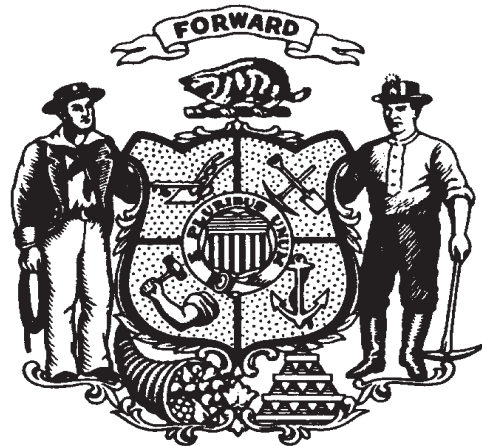


# Wisconsin Administrative Register

No. 635



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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 & Consumer Protection (2)

1. **EmR0804** — Creating **subch. IV of Ch. ATCP 161**, relating to the “buy local” grant program created under s. 93.48, Stats.

#### Exemption From Finding of Emergency

DATCP has general authority under s. 93.07 (1), Stats., to interpret laws under its jurisdiction. Section 93.48 (1), Stats., specifically requires DATCP to adopt rules for the “buy local” grant program. Section 9103(3i) of 2007 Wisconsin Act 20 (biennial budget act) authorizes DATCP to adopt temporary emergency rules without the normal “finding of emergency,” pending the adoption of “permanent” rules. This temporary emergency rule implements the “buy local” grant program on an interim basis, pending the adoption of “permanent” rules.

**Publication Date:** February 22, 2008  
**Effective Date:** February 22, 2008  
**Expiration Date:** May 1, 2009  
**Hearing Date:** May 30, 2008

2. **EmR0822** — Rules adopted revising **Ch. ATCP 10**, relating to diseases of fish and farm–raised deer.

#### Finding of Emergency

(1) The Wisconsin department of Agriculture, Trade and Consumer Protection (“DATCP”) administers Wisconsin’s animal health and disease control programs, including programs to control diseases of fish and farm–raised deer.

##### Disease Testing of Fish

(2) DATCP regulates fish farms, including fish farms operated by the Wisconsin Department of Natural Resources (“DNR”). DATCP also regulates the import, movement and disease testing of fish.

(3) Viral hemorrhagic septicemia (VHS) is a serious disease of fish. VHS was first reported in Wisconsin on May 11, 2007, after the Wisconsin Veterinary Diagnostic Laboratory confirmed positive samples from freshwater drum (sheepshead) in Little Lake Butte des Mortes (part of the Lake Winnebago system). VHS was subsequently found in Lake Winnebago, and in Lake Michigan near Green Bay and Algoma. The source of VHS in these wild water bodies is not known. VHS has not yet been reported in any Wisconsin fish farms. VHS can be fatal to fish, but is not known to affect human beings.

(4) Current DATCP rules require health certificates for fish and fish eggs (including bait) imported into this state, for fish and fish eggs stocked into waters of the state, and for fish and fish eggs (including bait species) moved between fish farms in this state. *Import* health certificates must include VHS testing if the import shipment includes salmonids (salmon, trout, etc.) or originates from a state or province where VHS is known to occur. VHS testing is *not* currently required for fish or fish eggs stocked into waters of the state from Wisconsin sources, for bait fish or eggs originating from Wisconsin sources, for fish or fish eggs moved between fish farms in Wisconsin, or for non–salmonids imported from states where VHS has not yet been found.

(5) Because VHS has now been found in waters of the state, it is necessary to expand current VHS testing requirements. Because of the urgent need to minimize the spread of VHS in this state, it is necessary to adopt VHS testing requirements by emergency rule, pending the adoption of a “permanent” rule.

##### Disease–Free Herd Certification of Farm–Raised Deer Herds

(6) DATCP registers farm–raised deer herds in this state. DATCP also regulates the import, movement and disease testing of farm–raised deer. Under current DATCP rules, DATCP may certify a farm–raised deer herd as brucellosis–free or tuberculosis–free, or both, based on herd test results provided by the farm–raised deer keeper. Certification is voluntary, but facilitates sale and movement of farm–raised deer.

(7) Under current rules, a tuberculosis–free herd certification is good for 3 years, but a brucellosis–free herd certification is good for only 2 years. There is no compelling veterinary medical reason for the difference. A rule change (extending the brucellosis–free certification term from 2 to 3 years) is needed to harmonize the certification terms, so that farm–raised deer keepers can conduct simultaneous tests for both diseases. Simultaneous testing will reduce testing costs and limit stress on tested deer. An emergency rule is needed to avoid some unnecessary costs for farm–raised deer keepers this year, pending the adoption of permanent rules.

**Publication Date:** July 9, 2008  
**Effective Date:** July 9, 2008  
**Expiration Date:** December 6, 2008  
**Hearing Date:** August 1, 2008

## Children and Families

(Formerly Workforce Development)

### *Family Supports, Chs. DWD 12 to 59*

**EmR0821** — Rules adopted creating **ss. DWD 40.02 (12m), 40.05, and DWD 40 Appendix D**, relating to establishment of birth cost orders based on child support guidelines.

#### **Finding of Emergency**

The Department of Workforce Development 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:

The federal Office of Child Support Enforcement (OCSE) has notified Wisconsin that OCSE will not certify the state's request for federal income tax refund offset for birth cost orders that have not been set in accordance with the child support guidelines in Chapter DWD 40, which take into consideration the payer's ability to pay.

Federal income tax refund offset is one of the primary tools for collection of birth cost orders owed to the State of Wisconsin. In calendar year 2007, the child support program collected \$11,481,000 in birth costs through federal income tax refund offset. Of the nearly \$11.5 million collected, approximately \$6.62 million was returned to the federal government to reimburse Medicaid costs, \$1.72 million was used by county child support agency programs to benefit children in the state, and the remaining \$3.14 million was returned to the state Medicaid program.

**Publication Date:** June 27, 2008  
**Effective Date:** June 27, 2008  
**Expiration Date:** November 24, 2008  
**Hearing Date:** July 29, 2008

## Commerce

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

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

**EmR0826** — Rules adopted to renumber **s. Comm 66.0911**; to amend **s. Comm 20.24 (1) and (2)**; and to create **ss. Comm 21.095, 20.24 Table 20.24–14, 62.1200, 62.3500 (3) (e), 66.0911 (title) and (2)**, relating to carbon monoxide alarms and affecting small business.

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

Under the nonstatutory provisions of 2007 Wisconsin Act 205, the Department of Commerce is directed to issue emergency rules that implement provisions of the Act. The Act specifically states: "Notwithstanding section 227.24 (1) (a) and (3) of the statutes, neither the department of commerce or the department of health services is required to provide evidence that promulgating rules under this subsection as emergency rules 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."

The Act mandates the installation and maintenance of carbon monoxide alarms in buildings accommodating certain types of residential occupancies and within which fuel burning appliances are located. Residential occupancies include tourist rooming houses, bed and breakfast establishments, and any public building that is used for sleeping or lodging, such as, hotels, motels, condominiums, apartment buildings, dormitories, fraternities, sororities, convents, seminaries, community based residential facilities, home shelters, but not hospitals and nursing homes. The Act requires the installation of carbon monoxide alarms in new buildings as of October 1, 2008. The owners of existing buildings will have until April 1, 2010 to install the carbon monoxide alarms. The Act also provides for the omission of carbon monoxide alarms in certain instances which are further clarified by the administrative rules.

**Publication Date:** September 10, 2008  
**Effective Date:** October 1, 2008  
**Expiration Date:** February 28, 2009  
**Hearing Date:** October 14, 2008

## Commerce (2)

### *Financial Resources for Businesses and Communities, Chs. Comm 104–135*

- EmR0823** — Rules adopted amending **Comm Table 108.6–1, sections Comm 108.07 (5), 108.22 (1), and 154.06 (intro.)**, relating to emergency assistance grants in the community development block grant program, and affecting small businesses.

#### **Finding of Emergency**

The Department of Commerce finds that an emergency exists and that adoption of the rule included in this order is necessary for the immediate preservation of public health, safety, and welfare. The facts constituting the emergency are as follows.

Currently under sections Comm 108.06, 108.07, and 108.22 of the Wisconsin Administrative Code, as promulgated under sections 560.04, 560.045, and 560.9809 of the Statutes, the Department may annually use up to 5 percent of its federal Community Development Block Grant (CDBG) funds to repair or replace public infrastructure or facilities, or for emergency services necessitated by a natural disaster or catastrophic event. Also under sections Comm 108.07 and 108.22, the maximum amount of CDBG funds that the Department can award to any local government for a natural disaster or catastrophic event is \$500,000.

Currently under section Comm 154.06, as promulgated under sections 560.02 (4) and 560.9809 (2) of the Statutes, the Department may annually use up to \$2,000,000 of CDGB funds to address emergency housing needs caused by natural disasters or catastrophic events.

Because of the unprecedented levels of damage to public infrastructure and facilities from the severe storms and widespread flooding that occurred throughout the State in June 2008, the need for emergency assistance to communities far exceeds the \$1.35 Million of CDBG funding that results from the above 5–percent limit, and the need for emergency housing assistance for low and moderate income households far exceeds the above \$2,000,000. Communities and households in 28 of the 30 counties where the Governor has declared a state of emergency are eligible for this CDBG program assistance.

This emergency rule repeals the above limits of 5 percent, \$500,000 and \$2,000,000. This will enable the Department

to (1) use any available CDBG funds for emergency assistance with repairing or replacing public infrastructure and facilities, and with repairing or replacing homes damaged by the severe storms and flooding; and (2) base the award amounts on the scope of the damages and destruction in the community and on the funds available.

**Publication Date:** July 16, 2008  
**Effective Date:** July 16, 2008  
**Expiration Date:** December 16, 2008  
**Hearing Date:** August 27, 2008

2. **EmR0831** — Rules adopted creating section **Comm 113.03 (4)**, relating to allocation of volume cap on tax-exempt private activity bonds.

#### **Finding of Emergency**

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

The facts constituting the emergency are as follows. Because of widespread disruption of the housing markets, Congress has enacted the Housing and Economic Recovery Act of 2008 (the “Act”), which contains various relief measures relating to housing. Section 3021 of the Act creates a special one-time additional allocation of volume cap for calendar year 2008, to be used for the issuance of single-family housing bonds and multifamily housing bonds no later than December 31, 2010.

Under section 560.032 of the Statutes, the Department of Commerce is charged with allocating to Wisconsin issuers the private activity bond volume cap allocated to Wisconsin under the Internal Revenue Code of 1986, 26 USC 146. This emergency rule is necessary to implement the special allocation of volume cap under the Act, as described above.

Pursuant to section 227.24 of the Statutes, this rule is adopted as an emergency rule to take effect upon publication in the official state newspaper and filing with the Legislative Reference Bureau.

**Publication Date:** September 27, 2008  
**Effective Date:** September 27, 2008  
**Expiration Date:** February 24, 2009  
**Hearing Date:** October 27, 2008

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### **Financial Institutions – Securities**

**EmR0829** — Rules adopted to **amend s. DFI–Sec 4.06 (2) (i) and to create ss. DFI–Sec 4.06 (1) (v), 5.06 (14) and Chapter DFI–Sec 10**, relating to making it a dishonest or unethical practice for securities licensees to make use of misleading designations or certifications purporting to demonstrate special expertise in the financial or retirement needs of seniors.

#### **Finding of Emergency**

The Division of Securities of the Department of Financial Institutions for the State of Wisconsin finds that an emergency exists and that the rules are necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency follows:

The Division is taking immediate, emergency-rule action to protect seniors in Wisconsin from being misled through the use by securities licensees of designations and credentials that imply or represent that a person has special expertise, certification, or training in financial planning for seniors, but

where such designations and/or credentials are either non-existent or do not involve significant education, testing, training or experience, and in reality are marketing ploys.

**Publication Date:** September 15, 2008  
**Effective Date:** September 15, 2008  
**Expiration Date:** February 12, 2009

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### **Government Accountability Board**

**EmR0830** — Rules adopted repealing and recreating **Chapter GAB 4**, relating to observers at a polling place or other location where votes are being cast, counted or recounted.

#### **Finding of Emergency**

Pursuant to section 227.24, Stats., the Government Accountability Board finds that an emergency exists in the Board’s May 5, 2008 decision to decline to reaffirm the administrative rule section EIBd 4.01 because the rule was inconsistent with the requirements of its enabling statute, s. 7.41, Stats. The statute states that any member of the public is allowed to be present at the polls on Election Day to observe; however, it does not specify standards of conduct they must abide by.

The Board further finds that given the intense interest in the fall election, the expected high turnout, the increasing use of observers in the polling place, and the comments of municipal and county clerks regarding the obstacles observers can pose to the orderly conduct of elections, it is necessary to codify standards to regulate the observers’ conduct and that the attached rule governing observer conduct must be adopted prior to the fall elections to ensure the public peace and safety with respect to the administration of the fall elections.

**Publication Date:** September 26, 2008  
**Effective Date:** September 26, 2008  
**Expiration Date:** February 23, 2009  
**Hearing Date:** November 11, 2008

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### **Health Services**

(Formerly Health and Family Services)

*Management & Technology & Strategic Finance,  
Chs. HFS (DHS) 1—*

**EmR0832** — Rule adopted to repeal **s. HFS 12.03 (15) and to create ss. HFS 12.03 (20m), 12.115 and Table HFS 12.115**, relating to background checks of individuals who provide personal care services, and affecting small businesses.

#### **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:

2007 Wisconsin Act 172 requires the department to specify by rule, the crimes, a conviction of which an entity must disclose to a client or a client’s guardian before the caregiver provides the client with personal care services in the client’s home. Act 172 also requires the department to define the term “substitute caregiver”. Under s. 50.065 (2m) (d), Stats., as created by 2007 Wisconsin Act 172, the department created a list of crimes required and also as required defined the term “substitute caregiver”.

Effective November 1, 2008, entities, including home health agencies and temporary employment agencies, are required under s. 50.065 (2m) (d), Stats., to disclose to the client or the client's guardian, the assigned caregiver's convictions of crimes specified by the department by rule.

**Publication Date:** October 20, 2008  
**Effective Date:** November 1, 2008  
**Expiration Date:** March 31, 2009

### Health Services

(Formerly Health and Family Services)

#### *Health, Chs. HFS 110—*

**EmR0825** — Rule adopted creating **Chapter HFS 119**, to require emergency medical technicians, first responders, and individuals who provide instruction to emergency medical technicians and first responders to complete training on the use of automated external defibrillators and to specify the content of the training, qualifications of providers, and frequency with which training is to be completed, and affecting small businesses.

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

The legislature by 2007 Act 104 provides the department with an exemption from a finding of emergency to adopt these emergency rules.

**Publication Date:** August 29, 2008  
**Effective Date:** September 1, 2008  
**Expiration Date:** January 29, 2009

### Natural Resources

#### *Fish, Game, etc., Chs. NR 1—*

**EmR0824** — Rule adopted revising ss. **NR 10.01 (1) (b), (g), (h), (u) and (v) and 10.06 (5)**, relating to the 2008 migratory game bird seasons and waterfowl hunting zones.

