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WISCONSIN ADMINISTRATIVE REGISTER

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Emergency Rules Now in Effect

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

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

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

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

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

Copies of emergency rule orders can be obtained from the promulgating agency. The text of current emergency rules can be viewed at www.legis.state.wi.us/rsb/code.

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

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
Extension Through: November 17, 2010
Hearing Date: May 25, 2010

Children and Families (2)

Safety and Permanence, Chs. DCF 37–59

1. 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

2. EmR1034 — Rule adopted to create sections **DCF 57.485 and 57.49 (1) (am)**, relating to determination of need for new group homes.

Exemption From Finding of Emergency

Section 14m (b) of 2009 Wisconsin Act 335 provides that the department is not required to provide evidence that promulgating a rule under s. 48.625 (1g), Stats., 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.

Section 14m (b) also provides that notwithstanding s. 227.24 (1) (c) and (2), Stats., an emergency rule promulgated under s. 48.625 (1g), Stats., remains in effect until the permanent rules promulgated under s. 48.625 (1g), Stats., take effect.

Publication Date: September 2, 2010
Effective Dates: September 2, 2010 through January 29, 2011
Hearing Date: October 21, 2010
 (See the Notice in this Register)

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
Hearing Date: October 1, 2010
 (See the Notice in this Register)

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

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

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
Extension Through: December 15, 2010
Hearing Date: August 30, 2010

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. 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
Extension Through: October 24, 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

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

Natural Resources (3)

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

3. EmR1033 — Rule adopted to revise **section NR 10.01 (1)**, relating to hunting and the 2010 migratory game bird seasons and waterfowl hunting zones.

Finding of Emergency

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

Publication Date: September 1, 2010
Effective Dates: September 1, 2010 through January 28, 2011

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

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

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.

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

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

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

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
Hearing Date: September 28, 2010

(See the Notice in this Register)

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

Scope Statements

Children and Families *Safety and Permanence, Chs. DCF 35–59*

Subject

Revises Chapter DCF 56, relating to foster care levels of care.

Policy Analysis*Levels of Care, Phase Two*

Section 48.62 (8), Stats., as created by 2009 Wisconsin Act 28 and amended by 2009 Wisconsin Act 71, provides that the Department shall promulgate rules relating to foster homes as follows:

- Rules providing levels of care that a licensed foster home is certified to provide. Those levels of care shall be based on the level of knowledge, skill, training, experience, and other qualifications that are required of the licensee, the level of responsibilities that are expected of the licensee, the needs of the children who are placed with the licensee, and any other requirements relating to the ability of the licensee to provide for the needs of the child that the department may promulgate by rule.
- Rules establishing a standardized assessment tool to assess the needs of a child placed or to be placed outside the home, the assessment shall be used to determine the level of care that is required to meet those needs, and to place the child in a placement that meets those needs. A foster home that is certified to provide a given level of care may provide foster care for any child whose needs are assessed to be at or below the level of care that the foster home is certified to provide. A foster home that is certified to provide a given level of care may not provide foster care for any child whose needs are assessed to be above that level of care unless the department, county department, or child welfare agency issuing the foster home license determines that support or services sufficient to meet the child's needs are in place and grants an exception to that prohibition.
- Rules providing monthly rates of reimbursement for foster care that are commensurate with the level of care that the licensed foster home is certified to provide and the needs of the child who is placed in the foster home. Those rates shall include rates for supplemental payments for special needs of the child and exceptional circumstances for a foster home that is receiving an age–related monthly rate. In promulgating the rules, the Department shall provide a mechanism for equalizing the amount of reimbursement received by a foster parent prior to the promulgation of those rules and the amount of reimbursement received by a foster parent under those rules so as to reduce the amount of any reimbursement that may be lost as a result of the implementation of these rules.
- Rules providing a monthly retainer fee for a foster home that agrees to maintain openings for emergency placements.

The Department is implementing the rules on levels of care in two phases. A previous rulemaking order created the process for certification of licensed foster homes at Level 1 and Level 2. This rulemaking order will create the requirements for foster homes and licensing agencies at Levels 3 to 5, establish the customized assessment tool, provide the process to determine monthly rates of reimbursement above the basic maintenance payment under levels of care, and provide for a monthly retainer fee for a foster home that agrees to maintain openings for emergency placements.

Physical Restraint of Foster Children

A physical restraint is any physical hold, apparatus, or mechanical support, excluding a medical restraint prescribed by a child's physician, that interferes with the free movement of a person's limbs or body. The proposed rules will provide that generally foster parents may not use any type of physical restraint with a foster child unless there is an immediate risk to the safety of the foster child or another person that cannot be managed by alternative means. An exception approval process will allow for limited circumstances in which foster parents would have approval to use physical restraint with a foster child. Foster parents shall use means of diffusing a situation such as de–escalation techniques rather than physical restraint whenever possible.

Protecting Foster Children from the Effects of Second–Hand Smoke

The proposed rules will also require that foster parents refrain from smoking or allowing any other person to smoke in the foster home while foster children are present and refrain from smoking or allowing any other person to smoke in vehicles while transporting foster children. The licensing agency may grant a non–safety related waiver to this requirement for a foster parent who is a relative of the child, unless granting the waiver is contraindicated by the specific health needs of the child in care.

Statutory Authority

Sections 48.62 (8) and 227.11 (2), Stats.

Comparison with Federal Regulations

None.

Entities Affected by the Rule

Prospective and current foster parents, county and tribal human or social services agencies, and licensed child–placing agencies.

Estimate of Time Needed to Develop the Rule

400 hours.

Contact Information

Jonelle Brom, Out–of–Home Care Specialist
Bureau of Permanence and Out–of–Home Care
Phone: (608) 264–6933
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Employee Trust Funds

Subject

Repeals and recreates section ETF 20.055 to reflect statutory changes in department practices regarding spousal consent on benefit applications.

Policy Analysis

ETF is responsible for administering the benefit programs authorized under Chapter 40 of the Wisconsin Statutes. Since s. ETF 20.055 was promulgated, a spousal consent provision for separation benefits was enacted in 1993 Wisconsin Act 426. The purpose of this rulemaking is to amend s. ETF 20.055 to reflect the provisions in Wisconsin Act 426 and expand the language related to spousal consent waivers.

Statutory Authority

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

Comparison with Federal Regulations

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

Entities Affected by the Rule

The new rules will affect Wisconsin Retirement System participants and their spouses.

Estimate of Time Needed to Develop the Rule

State employees will spend an estimated 35 hours to develop these rules.

Financial Institutions — Securities

Subject

Revises section DFI–Sec 1.02, relating to the definition of “institutional investor”.

Policy Analysis

The proposed rule will create s. DFI–Sec 1.02 (21) (a) to (g). The purpose of this rule is to reinstate former rule s. DFI–Sec 1.02 (8) (a) to (c) and (e) to (h) regarding the “institutional investor” definition inadvertently deleted in the 2009 securities rule revisions.

Statutory Authority

Sections 555.102 (11) (p), 551.605 (1), 227.11 (2), Stats.

Comparison with Federal Regulations

Rule 501(a) (1)–(3) of the federal Securities Act of 1933.

Entities Affected by the Rule

Issuers of registered securities or securities exempt from registration, broker–dealers and their securities agents, investment advisers and their investment adviser representatives, federal and state securities regulatory authorities, and securities self–regulatory organizations.

Estimate of Time Needed to Develop the Rule

20 hours.

Contact Information

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Health Services

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

Subject

Revises s. DHS 1.06 (3) (d) and (e), relating to the retention of records and the designation of files as either active or inactive.

Objective of the Rule

The objective is to change the treatment of active and inactive client records. Active client records are those records with a liability still attached; and inactive client records are those records that have been paid in full or have been determined to be uncollectible and their liability has been adjusted to zero thereby eliminating liability. The rule changes also reduce the amount of time all inactive client records are retained from 10 years to 5 years. All active client records are retained until they become inactive.

Policy Analysis

The first part of the rule changes will change the treatment of active and inactive client records. It is important to note that these rule changes only impact those financial records defined in s. DHS 1.06 (3) (a). Currently, s. DHS 1.06 (3) (d) provides that active records are those where a liability exists, except for those files where the client has received inpatient mental health services. Section DHS 1.06 (3) (e) does not provide a definition for inactive client records and requires the retention of inactive mental inpatient records for 10 years. The Department wants to remove the exception for inpatient mental health services for active client records, and simply define all client records as active when a liability exists; and define inactive files as those files without a liability, whether that occurs because the liability has been paid in full or if the file has been determined to be uncollectible and the liability on the file has been adjusted to zero. The Department also wants to remove the exception for inactive mental inpatient records within s. DHS 1.06 (3) (e) and retain all inactive records for 5 years.

