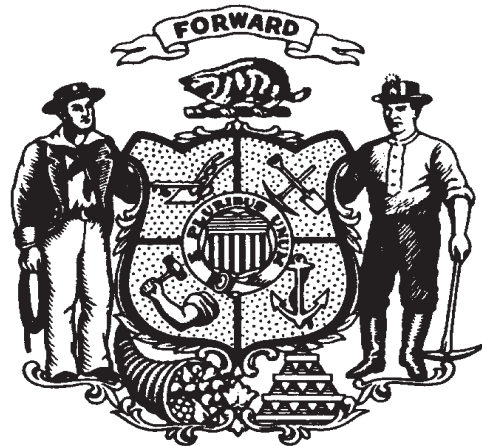


# Wisconsin Administrative Register

No. 637



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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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### 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** (renumbered DCF 150.02 (12m), 150.05 and DCF 150 Appendix D, effective 12-1-08), 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:** June 27, 2008 through November 23, 2008  
**Hearing Date:** July 29, 2008  
**Extension Through:** December 31, 2008

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### Commerce

#### Fee Schedule, Ch. Comm 2

**EmR0837** — Rule adopted revising **s. Comm 2.68**, relating to public swimming pool and water attraction plan review and inspection fees.

#### Finding of Emergency

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

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

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

3. The department estimates that 3,700 existing pools and water attractions will need to be modified in order to comply with the federal act.

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

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

**Publication Date:** December 15, 2008  
**Effective:** December 15, 2008 through May 13, 2009  
**Hearing Date:** January 8, 2009

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## 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:** October 1, 2008 through February 27, 2009  
**Hearing Date:** October 14, 2008

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## 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:** July 16, 2008 through December 12, 2008  
**Hearing Date:** August 27, 2008  
**Extension Through:** February 10, 2009

- 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:** September 27, 2008 through February 23, 2009  
**Hearing Date:** October 27, 2008

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## Corrections

**EmR0835** — Rules adopted creating **s. DOC 332.20**, relating to establishing a reimbursement fee to offset the costs of monitoring persons subject to global positioning system tracking or passive positioning system tracking.

### Finding of Emergency

The department of corrections finds that an emergency exists and that rules included in this order are necessary for the immediate preservation of public peace, health, safety and welfare. A statement of the facts constituting the emergency is:

Under 2005 WI Act 431, section 8, the legislature requires certain persons who have been convicted of a serious child sex offense, who have been found not guilty of a serious child sex offense by reason of mental disease or mental defect, or who are the subject of notification under s. 301.46 (2m) (am), Stats., to be placed on lifetime tracking under a global positioning system (GPS) or a passive positioning system (PPS). The legislature also authorized the department to establish a rule to require persons who are subject to GPS tracking or PPS tracking to pay the cost of tracking.

If the rule is not created promptly and immediately, the department will not be able to collect the fees which are to be used to offset the costs of the tracking program, which could result in a lessening of tracking due to budget limitations.

The purpose of the emergency rule is to require all persons who are subject to tracking to pay the tracking fee which is used to offset the costs of the tracking program. The permanent rule process has been started. However, the permanent rule process will take approximately nine months to complete. Emergency rules are necessary to respond promptly to the collection of tracking fees while permanent rules are being developed.

**Publication Date:** November 12, 2008  
**Effective:** November 12, 2008  
 through April 10, 2009  
**Hearing Date:** December 11, 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:** September 15, 2008  
 through February 11, 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:** September 26, 2008  
 through February 22, 2009  
**Hearing Date:** November 11, 2008

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## Health Services (2)

(Formerly Health and Family Services)

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

- EmR0832** — Rule adopted to repeal **s. HFS (DHS) 12.03 (15) and to create ss. HFS (DHS) 12.03 (20m), 12.115 and Table HFS (DHS) 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:** November 1, 2008 through March 31, 2009  
**Hearing Date:** January 6, 2009

**Publication Date:** August 29, 2008  
**Effective:** September 1, 2008 through January 28, 2009  
**Hearing Date:** December 11, 2008

2. **EmR0834** — Rules adopted amending s. **HFS (DHS) 10.23 (2) (d) 2.**, relating to confidentiality requirements of the Family Care program that prohibit benefit specialists from disclosing personally identifying information about a client without the client's informed consent, unless required by law.