#### **Finding of Emergency**

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

**Publication Date:** August 30, 2008  
**Amendment:** September 26, 2008  
**Effective Date:** August 30, 2008  
**Expiration Date:** January 27, 2009  
**Hearing Date:** October 27, 2008

### Natural Resources

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

**EmR0809** — Rule adopted to repeal s. **NR 198.15 (2)**, to renumber s. **NR 198.12 (6) to (10)**, to amend ss. **NR 198.11, 198.14 (1) (e) and (f) 2., 198.23 (5) to (7), 198.33 (5), and 198.44 (5)** and to create ss. **NR 198.12 (6) and (7), 198.33 (6) and subch. V of ch. NR 198**, relating to grants for the control of aquatic invasive species.

#### **Finding of Emergency**

The substantial increase in grant funding is a strong message from the Legislature that concern over the welfare of our public waters is growing, along with the expectation that these additional funds be put to work as soon as possible. The appropriation from which these funds are spent is a biennial appropriation, meaning that any unspent funds at the end of the biennium automatically lapse back to the Water Resources Account of the Conservation Fund. The timeline for permanent rule promulgation and the lack of staff to provide support to eligible sponsors may impede the Department's ability to fully and responsibly invest the authorized spending by the end of the biennium because of the current rule's limitations. An emergency rule will help to minimize or eliminate the amount of funds that are lapsed.

**Publication Date:** April 7, 2008  
**Effective Date:** July 1, 2008  
**Expiration Date:** November 28, 2008  
**Hearing Dates:** July 22 to August 5, 2008  
**Extension Through:** January 26, 2009

### Pharmacy Examining Board

**EmR0815** — Rule adopted revising **Ch. Phar 13**, relating to the regulation of wholesale prescription drug distributors.

#### **Finding of Emergency**

The Board has made a finding of emergency. The Board finds that failure to have the proposed rules in effect on June 1, 2008, the effective date of the applicable provisions of 2007 Wisconsin Act 20, will create a danger to the public health, safety and welfare, by disrupting the wholesale distribution of prescription drugs in the state of Wisconsin.

**Publication Date:** May 29, 2008  
**Effective Date:** June 1, 2008  
**Expiration Date:** October 29, 2008  
**Hearing Date:** July 23, 2008  
**Extension Through:** December 27, 2008

### Public Instruction (2)

- EmR0813** — A rule is adopted revising **Ch. PI 37**, relating to grants for national teacher certification and master educator licensure.

#### **Finding of Emergency**

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

The new provisions modifying the grants for the national teacher certification program under 2007 Wisconsin Act 20,

the biennial budget bill, took effect October 27, 2007. In order to establish the new application criteria and procedures to award grants to eligible applicants in the 2007–08 school year, emergency rules must be in place as soon as possible.

**Publication Date:** May 17, 2008  
**Effective Date:** May 17, 2008  
**Expiration Date:** October 14, 2008  
**Hearing Date:** July 23, 2008  
**Extension Through:** December 12, 2008

2. **EmR0816** — A rule adopted revising **Ch. PI 30**, relating to state special education aid for certain pupil services personnel.

#### Finding of Emergency

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

The new provisions under 2007 Wisconsin Act 221 modifying the percentage of the salaries of licensed school nurses, licensed school social workers, licensed school psychologists, and licensed school counselors that are eligible for state aid reimbursement first applies to state aid distributed in the 2008–09 school year. In order to establish instructions this spring as to how school districts are to account for these pupil services staff on special education claim forms, rules must be in place as soon as possible.

**Publication Date:** May 30, 2008  
**Effective Date:** May 30, 2008  
**Expiration Date:** October 27, 2008  
**Hearing Date:** July 14, 2008  
**Extension Through:** December 25, 2008

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### Regulation and Licensing (3)

1. **EmR0819** — A rule adopted revising **s. RL 161.04**, relating to examinations for substance abuse professionals.

#### Finding of Emergency

The department has made a finding of emergency. The current rules require an applicant for a clinical substance abuse counselor credential to pass an oral examination. The company that produced that examination is not giving that examination after June 1, 2008. This emergency rule creates a time period for a transition to enable a category of applicants to get a clinical substance abuse counselor credential. Persons holding a clinical substance abuse counselor credential can apply for a supervisory credential. There is a strong need for more supervisors in this field because services can only be provided under supervision. This rule will enable more applicants to receive a supervisor credential and is therefore necessary to maintain the health, safety and welfare of the public.

**Publication Date:** June 18, 2008  
**Effective Date:** June 18, 2008  
**Expiration Date:** November 15, 2008  
**Hearing Date:** November 11, 2008

2. **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 Date:** September 10, 2008  
**Expiration Date:** February 7, 2009  
**Hearing Date:** November 26, 2008

3. **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 Date:** September 10, 2008  
**Expiration Date:** February 7, 2009  
**Hearing Date:** November 26, 2008

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### Revenue

**EmR0820** — Rule adopted creating **ss. Tax 8.03 and 8.05**, relating to the registration of wine collectors, establishing standards of eligibility for registration as a wine collector, specifying the form and manner of notice required prior to the sale of wine by a wine collector, and the creation and organization of small winery cooperative wholesalers.

#### Exemption From Finding of Emergency

The legislature by Section 50 of 2007 Wisconsin Act 85 provides an exemption from a finding of emergency for the adoption of the rule.

**Publication Date:** June 26, 2008  
**Effective Date:** June 26, 2008  
**Expiration Date:** July 1, 2010 or the date on which permanent rules take effect, whichever is sooner.

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### Transportation (2)

1. **EmR0818** — A rule adopted creating **Ch. Trans 263**, relating to multiple trip overweight permits for vehicles transporting granular roofing materials.

#### Exemption From Finding of Emergency

The Legislature, by 2007 Wisconsin Act 171, Section 6 (2), provides an exemption from a finding of emergency for the adoption of the rule.

**Publication Date:** July 1, 2008  
**Effective Date:** July 1, 2008  
**Expiration Date:** July 1, 2009 or the date on which permanent rules take effect, whichever is sooner.  
**Hearing Date:** July 30, 2008

2. **EmR0833** — Rule adopted revising **Chs. Trans 325, 326 and 327**, relating to motor carrier safety, and hazardous material transportation safety.

#### 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 peace, health, safety or welfare. Recently enacted commercial motor carrier safety regulations apply to drivers and carriers transporting property and passengers by commercial vehicles in interstate commerce and enhance highway safety. It is imperative the industry operates under a single set of safety regulations to minimize confusion that could result in inadvertent noncompliance or application of an outdated safety standard. Also pursuant to 49 CFR 350.331(d), States are required to adopt compatible laws or rules to remain eligible for Motor Carrier Safety Assistance Program funding. Currently, Wisconsin receives approximately \$4 million in such funding, which is used to administer various highway safety programs, and that funding and the safety programs it supports will be in jeopardy if Wisconsin does not implement these changes immediately. The Motor Carriers Association has urged the Department to implement these changes as it will help ensure uniformity and increased highway safety.

**Publication Date:** November 5, 2008  
**Effective Date:** November 5, 2008  
**Expiration Date:** April 4, 2009  
**Hearing Date:** December 2, 2008

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## Scope Statements

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

#### **Subject**

Revises Chapter ATCP 29, relating to pesticide use and control.

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

Update and clarify current rules regulating the distribution and use of pesticides, the licensing and certification of pesticide applicators, and the registration of pesticide products.

#### **Policy Analysis**

DATCP regulates the distribution and use of pesticides in Wisconsin, pursuant to ss. 94.67 to 94.71, Stats. State regulation supplements federal regulations administered by the U.S. Environmental Protection Agency (EPA).

Pesticide products must be registered for labeled uses with EPA, except that DATCP may register certain products without EPA registration to meet “special local needs” in Wisconsin. Pesticide products must be labeled according to federal and state law.

DATCP licenses the following entities that distribute or use pesticides in Wisconsin:

- Pesticide manufacturers and labelers.
- “Restricted–use” pesticide dealers.
- Pesticide application businesses.
- Individuals who apply pesticides as commercial applicators for hire.
- Veterinary clinics that apply pesticides.

DATCP also certifies individual pesticide applicators for competence. Certification is required for all commercial applicators, and for farmers and other individuals who use “restricted–use” pesticides. DATCP certifies pesticide applicators in appropriate categories, based on the types of applications that they perform.

DATCP has adopted rules to regulate all of the following:

- Pesticide sales and distribution.
- Proper handling and use of pesticides.
- Storing, mixing and loading pesticides to prevent pesticide spills.
- Specialized pesticide applications such as aerial, lawn care, fumigation and chemigation applications.
- Groundwater and surface water protection.
- Worker protection.
- Notice of pesticide applications.
- Collection and proper disposal of pesticide containers and unwanted pesticides.

This rule change may make the following changes to current rules:

- Clarify and update rules related to aquatic pesticide applications.
- Clarify and update rules related to structural pesticide applications.

- Clarify and update rules related to residential chemigation systems.
- Clarify and update rules to ensure consistency with other rules, such as pesticide bulk storage rules under ATCP 33.
- Make other changes to clarify and update rules.

#### **Policy Alternatives**

No change. If DATCP takes no action, current rules will remain in effect. However, the current rules are outdated and inconsistent in certain respects. This rule will address new pesticide practices and uses, and harmonize regulations that are currently somewhat inconsistent.

#### **Statutory Authority**

Sections 93.07 (1), 94.69 (1), and 94.705 (2), Stats.

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

The Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) is the primary federal law governing pesticide regulation (other federal laws, such as the federal Food, Drug and Cosmetic Act, also apply). FIFRA is administered by EPA. Most pesticide products must be registered by EPA, except that states may register certain products without EPA registration to meet “special local needs.” Pesticides must be registered for specific uses, and must be used according to EPA–approved label directions. States have independent authority to regulate the distribution, handling and use of pesticides, provided that they do not contradict federal regulations under FIFRA.

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

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

- Pesticide manufacturers, labelers, dealers, handlers and commercial applicators.
- Farmers.
- Homeowners and residential tenants (for example, those affected by structural pesticide applications, homeowner chemigation applications, and aquatic applications).

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

DATCP estimates that it will use approximately 0.5 FTE staff annually to develop this rule. This includes time required for investigation and analysis, rule drafting, preparing related documents, coordinating advisory committee meetings, holding public hearings and communicating with affected persons and groups. DATCP will use existing staff to develop this rule.

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

#### **Subject**

Revises Chapter ATCP 30 (may renumber and reorganize this rule), relating to atrazine pesticide applications.

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

Regulate the use of atrazine pesticides to protect groundwater and assure compliance with Wisconsin’s Groundwater Law. Update current rule to reflect

groundwater–sampling results related to atrazine obtained during the past year. Reorganize current rule to accommodate any new or expanded prohibition area (PA).

### **Policy Analysis**

DATCP must regulate the use of pesticides to assure compliance with groundwater standards under ch. 160, Stats. Groundwater standards are established by the Department of Natural Resources under ch. NR 140, Wis. Adm. Code. DNR has established a groundwater enforcement standard of 3 µg/liter for atrazine and its chlorinated metabolites.

DATCP must prohibit atrazine uses that result in groundwater contamination levels that exceed the DNR enforcement standard under s. 160.25, Stats. DATCP must prohibit atrazine use in the area where groundwater contamination has occurred unless DATCP determines to a reasonable certainty, based on the greater weight of credible evidence, that alternative measures will achieve compliance with the DNR enforcement standard.

Currently, under ch. ATCP 30, Wis. Adm. Code, the use of atrazine is prohibited in 101 PAs (approximately 1,200,000 acres), including large portions of the Lower Wisconsin River Valley, Dane County and Columbia County. The current rules also restrict atrazine use rates and handling practices, including the timing of applications, on a statewide basis. The statewide restrictions are designed to minimize the potential for groundwater contamination, as required under s. 160.25, Stats.

Over the next year, DATCP may identify additional wells containing atrazine and its chlorinated metabolites at and above the current DNR enforcement standard. In order to comply with ch. 160, Stats., DATCP must take further action to prohibit or regulate atrazine use in the areas where these wells are located. DATCP proposes to amend ch. ATCP 30, Wis. Adm. Code to add PAs or take other appropriate regulatory action in response to any new groundwater findings.

### **Policy Alternatives**

No change. If DATCP takes no action, current rules will remain in effect. But that will not adequately protect groundwater or meet DATCP's statutory obligations in areas (if any) where there may be new groundwater contamination findings.

### **Statutory Authority**

Sections 93.07, 94.69, and 160.19 through 160.25, Stats.

### **Comparison with Federal Regulations**

Pesticides and pesticide labels must be registered with the federal Environmental Protection Agency ("EPA"). Persons may not use pesticides in a manner inconsistent with the federal label. The current federal label for atrazine advises that atrazine should not be used on permeable soils with groundwater near the soil surface. Wisconsin has clearer, more definite restrictions on atrazine use, based on actual findings of groundwater contamination in this state.

EPA is proposing federal rules that would require states to create pesticide management plans for pesticides that have the potential to contaminate groundwater. Wisconsin's current regulatory scheme for atrazine pesticides would likely comply with the proposed federal rules.

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

Residents whose private wells are located in a newly proposed or expanded PA would be affected by the proposed rule. Atrazine users in a newly proposed or expanded PA would also be affected by the proposed rule. Dealers, distributors and manufacturers of atrazine who service areas covered by new or expanded PAs may be affected by a reduction in atrazine sales. Commercial pesticide applicators must be aware of atrazine PAs in order to avoid illegal applications. The proposed action will not have any effect on consumers.

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

DATCP estimates that it will use approximately 0.5 FTE staff to develop this rule. This includes investigation, drafting, preparing related documents, coordinating advisory committee meetings, holding public hearings and communicating with affected persons and groups. DATCP will use existing staff to develop this rule.

## **Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors Examining Board**

### **Subject**

Amends s. A–E 3.05 (2), relating to the current requirements for licensee candidates to sit for an architectural examination.

### **Objective of the Rule**

To allow candidates with a National Architectural Accrediting Board (NAAB) accredited degree program and a National Council of Architectural Registration Boards (NCARB) established Intern Development Program (IDP) training record to take the examination upon graduation. This will allow some candidates to obtain licensure earlier as some candidates take longer than one year to complete the multiple part examination.

### **Policy Analysis**

Currently, licensee candidates can only take the examination within one year of completion of their education and experience requirements. It may be difficult for some licensee candidates to complete this multiple part examination within one year, which then results in a delay in obtaining a license.

This proposed rule would amend this examination entrance requirement to allow candidates to take the examination upon graduation from a National Architectural Accrediting Board (NAAB) accredited degree program and obtaining a National Council of Architectural Registration Boards (NCARB) established Intern Development Program (IDP) training record. The candidate would still have to meet all current requirements, but would be allowed to take the examination earlier under this criteria.

### **Statutory Authority**

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

### **Comparison with Federal Regulations**

This is not an area which is regulated by federal law or subject to any proposed federal legislation. The standards for state licensure are regulated by each state.

**Entities Affected by the Rule**

Architect licensee candidates.

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

100 hours.

**Barbering and Cosmetology Examining Board****Subject**

Revises Chapter BC 7, relating to the examination process.

**Objective of the Rule**

To revise and update various provisions of ch. BC 7, as deemed necessary, to update the examination provisions so they adequately address current national and state examination practices.

The provisions of ch. BC 7, “Examinations,” are outdated and are no longer effective based upon the current manner in which examinations are typically administered. The goal is to create a rule change to ch. BC 7 to amend, modify or redact various provisions so as to update the rule provisions so they appropriately and adequately reflect the present examination process and bring the rules into conformance with current national and state practice.

