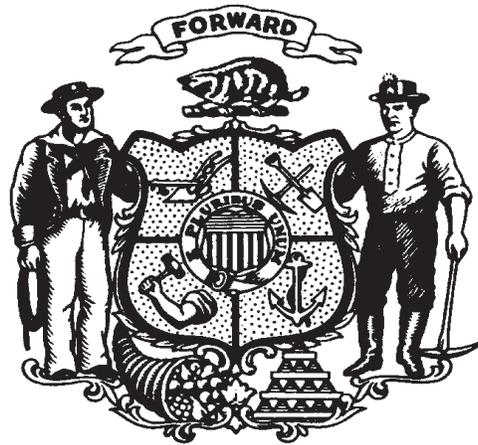


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Emergency Rules Now in Effect

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

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

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

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

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

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

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

Agriculture, Trade and Consumer Protection (2)

1. **EmR0913** — Rule adopted revising s. **ATCP 21.17**, relating to the quarantines of Brown County and Kenosha County for emerald ash borer.

Finding of Emergency

On July 24, 2009, APHIS identified emerald ash borer in Brown County. On August 12, 2009, APHIS identified emerald ash borer in Kenosha County. Emerald ash borer is an exotic pest that poses a dire risk to the ash forest. When APHIS declares quarantine, DATCP has regulatory authority for import controls and quarantine for emerald ash borer under ATCP 21.17. It is anticipated that APHIS will declare quarantines for Brown County and Kenosha County but that it will take up to six weeks for APHIS to act. A six week delay until enactment of the federal quarantines leaves too much time for businesses or individuals to move potentially emerald ash borer infested material out of the county to areas

of Wisconsin or other states that are not infested with emerald ash borer.

DATCP is adopting this rule as a temporary emergency rule, pending completion of federal quarantine regulations. DATCP does not anticipate completing a permanent rule.

Publication Date: August 22, 2009
Effective: August 22, 2009 through January 18, 2010
Hearing Dates: September 29 and 30, 2009

2. **EmR0922** — Rule adopted revising s. **ATCP 21.17**, relating to the quarantines of Milwaukee County, Racine County and Waukesha County for emerald ash borer.

Finding of Emergency

On August 28, 2009, APHIS identified emerald ash borer in Milwaukee County, near the borders of Racine County and Waukesha County. Emerald ash borer is an exotic pest that poses a dire risk to the ash forest. When APHIS declares quarantine, DATCP has regulatory authority for import controls and quarantine for emerald ash borer under ATCP 21.17. It is anticipated that APHIS will declare quarantines for Milwaukee County, Racine County and Waukesha County but that it will take up to six weeks for APHIS to act. A six week delay until enactment of the federal quarantines leaves too much time for businesses or individuals to move potentially emerald ash borer infested material out of the county to areas of Wisconsin or other states that are not infested with emerald ash borer.

DATCP is adopting this rule as a temporary emergency rule, pending completion of federal quarantine regulations. DATCP does not anticipate completing a permanent rule.

Publication Date: September 14, 2009
Effective: September 14, 2009 through February 10, 2010
Hearing Date: October 15, 2009

Children and Families

Safety and Permanence, Chs. DCF 37–59

- EmR0937** — Rule adopted revising **Chapters DCF 56 and 58**, relating to foster care and kinship care.

Finding of Emergency

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

2009 Wisconsin Act 28 assumes that court-ordered kinship care relatives will be applying for a license to operate a foster home beginning after January 1, 2010, and continuing throughout 2010. This rule creates the first two levels of the new levels of care system for foster care. The newly-licensed kinship care relatives will be incorporated into the foster care program. Licensing these relatives will allow the state to claim an additional \$6.5 million in Title IV-E funds for 2010. Act 28 appropriates this \$6.5 million to be expended in 2011.

Publication Date: December 30, 2009
Effective: January 1, 2010 through
 May 30, 2010

Commerce

Fee Schedule, Ch. Comm 2

EmR0934 — Rule adopted revising **Chapter Comm 2**, relating to public swimming pool and water attraction plan review and inspection fees.

Finding of Emergency

The Department of Commerce finds that an emergency exists within the state of Wisconsin and that adoption of an emergency rule is necessary for the immediate preservation of the public health, safety and welfare. A statement of the facts constituting the emergency is as follows.

1. Implementation of the federal Virginia Graeme Baker Pool and Spa Safety Act necessitates most existing public swimming pools and water attractions to undergo physical modifications to reduce the risk of entrapment at suction outlets.

2. The Virginia Graeme Baker Pool and Spa Safety Act has a compliance date of December 19, 2008.

3. The department estimates that 3,700 existing pools and water attractions will need to be modified in order to comply with the federal act. As of December 1, 2009, approximately 1,800 pool modifications have been submitted to the department for review and approval.

4. There are claims that the availability of parts to make the necessary modifications is limited.

5. The current department plan review fees and inspection fees under s. Comm 2.68 reflect an estimated average time and cost to provide those services. For the types of pool and water attraction modifications necessary to comply with the Virginia Graeme Baker Pool and Spa Safety Act, the department believes that the time and cost to provide the service will be below the averages reflected under the current fee structure of section Comm 2.68.

6. The department believes that a fee reduction to facilitate plan review and inspection relative to the Virginia Graeme Baker Pool and Spa Safety Act is in alignment with the direction provided under s. 101.19, Stats., of keeping fees consistent with the costs of providing service.

Publication Date: January 1, 2010
Effective: January 1, 2010 through
 May 30, 2010
Hearing Date: January 21, 2010

Commerce

Uniform Dwelling, Chs. Comm 20–25

EmR0917 — Rule adopted revising **Ch. Comm 22**, relating to energy conservation.

Finding of Emergency

The Department of Commerce finds that an emergency exists within the state of Wisconsin and that adoption of an emergency rule is necessary for the immediate preservation of the public health, safety and welfare. A statement of the facts constituting the emergency is as follows.

1. Recently, chapter Comm 22, relating to energy conservation, was repealed and recreated to bring the Wisconsin requirements in line with the national model energy code. Effective April 1, 2009, chapter Comm 22 incorporates new prescriptive requirements that apply to individual components such as walls, windows, skylights, doors and ceilings. Within that subsection is section Comm 22.31 (2) (a), that allows the use of a “total dwelling thermal envelope” method, and (2) (b), that allows the use of REScheck software, version 4.1.0, or later, to calculate compliance with the Uniform Dwelling Code thermal envelope requirements.

2. The U.S. Department of Energy’s Building Energy Codes Program develops and distributes REScheck software. The software program simplifies and clarifies residential code compliance with the Model Energy Code (MEC) and the International Energy Conservation Code (IECC). REScheck software makes it easier for designers, builders, product manufacturers and code officials to comply with energy codes based on the IECC or ASHRAE/IESNA Standard 90.1 requirements. Also, REScheck can be tailored to meet state-specific codes.

3. The department included the REScheck software edition requirement in anticipation that Version 4.1.0 would be compatible with the current code. Working with Pacific Northwest Laboratories, who contracts with the U.S. Department of Energy to develop the REScheck software, the department developed state-specific energy calculations that were not incorporated into REScheck software until Version 4.2.2. The calculations that reflect the current code are identified in the software as “Wisconsin 2009.” Versions prior to 4.2.2 do not have the code choice “Wisconsin 2009.”

4. Previous versions of REScheck, including Version 4.1.0, do not meet nor support the requirements of Wisconsin’s current energy code. In fact, Version 4.1.0 includes other values, such as gross wall trade-offs and appliance credits that are not included in chapter Comm 22 that became effective April 1, 2009.

5. The department recognizes that without promulgating this emergency rule, there would be confusion and miscalculations surrounding the use of Version 4.1.0 and other previous and out-of-date versions of REScheck software to calculate compliance with Uniform Dwelling Code thermal envelope requirements.

Publication Date: September 5, 2009
Effective: September 5, 2009 through
 February 1, 2010
Hearing Date: October 21, 2009

Commerce (2)

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

1. **EmR0910** — Rule adopted to create **Chapter Comm 100**, relating to tax benefits for job creation, capital investment, employee training, and corporate headquarters.

Exemption From Finding of Emergency

The Legislature, by section 9110 (4) in 2009 Wisconsin Act 2, exempts the Department from providing evidence that this emergency rule is necessary for the preservation of the public peace, health, safety or welfare; and exempts the Department from providing a finding of emergency for the adoption of this rule.

Publication Date: June 30, 2009
Effective: June 30, 2009 through July 1, 2010 or the date permanent rules take effect, whichever is sooner
Hearing Date: September 15, 2009

- 2. **EmR0931** — Rule adopted creating Chapter Comm 136, relating to midwestern disaster area bonds.

Finding of Emergency

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

Between June 14 and July 9, 2008, thirty Wisconsin counties were declared major disaster areas by the President as a result of severe storms, tornados or flooding in 2008 that caused extensive damage to communities, residents, businesses, the economy and critical infrastructure. Subsequently, the federal Heartland Disaster Tax Relief Act of 2008 was enacted, authorizing the Governor of Wisconsin to designate up to \$3,830,112,000 in Qualified Midwestern Disaster Area Bonds, which must be issued before January 1, 2013, for the purpose of encouraging economic development and recovery in the 30 counties.

To implement the provisions this federal Act, Governor Jim Doyle issued Executive Order #288, directing the Department to promulgate rules for allocating Wisconsin’s Qualified Midwestern Disaster Area Bonding Authority, and including the necessary provisions to ensure that bonds are allocated to eligible projects on the basis of providing assistance to areas in the order in which the assistance is most needed. This rule is the result of that directive.

Publication Date: November 9, 2009
Effective: November 9, 2009 through April 7, 2010
Hearing Date: January 25, 2010

Corrections (2)

- 1. **EmR0920** — Rule adopted revising s. DOC 309.466, relating to inmate release accounts.

Finding of Emergency

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

Under 2009 WI Act 28, an increased number of inmates are being considered for release. In addition, the department has developed a number of release initiatives to address an inmate’s successful transition from incarceration to community life. As part of those initiatives, there are costs associated with that transition, including acquiring housing, employment, and transportation. For example, an inmate must have a social security card, a driver’s license or state identification card, the first months rent and security deposit for an apartment, and civilian clothing.

Under the current rule, an inmate may only use release account funds for “adequate clothing for release” and for “out-of-state release transportation.” In addition, the rule limits the maximum amount of money which can be saved in the release account to \$500.00. The emergency rule

immediately permits the use of release account money for a wide variety of purchases, including fees associated with obtaining a driver’s license or state identification card, housing, and a mode of transportation (bus tickets, vehicle, bicycle, etc.). In the past the Department has borne some of these costs, despite an inmate having the money in his or her release account. Given the initiatives of reentry and release, an inmate should be responsible for these expenditures.

In addition, the emergency rule raises the limit on release accounts from \$500.00 to \$5,000.00. Since the current limit was established, the cost of living in the community has risen. The department seeks this change to reflect the significant costs of housing, transportation, and food and other necessities.

If the rule is not created promptly and immediately, the department will not be able to use inmate release account funds to pay for items which inmates need in preparation for their release to the community. The purpose of the emergency rule is to permit inmates to use release account funds for a greater range of expenditures related to their release from incarceration and transition back into the community. 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 need to use inmate funds, not state funds, while permanent rules are being developed.

Publication Date: September 10, 2009
Effective: September 10, 2009 through February 6, 2010
Extension Through: April 7, 2010
Hearing Date: October 14, 2009

- 2. **EmR0939** — Rule adopted revising Chapter DOC 302, relating to sentence calculations and prison release and to administrative review of inmate classification decisions.

Finding of Emergency

The Department of Corrections finds that an emergency exists and that emergency rules are necessary for the immediate preservation of public peace, health, safety and welfare. A statement of facts constituting the emergency is:

Under 2009 Wisconsin Act 28, the legislature provides for the release of inmates from prison if certain criteria are met. The Department is responsible for implementing several of those procedures. Specifically, the department is responsible for implementing the early release programs under: (1) s PAT (2) ERP/CIP (3) CER (4) Risk reduction (5) 75%/85%. In addition, the department is revising section 302.18 to facilitate the review of inmates for purposes of early release.

If the rule is not created promptly and immediately, the Department will not be able to proceed in reviewing inmates under these various release procedures. This could result in significant delay in the implementation of the statutory provisions which will negatively impact the ability of the Department to manage the inmate population in a safe and effective manner. In addition, a delay will affect the management and control of inmate population levels of correctional facilities with the resources necessary to maintain public safety.

The purpose of the emergency rule is to implement newly created statutory provisions providing for release of inmates under specified circumstances. The permanent rule process has been started. However, the permanent rule process will take approximately nine months to complete. Emergency rules are necessary for a prompt implementation of the legislative mandates concerning the release of inmates meeting established criteria while the permanent rules are being developed.

Publication Date: December 31, 2009
Effective: December 31, 2009
through May 29, 2010
Hearing Date: February 25, 2010

Earned Release Review Commission

(Formerly Parole Commission)

EmR0940 — Rule adopted revising **Chapter PAC 1**, relating to the release of inmates through parole or other procedures.

Finding of Emergency

The Wisconsin Earned Release Review Commission finds that an emergency exists and that emergency rules are necessary for the immediate preservation of public peace, health, safety and welfare. A statement of facts constituting the emergency is:

Under 2009 Wisconsin Act 28, the legislature provides for the release of inmates from prison if certain criteria are met. The Earned Release Review Commission (formerly the Parole Commission) is responsible for implementing several of those procedures. Specifically, the commission is responsible for considering the early release of inmates under: (1) section 304.06 (1) (bg)1. and 2., Stats., after the inmate has served the term of confinement of their bifurcated sentence less positive adjustment time, (2) section 304.06 (1) (bg) 3. and 4., Stats., after the inmate has served either 75 % or 85 % of their term of confinement, depending on the offense for which the inmate was sentenced, and (3) section 302.1135 (2) (a), (b), and (c), Stats., based on age or extraordinary health.

If the rule is not created promptly and immediately, the commission will not be able to proceed in reviewing inmates under these various release procedures. This could result in significant delay in the implementation of the statutory provisions which will negatively impact the ability of the department of corrections to manage the inmate population in a safe and effective manner. In addition, a delay will affect the management and control of inmate population levels of correctional facilities with the resources necessary to maintain public safety.

The purpose of the emergency rule is to implement newly created statutory provisions providing for release of inmates under specified circumstances. The permanent rule process has been started. However, the permanent rule process will take approximately nine months to complete. Emergency rules are necessary to respond to the legislatively recognized need to review inmates who meet the requirements under the statutes for potential release while the permanent rules are being developed.

Publication Date: December 31, 2009
Effective: December 31, 2009
through May 29, 2010
Hearing Date: February 23, 2010

Employee Trust Funds

EmR0938 — Rule adopted revising **Chapters ETF 10, 20 and 40**, relating to the implementation of benefit changes mandated in 2009 Wisconsin Act 28; specifically, domestic partner benefits and the expansion of health insurance coverage to adult dependents up to the age of 27 years.

Finding of Emergency

The Department of Employee Trust Funds finds that an emergency exists and that emergency rules are necessary for the immediate preservation of the public peace, health, safety, or welfare. A statement of the facts constituting the emergency is:

ETF cannot promulgate a permanent rule in compliance with the mandated changes by January 1, 2010, which is the effective date of the domestic partnership and the health insurance provisions of 2009 Wisconsin Act 28. Without an emergency rule in place, the ability of ETF to enroll and cover participants' domestic partners and to provide health insurance to adult dependents would be seriously impaired. ETF would be unable to provide health insurance and other benefits to domestic partners and adult dependents.

Publication Date: December 28, 2009
Effective: January 1, 2010
through May 30, 2010
Hearing Date: February 12, 2010

(See the Notice in this Register)

Health Services

*Medical Assistance, Chs. DHS 101—
Health, Chs. DHS 110—*

EmR0932 — Rule adopted revising **Chapters DHS 105, 106 and 133**, relating to personal care agencies and providers, and affecting small businesses.

Exemption From Finding of Emergency

The legislature by 2009 Wis. Act 28, Section 9122 (2), provides an exemption from a finding of emergency to adopt these emergency rules.

Publication Date: December 16, 2009
Effective: December 16, 2009 through
September 11, 2010
(corrected)
Hearing Date: February 3, 2010

Health Services

Health, Chs. DHS 110—

EmR0928 — Rule adopted to revise **Chapter DHS 163**, relating to requirements for conducting lead-safe renovation activities in pre-1978 housing and child-occupied facilities, and affecting small businesses.

Finding of Emergency

The Department of Health Services (department) finds that an emergency exists and that the adoption of an emergency rule is necessary for the continuity of regulations relating to lead hazard exposure in Wisconsin. The facts constituting the emergency are as follows:

Under ch. DHS 163, the department, as Wisconsin's public health agency, regulates lead hazard reduction and lead management activities in pre-1978 housing (target housing) and child-occupied facilities. The rules include standards for certification of individuals and companies conducting these activities, accreditation of lead training courses and approval of instructors, and work practices. In addition to the department's authority under chs. 250 and 254, Stats., to regulate lead hazards, the department has authorization from the Environmental Protection Agency (EPA) to regulate lead

hazard reduction and management activities in lieu of the EPA administering federal regulations in Wisconsin.

On April 22, 2008, the EPA issued rules under 40 CFR 745 to establish requirements for training renovators, other renovation workers, and dust sampling technicians; for certifying renovators, dust sampling technicians, and renovation firms; for accrediting providers of renovation and dust sampling technician training; and for renovation work practices (and associated recordkeeping requirements) that disturb paint in target housing and child-occupied facilities. Under the EPA regulations, beginning on April 22, 2010, persons who perform renovation activities for compensation, including repair and painting activities, that disturb paint in target housing and child-occupied facilities must be certified, properly trained, and follow specific work practices to prevent lead contamination. The EPA will begin accepting applications for certification from individuals and companies on October 22, 2009.

States that promulgate rules that conform to the EPA standards on or before October 22, 2009, may accept applications for certification in lieu of the EPA. Otherwise, on October 22, 2009, the EPA will begin accepting these applications and the associated fees from Wisconsin companies and individuals. Such an occurrence may cause confusion among the regulated community and property owners, and would impede the department's ability to continue to administer a viable lead hazard reduction program if covered persons begin complying with the EPA certification requirements before state requirements are implemented. Promulgating rules before October 22, 2009, will help to avoid any unnecessary complexity for covered persons that may be caused by overlapping state and federal regulations that address lead-based paint hazards in target housing and child-occupied facilities.

