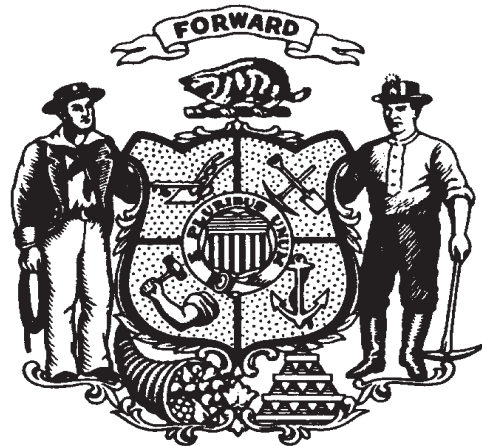


# Wisconsin Administrative Register

No. 639



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Questions, comments, or corrections should be directed to:

Bruce Hoesly (608) 266-7590  
email: [bruce.hoesly@legis.wisconsin.gov](mailto:bruce.hoesly@legis.wisconsin.gov)

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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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### 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.

<b>Publication Date:</b>	<b>December 15, 2008</b>
<b>Effective:</b>	<b>December 15, 2008 through May 13, 2009</b>
<b>Hearing Date:</b>	<b>January 8, 2009</b>

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### Commerce

#### *Licenses, Certifications and Registrations, Ch. Comm 5 Wis. Commercial Building Code, Chs. Comm 60–66*

**EmR0904** — Rule adopted revising **ss. Comm 5.30 and 61.295**, relating to building contractor registration.

#### 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. Under Chapter 560 of the Statutes, the department of commerce is charged with facilitating the establishment and retention of business enterprises in Wisconsin, and with seeking closer cooperation and coordination between units of state government, so that the economy of the state may continue to develop fully and meet citizen and community needs.

2. Under Chapters 101 and 145 of the statutes, the department of commerce has oversight over the design, construction, alteration and maintenance of public buildings and places of employment, one- and two- family dwellings, public swimming pools and public water attractions in order to protect public safety, health and welfare and the waters of the state.

3. The department has proposed an administrative rule that would require the registration of various types of building contractors not already credentialed by the department under existing administrative rules. Under the proposed rules contractors must be registered with the department by January 1, 2010. A public hearing on that proposal was held on January 21, 2009.

4. The proposed rule has three main benefits to Wisconsin: first, it will enhance the department's ability to communicate with and educate building contractors throughout the state about their obligations to limit safety and health risks for the citizens of Wisconsin; second, it will enhance the ability of the department to cooperate and coordinate with the Department of Workforce Development relative to their administration of unemployment insurance and workers compensation insurance programs; and third, it will enhance the ability of

the department to cooperate and coordinate with the Department of Revenue relative to their administration of the state income tax program.

5. Due to the current economic circumstances, the department has determined that the implementation for building contractor registration should be July 1, 2009 in order for the benefits to be in effect for the 2009 building construction season.

**Publication Date:** March 2, 2009  
**Effective:** March 2, 2009 through July 29, 2009

(except ss. Comm 5.30 (1) and 61.295 (2))

**Effective:** July 1, 2009 through November 27, 2009

**Hearing Date:** March 31, 2009

(See the Notice in this Register)

## Commerce

### *Elevators, Escalators and Lift Devices, Ch. Comm 18*

**EmR0901**— Rule adopted repealing **s. Comm 18.1702 (8)**, relating to a wear and fatigue monitoring system and a device that protects against suspension loss for electric traction elevators that use smaller sized wire ropes.

#### **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. The recent revision of chapter Comm 18, Elevators, Escalators and Lift Devices, references and adopts the 2007 edition of the national standard ASME A17.1, developed by the American Society of Mechanical Engineers. Effective January 1, 2009, the regulations include a provision, s. Comm 18.1702 (8), that requires a wear and fatigue monitoring system and a device that protects against suspension loss for electric traction elevators using smaller sized wire ropes.

2. The department included the wear and fatigue monitoring system and protection device requirements in anticipation that the next edition of the national ASME A17.1 standard would incorporate a similar provision. The department developed s. Comm 18.1702 (8) based on code language being proposed by the national standard ASME A17.1 Committee.

3. The wear and fatigue monitoring system and the device to protect against suspension loss were not incorporated into the next version of the ASME A17.1. The ASME A17.1 Committee withdrew the section because of implementation concerns, and at this time it is unclear what the final section on suspension ropes and their connections in elevators will include.

4. Because the department adopts by reference the national standard ASME A17.1, it recognizes that without promulgating this emergency rule, there could be confusion in what constitutes recognized safe practices for a monitoring system and protection against suspension loss for electric traction elevators. The department believes that repealing s. Comm 18.1702 (8) will keep the Wisconsin code in alignment with the most current edition of ASME A17.1 and still promote safety.

**Publication Date:** February 5, 2009  
**Effective:** February 5, 2009 through July 4, 2009  
**Hearing Date:** March 2, 2009

## 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 the date permanent rules become effective  
**Hearing Date:** October 14, 2008

## Commerce

### *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:** April 11, 2009

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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 amending 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 18, 2008  
**Effective:** September 18, 2008 through February 14, 2009  
**Extension Through:** April 15, 2009

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### Government Accountability Board

**EmR0902** — Rule adopted amending s. **GAB 6.05**, relating to filing campaign finance reports in electronic format.

#### Finding of Emergency

The Government Accountability Board amends s. GAB 6.05, Wis. Adm. Code, relating to filing campaign finance statements in electronic format. The amended rule creates a uniform requirement and restricts registrants to an "electronic format" compatible with the Board's electronic filing system for filing campaign finance reports.

Pursuant to s. 227.24, Stats., the Government Accountability Board finds an emergency exists because the Board's January 18, 2008 decision to implement the use of a new electronic filing system, and the technical requirements thereof, conflicts with the technical electronic format filing permitted by the previous rule. In effect, the current

electronic filing system cannot work without a uniform and restricted electronic format that is compatible with the new electronic filing system.

The Board adopts the legislature's policy findings of s. 11.001, Stats., emphasizing that one of the most important sources of information to voters about candidates is available through the campaign finance reporting system. The Board further finds that it is necessary to codify a uniform electronic format filing requirement to ensure the proper operation of the current electronic filing system so that the campaign finance information is available to voters. The amended rule, GAB 6.05, must be adopted immediately to ensure the public peace and welfare with respect to the administration of current and future elections.

**Publication Date:** February 5, 2009  
**Effective:** February 5, 2009 through July 4, 2009  
**Hearing Date:** March 20, 2009  
 (See the Notice in this Register)

### Health Services (2)

(Formerly Health and Family Services)

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

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

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

### 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:** September 1, 2008 through January 28, 2009  
**Hearing Date:** December 11, 2008  
**Extension Through:** March 29, 2009

### 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

## 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:** March 27, 2009

## Pharmacy Examining Board

**EmR0903** — A rule adopted repealing s. Phar 4.02 (2), relating to the practical examination.

#### Finding of Emergency

The Pharmacy Examining Board finds that, under s. 227.24 (1), Stats., the repeal of s. Phar 4.02 (2) is required for the preservation of the public peace, health, safety and welfare.

Currently, under s. Phar 4.02 (2), the board administers a practical examination to determine an applicant's competence in compounding and dispensing medications, which includes consultation of patients. The board has determined that this examination is no longer needed because the competencies tested in the examination are also tested in two other national examinations that applicants are required to take in order to obtain a license in Wisconsin. The board has also determined that the practical examination requirement may contribute to the shortage of pharmacists in Wisconsin.

First, under s. Phar 4.02 (1) and (3), an applicant is required to take and pass the Multi-State Pharmacy Jurisprudence Examination (MPJE) and the North American Pharmacist Licensure Examination (NAPLEX). Both of these examinations test competencies that relate to subject areas that are also tested in the practical examination. As a result, applicants are required to take an additional examination, and pay an additional examination fee. In some instances, this step may also result in a delay in the processing of applications for licensure.

Second, in reference to the shortage of pharmacists in Wisconsin, the board has found that populations in rural areas and in certain city neighborhoods are underserved. The board believes that, because of its practical examination requirement, potential applicants from other states are declining to seek licensure in Wisconsin. Wisconsin is one of only four states that require a practical examination. None of the states that border Wisconsin have a practical examination requirement.

**Publication Date:** February 28, 2009  
**Effective:** February 28, 2009 through July 27, 2009  
**Hearing Dates:** April 8, 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:** March 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 the date on which the final rules take effect**  
**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:** September 10, 2008  
**through the date on which the final rules take effect**  
**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**  
**Hearing Date:** February 12, 2009

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## Scope Statements

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

#### **Subject**

Revises Chapter ATCP 1, relating to administrative orders and contested cases.

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

Update and clarify current procedural rules related to DATCP administrative orders and “contested case” hearings.

#### **Policy Analysis**

DATCP enforces a number of statutes, including chs. 88, 91 to 100 and 126, Stats. In the administration of these statutes, DATCP often takes formal administrative enforcement actions prescribed by statute. These may include administrative “orders” such as license suspensions or revocations, administrative injunctions (e.g., orders prohibiting unfair business practices), hazardous product bans, holding orders to prohibit the distribution of adulterated food or commodities, plant and animal quarantine orders, orders condemning adulterated food or diseased animals, and a variety of other orders specified by statute.

Some types of orders may be issued by DATCP division administrators or staff, while others may only be issued by the DATCP Secretary or designee. Persons adversely affected by a DATCP order are normally entitled to a “contested case” hearing. The hearing is conducted according to procedures provided under ch. 227, Stats., and ch. ATCP 1, Wis. Adm. Code. The hearing normally precedes the order, except that some orders may be issued on a summary basis subject to a prompt follow-up hearing.

An impartial administrative law judge (ALJ) presides over a “contested case” hearing. DATCP is currently in the process of transferring its ALJ functions to the Department of Administration, Division of Hearings and Appeals. ALJ’s from the Division of Hearings and Appeals will conduct DATCP “contested case” hearings, subject to procedures provided in ch. 227, Stats., and ch. ATCP 1.

The DATCP Secretary or designee typically makes the final decision in a “contested case,” after reviewing the ALJ’s

proposed decision. The final decision is subject to judicial review, as provided in ch. 227, Stats.

This rule may make the following changes to DATCP’s current “contested case” rules under ch. ATCP 1:

- Clarify and update procedures for assigning a case to an ALJ.
- Clarify and update procedural rules related to “contested cases,” including recovery proceedings under Wisconsin’s Agricultural Producer Security Law, ch. 126, Stats.
- Clarify and update rules relating to the award of costs and attorneys fees in contested cases.
- Make other changes, as necessary, to clarify and update current rules.

#### **Policy Alternative**

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 clarify and update current rules.

#### **Statutory Authority**

Sections 93.07 (1) and 93.18, Stats., and subch. III of ch. 227, Stats.

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

None.

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

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

Persons licensed by DATCP.

Persons engaged in businesses regulated by DATCP.

