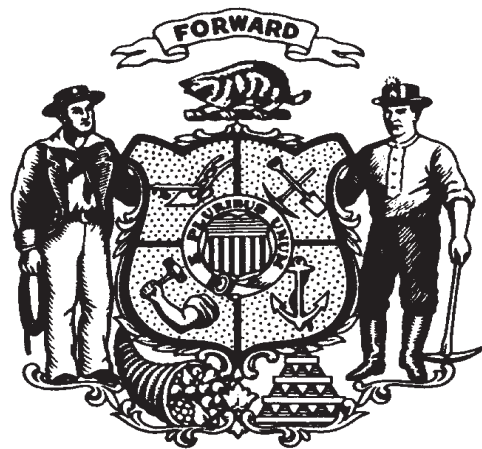


Wisconsin Administrative Register

No. 642



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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.

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.

Children and Families

Family and Economic Security, Chs. DCF 101–153

EmR0906 — Rule adopted revising ss. **DCF 120.05, 120.07 and 120.08**, relating to emergency assistance for needy families.

Finding of Emergency

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

The recent large increase in foreclosures has caused tenants living in rental properties that are in foreclosure to lose their housing. Under the current rule, these tenants are not eligible for Emergency Assistance due to impending homelessness and would only be able to receive assistance if they became homeless. This emergency rule will allow these tenants to receive assistance for impending homelessness and avoid the additional expense and trauma of homelessness.

The current maximum payment amounts for Emergency Assistance due to homelessness and impending homelessness are insufficient to allow a smaller family to obtain or retain a permanent living accommodation. Increasing the payments

for smaller households immediately will help them obtain or retain a permanent living accommodation with fewer resources from other sources and may prevent homelessness for these families.

The current rule has no maximum payment amount for Emergency Assistance due to an energy crisis. All other categories of assistance have a maximum payment based on group size. This emergency rule requires that families first exhaust resources available through the Wisconsin Home Energy Program and sets a maximum payment amount for assistance available for Emergency Assistance due to energy crisis to make better use of the program's limited funds.

Publication Date: April 9, 2009
Effective: April 22, 2009 through September 18, 2009
Hearing Date: June 11, 2009

Children and Families

Family and Economic Security, Chs. DCF 101–153 Early Care and Education, Chs. DCF 201–252

EmR0908 — Rules adopted amending s. **DCF 101.09 (3) (b) and creating ss. DCF 101.09 (3) (b) 1. b., 101.26 (3), and 201.08 (2) (g)**, relating to Wisconsin Works and Wisconsin Shares disregard of temporary census income.

Finding of Emergency

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

Disregarding income earned from temporary employment with the U.S. Census Bureau in determining Wisconsin Works and Wisconsin Shares eligibility and child care copayments is necessary for the public welfare to ensure Wisconsin has a broad pool of available workers to help ensure an accurate Census count, particularly in historically undercounted low-income neighborhoods. Census work is currently ongoing.

Publication Date: May 28, 2009
Effective: June 1, 2009 through October 28, 2009
Hearing Date: July 14, 2009

Commerce

Fee Schedule, Ch. Comm 2

EmR0837 — Rule adopted revising s. **Comm 2.68**, relating to public swimming pool and water attraction plan review and inspection fees.

Finding of Emergency

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

1. Implementation of the federal Virginia Graeme Baker Pool and Spa Safety Act necessitates most existing public

swimming pools and water attractions to undergo physical modifications to reduce the risk of entrapment at suction outlets.

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

3. The department estimates that 3,700 existing pools and water attractions will need to be modified in order to comply with the federal act.

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

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

Publication Date: December 15, 2008
Effective: December 15, 2008 through May 13, 2009
Hearing Date: January 8, 2009
Extension Through: July 12, 2009

Commerce

Licenses, Certifications and Registrations, Ch. Comm 5 Wis. Commercial Building Code, Chs. Comm 60–66

EmR0904 — Rule adopted revising **ss. Comm 5.30 and 61.295**, relating to building contractor registration.

Finding of Emergency

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

1. Under Chapter 560 of the Statutes, the department of commerce is charged with facilitating the establishment and retention of business enterprises in Wisconsin, and with seeking closer cooperation and coordination between units of state government, so that the economy of the state may continue to develop fully and meet citizen and community needs.

2. Under Chapters 101 and 145 of the statutes, the department of commerce has oversight over the design, construction, alteration and maintenance of public buildings and places of employment, one- and two- family dwellings, public swimming pools and public water attractions in order to protect public safety, health and welfare and the waters of the state.

3. The department has proposed an administrative rule that would require the registration of various types of building contractors not already credentialed by the department under existing administrative rules. Under the proposed rules contractors must be registered with the department by January 1, 2010. A public hearing on that proposal was held on January 21, 2009.

4. The proposed rule has three main benefits to Wisconsin: first, it will enhance the department's ability to communicate with and educate building contractors throughout the state

about their obligations to limit safety and health risks for the citizens of Wisconsin; second, it will enhance the ability of the department to cooperate and coordinate with the Department of Workforce Development relative to their administration of unemployment insurance and workers compensation insurance programs; and third, it will enhance the ability of the department to cooperate and coordinate with the Department of Revenue relative to their administration of the state income tax program.

5. Due to the current economic circumstances, the department has determined that the implementation for building contractor registration should be July 1, 2009 in order for the benefits to be in effect for the 2009 building construction season.

Publication Date: March 2, 2009
Effective: March 2, 2009 through July 29, 2009
(except ss. Comm 5.30 (1) and 61.295 (2))
Effective: July 1, 2009 through November 27, 2009
Hearing Date: March 31, 2009

Financial Institutions — Banking

EmR0907 — Rule adopted to create **Chapter DFI–Bkg 47 and to repeal Chapter DFI–Bkg 41**, relating to the transition from a registration system to a license system.

Exemption From Finding of Emergency

The legislature by section 9117 of 2009 Wisconsin Act 2 provides an exemption from a finding of emergency for the adoption of the rule.

Publication Date: May 4, 2009
Effective: *Section 1:* 5–4–09 through 7–1–11
Section 2: 9–1–09 through 7–1–11
Section 3: 1–10–10 through 7–1–11
Hearing Date: June 10, 2009

Government Accountability Board

EmR0902 — Rule adopted amending **s. GAB 6.05**, relating to filing campaign finance reports in electronic format.

Finding of Emergency

The Government Accountability Board amends s. GAB 6.05, Wis. Adm. Code, relating to filing campaign finance statements in electronic format. The amended rule creates a uniform requirement and restricts registrants to an "electronic format" compatible with the Board's electronic filing system for filing campaign finance reports.

Pursuant to s. 227.24, Stats., the Government Accountability Board finds an emergency exists because the Board's January 18, 2008 decision to implement the use of a new electronic filing system, and the technical requirements thereof, conflicts with the technical electronic format filing permitted by the previous rule. In effect, the current electronic filing system cannot work without a uniform and restricted electronic format that is compatible with the new electronic filing system.

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 a uniform electronic format filing requirement to ensure the proper operation of the current electronic filing system so that the campaign finance information is available to voters. The amended rule, GAB 6.05, must be adopted immediately to ensure the public peace and welfare with respect to the administration of current and future elections.

