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## WISCONSIN ADMINISTRATIVE REGISTER

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Medicaid reimbursement for outpatient hospital services; State of Wisconsin 2010-2011 Medicaid Payment Plan.

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## Emergency Rules Now in Effect

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

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

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

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

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

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

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

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

1. **EmR1003** — Rule adopted revising **ss. ATCP 60.15 and 60.20**, relating to somatic cell standards for dairy goat milk.

#### Finding of Emergency

Recently, the National Conference of Interstate Milk Shippers voted to relax the standard for somatic cells in grade A goat milk, from 1,000,000 somatic cells per ml to 1,500,000 per ml. The United States Food and Drug Administration accepted this change and will include it in the next edition of the Interstate Pasteurized Milk Ordinance. The United States Department of Agriculture is adopting the same standard for grade B goat milk, as part of its standards for “Milk for Manufacturing Purposes and its Production and Processing.”

Wisconsin rules currently establish a limit of 1,000,000 somatic cells per ml in goat milk, which is more stringent than the new national standard of 1,500,000 per ml. The more stringent Wisconsin standard, if not modified to conform to the new national standard, will put Wisconsin dairy goat milk producers at a significant financial, operational, and competitive disadvantage compared to producers in other states.

This emergency rule modifies Wisconsin’s current standard, and makes it consistent with the new national standard. The department of agriculture, trade and consumer protection (DATCP) is adopting this rule as a temporary emergency rule, pending rulemaking proceedings to modify the standard on a more “permanent” basis. “Permanent” rulemaking proceedings normally require over a year to complete. This emergency rule is needed to mitigate a potential hardship to Wisconsin producers of dairy goat milk, pending the adoption of “permanent” rules.

**Publication Date:** February 4, 2010  
**Effective Dates:** February 4, 2010 through July 3, 2010  
**Hearing Date:** June 15, 2010

2. **EmR1012** — Rule adopted to create **section ATCP 70.03 (7) (e) and (f)**, relating to food processing plant license exemptions for certain home-canners and maple sap processors.

#### Finding of Emergency

(1) The Department of Agriculture, Trade and Consumer Protection (DATCP) administers state food processing plant license requirements under s. 97.29, Stats.

(2) Recent legislation (2009 Act 101, enacted on February 4, 2010) created a limited exemption from food processing plant license requirements under s. 97.29, Stats., for persons who home-can limited quantities of acidic, acidified or fermented vegetable and fruit products for retail sale at community and social events or at farmers’ markets.

(3) Home-canned food products, if not properly canned, may pose a risk of serious food safety hazards such as botulism.

(4) DATCP has received many requests for clarification of the new license exemption under Act 101. In order to facilitate compliance and protect consumers from potentially serious food safety hazards, DATCP must adopt administrative rules to clarify the scope, application and terms of the new license exemption.

(5) Implementing rules are urgently needed because of the seriousness of the potential food safety hazards, and the seasonal nature of the farmers’ markets and other events at which home-canned products may be sold. The normal rulemaking process takes over a year to complete, and cannot be completed in time for this summer’s farmers’ markets (which begin as early as mid-April or May). Persons who wish to sell home-canned food products must clearly understand the scope of the license exemption, and the food safety standards that must be met in order to qualify.

(6) This temporary emergency rule clarifies the scope, application and terms of the new license exemption under Act 101, pending the completion of “permanent” rules by the normal rulemaking process. This emergency rule is needed to protect the public health, safety and welfare, and to facilitate fair and orderly implementation of the new license exemption.

(7) This emergency rule also exempts, from food processing plant license requirements under s. 97.29, Stats., a person who collects and processes relatively small quantities of maple sap to produce maple syrup or concentrated maple sap for sale to other processors for further processing. These small-scale processing activities pose

minimal food safety risks, and the current license requirement imposes an unnecessary cost and compliance burden. An emergency rule is needed to relieve these cost and compliance burdens for the maple sap collection and processing season that typically begins in March. This emergency rule creates a temporary license exemption, pending the completion of “permanent” rules by the normal rulemaking process. This emergency rule clearly defines the scope, application and terms of the exemption, in order to protect public health, safety and welfare.

**Publication Date:** April 22, 2010  
**Effective Dates:** April 22, 2010 through September 18, 2010  
**Hearing Date:** May 25, 2010

### 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 Dates:** January 1, 2010 through May 30, 2010  
**Extension Through:** July 29, 2010  
**Hearing Dates:** March 17, March 31, April 8, 2010

### Children and Families

#### *Early Care and Education, Chs. DCF 201–252*

**EmR1015** — Rule adopted revising **Chapter DCF 201**, relating to authorized hours of subsidized child care and affecting small businesses.

#### **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 implementation of s. 49.155 (6g), Stats., will save an estimated \$9 million over the 2009–2011 biennium.

**Publication Date:** May 17, 2010  
**Effective Dates:** May 17, 2010 through October 13, 2010  
**Hearing Date:** June 17, 2010

### Commerce (5)

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

1. **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 Dates:** November 9, 2009 through April 7, 2010  
**Extension Through:** August 5, 2010  
**Hearing Date:** January 25, 2010

2. **EmR1006**— Rule adopted to create **Chapter Comm 137**, relating to reallocations for recovery zone facility bonds as established under the federal American Recovery and Reinvestment Act of 2009, and affecting small businesses.

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

The Legislature, by Section 5 (1) (b) in 2009 Wisconsin Act 112, exempts the Department from providing evidence that this emergency rule is necessary for the preservation of public peace, health, safety or welfare; and exempts the Department from providing a finding of emergency for the adoption of this rule.

**Publication Date:** March 5, 2010  
**Effective Dates:** March 5, 2010 through August 1, 2010  
(subject to 2009 Wis. Act 112, s. 5)  
**Hearing Date:** May 13, 2010

3. **EmR1008** — Rule adopted to create **Chapter Comm 124** relating to the Forward Innovation Fund, and affecting small businesses.

#### Exemption From Finding of Emergency

The Legislature, by Section 9110 (8) of 2009 Wisconsin Act 28, exempts the Department from providing evidence that this emergency rule is necessary for the preservation of public peace, health, safety or welfare; and exempts the Department from providing a finding of emergency for the adoption of this rule.

**Publication Date:** March 22, 2010  
**Effective Dates:** March 22, 2010 through July 1, 2010  
**Hearing Date:** May 26, 2010

4. **EmR1013** — Rule adopted to create **Chapter Comm 121**, relating to the small business innovation research assistance program, and affecting small businesses.

#### Exemption From Finding of Emergency

The Legislature, by Section 9110 (16u) of 2009 Wisconsin Act 28, exempts the Department from providing evidence that this emergency rule is necessary for the preservation of public peace, health, safety or welfare; and exempts the Department from providing a finding of emergency for the adoption of this rule.

**Publication Date:** April 21, 2010  
**Effective Dates:** April 21, 2010 through September 17, 2010  
**Hearing Date:** June 11, 2010

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

#### Finding of Emergency

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

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

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

Because of enactment of 2009 Wisconsin Act 295, a number of entities that may be eligible for the tax credits have contacted the Department with inquiries concerning the process for applying for the credits, for expenditures that have been or will be incurred during taxable years that began after

December 31, 2009. In addition, section 71.07 (3rm) of the Statutes includes a \$1,000,000 tax-credit allocation that became available on May 27, 2010, and expires on June 30, 2010.

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

**Publication Date:** June 8, 2010  
**Effective Dates:** June 8, 2010 through November 4, 2010

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### Corrections

**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 Dates:** December 31, 2009 through May 29, 2010  
**Extension Through:** July 28, 2010  
**Hearing Date:** February 25, 2010

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## 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 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 Dates:** December 31, 2009  
 through May 29, 2010  
**Extension Through:** July 28, 2010  
**Hearing Date:** February 23, 2010

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## 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 Dates:** January 1, 2010  
 through May 30, 2010  
**Extension Through:** July 29, 2010  
**Hearing Date:** February 12, 2010

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## Government Accountability Board

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

### Finding of Emergency

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

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

**Publication Date:** May 20, 2010  
**Effective Dates:** May 20, 2010 through  
 October 16, 2010

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## Health Services (2)

*Health, Chs. DHS 110—*

- EmR1004** — Rule adopted to create **sections DHS 195.145 and 197.145**, relating to carbon monoxide detectors in hotels, motels, tourist rooming houses and bed and breakfast establishments, and affecting small businesses.

**Finding of Emergency**

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

Section 101.149 (2) and (3), Stats., requires the owners of lodging establishments, including hotels, tourist rooming houses, and bed and breakfast establishments that were constructed on or before October 1, 2008, or had plans reviewed by the department of commerce before October 1, 2008, to, not later than April 1, 2010, install carbon monoxide detectors in every residential building that has a fuel-burning appliance, unless, pursuant to s. 101.149 (5), Stats., the building does not have an attached garage and all fuel-burning appliances in the building have sealed combustion units that are either covered by the manufacturer’s warranty against defects or are inspected under rules promulgated by DHS.

Section 254.74 (1) (am), Stats., requires DHS to promulgate rules under which DHS would conduct inspections of sealed combustion units for carbon monoxide emissions, and rules that specify the conditions under which DHS may issue orders to correct violations of s. 101.149 (2) or (3), Stats.

**Publication Date:** March 1, 2010  
**Effective Dates:** April 1, 2010 through August 28, 2010  
**Hearing Dates:** April 21, 23, 27, 28, 30, 2010

- 2. **EmR1009** — Rule adopted to revise **Chapter DHS 137**, relating to anatomical gifts and the Wisconsin Donor Registry.

**Finding of Emergency**

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

There are over 105,000 people in the United States on the national waiting list for organ transplants including 1,500 in Wisconsin. Due to the limited availability of organs for transplantation, 18 people die each day in the United States.

As part of Wisconsin’s response to the need for increased organ and tissue donation, the department, as authorized under s. 157.06 (20), Stats., has established the Wisconsin Donor Registry (Donor Registry).

The Donor Registry will make it easier for Wisconsin residents to become donors and for procurement organizations to identify donors, and thus it should increase the supply of available organs and tissues, which may save the lives of persons awaiting transplant.

Promulgating the rules for the Donor Registry as emergency rules will enable department–authorized procurement organizations to quickly determine whether a person who is at or near death has a record of gift. In addition, the Donor Registry makes it possible for individuals to immediately make anatomical gifts.

The Donor Registry will become available for use by the public upon the effective date of these emergency rules and may be accessed by the public at [yesIwillwisconsin.com](http://yesIwillwisconsin.com). Substantially identical permanent rules are being proposed concurrent to this emergency order.

**Publication Date:** March 29, 2010  
**Effective Dates:** March 29, 2010 through August 25, 2010  
**Hearing Date:** May 5, 2010

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**Insurance (4)**

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

**Exemption From Finding of Emergency**

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

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

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

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

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

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

**Exemption From Finding of Emergency**

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

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

(4) CONTINUATION COVERAGE RULES (a) Notwithstanding section 632.897 of the statutes and subsections (1), (2), and (3), the commissioner of insurance may promulgate rules establishing standards requiring insurers to provide continuation of coverage for any individual covered at any time under a group policy who is a state eligible individual to whom subsection (2) or (3) applies

or an assistance eligible individual, as defined under section 3001 (a) (3) of the federal act, including rules governing election or extension of election periods, notice, rates, premiums, premium payment, application of preexisting condition exclusions, and election of alternative coverage.

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

**Publication Date:** January 7, 2010  
**Effective Dates:** January 8, 2010  
 through June 6, 2010  
**Hearing Date:** May 5, 2010

3. **EmR1005** — A rule adopted creating **section Ins 3.36**, 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.

**Publication Date:** March 8, 2010  
**Effective Dates:** March 8, 2010  
 through August 4, 2010  
 (subject to s. 632.895 (12m) (f), Stats.)  
**Hearing Date:** May 26, 2010

4. **EmR1020** — Rule adopted to revise **Chapter Ins 17**, relating to annual injured patients and families compensation fund fees and medical mediation panel fees for the fiscal year beginning July 1, 2010, and may have an effect on 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:

These changes must be in place with an effective date of July 1, 2010 for the new fiscal year assessments. The fiscal year fees were established by the Board of Governors at a meeting on May 18, 2010.

**Publication Date:** June 15, 2010  
**Effective Dates:** June 15, 2010  
 through November 11, 2010  
**Hearing Date:** July 19, 2010

(See the Notice in this Register)

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## Natural Resources

### *Fish, Game, etc., Chs. NR 1—*

**EmR1014** — Rule adopted to create **section NR 45.13 (1m) (d)**, relating to the establishment of a slow–no–wake zone on the Wisconsin River at the Dells of Wisconsin River state natural area.

#### Finding of Emergency

The Department of Natural Resources 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: Based on information received by the Department, user conflicts are increasing. Failure to enact this rule could lead to additional boating accidents and potential for injury during the upcoming high use season.

**Publication Date:** May 20, 2010  
**Effective Dates:** May 20, 2010 through  
 October 16, 2010  
**Hearing Date:** June 22, 2010

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## Natural Resources

### *Environmental Protection — Hazardous Waste Management, Chs. NR 600—*

**EmR1007** — A rule adopted revising **section NR 660.10**, relating to hazardous waste management.

#### Exemption From Finding of Emergency

Section 289.67 (2) (de), Stats., as created by 2009 Wisconsin Act 28 (the 2009–2011 biennial budget bill), requires the department to promulgate by rule definitions of “large quantity generator” and “small quantity generator” for purposes of the hazardous waste generator fees established by s. 289.67 (2) (b) 1., Stats., as amended by 2009 Wisconsin Act 28.

Section 9137 (2), a non–statutory provision in 2009 Wisconsin Act 28, authorizes the department to promulgate the required definitions using emergency rule making procedures, but is not required to provide evidence that promulgating a rule under that subsection as an emergency rule is necessary for the preservation of public peace, health, safety, or welfare and is not required to

**Publication Date:** March 17, 2010  
**Effective Dates:** March 17, 2010 through  
 July 1, 2011  
**Hearing Date:** April 26, 2010

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## 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 Dates:** October 3, 2009 through March 1, 2010  
**Extension Through:** June 29, 2010  
**Hearing Date:** November 16, 2009

**Public Instruction (2)**

- EmR1018** — Rule adopted to create **Chapter PI 45**, relating to the use of race–based nicknames, logos, mascots, and team names by school boards.

**Finding of Emergency**

Pursuant to Section 3 of the nonstatutory provisions of 2009 Wisconsin Act 250, 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:** June 1, 2010  
**Effective Dates:** June 1, 2010 through October 28, 2010

- EmR1021** — Rule adopted to create **section PI 35.07**, relating to establishing a temporary, nonrenewable waiver from the requirement that a teacher have a bachelor’s degree in order to teach in a private school under the Milwaukee Parental Choice Program.

**Exemption From Finding of Emergency**

Pursuant to Section 9139 (4r) 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:** June 16, 2010  
**Effective Dates:** June 16, 2010 through November 12, 2010  
**Hearing Date:** July 12, 2010

(See the Notice in this Register)

**Regulation and Licensing (2)**

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

**Exemption From Finding of Emergency**

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

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

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

**Exemption From Finding of Emergency**

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

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

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### Revenue

**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 Dates:** January 19, 2010 through June 16, 2010  
 (Subject to 2009 Wis. Act 28, Section 9143 (4u))  
**Extension Through:** August 15, 2010  
**Hearing Date:** February 11, 2010

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### Transportation

**EmR1017** — Rule adopted to create **section Trans 100.25**, relating to mandatory insurance exemptions.

#### Finding of Emergency

The Department of Transportation finds that an emergency exists and that an emergency rule is necessary for the immediate preservation of the public health and welfare. A statement of the facts constituting the emergency is the requirements of the mandatory insurance laws in Chapter 344, Stats., as created by 2009 Wis. Act 28, contain exceptions to furnishing proof of a motor vehicle liability insurance policy. This emergency rule defines the administration of those exceptions. These mandatory insurance requirements, and the exceptions, are effective June 1, 2010, thereby necessitating an emergency rule being put into place until the effective date of the permanent rule. Clarification of the

mechanism to be used to qualify for an exception under the new statute will be useful to persons wishing to file for an exception. Persons whose religious beliefs preclude them from buying insurance will benefit from this rule making.

**Publication Date:** June 1, 2010  
**Effective Dates:** June 1, 2010 through October 28, 2010  
**Hearing Date:** June 24, 2010

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### Workforce Development

#### *Labor Standards, Chs. DWD 270–279*

**EmR1011** — Rule adopted to create **Chapter DWD 273**, relating to the regulation of traveling sales crews.

#### 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 statute which provides for the regulation of traveling sales crews became effective on April 1, 2010. The Department has completed its work on the proposed administrative rule which implements the statute, and submitted the proposed rule in final form for legislative review on April 13, 2010. Putting the provisions of the proposed rule into effect during the legislative review period will allow the Department to take any enforcement action that might be needed if there are complaints during this period about the operation of traveling sales crews without the permits required by statute.

**Publication Date:** April 19, 2010  
**Effective Dates:** April 19, 2010 through September 15, 2010

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## Scope Statements

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### Children and Families

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

##### Subject

Revises Chapter DCF 57, relating to group home determination of need.

##### Policy Analysis

Any person who receives, with or without transfer of legal custody, 5 to 8 children to provide care and maintenance for those children must obtain a license to operate a group home from the department. To obtain a license to operate a group home, a person must meet the minimum requirements for a license established in chapter DCF 57, meet the background check requirements, pay the license fee, and meet the new determination of need requirement created by 2009 Wisconsin Act 335.

Section 48.625 (1g), Stats., as created by 2009 Wisconsin Act 335, provides that no person may apply for a license to operate a new group home or for an amendment to a license that would increase the bed capacity of an existing group home until the department has reviewed the need for the additional placement resources that would be made available by the issuance or amendment of the license and has certified in writing that a need exists for the proposed additional placement resources. The department shall promulgate rules to implement this subsection.

The proposed rules will implement the determination of need requirement.

##### Statutory Authority

Sections 48.625 and 227.11 (2), Stats.

##### Comparison with Federal Regulations

None

##### Entities Affected by the Rule

Group home licensees and applicants for a license to operate a group home.

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

75 hours.

### Employee Trust Funds

##### Subject

Revises section ETF 10.75, relating to power of attorney.

##### Objective of the Rule

The Department of Employee Trust Funds proposes to amend s. ETF 10.75 to harmonize the rule with Wisconsin Statutes as amended by 2009 Wisconsin Act 319.

##### Policy Analysis

ETF is responsible for administering the benefit programs authorized under Chapter 40 of the Wisconsin Statutes. 2009 Wisconsin Act 319 repealed sections 243.07 and 243.10 of Chapter 243 and created Chapter 244 relating to power of attorney. The purpose of this rulemaking is to amend ETF

10.75 to conform the language and statutory references to the statutory changes.

##### Statutory Authority

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

##### Comparison with Federal Regulations

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

##### Entities Affected by the Rule

The new rules will affect members, subscribers, their beneficiaries and dependents who have granted power of attorney to one or more individuals or entities.

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

State employees will spend an estimated 30 hours to develop these rules.

### Employee Trust Funds

##### Subject

Revises Chapter ETF 52, relating to the administration of the Duty Disability Program under s. 40.65, Stats.

##### Objective of the Rule

The Department of Employee Trust Funds seeks to clarify the existing rule regarding the administration of the Duty Disability Program and streamline the process of applying for and making determinations regarding the Duty Disability benefit.

##### Policy Analysis

ETF is responsible for ensuring that the Duty Disability benefit authorized by s. 40.65, Stats., is appropriately administered for participants in the Wisconsin Retirement System. Chapter ETF 52 was promulgated, in its entirety, in 1998. Since that time, the Department has further developed policies and procedures for administering the benefit, and finds that the rules should be amended to incorporate many of these policies and procedures and to clarify how the Duty Disability benefit is administered under the rules.

The proposed rule would amend definitions in s. ETF 50.02 to clarify how the terms are used by the Disability Bureau of ETF. Other provisions that could be amended include, without limitation, ss. ETF 52.04, 52.06, 52.07, 52.08, 52.12, 52.16 and 52.22.

ETF also contemplates creating new rules regarding the Duty Disability benefit to conform with existing policies and procedures of the Disability Bureau of ETF in administering the benefit.