#### **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, and holding public hearings. DATCP will use existing staff to develop this rule.

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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.*

## **Commerce**

*Fee Schedule, Ch. Comm 2  
Flammable, Combustible and Hazardous Liquids,  
Ch. Comm 10  
CR 09–017*

On March 2, 2009, the Department of Commerce submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

### **Analysis**

The proposed order revises Chapters Comm 2 and 10, relating to flammable, combustible and hazardous liquids.

### **Agency Procedure for Promulgation**

A public hearing is required and will be held on March 31, 2009. The Division of Environmental and Regulatory Services is responsible for promulgation of the rules.

### **Contact Information**

Sam Rockweiler  
Code Development Consultant  
Phone: 608–266–0797  
Email: srockweiler@commerce.state.wi.us

## **Natural Resources**

*Fish, Game, etc., Chs. NR 1–  
CR 09–018*

On February 17, 2009, 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 20, 21, 22, and 23, relating to fishing and clamming on the inland, outlying, and boundary waters of Wisconsin.

### **Agency Procedure for Promulgation**

A public hearing will be held on April 13, 2009 beginning at 7:00 p.m. in each county. The Bureau of Fisheries Management is responsible for promulgation of the rules.

### **Contact Information**

Joe Hennessy  
Bureau of Fisheries Management  
Phone: 608–267–9427

## **Pharmacy Examining Board**

**CR 09–019**

On March 2, 2009, the Department of Regulation and Licensing submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

### **Analysis**

The proposed order repeals section Phar 4.02 (2), relating to the practical examination.

### **Agency Procedure for Promulgation**

A public hearing is required and will be held on April 8, 2009, at 9:30 a.m. at 1400 East Washington Avenue, Room 121A, Madison, Wisconsin.

### **Contact Information**

Pamela Haack, Paralegal  
Office of Legal Counsel  
Phone: 608–266–0495  
Email: Pamela.haack@wisconsin.gov

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## Rule-Making Notices

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### Notice of Hearing

#### Commerce

#### *Licenses, Certifications and Registrations, Ch. Comm 5* EmR0904

NOTICE IS HEREBY GIVEN that pursuant to ss. 101.17 and 227.24 (4), Stats., the Department of Commerce will hold a public hearing on emergency rules revising section Comm 5.30, relating to building contractor registration.

#### Hearing Information

The public hearing will be held as follows:

<b><u>Date and Time:</u></b>	<b><u>Location:</u></b>
<b>March 31, 2009</b> 1:00 p.m.	Conference Room 3B Thompson Commerce Center 201 West Washington Avenue Madison

This hearing is held in an accessible facility. If you have special needs or circumstances that may make communication or accessibility difficult at the hearing, please call (608) 266-8741 or (608) 264-8777 (TTY) at least 10 days prior to the hearing date. Accommodations such as interpreters, English translators, or materials in audio tape format will, to the fullest extent possible, be made available upon a request from a person with a disability.

#### Appearances at Hearing and Submission of Written Comments

Interested persons are invited to appear at the hearing and present comments on the emergency rules. Persons making oral presentations are requested to submit their comments in writing. Persons submitting comments will not receive individual responses. The hearing record on the emergency rules will remain open until April 10, 2009, to permit submittal of written comments from persons who are unable to attend the hearing or who wish to supplement testimony offered at the hearing. Written comments should be submitted to James Quast, at the Department of Commerce, P.O. Box 2689, Madison, WI 53701-2689, or Email at jim.quast@wisconsin.gov.

#### Copies of Emergency Rule

The emergency rules and an analysis of the rules are available on the Internet at the Safety and Buildings Division Web site at [www.commerce.wi.gov/SB/](http://www.commerce.wi.gov/SB/). Paper copies may be obtained without cost from Roberta Ward, at the Department of Commerce, Program Development Bureau, P.O. Box 2689, Madison, WI 53701-2689, or Email at [roberta.ward@wisconsin.gov](mailto:roberta.ward@wisconsin.gov), or at telephone (608) 266-8741 or (608) 264-8777 (TTY). Copies will also be available at the public hearing.

#### Analysis Prepared by Department of Commerce

The Wisconsin Department of Commerce adopts an order to create Comm 5.01 (4) (h), Comm 5.02 Table 5.02 line 8m., Comm 5.02 Table 5.02 footnote a, Comm 5.06 Table 5.06 line 8m., Comm 5.30 and Comm 61.295 relating to building contractors and affecting small business.

#### *Statutes interpreted*

Sections 101.02 (1), (4), (13) (b), (15) (a), (b), (f), (h), (k) and (L), 101.12 (3) (h), 101.19 (1) (f), 101.63 (1), 145.02 (2) and (3), 560.01 (1) and (2), and 560.02 (4), Stats.

#### *Statutory authority*

Sections 101.02 (1), (4), (13) (b), (15) (a), (b), (f), (h), (k) and (L), 101.12 (3) (h), 101.63 (1), 145.02 (2) and (3), 560.01 (1) and (2), and 560.02 (4), Stats.

#### *Related statute or rule*

Statutes:

Sections 101.148, 101.178, 101.654, 101.862, 101.94, 101.95, 101.951, 101.96, 101.985 (1), and 895.07 (13), Stats.  
Administrative Rules:

Sections Comm 5.31, 5.32, 5.323, 5.327, 5.41, 5.42, 5.70 and 5.9905.

#### *Explanation of agency authority*

Under chapter 560 of the Wisconsin Statutes, the Department of Commerce is charged with facilitating the establishment and retention of business enterprises in Wisconsin, and seeking closer cooperation and coordination between units of state government, so that the economy of the state may continue to develop fully and meet citizen and community needs.

Under chapters 101 and 145 of the Wisconsin Statutes, the Department of Commerce also protects public health, safety, and welfare by promulgating comprehensive requirements for design, construction, use and maintenance of public buildings and places of employment, public swimming pools and water attractions and adopts rules that establish uniform, statewide standards for the construction of one- and 2-family dwellings. Various construction trades are involved in building or modifying these types of structures. Together with building owners and designers, construction trades share a responsibility to ensure that the buildings, relative to the respective trade's work, do not pose risk to public health and safety.

The registration would enhance the department's communication, education and oversight efforts for those businesses that contribute in various ways and aspects to the creation or alteration of buildings that limit the safety and health risks for the citizens of Wisconsin. Utilizing the registry of building contractors the department will more efficiently and effectively inform contractors about safety regulations and consumer protection regulations, such as the consumer notice required under s. 101.148 (2), Stats., pertaining to procedures for addressing construction defects.

The department recognizes that by registering Wisconsin building contractors and subcontractors, information pertaining to such registrants can be posted on the internet and made available to the Wisconsin Departments of Workforce Development and Revenue for use in their administration of unemployment insurance, workers compensation insurance and income tax programs, respectively. The registry of building contractors can be used by the aforementioned agencies to reinforce their efforts to minimize the misclassification of employees and to maximize proper participation in unemployment insurance and workers compensation insurance programs and proper payment of income taxes.

**Summary of proposed rules**

The proposed rules require a registration credential for various building contactors who are involved in the construction or modification of public buildings and places of employment and one- and 2-family dwellings, unless the contractor already holds another type of contractor credential issued by the department. The registration credential is for a contracting business and is not required for each partner or employee who is involved with physically constructing or modifying the structures.

**Comparison with federal regulations**

An internet-based search of the code of federal regulations and the federal register did not identify any federal requirements relating to contractor registrations.

**Comparison with rules in adjacent states**

An Internet-based search for the states of Illinois, Iowa, Michigan and Minnesota found the following:

**Illinois:**

The state of Illinois does not have any regulations regarding the licensure of building contractors, except roofers.

**Iowa:**

The state of Iowa requires all individual contractors and businesses performing construction work in Iowa to be registered. The fee is \$25 for a two year registration. The prerequisites for registration include the demonstration of compliance with worker's compensation insurance requirements and compliance with unemployment tax requirements.

**Michigan:**

The state of Michigan requires licenses for persons and businesses that contract with property owners to build new homes or remodel homes. The license types are: Residential Builder, and Maintenance and Alteration Contractor. The Maintenance and Alteration Contractor is restricted to perform only specific trades and services for which they are licensed. The fee is \$225 for a three year license. Applicants for the license must complete 60 hours of approved education and pass an examination. Michigan does not have a licensing law regulating builders of commercial buildings.

**Minnesota:**

The state of Minnesota requires certifications for persons and businesses that contract with property owners to construct or improve dwellings for habitation by one to four families and where the person or business is involved with two or more special building skills. The Residential Contractor license and Remodeler license are annual licenses. The fees, which are based upon gross receipts, are \$260 to \$360. The application for the license must include a qualifying person who must take the required examination and fulfill the continuing education requirements for the licensee.

Also under the Minnesota Independent Contractor Certification Law, as of January 1, 2009, a certification is required for building contractors where contractors must establish that they are independent contractors versus employees utilizing the "9 Items" test related to Worker's Compensation. The fee for a two year certification is \$250.

**Summary of factual data and analytical methodologies**

The registration provisions of the proposed rules were developed by analyzing and comparing the current administrative rules under chapter Comm 5 for other types of building contractors currently licensed, certified or registered by the department. The concept of the contractor registration

was developed in light of proposed Wisconsin legislation under 2007 SB228 and AB466, and with consideration of legislation in the states adjacent to Wisconsin.

**Small Business Impact**

The proposed rules require the registration of individuals and entities that act as building contractors or subcontractors who are involved in the construction or modification of public buildings, places of employment and one- and 2- family dwellings and who are not already credentialed by the department. The department currently credentials several contracting trades, including dwelling contractors, HVAC contractors, electrical contractors and elevator contractors. The rules would apply to those persons and entities engaged in the business of commercial general construction, drywall, plastering, electrical wiring, finish carpentry, flooring, framing carpentry, glass and glazing, insulation, masonry and stone work, plumbing, concrete work, roofing, siding, building site preparation and/or stabilization, structural steel, tile and terrazzo, wall coverings, and other building or equipment specialties.

The department estimates that the number of contractors to be registered under the rules would be 30,000. A contractor registration would cost \$100 for a 4-year term if applied for electronically and \$115 if applied for via paper. The department does not believe that this registration and fee would pose a significant impact on businesses.

An economic impact report has not been required to be prepared.

**Small business regulatory coordinator**

Carol Dunn

Phone: (608) 267-0297

Email: carol.dunn@wisconsin.gov.

**Fiscal Estimate****Summary**

The rules require a registration credential for various building contactors who are involved in the construction or modification of public buildings and places of employment and one- and 2-family dwellings, unless the contractor already holds another type of contractor credential issued by the department. The type of contracting businesses required to be registered under the rules include commercial general construction, drywall, plastering, electrical wiring, finish carpentry, flooring, framing carpentry, glass and glazing, insulation, masonry and stone work, plumbing, concrete work, roofing, siding, building site preparation and/or stabilization, structural steel, tile and terrazzo, wall coverings, and other building or equipment specialties.

