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Emergency Rules Now in Effect

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

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

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

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

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

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

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

Agriculture, Trade & 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

Uniform Dwelling, Chs. Comm 20–25

Wisconsin Commercial Building Code, Chs. Comm 60–66

EmR0826 – Rules adopted to **renumber s. Comm 66.0911; to amend s. Comm 20.24 (1) and (2); and to create ss. Comm 21.095, 20.24 Table 20.24–14, 62.1200, 62.3500 (3) (e), 66.0911 (title) and (2)**, relating to carbon monoxide alarms and affecting small business.

Exemption From Finding of Emergency

Under the nonstatutory provisions of 2007 Wisconsin Act 205, the Department of Commerce is 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, neither the department of commerce or the department of health services is 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 installation and maintenance of carbon monoxide alarms in buildings accommodating certain types of residential occupancies and within which fuel burning appliances are located. Residential occupancies

include tourist rooming houses, bed and breakfast establishments, and any public building that is used for sleeping or lodging, such as, hotels, motels, condominiums, apartment buildings, dormitories, fraternities, sororities, convents, seminaries, community based residential facilities, home shelters, but not hospitals and nursing homes. The Act requires the installation of carbon monoxide alarms in new buildings as of October 1, 2008. The owners of existing buildings will have until April 1, 2010 to install the carbon monoxide alarms. The Act also provides for the omission of carbon monoxide alarms in certain instances which are further clarified by the administrative rules.

Publication Date: September 10, 2008
Effective Date: October 1, 2008
Expiration Date: February 28, 2009
Hearing Date: October 14, 2008

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

Commerce (2)

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

- 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.

- 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

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

Financial Institutions – Securities

EmR0829 – Rules adopted to **amend s. DFI–Sec 4.06 (2) (i) and to create ss. DFI–Sec 4.06 (1) (v), 5.06 (14) and Chapter DFI–Sec 10**, relating to making it a dishonest or unethical practice for securities licensees to make use of

misleading designations or certifications purporting to demonstrate special expertise in the financial or retirement needs of seniors.

Finding of Emergency

The Division of Securities of the Department of Financial Institutions for the State of Wisconsin finds that an emergency exists and that the rules are necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency follows:

The Division is taking immediate, emergency–rule action to protect seniors in Wisconsin from being misled through the use by securities licensees of designations and credentials that imply or represent that a person has special expertise, certification, or training in financial planning for seniors, but where such designations and/or credentials are either non–existent or do not involve significant education, testing, training or experience, and in reality are marketing ploys.

Publication Date: September 15, 2008
Effective Date: September 15, 2008
Expiration Date: February 12, 2009

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

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

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

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

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

- 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

- 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

Regulation and Licensing (4)

- 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

- 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

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

Exemption From Finding of Emergency

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

Publication Date: September 10, 2008
Effective Date: September 10, 2008
Expiration Date: February 7, 2009

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

Exemption From Finding of Emergency

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

Publication Date: September 10, 2008
Effective Date: September 10, 2008
Expiration Date: February 7, 2009

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.

Transportation

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

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

Scope Statements

Corrections

Subject

Amends Chapter DOC 303, relating to the discipline of inmates for violation of prison rules and regulations.

Objective of the Rule

The objective of the rule is to amend the rule to review and revise the listing of offenses, penalties and sanctions resulting from violating rules of conduct, and procedures for imposing discipline on inmates.

Policy Analysis

The current rule chapter provides in detail a listing of offenses for which an inmate may be disciplined. In addition, the current rule sets forth the penalties and sanctions which an inmate may receive if found guilty of a violation. Finally, the current rule establishes certain procedures to be followed before discipline can be imposed.

The current rule has not been reviewed or revised since 2001. The Department seeks to revise the rule chapter to reflect changes based on case law and practice. In addition, the listing of offenses needs to be expanded to better define the conduct for which inmates may be disciplined. Finally, there is a need to review and revise the due process procedures to make the procedures more efficient.

There is no alternative means to address the need for revisions as discussed above.

Statutory Authority

Sections 227.11 (2), 301.02, and 301.03 (2), Stats.

Entities Affected by the Rule

This rule will affect inmates and Department staff.

Comparison with Federal Regulations

There are no existing or proposed federal regulations which specifically address the discipline of state prison inmates. However, the Americans with Disabilities Act and the Prison Rape Elimination Act may affect department policies and procedures, concerning the discipline of state inmates.

Estimate of Time Needed to Develop the Rule

The Department estimates that it will take approximately 500 hours to develop this rule, including drafting the rule and complying with rulemaking requirements.

Corrections

Subject

Amends sections DOC 306.10, 306.11, and Chapter DOC 311, and creates section DOC 311.17, relating to authorizing the use of medical restraints on inmates.

Objective of the Rule

To establish procedures for the use of restraints on certain inmates if authorized by a department health care professional.

Policy Analysis

Sections DOC 306.10 and DOC 306.11 address a procedure for the use of mechanical restraints when transporting inmates or when there is a need to immobilize an inmate. There is no rule provision for the use of restraints for medical reasons when authorized by a health care professional. The creation of the new rule will clarify the procedures to be followed when restraints are medically required.

The department currently uses medical restraints when a health care professional orders them. It does not follow the procedures under s. DOC 306.11 since that section applies to security issues as determined by security personnel. This rule will clarify the distinction among restraints under ss. DOC 306.10 and 306.11 and medical restraints. There is no alternative means to address the need for revisions as discussed above.

Statutory Authority

Sections 227.11 (2), 301.02, and 301.03 (2), Stats.

Entities Affected by the Rule

This rule will affect inmates, department staff, health care providers, guardians, and guardians ad litem.

Comparison with Federal Regulations

There are no existing or proposed federal regulations which address the use of medical restraints in state prisons.

Estimate of Time Needed to Develop the Rule

The Department estimates that it will take approximately 100 hours to develop this rule, including drafting the rule and complying with rulemaking requirements.

Corrections

Subject

Amends Chapter DOC 328 relating to changes in statutory law, changes in the operations and practices of supervising persons on probation, parole, or extended supervision, and establishing a procedure for imposing as a condition of supervision compliance with prescribed medications.

Objective of the Rule

The objective of the rule is to amend the rule to reflect a number of changes in the law, including truth in sentencing, and changes in the operations and practices of supervising persons on probation, parole, or extended supervision and to establish a procedure for imposing as a condition of supervision compliance with prescribed medications.

Policy Analysis

The current rule chapter provides in detail the supervision of persons on probation and parole. However, the rule chapter has not been fully reviewed for revision since the passage of Wisconsin's Truth in Sentencing law in 1998. There have been further statutory amendments and case law developments which have resulted in the need to modify the Department's administrative code chapter on community supervision. For example, the chapter does not refer to

extended supervision which is the community supervision component of a bifurcated sentence under Truth in Sentencing. Thus, there has been confusion as to the applicability of the rule chapter to persons on extended supervision. In addition, the Department has amended other rule chapters to reflect new program responsibilities in the supervision of sex offenders, but had not amended chapter DOC 328. Further, the Department has over time changed verbiage, which is not consistently reflected in the current rule. (For example, the Department refers to persons under community supervision as offenders, not clients. There have been some amendments to the rule chapter which created new sections which use the term “offender” but there other sections in which the term “client” is used.) Finally, the Department anticipates establishing a procedure for imposing as a condition of supervision compliance with prescribed medications.

There is no alternative means to address the need for revisions as discussed above.

Statutory Authority

Sections 227.11 (2), 301.02, 301.03 (2), and 302.11 (8), Stats.

Entities Affected by the Rule

This rule will affect persons on probation, parole, or extended supervision, and Department staff.

Comparison with Federal Regulations

There are no federal regulations which address the supervision of persons on community supervision for violations of Wisconsin criminal statutes. However, under 4 USCA section 112, Congress has authorized the Interstate Corrections Compact which Wisconsin adopted and is found in s. 302.25, Wis. Stats. The ICC permits participating states to cooperate among themselves in the supervision of inmates and offenders.

Estimate of Time Needed to Develop the Rule

The Department estimates that it will take approximately 100 hours to develop this rule, including drafting the rule and complying with rulemaking requirements.

