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## WISCONSIN ADMINISTRATIVE REGISTER

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## Emergency Rules Now in Effect

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

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

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

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

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

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

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

**Publication Date:** September 2, 2011  
**Effective Dates:** September 2, 2011 through January 29, 2012  
**Hearing Date:** October 5, 2011

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### Children and Families

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

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

#### Exemption From Finding of Emergency

Section 14m (b) of 2009 Wisconsin Act 335 provides that the department is not required to provide evidence that promulgating a rule under s. 48.625 (1g), Stats., as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency.

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

**Publication Date:** September 2, 2010  
**Effective Dates:** September 2, 2010 through the date permanent rules become effective  
**Hearing Date:** October 21, 2010

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### Employment Relations Commission

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

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

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

#### Finding of Emergency

An emergency exists because the public peace, health, safety and welfare necessitate putting these rules into effect so that the Wisconsin Employment Relations Commission can meet its election obligations under ss. 111.70 (4) (d) 3. b. and 111.83 (3) (b), Stats., and nonstatutory provisions ss. 9132 (1) (b) and 9155 (1) (b) of 2011 Wisconsin Act 10 as amended by nonstatutory provisions ss. 3570f and 3570h of 2011 Wisconsin Act 32.

**Publication Date:** September 15, 2011  
**Effective Dates:** September 15, 2011 thru February 12, 2012  
**Extension Through:** April 12, 2012  
**Hearing Date:** February 2, 2012

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### Insurance (2)

**1. EmR1117** — Rule adopted to revise **Chapter Ins 18**, relating to grievances and independent review requirements and affecting small business.

The statement of scope for this rule, SS 027–11 Ch. Ins 18, was approved by the governor on September 30, 2011, published in Register No. 670, on October 14, 2011, and approved by the Commissioner Theodore Nickel on October 26, 2011. The emergency rule was approved by the governor on November 3, 2011.

#### Finding of Emergency

The Commissioner of Insurance finds that an emergency exists and that the attached proposed emergency rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. Portions of Wisconsin's insurance law and regulations governing grievances and independent review processes are in conflict with federal law and regulation following the amendment of 42 USC 300gg 19 (a) and (b), as implemented by 45 CFR 147.136, as amended. Therefore, the Commissioner, pursuant to s. 631.01 (5), Stats., has determined that it is in the interest of the State of Wisconsin, Wisconsin insureds and the public to exempt

insurers, certified independent review organizations and self-insured governmental health plans that elect to comply with ch. Ins 18, Wis. Adm. Code, as revised, from being required to comply with provisions contained in s. 632.83 and 632.835, Stats., that are inconsistent with 42 USC 300gg-19 (a) and (b), and 45 CFR 147.136 et seq., as amended.

Facts constituting the emergency arise from the desire for the State of Wisconsin to retain jurisdiction and regulatory control over the grievance and the independent review processes and independent review organizations operating in the state. The Secretary of the US Department of Health and Human Services issued interim final regulations and guidance, most recently released late June 2011. The regulations require states that desire to retain regulatory oversight of the grievance and independent external review processes, to demonstrate compliance with the federal internal appeal and external review laws and regulations to the Center for Consumer Information and Insurance Oversight (“CCIIO”). The Commissioner received notice on July 29, 2011, from CCIIO that Wisconsin’s current regulatory oversight is not compliant.

The Commissioner has requested reconsideration of that initial determination, however, to ensure retention of regulatory oversight of the grievance and independent external review processes revisions to ch. Ins 18, Wis. Adm. Code, must be made and be applicable for claims arising on or after January 1, 2012. Assembly Bill 210 has been introduced, a bill that repeals inconsistent provisions in accordance with federal requirements, but it is unlikely that AB 210 will be enrolled within the reconsideration timeframe. Therefore the Commissioner is proposing this emergency rule to comply with the federal requirements in order to retain regulatory jurisdiction of grievance and independent review processes.

**Publication Date:** November 16, 2011

**Effective Dates:** November 16, 2011 through April 13, 2012

**Repealed by EmR1119:** December 29, 2011

**2. EmR1119** — Rule to repeal EmR1117, which was to revise **Chapter Ins 18**, relating to grievances and independent review requirements, and affecting small business.

The emergency rule was approved by the governor on December 27, 2011.

The statement of scope SS 045-11 was approved by the governor on December 1, 2011, and published December 14, 2011 in Register No. 672. The Statement of Scope was signed by Commissioner Nickel on December 24, 2011.

#### **Finding of Emergency**

The Commissioner of Insurance finds that an emergency exists and that the attached proposed emergency rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. Emergency Rule 1117 (EmR1117), was effective November 16, 2011 and is to be first applicable on January 1, 2012. EmR1117 contained provisions modifying Wisconsin’s insurance regulations governing grievances and independent review processes to comply with federal law provisions of 42 USC 300gg 19 (a) and (b), as implemented by 45 CR 147.136, as amended. It has been determined that this may not be in the best interest of the state.

The proposed emergency rule will repeal EmR1117 in its entirety and maintain Wisconsin’s prior existing regulations

and oversight of the grievance and independent review process. To avoid full implementation of EmR1117 and industry and consumer confusion, the Commissioner has determined that this emergency rule must be effective prior to January 1, 2012.

**Publication Date:** December 29, 2011

**Effective Dates:** December 29, 2011 through May 26, 2012

**Hearing Date:** January 26, 2012

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### **Justice (2)**

**1. EmR1114** — Rule to create **Chapter Jus 17** and **Chapter Jus 18**, relating to licenses authorizing persons to carry concealed weapons; concealed carry certification cards for qualified former federal law enforcement officers; and the certification of firearms safety and training instructors.

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

The statement of scope for this rule, SS 020-11, was approved by the governor on August 31, 2011, published in Register No. 669, on September 14, 2011, and approved by Attorney General J.B. Van Hollen on September 26, 2011.

#### **Finding of Emergency**

Under section 101 of 2011 Wis. Act 35, most of the provisions of that Act — including the provisions governing the licensing and certification processes covered by the rules proposed here and the provisions authorizing the carrying of a concealed weapon by the holder of a license, an out-of-state license, or a certification card — will have an effective date of November 1, 2011. In particular, s. 175.60 (9), Stats., will require DOJ to begin receiving and processing license applications and issuing or denying licenses as soon as that provision takes effect on November 1, 2011. The Legislature has thus determined that the public welfare requires the licensing system to take effect on November 1, 2011.

DOJ cannot comply with the requirements of s. 175.60 (9), Stats., and related statutory requirements until it has in effect administrative rules establishing the procedures and standards that will govern DOJ’s enforcement and administration of those requirements. It follows that, in order for DOJ to meet its statutory duties that take effect on November 1, 2011, it must complete the promulgation of such administrative rules prior to that date.

Under the non-emergency rulemaking procedures of ch. 227, Stats., before the proposed rules could be promulgated, numerous notice, hearing, and publication requirements would have to be fulfilled — including, but not limited to a public hearing on the proposed rules, preparation of a detailed report including a summary of public comments and DOJ’s responses to those comments, and legislative review of the proposed rules. DOJ has determined that it is impossible for all of the required steps in that non-emergency rulemaking process to be completed by November 1, 2011. Only if DOJ utilizes the emergency rulemaking procedures of s. 227.24, Stats., can the requisite rules be promulgated and in effect in time for DOJ to meet its statutory duties that take effect on November 1, 2011. The public welfare thus necessitates that the proposed rules be promulgated as emergency rules under s. 227.24, Stats. Once the proposed emergency rules have been promulgated, DOJ will promptly follow up with the promulgation of a permanent version of the rules under the full rulemaking procedures.

**Publication Date:** October 25, 2011  
**Effective Dates:** November 1, 2011 through March 29, 2012  
**Extension Through:** April 12, 2012

**2. EmR1115** — Rule to create **section Jus 17.13**, relating to the recognition by Wisconsin of concealed carry licenses issued by other states.

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

The statement of scope for this rule, SS 009–11, was approved by the governor on August 4, 2011, published in Register No. 668, on August 31, 2011, and approved by Attorney General J.B. Van Hollen on September 12, 2011.

#### Finding of Emergency

Section 100 (1) of 2011 Wis. Act 35 expressly authorizes and requires DOJ to use the emergency rulemaking procedures of s. 227.24, Stats., to promulgate the emergency rule required under s. 165.25 (12), Stats., and further provides that DOJ is not required to provide evidence that promulgating this rule as an emergency rule is necessary for the preservation of public peace, health, safety, or welfare.

**Publication Date:** October 25, 2011  
**Effective Dates:** November 1, 2011 through March 29, 2012

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### Natural Resources ()

#### *Fish, Game, etc., Chs. NR 1—*

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

#### Exemption From Finding of Emergency

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

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

**2. EmR1111** — Rule to repeal and recreate **sections NR 10.01 (1) (b), (g) and (u) and 10.32** and to amend **section NR**

**10.01 (1) (v)**, relating to hunting and the 2011 migratory game bird seasons and waterfowl hunting zones.

#### Finding of Emergency

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

**Publication Date:** September 3, 2011  
**Effective Dates:** September 3, 2011 through January 30, 2012  
**Hearing Date:** October 3, 2011

**3. EmR1116** — Rule to amend **section NR 25.05 (1) (c)**, relating to commercial fishing in outlying waters.

This emergency rule was approved by the governor on October 19, 2011.

The statement of scope for this rule, SS 023–11, was approved by the governor on September 15, 2011, published in Register No. 669, on September 30, 2011, and approved by The Natural Resources Board on October 26, 2011.

#### Finding of Emergency

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

The current commercial season for whitefish from Lake Michigan and Green Bay closes one week before the season closure for state-licensed fishers in the State of Michigan. This limitation on fishing opportunities threatens the welfare of state-licensed commercial fishers in Wisconsin and makes these Wisconsin businesses less competitive with counterparts in Michigan. The additional business revenue, approximately \$161,300, and improved competitiveness of the commercial fishing industry, rises to the standard of preservation and improvement of the public welfare required for emergency rule making.

The number of commercial fishers has been declining over the last 20 years from 145 to 57. While some of this decline has been due to consolidation, some of the reduction is due to adverse economics of the industry. This rule requires emergency action to enhance public welfare as it applies to the economic health of the commercial fishing industry, which requested this rule change.

**Publication Date:** October 26, 2011  
**Effective Dates:** October 26, 2011 through March 23, 2012

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### Revenue

**EmR1201** — Rule to revise **section Tax 7.23**, relating to the activities of brewers, bottlers, out-of-state shippers, and wholesalers.

The scope statement for this rule, SS 018–11, was approved by the governor on August 16, 2011, published in Register No.

669 on September 14, 2011, and approved by the Secretary of Revenue on September 26, 2011.

### **Finding of Emergency**

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

The emergency rule is to administer the provisions of ss. 125.28 (5) (e) and 125.29 (3), Stats., as created by 2011 Wisconsin Act 32, and reflect revisions made by the Act to the authorized activities of persons holding wholesalers' and brewers' permits.

It is necessary to promulgate this rule order so that the above provisions may be administered in a fair and consistent manner.

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

**Publication Date:** January 27, 2012  
**Effective Dates:** January 27, 2012 through June 24, 2012  
**Hearing Date:** February 27, 2012  
 (See the Notice in this Register)

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

**EmR0827** — Rule adopted creating **section RL 91.01 (3) (k)**, relating to training and proficiency in the use of automated external defibrillators for certification as a massage therapist or bodyworker.

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

Section 41 (2) (b) of the nonstatutory provisions of 2007 Wisconsin Act 104 provides that notwithstanding section 227.24 (1) (a) and (3) of the statutes, the department of regulation and licensing is not required to provide evidence that promulgating a rule as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated to implement 2007 Wisconsin Act 104. Notwithstanding section 227.24 (1) (c) and (2) of the statutes, these emergency rules will remain in effect until the date on which the final rules take effect.

**Publication Date:** September 10, 2008  
**Effective Dates:** September 10, 2008 through the date on which the final rules take effect  
**Hearing Date:** November 26, 2008  
 April 13, 2009

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## Scope Statements

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### Justice

#### SS 010–12

This statement of scope was approved by the governor on February 15, 2012.

#### Rule No.

The proposed emergency rules will be numbered Wis. Admin. Code section Jus 17.01 through 17.13 and Jus 18.01 through 18.10 and will replace the existing emergency rules bearing the same numbers.

#### Relating to

Licenses authorizing persons to carry concealed weapons; concealed carry certification cards for qualified former federal law enforcement officers; and the certification of firearm safety and training instructors.

#### Description of the Objectives of the Rules

The State of Wisconsin Department of Justice (“DOJ”) proposes to promulgate emergency administrative rules relating to the implementation of DOJ’s statutory responsibilities under 2011 Wis. Act 35 regarding licenses authorizing persons to carry concealed weapons, the certification of firearm safety and training instructors, the recognition by Wisconsin of concealed carry licenses issued by other states, and concealed carry certification cards for qualified former federal law enforcement officers.

The proposed emergency rules will correspond to and have the same scope as the emergency rules covering the same subjects which were adopted by DOJ on October 25, 2011, with an effective date of November 1, 2011, and which are currently in effect.

The need for these emergency rules arises out of the November 7, 2011, action of the Joint Committee for the Review of Administrative Rules (“JCRAR”). On that date, acting pursuant to Wis. Stat. s. 227.26 (2) (d), JCRAR suspended the following portions of the emergency rules that were adopted on October 25, 2011:

- Portion of section Jus 17.03 (8) requiring that a “firearms safety or training course” be reasonably calculated to “test” a student’s comprehension and application of firearm safety rules and safe firearm handling;
- Portion of section Jus 17.03 (8) requiring that a “firearms safety or training course” include “at least four hours” of training;
- Portion of section Jus 17.03 (13) requiring that a “national or state organization that certifies firearms instructors” must “require[] firearms instructors to successfully complete instructor training of at least eight hours in length;”
- Section Jus 17.05 (2) (c), requiring that documentation of a license applicant’s firearms training must include the “length in hours of the firearms safety or training course;”
- Section Jus 17.05 (2) (e), requiring that documentation of a license applicant’s firearms training must include “the city and state in which the applicant completed the firearms safety or training course;”
- Section Jus 17.05 (2) (f), requiring that documentation of a license applicant’s firearms training must include “the name, address and telephone number of the person or entity responsible for the firearms safety or training course;” and
- Section Jus 17.05 (2) (h), requiring that documentation of a license applicant’s firearms training must include a “signed statement by the instructor who taught the firearms safety or training course to the applicant affirming that the course satisfied the definition of a firearms safety or training course in section Jus 17.03 (8) and that the applicant successfully completed the course.”

On November 10, 2011, while the suspension of the above portions of the emergency rules was in effect, DOJ submitted for the Governor’s approval a scope statement for proposed permanent rules corresponding to and covering the same subjects as the emergency rules. Under that scope statement, the proposed permanent rules are not to include the substance of any of the provisions that had been suspended by JCRAR. On December 19, 2011, the Governor approved that scope statement. The scope statement for the permanent rules was subsequently published and received final approval from the Attorney General on January 10, 2012. *See* Wis. Stat. s. 227.135 (2). Since that time, DOJ has been engaged in the process of drafting proposed permanent rules which — consistent with the approved scope statement — will not include the substance of any of the provisions in the emergency rules that had been suspended by JCRAR.

Under Wis. Stat. s. 227.26 (2) (i), if a bill supporting JCRAR’s suspension action of November 7, 2011, is not enacted into law by the end of the current legislative session on March 15, 2012, then the suspension would be lifted and the original version of the emergency rules — including the previously suspended portions — would go back into legal effect. At that point, the emergency rules in effect would be inconsistent both with the emergency rules as they have been administered by DOJ since November 7, 2011, and with the proposed permanent rules, the scope of which has already been approved by the Governor and the Attorney General. Any such lack of continuity in the operation of DOJ’s concealed carry rules would be confusing and disruptive both for permit applicants and for DOJ staff administering the concealed carry permit program.

The rules proposed here would prevent such a discontinuity in the operation of the concealed carry rules by re-promulgating the existing emergency rules in their entirety, with the exception of those portions that were suspended by JCRAR on November 7, 2011. The promulgation of emergency rules in this revised form will ensure that the operation of the rules remains consistent through the completion of the permanent rulemaking process that is already under way.

As previously noted, the emergency rules proposed here will cover the same subject areas covered by the existing emergency rules and the proposed permanent rules. There are five such subject areas:

First, there are rules governing the issuance of concealed carry licenses to qualified applicants by DOJ pursuant to s. 175.60, Stats. These rules govern all aspects of the licensing process and describe the procedures and standards under which DOJ processes applications, sets and collects fees, and verifies that each license applicant meets all of the license eligibility requirements under s. 175.60 (3), Stats., including procedures and standards for certifying that an applicant has satisfied the applicable statutory training requirements and procedures for conducting the statutorily required background check of each applicant to determine whether the applicant is prohibited from possessing a firearm under state or federal law.