The department estimates that there would be 30,000 contracting businesses that would be required to obtain registrations. The department proposes to charge \$100 for a 4-year, building contractor registration. There is also a \$15 initial application fee that would be waived if the applicant applies and pays for the registration via the internet. The department estimates that it would realize approximately \$806,250 in revenue annually.

The department anticipates that the workload associated with this registration can be managed with information technology usage and within current staff levels associated with the administration of the commercial building code program and the one- and 2- family dwelling code program.

**State fiscal effect**

Increase in existing revenues.

Increase costs – may be possible to absorb within agency's budget.

**Local government fiscal effect**

None.

**Fund sources affected**

PRO.

**Long-range fiscal implications**

None are anticipated.

**Agency Contact**

Robert DuPont, Bureau Director  
 Phone: (608) 266-8984  
 Email: robert.dupont@wisconsin.gov

**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. Under Chapter 560 of the Statutes, the department of commerce is charged with facilitating the establishment and retention of business enterprises in Wisconsin, and with seeking closer cooperation and coordination between units of state government, so that the economy of the state may continue to develop fully and meet citizen and community needs.
2. Under Chapters 101 and 145 of the statutes, the department of commerce has oversight over the design, construction, alteration and maintenance of public buildings and places of employment, one- and two-family dwellings, public swimming pools and public water attractions in order to protect public safety, health and welfare and the waters of the state.
3. The department has proposed an administrative rule that would require the registration of various types of building contractors not already credentialed by the department under existing administrative rules. Under the proposed rules contractors must be registered with the department by January 1, 2010. A public hearing on that proposal was held on January 21, 2009.
4. The proposed rule has three main benefits to Wisconsin: first, it will enhance the department's ability to communicate with and educate building contractors throughout the state about their obligations to limit safety and health risks for the citizens of Wisconsin; second, it will enhance the ability of the department to cooperate and coordinate with the Department of Workforce Development relative to their administration of unemployment insurance and workers compensation insurance programs; and third, it will enhance the ability of the department to cooperate and coordinate with the Department of Revenue relative to their administration of the state income tax program.
5. Due to the current economic circumstances, the department has determined that the implementation for building contractor registration should be July 1, 2009 in order for the benefits to be in effect for the 2009 building construction season.

Pursuant to section 227.24, Stats., this rule is adopted as an emergency rule to take effect upon publication in the official state newspaper, except for ss. Comm 5.30 (1) and Comm 61.295 (2) which shall take effect on July 1, 2009.

**Notice of Hearing****Commerce****Fee Schedule, Ch. Comm 2****Flammable, Combustible and Hazardous Liquids,****Ch. Comm 10****CR 09-017**

NOTICE IS HEREBY GIVEN that pursuant to section 101.09 (3) of the Statutes, the Department of Commerce will hold a public hearing on proposed rules in Chapters Comm 2 and 10, relating to flammable, combustible and hazardous liquids, and affecting small businesses.

**Hearing Information**

The public hearing will be held as follows:

<b><u>Date and Time:</u></b>	<b><u>Location:</u></b>
<b>March 31, 2009</b> Tuesday 9:00 a.m.	Thompson Commerce Center Third Floor, Room 3B 201 West Washington Avenue Madison, Wisconsin

The hearing will be held in an accessible facility. If you have special needs or circumstances that may make communication or accessibility difficult at the hearing, please call Sam Rockweiler at (608) 266-0797 or at Contact Through Relay at least 10 days prior to the hearing date. Accommodations such as interpreters, English translators, or materials in audio tape format will, to the fullest extent possible, be made available upon a request from a person with a disability.

**Appearances at Hearing and Submission of Written Comments**

Interested persons are invited to appear at the hearing and present comments on the proposed rules. Persons making oral presentations are requested to submit their comments in writing, via e-mail. Persons submitting comments will not receive individual responses. The hearing record on this rulemaking will remain open until April 2, 2009, to permit submittal of written comments from persons who are unable to attend the hearing or who wish to supplement testimony offered at the hearing. E-mail comments should be sent to sam.rockweiler@wi.us. If e-mail submittal is not possible, written comments may be submitted to Sam Rockweiler, Department of Commerce, Division of Environmental and Regulatory Services, P.O. Box 14427, Madison, WI 53708-0427.

**Copies of Proposed Rules**

The proposed rules and an analysis of the rules are available on the Internet by entering "Comm 10" in the search engine at the following Web site: <http://adminrules.wisconsin.gov>. Paper copies may be obtained without cost from Sam Rockweiler at the Department of Commerce, Division of Environmental and Regulatory Services, P.O. Box 14427, Madison, WI 53707, or at [sam.rockweiler@wi.us](mailto:sam.rockweiler@wi.us), or at telephone (608) 266-0797, or at Contact Through Relay. Copies will also be available at the public hearing.

**Analysis Prepared by Department of Commerce****Statutes interpreted**

Sections 101.02 (15), 101.09 (3), 101.11 (2), 101.14 (1) (a), 101.19, and 168.16, of the Statutes.

**Statutory authority**

Sections 101.02 (15), 101.09 (3), 101.11, 101.14 (1) (a), 101.19, 168.16 (4), and 227.11 (2) (a) of the Statutes.

### *Explanation of agency authority*

Under the statutes listed above, the Department has a responsibility to adopt and administer rules for safe storage, handling and use of flammable, combustible and hazardous liquids. The rules in this order encompass fire safety, life safety and environmental safety aspects for flammable, combustible and hazardous liquids. The Department also has authority under section 227.11 (2) (a) of the Statutes to promulgate rules interpreting any statute that is enforced or administered by the Department, if the rule is considered necessary to effectuate the purpose of the statute.

### *Related statute or rule*

The rules in this order are related to rules in chapter Comm 14, which addresses fire prevention; chapter Comm 47, which addresses Petroleum Environmental Cleanup Fund Awards; and chapter Comm 48, which addresses grade specifications and inspection criteria for petroleum products.

### *Plain language analysis*

The rules in this order are primarily intended to implement the operator–training criteria issued by the United States Environmental Protection Agency (EPA) in response to the federal Energy Policy Act of 2005. These criteria apply to all underground storage tank systems (USTs) that are federally regulated under Part 280 of Title 40 of the *Code of Federal Regulations*. These tank systems coincide with the underground storage tank systems that are required by section Comm 10.145 to have a permit to operate from the Department.

The proposed rules also include several miscellaneous changes in chapters Comm 2 and 10 that are needed primarily for clarification purposes as a follow–up to repealing and recreating chapter Comm 10 in 2008. These changes include (1) adopting an updated version of a standard for repair of shop–fabricated aboveground tanks; (2) clarifying that overflow–protection requirements apply to existing (not just new) aboveground storage tanks having both a fill point outside a diked area and either a tight–connect delivery or latch–open filling; (3) extending secondary–containment requirements to apply to new safe–suction systems and new tank–manifold piping, to be consistent with overriding EPA regulations; (4) clarifying that inventory–verification requirements apply only to retail tank systems, and that they apply there regardless of the capability of an automatic tank gauge; (5) extending underground storage tank tightness testing to tanks that are inspected internally because of having a failing sacrificial anode system, tanks that have periodic internal inspections because of being previously lined, and tanks that have a lining which is being repaired; (6) requiring installation of an access way from the tank interior to finished grade (if not already provided) when lining a tank or inspecting a lined tank, so that an inspector can readily enter the tank during subsequent inspections; and (7) making underground storage tank systems comply with the aboveground storage tank system requirements for double–poppet emergency shut–off valves at dispensers, and for monthly monitoring of the water level in the tank.

In addition to clarifying the application of inventory–verification requirements to retail facilities, the Department invites recommendations on whether to apply these or similar inventory–verification requirements to non–retail facilities that have underground tanks or underground pressurized piping, such as bulk plants and fleet operations.

### *Comparison with federal regulations*

The operator–training requirements in Section 9010(a) of the federal Solid Waste Disposal Act that was enacted as part of the 2005 Energy Policy Act, and the EPA criteria issued in conjunction with Section 9010(a), establish three classes of operators for federally regulated underground storage tank systems – i.e., Class A operators have primary responsibility for on–site operation and maintenance of the systems, Class B operators have daily on–site responsibility for the operation and maintenance of the systems, and Class C operators have daily on–site responsibility for addressing emergencies presented by spills or releases from the systems. The EPA criteria, as published in EPA–510–R–07–005, further specify (1) which facilities are subject to the training criteria, (2) who is subject to the training criteria, (3) minimum components of the training programs for each class of operator, (4) a 3–year timeframe for completing the training of all the operators, (5) establishment of a state–level system for ensuring all operators are trained in accordance with the criteria, (6) methods for states to demonstrate compliance with the criteria, and (7) methods the EPA will use to enforce state–level compliance with the criteria.

The operator–training rules in this proposed order consist of no more than – and no less than – the EPA criteria, with the following exceptions:

- A. Wherever the EPA criteria refer to a “release,” other than for reporting, the text is clarified to also refer to leaks. This clarification is consistent with the text in chapter Comm 10 that recognizes and distinguishes between these two circumstances. Consequently, for example, the proposed rules would (1) require a Class B operator to receive training in operation and maintenance requirements that address leak detection – not just release detection, and (2) require a Class C operator to be trained to take action in response to an alarm caused by a leak – not just an alarm caused by a release. The EPA references to reporting of releases are not expanded to include reporting of leaks, except where a Class C operator reports to a Class B operator, because chapter Comm 10 does not require reporting leaks. However, the references to reporting of releases are clarified to include both suspected and obvious releases, to be consistent with the text in chapter Comm 10 that recognizes and distinguish between these two types of releases.
- B. For a facility at which the owner and operator are separate persons, additional text makes them equally responsible for ensuring that the Class A, Class B and Class C operators are designated.
- C. The responsibilities for the Class B operator, in section Comm 10.830 (2) (e), are expanded to include providing the Class C operator with specified, written instructions for fulfilling the Class C responsibilities; and those Class C responsibilities are described in greater detail in the specified instructions than in the EPA criteria. Similarly, additional text in section Comm 10.830 (2) (f) clarifies that the Class B operator is responsible for ensuring that the Class C operator is present during all operating hours of typical tank systems for fueling facilities; and the circumstances where that presence is not required are specified. Further, section Comm 10.842 (2) clarifies that the Class C operator must be trained to understand the required written instructions.
- D. In the prescribed acceptable training, in section Comm 10.850 (2) (b), additional text clarifies that the training for

a Class C operator must be provided by, or authorized by, an accredited Class A or Class B operator *for the facility where the Class C operator is employed*. Consequently, a Class C operator could move from one facility to another that is operated by the same Class A or Class B operator – but would need new training and accreditation to be a Class C operator at another facility that is operated by a different Class A or Class B operator.

- E. In the retraining requirements, in section Comm 10.880, a definition is included for “significant compliance,” which applies beyond EPA’s referenced guidance for release prevention and release detection. This definition is intended to foster consistency in enforcement, and is essentially copied from the definition of “substantial compliance” in the Wisconsin Fire Protection Code, chapter Comm 14, where it has been helpful for the past several years in auditing local fire departments.