Corrections

Subject

Amends Chapter DOC 331, relating to changes in statutory law and the operations and practices of supervising persons on probation, parole, or extended supervision.

Objective of the Rule

The objective of the rule is to amend the rule to reflect a number of changes in the law, including truth in sentencing and changes in the operations and practices of supervising persons on probation, parole, or extended supervision.

Policy Analysis

The current rule chapter provides in detail the procedure for the revocation of the community supervision of persons on probation and parole. However, the rule chapter has not been fully reviewed for revision for a number of years, resulting in its not reflecting current statutory provisions, including Wisconsin’s Truth in Sentencing law or Sexual Predator law. For example, the chapter does not refer to extended supervision which is the community supervision component of a bifurcated sentence under Truth in Sentencing. Thus, there has been confusion as to the applicability of the rule

chapter to the revocation of the supervision of persons on extended supervision. There have been additional statutory amendments and case law developments which have resulted in the need to modify the Department’s administrative code chapter on revocation procedures. The Department has over time changed verbiage, which is not consistently reflected in the current rule. (For example, the Department refers to persons under community supervision as offenders, not clients.)

There is no alternative means to address the need for revisions as discussed above.

Statutory Authority

Sections 227.11 (2), 301.02, 301.03 (2), and 302.11 (8), Stats.

Entities Affected by the Rule

This rule will affect persons on probation, parole, or extended supervision, Department staff, division of hearing and appeals staff, the courts, district attorneys and defense attorneys.

Comparison with Federal Regulations

There are no federal regulations which address the procedures for the revocation of the supervision of persons on community supervision for violations of Wisconsin criminal statutes.

Estimate of Time Needed to Develop the Rule

The Department estimates that it will take approximately 100 hours to develop this rule, including drafting the rule and complying with rulemaking requirements.

Corrections

Subject

Repeals and recreates Chapter DOC 346 (Secure Detention for Juveniles), relating to the elimination of outdated provisions; clarification of language; updates citations to statutes for accuracy; clarifies requirements for secure detention facilities and juvenile portions of a county jail; and renumbers and reorganizes the chapter.

Objective of the Rule

The objective of the rule is to:

- Bring the rule chapter into conformity with ch. 938, Juvenile Justice Code;
- Bring the rules into conformity with the federal Juvenile Justice and Delinquency Prevention Act;
- Clarify the requirements for juvenile portions of county jails; and
- Reorganize and renumber the chapter.

Policy Analysis

Chapter DOC 346 establishes minimum standards for juvenile detention facilities and juvenile portions of county jail consistent with the federal Juvenile Justice and Delinquency Act. The rule will:

- Correct statutory references to ch. 938;
- Define the term “juvenile” and clarify age and eligibility requirements for detention in a secure detention facility and juvenile portion of a county jail;
- Update references to the current federal act and regulations;
- Clarify the use of a juvenile portion of a county jail;

- Review the ratio of staff to incarcerated individuals for staff responsible for supervising juveniles in a juvenile portion of a county jail;
- Make programmatic distinctions between secure detention facilities and juvenile portions of a county jail;
- Clarify the requirements for the observation of juveniles;
- Clarify mandatory staff training subjects;
- Require that facilities include a section on searches in the operational plan;
- Clarify the process for the department's review and approval of county construction plans;
- Require space for storage and classrooms for new or substantially remodeled facilities;
- Establish a minimum space requirement for outdoor recreation, if outdoor recreation is provided; and
- Reorganize and renumber chapter DOC 346.

The alternatives to the proposed policy would result in not updating and clarifying existing rule provisions.

Statutory Authority

Sections 227.11 (2), 301.36 and 301.37, Stats.

Entities Affected by the Rule

The rule affects juveniles, county entities, including county juvenile facilities (juvenile detention facilities and juvenile portions of a county jail), and staff.

Comparison with Federal Regulations

Wisconsin opted to come into compliance with the federal Juvenile Justice and Delinquency Act (JJJPA), 42 USC 5601, et seq., and the implementing regulations (28 CFR Part 31), thereby making certain funds under the Act available to Wisconsin counties. In 1990 the federal Office of Juvenile Justice and Delinquency Prevention approved Wisconsin's Revised Jail Removal Plan. This plan permitted an exception to the JJJPA provision prohibiting co-location of juveniles in adult jails. In order to come into compliance with the JJJPA and the Wisconsin Jail Removal Plan, the Department of Corrections revised chapter DOC 346, Wis. Adm. Code, which governs juvenile detention facilities, in 1992 and 1994. The level of compliance with the JJJPA may affect the level of funding available to Wisconsin.

In general the JJJPA and its regulations generally prohibit sight and sound contact between juveniles and adults. A facility may achieve sight and sound separation through architectural or procedural means. Sight or sound contact is permitted if it is both brief and inadvertent or accidental. Contacts must be reported as violations of the JJJPA. The JJJPA permits the transfer or placement of adjudicated delinquents in adult facilities once the juvenile has attained the age of full criminal responsibility under State law (17 years of age for Wisconsin). (42 USC 5633 (a) (11), (12), and (13))

The JJJPA also regulates co-located facilities, that is, adult and juvenile facilities which are in the same building complex. The JJJPA requires sight and sound separation of juveniles and adults through architectural or procedural means. (42 USC 5633 (a) (11), (12), and (13))

The JJJPA also limits the amount of time that a juvenile may be held in an adult jail or lockup. (42 USC 5633 (a) (11), (12), and (13))

Estimate of Time Needed to Develop the Rule

The Department estimates that it will take approximately 100 hours to develop this rule, including drafting the rule and complying with rulemaking requirements.

Natural Resources

Fish, Game, etc., Chs. NR 1—

Subject

Revises Chapter NR 47, relating to the control of invasive plants in weed management areas.

Objective of the Rule

The 2007–09 Biennial Budget (2007 Wis. Act 20) authorizes and requires the creation of rules for weed management groups to control invasive plants in weed management areas.

The grant program would provide grants to groups of interested parties for the control of plants in designated weed management areas. At least \$60,000 annually will be appropriated through the Wisconsin Forest Landowner Grant Program to weed management areas.

Policy Analysis

The Department has been directed in 2007 Wis. Act 20 to promulgate rules to implement and administer a weed management group grant program. Rule development will include:

- Developing a system to implement and administer the program: 2007 Wis. Act 20 requires the rule do the following:
 1. Determine the amount of a matching contribution.
 2. Develop minimum standards for the program.
 3. Establish eligibility requirements for groups receiving grants in weed management areas.
 4. Establish eligibility requirements for the grants.
 5. Establish eligibility requirements for weed management areas.
- Evaluating option for requiring maintenance of practices.
- Establishing a system for record keeping.
- Establish a grant application time frame and process.
- Evaluating whether rules should be consistent with related programs (Wisconsin Forest Landowner Grant Program).
- Investigating systems for monitoring and/or auditing by the Department.

Statutory Authority

Section 26.38, Stats.

Entities Affected by the Rule

- Any party wishing to apply for a grant from the DNR to control invasive plants.
- Any organized landowner groups wishing to apply for a grant.
- Any conservation organization interested in the control of invasive species.
- Federal, state and local agencies interested in the control of invasive species.
- Any citizen interested in the effects that the spread of invasive species has on the states natural resources.
- Any cooperating forester, restoration/landscape consultant, or farm coops that may be hired to do invasive species control.

Comparison with Federal Regulations

There are no known federal rules which apply to the creation of a grant program for the control of plants in designated weed management areas a grant program for the control of plants in designated weed management areas weed management.

Estimate of Time Needed to Develop the Rule

The Department estimates that approximately 155 hours of existing staff time will be needed to develop this rule. This time includes collecting public input at listening sessions, drafting the rule, taking the rule to public hearings, preparation with the Natural Resource Board, legislative review, and rule adoption.

Agency Contact Person

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Natural Resources

*Environmental Protection – General, Chs. NR 100—
Environmental Protection – Wis. Pollutant Discharge
Elimination System, Chs. NR 200—*

Subject

This is an amended scope statement relating to development of additions to Chapters NR 102 and 104, to incorporate nutrient water quality criteria for lakes and streams; and to Chapters NR 106 and 216, to incorporate provisions for developing nutrient criteria-based water quality based effluent limits.

