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## WISCONSIN ADMINISTRATIVE REGISTER

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## Emergency Rules Now in Effect

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

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

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

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

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

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

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

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### Agriculture, Trade and Consumer Protection

**EmR1112** — Rule adopted to create **sections ATCP 99.126 (6) and ATCP 99.235 (5)** and to amend **sections ATCP 99.126 (1) and ATCP 99.235 (1)**, relating to grain dealer and grain warehouse keeper agricultural producer security fund assessments.

This emergency rule was approved by the governor on July 14, 2011.

The statement of scope for this rule, SS 002-11, was approved by the governor on July 14, 2011, published in Register 667, on July 31, 2011, and approved by The Board of Agriculture, Trade and Consumer Protection on August 12, 2011.

#### Finding of Emergency

In Wisconsin, grain dealers (persons who purchase grain from producers), grain warehouse keepers (persons who store grain that is owned by others), milk contractors (persons who purchase milk from producers, and vegetable contractors (persons who purchase vegetables from producers for use in processing), must obtain a license to do these activities and are collectively referred to as “contractors”. Most contractors are “contributing contractors”, which means they must pay

annual assessments into the Wisconsin Agricultural Producer Security Fund. This fund is designed to help partially reimburse producers in the event that a contractor defaults on payment to producers. The annual assessments are calculated based on the total dollar value of commodities purchased or stored, the length of time that the contractor has participated in the fund, and certain financial ratios from the contractor’s balance sheet.

All else equal, a contractor who purchases small amounts will pay lower assessments than one who purchases large amounts. All else equal, a contractor who is in a conservative financial position will pay lower assessments than one who carries higher levels of liabilities relative to their assets or equity. All else equal, a contractor who has participated in the fund for more than five years will pay lower assessments than one who has participated for less than five years. The annual assessment, calculated from the factors discussed above, vary considerably from one contractor to another. An annual assessment may be as low as \$100, or as high as several hundred thousand dollars.

The grain dealer and grain warehouse keeper license years begin on September 1 of each year. At that point, DATCP calculates the assessment for the new license year that will be due in four quarterly payments over the course of that year. Calculations are based on purchase data and financial statement data for the grain dealer or grain warehouse keeper’s most recently completed fiscal year and annual financial statement.

For the license years that will begin on September 1, 2011, a very unusual combination of business financing and recent high commodity prices has led to unusually high assessment calculations for one grain company. In fact, if the existing rule remains unmodified, there will be one individual elevator that will be charged over \$1.2 million in assessments (for both grain dealer and grain warehouse combined). This is roughly four times greater than the previous highest annual assessment and roughly six times higher than the second highest annual assessment in the grain (dealer and warehouse combined) producer security fund program. Further, this potential assessment for next license year is more than double the highest assessment that has ever occurred in the milk contractor portion of the fund. This is significant because the dollar amount of a large milk contractor’s annual purchase of milk tends to be much higher the dollar amount of a large grain dealer’s annual purchase (or store) of grain.

In the majority of cases, the assessment calculation formulas reasonably charge contractors for the overall risk that they pose to the fund in the event that they should default on amounts owed to producers. However, at least in the short term, this is not true for this one elevator. DATCP will analyze whether or not it is appropriate for this emergency rule to also be promulgated as a permanent rule, and if so, begin a separate rulemaking process at a later date.

This temporary emergency rule is necessary to protect the welfare of the many hundreds of grain farmers who do business with this grain elevator, and to help prevent major disruptions in the grain industry.

<b>Publication Date:</b>	<b>September 2, 2011</b>
<b>Effective Dates:</b>	<b>September 2, 2011 through January 29, 2012</b>
<b>Hearing Date:</b>	<b>October 5, 2011</b>



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## Children and Families (2)

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

**1. 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 the date permanent rules become effective  
**Hearing Date:** October 21, 2010

**2. EmR1106** — Rule adopted to revise **Chapters DCF 52, 54, and 57**, relating to regulation of rates charged by residential care centers for children and youth, child-placing agencies, and group homes.

#### Finding of Emergency

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

2009 Wisconsin Act 28 directed the department to implement rate regulation effective January 1, 2011. Implementation was delayed and this rule is phasing-in rate regulation at the earliest feasible date.

**Publication Date:** April 18, 2011  
**Effective Dates:** April 18, 2011 through September 16, 2011  
**Hearing Date:** May 18, 2011  
**Extension Through:** November 13, 2011

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## Employment Relations Commission

**EmR1113** — Rule adopted to create Chapters **ERC 70 to 74 and ERC 80**, relating to initial annual certification elections.

These emergency rules were approved by the Governor on September 13, 2011.

The statement of scope for this rule, SS 004–11, was approved by the governor on July 20, 2011, published in Register 667, on July 31, 2011, and approved by the Wisconsin Employment Relations Commission as required by s. 227.135 (2) on August 15, 2011.

#### Finding of Emergency

An emergency exists because the public peace, health, safety and welfare necessitate putting these rules into effect so that the Wisconsin Employment Relations Commission can

meet its election obligations under ss. 111.70 (4) (d) 3. b. and 111.83 (3) (b), Stats., and nonstatutory provisions ss. 9132 (1) (b) and 9155 (1) (b) of 2011 Wisconsin Act 10 as amended by nonstatutory provisions ss. 3570f and 3570h of 2011 Wisconsin Act 32.

**Publication Date:** September 15, 2011  
**Effective Dates:** September 15, 2011 thru February 12, 2012

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## Government Accountability Board

**EmR1049** — Rule adopted to amend section **GAB 1.28**, relating to the definition of the term “political purpose.”

#### Finding of Emergency

The Government Accountability Board amends s. GAB 1.28 (3) (b), Wis. Adm. Code, relating to the definition of the term “political purpose.” Section GAB 1.28 as a whole continues to clarify the definition of “political purposes” found in s. 11.01 (16) (a) 1., Stats., but repeals the second sentence of s. GAB 1.28 (3) (b) which prescribes communications presumptively susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate.

This amendment to s. GAB 1.28 (3) (b) is to the rule that was published on July 31, 2010 and effective on August 1, 2010, following a lengthy two year period of drafting, internal review and study, public comment, Legislative review, and consideration of U.S. Supreme Court decisions. Within the context of ch. 11, Stats, s. GAB 1.28 provides direction to persons intending to engage in activities for political purposes with respect to triggering registering and reporting obligations under campaign financing statutes and regulations. In addition, the rule provides more information for the public so that it may have a more complete understanding as to who is supporting or opposing which candidate or cause and to what extent, whether directly or indirectly.

Pursuant to s. 227.24, Stats., the Government Accountability Board finds an emergency exists as a result of pending litigation against the Board and two decisions by the United States Supreme Court: *Federal Election Commission (FEC) v. Wisconsin Right to Life, Inc. (WRTL II)*, 551 U.S. 549 (2007) and *Citizens United v. FEC*, 558 U.S. \_\_\_, (No. 08–205) (January 21, 2010). Following the effective date of the August 1, 2010 rule, three lawsuits were filed seeking a declaration that the rule was unconstitutional and beyond the Board’s statutory authority: one in the U.S. District Court for the Western District of Wisconsin, one in the U.S. District Court for the Eastern District of Wisconsin, and one in the Wisconsin Supreme Court. On August 13, 2010, the Wisconsin Supreme Court temporarily enjoined enforcement of the August 1, 2010 rule, pending further order by the Court.