**Policy Analysis**

Currently, ch. BC 7 calls for methods and requirements that can no longer be met based upon national and state changes in how, and by whom, examinations are conducted. Specifically, there are provisions that call for examination reviews upon examination failure that cannot be accomplished due to the proprietary interests examination vendors have in the examinations. Similarly, there are provisions that require an immediate conference by two examiners to discuss the suspected failing examinee’s performance, as well, that a written description for the failure be provided. These requirements prove difficult to accomplish and/or otherwise do not jive with most national and state examination practices.

**Statutory Authority**

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

**Comparison with Federal Regulations**

This is not an area which is regulated by federal law or subject to any proposed federal legislation. The standards for state licensure are regulated by each state.

**Entities Affected by the Rule**

Barbering and cosmetology licensees.

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

160 hours

**Public Instruction****Subject**

Revises s. PI 34.34 (1) and (2), relating to charter school instructional staff licenses and permits and s. PI 8.01 (2), relating to charter school licensure under the school district standards.

**Objective of the Rule**

These modifications are primarily related to the highly-qualified teacher (HQT) provisions of the No Child Left Behind Act (NCLB). Most pertinent, Wisconsin’s

existing procedure for granting a charter school instructional staff license focuses solely on whether an applicant holds any kind of teaching license and does not address subject-matter expertise. As a result, it is quite possible that holders of Wisconsin’s current charter school instructional staff licenses are not “highly qualified” under NCLB. In addition, school districts apply for charter school instructional staff licenses on behalf of individuals. As a result, it is possible that these licenses may be acquired for an individual without the individual’s knowledge.

**Policy Analysis**

Applicants must be highly qualified under the NCLB core academic subjects, including English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history and geography. To be highly qualified, an applicant must have a major or minor in the assigned core academic subject, or have passed the Praxis II content exam approved by the state superintendent for that subject area.

A school district may continue to request a charter school instructional staff license or permit on behalf of an individual. However, individuals will be required to submit a completed application for the license or permit. In addition, specific information relating to an applicant’s specific teaching assignment and his or her qualifications will be required as part of the application process.

**Policy Alternatives**

If the department does not make these changes, it could lose funding under the NCLB.

**Statutory Authority**

Section 121.02 (1) (a) 2., Stats.

**Comparison with Federal Regulations**

See *Objective of the Rule*.

**Entities Affected by the Rule**

Charter schools.

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

The amount of time needed for rule development by department staff and the amount of other resources necessary are indeterminable. The time needed to create the rule language itself will be minimal. However, the time involved with guiding the rule through the required rule promulgation process is fairly significant. The rule process takes more than six months to complete.

**Veterans Affairs****Subject**

Amends s. VA 2.01 (1) (f) and (n) and creates s. VA 2.01 (1) (u), relating to the definitions of “Dental care”, “Hearing care” and “Vision care” for the purpose of administering the Assistance to Needy Veterans Grant Program.

**Objective of the Rule**

The amended definition of the terms “Dental care” and “Hearing care” is intended to provide clarification of the scope of these benefits and to administer the program in accordance with the policies of the State of Wisconsin, Board of Veterans Affairs. The term “Vision care” has not been previously defined and the department wants to provide clarification for all parties who may seek benefits, assist veterans in seeking benefits and the department regarding the scope of benefits available in this program and to administer

the program in accordance with the policies of the State of Wisconsin, Board of Veterans Affairs.

### Policy Analysis

Under current program rules, a veteran may apply for “Dental care” which encompasses any care given to teeth, including cosmetic care. The department is seeking to limit the provision of “Dental care” to care which is defined by a dentist as necessary for the health of the veteran. The current definition of “Hearing care” also allows for any care related to hearing, but does not impose a restriction on the medical necessity of the aid sought. The department is seeking to limit “Hearing care” to the provision of care which is defined by a health care provider as necessary for the health of the veteran. Under current program rules, veterans may apply for grants covering any treatment of a vision issue, as no definition of that term exists. As a result, some veterans have applied for grants which involve cosmetic vision issues and repetitive purchases of the same vision care (eyewear).

The goal of the program is to provide the same level of care regarding Dental care, Hearing care, and Vision care available under the United States Department of Veterans Affairs health care program to those veterans who could not qualify for that program. The department believes that amending the current definitions of “Dental care” and “Hearing care”, as well as defining the term “Vision care” to limit care in accordance with care offered by the United States Department of Veterans Affairs will provide clarification of the scope of treatment available and allow the program to function in accordance with the policies established by the State of Wisconsin, Board of Veterans Affairs.

### Statutory Authority

Section 45.40 (3m), Stats.

### Comparison with Federal Regulations

The Assistance to Needy Veterans Grant program is administered entirely under the authority of state law. The U.S. Department of Veterans Affairs provides health care for eligible veterans in accordance with Title 38 of the U.S. Code and Title 38 of the Code of Federal Regulations. All veterans applying for benefits under this program are required to apply for the same benefits from the U.S. Department of Veterans Affairs and to use that agency’s services if found eligible. Any veteran who does not apply for benefits from that agency or does not accept benefits from that agency if eligibility is established is ineligible for the program. There is no other existing or proposed federal regulation that has any direct bearing upon the proposed rule.

### Entities Affected by the Rule

The amended rules will affect veterans applying for the benefit, the department, providers of dental care, hearing care, and vision care, and county veterans service officers.

### Estimate of Time Needed to Develop the Rule

Approximately 15 hours of Department of Veterans Affairs staff time will be needed to promulgate the rule.

## Workforce Development

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

### Subject

Revises Chapter DWD 128, relating to unemployment insurance rules for determining a claimant’s ability and availability to work.

### Policy Analysis

To be eligible to receive unemployment insurance benefits, an individual must, in addition to other requirements, be “able” to perform suitable work and be “available” for suitable work (A&A). The methodology for determining ability to work and availability for work in Chapter DWD 128 was repealed and recreated effective April 2008 with significant changes. As the Department is implementing the new methodology, the need for minor changes is apparent.

Under s. DWD 128.01 (3) a claimant is not able to work if the claimant is unable to perform any suitable work due to a physical or psychological condition. In determining whether the claimant is able to perform suitable work, the department shall consider all factors relevant to the circumstances of the case, which may include five listed factors. The factors are (a) the claimant’s usual or customary occupation; (b) the nature of the restrictions caused by the claimant’s physical or psychological condition; (c) whether the claimant is qualified to perform other work within the claimant’s restrictions considering the claimant’s education, training, and experience; (d) whether the claimant could be qualified to perform other work within the claimant’s restrictions with additional training; and (e) occupational information and employment conditions data and reports available to the department showing whether and to what extent the claimant is able, within his or her restrictions, to perform suitable work in his or her labor market area. The Department now believes that s. DWD 128.01 (3) (d) is overly broad and may conflict with a statutory requirement. Section 108.04 (16), Stats., provides that a claimant may be eligible for unemployment insurance while in training if the training is approved by the Department even if the claimant is not able and available for work. The factor in s. DWD 128.01 (3) (d) appears to allow a claimant to choose training that is not approved by the Department to meet the able test. It seems counter to the approved training provisions to allow someone to meet the test with unapproved training. The Department proposes to repeal this provision.

The Department proposes to repeal the word “any” in the provision in s. DWD 128.01 (3) that states “during any week, a claimant is not able to work if the claimant is unable to perform *any* suitable work due to a physical or psychological condition.” The Department also proposes to add another factor to s. DWD 128.01 (3) (a) to (e) to consider in determining whether a claimant is able perform suitable work, “the extent to which work is generally performed in the labor market that is within the claimant’s ability.” The definition of “suitable work” in s. DWD 100.02 (61) is work that is reasonable considering the claimant’s training, experience, and duration of unemployment as well as availability of jobs in the labor market. A federal regulation at 20 CFR 604.3 (b) requires that the “type of services that the individual is able and available to perform are generally performed in the labor market.” The department has concerns that allowing a claimant to be eligible for unemployment insurance based on ability to do *any* work at all does not accurately reflect a genuine attachment to the labor market as required by the federal regulations. By removing the word “any” and allowing the decision–maker to consider the extent to which the jobs are available in the labor market, the Department seeks to narrow the ability test.

DWD 128.01 (4) now requires that all claimants be available for full–time work, which is defined as 32 hours per week. This requirement has had an unintentional effect on claimants who have a physical or psychological restriction that limits the hours they can work. A recent hearing decision

found a claimant ineligible because she was medically restricted to working 17 or fewer hours per week and, as a result, was not available for full–time work, even though she was available to work as many hours as she was able to work. Under prior law and Department policy, the person should have been eligible for benefits because she was as available for work as she was able. The Department proposes to amend the provision on availability for work to provide that a claimant who has a physical or psychological restriction and is found able to work shall not be considered unavailable for work solely due to the inability to work full–time if the claimant is available for work for the number of hours the claimant is able to work. This was the interpretation of the able and available requirement under the previous version of Chapter DWD 128, and the Department thinks it is the better policy choice to not discourage people from working up to their ability.

The Department also proposes to repeal s. DWD 128.01 (7) on partial employment. This provision states that the Department may require a claimant who is partially unemployed to comply with the ability and availability (A&A) requirements in the chapter if there is a definite indication that the claimant is not genuinely interested in working full–time. The partially employed provision was carried over from the previous version of Chapter DWD 128.

Other provisions in Chapter DWD 128 will also be reviewed for possible changes.

#### **Statutory Authority**

Sections 108.08 (1), 108.09, 108.14 (2), and 227.11, Stats.

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

Federal regulations provide that a state may pay unemployment insurance only to an individual who is able to work and available for work for the week for which unemployment insurance is claimed. Whether an individual is able to work and available for work must be tested by determining whether the individual is offering services for which a labor market exists. This requirement does not mean that job vacancies must exist, only that at a minimum, the type of services the individual is able and available to perform must be in the labor market. The state must determine the geographical scope of the labor market for an individual under its UI law.

A state may consider an individual to be able to work during the week of unemployment claimed if the individual is able to work for all or a portion of the week claimed, provided any limitation on his or her ability to work does not constitute a withdrawal from the labor market. A state may consider an individual available for work if the state finds the individual able to work despite illness or injury. A state must not deny unemployment insurance to an individual for failure to be available for work during a week if during the week the individual is in training with the approval of the state agency.

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

Employers and employees covered by the unemployment insurance program

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

150 hours

#### **Agency Contact**

Tracey Schwalbe, Research Attorney  
Unemployment Insurance Division  
tracey.schwalbe@dwd.state.wi.us  
(608) 266–9641

### **Workforce Development**

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

#### **Subject**

Revises Chapter DWD 129, relating to unemployment insurance benefit claiming procedures.

#### **Policy Analysis**

Section 108.08 (1), Stats., provides that to receive benefits for any given week of unemployment, a claimant shall give notice to the department with respect to such week of unemployment within such time and in such manner as the department may by rule prescribe. Chapter DWD 129 addresses notice requirements for claiming unemployment insurance benefits.

Under Chapter DWD 129, when a claimant does not file a timely weekly certification for any week, the claim becomes inactive the first week after the last week that a timely weekly certification could have been filed for that week. Once a claim becomes inactive, the claim can be resumed only by filing a new initial claim. When an initial claim is filed (including a resumed claim), a claimant may claim benefits for the week the claim is initiated or resumed and the prior week. This is a different deadline than the continuing claims provision that allows a claimant to file a weekly claim certification up to 14 days following the end of the week for which benefits are claimed.

This distinction has been difficult for claimants and administrative law judges to understand. The Department proposes to simplify the rule language and provide examples in an attempt to clarify the rule. Other provisions in Chapter DWD 129 will also be reviewed for possible changes.

#### **Statutory Authority**

Sections 108.08 (1), 108.09, 108.14 (2), and 227.11, Stats.

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

There are no federal regulations for unemployment insurance benefits regarding filing or notice requirements.

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

Employers and employees in Wisconsin.

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

100 hours

#### **Agency Contact**

Tracey Schwalbe, Research Attorney  
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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.*

### Natural Resources

***Environmental Protection — Air Pollution Control,  
Chs. NR 400—  
CR 08–104***

On November 4, 2008, the Department of Natural Resources submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

#### **Analysis**

The proposed order revises Chapters NR 419 and 484, relating to VOC emission controls for industrial wastewater collection and treatment operations.

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

A public hearing is scheduled for December 5, 2008.

#### **Contact Information**

Bill Adamski  
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### Natural Resources

***Environmental Protection — Air Pollution Control,  
Chs. NR 400—  
CR 08–102***

On November 4, 2008, the Department of Natural Resources submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

#### **Analysis**

The proposed order revises Chapters NR 422, 423, 439 and 484, relating to application of reasonably available control technology emission limitations to sources of volatile organic compounds in ozone non-attainment counties, and affecting small business.

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

A public hearing is scheduled for December 5, 2008.

#### **Contact Information**

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larry.bruss@wisconsin.gov

### Natural Resources

***Environmental Protection — Air Pollution Control,  
Chs. NR 400—  
CR 08–103***

On November 4, 2008, the Department of Natural Resources submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

#### **Analysis**

The proposed order revises Chapter NR 428, relating to the control of nitrogen oxide emitted by stationary sources in the ozone nonattainment area in southeastern Wisconsin.

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

A public hearing is scheduled for December 5, 2008.

#### **Contact Information**

Thomas Karman  
608–264–8856  
Thomas.karman@dnr.state.wi.us

### Transportation

#### CR 08–100

On October 28, 2008, the Department of Transportation submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

#### **Analysis**

The proposed order revises Chapters Trans 325, 326 and 327, relating to motor carrier safety, and hazardous material transportation safety.

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

A public hearing is required and is scheduled for December 2, 2008. The Division of State Patrol, Bureau of Transportation Safety is responsible for promulgation of the rules.

#### **Contact Information**

Julie A. Johnson, Paralegal  
608–267–3703

### Transportation

#### CR 08–101

On October 29, 2008, the Department of Transportation submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

**Analysis**

The proposed order revises Chapter Trans 276, relating to the operation of certain 2–vehicle combinations on certain highways without a permit.

**Agency Procedure for Promulgation**

A public hearing is required and is scheduled for December 3, 2008. The Division of Transportation System Development, Bureau of Highway Operations is responsible for promulgation of the rules.

**Contact Information**

Julie A. Johnson, Paralegal  
608–267–3703

**University of Wisconsin System  
CR 08–099**

On October 27, 2008, the Board of Regents of the

University of Wisconsin System submitted a proposed rule–making order to the Wisconsin Legislative Council Rules Clearinghouse.

**Analysis**

The proposed order revises Chapter UWS 17, relating to student non–academic disciplinary procedures, and chapter UWS 18, relating to conduct on university lands.

**Agency Procedure for Promulgation**

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

**Contact Information**

Anne Bilder  
608–265–3094

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## Rule–Making Notices

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### Notice of Hearing

#### Natural Resources

*Environmental Protection — Air Pollution Control,  
Chs. NR 400—  
CR 08–104*

NOTICE IS HEREBY GIVEN THAT pursuant to ss. 227.11 (2) (a) and 285.11 (1) and (6), Stats., the Department of Natural Resources will hold a public hearing on revisions to Chapters NR 419 and 484, Wis. Adm. Code, relating to VOC emission controls for industrial wastewater collection and treatment operations.

