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NOTICE TO SUBSCRIBERS

Printing of Administrative Code and Register Will End January 1, 2015

As required by 2013 Wisconsin Act 20, state-sponsored printing and distribution of the Wisconsin Administrative Code and Register will end January 1, 2015, and the Code and Register will become electronic-only publications.

Important points:

- The LRB will continue to publish the Code and Register at their present locations on the Legislature's and Legislative Reference Bureau's Internet sites.
- Publication of the Register will occur every Monday rather than the current practice of bimonthly publication.
- Updated and new Code chapters, with insertion and removal instructions, will still be published in the last Register of each month.

Code chapters will be published in the Register as PDF files in the exact format as they are currently printed, including page numbers.

Users can continue loose-leaf notebook use by printing chapters to 3-hole punch paper from any printer or by making arrangements with commercial printers. (Notebooks will no longer be available from the state and the notebook volume for insertion will no longer be designated for published chapters.)

- The format for Internet publication of the Code will not change. The Code will continue to be published in its entirety in both HTML and PDF formats and updated on the first day of each month to reflect changes published in the most recent end-of-month Register.
- An Email notice system is being developed to alert users to changes in only those rules and rulemaking notices that are of interest to the user. RSS feeds providing notice of new Registers and changes to the whole Code, Code chapters grouped by agency, and individual Code chapters are currently available. (For more information on RSS feeds see <https://docs.legis.wisconsin.gov/feed>.) Details on the email notice system will be published in future Registers prior to January 1, 2015.
- The cost of all subscriptions and renewals will be prorated to January 1, 2015 by DOA.

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Table of Contents

Emergency Rules Now in Effect.**Pages 6 to 11**

Administration:

Creates Chapter Adm 93, relating to the community development block grant program. **EmR1309**

Agriculture, Trade and Consumer Protection:

Amends section ATCP 21.17 (1) (b) and creates section ATCP 21.17 (1) (c), relating to the quarantine of Jefferson County for emerald ash borer. **EmR1311**Amends section ATCP 21.17 (1) and creates section ATCP 21.17 (1) (d), relating to the quarantine of Sauk County for emerald ash borer. **EmR1312**Amends section ATCP 21.17 (1) (b) and creates section ATCP 21.17 (1) (e), relating to the quarantines of Dodge, Douglas and Winnebago counties for emerald ash borer. **EmR1315**

Employment Relations Commission:

Creates Chapters ERC 70, 71, and 80, relating to annual certification elections. **EmR1310**

Insurance:

Amends sections Ins 17.01 (3) and 17.28 (3) (c) and repeals and recreates section Ins 17.28 (6), relating to Injured Patients and Families Compensation Fund Annual Fund and Mediation Panel Fees, and ISO code amendments for the fiscal year beginning July 1, 2013, and affecting small business. **EmR1306**Creates Chapter Ins 6 subch. II, subch. II (title), and sections Ins 6.91 to 6.98, relating to navigators, nonnavigator assisters, and related entities and affecting small business. **EmR1314**

Natural Resources:

Fish, Game, etc., Chs. NR 1—Revises Chapters NR 10, 12, and 19, relating to the wolf hunting and trapping season and regulations and a depredation program. **EmR1210*****Fish, Game, etc., Chs. NR 1—***Repeals and recreates section NR 10.01 (3) (h) 1., relating to the coyote hunting season. **EmR1215*****Fish, Game, etc., Chs. NR 1—***Repeals section NR 10.06 (9) (b), amends section NR 10.01 (1) (v), repeals and recreates sections NR 10.01 (1) (b) to (u) and 10.12 (3) (c), and creates section NR 10.12 (3) (e), relating to migratory bird hunting regulations. **EmR1313**

Safety and Professional Services:

Professional Services, Chs. SPS 1–299Amends Chapters SPS 60, 61, 62, and 65 and creates Chapter SPS 205, relating to barbers and to barbering and cosmetology schools and instructors. **EmR1302*****Professional Services, Chs. SPS 1–299***Repeals section SPS 81.04 (1) (c) 3. and 4., and amends section SPS 81.04 (2), relating to reciprocity. **EmR1307**