Publication Date: October 16, 2009
Effective: October 19, 2009
 through March 17, 2010
Hearing Date: November 18, 2009

Insurance (6)

- EmR0918** — Rule adopted to revise **Chapter Ins 6**, relating to exempting commercial umbrella and commercial liability policies covering only hired and non-owned autos from having to offer or include uninsured and underinsured motorist coverage.

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:

Act 28 (2009) modified the requirements for auto insurance in Wisconsin. Most of these new provisions go into effect on November 1, 2009. These modifications did not specifically address the issue of insurers who write commercial liability insurance and commercial umbrella policies which insure only hired and non-owned automobiles ("HNO") under the policy but do not insure any automobiles owned by the insured.

If these new Act 28 requirements apply to commercial liability insurance and commercial umbrella policies which insure only hired and non-owned automobiles ("HNO") under the policy, this creates a significant problem. Some of these insurers do not have authority to write auto insurance

which is needed to write uninsured ("UM") and underinsured coverage ("UIM"). Other insurers offering the commercial umbrella and commercial liability HNO have not ever written UM/UIM coverages because the current rules exempt them. Insurers have also stated that obtaining reinsurance for this is a problem.

This issue was addressed in 1997 when an emergency rule was promulgated and modifications to Ins 6.77 were enacted in response to various court cases. In that process, commercial insurers who wrote liability policies that covered only HNO were exempted from the requirement to offer or include UM/UIM coverage. This emergency rule would continue this exemption so that the market for commercial liability insurance and commercial umbrella policies is not disrupted.

Publication Date: September 9, 2009
Effective: November 1, 2009 through
 March 30, 2010
Hearing Date: December 8, 2009

- EmR0923** — Rule adopted to create **section Ins 3.36**, Wis. Adm. Code, relating to treatment of autism spectrum disorders and affecting small business.

Exemption From Finding of Emergency

The Commissioner of Insurance pursuant to s. 632.895 (12m) (f) 2., Stats., need not find that an emergency exists nor provide evidence that promulgating a rule is necessary for the preservation of the public peace, health, safety or welfare.

Specifically, s. 632.895 (12m) (f), Wis. Stats., requires the commissioner to define "intensive-level services," "nonintensive-level services," "paraprofessional," and "qualified" for purposes of providing services under this subsection. The statute further authorizes that the commissioner may promulgate rules governing the interpretation or administration of this subsection.

Publication Date: September 26, 2009
Effective: September 26, 2009
 through February 22, 2010
Hearing Date: December 2, 2009

- EmR0925** — Rule adopted to create **section Ins 3.75**, relating to continuation of group health insurance policies.

Exemption From Finding of Emergency

Under 2009 Wisconsin Act 11, section 9126, a Finding of Emergency is not required for this emergency rule. The relevant portion of 2009 Act 11 reads as follows:

2009 Wisconsin Act 11, SECTION 9126. Nonstatutory provisions; Insurance.

(4) CONTINUATION COVERAGE RULES. (a) Notwithstanding section 632.897 of the statutes and subsections (1), (2), and (3), the commissioner of insurance may promulgate rules establishing standards requiring insurers to provide continuation of coverage for any individual covered at any time under a group policy who is a state eligible individual to whom subsection (2) or (3) applies or an assistance eligible individual, as defined under section 3001 (a) (3) of the federal act, including rules governing election or extension of election periods, notice, rates, premiums, premium payment, application of preexisting condition exclusions, and election of alternative coverage.

(b) The commissioner may promulgate the rules under paragraph (a) as emergency rules under section 227.24 of the statutes. Notwithstanding section 227.24 (1) (c) of the statutes, emergency rules promulgated under this paragraph

may remain in effect for one year and may be extended under section 227.24 (2) of the statutes. Notwithstanding section 227.24 (1) (a) and (3) of the statutes, **the commissioner is not required to provide evidence that promulgating a rule under this paragraph as an emergency rule is necessary for the preservation of public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under this paragraph.** [Emphasis Added]

Publication Date: October 1, 2009
Effective: October 2, 2009 through October 1, 2010
Hearing Date: December 8, 2009

- 4. **EmR0927** — Rule adopted to create **Chapter Ins 57**, relating to care management organizations and affecting small business.

Finding of Emergency

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

Beginning January 1, 2010, care management organizations are required to obtain a permit from the commissioner to provide services under the Family Care program. In order to ensure no gap in services to enrollees, organizations and the office need to complete and accept applications for permits prior to January 1, 2010. Promulgation of this rule will permit the timely filing and review of permittees.

Publication Date: October 9, 2009
Effective: October 10, 2009 through March 10, 2010
Hearing Date: December 3, 2009

- 5. **EmR0930** — Rule adopted to create **section Ins 3.34**, relating to insurance coverage of dependents to age 27 and affecting small business.

Finding of Emergency

The Commissioner of Insurance finds that an emergency exists and that an emergency rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. Facts constituting the emergency are as follows: the Commissioner is aware that insurers, employers and consumers are interpreting the state mandate inconsistently so without this rule consumers will not be treated similarly when the law becomes effective on January 1, 2010; the Commissioner has received numerous inquiries from insurers, consumers and employers seeking clarity of terms and guidance on interpretation and implementation of the law as many employers are entering open enrollment for the 2010 plan year.

These changes will be effective the day following publication in the official state newspaper and a permanent rule will start the permanent rule process to achieve uniformity in interpretation therefore protecting the public, informing employers, and guiding insurers in the state.

Publication Date: October 30, 2009
Effective: October 31, 2009 through March 29, 2010
Hearing Date: January 14, 2010

- 6. **EmR0945** — Rule adopted revising **section Ins 3.75**, relating to the continuation of group health insurance policies.

Exemption From Finding of Emergency

Under 2009 Wisconsin Act 11, section 9126, a Finding of Emergency is not required for this emergency rule. The relevant portion of 2009 Act 11 reads as follows:

2009 Wisconsin Act 11, SECTION 9126. Nonstatutory provisions; Insurance.

(4) CONTINUATION COVERAGE RULES (a) Notwithstanding section 632.897 of the statutes and subsections (1), (2), and (3), the commissioner of insurance may promulgate rules establishing standards requiring insurers to provide continuation of coverage for any individual covered at any time under a group policy who is a state eligible individual to whom subsection (2) or (3) applies or an assistance eligible individual, as defined under section 3001 (a) (3) of the federal act, including rules governing election or extension of election periods, notice, rates, premiums, premium payment, application of preexisting condition exclusions, and election of alternative coverage.

(b) The commissioner may promulgate the rules under paragraph (a) as emergency rules under section 227.24 of the statutes. Notwithstanding section 227.24 (1) (c) of the statutes, emergency rules promulgated under this paragraph may remain in effect for one year and may be extended under section 227.24 (2) of the statutes Notwithstanding section 227.24 (1) (a) and (3) of the statutes, **the commissioner is not required to provide evidence that promulgating a rule under this paragraph as an emergency rule is necessary for the preservation of public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under this paragraph.** [Emphasis Added]

Publication Date: January 7, 2010
Effective: January 8, 2010 through June 6, 2010

Natural Resources

Fish, Game, etc., Chs. NR 1—

- EmR0914** — Rule adopted to revise **Chapter NR 10**, relating to hunting and the 2009 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 22, 2009
Effective: September 1, 2009 through January 28, 2010
Hearing Date: November 4, 2009

Natural Resources

Environmental Protection — Water Regulation, Chs. NR 300—

EmR0915 — A rule adopted revising **Chapters NR 335 and 336**, relating to grants for dam maintenance, repair, modification, or abandonment and removal.

Finding of Emergency

The substantial increase in bonding for the dam grant programs is a strong message from the legislature that concern for public welfare from unsafe dams is growing, as well as the desire to help dam owners, including the owners of the many dams damaged during the flooding in 2007 and 2008. In order to protect the public and provide this financial assistance, these additional funds should be put to work as soon as possible. The timeline for permanent rule promulgation will impede the Department's ability to accept applications and commit funding to dam safety projects until at least June 2010, which would delay most projects until late 2010 or 2011. The emergency rules will allow immediate implementation of modifications that will allow a grant application cycle to be conducted yet this fall and allow most projects to be constructed during the 2010 construction season or before.

Publication Date: August 28, 2009
Effective: August 28, 2009 through
 January 24, 2010

Public Defender Board

EmR0926 — Rule adopted to create **Chapter PD 8**, Discovery Payments, relating to the maximum fees that the state public defender may pay for copies of discovery materials in criminal proceedings, proceedings under Chapter 980, Wis. Stats., and other proceedings in which the state public defender provides legal representation.

Finding of Emergency

These rules are promulgated under s. 227.24 (1) (a), Stats., because the magnitude of the shortfall in the state public defender's appropriation for transcripts, discovery, and interpreters in both years of the current biennium constitutes an emergency that requires implementation of a rule earlier than a permanent rule could take effect if the agency were to comply with the applicable notice, hearing, legislative-review, and publication requirements.

The state public defender was initially provided a base budget of \$60,000 in 1995 for discovery payments, which at that time consisted mostly of photocopies and some photographs. In the 1999–2001 budget act, this appropriation was increased to \$150,000, based on a presumptive rate for photocopies of \$0.20 per page. In the 2001–2003 biennial budget act, this appropriation was subjected to a five percent funding reduction, leaving a base budget for discovery payments of \$142,500.

The public defender received discovery bills totaling \$717,000 for the fiscal year that ended June 30, 2009. Although discovery costs are caseload driven, this represents a nearly five-fold increase since 2001 and is due primarily to two factors. First, in the past many counties and municipalities did not bill the state public defender for copies of discovery materials. Because local budgets have come under increasing pressure, most now do so. Second, 2005 Wisconsin Act 60 resulted in more widespread use of audio

and video recordings of interrogations by law enforcement, copies of which must be provided to the defense.

The public defender board's requests for cost-to-continue budget increases for discovery payments in 2007–2009 and in 2009–2011 were not funded. Instead, the FY 2009–2011 budget act reduced this appropriation by 1%, leaving a base budget of \$141,100, and directed the board to promulgate rules to address the funding shortfall.

Publication Date: October 3, 2009
Effective: October 3, 2009 through
 March 1, 2010
Hearing Date: November 16, 2009

Public Instruction (4)

1. **EmR0916** — A rule adopted revising **ss. PI 35.03 and 35.05**, relating to establishing a fee under the Milwaukee Parental Choice Program.

Exemption From Finding of Emergency

Pursuant to Section 9139 (3) of the nonstatutory provisions of 2009 Wisconsin Act 28, the Department of Public Instruction is not required to provide evidence that this rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency.

Publication Date: September 1, 2009
Effective: September 1, 2009 through
 January 28, 2010
Extension Through: March 29, 2010
 (Except Section 1)
Effective: October 1, 2009 through
 February 27, 2010
Hearing Date: October 26, 2009

2. **EmR0921** — Rule adopted to create **Chapter PI 15**, relating to revenue limit exemptions for energy efficiencies.

Exemption From Finding of Emergency

Pursuant to Section 9139 (2x) of the nonstatutory provisions of 2009 Wisconsin Act 28, the Department of Public Instruction is not required to provide evidence that this rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency.

Publication Date: September 4, 2009
Effective: September 4, 2009 through
 January 31, 2010
Extension Through: April 1, 2010
Hearing Date: November 9, 2009

3. **EmR0933** — Rule adopted to create **Chapter PI 39**, relating to grants for tribal language revitalization.

Finding of Emergency

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

The tribal language revitalization grant program under s. 115.745, Stats., was created under 2009 Wisconsin Act 28. The Act became effective June 30, 2009, and appropriated \$247,500 annually beginning in the 2009–10 school year. In

order for school districts to develop applications and for the department to review the applications and grant awards in time for the program to operate in the second semester of the school year, rules must be in place as soon as possible to establish application criteria and procedures.

Publication Date: December 15, 2009
Effective: December 15, 2009
 through May 13, 2010
Hearing Date: January 15, 2010

4. **EmR0936** — Rule adopted to create **section PI 8.01 (4)**, relating to waiver of school hours.

Finding of Emergency

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

2009 Wisconsin Act 42 requires the department to promulgate rules establishing criteria for waiving the requirement to schedule at least the number of hours of direct pupil instruction specified under s. 121.02 (1) (f) 2. if school is closed for a reason specified in s. 115.01 (10) (a) 2. or 3. The Act became effective October 21, 2009. Therefore, rules must be in place as soon as possible to establish the waiver procedure and criteria for the current school year.

Publication Date: December 21, 2009
Effective: December 21, 2009
 through May 19, 2010
Hearing Date: February 1, 2010

Public Service Commission

EmR0919 — Rule adopted to create **Chapter PSC 172**, relating to the police and fire protection fee created under 2009 Wisconsin Act 28.

Finding of Emergency

The Commission finds that an emergency exists and that an emergency rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. The police and fire protection fee, which must go into effect September 1, 2009, (2009 Wisconsin Act 28 section 9441) will be used to replace shared revenue payments for such services. To ensure the public peace, health, safety, and welfare of the citizens of Wisconsin, it is vital for funding of police and fire protection services to continue smoothly, quickly, and unimpeded. Thus, it is necessary for the rule administering the fee to be implemented as soon as possible.

Publication Date: September 11, 2009
Effective: September 11, 2009
 through February 7, 2010
Hearing Date: December 2, 2009

Regulation and Licensing (2)

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

Exemption From Finding of Emergency

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

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

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

Exemption From Finding of Emergency

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

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

Revenue (6)

1. **EmR0924** — Rule adopted revising **Chapter Tax 11**, relating to sale and use tax.

Finding of Emergency

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

The changes made by the emergency rule must be effective October 1, 2009, to be in conformity with the Streamlined Sales and Use Tax Agreement. In order to meet this deadline, it is necessary to promulgate this rule as an emergency rule.

Publication Date: September 30, 2009
Effective: October 1, 2009 through
 February 27, 2010
Hearing Dates: December 1 and 15, 2009

2. **EmR0929** — Rule adopted to create sections **Tax 2.85 and 11.90**, relating to failure to produce records.

Finding of Emergency

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

The emergency rule is to reflect changes in Wisconsin's tax laws due to the adoption of penalties for failure to produce records.

It is necessary to promulgate this rule order to provide guidance so that the penalties can be administered in a fair and consistent manner.

Publication Date: October 19, 2009
Effective: October 19, 2009 through March 17, 2010
Hearing Dates: December 10 and 21, 2009

3. **EmR0935** — Rule adopted to create **section Tax 1.16**, relating to the financial record matching program.

Finding of Emergency

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

The emergency rule is to reflect changes in Wisconsin's tax laws due to the creation of the financial record matching program.

It is necessary to promulgate this rule order to provide procedures so that the program can be administered in a fair and consistent manner.

Publication Date: December 22, 2009
Effective: December 22, 2009 through May 20, 2010
Hearing Date: February 11, 2010

(See the Notice in this Register)

4. **EmR0943** — Rule adopted to revise **Chapter Tax 2**, relating to apportionment and nexus.

Finding of Emergency

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

In 2009, the Wisconsin Legislature enacted Acts 2 and 28, both of which contained substantial changes to Wisconsin's corporation franchise and income tax laws. Most of these changes are effective retroactively to taxable years beginning on or after January 1, 2009. Emergency rules are needed to add certainty about the scope and application of the newly enacted statutes as soon as possible so that taxpayers can file their returns accordingly.

Publication Date: December 31, 2009
Effective: December 31, 2009 through May 29, 2010
Hearing Date: February 25, 2010

(See the Notice in this Register)

5. **EmR1001** — Rule adopted revising **Chapter Tax 2**, relating to combined reporting for corporation franchise and income tax purposes.

Finding of Emergency

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

The function of the Wisconsin Department of Revenue is to administer the Wisconsin tax laws. These laws, and tax policy for raising revenue, are determined by the State Legislature. The State Legislature recently enacted numerous items of tax legislation, affecting individuals and businesses alike. Some of these apply retroactively to January 1, 2009. Emergency rules are needed, not only to address the risk of revenue loss, but to add more clarity and certainty about the scope and application of the newly enacted statutes.

Publication Date: January 15, 2010
Effective: January 15, 2010 through June 13, 2010
Hearing Date: February 25, 2010

(See the Notice in this Register)

6. **EmR1002** — Rule adopted to create **section Tax 1.17**, relating to the ambulatory surgical center assessment.

Exemption From Finding of Emergency

The legislature by Section 9143 (4u) of 2009 Wisconsin Act 28 provides an exemption from a finding of emergency for the adoption of the rule.

Publication Date: January 19, 2010
Effective: January 19, 2010 through October 15, 2010
Hearing Date: February 11, 2010

(See the Notice in this Register)

Veterans Affairs (2)

1. **EmR0911** — Rule adopted to revise section VA 2.01, relating to the assistance to needy veterans grant program.

Finding of Emergency

The Wisconsin Department of Veterans Affairs 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 facts constituting the emergency is: The economic recession in effect for the last fiscal year has adversely affected the veteran population. Many veterans have lost their employment or had their scope of employment reduced. In addition to losing employment, many veterans have seen their health care reduced or eliminated. In order to serve the largest population of veterans and ensure minimal health care for that population, the department is requesting emergency rules to define "vision care and to limit the eligibility, by available funding, for "dental care", "hearing care", and "vision care". These eligibility limitations, which address the cost, type and frequency of care available under the program, will allow more veterans in need to access the limited resources of this program.

Publication Date: July 1, 2009
Effective: July 1, 2009 through November 27, 2009
Extension Through: March 27, 2010
Hearing Date: August 14, 2009

2. **EmR0944** — Rule adopted to amend **section VA 2.02 (2)**, relating to the veterans tuition reimbursement program.

Finding of Emergency

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

The removal of the existing deadline for completing and receiving an application for the tuition fee reimbursement program has left the department unable to budget the available resources for this program to ensure maximum coverage for eligible veterans throughout the fiscal year. The department is requesting emergency rules to ensure applications can be processed in a responsive manner and to allow the department to properly manage the program’s biennial budget and ensure the welfare of all eligible veterans. The emergency rule will address the need for an application deadline while the department completes the promulgation for a permanent rule for the program.