The Department believes it is necessary to move forward with these rule changes for several reasons:

(1) The Department has changed its business practices and no longer recognizes the distinction between inpatient mental health client records and all other client records. Thus, client records for inpatient mental health clients need not be held for a longer period of time;

(2) This distinction has created confusion across the counties and has led to different applications of the rules across those counties. By simplifying the rules and removing this confusing distinction, the Department will increase uniformity across the State; and

(3) The Department will save on storage costs by shortening the time records are held.

These proposed rule changes are administrative in nature and will not have a significant impact on the public. The Department, and various counties of the State, will realize decreased costs and reduce unnecessary spending, along with an increase in uniformity and accountability.

Statutory Authority

Sections 46.03 (18), 46.10 (1) to (14) (a), 227.11 (2), Stats.

Comparison with Federal Regulations

There appears to be no existing or proposed federal regulation that addresses the activities to be regulated by the proposed rules.

Entities Affected by the Rule

Various counties across the State.

Dept. of Health Services — Bureau of Fiscal Services — Billing and Collections.

Estimate of Time Needed to Develop the Rule

The Department expects less than ten hours to develop the rule and needs no other resources.

Contact Information

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

Subject

Revises section MPSW 1.09 to allow licensed marriage and family therapists, professional counselors and clinical social workers to engage in substance abuse counseling without seeking separate certification as a substance abuse counselor under s. 440.088, Stats. Additionally, the intended revision will eliminate the provisions for applying for and receiving a substance abuse specialty within s. MPSW 1.09.

Objective of the Rule

The objective of the rule change is to allow ch. 457, Stats. licensed professionals to engage in substance abuse counseling without requiring them to become certified substance abuse counselors under s. 440.88, Stats. The board also intends to eliminate the specified education hours and training required for the substance abuse specialty, as well as the granting of the substance specialty under s. MPSW 1.09. For those providing ongoing treatment of substance abuse counseling, the amended rules will require an as of yet unspecified amount of hours in continuing education. The changes pursued by the board will allow licensed marriage and family therapists, professional counselors and clinical social workers to provide therapy for primary and co-occurring substance abuse disorders if they are adequately trained to do so without need of additional certification. Other master’s level credential holders, i.e. certified advanced practice and independent social workers, marriage and family therapists and professional counselor training license holders, could provide such services under adequate supervision. The envisioned changes to the rule will require certified social workers to pursue substance abuse counselor certification under s. 440.88, Stats., in order to provide substance abuse counseling services.

Policy Analysis

Currently, under s. MPSW 1.09, a person credentialed by the board may use the title “alcohol or drug counselor” or “chemical dependency counselor” only if he or she is certified as an alcohol and drug counselor or as a chemical dependency counselor through a process recognized by the Department of Health. (*Note: 2005 Wis. Act 25 transferred the authority for regulation of substance abuse counselors from the Department of Health Services to the Department of Regulation and Licensing.*) A person credentialed by the board may treat alcohol or substance dependency or abuse only if he or she is qualified to do so by education, training and experience.

Under s. 457.02, Stats., marriage and family therapists, professional counselors and social workers are not authorized

to treat alcohol or substance dependency or abuse as a specialty unless the individual is a certified substance abuse counselor, or unless the individual satisfies educational and supervised training requirements established in rules promulgated by the board. The statutory guidelines for promulgation of those rules advise the board to consider the existing requirements for state certification of substance abuse counselors, however the statute does not direct the board to adopt or use state rules as a guideline.

Finally, it is the position of the board that licensed professionals who have had the requisite education, training and experience in treatment of substance abuse may provide substance abuse therapy as treatment of such is included with the definition of psychotherapy and the provision of psychotherapy is within their legal scope of practice. The limiting factor of the disorders that a therapist treats is their prior training and experience and is an issue of ethics. i.e., a therapist may not ethically practice in areas in which they lack competence.

Statutory Authority

Sections 15.08 (5) (b), 227.11 (2), 457.02 (5m) and 457.03, Stats.

Comparison with Federal Regulations

None.

Entities Affected by the Rule

Marriage and family therapists, professional counselors and social workers — all levels will be affected by the rule (credential holders).

Estimate of Time Needed to Develop the Rule

Approximately 120 hours.

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

Subject

Revises section MPSW 3.13, relating to social worker training certificates.

Objective of the Rule

To clarify and update s. MPSW 3.13, regarding requirements for issuance of a social worker training certificate. The objective of the proposed updates is to reduce confusion among prospective applicants, streamline and clarify education and training approval procedures, and increase education requirements required under the social worker training certificate so that they are equivalent to the requirements of an accredited baccalaureate degree in social work.

Policy Analysis

The social worker training certificate was enacted in law to allow students with undergraduate degrees in a small number of social–science majors to obtain basic level social worker certification by completing a number of social work courses and a supervised internship or work experience. The statutes allow persons with undergraduate degrees in three specific majors (sociology, psychology, and criminal justice) to automatically qualify for the training certificate. Additionally, there is a category of “other human service degree programs” which the social worker section has come to believe is poorly defined in s. MPSW 3.13. In the section’s view, the current rules regarding this option have created significant problems for persons applying for the certificate

and for the department since each application must be reviewed by the section individually in order to determine if the major meets the requirements. Further, applicants seek approval for the certificate after they have completed a program, and may be disappointed to learn that their program does not meet the requirements of the social worker training certificate. Applicants and employers may be harmed if an applicant takes a job that requires the training certificate but later learns that the applicant's degree major does not meet the minimum requirements. These persons use a disproportionate amount of department staff time in attempting to pursue a credential that they are not able to obtain with their educational background. (e.g. After they complete their education, they may have a job opportunity that requires certification, they apply, are denied and afforded a class 1 hearing before the section. If they do not prevail, the typical result is termination from their social services position.) The social worker section is modifying its rules to create a process for preapproval of majors in order to provide clear guidelines to applicants, employers, colleges and universities, and department staff as to which "other human services" degrees will meet the requirements.

Additionally, the Council on Social Work Education (CSWE) has revised their requirements for the baccalaureate degree in social work. Significant changes to the CSWE educational policy and accreditation standards go into effect later in 2010, and all social work degree programs will be reviewed according to these new guidelines. The social worker section believes that as the standards for the accredited bachelor's degree in social work is increasing; there is a subsequent need to modify the existing rules to make the educational requirements for the social worker training certificate more equivalent to a baccalaureate degree in social work given these new guidelines. According to s. 457.09 (4), Stats., the social worker training certificate sets standards to create a path towards equivalency with a baccalaureate degree in social work. The social worker section is responsible for establishing rules which spell out the requirements for the social worker training certificate to meet the equivalency standards, and the current rules regarding course requirements, internships, and employment need to be updated to reflect the changing standards in the field of social work.

Statutory Authority

Sections 15.08 (5) (b), 227.11 (2), 457.03, 457.09 and 457.22, Stats.

Comparison with Federal Regulations

None.

Entities Affected by the Rule

Social workers.

Estimate of Time Needed to Develop the Rule

Approximately 120 hours.

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

DNR # ER–35–10

Subject

Revises Chapter NR 27, relating to the listing of cave bats as threatened species.

Objective of the Rule

The Department is in the process of implementing surveillance, monitoring, research and outreach programs that are designed to help slow the spread of white–nose syndrome (WNS) upon its arrival in the state. The Department will be seeking to make changes to Wis. Adm. Code Ch. NR 27 to include listing cave bats as threatened. With no regulatory authority for cave bats, the objective of listing is to provide immediate protection for the four species of cave bats that meet listing criteria, and address the emerging spread and threat of WNS to the state bat populations. The NR Board heard an informational item on the cause and spread of WNS several months ago. The Department anticipates the need to have a rule approved by the NRB by December, 2010 in order to manage the disease effectively.

Policy Analysis

Currently bats receive no protection in the state. Listing cave bats as threatened will provide adequate authority to minimize additional sources of mortality and begin work with stakeholders to implement best management practices. The alternative action of do nothing does not allow the Department to carry out management actions needed to limit the spread of WNS in the state or minimize bat mortality.

Statutory Authority

Sections 23.09 (2) (p), 29.604 (3), 29.924 (5), and 227.11 (2) (a), Stats.

Comparison with Federal Regulations

No known federal regulations or decisions.

Entities Affected by the Rule

Groups likely affected by the the listing of cave bats include commercial caves and mines, recreational cavers, wildlife rehabilitators, animal control operators, private cave and mine owners, the agricultural and forest industry and the conservation community. The Department has been working with these groups to identify concerns and opportunities for collaboration in the effort to slow the spread of WNS and protect Wisconsin cave bats.