This amended scope statement is a result of discussions during the first meeting of an external advisory committee where there was a strong preference expressed by a number of committee members to also address procedures for developing nutrient criteria-based effluent limits for municipal and industrial wastewater treatment plants and municipal storm water discharges.

Objective of the Rule

To address nuisance algae and aquatic weed problems in lakes and low oxygen stress to fish and other aquatic life streams, the U. S. Environmental Protection Agency (EPA) is requiring all states, including Wisconsin, to adopt nutrient (phosphorus and nitrogen) criteria as part of its water quality standards. EPA's guidance identifies values for principally four "coregions" in the state, the northern forested areas, a west to east central zone, the driftless area and the southeastern quarter of the state. It also calls for adoption of "causal" pollutants, phosphorus and nitrogen, and "response" problems, algal biomass and high turbidity. EPA's guidance is based on the lowest 25th percentile of available data for each region, including data from other states. If EPA's approach were used, inevitably 75 percent of the lakes or streams – regardless of the actual conditions in the water – would be considered as not meeting water quality standards and would need to be placed on the state's 303(d) impaired waters list.

The specific water quality standards criteria would be placed in Ch. NR 102 while lake or stream-specific criteria,

if any, would be placed in Ch. NR 104. Upon adoption, the criteria will be used to:

- Develop nutrient water quality based municipal and industrial WPDES permit effluent limits;
- Identify impaired waters under s. 303(d) of the Clean Water Act;
- Further identify watersheds where nonpoint source controls, including performance standards and prohibitions, are most needed; and
- Develop Total Maximum Daily Load (TMDL) allocations.

The procedures for developing water quality based effluent limits using the criteria would be placed in Ch. NR 106 for municipal and industrial wastewater treatment plants and in Ch. NR 216 for municipal storm water discharges.

Policy Analysis

EPA provides a number of options to the states. States may adopt nutrient criteria based on:

- EPA's guidance values (based on the 25th percentile of available data for multi-state eco-regions);
- The 25th percentile of available data for the state;
- The 75th percentile of conditions found in good quality lakes and streams; deemed as "least-impacted" reference conditions in EPA guidance; or
- Analyses of effects found on the fish and aquatic life in the state's lakes and streams.

Also, states may adopt criteria:

- Uniformly applicable across the state;
- Varying by geographic regions determined by the state; or
- Varying by EPA's ecoregions.

Finally, Department staff anticipates that EPA may accept promulgation on only phosphorus criteria instead of the suite of parameters (phosphorus, nitrogen, algal biomass and turbidity) identified in federal guidance.

If the state chooses to vary from EPA's guidance, the state must justify its approach to EPA. If the state chooses to not adopt nutrient criteria or if EPA finds the state's approach unacceptable, EPA may "over-promulgate" its own criteria (described above) for the state. EPA may "over-promulgate" as soon as 2008.

To date, EPA has not issued nutrient criteria guidance for the Great Lakes and their nearshore waters, including bays and harbors. In addition to adopting criteria for inland lakes and streams, criteria could be developed for these interstate waters. EPA also recommends that the criteria take into account the quality of downstream waters, including the Gulf of Mexico since nutrients, especially nitrogen, flow with the water and may cause water quality problems long distances from their source. Beyond use of the 25th percentile of available nitrogen data, EPA has not provided guidance on how to take into account the hypoxic (very low oxygen) conditions of the Gulf.

To better address the options listed above the Department requested researchers from the Department's Integrated Science Services Division and the U. S. Geological Survey (Department of Interior) to study Wisconsin streams and rivers. One study reports was published in 2006 and the second will be published in 2008. The first report evaluates 250 small and medium sized streams. The second report dealing with over 30 large streams and rivers will be completed late this year. The Department intends to use the results of these two reports, related study reports from

Minnesota and Michigan and past Department studies to develop and recommend criteria that are specific to Wisconsin's lakes and streams.

Statutory Authority

Sections 227.11 (2), 281.15, 282.001, 283.13 (5) and 283.33, Stats.

Entities Affected by the Rule

Either directly or indirectly, the nutrient criteria will likely affect the majority of point sources and urban and rural nonpoint sources. The number and extent that will be affected will depend on the values promulgated.

For municipal and industrial point sources, the nutrient criteria may require phosphorus removal for dischargers below the Ch. NR 217, Wis. Adm. Code, phosphorus effluent limits threshold levels. It may also require lower limits for those with either 1 mg/l or alternate limits under Ch. NR 217. At the same time, there will be a group of point source dischargers unaffected by the rule. Again, the number and the extent of any additional point source limits cannot be determined at this time.

Nutrient criteria will likely result in some additional lakes or streams being added to the section 303(d) Clean Water Act impaired waters list. TMDLs for these waters will identify the need for nutrient control from agricultural and urban nonpoint sources in watersheds draining to the impaired waters. In many situations, installation of best management practices to meet the required nonpoint source performance standards and prohibitions will be sufficient to attain and maintain the nutrient criteria. In those situations, no additional nonpoint source control is needed. In other situations, where the nonpoint source performance standards and prohibitions are insufficient, the result of this rule will be additional nonpoint source controls.

Comparison with Federal Regulations

In 2000, EPA promulgated nutrient criteria guidance for both lakes and streams and set a promulgation deadline of the end of 2004. For states choosing to conduct applicable studies, EPA has extended that deadline for states an additional three years. The estimated time needed to develop the rule may extend somewhat beyond EPA's extended schedule.

As briefly described above in the Subject/Objective section of the scope statement, states have the option to directly promulgate EPA's guidance values as criteria or to develop and justify reference or effects-based values as criteria for lakes and streams.

Estimate of Time Needed to Develop the Rule

Staff estimates that 20 to 30 months are needed to complete promulgation of the nutrient criteria for lakes and streams. An updated target for completion of the promulgation process is late 2008 to early 2009. Due to the complexity of the issue, a Department work group will need to review both recent and past studies, evaluate other pertinent data, and analyze implementation issues. After the work group process has sufficiently advanced, an external advisory group will be convened. Public hearings should be held in late-summer to fall of 2008. Overall, it is estimated that approximately 2000 hours in staff time will be needed for the various steps in this process.

Agency Contact Person

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Natural Resources

*Environmental Protection – General, Chs. NR 100—
Environmental Protection – Water Supply, Chs. NR 800—*

Subject

Revises Chapters NR 121, 142, 811 and 820, and creates Chapter NR 143, relating to the Great Lakes–St. Lawrence River Basin Water Resources Compact.

Objective of the Rule

On May 27, 2008 the Great Lakes–St. Lawrence River Basin Water Resources Compact (Compact) and implementing legislation was enacted in Wisconsin. This Act creates a water quantity management program with:

- Statewide monitoring and planning elements
- Water use project review standards and regulatory requirements specific only to users within or adjacent to the Great Lakes Basin,
- A tiered statewide water conservation program, and
- A prohibition against diversions out of the Great Lakes Basin with a process for limited exceptions for communities that straddle the basin boundary or are in counties that straddle the basin boundary.

The proposed set of rules will encompass specific statutory directives to DNR as well as rules that are necessary for or will assist in the implementation of provisions of Act 227. Included will be rules related to statewide registration and reporting of water withdrawals, calculating water loss from consumptive uses, the development of water withdrawal baselines in the Great Lakes Basin and for existing transfers of water out of the Great Lakes Basin, management of water withdrawals in the Great Lakes Basin including a water use permit program and decision making standards for new and increased withdrawals, management of transfers of water from the Great Lakes Basin to outside of the Great Lakes Basin including the application requirements and review criteria, creating a tiered statewide water conservation program, statewide water supply service area planning for municipalities serving populations greater than 10,000 people, a statewide water use report, and other rules as necessary to implement Act 227.