In the lawsuit in the U.S. District Court for the Western District of Wisconsin, the parties previously executed a joint stipulation asking the Court to permanently enjoin application and enforcement of the second sentence of s. GAB 1.28 (3) (b). On October 13, 2010, the Court issued an Opinion and Order denying that injunction request. In denying the injunction, the Court noted that “G.A.B. has within its own power the ability to refrain from enforcing, or removing altogether, the offending sentence from a regulation G.A.B. itself created” and emphasized that “removing the language — for example, by G.A.B. issuing an emergency rule — would be far more ‘simple and expeditious’ than asking a federal court to permanently enjoin enforcement of the offending regulation.” *Wisconsin Club for Growth, Inc. v.*

*Myse*, No. 10–CV–427, slip op. at 2 (W.D. Wis. Oct. 13, 2010). The Court further noted that staying the case would give the Board time to resolve some or all of the pending issues through further rulemaking. *Id.*, slip op. at 14.

In addition, the Board, through its litigation counsel, has represented to the Wisconsin Supreme Court that it does not intend to defend the validity of the second sentence of s. GAB 1.28 (3) (b) and that it would stipulate to the entry of an order by that Court permanently enjoining the application or enforcement of that sentence.

This amendment brings s. GAB 1.28 (3) (b) into conformity with the above stipulation, with the representations that have been made to the Wisconsin Supreme Court, and with the suggestions made in the October 13, 2010, Opinion and Order of the U.S. District Court for the Western District of Wisconsin. The Board finds that the immediate adoption of this amendment will preserve the public peace and welfare by providing a simple and expeditious clarification of the meaning of s. GAB 1.28 for litigants, for the regulated community, and for the general public and by doing so in advance of the 2011 Spring Election and any other future elections.

**Publication Date:** January 7, 2011  
**Effective Dates:** January 7, 2011 through June 5, 2011  
**Extension Through:** October 3, 2011  
**Hearing Date:** February 16, 2011

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## Natural Resources (5)

### *Fish, Game, etc., Chs. NR 1—*

**1. EmR1036** — Rule adopted to create **section NR 40.04 (2) (g)**, relating to the identification, classification and control of invasive species.

#### Exemption From Finding of Emergency

Section 227.24 (1) (a), Stats., authorizes state agencies to promulgate a rule as an emergency rule without complying with the notice, hearing and publication requirements under ch. 227, Stats., if preservation of the public peace, health, safety or welfare necessitates putting the rule into effect prior to the time it would take effect if the agency complied with the procedures. However, s. 23.22 (2t) (a), Stats., authorizes the department to promulgate emergency rules to identify, classify, or control an invasive species without having to provide evidence that an emergency rule is necessary for the preservation of public peace, health, safety, or welfare or to provide a finding of emergency. **In addition, such emergency rules may remain in effect until whichever of the following occurs first: the first day of the 25th month beginning after the effective date of the emergency rule, the effective date of the repeal of the emergency rule, or the date on which the permanent rule identifying, classifying, or controlling the invasive species, promulgated under s. 23.22 (2) (b) 6., Stats., takes effect.**

**Publication Date:** September 29, 2010  
**Effective Dates:** September 29, 2010 through  
*See bold text above*  
**Hearing Date:** October 25 to 29, 2010

**2. EmR1039** (DNR # IS–49–10(E)) — Rule adopted to create **sections NR 40.02 (7g), (7r), (25m), (28m) and (46m), 40.04 (3m) and 40.07 (8)**, relating to the

identification, classification and control of invasive bat species.

#### Exemption From Finding of Emergency

Section 227.24 (1) (a), Stats., authorizes state agencies to promulgate a rule as an emergency rule without complying with the notice, hearing and publication requirements under ch. 227, Stats., if preservation of the public peace, health, safety or welfare necessitates putting the rule into effect prior to the time it would take effect if the agency complied with the procedures. However, s. 23.22 (2t) (a), Stats., authorizes the department to promulgate emergency rules to identify, classify, or control an invasive species without having to provide evidence that an emergency rule is necessary for the preservation of public peace, health, safety, or welfare or to provide a finding of emergency. **In addition, such emergency rules may remain in effect until whichever of the following occurs first: the first day of the 25th month beginning after the effective date of the emergency rule, the effective date of the repeal of the emergency rule, or the date on which the permanent rule identifying, classifying, or controlling the invasive species, promulgated under s. 23.22 (2) (b) 6., Stats., takes effect.**

**Publication Date:** November 3, 2010  
**Effective Dates:** November 3, 2010 through  
*See bold text above*  
**Hearing Date:** November 29, 2010

**3. EmR1045** (DNR # IS–07–11(E)) — Rule to repeal **section NR 40.02 (28m)**, to amend **section NR 40.04 (3m)**, and to repeal and recreate **section NR 40.07 (8)**, (all as created by Natural Resource Board emergency order EmR1039, DNR # IS–49–10(E)), relating to the identification, classification and control of invasive species.

#### Exemption From Finding of Emergency

Section 227.24 (1) (a), Stats., authorizes state agencies to promulgate a rule as an emergency rule without complying with the notice, hearing and publication requirements under ch. 227, Stats., if preservation of the public peace, health, safety or welfare necessitates putting the rule into effect prior to the time it would take effect if the agency complied with the procedures. However, s. 23.22 (2t) (a), Stats., authorizes the department to promulgate emergency rules to identify, classify, or control an invasive species without having to provide evidence that an emergency rule is necessary for the preservation of public peace, health, safety, or welfare or to provide a finding of emergency. **In addition, such emergency rules may remain in effect until whichever of the following occurs first: the first day of the 25th month beginning after the effective date of the emergency rule, the effective date of the repeal of the emergency rule, or the date on which the permanent rule identifying, classifying, or controlling the invasive species, promulgated under s. 23.22 (2) (b) 6., Stats., takes effect.**

**Publication Date:** December 13, 2010  
**Effective Dates:** December 13, 2010 through  
*See bold text above*

**4. EmR1109** — Rule to amend **sections NR 10.01 (3) (ed) 1. a., 10.01 (3) (et) 2., 10.104 (7) (a) 1., and 10.104 (7) (b)**, relating to deer hunting seasons and carcass tag use.

#### 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 rule is necessary in order to foster participation by hunters and landowners so they will continue to hunt and cooperate in CWD control and deer herd



management. This rule proposal balances pressing social concerns about the quality of the deer hunt with the need for effective herd control measures such as additional antlerless deer harvest in management units that are more than 20% over population goals or simply over population goals in units that are part of the CWD Management Zone. This rule will increase harvest of bucks in the CWD zone which have a higher prevalence of CWD and, because of their greater dispersal distances, have a higher likelihood of spreading CWD. However, the rule retains a herd control tool which requires that antlerless deer be harvested before additional bucks (beyond the initial one) may be taken. The federal government and state legislature have delegated to the appropriate agencies rule-making authority to control and regulate hunting of wild animals. The State of Wisconsin must provide publications describing the regulations for deer hunting to more than 630,000 deer hunters prior to the start of the season. These regulations must be approved prior to printing nearly 1 million copies of the regulations publication.