##### Statutory Authority

Sections 40.03 (2) (i) and 227.11 (2), Stats.

##### Comparison with Federal Regulations

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

**Entities Affected by the Rule**

The new rules will affect members in the Duty Disability program as well as those who apply for the program.

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

State employees will spend an estimated 75 hours to develop these rules.

**Financial Institutions — Banking****Subject**

Creates section DFI-Bkg 74.01 (3m), relating to health care billing companies.

**Objective of the Rule**

The purpose of the rule is to provide a definition of “health care billing companies.”

**Statutory Authority**

Sections 218.04 (7) (d) and 227.11 (2), Stats.

**Comparison with Federal Regulations**

None.

**Entities Affected by the Rule**

Health care billing companies.

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

50 hours.

**Contact Information**

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**Financial Institutions — Banking****Subject**

Creates Chapter DFI-Bkg 75, relating to payday lending.

**Objective of the Rule**

The purpose of this rule is to set forth certain procedures and requirements for payday lenders. Matters affected may include the conduct of payday lenders, definitions, licensure, applications, fees, bonds, relocation, conducting other business, records, reports, revocations, suspensions, disclosure requirements, informational materials, interest, penalties, prepayment, repayment, rescission, prohibitions, database and customer information.

**Statutory Authority**

Sections 138.10 (2m), 138.14 (8) (b), (14) (g) and 227.11 (2), Stats.

**Comparison with Federal Regulations**

None.

**Entities Affected by the Rule**

Payday lenders.

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

150 hours.

**Contact Information**

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**Insurance****Subject**

Creates section Ins 3.35, relating to colorectal cancer screening coverage and affecting small business.

**Objective of the Rule**

The commissioner is required to promulgate rules to implement 2009 Wis. Act 346 requiring health insurance coverage of colorectal cancer screenings. The rule will specify guidelines for the colorectal cancer screening that are to be covered by disability insurance policies and self-insured health plans of the state, county, city, town, village or school district that provide coverage of any colorectal cancer examinations and lab tests. The rule will also specify the factors for determining whether an individual is at high risk for colorectal cancer. The commissioner will consult with the secretary of health services and consider nationally validated guidelines in the development of the rule.

**Policy Analysis**

There are no directly relevant policies, however s. 632.895 (8), Stats., mandates coverage for mammograms and s. Ins 3.47, Wis. Adm. Code regulates the solicitation of cancer insurance products. The prevention of cancer including routine screening may currently be found in the coverage offered by many insurers. As the commissioner enforces other health coverage mandates and will be consistent in developing rules for colorectal cancer screening.

**Statutory Authority**

Sections 601.41 (3) and 632.895 (16), Stats., as created by 2009 Wis. Act 346 and renumbered to 632.895 (16m), under s. 13.92 (1) (bm) 2., Stats.

**Comparison with Federal Regulations**

There are no existing or proposed federal regulations that address the newly enacted law or proposed rule.

**Entities Affected by the Rule**

Insurers offering group health insurance, self-funded governmental plans and licensed intermediaries authorized to solicit group health insurance.

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

200 hours and no other resources are necessary.

**Insurance****Subject**

Creates section Ins 3.375, relating to health insurance coverage of nervous and mental disorders, alcoholism and other drug abuse problems and affecting small business.

**Objective of the Rule**

The commissioner is required to promulgate rules to implement 2009 Wis. Act 218 requiring health insurance coverage of nervous and mental disorders, alcoholism and other drug abuse problems. The rules will guide

implementation of the Act in light of the federal mental health parity law. The rules will also reflect the ability for employers and small employers to qualify for an exemption from the requirements of the Act for specified periods of time. Further if an employer including a small employer qualifies for an exemption the commissioner is required to specify by rule and the content and manner in which the notices must be provided to enrollees. Finally the commissioner is to promulgate rules regarding the actuarial study necessary to qualify for an exemption.

The Act authorizes the commissioner to promulgate rules on an emergency basis under s. 227.24, Stats., without providing evidence that an emergency rule is necessary to preserve the public peace, health, safety or welfare and is not required to make a finding of emergency. It is anticipated since the Act is effective December 1, 2010 that an emergency rule will need to be promulgated.

### **Policy Analysis**

Section 632.89, Stats., and s. Ins 3.37, Wis. Adm. Code, are existing policies relevant to the new rule.

### **Statutory Authority**

Sections 601.41 (3) and 632.89, Stats.

### **Comparison with Federal Regulations**

Recently guidance in the form of interim final rules was published implementing the Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA). MHPAEA is a federal law that provides participants who already have benefits under mental health and substance use disorder (MH/SUD) coverage parity with benefits limitations under their medical/surgical coverage. MHPAEA may apply to two different types of coverage: large group self-funded group health plans and large group fully insured group health plans.

The guidance includes amendments to the internal revenue code, HIPAA regulations and the Department of Health and Human Services requirements for the group health insurance market. Each respective set of rules contains the same definition of mental health benefits. Mental health benefits means benefits with respect to services for mental health conditions, as defined under the terms of the plan and in accordance with applicable Federal and State law. Any condition defined by the plan as being or as not being a mental health condition must be defined to be consistent with generally recognized independent standards of current medical practice (for example, the most current version of the Diagnostic and Statistical Manual of Mental Disorders (DSM), the most current version of the ICD, or State guidelines).

The federal regulations and MHPAEA apply when the health plan offers coverage for mental health and addiction services but does not mandate such coverage be contained in health plans. In contrast, Wisconsin requires group health benefit plans to cover nervous and mental disorders, alcoholism and other drug abuse problems and now requires parity in coverage.

Federal law does not preempt state law if the state law does not prevent the application of the federal law. So where Wisconsin law provides more protection to insureds, provided federal law can be applied, state law can stand.

The rules to be promulgated will be drafted to permit both federal and state law to work together.

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

Insurers offering group health insurance, self-funded governmental plans and licensed intermediaries authorized to solicit group health insurance.

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

200 hours and no other resources are necessary

## **Marriage and Family Therapy, Professional Counseling and Social Work Examining Board**

### **Subject**

Revises section MPSW 10.01, relating to definitions; section MPSW 11.01, relating to applications; and section MPSW 14.01, relating to an academic program equivalent to a master's degree in professional counseling.

### **Objective of the Rule**

Proposed amendments to: definitions under ch. MPSW 10; application for licensure as a professional counselor as provided in s. MPSW 11.01 pertaining to degree requirements, board approval of equivalent programs and accreditation of programs; an academic program equivalent to a degree in professional counseling pertaining to coursework requirements, credit hour requirements, accreditation standards, total program credit requirements and board approval as provided in s. MPSW 14.01

The definition or description of what is considered a Master's or Doctorate degree in Professional Counseling is not found or clarified in the Board's administrative rules; however, the statutory requirements for licensure include submitting either a "Master's Degree in Professional Counseling" or its equivalent from a program approved by the Section. The Section has found that a "professional counseling degree" does not appear to be a common name applied to a counseling master's program and more concisely is a name of a category of programs that prepare students for entry into the practice of professional counseling. Programs for counseling may have different titles including guidance and counseling, counseling psychology, rehabilitation counseling, mental health counseling, etc.

The standard for many professional counseling programs appear to be set at a minimum standard of 48 hours minimum and in some jurisdictions, up to 60 hours in the masters degree. Additionally, there are variations between the jurisdictions in topic areas, which constitute professional counseling education. Wisconsin does not have a minimum hourly requirement defined for a professional counseling program; however does include a minimum for approval of programs equivalent to professional counselor programs. Wisconsin's equivalency standards are set at 42 credits minimum, which include at least 3 credits for counseling practicum, 3 credits for counseling theory, and the remainder of 42 credits distributed over the eight identified topic areas found in administrative rules. Given the differences in the Sections credit requirement, lack of minimum credit requirement and topic areas, the Section proposes to amend minimum credit requirements and reserves the right to determine counseling education program topic areas.

### **Policy Analysis**

The Section made the following policy determinations regarding approval and pre-approval of degree programs used to satisfy the requirements for licensure.

- The Section discussed the various program names with "Counseling" in the description and how the Department

should handle the application process for these programs. The Board advised the credentialing staff that if an applicant holds a master's or doctor's degree in "counseling" (as opposed to "professional counseling"), that is not on the approved list on the application, then credentialing will ask for a transcript to be sent. (*Discussion Re: Guidelines regarding the application process and Practicum [Sic] for Credentialing Staff to Use, Professional Counselor Section minutes, June 25, 2003*)

- The Department discussed with the Section a question frequently posed by applicants as to if they hold degrees that have names very similar to those on the "pre-approved list" would the Section accept them. Credentialing staff also asked for guidance as to what they should do with the pre-approved list – should program names be added one at a time or should there be another mechanism in place. The Section directed the Department to obtain a counseling program catalog and to include a list of CACREP approved schools along with the application materials. (*Discussion Re: Pre-approved degrees – Consider Adding Degree(s) to Pre-approved List, Professional Counselor Section minutes, Sept 24, 2003*)
- The Section held a discussion as to whether a number of specific Wisconsin Programs should be considered on the "approved program list". The Section reviewed materials from the following programs and made determinations as to whether they would be accepted on the approved program list. Upon the review of specific programs, credentialing staff was directed to create a new preapproved program list. The Section also at this time voted to accept any CACREP or CORE accredited programs as automatically meeting the requirements for licensure. (*Discussion Re: Approval of School Programs and the Development of New Approved Degree List..., Professional Counselor Section minutes, February 1, 2005*)

#### **Statutory Authority**

Sections 15.08 (5) (b) and (6), 227.11 (2), and 457.03 (1), Stats.

#### **Comparison with Federal Regulations**

None.

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

Entities primarily affected by the rule will may be educational institutions offering professional counseling education programs and those interested in pursuing training licensure or full licensure as a professional counselor.

Changes outlined in this scope may also affect counselor programs provided by accredited colleges and universities.

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

160 hours.

### **Public Service Commission**

#### **Subject**

Revises Chapters PSC 184 and 185, relating to water conservation and construction rules.

#### **Objective of the Rule**

The proposed rules will modify chs. PSC 184 and 185 to simplify and clarify the water utility construction approval process and to codify past Commission decisions and current practices related to water conservation and efficiency for water public utilities. The proposed rules will also ensure

consistency with water conservation rules being proposed by the Department of Natural Resources (DNR).

#### **Policy Analysis**

Chapter PSC 184 establishes criteria and procedures for approving water utility plant construction projects proposed by water and sewer public utilities. These rules have not been updated since 1992. The Commission proposes to simplify these rules to reflect current practices and to clarify the types of information necessary to adequately review these projects. In addition, the proposed rules may require applicants to demonstrate that new facilities are not unreasonably in excess of the probable future requirements, such as considering water conservation as an alternative to construction.

Chapter PSC 185 establishes service standards and rules for all water public utilities. These rules include several requirements to ensure the efficient use of water resources, including metering of water sales, tracking unaccounted-for water, and discouraging wasteful water practices, among other requirements. Since 2007, the Commission has authorized water conservation and efficiency measures in individual water rate cases as a way to address increasing utility costs and to ensure sustainable use of the state's water resources. However, ch. PSC 185 has not been updated to reflect current Commission priorities and practices in these matters.

The proposed rule changes may include updating definitions and requirements related to water loss control, customer billing, water rate design, and other demand management activities. The proposed rules will modernize and update annual auditing and reporting requirements related to water losses and unaccounted-for water. The proposed rules may also establish criteria for utilities that wish to implement voluntary water conservation and efficiency programs, similar to those used for voluntary energy efficiency programs proposed by electric utilities. Finally, the proposed rules may also address other demand-management tools, such as toilet rebate programs and the establishment of conservation-oriented water rates for certain classes of customers.

The proposed changes to ch. PSC 185 will ensure coordination of water conservation programs among state agencies. Section 281.346(8)(b), Stats., directs the DNR to develop and implement a statewide water conservation and efficiency program in cooperation with the Public Service Commission and the Department of Commerce. The DNR is currently developing new administrative rules under ch. NR 852. These rules would apply to all categories of water users in the state, including utilities regulated by the Public Service Commission. The proposed changes to ch. PSC 185 would clarify responsibilities among the agencies and ensure that the proposed requirements for water public utilities are consistent with the requirements being proposed by the DNR for other water users.

#### **Statutory Authority**

Sections 196.02, 196.03, 196.06, 196.12, 196.15, 196.49, 227.11 (2), and 281.346 (8), Stats.

#### **Comparison with Federal Regulations**

None.

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

All water public utilities regulated by the Commission.

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

The Commission estimates that approximately 250 hours of Commission staff time will be required in this rulemaking.

## Public Service Commission

### Subject

Revises Chapter PSC 185, relating to water utility service rules.

### Policy Analysis

The Commission has promulgated utility service rules for each industry it regulates. Ch. PSC 185, which establishes service rules related to water public utilities, has not been comprehensively updated since 1997. The Commission proposes to review and update the water service rules to ensure consistency between all utility industries, where appropriate, and to reflect changes in the water industry in the last decade.

### Statutory Authority

Sections 196.02 (3), 196.03 (1), and 227.11 (2), Stats.

### Comparison with Federal Regulations

None.

### Entities Affected by the Rule

All water and sewer public utilities regulated by the Commission.

### Estimate of Time Needed to Develop the Rule

The Commission estimates that approximately 300 hours of Commission staff time will be required in this rulemaking.

## Radiography Examining Board

### Subject

Creates initial administrative rules of the Radiography Examining Board (Chapters RAD 1 to 5), relating to education standards, requirements, and examinations for radiography.

### Objective of the Rule

To implement the statutory provisions created by 2009 Wisconsin Act 106, and implemented under Chapter 462 of the Wisconsin Statutes.

### Policy Analysis

2009 Wisconsin Act 106 created chapter 462 of the Wisconsin Statutes. The promulgation of administrative rules pursuant to s. 462.06, Stats., is necessary to implement standards for education in radiography, examinations required, continuing education requirements for renewal, code of ethics and any additional provisions authorized under chapter 462 of the Wisconsin Statutes deemed necessary by the Radiography Examining Board.

### Statutory Authority

Sections 227.11 (2) and 462.06, Stats., as created by 2009 Wisconsin Act 106.

### Comparison with Federal Regulations

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

### Entities Affected by the Rule

Health care providers (clinics, hospitals and other providers) that offer radiography, podiatrists per § 448.695

(3), Stats., those using the title of radiographer, representing themselves as radiographers or engaging in radiography unless they meet the exemptions under s. 462.02, Stats.

### Estimate of Time Needed to Develop the Rule

Total hours: 120.

## Regulation and Licensing

### Subject

Revises Chapters RL 185 to 191, relating to boxing contests.

### Objective of the Rule

The Department of Regulation and Licensing seeks to amend the current rules regulating the manner in which boxing contests are conducted in Wisconsin pursuant to the enactment of 2009 Wisconsin Act 111. This new legislation has a significant impact on the current rules.

### Policy Analysis

2009 Wisconsin Act 111, which was enacted on February 4, 2010, amended ch. 444, Stats., updating the boxing statute and adding the sport of mixed martial arts as a new area of regulation. The newly enacted statute directs the department to promulgate rules to govern boxing and mixed martial arts in the following areas: permits, bonds for conducting events, insurance for contestants, requirements for health examinations of contestants, as well as mandatory drug testing policies. The department recognizes the need to update the safety standards currently in the rules concerning boxing and to provide consistency for conducting boxing and mixed martial arts events.

### Statutory Authority

Sections 227.11 (2), 440.03 (1), (1m), 444.01, 444.02, 444.03, 444.035, 444.06, 444.095, 444.11, 444.12, 444.13, 444.14, 444.15 and 444.18, Stats.

### Comparison with Federal Regulations

The federal law regulating boxing is Title 15 US Code Chapter 89 Professional Boxing safety § 6301– §6313. It's relationship to state law is stated in §6313, "nothing in this Act [[15 USCS §§ 6301](#) et seq.] shall prohibit a State from adopting or enforcing supplemental or more stringent laws or regulations not inconsistent with this Act [[15 USCS §§ 6301](#) et seq.], or criminal, civil, or administrative fines for violations of such laws or regulations." The proposed amendments to the current boxing rules are consistent with this regulation.

### Entities Affected by the Rule

Licensed professionals, applicants, employers of licensed professionals, and entities engaged in promoting and conducting boxing contests, i.e., promoters, clubs, contestants, and officials.

### Estimate of Time Needed to Develop the Rule

It is estimated that 1000 hours in state employee time will be required.

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# Submittal of Rules to Legislative Council Clearinghouse

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

## **Insurance CR 10-065**

On June 9, 2010, the Office of the Commissioner of Insurance submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

### **Analysis**

The proposed order revises sections Ins 17.01 (3) and 17.28 (6), relating to fiscal year 2011 fund fees and mediation panel fees, and affects small business.

### **Agency Procedure for Promulgation**

A public hearing is required and is scheduled for July 19, 2010.

### **Contact Information**

A copy of the proposed rule may be obtained from the Web site at: <http://oci.wi.gov/ocirules.htm> or by contacting:

Inger Williams, OCI  
Public Information and Communications  
Phone: (608) 264-8110

For additional information, please contact:

Theresa L. Wedekind, OCI Legal Unit  
Phone: (608) 266-0953  
Email: [theresa.wedekind@wisconsin.gov](mailto:theresa.wedekind@wisconsin.gov)

## **Insurance CR 10-067**

On June 14, 2010, the Office of the Commissioner of Insurance submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

### **Analysis**

The proposed order revises section Ins 8.49 Appendix 1, relating to uniform small employer application for health care, and affects small business.

### **Agency Procedure for Promulgation**

A public hearing is required and is scheduled for July 21, 2010.

### **Contact Information**

A copy of the proposed rule may be obtained from the Web site at: <http://oci.wi.gov/ocirules.htm> or by contacting:

Inger Williams, OCI  
Public Information and Communications  
Phone: (608) 264-8110

For additional information, please contact:

Julie E. Walsh, OCI Legal Unit  
Phone: (608) 264-8101  
Email: [julie.walsh@wisconsin.gov](mailto:julie.walsh@wisconsin.gov)

## **Insurance CR 10-068**

On June 14, 2010, the Office of the Commissioner of Insurance submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

### **Analysis**

The proposed order creates section Ins 3.33, relating to uniform questions and format for individual health insurance, and affects small business.

### **Agency Procedure for Promulgation**

A public hearing is required and is scheduled for July 22, 2010.

### **Contact Information**

A copy of the proposed rule may be obtained from the Web site at: <http://oci.wi.gov/ocirules.htm> or by contacting:

Inger Williams, OCI  
Public Information and Communications  
Phone: (608) 264-8110

For additional information, please contact:

Julie E. Walsh, OCI Legal Unit  
Phone: (608) 264-8101  
Email: [julie.walsh@wisconsin.gov](mailto:julie.walsh@wisconsin.gov)

## **Natural Resources *Fish, Game, etc., Chs. NR 1—* CR 10-066**

(DNR # WM-21-10)

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

### **Analysis**

The proposed order revises Chapter NR 10, relating to the 2010 migratory bird season.

### **Agency Procedure for Promulgation**

Public hearings are scheduled for August 2, 3, 4 and 5, 2010.

### **Contact Information**

Kevin Van Horn  
Migratory Bird Specialist  
Phone: (608) 266-8841

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

Linda Haddix  
Bureau of Legal Services  
Phone: (608) 266-1959

**Natural Resources**  
*Fish, Game, etc., Chs. NR 1—*  
**CR 10-069**  
(DNR # ER-10-10)

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

**Analysis**

The proposed order revises Chapter NR 29, relating to fee update for the Endangered Resources Program and Review Program.

**Agency Procedure for Promulgation**

Public hearings are scheduled for July 13, 14, and 16, 2010.

**Contact Information**

Sarah Carter  
Endangered Resources Review Specialist  
Phone: (608) 264-8968

Linda Haddix  
Bureau of Legal Services  
Phone: (608) 266-1959

**Transportation**  
**CR 10-070**

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

**Analysis**

The proposed order revises Chapter Trans 100, relating to safety responsibility, damage judgment and mandatory insurance laws.

**Agency Procedure for Promulgation**

A public hearing is required and is scheduled for July 21, 2010. The Department's Division of Motor Vehicles is responsible for promulgation of the proposed rule.