Policy Analysis

2007 Act 227 ratified the Compact in Wisconsin and expanded the state's authority to manage water quantity statewide and in the Great Lakes Basin. All Great Lake states and US Congress must ratify the Compact before it becomes legally binding. Specifically the law provides for a means of collecting information on water withdrawal (through registration and reporting), regulating those withdrawals in the Great Lakes Basin (through a water use permit that establishes the baseline withdrawal), managing new or increased withdrawals in the Great Lakes Basin by evaluating significant proposals for environmental impacts against a decision making standard, and specifies creating a water

conservation program that will be used in decision making criteria for new or increased withdrawals, and applications for transfers of water out of the Great Lakes basin. The proposed set of rules will address all of these elements of the implementing legislation.

Act 227 also creates a new water supply service area planning requirement for water communities with water utilities serving greater than 10,000 people recognizing the importance of cooperative long term planning for water supply while also accounting for the potential environmental impacts of withdrawals for water supply. The Act requires the implementation of a tiered water conservation and efficiency program, an element of the Compact identified as critical to protecting the long term viability of the Great Lakes. The proposed set of rules will address the requirements for an approved water supply service area plan and the water conservation program. The proposed set of rules may also make changes to Ch. NR 142 that also addresses Great Lakes water quantity management.

Statutory Authority

Sections 281.343, 281.344, 281.346, and 281.348, Stats.

Entities Affected by the Rule

All water withdrawers with the capacity to pump, or otherwise withdraw water, and that are using, more than 100,000 gallons per day are subject to provisions of Act 227. As volumes of withdrawals increase, the requirements for the withdrawer will increase as will the impacts from the proposed set of rules. The proposed set of rules is likely to be of particular interest to water withdrawers such as municipal water utilities, industrial users and agricultural interests. The proposed set of rules will also interest citizens and groups concerned with the Great Lakes waters.

Comparison with Federal Regulations

There are no comparable federal requirements pertaining to water quantity management in the Great Lakes Basin. Existing federal regulations address the transfer of water out of the Great Lakes Basin in the Water Resources Development Act, 42 USC 1962d–20. The Compact was specifically negotiated to address weaknesses in the federal law and this federal law is anticipated to be repealed if the US Congress consents to the Compact. However, nothing in Act 227 contradicts 42 USC 1962d–20.

Estimate of Time Needed to Develop the Rule

4,000 hours

Agency Contact Person

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Transportation

Subject

Amends Chapter Trans 100 to resolve circular logic of some statutory provisions in Chapter 344, Stats., related to license reinstatement.

Policy Analysis

1. Resolve statutory ambiguity.

DOJ has recommended that DOT amend Ch. Trans 100 to deal with an ambiguity/inconsistency in Ch. 344, Stats. The Department has always interpreted s. 343.44. Section 344.27(3), Stats., provides that "If the judgment debtor fails to pay any installment as specified by such order, the secretary, upon notice of such default, shall immediately suspend the operating privilege and registrations of the judgment debtor until such judgment is satisfied as provided in s. 344.26." DMV has always interpreted this provision as requiring the judgment be satisfied before it can release any damage judgment suspension that was temporarily lifted because of a court order if the suspension was reinstated because the judgment debtor didn't meet the requirements of the court order.

In a recent Milwaukee case, Milwaukee Circuit Court case 08–CV–4834, involving a driver named Anthony Lee, Wisconsin Legal Action suggested that another avenue is available to debtors besides satisfying the judgment: reaching an agreement with the judgment creditor. WisDOT initially rejected this approach, but in carefully reviewing the statute and in consultation with the Department of Justice, concluded that some circular logic in a number of other statutes made Mr. Lee's argument at least tenable. In as much as the only persons really affected by Mr. Lee's potential reinstatement are the judgment creditor and judgment debtor, and they are in agreement in permitting reinstatement, DMV saw no benefit in litigation over this point and has made Mr. Lee eligible to apply for reinstatement based on his agreement with the judgment creditor.

This rule making would permit DMV to allow other judgment debtors and creditors the same opportunity. At the same time, DMV would limit the extent or number of times this would be done to prevent a never-ending circle of court-ordered and debtor-creditor agreements from being filed, increasing DOT workload, and undermining the purpose of the statute.

2. Self-insurance requirements.

WisDOT's Risk Management Section recommends that the rules regarding self-insurance be amended to exclude intangible assets such as goodwill or a franchise from consideration when determining whether a self-insurance applicant has the financial capacity to pay losses due to accidents. It also recommends that WisDOT require that any self-insurer have an accounting system, that it track claims, that it encumber and reserve funds for claims, and that it be able to investigate accidents. WisDOT will consider amending the rules for self-insurers consistent with these recommendations.

Since the last changes to Ch. Trans 100, WisDOT has encountered entities that technically have insurance but whose insurance policies have extremely high deductibles (\$500,000, for example). WisDOT will consider whether a company with deductibles over a certain level should be required to file self-insurance documentation to establish their capacity to pay claims up to the level of their deductibles.

Because self-insurance applications require so much additional review effort by the department, WisDOT will consider whether to establish an application fee for self-insurers that will cover the costs to the agency of accepting and reviewing self-insurance applications.

3. Review provisions.

Review the provisions of s. Trans 100.09, proof of operating without permission, to improve the readability of the section and maintain consistency with the Court of Appeals decision in *Plevin v. DOT*, 2003 WI App 211.

Statutory Authority

Sections 85.16 (1), 227.11 and 343.02, Stats.

Entities Affected by the Rule

Insurance companies.

Comparison with Federal Regulations

None.

Estimate of Time Needed to Develop the Rule

50 hours

Submittal of Rules to Legislative Council Clearinghouse

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

Administration

CR 08–084

On September 3, 2008, the Wisconsin Department of Administration and the Electronic Recording Council of Wisconsin submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed order creates Chapter Adm 70, relating to electronic recording of documents.

Agency Procedure for Promulgation

A public hearing is required and will be scheduled at a later time. The Department's Office of Legal Counsel, in coordination with the Electronic Recording Council of Wisconsin is primarily responsible for the promulgation of the proposed rule.

Contact Information

If you have questions regarding the proposed rule order, please contact:

Donna Sorenson
Department of Administration
101 E. Wilson Street, 10th Floor
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E-Mail: Donna.Sorenson@Wisconsin.gov

Agriculture, Trade and Consumer Protection

CR 08–090

On September 11, 2008, the Department of Agriculture, Trade and Consumer Services submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed order revises Chapter ATPC 30, relating to pesticide product restrictions; atrazine pesticides.

Agency Procedure for Promulgation

A public hearing is scheduled for October 23, 2008. The Department's Division of Agricultural Resource Management is primarily responsible for the rule.

Contact Information

If you have questions, you may contact Rick Graham at 608–224–4502.

Commerce

Uniform Dwelling, Chs. Comm 20–25 Wisconsin Commercial Building Code, Chs. Comm 60–66 CR 08–085

On September 4, 2008, the Department of Commerce submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed order revises sections Comm 21.095 and 62.1200, relating to carbon monoxide alarms.

Agency Procedure for Promulgation

A public hearing is scheduled for October 14, 2008. The Division of Safety and Buildings is responsible for promulgation of the proposed rules.

Contact Information

James Quast, Program Manager
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jim.quast@wisconsin.gov

Marriage and Family Therapy, Professional Counseling and Social Work Examining Board CR 08–088

On September 8, 2008, the Department of Regulation and Licensing submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed order revises sections MPSW 11.01, 12.01 and 14.01, relating to supervised practice, training licenses and academic programs for professional counselors.

Agency Procedure for Promulgation

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

Contact Information

Pamela Haack, Paralegal
Office of Legal Counsel
608–266–0495
Pamela.haack@drl.state.wi.us

Marriage and Family Therapy, Professional Counseling and Social Work Examining Board CR 08–089

On September 8, 2008, the Department of Regulation and Licensing submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed order revises sections MPSW 3.09 and 3.13, relating to practice hours and internship for social workers.

Agency Procedure for Promulgation

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

Contact Information

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Natural Resources***Fish, Game, etc., Chs. NR 1—
CR 08-091***

On September 16, 2008, the Department of Natural Resources submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed order revises Chapter NR 47, subch. IX, relating to the gypsy moth suppression program.

Agency Procedure for Promulgation

A public hearing is scheduled for October 14, 2008. The Bureau of Forest Science, DNR Division of Forestry is responsible for promulgation of the rules.

