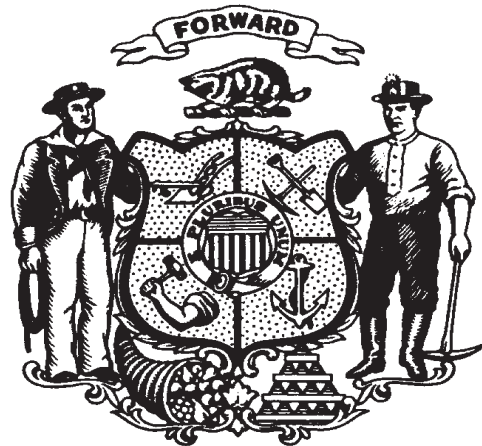


# Wisconsin Administrative Register

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## WISCONSIN ADMINISTRATIVE REGISTER

The Wisconsin Administrative Register is published twice monthly by the Legislative Reference Bureau.

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

#### Finding of Emergency

On July 24, 2009, APHIS identified emerald ash borer in Brown County. On August 12, 2009, APHIS identified emerald ash borer in Kenosha County. Emerald ash borer is an exotic pest that poses a dire risk to the ash forest. When APHIS declares quarantine, DATCP has regulatory authority for import controls and quarantine for emerald ash borer under ATCP 21.17. It is anticipated that APHIS will declare quarantines for Brown County and Kenosha County but that it will take up to six weeks for APHIS to act. A six week delay until enactment of the federal quarantines leaves too much time for businesses or individuals to move potentially emerald ash borer infested material out of the county to areas of Wisconsin or other states that are not infested with emerald ash borer.

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

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

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

#### Finding of Emergency

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

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

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

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### Commerce

#### Fee Schedule, Ch. Comm 2

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

#### Finding of Emergency

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

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

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

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

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

5. The current department plan review fees and inspection fees under s. Comm 2.68 reflect an estimated average time



and cost to provide those services. For the types of pool and water attraction modifications necessary to comply with the Virginia Graeme Baker Pool and Spa Safety Act, the department believes that the time and cost to provide the service will be below the averages reflected under the current fee structure of section Comm 2.68.

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

**Expected Publication Date: January 1, 2010**

**Hearing Date: January 21, 2010**

(See the Notice in this Register)

## Commerce

### *Uniform Dwelling, Chs. Comm 20–25*

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

#### Finding of Emergency

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

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

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

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

4. Previous versions of REScheck, including Version 4.1.0, do not meet nor support the requirements of Wisconsin’s current energy code. In fact, Version 4.1.0 includes other values, such as gross wall trade-offs and appliance credits that

are not included in chapter Comm 22 that became effective April 1, 2009.

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

**Publication Date: September 5, 2009**

**Effective: September 5, 2009 through February 1, 2010**

**Hearing Date: October 21, 2009**

## Commerce (2)

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

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

#### Exemption From Finding of Emergency

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

**Publication Date: June 30, 2009**

**Effective: June 30, 2009 through July 1, 2010 or the date permanent rules take effect, whichever is sooner**

**Hearing Date: September 15, 2009**

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

#### Finding of Emergency

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

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

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

**Publication Date:** November 9, 2009  
**Effective:** November 9, 2009 through  
 April 7, 2010

### Corrections

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

#### Finding of Emergency

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

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

Under the current rule, an inmate may only use release account funds for "adequate clothing for release" and for "out-of-state release transportation." In addition, the rule limits the maximum amount of money which can be saved in the release account to \$500.00. The emergency rule immediately permits the use of release account money for a wide variety of purchases, including fees associated with obtaining a driver's license or state identification card, housing, and a mode of transportation (bus tickets, vehicle, bicycle, etc.). In the past the Department has borne some of these costs, despite an inmate having the money in his or her release account. Given the initiatives of reentry and release, an inmate should be responsible for these expenditures.

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

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

**Publication Date:** September 10, 2009  
**Effective:** September 10, 2009  
 through February 6, 2010  
**Hearing Date:** October 14, 2009

### Health Services

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

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

#### Exemption From Finding of Emergency

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

**Publication Date:** December 16, 2009  
**Effective:** December 16, 2009  
 through May 14, 2010  
**Hearing Date:** February 3, 2010

(See the Notice in this Register)

### Health Services

*Health, Chs. DHS 110—*

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

#### Finding of Emergency

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

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

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

States that promulgate rules that conform to the EPA standards on or before October 22, 2009, may accept

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

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

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### Insurance (5)

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

#### Finding of Emergency

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

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

If these new Act 28 requirements apply to commercial liability insurance and commercial umbrella policies which insure only hired and non-owned automobiles ("HNO") under the policy, this creates a significant problem. Some of these insurers do not have authority to write auto insurance which is needed to write uninsured ("UM") and underinsured coverage ("UIM"). Other insurers offering the commercial umbrella and commercial liability HNO have not ever written UM/UIM coverages because the current rules exempt them. Insurers have also stated that obtaining reinsurance for this is a problem.

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

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

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

#### Exemption From Finding of Emergency

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

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

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

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

#### Exemption From Finding of Emergency

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

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

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

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

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



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

#### Finding of Emergency

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

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

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

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

#### Finding of Emergency

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

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

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

(See the Notice in this Register)

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### Natural Resources

*Fish, Game, etc., Chs. NR 1—*

- EmR0914** — Rule adopted to revise **Chapter NR 10**, relating to hunting and the 2009 migratory game bird seasons and waterfowl hunting zones.

#### Finding of Emergency

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to protect the public welfare. The federal government and state legislature have delegated to the appropriate agencies

rule-making authority to control the hunting of migratory birds. The State of Wisconsin must comply with federal regulations in the establishment of migratory bird hunting seasons and conditions. Federal regulations are not made available to this state until mid-August of each year. This order is designed to bring the state hunting regulations to conformity with the federal regulations. Normal rule-making procedures will not allow the establishment of these changes by September 1. Failure to modify our rules will result in the failure to provide hunting opportunity and continuation of rules which conflict with federal regulations.

**Publication Date:** August 22, 2009  
**Effective:** September 1, 2009 through January 28, 2010  
**Hearing Date:** November 4, 2009

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### Natural Resources

*Environmental Protection — Water Regulation,  
 Chs. NR 300—*

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

#### Finding of Emergency

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

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

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

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### Public Instruction (3)

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

#### Exemption From Finding of Emergency

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

**Publication Date:** September 1, 2009  
**Effective:** September 1, 2009 through January 28, 2010

(Except Section 1)

**Effective:** October 1, 2009 through February 27, 2010  
**Hearing Date:** October 26, 2009

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

#### Exemption From Finding of Emergency

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

**Publication Date:** September 4, 2009  
**Effective:** September 4, 2009 through January 31, 2010  
**Hearing Date:** November 9, 2009

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

#### Finding of Emergency

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

The tribal language revitalization grant program under s. 115.745, Stats., was created under 2009 Wisconsin Act 28. The Act became effective June 30, 2009, and appropriated \$247,500 annually beginning in the 2009–10 school year. In order for school districts to develop applications and for the department to review the applications and grant awards in time for the program to operate in the second semester of the school year, rules must be in place as soon as possible to establish application criteria and procedures.

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

(See the Notice in this Register)

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### Public Service Commission

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

#### Finding of Emergency

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

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

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### 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

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### Revenue (4)

1. **EmR0912** — Rule adopted revising **Chapter Tax 2**, relating to combined reporting for corporation franchise and income tax purposes.

#### Finding of Emergency

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

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

**Publication Date:** August 8, 2009  
**Effective:** August 8, 2009 through  
 January 4, 2010  
**Hearing Dates:** September 25, 2009 and  
 October 16, 2009

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

#### Finding of Emergency

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

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

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

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

#### Finding of Emergency

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

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

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

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

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

#### Finding of Emergency

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

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

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

**Publication Date:** December 22, 2009  
**Effective:** December 22, 2009  
 through May 20, 2010

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### Veterans Affairs

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

#### Finding of Emergency

The Wisconsin Department of Veterans Affairs finds that an emergency exists and that the rules are necessary for the immediate preservation of the public peace, health, safety, or welfare. A statement of facts constituting the emergency is: The economic recession in effect for the last fiscal year has adversely affected the veteran population. Many veterans

have lost their employment or had their scope of employment reduced. In addition to losing employment, many veterans have seen their health care reduced or eliminated. In order to serve the largest population of veterans and ensure minimal health care for that population, the department is requesting emergency rules to define “vision care and to limit the eligibility, by available funding, for “dental care”, “hearing care”, and “vision care”. These eligibility limitations, which address the cost, type and frequency of care available under

the program, will allow more veterans in need to access the limited resources of this program.

**Publication Date:** July 1, 2009  
**Effective:** July 1, 2009 through  
November 27, 2009  
**Extension Through:** January 26, 2010  
**Hearing Date:** August 14, 2009



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## Scope Statements

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### Agriculture, Trade and Consumer Protection

#### Subject

Revises Chapter ATCP 34, relating to the Chemical and Container Collection (“Clean Sweep”) Program.

#### Objective of the Rule

Update and clarify current rules related to Wisconsin’s “Clean Sweep” program. Among other things, this rule will implement statutory changes authorizing a “Clean Sweep” program for the collection and disposal of unwanted prescription drugs.

#### Policy Analysis

DATCP has operated an agricultural “Clean Sweep” grant program since 1990. The “Clean Sweep” program has helped county and local governments to collect and dispose of over 3 million pounds of farm chemical wastes.

2003 Wis. Act 33 transferred the state’s household “Clean Sweep” grant program (for the collection of hazardous household wastes) from the Department of Natural Resources to DATCP. In 2004, DATCP consolidated the household “Clean Sweep” program with the agricultural program. Since then, “Clean Sweep” grants have helped county and local governments to collect and dispose of over 5 million pounds of household hazardous wastes.

Under the “Clean Sweep” program, DATCP distributes grants to county and local governments for hazardous waste collection events (or permanent collection sites). Funded projects accept farm and household hazardous wastes from end-users and from certain businesses such as agricultural dealers and golf courses (“very small quantity generators”).

2007 Wis. Act 20 authorized DATCP to expand the “Clean Sweep” grant program to include grants for county and local projects to collect unwanted prescription drugs. DATCP has implemented a pilot prescription drug program, and now proposes to develop rules for a more “permanent” program.

This rule may do all of the following:

- Create a “Clean Sweep” component program for prescription drugs that is consistent with federal and state laws related to prescription drugs and controlled substances.
- Clarify procedures under the entire “Clean Sweep” program, including procedures related to grant applications, grant approval, grant contracts, reporting requirements, reimbursement procedures, selection of hazardous waste handlers, and other matters.
- Make other changes, as necessary, to improve the administrative and operational efficiency of the “Clean Sweep” program.

#### Policy Alternatives

No change. If DATCP takes no action, current rules will remain in effect. There will be no rules for the prescription drug “Clean Sweep” program, and rules for other parts of the

“Clean Sweep” program will be outdated. This will cause confusion and inhibit effective administration of the “Clean Sweep” program.

#### Statutory Alternatives

Amend s. 93.57, Stats., to delete the authorization for a prescription drug “Clean Sweep” program.

#### Statutory Authority

Sections 93.07, 93.55, and 93.57, Wis. Stats.

#### Comparison with Federal Regulations

The United States Environmental Protection Agency (EPA) administers the Resource Conservation and Recovery Act (RCRA), which includes regulations affecting the collection, movement, and disposal of hazardous agricultural and household waste. EPA has also adopted universal waste management rules under 40 CFR 273. Wisconsin’s “Clean Sweep” grantees and vendors must comply with all applicable RCRA and universal waste provisions.

Prescription drugs that are controlled substances are regulated under the federal Controlled Substance Act (21 USC 801) and the Controlled Substances Import and Export Act (21 USC 951). Wisconsin’s prescription drug “Clean Sweep” program must comply with these and related federal laws.

#### Entities Affected by the Rule

This rule may affect the following persons and entities, among others:

- Local governments (counties, municipalities and regional planning commissions) and tribal nations who are eligible to apply for and receive “Clean Sweep” grants.
- Farmers.
- Homeowners and residential tenants.
- Business that generate very small quantities of hazardous wastes.

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

DATCP estimates that it will use approximately 1.0 FTE staff to develop this rule. This includes time required for investigation and analysis, rule drafting, preparing related documents, coordinating advisory committee meetings, holding public hearings and communicating with affected persons and groups. DATCP will use existing staff to develop this rule.

DATCP may not begin drafting this rule until the Board of Agriculture, Trade and Consumer Protection (Board) approves this scope statement. The Board may not approve this scope statement sooner than 10 days after this scope statement is published in the Wisconsin Administrative Register. If the Board takes no action on the scope statement within 30 days after the scope statement is presented to the Board, the scope statement is considered approved. Before DATCP holds public hearings on this rule, the Board must approve the hearing draft. The Board must also approve the final draft rule before the department adopts the rule.

## Agriculture, Trade and Consumer Protection

### Subject

Revises Chapter ATCP 69, relating to buttermaker licensing.

### Objective of the Rule

This rule may modify current training and examination requirements for licensed buttermakers under ch. ATCP 69, Wis. Adm. Code. Wisconsin is currently facing a shortage of licensed buttermakers. This rule may modify current training and examination requirements, and create new options to facilitate the training and licensing of qualified buttermakers.

### Policy Analysis

DATCP administers Wisconsin's buttermaker licensing program under ch. 97.17, Wis. Stats. DATCP has adopted licensing rules under ch. ATCP 69, Wis. Adm. Code. There have been few changes in the current program since 1929.

Under current law, butter must be made by or under the supervision of a licensed buttermaker. However, there are currently only 38 licensed buttermakers in the state. There is a growing national market for butter. Without more licensed buttermakers, Wisconsin's butter industry will be at significant risk and may be unable to take advantage of new market opportunities.

Under current rules, an applicant for a buttermaker license (*other than* a renewal applicant) must pass an examination. Every applicant (*including* a renewal applicant) must have at least one of the following qualifications:

- The applicant has been licensed as a buttermaker for at least 10 years.
- The applicant has worked directly under a licensed buttermaker for at least 24 months.
- The applicant has worked directly under a licensed buttermaker for at least 18 months and has completed a DATCP-approved training course from an accredited post-secondary institution.
- The applicant has obtained a 4-year degree in food science (or an equivalent major) from an accredited post-secondary educational institution, and has worked directly under a licensed buttermaker for at least 12 months.

This rule may provide more flexible training and examination options to facilitate the training and licensing of qualified buttermakers. DATCP will develop this rule in consultation with the Wisconsin dairy industry, including the emerging artisan and farmstead buttermaking industry. DATCP will also consult with the University of Wisconsin and other institutions. This rule may take advantage of new training resources and technologies that were not previously available.

This rule will promote the development and diversification of Wisconsin's dairy industry. It will allow more people to enter the industry as licensed buttermakers, including makers of artisan and farmstead butter. It will help relieve an acute shortage of licensed buttermakers, which is putting the state's entire butter industry at risk. It will also ensure the safety and quality of Wisconsin butter, and maintain Wisconsin's reputation as a dairy leader, by ensuring that buttermakers are adequately trained and qualified.

### Policy Alternatives

If DATCP takes no action, current rules will remain in effect. Current rules may unnecessarily limit buttermaker licensing, which may in turn limit the development and diversification of Wisconsin's dairy industry.

There are no statutory alternatives at this time.

### Statutory Authority

Sections 93.07 (1), 97.17 and 227.24, Wis. Stats.

### Comparison with Federal Regulations

The United States food and drug administration has adopted food safety and labeling standards for butter, including a butter "standard of identity" (a product such as margarine may not be sold as "butter"). The United States department of agriculture has adopted grading standards for butter. This rule will not be directly affected by federal rules. However, licensed buttermakers must be aware of relevant federal rules.

### Entities Affected by the Rule

#### *Buttermakers*

This rule may offer more flexible training and licensing options for current and prospective buttermakers. That may, in turn, increase the total number of licensed buttermakers in the state.

#### *Cheesemakers*

This rule may make it easier for licensed cheesemakers to obtain a buttermaker license. That may give them more job flexibility, and provide more opportunities for value-added dairy enterprise.

#### *Dairy Industry*

This rule will promote the development and diversification of Wisconsin's dairy industry. It will allow more people to enter the industry as licensed buttermakers, including makers of artisan and farmstead butter. It will help relieve an acute shortage of licensed buttermakers, which is putting the state's entire butter industry at risk. It will also ensure the safety and quality of Wisconsin butter, and maintain Wisconsin's reputation as a dairy leader, by ensuring that buttermakers are adequately trained and qualified.

### Estimate of Time Needed to Develop the Rule

DATCP estimates that it will use the equivalent of 0.5 FTE staff to revise this rule. This anticipates a 6 month period for investigation and analysis, rule drafting, preparing related documents, coordinating advisory committee meetings, holding public hearings and communicating with affected persons and groups. DATCP will use existing staff to develop this rule.