	<i>Professional Services, Chs. SPS 1–299</i> Creates section SPS 34.04 (2) (a) 4., relating to training of firearms instructors for private security personnel, private detectives, and private investigators or special investigators, and affecting small business. EmR1308
Safety and Professional Services — Controlled Substances Board:	Creates section CSB 2.36, relating to scheduling controlled substances. EmR1318 [<i>First Appearance</i>]
Workforce Development:	<i>Unemployment Insurance, Chs. DWD 100–150</i> Revises Chapters DWD 126 to 129, relating to unemployment insurance work registration, work search, and benefit claiming procedures. EmR1316
	<i>Employment and Training, Chs. DWD 805–830</i> Creates Chapter DWD 801, relating to workforce training grants under the Wisconsin Fast Forward program. EmR1317
Scope Statements.	Pages 12 to 25
Administration:	Revises Chapter Adm 2, relating to use of state buildings and facilities. SS 131–13
Agriculture, Trade and Consumer Protection:	Revises Chapter ATCP 55, relating to drug residues in animals for human food, and affecting small business. SS 129–13
	Revises Chapter ATCP 142, relating to the Cranberry Marketing Order. SS 130–13
	Revises Chapter ATCP 80, relating to dairy plants, and affecting small business. SS 132–13
	Revises Chapter ATCP 60, relating to dairy farms, and affecting small business. SS 133–13
	Revises Chapters ATCP 93 and 94 and sections SPS 305.02, 305.06, 305.68, and 305.82 to 305.89, relating to flammable, combustible, and hazardous liquids; and petroleum and other liquid fuel products. SS 134–13
Safety and Professional Services:	<i>Safety, Buildings, and Environment —</i> <i>General Part I, Chs. SPS 301–319,</i> <i>Uniform Dwelling Code, Chs. SPS 320–325,</i> <i>General Part II, Chs. SPS 326–360</i> Revises Chapters SPS 302, 305, 320, 321, 326, and 328, relating to manufactured homes and manufactured home communities. SS 136–13
Safety and Professional Services — Dentistry Examining Board:	Revises Chapter DE 8, relating to patient dental record retention. SS 127–13
Safety and Professional Services — Massage Therapy and Bodywork Therapy Affiliated Credentialing Board:	Revises Chapter MTBT 5, relating to unprofessional conduct. SS 128–13
Safety and Professional Services — Optometry Examining Board:	Revises Chapters Opt 2, 5, and 6, relating to updating board and profession practices. SS 135–13

Submittal of Proposed Rules to Legislative Council Clearinghouse.**Pages 26 to 28**

Employment Relations Commission:

Creates Chapters ERC 70, 71, and 80, relating to annual certification elections to the Rules Clearinghouse. **CR 13-092**

Natural Resources:

Environmental Protection — Air Pollution Control, Chs. 400—Revises Subchapter III of Chapter NR 446, relating to control of mercury emissions from coal-fired electric generating units. **CR 13-089**

Public Instruction:

Revises Chapter PI 21, relating to driver education programs. **CR 13-083**Repeals Chapter PI 29, relating to the grants for Preschool Through Grade 5 programs. **CR 13-084**Repeals Chapter PI 31, relating to grants for STEM programs. **CR 13-085**Revises Chapter PI 32, relating to grants for alcohol and other drug abuse programs. **CR 13-086**Repeals Chapter PI 33, relating to grants for nursing services. **CR 13-087**Amends section PI 34.35 (1) (c), relating to the definition of immoral conduct. **CR 13-088**

Safety and Professional Services — Joint Board of Professional Geologists, Hydrologists and Soil Scientists:

Revises Chapters GHSS 1 to 4 and creates Chapter GHSS 6, relating to continuing education requirements for professional geologists, hydrologists, and soil scientists. **CR 13-091**

Safety and Professional Services — Medical Examining Board:

Revises section Med 1.02 (2), relating to applicants for medical licensure to provide to the Medical Examining Board verified copies of their diplomas. **CR 13-090****Rule-Making Notices.****Pages 29 to 71**

Administration:

Amends Chapter Adm 93, relating to the distribution of Community Development Block Grant funds. **CR 13-069, EmR1309**

Employment Relations Commission:

Creates Chapters ERC 70, 71, and 80, relating to annual union certification elections. **CR 13-092, EmR1310**

Natural Resources:

Environmental Protection — General, Chs. NR 100—, Environmental Protection — Wis. Pollutant Discharge Elimination System, Chs. NR 200—***Environmental Protection — Air Pollution Control, Chs. NR 400—******Environmental Protection — Solid Waste Management, Chs. NR 500—******Environmental Protection — Water Supply, Chs. NR 800—***
Revises Chapters NR 103, 123, 130 to 132, 135, 140, 182, 213, 214, 406, 500 to 538, 812, and 815, relating to nonferrous mining. **CR 13-057**

	<i>Environmental Protection — Air Pollution Control, Chs. NR 400—</i>
	Revises Subchapter III of Chapter NR 446, relating to the control of mercury emitted by coal-fired electric generating units. CR 13-089
Public Instruction:	Revises Chapter PI 21, relating to driver education programs. CR 13-083
	Repeals Chapter PI 29, relating to grants for Preschool Through Grade 5 programs. CR 13-084
	Repeals Chapter PI 31, relating to grants for STEM programs. CR 13-085
	Revises Chapter PI 32, relating to grants for alcohol and other drug abuse programs. CR 13-086
	Repeals Chapter PI 33, relating to grants for nursing services. CR 13-087
	Amends section PI 34.35 (1) (c), relating to the definition of immoral conduct. CR 13-088
Safety and Professional Services — Controlled Substances Board:	Creates section CSB 2.36, relating to scheduling controlled substances. EmR1318
Safety and Professional Services — Joint Board of Professional Geologists, Hydrologists and Soil Scientists:	Revises Chapters GHSS 1 to 4 and creates Chapter GHSS 6, relating to continuing education requirements for professional geologists, hydrologists, and soil scientists. CR 13-091
Safety and Professional Services — Medical Examining Board:	Amends section Med 1.02 (2), relating to requiring applicants for medical licensure to provide to the Medical Examining Board verified copies of their diplomas. CR 13-090
Submittal of Proposed Rules to Legislature.	Page 72
Natural Resources:	<i>Fish, Game, etc., Chs. NR 1—</i> Revises Chapter NR 10, relating to migratory bird hunting regulations. CR 13-052
Revenue:	Revises Chapters Tax 6 and 15, relating to public utility taxation, investment and local impact fund, and real estate transfer fee. CR 13-037
Safety and Professional Services:	<i>Professional Services, Chs. SPS 1-299</i> Creates section SPS 34.04 (2) (a) 4. and 5., relating to training of firearms instructors for private security personnel, private detectives, and private investigators or special investigators. CR 13-047
Safety and Professional Services — Examining Board of Architects, Landscape Architects, Professional Engineers, Designers, and Land Surveyors:	Revises Chapters A-E 8 and 9, relating to landscape architect licensure and practice. CR 12-039
Rule Orders Filed with the Legislative Reference Bureau.	Page 73
Employee Trust Funds:	Revises Chapter ETF 52, relating to the administration of the Duty Disability Program under s. 40.65, Stats. CR 13-029

Public Instruction:	Creates Chapter PI 47, relating to the equivalency process for approving alternative models to evaluate educator practice. CR 13-024
Safety and Professional Services:	<i>Professional Services, Chs. SPS 1-299</i> Amends section SPS 132.05 (1), relating to biennial renewal dates. CR 13-030 <i>Safety, Buildings, and Environment — General Part I, Chs. SPS 301-319</i> Revises Chapter SPS 316, relating to electrical construction. CR 13-042
Safety and Professional Services — Examining Board of Architects, Landscape Architects, Professional Engineers, Designers, and Land Surveyors:	Revises Chapter A-E 4, relating to requirements for registration as a professional engineer. CR 12-053
Safety and Professional Services — Optometry Examining Board:	Amends section Opt 5.02 (4), relating to lens prescription. CR 13-017
Rules Published with this Register and Final Regulatory Flexibility Analyses.	Pages 74 to 75
Employee Trust Funds:	Revises Chapters ETF 10, 20, and 40, relating to technical and minor substantive changes in existing ETF administrative rules. CR 12-054
Natural Resources:	<i>Fish, Game, etc., Chs. NR 1—</i> Revises Chapters NR 10, 11, 17, and 45, relating to hunting, trapping, closed areas, dog training, and the use of department lands. CR 13-021 <i>Environmental Protection — General, Chs. NR 100— Environmental Protection — Investigation and Remediation of Environmental Contamination, Chs. NR 700—</i> Revises Chapters NR 169 and 700 to 750, relating to investigation and remediation of contaminated properties. CR 12-023
Safety and Professional Services:	<i>Professional Services, Chs. SPS 1-299</i> Creates Chapter SPS 50 and amends Chapters SPS 60 to 62 and 65, relating to barbers and to barbering and cosmetology schools and instructors, and affecting small business. CR 13-026
Safety and Professional Services — Pharmacy Examining Board	Amends section Phar 7.01 (1) (e), relating to delivery of prescription drugs. CR 13-018
Sections Affected.	Pages 76 to 79
Executive Orders.	Page 80