#### **Finding of Emergency**

The Department of Health Services finds that an emergency exists and that 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:

Chapter HFS 10 is the department's rule that guides the implementation of the department's Family Care program. Included in these provisions are standards for confidentiality which prohibit disability benefit specialists from disclosing personally identifying information about a client without the client's consent unless required by law. Because disability benefit specialists are permissive reporters, and thus not required to report abuse, neglect, or financial exploitation of elder adults and adults at risk under ss. 46.90 (4) (ar) and 55.043 (1m) (br), Stats., s. HFS 10.23 (2) (d) 2., effectively prevents disability benefits specialists from making such disclosures.

Amending s. HFS 10.23 (2) (d) 2., to allow disability benefit specialists to report abuse, neglect, or financial exploitation under ss. 46.90 (4) (ar) and 55.043 (1m) (br), Stats., would help to ensure that elder adults and adults-at-risk who may have been abused, neglected, or financially exploited are brought to the attention of the abuse, neglect and exploitation response systems outlined under ss. 46.90 and 55.043, Stats.

**Publication Date:** November 3, 2008  
**Effective:** November 3, 2008 through April 1, 2009  
**Hearing Date:** January 27, 2009

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### **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.

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### **Military Affairs — Wisconsin Emergency Management**

**EmR0836** — Rule adopted revising **Chapter WEM 1**, relating to fee revisions to facilities housing hazardous chemicals, hazardous substances, and extremely hazardous substances as defined in s. WEM 1.02 (5).

#### **Finding of Emergency**

The Wisconsin Division of Emergency Management (WEM)/State Emergency Response Commission finds that an emergency exists and that a rule revision is necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of facts constituting an emergency is as follows:

Emergency response to and planning for accidental or purposeful releases of dangerous chemicals will be compromised by a significant reduction of money available to fund emergency management activities at the county level. County emergency management agencies will be unable to fully comply with state and federal laws. Wisconsin Emergency Management would also experience substantial reductions in capabilities to assist local units of government with their state and federally required responsibilities. Sufficient funding of the county grant program and WEM activities is necessary to protect and defend the citizens of Wisconsin from accidental releases and releases caused by terrorist actions.

**Publication Date:** December 1, 2008  
**Effective:** December 1, 2008 through April 29, 2009  
**Hearing Dates:** December 18 and 19, 2008

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### **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:** August 30, 2008 through  
 January 26, 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:** July 1, 2008 through  
 November 27, 2008  
**Hearing Dates:** July 22 to August 5, 2008  
**Extension Through:** January 26, 2009

## Public Instruction

**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:** May 17, 2008 through  
 October 13, 2008  
**Hearing Date:** July 23, 2008  
**Extension Through:** January 31, 2009

## Regulation and Licensing (3)

- 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:** June 18, 2008 through  
 November 14, 2008  
**Hearing Date:** November 11, 2008  
**Extension Through:** January 14, 2009

- 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:** September 10, 2008  
 through February 6, 2009  
**Hearing Date:** November 26, 2008

- 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:** September 10, 2008  
 through February 6, 2009  
**Hearing Date:** November 26, 2008

### 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:** June 26, 2008 through  
 July 1, 2010 or the date on  
 which permanent rules  
 take effect, whichever is  
 sooner.

### Transportation

**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:** November 5, 2008 through  
 April 3, 2009  
**Hearing Date:** December 2, 2008

### Workforce Development

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

**EmR0838** – Rules adopted revising **s. DWD 290.155 (1)**, relating to the adjustment of thresholds for application of prevailing wage rates.

