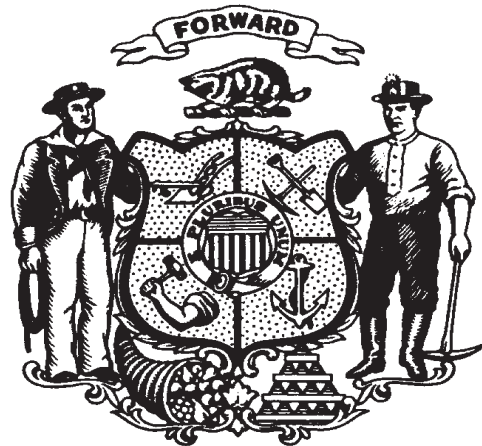


# Wisconsin Administrative Register

No. 656



Publication Date: August 31, 2010  
Effective Date: September 1, 2010



Legislative Reference Bureau  
<http://www.legis.state.wi.us/rsb/code.htm>



## WISCONSIN ADMINISTRATIVE REGISTER

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

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## Emergency Rules Now in Effect

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

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

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

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

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

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

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

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### Agriculture, Trade and Consumer Protection

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

#### Finding of Emergency

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

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

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

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

administrative rules to clarify the scope, application and terms of the new license exemption.

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

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

(7) This emergency rule also exempts, from food processing plant license requirements under s. 97.29, Stats., a person who collects and processes relatively small quantities of maple sap to produce maple syrup or concentrated maple sap for sale to other processors for further processing. These small-scale processing activities pose minimal food safety risks, and the current license requirement imposes an unnecessary cost and compliance burden. An emergency rule is needed to relieve these cost and compliance burdens for the maple sap collection and processing season that typically begins in March. This emergency rule creates a temporary license exemption, pending the completion of "permanent" rules by the normal rulemaking process. This emergency rule clearly defines the scope, application and terms of the exemption, in order to protect public health, safety and welfare.

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

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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  
**Extension Through:** September 27, 2010  
**Hearing Dates:** March 17, March 31,  
 April 8, 2010

### Children and Families

#### *Family and Economic Security, Chs. DCF 101–153*

**EmR1024** — Rule adopted creating **Chapter DCF 110**, relating to transitional jobs for low-income adults.

#### **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:

Initial funding for the transitional jobs demonstration project will come from the Temporary Assistance to Needy Families (TANF) Emergency Contingency Fund under the American Recovery and Reinvestment Act of 2009. Spending for subsidized employment is one of the ways that the state can earn additional federal dollars under the TANF Emergency Contingency Fund. The deadline for earning the additional federal dollars is September 30, 2010.

**Publication Date:** June 30, 2010  
**Effective Dates:** July 1, 2010 through  
 November 27, 2010  
**Hearing Date:** August 5, 2010

### Children and Families (2)

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

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

#### **Finding of Emergency**

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

2009 Wisconsin Act 28 assumes that implementation of s. 49.155 (6g), Stats., will save an estimated \$9 million over the 2009–2011 biennium.

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

**2. EmR1027** — Rule adopted revising **Chapter DCF 201**, relating to child care subsidy program integrity.

#### **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:

The Department of Children and Families has determined that significant disparities currently exist between DCF 201 and the intent of 2009 Wisconsin Acts 28 and 77 regarding Wisconsin Shares program integrity efforts. The recent efforts of the legislature and the department to address child care fraud and program integrity are estimated to save \$100 million over the course of the biennium. Currently over \$7.1 million of child care provider overpayments have yet to be collected due to the lack of authority to use basic collections practices such as tax intercept, wage levy, and property liens. This rule will permit the department to more aggressively collect on these debts, strengthen the department's ability to further tighten requirements for child care providers wishing to do business with the Wisconsin Shares program, and better enforce the rules of the program. These changes will result in continued fiscal savings as well as ensure better quality child care for the children of Wisconsin.

**Publication Date:** July 9, 2010  
**Effective Dates:** July 9, 2010 through  
 December 5, 2010  
**Hearing Date:** August 6, 2010

### Commerce

#### *Wis. Commercial Building Code, Chs. Comm 60–66*

**EmR1022** — Rule adopted creating s. **Comm 62.0400 (5)**, relating to no smoking signs.

#### **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 2009 Wisconsin Act 12, s. 101.123, Stats., is to take effect July 5, 2010.
2. Under the Act, the department is to establish by rule uniform characteristics for no smoking signs.
3. Under the Act, the responsibilities of person in charge of a public conveyance or at a location where smoking is prohibited include the posting of no smoking signs.
4. The department believes that the emergency rules are necessary in order to clarify the minimum no smoking sign characteristics so that persons in charge may fulfill the statutory obligations.

**Publication Date:** June 28, 2010  
**Effective Dates:** July 5, 2010 through  
 December 1, 2010  
**Hearing Date:** July 26, 2010

### Commerce (4)

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

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

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

The Legislature, by Section 9110 (16u) of 2009 Wisconsin Act 28, exempts the Department from providing evidence that this emergency rule is necessary for the

preservation of public peace, health, safety or welfare; and exempts the Department from providing a finding of emergency for the adoption of this rule.

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

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

#### **Finding of Emergency**

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

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

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

Because of enactment of 2009 Wisconsin Act 295, a number of entities that may be eligible for the tax credits have contacted the Department with inquiries concerning the process for applying for the credits, for expenditures that have been or will be incurred during taxable years that began after December 31, 2009. In addition, section 71.07 (3rm) of the Statutes includes a \$1,000,000 tax-credit allocation that became available on May 27, 2010, and expires on June 30, 2010.

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

**Publication Date:** June 8, 2010  
**Effective Dates:** June 8, 2010 through November 4, 2010  
**Hearing Date:** August 17, 2010

**3. EmR1026** — Rule adopted creating **Chapter Comm 139**, relating to rural outsourcing grants.

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

The Legislature, by Section 45 (1) (b) of 2009 Wisconsin Act 265, exempts the Department from providing evidence that this emergency rule is necessary for the preservation of public peace, health, safety or welfare; and exempts the Department from providing a finding of emergency for the adoption of this rule.

**Publication Date:** July 2, 2010  
**Effective Dates:** July 2, 2010 through November 28, 2010

**4. EmR1029**— Rule adopted to repeal and recreate **Chapter Comm 137**, relating to reallocations for recovery zone facility bonds as established under the federal American Recovery and Reinvestment Act of 2009, and affecting small businesses.

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

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

**Publication Date:** July 23, 2010  
**Effective Dates:** July 23, 2010 through December 19, 2010

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### **Corrections**

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

#### **Finding of Emergency**

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

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

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

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

**Publication Date:** December 31, 2009  
**Effective Dates:** December 31, 2009 through May 29, 2010  
**Extension Through:** September 26, 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  
**Extension Through:** September 26, 2010  
**Hearing Date:** February 23, 2010

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## Government Accountability Board

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

### Finding of Emergency

Pursuant to s. 227.24, Stats., the Government Accountability Board finds an emergency exists as a result of the United States Supreme Court decision *Citizens United v. FEC*, 558 U.S. \_\_\_, (No. 08–205)(January 21, 2010). Within

the context of ch. 11, Stats, the rule provides direction to organizations receiving contributions for independent disbursements or making independent disbursements. Comporting with *Citizens United*, this emergency rule order does not treat persons making independent disbursements as full political action committees or individuals under s. 11.05, Stats., for the purposes of registration and reporting. With respect to contributions or in-kind contributions received, this emergency rule order requires organizations to disclose only donations “made for” political purposes, but not donations received for other purposes.

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

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

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## Health Services

*Health, Chs. DHS 110—*

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

### Finding of Emergency

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

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

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

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

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

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



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

### Insurance (4)

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

#### Exemption From Finding of Emergency

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

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

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

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

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

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

#### Exemption From Finding of Emergency

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

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

(4) CONTINUATION COVERAGE RULES (a) Notwithstanding section 632.897 of the statutes and subsections (1), (2), and (3), the commissioner of insurance may promulgate rules establishing standards requiring

insurers to provide continuation of coverage for any individual covered at any time under a group policy who is a state eligible individual to whom subsection (2) or (3) applies or an assistance eligible individual, as defined under section 3001 (a) (3) of the federal act, including rules governing election or extension of election periods, notice, rates, premiums, premium payment, application of preexisting condition exclusions, and election of alternative coverage.

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

**Publication Date:** January 7, 2010  
**Effective Dates:** January 8, 2010 through January 7, 2011  
**Hearing Date:** May 5, 2010

**3. EmR1005** — A rule adopted creating **section Ins 3.36**, relating to treatment of autism spectrum disorders and affecting small business.

#### Exemption From Finding of Emergency

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

**Publication Date:** March 8, 2010  
**Effective Dates:** March 8, 2010 through August 4, 2010  
(subject to s. 632.895 (12m) (f), Stats.)  
**Extension Through:** October 3, 2010  
**Hearing Date:** May 26, 2010

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

#### Finding of Emergency

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

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

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

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## Military Affairs

**EmR1030** — Rule adopted to create **Chapter DMA 1**, relating to military family financial aid.

### Exemption From Finding of Emergency

Under 2009 Wisconsin Act 28, section 9136, a Finding of Emergency is not required for this emergency rule. The relevant portion of 2009 Act 28 reads as follows:

**2009 Wisconsin Act 28, Section 9136.** Nonstatutory provisions; Military Affairs.

(2c) EMERGENCY RULE; MILITARY FAMILY FINANCIAL AID. Using the procedure under section 227.24 of the statutes, the department of military affairs shall promulgate the rules described under section 321.45 (2) of the statutes, as created by this act, for the period before the permanent rules become effective, but not to exceed the period authorized under section 227.24 (1) (c) and (2) of the statutes. Notwithstanding section 227.24 (1) (a), (2) (b), and (3) of the statutes, **the department of military affairs is not required to provide evidence that promulgating a rule under this subsection 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 the rules promulgated under this subsection. [Emphasis added]**

**Publication Date:** July 26, 2010  
**Effective Dates:** July 26, 2010 through December 22, 2010

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## Natural Resources (2)

*Fish, Game, etc., Chs. NR 1—*

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

### Finding of Emergency

The Department of Natural Resources finds that an emergency exists and that an emergency rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. A statement of the facts constituting the emergency is: Based on information received by the Department, user conflicts are increasing. Failure to enact this rule could lead to additional boating accidents and potential for injury during the upcoming high use season.

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

**2. EmR1028** — Rule adopted to amend **s. NR 10.104 (7) (a)**, relating to the use of archery deer hunting licenses.

### 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. Deer populations are well below goal in much of northeast Wisconsin, causing great concern from hunters and others who value deer. This rule is one of the ways the department is trying to rebuild the populations there. The federal government and state legislature have delegated to the appropriate agencies rule–making authority to control and

regulate hunting wild animals. The State of Wisconsin must provide publications describing the regulations for deer hunting to approximately 250,000 archery deer hunters prior to the start of the season. These regulations must be legally in effect prior to printing nearly 1 million copies of the regulations publication. The timeline for the permanent version of this rule will not have it in effect in time for these deadlines.

**Publication Date:** July 8, 2010  
**Effective Dates:** July 8, 2010 through December 4, 2010  
**Hearing Date:** August 30, 2010

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## Natural Resources

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

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

### Exemption From Finding of Emergency

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

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

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

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## Public Instruction (3)

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

### Finding of Emergency

Pursuant to Section 3 of the nonstatutory provisions of 2009 Wisconsin Act 250, the Department of Public Instruction is not required to provide evidence that this rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency.

**Publication Date:** June 1, 2010  
**Effective Dates:** June 1, 2010 through October 28, 2010  
**Hearing Date:** July 29, 2010

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

#### Exemption From Finding of Emergency

Pursuant to Section 9139 (4r) of the nonstatutory provisions of 2009 Wisconsin Act 28, the Department of Public Instruction is not required to provide evidence that this rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency.

**Publication Date:** June 16, 2010  
**Effective Dates:** June 16, 2010 through November 12, 2010  
**Hearing Date:** July 12, 2010

**3. EmR1023** — Rule adopted creating **Chapter PI 43**, relating to education reform.

#### Finding of Emergency

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

2009 Wisconsin Act 215 requires the state superintendent to promulgate rules establishing criteria and procedures for determining whether a school or school district is in need of improvement and whether a school is among the lowest performing 5 percent of all public schools in the state. The Act became effective May 14, 2010 and review by the various interest groups was completed June 18, 2010. Rules must be in place as soon as possible to establish identification criteria prior to the upcoming school year.

**Publication Date:** June 28, 2010  
**Effective Dates:** June 28, 2010 through November 24, 2010  
**Hearing Date:** July 27, 2010

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### Regulation and Licensing (4)

**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

**3. EmR1031** — Rule adopted revising **Chapters RL 110 to 116**, relating to the regulation of professional boxing contests.

#### Exemption From Finding of Emergency

The Department of Regulation and Licensing, pursuant to 2009 Wisconsin Act 111, is not required to provide evidence that an emergency exists nor provide evidence that promulgating a rule is necessary for the preservation of the public peace, health, safety, or welfare.

**Publication Date:** August 25, 2010  
**Effective Dates:** September 1, 2010 through January 28, 2011  
**Hearing Date:** September 20, 2010

(See the Notice in this Register)

**4. EmR1032** — Rule adopted creating **Chapters RL 192 to 196**, relating to the regulation of mixed martial arts sporting events.

#### Exemption From Finding of Emergency

The Department of Regulation and Licensing, pursuant to 2009 Wisconsin Act 111, is not required to provide evidence that an emergency exists nor provide evidence that promulgating a rule is necessary for the preservation of the public peace, health, safety, or welfare.

**Publication Date:** August 26, 2010  
**Effective Dates:** September 1, 2010 through January 28, 2011  
**Hearing Date:** September 20, 2010

(See the Notice in this Register)

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### Technical College System Board

**EmR1025** — Rule adopted to amend **Chapter TCS 17**, relating to training program grant funds.

#### Finding of Emergency

The Wisconsin Technical College System Board 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 an emergency is:

In May 2010, the Wisconsin C.O.R.E. Jobs Act provided an additional \$1 million GPR for the training program grants authorized in Wis. Stats. §§ 20.292 (1) (eh) and 38.41. These funds were provided to address a critical need of Wisconsin employers for skills training and education necessary to protect the state's economic vitality and health, with a special emphasis on advanced manufacturing and welding.

The WTCS Board is required to award these funds by June 30, 2011, the end of the current 2009–11 biennium. In addition, s. TCS 17.06 (1), Wis. Adm. Code, requires that district boards or employers receiving skills training or education under the grant shall contribute matching funds, other than in-kind matching funds, equal to at least 25% of total approved project costs.

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

rules eliminating the 25% match requirement must be established immediately.

**Publication Date:** July 2, 2010

**Effective Dates:** July 2, 2010 through  
November 28, 2010

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### Transportation

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

#### Finding of Emergency

The Department of Transportation finds that an emergency exists and that an emergency rule is necessary for the immediate preservation of the public health and welfare. A statement of the facts constituting the emergency is the requirements of the mandatory insurance laws in Chapter 344, Stats., as created by 2009 Wis. Act 28, contain exceptions to furnishing proof of a motor vehicle liability insurance policy. This emergency rule defines the administration of those exceptions. These mandatory insurance requirements, and the exceptions, are effective June 1, 2010, thereby necessitating an emergency rule being put into place until the effective date of the permanent rule. Clarification of the mechanism to be used to qualify for an exception under the new statute will be useful to persons wishing to file for an exception. Persons whose religious beliefs preclude them from buying insurance will benefit from this rule making.

