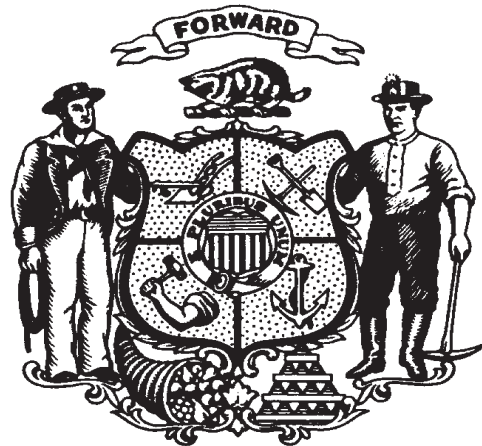


# Wisconsin Administrative Register

No. 650



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## WISCONSIN ADMINISTRATIVE REGISTER

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

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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

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

#### Finding of Emergency

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

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

This emergency rule modifies Wisconsin's current standard, and makes it consistent with the new national

standard. The department of agriculture, trade and consumer protection (DATCP) is adopting this rule as a temporary emergency rule, pending rulemaking proceedings to modify the standard on a more "permanent" basis. "Permanent" rulemaking proceedings normally require over a year to complete. This emergency rule is needed to mitigate a potential hardship to Wisconsin producers of dairy goat milk, pending the adoption of "permanent" rules.

**Publication Date:** February 4, 2010  
**Effective Dates:** February 4, 2010 through July 3, 2010 (corrected)

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### Children and Families

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

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

#### Finding of Emergency

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

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

**Publication Date:** December 30, 2009  
**Effective Dates:** January 1, 2010 through May 30, 2010  
**Hearing Dates:** March 17, March 31, April 8, 2010

(See the Notice in this Register)

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### Commerce

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

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

#### Finding of Emergency

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

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

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

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

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

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

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

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

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**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 Dates:** 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 Dates:** November 9, 2009 through April 7, 2010  
**Hearing Date:** January 25, 2010

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**Corrections (2)**

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

**Finding of Emergency**

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

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

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

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

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

promptly to the need to use inmate funds, not state funds, while permanent rules are being developed.

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

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

#### Finding of Emergency

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

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

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

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

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

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### Earned Release Review Commission

(Formerly Parole Commission)

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

#### Finding of Emergency

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

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

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

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

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

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### Employee Trust Funds

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

#### Finding of Emergency

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

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

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



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## 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 Dates:** December 16, 2009 through  
 May 14, 2010  
 (Subject to 2009 Wis. Act 28, Section 9122 (2))  
**Hearing Date:** February 3, 2010

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## 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 Dates:** October 19, 2009  
 through March 17, 2010  
**Hearing Date:** November 18, 2009

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## Insurance (6)

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

#### **Finding of Emergency**

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

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

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

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

**Publication Date:** September 9, 2009  
**Effective Dates:** 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 Dates:** September 26, 2009  
 through June 22, 2010  
 (Subject to s. 632.895 (12m) (f), Stats.)  
**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 Dates:** 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 Dates:** 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 Dates:** October 31, 2009 through  
 March 29, 2010  
**Hearing Date:** January 14, 2010

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

#### Exemption From Finding of Emergency

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

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

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

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

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

### Natural Resources

#### *Fish, Game, etc., Chs. NR 1—*

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

#### Finding of Emergency

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to protect the public welfare. The federal government and state legislature have delegated to the appropriate agencies rule-making authority to control the hunting of migratory birds. The State of Wisconsin must comply with federal regulations in the establishment of migratory bird hunting seasons and conditions. Federal regulations are not made available to this state until mid-August of each year. This order is designed to bring the state hunting regulations to conformity with the federal regulations. Normal rule-making procedures will not allow the establishment of these changes by September 1. Failure to modify our rules will result in the failure to provide hunting opportunity and continuation of rules which conflict with federal regulations.

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

### Natural Resources

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

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

#### Finding of Emergency

The substantial increase in bonding for the dam grant programs is a strong message from the legislature that concern for public welfare from unsafe dams is growing, as well as the desire to help dam owners, including the owners of the many dams damaged during the flooding in 2007 and 2008. In order to protect the public and provide this financial assistance, these additional funds should be put to

work as soon as possible. The timeline for permanent rule promulgation will impede the Department's ability to accept applications and commit funding to dam safety projects until at least June 2010, which would delay most projects until late 2010 or 2011. The emergency rules will allow immediate implementation of modifications that will allow a grant application cycle to be conducted yet this fall and allow most projects to be constructed during the 2010 construction season or before.

**Publication Date:** August 28, 2009  
**Effective Dates:** August 28, 2009 through  
 January 24, 2010  
**Extension Through:** March 25, 2010

### Public Defender Board

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

#### Finding of Emergency

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

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

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

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

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



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### Public Instruction (4)

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

#### Exemption From Finding of Emergency

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

**Publication Date:** September 1, 2009  
**Effective Dates:** September 1, 2009 through January 28, 2010  
**Extension Through:** March 29, 2010  
 (Except Section 1)  
**Effective Dates:** 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 Dates:** September 4, 2009 through January 31, 2010  
**Extension Through:** April 1, 2010  
**Hearing Date:** November 9, 2009

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

#### Finding of Emergency

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

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

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

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

#### Finding of Emergency

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

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

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

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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 Dates:** September 11, 2009 through February 7, 2010  
**Extension Through:** April 18, 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 Dates:** 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 Dates:** September 10, 2008 through the date on which the final rules take effect  
**Hearing Date:** November 26, 2008

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### Revenue (6)

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

#### Finding of Emergency

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

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

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

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

#### Finding of Emergency

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

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

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

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

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

#### Finding of Emergency

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

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

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

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

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

#### Finding of Emergency

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

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

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

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

#### Finding of Emergency

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

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



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

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

#### Exemption From Finding of Emergency

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

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

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### Veterans Affairs (2)

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

#### Finding of Emergency

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

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

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

#### Finding of Emergency

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

The removal of the existing deadline for completing and receiving an application for the tuition fee reimbursement program has left the department unable to budget the available resources for this program to ensure maximum coverage for eligible veterans throughout the fiscal year. The department is requesting emergency rules to ensure applications can be processed in a responsive manner and to allow the department

to properly manage the program’s biennial budget and ensure the welfare of all eligible veterans. The emergency rule will address the need for an application deadline while the department completes the promulgation for a permanent rule for the program.

**Publication Date:** January 4, 2010  
**Effective Dates:** January 4, 2010 through June 2, 2010  
**Hearing Date:** March 10, 2010

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### Workforce Development (2)

#### *Public Works Construction Contracts, Chs. DWD 290–294*

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

#### Finding of Emergency

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

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

The prevailing wage laws require that when a state agency or local governmental unit contracts for the erection, construction, remodeling, repairing, or demolition of a public works project it must obtain a prevailing wage rate determination from the Department of Workforce Development and require that the contractors and subcontractors on the project pay their employees in accordance with the wage rates established by the determination. Under the law as it existed before the enactment of 2009 Act 28, a prevailing wage rate determination was required for any project with an estimated cost of at least \$48,000 (for a single-trade project) or \$234,000 (for a multi-trade project). Act 28 changes these amounts to an estimated project cost of at least \$25,000. Act 28 has also created a new statute, s. 66.0904, Stats., which requires that a private developer obtain and comply with a prevailing wage rate determination for a private project that receives at least \$1,000,000 in direct financial assistance from a local governmental unit.

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

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

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

**Finding of Emergency**

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

The adjustment of the thresholds for the application of the project payment and performance assurance bond requirements ensures that the adjustments are effective on a date certain that is prior to the time of year that project requests are generally submitted to the Department and the need for obtaining bonding is determined. The adjustment avoids imposing an additional administrative burden on local

governments and state agencies caused by an effective decrease of the thresholds due solely to inflation in the construction industry. If these new thresholds are not put into effect by emergency rule, the old thresholds will remain effective for approximately six to seven months, until the conclusion of the permanent rule-making process. The thresholds are based on national construction cost statistics and are unlikely to be changed by the rule-making process.

**Publication Date: December 29, 2009**

**Effective Dates: January 1, 2010 through  
May 30, 2010**

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## Scope Statements

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### Agriculture, Trade and Consumer Protection

#### Subject

Revises Chapter ATCP 70, relating to food processing plant license exemptions for certain small processors.

#### Objectives of the Rule

This rule may exempt the following persons from licensing as food processing plant operators:

- A person who processes certain types of foods at home, for retail sale by that person, provided that the person receives a combined total of no more than \$5,000 from the retail sale of those types of home-processed foods in any license year.
- A maple syrup processor that receives no more than \$5,000, in any license year, from the sale of maple syrup for further processing.

This rule will define the scope of these license exemptions, and will interpret and clarify related statutes and rules as necessary.

#### Policy Analysis

DATCP administers Wisconsin's food safety program under ch. 97, Stats. DATCP licenses and regulates food processing plant operators under s. 97.29, Stats., and ch. ATCP 70, Wis. Adm. Code. Regulation is designed to protect public health and safety.

Recent law changes (2009 Wis. Act 101) created a food processing plant license exemption for persons who home-process certain foods for retail sale, provided that their gross sales of those foods do not exceed \$5,000 a year. This rule may clarify that license exemption, and expand it to include small-scale processing of certain other (less hazardous) home-processed foods. This rule may also create a limited license exemption for maple syrup processors that receive no more than \$5,000, in any license year, from the sale of maple syrup for further processing.

This rule will define the scope of these license exemptions, and will interpret and clarify related statutes and rules as necessary. This rule will reduce the regulatory burden for certain small-scale food processing operations, without creating undue risks to public health or safety.

#### Policy Alternatives

New law enacted by 2009 Wis. Act 101 requires DATCP to implement licensing exemptions for certain foods that are canned or processed at home. DATCP has no alternative but to adopt those rules. In the interest of fairness, DATCP may also adopt rules (as described in this scope statement) to exempt certain small-scale processors of other, less-hazardous, food from licensing. DATCP hopes to clarify the interpretation of Act 101, and provide a fair and consistent approach to licensing.

DATCP has received numerous requests for clarification of Act 101, as well as requests for the exemption of maple syrup processors who sell less than \$5,000 per year at wholesale. DATCP seeks to be consistent and fair to these producers of these and other food products, without jeopardizing the public

food supply. If DATCP takes no action to clarify licensing requirements, licensing criteria may be confusing, inconsistent and needlessly burdensome.

There are no statutory alternatives at this time.

#### Statutory Authority

Sections 93.07 (1) and 97.29 (1) (g) 8. and (5), Stats.

#### Comparison with Federal Regulations

None.

#### Entities Affected by the Rule

This rule will benefit persons that process limited amounts of certain food products (such as pickles, canned vegetables or fruits, breads, cakes and candy) in their homes for retail sale, including sales at community events or farmers' markets. This rule will also benefit maple syrup processors that sell small amounts of maple syrup for further processing.

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

DATCP estimates that it will use the equivalent of 0.50 FTE staff to revise this rule. This includes rule drafting, preparing related documents, 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.

### Children and Families

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

#### Subject

Revises Chapter DCF 53, relating to adoption record searches.

#### Policy Analysis

*Medical information.* Under s. 48.432, Stats., adults who were adopted in Wisconsin or who were not adopted but whose birth parents' parental rights were terminated may obtain from Department files relevant medical or genetic information about themselves or their birth parents. This information is also available to adoptive parents, guardians, offspring, and assigned agency or social workers.

If the Department does not have the information on file, a search for the birth parents may be requested to obtain the information. The request must be accompanied by a statement from a physician certifying either that the adoptee or individual who was not adopted but whose birth parents' parental rights were terminated has or may have acquired a

genetically transferable disease or that the adoptee's or individual's medical condition requires access to the information. Before the information is released, the name and address of the birth parent and the identity of any health care provider is deleted.

*Identifying information.* Under s. 48.433, Stats., a birth parent whose parental rights have been terminated may file an affidavit authorizing the department or agency to provide the child with his or her original birth certificate and any other available information about birth parent's identity and location. This affidavit may be revoked at any time.

The Department or agency may disclose this information to adults whose birth parents' parental rights were terminated if it has unrevoked affidavits from both parents or an unrevoked affidavit from one of the birth parents and the other birth parent was unknown at the time of the termination of parental rights.

If the Department or agency does not have an affidavit on file from each known birth parent, a search for each birth parent who has not filed an affidavit may be requested. Upon locating a birth parent, the department or agency shall notify the parent of the request for information and the right to file an affidavit. If, after a search, a known birth parent cannot be located, the department or agency may disclose the information if the other birth parent has filed an unrevoked affidavit.

If the department or agency may not disclose the information requested, it shall provide requester with any nonidentifying social history information about either of the birth parents that it has on file.

The proposed rules will update and clarify the rules implementing these statutory provisions.

#### **Statutory Authority**

Sections 48.32 (9), 48.33 (11), and 227.11 (2), Stats.

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

None.

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

County agencies and licensed child-placing agencies.

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

150 hours.

#### **Contact Information**

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Adoption Record Search  
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### **Children and Families**

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

#### **Subject**

Revises Chapter DCF 201, relating to establishing and adjusting child care subsidy authorizations.

#### **Policy Analysis**

Section 49.155 (1m) (a), Stats., provides the work, training, and educational activities for which an eligible individual can receive a subsidy for child care. A child care administrative agency determines the hours of child care authorized per week and authorizes payment to a child care provider.

*Maximum number of authorized hours.* Section 49.155 (6g) (a), Stats., as created by 2009 Wisconsin Act 28, provides that no more than 12 hours of child care per day per child may be authorized unless the parent provides written documentation of work or transportation requirements that exceed 12 hours in a day. The child care administrative agency may authorize more than 12 hours, not exceeding 16 hours, of child care per day for a child whose parent provides written documentation of work or transportation requirements that exceed 12 hours in a day. If the authorized hours of child care per day for a child will be reduced from more than 12 to 12 or less because the child's parent does not provide the written documentation, the child care administrative agency shall provide to the child's parent and to the child care provider 4 weeks' notice of the reduction in authorized hours before actually reducing the child's authorized hours.

*Adjusting authorized hours.* Under s. DCF 201.04 (2) (d), payment to a licensed child care provider is generally based on authorized hours of child care. If the schedule of child care to be used is expected to vary widely or the child care administrative agency has documented 3 separate occasions where a licensed child care provider significantly overreported the attendance of a child, payment is based on attendance.

Section 49.155 (6g) (am) and (b), Stats., as created by 2009 Wisconsin Act 28, provides that if payment to a child care provider is based on authorized hours of child care, the department shall do all of the following with respect to establishing and adjusting the number of authorized hours per child:

- The department shall track a child's hourly usage of child care authorizations over a 6-week period.
- If the child's hourly usage tracked is less than 60 % of the authorized hours of child care, the department shall reduce the authorized hours of child care for the child to 90% of the maximum number of hours of child care that the child attended during that 6-week period.
- The department shall provide written notice of the proposed adjustment to the child's parent, the child care provider, and the applicable county department or agency.
- The department shall provide a grace period after the number of authorized hours are reduced during which time the child care subsidy amount paid to the child care provider for the child shall remain the same as before the reduction in authorized hours was made.

The department shall exclude from a child's hourly usage calculation all of the following:

- One week per year of vacation time for the child care provider.
- One week per year of sick time for the child care provider.
- Two weeks per year of vacation time for the child's parent.

The proposed rules will specify how these requirements will be implemented.

#### **Statutory Authority**

Sections 49.155 (6g) (c) and 227.11 (2), Stats.

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

None.

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

Counties, tribes, child care providers, parents, and children.

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

80 hours.



**Contact Information**

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 Division of Early Care and Education  
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**Commerce*****Financial Resources for Businesses and Communities,  
Chs. Comm 104—*****Subject**

Creates Chapter Comm 137, relating to reallocations for recovery zone facility bonds.

**Objective of the Rule**

These permanent rules are expected to replace emergency rules that establish a system for reallocating waived allocations for recovery zone facility bonds, as defined under 26 USC 1400U-3(b)(1).

These permanent rules may include procedures and conditions for the granting of a reallocation, as deemed by the Department to be in the best interest of the State, and may establish the rate for any cash deposit that will be a condition for receiving a reallocation.

**Policy Analysis**

The Department currently administers chapter Comm 113 for the allocation of volume cap on tax-exempt private activity bonds, which relates to the Department's annual allocation of bonding authority for its Industrial Revenue Bond program, pursuant to 26 USC 146.

The Department also currently administers chapter Comm 136, which addresses Wisconsin's one-time allocation of bonding authority for issuance of Midwestern disaster area bonds for the purposes of 26 USC 1400N(a), as modified and applied by section 702(d)(intro.) and (1) of the federal Heartland Disaster Tax Relief Act of 2008, Public Law 110-343, title VII, subtitle A. These are private activity bonds that are designed to facilitate the recovery and rebuilding of areas which in 2008 were declared by the President as being major disaster areas because of severe storms, tornados or flooding.

The alternative of not promulgating these rules would conflict with a directive in section 560.033 of the Statutes, as established in 2009 Wisconsin Act 112, that requires this rulemaking.

**Statutory Authority**

Sections 227.11 (2) (a) and 560.033, Stats.

**Comparison with Federal Regulations**

The federal American Recovery and Reinvestment Act of 2009 (ARRA) authorizes certain local governments to issue a limited amount of tax-exempt, recovery zone facility bonds. Through each State, the ARRA allocates to counties, and to cities with a population of at least 100,000, the limited amount of bonds that may be issued. The ARRA also authorizes these counties and cities to then waive some or all of their allocation, in which case the State in which the local units are located may reallocate the waived allocation to other units of government in that State.

**Entities Affected by the Rule**

The proposed rules may affect any of the following entities that choose to apply for the reallocated bonding authority: a

city, village, town, county; a special purpose district; a state authority, such as the Wisconsin Housing and Economic Development Authority, the Wisconsin Health and Educational Facilities Authority, or the University of Wisconsin Hospitals and Clinics Authority; or a local housing, redevelopment, or community development authority.

The proposed rules may also affect owners or developers of any facility that is constructed using the proceeds from this reallocated bonding authority.

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

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

**Health Services*****Health, Chs. DHS 110—*****Subject**

Revises Chapter DHS 172, relating to the safety, maintenance and operation of public swimming pools and water attractions.

**Objective of the Rule**

To revise the chapter for clarity and to address substantive issues that have arisen as a result of Department and industry concerns.

**Policy Analysis**

Under the authority of s. 254.47, Stats., the Department regulates the operation of all public swimming pools in the state. The Department's regulatory oversight is to ensure that public swimming pools maintain operating practices that protect the public's health. The public's health is maintained at public swimming pools to the extent that the public does not contract waterborne illnesses at pools. Waterborne illnesses result from unsanitary pool conditions or malfunctioning pool equipment, which, in turn, are normally a result of poor pool maintenance practices. The public's health is also maintained at public swimming pools to the extent that the public does not suffer physical or submersion injuries. Physical and submersion injuries are caused or aggravated by poor safety equipment maintenance and a lack of adequate supervision.

Under its statutory authority, the Department promulgated ch. DHS 172 to regulate the operation of public swimming pools and water attractions for the purpose of protecting the public health. The Department made significant changes to ch. DHS 172 in 2007. Since then, a number of issues have arisen regarding the clarity and scope of the rule. The Department proposes to change the existing rule to address these issues and others deemed appropriate by a committee of industry and regulatory personnel convened by the Department.

The primary purpose of the proposed rulemaking is to revise the chapter for clarity and analyze parts of the code that have caused concern among regulated parties. This includes correcting and adding definitions to reflect national standards and Department of Commerce language, addressing omissions revolving around the lifeguarding rules and refining them to lessen the burden they create, assessing the application of code requirements to existing pools, rewriting the required safety equipment section to better reflect current standards of rescue, evaluating new technology such as

automated operating systems and resolve conflicts regarding its use, updating the reports and records section to require retention of federally required information, modifying the labeling requirements to reflect federal standards, adjusting chemical standards to more accurately reflect the recommendations of national standards and other state codes, and addressing concerns generated by the advisory committee.

#### **Statutory Authority**

Sections 227.11 (2), 250.04 (1) and (7), and 254.47, Stats.

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

No federal rules or model code exists governing the licensing and operation of public swimming pools.

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

The proposed rule will affect the owners and institutions that operate public pools and water attractions, and the general public.

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

The Department estimates that approximately 575 hours of staff time will be required to promulgate the proposed rules.

#### **Contact Information**

Shane Anderson  
Division of Public Health, Bureau of Environmental and Occupational Health  
Phone : (608) 266-8282

## **Insurance**

#### **Subject**

Creates section Ins 3.75, Wis. Adm. Code, relating to continuation of group policy coverage for employees and their dependents and affecting small business.

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

In December 2009 Congress enacted section 1010 of the federal department of defense appropriations act, 2010 ("DOD Act"). This section extended the federal premium subsidy provided under the American Recovery and Reinvestment Act of 2009, provided for retroactive extension of coverage for a transition period, and required that notice of the extended subsidy and retroactive coverage and premium payment be given to assistance eligible individuals. This rule makes it clear that these rights must also be extended to assistance eligible individuals who are or were eligible for coverage under state law, either under s. 632.897, Stats., or s. INS 3.75, Wisconsin Administrative Code.

#### **Policy Analysis**

The United States Department of the Treasury, Internal Revenue Service published in a frequently asked question and answer format the question of continuation rights for employees and their dependents when employers discontinue a group policy and determined that eligible employees would be able to elect continuation coverage that may be eligible for premium subsidy under the American Recovery and Reinvestment Act of 2009. There is no current state rule or policy on this specific issue.

#### **Statutory Authority**

Sections 601.41 (3), 601.42, 632.897 and Section 9126 of 2009 Wisconsin Act 11.

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

This proposed rule would enact for Wisconsin insureds the ability to elect continuation of coverage when an employer discontinues group health insurance consistent with the Internal Revenue Service's interpretation of the American Recovery and Reinvestment Act of 2009.

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

Insurers issuing group health insurance products, including insurers offering small employer group health insurance and insurance intermediaries soliciting such products may be affected by this rule.

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

200 hours and no other resources are necessary.

## **Natural Resources**

### *Environmental Protection — Air Pollution Control, Chs. NR 400—*

#### **Subject**

Revises Chapters NR 400 and 405 to 408, relating to air permitting requirements for particulate matter less than 2.5 microns (PM 2.5), greenhouse gas (GHG) emission, and the Forest County Potawatomi Class I area.

#### **Objectives of the Rule**

- Incorporate federally mandated changes to the major source air permitting program to include particulate matter less than 2.5 microns in diameter (PM 2.5) as an air pollutant.
- Incorporate the federal "tailoring" rule for regulating GHG emissions under the existing major source permitting rules.
- Establish rules and procedures for evaluating sources which may impact the Forest County Potawatomi (FCP) Class I area, and
- Make minor clarifying changes to existing permitting rules.

#### **Policy Analysis**

The Department is required under the Clean Air Act to keep its major source permitting program consistent with federal requirements. The United States Environmental Protection Agency (US EPA) has adopted rules identifying PM 2.5 as a pollutant subject to major source permitting and the Department is proposing appropriate changes to its prevention of significant deterioration requirements in ch. NR 405. Implementation of these changes may also require changes to the existing operation permit program rules in ch. NR 407 as well as the minor source permitting program rules in ch. NR 406.

The US EPA is also proposing to adopt GHG rules in March 2010 that will subject sources of GHG emissions to regulations under the existing major source permitting program. Because this rule will subject thousands of small and previously unregulated sources to permitting requirements, US EPA has found it necessary to also propose to adopt another rule to set higher applicability thresholds in order to avoid unduly burdening many small sources with the cost of meeting permitting requirements. A revision to existing state major source permitting rules consistent with this federal action is necessary to ensure that these smaller sources will not be subject to major source permitting requirements for GHG emissions in Wisconsin. Even with commencing the rule development process in January 2010, it is likely that an

emergency rule will be needed to implement the GHG applicability threshold rule quicker to prevent the regulation of smaller GHG sources under existing permitting rules.

There is no realistic alternative to incorporating the PM 2.5 or GHG rules into Wisconsin's air pollution rules. Failure to do so would not only fail to protect state citizens from the potential impacts of PM 2.5 emissions; it would also result in US EPA implementing these requirements in the state. Failure to implement the GHG rule would subject tens of thousands of small GHG emitters to major source air permitting requirements including the requirement to obtain a major source (Title V) operation permit and Best Available Control Technology (BACT) requirements for new or modified GHG emission sources.

The FCP non-Federal Class I air quality area has been established by US EPA at the request of the FCP in 2008. In 1999, the state signed a Final Agreement with the FCP that resolved the state's Class I dispute and which details what the Department, FCP, and potentially affected permit applicants need to do to evaluate the impact of new or modified sources of air pollution that may potentially affect the Class I areas. The Department is proposing to adopt these requirements by rule. The Department believes that adopting these requirements by rule is the best alternative.

#### **Statutory Authority**

Section 285.11 (1), Stats.

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

The Department will propose PM 2.5 and GHG permitting rules essentially identical to the existing federal rules. The FCP Class I area will use the Final Agreement as the basis for the rules and procedures. In general, the Final Agreement limits the number of sources that could be impacted by the Class I area if the Class I area was evaluated the same as Federal Class I areas.

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

These proposed rule changes could impact any facility applying for an air pollution control permit. However, the primary impact will be on major air pollution sources such as utilities, pulp and paper mills, and foundries. These rules could also have a significant impact on any source proposing to locate near the FCP Class I area in Forest County.

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

The Department estimates that development of these rules will consume approximately 850 hours of work time.

#### **Contact Information**

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### **Natural Resources**

*Environmental Protection — Air Pollution Control,  
Chs. NR 400—*

#### **Subject**

Revises Chapter NR 485, relating to the motor vehicle inspection and maintenance (I/M) program relating to repair cost limits and emission limitations.