Publication Date: January 4, 2010
Effective: January 4, 2010 through June 2, 2010

accordance with the wage rates established by the determination. Under the law as it existed before the enactment of 2009 Act 28, a prevailing wage rate determination was required for any project with an estimated cost of at least \$48,000 (for a single-trade project) or \$234,000 (for a multi-trade project). Act 28 changes these amounts to an estimated project cost of at least \$25,000. Act 28 has also created a new statute, s. 66.0904, Stats., which requires that a private developer obtain and comply with a prevailing wage rate determination for a private project that receives at least \$1,000,000 in direct financial assistance from a local governmental unit.

The state and local governmental units and private developers who may be subject to these new requirements of the prevailing wage laws need immediate guidance as to the manner in which the Department will apply the January 1, 2010 effective date to new projects. This rule provides that guidance by establishing that the new threshold requirements will apply to projects for which a request for bids is issued or a contract is negotiated after January 1, 2010.

Publication Date: December 29, 2009
Effective: January 1, 2010 through May 30, 2010

Workforce Development (2)
Public Works Construction Contracts,
Chs. DWD 290–294

1. **EmR0941** — Rule adopted to create **section DWD 290.20**, relating to the thresholds for the requirement of prevailing wage rates.

Finding of Emergency

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

The most recent state budget legislation, 2009 Wisconsin Act 28, contained amendments to the state laws which require the payment of prevailing wage rates for work done on projects of public works and, in a new statute, for work done on private projects which receive more than \$1,000,000 of public direct financial assistance. The new provisions become effective on January 1, 2010.

The prevailing wage laws require that when a state agency or local governmental unit contracts for the erection, construction, remodeling, repairing, or demolition of a public works project it must obtain a prevailing wage rate determination from the Department of Workforce Development and require that the contractors and subcontractors on the project pay their employees in

2. **EmR0942** — Rule adopted to amend **section DWD 293.02**, relating to the adjustment of thresholds for payment and performance assurance bond requirements and affecting small businesses.

Finding of Emergency

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

The adjustment of the thresholds for the application of the project payment and performance assurance bond requirements ensures that the adjustments are effective on a date certain that is prior to the time of year that project requests are generally submitted to the Department and the need for obtaining bonding is determined. The adjustment avoids imposing an additional administrative burden on local governments and state agencies caused by an effective decrease of the thresholds due solely to inflation in the construction industry. If these new thresholds are not put into effect by emergency rule, the old thresholds will remain effective for approximately six to seven months, until the conclusion of the permanent rule-making process. The thresholds are based on national construction cost statistics and are unlikely to be changed by the rule-making process.

Publication Date: December 29, 2009
Effective: January 1, 2010 through May 30, 2010

Scope Statements

Children and Families

Safety and Permanence, Chs. DCF 37–59

Subject

Creates Chapter DCF 12, relating to caregiver background checks.

Policy Analysis

When 2007 Wisconsin Act 20 created the Department of Children and Families (DCF), nonstatutory language provided for the transfer to DCF of rules “primarily related” to the Division of Children and Families within the Department of Health and Families Services (DHFS). Transfer to DCF of department–level DHFS rules that apply “equally” to the Department of Health Services and DCF was not addressed.

The DHFS background check rule, HFS 12, was a department–level rule promulgated based on current DCF statutory authority in s. 48.685, Stats., and current DHS statutory authority in s. 50.065, Stats. The Legislative Reference Bureau (LRB) has informed the Department that necessary parts of the caregiver background check rule cannot be transferred to DCF under LRB’s authority to make technical corrections. This proposed rulemaking order will create a DCF caregiver background check rule based on the portions of HFS 12 (renumbered DHS 12) affecting programs regulated by DCF.

The proposed rule will also include statutory updates from 2009 Wisconsin Acts 28 and 76; 2007 Wisconsin Acts 111 and 116; 2005 Wisconsin Acts 184 and 277; and 2001 Wisconsin Act 109.

In addition, the proposed DCF 12 will add certified child care providers as a covered entity directly in the rule. Certified child care providers are subject to the background check requirements in s. 48.685, Stats. Before the creation of DCF, certified providers were regulated by the Department of Workforce Development (DWD). Since DWD had no statutory authority for a background check rule, the certification rules in DCF 202 provide that the same background check provisions that apply to licensed child care under HFS 12 (DHS 12) also apply to certified child care. Certified providers will be specifically included in DCF 12.

The proposed rule will also make various minor changes and clarifications. The Department has a memorandum of agreement with DHS for DHS to continue to perform department–level rehabilitation review procedures for entities regulated by DCF. The Department does not have statutory authority to change the criminal bars by rule.

Statutory Authority

Section 48.685 (1) (ag) 1. a., (2) (d), (5) (a), (6) (b) and (c) and s. 227.11 (2), Stats.

Comparison with Federal Regulations

42 USC 671 requires states to provide procedures for criminal records checks, including fingerprint–based checks of national crime information databases, for any prospective foster or adoptive parent. A felony conviction for child abuse or neglect, for spousal abuse, for a crime against children, or

for a crime involving violence, including rape, sexual assault, or homicide, but not including other physical assault or battery, is a permanent bar. A felony conviction for physical assault, battery, or a drug–related offense is a 5–year bar. A state must obtain the addresses for the past 5 years of any prospective foster or adoptive parent and any other adult living in the home to enable the state to check any child abuse and neglect registry maintained by the state or any other state.

Entities Affected by the Rule

Treatment foster homes, residential care centers for children and youth, child–placing agencies, foster homes, group homes, shelter care facilities, certified child care providers, family child care centers, group child care centers, days camps for children, and day care programs established by school boards.

Estimate of Time Needed to Develop the Rule

100 hours.

Contact Information

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Children and Families

Safety and Permanence, Chs. DCF 37–59

Subject

Creates Chapter DCF 35, relating to home visitation to prevent child abuse or neglect.

Policy Analysis

Under s. 48.983, Stats., as affected by 2009 Wisconsin Act 28 and 2009 Wisconsin Act 82, a county, private agency, or Indian tribe may apply to the department for an annual grant that will be used to operate a home visiting program to prevent child abuse and neglect.

The home visiting program will provide case management services that will begin when a woman who is eligible for Medical Assistance is pregnant if an assessment shows risk factors for poor birth outcomes or for perpetuating child abuse or neglect. Services will generally continue until the child is 3 years old. One of the purposes for which the grant may be used is to reimburse a case management provider for the amount of the allowable charges under the Medical Assistance program that is not provided by the federal government. The grants may also be used for flexible funds for appropriate expenses of each family that is participating in the home visiting program, training activities, and a grantee’s start–up costs and capacity building.

The minimum amount of a grant is \$10,000. The county, private agency, or Indian tribe shall agree to match at least 25% of the grant amount annually in funds or in–kind contributions. The department shall determine the amount of a grant awarded to a county, private agency, or Indian tribe in excess of \$10,000 based on the need for a grant, as determined by a formula that the department shall promulgate by rule. The

formula shall determine need based on the number of births that are funded by Medical Assistance in that county, the area in which that private agency is providing services, or the reservation of that Indian tribe and on the rate of poor birth outcomes, including infant mortality, premature births, low birth weights, and racial or ethnic disproportionality in the rates of those outcomes, in that county, the area in which that private agency is providing services, or the reservation of that Indian tribe.

The proposed rule will be the formula to determine the grant amount in excess of \$10,000, as required by s. 48.983 (2), Stats.

Statutory Authority

Sections 49.983 (2) and 227.11 (2), Stats.

Comparison with Federal Regulations

None.

Entities Affected by the Rule

Counties, tribes, private agencies, and women who are eligible for Medical Assistance and have a substantial risk of poor birth outcomes or future abuse or neglect of a child.

Estimate of Time Needed to Develop the Rule

75 hours.

Contact Information

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Children and Families

Safety and Permanence, Chs. DCF 37-59

Subject

Revises Chapters DCF 56 and 58, relating to foster care and kinship care.

Policy Analysis

Section 48.62 (8), Stats., as created by 2009 Wisconsin Act 28, provides that the Department shall promulgate rules to provide levels of care that a licensed foster home is certified to provide, establish a standardized assessment tool to assess the needs of a child and determine the level of care that is required, and provide monthly rates of reimbursement for foster care that are commensurate with the level of care that the foster home is certified to provide and the needs of the child who is placed in the foster home.

The Department is implementing the rules on levels of care in two phases. This proposed rule will amend the base foster care licensing code and create a process for certification of foster homes at Level 1 and Level 2. A future rulemaking order will create the requirements for foster homes with certification levels above Level 2, establish the customized assessment tool, and provide the process to determine monthly rates of reimbursement above the basic maintenance payment under levels of care.

2009 Wisconsin Act 28 assumes that court-ordered kinship care relatives will be applying for a license to operate a foster home beginning after January 1, 2010, and continuing throughout 2010. The newly-licensed kinship care relatives will be incorporated into the foster care program. Licensing

these relatives will allow the state to claim an additional \$6.5 million in federal Title IV-E funds for 2010. Act 28 appropriates this \$6.5 million to be expended in 2011. 2009 Wisconsin Act 71 provides the specifics on licensing court-ordered kinship care applicants as foster parents. The proposed rule incorporates these requirements.

42 USC 671(a)(10) allows a waiver of a foster care licensing standard only on a case-by-case basis and only for non-safety related standards in relative foster family homes for specific children in care. States must determine which of their foster care licensing standards are not safety related. This rule will determine which licensing standards can be waived for relative foster homes.

The proposed rule will also allow licensing agencies to grant an exception to allow more than 6 but no more than 8 foster children in a foster home if necessary to keep a minor parent and minor child together or to keep siblings together. In addition, the rule will require a licensing agency or placing agency to have at least one contact per month with a foster parent and require a licensing agency to provide each foster parent with a copy of the agency's foster parent handbook.

The proposed rule will also make several other minor changes, clarifications, and statutory updates. A corresponding emergency rule was effective January 1, 2010.

Statutory Authority

Sections 48.62 (1) (a) and (8) (a), 48.67 (1) and (4), and 227.11 (2) (a), Stats.

Comparison with Federal Regulations

In general, a state can be eligible for federal funding under Title IV-E of the Social Security Act for foster care assistance if:

- The child was removed and placed in foster care in accordance with either of the following:
- A voluntary placement agreement between the state agency, or any other agency acting on behalf of the state, and the parents or guardians. If the child has remained in voluntary placement for a period in excess of 180 days, a judicial determination must be made.
- A judicial determination that:
- The placement is in the best interests of the child.
- Continuation in the home from which removed would be contrary to the welfare of the child and that reasonable or, in the case of an Indian child, active efforts have been made to preserve and unify the family, with the child's health and safety as the paramount concern.
- The child's placement and care are the responsibility of the state agency or any other public agency with which the state has made an agreement.
- The child has been placed in a foster family home, treatment foster home, group home, shelter care, or residential care center for children and youth.
- The child, while in the home, would have met the eligibility criteria for Aid to Families with Dependent Children as the program existed on July 16, 1996.

42 USC 671(a)(24) requires that the state plan for foster care and adoption assistance include a certification that, before a child in foster care under the responsibility of the state is placed with prospective foster parents, the prospective foster parents will be prepared adequately with the appropriate knowledge and skills to provide for the needs of the child, and that such preparation will be continued, as necessary, after the placement of the child.

45 CFR 1355(a) includes in the definition of “foster family home” a provision that states may claim Title IV–E reimbursement during the period of time between the date a prospective foster family home satisfies all requirements for licensure and the date the actual license is issued, not to exceed 60 days.

42 USC 671(a)(31) provides that a state must provide that reasonable efforts are made to place siblings removed from their home in the same foster care, kinship guardianship, or adoptive placement, unless the state documents that such joint placement would be contrary to the safety or well-being of any of the siblings. If siblings are not jointly placed, the state must provide for frequent visitation or other ongoing interaction between the siblings, unless that frequent visitation or other ongoing interaction would be contrary to the safety or well-being of any of the siblings.

42 USC 671(a)(20) provides that a state must provide procedures for criminal records checks, including fingerprint-based checks of national crime information databases, for all prospective foster or adoptive parents. A state must also check any child abuse and neglect registry maintained by the state or another state in which any prospective foster or adoptive parent or other adult living in the home has resided in the preceding 5 years.

Entities Affected by the Rule

Court-ordered kinship care relatives, prospective and current foster parents, county and tribal human or social services agencies, and licensed child-placing agencies.

Estimate of Time Needed to Develop the Rule

400 hours.

Contact Information

Jonelle Brom

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Insurance

Subject

Revises sections Ins 17.01 and 17.28, relating to fiscal year 2011 fund fees, provider classifications, and mediation panel fees and affecting small business.

Objective of the Rule

To establish the annual fees that participating health care providers must pay to the Injured Patients and Families Compensation Fund as required by s. 655.27 (3), Wis. Stat., for the fiscal year beginning, July 1, 2010. The proposed rule will update the listing of provider specialties (ISO Codes) by assessment class and will establish the mediation panel fees for fiscal year 2011 commencing July 1, 2010.

Policy Analysis

Existing policies are set forth in the statutes cited in the next section and in the rules themselves.

Statutory Authority

The statutory authority for this rule is sections 601.41 (3), 655.27 (3) (bg) and 655.61, Wis. Stats.

Comparison with Federal Regulations

There is no existing or proposed federal regulation addressing any medical malpractice fund like the Wisconsin Injured Patients and Families Compensation Fund.

Entities Affected by the Rule

All health care provider participants in the fund as set forth in s. 655.002 (1), Wis. Stats.

Estimate of Time Needed to Develop the Rule

100 hours estimated state employee time to promulgate this rule; other resources will include the review and recommendation of the board’s actuarial committee based on the analysis and recommendation of the fund’s actuaries and the director of state courts.

Natural Resources

Fish, Game, etc., Chs. NR 1—

Subject

Revises Chapter NR 29, relating to updating fee information for the Endangered Resources Review Program.

Objective of the Rule

The Department requests authorization to begin the process of amending Ch. NR 29, Wis. Adm. Code, to update fee information for services provided by the Endangered Resources Review Program and consider improved service alternatives requested by stakeholders. The Endangered Resources Review Program evaluates projects for potential impacts to rare species and habitats, shares Natural Heritage Inventory (NHI) data on rare species and high-quality natural communities, and provides training for DNR staff and external partners and customers. The program works with landowners, businesses, communities and DNR permit staff early in the planning phase of development and land management projects to identify measures that avoid and minimize negative impacts to rare species as required by endangered species laws while still allowing projects to be implemented. DNR is required by state statute to provide NHI information and data to customers for research, education, environmental, land management and similar authorized purposes (s. 23.27(3)(b), Wis. Stats.).

The fee structure for the Endangered Resources Review Program (contained in Ch. NR 29, Wis. Adm. Code: Endangered Resources Information Fees) was last updated 19 years ago. As a precursor to the process of updating the fee information, the Bureau has been gathering feedback from external customers and partners over the last year about how the Endangered Resources Review Program can better serve them, including identifying their priority needs and specific suggestions for improved services to better meet those needs. The Bureau has also been gathering input from DNR staff in other divisions and bureaus about how to better coordinate with other programs to improve consistency and decrease workload and completion time for permits related to the endangered resources review which is required for all actions that the DNR conducts, funds, or approves. The objective of this action is an updated fee structure that incorporates the improved service alternatives requested by stakeholders (e.g., an expedited endangered resources review option and additional training alternatives), allowing the Endangered Resources Review Program to provide the high-quality services requested by external customers and partners in a self-supporting manner.

Policy Analysis

Staff salary and fringe costs have increased significantly since the last revision of Ch. NR 29, Wis. Adm. Code, in 1990 such that the fees currently in place no longer cover the cost of staff time required to provide NHI information, including

endangered resources review and data sharing services, to our customers. The current fee for providing an endangered resources review is \$20/hour (\$60 minimum). Current staff costs for providing this service are \$44/hour. Thus for an average review (which takes 3 hours), the program loses \$72 in Review Program staff costs alone. Similarly, current fees for sharing NHI data are \$500–\$1000, but actual costs of 1) collection, mapping, quality control, management and packaging of these data for customers, 2) the processing time necessary to complete license agreements safeguarding the security of the data, and 3) providing the training and technical support necessary for external customers and partners to correctly use, understand and interpret the data often exceed this fee. This discrepancy between current fees and actual costs incurred along with cuts to funding for the Endangered Resources Bureau have led to funding and staff shortages in the Endangered Resources Review Program. The Endangered Resources Review Program is currently funded primarily by a multi-program chargeback. This chargeback was recently approved through FY10, contingent upon identifying alternate funds adequate to fund the program by FY11. Updating the fee structure in NR 29 is a necessary step in this process.

Statutory Authority

Section 23.27 (3), Wis. Stats.: Natural Heritage Inventory Program:

- (a) Duties; and
- (b) Access to information; fees.

Section 227.11, Wis. Stats.: Extent to which chapter confers rule-making authority.

Comparison with Federal Regulations

All projects that the DNR conducts, funds or approves must be in compliance with federal and state Endangered Species laws. Examples include land acquisition, land and water planning and development projects, sustainable forestry certification, Managed Forest Law (MFL) plan development, NEPA compliance for receipt of federal aid, and DNR permit review. Because federal compliance is required for receipt of federal grants (federal Sport Fish Restoration and Pittman–Robertson funds granted to the Department totaled nearly \$23 million in fiscal year 2009), the Endangered Resources Review Program has worked with the U.S. Fish and Wildlife Service (USFWS) to develop joint screening procedures. These procedures have been approved by the Department as well as by the USFWS Federal Aid Office. The procedures require checking the NHI database for occurrences of listed species and provide an opportunity to screen for Special Concern species to ward off future listings. Thus a myriad of DNR programs within Central Office and the regions depend on services that the Endangered Resources Review Program provides (including NHI data available through the online NHI Portal, species management guidelines, endangered resources review services, NHI data sharing services, training, and technical support) for conservation compliance. The provision of timely and accurate NHI data through the NHI Portal along with the technical support and services provided by the Endangered Resources Review Program are an insurance policy for the Department. They ensure that all Department programs meet state ESA requirements, that Department permits are issued in a timely manner, and that federal grants are not held up by the USFWS for noncompliance. The Endangered Resources Review Program strives to continue to develop and improve tools and provide services that facilitate and streamline

compliance with state and federal endangered species laws for both internal staff and external customers and partners.

