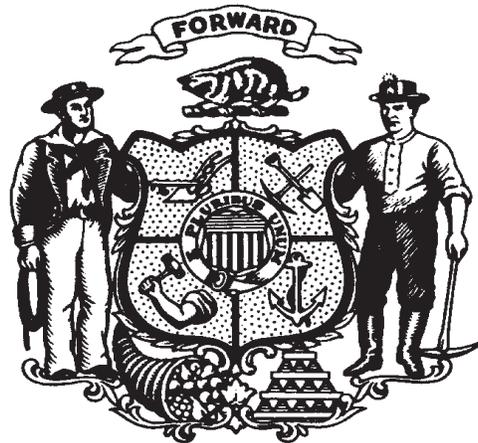


# Wisconsin Administrative Register

No. 680



Publication Date: August 14, 2012

Effective Date: August 15, 2012



Legislative Reference Bureau  
<http://www.legis.state.wi.us/rsb/code.htm>



## WISCONSIN ADMINISTRATIVE REGISTER

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## Emergency Rules Now in Effect

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

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

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

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

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

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

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

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### Agriculture, Trade and Consumer Protection (2)

**1. EmR1202** — Rule adopted to create **section ATCP 161.50 (3) (e)** and **subchapter VI of Chapter ATCP 161**, relating to the “grow Wisconsin dairy producer” grant and loan program created under sections 20.115 (4) (d) and 93.40 (1) (g), Stats.

This emergency rule was approved by the governor on March 27, 2012.

The scope statement for this rule, SS 002–12, was approved by the governor on January 9, 2012, published in Register No. 673, on January 31, 2012, and approved by the Board of Agriculture, Trade and Consumer Protection on February 22, 2012.

#### Finding of Emergency

Enactment of a rule is necessary to establish criteria the department will use to make determinations for grants, loans or other forms of financial assistance to dairy producers to promote and develop the dairy industry. An emergency rule is needed to ensure that funds are used to assist dairy producers during the first year of the annual appropriation as permanent rules cannot be adopted in time to provide the basis for grant determinations for the first year appropriations.

**Filed with LRB:** March 22, 2012  
**Publication Date:** March 30, 2012  
**Effective Dates:** March 30, 2012 through August 26, 2012  
**Hearing Date:** June 28, 2012

**2. EmR1209** — The state of Wisconsin department of agriculture, trade and consumer protection hereby adopts the following emergency rule to amend **section ATCP 21.17 (1) (b)** and to create **section ATCP 21.17 (1) (c)**, relating to the quarantines of Rock County and Walworth County for emerald ash borer.

This rule was approved by the governor on July 12, 2012.

The scope statement for this rule, SS 019–11, was approved by the governor on August 29, 2011, published in Register No. 669, on September 14, 2011, and approved by the Board of Agriculture, Trade and Consumer Protection on December 15, 2011.

#### Finding of Emergency

(1) On June 11, 2012, APHIS identified EAB in Walworth County, near the village of Walworth. Subsequently, APHIS also positively identified EAB in Rock County in the city of Janesville on June 25, 2012. EAB is an exotic pest that poses a dire risk to the ash forest. When APHIS declares quarantine, DATCP has regulatory authority for import controls and quarantine for EAB under s. ATCP 21.17. It is anticipated that APHIS will declare quarantines for Rock County and Walworth County but that it will take six to eight weeks for APHIS to act. A six week delay until enactment of the federal quarantines leaves too much time for businesses or individuals to move potentially EAB infested material out of these counties to areas of Wisconsin or other states that are not infested with EAB.

(2) DATCP is adopting this rule as a temporary emergency rule, pending completion of federal quarantine regulations. DATCP does not anticipate completing a permanent rule.

**Filed with LRB:** July 16, 2012  
**Publication Date:** July 17, 2012  
**Effective Dates:** July 17, 2012 through December 13, 2012  
**Hearing Date:** August 28, 2012

(See the Notice in this Register)

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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.

**Filed with LRB:** August 31, 2010  
**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

**EmR1203** — Rule adopted to create **Chapters ERC 90 and 100**, relating to the calculation and distribution of collectively bargained base wages.

This emergency rule was approved by the governor on March 30, 2012.

The statement of scope for this rule, SS 005–11, was approved by the governor on August 31, 2011, published in Register No. 669, on September 14, 2011, and approved by the Employment Relations Commission on September 19, 2011.

#### Finding of Emergency

An emergency exists because the public peace, health, safety and welfare necessitate putting these rules in effect so that the State of Wisconsin and municipal employers can proceed to bargain over base wages with labor organizations that represent State and municipal employees.

**Filed with LRB:** April 16, 2012  
**Publication Date:** April 19, 2012  
**Effective Dates:** April 19, 2012 through September 15, 2012

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### Health Services

#### *Health, Chs. DHS 110—*

**EmR1204** — The Wisconsin Department of Health Services hereby adopts emergency rules to create **section DHS 115.05 (3)**, relating to fees for screening newborns for congenital and metabolic disorders and other services.

This emergency rule was approved by the governor on April 19, 2012.

The statement of scope for this rule, SS 033–11, was approved by the governor on October 25, 2011, published in Register No. 671, on November 14, 2011, and approved by the Department of Health Services Secretary, Dennis G. Smith, effective November 25, 2011.

#### Exemption from Finding of Emergency

The legislature by 2011 Wisconsin Act 32, SECTION 9121 (9) provides an exemption from a finding of emergency to adopt these emergency rules. The exemption is as follows:

2011 Wisconsin Act 32, SECTION 9121 (9) CONGENITAL DISORDER TESTING FEES; RULES. Using the procedure under section 227.24 of the statutes, the department of health services shall promulgate rules required under section 253.13 (2) of the statutes, as affected by this act, for the period before the effective date of the permanent rules promulgated under section 253.13 (2) of the statutes, as affected by this act, but not to exceed the period authorized

under section 227.24 (1) (c) of the statutes, subject to extension under section 227.24 (2) of the statutes. Notwithstanding section 227.24 (1) (a), (2) (b), and (3) of the statutes, the department of health services is not required to provide evidence that promulgating a rule under this subsection as an emergency rule is necessary for the preservation of public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under this subsection.

**Filed with LRB:** May 1, 2012  
**Publication Date:** May 4, 2012  
**Effective Dates:** May 4, 2012 through September 30, 2012  
**Hearing Date:** May 25, 2012

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### Insurance

**EmR1208** — The Commissioner of Insurance purposes an order to amend **section Ins 17.01 (3)** and repeal and recreate **section Ins 17.28 (6)**, relating to the Injured Patients and Families Compensation Fund annual fund fees and mediation panel fees for fiscal year 2013 and affecting small business.

This emergency rule was approved by the governor on May 25, 2012.

The statement of scope SS 001–12, was approved by the governor on January 4, 2011, published in Register No. 673, on January 31, 2012, and approved by the Commissioner of Insurance on February 14, 2012.

#### Finding of Emergency

The Commissioner of Insurance finds that an emergency exists and that the attached rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. Facts constituting the emergency are as follows:

These changes must be in place with an effective date of July 1, 2012 for the new fiscal year assessments in accordance with s. 655.27 (3), Wis. Stats. The permanent rule making process during an even-numbered year cannot complete the rule-making process prior to the effective date of the new fee schedule. The fiscal year fees were established by the Board of Governors at the meeting held on December 14, 2011.

**Filed with LRB:** June 12, 2012  
**Publication Date:** June 14, 2012  
**Effective Dates:** June 14, 2012 through November 10, 2012  
**Hearing Date:** June 19, 2012

(**Note:** The affected sections were incorrectly shown as **Ins 17.01 (3)** and **17.28 (6)** in Register 679, July 15, 2012)

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### Justice

**EmR1206** — The State of Wisconsin Department of Justice (“DOJ”) proposes an order to repeal and re-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.

Governor Walker approved the final draft emergency rules on March 15, 2012. Attorney General Van Hollen signed an order approving the final emergency rules on March 15, 2012, and the emergency rules were published in the Wisconsin State Journal on March 21, 2012.

The statement of scope for these emergency rules, SS 010–12, was approved by Governor Walker on February 15,

2012, published in Administrative Register No. 674, on February 29, 2012, and approved by Attorney General J.B. Van Hollen on March 12, 2012.

### Finding of Emergency

Under section 101 of 2011 Wis. Act 35, DOJ has been statutorily required to receive and process concealed carry license applications and to issue or deny licenses since November 1, 2011. The Legislature has thus determined that the public welfare requires the licensing system commenced on that date to remain continuously in effect. Emergency rules governing the licensing process were adopted on October 25, 2011, and have been in effect since November 1, 2011.

On November 7, 2011, JCRAR suspended certain portions of the emergency rules adopted on October 25, 2011. Since that time, DOJ has implemented concealed carry licensing without enforcing the suspended provisions. DOJ is also in the process of developing proposed permanent rules that do not include the substance of any of the provisions in the emergency rules that were 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.

In order to prevent such a discontinuity in the operation of the concealed carry rules, it is necessary to re-promulgate the existing emergency rules in their entirety, with the exception of the portions that were suspended by JCRAR on November 7, 2011. Only if DOJ utilizes the emergency rulemaking procedures of s. 227.24, Stats., can the revised emergency rules be promulgated and in effect in time to prevent discontinuity in the operation of the existing rules. The public welfare thus necessitates that the rules proposed here be promulgated as emergency rules under s. 227.24, Stats.

**Filed with LRB:** May 24, 2012  
**Publication Date:** March 21, 2012  
**Effective Dates:** March 21, 2012 through August 17, 2012  
**Hearing Date:** July 16, 24, 25, 2012

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## Natural Resources (2)

### *Fish, Game, etc., Chs. NR 1—*

**1. EmR1205** (DNR # CF–26–11(E)) — The Wisconsin Department of Natural Resources proposes an emergency order to revise **Chapter NR 64**, relating to All-Terrain Vehicles, as follows: to renumber section NR 64.14 (9) (d); to amend section NR 64.12 (7) (a) and section NR 64.14 (9) (a) 1.; and to create sections NR 64.02 (9m), NR 64.02 (15), NR 64.12 (7) (am), NR 64.14 (2r) (a) and (b), and NR 64.14 (9) (d), relating to the all-terrain vehicle grant programs and trail–route combinations.