DATCP may not begin drafting this rule until the Board of Agriculture, Trade and Consumer Protection (Board) approves this scope statement. The Board may not approve this scope statement sooner than 10 days after this scope statement is published in the Wisconsin Administrative Register. If the Board takes no action on the scope statement within 30 days after the scope statement is presented to the Board, the scope statement is considered approved. Before DATCP holds public hearings on this rule, the Board must approve the hearing draft. The Board must also approve the final draft rule before the department adopts the rule.

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

Creates Chapter Comm 101, relating to tax credits for jobs and training.

**Objective of the Rule**

This rulemaking would create chapter Comm 101 for administering the jobs tax credit established in sections 71.07 (3q), 71.28 (3q), 71.47 (3q) and 560.2055 of the Statutes, as enacted in 2009 Wisconsin Act 28.

**Policy Analysis**

The Department has various rules for administering several economic development programs, but those rules do not specifically include the expected rule text for earning refundable business tax credits by increasing net employment that is either high-paying or is accompanied with employee training.

Section 560.2055 (5) (f) of the Statutes requires the Department to promulgate these rules. The alternative of not promulgating these rules would disregard that directive.

**Statutory Authority**

Sections 227.11 (2) (a) and 560.2055 (5) (f).

**Comparison with Federal Regulations**

In researching federal tax incentives, the Department and the Department of Revenue found that there are no tax credits at the federal level that are exactly like the corresponding credit in sections 71.07 (3q), 71.28 (3q), 71.47 (3q) and 560.2055 of the Statutes. The following federal tax credit may apply to the activities that will be addressed by the proposed rules, but this federal tax credit is structured differently than the credit in sections 71.07 (3q), 71.28 (3q), 71.47 (3q) and 560.2055 of the Statutes.

Job creation that would be eligible for tax benefits under the proposed rules may qualify for the federal consolidated Work Opportunity Tax Credit – which includes tax credits for an employer that hires an individual who is (1) a qualifying Hurricane Katrina employee, (2) a member of a qualifying family with long-term or recent receipt of Temporary Assistance to Needy Families payments, (3) a qualifying food stamp recipient, (4) a qualifying veteran, (5) a qualifying ex-felon, (6) a resident of a designated community, (7) a qualifying summer youth employee, (8) a qualifying recipient of vocational rehabilitative services, or (9) a qualifying recipient of Supplemental Security income.

**Entities Affected by the Rule**

These rules may affect any business that elects to pursue refundable business tax credits for increasing net employment which is either high-paying or is accompanied with employee training.

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

The staff time needed to develop the rules is expected to range from 120 to 180 hours, depending upon the associated complexity. This includes research, rule drafting, and processing the rules through public hearings, legislative review, and adoption. There are no other resources necessary to promulgate the rules.

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

Creates Chapter Comm 102, relating to the Wisconsin Enterprise Zone program.

**Objective of the Rule**

This rulemaking would create chapter Comm 102 for establishing definitions in the enterprise zone program administered by the Department under section 560.799 of the Statutes, as modified by 2009 Wisconsin Acts 11 and 28. This rulemaking may also include codifying other practices related to administering this program.

**Policy Analysis**

The Department has various permanent rules for administering several economic development programs, but those rules do not currently include the expected rule text for (1) defining an original equipment manufacturer with a significant supply chain in Wisconsin, (2) defining full-time employee, and (3) defining tier I and tier II counties and municipalities.

The definition of full-time employee is expected to be consistent with the definition of this term that the Department plans to create in chapter Comm 100 for consolidating five of the Department's development-zone tax-credit programs into a single, statewide program.

The definitions of tier I and tier II counties and municipalities are expected to be consistent with the definitions of these terms that the Department plans to create in chapter Comm 101 for the jobs tax credit addressed in section 560.2055 of the Statutes.

Section 560.799 (6) (g) of the Statutes requires the Department to promulgate these rules. The alternative of not promulgating these rules would disregard that directive.

**Statutory Authority**

Sections 227.11 (2) (a) and 560.799 (6) (g), Stats.

**Comparison with Federal Regulations**

In researching federal tax incentives, the Department and the Department of Revenue found that there are no tax credits at the federal level which are exactly like the enterprise zone tax credit in sections 71.07 (3w), 71.28 (3w), 71.47 (3w) and 560.799 of the Statutes. The following federal tax credit may apply to some of the activities that may be addressed by the proposed rules, but this federal tax credit is structured differently than the credit in these sections of the Statutes.

Job creation that would be eligible for tax credits under the proposed rules may qualify for the federal consolidated Work Opportunity Tax Credit – which includes tax credits for an employer that hires an individual who is (1) a qualifying Hurricane Katrina employee, (2) a member of a qualifying family with long-term or recent receipt of Temporary Assistance to Needy Families payments, (3) a qualifying food stamp recipient, (4) a qualifying veteran, (5) a qualifying ex-felon, (6) a resident of a designated community, (7) a qualifying summer youth employee, (8) a qualifying recipient of vocational rehabilitative services, or (9) a qualifying recipient of Supplemental Security income.

**Entities Affected by the Rule**

These rules may affect any business that elects to pursue tax credits for qualifying activities in an enterprise zone designated by the Department. The qualifying activities



include beginning or expanding operations in, relocating to, or making significant capital expenditures in the zone.

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

The staff time needed to develop the rules is expected to range from 40 to 80 hours, depending upon the associated complexity. This includes research, rule drafting, and processing the rules through public hearings, legislative review, and adoption. There are no other resources necessary to promulgate the rules.

## **Commerce**

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

#### **Subject**

Revises Chapter Comm 133, relating to the Film Production Accreditation program.

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

The intended rules would update this chapter to make it consistent with the portions of 2009 Wisconsin Act 28 that address this program. Those portions consist of changes to sections 71.07 (5f) and (5h), 71.28 (5f) and (5h), and 71.47 (5f) and (5h) of the Statutes. This rulemaking may also include clarifying or updating the current rules to make them consistent with current industry and administrative practices.

#### **Policy Analysis**

The Department's current rules for tax credits for film productions address (1) the eligibility requirements for film productions to become accredited, (2) the documentation that must be submitted to receive accreditation and to receive acceptance of incurred expenses which are related to tax credits for producing a film production in Wisconsin, (3) the documentation that must be submitted to receive acceptance of incurred expenses which are related to tax credits for establishing a film production company in Wisconsin, (4) the Department's response to the submitted documentation, and (5) use of the Department's response when filing claims with the Department of Revenue for the corresponding tax credits.

The new rules are expected to include (1) narrowing the eligible productions to include only those with at least 35% of their budget spent in Wisconsin, (2) limiting the maximum tax credit in each year to \$500,000, (3) expanding the credits to include expenses for operating a film production company in Wisconsin, and (4) imposing an application fee.

The alternative of not promulgating these rules would cause this chapter to remain inconsistent with the current Statutes.

#### **Statutory Authority**

Sections 227.11 (2) (a) and 560.206 (4), Stats.

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

Neither the Department nor the Department of Revenue is aware of any existing or proposed federal regulation that addresses these tax credits.

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

The proposed rules may affect any entity that elects to pursue tax credits for expenses relating to film production services or to establishing or operating a film production company.

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

The staff time needed to develop the rules is expected to range from 120 to 180 hours, depending upon the associated complexity. This includes research, rule drafting, and processing the rules through public hearings, legislative review, and adoption. There are no other resources necessary to promulgate the rules.

## **Regulation and Licensing**

#### **Subject**

Revises Chapter RL 7, relating to the Impaired Professionals Procedure (IPP).

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

The Department of Regulation and Licensing established a task force to review the Impaired Professionals Procedure (IPP), which is designed to protect the public from credential holders who are impaired by reason of their abuse of alcohol or other drugs. The IPP Task Force created recommendations that have been reviewed by the department, boards and affiliated credentialing boards.

#### **Policy Analysis**

Revisions to modernize and improve the IPP will be based on the task force recommendations, the consultation provided by boards, and additional considerations that may be raised during the rule-making process, including available resources.

#### **Statutory Authority**

Sections 15.08 (5) (b), 51.30, 146.82, 227.11 (2) and 440.03, Stats.

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

There is none.

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

The Department of Regulation and Licensing, examining and affiliated examining boards attached to the department, boards and affiliated credentialing boards, licensed professionals, applicants, employers of licensed professionals, and entities engaged to perform monitoring and evaluation services on behalf of the department.

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

200 hours.

## **Transportation**

#### **Subject**

Creates Chapter Trans 198, relating to convenience fees for credit card, debit card, and other electronic payment methods.

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

2009 Wis. Act 28 allows the Department to accept payments by credit card, debit card, or any other electronic payment mechanism, for fees required to be paid to the Department under chs. 194, 218, 341, 342, 343, or 348, Stats., which are motor vehicle statutes.

Section 85.14, Stats., permits the Department to charge a convenience fee for transactions paid by these methods, in an amount to be established by rule. The convenience fee shall approximate the cost to the Department for providing this service to persons who request it.

This rule making, creating ch. Trans 198, establishes the Department's interpretation of ss. 85.14 and 20.395 (5) (cg), Stats., and establishes the method that the convenience fee is determined and published.

The proposed rule will consolidate all Division of Motor Vehicles rules relating to convenience fees for credit card, debit card, and other electronic payment methods. Therefore, this rule making will relocate into the proposed rule the provisions that are currently established as sections Trans 196.04 (1) (d) and 250.04.

#### **Policy Analysis**

The Department has currently established a convenience fee for internet registration renewal and internet application of oversize/overweight permits. The convenience fee is determined by the Department annually based on the cost of providing the service, up to a maximum amount stated in the rule, and the fee is published on the Department's web site and in communications that the Department sends to the generally affected populations.

The Department will use similar methodology for this rule.

The Department would like to establish a convenience fee amount that is as uniform as possible, and yet the Department also realizes the convenience fee amount should reasonably

relate to the product fee amount, as well as to the cost of providing electronic payment option.

In this rule making, the Department will determine the fee structure for the convenience fee. Examples of issues that the Department will consider: whether the various DMV fee transactions fall into categories which logically are charged a single categorical convenience fee; or whether certain transactions appropriately are removed from a categorical fee structure and instead charged a convenience fee that is a percentage of the DMV transaction amount; and to what degree costs associated with providing electronic payment are similar for different products.

#### **Statutory Authority**

Section 85.14 (1) (a), Stats.

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

No federal regulations relate to this rule making.

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

Wisconsin individuals and businesses that receive products from the Division of Motor Vehicles. Businesses that provide electronic payment methods.

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

120 hours

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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.*

## **Administration** **CR 09–114**

On December 15, 2009, the Department of Administration submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

### **Analysis**

The proposed order creates Chapter Adm 80, relating to administrative procedures for the Wisconsin Covenant Scholars Program.

2009 Wisconsin Act 28 requires the Department of Administration (DOA) to promulgate rules for the implementation of the Wisconsin Covenant Scholars Program and to submit proposed rules to Legislative Council staff no later than the first day of the twelfth month beginning after the effective date of the bill. The Act also requires DOA to promulgate rules establishing criteria for designation as a Wisconsin Covenant Scholar by the Office of the Wisconsin Covenant Scholars Program (OWCSP).

2007 Wisconsin Act 20 created s. 39.437, Wis. Stats., which provides grants to Wisconsin Covenant Scholars who are enrolled at least half-time at an eligible in-state institution. HEAB administers this program with the assistance of the OWCSP under s. 39.437, Wis. Stats.

### **Agency Procedure for Promulgation**

A public hearing is required and will be scheduled at a later date. The Office of the Wisconsin Covenant is primarily responsible for the promulgation of the proposed rule.

### **Contact Information**

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

Amy Bechtum, Director  
Office of the Wisconsin Covenant  
P.O. Box 7869  
Madison, WI 53707–7869  
Phone: (608) 261–8652  
E-Mail: Amy.Bechtum@wisconsin.gov

## **Commerce** **Fee Schedule, Ch. Comm 2** **CR 09–116**

On December 16, 2009, the Department of Commerce submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

## **Analysis**

The proposed order revises Chapter Comm 2, relating to public swimming pool and water attraction plan review and inspection fees.

### **Agency Procedure for Promulgation**

A public hearing is required and is scheduled for January 21, 2010. The Safety and Buildings Division is responsible for promulgation of the rule.

### **Contact Information**

James Quast, Program Manager  
Phone: (608) 266–9292  
Email: jim.quast@wisconsin.gov

## **Health Services** **Community Services, Chs. DHS 30—** **CR 09–109**

On December 11, 2009, the Department of Health Services submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

### **Analysis**

The proposed order revises Chapter DHS 75, relating to substance abuse counselors, clinical supervisors, and prevention specialists to reflect the transfer of credentialing authority for these professions from the Department to the Department of Regulation and Licensing (DRL) as required under 2005 Wisconsin Act 25, section 9121 (12s).

### **Agency Procedure for Promulgation**

A public hearing is scheduled for January 22, 2010.

### **Contact Information**

For substantive questions on rules contact:

S. Kate Johnson  
Bureau of Prevention, Treatment and Recovery  
1 West Wilson Street, Room 850  
Madison, WI 53704  
Phone: (608) 267–7707  
Email: SarahKate.Johnson@wisconsin.gov

Small Business Regulatory Review Coordinator:

Rosie Greer  
Phone: (608) 266–1279  
Email: greerrj@dhs.state.wi.us

## **Health Services** **Medical Assistance, Chs. DHS 101—** **Health, Chs. DHS 110—** **CR 09–107**

On December 4, 2009, the Department of Health Services submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

**Analysis**

The proposed order revises Chapters DHS 105, 106 and 133, relating to Medical Assistance certification of personal care agencies and providers.

**Agency Procedure for Promulgation**

A public hearing is scheduled for February 3, 2010.

**Contact Information**

For substantive questions on rules contact:

Al Matano  
Division of Health Care Access and Accountability  
P.O. Box 309  
Madison, WI 53702  
Email: alfred.matano@wisconsin.gov

Small Business Regulatory Review Coordinator:

Rosie Greer  
Phone: (608) 266-1279  
Email: greerrj@dhs.state.wi.us

**Health Services**

*Health, Chs. DHS 110—  
Economic Support, Chs. DHS 250—  
CR 09-115*

On December 16, 2009, the Department of Health Services submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

**Analysis**

The proposed order repeals Chapters DHS 117, 160 and 253, and revises Chapter DHS 172, relating to fees for copies of health care provider records, registration of sanitarians, child support cooperation for food stamps, and safety, maintenance and operation of public swimming pools and water attractions, and affecting small businesses.

**Agency Procedure for Promulgation**

The Department will adopt the rules as proposed without public hearing unless within 30 days after publication of the notice of no hearing in the Wisconsin Administrative Register on January 1, 2010, the Department of Health Services is petitioned for a public hearing by 25 natural persons who will be affected by the rule; a municipality which will be affected by the rule; or an association which is representative of a farm, labor, business or professional group which will be affected by the rule.

**Contact Information**

For substantive questions on rules contact:

Rosie Greer  
Department of Health Services  
Phone: (608) 266-1279  
Email: greerrj@dhs.state.wi.us

Small Business Regulatory Review Coordinator:

Rosie Greer  
Department of Health Services  
Phone: (608) 266-1279  
Email: greerrj@dhs.state.wi.us

For additional information, please contact:

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

**Natural Resources**

*Environmental Protection — General, Chs. NR 100—  
CR 09-112*

On December 15, 2009, the Department of Natural Resources submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

**Analysis**

The proposed order revises Chapters NR 151, 153 and 155, relating to runoff management, targeted runoff management grant program, and urban nonpoint source water pollution abatement and storm water management grant program.

**Agency Procedure for Promulgation**

Public hearings are required and will be scheduled at a later date.

**Contact Information**

Carol Holden, Runoff Management Section, DNR  
P.O. Box 7921  
Madison, WI 53707  
Phone: (608) 266-0140  
Email: carol.holden@wisconsin.gov

**Tourism**

**CR 09-111**

On December 11, 2009, the Department of Tourism submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

**Analysis**

The proposed order creates Chapter Tour 3 relating to grants to municipalities and organizations for regional tourist information centers created under 2009 Wisconsin Act 28.

Section 41.16 (3) (c), Wis. Stats., requires the Department to promulgate rules to administer the grants under this section, including the preparation of an application form.

Under the proposed rule, tourist information centers may apply for a grant to seek reimbursement for up to 50 percent of eligible costs. The proposed rule identifies the eligible costs, application procedures, contracts and reporting requirements.

**Agency Procedure for Promulgation**

A public hearing is required but has not yet been scheduled for this proposed rule. The Office of the Secretary is primarily responsible for the promulgation of the proposed rule.

**Contact Information**

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

Laura Muenich, Budget and Policy Analyst  
Department of Tourism  
201 W. Washington Avenue, 2<sup>nd</sup> Floor  
P.O. Box 8690  
Madison, WI 53708-8690  
Telephone: (608) 261-8764  
E-Mail: lmuenich@travelwisconsin.com



**Transportation**  
**CR 09-113**

On December 16, 2009, the Department of Transportation submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

**Analysis**

The proposed order creates Chapter Trans 148, relating to electronic recording and release of liens by non-individual creditors.

**Agency Procedure for Promulgation**

A public hearing is required and is scheduled for January 29, 2010. The Division of Motor Vehicles Bureau of Vehicle Services is primarily responsible for promulgation of the rules.