Entities Affected by the Rule

The Endangered Resources Review Program evaluates projects for potential impacts to rare resources and shares NHI data on rare species and high quality natural communities with external partners and customers for conservation purposes. As a result, there is a broad array of groups likely to be interested in and/or impacted by this proposed rule change including federal and state agencies, county and local units of government, private businesses (e.g., utilities, commercial and residential developers, environmental consultants, private foresters), non-profit organizations, university and college researchers, county forests and public and private landowners.

Estimate of Time Needed to Develop the Rule

The Department anticipates that approximately 268 hours of staff time will be needed.

Contact Information

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Transportation

Amended Scope Statement

Original Publication: Register No. 633,
September 30, 2008, eff. 10–1–08

Subject

Revises Chapter Trans 100, relating to insurance requirements.

Objective of the Rule

This Statement of Scope is published as part of a rule making effort that a Scope Statement published on October 1, 2008 initiated amending ch. Trans 100, relating to insurance requirements. 2009 Wis. Act 28 enacted a number of changes to Ch. 344, Stats., creating a mandatory insurance requirement for the State of Wisconsin. 2009 Act 28's amendments to Ch. 344, Stats., require the Department to promulgate rules to implement and administer the new law.

The objective included in the prior published statement specified the amendment of Ch. Trans 100 to resolve circular logic of some statutory provisions in Ch. 344, Stats., related to license reinstatement. The additional objective to be included is to implement the mandatory insurance provisions enacted as part of 2009 Wis. Act 28.

Policy Analysis

A. Matters included in the prior published Scope Statement

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 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. Under the statute, a judgment is "satisfied" for purposes of this law once the judgment debtor pays an amount equal to the minimum mandatory insurance amounts specified in the statutes.

Wisconsin Legal Action has brought this provision to the Department's attention and asked the Department to re-examine the statutory provision and the manner in which DMV interprets and applies this law. DMV will re-examine the statute and its interpretation and application of that statute as part of this rule making.

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. Provisions of s. Trans 100.09.

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.

B. Matters included in this published Scope Statement

Additional policies relevant to the rule and of new policies proposed to be included in the rule and an analysis of policy alternatives:

The Department will define by rule the forms of proof of insurance or other proofs of financial responsibility described in s. 344.63, Stats., that must be carried in any vehicle upon a Wisconsin highway.

Statutory Authority

Sections 85.16 (1), 227.11, 343.02 and 344.66, Stats.

Comparison with Federal Regulations

None.

Entities Affected by the Rule

Insurance companies and insured persons.

Estimate of Time Needed to Develop the Rule

250 hours.

University of Wisconsin System — Board of Regents

Subject

Revises Chapter UWS 19, relating to sick leave benefits for faculty, academic staff, and limited appointees of the University of Wisconsin System.

Objective of the Rule

The objective of the proposed rule is to amend Ch. UWS 19, Wis. Adm. Code, to change the sick leave reinstatement period for employees who leave and then return to employment in the UWS from three to five years to be consistent with the policy for classified staff. The proposed rule also would make a non-substantive correction to the definition of "sick leave" to conform to the federal Family and Medical Leave Act which has changed since Ch. UWS 19 was promulgated.

Policy Analysis

Ch. UWS 19, Wis. Adm. Code, governs accrual of sick leave by faculty, academic staff, and limited appointees of the UWS. The current three-year sick leave reinstatement period for unclassified employees is inconsistent with the policy for classified staff whose sick leave is reinstated if they return to the UWS within five years of terminating employment. Changing the reinstatement period from three to five years will correct this inequity, and will remove a potential barrier to unclassified staff members seeking to engage in entrepreneurial activities such as forming companies.

Statutory Authority

Sections 36.09 (1) and 36.30, Wis. Stats.

Comparison with Federal Regulations

Not applicable.

Entities Affected by the Rule

This rule will affect faculty, academic staff, and limited appointees of the University of Wisconsin System.

Estimate of Time Needed to Develop the Rule

The Board estimates that it will take approximately 10 hours of staff time to develop the proposed rule, and 5 hours to finalize the rule following public hearing.

Submittal of Rules to Legislative Council Clearinghouse

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

Employee Trust Funds CR 10–004

On January 14, 2010, the Department of Employee Trust Funds submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed order revises Chapters ETF 10, 20, 40 and 41, relating to domestic partner benefits and the extension of health insurance coverage to adult children to the age of 27 years.

Agency Procedure for Promulgation

A public hearing is required and will be held on February 12, 2010. The Department's policy director is primarily responsible for promulgation of the rules.

Contact Information

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Health Services

Management and Technology and Strategic Finance, Chs. DHS 1— CR 10–003

On January 8, 2010, the Department of Health Services submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed order creates Chapter DHS 19, relating to discretionary enforcement.

Agency Procedure for Promulgation

A public hearing is required and will be held on February 18, 2010.

Contact Information

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Public Instruction CR 10–002

On January 8, 2010, the Department of Public Instruction submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed order revises section PI 11.36 (6), relating to the identification of children with specific learning disabilities.

Agency Procedure for Promulgation

A public hearing is required and will be scheduled at a later date. The Division for Learning Support: Equity and Advocacy is primarily responsible for promulgation of the rules.

Contact Information

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Special Education
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Revenue CR 10–001

On January 7, 2010, the Department of Revenue submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed order revises Chapter Tax 2, relating to apportionment and nexus.

Agency Procedure for Promulgation

A public hearing is required and has been scheduled for February 25, 2010. The Office of the Secretary is primarily responsible for promulgation of the rules.

Contact Information

Dale Kleven
Income, Sales and Excise Tax Division
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Email: dale.kleven@revenue.wi.gov

Revenue CR 10–005

On January 14, 2010, the Department of Revenue submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed order creates section Tax 1.17, relating to the ambulatory surgical center assessment.

Agency Procedure for Promulgation

A public hearing is required and has been scheduled for February 11, 2010. The Office of the Secretary is primarily responsible for promulgation of the rules.

Contact Information

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Rule–Making Notices

Notice of Hearing Employee Trust Funds EmR0938, CR 10–004

NOTICE IS GIVEN That pursuant to s. 227.14, Stats., the Wisconsin Department of Employee Trust Funds (ETF) which includes the Employee Trust Fund Board, Wisconsin Retirement Board, Teachers Retirement Board, Group Insurance Board, and Deferred Compensation Board, will hold a public hearing to consider the emergency rules and proposed permanent rules to revise Chapters ETF 10, 20, 40 and 41, relating to the implementation of benefit changes mandated in 2009 Wisconsin Act 28; specifically, domestic partner benefits and the expansion of health insurance coverage to adult dependents up to the age of 27 years.

Hearing Information

A public hearing on the proposed rule will be held on:

<u>Date and Time</u>	<u>Location</u>
February 12, 2010 at 1:30 p.m.	Dept. of Employee Trust Funds Conference Room GB 801 West Badger Road Madison, Wisconsin

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

Copies of Proposed Rule

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

Submission of Written Comments

Comments may be submitted to the contact person no later than 4:30 p.m., Central Standard Time, on February 19, 2010.

Analysis Prepared by the Department of Employee Trust Funds

Statutes interpreted

Various statute sections in ch. 40, Stats., regarding the Public Employee Trust Fund.

Statutory authority

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

Explanation of agency authority

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

Related statute or rule

There are no other statutes or rules that provide for benefits administered by ETF to be extended to the domestic partners of state and local government employees. 2009 Wisconsin

Act 28 contains changes to many statutes relating to domestic partnership. A new Chapter 770, provides for a domestic partnership registry, but these provisions relate only to the creation of a registered domestic partnership and the benefits flowing from a Chapter 770 domestic partnership. These provisions are not linked with the provisions regarding Chapter 40 domestic partnerships. The expansion of health insurance to adult dependents up to the age of 27 years relates to an insurance mandate in s. 632.885, Stats.

Plain language analysis

2009 Wisconsin Act 28 provides in essence that domestic partners that meet the statutory requirements for domestic partnership in Chapter 40 are to be considered as equivalent to spouses for the purpose of the benefits administered by ETF. Domestic partnerships have not previously been recognized for Chapter 40 benefit purposes. In addition, 2009 Wisconsin Act 28 mandates the extension of health insurance coverage to eligible adult children up to the age of 27 years. ETF previously covered eligible adult children up to the age of 25 years if the child was a full time student. New rules and amendments are necessary to effectuate these provisions of 2009 Wisconsin Act 28, including but not limited to:

- A rule that the statutory definition of “decree date” applies to a termination of a domestic partnership for qualified domestic relations order purposes.
- A rule that for the purpose of determining a beneficiary under the statutory standard sequence (in the absence of a beneficiary designation or where the named beneficiary(ies) are deceased), a divorce, legal separation, or annulment terminates the marital relationship, and a domestic partnership terminates as defined by this rule.
- A rule that a completed and notarized *Affidavit of Domestic Partnership* must be received by the department before the domestic partnership becomes effective for Chapter 40 benefit purposes.
- A rule permitting the department to reject any Affidavit that is illegible or missing necessary information, and requiring rejection of Affidavits that are not notarized and/or signed by both partners.
- A rule clarifying that the registration of domestic partnership under Chapter 770, Wis. Stats., does not create a domestic partnership for Chapter 40 benefit purposes. ETF needs a separate affidavit because there are differences between the definitions of domestic partnership in Chapter 40 and in Chapter 770. For example, ETF’s definition of domestic partnership permits same–sex and opposite–sex domestic partners, while Chapter 770 permits only same–sex domestic partners.
- A rule establishing the effective date of Chapter 40 domestic partnerships based on ETF’s Affidavit receipt date. The rule determines exactly when and how domestic partnerships are created and terminated for Chapter 40 benefit purposes. For example, upon the Department’s receipt of a properly executed *Affidavit of Termination of Domestic Partnership*, ETF will consider the domestic partnership to be irrevocably dissolved.

- A rule that permits ETF to consider a domestic partnership to be terminated, based on evidence that the partnership no longer meets the statutory definition of a domestic partnership, such as failing to share a common residence or marrying, or that the Chapter 40 domestic partnership terminates at such time as neither partner has any benefit rights under Chapter 40.

Comparison with federal regulations

There are no existing federal regulations that specifically address benefits for the domestic partners of state and local government employees/retirees. However, there is pending federal legislation relating to domestic partnerships and to the expansion of health insurance to adult dependents to the age of 27 years:

Affordable Health Care for America Act (H.R. 3962): The bill contains a provision that would allow adults up to 27 years old to be covered by a parent's health insurance policy. The bill also addresses tax inequities for insurance subscribers related to the addition of adult children or domestic partners to the subscriber's employer-sponsored group health insurance plan. The bill was approved by the House of Representatives on November 7, 2009, and was placed on the Senate Calendar for reading.

Domestic Partnership Benefits and Obligations Act (S. 1102, H.R. 2517): provides to domestic partners of federal employees (excluding military) health insurance and enhanced dental and vision benefits, retirement and disability benefits, family, medical, and emergency leave, group life insurance, long-term care insurance, compensation for work injuries, and benefits for disability, death, or captivity. Last action on the bill was in July 2009, with the bill going to the Oversight and Government Reform Committee.

Tax Equity for Health Plan Beneficiaries Act (S. 1153, H.R. 2625): The bill would exclude the value of employer-provided health insurance for a domestic partner or other non-spouse beneficiary from an eligible employee's income, as it does for benefits provided for a spouse or dependent. Last action on the bill was in May 2009, with the bill going to the House Ways and Means Committee.

Ending Health Disparities for LGBT Americans Act (H.R. 3001): Introduced in June, 2009. This bill incorporates the Tax Equity for Health Plan Beneficiaries Act and the Domestic Partnership Benefits and Obligations Act. It contains provisions for eliminating inequities relating to domestic partner and same-sex spouse access to benefits, as well as the tax inequities. Last action on the bill was in August 2009, with the bill going to the Subcommittee on Military Personnel.

Comparison with Rules in Adjacent States

Illinois:

- *Domestic Partnership Benefits*. There are no comparable state-level administrative rules on domestic partnership benefits for state and local government employees. Some Illinois municipalities have ordinances that provide for domestic partner benefits.
- *Health Insurance Coverage of Adult Dependents*. For policies issued after July 1, 2009, Group or individual health insurance policies are permitted to cover unmarried dependents until they reach age 26, regardless of student status and to age 30 for dependents who are veterans and have not been dishonorably discharged. Illinois law Sections 356z.11 and 356z.12.

Iowa:

- *Domestic Partnership Benefits*. There are no comparable state-level administrative rules on domestic partnership benefits for state and local government employees. However, Iowa legalized same-sex marriage in April 2009.
- *Health Insurance Coverage of Adult Dependents*. Health insurance providers are required to continue to cover unmarried children under their parents' coverage provided that the child 1) is under the age of 25 and a current resident of Iowa, 2) is a full-time student, or 3) has a disability. Iowa Code § 509.3 and Iowa Code § 514E.7.

Michigan:

- *Domestic Partnership Benefits*. There are no comparable state-level administrative rules on domestic partnership benefits for state and local government employees. Some municipalities, such as Ann Arbor, have ordinances providing for domestic partner benefits.
- *Health Insurance Coverage of Adult Dependents*. There are no comparable administrative rules relating to the expansion of health insurance coverage of adult dependents.

Minnesota:

- *Domestic Partnership Benefits*. There are no comparable state-level administrative rules on domestic partnership benefits for state and local government employees. The city of Minneapolis has an ordinance that provides for domestic partner benefits. Minnesota's Governor vetoed a Bill in 2008 for domestic partnership benefits.
- *Health Insurance Coverage of Adult Dependents*. Minnesota Chapter 62E.02 defines "dependent" as a spouse or unmarried child under age 25, or a dependent child of any age who is disabled.

Summary of factual data and analytical methodologies

2009 Wisconsin Act 28 created a requirement for ETF to recognize domestic partners who meet the qualifications of a Chapter 40 domestic partnership for the various benefit programs administered by ETF. 2009 Wisconsin Act 28 also mandated the extension of health insurance coverage to adult children to the age of 27 years. These requirements of the Act have been set forth in the newly created rule provision, as directed by the legislature.

Analysis and supporting documents used to determine effect on small business

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

Small Business Impact

There is no effect on small business.

Fiscal Estimate

The rule will have a minimal fiscal effect in that it will require the creation and processing of new forms used to track new categories of dependents for the various benefit programs administered by the Department. Most of the fiscal effect will be one-time. These costs are anticipated to be insignificant and the Department can absorb these costs within the existing base budget. The rule will not create any additional fiscal impact on any county, city, village, town, school district, technical college district, or sewerage districts. The rule will not create any additional fiscal impact

on the state for the current biennium. The rule will not have any fiscal impact on the private sector.

Agency Contact Person

Steve Hurley, Policy Director
 Department of Employee Trust Funds
 801 W Badger Rd.
 Madison, WI 53713-7931
 P.O. Box 7931 (use ZIP Code 53707 for PO Box)
 Phone: 608-267-2847
 Email: Steve.Hurley@etf.state.wi.us

Notice of Hearing

Health Services

Management and Technology and Strategic Finance, Chs. DHS 1—

CR 10-003

NOTICE IS HEREBY GIVEN that pursuant to ss. 227.11 (2) and 895.59 (2), Stats., the Department of Health Services will hold a public hearing on proposed permanent rules creating Chapter DHS 19, relating to discretionary enforcement, and affecting small businesses.

Hearing Information

Date and Time

February 18, 2010
 1:00 p.m. – 3:00 p.m.

Location

Wilson St. State Office Bldg.
 1 W. Wilson Street
 Room 638A
 Madison, Wisconsin

Accessibility

English

DHS is an equal opportunity employer and service provider. If you need accommodations because of a disability or need an interpreter or translator, or if you need this material in another language or in an alternate format, you may request assistance to participate by contacting Rosie Greer at 608-266-1279. You must make your request at least 7 days before the activity.

Spanish

DHS es una agencia que ofrece igualdad en las oportunidades de empleo y servicios. Si necesita algún tipo de acomodaciones debido a una incapacidad o si necesita un interprete, traductor o esta información en su propio idioma o en un formato alterno, usted puede pedir asistencia para participar en los programas comunicándose con Rosie Greer al número 608-266-1279. Debe someter su petición por lo menos 7 días de antes de la actividad.

Hmong

DHS yog ib tus tswv hauj lwm thiab yog ib qhov chaw pab cuam uas muab vaj huam sib luag rau sawv daws. Yog koj xav tau kev pab vim muaj mob xiam oob qhab los yog xav tau ib tus neeg pab txhais lus los yog txhais ntaub ntawv, los yog koj xav tau cov ntaub ntawv no ua lwm hom lus los yog lwm hom ntawv, koj yuav tau thov kev pab uas yog hu rau Rosie Greer ntawm 608-266-1279. Koj yuav tsum thov qhov kev pab yam tsawg kawg 7 hnub ua ntej qhov hauj lwm ntawd.

Copies of the Proposed Rule

A copy of the rules may be obtained from the department at no charge by downloading the documents from www.adminrules.wisconsin.gov or by contacting:

Rosie Greer
 Department of Health Services
 1 W. Wilson Street, Room 650
 Madison, WI 53707
 Phone: 608-226-1279
 Email: greerrj@dhfs.state.wi.us

Submission of Written Comments

Comments may be submitted to Rosie Greer listed above, or to the Wisconsin Administrative Rules Website at www.adminrules.wisconsin.gov until February 18, 2010, 4:30 p.m.

Analysis Prepared by the Department of Health Services

Statute interpreted

Section 895.59, Stats.

Statutory authority

Sections 227.11 (2) and 895.59 (2), Stats.