This emergency rule was approved by the governor on April 26, 2012.

The statement of scope for this rule, SS 046–11, was approved by the governor on December 2, 2011, published in Register No. 672 on December 31, 2011, and approved by the Natural Resources Board on February 22, 2012.

### Finding of Emergency

The department is aware that several ATV trails in Wisconsin overlap existing roads. From the onset of the program, these overlapping paths were identified as trails, signed accordingly, and were eligible to receive ATV grant funds. A few years ago, the ORV Advisory Council and WI County Forestry Association proposed that the department revise Ch. NR 64 to accommodate paths used by both ATVs and motor vehicles. These trail–route combinations — also called hybrid trails but commonly referred to as “troutes” — will be eligible for future maintenance grant funding at the current rate if it can be shown that the hybrid trails (“troute”) existed prior to the effective date of this rule.

This emergency rule will establish a new category of all-terrain trail commonly called a “troute”, or a trail–route combination, that provides a connector between trails and allows grant funding for these unique trails. An emergency rule is needed because we anticipate that the permanent rule revisions to Ch. NR 64 that will include troutes will not be effective until Sept 2012, at the earliest. Without this emergency rule, DNR will not be able to award grants to project sponsors for ATV “troutes” in July 2012, as is our practice. About one–third of the trails in northern Wisconsin are “troutes” and have been funded as trails since the program started. Our partners count upon grant funds for troute maintenance.

Without this Emergency Rule, the integrity and safety of troutes could be severely compromised. Our partners may be forced to close troutes without grant funding to maintain them until the permanent rule is effective. If troutes are closed, riders could be stranded in an unfamiliar location or be forced to turn around and ride back the same way they came instead of continuing onto their destination.

**Filed with LRB:** May 9, 2012  
**Publication Date:** June 1, 2012  
**Effective Dates:** June 15, 2012 through November 11, 2012  
**Hearing Date:** June 25, 2012

**2. EmR1207** — The Wisconsin Natural Resources Board proposes an order to amend **section NR 10.01 (3) (d) 1.**, relating to the bobcat hunting and trapping season.

This emergency rule was approved by the governor on May 4, 2012. This emergency rule, modified to reflect the correct effective date, was approved by the governor on May 25, 2012.

The statement of scope for this rule, SS 009–12, was approved by the governor on February 15, 2012, published in Register No. 674, on February 29, 2012, and approved by the Natural Resources Board on March 28, 2012.

This rule was approved and adopted by the State of Wisconsin Natural Resources Board on April 25, 2012.

### Finding of Emergency

Pursuant to s. 227.24, Stats., the Department of Natural Resources finds that an emergency exists and that the attached rule is necessary for the immediate preservation of the public peace, health, safety, or welfare.

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. 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. Some people will view a reversion to the single season framework as a reduction of opportunity that is not socially acceptable. Therefore, this emergency rule is needed to preserve the public welfare.

**Filed with LRB:** May 30, 2012  
**Publication Date:** June 10, 2012  
**Effective Dates:** October 1, 2012 through  
February 27, 2013  
**Hearing Date:** August 27, 2012

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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 safety and professional services (formerly 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.

**Filed with LRB:** September 8, 2008  
**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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### Children and Families

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

#### SS 054–12

This statement of scope was approved by the governor on July 30, 2012.

#### Rule No.

Chapter DCF 201.

#### Relating to

Circumstances for a waiver to allow child care subsidy payments for a parent who is a provider.

#### Rule Type

Emergency.

#### Finding/Nature of Emergency (Emergency Rule only):

Section 49.155 (3m) (d), Stats., as affected by 2011 Wisconsin Act 32, prohibits a parent who is a child care provider from receiving a child care subsidy for care of the provider's children by another child care provider. The prohibition on assistance does not apply if the child's parent has applied for, and been granted, a waiver. Implementation of an emergency rule specifying the circumstances under which the department or an agency will grant a waiver is necessary to protect certain vulnerable children.

#### Detailed Description of the Objective of the Proposed Rule

The rule will specify the circumstances, or standards for determining the circumstances, under which a child care administrative agency will grant a waiver under s. 49.155 (3m) (d), Stats.

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

A parent who is a child care provider may apply to the child care administrative agency for a waiver requesting assistance for child care services provided for the provider's child by another child care provider. The department or agency may grant a waiver if any of the following apply:

- The department or agency determines that assistance is appropriate because the child has a special need.
- The parent is the child's foster parent.
- The parent is the child's guardian or interim caretaker and is receiving subsidized guardianship payments for the care and maintenance of the child.
- The parent is the child's kinship care relative, the child has been placed with the relative under a court order, and the relative is receiving kinship care payments for the care and maintenance of the child.
- Both of the following apply:

- The child's biological parent is a dependent minor child under the age of 18 who attends high school or participates in a course of study meeting the standards established by the state superintendent of public instruction for the granting of a declaration of equivalency of high school graduation.
- The dependent minor parent and the child reside with a person who is considered the parent for purposes of the child care subsidy program and who may be the dependent minor parent's custodial parent, kinship care relative, foster parent, or guardian receiving subsidized guardianship payments for the care and maintenance of the dependent minor parent.

#### Detailed Explanation of Statutory Authority for the Rule

Section 49.155 (3m) (d), Stats., as affected by 2011 Wisconsin Act 32, provides that no child care subsidy funds may be used for child care services that are provided for a child by a child care provider who is the parent of the child or who resides with the child. In addition, no child care subsidy funds may be used for child care services that are provided by another child care provider if the child's parent is a child care provider.

This prohibition does not apply if the child's parent has applied for, and been granted, a waiver of by the county department, agency, or by the department. Section 49.155 (3m) (d) 4., Stats., directs the department to promulgate rules that specify the circumstances, or standards for determining the circumstances, under which a local agency or the department will grant a waiver.

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

80 hours.

#### List with Description of All Entities that may be Affected by the Proposed Rule

Child care providers, low-income parents who are child care providers.

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

None.

#### Anticipated Economic Impact of Implementing the Rule (Note: if the Rule is Likely to have a Significant Economic Impact on Small Businesses)

Minimal or no economic impact.

#### Contact Person

Susan Mathison, Division of Early Care and Education  
(608) 266–8832

[susan.mathison@wisconsin.gov](mailto:susan.mathison@wisconsin.gov)

## Employee Trust Funds

### SS 059–12

This statement of scope was approved by the governor on July 30, 2012.

#### Rule No.

Sections ETF 10.01 (3i), 10.63, 20.015 (1), (2), (20) and 40.10.

#### Relating to

Technical changes to ETF rules.

#### Rule Type

Permanent.

#### Detailed Description of the Objective of the Proposed Rule

The objective of this technical rule is to make to technical updates to existing ETF rules, create consistency with statutes recently amended by the legislature, and make other minor substantive changes. This rule:

- A. Removes the language in an existing rule relating to the benefit adjustment contribution.
- B. Changes an existing rule to allow employers more flexibility in the deadlines for submitting monthly reports to ETF.
- C. Changes an existing rule in order to comply with 2011 Wisconsin Act 32 eligibility requirements for employees initially working for a Wisconsin Retirement System employer on or after July 1, 2011.
- D. Allows benefits paid via electronic deposit to go to any financial institution account designated by the member, beneficiary or distributee of an estate and approved by ETF.
- E. Changes the existing rule regarding local public employers health insurance to comply with 2011 Wisconsin Act 133.

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

- A. ETF s. 10.01 (3i) is amended to remove the language referencing the benefit adjustment contribution, since that type of contribution to the Wisconsin Retirement System was eliminated by 2011 Wisconsin Act 10. No new policies are being proposed and no policy alternative is presented.
- B. ETF s. 10.63 establishes various deadlines by which reports are due to be filed with the department. The proposed rule allows employers more flexibility in the deadlines for submitting monthly reports to ETF and will allow the ETF Secretary to respond rapidly to future changes and needs. The need for flexibility arose because of changes made by 2011 Wisconsin Act 10 that required employers to pay insurance premiums for state and local employees until the end of the month of an employee's termination. A policy alternative is to set new specific due dates into the Administrative Code.
- C. ETF ss. 20.015 (1) and (2), regarding participating employees, are repealed and replaced with language to comply with 2011 Wisconsin Act 32 eligibility requirements, including two paragraphs concerning educational support personnel employees. No new

policies are being proposed and no policy alternative is presented.

- D. A rule is created to allow a member, beneficiary, or distributee of an estate who has benefits paid via electronic deposit into a financial institution account owned by him/her to designate a representative payee, nursing home, religious order or other entity that is approved by ETF. This rule change would make it easier for a member, beneficiary, or distributee of an estate to meet their financial obligations.
- E. ETF s. 40.10 is amended to comply with 2011 Wisconsin Act 133 and permit governmental employers who are not participating employers in the Wisconsin Retirement System to be covered in the local government health insurance plan offered by the Group Insurance Board.

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

Wis. Stat. s. 40.03 (2) (i) The secretary...Shall promulgate, with the approval of the board, all rules, except rules promulgated under par. (ig) or (ir), that are required for the efficient administration of the fund or of any of the benefit plans established by this chapter. In addition to being approved by the board, rules promulgated under this paragraph relating to teachers must be approved by the teachers retirement board and rules promulgated under this paragraph relating to participants other than teachers must be approved by the Wisconsin retirement board, except rules promulgated under s. 40.30.

Wis. Stat. s. 40.03 (2) (ig) The secretary...Shall promulgate, with the approval of the group insurance board, all rules required for the administration of the group health, long-term care, income continuation or life insurance plans established under subchs. IV to VI.

Wis. Stat. s. 227.11 (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.

(b) Each agency may prescribe forms and procedures in connection with any statute enforced or administered by it, if the agency considers it necessary to effectuate the purpose of the statute, but this paragraph does not authorize the imposition of a substantive requirement in connection with a form or procedure.

(c) Each agency authorized to exercise discretion in deciding individual cases may formalize the general policies evolving from its decisions by promulgating the policies as rules which the agency shall follow until they are amended or repealed. A rule promulgated in accordance with this paragraph is valid only to the extent that the agency has discretion to base an individual decision on the policy expressed in the rule.