**Contact Information**

Julie A. Johnson  
Paralegal  
Phone: (608) 267-3703

**Workforce Development**  
*Unemployment Insurance, Chs. DWD 100-150*  
**CR 10-071**

On June 15, 2010, the Department of Workforce Development submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

**Analysis**

The proposed order revises Chapter DWD 111, relating to unemployment insurance rules for quarterly wage reporting procedures.

**Agency Procedure for Promulgation**

A public hearing is required and is scheduled for July 21, 2010. The Department's Unemployment Insurance Division is responsible for promulgation of the proposed rule.

**Contact Information**

Tracey L. Schwalbe  
Phone: (608) 266-9641  
Email: tracey.schwalbe@wisconsin.gov

**Workforce Development**  
*Unemployment Insurance, Chs. DWD 100-150*  
**CR 10-072**

On June 15, 2010, the Department of Workforce Development submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

**Analysis**

The proposed order revises Chapter DWD 110, relating to unemployment insurance rules for coverage and related records and reports.

**Agency Procedure for Promulgation**

A public hearing is required and is scheduled for July 21, 2010. The Department's Unemployment Insurance Division is responsible for promulgation of the proposed rule.

**Contact Information**

Tracey L. Schwalbe  
Phone: (608) 266-9641  
Email: tracey.schwalbe@wisconsin.gov

**Workforce Development**  
*Apprenticeship, Chs. DWD 295-296*  
**CR 10-073**

On June 15, 2010, the Department of Workforce Development submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

**Analysis**

The proposed order revises Chapter DWD 295, relating to bringing the state apprenticeship program into conformance with federal apprenticeship program regulations.

**Agency Procedure for Promulgation**

A public hearing is required and is scheduled for July 22, 2010. The Department's Employment and Training Division, Bureau of Apprenticeship Standards, is responsible for promulgation of the proposed rule.

**Contact Information**

Howard Bernstein, DWD Legal Counsel  
Phone: (608) 266-9427  
Email: Howard.Bernstein@dwd.wisconsin.gov

Karen Morgan, Director  
Bureau of Apprenticeship Standards  
Phone: (608) 266-3133  
Email: Karen.Morgan@dwd.wisconsin.gov

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## Rule–Making Notices

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### Notice of Hearing Insurance

#### EmR1020, CR 10–065

NOTICE IS HEREBY GIVEN That pursuant to the authority granted under s. 601.41 (3), Stats., and the procedures set forth under ss. 227.18 and 227.24 (4), Stats., the Office of the Commissioner of Insurance (OCI) will hold a public hearing to consider an emergency rule and proposed permanent rulemaking order affecting Sections Ins 17.01 (3) and 17.28 (6), Wis. Adm. Code, relating to fiscal year 2011 fund fees and mediation panel fees and affecting small business.

#### Hearing Information

**Date:** July 19, 2010  
**Time:** 10:00 a.m., or as soon thereafter as the matter may be reached  
**Location:** OCI, Room 227  
 125 South Webster Street, 2nd Floor  
 Madison, WI

#### Submittal of Written Comments

Written comments can be mailed to:

Theresa L. Wedekind  
 Legal Unit – OCI Rule Comment for Rule Ins 1701  
 Office of the Commissioner of Insurance  
 PO Box 7873  
 Madison WI 53707–7873

Written comments can be hand delivered to:

Theresa L. Wedekind  
 Legal Unit – OCI Rule Comment for Rule Ins 1701  
 Office of the Commissioner of Insurance  
 125 South Webster St – 2<sup>nd</sup> Floor  
 Madison WI 53703–3474

Comments can be emailed to:

Theresa L. Wedekind  
 theresa.wedekind@wisconsin.gov

Comments submitted through the Wisconsin Administrative Rule Web site at: <http://adminrules.wisconsin.gov> on the proposed rule will be considered.

The deadline for submitting comments is **4:00 p.m. on the 14<sup>th</sup> day after the date for the hearing** stated in this Notice of Hearing.

#### Copies of Proposed Rule and Fiscal Estimate

A copy of the full text of the proposed rule changes, analysis and fiscal estimate may be obtained from the Web site at: <http://oci.wi.gov/ocirules.htm> or by contacting:

Inger Williams, OCI Services Section, at:  
 Phone: (608) 264–8110  
 Email: [inger.williams@wisconsin.gov](mailto:inger.williams@wisconsin.gov)  
 Address: 125 South Webster St – 2<sup>nd</sup> Floor  
 Madison WI 53703–3474  
 Mail: PO Box 7873, Madison, WI 53707–7873

### Analysis Prepared by the Office of the Commissioner of Insurance

#### *Statutes interpreted*

Sections 655.27 (3), and 655.61, Wis. Stats.

#### *Statutory authority*

Sections 601.41 (3), 655.004, 655.27 (3) (b), and 655.61, Wis. Stats.

#### *Explanation of agency authority*

The commissioner of insurance, with the approval of the board of governors (board) of the injured patients and families compensation fund (fund), is required to establish by administrative rule the annual fees which participating health care providers must pay to the fund and the annual fee due for the operation of the medical mediation panel.

#### *Related statutes or rules*

None.

#### *Plain language analysis and summary of proposed rule*

This rule establishes the fees that participating health care providers must pay to the fund for the fiscal year beginning July 1, 2010. These fees represent an 8.6% increase from fees paid for the 2009–10 fiscal year. The board approved these fees at its meeting on May 18, 2010.

The board is also required to promulgate by rule the annual fees for the operation of the injured patients and families compensation mediation system, based on the recommendation of the director of state courts. The recommendation of the director of state courts was reviewed by the board's actuarial and underwriting committee. This rule implements the funding level approved by the board by establishing mediation panel fees for the next fiscal year at \$28.00 for physicians and \$6.00 per occupied bed for hospitals, representing an increase of \$3.00 per physician and \$1.00 per occupied bed for hospitals from 2009–10 fiscal year mediation panel fees.

#### *Comparison with federal regulations*

To the fund board's and OCI's knowledge there is no existing or proposed federal regulation that is intended to address patient compensation fund rates, administration or activities.

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

To the fund board's and OCI's knowledge there are no similar rules in the adjacent states to compare this rule to as none of these states have a patients compensation fund created by statute where rates are directed to be established yearly by rule as is true in Wisconsin.

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

None. This rule establishes annual fund fees pursuant to the requirements of the above–noted Wisconsin statutes.

#### *Analysis and documentation used to determine rule's effect on small businesses*

This increase in fund fees and mediation panel fees will have an affect on some small businesses in Wisconsin; particularly those that employ physicians and other health care professionals. The mediation panel fee is assessed only

on physicians and hospitals, not on corporations or other health care entities. These increases will affect only those small businesses that pay the fund fees and mediation panel fees on behalf of their employed physicians. However, these increases will not have a significant effect nor should it negatively affect the small business's ability to compete with other providers.

#### **Private Sector Fiscal Impact**

The increase in fees promulgated by this rule does not result in a significant fiscal effect on the private sector. Although a health care provider may pass this increase on to its patients, there will not be a significant fiscal effect on the private sector as a result of this proposed rule.

#### **Small Business Fiscal Impact**

This rule will have little or no effect on small businesses. The increase contained in the proposed rule will require providers to pay an increased fund fee and mediation panel fee which will increase the operational expenses for the providers. However, this increase is not considered to be significant and will have no effect on the provider's competitive abilities.

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

The OCI small business coordinator is Eileen Mallow and may be reached at phone number (608) 266-7843 or at email address: [eileen.mallow@wisconsin.gov](mailto:eileen.mallow@wisconsin.gov).

#### **Fiscal Estimate**

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

The Injured Patients and Families Compensation Fund (IPFCF or Fund) is a segregated fund. Annual Fund fees are established to become effective each July 1 based the Fund's needs for payment of medical malpractice claims. The proposed fees were approved by the Fund's Board of Governors at its May 18, 2010, meeting and represent an increase of 8.6% over fiscal year 2010 fund fees.

The Fund is a unique fund; there are no other funds like it in the country. The Fund provides unlimited liability coverage and participation is mandatory. These two features make this Fund unique compared to funds in other states. The only persons who will be affected by this rule change are the Fund participants themselves as the IPFCF is fully funded through assessments paid by Fund participants.

There is no effect on GPR.

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

None.

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

None.

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

None.

#### **Agency Contact Person**

Inger Williams, OCI  
 Phone: (608) 264-8110  
 Email: [inger.williams@wisconsin.gov](mailto:inger.williams@wisconsin.gov)  
 Address: 125 South Webster St – 2<sup>nd</sup> Floor  
 Madison WI 53703-3474  
 Mail: PO Box 7873  
 Madison, WI 53707-7873

## **Notice of Hearing**

### **Insurance CR 10-067**

NOTICE IS HEREBY GIVEN That pursuant to the authority granted under s. 601.41 (3), Stats., and the procedures set forth under s. 227.18, Stats., the Office of the Commissioner of Insurance (OCI) will hold a public hearing to consider the adoption of the proposed rulemaking order affecting section Ins 8.49 Appendix 1, Wis. Adm. Code, relating to uniform small employer application for health care and affecting small business.

#### **Hearing Information**

**Date:** July 21, 2010  
**Time:** 1:30 p.m., or as soon thereafter as the matter may be reached  
**Location:** OCI, Room 227  
 125 South Webster Street, 2nd Floor  
 Madison, WI

#### **Submittal of Written Comments**

Written comments can be mailed to:

Julie E. Walsh  
 Legal Unit – OCI Rule Comment for Rule Ins 849  
 Office of the Commissioner of Insurance  
 PO Box 7873  
 Madison WI 53707-7873

Written comments can be hand delivered to:

Julie E. Walsh  
 Legal Unit – OCI Rule Comment for Rule Ins 849  
 Office of the Commissioner of Insurance  
 125 South Webster St – 2<sup>nd</sup> Floor  
 Madison WI 53703-3474

Comments can be emailed to:

Julie E. Walsh  
[julie.walsh@wisconsin.gov](mailto:julie.walsh@wisconsin.gov)

Comments submitted through the Wisconsin Administrative Rule Web site at: <http://adminrules.wisconsin.gov> on the proposed rule will be considered.

The deadline for submitting comments is **4:00 p.m. on the 14<sup>th</sup> day after the date for the hearing** stated in this Notice of Hearing.

#### **Copies of Proposed Rule and Fiscal Estimate**

A copy of the full text of the proposed rule changes, analysis and fiscal estimate may be obtained from the OCI internet Web site at <http://oci.wi.gov/ocirules.htm> or by contacting:

Inger Williams, OCI  
 Phone: (608) 264-8110  
 Email: [inger.williams@wisconsin.gov](mailto:inger.williams@wisconsin.gov)  
 Address: 125 South Webster St – 2<sup>nd</sup> Floor  
 Madison WI 53703-3474  
 Mail: PO Box 7873  
 Madison, WI 53707-7873

#### **Analysis Prepared by the Office of the Commissioner of Insurance**

##### ***Statutes interpreted***

Sections 600.01, 628.34 (12), 635.10, Stats.

**Statutory authority**

Sections 601.41 (3), 601.41 (8), 635.10, 635.18 (8), Stats.

**Explanation of agency authority**

In accordance with s. 601.41 (8), Stats., the office of the commissioner of insurance is required to revise the uniform small employer application form at least once every two years in consultation with the health advisory council. The rule was initially promulgated in 2003, and due to federal changes and a request of the health advisory council the office of the commissioner of insurance proposes this rule.

**Related statutes or rules**

Section 635.10, Stats., requires use of the small employer uniform employee application for group health insurance.

**Plain language analysis and summary of proposed rule**

Additionally the federal government has also modified the Health Insurance Portability and Accountability Act (HIPAA) to include the requirement of additional descriptive information for persons who after a qualifying event are permitted the option of a special enrollment period to understand how to obtain and apply for coverage. The proposed rule contains the modifications to the waiver and health underwriting questions to comply with the Genetic Information Nondiscrimination Act of 2008 (GINA) and the Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA) as well mandated coverage for dependents.

Specifically, the modifications include several to the small employer uniform application for group health insurance. In section V of the application a sentence has been added in accordance with an amendment to CHIPRA that informs an employee how to obtain information on electing health insurance coverage through a special election period due to a qualifying event including Medicaid premium assistance. This information is to be provided at the time the employee waives the right to obtain health insurance through the small employer. Information is updated regarding the treatment of genetic information in the medical information section of the application. Additionally, modification were made to delete reference to a dependent needing to be a full-time student or financially dependent as both state and federal law mandate inclusion of dependents.

During the July 2009 meeting of the health advisory council, a motion was passed to request the office of the commissioner of insurance to modify the uniform application to comply with the GINA and CHIPRA changes pending federal rule promulgation due in February 2010. Subsequent to the state budget passage, the health advisory council revised its request to include modifications to comply with state law. The proposed rule incorporates the changes requested by the council in accordance with GINA and CHIPRA and mandated coverage of dependents to age 27. Failure to amend the current rule will result in insurers being non-compliant with federal and state requirements.

**Comparison with federal regulations**

There is no existing or proposed federal regulation related to a uniform employee application for small employer group health insurance.

**Comparison of similar rules in adjacent states****Iowa:**

Effective April 16, 2008, Iowa enacted 191-71.26 (513B) uniform health insurance application form to be used by small

employer carriers. The uniform application is very similar to Wisconsin's form.

**Illinois:**

Recently enacted Public Act 95-857, requiring the development and use of uniform health applications for small group and individual health insurance. The applications are to be used beginning January 1, 2011. The applications are still being developed by the state.

**Minnesota:**

None as to the small employer uniform application for group health insurance.

**Michigan:**

None as to the small employer uniform application for group health insurance.

**Summary of factual data and analytical methodologies**

The office of the commissioner of insurance reviewed the GINA and CHIPRA regulations as well as newly enacted state mandates to ensure that the proposed modifications are necessary and will enable the application to be compliant with federal requirements.

**Analysis and supporting documentation used to determine rule's effect on small businesses**

There are no insurers that offer small employer group health insurance that qualify as small businesses in accordance with s. 227.114 (1), Wis. Stats. Intermediaries that solicit small employer group health insurance will be required to use the new form but since it is available at no cost from the office, the effect will be minimal.

**Private Sector Fiscal Impact**

There will be no significant fiscal effect on the private sector as the modifications are very minor and will assist in ensuring employees have information with which to make informed decisions and assist in coordinating benefits with the federal Medicare program.

**Small Business Fiscal Impact**

Pursuant to s. 227.114, Stats., the proposed rule may have an effect on small businesses. This rule will necessitate the use of the revised form by small businesses, however the effect is not significant.

The initial regulatory flexibility analysis is as follows:

**Initial regulatory flexibility analysis****Types of small businesses affected:**

Insurance agents and insurers authorized to offer small employer health insurance.

**Description of reporting and bookkeeping procedures required:**

None beyond those currently required.

**Description of professional skills required:**

None beyond those currently required.

**Small business regulatory coordinator**

The OCI small business coordinator is Eileen Mallow and may be reached at phone number (608) 266-7843 or at email address [eileen.mallow@wisconsin.gov](mailto:eileen.mallow@wisconsin.gov)

**Fiscal Estimate****Assumptions used in arriving at fiscal estimate**

The proposed modifications are critical for federal compliance but do not result in added cost to insurer, employer or consumer.

**State fiscal effect**

None.

**Local government fiscal effect**

None.

**Long-range fiscal implications**

None.

**Agency Contact Person**

Inger Williams, OCI  
 Public Information and Communications  
 Phone: (608) 264-8110  
 Email: inger.williams@wisconsin.gov  
 Address: 125 South Webster St – 2<sup>nd</sup> Floor  
 Madison WI 53703-3474  
 Mail: PO Box 7873, Madison, WI 53707-7873

**Notice of Hearing**  
**Insurance**  
**CR 10-068**

NOTICE IS HEREBY GIVEN That pursuant to the authority granted under s. 601.41 (3), Stats., and the procedures set forth under s. 227.18, Stats., the Office of the Commissioner of Insurance (OCI) will hold a public hearing to consider the adoption of the proposed rulemaking order creating section Ins 3.33, Wis. Adm. Code, relating to uniform questions and format for individual health insurance and affecting small business.

**Hearing Information**

**Date:** July 22, 2010  
**Time:** 1:00 p.m., or as soon thereafter as the matter may be reached  
**Location:** OCI, Room 227  
 125 South Webster Street, 2nd Floor  
 Madison, WI

**Submittal of Written Comments**

Written comments can be mailed to:

Julie E. Walsh  
 Legal Unit – OCI Rule Comment for Rule Ins 333  
 Office of the Commissioner of Insurance  
 PO Box 7873  
 Madison WI 53707-7873

Written comments can be hand delivered to:

Julie E. Walsh  
 Legal Unit – OCI Rule Comment for Rule Ins 333  
 Office of the Commissioner of Insurance  
 125 South Webster St – 2<sup>nd</sup> Floor  
 Madison WI 53703-3474

Comments can be emailed to:

Julie E. Walsh  
 julie.walsh@wisconsin.gov

Comments submitted through the Wisconsin Administrative Rule Web site at: <http://adminrules.wisconsin.gov> on the proposed rule will be considered.

The deadline for submitting comments is **4:00 p.m. on the 14<sup>th</sup> day after the date for the hearing** stated in this Notice of Hearing.

**Copies of Proposed Rule and Fiscal Estimate**

A copy of the full text of the proposed rule changes, analysis and fiscal estimate may be obtained from the Web site at: <http://oci.wi.gov/ocirules.htm> or by contacting:

Inger Williams, OCI  
 Phone: (608) 264-8110  
 Email: inger.williams@wisconsin.gov  
 Address: 125 South Webster St – 2<sup>nd</sup> Floor  
 Madison WI 53703-3474  
 Mail: PO Box 7873, Madison, WI 53707-7873

**Analysis Prepared by the Office of the Commissioner of Insurance****Statutes interpreted**

Sections 600.01, 628.34 (12), 601.41 (10), Stats.

**Statutory authority**

Sections 601.41 (3), 601.41 (10), Stats.

**Explanation of agency authority**

In accordance with s. 601.41 (10), Stats., the commissioner is required to prescribe by rule uniform questions and format of an application that is to be exclusively used by insurers authorized to offer individual major medical health insurance coverage. Further the commissioner has rule-making authority pursuant to s. 601.41 (3), Stats.

**Related statutes or rules**

Section 601.41 (8), Stats., authorized the commissioner to develop a uniform application for health insurance to be used in the small employer market. Section Ins 8.49, Wis. Adm. Code implemented the requirement for development of the uniform application for small employers. The commissioner used portions of the small employer application that is applicable to the individual health insurance application.

**Plain language analysis and summary of proposed rule**

The proposed rule was developed with the assistance of an advisory council charged with developing the uniform application questions and format to be used exclusively in the individual major medical health insurance market. The advisory council met six times between October 2009 and June 2010. The council members included intermediaries, public members, consumer advocates and representatives from the insurance industry.

As charged, the council recommended the proposed uniform application questions and format after reviewing applications used in the state for individual major medical health insurance and the model utilized by the State of Oregon.

The proposed rule requires insurers to develop policies and procedures to implement the new individual uniform application, restricts modifications, prescribes how the individual uniform application can be used when completed using internet access to the insurer or when the application is completed via telephone. The proposed rule prohibits insurers from automatically completing portion in the electronic version based on responses to various questions but does allow the insurer to rearrange the sequence as pull-down questions provided the printed form is in the required format as contained in Appendix 1.

Appendix 1 is the individual uniform application that once applicable, contains the only questions and format that can be used by insurers offering individual major medical health insurance.

Insurers will be permitted to add as separate forms that describe additional terms of the policy such as coinsurance, copayment and deductibles, payment mode, network selection. Additionally insurers will be permitted to add as a separate form the authorizations necessary to be compliant with Health Insurance Portability Accountability Act of 1996 (HIPAA) P.L. 104–191.

#### ***Comparison with federal regulations***

There is no existing or proposed federal regulation related to uniform questions and format of an application for individual health insurance. Recently, the federal government passed P.L. 111–148 and P.L. 111–152, federal health care reform, that will place restrictions on individual health insurance products but the laws do not prescribe uniform questions and format for individual health insurance.