Explanation of agency authority

The rules created under s. 895.59 (2) Stats., are required to include a reduction or waiver of penalties for voluntary disclosure by a small business of actual or potential violations of rules or guidelines. Section 895.59 (2) Stats., further requires that the rule specify when the use of discretion in the enforcement of a rule or guideline against a small business will not be allowed. Section 895.59 (2), Stats., includes a list of circumstances under which discretion is not allowed. These circumstances must also be included in the rule. The rules may include consideration of a violator's ability to pay when determining the amount of any monetary penalty, assessment, or surcharge.

Related statute or rule

Section 895.59 Stats.

Plain language analysis

The Department proposes to create a rule consistent with the requirements of s. 895.59, Stats., by indicating when the Department may use discretionary enforcement concerning small businesses and when discretionary enforcement concerning small businesses is prohibited.

Comparison with federal regulations

There appear to be no proposed or existing federal regulations that are intended to address the activities to be regulated by the proposed rule.

Comparison with rules in adjacent states

Illinois:

There appear to be no rules in Illinois that are similar to the proposed rules.

Iowa:

There appear to be no rules in Iowa, that are similar to the proposed rules.

Michigan:

There appear to be no rules in Michigan that are similar to the proposed rules.

Minnesota:

There appear to be no rules in Minnesota that are similar to the proposed rules.

Summary of factual data and analytical methodologies

The Department reviewed statutes that authorize enforcement to determine the limitations if any of whether discretionary enforcement could be used and the extent of that discretion.

Analysis and supporting documents used to determine effect on small business

Entities that may be affected by the proposed rules include the following: Emergency Medical and Ambulance Service Providers; Asbestos & Lead Abatement Providers, Consultants, and Trainers; Hotels and Motels; Bed and Breakfast Establishments; Tourist Rooming Houses; Recreational and Educational Campgrounds; Restaurants (including mobile restaurants); Tattoo and Body Piercing Establishments; Tanning Bed Facilities; Public Pools; Vending Machine Operators; WIC Vendors; persons subject to licensing and regulation under ch. DHS 157; other entities regulated by the Department's Division of Public Health; and certain Medical Assistance providers regulated by the Department's Division of Health Care Access and Accountability.

Section 895.59, Stats., is applicable only to small businesses that are not covered under ss. 48.685 or 50.065, Stats. Because the rule requires a reduction or waiver of a penalty for voluntary disclosure of a violation, it is likely that the rule will have a positive fiscal effect on those businesses that receive a waiver or reduction.

Small Business Impact

The proposed rules will have a direct impact on a substantial number of small businesses that are not covered under ss. 48.685 or 50.065, Stats. The economic impact on the businesses affected by this rule is indeterminate.

Small business regulatory coordinator

Rosie Greer
Phone: 608-266-1279
Email: rosie.greer@dhs.wisconsin.gov

Fiscal Estimate

A copy of the full fiscal estimate may be obtained from the department's contact person listed below upon request.

State fiscal effect

None.

Local government fiscal effect

None.

Private sector fiscal effect

Indeterminate.

Agency Contact Person

Rosie Greer
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1 W. Wilson Street, Room 650
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AMENDED Notice of Hearings
(Original published, Register January 15, 2010, No. 649)
Natural Resources
Environmental Protection — General, Chs. NR 100—
CR 09-112

NOTICE IS HEREBY GIVEN THAT pursuant to ss. 227.11 (2) (a), 281.16, 281.19, 281.65 and 281.66, Stats., the Department of Natural Resources will hold public hearings on proposed revisions to Chapters NR 151, 153 and 155, Wis. Adm. Code, relating to the control of polluted runoff and two grant programs that help fund those controls.

Hearing Information

The hearings will be held on:

- | | |
|--|---|
| January 25, 2010
at 1:00 p.m. | Outagamie County Highway Dept.
Highway Shop Conference Room
1313 Holland Road
Appleton |
| January 28, 2010
at 1:00 p.m. | Best Western Trail Lodge
3340 Mondovi Road
Room: Chippewa #1
Eau Claire |
| February 2, 2010
at 1:00 p.m. | State Office Bldg.
141 NW Barstow St., Room 151
Waukesha |
| February 10, 2010
at 1:00 p.m. | Lyman F. Anderson Agricultural and
Conservation Center
1 Fen Oak Court
Classrooms A & B (1st floor)
Madison |
| February 11, 2010
at 1:00 p.m. | Rib Mountain Municipal Center
3700 N. Mountain Road (HWY NN)
Wausau |
| February 25, 2010
at 1:00 p.m. | UW Platteville, Pioneer Student Center
University North Room
One University Plaza
Platteville |

Each hearing will begin with a 1 hour informational session followed by formal testimony.

Pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided to qualified individuals with disabilities upon request. Please call Carol Holden at (608) 266-0140 with specific information on your request at least 10 days before the date of the scheduled hearing.

Copies of Proposed Rule and Fiscal Estimate

The proposed rule revisions and supporting documents, including the fiscal estimate may be viewed and downloaded and comments electronically submitted at the following internet site: <https://health.wisconsin.gov/admrules/public/Home> (Search this website using "NR 151", select "NR 151, 153, 155 Relating to Runoff Management Performance Standards and Grants."). If you do not have internet access, a personal copy of the proposed rules and supporting documents, including the fiscal estimate may be obtained from Carol Holden, DNR – WT/3, P.O. Box 7921, Madison, WI 53707-7921 or by calling (608) 266-0140.

Submission of Written Comments

Written comments on the proposed rules may be submitted via U.S. mail to Carol Holden, DNR – WT/3, P.O. Box 7921, Madison, WI 53707–7921 or by e–mail to carol.holden@wisconsin.gov. Comments may be submitted until **March 12, 2010**. Written comments whether submitted electronically or by U.S. mail will have the same weight and effect as oral statements presented at the public hearings.

Analysis Prepared by Department of Natural Resources

Statutes interpreted

Sections 281.16, 281.65 and 281.66, Stats.

Statutory authority

Sections 227.11 (2) (a), 281.16, 281.19, 281.65 and 281.66, Stats.

Related statute or rule

Chapter 92 and s. 283.33, Stats., and chs. ATCP 50, and NR 120, 152, 154, 216 and 243, Wis. Adm. Code.

Plain language analysis of the rule

Chapter NR 151, Runoff Management

The rule adds new and modifies existing performance standards that address nonpoint source pollution from both agricultural and non–agricultural sources, including transportation. The new performance standards include:

- a setback from waterbodies in agricultural fields within which no tillage would be allowed;
- a limit on the amount of phosphorus that may run off croplands as measured by a phosphorus index;
- a prohibition against significant discharge of process wastewater from milk houses, feedlots, and other similar sources;
- a standard that requires implementation of best management practices designed to meet a load allocation specified in an approved Total Maximum Daily Load (TMDL).

Modifications are made to the agricultural performance standards addressing cropland soil erosion control, nutrient management and manure storage. The rule also changes the non–agricultural performance standards that address construction site erosion control, post–construction storm water management and developed urban areas. The subchapter addressing transportation performance standards is moved to the non–agricultural performance standards sections. The agricultural implementation and enforcement sections are modified to clarify cost–share eligibility and to better align with the department’s stepped enforcement procedures. Some definitions are added and other definitions that are no longer used are deleted.

Chapter NR 153, Targeted Runoff Management And Notice Of Discharge Grant Programs

This existing rule contains policies and procedures for administering targeted runoff management grants to reduce both agricultural and urban nonpoint source pollution. Grants may be used to cost share the installation of best management practices as well as to support a variety of local administrative and planning functions. Projects are selected through a competitive scoring system and generally take two to three years to complete.

The revisions create four project categories for the targeted runoff management grant program instead of one category in the existing rule. The categories include large–scale/TMDL implementation, large–scale/non–TMDL control, small–scale/TMDL implementation and small–scale/non–TMDL control projects. The rule will help the state make progress in meeting its obligation to address impaired waters by focused funding of projects addressing TMDLs.

To implement recent statutory changes to the grant program, the rule creates a mechanism outside the competitive TRM process to fund Notices of Discharge (NODs) issued under ch. NR 243. Other provisions allow the department more flexibility in allocating grant funds and ensure an equitable scoring system. Portions of ch. NR 153 are repealed and recreated to accommodate the newly created categories, to eliminate or add definitions, clarify and expand restrictions on cost sharing, require the establishment of a local ch. NR 151 implementation program as a grant condition and allow for additional safeguards in the application documents.

Chapter NR 155, Urban Nonpoint Source Pollution Abatement And Storm Water Management Grant Program

This existing rule contains policy and procedures for administering the urban nonpoint source and storm water management grant program authorized under s. 281.66, Stats. The department may make grants under this program to governmental units for practices to control both point and nonpoint sources of storm water runoff from existing urban areas, and to fund storm water management plans for developing urban areas and areas of urban redevelopment. The goal of this grant program is to achieve water quality standards, minimize flooding, protect groundwater, coordinate urban nonpoint source management activities with the municipal storm water discharge permit program and implement the non–agricultural nonpoint source performance standards under ch. NR 151. Grants to a governmental unit may be used to cost share the installation of best management practices as well as to support a variety of local administrative and planning functions. The department may also make grants to the board of regents of the University of Wisconsin System to control urban storm water runoff from campuses in selected locations. Projects are selected through a competitive scoring system and generally take one to two years to complete.

The revisions to ch. NR 155 increase the department’s management oversight and accountability of grants while at the same time increase flexibility in how the grants are used. The revisions limit on the amount of money a grantee may receive in a given grant year, increase the department’s management oversight of grants by approving all contracts, regardless of cost, provide the department greater flexibility in awarding funds and allow for additional safeguards in the application documents.

The rule also allows the use of local assistance grants to pay for work done by competent in–house staff rather than hiring an outside consultant thus increasing local government’s flexibility to control costs. The rule adds requirements that hired consultants be competent in storm water management, all outstanding grants be completed on schedule prior to a new grant award, a final report be submitted and that the department may deny a grant to an otherwise eligible project if there is a potential impact on hazardous sites in addition to historic sites, cultural resources or endangered resources. Other parts of ch. NR 155 are repealed and recreated to define

terms, clarify concepts and merge similar sections, giving the department greater flexibility in awarding funds.

Comparison with federal regulations

The rule revisions are consistent with federal regulations that apply to control of nonpoint sources of pollution, animal feeding operations, nutrient management and storm water management. While federal regulations do not apply specifically to cropland practices or livestock operations that have only nonpoint source runoff, there are federal regulations for concentrated animal feeding operations (point sources) that specify control of nutrients entering surface waters. Certain modifications also better align state grant funding priorities with those of the federal government regarding total maximum daily loads.

The rule's phosphorus index performance standard is based on national policy and guidelines on nutrient management issued by the US Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) in April, 1999. The national policy and guidelines suggested the use of one of three phosphorus risk assessment tools, the most comprehensive of which is the phosphorus index. Prior to the adoption of this national policy, states began developing phosphorus-based nutrient management guidelines or regulations. The tillage setback performance standard is based on the phosphorus index calculation that assumes no tillage to the edge of the bank. The performance standard specifying BMPs to meet the load requirements of approved TMDLs will help the state to control nonpoint source pollutants to achieve federally required and approved TMDLs. The control of process wastewater discharge is of sufficient concern that USDA has developed technical standards for management of process wastewater.

Comparison of similar rules in adjacent states

In general, the adjacent states do not use statewide performance standards specifically designed to address polluted runoff from agricultural sources. However, these states have various regulations and procedures in place to address many of the polluted runoff sources that these rule revisions address. All four states use the phosphorus index in some form but none have proposed using it as a statewide performance standard as this rule does. The rule differs from the adjacent states' rules because it has more detail in its phosphorus index, is more quantitative and has more research to validate it. Also, in Wisconsin, pursuant to s. 281.16, Stats., cost sharing must be made available to existing agricultural operations before the state may require compliance with the standards.

Illinois:

Illinois does not have a tillage setback requirement, but it does offer a property tax incentive for the construction of livestock waste management facilities including the development of vegetative filter strips. The filter strips must be in cropland that is surrounding a surface-water or groundwater conduit, must be part of a conservation plan, and must have a uniform ground cover. The minimum and maximum widths that are eligible for the tax reduction is determined by the slope. Illinois does not allow raw materials, by-products and products of livestock management facilities, including milkhouse waste, silage leachate, and other similar products to be discharged to waters of the state. In addition to tax incentives, Illinois relies on federal Clean Water Act section 319 funds from US EPA to fund nonpoint source projects in the state.

Illinois requires that permit applicants follow a series of technical standards that are in the Illinois Urban Manual for both construction and post-construction. If the developer uses the technical standards they are considered in compliance, unless an inspection indicates that the technical standard is not working adequately. The developer will then need to make changes to their construction site or storm water management plan.

Iowa:

Iowa requires that nutrient management plans for livestock operation of 500 or more animal units be based on the phosphorus index. The rule's version of the phosphorus index uses Iowa's "quasi-modeling" approach but the equations are based on Wisconsin research. Iowa does not require a separation distance between tillage activities and waterbodies. Iowa prohibits discharge to waters of the state, polluting waters of the state and discharge to road ditches.

Iowa does not have a performance standard approach to construction projects, but does require BMP implementation. There is no specific goal for post-construction other than to have a storm water management plan similar to the way Wisconsin's program was set up before ch. NR 151 was promulgated in 2002. The requirement on the municipality is to try to control runoff from new development. There are no specific goals.

Iowa is making an effort to coordinate the development of TMDLs with the implementation of water quality improvement plans based on TMDLs. There is not yet a separate funding source specifically for implementing TMDL plans, but there are several different funding sources currently used for watershed project implementation, including section 319 funds and three different sources of state-funded watershed implementation funds. There is also a state-funded lakes restoration fund which may be partly used for watershed restoration work. Wherever possible, watershed projects try to leverage EQIP and other federal sources of funds.

Iowa does not currently offer a separate source of funds for Animal Feeding Operation BMPs in response to a Notice of Discharge violation. However, Iowa does not preclude a producer from funding because of a Notice of Violation (NOV), except in the case where the NOV results in the requirement for an NPDES permit. Funding from State Revolving Funds and federal section 319 cannot be used for BMPs requiring an NPDES permit, but can be used for non-permitted BMPs. EQIP funds in Iowa are currently allocated such that counties with water quality livestock projects receive 40 percent of the eligible points when scoring for EQIP funding. The Iowa Department of Agriculture and Land Stewardship has a nutrient management program designed to offer financial assistance for livestock producers for manure management, but the program has not been funded in over 10 years.

Michigan:

Michigan does not require a separation distance between tillage activities and waterbodies. The state's rules regarding process wastewater only apply to permitted concentrated animal feeding operations, but discharges from smaller farms are generally prohibited as a violation of water quality standards.

Within permits that apply to municipal separate storm sewer systems (MS4s), Michigan has similar performance standards for post-construction total suspended solids control and peak flow control in new development. It has a minimum treatment volume standard of one inch (or ½ inch if

technically supported) where they must achieve an 80 percent total suspended solids reduction. It also has a channel protection criteria where the post-peak flow rate and volume must match the pre-peak flow rate and volume for all storms up to the 2-yr, 24-hr event. The peak flow control standard is more stringent than this rule because it also controls volume. Wisconsin is trying to control streambank erosion by controlling a greater number of smaller storms. Michigan has also identified some water bodies that are not required to meet the channel protection standard, similar to Wisconsin's approach. Michigan has an option to use low impact development to meet these two standards, which is very different from Wisconsin. However, unlike Wisconsin, Michigan is only implementing these performance standards on new development in municipalities that have an MS4 permit. Also, if the municipality had an ordinance in place prior to this rule that addressed water quality for new development even if the performance standard was not included, they are grandfathered in.

Michigan has a pass through grant (section 319 and Clean Michigan Initiative funds) that places a priority on projects that will restore impaired waters or achieve progress toward meeting TMDL load reductions. Michigan does not have a program similar to the rule's mechanism to fund NODs outside of a competitive grant process.

Minnesota:

Minnesota does not have a tillage setback requirement along all waterbodies in agricultural areas, but the state does require a 16.5 foot (one rod) grass strip along certain public drainage ditches as well as vegetated strips, restored wetlands, and other voluntary set-aside lands through federal, state and local programs. For process wastewater, Minnesota rules place a limit of less than 25 mg/l BOD₅ (biological oxygen demand) that can be released to surface water and, if released to a leach field, the threshold is less than 200 mg/l BOD₅.

For non-agricultural practices, Minnesota recently reissued construction permits that require infiltration and the need for additional BMPs when sites are located near s. 303 (d) or outstanding resource waters. Its permit generally is more prescriptive in terms of how to design a BMP for optimal control, but it is not usually presented as a performance standard which would provide more flexibility. Based on Minnesota's documentation, it appears to require BMPs that will achieve an 80 percent total suspended solids reduction and ones that will infiltrate the first half inch of runoff from impervious surfaces. Minnesota requires more BMPs, including temperature control, if the receiving water has special needs such as ORW/ERW waters or s. 303 (d) waters.

Minnesota provides funding for TMDLs through its Clean Water Legacy Act and section 319 of the federal Clean Water Act. The state does not have a funding mechanism to fund notices of discharge specifically, but is looking for ways to provide more financial support for runoff from feedlots. There is a state cost-share program which is used alone or in combination with federal cost share.

Summary of factual data and analytical methodologies

The rule's agricultural performance standards were developed with input from an advisory committee that met four times between December 2007 and February 2008. The following research results and methodologies were analyzed as part of the development of these standards.

Phosphorus Index:

The Wisconsin Buffer Initiative: A Report to the Natural Resources Board of the Wisconsin Department of Natural Resources by the University of Wisconsin-Madison, College of Agricultural and Life Sciences. Dec. 22, 2005.

The following series of articles focused on the watershed targeting approach used in the Wisconsin Buffer Initiative report:

Diebel, M. W., J.T. Maxted, P. J. Nowak, and M. J. Vander Zanden. 2008. Landscape planning for agricultural nonpoint source pollution reduction I: A geographical allocation framework. *Environmental Management* 42 (5): 789-802.

Maxted, J. T., Diebel, M. W., and M. J. Vander Zanden. 2009. Landscape planning for agricultural nonpoint source pollution reduction II: Balancing watershed size, number of watersheds, and implementation effort. *Environmental Management* 43 (1): 60-68.