(d) An agency may promulgate rules implementing or interpreting a statute that it will enforce or administer after publication of the statute but prior to the statute's effective date. A rule promulgated under this paragraph may not take effect prior to the effective date of the statute that it implements or interprets.

(e) An agency may not inform a member of the public in writing that a rule is or will be in effect unless the rule has been filed under s. [227.20](#) or unless the member of the public requests that information.

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

State employees will spend an estimated 40 hours to develop these rules.

**List with Description of All Entities that may be Affected by the Proposed Rule**

The new rules will affect state and local public employers, members, subscribers, their beneficiaries and dependents who interact with ETF regarding the benefit programs administered by ETF.

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

No existing or proposed federal regulation addresses the contemplated rule changes.

**Anticipated Economic Impact of Implementing the Rule (Note: if the Rule is Likely to have a Significant Economic Impact on Small Businesses)**

ETF anticipates that the proposed rule will have minimal or no economic impact locally or statewide and will not impact small businesses.

**Contact Person**

ETF General Counsel, David Nispel. Phone: (608) 264–6936.

**Financial Institutions — Credit Unions**

SS 053–12

This statement of scope was approved by the governor on July 6, 2012.

**Rule No.**

Chapter DFI–CU 67.

**Relating to**

Credit union exams.

**Rule Type**

Remove obsolete rule.

**Detailed Description of the Objective of the Proposed Rule**

Repeal DFI–CU–67: Certified Public Accountant Audits of Credit Unions in Lieu of Examinations by the State of Wisconsin.

The statutory citation that allowed for a certified public account audit to be used in lieu of an examination by the State of Wisconsin was removed. As a result this is an obsolete rule that needs to be removed.

**Description of the Existing Policies Relevant to the Rule, New Policies Proposed to be Included in the Rule, and an Analysis of Policy Alternatives**

**Existing Rule:** DFI–CU–67 – The director may accept an audit report of a certified public accountant who is not an employee of the credit union in lieu of all or a portion of the routine examination which is made by or caused to be made by the director as required.

**Proposed Rule:** Remove DFI–CU–67, it is in conflict with the statutes. The previous s. 186.235 (16) (b) was removed and this rule is now obsolete.

**Detailed Explanation of Statutory Authority for the Rule (Including the Statutory Citation and Language)**

The statutory authority for the rule is as follows:

Section 186.235 (8), Stats., which states that “[t]he office of credit unions shall, with the approval of the credit union review board, promulgate rules relating to the business of credit unions.”

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

10 hrs.

**List with Description of All Entities that may be Affected by the Proposed Rule**

Wisconsin credit unions.

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

Section 186.15, Wis. Statutes, requires credit unions to have annual audits to attest to the accuracy of their financial statements. The office of credit unions' exams are required by 186.235 to evaluate the safety and soundness of the credit unions. Financial statement audits and regulatory exams are for two different purposes. Wisconsin state chartered credit unions are required to have federal insurance which is provided by the National Credit Union Administration (NCUA). NCUA performs insurance reviews of state chartered credit unions and they would not accept a CPA audit in lieu of a NCUA insurance review or a office of credit unions exam.

**Anticipated Economic Impact of Implementing the Rule (Note: if the Rule is Likely to have a Significant Impact on Small Businesses)**

None.

**Contact Person**

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## Natural Resources

### *Fish, Game, etc., Chs. NR 1—*

#### SS 055–12

This statement of scope was approved by the governor on July 25, 2012.

#### Rule No.

Section NR 45.045, FR–20–12.

#### Relating to

Regulation of firewood entering state lands.

#### Rule Type

#### Finding/Nature of Emergency (Emergency Rule Only)

This is not an emergency rule.

#### Detailed Description of the Objective of the Proposed Rule

In order to provide better protection from introduction of wood borne invasive pests and diseases, the proposed change to NR 45.045 (2) (a) would reduce the distance from the state campground or property from which allowable firewood may originate from 25 to 10 miles. The proposed elimination of NR 45.045 (2) (b) would remove a regulation that would no longer provide significant additional protection if the change to (a) is approved.

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

DNR currently limits firewood entering state lands to that wood originating from within 25 miles and within the state or from dealers that are certified by the state as treating their wood to prevent transmission of pests or diseases. In response to concerns from the public, we propose to reduce the allowable distance to 10 miles. A model of the changing risk of introduction of an invasive pest with decreasing allowable distance shows a significant reduction in level of risk between 25 and 10 miles. With the establishment of emerald ash borer and beech bark disease at several sites in Wisconsin and the new threat of thousand cankers disease of walnut; this seems to be a prudent step to take. If the allowable distance is reduced to 10 miles, the prohibition of out-of-state wood will no longer provide the additional protection it once contributed. If a pest is established within 10 miles, it will be a short time before it can spread on its own onto the property. In this situation, the out-of-state prohibition doesn't provide additional protection. Regulation that doesn't provide a benefit should be dropped. We also expect a long term benefit of simplifying the message that safe wood is local or treated and avoiding the appearance of blaming other states for invasive pests.

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

Chap. 23.09 (2intro): DEPARTMENTAL RULES; STUDIES; SURVEYS; SERVICES; POWERS; LONG-RANGE PLANNING. The department may promulgate such rules, inaugurate such studies, investigations and surveys, and establish such services as it deems necessary to carry out the provisions and purposes of this section. The department shall establish long-range plans, projects and priorities for conservation. The department may:

Chap. 23.09 (2m) (b): FOREST LAND PLANS AND MANAGEMENT. The department shall manage forest land under its jurisdiction in a manner that is consistent with, and that furthers the purpose of, the designation of that forest land as a state forest, southern state forest, state park, state trail, state natural area, state recreation area, or similar designation.

Chap. 23.09 (10): CONSERVATION EASEMENTS AND RIGHTS IN PROPERTY. Confirming all the powers hereinabove granted to the department and in furtherance thereof, the department may acquire any and all easements in the furtherance of public rights, including the right of access and use of lands and waters for hunting and fishing and the enjoyment of scenic beauty, together with the right to acquire all negative easements, restrictive covenants, covenants running with the land, and all rights for use of property of any nature whatsoever, however denominated, which may be lawfully acquired for the benefit of the public. The department also may grant leases and easements to properties and other lands under its management and control under such covenants as will preserve and protect such properties and lands for the purposes for which they were acquired.

Chap. 23.091 (1): DESIGNATION. The department may acquire, develop, operate and maintain state recreation areas. State lands and waters may be designated as state recreation areas that are environmentally adaptable to multiple recreational uses, or are so located to provide regional or urban recreational opportunities or for preservation.

Chap. 23.11 (1): General powers. In addition to the powers and duties heretofore conferred and imposed upon said department by this chapter it shall have and take the general care, protection and supervision of all state parks, of all state fish hatcheries and lands used therewith, of all state forests, and of all lands owned by the state or in which it has any interests, except lands the care and supervision of which are vested in some other officer, body or board; and said department is granted such further powers as may be necessary or convenient to enable it to exercise the functions and perform the duties required of it by this chapter and by other provisions of law. But it may not perform any act upon state lands held for sale that will diminish their salable value.

Chap. 23.11 (4): The department shall have police supervision over all state-owned lands and property under its supervision, management and control, and its duly appointed agents or representatives may arrest, with or without warrant, any person within such area, committing an offense against the laws of this state or in violation of any rule of the department in force in such area, and deliver such person to the proper court of the county wherein such offense has been committed and make and execute a complaint charging such person with the offense committed. The district attorney of the county wherein such offense has been committed shall appear and prosecute all actions arising under this subsection.

Chap. 26.30 (2): POWERS. The department is vested with authority and jurisdiction in all matters relating to the prevention, detection and control of forest pests on the forest lands of the state, and to do all things necessary in the exercise of such authority and jurisdiction, except that this shall not be construed to grant any powers or authority to the department for the silvicultural control of forest pests on any land. This section shall apply only to the detection and control of forest pests on forest lands and does not affect the authority of the department of agriculture, trade and consumer protection under chs. 93 and 94. The action of the department under sub. (4) shall be coordinated with the department of agriculture, trade and consumer protection in accordance with s. 20.901. The secretaries of natural resources and agriculture, trade and

consumer protection shall execute annually a memorandum of agreement to enable the coordination of pest control work of their departments.

Chap. 27.01 (2) (i): Establish and operate in state parks such services and conveniences and install such facilities as will render such parks more attractive for public use and make reasonable charges for the use thereof.

Chap. 27.01 (2) (j): Promulgate rules necessary to govern the conduct of state park visitors, and for the protection of state park property, or the use of facilities, including the use of boats and other watercraft on lakes or rivers within the limits of a state park, and the use of roads, trails or bridle paths.

Chap. 28.04 (2) (a) The department shall manage the state forests to benefit the present and future generations of residents of this state, recognizing that the state forests contribute to local and statewide economies and to a healthy natural environment. The department shall assure the practice of sustainable forestry and use it to assure that state forests can provide a full range of benefits for present and future generations. The department shall also assure that the management of state forests is consistent with the ecological capability of the state forest land and with the long–term maintenance of sustainable forest communities and ecosystems. These benefits include soil protection, public hunting, protection of water quality, production of recurring forest products, outdoor recreation, native biological diversity, aquatic and terrestrial wildlife, and aesthetics. The range of benefits provided by the department in each state forest shall reflect its unique character and position in the regional landscape.

Chap. 28.04 (2) (c): In managing the state forests, the department shall recognize that management may consist of both active and passive techniques.

Chap. 227.11 (2) (a): Rule–making authority is expressly conferred as follows: 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:

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

206 hours total, before and after public hearings.

**List with Description of All Entities that may be Affected by the Proposed Rule**

We expect campers and firewood dealers would be impacted or interested in this rule.

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

The Apostle Islands National Park has prohibited all firewood into the park since 2006. The Chequamegon–Nicolet National Forest prohibits firewood from south of Route 29 or from outside Wisconsin. The

Huron–Manistee National Forest in Michigan prohibits bringing ash firewood onto the forest. The Army Corps of Engineers regulates firewood they allow onto their lands in Wisconsin.