Publication Date: February 5, 2009
Effective: February 5, 2009 through July 4, 2009
Hearing Date: March 20, 2009

Pharmacy Examining Board

EmR0903 — A rule adopted repealing s. **Phar 4.02 (2)**, relating to the practical examination.

Finding of Emergency

The Pharmacy Examining Board finds that, under s. 227.24 (1), Stats., the repeal of s. Phar 4.02 (2) is required for the preservation of the public peace, health, safety and welfare.

Currently, under s. Phar 4.02 (2), the board administers a practical examination to determine an applicant's competence in compounding and dispensing medications, which includes consultation of patients. The board has determined that this examination is no longer needed because the competencies tested in the examination are also tested in two other national examinations that applicants are required to take in order to obtain a license in Wisconsin. The board has also determined that the practical examination requirement may contribute to the shortage of pharmacists in Wisconsin.

First, under s. Phar 4.02 (1) and (3), an applicant is required to take and pass the Multi-State Pharmacy Jurisprudence Examination (MPJE) and the North American Pharmacist Licensure Examination (NAPLEX). Both of these examinations test competencies that relate to subject areas that are also tested in the practical examination. As a result, applicants are required to take an additional examination, and pay an additional examination fee. In some instances, this step may also result in a delay in the processing of applications for licensure.

Second, in reference to the shortage of pharmacists in Wisconsin, the board has found that populations in rural areas and in certain city neighborhoods are underserved. The board believes that, because of its practical examination requirement, potential applicants from other states are declining to seek licensure in Wisconsin. Wisconsin is one of only four states that require a practical examination. None of the states that border Wisconsin have a practical examination requirement.

Publication Date: February 28, 2009
Effective: February 28, 2009 through July 27, 2009
Hearing Dates: April 8, 2009

Regulation and Licensing (2)

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

Exemption From Finding of Emergency

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

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

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

Exemption From Finding of Emergency

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

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

Revenue

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

Exemption From Finding of Emergency

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

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

Wisconsin Technical College System Board

EmR0905 — Rule adopted revising **Ch. TCS 17**, relating to training program grant funds appropriated in 2009 Wisconsin Act 2.

Finding of Emergency

The Wisconsin Technical College System Board finds that an emergency exists and that the attached rule is necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts constituting an emergency is:

The 2009 Wis. Act 2 (the 2007–09 budget repair bill) provided an additional \$1,000,000 GPR to the existing annual appropriation of \$3,000,000 GPR for the training program

grants authorized in Wis. Stats. ss. 20.292 (1) (eh) and 38.41. These funds were provided to address a critical need of Wisconsin employers for skills training and education necessary to protect the state's economic vitality and health, with a special emphasis on advanced manufacturing and welding.

The Act requires the WTCS Board to award these funds by June 30, 2009 or the end of the current 2008–09 fiscal year. In addition, TCS 17.06 (1), *Wis. Adm. Code*, requires that district boards or employers receiving skills training or education under the grant shall contribute matching funds, other than in-kind matching funds, equal to at least 25% of total approved project costs.

Due to declining economic conditions and reduced business revenues, technical college districts report that employers are withdrawing participation in approved training grants because of an inability to fund the 25% match. Therefore, to ensure that business and incumbent workers in need of skills training and other education may access these services and that appropriated funds are distributed to technical college districts for this purpose before the end of the fiscal year, emergency administrative rules eliminating the 25% match requirement must be established immediately.

Publication Date: March 20, 2009
Effective: March 20, 2009 through August 16, 2009

Scope Statements

Employee Trust Funds

Subject

Revises section ETF 11.15 (4), relating to the agent for service of process upon the boards that are attached to the department.

Objective of the Rule

The proposed rule concerns designation of persons who will be able to accept service of process for the boards in matters pertaining to a pending appeal.

Policy Analysis

Currently, only three positions are designated by rule to receive service on behalf of the board: the chief counsel of the department and the division administrator or program director administering the program which pertains to the underlying appeal to the board.

This rulemaking is prompted by the desire to improve and simplify the procedure for receipt of service of process upon the boards attached to the department and by changes within the department's legal services office. By increasing the number of persons who are authorized to accept such service, the department will enhance customer service and allow staff to locate more easily an appropriate person to receive service. Two additional positions are designated to accept service for the board: the deputy secretary and the secretary of the department, or his or her designees. The names of the persons designated to accept service shall be disclosed upon request. Also, the proposed rule will eliminate the specific designation of a chief counsel of the department and change that position to be the general counsel.

Statutory Authority

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

Comparison with Federal Regulations

No specific federal regulation is implicated by this rulemaking. There is no impact on the provisions of the Internal Revenue Code regulating qualified pension plans. Similarly, there is no impact on Wis. Stat. s. 40.015, which requires that the Wisconsin Retirement System be maintained as a qualified plan.

Entities Affected by the Rule

The proposed rule would affect the various boards attached to the department and the department itself.

Estimate of Time Needed to Develop the Rule

The Department estimates that state employees will spend 20 hours to develop this rule.

Health Services

Medical Assistance, Chs. DHS 101—

Subject

Revises Chapters DHS 105 and 106, relating to certification of personal care agencies under the Wisconsin Medical Assistance program.

Objective of the Rule

To establish standards for certification of personal care providers under the Medical Assistance program.

Policy Analysis

A proposal currently being considered by the Wisconsin Legislature as part of the biennial budget bill, AB 75, seeks to specify the entities whose personal care services may be reimbursable by Medical Assistance.

In anticipation of the legislation, the department intends to propose standards by which to certify personal care providers other than county agencies, home health agencies, tribes and Independent Living Centers that want to directly bill and be reimbursed by the Medical Assistance program for the personal care services provided to recipients of Medical Assistance. In addition to promulgating permanent rules, the department may, as authorized under proposed AB 75, use emergency rules to make the standards immediately effective so that existing personal care providers that currently bill the Medical Assistance program through one of the types of agency listed above, may begin to directly bill as soon as possible after the effective date of the legislation, in the event their billing agency discontinues Medicaid certification as a personal care agency.

Statutory Authority

Sections 49.45 (2) (a) 11., (10) and (42) and 227.11 (2), Stats.

Comparison with Federal Regulations

Section 440.167 of 42 CFR provides the requirements for providing personal care services to Medicaid recipients. Section 440.167 does not provide detail on the types of agencies that are allowed to provide personal care services or to directly bill the Medicaid program for reimbursement.

Entities Affected by the Rule

Personal care agencies, including Independent Living Centers (ILCs), home health agencies, county agencies, federally recognized American Indian tribes and bands in Wisconsin, entities that currently contract with these agencies to perform personal care services, and managed care organizations may be affected by the proposed rules.

Estimate of Time Needed to Develop the Rule

The Department estimates that it will take approximately 150 hours of staff time to develop the proposed rules.

Contact Information

Al Matano
(608) 267-6848

Health Services

Health, Chs. DHS 110—

Subject

Revises Chapter DHS 163, relating to certification for identification, removal and reduction of lead-based paint hazards.

