Wisconsin has been an agreement state since August 11, 2003.
2. Incorporate new security requirements for certain radioactive materials, initially implemented nationally under order of the Nuclear Regulatory Commission, into ch. HFS 157.
3. Update the x–ray requirements in ch. HFS 157 to reflect changes in 21 CFR.
4. Add new regulatory requirements related to new x–ray diagnostic and therapeutic technologies, including digital radiography and x–ray brachytherapy, and new uses of existing x–ray technologies.
5. Revise operator qualifications for fluoroscopy machines.
6. Add a new requirement for radiation safety committee review of therapeutic uses of x–ray devices.
7. Incorporate minor corrections to rule language based on the Department’s experience administering the current rule and input of an advisory group.
8. Incorporate minor revisions to operator qualification, shielding and quality testing.

### Statutory Authority

Sections 254.34 (1) (a), 254.365 (4) and 254.37 (3), Stats.

### Entities Affected by the Rule

Radioactive materials licensees and x–ray registrants, including hospitals, academic facilities, physicians, dentists, chiropractors, veterinarians and industrial facilities that use radioactive materials or x–ray devices.

### Comparison with Federal Regulations

The radiation protection requirements in ch. HFS 157 are based on or identical to the following federal regulations:

- a. Title 10, Code of Federal Regulations, Parts 19, 20, 31, 33–36, 39, 40, 70, 71 and 150 for radioactive materials.
- b. Title 21, Code of Federal Regulations, Part 900 for mammography and Parts 1020 –1040 for diagnostic, therapeutic and cabinet x–ray devices.

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

The Department will require approximately 250 hours of staff time to develop the rules. The Department will form an ad hoc advisory group consisting of representative users of radioactive materials and x–ray devices to provide input on the technical content of the rules. The Department anticipates that advisory group input to the development of the rules will minimize the need to revise the rules during the promulgation process.

## **Insurance**

### **Subject**

Revises section Ins 3.39, relating to Medicare supplement insurance products and affecting small business.

### **Objective of the Rule**

The Office of the Commissioner of Insurance (“Office” or “Commissioner”), intends to amend numerous provisions within s. Ins 3.39, Wis. Adm. Code, to reflect changes in Wisconsin common law and federal requirements in two recent acts, the Medicare Improvements for Patients and Providers Act of 2008 (MIPPA) and Genetic Information Nondiscrimination Act of 2008 (GINA). Further, the federal government has included in the implementation and oversight of MIPPA that the National Association of Insurance Commissioners (NAIC) modify its Medicare supplement model regulations to incorporate the MIPPA and GINA changes. The states, including Wisconsin have one year to implement the NAIC model. This rule will include such

modifications so that Wisconsin is in compliance with the federal regulations.

### **Policy Analysis**

In order for Wisconsin to continue regulating Medicare supplement insurance policies sold in Wisconsin, it needs to amend its Medicare supplement administrative rules to comply with federal law. However, Wisconsin continues to be an exempt state under the federal Medicare law with respect to benefit plan design. As an exempt state the Office regulates Medicare supplement products through regulation of insurers issuing Medicare supplement policies and has established basic requirements for the content of such products. The recent changes through MIPPA and GINA require the modification of Wisconsin regulations to include new requirements and restrictions related to Medicare supplement insurance products and insurance producers soliciting such products. The requirements contained in GINA will also need to be incorporated into the Medicare supplement regulations.

### **Statutory Authority**

Sections 601.41 (3), 601.42, 628.34 (12), 632.76, 632.81, 632.897, Stats.

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

Insurers issuing Medicare supplement products and insurance intermediaries soliciting such products may be affected by this rule.

### **Comparison with Federal Regulations**

Due to Wisconsin’s status as an exempt state, there is no existing or proposed regulation that is intended to address the content of the proposed rule although federal regulation requires modification to the existing rule so that it complies with federal statutory and regulatory requirements.

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

200 hours and no other resources are necessary.

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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.*

## **Health Services**

*Health, Chs. DHS 110—*

**CR 08–082**

On August 22, 2008, the Department of Health Services submitted a proposed rule–making order to the Wisconsin Legislative Council Rules Clearinghouse.

### **Analysis**

The proposed order creates Chapter DHS 119, relating to required training for EMTs, First Responders and training providers in the use of automated external defibrillators.

### **Agency Procedure for Promulgation**

A public hearing is required and will be scheduled at a later time.

### **Contact Information**

For substantive questions on rules contact:

Brian Litza, Chief  
Bureau of Local Health Practice – EMS Section  
1 W. Wilson St.  
Madison, WI 53701  
608–261–6870  
litzabd@dhs.wisconsin.gov

Small Business Regulatory Review Coordinator:

Rosie Greer  
608–266–1279  
[greerrj@dhs.state.wi.us](mailto:greerrj@dhs.state.wi.us)

## **Natural Resources**

*Fish, Game, etc., Chs. NR 1—*

**CR 08–083**

On August 27, 2008, the Department of Natural Resources submitted a proposed rule–making order to the Wisconsin Legislative Council Rules Clearinghouse.