Second, the rules govern the administration of concealed carry licenses that have been issued by DOJ. These rules cover: the maintenance and treatment of licensing records by DOJ; the receipt and processing by DOJ of information from courts regarding individuals subject to a court imposed disqualification from possessing a dangerous weapon; procedures for renewing a license and replacing a license that is lost, stolen, or destroyed; procedures for processing address changes or name changes by licensees; procedures and standards for revoking or suspending a license; procedures for the administrative review by DOJ of any denial, suspension, or revocation of a license; and procedures governing DOJ's cooperation with courts and law enforcement agencies in relation to emergency licenses issued by a court.

Third, the rules govern the procedures and standards for the qualification and certification of firearms instructors by DOJ under s. 175.60 (4) (b), Stats., and provide a definition identifying those firearm instructors who are certified by a national or state organization, as provided in s. 175.60 (4) (a), Stats.

Fourth, pursuant to s. 165.25 (12m), Stats., the rules designate those states other than Wisconsin that issue a permit, license, approval, or other authorization to carry a concealed weapon that is entitled to recognition in Wisconsin under s. 175.60 (1) (f), Stats., because the permit, license, approval, or other authorization requires, or designates that the holder chose to submit to, a background search that is comparable to the type of background check that DOJ is required to conduct for Wisconsin licensees under s. 175.60 (9g), Stats.

Fifth, the rules govern the procedures and standards under which DOJ issues concealed carry certification cards to qualified former federal law enforcement officers pursuant to s. 175.49, Stats. These rules govern all aspects of the certification process for former federal officers who reside in Wisconsin and describe the procedures and standards under which DOJ processes applications, sets and collects fees, and verifies that each applicant meets all of the certification eligibility requirements under s. 175.49 (3) (b), Stats., including procedures and standards for certifying that an applicant has satisfied the firearm qualification requirement under s. 175.49 (3) (b) 5., Stats., and procedures for conducting the statutorily required background check of each applicant to determine whether the applicant is prohibited from possessing a firearm under federal law. The rules also cover: the maintenance and treatment of certification records by DOJ; procedures for renewing a certification card and replacing a card that is lost, stolen, or destroyed; procedures for processing address changes or name changes by a certified

former federal officer; procedures and standards for revoking or suspending a certification; and procedures for the administrative review by DOJ of any denial, suspension, or revocation of a certification.

### **Description of Existing Policies Relevant to the Rule and of New Policies Proposed to be Included in the Rule and an Analysis of Policy Alternatives; the History, Background and Justification for the Proposed Rule**

In 2011 Wisconsin Act 35, the state of Wisconsin established a new system under which DOJ is required to issue licenses authorizing eligible Wisconsin residents to carry concealed weapons in Wisconsin and to certify firearms safety and training instructors. The legislation also authorizes DOJ to issue concealed carry certification cards to qualified former federal law enforcement officers who reside in Wisconsin. Because the concealed carry licensing and certification programs established by Act 35 are new, there are no existing DOJ practices or policies that cover the subject areas of the administrative rules here proposed other than the emergency rules that went into effect on November 1, 2011.

Most of the proposed rules simply carry into effect the legislative directives set forth in Act 35. In a few areas, the proposed rules articulate policies which give substance to undefined statutory terms or are needed to ensure that licenses and certification cards are issued only to eligible individuals and that all applicants and licensees are properly identified at all times. Such rules are specifically intended to carry out the legislature's intent reflected in Act 35.

For example, the proposed rules provide definitions of such undefined statutory terms as "firearms safety or training course" and "national or state organization that certifies firearms instructors." Such definitions are necessary to give substantive content to these otherwise undefined statutory terms so as to carry out the legislative purposes of ensuring that all licensees have been trained in firearms and firearms safety and of ensuring that all certified firearms instructors have demonstrated the ability and knowledge required for providing training in firearms and firearms safety. The policy alternative of not defining such terms in DOJ's administrative rules would be contrary to those important legislative purposes.

Similarly, the proposed rules specify the types of information that must be included in a training certificate or affidavit in order for DOJ to find that certificate or affidavit to be sufficient to satisfy the training documentation requirements in s. 175.60 (4) (a), Stats. Such specification is necessary to give substantive content to the statutory documentation requirements so as to carry out the legislative purpose of ensuring that every successful applicant for a concealed carry license has adequately demonstrated completion of at least one of the forms of statutorily required training. The policy alternative of not specifying the required contents of an acceptable training certificate or affidavit in DOJ's administrative rules would be contrary to that important legislative purpose.

Likewise, the proposed rule designating those states other than Wisconsin that conduct a background check for concealed carry licensees comparable to Wisconsin's background check is necessary to comply with the statutory requirement of s. 165.25 (12m), Stats. That rule enables law enforcement officers and others to determine whether a particular concealed carry license issued by another state is entitled to recognition as an "out-of-state license" as defined in s. 175.60 (1) (f), Stats. The alternative of not promulgating such a rule would violate the requirements of s. 165.25 (12m),

Stats. and would be contrary to the purpose of facilitating recognition of out-of-state licenses.

The proposed rules also contain procedures for issuing a new concealed carry license or certification card to an individual who changes his or her name, and procedures under which DOJ will work cooperatively with courts and law enforcement agencies in relation to any emergency concealed carry license that may be issued by a court, pursuant to s. 175.60 (9r). These procedures are not specifically required by statute but are necessary to carry out the legislative purposes of ensuring that licenses and certification cards are issued only to eligible individuals and that all applicants and licensees are properly identified at all times. The policy alternative of not including such procedures in DOJ's administrative rules would be contrary to those important legislative purposes.

### **Statutory Authority for the Rule (Including the Statutory Citation and Language)**

#### **A. Section 175.60 (7), Stats.**

Those portions of the proposed rules that establish the amount of the fee to be charged for a concealed carry license are expressly and specifically authorized and required by s. 175.60 (7), Stats., which provides:

**SUBMISSION OF APPLICATION.** An individual may apply for a license under this section with the department by submitting, by mail or other means made available by the department, to the department all of the following:

(c) A license fee in an amount, as determined by the department by rule, that is equal to the cost of issuing the license but does not exceed \$37. The department shall determine the costs of issuing a license by using a 5-year planning period.

#### **B. Section 175.60(14g), Stats.**

Those portions of the proposed rules that establish procedures for the administrative review by DOJ of any denial, suspension, or revocation of a license are expressly and specifically authorized by s. 175.60 (14g), Stats., which provides:

**DEPARTMENTAL REVIEW.** The department shall promulgate rules providing for the review of any action by the department denying an application for, or suspending or revoking, a license under this section.

#### **C. Section 175.60 (15) (b), Stats.**

Those portions of the proposed rules that establish the amount of the fee to be charged for the renewal of a concealed carry license are expressly and specifically authorized by s. 175.60 (15) (b), Stats., which provides:

The department shall renew the license if, no later than 90 days after the expiration date of the license, the licensee does all of the following:

4. Pays all of the following:

a. A renewal fee in an amount, as determined by the department by rule, that is equal to the cost of renewing the license but does not exceed \$12. The department shall determine the costs of renewing a license by using a 5-year planning period.

#### **D. Section 227.11 (2) (a), Stats.**

Those portions of the proposed rules that are not specifically authorized by ss. 175.60 (7), (14g), and (15) (b), Stats., as

described above, are authorized by s. 227.11 (2) (a), Stats., which provides:

(2) Rule-making authority is expressly conferred as follows:

(a) Each agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute, but a rule is not valid if the rule exceeds the bounds of correct interpretation. All of the following apply to the promulgation of a rule interpreting the provisions of a statute enforced or administered by an agency:

1. A statutory or nonstatutory provision containing a statement or declaration of legislative intent, purpose, findings, or policy does not confer rule-making authority on the agency or augment the agency's rule-making authority beyond the rule-making authority that is explicitly conferred on the agency by the legislature.

2. A statutory provision describing the agency's general powers or duties does not confer rule-making authority on the agency or augment the agency's rule-making authority beyond the rule-making authority that is explicitly conferred on the agency by the legislature.

3. A statutory provision containing a specific standard, requirement, or threshold does not confer on the agency the authority to promulgate, enforce, or administer a rule that contains a standard, requirement, or threshold that is more restrictive than the standard, requirement, or threshold contained in the statutory provision.

This statute expressly confers on DOJ the general power to determine whether administrative rules interpreting those statutory provisions in Act 35 that are to be enforced or administered by DOJ are necessary to effectuate the purpose of those statutory provisions and, if such necessity is found, to promulgate such administrative rules, as long as those rules do not exceed the bounds of correct interpretation of the governing statutes.

DOJ finds that the rules here proposed are necessary to effectuate those portions of ss. 175.49 and 175.60 that require DOJ to establish and operate procedures governing:

- the issuance of concealed carry licenses to qualified applicants, including verification that each applicant has satisfied the applicable statutory training requirements, has passed the mandatory background check, and has met all of the other statutory eligibility requirements for a license;
- the issuance of concealed carry certification cards to qualified former federal law enforcement officers residing in Wisconsin, including verification that each applicant has satisfied the applicable firearm certification requirements, has passed the mandatory background check, and has met all of the other statutory eligibility requirements for certification;
- the administration of concealed carry licenses and certifications that have been issued by DOJ, including the maintenance and treatment of records; the receipt and processing of information from courts about individuals subject to a court-imposed disqualification from possessing a dangerous weapon; the renewal of licenses and certifications and the replacement of those that are lost, stolen, or destroyed; the processing of address changes or name changes for licenses and certifications; procedures and standards

for revoking or suspending a license or certification; procedures for the administrative review by DOJ of any denial, suspension, or revocation of a license or certification; and procedures governing DOJ's cooperation with courts and law enforcement agencies in relation to emergency licenses issued by a court; and

- the qualification and certification of firearms instructors by DOJ and the identification of those firearm instructors who are certified by a national or state organization.

DOJ further finds that the rules here proposed:

- do not exceed the bounds of correct interpretation of ss. 175.49 or 175.60;
- are authorized by the statutes described above and are not based on authority derived from any other statutory or nonstatutory statements or declarations of legislative intent, purpose, findings, or policy;
- are authorized as necessary interpretations of the specific requirements of ss. 175.49 and 175.60 and are not based on authority derived from any other general powers or duties of DOJ; and
- do not impose any standards or requirements that are more restrictive than the standards and requirements contained in ss. 175.49 and 175.60.

For these reasons, those portions of the proposed rules that are not specifically authorized by ss. 175.60 (7), (14g), and (15) (b), Stats., are authorized by s. 227.11 (2) (a), Stats.

#### E. Section 227.24 (1) (a), Stats.

The rules proposed here may be promulgated as emergency rules under s. 227.24 (1) (a), Stats., which provides:

An agency may promulgate a rule as an emergency rule without complying with the notice, hearing and publication requirements under this chapter if preservation of the public peace, health, safety or welfare necessitates putting the rule into effect prior to the time it would take effect if the agency complied with the procedures.

DOJ finds that the public welfare necessitates promulgating the proposed rules as emergency rules under s. 227.24 (1) (a), Stats. For the reasons already described in Section 1 above, in order to ensure continuity and avoid confusion and disruption in the operation of the rules governing the concealed carry permit program, it is necessary for DOJ to promulgate revised emergency rules that do not include the provisions of the existing emergency rules that were suspended by JCRAR on November 7, 2011. The preservation of such continuity and the avoidance of such confusion and disruption is plainly in the public interest. The public welfare thus necessitates that the proposed rules be promulgated as emergency rules under s. 227.24, Stats. Once these emergency rules have been promulgated, DOJ will continue the permanent rulemaking process that is already under way.

#### **Estimate of the Amount of Time that State Employees will Spend to Develop the Rule and of Other Resources Necessary to Develop the Rule**

It is estimated that state employees will spend approximately 10 hours on the rulemaking process for the

emergency rules proposed here, primarily for compliance with required rulemaking procedures.

#### **Description of all Entities that may be Impacted by the Rule**

The proposed rules governing procedures and standards for the issuance and administration of concealed carry licenses under s. 175.60, Stats., directly affect the interests of all Wisconsin residents who wish to apply for a license to carry a concealed weapon. In addition, the proposed rules also indirectly affect the interest of the general public to the extent that the proper training and licensing of concealed carry licensees generally affects public safety.

The proposed rules governing procedures and standards for the issuance and administration of certification cards under s. 175.49 (3), Stats., directly affect the interests of all former federal law enforcement officers residing in Wisconsin who wish to apply for such certification. In addition, the proposed rules also indirectly affect the interest of the general public to the extent that the proper firearm certification of former law enforcement officers generally affects public safety.

The proposed rules governing the procedures and standards for the qualification and certification of firearms instructors by DOJ under s. 175.60 (4) (b), Stats., directly affect the interests of all eligible persons who wish to apply for such certification. The proposed rules identifying those firearm instructors who are certified by a national or state organization, as provided in s. 175.60 (4) (a), Stats., directly affect the interests of all persons who wish to claim such certification as a basis for providing training in firearms and firearm safety under that statute. In addition, the proposed rules also indirectly affect the interest of the general public to the extent that the proper certification of firearms instructors generally affects public safety.

#### **Summary and Preliminary Comparison of any Existing or Proposed Federal Regulation that is Intended to Address the Activities to be Regulated by the Rule**

For persons other than current and former law enforcement officers, the regulation of the carrying of concealed weapons is primarily governed at the state level. Numerous federal statutes and regulations restrict the possession of weapons that have been shipped in interstate commerce, but there are no federal regulations that relate to the licensing of concealed carry by such persons, nor are there federal regulations governing the certification of firearms instructors for concealed carry purposes.

For qualified current and former law enforcement officers, state and local laws restricting the carrying of concealed firearms are federally preempted by 18 U.S.C. ss. 926B–926C (commonly referred to as “H.R. 218”). The provisions in 2011 Wis. Act 35 related to qualified current and former law enforcement officers are state–law codifications of the corresponding provisions in H.R. 218. Similarly, the rules proposed here governing procedures and standards for the issuance and administration of concealed carry certification cards for qualified former federal law enforcement officers also codify corresponding provisions in the federal law.

#### **Contact Person**

Assistant Attorney General Clayton P. Kawski, (608) 266–7477.

## Natural Resources

### *Fish, Game, etc., Chs. NR 1—*

#### SS 008–12

This statement of scope was approved by the governor on February 15, 2012.

#### Rule No.

WM–05–12(E) (Revises Chapter NR 10)

#### Relating to

Reestablishing a four day, October, antlerless–only firearm deer season in the CWD Management Zone.

#### Description of the Objective of the Rule

This emergency rule proposal would re–establish the annual October, antlerless–only, four day firearm deer season that has been held in the chronic wasting disease management zone.

#### Description of Existing Policies Relevant to the Rule and of New Policies Proposed to be Included in the Rule and an Analysis of Policy Alternatives; the History, Background and Justification for the Proposed Rule

Under 2011 ACT 50, if the department elects to continue holding the four day, antlerless–only, firearm deer season prior to the traditional nine day firearm season, it must do so by enacting emergency rules each year. This season may only be held in areas where a chronic wasting disease management zone has been established. The season would begin on Thursday, October 11.

Since 2002, the department has held an October firearm deer season to provide hunting opportunity and for herd management and disease control purposes in the chronic wasting disease management zone. Deer population reduction is the available disease control method most likely to be effective in controlling CWD in free–ranging deer. Over the past 50 years, regulated hunting has been shown to be an ecologically sound, socially beneficial, and fiscally responsible method of managing deer populations. Hunter harvest in the CWD Management Zone during the past eight years appears to have reduced the deer population in this region, although it has not been sufficient to cause substantial, widespread population decline. An October season helps maintain a consistent hunting–season structure that improves hunter understanding of regulations and enhances both compliance and enforcement of those regulations. A consistent season framework also makes it easier to evaluate management efforts.

#### Statutory Authority for the Rule (Including the Statutory Citation and Language)

In promulgating this rule, ss. 29.014, 29.016 (2) (b), 29.063 and 227.24, Stats., have been interpreted as providing the department with the authority to make modifications to deer hunting seasons.

#### Estimate of the Amount of Time that State Employees will Spend to Develop the Rule and of Other Resources Necessary to Develop the Rule

Approximately 73 hours will be needed by the department prior to and following adoption by the board.

#### Description of all Entities that may be Impacted by the Rule

Interested groups and individuals are those who are concerned about deer management including hunters and people whose interests involve agriculture, environment, forestry, wildlife viewing, and non–hunting related outdoor recreation that occurs during deer hunting seasons.

#### Summary and Preliminary Comparison of any Existing or Proposed Federal Regulation that is Intended to Address the Activities to be Regulated by the Rule

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

#### Anticipated Economic Impact of the Rule

No economic impacts are anticipated. The hunting season framework proposed in this rule is identical to the season framework that was in place during the previous season.

#### Contact Person

Scott Loomans, Wildlife Regulation Policy Specialist, 101 S. Webster Street, PO Box 7921, Madison WI 53707–7921, (608) 267–2452 or Kevin Wallenfang, Big Game Specialist, 101 S. Webster Street, PO Box 7921, Madison WI 53707–7921, (608) 261–7589.