**Publication Date:** July 2, 2011  
**Effective Dates:** September 17, 2011 through February 13, 2012

**5. EmR1111** — Rule to repeal and recreate **sections NR 10.01 (1) (b), (g) and (u) and 10.32** and to amend **section NR 10.01 (1) (v)**, relating to hunting and the 2011 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 late July of each year. This order is designed to bring the state hunting regulations into 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 3, 2011  
**Effective Dates:** September 3, 2011 through January 30, 2012  
**Hearing Date:** October 3, 2011

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### Revenue (3)

**1. EmR1104** — Rule adopted creating **section Tax 2.957**, relating to income and franchise tax credits and deductions for businesses that relocate to Wisconsin.

#### Finding of Emergency

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

The emergency rule is to reflect changes in Wisconsin's tax laws due to the creation of income and franchise tax credits and deductions for businesses that relocate to Wisconsin.

It is necessary to promulgate this rule order so that these credits and deductions, created to help bring much needed

jobs to Wisconsin, may be administered in a fair and consistent manner.

This rule is therefore promulgated as an emergency rule and shall take effect upon publication in the official state newspaper. Certified copies of this rule have been filed with the Legislative Reference Bureau, as provided in s. 227.24, Stats.

**Publication Date:** April 7, 2011  
**Effective Dates:** April 7, 2011 through September 3, 2011  
**Extension Through:** January 1, 2012  
**Hearing Date:** June 14, 2011

**2. EmR1105** — Rule adopted creating **section Tax 3.05**, relating to income and franchise tax deductions for job creation.

#### Finding of Emergency

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

The emergency rule is to reflect changes in Wisconsin's tax laws due to the creation of income and franchise tax deductions for job creation.

It is necessary to promulgate this rule order so that these deductions, created to help bring much needed jobs to Wisconsin, may be administered in a fair and consistent manner.

This rule is therefore promulgated as an emergency rule and shall take effect upon publication in the official state newspaper. Certified copies of this rule have been filed with the Legislative Reference Bureau, as provided in s. 227.24, Stats.

**Publication Date:** April 7, 2011  
**Effective Dates:** April 7, 2011 through September 3, 2011  
**Extension Through:** January 1, 2012  
**Hearing Date:** June 14, 2011

**3. EmR1110** — The Wisconsin Department of Revenue hereby adopts an emergency rule interpreting s. 77.54 (56), Stats., creating **section Tax 11.10**, relating to wind, solar, and certain gas powered products.

The statement of scope for this emergency rule, SS 001-11, was approved by the governor on June 17, 2011, and published in Register 667 on July 14, 2011. This emergency rule was approved by the governor on June 20, 2011

#### Finding of Emergency

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

The emergency rule is to reflect changes in Wisconsin's tax laws due to the creation of a sales and use tax exemption for certain energy-producing wind, solar, and gas powered products and the electricity or energy they produce.

It is necessary to promulgate this rule order so that this exemption, which is effective July 1, 2011, may be administered in a fair and consistent manner.

This rule is therefore promulgated as an emergency rule and shall take effect upon publication in the official state newspaper. Certified copies of this rule have been filed with the Legislative Reference Bureau, as provided in s. 227.24, Stats.

**Publication Date:** June 29, 2011  
**Effective Dates:** June 29, 2011 through  
 November 25, 2011

**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

### **Safety and Professional Services (3)** **(Formerly Regulation and Licensing)**

**1. EmR0827** — Rule adopted creating **section 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 Date:** November 26, 2008  
 April 13, 2009

**2. EmR0828** — Rules adopted to amend **section RL 181.01 (2) (c)**; and to create **sections 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.

**3. EmR1102** — Rule adopted creating **Chapters RL 200 to 202**, relating to governing professional conduct of individuals licensed as sign language interpreters, and for the treatment of state resident licensure exemption requests.

#### **Finding of Emergency**

2009 Wisconsin Act 360 created laws regulating the practice of sign language interpreting, and became effective on December 1, 2010. Under the act, codified at s. 440.032, Stats., individuals practicing as sign language interpreters must now be licensed by the department, and must comply with a code of professional conduct to be promulgated by the department. The new law also provides for exemptions from the licensure requirement under certain circumstances, and requires the council to promulgate rules establishing the criteria and procedures for granting state resident exemptions. As s. 440.032, Stats., is already in effect, an emergency rule is necessary to implement the law pending promulgation of a similar permanent rule.

**Publication Date:** March 16, 2011  
**Effective Dates:** March 16, 2011 through  
 August 12, 2011  
**Extension Through:** October 11, 2011  
**Hearing Date:** May 3, 2011

### **Safety and Professional Services — Barbering and Cosmetology Examining Board**

**EmR1047** — Rule adopted to revise **Chapters BC 9 and 11**, relating to late renewal and continuing education.

#### **Finding of Emergency**

The rule as currently promulgated fails to adequately protect the public to the extent that several provisions are underdeveloped, ambiguous or silent. As a result, inconsistent interpretations and contradictory information has led to significant confusion within the profession. Given that the rules require licensees to comply by March 31, 2011, the errors and omissions need to be addressed immediately so licensees can receive adequate training to provide safe and competent services to the public, and comply with the requirements for renewal of a license.

**Publication Date:** December 23, 2010  
**Effective Dates:** December 23, 2010 through  
 May 21, 2011  
**Extension Through:** September 18, 2011  
**Hearing Date:** April 4, 2011

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## Scope Statements

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### Children and Families

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

##### SS 029–11

This statement of scope was approved by the governor on October 13, 2011.

#### Objective and Policy Analysis

Creates Chapter DCF 55, relating to subsidized guardianship.

#### Policy Analysis

The proposed rule will implement s. 48.623, Stats., as created by 2011 Wisconsin Act 32, relating to the subsidized guardianship program. The proposed rule will include the following topics:

- Eligibility of a child, the child's siblings, and the prospective guardian.
- The procedure to be used by agency caseworkers to inform relatives who may be eligible about the program.
- Determination of the appropriateness of subsidized guardianship for the child.
- Requirements for the subsidized guardianship agreement.
- Payment determination and payment adjustments.
- Payment continuation when a guardian is unable or unavailable to care.
- Overpayment collection.

#### Statutory Authority

Section 48.623 (3) (d), Stats., as created by 2011 Wisconsin Act 32, provides that the department or a county department may recover an overpayment made from a guardian or interim caretaker who continues to receive those payments by reducing the amount of the person's monthly payment. The department may by rule specify other methods for recovering those overpayments. A county department that recovers an overpayment under this paragraph due to the efforts of its officers and employees may retain a portion of the amount recovered, as provided by the department by rule.

Section 48.623 (7), Stats., as created by 2011 Wisconsin Act 32, provides that the department shall promulgate rules to implement s. 48.623, Stats. Those rules shall include all of the following:

- A rule defining the substantial change in circumstances under which a person receiving monthly subsidized guardianship payments may request that an agreement be amended to increase the amount of those payments.
- Rules establishing requirements for submitting a request and criteria for determining the amount of the increase in monthly subsidized guardianship payments that a county department or the department shall offer if there has been a substantial change in circumstances and if there has been no substantiated report of abuse or neglect of the child by the person receiving those payments.
- Rules establishing the criteria for determining the amount of the decrease in monthly subsidized guardianship payments that the department shall offer if a substantial

change in circumstances no longer exists. The criteria shall provide that the amount of the decrease offered by the department may not result in a monthly subsidized guardianship payment that is less than the initial monthly subsidized guardianship payment provided for the child.