#### Finding of Emergency

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

Adjusting the thresholds for application of the prevailing wage rate requirements by emergency rule ensures that the adjustments are effective on a date certain that is prior to the time of year that project requests are generally submitted to the Department and applicability of the prevailing wage law is determined. The adjustment avoids imposing an additional administrative burden on local governments and state agencies caused by an effective decrease of the thresholds due solely to inflation in the construction industry. If these new thresholds are not put into effect by emergency rule, the old thresholds will remain effective for approximately six to seven months, until the conclusion of the permanent rule-making process. The thresholds are based on national construction cost statistics and are unlikely to be changed by the permanent rule-making process.

**Publication Date:** December 29, 2008  
**Effective:** January 1, 2009 through  
 May 30, 2009

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## Scope Statements

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### Natural Resources

*Fish, Game, etc., Chs. NR 1—*

#### Subject

Revises Chapters NR 10, 11, 15 and 19, relating to game and hunting, closed areas, game refuges, and outdoor recreation.

#### Policy Analysis

These rule changes are proposed for inclusion on the 2009 Spring Hearing questionnaire. Specifically, these rules would; modify the boundaries of migratory bird refuges, establish special hunting regulations for migratory birds at Mead Wildlife Management Area, clarify the definition of “open water hunting” for migratory birds, extend the fall turkey hunting season, expand opportunities for disabled turkey hunters, expand the season for hunting turkeys with the aid of dogs, create flexibility for the issuance of left-over turkey hunting permits, require registration of sharp-tailed grouse, revise bobcat hunting and trapping regulations, create a new pheasant hunting opportunity, update the definition of a firearm, allow criminal background checks of learn-to-hunt mentors, allow the use of rifles for deer hunting in certain areas, and establish or modify deer hunting seasons at certain state parks.

These changes do not deviate from existing board policy. The proposed changes to hunting seasons, methods, permit issuance, and registration are consistent with previous board actions and policies.

#### Statutory Authority

Sections 23.095, 23.11 and 29.014, Stats.

#### Comparison with Federal Regulations

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

#### Entities Affected by the Rule

Hunters are the principal group that will be affected by this rulemaking.

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

Rule development will take approximately 244 hours of staff time.

#### Contact Information

Scott Loomans  
101 S Webster Street  
Madison, WI 53707  
(608) 267-2452  
scott.loomans@wisconsin.gov

### Veterans Affairs

#### Subject

Revises section VA 2.01, relating to establishing the period and content for an application for subsistence aid grants, the availability of concurrent applications in the health care assistance program, and the limitations applicable to the subsistence aid and health care aid programs.

#### Objective of the Rule

The department, in conjunction with the County Veterans Service Officers, determined that the current application rules for the subsistence aid grant were not serving the intended applicants; that applicants for the health care aid grant were not able to apply for concurrent types of care; and that the program restrictions within the administrative rules did not accurately reflect the revised statutory limitations for grants. The department is therefore proposing to amend the rules regarding the application process for the subsistence aid program, the availability of concurrent applications in the health care aid program and lastly, to bring the administrative code into line with the revised statutory limitations enacted in 2007. The department believes the subsistence aid program will be more accessible for the intended population if the application process is adjusted to allow eligible veterans to make applications within the 90 day grant period allowed by statute, while maintaining the emergent nature of the program and the statutory requirement that all available assets be expended prior to any grant being offered. The department also believes veterans should be allowed to seek multiple health care aids, while maintaining the statutory limitation on monetary expenditures for each veteran from the program. Lastly, the department believes an update to the administrative code provisions, reflecting the statutory changes enacted in 2007, is warranted to avoid confusion.

#### Policy Analysis

The goal of the Assistance to Needy Veterans program is twofold: the subsistence aid portion of the program is intended to provide monetary assistance in the first 90 days following a loss of income from an illness, injury or natural disaster, while the health care aid portion provides similar health care for dental, hearing, and vision to eligible veterans who do not qualify for the United States Department of Veterans Affairs health care program. The department believes that amending the rules regarding the application process will make the subsistence aid portion of the program more responsive to the emergent care situation of veterans seeking that type of assistance. Amending the rules regarding the concurrent applications for dental care, hearing care, and vision care will allow different types of health care aid to be rendered concurrently. The requirement that binding quotes be submitted will provide both veterans and health care providers the ability to determine what care and monetary support is available and allow the program to function in accordance with the policies established by the State of Wisconsin, Board of Veterans Affairs. Lastly, the legislature amended the statutory limitations applicable to this program

and the department believes the administrative code should be amended to reflect the revised limitations to avoid any confusion.