#### Hearing Information

<b>December 5, 2008</b>	Rooms 140–141
Friday	DNR Southeast Region Hdqrs.
at 1:00 p.m.	2300 N. Dr. Martin Luther King Jr. Drive Milwaukee

Pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Robert Eckdale at (608) 266–2856 with specific information on your request at least 10 days before the date of the scheduled hearing.

The hearing will be held in conjunction with the hearing for Natural Resources Board Order No. AM–19–08, CR 08–102, relating to the application of reasonably available control technology emission limitations to sources of volatile organic compounds in ozone non–attainment counties and Natural Resources Board Order No. AM–20–08, CR 08–103, relating to the modification of existing rules for control of nitrogen oxide (NOx) emitted by stationary sources in the ozone nonattainment area in southeastern Wisconsin. The order in which the proposals will be considered will be decided at the time of hearing.

#### Copies of Proposed Rules and Submission of Written Comments

The proposed rule and supporting documents, including the fiscal estimate may be viewed and downloaded and comments electronically submitted at the following Internet site: <http://adminrules.wisconsin.gov>. (Search this Web site using the Natural Resources Board Order No. AM–19–08. Written comments on the proposed rule may be submitted via U.S. mail to Mr. Bill Adamski, Bureau of Air Management, P.O. Box 7921, Madison, WI 53707 or by e–mail to [William.Adamski@wisconsin.gov](mailto:William.Adamski@wisconsin.gov). Comments may be submitted until December 10, 2008. Written comments whether submitted electronically or by U.S. mail will have the same weight and effect as oral statements presented at the public hearings. If you do not have Internet access, a personal copy of the proposed rule and supporting documents, including the fiscal estimate may be obtained from Robert Eckdale, Bureau of Air Management, P.O. Box 7921, Madison, WI 53707 or by calling (608) 266–2856.

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

Sections 227.11 (2) (a), 227.14 (1m) (b), 285.11 (1) and (6), Stats.

#### *Statutory authority*

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

#### *Plain language analysis*

The State Implementation Plan developed under s. 285.11 (6), Stats., is revised. The Department proposes these rules to meet the requirements of Section 182(b)(2) of the federal Clean Air Act.

Section 182(b)(2) of Clean Air Act requires implementation of reasonably available control technology (RACT) for sources of volatile organic compounds (VOC) emissions in moderate and worse ozone nonattainment areas, for which EPA has published a Control Technology Guideline (CTG). The DNR has promulgated rules for VOC RACT emission limits in Wisconsin’s moderate ozone nonattainment areas.

However, on March 17, 2008, EPA notified DNR that Wisconsin’s state implementation plan was deficient because DNR rules did not establish VOC RACT emission limits consistent with recently published CTGs in Wisconsin’s ozone nonattainment areas. One of the identified VOC CTG emission source categories for which the DNR has yet to establish RACT limits is industrial wastewater collection and treatment (IWCT) operations. The rule is necessary to avoid potential federal sanctions.

#### *Comparison with federal regulations*

The rule will modify the DNR’s ozone state implementation plan to meet the requirements of the federal Clean Air Act and to clarify other state requirements.

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

The proposed rule is based on requirements established in the federal Clean Air Act. Any of the adjacent states which have ozone nonattainment areas are also charged with meeting these same requirements.

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

In a March 17, 2008 letter to the DNR, the US EPA outlined why Wisconsin’s state implementation plan (SIP) for ozone was being declared deficient with respect to meeting requirements of the Federal Clean Air Act. These reasons included a failure to promulgate an administrative rule to require that VOC emissions from industrial wastewater collection and treatment operations be subject to reasonably available control technology (RACT) in Wisconsin’s ozone nonattainment areas. In the same March 17 letter the US EPA notified the DNR that Wisconsin might be subject to federal sanctions if these deficiencies are not fully remedied by September 2009.

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

Due to the 100 ton/year applicability threshold in the rule, it is highly unlikely that a small business, as defined under 227.114 (1), Stats., would have an IWCT operation that triggers the emission reduction requirements in the rule.

**Small Business Impact**

This rule will have no effect on small businesses.

**Small business regulatory coordinator**

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

**Environmental Impact**

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

**Fiscal Estimate****Assumptions**

The Department proposes administrative rules to establish reasonably available control technology (RACT) requirements for volatile organic compound (VOC) emissions and compliance testing criteria for industrial wastewater collection and treatment (IWCT) operations from major VOC sources in Wisconsin ozone nonattainment areas.

**Summary****Fiscal impact on local government**

The proposed IWCT VOC control rule would apply only to companies that process their own industrial wastewater – rather than direct the waste stream to the local municipal wastewater treatment plants, which are already subject to DNR VOC emissions controls. Since municipal wastewater treatment plants are explicitly not involved with any independent IWCT operations which could potentially be regulated for VOCs, there would be no local government costs associated with any IWCT VOC RACT rules.

**Fiscal impact on state government and private**

In 2007 the Department's investigation of potential VOC RACT sources yielded no facilities that would be subject to a proposed IWCT VOC RACT rule (page 39 of the Department's June, 2007 report "Revisions to the State Implementation Plan for 8–Hour Ozone"). Consequently, the Department stated that "no major industrial wastewater facilities exist in the seven moderate nonattainment counties."

However, EPA, citing that the DNR does not independently determine VOC emissions from wastewater – rejected DNR's negative declaration on facilities subject to IWCT VOC RACT. The State must correct all ozone SIP deficiencies (including adopt an IWCT VOC RACT rule) in order to avoid sanctions.

Since the Department is not able to identify any IWCT facilities in Wisconsin being subject to a VOC RACT rule, it appears that there are negligible costs to the governmental and private industries. However, if controls are necessary for any IWCT, they would largely be designed to reduce VOC emissions by restricting the waste stream's exposure to ambient air. This is accomplished by installing water seals at those process points (drains, junction boxes, manholes, etc.) where the waste stream is exposed to the ambient air. According to a report on industrial wastewater, there would be a cost (amortized over 10 years) between \$1900 and \$4300 per ton VOC reduction to install these control devices.

**State fiscal effect**

None

**Local government fiscal effect**

None

**Long–range fiscal implications**

None

**Agency Contact Person**

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**Notice of Hearing****Natural Resources**

***Environmental Protection — Air Pollution Control,  
Chs. NR 400—  
CR 08–102***

NOTICE IS HEREBY GIVEN That pursuant to s. 285.11 (6), Stats., the Department of Natural Resources will hold a public hearing on revisions to Chapters NR 422, 423, 439 and 484, Wis. Adm. Code, relating to the application of reasonably available control technology emission limitations to sources of volatile organic compounds in ozone non–attainment counties, and affecting small business.

**Hearing Information**

**December 5, 2008** Rooms 140–141  
Friday DNR Southeast Region Hdqrs.  
at 1:00 p.m. 2300 N. Dr. Martin Luther King Jr.  
Drive  
Milwaukee

Pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Robert Eckdale at (608) 266–2856 with specific information on your request at least 10 days before the date of the scheduled hearing.

The hearing will be held in conjunction with the hearing for Natural Resources Board Order No. AM–20–08, CR 08–103, relating to the modification of existing rules for control of nitrogen oxide (NOx) emitted by stationary sources in the ozone nonattainment area in southeastern Wisconsin and Natural Resources Board Order No. AM–24–08, CR 08–104, relating to VOC emission controls for industrial wastewater collection and treatment operations. The order in which the proposals will be considered will be decided at the time of hearing.

**Copies of Proposed Rules and Submission of Written Comments**

The proposed rule and supporting documents, including the fiscal estimate may be viewed and downloaded and comments electronically submitted at the following Internet site: <http://adminrules.wisconsin.gov>. (Search this Web site using the Natural Resources Board Order No. AM–19–08. Written comments on the proposed rule may be submitted via U.S. mail to Mr. Larry Bruss, Bureau of Air Management, P.O. Box 7921, Madison, WI 53707 or by e–mail to [Larry.Bruss@wisconsin.gov](mailto:Larry.Bruss@wisconsin.gov). Comments may be submitted

until December 10, 2008. Written comments whether submitted electronically or by U.S. mail will have the same weight and effect as oral statements presented at the public hearings. If you do not have Internet access, a personal copy of the proposed rule and supporting documents, including the fiscal estimate may be obtained from Robert Eckdale, Bureau of Air Management, P.O. Box 7921, Madison, WI 53707 or by calling (608) 266–2856.

### **Analysis Prepared by Department of Natural Resources**

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

Section 285.11(6), Stats.

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

Section 285.11 (6), Stats.

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

The State Implementation Plan developed under s. 285.11(6), Stats., is revised. The Department proposes these rules to meet the requirements of Section 182(b)(2) of the federal Clean Air Act. Section 182(b)(2) requires states with moderate ozone nonattainment areas to update existing volatile organic compound (VOC) Reasonably Available Control Technology (RACT) regulations within one year of U.S. EPA issuing updated Control Technology Guidelines. U.S. EPA has issued revised guidelines for the paper coating, metal furniture coating, large appliance coating, flat wood paneling coating, flexible package printing, offset lithographic printing and industrial cleaning solvents industrial source categories.

Under Sec. 182(b)(2) of the Clean Air Act (CAA), the Department is required to update its VOC Reasonably Available Control Technology (RACT) regulations when EPA issues updated Control Techniques Guidelines (CTG) for RACT categories. These rules apply in Wisconsin's seven moderate ozone nonattainment counties (Kenosha, Milwaukee, Ozaukee, Racine, Sheboygan, Washington and Waukesha). More specific information is provided below.

**NR 422.075:** This rule applies VOC control to paper, film and foil coating lines, and solvent cleaning work practices. The rule applies new limits based on mass of VOC per mass of coating solids applied to individual coating lines emitting 25 tons per year VOC (maximum theoretical emissions) from the coating applicators and drying ovens. Paper coating lines include lines coating film and foil substrates in a uniform manner. The solvent cleaning work practices portion of the rule applies to facilities emitting 15 lb/day of uncontrolled VOC emissions from all coating lines and related coating cleaning activities at the facility. The rule requires coating line operations to achieve a 90% VOC control efficiency through the combination of installation of VOC control devices and/or use of compliant coatings based on VOC content. The rule also addresses storage and disposal requirements, control requirements, recordkeeping, compliance testing, and certification testing. Requirements in NR 422.07 continue to apply to facilities currently covered by that section.

**NR 422.105, NR 422.115, NR 422.131:** These rules apply VOC control to metal furniture coating, large appliance coating, flat wood panel coating and associated solvent cleaning work practices. The rules require application of new coating limits by coating type based on mass of VOC per volume of non–water coating as applied, exempt specific coating operations and apply to facilities with emissions exceeding 15 lbs/day (maximum theoretical emissions). The rules also establish a companion control requirement to utilize specific application techniques. The solvent cleaning work practices portion of the rules apply to facilities emitting 15

lb/day of uncontrolled VOC emissions from all coating lines and related activities at the facility. The rules require coating line operations to achieve a 90% VOC control efficiency through the combination of installation of VOC control devices and/or use of compliant coatings based on VOC content. The rules also address storage and disposal requirements, control requirements, recordkeeping, compliance testing, and certification testing. Requirements in NR 422.10, NR 422.11, NR 422.13 continue to apply to facilities currently covered by those sections.

**NR 422.141:** This rule applies VOC control to large flexible package printing presses, and associated solvent cleaning work practices. The rule applies to individual large presses emitting 25 tons per year of VOC (maximum theoretical emissions) from inks, coatings and adhesives, combined, from the press dryer. Sources may choose to reduce VOC emissions from large individual presses by either installing control systems or accepting VOC content limits for inks, coatings and adhesives. The solvent cleaning work practices portion of the rule applies to facilities emitting 15 lb/day of uncontrolled VOC emissions from all flexible package printing presses and related flexible package cleaning activities at the facility. The regulation addresses flexible package printing operations through the installation of VOC control devices, and storage and disposal requirements. Requirements in NR 422.14 continue to apply to facilities currently covered by that section.

**NR 422.143:** This rule applies VOC control to lithographic printing presses emitting 25 tons per year of VOC (maximum theoretical emissions) from heatset inks from the press dryer. In accordance with the CTG, the rule contains emission limitation exemptions for: up to 110 gallons of blanket or roller wash on a 12–consecutive month rolling basis, sheet–fed presses with a maximum sheet size of up to 11 inches by 17 inches, any lithographic press with a total fountain solution reservoir of less than one gallon, the printing of books on a heatset lithographic press, and heatset lithographic presses with a maximum web width of up to 22 inches. The rule also contains fountain solution VOC content limits for heatset, non–heatset, sheet–fed presses, and blanket or roller wash. The solvent cleaning work practices portion of the rule applies to facilities emitting 15 lb/day of uncontrolled VOC emissions from all lithographic printing presses and related lithographic cleaning activities at the facility. The rule also addresses storage and disposal requirements, temperature monitoring requirements, control requirements, recordkeeping requirements, compliance testing, and certification testing requirements. Requirements in NR 422.142 continue to apply to facilities currently covered by that section.

**NR 423.037:** This rule applies VOC controls to industrial cleaning operations at facilities emitting 6.8 kg/day (15 lb/day) of uncontrolled VOC emissions from industrial cleaning operations. The rule limits emissions by establishing solvent and solvent solution requirements, cleaning device and methods requirements, storage and disposal requirements, and recordkeeping requirements. Some industrial cleaning operations are regulated under industry specific RACT rules such as lithographic printers and large appliance manufacturers. Requirements in NR 423.035 continue to apply to facilities currently covered by that section.

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

The Clean Air Act requires the Department to update existing VOC RACT rules when EPA issues an updated CTG. The rules for paper, film and foil coating, flat wood panel

coating, furniture metal coating, large appliance coating, flexible package printing, lithographic printing, and industrial cleaning operations are based directly on the EPA CTGs. The rules regulate VOC emissions from individual printing and coating lines with emissions above specified thresholds as well as regulating VOC cleaning solvent work practices.

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

Illinois and Michigan are in the same position as Wisconsin regarding potentially deficient VOC RACT rules and they need to update their rules to reflect recently updated CTGs. Both states had previously adopted VOC RACT for the categories of sources subject to this rulemaking where such sources existed in their ozone nonattainment areas. Neither state has issued proposed new or updated regulations, but both are on a schedule to incorporate the required VOC RACT updates within their ozone SIPs. Minnesota and Iowa do not have designated ozone nonattainment areas and are not deficient in regard to VOC RACT.

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

The new paper, film and foil coating rule, the new furniture metal coating rule, and the new large appliance coating rule are based on the 2007 EPA CTGs for these categories. The new flexible package printing rule, the new lithographic printing rule, the new flatwood panel coating rule and the new industrial cleaning operations rule are based on the 2006 EPA CTGs for these source categories. All the recommended control measures in the CTGs are incorporated into the new rules. Retention of existing RACT limitations for these categories prevents backsliding. Some industrial cleaning operations will be regulated under industry specific RACT rules for lithographic printing; flexible package printing; flat wood paneling coatings; paper film and foil coatings; large appliance coatings; and metal furniture coatings.

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

**NR 422.075:** The control requirements for individual large paper, film and foil coating lines will not impact small businesses. EPA established the number of affected facilities by surveys with consideration of state emission reporting and inventory estimates. Estimated cost per unit VOC reduced is provided by EPA in the CTG document.