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

##### *Iowa:*

None as to the uniform questions and format for individual health insurance.

##### *Illinois:*

Recently enacted Public Act 95–857, requiring the development and use of uniform health applications for small group and individual health insurance. The applications are to be used beginning January 1, 2011. The applications are still being developed by the state.

##### *Minnesota:*

None as to the uniform questions and format for individual health insurance.

##### *Michigan:*

None as to the uniform questions and format for individual health insurance.

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

The commissioner in working with the advisory council sought the greatest common factor among insurers as to their current application and underwriting process to minimize changes that insurers will need to make to their underwriting process.

#### ***Analysis and supporting documentation used to determine rule's effect on small businesses***

There are no insurers that offer health insurance that qualify as small businesses in accordance with s. 227.114 (1), Wis. Stats. Intermediaries that solicit individual health insurance will be required to use the new form but since it is available at no cost from the office, the effect will be minimal.

#### **Private Sector Fiscal Impact**

There will be no significant fiscal effect on the private sector as the proposed rules will assist individuals by utilizing one form when applying for individual major medical health insurance.

#### **Small Business Fiscal Impact**

This rule will necessitate the use of the uniform questions and format for application for individual health insurance; however the effect is not significant.

The initial regulatory flexibility analysis is as follows:

#### ***Initial regulatory flexibility analysis***

##### *Types of small businesses affected:*

Insurance agents and intermediaries.

#### ***Description of reporting and bookkeeping procedures required:***

None. No additional bookkeeping or reporting requirements other than are currently required.

#### ***Description of professional skills required:***

None. No other professional skills other than are currently required.

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

The OCI small business coordinator is Eileen Mallow and may be reached at phone number (608) 266–7843 or at email address [eileen.mallow@wisconsin.gov](mailto:eileen.mallow@wisconsin.gov)

#### **Fiscal Estimate**

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

None.

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

None.

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

None.

#### **Agency Contact Person**

Inger Williams, OCI

Public Information and Communications

Phone: (608) 264–8110

Email: [inger.williams@wisconsin.gov](mailto:inger.williams@wisconsin.gov)

Address: 125 South Webster St – 2<sup>nd</sup> Floor  
Madison WI 53703–3474

Mail: PO Box 7873, Madison, WI 53707–7873

#### **Notice of Hearing**

#### **Natural Resources**

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

#### **CR 08–022**

(DNR # WM–04–08)

NOTICE IS HEREBY GIVEN that pursuant to ss. 27.01 and 29.089, Stats., the Department of Natural Resources will hold a public hearing on revisions to Chapters NR 10 and 45, Wis. Adm. Code, relating to hunting on department–owned portions of the State Ice Age Trail area. State Ice Age trail area properties and other trails fall under the definition of state parks. Under s. 29.089, Stats., hunting is prohibited in state parks unless authorized by rule. The authority proposed in this rule is necessary in order for hunting to continue on areas where it has been an accepted activity. This proposal would let the department authorize hunting on newly purchased property, without writing individual rules, after considering factors to determine the suitability of that activity. The proposal does not require that hunting be allowed. This rule change gives the department the ability to be significantly more responsive in managing hunting at State Ice Age trail areas.

The rule establishes that hunting may occur during any season established by the department, or that it may occur only during certain deer seasons or at certain times of the year. This proposal clarifies that hunting may be allowed on a portion or all of an Ice Age Trail area property. When new lands are purchased, these decisions will be made upon purchase and evaluated again as part of the master planning process established by administrative rule.

In state parks, possession of loaded or uncased firearms is illegal where hunting is not allowed. This rule creates and

exception for crossing, by the shortest route possible, the traveled portion of a trail in a State Ice Age trail area.

Hearings were previously held on this rule order in Fitchburg, Wausau, and Milwaukee. Following those hearings, this proposal has been revised so that it no longer specifically lists unique plant or animal communities, usership patterns, or public safety as criteria to consider when a decision is made to allow hunting. Under the current proposal, considerations to be made are; the size, shape and location of the property as well as surrounding land uses, location of the property adjacent to other lands open to hunting, and the proximity of the trail property to areas developed for residences. As amended, the proposal no longer specifies that an area is open to hunting unless it is posted as closed to hunting.

### Hearing Information

The hearing will begin at **6:00 p.m.** on the following date at the following location:

**July 12, 2010** Glacier Room  
DNR South Central Region Hdqrs.  
3911 Fish Hatchery Road  
Fitchburg

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

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

The proposed rule and fiscal estimate may be reviewed and comments electronically submitted at the following Internet site: <http://adminrules.wisconsin.gov>. Written comments on the proposed rule may be submitted via U.S. mail to Mr. Scott Loomans, Bureau of Wildlife Management, P.O. Box 7921, Madison, WI 53707. Comments may be submitted by email to [scott.loomans@wisconsin.gov](mailto:scott.loomans@wisconsin.gov). Comments may be submitted until July 14, 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. A personal copy of the proposed rule and fiscal estimate may be obtained from Mr. Loomans.

### Small Business Impact

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

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

### Environmental Impact

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

Department's consideration of the impacts of the proposal and reasonable alternatives.

### Agency Contact Person

Scott Loomans  
Phone: (608) 267-2452  
Email: [scott.loomans@wisconsin.gov](mailto:scott.loomans@wisconsin.gov)

## Notice of Hearings Natural Resources *Fish, Game, etc., Chs. NR 1—* **CR 10-066**

(DNR # WM-21-10)

NOTICE IS HEREBY GIVEN that pursuant to ss. 29.014, 29.041, 29.197 and 227.11 (2) (a), Stats., the Department of Natural Resources will hold public hearings on revisions to Chapter NR 10, Wis. Adm. Code, relating to the 2010 migratory game bird seasons and waterfowl hunting zones.

Season dates and bag limits will be set for ducks and Canada geese. Under international treaty and federal law, migratory game bird seasons are closed unless opened annually via the U.S. Fish and Wildlife Service regulatory process. Because of the timing of Wisconsin's rule process and the U.S. Fish and Wildlife Service rule process, the actual season lengths, dates and bag limits cannot be determined at this time for much of the rule. The daily bag limit for ducks is expected to be 6 ducks including not more than 4 mallards, of which only one may be a hen, one black duck, one pintail, one canvasback, 3 wood ducks, two scaup, and 2 redheads. Season lengths for Canada geese are expected to be: Collins Zone - 66 days; Horicon Zone - 92 days; Exterior Zone - 85 days; and Mississippi River Subzone - 85 days.

There would be two time periods for hunting Canada geese in the Horicon Zone and three time periods in the Collins Zone.

### Hearing Information

The hearings will begin at **7:00 p.m.** at each of the following locations:

- August 2, 2010** State Office Bldg.  
Rooms B-19 and B-20  
3550 Mormon Coulee Road  
La Crosse
- August 3, 2010** WI Indianhead Technical College (WITC)  
Room 243, 1900 College Drive  
Rice Lake
- August 4, 2010** Agricultural Services Center  
Main Conference Room  
3369 West Brewster Street  
Appleton
- August 5, 2010** Comfort Suites Lake Country  
Thunder Bay Room  
N14 W24121 Tower Place  
Pewaukee

Pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Kent Van Horn at (608) 266-8841 with specific information on your request at least 10 days before the date of the scheduled hearing.

### **Copies of Proposed Rule and Fiscal Estimate and Submittal of Written Comments**

The proposed rule and fiscal estimate may be reviewed and comments electronically submitted at the following Internet site: <http://adminrules.wisconsin.gov>. A personal copy of the proposed rule and fiscal estimate may be obtained from Mr. Van Horn at the address listed below.

Written comments on the proposed rule may be submitted via U.S. mail to Mr. Kent Van Horn, Bureau of Wildlife Management, P.O. Box 7921, Madison, WI 53707 or by email to [kent.vanhorn@wisconsin.gov](mailto:kent.vanhorn@wisconsin.gov). Comments may be submitted until **August 6, 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 and explanation of agency authority***

In promulgating this rule, ss. 29.014, 29.041, 29.197 and 29.885, Stats. have been interpreted as allowing the department the authority to establish the migratory game bird seasons within the state as well as on and in all waters bordering the state and establish the two-day youth waterfowl hunt.

#### ***Statutory authority and explanation of agency authority***

Statutes that authorize the promulgation of this rule order include ss. 29.014 and 227.11, Stats. These sections grant rule making authority to the department to establish and maintain open and closed seasons for hunting and provide that all rules promulgated under this authority are subject to review under ch. 227, Stats. In addition, s. 29.041, Stats., authorizes the department to promulgate rules that regulate hunting on and in all interstate boundary waters, and s. 29.197, Stats., authorizes the establishment of special hunts.

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

This rule order establishes the season length and bag limits, for the Wisconsin migratory game bird seasons. Each year similar or identical emergency and permanent rule packages are promulgated. This process is necessary to have the seasons in place for the fall hunting season while following the federal and state rule procedures. Clearinghouse Rule 10-020, the Wildlife Management Spring Hearing Rules package, repeals the Burnett and Rock Prairie Canada goose management subzones. This rule order is written as affected by CR 10-20.

#### ***Plain language analysis***

Sections 1 and 4 through 8 repeal the Collins goose management zone.

Section 2 of this rule order establishes the season length and bag limits for the 2010 Wisconsin migratory game bird seasons. For ducks, the state is divided into two zones each with 60-day seasons. The season begins at 9:00 a.m. September 25 and continues for 60 consecutive days in the north, closing on November 23. In the South the season begins at 9:00 a.m. on October 2 and continues through October 10, followed by a 5-day split, and then reopens on October 16 and continues through December 5. The daily bag limit is 6 ducks including no more than: 4 mallards, of which only 1 may be a hen, 1 black duck, 1 pintail, 1 canvasback, 3 wood ducks, 2 scaup and 2 redheads.

For Canada geese, the state is apportioned into 3 goose hunting zones: Horicon, Collins and Exterior. Other special

goose management subzones within the Exterior Zone include Brown County and the Mississippi River. Season lengths are: Collins Zone – 66 days (three hunting periods, September 16 – October 3, October 4 – 24, October 25 – November 19); Horicon Zone – 92 days (2 hunting periods, first period beginning September 16 and the second on November 1); Exterior Zone in the northern duck zone – 85 days (Sept. 18 – Dec. 11); Exterior Zone in the southern duck zone – 85 days (Sept. 18 – Oct. 10 and Oct. 16 – Dec. 16) and Mississippi River subzone – 85 days (Oct. 2 – Oct. 10 and Oct. 16 – Dec. 30). The statewide daily bag limit for Canada geese in all zones is 2 birds per day during the open seasons within the zones.

Section 3 establishes the youth waterfowl hunting season dates.

#### ***Comparison with federal regulations***

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

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

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

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

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

only differ slightly based on hunter desires, habitat and population management goals. However, these variations fall within guidelines and sideboards established by the USFWS.

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

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

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

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

In early July, staff will conduct a public meeting to solicit input from interest groups, including representatives of the Conservation Congress Migratory Committee. At this meeting staff will provide the attendees with breeding status information and ask for any items that they wish the department to pursue at the MFC meeting in mid July. Department staff then attended the MFC Technical and Council meetings. At this meeting, staff will be provided status information and the proposed framework alternative from the USFWS. Department staff will then work with the other states in our Flyway to discuss and develop proposals and recommendations to be voted upon by the MFC. Proposals that pass at the MFC meeting will be forwarded to the USFWS for consideration by the Service Regulations Committee (SRC) at their meeting. The USFWS will announce its final waterfowl season framework recommendation on July 30. Department staff will summarize waterfowl status and regulation information for

Wisconsin citizens and present this information to the Migratory Committee of the Conservation Congress and at a public meeting (Post-Flyway Meeting) of interest groups and individuals on July 31. Staff will gather public input at these meetings regarding citizen suggestions for the development of Wisconsin's waterfowl regulations given the federal framework. Public hearings will be held during the first week of August around the state to solicit additional input on the proposed annual waterfowl rule.

This rule proposal will eliminate the Collins Canada goose hunting zone in 2011. The Collins zone in Manitowoc County was established in 1988 because it was a site specifically used by the Mississippi Valley Population of Canada geese and was hunted intensively. With the expansion of the Giant Canada goose population in Manitowoc County and the decreased interest in hunting the Collins zone, there is no longer a need for special restrictions. Staff have already collected public input and Mississippi Flyway Council review for the elimination of this zone with favorable results. As part of the annual harvest management of the Collins zone, all hunting permit holders are mailed a questionnaire. For the 2009 season, we included a question asking the permit holders if they would favor eliminating the Collins Zone and 80% favored elimination of the zone. Only 14% opposed elimination and 6% did not respond. We can increase efficiency and collect input from waterfowl hunters statewide by taking the proposal through the 2010 summer waterfowl rule hearings.

***Analysis and supporting documents used to determine effect on small business***

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

**Small Business Fiscal Impact**

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

It is not anticipated that the proposed rule will have an economic impact on small businesses.

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

**Environmental Impact**

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

**Fiscal Estimate**

This proposed migratory bird season rule is similar to the season in previous years and will not result in any significant changes in spending or revenue. There are no new government costs anticipated due to the provisions of this rule.

**Agency Contact Person**

Kent Van Horn  
101 S. Webster Street  
PO Box 7921  
Madison, WI 53707-7921  
Email: kent.vanhorn@wisconsin.gov

**Notice of Hearings****Natural Resources***Fish, Game, etc., Chs. NR 1—***CR 10-069**

(DNR # ER-10-10)

NOTICE IS HEREBY GIVEN that pursuant to ss. 23.27 (3) (b) and 227.11 (2) (a), Stats., the Department of Natural Resources will hold public hearings on revisions to Chapter NR 29, Wis. Adm. Code, relating to fees for providing endangered resources information to those who request it for specific authorized purposes.

The Department proposes to update fees for providing Natural Heritage Inventory (NHI) information and data to the public, establish a new expedited endangered resources review service; require education, training, experience, and an exam for requesters of detailed NHI data; establish a pilot certification program; and charge fees for training, exams, and certification to cover Department costs.

**Hearing Information**

The hearings will be held on:

<b>July 13, 2010</b> Tuesday at 11:00 a.m.	Glaciers Edge and Gathering Waters Rms. DNR South Central Region Headquarters 3911 Fish Hatchery Road Fitchburg
<b>July 14, 2010</b> Wednesday at 11:00 a.m.	Room 163, DNR Service Center 141 NW Barstow Waukesha
<b>July 16, 2010</b> Friday at 11:00 a.m.	DNR/DMV Conference Room DNR Service Center 5301 Rib Mountain Drive Wausau

Pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Sarah Carter at (608) 264-8968 with specific information on your request at least 10 days before the date of the scheduled hearing.

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

The proposed rule and fiscal estimate may be reviewed and comments electronically submitted at the following Internet site: <http://adminrules.wisconsin.gov>. A personal copy of the proposed rule and fiscal estimate may be obtained from Ms. Carter at the address listed below.

Comments may also be submitted via an online form at: <http://dnr.wi.gov/org/land/er/review/NR29form.asp>. Written comments on the proposed rule may be submitted via U.S. mail to Ms. Sarah Carter, Bureau of Endangered Resources, P.O. Box 7921, Madison, WI 53707 or by email to [sarah.carter@wisconsin.gov](mailto:sarah.carter@wisconsin.gov). Comments may be submitted until **July 16, 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***

In promulgating this rule, s. 227.11 (2) (a), Stats., has been interpreted as allowing the department the authority to develop rules to implement a program to provide natural heritage inventory information to the public. Section 23.27 (3) (b), Stats., has been interpreted as directing the department to share natural heritage inventory information and data with those who request it for specific authorized purposes.

***Statutory authority***

The state statutes that authorize the promulgation of this rule include section 23.27 (3) (b), Stats., and section 227.11, Stats.

***Explanation of agency authority***

These sections grant rule-making authority and fee establishment to the department and direct the department to make natural heritage inventory information and data available to those who request it.

***Plain language analysis***

Ch. NR 29, Wis. Adm. Code, outlines mechanisms and fees for sharing Natural Heritage Inventory (NHI) information on rare species and high-quality natural communities with the public. The proposed changes to Ch. NR 29, Wis. Admin. Code, represent recommendations made by stakeholders during a comprehensive program review conducted in 2008-2009.

Fees in Ch. NR 29, Wis. Adm. Code, have not been updated in 20 years. The proposed rule updates fees for one-time NHI information requests (commonly referred to as Endangered Resources (ER) Reviews) from \$20/hour to \$75/hour, and reduces the minimum charge from three hours of staff time (currently \$60) to one hour of staff time (\$75). Wisconsin's proposed \$75 minimum fee is low to average when compared to fees charged by other states both nationally and in the Midwest. Fees for providing access to the detailed NHI data via a formal NHI Data License are updated from a minimum of \$500 to a minimum of \$850, and from a maximum of \$1000 to a maximum of \$1500. The range in fees allows the Department to provide flexibility in costs for users depending on the format and geographic extent of the data requested.

The rule also creates a new expedited endangered resources review service to meet the needs of customers faced with very short deadlines for commencing project activities. The product is provided in a guaranteed, short timeframe (7 working days) for a higher fee: \$140/hour with a minimum charge of three hours (\$420). The ER Review Program has been piloting this service for the last six months. The pilot was accomplished via contract for a similar but slightly lower fee (\$100/hour, \$360 minimum). Based on the success of the initial pilot and consistent requests from stakeholders for this service, the Department is now proposing this change to allow Department staff to provide this service on a regular basis.

The proposed rule clarifies that users with access to detailed NHI data may be required to take training and/or an exam to ensure that they have the knowledge and skills to correctly access, interpret, apply and ensure the security of these sensitive data, and establishes that the Department may charge fees for training and exams to cover Department costs. The rule also directs the Department to establish a pilot certification program to allow external individuals with a

documented biological background who demonstrate specific skills and knowledge be authorized to conduct preliminary evaluations of potential impacts of proposed projects on endangered resources. These changes are a response to training needs that have been identified consistently by both customers and Department staff, and were reiterated by stakeholders in the recent program review. Those requesting direct access to the NHI data are currently required to take online training and an exam before being provided access to the data. However, there is a need to create better and more comprehensive training to allow users to better understand, interpret, and apply these data to their specific projects and uses. There is also a need to continue to ensure that this information has been effectively conveyed and understood through completion of an exam. In anticipation of this proposed rule change, the ER Review Program has been working with two groups of stakeholders since Fall 2009 to develop the certification program. The exam, training, and certification program will all be guided by the recommendations of these two groups. More information about this initiative is available online at <http://dnr.wi.gov/org/land/er/review/proposedChanges.asp>.

#### ***Related statute or rules and plain language analysis***

Section 23.27 (3) (b), Wis. Stats., requires the Department to share Natural Heritage Inventory (NHI) information with those who request it for research, educational, environmental, land management or similar authorized purposes. Ch. NR 29, Wis. Admin. Code, outlines mechanisms and fees for sharing this information. The proposed changes to Ch. NR 29, Wis. Admin. Code, will update fees for providing NHI information to customers to reflect the actual cost of collecting, storing, managing, compiling and providing this information and data as required by s. 23.27(3)(b), Stats. The rule will also create a new expedited endangered resources review service and establish a pilot certification program.

Fees in Ch. NR 29, Wis. Adm. Code, have not been updated in 20 years. The proposed rule updates fees for one-time NHI information requests (commonly referred to as ER Reviews) from \$20/hour to \$75/hour, and reduces the minimum charge from three hours of staff time (currently \$60) to one hour of staff time (\$75).

It should be noted that generalized NHI information is available for free to the public on our website at <http://dnr.wi.gov/org/land/er/review/> under 'Free, Online Resources'. The data are available in several formats, including printouts by township. These data are used frequently by consultants, students, land use planners, landowners, non-profit organizations, local units of government, educators, and others for a variety of purposes including research, pre-screening projects for regulatory purposes, gathering information for community/land use planning initiatives, and informing conservation and restoration efforts.

#### ***Comparison with federal regulations***

The proposed rules are related to provision of information on rare species (including those classified as endangered and threatened at the state and federal levels) and high-quality natural communities. These rules do not relieve individuals from any restrictions, requirements or conditions of federal statutes or regulations related to endangered species. In fact, providing this information to the public facilitates compliance by the regulated community with existing state and federal endangered species laws.