#### **Objectives of the Rule**

The Department of Natural Resources (DNR) is proposing to revise s. NR 485.045, Wis. Adm. Code, pertaining to the repair cost limit for the state's motor vehicle inspection and maintenance (I/M) program. This proposal will set the limit for vehicles in Sheboygan County to the same amount as the limit for the vehicles in the other counties subject to the program. The DNR is also proposing to repeal emission limitations in s. NR 485.04, Wis. Adm. Code, for tests that are obsolete due to changes in motor vehicle technology.

##### *A. Repair Cost Limit*

Wisconsin's I/M program started in 1984 and is currently operating in the seven counties of Kenosha, Milwaukee, Ozaukee, Racine, Sheboygan, Washington, and Waukesha. Vehicles failing a reinspection are currently eligible for a waiver of compliance if the cost of repairs exceeds the limits in s. NR 485.045, Wis. Adm. Code, and if other conditions, specified in Trans 131.04 and 131.05, Wis. Adm. Code, are met. However, the I/M program did not issue any of these "cost waivers" from July, 2001, through June, 2009, for vehicles equipped with the second generation on-board diagnostics (OBD-II) technology (model year 1996 and newer cars and light trucks) since such waivers would be in violation of s. Trans 131.05 (1) (j), Wis. Adm. Code. Furthermore, as a result of statutory changes in the 2007-2009 biennial budget (2007 Wisconsin Act 20) which exempted from the I/M program the model years not required to be equipped with the OBD-II technology, the I/M program did not issue cost waivers for any vehicle from July, 2008, through June, 2009. The program resumed issuing cost waivers on July, 2009. The reasons for this resumption are described in the following section, titled: Description of Relevant Existing and New Policies and Analysis of Policy Alternatives.

Under s. NR 485.045 (1) (c), Wis. Adm. Code, the repair cost limit is currently \$787 (\$450 in 1989, adjusted annually for inflation) in the six program counties other than Sheboygan. In Sheboygan County, as provided in s. NR 485.045 (1) (b), Wis. Adm. Code, the repair cost limit is fixed at \$200 for vehicles of a 1981 or newer model year and \$75 for older vehicles. Sheboygan County has lower limits since its nonattainment classification established in 1992 was at a lower level than that for the other six counties. However, ozone levels in Sheboygan County have not improved as much as in the other six counties, in part due to the aid of federally-mandated reformulated gasoline in the other six counties. Presently, Sheboygan County has the highest ozone levels in the seven-county I/M program area.

The DNR is proposing to expand the coverage of the inflation-adjusted \$450 repair cost limit to all counties subject to the I/M program, thereby removing the lower limits for Sheboygan County. This proposed adjustment to the repair cost limit, although a greater financial allocation, would enable Sheboygan County to achieve the emissions levels projected in Wisconsin's state implementation plan (SIP) for attaining and maintaining ozone air quality standards. This proposal is equitable to the residents of all seven counties and is more lenient than the previous practice from July, 2001, through June, 2009, which did not allow any cost waivers for the model year 1996 and newer cars and light trucks.

##### *B. Emission Limitations*

Statutory changes in the 2007-2009 biennial budget exempted from the I/M program the model years of vehicles not equipped with the second-generation on-board



diagnostics (OBD–II) technology. Consequently, beginning July, 2008, all vehicles subject to the program are now inspected by scanning the vehicles' OBD–II systems.

The DNR is proposing to repeal the emission limitations in s. NR 485.04, Wis. Adm. Code, for the following tests:

- Evaporative system integrity (pressure) test
- Evaporative system purge test
- Steady–state tests

These tests provide no significant additional information regarding vehicle emission performance beyond that already provided by the OBD scans. Furthermore, the two evaporative system tests have never been conducted by the I/M program and are intrusive, involving the cutting or crimping of fuel vapor lines. The steady–state tests were effective early in the I/M program, but are no longer conducted. These tests are poor at identifying and diagnosing emission problems in today's vehicles.

### **Policy Analysis**

This proposed revision is the result of discussions between the Wisconsin Department of Transportation (DOT) and the DNR staff pertaining to the issuing of cost waivers. The DOT has interpreted s. Trans 131.05(1) (j), Wis. Adm. Code, to mean that to pass a waiver emission equipment inspection, which is a prerequisite for receiving a waiver, the OBD–II system's malfunction indicator light (MIL) must be operational and non–active (that is, not lit). It is expected that an adequate vehicle repair will cause the MIL to turn off, since the underlying condition is corrected. In prior years the I/M program also provided an alternative test, allowing a vehicle to be inspected regardless of the MIL status. However, now that the program administers only the OBD–II test, the DOT's Office of General Counsel has determined that DOT's interpretation of s. Trans 131.05 (1) (j), Wis. Adm. Code, is contrary to s. 110.20 (13), Wis. Stats., since it prevents issuing a cost waiver to every inspected vehicle, regardless of the amount spent on repairs. Consequently, since July, 2009, the DOT has been implementing its new interpretation, thereby allowing cost waivers for vehicles failing by means of a lit MIL. The DOT is also in the process of amending Trans 131.05 (1) (j), Wis. Adm. Code, to allow a cost waiver in certain circumstances even if a vehicle's MIL is unable to be turned off; thereby conforming their rule to statutory language.

For the six I/M program counties other than Sheboygan, the DNR is projecting that the resumption of cost waivers would not lead to a change in emission levels from those projected

in the SIP. However, without this proposed revision, the DNR is projecting that the lower cost limits for Sheboygan County would result in a four percent increase in motor vehicle emissions in Sheboygan County from those projected in the SIP.

The proposed repeal of the emission limitations for certain tests does not appear to have any significant policy implications, since those tests have either never been conducted or are no longer being conducted by the I/M program.

### **Statutory Authority**

Section 110.20 (13) (b), 227.11 (2) (a), 285.11 (1) and 285.30 (2), Wis. Stats. The state implementation plan developed under 285.11 (6), Wis. Stats., will be revised.

### **Comparison with Federal Regulations**

The proposed rule is consistent with the federal clean air act and the federal regulations for motor vehicle I/M programs under that act. Those regulations are found in 40 CFR 51.350–51.373.

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

The affected entities are the owners of non–exempt vehicles registered in Sheboygan County and the vehicle repair facilities that repair those vehicles in response to a failed I/M inspection. If the proposed revisions are adopted, the I/M–related repairs costs for vehicles in Sheboygan County would be similar to those in the other I/M counties. However, if the revisions are not adopted, the I/M–related repairs for the vehicles in Sheboygan County could be significantly less costly and less effective than those for the vehicles in the other I/M counties.

Also, transportation stakeholders may be interested in the proposed rule's impact on the safety margins for the motor vehicle emission budgets in the SIP.

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

The DNR will need about 300 hours of total staff time.

### **Contact Information**

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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.*

### **Barbering and Cosmetology Examining Board** **CR 10-014**

On February 5, 2010, the Department of Regulation and Licensing submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

#### **Analysis**

The proposed order revises Chapter BC 7, relating to examinations for barbers and cosmetologists, aestheticians, electrologists, manicurists, and managers.

#### **Agency Procedure for Promulgation**

A public hearing is required and will be held on May 3, 2010.

#### **Contact Information**

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Division of Board Services  
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Email: Pamela.haack@wisconsin.gov

### **Children and Families** *Safety and Permanence, Chs. DCF 37-59* **CR 10-021**

On February 12, 2010, the Department of Children and Families submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

#### **Analysis**

The proposed order revises Chapters DCF 56 and 58, relating to foster care and kinship care.

#### **Agency Procedure for Promulgation**

Public hearings are required and will be held on March 17, March 31, and April 8. The organizational unit responsible for promulgation of the proposed rules is the Division of Safety and Permanence.

#### **Contact Information**

Elaine Pridgen  
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### **Commerce** *Ch. Comm 6* **CR 10-024**

On February 16, 2010, the Department of Commerce submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

#### **Analysis**

The proposed order creates Chapter Comm 6, relating to no smoking.

#### **Agency Procedure for Promulgation**

A public hearing is required and will be held on April 6, 2010. The organizational unit responsible for promulgation of the proposed rules is the Safety and Buildings Division.

#### **Contact Information**

James Quast, Program Manager  
Phone: (608) 266-9292  
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### **Employment Relations Commission** **CR 10-019**

On February 9, 2010, the Wisconsin Employment Relations Commission submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

#### **Analysis**

The proposed order amends Chapters ERC 1 to 12, 14, 17, 19 to 28, and 30 to 33, and creates Chapters ERC 29, 34, and 60 to 68, relating to the Wisconsin Employment Peace Act, the Municipal Employment Relations Act, the State Employment Labor Relations Act and the newly created UW System Faculty and Academic Staff Labor Relations Act.

#### **Agency Procedure for Promulgation**

A public hearing is required and will be held on March 11, 2010.

#### **Contact Information**

Peter Davis  
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### **Health Services** *Health, Chs. DHS 110-* **CR 10-015**

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

#### **Analysis**

The proposed order creates sections DHS 195.145 and 197.145, relating to carbon monoxide detectors in hotels, motels, tourist rooming houses and bed and breakfast establishments, and affecting small businesses.

#### **Agency Procedure for Promulgation**

A public hearing is required, but has not yet been scheduled.

**Contact Information**

For substantive questions on rules contact:

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Small Business Regulatory Review Coordinator:

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

On February 16, 2010, the Office of the Commissioner of Insurance submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

**Analysis**

The proposed order revises Subch. III of Chapter Ins 18, relating to independent review and affecting small business.

**Agency Procedure for Promulgation**

A public hearing is required and will be held on March 17, 2010

**Contact Information**

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

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

For additional information, please contact:

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

**Marriage and Family Therapy, Professional  
Counseling and Social Work Examining Board**  
**CR 10-013**

On February 5, 2010, the Department of Regulation and Licensing submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

**Analysis**

The proposed order revises section MPSW 1.11, relating to psychometric testing.

**Agency Procedure for Promulgation**

A public hearing is required and will be held on April 13, 2010.

**Contact Information**

Pamela Haack, Paralegal  
Division of Board Services  
Phone: (608) 266-0495  
Email: Pamela.haack@wisconsin.gov

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

On February 5, 2010, the Department of Natural Resources submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

**Analysis**

The proposed order revises Chapter NR 40, relating to invasive species identification, classification and control.

**Agency Procedure for Promulgation**

A public hearing is required and will be held on March 11, 2010.

**Contact Information**

Peter D. Flaherty  
Bureau of Legal Services  
Phone: (608) 266-8254  
Email: Peter.Flaherty@wisconsin.gov

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

On February 11, 2010, 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 10, 11, 15 and 19, relating to the 2010 Annual Spring Hearings relating to hunting, trapping, closed areas, and game refuges.

**Agency Procedure for Promulgation**

Public hearings are required and will be held on April 12, 2010 in each county.

**Contact Information**

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

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

On February 17, 2010, 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 20, 21, 23 and 26, relating to the 2010 Annual Spring Hearings relating to fishing in inland, outlying, and boundary waters.

**Agency Procedure for Promulgation**

Public hearings are required and will be held on April 12, 2010 in each county.

**Contact Information**

Joseph Hennessy  
Bureau of Fisheries Management  
Phone: (608) 267-9427

### **Natural Resources**

#### ***Environmental Protection — Air Pollution Control, Chs. NR 400—***

#### **CR 10-012**

On February 2, 2010, the Department of Natural Resources submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

#### **Analysis**

The proposed order creates section NR 400.02 (162) (a) 51. and 52., relating to the definition of the term volatile organic compound (VOC).

#### **Agency Procedure for Promulgation**

A public hearing is required and will be held on March 12, 2010.

#### **Contact Information**

Robert B. Eckdale  
Bureau of Air Management  
Phone: (608) 266-2856  
Email: Robert.Eckdale@wisconsin.gov

### **Public Defender**

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

On February 15, 2010, the Board of Directors of the State Public Defender Agency submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

#### **Analysis**

The proposed order creates Chapter PD 8, relating to the payments for copies of discovery material provided to staff and private attorneys appointed to represent state public defender clients in legal proceedings.

#### **Agency Procedure for Promulgation**

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

#### **Contact Information**

Kathy Pakes, Legal Counsel  
Phone: (608) 261-0633  
Email: pakesk@opd.wi.gov

### **Workforce Development**

#### ***Unemployment Insurance, Chs. DWD 100-150***

#### **CR 10-017**

On February 9, 2010, the Department of Workforce Development submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

#### **Analysis**

The proposed order revises Chapter DWD 128, relating to unemployment insurance rules for determining a claimant's ability to work and availability for work and affecting small businesses.

#### **Agency Procedure for Promulgation**

A public hearing is required and will be held on March 12, 2010. The organizational unit responsible for promulgation of the proposed rules is the DWD Unemployment Insurance Division.

#### **Contact Information**

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

### **Workforce Development**

#### ***Unemployment Insurance, Chs. DWD 100-150***

#### **CR 10-018**

On February 9, 2010, the Department of Workforce Development submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

#### **Analysis**

The proposed order revises Chapter DWD 129, relating to unemployment insurance rules for benefit claiming procedures.

#### **Agency Procedure for Promulgation**

A public hearing is required and will be held on March 12, 2010. The organizational unit responsible for promulgation of the proposed rules is the DWD Unemployment Insurance Division.

#### **Contact Information**

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

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## Rule–Making Notices

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**Notice of Hearings**  
**Children and Families**  
*Safety and Permanence, Chs. DCF 37–59*  
**EmR0937, CR 10–021**

NOTICE IS HEREBY GIVEN that pursuant to ss. 48.62 (1) (a) and (8) (a), 48.67 (intro.) and (4), and 227.11 (2) (a), Stats., the Department of Children and Families proposes to hold 3 public hearings to consider emergency rules and proposed permanent rules revising Chapters DCF 56 and 58, relating to foster care and kinship care.

### Hearing Information

<b>March 17, 2010</b> Wednesday 1:30 p.m.	MADISON GEF 1 Building 201 E. Washington Avenue Room D203
<b>March 31, 2010</b> Wednesday 1:30 p.m.	MILWAUKEE Bureau of Milwaukee Child Welfare, Region 3 2745 S. 13 <sup>th</sup> Street, AV Room
<b>April 8, 2010</b> Thursday 1:30 p.m.	STEVENS POINT Portage County Health and Human Services 817 Whiting Avenue Room 103–104, Lower Level

If you have special needs or circumstances regarding communication or accessibility at a hearing, please call (608) 267–9403 at least 10 days prior to the hearing date. Accommodations such as ASL interpreters, English translators, or materials in audio format will be made available on request to the fullest extent possible.

### Copies of Proposed Rules

A copy of the proposed rules is available at <http://adminrules.wisconsin.gov>. This site allows you to view documents associated with this rule's promulgation, register to receive email notification whenever the Department posts new information about this rulemaking order, and submit comments and view comments by others during the public comment period. You may receive a paper copy of the rule or fiscal estimate by contacting:

Elaine Pridgen, Office of Legal Counsel  
 Department of Children and Families  
 201 E. Washington Avenue  
 Madison, WI 53707  
 Phone: (608) 267–9403  
 Email: [dcfpublichearing@wisconsin.gov](mailto:dcfpublichearing@wisconsin.gov)

### Appearances at Hearing and Submittal of Written Comments

Interested persons are invited to appear at the hearing and will be afforded the opportunity to make an oral presentation of their positions. Persons making oral presentations are

requested to submit their facts, views, and suggested rewording in writing. Written comments on the proposed rules received at the above address, email, or through the <http://adminrules.wisconsin.gov> web site no later than April 9, 2010, will be given the same consideration as testimony presented at the hearing.

### Analysis Prepared by the Department of Children and Families

#### *Statutory authority*

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

#### *Statutes interpreted*

Section 48.57 (3m) and (3n), Stats., as affected by 2009 Wisconsin Act 71; Sections 48.62 and 48.67, Stats., as affected by 2009 Wisconsin Act 28, and Section 48.685, Stats.

#### *Related statute or rule*

NA

#### *Explanation of agency authority*

Section 48.62 (1) (a), Stats., provides that any person who receives, with or without transfer of legal custody, 4 or fewer children or, if necessary to enable a sibling group to remain together, 6 or fewer children or, if the department promulgates rules permitting a different number of children, the number of children permitted under those rules, to provide care and maintenance for those children shall obtain a license to operate a foster home from the department, a county department or a licensed child welfare agency as provided in s. 48.75, Stats.

Section 48.62 (8) (a), Stats., as created by 2009 Wisconsin Act 28, provides that the department shall promulgate rules relating to foster homes providing levels of care that a licensed foster home is certified to provide. Those levels of care shall be based on the level of knowledge, skill, training, experience, and other qualifications that are required of the licensee, the level of responsibilities that are expected of the licensee, the needs of the children who are placed with the licensee, and any other requirements relating to the ability of the licensee to provide for those needs that the department may promulgate by rule.

Section 48.67 (intro.), Stats., provides that the department shall promulgate rules establishing minimum requirements for the issuance of licenses to, and establishing standards for the operation of, child welfare agencies, day care centers, foster homes, treatment foster homes, group homes, shelter care facilities, and county departments. Those rules shall be designed to protect and promote the health, safety, and welfare of the children in the care of all licensees.

Section 48.67 (4), Stats., as created by 2009 Wisconsin Act 28, provides that the department shall promulgate rules that require that all foster parents successfully complete training in the care and support needs of children who are placed in foster care that has been approved by the department. The department shall promulgate rules prescribing the training that is required under this subsection and shall monitor compliance with this subsection according to those rules.



### **Summary of the rule**

#### *Licensing of Court–Ordered Kinship Care Relatives to Operate Foster Homes and Limits on Kinship Care Payments*

2009 Wisconsin Act 28 assumes that kinship care relatives who are providing care and maintenance for a child who is placed in the kinship care relative's home under an order of the court assigned to exercise jurisdiction under the Children's Code and the Juvenile Justice Code (juvenile court) will apply for a license to operate a foster home in 2010. Licensing these relatives as foster parents will enable the Department to claim an additional \$6,524,300 federal reimbursement under Title IV–E of the Social Security Act for 2010. Act 28 appropriates this \$6.5 million to be expended in 2011.

**New applicants.** Sections 48.57 (3m) (ap) and (3n) (ap), as created by 2009 Wisconsin Act 71, and this rule provide the specifics on licensing new court–ordered kinship care applicants as foster parents. These provisions apply to kinship care relatives who apply after January 1, 2010, or who have an application pending on that date.

As a condition of eligibility, a court–ordered kinship care relative who applies to the county department or the department for kinship care payments must apply for a license to operate a foster home. With certain limits, applicants will receive kinship care payments during the foster care licensure process. A county department or, in Milwaukee County, the Department, may make kinship care payments to a kinship care relative who is providing care and maintenance for a child who is placed in the home of the kinship care relative under a juvenile court order for no more than 60 days after the date on which the county department or the Department received the completed application of the kinship care relative for a license to operate a foster home or, if the application is approved or denied within those 60 days, until the date on which the application is approved or denied.

If the application is not approved or denied within those 60 days for any reason other than an act or omission of the kinship care relative, the county department or the Department may make kinship care payments for 4 months after the date on which the county department or the Department received the completed application or, if the application is approved or denied within those 4 months, until the date on which the application is approved or denied.

Notwithstanding that an application of a kinship care relative for a foster home license is denied, the county department or the Department may make kinship care payments to the kinship care relative for as long as the kinship care relative continues to meet the conditions for eligibility for those payments if the county department or the Department submits to the juvenile court information relating to the background investigation required when a kinship care relative applies for kinship care payments, an assessment of the safety of the kinship care relative's home and the ability of the kinship care relative to care for the child, and a recommendation that the child remain in the home of the kinship care relative, and the juvenile court, after considering that information, assessment, and recommendation, orders the child to remain in the kinship care relative's home.

**Current kinship care providers.** A non–statutory provision of 2009 Wisconsin Act 71 at Section 26 and this rule provide the specifics on the transition of current kinship care and long–term kinship care providers to be foster care providers. The non–statutory provision applies to a child who already is in kinship care on the date before the effective date of January

1, 2010. A court–ordered kinship care relative or long–term kinship care relative shall apply for a license to operate a foster home prior to or at the time of the reassessment or review of eligibility in calendar year 2010. The kinship care relative or long–term kinship care relative shall obtain a license to operate a foster home by no later than 6 months after the date of their first reassessment or review of eligibility following January 1, 2010.

If the kinship care relative or long–term kinship care relative refuses to obtain a license to operate a foster home or is unable to meet the minimum requirements for the issuance of a license, the agency that prepared the child's permanency plan shall make a recommendation regarding the continuing necessity for and safety and appropriateness of the placement at the next permanency plan review or permanency plan hearing. The court or panel conducting the review or hearing shall make the determination. If the court or panel determines that the placement continues to be necessary, safe, and appropriate, the child may remain in the placement and the kinship care relative or long–term kinship care relative may continue to receive kinship care payments.

#### *Levels of Care*

Section 48.62 (8), Stats., as created by 2008 Wisconsin Act 28, provides that the Department shall promulgate rules to provide levels of care that a foster home is certified to provide, establish a standardized assessment tool to assess the needs of a child and determine the level of care that is required, and provide monthly rates of reimbursement for foster care that are commensurate with the level of care that the foster home is certified to provide and the needs of the child who is placed in the foster home.

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

**Requirements for Level One Certification.** The rule provides that a licensing agency may grant a Level One certification only to a foster home with a child–specific license. A “child–specific license” is a license that is issued to a relative of a child or an individual who has a previous existing relationship with the child or the child's family.

A foster parent who operates a foster home with a Level One certification shall receive a minimum of 6 hours of pre–placement training within 6 months after the date of initial licensure.

The basic maintenance payment is \$215 before January 1, 2011, and \$220 beginning January 1, 2011, for care and maintenance provided for a child of any age by a foster home that is certified to provide level one care.

**Requirements for Level 2 Certification.** An individual who applies for a license to operate a foster home with a Level 2 certification must submit at least 3 favorable reference letters written by persons unrelated to the applicant.

Level 2 requires the same amount of pre–placement training as Level One, which is a minimum of 6 hours. A foster parent must complete the pre–placement training before or after initial licensure but prior to the placement of any child in the home, except if the foster parent has a

child-specific license, the training must be completed within 6 months after the date of initial licensure.

A foster parent who operates a foster home with a Level 2 certification must also complete a minimum of 30 hours of initial licensing training during the initial licensing period and complete 10 hours of ongoing training in each 12-month period of licensure subsequent to the initial licensing period.

The basic maintenance payment for care and maintenance provided by a foster home with a Level 2 certification is the age-related payment established by s. 48.62 (4), Stats.

#### *Waiver of Non-Safety Requirements for Relatives*

42 USC 671(a)(10) provides that a state must establish and maintain standards for foster family homes that are reasonably in accord with recommended standards of national organizations concerned with these standards, including standards related to admission policies, safety, sanitation, and protection of civil rights. The state must apply those standards equally to all foster family homes, unless a waiver of a standard has been granted with respect to a particular relative foster family home. A waiver of a standard may be made only on a case-by-case basis and applied only to non-safety related standards in relative foster family homes for specific children in care. States must determine which of their foster care licensing standards are not safety related.

This rule provides that the licensing agency may grant waivers of the following non-safety standards in ch. DCF 56 when licensing a relative foster home:

- Documents that an applicant must submit when applying for a license:
  - Applicant's employment history for 5 years prior to application.
- Licensee qualification requirements:
  - An applicant for an initial license or a foster parent applying for renewal of a license shall furnish proof to the licensing agency of having homeowner's or renter's liability insurance. A licensing agency shall have on file verification that each foster parent licensed by that agency has insurance coverage, or shall have on file documentation that the foster parent has been granted a waiver, or has been issued a license for a period not to exceed 90 days to allow the foster parent to obtain necessary documentation to request a waiver.
- Requirements for the physical environment:
  - A foster home must have an interior living area with a minimum of 200 square feet for each household member, including each foster child.
  - Sleeping arrangements
    - Each foster child shall be provided with a separate bed except that 2 related children under 12 years of age may share a double or larger bed.
    - There shall be a minimum of 2 feet horizontally between beds except that between bunk beds there shall be a minimum of 5 feet.
    - A sleeping room that someone must pass through to get to another part of the building may not be used for a foster child.
    - A foster child may not regularly sleep in a room to which access can be gained only through another occupied sleeping room.
- Requirements on care of foster children:
  - Clothing
    - No more than 4 children may regularly occupy one bedroom.
  - The licensee shall provide enough drawer and closet space to reasonably accommodate each foster child's clothing and other personal belongings.
  - Each foster home shall have available outdoor recreation and play space either on the premises or nearby.
- Personal belongings
  - The licensee shall ensure that funds allocated for the purchase of clothing for foster children are used in such a manner and that children in the licensee's care are comfortably and appropriately dressed within the limits of the funds. Foster children's clothing shall be maintained in a state of good repair and cleanliness.
  - Clothing purchased for a foster child or otherwise provided to a foster child with the understanding that the clothing belongs to the foster child shall be the property of the child and shall be given to the child to take when he or she leaves the foster home.
- Spending money
  - When a foster child leaves a foster home, he or she may take all special equipment or other personal belongings that the child had when placed in the foster home, that were given to the child to keep, that the child received as gifts, or that were purchased on behalf of the child with public funds, unless the items are permanently affixed to the foster home.
- Education
  - The foster parent shall give each foster child spending money each week. The amount of spending money given to a foster child shall be appropriate to the child's age and maturity and in accordance with the child's case plan established by the supervising agency.
  - The foster parent shall make every reasonable effort to participate, as appropriate, in school activities involving foster children in their care.
  - The foster parent may not provide a home-based private educational program to foster children in their care. This does not apply to homebound study under s. 118.15 (1), Stats., or as defined in the child's individualized education program.
  - Foster children shall be given the opportunity to develop appropriate friendships with schoolmates and to visit their friends.
  - The foster parent shall provide suitable reading material and facilities for undisturbed reading and study for all foster children in their home who wish to read or who have homework assignments.
  - The foster parent shall assist the agency and any contracted agency with the transfer of independent living skills to and the preparation for independent living of a foster child whose permanency plan indicates the need for these skills and preparation.