An economic impact report was not requested.

**NR 422.105: NR 422.115: NR 422.131:** The control requirements for large metal furniture coating lines, large appliance coating lines and flatwood panel coating lines will not impact small businesses as these activities are already regulated for the facility threshold scale proposed. The coating activities and limits and control requirements reflect current industry coating types and application practices. EPA established the number of affected facilities by surveys with consideration of state emission reporting and inventory estimates. Estimated cost per unit VOC reduced is provided by EPA in the CTG document.

An economic impact report was not requested.

**NR 422.141: NR 422.143:** The control requirements for individual large printing flexible package printing presses and large lithographic packaging printing presses will not impact small businesses, since these large presses are not used by small businesses.

The solvent cleaning work practices are considered standard industrial practice. Most, if not all, facilities already

perform good solvent cleaning work practices. The proposed rule establishes those standard work practices as requirements.

An economic impact report was not requested.

**NR 423.037:** The control requirements for industrial cleaning operations will not impact small businesses. The many solvent cleaning work practices are considered standard industrial practice. Most, if not all, facilities already perform good solvent cleaning work practices.

An economic impact report has not been requested.

#### **Small Business Impact**

These regulations will have a minimal economic cost to individual small businesses, because the major control requirements apply only to large facilities. Additionally, solvent cleaning work practices are considered standard industrial practice, therefore it is anticipated that most businesses affected by these rules are already implementing the requirements. More specific cost estimates are provided below.

**NR 422.075:** Through industry surveys EPA has estimated that no more than 7 facilities may be regulated in the large paper, foil and film coating category (inclusive of fabric and vinyl coaters regulated under NR 422.08 in Wisconsin nonattainment counties. A smaller number meet the 25 ton/coating line regulatory threshold. EPA estimated the national average cost of this RACT control as \$1180/ton VOC (\$2005).

**NR 422.105:** EPA estimated through prior survey work accomplished as background for the federal NESHAP that only 143 facilities operate within ozone nonattainment areas nationwide. Comparative statistics suggest less than a dozen furniture metal coating facilities operate in Wisconsin's nonattainment area. EPA estimated the national average cost of this coating RACT control as \$1670/ton VOC (\$2005) with the incremental cost of the new coating limits and application practice requirements as \$200/ton (\$2005).

**NR 422.115:** For large appliance coating, EPA estimated the national average cost of this coating RACT control at \$500/ton VOC (\$2006).

**NR 422.131:** Through industry surveys, EPA has estimated that only 1 facility is likely to be regulated for flatwood panel coating in Wisconsin nonattainment counties. EPA estimated the national average cost of this coating RACT control as \$1900/ton VOC (\$2005) for interior and tileboard panels and \$2600/ton VOC (\$2005) for exterior siding.

**NR 422.141: NR 422.143:** EPA estimates that the total annual cost related to the cleaning requirements per small lithographic and flexible package printing facilities is approximately \$1,485 (2005 dollars).

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

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

#### **Environmental Impact**

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

## Fiscal Estimate

### Assumptions

These volatile organic compounds (VOC) Reasonably Available Control Technology (RACT) rules are proposed so the Department will meet the Sec. 182(b)(2) requirement of the federal Clean Air Act. Section 182(b)(2) requires the Department to update existing VOC RACT regulations as US EPA issues updated Control Techniques Guidelines (CTG) for the RACT categories. US EPA released updated CTGs for the following seven source categories: flat wood paneling coating; paper, film and foil coating; large appliance coating; metal furniture coating; flexible package printing; offset lithographic printing; and industrial cleaning solvents. These rules will enable the Department to comply with the federal requirements.

### Fiscal effect on state government

The rule requirements will not create a significant fiscal effect on state government because the majority of the sources affected are already inspected, permitted and otherwise regulated by the Department. There will not be a significant fiscal impact on the majority of source categories. However, the Department estimates that the industrial cleaning solvents rule will result in an estimated 400 ton/year future reduction in reported VOC emissions. Therefore, the Department may lose up to \$15,000 (400 \* \$35.71/ton VOC) in emission fee revenue annually.

### Fiscal effect on private sector

The Department believes that the proposed rules will not create a significant economic impact to private sector businesses. With a couple of minor exceptions, US EPA states in the CTGs that many facilities located in ozone nonattainment areas are already meeting the emission control levels recommended in the CTGs. In addition, the Department believes that the proposed industrial cleaning solvents work practices are already being implemented at many printing and coating facilities in the state.

### State government fiscal effect

Decrease existing revenues.

### Local government fiscal effect

None.

### Fund sources affected

PRO

### Affected Chapter 20 appropriations

Section 20.370 (2) (bg) and (bh), Stats.

### Agency Contact Person

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608–264–7543  
larry.bruss@wisconsin.gov

## Notice of Hearing

### Natural Resources

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

#### **CR 08–103**

NOTICE IS HEREBY GIVEN THAT pursuant to ss. 227.11 (2) (a) and 285.11 (6), Stats., the Department of Natural Resources will hold a public hearing on revisions to Chapter NR 428, Wis. Adm. Code, relating to modification of existing rules for control of nitrogen oxide (NO<sub>x</sub>) emitted by

stationary sources in the ozone nonattainment area in southeastern Wisconsin

### Hearing Information

#### **December 5, 2008**

Friday

at 1:00 p.m.

Rooms 140–141

DNR Southeast Region Hdqrs.

2300 N. Dr. Martin Luther King Jr.

Drive

Milwaukee

Pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Robert Eckdale at (608) 266–2856 with specific information on your request at least 10 days before the date of the scheduled hearing.

The hearing will be held in conjunction with the hearing for Natural Resources Board Order No. AM–19–08, CR 08–102, relating to the application of reasonably available control technology emission limitations to sources of volatile organic compounds in ozone non–attainment counties and Natural Resources Board Order No. AM–24–08, CR 08–104, relating to VOC emission controls for industrial wastewater collection and treatment operations. The order in which the proposals will be considered will be decided at the time of hearing.

### Copies of Proposed Rules and Submission of Written Comments

The proposed rule and supporting documents, including the fiscal estimate may be viewed and downloaded and comments electronically submitted at the following Internet site: <http://adminrules.wisconsin.gov>. (Search this Web site using the Natural Resources Board Order No. AM–19–08. Written comments on the proposed rule may be submitted via U.S. mail to Mr. Tom Karman, Bureau of Air Management, P.O. Box 7921, Madison, WI 53707 or by e–mail to [Thomas.Karman@wisconsin.gov](mailto:Thomas.Karman@wisconsin.gov). Comments may be submitted until December 10, 2008. Written comments whether submitted electronically or by U.S. mail will have the same weight and effect as oral statements presented at the public hearings. If you do not have Internet access, a personal copy of the proposed rule and supporting documents, including the fiscal estimate may be obtained from Robert Eckdale, Bureau of Air Management, P.O. Box 7921, Madison, WI 53707 or by calling (608) 266–2856.

### Analysis Prepared by Department of Natural Resources

#### *Statutes interpreted*

Section 285.11 (6), Stats.

#### *Statutory authority*

Section 227.11 (2) (a) and 285.11 (6), Stats.

#### *Related statute or rule*

The current provisions of ch. NR 428 established nitrogen oxide emission limits for new and existing facilities which are located in ozone nonattainment counties. The primary intent of these provisions is to fulfill Clean Air Act (CAA) requirements for demonstrating rate–of–progress towards attaining the 1–hour ozone standard and establishment of a Reasonably Available Control Technology (RACT) program for major sources of nitrogen oxide emissions (NO<sub>x</sub>) in counties designated as nonattainment under the 8–hour ozone standard. Modifications are proposed to existing portions of ch. NR 428.

#### *Plain language analysis*

The proposed revisions relate to issues for State Implementation Plan approvability and miscellaneous

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

The proposed revisions address two areas: 1) required modifications to the NO<sub>x</sub> RACT program to meet minimum criteria for conditional Federal approval of the program into the State Implementation Plan (SIP); and 2) revisions identified by the department and stakeholders during implementation which clarify and facilitate implementation of requirements within ch. NR 428.

#### *Revisions for SIP approval*

As stated in s. NR 428.20, NO<sub>x</sub> RACT requirements are applicable to facilities which have potential NO<sub>x</sub> emissions equal to or greater than 100 tons per year. These facilities under the Clean Air Act are known as major sources. In proposing federal approval, the US EPA requires that the term "potential emissions", used in identifying major sources, be defined as the amount of NO<sub>x</sub> which can be theoretically emitted from emissions units at the facility on an uncontrolled basis over the year. These total potential emissions may consider a restriction on operational capacity or hours, if those restrictions are federally enforceable.

To address EPA's concerns, the proposed rules incorporate a definition of "maximum theoretical emissions" in identifying which sources are subject to NO<sub>x</sub> RACT requirements. This approach is consistent with the use of this term in s. NR 419.02 (11) for identifying the applicability of the state's VOC RACT requirements.

#### *Revisions for Clarifications and Implementation*

There are a number of miscellaneous revisions proposed in the rule package consistent with the intent of the existing rules. These revisions do not change the emission limitations or the sources subject to the emission limitations. The revisions are focused to implementation issues and clarification of requirements. These revisions include:

- The existing NO<sub>x</sub> RACT rule identifies electric utility owned units as those subject to the federal CAIR rule. The proposed rule revision amends these provisions to account for the vacatur of the CAIR rule.
- The existing NO<sub>x</sub> RACT rule allows sources to apply for an alternative emission limit or compliance schedule. However, the applications were due by May 1, 2008 even though in some cases requirements are not effective until 2013. The rule revision allows additional time for sources to submit an application for an alternative requirement.
- The existing NO<sub>x</sub> RACT rule prohibits a source with an approved alternative emission limit or compliance schedule from participating in emissions averaging at any time. The rule revision only prohibits participation in the emissions averaging program for purposes of demonstrating compliance with an alternative emission limit of compliance schedule.
- The new source NO<sub>x</sub> limits in s. NR 428.04 are applicable to units that undergo modification. The proposed revision modifies the existing rule to avoid triggering new source NO<sub>x</sub> limits when the modification is made solely to comply with existing NO<sub>x</sub> control requirements.
- Several revisions allow sources subject to monitoring and reporting requirements under different provisions in ch. NR 428 to satisfy all requirements by meeting one set of monitoring and reporting requirements. These revisions also allow certain sources to demonstrate compliance through periodic stack testing instead of more costly continuous emissions monitoring.

- A number of miscellaneous revisions are proposed to clarify monitoring requirements and deadlines.
- The NO<sub>x</sub> limits in s. NR 428.05, established prior to the RACT program, are intended to apply to sources existing prior to February 1, 2001 with no lapse in applicability unless the source becomes subject to the new source limits in s. NR 428.04 due to a major modification. The applicability statement in s. NR 428.05 (1) is being revised to remove the reference to "modified" sources to clarify this intent.

#### *Comparison with federal regulations*

The NO<sub>x</sub> emission requirements of NR 428 are in place to fulfill federal ozone requirements in non-attainment areas for demonstrating rate-of-progress towards meeting 1 hour ozone attainment and for implementing a Reasonably Available Control Technology program for major sources of NO<sub>x</sub> emissions (NO<sub>x</sub> RACT). Since there are no direct federal emission limitations, states must meet these requirements through development of control requirements and adoption of them into the State Implementation Plan. Many states have NO<sub>x</sub> emission control programs in place or are in the process of evaluating and developing necessary rules to meet federal ozone non-attainment requirements.

EPA does regulate NO<sub>x</sub> emissions for similar sources and to similar control levels as those contained in ch. NR 428. These EPA regulations include new source performance standards, new source review and prevention of significant deterioration requirements, federal engine standards, the Acid Rain program, the NO<sub>x</sub> State SIP Call and various source specific consent decrees.

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

The need to implement NO<sub>x</sub> emission control requirements in adjacent states differ based on ozone non-attainment designations and the resulting applicable federal requirements. Illinois is in the process of developing NO<sub>x</sub> RACT rules. Ohio, Indiana, and Michigan are evaluating their applicable federal requirements based on attainment status. And Iowa and Minnesota currently do not have to respond to federal requirements for reduction in NO<sub>x</sub> emissions. As in the case of ch. NR 428, all rules developed by these states for ozone related purposes must undergo federal approval for inclusion into their State Implementation Plan.

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

Several proposed revisions are needed to address EPA's concern for approving the RACT rules into the State Implementation Plan. Other proposed revisions address implementation issues and the need for clarifications by the Department staff and stakeholders.

#### **Small Business Impact**

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

The existing rule requirements are applicable to large industrial or electric generation sources. Based on the limited nature of the proposed changes to the existing rule there is no impact anticipated to small businesses.

##### *Small business regulatory coordinator*

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

#### **Environmental Impact**

The Department has made a preliminary determination that this action does not involve significant adverse environmental

effects and does not need an environmental analysis under ch. NR 150, Wis. Adm. Code. However, based on the comments received, the Department may prepare an environmental analysis before proceeding with the proposal. This environmental review document would summarize the Department's consideration of the impacts of the proposal and reasonable alternatives.

### **Fiscal Estimate**

#### **Assumptions**

The proposed revisions to ch. NR 428 address criteria for federal approval of the Reasonably Available Control (RACT) Program. Specifically, EPA requires incorporating into rule the basis for identifying major sources subject to the RACT program as those sources with maximum theoretical emissions equal to or greater than 100 tons per year of NO<sub>x</sub>. Incorporating this concept is not anticipated to change the emissions units subject to NO<sub>x</sub> emission limitations as the currently adopted RACT program and applicability of emission limitations therein were originally developed on the basis of maximum theoretical emissions.

In general other revisions proposed to ch. NR 428 affect corrections and address implementation issues which also do not change the affected units and intended emission reductions. One proposed revision, however, does address whether an emissions unit is subject to an existing or new source emission limitation under ch. NR 428. Currently, an emissions unit through installation of control equipment to meet a NO<sub>x</sub> emission limitation may trigger major modification levels and applicability of a more stringent new source NO<sub>x</sub> emission limitation. The ch. NR 428 rules established emission limitations by source category with no intent of triggering a more stringent emission limit in meeting the original applicable limit. Therefore, this specific modification is consistent with the original intent and emission reductions and cost evaluated in developing the currently adopted rules.

#### **Estimate**

There is no anticipated fiscal impact from these rule revisions. Since the rule revisions proposed in Board Order AM–20–08 do not change the overall NO<sub>x</sub> emission requirements or the emissions units anticipated to be subject to emission limitations there is no change anticipated due to these rule revisions versus the original fiscal estimates supporting adoption of current ch. NR 428 requirements.

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

None

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

None

### **Agency Contact Person**

Thomas Karman  
Phone: (608) 264–8856  
Fax: (608) 267–0560  
Email: Thomas.karman@dnr.state.wi.us

## **Notice of Hearing Regulation and Licensing EmR0827**

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Department of Regulation and Licensing in ss. 227.11 (2) and 460.04 (2), Stats., 2007 Wisconsin Act 104, the Department of Regulation and Licensing will hold a public

hearing on an order adopting emergency rules to create 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.