All projects that the Department conducts, funds or approves must also 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 plan development, NEPA compliance for receipt of federal aid, and Department 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 last year), the ER Review Program has worked with the U.S. Fish and Wildlife Service to develop procedures for screening proposed projects for potential impacts to endangered resources. The foundation of the screening procedure is the NHI database. The provision of timely and accurate NHI data through the NHI Portal along with the technical support and services provided by the ER Review Program help ensure that federal grants are not held up by the US Fish and Wildlife Service for noncompliance, that all Department programs comply with state and federal endangered species laws, and that Department permits are issued in a timely manner.

We are not aware of a federal law requiring provision of information on federally protected rare species and habitats to the public. As with Wisconsin, generalized information on rare species locations in Wisconsin is available for free at the US Fish and Wildlife Service website: <http://www.fws.gov/midwest/Endangered/lists/Wisc-cty.html>. However, information in this table is generalized much more broadly: species locations are generalized to the county level. In contrast, locational information for species in Wisconsin is available to the township level on the Department website at <http://dnr.wi.gov/org/land/er/review/> under 'Free, Online Resources'. In addition, it should be noted that most information US Fish and Wildlife Service provides in their table comes from NHI data that the Department shares with US Fish and Wildlife Service via a formal NHI Data License.

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

Fees for provision of NHI information vary across the Midwest and across the nation. The majority of states use some variety of fee formula, usually based on an hourly rate for time needed to complete the request or a per quadrangle fee. Florida, Rhode Island, and West Virginia all charge \$75/hr, with a one-hour minimum. Several other states such as Delaware and New Jersey follow this formula, although the fees range from \$20 to \$100/hr. Four states plus the Navajo Nation base their fees on the number of quadrangles reviewed, with charges ranging from \$20 to \$45 per quadrangle. New Mexico, Wyoming, and Colorado utilize a tiered fee structure, charging a base fee and adding additional charges based on variables such as whether the search returned any results, project area, number of species found, etc. All three states have a base fee of around \$100; the maximum charge can range up to \$25,000 in Wyoming.

Fees for NHI information in the Midwest also vary, as in the country as a whole. Illinois and Iowa both provide free reports upon request. Michigan charges a \$100 base fee plus \$.607/mi<sup>2</sup>, while Indiana and Ohio both charge around \$50 per half hour. South Dakota charges \$30 for a computer search and \$30/hr for a manual search. Minnesota uses a tiered system similar to New Mexico's, charging a base fee of \$60 plus an additional \$30/hr or \$25 for queries by species plus \$5 per additional species. Wisconsin's \$75 minimum fee is low to average when compared to states both nationally and in the Midwest.

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

The proposed rules are related to provision of information on rare species (including those classified as endangered and threatened at the state and federal levels) and high-quality natural communities. The proposed rules seek to provide information to the public facilitating compliance by the regulated community with both state and federal endangered species laws. This information is also provided to other Department staff, facilitating Department compliance with state endangered species laws (see above). These rules do not relieve individuals from any restrictions, requirements or conditions of state statutes or regulations related to endangered species.

These rules were developed with the assistance of the Bureau of Endangered Resources, Legal Services and with input from stakeholders of the ER Review Program. A group of ER Review Program stakeholders met several times between Fall 2008 and Spring 2009 to consider and recommend changes to the ER Review Program that would better serve its customers. This proposed rule change represents several changes recommended by the group. Stakeholders included other state and federal agencies, local units of government, developers, private and county forests, utilities, non-profit conservation organizations, private consultants, and others. Specific organizations represented included Alliant Energy, American Transmission Company, Madison Audubon Society, Metropolitan Builders Association, Natural Resources Consulting, Inc., The Nature Conservancy, US Department of Agriculture Natural Resources Conservation Service, We Energies, Wisconsin Department of Agriculture, Trade, and Consumer Protection, Wisconsin Towns Association, and others. Internal stakeholders were also consulted about ways to facilitate coordination across programs and shorten permit turnaround time related to the endangered resources review required for all actions that the Department conducts, funds, or approves. The Division of Forestry, Office of Energy, and Bureaus of Science Services and Watershed were represented on the internal stakeholder group. Another stakeholder meeting is scheduled for April 23, 2010 to share information about the rule process. One more stakeholder meeting will be held after the anticipated July 2010 public hearings to share input received at the public hearings with stakeholders.

Fees for providing access to the detailed NHI data (provided via a formal NHI Data License) are updated from a minimum of \$500 to a minimum of \$850, and from a maximum of \$1000 to a maximum of \$1500. Most other states do not provide external customers with direct access to the underlying NHI database (the same database used by the Department for regulatory and conservation purposes). The Department feels this is a critical service, providing trained and knowledgeable users with the detailed data they need to better protect endangered resources, often accomplished by better siting and planning projects which may cover large geographic areas (e.g., utility lines) to take into account endangered resources. The range in fees provided by the updated values allows the Department to provide flexibility in costs for users depending on the format and geographic extent of the data requested.

The rule also creates a new expedited service (Expedited ER Reviews) to meet the needs of customers faced with very short deadlines for commencing project activities. The product is provided in a guaranteed, short timeframe (7 working days) for a higher fee: \$140/hour with a minimum

charge of three hours (\$420). Stakeholders, both internal and external, requested this service to help enable projects on very short deadlines (e.g., stimulus projects) to comply with endangered species laws. The program has been piloting this service for the last six months to provide a mechanism for quickly reviewing proposed stimulus projects. The pilot was accomplished via contract for a similar but slightly lower fee (\$100/hour, \$360 minimum), and quality products were provided on time to customers. Based on the success of the initial pilot and consistent requests from stakeholders for this service, the Department is now proposing this change to allow Department staff to provide this service as a regular function of the ER Review Program.

The proposed rule clarifies that users with access to detailed NHI data may be required to take training and/or an exam to ensure that they have the knowledge and skills to correctly access, interpret, apply and ensure the security of these sensitive data, and establishes that the Department may charge fees for training and exams to cover Department costs. The rule also directs the Department to establish a pilot certification program to allow external individuals with a documented biological background who demonstrate specific skills and knowledge be authorized to conduct preliminary evaluations of potential impacts of proposed projects on endangered resources. These changes are a response to training needs that have been identified consistently by both customers and Department staff, and were reiterated by stakeholders in the recent program review. Those requesting direct access to the NHI data are currently required to take online training (approximately four hours) and an exam before being provided access to the data. However, there is a need to create better and more comprehensive training targeting specific user groups to allow each to better understand, interpret, and apply these data to their specific projects and uses. And, there is a need to continue to ensure that this information has been effectively conveyed and understood through completion of an exam. In anticipation of this proposed rule change, the ER Review Program has been working with two small groups of stakeholders since Fall 2009 to develop a list of competencies, an exam, and a training plan for providing users of these data with the skills, tools, and information that they need to best use the data. One group consists of forestry users, while the second group encompasses other types of users (utilities, agencies, non-profit organizations, private consultants, and others). These groups are expected to finish their work in Fall 2010. The exam, training, and certification program will all be guided by the recommendations of these two working groups. More information about this initiative is available online at <http://dnr.wi.gov/org/land/er/review/proposedChanges.aspx> or by emailing [arah.carter@wisconsin.gov](mailto:arah.carter@wisconsin.gov).

### **Small Business Fiscal Impact**

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

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

### **Environmental Impact**

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

received, the Department may prepare an environmental analysis before proceeding with the proposal. This environmental review document would summarize the Department's consideration of the impacts of the proposal and reasonable alternatives.

### **Fiscal Estimate**

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

Increase existing revenues.

Increase costs – will not be possible to absorb within agency's budget.

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

Indeterminate.

Increase Costs — Permissive.

#### ***Types of local governmental units affected***

Town, Villages, Cities, Counties.

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

SEG.

#### ***Affected Ch. 20 appropriations***

Section 20.370 (1) (fs), Stats.

### **Agency Contact Person**

Sarah Carter  
101 S. Webster Street  
P.O. Box 7921  
Madison, WI 53707-7921  
Phone: (608) 264-8968  
Email: sarah.carter@wisconsin.gov

## **Notice of Hearing Public Instruction EmR1021**

NOTICE IS HEREBY GIVEN That pursuant to ss. 119.23 (2) (a) 6. c. and 227.11 (2) (a), Stats., the Department of Public Instruction will hold a public hearing to consider emergency rules creating section PI 35.07, relating to establishing a nonrenewable waiver from the requirement that a teacher have a bachelor's degree in order to teach in a private school under the Milwaukee Parental Choice Program.

### **Hearing Information**

The hearing will be held as follows:

**Date:** July 12, 2010  
**Time:** 1:00 – 2:00 p.m.  
**Location:** Madison  
GEF 3 Building  
125 South Webster Street  
Room 041

The hearing site is fully accessible to people with disabilities. If you require reasonable accommodation to access any meeting, please call Robert Soldner, Director, School Management Services, (608) 266-7475 or leave a message with the Teletypewriter (TTY) at (608) 267-2427 at least 10 days prior to the hearing date. Reasonable accommodation includes materials prepared in an alternative format, as provided under the Americans with Disabilities Act.

### **Copies of Emergency Rule and Fiscal Estimate**

The emergency rule and fiscal estimate are available on the internet at <http://dpi.wi.gov/pb/rulespg.html>. A copy of the rule and the fiscal estimate also may be obtained by sending an email request to [lori.slauson@dpi.wi.gov](mailto:lori.slauson@dpi.wi.gov) or by writing to:

Lori Slauson, Administrative Rules and Federal Grants  
Coordinator  
Department of Public Instruction  
125 South Webster Street  
P.O. Box 7841  
Madison, WI 53707

### **Submittal of Written Comments**

Written comments on the proposed rules received by Ms. Slauson at the above mail or email address no later than **July 15, 2010**, will be given the same consideration as testimony presented at the hearing.

### **Analysis Prepared by Department of Public Instruction**

#### ***Statute interpreted***

Section 119.23 (2) (a) 6. c., Stats., and SECTION 9139 (4r) of the nonstatutory provisions of 2009 Wisconsin Act 28.

#### ***Statutory authority***

Sections 119.23 (2) (a) 6. c. and 227.11 (2) (a), Stats., and SECTION 9139 (4r) of the nonstatutory provisions of 2009 Wisconsin Act 28.

#### ***Explanation of agency authority***

Section 119.23 (2) (a) 6. c., Stats., requires the department to, by rule, implement a process to issue a temporary, nonrenewable waiver to certain teachers that meet specific statutory requirements and who are employed by a private school participating in the Milwaukee Parental Choice Program (MPCP) program.

Section 119.23 (11), Stats., requires the department to promulgate rules to implement and administer the MPCP.

Section 227.11 (2) (a), Stats., gives an agency rule-making authority to interpret the provisions of any statute enforced or administered by it, if the agency considers it necessary to effectuate the purpose of the statute.

SECTION 9139 (4r) of the nonstatutory provisions of 2009 Wisconsin Act 28 allows the department promulgate emergency rules without a finding of emergency or a statement as to why the rule is necessary for the preservation of the public peace, safety or welfare.

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

N/A

#### ***Plain language analysis***

2009 Wisconsin Act 28, the 2009-11 biennial budget bill, made several modifications to the Milwaukee Parental Choice Program under s. 119.23, Stats. Several of the modifications require that the department develop rules to implement the statutory provisions. One of those modifications requires the department to develop a rule setting forth the process to issue a temporary, nonrenewable waiver for eligible teachers who have been teaching in a participating private school for at least 5 consecutive years immediately preceding July 1, 2010, but do not have a bachelor's degree.

By statute, a teacher may apply for a temporary, nonrenewable waiver if he or she:

- Was employed by the private school participating in the Milwaukee Parental Choice Program (MPCP) on July 1, 2010,
- Has been teaching for at least the 5 consecutive years immediately preceding July 1, 2010, and
- Does not have a bachelor's degree from an accredited institution of higher education on July 1, 2010.

The statutes further require the applicant to submit to the department a waiver application designed by the department and a plan for satisfying the requirements under s. 119.23 (2) (a) 6. a., Stats., including the name of the accredited institution of higher education at which the teacher is pursuing or will pursue the bachelor's degree and the anticipated date on which the teacher expects to complete the bachelor's degree.

The rules include the statutory requirements described above and establish the process for requesting the temporary, nonrenewable waiver. The rules require specific information to be submitted by July 31, 2010, when applying for the waiver, including:

- Information documenting that the institution of higher education is accredited.
- The name and contact information of the accredited institution of higher learning.
- A list of specific classes to be taken to complete the bachelor's degree, including updates of any changes that have occurred in the applicant's plan.
- If applicable, an official transcript showing courses already completed that count toward the bachelor's degree.
- Information demonstrating a bachelor's degree from the accredited institution of higher education can be issued within five years under the plan proposed by the applicant.

Finally, no waiver granted under these rules is valid after July 31, 2015.

The Act required permanent rules be submitted to the Legislative Council by October 1, 2009. The permanent rule process is nearly complete but emergency rules are being promulgated to establish the waiver application requirements prior to the July 1, 2010, teacher criteria deadline, established under s. 119.23 (2) (c), Stats.

#### ***Comparison with federal regulations***

N/A

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

Illinois, Iowa, Michigan, and Minnesota do not have rules relating to private school voucher programs.

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

The waiver granted under these rules is only available to teachers that meet the requirements on July 1, 2010 and valid until July 31, 2015. The information required in the rule is typical of information requested from regular teachers in determining whether they are on-track to receiving proper certification.

#### ***Analysis and supporting documents used to determine effect on small business***

N/A.

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

N/A.

#### **Small Business Fiscal Impact**

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

#### **Fiscal Estimate**

The rule sets forth the process to issue a temporary, nonrenewable waiver for eligible teachers who have been teaching in a participating private school but do not meet the new licensing requirement created by 2009 Wis. Act 28 under s. 119.23 (2) (a) 6. a., Stats.

The rules will have no local fiscal effect and will have no significant economic impact on small businesses, as defined in s. 227.114 (1) (a), Stats.

The costs associated with the new waiver application process and review will be absorbed by the department.

#### **Agency Contact Person**

Robert Soldner, Director  
School Management Services  
Phone: (608) 266-7475  
Email: robert.soldner@dpi.wi.gov

### **Notice of Hearing Transportation CR 10-070**

NOTICE IS HEREBY GIVEN that pursuant to ss. 85.16 (1), 227.11, 343.02 and 344.66, Stats., the Department of Transportation will hold a public hearing to consider the amendment of Chapter Trans 100, Wis. Adm. Code, relating to license reinstatement.

#### **Hearing Information**

**Date:** July 21, 2010  
**Time:** 10:30 a.m.  
**Location:** Hill Farms State Transportation Bldg.  
Room 144-B  
4802 Sheboygan Avenue  
Madison, WI

This hearing is held in an accessible facility. If you have special needs or circumstances that may make communication or accessibility difficult at the hearing, please call Reginald Paradowski at (608) 264-7002 with specific information on your request at least 10 days before the date of the scheduled hearing. Accommodations such as interpreters, English translators, or materials in alternative format will, to the fullest extent possible, be made available upon a request from a person with a disability to accommodate your needs.

#### **Copies of Proposed Rule**

A copy of the rule may be obtained upon request from Reginald Paradowski, Section Chief, Division of Motor Vehicles, Driver Information Section, Room 301, P. O. Box 7983, Madison, WI 53707-7983. You may also contact Mr. Paradowski by phone at (608) 264-7002 or via e-mail: reginald.paradowski@wisconsin.gov to obtain copies of the proposed rule. Copies will also be available at the hearing.

#### **Submission of Written Comments**

The public record on this proposed rule making will be held open until close of business the day of the hearing to permit the submission of comments in lieu of public hearing testimony or comments supplementing testimony offered at

the hearing. Any such comments should be submitted to Reginald Paradowski, Section Chief, Division of Motor Vehicles, Driver Information Section, Room 301, P. O. Box 7983, Madison, WI 53707-7983, or by calling (608) 264-7002. You may also contact Mr. Paradowski via e-mail at: dotuninsuredmotorist@dot.wi.gov.

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

### **Analysis Prepared by the Wisconsin Department of Transportation**

#### ***Statutes interpreted***

Sections 344.25 to 344.27, 344.37, 344.61 to 344.67 and 346.70, Stats.

#### ***Statutory authority***

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

#### ***Explanation of agency authority***

The Department is charged with administering the safety responsibility and damage judgment laws contained in Ch. 344. This rule making deals with reinstatement of operating privileges following suspension for nonpayment of a damage judgment. The Department is also charged with administering provisions of the mandatory insurance law, Subchapter VI to Ch. 344, Stats. This rule making implements that new law.

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

344.01(2)(d), Subch. VI of Ch. 344, Stats.

#### ***Plain language analysis***

This proposed rule making revises those provisions of Ch. Trans 100 to reflect statutory requirements and to codify DMV practices and procedures that are used in the administration of the safety responsibility and damage judgment laws. The damage judgment law provides that a driver's operating privilege may be suspended for up to 20 years if the driver fails to pay down the judgment to the same extent it would have been paid had the driver carried the minimum insurance required under Wisconsin's safety responsibility law. The safety responsibility law requires drivers involved in accidents without insurance to post a deposit with the Department to cover potential damages resulting from the accident. Failure to post the deposit results in suspension of operating privileges.

A second objective of this rule making, discussed below, is to establish standards for filings made in lieu of insurance with the Department pursuant to s. 344.63, Stats., as created by 2009 Wis. Act 28, and establish any other regulations made necessary by Wisconsin's new mandatory insurance law.

#### ***Safety Responsibility and Damage Judgment Law Related Proposed Rules***

Section 344.01 (2) (d), Stats., sets minimum mandatory insurance limits in Wisconsin of \$50,000 because of bodily injury to or death of one person in any one accident and, subject to such limit for one person, in the amount of \$100,000 because of bodily injury to or death of 2 or more persons in any one accident and in the amount of \$15,000 because of injury to or destruction of property of others in any one accident.<sup>1</sup> Section 344.26 (3), Stats., provides that unpaid damage judgments in excess of those amounts are "deemed satisfied"

for purposes of the damage judgment law when payments in those amounts have been credited to the judgments. Payments made in settlement of any claims because of bodily injury, death or property damage arising from a motor vehicle accident are credited in reduction of the respective amounts so specified.

<sup>1</sup> These dollar amounts can be adjusted in accordance with variance in the consumer price index beginning in 2017. The rule text reflects this fact, but for purposes of the analysis, the current \$15,000, \$50,000 and \$100,000 amounts shall be used to simplify the text and improve the understandability of the analysis.

It should be noted in this regard that the term "satisfied" as used in ss. 344.25 to 344.27, Stats., is not used in the commonly understood legal parlance of the term. Ordinarily, to lawyers, "satisfaction" of a judgment means the payment of all amounts due under the judgment. In s. 344.26(3), Stats., however, the different meaning described in the preceding paragraph is ascribed to the term solely for purposes of the damage judgment law. This is consistent with the safety responsibility law. Under the safety responsibility law, a person who had a contract of insurance with the minimum coverages described in s. 344.01(2)(d), Stats., would not be subject to that law's bond requirements. s. 344.14 (2) (a), Stats.

This proposed rule making would amend Ch. Trans 100 to make clear that payment of a judgment to the \$15,000 for property damage plus \$50,000 or \$100,000 level for injuries is sufficient to warrant release of any damage judgment suspension by the Division of Motor Vehicles. It also imposes a requirement that any settlement agreement between the parties state the nature of the damages involved and the amount at which the possibility of re-suspension under the DMV damage judgment law expires.

An additional proposed amendment to Ch. Trans 100 is intended to resolve a potential ambiguity in ss. 344.25 to 344.27, Stats. Since the inception of this program, DOT has interpreted those statutes as permitting release of a DMV damage judgment suspension once upon a debtor driver entering into a private repayment agreement and once upon that debtor driver obtaining a court-ordered repayment plan under s. 344.27, Stats. DMV has required satisfaction of the judgment as a condition of reinstatement following default on any judicial plan because of the s. 344.27(3), Stats., requirement that "[I]f 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." In drafting this rule, the Department considered whether it could permit these steps to be done in a different sequence and whether multiple agreements could be permitted.