The proposed amendment to VA 2.01 (2) (a) will limit the period for which a subsistence aid application can be made and require the applicant to list all available assets the applicant has at the time of application for the benefit. The proposed amendment to VA 2.01 (2) (b) will allow the use of concurrent applications in the health care aid program if written and binding quotes for the health care procedures have been submitted to the department. The proposed amendment to VA 2.01 (3) (b) will allow applicants to apply for subsistence aid at any point in the 90 day period following the applicant's loss of income from an illness, injury or natural disaster. The proposed amendment to VA 2.01 (3) (c) will update the restrictions identified in the program in accordance with the amendments to the statute enacted in 2007.

#### **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 rules.

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

The amended rules will affect veterans applying for benefits, 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.

#### **Contact Information**

James A. Stewart, Chief Legal Counsel  
30 W. Mifflin Street  
P.O. Box 7843  
Madison, WI 53707-7843  
(608) 266-3733

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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 08–114***

On December 22, 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 421 and 439, relating to the application of reasonably available control

technology for volatile organic compound emissions from certain operations within the synthetic organic chemical manufacturing industry.

### **Agency Procedure for Promulgation**

A public hearing is scheduled for January 28, 2009. The Bureau of Air Management is responsible for promulgation of the rules.

### **Contact Information**

Robert Eckdale  
Bureau of Air Management  
robert.eckdale@wisconsin.gov

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## Rule-Making Notices

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### Notice of Hearing Health Services

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

#### EmR0834 and CR 08–109

NOTICE IS HEREBY GIVEN that pursuant to sections 46.288 (1) and 227.11 (2) (a), Stats., the Department of Health Services will hold a public hearing on its emergency order and corresponding proposed permanent order revising Chapter DHS 10, relating to the confidentiality requirements of the Family Care program that prohibit benefit specialists from disclosing personally identifying information about a client without the client's informed consent unless required by law.

#### Hearing Information

Date and Time	Location
<b>January 27, 2009</b>	Department of Health Services
Tuesday,	1 West Wilson Street
10:00 a.m. to Noon	Room 630
	Madison, WI 53703

The hearing site is fully accessible to people with disabilities. If you are hearing impaired, do not speak English or have circumstances that might make communication at a hearing difficult; you require an interpreter or a non-English large print or taped version of the proposed rules, contact the person at the address or telephone number given below at least 10 days before the hearing. With less than 10 days notice, an interpreter may not be available.

#### Analysis Prepared by Department of Health Services

##### *Statutes interpreted*

Sections 46.90, 55.02, 55.043, Stats.

##### *Statutory authority*

Sections 46.288 (1) and 227.11 (2) (a), Stats.

##### *Explanation of agency authority*

The department's responsibilities for adult protective services are outlined under s. 55.02, Stats., and include requirements for the department to develop and operate a coordinated, statewide system for protective services and protective placements in cooperation with county departments. Section 55.01 (6r), Stats., defines protective services to include identification of individuals in need of services to keep the individual safe from abuse, neglect or financial exploitation.

The department is required under s. 46.288 (1), Stats., to promulgate as rules prescribing the standards for performance by resource centers and for certification of care management organizations, including requirements for maintaining quality assurance and quality improvement. Section 227.11 (2) (a), Stats., provides the department, as a state agency, with general rulemaking authority interpreting the provisions of any statute enforced or administered by the department if the department considers it necessary to effectuate the purpose of the statute.

##### *Related statute or rule*

See the "Statutes interpreted" and "Statutory authority" sections.