Diebel, M. W., J.T. Maxted, D. Robertson, S. Han, and M. J. Vander Zanden. 2009. Landscape planning for agricultural nonpoint source pollution reduction III: Assessing phosphorus and sediment reduction potential. *Environmental Management* 43 (1): 69-83.

The following studies of in-field runoff sediment and phosphorus concentrations provided some of the data that was used in building phosphorus index equations:

Panuska, J.C., K.G. Karthikeyan and P.S. Miller. 2008. Impact of surface roughness and crusting on particle size distribution of edge-of-field sediments. *Geoderma* 145: 315 - 324.

Panuska, J.C., K.G. Karthikeyan and J.M. Norman. 2008. Sediment and phosphorus losses in snowmelt and rainfall runoff from three corn management systems. *Trans. ASABE* 51: 95 - 105.

Panuska, J.C., K.G. Karthikeyan. 2009. Phosphorus and organic matter enrichment in snowmelt and rainfall runoff from agricultural fields. *Geoderma* XX: XX -XX (in review).

The following articles about the in-field runoff monitoring methods to collect the runoff phosphorus data that are used to validate the phosphorus index:

Bonilla, C.A., D.G. Kroll, J. M. Norman, D.C. Yoder, C.C. Molling, P.S. Miller, J.C. Panuska, J. B. Topel, P.L. Wakeman, and K.G. Karthikeyan. 2006. Instrumentation for measuring runoff, sediment, and chemical losses from agricultural fields. *Journal of Environmental Quality* 35:216-223.

Stunetebeck, T.D., M.J. Komiskey, D.W. Owens, and D.W. Hall. 2008. Methods of data collection, sample processing and data analysis for edge-of-field, stream gaging, subsurface tile, and meteorological stations at Discovery Farms and Pioneer Farm in Wisconsin, 2001-7. U.S. Geological Survey Open File report 2008-1015. 51 p.

The following paper showed one year's worth of research that validated the Wisconsin phosphorus index.

Bundy, L. G., A. P. Mallarino, and L. W. Good. 2008. Field-Scale Tools for Reducing Nutrient Losses to Water Resources. Pp. 159-170 in Final Report: Gulf Hypoxia and Local Water Quality Concerns Workshop. September 26-28, 2005, Ames, Iowa. Sponsored by Iowa State University and EPA. Organized by the MRSHNC, Upper

Mississippi River Sub-basin Hypoxia Nutrient Committee. St. Joseph, Michigan.

The following paper in press shows that simple runoff phosphorus loss models, like the Wisconsin phosphorus index can work well:

Vadas, P. A., L.W. Good, P.A. Moore Jr., and N. Widman. 2009. Estimating phosphorus loss in runoff from manure and phosphorus for a phosphorus loss quantification tool. *Journal of Environmental Quality* (in press).

The following document shows all the phosphorus index equations on the internet:

Good, L. W. and J. C. Panuska. 2008. Current calculations in the Wisconsin P Index. Available at: <http://wpindex.soils.wisc.edu>.

The following models were used in the development of the Wisconsin phosphorus index:

RUSLE 2 (Revised Universal Soil Loss Equations, version 2), USDA–NRCS official RUSLE2 Program and Database and Training materials and User’s Guides are available from http://fargo.nserl.purdue.edu/rusle2_dataweb/RUSLE2_Ind_ex.htm The draft user’s guide on this site is on the link labeled “RUSLE2 Technology.”

Snap–Plus 1.129.1, 1/20/2009 Copyright 2003–2008 by University of Wisconsin Regents Software developed by P Kaarakka, L.W. Good, and J. Wolter in the Department of Soil Science, UW Madison. This a software program links models for nutrient management (SNAP), conservation assessment (RUSLE2) and the Wisconsin Phosphorus Index (PI) into one software program for multi–year nutrient and conservation planning. The most current version is available at <http://www.snapplus.net/>.

Process wastewater performance standard:

The rule’s performance standard requires that livestock producers have no significant discharge of process wastewater to waters of the state. Sources of greatest concern include feed storage leachate and milk house waste. Process wastewater discharge is of sufficient concern that USDA has developed technical standards for its management. Environmental aspects of milking center waste water and feed storage leachate, including waste characteristics and water quality impacts, are included in:

Pollution Control Guide for Milking Center Wastewater Management. Springman, R.E., Payer, D.D and B.J. Holmes. 1994. University of Wisconsin–Extension, 44 pages.

“Silage Leachate Control”. Wright, Peter, in *Silage: Field to Feedbunk, Proceedings from the North American Conference, Hershey, Pennsylvania, February 11–13, 1997.* Pages 173 – 186. NRAES, editor.

“Environmental Problems with Silage Effluent”. Graves, R.E., and P.J. Vanderstappen. USDA Natural Resources Conservation Service, National Water Management Center Publication. 6 pages

“Base Flow Leachate Control.” Wright, Peter and P.J. Vanderstappen. Paper No. 94–25 60, ASCE Meeting Presentation at the 1994 International Winter Meeting, Atlanta Ga., December 13 – 16, 1994. 7 pages.

The USDA technical standard for managing milk house waste and feed storage leachate discharges is: *Waste Treatment* (no. 629). USDA, Natural Resources Conservation Service. August, 2008. 22 pages.

Modifications to the non–agricultural performance standards were developed with input from a technical advisory committee that met four times between October 2007 and February 2008. Changes to the protective areas performance standard are based on the department’s Guidance for the Establishment of Protective Areas for Wetlands in Runoff Management Rules, Wisconsin Administrative Code NR 151 in the Waterway and Wetland Handbook, Ch. 10. Department staff gathered information from municipal engineers and conducted analyses under various scenarios using analytical models to provide information to the technical advisory committee including:

- analysis showing the impact of redevelopment on total suspended solids loads, recommendations and estimated costs for control practices,
- analysis of the infiltration performance standards modifications for different land uses.

Analysis and supporting documentation used to determine effect on small business

The department concluded that the revisions to chs. NR 151, 153 and 155 will result in additional compliance requirements for small businesses, but the rules will not result in additional reporting requirements for small businesses. Rather than mandate specific design standards, the rules either establish new performance standards or revise existing performance standards.

Compliance requirements for agricultural producers vary depending on the type of operation and the performance standard, but the revisions to the rules will not change the existing compliance requirements for agricultural operations. Under state law, compliance with the performance standards is not required for existing nonpoint agricultural facilities and practices unless cost sharing is made available for eligible costs. A less stringent compliance schedule is not included for agricultural producers because compliance is contingent on cost sharing and in many cases, it can take years for a county or the state to provide cost share money to a producer.

Agricultural producers who are in compliance with the existing nutrient management performance standard may already be in compliance with the new phosphorus index and tillage setback performance standards. A phosphorus reduction strategy is included in NRCS nutrient management technical standard 590 (Sept. 5, 2005). A phosphorus index of 6 or less is specified in the PI strategy in Criteria C, 2 of the technical standard. The concept of streambank integrity, as proposed through a tillage setback performance standard, is an assumption of the phosphorus index calculation, which estimates phosphorus delivery to the stream via overland flow, but not from bank erosion or other means that soil, manure or fertilizer might enter the stream from farming operations. In circumstances where the phosphorus index has been determined to be insufficient to achieve water quality standards in areas where an approved total maximum daily load (TMDL) has been approved, a higher level of pollution control may be required. An owner or operator in this situation would be required to implement BMPs designed to meet the load allocation in the TMDL.

The rule revisions will not change the schedules for compliance and reporting requirements for non–agricultural businesses. These requirements are the same as those specified in ch. NR 216. In determining whether non–agricultural small businesses can be exempted from the rules, the department concluded that because the requirements of ch. NR 151, Subchapter III are based on

federal requirements the state cannot exempt those businesses. Also, the impacts from certain small business construction activities can have as large a water quality impact as from large businesses.

In determining the compliance and reporting effects, the department considered 1) the existing performance standards and prohibitions in ch. NR 151, 2) the requirements of NRCS technical standard 590 needed to meet the nutrient management performance standard, 3) assumptions contained in the Wisconsin Phosphorus Index, 4) compliance and reporting requirements under ch. NR 216, Subchapter II, 5) agreement with the department of commerce to regulate storm water discharges from commercial building sites under one permit, and 6) feedback from members of advisory committees that included small business owners and organizations.

Small Business Impact (including how this rule will be enforced)

The overall effect on small businesses may be increased time, labor and money spent on BMPs or planning tools, but there will not be a significant economic impact on small business. However, for agricultural producers the proposed new agricultural performance standards and the revised existing agricultural performance standards are not enforceable unless 70 percent cost sharing is provided, or up to 90 percent for economic hardship cases. The rules will be enforced either through county ordinances, DNR stepped enforcement procedures or a combination of the two.

Small businesses in the construction industry will not see an effect from the changes to the construction performance standard, but may experience increased costs from the changes to some of the post-construction performance standards. Most of the businesses affected by the changes to the total suspended solids standard will be commercial and it is difficult to estimate how many of those would be classified as small businesses. The modifications to the infiltration and the protective area performance standards may add additional costs, but they are expected to be small. Businesses affected will be both large and small. The rule will be enforced through permits required under ch. NR 216, or through local ordinances. For the non-agricultural performance standards, cost sharing is not required for compliance. However, the department may award grants for certain BMPs and planning activities.

Initial regulatory flexibility analysis

Pursuant to s. 227.114, Stats., the proposed rule may have an impact on small businesses. The initial regulatory flexibility analysis is as follows:

Describe the type of small business that will be affected by the rule.

Agricultural producers (crops and livestock), business and associated professionals involved with construction (developers, engineers, contractors, others in the building profession, and small commercial establishments that meet the definition of small business).

Briefly explain the reporting, bookkeeping and other procedures required for compliance with the rule.

None.

Describe the type of professional skills necessary for compliance with the rule.

Familiarity with software such as SNAP Plus and RUSLE2 will be needed for the phosphorus index agricultural performance standard.

Small business regulatory coordinator

The Department's Small Business Regulatory Coordinator for this rule may be contacted at Julia.Riley@wisconsin.gov or by calling (608) 264-9244.

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

Proposed rule revision will result in an increased demand on agency staff devoting more time to training, education, grant oversight, enforcement and development of guidance and procedures. The department estimates that a total of 10.5 FTEs will be needed to implement all three rules.

State fiscal effect

Increase costs. Costs will not be absorbed within the agency's budget.

Local government fiscal effect

Increase costs.

Types of local governmental units affected

Towns, Villages, Cities, Counties.

Fund sources affected

GPR, SEG.

Long-range fiscal implications

State cost-share grants to fully implement the process wastewater performance standard would be \$9.3 million or \$930,000 annually if awarded over a 10-year period. However, this estimate is dependent upon the availability of cost-share funds to implement the standard.

Agency Contact Person

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Notice of Hearing Revenue

EmR0935, CR 09-118

NOTICE IS HEREBY GIVEN That pursuant to ss. 71.91 (8) (b) and 227.24 ,Stats., the Department of Revenue will hold a public hearing to consider emergency rules and the

creation of permanent rules revising Chapter Tax 1, relating to the financial record matching program.

Hearing Information

The hearing will be held:

<u>Date and Time</u>	<u>Location</u>
February 11, 2010 at 9:00 a.m.	Events Room State Revenue Building 2135 Rimrock Road Madison, Wisconsin

Handicap access is available at the hearing location.

Submission of Written Comments

Interested persons are invited to appear at the hearing and may make an oral presentation. It is requested that written comments reflecting the oral presentation be given to the department at the hearing. Written comments may also be submitted to the contact person shown under *Agency Contact Person* listed below no later than February 18, 2010, and will be given the same consideration as testimony presented at the hearing.

Analysis Prepared by the Department of Revenue

Statutes interpreted

Section 71.91 (8), Stats.

Statutory authority

Section 71.91 (8) (b), Stats.

Explanation of agency authority

Section 71.91 (8) (b), Stats., provides that the department shall promulgate rules specifying procedures to enter into agreements with financial institutions doing business in the state to operate the financial record matching program.

Related statute or rule

Sections 71.78 (1) and 77.61 (5) (a), Stats.

Plain language analysis

This proposed rule does the following:

- Provides procedures under which the department and a financial institution doing business in Wisconsin shall enter into an agreement for the exchange of data for purposes of operating the financial record matching program.
- Provides the two methods under which the department and a financial institution doing business in Wisconsin may exchange data under the financial record matching program.

Comparison with federal regulations

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

Comparison with rules in adjacent states

The department is not aware of a similar rule in an adjacent state.

Summary of factual data and analytical methodologies

2009 Wisconsin Act 28 created the financial record matching program. Among the provisions created is a requirement for the department to promulgate rules specifying procedures to enter into agreements with financial institutions doing business in Wisconsin. The department has created this proposed rule order to comply with this statutory requirement.

Analysis and supporting documents used to determine effect on small business

Currently all financial institutions doing business in the state are required to participate in the financial records matching program according to s. 49.853, Stats., operated by the Wisconsin Department of Children and Families. There is no impact on smaller financial institutions.

Anticipated costs incurred by private sector

This proposed rule does not have a significant fiscal effect on the private sector.

Small Business Impact

This proposed rule order does not have a significant economic impact on a substantial number of small businesses.

Fiscal Estimate

The fiscal effect of the financial records matching program was included in the fiscal estimate for 2009 Wis. Act 28. As such, the rule has no fiscal effect.

State fiscal effect

None.

Text of Proposed Rule

SECTION 1. Tax 1.16 is created to read:

Tax 1.16 Financial record matching program. (1) **PURPOSE.** The purpose of this section is to specify procedures under which the department shall enter into agreements with financial institutions doing business in this state to operate the financial record matching program under s. 71.91 (8), Stats.

(2) **DEFINITIONS.** In this section:

- (a) "Account" has the meaning given in s. 71.91 (8) (a) 1., Stats.
- (b) "Financial institution" has the meaning given in s. 49.853 (1) (c), Stats.

(3) **PROCEDURES.** (a) A financial institution doing business in this state shall enter into an agreement with the department to participate in the exchange of data on a quarterly basis. To the extent feasible, the information required under this agreement shall be submitted by electronic means prescribed by the department. The financial institution shall sign the agreement and return the agreement to the department within 20 business days of receipt of the agreement. The department shall review the agreement and, if all conditions have been met, shall sign the agreement and provide the financial institution with a copy of the signed agreement.

(b) A financial institution shall elect one of the following options for the exchange of data described in par. (a):

1. 'State matching option.' This option is also known as the "all accounts method." If this option is elected, the agreement described in par. (a) shall include the following:

a. The financial institution agrees to provide an electronic file to the department or department's agent on a quarterly basis. The file contains the name, social security number or federal employer identification number of all persons having an ownership interest in an account maintained at the financial institution, together with a description of each person's interest.

b. The department or department's agent will perform a match against the delinquent debtor file. Upon the request of the department or the department's agent, the financial

institution shall provide the department, for each delinquent debtor who matches information provided by the financial institution under subpar. a., the delinquent debtor's address of record, account number, account type and the balance of the account.

c. The department or department's agent agrees not to disclose or retain information received from the financial institution concerning account holders who are not delinquent debtors. Sixty days notice is required for any changes to the conditions of the contract.

2. 'Financial institution matching option.' This option is also known as the "matched accounts method." If this option is elected, the agreement described in par. (a) shall include the following:

a. The department or department's agent agrees to provide the financial institution an electronic file on a quarterly basis. The file contains the names and social security numbers or federal employer identification numbers of delinquent debtors.

b. The financial institution agrees to return a file of matched records to the department or department's agent. The return file of matched records contains the delinquent debtor's name, social security number or federal employer identification number, address of record, account number, account type, the nature of the delinquent debtor's ownership interest in the account and the balance of the account at the time that the record match is made.

c. The financial institution agrees not to disclose or retain information received from the department concerning account holders who are not delinquent debtors.

(c) A financial institution may request reimbursement from the department for costs associated with participating in the financial record matching program in an amount not to exceed \$125 for each calendar quarter that the financial institution participates in the program.

Agency Contact Person

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Notice of Hearing

Revenue

EmR0943, CR 10-001

NOTICE IS HEREBY GIVEN That pursuant to ss. 71.04 (8), 71.25 (10), 227.11 (2) (a), and 227.24, Stats., the Department of Revenue will hold a public hearing to consider emergency rules and the creation of permanent rules revising Chapter Tax 2, relating to apportionment and nexus.

Hearing Information

The hearing will be held:

<u>Date and Time</u>	<u>Location</u>
February 25, 2010 at 1:00 p.m.	Events Room State Revenue Building 2135 Rimrock Road Madison, Wisconsin

Handicap access is available at the hearing location.

Copies of Proposed Rules

A copy of the full text of the proposed rule order and the full fiscal estimate may be obtained at no cost by contacting the department. See *Agency Contact Person* listed below.

Submission of Written Comments

Interested persons are invited to appear at the hearing and may make an oral presentation. It is requested that written comments reflecting the oral presentation be given to the department at the hearing. Written comments may also be submitted to the contact person shown under *Agency Contact Person* listed below no later than March 4, 2010, and will be given the same consideration as testimony presented at the hearings.

Analysis Prepared by the Department of Revenue:

Statute interpreted

Sections 71.04(4), (4m), (5), (6), (7), (8), and (10), 71.22 (1r), 71.23 (1) and (2), 71.25 (5), (6), (6m), (7), (8), (9), (10), and (15), 71.255 (5), and 77.93, Stats.

Statutory authority

Sections 71.04 (8), 71.25 (10), and 227.11 (2) (a), Stats.

Explanation of agency authority

Section 227.11 (2) (a), Stats., provides that each agency may promulgate rules interpreting the provisions of any statute enforced or administered by it, if the agency considers it necessary to effectuate the purpose of the statute.