Contact Information

Dr. Andrea Diss-Torrance
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Regulation and Licensing**CR 08-086**

On September 8, 2008, the Department of Regulation and Licensing submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed order revises section RL 91.01, relating to training and proficiency in the use of automated external defibrillators for licensure as a licensed midwife.

Agency Procedure for Promulgation

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

Contact Information

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Regulation and Licensing**CR 08-087**

On September 8, 2008, the Department of Regulation and Licensing submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed order revises sections RL 180.02 and 181.01, relating to training and proficiency in the use of automated external defibrillators for certification as a massage therapist or bodyworker.

Agency Procedure for Promulgation

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

Contact Information

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Rule–Making Notices

Notice of Hearing

Agriculture, Trade and Consumer Protection

CR 08–090

The Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) announces that it will hold a public hearing on rules revising Chapter ATCP 30, relating to expanding and joining two current atrazine prohibition areas near Poynette in Columbia County.

Hearing Information

DATCP will hold the public hearing at the time and location shown below.

<u>Date and Time</u>	<u>Location</u>
October 23, 2008	MacKenzie Environmental
Thursday	Center
3:00 p.m. to 5:00 p.m. and	Badger Den Conference Rm.
6:00 p.m. to 8:00 p.m.	W7303 Co. Hwy CS
	Poynette, WI 53955

Hearing impaired persons may request an interpreter for these hearings. Please make reservations for a hearing interpreter by October 16, by writing to Claire Fried, Division of Agricultural Resource Management, P.O. Box 8911, Madison, WI 53708–8911, Claire.Fried@wisconsin.gov, telephone (608) 224–4523. Alternatively, you may contact the DATCP TDD at (608) 224–5058. Handicap access is available at the hearings.

Analysis Prepared by the Department of Agriculture, Trade and Consumer Protection

In order to protect Wisconsin groundwater, the Department of Agriculture, Trade and Consumer Protection (“DATCP”) administers rules that limit atrazine herbicide application rates throughout the state, and prohibit atrazine applications in areas where groundwater contamination levels attain or exceed state enforcement standards adopted by the Department of Natural Resources. Based on new groundwater test data, this rule will expand and join two current atrazine prohibition areas in Columbia County.

Statutes interpreted

Sections 94.69, 160.19 (2), and 160.21 (1), Stats.

Statutory authority

Sections 93.07 (1), 94.69 (1), 160.19 (2), and 160.21 (1), Stats.

Explanation of statutory authority

DATCP has broad authority, under s. 93.07(1), Stats., to adopt rules to implement programs under its jurisdiction. DATCP has authority to adopt pesticide rules under s. 94.69(1), Stats. Under ss. 160.19(2) and 160.21(1), Stats., DATCP must regulate pesticide use, as necessary, to prevent groundwater contamination and restore groundwater quality.

Related rules or statutes

Under the state groundwater law, ch. 160, Stats., DATCP must regulate pesticide use as necessary to prevent groundwater contamination and restore groundwater quality. DATCP has adopted general rules for its groundwater protection program under ch. ATCP 31, Wis. Adm. Code.

DNR has adopted groundwater enforcement standards and preventive action limits for atrazine and its metabolites under NR 140, Wis. Adm. Code.

This rule is consistent with the state groundwater law (ch. 160, Stats.) and DATCP’s general groundwater protection rules (ATCP 31), and is designed to attain compliance with the groundwater enforcement standards and preventive action limits specified by DNR rules (NR 140).

Background

Atrazine is a widely used agricultural herbicide that has been found in groundwater throughout the state. Current DATCP rules under ch. ATCP 30, Wis. Adm. Code, limit atrazine application rates throughout the state to ½ the current federal label rate. The current rules also *prohibit* the use of atrazine where atrazine contamination of groundwater has attained or exceeded the state groundwater enforcement standard under ch. NR 140, Wis. Adm. Code. Current rules prohibit atrazine use in 102 designated areas, including major prohibition areas in the lower Wisconsin River Valley and much of Dane and Columbia counties.

Rule content

Based on new groundwater sampling data, this rule expands and joins two current atrazine prohibition areas in Columbia County. The expansion will increase the total statewide acreage of atrazine prohibition areas by approximately 1,830 acres. By joining two prohibition areas, this rule will reduce the total number of prohibition areas from 102 to 101. This rule includes maps describing the revised prohibition areas.

Within every prohibition area, atrazine applications are prohibited. Atrazine mixing and loading operations are also prohibited unless conducted over a spill containment surface that complies with s. ATCP 29.45, Wis. Adm. Code.

Comparison with federal regulations

Pesticides and pesticide labels must be registered with the federal Environmental Protection Agency (“EPA”). Persons may not use pesticides in a manner inconsistent with the federal label.

The maximum atrazine application rate in Wisconsin is ½ of the maximum federal rate. However, the current federally–registered atrazine label suggests that atrazine should not be used on permeable soils with groundwater near the soil surface. Wisconsin has clear, definite restrictions on atrazine use, based on actual findings of groundwater contamination in this state.

EPA is proposing federal rules that would require states to have pesticide management plans for pesticides that have the potential to contaminate groundwater. Wisconsin’s current regulatory scheme for atrazine pesticides would likely comply with the proposed federal rules.

Comparison with rules in adjacent states

Wisconsin atrazine regulations are stronger than those in adjacent states:

- Iowa restricts atrazine application rates to 1/2 the federal label rate in 23 counties (7 with county–wide restrictions and 16 with restrictions in some townships).
- Minnesota has a program of voluntary use limitations when surface water or groundwater contamination

exceeds a level of concern. This program suggests pesticide use restrictions or management practices to reduce surface water or groundwater contamination. To date, this program has not been implemented anywhere in Minnesota.

- Illinois and Michigan have no atrazine regulations.

Data and analytical methodologies

This rule is based on groundwater sample results for atrazine and atrazine metabolites obtained from the affected areas during the past year. Groundwater samples contained atrazine contamination in excess of 3.0 ug/L (the state enforcement standard established by DNR groundwater rules under ch. NR 140, Wis. Adm. Code).

Preliminary contamination findings were based on groundwater samples analyzed by the University of Wisconsin – Stevens Point. DATCP confirmed the existence of groundwater contamination, in excess of the state enforcement standard, based on DATCP analysis of groundwater samples collected by DATCP. DATCP collected and analyzed the samples using official collection and analytical methods.

Small Business Impact

This rule will affect four or five farmers, in the expanded prohibition areas, who currently use atrazine to control weeds in corn. Those farmers, who are “small businesses,” will no longer be able to use atrazine. However, other effective weed control products are available, so the rule will not have a significant impact on the affected farmers. This rule may also have a slight impact on distributors and applicators of atrazine herbicides, crop consultants and equipment dealers, but the impact will not be significant.

This rule will not have a significant adverse impact on small business, and is not subject to the delayed small business effective date provided in s. 227.22 (2) (e), Stats.

Fiscal Estimate

Administration and enforcement of this rule will involve some new costs for DATCP. Staff time will be needed to monitor compliance (0.1 FTE, cost approximately \$7,800). Compliance monitoring will be coordinated with current compliance monitoring activities. Soil sampling and testing may be used to monitor compliance, and may require an estimated \$1,000 in analytical services.

Total costs are estimated at \$8,800. DATCP expects to absorb these costs within its current budget. There will be no additional costs to any other state agencies or local governments.

Submission of Written Comments

DATCP invites the public to attend the hearing and comment on the rules. Following the hearing, the hearing record will remain open until November 7, 2008 for additional written comments. Comments may be sent to the Division of Agricultural Resource Management at the address below, by email to Rick.Graham@wisconsin.gov or online at <https://apps4.dhfs.state.wi.us/admrules/public/Home>.

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

Copies of Proposed Rule

You may obtain free copies of the proposed rule by contacting the Wisconsin Department of Agriculture, Trade

and Consumer Protection, Division of Agricultural Resource Management, 2811 Agriculture Drive, P.O. Box 8911, Madison, WI 53708. You may also obtain copies by calling (608) 224-4502 or emailing Rick.Graham@wisconsin.gov. Copies will also be available at the hearing. To view the proposed rule online, go to: <https://apps4.dhfs.state.wi.us/admrules/public/Home>.