**Contact Information**

Julie A. Johnson, Paralegal

Phone: (608) 267-3703

Email: Julie1.Johnson@wisconsin.gov

**Workforce Development**  
**Labor Standards, Chs. DWD 270-279**  
**CR 09-110**

On December 14, 2009, the Department of Workforce Development submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

**Analysis**

The proposed order creates Chapter DWD 273, relating to the regulation of traveling sales crews, which involves the employment of groups of persons as salespersons who travel to a variety of locations and sell consumer goods or services door to door.

**Agency Procedure for Promulgation**

A public hearing is required and will be held on January 20, 2010. The DWD Equal Rights Division is the organizational unit that is primarily responsible for promulgation of the rule.

**Contact Information**

Howard Bernstein, DWD Legal Counsel

Phone: (608) 266-9427

Email: howard.bernstein@dwd.wisconsin.gov

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## Rule–Making Notices

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### Notice of Hearings

#### Agriculture, Trade and Consumer Protection

CR 09–105

(2nd Printing)

The Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) announces that it will hold public hearings on a proposed rule to revise Chapter ATCP 92, Wis. Adm. Code, relating to weights and measures licensing and fees.

#### Hearing Information

DATCP will hold the public hearings at the times and locations shown below.

##### Monday, January 11, 2010

10:00 a.m. to 12:00 p.m.

Dept. of Agriculture, Trade and Consumer Protection  
2811 Agriculture Drive, Board Room (CR–106)  
Madison, Wisconsin 53718–6777

##### Tuesday, January 12, 2010

10:30 a.m. to 12:30 p.m.

Marathon County Public Library – Wausau Library  
300 North First Street  
Wausau, Wisconsin 54403

##### Friday, January 15, 2010

11:00 a.m. to 1:00 p.m.

Havenwoods State Forest  
6141 North Hopkins Street  
Milwaukee, Wisconsin 53209–3565

Hearing impaired persons may request an interpreter for these hearings. Please make reservations for a hearing interpreter by January 8, 2010, by writing to Michelle Reinen, Division of Trade and Consumer Protection, P.O. Box 8911, Madison, WI 53708–8911, [Michelle.reinen@wi.gov](mailto:Michelle.reinen@wi.gov), telephone (608) 224–5160. Alternatively, you may contact the DATCP TDD at (608) 224–5058. Handicap access is available at the hearings.

#### Submission of Written Comments

DATCP invites the public to attend the hearing and comment on the rule. Following the hearing, the hearing record will remain open until Friday, January 29, 2010 for additional written comments. Comments may be sent to the division of Trade and Consumer Protection at the address below, by email to [michelle.reinen@wi.gov](mailto:michelle.reinen@wi.gov), or online at <https://apps4.dhfs.state.wi.us/admrules/public/Home>.

To provide comments or concerns relating to small business, you may also contact DATCP's small business regulatory coordinator Keeley Moll at the address above, or by emailing to [Keeley.Moll@datcp.state.wi.us](mailto:Keeley.Moll@datcp.state.wi.us) or by telephone at (608) 224–5039.

#### Copies of Proposed Rules

You may obtain a free copy of this rule, fiscal estimate, and business impact analysis by contacting the Wisconsin Department of Agriculture, Trade and Consumer Protection,

Division of Trade and Consumer Protection, 2811 Agriculture Drive, P.O. Box 8911, Madison, WI 53708. You can also obtain a copy by calling (608) 224–5160 or emailing [michelle.reinen@wi.gov](mailto:michelle.reinen@wi.gov). Copies will also be available at the hearings. To view the proposed rule online, go to <http://adminrules.wisconsin.gov>.

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

The Department of Agriculture, Trade and Consumer Protection (DATCP) administers state laws to ensure the accuracy of commercial weights and measures. DATCP adopts weights and measures rules, and licenses persons who operate or service weighing and measuring devices. DATCP may establish certain license fees and other fees by rule.

This rule modifies current DATCP weights and measures rules. Among other things, this rule implements 2009 Wis. Act 28 (biennial budget act). Act 28 changed state weights and measures laws, including laws related to vehicle scales, weights and measures service companies, vehicle tank meters and liquefied petroleum (LP) gas meters. Act 28 created new license requirements, and authorized DATCP to establish certain license fees and surcharges by rule. Act 28 also authorized DATCP to charge reinspection fees to help pay for reinspections made necessary by weights and measures law violations.

#### Statutes interpreted

Sections 93.06 (1p), 93.07 (1), 97.30 (3m) (c) 3., 98.03 (2), 98.16, 98.18, 98.224, 98.245 and 98.255, Stats.

#### Statutory authority

Sections 93.07 (1), 97.30 (5), 98.03 (2), 98.16 (4), 98.18 (2), 98.224 (4), 98.245 (9) and 98.255 (2), Stats.

#### Explanation of agency authority

##### General

DATCP has general authority, under s. 93.07 (1), Stats., to interpret laws under its jurisdiction. Under s. 93.06 (1p), Stats., DATCP may charge for certain services (including analytical services) provided in response to a voluntary request (in this case, fees to analyze and process voluntary requests for livestock scale construction variances).

##### Weights and Measures; General

DATCP administers ch. 98, Stats., related to commercial weights and measures. Under s. 98.03 (2), Stats., DATCP has broad authority to adopt rules governing the construction, installation and use of commercial weights and measures (including scales and other weighing and measuring devices).

##### Retail Food Establishments

DATCP licenses and inspects retail food establishments for food safety purposes under s. 97.30, Stats. However, DATCP also conducts weights and measures inspections of retail food establishments. Licensed establishments must pay an annual weights and measures fee under s. 97.30 (3m) (c) 3., Stats. DATCP may establish that fee by rule (s. 97.30 (5), Stats.).

##### Vehicle Scales

Vehicle scales are regulated by s. 98.16, Stats. Under s. 98.16 (as modified by Act 28), a vehicle scale operator must:

- Be annually licensed by DATCP and pay an annual license fee for each vehicle scale (DATCP may adjust license fees by rule).
- Pay a license fee surcharge for each vehicle scale if the operator is found operating that scale without a license (Act 28 authorizes DATCP to adjust that surcharge by rule).
- Obtain a permit from DATCP before installing or relocating a vehicle scale (Act 28 authorizes DATCP to charge a permit fee).
- Comply with scale construction standards, unless DATCP grants a variance (Act 28 authorizes DATCP to charge a fee for processing variance requests).
- Pay reinspection fees for reinspections made necessary by law violations (DATCP may adopt reinspection fees by rule under s. 98.255, Stats.).  
DATCP may adopt rules to establish and adjust fees, and regulate the construction and operation of vehicle scales (s. 98.16 (3), Stats.).

#### *Weights and Measures Service Companies and Technicians*

Section 98.18, Stats., regulates persons engaged in the business of installing, servicing, testing or calibrating scales and other weighing and measuring devices (weights and measures service companies). Under that section:

- Weights and measures service companies must:
  - Be annually licensed by DATCP and pay an annual license fee (DATCP may adjust license fees by rule).
  - Pay a license fee surcharge if the weights and measures service company is found operating without a license (DATCP is *not* authorized to adjust that surcharge by rule).
- DATCP may adopt rules to regulate weights and measures service companies and establish license fees (s. 98.18(2), Stats.).

DATCP rules currently exempt individual weights and measures technicians from licensing if they are employed by a licensed weights and measures service company. However, individual technicians must be certified for competence (there is a certification examination fee of \$25). A certification is good for 5 years.

#### *Vehicle tank meters*

Vehicle tank meters are regulated by s. 98.224, Stats., as created by Act 28. Under that section, a vehicle tank meter operator must:

- Be annually licensed by DATCP and pay an annual license fee for each vehicle tank meter (DATCP must establish license fees by rule). An operator must pay a license fee surcharge if the operator is found operating a vehicle tank meter without a license (DATCP may establish the surcharge by rule).
- Comply with testing and reporting requirements. An operator who fails to do so must pay a license fee surcharge that DATCP must establish by rule.
- Pay reinspection fees for reinspections made necessary by law violations (DATCP may adopt reinspection fees by rule under s. 98.255, Stats.).

DATCP may adopt rules to establish and license fees and surcharges; testing, reporting and recordkeeping requirements; and standards for the construction, operation and maintenance of vehicle tank meters (s. 98.16 (4), Stats.).

#### *LP Gas Meters*

LP gas meters are regulated by s. 98.245, Stats., as modified by Act 28. Under that section, LP gas meter operators must:

- Be annually licensed by DATCP and pay an annual license fee for each LP gas meter (DATCP must establish license fees by rule). An operator must pay a license fee surcharge if the operator is found operating an LP gas meter without a license (DATCP must establish the surcharge by rule).
- Comply with testing and reporting requirements. An operator who fails to do so must pay a license fee surcharge that DATCP must establish by rule.
- Pay reinspection fees for reinspections made necessary by law violations (DATCP may adopt reinspection fees by rule under s. 98.255, Stats.).

DATCP may adopt rules to establish and license fees and surcharges; testing, reporting and recordkeeping requirements; and standards for the construction, operation and maintenance of vehicle tank meters (s. 98.245 (9), Stats.).

#### *Reinspection Fees*

Under s. 98.255, Stats. (as created by Act 8), DATCP may charge a reinspection fee to cover DATCP reinspection costs incurred because of a law violation found on an initial inspection of a weight or measure (including a scale or other weighing or measuring device). DATCP may establish reinspection fee amounts by rule (s. 98.255 (2), Stats.). DATCP may specify different reinspection fees for different types of weighing or measuring devices. The fee for each type of device may not exceed DATCP's average cost to reinspect that type of device.

#### *Related statutes and rules*

Among other things, this rule establishes annual weights and measures fees for retail food establishments, which are licensed and regulated (for food safety purposes) under s. 97.30, Stats., and ch. ATCP 75, Wis. Adm. Code.

#### *Content of rule*

The Department of Agriculture, Trade and Consumer Protection (DATCP) administers Wisconsin's weights and measures program which ensures the accuracy of commercial weights and measures. DATCP inspects commodities, scales and measuring devices to ensure that businesses and consumers get what they pay for. The weights and measures program is partially funded by weights and measures license fees. The biennial budget act expanded licensing of weights and measures devices, and authorized certain fee adjustments by rule, in order to improve weights and measures regulation and help remedy a severe budget shortfall. The budget act affects vehicle scales, vehicle tank meters and LP gas meters, among other things. It also authorizes DATCP to charge fees for reinspections made necessary by weights and measures law violations.

This rule is designed to implement the budget act. However, this rule also updates and clarifies other weights and measures rule provisions under ch. ATCP 92, Wis. Adm. Code. This rule establishes different fees for different weights and measures program and license categories, based upon an analysis of program costs associated with each category. Fees are generally proportionate to program costs in each category. Specifically, this rule does all of the following:

#### *Retail Food Establishments*

This rule increases the annual *weights and measures* inspection fees paid by licensed retail food establishments (it

does *not* change *food safety* inspection fees). This rule does all of the following:

- Increases, from \$100 to \$420, the annual fee for a retail food establishment that has annual food sales of at least \$1 million and processes potentially hazardous food.
- Increases, from \$45 to \$55, the annual fee for a retail food establishment that has annual food sales of at least \$25,000 but less than \$1 million and processes potentially hazardous food.
- Increases, from \$25 to \$45, the annual fee for a retail food establishment that has annual food sales of at least \$25,000 and is engaged in food processing, but does not process potentially hazardous food.
- Establishes a fee of \$30 for a retail food establishment that is not engaged in food processing.

#### *Vehicle and Livestock Scales*

This rule does all of the following:

- Increases, from \$100 to \$140, the annual fee for a vehicle scale operator license (does *not* apply to livestock scales other than vehicle scales).
- Increases, from \$200 to \$350, the license fee surcharge for a person found operating a vehicle scale without a license (does *not* apply to operators of livestock scales other than vehicle scales, because those operators are not licensed).
- Establishes a license fee surcharge of \$350 for an operator who, during the previous year, failed to comply with vehicle scale testing and reporting requirements (does *not* apply to operators of livestock scales other than vehicle scales, because those operators are not licensed).
- Establishes a fee of \$160 for a permit to install or relocate a vehicle scale. This fee does *not* apply to livestock scale permits (other than vehicle scales) because the statutes do not authorize DATCP to charge fees for livestock scale permits mandated by DATCP.
- Establishes a fee of \$360 to process a request, by a vehicle scale operator *or* livestock scale operator, for a variance from an applicable scale construction standards (this rule does not change current construction standards). See ss. 93.06 (1p) and 98.16 (2m) (b) and (4), Stats.
- Updates and clarifies current requirements for annual testing of vehicle scales *and* livestock scales, and reporting test results to DATCP.
- Establishes a vehicle scale operator license surcharge of \$350 for an operator who fails to comply with annual scale testing and reporting requirements (does *not* apply to operators of livestock scales other than vehicle scales, because those operators are not licensed).

#### *Weights and Measures Service Companies and Technicians*

This rule increases current annual license fees for weights and measures service companies, as follows:

- Increases the basic license fee from \$250 to \$325.
- Increases the supplementary license fee for companies operating more than one business location. The fee for each additional business location is increased from \$75 to \$100.

This rule increases, from \$25 to \$35, the current examination fee for certification of an individual weights and measures technician (5-year certification). The examination fee may be paid by the weights and measures service company that employs the technician.

#### *LP Gas Meters*

This rule does all of the following:

- Implements statutory licensing requirements for operators of LP gas meters.
- Establishes an annual license fee of \$140.
- Establishes a license fee surcharge of \$350 for an applicant who was found operating an LP gas meter without a required license during the previous year.
- Establishes basic annual testing and test reporting requirements related to LP gas meters, and establishes a license fee surcharge of \$350 for an applicant who failed to comply with those basic requirements in the previous year.

#### *Vehicle Tank Meters*

This rule does all of the following:

- Implements statutory licensing requirements for vehicle tank meter operators.
- Establishes an annual license fee of \$140.
- Establishes a license fee surcharge of \$350 for an applicant who was found operating a vehicle tank meter without a required license during the previous year.
- Establishes basic annual testing and test reporting requirements related to vehicle tank meters, and establishes a license fee surcharge of \$350 for an applicant who failed to comply with those basic requirements in the previous year.

#### *Reinspection Fees*

This rule establishes reinspection fees to cover DATCP reinspection costs incurred because of law violations found on an initial inspection of a weight or measure (including a scale or other weighing or measuring device). This rule establishes the following reinspection fees for the following types of weights and measures, based on DATCP's average cost to reinspect that type of weight or measure:

- Large capacity scale (over 5,000 lbs), \$300.
- Medium capacity scale (300–5,000lbs), \$185.
- Small capacity scale (up to 300 lbs), \$150.
- Vehicle tank meter, \$230.
- Liquefied petroleum gas meter, \$360.
- Loading rack meter, \$300.
- Retail motor fuel device (or similar liquid measuring device), \$150.
- Timing device, \$150.
- Grain moisture meter, \$200.
- Package labeling accuracy, \$185.
- Price accuracy, \$255.
- Other reinspections, \$175.

#### *Comparison with federal regulations*

States have the primary responsibility for regulating weights and measures. The National Institute of Standards and Technology (NIST) provides model regulations and standards which may be adopted and enforced by the states. This rule is not mandated by federal law.

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

Wisconsin has a well-developed weights and measures program. Wisconsin statutes authorize DATCP to license persons who operate or service weights and measures in the state and also authorize DATCP to adopt rules prescribing standards for the construction, operation and maintenance of



weights and measures and to establish the fees for inspections and licenses.

Some surrounding states have less comprehensive weights and measures programs, and fewer administrative options for standardizing and regulating weights and measures. Surrounding states tend to regulate weights and measures on a more *ad hoc* basis. However, several surrounding states have established weights and measures fees to help fund their state programs.

#### *Retail Food Establishments*

Illinois and Minnesota charge retail food establishment scale fees, and Minnesota charges fees for package checking. Comparable Illinois scale fees range from \$20–\$900 annually per establishment, depending upon number of scales. Minnesota scale fees range from \$35–\$1125 annually per establishment, depending upon number of scales (the fee is \$25 per scale). Minnesota package checking fees range from \$35–\$330 depending on lot size.

#### *Weights and Measures Service Companies and Technicians*

Illinois and Michigan license weights and measures service companies. Illinois has an annual license fee of \$50. Michigan has a \$300 biennial license fee. Minnesota does not have a licensing program (funding comes from general program revenue).

Illinois and Michigan both license service company technicians. Illinois has an annual technician license fee of \$25. Michigan has a \$100 technician license fee every 2 years. Minnesota does not have a licensing program (funding comes from general program revenue).

#### *Vehicle Scales*

Illinois and Minnesota both license vehicle scales. Illinois has an annual license fee of \$200. Minnesota charges a range of \$170–\$250 per license with a Place in Service fee of \$110. Michigan does not have a licensing program (funding comes from general program revenue).

#### *LP Gas Meters*

Illinois and Minnesota both license LP gas meters. Illinois has an annual license fee of \$165. Minnesota has a \$150 license fee with a “place-in-service” fee of \$110. Michigan does not have a licensing program (funding comes from general program revenue).