## Natural Resources

### *Fish, Game, etc., Chs. NR 1—*

#### SS 009–12

This statement of scope was approved by the governor on February 15, 2012.

#### Rule No.

WM–03–12(E) (Revises Chapter NR 10)

#### Relating to

Modifying Chapter NR 10 related to the bobcat hunting and trapping season.

#### Description of the Objective of the Rule

This rule would establish the 2012 bobcat hunting and trapping season framework.

#### Description of Existing Policies Relevant to the Rule and of New Policies Proposed to be Included in the Rule and an Analysis of Policy Alternatives; the History, Background and Justification for the Proposed Rule

Through this rulemaking, the department will propose continuing the current trial bobcat season framework that was split into two separate time periods in 2010 and 2011. The alternatives to be considered are reverting back to a single, straight season framework, or extending the trial period in order to allow additional evaluation.

In 2010 and 2011, the bobcat season was split into two separate permit periods: the Saturday nearest Oct. 17 – Dec. 25 and Dec. 26 to Jan 31. There appears to have been public support for the new season framework and the opinion of department staff is that it provides the tools for sound use, management and protection of the bobcat resource. If emergency rules are not promulgated, the season automatically reverts back to a single permit period beginning

on the Saturday nearest October 17 and continuing through December 31 in 2012. Some people will view a reversion to the single season framework as a reduction of opportunity that is not socially acceptable. Frequent change of season dates and regulations for hunting and trapping can be confusing and disruptive to the public, can result in citations being issued, and is not necessary for protection of the bobcat population in this situation. Therefore, this emergency rule is needed to preserve the public welfare.

During this rule making process the impacts of the split season framework and public opinion will be evaluated, including through consideration of voting on an advisory question at the April, 2012 spring hearings in each county. If there is support, this rule proposal will be followed by permanent rules.

#### **Statutory Authority for the Rule (Including the Statutory Citation and Language)**

Sections 29.011, 29.014, 29.192 (4), 227.24 Wis. Stats.

#### **Estimate of the Amount of Time that State Employees will Spend to Develop the Rule and of Other Resources Necessary to Develop the Rule**

144 hours.

#### **Description of all Entities that may be Impacted by the Rule**

Groups likely to be impacted or interested in this rulemaking are bobcat hunters and trappers, including members of groups such as the Wisconsin Trappers Association, Bear Hunters Association, Wildlife Federation, and the Conservation Congress.

#### **Summary and Preliminary Comparison of any Existing or Proposed Federal Regulation that is Intended to Address the Activities to be Regulated by the Rule**

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

#### **Anticipated Economic Impact of the Rule**

No economic impacts are anticipated. The hunting season framework proposed in this rule is identical to the season framework that was in place during the previous season.

#### **Contact Person**

Scott Loomans, 101 S Webster St., Madison, WI 53707, (608)267-2452, [scott.loomans@wisconsin.gov](mailto:scott.loomans@wisconsin.gov) or John Olson, 2501 Golf Course Road, Ashland, WI 54806, (715) 685-2934, [johnf.olson@wisconsin.gov](mailto:johnf.olson@wisconsin.gov)

### **Natural Resources**

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

##### **SS 011-12**

This statement of scope was approved by the governor on February 15, 2012.

#### **Rule No.**

WM-02-12(E) (Revises Chapter NR 10)

#### **Relating to**

Establishing the 2012 Migratory Bird Season Framework.

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

This emergency rule order will establish the 2012 migratory bird hunting seasons.

#### **Description of Existing Policies Relevant to the Rule and of New Policies Proposed to be Included in the Rule and an Analysis of Policy Alternatives; the History, Background and Justification for the Proposed Rule**

This is an annual rule that will be consistent with a federal framework and is not a change from past policies. Migratory game bird hunting is regulated by the United States Fish & Wildlife Service (USFWS), in 50 CFR part 20, who will offer a final season framework to Wisconsin on approximately August 1, 2012. The State of Wisconsin's season proposal will be based on the federal framework and local conditions. Wisconsin will also not be more restrictive than the federal bag limit framework except that we will propose one less hen mallard in the bag limit if the federal framework allows two or more, consistent with existing Wisconsin rules. This rule may relax the prohibition on hunting waterfowl in open water for holders of permits for hunters with disabilities and lift a sunset of special migratory bird hunting regulations at the Mead and Zeloski Marsh Wildlife Management Areas.

#### **Statutory Authority for the Rule (Including the Statutory Citation and Language)**

Sections 29.014, 29.041, 29.192 and 227.24, Stats.

#### **Estimate of the Amount of Time that State Employees will Spend to Develop the Rule and of Other Resources Necessary to Develop the Rule**

Approximately 400 hours will be needed by the department prior to and following the hearings.

#### **Description of all Entities that may be Impacted by the Rule**

These rules will impact migratory game bird hunters and those who enjoy viewing waterfowl in Wisconsin.

#### **Summary and Preliminary Comparison of any Existing or Proposed Federal Regulation that is Intended to Address the Activities to be Regulated by the Rule**

Under international treaty and Federal law, migratory game bird seasons are closed unless opened annually through the USFWS regulations process. As part of the federal rule process, the service proposes a duck harvest-management objective that balances hunting opportunities with the desire to achieve waterfowl population goals identified in the North American Waterfowl Management Plan (NAWMP). Hunting opportunity increases as duck populations approach the goals in the NAWMP. Factors such as habitat are also considered.

Locally produced giant Canada geese are now a considerable portion of the harvest in states that also harvest Mississippi Valley Population geese that nest in Canada. The MFC has been testing the use of a standard season framework for 5 years, ending in 2011. Season lengths and bag limits for each MVP harvest state have remained unchanged. In 2012, the MFC will conduct an evaluation of harvest impacts of these stable regulations and establish a framework for future seasons. Following the 2012 review, changes to the Canada goose zones or hunting regulations may be proposed in Wisconsin.

### Anticipated Economic Impact of the Rule

No economic impacts are anticipated. The hunting season frameworks proposed in this rule will be comparable to those in place during the previous season.

### Contact Person

Scott Loomans, 101 S Webster St., Madison, WI 53707, (608)267-2452, [scott.loomans@wisconsin.gov](mailto:scott.loomans@wisconsin.gov) or Kent Van Horn, Migratory Birds Specialist, 101 South Webster Street, PO Box 7921, Madison, WI 53707-7921, (608) 266-8841, [Kent.Vanhorn@wisconsin.gov](mailto:Kent.Vanhorn@wisconsin.gov).

## Natural Resources

### *Environmental Protection — General, Chs. NR 100— SS 012-12*

This statement of scope was approved by the governor on February 15, 2012.

### Rule No.

Revises Chapter NR 115, Wis. Adm. Code WT-06-12

### Relating to

Wisconsin's Shoreland Management Program.

### Description of the Objective of the Rule

Modify the rule relating to the impervious surface limits, nonconforming structure provisions, vegetation standards and administrative procedures to reduce the administrative burden on counties.

### Description of Existing Policies Relevant to the Rule and of New Policies Proposed to be Included in the Rule and an Analysis of Policy Alternatives; the History, Background and Justification for the Proposed Rule

Wisconsin's minimum shoreland zoning standards were originally codified as Ch. NR 115, Wis. Adm. Code, in the 1960's, and had been revised very little until 2009. Rule revisions in 2009 addressed the changes in land use and development patterns from small, older family cottages to year-round homes and multi-unit complexes with sizes proportionate to the high value of the shoreline property. Since the 1960's, most counties have elected to create shoreland zoning ordinances that go beyond the minimum standards, but were looking for up-to-date statewide minimums to make these protective measures more consistent. Scientific research has shown that easily-implementable up-to-date minimum standards are a critical tool for protecting Wisconsin lakes and streams.

Since the legislature approved the modifications to Ch. NR 115 in 2009, counties have identified certain provisions in the revised rule that are unclear, difficult to implement or administratively burdensome. The current proposal is to clarify and modify certain sections of the code to address these concerns, so that counties can implement the state minimum shoreland standards efficiently and effectively.

Current policy under Ch. NR 115.05 (1) (e) specifies that the impervious surface standards be applied to land within 300 feet of the ordinary high water mark and limits the amount of impervious surfaces on a property to a maximum of 30%. The new policies will simplify the application of impervious surfaces to only riparian lots or those lots that lie entirely within 300 feet of the ordinary high water mark. Further, the

policy will provide additional options for properties that currently exceed 30% impervious surfaces on their lot or wish to exceed 30% in the future.

Second, the nonconforming structure standards under NR 115.05 (1) (g) limit the ability for structures to be laterally expanded within 75 feet of the ordinary high water mark, require the removal of nonconforming accessory structures when relocating or reconstructing a principal structure and specify that maintenance and repair of nonconforming structures may be allowed. The new policy would allow for some lateral expansion of structures within 75 feet, but more than 35 feet from the ordinary high water mark. The new policy will also remove the requirement that nonconforming accessory structures be removed when relocating or reconstructing a nonconforming principal structure, and will clarify the department's intent in allowing maintenance and repair of legal nonconforming structures.

Third, the current policy under NR 115.05 (4) requires the submittal of variances, special exceptions or conditional use permits, or appeals for map or text interpretation, and decisions to amend a map or text of an ordinance. While the policy will remain the same, current NR 115 contains two substantially similar requirements but is confusing because the language is conflicting. The new policy will be to remove one these statements to clarify the intent of the department.

Finally, the vegetative management standards under NR 115.05 (1) (c) (d), specifies that counties may allow the removal of exotic or invasive species, damaged or diseased vegetation or vegetation that creates an imminent safety hazard, as long as the property owner agrees to replace or replant vegetation as soon as practicable. The new policy will continue to allow the removal of these species, but will clarify that counties do not have to require a permit for the removal of these species or the replanting of new vegetation.

### Statutory Authority for the Rule (Including the Statutory Citation and Language)

Section 59.692 (1m), Stats. requires counties to adopt zoning and subdivision regulations for the protection of shoreland areas to effect the purposes of section 281.31 and to promote public health, safety, and general welfare.

Section 281.31 (6), Stats. requires the department prepare and adopt general recommended standards and criteria for municipalities to protect navigable waters giving "particular attention to safe and healthful conditions for the enjoyment of aquatic recreation...the capability of the water resources...building setbacks from the water; preservation of shore growth and cover; shoreland layout for residential and commercial development; suggested regulations and suggestions for the effective administration and enforcement of such regulations."

### Estimate of the Amount of Time that State Employees will Spend to Develop the Rule and of Other Resources Necessary to Develop the Rule

The department estimates that approximately 820 hours of existing staff time will be needed to complete the rule revision process. This time includes meeting with stakeholders, drafting rule language, completing an economic impact analysis, conducting statewide public hearings, collecting public input at those hearings, and providing information for the Natural Resources Board, and legislature. Little to no economic impact is expected from the proposed rule revisions; a Level 3 Economic Impact Analysis will be prepared.

**Description of all Entities that may be Affected by the Rule**

Groups likely to be impacted by these issues include a) property owners: b) zoning administrators and county officials: c) realtors: d) contractors, and others who provide land alteration services: and e) members of the public who recreate on or near navigable waters.

**Summary and Preliminary Comparison with any**

**Existing or Proposed Federal Regulation that is Intended to Address the Activities to be Regulated by the Rule**

There are no existing or proposed federal regulations that address the issue of shoreland zoning.

**Contact Person**

Russ Rasmussen, Deputy Water Division Administrator  
(608) 267-7651.

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## Submittal of Proposed Rules to Legislative Council Clearinghouse

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

### Employee Trust Fund CR 12–020

On February 9, 2012, the Wisconsin Department of Employee Trust Funds submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse revising section ETF 10.10, relating to ETF and teachers board elections.

This rule is not subject to s. 227.135 (2), as affected by 2011 Wis. Act 21. The statement of scope for this rule, submitted to the Legislative Reference Bureau on March 16, 2010 and published in Register No. 651 on March 31, 2010, was sent to the Legislative Reference Bureau prior to June 8, 2011, the effective date of 2011 Wis. Act 21.

#### Agency Procedure for Promulgation

A public hearing is required for this rule. A public hearing has been scheduled for March 26, 2012, at 3:00 p.m. in Conference Room GA at the Department of Employee Trust Funds, 801 West Badger Road, Madison, Wisconsin. The department's Office of Policy, Privacy and Compliance is primarily responsible for promulgation of this rule.

#### Contact Information

Steve Hurley, Director  
Telephone: (608) 267–2847  
Email: [steve.hurley@etf.state.wi.us](mailto:steve.hurley@etf.state.wi.us)

### Public Defender CR 12–017

On February 6, 2012 the State Public Defender Agency submitted a proposed rule to revise section PD 3.03 to the Legislative Council staff for review.

The scope statement for this rule, SS 013–11, was approved by the Governor on August 9, 2011, published in Register No. 669, on September 14, 2011, and approved by the State Public Defender Board on January 27, 2012.

#### Analysis

Revises section PD 3.03, relating to determination of financial eligibility, relates to the determination of eligibility for the assignment of publicly appointed counsel.

#### Agency Procedure for Promulgation

Pursuant to s. 227.16 (2) (b), Stats., a public hearing is not required. The proposed rule brings an existing rule into conformity with Wis. Stats. s. 977.02 (3) (b) and (c), enacted pursuant to 2011 Act 32. The State Public Defender Administrative Offices, Kathleen Pakes, Office of Legal Counsel, 261–0633, is primarily responsible for promulgation of this rule.

#### Contact Information

Kathleen Pakes, Office of Legal Counsel,  
608–261–0633

### Public Defender CR 12–018

On February 6, 2012 the State Public Defender Agency submitted a proposed rule to revise section PD 6.025 to the Legislative Council staff for review.

The scope statement for this rule, SS 014–11, was approved by the Governor on August 9, 2011, published in Register No. 669, on September 14, 2011, and approved by the State Public Defender Board on January 27, 2012.

#### Analysis

Revises section PD 6.025, determination of ability to pay, relates to whether persons subject for payment for legal representation have the ability to pay all, or part of, the costs of representation.

#### Agency Procedure for Promulgation

Pursuant to s. 227.16 (2) (b), Stats., a public hearing is not required. The proposed rule brings an existing rule into conformity with Wis. Stats. s. 977.02 (3) (b) and (c), enacted pursuant to 2011 Act 32. The State Public Defender Administrative Offices, Kathleen Pakes, Office of Legal Counsel, 261–0633, is primarily responsible for promulgation of this rule.

#### Contact Information

Kathleen Pakes, Office of Legal Counsel,  
608–261–0633

### Safety and Professional Services Barbering and Cosmetology Examining Board CR 12–016

On February 8, 2012, the Barbering and Cosmetology Examining Board submitted a proposed rule to revise Chapter BC 6 (Supervision of Apprentices) to the Legislative Council Rules Clearinghouse.

#### Scope

This rule is not subject to s. 227.135 (2), Stats., as affected by 2011 Wis. Act 21. The scope statement for this rule was published in Register No. 662 on February 14, 2011, was sent to the Legislative Reference Bureau prior to the effective date of 2011 Wis. Act 21. The scope statement was approved by the Barbering and Cosmetology Examining Board by passive approval under 227.135 (2), Stats., on March 2, 2011.

#### Analysis

Statutory Authority: Sections 15.08 (5) (b), 454.10 (10), Stats.

This proposed rule-making order relates to responsibilities of the manager and practical training for apprentices.

**Agency Procedure for Promulgation**

A public hearing is not required under s. 227.16 (2) (b), and no public hearing will be held.

**Contact Information**

Kris Anderson, Department of Safety and Professional Services, Division of Board Services, (608) 261-2385, [Kristine.L.Anderson@Wisconsin.gov](mailto:Kristine.L.Anderson@Wisconsin.gov).

**Safety and Professional Services  
Cemetery Board  
CR 12-021**

On February 13, 2012, the Cemetery Board submitted a proposed rule, CB 3 to 5 (Authority transfer) to the Legislative Council Rules Clearinghouse.

**Scope**

This rule is not subject to s. 227.135 (2), Stats., as affected by 2011 Wis. Act 21. The scope statement for this rule was published in Register No. 636 on December 31, 2008, was sent to the Legislative Reference Bureau prior to the effective date of 2011 Wis. Act 21. The scope statement was approved by the Cemetery Board by passive approval under 227.135 (2), Stats., on January 11, 2009.

**Analysis**

Statutory Authority: Sections 157.19 (2) (d), 227.11 (2) (a), 440.905 (2), 440.92 (7), Stats.

This proposed rule-making order renames, renumbers and revises Chapters SPS 52, 53, 54, relating to the transfer of authority to regulate warehouses storing cemetery pre-need

merchandise, changing trustees of care or pre-need trust funds, and alternative care funds investments.

**Agency Procedure for Promulgation**

A public hearing is required under s. 227.16 (1), Stats., and will be held on March 13, 2012, at 9:45 a.m. in Rm. 121A of the Department of Safety and Professional Services.

**Contact Information**

Kris Anderson, Department of Safety and Professional Services, Division of Board Services, (608) 261-2385, [Kristine.L.Anderson@Wisconsin.gov](mailto:Kristine.L.Anderson@Wisconsin.gov).