**Publication Date:** June 1, 2010

**Effective Dates:** June 1, 2010 through  
October 28, 2010

**Hearing Date:** June 24, 2010



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## Scope Statements

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

#### **Subject**

Revises Chapter MPSW 20 to define the failure to have a grievance procedure and the failure of a supervising credential holder to report adverse or disciplinary action related to professional practice as unprofessional conduct. The code of conduct will include the following provisions:

1. Failure of a credential holder to notify a client in writing of a procedure to resolve a grievance is unprofessional conduct.
2. Failure of a supervising credential holder to file a report with the board after terminating, suspending or restricting a credential holder as a result of adverse or disciplinary action related to professional practice is unprofessional conduct. Failure to file a report when a credential holder terminates employment before action is taken also constitutes unprofessional conduct.

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

Revises Chapter MPSW 20 which defines unprofessional conduct. The new amendment will define the failure to have a grievance procedure and the failure of a supervising credential holder to report adverse or disciplinary action related to professional practice as unprofessional conduct. Defining the failure to comply with ss. 457.04 (8) and 457.25, Stats., as unprofessional conduct will likely increase statutory compliance.

#### **Policy Analysis**

Under s. 457.04 (8), Stats., marriage and family therapists, professional counselors and clinical social workers must notify their clients in writing of the procedures to follow to resolve a grievance.

Under s. 457.25, Stats., any health care agency, institution, state or local professional society, person or entity that terminates, suspends or restricts the employment or contract of a license holder as a result of adverse or disciplinary action in the practice of the profession shall submit a written report of the action to the board within 30 days after the date on which the action is taken or, if grounds for such an action exist and the credential holder terminates his or her employment before the action is taken, within 30 days after the date on which the credential holder terminates employment.

The board would like to raise awareness of these statutory provisions by defining the failure to report and failure to have a grievance resolution procedure as unprofessional conduct under the code of conduct.

Continuing education classes and the code of conduct are required as a condition of renewal. Thus, license holders will become aware of their obligations under the code of conduct when they renew their license each biennium. In this way, license holders will review what constitutes unprofessional conduct at least on a biennial basis. By incorporating the specific statutory provisions into the code of conduct, license holders are more likely to be aware of their legal obligations and to conduct themselves accordingly.

#### **Statutory Authority**

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

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

None.

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

Marriage and family counselors, professional counselors and social workers (credential holders).

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

Approximately 120 hours.

### **Medical Examining Board**

#### **Subject**

Revises Chapter Med 10, relating to unprofessional conduct.

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

Recent changes to the statutory definition of unprofessional conduct prompted the Medical Examining Board to review ch. Med 10 in a move to modernize the regulatory language and ensure that current standards of care are reflected in the rules.

#### **Policy Analysis**

The revisions will be based on a review of the model rules set forth by the Federation of State Medical Boards (FSMB), laws and regulations in other states and the Medical Examining Board's own review of improvements necessary to enforce the protection of public health and safety.

#### **Statutory Authority**

Sections 15.08 (5) (b), 227.11 (2) and 448.40 (1), Stats.

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

None.

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

Medical Examining Board and all of its affiliated boards, licensed professionals including doctors and physician assistants, applicants, health care consumers, and employers of licensed health care professionals.

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

It is estimated that 300 hours will be needed to promulgate the rule.

### **Natural Resources**

*Fish, Game, etc., Chs. NR 1—*

DNR # FR-38-10

#### **Subject**

Revises Chapter NR 45 relating to the use of golf carts on the Peshtigo River State Forest and Governor Thompson State Park.

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

Section 27.01 (16), Wis. Stats., created under 2009 Wisconsin Act 54, requires the Department to promulgate a rule that specifies when and where golf carts are allowed on the Peshtigo River State Forest and Governor Thompson State Park.

**Policy Analysis**

Golf carts fall under the definition of a motor vehicle s. 340.01 (35), Wis. Stats. Golf carts are not allowed on “public roads” including DNR managed roads and parking lots.

Before DNR took ownership of the lands now consisting of the Peshtigo River State Forest and Governor Thompson State Park, golf cart use was occurring illegally at Wisconsin Public Service boat landings and Town roads leading to the boat landings. Section 27.01 (16), Wis. Stats., directs the Department to allow the use of golf carts to approximately the same times and locations as golf carts were used prior to the Departments purchase of the lands from Wisconsin Public Service.

**Statutory Authority**

Section 27.01 (16), Wis. Stats.

**Comparison with Federal Regulations**

There is no existing or proposed federal regulation that is intended to address the issue of golf cart use on public roadways.

**Entities Affected by the Rule**

Local Unit of Governments, primarily the Town of Stephenson and Marinette County; Local businesses, primarily service industries; Year round and seasonal homeowners; Wisconsin Public Service (landowner), Department of Natural Resources.

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

The Department estimates that approximately 180 hours of staff time will be needed to develop the new rule. This time includes meeting with local stakeholders and collecting public input, drafting the rule, taking the rule to public hearing, preparing for meetings with the Natural Resource Board, Legislative review and rule adoption.

**Agency Contact**

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**Podiatrists Affiliated Credentialing Board****Subject**

Revises section Pod 1.08, relating to temporary educational licenses and section Pod 3.01, relating to continuing education requirements.

**Objective of the Rule**

The current rule on temporary educational licenses states that a temporary educational license is only valid for one year. In order to be a licensed podiatrist, one must have completed two years of postgraduate training. This two-year

requirement means that an individual must reapply for a temporary educational license half-way through postgraduate training. The current rule on continuing education states that all licensees seeking to renew their license must complete 50 hours of continuing education within two calendar years of the specified renewal date. This presents a problem for new licensees who received their license towards the end of a renewal period as they must also comply with the requisite 50 hours.

**Policy Analysis**

There are no existing policies relevant to the proposed rules.

**Statutory Authority**

Sections 15.08 (5) (b), 227.11 (2) and 448.695, Stats.

**Comparison with Federal Regulations**

None.

**Entities Affected by the Rule**

Individuals seeking a temporary educational license and new licensees seeking their first renewal.

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

It is estimated that 150 hours will be needed to promulgate the rule.

**Public Defender****Subject**

Revises Chapter PD 3, relating to financial eligibility criteria used in determining who qualifies for public defender representation.

**Policy Analysis**

Section 977.02 (3), Wis. Stats., created by 2009 Wisconsin Act 164, directs the State Public Defender to promulgate rules regarding a revised determination of indigency. In promulgating these rules, Act 164 directs the State Public Defender to estimate case-type specific costs of effective representation and to employ the income standards established in s. 49.145 (3) (a) (Wisconsin Works) to determine an individual’s ability to pay the costs of, and qualify for, legal representation by the State Public Defender.

Tying eligibility for representation to s. 49.145 (3) (a) raises the income level for which a person qualifies for a public defender, thereby increasing the number of clients served by the State Public Defender Agency.

An increase in the number of persons who qualify for representation by the State Public Defender has a corresponding decrease in the costs to counties. Counties are required to provide counsel for those individuals who do not qualify for state public defender representation but have insufficient means to privately retain an attorney. Act 164 shifts, to a large extent, the responsibility of providing representation for these “working poor” from the counties to the State.

**Statutory Authority**

Sections 973.06 (1) (e), 977.02 (3);, 977.02 (3) (a), Wis. Stats.

**Comparison with Federal Regulations**

There are no federal regulations comparable to the rule changes proposed.

**Entities Affected by the Rule**

This rule increases the number of persons who will qualify for representation by the State Public Defender.

This change in eligibility lessens the financial burden on counties, all of which are required to provide counsel to those defendants who have income too high to qualify for the State Public Defender, but who cannot afford to retain an attorney.

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

The Rule shall be in effect by June 19, 2011, the date upon which the new eligibility guidelines take effect.

#### **Contact Information**

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Madison, WI 53703  
Phone: 608-261-0633  
Email: [pakesk@opd.wi.gov](mailto:pakesk@opd.wi.gov)

### **Public Defender**

#### **Subject**

Revises Chapter PD 6, relating to the reimbursement of legal fees to the State Public Defender.

#### **Policy Analysis**

2009 Wisconsin Act 164 created section 977.02 (3), Wis. Stats., directing the State Public Defender to promulgate rules regarding a revised determination of indigency.

In promulgating these rules, Act 164 also directs the State Public Defender to estimate the cost of effective representation for specific types of cases and to use the standards established in s. 49.145(3)(a) (Wisconsin Works) to determine an individual's ability to pay the State Public Defender for the costs of legal representation by that Agency.

Revised Chapter PD 6 bases the amount an individual must pay for legal representation on the current costs for specific case types, and also defines the ability to pay in a manner consistent with the criteria for determination of indigency in Chapter PD 3.

#### **Statutory Authority**

Sections 977.075, 977.076, 973.06 (1) (e), 977.02 (3), 977.02 (3) (a), Wis. Stats.

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

There are no federal regulations comparable to the rule changes proposed.

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

This rule affects those persons qualifying for representation by the State Public Defender.

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

The Rule shall be in effect by June 19, 2011, the date upon which the new eligibility guidelines take effect.

#### **Contact Information**

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### **Public Service Commission**

#### **Subject**

Revises Chapter PSC 168, to clarify rules relating to the recertification of entities that had been certified as resellers, but lost such certification, and seek to regain that status. In conjunction with this review, the rules may be modified as they relate to filing requirements, certification provisions and related matters.

#### **Policy Analysis**

Alternative Telecommunications Utility – Resellers (resellers) are a type of telecommunications provider, defined by Wis. Stat. § 196.01(1d)(c). Chapter PSC 168 relates to (a) the process for certification of resellers, (b) requirements that are imposed upon certified resellers, and (c) issues concerning decertification and recertification of such entities. These rules have not been updated (with minor exception) since 1997, when first promulgated. The Commission proposes to examine clarifications to these rules to address issues about filing requirements, consequences of filing failures, and the ultimate review and determination of whether to recertify providers. As part of this review, the Commission may examine overall requirements for resellers, processes for reseller filings with the Commission, and the imposition of mandates related to how decertified providers are recertified.

#### **Statutory Authority**

Sections 196.01(1d), 196.02, 196.03, 196.203, and 227.11 (2), Stats.

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

None.

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

Alternative telecommunications utility — Resellers certified by, or entities subject to certification by, the Commission.

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

The Commission estimates that approximately 160 hours of Commission staff time will be required in this rulemaking.

### **Revenue**

#### **Subject**

Repeals and recreates Chapter Tax 20, relating to the lottery and gaming and school levy tax credits; and the repeal of Chapter Tax 53, relating to plat review fees.

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

- Provide definitions related to the lottery and gaming credit and establish procedures to assist in the management of the lottery and gaming credit program at the state, county, town, village and city level.
- Provide restrictions for the distribution of the School Levy Tax Credit — lottery fund.
- Remove obsolete provisions relating to plat review fees.

#### **Policy Analysis**

Existing policies are as set forth in the rules. No new policies are being proposed, other than to reflect law changes. If the rules are not changed, they will be incorrect in that they will not reflect current law or current Department policy.

#### **Statutory Authority**

Sections 73.03 (66) and 227.11(2) (a), Stats.

**Comparison with Federal Regulations**

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

**Entities Affected by the Rule**

Wisconsin municipalities receiving school levy tax credit payments and counties and municipalities who manage the lottery and gaming credit program.

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

The department estimates it will take approximately 200 hours to develop this rule order

**Contact Information**

Dale Kleven

Phone: (608) 266-8253

Email: dale.kleven@revenue.wi.gov

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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.*

## **Agriculture, Trade and Consumer Protection** **CR 10–100**

On August 13, 2010, the Department of Agriculture, Trade and Consumer Protection submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

### **Analysis**

The proposed order creates Chapter ATPC 16, relating to dog sellers and dog facility operators.

### **Agency Procedure for Promulgation**

Public hearings will be held on September 20, 23, 27, 28 and 30, 2010. The Department's Division of Animal Health is primarily responsible for this rule.

### **Contact Information**

Melissa Mace  
Phone: (608) 224-4883

## **Commerce**

### **Wis. Commercial Building Code, Chs. Comm 60 to 66** **CR 10–103**

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

### **Analysis**

The proposed order revises Chapters Comm 2, 5, 14, 20 and 61 to 66, relating to the design, construction, maintenance and inspection of public buildings and places of employment, including commercial buildings and structures and multifamily dwellings.

### **Agency Procedure for Promulgation**

A public hearing is required and will be held on October 5, 2010. The Department of Commerce is responsible for promulgation of the proposed rules.

### **Contact Information**

Jim Smith, Program Manager  
Phone: (608) 266-0251  
Email: jim.smith@wisconsin.gov

## **Regulation and Licensing** **CR 10–101**

On August 16, 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 Chapters RL 110 to 116, relating to the regulation of professional boxing contests.

### **Agency Procedure for Promulgation**

A public hearing is required and will be held on September 20, 2010.

### **Contact Information**

Shawn Leatherwood  
Division of Board Services  
Phone: (608) 261-4438  
Email: shawn.leatherwood@wisconsin.gov

## **Regulation and Licensing** **CR 10–102**

On August 16, 2010, the Department of Regulation and Licensing submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

### **Analysis**

The proposed order creates Chapters RL 192 to 196, relating to the regulation of mixed martial arts sporting events.

### **Agency Procedure for Promulgation**

A public hearing is required and will be held on September 20, 2010.

### **Contact Information**

Shawn Leatherwood  
Division of Board Services  
Phone: (608) 261-4438  
Email: shawn.leatherwood@wisconsin.gov

## **University of Wisconsin System** **CR 10–104**

On August 13, 2010, the Board of Regents of the University of Wisconsin System submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

### **Analysis**

The proposed order revises sections UWS 19.01 and 19.03, relating to sick leave benefits for faculty, academic staff, and limited appointees of the University of Wisconsin System.

### **Agency Procedure for Promulgation**

A public hearing is required and will be scheduled at a later time. The UW System Office of General Counsel is primarily responsible for promulgation of the proposed rule.

### **Contact Information**

Chris Ashley  
Phone: (608) 262-3662



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## Rule–Making Notices

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### Notice of Hearing

#### Agriculture, Trade and Consumer Protection CR 10–100

The State of Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) announces that it will hold public hearings on a proposed rule to create Chapter ATCP 16, Wis. Adm. Code, relating to dog sellers and dog facility operators.

#### Hearing Information

DATCP will hold five public hearings at the times and places shown below. DATCP invites the public to attend the hearings and comment on the proposed rule.

#### Monday, September 20, 2010

5:00 p.m. – 7:00 p.m.

Dept. of Agriculture, Trade and Consumer Protection  
2811 Agriculture Drive  
First Floor – Room 106 (Boardroom)  
Madison, WI 53718

#### Thursday, September 23, 2010

2:00 p.m. – 4:00 p.m.