Related statute or rule

Sections Tax 2.60 to 2.67, Wisconsin Administrative Code

Plain language analysis

This rule does the following:

1. Amends s. Tax 2.39, *Apportionment Method*, as follows:

- Explains how the rule applies to corporations that are required to use combined reporting, including applicable cross-references.
 - Updates s. Tax 2.39 (6), relating to the sales factor, to reflect applicable changes that were enacted by 2009 Acts 2 and 28. More specifically, provides that for taxable years beginning on or after January 1, 2009:
 - "Throwback sales" are included in the numerator at their full amount, rather than at 50%.
 - Throwback sales are no longer included in the numerator for sales of services or of the use of computer software.
 - Sales of intangibles or the use or licensing of intangibles are no longer sourced according to where the income producing activity occurs. Instead, they are sourced according to the newly created ss. 71.04 (7) (dj) and (dk) and 71.25 (9) (dj) and (dk), Stats. In general, these statutes source the transaction to where the customer uses the intangible property.
 - Provides rules interpreting ss. 71.04 (7) (dj) and (dk) and 71.25 (9) (dj) and (dk), Stats. relating to sourcing for intangibles for taxable years beginning on or after January 1, 2009.
 - Clarifies that for purposes of computing throwback sales, nexus for part of a taxable year is recognized as nexus for the entire taxable year.
- ##### 2. Amends s. Tax 2.49, *Apportionment of Apportionable Income of Interstate Financial Institutions*, as follows:
- Explains how the rule applies to corporations that are required to use combined reporting, including applicable cross-references.

- Amends the definition of “financial institution” to include credit card banks and investment subsidiaries of banks.
 - Provides that s. Tax 2.49 (4) (zs) does not apply to taxable years beginning on or after January 1, 2009. This means that for taxable years beginning on or after January 1, 2009, throwback sales are not included in the numerator except for sales of tangible personal property.
3. *Amends s. Tax 2.495, Apportionment of Apportionable Income of Interstate Brokers–Dealers, Investment Advisers, Investment Companies, and Underwriters, as follows:*
- Explains how the rule applies to corporations that are required to use combined reporting, including applicable cross–references.
 - Provides that s. Tax 2.495 (4) (g) does not apply to taxable years beginning on or after January 1, 2009. This means that for taxable years beginning on or after January 1, 2009, throwback sales are not included in the numerator except for sales of tangible personal property.
4. *Amends s. Tax 2.502, Apportionment of Apportionable Income of Interstate Telecommunications Companies, as follows:*
- Explains how the rule applies to corporations that are required to use combined reporting, including applicable cross–references.
 - Provides that for taxable years beginning on or after January 1, 2009, the sales factor means the sales factor under s. 71.25(9), Stats., as in effect for the current taxable year. This statute sources sales based on where the benefit of the service is received.
 - Specifies how various types of telecommunications services would be sourced under s. 71.25(9), Stats.. Under the rule, the location where the benefit of the service is received is determined using principles consistent with the Streamlined Sales and Use Tax Agreement.
5. *Amends s. Tax 2.82, Nexus, as follows:*
- Explains how the rule applies to corporations that are required to use combined reporting, including applicable cross–references.
 - Defines “loans” for purposes of applying s. 71.22(1r), Stats.
 - Clarifies that nexus for part of a taxable year is recognized as nexus for the entire taxable year.
 - Provides that the same nexus standards apply to the recycling surcharge as apply to the corporation franchise or income tax.
6. *Amends the following rules to explain how they apply to corporations that are required to use combined reporting, including applicable cross–references:*
- Tax 2.46 — Apportionment of business income of interstate air carriers
 - Tax 2.47 — Apportionment of business income of interstate motor carriers
 - Tax 2.475 — Apportionment of net business income of interstate railroads, sleeping car companies, and car line companies
 - Tax 2.48 — Apportionment of net business incomes of interstate pipeline companies
 - Tax 2.50 — Apportionment of apportionable income of interstate public utilities

Comparison with federal regulations

There are no existing or proposed federal regulations that relate to apportionment of income among states.

Comparison with rules in adjacent states

Minnesota, Michigan, Illinois, and Iowa each have their own unique rules and relating to apportionment and nexus. Following is a summary of how the rules and regulations of these other states have provisions similar to the substantive provisions in this rule order:

Minnesota:

- Services are sourced to where the benefit of the service is received.
- Holding loans secured by real or tangible personal property in the state creates nexus.
- Loan–backed securities are generally not “loans” that would create nexus.
- Nexus for part of the taxable year is nexus for the entire taxable year.

Michigan:

- Services are sourced to where the benefit of the service is received.
- For telecommunications services, the location where the benefit of the service is received is determined using principles consistent with the Streamlined Sales and Use Tax Agreement.
- Loan–backed securities are generally not “loans” that would create nexus.
- Nexus for part of the taxable year is nexus for the entire taxable year.

Illinois:

- Loan–backed securities are generally not “loans” that would create nexus.
- Nexus for part of the taxable year is nexus for the entire taxable year.
- For telecommunications services, the location where the benefit of the service is received is determined using principles consistent with the Streamlined Sales and Use Tax Agreement.
- Defines “financial organization” to specifically include credit card banks and their subsidiaries.

Iowa:

- Services, including telecommunications services, are sourced to where the benefit of the service is received.
- Holding loans secured by real or tangible personal property in the state creates nexus.
- Loan–backed securities are generally not “loans” that would create nexus.
- Nexus for part of the taxable year is nexus for the entire taxable year.

Summary of factual data and analytical methodologies

The Department reviewed the statutory provisions enacted by 2009 Acts 2 and 28 and identified existing provisions of chapter Tax 2, Wisconsin Administrative Code, that no longer reflect current law or do not provide useful interpretation of the statutes as amended. The Department studied the laws and regulations of our neighboring states in addition to the model apportionment regulations developed by the Multistate Tax Commission (MTC) to determine how those states have been interpreting statutes that are similar to Wisconsin’s. Also,

since Michigan and Illinois just updated their apportionment rules for telecommunications companies (in 2008 and 2009, respectively), the Department contacted those states for insight on the industry reaction to those changes.

Analysis and supporting documents used to determine effect on small business

Nexus and apportionment issues apply only to businesses that are engaged in business in more than one state. Thus, this rule does not have a significant effect on small business.

Anticipated costs incurred by private sector

This rule does not result in a significant cost to the private sector.

Small Business Impact

This rule order does not have a significant economic impact on a substantial number of small businesses.

Fiscal Estimate

This rule order makes various changes to Tax 2.39 through Tax 2.82 to:

- 1) Update rules for apportionment and nexus to reflect statutory changes in 2009 Act 2 and 2009 Act 28 relating to the implementation of combined reporting for affiliated groups of corporations;
- 2) Update rules on the sourcing of sales as well as definitions of certain terms to implement the streamlined sales tax statutory changes contained in 2009 Act 2; and
- 3) Certain other changes to administrative rules under the authority of s. 71.04(8) and 71.25(10), Stats, related to railroads, financial organizations and public utilities.

The fiscal effects of the rule changes for items 1 and 2 above were included in the fiscal effects for 2009 Act 2 and 2009 Act 28. As such, these rule changes have no fiscal effect.

The fiscal effect of the rule changes promulgated under authority of s. 71.04 (8) and 71.25 (10), Stats., are expected to be minimal.

Agency Contact Person

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Notice of Hearing

**Revenue
EmR1001**

NOTICE IS HEREBY GIVEN That pursuant to ss. 71.255 (6) (b) 2. and (c) 2., (7) (a), and (11) and 227.24, Stats., the Department of Revenue will hold a public hearing to consider emergency rules to create sections Tax 2.60 through 2.67, relating to combined reporting for corporation franchise and income tax purposes.

The emergency rule order:

- reflects the changes in Wisconsin's franchise and income tax laws affected by 2009 Act 2, and
- provides guidance to taxpayers and Department employees so they can properly apply the Wisconsin franchise and income tax laws.

Hearing Information

The hearing will be held:

<u>Date and Time</u>	<u>Location</u>
February 25, 2010 at 1:00 p.m.	Events Room State Revenue Building 2135 Rimrock Road Madison, Wisconsin

Handicap access is available at the hearing location.

Copies of Emergency Rule

A copy of the full text of the emergency rule order and the full fiscal estimate may be obtained at no cost by contacting the department. See *Agency Contact Person* listed below.

Submission of Written Comments

Interested persons are invited to appear at the hearing and may make an oral presentation. It is requested that written comments reflecting the oral presentation be given to the department at the hearing. Written comments may also be submitted to the contact person shown under *Agency Contact Person* listed below no later than March 4, 2010, and will be given the same consideration as testimony presented at the hearings.

Analysis Prepared by the Department of Revenue:

Statute interpreted

Section 71.255, Stats.

Statutory authority

General rulemaking authority in s. 227.24, Stats.; specific rulemaking authority granted in s. 71.255, Stats., as follows:

- Section 71.255(6)(b)2. and (c)2., Stats., relating to net business loss carryforwards, credits, and credit carryforwards.
- Section 71.255(7)(a), Stats., relating to identifying the designated agent.
- Section 71.255(11), relating to the adoption of federal treasury regulations so that transactions among combined group members are treated consistently with transactions among federal consolidated group members.

Explanation of agency authority

An agency may promulgate a rule as an emergency rule without complying with the notice, hearing, and publication requirements of the statutes if preservation of the public peace, health, safety, or welfare necessitates putting the rule into effect prior to the time it would take effect if the agency complied with the procedures.

Related statute or rule

Sections 71.24 (1), (1m), and (7), 71.29, 71.44 (1), (1m), and (3), 71.77, 71.82, 71.83, and 71.84, Stats.

Plain language analysis

This rule creates eight new rule sections. The purpose of each rule section is provided below:

Section Tax 2.60 Definitions Relating to Combined Reporting.

Provides definitions relating to the other rule sections created by this rule order. Those other sections are ss. Tax 2.61, 2.62, 2.63, 2.64, 2.65, 2.66, and 2.67.

Section Tax 2.61 Combined Reporting.

- Explains who must use combined reporting.
- Provides rules for determining whether a corporation is a member of a "commonly controlled group."

- Explains when a corporation's income is not subject to combination because of the degree of the corporation's activity outside the U.S. ("water's edge" rules).
- Explains how to compute the combined group's combined unitary income, including the applicability of federal regulations that relate to consolidated groups. The following components of the computation are covered:
 - Intercompany transactions
 - Capital gains and losses
 - Charitable contributions
 - Dividends
 - Stock basis adjustments
 - Earnings and profits
 - Allocation of expenses and deductions
- Explains how to apportion the combined unitary income and rules that apply to various aspects of the apportionment computation.
- Provides rules for determining the taxable income of combined groups that are not subject to apportionment.
- Describes how to apply net business loss carryforwards, including rules relating to the sharing of net business losses.
- Describes how to apply credits, including rules relating to the sharing of research credits.

Section Tax 2.62 Unitary Business.

- Explains the concept of a "unitary business" and its relationship to the concept of a "combined group."
- Enumerates several characteristics that are indicators of a "unitary business."
- Lists some key U.S. Supreme Court cases which provide further guidance on the extent to which a business enterprise is considered a "unitary business" under the U.S. Constitution. This is significant because the statute provides that "unitary business" shall be construed to the broadest extent permitted by the U.S. Constitution.
- Provides several presumptions to aid taxpayers in determining whether a unitary business exists.
- Provides specific rules relating to the inclusion of passive holding companies and pass-through entities in the unitary business.

Section Tax 2.63 Controlled Group Election.

- Explains how to make the election and how to renew it after its 10-year duration.
- Provides rules relating to the department's authority to disregard the election in cases where it has the primary effect of tax avoidance rather than its intended purpose of simplifying the determination of who must be included in the combined report.

Section Tax 2.64 Alternative Apportionment for Combined Groups Including Specialized Industries.

- Specifies how and when a qualifying group may file a petition for alternative apportionment and what information must be submitted to the department.
- Provides that once the department approves the alternative method, that same method must be used for a 7-year period, subject to a limitation that the tax computation under the alternative method cannot be lower than what it would have been if each corporation apportioned its income separately.

Section Tax 2.65 Designated Agent of Combined Group.

- Explains how to identify which corporation is responsible to act on behalf of the combined group for matters relating to the combined return.
- Defines the scope and limitations of the agency relationship.

Section Tax 2.66 Combined Estimated Tax Payments.

- Explains when a combined group member may make its own estimated payments, rather than having the designated agent make the payments on its behalf.
- Provides rules for determining the combined group's required estimated tax payments.
- Provides rules for applying estimated payments and overpayments of prior year estimated payments.

Section Tax 2.67 Combined Returns.

- Enumerates the required components of a combined return and explains how to report separate entity items.
- Explains how to determine the taxable year of a combined return.
- Provides rules relating to interest, penalties, and statutes of limitations as they relate to combined returns.

Comparison with federal regulations

The rules are very similar to the federal regulations relating to consolidated groups. The federal regulations listed below are specifically referenced or adopted in this rule order, but modified to apply to combined groups instead of federal consolidated groups.

- Treas. Reg. §1.1502-13, relating to intercompany transactions. This federal regulation was actually adopted by statute (s. 71.255(4)(g), Stats.), but is interpreted in this rule order (s. Tax 2.61(6)(b)).
- Treas. Regs. §1.1502-22 and 1.1502-23, relating to capital gains and losses and section 1231 gains and losses (s. Tax 2.61(6)(c)).
- Treas. Reg. §1.1502-24, relating to charitable contributions (s. Tax 2.61(6)(d)).
- Treas. Reg. §1.1502-32, relating to investment (stock basis) adjustments (s. Tax 2.61(6)(f)).
- Treas. Reg. §1.1502-33, relating to earnings and profits (s. Tax 2.61(6)(g)).

The general purpose of the above federal regulations is to treat the members of a federal consolidated group as if they were divisions of a single corporation. Likewise, the purpose of adopting these rules for Wisconsin purposes is to treat the members of a combined group as if they were divisions of a single corporation.

Comparison with rules in adjacent states

Illinois:

Illinois has comprehensive regulations relating to its combined reporting statute. (including IL Regs. 100.2340, 100.2570, 100.5200, 100.5201, 100.5210, 100.5220, 100.5230, 100.5240, 100.5250, 100.5260, 100.5265, 100.5280, and 100.9700). The following aspects of the rules in this rule order were modeled after the Illinois regulations, with some modifications:

- Adoption of federal consolidated return regulations
- Combined estimated tax payments
- Rules relating to the duties of the designated agent

Iowa:

Iowa does not have a statute which permits or allows combined reporting. Thus, it has no rules or regulations relating to combined reporting.

Michigan:

Michigan adopted combined reporting in 2008, when it enacted its Michigan Business Tax. At the time this rule order was authored, Michigan has not yet promulgated rules or regulations relating to its combined reporting statute. However, Michigan has published an extensive amount of guidance in the form of Frequently Asked Questions.

Minnesota:

Like Illinois, Minnesota has rules relating to its combined reporting statute (including Rules 8019.0100, 8019.0300, 8019.0405, and 8019.0500, Minn. Rules). The section of this rule order that provides guidance in determining a “unitary business” (s. Tax 2.62) is modeled after Minnesota’s rule 8019.0100, with some modifications.

Summary of factual data and analytical methodologies

The department developed these rules based upon research of the combined reporting laws, rules, regulations, published guidance, and tax form instructions of other states. The Illinois and Minnesota regulations referenced above were frequently used as a resource, in addition to various law journal articles and tax publications.

The combined reporting regulations recently promulgated by Massachusetts (830 CMR 63.32B.2) were heavily relied upon. The Massachusetts combined reporting law (M.G.L. c. 63 §32B), like Wisconsin’s, is first effective for taxable years beginning on or after January 1, 2009, and Wisconsin’s law has many similarities with the Massachusetts law.

The department also studied the regulations under section 1502 of the Internal Revenue Code, relating to consolidated returns.

Analysis and supporting documents used to determine effect on small business

Combined reporting primarily affects larger corporations, rather than small businesses. Combined reporting is required for regular “C” corporations, but is not required for the types of entities that are more characteristic of small businesses, such as:

- Sole proprietorships,
- Partnerships,
- Limited liability companies taxed as partnerships, and
- S corporations

Anticipated costs incurred by private sector

This emergency rule does not have a significant fiscal effect on the private sector independently from the statute it interprets.

Small Business Impact

This emergency rule does not have a significant effect on small business.

Fiscal Estimate

The proposed rules create Tax 2.60 through 2.67 to incorporate tax law changes included in 2009 Act 2 and 2009 Act 28 related to combined reporting for commonly controlled groups of corporations.

The fiscal effect from implementation of combined reporting was included in the fiscal effect for Act 2, and the fiscal effect of certain changes to combined reporting that were a part of Act 28 were included in the fiscal effect for the

Act. The administrative rules for these provisions have no fiscal effect independent of Acts 2 and 28.

In addition to the rule changes made necessary by the statutory changes under Acts 2 and 28, the rule also specifies that basis for depreciable assets for corporations that are subject to tax for the first time shall be the federal basis of the assets, except that the basis shall be computed without regard to any bonus depreciation claimed for federal purposes as required by statute. The fiscal effect of this provision is unknown.

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**Notice of Hearing
Revenue
EmR1002, CR 10-005**

NOTICE IS HEREBY GIVEN That pursuant to ss. 146.98 (3), (4), and (5) and 227.24 Stats., the Department of Revenue will hold a public hearing to consider emergency rules and the creation of permanent rules revising Chapter Tax 1, relating to the ambulatory surgical center assessment.

Hearing Information

The hearing will be held:

<u>Date and Time</u>	<u>Location</u>
February 11, 2010 at 1:00 p.m.	Events Room State Revenue Building 2135 Rimrock Road Madison, Wisconsin

Handicap access is available at the hearing location.

Submission of Written Comments

Interested persons are invited to appear at the hearing and may make an oral presentation. It is requested that written comments reflecting the oral presentation be given to the department at the hearing. Written comments may also be submitted to the contact person shown under *Agency Contact Person* listed below no later than February 18, 2010, and will be given the same consideration as testimony presented at the hearing.

Analysis Prepared by the Department of Revenue**Statutes interpreted**

Sections 146.98 and 20.566 (1) (gn), Stats.

Statutory authority

Sections 146.98 (3), (4), and (5) and 227.24, Stats.

Related statute or rule

Section 50.38, Stats., imposes a hospital assessment, and s. 50.14, Stats., imposes an assessment on licensed nursing home beds and intermediate care facilities for the mentally retarded (ICF-MR).

Plain language analysis

This proposed rule does the following:

- Establishes the requirements for administration of the ambulatory surgical center assessment.