### **Hearing Information**

**Date:** November 26, 2008  
**Time:** 9:00 A.M.  
**Location:** 1400 East Washington Avenue  
(Enter at 55 North Dickinson Street)  
Room 121A  
Madison, Wisconsin

### **Submission of Written Comments**

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but are urged to submit facts, opinions and argument in writing as well. Facts, opinions and argument may also be submitted in writing without a personal appearance by mail addressed to Pamela Haack, Department of Regulation and Licensing, Office of Legal Counsel, 1400 East Washington Avenue, Room 152, P.O. Box 8935, Madison, Wisconsin 53708–8935, or by email to [pamela.haack@drl.state.wi.us](mailto:pamela.haack@drl.state.wi.us). Written comments must be received by December 1, 2008, to be included in the record of rule–making proceedings.

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

#### **Statutes interpreted**

Section 460.04 (2), Stats.

#### **Statutory authority**

Sections 227.11 (2) and 460.04 (2), Stats., 2007 Wisconsin Act 104

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

2007 Wisconsin Act 104 amends ch. 460, Stats., which regulates the profession of massage therapy and bodywork. The effect of the Act requires the Department of Regulation and Licensing to amend administrative rules for application for certification as a massage therapist or bodyworker. As required by 2007 Wisconsin Act 104, the rule creates the requirement for applicants to be proficient in the use of automated external defibrillators (AEDs) through the completion of an approved instruction program prior to initial certification.

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

Section RL 91.01, Wis. Adm. Code.

#### **Plain language analysis**

The massage therapy and bodywork statutes and administrative rules regarding application for certification, reciprocal certification and renewal do not have a requirement for training and proficiency in the use of an AED. This rule implements a provision of 2007 Wisconsin Act 104, requiring applicants for a credential to be proficient in the use of automated external defibrillators (AEDs) through the completion of an approved instruction program prior to initial certification.

SECTION 1 creates a requirement for applicants for a credential to be proficient in the use of automated external defibrillators (AEDs) through the completion of an approved instruction program prior to initial certification.

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

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

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

Minnesota does not have regulations or state requirements for massage therapy.

**Michigan:**

Michigan does not have regulations or state requirements for massage therapy.

**Iowa:**

Laws and rules for Iowa do not require automated external defibrillator (AED) training. One of the requirements for Iowa licensure is proof of current CPR and First Aid cards, Chapter 131, 131.2(6) states: The applicant shall submit proof of completion of a cardiopulmonary resuscitation (CPR) course and a first–aid course that were certified by the American Red Cross, by the American Heart Association, or by the National Safety Council. One of the following shall be required:

- a. Official transcript documenting completion of a CPR class and a first–aid class within one year prior to submitting the application for licensure; or
- b. Copy of the current certification card(s) or renewal card(s).

**Illinois:**

Illinois does not appear to require proficiency and training in the use of AEDs as a requirement for licensure and renewal of massage therapists. Massage Therapists are licensed under Title 68: Professions & Occupations: Chap. VII, Dept. of Financial and Professional Regulation, Subchapter B, Professions and Occupations Part 1284 Massage Licensing Act, ss. 1284.30 Application for Licensure and 1284.60 Renewals

**Summary of factual data and analytical methodologies**

2007 Wisconsin Act 104 created a requirement for applicants for a credential as a massage therapy or bodyworker to be proficient in the use of automated external defibrillators (AEDs) through the completion of an approved instruction program prior to initial certification. This requirement of the Act has been set forth in the newly created rule provision, as directed by the legislature.

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

Training for certification and renewal of certification may vary. The Madison Wisconsin Chapter of the American Red Cross (Badger Chapter) offers AED/CPR initial certification for \$80.00 and \$52.00 for review. Both trainings are valid for one year. Based on these figures, AED certification costs for a certified massage therapist could cost approximately \$132.00 for the certification biennium and less so in subsequent bienniums (initial biennium in which AED certification was achieved: \$132.00 initial certification plus \$52.00 for review).

As of July 2008, there were 3,162 massage therapists and bodyworkers with active certifications.

**Small Business Impact**

This emergency rule will have no 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 [larry.martin@drl.state.wi.us](mailto:larry.martin@drl.state.wi.us), or by calling 608–266–8608.

**Fiscal Estimate****Summary**

The department estimates that this rule will require staff time in the Office of Legal Counsel, Division of Management Services, Office of Exams, and the Division of Professional Credentialing. The total one–time salary and fringe costs are estimated at \$3,032.

**Anticipated costs incurred by private sector**

The department finds that this rule has no significant fiscal effect on the private sector.

**Agency Contact Person**

Pamela Haack, Paralegal, Department of Regulation and Licensing, Office of Legal Counsel, 1400 East Washington Avenue, Room 152, P.O. Box 8935, Madison, Wisconsin 53708; telephone 608–266–0495; email at [pamela.haack@drl.state.wi.us](mailto:pamela.haack@drl.state.wi.us).

**Text of Proposed Rule**

SECTION 1. RL 91.01 (3) (k) is created to read:

RL 91.01 (3) (k) Has current proficiency in the use of an automated external defibrillator achieved through instruction provided by an individual, organization, or institution of higher education approved under s. 46.03 (38), Stats., to provide the instruction.

**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.

This emergency rule was effective on September 10, 2008.

**Notice of Hearing  
Regulation and Licensing  
CR 08–086**

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Department of Regulation and Licensing in ss. 227.11 (2) and 460.04 (2), Stats., 2007 Wisconsin Act 104, the Department of Regulation and Licensing will hold a public hearing to create 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.

**Hearing Information**

**Date:** November 26, 2008  
**Time:** 9:00 A.M.  
**Location:** 1400 East Washington Avenue  
 (Enter at 55 North Dickinson Street)  
 Room 121A  
 Madison, Wisconsin

**Submission of Written Comments**

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but are urged to submit facts, opinions and argument in writing as well. Facts, opinions and argument may also be

submitted in writing without a personal appearance by mail addressed to the Pamela Haack, Department of Regulation and Licensing, Office of Legal Counsel, 1400 East Washington Avenue, Room 152, P.O. Box 8935, Madison, Wisconsin 53708–8935, or by email to [pamela.haack@dr1.state.wi.us](mailto:pamela.haack@dr1.state.wi.us). Written comments must be received by December 1, 2008, to be included in the record of rule–making proceedings.

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

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

Section 460.04 (2), Stats.

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

Section 227.11 (2), Stats., and s. 460.04 (2), Stats., 2007 Wisconsin Act 104.

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

2007 Wisconsin Act 104 amends ch. 460, Stats., which regulates the profession of massage therapy and bodywork. The effect of the Act requires the Department of Regulation and Licensing to amend administrative rules for application for certification as a massage therapist or bodyworker. As required by 2007 Wisconsin Act 104, the proposed rule creates the requirement for applicants to be proficient in the use of automated external defibrillators (AEDs) through the completion of an approved instruction program prior to initial certification.

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

Section RL 91.01, Wis. Adm. Code.

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

The massage therapy and bodywork statutes and administrative rules regarding application for certification, reciprocal certification and renewal do not have a requirement for training and proficiency in the use of an AED. This proposed rule–making implements a provision of 2007 Wisconsin Act 104, requiring applicants for a credential to be proficient in the use of automated external defibrillators (AEDs) through the completion of an approved instruction program prior to initial certification.

SECTION 1 creates a requirement for applicants for a credential to be proficient in the use of automated external defibrillators (AEDs) through the completion of an approved instruction program prior to initial certification.

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

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

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

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

Minnesota does not have regulations or state requirements for massage therapy.

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

Michigan does not have regulations or state requirements for massage therapy.

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

Laws and rules for Iowa do not require automated external defibrillator (AED) training. One of the requirements for Iowa licensure is proof of current CPR and First Aid cards, Chapter 131, 131.2(6) states: The applicant shall submit proof of completion of a cardiopulmonary resuscitation (CPR) course and a first–aid course that were certified by the American Red Cross, by the American Heart Association, or

by the National Safety Council. One of the following shall be required:

- a. Official transcript documenting completion of a CPR class and a first–aid class within one year prior to submitting the application for licensure; or
- b. Copy of the current certification card(s) or renewal card(s).

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

Illinois does not appear to require proficiency and training in the use of AEDs as a requirement for licensure and renewal of massage therapists. Massage Therapists are licensed under Title 68: Professions & Occupations: Chap. VII, Dept. of Financial and Professional Regulation, Subchapter B, Professions and Occupations Part 1284 Massage Licensing Act, ss. 1284.30 Application for Licensure and 1284.60 Renewals

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

2007 Wisconsin Act 104 created a requirement for applicants for a credential as a massage therapist or bodyworker to be proficient in the use of automated external defibrillators (AEDs) through the completion of an approved instruction program prior to initial certification. This requirement of the Act has been set forth in the newly created rule provision, as directed by the legislature.

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

Training for certification and renewal of certification may vary. The Madison Wisconsin Chapter of the American Red Cross (Badger Chapter) offers AED/CPR initial certification for \$80.00 and \$52.00 for review. Both trainings are valid for one year. Based on these figures, AED certification costs for a certified massage therapist could cost approximately \$132.00 for the certification biennium and less so in subsequent bienniums (initial biennium in which AED certification was achieved: \$132.00 initial certification plus \$52.00 for review).

As of July 2008, there were 3,162 massage therapists and bodyworkers with active certifications.

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

These proposed rules will have no 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 [larry.martin@dr1.state.wi.us](mailto:larry.martin@dr1.state.wi.us), or by calling 608–266–8608.

#### ***Fiscal Estimate***

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

The department estimates that this rule will require staff time in the Office of Legal Counsel, Division of Management Services, Office of Exams, and the Division of Professional Credentialing. The total one–time salary and fringe costs are estimated at \$3,032.

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

The department finds that this rule has no significant fiscal effect on the private sector.

#### ***Agency Contact Person***

Pamela Haack, Paralegal, Department of Regulation and Licensing, Office of Legal Counsel, 1400 East Washington Avenue, Room 152, P.O. Box 8935, Madison, Wisconsin 53708; telephone 608–266–0495; email at [pamela.haack@dr1.state.wi.us](mailto:pamela.haack@dr1.state.wi.us).

**Text of Proposed Rule**

SECTION 1. RL 91.01 (3) (k) is created to read:

RL 91.01 (3) (k) Has current proficiency in the use of an automated external defibrillator achieved through instruction provided by an individual, organization, or institution of higher education approved under s. 46.03 (38), Stats., to provide the instruction.

**Notice of Hearing  
Regulation and Licensing  
EmR0828**

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Department of Regulation and Licensing in ss. 227.11 (2) and 440.984, Stats., the Department of Regulation and Licensing will hold a public hearing on an emergency rule to renumber and amend RL 181.01 (2) (c); and to create RL 180.02 (1m), (3m) and (11), 181.01 (1) (d) and (2) (c) 1. and 2., relating to training and proficiency in the use of automated external defibrillators for licensure as a licensed midwife.

**Hearing Information**

**Date:** November 26, 2008  
**Time:** 9:20 A.M.  
**Location:** 1400 East Washington Avenue  
 (Enter at 55 North Dickinson Street)  
 Room 121A  
 Madison, Wisconsin

**Submission of Written Comments**

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but are urged to submit facts, opinions and argument in writing as well. Facts, opinions and argument may also be submitted in writing without a personal appearance by mail addressed to Pamela Haack, Department of Regulation and Licensing, Office of Legal Counsel, 1400 East Washington Avenue, Room 152, P.O. Box 8935, Madison, Wisconsin 53708–8935, or by email to [pamela.haack@drl.state.wi.us](mailto:pamela.haack@drl.state.wi.us). Written comments must be received by December 1, 2008, to be included in the record of rule–making proceedings.

**Analysis Prepared by the Department of Regulation and Licensing****Statutes interpreted**

Sections 440.982 and 440.983, Stats., and 2007 Wisconsin Act 104.

**Statutory authority**

Sections 227.11 (2) and 440.984, Stats.

**Explanation of agency authority**

2007 Wisconsin Act 104 amends ch. 440, Stats., which regulates the practice of midwifery. The effect of the Act requires the Department of Regulation and Licensing to amend administrative rules for application for licensure as a licensed midwife. As required by 2007 Wisconsin Act 104, this emergency rule creates the requirement for applicants and licensees to be proficient in the use of automated external defibrillators (AEDs) through the completion of an approved instruction program prior to initial licensure, issuance of a temporary permit, and renewal of licensure.

**Related statutes or rules**

Section 46.03 (38), Stats.

**Plain language analysis**

This emergency rule amends rules relating to licensed midwives to include the requirement for applicants and licensees to be proficient in the use of automatic external defibrillators (AEDs) through the completion of an approved instruction program prior to initial licensure, issuance of a temporary permit, and renewal of licensure, resulting from 2007 Wisconsin Act 104.

SECTION 1 creates definitions for “automated external defibrillator,” “defibrillation” and “ventricular fibrillation.”

SECTION 2 creates a provision in s. RL 181.01 (1) to require applicants to submit evidence satisfactory to the department that the applicant has current proficiency in the use of an automated external defibrillator achieved through instruction provided by an individual, organization, or institution of higher education approved under s. 46.03 (38), Stats., to provide the instruction.

SECTION 3 renumbers and amends, and SECTION 4 creates, provisions to require licensees to submit, at the time of renewal, evidence satisfactory to the department that the applicant has current proficiency in the use of an automated external defibrillator achieved through instruction provided by an individual, organization, or institution of higher education approved under s. 46.03 (38), Stats., to provide the instruction.

**Comparison with federal regulations**

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

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

Under 147D.17; subd. 1 (14) requires midwives to be certified in adult and infant CPR (the American Heart Association teaches AED with CPR) but there is nothing in the statutes or rules requiring specific training in the use of the defibrillator.

*Iowa:*

Iowa does not regulate midwives.

*Illinois:*

Illinois does not regulate midwives.

*Michigan:*

Michigan does not regulate midwives.

**Summary of factual data and analytical methodologies**

2007 Wisconsin Act 104 created a requirement for applicants for an initial credential as a midwife, issuance of a temporary permit, and as a qualification for renewal, to be proficient in the use of automated external defibrillators (AEDs) through the completion of an approved instruction program prior to initial certification. This requirement of the Act has been set forth in the newly created rule provisions, as directed by the legislature.

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

Training for AED certification and renewal of certification may vary. The Madison Wisconsin Chapter of the American Red Cross (Badger Chapter) offers to professionals AED/CPR initial certification for \$80.00 and \$52.00 for review. Both trainings are valid for one year. Based on these figures, AED certification for a licensed chiropractor could cost approximately \$132.00 for the licensure biennium and less so in subsequent bienniums (initial biennium in which AED certification was achieved: \$132.00 initial certification plus \$52.00 for review).

As of July 2008, there were 35 Wisconsin licensed midwives with active licenses to practice.

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

### Small Business Impact

This emergency rule will have no 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 [larry.martin@drl.state.wi.us](mailto:larry.martin@drl.state.wi.us), or by calling 608–266–8608.

### Fiscal Estimate

#### Summary

The department estimates that this rule will require staff time in the Office of Legal Counsel, Division of Management Services, and the Division of Professional Credentialing. The total one–time salary and fringe costs are estimated at \$2,223.

#### Anticipated costs incurred by private sector

The department finds that this rule has no significant fiscal effect on the private sector.

### Agency Contact Person

Pamela Haack, Paralegal, Department of Regulation and Licensing, Office of Legal Counsel, 1400 East Washington Avenue, Room 152, P.O. Box 8935, Madison, Wisconsin 53708; telephone 608–266–0495; email at [pamela.haack@drl.state.wi.us](mailto:pamela.haack@drl.state.wi.us).