Estimate of Time Needed to Develop the Rule

The Department anticipates that approximately 374 hours of staff time will be needed.

Contact Information

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Natural Resources *Fish, Game, etc., Chs. NR 1—* *DNR # IS–41–10*

Subject

Revises section NR 40.04, relating to the listing of *Geomyces destructans* as a prohibited invasive species.

Objective of the Rule

The rapid spread of white–nose syndrome (WNS) in bats necessitates immediate action on the part of the Department. The Department is requesting approval to list the white nose fungus as an invasive species: the addition of *Geomyces*

destructans to the prohibited species listed in Wis. Adm. Code NR 40.04. Listing the fungus as a prohibited invasive species under NR 40.04 give the Department the ability to effectively manage the fungus' spread and limit human transport. Wisconsin cave bats travel large distances, sometimes hundreds of miles from their summer roosting areas to their overwintering grounds to hibernate. Wisconsin has some of the Midwestern United States' largest populations of cave bat species, and it is also known that bats are shared with neighboring states. Therefore, allowing this invasive species of fungus to spread unchecked has the potential of facilitating its spread throughout the region. The Department anticipates the need to have a rule approved by the NRB by December, 2010 in order to manage WNS effectively.

Policy Analysis

Geomyces destructans is a nonnative species to Wisconsin, with a likely European origin, and its introduction will cause economic and/or environmental harm. Two recent peer-reviewed journal articles have found and described the same fungus in four European countries. The most likely mode of introduction into the United States would have been through human transport of the fungus.

Based on evidence from the states where WNS has been found, the fungus has the potential of greatly reducing or extirpating Wisconsin's cave bats by 70% in the first year, and greater than 90% in the second year after the introduction. Bats are primary predators of night flying insects, many of which are agricultural, forest, and human health pests such as mosquitoes which can transmit the West–Nile virus. Indirect and direct economic impacts are tied to likely increases in chemical pesticides costs needed to combat the agriculture and forest insect pests with population decline of these species.

Although the 2009/2010 winter surveys did not indicate the fungus is in Wisconsin, it has been found in neighboring states and is at present as close as 250 miles south of our border in Missouri and 300 miles north of our border in Ontario Canada. Little brown bats, currently Wisconsin's most common cave bat, are known to migrate over 270 miles and the fungus has been shown to spread as far as 900 miles in one year.

The limited number of hibernacula in the state makes it feasible to implement control efforts having long-term protection benefits. Current research is investigating methods for environmental control and treatment of affected sites. There are also actions presently available to help slow the spread while waiting for additional treatment options to become available.

There is no recognized, anticipated, or likely beneficial use or commercial value of the fungus *Geomyces destructans* itself. The negative socio-economic impacts are related to reduced recreational opportunities for cavers. Conversely, introduction of the fungus will likely increase agricultural and forestry expenses needed to combat pests, and reduced crop production of organic farms. Finally, wildlife viewing areas to watch fall swarming behavior at hibernacula would no longer be an option for citizens interested in experiencing the night-time flight emergence of some of Wisconsin's important natural resources.

The alternative action of do nothing does not allow the Department to carry out management actions to limit the spread of WNS in the state or minimize mortality.

Statutory Authority

Sections 23.22 (2) (b) 6. and (2t) and 227.11 (2) (a), Stats.

Comparison with Federal Regulations

No known federal regulations or decisions.

Entities Affected by the Rule

Groups likely affected by the bat management rule and the listing of cave bats include commercial caves and mines, recreational cavers, private cave and mine owners, the agricultural and forest industry and the conservation community. The Department has been working with these groups to identify concerns and opportunities for collaboration in the effort to slow the spread of WNS.

Estimate of Time Needed to Develop the Rule

The Department anticipates that approximately 374 hours of staff time will be needed.

Contact Information

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Natural Resources *Fish, Game, etc., Chs. NR 1—* DNR # FR-45-10

Subject

Revises Chapter NR 46, relating to administration of the Managed Forest Law (MFL) Program.

Objective of the Rule

2009 Wisconsin Act 365 was signed into law on May 18, 2010 and provides a multitude of benefits to landowners, DNR and cooperating foresters, and local municipalities. It simplifies the application process for landowners and foresters by eliminating the multiple deadlines, provides options for stepped enforcement to encourage compliance and keep land under the law, provides better notification to buyers of MFL lands so that informed decisions on land transactions can be made, and provides improved avenues for local municipalities to receive their tax revenue from landowners when timber sales occur. Overall, 2009 Wisconsin Act makes the MFL program easier to explain, enter and enforce. NR 46, Wis. Admin. Code needs to be amended as a result of Act 365 to reflect current statutory language.

DNR is also continuing to streamline the administration of the MFL program to reduce undue process. New computer mapping programs make it necessary to eliminate long held mapping standards to support GIS capabilities. Review and referral periods will need amendment as a result of changes to computer data collection and on line application review systems. Changes to the management plan development process for private, non-industrial landowners purchasing lands from large, industrial accounts are also being sought to facilitate sound management of these forested acreages. These and other changes to the administration of the MFL program will allow for faster development and approval of MFL applications, and will eliminate processes and programs that are no longer needed.

Policy Analysis

Wisconsin's Managed Forest Law (MFL) was created in 1986 for the purpose of promoting sound forestry practices on privately owned woodlands. Since 1986 the MFL program

has been amended many times to balance the incentive for private landowners to enroll in MFL program with the public willingness to support it. The sum of these changes had made the MFL program complex and difficult to explain, enter and enforce.

Changes as a result of 2009 Wisconsin Act 365 have simplified many provisions of the MFL program. In addition, computer programming tools will also reduce or eliminate complex processes, further simplifying the MFL program.

Most changes required in NR 46 as a result of Act 365 are not a change from past policy. Terminology changes add clarity to landowners and partners. Changes in application deadlines do not change past policy since landowners have always had deadlines to apply for MFL. The changes due to application, approval and referral deadline changes do not represent a change in policy since these deadlines have always existed.

A change in policy will result in requiring small, non–industrial landowners who purchase large industrial lands to have a proposed management plan developed as part of the transfer process. Currently the department could take up to three years to develop these management plans. Requiring the landowner to develop a proposed management plan would allow for these lands to have a forest inventory and management practice schedule within one year, thus insuring that sustainable forestry is being practiced. Certified plan writers would likely develop these management plans.

Statutory Authority

Chapter 77, Wis. Stats.

Comparison with Federal Regulations

There are no existing or proposed federal regulations to compare with Wisconsin’s Managed Forest Law or Forest Crop Law programs.

Entities Affected by the Rule

Landowners who are enrolling lands into the MFL program or who are purchasing lands that are already enrolled in the MFL program.

Certified plan writers and department foresters who are developing application material for landowners.

Department foresters who are reviewing application materials or are administering the provision of the MFL program.

Estimate of Time Needed to Develop the Rule

The department estimates that approximately 138 hours of existing staff time will be needed to develop this rule. The time includes meeting with department staff and surveying certified plan writers to collect information on standards, drafting the rule, taking the rule to statewide public hearing, preparation for meetings with the Natural Resources Board, legislative review, and rule adoption.

Contact Information

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Natural Resources

Environmental Protection — General, Chs. NR 100—

DNR # OE–46–10

Subject

Revises Chapter NR 150, relating to the Department’s implementation of the Wisconsin Environmental Policy Act (WEPA) and s. 1.11, Wis. Stats.

Objective of the Rule

The Department proposes to repeal and replace Ch. NR 150, Wis. Adm. Code, *Environmental Analysis and Review Procedures for Department Actions*. Chapter NR 150 was first promulgated in 1981 and last comprehensively reviewed and revised in 1987.

The rule change will make the Department’s WEPA compliance more effective, meaningful and consistent with WEPA and s. 1.11, Wis. Stats. A new rule will emphasize the analysis of broad issues and policies, de–emphasize document production for individual project actions, and provide meaningful public involvement. The new rule will require that the Department:

- (1) Identify and analyze environmental issues important for their geographic, multidisciplinary, or policy scope;
- (2) Analyze issues earlier, when alternative options have not been foreclosed, and on an ongoing basis;
- (3) Provide that environmental analysis information be incorporated into departmental policy and decision–making;
- (4) Define and provide meaningful public involvement;
- (5) Address the information/policy–driven requirements of s. 1.11 (2) (e) and (h) as separate from the action/project–driven requirements of s. 1.11 (2) (c);
- (6) Identify and eliminate process requirements that have become duplicative over time as a result of changes in statutory authorities and administrative practice; and
- (7) Replace the current Ch. NR 150, Wis. Adm. Code, type list with criteria for identifying, prioritizing, analyzing and seeking public input on relevant issues.