The rule provides that the Department exceptions panel may grant waivers of the following non-safety related standards in ch. DCF 56 when a relative foster home is licensed:

- Documents that an applicant must submit when applying for a license:
  - The applicant must submit verification of homeowner's or renter's liability insurance coverage or a request for a waiver. A licensing agency need not retain a copy of the documentation in its files.
- Requirements for the physical environment
  - Sleeping arrangements
    - No foster child one year of age or older may regularly share a bedroom with an adult unless a physician determines that it is medically necessary and the licensing agency approves.
  - Heating
    - No foster home may be maintained at any time at a temperature of less than 68 degrees Fahrenheit during waking hours or 58 degrees Fahrenheit during sleeping hours unless written approval has been obtained from the licensing agency.

#### *Other Changes To Foster Care Rules*

- *Agency contact.* A licensing agency or placing agency shall have at least one contact per month with a foster parent who operates a foster home with a Level One or Level 2 certification if a child is placed in the foster home.
- *Disaster plan.* Each licensed foster home shall file a disaster plan with the licensing agency that would allow the licensing agency to identify, locate, and ensure continuity of services to children under the placement and care responsibility or supervision of an agency who are displaced or adversely affected by a disaster.
- *Foster parent handbook.* A licensing agency shall provide each licensed or prospective foster parent with a copy of the agency's foster parent handbook prior to or at the time of the issuance of the license to operate a foster home.
- *Prohibit co-sleeping with infant.* Each infant child, birth to 12 months of age, shall sleep alone in a crib, bassinet, or playpen.
- *Sibling and parental connections.* Licensing agencies may grant an exception to allow more than 4 but no more than 8 foster children in a foster home if necessary to keep to keep siblings together or a minor parent and minor child together. Licensing agencies shall apply to the department exceptions panel to place more than 8 children in a foster home if necessary to keep siblings together or to keep a minor parent and minor child together.
- *Background check.* Before an initial foster home license is issued or a license is renewed, the licensing agency shall conduct a reverse search by address of the Wisconsin sex offender registry. The background check section is also updated based on changes to s. 48.685 (2) (c), Stats., and 42 USC 671(a)(20).
- *Vehicle liability insurance.* Waivers of motor vehicle liability insurance may no longer be granted. Section 344.62, Stats., requires motor vehicle liability insurance effective June 1, 2010.
- *Child safety restraint systems.* The rule incorporates the requirements of s. 347.48 (4), Stats.

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

The non-statutory requirements of the rule are based on recommendations from the Foster Parent Training Committee, the Out-of-Home Care/Adoption Committee,

and listening sessions held by the Department regarding implementation of levels of care.

#### *Comparison with federal requirements*

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

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

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

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

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

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



***Comparison to rules in adjacent states******Michigan***

Michigan is operating its child welfare system under the terms of a settlement agreement in the class action lawsuit *Dwayne B. v. Granholm*. The settlement was approved on October 24, 2008. One of the goals of the settlement agreement is increased supervision, services, and support to children placed in relative care. The settlement agreement includes the following provisions:

- Other than certain exceptional circumstances, all foster parents shall be licensed. Relative caregivers of all children who enter state foster care custody on or after 10/1/08 must be licensed. The department will implement a plan to license current unlicensed relative caregivers in a phased-in time period. Unlicensed relative providers must still meet the same safety standards as nonrelative providers. The settlement monitor shall conduct a review of the department's implementation of the settlement if more than 10% of unlicensed relative caregivers decline to be licensed.
- All licensed relative foster care providers shall receive the same foster care maintenance rates as similarly situated unrelated foster care providers. Historically, relative caregivers were encouraged to apply for public assistance and would be eligible for a child-only grant regardless of income. A relative caregiver would only be eligible for a standard foster care payment if the parental rights of the child's parents were terminated.
- The department will publicize the procedures on obtaining variances from standard foster care licensing requirements for purposes of licensing relative homes. The department shall not waive any licensing standards that are essential for the safety and well-being of the child.

The department may grant a variance from an administrative rule if the proposed variance assures that the health, care, safety, protection, and supervision of a foster child are maintained.

***Minnesota:***

A license is required for foster care by an individual who is a relative to the child except for an unlicensed emergency relative placement. In licensing a relative, the commissioner shall consider the importance of maintaining the child's relationship with relatives as an additional significant factor in determining whether a background study disqualification should be set aside or a variance should be granted.

A license applicant or license holder may request, in writing, a variance from rule requirements that do not affect the health, safety, or rights of the child or others. A variance request must include alternative equivalent measures the foster care applicant or license holder will take to ensure the health and safety of children if the variance is granted.

***Illinois:***

Relatives who care for children for whom the Department is legally responsible may, but need not, apply for licensure as a foster family home. Only placements in licensed foster family homes receive the foster care payment rate. Relatives who are unlicensed receive the child-only standard of need.

Unless prohibited by law, the director of the department may waive, or may conditionally waive, any requirement in the foster care licensing rules if doing so is in the best interest of the foster care children.

***Iowa:***

Relatives who are caring for a child may be eligible to receive financial assistance through foster care or a child-only or family grant under the state's Temporary Assistance to Needy Families program. To receive foster care payments, a relative must be licensed as a foster parent.

On a case-by-case basis, the service area manager or area social work administrator may waive any licensing standard unless the requirement is set in state or federal law or the waiver could have a negative impact on the safety and well-being of a child placed in the foster family home.

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

The proposed rule will affect private child-placing agencies, but the effect will be minimal.

***Small Business Impact***

The proposed 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.

The Department's Small Business Regulatory Coordinator is Elaine Pridgen, (608) 267-9403, [elaine.pridgen@wisconsin.gov](mailto:elaine.pridgen@wisconsin.gov).

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

The rule implements the first two levels of the Graduated Licensing and Levels of Care policy, as directed in 2009 Wisconsin Act 28. This rule establishes the requirements for certification at these two levels of care. A foster home at these two levels is certified based on a number of factors, including the level of knowledge, skill, training and experience of the licensee, the level of responsibilities expected, and the needs of the child. The rule also establishes training requirements for these levels of licensure.

These changes will affect counties and the Department, which operates the child welfare program in Milwaukee County. The fiscal impact of these changes was included in the biennial budget; therefore implementation of these rules is not anticipated to have a fiscal effect.

Additionally, by not implementing the rule, DCF stands to lose a substantial amount of federal revenue. By licensing current court-ordered Kinship Care providers, Act 28 assumes that the Department will be able to claim an additional \$6,524,300 in IV-E revenue as a result of the policy. Without the rule, DCF will not be able to require these providers to get certified and will lose the additional revenue assumed in Act 28.

***State fiscal effect***

None.

***Local government fiscal effect***

None.

***Long-range fiscal implications***

None.

***Agency Contact Person***

Jonelle Brom

Bureau of Permanence and Out-of-Home Care

Division of Safety and Permanence

Phone: (608) 264-6933

Email: [jonelle.brom@wisconsin.gov](mailto:jonelle.brom@wisconsin.gov).



## Notice of Hearing

### Commerce

#### Ch. Comm 6

#### CR 10-024

NOTICE IS HEREBY GIVEN that pursuant to ss. 101.02 (1) and (15) (a) and (i), and 101.123 (6), Stats., the Department of Commerce will hold a public hearing on proposed rules to create Chapter Comm 6, relating to no smoking.

### Hearing Information

The public hearing will be held as follows:

<b><u>Date and Time:</u></b>	<b><u>Location:</u></b>
<b>April 6, 2010</b> 10:00 a.m.	First Floor Conference Room Thompson Commerce Center 201 W. Washington Avenue Madison

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

### Appearances at Hearing and Submittal 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 April 16, 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 101.02 (1), (15) (a) and (i), 101.11 (1), Stats.

#### *Statutory authority*

Sections 101.02 (1), (15) (a) and (i), and 101.123 (6), Stats.

#### *Related statute or rule*

Section 101.123, Stats.

### *Explanation of agency authority*

Under the statutes cited, the Department of Commerce has the broad authority to protect the health of employees and frequenters of places of employment and public buildings.

### *Summary of proposed rules*

The proposed rules prohibit smoking in enclosed indoor areas of places of employment and public buildings existing on or after July 1, 2010.

### *Comparison with federal regulations*

An internet search on U.S. federal regulations and U.S. federal register yielded no results regarding a general prohibition of smoking in places of employment and public buildings.

### *Comparison with rules in adjacent states*

The following is a comparison of smoking prohibitions enacted in adjacent states.

#### *Illinois:*

The Smoke Free Illinois Act, 410 ILCS 82, as of January 1, 2008 prohibits smoking in a public place or in any place of employment or within 15 feet of any entrance to a public place or place of employment.

#### *Iowa:*

Effective July 1, 2008, Iowa under the Smokefree Air Act no longer allows smoking in almost all public places and enclosed areas within places of employment, as well as some outdoor areas. The law applies to: restaurants, bars, outdoor entertainment events and amphitheatres. It also covers places of employment such as office buildings, health care facilities, and child care facilities. Smoking is allowed on the gaming floor of a licensed casino, as well as designated hotel and motel rooms.

#### *Michigan:*

Michigan has yet to enact a general statewide smoking prohibition.

#### *Minnesota:*

As of October 1, 2007 Minnesota under the Clean Indoor Air Act prohibits smoking in bars, restaurants, private clubs such as VFWs and American Legion halls, bowling alleys, country club lounges, lobbies of hotels and motels, public transportation, taxis, home offices where employees work or customers visit, home day cares when children are present, and smaller commercial vehicles carrying more than one person.

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

The proposed rules were developed as a result of an analysis of 2009 Wisconsin Act 12. Under the Act, the statutory definitions for "enclosed place" in conjunction with "substantial wall" could be construed to permit smoking in many indoor spaces of public buildings and places of employment that would be inconsistent with the publicized objectives of the Act.

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

The proposed rules implement a statewide smoking ban in enclosed areas of public buildings and places of employment similar to the publicized objectives of 2009 Wisconsin Act 12. The rules would apply to all existing and future public buildings and places of employment. The department does not believe that the proposed rules will increase the effect on small businesses over the publicized objectives of the Act.

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 no smoking rules will apply to enclosed indoor areas of places of employment and public buildings owned or leased by any business.

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

No reporting, bookkeeping or other procedures are required for compliance with the rules.

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

No types of professional skills are necessary for compliance with the rules.

*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**

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

None.

#### ***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](mailto:jim.quast@wisconsin.gov)

## **Notice of Hearing**

### **Employment Relations Commission**

**CR 10-019**

NOTICE IS HEREBY GIVEN that pursuant to ss. 111.09, 111.71, 111.935 (2), 111.94, 111.9993, 227.11 and 227.24,

Stats., and interpreting the Wisconsin Employment Peace Act (WEPA), the Municipal Employment Relations Act (MERA), the State Employment Labor Relations Act (SELRA) and the University of Wisconsin System Faculty and Academic Staff Labor Relations Act (FASLRA), the Wisconsin Employment Relations Commission will hold a public hearing to consider the amendment and creation of rules implementing 2009 Wisconsin Act 28 amendments to WEPA, MERA and SELRA and creation of FASLRA.

### **Hearing Information**

The hearing will be held:

**March 11, 2010**      Employment Relations Commission  
10:00 a.m.            Conference Room  
1457 East Washington Avenue  
Madison, Wisconsin

The hearing site is accessible to people with disabilities.

### **Copies of Proposed Rules**

Copies of the proposed rules can be obtained by contacting Peter Davis at [PeterG.Davis@wisconsin.gov](mailto:PeterG.Davis@wisconsin.gov) or (608) 266-2993.

### **Submission of Written Comments**

Written comments should be received on or before March 22, 2010 by the Wisconsin Employment Relations Commission by email: ([PeterG.Davis@wisconsin.gov](mailto:PeterG.Davis@wisconsin.gov)) fax: (608-266-6930) or mail sent to 1457 East Washington Avenue, Madison, Wisconsin 53707.

### **Analysis Prepared by the Wisconsin Employment Relations Commission**

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

These proposed administrative rules interpret various provisions of 2009 Wisconsin Act 28 specifically including ss. 111.02 (6) (am), 111.02 (7) (a) (intro.), 111.02 (7) (a) 4, 111.02 (7m), 111.02 (9m) (intro.), 111.02 (9m) (b), 111.02 (10m), 111.05 (2), 111.05 (7), 111.70 (1) (a), 111.70 (1) (b), 111.70 (1) (j), 111.70 (1) (ne), 111.70 (3) (a) 4, 111.70 (3p), 111.70 (4) (cm) 5, 111.70 (4) (cm) 5s, 111.70 (4) (cm) 6. a, 111.70 (4) (cm) 6. am, 111.70 (4) (cm) 7, 111.70 (4) (cm) 7g, 111.70 (4) (cm) 7r. (intro.), 111.70 (4) (cm) 8m, 111.70 (4)(d) 2. a, 111.70 (4) (m) 6, 111.81 (3h), 111.81 (7) (g), 111.81 (9k), 111.81 (17m), 111.815 (1) and (2), 111.825 (2) (g), (h) and (i), 111.825 (2g), 111.825 (3), 111.825 (4), 111.83 (1), 111.83 (5m), 111.84 (2) (c), 111.905, 111.91 (1) (cg), 111.91 (2) (n), 111.91 (2) (nm), 111.91 (2c), 111.91 (1) (a), 111.92 (2m), 111.935 and 111.95-111.9993.

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

Sections 111.09, 111.71, 111.935 (2), 111.94, 111.9993 and 227.11, Stats.

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

The Wisconsin Employment Peace Act, the Municipal Employment Relations Act, the State Employment Labor Relations Act and the University of Wisconsin System Faculty and Academic Staff Labor Relations Act all require that the Commission adopt administrative rules to regulate various proceedings.

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

None.

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

The Wisconsin Employment Relations Commission has reviewed its rules concerning procedures in the

administration of the following portions of Chapter 111, Stats., for the purposes of correcting errors in its comprehensive 2006 rules review and revision, amending or creating new rules concerning changes Subchapters I, IV and V, and creating new rules concerning the newly-created Subchapter VI. Those Subchapters consist of the following Acts:

Subchapter I — the (Wisconsin) Employment Peace Act (WEPA)

Subchapter IV — the Municipal Employment Relations Act (MERA)

Subchapter V — the State Employment Labor Relations Act (SELRA)

Subchapter VI — the University of Wisconsin System Faculty and Academic Staff Labor Relations Act (FASLRA)

#### *Overall Objectives*

The overall objectives of the proposed rules are:

- correcting errors/omissions made during the comprehensive 2006 rules review/revision
- conforming to changes in WEPA, MERA and SELRA
- establishing procedures concerning the newly-created FAFSRA.
- removing internal inconsistencies

#### *Changes Common To All Or Many Chapters*

The newly-created ch. ERC 34 closely parallels ch. ERC 32, with numerous references to the corresponding sections of ch. ERC 32.

Chs. ERC 60–68 concerning the newly-enacted FASLRA replicate the corresponding chapters in the SELRA rules in chs. 20–28. Accordingly, as in the 2006 review/revision, an effort has been made, wherever possible, to maintain parallelism among the chapters concerning parallel subject areas under WEPA, MERA, SELRA and FASLRA. To avoid unnecessary repetition, references to parallel provisions elsewhere in the rules have been utilized instead of repeating parallel text. In general, MERA rules have been referenced in the WEPA, SELRA and FASLRA chapters instead of repeating the parallel text. References to the hearing procedures in ch. ERC 18 have been utilized extensively throughout the rules.

Numerous references to “practice and procedures” have been changed to “practice and procedure” so that the usage of that phrase is uniform throughout the rules.

#### *Changes Specific To Particular Chapters*

Giving effect to revisions of the definitions of fair share and maintenance of membership agreements in ss. 111.02 (7m) and (9m), Stats., respectively, s. ERC 8.01 and the title of ch. ERC 8 have been revised to make that existing chapter regarding fair share and maintenance of membership referenda applicable to a s. 111.02 (7) (a), Stats., employer of day care providers.

Correcting an error in s. ERC 12.02 (6) (b) 4., that section regarding the contents of a complaint case notice of hearing has been revised so that it conforms with the existing requirement in s. ERC 12.03 (1) that each respondent shall file an answer.

Correcting an error in s. ERC 50.04 (4) a new second sentence has been added paralleling the second sentence of s. ERC 13.04 (4).

Under the newly-enacted ss. 111.935, Stats., the new ch. ERC 29 provides a procedure by which a labor organization can attain certification as the exclusive collective bargaining representative of a bargaining unit of research assistants (newly-defined in s. 111.81 (7m), Stats.), by means of a WERC administrative determination based on employee-signed authorization cards, in lieu of a secret ballot election. The new ch. ERC 29 has been generally patterned after the representation election procedures in ch. ERC 13. However, because there is no other Wisconsin labor relations provision for an authorization card majority based determination of representative, the new chapter includes a variety of new and unique elements:

- The new procedure has been structured as a separate chapter onto itself, rather than included in the SELRA representation elections chapter, ch. ERC 23.
- Consistent with the language of s. 111.935, Stats., that once a card majority is determined “the collective bargaining unit is established”, the new procedure is made available only with regard to bargaining units that are currently unrepresented (e.g., Section title, s. ERC 29.01).
- The new procedure is an optional alternative to a secret ballot election, not a preclusive replacement of the secret ballot election procedure. (e.g., ss. ERC 29.01; see also, s. ERC 29.07 (4)).
- A labor organization is permitted to file both a petition under the new procedure and a petition for secret ballot election regarding the same bargaining unit. (s. ERC 29.02 (4) (b)).
- The processing of a petition filed under the new procedure will take precedence over the processing of a petition for secret ballot election regarding the same bargaining unit filed by the same labor organization or by a competing labor organization. (s. ERC 29.07 (4)).
- Specific time and content standards for authorization card validity are included. A petition must be supported by authorization cards signed by a majority of the employees in the bargaining unit when the petition was filed. To be valid, authorization cards are to include the employee name and department, employee signature, and the date, time and location of signature; must contain the statutory definition of the bargaining unit involved; and must contain statements reflecting that the employee favors representation by the named labor organization, that the card was signed freely and without coercion, that the card is in effect for one year and not revocable, but that the employee is permitted to sign another such card in support of a different labor organization; and the card must have been signed by the employee within one year prior to the date of filing of the petition. (s. ERC 29.02 (3) and 29.04 (2)).
- Specific provisions govern the effect of the filing of a competing labor organization’s petition for card-based certification regarding the same bargaining unit as to which another labor organization’s earlier such petition is pending. If the petitions are filed within 10 days of one another, both will be processed and a secret ballot election will be conducted in the unlikely event that both petitions are determined to have majority card support. A petition filed more than 10 days after the filing of an earlier petition regarding the same unit, will not be processed until the processing of the earlier petition is completed, and then only if the earlier petition is dismissed. (s. ERC 29.07 (3)).

- Gives certification based on authorization card majority the same effect as a certification based on secret ballot election. (s. ERC 29.07 (5)).
- Provides for WERC release of the numbers of bargaining unit employees and of valid cards counted. (s. ERC 29.04 (2) (b)).
- Specifies that post-determination objections procedures are available regarding objections to the conduct of the WERC's administrative determination as to the existence of an authorization card majority or to conduct affecting the results of the WERC's determination. (s. ERC 29.05).
- Prohibits disclosure of the cards or the names of employees signing cards unless objections cannot be fairly resolved without such disclosure. (s. ERC 29.06 (1)).

In response to the 2009 Act 28 repeal of the Qualified Economic Offer and replacement of special provisions regarding bargaining units of school district professional employees with special provisions regarding bargaining units of all school district employees, a new ch. ERC 34 has been created to cover all school district employee bargaining units, and the titles and scope sections of chs. ERC 32 and 33 have been amended. As a result, chs. ERC 32 and 34 will be the chapters generally applicable as regards disputes involving non-school district and school district employee bargaining units, respectively, with chs. ERC 33 and 33 Appendix applying only to petitions concerning school district professional employee collective bargaining agreements covering periods ending June 30, 2009. (ss. ERC 32.01, 33.01, and ch. ERC 34).

Chapters ERC 40 regarding the ad hoc roster and 50 regarding labor-management cooperation services have been updated to include references to the newly-enacted FASLRA. (ss. ERC 40.01 and 50.01).

New chs. ERC 60-68 have been created to provide procedures relating to the newly-enacted FASLRA. Because FASLRA parallels SELRA in many respects, the new chapters replicate the corresponding existing chs. ERC 30-38 concerning SELRA procedures.

***Comparison with federal regulations***

None.

***Comparison with rules in adjacent state labor relations agencies***

*See the Table on following pages.*

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

Not applicable.

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

Not applicable.

**Effect on small business.**

None.

**Fiscal Estimate**

These proposed rules have no fiscal effect.

**Agency Contact Person**

Peter G. Davis

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Description of or reference to WERC rule changes	Question regarding other agencies' rules	Answer regarding other agencies' rules
<p>CHANGES COMMON TO ALL OR MANY CHAPTERS</p>		<p>AGENCY Name and Source of Rules cited:</p>
	<p><b>1. What subject areas are covered by the agency's rules?</b></p> <p><b>Wisconsin Employment Relations Commission Chapters ERC</b>                      Private Sector                      1. private sector general                      2. private sector complaint                      3. private sector representation election                      4. private sector referendum                      5. private sector grievance arbitration                      6. private sector mediation                      7. private sector unit clarification                      8. private sector referendum UW Hospital and Clinics Authority                      9. private sector discretionary declaratory rulings</p> <p>Municipal Sector                      10. municipal sector general                      11. municipal sector election                      12. municipal sector complaint                      13. municipal sector mediation                      14. municipal sector fact finding                      15. municipal sector referendum                      16. municipal sector grievance arbitration                      17. municipal sector unit clarification                      18. municipal sector bargaining scope declaratory rulings                      19. municipal sector discretionary declaratory rulings</p> <p>State Sector                      20. state sector general                      21. state sector election                      22. state sector complaint                      23. state sector grievance arbitration                      24. state sector mediation                      25. state sector fact finding                      26. state sector referendum                      27. state sector unit clarification                      28. state sector discretionary declaratory rulings                      29 authorization card majority determination of representative of unrepresented research assistants</p> <p>Municipal Sector Interest Arbitration                      30. Municipal interest arbitration involving fire fighting and law enforcement personnel under s. 111.77, Stats.                      31. Interest arbitration of disputes involving law enforcement bargaining units in 1st class cities                      32. Collective bargaining and interest arbitration in municipal sector disputes not involving law enforcement, fire fighting or school district employees                      33. Collective bargaining and interest arbitration in disputes relating to collective bargaining agreements affecting school district professional employees covering periods beginning before July 1, 2009.                      33 Appendix. Wisconsin Employment Relations Commission qualified economic offer calculation relating to collective bargaining agreements affecting school district professional employees covering periods beginning before July 1, 2009.                      34. Collective bargaining and interest arbitration in municipal sector disputes relating to collective bargaining agreements affecting school district employees covering periods beginning on or after July 1, 2009.</p>	<p><b>Minnesota Bureau of Mediation Services</b>                      Minnesota Rules,                      Chapter 5505 – Private Rules                      5505.0100 Definitions.                      5505.0200 Purpose, Construction, And Waiver.                      5505.0300 Request For Investigation.                      5505.0400 Required Information.                      5505.0500 Notice Of Hearing And Investigation.                      5505.0600 Hearings.                      5505.0700 Examination Of Witnesses.                      5505.0800 Subpoenas.                      5505.0900 Determination Of Representative.                      5505.1000 Election Procedure.                      5505.1100 Challenge Of Voter.                      5505.1200 Consent Election.                      5505.1300 Certification Order.                      5505.1400 Objections To Certification.                      5505.1500 Reconsideration Within One Year.                      Chapter 5510 – Public Rules                      Representation Matters And Fair Share Fee Challenges; Proceedings Before The Commissioner                      Negotiation, Mediation, Impasse Certification, Arbitration, And Intent To Strike Notice                      Grievance Procedure                      Chapter 520 LMC – Grant Rules                      Chapter 5530 – Arbitration Roster Rules                      5530.0100 Application.                      5530.0200 Policy.                      5530.0300 Definitions.                      5530.0400 Role Of Bureau.                      5530.0500 Status Of Arbitrators.                      5530.0600 Arbitrator Qualifications.                      5530.0700 Appointment To Roster.                      5530.0800 Arbitrator Conduct And Standards.                      5530.0900 Panel Selections And Referrals.                      5530.1000 Arbitration Proceedings.                      5530.1200 Performance Measures.                      5530.1300 Disciplinary Or Removal Procedures.                      Chapter 7315 – Independent Review Rules                      7315.0210 Scope.                      7315.0300 Policy.                      7315.2300 Request For Rehearing.                      7315.2400 Petition For Rehearing.                      7315.2500 Consideration.                      7315.2600 Determination.                      7315.2700 Notice Of Rehearing.                      7315.2800 Rehearing Procedure.                      7315.2900 Decision After Rehearing.</p>

Description of or reference to WERC rule changes	Question regarding other agencies' rules	Answer regarding other agencies' rules
	<p><b>1. What subject areas are covered by the agency's rules? (Continued)</b></p> <p>Ad Hoc Roster 40. roster of ad hoc arbitrators and fact-finders</p> <p>Labor-Management Cooperation Services 50. labor management cooperation services</p> <p>UW System Faculty and Academic Staff Sector 20. faculty/academic staff sector general 21. faculty/academic staff sector election 22. faculty/academic staff sector complaint 23. faculty/academic staff sector grievance arbitration 24. faculty/academic staff sector mediation 25. faculty/academic staff sector fact finding 26. faculty/academic staff sector referendum 27. faculty/academic staff sector unit clarification 28. faculty/academic staff sector discretionary declaratory rulings</p>	<p><b>Michigan Public Employment Relations Commission</b> Michigan Rules R 423.101 – 423.499 – General Rules Part 1. General Provisions Part 2. Mediation Of Labor Disputes Part 3. Fact Finding Part 4. Representation Proceedings. Part 5. Unfair Labor Practice Charges Part 6. Motion Practice Part 7. Hearings Part 8. Filing And Service Of Documents Part 9. Notice Of Public School Strike Or Lockout R 423.501 – 423.514 Administration Of Compulsory Arbitration Act For Labor Disputes In Municipal Police And Fire Departments</p> <p><b>Iowa Public Employment Relations Board</b> Iowa Rules [621] Chapter 1 General Provisions Chapter 2 General Practice And Hearing Procedures Chapter 3 Prohibited Practice Complaints Chapter 4 Bargaining Unit And Bargaining Representative Determination Chapter 5 Elections Chapter 6 Negotiations And Negotiability Disputes Chapter 7 Impasse Procedures Chapter 8 Internal Conduct Of Employee Organizations Chapter 9 Administrative Remedies Chapter 10 Declaratory Orders Chapter 11 State Employee Appeals Of Grievance Decisions And Disciplinary Actions</p>