#### *Vehicle Tank Meters*

Illinois and Minnesota both license vehicle tank meters. Illinois charges a range of \$100 to \$200 for an annual license. Minnesota’s program funding comes from other sources, but does have a “place-in-service” fee of \$110. Michigan does not have a licensing program (funding comes from general program revenue).

#### *Reinspection Fees*

Device	Illinois fees	Michigan fees	Minnesota fees
Vehicle Scale (large capacity)	\$200	GPR (no fee)	Avg \$388
Medium Capacity Scale	\$75–200	GPR	\$145–270
Small Capacity Scale	\$20–50	GPR	\$125–\$250
Vehicle Tank Meter	\$100–200	GPR	SEG
LPG Meter	\$165	GPR	\$250
Loading Rack Meter	\$200	GPR	SEG
Retail Motor Fuel	\$50	GPR	SEG
Timing Device	N/A	GPR	\$175/hr
Grain Moisture Meter	\$100	GPR	N/A
Package Labeling	N/A	GPR	\$235–\$530
Price Accuracy	N/A	GPR	\$175–\$190 /hour
Other	N/A	GPR	\$175–190/ hour

#### **Small Business Impact**

This rule will affect businesses that operate or service weights and measures in Wisconsin. Many affected businesses will pay higher fees, or will pay fees for the first time. However, the fee increases are not expected to have a major impact on overall business costs. Fees for each business category are proportionate to weights and measures program costs for that business category, and cover only a portion of program costs. A complete business impact analysis is available from DATCP.

#### **Fiscal Estimate**

This rule will increase annual DATCP revenues by an estimated \$400,000 and will allow DATCP to cover a larger share of its costs to administer Wisconsin’s weights and measures program. This rule will have no significant impact on local units of government. A complete fiscal estimate is available from DATCP.

#### **Agency Contact Person**

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

Michelle Reinen, Program & Policy Analyst  
 Dept. of Agriculture, Trade and Consumer Protection  
 P.O. Box 8911  
 Madison, WI 53708–8911  
 Telephone: (608) 224–5160  
 E-Mail: hearingcomments@datcp.state.wi.us

## Notice of Hearing

### Commerce

#### *Fee Schedule, Ch. Comm 2*

#### **EmR0934, CR 09-116**

NOTICE IS HEREBY GIVEN that pursuant to ss. 101.19 and 145.26, Stats., the Department of Commerce will hold a public hearing on proposed rules and the emergency rules to amend section Comm 2.68 (3) (d), Tables 2.68-1 and 2.68-2; and to create section Comm 2.68 (3) (a), relating to fees for plan review and inspection of public swimming pools and water attractions and affecting small business.

#### **Hearing Information**

The public hearing will be held as follows:

<b><u>Date and Time:</u></b>	<b><u>Location:</u></b>
<b>January 21, 2010</b> 10:00 a.m.	Conference Room 3C Tommy G. Thompson Center 201 West Washington Avenue Madison

This hearing is held in an accessible facility. If you have special needs or circumstances that may make communication or accessibility difficult at the hearing, please call (608) 266-8741 or (608) 264-8777 (TTY) at least 10 days prior to the hearing date. Accommodations such as interpreters, English translators, or materials in audio tape format will, to the fullest extent possible, be made available upon a request from a person with a disability.

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

Interested persons are invited to appear at the hearing and present comments on the proposed rules. Persons making oral presentations are requested to submit their comments in writing. Persons submitting comments will not receive individual responses. The hearing record on this proposed rulemaking will remain open until January 29, 2010, to permit submittal of written comments from persons who are unable to attend the hearing or who wish to supplement testimony offered at the hearing. Written comments should be submitted to James Quast, at the Department of Commerce, P.O. Box 2689, Madison, WI 53701-2689, or Email at jim.quast@wisconsin.gov.

#### **Copies of Proposed Rules**

The proposed rules and an analysis of the proposed rules are available on the Internet at the Safety and Buildings Division Web site at [www.commerce.wi.gov/SB/](http://www.commerce.wi.gov/SB/). Paper copies may be obtained without cost from Roberta Ward, at the Department of Commerce, Program Development Bureau, P.O. Box 2689, Madison, WI 53701-2689, or Email at [roberta.ward@wisconsin.gov](mailto:roberta.ward@wisconsin.gov), or at telephone (608) 266-8741 or TDD Relay dial 711 in Wisconsin or (800) 947-3529. Copies will also be available at the public hearing.

#### **Analysis Prepared by Department of Commerce**

##### *Statutes interpreted*

Sections 101.19 and 145.26, Stats.

##### *Statutory authority*

Sections 101.19 and 145.26, Stats.

##### *Related statute or rule*

Statutes: None

Administrative Rules: Chapter Comm 90

##### *Explanation of agency authority*

Chapters 101 and 145, Stats., grant the department general authority for the purpose of protecting public health, safety and welfare by establishing standards and regulatory oversight programs for the construction and maintenance of buildings, structures and dwellings, public swimming pools and water attractions. These programs are administered by the Safety and Buildings Division. Sections 101.19 and 145.26, Stats., grant the department authority to promulgate rules to fix and collect fees that reflect the cost of administering the public swimming pool and water attraction program.

##### *Summary of proposed rules*

The rules adjust the plan review and inspection fees for public swimming pools and water attractions. The rules also create a separate plan review and inspection fee for modifications to existing swimming pools and water attractions that are necessary in order to comply with the federal Virginia Graeme Baker Pool and Spa Safety Act. The federal Virginia Graeme Baker Pool and Spa Safety Act requires most existing public swimming pools and water attractions to undergo physical modifications to reduce the risk of entrapment at suction outlets.

##### *Comparison with federal regulations*

An internet-based search of the code of federal regulations and the federal register did not identify any federal requirements relating to public swimming pool and water attraction plan review or inspection fees. The federal Consumer Product Safety Commission's implementation of the Virginia Graeme Baker Pool and Spa Safety Act necessitates the modification of existing pools to address entrapment at suction outlets.

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

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

##### *Illinois:*

The Illinois Department of Public Health provides for the inspection and licensing of all public swimming pools, spas, waterslides, wading pools, and bathing beaches. Effective February 2003, the Department reviews all plans and specifications before construction can begin. The state's permit for the construction, development, major alteration or installation of each swimming facility is \$50, and must accompany any application.

##### *Iowa:*

The Iowa Department of Public Health Swimming Pool Program regulates the construction and reconstruction of swimming pools and spas. Plan Review fees range from \$165 for swimming pools less than 500 square feet to \$825 for pools 4000 square feet or greater which may include a water slide. Water slides with a dedicated plunge pool have a plan review fee of \$550 with a fee of \$165 for each additional water slide. The plan review fees for spas range from \$165 for a spa less than 500 square feet to \$385 for a spa of 1000 square feet or greater. The reconstruction plan review fee is \$250 for each swimming pool, spa, or bathroom altered in the reconstruction.

##### *Michigan:*

The Michigan Department of Environmental Quality Water Bureau regulates public swimming pool construction

permits and licensing fees, which range from \$596 for a new pool 500 square feet or less to \$1,951 for a new pool more than 4000 square feet in area. The permit fee for modification of an existing pool is \$298.

*Minnesota:*

The Minnesota Department of Health regulates swimming pool and spa pool plan review. Plan review and inspection fees are \$800 each for swimming pools, wading pools, therapy pools, spray decks and interactive water features; \$500 each for spa pools and a request for variance; \$400 for slides and alterations not altering shape or size; and \$75 for a disinfection system change.

**Summary of factual data and analytical methodologies**

The changes are necessary in order to bring revenues in line with the cost of providing the services for public swimming pools and water attractions. The department is statutorily directed to establish and collect fees which should, as closely as possible, equal the cost of providing those services.

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. The department estimates that 3,700 existing pools and water attractions will need to undergo some type of modifications. The current plan review fees reflect the estimated average time and costs to provide the service. For types of pool and 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 fee structure of section Comm 2.68.

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

The general increases for the plan review and inspection fees for public swimming pools and water attractions are similar to those proposed in 2008 and reviewed by the Pool Council. It is estimated that the plan review and inspection fee adjustments will result in an estimated annual increase in revenues of \$25,000.

One fee reduction is occurring in light of the implementation of the federal Virginia Graeme Baker Pool and Spa Safety Act which necessitates most existing public swimming pools and water attractions to undergo physical modifications to reduce the risk of entrapment at suction outlets. The plan review and inspection fees for these types of pool and water attraction modifications are reduced by 50 to 67%. The reduction will save pool and water attraction owners \$200 to \$650 per plan submittal. The department estimates there are still approximately 1,900 existing public swimming pools and water attractions in Wisconsin needing to submit plans for the necessary federally mandated modifications. The department estimates that 90% of the future plan submittals, 1,710, will fall under the category involving department inspections and 10% of the future plan submittals, 190, will fall under the category where the department does not conduct the inspections. Under this assumption, the department will not realize \$703,000 in plan review and inspection revenue from these plan submittals under the rules.

The Department believes that the rules will have a minimal direct impact on small business in that most businesses would utilize the plan review and inspection services on an infrequent basis and are typically a one time occurrence.

These types of fees would not be significant to the overall operation of the business in comparison to overall expenses.

An economic impact report has not been required pursuant to s. 227.137, Stats.

**Small Business Impact**

**Initial regulatory flexibility analysis**

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

The proposed rules would affect owners or agents who propose to build or alter public swimming pools or water attractions. Example of groups that may be affected by the proposed rules would be municipalities, hotels and motels and water amusement parks.

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

The proposed rules do not impose any additional reporting, bookkeeping or other procedures for compliance.

*Types of professional skills necessary for compliance with the rules.*

The proposed rules do not require any type of professional skills for compliance.

*Rules have a significant economic impact on small businesses?*

No.

**Small Business Regulatory Coordinator**

The small business regulatory coordinator for the Department of Commerce is Carol Dunn, who may be contacted at telephone (608) 267-0297, or Email at carol.dunn@wisconsin.gov.

**Environmental Analysis**

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

**Fiscal Estimate**

**Assumptions used in arriving at fiscal estimate**

The general increases for the plan review and inspection fees for public swimming pools and water attractions are similar to those proposed in 2008. It is estimated that the plan review and inspection fee adjustments will result in an estimated annual increase in revenues of \$25,000.

One fee reduction is occurring in light of the implementation of the federal Virginia Graeme Baker Pool and Spa Safety Act which necessitates most existing public swimming pools and water attractions to undergo physical modifications to reduce the risk of entrapment at suction outlets. The plan review and inspection fees for these types of pool and water attraction modifications are reduced by 50 to 67%. The reduction will save pool and water attraction owners \$200 to \$650 per plan submittal. The department estimates there are still approximately 1,900 existing public swimming pools and water attractions in Wisconsin needing to submit plans for the necessary federally mandated modifications. The department estimates that 90% of the



future plan submittals, 1,710, will fall under the category involving department inspections and 10% of the future plan submittals, 190, will fall under the category where the department does not conduct the inspections. Under this assumption, the department will not realize \$703,000 in plan review and inspection revenue from these plan submittals under the rules.

The Department believes that the rules will have a minimal direct impact on small business in that most businesses would utilize the plan review and inspection services on an infrequent basis and are typically a one time occurrence. These types of fees would not be significant to the overall operation of the business in comparison to overall expenses.

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

Decrease existing revenues.

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

None.

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

PRO.

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

None are anticipated.

#### **Agency Contact Person**

James Quast, Program Manager  
Phone: (608) 266-9292  
Email: jim.quast@wisconsin.gov

### **Notice of Hearing**

#### **Health Services**

#### ***Community Services, Chs. DHS 30—***

#### **CR 09-109**

NOTICE IS HEREBY GIVEN that pursuant to ss. 46.973 (2) (c), 51.42 (7) (b), 51.45 (8) and (9) and 227.11, Stats., and 2005 Wisconsin Act 25, section 9121, the Department of Health Services will hold a public hearing on proposed rules to consider revisions to Chapter DHS 75, relating to substance abuse counselors, clinical supervisors, and prevention specialists, and affecting small businesses.

#### **Hearing Information**

##### **Date and Time**

**January 22, 2010**  
10:00 a.m. to Noon

##### **Location**

Wilson Street State Office Bldg.  
1 W. Wilson St., Rm. 751  
Madison, WI

#### **Accessibility**

##### ***English***

DHS is an equal opportunity employer and service provider. If you need accommodations because of a disability or need an interpreter or translator, or if you need this material in another language or in an alternate format, you may request assistance to participate by contacting S. Kate Johnson at (608) 267-7707. You must make your request at least 7 days before the activity.

##### ***Spanish***

DHS es una agencia que ofrece igualdad en las oportunidades de empleo y servicios. Si necesita algún tipo de acomodaciones debido a una incapacidad o si necesita un interprete, traductor o esta información en su propio idioma o en un formato alterno, usted puede pedir asistencia para

participar en los programas comunicándose con S. Kate Johnson al número (608) 267-7707. Debe someter su petición por lo menos 7 días de antes de la actividad.

##### ***Hmong***

DHS yog ib tus tswv hauj lwm thiab yog ib qhov chaw pab cuam uas muab vaj huam sib luag rau sawv daws. Yog koj xav tau kev pab vim muaj mob xiam oob qhab los yog xav tau ib tus neeg pab txhais lus los yog txhais ntaub ntawv, los yog koj xav tau cov ntaub ntawv no ua lwm hom lus los yog lwm hom ntawv, koj yuav tau thov kev pab uas yog hu rau S. Kate Johnson ntawm (608) 267-7707. Koj yuav tsum thov qhov kev pab yam tsawg kawg 7 hnub ua ntej qhov hauj lwm ntawd.

#### **Copies of the Rule**

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

S. Kate Johnson  
Bureau of Prevention, Treatment and Recovery  
DMHSAS/DHS  
1 West Wilson Street, Room 850  
Madison, WI 53704  
SarahKate.Johnson@wisconsin.gov  
(608) 267-7707

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

Comments may be submitted to S. Kate Johnson, listed above, or to the Wisconsin Administrative Rules Website at [www.adminrules.wisconsin.gov](http://www.adminrules.wisconsin.gov) until January 22, 2010, 4:30 p.m.

#### **Analysis Prepared by the Department of Health Services**

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

2005 Wisconsin Act 25, section 9121 (12s).

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

Sections 46.973 (2) (c), 51.42 (7) (b), 51.45 (8) and (9) and 227.11, Stats., and 2005 Wisconsin Act 25, section 9121.

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

Section 46.973 (2) (c), Stats., authorizes the Department to develop standards and provide consultation for local drug dependence and drug abuse programs, and s. 51.42 (7) (b), Stats., authorizes the Department to promulgate rules governing a variety of services, including alcoholism and drug abuse services. Section 51.45 (8), Stats., authorizes the Department to establish minimum standards for approved treatment facilities that must be met in order for a treatment facility to be approved. Section 51.45 (9), Stats., authorize the Department to promulgate rules for acceptance of persons into the treatment program for the purpose of early and effective treatment of alcoholics and intoxicated persons. All of the standards are referenced in ch. DHS 75.

Section 227.11 establishes requirements and parameters for agencies to promulgate rules, policies, and documents supporting rules for programs that are administered by it.

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

Chapters RL 160 to 168, Wis. Adm. Code.

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

The Department proposes to amend ch. DHS 75, relating to substance abuse counselors, clinical supervisors, and prevention specialists to reflect the transfer of credentialing authority for these professions from the Department to the

Department of Regulation and Licensing (DRL) as required under 2005 Wisconsin Act 25, s. 9121 (12s) and conform the definitions in ch. DHS 75 with those in chs. RL 160 to 168.

Chapter DHS 75 has not been updated to reflect these changes since the changes were created in 2005. The passage of Act 25 divided oversight for substance abuse programs and providers resulting in the Department maintaining responsibility for certification of substance abuse services and assigning DRL responsibility for certification of individuals providing substance abuse treatment.

The proposed changes to ch. DHS 75 include the following:

- 1) Updating definitions in s. DHS 75.02 to reflect changes to those terms in chs. RL 160 to 168, including clinical supervisor, counseling, prevention, prevention specialist, prevention specialist-in training, and substance abuse counselor, substance abuse counselor-in training, and clinical substance abuse counselor.
- 2) Updating the names of bureaus and divisions.
- 3) Incorporating any additional changes related to the definitions referenced above.

These policy changes cannot be implemented in an alternative manner or policy due to the scope of ch. DHS 75, which establishes policies for certification of community substance abuse services. Definitions of substance abuse professionals are currently included in ch. DHS 75 and need to be updated due to their direct relationship with substance abuse services.

The expected outcome of these revisions is to have ch. DHS 75 to be congruent with chs. RL 160 to 168, and reflect current statutory requirements. There will not be an effect on businesses and public agencies since these changes are already implemented within DRL.

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

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

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

##### ***Illinois:***

Title 77 Part 2060 of Illinois Administrative Code sets forth the requirements for certification of substance abuse treatment and intervention services. Substance abuse counselors are licensed by the Illinois Alcohol and Other Drug Abuse Professional Certification Association according to the Illinois Model for the Certification of Alcohol and other Drug Abuse Counselors.