### Text Proposed Rule

SECTION 1. RL 180.02 (1m), (3m) and (11) are created to read:

RL 180.02 (1m) “Automated external defibrillator” means a defibrillator device to which all of the following apply:

a. It is approved for commercial distribution by the federal food and drug administration.

b. It is capable of recognizing the presence or absence of ventricular fibrillation or rapid ventricular tachycardia and of determining without intervention by the user of the device whether defibrillation should be performed.

c. After having determined that defibrillation should be performed, it is capable, either at the command of an operator or without intervention by an operator, of delivering an electrical shock to an individual.

(3m) “Defibrillation” means administering an electrical impulse to an individual’s heart in order to stop ventricular fibrillation or rapid ventricular tachycardia.

(11) “Ventricular fibrillation” means a disturbance in the normal rhythm of the heart that is characterized by rapid, irregular, and ineffective twitching of the ventricles of the heart.

SECTION 2. RL 181.01 (1) (d) is created to read:

RL 181.01 (1) (d) Evidence satisfactory to the department that the applicant has current proficiency in the use of an automated external defibrillator achieved through instruction provided by an individual, organization, or institution of higher education approved under s. 46.03 (38), Stats., to provide the instruction.

SECTION 3. RL 181.01 (2) (c) is renumbered RL 181.01 (2) (c) (intro.) and is amended to read:

RL 181.01 (2) (c) (intro.) A licensed midwife shall, at the time that he or she applies for renewal of a license under par. (b), submit proof satisfactory to the department ~~that he or she holds a valid certified professional midwife credential from the North American Registry of Midwives or a successor organization, or a valid certified nurse–midwife credential from the American College of Nurse–Midwives or a successor organization.~~ **of all of the following:**

SECTION 4. RL 181.01 (2) (c) 1. and 2. are created to read:

RL 181.01 (2) (c) 1. He or she holds a valid certified professional midwife credential from the North American Registry of Midwives or a successor organization, or a valid certified nurse–midwife credential from the American College of Nurse–Midwives or a successor organization.

2. He or she has current proficiency in the use of an automated external defibrillator achieved through instruction provided by an individual, organization, or institution of higher education approved under s. 46.03 (38), Stats., to provide the instruction.

### 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.

This emergency rule was effective on September 10, 2008.

## Notice of Hearing Regulation and Licensing CR 08–087

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Department of Regulation and Licensing in ss. 227.11 (2) and 440.984, Stats., the Department of Regulation and Licensing will hold a public hearing to consider an order to renumber and amend RL 181.01 (2) (c); and to create RL 180.02 (1m), (3m) and (11), 181.01 (1) (d) and (2) (c) 1. and 2., relating to training and proficiency in the use of automated external defibrillators for licensure as a licensed midwife.

### Hearing Information

**Date:** November 26, 2008

**Time:** 9:20 A.M.

**Location:** 1400 East Washington Avenue  
(Enter at 55 North Dickinson Street)  
Room 121A  
Madison, Wisconsin

### Submission of Written Comments

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but are urged to submit facts, opinions and argument in writing as well. Facts, opinions and argument may also be submitted in writing without a personal appearance by mail addressed to Pamela Haack, Department of Regulation and Licensing, Office of Legal Counsel, 1400 East Washington Avenue, Room 152, P.O. Box 8935, Madison, Wisconsin 53708–8935, or by email to [pamela.haack@drl.state.wi.us](mailto:pamela.haack@drl.state.wi.us). Comments must be received on or before December 1, 2008, to be included in the record of rule-making proceedings.

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

### ***Statutes interpreted***

Sections 440.982 and 440.983, Stats., and 2007 Wisconsin Act 104.

### ***Statutory authority***

Sections 227.11 (2) and 440.984, Stats.

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

2007 Wisconsin Act 104 amends ch. 440, Stats., which regulates the practice of midwifery. The effect of the Act requires the Department of Regulation and Licensing to amend administrative rules for application for licensure as a licensed midwife. As required by 2007 Wisconsin Act 104, the proposed rule creates the requirement for applicants and licensees to be proficient in the use of automated external defibrillators (AEDs) through the completion of an approved instruction program prior to initial licensure, issuance of a temporary permit, and renewal of licensure.

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

Section 46.03 (38), Stats.

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

This proposed rule–making order amends rules relating to licensed midwives to include the requirement for applicants and licensees to be proficient in the use of automatic external defibrillators (AEDs) through the completion of an approved instruction program prior to initial licensure, issuance of a temporary permit, and renewal of licensure, resulting from 2007 Wisconsin Act 104.

SECTION 1 creates definitions for “automated external defibrillator,” “defibrillation” and “ventricular fibrillation.”

SECTION 2 creates a provision in s. RL 181.01 (1) to require applicants to submit evidence satisfactory to the department that the applicant has current proficiency in the use of an automated external defibrillator achieved through instruction provided by an individual, organization, or institution of higher education approved under s. 46.03 (38), Stats., to provide the instruction.

SECTION 3 renumbers and amends, and SECTION 4 creates, provisions to require licensees to submit, at the time of renewal, evidence satisfactory to the department that the applicant has current proficiency in the use of an automated external defibrillator achieved through instruction provided by an individual, organization, or institution of higher education approved under s. 46.03 (38), Stats., to provide the instruction.

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

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

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

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

Under 147D.17; subd. 1 (14) requires midwives to be certified in adult and infant CPR (the American Heart Association teaches AED with CPR) but there is nothing in the statutes or rules requiring specific training in the use of the defibrillator.

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

Iowa does not regulate midwives.

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

Illinois does not regulate midwives.

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

Michigan does not regulate midwives.

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

2007 Wisconsin Act 104 created a requirement for applicants for an initial credential as a midwife, issuance of a temporary permit, and as a qualification for renewal, to be proficient in the use of automated external defibrillators (AEDs) through the completion of an approved instruction program prior to initial certification. This requirement of the Act has been set forth in the newly created rule provisions, as directed by the legislature.

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

Training for AED certification and renewal of certification may vary. The Madison Wisconsin Chapter of the American Red Cross (Badger Chapter) offers to professionals AED/CPR initial certification for \$80.00 and \$52.00 for review. Both trainings are valid for one year. Based on these figures, AED certification for a licensed chiropractor could cost approximately \$132.00 for the licensure biennium and less so in subsequent bienniums (initial biennium in which AED certification was achieved: \$132.00 initial certification plus \$52.00 for review).

As of July 2008, there were 35 Wisconsin licensed midwives with active licenses to practice.

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

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

These proposed rules will have no 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 [larry.martin@drl.state.wi.us](mailto:larry.martin@drl.state.wi.us), or by calling 608–266–8608.

### ***Fiscal Estimate***

#### ***Summary***

The department estimates that this rule will require staff time in the Office of Legal Counsel, Division of Management Services, and the Division of Professional Credentialing. The total one–time salary and fringe costs are estimated at \$2,223.

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

The department finds that this rule has no significant fiscal effect on the private sector.

### ***Agency Contact Person***

Pamela Haack, Paralegal, Department of Regulation and Licensing, Office of Legal Counsel, 1400 East Washington Avenue, Room 152, P.O. Box 8935, Madison, Wisconsin 53708; telephone 608–266–0495; email at [pamela.haack@drl.state.wi.us](mailto:pamela.haack@drl.state.wi.us).

### ***Text of Proposed Rule***

SECTION 1. RL 180.02 (1m), (3m) and (11) are created to read:

RL 180.02 (1m) “Automated external defibrillator” means a defibrillator device to which all of the following apply:

a. It is approved for commercial distribution by the federal food and drug administration.

b. It is capable of recognizing the presence or absence of ventricular fibrillation or rapid ventricular tachycardia and of determining without intervention by the user of the device whether defibrillation should be performed.

c. After having determined that defibrillation should be performed, it is capable, either at the command of an operator

or without intervention by an operator, of delivering an electrical shock to an individual.

(3m) “Defibrillation” means administering an electrical impulse to an individual’s heart in order to stop ventricular fibrillation or rapid ventricular tachycardia.

(11) “Ventricular fibrillation” means a disturbance in the normal rhythm of the heart that is characterized by rapid, irregular, and ineffective twitching of the ventricles of the heart.

SECTION 2. RL 181.01 (1) (d) is created to read:

RL 181.01 (1) (d) Evidence satisfactory to the department that the applicant has current proficiency in the use of an automated external defibrillator achieved through instruction provided by an individual, organization, or institution of higher education approved under s. 46.03 (38), Stats., to provide the instruction.

SECTION 3. RL 181.01 (2) (c) is renumbered RL 181.01 (2) (c) (intro.) and is amended to read:

RL 181.01 (2) (c) (intro.) A licensed midwife shall, at the time that he or she applies for renewal of a license under par. (b), submit proof satisfactory to the department ~~that he or she holds a valid certified professional midwife credential from the North American Registry of Midwives or a successor organization, or a valid certified nurse–midwife credential from the American College of Nurse Midwives or a successor organization. of all of the following:~~

SECTION 4. RL 181.01 (2) (c) 1. and 2. are created to read:

RL 181.01 (2) (c) 1. He or she holds a valid certified professional midwife credential from the North American Registry of Midwives or a successor organization, or a valid certified nurse–midwife credential from the American College of Nurse Midwives or a successor organization.

2. He or she has current proficiency in the use of an automated external defibrillator achieved through instruction provided by an individual, organization, or institution of higher education approved under s. 46.03 (38), Stats., to provide the instruction.

## Notice of Hearing

### Transportation

#### EmR0833

NOTICE IS HEREBY GIVEN that pursuant to s. 110.07, Stats., interpreting ch. 194, Stats., the Department of Transportation will hold a public hearing on the emergency rule amendment of Chapters Trans 325, 326 and 327, Wisconsin Administrative Code, relating to motor carrier safety, and hazardous material transportation safety.

#### Hearing Information

**Date:** December 2, 2008  
**Time:** 10:00 A.M.  
**Location:** Hill Farms State Transportation Bldg.  
 4802 Sheboygan Avenue  
 Room 701  
 Madison, Wisconsin

The public hearing site is accessible to people with disabilities.

## Analysis Prepared by the Wisconsin Department of Transportation

### *Statutes interpreted*

Section 110.075 and Ch. 194, Stats.

### *Statutory authority*

Section 110.075 and Ch. 194, Stats.

### *Explanation of agency authority*

The Department of Transportation sets standards and adopts rules to establish a plan of inspection to implement the inspection program. It is the duty of the Department to prescribe rules and regulations as to safety and operations and the hours of labor of drivers of motor vehicles operated under the authority of these chapters.

### *Related statute or rule*

Section 110.07, Stats.

### *Plain language analysis*

As prescribed by state statute, the Department is mandated to regulate both intrastate and interstate transportation of property and passengers by commercial motor vehicles. It is in the best interest of the public when current regulations are used for enforcement of these regulations.

### *Comparison with federal regulations*

Trans 325 (Interstate Motor Carrier Safety regulations) adopts Federal regulations 49 CFR part 385, subpart C (Certification of Safety Auditors, Safety Investigators and Safety Inspectors) and parts 390 to 393 and 395 to 397. Trans 326 (Motor Carrier Safety Requirements for Transportation of Hazardous Materials) adopts Federal Regulations 49 CFR parts 107, 171–173, 177, 178, 180 and 385, subpart E (Hazardous Materials Safety Permits). Trans 327 (Motor Carrier Safety) adopts Federal regulations part 385, subpart C, (Certification of Safety Auditors, Safety Investigators and Safety Inspectors), parts 40, 390–general, except 390.23(a)(3); 391–general except 391.11(b)(1) and 391.41(b)(3), 391.41(b)(10); 392 except 392.16; 393–general except 393.42 shall not apply to vehicles placed in operation in common, contract or private carriage prior to June 1, 1987; 395, general–except 395.1(e)(1), 395.1(h), 395.1(i) 395.5, 395.8, and the maximum number of hours identified in 395.3 as follows: (a) more than 12 hours following 10 consecutive hours off duty; (b) for any period after having been on duty 16 hours following 10 consecutive hours off duty; (c) after having been on duty for 70 hours in any period of 7 consecutive days; and (d) after having been on duty for 80 hours in any period of 8 consecutive days, and parts 396 and 397.

### *Comparison with rules in adjacent states*

All adjacent states (Michigan, Minnesota, Illinois and Iowa) adopt the same Federal regulations.

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

The Federal Motor Carrier Safety Administration continues to do ongoing research into vehicle equipment, driver safety, carrier authority and hazardous materials. Its research, coupled with the input from the motor carrier industry, resulted in ongoing updates to federal regulations for interstate commerce. It is imperative the same regulations are enforced from state to state.

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

The research provided by the Federal Motor Carrier Safety Administration was used in analyzing the effects on small business.

**Small Business Impact**

This rule making will have no significant adverse effect on small businesses.

The Department's Regulatory Review Coordinator may be contacted by e–mail at [ralph.sanders@dot.state.wi.us](mailto:ralph.sanders@dot.state.wi.us), or by calling (414) 438–4585.

**Fiscal Estimate**

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

**Copies of Emergency Rule and Agency Contact**

Requests for copies of the emergency rule should be submitted to Lt. Patricia Hansen, Department of Transportation, Division of State Patrol, Bureau of Field Services, Room 551, P. O. Box 7936, Madison, WI 53707–7936. You may also contact Lt. Hansen by phone at (608) 266–0094 or via e–mail at [patricia.hansen@dot.state.wi.us](mailto:patricia.hansen@dot.state.wi.us).

To view the emergency rule, you may visit the following website:

<http://www.dot.wisconsin.gov/library/research/law/rulenotices.htm>.

**Notice of Hearing  
Transportation  
CR 08–100**

NOTICE IS HEREBY GIVEN that pursuant to s. 110.07, Stats., interpreting ch. 194, Stats., the Department of Transportation will hold a public hearing on the adoption of permanent rules amending Chapters Trans 325, 326 and 327, Wisconsin Administrative Code, relating to motor carrier safety, and hazardous material transportation safety.

**Hearing Information**

**Date:** December 2, 2008  
**Time:** 10:00 A.M.  
**Location:** Hill Farms State Transportation Bldg.  
4802 Sheboygan Avenue  
Room 701  
Madison, Wisconsin

The public hearing site is accessible to people with disabilities.

**Analysis Prepared by the Wisconsin Department of Transportation****Statutes interpreted**

Ch. 194, Stats.

**Statutory authority**

Section 110.075 and Ch. 194, Stats.

**Explanation of agency authority**

The Department of Transportation sets standards and adopts rules to establish a plan of inspection to implement the inspection program. This proposed rule making eliminates the date specification for applicable federal regulations enabling the Department to apply current federal regulations. It is the duty of the Department to prescribe rules and

regulations as to safety and operations and the hours of labor of drivers of motor vehicles operated under the authority of these chapters.

**Related statute or rule**

Section 110.07, Stats.

**Plain language analysis**

As prescribed by state statute, the Department is mandated to regulate both intrastate and interstate transportation of property and passengers by commercial motor vehicles. It is in the best interest of the public when current regulations are used for enforcement of these regulations. Applying outdated regulations can adversely affect interstate transportation where those other states apply current regulations.