Description of or reference to WERC rule changes	Question regarding other agencies' rules	Answer regarding other agencies' rules
	<p><b>1. What subject areas are covered by the agency's rules? (Continued)</b></p>	<p><b>Illinois Labor Relations Board</b>            Title 80: Public Officials And Employees            Subtitle C: Labor Relations            Chapter IV: Illinois Labor Relations Board            Part 1200 General Procedures            Part 1210 Representation Proceedings            Part 1220 Unfair Labor Practice Proceedings            Part 1230 Impasse Resolution            Part 1240 Police Officer Decertification Proceedings</p> <p><b>Illinois Educational Labor Relations Board</b>            Title 80: Public Officials and Employees            Subtitle C: Labor Relations            Chapter III: Illinois Educational Labor Relations Board            Part 1100 General Procedures            Part 1105 Hearing Procedures            Part 1110 Representation Procedures            Part 1120 Unfair Labor Practice Proceedings            Part 1125 Fair Share Fee Objections            Part 1130 Collective Bargaining And Impasse Resolution            Part 1135 University Of Illinois Bargaining Units</p>

Description of or reference to WERC rule changes	Question regarding other agencies' rules	Answer regarding other agencies' rules
<p>The newly-created ch. ERC 34 closely parallels ch. ERC 32, with numerous references to the corresponding sections of ch. ERC 32.</p> <p>Chs. ERC 60–68 concerning the newly-enacted FAFSRA replicate the corresponding chapters in the SELRA rules in chs. 20–28. Accordingly, as in the 2006 review/revision, an effort has been made, wherever possible, to maintain parallelism among the chapters concerning parallel subject areas under WEPA, MERA, SELRA and FASLRA. To avoid unnecessary repetition, references to parallel provisions elsewhere in the rules have been utilized instead of repeating parallel text. In general, MERA rules have been referenced in the WEPA, SELRA and FASLRA chapters instead of repeating the parallel text. References to the hearing procedures in ch. ERC 18 have been utilized extensively throughout the rules.</p>	<p><b>2. What is the overall structure of the agency's rules?</b></p> <p>WERC – separate sets of rules for private, municipal, state and faculty/academic staff sectors plus ad hoc roster and LMC services (see above)</p>	<p>MN BMS – fewer chapters — separate sets of rules for private and public sectors (public including municipal and state), plus LMC grants, ad hoc roster and rehearing procedures (see chapters list above)</p> <p>MI ERC – single set of rules covering private, municipal and state sectors plus separate set of rules for police–fire interest arbitration</p> <p>Iowa PERB – single set of rules covering municipal and state sectors (no private sector jurisdiction) fewer chapters. (see chapters list above)</p> <p>Ill. LRB – single set of rules covering municipal and state sectors (see chapters list above)</p> <p>Ill. Ed. LRB – single set of rules covering educational institutions in municipal and state sectors — (see chapters list above)</p>
<p>Numerous references to “practice and procedures” have been changed to “practice and procedure” so that the usage of that phrase is uniform throughout the rules.</p>		
<p><b>CHANGES SPECIFIC TO PARTICULAR CHAPTERS</b></p>		
<p>Giving effect to revisions of the definitions of fair share and maintenance of membership agreements in ss. 111.02 (7m) and (9m), Stats., respectively, s. ERC 8.01 and the title of ch. ERC 8 have been revised to make that existing chapter regarding fair share and maintenance of membership referenda applicable to a s. 111.02 (7) (a), Stats., employer of day care providers.</p>		
<p>Correcting an error in s. ERC 12.02 (6) (b) 4., that section regarding the contents of a complaint case notice of hearing has been revised so that it conforms with the existing requirement in s. ERC 12.03 (1) that each respondent shall file an answer.</p>		
<p>Correcting an error in s. ERC 50.04 (4) a new second sentence has been added paralleling the second sentence of s. ERC 13.04 (4).</p>		
<p>Under the newly-enacted ss. 111.935, Stats., the new ch. ERC 29 provides a procedure by which a labor organization can attain certification as the exclusive collective bargaining representative of a bargaining unit of research assistants (newly-defined in s. 111.81 (7m), Stats.), by means of a WERC administrative determination based on employee-signed authorization cards, in lieu of a secret ballot election. The new ch. ERC 29 has been generally patterned after the representation election procedures in ch. ERC 13.</p>	<p><b>3. Do the agency's rules provide a procedure by which a labor organization can attain certification as exclusive collective bargaining representative based on authorization cards in lieu of a secret ballot election?</b></p> <p>WERC – Yes, new ch. ERC 29, applicable only to research assistants in the UW System.</p>	<p>MN BMS – None found.</p> <p>MI ERC – None found.</p> <p>Iowa PERB – None found</p> <p>Ill. LRB – Yes. A “majority interest petition” procedure is available (e.g., 1200.10, 1210.80.)</p> <p>Ill. Ed. LRB – Yes. A “majority interest” procedure is available (e.g., 1110.10 j))</p>



Description of or reference to WERC rule changes	Question regarding other agencies' rules	Answer regarding other agencies' rules
<p>However, because there is no other Wisconsin labor relations provision for an authorization card majority based determination of representative, the new chapter includes a variety of new and unique elements:</p> <p>– The new procedure has been structured as a separate chapter onto itself, rather than included in the SELRA representation elections chapter, ch. ERC 23.</p>	<p><b>4. If the agency rules include card-based certification procedures, are they structured separately from rules regarding representation elections?</b></p> <p>WERC – Yes (see note in first column)</p>	<p>MN BMS – No card based procedure found.</p> <p>MI ERC – No card based procedure found.</p> <p>Iowa PERB – No card based procedure found.</p> <p>Ill. LRB – No. The majority interest procedures are integrated with other procedures for attaining exclusive representative status. (e.g., 1200.10) However, there are some separate subsections devoted exclusively to majority interest related provisions. (e.g., 1210.100 b))</p> <p>Ill. Ed. LRB – No. The majority interest procedures are integrated with other procedures for attaining exclusive representative status (e.g., 1200.10, 1210.80.). However, there are some separate subsections devoted exclusively to majority interest related provisions. (e.g., 111.10.105)</p>
<p>– Consistent with the language of s. 111.935, Stats., that once a card majority is determined “the collective bargaining unit is established”, the new procedure is made available only with regard to bargaining units that are currently unrepresented (e.g., Section title, s. ERC 29.01)</p>	<p><b>5. If the agency’s rules include a card-based certification procedure, is that procedure limited to bargaining units that are currently unrepresented?</b></p> <p>WERC – Yes (see note in first column)</p>	<p>MN BMS – No card based procedure found.</p> <p>MI ERC – No card based procedure found.</p> <p>Iowa PERB – No card based procedure found.</p> <p>Ill. LRB – Yes, majority interest process not an available means of replacing or decertifying an existing representative. (1110.105)</p> <p>Ill. Ed. LRB – Yes, majority interest process not an available means of replacing or decertifying an existing representative. (1210.20) However, majority interest process is available as a means of adding unrepresented employees to an existing represented bargaining unit. (1110.180 a) 1) h)).</p>
<p>– The new procedure is an optional alternative to a secret ballot election, not a preclusive replacement of the secret ballot election procedure. (e.g., ss. ERC 29.01; see also, s. ERC 29.07 (4)).</p>	<p><b>6. If the agency’s rules include a card-based certification procedure, does that procedure preclusively replace a secret ballot election procedure?</b></p> <p>WERC – No. The secret ballot election procedures in ERC 23 are also applicable to research assistants.</p>	<p>MN BMS – No card based procedure found.</p> <p>MI ERC – No card based procedure found.</p> <p>Iowa PERB – No card based procedure found.</p> <p>Ill. LRB – No. Secret ballot election procedures are also available. (e.g., 1200.10, 1210.80.)</p> <p>Ill. Ed. LRB – Secret ballot election procedures are also available. (e.g., 1110.50 b) 9))</p>

Description of or reference to WERC rule changes	Question regarding other agencies' rules	Answer regarding other agencies' rules
<p>– A labor organization is permitted to file both a petition under the new procedure and a petition for secret ballot election regarding the same bargaining unit. (s. ERC 29.02 (4) (b))</p>	<p><b>7. If the agency's rules include a card-based certification procedure, is a labor organization permitted to file and have pending at the same time both an election petition and a petition for authorization card-based certification regarding the same unit?</b></p> <p>WERC – Yes. However, the two petitions will not be processed simultaneously. (see WERC answer to question 7. below)</p>	<p>MN BMS – No card based procedure found.</p> <p>MI ERC – No card based procedure found.</p> <p>Iowa PERB – No card based procedure found.</p> <p>Ill. LRB – Unclear. However, majority interest petition is processed as if it were an election petition if accompanying showing of interest reflects 30% or more support but less than majority support. (1110.105 r).</p> <p>Ill. Ed. LRB – Unclear. However, filing and withdrawal of a majority interest petition can, in some circumstances, bar petitioner from filing any other representation petition for one year. (1110.50)</p>
<p>– The processing of a petition filed under the new procedure will take precedence over the processing of a petition for secret ballot election regarding the same bargaining unit filed by the same labor organization or by a competing labor organization. (s. ERC 29.07 (4)).</p>	<p><b>8. If the agency's rules include a card-based certification procedure, does that procedure specify what effect a petition for secret ballot election by the same labor organization or a different labor organization would have on a pending petition for authorization card based certification?</b></p> <p>WERC – Yes. The petition for card based certification will be processed first, with the election petition processed only if the petition for card based certification is dismissed.</p>	<p>MN BMS – No card based procedure found.</p> <p>MI ERC – No card based procedure found.</p> <p>Iowa PERB – No card based procedure found.</p> <p>Ill. LRB – Majority interest petition is processed as if it were an election petition if accompanying showing of interest reflects 30% or more support but less than majority support. (1110.105 r). If competing organizations file petitions regarding the same or similar bargaining units, the Board will direct a secret ballot election to determine representation. (1210.100 b) 8)).</p> <p>Ill. Ed. LRB – Unclear. No specific provision found on that subject.</p>
<p>– Specific time and content standards for authorization card validity are included. (ss. ERC 29.02 (3) and 29.04 (2)).</p>	<p><b>9. If the agency's rules include a card-based certification procedure, does that procedure specify time and content standards for authorization card validity?</b></p> <p>WERC – Yes. A petition must be supported by authorization cards signed by a majority of the employees in the bargaining unit when the petition was filed.</p> <p>To be valid, authorization cards are to include the employee name and department, employee signature, and the date, time and location of signature; must contain the statutory definition of the bargaining unit involved; and must contain statements reflecting that the employee favors representation by the named labor organization, that the card was signed freely and without coercion, that the card is in effect for one year and not revocable, but that the employee is permitted to sign another such card in support of a different labor organization; and the card must have been signed by the employee within one year prior to the date of filing of the petition.</p>	<p>MN BMS – No card based procedure found.</p> <p>MI ERC – No card based procedure found.</p> <p>Iowa PERB – No card based procedure found.</p> <p>Ill. LRB – Yes. Majority interest petition can be supported by authorization cards, petitions or any other evidence that demonstrates that a majority of the employees in the bargaining unit at the time the petition was filed wish to be represented by the union for purposes of collective bargaining (1210.80 d) 2) a))</p>

Description of or reference to WERC rule changes	Question regarding other agencies' rules	Answer regarding other agencies' rules
		<p>To be valid, evidence of interest must include the employee's name, an original legible signature dated by the employee and a statement that the employee understands that the card may be used in support of a petition to attain representative status without an election; the signature must be dated within 6 months prior to the filing of the petition. (1210. 80 d) 2) c), d), e))</p> <p>Employees are allowed to withdraw previously–signed statements of support for a labor organization in limited circumstances. Specifically, “Employees may not withdraw authorization cards or other documents evidencing majority support after the filing of a majority interest petition, unless the basis for the withdrawal constitutes evidence of fraud or coercion on the part of the petitioner.” (1210.80 e) 6)</p> <p>Ill. Ed. LRB – Yes. Majority interest petition may be supported by current dues deduction authorizations, authorization cards, petitions or other evidence of interest as regards employees in the bargaining unit at the time the petition was filed. (1110.80 a))</p> <p>Evidence called for on model authorization card included in the rules would suffice as evidence of interest. The model card calls for a statement that the employee favors collective bargaining representation by the named labor organization, the employee's name and employment position, the employee's signature and the date of the signature. (1110.80 a) 3) The signature must be dated within 6 months prior to the filing of the petition (1110.80 d))</p> <p>Unclear under what circumstances, if any, employees are permitted to withdraw previous manifestations of support for labor organization. The only provision found to refer to such withdrawal reads, “Upon the filing of a petition or at any time thereafter that the case is pending, a party may allege that the dues deduction authorizations and other evidence submitted in support of a designation of representative without an election were subsequently changed, altered, withdrawn, or withheld as a result of employer fraud, coercion, or any other unfair labor practice by the employer. (1110.105 s)).</p>

Description of or reference to WERC rule changes	Question regarding other agencies' rules	Answer regarding other agencies' rules
<p>– Specific provisions govern the effect of the filing of a competing labor organization's petition for card-based certification regarding the same bargaining unit as to which another labor organization's earlier such petition is pending. (s. ERC 29.07 (3)).</p>	<p><b>10. If the agency's rules include a card-based certification procedure, what provision is made regarding the effect of the filing of a competing labor organization's petition for card based certification regarding the same bargaining unit as to which another labor organization's earlier petition is pending?</b></p> <p>WERC – Yes. If the petitions are filed within 10 days of one another, both will be processed and a secret ballot election will be conducted in the unlikely event that both petitions are determined to have majority card support. A petition filed more than 10 days after the filing of an earlier petition regarding the same unit, will not be processed until the processing of the earlier petition is completed, and then only if the earlier petition is dismissed</p>	<p>MN BMS – No card based procedure found.</p> <p>MI ERC – No card based procedure found.</p> <p>Iowa PERB – No card based procedure found.</p> <p>Ill. LRB – If competing organizations file petitions regarding the same or similar bargaining units, the Board will direct a secret ballot election to determine representation. (1210.100 b) 8).</p> <p>Ill. Ed. LRB – Unclear. No specific provision found on that subject. (see generally, 1110.70)</p> <p>Ill. Ed. LRB – Unclear. No specific provision found on that subject.</p>
<p>– Gives certification based on authorization card majority the same effect as a certification based on a secret ballot election. (s. ERC 29.07 (5)).</p>	<p><b>11. If the agency's rules include a card-based certification procedure, is a card-based certification given the same effect as a certification based on secret ballot election?</b></p> <p>WERC – Yes.</p>	<p>MN BMS – No card based procedure found.</p> <p>MI ERC – No card based procedure found.</p> <p>Iowa PERB – No card based procedure found.</p> <p>Ill. LRB – No specific provision found to that effect, however, the general integration of majority interest process with election process strongly implies that certifications resulting from each process would be given the same effect.</p> <p>Ill. Ed. LRB – Yes, for example, certification based on majority interest is given the same certification bar effect on other subsequent representation petitions as an election based certification. (e.g., 1110.70)</p>

Description of or reference to WERC rule changes	Question regarding other agencies' rules	Answer regarding other agencies' rules
<p>– Provides for WERC release of the numbers of bargaining unit employees and of valid cards counted. (s. ERC 29.04 (2) (b)).</p>	<p><b>12. If the agency's rules include a card-based certification procedure, does the procedure provide for the agency's release of the numbers of bargaining unit employees and of the number of valid cards counted?</b></p> <p>WERC – Yes and yes.</p>	<p>MN BMS – No card based procedure found.</p> <p>MI ERC – No card based procedure found.</p> <p>Iowa PERB – No card based procedure found.</p> <p>Ill. LRB – Yes, at least where the petition results in certification of the petitioner as representative. Preparation of “a tally of the finding of majority support” is specifically called for in connection with the certification of the petitioner as representative. (1210.100 b) 7) B)). However no similar reference is made as regards instances in which the petition is dismissed on the grounds that the showing of interest is inadequate. (1210.11 b) 7) A)).</p> <p>Ill. Ed. LRB – Apparently not. Rules refer only to Board issuance of certification if Board concludes that petition is supported by majority interest. No reference to a tally of any kind. (see generally, 1110.105 e))</p>



Description of or reference to WERC rule changes	Question regarding other agencies' rules	Answer regarding other agencies' rules
<p>– Specifies that post-determination objections procedures are available regarding objections to the conduct of the WERC's administrative determination as to the existence of an authorization card majority or to conduct affecting the results of the WERC's determination. (s. ERC 29.05).</p>	<p><b>13. If the agency's rules include a card-based certification procedure, is there a procedure for raising objections regarding conduct affecting the outcome of the procedure?</b></p> <p>WERC – Yes. Objections can be made to the conduct of the WERC administrative determination and/or to conduct affecting the results of the WERC's determination.</p>	<p>MN BMS – No card based procedure found.</p> <p>MI ERC – No card based procedure found.</p> <p>Iowa PERB – No card based procedure found.</p> <p>III. LRB – Yes. Any person (not just parties to the petition proceeding) may submit evidence of fraud or coercion regarding evidence of majority interest during agency investigation phase of processing of petition (1210.80 e) 3). Employer is required to submit any such evidence it may have within 14 days (or more if extended) of the filing of the petition. (1210.100 b) 3). If fraud or coercion by petitioner sufficient to affect the showing of majority interest is proven by clear and convincing evidence, Board will direct an election to determine representation. (1210.100 b) 5) B)</p> <p>III. Ed. LRB – Yes. Any person (not just parties to the petition proceeding) may submit evidence of fraud or coercion regarding evidence of majority interest during agency investigation phase of processing of petition. (1110.80 g) Employer is required to submit any such evidence it may have within 14 days (or more if extended) of the filing of the petition. (1110.105 d). If fraud or coercion by petitioner sufficient to affect the showing of majority interest is proven by clear and convincing evidence, Board will direct an election to determine representation. (1110.105 h)) Where majority interest is not shown by petitioner, petitioner will nonetheless be certified as representative without an election upon a showing that petitioner would have had majority interest support but for the fact that “. . . the dues deduction authorizations and other evidence submitted in support of a designation of representative without an election were subsequently changed, altered, withdrawn, or withheld as a result of employer fraud, coercion, or any other unfair labor practice by the employer.” (1110.105 s), t))</p>

Description of or reference to WERC rule changes	Question regarding other agencies' rules	Answer regarding other agencies' rules
<p>– Prohibits disclosure of the cards or the names of employees signing cards unless objections cannot be fairly resolved without such disclosure. (s. ERC 29.06 (1)).</p>	<p><b>14. If the agency's rules include a card-based certification procedure, does the procedure specify under what conditions, if any, the cards or the names of employees signing cards is subject to disclosure to parties other than the petitioner?</b></p> <p>WERC – Yes. The contents of the cards, including the names of employees signing the cards, will not be disclosed to other than the petitioner, unless objections cannot be fairly resolved without such disclosure.</p>	<p>MN BMS – No card based procedure found.</p> <p>MI ERC – No card based procedure found.</p> <p>Iowa PERB – No card based procedure found.</p> <p>Ill. LRB – “The Board shall maintain the confidentiality of the showing of interest. The evidence submitted in support of the showing of interest shall not be furnished to any of the parties.” (1210.80 e) 1). However, “The adequacy of the showing of interest shall be determined administratively by the Board or its agent. The showing of interest determination is not subject to litigation, except upon a finding of a material issue of fact or law relating to fraud or coercion in majority interest petition cases.” (1210.80 e) 3)</p> <p>Ill. Ed. LRB – “The Board shall maintain the confidentiality of the showing of interest. The evidence submitted in support of the showing of interest shall not be furnished to any of the parties.” (1110.80 f) However, “Except as provided in 1110.105, the showing of interest shall not be subject to collateral attack and shall not be an issue at hearing.” Section 1110.105 provides procedures for adjudicating allegations of fraud or coercion regarding the evidence of majority support. (1110.105 f)–i)).</p>
<p>In response to the 2009 Act 28 repeal of the Qualified Economic Offer and replacement of special provisions regarding bargaining units of school district professional employees with special provisions regarding bargaining units of all school district employees, a new ch. ERC 34 has been created to cover all school district employee bargaining units, and the titles and scope sections of chs. ERC 32, 33 and 33 Appendix have been revised. As a result, chs. ERC 32 and 34 will be the chapters generally applicable as regards disputes involving non-school district and school district employee bargaining units, respectively, with chs. ERC 33 and 33 Appendix applying only to petitions concerning collective bargaining agreements covering periods beginning before July 1, 2009. (ss. ERC 32.01, 33.01, ch. ERC 33 Appendix caption, and ch. ERC 34).</p>		
<p>Chapters ERC 40 regarding the ad hoc roster and 50 regarding labor-management cooperation services have been updated to include references to the newly-enacted FASLRA. (ss. ERC 40.01 and 50.01).</p>		
<p>New chs. ERC 60–68 have been created to provide procedures relating to the newly-enacted FASLRA. Because FASLRA essentially replicated SELRA in all respects, the new chapters replicate the corresponding existing chs. ERC 30–38 concerning SELRA procedures.</p>		
<p>---end of comparison table---</p>		

## Notice of Hearing

### Insurance CR 10-023

NOTICE IS HEREBY GIVEN That pursuant to the authority granted under s. 601.41 (3), Stats., and the procedures set forth in under s. 227.18, Stats., the Office of the Commissioner of Insurance (OCI) will hold a public hearing to consider the adoption of proposed rules to revise Subchapter III of Chapter Ins 18, Wis. Adm. Code, relating to independent review procedures and affecting small business.

#### Hearing Information

**Date:** March 17, 2010  
**Time:** 1:00 p.m., or as soon thereafter as the matter may be reached  
**Place:** OCI, Room 227  
 125 South Webster Street, 2<sup>nd</sup> Floor  
 Madison, WI

#### Submittal of Written Comments

Written comments can be mailed to:

Julie E. Walsh  
 Legal Unit – OCI Rule Comment for Rule Ins 18III  
 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 18III  
 Office of the Commissioner of Insurance  
 125 South Webster St – 2<sup>nd</sup> Floor  
 Madison WI 53703-3474

Comments can be emailed to:

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

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

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

#### Copies of Proposed Rule and Fiscal Estimate

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

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

##### *Statutes interpreted*

Sections 600.01, 628.34 (12), and 632.835, Stats.

##### *Statutory authority*

Sections 600.01 (2), 601.41 (3), 601.42 (2), 628.34 (12), and (632.835 (5) and (8), Stats.

##### *Explanation of agency authority*

2009 Wisconsin Act 28 amended the existing independent review definitions and procedures and incorporated two new triggering events for independent review rights and reporting requirements. Newly created provisions include new definitions of coverage denial determinations, preexisting condition exclusion denial and rescission determinations. The Act also created independent review eligibility for preexisting condition exclusion denial determinations and rescissions. The commissioner must render a determination that at least one independent review organization has completed the certification process and is able to effectively provide independent reviews for coverage denial determinations.

##### *Related statutes or rules*

Chapter Ins 18 subch. I and II, Wis. Adm. Code.

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

The proposed rule implements 2009 Wis. Act 28 that expanded existing independent review rights for Wisconsin insureds. The proposed rule amends the existing rule to include the newly created statutory terms of coverage denial determination and preexisting condition exclusion denial determination. As with the amended statute, the rule is modified by replacing the term “adverse determination and experimental treatment determination” with the more inclusive term “coverage denial determination” throughout ch. Ins 18, subch. III.

The commissioner is directed in s. 632.853 (8) (b), Stats., to determine that at least one independent review organization has been certified that can effectively provide independent review of preexisting condition exclusion denial determinations and rescissions. In order to make the determination, the proposed rule clarifies what types of denials are eligible under preexisting condition exclusion denial determination reviews and the type of expertise independent review organizations need to render determinations. The proposed rule requires independent review organizations to utilize the expertise of state licensed lawyers and certified actuaries when appropriate. The lawyers and actuaries must be current in their credentialing or licensure and can assist the independent review organization as an advisor or participant on the review panel at the discretion of the organization.

The proposed rule also modifies a portion of ch. Ins 18, subch. I and II to reflect that insureds not only have a right to independent review but also the grievance process established by insurers. This is a new right for persons that have had a policy rescinded or coverage denied as preexisting. The modifications clarify what is not subject to a grievance or independent review, specifically that administrative issues are not eligible for independent review. The proposed rule also clarifies that when an insurer and insured dispute whether an issue is eligible for independent review, that dispute is eligible for review.

Additionally, the proposed rule includes amended reference that depending upon the type of issue under independent review that the determination may be binding on the insurer and insured. The proposed rule updates the compendium that independent review organizations may use to reflect name or source changes and creates legal resources

as a new source of information that can be utilized by the independent review organizations.

Finally, the proposed rule parallels implementation of the new preexisting condition denial and rescission determinations that was available when independent review was first implemented. For eligible preexisting condition coverage denial and rescission determinations that occur after January 1, 2010 the date of the notice from the commissioner that he has certified the availability of an independent review organization to review preexisting condition and rescission issues, insureds will have 4 months to request an independent review. Once the commissioner has published notice that he has certified the availability of an independent review organization to review preexisting condition and rescission issues, insureds will have 4 months to file requests for independent review from the date of the preexisting condition exclusion denial or rescission determination by the insurer or from the date of receipt of notice of the grievance panel decision, whichever is later.