##### ***Iowa:***

Alcohol and drug counselors are certified by the Iowa Board of Certification according to their rules and regulations published in the Alcohol and Drug Counselor Handbook. Substance abuse treatment programs in Iowa are licensed according to Ch. 125.13, Stats., and Adm. Code 641, Ch. 155.

##### ***Michigan:***

In Michigan, substance abuse counselors must meet Michigan Certification Board for Addiction Professionals certification requirements which are taken from the International Certification and Reciprocity Consortium (ICRC). Substance use disorder programs must be licensed according to Act 360, s. 6231 (1), Stats., and ss. 325.14101 to 325.14928, Adm. Code.

##### ***Minnesota:***

Alcohol and Drug Counselors in the State of Minnesota are certified according to s. 148C., Stats., and ss. 4747.0010 to 4747.1500, Adm. Rule, established by the Minnesota Board of Behavioral Health and Therapy. Substance abuse treatment programs must be licensed according to treatment licensing rules ss. 9530.6405 to 9530.6505 (Rule 31).

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

The proposed rules will not directly affect small businesses. The rules under this order are to conform to the transfer of authority under 2005 Wisconsin Act 25 from the department to DRL.

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

The proposed rules will not directly affect small businesses. Any fiscal impact upon small business occurred when the changes from 2005 Wisconsin Act 25 were implemented by DRL in 2005 and 2006.

#### **Small Business Impact**

The proposed rules will not directly affect small businesses. The rules under this order are to conform to the transfer of authority under 2005 Wisconsin Act 25 from the department to DRL. Any fiscal impact upon small business occurred when the changes from 2005 Wisconsin Act 25 were implemented by DRL in 2005 and 2006.

#### **Small Business Regulatory Coordinator**

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

#### **Fiscal Estimate**

##### ***Summary***

The proposed revisions to DHS 75 bring DHS administrative rules into compliance with changes finalized by the legislature in 2005 and implemented by the Department of Regulation and Licensing (DRL) in 2006. Any fiscal impact due to the changes would have already been addressed by state government, local governments, and small businesses when DRL implemented the changes in 2006.

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

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

None.

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

None.

##### ***Private sector fiscal effect***

None.

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

None.

#### **Agency Contact Person**

S. Kate Johnson  
Bureau of Prevention, Treatment and Recovery  
DMHSAS/DHS  
1 West Wilson Street, Room 850  
Madison, WI 53704  
SarahKate.Johnson@wisconsin.gov  
(608) 267-7707

## Notice of Hearing

### Health Services

*Medical Assistance, Chs. DHS 101—*

*Health, Chs. DHS 110—*

**EmR0932, CR 09–107**

NOTICE IS HEREBY GIVEN that pursuant to ss. 49.45 (2) (a) 11., (10) and (42) and 227.11 (2), Stats., the Department of Health Services will hold a public hearing on emergency rules and proposed permanent rules to consider revisions to Chapters DHS 105, 106, and 133, relating to Medical Assistance certification for personal care agencies and providers, and affecting small businesses.

### Hearing Information

#### Date and Time

**February 3, 2010**

9:00 a.m. – 11:00 a.m.

#### Location

Dept. of Health Services  
Wilson St. State Office Bldg.  
1 West Wilson Street  
Room 950A  
Madison, Wisconsin

### Accessibility

#### *English*

DHS is an equal opportunity employer and service provider. If you need accommodations because of a disability or need an interpreter or translator, or if you need this material in another language or in an alternate format, you may request assistance to participate by contacting Pat Benesh at 608–264–9896. You must make your request at least 7 days before the activity.

#### *Spanish*

DHS es una agencia que ofrece igualdad en las oportunidades de empleo y servicios. Si necesita algún tipo de acomodaciones debido a una incapacidad o si necesita un intérprete, traductor o esta información en su propio idioma o en un formato alterno, usted puede pedir asistencia para participar en los programas comunicándose con Pat Benesh al número 608–264–9896. Debe someter su petición por lo menos 7 días de antes de la actividad.

#### *Hmong*

DHS yog ib tus tswv hauj lwm thiab yog ib qhov chaw pab cuam uas muab vaj huam sib luag rau sawv daws. Yog koj xav tau kev pab vim muaj mob xiam oob qhab los yog xav tau ib tus neeg pab txhais lus los yog txhais ntaub ntawv, los yog koj xav tau cov ntaub ntawv no ua lwm hom lus los yog lwm hom ntawv, koj yuav tau thov kev pab uas yog hu rau Pat Benesh ntawm 608–264–9896. Koj yuav tsum thov qhov kev pab yam tsawg kawg 7 hnuv ua ntej qhov hauj lwm ntawd.

### Copies of the Proposed Rule

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

Pat Benesh, Quality Assurance Program Spec–Senior  
Division of Quality Assurance  
1 West Wilson St., Room 534  
Madison, WI 53701  
Phone: 608–264–9896  
Fax: 608–267–0352  
[patricia.benesh@wisconsin.gov](mailto:patricia.benesh@wisconsin.gov)

### Submission of Written Comments

Comments may be submitted to the agency contact person listed above or to the Wisconsin Administrative Rules Website at [www.adminrules.wisconsin.gov](http://www.adminrules.wisconsin.gov) until February 4, 2009, 4:30 p.m.

### Analysis Prepared by the Department of Health Services

#### *Statute interpreted*

Sections 49.45 (42) (c) and (d) 3., Stats.

#### *Statutory authority*

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

#### *Explanation of agency authority*

Section 49.45 (2) (a) 11., Stats., authorizes the department to establish criteria for certification of providers of Medical Assistance, certify providers who meet certification criteria and promulgate rules to implement the statute.

Section 49.45 (10), Stats., authorizes the department to promulgate rules consistent with its duties in administering Medical Assistance, including its duties relating to reimbursement for personal care services by certified providers.

Section 49.45 (42) (c), Stats., allows the department to charge a fee to certify a provider of personal care services that is not an independent living center (ILC), county department, a federally recognized American Indian tribe or band in Wisconsin or a licensed home health agency.

Section 227.11 (2) (a), Stats., allows agencies to promulgate rules interpreting the provision of any statute enforced or administered by the agency if the agency considers it necessary to effectuate the purpose of the statute.

#### *Related statute or rule*

DHS chs. 101, 106, and 107.

#### *Plain language analysis*

The department proposes standards by which to certify freestanding personal care agencies, county departments, home health agencies, federally recognized American Indian tribe or band in Wisconsin, and ILCs as personal care providers. The proposed rules includes certification requirements for persons that want to directly bill and be reimbursed by the Medical Assistance program for the personal care services provided to recipients of Medical Assistance. The rules include new provisions that all personal care providers must follow. The new provisions are:

- Provide employee orientation, evaluation and health screening, including tuberculosis.
- Train staff regarding infection control and prevention.
- Provide client rights, including determination of client appropriateness for service, provisions of rights and notice of how to file a complaint with the department.
- Require a service agreement and a notice and criteria for discharge.
- Promptly notify the physician of a significant change in condition.

#### *Comparison with federal regulations*

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



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

Wisconsin offers personal care as an optional Medicaid state plan service, but Illinois does not. Illinois does offer some types of personal care services under waivers.

**Iowa:**

Wisconsin offers personal care as an optional Medicaid state plan service, but Iowa does not. Iowa does offer some types of personal care services under waivers.

**Michigan:**

Both Michigan and Wisconsin offer personal care as an optional Medicaid state plan service.

Michigan is one of only 2 states nationwide (the other is New Jersey) that covers assistive devices or equipment under the PCS benefit. Nationwide, 17 of the 25 states that offer personal care services (71%) allow some kind of consumer direction for the PCS benefit. Michigan allows it to some extent (as does Minnesota). Wisconsin very recently began offering a self-directed personal care option on a very limited basis to participants in the self-directed program known as IRIS (Include, Respect, I Self-Direct).

Wisconsin is in the middle of the 3 states in the region terms of the settings where the personal care services benefit may be provided. Michigan is more restrictive than Wisconsin, as the service may only be provided in the home. In Wisconsin, the services may be provided in the home or in community-based residential setting in facilities of 20 beds or less.

Minnesota is the most stringent of the 3 states in terms of who may authorize the use of personal care services. Minnesota requires a statement of medical need from a physician and an assessment as to need by a public health nurse. In Michigan, physicians, social workers, case managers, physician assistants, and nurse practitioners may all authorize personal care services. Wisconsin only allows personal care services when authorized by a physician.

**Minnesota:**

Both Minnesota and Wisconsin offer personal care as an optional Medicaid state plan service.

Wisconsin is in the middle of the 3 states in terms of the settings where the personal care services benefit may be provided. In Wisconsin, the services may be provided in the home or in community-based residential setting in facilities of 20 beds or less. Minnesota provides the service in the home, in community-based residential settings, in schools, and in the workplace.

**Summary of factual data and analytical methodologies**

The department relied on all of the following sources to determine the impact on small businesses, specifically personal care agencies to draft the rules:

1. The Department met with the Home Care Advisory Committee (HCAC) and reviewed the initial draft of the rule. This committee is composed of representatives of the Wisconsin Personal Services Association (WPSA), Wisconsin Homecare Organization (WHO), Professional Homecare Providers (PHP), subcontracted personal care agencies, ILCs, home health agencies, counties, and representatives from the Homecare Consumer Advisory Committee. Representatives from these organizations were provided a copy of the initial draft of the rule and asked for comments. The initial draft

of the rule was also sent to counties and ILCs for comment.

2. The 2002 Economic Census – Wisconsin Geographic Series, compiled by the U.S. census bureau every 5 years for each year ending in “2” and “7” and contains the latest available economic data (2007 data is not yet published–October 2009) compiled on businesses located in Wisconsin.
3. Criteria adopted by the Department and approved by the Wisconsin Small Business Regulatory Review Board to determine whether the Department’s rules have a significant economic impact on a substantial number of small businesses. Pursuant to the Department’s criteria, a rule will have a significant economic impact on a substantial number of small businesses if at least 10% of the businesses affected by the rules are small businesses and if operating expenditures, including annualized capital expenditures, increase by more than the prior year’s consumer price index or reduces revenues by more than the prior year’s consumer price index. For the purposes of this rulemaking, 2008 is the index year. The consumer price index is compiled by the U.S. Department of Labor, Bureau of Labor Statistics; the preliminary rate for the Midwest in 2008 is currently estimated at 3.9 percent.
4. Section 227.114 (1) (a), Wis. Stats., defines “small business” as a business entity, including its affiliates, which is independently owned and operated and not dominant in its field, and which employees 25 or fewer full-time employees or which has gross annual sales of less than \$5,000,000.

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

The North American Industry Classification System (NAICS) includes personal care agencies in the Health Care and Social Assistance sector, (sector 62) and further defined in sub-sector 6216 home health agencies (home based services). This industry sector comprises establishments primarily engaged in providing skilled nursing services in the home, along with a range of the following: personal care services; homemaker and companion services; physical therapy; medical social services; medications; medical equipment and supplies; counseling; 24-hour home care; occupation and vocational therapy; dietary and nutritional services; speech therapy; audiology; and high-tech care, such as intravenous therapy. Employment statistics and revenue data are not readily available for the personal care agency share of these major health care providers. The DQA has no data on personal care agencies, as these are not currently regulated by the agency. Based on the limited data available, it is estimated that 70 personal care agencies will initially seek certification from the department. The number of small business entities is unknown. Certification is required for these agencies to qualify for reimbursement from the Medicaid program. Currently, personal care agencies are reimbursed for services through counties or other third-party Medicaid providers.

This emergency order makes it possible for personal care agencies to bill the Wisconsin Medicaid program directly by complying with certification requirements in the Medicaid regulations. The overall outcome for the small businesses affected by the rules should be positive.

2009 Act 28, the 2009–11 biennial budget bill, expands the types of entities that can be certified by the department as

Medicaid personal care providers. In particular, personal care agencies other than counties, Tribes, home health agencies, and Independent Living Centers can be certified directly as Medicaid providers. This emergency rule amends the existing Medicaid personal care certification rule, DHS 105, to implement the biennial budget provisions.

Counties, Tribes, home health agencies, and Independent Living Centers that are already Medicaid certified personal care providers under the prior statutory provisions, can remain personal care providers, without initiating or going through an application process.

In addition to specifying the certification procedures for independently certified personal care agencies, the emergency rule also updates requirements and includes new requirements for personal care providers to strengthen the protection of clients' health, safety, and rights. These changes apply both to existing certified personal care providers and to personal care agencies that seek certification under the Act 28 provisions. Based on consultations with personal care providers, these new requirements are best practices that have generally already been adopted by providers. For this reason they are not expected to impose new workload on providers.

The fiscal impact on small business as defined in s. 227.114 (1), Stats., should be minimal. The items listed below have been identified as potentially increasing revenues or costs to personal care providers.

#### *Independent personal care agency certification*

The provisions of the emergency rule will allow personal care agencies that provide services under contract with a county, Tribe, home health agency, or independent living center to become independently certified and bill the Medicaid program directly for personal care services. In addition, other agencies that do not currently serve Medical Assistance recipients will be able to be certified as Medical Assistance providers, begin serving Medical Assistance recipients, and be reimbursed for their services. The rule provisions would increase revenues for agencies that seek to be certified.

#### *Application and annual fee*

Personal care agencies that seek Medicaid certification under the provisions of Act 28 will be required to pay an initial application fee and an annual fee. Fees will be established by the Department's Division of Quality Assurance and may be periodically revised. The amount of the annual fee will be based on a number of factors including revenues from operations. The Division of Quality Assurance anticipates that initially the application fee will be \$300. It is anticipated the annual fee will range from a minimum of \$500, not to exceed \$2,500 and will be based on the annual revenue of the freestanding personal care agency.

#### *Minimize Risk of Infection*

The first substantive revision requires agencies to provide staff training and proper supplies to minimize the risk of infection and to monitor for compliance. This requirement is expected to result in minimal costs to providers because many personal care providers in Wisconsin already provide staff training and monitoring to meet current standards of practice and Centers for Disease Control (CDC) guidelines. Any provider that does not meet this standard is able to access information from CDC's web site to train their staff and start their monitoring program. Additional costs for sundry supplies (e.g., gloves, masks, etc.) are expected to be minimal.

#### *Communicable disease screening*

Personal care providers will be required to ensure that employees are screened for the presence of clinically apparent communicable diseases, including tuberculosis, within 90 days before the employee has direct client contact. This standard is similar to employee health screening requirements for nursing homes, home health agencies, hospices, hospitals, facilities for the developmentally disabled and restaurants. *The Journal of American Medical Association* (April 19, 2000) identifies health care workers as a group at risk for acquiring tuberculosis. Pulmonary tuberculosis is a contagious disease that is usually spread through the coughing and sneezing of an infected person. Transmission of the infection usually occurs only after prolonged exposure. It is important for persons in high risk groups to be tested to ensure they are free from infectious disease to prevent exposure and spread of the disease to clients and to identify the need for treatment.

The average time to complete the pre-employment screening is estimated to be 30 minutes, at an estimated cost of \$14 per employee. Although not required by rule, this may encourage providers to complete a tuberculosis skin test, at an average cost of \$50 each.

#### *Training and Orientation*

The rules will require an estimated additional 4 hours of training and orientation for personal care workers (PCWs) and registered nurses. It is estimated that the average hourly rate is \$28.00 salary and fringe. Estimated per staff costs are \$116 per affected employee.

#### *Discharge summary*

The proposed rules require the completion of a discharge summary for all clients. It is estimated that a registered nurse will need 10 minutes to complete this requirement. The per-client cost is estimated at \$7 (\$40 per hour salary and fringe x 10 minutes).

#### **Small Business Impact**

The proposed rule will affect at least 10% of the small businesses affected by the rule, but the rules will not have a significant negative economic impact on those businesses.

#### **Small Business Regulatory Coordinator**

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

#### **Fiscal Estimate**

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

#### **Summary**

A proposal included by the Wisconsin Legislature in the biennial budget act, 2009 Wisconsin Act 28, expands the types of entities whose personal care services may be reimbursable by Medical Assistance. To implement the legislation, the department has developed rules 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 personal care services provided to recipients of Medical Assistance. This will allow existing personal care providers that currently bill the Medical Assistance program through one of the types of agency listed above to directly bill the Medical Assistance program, in the event their billing agency discontinues Medical Assistance

certification as a personal care agency. In addition, some additional personal care agencies that do not serve Medical Assistance recipients will be able to be certified as Medical Assistance providers, begin serving Medical Assistance recipients, and be reimbursed for their services.

The rule allows small businesses to bill the Wisconsin Medicaid program for reimbursement for services they provide where they cannot do so now. As a result, rule will be beneficial to them, as it will allow them to bill the Medicaid program for reimbursement.

Act 28 included these provisions because it was anticipated that some counties may choose to discontinue their Medicaid personal care certification when they implement Family Care. The provisions would allow independently certified personal care agencies to serve Medicaid recipients who were previously served by the county. The rule provisions will not have any fiscal effect on state agencies other than those already reflected in Act 28.