### **Analysis**

The proposed order revises section NR 27.03, relating to removing trumpeter swan from the Wisconsin endangered species list and osprey from the Wisconsin threatened species list.

### **Agency Procedure for Promulgation**

A public hearing is scheduled for October 20, 2008.

### **Contact Information**

Sumner Matteson  
Bureau of Endangered Resources  
608–266–1571  
Sumner.Madison@Wisconsin.gov

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## Rule–Making Notices

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### Notice of Hearing Natural Resources

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

NOTICE IS HEREBY GIVEN that pursuant to ss. 29.604 and 227.11, Stats., interpreting s. 29.604, Stats., the Department of Natural Resources will hold a public hearing on the repeal of s. NR 27.03 (3) (b) 2. and 8., Wis. Adm. Code, relating to the trumpeter swan and osprey.

#### Hearing Information

The hearing will be held on:

<b>October 20, 2008</b> Monday at 4:00 p.m.	Room 027 DNR State Office Building 101 South Webster St. Madison (Entrance at the Webster Street doors only)
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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 Sumner Matteson at (608) 266–1571 with specific information on your request at least 10 days before the date of the scheduled hearing.

#### Analysis Prepared by Department of Natural Resources

##### *Statutes interpreted*

Section 29.604, Stats.

##### *Statutory authority*

Sections 29.604 and 227.11, Stats.

##### *Summary of rule*

The proposed rule will delete trumpeter swan from the Wisconsin endangered species list and the osprey from the Wisconsin threatened species list.

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

The proposed rule changes are non–controversial in nature and do not represent policy or significant changes that differ from surrounding states. Many of the other states in the mid–west continue to list trumpeter swans and osprey as endangered or threatened species. Wisconsin is fortunate to have had such successful recovery programs for these species.

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

The proposed rule changes are based solely on the biological recovery of these species in Wisconsin.

#### Small Business Impact

Pursuant to s. 227.114, Stats., it is not anticipated that the proposed rule will have an economic impact on small businesses. The Department’s Small Business Regulatory Coordinator may be contacted at [SmallBusiness@dnr.state.wi.us](mailto:SmallBusiness@dnr.state.wi.us) or by calling (608) 266–1959.

#### Environmental Analysis

The Department has made a preliminary determination that this action does not involve significant adverse environmental effects and does not need an environmental analysis under ch.

NR 150, Wis. Adm. Code. However, based on the comments received, the Department may prepare an environmental analysis before proceeding with the proposal. This environmental review document would summarize the Department’s consideration of the impacts of the proposal and reasonable alternatives.

#### Fiscal Estimate

##### *Anticipated private sector costs*

These rules do not have a significant fiscal effect on the private sector. Additionally, no significant costs are associated with compliance to these rules.

#### Copy of Proposed Rule, Submission of Written Comments, Agency Contact Person

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. Sumner Matteson, Bureau of Endangered Resources, P.O. Box 7921, Madison, WI 53707. Comments may be submitted until October 29, 2008. 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. Matteson.

### Notice of Hearing Natural Resources

*Fish, Game, etc., Chs. NR 1—  
EmR0824*

NOTICE IS HEREBY GIVEN that pursuant to ss. 29.014, 227.11 and 227.14, Stats., interpreting ss. 29.014, 29.041 and 29.885, Stats., the Department of Natural Resources will hold a public hearing on emergency rule, Order No. WM–18–08E, (EmR0824), revising Chapter NR 10, pertaining to the 2008 migratory game bird season. This emergency order took effect on August 30, 2008.

#### Hearing Information

The hearing will be held on:

<b>October 17, 2008</b> Friday at 2:00 p.m.	Room 408 DNR State Office Building 101 South Webster St. Madison (Entrance at the Webster Street doors only)
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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 Kent Van Horn at (608) 266–8841 with specific information on your request at least 10 days before the date of the scheduled hearing.

#### Analysis Prepared by Department of Natural Resources

##### *Statutes interpreted*

Sections 29.014, 29.041 and 29.885, Stats.

##### *Statutory authority*

Sections 29.014, 227.11 and 227.14, Stats.

### **Summary of rule**

This rule order establishes the season length and bag limits for the 2008 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 27 and continues for 60 consecutive days in the north, closing on November 25. In the South, the season begins at 9:00 a.m. on October 4 and continues through October 12, followed by a 5–day split, and then reopens on October 18 and continues through December 7. The special season for hunters age 12 through 15 will occur on September 20 and 21.