**Anticipated Economic Impact of Implementing the Rule (Note: if the Rule is Likely to have a Significant Impact on Small Businesses)**

Small vendors just outside state campgrounds are already getting their wood from close by given the current 25 mile limit on allowable wood. For this reason, we do not anticipate an additional significant impact on these vendors with the decrease to 10 miles. It may have a beneficial effect on vendors who are certified as treating their wood by the Department of Agriculture, Trade and Consumer Protection as it could increase the convenience of their product since it can be brought into any state property, regardless of where it originated.

**Contact Person**

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**Natural Resources**

***Fish, Game, etc., Chs. NR 1—  
SS 057–12***

This statement of scope was approved by the governor on July 25, 2012.

**Rule No.**

FH–18–12, Chapters NR 20, 21, 22, and 23.

**Relating to**

Fishing regulations on inland, outlying, and boundary waters that will be proposed at the 2013 Spring Fish and Wildlife Hearings.

**Rule Type**

Permanent.

**Finding/Nature of Emergency (Emergency Rule Only)**

Not applicable.

**Detailed Description of the Objective of the Proposed Rule**

With this rule, the department will make changes to fish size limits, bag limits, seasons, and other regulations related to fishing in inland, outlying, and boundary waters, as described in the table below. Fishing regulations are in place to help meet management goals and objectives for waters and their fish species, such as providing a trophy walleye fishery or a bass fishery that maximizes predation on smaller fishes. New regulations are proposed when management goals have changed or the department must address a critical need, such as a major fish population decline. They are based on input solicited from stakeholders when the proposals were developed as well as a plan for evaluating the regulation after it is in place.

<b>BASS</b>	<b>COUNTY</b>	<b>OBJECTIVES</b>
Half Moon Lake	Eau Claire	Decrease number of bass while increasing size and weight
Bass Lake	St. Croix	Decrease number of bass while increasing size and faster growth
Trump Lake	Forest	Decrease number of bass while increasing size
Balsam Lake	Polk	Improve growth and size of bass
<b>WALLEYE</b>	<b>COUNTY</b>	<b>OBJECTIVES</b>
Minong Flowage	Douglas, Washburn	Decrease number of walleye while increasing size and faster growth
Lake Nebagamom	Douglas	Increase size and number of walleye
Patten Lake	Florence	Increase the number and recruitment of walleye
Sandy Beach Lake	Iron	Increase the number and recruitment of walleye
Silver Lake	Barron	Increase size and number of walleye
Wisconsin and Yellow Rivers	several	Remove sunset; provide walleye harvest, catch–and–release, and trophy opportunities
Beaver Dam Lake, Fox Lake	Dodge	Remove sunset; provide larger walleye harvest opportunities, predation on carp & bullheads
<b>NORTHERN PIKE</b>	<b>COUNTY</b>	<b>OBJECTIVES</b>
Lake Six	Iron	Increase pike harvest opportunities, size and competition
Diamond Lake	Bayfield	Restore pike population and a quality fishery
<b>MUSKELLUNGE</b>	<b>COUNTY</b>	<b>OBJECTIVES</b>
Lake Michigan waters north of Waldo Blvd.	many	Support self–reproducing musky population; sustain sport fishery
<b>CATFISH</b>	<b>COUNTY</b>	<b>OBJECTIVES</b>
Yellowstone Lake	Lafayette	Simplify and use general inland catfish regulations
<b>PANFISH</b>	<b>COUNTY</b>	<b>OBJECTIVES</b>
Thompson Lake	Pepin	Simplify and use general inland panfish regulations
<b>STURGEON</b>	<b>COUNTY</b>	<b>OBJECTIVES</b>
Lakes Winnebago, Butte des Morts, Winneconne, and Poygan	Winnebago/Waushara	Address spearing season safety concerns
<b>URBAN PONDS</b>	<b>COUNTY</b>	<b>OBJECTIVES</b>
Token Creek, Syene, Lapham Peak, and Lions Park ponds	Dane, Rock, Waukesha	Add youth and disabled persons fishing opportunities
<b>LEAD TACKLE</b>	<b>COUNTY</b>	<b>OBJECTIVES</b>
Escanaba, Nebish, Palette lakes	Vilas	Reduce lead deposited into lakes, improve wildlife health
<b>TROLLING</b>	<b>COUNTY</b>	<b>OBJECTIVES</b>
Inland waters	all	Simplify trolling and position fishing rules
<b>EXPERIMENTAL LAKES</b>	<b>COUNTY</b>	<b>OBJECTIVES</b>
Nebish, Palette, Mystery, Spruce, Escanaba lakes	Vilas	Adapt regulations rapidly on these lakes in response to research needs
<b>NORTHERN BASS ZONE</b>	<b>COUNTY</b>	<b>OBJECTIVES</b>
Northern Bass Zone	many	Provide a variety of bass fishing opportunities through adjustments to northern bass zone regulations

<b>ROUGH FISH</b>	<b>COUNTY</b>	<b>OBJECTIVES</b>
Inland waters	all	Expand fishing opportunities near dams and simplify spearing season dates
<b>ICE SHELTERS</b>	<b>COUNTY</b>	<b>OBJECTIVES</b>
Boundary waters	many	Make ice shelter labeling requirements consistent with inland waters
<b>LAKES RESTORATION</b>	<b>COUNTY</b>	<b>OBJECTIVES</b>
Lake Tomah, Park Lake, Sparkling Lake	Monroe, Columbia, Vilas	Protect large fish to create a balanced fishery and help restore and improve water conditions
<b>BAG LIMIT READJUSTMENTS</b>	<b>COUNTY</b>	<b>OBJECTIVES</b>
Ceded territory	Many	Allow timing flexibility for bag limit adjustments each year after tribal spearing has ended

In addition to the regulation changes listed above, the rule would also amend s. NR 20.35 in order to allow fish biologists to adjust fish harvest bag and size limits under certain conditions. Procedures already exist in s. NR 20.35 to allow the department to apply alternative size limits, bag limits, or both for identified fish species to provide for better use and management of the fishery resources of the water. These alternative limits apply temporary regulations to fish species in a waterbody. After distributing a notice and conducting a public information meeting if requested, the department posts signs at the water's public access sites noting that an alternate limit applies. Currently, s. NR 20.35 allows the department to apply no size limit to walleye, largemouth bass, or smallmouth bass if it has been found that the fish population has very slow growth in the water or if there are high contamination levels of mercury or other toxins. Under this rule proposal, alternate size or bag limits may be applied to walleye, largemouth bass, smallmouth bass, northern pike, or panfish if, for the particular species in a particular water, the department finds that at least one of the following conditions exist:

- a) A lake restoration project is in place to reduce detrimental fish species that includes bio-manipulation of a waterbody through increasing the abundance and biomass of predator game fish.
- b) Fish have been removed or destroyed as a result of a rehabilitation program to reestablish a good supply of game fish.
- c) An inland water has been documented to contain detrimental species, species nonindigenous to the waters of the state, or rough fish. In order to control the population of detrimental, nonindigenous, or rough fish species and protect the native fish populations, the department shall apply alternate limits.
- d) The department is collaborating with an established university research project in a particular waterbody. The department shall apply alternate size or bag limits for particular species as determined in collaboration with university researchers that shall remain in full force and effect until the research project has ended and the size or bag limits return to those previously in place.
- e) The department finds that an evaluation of a size or bag limit could not be completed before a sunset date listed in s. NR 20.20. The department may extend the limits and they shall remain the same for 7 years from the date specified in s.

NR 20.20 or until a permanent rule change is in place, whichever occurs first. The determination to extend a size limit sunset date shall be made within two years prior to the sunset date listed in s. NR 20.20.

#### *Wisconsin Conservation Congress Proposals*

Each year the Wisconsin Conservation Congress proposes advisory questions to the general public at the Fish and Wildlife Spring Hearings. Those questions are not reviewed by the department until after they are supported by a majority vote at the hearings and approved by the Congress at its annual meeting. The Fisheries Management Bureau will expedite review of the approved fisheries-related advisory questions from the April 2012 hearings and include in this rule those proposed non-controversial regulations for which available data warrant immediate attention. The Bureau will consult further with Congress committees and its species teams on the other proposed regulations that require additional data and review.

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

The proposed rule would make modifications to portions of chs. NR 20, 21, 22, and 23 pertaining to sport fishing regulations on inland, outlying, and boundary waters of Wisconsin. These changes are proposed to protect and enhance the State's fish resources.

All rule change proposals were submitted by fish biologists and peer-reviewed for justification and enforceability by Fisheries Management supervisors and the Bureau Director, species management teams, and the Bureaus of Law Enforcement and Legal Services. Proposals were discussed with Wisconsin Conservation Congress members and will be presented at the 2013 Fish and Wildlife Spring Hearings. Proposals that reduce regulation complexity or eliminate a special regulation in favor of a statewide one were given preference.

The existing policy behind fishing regulations is to provide diverse fishing opportunities throughout the state and that policy will be continued and enhanced by these rule changes. Based on the management goals for individual waters and species, the Fisheries Management Program strives to provide:

- consumptive opportunities where anglers can fish for a meal from a self-sustained, slow-growing fish population;

- quality and memorable opportunities where anglers can catch large fish and the density of adult fish in the populations are sustained or increased; and
- trophy opportunities where anglers can catch large trophy–size fish and the survival of older and larger fish is increased.

It is not expected that rule changes as a result of comments from the 2013 Fish and Wildlife Spring Hearings would affect the scope or economic impact of the rule proposal. For example, the department may make changes in response to hearing comments that would remove a proposal to implement an 18–inch minimum size limit and daily bag limit of 3 fish for walleye, sauger, and hybrids in one or more counties. Without implementing the proposed size and bag limits, existing regulations remain in place to ensure continued protection of fish resources. Similarly, if comments from public hearings result in additional elements to a proposal, it is not expected that it would affect the scope or economic impact of the rule proposal. For example, a proposal to require the use of quick–strike rigs when fishing with a 10–inch or longer minnow as bait was changed after a hearing in order to allow the use of circle hooks or quick–strike rigs when fishing with an 8–inch or longer minnow as bait. These changes still met the intent and objectives of the original rule proposal.

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

Section 29.014 (1), Stats., directs the department to establish and maintain conditions governing the taking of fish that will conserve the fish supply and ensure the citizens of this state continued opportunities for good fishing.