In the end, the Department concluded that the above-quoted language of s. 344.27(3), Stats., prevents DMV from permitting reinstatement of operating privileges following default on a court-ordered repayment plan unless the driver (or someone on the driver's behalf) actually pays \$15,000, \$50,000 or \$100,000, as appropriate, to the judgment creditor. DMV also concluded that it would not permit repeated private repayment agreements for a single damage judgment. The proposed rule reflects these determinations.

Amendments to s. Trans 100.08(1) are proposed merely to eliminate inconsistent use of language in the amended paragraphs. The paragraphs amended used alternatively the

term “check” or the term “draft,” when either a check or a draft is adequate in any of those instances and either is accepted by DMV. The amendments simply make it clear that either is acceptable in lieu of cash.

Finally, the unencumbered asset base formula amount required for self-insurance in s. Trans 100.16(4)(a) is raised from \$60,000 to \$115,000 to match the new minimum liability limits required under state law. The formula is expressed in a manner that will allow the amount to rise or fall as minimum insurance limits rise or fall under s. 344.11, Stats.

#### *Mandatory Insurance Related Proposed Rules*

As stated above, one purpose of this proposed rule making is to set interim standards for filings made in lieu of insurance with the Department pursuant to s. 344.63, Stats., as created by 2009 Wis. Act 28. The statutes require the Department to accept and release deposits made in lieu of mandatory insurance under particular circumstances, and these rules cannot modify those statutorily established requirements. The Department believes the legislature may wish to consider modifying some of those requirements in the future because the effects of some of the provisions may undermine the legislature’s apparent intentions in enacting the laws. These effects are explained below.

One deposit accepted in lieu of insurance under s. 344.63, Stats., is \$60,000 cash. The \$60,000 amount is set in the statutes and is far less than the minimum insurance required under the law. U.S. currency, cashiers and certified checks, money orders, bank checks, and attorney trust fund checks may be accepted as a cash deposit by the Department. In addition to depositing cash, the depositor must prove no judgments are outstanding against the depositor in the depositor’s county of residence. s. 344.37(1), Stats.

A second deposit accepted by the Department is a bond. There are two types of bonds. First, a bond issued by a surety company for the minimum liability coverage amounts required by law (currently \$15,000 property, \$50,000 personal injury to one person, \$100,000 personal injury of multiple persons). The bond will need to be in a form approved by the Department. The other form of bond permitted under the statutes is a judicial bond. If requested, judges will have to approve or disapprove of applications to create a bond secured by \$330,000 in real estate (twice the amount of the bond).

The third mechanism available under the statute is posting securities. Securities are the most problematic from an administrative and enforcement standpoint. The value of securities can vary greatly over time. The Department cannot and will not know the value of securities after deposit. The burden will be on the depositor to be able to prove the value of any securities deposited with the Department to police when asked. Deposits of securities must be accompanied by an opinion of counsel verifying that the securities meet the statutory requirements for use in lieu of insurance. The depositor will need to provide an affidavit as to the value of the securities at the time of deposit and will need to pledge the securities in a manner that permits the Department to sell them in order to use the proceeds to satisfy damages resulting from accidents. The share or bond certificates will need to be physically deposited with the Department. The Department proposes in this rulemaking to require that the securities be of a type readily sold on a recognized market, such as the NASDAQ or New York Stock Exchange, so that DMV has a means of converting the securities to cash if the securities

must be used to pay damages resulting from an accident. Securities in closely held corporations, certificates of deposit that are subject to early withdrawal penalties, and other types of securities that are not readily converted to cash would not be accepted. Minimum standards of capitalization and liquidity are suggested as mechanisms for ensuring that penny stocks and unmarketable securities that are difficult to sell will not be accepted.

As set forth at the outset of this plain language analysis, there are some issues related to the return of deposits made in lieu of mandatory insurance established by the new mandatory insurance law that may merit further legislative attention. For example, s. 344.63(3)(a) provides that any bond, cash or securities deposited in lieu of insurance with the Department would have to be returned to the depositor if the owner or operator of the vehicle for whom the deposit was made obtains insurance, dies, becomes permanently incapacitated to operate a motor vehicle, no longer holds a valid operator’s license or no longer owns a motor vehicle registered with the Department. The Department lacks authority under that statute to retain any bond or deposit to satisfy damages resulting from an accident once any of those events triggering return of the deposit occurs.

Because of this statutory requirement, the person posting the bond or deposit will have ample opportunity to withdraw any deposit prior to the Department being able to apply it to any judgment for damages for the injured party’s benefit. For example, if the depositor were to be involved in an accident, he or she could walk into any DMV service center, surrender his or her license and demand return of the deposit. Under the new law, DMV has a ministerial non-discretionary responsibility to return the deposit, even if the Department knows that the accident has occurred. Once the deposit is returned, the driver can request DMV reinstate his or her license, and DMV is required to do so. Similarly, if the driver who made the deposit in lieu of insurance killed himself by negligently causing an accident injuring others, the Department is required to return the deposit to the depositor’s estate and cannot retain the deposit for the benefit of the persons the depositor negligently injured. In these and other foreseeable types of situations, the deposit made in lieu of insurance would not be available to satisfy the damages suffered by those injured in the accident. The legislature may wish, at some point, to consider amending the statutory provisions that lead to such results so that deposits made in lieu of insurance could be held by the Department in order to help offset damages caused by drivers using deposits in lieu of insurance.

#### ***Comparison with federal regulations***

There are no existing or proposed federal regulations on this issue.

#### ***Comparison with rules in the following states***

##### *Michigan:*

Owners of passenger vehicles, vans, and light trucks must purchase Michigan no-fault insurance before registering their vehicle. Out-of-state insurance policies cannot be used to meet Michigan insurance requirements for registering a vehicle. Motorcycles must also be insured, but it is not no-fault insurance.

Required coverages include bodily injury/property damage, personal injury protection, and property protection insurance. These required coverages do not pay for damage to vehicles or cover theft. Drivers may carry collision

coverage (damage) and comprehensive coverage (theft) at their option.

Drivers are required to keep a Michigan no-fault insurance certificate in their vehicle or carry it with them when they drive. If they cannot show proof of insurance to a law enforcement officer, their operating privilege or vehicle registration may be suspended.

Persons (usually companies) owning more than 25 vehicles may be exempt from the mandatory insurance requirement by obtaining a certificate of self insurance from the Michigan Secretary of State. Applicants must have a net worth in excess of \$20 million to be exempt from carrying insurance, or a have net worth in excess of \$5 million and carry an excess insurance policy. Section R 257.532, Michigan Admin. Code.

Department staff did not find any provision of Michigan law allowing deposits in lieu of insurance similar to those set forth in s. 344.63, Stats.

Michigan has a damage judgment law similar to Wisconsin's. If someone is driving a vehicle without insurance and is at-fault in an accident, the injured party may file a suit against the uninsured motorist in court for damages. The court may award a judgment for damages to the injured party against the uninsured motorist. Unlike Wisconsin, if the uninsured motorist cannot pay the judgment, their driver license is suspended until the judgment is paid in full. Wisconsin requires only that the minimum mandatory insurance amounts be paid before a driver may reinstate his or her license.

Michigan does not have a safety responsibility law similar to Wisconsin's.

#### *Minnesota:*

The Minnesota No-Fault Act (M.S. 65B.48), requires owners of registered motor vehicles to maintain no-fault insurance. The law makes it a crime for a vehicle owner to operate or permit operation of any uninsured motor vehicle or motorcycle upon any public road, street, or highway. Violation of the law can result in fines or imprisonment and/or loss of driving privileges.

Drivers must carry liability, personal injury protection, uninsured motorist, and underinsured motorist coverage. Collision and comprehensive coverage are optional.

Minnesota Law (M.S. 169.791) requires drivers to carry proof of insurance in the vehicle at all times and to provide it to peace officers upon demand.

Minnesota does not appear to have a safety responsibility law. Minn. Stat. 171.182 provides for revocation of operating privileges for drivers who have unpaid damage judgments resulting from automobile accidents. Unlike Wisconsin, complete payment of the judgment is required prior to reinstatement.

#### *Illinois:*

All motor vehicles operated in Illinois must be covered by liability insurance. Vehicle owners are required to provide insurance information at the time of registration renewal.

Drivers operating without proof of insurance in Illinois, are subject to a five hundred dollar fine and a sixty day suspension of vehicle registration. Illinois requires drivers to carry bodily injury liability limits of \$20,000/\$40,000, property damage liability limits of \$15,000, and uninsured motorist coverage.

Illinois does not appear to have a safety responsibility law. Illinois law does provide for revocation of operating

privileges for drivers who have unpaid damage judgments resulting from automobile accidents. Unlike Wisconsin, complete payment of the judgment is required prior to reinstatement.

#### *Iowa:*

Iowa does not mandate that drivers or vehicle owners carry insurance. Iowa has a safety responsibility law similar to Wisconsin's, which is used to compel uninsured drivers to post deposits in order to cover damages potentially attributable to them from an accident. Any person involved in an accident in Iowa, as either the driver or owner of a motor vehicle, is subject to the requirements of the law.

Iowa does not have a compulsory insurance law. Instead, the Financial & Safety Responsibility Act provides for:

- Suspending the operating and registration privileges of a driver or owner who cannot show immediate financial responsibility following an accident; and,
- By requiring anyone whose driver's license has been suspended or revoked because of a conviction, unsatisfied judgment or violation of the OWI law to prove financial responsibility for any future damages or injuries that driver may cause.

Just as in Wisconsin, in Iowa drivers must file an accident report and must be filed with the Office of Driver Services within a set timeframe if an accident results in bodily injury, death or total property damage over a statutorily established amount. Drivers do not need to file a personal accident report if the accident was investigated by a law enforcement agency and the investigating officer files a report.

A driver who causes personal injury or damage exceeding \$1,000 to the other party must prove his or her financial responsibility or be subject to license suspension. Similar to Wisconsin's safety responsibility law, drivers can prove financial responsibility by showing that they were covered by automobile liability insurance at the time of the accident, posting cash, getting releases from all other damaged or injured parties, being absolved of responsibility by a court judgment, filing an agreement to pay the other damaged or injured parties on an installment plan, or reaching a settlement with the injured persons. Iowa also allows the uninsured motorist to confess judgment and enter into a judicially-approved payment plan as a mechanism for resolving safety responsibility matters.

Both the owners and drivers of the vehicles involved in an accident must prove their financial responsibility. This means that the person who owns the vehicle involved in an accident has to show financial responsibility even if they weren't driving. Like Wisconsin, Iowa will suspend registrations of all the owners' vehicles if they do not comply. Similarly, the driver of the vehicle has to show financial responsibility or lose all licenses to operate motor vehicles.

Iowa does not appear to have a damage judgment law similar to Wisconsin's.

Overall, it appears that states having mandatory insurance laws do not have a safety responsibility law similar to Wisconsin's. Iowa, which has a safety responsibility law, does not mandate insurance.

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

Section 344.63, Stats., as created by 2009 Wis. Act 28, provides exceptions to the requirement of having a motor vehicle liability insurance policy to operate a motor vehicle on Wisconsin highways. The exceptions defined in the statutes are nearly identical to those provided for under Wisconsin's

Safety Responsibility Law. The administration of the exceptions, as defined in this proposed rule, are purposely drafted to closely mirror the procedures currently in place under the Safety Responsibility Law.

***Analysis and supporting documentation used to determine effect on small businesses***

This regulatory change has no impact on small business. This rule making largely codifies existing DOT policy with regard to the administration of the safety responsibility and damage judgment laws. The Department does not anticipate any fiscal effect upon small businesses from this codification.

**Small Business Impact**

This regulatory change has no impact on small business. The safety responsibility and damage judgment portions of this rule making largely codifies existing DOT policy with regard to the administration of the safety responsibility and damage judgment laws. This proposed rule making related to filings in lieu of mandatory insurance are not expected to impact small business in any manner. The new mandatory insurance law itself may require small businesses that lack automobile coverage to obtain insurance or make a filing in lieu of insurance with the Department. The Department does not anticipate any fiscal effect upon small businesses from this codification. The Department's Regulatory Review Coordinator may be contacted by e-mail at [ralph.sanders@dot.state.wi.us](mailto:ralph.sanders@dot.state.wi.us), or by calling (414) 438-4585.

**Private Sector Fiscal Impact**

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

**Fiscal Estimate**

This rule making largely codifies existing DOT policy with regard to the administration of the safety responsibility and damage judgment laws. The Department believes any fiscal effect from this codification to be indeterminate as the number of citations issued for not carrying proof of liability insurance, failure to have liability insurance, or fraud in providing proof of liability insurance cannot be surmised at this time. The Department will incur costs for computer changes necessary to develop codes used to indicate the new types on convictions on violators driving records and an unknown amount of time spent by staff explaining insurance requirements and processing license suspensions and reinstatements for persons whose operating privilege is suspended for not paying the forfeitures associated with the violations listed above. The Department will also receive an indeterminate amount of revenue resulting from reinstatement fees collected from those persons whose operating privilege is suspended for not paying forfeitures. Local revenue has the potential to increase through collection of forfeitures and other charges related to the penalties associated with convictions for violations of the new charges.

**Agency Contact Person**

Reginald Paradowski, Section Chief  
Division of Motor Vehicles  
Driver Information Section, Room 301  
P. O. Box 7983, Madison, WI 53707-7983  
Phone: (608) 264-7002  
Email: [dotuninsuredmotorist@dot.wi.gov](mailto:dotuninsuredmotorist@dot.wi.gov)

**Notice of Hearing**

**Workforce Development**

***Unemployment Insurance, Chs. DWD 100-150***  
**CR 10-071**

NOTICE IS HEREBY GIVEN That pursuant to ss. 108.14 (2), 108.205, 108.22, and 227.11 (2) (a), Stats., the Department of Workforce Development proposes to hold a public hearing to consider rules revising Chapter DWD 111, relating to unemployment insurance rules for quarterly wage reporting requirements.

**Hearing Information**

**Date:** Wednesday, July 21, 2010

**Time:** 1:30 p.m.

**Location:** MADISON  
GEF I Building, H306  
201 E. Washington Avenue

Visitors to the GEF 1 building are requested to enter through the left East Washington Avenue door and register with the customer service desk. The entrance is accessible via a ramp from the corner of Webster Street and East Washington Avenue. If you have special needs or circumstances regarding communication or accessibility at the hearing, please call (608) 267-9403 at least 10 days prior to the hearing date. Accommodations such as ASL interpreters, English translators, or materials in audiotape format will be made available on request to the fullest extent possible.

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

Interested persons are invited to appear at the hearing and will be afforded the opportunity to make an oral presentation of their positions. Persons making oral presentations are requested to submit their facts, views, and suggested rewording in writing.

An electronic copy of the proposed rules is available at <http://adminrules.wisconsin.gov>. This site allows you to view documents associated with this rule's promulgation, register to receive email notification whenever the Department posts new information about this rulemaking order, and submit comments and view comments by others during the public comment period. You may receive a paper copy of the rule or fiscal estimate by contacting: Tracey Schwalbe, Research Attorney, Unemployment Insurance Bureau of Legal Affairs, Department of Workforce Development, P.O. Box 8942, Madison, WI 53708.

Written comments on the proposed rules received at the above address, email, or through the <http://adminrules.wisconsin.gov> web site no later than **July 21, 2010**, will be given the same consideration as testimony presented at the hearing.

**Analysis Prepared by the Department of Workforce Development**

***Statutes interpreted***

Section 108.205 and 108.22, Stats.

***Statutory authority***

Section 108.14 (2), 108.205, 108.22, and 227.11, Stats.

***Related statute or rule***

42 U.S.C. s. 1320b-7 (a) (3), ch. DWD 110.

***Explanation of agency authority***

Chapter 108, Stats., requires employers to file with the department a quarterly report showing the name, social security number, and wages paid to each employee who is employed by the employer during the quarter. The quarterly reports are due no later than the last day of the month following the completion of each quarter. The department may prescribe the manner and form for filing quarterly wage reports electronically. Sections 108.14 (2) and 227.11 (2), Stats., authorize the department to adopt and enforce all rules the department finds necessary to carry out the requirements of Chapter 108, Stats.

***Plain language analysis***

Wisconsin Act 59 in 2007 amended several provisions of ch. 108, Stats., related to how employers file reports with the department, the timeliness for filing reports, and the penalties for failing to do so. The proposed rule corresponds with the statutory changes in 2007 Wis. Act 59, eliminates provisions that duplicate statutory provisions, and eliminates obsolete provisions.

As amended by 2007 Wis. Act 59, Chapter 108 requires employer agents and employers of 25 or more employees to file quarterly wage reports electronically. Section 108.205, Stats. Quarterly wage reports must be filed by the last day of the month following the completion of the calendar quarter and may be assessed a penalty of \$50 for each delinquent quarterly report. Sections 108.205 (1) and 108.22 (1) (a), Stats. In addition, an employer that fails to file the report in the required format may be assessed a penalty of \$20 for each employee whose information is not reported in the correct format. Section 108.22 (1) (ac), Stats.

The proposed rule updates the requirements for filing quarterly wage reports to include electronically filed reports, and identifies the website where electronic reports may be filed. The proposed rule eliminates the need for employers to notify the department whether they provide access to a health insurance plan; this provision is obsolete. The rule currently provides that the time to file a report is extended if it is mailed as long as the report is postmarked by the due date or 3 days past the due date. However, pursuant to the statutes as amended by 2007 Wis. Act 59, quarterly wage reports are due the last date of the month following a quarter. This obsolete provision is removed from the rule. The proposed rule eliminates the obsolete provisions related to employers filing wage record data on combined quarterly contribution report forms. The proposed rule eliminates the obsolete penalties for delinquent wage reports. Finally, the department reviewed the rule to eliminate provisions that were repetitive or duplicated statutory provisions, and to edit for grammatical purposes.

***Comparison with federal regulations***

Since 1988, federal law has required all States to have in effect, as a condition for compliance with federally aided assistance programs, a requirement that employers make quarterly reports of wages to the state.

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

Illinois requires that employers file wage reports either electronically or by paper on a printed packet together with the contribution report. The reports must be filed on or before the due date, the last day of the calendar month next following

the calendar quarter. 56 Ill. Adm. Code s. 2760.120, .125 & 140.

***Iowa:***

Iowa requires that wage reports and contributions are due the last day of the month following the end of the calendar quarter. Contributions that are mailed must be postmarked by the due date. 871 Iowa Admin. Code s. 23.8 (96).

***Michigan:***

Michigan statutes require each employer to file a quarterly wage report on forms and at a time as the commission prescribes, but does not have rules interpreting the statute. Mich. Comp. Law s. 421.13.

***Minnesota:***

Minnesota statutes require that employers file wage reports electronically and the state calculates the amount of contributions due for the employer. The contributions must be received by the department on or before the last day of the month following the end of the calendar quarter. Minn. Stat. s. 268.051.

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

The department sought to conform the rule language to the changes made to the statutory provisions in 2007 Wis. Act 59. In addition, the department reviewed the rule language carefully to eliminate provisions that are unnecessarily duplicative of statutory provisions to avoid the potential problem posed by statutory changes and outdated rule language.

***Analysis used to determine effect on small businesses***

The proposed rule incorporates the changes to chapter 108, Stats., contained in 2007 Wis. Act 59, and will not have an additional effect on small business.

***Small Business Fiscal Impact***

The proposed rule incorporates the changes to chapter 108, Stats., contained in 2007 Wis. Act 59, and will not have an additional effect on small business.

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

None.

***Local government fiscal effect***

None.

***Agency Contact Person***

Tracey Schwalbe, UI Research Attorney

Phone: (608) 266-9641

Email: [tracey.schwalbe@wisconsin.gov](mailto:tracey.schwalbe@wisconsin.gov)

***Notice of Hearing******Workforce Development******Unemployment Insurance, Chs. DWD 100-150******CR 10-072***

NOTICE IS HEREBY GIVEN that pursuant to ss. 108.14 (2), 108.22, and 227.11 (2) (a), Stats., the Department of Workforce Development proposes to hold a public hearing to consider rules revising Chapter DWD 110, relating to unemployment insurance rules for coverage and related reports.