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

There are no existing or proposed federal regulations addressing access to independent review organizations for preexisting conditions and rescissions.

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

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

In 2000 Illinois enacted the managed care reform and patients right act 215 ILCS 134, initiating external review for insured enrolled in health maintenance organizations a right to external review of medical necessity determinations. On January 5, 2010, Illinois enacted the health carrier external review act that broadens the right to external review to all Illinois residents enrolled in health insurance plans under 215 ILCS 180. The review is limited to adverse determinations and does not include review of preexisting condition denials or rescissions.

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

Effective January 1, 2000, Iowa enacted a right to external review arising from medical necessity determinations at Iowa Code section 514J. On January 1, 2009, Iowa extended external review to long-term care insurance benefit trigger determinations. Iowa Code section 514G.110. Iowa law does not include external review for preexisting condition denials or rescission determinations.

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

Effective October 1, 2000, Michigan offers external review for adverse determinations based upon medical necessity that are unresolved internally by the plan. 2000 PA 251, MCL 550.1911

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

Effective 2000 Minnesota enacted law that provider external review relating to medical necessity determinations from managed care plans and indemnity carriers. Minn. Stat. 72A.327. The law does not include external review for preexisting condition denials or rescission determinations and assumes denials arise from utilization review only.

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

The commissioner created a working group to assist in the development of the proposed rule. The working group included representatives from the insurance industry, independent review organizations, consumer advocates and the public and staffed by the office including the managed care specialist whose duties include the oversight of independent review organizations. Meetings were held monthly between September and December. The working group considered information regarding the number of complaints the office receives annually relating to preexisting condition exclusions and rescissions when developing its recommendation to the commissioner. In addition, the consumer representatives provided current case law and issues seen from constituents.

The working group unanimously made its recommendations to the commissioner and those recommendations are reflected in the proposed rule.

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

The office reviewed the number and type of complaints relating to preexisting condition exclusion denials and rescissions. Annually there are less than 10 rescissions in the state. Although more preexisting condition exclusion denials occur the frequency is still very low. The independent review organizations are certified by the commissioner's designee to conduct independent reviews in the state and several are small businesses, however the additional cost, if any, will be primarily borne by large insurers not the independent review organizations. The proposed rule places few additional requirements on the independent review organizations and in clarifying what is and is not eligible for reviews, the costs incurred will be limited. Finally, it was noted during the rule development process at the working group that most independent review organizations already have access to lawyers as needed so there is no additional cost associated with the proposed requirement.

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

This rule will have little or no effect 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.

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

None.

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

None.



**Agency Contact Person**

Inger Williams, OCI Services Section  
 Phone: (608) 264-8110  
 Email: 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****Natural Resources***Fish, Game, etc., Chs. NR 1—***CR 10-016**

NOTICE IS HEREBY GIVEN that pursuant to sections 23.09 (2) (intro), 23.091, 23.11 (1), 23.22 (2) (a) and (b) 6., 23.28 (3), 27.01 (2) (j), 29.014 (1), 29.039 (1) 29.041, and 227.11 (2) (a), Stats., the Department of Natural Resources will hold a public hearing on proposed revisions to Chapter NR 40, Wis. Adm. Code, relating to the identification, classification and control of invasive species. The proposed revisions are “housekeeping” in nature.

**Hearing Information**

The hearing will be held:

<b>March 11, 2010</b>	Room G-09
Thursday	Wis. Natural Resources Bldg.
at 10:00 a.m.	(GEF 2), 101 S. Webster Street
	Madison, Wisconsin

Pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Ms. Kelly Kearns at (608) 267-5066 with specific information on your request at least 10 days before the date of the scheduled hearing.

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

The proposed rule and fiscal estimate may be reviewed and comments electronically submitted at the following Internet site: <http://adminrules.wisconsin.gov>. Written comments on the proposed rule may be submitted by U.S. mail to Ms. Kelly Kearns, Bureau of Endangered Resources, Department of Natural Resources, PO Box 7921, Madison, WI 53707-7921 or email to [DNRNR40Comments@wisconsin.gov](mailto:DNRNR40Comments@wisconsin.gov). Written comments may be submitted until March 21, 2010. Written comments, whether submitted electronically or by U.S. mail, will have the same weight and effect as oral statements presented at the public hearing. A personal copy of the proposed rule and fiscal estimate may be obtained from Ms. Kearns.

**Analysis Prepared by Department of Natural Resources****Statutes interpreted**

Section 23.22 (2) (a), Stats.

**Statutory authority**

Sections 23.09 (2) (intro), 23.091, 23.11 (1), 23.22 (2) (a) and (b) 6., 23.28 (3), 27.01 (2) (j), 29.014 (1), 29.039 (1) 29.041, and 227.11 (2) (a), Stats.

**Explanation of agency authority**

The principal authority for the department’s invasive species rules is s. 23.22 (2) (a) and (b) 6., Stats., which requires the department to establish a statewide program to control invasive species in this state and directs the department to promulgate rules to identify, classify and control invasive species for purposes of the program, which may include procedures and requirements for issuing permits to control invasive species. In order to fulfill this broad duty, the department adopted ch. NR 40 to provide it with all of the tools that are required to control invasive species, wherever found in the state, including regulation of the possession, transportation, transfer and introduction of specific invasive species, general preventive measures designed to restrict pathways by which humans commonly spread or introduce invasive species, authority to enter property in order to inspect, survey and control invasive species, and authority to recover the state’s costs when it must carry out necessary control measures because responsible parties do not comply with department orders to control invasives themselves.

Section 23.11 (1), Stats., delegates to the department such further powers as may be necessary or convenient to enable it to exercise the functions and perform the duties required of it by ch. 23, Stats., and by other provisions of law.

Invasive species have caused environmental and economic damage and threaten human health, and will continue doing so unless adequate control measures are adopted and implemented. The general legislative delegation to the department of all necessary or convenient powers set out in s. 23.11 (1), Stats., combined with the broad directive in s. 23.22 (2) (a) and (b) 6., Stats., to control invasive species in this state give the department sufficient power to adopt and revise as needed rules for the protection of public health, safety, welfare and the environment, but particularly for the promotion of public welfare, convenience and general prosperity. The department’s exercise of legislatively delegated police powers, as embodied in its invasive species rules, has its basis in the inherent power and duty of government to protect and promote the life, comfort, safety and welfare of society.

Section 23.09 (2) (intro), Stats., grants the department general authority to adopt rules for the protection, development and use of forests, fish and game, lakes, streams, plant life, flowers and other outdoor resources in this state. Section 23.091, Stats., authorizes the department to acquire, develop, operate and maintain state recreation areas, to establish use zones within state recreation areas providing for the full range of recreational uses, including hunting and fishing, and to promulgate rules to control uses within zones and limit the number of persons using any zone. Section 23.11 (1), Stats., gives the department the authority to have and take the general care, protection and supervision of all state parks, of all state fish hatcheries and lands used therewith, of all state forests, and of all lands owned by the state or in which it has any interests.

Section 23.28 (3), Stats., prohibits the department from allowing any use of a designated state natural area which is inconsistent with or injurious to its natural values, and authorizes the department to establish use zones, control uses within a zone and limit the number of persons using zones in designated state natural areas. Section 27.01 (2) (j), Stats., grants the department authority to promulgate rules necessary to govern the conduct of state park visitors, and for the protection of state park property, or the use of facilities,



including the use of boats and other watercraft on lakes or rivers within the limits of a state park, and the use of roads, trails or bridle paths.

Section 29.014 (1), Stats., directs the department to establish and maintain any bag limits and conditions governing the taking of fish that will conserve the fish supply and ensure the citizens of this state continued opportunities for good fishing. Section 29.039 (1), Stats., authorizes the department to develop conservation programs to ensure the perpetuation of nongame species, require harvest information and establish limitations relating to taking, possession, transportation, processing and sale or offer for sale, of nongame species. "Nongame species" is defined as any mammal, bird, fish, or other creature of a wild nature endowed with sensation and the power of voluntary motion that is living in the wild and that is not classified as a game fish, game animal, game bird or furbearing animal. Section 29.041, Stats., provides that the department may regulate fishing on and in all interstate boundary waters, and outlying waters.

Finally, s. 227.11 (2) (a), Stats., expressly confers rulemaking authority on the department to promulgate rules interpreting any statute enforced or administered by it, if the agency considers it necessary to effectuate the purpose of the statute. The department considers the rules created by this Order to be necessary to effectuate the purposes of s. 23.22, Stats.

**Related statute or rule**

Related statutes or rules include but are not limited to the following provisions which, to varying degrees, may apply to the identification, classification, control or other regulation of species that are invasive, or to conduct that may result in the introduction or spread of invasive species:

Statutory section — Title [or subject]

15.347 (18)	Invasive species council.	29.335	Feeding wild animals for nonhunting purposes.
23.093	Carp control research.	29.337	Hunting and trapping by landowners and occupants.
23.235	Nuisance weeds.	29.354	Possession of game birds and animals.
23.24	Aquatic plants.	29.407	Transportation of fish.
26.20 (4)	[Railroad right-of-way annual weed removal]	29.414	Erection of barriers to exclude rough fish.
26.30	Forest insects and diseases; department jurisdiction; procedure.	29.417	Permit to take rough fish.
27.019 (7) (c)	[County rural planning – highways only native plantings allowed]	29.421	Removal of rough fish.
27.05 (5) and (7)	[County authority to manage plants and control weeds in county waters, parks and county lands]	29.424	Control of detrimental fish.
29.011	Title to wild animals.	29.509	Bait dealer license.
29.047	Interstate transportation of game.	29.516	Fishing with nets and setlines.
29.053	Specific open and closed seasons.	29.601	Noxious substances.
29.055	Wild animals; possession in closed season or in excess of bag limit.	29.604	Endangered and threatened species protected.
29.057	Wild animals; possession in open season.	29.614	Scientific collector permit.
29.089	Hunting on land in state parks and state fish hatcheries.	29.627	Domestic fur-bearing animal farms.
29.091	Hunting or trapping in wildlife refuge.	29.701	Propagation of fish; protected wild animals.
29.192	Regulation of takings of certain wild animals.	29.705	Propagation of fish; removal of fish.
29.301	General restrictions on hunting.	29.733	Natural waters used in fish farms.
29.307	Hunting with aid of aircraft prohibited.	29.734	Barriers required for fish farms.
29.314	Shining animals.	29.735	Importation of fish.
29.327	Regulation of waterfowl blinds.	29.736	Stocking of fish.
29.331	Trapping regulation.	29.737	Permit for private management.
29.334	Hunting and trapping; treatment of wild animals.	29.738	Private fishing preserves.
		29.741	Food in the wild for game birds.
		29.875	Disposal of escaped deer or elk.
		29.885	Removal of wild animals.
		29.887	Wildlife control in urban communities.
		29.924	Investigations; Searches.
		29.927	Public nuisances.
		29.931	Seizures.
		29.934	Sale of confiscated game and objects.
		30.07	Transportation of aquatic plants and animals; placement of objects in navigable waters.
		30.1255	Report on control of aquatic nuisance species.
		59.70 (17) and (18)	[County funds, equipment, fees for pest and weed control, plant or animal diseases.]
		66.0407	Noxious weeds. [local governments]
		66.0517	Weed commissioner. [local governments]
		66.0627	Special charges for current services. [charges for weed elimination]
		84.07 (3)	[DOT highway patrol officers to destroy noxious weeds on highways]
		93.07	Department duties. [Dept. of Agriculture, Trade and Consumer Protection – pests]
		94.01	Plant inspection and pest control authority.
		94.02	Abatement of pests.
		94.03	Shipment of pests and biological control agents; permits.
		94.10	Nursery stock; inspection and licensing.
		94.38	Agricultural and vegetable seeds; definitions.
		94.41	Prohibitions. [Sale or distribution of noxious weed seed]
		94.45	Powers and authority of the department.
		94.46	Stop sale; penalties; enforcement.
		94.69	Pesticides; rules.
		94.76	Honeybee disease and pest control.
		146.60	Notice of release of genetically engineered organisms into the environment.
		169.04	Possession of live wild animals.
		169.06	Introduction, stocking, and release of wild animals.

- 169.07 Exhibition of live wild animals.
- 169.08 Propagation of wild animals.
- 169.10 Sale and purchase of live wild animals.
- 169.11 Harmful wild animals.
- 169.36 Record-keeping and reporting requirements.
- 182.017 Transmission lines; privileges; damages.  
[utility weed control along transmission lines]
- 281.17 (2) [DNR to supervise chemical treatment of waters for the suppression of nuisance-producing organisms that are not regulated by the program established under s. 23.24 (2).]
- 237.10 Rapide Croche lock [Fox river lamprey barrier]

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

The proposed rule makes several “housekeeping” changes to ch. NR 40 relating to the identification, classification and control of invasive species.

SECTION 1. of the proposed Order creates a definition for the term “aquatic invasive species.” The definition is needed for clarification of an existing rule that authorizes the department to remove detrimental fish and other aquatic invasive species from waters of the state.

SECTION 2. revises the current definitions of “established” and “propagules,” to clarify that they apply to organisms other than plants, such as disease-causing microorganisms. It also modifies the definition of “wild animal” to clarify that crayfish as well as fish are excluded from that term, consistent with the regulatory approach taken in the rest of ch. NR 40 regarding invasive fish and crayfish species.

SECTIONS 3. and 8. of this proposed Order revise the descriptions of the boundary lines for 6 split-listed invasive plant species (i.e., plants that are listed both as “prohibited” in one part of the state and as “restricted” in another part of the state). In order to be consistent with other split-listed invasive plant species described in ch. NR 40, the prohibited and restricted area descriptions for these 6 plants are changed from areas marked by boundary lines consisting of highways to areas that are defined by named counties. SECTIONS 3. and 8. also revise the “prohibited” and “restricted” invasive plant species listings for *Conium maculatum* (Poison hemlock). The plant currently is listed as “prohibited” in all counties except Iowa and Grant counties, where it is listed as “restricted.” The plant’s status in Crawford, Dane, Green, Lafayette, Rock, Richland and Sauk counties is changed from “prohibited” to the reduced regulatory status of “restricted” due to its recently discovered relative abundance in those counties. The revisions also correct the order of the county names to be alphabetical.

SECTION 4. corrects the scientific name of snakehead fish, corrects inconsistencies in the use of Italic font for species scientific names, corrects the revised list of prohibited fish species to be in alphabetical order, specifically lists or names the snakehead fish species that are considered viable in Wisconsin waters, and adds an informational Note that identifies nonnative fish species that the department has determined are not viable.

SECTIONS 5., 6., 7., 9., 10., 11., 12., 13. and 15. create or amend informational Notes to various provisions of ch. NR 40. The Notes are created or revised to reflect changes made by 2009 Wisconsin Act 55 or changes made elsewhere in this proposed rule, or to correct staff position titles, email addresses or Internet links or other similar information.

SECTION 14. revises the current bans in ch. NR 40 on the highway transport or launching of any vehicle, boat, boat trailer or other equipment that has an aquatic plant or aquatic animal attached. The revisions remove code language made largely redundant by the adoption of s. 30.07, Stats., as created by 2009 Wisconsin Act 55, effective November 12, 2009. Section 30.07, Stats., includes a ban on the placement or operation in navigable waters of any vehicle, watercraft or equipment with aquatic plants or aquatic animals attached to the exterior. As a compliment to s. 30.07, Stats., the proposed rule retains and revises language in ch. NR 40 banning the placement or operation in wetlands or non-navigable waters of any vehicle, watercraft or equipment with aquatic plants or aquatic animals attached to the exterior. The proposed rule exempts native duckweed and wild rice like s. 30.07, Stats., but unlike the statute, the proposed rule retains an exemption for vehicles, watercraft and equipment engaged in fire suppression.

SECTION 16. of the proposed rule removes an unnecessary regulatory permit requirement that duplicated an existing statutory requirement relating to the introduction of nonnative aquatic plants. References to nonnative aquatic plants are removed from s. NR 40.07 (7) and the remaining rule is revised, for consistency, to require a ch. NR 40 permit instead of a “written exemption” to introduce nonnative algae and cyanobacteria to waters of the state. A Note is added referring to the existing statutory permit requirement under s. 23.24, Stats., for introduction of nonnative aquatic plants.

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

There are no directly comparable federal regulations.

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

Because the proposed rule consists only of unique “housekeeping” revisions to existing administrative rules, no comparison is possible.

### ***Factual data and analytical methodologies***

Department staff and members of the public identified drafting errors and potential problems in ch. NR 40 after it was adopted effective September 1, 2009. In addition, a review of ch. NR 40 was conducted after the enactment of 2009 Wisconsin Act 55 (effective November 12, 2009) to identify how ch. NR 40 should be revised to conform to the Act.

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

The proposed rule is intended to correct drafting errors, clarify existing code language, harmonize the existing code with new statutory provisions by eliminating redundancies, and accomplish other, similar “housekeeping” changes. It does not establish any new requirements.

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

The proposed rule is not expected to have a significant adverse effect on a substantial number of small businesses and may have favorable effects on a number of businesses by correcting and clarifying existing rules and by adding informational Notes to ch. NR 40.

Interested parties may include the plant nursery industry, seed and agriculture industries, fish farmers, bait dealers, aquarium and ornamental fish dealers, land owners and managers, commercial fishers, anglers, gardeners, county and municipal governments, lake districts, government agencies, environmental and conservation organizations, and the Wisconsin Invasive Species Council.

Enforcement of ch. NR 40 will not change as a result of the proposed rule. Enforcement will vary depending on the

species being regulated and the applicability of other rules and statutes. For forest or plant pests and aquaculture, the department and DATCP share regulatory responsibility. The department has (or will develop) memoranda of agreement with DATCP to clarify what aspects of ch. NR 40 and related rules will be enforced by each agency.

The department will normally follow an informal, stepped enforcement process in order to obtain compliance with the revised invasive species rules. This involves informal discussions between department staff and the landowner or company, notifying the person of potential violations and providing guidance on how to comply with the rules. Notices of non-compliance may follow if necessary. If formal enforcement is necessary, these revised rules and permits issued under the revised rules will be enforced by department conservation wardens, county district attorneys, and circuit courts through the use of citations and civil or criminal complaints. Civil and criminal enforcement may also be carried out by department referral of violations to the Wisconsin Attorney General, with prosecution and abatement actions in the circuit courts. Criminal enforcement will be limited to intentional violations. Finally, violations of the permits issued under revised ch. NR 40 also may be enforced by administrative permit revocation proceedings.

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

Pursuant to s. 227.114, Stats., the proposed rule may have an impact on small businesses but is not expected to have a significant adverse effect on a substantial number of small businesses and may have favorable effects on a number of businesses by correcting and clarifying existing rules and by adding informational Notes to ch. NR 40. The department's initial regulatory flexibility analysis is as follows:

#### *Type of small business that will be affected by the rule.*

Small businesses that may be affected by the proposed rule include the plant nursery industry, seed and agriculture industries, fish farmers, bait dealers, aquarium and ornamental fish dealers, businesses that own or manage land, and commercial fishers.

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

No new reporting, bookkeeping or other procedures are created by the proposed rule.

#### *Type of professional skills necessary for compliance with the rule.*

No new professional skills are needed to comply with the proposed rule.

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

The department's Small Business Regulatory Coordinator may be contacted by calling (608) 266-1959 or by email at [Linda.Haddix@wisconsin.gov](mailto:Linda.Haddix@wisconsin.gov).

#### **Environmental Analysis**

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

#### **Fiscal Estimate**

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

None anticipated.

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

None.

#### **Agency Contact Person**

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#### **Notice of Hearings**

#### **Natural Resources**

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

#### **CR 10-020, CR 10-025**

NOTICE IS HEREBY GIVEN that pursuant to ss. 23.09 (2) (b), 29.014, 29.053 (3), 29.059, 29.089, 29.192 and 29.193, Stats., the Department of Natural Resources will hold public hearings on revisions to Chapters NR 10, 11, 12 and 19, Wis. Adm. Code, relating to hunting, trapping, closed areas and game refuges (CR 10-020).

The proposed rules will:

1. Establish a definition and allow the use of atlatls for small game hunting.
2. Allow the use of colony traps for muskrats and establish size standards and regulations.
3. Eliminate the Burnett County and Rock Prairie Canada Goose Management Subzones.
4. Establish and clarify definitions of a normal "agricultural or gardening practice" and "manipulation" for the purposes of enforcing existing prohibitions of baiting and feeding wild animals.
5. Allow participation in the youth turkey hunting season by 16 and 17 year olds.
6. Establish turkey hunting seasons and zones at Hartman Creek, Straight Lake, and the Glacial Heritage Area State Parks.
7. Establish a single, consistent raccoon season opener for residents and non-residents.
8. Allow firearm deer hunting at Nelson Dewey state park during the traditional season in November.
9. Allow deer hunting on newly acquired lands at Buckhorn state park during all normal firearm deer hunting seasons.
10. Allow muzzleloader deer hunting at Big Bay state park during the normal statewide muzzleloader season that follows the traditional November firearm season.
11. Establish firearm and archery deer hunting seasons at proposed Glacial Heritage Area state parks that are consistent with other CWD Management Zone state park hunting seasons.
12. Allow participation in the youth deer hunting season by 16 and 17 year olds.
13. Establish a single, consistent statewide opening date for fox hunting and trapping and coyote trapping.
14. Eliminate the 2:00 p.m. pheasant hunting closure at Scuppernong River Habitat Management Area in Waukesha County and allows pheasant hunting all day.



15. Allow the use of scopes on muzzleloading firearms during the muzzleloader–only deer hunting season.
16. Provide that all deer hunting licenses which are issued to 10 year–olds to 17 year–olds will include a carcass tag that is valid for an antlerless deer in any unit statewide.
17. Allow the transportation of whole deer carcasses from the CWD zone to other areas if the whole carcass is taken directly to a licensed meat processor or taxidermist.
18. Allow dividing a deer into five parts prior to registration in order to facilitate removal from the field. These sections also repeal, recreate and amend provisions which allow quartering bear and elk so that they may be divided into five parts in order to more easily facilitate removal from the field.
19. Increase the penalty for violation animal damage abatement program requirements by clarifying that program participation can be denied for the following program year in addition to the current year.
20. Clarify the definition of “novice participant” for learn to hunt programs.

NOTICE IS HEREBY FURTHER GIVEN that pursuant to ss. 29.014 (1), 29.039, 29.041, 29.053, 29.531 and 29.533, Stats., the Department of Natural Resources will hold public hearings on revisions to Chapters NR 20, 21 and 26, Wis. Adm. Code, relating to fishing on the inland, outlying, and boundary waters of Wisconsin (CR 10–025).

The proposed rules will:

1. Permit motor trolling in Ashland, Iron, Price and Sawyer counties.
2. Eliminate the minimum size restriction for largemouth and smallmouth bass in Bear, Horsehead, and Upper and Lower Turtle lakes (Barron county).
3. Increase the minimum size restriction for walleye in Bear, Horseshoe (T36N, R14E, S3, 115 ac.), and Upper and Lower Turtle lakes (Barron county) from 15 to 18 inches and decreases the daily bag limit for walleye from 5 fish to 3 fish.
4. Eliminate the minimum size restriction for largemouth and smallmouth bass in Lake Owen (Bayfield county).
5. Increase the minimum size restriction for walleye in Lake Owen (Bayfield County) from 15 to 18 inches and decreases the daily bag limit for walleye from 5 fish to 3 fish.
6. Eliminate the minimum size restriction for largemouth and smallmouth bass in Big McKenzie lake (Burnett/ Washburn counties).
7. Increase the minimum size restriction for walleye in Big McKenzie lake (Burnett/ Washburn counties) from 15 to 18 inches and decreases the daily bag limit for walleye from 5 fish to 3 fish.
8. Increase the minimum size restriction for walleye in Metonga lake (Forest county) from 15 to 18 inches and decreases the daily bag limit for walleye from 5 fish to 3 fish.
9. Standardize trout regulations for all of the Wolf river (Langlade county), allowing hook and line fishing only with artificial lures from the First Saturday in May at 5:00am until September 30 with a bag limit of 3 and a maximum size of 12 inches. There is also a catch and release season from October 1 to November 15 for hook and line fishing with artificial lures.
10. Eliminate the minimum size restriction for largemouth and smallmouth bass in Half Moon, Pipe, and Ward lakes (Polk county).
11. Increase the minimum size restriction for walleye in Big Butternut, Half Moon, Pipe, and Ward lakes (Polk county) from 15 to 18 inches and reduces the daily bag limit for walleye from 5 fish to 3 fish.
12. Eliminate the minimum size restriction for largemouth and smallmouth bass in Chain, Clear, Island, and McCann lakes (Island chain of lakes, Rusk county).
13. Increase the minimum size restriction for walleye in Chain, Clear, Island, and McCann lakes (Island chain of lakes, Rusk county) from 15 to 18 inches and reduces the daily bag limit for walleye from 5 fish to 3 fish.
14. Extend the season on Chippewa flowage (Sawyer county) from the first Saturday in May to the first Sunday in March for all species except muskellunge, walleye, and lake sturgeon.
15. Eliminate the minimum size restriction for largemouth and smallmouth bass in Whitefish and Sissabagama lakes, and the Chippewa flowage (Sawyer county).
16. Increase the minimum size restriction in Nelson, Sissabagama and Whitefish lakes from 15 to 18 inches and reduces the daily bag limit for walleye from 5 fish to 3 fish.
17. Change the panfish daily bag limit to 10 fish daily bag limit for all panfish all season on the Chippewa flowage, and creates a continuous open season for panfish. The previous panfish bag limits were 25 with no more than 15 crappie from the first Saturday in May until November 30 but no crappie from December 1 to the first Sunday in March, with fishing for panfish prohibited between the first Sunday in March and the first Saturday in May.
18. Increase the minimum size restriction for walleye in the Chippewa flowage from no minimum to 18 inches. The daily bag limit is unchanged at 3 walleye per day.
19. Make permanent the 45 inch minimum size restriction for muskellunge in Little St. Germain lake (Vilas county). The current 45–inch minimum regulation is scheduled to expire November 30, 2011.
20. Eliminate the minimum size restriction for largemouth and smallmouth bass in Middle McKenzie, Nancy and Long lakes (Washburn county).
21. Increase the minimum size restriction for walleye in Middle McKenzie (Washburn/ Burnett counties), Nancy and Long lakes (Washburn county) from 15 to 18 inches and reduces the daily bag limit for walleye from 5 fish to 3 fish.
22. Increase the minimum size restriction for northern pike on Big Muskego lake including Bass bay (Waukesha county) from 26 inches to 40 inches and reduces the daily bag limit from 2 to 1 fish.
23. Increase the minimum size restriction for bass in Marion Pond (Waupaca county) from 14 inches to 18 inches and reduces the daily angler bag limit from 5 to 1. This rule will expire on April 1, 2016.
24. Increase the minimum size restriction for northern pike in Marion pond (Waupaca county) from no minimum to 26 inches and reduces the daily angler bag limit from 5 to 2. This rule will expire April 1, 2016.
25. Decrease the minimum length restriction to 7 inches for all trout in the Waupaca river downstream of River road. Current regulations are 12 inches for brown trout and



- rainbow trout, and 8 inches for brook trout. It also increases the daily angler bag from 3 trout to 5 trout.
26. Prohibit night fishing from September 15 to the first Saturday in May in the section of the Oconto river from the upstream side of the US 141 Bridge to the Stiles dam (Oconto county).
27. Add a catch-and-release season for Lake Sturgeon on the St. Croix river from October 1 to 15. This section of the St. Croix river is a Wisconsin–Minnesota boundary water, and this section will make Wisconsin rules consistent with Minnesota rules.
28. Extend the largemouth and smallmouth bass fishing season on Wisconsin–Michigan boundary waters from November 30 to December 31. This will make Wisconsin and Michigan rules consistent.
29. Eliminate the following fish refuges: on the Chippewa flowage for 500 feet below Moose lake (Sawyer county), on Spider creek between Spider lake and State highway 77 (Sawyer county), on Island creek between Island and Black Dan lakes (Sawyer county), on Malviney creek (Sawyer county), on the unnamed tributary of Lake Chetac from Lake Chetac to 1000 feet upstream (Sawyer county), on the Brunet River from Lake Winter to 500 feet downstream (Sawyer county), on the Couderay river from the Grimh (Radisson) dam to 500 feet downstream (Sawyer county) and on the Little Turtle river and Turtle–Flambeau flowage 200 feet upstream of Popko’s Circle road until 200 feet downstream of Popko’s Circle road (Iron county).
30. Replace the current no minimum length limit and 14 to 18 inch protected slot with no minimum length limit but only 1 fish over 14” and increase the daily bag limit from 3 to 5 for walleye on the Three Lakes chain, Oneida County.
31. Replace the no minimum length limit but only 1 fish over 14” with a 15” minimum length limit for walleye on Sevenmile lake, Oneida County.