Objective of the Rule

To enable the Department to administer and enforce newly promulgated Environmental Protection Agency (EPA)

regulations under 40 CFR 745 Subparts E, L, and Q for abating lead-based paint hazards instead of the EPA. The new EPA regulations address lead-paint hazards created by renovation, repair, and painting activities that disturb lead-based paint in pre-1978 housing and child occupied facilities. The EPA regulations require that building owners and occupants receive information on lead-based paint hazards before renovations begin; that individuals performing renovations are properly trained; that renovators and renovation firms are certified; that proper work practices be followed during renovation activities; and that cleaning verification is conducted when work is completed. The EPA regulations would directly regulate renovation activities conducted for remuneration in pre-1978 housing and child-occupied facilities.

Policy Analysis

The Department is currently authorized by EPA to administer and enforce a lead-based paint hazard reduction certification and accreditation program. To meet the EPA standards and receive EPA authorization to administer and enforce the new lead renovation regulations in pre-1978 housing and child occupied facilities, the Department must implement rules that are consistent with and as protective as the EPA regulations. If Wisconsin does not apply for program authorization, the EPA will administer the program in Wisconsin under the federal regulations. Wisconsin companies and individuals would be required to comply with federal regulations and pay fees directly to the federal program for certification and accreditation, in addition to complying with state lead laws and rules, and fees under ch. DHS 163.

Authorization by EPA for Wisconsin to implement the new regulations would avoid the unnecessary complexity of overlapping state and federal regulations. The Department and local agencies are in a better position to protect the health and safety of Wisconsin citizens than is the EPA, by providing more direct technical assistance, oversight and outreach. Only minor revisions to ch. DHS 163 will be necessary to meet the EPA requirements because ch. DHS 163 already incorporates training courses, disciplines and certifications that are similar to those promulgated by EPA under 40 CFR 745 Subpart E.

The Department intends to revise its training courses for lead-safe renovators and lead sampling technicians; update language to reflect EPA terminology; and add work practice requirements, including pre-renovation notification to owners, recordkeeping, and cleaning verification protocols for renovation activities.

In October 2009, the EPA will begin accepting applications and fees for training and certification under the new federal lead abatement requirements that take effect in April 2010. The Department may implement emergency rules to modify ch. DHS 163 in order to preserve Wisconsin's jurisdiction over its lead abatement program before the proposed permanent rules can become effective and before EPA begins accepting applications and fees from Wisconsin renovators in October 2009.

Statutory Authority

Sections 227.11 (2), 254.172 (1) and 254.174, Stats.

Comparison with Federal Regulations

40 CFR Part 745 Subpart E, Residential Property Renovation. Subpart E contains requirements for the

provision of pre-renovation information distribution to property owners and occupants, firm and renovator certification, work practice standards for renovation, recordkeeping and enforcement. DHS 163 currently includes some, but not all, similar provisions with the EPA rule. DHS 163 does not include any pre-renovation information distribution requirements. DHS 163 provisions for certification of individuals and companies conducting renovation activities are similar to the EPA language, but some revisions are necessary to be consistent with the EPA. These revisions include making mandatory for all regulated renovation activities certifications that are currently optional in DHS 163.

40 CFR Part 745 Subpart L, Lead-Based Paint Activities. Subpart L contains training course accreditation requirements for the lead renovator and dust sampling technician courses. DHS 163 includes provisions for the accreditation of similar courses, the lead-safe work and lead sampling courses, but some revisions are necessary to bring the curricular requirements in DHS 163 into compliance with the EPA course requirements as described in Subpart L.

Entities Affected by the Rule

Renovation contractors (including remodelers, painters, carpenters, building trades), rental property owners and managers, child-occupied facility operators including childcare centers and pre-schools, and schools.

Estimate of Time Needed to Develop the Rule

Estimated staff time to develop the rule: 300 hours. This includes time to staff the lead technical advisory committee required under s. 254.174, Stats.

Contact Information

Shelley Bruce
(608) 267-0928

Insurance

Subject

Revises section Ins 3.60, relating to disclosures for health care claim settlements and affecting small business.

Objective of the Rule

To review and revise the disclosure requirements relating to how insurers determine usual and customary reimbursement rates. The proposed rule may modify requirements relating to data used to determine usual and customary rates and disclosure of the insurer's methodologies. The resulting rule is intended to increase the transparency of insurers' usual and customary rates so that consumers can make informed decisions regarding health care.

Policy Analysis

The current rule has existed in its current form since 1993. It is appropriate to review the regulation in light of proposed creation of a non-profit organization to create a new, independent database for use in determining usual and customary rates.

Statutory Authority

Sections 601.41 (8), 601.42, and 628.34 (1) and (12), Stats.

Comparison with Federal Regulations

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

Entities Affected by the Rule

Health insurers offering group and individual health insurance.

Estimate of Time Needed to Develop the Rule

200 hours and no other resources are necessary.

Natural Resources***Fish, Game, etc., Chs. NR 1—*****Subject**

Revises Chapters NR 21 and 22, relating to commercial fishing on the Wisconsin–Iowa and Wisconsin–Minnesota boundary waters.

Objective of the Rule

One of the primary purposes of the proposed rule is to create descriptions/definitions of several types of commercial fishing nets currently referred to in Chapters NR 21 and 22, Wis. Adm. Code and Ch. 29, Stats., but which are not defined in either statute or code. Without clear specifications for each of these nets and how they may be used, it is feasible that a person could construct and use just about any type or design of net or trap they desire and claim it is a bait net, buffalo net, frame or fyke net, slat net or basket trap. These traditional types of nets have been in operation for many years and the department would like to define them specifically in code while there are still wardens and commercial fisherman that know what they are. This way there can be no question about what is and is not a legal net.

The importance of this issue will continue to increase as the commercialization of Mississippi River sturgeon for caviar continues to increase in Wisconsin waters of the Mississippi river. We expect heavy pressure on this resource in future years as sturgeon populations continue to collapse in states to the south that are heavily fished now.

Commercial fishermen, fisheries and law enforcement staff have had to deal with inconsistent commercial fishing regulations on the Mississippi river. The same commercial fisherman may be fishing on both the Wisconsin–Iowa and the Wisconsin–Minnesota boundary waters, but currently must follow different rules depending on what portion of the river the person is fishing. In addition to defining certain currently legal commercial fishing gear, this rule will also provide clarification of several other existing definitions and provide more consistency and clarification of the commercial fishing rules within and between chapters NR 21 and 22, Wis. Adm. Code. The current rules found in NR 21 have closed numerous legal loopholes and have provided better protection of game fish. This rule order will adopt the rules similar to or the same as the rules found in NR 22. This effort is also a coordinated effort to update Wisconsin/Iowa commercial fishing rules with the Iowa DNR. Iowa's rule changes are already under way. Wisconsin's failure to update our rules will result in further inconsistency in the commercial fishing rules across the breadth of the Mississippi River.

Policy Analysis

The Department is beginning the process of developing and recommending changes to Wisconsin Administrative Code relating to commercial fishing on the Wisconsin–Iowa boundary waters. The proposed Wisconsin–Iowa boundary water changes are intended to provide more consistency with commercial fishing rules already in place for

Wisconsin–Minnesota boundary waters. The Department plans to work with the affected user group during the summer of 2009 to develop these rules and during the fall of 2009 and request authorization to hold a hearing on these new rules during the winter of 2009–2010. This is also part of a joint effort with the state of Iowa which is already moving forward on their revisions.