Emergency Rules Now in Effect

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.

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.

Administration

EmR1309 — The Department of Administration hereby adopts an order to create **Chapter Adm 93**, relating to the community development block grant program.

The statement of scope for this rule, SS 041-13, was approved by the Governor on April 15, 2013, and published in Register No. 688 on April 30, 2013, and approved by the Department of Administration Secretary, Mike Huebsch, effective May 13, 2013. This emergency rule was approved by the Governor on June 19, 2013.

Finding of Emergency

Each year the federal government makes funding available to the several states for economic and housing development through a program known as the Community Development Block Grant Program (CDBG). The CDBG is governed under 42 USC 5301 to 5319 and 24 CFR Part 570, and is administered by the US Department of Housing and Urban Development (HUD). Since the dissolution of the Wisconsin Department of Commerce, the Wisconsin Department of Administration (DOA) has received CDBG grants from HUD, and entered into agreements with the Wisconsin Economic Development Corporation (WEDC) for the

administration of those funds. Under this arrangement, state administrative code Chapter Commerce 108 was unneeded, as WEDC operated under substantially similar internal policies. Recently, DOA and WEDC have mutually determined that the expertise of DOA is better suited to administration of CDBG funds, while the expertise of WEDC is best suited to consultation with localities and businesses seeking to access CDBG funds. The parties intend to formalize the transfer of administrative responsibility of CDBG funds to DOA shortly. Consequently, it is imperative for the welfare of the State of Wisconsin that administrative code provisions concerning the CDBG program be made.

Filed with LRB: June 28, 2013
Publication Date: July 1, 2013
Effective Dates: July 1, 2013 through November 27, 2013
Hearing Date: November 18, 2013

Agriculture, Trade and Consumer Protection (3)

1. EmR1311 — 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 quarantine of Jefferson County for emerald ash borer.

This emergency rule was approved by the Governor on July 15, 2013.

The blanket statement of scope for this rule, SS 0088-12, was approved by the Governor on November 8, 2012, published in Register No. 683, on November 30, 2012, and approved by the Board of Agriculture, Trade and Consumer Protection as required by s. 227.135 (2), Stats., on December 18, 2012.

Finding of Emergency

On June 25, 2013, the Wisconsin Department of Natural Resources positively identified Emerald Ash Borer (EAB) in Walworth County at the University of Wisconsin Whitewater Campus, about 750 meters from the Jefferson County line. EAB is an exotic, invasive 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 a quarantine for Jefferson 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.

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 24, 2013
Publication Date: July 24, 2013
Effective Dates: July 24, 2013 through December 20, 2013
Hearing Date: September 26, 2013

2. EmR1312 — 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) (d)**, relating to the quarantine of Sauk County for emerald ash borer.

The blanket statement of scope for this rule, SS 08–12, was approved by the Governor on November 8, 2012, published in Register No. 683, on November 30, 2012, and approved by the Board of Agriculture, Trade and Consumer Protection (as required by s. 227.135 (2), Stats.) on December 18, 2012.

This emergency rule was approved by the Governor on August 1, 2013.

Finding of Emergency

On July 11, 2013, the United States Department of Agriculture — Animal and Plant Health Inspection Service (“APHIS”) positively identified Emerald Ash Borer (“EAB”) in Sauk County at Mirror Lake State Park. EAB is an exotic, invasive 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 a quarantine for Sauk 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.

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: August 13, 2013
Publication Date: August 14, 2013
Effective Dates: August 14, 2013 through January 10, 2014
Hearing Date: September 26, 2013

3. EmR1315 — 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) (e)**, relating to the quarantines of Dodge, Douglas, and Winnebago counties for emerald ash borer.