NOTICE IS HEREBY FURTHER GIVEN that at 7:00 p.m. on **Monday, April 12, 2010**, the Wisconsin Conservation Congress will hold its election of county delegates in each county. Upon completion of the delegate elections, the joint Spring Hearing/Conservation Congress meeting will convene to take comments on the foregoing rule modifications and Conservation Congress advisory questions.

#### Hearing Information

The hearings will be held on **Monday, April 12, 2010** at 7:00 p.m. at the following locations:

Adams	Adams County Courthouse County Board Room, 402 Main Street Friendship	Buffalo	Alma High School, Gymnasium S1618 STH 35, Alma
Ashland	Ashland Senior High School 1900 Beaser, Ashland	Burnett	Burnett County Government Center 7410 County Road K, Siren
Barron	Old County Courthouse, Auditorium 330 E. LaSalle Avenue, Barron	Calumet	Calumet County Courthouse, Rm. B025 206 Court Street, Chilton
Bayfield	Bayfield County Courthouse County Board Room 117 E. 5th Street, Washburn	Chippewa	Chippewa Falls Middle School Auditorium 750 Tropicana Blvd., Chippewa Falls
Brown	Southwest High School, School Auditorium 1331 Packerland Drive, Green Bay	Clark	Greenwood High School, Cafetorium 306 W. Central Avenue, Greenwood
		Columbia	Portage Junior High School 2505 New Pinery Road, Portage
		Crawford	Crawford County Courthouse 2nd Floor Courtroom 220 N. Beaumont Road, Prairie du Chien
		Dane	E.F. Schwan Performing Arts Center Monona Grove High School 4400 Monona Drive, Monona
		Dodge	Horicon City Hall, 404 E. Lake Street Horicon
		Door	Sturgeon Bay High School, Auditorium 1230 Michigan Street, Sturgeon Bay
		Douglas	Superior Senior High School, Cafeteria 2600 Catlin Avenue, Superior
		Dunn	Dunn County Fish and Game Club 1900 Pioneer Avenue, Menomonie
		Eau Claire	South Middle School, Auditorium 2115 Mitscher Avenue, Eau Claire
		Florence	Florence Natural Resource Center 5631 Forestry Drive, Florence
		Fond du Lac	Theisen Middle School 525 E Pioneer Road, Fond du Lac
		Forest	Crandon Area School District 9750 US HWY 8 West, Crandon
		Grant	Lancaster High School, Hillary Auditorium, 806 East Elm Street, Lancaster
		Green	Monroe Middle School 1220 16th Avenue, Monroe
		Green Lake	Green Lake High School, Small Gym 612 Mill Street, Green Lake
		Iowa	Dodgeville High School, Gymnasium 912 Chapel Street, Dodgeville
		Iron	Mercer Community Center 2648 W Margaret Street, Mercer
		Jackson	Black River Falls Middle School, LGI Rm. 1202 Pierce Street, Black River Falls
		Jefferson	Jefferson County Fair Park Activity Center 503 N. Jackson, Jefferson
		Juneau	Olson Middle School, Auditorium 508 Grayside Avenue, Mauston
		Kenosha	Bristol Elementary School 20121 83rd Street, Bristol
		Kewaunee	Kewaunee High School, Auditorium 911 Third Street, Kewaunee
		La Crosse	Onalaska High School 700 Hilltopper Pl., Onalaska

Lafayette	Darlington High School, Auditorium 11838 Center Hill Road, Darlington	Shawano	Shawano Middle School, LGI Room 1050 S. Union Street, Shawano
Langlade	Antigo High School 1900 10th Avenue, Antigo	Sheboygan	Sheboygan Falls High School, Auditorium 220 Amherst Avenue, Sheboygan Falls
Lincoln	Tomahawk Elementary School 1048 East King Road, Tomahawk	Taylor	Fair Grounds, Multi Purpose Building Hwy 64/ Hwy 13, Medford
Manitowoc	UW–Manitowoc, Theatre/Auditorium 705 Viebahn Street, Manitowoc	Trempealeau	City Center Gym 36245 Park Street, Whitehall
Marathon	D.C. Everest Middle School, Auditorium 9302 Schofield Avenue, Schofield	Vernon	Viroqua High School, Commons 100 Blackhawk Drive, Viroqua
Marinette	Crivitz High School, Auditorium 400 South Avenue, Crivitz	Vilas	Saint Germain Elementary School 8234 Hwy 70, Saint Germain
Marquette	Montello High School, Community Room 222 Forest Lane, Montello	Walworth	Delavan–Darien High School 150 Cummings Street, Delavan
Menominee	Menominee County Courthouse Courthouse Lane, Keshena	Washburn	Spooner Ag Research Station W6646 Highway 70, Spooner
Milwaukee	Nathan Hale High School 11601 W. Lincoln Avenue, West Allis	Washington	Washington County Fairgrounds 3000 Cty Hwy PV, West Bend
Monroe	Sparta Meadowview School A103 Cafetorium 1225 North Water Street, Sparta	Waukesha	Waukesha Expo Center, North Hall 1000 Northview Road, Waukesha
Oconto	Suring High School, Cafeteria 411 E Algoma Street, Suring	Waupaca	Waupaca High School, Auditorium E 2325 King Road, Waupaca
Oneida	James Williams Middle School, Auditorium 915 Acacia Lane, Rhinelander	Waushara	Waushara County Court House 2nd Floor Old Court Room 209 S. St. Marie Street, Wautoma
Outagamie	Riverview Middle School, Auditorium 101 Oak Street, Kaukauna	Winnebago	Webster Stanley Middle School Auditorium, 915 Hazel Street, Oshkosh
Ozaukee	Webster Middle School, Commons W75 N624 Wauwatosa Road, Cedarburg	Wood	Pittsville High School, Auditorium 5459 Elementary Avenue, Pittsville
Pepin	Pepin County Government Center County Board Room 740 7th Avenue West, Durand		
Pierce	Ellsworth Senior High School, Auditorium 323 Hillcrest, Ellsworth		
Polk	Unity High School 1908 150th Street, Balsam Lake		
Portage	Ben Franklin Junior High School Auditorium – Room 1208 2000 Polk Street, Stevens Point		
Price	Price County Courthouse 126 Cherry Street, Phillips		
Racine	Union Grove High School 3433 S. Colony Avenue, Union Grove		
Richland	Richland County Courthouse, Courtroom 181 West Seminary, Richland Center		
Rock	Pontiac Convention Center 2809 N. Pontiac Drive, Janesville		
Rusk	Ladysmith High School 1700 Edgewood, Ladysmith		
Saint Croix	St Croix Central High School, Commons 1751 Broadway Street, Hammond		
Sauk	UW Baraboo Campus, A4 Lecture Hall 1006 Connie Road, Baraboo		
Sawyer	Winter High School Cafeteria 6585W Grove Street, Winter		

Pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of information material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Kari Lee–Zimmermann at (608) 266–2952 with specific information on your request by April 5, 2010.

#### **Copies of Proposed Rules and Submittal of Written Comments**

The proposed rules and fiscal estimates may be reviewed and comments electronically submitted at the following Internet site: <http://adminrules.wisconsin.gov>. Written comments on the proposed hunting and trapping regulations may be submitted via U.S. mail to Mr. Scott Loomans, Bureau of Wildlife Management, P.O. Box 7921, Madison, WI 53707. Written comments on the proposed fishing regulations may be submitted via U.S. mail to Mr. Joe Hennessy, Bureau of Fisheries Management, P.O. Box 7921, Madison, WI 53707. Written comments shall be postmarked **not later than April 13, 2010**. Written comments whether submitted electronically or by U.S. mail will be summarized for the Natural Resources Board, however, they will not be tallied along with the responses received at the county hearings.

#### **CR 10–020 — Analysis Prepared by Department of Natural Resources**

##### *Statutes interpreted*

The department has interpreted the following statutes as providing the authority to promulgate rules regarding hunting, trapping, closed areas and game refuges: ss. 23.09 (2)

(b), 29.014, 29.053 (3), 29.059, 29.089, 29.192 and 29.193, Stats.

**Statutory authority**

Sections 23.09 (2) (b), 29.014, 29.053 (3), 29.059, 29.089, 29.192 and 29.193, Stats.

**Explanation of agency authority**

The statutes listed above specifically provide the department with authority to establish game refuges, maintain open and closed seasons and other regulations to conserve fish and game and ensure opportunities for hunting and trapping, provide additional hunting opportunities for persons who are physically disabled, report the number and kind of animal taken by hunters and trappers and authorize and regulate hunting on land in state parks. All rules promulgated under this authority are subject to review under ch. 227, Stats.

**Related rule or statute**

There are no state rules or statutes that directly relate to the provisions that are proposed in this administrative order.

**Plain language analysis**

The department has recommended modifications to chapters NR 10, 11, 12 and 19, Wis. Adm. Code, relating to hunting, trapping, closed areas and game refuges. These rule changes are proposed for inclusion in the 2010 Spring Hearing Questionnaire. Specifically, these proposals do the following:

Sections 1 and 23 establish a definition and allow the use of atlats for small game hunting.

Sections 2, 29 and 30 allow the use of colony traps for muskrats and establish size standards and regulations.

Sections 3, 5, 6, 7, 8, 32 and 33 eliminate the Burnett County and Rock Prairie Canada Goose Management Subzones.

Sections 4, 21, 36 and 39 establish and clarify definitions of a normal “agricultural or gardening practice” and “manipulation” for the purposes of enforcing existing prohibitions of baiting and feeding wild animals.

Section 9 allows participation in the youth turkey hunting season by 16 and 17 year olds.

Sections 10 and 31 establish turkey hunting seasons and zones at Hartman Creek, Straight Lake, and the Glacial Heritage Area State Parks.

Sections 11 and 12 establish a single, consistent raccoon season opener for residents and non-residents.

Section 13 allows firearm deer hunting at Nelson Dewey state park during the traditional season in November.

Section 14 allows deer hunting on newly acquired lands at Buckhorn state park during all normal firearm deer hunting seasons.

Section 15 allows muzzleloader deer hunting at Big Bay state park during the normal statewide muzzleloader season that follows the traditional November firearm season.

Section 16 Establishes firearm and archery deer hunting seasons at proposed Glacial Heritage Area state parks that are consistent with other CWD Management Zone state park hunting seasons.

Section 17 allows participation in the youth deer hunting season by 16 and 17 year olds.

Section 18 and 19 establish a single, consistent statewide opening date for fox hunting and trapping and coyote trapping.

Section 21 eliminates the 2:00 p.m. pheasant hunting closure at Scuppernong River Habitat Management Area in Waukesha County and allows pheasant hunting all day.

Section 22 allows the use of scopes on muzzleloading firearms during the muzzleloader-only deer hunting season.

Section 24 provides that all deer hunting licenses which are issued to 10 year-olds to 17 year-olds will include a carcass tag that is valid for an antlerless deer in any unit statewide.

Sections 25 and 26 allow the transportation of whole deer carcasses from the CWD zone to other areas if the whole carcass is taken directly to a licensed meat processor or taxidermist.

Section 27 and 28 allow dividing a deer into five parts prior to registration in order to facilitate removal from the field. These sections also repeal, recreate and amend provisions which allow quartering bear and elk so that they may be divided into five parts in order to more easily facilitate removal from the field.

Sections 34 and 35 increases the penalty for violation animal damage abatement program requirements by clarifying that program participation can be denied for the following program year in addition to the current year.

Sections 37 and 38 clarify the definition of “novice participant” for learn to hunt programs.

**Comparison with federal regulations**

Federal regulations allow states to manage the wildlife resources located within their boundaries provided they do not conflict with regulations established in the Federal Register. None of these rule changes violate or conflict with the provisions established in the Federal Code of Regulations.

**Comparison with rules in adjacent states**

These rule change proposals do not represent significant policy changes and do not differ significantly from surrounding states. All surrounding states have regulations and rules in place for the management and recreational use of wild game and furbearer species that are established based on needs that are unique to that state’s resources and public desires.

Iowa allows the use of atlats for small game hunting and at least 12 other states allow their use, primarily for small or non-game species. In some of these state, non-game includes rabbits, squirrels, raccoon, fox, coyote and other species that would be considered small game or furbearers in Wisconsin.

All of Wisconsin’s surrounding states allow deer or turkey hunting in certain situations on properties which are comparable to state parks in Wisconsin and have a wide variety of season types and firearm or archery options.

The federal maximum age for participation in special youth waterfowl hunting seasons is 15. Minnesota allows participation by 12 to 17 year olds in its youth turkey hunts. Most of Iowa’s hunts are for 12 – 15 year olds. Michigan youth hunts are for 10 to 16 year olds. The minimum age for Illinois youth hunts is generally 10 but the maximum is either 15 or 16, varies from pheasant to deer.

Minnesota, Iowa and Illinois all have consistent raccoon season opening dates for residents and non-residents. Michigan does not allow non-resident raccoon trapping until a month after the resident season has opened, however, Michigan does not allow trapping or fur harvest by Wisconsin residents.

Minnesota does not allow scopes on muzzleloaders. Illinois, Michigan and Iowa do allow the use of scopes.



All of Wisconsin's surrounding states have a consistent statewide opening day for fox. The coyote season also opens on the same day statewide in Wisconsin's surrounding states. While those states do not have zones for the same species, the fox and coyote seasons are different in all surrounding states except Iowa.

Minnesota allows quartering deer in the field and requires that the head of the deer remain attached to one of the quarters. Iowa requires deer to remain intact until the animal is processed for consumption. Wisconsin's other surrounding states do not prohibit quartering deer in the field to facilitate removal.

Colony traps are legal in Minnesota but not allowed in Illinois. In Iowa and Michigan colony traps are legal only for muskrats and must be entirely submerged.

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

The rule changes included in this order do not deviate from current department policy on the management of wildlife and the regulation of hunting and trapping.

This rule proposal would allow small game hunting with an implement called an atlatl. An atlatl is a primitive device that achieves the velocity needed to strike a target with a dart by the use of a lever. The efficiency of this device may be comparable to traditional archery gear. Currently small game animals may be hunted with firearms, air guns, archery gear, and crossbows (if authorized by permit). In this proposal, small game includes species which are unprotected under current rule.

This rule would allow the use of traps which are capable of capturing multiple muskrats in one setting, commonly called colony traps. Maximum trap dimensions and placement restrictions are established and the use of bait is prohibited in order to limit the number of animals captured in one setting of a trap to three or four and minimize the chance of catching non-target species. This rule specifies that colony traps may only be used for muskrat but mink that are incidentally captured could be retained and utilized by the trapper. Because this trap type completely encloses the trapped animal in a cage, fur damage by predators is minimized. Colony traps do not have moving parts other than a one-way gravity drop entrance and will not create conflict with other wetland dependant activities such as duck hunting.

Elimination of the Burnett County and Rock Prairie Canada Goose Management Subzones is proposed because they are no longer needed with the recovery of year-round populations of resident geese.

Under current regulations on the practice of baiting and feeding wild animals, normal agricultural or gardening practices and crop manipulation are not considered baiting. These practices are not defined in administrative code. For the purposes of enforcing current prohibitions of baiting and feeding wild animals this proposal more specifically defines a normal agricultural or gardening practice by clarifying that, once a crop is harvested, it is considered to be bait if it is placed back on the landscape. If a crop is placed in an area, such as fenced pasture for the purpose of feeding livestock, it is not considered to be bait.

Currently, participation in the youth turkey and deer hunting seasons is allowed only by youth ages 10 to 15. This proposal would expand participation in those seasons by allowing 16 and 17 year olds. In 2008, the number of 16 and 17 year olds who purchased licenses to hunt during the regular firearm deer seasons was 18,749.

Hunting at state park properties is prohibited by state statute unless the department has promulgated rules that specifically allow hunting for deer, turkeys, or small game at an individual park property. Turkey hunting is currently allowed during the first three of the six spring turkey hunting periods at 14 state parks. These properties are managed primarily for outdoor recreational activities other than hunting but, by allowing hunting prior to times when property use increases, hunting can be accommodated while minimizing user conflict. This rule would expand turkey hunting opportunities at three properties, Straight Lake, Hartman Creek and the newly proposed Glacial Heritage Area state park. Fall turkey hunting is not allowed at any state parks and is not proposed for these three.

This rule would establish a single, consistent raccoon season opener for residents and non-residents. The current season restricts non-residents from the first two weeks of the fall season. There is, however, no measurable level of competition for this resource between residents and non-residents. Since 2006 the department sold 6, 6, and 5 non-resident trapping licenses, respectively. Non-resident furbearer hunting licenses average 35-40 annually with many purchased specifically for bobcat hunting. This would be consistent with all other current Wisconsin non-resident furbearer hunting and trapping seasons, which open with the resident season opener. This proposal is a simplification of current rule and there is no biological reason for the existing delay for non-residents.

Hunting at state park properties is prohibited by state statute unless the department has promulgated rules that specifically allow hunting for deer, turkeys, or small game at an individual park property. Current rule authorizes rifle, shotgun or muzzleloader deer hunting opportunities at 25 state parks. This proposal would expand deer hunting opportunities at Nelson Dewey state park by allowing hunting during the traditional firearm season in November. It would allow deer hunting on newly acquired lands at Buckhorn state park during all normal firearm deer hunting seasons. The proposal allows muzzleloader deer hunting at Big Bay state park during the normal statewide muzzleloader season that follows the traditional November firearm season. Finally, this rule would establish firearm and archery deer hunting seasons at proposed Glacial Heritage Area state parks which are consistent with other CWD Management Zone state park hunting seasons. Deer hunting at state parks provides hunting opportunities in ways that are designed to minimize conflicts with non-hunting state park users and to control deer herd impacts on natural vegetation.

Under this proposal, the north and south zones for fox hunting and trapping seasons would be eliminated so that the seasons for fox hunting and trapping would open concurrently statewide. The coyote trapping season, which is the same as the fox season, is revised in the same way under this proposal. This will provides hunters in the old south zone with an additional two weeks of harvest opportunity. There appears no biological reason to delay southern seasons by 8 days. This proposal simplifies an unneeded complication. A person in southern Wisconsin, if concerned that pelts will not be prime under the early season framework, can simply chose to delay harvest.

This proposal would eliminate the 2:00 p.m. pheasant hunting closure at Scuppernong River Habitat Management Area in Waukesha County and allow pheasant hunting all day. Scuppernong was once a Wildlife Area and was incorporated



into the Kettle Moraine State Forest Southern Unit in 2001 and renamed the Scuppernong River Habitat Area. The early closure was designated to reduce pressure immediately following stocking, giving the birds time to disperse. This area does receive heavy hunting pressure but also has some of the best and most pheasant habitat in the County. The area is usually stocked with pheasants from the state game farm in the late afternoon and hunters only have a few hours to pursue birds. Adequate carry over of birds to the next day is expected with this rule change. The remainder of the forest is open after 2:00 p.m. for pheasant hunting and removing the early closure will make for consistent regulations in the area and avoid hunter confusion during the pheasant season.

This proposal would allow the use of scopes with magnifying power on muzzleloaders during the muzzleloader-only season that follows the traditional firearm season. Scopes are not currently allowed during the muzzleloader only season because, when the season was initially developed, public support was for a hunt that focused on the use of traditional, primitive firearms. Public opinion has evolved and appears now to favor allowing the use of scopes. Department staff people do not anticipate that this proposal will have any effect on deer herd management.

Currently, the Junior Gun Deer License includes one Gun Buck Deer Carcass Tag valid in any unit statewide and one Antlerless Deer Carcass Tag valid in Earn-A-Buck and Herd Control Units. In an effort to provide youth hunters with added opportunities to harvest a deer, this proposal would make the antlerless tag valid in any unit statewide.

Currently, only boned out meat, quarters that do not contain any part of the spine or head, hides, antlers, and finished taxidermy mounts may be transported from a CWD area in Wisconsin or another state or province. Allowing the transportation of deer carcasses from a CWD management areas to other areas will provide hunters with greater flexibility while still preventing environmental contamination through discarded animal parts by requiring that carcasses that contain any part of the spinal column and heads be delivered only to a licensed meat processor (not an unlicensed individual who cuts up deer only) or to a registered taxidermist within 72 hours. Licensed meat processors are required to properly dispose of carcass waste materials under DATCP rules and provisions are established in this proposal to require that taxidermists properly dispose of the parts of the carcasses of highest risk for spreading CWD.

The practice of quartering deer prior to registration, in order to facilitate removal from the field, is currently prohibited for most hunters. This proposal would allow a hunter to divide a deer into as many as five parts only for the purpose of removing the animal from the field. Currently bear and elk may be quartered but this proposal will allow dividing them up to five times which will be consistent with deer and more practical to facilitate removal from the field. In order to make identification easier for registration station staff and to assure that parts of different animals are not confused, this proposal requires that the head remain attached to one part of deer and bear and that no more than one deer or bear which is not intact may be possessed or transported prior to registration.

This proposal would increase the penalty for Wildlife Damage Abatement and Claims Program enrollees being uncooperative or wrongfully denying public hunting access. Under the proposal, enrollees found in violation would not be

eligible for WDACP assistance or claims for an additional calendar year instead of the remainder of the current year. In many situations, the department is unaware of hunter access complaints until after the deer hunting season meaning enrollees proven to be uncooperative or wrongfully denying hunter access are not eligible for WDACP assistance for only a month or two. Under this proposal, program violations may be deterred by the increasing this penalty.

Finally, this proposal would clarify the definition of "novice participant" for learn to hunt programs in order to focus participation on hunters who are not likely to be exposed to hunting experiences unless they participate in the program. A concern with the current program is that participation is currently allowed by any novice, including those who do have access to mentors and who will be exposed to hunting regardless of participation in a learn to hunt program. A more precise definition will allow limited resources to be focused on novice hunters who will benefit the most from a mentored hunting experience.

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

These rules, and the legislation which grants the department rule making authority, do not have a significant fiscal effect on the private sector or small businesses.

#### **Small Business Impact**

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

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

#### **Environmental Analysis**

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

#### **Fiscal Estimate**

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

Signs will need to be created and posted at state park properties where new hunting opportunities are being created. Maps of the areas where hunting is allowed at these properties will also be created but would be available to the public electronically which will eliminate any significant printing costs. It is anticipated that preparation for the first hunting season at these parks will cost less than \$7,500 for all properties combined. The cost of preparing for future seasons will involve only sign maintenance and the cost of copying maps in-house. These costs will be spread across several properties and can be absorbed in the department's budget.

The department already administers seasons and enforces regulations related to all of the other hunting and trapping opportunities that are modified by this rules package. No new expenses or revenue are anticipated as a result of these proposals.

**State fiscal effect**

Increase costs. May be possible to absorb within agency's budget.

**Local government fiscal effect**

None.

**Fund sources affected**

SEG.

**Long-range fiscal implications**

None.

**Agency Contact Person**

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**CR 10-025 — Analysis Prepared by Department of Natural Resources****Statutes interpreted**

Sections 29.014 (1), 29.039, 29.041, 29.053, 29.531 and 29.533, Stats., which authorize fishing, have been interpreted as giving the department the authority to make changes to fishing and clamming regulations on inland and boundary waters of Wisconsin.

**Statutory authority**

Sections 29.014(1), 29.039, 29.041, 29.053 and 227.11 (2) (a), Stats.