Section 29.041, Stats., provides that the department may regulate fishing on and in all interstate boundary waters and outlying waters.

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

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

Approximately 300 hours.

#### **List with Description of all Entities that may be Affected by the Proposed Rule**

The proposed rule will primarily affect sport anglers. As with any change in regulations, there will be a requirement for anglers to learn the new rules. The Fisheries Management Bureau works to notify the public of new regulations via press releases, the internet, and fishing regulations pamphlets.

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

Authority to promulgate fishing regulations is granted to states. None of the proposed changes violate or conflict with federal regulations.

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

Minimal to no economic impact. (Level 3)

It is not expected that there will be any economic impact directly related to these rule changes. The proposed rule will primarily affect sport anglers. Regulations are already in

place and this rule is intended to continue protection and enhancement of the State’s fish resources. One intention of the rule is to help maintain or improve the general economic impact of fishing throughout Wisconsin.

The department will conduct an economic impact analysis to determine if any individuals, businesses, local governments, or other entities expect to be adversely affected economically. The proposed rule does not impose any compliance or reporting requirements on small businesses nor are any design or operational standards contained in the rule. The rule does not allow for the potential to establish a reduced fine for small businesses, nor does it establish “alternative enforcement mechanisms” for “minor violations” of administrative rules made by small businesses.

#### **Contact Person**

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### **Natural Resources**

#### ***Fish, Game, etc., Chs. NR 1— SS 058–12***

This statement of scope was approved by the governor on July 25, 2012.

#### **Rule No.**

FH–19–12, Chapters NR 19, 20, 21, 22, 23, 25, and 26.

#### **Relating to**

Fisheries Administrative Code Housekeeping: corrections, clarifications, and updates to outdated language regarding fishing in inland, outlying, and boundary waters.

#### **Rule Type**

Permanent.

#### **Finding/Nature of Emergency (Emergency Rule Only)**

Not applicable.

#### **Detailed Description of the Objective of the Proposed Rule**

The proposed rule would make non–substantive housekeeping changes to sections of NR 19, 20, 21, 22, 23, 25, and 26, relating to the regulation of fishing. The goal is to ensure the rule language that governs fishing in inland, outlying, and boundary waters is accurate and properly reflects the desired management of Wisconsin waters. The rule is in response to recent legislative changes and to the interests of the public and both Law Enforcement and Fisheries Management staff. The objectives are to:

- add language to respond to newly created statutory language,
- remove sections of code that are outdated or have been replaced by other statute or code changes,
- correct errors that occurred during the drafting of rules, and
- add or repeal language to clarify intent of original rules.

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

The goal of fish management, as stated in s. NR 1.01 (2), is “to provide opportunities for the optimum use and

enjoyment of Wisconsin’s aquatic resources, both sport and commercial. A healthy and diverse environment is essential to meet this goal and shall be promoted through management programs.”

Fishing regulations in this rule, such as length and bag limits or season dates, are used as a tool to ensure good fishing exists into the future. The department has used different types of fishing regulations in order to: control angler impacts on fish populations; maintain numbers and sizes of fish in a lake or stream; provide different types of fishing experiences, such as fishing for dinner or for a trophy fish; and make access to fishing as fair as possible.

No new policy will be proposed in this housekeeping rule. It will include non–substantive changes to administrative code that support existing policies and goals, including:

#### Changes to ch. NR 19

- Amending Subchapter III of NR 19, which regulates fish farms in natural waterbodies, in response to legislative changes in 2011 Wisconsin Act 207. Natural waterbody permits now do not expire unless the department makes a finding that substantial public interest exists in the waterbody and that public or private rights in the waterbody will be damaged. A natural waterbody permit will not be required for someone wishing to use a natural waterbody for a fish farm if he or she was already issued a permit for changing the course of a stream, enlarging a waterway, or constructing a dam. In addition, the department is not required to hold a hearing or provide notice that it will not hold a hearing before issuing a permit, but it must post a notice of every permit application on its website.

#### Changes to ch. NR 20

- Removing all notations of a 40–inch size limit for muskellunge in ss. NR 20.20 (1) through (72) county regulations. A minimum size of 40 inches is now the general inland waters size limit for muskellunge and is indicated in s. NR 20.20 (73).
- Removing expired language for regulations on Sparkling Lake in Vilas County and Twin Valley Lake in Iowa County.
- Clarifying in s. NR 20.06 (1) that trolling may also be allowed as provided in s. 29.193, Stats., which authorizes approvals for disabled persons.
- Creating no possession limit in s. NR 20.03 (31) for food distribution services, as defined in s. 29.001 (28), Stats., that lawfully receive fish for purposes of redistribution. This clarifies in code the existing law enforcement policy on fish donations.
- Updating Wisconsin–Michigan boundary water regulations to be consistent with Michigan regulations. Department of Natural Resources staff from both states met in 2011 and agreed to make night angling, hook size, and spearing changes for consistency and clarity within code. A prior rule that was mistakenly modified will now restore night fishing and remove a hook gap restriction on the Menominee River. Spearing for rough fish will also be closed on all WI–MI boundary waters to make regulations the same as in Michigan and to bring the rule back into compliance with how it had been enforced and understood in prior years.

- Adding sunset language in s. NR 20.20 (64) (c) for bass regulations on Sparkling Lake in Vilas County that was mistakenly excluded from a rule in 2008.
- Removing perch in Vilas County from the list of detrimental fish under s. NR 20.38. There are and never were any contracts issued for removal of perch on those waters and abundant perch are no longer considered bad for the fishery.
- Correcting language in s. NR 20.20 (44) for the Minocqua Chain in Oneida County. Bass season language was left out in error during rule changes in 2011.
- Clarifying boundaries of trout regulations in s. NR 20.20 (54) (e) for the East Fork of Raccoon Creek in Rock County.
- Preventing currently overlapping dates of regulations for walleye, sauger, and hybrids on the Fox River downstream from the DePere Dam.
- Providing free fishing during the third weekend in January each year when no license is required to fish, in response to legislative changes in 2011 Wisconsin Act 168.
- Revising code to allow anyone to fish for rough fish with a crossbow under the same circumstances as with a bow and arrow and adding Asian carp to the definition of rough fish, in response to 2011 Wisconsin Act 180.

#### Changes to chs. NR 21, 22, and 23

- Making ice shelter labeling rules the same on boundary waters as on inland waters. Owners will not be required to post their names and addresses on fishing shelters that are occupied or otherwise in use.
- Providing free fishing during the third weekend in January each year when no license is required to fish, in response to legislative changes in 2011 Wisconsin Act 168.
- Revising code to allow anyone to fish for rough fish with a crossbow under the same circumstances as with a bow and arrow and adding Asian carp to the definition of rough fish, in response to 2011 Wisconsin Act 180.

#### Changes to ch. NR 25

- Deleting references to minimum harvesting requirements for commercial fishing in the Great Lakes, in response to legislative changes in 2011 Wisconsin Act 177.

#### Changes to ch. NR 26

- Removing expired language for a fish refuge on the Grand River in Green Lake County.
- Extending an existing fish refuge on Wingra Creek in Dane County. The refuge boundaries will be extended in response to a rebuilt and extended platform next to the refuge.

### Detailed Explanation of Statutory Authority for the Rule

Section 29.014 (1), Stats., directs the department to establish and maintain conditions governing the taking of fish that will conserve the fish supply and ensure the citizens of this state continued opportunities for good fishing.

Section 29.041, Stats., provides that the department may regulate fishing on and in all interstate boundary waters and outlying waters.

Section 29.519 (1m) (b), Stats., provides that “after giving due consideration to the recommendations made by the commercial fishing boards under sub. (7), the department may establish species harvest limits and promulgate rules to establish formulas for the allocation of the species harvest limits among commercial fishing licensees or for the allotment of individual licensee catch quotas.”

Section 29.733 (2) (f) provides that the department shall promulgate rules to establish the fees, criteria and procedures to be used in issuing permits for natural waters used in fish farms.

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

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

Approximately 120 hours.

**List with Description of All Entities that may be Affected by the Proposed Rule**

The proposed rule will have minimal impact on members of the public. As with any change in regulations, there will be a requirement for anglers to learn the new rules. However, a majority of this rule change clarifies code to reflect existing policies for which anglers must already comply. The Fisheries Management Bureau works to notify the public of new regulations via press releases, the internet, and fishing regulations pamphlets.

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

Authority to promulgate fishing regulations is granted to states. None of the proposed changes violate or conflict with federal regulations.

**Anticipated Economic Impact of Implementing the Rule**

Minimal to no economic impact expected. (Level 3)

It is not expected that there will be any economic impact directly related to these rule changes on anglers. The department will conduct an economic impact analysis to determine if any individuals, businesses, local governments, or other entities expect to be adversely affected economically. The proposed rule does not impose any compliance or reporting requirements on small businesses nor are any design or operational standards contained in the rule.

The rule does not allow for the potential to establish a reduced fine for small businesses, nor does it establish “alternative enforcement mechanisms” for “minor violations” of administrative rules made by small businesses.

**Contact Person**

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**Natural Resources**

***Environmental Protection, Air Pollution Control,  
Chs. NR 400—  
SS 056–12***

This statement of scope was approved by the governor on July 25, 2012.

**Rule No.**

AM–21–12

**Relating to**

Revisions to Chapters NR 405 and 408 to maintain consistency with federal permit guidelines, and to Chapters NR 400 and 410 consistent with the repeal of Chapter NR 411 for indirect source permits.

**Rule Type**

Permanent.

**Detailed Description of the Objective of the Proposed Rule**

The objective of this rule package is to revise language in chs. NR 405 and 408 to maintain consistency with federal requirements and definitions. Additionally, sections of chs. NR 400 and 410 need to be repealed due to the repeal of ch. NR 411.

In May 2006, the Wisconsin Department of Natural Resources (WDNR) requested approval by the U.S. Environmental Protection Agency (USEPA) of rules promulgated by Wisconsin to incorporate federal New Source Review Reform requirements as a revision to the State Implementation Plan (SIP). The USEPA approved the SIP revisions, but subsequently requested changes to language in chs. NR 405 and 408. The changes pertain to the fuel use prohibition that is part of the definition of “major modification”.