Office of Energy and Environmental Analysis (OEAA) staff will lead this rule revision effort. They will work with an internal team of staff from several Department programs impacted by the rule to obtain their input. We also plan to involve potentially interested and affected external parties.

Policy Analysis

WEPA and NR 150 are cornerstone laws for the agency that date back to the early 1970’s. The last major revision to this administrative code was in 1987. Given the many changes in Department activities since then, the code is now substantially outdated and contains many procedural requirements which create workload inefficiencies for Department staff and confusion for the public.

The fundamental Department policy regarding WEPA, as currently embodied in NR 150, will not change. The rule re–creation may result in a number of procedural changes and a new emphasis on how the Department applies the Wisconsin Environmental Policy Act, especially to its policy development actions

Statutory Authority

Sections 1.11 and 227.11, Wis. Stats.

Comparison with Federal Regulations

The 1970 Wisconsin Environmental Policy Act (WEPA) and s. 1.11 Stats., were modeled after the National Environmental Policy Act (NEPA) of 1969. NEPA created the Council on Environmental Quality (CEQ), that established guidelines and regulations to implement the Act. As with other state agency WEPA rules, NR 150 was based in part upon the federal CEQ guidelines. This revision of NR 150 will remain true to the CEQ guidelines.

Entities Affected by the Rule

As NR 150 applies to all Department actions, but is a requirement that DNR must meet. Many of those regulated entities and interested parties that are involved in the full array of DNR actions including planning, policy making, and permitting, may have an interest in the revised rule. We expect to involve key stakeholder groups in the advisory committee and in the public outreach for the rule, with an expectation that those representing major regulated groups and those representing conservation and natural resource interests will likely be most heavily involved.

Estimate of Time Needed to Develop the Rule

The Department estimates the following hours of existing staff time will be needed to develop these rules:

OEEA — 300 hours

Legal — 80 hours

M&B — 1.5 hours

Contact Information

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Natural Resources

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

DNR # AM–44–10

Subject

Revises Chapters NR 419, 421, 422, and 423, relating to reasonably available control technology (RACT) rules for volatile organic compounds (VOC).

Objective of the Rule

The purpose of the proposed rules will be to correct deficiencies identified by U.S. EPA (EPA) with the DNR's recently adopted VOC RACT rules. This will require revisions to Chapters NR 419, 421, 422 and 423 of the administrative code and may involve amendments to other chapters necessary to accomplish the purpose of the VOC RACT rules and associated control techniques guideline

(CTG) documents. Other amendments to these chapters may also be made to clarify existing requirements.

The rule revisions are necessary to obtain EPA approval of the adopted rules into the state's federally–approved state implementation plan (SIP) as a condition of Wisconsin's strategy for attainment of the 1997 ozone standards.

Policy Analysis

Since EPA has developed CTG documents for the states to follow, the Bureau of Air Management does not expect to deal with major policy decisions related to rule drafting. The proposed rule changes address EPA's identified deficiencies in the recently adopted VOC RACT rules. However, some minor changes to EPA's guidelines may be necessary to improve implementation in Wisconsin.

Statutory Authority

Section 285.11 (6), Wis. Stats., requires DNR to develop a plan for the prevention, abatement and control of air pollution. With limited exceptions, the rules or control strategies for ozone control must conform to the federal Clean Air Act.

Comparison with Federal Regulations

To guide the states' VOC RACT rule development, EPA has developed CTG documents that the states must follow in establishing applicability criteria, emission limits and other requirements for RACT rules. DNR's rule development will be based on and consistent with EPA guidance documents, but some minor changes from EPA's guidelines may be necessary to improve implementation in Wisconsin.

Entities Affected by the Rule

Affected parties include industrial sources in the various identified categories. These categories are: synthetic organic chemical manufacturing; industrial wastewater; industrial solvent cleaning; lithographic printing; letter press printing; flexible package printing; flat wood panel coating; paper, film, and foil coating; large appliance coating; and metal furniture coating. There are several other organizations that may not be directly affected by the rule, but are likely to have an interest in rule development including Wisconsin Manufacturers and Commerce, Printing Industries of Wisconsin, environmental organizations such as Clean Wisconsin and Sierra Club, and public health organizations.

Estimate of Time Needed to Develop the Rule

Since the proposed rules involve a number of source categories, the Bureau of Air Management expects to use multiple rule drafters for the various VOC RACT categories. A total of about 620 hours is needed for the rule making project.

Contact Information

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Submittal of Rules to Legislative Council Clearinghouse

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

Agriculture, Trade and Consumer Protection **CR 10–106**

On August 31, 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 revises Chapter ATCP 69, relating to buttermaker license qualifications.

Agency Procedure for Promulgation

A public hearing will be held on October 1, 2010. The Department’s Office of Legal Counsel is primarily responsible for this rule.

Contact Information

Tom Leitzke
Phone: (608) 224–4711

Agriculture, Trade and Consumer Protection **CR 10–107**

On August 31, 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 revises Chapter ATCP 20, relating to agricultural and vegetable seed.

Agency Procedure for Promulgation

A public hearing will be held on October 13, 2010. The Department’s Office of Legal Counsel is primarily responsible for this rule.

Contact Information

Bob Dahl
Phone: (608) 224–4573

Children and Families **Safety and Permanence, Chs. DCF 35–59** **CR 10–105**

On August 31, 2010, the Department of Children and Families submitted a proposed rule–making order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed order revises Chapter DCF 57, relating to determination of need for new group homes.

Agency Procedure for Promulgation

A public hearing is required and will be held on October 21, 2010. The Department’s Division of Safety and Permanence is primarily responsible for this rule.

Contact Information

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Rule–Making Notices

Notice of Hearing

Agriculture, Trade and Consumer Protection

CR 10–100

(Reprinted from the 8/31/10 Register)

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 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 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. 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 1* 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 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

Melissa Mace
Phone: (608) 224–4883
Email: Melissa.mace@wi.gov

Notice of Hearing

Agriculture, Trade and Consumer Protection CR 10–106

The Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) announces that it will hold a public hearing on rules to create section ATCP 69.01 (3) (e) and (f), relating to buttermaker license qualifications. DATCP will hold the public hearing at the time and location shown below.

Hearing Information

October 1, 2010

10:00 a.m. – 11:30 a.m.

WI Department of Agriculture, Trade & Consumer Protection
2811 Agriculture Drive – Conference Room 172, 1st Floor
Madison, WI 53718

Hearing impaired persons may request an interpreter for these hearings. Please make reservations for a hearing interpreter by **September 30, 2010**, by writing to Deb Mazanec, Division of Food Safety, P.O. Box 8911, Madison, WI 53708–8911; e-mailing to debbie.mazanec@wi.gov or by phone at (608) 224–4712. Alternatively, you may contact the DATCP TDD at (608) 224–5058. Handicap access is available at the hearings.

Submittal of Written Comments

DATCP invites the public to attend the hearing and comment on the rules. Following the hearing, the hearing record will remain open until Friday, **October 8, 2010** for additional written comments. Comments may be sent to the Debra Mazanec, Division of Food Safety at the address above, by email to debbie.mazanec@wi.gov or online at <http://AdminRules.Wisconsin.gov/>.

To provide comments or concerns relating to small business, you may also contact DATCP’s small business regulatory coordinator Keeley Moll at the address above, or by emailing to Keeley.Moll@wi.gov or by telephone at (608) 224–5039.

Copies of Proposed Rule

You may obtain free copies of the rule by contacting the Wisconsin Dept. of Agriculture, Trade and Consumer Protection, Division of Food Safety, 2811 Agriculture Drive, P.O. Box 8911, Madison, WI 53708. You may also obtain copies by calling (608) 224–4712 or e-mailing to debbie.mazanec@wi.gov. Copies will also be available at the hearing. To view the proposed rule online, go to: <http://adminrules.wisconsin.gov/Keeley.Moll@datcp.state.wi.us>.

Analysis Prepared by Dept. of Agriculture, Trade and Consumer Protection

The Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) currently licenses buttermakers under s. 97.17, Stats. This rule provides more ways for an individual to qualify for licensing as a buttermaker.

Statutes interpreted

Section 97.17 (2), Stats.

Statutes interpreted

Sections 93.07 (1), 97.17 (2) and 227.24, Stats.

Explanation of statutory authority

DATCP has broad general authority under s. 93.07 (1), Stats., to interpret laws under its jurisdiction. DATCP has specific authority under s. 97.17 (2), Stats., to establish license qualifications for buttermakers.