Fox Valley Technical College  
Room E130 A & B  
1825 North Bluemound Dr.  
Appleton, WI 54914

#### Monday September 27, 2010

6:00 p.m. – 8:00 p.m.

The Plaza Hotel and Suites  
1202 West Clairemont Ave.  
Crystal 1 Room  
Eau Claire, WI 54701

#### Tuesday, September 28, 2010

2:00 p.m. – 4:00 p.m.

Wausau Public Library/Marathon County Public Library  
Wausau Room  
300 North First St.  
Wausau, WI 54403

#### Thursday, September 30, 2010

6:00 p.m. – 8:00 p.m.

Havenwoods State Forest  
Auditorium  
6141 North Hopkins Street  
Milwaukee, WI 53209

Hearing impaired persons may request an interpreter for these hearings. Please make reservations for a hearing interpreter by September 9, 2010, by writing to Melissa Mace, Division of Animal Health, P.O. Box 8911, Madison, WI 53708–8911, telephone (608) 224–4883. Alternatively, you may contact the DATCP TDD at (608) 224–5058. Handicap access is available at the hearings.

### Submittal of Written Comments

Following the public hearings, the hearing record will remain open until Friday, **October 8, 2010** for additional written comments. Comments may be sent to the Division of Animal Health at the address below, by email to [Melissa.mace@wi.gov](mailto:Melissa.mace@wi.gov) or online <http://AdminRules.Wisconsin.gov/>.

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

### Copies of Proposed Rule

You may obtain a free copy of this rule by contacting the Wisconsin Department of Agriculture, Trade and Consumer Protection, Division of Animal Health, 2811 Agriculture Drive, P.O. Box 8911, Madison, WI 53708. You can also obtain a copy by calling (608) 224–4883 or emailing [Melissa.mace@wi.gov](mailto:Melissa.mace@wi.gov). Copies will also be available at the hearings. To view the proposed rule online, go to: <http://AdminRules.Wisconsin.gov/>

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

#### Rule summary

This rule implements s. 173.41, Stats., created by 2009 Wis. Act 90. Act 90 requires the Department of Agriculture, Trade and Consumer Protection (“DATCP”) to license and regulate persons who do any of the following:

- *Operate an “animal control facility.”* Under this rule, an “animal control facility” means a facility in this state, for the care of animals, which is operated under a contract with a county, town or municipality under s. 173.15(1), Stats.
- *Operate an “animal shelter.”* Under this rule, an “animal shelter” means a facility in this state that is operated for the purpose of providing for and promoting the welfare, protection, and humane treatment of animals, that is used to shelter at least 25 dogs in a license year, and that is operated by a humane society, animal welfare society, animal rescue group, or other nonprofit group.
- *Operate as a “dog breeder.”* Under this rule, a “dog breeder” means a person who in any license year sells at least 25 dogs, from more than 3 litters, which that person has bred and raised in this state.
- *Operate a “dog breeding facility.”* Under this rule, a “dog breeding facility” means a place in this state where dogs are bred and raised and from which at least 25 dogs from more than 3 litters are sold in a license year.
- *Operate as a “dog dealer.”* Under this rule, a “dog dealer” means any of the following persons, other than an “out-of-state dog dealer:”
  - A person who in any license year sells in this state at least 25 dogs that the person owns but has not bred and raised.
  - A person, other than an auctioneer or auction company registered under ch. 480, Stats., who in any license

year brokers or arranges the sale in this state of at least 25 dogs that are under that person's custody or legal control (but that the person does not own and has not bred or raised).

- An auctioneer or auction company registered under ch. 480, Stats., which operates one or more auctions in this state in which a combined total of 50 or more dogs are sold or offered for sale in any license year.
- *Operate in this state as an "out-of-state dog dealer."* Under this rule, an "out-of-state dog dealer" means a non-resident person who in any license year imports at least 25 dogs for sale in this state, regardless of whether the dogs were bred or raised by that person.

This rule spells out standards required of license holders, including standards related to the care, transportation and sale of dogs.

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

Sections 93.06 (1g), (7) and (8), 93.21(5), 95.20, 95.23 (1), 95.45 (4) (c) and 173.41, Stats.

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

Sections 93.07 (1), 93.21 (5), 95.20, 95.45 (4) (c) and 173.41 (3) (c) and (14), Stats.

#### ***Explanation of statutory authority***

DATCP has broad general authority, under s. 93.07 (1), Stats., to adopt rules interpreting laws under its jurisdiction. Under s. 173.41(14), Stats., DATCP is required to adopt rules implementing s. 173.41, Stats., DATCP also has relevant rulemaking authority under other statutes. DATCP has developed this rule in consultation with an advisory council, as required under s. 173.41 (14), Stats.

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

Under s. 173.27, Stats., and ch. ATCP 15, DATCP has adopted standards for the training and certification of county and local humane officers. Under s. 93.07(11), Stats., DATCP provides veterinary consultation and other assistance to county and local humane officers. Under ch. ATCP 10, DATCP has adopted general rules related to animal health, animal imports, animal movement and disease control.

#### ***Standards incorporated by reference***

This rule incorporates, by reference, humane euthanasia methods identified by the American Veterinary Medical Association in *Appendix I* to its *Guidelines on Euthanasia (June 2007)*. DATCP will ask permission from the Attorney General and the Legislative Reference Bureau to incorporate this material by reference in this rule. Copies will be kept on file with DATCP and the Legislative Reference Bureau.

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

##### **LICENSE REQUIRED**

Under this rule, a person who does any of the following must hold an annual license from DATCP, unless the person qualifies for a license exemption (see below):

- Operates an "animal control facility."
- Operates an "animal shelter."
- Operates as a "dog breeder."
- Operates a "dog breeding facility."
- Operates as a "dog dealer."
- Operates in this state as an "out-of-state dog dealer."

An annual license expires on September 30. A license holder must display a copy of the license at each animal control facility, animal shelter or dog breeding facility (if any) operated by the license holder. A license is not transferable between persons or facilities.

##### **LICENSE EXEMPTIONS**

The following activities are exempt from licensing under this rule:

##### *Veterinary activities.*

A veterinarian licensed under ch. 453, Stats., is not required to hold a license under this rule for activities that the veterinarian conducts in the normal course of veterinary practice, within the scope of the veterinarian's license.

##### *Agent care.*

A person who, as contract agent for one or more license holders, keeps dogs owned or legally controlled by those license holders at a location owned or legally controlled by the agent is not required to be licensed under this rule if all of the following apply:

- The agent keeps no more than 24 dogs at any single location owned or controlled by the agent.
- The person keeps dogs for each license holder pursuant to a written agency contract with that license holder, subject to that holder's license.
- The agent agrees, in the agency contract, to meet the dog care standards in this rule and to permit reasonable DATCP inspection upon request.
- Each license holder keeps records including the agent's name and address, the address of each location at which the agent keeps dogs for the license holder, a copy of the agency contract, the number of dogs that the agent keeps for the license holder, and the identification and health records required under this rule for each dog kept by the agent.

##### *One-time liquidation sale.*

No license is required under this rule for a one-time liquidation sale of dogs that the seller owns and keeps at a location owned by the seller if all of the following apply:

- The seller gives DATCP written notice at least 30 days prior to the sale. The notice must include the starting date of the sale, the location of the sale, and the number of dogs that may be sold.
- All dogs at the sale location are offered for sale.
- No more than 30 dogs are offered for sale.
- The seller does not add dogs during the sale, or include in the sale any dogs that the seller does not own.
- The seller does not engage in any other activities for which a license is required, either during the license year in which the sale occurs or in the preceding or subsequent license year.

##### *Breeding, raising and selling dogs for research.*

No license is required under this rule to breed, raise and sell dogs solely for purposes of scientific research if all of the following apply:

- The dogs are sold from the facility where they are bred and raised.
- The dogs are sold only to animal care facilities licensed or registered by the United States department agriculture (USDA), and are not resold to any other person.



- The facility at which the dogs are bred and raised complies with federal regulations under 9 CFR subchapter A (Animal Welfare).

#### *Temporary dog market.*

No license is required under this rule to operate a “temporary dog market” (a place where dog owners sell dogs from temporary booths or spaces that they rent from the market operator), provided that the market operator does all of the following:

- Gives DATCP prior written notice of the market. The notice must include the beginning and ending dates of the market, the market location, and the approximate number of sellers who may bring dogs to the market.
- Provides adequate facilities for, and takes reasonable steps to ensure, humane treatment of all dogs kept at the market.
- Arranges for a Wisconsin certified veterinarian to examine all dogs kept at the market on each day of market operations, if the market operates for more than 2 consecutive days.
- Obtains certain information from each person who brings dogs to the market, including the person’s name and address; the person’s dog seller license number (if any); the number of dogs that the person brings to the market; a description of each dog; the source of each dog (if the person has not owned the dog since its birth); documentation of rabies vaccination (if required); and documentation of legal import (if the dog was imported to this state). The market operator must keep the information for at least 5 years, and must make it available to DATCP for inspection and copying upon request.
- Allows DATCP to inspect the market during market hours.

#### LICENSED ACTIVITIES AND FACILITIES

In some cases, a person may engage in more than one activity for which a license is required, or may operate more than one dog facility for which a license required. Under this rule, that person may obtain a single license document that covers all of those activities and facilities. However, the license document must identify each type of licensed activity and the location at which the license holder keeps dogs pursuant to the license. License fees are based on the number of licensed facilities, or the number of dogs sold by the license holder, or both:

- If a person operates one or more “animal control facilities” or “animal shelters,” the person must pay a separate license fee (flat amount) for *each* of those facilities.
- If a person operates one or more “dog breeding facilities,” the person must pay a separate license fee for *each* of those facilities based on the number of dogs sold from that facility.
- If a person sells dogs from one or more locations *other than* an “animal control facility,” “animal shelter” or “dog breeding facility,” the person must pay license fees based on the person’s combined annual dog sales from all of those locations.

A license holder may not keep dogs for any licensed purpose, either directly or through an agent, at any location other than the following:

- Locations identified in the license.

- Locations owned or legally controlled by contract agents who keep, for the license holder, dogs owned or legally controlled by the license holder. A license need not identify the license holder’s agents or agent locations. However:

- The license application must disclose whether the license holder will use such agents.
- The license holder must keep records identifying each agent and agent location, a copy of each agent’s contract with the license holder, the number of dogs (owned or legally controlled by the license holder) that are kept by each agent, and identification and health records related to those dogs.
- The license holder must make the records available to DATCP for inspection and copying upon request.

- A “temporary dog market” that is registered and operated according to this rule.
- An auction location at which dogs are temporarily kept for the purpose of sale at auction, other than an auction conducted by the license holder.

#### APPLYING FOR A LICENSE

A person must apply for a license on a form provided by DATCP. The form must include all of the following:

- The applicant’s legal name and any trade names under which the applicant engages in licensed activities.
- The applicant’s principal business address.
- The address of each location at which the applicant may keep dogs pursuant to the license.
- A statement indicating whether any dogs owned or legally controlled by the applicant will be kept by agents at locations owned or legally controlled by those agents. The agents and agent locations need not be identified in the license application (but other requirements apply).
- A statement indicating whether the applicant operates any “animal control facility,” “animal shelter” or “dog breeding facility” and, if so, the type and address of each facility.
- An identification of each activity for which the applicant seeks a license.
- The total number of dogs that the applicant sold in this state during the preceding license year or, if the applicant did not sell any dogs in this state during the preceding license year, the total number of dogs that the applicant expects to sell in this state during the license year for which application is made. The applicant must report sales from all locations, including agent locations, but need not report sales from licensed “animal control facilities” or “animal shelters.” If any sales are made from a “dog breeding facility,” the application must indicate the number of sales made from that facility.
- All license fees and surcharges required under this rule (see below).
- If the applicant applies to be licensed as an “out-of-state dog dealer,” copies of all of the following:
  - Any dog seller’s license that the person is required to hold in the state from which that person operates in this state as an “out-of-state dog dealer.”
  - Any dog seller’s license that the person is required to hold under federal law.

#### LICENSE FEES AND SURCHARGES

An annual license application must include the following nonrefundable fees and surcharges, as applicable:

- A license fee of \$125 for each “animal control facility.”
- A license fee of \$125 for each “animal shelter.”
- For each “dog breeding facility,” the following fee based on the number of dogs sold from that facility.
  - \$250 if the number is at least 25 but less than 50.
  - \$500 if the number is at least 50 but less than 100.
  - \$750 if the number is at least 100 but less than 250.
  - \$1,000 if the number is at least 250.
- The following license fee based on the number of dogs sold from any location other than from an “animal control facility,” an “animal shelter” or a “dog breeding facility,” except that this fee does not apply to an “out-of-state dog dealer.”
  - \$250 if the number is at least 25 but less than 50.
  - \$500 if the number is at least 50 but less than 100.
  - \$750 if the number is at least 100 but less than 250.
  - \$1,000 if the number is at least 250.
- A fee that is 150 percent of the above fee if the applicant is an “out-of-state dog dealer.”
- A late renewal surcharge equal to 20% of all license fees required above if the applicant seeks to renew a license after that license has expired.
- A surcharge equal to the total of all license fees required above if DATCP finds that the applicant operated without a license in the prior license year, or falsified the prior year’s license application to avoid fee payments.
- Any unpaid reinspection fee properly charged under this rule (see below).

#### **TIMELY ACTION ON LICENSE APPLICATION**

DATCP must grant or deny a license application 30 business days after it receives a complete license application except that, if the applicant seeks authorization to keep dogs at a location not previously licensed, DATCP must grant or deny the license within 30 days after it inspects that location (DATCP must complete the inspection within 60 days after it receives a complete license application).

#### **ISSUING OR WITHDRAWING A LICENSE**

DATCP may deny, suspend or revoke a license if the applicant or license holder fails to comply with applicable licensing requirements; is not fit, qualified or equipped to conduct the activity for which the license is required; has violated or failed to obey a relevant law, order, or regulation; or has misrepresented any information in a license application. DATCP may issue a license on a conditional basis, contingent on the license holder’s compliance with specified conditions.

DATCP may summarily suspend a license, without prior notice or hearing, if DATCP finds any of the following:

- That the license holder has violated this rule, and that the violation imminently threatens the health, safety, or welfare of any dog.
- That the license holder has committed an act of animal cruelty in violation of ch. 951, Stats.

Whenever DATCP denies, suspends or revokes a license, DATCP must give written notice specifying its reasons and notifying the applicant or license holder of the right to request a hearing on DATCP’s action. DATCP may reinstate a license if circumstances warrant reinstatement.

#### **INSPECTING LICENSED OPERATIONS**

DATCP may at any time, during reasonable hours, inspect any location at which a person engages in any activity for which a license is required under this rule. Before DATCP licenses an applicant to keep dogs at a location not previously licensed, DATCP must inspect that location. DATCP must also inspect each licensed location at least once in every 2 license years. The inspection must examine the operator’s compliance with applicable requirements under this rule, including applicable requirements related to recordkeeping, dog health and standards of care.

Whenever DATCP inspects a location under this rule, DATCP must give the operator a copy of its inspection report. The facility operator must post a copy of the most recent inspection report in a prominent place at the inspected location, so that visitors to that location can easily notice and read it.