Several types of commercial fishing nets or gear are listed in chapters NR 21 and 22, Wis. Adm. Code and Ch. 29, Stats. Some of these nets are defined or described in the statutes, while others, such as bait nets, buffalo nets, frame or fyke nets and basket traps (slat nets) are not. The new definitions and rules will not prevent the use of these commonly used nets in areas where they are currently authorized, but will provide a description of what these nets are and how they can be used. These rules will also define in NR 22, Wis. Adm. Code what drive sets, dead sets and drift sets are, similar to how they are defined in NR 21, Wis. Adm. Code.

In addition, this rule will help to clarify what fish are legal commercial fish and how they must be handled, how nets or gear are to be marked and tagged, the maximum number of nets that may be used, what licenses or permits are required to engage in commercial fishing activities or for the possession or sale of commercial fish or fish eggs. In addition to providing clarification in the commercial fishing rules for the Wisconsin/Iowa boundary waters of the Mississippi river, this rule order will provide rules which are more consistent with rules already in place on Wisconsin/Minnesota boundary waters. Commercial fishers have not had problems complying with these rules in those waters since the changes took place there in the mid-1990's.

Statutory Authority

Sections 29.014, 29.024, 29.041, 29.523, 29.526, 29.529 and 227.11(2), Stats.

Comparison with Federal Regulations

The USFW Service is also considering closing commercial harvest of shovelnose sturgeon on all of the Missouri River and on the Mississippi River from St. Louis downstream to the Gulf of Mexico. This is being done because of the shovelnose sturgeon "similarity of appearance" to endangered pallid sturgeon. If and when this takes place we can expect to see a significant increase in pressure on our Wisconsin shovelnose sturgeon to replace the lost source of caviar downstream. Therefore, the updates and clarifications being considered to the NR 22 commercial fishing rules are even more important now, so we have enforceable rules in place before we see an increase in harvest pressure.

Entities Affected by the Rule

This rule will affect all individuals who currently hold or who may in the future hold a net license for commercial fishing on the Wisconsin waters of the Mississippi river.

Estimate of Time Needed to Develop the Rule

80 hours.

Contact Information

Thomas Van Haren,
101 S. Webster St.,
PO BOX 7921,
Madison, WI 53707
(608)266-3244,
Thomas.VanHaren@wisconsin.gov

Railroads

Subject

Revises Chapters RR 1, 2, and 4 to update and clarify procedures and policies currently practiced by the Office of the Commissioner of Railroads (OCR) but not codified. The proposed rule will also further define terms as they relate to OCR process including, but not limited to, “alteration”, “highway”, “complete renewal”, and “cost–apportionment”.

Objective of the Rule

Revisions to Chapters RR 1, 2, and 4 are necessary to recognize the availability of new technology, namely electronic filing, and to codify terms and procedures that are not spelled out under these chapters, but have historical precedent through established Office procedures and OCR Orders. A need has arisen to clarify the OCR’s authority to issue summary judgments. The proposed rule is not intended to expand OCR’s authority.

Statutory Authority

Sections 189.02, 195.03, and 227.11 (2), Stats.

Comparison with Federal Regulations

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

Entities Affected by the Rule

Wisconsin Department of Transportation, railroad companies, water carriers, local governmental boards and departments, and other petitioners.

Estimate of Time Needed to Develop the Rule

The Commissioner estimates less than 200 hours of staff time will be required to develop these rules.

Contact Information

Elizabeth Piliouras, Agency Liaison
(608) 266–0276

Submittal of Rules to Legislative Council Clearinghouse

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

Children and Families

*Family and Economic Security, Chs. DCF 101—
Early Care and Education, Chs. DCF 201—*

CR 09–043

On June 12, 2009, the Department of Children and Families submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed order revises Chapters DCF 101 and 201, relating to Wisconsin Works and Wisconsin Shares disregard of temporary census income.

Agency Procedure for Promulgation

A public hearing is required and will be held on July 14, 2009. The organizational units responsible for the promulgation of the proposed rules are the DCF Division of Family and Economic Security and Division of Early Care and Education,

Contact Information

Elaine Pridgen
Phone: (608) 267–9403
Email: elaine.pridgen@wisconsin.gov

Natural Resources

*Fish, Game, etc., Chs. NR 1—
CR 09–042*

On June 2, 2009, 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 2009 migratory bird hunting seasons and bag limits.

Agency Procedure for Promulgation

The Bureau of Wildlife Management is primarily responsible for promulgation of the rules. Public hearings are scheduled for:

August 3, 2009 — Rooms B–19 and B–20, State Office Building, 3550 Mormon Coulee Road, La Crosse at 7:00 p.m.

August 4, 2009 — Room 243, WI Indianhead Tech College, 1900 College Drive, Rice Lake at 7:00 p.m.

August 5, 2009 — Main Conference Room, Agricultural Services Center, 3369 W. Brewster St., Appleton at 7:00 p.m.

August 6, 2009 — Comfort Suites Lake Country, Thunder Bay Room, N14 W24121 Tower Place, Pewaukee at 7:00 p.m.

Contact Information

Scott Loomans
Bureau of Wildlife Management
(608) 267–2452.

Rule-Making Notices

Notice of Hearing

Children and Families

*Family and Economic Security, Chs. DCF 101—
Early Care and Education, Chs. DCF 201—
EmR0908 and CR 09-043*

NOTICE IS HEREBY GIVEN that pursuant to ss. 49.145 (1), 49.155 (1m), and 227.11 (2) (a), Stats., the Department of Children and Families proposes to hold a public hearing to consider emergency rules and permanent rules relating to Wisconsin Works and Wisconsin Shares disregard of temporary census income.

Hearing Information

Date	Location
July 14, 2009	MADISON
Tuesday	GEF 1 Building
1:30 p.m.	201 E. Washington Avenue Room H204

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.

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 audio format will be made available on request to the fullest extent possible.

Submission of Written Comments

Comments may be submitted to Elaine Pridgen, Office of Legal Counsel, Department of Children and Families, 201 E. Washington Avenue, P.O. Box 8916, Madison, WI, 53708-8916 or elaine.pridgen@wisconsin.gov. The comment deadline is July 14, 2009.

Analysis Prepared by the Department of Children and Families

Statutory authority

Sections 49.145 (1), 49.155 (1m), and 227.11 (2) (a), Stats.

Statutes interpreted

Sections 49.145 (1) and (3) and 49.155 (1m), Stats.

Related statutes or rules

NA

Explanation of agency authority

Section 49.145 (1) provides that to be eligible for Wisconsin Works (W-2) employment positions and job access loans for any month, an individual shall meet the financial eligibility requirements in sub. (3). The Department may promulgate rules establishing additional eligibility criteria and specifying how eligibility criteria are to be administered.

Section 49.155 (1m) (c) 1., Stats., provides that in determining financial eligibility for the child care subsidy, the W-2 agency shall calculate the gross income of the family as

described in s. 49.145 (3) (b), Stats., for W-2 employment positions and job access loans. An individual shall also satisfy other eligibility criteria established by the department by rule under par. (d).