Section 227.11 (2) (a) (intro.), Stats., expressly confers rule-making authority on each agency to promulgate rules interpreting the provisions of any statute enforced or administered by the agency if the agency considers it necessary to effectuate the purpose of the statute.

#### Entities That May Be Affected By the Rule

Children in out-of-home care, relatives of children in out-of-home care, and county departments of social or human services.

#### Summary of Applicable Federal Law

The Fostering Connections to Success and Increasing Adoptions Act of 2008 creates an option for states to operate a guardianship assistance program and receive federal reimbursement for a percentage of the expenditures under Title IV–E of the Social Security Act. Once a state adopts the option in the state plan, assistance must be provided to any child who is eligible.

42 USC 671 (a) (28) provides that an agency may enter into kinship guardianship assistance agreements to provide kinship guardianship assistance payments on behalf of children to grandparents and other relatives who have assumed legal guardianship of the children for whom they have cared as foster parents and for whom they have committed to care on a permanent basis.

42 USC 673 (d) provides that a child is eligible for kinship guardianship assistance payments if all of the following apply:

- The child was removed from his or her home pursuant to a voluntary placement agreement or as a result of a judicial determination that continuation in the home would be contrary to the welfare of the child.
- The child was eligible for foster care maintenance payments while residing for at least 6 consecutive months in the home of the prospective relative guardian.
- Being returned home or adopted are not appropriate permanency options for the child.
- The child demonstrates a strong attachment to the prospective relative guardian and the relative guardian has a strong commitment to caring permanently for the child.
- With respect to a child who has attained 14 years of age, the child has been consulted regarding the kinship guardianship arrangement.

An agency may provide kinship guardianship assistance payments for a sibling of a child determined eligible, regardless of whether the sibling meets the eligibility requirements, if the agency and the relative agree on the appropriateness of placing the sibling in the home of the relative.

If subsidized guardianship payments are provided, an agency is required to enter into a written, binding kinship guardianship assistance agreement with the prospective relative guardian that provides the following:



- The amount of each kinship guardianship assistance payment and the manner in which the payment may be adjusted periodically based on the circumstances of the relative guardian and the needs of the child, in consultation with the guardian. A kinship guardianship assistance payment on behalf of a child cannot exceed the foster care maintenance payment that would have been paid on behalf of the child if the child had remained in a foster home.
- Any additional services and assistance that the child and relative guardian will be eligible for under the agreement and the procedure by which the relative guardian may apply for additional services as needed.
- That the agency will pay nonrecurring expenses associated with obtaining legal guardianship of the child up to \$2,000.
- That the agreement shall remain in effect without regard to the state residency of the relative guardian.

42 USC 671 (a) (20) requires a state to provide procedures for fingerprint-based criminal records checks of relative guardians and child abuse and neglect registry checks of relative guardians and adults living the guardians' home before guardianship assistance payments may be made.

42 USC 673 (b) (3) (C) provides that a child for whom kinship guardianship assistance payments are being made is categorically eligible for Medicaid in the same manner as a child for whom foster care maintenance payments are made.

Before the Fostering Connections to Success and Increasing Adoptions Act of 2008 was adopted, 11 states operated subsidized guardianship programs as demonstration projects under federal waivers, including a Wisconsin program in Milwaukee County. The demonstration projects found that the availability of subsidized guardianship increases the number of children who exit foster care to permanent homes, maintains child safety, and saves money through reductions in out-of-home placement days and subsequent decreases in the administrative costs associated with supervising foster care cases. For a synthesis of the findings of the subsidized guardianship demonstration projects, see: [http://www.acf.hhs.gov/programs/cb/programs\\_fund/cwwai-ver/2011/subsidized.pdf](http://www.acf.hhs.gov/programs/cb/programs_fund/cwwai-ver/2011/subsidized.pdf).

#### **Staff Time Required**

250 hours.

#### **Contact Information**

Jonelle Brom, Division of Safety and Permanence  
(608) 264-6933  
[jonelle.brom@wisconsin.gov](mailto:jonelle.brom@wisconsin.gov)

### **Natural Resources**

*Fish, Game, etc., Chs. NR 1—*  
**SS 028-11**  
(DNR # FR-19-11)

This statement of scope was approved by the governor on July 14, 2011.

#### **Subject**

Statement of Scope relating to Chapter NR 47 proposed changes to Wisconsin Forest Landowner Grant Program (WFLGP) for non-industrial private forestland owners.

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

The objective of the proposed amendments to Chapter NR 47, Subchapter VII, is to implement updates and improvements to the Wisconsin Forest Landowner Grant Program (WFLGP). These recommended changes were identified during a review of the WFLGP completed by the Division of Forestry, with the assistance of partners.

#### **Description of Policy Issues/Analysis of Policy Alternatives**

Revisions to Chapter NR 47, Subchapter VII – The Private Forest Landowner Grant Program, will implement updates and improvements to the program related to the implementation and administration of the WFLGP for NIPF owners including practice description and priorities, grants calculations, allowable costs, and eligibility for applicants and practices.

#### **Statutory Authority**

Statutory authority for creation of this rule can be found in s. 26.38, Wis. Stats.

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

The Department estimates that approximately 100 hours of existing staff time will be needed to develop this rule. This time includes drafting the rule, taking the rule to public hearings, presentations to the Natural Resource Board, legislative review, and rule adoption.

#### **Summary and Comparison of Applicable Federal Regulations**

There are no known federal rules which apply to the WFLGP for NIPF owners.

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

- Non-industrial private forestland owners wishing to apply for grants to create a forest stewardship plan or implement a forestry practice on their land.
- Division of forestry staff involved in the administration of the grant programs.
- Any cooperating forester, other resource managers or other private businesses that may be hired by a landowner to implement a practice under the grant program.

#### **Agency Contact Person**

WFLGP for NIPF owners  
Carol Nielsen  
Wisconsin Department of Natural Resources  
101 South Webster Street  
P.O. Box 7921  
Madison WI 53707-7921  
608-267-7508  
[carol.nielsen@wisconsin.gov](mailto:carol.nielsen@wisconsin.gov)

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# Submittal of Rules to Legislative Council Clearinghouse

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

**Safety and Professional Services  
(formerly Commerce)**  
*Boilers and Pressure Vessels, Ch. Comm 41*  
*Mechanical Refrigeration, Ch. Comm 45*  
**CR 11-047**

The Wisconsin Department of Safety and Professional Services announces that on October 12, 2011 it referred the following proposed rule to the Wisconsin Legislative Council Rules Clearinghouse, pursuant to s. 227.15, Stats.

This rule is not subject to s. 227.135 (2), of the Wisconsin Statutes, as affected by 2011 Wisconsin Act 21. The statement of scope for this rule, published in Register No. 664, on April 14, 2011, was sent to the Legislative Reference

Bureau prior to the effective date of 2011 Wis. Act 21.

**Analysis**

The proposed rule revises Chapters Comm 41 and 45, relating to boilers and pressure vessels.

**Agency Procedure for Promulgation**

The department will hold a public hearing on November 11, 2011. The department's Division of Safety and Buildings is primarily responsible for this rule.