**Transportation  
CR 12-019**

On February 10, 2012, the Department of Transportation submitted a proposed rule to the Legislative Council Rules Clearinghouse.

This rule is not subject to s. 227.135(2), Stats., as affected by 2011 Wis. Act 21. The scope statement for this rule, published in Register No. 642 on June 14, 2009, was sent to the Legislative Reference Bureau prior to June 8, 2011, the effective date of 2011 Wis. Act 21.

**Analysis**

Revises Chapter Trans 114, relating to uniform traffic citation.

**Agency Procedure for Promulgation**

A public hearing is required and is scheduled for March 9, 2012 at 2:00 p.m. The department's Division of Motor Vehicles, Bureau of Driver Services is primarily responsible for promulgation of the proposed rule.

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## Rule–Making Notices

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### Notice of Hearing Employee Trust Funds CR 12–020

NOTICE IS HEREBY GIVEN That The Wisconsin Department of Employee Trust Funds (ETF) proposes an order pursuant to section 227.14, Stats., to repeal section ETF 10.10 (13); to repeal and recreate sections ETF 10.10 (3), (4), (6), (7) and (9); to amend sections ETF 10.10 (1), (1m), (2), (8), (10), (11) and (12); to renumber and amend sections ETF 10.10 (15), (16) and (17); and create sections ETF 10.10 (5) and (16), relating to elections to the Employee Trust Funds and Teachers Retirement Board.

#### Hearing Information

**Date:** Monday, March 26, 2012  
**Time:** 3:00 P.M.  
**Location:** Department of Employee Trust Funds  
 801 West Badger Road  
 Conference Room GA  
 Madison, WI 53713

Persons wishing to attend should come to the reception desk located up the stairs and directly to the left (or by elevator) from the main entrance to the building.

#### Copies of Proposed Rule

Copies of the proposed rule are available without cost from the Office of the Secretary, Department of Employee Trust Funds, P.O. Box 7931, Madison, WI 53707–7931. The telephone number is: (608) 266–1071.

#### Place Where Comments are to be Submitted and Deadline for Submissions

Comments may be submitted to the contact person no later than 4:30pm, Central Standard Time, on Monday, **April 2, 2012**. The public hearing will be held at 3:00pm on Monday, March 26, 2012 in conference room GA of the Wisconsin Employee Trust Fund building at 801 W. Badger Rd, Madison, WI 53713.

#### Analysis Prepared by the Department of Employee Trust Funds

##### *Statutes interpreted*

Section 40.03 (2) (p), Stats.

##### *Statutory authority*

Sections 40.03 (2) (i), and 227.11 (2) (a) (intro), 1. to 3., Stats.

##### *Explanation of agency authority*

By statute, the ETF Secretary is expressly authorized, with appropriate board approval, to promulgate rules required for the efficient administration of any benefit plan established in ch. 40 of the Wisconsin statutes. Also, each state agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency if the agency considers it necessary to effectuate the purpose of the statute.

This rule is not subject to s. 227.135 (2), as affected by 2011 Wis. Act 21. The scope statement for this rule, submitted to the Legislative Reference Bureau on 03/16/2010 and published in Register No. 651b on 04/01/2010, was sent to the Legislative Reference Bureau prior to June 8, 2011, the effective date of 2011 Wis. Act 21.

##### *Related statute or rule*

Section 40.03 (2) (p), Stats.

##### *Plain language analysis*

(a) *Clarify statutory authority of the ETF Secretary to hold board elections in any reasonable manner, including by electronic means.*

When warranted, holding board elections electronically can promote efficiency and minimize costs. It is clear that the Secretary has authority under s. 40.03 (2) (p), Stats., to choose the means of holding board elections. However, the provisions in the existing administrative rule contemplate only a paper–based board election process. The changes to the rule provide that the Secretary may choose to hold a board election using a paper–based process, electronically by use of the Internet, by a combination of methods or by any other reasonable means.

(b) *Simplify Wis. Admin. Code section ETF 10.10*

Changes have been made to make provisions in Wis. Admin. Code section ETF 10.10 more understandable and eliminate provisions that create inefficiencies. Some of the clarification in language includes: creation of section headers, re–arranging and renumbering of subsections, additional definitions, and breaking–up sections into subparagraphs.

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

There are no existing or proposed federal regulations relevant to electronic elections for board members of public pension systems.

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

*Illinois* – The relevant regulations governing board elections to the State Employees’ Retirement System of Illinois are found in 80 Ill. Adm. Code 1540.330, Board Elections. The code sets forth procedures for standard paper ballot elections, and does not include provisions for electronic voting.

*Iowa* – Iowa law establishes the Iowa Benefits Advisory Committee (BAC) under Iowa Code section 97B.8B. Regulations governing the BAC are provided in IAC 495–3.1. State law gives Iowa Public Employees’ Retirement System authority to adopt election rules, however the regulations do not provide for election procedures. There are likewise no regulations governing or authorizing electronic voting methods.

*Michigan* – M.C.L.A. 38.3 governs membership for the Retirement Board of the State Employees’ Retirement System. Members are appointed in different employment categories by the governor. Similarly, under M.C.L.A. 38.1322, the governor appoints members to the board of the

Public School Employees’ Retirement System. Because members are appointed, there are therefore no regulatory provisions governing elections, including electronic voting procedures.

*Minnesota* – Regulations governing board elections for the Minnesota State Retirement System are found in Chapter 7900. The regulations cover standard paper ballots and do not include special provisions for electronic voting procedures.

**Summary of factual data and analytical methodologies**

ETF worked closely with the Employee Trust Funds Board and Teachers Retirement Board in formulating the needs for electronic voting methods. The rule was put before the boards on two occasions for input and commentary. Analysis hinged on the benefits of paperless elections, including: efficiency and cost, and convenience for voters.

**Accuracy, integrity, objectivity and consistency of data**

The present rule changes were a result of recommendations from the relevant governing boards and considerations of the efficiency and convenience attributable to electronic voting procedures. ETF conducted analysis with integrity in an accurate, objective, and consistent manner in accordance with its fiduciary responsibilities to its members.

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

The rule does not have an effect on small businesses because the elections rule governs procedures for electing members to governing boards of a public agency whose members are public employees or annuitants.

**Effect on Small Business**

There is no effect on small business.

**Agency Contact Person**

Steve Hurley, Director of the Office of Policy, Privacy and Compliance, Department of Employee Trust Funds, P.O. Box 7931, Madison WI 53707. Telephone: (608) 267–2847. E–mail address: [steve.hurley@etf.state.wi.us](mailto:steve.hurley@etf.state.wi.us).

**Fiscal Estimate**

The rule will not have any fiscal effect on the administration of the Wisconsin Retirement System, nor will it have any fiscal effect on the private sector, the state or on any county, city, village, town, school district, technical college district, or sewerage districts.

<b>ADMINISTRATIVE RULES FISCAL ESTIMATE AND ECONOMIC IMPACT ANALYSIS</b>		
Type of Estimate and Analysis		
<input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected		
Administrative Rule Chapter, Title and Number		
ETF 10.10 Employee trust funds board and teachers retirement board elections		
Subject		
Election of members to employee trust funds and teachers retirement board		
Fund Sources Affected		Chapter 20 , Stats. Appropriations Affected
GPR   FED   PRO   PRS   SEG   SEG–S		
Fiscal Effect of Implementing the Rule		
<input checked="" type="checkbox"/> No Fiscal Effect	<input type="checkbox"/> Increase Existing Revenues	<input type="checkbox"/> Increase Costs
<input type="checkbox"/> Indeterminate	<input type="checkbox"/> Decrease Existing Revenues	<input type="checkbox"/> Could Absorb Within Agency’s Budget
		<input type="checkbox"/> Decrease Costs
The Rule Will Impact the Following (Check All That Apply)		
<input type="checkbox"/> State’s Economy		<input type="checkbox"/> Specific Businesses/Sectors
<input type="checkbox"/> Local Government Units		<input type="checkbox"/> Public Utility Rate Payers
Would Implementation and Compliance Costs Be Greater Than \$20 million?		
Yes <input checked="" type="checkbox"/> No		
Policy Problem Addressed by the Rule		
ETF seeks to clarify the Secretary’s authority under s. 40.03 (2) (p), Stats., to choose alternate means of holding elections of members to the Teachers Retirement Board and Employee Trust Funds Board. When warranted, holding board elections electronically can promote efficiency and minimize costs. Additional changes to the rule are made for the simplification of the elections provisions.		
Summary of Rule’s Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State’s Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)		
There is no economic and fiscal impact on small business, business sectors, public utility rate payers, local governmental units and the state’s economy as a whole. The rule change addresses the need to clarify statutory authority of the ETF Secretary to hold board elections in any reasonable manner, including electronic means, and to simplify the current code governing board elections procedures. These changes will not have a fiscal effect.		

Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule
Implementing the rule changes will provide more clarity in the board elections rule, and will afford the Secretary the authority to utilize electronic voting methods in electing members to the board. Electronic voting will provide cost-effective, efficient, faster, and more convenient options for board elections.
Long Range Implications of Implementing the Rule
There are no long range economic or fiscal impacts of the rule.
Compare With Approaches Being Used by Federal Government
Electronic voting methods have become increasingly utilized in all layers of government.
Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)
<p>Illinois – The relevant regulations governing board elections to the State Employees’ Retirement System of Illinois are found in 80 Ill. Adm. Code 1540.330, Board Elections. The code sets forth procedures for standard paper ballot elections, and does not include provisions for electronic voting.</p> <p>Iowa – Iowa law establishes the Iowa Benefits Advisory Committee (BAC) under Iowa Code section 97B.8B. Regulations governing the BAC are provided in IAC 495–3.1. State law gives Iowa Public Employees’ Retirement System authority to adopt election rules, however the regulations do not provide for election procedures. There are likewise no regulations governing or authorizing electronic voting methods.</p> <p>Michigan – M.C.L.A. 38.3 governs membership for the Retirement Board of the State Employees’ Retirement System. Members are appointed in different employment categories by the governor. Similarly, under M.C.L.A. 38.1322, the governor appoints members to the board of the Public School Employees’ Retirement System. Because members are appointed, there are therefore no regulatory provisions governing elections, including voting procedures.</p> <p>Minnesota – Regulations governing board elections for the Minnesota State Retirement System are found in Chapter 7900. The regulations cover standard paper ballots and do not include special provisions for electronic voting procedures.</p>

**Notice of Proposed Rulemaking  
Without Public Hearing  
Public Defender Board  
CR 12–017**

The State of Wisconsin Public Defender Board (SPD) announces the revision of section PD 3.03, relating to determination of financial eligibility, the determination of eligibility for the assignment of publicly appointed counsel.

The proposed rule brings an existing rule into conformity with sections 977.02 (3) (b) and (c), Stats., enacted pursuant to 2011 Act 32. Pursuant to section 227.16 (2) (b), Stats., a public hearing is not required.

**Submittal of Written Comments**

Interested persons are invited to comment on the rule by **March 15, 2012**. Written comments should be addressed to: Kathy Pakes, SPD, PO Box 7923, Madison, WI 53707–7923, or by email: [pakesk@opd.wi.gov](mailto:pakesk@opd.wi.gov).

**Copies of Proposed Rule**

To view the rule online, go to:  
<http://www.wisspd.org/CAR2.asp>

To view the rule fiscal note online, go to:  
<http://www.wisspd.org/CAR2.asp>

You may contact Kathy Pakes at [pakesk@opd.wi.gov](mailto:pakesk@opd.wi.gov) or by telephone at (608) 266–0087 to request a copy (at no cost) of the rule and fiscal note be sent to you by U.S. mail.

**Analysis Prepared by the Wisconsin Public Defender Board**

*Statutes interpreted*

Section 977.02.

**Statutory authority**

Sections 977.02 (3) (b) and (c); 977.06; Wis. Stats. and s. 977.02 (3) authorizes the State Public Defender Board to promulgate rules regarding indigency and eligibility for legal services. In determining indigency, Wis. Stats. ss. 977.02 (3) (b) & (c) directs the State Public Defender to consider a person’s available assets and income.

**Explanation of agency authority**

The executive budget act of the 2011 legislature, Act 32, sections 3559d and 3559h, made the following changes to the way by which the SPD considers the assets and income of persons applying for public defender representation:

*Assets:*

Prior legislation, 2009 Act 164, directed the State Public Defender, in determining whether someone was eligible for public defender representation, to consider assets in the manner described in s. 49.145 (3) (a) (Wisconsin Works). 2011 Act 32, s. 3559d changed these Act 164 provisions relating to W2, and directs the SPD to make the eligibility determination based on a combined equity value of available assets, without regard to asset valuation under Wis. Stats. s. 49.145 (3) (a). See Wis. Stats. s. 977.02 (3) (b).

*Income:*

Prior legislation, 2009 Act 164, directed the SPD to use 115% of the federal poverty guidelines as the applicable cost of living when making a determination of eligibility. Under prior legislation, eligibility for public defender representation would automatically change if the federal poverty guidelines were adjusted.

Pursuant to 2011 Act 32, s. 3559h eligibility will not automatically change when the federal poverty guideline is updated. Instead, for purposes of determining eligibility, the cost of living is frozen at 115% of the 2011 federal poverty guideline. Thus, in the event the federal poverty guideline

changes, the state public defender will still use 115% of the 2011 rate in its determination of financial eligibility. *See*, Wis. Stats. s. 977.02 (3) (c).

**Related statute or rule**

None.

**Plain language analysis**

2011 Act 32 froze income eligibility for state public defender representation at 115% of the 2011 federal poverty guidelines. These changes bring the administrative rules into conformity with Act 32.

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

In the federal system, the Criminal Justice Act (CJA) requires that representation be provided to financially eligible persons for proceedings and matters covered by the CJA.

The determination of eligibility for representation under the CJA is a judicial function to be performed by the court or U.S. magistrate judge after making appropriate inquiries concerning the person's financial condition. Unless it will result in undue delay, fact-finding concerning the person's eligibility for appointment of counsel should be completed prior to the person's first appearance in court. [[Guide, § 210.40.20\(a\), \(b\)](#)]

A person is considered "financially unable to obtain counsel" within the meaning of the CJA [[18 U.S.C. § 3006A\(b\)](#)] if the person's net financial resources and income are insufficient to obtain qualified counsel. In determining whether such insufficiency exists, consideration should be given to:

- the cost of providing the person and the person's dependents with the necessities of life, and
- the cost of the defendant's bail bond if financial conditions are imposed, or the amount of the deposit defendant is required to make to secure release on bond.

Any doubts as to a person's eligibility should be resolved in the person's favor; erroneous determinations of eligibility may be corrected at a later time. At the time of determining eligibility, the court or U.S. magistrate judge should inform the person of the penalties for making a false statement, and of the obligation to inform the court and the person's attorney of any change in financial status.

**Comparison with rules in adjacent states**

*Iowa:* Iowa Code sec. 815.9

Eligibility for public defender representation is tied to the United State poverty level as defined by the most recently revised poverty income guidelines published by the United States department of health and human services. Generally, a person with an income level at or below 125% of the federal poverty guidelines will qualify for public defender representation. Persons with an income of 125% to 200% of the federal poverty guidelines may qualify for public defender representation if the court finds not appointing counsel would cause the person substantial hardship.

*Illinois:*

Does not have a statewide public defender system. The counties bear the cost of representation. Indigency determinations are made on a county by county basis.

*Michigan:*

Does not have a statewide public defender system. The counties bear the cost of representation. Indigency determinations are made on a county by county basis.

*Minnesota:*

Has a statewide public defender system. Guidelines for those persons who qualify for representation may be viewed at:

<http://www.house.leg.state.mn.us/hrd/pubs/ss/ssmpds.htm>

In Minnesota a defendant is financially unable to obtain counsel if the defendant, or a defendant's dependent (residing in the same household), receives means-tested governmental benefits, or, considering the defendant's liquid assets and current income, the defendant would be unable to pay the reasonable costs charged by a private attorney.

Upon disposition of the case, the defendant must pay a \$28 co-payment, unless the court waives the co-payment. The statute does not indicate when a court should exercise its discretion to waive the co-payment. In 2003, the Minnesota Court of Appeals held that a defendant is exempt from the co-payment and the court must waive the co-payment when a defendant is indigent or when the co-payment would cause manifest hardship on a defendant.

**Summary of factual data and analytical methodologies**

N/A

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

N/A

**Effect on Small Business**

None.

**Fiscal Estimate**

<http://www.wisspd.org/CAR2.asp>

**Agency Contact Person**

Questions regarding these rules may be directed to Kathy Pakes at [pakesk@opd.wi.gov](mailto:pakesk@opd.wi.gov) or 315 N. Henry Street, 2<sup>nd</sup> Floor, Madison, WI 53703.