DATCP may require a license holder to pay a reinspection fee of \$150 for each reinspection (other than a routine or regularly scheduled inspection) that DATCP makes to verify that rule violations noted in a previous inspection have been corrected. The reinspection fee is due upon written demand from DATCP, following the reinspection. An applicant for an annual license must include, in the license application, any unpaid reinspection fees.

#### **RECORDS KEPT BY LICENSE HOLDERS**

A license holder must keep all of the following records under this rule:

##### *Dog records.*

The following records related to each dog that comes under the license holder’s custody or legal control, including any dog placed with a contract agent (see above):

- A description of the dog including the dog’s breed or type, sex, date of birth or approximate age, color, and distinctive markings.
- Any USDA official identification assigned to the dog, including any official identification tag, tattoo or microchip information.
- A statement that the dog was born under the license holder’s custody or legal control, if that is the case.
- All of the following information if the dog was not born under the license holder’s custody or legal control:
  - The date on which the license holder acquired custody or legal control over the dog.
  - The identity of the person from whom the license holder acquired custody or legal control of the dog, including all of the following:
    - The person’s name and address, including state of residence.
    - The person’s USDA animal care facility license or registration number, if any.
- All of the following information if the dog is no longer under the license holder’s custody or legal control:
  - The date on which the dog left the license holder’s custody or legal control.
  - The disposition of the dog.
  - The identity of the person, if any, to whom the license holder delivered custody or legal control of the dog.
- A copy of any certificate of veterinary inspection that accompanied the dog when it entered or left the license holder’s custody or legal control.

- Health records related to the dog, including vaccination, observation and treatment records, whether the health care was administered by the license holder or by a veterinarian.
- Breed registration records if any.

*Dog behavior and socialization plan.*

A copy of the license holder's written dog behavior and socialization plan, as required by this rule (see below).

*Records related to agents keeping dogs for license holder.*

The following records related to each agent who keeps one or more dogs for the license holder at a location owned or legally controlled by the agent (see above):

- The agent's name and address.
- A copy of the agent's contract with the license holder.
- The number of dogs placed with the agent.
- Dog identification and health records related to all dogs placed with the agent (see above).

The license holder must keep the above records in written or readily readable electronic form. The records must be kept at the license holder's principal place of business, except that records related to a licensed animal control facility, animal shelter or dog breeding facility must be kept at that facility. The license holder must keep the records for at least 5 years after they are made, and must make them available to DATCP for inspection and copying upon request.

**DOG SALES; CERTIFICATE OF VETERINARY INSPECTION**

Under this rule, whenever a license holder sells a dog in this state, the dog must be accompanied by a certificate of veterinary inspection. The certificate must be prepared and signed by a Wisconsin certified veterinarian, except that a certificate accompanying a dog imported into this state may be issued by a veterinarian who is accredited by USDA and the state of origin.

A certificate of veterinary inspection must be issued on a form provided by DATCP, USDA, or the state in which the certificate is issued. A certificate issued in this state must be issued on a form provided by DATCP. The certificate must include all of the following:

- The name and address of the person selling the dog.
- The number, breed, sex and age of the dog.
- Whether the dog is spayed, neutered or sexually intact.
- The dog's vaccination record. The vaccination record must identify each type of vaccination that the dog has received. For each type of vaccination, the record must include all of the following:
  - The name of the vaccine manufacturer.
  - The vaccine serial number and lot number.
  - The date on which the vaccine was administered.
  - The name of the person who administered the vaccine.
- Import information required under current rules if the certificate accompanies a dog imported into this state.
- If the dog is sold at public auction, documentation showing that the dog has tested negative on a brucellosis test conducted within 30 days prior to the auction sale.
- The following statement, or a substantially similar statement, that is based on at least a brief personal examination by the veterinarian making the statement:

"I certify, as a veterinarian, that I have inspected the dogs identified on this certificate and that the dogs are not showing any sign of infectious, contagious or communicable disease, except as otherwise noted on this certificate. Vaccinations and test results are as indicated on this certificate. This certificate is not a warranty."

- The veterinarian's signature and the date of signature.

The veterinarian must sign the certificate within 10 days after the veterinarian completes the examination on which the certificate is based. The certificate is valid for 30 days after the date of examination. Copies must be provided to the following persons:

- The person buying the dog.
- The person selling the dog.
- The veterinarian who issues the certificate.

**AGE AT WHICH DOGS MAY BE SOLD**

A license holder may not, in connection with the sale of a dog, transfer that dog to the physical custody of the buyer unless one of the following applies:

- The dog is at least 7 weeks old.
- The dog is accompanied by its dam.
- The DATCP approves the transfer in writing.

**DOG CARE; GENERAL**

A license holder (and the license holder's employees and agents) must comply with all of the following standards of care for dogs kept pursuant to the license:

*Food and water.*

- Each dog must be fed at least once a day, unless another schedule is needed to maintain or restore the dog's health.
- The size and nutritional content of a dog's daily food ration must be based on dog's age, condition, size and weight.
- Dog food must be wholesome, uncontaminated and palatable. Dog food must be stored in a manner that keeps it wholesome, uncontaminated and palatable. Food storage containers must be clean.
- An adequate quantity of fresh water must be made available to each dog at all times, or as often each day as is necessary to keep the dog well-hydrated at all times. Water must be fluid, potable and uncontaminated.
- Food and water must be provided in durable containers, except that food may be provided in disposable containers if discarded after one use.
- Water containers, and non-disposable food containers and utensils, must be cleaned and sanitized as necessary to keep them in sanitary condition.

*Animal health and veterinary care.*

- Dogs must be handled as carefully as practicable, and in a manner that does not cause trauma, physical harm or unnecessary discomfort.
- A caretaker must perform daily body, mobility and behavior checks on each dog.
- A dog with a communicable disease must be separated from other susceptible animals.
- Dogs must be groomed as necessary to prevent abnormal matted hair and overgrown nails, and to allow freedom of movement and normal bodily functions.



- A veterinarian must examine each dog as often as necessary to ensure adequate health care.
- Sick, diseased or injured dogs must receive timely veterinary care or must be euthanized in a legal and humane manner.
- DATCP may, by written notice, require a license holder to submit a dog for veterinary examination if a DATCP inspection indicates that the dog is ill, injured or neglected.

#### *Housing and transportation.*

Dogs must be kept in facilities that comply with this rule (see below), and transported in compliance with this rule (see below).

#### *Exercise.*

Dogs must have reasonable daily exercise, based on the dog's breed, size, age and health condition. Dogs must have a daily access to a run or exercise area where they can achieve a running stride. Repetitive unsupervised physical activity, restrictive of other activities, must be avoided.

#### *Dog grouping and separation.*

- Dogs must be separated, as necessary, into compatible groups.
- Females in season (estrus) may not be kept in the same un-separated enclosure with males, except for breeding purposes.
- Dogs exhibiting potentially harmful aggressive behavior must be separated from other dogs.
- Puppies under 4 months old may not be kept in the same un-separated enclosure with adult dogs other than their dam or foster dam, unless under direct supervision.
- A dam in whelp must be separated from other dogs for at least one week prior to her expected whelping date.

#### *Behavior and socialization.*

- All dogs must have daily, full-body physical contact with other compatible dogs, except where such contact must be avoided for good cause.
- All dogs must have daily positive human contact, not limited to feeding time.
- All dogs must have play objects or other effective forms of inanimate enrichment in their primary enclosures, except where such objects or enrichment must be denied for good cause.
- Dogs in solitary primary enclosures must have daily visual enrichment, except where that enrichment must be denied for good cause.
- Dogs may not be deprived of contact, activity or enrichment for extended periods, except for good cause.
- A license holder must have a written plan for meeting these requirements, and must instruct employees and agents on the terms of that plan.

#### **DOGS KEPT INDOORS**

The following requirements apply to an indoor facility at which a person keeps dogs pursuant to a license under this rule:

#### *Primary enclosures; general requirements.*

A "primary enclosure" is an enclosed space where a dog spends the majority of its sleeping and resting time. A "primary enclosure" must meet the following general

requirements, except that different requirements apply to specific kinds of primary enclosures described below:

- The area of the primary enclosure shall be at least equal to the sum of the following, where each dog's length is measured from the tip of the dog's nose to the base of the dog's tail:
  - For the largest dog in the primary enclosure, the following area:
    - 4.5 sq. ft. for a dog up to 10 inches long.
    - 8 sq. ft. for a dog 11 to 16 inches long.
    - 12 sq. ft. for a dog 17 to 22 inches long.
    - 18 sq. ft. for a dog 23 to 26 inches long.
    - 24 sq. ft. for a dog 26 to 30 inches long.
    - 30 sq. ft. for a dog more than 30 inches long.
  - For each additional dog in the primary enclosure, the following area:
    - 3.375 sq. ft. for a dog up to 10 inches long.
    - 6 sq. ft. for a dog 11 to 16 inches long.
    - 9 sq. ft. for a dog 17 to 22 inches long.
    - 13.5 sq. ft. for a dog 23 to 26 inches long.
    - 18 sq. ft. for a dog 26 to 30 inches long.
    - 22.5 sq. ft. for a dog more than 30 inches long.
- The height of the primary enclosure must be at least 12 inches taller than the tallest dog in the enclosure.
- Each dog kept in the primary enclosure must have access, for at least 30 minutes each day, to a run or exercise area that is large enough for the dog's size and temperament (considering the number of dogs that may use the run or exercise area at any given time), and large enough so that the dog can achieve a running stride.

#### *Single-dog enclosure with separate run or exercise area.*

The general requirements above do not apply to a primary enclosure for one dog if the enclosure is part of a facility that has a separate run or exercise area for the dog's daily indoor or outdoor use and if all of the following apply:

- The run or exercise area is large enough for the dog's size and temperament (considering the number of dogs that may use the run or exercise area at any given time), and is large enough for the dog to achieve a running stride.
- The dog spends at least 120 minutes per day in the run or exercise area.
- The dog spends no more than 12 hours at a time in the primary enclosure, without access to the run or exercise area.
- The primary enclosure is long enough to accommodate the entire length of dog's head and body, measured from the tip of the dog's nose to the base of the dog's tail.
- The primary enclosure is tall enough for the dog to stand normally and comfortably, and large enough for the dog to turn around and lie down.

#### *Whelping enclosure.*

A primary enclosure for a single whelping dam and her puppies must comply with all of the following requirements, rather than the general requirements above:

- The enclosure must have a solid floor and be of an appropriate type for the breed.
- The enclosure must be tall enough for the dam to stand normally and comfortably.
- The enclosure must be large enough for the dam to lie down in a stretched out position, so that all puppies can simultaneously nurse.

- The enclosure must be large enough for the number and temperament of the puppies.
- The enclosure must be designed so that the dam can be away from puppies.

*Nursery enclosure.*

An primary enclosure for puppies between the age of weaning and the age of 4 months must comply with the following requirements, rather than the general requirements above:

- The enclosure must be large enough to allow all of the puppies to turn around, stand up, lie down, and exercise normal postural movements.
- The enclosure must be large enough to encourage socialization and exercise.

*Floors and interior surfaces of indoor primary enclosures.*

The following standards apply to all indoor primary enclosures:

- Dirt floors are prohibited.
- A floor, other than a floor in a whelping enclosure, may be constructed of metal wire mesh. Metal wire mesh floors must comply with all of the following requirements:
  - The wire must be vinyl-coated.
  - The wire must be of an adequate gauge to prevent sagging under the weight of the dog or dogs kept in the enclosure, and to prevent injury to the dogs' feet.
  - The mesh openings must be small enough to prevent the feet of the smallest dog kept in the enclosure from passing through or becoming entangled in the mesh.
- Floors and other interior surfaces must be constructed and maintained to keep dogs safe from injury, clean and dry. Surfaces must be regularly cleaned and sanitized.

*Stacking primary enclosures.*

No indoor primary enclosure may be stacked on top of any other indoor primary enclosure unless the stacking arrangement complies with all of the following:

- The floor of the top enclosure must be no higher than 52 inches from the floor of the room in which the enclosures are stacked.
- The stacking arrangement must provide for safe dog handling, adequate ventilation and temperature control, easy cleaning and sanitization, and easy inspection of all stacked enclosures.
- Each stacked enclosure must have ventilated sides and a solid floor that can be easily cleaned and sanitized.
- The stacked enclosures must be stable when filled to maximum capacity with dogs.
- No dog in any of the stacked enclosures may be exposed to any excreta, urine, dirt or debris falling from a higher enclosure.

*Lighting, temperature and ventilation.*

Indoor facilities in which primary enclosures are located must meet all of the following requirements:

- The facility must have well-distributed natural or artificial light that is adequate for proper care, maintenance and inspection of the facility and of all dogs kept in the facility. All areas in which dogs are kept must have a diurnal lighting cycle.

- The facility must have adequate heating and cooling facilities, and must be heated and cooled as necessary to keep temperatures within appropriate limits, based on the dog breeds kept at the facility and the ability of those breeds to acclimate to temperature variation. Dogs must be protected from heat, cold and humidity that may be injurious to their health.

- The facility must be adequately ventilated with fresh or filtered air to maintain the health and comfort of all dogs and to minimize odors, drafts, ammonia levels and moisture condensation. The facility must provide an exchange of air between indoor areas where dogs are kept and the outdoors.

*Cleaning and sanitization.*

- Excreta must be removed from primary enclosures and other dog holding areas at least daily, and more often as necessary for the health and comfort of all dogs.
- Primary enclosures and other dog holding areas must be cleaned with an appropriate detergent, then rinsed and sanitized with an appropriate sanitizer, as often as necessary to be free of accumulated dirt, debris and disease hazards.
- A primary enclosure must be cleaned and sanitized before any new dog is placed in the enclosure.
- Dogs must be removed from primary enclosures and other dog holding areas before those enclosures or areas are cleaned and sanitized. Dogs may not be returned to a cleaned or sanitized enclosure or area until the enclosure or area is dry.
- All dog bedding shall be maintained in a clean, dry condition.

**DOGS KEPT OUTDOORS**

The following requirements apply to an outdoor facility at which a person keeps dogs pursuant to a license under this rule:

*Dogs must be capable of staying outdoors.*

A dog kept in an outdoor primary enclosure shall be all of the following:

- Readily able to tolerate the outdoor temperatures and conditions to which the dog may be exposed in that enclosure, considering the dog's breed, age, health and physical condition.
- Acclimated to the outdoor temperatures and temperature variations that may occur in that enclosure.

*Outdoor primary enclosure; minimum area.*

The area of an outdoor primary enclosure (not counting the area of any dog shelter in the primary enclosure) shall be at least equal to the sum of the following, where each dog's length is measured from the tip of the dog's nose to the base of the dog's tail:

- For the largest dog in the primary enclosure, the following area:
  - 4.5 sq. ft. for a dog up to 10 inches long.
  - 8 sq. ft. for a dog 11 to 16 inches long.
  - 12 sq. ft. for a dog 17 to 22 inches long.
  - 18 sq. ft. for a dog 23 to 26 inches long.
  - 24 sq. ft. for a dog 26 to 30 inches long.
  - 30 sq. ft. for a dog more than 30 inches long.
- For each additional dog in the primary enclosure, the following area:

- 3.375 sq. ft. for a dog up to 10 inches long.
- 6 sq. ft. for a dog 11 to 16 inches long.
- 9 sq. ft. for a dog 17 to 22 inches long.
- 13.5 sq. ft. for a dog 23 to 26 inches long.
- 18 sq. ft. for a dog 26 to 30 inches long.
- 22.5 sq. ft. for a dog more than 30 inches long.