**Contact Information**

Joe Hertel, Program Manager

Phone: (608) 266-5649

Email: [Joe.Hertel@wisconsin.gov](mailto:Joe.Hertel@wisconsin.gov)



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## Rule–Making Notices

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### Notice of Hearing

#### Safety and Professional Services (formerly Commerce)

#### *Boilers and Pressure Vessels, Ch. Comm 41 Mechanical Refrigeration, Ch. Comm 45*

**CR 11–047**

NOTICE IS HEREBY GIVEN that pursuant to sections 101.02 (1) and (15) (h) to (j) and 101.17 of the Wisconsin Statutes, the Department of Safety and Professional Services will hold a public Hearing on proposed rules under Chapters Comm 41 and 45, relating to boilers and pressure vessels.

#### Hearing Information

The public Hearing will be held as follows:

**Date:** Friday, November 11, 2011

**Time:** 10:00 A.M.

**Location:** Room 121C  
1400 East Washington Avenue  
Madison, WI 537

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.

#### Appearances at the Hearing and Submittal of Written Comments

Interested persons are invited to appear at the Hearing and present comments on the proposed rules. Persons making oral presentations are requested to submit their comments in writing, via e–mail. Persons submitting comments will not receive individual responses. The Hearing record on this rulemaking will remain open until **November 14, 2011**, 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@wisconsin.gov](mailto:sam.rockweiler@wisconsin.gov). If e–mail submittal is not possible, written comments may be submitted to Sam Rockweiler, Department of Safety and Professional Services, P.O. Box 14427, Madison, WI 53708–0427.

#### Copies of Proposed Rule

The proposed rules and an analysis of them are available on the Internet at the Safety and Buildings Division Web site at: <http://dsps.wi.gov/sb/SB–HomePage.html>. Paper copies may be obtained without cost from Sam Rockweiler at the Department of Safety and Professional Services, P.O. Box 14427, Madison, WI 53707, or at [sam.rockweiler@wisconsin.gov](mailto:sam.rockweiler@wisconsin.gov), or at telephone (608) 266–0797, or at Contact Through Relay. Copies will also be available at the public Hearing.

### Analysis Prepared by the Department of Safety and Professional Services

#### *Statutes interpreted*

Sections 101.02 (1) and (15) (h) to (j), and 101.17.

#### *Statutory authority*

Sections 101.02 (1) and (15) (h) to (j), 101.17, and 227.11 (2) (a).

#### *Explanation of agency authority*

Under sections 101.02 (1) and (15) (h) to (j) of the Statutes, the Department is required to establish rules and prescribe safeguards for protecting the life, health, safety and welfare of employees and frequenters of public buildings and places of employment. Under section 101.17 of the Statutes, installation and use of machines, mechanical devices and steam boilers must comply with the rules of the Department. The Department also has authority under section 227.11 (2) (a) of the Statutes to promulgate rules interpreting any statute that is enforced or administered by the Department, if the rule is considered necessary to effectuate the purpose of the statute.

#### *Related statute or rule*

Most of the boilers and pressure vessels that are addressed by the proposed rule changes are within public buildings and places of employment, which are addressed by the Wisconsin Commercial Building Code, which consists of chapters Comm 61 to 66. Some of the pressure vessels that are addressed by the proposed rule changes are in mechanical refrigeration systems, which are addressed in chapter Comm 45.

#### *Plain language analysis*

Chapter Comm 41 contains Wisconsin’s minimum safety standards for design, construction, installation, operation, inspection, testing, maintenance, repair and alteration of boilers, pressure vessels, power piping and solid–fuel–fired water–heating appliances that are installed for public buildings, places of employment, and one– or two–family dwellings.

The proposed changes would primarily update this chapter to have it include newer editions of several referenced national model codes and standards from the American Society of Mechanical Engineers (ASME) and the National Board of Boiler and Pressure Vessel Inspectors – such as the *ASME Boiler and Pressure Vessel Code*. The changes also include newly adopting two additional, closely related industry–consensus safety standards: ASME CSD–1, for controls and safety devices for automatically fired boilers having fuel–input ratings of 400,000 or more Btu per hour; and NFPA<sup>®</sup> 55, for compressed gases and cryogenic fluids. Consent to adopting the referenced standards will be obtained from the Attorney General prior to incorporating the standards into the rules.

The changes would also discontinue applying ASME nuclear power plant requirements that differ from the requirements applied by the federal Nuclear Regulatory Commission. The changes would also clarify and refine some of the administrative elements of the chapter, such as how

authorized agents and insurance companies can participate in enforcing the chapter. Overall, the changes would essentially make this chapter consistent with current, nationwide industry standards and practices for boilers and pressure vessels.

***Summary of, and comparison with, existing or proposed federal regulations***

The federal Nuclear Regulatory Commission has regulations for construction, operation, inspection and licensing of nuclear power plants in Parts 50.55a to 50.57 of Title 10 of the *Code of Federal Regulations* (CFR). An Internet-based search indicated that the current edition of these regulations is dated January 1, 2011, and this edition applies various requirements developed by ASME for the boilers and pressure vessels in these facilities.

An Internet-based search revealed that on March 10 to 12, 2011, the Advisory Committee on Reactor Safeguards held its 581<sup>st</sup> meeting and agreed to proposed final revisions for the next edition of 10 CFR 50.55a.

***Comparison with rules in adjacent States***

An Internet-based search found that the four adjacent states adopt by reference the following editions and addenda of the ASME *Boiler and Pressure Vessel Code* and related standards. These states also create amendments to the adopted standards similar to Wisconsin's administrative rules for boilers and pressure vessels.

a. The Illinois Office of the State Fire Marshal, Division of Boiler and Pressure Vessel Safety regulates the construction, installation, operation, inspection and repair of boilers and pressure vessels throughout the state of Illinois. The Illinois boiler and pressure vessel safety rules are similar to the requirements in the Wisconsin Boiler and Pressure Vessel Code, including the Illinois incorporation by reference of the ASME *Boiler and Pressure Vessel Code* (2007 edition), ASME CSD-1 (2004 edition) and the *National Board Inspection Code* (2007 edition).

b. The Iowa Department of Workforce Development, Division of Labor Services administers and enforces the Boilers and Unfired Pressure Vessels Chapter of the Iowa Code. That chapter requires new installations of boilers and pressure vessels to be designed, manufactured, installed, inspected and stamped in accordance with the applicable requirements of the ASME *Boiler and Pressure Vessel Code* (2007 edition with 2008a and 2009b addenda); ASME CSD-1 (2009 edition); ASME B31.1 *Power Piping* (2007 edition); and the *National Board Inspection Code* (2007 edition with 2008, 2009 and 2010 addenda).

c. The Michigan Department of Licensing and Regulatory Affairs, Boiler Division administers the Michigan Boiler Rules. The rules are similar to the Wisconsin rules and establish minimum standards of safety for the construction, installation, inspection, use, alteration and repair of boilers, with limited rules for specified pressure vessels. The rules adopt the ASME *Boiler and Pressure Vessel Code* (2007 edition and 2008a addenda), ASME B31.1 *Power Piping* (2007 edition), and the *National Board Inspection Code* (2007 edition).

d. The Minnesota Department of Labor and Industry, Division of Construction Codes and Licensing administers rules that address the manufacture, installation, repair, operation, safety and inspection of boilers, pressure vessels and appurtenances. The rules also contain provisions for

licensing of boiler operators, and include minimal requirements for hobby boilers (steam traction engines). The rules are similar to the Wisconsin rules and incorporate the most recent editions and addenda of the ASME *Boiler and Pressure Vessel Code* and the *National Board Inspection Code*.