**Proposed Rule**

PD 3.03 (2) and (3) are amended to read:

PD 3.03 (2) The state public defender shall ~~consider assets in the manner described in s. 49.145 (3) (a), Stats., and shall consider assets as available to pay the costs of legal representation if the assets exceed the resource limitations of s. 49.145 (3) (a), Stats.,~~ treat assets as available to the person to pay the costs of legal representation if the assets exceed \$2500 in combined equity value except that the state public defender shall exclude the equity value of vehicles up to a total equity value of \$10,000 and shall exclude the first \$30,000 of the equity value of the home that serves as the individual's homestead. ~~exclusion from consideration for the applicant's homestead shall be limited to the first \$30,000 of equity.~~

(3) Subject to subs. (4) and (5), the state public defender shall consider income as available to pay the costs of legal representation if the gross income exceeds 115 percent of the amount specified in 42 U.S.C. s. 9902(2) (2011) ~~the income limitations of s. 49.145 (3) (b), Stats.~~

STATE OF WISCONSIN DEPARTMENT OF ADMINISTRATION DOA 2049 (R 07/2011)		
<b>ADMINISTRATIVE RULES FISCAL ESTIMATE AND ECONOMIC IMPACT ANALYSIS</b>		
Type of Estimate and Analysis		
Original <input checked="" type="checkbox"/> Updated    Corrected		
Administrative Rule Chapter, Title and Number		
PD 3.03; PD 6.025		
Subject		
Eligibility Guidelines for Public Defender Representation		
Fund Sources Affected	Chapter 20 , Stats. Appropriations Affected	
<input checked="" type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S	20.550 (1)	
Fiscal Effect of Implementing the Rule		
<input type="checkbox"/> No Fiscal Effect <input checked="" type="checkbox"/> Indeterminate	Increase Existing Revenues Decrease Existing Revenues	<input checked="" type="checkbox"/> Increase Costs Could Absorb Within Agency's Budget Decrease Costs
The Rule Will Impact the Following (Check All That Apply)		
<input type="checkbox"/> State's Economy <input checked="" type="checkbox"/> Local Government Units	<input type="checkbox"/> Specific Businesses/Sectors <input type="checkbox"/> Public Utility Rate Payers	
Would Implementation and Compliance Costs Be Greater Than \$20 million?		
Yes <input checked="" type="checkbox"/> No		
Policy Problem Addressed by the Rule		
<p>Wis. Stats. Sec. 977.02 authorizes the State Public Defender Board to promulgate rules regarding indigency and eligibility for legal services. In determining indigency, Sec. 977.02 (3) directs the State Public Defender to consider a person's available assets and income. Sec. 977.02 (3) (c) directs the SPD to consider as income only that income which exceeds the income limitations in s. 49.145 (3) (b). The executive budget act of the 2011 legislature, Act 32, sections 3559d and 3559h, made the following changes to the way by which the SPD considers the assets and income of persons applying for public defender representation.</p> <p><i>Assets:</i> Prior legislation, 2009 Act 164, directed the State Public Defender, in determining whether someone was eligible for public defender representation, to consider assets in the manner described in s. 49.145 (3) (a) (Wisconsin Works). 2011 Act 32 changed these Act 164 provisions relating to W2, and directs the SPD to make the eligibility determination based on a combined equity value of available assets, without regard to asset valuation under Wis. Stats. Sec. 49.145 (3) (a).</p> <p><i>Income:</i> Prior legislation, 2009 Act 164, tied eligibility to the federal poverty guidelines. Under prior legislation, eligibility for public defender representation would automatically change if the federal poverty guidelines were adjusted.</p> <p>Pursuant to 2011 Act 32, eligibility will not automatically change when the federal poverty guideline is updated. Instead, income eligibility is frozen at 115% of the 2011 federal poverty guideline. Thus, in the event the federal poverty guideline changes, eligibility for state public defender representation will still be determined by the 2011 rate.</p>		
Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)		
As the federal poverty guideline is adjusted upward, and the eligibility for public defender representation remains stagnant at the 2011 level, local governments (counties) will pick up the cost to represent those defendants who earn more than the 2011 federal poverty guidelines, but do not have funds to hire a lawyer and are deemed eligible by the courts for representation.		
Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule		
N/A		

Long Range Implications of Implementing the Rule
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As the federal poverty guideline is adjusted upward, and the eligibility for public defender representation remains stagnant at the 2011 level, the counties will pick up the cost to represent those defendants who earn more than the 2011 federal poverty guidelines, but do not have funds to hire a lawyer and are deemed eligible by the courts for representation.

Compare With Approaches Being Used by Federal Government
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In the federal system, the Criminal Justice Act (CJA) requires that representation be provided to financially eligible persons for proceedings and matters covered by the CJA.

The determination of eligibility for representation under the CJA is a judicial function to be performed by the court or U.S. magistrate judge after making appropriate inquiries concerning the person's financial condition. Unless it will result in undue delay, fact-finding concerning the person's eligibility for appointment of counsel should be completed prior to the person's first appearance in court. [\[Guide, § 210.40.20\(a\), \(b\)\]](#)

A person is considered "financially unable to obtain counsel" within the meaning of the CJA [\[18 U.S.C. § 3006A\(b\)\]](#) if the person's net financial resources and income are insufficient to obtain qualified counsel. In determining whether such insufficiency exists, consideration should be given to:

- the cost of providing the person and the person's dependents with the necessities of life, and
- the cost of the defendant's bail bond if financial conditions are imposed, or the amount of the deposit defendant is required to make to secure release on bond.

Any doubts as to a person's eligibility should be resolved in the person's favor; erroneous determinations of eligibility may be corrected at a later time. At the time of determining eligibility, the court or U.S. magistrate judge should inform the person of the penalties for making a false statement, and of the obligation to inform the court and the person's attorney of any change in financial status.

Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)
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*Iowa:* Iowa Code sec. 815.9

Eligibility for public defender representation is tied to the United State poverty level as defined by the most recently revised poverty income guidelines published by the United States department of health and human services. Generally, a person with an income level at or below 125% of the federal poverty guidelines will qualify for public defender representation. Persons with an income of 125% to 200% of the federal poverty guidelines may qualify for public defender representation if the court finds not appointing counsel would cause the person substantial hardship.

*Illinois:*

Does not have a statewide public defender system. The counties bear the cost of representation. Indigency determinations are made on a county by county basis.

*Michigan:*

Does not have a statewide public defender system. The counties bear the cost of representation. Indigency determinations are made on a county by county basis.

*Minnesota:*

Has a statewide public defender system. Guidelines for those persons who qualify for representation may be viewed at: <http://www.house.leg.state.mn.us/hrd/pubs/ss/ssmpds.htm>

In Minnesota a defendant is financially unable to obtain counsel if the defendant, or a defendant's dependent (residing in the same household), receives means-tested governmental benefits, or, considering the defendant's liquid assets and current income, the defendant would be unable to pay the reasonable costs charged by a private attorney.

Upon disposition of the case, the defendant must pay a \$28 co-payment, unless the court waives the co-payment. The statute does not indicate when a court should exercise its discretion to waive the co-payment. In 2003, the Minnesota Court of Appeals held that a defendant is exempt from the co-payment and the court must waive the co-payment when a defendant is indigent or when the co-payment would cause manifest hardship on a defendant.

**Notice of Proposed Rulemaking  
Without Public Hearing  
Public Defender Board  
CR 12-018**

The State of Wisconsin Public Defender Board (SPD) announces the revision of section PD 6.025, relating to determination of ability to pay, relating to whether persons subject for payment for legal representation have the ability to pay all, or part of, the costs of representation.

The proposed rule brings an existing rule into conformity with sections 977.02 (3) (b) and (c), Stats., enacted pursuant to 2011 Act 32. Pursuant to section 227.16 (2) (b), Stats., a public hearing is not required.

**Submittal of Written Comments**

Interested persons are invited to comment on the rule by **March 15, 2012**. Written comments should be addressed to: Kathy Pakes, SPD, PO Box 7923, Madison, WI 53707-7923, or by email: [pakesk@opd.wi.gov](mailto:pakesk@opd.wi.gov).

**Copies of Proposed Rule**

To view the rule online, go to:  
<http://www.wisspd.org/CAR2.asp>

To view the rule fiscal note online, go to:  
<http://www.wisspd.org/CAR2.asp>

You may contact Kathy Pakes at [pakesk@opd.wi.gov](mailto:pakesk@opd.wi.gov) or by telephone at (608) 266-0087 to request a copy (at no cost) of the rule and fiscal note be sent to you by U.S. mail.

**Analysis Prepared by the Wisconsin Public Defender**

*Statutes interpreted*

Section 977.02.

*Statutory authority*

Sections 977.02 (3) (b) and (c); 977.06.

*Explanation of agency authority*

Wis. Stats. s. 977.02 (3) authorizes the State Public Defender Board to promulgate rules regarding indigency and eligibility for legal services. In determining indigency, Wis. Stats. s. 977.02 (3) (b) and (c) directs the State Public Defender to consider a person's available assets and income.

The executive budget act of the 2011 legislature, Act 32, sections 3559d and 3559h, made the following changes to the way by which the SPD considers the assets and income of persons applying for public defender representation:

*Assets:*

Prior legislation, 2009 Act 164, directed the State Public Defender, in determining whether someone was eligible for public defender representation, to consider assets in the manner described in Wis. Stats. 49.145 (3) (a), (Wisconsin Works). 2011 Act 32, s. 3559d changed these Act 164 provisions relating to W2, and directs the SPD to make the eligibility determination based on a combined equity value of available assets, without regard to asset valuation under Wis. Stats. s. 49.145 (3) (a). See Wis. Stats. s. 977.02 (3) (b).

*Income:*

Prior legislation, 2009 Act 164, directed the SPD to use 115% of the federal poverty guidelines as the applicable cost of living when making a determination of eligibility. Under prior legislation, eligibility for public defender representation would automatically change if the federal poverty guidelines were adjusted.

Pursuant to 2011 Act 32, s. 3559h eligibility will not automatically change when the federal poverty guideline is updated. Instead, for purposes of determining eligibility, the cost of living is frozen at 115% of the 2011 federal poverty guideline. Thus, in the event the federal poverty guideline changes, the state public defender will still use 115% of the 2011 rate in its determination of financial eligibility. See, Wis. Stats. s. 977.02 (3) (c).

*Related statute or rule*

None.

*Plain language analysis*

2011 Act 32 freezes income eligibility for public defender representation at 115% of the 2011 federal poverty guidelines.

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

In the federal system, the Criminal Justice Act (CJA) requires that representation be provided to financially eligible persons for proceedings and matters covered by the CJA.

The determination of eligibility for representation under the CJA is a judicial function to be performed by the court or U.S. magistrate judge after making appropriate inquiries concerning the person's financial condition. Unless it will result in undue delay, fact-finding concerning the person's eligibility for appointment of counsel should be completed prior to the person's first appearance in court. [\[Guide, § 210.40.20\(a\), \(b\)\]\[18 U.S.C. § 3006A\(b\)\]](#)

A person is considered "financially unable to obtain counsel" within the meaning of the CJA <http://www.law.cornell.edu/uscode/18/3006A.html> – b if the person's net financial resources and income are insufficient to obtain qualified counsel. In determining whether such insufficiency exists, consideration should be given to:

- the cost of providing the person and the person's dependents with the necessities of life, and
- the cost of the defendant's bail bond if financial conditions are imposed, or the amount of the deposit defendant is required to make to secure release on bond.

Any doubts as to a person's eligibility should be resolved in the person's favor; erroneous determinations of eligibility may be corrected at a later time. At the time of determining eligibility, the court or U.S. magistrate judge should inform the person of the penalties for making a false statement, and of the obligation to inform the court and the person's attorney of any change in financial status.

*Comparison with rules in adjacent states*

*Iowa:* Iowa Code sec. 815.9

Eligibility for public defender representation is tied to the United State poverty level as defined by the most recently revised poverty income guidelines published by the United States department of health and human services. Generally, a person with an income level at or below 125% of the federal poverty guidelines will qualify for public defender representation. Persons with an income of 125% to 200% of the federal poverty guidelines may qualify for public defender representation if the court finds not appointing counsel would cause the person substantial hardship.

*Illinois:*

Does not have a statewide public defender system. The counties bear the cost of representation. Indigency determinations are made on a county by county basis.

*Michigan:*

Does not have a statewide public defender system. The counties bear the cost of representation. Indigency determinations are made on a county by county basis.

*Minnesota:*

Has a statewide public defender system. Guidelines for those persons who qualify for representation may be viewed at:

<http://www.house.leg.state.mn.us/hrd/pubs/ss/ssmpds.htm>

In Minnesota a defendant is financially unable to obtain counsel if the defendant, or a defendant's dependent (residing in the same household), receives means-tested governmental benefits, or, considering the defendant's liquid assets and current income, the defendant would be unable to pay the reasonable costs charged by a private attorney.

Upon disposition of the case, the defendant must pay a \$28 co-payment, unless the court waives the co-payment. The statute does not indicate when a court should exercise its discretion to waive the co-payment. In 2003, the Minnesota Court of Appeals held that a defendant is exempt from the co-payment and the court must waive the co-payment when a defendant is indigent or when the co-payment would cause manifest hardship on a defendant.

*Summary of factual data and analytical methodologies*

N/A

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

N/A

**Effect on Small Business**

None.

**Fiscal Estimate and Economic Impact Analysis**

<http://www.wisspd.org/CAR2.asp>

See the notice for the revision of s. PD 3.03. (CR 12-017 in this Register)

**Agency Contact Person**

Questions regarding these rules may be directed to Kathy Pakes at [pakesk@opd.wi.gov](mailto:pakesk@opd.wi.gov) or 315 N. Henry Street, 2<sup>nd</sup> Floor, Madison, WI 53703.

**Place to Submit Comments**

Comments may be submitted to Kathy Pakes at [pakesk@opd.wi.gov](mailto:pakesk@opd.wi.gov) or 315 N. Henry Street, 2<sup>nd</sup> Floor, Madison, WI 53703.

**Proposed Rule**

PD 6.025 (1) and (2) (a) are amended to read:

PD 6.025 (1) The state public defender shall determine whether persons subject to payment for legal representation have the ability to pay all, or part of, the costs of representation. A person has the ability to pay some amount to these costs if the person has gross income in excess of the amount specified in 42 U.S.C. s. 9902(2) (2011) or has assets treated under s. PD 3.03(2) as available to pay the costs of legal representation with income in excess of the amount specified in s. 49.001(5), Stats., or assets available to pay the costs of legal representation under s. PD 3.03(2) has the ability to pay some amount toward these costs. The state

public defender may defer the determination of ability to pay until after the time period for payment of the optional discount amount specified in s. PD 6.02 has expired.

(2) (a) The person has gross income exceeding 115% of the amount specified in 42 U.S.C. s. 9902(2)(2011) or has assets treated under s. PD 3.03(2) as available to pay the costs of legal representation, is determined to have income in excess of the amount specified in s. 49.001(5), Stats., or assets available to pay the costs of legal representation under s. PD 3.03(2).

**Notice of Hearing  
Safety and Professional Services  
Cemetery Board  
CR 12-021**

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Cemetery Board in sections 227.11 (2) and 961.335 (8), Wis. Stats., and interpreting section 961.335, Wis. Stats., the Cemetery Board will hold a public hearing at the time and place indicated below to consider an order to promulgate Chapters CB 3 to 5, Wis. Admin. Code. The proposed rules relate to the transfer of authority for regulation of warehouses storing cemetery pre-need merchandise, changing trustees of care or pre-need trust funds, and alternative care funds investments from the department of safety and professional services to the cemetery board.

**Hearing Information**

**Date:** Tuesday, March 13, 2012  
**Time:** 9:45 A.M.  
**Location:** 1400 East Washington Avenue  
Room 121A  
Madison, WI 53703

**Appearances at the Hearing and Submittal 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 Safety and Professional Services, Division of Board Services, P.O. Box 8935, Madison, Wisconsin 53708. Written comments must be received at or before the public hearing to be included in the record of rule-making proceedings.

Comments may be submitted to Kris Anderson, Paralegal, Department of Safety and Professional Services, 1400 E. Washington Ave., Rm. 117, P.O. Box 8935, Madison, Wisconsin 53708-8935, or by email to [Kristine1.Anderson@Wisconsin.gov](mailto:Kristine1.Anderson@Wisconsin.gov). Comments must be received on or before the date and time of the public hearing for inclusion in the record of rule-making proceedings. A public hearing on this proposal will be held at the department on March 13, 2012, in Rm. 121A, at 9:45 a.m.

**Copies of Proposed Rule**

Copies of this proposed rule are available upon request to Kris Anderson, Paralegal, Department of Safety and Professional Services, Division of Board Services, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708, or by email at [Kristine1.Anderson@wisconsin.gov](mailto:Kristine1.Anderson@wisconsin.gov).

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

### Statutes interpreted

Sections 157.11 (9g), 157.19, 440.92 (7), Stats.

### Statutory authority

Sections 157.19 (2) (d), 227.11 (2) (a), 440.905 (2), 440.92 (7), Stats.