Agency Contact Person

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

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Madison, WI 53708-8911
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Notice of Hearing Commerce

Uniform Dwelling, Chs. Comm 20-25 Wisconsin Commercial Building Code, Chs. Comm 60-66 EmR0826 and CR 08-085

NOTICE IS HEREBY GIVEN that pursuant to ss. 101.02 (15), 101.149, and 101.63 (1), Stats., the Department of Commerce will hold a public hearing on proposed permanent rules and emergency rules under Chapters Comm 21 and 62 relating to carbon monoxide alarms and affecting small business.

Hearing Information

The public hearing will be held as follows:

<u>Date and Time:</u>	<u>Location:</u>
October 14, 2008 10:00 a.m.	Conference Room 3B Thompson Commerce Center 201 W. Washington Avenue Madison

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 prior to the hearing date. Accommodations such as interpreters, English translators, or materials in audio tape format will, to the fullest extent possible, be made available upon a request from a person with a disability.

Analysis Prepared by Department of Commerce

Statutes interpreted

Sections 101.02 (15) and 101.63 (1), Stats., and s. 101.149, Stats., as created by 2007 Wisconsin Act 205.

Statutory authority

Sections 101.02 (1) and (15) (a) and 101.63 (1), Stats., and s. 101.149, Stats., as created by 2007 Wisconsin Act 205.

Explanation of agency authority

Under the statutes cited, the Department of Commerce protects public health, safety, and welfare by promulgating comprehensive requirements for design, construction, use and maintenance of public buildings and places of employment and adopts rules that establish uniform, statewide standards for the construction of 1- and 2-family dwellings. 2007 Wisconsin Act 205 specifically directs the Department to address carbon monoxide alarms involving these types of buildings.

Related statute or rule

Statutes: Section 101.12 (1), Stats.

Administrative Rules: Chapters Comm 60 to 66, Wisconsin Commercial Building Code, and Chapters Comm 20 to 25, Uniform Dwelling Code.

Summary of rule

The rules establish minimum requirements for the installation and maintenance of carbon monoxide alarms in buildings accommodating residential type occupancies where people sleep or lodge, excluding hospitals and nursing homes, that reflect the statutory mandates of 2007 Wisconsin Act 205. Specifically, the rules would:

For new tourist rooming houses (cabins under the scope of Uniform Dwelling Code) (October 1, 2008), Comm 21.095

- Require the installation of carbon monoxide alarms where any type of fuel burning appliances are installed.
- Require the carbon monoxide alarms to be continuously powered by the building's electrical service with battery backups.

For new commercial buildings: (October 1, 2008)

- Require the installation of carbon monoxide alarms where any type of fuel burning appliances are installed. Comm 62.1200 (2) (a)
- Require the carbon monoxide alarms to be continuously powered by the building's electrical service with battery backups. Comm 62.1200 (2) (c)

For existing commercial buildings (Buildings existing on October 1, 2008 or reviewed and receiving department plan approval under the rules effective prior to October 1, 2008)

- Require the installation of carbon monoxide alarms by April 1, 2010.
- Do not dictate the type of power sources for the carbon monoxide alarms, thereby allowing batteries, electrical outlet plug-ins or wired to the building's electrical service.
- Allow the omission of carbon monoxide alarms provided there are no attached garages and all of the fuel burning appliances are of sealed combustion type either under warranty or annually inspected for carbon monoxide emissions. Comm 62.1200 (2) (a) 4.

The rules require carbon monoxide alarms to be listed and labeled identifying conformance to UL 2034, Underwriters Laboratories Inc, Standard for Safety Single and Multiple Station Carbon Monoxide Alarms.

Under the federal Americans with Disabilities Act, ADA, and the federal Fair Housing Law certain carbon monoxide alarms may be required to have both audible and visual alarm features.

Owners of existing tourist rooming houses will need to install and maintain carbon monoxide alarms in accordance with s. 101.149 (2) and (3), Stats., by April 1, 2010.

Comparison with federal regulations

An internet-based search of code of federal regulations and the federal register did not identify any federal requirements for the installation and maintenance of carbon monoxide alarms in residential buildings.

Comparison with rules in adjacent states

An Internet-based search of carbon monoxide alarm regulations for the states of Illinois, Iowa, Michigan and Minnesota found the following:

- Illinois under Public Act 094-0741, the Carbon Monoxide Alarm Detector Act, has required the installation of carbon monoxide alarms in all occupancies and structures which have sleeping rooms since January 1, 2007.
- Iowa requires the installation of carbon monoxide alarms in foster care facilities.
- Michigan has not enacted any carbon monoxide alarm regulations at this time.
- Minnesota statute, 299F.50, requires carbon monoxide alarms in all single family homes and multifamily apartments units; new construction as of January 1, 2007; existing single family homes as of August 1, 2008 and existing multi-family and apartment buildings as of August 1, 2009.

Summary of factual data and analytical methodologies

In developing the rules the Department reviewed the language of 2007 Wisconsin Act 205 in conjunction with the Department's broad authority under ss. 101.02 (15) and 101.63 (1), Stats., to protect public health and safety regarding the construction of public buildings, places of employment and one- and two- family dwellings to be used as tourist rooming houses. The current administrative rules for the installation of fire alarms (smoke detectors) were used as a model for these proposed rules pertaining to carbon monoxide alarms. The Department also analyzed the complexities of compliance under several scenarios where fuel burning appliances are added or replaced during the life of the building, such as residential condominiums.

Analysis and supporting documents used to determine effect on small business

The proposed rules implement mandates imposed by 2007 Wisconsin Act 205. The Act affects the owners of commercial buildings where people sleep or lodge and tourist room houses (rental cabins) where fuel burning appliances are installed. The types of commercial buildings affected include apartment buildings, condominiums, hotels, motels, bed and breakfast establishments, fraternities, sororities, dormitories, convents, seminaries, community based residential facilities, and home shelters. The department does not believe that the rules will increase the effect on small businesses over that imposed by the Act. Battery or plug-in type carbon monoxide alarms typically range in cost from \$25 to \$50. New construction installation costs for a hard-wired type carbon monoxide alarm with battery backup ranges in from \$65 to \$85 and \$90 to \$110 if interconnection is involved. Combination carbon monoxide alarms and smoke alarms are also available. Smoke alarms are currently required for residential occupancies. The use of combination carbon monoxide alarms and smoke alarms should result in installation and labor cost savings over that for separate systems.

An economic impact report has not been required to be prepared.

Small Business Impact

The rules are not expected to impose significant costs or other impacts on small businesses because the rules address submittal of documentation only by applicants who choose to pursue tax credits for dairy manufacturing modernization or expansion activities.

Initial regulatory flexibility analysis

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

The proposed rules implement mandates imposed by 2007 Wisconsin Act 205 regarding the installation and

maintenance of carbon monoxide alarms. The Act affects the owners of commercial buildings where people sleep or lodge and tourist room houses (rental cabins) where fuel burning appliances are installed. The types of commercial buildings affected include apartment buildings, condominiums, hotels, motels, fraternities, sororities, dormitories, convents, seminaries, community based residential facilities, home shelters and bed and breakfast establishments.

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

There are no new reporting, bookkeeping and other procedures necessary for compliance with the rules.

Types of professional skills necessary for compliance with the rules.

There are no new types of professional skills necessary for compliance with the rules.

Rules have a significant economic impact on small businesses?

No.

Environmental Analysis

The Department has considered the environmental impact of the proposed rules. In accordance with chapter Comm 1, the proposed rules are a Type III action. A Type III action normally does not have the potential to cause significant environmental effects and normally does not involve unresolved conflicts in the use of available resources. The Department has reviewed these rules and finds no reason to believe that any unusual conditions exist. At this time, the Department has issued this notice to serve as a finding of no significant impact.

Fiscal Estimate

Summary

The rules implement mandates imposed by 2007 Wisconsin Act 205 regarding the installation and maintenance of carbon monoxide alarms in buildings accommodating residential type occupancies where people sleep or lodge, excluding hospitals and nursing homes. The rules will not increase the department's revenue or cost with respect to administration or enforcement over that imposed by the Act.