Plain language analysis

DATCP licenses individuals as buttermakers under s. 97.17, Stats. DATCP has adopted licensing rules under ch. ATCP 69, Wis. Adm. Code. Currently, an applicant for a 2–year buttermaker license must pass an examination (required only for initial license) and must show that he or she has done at least one of the following (required for initial and renewal license):

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

Under this rule, an applicant may also qualify for licensing if either of the following apply, with the proviso that the applicant must also pass an examination for an *initial* license:

- The applicant holds a Wisconsin *cheesemaker* license and has done all of the following:
 - Completed a DATCP–approved buttermaker training course.
 - Worked in buttermaking operations for at least 40 hours under the direct personal supervision of a licensed buttermaker.
- The applicant has done all of the following:
 - Worked in the complete process of buttermaking for at least 120 hours under the direct personal supervision of a licensed buttermaker.
 - Completed DATCP–approved courses in all of the following:
 - Buttermaking.
 - Production of safe dairy foods.
 - Hazard analysis — critical control point (HACCP) process control.
 - Principles of milk pasteurization.
 - Dairy sanitation.

Comparison with federal regulations

The United States food and drug administration has adopted food safety and labeling standards for butter, including a butter “standard of identity” (a product such as margarine may not be sold as “butter”). The United States department of agriculture has also adopted grading standards for butter. Neither FDA nor USDA licenses buttermakers.

This rule is not affected by current federal rules. However, buttermakers licensed under this rule must be aware of the relevant federal rules.

Comparison with rules in adjacent states

Buttermakers are not required to hold an individual professional license any of the surrounding states (dairy plant operators must be licensed, as in Wisconsin).

Data and analytical methodologies

This rule does not rely on any special data or analytical methodologies.

Small Business Impact

This rule will have a positive impact on the Wisconsin dairy industry, including Wisconsin’s butter industry. The rule will promote the development and diversification of the dairy industry, and will not have any negative impact on business. The rule will:

- Provide more options for individuals who wish to be licensed as buttermakers.
- Help relieve a current acute shortage of licensed buttermakers, which is putting the state’s butter industry at risk.
- Allow more people to enter the industry as licensed buttermakers, including makers of artisan and farmstead butter.
- Help ensure the safety and quality of Wisconsin butter, by ensuring that buttermakers are adequately trained and qualified.
- Make it easier for licensed *cheesemakers* to obtain a buttermaker license. That may give them more job flexibility, and provide more opportunities for value–added dairy enterprise.

This rule does not increase license fees, add new recordkeeping requirements, or require businesses to pay for additional professional services. Small businesses will benefit from this rule, and will not be adversely affected in any way. A complete *business impact analysis* is attached.

Fiscal Estimate

This rule will have no significant fiscal impact on Wisconsin state or local government. This rule does not increase buttermaker license fees. This rule may increase the number of buttermaker licenses, but the increase is not expected to have a significant impact on DATCP license revenues or administrative costs. DATCP expects to absorb any increased costs with current budget and staff. A complete *fiscal estimate* is attached.

Agency Contact Person

Questions or comments related to this rule may be sent to the following address:

Wis. Dept. of Agriculture, Trade and Consumer Protection
 Trade and Consumer Protection Division — Food Safety
 P.O. Box 8911
 Madison, WI 53708–8911
 Attn: Debra Mazanec
 Phone: (608) 224–4712
 Email: debbie.mazanec@wisconsin.gov

Notice of Hearing
Agriculture, Trade and Consumer Protection
CR 10–107

The State of Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) announces that it will hold a public hearing on its proposed rule, Chapter ATCP 20, Wis. Adm. Code, relating to agricultural and vegetable seed. DATCP will hold one public hearing at the time and place shown below.

Hearing Information

Wednesday, October 13, 2010

9:00 a.m. – 11:00 a.m.

Dept. of Agriculture, Trade and Consumer Protection

2811 Agriculture Drive, Board Room (CR–106)

Madison, Wisconsin, 53718–6777

Hearing impaired persons may request an interpreter for this hearing. Please make reservations for a hearing interpreter by **October 8, 2010**, by writing to Deb Bollig, Division of Agricultural Resource Management, P.O. Box 8911, Madison, WI 53708–8911, telephone (608) 224–4584. Alternatively, you may contact the DATCP TDD at (608) 224–5058. The hearing facility is handicap accessible.

Submittal of Written Comments

DATCP invites the public to attend the hearing and comment on the proposed rule. Following the public hearing, the hearing record will remain open until **October 27, 2010** for additional written comments. Comments may be sent to Greg Helmbrecht, Division of Agricultural Resource Management at the address above, by email at greg.helmbrecht@wisconsin.gov or online at <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@wisconsin.gov or by telephone at (608) 224–5039.

Copies of Proposed Rule

You may obtain a free copy of this proposed rule by contacting the Dept. of Agriculture, Trade and Consumer Protection, Division of Agricultural Resource Management, 2811 Agriculture Drive, P.O. Box 8911, Madison, WI 53708. You can also obtain a copy by calling (608) 224–4596 or emailing greg.helmbrecht@wisconsin.gov. Copies will also be available at the hearing. To view the proposed rule online, go to: <http://AdminRules.Wisconsin.gov/>.

Analysis Prepared by Dept. of Agriculture, Trade and Consumer Protection

Prior to the adoption of 2009 Wis. Act 28, Wisconsin had detailed statutes (See ss. 94.38 through 94.46, Wis. Stats.) that prescribed standards for seed germination and seed labeling. As part of 2009 Wis. Act 28, the Legislature amended the statutes that govern the regulation of seed. The changes adopted as part of 2009 Wis. Act 28 repealed those germination and labeling standards effective January 1, 2011 and gave the Department of Agriculture, Trade and Consumer Protection (DATCP) authority to establish standards for germination, labeling, distribution and sale of agricultural seed and vegetable seed by rule. This rule establishes new

rules related to seed labeling and modifies current rules related to standards of germination, analysis, testing, sampling, inspection and examination. The rule also establishes new standards for native seeds. DATCP administers the seed program.

Statutes interpreted

Sections 93.07 (1) and 94.38 to 94.46, Stats.

Statutory authority

Sections 93.07 (1) and 94.45 (6), Stats.

Explanation of statutory authority

DATCP has general authority, under s. 93.07 (1), Stats., to interpret laws under its jurisdiction. DATCP has authority, under s. 94.45 (6), Stats., to promulgate rules to prescribe standards for the labeling, distribution, and sale of agricultural seed and vegetable seed, to govern methods of sampling, inspecting, analyzing, testing, and examining agricultural seed and vegetable seed, to prescribe tolerances for purity and rate of germination of agricultural seed and vegetable seed, to prescribe tolerances for the occurrence of noxious weed seeds in agricultural seed and vegetable seed, to identify noxious weeds and prohibited noxious weeds, to govern the issuance of seed labeler licenses and to govern the administration and enforcement of ss. 94.38 to 94.46, Stats. DATCP has authority, under s. 100.20 (2), Stats., to regulate business practices and methods of competition.

Related rules or statutes

This rule is consistent with DNR rules under ch. NR 40, Wis. Adm. Code, for classification and control of invasive species.

Rule content

This rule modifies Wisconsin's agricultural and vegetable seed rule. Among other things, this rule:

- Establishes new rules related to seed labeling;
- Modifies current rules related to standards of germination, analysis, sampling, inspection, and examination;
- Establishes new rules related to native seeds;
- Incorporates the fees for seed labeler licenses contained in s. 94.43, Stats.
- Makes other minor changes to update, clarify and correct current agricultural and vegetable seed rules.

The standards used for label contents, germination, weed seed and other tolerances as well as the definitions applicable to those standards that were included in the statute have changed substantially since the adoption of the seed law statutes. The primary effect of the rule is to update those standards and definitions to make them consistent with current practice throughout the U. S. and with the standards maintained by the Association of Official Seed Analysts. The standards proposed in this rule, like the statutes that exist through December 31, 2010 have the purpose of maintaining a fair marketplace for purchasers of agricultural seed and vegetable seed labeled, distributed, and sold in Wisconsin.

Comparison with federal regulations

The USDA–Agricultural marketing Service, Seed Regulatory and Testing Branch uses the published Association of Official Seed Analyst (AOSA) standards included in this rule for its regulatory work. The same seed rules are also used internationally and are published by the International Seed Trade Association.