Chapter NR 405.02 (25i) defines “Regulated NSR air contaminant” and includes an example of volatile organic compounds as a precursor for ozone. USEPA has requested inclusion of nitrogen oxides (NO<sub>x</sub>) in the example contained in the definition for clarification purposes.

On April 27, 2011, the Joint Committee for Review of Administrative Rules (JCRAR) adopted a motion under s. 227.26 (2) (d), Wis. Stats., suspending ch. NR 411. Subsequent passage of legislation introduced by JCRAR in support of the suspension (see [2011 Wisconsin Act 121](#)), resulted in the repeal of ch. NR 411. The primary purpose of ch. NR 411 had been to control carbon monoxide emissions from indirect sources through conditions established in construction and operation permits. Therefore the WDNR proposes to repeal rules whose only purpose is in support of ch. NR 411. Rules proposed for repeal include ss. NR 400.02 (101) and (106), and 410.03 (3). Sections NR 400.02 (101) and (106) define ‘modified indirect source’ and ‘new indirect source’ respectively. Section NR 410.03 (3) establishes fees for the application and issuance of permits to construct or modify an indirect source under ch. NR 411.

**Description of the Existing Policies Relevant to the Rule, New Policies Proposed to be Included in the Rule, and an Analysis of Policy Alternatives**

In a letter dated June 17, 2009, the USEPA notified the WDNR that the definition of the term “major modification”

in s. NR 405.02 was inadequate because it failed to identify permits issued under federal authority. Wisconsin's Prevention of Significant Deterioration (PSD) program was approved into its SIP on June 28, 1999. Before that, PSD construction permits were issued under federal authority. When ch. NR 405.02 (21) (b) (5) was written, the references to federal authority were inadvertently left out. Because the federal citations were left out of the rule, USEPA identified that in a very limited situation, the current state definition would allow a source to make a change to use a different fuel or raw material without undergoing major new source permit review for the change, even though the change could be prohibited under a federal permit. The WDNR will amend this definition to ensure that it is consistent with USEPA rule and policy and recognizes all federally issued permits.

The alternative to this rule action is to keep the rules as they are which USEPA has already identified as an inconsistency with federal PSD program. However, in a Federal Register filed June 14, 2012, USEPA disapproved the portions of the infrastructure SIP pertaining to chs. NR 405 and 408 that would be addressed with this rulemaking. In the Federal Register, USEPA stated that they are under obligation to promulgate a Federal Implementation Plan (FIP) addressing the disapproved portions of the SIP within 2 years. The Federal Register states that the FIP will not be promulgated if WDNR rectifies the deficiencies within the 2 year timeframe.

The proposed clarification of NO<sub>x</sub> as a precursor to ozone is not a policy change, but a statement of fact.

Not repealing sections of chs. NR 400 and 410 in response to the repeal of ch. NR 411 by the legislature would potentially create confusion and perpetuate an inconsistency with WDNR rules.

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

Section 285.11(17), Wis. Stat., requires WDNR to “Promulgate rules, consistent with the federal clean air act, that modify the meaning of the term ‘modification’ as it relates to specified categories of stationary sources...”. The proposed rule to make the WDNR definition of “major modification” consistent with the federal definition is necessary to be consistent with the statutes and the federal clean air act.

Section 285.11 (1), Wis. Stats., establishes that the WDNR shall “Promulgate rules implementing and consistent with this chapter and s. 299.15.”. Section 285.60 (11) (b), Stats., effective March 21, 2012, establishes that the WDNR may not require a permit under this chapter for an indirect source. The proposed repeal of rules whose sole purpose is to support the issuance of permits for indirect sources is therefore necessary to be consistent with the statutes and to establish consistency within the administrative code.

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

Approximately 300 hours will be spent by WDNR staff.

#### **List with Description of All Entities that may be Affected by the Proposed Rule**

The WDNR believes that the number of major sources affected by the proposed rule changes to chs. NR 405 and 408 will be small, if any. Under Wisconsin's Title V operation permit program all requirements that apply to a source are included in its operation permit. WDNR clearly recognizes

that requirements contained in a federally issued major source construction permit apply to the source and are therefore included in the source's Title V operation permit issued by the WDNR, making the requirement fully enforceable under state and federal law. The WDNR is not aware of a single situation where this type of requirement existed in a federal construction permit and was not included the state Title V operation permit.

The addition of language to clarify that NO<sub>x</sub> is a precursor to ozone will have no impact on any entities.

No entities will be affected by the proposed repeal of rules related to indirect sources. Since ch. NR 411 has already been repealed through legislative action, rules whose only purpose was to support the implementation of ch. NR 411 are already moot. Therefore the proposed repeal of these rules will not have any effect.

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

The rule changes proposed to chs. NR 405 and 408 are requested by USEPA to maintain consistency with federal major modification definitions.

#### **Anticipated Economic Impact of Implementing the Rule (Note if the Rule is Likely to have a Significant Economic Impact on Small Businesses)**

The economic impact due to the changes proposed to chs. NR 405 and 408 is expected to be minimal, in part because there are few permits that would be affected by this change. PSD sources are large emitters by definition and do not typically include small business, so the impact to small businesses should be minimal at most.

Chapter NR 411 has been repealed, and the department is now proposing to repeal rules whose only purpose was to support the implementation of ch. NR 411. Therefore, the proposed repeal of these rules will have no economic impact.

#### **Contact Person**

Gail Good, Wisconsin Department of Natural Resources, 101 South Webster Street, PO Box 7921, Madison, WI 53707–7921, 608 267–0803, [gail.good@wisconsin.gov](mailto:gail.good@wisconsin.gov).

#### **Public Service Commission**

SS 060–12

This statement of scope was approved by the governor on July 25, 2012.

#### **Rule No.**

Wis. Admin. Code Chapter PSC 118, PSC Docket 1–AC–240.

#### **Relating to**

Renewable Resource Credit rule changes to conform with 2011 Wisconsin Act 155.

#### **Description of the Objective of the Rule and Expected Financial Impact**

The objective of the rulemaking is to amend relevant sections of Wis. Admin. Code ch. PSC 118 relating to renewable resource credits as a result of statutory changes adopted in 2011 Wisconsin Act 155, effective April 10, 2012. This rulemaking is expected to have no or minimal financial impact.

**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**

The purpose of the rulemaking is to amend Wis. Admin. Code ch. PSC 118 relating to renewable resource credits to conform to the statutory changes made by 2011 Wisconsin Act 155. This will be accomplished in the following ways: (1) revise the definition of a renewable resource credit to be consistent with the statute; (2) allow a “customer or member of an electric provider” to create a renewable resource credit under Wis. Stat. s. 196.378 (3) (a) 1m; (3) include wind energy and hydroelectric energy as additional types of energy from which a renewable resource credit may be created under Wis. Stat. s. 196.378 (3) (a) 1m.; and (4) revise Wis. Admin. Code ch. PSC 118 to reflect the statutory provisions regarding banking of credits. The degree of impact is expected to be wholly positive, offering greater opportunities to create renewable resource credits consistent with the Legislature’s changes to Wis. Stat. s. 196.378 under 2011 Wisconsin Act 155.

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

This rulemaking is conducted by the Commission under Wis. Stat. 196.02 (1) (“do all things necessary and convenient to its jurisdiction”); 196.03 (“The commission may adopt reasonable rules to . . . regulate the mode and manner of all . . . investigations and hearings”); 196.378 (3) (a) 1m. (“The commission shall promulgate rules that allow an electric provider or customer or member of an electric provider to create a renewable resource credit based on . . . [various things, including] wind energy; hydroelectric energy”); 196.378 (3) (a) 2. (“The commission shall promulgate rules for calculating the amount of a renewable resource credit that is bankable from a renewable facility . . .”); 196.378 (4) (“The commission may promulgate rules that designate a resource . . . as a renewable resource”); and, Wis. Stat. s. 196.44 (The commission . . . shall enforce all laws relating to public utilities . . .”). In addition, the Commission has general power granted to all state agencies under Wis. Stat. s. 227.11 (2) (a) (“Each agency may promulgate rules interpreting the provisions of any statute enforced or administered by it, if the agency considers it necessary to effectuate the purpose of the statute, . . .”).

**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 Commission estimates 150 hours of state employee time to develop the rule. No extraordinary resources are anticipated.

**Description of All Entities that may be Impacted by the Rule**

All electric providers, customers or members of an electric provider, and renewable energy developers seeking to create renewable resource credits will be favorably impacted by this change. There is no anticipated impact on utility ratepayers.

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

No comparison with federal regulations can be made because there is no federal renewable portfolio standard. Two bills proposing a national renewable portfolio standard were

introduced in the 112th Congress, but neither has been enacted:

1. Senate Bill 741, a bill to amend the Public Utility Regulatory Policies Act of 1978 to establish a renewable electricity standard, and for other purposes. Senator Tom Udall (NM) introduced the bill on April 6, 2011. The bill was then referred to Senate committee where it was read twice and referred to the Committee on Energy and Natural Resources.
2. Senate Bill 559, Securing America’s Future with Energy and Sustainable Technologies Act. Senator Amy Klobuchar (MN) introduced this bill on March 10, 2011. The bill was then referred to Senate committee where it was read twice and referred to the Committee on Finance.

There are no known federal regulations governing the creation of renewable resource credits or their equivalent.

The intent of this rulemaking is to amend Wis. Admin. Code ch. PSC 118 relating to renewable resource credits to conform to the statutory changes made by 2011 Wisconsin Act 155.

**Contact Person**

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**Safety and Professional Services**

*Safety, Buildings, and Environment, General Part I,  
Chs. SPS 301–319*

SS 052–12

This statement of scope was approved by the governor on June 29, 2012.

**Rule No.**

Chapter SPS 316.

**Relating to**

Electrical.

**Rule Type**

Permanent.

**Finding/Nature of Emergency (Emergency Rule Only)**

N/A.

**Detailed Description of the Objective of the Proposed Rule**

The proposed rules would remove the mandatory requirements in the electrical code for the installation and use of arc–fault circuit–interrupter protection, ground–fault circuit–interrupter protection and tamper–resistant receptacles in dwelling units; thereby allowing a choice in the use of these devices.