This emergency rule was approved by the Governor on August 29, 2013.

The blanket statement of scope for this rule, SS 0088–12, was approved by the Governor on November 8, 2012, published in Register No. 683, on November 30, 2012, and approved by the Board of Agriculture, Trade & Consumer Protection (as required by s. 227.135 (2), Stats.) on December 18, 2012.

Finding of Emergency

The United States Department of Agriculture — Animal and Plant Health Inspection Service (“APHIS”) positively identified Emerald Ash Borer (“EAB”) in Watertown, Dodge County on August 1, 2013; in Black Wolf township, Winnebago County on August 6, 2013; and subsequently in Superior, Douglas County on August 13, 2013. EAB is an exotic, invasive 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 a quarantine for Dodge, Douglas, and Winnebago counties 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.

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: September 11, 2013
Publication Date: September 11, 2013
Effective Dates: September 11, 2013 through February 7, 2014
Hearing Date: October 11, 2013

Employment Relations Commission

EmR1310 — The Wisconsin Employment Relations Commission hereby creates **Chapters ERC 70, 71, and 80**, relating to annual certification elections.

This emergency rule was approved by the Governor July 3, 2013.

The statement of scope for this rule, SS 045–13, was approved by the Governor on April 19, 2013, published in Register 689, on May 14, 2013, and approved by the Wisconsin Employment Relations Commission on June 3, 2013.

Finding of Emergency

An emergency exists because the public peace, health, safety and welfare necessitate putting these rules into effect so that the Wisconsin Employment Relations Commission can meet its obligation to conduct annual certification elections as required by ss. 111.70 (4) (d) 3. b. and 111.83 (3) (b), Stats.

Filed with LRB: July 15 2013
Publication Date: July 13, 2013
Effective Dates: July 13, 2013 through December 9, 2013

Insurance (2)

1. EmR1306 — The Commissioner of Insurance adopts an order to amend **sections Ins 17.01 (3) and 17.28 (3) (c)** and to repeal and recreate **section Ins 17.28 (6)**, Wis. Admin. Code, relating to Injured Patients and Families Compensation Fund Annual Fund and Mediation Panel Fees, and ISO code amendments for the fiscal year beginning July 1, 2013, and affecting small business.

This emergency rule was approved by the Governor on June 4, 2013.

The statement of scope for this rule, SS 042–13, was approved by the Governor on April 16, 2013, published in Register No. 688, on April 30, 2013, and approved by the Commissioner on May 10, 2013.

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 prior to July 1, 2013, in order for the new fiscal year assessments to be issued in accordance with s. 655.27 (3), Wis. Stats. The permanent rule-making process cannot be completed prior to

the effective date of the new fee schedule. The fiscal year fund fees were established by the Board of Governors at the meeting held on December 19, 2012, and the mediation panel fees were established by the Board of Governors at the meeting held on March 20, 2013.

Filed with LRB: June 10, 2013
Publication Date: June 12, 2013
Effective Dates: June 12, 2013 through November 8, 2013
Hearing Date: July 23, 2013

2. EmR1314 — The Commissioner of Insurance proposes an order to create **Chapter Ins 6 subch. II, subch. II (title), and sections Ins 6.91 to 6.98**, relating to navigators, nonnavigator assisters, and related entities and affecting small business.

The statement of scope for this rule SS 078–13, was approved by the Governor on July 1, 2013, published in Register No. 691, on July 15, 2013, and approved by the Commissioner on July 26, 2013. This emergency rule was approved by the Governor on August 30, 2013.

Finding of Emergency

In accordance with s. 623.98, Stats., the commissioner may promulgate rules under ss. 227.24 (1) (a) and (3), Stats., without providing evidence that promulgating a rule is necessary for the preservation of the public peace, health, safety, or welfare and without a finding of emergency. The commissioner intends to publish the proposed rule sufficiently in advance of October 1, 2013 to permit proper licensing, certification, and training of navigators and nonnavigator assisters and to permit proper registration of navigator and nonnavigator assister entities. The commissioner intends to promulgate permanent rules close in time to the emergency rules so not to create a gap in requirements.