*Shelter, shade and windbreak.*

An outdoor primary enclosure shall include all of the following:

- A dog shelter (see below) that is accessible by all dogs kept in the primary enclosure.
- A shaded area, other than the dog shelter, which is adequate to shade all dogs in the primary enclosure from direct sunlight during all sunlight hours, without crowding.
- A windbreak, other than the dog shelter, which is adequate to shelter all dogs in the primary enclosure from wind.

*Dog shelter.*

A dog shelter, provided for dogs kept in an outdoor primary enclosure, shall be all of the following:

- Made of a durable material, have 4 sides, a roof, and a flat solid floor.
- Be big enough to accommodate all dogs kept in the primary enclosure without crowding. The roof of the shelter shall be at least 12 inches higher than the standing height of the tallest dog that may use the shelter.
- Be constructed and maintained to do all of the following:
  - Prevent injury to dogs that use it.
  - Allow all dogs using it to retain or dissipate enough body heat for health and comfort.
  - Allow all dogs using it to remain dry and clean.
  - Give all dogs using it reasonable protection from predators.

*Outdoor primary enclosure; construction.*

An outdoor primary enclosure shall be constructed and maintained to prevent dogs from escaping from the enclosure. If any portion of the primary enclosure is covered by a roof or overhead screen, the roof or screen must be at least 12 inches higher than the standing height of the tallest dog in the primary enclosure.

*Outdoor tethering; general.*

A dog may not be tethered outdoors unless all of the following apply.

- The dog is of a breed for which tethering is considered reasonably appropriate.
- The dog can readily tolerate tethering, based on its age, health and physical condition.
- The tethered dog can easily enter and lie down in a dog shelter that complies with this rule (see above).
- The tethered dog is not a pregnant or nursing female.
- The tether cannot become entangled with any object.
- The tether has an anchor swivel.
- The tether is at least 6 feet long and of sufficient length for the size of the dog.

- The tether is attached to the dog by means of a non-tightening collar or harness of sufficient size for the dog.

*Tethering prohibited at animal control facilities and animal shelters.*

Tethering may not be used for any dog kept outdoors at an animal control facility or animal shelter.

*Access to run or exercise area.*

Each dog kept in an outdoor primary enclosure must have access, for at least 30 minutes each day, to a run or exercise area that meets all of the following requirements:

- It must be large enough for the dog's size and temperament (considering the number of dogs that may use the run or exercise area at any given time), and large enough so that the dog can achieve a running stride.
- It must include a shaded area large enough to shade all dogs using the run or exercise area. However, the run or exercise area need not include a shelter unless the run or exercise area also serves as a primary enclosure.

*Outdoor facility maintenance.*

Outdoor facilities must be maintained to protect the health and safety of dogs kept in those facilities. Maintenance must include all of the following:

- Excreta must be removed from outdoor primary enclosures at least daily.
- Pests and parasites must be controlled as necessary to maintain dog health and comfort.
- Dog bedding must be kept in a clean, dry condition.

**TRANSPORTING DOGS**

A license holder (and the license holder's employees and agents) must comply with the following standards related to the transportation of dogs:

*Portable enclosures.*

A portable enclosure used to transport one or more dogs, including any enclosure that is placed on or forms part of a transport vehicle, must meet all of the following requirements:

- It must be constructed of water-resistant and cleanable material.
- It must be designed to keep all dogs within the enclosure clean and dry.
- It must be designed to protect the health and safety of all dogs in the enclosure.
- It must have ventilation openings to ensure the comfort and health of all dogs in the enclosure.
- It must be securely closed when in use.
- It must be cleaned and sanitized between occupancy by different dogs, and more often as necessary to keep it in a clean condition.
- When on a transport vehicle, it must be all of the following:
  - Positioned so that each dog in the enclosure has access to sufficient air for normal breathing.
  - Positioned so that the opening through which dogs enter and exit the enclosure is accessible at all times for emergency removal of dogs from the enclosure.
  - Positioned so that all dogs in the enclosure are protected from the elements.
  - Positioned or protected so that no dog in the enclosure is exposed to excreta falling from above.



- Secured as necessary to prevent reasonably foreseeable movement that may injure dogs.

#### *Care of dogs during transport.*

The following standards apply to dogs that are being transported:

- Each dog must at all times be protected from hypothermia and hyperthermia. Transportation vehicles must be heated or cooled, if necessary, to comply with this paragraph.
- Each dog must have sufficient space to turn, stand, and lie down.
- Each dog must be provided with food and water, according to standards in this rule.
- Dogs must be separated if incompatible (see grouping and separation standards above).
- Each dog shall be visually inspected every 4 hours.
- Each dog must be removed from the transport vehicle at least once every 12 hours, and be allowed to urinate, defecate and exercise.
- Each dog must be promptly removed from the transport vehicle when the vehicle reaches its destination.

#### *Transport vehicles.*

The following standards apply to a transport vehicle that is used to transport dogs:

- The vehicle must be equipped to provide fresh or filtered air, without injurious drafts, to all dogs that are transported in the vehicle.
- The dog cargo space must be constructed and maintained to minimize the ingress of exhaust from the vehicle's engine.

#### **PROHIBITED CONDUCT**

No license holder may do any of the following, either directly or through an employee or agent:

- Prevent or interfere with a DATCP inspection under this chapter, or assault an inspector.
- Refuse or fail, without just cause, to produce evidence or records requested by DATCP.
- Misrepresent a dog's breed or pedigree, or move a diseased dog in violation of current law.
- Knowingly accept dogs from a person who is not properly licensed to supply those dogs (unless the person accepts the dogs to protect them, and promptly reports the acceptance to DATCP).

#### **VARIANCES**

In response to a written request, DATCP may grant a written variance from an animal care standard under this rule if DATCP finds that the variance is reasonable and necessary under the circumstances and will not compromise the purpose served by the standard. A variance must be issued in writing, must include DATCP's findings, and must include the specific terms of the variance (including any time limit on the variance). A variance request must include information to show that the variance is justified.

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

Currently, USDA licenses and inspects approximately 49 kennels in Wisconsin that are selling puppies wholesale. USDA establishes minimum facility standards for those licensed facilities.

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

##### *Minnesota:*

Minnesota has no comparable licensing program for dog sellers or dog facilities. Proposed legislation failed in the last session, but will likely be reintroduced in the next session.

##### *Illinois:*

Illinois licenses and regulates persons that have custody of more than 5 female dogs who breed dogs for sale. Illinois also licenses and regulates pet shops, dog dealers, kennel operators and catteries. Regulations establish minimum standards of care, record keeping requirements, and requirements for dog movement.

##### *Michigan:*

Michigan has no comparable licensing program for dog sellers or dog facilities.

##### *Iowa:*

Iowa licenses and regulates person that have custody of more than 3 breeding male or female dogs, including boarding kennels, breeders and dealers. Regulations establish minimum standards of care, record keeping requirements, and requirements for dog movement.

#### ***Data and analytical methodologies***

DATCP consulted with an advisory committee comprised of individuals that will be licensed and regulated under this rule, and veterinarians. DATCP representatives also attended USDA presentations related to humane dog care standards.

#### **Small Business Impact**

This rule will affect persons who operate "animal control facilities," "animal shelters" or "dog breeding facilities" in this state, or who operate as "dog breeders," "dog dealers" or "out-of-state dog dealers" in this state. Under 2009 Wis. Act 90, these persons must be annually licensed and must pay annual license fees as provided in this rule (see above). This rule does not, by itself, increase license requirements or fees (beyond the licensing requirements and fees already created by Act 90).

This rule spells out licensing standards for persons who are required to be licensed under this rule, including standards for the care, transportation and sale of dogs. Many of the persons who are subject to licensing under this rule are already meeting the standards under this rule, but others will incur costs to bring their facilities and practices into compliance with this rule.

- Under Act 90 and this rule, whenever a license holder sells a dog in this state, the dog must be accompanied by a certificate of veterinary inspection (health certificate). The certificate must be issued by a Wisconsin certified veterinarian, on an official form provided by DATCP. The certificate forms cost only \$0.60 each (an estimated \$44,000 for sellers statewide), but there will be a significant cost for veterinarian services. This could have a significant financial impact on license holders, especially small dog breeders. However, this rule does not add any costs beyond those imposed by Act 90 itself.
- The facility requirements in this rule are, for the most part, rudimentary. However, some license holders may need to make significant facility upgrades in order to comply with the standards in this rule and ensure a humane level of care.
- This rule requires license holders to keep inventory, identification and health records related to dogs that they



keep or sell. Many of the persons affected by this rule already keep such records, but others do not. This rule may impose additional recordkeeping costs on those who do not. Many of the recordkeeping requirements in this rule are also contained (in more general form) in Act 90, so this rule does not add significantly to the costs already imposed by Act 90.

- This rule may require some dog sellers to hire additional staff, or hire professional services (especially veterinarian services) to comply with this rule and provide a humane level of care to dogs under their custody or control.

This rule will benefit the dog care and sales industry by establishing basic standards of humane care and fair competition. This rule will also benefit dog buyers by providing greater assurance that dogs are healthy and well-adjusted, and have been humanely treated.

Many of the persons affected by this rule are “small businesses.” This rule, like Act 90, exempts animal shelters that keep no more than 25 dogs per year. It also exempts dog breeders and dog dealers who sell no more than 25 dogs a year from no more than 3 litters. But neither Act 90 nor this rule make other significant exemptions for “small business,” because many of the most serious animal health and humane problems addressed by Act 90 are found in “small business” settings.

The standards in this rule give affected businesses some flexibility and choices, consistent with the basic requirement of humane care. DATCP may issue licenses on a conditional basis, giving some license holders additional time to bring their operations into full compliance. DATCP may also grant variances for good cause, if the variance does not undermine the purpose of the standard from which the variance is granted.

### **Fiscal Estimate**

This rule will not have a significant state or local fiscal impact. Section 173.41 (14), Stats., created by 2009 Wis. Act 90, requires DATCP to license and inspect “animal control facilities,” “animal shelters,” “dog breeders,” “dog breeding facilities,” “dog dealers” and “out of state dog breeders” that do business in this state. DATCP must inspect licensed facilities prior to licensing, and at least once every 2 years. Act 90 provided staff and funding for this licensing and inspection activity.

This rule will not create additional staffing requirements or program costs, beyond those entailed by Act 90 itself, nor will it change license fee revenues. Act 90 authorized DATCP to change initial statutory license fees by rule. However, this rule does not make any significant changes to the statutory fees.

Under Act 90 and this rule, whenever a license holder sells a dog in this state, the dog must be accompanied by a certificate of veterinary inspection (health certificate). The certificate must be issued by a Wisconsin certified veterinarian, on an official form provided by DATCP. Certified veterinarians may purchase the forms from DATCP at a cost of \$0.60 each (the same as for certificates used under other animal health programs). DATCP estimates that certificate sales will generate \$44,000 in program revenue each year. Act 90 contemplates that these revenues will be used to help fund this program.

### **Agency Contact Person**

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### **Notice of Hearing Commerce**

#### ***Wis. Commercial Building Code, Chs. Comm 60 to 66 CR 10-103***

NOTICE IS HEREBY GIVEN that pursuant to ss. 101.02 and 145.02, Stats., the Department of Commerce will hold a public hearing on proposed rules under Chapters Comm 2, 5, 14, 20 and 61 to 66, relating to the design, construction, maintenance and inspection of public buildings and places of employment, including commercial buildings and structures and multifamily dwellings.

### **Hearing Information**

The public hearing will be held as follows:

**Date:** October 5, 2010  
**Time:** 10:00 a.m.  
**Location:** Thompson Commerce Bldg.  
Conference Room 3B  
201 W. Washington Avenue  
Madison, Wisconsin

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.

### **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 **October 18, 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 Jim Smith, at the Department of Commerce, P.O. Box 2689, Madison, WI 53701-2689, or Email at [jim.smith@wisconsin.gov](mailto:jim.smith@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 Jim Smith, at the Department of Commerce, P.O. Box 2689, Madison, WI 53701-2689, or Email at [jim.smith@wisconsin.gov](mailto:jim.smith@wisconsin.gov), or at telephone (608) 266-0251 or (608) 264-8777 (TTY). Copies will also be available at the public hearing.

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

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

Sections 101.02 (1) and (15), 101.025, 101.027, 101.13, 101.132, 101.14 (1) and (4), 101.63, 101.973 (1) and 145.02, Stats.

**Statutory authority**

Sections 101.02 (1), (7), (7m) and (15), 101.025, 101.027, 101.11, 101.12, 101.13, 101.132, 101.14 (1), (4) and (4m), 101.145, 101.149, 101.19, 101.63, 101.73, 101.973 and 145.02, Stats.

**Related statute or rule**

Chapter Comm 2, Fee Schedule  
 Chapter Comm 5, Licenses, Certifications and Registrations  
 Chapter Comm 14, Fire Prevention  
 Chapter Comm 16, Electrical  
 Chapter Comm 18, Elevators, Escalators and Life Devices  
 Chapter Comm 20, Uniform Dwelling Code  
 Chapter Comm 41, Boilers and Pressure Vessels  
 Chapter Comm 45, Mechanical Refrigeration  
 Chapter Comm 82, Uniform Plumbing Code

**Explanation of agency authority**

Under the statutes cited, the Department of Commerce protects public health, safety, and welfare by promulgating comprehensive requirements for design, construction, maintenance and inspection of public buildings and places of employment, including commercial buildings and structures and multifamily dwellings. The department also updates these requirements as necessary to be consistent with nationally recognized standards that are incorporated by reference into the Wisconsin Commercial Building Code (WCBC), specifically, the building code requirements developed by the *International Code Council*<sup>®</sup> (ICC).

**Summary of proposed rules**

Currently, the department adopts by reference the 2006 editions of the ICC suite of building codes – the *International Building Code*<sup>®</sup> (IBC), the *International Energy Conservation Code*<sup>®</sup> (IECC), *International Existing Buildings Code*<sup>®</sup> (IEBC), the *International Fuel Gas Code*<sup>®</sup> (IFGC) and the *International Mechanical Code*<sup>®</sup> (IMC) – and makes Wisconsin modifications to these codes within the WCBC. The department proposes to adopt the 2009 editions of these ICC codes.

Significant changes from the 2006 to the 2009 editions of the ICC codes include:

- Defining and clarifying live/work unit provisions; IBC section 419.
- Adding provisions for Ambulatory Health Care Facilities; IBC section 422.
- Adding storm shelter provisions and references to ICC 500; IBC section 423.
- Requiring new locking provisions for egress doors serving certain types of occupancies; IBC sections 1008.1.9.6, 1008.1.9.8 and 1008.1.9.9.
- Clarifying accessibility provisions for live/work units are to be evaluated separately; IBC section 1103.2.13.
- Requiring at least lavatory with enhanced reach ranges in toilet rooms having 6 or more lavatories for accessibility purposes; IBC section 1109.2.3.
- Providing specific provisions on tightness of buildings (air barriers); IECC section 402.4.2.
- Requiring shutoff controls for snow/ice-melting systems serving residential occupancies; IECC section 403.8.