The proposed rules include selection of the following options that are allowed in the EPA criteria:

- A. For the deadline for having a Class A, Class B and Class C operator, in section Comm 10.820, a phase-in schedule is established that (1) applies EPA’s August 8, 2012, deadline only to small businesses; and (2) applies an earlier, January 1, 2012, deadline to all other facilities. This phase-in would be consistent with the requirements in section 227.22 (2) (e) of the Statutes for allowing small businesses extra time to comply with new rules that have a significant economic impact, and could be helpful not only to small businesses but also to the Department and its regulatory and training partners in implementing this portion of the training program.
- B. In section Comm 10.841 (2) (a), an option is included for any Class B operator to have site-specific training that is focused only on equipment used at the operator’s facility.
- C. Section Comm 10.850 (2) (a) 1. specifies a Wisconsin-based International Code Council® training and certification process for Class A and Class B operators, as the base-level process. Discussions with ICC staff indicate several advantages of using this approach – particularly in combination with the equivalent, alternate training programs that are permitted for Class A and Class B operators in section Comm 10.850 (2) (a) 2. The ICC process could include evaluation and certification of individuals who skip the training because they already have adequate knowledge about operating underground storage tank systems.
- D. Section Comm 10.850 (4) includes, for Class A and Class B operators, reciprocity acceptance of training verification from other states that have equivalent training programs.
- E. The recordkeeping requirements in section Comm 10.870 include keeping documentation of compliance only at each facility or at another, readily available site – rather than reporting that compliance to the Department or authorized agent.

The proposed rules do not include an EPA-referenced option of requiring renewal of the training.

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

##### *Michigan:*

Michigan is currently updating their 1998 rules for their UST program. They are working with stakeholders on the rules package and plan to have new rules promulgated within the next year. Included in the code update is the mandate for

operator training, which will mostly mirror the EPA requirements. They are planning to require ICC certification and to require renewals every 2 years, and plan to limit the number of facilities that a Class B operator can oversee to 45. For facilities that are routinely attended, at least one Class C operator is expected to be present during all operating hours – and at unmanned facilities, fuel delivery personnel are expected to fulfill the Class C operator responsibilities, for the purpose of fuel deliveries. The draft rules include substantially greater detail than the EPA criteria, for the training that Class C operators must receive.

##### *Minnesota:*

Minnesota has developed a UST rule-revision draft that includes operator-training requirements and has sent it to their Revisor’s Office for review, after which it will be released for public comment for 30 days. They expect to meet the August 8, 2009, EPA deadline for having the revised rule in place.

Some key points that Minnesota has included in their revised rule are as follows:

1. Training for operators will not always be mandatory. The operator will have the choice of taking only a test. If the operator fails the test, training by a State-approved trainer will be mandatory.
2. Trainers must be approved by the State in order to provide operator training.
3. Only Class A and Class B operators must pass a test.
4. Class B operators must be employees of the company that owns the facility. Class B operators will also be tested on site-specific equipment and functions. (No third-party contractors are permitted.)
5. An outside party likely will create an on-line testing platform.
6. The operator training is expected to be phased in over a 3-year period, with sequential deadlines that are based on telephone area codes.
7. For facilities that are routinely attended, at least one Class C operator is expected to be present during all operating hours – and at unmanned facilities, a sign must be posted showing the emergency shut-off procedures and the name, address and telephone number of the owner, operator or local emergency response personnel.
8. If a facility is found to have a significant-operational-compliance violation at the time of a State inspection, the Class B operator will be required to take training and pass another test.

Minnesota has begun meeting with a group of stakeholders that includes a wide spectrum of tank owners, to help develop the test questions for the operators.

Further information about the rule revision is available at <http://www.pca.state.mn.us/rulesregs/ust-rules.html>, and the current rule draft is posted at <http://www.pca.state.mn.us/publications/rule-ch7150-draft2-0908.pdf>

##### *Iowa:*

Iowa has begun their rulemaking process for the operator-training requirements and has held internal meetings for developing draft rules. A stakeholder meeting was held in February to discuss options and get input.

##### *Illinois:*

Illinois is in the preliminary stages of rulemaking, and has not yet developed draft rules. The State Fire Marshall’s office has contacted Wisconsin to survey our experiences with stakeholder meetings and to obtain a copy of our proposed rules.

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

The information from which the proposed operator–training rules were developed consisted of (1) the EPA criteria published in EPA–510–R–07–005, (2) existing and proposed rules from about 15 other states, and (3) personal contacts with staff from the International Code Council and with private–sector trainers for operators of underground storage tank systems.

The proposed miscellaneous changes to chapter Comm 10 were developed primarily from six regional training sessions the Department conducted statewide in January and February of 2009 in conjunction with implementing a comprehensive update of chapter Comm 10 that became effective on February 1, 2009.

The proposed rules were also developed with assistance from the Department’s advisory committee for flammable, combustible and hazardous liquids. The members of that advisory committee are as follows:

<b>Name</b>	<b>Representing</b>
Randy Shervey . . . . .	Wisconsin Fire Inspectors Association
Erin Roth . . . . .	Wisconsin Petroleum Council
Tim Clay . . . . .	Wisconsin Federation of Cooperatives
Tara Wetzel . . . . .	Wisconsin Transportation Builders Association
Paul Knower . . . . .	Wisconsin Petroleum Equipment Contractors Association
Scott Miller . . . . .	Wisconsin Fire Chiefs Association
Steve Danner . . . . .	Wisconsin Aviation Trades Association
Elizabeth Hellman . . . . .	Wisconsin Utilities Association
Gary Pate . . . . .	Wisconsin Insurance Alliance
John Reed . . . . .	Wisconsin Airport Management Association
Dale Safer . . . . .	Wisconsin Innkeepers
Bill Noel . . . . .	Wisconsin Paper Council
Matt Hauser . . . . .	Wisconsin Petroleum Marketers and Convenience Store Association

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

The Department derived the cost estimates in the following section from input from the International Code Council and private–sector trainers for operators of underground storage tank systems.

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

The base–level, International Code Council certification service has been adopted by California and Wyoming. The cost is about \$150 per person – which covers the cost of the State and EPA reference material, and a test. The ICC service is a self–directed process where individuals purchase the State and federal regulations and pertinent publications, and then go to a test center to take the test. The cost for taking the ICC test, without the training, is \$75.

If a private–sector group such as Petroleum Training Solutions (PTS) provides open–to–the–public training, like they currently provide in Oregon and other States, the charge should be about \$325 per person. PTS is partnering with several petroleum–marketer associations in Oregon and other States to get reductions in cost, in exchange for marketing the classes within the respective associations. In Oregon, the fee

for members of the Oregon Petroleum Marketers Association is \$280.

In Kansas, the State pays for the training, and the cost is about \$5,000 per classroom. (PTS prefers to limit class sizes to 35, but in Kansas they accommodated rooms of 50.) These sessions would cost approximately \$125 to \$150 per person.

Williams & Company also provides classroom training in Kansas, with opportunities for direct questions and answers, and they bring in UST equipment for hands–on training. The company prefers to conduct a class of at least 50 persons – and does some classes back–to–back to minimize travel costs. These sessions would cost approximately \$125 to \$150 per person. The company provides an open–book group test, and certifies the participants at the conclusion of the class. Testing can be designed any way the State desires. The company maintains a spreadsheet of the individuals who are certified, along with the site identification, and provides the list to the State of Kansas to use to verify training, during annual renewals of UST permits.

Williams & Company also provides two types of webinars – the first is a video Web broadcast of a speaker in front of a local audience, and other participants can access the presentation over the Web. The second is a log–in to a Web site where participants have audio via a phone line and watch a PowerPoint presentation on the Web site. The second is much less costly. The first may require a TV studio and production facilities, and broadcast services can be rather expensive. Depending on the number of participants and the type of webinar, these costs could range from \$50 to \$225, based on production costs of \$10,000. The biggest difference between in–class training and on–line webinars is that for webinars, the participants do not have travel time and associated expenses, so the savings are immediate.

In Colorado, PTS will start presenting webinars in May, that will cost \$325. Under this webinar model, the webinars will be free, and the fee will be collected when the test is taken from PTS.

The State of New Mexico estimates that classroom training for their Class A and Class B operators may range from \$200 to \$350 per person.

Costs for training Class C operators are not expected to be significant because all Class C training will be provided by, or authorized by, the Class B operator for the facility.

### **Small Business Impact**

These rule changes may have an economic effect on any small business with at least one federally regulated underground storage tank containing a flammable, combustible or federally–regulated hazardous liquid. These economic effects are not expected to be significant, and are summarized above.

Any inquiries for the small business regulatory coordinator for the Department of Commerce can be directed to Sam Rockweiler, the agency contact person listed below.

#### **Initial Regulatory Flexibility Analysis**

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

Any small business with at least one federally regulated underground storage tank system containing a flammable, combustible or federally–regulated hazardous liquid.

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

Each facility that has a tank system as described above must maintain documentation which (1) identifies the facility’s Class A, Class B and Class C operators; (2) shows these operators have received the accreditation required by

the rules; and (3) lists instructions the Class C operator is required to follow.

All Class A and Class B operators must be trained to understand the responsibilities prescribed in the rules, or pass a written examination demonstrating that understanding. All Class C operators must receive prescribed training that is provided by, or authorized by, an accredited Class A or Class B operator for the facility where the Class C operator is employed.

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

To receive the accreditation required in the rules, Class A, Class B and Class C operators must show they understand how to (1) safely operate and maintain underground storage tank systems and corresponding liquid fuel dispensing systems, including leak detection equipment; (2) appropriately respond to any spills, leaks or releases associated with these systems; and (3) appropriately maintain the records that chapter Comm 10 currently requires for these systems.

*Rules have a significant economic impact on small businesses?*

No

### Environmental Analysis

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

### Fiscal Estimate

There are no requirements in this proposal that should significantly affect either state or local government costs or revenues.

The anticipated costs that may be incurred by the private sector in complying with new requirements in the proposed rules are adequately described in the rule summary which immediately precedes the proposed rules.

### Agency Contact Information

Sam Rockweiler  
Wisconsin Department of Commerce  
Division of Environmental and Regulatory Services  
P.O. Box 14427  
Madison, WI 53708-0427  
telephone (608) 266-0797  
e-mail sam.rockweiler@wi.gov.

## Notice of Hearing Government Accountability Board CR 09-013

NOTICE IS HEREBY GIVEN that pursuant to ss. 5.05 (1) (f) and 227.11 (2) (a), Stats., the Government Accountability Board will hold a public hearing to consider adoption of a rule to amend s. GAB 1.28, Wis. Adm. Code, relating to the definition of the term "political purpose."

### Hearing Information

The public hearing will be held at the time and location shown below.