## Hearing Information

**Date:** Wednesday, July 21, 2010

**Time:** 1:00 p.m.

**Location:** MADISON  
GEF I Building, H306  
201 E. Washington Avenue

Visitors to the GEF 1 building are requested to enter through the left East Washington Avenue door and register with the customer service desk. The entrance is accessible via a ramp from the corner of Webster Street and East Washington Avenue. If you have special needs or circumstances regarding communication or accessibility at the hearing, please call (608) 267-9403 at least 10 days prior to the hearing date. Accommodations such as ASL interpreters, English translators, or materials in audiotape format will be made available on request to the fullest extent possible.

## Submittal of Written Comments and Copies of Proposed Rule

Interested persons are invited to appear at the hearing and will be afforded the opportunity to make an oral presentation of their positions. Persons making oral presentations are requested to submit their facts, views, and suggested rewording in writing.

An electronic copy of the proposed rules is available at <http://adminrules.wisconsin.gov>. This site allows you to view documents associated with this rule's promulgation, register to receive email notification whenever the Department posts new information about this rulemaking order, and submit comments and view comments by others during the public comment period. You may receive a paper copy of the rule or fiscal estimate by contacting: Tracey Schwalbe, Research Attorney, Unemployment Insurance Bureau of Legal Affairs, Department of Workforce Development, P.O. Box 8942, Madison, WI 53708.

Written comments on the proposed rules received at the above address, email, or through the <http://adminrules.wisconsin.gov> web site no later than **July 21, 2010**, will be given the same consideration as testimony presented at the hearing.

## Analysis Prepared by the Department of Workforce Development

### Statutory authority

Sections 108.14 (2), 108.22, and 227.11, Stats.

### Statutes interpreted

Sections 108.17, 108.21, and 108.22, Stats.

### Related statute or rule

Chapter DWD 111.

### Explanation of agency authority

Chapter 108, Stats., requires employers to maintain work records and to submit records to the department for inspection, and to submit other reports as required by the department to determine an employer's status and contribution liability. Sections 108.14(2) and 227.11(2), Stats., authorize the department to adopt and enforce all rules the department finds necessary to carry out the requirements of Chapter 108, Stats.

## Plain language analysis

Wisconsin Act 59 in 2007 amended several provisions of Chapter 108, Stats., related to how employers file reports with the department, the timeliness for filing reports, and the penalties for failing to do so. The proposed rule corresponds with the statutory changes in 2007 Wis. Act 59. Section 108.17 (2) (b) was amended in 2007 Wis. Act 59 to provide that employers may be excused from filing contribution reports if they file their wage reports electronically. Section 108.17 (7), Stats., was amended in 2007 Wis. Act 59 to provide that some employers must remit contributions or other payments due electronically. The proposed rule takes into account the statutory changes to allow filing of reports and payments electronically. The rule currently provides that the time to file a report is extended if it is mailed as long as the report is postmarked by the due date or 3 days past the due date. Pursuant to the statutes as amended by 2007 Wis. Act 59, contribution reports and payments are due the last date of the month following a quarter; this obsolete provision is removed from the rule. The reference to due dates falling on holidays or weekends is repealed because it duplicates s. 108.22(1)(b), Stats.; however, legal holidays are clarified to also include any date the Unemployment Division is closed due to furlough, or due to inclement weather or other acts of nature. The rule currently refers to a \$10,500 taxable wage base for computing the defined taxable payroll. The proposed rule refers to the taxable wage base as provided in ch. 108, Stats., rather than naming the amount because the amount is scheduled to change over time. Finally, the department reviewed the rule to eliminate provisions that were repetitive or duplicated statutory provisions, and to edit for grammatical purposes.

## Comparison with federal regulations

Since 1988, federal law has required all States to have in effect, as a condition for compliance with federally aided assistance programs, a requirement that employers make quarterly reports of wages to the state. There are no federal requirements governing how states receive contribution reports.

## Comparison with rules in adjacent states

### Illinois:

Illinois rules require that an employer must pay contributions due by check accompanied by a transmittal form. Employers with 250 or more employees must file quarterly reports electronically. Contributions are due on or before the last day of the month following the end of the quarter. Where the payment is made by mail, the reports are considered timely if the postmark bears a date within the prescribed time limit. Late payments are assessed interest at the rate of 2% per month. 56 Ill. Adm. Code ss. 2760.135-.60.

### Iowa:

Iowa requires that wage reports and contributions are due the last day of the month following the end of the calendar quarter. Contributions that are mailed must be postmarked by the due date. Penalties may be applied to reports that are not received by the due date and interest of 1% per month is charged on overdue contributions. 871 Iowa Admin. Code s. 23.8 (96).

### Michigan:

Michigan requires that employer contributions are due quarterly; employers must submit contribution reports on form provided by the agency or electronically. Payments are

due on or before the 25<sup>th</sup> day of the month next following the last day of the calendar quarter. Contributions paid after the 25<sup>th</sup> but before the first day of the next calendar month do not accrue interest. Mich. Admin. Code s. 421.121.

*Minnesota:*

Minnesota statutes require that employers file wage reports electronically and the state calculates the amount of contributions due for the employer. The contributions must be received by the department on or before the last day of the month following the end of the calendar quarter. Minn. Stat. s. 268.051.

**Summary of factual data and analytical methodologies**

The department sought to conform the rule language to the changes made to the statutory provisions in 2007 Wis. Act 59. In addition, the department reviewed the rule language carefully to eliminate provisions that are unnecessarily duplicative of statutory provisions to avoid the potential problem posed by statutory changes and outdated rule language.

**Analysis used to determine effect on small businesses**

The proposed rule incorporates the changes to chapter 108, Stats., contained in 2007 Wis. Act 59, and will not have an additional effect on small business.

**Small Business Fiscal Impact**

The proposed rule incorporates the changes to chapter 108, Stats., contained in 2007 Wis. Act 59, and will not have an additional effect on small business.

**Fiscal Estimate**

**State fiscal effect**

None.

**Local government fiscal effect**

None.

**Agency Contact Person**

Tracey Schwalbe, UI Research Attorney  
Phone: (608) 266-9641  
Email: [tracey.schwalbe@wisconsin.gov](mailto:tracey.schwalbe@wisconsin.gov).

**Notice of Hearing**

**Workforce Development**

**Apprenticeship, Chs. DWD 295-296  
CR 10-073**

NOTICE IS HEREBY GIVEN that pursuant to sections 103.005 (1), 106.01 (9) and 227.11 (2), Stats., the Department of Workforce Development proposes to hold a public hearing to consider the revision of Chapter DWD 295, relating to the state apprenticeship program and affecting small businesses.

**Hearing Information**

**Date:** Thursday, July 22, 2010  
**Time:** 9:00 a.m.  
**Location:** MADISON  
GEF I Building, D203  
201 E. Washington Avenue

Visitors to the GEF I building are requested to enter through the left East Washington Avenue door and register with the customer service desk. The entrance is accessible via a ramp from the corner of Webster Street and East Washington

Avenue. If you have special needs or circumstances regarding communication or accessibility at the hearing, please call (608) 266-9427 at least 10 days prior to the hearing date. Accommodations such as ASL interpreters, English translators, or materials in audiotape format will be made available on request to the fullest extent possible.

**Submittal of Written Comments**

Interested persons are invited to appear at the hearing and will be afforded the opportunity to make an oral presentation of their positions. Persons making oral presentations are requested to submit their facts, views, and suggested rewording in writing.

Written comments may be submitted to Howard Bernstein, Office of Legal Counsel, Dept. of Workforce Development, P.O. Box 7946, Madison, WI 53707-7946 or by email to [Howard.Bernstein@dwd.wisconsin.gov](mailto:Howard.Bernstein@dwd.wisconsin.gov). The deadline for submission is **July 23, 2010**. Written comments will be given the same consideration as testimony presented at the hearing.

**Copies of Proposed Rule**

The proposed rules are available at the website <http://adminrules.wisconsin.gov>. This site allows you to view documents associated with this rule's promulgation, register to receive email notification whenever the Department posts new information about this rulemaking order, and submit comments and view comments by others during the public comment period. You may receive a paper copy of the rule by contacting Howard Bernstein at the addresses given above or by telephone at (608) 266-9427.

**Analysis Prepared by the Department of Workforce Development**

**Statute interpreted**

Section 106.01, Stats.

**Statutory authority**

Sections 103.005 (1), 106.01 (9), and 227.11, Stats.

**Explanation of agency authority**

Under ss. 106.01 to 106.04, Stats., the Department of Workforce Development (DWD) is responsible for the establishment and supervision of apprenticeship standards for sponsors, employers and employees. Under s. 106.01 (9), Stats., "(t)he department may investigate, fix reasonable classifications, issue rules and general or special orders and, hold hearings, make findings and render orders upon its findings as shall be necessary to carry out the intent and purposes of this section."

**Summary of the proposed rule**

On October 26, 2008, the US Department of Labor published 29 CFR 29 (Volume 29 of the Code of Federal Regulations, Part 29) in the Federal Register. 29 CFR 29 is a final rule designed to modernize the National Apprenticeship System. This rule, which took effect on December 29, 2008, provides State Apprenticeship Agencies with up to two additional years to implement the required changes in order to continue federal recognition of Wisconsin's apprenticeship program.

On May 12, 2010, the Governor signed 2009 Wisconsin Act 291, previously 2009 Senate Bill 586, which makes conforming changes to the Wisconsin Statutes which are designed to ensure that the U.S. Department of Labor will continue to recognize Wisconsin's program as in conformance. This proposed rule is intended to carry forward

the intent of Act 291 and make similarly conforming changes to the administrative rules of the apprenticeship program.

The proposed amendments to DWD 295 implement the changes provided in 29 CFR Part 29 and include the following changes: three different approaches for apprentices to complete a program, allowance for technology based learning by defining electronic media and explicitly allowing its use in the provision of related instruction, sets the components of program standards and introduces completion rates as a critical factor in the evaluation of program quality, provides increased program quality and options for apprentice sponsors changes, introduces provisional registration which will increase quality and success rates by providing for newly registered programs to be reviewed and the end of the provisional registration and sets forth components which must be included in an Apprentice Contract.

#### ***Summary of analytical methodology***

This proposed rule has been developed by reviewing the new federal National Apprenticeship System standards and drafting amendments to the existing rules on apprenticeship to bring the state rules into conformance with the federal regulations.

#### ***Comparison with federal regulations***

As described above, federal law has been amended to create a National Apprenticeship System. State programs which meet the federal standards will be recognized as in conformance by the U.S. Department of Labor.

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

*Minnesota* has a state apprenticeship statute and is going through a process similar to Wisconsin to update its statutes and rules to be consistent with the federal regulations. *Illinois*, *Michigan*, and *Iowa* are “federal” apprentice registration states which follow the federal regulations in the absence of state statutes and rules.

#### ***Analysis used to determine effect on small business***

The nature of the revisions to federal and state law and the proposed rule has been such that employers and employees will not be subject to any burdensome or costly changes.

#### **Small Business Fiscal Impact**

The rule changes affect small businesses as defined in s. 227.114 (1), Stats., but do not have a significant economic impact on a substantial number of small businesses.

#### **Fiscal Estimate**

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

None.

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

None.

#### **Agency Contact Person**

Karen Morgan, Director  
DWD Bureau of Apprenticeship Standards  
Phone: (608) 266-3133  
Email: [Karen.Morgan@dwd.wisconsin.gov](mailto:Karen.Morgan@dwd.wisconsin.gov)

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## Submittal of Proposed Rules to the Legislature

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

**Insurance**  
**CR 10-023**

A rule-making order to revise Subchapter III of Chapter Ins 18, relating to independent review procedures.

**Natural Resources**  
***Fish, Game, etc., Chs. NR 1—***  
**CR 10-016**

(DNR # IS-07-10)

A rule-making order to revise Chapter NR 40, relating to the identification, classification and control of invasive species.

**Natural Resources**  
***Fish, Game, etc., Chs. NR 1—***  
**CR 10-020**

(DNR # WM-01-10)

A rule-making order to revise Chapters NR 10 and 19, relating to the 2010 Wildlife Management Spring Hearings; hunting and trapping regulations.

**Natural Resources**  
***Fish, Game, etc., Chs. NR 1—***  
**CR 10-025**

(DNR # FH-03-10)

A rule-making order to revise Chapters NR 20, 21, 23 and 26, relating to fishing regulation changes proposed and supported at the 2010 Spring Fish and Wildlife Rules Hearings.

**Public Instruction**  
**CR 09-084**

A rule-making order to create section PI 35.07, relating to establishing a temporary, nonrenewable waiver from the requirement that a teacher have a bachelor's degree in order to teach in a private school under the Milwaukee Parental Choice program.

**Transportation**  
**CR 10-040**

A rule-making order to revise Chapter Trans 101, relating to the demerit point system and graduated driver license restriction extensions.

**Workforce Development**  
***Unemployment Insurance, Chs. DWD 100-150***  
**CR 10-017**

A rule-making order to revise Chapter DWD 128, relating to ability and availability for work.

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## Rule Orders Filed with the Legislative Reference Bureau

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

### Commerce

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

#### **CR 09-121**

Creates Chapter Comm 136, relating to Midwestern Disaster Area Bonds.  
Effective 8-1-10.

### Natural Resources

#### *Fish, Game, etc., Chs. NR 1—*

#### **CR 09-077**

(DNR # LF-08-09)

Creates Chapter NR 52, relating to ensuring that lands acquired with funding from the stewardship program under ss. 23.0915 and 23.0917, Stats., are open to public hunting, trapping, fishing, hiking and cross country skiing.  
Effective 8-1-10.

### Natural Resources

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

#### *WPDES, Chs. NR 200—*

#### *Water Regulation, Chs. NR 300—*

#### *Water Supply, Chs. NR 800—*

#### **CR 09-123**

Revises Chapters NR 102, 103, 105, 106, 108, 110, 114, 200, 203, 205, 210, 214, 299, 328, 341 and 812, relating to minor modifications to rules affecting the Bureau of Watershed Management.  
Effective 8-1-10.

### Public Defender Board

#### **CR 10-022**

Creates Chapter PD 8, relating to payments for copies of discovery material provided to staff and private attorneys appointed to represent state public defender clients in legal proceedings.  
Effective 8-1-10.

### Revenue

#### **CR 10-005**

Creates section Tax 1.17, relating to the ambulatory surgical center assessment.  
Effective 8-1-10.

### Transportation

#### **CR 10-030**

Repeals sections Trans 196.04 (1) (d) and 250.04, and creates Chapter Trans 198, relating to motor vehicle convenience fees.  
Effective 8-1-10.

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# Rules Published with this Register and Final Regulatory Flexibility Analyses

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*The following administrative rule orders have been adopted and published in the **June 30, 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.*

## **Agriculture, Trade and Consumer Protection** **CR 09-023**

Rule revises Chapter ATPC 149, relating to the Potato Marketing Order. Effective 7-1-10.

### **Summary of Final Regulatory Flexibility Analysis**

This rule increases does all of the following:

- Increase the maximum assessment that the potato industry board is authorized to charge to producers. This rule changes the maximum assessment rate from 6 cents to 10 cents per hundredweight on potatoes sold into commercial channels.
- Change the election and membership of the potato industry board. This rule reduces the number of election districts from 5 to 3, and reduces the number of board members from 10 to 9. Eight of the 9 members of the modified board will be elected by producers from districts identified in this rule, and one board member will be chosen by all potato producers in a statewide “at large” election. Under this rule, all board members will be elected for 3-year terms.
- Provide for a gradual changeover to the new board membership. Current board members will continue to hold office until their current terms expire.

Under this rule, potato industry board election districts will be as follows:

- District 1 will be represented by 3 board members and will include Ashland, Barron, Bayfield, Brown, Burnett, Chippewa, Clark, Door, Douglas, Dunn, Eau Claire, Florence, Forest, Iron, Kewaunee, Langlade, Lincoln, Marinette, Menominee, Oconto, Oneida, Pepin, Pierce, Polk, Price, Rusk, Sawyer, St. Croix, Taylor, Vilas, and Washburn counties.
- District 2 will be represented by 3 board members and will include Marathon, Outagamie, Portage, Shawano, Waupaca and Waushara counties.
- District 3 will be represented by 2 board members and will include Adams, Buffalo, Calumet, Columbia, Crawford, Dane, Dodge, Fond du Lac, Grant, Green, Green Lake, Iowa, Jackson, Jefferson, Juneau, Kenosha, LaCrosse, Lafayette, Manitowoc, Marquette, Milwaukee, Monroe, Ozaukee, Racine, Richland, Rock, Sauk, Sheboygan, Trempealeau, Vernon, Walworth, Washington, Waukesha, Winnebago and Wood counties.

The changes to the current election districts, and the election of one “at large” representative, will address changes in the geographic distribution of potato production in the state. The increase in the maximum authorized marketing order assessment will facilitate additional funding for market development and research, including University of Wisconsin research related to new potato varieties and pesticide and chemical management.

## **Summary of Comments by Legislative Review Committees**

On March 1, 2010, DATCP transmitted the above rule for legislative review. The rule was assigned to the Assembly Committee on Agriculture and to the Senate Committee on Agriculture and Higher Education. The assigned legislative committees neither took any action nor made any comment to DATCP.

## **Architects, Engineers, Designers and Land Surveyors Examining Board** **CR 09-079**

Rule amends section A-E 3.05 (2), relating to entrance requirements to take the architect examination. Effective 7-1-10.

### **Summary of Final Regulatory Flexibility Analysis**

These rules will have no significant economic impact on a substantial number of small businesses, as defined in s. 227.114 (1), Stats. The Department’s Regulatory Review Coordinator may be contacted by email at [hector.colon@wisconsin.gov](mailto:hector.colon@wisconsin.gov), or by calling 608-266-8608.

## **Summary of Comments by Legislative Review Committees**

No comments were reported.

## **Architects, Engineers, Designers and Land Surveyors Examining Board** **CR 09-080**

Rule creates Chapter A-E 12, relating to continuing education for architects. Effective 7-1-10.

### **Summary of Final Regulatory Flexibility Analysis**

These rules will have no significant economic impact on a substantial number of small businesses, as defined in s. 227.114 (1), Stats. The Department’s Regulatory Review Coordinator may be contacted by email at [hector.colon@wisconsin.gov](mailto:hector.colon@wisconsin.gov), or by calling 608-266-8608.

## **Summary of Comments by Legislative Review Committees**

No comments were reported.

## **Architects, Engineers, Designers and Land Surveyors Examining Board** **CR 09-081**

Rule creates Chapter A-E 11, relating to continuing education for landscape architects. Effective 7-1-10.

### **Summary of Final Regulatory Flexibility Analysis**

These proposed rules will have no significant economic impact on a substantial number of small businesses, as defined

in s. 227.114 (1), Stats. The Department's Regulatory Review Coordinator may be contacted by email at [hector.colon@wisconsin.gov](mailto:hector.colon@wisconsin.gov), or by calling 608-266-8608.

**Summary of Comments by Legislative Review Committees**

No comments were reported.

**Employment Relations Commission  
CR 10-019**

Rule revises Chapters ERC 1 to 12, 14, 17 to 28, and 30 to 50 and creates Chapters ERC 29 and 60 to 68, relating to the administration of collective bargaining laws. Effective 7-1-10.

**Summary of Final Regulatory Flexibility Analysis**

This rule will have no impact on small businesses.

**Summary of Comments by Legislative Review Committees**

No comments were reported.

**Financial Institutions — Credit Unions  
CR 10-009**

Rule creates Chapter DFI-CU 65, relating to credit union service organizations. Effective 7-1-10.

**Summary of Final Regulatory Flexibility Analysis**

This rule will have no adverse impact on small businesses.

**Summary of Comments by Legislative Review Committees**

No comments were received.

**Natural Resources  
Fish, Game, etc., Chs. NR 1—  
CR 09-042**

(DNR # WM-13-09)

Rule revises Chapter NR 10, relating to hunting and the 2009 migratory game bird seasons and waterfowl hunting zones. Effective 7-1-10.

**Summary of Final Regulatory Flexibility Analysis**

These rules are applicable to individual sportspersons and impose no compliance or reporting requirements for small business, nor are any design or operational standards contained in the rule. Therefore, under s. 227.19 (3m), Stats., a final regulatory analysis is not required.