### Explanation of agency authority

2007 Wisconsin Act 174 transferred authority for regulation of warehouses that store cemetery merchandise sold under a preneed sales contract, changes of trustees for care and preneed trust funds, and alternative care fund investments from the department of safety and professional services to the cemetery board. Thus, Ch. 157 and s. 440.905, Stats., grant sole authority for implementation of the laws related to these regulatory areas to the cemetery board.

### Plain language analysis

These proposed rules implement the statutory changes that resulted from the passage of 2007 Wis. Act 174. The rules transfer to the cemetery board the authority to regulate: warehouses that store cemetery merchandise sold under a preneed sales contract; changes of trustees for care and preneed trust funds; and alternative care fund investments from the department. The administrative code provisions that Act 174 affected are currently located in Chs. SPS 52 to 54. To reflect the transfer of authority effected by Act 174, the chapter and rule titles must be changed from “SPS” to “CB,” and the chapter and rule numbers must be changed from those using 52 to 54 to those using 3 to 5.

The substance of the rules in Chs. SPS 52 to 54, formerly RL 52 to 54, will not change by this proposal. These proposed rules amend those chapters only to reflect the transfer of regulatory authority, the 2011 department name-change, and other minor information updates such as addresses referenced, etc.

Proposed Ch. CB 4 adds some provisions that are closely related to those in existing Ch. SPS 53. First, new s. CB 4.015 defines “financial institution,” as used in the chapter, to have the meaning set forth in s. 705.01 (3), Stats. That definition appears in s. 157.19 (1), Stats., and applies to all of s. 157.19, which is the enabling statute for the rules set forth in former Ch. RL 53 and proposed Ch. CB 4, Wis. Admin. Code. The cemetery board adds this definition to the existing rules for increased clarity regarding what constitutes a financial institution within the meaning of that chapter.

Existing rules require an affidavit from only the transferee financial institution in a change of trustee for care funds or preneed trust funds transactions. Sections SPS 53.03 (1) (d), (2) (d). The proposed rules would also require an affidavit from the transferor financial institution as well. Sections CB 4.03 (1) (dm), (2) (dm). The transferor’s affidavit must confirm that all deposits into the funds to be transferred were timely, and that there have been no withdrawals of the principal. The transferor’s affidavit will assure that the requested change of trustee is not for purposes of hiding impropriety in the transferor institution’s management of the funds. The cemetery board is authorized to impose the requirement for the transferor’s affidavit under ss. 157.19 (d) and 440.905 (2). The assurance provided from the transferor’s affidavit will significantly enhance the board’s ability to oversee change-of-trustee transactions and the

department’s enforcement of the board’s rules, both of which will result in better protection of the funds involved.

Finally, given the cemetery board’s quarterly meeting schedule, a full-board determination of a change-of-trustee request within 60 days of its receipt, as required by current s. SPS 53.02 (4), may not be feasible. To facilitate timely determinations of such requests, proposed rule s. CB 4.02 (4) provides for determination by the board’s designee if necessary.

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

There are no existing or proposed federal regulations related to the regulatory areas of the proposed rules.

### Comparison with rules in adjacent states

#### Illinois:

The Illinois statutes, called the Illinois Compiled Statutes (ILCS), charge the state’s Department of Financial and Professional Regulation (DFPR) with governing cemeteries pursuant to the Cemetery Oversight Act. The DFPR’s powers include the authority to promulgate rules for the administration and enforcement of that Act. Section 225 ILCS 411/5–25. Licensed cemetery authorities may accept any gift or payment for the care of the cemetery or a cemetery lot to establish a trust fund for the specified purpose. Section 225 ILCS 411/15–5 (a). The cemetery authority acts as trustee of amounts received until depositing them with a corporate fiduciary. Section 225 ILCS 411/15–5 (b). Under s. 225 ILCS 620/1–5.05, “corporate fiduciary” means a trust company, such as a bank or other financial institution, or an individual or entity that has obtained a certificate of authority under the Corporate Fiduciary Act to exercise trust powers.

<http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=3173&ChapterID=24>

The Illinois State Comptroller regulates pre-need contract salespersons, pre-need contracts, and cemetery care or pre-need trust funds under both the Illinois Funeral or Burial Funds Act, ch. 225 ILCS 45, and the Illinois Pre-Need Cemetery Sales Act, ch. 815 ILCS 390. A salesperson may change the trustee of pre-need trust funds upon no less than 30 days’ prior notice to the Comptroller. Section 225 ILCS 45/2 (g). When a seller changes trustees, the trustee must provide written notice of the change to the Comptroller at least 28 days prior to the effective date of the change. Sections 225 ILCS 45/2 (g), 815 ILCS 390/16 (b).

<http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=1302&ChapterID=24>

<http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=2343&ChapterID=67>

Neither the Illinois Comptroller’s administrative rules, nor those of the DPFR specifically address changes in trustees of cemetery care or pre-need trust funds. Title 38, Part 610, Ill. Admin. Code.

<http://www.ilga.gov/commission/jcar/admincode/038/03800600sections.html>  
<http://www.ilga.gov/commission/jcar/admincode/038/03800610sections.html>

<http://www.ilga.gov/commission/jcar/admincode/068/068parts.html>

#### Iowa:

In Iowa, the commissioner of insurance regulates cemeteries and funeral merchandise and services under the Cemetery and Funeral Merchandise and Funeral Services Act

and the Iowa Cemetery Act. Sections 523A.801, 523I.201, Iowa Code. The commissioner of insurance is an officer in the insurance division of Iowa's department of commerce. Section 505.1, Iowa Code. A seller of cemetery or funeral merchandise, or funeral services must deposit any moneys paid by the purchaser into a trust fund that the seller has previously established for such purposes. Section 523A.201.

Cemeteries may sell interment rights, merchandise related to the final disposition of human remains, or memorial or special care, and may or may not place moneys received from such sales in a trust fund. Section 523I.102 4., 20., 28., 47. Perpetual care cemeteries must maintain an irrevocable trust fund for the general care of a cemetery. The care fund trust must provide for the appointment of initial and successor trustees. Sections 523I.806 1., 523I.809 1., Iowa Code. A trustee for care funds may, but need not, be a financial institution. The cemetery may transfer care funds from one financial institution to another. Section 523I.810 1. a., 3., Iowa Code. The care fund's trustee may hold money or property designated for the special care of a particular interment space, or cemetery section or building as specified by the purchaser. Section 523I.804 4., Iowa Code.

<http://search.legis.state.ia.us/nxt/gateway.dll?f=templates&fn=default.htm><http://search.legis.state.ia.us/nxt/gateway.dll?f=templates&fn=default.htm>

Iowa's administrative rules regulating cemeteries are located at ch. 191—18, Iowa Admin. Code. Section 191—18.1. (2) of the code reiterates the provisions regarding a care funds trust stated in ss. 523I.806—.810, Iowa Code. Rules associated with the Cemetery and Funeral Merchandise and Funeral Services Act found at chs. 191—101—102, Iowa Administrative Code.

<http://search.legis.state.ia.us/nxt/gateway.dll/ar/iac?f=templates&fn=default.htm><http://search.legis.state.ia.us/nxt/gateway.dll?f=templates&fn=default.htm>

#### *Michigan:*

In Michigan, ownership and operation of cemeteries is regulated by the Cemetery Commissioner, an officer in the Department of Licensing and Regulatory Affairs (LARA), formerly the Department of Labor and Economic Growth. Michigan Compiled Laws (MCL) 456.522, s. 2. (k). Cemeteries are required to establish and maintain an irrevocable endowment and perpetual care trust fund with one or more financial institutions that will serve as trustee for the portion of the fund allocated to them. A cemetery may remove and replace a trustee at any time, subject to the consent of the commissioner and to the trustee agreement. MCL 456.536 s. 16 (4).

LARA administers the Prepaid Funeral and Cemetery Sales Act, under which it registers sellers and providers of funeral or cemetery services or merchandise sold pursuant to prepaid contracts, and regulates such contracts. MCL 328.213 s. 3. (o), 328.215 s. 5. (d), 328.216. All funds received pursuant to prepaid contracts must be held in escrow by an escrow agent for the benefit of the contract beneficiary. MCL 328.222 s. 12. (1). The statutes specify with particularity, based on whether the contract price is guaranteed or non-guaranteed, who or what entity may serve as the escrow agent: if non-guaranteed, either the contract

seller or provider, or another of the seller's or provider's choice; if either guaranteed or non-guaranteed, a depository, a trust company, a non-profit corporation or association of at least 250 funeral establishments, or a non-profit of at least 30 cemeteries; if guaranteed and includes funeral services, selected by the provider of those services; if guaranteed and no funeral services, selected by any provider that is a party to the contract. Contract sellers and providers may not serve as the escrow agent for guaranteed price contracts. MCL 328.222 s. 12. (4) (b), (5). Providers and escrow agents may change the escrow depository at any time and with or without cause, without the approval of any other party. The contract buyer must be notified of a change of depository or escrow agent. MCL 328.224 s.14. (3).

<http://legislature.mi.gov/doc.aspx?mcl-Act-255-of-1986>

The cemetery commissioner's administrative rules are codified at R 456.101—.196, Mich. Admin. Code. These rules contain provisions related to endowed care funds, but they do not discuss changes of trustees for such funds.

[http://www.state.mi.us/orr/emi/admincode.asp?AdminCode=Single&Admin\\_Num=45600101&Dpt=LG&RngHigh=](http://www.state.mi.us/orr/emi/admincode.asp?AdminCode=Single&Admin_Num=45600101&Dpt=LG&RngHigh=)

The administrative rules corresponding to the Michigan Prepaid Funeral and Cemetery Sales Act are found at R 339.11—.47, Mich. Admin. Code. Although various of the rules therein reference the escrow, deposit, and investment of moneys received for cemetery merchandise, none directly address changes in escrow agents.

[http://www.state.mi.us/orr/emi/admincode.asp?AdminCode=Single&Admin\\_Num=33900011&Dpt=&RngHigh=33923405](http://www.state.mi.us/orr/emi/admincode.asp?AdminCode=Single&Admin_Num=33900011&Dpt=&RngHigh=33923405)

#### *Minnesota:*

Cemeteries in Minnesota may be either public or private. The ownership and operation of a public cemetery is governed by either a corporation or association formed for such purposes, and must provide for the appointment of at least three board members or trustees. Section 306.02, Minn. Stats. A cemetery association may establish a permanent fund for the general care, maintenance, and improvement of the cemetery. Section 306.31, Minn. Stats. The association must either appoint a board of trustees for the fund, consisting of not less than three and not greater than five resident landowners, or designate a trust company within the state. Section 306.32, Minn. Stats. Trustees are appointed for life except if a trust company, which may be replaced by a board of trustees or another trust company, as the association trustees see fit. Section 306.32, Minn. Stats.

[https://www.revisor.mn.gov/statutes/?id=306&view=chapter&year=2011&keyword\\_type=all&keyword=cemetery&format=pdf](https://www.revisor.mn.gov/statutes/?id=306&view=chapter&year=2011&keyword_type=all&keyword=cemetery&format=pdf)

The total of all moneys paid pursuant to a contract for the preneed purchase of burial goods, or funeral or burial services must be held in trust with a Minnesota financial institution until performance of the terms of the contract upon the death of the trust's beneficiary. Unless otherwise specified by the purchaser, the trust must be revocable in its entirety. 149A.97, subd. 3., Minn. Stats. Such trusts must be carried in a separate account with the depositor funeral provider and the purchaser named as trustees. The purchaser may at any time prior to the death of the beneficiary designate another trustee. 149A.97, subd. 3a. (8), subd. 4. Minn. Stats.

[https://www.revisor.mn.gov/statutes/?id=149A&view=chapter&year=2011&keyword\\_type=all&keyword=cemetery&format=pdf](https://www.revisor.mn.gov/statutes/?id=149A&view=chapter&year=2011&keyword_type=all&keyword=cemetery&format=pdf)

Minnesota has no administrative rules related to cemetery care other than those regulating the construction of new care facilities, 4660.1200, Minn. Admin. Rules; charitable, religious, or educational organizations, including their tax exempt status, 8130.6200, Minn. Admin. Rules; and caskets, burial vaults, and urns for remains used for human burial, 8130.6300, Minn. Admin. Rules. No rules address trust funds or changes of trustees thereof.

[https://www.revisor.mn.gov/rules/?id=4660.1200&keyword\\_type=all&keyword=cemetery+care](https://www.revisor.mn.gov/rules/?id=4660.1200&keyword_type=all&keyword=cemetery+care)[https://www.revisor.mn.gov/rules/?id=8130.6200&keyword\\_type=all&keyword=cemetery](https://www.revisor.mn.gov/rules/?id=8130.6200&keyword_type=all&keyword=cemetery),  
[https://www.revisor.mn.gov/rules/?id=8130.6200&keyword\\_type=all&keyword=cemetery](https://www.revisor.mn.gov/rules/?id=8130.6200&keyword_type=all&keyword=cemetery),

[https://www.revisor.mn.gov/rules/?id=8130.6300&keyword\\_type=all&keyword=cemetery](https://www.revisor.mn.gov/rules/?id=8130.6300&keyword_type=all&keyword=cemetery)

A search of the Minnesota Administrative Rules for regulation of preneed or prepaid merchandise or services produced no results. 8130.6200

[https://www.revisor.mn.gov/search/doc\\_result.php?search=all&keyword\\_type=all&keyword=pre-need+preneed+prepaid+&stat\\_year1=2011&stat\\_year2=2011&stat\\_chapter=&laws\\_session1=87&laws\\_session2=87&laws\\_chapter=&law\\_s\\_display=art&rule=1&rule\\_year1=2010&rule\\_year2=2010&rule\\_chapter=&rule\\_agency%5B%5D=&court\\_year1=2010&court\\_year2=2010&court\\_type%5B%5D=&submit\\_keyword=GO](https://www.revisor.mn.gov/search/doc_result.php?search=all&keyword_type=all&keyword=pre-need+preneed+prepaid+&stat_year1=2011&stat_year2=2011&stat_chapter=&laws_session1=87&laws_session2=87&laws_chapter=&law_s_display=art&rule=1&rule_year1=2010&rule_year2=2010&rule_chapter=&rule_agency%5B%5D=&court_year1=2010&court_year2=2010&court_type%5B%5D=&submit_keyword=GO)

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

The comparison information with the rules in adjacent states was obtained by thorough review of their laws and rules, and from direct contact with those states by e-mail or telephone.

The proposed transfer of authority for regulation of warehouses that store cemetery pre-need merchandise, changing trustees of care or pre-need trust funds, and alternative care funds investments was prompted by legislative action that became effective on April 9, 2008. The purpose of these rules is to bring the existing rules into conformity with the enabling statutes, and thus, neither collection of factual data, nor the use of analytical methodologies were necessary.

#### ***Implementation of requirements for ensuring the accuracy, integrity, objectivity, and consistency of data used in rule preparation and related analysis***

No use of factual data or analytical methodologies was required in the preparation of this proposal or its related analysis.

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

Pursuant to s. IV, 3. a., EO # 50, the rules proposed herein were posted on both the state's and the department's

administrative rules websites for 14 days to solicit comments regarding the rule's potential economic impact on businesses, business sectors, professional associations, local government units, or potentially interested parties. In addition, e-mail solicitations were sent to several potentially interested parties. No responses to any of the solicitations were received.

The department concludes that the proposed rules will have no economic impact on small businesses. This proposal tracks legislation that became effective on April 9, 2008, approximately four years ago. The statutory change has thus been in place long enough to produce the resulting economic or fiscal impact experienced by private businesses or public entities, if any, for such impact to have been fully absorbed by those entities as a part of routine operations.

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

The department finds that these proposed rules will have no significant fiscal effect on the private sector.

#### **Fiscal Estimate**

Implementation of these rules will cause a minor increase in the department's credentialing division costs, which the department is able to absorb.

#### **Initial Regulatory Flexibility Analysis or Summary**

These proposed rules amend existing administrative code only to reflect the transfer of regulatory authority, the 2011 department name-change, and other minor information updates such as addresses referenced, etc. The individuals and entities governed by the existing rules include: cemeteries; funeral homes; sellers of pre-need cemetery or funeral merchandise or services; and the financial institutions serving as a trust fund depository and trustee. Because the substance of the existing rules does not change under this proposal, such individuals and entities will not be affected by the promulgation of the proposed amendments.

Change-of-trustee transactions require knowledge of banking practices and record-keeping. Such knowledge is essentially clerical in nature. A sworn, statement by a financial institution officer regarding the required transaction information must be notarized. These functions are a routine aspect of a financial institution's operations, and will not change by this proposal.

#### **Effect on Small Business**

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

The department's Regulatory Review Coordinator may be contacted by email at [Greg.Gasper@Wisconsin.gov](mailto:Greg.Gasper@Wisconsin.gov), or by phone at (608) 266-2112.

#### **Agency Contact**

Kris Anderson, Paralegal, Department of Safety and Professional Services, Division of Board Services, 1400 E. Washington Ave., Rm. 117, P.O. Box 8935, Madison, Wisconsin 53708; telephone (608) 261-2385; email at [KristineI.Anderson@Wisconsin.gov](mailto:KristineI.Anderson@Wisconsin.gov).