<u>Date and Time</u>	<u>Location</u>
<b>March 30, 2009</b> at 9:30 a.m.	Government Accountability Board Office 212 E. Washington Avenue 3 <sup>rd</sup> Floor Madison, Wisconsin 53703

This public hearing site is accessible to people with disabilities. If you have special needs or circumstances that may make communication or accessibility difficult at the hearing, please contact the agency contact person listed below.

### Analysis Prepared by the Government Accountability Board

#### *Statute interpreted*

Section 11.01 (16), Stats.

#### *Statutory authority*

Sections 5.05 (1) (f) and 227.11 (2) (a), Stats.

#### *Explanation of agency authority*

Under the existing statute, s. 11.01 (16), Stats., an act is for "political purposes" when by its nature, intent or manner it directly or indirectly influences or tends to influence voting at an election. Such an act includes support or opposition to a person's present or future candidacy. Further, s. 11.01 (16) (a) 1., Stats., provides that acts which are for "political purposes" include but are not limited to the making of a communication which expressly advocates the election, defeat, recall or retention of a clearly identified candidate. The existing rule, s. GAB 1.28 (2) (c), provides that the campaign finance regulations under ch. 11 of the Wisconsin Statutes apply to making a communication that contains one or more specific words "or their functional equivalents" with reference to a clearly identified candidate that expressly advocates the election or defeat of that candidate and that unambiguously relates to the campaign of that candidate.

Under the existing statute, s. 11.01 (16) (a) 1., Stats., and rule, s. GAB 1.28 (2) (c), individuals and organizations that do not spend money to expressly advocate the election or defeat of a clearly identified candidate, or to advocate a vote "Yes" or vote "No" at a referendum, are not subject to campaign finance regulation under ch.11 of the Wisconsin Statutes. The term "expressly advocate" initially was limited to so-called "magic words" or their verbal equivalents. The Wisconsin Supreme Court, in *Wisconsin Manufacturers & Commerce (WMC) v. State Elections Board*, 227 Wis.2d 650 (1999), has opined that if the Government Accountability Board's predecessor, the Elections Board, wished to adopt a more inclusive interpretation of the term "express advocacy," it could do so by way of a rule. The Wisconsin Court of Appeals, in *Wisconsin Coalition for Voter Participation, Inc. v. State Elections Board*, 231 Wis.2d 670 (Wis. Ct. App. 1999), further opined:

And while, as plaintiffs point out, "express advocacy" on behalf of a candidate is one part of the statutory definition of "political purpose," it is not the only part. Under s. 11.01 (16), Stats., for example, an act is also done for a political purpose if it is undertaken "for the purpose of influencing the election . . . of any individual.

Contrary to plaintiffs' assertions, then, the term "political purposes" is not restricted by the cases, the statutes or the code to acts of express advocacy. It

encompasses many acts undertaken to influence a candidate’s election—including making contributions to an election campaign.

The United States Supreme Court, in *McConnell et al. v. Federal Election Commission (FEC) et al.*, 540 U.S. 93 (2003), in a December 10, 2003 opinion, has said that Congress and state legislatures may regulate political speech that is not limited to “express advocacy.” Specifically, the *McConnell* Court upheld, as facially constitutional, broader federal regulations of communications that (1) refer to a clearly identified candidate; (2) are made within 60 days before a general election or 30 days before a primary election; and (3) are targeted to the relevant electorate. The *McConnell* Court further opined:

Nor are we persuaded, independent of our precedents, that the First Amendment erects a rigid barrier between express advocacy and so-called issue advocacy. That notion cannot be squared with our longstanding recognition that the presence or absence of magic words cannot meaningfully distinguish electioneering speech from a true issue ad . . . Indeed, the unmistakable lesson from the record in this litigation . . . is that *Buckley’s* magic-words requirement is functionally meaningless . . . Not only can advertisers easily evade the line by eschewing the use of magic words, but they would seldom choose to use such words even if permitted. And although the resulting advertisements do not urge the viewer to vote for or against a candidate in so many words, they are no less clearly intended to influence the election.

In *Federal Election Comm’n. v. Wisconsin Right To Life, Inc. (WRTL II)*, 550 U.S. \_\_\_ (2007), a United States Supreme Court case, Chief Justice Roberts writing for the majority, opined that an ad is the functional equivalent of express advocacy, if the ad is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate, i.e. mentions an election, candidacy, political party, or challenger; takes a position on a candidate’s character, qualifications, or fitness for office; condemns a candidate’s record on a particular issue.

The revised rule will more clearly specify those communications that may not reach the level of “magic words” express advocacy, yet are subject to regulation because they are the functional equivalent to express advocacy, for “political purposes,” and susceptible of no other reasonable interpretation other than as an appeal to vote for or against a specific candidate.

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

Section 11.01 (16), Stats., and section GAB 1.28, Wis. Adm. Code.

#### **Plain language analysis**

The revised rule will subject to regulation communications that are “susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate.” The revised rule will subject communications meeting this criteria to the applicable campaign finance regulations and requirements of ch. 11, Stats.

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

The United States Supreme Court upheld regulation of political communications called “electioneering communications” in its December 10, 2003 decision: *McConnell et al. v. Federal Election Commission, et al.* (No.02–1674) and pursuant to its June 25, 2007 decision of:

*Federal Election Commission (FEC) v. Wisconsin Right to Life, Inc. (WRTL II)*, (No.06–969and 970).

The *McConnell* decision is a review of relatively recent federal legislation – The Bipartisan Campaign Reform Act of 2002 (BCRA) – amending, principally, the Federal Election Campaign Act of 1971 (as amended). A substantial portion of the *McConnell* Court’s decision upholds provisions of BCRA that establish a new form of regulated political communication – “electioneering communications” – and that subject that form of communication to disclosure requirements as well as to other limitations, such as the prohibition of corporate and labor disbursements for electioneering communications in BCRA ss. 201, 203. BCRA generally defines an “electioneering communication” as a broadcast, cable, or satellite advertisement that “refers” to a clearly identified federal candidate, is made within 60 days of a general election or 30 days of a primary and if for House or Senate elections, is targeted to the relevant electorate.

In addition, the Federal Election Commission (FEC) promulgated regulations further implementing BCRA (generally 11 CFR Parts 100–114) and made revisions incorporating the *WRTL II* decision by the United States Supreme Court (generally 11 CFR Parts 104, 114.) The FEC regulates “electioneering communications.”

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

##### *Illinois:*

Illinois has a rule requiring a nonprofit organization to file financial reports with the State Board of Elections if it: 1) is not a labor union; 2) has not established a political committee; and 3) accepts or spends more than \$5,000 in any 12-month period in the aggregate:

- A) supporting or opposing candidates for public office or questions of public policy that are to appear on a ballot at an election; and/or
- B) for electioneering communications.

In addition, the same rule mandates all the same election reports of contributions and expenditures in the same manner as political committees, and the nonprofit organizations are subject to the same civil penalties for failure to file or delinquent filing. (See Illinois Administrative Code, Title 26, Chapter 1, Part 100, s. 100.130).

##### *Iowa:*

Iowa prohibits direct or indirect corporate contributions to committees or to expressly advocate for a vote. (s. 68A.503(1), Iowa Stats.) Iowa does allow corporations to use their funds to encourage registration of voters and participation in the political process or to publicize public issues, but provided that no part of those contributions are used to expressly advocate the nomination, election, or defeat of any candidate for public office. (s. 68A.503(4), Iowa Stats.) Iowa does not have any additional rules further defining indirect corporate contributions or expressly advocating for a vote.

##### *Michigan:*

Michigan prohibits corporate and labor contributions for political purposes (s. 169.254, Mich. Stats.) and requires registration and reporting for any independent expenditures of \$100.01 or more (s. 169.251, Mich. Stats.) Michigan does not have any additional rules defining political purposes.

##### *Minnesota:*

Minnesota statutes prohibit direct and indirect corporate contributions and independent expenditures to promote or defeat the candidacy of an individual. (s. 211B.15(Subds. 2

and 3), Minn. Stats.) A violation of this statute could subject the corporation to a \$40,000.00 penalty and forfeiture of the right to do business in Minnesota. A person violating this statute could receive a \$20,000.00 penalty and up to 5 years in prison. Minnesota does not have any additional rules defining indirect influence on voting. (s. 211B15 (Subds. 6 and 7), Minn. Stats.)

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

Adoption of the rule was primarily predicated on federal and state statutes, regulations, and case law. Additional factual data was considered at several Government Accountability Board public meetings, specifically the expenditures on television advertisements, and the actual transcripts for the same, as aired during a recent Wisconsin Supreme Court race.

#### **Small Business Impact**

The rule will have no effect on small business, nor any economic impact.

#### **Fiscal Estimate**

The creation of this rule has no fiscal effect.

#### **Agency Contact Person**

Shane W. Falk, Staff Counsel  
Government Accountability Board  
212 E. Washington Avenue, 3<sup>rd</sup> Floor  
P.O. Box 2973  
Madison, Wisconsin 53701-2973  
Phone 266-2094  
Shane.Falk@wisconsin.gov

#### **Submission of Written Comments**

Comments should be submitted no later than March 30, 2009 to the following address:

Government Accountability Board  
212 E. Washington Avenue, 3<sup>rd</sup> Floor  
P.O. Box 2973  
Madison, Wisconsin 53701-2973

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

SECTION 1. GAB 1.28 is amended to read:

**GAB 1.28 Scope of regulated activity; election of candidates.** (1) Definitions. As used in this rule:

(a) "Political committee" means every committee which is formed primarily to influence elections or which is under the control of a candidate.

(b) "Communication" means any printed advertisement, billboard, handbill, sample ballot, television or radio advertisement, telephone call, e-mail, internet posting, and any other form of communication that may be utilized for a political purpose.

(c) "Contributions for political purposes" means contributions made to 1) a candidate, or 2) a political committee or 3) an individual who makes contributions to a candidate or political committee or incurs obligations or makes disbursements for the purpose of expressly advocating the election or defeat of an identified candidate political purposes.

(2) Individuals other than candidates and ~~committees~~ persons other than political committees are subject to the applicable ~~disclosure-related and recordkeeping-related~~ requirements of ch. 11, Stats., ~~only~~ when they:

(a) Make contributions or disbursements for political purposes, or

(b) Make contributions to any person at the request or with the authorization of a candidate or political committee, or

(c) Make a communication ~~containing~~ for a political purpose.

(3) A communication is for a "political purpose" if either of the following applies:

(a) The communication contains terms such as the following or their functional equivalents with reference to a clearly identified candidate ~~that expressly advocates the election or defeat of that candidate and that unambiguously~~ relates to the campaign of that candidate:

1. "Vote for;"
2. "Elect;"
3. "Support;"
4. "Cast your ballot for;"
5. "Smith for Assembly;"
6. "Vote against;"
7. "Defeat;" or
8. "Reject."