Summary of the proposed rules

The proposed rules will exclude income earned from temporary employment with the U.S. Census Bureau in determining W-2 and child care eligibility and child care copayments. This exclusion will apply for up to 12 weeks per year. A W-2 participant who is working for the Census fewer than 30 hour per week may be placed in a pro-rated Community Service Job with hours of Census employment treated the same as hours of other unsubsidized employment in determining participation requirements and payment amounts. Disregarding Census earnings will reduce, but not eliminate, family child care copayment responsibility. In general, a copayment is required from families receiving a child care subsidy under federal law. A family with only Census income will be required to pay a copayment at the lowest level.

Summary of factual data and analytical methodologies

In 2009 and 2010, the U.S. Census Bureau will be recruiting and temporarily employing more than 700,000 people to fill paid, part-time positions to conduct the 2010 census. In 1999 and 2000, the Census Bureau successfully recruited Temporary Assistance for Needy Families (TANF) participants to help fill vacancies and wishes to do the same for the 2010 census.

The Department of Health and Human Service, Administration for Children and Families, encourages states to disregard the income that TANF participants receive as census employees. This will mean that temporary income from census employment will not result in TANF participants losing financial assistance without gaining long-term employment.

Encouraging W-2 participants to work for the Census Bureau by ensuring that benefits will not be lost is critical to the Census Bureau's work. It is important to the Census to employ workers from neighborhoods that have historically been undercounted. W-2 participants can play vital roles in establishing an accurate count, which affects Wisconsin's congressional representation and federal funding distribution.

Census work can help the State meet the required TANF work-participation rate when the W-2 participant is receiving a pro-rata W-2 grant. Disregarding income will avoid confusion resulting from temporary, intermittent employment with varying weekly earnings. In addition, Census jobs will provide W-2 participants with training and work experience while they perform a valuable community service. Children of Census workers will benefit from being in a licensed or certified child care center while their parents are employed.

Most temporary workers will be employed as enumerators in the field for about 4 to 8 weeks. Nationally, about 100,000 people will be employed in 2009 to locate and verify addresses and about 600,000 people will be employed in 2010 for non-response follow-up. Up to 3,500 positions are targeted for Wisconsin in 2009 and 17,400 in 2010.

Thirty-three other states have approved or indicated pending approval of policies allowing disregard of census income in determining TANF eligibility.

Comparison with federal regulations

In general, a copayment is required from families receiving a child care subsidy.

Comparison with rules in adjacent states

All adjacent states have approved or indicated pending approval of TANF guidelines allowing temporary census employees to maintain TANF eligibility.

Analysis and supporting documentation used to determine effect on small businesses

The rule affects W-2 agencies, but the change in policy is minor.

Small Business Impact

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

Fiscal Estimate

Summary

The number of federal Census positions targeted for Wisconsin will be up to 3,500 in 2009 and 17,400 in 2010. The majority of these positions will be field operation workers with wages ranging from \$11.75 to \$15 per hour in 2009 and \$13.75 to \$17.75 in 2010. The hours for the positions are projected to be from 5 to 25 per week, with each position lasting 4 to 8 weeks. The fiscal impact of disregarding earnings on the Wisconsin Shares child care assistance program is minimal because even the highest paid temporary Census position will calculate to be below the eligibility level of 185% of the federal poverty level. Disregarding Census earnings will reduce, but not eliminate, family copayment responsibility. In general, federal law requires that families pay a copayment. A family with only Census income will be required to pay a copayment at the lowest level. The projected amount of copayment reduction will be approximately \$16,600 in 2009 and \$42,200 in 2010 for a \$10 per week, two-child family model for 3,310 children in 2009 and 11,036 in 2010 for 6 weeks of part-time child care.

State fiscal effect

Decrease existing revenues.

Local government fiscal effect

None.

Long-range fiscal implications

None.

Agency Contact Persons

For Wisconsin Works, the agency contact is:

Rose Prochazka
(608) 267-7398
rose.prochazka@wisconsin.gov

For Wisconsin Shares child care assistance, the agency contact is:

Sue Mathison
(608) 266-8872
susan.mathison@wisconsin.gov

Text of Proposed Rules

SECTION 1. DCF 101.09 (3) (b) 1. is amended to read:

DCF 101.09 (3) (b) *Income limitations*. 1. The individual is a member of a W-2 group whose gross income is at or below

115% of the poverty line. In this subdivision, "gross income" does not include any payments of the following:

a. Payments or benefits made under any federal law that specifically exempts such payments or benefits from being considered in determining eligibility for any federal means-tested program.

SECTION 2. DCF 101.09 (3) (b)1. b. is created to read:

b. Income earned from employment with the United States Census Bureau that does not exceed 12 weeks per year.

SECTION 3. DCF 101.26 (3) is created to read:

(3) Income earned from employment with the United States Census Bureau that does not exceed 12 weeks per year shall not be considered as family income in determining financial eligibility for a child care subsidy under s. 49.155 (1m) (c), Stats.

SECTION 4. DCF 201.08 (2) (g) is created to read:

(g) Income earned from employment with the United States Census Bureau that does not exceed 12 weeks per year shall not be considered as family income in determining the amount of a parental copayment under sub. (1).

Notice of Hearings

Natural Resources

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

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 2009 migratory game bird seasons and waterfowl hunting zones.

Hearing Information

August 3, 2009 Monday at 7:00 p.m.	Rooms B-19 and B-20 State Office Building 3550 Mormon Coulee Road La Crosse
August 4, 2009 Tuesday at 7:00 p.m.	Room 243 WI Indianhead Tech College 1900 College Drive Rice Lake
August 5, 2009 Wednesday at 7:00 p.m.	Main Conference Room Agricultural Services Center 3369 W. Brewster St. Appleton
August 6, 2009 Thursday at 7:00 p.m.	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.

Submission of Written Comments and Copies of Rule

The proposed rule and fiscal estimate may be reviewed and comments electronically submitted at the following Internet site: <http://adminrules.wisconsin.gov>. Written comments on the proposed rule may be submitted via U.S. mail to Mr. Kent

Van Horn, Bureau of Wildlife Management, P.O. Box 7921, Madison, WI 53707 or by email to kent.vanhorn@wisconsin.gov. Comments may be submitted until August 6, 2009. Written comments whether submitted electronically or by U.S. mail will have the same weight and effect as oral statements presented at the public hearings. A personal copy of the proposed rule and fiscal estimate may be obtained from Mr. Van Horn.

The deadline for written comments is August 7, 2009. Comments may be submitted to the agency contact person or electronically at the following internet site: <http://adminrules.wisconsin.gov>.

Analysis Prepared by Department of Natural Resources

Statutes interpreted

Sections 29.014, 29.041 and 29.885, Stats.

Statutory authority

Sections 29.014 and 227.11, Stats.

Explanation of agency authority

Sections 29.014, 29.041 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.

Sections 29.014 and 227.11, Stats., 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, s. 29.197, Stats., and 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.

Summary of rule

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, 3 wood ducks and 2 redheads. The season for scaup may include 45 days with a 2 bird bag limit and 15 days with a 1 bird bag limit. The season for canvasbacks would be closed. 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.