**Description of the Existing Policies Relevant to the Rule, New Policies Proposed to be Included in the Rule, and an Analysis of Policy Alternatives**

Current rules mandate the use of these devices for new construction and some remodeling in both specific and general areas of dwelling units. The proposed rules would remove the requirement for the installation of the devices in dwelling units. Alternatives are to keep the current rules and any problems associated with their installation and use. Currently, devices may be removed in violation of the rules.

**Detailed Explanation of Statutory Authority for the Rule (Including the Statutory Citation and Language)**

The statutory authority for chapter SPS 316 is contained in statutory sections 101.63 (1) for one- and two-family dwellings, 101.73 (1) for modular or manufactured dwellings, 101.82 (1) for general application of the electrical rules, and 101.973 for multifamily dwellings. Section 101.82 (1) specifically charges the department with promulgating by rule a state electrical wiring code that establishes standards for installing, repairing, and maintaining electrical wiring. Where feasible, the rules are to reflect nationally recognized standards.

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

The staff time needed to develop the rules is expected to be about 600 hours, depending on the complexity. This includes research, rule drafting, and processing the rules through public hearings, legislative review, and adoption. There are no other resources necessary to develop the rules.

**List with Description of All Entities that may be Affected by the Proposed Rule**

These rules may affect any dwelling unit, new or existing, where the installation or repair of electrical wiring will be undertaken. The rules may also affect any designer, installer or inspector of electrical wiring for dwellings, along with owners, occupants and guests in these dwelling units.

**Summary and Preliminary Comparison with any Existing or Proposed Federal Regulation that is**

**Intended to Address the Activities to be Regulated by the Proposed Rule**

There are several existing federal regulations that relate to the installation of electrical wiring and equipment. Some of these regulations require compliance with various editions of the National Fire Protection Association’s National Electrical Code® (NEC) and are primarily directed at workplace safety. The following regulation directly affects the electrical installations in manufactured dwellings (mobile homes):

- Title 24 CFR, Part 3280 – Manufactured Home Construction and Safety Standards. Subpart I – Electrical Systems. This regulation in the Department of Housing and Urban Development covers electrical systems in manufactured homes, and requires compliance with the 2005 NEC. In the scope of the regulations it is indicated in (b) that “The use of arc-fault breakers under Articles 210.12(A) and (B), 440.65, and 550.25(A) and (B) of the National Electrical Code, NFPA No. 70–2005 is not required. However, if arc-fault breakers are provided, such use must be in accordance with the National Electrical code, NFPA No. 70–2005.”

**Anticipated Economic Impact of Implementing the Rule (Note: if the Rule is Likely to have a Significant Economic Impact on Small Businesses)**

The cost of construction for new and the cost of maintenance on existing dwellings will decrease depending on the preference of installing the listed devices. The economic impact is minimal.

**Contact Person**

Jim Quast, Program Manager 608 266 9292.

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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.*

### **Technical College System Board CR 12–032**

The Wisconsin Technical College System Board has submitted a proposed rule amendment to the Legislative Council Rules Clearinghouse on July 27, 2012.

The scope statement for this rule, SS 039–12, was approved by the governor on June 8, 2012, published in Register No. 678 on June 30, 2012, and approved by the Wisconsin Technical College System Board on July 25, 2012.

#### **Analysis**

The proposed order revises TCS 2, relating to District Board Member Appointments.

### **Agency Procedure for Promulgation**

A public hearing is not required as the proposed amendment brings the existing rule into conformity with district board membership provisions established in 2011 Wisconsin Act 286.

### **Contact Information**

Written comments may be submitted by 4:00 pm on September 15, 2012 to Morna Foy at the Wisconsin Technical College System, 4622 University Avenue, PO Box 7874, in Madison, WI 53707–7874 or by email to [morna.foy@wtcsystem.edu](mailto:morna.foy@wtcsystem.edu) with a subject line of TCS 2.

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## Rule–Making Notices

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### Notice of Hearing

#### Agriculture, Trade and Consumer Protection

##### EmR1209

#### Rule Related to Plant Pest Import Controls and Quarantine

The state of Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) announces that it will hold a public hearing on its emergency rule, section ATCP 21.17, Wis. Adm. Code, relating to the quarantines of Rock County and Walworth County for emerald ash borer.

#### Hearing Information

**Date:** Tuesday, August 28, 2012  
**Time:** 1:00–3:00 p.m.  
**Location:** Dept. of Agriculture, Trade and Consumer Protection  
 Conference Room 172 (1<sup>st</sup> floor, across from main entrance)  
 2811 Agriculture Drive  
 Madison, WI 53718

Hearing impaired persons may request an interpreter for this hearing. Please make reservations for a hearing interpreter by **August 22, 2012**, by writing to Barbara Stalker, Division of Agricultural Resource Management, P.O. Box 8911, Madison, WI 53708–8911, telephone (608) 224–4660. Alternatively, you may contact the DATCP TDD at (608) 224–5058. The hearing facility is accessible to disabled users.

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

DATCP invites the public to attend the hearing and comment on the emergency rule. Following the public hearing, the hearing record will remain open until Tuesday, **September 4, 2012**, for additional written comments. Comments may be sent to the Division of Agricultural Resource Management at the address below, to [Christopher.Deegan@wisconsin.gov](mailto:Christopher.Deegan@wisconsin.gov) or at <http://adminrules.wisconsin.gov>.

To provide comments or concerns relating to small business, please contact DATCP’s small business regulatory coordinator, Keeley Moll, at the address above, by emailing to [Keeley.Moll@wisconsin.gov](mailto:Keeley.Moll@wisconsin.gov) or by telephone at (608) 224–5039.

#### Copies of the Proposed Rules

You may obtain a free copy of this emergency rule by contacting the Wisconsin Department of Agriculture, Trade and Consumer Protection, Division of Agricultural Resource Management, 2811 Agriculture Drive, P.O. Box 8911, Madison, WI 53708. You can also obtain a copy by calling (608) 224–4573 or emailing [Christopher.Deegan@wisconsin.gov](mailto:Christopher.Deegan@wisconsin.gov). Copies will also be available at the hearing. To view the emergency rule online, please go to: <http://adminrules.wisconsin.gov>.

#### Analysis Prepared by the Department of Agriculture, Trade and Consumer Protection

This emergency rule creates quarantines for Rock County and Walworth County for emerald ash borer (EAB). Under this rule, the Department of Agriculture, Trade and Consumer Protection (DATCP) quarantines Rock County and Walworth County to mitigate the movement of emerald ash borer to other areas of Wisconsin and other states.

DATCP is adopting this temporary emergency rule pending the adoption of a federal regulation to quarantine Rock County and Walworth County. The emergency rule will take effect immediately upon publication in the official state newspaper, and will remain in effect for 150 days. The Legislature’s Joint Committee for Review of Administrative Rules may extend the emergency rule for up to 120 additional days.

#### *Statutes interpreted*

Sections 93.07 (12) and 94.01, Stats.

#### *Statutory authority*

Sections 93.07 (1), 93.07 (12), 94.01 and 227.24, Stats.

#### *Explanation of statutory authority*

The Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) has broad general authority, under s. 93.07 (1), Stats., to adopt regulations to enforce laws under its jurisdiction. DATCP also has broad general authority, under ss. 93.07 (12) and 94.01, Stats., to adopt regulations to prevent and control plant pest infestations. Emerald ash borer quarantines created by this rule are part of an overall state strategy to prevent and control plant pest infestations, including EAB infestations. DATCP is adopting this temporary emergency rule, under authority of s. 227.24, Stats., pending the adoption of federal regulations on the same subject.

#### *Background*

The United States Department of Agriculture–Animal and Plant Health Inspection Services (APHIS) positively identified EAB in Walworth County near the village of Walworth on June 11, 2012. APHIS also positively identified EAB in Rock County in the city of Janesville on June 25, 2012. This emergency rule creates DATCP quarantines for Rock County and Walworth County. Federal quarantines will be enacted approximately six to eight weeks after a formal submission by the state plant regulatory official. Emerald ash borer is carried and spread by untreated ash wood products. A six week delay until enactment of the federal quarantine leaves too much time for businesses or individuals to move potentially EAB–infested material out of these counties to areas of Wisconsin or other states that are not infested with EAB.

Emerald ash borer is an injurious exotic pest that now endangers Wisconsin’s 750 million ash trees and ash tree resources. This insect has the potential to destroy entire stands of ash, and any incursion of emerald ash borer can result in substantial losses to forest ecosystems and urban trees, as well as the state’s thriving tourism and timber industries. The emerald ash borer has killed over fifty million trees in the Midwest and has cost several hundred million

dollars annually in losses to the woodlot, nursery and landscape industries. The United States Department of Agriculture predicts the national urban impact from this pest could exceed \$370 billion.

DATCP has plant inspection and pest control authority under s. 94.01, Stats., to adopt rules establishing quarantines or other restrictions on the importation into or movement of plants or other materials within this state, if these measures are necessary to prevent or control the spread of injurious plant pests. A quarantine order may prohibit the movement of any pest, or any plant, pest host or pest–harboring material, which may transmit or harbor a pest.

#### **Emergency rule content**

The emergency rule will do the following:

- Create quarantines of emerald ash borer for Rock County and Walworth County that prohibit the movement of all hardwood species of firewood, and nursery stock, green lumber, and other material living, dead, cut or fallen, including logs, stumps, roots, branches and composted and uncomposted chips of the genus *Fraxinus* (Ash wood), out of the contiguous quarantined area.
- Provide an exemption for items that have been inspected and certified by a pest control official and are accompanied by a written certificate issued by the pest control official (some products, such as nursery stock, cannot be given an exemption).
- Provide an exemption for businesses that enter into a state or federal compliance agreement. The compliance agreement describes in detail what a company can and cannot do with regulated articles.