Comparison with rules in adjacent states

Surrounding states have adopted the same AOSA published agricultural seed and vegetable seed standards as

are included in this rule. The AOSA standards have been adopted by most states as the rules for testing seeds in their respective states. The AOSA's standards were developed to promote uniformity and accuracy in seed testing methods.

Data and analytical methodologies

DATCP consulted DNR, UWEX and the Association of Seed Analysts and worked with an advisory body made up of representatives of the Wisconsin seed industry and seed consumers in Wisconsin to develop the standards in the rule.

Environmental Impact

This rule will prohibit and restrict certain noxious weed seeds, some of which were previously prohibited or restricted under statute. The addition of new prohibited and restricted weed seeds may have a minor positive impact on the environment. The majority of the rule provisions have no environmental impact.

Small Business Impact

This rule updates current rules related to agricultural seeds and vegetable seeds. The primary purpose of this rule is to ensure a fair marketplace by establishing germination, labeling, examination, sampling, inspecting, and analysis standards that agricultural seeds and vegetable seeds sold in Wisconsin must meet. This rule establishes and updates these standards. The rule also establishes new standards for native seeds, a growing category of seeds not previously subject to regulation. Standards contained in the applicable statutes will be repealed as of January 1, 2011 and will be established in this rule. This rule also clarifies current seed rules, to facilitate understanding and compliance.

This rule will not have a significant impact on small businesses. This rule is expected to positively affect businesses by ensuring the all agricultural seed and vegetable seed producers, labelers, distributors, and wholesalers are using uniform standards for germination, labeling, analysis, testing, sampling, inspection and examination. The standards will ensure a fair agricultural seed and vegetable seed marketplace for businesses and consumers.

Fiscal Estimate

The proposed rule will have no fiscal impact on state or local government. Seed labeler license fees included in the proposed rule have already been created by statute. (See s. 94.43, Stats.)

Agency Contact Person

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

Greg Helmbrecht
Dept. of Agriculture, Trade and Consumer Protection
P.O. Box 8911 , Madison, WI 53708–8911
Phone: (608) 224–4596
E–Mail: Greg.Helmbrecht@wisconsin.gov

Notice of Hearing

Children and Families

Safety and Permanence, Chs. DCF 35–59

EmR1034, CR 10–105

NOTICE IS HEREBY GIVEN that pursuant to s. 48.625 (1g), Stats., as created by 2009 Wisconsin Act 335, and 227.11 (2) (a), Stats., the Department of Children and Families

proposes to hold a public hearing to consider proposed permanent rules and emergency rules creating ss. DCF 57.485 and 57.49 (1) (am), relating to determination of need for new group homes and affecting small businesses.

Hearing Information

Date and Time:

October 21, 2010

Thursday

1:30 p.m.

Location:

MADISON

GEF 1 Building, Room H204

201 E. Washington Avenue

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

Appearance at Hearing

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

Copies of Proposed Rule and Submittal of Written Comments

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

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

Written comments on the proposed rules received at the above address, email, or through the <http://adminrules.wisconsin.gov> website no later than **October 22, 2010**, will be given the same consideration as testimony presented at the hearing.

Analysis Prepared by the Department of Children and Families

Statutory authority

Section 48.625 (1g), Stats., as created by 2009 Wisconsin Act 335, and s. 227.11 (2) (a), Stats.

Statutes interpreted

Section 48.625, Stats.

Explanation of agency authority

Any person who receives, with or without transfer of legal custody, 5 to 8 children to provide care and maintenance for those children must obtain a license to operate a group home from the department. To obtain a license to operate a group home, a person must meet the minimum requirements for a

license established in chapter DCF 57, meet the background check requirements, pay the license fee, and meet the new determination of need requirement created by 2009 Wisconsin Act 335.

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

Summary of the proposed rule

The rule will provide that an applicant for a determination of need for a new group home or for increased bed capacity in an existing group home shall submit all of the following documents to the department:

- A statement of support by one or more counties, the Bureau of Milwaukee Child Welfare, or the Department of Corrections stating that the proposed additional placement resources are needed.
- A detailed description of the methodology and findings that there is a need for this particular group home.
- A detailed plan for the operation of the proposed group home that includes all of the following:
 - The number, sex, and age range of the children to be served.
 - The type of needs or disabilities of children to be served.
 - Number of staff listed by job title, degree or certification, and full–time or part–time status.
 - A description of the proposed program and treatment goals.
 - The location of the group home and a drawing of the layout of the physical plant.

The department shall send written notice of its determination of need to the applicant with a specific reason for the determination within 90 days after the date on which the department received all required documents and information from an applicant. The department will consider an application that remains incomplete for a 90–day period after receipt of any documentation to be withdrawn.

Comparison with federal regulations

None.

Comparison with rules in adjacent states

The department is not aware of any requirements to obtain a certificate of need before applying for a license to operate a group home in adjacent states.

Summary of factual data and analytical methodologies

The rule regulates the establishment of new group homes and the expansion of existing group homes to control costs to Wisconsin citizens while ensuring an adequate number and variety of facilities to meet the needs of children who require out–of–home residential care.

Analysis used to determine effect on small businesses

The rule provides details to implement the statute.

Small Business Impact

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

The Department’s Small Business Regulatory Coordinator is Elaine Pridgen, (608) 267–9403, elaine.pridgen@wisconsin.gov.

Fiscal Estimate

Assumptions used in arriving at fiscal estimate

A determination of need requirement will save staff time that is currently spent licensing group homes that are not needed. Group homes that are underutilized have higher per bed overhead costs that have often been passed on to purchasers.

State fiscal effect

None.

Local government fiscal effect

None.

Long–range fiscal implications

None.

Agency Contact Person

Mary Morse, Child Welfare Licensing Section
Bureau of Permanence and Out–of–Home Care
Phone: (608) 266–0415.
Email: mary.morse@wisconsin.gov

Notice of Hearing Commerce

Financial Resources for Businesses and Communities, Chs. Comm 100— EmR1029

NOTICE IS HEREBY GIVEN that pursuant to s. 560.033 of the Statutes, the Department of Commerce will hold a public hearing on emergency rules to create Chapter Comm 137, relating to reallocations for recovery zone facility bonds, and affecting small businesses.

Hearing Information

Date and Time:

October 1, 2010
Friday
1:00 p.m.

Location:

Thompson Commerce Center
Third Floor, Room 3B
201 West Washington Avenue
Madison, WI

This hearing will be held in an accessible facility. If you have special needs or circumstances that may make communication or accessibility difficult at the hearing, please call Sam Rockweiler at (608) 266–0797 or at Contact Through Relay 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.

Appearance at Hearing and Submittal of Written Comments

Interested persons are invited to appear at the hearing and present comments on the rules. Persons making oral presentations are requested to submit their comments in writing, via e–mail. Persons submitting comments will not

receive individual responses. The hearing record on this rulemaking will remain open until **October 6, 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. E–mail comments should be sent to sam.rockweiler@wi.gov. If e–mail submittal is not possible, written comments may be submitted to Sam Rockweiler, Department of Commerce, Division of Environmental and Regulatory Services, P.O. Box 14427, Madison, WI 53708–0427.

Copies of Emergency Rule

The rules and an analysis of the rules are available on the Internet by entering “Comm 137” in the search engine at the following Web site:

<https://health.wisconsin.gov/admrules/public/Homesam.rockweiler@wi.gov>

Paper copies may be obtained without cost from Sam Rockweiler at the Department of Commerce, Division of Environmental and Regulatory Services, P.O. Box 14427, Madison, WI 53707, or at sam.rockweiler@wi.gov, or telephone (608) 266–0797, or at Contact Through Relay. Copies will also be available at the public hearing.

Analysis Prepared by the Department of Commerce

Statutes interpreted

Section 560.033, Stats.

Statutory authority

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

Explanation of agency authority

Section 227.11 (2) (a) of the Statutes authorizes the Department to promulgate rules interpreting the provisions of any Statute administered by the Department. Section 560.033 (1) of the Statutes directs the Department to establish by rule, a system for reallocating waived allocations for recovery zone facility bonds – as defined under 26 USC 1400U–3(b)(1) – to the authorities and local governmental units which are defined in sections 66.1104 (1) (a) and (b) of the Statutes. Section 560.033 (3) of the Statutes authorizes the Department to place any condition on these reallocations that the Department deems is in the best interest of the State.

Related statute or rule

Chapter Comm 113 contains rules relating to allocating volume cap on tax–exempt private activity bonds for manufacturing and housing, pursuant to 26 USC 146.

Chapter Comm 136 establishes a procedure by which the Governor can designate tax–exempt Midwestern disaster area bonds that can be issued by, or on behalf of, the State or any political subdivision thereof, under the federal Heartland Disaster Tax Relief Act of 2008. These are private activity bonds that are designed to facilitate the recovery and rebuilding of areas which were declared major disaster areas in 2008.