Filed with LRB: September 5, 2013
Publication Date: September 10, 2013
Effective Dates: September 10, 2013 through February 6, 2014
Hearing Date: September 27, 2013

Natural Resources (3)

Fish, Game, etc., Chs. NR 1—

1. EmR1210 (DNR # WM–09–12(E)) — The Wisconsin Natural Resources Board proposes an order to amend **sections NR 10.001 (25c), 10.02 (1), 10.06 (5) and (8) (intro.), 10.07 (2) (b) 2., 10.07 (2m) (intro.) and (e) (intro.), 10.07 (2m) (f) (intro.), 10.09 (1), 10.13 (1) (b) 9., 10.13 (1) (b) 15., 10.13 (1) (b) 16., 10.145 (intro), 10.145 (3) to (8), 12.10 (intro.), 12.10 (1) (a) 4., 12.10 (1) (b) 2., 12.15 (13) and 19.25** and to create **sections NR 10.001 (22q), 10.001 (23a), 10.001 (23am), 10.001 (23b), 10.001 (26g), 10.001 (33), 10.01 (3) (j), 10.07 (1) (m), 10.07 (2m) (em), 10.07 (2m) (g) 3., NR 10.07 (4), 10.13 (1) (b) 15m., 10.13 (1) (b) 18., 10.145 (1m), (1u) and Note, sections NR 10.16 (5), 10.295, 12.15 (11) (e), 12.60 to 12.63, 12.64 (1) (a) and (b) (intro.) 1., 12.64 (1) (b) 2. and 3., 12.64 (1) (b) 4. and 5., 12.64 (2) (a) to (c), 12.64 (2) (d), 12.64 (3) and 12.65**, relating to the wolf hunting and trapping season and regulations and a depredation program.

This emergency rule was approved by the Governor on August 10, 2010.

The statement of scope for this rule, SS 023–12, was approved by the Governor on April 12, 2012, published in Register No. 676, on April 30, 2012, and approved by the Natural Resources Board on May 23, 2012.

Finding of Emergency

A non–statutory provision, SECTION 21, of 2011 ACT 169 requires the department to submit rules necessary for implementation or interpretation and establishes that the department is not required to make a finding of emergency.

Filed with LRB: August 15, 2012
Publication Date: August 18, 2012
Effective Dates: August 18, 2012 through the date on which the permanent rules take effect, as provided in 2011 Wisconsin Act 169, section 21.

2. EmR1215 (DNR # WM–16–12(E)) — The Wisconsin Natural Resources Board proposes an order to repeal and recreate **section NR 10.01 (3) (h) 1.**, relating to the coyote hunting season.

This emergency rule was approved by the Governor on August 30, 2012.

The statement of scope for this rule, SS 038–12, was approved by the Governor on May 29, 2012, published in Register No. 678, on June 14, 2012, and approved by the Natural Resources Board on June 27, 2012.

Finding of Emergency

A non–statutory provision, Section 21, of 2011 ACT 169 requires the department to submit rules necessary for implementation or interpretation and establishes that the department is not required to make a finding of emergency.

Filed with LRB: September 14, 2012
Publication Date: October 1, 2012
Effective Dates: October 1, 2012 through the date on which the permanent rules take effect, as provided in 2011 Wisconsin Act 169, section 21.

3. EmR1313 (DNR # WMH–07–13(E)) — The Wisconsin Natural Resources Board proposes an order to repeal **section NR 10.06 (9) (b)**; to amend **section NR 10.01 (1) (v)**; to repeal and recreate **sections NR 10.01 (1) (b) to (u) and 10.12 (3) (c)**; and to create **section NR 10.12 (3) (e)**, relating to migratory bird hunting regulations.

This emergency rule was approved by the Governor on August 30, 2013.

The statement of scope for this rule, SS 018–13, was approved by the Governor on February 18, 2013, published in Register No. 687, on March 14, 2013, and approved by the Natural Resources Board on April 24, 2013.

Statutory Authority

The chapter on wild animals and plants, in s. 29.014, Stats., “rule making for this chapter”, establishes that the department shall maintain open and closed seasons for fish and game and any limits, rest days, and conditions for taking fish and game. This grant of rule–making authority allows the department to promulgate rules related to migratory game bird hunting. Additional statutory authority is found in ss. 23.11, 29.192 and 29.041, Stats. The emergency rule making process is established in s. 227.24, Stats.