**Summary of Comments by Legislative Review Committees**

The rules were reviewed by the Assembly Fish & Wildlife Committee and the Senate Committee on Transportation, Tourism, Forestry and Natural Resources. On September 23, 2009 the Assembly Committee on Fish & Wildlife held a public hearing. The department did not receive any comments or requests for modification as a result of that hearing.

**Natural Resources  
Fish, Game, etc., Chs. NR 1—  
CR 09-051**

(DNR # FH-18-09)

Rule revises Chapters NR 19 to 23, relating to fishing on the inland, outlying, and boundary waters of Wisconsin. Effective 7-1-10.

**Summary of Final Regulatory Flexibility Analysis**

The proposed rules do not impose any compliance or reporting requirements on small businesses nor are any design or operational standards contained in the rule.

**Summary of Comments by Legislative Review Committees**

A public hearing was held on Friday, August 14, 2009. No members of the public appeared. One inquiry was made by the Wisconsin Bowfishing Association regarding content of the rule, for information only.

**Natural Resources  
Fish, Game, etc., Chs. NR 1—  
CR 09-052**

(DNR # WM-21-07)

Rule revises Chapters NR 12 and 16, relating to harmful wild animal designation for wild or feral hogs, mute swans, and wolf-dog hybrids. Effective 7-1-10.

**Summary of Final Regulatory Flexibility Analysis**

These rules, and the legislation which grants the department rule making authority, do not have a significant fiscal effect on the private sector or small businesses. These rules will allow the possession, propagation, and sale of mute swans in a manner which is identical to regulations which were in effect prior to a change to the Code of Federal Regulations which invalidated state regulations by breaking a cross reference in code language.

The possession and sale of wolf-dog hybrids would continue to be allowed under this rule proposal with certain conditions. Propagation would not be allowed under this proposal. Propagation for sale in Wisconsin is believed to be a limited activity that would have limited to no effect on small businesses. Likewise, the possession and propagation of feral swine would continue to be allowed by certain people for the purposes of meat production. People who possess wild or feral swine for other purposes are not believed to be benefitting economically and there would be no business effect.

In most cases these rules are applicable to individual animal owners. Business owners who possess wild or feral hogs, mute swans, or wolf-dog hybrids would be subject to compliance standards through a requirement that enclosures be of sufficient construction to contain those species. For wolf-dog hybrid owners, compliance with pen standards would not be required until 2014. Permanent marking of wild or feral swine and wolf-dog hybrids would be required. Wolf-dog hybrids would need to be sexually neutered. Annual reporting of animals acquired and sold or which die would be required. Additionally, business owners would be required to report events of animal escape to the department within 24 hours of becoming aware of the escape.

**Summary of Comments by Legislative Review Committees**

These rules were reviewed by the Senate Committee on Transportation, Tourism, Forestry and Natural Resources and the Assembly Committee on Fish and Wildlife. No hearings were held and the department did not receive comments or requests for modification.

**Public Defender Board  
CR 09-067**

Rule revises Chapter PD 1, relating to the certification of private bar attorneys to accept appointments to provide legal representation for state public defender clients. Effective 7-1-10.

**Summary of Final Regulatory Flexibility Analysis**

This rule will have no impact on small businesses.

**Summary of Comments by Legislative Review Committees**

No comments were reported.

**Public Service Commission  
CR 09-086**

Rule creates Chapter PSC 172, relating to the police and fire protection fee. Effective 7-1-10.

**Summary of Final Regulatory Flexibility Analysis**

While the statute creating this fee and this rule will affect small businesses to some degree, the Commission is unable to estimate the number because the statute and rule apply to all telecommunications providers and to retailers that sell prepaid wireless telecommunications plans. Since the Commission does not regulate wireless telecommunications providers or retail sellers of wireless services, it does not have the data necessary to determine whether those are small businesses. However, the Commission and the Department of Revenue (DOR) worked together to develop this rule. The steps taken by DOR to reduce the burden of tax filings on small businesses were taken into account when drafting this rule.

**Summary of Comments by Legislative Review Committees**

No comments were reported.

**Revenue  
CR 09-087**

Rule creates sections Tax 2.85 and 11.90, relating to penalties for failure to produce records. Effective 7-1-10.

**Summary of Final Regulatory Flexibility Analysis**

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

**Summary of Comments by Legislative Review Committees**

No comments were reported.

**Revenue  
CR 09-118**

Rule creates section Tax 1.16, relating to the financial record matching program. Effective 7-1-10.

**Summary of Final Regulatory Flexibility Analysis**

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

**Summary of Comments by Legislative Review Committees**

No comments were reported.

**Revenue  
CR 10-001**

Rule revises Chapter Tax 2, relating to apportionment and nexus. Effective 7-1-10.

**Summary of Final Regulatory Flexibility Analysis**

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

**Summary of Comments by Legislative Review Committees**

No comments were reported.

**Veterans Affairs  
CR 09-092**

Rule revises section VA 1.11, relating to the duties and responsibilities of the secretary. Effective 7-1-10.

**Summary of Final Regulatory Flexibility Analysis**

These rules do not appear to have any effect upon small businesses, nor any significant fiscal impact upon the private sector.

**Summary of Comments by Legislative Review Committees**

No comments were reported.

**Veterans Affairs  
CR 09-122**

Rule revises section VA 2.02 (2), relating to the veterans tuition reimbursement program. Effective 7-1-10.

**Summary of Final Regulatory Flexibility Analysis**

These rules have no effect upon small businesses, nor any significant fiscal impact upon the private sector.

**Summary of Comments by Legislative Review Committees**

No comments were reported.

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## Sections Affected by Rule Revisions and Corrections

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The following administrative code sections had rule revisions and corrections take place in **June 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

#### Agriculture, Trade and Consumer Protection

##### Ch. ATCP 149

ATCP 149.03 (1)  
ATCP 149.04  
ATCP 149.06 (1)

#### Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors Examining Board

##### Ch. A-E 3

A-E 3.05 (2)

##### Ch. A-E 11 (Entire Chapter)

##### Ch. A-E 12 (Entire Chapter)

#### Employment Relations Commission

##### Ch. ERC 1

ERC 1.02  
ERC 1.04  
ERC 1.06  
ERC 1.07  
ERC 1.09

##### Ch. ERC 2

ERC 2.02 to 2.06  
ERC 2.09  
ERC 2.10

##### Ch. ERC 3

ERC 3.02 to 3.13

##### Ch. ERC 4

ERC 4.07 to 4.12  
ERC 4.14 to 4.16

##### Ch. ERC 5

ERC 5.03 to 5.09

##### Ch. ERC 6

ERC 6.03 to 6.07

##### Ch. ERC 7

ERC 7.02 to 7.08

##### Ch. ERC 8

ERC 8.01  
ERC 8.05 to 8.09  
ERC 8.11 to 8.13

##### Ch. ERC 9

ERC 9.02 to 9.09  
ERC 9.11

##### Ch. ERC 10

ERC 10.02  
ERC 10.04

##### Ch. ERC 11

ERC 11.06 to 11.07  
ERC 11.12 to 11.13

##### Ch. ERC 12

ERC 12.02 (6) (b)  
ERC 12.05  
ERC 12.10

##### Ch. ERC 14

ERC 14.04 (3)

##### Ch. ERC 17

ERC 17.02 (2)  
ERC 17.05 to 17.06

##### Ch. ERC 19

ERC 19.05  
ERC 19.08 to 19.09

##### Ch. ERC 20

ERC 20.01 to 20.04  
ERC 20.07  
ERC 20.09

##### Ch. ERC 21

ERC 21.02 to 21.13

##### Ch. ERC 22

ERC 22.02 to 22.09

##### Ch. ERC 23

ERC 23.03 to 23.09

##### Ch. ERC 24

ERC 24.03 to 24.07

##### Ch. ERC 25

ERC 25.02 to 25.04  
ERC 25.06 to 25.11

##### Ch. ERC 26

ERC 26.05 to 26.06  
ERC 26.08 to 26.09  
ERC 26.11 to 26.13

##### Ch. ERC 27

ERC 27.02 to 27.07

##### Ch. ERC 29 (Entire Chapter)

##### Ch. ERC 30

ERC 30.08 (3)

##### Ch. ERC 31

ERC 31.03 (2)  
ERC 31.06 (3)

ERC 31.08  
 ERC 31.09  
**Ch. ERC 32**  
 ERC 32.01  
 ERC 32.09 (2), (3)  
 ERC 32.11  
 ERC 32.12  
 ERC 32.15 (8)

**Ch. ERC 33**  
 ERC 33.01  
 ERC 33.04 to 33.08  
 ERC 33.20

**Ch. ERC 40**  
 ERC 40.01  
 ERC 40.05 (1), (3)  
 ERC 40.06 (3)

**Ch. ERC 50**  
 ERC 50.01  
 ERC 50.04 (4)

**Ch. ERC 60 (Entire Chapter)**

**Ch. ERC 61 (Entire Chapter)**

**Ch. ERC 62 (Entire Chapter)**

**Ch. ERC 63 (Entire Chapter)**

**Ch. ERC 64 (Entire Chapter)**

**Ch. ERC 65 (Entire Chapter)**

**Ch. ERC 66 (Entire Chapter)**

**Ch. ERC 67 (Entire Chapter)**

**Ch. ERC 68 (Entire Chapter)**

## Financial Institutions – Credit Unions

**DFI–CU 65 (Entire Chapter)**

## Health Services

**Ch. DHS 85**  
 DHS 85.03 (intro.)

## Natural Resources

**Ch. NR 10**  
 NR 10.01 (1) (b), (g), (u), (v)  
 NR 10.31 (3) (intro.), (b)  
 NR 10.32  
**Ch. NR 12**  
 NR 12.10 (1) (b)  
**Ch. NR 16**  
 NR 16.11 (1), (3) to (5)  
 NR 16.15 (2) (a), (e), (3), (4)  
 NR 16.30 (2) (a), (4) (a), (9) (b), (c)  
 NR 16.50 (1) (c), (d)

**Ch. NR 19**  
 NR 19.275 (3) (j), (k)

**Ch. NR 20**  
 NR 20.03 (31) (a)  
 NR 20.05 (14)  
 NR 20.07 (5)  
 NR 20.09 (2)  
 NR 20.18 (1)

NR 20.20 (19) (b), (35) (g), (64) (b), (73) (b), (c), (g),  
 (L)

NR 20.36 (1) (intro.), (2)

## **Ch. NR 21**

NR 21.06 (1) (d)  
 NR 21.13 (3) (i), (j)

## **Ch. NR 22**

NR 22.03  
 NR 22.06 (1) (d)  
 NR 22.13 (3) (i), (j)

## **Ch. NR 23**

NR 23.02 (1), (1m)  
 NR 23.05 (5) (c)  
 NR 23.055 (1) (intro.), (2)  
 NR 23.12

## Public Defender Board

### **Ch. PD 1**

PD 1.03  
 PD 1.035  
 PD 1.037  
 PD 1.04  
 PD 1.05 (1), (2), (3), (6)  
 PD 1.06  
 PD 1.07  
 PD 1.075  
 PD 1.08

## Public Service Commission

**Ch. PSC 172 (Entire Chapter)**

## Revenue

### **Ch. Tax 1**

Tax 1.16

### **Ch. Tax 2**

Tax 2.39 (1), (2) (ag), (ar), (b), (cm), (d), (3) (d), (e), (6)  
 (b) to (i)

Tax 2.46

Tax 2.47 (title), (1), (1m), (2) (title), (intro.)

Tax 2.475 (title), (1), (1m), (2) (intro.), (4)

Tax 2.48 (title), (1), (2) (am)

Tax 2.49 (1), (2) (dm), (fm), (g), (h), (hm), (3) (intro.),  
 (c), (d), (4) (intro.), (z), (zm), (zs)

Tax 2.495 (1), (2) (em), (3) (intro.), (c), (d), (4) (intro.),  
 (h)

Tax 2.50 (1), (2), (3) (intro.)

Tax 2.502 (1), (2) (am), (d) to (f), (3) to (5)

Tax 2.505 (1) to (3)

Tax 2.82

Tax 2.85

### **Ch. Tax 11**

Tax 11.90

## Veterans Affairs

### **Ch. VA 1**

VA 1.11 (1), (8)

### **Ch. VA 2**

VA 2.02 (2)

### Editorial Corrections

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

#### **Agriculture, Trade and Consumer Protection**

##### **Ch. ATCP 149**

ATCP 149.04 (3)

#### **Public Service Commission**

##### **Ch. PSC 172**

PSC 172.02 (9)

PSC 172.08 (2)

#### **Revenue**

##### **Ch. Tax 2**

Tax 2.39 (2) (cm)

Tax 2.46 (1) (title)

Tax 2.47 (1) (title)

Tax 2.475 (1) (title), (1m) (title)

Tax 2.502 (5) (f)

Tax 2.505 (1) (title)

Tax 2.85 (3) (intro.)

##### **Ch. Tax 11**

Tax 11.90 (3) (intro.)

#### **Veterans Affairs**

##### **Ch. VA 1**

VA 1.02

##### **Ch. VA 2**

VA 2.01 (3) (b)

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## Executive Orders

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**The following are recent Executive Orders issued by the Governor.**

**Executive Order 314.** *See Executive Order No. 315.*

**Executive Order 315.** An Amendment to Executive Order No. 314, 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 Peace Officers Who Have Given Their Lives in the Line of Duty.

**Executive Order 316.** Relating to Directing Agency Action Concerning Bonds to be Issued as Qualified Energy Conservation Bonds.

**Executive Order 317.** Relating to a Proclamation That the Flag of the United States and the Flag of the State of Wisconsin be Flown at Half-Staff on Memorial Day.

**Executive Order 318.** 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 Officer Steven Wannow of the Hartford Police Department.

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## Public Notices

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### Department of Health Services

#### State of Wisconsin Medicaid Payment Plan: FY 2010–2011

#### Medical Assistance Reimbursement for Inpatient Hospital Services: Acute Care Hospitals, Children's Hospitals, Major Border Status Hospitals, Non State Public and Private Psychiatric Hospitals

The State of Wisconsin reimburses hospitals for inpatient hospital services provided to Medical Assistance recipients under the authority of Title XIX of the Social Security Act and Chapter 49 of Wisconsin Statutes. This program, administered by the State's Department of Health Services, is called Medicaid or Medical Assistance.

Under the current Medicaid Inpatient Hospital State Plan, effective July 1, 2009, the rate-setting methodology for Acute Care, Major Border Status and Children's Hospitals is a provider specific, DRG payment system adjusted by case mix that assigns each hospital a unique hospital specific DRG base rate. This rate includes adjustments for differences in wage levels, includes an amount for capital expenditures, and payment enhancements for qualifying Disproportionate Share Hospitals, Rural Hospitals and facilities with Graduate Medical Education programs. In addition, a cost outlier payment will be made when the cost of providing services exceeds a pre-determined trimpoint. Payments are adjusted as necessary to ensure budget compliance using a statewide base rate as the starting point of the rate setting process. Non State Public and Private Psychiatric and Rehabilitation Hospitals are paid on a provider specific, cost based per diem rate adjusted as necessary to ensure budget compliance.

The Department is proposing to implement rate setting methodology changes for inpatient hospital services for Acute Care Hospitals, Children's Hospitals, Non State Public and Private Psychiatric Hospitals, and Major Border Status Hospitals. The proposed changes generally revert to the payment methodology in place during State Fiscal Year 2010. The Department intends to modify the inpatient rate setting methodology to implement these Medicaid rate changes with an effective date of July 1, 2010.

The following will be new for 2010–2011 and not reflected in the 2009–2010 rate methods:

- Restore full cost-based Critical Access Hospital Reimbursement.
- Hospital access payments will be updated and made in addition to base DRG payments.
- Critical Access Hospital access payments will be made in addition to base DRG payments.
- Hospital pay for performance criteria will be updated.
- Rate appeal provisions will be updated.
- Critical Access Hospital Settlements will be eliminated.
- The Rehab Hospital rate methodology will be aligned with the Psych Hospital methodology.
- The Disproportionate Share Payment methodology will be altered.
- The Rural Hospital Payment Adjustment will be revised.
- The Wage Index Policy will be updated.

This notification is intended to provide notice of the type of changes that are included in the amendment. Interested parties should obtain a copy of the actual proposed plan amendment to comprehensively review the scope of all changes.

#### Proposed Change

It is estimated that these changes will have no impact on projected annual aggregate Medicaid expenditures in state fiscal year 2010–11.

The Department's proposals involves no change in the definition of those eligible to receive benefits under Medicaid, and the benefits available to eligible recipients remains the same. The effective date for these proposed changes will be July 1, 2010.

**Copies of the Proposed Change**

A copy of the proposed change may be obtained free of charge at your local county agency or by calling or writing as follows:

**Regular Mail**

Division of Health Care Access and Accountability  
P.O. Box 309  
Madison, WI 53701-0309

**State Contact**

Krista Willing, Section Chief  
Hospital Rate Setting  
(608) 266-2469 (phone)  
(608) 266-1096 (fax)

[KristaE.Willing@wisconsin.gov](mailto:KristaE.Willing@wisconsin.gov)

A copy of the proposed change is available for review at the main office of any county department of social services or human services.

**Written Comments**

Written comments are welcome. Written comments on the proposed change may be sent by FAX, email, or regular mail to the Division of Health Care Access and Accountability. The FAX number is (608) 266-1096. The email address is [KristaE.Willing@wisconsin.gov](mailto:KristaE.Willing@wisconsin.gov). Regular mail can be sent to the above address. All written comments will be reviewed and considered.

All written comments received will be available for public review between the hours of 7:45 a.m. and 4:30 p.m. daily in Room 350 of the State Office Building, 1 West Wilson Street, Madison, Wisconsin. Revisions may be made in the proposed changed methodology based on comments received.

**Department of Health Services****State of Wisconsin Medicaid Payment Plan: FY 2010-2011****Medicaid Reimbursement for Outpatient Hospital Services:  
Acute Care Hospitals, Children's Hospitals, Major Border Status Hospitals,  
Non State Public and Private Psychiatric Hospitals**

The State of Wisconsin reimburses hospitals for outpatient hospital services provided to Medical Assistance recipients under the authority of Title XIX of the Social Security Act and Chapter 49 of Wisconsin Statutes. This program, administered by the State's Department of Health Services (DHS), is called Medicaid or Medical Assistance.

Under the current Medicaid Outpatient Hospital State Plan, effective July 1, 2009, the rate-setting methodology for Acute Care, Major Border Status and Children's Hospitals is a provider specific, cost-based rate per visit. Out of state and new hospitals without cost reports are paid at a statewide average percent of charges.

The following changes will be contained in the July 1, 2010 outpatient hospital state plan amendment:

- Restore full cost-based Critical Access Hospital Reimbursement.
- Hospital access payments will be updated and made in addition to rates per visit.
- Rate appeal provisions will be updated.
- Critical Access Hospital Settlements will be eliminated.

**Proposed Change**

It is estimated that these changes will have no impact on projected annual aggregate Medicaid expenditures in state fiscal year 2010-11.

The Department's proposals involves no change in the definition of those eligible to receive benefits under Medicaid, and the benefits available to eligible recipients remains the same. The effective date for these proposed changes will be July 1, 2010.

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**Regular Mail**

Division of Health Care Access and Accountability  
P.O. Box 309  
Madison, WI 53701-0309

**State Contact**

Krista Willing, Section Chief

Hospital Rate Setting

(608) 266-2469 (phone)

(608) 266-1096 (fax)

[KristaE.Willing@wisconsin.gov](mailto:KristaE.Willing@wisconsin.gov)

A copy of the proposed change is available for review at the main office of any county department of social services or human services.

**Written Comments**

Written comments are welcome. Written comments on the proposed change may be sent by FAX, email, or regular mail to the Division of Health Care Access and Accountability. The FAX number is (608) 266-1096. The email address is [KristaE.Willing@wisconsin.gov](mailto:KristaE.Willing@wisconsin.gov). Regular mail can be sent to the above address. All written comments will be reviewed and considered.

All written comments received will be available for public review between the hours of 7:45 a.m. and 4:30 p.m. daily in Room 350 of the State Office Building, 1 West Wilson Street, Madison, Wisconsin. Revisions may be made in the proposed changed methodology based on comments received.

The State of Wisconsin  
Department of Administration  
Bureau of Document Services  
Document Sales and Distribution Section  
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