The Act and the rules affect the owners of commercial buildings where people sleep or lodge and tourist room houses (rental cabins) where fuel burning appliances are installed. The types of commercial buildings affected include apartment buildings, condominiums, hotels, motels, fraternities, sororities, dormitories, convents, seminaries, community based residential facilities, home shelters and tourist rooming houses (rental cabins). The department does not believe that the rules will increase the effect on owners over that imposed by the Act. Battery or plug-in type carbon monoxide detectors typically range in cost from \$25 to \$50. New construction installation costs for a hard-wired type carbon monoxide alarm with battery backup ranges in cost from \$65 to \$85 and \$90 to \$110 if interconnection is involved. Combination carbon monoxide alarms and smoke alarms are also available. The use of combination carbon monoxide alarms and smoke alarms should result in installation and labor cost savings over that for separate systems.

State fiscal effect

None.

Local fiscal effect

None.

Fund sources affected

PRO

Long-range fiscal implications

No long-range fiscal implications are anticipated.

Submission 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 October 24, 2008, 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 James Quast, at the Department of Commerce, P.O. Box 2689, Madison, WI 53701-2689, or Email at jim.quast@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 Web site at www.commerce.wi.gov/SB/. Paper copies may be obtained without cost from Roberta Ward, at the Department of Commerce, Program Development Bureau, P.O. Box 2689, Madison, WI 53701-2689, or Email at roberta.ward@wisconsin.gov, or at telephone (608) 266-8741 or (608) 264-8777 (TTY). Copies will also be available at the public hearing.

Agency Contact Person

James Quast, Program Manager, (608) 266-9292 or email jim.quast@wisconsin.gov.

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.

Notice of Hearing

Natural Resources

Fish, Game, etc., Chs. NR 1—

CR 08-091

NOTICE IS HEREBY GIVEN that pursuant to ss. 26.30 (6m) and 227.11 (2), Stats., interpreting ss. 26.30, 28.01 and 28.07, Stats., the Department of Natural Resources will hold public hearings on revisions to Chapter NR 47, subch. IX, relating to the gypsy moth suppression program.

Hearing Information

The hearings will be held on:

October 14, 2008 **Video conference participation**
Tuesday – 7:00 p.m. will be available at:

Old Library 1122, UW-Eau Claire
105 Garfield Avenue, Eau Claire

Room IS1034, UW-Green Bay
2420 Nicolet Drive, Green Bay

Room 227, Pyle Center
702 Langdon Street, Madison

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 Dr. Andrea Diss-Torrance at (608) 264-9247 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 26.30, 28.01 and 28.07, Stats.

Statutory authority

Sections 26.30 (6m) and 227.11 (2), Stats.

Plain language analysis of rule

The purpose of this rule is to revise the existing procedures for participation by landowners through counties in a voluntary, cooperative state suppression program for outbreaks in Wisconsin of a foreign pest, the gypsy moth. The suppression program includes an aerial insecticide treatment program (administered in partnership with the Department of Agriculture, Trade and Consumer Protection) and administration of federal cost sharing for participants in that treatment program.

Gypsy moth is not native to Wisconsin but has become established in many counties of the state. Where this pest is established, it goes through periodic outbreaks in which the population of gypsy moth explodes and forests can be stripped of leaves in late June. The stress of heavy defoliation can cause the death of some trees and leaves surviving trees weak allowing attack by other pests and diseases. When outbreaks occur, the public typically becomes concerned and looks for ways to reduce the population of gypsy moth to tolerable levels. Treatments to kill large numbers of the pest can be expensive, at times damaging to our native insects and other animals, or even dangerous to the landowner when pesticides are not used according to directions. The department-organized suppression program provides the public with a safe, effective and affordable means to prevent damage to their trees.

The suppression program is offered to landowners through counties. Participating counties provide a coordinator who serves as the contact for the public. The existing rule defines the tasks that will be performed by the participating counties, how to apply for the program, criteria of eligible areas for treatment and cost sharing under the program and eligible costs that can be shared in the federal cost sharing program. This revision of that rule will change the eligibility requirements of the state program to comply with those of the federal program. The revision also includes housekeeping changes which will improve the program's efficiency and accommodate the needs of the participating counties.

Comparison with federal regulations

The USDA Forest Service under the Cooperative Forestry Assistance Act of 1978 (appendix A) as amended (P.L. 95-313) and the 1990 Farm Bill offers a cost sharing program to states for the suppression of gypsy moth outbreaks. Their objective is to assist state agencies in protecting forest resources by preventing defoliation in residential, recreational and timber production lands. Cost share is made available to state cooperators who have established an acceptable integrated pest management strategy for the gypsy moth as determined by the Forest Service. The cost share from the Forest Service can be used to pay for the treatment and preparatory work for the treatment including monitoring, administration, and public notification. The current

maximum federal share of project costs is 50%. The Forest Service cost-share rate, however, may be adjusted downwards to meet annual federal budget limitations. The Forest Service requires that the treatments that receive cost sharing be voluntary and are eligible by the minimum criteria decided by the Forest Service.

Comparison of rules in adjacent states

Of the adjacent states, only Michigan has a suppression program for gypsy moth. The Department of Agriculture takes its authority to run the suppression program from the Insect Pest and Plant Disease Act 189 of 1931. There are no legislative rules governing the Michigan suppression program, however. Like Wisconsin's program, Michigan receives cost sharing from the USDA Forest Service so requirements described above apply to both. The two states suppression programs are similar in many ways though in Wisconsin all land uses are allowed to apply to the program and there is no prioritization of treatment for different land uses as there is in the Michigan program.

Summary of factual data and analytical methodologies

Not applicable to this rule as it is not regulatory.

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 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

Summary

State fiscal effect. Counties that administer the application for the Department-owned properties have the option of charging the Department for this service. Therefore, allowing for direct application to the suppression program will enable the Department to avoid charges that it would ordinarily have to pay to a county for administering the application, resulting in an indeterminate reduction in Department costs.

Local fiscal effect. To the extent that a county has no other applicants to the suppression program other than Department-owned properties, this rule change will save some counties the expense of providing the administrative services, resulting in an indeterminate reduction in county costs.

Anticipated costs to private sector. The program is a voluntary one and is only done at resident's request or agreement so we do not expect any involuntary expenses. We expect that this program will provide cost savings for private businesses facing losses from damage to their property by gypsy moth. Private businesses may apply to the suppression program for treatment as can any other resident or community. The program provides access to a cost-effective aerial spray treatment that may not be available in that area and also provides cost sharing from the federal government reducing costs for participants.

Assumptions used in arriving at fiscal estimate. The proposed rule allows Department–owned properties to apply directly to the gypsy moth suppression program instead of requiring them to apply through a county.

State fiscal effect

Indeterminate – decrease costs.

Local fiscal effect

Indeterminate – decrease permission costs.

Units of local government affected

Counties

Fund sources affected

SEG

Submission of Written Comments, Copies of Proposed Rule, 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 Dr. Andrea Diss–Torrance, Bureau of Forest Science, P.O. Box 7921, Madison, WI 53707. Comments may be submitted until October 17, 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 Dr. Diss–Torrance.

Rule Orders Filed with the Legislative Reference Bureau

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

Commerce

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

CR 08-031

Creates Chapter Comm 132, relating to dairy manufacturing facility investment credits.
Effective 11-1-08.

Insurance

CR 08-032

Revises Chapter Ins 3, relating to long-term care plans including the long-term care partnership program qualifying policies.
Effective 11-1-08.

Transportation

CR 08-048

Revises Chapter Trans 250, relating to Internet and telephone call-in fees.
Effective 11-1-08.

Rules Published with this Register and Final Regulatory Flexibility Analyses

*The following administrative rule orders have been adopted and published in the **September 30, 2008**, Wisconsin Administrative Register. Copies of these rules are sent to subscribers of the complete Wisconsin Administrative Code and also to the subscribers of the specific affected Code.*

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

Agriculture, Trade and Consumer Protection **CR 08-038**

Revises Chapter ATCP 161, relating to the “Buy-Local” grant program. Effective 10-1-08.