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

The methodology for this update of chapter Comm 41 consisted primarily of reviewing and assessing the latest editions of the national model codes and standards that serve as the basis for the chapter. In reviewing these latest editions, Department staff concluded that these codes and standards are clearer and provide more detail than the current requirements and standards in Comm 41, and would not impose significant additional costs or other impacts on a substantial number of businesses. The Department's Boiler and Pressure Vessel Code Advisory Council then agreed with these conclusions. The members of that Council represent the many stakeholders involved in the boiler and pressure vessel industry including manufacturers, inspectors, building contractors, regulators, labor, insurance and the public. The following organizations are represented on the Council:

- American Insurance Association
- Boiler and Pressure Vessel Repairers Association
- City of Milwaukee
- HSB Global Standards
- Plumbing, Mechanical and Sheet Metal Contractors Alliance
- Wisconsin Boiler Inspector's Association
- Wisconsin Historical Steam Engine Association
- Wisconsin Manufacturers & Commerce
- Wisconsin Pipe Trades Association
- Wisconsin Utilities Association

The Department believes the referenced national model codes and standards reflect contemporary societal values with respect to protecting public health, safety and welfare in the design, construction, use, operation and maintenance of boilers and pressure vessels in commercial and public buildings and places of employment. For example, the ASME *Boiler and Pressure Vessel Code* is kept current by the ASME Boiler and Pressure Committee, which was established 100 years ago in response to boiler accidents that were causing upwards of 50,000 deaths annually. The Committee now consists of more than 950 engineers, and meets regularly to consider requests for interpretations and revisions and to develop new rules. In the formulation of its rules and in the establishment of maximum design and operating pressures, the Committee considers ongoing advances in materials, construction, methods of fabrication, inspection, certification and overpressure protection. The ASME *Boiler and Pressure Vessel Code* is now adopted in part or in its entirety by all 50 states and numerous municipalities and territories of the United States, and by all the provinces of Canada. More than 92,000 copies of the *Code* are in use in over 100 countries, and this use is supported by ASME, which now includes more than 120,000 members in over 150 countries worldwide.

Wisconsin first adopted rules that were consistent with the ASME *Boiler and Pressure Vessel Code* in 1915, and has routinely adopted the latest edition of this code by reference since 1956. Keeping Wisconsin's requirements consistent with this industry standard avoids having manufacturers, suppliers, inspectors and insurers of the regulated equipment

face a regulatory environment here that differs from their practices elsewhere.

***Analysis and supporting documents used to determine effect on small business or in preparation of economic impact report***

The Department used its Boiler and Pressure Vessel Code Advisory Council to gather and analyze information on potential impacts in complying with both the technical and administrative requirements of the proposed rules. A responsibility of council members is to bring forth any concerns that their respective organizations may have with the current and proposed requirements, and any concerns for potential economic impacts.

In addition to posting rule-development and council activities on its Web site, the Department offers an e-mail subscription service, which is available to all small businesses. This service provides e-mail notification of council meetings, meeting agendas and Council-meeting progress reports so small businesses can follow proposed code changes.

Consideration of the potential effects on small business was based on guidelines produced by the federal Small Business Administration's Office of Advocacy.

**Effect on Small Business**

The proposed changes are not expected to impose significant additional costs or other impacts on a substantial number of businesses because the primary effect of the changes is to make chapter Comm 41 consistent with current, nationwide industry standards and practices for boilers and pressure vessels.

***Initial regulatory flexibility analysis***

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

Any business involved with the design, construction, installation, operation, inspection, testing, maintenance, repair and alteration of boilers and pressure vessels that are installed for public buildings or places of employment.

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

The rule revisions would not require any new reporting or other bookkeeping. They would clarify that reports for both installation and periodic inspections are sent to the Department primarily through its electronic data interchange transfer system. They would apply the current timeframes for filing periodic-inspection reports to both installation and periodic inspections, rather than only periodic inspections. They would also reduce the application of the accident-reporting requirements to only where injuries occur that need more than first aid treatment.

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

No new professional skills would be needed.

4. *Rules have a significant economic impact on small businesses.*

No. Rules not submitted to Small Business Regulatory Review Board.

***Small business regulatory coordinator***

The small business regulatory coordinator for the Department of Safety and Professional Services is John Murray, who may be contacted at telephone (608) 266-8608, or Email at [john.murray@wisconsin.gov](mailto:john.murray@wisconsin.gov).

**Environmental Analysis**

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

**Agency Contact Information**

Sam Rockweiler, Wisconsin Department of Safety and Professional Services, Division of Environmental and Regulatory Services, P.O. Box 14427, Madison, WI, 53708-0427; telephone (608) 266-0797; e-mail [sam.rockweiler@wisconsin.gov](mailto:sam.rockweiler@wisconsin.gov).

STATE OF WISCONSIN DEPARTMENT OF ADMINISTRATION DOA 2049 (R 07/2011)		
<b>ADMINISTRATIVE RULES                  FISCAL ESTIMATE AND                  ECONOMIC IMPACT ANALYSIS</b>		
Type of Estimate and Analysis		
<input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected		
Administrative Rule Chapter, Title and Number		
Comm 41, Boilers and Pressure Vessels; and Comm 45, Mechanical Refrigeration		
Subject		
Boilers, pressure vessels and power piping		
Fund Sources Affected	Chapter 20 , Stats. Appropriations Affected	
GPR   FED <input checked="" type="checkbox"/> PRO   PRS   SEG   SEG-S	None	
Fiscal Effect of Implementing the Rule		
<input checked="" type="checkbox"/> No Fiscal Effect <input type="checkbox"/> Indeterminate	<input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Decrease Existing Revenues	<input type="checkbox"/> Increase Costs <input type="checkbox"/> Could Absorb Within Agency's Budget <input type="checkbox"/> Decrease Costs
The Rule Will Impact the Following (Check All That Apply)		
<input type="checkbox"/> State's Economy <input type="checkbox"/> Local Government Units	<input type="checkbox"/> Specific Businesses/Sectors <input type="checkbox"/> Public Utility Rate Payers	
Would Implementation and Compliance Costs Be Greater Than \$20 million?		
Yes <input checked="" type="checkbox"/> No		
Policy Problem Addressed by the Rule		
The industry standards that are adopted by reference in chapter Comm 41 are out-of-date because the sponsoring organizations have replaced them with newer editions.		
Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)		
The proposed rule revisions would not impose significant additional costs or other impacts on a substantial number of businesses.		
Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule		
Keeping Wisconsin's requirements consistent with current industry standards avoids having manufacturers, suppliers, inspectors and insurers of the regulated equipment face a regulatory environment here that differs from their practices elsewhere.		
Long Range Implications of Implementing the Rule		
No adverse impacts are expected, and any uncertainties that could otherwise result by being inconsistent with corresponding regional and national-level practices will be avoided.		
Compare With Approaches Being Used by Federal Government		
The proposed rules for nuclear power plants would achieve consistency with the requirements applied by the Nuclear Regulatory Commission.		
Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)		
Minnesota already applies the latest edition of the ASME <i>Boiler and Pressure Vessel Code</i> , and the other 3 neighboring states are expected to soon do so as well.		
Name and Phone Number of Contact Person		
Sam Rockweiler, 608.266.0797		

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## Submittal of Proposed Rules to the Legislature

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

Public Service Commission  
**CR 10-147**

(PSC Docket # 1-AC-234)

Revises Chapter PSC 118, relating to renewable resource credits.