#### *Plain language analysis*

Chapter DHS 10 is the department's rule that guides the implementation of the department's Family Care program. Included in these provisions are standards for confidentiality which prohibit disability benefit specialists from disclosing personally identifying information about a client without the client's consent unless required by law. Because disability benefit specialists are permissive reporters, and thus not required to report abuse, neglect, or financial exploitation of elder adults and adults at risk under ss. 46.90 (4) (ar) and 55.043 (1m) (br), Stats., s. DHS 10.23 (2) (d) 2., effectively prevents disability benefits specialists from making such disclosures.

In the emergency order, and the corresponding proposed permanent order, the department has revised s. DHS 10.23 (2) (d) 2., by adding language that would permit disability benefit specialists to report abuse, neglect, or financial exploitation of elder adults or adults-at-risk without violating that section's non-disclosure provisions.

Amending s. DHS 10.23 (2) (d) 2., to allow disability benefit specialists to report abuse, neglect, or financial exploitation under ss. 46.90 (4) (ar) and 55.043 (1m) (br), Stats., would help to ensure that elder adults and adults-at-risk who may have been abused, neglected, or financially exploited are brought to the attention of the abuse, neglect and exploitation response systems outlined under ss. 46.90 and 55.043, Stats.

#### *Comparison with federal regulations*

42 USC 3058i (b) 8 (A) directs the state Unit on Aging (DHS-Bureau of Aging and Disability Resources) to promote the development of an elder abuse, neglect, and exploitation (ANE) to, among other requirements, include administrative procedures as may be necessary or appropriate to ensure that the state will deal effectively with ANE cases in the state and, to coordinate the programs with other state and local programs and services for the protection of vulnerable adults, including adult protective services.

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

##### *Illinois*

Illinois does not have a program similar to Family Care.

##### *Iowa*

Iowa does not have a program similar to Family Care.

##### *Michigan*

Michigan does not have a program similar to Family Care.

##### *Minnesota*

Minnesota does not have a program similar to Family Care.

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

In response to questions concerning the role of resource center disability benefit specialists in protective services, the department reviewed and analyzed its administrative rules and policies and determined that changes were needed to ensure that its administrative rules reflect its responsibilities to coordinate and maintain a protective service system for elder adults and adults-at-risk.

#### **Small Business Impact**

The rules do not affect businesses.

**Small business regulatory coordinator**

Rosie Greer  
[Greerj@dhfs.state.wi.us](mailto:Greerj@dhfs.state.wi.us)  
 608-266-1279

**Fiscal Estimate**

There is a potential increase in costs to counties that would be associated with counties responding to additional reports of abuse, neglect, or financial exploitation generated as a result of disability benefit specialists being able to make such reports. However, it is expected that this impact would be minimal since many other parties can report such incidents so that the impact of this change would only likely affect the timing and source of the report.

**Agency Contact Person**

Jane A. Raymond, Advocacy & Protection Systems  
 Developer  
 Department of Health Services  
 DLTC/Bureau of Aging and Disability Resources  
 1 West Wilson Street, Room 450  
 Madison, WI 53702  
[Jane.raymond@dhfs.wisconsin.gov](mailto:Jane.raymond@dhfs.wisconsin.gov)  
 608-266-2568

**Submission of Written Comments**

Written comments may be submitted at the public hearing or submitted to the contact person listed above. Comments may also be made using the Wisconsin Administrative Rule Website at <http://adminrules.wisconsin.gov>. The deadline for submitting comments to the Department is 4:30 p.m. on Tuesday, February 3, 2009.

**Text of Proposed Rule**

SECTION 1. DHS 10.23 (2) (d) 2., is amended to read:

DHS 10.23 (2) (d) 2. Notwithstanding sub. (7) (b), a benefit specialist may not disclose information about a client without the informed consent of the client, unless required by law or as permitted under ss. 55.043 (1m) (br) or 46.90 (4) (ar), Stats.