- Specifying the heating of outside spaces to be radiant type and provided with efficiency controls; IECC section 503.2.11.
- Revising the mechanical ventilation table to provide more detailed occupancy classifications that reflect ASHRAE standard 62 – Ventilation for Acceptable Indoor Air Quality; IMC table 403.3.
- Requiring that make-up air to be provided for domestic kitchen exhaust hoods with capacities of greater than 400 cfm be tied in to operation of hood; IMC section 505.2.
- Eliminating details on combustion air from within the IMC by deferring to NFPA standard 31 for oil-fired appliances and the manufacturers' recommendations for solid-fuel-fired appliances.
- Expanding the provisions for the piping of hydronic heating systems to reflect newer materials and standards; IMC chapter 12.
- Requiring thermal insulation below radiant floor heating systems; IMC sections 1209.5 to 1209.5.4.
- Establishing bonding/grounding provisions specific to corrugated stainless steel gas tubing (CSST); IFGC section 310.1.1.
- Prohibiting gas piping from entering/exiting a building below grade; IFGC section 404.4.
- Requiring LP-Gas piping to be electrically isolated (dielectric fitting) where the underground piping comes above ground to enter the building; IFGC section 404.8.
- Requiring gas clothes dryer exhaust ducts to be protected from penetration by nails/screws; IFGC section 614.6.3.
- Specifying minimum vertical clearances between gas cooktops and materials or cabinets above; IFGC section 623.7.
- Adding provisions associated with the use of used materials and equipment; IEBC section 104.9.1.
- Clarifying that when undergoing a partial change of occupancy, accessibility will be driven by the alteration provisions found in ss. 605 or 706. ; IEBC section 912.8.1.

Many of the current Wisconsin modifications under the WCBC are proposed to be repealed because of changes in the 2009 editions of the ICC codes. Minor amendments, including renumbering, are being made to several Wisconsin modifications to reflect changes in the 2009 IBC codes.

The proposed rules include creating some general global modifications that replace various current individual deletions of unnecessary ICC requirements, such as requirements that address (1) designing one- and two- family dwellings; (2) employing special inspectors or obtaining special inspections; (3) obtaining a mandated approval from a local building or fire code official; and (4) building in flood-hazard areas. Other proposed Wisconsin modifications include:

- Modifying the provisions for firewalls or division walls separating townhouses for the purpose of allowing sprinkler protection in accordance with NFPA standard 13D; s. Comm 62.0903 (5).
- Extending an automatic sprinkler exemption for small R-2 multifamily dwellings to other small residential buildings, such as cabins at summer camps; s. Comm 62.0903 (5) (d).
- Revising the sprinkling requirements for townhouses with less than 20 units to reflect the changes in the latest edition

of the *International Residential Code*<sup>®</sup>; s. Comm 62.0903 (5) (d).

- Eliminating the required international symbol accessibility signage for assigned parking serving a residential apartment building; s. Comm 62.1103.
- Extending the modified uniform live loads for attics in townhouses to attics in all residential occupancies; s. Comm 62.1607.
- Codifying additional criteria for ground improvement methods relating to foundations and floor slabs, such as for Geopier<sup>®</sup> systems; s. Comm 62.1804.
- Reducing presumptive load-bearing values by ½ for saturated soils; s. Comm 62.1806.
- Alerting building owners or occupants to the heating assumption for frost-protected shallow foundations; s. Comm 62.1809.
- Requiring an elevator car that accommodates an ambulance stretcher for fire department emergency access in defined buildings; s. Comm 62.3002.
- Exempting the need for economizers for package RTU's 33,000 BTU/hr and larger; s. Comm 63.0503.
- Clarifying the exemption of an economizer for a closed circuit cooling tower heat pump system, s. Comm 63.0503.
- Providing alternative mechanical ventilation table and provisions, Comm Table 64.0403.
- Clarifying maintenance requirements for smoke alarms; s. Comm 66.0503.

### Comparison with federal regulations

#### General Building Code

- *Code of Federal Regulations* — An Internet-based search for “federal commercial building code” and “building code regulations” in the Code of Federal Regulations (CFR) did not identify any federal regulations pertaining to these topics.
- *Federal Register* — An Internet-based search for “federal commercial building code” and “building code regulations” in the 2005 to 2010 issues of the Federal Register did not identify any proposed federal regulations pertaining to these topics.

#### Energy Conservation Requirements

- *Code of Federal Regulations* — The portion of the CFR relating to energy conservation for commercial buildings and facilities is found under 10 CFR 420–State Energy Program. The purpose of this regulation is to promote the conservation of energy, to reduce the rate of growth of energy demand and to reduce dependence on imported oil through the development and implementation of comprehensive state energy programs. This regulation initially required that each state's energy conservation rules for new buildings be no less stringent than the provisions of the 1989 edition of ASHRAE Standard 90.1, Energy Standard for Buildings Except Low-Rise Residential Buildings.
- *Federal Register* — According to the January 23, 2009, Federal Register, the Department of Energy (DOE) is determining if ANSI/ASHRAE/IESNA Standard 90.1–2007 would save energy in commercial buildings.

DOE is doing a comparative analysis of the 2007 edition of that standard to the 2004 edition. The 2009 edition of the IECC energy conservation requirements for commercial buildings, which the proposed rules would adopt by reference, reflect the 2007 edition of the ASHRAE 90.1 Standard.

#### Accessibility Requirements

- *Code of Federal Regulations* — The portions of the CFR relating to accessibility in commercial buildings and facilities include the following:
  1. 28 CFR 35 — Nondiscrimination on the Basis of Disability in State and Local Government Services.
  2. 28 CFR 36 — Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities.
  3. 24 CFR 40 — Accessibility standards for design, construction, and alteration of publicly owned residential structures.
  4. 24 CFR 41 — Policies and procedures for the enforcement of standards and requirements for accessibility by the physically handicapped.

Both 28 CFR 35 and 28 CFR 36 require public buildings and commercial facilities — including government-owned and -operated buildings and facilities — be designed, constructed and altered in compliance with the accessibility construction regulations specified under the federal Americans with Disabilities Act Accessibility Guidelines (ADAAG). The purpose of 24 CFR 40 and 24 CFR 41 is to provide technical guidance on the design and construction of dwelling units as required by the federal Fair Housing Amendments Act of 1988.

The intent of the IBC and the amendments included under chapter Comm 62 is to ensure the Wisconsin construction requirements related to accessibility are equivalent to these applicable federal laws and regulations.

- *Federal Register* — Proposed federal regulations and amendments to established federal regulations for accessibility are found in the following issues of the Federal Register:
  1. October 24, 2008 — Design and Construction Requirements; Compliance with ANSI A117.1 (2003) Standards.
  2. August 5, 2005 — ADAAG; Corrections.
  3. December 7, 2009 — Nondiscrimination on the Basis of Disability in Public Accommodations and Commercial Facilities.
  4. March 23, 2007 — ADAAG Supplementary Material.
  5. November 23, 2005 — ADAAG Public Rights-of-Way.
  6. April 17, 2006 — Multifamily Building Conformance with the Fair Housing Accessibility Guidelines: Improving the Methodology.

The ICC is actively monitoring the proposed changes to the federal standards affecting accessibility and will include these changes in future editions of the IBC and the corresponding ICC/ANSI A117.1–Accessible and Usable Buildings and Facilities Standard.



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

An Internet-based search of the four adjacent states found the following regulations that include similar requirements relating to public buildings and places of employment:

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

Illinois does not administer a statewide building code.

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

The Iowa Department of Public Safety administers the Iowa State Building Code. Effective January 1, 2010, the department adopted the 2009 editions of the IBC, IMC, IEBC and IECC with Iowa amendments.

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

The Michigan Department of Labor and Economic Growth administers the Michigan construction codes, which adopt by reference the 2006 editions of the IBC, IMC and IEBC with amendments. The 2009 Michigan Building, Residential, and Rehabilitation Code for Existing Buildings review process is in progress.

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

The Minnesota Department of Labor and Industry administers the Minnesota State Building Code, which adopted the 2006 editions of the IBC, IFGC and IMC.

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

The primary methodology for updating the Wisconsin Commercial Building Code, chapters Comm 61 to 66, has been a review and assessment of the latest editions of the national model codes that serve as the basis for the Wisconsin code. The department's review and assessment process involved the participation and support of 10 advisory councils. The members of the councils represent many stakeholders involved in the building industry, including designers, contractors, developers, regulators, labor, the fire service and the public. (A listing of the councils and the current members is provided at the end of this analysis.)

The department believes that the national model codes reflect current societal values with respect to protecting public health, safety and welfare in the design, construction, use, operation and maintenance of commercial buildings that serve as public buildings and places of employment. The model code organization – International Code Council, ICC – uses a process open to all parties to develop its codes. More information, including background information in the development of the 2009 model code editions, may be found at the ICC web site, <http://www.iccsafe.org>.

The review and assessment process for the Commercial Building Code involved an examination of the revisions in the 2009 editions of the IBC, IECC, IMC, IFGC and IEBC. The assessment included the evaluation of the current rules under chapters Comm 61 to 66 that modified these ICC codes. Working with the 10 advisory councils, the department determines if the various technical requirements in the 2009 model codes are reasonable for addressing potential risks or concerns and promoting the public health, safety and welfare. Such determinations are made based upon experience, forecasts, intuition or projection.

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

The department used 10 advisory code councils to analyze and develop the proposed revisions to the Commercial Building Code. The councils involve a variety of organizations whose memberships include many types of

small businesses. The department uses these councils to gather information on potential impacts in complying with the technical and administrative requirements of the codes. Council members are responsible for bringing forth the concerns that their respective organizations may have with the requirements including economic impacts. (Copies of the council meetings summaries are available on the Safety and Building Division web site, <http://www.commerce.state.wi.us/SB/SB-CodeCouncilsComBldgSum.html>.)

The department also offers an e-mail subscription service to anyone who is interested in rule development and/or council activities. The service provides e-mail notification of council meetings, meeting agendas and council meeting progress reports. Currently, there are about 2,000 subscriptions for information pertaining to the commercial building program.

The department believes the rules will not increase the effect on small businesses from what the current rules impose on them. An economic impact report is not required pursuant to section 227.137, Stats.

### **Small Business Impact**

#### ***Summary***

The requirements of the Commercial Building Code impact all businesses, regardless of size, that use public buildings and places of employment in Wisconsin. The codes impact a variety of businesses, including small businesses, particularly those businesses that design, build, or maintain commercial buildings; provide or produce building materials or components; own commercial buildings; or occupy commercial buildings. It is indeterminable how many small businesses may be impacted by the rules in some manner.

The potential effects of the codes occur on two basic levels, administrative and technical. The codes dictate certain administrative procedural requirements that are to be followed to acquire various approvals. For the most part, the codes establish numerous technical standards that are to be adhered to when designing, constructing, using, operating or maintaining a commercial building to protect public health, safety and welfare.

The proposed rule revisions do not substantially modify the current administrative requirements of the Commercial Building Code. Therefore, this type of impact on small businesses will not substantially change.

How the code's technical standards may impact small businesses is dependent upon many variables. The proposed revisions for the Commercial Building Code do not apply retroactively to existing buildings. The proposed revisions would apply when a new building or modification to an existing building is proposed. The various advisory councils did not identify major economic concerns for updating the Commercial Building Code to the latest ICC codes as amended in this proposal.

Regarding s. 227.115, Stats., the department believes the proposed rule changes for the Commercial Building Code will not directly or substantially affect the development, construction, cost or availability of housing.

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

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

The proposed rules will affect any business involved with the ownership, design, construction, maintenance and inspection of public buildings, including multifamily dwellings, and places of employment.

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

There are no additional reporting, bookkeeping or other procedures required for compliance with the rules.

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

There are no additional professional skills 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](mailto:carol.dunn@wisconsin.gov).

#### **Environmental Impact**

The Department has prepared a preliminary Environmental Assessment (EA) on the proposed rules. The preliminary recommendation is a finding of no significant impact. Copies of the preliminary EA are available from the Department on request and will be available at the public hearings. Requests for the EA and comments on the EA should be directed to:

Department of Commerce  
P.O. Box 2689  
Madison, Wisconsin 53701  
Phone: (608) 266-8741 or TTY (608) 264-8777

Written comments will be accepted until **October 18, 2010**.

#### **Fiscal Estimate**

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

The proposed rules adopt by reference the 2009 editions of the *International Code Council*<sup>®</sup> (ICC) suite of building codes – the *International Building Code*<sup>®</sup> (IBC), the *International Energy Conservation Code*<sup>®</sup> (IECC), *International Existing Buildings Code*<sup>®</sup> (IEBC), the *International Fuel Gas Code*<sup>®</sup> (IFGC) and the *International Mechanical Code*<sup>®</sup> (IMC) — and makes Wisconsin modifications to these codes within the Wisconsin Commercial Building Code (WCBC). The promulgation of these rules will affect businesses involved in the design, construction, maintenance and inspection of public buildings and places of employment, including commercial buildings and structures and multifamily dwellings.

The proposed rules require plan review for buildings >25,000 sq. ft and < 50,000 sq. ft. This will impact about 170 projects annually, and will result in an estimated annual revenue increase of \$78,500. Currently, these projects pay \$25 for a building project registration and \$25 for the registration of building components. Under the proposed rules change, individual projects will pay a building plan review fee of \$400 to \$450, including an \$100 plan entry fee, and in some cases, an additional fee for component plan review such as \$180 to \$200 for HVAC plan review and \$60 to \$100 for fire system plan review.

By expanding the types of occupancies for plan review of fire protection systems, the department estimates that annual submittals will increase by 629 plans. Fees for fire protection

systems plans ran from \$30 to \$7,100 and vary depending on the size of the structure and if the structure is located in a municipality that is delegated to conduct fire protection system inspection. That department estimates that it would realize about \$193,600 in revenue annually.

The department anticipates that the workload associated with requiring plan review for buildings >25,000 sq. ft. and <50,000 sq. ft and the expanded plan review of fire protection systems can be managed with current information technology and within current staff levels.

#### **State fiscal effect**

Increase existing revenues.

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

None.

#### **Fund sources affected**

FED.

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

None are anticipated.

#### **Agency Contact**

Jim Smith, Program Manager  
Phone: (608) 266-0251  
Email: [jim.smith@wisconsin.gov](mailto:jim.smith@wisconsin.gov)

### **Notice of Hearing Regulation and Licensing EmR1031, CR 10-101**

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Department of Regulation and Licensing in ss. 227.11 (2), 440.03 (1), 440.03 (1m), 444.01, 444.02, 444.03, 444.04, 444.035, 444.06, 444.09, 444.095, 444.10, 444.11, 444.12, 444.13, 444.14, 444.15 and 444.18, Stats., the Department of Regulation and Licensing will hold a public hearing at the time and place indicated below to consider an emergency rule and a proposed rule to revise Chapters RL 112 to 116, relating to the regulation of professional boxing contests.