In addition, the rule includes new provisions applying to all personal care providers regarding infection control, communicable disease screening, training and orientation, and discharge summaries. These provisions will not increase state agency costs. The provisions may result in a minimal cost increase for county agencies certified as personal care providers.

**State fiscal effect**

None.

**Local government fiscal effect**

Indeterminate.

**Private sector fiscal effect**

Indeterminate.

**Long-range fiscal implications**

None known.

**Agency Contact Person**

Pat Benesh, Quality Assurance Program Spec–Senior  
Division of Quality Assurance  
1 West Wilson St., Room 534  
Madison, WI 53701  
Phone: 608–264–9896  
Fax: 608–267–0352  
Email: patricia.benesh@wisconsin.gov

**Notice of Proposed Rulemaking  
(Without Hearing)**

**Health Services**

**Health, Chs. DHS 110—  
Economic Support, Chs. DHS 250—  
CR 09–115**

NOTICE IS HEREBY GIVEN that pursuant to s. 227.11 (2) (a), Stats., and according to the procedure set forth in s. 227.16 (2) (e), Stats., the Department of Health Services will adopt a rule as proposed in this notice, without public hearing unless within 30 days after publication of this notice in the Wisconsin Administrative Register on January 1, 2010, the Department of Health Services is petitioned for a public hearing by 25 natural persons who will be affected by the rule; a municipality which will be affected by the rule; or an association which is representative of a farm, labor, business or professional group which will be affected by the rule.

The rule repeals Chapters DHS 117, 160 and 253, and revises Chapter DHS 172, relating to fees for copies of health care provider records, registration of sanitarians, child support cooperation for food stamps, and safety, maintenance and operation of public swimming pools and water attractions, and affecting small businesses.

**Submission of Written Comments**

General questions may be submitted to:

Rosie Greer  
Department of Health Services  
608–266–1279  
[Rosie.greer@dhs.wi.gov](mailto:Rosie.greer@dhs.wi.gov)

**Analysis Prepared by the Department of Health Services**

Similar to the legislature's need to periodically make corrections and minor revisions to the Wisconsin statutes, the Department must periodically make such revisions to the Department's section of the Wisconsin administrative code and to its administrative rules. The changes made under this order are due to changes made to state law or rules and are intended to have little or no substantive effect on persons regulated by the rules.

**DHS 117**

The legislature, under 2009 Act 28, established a fee schedule for medical record copies under s. 146.83, Stats., which replaces the medical record copy fee schedule established by the department under ch. DHS 117. Under this order, the department repeals ch. DHS 117.

**DHS 160**

The legislature, under 2005 Act 25, transferred authority to regulate sanitarians to the department of regulation and licensing (DRL). DRL subsequently promulgated chs. RL 174 to 177 to regulate sanitarians. The department's rules for sanitarians are under ch. DHS 160. Under this order, the department repeals ch. DHS 160.

**DHS 172**

The department of commerce repealed and recreated ch. Comm 90 (Clearinghouse Rule 08–056) which resulted in the renumbering of various sections of that chapter. Chapter DHS 172 includes cross–references to a number of sections in ch. Comm 90. In addition to inaccurate cross–references, the DHS 172 contains language in need of correction or clarification. Under this order, the department updates the cross–references, and revises language in ch. DHS 172.

**DHS 253**

The legislature, under 2007 Act 20, repealed s. 49.79 (2) (a), Stats., the child support cooperation requirement for food stamp eligibility. The department's rules for implementing these requirements are under ch. DHS 253. Under this order, the department repeals ch. DHS 253.

**Comparison with federal regulations**

Not applicable.

**Comparison with rules in adjacent states**

**Illinois:**

Not applicable.

**Iowa:**

Not applicable.

**Michigan:**

Not applicable.



*Minnesota:*

Not applicable.

**Summary of factual data and analytical methodologies**

The department reviewed statutes, Acts, and the rules presented in this order to determine which rules needed to be repealed or revised.

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

The revisions will not have a fiscal effect on businesses.

**Small Business Impact**

The revisions will not have a fiscal effect on businesses.

**Fiscal Estimate**

There will be no fiscal effect on the state, local, or the private sector.

**Summary**

Similar to the legislature’s need to periodically make corrections and minor revisions to the Wisconsin statutes, the Department must periodically make such revisions to the Department’s section of the Wisconsin administrative code and to its administrative rules. The changes made under this order are due to changes made to state law or rules and are intended to have little or no substantive effect on persons regulated by the rules.

The legislature, under 2009 Act 28, established a fee schedule for medical record copies under s. 146.83, Stats., which replaces the medical record copy fee schedule established by the department under ch. DHS 117. Under this order, the department repeals ch. DHS 117.

The legislature, under 2005 Act 25, transferred authority to regulate sanitarians to the department of regulation and licensing (DRL). DRL subsequently promulgated chs. RL 174 to 177 to regulate sanitarians. The department’s rules for sanitarians are under ch. DHS 160. Under this order, the department repeals ch. DHS 160.

The legislature, under 2007 Act 20, repealed s. 49.79 (2) (a), Stats., the child support cooperation requirement for food stamp eligibility. The department’s rules for implementing these requirements are under ch. DHS 253. Under this order, the department repeals ch. DHS 253.

The department of commerce repealed and recreated ch. Comm 90 (Clearinghouse Rule 08–056) which resulted in the renumbering of various sections of that chapter. Chapter DHS 172 includes cross–references to a number of sections in ch. Comm 90. In addition to inaccurate cross–references, the DHS 172 contains language in need of correction or clarification. Under this order, the department updates the cross–references, and revises language in ch. DHS 172.

**State fiscal effect**

None.

**Local government fiscal effect**

None.

**Private sector fiscal effect**

None.

**Long–range fiscal implications**

None known.

**Text Of Proposed Rule**

SECTION 1. Chapter DHS 117 is repealed.

SECTION 2. Chapter DHS 160 is repealed.

SECTION 3. DHS 172.04 (13), (27) (c) 1., (39), (40), and (45) are amended to read:

DHS 172.04 (13) “Deep portion” means a water depth greater than 5.5 portion of a pool having a design water depth greater than 5 feet.

(27) (c) 1. A certificate from the American Red Cross “CPR for the Professional Rescuer CPR–AED for Lifeguards” course.

(39) “Pool and water attraction area” means, in an outdoor facility, the pool or water attraction and the area within the basin’s enclosure and, in an indoor facility, the pool or water attraction and the required deck as specified in s. Comm 90.09 Comm 90.13 (1) and (2).

(40) “Pool slide” means a slide where the drop from the slide terminus to water is less than 20 inches (50.8 centimeters) and the flume carries less than 100 gallons of water per minute.

(45) “Superchlorination” means the addition of an oxidizing product such as chlorine to pool water to raise the level of the oxidizer to raise the level of oxidizer to at least 10 ppm. “Superchlorination” is sometimes referred to as “superoxidation”.

SECTION 4. DHS 172.05 (4) (a) 4. is amended to read:

DHS 172.05 (4) (a) 4. A statement from an engineer who worked on the pool indicating that it was completed in accordance with the pool’s construction plan under s. Comm 90.0490.05 (1) (c).

SECTION 5. DHS 172.11 (1) is amended to read:

DHS 172.11 (1) GENERAL. As required by s. Comm 90.11, each pool shall have a water recirculation system with disinfection treatment and filtration equipment consisting of overflow gutters or skimmers, main drains, inlets, pumps, piping, and filters. The system shall be operated continuously except for seasonal closing or during periods of necessary maintenance.

Note: See s. Comm 90.14 for design requirements for the recirculation system.

SECTION 6. DHS 172.11 Table B is amended to read:

Temperature in ° F. (° C.)	Load (gals/ person) <sup>a</sup>	Maximum Turnover Time (hours)
≤72–93 (22–33 ° C.)	> 2,500	4
≤72–93 (22–33 ° C.)	> 450	2
≤72–93 (22–33 ° C.)	< 450	1
≥93–104 (33–40 ° C.)	N/A	0.5

N/A = not applicable.

<sup>a</sup> The number is equal to posted patron load.

SECTION 7. DHS 172.13 (1) (intro.) and (a) are amended to read:

DHS 172.13 (1) GENERAL. As required in s. Comm 90.12 (1) (b), all disinfectant feeders shall be approved by



the department of commerce and installed according to the manufacturer's directions, and used only with the disinfectant recommended by the manufacturer and meet all of the following requirements:

(a) Feeders shall be automatic, easily adjustable, capable of providing the required chemical residuals, equipped with flow control valves upstream and downstream from the feeder, easily disassembled for cleaning and maintenance, durable, and capable of accurate feeding with a rate of flow meter installed to accurately measure the flow through the feeder system.

SECTION 8. Table DHS 172.14 is amended to read:

**Table DHS 172.14  
Minimum Disinfectant Residuals**

	Minimum Free Chlorine Residual	Total Bromine
<b>Swimming and Activity Pools</b>		
Swimming and Activity Pool	1.0 ppm	3.0 ppm
Swimming and Activity Pool With Stabilizer	1.5 ppm	N/A
<b>Wading Pools</b>		
Wading Pool	2.0 ppm	4.0 ppm
Wading Pool With Stabilizer	3.0 ppm	N/A
<b>Whirlpool, Exercise, Therapy Pools</b>		
Whirlpool, Exercise, or Therapy Pool	3.0 ppm	7.0 ppm
Whirlpool With Stabilizer	4.0 ppm	N/A
<b>Water Attractions Other Than Those Specified</b>		
Water Attraction Other Than Those Specified	1.0 ppm	3.0 ppm
Water Attraction Other Than Those Specified With Stabilizer	1.5 ppm	N/A
<b>Plunge Pools and Wave Pools</b>		
Plunge and Wave Pool	2.0 ppm	5.0ppm
Plunge/ Wave Pool With Stabilizer	3.0 ppm	N/A
<b>Interactive Play Attractions</b>		
Interactive Play Attraction	2.0 ppm	5.0 ppm
Interactive Play Attraction With Stabilizer	3.0 ppm	7.0 ppm
<b>Waterslides and Pool Slides</b>		
Waterslides and Pool Slides	2.0 ppm	5.0 ppm
Waterslides With Stabilizer	3.0 ppm	N/A

SECTION 9. DHS 172.14 (2) (c) 8. Note is repealed.

SECTION 10. DHS 172.15 (1) is amended to read:

DHS 172.15 (1) CHLORINE GENERATORS. Chlorine generators shall be NSF approved and installed according to NSF and manufacturer instructions. An additional disinfection system shall remain on line to provide the capacity to superchlorinate the water as specified in s. ~~Comm 90.12 (4) (c)~~ and maintain the required sanitizer residual.

SECTION 11. DHS 172.17 (3) is amended to read:

DHS 172.17 (3) The disinfectant testing reagent shall be diethyl-p-phenylene diamine (DPD) in powder or liquid form. A test kit using the titrimetric method (FAS-DPD) for chlorine and bromine testing and colorimetric comparators used for additional water testing shall be approved by the department and shall provide for accurate comparison in the required range for each test as stated in s. DHS 172.14 (4). The test equipment shall provide for direct measurement of free and combined chlorine from 0 to 10 ppm in increments of 0.2 ppm. If bromine is used, the testing equipment shall provide for direct measurement of total bromine from 0 to 20 ppm in increments of 0.2-0.5 ppm.

SECTION 12. DHS 172.19 (4) (b) is amended to read:

DHS 172.19 (4) (b) Except in par. (d), the water temperature of an indoor pool shall be between 72°F. (22°C.) and 95°F. (35°C.). The minimum water temperature for an outdoor pool shall be 65°F. (18°C.).

SECTION 13. DHS 172.22 (2) (b) 1. and 3. are amended to read:

DHS 172.22 (2) (b) 1. American Red Cross Water Park Lifeguard Training certificate.

3. National Pool and Water park International Lifeguard Training Program certificate.

SECTION 14. Table DHS 172.23 B is amended to read:

**Table DHS 172.23–B  
Required Number of Lifeguards and Attendants Based on Pool Type**

Pool Type	Lifeguard and Attendant Staffing Requirements
Activity Pools	At least one lifeguard is required if the pool contains one of the following: <ol style="list-style-type: none"> <li>1. A pad walk.</li> <li>2. A tethered floatable more than 18 inches long in 2 directions. Appendages such as alligator feet should not be included in determining the length.</li> <li>3. A non–tethered floatable. Non–tethered floatables do not include tire inner tubes used in leisure rivers or waterslides.</li> </ol>
Leisure Rivers	At least one attendant is required at the entrance of the leisure river. The attendant shall have a clear line of sight for all areas of the river, or additional attendants are required so that all areas of the river are in view of at least one attendant.
Vanishing Edge Pools	At least one lifeguard regardless of the square footage, unless the water attraction is limited to adult use only.
Vortex Pools and Current Pools	At least one lifeguard is required whenever the pool is occupied by a patron.
Wave Pools	At least one lifeguard is required regardless of the square footage of the pool. Additional lifeguard staffing shall be based on the patron load requirements in Table DHS 172.23–A.
Pools with a Visual Obstruction	At least one attendant is required if the pool has a visual obstruction larger than 10 feet in length by 6 feet in height by 5 feet in width or if the visual obstruction covers more than 20 percent of the pool’s basin.
Pools with Diving Boards or Platforms	At least one lifeguard for every 2 diving boards or platforms in the same pool.
Pools with Slides	<ol style="list-style-type: none"> <li>1. Children’s Slide: No attendant is required.</li> <li>2. Poolslide: Greater than 4 feet but less than 6 feet in height, which drops into water greater than 4 feet deep: At least one lifeguard.</li> <li>3. Poolslide: Less than 6 feet in height, with an obstructed view of slide terminus at 43 inches at entry point: At least one lifeguard.</li> <li>4. Drop slide: Less than 6 feet in height: At least one lifeguard</li> <li>5. Run–out slide:               <ul style="list-style-type: none"> <li>Greater than 6 feet in height clear view of the terminus end: At least one attendant on top platform.</li> <li>Greater than 6 feet obstructed view of the terminus end: At least one attendant on top and bottom of run–out.</li> <li>Less than 6 feet clear view of terminus end: No attendant or lifeguard required</li> </ul> </li> <li>6. Waterslide:               <ul style="list-style-type: none"> <li>Greater than 6 feet: Attendant on top of the slide, lifeguard on bottom and means of 2–way communication between attendants and lifeguards.</li> <li>Less than 6 feet with a clear view of terminus end and no obstructions around slide: At least one lifeguard.</li> </ul> </li> </ol>
Wading Pools	Wading pools do not require a lifeguard or attendant unless there is a large obstruction per ss. <del>90.18 (3)</del> <u>90.20 (4)</u> and <del>90.30 (3)</del> <u>(90.30 (3))</u> .
Exercise Pools	Exercise pools do not require a lifeguard or attendant.
Whirlpools	If a whirlpool is located within a water attraction complex, at least one attendant shall provide periodic supervision of the whirlpool. If a whirlpool is not guarded or attended with an attendant assigned at all times, a sign shall be posted that states in letters that are at least 4 inches high: Non–guarded area.
Therapy Pools	At least one attendant who has current CPR certification is required for a therapy.
Interactive Play Attraction (Splash Pads)	An interactive play attraction not restricted by an enclosure shall have at least one attendant on the premises. The attendant shall provide periodic supervision of the water attraction as specified in the staffing plan.

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SECTION 15. DHS 172.26 (1) (b) and (c) and (2) Note are amended to read:

DHS 172.26 (1) (b) For each basin of water over 4 feet in length and over 2 feet deep, a ~~shepherd's~~ shepherd's crook-type pole shall be provided. In addition, for each lifeguard chair, or for a pool 30 feet or more in width that does not have lifeguard chairs, at least one of the following shall be provided:

(c) The safety rope required in s. Comm ~~90.08 (4)~~ 90.18 (1) shall remain in place except during a lifeguarded activity or adult only lap swim. The responsible supervisor shall ensure the rope is in place during required times.

(2) Note: A request for an alternative location for a telephone or another system of communication that provides access to emergency service during hours of pool operation may be made under s. DHS ~~173.02 (2)~~ 172.03 (2).

SECTION 16. DHS 172.29 (3) (f) is amended to read:

DHS 172.29 (3) (f) Minors under the age of 6 ~~and under~~ are not permitted in the whirlpool.

SECTION 17. DHS 172.33 (1) (d) and (g), (2) (a) Note, and (4) (c) Note are amended to read:

DHS 172.33 (1) (d) *Hosing*. Hosing shall be provided in adequate lengths to flush the entire pool deck. All hose bibbs shall be protected against backsiphonage by the proper installation of an approved backflow prevention device as required under s. Comm ~~90.13 (6)~~ 90.16 (4).

(g) *Drinking fountain*. Each drinking fountain required under ~~ss. s. Comm 90.09 (3) and 90.16 90.19~~ shall be maintained in clean and sanitary condition.

(2) (a) Note: See ~~chapter s. Comm 90.19~~ chapter s. Comm 90.19 for additional information.

(4) (c) Note: Refer to ~~chapter s. Comm 90.16~~ chapter s. Comm 90.16 for department of commerce installation requirements.