**Notice of Hearings****Health Services****Medical Assistance, Chs. DHS 100—  
CR 08-108**

NOTICE IS HEREBY GIVEN that pursuant to section 49.45 (2) (a) 11., Stats., the Department of Health Services will hold public hearings to consider the amendment of Chapter DHS 105, relating to benefits covered by the Wisconsin Medical Assistance program. The proposal relates specifically to the Department of Health Services allowing federally recognized American Indian tribes and bands in Wisconsin to be certified by Wisconsin Medicaid as providers of personal care services.

**Hearing Information**

Date and Time	Location
<b>February 3, 2009</b> Tuesday 1:00 to 3:00 p.m.	500 Forest Street Marathon County Courthouse Corporation Counsel Conference Room Wausau, WI

**February 4, 2009**  
 Wednesday  
 10:00 a.m. to Noon  
 1 West Wilson Street  
 State Office Building  
 Room B-139  
 Madison, WI

The hearing site is fully accessible to people with disabilities. If you are hearing impaired, do not speak English or have circumstances that might make communication at a hearing difficult; you require an interpreter or a non-English large print or taped version of the proposed rules, contact the person at the address or telephone number given below at least 10 days before the hearing. With less than 10 days notice, an interpreter may not be available.

**Analysis Prepared by Department of Health Services****Statute interpreted**

Section 49.45 (2) (a) 11., Stats.

**Statutory authority**

Section 49.45 (2) (a) 11., Stats.

**Explanation of agency authority**

Section 49.45 (2) (a) 11., Stats., requires the Department to promulgate rules establishing criteria for certification of providers of medical assistance.

**Related statute or rule**

Section 49.45 (42), Stats., describes the circumstances under which personal care services are paid for by Wisconsin Medicaid.

**Plain language analysis**

The Department proposes to amend ch. HFS 105 to allow federally recognized American Indian tribes and bands in Wisconsin to be certified by Wisconsin Medicaid as providers of personal care services. The proposed amendments would increase the number of providers available in Wisconsin to provide personal care services.

The Department believes that the proposed change is necessary in order to allow tribal government agencies to become personal care agencies, thereby providing tribal members access to culturally sensitive personal care providers in their own communities.

**Comparison with federal regulations**

The section of the Code of Federal Regulations which provides the regulatory authority to provide personal care services under the Medicaid program is 42 CFR § 440.167. The federal regulations are less detailed than the proposed rule and existing Wisconsin regulations concerning personal care services provided to Medicaid recipients.

**Comparison with rules in adjacent states****Illinois**

Wisconsin offers personal care as an optional Medicaid state plan service, but Illinois does not. Illinois does offer some types of personal care services under waivers.

**Iowa**

Wisconsin offers personal care as an optional Medicaid state plan service, but Iowa does not. Iowa does offer some types of personal care services under waivers.

**Michigan**

Both Michigan and Wisconsin offer personal care as an optional Medicaid state plan service.

**Minnesota**

Both Minnesota and Wisconsin offer personal care as an optional Medicaid state plan service.

**Summary of factual data and analytical methodologies**

The Home Care Consumer Advisory Committee and the Home Care Advisory Committee advise the Department on issues relating to home health care.

### Small Business Impact

The proposed change does not affect small business.

### Fiscal Estimate

The rule will provide the authority for the Department to certify federally recognized American Indian tribes in Wisconsin as providers of personal care services under Wisconsin Medicaid. The proposed amendment will allow a new category of agency to be certified as a provider of personal care services under the Wisconsin Medicaid program, thus increasing the number of providers available in Wisconsin to provide personal care services. To the extent there is a fiscal impact, it will result from increased utilization of these services due to the increased availability of providers.

### Agency Contact Person

Al Matano  
Division of Health Care Access and Accountability  
P.O. Box 309  
Madison, WI 53702  
608-267-6848  
alfred.matano@wisconsin.gov

### Submission of Written Comments

Written comments may be submitted at the public hearing or submitted to the contact person listed above. Comments may also be made using the Wisconsin Administrative Rule Website at <http://adminrules.wisconsin.gov>. The deadline for submitting comments to the Department is 4:30 p.m. on Wednesday, February 18, 2009.