Summary of Final Regulatory Flexibility Analysis

The “buy local” grant program will benefit farmers, businesses and communities that participate in production, distribution or marketing of locally produced foods. Grant recipients will benefit directly, while others will benefit indirectly from the creation of stronger local food networks and systems. Many of the beneficiaries of this program will be small businesses.

This rule will have a positive impact on program beneficiaries, because it will allow DATCP to implement the “buy local” grant program. The rule will establish basic standards and procedures for the “buy local” grant program to ensure that the program is effective and accountable. The rule standards and procedures will not have any adverse impact on program beneficiaries.

The “buy local” grant program will be of special benefit to small and medium-sized businesses. This rule will also benefit small businesses by allowing DATCP to implement the “buy local” program. This rule will establish basic standards and procedures for the “buy local” grant program to ensure that the program is effective and accountable. Those standards and procedures will not have any adverse effect on small business, so there is no need to make special accommodations for small business.

Summary of Comments by Legislative Review Committees

On June 30, 2008 DATCP transmitted the rule for legislative review. The rule was assigned to the Assembly Committee on Agriculture. The legislative review period expired on August 12, 2008. No hearings were held and the committee did not request any changes to the rule.

Commerce **CR 07-100**

Revises Chapters Comm 2, 5 and 81 to 87, relating to private onsite wastewater treatment systems. Effective 10-1-08.

Summary of Final Regulatory Flexibility Analysis

The rule revisions update and clarify the existing rules governing the design, installation, inspection and maintenance for private onsite wastewater treatment systems, POWTS. The updating also establishes a maintenance

program for POWTS as directed by part of 2005 Wisconsin Act 347. Section 145.245 (7) (c), Stats., directs the Department to revise grant funding tables when certain thresholds are exceeded. Certain financial assistance tables in chapter Comm 87, Wisconsin Fund, are updated to comply with the requirements of s. 145.245 (7) (c), Stats.

Summary of Comments by Legislative Review Committees

The Assembly Natural Resources Committee requested the department to consider modifications to the rule package. Germane modifications regarding POWTS maintenance were submitted to the committees on July 8, 2008 and have been deemed acceptable to the committees.

Financial Institutions – Corporate and Consumer Services **CR 08-041**

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

Summary of Final Regulatory Flexibility Analysis

This rule will have no adverse impact on small businesses.

Summary of Comments by Legislative Review Committees

No comments were received.

Natural Resources **CR 08-011**

Revises Chapters NR 10, 11, 17, 19 and 45, relating to hunting and trapping regulations and the use of department managed lands. Effective 2-1-09.

Summary of Final Regulatory Flexibility Analysis

The rules relate to hunting, trapping and the use of public lands and 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. Therefore, under s. 227.10 (3m), Stats., a final regulatory flexibility analysis is not required.

Summary of Comments by Legislative Review Committees

The rules were reviewed by the Senate Committee on Environment and Natural Resources and the Assembly Committee on Natural Resources. On June 18, 2008, the Assembly Committee on Natural Resources held a public hearing. The department did not receive any requests for modification as a result of this hearing.

Natural Resources**CR 08-014**

Revises Chapter NR 58, relating to the implementation and administration of grants for endangered resources. Effective 10-1-08.

Summary of Final Regulatory Flexibility Analysis

The rule relates to grants to public agencies, non-governmental organizations, educational institutions and private individuals for projects that protect Species of Greatest Conservation Need and their habitats. There are no requirements for small businesses. Therefore, under s. 227.19 (3m), Stats., a final regulatory flexibility analysis is not required.

Summary of Comments by Legislative Review Committees

The rules were reviewed by the Senate Committee on

Environment and Natural Resources and the Assembly Committee on Natural Resources. On June 18, 2008, the Assembly Committee on Natural Resources held a public hearing. The department did not receive any requests for modification as a result of this hearing.

Podiatrists Affiliated Credentialing Board**CR 07-103**

Creates section Pod 3.02 (1) (e), relating to continuing medical educational programs. Effective 10-1-08.

Summary of Final Regulatory Flexibility Analysis

These rules will have no significant economic impact on small businesses, as defined in s. 227.114 (1), Stats.

Summary of Comments by Legislative Review Committees

No comments were reported.

Sections Affected by Rule Revisions and Corrections

The following administrative rule revisions and corrections have taken place in **September 2008**, and will be effective as indicated in the history note for each particular section. For additional information, contact the Legislative Reference Bureau at (608) 266-7590.

Revisions

Agriculture, Trade and Consumer Protection

Ch. ATCP 161

Ss. ATCP 161.40 to 161.46

S. Comm 85.30 (5)

S. Comm 85.60 (4) (c), (d), (5) (b)

Ch. Comm 87

S. Comm 87.30 (1) and Tables 3 to 5

Commerce

Ch. Comm 2

S. Comm 2.66 (2) and Table

Ch. Comm 5

S. Comm 5.36 (1)

Ch. Comm 81

S. Comm 81.01 (163s)

S. Comm 81.20 (4)

Ch. Comm 82

S. Comm 82.03 (3)

S. Comm 82.40 (8) (b)

Ch. Comm 83

S. Comm 83.03 (5) and (6)

S. Comm 83.04

S. Comm 83.05 (1)

S. Comm 83.20 (2)

S. Comm 83.21 (2) (c), (3) (f), (6m), (9)

S. Comm 83.22 (2), (4), (7) (a), Tables 2 and 3

S. Comm 83.23 (4) (b), (c) and (7)

S. Comm 83.25 (2) (e) and (f)

S. Comm 83.255

S. Comm 83.32 (1) (h) and (3) (c)

S. Comm 83.43 Table 1

S. Comm 83.44 (3) (b), (5) (b), (c) and Table 3

S. Comm 83.45 (6)

S. Comm 83.50

S. Comm 83.52 (1) and (3)

S. Comm 83.53

S. Comm 83.54 (4) (c) and (d)

S. Comm 83.55

S. Comm 83.60 (1)

S. Comm 83.61

S. Comm 83.62

Ch. Comm 84

S. Comm 84.01

S. Comm 84.25 (7) (h) and (10)

S. Comm 84.30 (6) (j)

Ch. Comm 85

S. Comm 85.02

Financial Institutions – Corporate and Consumer Services

Ch. DFI-CCS 20 (Entire Chapter)

Natural Resources

Ch. NR 10

S. NR 10.001 (3t), (3u), (5j)

S. NR 10.01 (3) (b) and (bm)

S. NR 10.13 (1) (b)

S. NR 10.145 (2) (b)

S. NR 10.25 (4) (c)

Ch. NR 11

S. NR 11.10 (title) and (intro.)

Ch NR 17

S. NR 17.04 (2) (b)

S. NR 17.08 (2) (b)

Ch. NR 19

S. NR 19.51

Ch. NR 45

S. NR 45.04 (3) (u)

S. NR 45.09 (5)

Ch. NR 58

S. NR 58.30

S. NR 58.31

S. NR 58.32

S. NR 58.33 (1) (intro.) and (3)

S. NR 58.34

S. NR 58.35 (1), (2) (intro.), (3)

S. NR 58.36

S. NR 58.37

S. NR 58.38

Podiatrists Affiliated Credentialing Board

Ch. Pod 3

S. Pod 3.02 (1) (e)

Editorial Corrections

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

Commerce

Ch. Comm 81

S. Comm 81.01 (288e)

Ch. Comm 83

S. Comm 83.04 (1)

S. Comm 83.32 (1) (h) 1.

Ch. Comm 87

S. Comm 87.03 (7m)

Executive Orders

The following are recent Executive Orders issued by the Governor.

Executive Order 265. Relating to Issuance of General Obligation Bonds for the Veterans Home Loan Program and Appointment of Hearing Officer.

Executive Order 266. Relating to a Proclamation of a State of Emergency Relating to the Transportation of Emergency Relief Supplies.

Executive Order 267. Relating to a Proclamation that the Flag of the United States and the Flag of the State of Wisconsin be Flown at Half-Staff to Commemorate the Seven Year Anniversary of the Terrorist Attacks on the United States.

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