This rule is not subject s. 227.185. The statement of scope for this rule, published in Register No. 655 on July 14, 2010, and was sent to the Legislative Reference Bureau prior to the effective date of 2011 Wisconsin Act 21.



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## Rule Orders Filed with the Legislative Reference Bureau

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

### **Natural Resources**

*Fish, Game, etc., Chs. NR 1—*

**CR 11-008**

(DNR # FH-50-10)

Revises section NR 25.09, relating to commercial fishing in outlying waters.  
Effective 12-1-11.

### **Natural Resources**

*Environmental Protection – Air Pollution Control,*

*Chs. NR 400—*

**CR 07-082**

(DNR # AM-23-07B)

Revises Chapters NR 404 and 484, relating to the 24-hour secondary ambient air quality standard for particulate matter measured as total suspended particulates (TSP) and affecting small business.  
Effective 12-1-11.

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## Rules Published with this Register and Final Regulatory Flexibility Analyses

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*The following administrative rule orders have been adopted and published in this edition of the Wisconsin Administrative Register. Copies of these rules are sent to subscribers of the complete Wisconsin Administrative Code and also to the subscribers of the specific affected Code.*

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

### **Agriculture, Trade and Consumer Protection** **CR 10-121**

(DATCP # 10-R-02)

Revises Chapter ATCP 70, relating to food processing plant license exemption for certain maple sap processors. Effective 11-1-11.

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

This rule will benefit persons who process maple sap to produce maple syrup or concentrated maple sap for sale to other processors for further processing. Those persons will no longer need a food processing plant license, provided that they sell less than \$5,000 worth of maple syrup or concentrated maple sap for further processing in the license year and meet other requirements for exemption. Exempt maple sap processors will save a \$95 annual license fee and will be exempt from facility construction and sanitation requirements that apply to licensed food processing plants.

#### **Comments from Legislative Committees (Summary)**

On June 8, 2011, DATCP transmitted the above rule for legislative committee review. The rule was assigned to the Senate Committee on Energy, Biotechnology, and Consumer Protection and to the Assembly Committee on Agriculture. The Senate Committee took no action, while the Assembly committee held a public hearing on August 11, 2011, and voted to waive the review period with a vote of 12 Ayes, 0 Noes.

### **Natural Resources** ***Fish, Game, etc., Chs. NR 1—*** **CR 11-006**

(DNR # FH-03-11)

Revises Chapters NR 20, 23 and 26, relating to fishing on the inland, outlying, and boundary waters of Wisconsin. Effective 11-1-11 in part, 4-1-12 in part.

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

The proposed rules do not have a significant economic impact on small businesses. They do not apply directly to businesses, but rather to sport anglers. The proposed rules do not impose any compliance or reporting requirements on small businesses nor are any design or operational standards contained in the rule. No issues were raised by small businesses during the rule hearings. The rules will be enforced by Conservation Wardens who have arrest powers and may use citations.

### **Summary of Comments of Legislative Standing Committees**

The rules were reviewed by the Senate Committee on Environment and Natural Resources, the Assembly Committee on Natural Resources, and the Joint Committee on Review of Administrative Rules. On June 22, 2011, the Assembly Committee on Natural Resources held a public hearing. The Department did not receive any comments or requests for modification as a result of the hearing.

### **Natural Resources** ***Fish, Game, etc., Chs. NR 1—*** **CR 11-007**

(DNR # WM-01-11)

Revises Chapters NR 10 and 45, relating to game and hunting, wildlife damage and nuisance control, and DNR managed lands. Effective 11-1-11 in part, 2-1-12 in part.

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

These rules are applicable to individual sportspersons and impose no compliance or reporting requirements for small business, nor are any design or operational standards contained in the rule. Therefore, under s. 227.19(3m), Stats., a final regulatory flexibility analysis is not required.

### **Summary of Comments of Legislative Standing Committees**

The rules were reviewed by the Assembly Committee on Natural Resources and the Senate Committee on Natural Resources and Environment. No hearings were held and the department did not receive comments or requests for modifications.

### **Revenue** **CR 10-129**

Revises Chapter Tax 20 and repeals Chapters Tax 20 Appendix and 53, relating to the lottery and gaming and school levy tax credits and plat review fees. Effective 11-1-11.

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

This rule order does not have a significant economic impact on a substantial number of small businesses.

### **Summary of Comments of Legislative Standing Committees**

No comments reported.

**Safety and Professional Services —  
Veterinary Examining Board  
CR 11-025**

Revises Chapters VE 2 and 3, relating to the requirements for the initial licensure of veterinarians. Effective 11-1-11.

**Summary of Final Regulatory Flexibility Analysis**

These proposed rules have been reviewed by the department's Small Business Review Advisory Committee to

determine whether the rules will have any significant economic impact on a substantial number of small businesses, as defined in s. 227.114 (1), Stats. The Department's Regulatory Review Coordinator may be contacted by email at [john.murray@wisconsin.gov](mailto:john.murray@wisconsin.gov), or by calling (608) 266-2112.

**Summary of Comments of Legislative Standing Committees**

No comments reported.

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## Sections Affected by Rule Revisions and Corrections

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The following administrative code sections had rule revisions and corrections take place in **October 2011**, and will be effective as indicated in the history note for each particular section. For additional information, contact the Legislative Reference Bureau at (608) 266-7590.

### Revisions

#### Agriculture, Trade and Consumer Protection

##### Ch. ATCP 70

ATCP 70.03 (7) (e) and (note)

#### Natural Resources

##### Ch. NR 10

NR 10.01 (2) (f) 1. to 3., (3) (e) 1. b., 2. b., (em) 1., (es) 3., (i) 1.

NR 10.02 (1) (b)

NR 10.06 (6) (intro.)

NR 10.106 (2) (e)

NR 10.11 (7)

##### Ch. NR 20

NR 20.03 (6m), (31m), (39t)

NR 20.06 (11)

NR 20.20 (2) (c) 1., (3) (am) 3., (b), (5) (c) 2., (em), (h), (7) (c), (16) (c) 2., (21) (d) 1., (24) (b), (39) (b), (43) (b), (44) (b) 4., (c) 2., (g) 2., (45) (a) 2., (49) (am) 2., (51) (bm) 1., (56) (e) 1., (57) (d) 4., 5., (e), (i) 3., 4., (59) (a) 2., (bm), (60) (b) 2., (64) (d) 2., (66) (bm), (68) (a) 2., (73) (b) 3s., (g) 2., 3.

##### Ch. NR 23

NR 23.05 (5) (k)

##### Ch. NR 26

NR 26.01 (46) (title), (a)

NR 26.24 (38)

NR 26.34

##### Ch. NR 45

NR 45.09 (5) (intro.)