#### **Federal and surrounding state programs**

##### *Federal programs*

Under the federal Plant Protection Act, APHIS has responsibility for excluding, eradicating and controlling serious plant pests, including emerald ash borer. APHIS has instituted statewide quarantines on the movement of all ash wood for Illinois, Indiana, Ohio, Pennsylvania and West Virginia, in addition to portions of Iowa, Kentucky, Maryland, Michigan, Minnesota, Missouri, New York, and Virginia. APHIS has also instituted quarantines for Brown, Kenosha, Racine, Milwaukee, Waukesha, Ozaukee, Washington, Sheboygan, Fond du Lac, La Crosse, Vernon and Crawford Counties in Wisconsin. The quarantines include restrictions on the movement of any hardwood (non–coniferous) firewood.

##### *Surrounding state programs*

Surrounding states where emerald ash borer has been identified (Illinois, Indiana, Iowa, Minnesota and Michigan) have state and federal quarantines that prohibit the movement of regulated articles out of quarantined areas. A regulated article can only move out of quarantined areas after it is certified by USDA or state officials.

#### **Fiscal Impact**

DATCP will have additional workload related to enforcing the quarantines but it will be able to absorb the projected workload and costs within DATCP’s current budget and with

current staff. The presence of emerald ash borer may produce additional workload for local governments in Rock County and Walworth County, but the quarantines will not themselves produce any local fiscal impact.

#### **Business Impact**

This emergency rule may have an impact on persons or companies that deal in any hardwood firewood or ash materials in Rock County and Walworth County. The affected businesses are all small businesses. This emergency rule restricts the sale or distribution of ash products plus any hardwood firewood from Rock County and Walworth County to locations outside of the contiguously quarantined counties of Fond du Lac, Sheboygan, Washington, Ozaukee, Waukesha, Milwaukee, Racine and Kenosha.

The business impact of this emergency rule depends on the number of nurseries that sell/distribute ash nursery stock outside the county, firewood producers/dealers that sell/distribute outside the county, saw mills that move untreated ash stock outside the county, and green wood waste that is moved outside the county.

Rock County and Walworth County have a combined total of 36 licensed nursery growers that could possibly be growing ash nursery stock. Those growers will not be able to sell ash nursery stock outside of the contiguous quarantine area of southeast Wisconsin, though discussions with the Wisconsin Nursery Association indicate that few, if any, nurseries continue to sell ash trees. There are also a total of four known firewood dealers in Rock County and Walworth County. Firewood dealers would need to be certified under s. ATCP 21.20 to sell firewood outside of the contiguous quarantine area. To obtain certification a firewood dealer pays a \$50 annual certification fee to DATCP and treats the firewood in a manner that ensures it is free of EAB. There are six sawmills (non–vener) in Rock County and Walworth County and an unknown number of wood processing facilities that deal with ash. To sell ash wood products outside of the contiguous quarantine area they will need to enter into a compliance agreement with DATCP or APHIS that authorizes movement of ash products outside of the quarantine only when there is assurance that the movement will not spread EAB to other locations.

#### **Environmental Impact**

This emergency rule will not have a significant impact on the environment.

#### **DATCP Contact**

Questions and comments (including hearing comments) related to this rule may be directed to:

Brian Kuhn or Christopher Deegan  
 Department of Agriculture, Trade and Consumer  
 Protection  
 P.O. Box 8911  
 Madison, WI 53708–8911  
 Telephone: (608) 224–4590 or (608) 224–4573  
 E–Mail: [brian.kuhn@wisconsin.gov](mailto:brian.kuhn@wisconsin.gov) or  
[christopher.deegan@wisconsin.gov](mailto:christopher.deegan@wisconsin.gov)

## Notice of Proposed Rule–Making Without Public Hearing

### Technical College System Board CR 12–032

The Wisconsin Technical College System Board proposes an order to amend TCS 2, relating to district board member appointments. Pursuant to s. 227.16 (2) (b), Stats., a public hearing is not required as the proposed amendment brings the existing rule into conformity with district board membership provisions established in 2011 Wisconsin Act 286.

The scope statement for this rule, SS 039–12, was approved by the governor on June 8, 2012, published in Register No. 678 on June 30, 2012, and approved by the Wisconsin Technical College System Board on July 25, 2012.

#### Analysis Prepared by the Wisconsin Technical College System Board

##### *Statutes interpreted*

Wis. Stats. section 38.08 (1) (a).

##### *Statutory authority*

Wis. Stats. section 38.04 (15).

##### *Explanation of statutory authority*

Wis. Stats. s. 38.04 (15) assigns responsibility for review of district board appointments to the Wisconsin Technical College System stating that “the board shall, by rule, establish criteria and procedures for the review of district board member appointments.”

##### *Related rule or statute*

TCS 2.

##### *Plain language analysis*

2011 Wisconsin Act 286 created new district board and appointment committee membership requirements for the Milwaukee Area Technical College (MATC) District. The proposed amendments to TCS 2 will align administrative rule provisions to MATC’s district board membership with the member representation established by the Legislature and the Governor in 2011 Wisconsin Act 286.

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

Not applicable.

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

Not applicable.

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

Not applicable.

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

Not applicable.

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

None.

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

Morna Foy, Vice President, Wisconsin Technical College System, 4622 University Avenue, P.O. Box 7874, Madison, Wisconsin 53707–7874, telephone (608) 266–2449, e–mail [morna.foy@wtcsystem.edu](mailto:morna.foy@wtcsystem.edu).

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

A public hearing and notice are not required under s. 227.16 (2) (b), Stats., however, written comments may be submitted by **4:00 pm on September 15, 2012** to Morna Foy at the Wisconsin Technical College System, 4622 University Avenue, PO Box 7874, in Madison, WI 53707–7874 or by email to [morna.foy@wtcsystem.edu](mailto:morna.foy@wtcsystem.edu) with a subject line of TCS 2.

#### Effective Date

This rule shall take effect on the first day of the month following publication in the Wisconsin Administrative Register, as provided in s. 227.22 (2) (intro.), Stats.

#### Final Regulatory Flexibility Analysis

Not Applicable.

#### Fiscal Estimate

Attached.

#### Text of Rule

SECTION 1. TCS 2.02 (1), (3), and (5) are amended to read:

TCS 2.02 Definitions. (1) “Appointment committee” means the appointment committee constituted under s. 38.10 (1) (a), (b), ~~or~~ (c), or (d), Stats.

(3) With the exception of the district board governing the Milwaukee area technical college, “Business “business and industry” includes every trade, occupation and profession.

(5) Except as provided in (5m) “Employer” “employer” means any person who receives earnings as payment for personal services and possesses the power to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline other employees, or adjust employee grievances, or effectively recommend such action, if in connection with the exercise of such power the person exercises independent judgment in relation to the power. Employer does not include a person acting in the capacity of officer or agent of a labor organization.

SECTION 2. TCS 2.02 (5m) is created to read:

(5m) For the district board governing the Milwaukee area technical college, “employer” means a business entity, as defined in s. 13.62 (5), Wis. Stats., a nonprofit organization that provides health care services, credit union, or cooperative association.

SECTION 3. TCS 2.04 (3) (a) 4. and 6. are amended to read:

TCS 2.04 (3) (a) 4. Except as provided under subd. 4m., ~~Position~~ position sought as an employer, employee, additional, elected official or school district administrator member.

6. ~~Sex~~ Gender and status as a member of a minority as defined under s. TCS 2.02 ~~(5)-(9)~~.

SECTION 4. TCS 2.04 (3) (a) 4m. is created to read:

For the district board governing the Milwaukee area technical college, position sought as a school district administrator, elected official, additional member, or member representing an employer. A person seeking appointment as an additional member shall indicate whether he or she is a school district administrator, elected official, or member representing an employer. Candidates seeking appointment as a member representing an employer must identify if the

employer has 15 or more employees or 100 or more employees, and whether it is a manufacturing business.

SECTION 5. TCS 2.04 (4) (c) and (d) are amended to read:

(4) (c) Except as provided in (e), Reasonably reasonably represent the various businesses and industries in the district as required for employer and employee members of the district board.

(d) Except as provided in (e), Result result in a district board consisting of 9 members, including 2 employer members, 2 employee members, 3 additional members, a school district administrator as defined under s. 115.001 (8), Stats., and employed by a school board of a school district located in the district, and one elected official who holds a state or local office as defined in s. 5.02, Stats., except for the

office of party committeeman or party committeewoman.

SECTION 6. TCS 2.04 (4) (e) is created to read:

(e) For the Milwaukee area technical college district, result in a district board consisting of 9 members who are residents of the district, 7 of whom are residents of Milwaukee County, consisting of one school district administrator as defined under s. 115.001 (8), Stats., one elected official who holds a state or local office, as defined in s. 5.02, Stats., 2 additional members, and 5 persons representing employers as defined in TCS 2.02 (5) (b). Three of the members shall represent employers with 15 or more employees, 2 of the members shall represent employers with 100 or more employees, and at least 2 of the members shall represent employers who are manufacturing businesses.

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		
TCS 2, District Board Member Appointments		
Subject		
District Board Member Appointments		
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 (for WTCS Board) Indeterminate	Increase Existing Revenues Decrease Existing Revenues	Increase Costs Could Absorb Within Agency’s Budget Decrease Costs (for technical college districts)
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		
Alignment of statutory and administrative rule provisions regarding the appointment of district board members.		
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		
Alignment of statutory and administrative rule provisions regarding the appointment of district board members. Alternative would be to rely on statutory provisions.		
Long Range Implications of Implementing the Rule		
Alignment of statutory and administrative rule provisions regarding the appointment of district board members.		

Compare With Approaches Being Used by Federal Government
Not applicable.
Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)
Not applicable.
Name and Phone Number of Contact Person
Morna Foy, (608) 266–2449

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## Rule Orders Filed with the Legislative Reference Bureau

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

**Revenue**  
**CR 12–014**  
**(Correction Notice)**

The Wisconsin Department of Revenue adopts an order to revise Chapters Tax 1 and 11, relating to sales and use tax law changes made by 2011 Wisconsin Act 32 and other legislation.

This rule was incorrectly shown as CR 12–024 in Register 679, July 31, 2012.  
Effective 9–1–12.

**Safety and Professional Services —**  
**Cemetery Board**  
**CR 12–021**

The Cemetery Board adopts an order to repeal Chapters SPS 52 to 54; and to create Chapters CB 3 to 5, relating to warehouses storing cemetery pre–need merchandise, changing trustees of care or pre–need trust funds, and alternative care funds investments.  
Effective 9–1–12.

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