(b) The communication is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate. A communication is susceptible of no other reasonable interpretation if it is made during the period beginning on the 60th day preceding a general, special, or spring election and ending on the date of that election or during the period beginning on the 30th day preceding a primary election and ending on the date of that election and that includes a reference to or depiction of a clearly identified candidate and:

1. Refers to the personal qualities, character, or fitness of that candidate;

2. Supports or condemns that candidate's position or stance on issues; or

3. Supports or condemns that candidate's public record.

~~(3)~~ (4) Consistent with s. 11.05 (2), Stats., nothing in sub. (1) ~~or~~ (2), or (3) should be construed as requiring registration and reporting, under ss. 11.05 and 11.06, Stats., of an individual whose only activity is the making of contributions.

#### **SECTION 2. EFFECTIVE DATE.**

This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22 (intro), Stats.

### **Notice of Hearing**

#### **Natural Resources**

#### ***Fish, Game, etc., Chs. NR 1—***

#### **CR 09-015 and CR 09-018**

NOTICE IS HEREBY GIVEN that pursuant to ss. 29.014 (1), 29.039, 29.041, 29.053 and 227.11 (2) (a), Stats., the Department of Natural Resources will hold public hearings on revisions to Chapters NR 20, 21, 22, and 23, Wis. Adm. Code, relating to fishing and clamming on the inland, outlying and boundary waters of Wisconsin.

NOTICE IS HEREBY FURTHER GIVEN that pursuant to ss. 23.09 (2) (b), 29.014, 29.053 (3), 29.059, 29.089, 29.192 and 29.193, Stats., the Department of Natural Resources will hold public hearings on revisions to Chapters NR 10, 11, and 15, Wis. Adm. Code, relating to hunting and trapping regulations and the use of department managed lands.

NOTICE IS HEREBY FURTHER GIVEN that at 7:00 p.m. on **Monday, April 13, 2009**, the Wisconsin Conservation Congress will hold its election of county delegates in each county. Upon completion of the delegate elections, the joint Spring Hearing/Conservation Congress meeting will convene to take comments on the foregoing rule modifications.

### Hearing Information

The hearings will be held on **Monday, April 13, 2009** at 7:00 p.m. at the following locations:

Adams	Adams County Courthouse, Board Room, 402 Main Street, Friendship	Green Lake	Green Lake High School, Small Gym, 612 Mill St., Green Lake
Ashland	Ashland Senior High School, Auditorium, 1900 Beaser Avenue, Ashland	Iowa	Dodgeville High School, Gymnasium, 912 West Chapel Street, Dodgeville
Barron	Barron Government Center, 330 E. LaSalle Avenue, Barron	Iron	Iron County Courthouse, 300 Taconite St., Hurley
Bayfield	Drummond High School, Auditorium, 52440 Eastern Ave., Drummond	Jackson	Black River Falls Middle School, LGI Room, 1202 Pierce Street, Black River Falls
Brown	Franklin Middle School, Auditorium, 1234 W. Mason, Green Bay	Jefferson	Jefferson Co. Fairgrounds, Activity Center, 503 N. Jackson Ave., Jefferson
Buffalo	Alma High School, Gymnasium, S1618 STH 35, Alma	Juneau	Olson Middle School, Auditorium, 508 Grayside Avenue, Mauston
Burnett	Burnett County Government Center, Room 165, 7410 County Road K, Siren	Kenosha	Bristol Grade School, Gymnasium, 20121 83 <sup>rd</sup> Street, Bristol
Calumet	Calumet County Courthouse, B025, 206 Court Street, Chilton	Kewaunee	Kewaunee High School, Auditorium, 911 3 <sup>rd</sup> Street, Kewaunee
Chippewa	Chippewa Falls Middle School Auditorium 750 Tropicana Blvd., Chippewa Falls	La Crosse	Onalaska High School, Field House, 700 Hilltop Place, Onalaska
Clark	Greenwood High School, Cafetorium, 306 W. Central Ave., Greenwood	Lafayette	Darlington High School, Auditorium, 11838 Center Hill Road, Darlington
Columbia	Portage Junior High School, 2505 New Pinery Rd., Portage	Langlade	Antigo High School, Volm Auditorium, 1900 10 <sup>th</sup> Avenue, Antigo
Crawford	Crawford County Courthouse, Court Room, 220 N. Beaumont Road, Prairie du Chien	Lincoln	Tomahawk Elementary School, 1048 East Kings Road, Tomahawk
Dane	Middleton Performing Arts Center, Middleton High School, 2100 Bristol St., Middleton	Manitowoc	UW Manitowoc, Theater, 705 Viebahn Street, Manitowoc
Dodge	Horicon City Hall, 404 E. Lake Street, Horicon	Marathon	D.C. Everest Middle School, 9302 Schofield Avenue, Weston
Door	Crossroads at Big Creek, 2041 Michigan Ave., Sturgeon Bay	Marinette	Crivitz High School, Auditorium, 400 South Ave, Crivitz
Douglas	Brule Town Hall, 5814 S. Maple St., Brule	Marquette	Montello High School, Community Room, 222 Forest Lane, Montello
Dunn	Dunn County Fish and Game Club, 1900 Pioneer Ave., Menomonie	Menominee	Menominee County Courthouse, Basement, Courthouse Lane, Keshena
Eau Claire	South Middle School, Auditorium, 2115 Mitscher Ave., Eau Claire	Milwaukee	Nathan Hale High School, Auditorium, 11601 West Lincoln Avenue, West Allis
Florence	Florence Natural Resource Center, Basement, Highway 70/101, Florence	Monroe	Tomah High School, Cafeteria, 901 Lincoln Ave., Tomah
Fond du Lac	Theisen Middle School, 525 E Pioneer Road, Fond du Lac	Oconto	Suring High School, Cafeteria, 411 E. Algoma St., Suring
Forest	Crandon High School, Auditorium, 9750 USH 8 W, Crandon	Oneida	James Williams Junior High School, 915 Acacia, Rhinelander
Grant	Lancaster High School, Auditorium, 806 Elm Street, Lancaster	Outagamie	Riverview Middle School, Auditorium, 101 Oak Street, Kaukauna
Green	Monroe Middle School, 1510 13 <sup>th</sup> Street, Monroe	Ozaukee	Port Washington American Legion, 435 Lake St., Port Washington
		Pepin	Pepin County Government Center, County Board Room, 740 7th Avenue W., Durand
		Pierce	Ellsworth Senior High School, Gymnasium, 323 Hillcrest St., Ellsworth
		Polk	Unity High School, Gymnasium, 908 150th Street/Hwy 46, Balsam Lake
		Portage	Ben Franklin Junior High School, Auditorium, 2000 Polk Street, Stevens Point
		Price	Price Co. Courthouse, County Board Room, 126 Cherry Street, Phillips

Racine	Union Grove High School, Auditorium (Use Hwy. 45 School Entrance), 3433 S. Colony Ave., Union Grove
Richland	Richland County Courthouse, 181 West Seminary, Richland Center
Rock	Pontiac Convention Center, 2809 N. Pontiac Dr., Janesville
Rusk	Ladysmith High School, Auditorium, 1700 E. Edgewood Ave., Ladysmith
Sauk	UW-Baraboo Sauk County, R.G. Brown Theater, 1006 Connie Road, Baraboo
Sawyer	Hayward Area Middle School, Cafetorium, 10408 Greenwood Ln., Hayward
Shawano	Shawano Community Middle School, LGI Room, 1050 S. Union Street, Shawano
Sheboygan	Sheboygan Falls High School, Auditorium, 220 Amherst Avenue, Sheboygan Falls
St. Croix	WI Indianhead Technical College, Cashman Conference Room, 1019 S. Knowles Ave., New Richmond
Taylor	Taylor Co. Fairgrounds, Multipurpose Bldg. State Hwy 13 and Hwy 64 Intersection, Medford
Trempealeau	Whitehall City Center, Gymnasium, 36245 Park Street, Whitehall
Vernon	Viroqua High School, 100 Blackhawk Drive, Viroqua
Vilas	Town of Plum Lake Town Hall, 235 Lake St., Sayner
Walworth	Delavan/Darien High School, Auditorium, 150 Cummings, Delavan
Washburn	WI Ag Research Station, W6646 Hwy 70, Spoooner
Washington	Washington County Fair Park, Exhibit Hall, 3000 Hwy PV, West Bend
Waukesha	Waukesha Co. Tech. College (WCTC), Anderson Education Center, 800 Main St., Pewaukee
Waupaca	Waupaca High School, Auditorium, E2325 King Road, Waupaca
Waushara	Waushara County Court House, 2 <sup>nd</sup> Floor Old Courtroom, 209 S. St. Marie, Wautoma
Winnebago	Webster Stanley Auditorium, 915 Hazel Street, Oshkosh
Wood	Pittsville High School, Auditorium, 5459 Elementary Ave., Pittsville

Pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of information material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Kari Lee-Zimmermann at (608) 266-2952 with specific information on your request by April 6, 2009.

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

The proposed rules and fiscal estimates may be reviewed and comments electronically submitted at the following Internet site: <http://adminrules.wisconsin.gov>. Written comments on the proposed hunting and trapping regulations

may be submitted via U.S. mail to Mr. Scott Loomans, Bureau of Wildlife Management, P.O. Box 7921, Madison, WI 53707. Written comments on the proposed fishing regulations may be submitted via U.S. mail to Mr. Joe Hennessy, Bureau of Fisheries Management, P.O. Box 7921, Madison, WI 53707. Written comments shall be postmarked not later than April 14, 2009. Written comments whether submitted electronically or by U.S. mail will be summarized for the Natural Resources Board, however, they will not be tallied along with the responses received at the county hearings.

#### Analysis Prepared by Department of Natural Resources

**CR 09-018** — Revisions to Chapters NR 20, 21, 22, and 23, relating to fishing and clamming on the inlands, outlying, and boundary waters of Wisconsin.

#### Statutes interpreted

Sections 29.014 (1), 29.039, 29.041, 29.053, 29.531, 29.533, and 29.537, Stats.

#### Statutory authority

Sections 29.014 (1), 29.039, 29.041, 29.053 and 227.11 (2) (a), Stats.

#### Summary of rule

The proposed rules will:

1. Allow the department to conduct criminal history background checks on individuals that want to serve as department sponsored volunteer angler education instructor or a mentor as part of a department sponsored or approved learn-to-hunt program. These instructors often and primarily serve as instructors for youth. This proposal would also remove the condition that a mentor for fishing programs may not serve as a mentor for more than 3 anglers and clarify that the applicant, instructors and mentors need to possess a valid fishing license. This will also reduce the 30 day advanced notice for applications for fishing programs to 15 days.

2. Correct an administrative error which was included in the recently adopted rules regarding minnow harvest and possession, as related to concerns regarding containing the spread of Viral Hemorrhagic Septicemia.

3. Clarify legality of using a small remote controlled boat or similar device with a piece of line and hook attached for the purpose of catching fish in Wisconsin. Our interpretation of the law is that these devices when used for fishing, if not tethered back to the boat, pier or shore where the person operating it is located, is not allowed under our "jug-fishing" rule in NR 20.06 (10).