The daily bag limit is 6 ducks including no more than: 4 mallards, of which only one may be a hen, one black duck, one pintail, 3 wood ducks and 2 redheads. The daily bag limit may include 1 scaup except that from Oct. 18 to Nov. 6 in the north zone and Nov. 1 to Nov. 20 in the south zone the daily bag may include 2 scaup.

The USFWS has reduced the daily bag limit on scaup from 2 for the entire season to 1 for a portion of the season in response to a declining population trend from the 1970's until about 2001. Scaup are, however, still the third most abundant duck in continental surveys at 3.7 million. The Mississippi Flyway was given a scaup season of 60 days with 40 days at a 1 bird daily bag and 20 days at a 2 bird daily bag. Wisconsin had the option to pick where the 20 days with a 2 bird bag fall during the season.

This rule order does not allow the harvest of canvasback ducks which is a stipulation of the federal framework. The season closure is in response to a decrease in the canvasback breeding population. The reason for this decrease remains unanswered but may be due to over–flight to non–breeding areas because of dry conditions in the prairie region. The canvasback harvest in 2007 (125,000 nationwide) was only one–third of the number of birds that were projected could be safely harvested.

For Canada geese, the state is apportioned into 3 goose hunting zones: Horicon, Collins and Exterior. Other special goose management subzones within the Exterior Zone include Brown County, Burnett County, Rock Prairie and the Mississippi River. Season lengths are: Collins Zone – 67 days (three hunting periods, September 16 – October 5, October 6 – 26, October 27 – November 21); Horicon Zone – 92 days (2 hunting periods, first period beginning September 16 and the second on November 3); Exterior Zone in the northern duck zone – 85 days (Sept. 20 – Dec. 13); Exterior Zone in the southern duck zone – 85 days (Sept. 20 – Oct. 12 and Oct. 18 – Dec. 18) and Mississippi River subzone – 85 days (Oct. 4 – Oct. 12 and Oct. 18 – Jan. 1). The Burnett County subzone is closed to Canada goose hunting. 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 order adds ten days to the mourning dove season so that it extends to November 9 which is consistent with a new opportunity offered in the federal hunting season framework.

Finally, this rule corrects an inconsistency between the section that establishes shooting hours and the section that establishes when the hunting season begins. Both should indicate a 9:00 a.m. start on the first day of the duck season but the section on shooting hours incorrectly describes a 12:00 noon start.

### **Comparison with 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 (FWS) regulations process. As

part of the Federal rule process, the FWS 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 FWS believes that the NAWMP's population goals tend to exert a conservative influence on overall duck harvest–management, other factors such as habitat are considered.

In the past, the regular Canada goose season was based on the allowable Mississippi Valley Population (MVP) harvest and 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 will remain unchanged. Each state retains the flexibility to schedule the timing of their Canada goose season. In addition, if the MVP spring population numbers drop to a predetermined low level during the 5–year period, the stable season framework will be adjusted.

All proposed modifications included in this rule order are consistent with these parameters and guidelines which are annually established by the Fish and Wildlife Service in 50 CFR 20.

### **Comparison with 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 these states meet to discuss regulations and guidelines offered to the flyways by the FWS. 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. These variations fall within guidelines and sideboards established by the FWS.

### **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.

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 May and June, breeding waterfowl surveys and banding are conducted in support of the regulatory process.

In early July, staff conducted a public meeting to solicit input from interest groups, including representatives of the Conservation Congress Migratory Bird Committee. At this meeting staff provided the attendees with breeding status information and asked for any items that they wish the department to pursue at the MFC meeting in mid July. Department staff then attended the MFC Technical and Council meetings. At this meeting staff were provided status information and the proposed framework alternative from the USFWS. Department staff then worked with the other states

in our Flyway to discuss and develop proposals and recommendations that were voted upon by the MFC. Proposals that passed at the MFC meeting were forwarded to the USFWS for consideration by the Service Regulations Committee (SRC) at their meeting. The USFWS announced its final waterfowl season framework recommendation on August 1. Department staff summarized waterfowl status and regulation information for Wisconsin citizens and presented this information to the Migratory Committee of the Conservation Congress and at a public meeting (Post–Flyway Meeting) of interest groups and individuals in early August. Staff gathered public input at these meetings regarding citizen suggestions for the development of Wisconsin's waterfowl regulations given the federal framework. Public hearings were held in early August around the state to solicit additional input on the proposed annual waterfowl rule.

#### **Small Business Impact**

These rules do not have a significant fiscal effect on small businesses.

#### **Fiscal Estimate**

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.

#### **Copy of Proposed Rule, Submission of Written Comments, Agency Contact Person**

Written comments on the emergency rule may be submitted to Mr. Kent Van Horn, Bureau of Wildlife Management, P.O. Box 7921, Madison, WI 53707 no later than October 21, 2008. Written comments will have the same weight and effect as oral statements presented at the hearing. A copy of the emergency rule may be obtained from Mr. Van Horn.