### Text of Proposed Rule

SECTION 1. DHS 105.17 (1) (intro.) is amended to read:

DHS 105.17 (1) (intro.). REQUIREMENTS. For MA certification, a personal care provider shall be a home health agency licensed under s. 50.49, Stats., and ch. DHS 133, a county department established under s. 46.215, 46.22 or 46.23, Stats., a county department established under s. 51.42 or 51.437, Stats., which has the lead responsibility in the county for administering the community options program under s. 46.27, Stats., ~~or an independent living center as defined in s. 46.96 (1) (ah), Stats., or a federally recognized American Indian tribe or band in Wisconsin.~~ A certified provider shall:

### Notice of Hearing

#### Natural Resources

#### *Environmental Protection — Air Pollution Control, Chs. NR 400— CR 08-114*

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 creating and amending rules in ss. NR 421.07 and 439.075, Wis. Adm. Code, relating to the application of reasonably available control technology for volatile organic compound emissions from certain operations within the synthetic organic chemical manufacturing industry. The State Implementation Plan developed under s. 285.11(6), Stats., is revised.

### Hearing Information

The hearing will be held on:

**January 28, 2009** Rooms 140-141  
Wednesday DNR Southeast Region Headquarters  
at 1:30 P.M. 2300 North 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.

### Copies of Proposed Rule

The proposed rule and supporting documents, including the fiscal estimate may be viewed and downloaded at <http://adminrules.wisconsin.gov> (Use the Search tab at the top of the page and search for AM-23-08). If you do not have Internet access, a personal copy of the proposed rule and supporting documents, including the fiscal estimate, may be obtained free of charge from Robert Eckdale, Rules Coordinator, DNR, Bureau of Air Management, P.O. Box 7921, Madison, WI 53707 or by calling (608) 266-2856.

### Submission of Written Comments

Comments on the proposed rule must be received on or before Monday, February 9, 2009. Written comments will have the same weight and effect as oral statements presented at the public hearing. Written comments and questions on the proposed rules may be submitted to:

William Adamski  
DNR, Bureau of Air Management (AM/7)  
101 S Webster Street  
Madison, WI 53703  
Phone: 608-266-2660  
Fax: 608-267-0560  
E-mail: William.Adamski@wisconsin.gov  
Internet: <http://adminrules.wisconsin.gov>

### 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), 285.11 (1) and (6), Stats.

#### *Related statute or rules*

Several sections of the proposed rule reference similar federal requirements for the same emission source categories as New Source Performance Standards (NSPS) adopted by the Department in ss. NR 440.675, 440.868 and 440.705, Wis. Adm. Code. These references are used because many of the federal control requirements necessary in the proposed rule are identical to the NSPS requirements.

#### *Plain language analysis*

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 Control Technology Guidelines (CTGs — “guidance”).

These requirements include that Wisconsin promulgate VOC RACT rules which are based on EPA guidance for facilities classified as synthetic organic chemical manufacturing industry (SOCMI) that have air oxidation or distillation and reactor processes. The DNR is proposing a VOC RACT rule that would regulate these SOCMI VOC emission categories in Wisconsin's ozone nonattainment areas. Several sections of the proposed rule reference identical federal requirements contained in the NSPS for these source categories, which the Department has already adopted into ch. NR 440, Wis. Adm. Code.

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

The proposed rule will modify the Department's ozone state implementation plan (SIP) to meet the requirements of the federal Clean Air Act and to clarify other state requirements. Portions of the proposed rule reference similar federal requirements contained in the NSPS for these source categories, which the Department has adopted in ch. NR 440, Wis. Adm. Code.

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

The proposed rule is based on requirements established in the federal Clean Air Act for states that have ozone nonattainment areas. Iowa and Minnesota have no ozone nonattainment areas. Illinois' requirements are similar to the proposed rule. Michigan has adopted the NSPS for SOCMI source categories into its own regulations.