4. Clarify that either a small game license or a fishing license is sufficient approval for a person older than 16 to take crayfish in Wisconsin.

5. Clarify boundaries of large rivers and their tributaries.

6. Repeal the barbless hooks requirement for early trout season.

7. Prohibit collection of live mussels or dead shell from the St. Croix River National Scenic Riverway, and eliminate commercial mussel harvest in the St. Croix River where it forms the boundary between Wisconsin and Minnesota (the activity is already prohibited by National Park Service rules), and in the St. Louis River where it forms the boundary between Wisconsin and Minnesota.

8. Set a minimum length restriction for walleye in Upper Clam lake (Ashland county) of 15 inches.

9. Increase the minimum length restriction for walleye in Beaver Dam lake (Barron county) from 15 inches to 18 inches, and reduce the daily angler bag limit for walleye from 5 fish to 3 fish.

10. Create an annual open season for trout in Beaver, Little Star, Nymphia, and Overby (Blaisdell) lakes (Bayfield county), where the seasons in these lakes are currently closed every other year. The annual open season in the other waters will be between the first Saturday in May and September 30.

11. Remove the 14 inch minimum length restriction for largemouth and smallmouth bass in Lake 26 (Burnett county).

13. Extend the end of open season for trout in Anderson lake (Douglas county) from September 30 to the first Sunday in March.

14. Set a minimum length restriction for walleye in Bearskull, Fisher, Owl, and Upper and Lower Springstead lakes (Iron county) of 15 inches.

15. Increase the minimum size restriction for northern pike in Silver lake (Manitowoc county) from 26 to 32 inches and reduce the daily angler bag limit from 2 to 1.

16. Correct an administrative error which improperly lists the minimum length restriction for walleye in the Wisconsin river downstream from the St. Regis dam in Rhineland (Oneida county) as none rather than 15 inches.

17. Increase the minimum length restriction for largemouth and smallmouth bass in Burrows lake (Oneida county) from 14 inches to 18 inches, and decrease the daily angler bag limit from 5 to 1.

18. Increase the minimum length restriction for walleye in Big Round lake (Polk county) from 15 inches to 18 inches, and reduce the daily angler bag limit for walleye from 5 fish to 3 fish.

19. Replace the current 9 inch minimum length restriction for trout in Manley creek (Sauk county) with a 9 inch maximum size restriction. This rule will expire 10 years after implementation.

20. Increase the minimum size restriction for muskellunge in Big Sand, Kentuck, and Long lakes (Vilas county) from 34 inches to 50 inches.

21. Set a minimum size restriction for walleye in Dead Pike lake (Vilas county) of 18 inches, and reduce the daily angler bag limit from 5 to 3.

22. Remove the current 15 inch minimum size restriction for walleye in North Twin and South Twin lakes (Vilas county), but stipulate that walleye between 14 and 18 inches may not be kept and only 1 walleye larger than 18 inches may be part of an angler's 3 fish daily bag limit.

23. Increase the minimum length restriction for walleye in White Sand (T42 N R7E S27.) and Long lakes (Vilas county) from 15 inches to 18 inches, and reduce the daily angler bag limit for walleye from 5 fish to 3 fish, and also correct an administrative error which improperly lists the closing date of the open angling season for walleye as March 1 rather than the first Sunday in March.

24. Add Regner (Washington county) and Foxbrook (Waukesha county) ponds to the state's urban fishing program, in which there would be a continuous open season but only persons under 16 years of age or disabled pursuant to s. 29.193 (3) (a), (b) or (c), Stats., may fish from the second Saturday in March to but not including the last Saturday in April, and in which persons may possess 1 largemouth bass, smallmouth bass, northern pike, walleye, sauger or hybrid in total; 10 panfish and bullheads in total; 3 trout and salmon in total, and an unlimited number of rough fish.

25. Correct an administrative error regarding bag limits for walleye, sauger, and their hybrids in Lake Winnebago. Current rules allow 5 walleye and 1 sauger or walleye/sauger hybrid,

but the bag limit should be 5 walleye/sauger/ hybrids in total, only 1 of which may be a sauger or walleye/sauger hybrid.

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

**CR 09–015:** Revisions to Chapters NR 10, 11, and 15, relating to hunting and trapping regulations and the use of department managed lands.

#### **Statutes interpreted**

Sections 23.09 (2) (b), 29.014, 29.053 (3), 29.059, 29.089, 29.192 and 29.193, Stats.

#### **Statutory authority**

Sections 23.09 (2) (b), 29.014, 29.053 (3), 29.059, 29.089, 29.192, and 29.193, Stats.

#### **Summary of rule**

The proposed rules will:

1. Clarify the definition of “open water hunting” for waterfowl.
2. Allow the harvest stocked hen pheasants at Sand Creek Fishery Area, Monroe County.
3. Extend the fall turkey season to Dec. 31 in zones 1 – 5, except for the nine–day deer season.
4. Modify bobcat hunting, trapping, cable restraint seasons and reporting.
5. Allow the use of rifles for firearm deer hunting in Dunn and Shawano Counties.
6. Allow firearm deer hunting at Potawatomi and Whitefish Dunes state parks, Door County and allow the use of rifles for deer hunting at all of Hartman Creek state park, Waupaca and Portage counties.
7. Establish that the 19–day muzzleloader–only season and late archery season is antlerless only but buck hunting can be allowed in certain years at Wildcat Mountain state park, Vernon County.
8. Eliminate the late archery deer hunt at Brunet Island state park.
9. Eliminate the special state park hunting season and allow hunting during all normal deer seasons at Cadiz Springs Recreation Area.
10. Establish a special migratory bird hunt with a 1:00 p.m. closure, regulations, and modify refuges at Mead wildlife area, Wood, Portage and Marathon counties and Lake Mills wildlife area, Jefferson County.
11. Clarify the definition of legal firearm types for hunting.
12. Create flexibility in the methods for issuing left–over turkey hunting permits.
13. Create flexibility to register wild turkeys by methods other than in person at registration stations.
14. Allow the use of electronic calls for turkey hunting by certain holders of disabled hunting permits.
15. Allow the use of dogs for turkey hunting during the fall season statewide.
16. Require the registration of sharp–tailed grouse harvest.
17. Allow hunting during special turkey hunts by holders Class B disabled hunting permits that are valid for hunting from a vehicle and issued for more than one year.
18. Eliminate the Nelson–Travino Mississippi River closed area in Buffalo County.
19. Reduce the size of Dike 17 waterfowl refuge and allow trapping and firearm deer hunting (Jackson County).
20. Reduce the size of Vernon Marsh waterfowl refuge because certain areas are no longer needed as goose refuge (Waukesha County).

### Small Business Impact

Pursuant to s. 227.114, Stats., it is not anticipated that the proposed rules will have a significant economic impact on small businesses.

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 Analysis

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

Mandatory registration of sharp-tailed grouse will not require new expenses because a harvest reporting system is already in place, its use is optional under current rules. Similarly, wild turkey harvest is recorded at department registration stations and telephone registration, if pursued, would replace the current system resulting in no new expenses. It is anticipated that costs will be less than under the current system. Startup costs for administering a bobcat harvest registration system by telephone are anticipated to be \$3,000, similar to the cost of the current Canada goose telephone registration system. Annual costs would be less than \$1,000 and can be absorbed within the department's current budget.

#### State fiscal effect

An increase in costs that may be possible to absorb within the agency's budget.

#### Local government fiscal effect

None.

#### Fund sources affected

SEG

## Notice of Hearing Pharmacy Examining Board EmR0903

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Pharmacy Examining Board in ss. 15.08 (5) (b), 227.11 (2) and 450.02 (3) (d), Stats., the Pharmacy Examining Board will hold a public hearing at the time and place indicated below to consider an emergency rule to repeal s. Phar 4.02 (2), relating to the practical examination.

### Hearing Information

**Date:** April 8, 2009  
**Time:** 9:30 a.m.  
**Location:** 1400 East Washington Avenue  
 (Enter at 55 North Dickinson Street)  
 Room 121A  
 Madison, Wisconsin

### Appearances at the Hearing and 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 Department of Regulation and Licensing, Office of Legal Counsel, P.O. Box 8935, Madison, Wisconsin 53708. Written comments must be received by April 13, 2009, to be included in the record of rule-making proceedings.

### Copies of Rule

Copies of this rule are available upon request to Pamela Haack, Paralegal, Department of Regulation and Licensing, Office of Legal Counsel, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708, or by email at [pamela.haack@wisconsin.gov](mailto:pamela.haack@wisconsin.gov).

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

#### Statutes interpreted

Sections 450.04 and 450.05, Stats.

#### Statutory authority

Sections 15.08 (5) (b), 227.11 (2) and 450.02 (3) (d), Stats.

#### Explanation of agency authority

The board is authorized under s. 450.02 (3) (d), Stats., to promulgate rules necessary for the administration of ch. 450, Stats., which includes approving examinations to determine whether an applicant is competent to engage in the practice of pharmacy. Refer also to s. 450.04 (1), Stats.

#### Related statute or rule

Ch. Phar 4 sets forth the board's procedures for administering, scoring, handling claims of examination error and responding to requests to retake the examination.

#### Plain language analysis

SECTION 1. In this emergency rule, the board repeals s. Phar 4.02 (2), which relates to the practical examination required for licensure of pharmacists. Under the current rule, the board administers a practical examination to determine an applicant's competence in compounding and dispensing medications, which includes consultation of patients. The board has determined that this examination is no longer needed because the competencies tested in the examination are also tested in two other national examinations that applicants are required to take in order to obtain a license in Wisconsin.

#### Comparison with federal regulations

Federal Medicaid law requires a patient consultation on new prescriptions.

#### Comparison with rules in adjacent states

##### Iowa:

Iowa does not have a separate patient consultation examination requirement.

##### Illinois:

Illinois does not have a separate patient consultation examination requirement.

##### Michigan:

Michigan does not have a separate patient consultation examination requirement.

##### Minnesota:

Minnesota does not have a separate patient consultation examination requirement.

**Summary of factual data and analytical methodologies**

It was the board's custom over time to review examination performance at each full board meeting for the examination that occurred the day before its meetings. As a result of apparent trends that emerged from these post–examination reviews, the board undertook an analysis of aggregate examination pass rates as it discussed the ongoing need for a practical consultation examination and found rates to be significantly higher for graduates of the University of Wisconsin–Madison than for other pharmacy schools. The board also reviewed experience in other states and found that Wisconsin is one of only four states in the nation that continues to require a practical consultation examination. One of the implications suggested by the board as a result of its review is that the examination creates a barrier to licensure in Wisconsin, and that the benefits of the examination do not justify its costs.

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

It is anticipated that elimination of the examination will have a positive impact on small business by yielding an enlarged pool of licensed pharmacists available for hire.

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

**Anticipated costs incurred by private sector**

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

**Small Business Impact**

These rules will have no significant economic impact on a substantial number of small businesses, as defined in s. 227.114 (1), Stats.

**Fiscal Estimate**

The department estimates that the proposed rule will have no significant fiscal impact.