**Explanation of agency authority**

Sections 29.014 (1), 29.039, 29.041, and 29.053, Stats., grant rule making authority to the department to establish and maintain open and closed seasons for fish and any bag limits, size limits, rest days and conditions governing the taking of fish that will conserve the fish supply and ensure the citizens of this state continued opportunities for good fishing; grant that the department may establish limitations relating to taking, possession, transportation, processing, and sale or offer for sale, of nongame species; and provide that the department may regulate fishing on and in all interstate boundary waters, and outlying waters. Section 227.11(2)(a), Stats., expressly confers rulemaking authority on the department to promulgate rules interpreting any statute enforced or administered by it, if the agency considers it necessary to effectuate the purpose of the statute.

**Related rule or statute**

None.

**Plain language analysis**

Sections 1, 9, 15 and 18 permit motor trolling in Ashland, Iron, Price and Sawyer counties.

Section 2 eliminates the minimum size restriction for largemouth and smallmouth bass in Bear, Horsehead, and Upper and Lower Turtle lakes (Barron county).

Section 3 increases the minimum size restriction for walleye in Bear, Horseshoe (T36N, R14E, S3, 115 ac.), and Upper and Lower Turtle lakes (Barron county) from 15 to 18 inches and decreases the daily bag limit for walleye from 5 fish to 3 fish.

Section 4 eliminates the minimum size restriction for largemouth and smallmouth bass in Lake Owen (Bayfield county).

Section 5 increases the minimum size restriction for walleye in Lake Owen (Bayfield County) from 15 to 18 inches and decreases the daily bag limit for walleye from 5 fish to 3 fish.

Section 6 eliminates the minimum size restriction for largemouth and smallmouth bass in Big McKenzie lake (Burnett/ Washburn counties).

Section 7 increases the minimum size restriction for walleye in Big McKenzie lake (Burnett/ Washburn counties) from 15 to 18 inches and decreases the daily bag limit for walleye from 5 fish to 3 fish.

Section 8 increases the minimum size restriction for walleye in Metonga lake (Forest county) from 15 to 18 inches and decreases the daily bag limit for walleye from 5 fish to 3 fish.

Sections 10 and 11 standardize trout regulations for all of the Wolf river (Langlade county), allowing hook and line fishing only with artificial lures from the First Saturday in May at 5:00am until September 30 with a bag limit of 3 and a maximum size of 12 inches. There is also a catch and release season from October 1 to November 15 for hook and line fishing with artificial lures.

Section 12 replaces the current no minimum length limit and 14 to 18 inch protected slot with no minimum length limit but only on fish over 14 inches in length and increases the daily bag limit from 3 to 5 for walleye in the Three Lakes chain and replaces the no minimum length limit but only on fish over 14 inches in length with a 15" minimum length limit on Sevenmile lake, Oneida county.

Section 13 eliminates the minimum size restriction for largemouth and smallmouth bass in Half Moon, Pipe, and Ward lakes (Polk county).

Section 14 increases the minimum size restriction for walleye in Big Butternut, Half Moon, Pipe, and Ward lakes (Polk county) from 15 to 18 inches and reduces the daily bag limit for walleye from 5 fish to 3 fish.

Section 16 eliminates the minimum size restriction for largemouth and smallmouth bass in Chain, Clear, Island, and McCann lakes (Island chain of lakes, Rusk county).

Section 17 increases the minimum size restriction for walleye in Chain, Clear, Island, and McCann lakes (Island chain of lakes, Rusk county) from 15 to 18 inches and reduces the daily bag limit for walleye from 5 fish to 3 fish.

Sections 19 and 21 extends the season on Chippewa flowage (Sawyer county) from the first Saturday in May to the first Sunday in March for all species except muskellunge, walleye, and lake sturgeon.

Section 20 eliminates the minimum size restriction for largemouth and smallmouth bass in Whitefish and Sissabagama lakes, and the Chippewa flowage (Sawyer county).

Section 20 also increases the minimum size restriction in Nelson, Sissabagama and Whitefish lakes from 15 to 18 inches and reduces the daily bag limit for walleye from 5 fish to 3 fish.

Section 20 also changes the panfish daily bag limit to 10 fish daily bag limit for all panfish all season on the Chippewa flowage, and creates a continuous open season for panfish. The previous panfish bag limits were 25 with no more than 15 crappie from the first Saturday in May until November 30 but

no crappie from December 1 to the first Sunday in March, with fishing for panfish prohibited between the first Sunday in March and the first Saturday in May.

Section 21 also increases the minimum size restriction for walleye in the Chippewa flowage from no minimum to 18 inches. The daily bag limit is unchanged at 3 walleye per day.

Section 22 makes permanent the 45 inch minimum size restriction for muskellunge in Little St. Germain lake (Vilas county). The current 45-inch minimum regulation is scheduled to expire November 30, 2011.

Section 23 eliminates the minimum size restriction for largemouth and smallmouth bass in Middle McKenzie, Nancy and Long lakes (Washburn county).

Section 24 increases the minimum size restriction for walleye in Middle McKenzie (Washburn/ Burnett counties), Nancy and Long lakes (Washburn county) from 15 to 18 inches and reduces the daily bag limit for walleye from 5 fish to 3 fish.

Section 25 increases the minimum size restriction for northern pike on Big Muskego lake including Bass bay (Waukesha county) from 26 inches to 40 inches and reduces the daily bag limit from 2 to 1 fish.

Section 26 increases the minimum size restriction for bass in Marion Pond (Waupaca county) from 14 inches to 18 inches and reduces the daily angler bag limit from 5 to 1. This rule will expire on April 1, 2016.

Section 27 increases the minimum size restriction for northern pike in Marion pond (Waupaca county) from no minimum to 26 inches and reduces the daily angler bag limit from 5 to 2. This rule will expire April 1, 2016.

Section 28 decreases the minimum length restriction to 7 inches for all trout in the Waupaca river downstream of River road. Current regulations are 12 inches for brown trout and rainbow trout, and 8 inches for brook trout. It also increases the daily angler bag from 3 trout to 5 trout.

Section 29 prohibits night fishing from September 15 to the first Saturday in May in the section of the Oconto river from the upstream side of the US 141 Bridge to the Stiles dam (Oconto county).

Section 30 adds a catch-and-release season for Lake Sturgeon on the St. Croix river from October 1 to 15. This section of the St. Croix river is a Wisconsin-Minnesota boundary water, and this section will make Wisconsin rules consistent with Minnesota rules.

Section 31 extends the largemouth and smallmouth bass fishing season on Wisconsin-Michigan boundary waters from November 30 to December 31. This will make Wisconsin and Michigan rules consistent.

Sections 32, 33, 34, and 35 eliminate the following fish refuges: on the Chippewa flowage for 500 feet below Moose lake (Sawyer county), on Spider creek between Spider lake and State highway 77 (Sawyer county), on Island creek between Island and Black Dan lakes (Sawyer county), on Malviney creek (Sawyer county), on the unnamed tributary of Lake Chetac from Lake Chetac to 1000 feet upstream (Sawyer county), on the Brunet River from Lake Winter to 500 feet downstream (Sawyer county), on the Couderay river from the Grimh (Radisson) dam to 500 feet downstream (Sawyer county) and on the Little Turtle river and Turtle-Flambeau flowage 200 feet upstream of Popko's Circle road until 200 feet downstream of Popko's Circle road (Iron county).

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

None known.

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

Fisheries management rules are generally similar in the states surrounding Wisconsin. Each bordering state regulates fishing by the use of seasons, bag limits and size limits. Specific seasons, bag and size limits may differ for species across the surrounding states; however, the general principles are similar. Michigan, Minnesota, Iowa and Illinois all have statewide seasons, bag and size limits for fish species, along with special or experimental regulations on individual waters.

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

Rule proposals were developed by fisheries and law enforcement staff to address management and enforcement concerns. Proposals were reviewed for need and adequacy, and approved by a fish team or law enforcement team supervisor and forwarded to regional director for approval. Proposals approved by the regions were forwarded to the Fisheries Management Bureau Director, who conducted a review with the Fisheries Management Board, law enforcement, legal services, the Wisconsin Conservation Congress, and the Great Lakes Indian Fish and Wildlife Commission. Only proposals approved by the Fisheries Management Bureau Director are included.

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

The proposed rules do not apply directly to businesses, but to sport anglers.

### **Small Business Impact**

The proposed rules do not impose any compliance or reporting requirements on small businesses nor are any design or operational standards contained in the rule. The rules will be enforced by Conservation Wardens who have arrest powers and may use citations.

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

### **Fiscal Estimate**

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

None.

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

None.

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

N/A

### **Agency Contact Person**

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## **Notice of Hearing**

### **Natural Resources**

#### ***Environmental Protection — Air Pollution Control, Chs. NR 400— CR 10-012***

NOTICE IS HEREBY GIVEN That pursuant to ss. 227.16 and 227.17, Stats, the Department of Natural Resources,



hereinafter the Department, will hold a public hearing on proposed rules to create s. NR 400.02 (162) (a) 51. and 52., relating to the definition of volatile organic compound (VOC). The proposed revisions relate to issues for State Implementation Plan approvability, and the State Implementation Plan developed under s. 285.11 (6), Stats., will be revised.

### Hearing Information

<u>Date and Time</u>	<u>Location</u>
<b>March 12, 2010</b>	WI DNR Building (GEF 2)
Friday	Room G09
at 1:00 PM	101 S. Webster Street Madison, WI

Reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Contact Robert B. Eckdale in writing at the Department of Natural Resources, Bureau of Air Management (AM/7), 101 S Webster, Madison, WI 53707; by E-mail to [Robert.Eckdale@wisconsin.gov](mailto:Robert.Eckdale@wisconsin.gov); or by calling (608) 266-2856. A request must include specific information and be received at least 10 days before the date of the scheduled hearing.

### Copies of Proposed Rule and Fiscal Estimate

The proposed rule and supporting documents, including the fiscal estimate, may be viewed and downloaded from the Administrative Rules System Web site which can be accessed through the link provided on the Proposed Air Pollution Control Rules Calendar at <http://www.dnr.state.wi.us/air/rules/calendar.htm>. If you do not have Internet access, a printed copy of the proposed rule and supporting documents, including the fiscal estimate, may be obtained free of charge by contacting Robert B. Eckdale, Department of Natural Resources, Bureau of Air Management (AM/7), 101 S. Webster Street, Madison, WI 53703, or by calling 608.266.2856.

### Submittal of Written Comments

Comments on the proposed rule must be received on or before Monday, March 22, 2010. Written comments may be submitted by U.S. mail, fax, E-mail, or through the Internet and will have the same weight and effect as oral statements presented at the public hearing. Written comments and any questions on the proposed rules should be submitted to:

Joseph Hoch  
 Department of Natural Resources  
 Bureau of Air Management (AM/7)  
 101 S Webster St., Madison, WI 53703  
 Phone: (608) 264-8861  
 Fax: 608.267.0560  
 E-mail: [joseph.hoch@wisconsin.gov](mailto:joseph.hoch@wisconsin.gov)  
 Internet: Use the Administrative Rules System Web site accessible through the link provided on the Proposed Air Pollution Control Rules Calendar at <http://www.dnr.state.wi.us/air/rules/calendar.htm>

### Analysis Prepared by the Department of Natural Resources

#### *Statute interpreted*

Section 285.11(6), Stats. The State Implementation Plan developed under s. 285.11(6), Stats., is revised.

#### *Statutory authority*

Sections 227.11(2)(a) and 285.11(1) and (6), Stats.

#### *Explanation of agency authority*

Section 227.11(2)(a), Stats., gives state agencies general rule-making authority. Section 285.11(1), Stats., gives the Department the authority to promulgate rules implementing and consistent with ch. 285, Stats. Section 285.11(6), Stats., requires the Department to develop a plan for the prevention, abatement and control of air pollution. The plan must conform with the Clean Air Act and federal regulations for ozone control. Since volatile organic compounds (VOC) are a precursor to ozone, having the state definition of VOC conform to the federal definition is consistent with s. 285.11(6), Stats.

#### *Related statute or rule*

Chapters NR 401 to 499 reference the definitions presented in s. NR 400.02, Wis. Adm. Code.

#### *Plain language analysis*

The proposed rule amendment contained in this order reflects a recent conclusion by the United States Environmental Protection Agency (EPA) that dimethyl carbonate and propylene carbonate make a negligible contribution to tropospheric ozone formation. EPA excluded these two compounds from its regulatory definition of VOC through a January 21, 2009 Federal Register notice (74 FR 3437).

Currently, s. NR 400.02 (162) (a), Wis. Adm. Code, lists 50 compounds that are excluded from the state regulatory definition of VOC. The Department is proposing to add dimethyl carbonate and propylene carbonate to this list to ensure consistency between state and federal definitions of VOC.

The proposed rule amendment may create an incentive for certain entities, such as paint and coating manufacturers, to use these compounds in place of other more highly reactive organic compounds thereby potentially reducing ground-level ozone concentrations.

#### *Comparison with federal regulations*

The proposed rule amendment will ensure consistency between state and federal VOC definitions.

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

Each of the adjacent states has exempted or is in the process of exempting these two compounds from the regulatory definition of VOC through state rulemaking processes. The following lists the expected state exemption dates for dimethyl carbonate and propylene carbonate:

*Illinois* — Expected exemption January, 2010.

*Iowa* — Compounds are exempt from emissions reporting starting in 2009.

*Michigan* — Expected exemption late 2010.

*Minnesota* — Compounds are currently exempt because EPA's VOC definition is referenced.

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

Since the proposed rule amendment is based on federal rule changes, the Department is relying on the factual data and analytical methodologies used by EPA to support its rule change. Information on the federal rule changes may be found in the Federal Register notice published on January 21, 2009 (74 FR 3437).



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

An analysis of the effect of the proposed rule amendment on small business was not performed since this change would only provide additional flexibility in allowing them to choose from additional chemical compounds.

Preparation of an economic impact report was not requested.

**Small Business Impact**

The proposed rule amendment is not expected to have a significant economic impact on small business because it does not impose any new regulations on them, but rather removes two compounds from the state regulatory definition of VOC. This may provide lower cost alternatives to compounds currently being used.

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

**Environmental Analysis**

The Department has made a preliminary determination that adoption of the proposed rules would not involve significant adverse environmental effects and would not need an environmental analysis under ch. NR 150, Wis. Adm. Code. However, based on comments received, an environmental analysis may be prepared before proceeding. This analysis would summarize the Department's consideration of the impacts of the proposal and any reasonable alternatives.

**Fiscal Estimate**

The proposed changes are being done so that the Department's regulations are updated to reflect current federal regulations. These are definition changes with no fiscal impact to state and local governments, and no anticipated significant fiscal impact to the private sector.

**Notice of Hearings  
Public Instruction  
CR 10-002**

NOTICE IS HEREBY GIVEN That pursuant to ss. 115.762 (3) (a) and 227.11 (2) (a), Stats., the Department of Public Instruction will hold public hearings to consider proposed permanent rules amending section PI 11.36 (6), relating to the identification of children with specific learning disabilities.

**Hearing Information**

The hearings will be held as follows:

<b><u>Date and Time</u></b>	<b><u>Location</u></b>
<b>March 16, 2010</b> 4:00 – 7:00 p.m.	Madison GEF 3 Building 125 South Webster St. Room 041
<b>March 18, 2010</b> 4:00 – 7:00 p.m.	Oshkosh CESA 6 2300 State Road 44 Conference Room
<b>April 7, 2010</b> 4:00 – 7:00 p.m.	Chippewa Falls CESA 10 725 West Park Ave. Conference Room

**April 14, 2010**  
4:00 – 7:00 p.m.  
Brookfield  
CESA 1  
19601 Bluemound Road  
Room A

The hearing sites are fully accessible to people with disabilities. If you require reasonable accommodation to access any meeting, please call Vaunce Ashby, Specific Learning Disability Educational Consultant at (608) 267-2841 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 Submittal of Written Comments**

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

Written comments on the proposed rules received by Ms. Slauson at the above mail or email address no later than April 23, 2010, will be given the same consideration as testimony presented at the hearing.

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

***Statute interpreted***

Sections 115.76 (5) (a) 10. and (b) and 115.78 (1m), Stats.

***Statutory authority***

Sections 115.76 (5) (b) and 227.11 (2) (a), Stats.

***Explanation of agency authority***

Section 115.762 (3) (a), Stats., requires the department to ensure that all children with disabilities are identified, located and evaluated.

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***

Subchapter V of Chapter 115, Stats.  
Chapter PI 11, Wis. Adm. Code.

***Plain language analysis***

In 2004, the Individuals with Disabilities Education Act (IDEA) modified the evaluation procedures for the identification of children with specific learning disabilities (SLD) under 20 U.S.C. 1414 (b) (6). As specified in IDEA, the evaluation procedures relating to the identification of specific learning disabilities provide that: States may not require the use of significant discrepancy as part of a determination of SLD, and must permit the use of a process based on a child's responses to scientifically-based intervention as part of its determination of SLD. This proposed rule clarifies the insignificant progress component commonly known as scientific, research-based or evidence-based interventions and the interventions' integrity.

The IEP team needs to include a person qualified to assess data on a pupil's individual rate of progress, who has implemented a scientific, research-based or evidenced-based intervention with that pupil, and who has observed the pupil while he or she is receiving the intervention. If an existing IEP team member can fulfill these roles, an additional team member is unnecessary.

IDEA also added reading fluency skills as an area of identification for SLD. Because the department's current rule under s. PI 11.36 (6), relating to specific learning disabilities is not consistent with the federal requirements, the rule will be recreated to align with the U.S. Code. The proposed rules will allow a five-year period during which a school district "is permitted but not required" to continue to use the significant discrepancy formula in identifying children with SLD. After that five-year period, the significant discrepancy formula may not be used.

The department submitted a rule modifying the SLD criteria and significant developmental delay (SDD) criteria to the Legislative Clearinghouse for review on June 4, 2007 (See CHR 07-058). The SLD criteria has changed significantly from the version in CHR 07-058, and therefore, is being re-submitted for Clearinghouse review and public hearings. The information relating to the SLD criteria will be removed from CHR 07-058 before the rule is submitted to the chief clerk of each house of the legislature in final draft form under s. 227.19 (2), Stats.

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

The proposed rules reflect the SLD language under 34 ss. CFR 300.307 to 300.311 as authorized under 20 U.S.C. s. 1221e-3, 1401 (30), and 1414 (b) (6). In addition, the rule clarifies the insignificant progress component commonly known as scientific, research-based or evidence-based interventions and the interventions' integrity. The IEP team needs to include a person qualified to assess data on a pupil's individual rate of progress, who has implemented a scientific, research-based or evidenced-based intervention with that pupil, and who has observed the pupil while he or she is receiving the intervention. If an existing IEP team member can fulfill these roles, an additional team member is unnecessary.

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

##### *Illinois:*

Beginning in 2010-2011 Illinois will require school districts to use a process based on a child's response to scientific, research-based interventions as part of SLD evaluation.

##### *Iowa:*

Beginning August, 2010, Iowa will require the use of a process based on the child's response to scientific, research-based intervention or the use of other alternative research-based approaches and prohibits the use of a severe discrepancy between intellectual ability and achievement.

##### *Michigan:*

Language going to public hearings in November, 2009 proposes the use of methods for determining SLD eligibility based on the use of scientific, research-based interventions

and patterns of strengths and weaknesses. At this point the discrepancy model or a sunset clause is not mentioned.

##### *Minnesota:*

The SLD criteria states that the child does not achieve adequately, has a disorder in one or more of the basic psychological processes, and the demonstration of a severe discrepancy or the demonstration of inadequate rate of progress.

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

In 2004, the Individuals with Disabilities Education Act (IDEA) modified the evaluation procedures for the identification of children with specific learning disabilities (SLD) under 20 U.S.C. 1414 (b) (6). As specified in IDEA, the evaluation procedures relating to the identification of specific learning disabilities provide that: 1) States may not require the use of significant discrepancy as part of a determination of SLD, 2) States must permit the use of a process based on a child's responses to scientifically-based intervention as part of its determination of a SLD, and 3) States may permit the use of other alternative research-based procedures to determine whether a child has a SLD. IDEA also added reading fluency skills as an area of identification for SLD. Because the department's current rule under s. PI 11.36 (6), relating to specific learning disabilities is not consistent with the federal requirements, the rule will be modified to align with the U.S. Code. The proposed rules will allow a five-year period during which a school district "is permitted but not required to" continue to use the significant discrepancy formula in identifying children with SLD.

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

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***

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

The proposed rules modify eligibility criteria used to identify children with specific learning disabilities (SLD) to be consistent with federal requirements. The federal requirements now specify state local education agencies (LEAs) shall not be required to consider a severe discrepancy and must permit the use of a process based on child's response to scientific, researched-based intervention in determining whether a child has an SLD. This rule modification should not result in altering the size of the population of children identified as having a disability. Wisconsin must comply with federal requirements in order to remain eligible to receive more than \$200 million in federal IDEA funds.

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

None.

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

None.

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

N/A

**Agency Contact Person**

Stephanie Petska, Director, Special Education  
 Email: stephanie.petska@dpi.state.wi.us  
 Phone: (608) 266-1781

**Notice of Hearing****Workforce Development**

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

NOTICE IS HEREBY GIVEN that pursuant to ss. 108.14 (2) and 227.11 (2) (a), Stats., the Department of Workforce Development proposes to hold a public hearing to consider rules revising Chapter DWD 128, relating to unemployment insurance rules for determining a claimant's ability to work and availability for work and affecting small businesses.

**Hearing Information**

<u>Date and Time</u>	<u>Location</u>
<b>March 12, 2010</b>	MADISON
Friday	G.E.F. 1 Building, H306
9:00 a.m.	201 E. Washington Avenue

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

**Copies of Proposed Rule**

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

**Appearances at Hearing and Submittal of Written Comments**

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

Written comments on the proposed rules received at the above address, email, or through the <http://adminrules.wisconsin.gov> web site no later than March 12, 2010, will be given the same consideration as testimony presented at the hearing.

**Analysis Prepared by Department of Workforce Development****Statutory authority**

Sections 108.14 (2) and 227.11, Stats.

**Statutes interpreted**

Sections 108.04 (1) (b) 1., (2) (a) 1., (7) (c), and (8) (e), Stats.

**Related statutes and rules**

Sections 108.04 (2) (a) 2. and 3., and (b), Stats.

Chapters DWD 126 and 127

**Explanation of agency authority**

To be eligible to receive unemployment insurance benefits, an individual must, in addition to other requirements, be "able" to perform suitable work and be "available" for suitable work.

Section 108.04 (2) (a) 1., Stats., provides that a claimant shall be eligible for benefits for any week of total unemployment only if the claimant is able to work and available for work during the week.

Section 108.04 (1) (b) 1., Stats., provides that an employee is ineligible for benefits while the employee is unable to work, or unavailable for work, if his or her employment with an employer was suspended by the employee or by the employer or was terminated by the employer because the employee was unable to do, or unavailable for, suitable work otherwise available with the employer, or if the employee was on a leave of absence, except in certain circumstances.

Section 108.04 (7) (c), Stats., provides that the disqualification for an employee's voluntary termination of work does not apply if the department determines that the employee terminated his or her work but had no reasonable alternative because the employee was unable to do his or her work, or if the employee terminated his or her work because of the health of a member of his or her immediate family; but if the department determines that the employee is unable to work or unavailable for work, the employee is ineligible to receive benefits while the inability or unavailability continues.

Section 108.04 (8) (e), Stats., provides that if an employee fails to accept suitable work with good cause or return to work with a former employer that recalls the employee with good cause, but the employee is unable to work or unavailable for work, the employee shall be ineligible for the week in which the failure occurred and while the inability or unavailability continues.

Section 108.14 (2), Stats., provides that the department may adopt and enforce all rules which it finds necessary or suitable to carry out Chapter 108, Stats., regarding unemployment insurance.

**Plain language analysis**

Under the current Chapter DWD 128, a claimant is considered "able" to work if the claimant is able to perform "any" suitable work. Suitable work is defined as work that is reasonable considering the claimant's training, experience, and duration of unemployment as well as the availability of jobs in the labor market. DWD §100.02 (61). If interpreted literally, this provision would mean that if a claimant can show that there is a single job that exists in the labor market that the claimant can do despite his or her restrictions, the



claimant may be considered “able” to work within the meaning of the rule.

Under the current rule, one of the factors applied to determine whether a claimant is “able” to work is “whether the claimant could be qualified to perform other work within the claimant’s restrictions with additional training.” The Department has observed that this factor operates as an exception to ability to work and availability for work to an extent that is inconsistent with the basis for the “able and available” requirements — attachment to the labor market. The application of this factor may yield results that negate the rule by excusing the claimant’s inability to work and unavailability for work during a period of training that is not “approved training” under the statutory exception to able and available, s. 108.04(16), Stats. The rule contains no limitation on the nature and extent of the training involved and might be read to excuse inability to work in cases in which the training period will be lengthy or open-ended. Deleting the factor contained in section 128.01 (3)(d) will not diminish the exception to the able to work and available for work requirements for weeks during which the claimant is enrolled in approved training under s. 108.04(16), Stats., which serves as an exception to all of the able and available requirements.

The language of the rule requiring that the claimant be “available for work” has been interpreted in a manner that is inconsistent with the intent of the rule. Currently, the rule provides that for a claimant to be “available” for work, the claimant must be available for full-time suitable work (32 hours per week). If a claimant has physical restrictions that limit the number of hours he or she can work to less than full-time work (32 hours per week), the claimant may not be found “available” for work. This result was not intended. Under the rule prior to its last revision, a claimant with a physical or psychological restriction that limited the number of hours the claimant was able to work was considered “available” for work if the claimant was available to work at least the number of hours of work as the claimant was “able” to work.

The Department proposes to amend the test for “able to work” by eliminating the word “any” from the second sentence of DWD 128.01(3). The Department proposes to delete the factor allowing consideration of whether the claimant could be qualified by additional training. These amendments will restore the focus on the factors most relevant to physical restrictions and residual capacity and assure that there is a genuine attachment to the labor market.