- Describes how the amount of the assessment for each ambulatory surgical center is determined.
- Details how the department will collect assessments.
- Provides guidance regarding data required to be submitted to the department to determine assessment amounts.
- Specifies the filing, reporting, and payment deadlines for the assessment, and penalties imposed for failure to meet the requirements.

Comparison with federal regulations

Federal law 42 CFR §433.68 describes permissible health care–related taxes that states may impose without a reduction in Medicaid Federal Financial Participation (FFP) in the medical assistance program jointly funded by the federal government and the state. The taxes must be broad based, uniformly imposed throughout a jurisdiction, and cannot exceed 5.5% of revenues. Ambulatory surgical center or ASC is defined in 42 CFR §416.2 as “any distinct entity that operates for the purposes of providing surgical services to patients not requiring hospitalization, has an agreement with the Center for Medicare and Medicaid Services (CMS) to participate in Medicare as an ASC, and meets the conditions set forth in subparts B and C of this part.”

Comparison with rules in adjacent states

Illinois imposes health care provider taxes on hospitals, intermediate care facilities for the mentally retarded or developmentally disabled, and nursing homes. There is no assessment of ambulatory surgical centers.

Iowa imposes a health care provider tax on intermediate care facilities for the mentally retarded or developmentally disabled. There is no assessment on ambulatory surgical centers.

Michigan imposes a health care provider tax on hospitals, managed care organizations, nursing homes and community mental health programs. There is no assessment on ambulatory surgical centers.

Minnesota imposes a health care provider tax on hospitals, intermediate care facilities for the mentally retarded or developmentally disabled, managed care organizations, and nursing homes. In addition, a tax of 2% of total gross receipts is imposed on surgical centers.

Summary of factual data and analytical methodologies

2009 Wisconsin Act 28 created s. 146.98 Stats., imposing an assessment on Medicare–certified ambulatory surgical centers in Wisconsin. The statute directs the department of revenue to allocate any assessment imposed among ambulatory surgical centers in proportion to their gross patient revenue. The department may determine the amount of the assessment, collect the assessment, require ambulatory surgical centers to provide any data that is required to determine assessment amounts, establish deadlines by which assessments shall be paid, and impose penalties for failure to comply with the requirements of the statute or any rules promulgated. The department is directed to transfer 99.5 percent of the assessments collected to the medical assistance trust fund and retain 0.5% of the assessment revenues collected to support the administrative costs related to the assessment.

Within the provisions of s. 146.98 (5), Stats., is a requirement that the department promulgate rules for the administration of the assessment.

In consultation with ambulatory surgical centers, the departments of administration and health services, the department has created this proposed rule order to satisfy the above requirements.

Analysis and supporting documents used to determine effect on small business

This proposed rule is created in accordance with 2009 Wisconsin Act 28 to administer and enforce statutory requirements relating to the assessment of ambulatory surgical centers. As the rule does not impose any significant financial or other compliance burden, the department has determined that it does not have a significant effect on small business.

Anticipated costs incurred by private sector

This proposed rule does not have a significant fiscal effect on the private sector.

Small Business Impact

This proposed rule does not have a significant effect on small business.

Fiscal Estimate

The fiscal effect of the assessment under s. 146.98, Stats., was included in the fiscal effect of 2009 Wis. Act 28. Therefore, this rule has no fiscal effect.

State fiscal effect

None.

Local government fiscal effect

None.

Text of Emergency and Proposed Permanent Rule

SECTION 1. Tax 1.17 is created to read:

Tax 1.17 Ambulatory surgical center assessment. (1) PURPOSE. The purpose of this section is to establish procedures and other requirements necessary for levying and collecting the ambulatory surgical center assessment imposed under s. 146.98, Stats.

(2) DEFINITIONS. In this section:

(a) “Ambulatory surgical center” or “ASC” has the meaning given in s. 146.98 (1), Stats.

(b) “Cash basis” is the method of accounting where income is reported in the year that it is actually or constructively received in the form of cash or its equivalent or other property.

(c) “Department” means the department of revenue.

(d) “Gross patient revenue” means the gross amount received on a cash basis by the ambulatory surgical center from all patient services.

(e) “Patient services” include any of the following goods and services provided to a patient or consumer:

1. Bed and board.
2. Nursing services and other related services.
3. Use of the ambulatory surgical center.
4. Medical social services.
5. Drugs, biologicals, supplies, appliances and equipment.
6. Other diagnostic or therapeutic items or services.
7. Medical or surgical services.
8. Laboratory services.
9. Items and services furnished to ambulatory patients not requiring emergency care.
10. Emergency services including ambulance services.

(3) REGISTRATION. (a) Ambulatory surgical centers in this state are required to be registered with the department, in the manner prescribed by the department.

(b) On or before January 1, ambulatory surgical centers in this state shall notify the department of a change in ownership, address change, and any other information pertinent to the ambulatory surgical center's assessment under s. 146.98, Stats., occurring in the previous calendar year.

(c) The department shall update ambulatory surgical center registration using information provided by the department of health services, division of quality assurance.

(4) ANNUAL GROSS PATIENT REVENUE SURVEY. (a) The department shall annually survey ambulatory surgical centers required to be registered under sub. (3) (a) to obtain any data required by the department needed to determine the amount of the assessment imposed in s. 146.98, Stats. Survey data filed shall be subject to the confidentiality provisions under s. 71.78, Stats.

(b) Ambulatory surgical centers required to be registered shall electronically file the survey annually on or before March 15.

(c) Ambulatory surgical centers may apply for a 5 day extension of the survey due date. An extension will be granted for good cause only. The application for an extension shall be filed electronically with the department on or before March 15 at <https://tap.revenue.wi.gov>.

(d) Failure to electronically file the survey with the department by the due date, including any extension, shall result in a late filing penalty of \$500 per day calculated from the day after the unextended due date up to the date the completed survey is received by the department, or April 1, whichever is earlier. Failure to file the survey during the period for the extension shall make the extension null and void.

Examples: 1) An ambulatory surgical center does not request an extension to file the annual survey and fails to file the survey by April 1, 2010. A daily \$500 late filing penalty is assessed for the period of March 16, 2010 through April 1, 2010, for a total late filing penalty of \$8,500.

2) An ambulatory surgical center is granted an extension, and files the annual survey on March 19, 2010. No late filing penalty is assessed.

3) An ambulatory surgical center is granted an extension to file the annual survey, but files the survey on March 24, 2010, after the expiration of the 5 day extension. A \$4,000 late filing penalty is assessed for the period of March 16, 2010 through March 23, 2010.

(e) The deadline for filing an amended survey is April 1. Information received after April 1 shall not be considered in the determination of the assessment. If any ambulatory surgical center fails, within the time required by this chapter, to file the survey, or files an incomplete or incorrect survey, the department shall make an assessment based upon any other information in the department's possession and according to its best judgment.

(f) The department may impose a penalty of 25% of the amount of the assessment if the ambulatory surgical center fails to file the survey by April 1, pursuant to s. 146.98 (3) (e), Stats.

(5) ASSESSMENT. (a) The assessment shall be calculated using a uniform percentage that satisfies the requirements under 42 CFR 433.68 for collecting an assessment without incurring a reduction in federal financial participation under the federal Medicaid program.

(b) The department shall electronically notify an ambulatory surgical center of the amount of the assessment on April 15.

(c) The assessment shall be paid electronically on or before June 1 in a manner prescribed by the department. Failure to pay the assessment by June 1 shall result in a penalty of \$500 per day calculated from the day after the due date up to the date the assessment is received by the department, subject to a maximum penalty equal to the amount of the assessment. Payment of the penalty under this subdivision does not relieve the ambulatory surgical center from the responsibility of paying the assessment.

(d) The department may require estimated pre-payment of the assessment, in a manner prescribed by the department. The department shall notify ambulatory surgical centers at least 90 days before the first estimated payment is due.

(6) AUDIT. (a) The department may conduct an office or field audit to determine the assessment under s. 146.98, Stats., or to ascertain the correctness of the information reported on the annual survey required to be filed under sub. (4) (b).

(b) Ambulatory surgical centers shall retain financial books and records that support the information reported on the annual survey, and provide it to the department pursuant to s. 146.98 (3) (c), Stats.

(c) The department may impose a penalty equal to the amount of any unreported gross patient revenue multiplied by the percentage established for that period in sub. (5) (a).

(7) APPEALS. Ambulatory surgical centers claiming to be adversely affected by the department's action or inaction, other than a rulemaking action or proposal for legislation, may petition the department for a contested case hearing under s. 227.42, Stats. The request for hearing shall be in writing and served upon the Secretary of Revenue within 30 days after the department's action or inaction complained of.

Note: Written requests for hearing should be addressed to: Wisconsin Department of Revenue, Office of the Secretary, P.O. Box 8933, Madison, WI 53708.

(8) COLLECTIONS. (a) Assessments under sub. (5) (c) shall become delinquent if not paid when due, unless the department receives a request for hearing under sub. (7).

(b) The department may immediately proceed to collect delinquent assessments, including any penalties, in a manner comparable to that described in s. 77.62, Stats.

(c) Assessments unpaid for more than 90 days after appeal rights have expired shall be posted on the list on the Internet site maintained by the department under s. 73.03 (62), Stats.

Agency Contact Person

Dale Kleven, Dept. of Revenue
Mail Stop 6-40
2135 Rimrock Road, PO Box 8933
Madison WI 53708-8933
Telephone: (608) 266-8253
E-mail: dale.kleven@revenue.wi.gov

Submittal of Proposed Rules to the Legislature

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

Revenue
CR 09-064

A rule-making order to create sections Tax 2.60 to 2.67, relating to combined reporting for corporation franchise and income tax purposes.

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.

Natural Resources

Fish, Game, etc., Chs. NR 1—

CR 09-018

Rule revises Chapter NR 20, relating to fishing and clamming on the inland, outlying, and boundary waters of Wisconsin.

Effective 3-1-10, in part; and 4-1-10, in part.

Public Instruction

CR 09-071

Rule creates Chapter PI 15, relating to revenue limit exemptions for energy efficiencies.

Effective 3-1-10.

Transportation

CR 09-070

Rule repeals Chapters Trans 267 and 268, relating to emergency agricultural transportation permits, and emergency energy conservation permits.

Effective 3-1-10.

Rules Published with this Register and Final Regulatory Flexibility Analyses

The following administrative rule orders have been adopted and published in the January 31, 2010, 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.

Insurance CR 09-038

Rule revising Chapter Ins 6, relating to the use of designations or certifications purporting to demonstrate special expertise in the financial or retirement needs of seniors. Effective 2-1-10.

Summary of Final Regulatory Flexibility Analysis

This rule does not impose any additional requirements on small businesses.

Summary of Comments by Legislative Review Committees

No comments were received.

Natural Resources Fish, Game, etc., Chs. NR 1— CR 09-016

Rule revising Chapter NR 25, relating to commercial fishing in outlying waters. Effective 2-1-10.

Summary of Final Regulatory Flexibility Analysis

The rule does not have a significant adverse economic impact on a substantial number of small businesses. Lake Michigan commercial fishing license holders will find re-licensing requirements to be less burdensome. Lake Superior commercial fishing license holders will have additional re-licensing requirements, although the standard as proposed does not affect any license holders who are currently active.

Summary of Comments by Legislative Review Committees

No comments were received.

Natural Resources Environmental Protection — General, Chs. NR 100— CR 05-058

Rule revises Chapter NR 115, relating to the Wisconsin Shoreland Management Program. Effective 2-1-10.

Summary of Final Regulatory Flexibility Analysis

This rule requires counties to adopt shoreland zoning ordinances. County shoreland zoning ordinances must meet or exceed the minimum standards established by the rule. Any businesses in the shoreland zone have been complying with

regulations since the late 1960's. This rule revision does not have a significant economic impact on a substantial number of small businesses so the small business 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 September 10, 2009 the Senate Committee on Environment and Natural Resources held a hearing and offered no comments. On September 2, 2009, the Assembly Committee on Natural Resources held a public hearing. The Department received requests for unspecified modifications. Subsequently, the Department agreed to make modifications which were presented to the Natural Resources Board on November 13, 2009 and unanimously approved on that day. Notice was sent to the Senate Committee on Environment and Natural Resources and the Assembly Committee on Natural Resources. The Department did not receive a comments or requests for additional modification as a result of the notice.

Natural Resources Environmental Protection — Air Pollution Control, Chs. NR 400— CR 09-020

Rule revising Chapters NR 406, 407, 409, 419, 439, and 484, relating to federal hazardous air pollutant regulations, biodiesel fuel, incorporation of statutory changes, and air permit applications, and affecting small business. Effective 2-1-10.

Summary of Final Regulatory Flexibility Analysis

The rule is not expected to have a significant impact on small businesses. However, it will allow some small businesses to become exempt from hazardous air pollutant permitting regulations, as is the case with the federal requirements. This could be a relief of time and monetary investment.

Summary of Comments by Legislative Review Committees

The rules were reviewed by the Assembly Committee on Natural Resources and the Senate Committee on Environment. Neither committee held a public hearing and the Department did not receive any comments or requests for modification from either of the committees.

Sections Affected by Rule Revisions and Corrections

The following administrative code sections had rule revisions and corrections take place in **January 2010**, 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

Insurance

Ch. Ins 6

Ins 6.90

Natural Resources

Ch. NR 25

NR 25.02 (39)

NR 25.03 (1) (b) to (d), (2), (3)

NR 25.06 (3) (a), (3m)

NR 25.07 (2) (a), (3) (a) to (c)

NR 25.135 (1) (a)

Ch. NR 115

NR 115.01

NR 115.02

NR 115.03 (intro.), (1), (1d), (1p), (3m), (4g), (4r), (7m), (12)

NR 115.04

NR 115.05

NR 115.06 (2), (3)

Ch. NR 406

NR 406.02 (1), (7)

NR 406.03 (1), (1m)

NR 406.04 (1f) (b), (1k) (b), (1q) (intro.), (g), (2) (h), (4) (a), (h), (i), (j)

Ch. NR 407

NR 407.02 (6) (a), (6m)

NR 407.03 (1) (sq), (1m) (a), (2) (g), (4) (intro.)

NR 407.04 (2)

NR 407.05 (1), (2), (5), Table 2

Ch. NR 409

NR 409.08 (1) (c)

Ch. NR 419

NR 419.07 (2), (3) (intro.)

Ch. NR 439

NR 439.055 (2) (b)

NR 439.07 (8) (b)

NR 439.075 (3) (a)

Ch. NR 484

NR 484.10 (55v)

Editorial Corrections

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

Insurance

Ch. Ins 6

Ins 6.77 (1)

Natural Resources

Ch. NR 25

NR 25.06 (3m)

NR 25.07 (2) (a)

NR 25.09 (1) (am)

Ch. NR 115

NR 115.02

Sections Affected by Corrections Not Published

Corrections under s. 13.92 (4) (b), Stats., identified in this Wis. Adm. Register.

Subscriber's note: Please make corrections (manually) in your printed code. The affected sections are shown as corrected on the Legislative Reference Bureau Internet site, [Http://www.legis.state.wi.us/rsb/](http://www.legis.state.wi.us/rsb/), and on the WisLaw® CD-ROM. Printed code will be shown as corrected in its next printing.

Location of Agency Reference and/or Cross-Reference	Outdated Agency Reference / Invalid Cross-Reference	Correction
DHS 12.03 (24)	48.685 (1) (e)	Delete reference
NR 40.07 (4) (b) Note	30.715	30.07
NR 45.075 (2)	166.03	323.10
NR 47.952 (2)	166.03	323.10
NR 106.08 (4)	166.20 (5) (a) 3. and 4.	323.60 (5) (c) and (d)
NR 109.01	30.715	30.07
NR 151.002 (48)	department of commerce 101.1205	department 281.33
NR 216.42 (4)	department of commerce 101.1205	department 281.33
NR 340.05 (3) (b)	NR 115.05 (3) (c)	NR 115.05 (1) (c)
NR 706.02 (3)	166.20 (twice)	323.60 (twice)
NR 708.05 (2) Note	166.22 (2) “regional teams established by the state emergency response board under s. 166.20 (2) (g), Stats.”	323.71 (1) Delete text and citation

Executive Orders

The following are recent Executive Orders issued by the Governor.

Executive Order 308. Relating to a Proclamation that the Flag of the United States and the Flag of the State of Wisconsin be Flown at Half-Staff as a Mark of Respect for Firefighter Steven Koeser of the St. Anna Fire Department.

Executive Order 309. Relating to a Proclamation that the Flag of the United States and the Flag of the State of Wisconsin be Flown at Half-Staff as a Mark of Respect for Lance Corporal Jacob Meinert of the United States Marine Corps Who Lost His Life While Serving His Country in Operation Enduring Freedom.

Public Notices

Department of Agriculture, Trade and Consumer Protection

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

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

The Department has determined that current dollar amounts specified under s. 779.41 (1) (intro), (a), (b) and (c) 1. to 4., Wis. Stats., shall be increased by 3.8%, according to the prior year annual change in the consumer price index.

The dollar amount contained in s. 779.41 (1) (intro), Wis. Stats., is adjusted to \$2,095. The dollar amounts contained in s. 779.41 (1) (a), (b), and (c) 1. to 4., Wis. Stats., are adjusted to the following dollar amounts:

(a) A trailer or semitrailer designed for use with a road tractor for charges in excess of \$6,285.

(b) Road machinery, including mobile cranes and trench hoes, farm tractors, machines of husbandry, or off-highway construction vehicles and equipment for charges in excess of \$10,460.

(c) A motor vehicle not included under par. (a) or (b) with a manufacturer's gross weight rating, including, with respect to road tractors, a manufacturer's gross weight rating for the combined carrying capacity of the tractor and trailer, of:

1. More than 10,000 and less than 20,000 pounds, for charges in excess of \$4,185.
2. 20,000 pounds or more, but less than 40,000 pounds, for charges in excess of \$8,260.
3. 40,000 pounds or more, but less than 60,000 pounds, for charges in excess of \$13,495.
4. 60,000 pounds or more, for charges in excess of \$16,250.

These revised dollar amounts under the mechanic's lien law shall apply to work commenced on or after January 1, 2010 for which a lien is claimed. These revised dollar amounts shall remain in effect until the first day of the first month following publication of new adjusted dollar amounts in the *Wisconsin Administrative Register*.

Contact Information

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