Plain language analysis

This rule order establishes the season length and bag limits for the 2009 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 26 and continues for 60 consecutive days in the north, closing on

November 24. In the South the season begins at 9:00 a.m. on October 3 and continues through October 11, followed by a 5-day split, and then reopens on October 17 and continues through December 6. The daily bag limit is 6 ducks including no more than: 4 mallards, of which only one may be a hen, one black duck, one pintail, 3 wood ducks, and 2 redheads. For scaup the daily bag limit will be 2 scaup for 45 days and 1 scaup for 15 days. The canvasback season is closed.

For Canada geese, the state is apportioned into 3 goose hunting zones: Horicon, Collins and Exterior. Other special goose management subzones within the Exterior Zone include Brown County, Burnett County, Rock Prairie and the Mississippi River. Season lengths are: Collins Zone – 66 days (three hunting periods, September 16 – October 4, October 5 – 25, October 26 – November 20); Horicon Zone – 92 days (2 hunting periods, first period beginning September 16 and the second on November 2); Exterior Zone in the northern duck zone – 85 days (Sept. 19 – Dec. 12); Exterior Zone in the southern duck zone – 85 days (Sept. 19 – Oct. 11 and Oct. 17 – Dec. 17) and Mississippi River subzone – 85 days (Oct. 3 – Oct. 11 and Oct. 17 – Dec. 31). The Burnett County subzone is closed to Canada goose hunting. The statewide daily bag limit for Canada geese in all zones is 2 birds per day during the open seasons within the zones.

Comparison with federal regulations

Under international treaty and Federal law, migratory game bird seasons are closed unless opened annually via the U.S. Fish and Wildlife Service (FWS) regulations process. As part of the Federal rule process, the FWS proposes a duck harvest-management objective that balances hunting opportunities with the desire to achieve waterfowl population goals identified in the North American Waterfowl Management Plan (NAWMP). Under this harvest-management objective, the relative importance of hunting opportunity increases as duck populations approach the goals in the NAWMP. Thus, hunting opportunity would be maximized when the population is at or above goals. Additionally, while FWS believes that the NAWMP's population goals 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 are consistent with these parameters and guidelines which are annually established by the Fish and Wildlife Service in 50 CFR 20.

Comparison with rules in adjacent states

Since migratory bird species are managed under international treaty, each region of the country is organized in a specific geographic flyway which represents an individual migratory population of migratory game birds. Wisconsin

along with Minnesota, Michigan, Illinois and Iowa are members of the Mississippi Flyway. Each year the states included in the flyways meet to discuss regulations and guidelines offered to the flyways by the FWS. The FWS regulations and guidelines apply to all states within the Flyway and therefore the regulations in the adjoining states closely resemble the rules established in this rule order, and only differ slightly based on hunter desires, habitat and population management goals. However, these variations fall within guidelines and sideboards established by the FWS.

Summary of factual data and analytical methodologies

For the regular duck season, a data based process called Adaptive Harvest Management is used annually by the USFWS and the Flyways to determine which of 3 framework alternatives best matches the current year's data on populations and habitat (data from the spring pond and duck survey). The option of a closed season is also possible if survey conditions indicated that this was 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 the 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 will be 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 will be 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 results of this work will be reviewed annually by the MFC committee and the USFWS to measure the impact of the stable season framework trial period.

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

In early July, staff will conduct a public meeting to solicit input from interest groups, including representatives of the Conservation Congress Migratory Bird Committee. At this meeting staff provide the attendees with breeding status information and ask for any items that they wish us to pursue at the MFC meeting in mid July. Department staff will then attend 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 that will be voted upon by the MFC. Proposals that passed 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. Department staff will then 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 in early August. 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 in early August around the state to solicit additional input on the proposed annual waterfowl rule.

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 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 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

Summary

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.

State fiscal effect

None.

Local government fiscal effect

None.

Long-range fiscal implications

None.

Agency Contact Person

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Madison, WI 53707-7921
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(608) 266-8841

Submittal of Proposed Rules to the Legislature

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

Labor and Industry Review Commission
CR 09-014

A rule-making order to revise Sections LIRC 1.025, 2.05, 3.05 and 4.04, relating to the rules of practice and procedure before the commission.

Natural Resources
Fish, Game, etc., Chs. NR 1—
CR 09-015

A rule-making order to revise Chapters NR 10, 11 and 15, relating to the 2009 annual spring hearings relating to hunting, trapping, closed areas and game refuges.

University of Wisconsin System
CR 08-099

A rule-making order to revise Chapters UWS 17 and 18, relating to student nonacademic misconduct and conduct on land under the control of the Board of Regents.

Rule Orders Filed with the Legislative Reference Bureau

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

Administration

CR 08-084

Creates Chapter Adm 70, relating to electronic recording of documents in Wisconsin County Register of Deeds offices. Effective 8-1-09.

Commerce

Flammable, Combustible and Hazardous Liquids, Ch. Comm 10

CR 09-017

Revises Chapters Comm 2 and 10, relating to flammable, combustible and hazardous liquids, and affecting small businesses. Effective 8-1-09.

Rules Published with this Register and Final Regulatory Flexibility Analyses

The following administrative rule orders have been adopted and published in the June 30, 2009, 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.

Commerce

Elevators, Escalators and Lift Devices, Ch. Comm 18

CR 09-012

Revises Chapter Comm 18, relating to suspension ropes and their connections serving elevators. Effective 7-1-09.

Summary of Final Regulatory Flexibility Analysis

Pursuant to s. 227.19 (3m), Stats., the Department of Commerce has determined that the rule to repeal s. Comm 18.1702 alleviates confusion and enforcement issues and will not have a significant impact on a substantial number of small businesses.

Summary of Comments by Legislative Review Committees

No comments were received.

Corrections

CR 08-105

Creates Section DOC 332.20, relating to establishing a reimbursement fee to offset the costs of monitoring persons subject to global positioning system tracking or passive positioning system tracking. Effective 7-1-09.

Summary of Final Regulatory Flexibility Analysis

The Department of Corrections has determined that the rule will not have a significant economic impact on a substantial number of small businesses since the rule does not regulate small businesses as that term is defined in s. 227.114, Stats.

Summary of Comments by Legislative Review Committees

No comments were reported.

Health Services

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

CR 08-098

Revises Chapter DHS 12, relating to background checks of individuals who provide personal care services. Effective 7-1-09.

Summary of Final Regulatory Flexibility Analysis

The rule will not have a fiscal impact on small businesses, independent of the costs already imposed by the requirements under s. 50.065 (2m), Stats., which requires that personal care entities conduct background checks, including criminal history checks, on individuals the entity assigns to provide personal care services in a client's residence and disclose the results to the client or the client's guardian.

Summary of Comments by Legislative Review Committees

No comments were received.

Health Services

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

CR 08-109

Revises Section DHS 10.23 (2) (d) 2., relating to confidentiality requirements of the Family Care program that prohibits benefit specialists from disclosing personally identifying information about a client without the client's informed consent, unless required by law. Effective 7-1-09.

Summary of Final Regulatory Flexibility Analysis

The rules do not affect small business.

Summary of Comments by Legislative Review Committees

No comments were received.

Health Services

Medical Assistance, Chs. DHS 101-

CR 08-108

Revises Section DHS 105.17 (1), relating to benefits covered by the Wisconsin Medical Assistance program. Effective 7-1-09.

Summary of Final Regulatory Flexibility Analysis

The rule does not affect small business.

Summary of Comments by Legislative Review Committees

No comments were received.