The Department proposes that to the extent that a worker has limitations on the number of hours she/he is able to work that are due to physical or psychological restrictions, she/he will not be regarded as unavailable for work if she/he is as available for work as the person is able to work.

The intent of the unemployment statute and rules is that *all* claimants must be able to work and available for work. The current language of DWD 128.01 (7) appears to suggest that a claimant who is partially unemployed *need not meet the “able and available” requirement unless* “there is a definite indication that the claimant is not genuinely interested in working full-time” or the claimant missed work available with a current employer. The Department proposes to repeal this provision to assure that the standard is applied uniformly.

In 2009 Wis. Act 11, the Legislature amended the exception to the quit disqualification that is applied when an

individual quits work to care for an ill or disabled family member. sec. 108.04(7)(c), Stats. The amendment was adopted to comply with the requirements for unemployment insurance modernization incentive funds as provided in the Assistance for Unemployed Workers and Struggling Families Act, Title II of Division B of P.L. 111-5, enacted February 17, 2009. The exception no longer requires that the claimant must demonstrate that he or she had “no reasonable alternative” to quitting. A claimant now must demonstrate that the immediate family member has a verified illness or disability that necessitates care for a period of time that is longer than the employer is willing to grant leave. The language in the current rule requires that for a claimant to be considered available for work, a claimant caring for a family member must demonstrate that the condition requires “essential” care that is “uniquely and actually” provided by the claimant. s. DWD 128.04(1)(a)2. The Department is concerned that the words “essential” and “uniquely and actually” may constitute a “no reasonable alternative” standard for availability. Under the current rule, a claimant may quit a job to care for a family member, but could be found unavailable for work on the required shifts because the claimant did not need to provide the care and had other alternatives. This interpretation is contrary to the intent of the statutory amendment. The Department proposes to amend this provision to be consistent with the amended quit exception in sec. 108.04(7)(c), Stats.

These amendments are consistent with the Department’s intent in adopting the revisions to DWD 128 that took effect in April 2008. Those revisions made a very substantial change to Wisconsin’s unique approach to the “able and available” requirements. The intent was to move to a concept more like that found in other states.

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

The Department of Labor issued a rule on the able and available requirement on January 16, 2007. The federal rule codified the longstanding interpretation that the Social Security Act and the Federal Unemployment Tax Act require states to limit payment of unemployment insurance to individuals who are able and available for work. This interpretation had not previously been comprehensively addressed in the federal regulations.

The federal regulation provides that a state may consider an individual to be able to work during the week of unemployment claimed if the individual is able to work for all or portion of the week, provided any limitation on his or her ability to work does not constitute a withdrawal from the labor market.

A state may consider an individual to be available for work during the week of unemployment claimed under any of the following circumstances: (1) the individual is available for any work for all or a portion of the week, provided any limitation does not constitute a withdrawal from the labor market; (2) the individual limits his or her availability to work which is suitable as determined under state law; and (3) the individual is on temporary lay-off and is available to work only for the employer that has temporarily laid-off the individual.

A state may consider an individual available for work if the state finds the individual able to work despite illness or injury.

A state must not deny unemployment benefits to an individual for failure to be available for work if the individual



is in approved training. An alien must be legally authorized to work to be considered available for work in the United States.

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

Iowa's rules provide that to be able to work an individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation. An individual must be able to work in some reasonably suitable, comparable, gainful, full-time endeavor, other than self-employment, which is generally available in the labor market where the individual resides. An individual is available for work if he or she is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse. An individual may have shift restrictions if the individual is available for the same shift in which his or her wage credits were earned and the individual has a reasonable expectation of securing employment. If a part-time worker is available to the same degree and to the same extent as when his or her wage credits were earned, the individual meets the availability requirement. An individual is available while serving on jury duty. An individual may not be eligible for benefits if the individual has imposed restrictions that leave the individual with no reasonable expectation of securing employment, including restrictions such as type of work, hours, wages, location, or physical restrictions.

The Illinois rules provide that an individual is able to work when physically and mentally capable of performing work for which the individual is otherwise qualified. The focus for ability to work is on the individual's condition; the employers' willingness to hire is irrelevant. The focus also is on any work the individual is currently qualified for and can perform, and is not limited to the individual's usual or most recent job. The rule provides that the best evidence that an individual is able to work in a particular occupation is that the individual has performed such work. An individual is available for work unless a condition so narrows opportunities that he has no reasonable prospect of securing work. An individual is unavailable if: domestic circumstances prevent an individual from working during "normal" days and hours in the occupation, the individual demands a wage that is unreasonable, the individual unreasonably restricts the distance the individual is willing to travel to work, or an individual's personal habits are inconsistent with the type of work the individual is seeking. An individual will not be unavailable for refusing to consider work that would violate sincerely held religious or moral convictions. If the individual is self-employed, availability depends on the nature and extent of the self-employment. Whether a seasonal worker is available during the off-season is determined by whether there is some prospect of obtaining work in the individual's customary occupation. When an individual appears to be imposing a condition on acceptance of work, it must be established whether this is a preference or an actual condition on availability. The best evidence that an individual is available for work is that the individual readily secures work despite the imposition of a condition.

Michigan and Minnesota do not have rules on ability and availability for work.

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

The Department prepared preliminary statistics of the experience with DWD 128 from April 2008, when the revised rule became effective, and September 2008. These statistics were presented to the Unemployment Insurance Advisory

Council at its meeting on October 2, 2008. Although these reflect experience with the rule over a short period of time, the statistics and the anecdotal experience with adjudicators and decisions from administrative law judges show that decisions finding claimants "able" under the new rule have increased, and there have been decisions denying benefits to claimants who are not "available" for full-time suitable work (32 hours per week) because of physical restrictions that limit the hours they are able to work.

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

The proposed rule will alter somewhat how the department will determine whether a claimant is able and available for work. The proposed rule does not add or change any requirements for small businesses. There are no reporting, bookkeeping, or other procedures required for compliance with the proposed rule and no professional skills are required of small businesses.

#### **Small Business Impact**

The rule will affect small businesses but will not have a significant economic impact on a substantial number of small businesses.

#### **Fiscal Estimate**

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

No fiscal effect is expected from the proposed amendments beyond that anticipated in 2009 Wisconsin Act 11 regarding the exception to disqualification for quitting a specific job in order to care for an ill or disabled family member, provided that the claimant remains available for other full time work. Field office staff estimated that approximately 100 claimants in any given year would be allowed benefits as a result of the less stringent requirements in Act 11. Based on benefits received by a sample of those excepted from disqualification prior to passage of Act 11, it was further estimated that total Unemployment Insurance benefit expenditures would increase by approximately \$100,000 as a result of the less stringent requirements. Of the \$100,000, it is estimated that \$1,000 in increased expenditures will be experienced by state government, \$2,000 by local units of government, and \$97,000 by private employers. No fiscal effects are expected from the other proposed amendments to the rule as these are clarifying or corrective of the intent of the rule as originally passed and analyzed.

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

Increase costs. May be possible to absorb within agency's budget.

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

Mandatory increase in costs.

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

Towns, Villages, Cities, Counties, School Districts, WTCS Districts.

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

GPR, FED, PRO, PRS, SEG SEG-S.

#### **Agency Contact Person**

Daniel LaRocque, Director  
Bureau of Legal Affairs  
Phone: (608) 267-1406

Email: daniel.larocque@wisconsin.gov

**Notice of Hearing**  
**Workforce Development**  
*Unemployment Insurance, Chs. DWD 100–150*  
**CR 10–018**

NOTICE IS HEREBY GIVEN that pursuant to ss. 108.08 (1), 108.14 (2) and 227.11 (2) (a), Stats., the Department of Workforce Development proposes to hold a public hearing to consider rules revising Chapter DWD 129, relating to unemployment insurance rules for benefit claiming procedures.

**Hearing Information**

<u>Date and Time</u>	<u>Location</u>
<b>March 12, 2010</b>	MADISON
Friday	G.E.F. 1 Building, H306
10:30 a.m.	201 E. Washington Avenue

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

**Copies of Proposed Rule**

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

**Appearances at Hearing and Submittal of Written Comments**

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

Written comments on the proposed rules received at the above address, email, or through the <http://adminrules.wisconsin.gov> web site no later than March 12, 2010, will be given the same consideration as testimony presented at the hearing.

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

**Statutory authority**

Sections 108.08 (1), 108.14 (2), and 227.11, Stats.

**Statutes interpreted**

Section 108.08 (1), Stats.

**Related statutes**

Not applicable

**Explanation of agency authority**

Section 108.08 (1), Stats., provides that to receive unemployment insurance benefits for any given week of unemployment, a claimant shall give notice to the department with respect to such week of unemployment within such time and in such manner as the department may by rule prescribe.

Section 108.14 (2), Stats., provides that the department may adopt and enforce all rules which it finds necessary or suitable to carry out Chapter 108, Stats., regarding unemployment insurance.

**Plain language analysis**

Section 108.08 (1), Stats., provides that to receive unemployment insurance benefits for any given week of unemployment, a claimant shall give notice to the department with respect to such week of unemployment within such time and in such manner as the department may by rule prescribe. Chapter DWD 129 was amended recently, with changes effective January 1, 2007. Since that time, appeal tribunal decisions have interpreted the provisions of the rule relating to resuming claims and filing weekly certifications in ways that were not intended by the rule. The proposed changes to the rule are to clarify the intent of the process for resuming claims and the interplay of the different time limits for filing initial/resumed claims and continuing weekly certifications. By simplifying the language of the rule, the department hopes to reduce the risk of further unintended interpretations of the rule.

*Initiating a claim.* Section DWD 129.01 (1) currently provides that a claimant is eligible only if, as of the first week being claimed, the claimant notifies the department by telephone, internet, or as otherwise prescribed by the department, during that week or within 7 days after the close of that week, of the claimant's intent to initiate the claim. The rule basically provides that all initial claims can be backdated one week.

*Continuing a claim.* Section DWD 129.01 (2) describes the requirements for continuing a claim by filing timely weekly certifications. The current rule provides that the claimant is eligible for benefits for any week only if the claimant files a weekly certification with the department by telephone, internet, mail, or as otherwise prescribed by the department, within 14 days following the end of the week for which benefits are claimed. The rule basically provides that to be able to continue a claim, a claimant has up to two weeks to file a weekly certification for a week being claimed.

*Resuming a claim.* The current rule provides that if a weekly certification is not filed for a benefit week as described in s. DWD 129.01 (2) to continue a claim, the claim becomes inactive as of the first week after the last week in which a timely weekly certification could have been filed for the missed week. In order to resume a claim after it has become inactive, a claimant must file a new initial claim. The section on initiating a claim provides that these initial/resumed claims can be backdated one week. The intent of the rule was not to allow claimants to reach back two weeks to file a continued weekly certification once a claim has become inactive, however, appeal tribunals have not consistently read the rule to reach this result and have allowed claimants to reach back two or more weeks to file continued weekly certifications after a claim has become inactive.

The proposed rule will clarify the language of the rule. The proposed rule will combine the repetitive language in DWD 129.01 (2) (b) 1.–4. The proposed rule will clarify that a claimant cannot file a timely weekly certification for any

week once the claimant has missed filing a timely weekly certification for a week. The department provides two examples to show how the clarified language should be interpreted.

In addition, DWD 129.05 is amended to authorize payment of benefits by debit cards issued by the department.

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

There are no federal standards or regulations for unemployment insurance benefits regarding filing or notice requirements.

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

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

Applications for unemployment benefits are effective the Sunday of the calendar week in which the completed application is submitted. Applications and weekly certifications may be submitted by Internet, telephone, or mail. An account that has become inactive may be reactivated effective the Sunday of the calendar week in which the account was reactivated.

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

An initial claim may be filed by telephone, in person, or by other means prescribed by the department. Claims are deemed filed as of Sunday of the week in which the claim is filed. A claimant must generally complete a voice response telephone claim to continue benefits.

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

The Michigan administrative rules provide that a claimant shall file an initial claim, continued claim, or resumed claim as directed by the agency. To be considered a timely filing and effective as of the beginning of the claimant's first week of unemployment, a new claim shall be received by the agency not later than the Friday after the end of the week containing the claimant's last day of work. A continued claim shall be received by the agency not later than the Friday after the end of the last week of the period for which the claimant is instructed to report. A resumed claim is effective as of the beginning of the week in which it is received by the agency. If a claimant does not file a new, continued, or resumed claim pursuant to these deadlines but files the new or resumed claim not later than the 14<sup>th</sup> day after these time limits, the claim is considered filed on time if the claimant has good cause for the lateness of the filing.

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

An initial claim for benefits must be filed in person at the local office unless a claimant is otherwise instructed by the

agency. An initial claim for benefits should be filed no later than the end of the first week in which the claimant is separated from work and the claim shall begin in the week in which it was filed. Filing by mail may be allowed for claimants with special circumstances, such as lack of transportation or physical disabilities. Claimants generally file a certification for continuing benefits by telephone. Claimants are given a certification day in which they call and respond to questions concerning their claims for the prior 2 weeks. If the claimant misses the certification day, a call may be placed on Thursday or Friday of that week, or on the designated certification day or Thursday or Friday of the next week. Filing a certification by mail may be allowed in special circumstances, such as language issues, hearing impairment, or lack of access to a touch tone phone.

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

The interpretations of the rule that were not intended were brought to the attention of the department through appeal tribunal decisions and discussions with administrative law judges regarding the interpretation of the rule provisions. The department has analyzed the proposed rule language through examples and by seeking comments on the proposed rule language from administrative law judges.

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

The proposed rule will clarify the current process of filing continued weekly certifications and resumed claims. The proposed rule does not add or change any requirements for small businesses.

#### **Small Business Impact**

The proposed rules do not add or change any requirements for small businesses. There are no reporting, bookkeeping, or other procedures required for compliance with the proposed rule and no professional skills are required.

#### **Fiscal Estimate**

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

None.

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

None.

#### **Agency Contact Person**

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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.*

### Health Services

*Community Services, Chs. DHS 30—*

**CR 09–109**

A rule-making order to revise Chapter DHS 75, relating to substance abuse counselors, clinical supervisors, and prevention specialists, and affecting small businesses.

### Health Services

*Health, Chs. DHS 110—*

**CR 09–115**

A rule-making order to revise Chapters DHS 117, 160, 172, and 253, relating to fees for copies of health care provider records; registration of sanitarians; safety, maintenance and operation of public swimming pools and water attractions; and child support cooperation for food stamps; and affecting small businesses.

### Insurance

**CR 09–093**

A rule-making order to create Chapter Ins 57, relating to care management organizations and affecting small businesses.

### Insurance

**CR 09–097**

A rule-making order to revise section Ins 6.77, 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.

### Natural Resources

*Fish, Game, etc., Chs. NR 1—*

**CR 09–103**

A rule-making order to create section NR 45.04 (1) (g), relating to the regulation of firewood that may be brought onto state lands.

### Natural Resources

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

**CR 07–111**

A rule-making order to revise Chapters NR 102 and 106, relating to water quality standards for heat and associated procedures for the calculation of point source effluent limitations.

### Public Instruction

**CR 09–117**

A rule-making order to create section PI 8.01 (4), relating to waiver of school hours.

### Revenue

**CR 09–090**

A rule-making order to revise Chapter Tax 11, relating to sales and use tax.

### Tourism

**CR 09–111**

A rule-making order to create Chapter Tour 3, relating to grants to municipalities and organizations for regional tourist information centers.



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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.*

### **Barbering and Cosmetology Examining Board** **CR 09-065**

Rule revises Chapter BC 9 and creates Chapter BC 11, relating to renewal, reinstatement of license, and continuing education.  
Effective 4-1-10.

### **Commerce**

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

### **CR 09-045**

Rule creates Chapter Comm 149, relating to statements and penalties for grant and loan programs, and penalties for tax credit programs.  
Effective 3-1-10.

### **Health Services**

#### *Health, Chs. DHS 110—*

### **CR 09-085**

Rule revises Chapter DHS 163, relating to requirements for conducting lead-safe renovation activities in pre-1978 housing and child-occupied facilities, and affecting small businesses.  
Effective 4-1-10.

### **Health Services**

#### *Health, Chs. DHS 110—*

### **CR 09-089**

Rule revises Chapter DHS 124, relating to forfeitures, anatomical gifts, and automated external defibrillator (AED) training for hospitals.  
Effective 4-1-10.

### **Insurance**

### **CR 09-055**

Rule creates section Ins 17.28 (3h), relating to supervision and direction.  
Effective 4-1-10.

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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 February 28, 2010, Wisconsin Administrative Register. Copies of these rules are sent to subscribers of the complete Wisconsin Administrative Code and also to the subscribers of the specific affected Code.*

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

## Commerce

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

#### CR 09-045

Rule creates Chapter Comm 149, relating to statements and penalties for grant and loan programs, and penalties for tax credit programs. Effective 3-1-10.

#### Summary of Final Regulatory Flexibility Analysis

Less stringent requirements are not included for small businesses because the directing legislation, 2007 Wisconsin Act 125, does not provide such flexibility.

No comments were received during the Public Hearing stage, and only minor clarification changes were made to the draft rules after the Hearing.

The reporting addressed in the rules is substantially similar to reporting that the Department currently requires in conjunction with administering economic development grants, loans and tax credits – and therefore is not expected to impose any significant new reporting costs on small businesses. The rules are not expected to impose any other significant costs on small businesses because the rules address submittal of documentation, and other activities, only by applicants that choose to pursue grants, loans or tax credits for economic development.

#### Summary of Comments by Legislative Review Committees

No comments were received.

## Natural Resources

### *Fish, Game, etc., Chs. NR 1—*

#### CR 08-023

Rule revises Chapter NR 46, relating to definitions, deadlines, and requirements related to Managed Forest Law. Effective 3-1-10.

#### Summary of Final Regulatory Flexibility Analysis

Small businesses affected by this rule will include certified plan writers who contract with landowners to write forest management plans to ensure sustainable forestry is practiced on the designated lands. Costs may be incurred if a landowner modifies their petition for designation but it is expected that costs will be negligible.

#### Summary of Comments by Legislative Review Committees

The rules were reviewed by the Senate Committee on Transportation, Tourism, Forestry, and Natural Resources. The deadline for action by the committee was November 6, 2009. No action was taken by the committees. The

Department did not receive a comments or requests for modification.

## Natural Resources

### *Fish, Game, etc., Chs. NR 1—*

#### CR 09-018

Rule revises Chapters NR 19 and 20, relating to fishing and clamming on the inland, outlying, and boundary waters of Wisconsin. Effective 3-1-10, in part; and 4-1-10, in part.

#### Summary of Final Regulatory Flexibility Analysis

These rules are applicable to individual sportspersons and do not impose any compliance or reporting requirements on small businesses nor are any design or operational standards contained in the rule. The rule will eliminate the opportunity for commercial clamming operations in the St. Louis River. However, National Park Service rules already prohibit commercial clamming in the St. Croix River where it forms the boundary between Wisconsin and Minnesota, and there have never been commercial clam operators in the St. Louis River. Therefore, under s. 227.19 (3m), Stats., a final regulatory flexibility analysis is not required.

#### Summary of Comments by Legislative Review Committees

The rules were reviewed by the Senate Committee on Transportation, Tourism, Forestry, and Natural Resources and the Assembly Committee on Fish and Wildlife. On April 13, 2009 the Department of Natural Resources held its Spring Fish and Wildlife Rules Hearings. Statewide attendance at public hearings was 7,939. No written comments were received regarding any portion of this rule. Rule change proposals affecting muskellunge regulations in Kentuck Lake (Vilas County) and affecting walleye regulations in North and South Twin Lakes (Vilas County) were not supported in Vilas or many of the counties neighboring Vilas County, and thus were not recommended for adoption. Concerns were raised regarding proposed language clarifying the boundaries of larger rivers in Sawyer and Juneau Counties, and the Department made minor modifications to the language of these sections.

## Public Instruction

#### CR 09-071

Rule creates Chapter PI 15, relating to revenue limit exemptions for energy efficiencies. Effective 3-1-10.

#### Summary of Final Regulatory Flexibility Analysis

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

#### Summary of Comments by Legislative Review Committees

No comments were reported.

**Transportation**

**CR 09-070**

Rule repeals Chapters Trans 267 and 268, relating to emergency agricultural transportation permits, and emergency energy conservation permits. Effective 3-1-10.

**Summary of Final Regulatory Flexibility Analysis**

Repeal of these chapters has no effect on small business, since statutory language prevails.

**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 **February 2010**, and will be effective as indicated in the history note for each particular section. For additional information, contact the Legislative Reference Bureau at (608) 266-7590.

### Revisions

#### Commerce

##### **Ch. Comm 106**

Comm 106.49 Note

Comm 106.68 Note

Comm 106.87 Note

##### **Ch. Comm 108**

Comm 108.02 Note

##### **Ch. Comm 110**

Comm 110.08 Note

##### **Ch. Comm 111**

Comm 111.09 Note

##### **Ch. Comm 116**

Comm 116.07 Note

##### **Ch. Comm 117**

Comm 117.07 Note

##### **Ch. Comm 127**

Comm 127.06 Note

##### **Ch. Comm 129**

Comm 129.03 Note

##### **Ch. Comm 131**

Comm 131.50 Note

##### **Ch. Comm 132**

Comm 132.40 Note

##### **Ch. Comm 133**

Comm 133.10 Note

##### **Ch. Comm 149 (Entire Chapter)**

NR 19.27 (4) (a)

NR 19.275 (3) (a)

NR 19.30

##### **Ch. NR 20**

NR 20.06 (10)

NR 20.16 (1) (b)

NR 20.20 (1) (a), (c), (cm), (d), (h), (2) (bm), (g), (3) (f), (4) (h), (7) (c), (16) (g), (26) (g), (29) (a), (c), (cm), (d), (h), (32) (c), (d), (g), (35) (a) to (d), (g), (36) (am), (37) (a), (c), (e), (i), (42) (b), (c), (f), (44) (b), (d), (g), (49) (f), (50) (a), (b), (cm), (d), (h), (51) (bg), (55) (bg), (56) (i), (57) (c), (64) (d), (h), (67) (a), (68) (a), (72) (a), (c), (cm), (d), (h) (73) (h), (o)

##### **Ch. NR 24**

NR 24.09

NR 24.10

##### **Ch. NR 46**

NR 46.15 (3m), (23)

NR 46.16 (1) (b), (6)

#### Public Instruction

##### **Ch. PI 15 (Entire Chapter and Appendix)**

#### Natural Resources

##### **Ch. NR 19**

NR 19.025 (3) (a), (5) (a)

#### Transportation

##### **Ch. Trans 267 (Entire Chapter)**

##### **Ch. Trans 268 (Entire Chapter)**

### Editorial Corrections

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

#### Commerce

##### **Ch. Comm 106**

Comm 106.66 (2)

Comm 106.85 (2)

##### **Ch. Comm 111**

Comm 111.01

Comm 111.02 (4), (6), (7), (17), (18), (26), (28)

Comm 111.03 (2) (c)

Comm 111.07 (4)

Comm 111.09 (2), (8) (e)

Comm 111.10 (1), (3) (a)

#### Emergency Management

##### **Ch. WEM 1**

WEM 1.01

WEM 1.02 (2), (4), (5), (7)

WEM 1.03

WEM 1.04 (1), (2)

WEM 1.06 (1), (2)

WEM 1.07 (1), (4), (5)

##### **Ch. WEM 2**

WEM 2.01

WEM 2.02 (1), (4)

WEM 2.03



WEM 2.04 (1) (intro.), (a)  
WEM 2.05 (2)

**Ch. WEM 3**

WEM 3.01  
WEM 3.02 (3), (8), (10), (11), (12)  
WEM 3.03 (intro.)  
WEM 3.04 (intro.)  
WEM 3.07

**Ch. WEM 5**

WEM 5.01  
WEM 5.02 (1)  
WEM 5.05 (1), (5)

**Ch. WEM 6**

WEM 6.01  
WEM 6.02 (1), (2), (8) to (10), (12) to (14)  
WEM 6.08 (1)  
WEM 6.13 (2) (a)

**Ch. WEM 7**

WEM 7.01

**Ch. WEM 8**

WEM 8.01  
WEM 8.02 (5), (7), (14)  
WEM 8.03 (4)  
WEM 8.08

**Health Services**

**Ch. DHS 175**

DHS 175.15 (3) (b)

**Natural Resources**

**Ch. NR 110**

NR 110.03 (3), (4), (6), (22), (33)  
NR 110.26 (5) (d), (7) (b), (9) (a)

**Ch. NR 113**

NR 113.02 (3), (4)  
NR 113.03 (29)  
NR 113.06 (2) (b)

**Ch. NR 150**

NR 150.03 (8) (e)

NR 150.25 (2) (c)

NR 150.40 (1) (intro.)

**Ch. NR 200**

NR 200.03 (3) (f)  
NR 200.065 (1) (f)

**Ch. NR 204**

NR 204.02 (1) (b)  
NR 204.03 (37)  
NR 204.08 (1)  
NR 204.12

**Ch. NR 205**

NR 205.07 (3) (a)

**Ch. NR 503**

NR 503.02 (1)

**Ch. NR 506**

NR 506.17

**Ch. NR 538**

NR 538.05 (1)  
NR 538.06 (3) (b)  
NR 538.12 (1)  
NR 538.18 (2) (a)

**Ch. NR 708**

NR 708.05 (5) (b)

**Ch. NR 718**

NR 718.01  
NR 718.05 (1), (2) (e), (3), (4)  
NR 718.09 (1), (2) (a), (3), (5) (b), (d), (6) (b)  
NR 718.11 (1), (2) (a)  
NR 718.13 (1)  
NR 718.14 (1)  
NR 718.15  
NR 718.17

**Ch. NR 722**

NR 722.09 (4)

**Transportation**

**Ch. Trans 117**

Trans 117.03 (2) (f), (5) (a)  
Trans 117.05 (5)

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## Executive Orders

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

**Executive Order 310.** Relating to Issuance of General Obligation Bonds for the Veterans Home Loan Program and Appointment of Hearing Officer.

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