STATE OF WISCONSIN DEPARTMENT OF ADMINISTRATION DOA 2049 (R 07/2011)		
<b>ADMINISTRATIVE RULES FISCAL ESTIMATE AND ECONOMIC IMPACT ANALYSIS</b>		
Type of Estimate and Analysis		
<input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected		
Administrative Rule Chapter, Title and Number		
CB 3–5 “Authority transfer,” includes all rules in the former Chs. RL 52–54		
Subject		
Warehouses storing cemetery pre–need merchandise, changing trustees of care or pre–need trust funds, and alternative care funds investments.		
Fund Sources Affected		Chapter 20 , Stats. Appropriations Affected
GPR   FED <input checked="" type="checkbox"/> PRO   PRS   SEG   SEG–S		20.165 (1) (g)
Fiscal Effect of Implementing the Rule		
No Fiscal Effect Indeterminate	Increase Existing Revenues Decrease Existing Revenues	<input checked="" type="checkbox"/> Increase Costs <input checked="" type="checkbox"/> Could Absorb Within Agency’s Budget Decrease Costs
The Rule Will Impact the Following (Check All That Apply)		
State’s Economy Local Government Units		<input checked="" type="checkbox"/> Specific Businesses/Sectors Public Utility Rate Payers
Would Implementation and Compliance Costs Be Greater Than \$20 million?		
Yes <input checked="" type="checkbox"/> No		
Policy Problem Addressed by the Rule		
2007 Wisconsin Act 174, amending chs. 157 and 440, Stats., effective on April 9, 2008, transferred authority previously held by the former department of regulation and licensing, now the department of safety and professional services, to the cemetery board. The authority transferred regards regulation of warehouses storing cemetery pre–need merchandise, changes in trustees of care or pre–need trust funds, and alternative care funds investments. The cemetery board’s rule–making proposal will implement the authority transfer, which will bring the regulations into compliance with their enabling statutes.		
Summary of Rule’s Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State’s Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)		
These proposed rules implement legislation that has been in effect for several years. If there was any economic or fiscal impact on private businesses or public entities based on the transfer of authority for regulating the relevant activities, which is highly unlikely, it has long since been absorbed by such businesses and entities as a part of routine operations. The rules promulgated by this proposal will therefore have no current economic or fiscal impact on any of those entities.		
Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule		
The existing administrative rules regarding regulation of warehouses storing cemetery pre–need merchandise, changes in trustees of care or pre–need trust funds, and alternative care funds investments reflect the pre–Act 174 enabling statutes. Because the authority for administering such regulation, currently set forth in chs. SPS 52–54, no longer rests with the department, they are not consistent with the statutes. Chapters SPS 52–54 must therefore be renamed and renumbered; there is no alternative to making the proposed changes.		
Long Range Implications of Implementing the Rule		
The primary implication of the proposed rules, whether short– or long–term, is that they will correctly indicate the cemetery board, and not the department, as the authority for regulating warehouses storing cemetery pre–need merchandise, changes in trustees of care or pre–need trust funds, and alternative care funds investments. Indicating the correct authority will result in less confusion for those governed by the rules, as well as for department personnel charged with carrying out cemetery board decisions based on thereon.		

Compare With Approaches Being Used by Federal Government
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There are no existing or proposed federal regulations related to the regulatory areas of the proposed rules.

Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)
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**Illinois:**

The Illinois statutes, called the Illinois Compiled Statutes (ILCS), charge the state's Department of Financial and Professional Regulation (DFPR) with governing cemeteries pursuant to the Cemetery Oversight Act. The DFPR's powers include the authority to promulgate rules for the administration and enforcement of that Act. Section 225 ILCS 411/5–25. Licensed cemetery authorities may accept any gift or payment for the care of the cemetery or a cemetery lot to establish a trust fund for the specified purpose. Section 225 ILCS 411/15–5 (a). The cemetery authority acts as trustee of amounts received until depositing them with a corporate fiduciary. Section 225 ILCS 411/15–5 (b). Under s. 225 ILCS 620/1–5.05, "corporate fiduciary" means a trust company, such as a bank or other financial institution, or an individual or entity that has obtained a certificate of authority under the Corporate Fiduciary Act to exercise trust powers.

<http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=3173&ChapterID=24>

The Illinois State Comptroller regulates pre-need contract salespersons, pre-need contracts, and cemetery care or pre-need trust funds under both the Illinois Funeral or Burial Funds Act, ch. 225 ILCS 45, and the Illinois Pre-Need Cemetery Sales Act, ch. 815 ILCS 390. A salesperson may change the trustee of pre-need trust funds upon no less than 30 days' prior notice to the Comptroller. Section 225 ILCS 45/2 (g). When a seller changes trustees, the trustee must provide written notice of the change to the Comptroller at least 28 days prior to the effective date of the change. Sections 225 ILCS 45/2 (g), 815 ILCS 390/16 (b).

<http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=1302&ChapterID=24>

<http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=2343&ChapterID=67>

Neither the Illinois Comptroller's administrative rules, nor those of the DPFR specifically address changes in trustees of cemetery care or pre-need trust funds. Title 38, Part 610, Ill. Admin. Code.

<http://www.ilga.gov/commission/jcar/admincode/038/03800600sections.html>

<http://www.ilga.gov/commission/jcar/admincode/038/03800610sections.html>,

<http://www.ilga.gov/commission/jcar/admincode/068/068parts.html>

**Iowa:**

In Iowa, the commissioner of insurance regulates cemeteries and funeral merchandise and services under the Funeral Merchandise and Funeral Merchandise Act and the Iowa Cemetery Act. Sections 523A.801, 523I.201, Iowa Code. The commissioner of insurance is an officer in the insurance division of Iowa's department of commerce. Section 505.1, Iowa Code. A seller of cemetery or funeral merchandise, or funeral services must deposit any moneys paid by the purchaser into a trust fund that the seller has previously established for such purposes. Section 523A.201.

Cemeteries may sell interment rights, merchandise related to the final disposition of human remains, or memorial or special care, and may or may not place moneys received from such sales in a trust fund. Section 523I.102 4., 20., 28., 47. Perpetual care cemeteries must maintain an irrevocable trust fund for the general care of a cemetery. The care fund trust must provide for the appointment of initial and successor trustees. Sections 523I.806 1., 523I.809 1., Iowa Code. A trustee for care funds may, but need not, be a financial institution. The cemetery may transfer care funds from one financial institution to another. Section 523I.810 1. a., 3., Iowa Code. The care fund's trustee may hold money or property designated for the special care of a particular interment space, or cemetery section or building as specified by the purchaser. Section 523I.804 4., Iowa Code.

<http://search.legis.state.ia.us/nxt/gateway.dll?f=templates&fn=default.htm>

Iowa's administrative rules regulating cemeteries are located at ch. 191—18, Iowa Admin. Code. Section 191—18.1. (2) of the code reiterates the provisions regarding a care funds trusted stated in ss. 523I.806—.810, Iowa Code. Rules associated with the Cemetery and Funeral Merchandise and Funeral Services Act found at chs. 191—101–102, Iowa Administrative Code.

<http://search.legis.state.ia.us/nxt/gateway.dll/ar/iac?f=templates&fn=default.htm>,

<http://search.legis.state.ia.us/nxt/gateway.dll?f=templates&fn=default.htm>

**Michigan:**

In Michigan, ownership and operation of cemeteries is regulated by the Cemetery Commissioner, an officer in the Department of Licensing and Regulatory Affairs (LARA), formerly the Department of Labor and Economic Growth. Michigan Compiled Laws (MCL) 456.522, s. 2. (k). Cemeteries are required to establish and maintain an irrevocable endowment and perpetual care trust fund with one or more financial institution that will serve as trustee for the portion of the fund allocated to it. A cemetery may remove and replace a trustee at any time, subject to the consent of the commissioner and to the trustee agreement. MCL 456.536 s. 16 (4).

<http://legislature.mi.gov/doc.aspx?mcl-Act-251-of-1968>

LARA administers the Prepaid Funeral and Cemetery Sales Act, under which it registers sellers and providers of funeral or cemetery services or merchandise sold pursuant to prepaid contracts, and regulates such contracts. MCL 328.213 s. 3. (o), 328.215 s. 5. (d), 328.216. All funds received pursuant to prepaid contracts must be held in escrow by an escrow agent for the benefit of the contract beneficiary. MCL 328.222 s. 12. (1). The statutes specify with particularity, based on whether the contract price is guaranteed or non-guaranteed, who or what entity may serve as the escrow agent: if non-guaranteed, either the contract seller or provider, or another of the seller's or provider's choice; if either guaranteed or non-guaranteed, a depository, a trust company, a non-profit corporation or association of at least 250 funeral establishments, or a non-profit of at least 30 cemeteries; if guaranteed and includes funeral services, selected by the provider of those services; if guaranteed and no funeral services, selected by any provider that is a party to the contract. Contract sellers and providers may not serve as the escrow agent for guaranteed price contracts. MCL 328.222 s. 12. (4) (b), (5). Providers and escrow agents may change the escrow depository at any time and with or without cause, without the approval of any other party. The contract buyer must be notified of a change of depository or escrow agent. MCL 328.224 s.14. (3).

<http://legislature.mi.gov/doc.aspx?mcl-Act-255-of-1986>

The cemetery commissioner's administrative rules are codified at R 456.101-.196, Mich. Admin. Code. These rules contain provisions related to endowed care funds, but they do not discuss changes of trustees for such funds.

[http://www.state.mi.us/orr/emi/admincode.asp?AdminCode=Single&Admin\\_Num=45600101&Dpt=LG&RngHigh=](http://www.state.mi.us/orr/emi/admincode.asp?AdminCode=Single&Admin_Num=45600101&Dpt=LG&RngHigh=)

The administrative rules corresponding to the Michigan Prepaid Funeral and Cemetery Sales Act are found at R 339.11-.47, Mich. Admin. Code. Although various of the rules therein reference the escrow, deposit, and investment of moneys received for cemetery merchandise, none directly address changes in escrow agents.

[http://www.state.mi.us/orr/emi/admincode.asp?AdminCode=Single&Admin\\_Num=33900011&Dpt=&RngHigh=33923405](http://www.state.mi.us/orr/emi/admincode.asp?AdminCode=Single&Admin_Num=33900011&Dpt=&RngHigh=33923405)

**Minnesota:**

Cemeteries in Minnesota may be either public or private. The ownership and operation of a public cemetery is governed by either a corporation or association formed for such purposes, and must provide for the appointment of at least three board members or trustees. Section 306.02, Minn. Stats. A cemetery association may establish a permanent fund for the general care, maintenance, and improvement of the cemetery. Section 306.31, Minn. Stats. The association must either appoint a board of trustees for the fund, consisting of not less than three and not greater than five resident landowners, or designate a trust company within the state. Section 306.32, Minn. Stats. Trustees are appointed for life except if a trust company, which may be replaced by a board of trustees or another trust company, as the association trustees see fit. Section 306.32, Minn. Stats.

[https://www.revisor.mn.gov/statutes/?id=306&view=chapter&year=2011&keyword\\_type=all&keyword=cemetery&format=pdf](https://www.revisor.mn.gov/statutes/?id=306&view=chapter&year=2011&keyword_type=all&keyword=cemetery&format=pdf)

The total of all moneys paid pursuant to a contract for the preneed purchase of burial goods, or funeral or burial services must be held in trust with a Minnesota financial institution until performance of the terms of the contract upon the death of the trust's beneficiary. Unless otherwise specified by the purchaser, the trust must be revocable in its entirety. 149A.97, subd. 3., Minn. Stats. Such trusts must be carried in a separate account for the depositor funeral provider and the purchaser are the named trustees. The purchaser may at any time prior the death of the beneficiary designate another trustee. 149A.97, subd. 3a. (8), subd. 4. Minn. Stats.

[https://www.revisor.mn.gov/statutes/?id=149A&view=chapter&year=2011&keyword\\_type=all&keyword=cemetery&format=pdf](https://www.revisor.mn.gov/statutes/?id=149A&view=chapter&year=2011&keyword_type=all&keyword=cemetery&format=pdf)

Minnesota has no administrative rules related to cemetery care other than those regulating the construction of new care facilities, 4660.1200, Minn. Admin. Rules; charitable, religious, or educational organizations, including their tax exempt status, 8130.6200, Minn. Admin. Rules; and caskets, burial vaults, and urns for remains used for human burial, 8130.6300, Minn. Admin. Rules. No rules address trust funds or changes of trustees thereof.

[https://www.revisor.mn.gov/rules/?id=4660.1200&keyword\\_type=all&keyword=cemetery+care](https://www.revisor.mn.gov/rules/?id=4660.1200&keyword_type=all&keyword=cemetery+care)

[https://www.revisor.mn.gov/rules/?id=8130.6200&keyword\\_type=all&keyword=cemetery](https://www.revisor.mn.gov/rules/?id=8130.6200&keyword_type=all&keyword=cemetery),

[https://www.revisor.mn.gov/rules/?id=8130.6300&keyword\\_type=all&keyword=cemetery](https://www.revisor.mn.gov/rules/?id=8130.6300&keyword_type=all&keyword=cemetery)

A search of the Minnesota Administrative Rules for regulation of preneed or prepaid merchandise or services produced no results. 8130.6200

[https://www.revisor.mn.gov/search/doc\\_result.php?search=all&keyword\\_type=all&keyword=pre-need+preneed+prepaid+&stat\\_year1=2011&stat\\_year2=2011&stat\\_chapter=&laws\\_session1=87&laws\\_session2=87&laws\\_chapter=&laws\\_display=art&rule=1&rule\\_year1=2010&rule\\_year2=2010&rule\\_chapter=&rule\\_agency%5B%5D=&court\\_year1=2010&court\\_year2=2010&court\\_type%5B%5D=&submit\\_keyword=GO](https://www.revisor.mn.gov/search/doc_result.php?search=all&keyword_type=all&keyword=pre-need+preneed+prepaid+&stat_year1=2011&stat_year2=2011&stat_chapter=&laws_session1=87&laws_session2=87&laws_chapter=&laws_display=art&rule=1&rule_year1=2010&rule_year2=2010&rule_chapter=&rule_agency%5B%5D=&court_year1=2010&court_year2=2010&court_type%5B%5D=&submit_keyword=GO)

**Notice of Alternative Hearing Date**  
**Safety and Professional Services**  
**Controlled Substances Board**  
**CR 12-010**

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Controlled Substances Board in sections 227.11 (2) and 961.335 (8), Wis. Stats., and interpreting section 961.335, Wis. Stats., the Controlled Substances Board will hold a public hearing at the time and place indicated below to consider an order to promulgate Chapter CSB 3, Wis. Admin. Code. The proposed rules relate to the requirements and procedures for granting special use authorizations.

**Hearing Information**

**Date:** Monday, March 12, 2012  
**Time:** 10:30 A.M.  
**Location:** 1400 East Washington Avenue  
 Room 121C  
 Madison, WI 53703

**PLEASE BE ADVISED that the public hearing announced in this notice will take place only upon cancellation of the public hearing that is currently scheduled and noticed for February 27, 2012 at 1:00 p.m. If the February 27, 2012 public hearing proceeds as scheduled, the March 13, 2012 public hearing date is not necessary and will be canceled. The cancellation of the February 27, 2012 public hearing will not be known until the Controlled Substances Board convenes that day.**

**Appearances at the Hearing and Submittal 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 Safety and Professional Services, Division of Board Services, P.O. Box 8935, Madison, Wisconsin 53708. Written comments must be received at or before the public hearing to be included in the record of rule-making proceedings.

Copies of this proposed rule are available upon request to Kris Anderson, Paralegal, Department of Regulation and Licensing, Division of Board Services, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708, or by email at [Kristine1.Anderson@wisconsin.gov](mailto:Kristine1.Anderson@wisconsin.gov).

For the Analysis and Fiscal Estimate and Economic Impact Analysis prepared by the Department of Safety and Professional Services see the Notice of Hearing in Register No. 674, February 14, 2012.

**Notice of Hearing**  
**Transportation**  
**CR 12-019**

NOTICE IS HEREBY GIVEN that pursuant to sections 85.16 (1), 345.11 (4) and 227.11, Stats., interpreting sections 85.16 (1) and 345.11 (4), Stats., the Department of Transportation will hold a public hearing to consider the amendment of Chapter Trans 114, Wisconsin Administrative Code, relating to the uniform traffic citation.

**Hearing Information**

**Date:** Friday, March 16, 2012  
**Time:** 2:00 P.M.  
**Location:** Hill Farms Office Building  
 4802 Sheboygan Avenue  
 Room 144B  
 Madison, WI 53705

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 Glenn Green at (608) 264-7206 with specific information on your request at least 10 days before the date of the scheduled hearing. Accommodations such as interpreters, English translators, or materials in alternative format will, to the fullest extent possible, be made available upon a request from a person with a disability to accommodate your needs.