SECTION 18. DHS 172.34 (5) Note is amended to read:

DHS 172.34 (5) Note: See ~~chapter s. Comm 90.18 (4)~~ chapter s. Comm 90.18 (4) for additional rules relating to the outdoor pool enclosure.

SECTION 19. DHS 172.35 (1) and (2) are amended to read:

DHS 172.35 (1) All waterslides and pool slides shall be designed and installed as required in s. Comm ~~90.30~~ 90.31.

(2) Waterslide and pool slide lubrication shall be in accordance with s. Comm ~~90.30 (4)~~ 90.31 (4). Run-out slide flume lubrication systems shall comply with the requirements in s. Comm ~~90.206 (3) (b) 2. and 3~~ 90.31 (4) (a).

SECTION 20. DHS 172.36 (2) (a) is amended to read:

DHS 172.36 (2) (a) If access to the interactive play attraction is not restricted by an enclosure, an attendant shall be present to provide periodic supervision.

SECTION 21. Chapter DHS 253 is repealed.

#### Agency Contact Person

Rosie Greer  
Department of Health Services  
608-266-1279  
[Rosie.greer@dhs.wi.gov](mailto:Rosie.greer@dhs.wi.gov)

## Notice of Hearing

### Insurance

#### EmR0930, CR 09-095

#### (Reprinted with Rescheduled Hearing)

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., subject to the Commissioner's approval of the Statement of Scope, the Office of the Commissioner of Insurance (OCI) will hold a public hearing to consider the adoption of emergency rules and proposed permanent rules creating section Ins 3.34, Wis. Adm. Code, relating to coverage of dependents to age 27 and affecting small business.

#### Hearing Information

**Date:** January 14, 2010

**Time:** 10:00 a.m., or as soon thereafter as the matter may be reached

**Place:** OCI, Room 227 (2<sup>nd</sup> Floor)  
125 South Webster Street, Madison, WI

#### Submission of Written Comments

Written comments can be mailed to:

Julie E. Walsh  
Legal Unit – OCI Rule Comment for Rule Ins 334  
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 334  
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)

Web site: <http://oci.wi.gov/ocirules.htm>

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  
Phone: (608) 264-8110  
Email: [inger.williams@wisconsin.gov](mailto:inger.williams@wisconsin.gov)  
Address: 125 South Webster Street — 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 (OCI)**

### ***Statutes interpreted***

Sections 600.01, 628.34 (12), 632.885, Stats.

### ***Statutory authority***

Sections 600.01 (2), 601.41 (3), 601.42, 628.34 (12), Stats.

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

The commissioner is authorized by s. 601.41, Stats., to propose rules in accordance with s. 227.11 (2), Stats., in order for the commissioner to administer and enforce the insurance statutes. Since passage of 2009 Wis. Act 28, the commissioner has been made aware of dramatic differences in interpretation and approaches to implementation that necessitate rule making.

### ***Related statutes or rules***

None.

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

The proposed rule interprets and implements the requirements of s. 632.885, Stats., by clarifying and defining eligibility criteria and providing guidance as to how insurers and self-insured health plans are to determine an adult child's eligibility for coverage. The proposed rule clarifies that the mandate applies to individual and group health insurance, limited-scope health insurance including vision and dental plans as well as self-insured health plans. The rule also clarifies that this mandate does not apply to certain insurance products including long-term care and Medigap policies. Further, as described in the applicability provisions of 2009 Wis. Act 28, the rule states when the mandate first applies, including the initial applicability for collectively bargained health plans.

The proposed rule provides clarity through definitions of "premium contribution" and "premium amount." The commissioner received the greatest volume of inquiries seeking guidance on how the premium comparison was to be conducted. The proposed rule simplifies and guides insurers and self-insured plans on exactly what is to be compared for this element of eligibility determination.

Guidance is provided regarding to whom an offer of coverage for an eligible adult child is to be given and reinforces the statutory provision that it is only the applicant or the insured who determines whether or not an eligible dependent is added to his or her health plan. The rule further informs insurers and self-insured plans on prohibited practices that would unduly restrict an otherwise eligible dependent from coverage contrary to the intent of the statute.

Specifically the rule provides specific guidance to insurers offering individual health insurance products as compared to insurers or self-insured health plans offering group health insurance coverage. Insurers offering individual health insurance may rate, may utilize pre-existing condition waiting periods and may apply elimination riders to an eligible adult child but may not impose such limitations as coverage would be rendered illusory. Insurers offering group health insurance or limited-scope insurance and self-insured health plans must comply with s. 632.746, Stat., with regards to pre-existing condition waiting periods and application of creditable coverage. The rule also requires insurers and self-insured health plans to treat an eligible adult child as a new entrant and provide annually at least a 30-day enrollment period.

Finally, the rule clarifies s. 632.885 (2) (a) 3. and (b) 3., Stats. An adult child is an eligible adult child when the child is between the ages of 17 and 27, is not married and who is not eligible for his or her employer sponsored coverage or whose employer does not offer health insurance to its employees. An adult child who has been called to federal active duty is an eligible adult child when a full-time student, less than 27 years of age when called to active duty. The rule clarifies that the adult child will have up to 12 months after completing active duty to apply for full-time student status at an institution of higher education, and that if the adult child is called more than once in four years of the first call to active duty, insurers and self-insured health plans may only use the adult child's age at the time of the first call to active duty when determining eligibility.

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

There is no existing regulation directly related to this new mandate. The federal government, US House and Senate are currently debating health insurance reform and at this time the office is aware that some of the proposals will be revised to contain similar requirements for extending coverage to adult children, but none have passed as of this date.

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

#### ***Illinois:***

215 ILCS 5/356z.12 provides parents with the option of keeping unmarried dependents on their health care insurance up to age 26. Parents with dependents who are veterans can keep dependents on the plans up to age 30. The veterans must be unmarried, must be Illinois residents, and must have received a discharge other than dishonorable. Veterans do not have to be enrolled as full-time students.

#### ***Iowa:***

Iowa Code § 509.3 and Iowa Code § 514E.7 requires that health insurance providers continue to cover unmarried children under their parents' coverage provided that the child: 1) is under the age of 25 and a current resident of Iowa, 2) is a full-time student, or 3) has a disability. Iowa Code § 509A.13.B, effective July 1, 2009, allows reenrollment of the same children in previously existing coverage under certain circumstances.

#### ***Michigan:***

No comparable regulations found. Michigan Code § 500.3406g prohibits the denial of enrollment on certain grounds for plans offering dependent coverage, and § 500.3406h addresses the eligibility of parents for dependent coverage and the health coverage of children through noncustodial parents. § 500.2264 provides exception for the termination of dependent coverage at specified age if a child is incapable of self-support due to mental or physical disability.

#### ***Minnesota:***

Minnesota Chapter 62E.02 Defines "dependent" as a spouse or unmarried child under age 25, or a dependent child of any age who is disabled.

#### ***Ohio:***

(information only) Ohio Rev. Code § 1751.14, as amended by 2009 OH H 1 allows an unmarried, dependent child who is an Ohio resident or a full-time student to remain on parent's insurance up to age 28, or without regard to age if they are incapable of self-sustaining employment due to disability.



**Summary of factual data and analytical methodologies**

The commissioner reviewed existing interpretation of terms used within the new mandate that are used in other areas of the statutes and administrative code for consistency. Further the commissioner considered the intent of the mandate and proposed rules that furthered that intent.

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

Although there are some limited-scope health insurers that may meet the definition of a small business, the effect on the insurers will not be significant since insurers will be able to assess and collect premium for the inclusion of the eligible adult child or may apply limitations on coverage. Intermediaries, some of whom may meet the definition of a small business will need to become familiar with this regulation but will not significantly effect those persons.

**Small Business Impact**

This rule will have little or no effect on small businesses and does not impose any additional requirements on small businesses.

**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.

**State government fiscal effect**

None.

**Private sector fiscal effect**

No significant effect on the private sector regulated by OCI.

**Long-range fiscal implications**

None.

**Agency Contact Person**

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

**Notice of Hearing****Public Instruction****EmR0933, CR 09-106**

NOTICE IS HEREBY GIVEN That pursuant to ss. 115.745 (3) and 227.11 (2) (a), Stats., the Department of Public Instruction will hold a public hearing to consider emergency rules and proposed permanent rules creating Chapter PI 39, relating to grants for tribal language revitalization. The hearing will be held as follows:

**Hearing Information****Date and Time**

**January 15, 2010**  
 2:30 — 4:00 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 JP Leary, American Indian Studies Program Consultant, at (608) 267-2283 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 Proposed Rule and Agency Contact Person**

The administrative rule and fiscal note are available on the internet at <http://dpi.wi.gov/pb/rulespg.html>. A copy of the proposed 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

**Submission of Written Comments**

Written comments on the proposed rules received by Ms. Slauson at the above mail or email address no later than January 22, 2010, will be given the same consideration as testimony presented at the hearing.

**Analysis Prepared by the Department of Public Instruction****Statute interpreted**

Section 115.745, Stats.

**Statutory authority**

Sections 115.745 (3) and 227.11 (2) (a), Stats.

**Explanation of agency authority**

Section 115.745 (3), Stats., requires the department to promulgate rules to implement and administer this program.

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.

**Related statute or rule**

N/A

**Plain language analysis**

2009 Wisconsin Act 28, the biennial budget bill, created a new competitive grant program under s. 115.745, Stats., appropriating \$247,500 annually for a school board or cooperative educational service agency (CESA), in conjunction with a tribal education authority to apply to the department for a grant for the purpose of supporting innovative, effective instruction in one or more American Indian languages.

The proposed rule establishes criteria and procedures for awarding grants to eligible applicants. Rules must be in place

as soon as possible to award grants in time for the upcoming school year. Therefore, emergency rules were promulgated effective December 15, 2009.

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

N/A

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

Illinois, Iowa, Michigan, and Minnesota do not have rules relating to grants for tribal language revitalization.

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

Because 2009 Wisconsin Act 28 creating this grant program became effective June 30, 2009, the rule established an application deadline of January 29, 2010 to expedite the awarding of funds in 2009–10. In subsequent years, applications will be due March 1 to coincide with application timelines established for other grants awarded by the department.

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

N/A

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

N/A

#### **Small Business Impact**

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

#### **Fiscal Estimate**

Under s. 20.255 (2) (km), Stats., 2009 Wisconsin Act 28, the biennial budget bill, appropriated \$247,500 annually to create a new competitive grant program under s. 115.745, Stats. The grant program allows a school board or CESA in conjunction with a tribal education authority to apply to the department for a grant for the purpose of supporting innovative, effective instruction in one or more American Indian languages.

The rule establishes criteria and procedures for awarding these program grants. The rule, itself, will not increase local revenue. It is the school district's choice as to whether it will apply for a grant and implement an American Indian language program.

The costs associated with administering this grant program will be absorbed by the department.

#### **Agency Contact Person**

JP Leary  
American Indian Studies Program Consultant  
(608) 267-2283  
jp.leary@dpi.state.wi.us.

### **Notice of Hearing**

#### **Transportation**

##### **CR 09-113**

NOTICE IS HEREBY GIVEN that pursuant to s. 342.245 (3) and (4), Stats., the Department of Transportation will hold a public hearing to consider the creation of Chapter Trans 148, Wis. Adm. Code, relating to electronic recording and release of liens by non-individual creditors.

### **Hearing Information**

#### **Date and Time**

**January 29, 2010**

11:00 a.m.

#### **Location**

Hill Farms State Transportation Building  
Room 144-B  
4802 Sheboygan Avenue  
Madison, WI

An interpreter for the hearing impaired will be available on request for this hearing. Parking for persons with disabilities and an accessible entrance are available.

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

A copy of the rule may be obtained upon request from Carson Frazier, Department of Transportation, Bureau of Vehicle Services, Room 253, P. O. Box 7911, Madison, WI 53707-7911. You may also contact Ms. Frazier by phone at (608) 266-7857 or via e-mail: [carson.frazier@dot.state.wi.us](mailto:carson.frazier@dot.state.wi.us).

#### **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 Carson Frazier, Department of Transportation, Bureau of Vehicle Services, Room 253, P. O. Box 7911, Madison, WI 53707-7911. You may also contact Ms. Frazier by phone at (608) 266-7857 or via e-mail: [carson.frazier@dot.state.wi.us](mailto:carson.frazier@dot.state.wi.us).

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 342.19 (2) (a), 342.20 (2) and (3), 342.22 (1) and (2), and 342.245, Stats.

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

Section 342.245 (3) and (4), Stats.

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

Section 342.245 of the Wisconsin Statutes requires a secured party to use an electronic process prescribed by the Department of Transportation to file a security interest statement, and deliver a release of a security interest in a motor vehicle and to pay a fee for those actions. The Department may, by rule, exempt a person or a type of transaction from those requirements, except that any person who is exempted shall pay a fee to the department for processing applications and releases submitted by the person utilizing a process other than an electronic process. The statutes require the Department to promulgate rules to implement and administer these requirements. This rulemaking does that.

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

Sections 85.16 (1), 227.11, 342.19 (2), 342.20 (2) and (3), 342.22 (1) and (2), 342.245, Stats.

**Plain language analysis**

2009 Wis. Act 28 created s. 342.245, Stats., and amended related provisions, to require secured parties that are not individuals to file a security interest in a vehicle utilizing an electronic process prescribed by the Department. Act 28 also authorizes the Department to exempt a person or a type of transaction from that requirement. Act 28 requires the Department to promulgate administrative rules to implement and administer the statute.

In this rule making, the Department proposes policies and procedures to implement the requirement that non-individual secured parties file a security interest statement electronically. The Department uses as a model ch. Trans 141, which requires licensed motor vehicle dealers to process title transactions using an electronic process prescribed by the Department.

Similar to policies established in ch. Trans 141, the Department, in ch. Trans 148, proposes to exempt from the requirement of electronic filing of security interest statement a secured party that has filed fewer than 49 security interest statements on Wisconsin motor vehicle titles during the previous calendar year. The proposed rule states that the Department may deny a secured party the authority to file and release security interest statements electronically based on the secured party's inadequate performance. As required by s. 342.245, Stats., and following the model of ch. Trans 141, the Department proposes to charge a \$5 fee per transaction for processing applications submitted by secured parties not required to process electronically, and the \$5 fee and a \$20 surcharge per transaction for processing applications submitted by secured parties not authorized to process electronically and by non-exempt secured parties that fail to comply with the law.

The Department proposes to exempt two types of transactions from the requirement that a secured party must file security interest statements electronically and, for these specifically exempted security interest transactions, the Department shall not charge a secured party a processing fee. First, if the security interest statement is being filed as part of a certificate of title transaction for a vehicle; and second, if the security interest statement is part of a transaction that is prohibited from successful electronic transaction because of an express limitation on the vehicle title or customer record, or on the e-MV Agent internet-based web application or APPS.

**Comparison with federal regulations**

No federal regulations govern the process covered in the proposed rule.

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

Michigan has no requirement, allowance, or means for a secured party to electronically file security interest statements.

**Minnesota:**

Minnesota has no requirement or allowance for a secured party to electronically file security interest statements. Minnesota at one time had such a pilot program; however, Minnesota has discontinued this practice.

**Illinois:**

Illinois has no requirement, allowance, or means for a secured party to electronically file security interest statements.

**Iowa:**

Iowa has no requirement, allowance, or means for a secured party to electronically file security interest statements.

**Summary of factual data and analytical methodologies**

Since 2007, all licensed motor vehicle dealers are required to process title and registration transactions. This law is implemented in chs. Trans 141 and Trans 156.

While financial institutions affected by ch. Trans 148 are of course different from motor vehicle dealers, many of the issues involved in electronically processing transactions and updating the DMV database are the same. For example, all transactions are subject to the same federal and state privacy laws and DMV security procedures. All transactions utilize the same methods of payment to DMV.

Therefore, the Department uses chs. Trans 141 and Trans 156 as a basis for ch. Trans 148, with changes as needed to address the different needs of secured parties.

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

The Department has analyzed the number of security interests listed on motor vehicle titles, by non-individual secured party, for calendar year 2008. There are more than 15,700 different secured parties that have current liens listed on motor vehicle titles.

The Department then excluded from the count security interests that were added as part of a title transaction (generally, a vehicle purchase in which the buyer obtained a loan). Of the total 15,700 secured parties, only about 2,080 secured parties listed security interests that are not part of a title transaction. Of the 2,080, only 433 secured parties listed 50 or more security interests, not part of a title transaction, in 2008. The 433 secured parties that listed 50 or more security interests are responsible for a total of 95,489 security interests not part of a title transaction. This is 88% of all security interests that are not part of a title transaction listed in calendar year 2008. The remaining 1,647 secured parties listed only 13,311 security interests not part of a title transaction, or 12% of all non-title security interests listed in 2008.

Therefore, the Department has concluded that a cut-off of 48 or fewer non-title transactions is a reasonable number. This number is the same number of sales which exempt a motor vehicle dealer from requirements under ch. Trans 141, making program administration and communication with DMV's business partners easier while, at the same time, this number captures a very large share of the security interest filing volume.