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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.*

## Children and Families

(Formerly Health and Family Services)

### CR 07–102

A rule–making order revising Chapters HFS 45, 46 and 55, relating to child care centers.

## Children and Families

(Formerly Workforce Development)

### CR 08–066

A rule–making order revising Chapter DWD 40, relating to establishment of birth cost orders under the child support guidelines.

## Commerce

*Electrical, Ch. Comm 16*

### CR 08–047

A rule–making order revising Chapter Comm 16, relating to electrical construction.

## Commerce

*Uniform Dwelling, Chs. Comm 20–25*

### CR 08–043

A rule–making order revising Chapters Comm 20 to 25, relating to one– and 2–family dwelling construction.

## Commerce

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

*Plumbing, Chs. Comm 81–87*

### CR 08–055

A rule–making order revising Chapters Comm 62 and 81 to 84, relating to the design, installation or construction, inspection and maintenance of plumbing.

## Commerce

*Public Swimming Pools and Water Attractions,  
Ch. Comm 90*

### CR 08–056

A rule–making order revising Chapter Comm 90, relating to the design and construction of public swimming pools and water attractions.

## Corrections

### CR 08–045

A rule–making order revising section DOC 332.19, relating to the sex offender registration fee.

## Financial Institutions

*Securities*

### CR 08–077

A rule–making order revising Chapters DFI–Sec 1 to 9, 31, 32 and 35, relating to definitions, registration procedures and exemptions, registration of securities broker–dealers and investment advisers, fraudulent practices, general provisions, administrative procedure and forms, and franchise law disclosure document requirements.

## Health Services

(Formerly Health and Family Services)

*Community Services, Chs. HFS 30–*

### CR 07–095

A rule–making order revising Chapter HFS 83, relating to community–based residential facilities.

## Health Services

(Formerly Health and Family Services)

*Health, Chs. HFS 110–*

### CR 08–036

A rule–making order revising Chapter HFS 159, relating to asbestos.

## Health Services

(Formerly Health and Family Services)

*Health, Chs. HFS 110–*

### CR 08–042

A rule–making order revising Chapter HFS 129, relating to certification and training of nurse aides, home health aides, medication aides, feeding assistants, and hospice aides.

## Health Services

(Formerly Health and Family Services)

*Health, Chs. HFS 110–*

### CR 08–073

A rule–making order revising Chapters HFS 173, 175, 178, and 195 to 198, relating to tattooing and body piercing establishments, recreational and educational camps, campgrounds, hotels, motels, and tourist rooming houses, restaurants, bed and breakfast establishments and vending of food.

**Natural Resources***Fish, Game, etc., Chs. NR 1—***CR 08–061**

A rule–making order revising Chapter NR 10, relating to the 2008 migratory game bird seasons and waterfowl hunting zones.

**Natural Resources***Environmental Protection–Air Pollution Control,  
Chs. NR 400—***CR 04–023**

A rule–making order revising Chapters NR 406, 407, 421, 460, 463 and 484, relating to national emission standards for hazardous air pollutants (NESHAP) for facilities engaged in the secondary production of aluminum.

**Natural Resources***Environmental Protection–Air Pollution Control,  
Chs. NR 400—***CR 07–105**

A rule–making order revising Chapters NR 460 and 469, relating to national emission standards for hazardous air pollutants (NESHAP) for halogenated solvent cleaners for the NESHAP general provisions.

**Occupational Therapists Affiliated  
Credentialing Board****CR 08–050**

A rule–making order revising sections OT 1.02 and 4.04, relating to occupational therapist supervision of occupational therapy assistants.

**Public Instruction****CR 08–044**

A rule–making order revising Chapter PI 37, relating to grants for national teacher certification and master educator licensure.

**Transportation****CR 08–058**

A rule–making order revising Chapter Trans 263, relating to multiple trip overweight permits for vehicles transporting granular roofing materials.

**Transportation****CR 08–072**

A rule–making order revising Chapter Trans 117, relating to the occupational licensing program.

**Workforce Development***Unemployment Insurance, Chs. DWD 100–150***CR 08–059**

A rule–making order revising Chapter DWD 136, relating to wages exempt from unemployment insurance levy.

**Workforce Development***Labor Standards, Chs. DWD 270–279***CR 08–069**

A rule–making order revising Chapter DWD 272, relating to minimum wages.

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## Rule Orders Filed with the Legislative Reference Bureau

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

### **Commerce**

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

#### **CR 08-037**

Revises Chapter Comm 131, relating to diesel truck idling reduction grants.  
Effective 11-1-08.

### **Financial Institutions**

*Corporate and Consumer Services*

#### **CR 08-041**

Creates Chapter DFI-CCS 20, relating to video service franchise.  
Effective 10-1-08.

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