**Comparison with federal regulations**

Trans 325 (Interstate Motor Carrier Safety regulations) adopts Federal regulations 49 CFR part 385, subpart C (Certification of Safety Auditors, Safety Investigators and Safety Inspectors) and parts 390 to 393 and 395 to 397. Trans 326 (Motor Carrier Safety Requirements for Transportation of Hazardous Materials) adopts Federal Regulations 49 CFR parts 107, 171–173, 177, 178, 180 and 385, subpart E (Hazardous Materials Safety Permits). Trans 327 (Motor Carrier Safety) adopts Federal regulations part 385, subpart C, (Certification of Safety Auditors, Safety Investigators and Safety Inspectors), parts 40, 390–general, except 390.23(a)(3); 391–general except 391.11(b)(1) and 391.41(b)(3), 391.41(b)(10); 392 except 392.16; 393–general except 393.42 shall not apply to vehicles placed in operation in common, contract or private carriage prior to June 1, 1987; 395, general–except 395.1(e)(1), 395.1(h), 395.1(i) 395.5, 395.8, and the maximum number of hours identified in 395.3 as follows: (a) more than 12 hours following 10 consecutive hours off duty; (b) for any period after having been on duty 16 hours following 10 consecutive hours off duty; (c) after having been on duty for 70 hours in any period of 7 consecutive days; and (d) after having been on duty for 80 hours in any period of 8 consecutive days, and parts 396 and 397.

**Comparison with rules in adjacent states**

All adjacent states (Michigan, Minnesota, Illinois and Iowa) adopt the same Federal regulations and subsequent revisions to those regulations.

**Summary of factual data and analytical methodologies**

The Federal Motor Carrier Safety Administration continues to do ongoing research into vehicle equipment, driver safety, carrier authority and hazardous materials. Its research, coupled with the input from the motor carrier industry, resulted in ongoing updates to federal regulations for interstate commerce. It is imperative the same regulations are enforced from state to state.

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

The research provided by the Federal Motor Carrier Safety Administration was used in analyzing the effects on small business.

**Small Business Impact**

This rule making will have no significant adverse effect on small businesses.

The Department's Regulatory Review Coordinator may be contacted by e–mail at [ralph.sanders@dot.state.wi.us](mailto:ralph.sanders@dot.state.wi.us), or by calling (414) 438–4585.

## Fiscal Estimate

### Summary

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

### Anticipated costs incurred by private sector

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

### Agency Contact Person and Submission of Written Comments

The public record on this proposed rule making will be held open until close of business on December 5, 2008, to permit the submission of comments in lieu of public hearing testimony or comments supplementing testimony offered at the hearing. Any such comments should be submitted to Lt. Patricia Hansen, Department of Transportation, Division of State Patrol, Bureau of Field Services, Room 551, P. O. Box 7936, Madison, WI 53707–7936. You may also contact Lt. Hansen by phone at (608) 266–0094, or by e–mail at patricia.hansen@dot.state.wi.us to obtain copies of the proposed rule.

To view the proposed amendments to the rule, view the current rule, and submit written comments via e–mail/internet, you may visit the following website: <http://www.dot.wisconsin.gov/library/research/law/rulenotices.htm>.

### Copies of Proposed Rule

A copy of the proposed rule may be obtained upon request from Lt. Patricia Hansen, Department of Transportation, Division of State Patrol, Bureau of Field Services, Room 551, P. O. Box 7936, Madison, WI 53707–7936. You may also contact Lt. Hansen by phone at (608) 266–0094 or via e–mail at patricia.hansen@dot.state.wi.us.

## Notice of Hearing Transportation CR 08–101

NOTICE IS HEREBY GIVEN that pursuant to s. 348.07, Stats., interpreting s. 348.07, Stats., the Department of Transportation will hold a public hearing on the amendment of Chapter Trans 276, Wisconsin Administrative Code, relating to allowing the operation of certain 2–vehicle combinations on certain highways without a permit

### Hearing Information

**Date:** December 3, 2008  
**Time:** 10:00 A.M.  
**Location:** Hill Farms State Transportation Bldg.  
 4802 Sheboygan Avenue  
 Room 501 (Eau Claire Room)  
 Madison, Wisconsin

The public hearing site is accessible to people with disabilities.

### Analysis Prepared by the Wisconsin Department of Transportation

#### Statutes interpreted

Section 348.07, Stats.

#### Statutory authority

Section 348.07, Stats.

#### Explanation of agency authority

Section 348.07 (4), Stats., requires the secretary to designate by rule the highways to which s. 348.07 (2) (f), Stats., [no overall length limitation for a tractor–semitrailer combination, a double bottom or an automobile haulaway], (fm) [no length limitation for a truck tractor or road tractor when such truck tractor or road tractor is operated in a tractor–semitrailer combination or as part of a double bottom or an automobile haulaway], (gm) [28 feet 6 inch length limit for a semitrailer or trailer operated as part of a double bottom], and (gr) [53 feet for a semitrailer whose length from kingpin to axle does not exceed 43 feet and which is operated as part of a 2–vehicle combination], and s. 348.08 (1) (e), Stats., [double bottom trucks] apply. The designation of highways under this subsection may not be inconsistent with the designation of highways made by the U.S. secretary of transportation under P.L. 97–424, section 411.

#### Related statute or rule

Section 348.07, Stats., and ch. Trans 276, Wis. Admin. Code

#### Plain language analysis

This rule proposes to amend s. Trans 276.07 (14) and (35m), Wisconsin Administrative Code, to add two segments of highway to the designated highway system established under s. 348.07 (4), Stats. The actual highway segments<sup>1</sup> that this rule proposes to add to the designated highway system are:

Hwy.	From	To
STH 66	West of Rosholt	CTH A E. of Rosholt
CTH A in Portage Co.	STH 66 near Rosholt	USH 10 in Amherst

<sup>1</sup> The rule text often achieves these objectives by consolidating individual segments into contiguous segments with new end points. In order to determine the actual highway segment added, it is necessary to compare the combined old designations with the combined new designation.

The long trucks to which this rule applies are those with 53–foot semitrailers, double bottoms and the vehicles which may legally operate on the federal National Network, but which exceed Wisconsin’s regular limits on overall length. Generally, no person may operate any of the following vehicles on Wisconsin’s highways without a permit: A single vehicle with an overall length in excess of 40 feet<sup>2</sup>, a combination of vehicles with an overall length in excess of 65 feet, a semitrailer longer than 48 feet, an automobile haulaway longer than 66 feet plus allowed overhangs, or a double bottom. Certain exceptions are provided under s. 348.07(2), Stats., which implements provisions of the federal Surface Transportation Assistance Act in Wisconsin.

<sup>2</sup> 45–foot buses are allowed on the National Network and Interstate system by Federal law. Section 4006(b) of the Intermodal Surface Transportation Efficiency Act of 1991.

The effect of this rule will be to extend the provisions of s. 348.07 (2) (f), (fm), (gm) and (gr), and s. 348.08 (1) (e), Stats., to the highway segments listed above. As a result, vehicles which may legally operate on the federal National Network in Wisconsin will also be allowed to operate on the newly–designated highway. Specifically, this means there will be no overall length limitation for a tractor–semitrailer

combination, a double bottom or an automobile haulaway on the affected highway segment. There also will be no length limitation for a truck tractor or road tractor when operated in a tractor–semitrailer combination or as part of a double bottom or an automobile haulaway. Double bottoms will be allowed to operate on the affected highway segment provided neither trailer is longer than 28 feet, 6 inches. Semitrailers up to 53 feet long may also be operated on this highway segment provided the kingpin to rear axle distance does not exceed 43 feet. This distance is measured from the kingpin to the center of the rear axle or, if the semitrailer has a tandem axle, to a point midway between the first and last axles of the tandem. Otherwise, semitrailers, including semitrailers which are part of an automobile haulaway, are limited to 48 feet in length.

These vehicles and combinations are also allowed to operate on undesignated highways for a distance of 15 miles or less from the designated highway in order to reach fuel, food, maintenance, repair, rest, staging, terminal or vehicle assembly or points of loading or unloading.

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

In the Surface Transportation Assistance Act of 1982 (STAA), the federal government acted under the Commerce clause of the United States Constitution to provide uniform standards on vehicle length applicable in all states. The length provisions of STAA apply to truck tractor–semitrailer combinations and to truck tractor–semitrailer–trailer combinations. (See Jan. 6, 1983, Public Law 97–424, § 411) The uniform standards provide that:

- No state shall impose a limit of less than 48 feet on a semitrailer operating in a truck tractor–semitrailer combination.
- No state shall impose a length limit of less than 28 feet on any semitrailer or trailer operating in a truck tractor–semitrailer–trailer combination.
- No state may limit the length of truck tractors.
- No state shall impose an overall length limitation on commercial vehicles operating in truck tractor–semitrailer or truck tractor–semitrailer–trailer combinations.
- No state shall prohibit operation of truck tractor–semitrailer–trailer combinations.

The State of Wisconsin complied with the federal requirements outlined above by enacting 1983 Wisconsin Act 78 which amended § 348.07 (2), Stats., and § 348.08 (1), Stats. This act created §§ 348.07 (2) (f), (fm), (gm) and 348.08 (1) (e) to implement the federal length requirements. In 1986 the legislature created § 348.07 (2) (gr), Stats., to add 53 foot semitrailers as part of a two vehicle combination to the types of vehicles that may operate along with STAA authorized vehicles. (See 1985 Wisconsin Act 165)

The vehicles authorized by the STAA may operate on the national system of interstate and defense highways and on those federal aid primary highways designated by regulation of the secretary of the United States Department of Transportation. In 1984 the USDOT adopted 23 CFR Part 658 which in Appendix A lists the highways in each state upon which STAA authorized vehicles may operate. Collectively these highways are known as the National Network. In 1983 Wisconsin Act 78, the legislature enacted § 348.07(4), Stats., which directs the Wisconsin Department of Transportation to adopt a rule designating the highways in Wisconsin on which

STAA authorized vehicles may be operated consistent with federal regulations.

The Department of Transportation first adopted ch. Trans 276 of the Wisconsin Administrative Code in December of 1984. The rule is consistent with 23 CFR Part 658 in that the Wisconsin rule designates all of the highways in Wisconsin that are listed in 23 CFR Part 658 as part of the National Network for STAA authorized vehicles. The federal regulation does not prohibit states from allowing operation of STAA authorized vehicles on additional state highways. The rule making authority granted to the Wisconsin Department of Transportation in § 348.07 (4), Stats., allows the DOT to add routes in Wisconsin consistent with public safety. The rule making process also provides a mechanism to review requests from businesses and shipping firms for access to the designated highway system for points of origin and delivery beyond 15 miles from a designated route. A process to review and respond to requests for reasonable access is required by 23 CFR Part 658.

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

##### *Michigan:*

Allows 53 ft. semi–trailers on designated highways only approved by the state transportation department or a local authority. Maximum length from kingpin to axle is 37.5 ft. to 40.5 ft. There is no restriction on maximum overall tractor–semitrailer length. Allows 5–mile access provision on state highways for food, fuel, repairs or rest.

##### *Minnesota:*

Allows 53 ft. semi–trailers on any road with an overall length restriction of 75 ft. No restriction on divided highways. Commissioner may designate other than divided highways, subject to local approval, for the purpose of providing reasonable access between divided highways.

##### *Illinois:*

Allows 53 ft. semi–trailers on designated highways on Class I, II and III highways. Maximum length from kingpin to axle is 45.5 ft. There is no restriction on maximum overall tractor–semitrailer length for Class I and II highways, but a 65 ft. restriction on Class III highway, and a 55 ft. restriction on non–state highways. Allows a 5–mile access provision off a state route.

##### *Iowa:*

Allows 53–ft. semi–trailers on any highway and no maximum overall semi–trailer length restriction.

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

Due to the federal requirement that requests for access to the designated highway system in a state be decided within 90 days of the request, a proposed rule making to add requested routes is initiated without investigation. The public hearing and Department investigation undertaken in preparation for the hearing provide the engineering and economic data needed to make a final decision on whether to withdraw the proposal or proceed to final rule making.

#### **Small Business Impact**

The provisions of this proposed rule adding two highway segments to the designated system have no direct adverse effect on small businesses, and may have a favorable effect on those small businesses which are shippers or carriers using the newly–designated routes.

The Department’s Regulatory Review Coordinator may be contacted by e–mail at ralph.sanders@dot.state.wi.us, or by calling (414) 438–4585.

**Fiscal Estimate**

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

**Agency Contact Person and Submission of Written Comments**

The public record on this proposed rule making will be held open until close of business the day of the hearing to permit the submission of comments in lieu of public hearing testimony or comments supplementing testimony offered at the hearing. Any such comments should be submitted to Ashwani Sharma, Department of Transportation, Bureau of

Highway Operations, Room 501, P. O. Box 7986, Madison, WI 53707–7986. You may also contact Mr. Sharma by telephone at (608) 266–1273 or via e–mail at [ashwani.sharma@dot.state.wi.us](mailto:ashwani.sharma@dot.state.wi.us) to obtain copies of the proposed rule.

To view the proposed amendments to the rule, view the current rule, and submit written comments via e–mail/internet, you may visit the following website: <http://www.dot.wisconsin.gov/library/research/law/rulenotices.htm>.

**Copies of Proposed Rule**

A copy of the proposed rule may be obtained upon request from Ashwani Sharma, Department of Transportation, Bureau of Highway Operations, Room 501, P. O. Box 7986, Madison, WI 53707–7986. You may also contact Mr. Sharma by phone at (608) 266–1273 or via e–mail at [ashwani.sharma@dot.state.wi.us](mailto:ashwani.sharma@dot.state.wi.us).

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## Rule Orders Filed with the Legislative Reference Bureau

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

### Children and Families

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

#### **CR 08–066**

Revises Chapter DCF 150, relating to the establishment of birth cost orders based on child support guidelines.  
Effective 1–1–09.

### Children and Families

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

#### **CR 07–102**

Revises Chapters DCF 250, 251 and 252, relating to child care centers.  
Effective 1–1–09.

### Corrections

#### **CR 08–045**

Revises Chapter DOC 332, relating to the sex offender registration fee.  
Effective 1–1–09.

### Financial Institutions — Securities

#### **CR 08–077**

Revises Chapters DFI–Sec 1 to 9, 31, 32 and 35, relating to all aspects of Wisconsin securities regulation, including definitions, securities registration procedures and registration exemptions, securities broker–dealer and investment adviser registration, enforcement powers and procedures, as well as general administrative powers.  
Effective 1–1–09.

### Insurance

#### **CR 08–053**

Revises Chapter Ins 50, relating to audit, control and financial reporting requirements.  
Effective 1–1–09.

### Natural Resources

#### *Fish, Game, etc., Chs. NR 1–*

#### **CR 08–061**

Revises Chapter NR 10, relating to the 2008 migratory game bird seasons and waterfowl hunting zones.  
Effective 1–1–09.

### Natural Resources

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

#### **CR 04–023**

Revises Chapters NR 406, 407, 460, 463 and 484, relating to national emission standards for hazardous air pollutants (NESHAP) for facilities engaged in the secondary production of aluminum.  
Effective 1–1–09.

### Natural Resources

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

#### **CR 07–105**

Revises Chapters NR 460 and 469, relating to national emission standards for hazardous air pollutants (NESHAP) for halogenated solvent cleaners for the NESHAP general provisions.  
Effective 1–1–09.