Plain language analysis

The rules in this order address a system for reallocating all of the federal recovery zone facility bond allocations that were not used by June 1, 2010, to the authorities and local governmental units which are defined in sections 66.1104 (1) (a) and (b) of the Statutes, as created in 2009 Wisconsin Act 112. This reallocation system includes deadlines that are

designed to result in complete use of the federal bond allocation prior to its expiration on December 31, 2010.

Comparison with federal regulations

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

Comparison with rules in adjacent states

Minnesota, Illinois, Iowa and Michigan have not yet promulgated any rules relating to counties or cities waiving allocations for recovery zone facility bonds. As a result, each county or city within those States may have developed their own requirements or guidelines for utilizing their portion of the State’s recovery zone facility bond allocation.

Summary of factual data and analytical methodologies

The data and methodology for developing these rules were derived from and consisted of (1) reviewing 2009 Wisconsin Act 112 and the corresponding criteria in section 1401 of the federal American Recovery and Reinvestment Act of 2009, Public Law 111–5; (2) incorporating applicable best practices the Department has developed in administering similar programs for economic development and business development; and (3) incorporating recommendations from stakeholders.

Analysis and supporting documents used to determine effect on small business

The primary documents that were used to determine the effect of the rules on small business were 2009 Wisconsin Act 112 and the corresponding criteria in section 1401 of the federal American Recovery and Reinvestment Act of 2009.

No economic impact report was prepared.

Small Business Impact

The rules are expected to result in only beneficial effects on small business because the rules only address tax–exempt private activity bonds that allow businesses to finance certain depreciable capital projects in areas which are designated by the bond issuers as having significant poverty, unemployment, rate of home foreclosures, or general distress.

Initial regulatory flexibility analysis

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

Any business choosing to pursue tax–exempt private activity bonds that are designed to finance certain depreciable capital projects in areas which are designated by the bond issuers as having significant poverty, unemployment, rate of home foreclosures, or general distress.

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

An application form prescribed by the Department must be completed and submitted to the Department by any authority or local governmental unit, as defined in s. 66.1104 (1) (a) and (b) of the Statutes, that desires to receive a reallocation of the bonding authority.

Types of professional skills necessary for compliance with the rules.

No new professional skills are necessary for compliance with the rules.

Rules have a significant economic impact on small businesses?

No

Small business regulatory coordinator

Any inquiries for the small business regulatory coordinator for the Department of Commerce can be directed to Sam Rockweiler, as listed above.

Fiscal Estimate

Assumptions used in arriving at fiscal estimate

The bond closing fee assessed under section Comm 137.08 (2) (b) is estimated to annually average \$5000 from each of 20 projects, for an annual total of \$100,000.

The proposed rules are not expected to impose any significant costs on the private sector because the rules address submittal of documentation, and other activities, only by applicants that choose to participate in the tax–exempt private activity bonding addressed in the rules.

State fiscal effect

Increase existing revenues.

Local government fiscal effect

None.

Long–range fiscal implications

None known.

Agency Contact Person

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Notice of Hearing

Technical College System Board

EmR1025, CR 10–096

NOTICE IS HEREBY GIVEN that pursuant to s. 38.41, Stats., the Wisconsin Technical College System Board will hold a public hearing to consider proposed rules amending Chapter TCS 17, relating to training program grants. The Wisconsin Technical College System Board adopted a temporary emergency rule effective July 2, 2010 and is also proposing a permanent rule. The hearing will cover both the emergency rule and the proposed permanent rule.

Hearing Information

Date: September 28, 2010

Time: 1:30 to 3:30 p.m.

Location: Wisconsin Technical College System Office
4622 University Avenue
Room 149
Madison, WI 53705

It is the policy of the Wisconsin Technical College System (WTCS) Board to provide accommodations to persons with disabilities which may affect their ability to access or participate in WTCS activities. Persons may request assistance or reasonable accommodation for the scheduled public hearing by contacting Morna Foy at (608) 266–2449 or (608) 267–2483 (TTY) on or before September 20, 2010.

Submittal of Written Comments

Written comments should be submitted by 4:00 p.m. on **September 28, 2010** to Morna Foy at the Wisconsin Technical College System, 4622 University Avenue, PO Box 7874, in Madison, WI 53707–7874 or by email to morna.foy@wtcsystem.edu with a subject line of TCS 17. Written comments will be given the same consideration as testimony presented at the hearing. People submitting comments will not receive individual responses.

Analysis Prepared by the Wisconsin Technical College System Board

Statutes interpreted

Sections 20.292 (1) (eh) and 38.41, Wis. Stats.

Statutory authority

Section 38.41, Wis. Stats.

Explanation of agency authority

Section 38.41 (4), Stats., authorizes the technical college system board to promulgate rules to implement and administer the awarding of grants to technical college district boards to provide skills training or other education related to the needs of business.

Related statute or rule

Section TCS 17.06, Wis. Adm. Code.

Plain language analysis

TCS 17 relates to training grants for technical college districts that provide skills training or other education related to the needs of business. A 25% match is required as a condition of the grant awards. The proposed amendment would eliminate the match requirement.

Comparison with federal regulations

Not applicable.

Comparison with rules in adjacent states

Not applicable.

Summary of factual data and analytical methodologies

Not applicable.

Small Business Impact

The proposed rules will have a positive effect — without the 25% match requirement, small businesses may be better able to take advantage of the training or education funding opportunities provided by this grant. Small businesses may access training or education through the training program grants, but there is no mandated participation in the program.

Fiscal Estimate

The functions required by these rules can be absorbed within existing staff. Therefore, there is no fiscal effect on the agency.

Text of Proposed Rule

SECTION 1. Section TCS 17.06 is amended to read:

TCS 17.06 CONDITIONS OF THE GRANT AWARD.

~~(1) 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.~~

~~(2) Grant award funds, including matching funds, may not be used for administration, marketing, or indirect costs.~~

(3) The board may establish limitations on the percentage of the grant award funds ~~and matching funds~~ that may be used to purchase or lease instructional materials, software,

equipment or supply items and that may be used to fund staff development costs. Such limitations shall be specified in the grant guidelines approved by the board under TCS 17.03(2).

Agency Contact Person

Morna Foy, Executive Assistant
Wisconsin Technical College System
4622 University Avenue
P.O. Box 7874
Madison, WI 53707–7874
Phone: (608) 266–2449
Email: morna.foy@wtcssystem.edu.

Submittal of Proposed Rules to the Legislature

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

Administration

CR 10–063

Creates Chapter Adm 24, relating to debarment, suspension and ineligibility of DOA contractors.

Agriculture, Trade and Consumer Protection

CR 10–045

Revises Chapter ATPC 127, relating to adding cell phone numbers to Wisconsin’s telemarketing “No Call” list.

Children and Families

Family and Economic Security, Chs. DCF 101–153

CR 08–004

Revises Chapter DCF 101, relating to Wisconsin Works Sanctions Good Cause.

Children and Families

Family and Economic Security, Chs. DCF 101–153

CR 10–078

Creates Chapter DCF 110, relating to transitional jobs for low–income adults.

Children and Families

Early Care and Education, Chs. DCF 201–252

CR 10–086

Revises Chapter DCF 201, relating to child care subsidy program integrity.

Commerce

Licenses, Certifications and Registrations, Ch. Comm 5

CR 10–090

Revises Chapter Comm 5, relating to thermal insulator credentials.

Commerce

Fire Prevention, Ch. Comm 14 Uniform Dwelling, Chs. Comm 20–25 Wis. Commercial Building Code, Chs. Comm 60–66

CR 09–104

Revises Chapter Comm 14, relating to fire prevention, recordkeeping for fires, and fire suppression for mobile kitchens; Chapters Comm 21 to 23, relating to structural, ventilating, and vapor–barrier requirements for one– and two–family dwellings; and Chapters Comm 61 to 63, relating to local enforcement, no–smoking signs, carbon monoxide detectors, and energy conservation for commercial buildings.

Commerce

Uniform Dwelling, Chs. Comm 20–25 Smoke Detectors, Ch. Comm 28

CR 10–089

Revises Chapters Comm 21 and 28, relating to carbon monoxide detectors in dwellings.

Commerce

Financial Resources for Businesses and Communities, Chs. Comm 100–

CR 10–079

Revises Chapter Comm 106, relating to the Wisconsin Development Fund.

Commerce

Financial Resources for Businesses and Communities, Chs. Comm 100–

CR 10–080

Creates Chapter Comm 126, relating to the Wisconsin Venture Fund.