**Finding of Emergency**

The Pharmacy Examining Board finds that, under s. 227.24 (1), Stats., the repeal of s. Phar 4.02 (2) is required for the preservation of the public peace, health, safety and welfare.

Currently, under s. Phar 4.02 (2), the board administers a practical examination to determine an applicant's competence in compounding and dispensing medications, which includes consultation of patients. The board has determined that this examination is no longer needed because the competencies tested in the examination are also tested in two other national examinations that applicants are required to take in order to obtain a license in Wisconsin. The board has also determined that the practical examination requirement may contribute to the shortage of pharmacists in Wisconsin.

First, under s. Phar 4.02 (1) and (3), an applicant is required to take and pass the Multi–State Pharmacy Jurisprudence Examination (MPJE) and the North American Pharmacist Licensure Examination (NAPLEX). Both of these examinations test competencies that relate to subject areas that are also tested in the practical examination. As a result, applicants are required to take an additional examination, and pay an additional examination fee. In some instances, this step may also result in a delay in the processing of applications for licensure.

Second, in reference to the shortage of pharmacists in Wisconsin, the board has found that populations in rural areas and in certain city neighborhoods are underserved. The board believes that, because of its practical examination requirement, potential applicants from other states are declining to seek licensure in Wisconsin. Wisconsin is one of only four states that require a practical examination. None of the states that border Wisconsin have a practical examination requirement.

**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@wisconsin.gov](mailto:pamela.haack@wisconsin.gov).

**Text of Emergency Rule**

SECTION 1. Phar 4.02 (2) is repealed.

This emergency rule shall take effect on February 28, 2009.

**Notice of Hearing  
Pharmacy Examining Board  
CR 09–019**

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Pharmacy Examining Board in ss. 15.08 (5) (b), 227.11 (2) and 450.02 (3) (d), Stats., the Pharmacy Examining Board will hold a public hearing at the time and place indicated below to consider permanent rules to repeal s. Phar 4.02 (2), relating to the practical examination.

**Hearing Information**

**Date:** April 8, 2009  
**Time:** 9:30 a.m.  
**Location:** 1400 East Washington Avenue  
(Enter at 55 North Dickinson Street)  
Room 121A  
Madison, Wisconsin

**Appearances at the Hearing and 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 Department of Regulation and Licensing, Office of Legal Counsel, P.O. Box 8935, Madison, Wisconsin 53708. Written comments must be received by April 13, 2009, to be included in the record of rule–making proceedings.

**Copies of Proposed Rule**

Copies of this proposed rule are available upon request to Pamela Haack, Paralegal, Department of Regulation and Licensing, Office of Legal Counsel, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708, or by email at [pamela.haack@wisconsin.gov](mailto:pamela.haack@wisconsin.gov).

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

Sections 450.04 and 450.05, Stats.

**Statutory authority**

Sections 15.08 (5) (b), 227.11 (2) and 450.02 (3) (d), Stats.

***Explanation of agency authority***

The board is authorized under s. 450.02 (3) (d), Stats., to promulgate rules necessary for the administration of ch. 450, Stats., which includes approving examinations to determine whether an applicant is competent to engage in the practice of pharmacy. Refer also to s. 450.04 (1), Stats.

***Related statute or rule***

Ch. Phar 4 sets forth the board's procedures for administering, scoring, handling claims of examination error and responding to requests to retake the examination.

***Plain language analysis***

SECTION 1. In this proposed rule-making order, the board proposes to repeal s. Phar 4.02 (2), which relates to the practical examination required for licensure of pharmacists. Under the current rule, the board administers a practical examination to determine an applicant's competence in compounding and dispensing medications, which includes consultation of patients. The board has determined that this examination is no longer needed because the competencies tested in the examination are also tested in two other national examinations that applicants are required to take in order to obtain a license in Wisconsin.

***Comparison with federal regulations***

Federal Medicaid law requires a patient consultation on new prescriptions.

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

Iowa does not have a separate patient consultation examination requirement.

***Illinois:***

Illinois does not have a separate patient consultation examination requirement.

***Michigan:***

Michigan does not have a separate patient consultation examination requirement.

***Minnesota:***

Minnesota does not have a separate patient consultation examination requirement.

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

It was the board's custom over time to review examination performance at each full board meeting for the examination that occurred the day before its meetings. As a result of apparent trends that emerged from these post-examination reviews, the board undertook an analysis of aggregate examination pass rates as it discussed the ongoing need for a practical consultation examination and found rates to be significantly higher for graduates of the University of Wisconsin–Madison than for other pharmacy schools. The board also reviewed experience in other states and found that Wisconsin is one of only four states in the nation that continues to require a practical consultation examination. One of the implications suggested by the board as a result of its review is that the examination creates a barrier to licensure in Wisconsin, and that the benefits of the examination do not justify its costs.

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

It is anticipated that elimination of the examination will have a positive impact on small business by yielding an enlarged pool of licensed pharmacists available for hire.

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.

**Fiscal Estimate**

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@wisconsin.gov](mailto:pamela.haack@wisconsin.gov).

**Text of Proposed Rule**

SECTION 1. Phar 4.02 (2) is repealed.

**Notice of Hearing****Public Instruction****CR 09–011**

NOTICE IS HEREBY GIVEN That pursuant to ss. 115.43 (2) (c) and 227.11 (2) (a), Stats., the Department of Public Instruction will hold a public hearing to consider proposed permanent rules amending Chapter PI 22, relating to precollege scholarships.

**Hearing Information**

<b>March 30, 2009</b>	Madison
1:30 – 2:30 p.m.	GEF 3 Building
	125 South Webster St.
	Room 041

The hearing site is fully accessible to people with disabilities. If you require reasonable accommodation to access the meeting, please contact Kevin Ingram, Director, Educational Opportunity Programs and Urban Education, at [kevin.ingram@dpi.wi.gov](mailto:kevin.ingram@dpi.wi.gov), (414) 227–4413, or leave a message with the Teletypewriter (TTY) at (608) 267–2427 at least 10 days prior to the hearing date. Reasonable accommodation includes materials prepared in an alternative format, as provided under the Americans with Disabilities Act.

**Copies of Proposed Rule**

The administrative rule and fiscal note are available on the internet at <http://dpi.wi.gov/pb/rulespg.html>. A copy of the proposed rule and the fiscal estimate also may be obtained by sending an email request to [lori.slauson@dpi.wi.gov](mailto:lori.slauson@dpi.wi.gov) or by writing to:

Lori Slauson  
Administrative Rules and Federal Grants Coordinator  
Department of Public Instruction  
125 South Webster Street  
P.O. Box 7841  
Madison, WI 53707

**Submission of Written Comments**

Written comments on the proposed rules received by Ms. Slauson at the above mail or email address no later than April 6, 2009, will be given the same consideration as testimony presented at the hearing.

**Analysis Prepared by Department of Public Instruction****Statute interpreted**

Section 115.43, Stats.

**Statutory authority**

Section 115.43 (2) (c), Stats.

**Explanation of agency authority**

Section 115.43 (2) (c), Stats., gives the department the authority, in consultation with postsecondary educational institutions, to promulgate rules establishing criteria for the review and approval of applications for scholarships under the precollege scholarship program.

**Related statute or rule**

N/A.

**Plain language analysis**

2007 Wisconsin Act 20, the biennial budget bill, modified the Minority Group Pupil Precollege Scholarship Program under ss. 115.28 (23) and 115.43, Stats., to change the eligibility criteria from being a minority pupil to being an economically disadvantaged pupil.

The corresponding rules under ch. PI 22, Wis. Adm. Code, are being modified to reflect the statutory language and current administration of the program. In addition, the proposed rules clarify:

- That precollege scholarships are *awarded* to economically disadvantaged pupils but *paid* to the postsecondary educational institution providing the precollege program in which the pupil is enrolled.
- That the precollege program provided by the postsecondary educational institution must meet certain requirements in order to be eligible under the program.
- That pupils do not have to apply to the department for a precollege scholarship, but must apply to a postsecondary educational institution offering a precollege program.
- That pupils may receive three scholarship awards per year and are no longer limited to receiving only one scholarship per semester or summer.

**Comparison with federal regulations**

N/A

**Comparison with rules in adjacent states**

Illinois, Iowa, Michigan, and Minnesota do not have rules relating to scholarships for economically disadvantaged children to attend precollege programs at postsecondary educational institutions.

**Summary of factual data and analytical methodologies**

In addition to the modifications made as a result of 2007 Wisconsin Act 20, modifications are made to clarify current practice and statutory intent. For instance, s. 115.43 (2) (b), Stats., requires that precollege scholarships be made on a competitive basis. It is unclear if it is the pupils or the postsecondary educational institutions that must compete. The current rules are also unclear. The rule modifications clarify that it is the postsecondary educational institutions that must meet certain requirements and thus “compete” for scholarship pupils to attend its institution and receive payment for those pupils.

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

N/A

**Anticipated costs incurred by private sector**

N/A

**Small Business Impact**

The proposed rules will have no significant economic impact on small businesses, as defined in s. 227.114 (1) (a), Stats.

**Fiscal Estimate**

Under s. 20.255 (3) (fz), Stats., precollege scholarships are awarded to eligible pupils that attend postsecondary educational institutions offering precollege programs designed to improve pupils’ academic skills necessary for success in college and technical college studies.

The rule modifies criteria and procedures for awarding scholarships under this program. The rules will have no fiscal effect on local governments or small businesses as defined in s. 227.114 (1) (a), Stats.

The costs associated with administering this grant program will be absorbed by the department.

**Agency Contact Person**

Kevin Ingram, Director  
Educational Opportunity Programs and Urban Education  
Phone: (414) 227–4413  
Email: kevin.ingram@dpi.wi.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.*

### **Administration**

#### **CR 08-033**

A rule-making order revising Chapter VFF-EMT 1, relating to the Service Award Program for volunteer fire fighters, emergency medical technicians and first responders.

### **Health Services**

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

#### **CR 08-098**

A rule-making order revising Chapter DHS 12, relating to personal care worker crimes list.

### **Natural Resources**

#### ***Fish, Game, etc., Chs. NR 1—***

#### **CR 08-083**

A rule-making order amending Chapter NR 27, relating to the removal of Trumpeter Swan from the endangered species list and Osprey from the threatened species list.

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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.*

### **Financial Institutions — Securities** **CR 08-095**

Revises Chapters DFI-Sec 4 and 5, and creates 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.  
Effective 4-1-09.

### **Transportation** **CR 08-080**

Creates Chapter Trans 145, relating to neighborhood electric vehicles.  
Effective 5-1-09.

### **Transportation** **CR 08-100**

Revises Chapters Trans 325, 326 and 327, relating to motor carrier safety and hazardous material transportation safety.  
Effective 5-1-09.

### **Transportation** **CR 08-101**

Revises Chapter Trans 276, relating to allowing the operation of certain 2-vehicle combinations on certain highways without a permit.  
Effective 5-1-09.