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

The DNR has already adopted federal regulations that establish VOC emission control requirements for NSPS facilities classified as SOCMI air oxidation, distillation and reactor operations. Much of the EPA guidance that the DNR must follow in its proposed VOC RACT rulemaking for SOCMI facilities is identical to these federal regulations. Consequently, appropriate portions of the proposed SOCMI VOC RACT rule reference those portions of ch. NR 440, Wis. Adm. Code, that are identical to EPA RACT guidance.

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

EPA's guidance for the SOCMI VOC controls does not include any discussion on the regulations potential impact on small business. It is not anticipated that the proposed rule will have an effect on small businesses. An economic impact report was not requested for the proposed rule.

#### **Small Business Impact**

Any SOCMI facility would require a minimum of 100 tons VOC emissions per year (maximum theoretical) in order to be subject to the proposed rule. Any small business that is classified a SOCMI facility would likely not meet this relatively high emissions total criteria. Consequently, the proposed rule will likely have no effect on small businesses.

The position of Small Business Regulatory Coordinator is currently vacant. If you have questions on the impact of these rules on small businesses, please contact Robert Eckdale by E-mail at [Robert.Eckdale@wisconsin.gov](mailto:Robert.Eckdale@wisconsin.gov) or by phone at 608-266-2856.

#### **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**

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

The Department proposes an administrative rule in ch. NR 421, Wis. Adm. Code, to establish reasonably available control technology (RACT) requirements for VOC emissions for air oxidation, distillation and reactor operations at SOCMI facilities classified as major VOC sources in Wisconsin's ozone nonattainment areas. A major SOCMI facility for VOC RACT purposes is defined as having maximum theoretical emissions of 100 tons or more of VOCs per year.

According to the US EPA's VOC RACT guidelines for these SOCMI categories (reactor and distillation: published in 1993, air oxidation: published in 1984) – the cost of installing, operating and maintaining control devices for VOC emissions (amortized over 10 years) would range between \$800 and \$4,000 per ton of VOC emissions reduced [Note: these cost estimates have not been adjusted for inflation since their original guideline publication dates].

In 2007 a Department investigation identified no facilities that would be subject to a proposed SOCMI VOC RACT rule for air oxidation, distillation, or reactor operations. Nevertheless, this rule is being proposed to avoid potential EPA action in the event that any SOCMI facilities are identified in Wisconsin's ozone nonattainment areas in the future.

No local governments currently process the VOC waste streams from SOCMI air oxidation, distillation and reactor operations. Consequently, there would be no local government costs associated with implementing the proposed SOCMI VOC RACT rule.

The Department is also proposing a minor change to s. NR 439.075 (2) (c) 3. j., Wis. Adm. Code, to reference s. NR 440.705, Wis. Adm. Code, to require compliance emission testing for VOCs at reactor operations.

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

Indeterminate

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

None

##### ***Fund sources affected***

PRO

##### ***Affected Ch. 20 appropriations***

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

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

None

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

Bill Adamski

608-266-2660

[William.Adamski@wisconsin.gov](mailto:William.Adamski@wisconsin.gov)

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## **Submittal of Proposed Rules to the Legislature**

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

**Agriculture, Trade and Consumer Protection**  
**CR 08-090**

A rule-making order revising Chapter ATCP 30, relating to atrazine restrictions for 2009.

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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.*

### **Commerce**

#### ***Electrical, Ch. Comm 16***

#### **CR 08-047**

Revises Chapter Comm 16, relating to electrical construction.  
Effective 3-1-09.

### **Commerce**

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

#### **CR 08-043**

Revises Chapters Comm 20 to 25, relating to the uniform dwelling code.  
Effective 4-1-09.

### **Commerce**

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

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

#### **CR 08-055**

Revises Chapters Comm 62 and 81 to 84, relating to the Wisconsin uniform plumbing code and the commercial building code.  
Effective 3-1-09.

### **Commerce**

#### ***Public Swimming Pools and Water Attractions,***

#### ***Ch. Comm 90***

#### **CR 08-056**

Revises Chapter Comm 90, relating to the design and construction of public swimming pools and water attractions.  
Effective 3-1-09.