Corrections

CR 09–120

Revises Chapter DOC 302, relating to sentence computation and modification.

Earned Release Review Commission

CR 09–119

Repeals and recreates Chapter PAC 1, relating to the release of inmates from state prison through parole or other procedures established through 2009 Wis. Act 28.

Financial Institutions — Banking**CR 10–097**

Revises section DFI–Bkg 74.01, relating to the exemption of health care billing companies from the definition of a collection agency.

Financial Institutions — Banking**CR 10–098**

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

Health Services

*Mgmt. & Technology & Strategic Finance, Chs. DHS 1—
Community Services, Chs. DHS 30—
Health, Chs. DHS 110—*

CR 10–091

Revises Chapters DHS 12, 83, 88, 124, 127, 148, and 165, relating to miscellaneous minor and technical changes.

Health Services

Health, Chs. DHS 110—

CR 10–084

Revises Chapter DHS 138, relating to the subsidy of health insurance premiums for persons with HIV infection.

Health Services

Health, Chs. DHS 110—

CR 10–085

Revises Chapters DHS 110 to 113 and 119, relating to emergency medical services.

Insurance**CR 09–096, CR 10–038**

Creates section Ins 3.75, relating to continuation of group insurance policies.

Insurance**CR 10–067**

Revises Ins 8.49 Appendix 1, relating to small employer uniform employee application for group health insurance.

Insurance**CR 10–068**

Creates section Ins 3.33, relating to uniform questions and format for individual health insurance.

Insurance**CR 10–076**

Revises sections Ins 6.05 and 6.07 and Appendices A and B, relating to policy form language simplification and readability.

Insurance**CR 10–077**

Revises sections Ins 51.01 and 51.60, relating to the risk–based capital of health insurers, property and casualty insurers, and fraternal insurers.

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

Revises section MPSW 1.11, relating to psychometric testing.

Natural Resources

Fish, Game, etc., Chs. NR 1—

CR 08–022

DNR # WM–04–08

Revises Chapter NR 10, relating to hunting on the Ice Age Trail.

Natural Resources

Fish, Game, etc., Chs. NR 1—

CR 10–042

DNR # LF–05–10

Revises Chapter NR 45, relating to use of department properties.

Natural Resources

Fish, Game, etc., Chs. NR 1—

CR 10–051

DNR # WM–02–10

Revises Chapters NR 8, 10, 12, and 17, relating to 2010 Wildlife Management housekeeping revisions.

Natural Resources

Fish, Game, etc., Chs. NR 1—

CR 10–053

DNR # FH–17–09

Revises Chapters NR 20, 21, 22, and 24, relating to commercial fishing on Wisconsin–Iowa and Wisconsin–Minnesota boundary waters.

Natural Resources*Fish, Game, etc., Chs. NR 1—***CR 10–066***DNR # WM–21–10*

Revises Chapter NR 10, relating to 2010 migratory bird seasons.

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

Revises Chapter NR 29, relating to a fee update for the endangered resources review program

Natural Resources*Environmental Protection — General, Chs. NR 100—***CR 09–102***DNR # DG–24–09*

Revises Chapter NR 140, relating to groundwater standards.

Natural Resources*Environmental Protection — Air Pollution Control, Chs. NR 400—***CR 10–033***DNR # AM–06–09*

Revises sections NR 433.05 and 433.06, relating to implementation of best available retrofit technology for the protection of visibility in mandatory class I federal areas.

Natural Resources*Environmental Protection — Air Pollution Control, Chs. NR 400—***CR 10–046***DNR # AM–06–10*

Revises section NR 410.05, relating to inspection and notification fees for sources that may emit asbestos into the ambient air.

Natural Resources*Environmental Protection — Air Pollution Control, Chs. NR 400—***CR 10–047***DNR # AM–09–10*

Revises sections NR 410.02 and 410.03, relating to fees for reviewing applications for construction of air pollution sources.

Natural Resources*Environmental Protection — Air Pollution Control, Chs. NR 400—***CR 10–048***DNR # AM–12–10*

Revises Chapters NR 400, 405, and 406, relating to air pollution control permit requirements for Class I areas.

Natural Resources*Environmental Protection — Air Pollution Control, Chs. NR 400—***CR 10–049***DNR # AM–13–10*

Revises Chapters NR 484 and 485, relating to the vehicle inspection and maintenance program.

Natural Resources*Environmental Protection — Air Pollution Control, Chs. NR 400—***CR 10–050***DNR # AM–16–10*

Revises Chapters NR 400, 404 to 408, and 484, relating to permit requirements for particulate matter emissions.

Natural Resources*Environmental Protection — Water Supply, Chs. NR 800—***CR 10–059***DNR # DG–25–10*

Creates Chapter NR 856, relating to water use registration and reporting.

Natural Resources*Environmental Protection — Water Supply, Chs. NR 800—***CR 10–060***DNR # DG–24–10*

Creates Chapter NR 852, relating to water conservation and water use efficiency.

Natural Resources*Environmental Protection — Water Supply, Chs. NR 800—***CR 10–061***DNR # DG–23–10*

Creates Chapter NR 850, relating to water use fees.

Public Instruction**CR 10-002**

Repeals and recreates section PI 11.36 (6), relating to the identification of children with specific learning disabilities.

Public Instruction**CR 10-083**

Revises Chapter PI 34, relating to educator preparation and licensing flexibility.

Public Service Commission**CR 08-070**

Repeals and recreates Chapter PSC 116, relating to a fuel cost rate adjustment process for electric utility service.

Public Service Commission**CR 10-057**

Creates Chapter PSC 128, relating to the siting of wind energy systems.

Regulation and Licensing**CR 10-081**

Revises Chapter RL 7, relating to the impaired professionals procedure.

Revenue**CR 10-093**

Revises Chapters Tax 4, 7, 8, 9, and 11, relating to motor vehicle, alternate fuels, and general aviation fuel tax return and refund claim forms; fermented malt beverage tax return and refund claim forms; intoxicating liquor report, tax return, and refund claim forms; cigarette and tobacco products report, tax return, and refund claim forms; and sales and use tax, local exposition tax, and premier resort area tax return forms.

Revenue**CR 10-094**

Revises Chapter Tax 11, relating to sales and use tax.

Revenue**CR 10-095**

Revises Chapters Tax 1 to 3, relating to electronic funds transfer; original and amended corporation franchise and income tax returns; information returns and wage statements; returns of persons other than corporations; the recycling surcharge; estimated tax requirements; addback and disclosure of related entity expenses; pass-through entity withholding; and the dividends received deduction for corporations.

Transportation**CR 10-082**

Creates Chapter Trans 75, relating to bikeways and sidewalks in highway projects.

Transportation**CR 10-088**

Revises Chapter Trans 131, relating to the vehicle emission inspection process.

Workforce Development***Public Works Construction Contracts,
Chs. DWD 290-294*****CR 10-029**

Revises section DWD 293.02, relating adjustment of thresholds for payment and performance assurance requirements.

Workforce Development***Public Works Construction Contracts,
Chs. DWD 290-294*****CR 10-092**

Revises Chapter DWD 290, relating to the prevailing wage program

Rule Orders Filed with the Legislative Reference Bureau

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

Health Services

Health, Chs. DHS 110—

CR 10-037

Revises Chapter DHS 137, relating to anatomical gifts and the Wisconsin Donor Registry.
Effective 11-1-10.

Natural Resources

Fish, Game, etc., Chs. NR 1—

CR 10-052

DNR # WM-15-10

Revises section NR 10.104 (7) (a), relating to the use of archery deer hunting licenses.
Effective 11-1-10.

Natural Resources

Fish, Game, etc., Chs. NR 1—

CR 10-020

DNR # WM-01-10

Revises Chapter NR 10, relating to hunting and trapping regulations, wildlife damage and nuisance control, closed areas and game refuges.
Effective 11-1-10 and 2-1-11.

Natural Resources

Environmental Protection — Water Regulation,

Chs. NR 300—

CR 10-032

DNR # WT-21-09

Revises Chapters NR 335 and 336, relating to grants for dam maintenance, repair, modification, or abandonment and removal.
Effective 11-1-10.

Natural Resources

Fish, Game, etc., Chs. NR 1—

CR 10-025

DNR # FH-03-10

Revises Chapters NR 20, 21, 23, and 26, relating to fishing on the inland, outlying, and boundary waters of Wisconsin.
Effective 11-1-10 and 4-1-11.

Natural Resources

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

CR 10-036

DNR # WA-30-09

Revises section NR 660.10, relating to hazardous waste management.
Effective 11-1-10.

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