#### Revenue

##### Ch. Tax 20

Entire Chapter

Tax 20 Appendix

##### Ch. Tax 53

Entire Chapter

#### Veterinary Examining Board

##### Ch. VE 2

VE 2.01 (2)

##### Ch. VE 3

VE 3.03 (intro.) and (5)

### Editorial Corrections

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

#### Agriculture, Trade and Consumer Protection

##### Ch. ATCP 163

Entire Chapter

##### Ch. ATCP 164

Entire Chapter

##### Ch. ATCP 165

Entire Chapter

#### Commerce

##### Ch. Comm 122

Entire Chapter

##### Ch. Comm 128

Entire Chapter

##### Ch. Comm 132

Entire Chapter

##### Ch. Comm 134

Entire Chapter

##### Ch. Comm 135

Entire Chapter

#### Natural Resources

##### Ch. NR 10

NR 10.106 (2) (e)

#### Revenue

##### Ch. Tax 20

Tax 20.12 (1), (2), (d)

#### University of Wisconsin System Board of Regents

##### Ch. UWS 23

Entire Chapter

##### Ch. UWS 24

Entire Chapter

Removal of the following chapters under the authority of s. 13.92 (4) (b) 15., Stats., are indicated in the following listing.

**Commerce**

- Ch. Comm 100**
- Ch. Comm 106**
- Ch. Comm 107**
- Ch. Comm 108**
- Ch. Comm 109**
- Ch. Comm 110**
- Ch. Comm 111**
- Ch. Comm 112**
- Ch. Comm 113**
- Ch. Comm 114**
- Ch. Comm 115**
- Ch. Comm 116**
- Ch. Comm 117**
- Ch. Comm 118**
- Ch. Comm 119**
- Ch. Comm 121**
- Ch. Comm 124**
- Ch. Comm 125**
- Ch. Comm 126**
- Ch. Comm 127**
- Ch. Comm 129**
- Ch. Comm 130**
- Ch. Comm 136**
- Ch. Comm 137**
- Ch. Comm 139**
- Ch. Comm 149**



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## Executive Orders

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

**Executive Order 43.** Relating to a Proclamation that the Flag of the United States and the Flag of the State of Wisconsin be Flown at Half-Staff as a Mark of Respect for Sergeant Chester G. Stoda of the United States Army Who Lost His Life While Serving His Country Supporting Operation Enduring Freedom – Afghanistan.

**Executive Order 44.** Relating to the Commissioning of a Whitetail Deer Trustee to Review and Evaluate Wisconsin's Deer Herd Management Practices.

**Executive Order 45.** Relating to a Special Session of the Legislature.

**Executive Order 46.** Relating to a Proclamation that the Flag of the United States and the Flag of the State of Wisconsin be Flown at Half-Staff as a Mark of Respect for Staff Sergeant Garrick L. Eppinger Jr. of the United States Army Reserve Who Lost His Life While Serving His Country During Operation Enduring Freedom–Afghanistan.

**Executive Order 47.** Relating to a Proclamation that the Flag of the United States and the Flag of the State of Wisconsin be Flown at Half-Staff as a Mark of Respect for Firefighters of this State Who Have Given Their Lives in the Line of Duty.

**Executive Order 48.** Relating to a Proclamation that the Flag of the United States and the Flag of the State of Wisconsin be Flown at Half-Staff as a Mark of Respect for Sergeant Jakob J. Roelli of the United States Army Who Lost His Life While Serving His Country During Operation Enduring Freedom–Afghanistan.

**Executive Order 49.** Relating to an Authorization for the Flag of the United States and the Flag of the State of Wisconsin to be Flown at Half-Staff as a Mark of Respect for David and Kristin Novaez.

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## Public Notices

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### Health and Family Services (Medical Assistance Reimbursement for Services Provided Under the Benchmark Plan)

The State of Wisconsin reimburses providers for services provided to Medical Assistance recipients under the authority of Title XIX of the Social Security Act and ss. 49.43 to 49.47, Wisconsin Statutes. This program, administered by the State's Department of Health Services, is called Medical Assistance (MA) or Medicaid. In addition, Wisconsin has expanded this program to create the BadgerCare and BadgerCare Plus programs under the authority of Title XIX and Title XXI of the Social Security Act and ss. 49.471, 49.665, and 49.67 of the Wisconsin Statutes. Federal statutes and regulations require that a state plan be developed that provides the methods and standards for reimbursement of covered services. A plan that describes the reimbursement system for the services (methods and standards for reimbursement) is now in effect.

Section 1937 of the Social Security Act provided authority for States to provide for medical assistance to one or more groups of Medicaid-eligible individuals, specified by the State in an approved state plan amendment, through enrollment in coverage that provides benchmark or benchmark-equivalent health care benefit coverage. Wisconsin did so, effective February 1, 2008. The current groups who receive benefits under Wisconsin's benchmark plan are pregnant women and infants with incomes between 200 and 300% of the Federal income poverty line, as well as newborns who are born to women with family incomes between 200 and 300% of the Federal income poverty line.

A recent change to federal law required States to provide emergency and non-emergency transportation services to those receiving coverage under a benchmark plan. In addition, EPSDT services are to be provided to individuals under 21 years of age. EPSDT stands for Early & Periodic Screening & Diagnostic Treatment Benefit, and it is described in section 1905(r) of the Social Security Act. The services available under EPSDT are described at the following link: [http://www.cms.gov/MedicaidEarlyPeriodicScrn/02\\_Benefits.asp](http://www.cms.gov/MedicaidEarlyPeriodicScrn/02_Benefits.asp).

Wisconsin initially submitted its state plan amendment to assure the provision of these benefits to the federal Centers for Medicare and Medicaid Services (CMS) seeking an effective date of April 1, 2010. Based on the publication date of this notice, that effective date will instead be November 1, 2011. In addition to this public notice, Wisconsin's tribes were consulted at a meeting of the Tribal Health Directors on June 9, 2010.

#### **Proposed Change**

The proposed change is to assure the provision of emergency and non-emergency transportation services, as well as EPSDT services, to individuals receiving Wisconsin Medicaid services under the benchmark plan previously approved by the federal Centers for Medicare and Medicaid Services.

The projected fiscal effect of these changes is a savings of \$31,000 general purpose revenue (GPR) and \$46,000 federal match (FED) for a total of \$77,000 all funds (AF) for the current state fiscal year.

#### **Copies of the Proposed Change:**

A copy of the proposed change may be obtained free of charge by calling or writing as follows:

#### **Regular Mail**

James Vavra  
Bureau of Benefits Management  
Division of Health Care Financing  
P.O. Box 309  
Madison, WI 53701-0309

#### **Phone**

James Vavra  
(608) 261-7838

#### **FAX**

(608) 266-1096  
Attention: James Vavra

#### **E-Mail**

[james.vavra@dhs.wisconsin.gov](mailto:james.vavra@dhs.wisconsin.gov)

A copy of the proposed change are available for review at the main office of any county department of social services or human services.

**Written Comments:**

Written comments are welcome. Written comments on the proposed changes may be sent by FAX, e-mail, or regular mail to the Department. The FAX number is (608) 266-1096. The e-mail address is [james.vavra@dhs.wisconsin.gov](mailto:james.vavra@dhs.wisconsin.gov). Regular mail can be sent to the above address. All written comments will be reviewed and considered.

The written comments will be available for public review between the hours of 7:45 a.m. and 4:30 p.m. daily in Room 350 of the State Office Building, 1 West Wilson Street, Madison, Wisconsin. Revisions may be made in the proposed changed methodology based on comments received.

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