Insurance

CR 08-107

Revises Section Ins 2.07, relating to replacement of life insurance or annuity contracts and disclosure requirements. Effective 7-1-09.

Summary of Final Regulatory Flexibility Analysis

The Office of the Commissioner of Insurance has determined that this rule will not have a significant economic impact on a substantial number of small businesses and therefore a final regulatory flexibility analysis is not required.

Summary of Comments by Legislative Review Committees

The legislative standing committees had no comments on this rule.

Insurance
CR 08-112

Revises Section Ins 3.39, relating to Medicare supplement and replacement insurance. Effective 7-1-09.

Summary of Final Regulatory Flexibility Analysis

The Office of the Commissioner of Insurance has determined that this rule will not have a significant economic impact on a substantial number of small businesses and therefore a final regulatory flexibility analysis is not required.

Summary of Comments by Legislative Review Committees

The legislative standing committees had no comments on this rule.

Insurance
CR 09-004

Revises sections Ins 17.01 (3) and 17.28 (3) (c) and (6), relating to the annual injured patients and families compensation fund fees and medical mediation panel fees for the fiscal year beginning July 1, 2009. Effective 7-1-09.

Summary of Final Regulatory Flexibility Analysis

This rule change will have no significant effect on the private sector regulated by OCI.

Summary of Comments by Legislative Review Committees

No comments were reported.

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

Revises sections MPSW 11.01, 12.01, and 14.01, relating to supervised practice, training licenses and academic programs for professional counselors. Effective 7-1-09.

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.

Summary of Comments by Legislative Review Committees

No comments were reported.

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

Revises sections MPSW 3.09 and 3.13, relating to practice hours and internship for social workers. Effective 7-1-09.

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.

Summary of Comments by Legislative Review Committees

No comments were reported.

Natural Resources
Fish, Game, etc., Chs. NR 1—
CR 08-060

Revises Chapter NR 25, relating to commercial fishing on outlying waters. Effective 7-1-09.

Summary of Final Regulatory Flexibility Analysis

The rule will affect licensed commercial fishers operating on Wisconsin's outlying waters (Lake Superior and Lake Michigan) and wholesale fish dealers. The current bi-weekly "paper" reporting system for daily fishing activity is replaced with an Electronic Fish harvest Reporting System whereby commercial fishers submit electronic reports and data relating to fishing activity and reports on a daily basis via the Internet. The Department will provide the portable electronic reporting unit to the commercial fishers. A fleet reporting system is created to allow commercial fishing businesses involving more than one license to consolidate quota allocations, fish harvest weights and daily fishing activity information for reporting purposes, thereby significantly reducing record keeping requirements relating to individual licenses. The completion and submittal of a biweekly catch and disposition report to the Department is eliminated for commercial fishers. Commercial fishers and wholesale fish dealers will be required to submit a new annual inventory report documenting fish in possession, storage or under control on an annual date of their choosing (to allow them to use the same inventory data as required for tax reporting or other business purposes). The requirements for inspection and tagging of foreign lake trout imported by wholesale fish dealers are eliminated.

Summary of Comments by Legislative Review Committees

The rules were reviewed by the Assembly Committee on Natural Resources and the Senate Committee on Transportation, Tourism, Forestry and Natural Resources. Neither committee held a public hearing. The Department did not receive any comments or requests for modification as a result of committee review.

Natural Resources

Environmental Protection — General, Chs. NR 100—
CR 08-063

Revises Chapters NR 190, 191, 195, and 198, relating to lake management planning, lake protection and river protection grants, and aquatic invasive species prevention and control grants. Effective 7-1-09.

Summary of Final Regulatory Flexibility Analysis

Small business is not directly affected by the rule because grants are issued only to governmental units or nonprofit organizations. Therefore, under s. 227.114, Stats., a final regulatory flexibility analysis is not required.

Summary of Comments by Legislative Review Committees

The rules were reviewed by the Senate Committee on Environment and the Assembly Committee on Natural Resources. No hearings were scheduled by either the Assembly or Senate committees.

**Volunteer Fire Fighter — Emergency Medical
Technician Service Award Board
CR 08-033**

Revises Chapter VFF-EMT 1, relating to the service award program for volunteer fire fighters, first responders, and emergency medical technicians. Effective 7-1-09.

Summary of Final Regulatory Flexibility Analysis

There is no effect on small business.

**Summary of Comments by Legislative Review
Committees**

No comments were reported.

**Workforce Development
Public Works Construction Contracts,
Chs. DWD 290-294
CR 09-001**

Revises Section DWD 290.155 (1), relating to adjustment of thresholds for application of prevailing wage rates. Effective 7-1-09.

Summary of Final Regulatory Flexibility Analysis

The rule does not affect small businesses as defined in s. 227.114 (1), Stats.

**Summary of Comments by Legislative Review
Committees**

The rule was referred to the Senate Committee on Children and Families and Workforce Development, and to the Assembly Committee on Workforce Development. No comments were received.

Sections Affected by Rule Revisions and Corrections

The following administrative code sections had rule revisions and corrections take place in **June 2009**, 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

Commerce

Ch. Comm 18

Comm 18.1702 (8) to (10)

Comm 18.1800

MPSW 11.01 (1) (b)

Ch. MPSW 12

MPSW 12.01 (intro.), (1) to (5)

Ch. MPSW 14

MPSW 14.01 (2) (intro.)

Corrections

Ch. DOC 332

DOC 332.20

Health Services

Ch. DHS 10

DHS 10.13 (16m)

DHS 10.23 (2) (d)

Ch. DHS 12

DHS 12.03 (15), (20m)

DHS 12.115

Ch. DHS 105

DHS 105.17 (1) (intro.)

Natural Resources

Ch. NR 25

NR 25.02

NR 25.03 (1) (a), (2) (am)

NR 25.04 (6), (7)

NR 25.05 (3)

NR 25.06 (3) (intro.)

NR 25.09 (1) (am), (as), (2) (a), (b), (3) (c), (d), (e), (6)

NR 25.10 (1) (b), (c), (2) (a), (b), (c), (f)

NR 25.13 (1) (title), (2), (3) (title), (intro.), (a), (b), (4) to (11)

NR 25.135

NR 25.14 (3), (4)

NR 25.16 (title), (1), (2), (3) (b)

NR 25.17

NR 25.18

NR 25.19

Ch. NR 190

NR 190.005 (1) (e)

NR 190.05 (2) to (4)

NR 190.15 (2) (g), (3) to (6)

Ch. NR 191

NR 191.05 (3) (g), (4) to (10)

NR 191.06 (1) (h)

Ch. NR 195

NR 195.07 (2) to (4)

NR 195.10 (1) (f)

Ch. NR 198

NR 198 (title)

NR 198.10

NR 198.11

NR 198.12 (5) to (13)

NR 198.13 (1), (3)

NR 198.14 (1) (intro.), (e), (f), (h), (2) (d)

NR 198.15

NR 198.21

NR 198.22 (1) (a)

NR 198.23 (2) (a), (f), (3) to (9)

NR 198.30

NR 198.31

NR 198.32 (intro.), (1) (intro.), (a), (2), (5), (6)

Insurance

Ch. Ins 2

Ins 2.07, Appendices I, II, III

Ch. Ins 3

Ins 3.13 (2) (j)