#### **Hearing Information**

**Date:** September 20, 2010  
**Time:** 9:30 a.m.  
**Location:** 1400 East Washington Avenue  
(Enter at 55 North Dickinson Street)  
Room 121A  
Madison, Wisconsin

#### **Appearance at Hearing and Submittal of Written Comments**

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but are urged to submit facts, opinions and argument in writing as well. Facts, opinions and argument may also be submitted in writing without a personal appearance by mail addressed to Shawn Leatherwood, Department of Regulation and Licensing, Division of Board Services, 1400 E. Washington Ave., Room 152, P.O. Box 8935, Madison, WI 53708-8935, or by email to [shawn.leatherwood@wisconsin.gov](mailto:shawn.leatherwood@wisconsin.gov). Written comments must be received by **September 27, 2010**, to be included in the record of rule-making proceedings.

### Copies of Proposed Rule

Copies of this proposed rule are available upon request to Shawn Leatherwood, Department of Regulation and Licensing, Division of Board Services, 1400 East Washington Avenue, P.O. Box 8935, Madison, WI 53708, or by email at [shawn.leatherwood@wisconsin.gov](mailto:shawn.leatherwood@wisconsin.gov).

### Analysis Prepared by the Department of Regulation and Licensing

#### *Statutes interpreted*

Ch. 444, Stats., and 2009 Wisconsin Act 111.

#### *Statutory authority*

Sections 227.11 (2), 440.03 (1), 440.03 (1m), 444.01, 444.02, 444.03, 444.04, 444.035, 444.06, 444.09, 444.095, 444.10, 444.11, 444.12, 444.13, 444.14, 444.15 and 444.18, Stats.

#### *Explanation of agency authority*

The Department of Regulation and Licensing is granted authority under s. 444.02 (1), Stats., and 2009 Wisconsin Act 111, to manage and control professional boxing contests in Wisconsin.

#### *Related statute or rule*

There are no other statutes or rules other than those listed above.

#### *Plain language analysis*

This proposed rule-making order makes changes to chs. RL 110 to 116, relating to the regulation of boxing. The proposed rules contain definitions, application and permit requirements, officials' duties at events, medical requirements, grounds for disciplinary action, and mandatory drug testing.

SECTION 1 repeals and recreates the following provisions:

Definitions for the terms “anabolic steroid,” “bout,” “boxer,” “cause,” “contest,” “knock-out,” “permit,” “professional,” “professional club,” “second,” “technical knock-out,” “10-point must scoring system.” Bond requirements for promoters and clubs. Compliance with federal law by promoters and clubs. Application requirements for initial registrations for promoters, clubs, managers, matchmakers, judges, referees, trainers, timekeepers.

SECTION 2 creates the following provisions:

Application requirements for seconds. Requirements for renewal of registration for promoters, clubs, managers, matchmakers, judges, referees, trainers, timekeepers, ringside physicians, and seconds. Application requirements for permits to conduct boxing events. Effect of permits to conduct boxing events once issued. Grounds for canceling a professional boxing event.

SECTION 3 repeals and recreates the following provisions:

Duties of promoters and clubs that have been issued a permit to conduct a professional boxing event. Duties of inspectors, judges, referees, ringside physicians and timekeepers assigned by the department to conduct professional boxing events. Pay schedule for officials assigned to conduct professional boxing events.

SECTION 4 amends the following provision: The title of Ch. RL 112.

SECTION 5 repeals s. RL 112.005.

SECTION 6 amends s. RL 112.01 (intro).

SECTION 7 amends s. RL 112.03 (1).

SECTION 8 repeals and creates s. RL 112.04, relating to handwraps.

SECTION 9 amends s. RL 112.08 (2).

SECTION 10 amends the title of Ch. RL 113.

SECTION 11 repeals s. RL 113.005.

SECTION 12 amends s. RL 113.01 (1) by striking the term show and adding the term event.

SECTION 13 amends and renumbers RL 113.02 (1).

SECTION 14 creates the following provision: Health examinations required for boxers.

SECTION 15 amends the following provisions: Requirements for boxers that have been knocked-out. Requirements for female boxers to submit to pregnancy testing.

SECTION 16 repeals and recreates the following provision: Weight limitations and weight classes.

SECTION 17 is repeals s. RL 114.005.

SECTION 18 amends s. RL 114.09.

SECTION 19 creates the following provisions: Sports drinks at ringside during contests, and Persons required at ringside before a professional boxing contest begins.

SECTION 20 repeals s. RL 115.005.

SECTION 21 amends and renumbers s. RL 115.02 (1) (a).

SECTION 22 creates the following provision: Health examinations required for boxers.

SECTION 23 repeals s. RL 116.005.

SECTION 24 amends the following provision: Grounds for discipline of promoters and clubs

SECTION 25 creates the following provision: Additional grounds for discipline of promoters and clubs.

SECTION 26 amends the following provision: Grounds for discipline of professional boxers.

SECTION 27 creates the following provision: Additional grounds for discipline of professional boxers.

SECTION 28 amends s. RL 116.02 (4).

SECTION 29 creates the following provisions: Grounds for medical suspensions and mandatory rest periods, and Grounds for mandatory drug testing.

#### *Comparison with federal regulations*

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

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

##### *Illinois:*

Boxing is regulated in Illinois via, the Professional Boxing Act 225 ILCS 105 and through the Illinois Code of Regulation. The statute and regulations specify the manner in which boxing contests will be conducted. 225 ILCS 105/0.05 Professional Boxing Act 225 ILCS 105/ Professional



Boxing Act. Illinois Code of Regulation Title 68 Pt. 1371 §1371.300 — §1371.380 PART 1371 PROFESSIONAL BOXING AND MARTIAL ARTS CONTESTS: Sections Listing

*Iowa:*

Chapter 90A, Code of Iowa regulate boxing and wrestling and empowers the commissioner to adopt rules necessary to enforce the code.

<http://coolice.legis.state.ia.us/Cool-ICE/default.asp?category=billinfo&service=IowaCode&ga=83>

The Iowa Administrative Code, 875 IAC 173.1 (90A) – 173.54(90A), regulates professional boxing contests some of the areas of regulation are drug testing, public safety, and blood-borne disease testing of contestants.

[http://search.legis.state.ia.us/nxt/gateway.dll/ar/iac/8750\\_labor%20services%20division%20\\_\\_5b875\\_\\_5d/1730\\_\\_chapter%20173%20professional%20boxing/\\_c\\_8750\\_1730.xml?f=templates&fn=document-frame.htm\\$3.0](http://search.legis.state.ia.us/nxt/gateway.dll/ar/iac/8750_labor%20services%20division%20__5b875__5d/1730__chapter%20173%20professional%20boxing/_c_8750_1730.xml?f=templates&fn=document-frame.htm$3.0)

*Michigan:*

The Michigan Unarmed Combat Regulatory Act regulates boxing in Michigan, placing it under the regulatory control of the Department of Energy, Labor and Economic Growth, Director's Office. The administrative rules, MICH.ADMIN CODE R339.101 — R339.403 govern the manner in which boxing and mixed martial arts events are conducted. [http://www.legislature.mi.gov/\(S\(itxqmlmbkf04w3325ny3cw45\)\)/documents/mcl/pdf/mcl-Act-403-of-2004.pdf](http://www.legislature.mi.gov/(S(itxqmlmbkf04w3325ny3cw45))/documents/mcl/pdf/mcl-Act-403-of-2004.pdf) and SOAHR Admincode

*Minnesota:*

Boxing is regulated in Minnesota via MN Statutes §341.21–§341.37, under the authority of the Combative Sports Commission. The Commission administers the Combative Sports regulations found in Minn. Reg. §2201.0020–§2201.0500. The regulations specify the manner in which boxing contests will be conducted.

<https://www.revisor.mn.gov/data/revisor/rule/current/2201/2201.pdf>

**Summary of factual data and analytical methodologies**

The Boxing Commissioner recognized the need to review the current boxing regulations in light of the passage of 2009 Wisconsin Act 111 and its impact on chapter 444, Stats. The new legislation made significant changes to the manner in which boxing contests are conducted and added the regulation of mixed martial arts. Along with the new legislation, provisions in force in other states were consulted as examples of consistency in regulating boxing and mixed martial arts. Some of those provisions were incorporated into the working draft, resulting in more standardized regulation of boxing and mixed martial arts specific to Wisconsin.

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

There will be an effect on small businesses that promote professional boxing contests in Wisconsin. Prior to the passing of 2009 Wisconsin Act 111, boxing promoters were not required to pay certain fees or meet certain financial obligations such as a gate tax fee, posting of a bond, and payments for additional inspectors. These additional financial obligations could increase costs for promoters. However, the additional costs are necessary to ensure safety in conducting professional boxing events. Moreover, the targeted fees are compatible with other states that regulate the sport.

Section 227.137, Stats., requires an “agency” to prepare an economic impact report before submitting the proposed rule-making order to the Wisconsin Legislative Council. The Department of Regulation and Licensing is not included as an “agency” in this section.

**Anticipated costs incurred by private sector**

The department finds that this rule will have an impact on the private sector as indicated above.

**Small Business Impact**

These proposed rules were reviewed by the department's Small Business Review Advisory Committee to determine if the rules will have a significant economic impact on a substantial number of small businesses, as defined in s. 227.114 (1), Stats. The rules may have some impact as described above in the “*Analysis and supporting documents used to determine the effect on small business*” section.

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

**Fiscal Estimate**

The department will have a one-time cost of \$3,440 which will come from IT programming, form development and website updates. The anticipated total ongoing costs are \$245,440 (includes both boxing and mixed martial arts), which will consist of staff time for licensing activities and attending events.

**Agency Contact Person**

Shawn Leatherwood  
Dept. of Regulation and Licensing  
Division of Board Services  
1400 East Washington Avenue, Room 152  
P.O. Box 8935, Madison, WI 53708  
Phone: 608-261-4438  
Email: [shawn.leatherwood@wisconsin.gov](mailto:shawn.leatherwood@wisconsin.gov)

**Notice of Hearing  
Regulation and Licensing  
EmR1032, CR 10-102**

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Department of Regulation and Licensing in ss. 227.11 (2), 440.03 (1), 440.03 (1m), 444.01, 444.02, 444.03, 444.035, 444.06, 444.095, 444.11, 444.12, 444.13, 444.14, 444.15 and 444.18, Stats., the Department of Regulation and Licensing will hold a public hearing at the time and place indicated below to consider an emergency rule and a proposed rule to create Chapters RL 192 to 196, relating to the regulation of mixed martial arts sporting events.

**Hearing Information**

**Date:** September 20, 2010  
**Time:** 9:30 a.m.  
**Location:** 1400 East Washington Avenue  
(Enter at 55 North Dickinson Street)  
Room 121A  
Madison, Wisconsin

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

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but



are urged to submit facts, opinions and argument in writing as well. Facts, opinions and argument may also be submitted in writing without a personal appearance by mail addressed to Shawn Leatherwood, Department of Regulation and Licensing, Division of Board Services, 1400 E. Washington Ave., Room 152, P.O. Box 8935, Madison, WI 53708-8935, or by email [shawn\\_leatherwood@wisconsin.gov](mailto:shawn_leatherwood@wisconsin.gov). Written comments must be received by **September 27, 2010**, to be included in the record of rule-making proceedings.

### **Copies of Proposed Rule**

Copies of this proposed rule are available upon request to Shawn Leatherwood, Department of Regulation and Licensing, Division of Board Services, 1400 East Washington Avenue, P.O. Box 8935, Madison, WI 53708, or by email at [shawn.leatherwood@wisconsin.gov](mailto:shawn.leatherwood@wisconsin.gov).

### **Analysis Prepared by the Department of Regulation and Licensing**

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

2009 Wisconsin Act 111.

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

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

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

The Department of Regulation and Licensing has the authority under 2009 Wisconsin Act 111 to promulgate rules to implement the requirements under ch. 444, Stats., relating to the regulation of mixed martial arts sporting events.

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

There are no other statutes or rules other than those listed above.

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

This proposed rule-making order creates chs. RL 192 to 196 relating to the regulation of mixed martial arts sporting events. The proposed rules contain definitions, application and permit requirements, officials' duties at events, conducting sporting events, fouls, equipment, medical requirements, grounds for disciplinary action, and mandatory drug testing.

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

None.

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

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

Statutes and rules for conducting mixed martial arts sporting events are found in the Illinois Professional Boxing Act 225 ILCS 105 and the Illinois Administrative Code Title 68 Chapter VII Subchapter b Part 1371.

(see: <http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=1322&ChapAct=225%26nbsp%3BILCS%26nbsp%3B105%2F&ChapterID=24&ChapterName=PROFESSION+S+AND+OCCUPATIONS&ActName=Professional+Boxing+Act%2E>)

(see: <http://www.ilga.gov/commission/jcar/admincode/068/06801371sections.html>)

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

Iowa does not require licensure for conducting mixed martial arts sporting events.

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

Statutes and rules for conducting mixed martial arts sporting events are found in the Michigan Unarmed Combat Regulatory Act 2004 PA 403, MCL 338.3601 to MCL 338.3633 and the Michigan Administrative Code R339.101 – R339.403.

(see: [http://www.legislature.mi.gov/\(S\(1zvgaeyksa1fh945kmq4mour\)\)/mileg.aspx?page=ChapterIndex](http://www.legislature.mi.gov/(S(1zvgaeyksa1fh945kmq4mour))/mileg.aspx?page=ChapterIndex))

(see: [http://www.state.mi.us/orr/emi/admincode.asp?AdminCode=Single&Admin\\_Num=33900101&Dpt=LG&RngHigh=](http://www.state.mi.us/orr/emi/admincode.asp?AdminCode=Single&Admin_Num=33900101&Dpt=LG&RngHigh=))

Licensure must be sought through the Department of Labor and Economic Growth, Bureau of Commercial Services. The Unarmed Combat Commission assists the Director of the Department of Labor and Economic Growth in regulating the sport.

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

Statutes and rules for conducting mixed martial arts sporting events are found in the Minnesota Statutes §341.21–§341.37 and the Minnesota Register at Minn. Reg. §.2202.0010–§2202.1200.

(see: <https://www.revisor.mn.gov/statutes/?id=341>)

(see: <https://www.revisor.mn.gov/rules/?id=2202>)

Licensure must be sought via the Combative Sports Commission, which regulates the manner in which mixed martial arts contests will be conducted.

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

A department-approved advisory panel met several times in 2010 to draft these proposed rules. The advisory panel was comprised of Mixed Martial Arts combatants, judges, fight officials and promoters, and a physician familiar with the injuries incurred in mixed martial arts contests. Several department staff persons, including the State Boxing Commissioner, provided support and expertise to the advisory panel. In addition to the advisory panel's discussions, which formed the basis for the public safety protections, the regulations of several other states were reviewed. Provisions in force in some states were imported into the working draft, resulting in a set of standards that incorporates the most effective rules from other jurisdictions to rules that are unique to the regulation of mixed martial arts in Wisconsin.