In this proposed rule, the Department proposes the exemption cut-off at 48 or fewer non-title security interests listed during the previous calendar year.

**Small Business Impact**

Most non-individual secured parties are financial institutions, located in and outside Wisconsin. Virtually all financial institutions maintain their records in electronic format and possess computers and access to the Internet. On the other hand, the Department recognizes that some small businesses do not possess this capability.

While there is not a direct connection between the size of the business and the amount of business done with the Department, the Department believes that this is an adequate measure of a small business for which it may be difficult to purchase necessary hardware and software, or to hire



sufficient staff to manage electronic security interest statement filing. Therefore, the proposed rule exempts secured parties that have filed 48 or fewer security interest statements in motor vehicles during the previous calendar year.

#### **Small Business Regulatory Coordinator**

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.

#### **Fiscal Estimate**

The Department estimates that there will be no fiscal impact on the liabilities or revenues of any county, city, village, town, school district, vocational, technical and adult education district, sewerage district, or federally-recognized tribes or bands.

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

#### **Agency Contact Person**

Carson Frazier  
Dept. of Transportation — Bureau of Vehicle Services  
Room 253, P. O. Box 7911  
Madison, WI 53707-7911  
Phone : (608) 266-7857  
Email: [carson.frazier@dot.state.wi.us](mailto:carson.frazier@dot.state.wi.us)

### **Notice of Hearing Workforce Development Labor Standards, Chs. DWD 270-279 CR 09-110**

NOTICE IS HEREBY GIVEN that pursuant to ss. 103.34 (13) and 227.11, Stats., the Department of Workforce Development proposes to hold a public hearing to consider the creation of Chapter DWD 273, relating to the regulation of traveling sales crews.

#### **Hearing Information**

<u><b>Date and Time</b></u>	<u><b>Location</b></u>
<b>January 20, 2010</b>	<b>Madison</b>
Wednesday	G.E.F. 1 Building, B103
1:30 p.m.	201 E. Washington Avenue

#### **Accessibility**

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.

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

The proposed rules are available for review at the website <http://adminrules.wisconsin.gov> and may also be obtained by contacting Howard Bernstein, Office of Legal Counsel, Dept. of Workforce Development, P.O. Box 7946, Madison, WI

53707-7946, (608) 266-9427, or [Howard.Bernstein@dwd.wisconsin.gov](mailto:Howard.Bernstein@dwd.wisconsin.gov).

#### **Appearances at the Hearing and Submission 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 on the rule may be submitted to the website or to Howard Bernstein at the address listed above by January 22, 2010, and will be given the same consideration as testimony presented at the hearing.

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

##### **Statutory authority**

Sections 103.34 (13) and 227.11(2), Stats.

##### **Statutes interpreted**

Section 103.34 (13), Stats.

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

Section 103.34, Stats., created by 2009 Wisconsin Act 3, provides for the regulation of traveling sales crews, which involves the employment of groups of persons as salespersons who travel to a variety of locations and sell consumer goods or services door to door. Section 103.34(13), Stats., provides the authority for rules interpreting the statute, establishing fees, and setting requirements for registration and safety.

##### **Summary of the proposed rule**

After providing brief statements on the authority, purpose and applicability of the rule, the proposed rule enumerates the items required for a certificate of registration. These include: a completed application form; two completed fingerprint cards (for the purpose of a criminal background check) for each person who is a proprietor, managing partner, manager, principal officer, employee, agent or representative of the traveling sales crew business who supervises or transports traveling sales crew workers; verification that the applicant has a surety bond, a certificate of deposit, an escrow account, or an irrevocable letter of credit, in the amount of at least \$10,000; a registration fee, in the amount of \$60 for each individual for whom a background check is required; a mechanic's certification that all vehicles to be used to transport sales crews are in compliance with all safety standards; copies of the information that is to be provided to employees describing the transportation to be provided, and any hazardous materials (such as cleaning supplies) that the crew may be storing, handling, transporting or otherwise having exposure to; and documents showing that the operator applicant has the required amount of insurance coverage.

The proposed rule provides that the Department will begin to process the application when it has received all of the required documents, and it will complete its processing of the application within 30 days of receipt of the results of the criminal background check.

The proposed rule specifies standards for the fingerprint cards that are to be submitted as part of the certification application, requires the applicant or certified operator to notify the Department of any change in information that has been submitted to the Department, and provides that a certificate of registration may be denied, suspended or revoked if the Department determines that the applicant or certified operator is not in compliance with the law.



The proposed rule specifies the employment and wage payment records that are to be maintained by a certified operator. The proposed rule requires that the vehicles used must meet all safety requirements and that the certified operator must provide written information to the crew members on the safe handling, storage and transportation of any products or other materials that accompany the crew in their vehicles.

The proposed rule describes the information that must be provided by the operator to the Department to obtain traveling sales crew member permits. This includes, for each crew member, a government picture ID, information on the area of recruitment, the locations where the crew will be working, a description of the duties of the crew members, a description of the products being sold, and a statement verifying that this information has been provided to the crew member. The proposed rule provides that permit applications will be processed and permits issued within ten days after the receipt of all application materials. The proposed rule provides that operators and crew members are required to carry permits and identification at all times while working.

The proposed rule provides that a person who is required to obtain a traveling sales crew member permit is entitled to file a claim for unpaid wages with the Department under sec. 109.09, Stats.

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

There is no federal law which regulates traveling sales crews or which requires work permits for door to door sales.

#### ***Comparison with laws in adjacent states***

None of the states adjacent to Wisconsin (Illinois, Iowa,

Michigan and Minnesota) has a law which regulates traveling sales crews.

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

The proposed rule is based on the requirements of sec. 103.34, Stats.

#### **Small Business Impact**

Because the proposed rule carries forward the requirements of the statute and does not establish new requirements, the proposed rule does not have an effect on small business.

#### **Fiscal Estimate**

##### ***Summary***

The proposed rule does not create any costs that are separate from costs potentially due to the new statute.

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

None.

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

None.

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

None.

#### **Agency Contact Person**

Timara Budack, Section Chief

Labor Standards Section

(608) 267-2495

Timara.Budack@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.*

## **Pharmacy Examining Board** **CR 09-098**

A rule-making order to amend sections Phar 6.08, 7.12 (2) (f) and 8.12 (2) (b), relating to security systems, utilization reviews, and prescription orders transmitted by facsimile machines.

## **Pharmacy Examining Board** **CR 09-099**

A rule-making order to create section Phar 7.095, relating to remote dispensing sites.

## **Public Instruction** **CR 09-074**

A rule-making order to amend section PI 35.05 (12) (a) 2. and to create sections PI 35.03 (1m) and 35.05 (4n), relating to establishing a fee under the Milwaukee Parental Choice Program.

## **Public Service Commission** **CR 06-067**

A rule-making order to revise Chapter PSC 160, relating to universal telecommunications service, administration of the universal service fund, and related changes.

## **Transportation** **CR 09-041**

A rule-making order to revise Chapter Trans 206, relating to the local roads improvement program.

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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.*

### **Natural Resources**

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

#### **CR 05-058**

Rule revises Chapter NR 115, relating to minimum standards for county shoreland ordinances.  
Effective 2-1-10.

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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 **December 31, 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.*

## **Agriculture, Trade and Consumer Protection** **CR 09-037**

Rule revising Chapter ATCP 91, relating to method of sale of commodities, including method of sale by weight, measure or count. Effective 1-1-10.

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

This rule changes current rules, which regulate methods of sale of commodities (including required methods of sale by weight, measure or count), to make them consistent with standards published by the National Institute of Standards and Technology ("NIST") and adopted by 45 other states. This rule also updates and clarifies current rule coverage.

NIST has published specific method-of-sale standards for certain commodities (these standards typically address consumer protection or fair competition issues that have arisen in connection with those particular commodities). This rule incorporates current NIST standards for the following commodities (subject, in some cases, to exceptions required by Wisconsin law):

#### *Food products*

- Meat, poultry, fish and seafood.
- Dairy products.
- Fresh fruits and vegetables.
- Butter, margarine and like spreads.
- Flour, corn meal and like products.
- Pickles and pickle relish.

#### *Non-food products*

- Fence wire.
- Coatings.
- Fireplace and stove wood.
- Peat and peat moss.
- Prefabricated utility buildings.
- Roofing and roofing material.
- Sealants.
- Sod and turf.
- Softwood lumber.
- Carpet.
- Hardwood lumber (retail)
- Polyethylene products.
- Insulation.
- Precious metals.
- Mulch.
- Liquefied petroleum gas.
- Liquid oxygen for respiration.

- Animal bedding.
- Wiping cloths.
- Baler twine.
- Potpourri.
- Communication paper.
- Bulk sand, rock, gravel and stone.

This rule incorporates the following general NIST standards (or makes DATCP rules more consistent with those NIST standards):

- Price declarations for food commodities sold from bulk by weight (must be shown per whole unit, not fractional unit, of weight).
- Price presentation (showing fractions of a cent).
- Combination quantity declarations.
- Vending machine labeling.
- Railroad car tare weights.

DATCP has not incorporated a small business enforcement policy in this rule. This rule will benefit businesses that sell commodities in more than one state, because it incorporates many of the NIST model standards and thus makes Wisconsin standards more consistent with standards used in 45 other states. While this rule does add some new standards to current rules, those standards are based on NIST standards with which most affected businesses are already complying.

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

On August 13, 2009, DATCP transmitted the above rule for legislative review. The rule was assigned to the Senate Committee on Small Business, Emergency Preparedness, Technical Colleges, and Consumer Protection and to the Assembly Committee on Agriculture. The Senate Committee on Small Business, Emergency Preparedness, Technical Colleges, and Consumer Protection did not hold a hearing and took no action. The Assembly Committee on Agriculture did not hold a hearing and also took no action.

## **Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors Examining Board** **CR 09-030**

Rule revising section A-E 6.03, relating to land surveying experience. Effective 1-1-10.

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

This citation correction of the rule 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.



**Architects, Landscape Architects, Professional  
Engineers, Designers and Land Surveyors  
Examining Board  
CR 09-032**

Rule creating Chapter A-E 10, relating to continuing education for land surveyors. Effective 1-1-10.

**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.

**Summary of Comments by Legislative Review  
Committees**

No comments were reported.

**Architects, Landscape Architects, Professional  
Engineers, Designers and Land Surveyors  
Examining Board  
CR 09-033**

Rule revising section A-E 8.03 (5), relating to the definitions of supervision, direct supervision, responsible charge, and direction and control. Effective 1-1-10.

**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.

**Summary of Comments by Legislative Review  
Committees**

No comments were reported.

**Architects, Landscape Architects, Professional  
Engineers, Designers and Land Surveyors  
Examining Board  
CR 09-034**

Rule revising section A-E 8.08 (3) and (4), relating to failure to respond to information requests in conjunction with an investigation of a complaint filed against a registrant. Effective 1-1-10.

**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.

**Summary of Comments by Legislative Review  
Committees**

No comments were reported.

**Children and Families  
Family and Economic Security, Chs. DCF 101-153  
CR 09-059**

Rule revising Chapter DCF 120, relating to emergency assistance for needy families. Effective 1-1-10.

**Summary of Final Regulatory Flexibility Analysis**

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

**Summary of Comments by Legislative Review  
Committees**

No comments were received.

**Commerce  
Fee Schedule, Ch. Comm 2  
Plumbing, Chs. Comm 81-87  
CR 09-050**

Rule revising Chapters Comm 2 and 82, relating to permits to operate, registration and filing fees. Effective 1-1-10.

**Summary of Final Regulatory Flexibility Analysis**

The rules increase the fees for permits to operate which will affect businesses which own any boiler, pressure vessel, anhydrous ammonia system, mechanical refrigeration system, conveyance and passenger ropeway.

The revisions regarding the cross connection control program will affect businesses where certain types of cross connection control assemblies are to be installed or exist to protect public water supplies.

**Summary of Comments by Legislative Review  
Committees**

No comments were received.

**Financial Institutions — Banking  
CR 09-060**

Rules revising Chapters DFI-Bkg 40 to 44, repealing Chapter DFI-Bkg 45, and creating Chapter DFI-Bkg 47, relating to the transition from a registration system to a license system under subch. III of Ch. 224, Stats., branch offices, mortgage broker agreements, surety bonds, and trade names. Effective 1-1-10; except the repeal eff. 1-1-11.

**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.

**Financial Institutions — Securities  
CR 09-056**

Rules revising Chapters DFI-Sec 1 to 5, 7 and 9, relating to minor revisions to securities sections for conformity with Wisconsin securities statutes, filings, and securities agent examination matters. Effective 1-1-10.

**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.

**Transportation  
CR 09-058**

Rules revising section Trans 315.03 (1), relating to safety belt medical use exemption. Effective 1-1-10.

**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.

**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 **December 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

#### Agriculture, Trade and Consumer Protection

##### Ch. ATCP 91

ATCP 91.01  
 ATCP 91.015  
 ATCP 91.02 (1)  
 ATCP 91.03  
 ATCP 91.04  
 ATCP 91.041  
 ATCP 91.042  
 ATCP 91.05  
 ATCP 91.06  
 ATCP 91.07  
 ATCP 91.08  
 ATCP 91.09  
 ATCP 91.10  
 ATCP 91.11

#### Architects, Engineers, Designers, etc.

##### Ch. A-E 6

A-E 6.03 (1) (a), (b)

##### Ch. A-E 8

A-E 8.03 (5)  
 A-E 8.08 (3), (4)

##### Ch. A-E 10 (Entire Chapter)

#### Children and Families

##### Ch. DCF 120

DCF 120.03 (6m)  
 DCF 120.05 (1) (f), (2) (c), (3), (4)  
 DCF 120.06  
 DCF 120.07  
 DCF 120.08 (2), (4), (5) (intro.)

#### Commerce

##### Ch. Comm 2

Comm 2.11 (6)  
 Comm 2.12 (4)  
 Comm 2.13 (3)  
 Comm 2.15 (4)  
 Comm 2.21 (4)  
 Comm 2.64 Table 2.64-1  
 Comm 2.645

##### Ch. Comm 5

Comm 5.99 (1), (3), (4), (5)

##### Ch. Comm 82

Comm 82.20 (1), Tables 82.20-1 and 82.20-2  
 Comm 82.22 (8) (b), (9), Table 82.22-1  
 Comm 82.41 (6)

#### Financial Institutions — Banking

##### Ch. DFI-Bkg 40 (Entire Chapter)

##### Ch. DFI-Bkg 41 (Entire chapter)

##### Ch. DFI-Bkg 42 (Entire chapter)

##### Ch. DFI-Bkg 43 (Entire chapter)

##### Ch. DFI-Bkg 44

DFI-Bkg 44.01 (1) (f), (g)

##### Ch. DFI-Bkg 45 (Entire chapter) (eff. 1-1-11)

##### Ch. DFI-Bkg 47 (Entire chapter)

#### Financial Institutions — Securities

##### Ch. DFI-Sec 1

DFI-Sec 1.02 (5) (b), (c), (8)

##### Ch. DFI-Sec 2

DFI-Sec 2.01 (9), (10)  
 DFI-Sec 2.02 (9) (b), (m)  
 DFI-Sec 2.04 (2)

##### Ch. DFI-Sec 3

DFI-Sec 3.03 (1) (intro.)

##### Ch. DFI-Sec 4

DFI-Sec 4.01 (3) (intro.), (4) (e) to (g)

##### Ch. DFI-Sec 5

DFI-Sec 5.01 (4) (a), (b)  
 DFI-Sec 5.05 (2) (a)  
 DFI-Sec 5.13 (4)

##### Ch. DFI-Sec 7

DFI-Sec 7.01 (2) (title), (c)

##### Ch. DFI-Sec 9

DFI-Sec 9.01 (1) (b)

#### Transportation

##### Ch. Trans 315

Trans 315.03 (1) (a), (c)

### **Editorial Corrections**

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

#### **Commerce**

##### **Comm 5**

Comm 5.12 (2) (h)

#### **Comm 131**

Comm 131.50 (1) and Appendix

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## Sections Affected by Corrections Not Published

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

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

<b>Location of Agency Reference and/or Cross-Reference</b>	<b>Outdated Agency Reference / Invalid Cross-Reference</b>	<b>Correction</b>
PC 1.01	chs. PC 1 to 7	chs. PC 1 to 6
PC 1.07	chs. PC 1 to 7	chs. PC 1 to 6



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## Executive Orders

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**The following are recent Executive Orders issued by the Governor.**

**Executive Order 300.** Relating to a Proclamation of an Energy Emergency.

**Executive Order 301.** Relating to a Declaration of an Agricultural Emergency.

**Executive Order 302.** An Amendment to Executive Order No. 300, Relating to a Proclamation of an Energy Emergency.

**Executive Order 303.** Relating to the Governor's WIRED for Health Board.

**Executive Order 304.** 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 National Pearl Harbor Remembrance Day.

**Executive Order 305.** Relating to a Special Session of the Legislature.

**Executive Order 306.** Relating to a Declaration of a State of Emergency.

**Executive Order 307.** Relating to the Closure of State Government Offices Due to Extreme Winter Weather Conditions.

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