Ins 3.29 (3) (a), (7) (b)

Ins 3.39 (1), (3) (ce), (cs), (q), (v), (w), (4) (intro.), (a), (4s), (5) (title), (intro.), (5m), (6) (intro.), (7) (a), (d), (8) (c), (9) (b), (14) (title), (a), (d), (14m), (15), (17), (18), (23) (d), (24) (g), (26) (b), (30) (a), (b), (30m), (31) (a), (34) (e), (ez), (35), (36), Appendices 1 to 10

Ch. Ins 17

Ins 17.01 (3)

Ins 17.28 (3) (c), (6)

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

Ch. MPSW 3

MPSW 3.09 (3), (3m)

MPSW 3.13 (3) (a)

Ch. MPSW 11

NR 198.33 (2) (c), (4), (5), (6)
 NR 198.41
 NR 198.42 (1) (a), (c), (d)
 NR 198.43 (1) (c) to (n)
 NR 198.44 (2) (g), (h), (k), (3) to (6)
 NR 198.50
 NR 198.51
 NR 198.52
 NR 198.53
 NR 198.60
 NR 198.61
 NR 198.62

VFF-EMT 1 (title)
 VFF-EMT 1.01
 VFF-EMT 1.02
 VFF-EMT 1.03 (6m), (9), (14), (20)
 VFF-EMT 1.04 (1), (3), (4), (5)
 VFF-EMT 1.06 (1) (a)
 VFF-EMT 1.07 (6)
 VFF-EMT 1.08 (title), (1), (3)
 VFF-EMT 1.10 (2)

**Volunteer Fire Fighters, First Responders
 and Emergency Medical Technicians Service
 Award Board**

Ch. VFF-EMT 1

Workforce Development

Ch. DWD 290
 DWD 290.155 (1)

Editorial Corrections

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

Commerce

Ch. Comm 18
 Comm 18.1705 (1)

NR 25.02 (44)
 NR 25.09 (1) (am)
 NR 25.13 (4), (5) (c)

Chapter NR 195

NR 195.02 (1)
 NR 195.03 (7), (15)

Insurance

Ch. Ins 17
 Ins 17.01 (2) (e)
 Ins 17.25 (5) (c), (n), (8) (a)
 Ins 17.28 (6) (o)

**Volunteer Fire Fighters, First Responders
 and Emergency Medical Technicians Service
 Award Board**

Ch. VFF-EMT 1
 VFF-EMT 1.03 (5), (16)

Natural Resources

Ch. NR 25

Public Notices

Department of Health Services (Medical Assistance Reimbursement of Nursing Homes) State of Wisconsin Medicaid Nursing Facility Payment Plan: FY 09–10

The State of Wisconsin reimburses Medicaid–certified nursing facilities for long–term care and health care services provided to eligible persons under the authority of Title XIX of the Federal Social Security Act and ss. 49.43 to 49.47, Wisconsin Statutes. This program, administered by the State’s Department of Health Services, is called Medical Assistance (MA) or Medicaid. Federal Statutes and regulations require that a state plan be developed that provides the methods and standards for setting payment rates for nursing facility services covered by the payment system. A plan that describes the nursing home reimbursement system for Wisconsin is now in effect as approved by the Centers for Medicare and Medicaid Services (CMS).

The Department is proposing changes in the methods of payment to nursing homes and, therefore, in the plan describing the nursing home reimbursement system. The changes are effective July 1, 2009. Some items may require legislative action and approval.

The proposed changes would update the payment system and make various payment–related policy changes. Some of the changes are necessary to implement various budget policies in the Wisconsin 2009–2011 Biennial Budget. Some of the changes are technical in nature; some clarify various payment plan provisions.

The estimated increase in annual aggregate expenditures attributable to these changes for nursing homes serving MA residents is approximately \$50,176,900 all funds, (\$35,347,475 FFP), excluding patient liability.

The proposed changes are being implemented to comply with Wisconsin Statutes governing Medicaid payment systems, particularly s. 49.45 (6m), Wis. Stats. This notice represents information known as of June 10, 2009.

The proposed changes are as follows:

1. Modify the methodology to adjust the reimbursement for nursing homes within the parameters of 2009–2011 Biennial Budget Bill and to disburse the \$50,176,900 allotted in the bill to a rate increase of approximately 2% for nursing homes and 2% for ICF–MRs. These modifications will include adjustments to the maximums, per diems, and other payment parameters in Sections 5.400, 5.500, 5.700, 5.800 and 5.900, the inflation and deflation factors in Section 5.300, and targets in Sections 3.000 and 5.000.
2. Modifying references to previous years for descriptive reasons will be done where necessary.
3. Modify the labor factors listed in Section 5.410.
4. Change the dates of the definitions of base cost reporting period, common period, and rate payment year in Sections 1.302, 1.303, and 1.314 to reflect the 2009–2010 period.
5. Modify contact names and addresses.
6. Modify Section 2.140 to specify which residents will be included in the quarterly patient–day census.
7. Delete Sections 3.657 and 5.960 regarding Pressure Sore Prevention Incentive.
8. Replace the Behavior / CI Allowance with a Provider Incentive. The new Incentive shall be based on the Medicaid FFS residents’ behavioral scores from the cost report period. Revise Sections 2.140, 2.7000, 3.122, 3.127, 3.128 and 5.460 and create a new sub–section in Section 3.600 accordingly.
9. Delete Section 1.400 and any reference to Nursing Home Appeals Board.
10. Modify Section 3.510 to identify nominal asset value on purchase.
11. Modify Section 3.050 to exclude all restricted use beds from rate setting.
12. Modify Sections 3.775 and 3.780 to reflect possible changes in the calculation of the Medicare Upper Limit. The calculation should reflect that the Supplemental Payment will use the CPE’s methodology of adjusting for case mix.

13. Modify Section 3.124 to reflect the calculation of the direct care allowance by comparing the case–mix–neutral (CMN) Nursing Services Expense to a range of Nursing Services Targets.
14. Create a section to define a three–year moving average of the labor factors in Section 5.410.
15. Modify sections 1.282, 3.801, 6.310, 6.320 concerning medical transportation.
16. Modify Section 5.940, the Medicaid Access Incentive.
17. Modify Sections 3.122, 3.532, 3.655, and 4.920 to better define a 50–bed facility.
18. Modify 2.250 to re–define amounts payable under Administrative and General Services.

Copies of the Proposed Changes

Copies of the available proposed changes and proposed rates may be obtained free of charge by writing to:

Division of Long Term Care
Attention: Nursing Home Medicaid Payment Plan
P.O. Box 7851
Madison, WI 53703–7851
or by faxing James Cobb at 608–264–7720.

Written Comments/Meetings

Written comments on the proposed changes may be sent to the Division of Long Term Care, at the above address. The comments will be available for public review between the hours of 7:45 a.m. and 4:30 p.m. daily in Room B274 of the State Office Building, 1 West Wilson Street, Madison, Wisconsin. Revisions may be made in the proposed changes based on comments received. There will also be public meetings to seek input on the proposed plan amendment. If you would like to be sent a public meeting notice, please write to the above address. Revisions may, also, be made in the proposed changes based on comments received at these forums.

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