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

There will be an effect on small businesses that promote mixed martial arts events in Wisconsin because previous to the legislation that was passed to regulate the sport, promoters did not need to meet certain requirements or pay certain fees that they will be required to pay now that the sport is regulated. Some of those fees and/or financial obligations that were outlined in 2009 Wisconsin Act 111 include: licensing fee, event fee, gate tax fee, bond requirements, and payment for inspectors, officials, etc. Payment for inspectors and officials was something that promoters paid for prior to the legislation being passed; however, we may require them to have more officials than they previously had which could increase their cost. The costs associated with regulating the sport are necessary to ensure the safety of the sport. Our fees are also in line with other states that conduct mixed martial arts events.

Section 227.137, Stats., requires an "agency" to prepare an economic impact report before submitting the proposed rule-making order to the Wisconsin Legislative Council. The

Department of Regulation and Licensing is not included as an “agency” in this section.

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

The department finds that this rule will have an impact on the private sector as indicated above. It is important to note that mixed martial arts events bring in significant revenue to cities that conduct these events. The Ultimate Fighting Championship brand brings in millions of dollars in revenue when they come to a given state to conduct one of their events. The revenue comes from the patronization of hotels, restaurants, retail and other businesses.

**Small Business Impact**

These proposed rules were reviewed by the department’s Small Business Review Advisory Committee to determine if the rules will have a significant economic impact on a substantial number of small businesses, as defined in s. 227.114 (1), Stats. The rule may have some impact as described above in the “Analysis and supporting documents used to determine effect on small business” section.

The Department’s Regulatory Review Coordinator may be contacted by email at [hector.colon@wisconsin.gov](mailto:hector.colon@wisconsin.gov), or by calling 608–266–8608.

**Fiscal Estimate**

The department will have a one–time cost of \$3,440 which will come from IT programming, form development and website updates. The department will have total on–going costs of \$245,440 (includes both mixed martial arts and boxing), which will consist of staff time for licensing activities and attending events.

**Agency Contact Person**

Shawn Leatherwood  
Dept. of Regulation and Licensing  
Division of Board Services  
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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.*

## **Agriculture, Trade and Consumer Protection**

### **CR 10-055**

Revises Chapter ATCP 60, relating to somatic cell standards for dairy goat milk.

## **Barbering and Cosmetology Examining Board**

### **CR 10-014**

Revises Chapter BC 7, relating to examinations for barbers and cosmetologists, aestheticians, electrologists, manicurists, and managers.

## **Commerce**

### ***Plumbing, Chs. Comm 81 to 87***

### **CR 10-064**

Revises Chapters Comm 5, 18 and 81 to 84, relating to the Wisconsin Uniform Plumbing Code.

## **Insurance**

### **CR 10-065**

Revises sections Ins 17.01 (3) and 17.28 (6), relating to fiscal year 2011 fund fees and mediation panel fees.

## **Public Instruction**

### **CR 10-058**

Amends section PI 34.31 (2) and creates section 34.01 (52m), relating to school nurse certification.

## **Public Instruction**

### **CR 10-074**

Creates Chapter PI 45, relating to the use of race-based nicknames, logos, mascots, and team names by school boards.

## **Public Instruction**

### **CR 10-075**

Creates Chapter PI 43, relating to education reform.

## **Transportation**

### **CR 09-044**

Creates Chapter Trans 123, relating to registration of off-road (non-standard) vehicles.

## **Transportation**

### **CR 10-070**

Revises Chapter Trans 100, relating to safety responsibility, damage judgment, and mandatory insurance laws.

## **Workforce Development**

### ***Apprenticeship, Chs. DWD 295 to 296***

### **CR 10-073**

Revises Chapter DWD 295, relating to apprenticeship.

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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.*

### Children and Families

#### *Safety and Permanence, Chs. DCF 35 to 59*

#### CR 10-021

Revises Chapters DCF 56 and 58, relating to foster care and kinship care.  
Effective 10-1-10.

### Children and Families

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

#### CR 10-056

Revises Chapter DCF 201, relating to authorized hours of subsidized child care.  
Effective 10-1-10.

### Financial Institutions — Securities

#### CR 10-062

Revises Chapters DFI—Sec 1, 2, 4, 5, 7, 8 and 32, relating to minor revisions to securities law and franchise law administrative code sections.  
Effective 10-1-10.

### Health Services

#### *Health, Chs. DHS 110—*

#### CR 10-034

Repeals and recreates Chapter DHS 131, relating to hospices, and affecting small businesses.  
Effective 10-1-10.

### Insurance

#### CR 10-023

Revises Chapter Ins 18, relating to independent review procedures.  
Effective 10-1-10.

### Insurance

#### CR 10-043

Creates section Ins 3.36, relating to autism spectrum disorders.  
Effective 10-1-10.

### Natural Resources

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

#### CR 07-111

Revises Chapters NR 102 and 106, relating to water quality standards for heat and associated procedures for the calculation of point source effluent limitations.  
Effective 10-1-10.



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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 August 31, 2010, Wisconsin Administrative Register. Copies of these rules are sent to subscribers of the complete Wisconsin Administrative Code and also to the subscribers of the specific affected Code.*

*For subscription information, contact Document Sales at (608) 266-3358.*

## Administration

### CR 08-025

Revises Chapter Adm 21, relating to construction bidding and contracting. Effective 9-1-10.

#### Summary of Final Regulatory Flexibility Analysis

The Department foresees a positive impact on small businesses. It is estimated the majority of bidders on state construction projects are small business contractors and vendors. This change will save contractors and bidders driving and delivery time and associated costs as well as allowing them additional time in the bidding process to prepare bids for submittal to the department.

#### Summary of Comments by Legislative Review Committees

No comments were reported.

## Children and Families

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

### CR 10-028

Creates Chapter DCF 35, relating to home visitation to prevent child abuse and neglect. Effective 9-1-10.

#### Summary of Final Regulatory Flexibility Analysis

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

#### Summary of Comments by Legislative Review Committees

No comments were received.

## Commerce

### *Licenses, Certifications and Registrations, Ch. Comm 5*

### CR 09-028

Revises Chapter Comm 5, relating to licensing of electricians. Effective 9-1-10 and 4-1-13.

#### Summary of Final Regulatory Flexibility Analysis

2007 Wisconsin Act 63 mandates state-wide electrician licensing as of April 1, 2013. Currently, the Department certifies master and journeyman electricians and register beginning electricians. The rules create a number of additional restricted licensing categories for industrial electricians and residential electricians and registration categories for the electrical apprentices and beginning electricians. The scope of work for industrial electricians will be limited to the facilities and properties of their employers. The scope of work for residential electricians will be limited to that associated with dwellings, dwelling units and detached accessory buildings and structures serving the dwellings or

the dwelling units, such as garages, carports, gazebos and swimming pools. The renewal of electrician licenses will continue to be contingent upon the fulfillment of continuing education obligations.

The department does not anticipate that the rules will increase the effect on small businesses over that imposed by the Act.

#### Summary of Comments by Legislative Review Committees

No comments were received.

## Commerce

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

### *Boilers and Pressure Vessels, Ch. Comm 41*

### *Mechanical Refrigeration, Ch. Comm 45*

### CR 10-011

Revises Chapters Comm 2, 41, and 45, relating to mechanical refrigeration. Effective 9-1-10.

#### Summary of Final Regulatory Flexibility Analysis

Less stringent requirements are not proposed for small businesses because the statutory directives under which these rules are proposed do not provide such flexibility.

Further clarification of the requirements relating to alterations to mechanical refrigeration systems, and of the potential applicability of other model codes was requested. Informational notes have been added to (1) explain that neither the *International Fire Code*<sup>®</sup> nor NFPA<sup>®</sup> 1 are applied by the Department to mechanical refrigeration systems and (2) encourage designers, contractors and owners to contact the Department to discuss their intentions for alterations and to determine, on a case-by-case basis, any upgrades that are then needed.

Several comments recommended adopting requirements that would be more restrictive than the requirements in the national standards which are referenced in the rules. The Department is postponing further consideration of those more-restrictive requirements until after they are included in the referenced national standards.

No new substantive reporting would be imposed on small businesses.

Although the rules would require periodic replacement of pressure relief valves in all existing ammonia mechanical refrigeration systems, the cost of this replacement is not expected to be significant. None of the other rule changes are expected to significantly increase the current cost of installing and operating mechanical refrigeration systems because the primary effect of the changes is to make chapter Comm 45 consistent with current regional and national standards for mechanical refrigeration, and with current industry and regulatory practices.

**Summary of Comments by Legislative Review Committees**

No comments were received.

**Commerce**

*Financial Resources for Businesses and Communities,  
Chs. Comm 100—  
CR 10-007*

Creates Chapter Comm 134, relating to meat processing facility investment credits. Effective 9-1-10.

**Summary of Final Regulatory Flexibility Analysis**

Less stringent application requirements are not proposed for small-business applicants because uniform application criteria are expected to result in maximizing the fairness and effectiveness of the allocation of the tax credits.

No substantive reporting would be imposed on small businesses.

The rules are not expected to impose significant costs on small businesses for other measures because the rules address submittal of documentation, and other activities, only by applicants that choose to pursue tax credits for investments in meat processing facilities.

**Summary of Comments by Legislative Review Committees**

No comments were received.

**Commerce**

*Financial Resources for Businesses and Communities,  
Chs. Comm 100—  
CR 10-008*

Revises Chapter Comm 132, relating to dairy manufacturing facility investment credits. Effective 9-1-10.

**Summary of Final Regulatory Flexibility Analysis**

Less stringent requirements are not proposed for small businesses because the directive under which these rules are proposed, section 560.207 of the Statutes, does not provide such flexibility.

No substantive reporting would be imposed on small businesses.

The rules are not expected to impose significant costs on small businesses for other measures because the rules address submittal of documentation only by dairy cooperatives that choose to pursue tax credits for investing in dairy manufacturing facilities.

**Summary of Comments by Legislative Review Committees**

No comments were received.

**Health Services**

*Medical Assistance, Chs. DHS 101—  
Health, Chs. DHS 110—  
CR 09-107*

Revises Chapters DHS 105, 106 and 133, relating to personal care agencies and providers, and affecting small businesses. Effective 9-1-10.

**Summary of Final Regulatory Flexibility Analysis**

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

**Summary of Comments by Legislative Review Committees**

No comments were received.

**Health Services**

*Health, Chs. DHS 110—  
CR 10-015*

Revises Chapters DHS 195 and 197, relating to carbon monoxide detectors in hotels, motels, tourist rooming houses, and bed and breakfast establishments, and affecting small businesses. Effective 9-1-10.

**Summary of Final Regulatory Flexibility Analysis**

The rule changes to Chapters DHS 195 and 197 will affect a substantial number of small businesses, however, the rule changes will not have a significant economic impact on those businesses.

**Summary of Comments by Legislative Review Committees**

No comments were received.

**Insurance**

**CR 10-026**

Revises section Ins 2.81, relating to use of the 2001 CSO Preferred Class Structure Mortality Table in determining reserve liabilities. Effective 9-1-10.

**Summary of Final Regulatory Flexibility Analysis**

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

**Summary of Comments by Legislative Review Committees**

No comments were received.

**Justice Assistance**

**CR 10-010**

Creates Chapter OJA 1, relating to the collection and analysis of motor vehicle traffic stop information. Effective 9-1-10 and 1-1-11.

**Summary of Final Regulatory Flexibility Analysis**

These rules do not have a significant effect on small business.

**Summary of Comments by Legislative Review Committees**

No comments were reported.

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

(DNR # IS-07-10)

Revises Chapter NR 40, relating to the identification, classification and control of invasive species, and affecting small business. Effective 9-1-10.

**Summary of Final Regulatory Flexibility Analysis**

The 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. Small businesses that may be affected by the 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.

The “housekeeping” revisions should improve the public’s ability to understand and comply with ch. NR 40. No new reporting, bookkeeping or other procedures are created by the rule. No new professional skills are needed to comply with the rule.

**Summary of Comments by Legislative Review Committees**

No comments were reported.

**Veterans Affairs****CR 09-091**

Revises section VA 2.01, relating to the Assistance to Needy Veterans grant program. Effective 9-1-10.

**Summary of Final Regulatory Flexibility Analysis**

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

**Summary of Comments by Legislative Review Committees**

No comments were reported.

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

Creates Chapter DWD 273, relating to the regulation of traveling sales crews. Effective 9-1-10.

**Summary of Final Regulatory Flexibility Analysis**

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

**Summary of Comments by Legislative Review Committees**

No comments were received.

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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 **August 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

#### Administration

##### Ch. Adm 21

Adm 21.01 (1)  
 Adm 21.02 (3), (7) to (9)  
 Adm 21.03 (2), (3) (intro.)  
 Adm 21.04 (1)  
 Adm 21.05  
 Adm 21.06 (1) (b)  
 Adm 21.07 (1) (intro.), (b), (3) (c), (d)  
 Adm 21.08 (1) (intro.), (f), (2) (intro.), (3), (4), (7)  
 Adm 21.09 (1), (2), (4) to (6)

#### Children and Families

##### Ch. DCF 35 (Entire Chapter)

#### Commerce

##### Ch. Comm 2

Comm 2.13 (1)

##### Ch. Comm 5

Comm 5.003 (17)  
 Comm 5.02 Table  
 Comm 5.06 Table  
 Comm 5.40  
 Comm 5.405  
 Comm 5.41  
 Comm 5.43 (5) to (7)  
 Comm 5.435  
 Comm 5.44 (1) (intro.), (2) (intro.), (3) (a), (4) to (6)  
 Comm 5.443  
 Comm 5.447  
 Comm 5.45  
 Comm 5.46  
 Comm 5.63 (4) (b)  
**Ch. Comm 41**  
 Comm 41.02 (1) (b)  
**Ch. Comm 45 (Entire Chapter)**  
**Ch. Comm 132**  
 Comm 132.10  
 Comm 132.20

Comm 132.30 (1), (2), (4)

Comm 132.40 (title), (1), (2)

Comm 132.50

Comm 132.60

##### Ch. Comm 134 (Entire Chapter)

#### Health Services

##### Ch. DHS 105

DHS 105.01 (6)

DHS 105.17 (1), (1c), (1e), (1f), (1g), (1n), (1r), (1w),  
 (2), (3), (4), (5)

##### Ch. DHS 106

DHS 106.06 (4m)

##### Ch. DHS 133

DHS 133.02 (5m) (c), (d)

##### Ch. DHS 195

DHS 195.145

##### Ch. DHS 197

DHS 197.145

#### Insurance

##### Ch. Ins 2

Ins 2.81 (4) (c), (5) (e)

#### Justice Assistance, Office of

##### Ch. OJA 1 (Entire Chapter)

#### Natural Resources

##### Ch. NR 40

NR 40.02 (3m), (16), (42), (53)

NR 40.04 (2) (b), (c)

NR 40.05 (2) (b)

NR 40.07 (4), (7)

#### Veterans Affairs

##### Ch. VA 2

2.01 (1) (u), (v), (3) (d) to (g)

#### Workforce Development

##### Ch. DWD 273 (Entire Chapter)

### Editorial Corrections

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

#### Insurance

##### Ch. Ins 2

Ins 2.81 (5) (e)



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