**Agency Contact Person and Place Where Comments are to be Submitted and Deadline for Submission**

The public record on this proposed rule making will be held open until close of business the day of the hearing to permit the submission of comments in lieu of public hearing testimony or comments supplementing testimony offered at the hearing. Any such comments should be submitted Darlene Schwartz, Department of Transportation, Citations and Withdrawals Section, Room 301, P. O. Box 7919, Madison, WI 53707-7919. You may also contact Ms. Schwartz by phone at (608) 266-8677 or via e-mail: [darlene.schwartz@wisconsin.gov](mailto:darlene.schwartz@wisconsin.gov) for copies of the proposed rule.

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

**Copies of Proposed Rule**

A copy of the rule may be obtained upon request from Glenn Green, Department of Transportation, Citations and Withdrawals Section, Room 301, P. O. Box 7919, Madison, WI 53707-7919. You may also contact Mr. Green by phone at (608) 264-7206 or via e-mail: [glenn.green@dot.wi.gov](mailto:glenn.green@dot.wi.gov). Copies will also be available at the hearing.

**Place Where Comments are to be Submitted and Deadline for Submissions**

**Analysis Prepared by the Department of Employee Trust Funds**

***Statutes interpreted***

Sections 85.16 (1) and 345.11 (4), Stats.

***Statutory authority***

Sections 85.16 (1) and 345.11 (4), Stats.

***Explanation of agency authority***

Section 345.11 (5), Stats., requires DOT to promulgate the Uniform Traffic Citation used by traffic officers across the state and any regulations related to it as an administrative rule:

...the secretary shall under s. 85.16 (1) promulgate the form or automated format as an administrative rule, and with the advice of the council shall make any other rules as are necessary for the implementation and operation of this section.

***Related statute or rule***

Section 345.11, Stats.

***Plain language analysis***

This proposed rule amends Figures 1, 4, 5, and 6 to ch. Trans 114, relating to the Uniform Traffic Citation. During the last audit of our Commercial Driver Licensing program in 2007, the reviewers indicated “The boxes on the uniform citation to identify CMV and hazmat involvement are not consistently and appropriately used by law enforcement for the DMV to identify and impose the appropriate disqualification action.” DMV proposes to change the Uniform Traffic Citation form and insert yes/no boxes next to the problem items in the hope that the change will improve consistent and appropriate use. Development of this rule did not involve the gathering, analysis, or use of data. Therefore, Wis. Stat. s. 227.14(2m) is inapplicable to this rulemaking.

The Uniform Traffic Citation Council has endorsed these changes. The changes to the citation involve no issue of policy; they are made to improve the reliability of the data provided by officers.

The rule also proposes to amend the existing rule to clarify that the automated citation must be produced in the format already prescribed by the Department in Figure 6 of the rule. The document may not be reproduced on small paper leaving the information too small to read.

The title to s. Trans 114.03 would be amended by this proposed rule to clarify that the provisions of that section apply to prototype forms used for the testing purposes described in that rule. The rule text is unchanged; the title is simply corrected to better describe the rule’s content. The new name will distinguish s. Trans 114.03 from s. Trans 114.07, which applies to the use of the standard uniform traffic citation form.

Finally, the proposal to amend the regulation to explicitly require the date and time of appearance to be shown on the citation is simply codifying procedures that should already be mandated by courts processing citations. A person who is issued a citation should be notified of the time and place he or she is required to appear in court or pay the ticket as part of that process. All persons have a fundamental due process right to notice of the time and place their case will be heard. Unfortunately, the Uniform Traffic Citation Council and Department have become aware that some police agencies do not specify the return date on citations. This proposed amendment is intended to end that practice.

***Summary of, and preliminary comparison with, existing or proposed federal regulation***

The purpose of making changes to the citation form related to CMV use or the transportation of hazardous materials is to improve compliance with federal CDL laws and regulations. Federal law requires Wisconsin to:

- Notify the licensing jurisdiction within 10 days if one of its drivers is convicted of a CDL offense in Wisconsin.
- Post convictions on Wisconsin driving records within 10 days of the conviction.

Section 345.48(1m), Stats., requires courts to report convictions to DMV within 5 working days. By having consistent information regarding CMV use or hazardous materials transportation, as well as a consistent automated citation format, DMV should be more consistent in processing reported convictions within the 10-day federal time limit.

***Comparison with rules in the following states***

Neighboring states have a requirement similar to Wisconsin’s that a uniform citation be used for traffic offenses.

**Michigan:** Michigan: Section 257.727c, Michigan Vehicle Code Act 300

(1) As used in this act, “citation” means a complaint or notice upon which a police officer shall record an occurrence involving 1 or more vehicle law violations by the person cited. Each citation shall be numbered consecutively, be in a form as determined by the secretary of state, the attorney general, the state court administrator, and the director of the department of state police.

**Minnesota:** 2008 Minnesota Statutes 169.99 Uniform Traffic Ticket

Subdivision 1. Form. (a) Except as provided in subdivision 3, there shall be a uniform ticket issued throughout the state by the police and peace officers or by any other person for violations of this chapter and ordinances in conformity thereto. Such uniform traffic ticket shall be in the form and have the effect of a summons and complaint. Except as provided in paragraph (b), the uniform ticket shall state that if the defendant fails to appear in court in response to the ticket, an arrest warrant may be issued. The uniform traffic ticket shall consist of four parts, on paper sensitized so that copies may be made without the use of carbon paper, as follows:

**Illinois:** Joint Committee on Administrative Title 92, Chapter 1, Part 450

The complaint shall be in the form provided by the Illinois Uniform Citation and Complaint form, and shall contain...

**Iowa:** Chapter 805.6 Uniform Citation and Complaint

1.a.(1) The commissioner of public safety, the director of transportation, and the director of natural resources, acting jointly, shall adopt a uniform, combined citation and complaint which shall be used for charging all traffic violations in Iowa under state law or local regulation.

***Summary of factual data and analytical methodologies used and how the related findings support the regulatory approach chosen***

The uniform traffic citation is created with the advice of the Council on Uniformity of Traffic Citations and Complaints. That group consists of representatives of various groups involved in the enforcement and adjudication of traffic regulations.

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

Traffic citations are generally written to individuals. The form used by law enforcement officers to write citations does not affect business in the state of Wisconsin. There is no documentation on this point and the analysis is limited to observing that there is no possible relationship between the form used for citations in traffic cases and small business development in Wisconsin.

***Effect on Small Business***

This rule has no effect on small business. The Department’s Regulatory Review Coordinator may be

contacted by e-mail at [ralph.sanders@dot.state.wi.us](mailto:ralph.sanders@dot.state.wi.us), or by calling (414) 438-4585.

**Fiscal Effect**

The Department estimates that there will be no fiscal impact on the state or on the liabilities or revenues of any county, city, village, town, school district, vocational, technical and adult education district, sewerage district, or federally-recognized tribes or bands. Existing s. Trans 114.07 permits law enforcement agencies to exhaust the existing stock of forms before buying new forms. This mitigates any fiscal impact on local governments.

**Anticipated costs incurred by private sector**

The department anticipates there will be no fiscal impact on private sector revenues or liabilities.

**Agency Contact Person and Place Where Comments are to be Submitted and Deadline for Submission**

Darlene Schwartz, Department of Transportation, Citations and Withdrawals Section, Room 301, P. O. Box 7919, Madison, WI 53707-7919. You may also contact Ms. Schwartz by phone at (608) 266-8677 or via e-mail: [darlene.schwartz@wisconsin.gov](mailto:darlene.schwartz@wisconsin.gov) for copies of the proposed rule.

STATE OF WISCONSIN DEPARTMENT OF ADMINISTRATION DOA 2049 (R 07/2011)		
<b>ADMINISTRATIVE RULES FISCAL ESTIMATE AND ECONOMIC IMPACT ANALYSIS</b>		
Type of Estimate and Analysis		
<input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected		
Administrative Rule Chapter, Title and Number		
Chapter Trans 114		
Subject		
Uniform Traffic Citations		
Fund Sources Affected		Chapter 20 , Stats. Appropriations Affected
GPR   FED   PRO   PRS   SEG   SEG-S		
Fiscal Effect of Implementing the Rule		
<input checked="" type="checkbox"/> No Fiscal Effect Indeterminate	Increase Existing Revenues Decrease Existing Revenues	Increase Costs Could Absorb Within Agency's Budget Decrease Costs
The Rule Will Impact the Following (Check All That Apply)		
State's Economy Local Government Units		Specific Businesses/Sectors Public Utility Rate Payers
Would Implementation and Compliance Costs Be Greater Than \$20 million?		
Yes <input checked="" type="checkbox"/> No		
Policy Problem Addressed by the Rule		
This rule-making implements changes to the format of the Uniform Traffic Citation to comply with federal requirements related to CDLs and to improve efficiency.		
Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)		
None.		
Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule		
The Uniform Traffic Citation form changes will improve Wisconsin compliance with federal CDL reporting requirements.		
Long Range Implications of Implementing the Rule		
The Uniform Traffic Citation form will be promulgated in the manner required by law.		
Compare With Approaches Being Used by Federal Government		
N/A		
Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)		
Neighboring states also require uniformity in their traffic citation formats.		
Name and Phone Number of Contact Person		
Attorney John Sobotik 608-266-8810		

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## Submittal of Proposed Rules to Legislature

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

### **Public Service Commission CR 11-039**

(PSC # 1-C-232)

(Revised Notice – Original Published June 30, 2011  
Register No. 666)

The proposed rule updates Chapters PSC 184 and 185, relating to water conservation and construction by water utilities and municipal combined water and sewer utilities.

This rule is not subject to s. 227.135 (2), Stats., as affected by 2011 Wis. Act 21. The scope statement for this rule, published in Register No. 654 on June 30, 2010, was sent to the Legislative Reference Bureau prior to June 8, 2011 (the effective date of 2011 Wisconsin Act 21).

### **Safety and Professional Services Professional Services, Chs. SPS 1-299**

**CR 08-086**

Creates sections SPS 91.01(3) (k) and 93.02 (4), relating to training and proficiency in the use of automated external defibrillators for licensure as a massage therapist or bodywork therapist.

This rule is not subject to s. 227.185, Stats. The statement of scope for this rule, published in Register No. 629 on May 31, 2008, was sent to the Legislative Reference Bureau prior to June 8, 2011 the effective date of 2011 Wis. Act 21.

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

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

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

**Natural Resources**  
***Fish, Game, etc., NR 1—***  
**CR 10-127**

(DNR # CF-28-09)

**Summary of Final Regulatory Flexibility Analysis**

Chapter NR 51, Wis. Admin. Code, is applicable to the Department, local units of government, nonprofit conservation organizations and Friends Groups and imposes no compliance or reporting requirements for small businesses, nor are there any design or operational standards contained in the rule that affect small business. Therefore, the proposed rule is not expected to have a significant impact on small businesses.

**Summary of Comments of Legislative Standing Committees**

No comments were reported.

**Natural Resources**  
***Fish, Game, etc., NR 1—***  
**CR 11-030**

(DNR # WM-02-11)

**Summary of Final Regulatory Flexibility Analysis**

The Wisconsin Natural Resources Board proposes an order revising Chapters NR 10, 15, 19 and 45, relating to game and hunting, game refuges, miscellaneous fur, fish, game and outdoor recreation, and the use of department properties. These rules are applicable to individual sportspersons and impose no compliance or reporting requirements for small businesses, and no design or operational standards are contained in the rule.

**Summary of Comments of Legislative Standing Committees**

No comments were reported.

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## Sections Affected by Rule Revisions and Corrections

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The following administrative code sections had rule revisions and corrections take place in **February 2012**, and will be effective as indicated in the history note for each particular section. For additional information, contact the Legislative Reference Bureau at (608) 266-7590.

### Revisions

#### Natural Resources

##### Ch. NR 10

NR 10.001 (1r), (5pm)

NR 10.106 (2) (f)

NR 10.111 (7)

NR 10.12 (5) (a)

NR 10.13 (1) (b)

##### Ch. NR 15

NR 15.024 (4) (a)

##### Ch. NR 19

NR 19.001 (5)

##### Ch. NR 45

NR 45.04 (3) (m)

##### Ch. NR 51

NR 51.002 (1), (2m), (3), (3m), (4) (a), (5r), (6d), (7), (7d), (8m), (9), (11), (13), (13m), (17), (17d), (17m), (19), (24), (26e), (26m), (26s), (27), (28), (29m), (30) to (32)

NR 51.003

NR 51.004 (6)

NR 51.005

NR 51.006

NR 51.007

NR 51.03

NR 51.04 (title), (1) (a) to (d), (2) (a), (am), (b) (intro.), (c), (e)

NR 51.05 (title), (1) (title), (intro.), (2) (title), (intro.), (b) to (d)

NR 51.06 (1), (4), (5)

NR 51.07 (1), (1d), (3) (intro.), (b), (c), (e), (f), (4)

NR 51.08 (intro.), (2), (4) (a), (b) (intro.)

NR 51.09 (1) (a) to (c), (3) (a), (d), (e), (f)

NR 51.24

NR 51.25 (1), (2)

NR 51.26 (intro.), (1) to (3), (g)

NR 51.27

NR 51.28

NR 51.32

NR 51.35

NR 51.40

NR 51.41

NR 51.42

NR 51.43

NR 51.45 (1) (title), (a), (b), (2) (title), (3)

NR 51.46 (1), (3) (intro.), (4)

NR 51.52

NR 51.53 (intro.), (7) to (9)

NR 51.62

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NR 51.64

NR 51.65 (intro.), (5), (6)

NR 51.66

NR 51.70 (2)

NR 51.72 (2), (2m)

NR 51.73 (1)

NR 51.74 (1), (title), (a), (b) (intro.), (c), (2), (title), (intro.), (a) to (g), (5), (6) (a) to (g)

NR 51.75 (title), (intro.), (2), (5), (13)

NR 51.82

NR 51.84 (3) (intro.)

NR 51.85 (1) to (4), (6) to (8)

NR 51.880

NR 51.882

NR 51.883 (1), (3), (6), (7) (b)

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NR 51.903

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NR 51.906 (1) to (4), (6) to (8)

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NR 51.913

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NR 51.918 (1), (16)

NR 51.920

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NR 51.925 (2)

NR 51.926 (1) (intro.), (a), (b), (2)

NR 51.932

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NR 51.934 (2), (3), (6), (8), (9), (10) (a)

NR 51.935 (1), (8), (16)

NR 51.942 (intro.), (2) to (4)

NR 51.943

NR 51.944 (1), (2), (6)

NR 51.946 (intro.), (5), (6)

NR 51.950

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NR 51.952 (title), (1), (2)	NR 51.974
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NR 51.960	NR 51.980
NR 51.961	NR 51.981
NR 51.962	NR 51.982
NR 51.963	NR 51.983
NR 51.964	NR 51.984
NR 51.965	NR 51.985
NR 51.966	NR 51.986
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NR 51.968	NR 51.990
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NR 51.972	NR 51.994

### Editorial Corrections

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

#### Agriculture, Trade and Consumer Protection

##### Ch. ATCP 40

ATCP 40.08 (Note)

##### Ch. ATCP 60

ATCP 60.08 (2)

ATCP 60.14 (6) (b)

##### Ch. ATCP 71

ATCP 71.03 (9) (a)

##### Ch. ATCP 87

ATCP 87.01 (3), (5)

##### Ch. ATCP 125

ATCP 125 (Note)

#### Ch. DCF 251

DCF 251.06 (6) (b) (Note)

#### Dietitians Affiliated Credentialing Board

##### Ch. DI 1

DI 1.02 (3)

#### Emergency Management

##### Ch. WEM 6

WEM 6.05 (5) (f)

##### Ch. WEM 8

WEM 8.08

#### Barbering and Cosmetology

##### Ch. BC 3

BC 3.01 (Note)

#### Financial Institutions – Savings Banks

##### Ch. DFI–SB 3

DFI–SB 3.09 (Note)

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##### Ch. CB 2

CB 2.04 (Note)

#### Health Services

##### Ch. DHS 12

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DHS 12.07 (1) (d), (2) (d)

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##### Ch. DHS 40

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**Medical Examining Board****Ch. Med 2**

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NR 51.005 (6)

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NR 51.904 (2) (title), (3)

NR 51.907 (1) (a) (title), (b) (title), (2) (a) (title), (b) (title), (c) (title)

NR 51.917 (3)

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NR 195.12 (1) (a)

**Ch. NR 199**

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DWD 80.49 (6) (b)

**Ch. DWD 270**

DWD 270.12 (13)

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## Executive Orders

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

**Executive Order 57.** Relating to the Repeal of Executive Order #10. **(January 18, 2012)**

**Executive Order 58.** Relating to a Proclamation that the Flag of the United States and the Flag of the State of Wisconsin be Flown at Half-Staff as a Mark of Respect for First Lieutenant David A. Johnson of the United States Army Who Lost His Life While Serving His Country During Operation Enduring Freedom-Afghanistan. **(February 3, 2012)**

**Executive Order 5.** Relating to Postsecondary Educational Institution Compliance with the U.S. Department of Education Program Integrity Rule. **(February 15, 2012)**

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