Filed with LRB: September 4, 2013

Publication Date: September 6, 2013
Effective Dates: September 6, 2013 through February 2, 2014
Hearing Date: October 28, 2013

Safety and Professional Services (3)
Professional Services, Chs. SPS 1—299

1. EmR1302 — The Wisconsin Department of Safety and Professional Services hereby adopts an order to amend **sections SPS 60.01; SPS 61.02 (1) (a), (2) (a), (3) (a), and (4) (a); 62.10 (title) and 62.10; 65.01; 65.02 (1); 65.07; and 65.12 (1) (h) and (i) 6.**; and to create **chapter SPS 205** relating to barbers and to barbering and cosmetology schools and instructors, and affecting small business.

This emergency rule was approved by the Governor on February 5, 2013.

The statement of scope for this rule, SS 063–12, was approved by the Governor on August 10, 2012, published in Register 680, on August 31, 2012, and approved by Secretary Dave Ross on October 15, 2012.

Finding of Emergency

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

On July 1, 2012, 2011 Wisconsin Act 190 transferred regulatory authority over barbers from the Barbering and Cosmetology Examining Board to the Department of Safety and Professional Services. Act 190 also changed the educational requirements for initial licensure of barbers, and the continuing–education requirements for renewal of barber licenses. Due to the transfer of authority and the changes in education requirements, immediate rulemaking by the Department is needed to implement corresponding rule changes prior to April 1, 2013, which is the renewal date mandated by section 440.08 (2) (a) of the Statutes for all barbering licenses.

Filed with LRB: February 14, 2013
Publication Date: February 14, 2013
Effective Dates: February 14, 2013 through July 13, 2013
Hearing Date: April 30, 2013
Extension Through: November 9, 2013

2. EmR1307 — The Wisconsin Department of Safety and Professional Services adopts an order to repeal **section SPS 81.04 (1) (c) 3. and 4.**, and to amend **section SPS 81.04 (2)**, relating to reciprocity.

This emergency rule was approved by the Governor on May 20, 2013.

The statement of scope for this rule, SS 012–13, was approved by the Governor on January 28, 2013, published in Register No. 686 on February 14, 2013, and approved by the Department of Safety and Professional Services on February 28, 2013.

Finding of Emergency

The Department of Safety and Professional Services finds that an emergency exists and that this rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. A statement of facts constituting the emergency is as follows:

Title XI of the Federal Financial Institutions Reform and Recovery Enforcement Act of 1989, as amended by the Dodd–Frank Act of 2010, dictates reciprocity requirements for real estate appraisers in each state. The federal body that oversees reciprocity requirements is the Appraisal Subcommittee (ASC). Currently, Wis. Admin. Code s. SPS 81.04 is not in compliance with the federal legislation. The Code must be brought into compliance by July 1, 2013. At that time, the ASC will conduct an audit to determine which states are in compliance. If Wisconsin is designated “out of compliance,” then federally regulated financial institutions may not engage a Wisconsin certified or licensed appraiser to perform an appraisal of property for a federally related transaction and other states will not be required to recognize Wisconsin credentialed appraisers seeking reciprocity. In order to implement the federally mandated reciprocity requirements before July 1, 2013, an emergency rule is needed.

Filed with LRB: June 12, 2013
Publication Date: June 18, 2013
Effective Dates: June 18, 2013 through November 14, 2013

3. EmR1308 — The Wisconsin Department of Safety and Professional Services adopts an order to create **section SPS 34.04 (2) (a) 4.**, relating to training of firearms instructors for private security personnel, private detectives, and private investigators or special investigators, and affecting small business.

This emergency rule was approved by the Governor on May 29, 2013.

The statement of scope for this rule, SS 080–12, was approved by the Governor on October 2, 2012, published in Register No. 682 on October 31, 2012, and approved by the Department of Safety and Professional Services on December 4, 2012.

Finding of Emergency

The Department of Safety and Professional Services (DSPS) finds that an emergency exists and that this rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. A statement of facts constituting the emergency is as follows.

Under section SPS 34.02 (1), private security personnel, private detectives, and private investigators or special investigators, who are seeking a firearms permit from the Department must obtain a certificate of firearms proficiency. Section SPS 34.02 (2) mandates that the certification be received from a Department–approved firearms–proficiency certifier pursuant to section SPS 34.04.

Section SPS 34.04 currently accepts only those certifier applicants who have received training as a police or security firearms instructor and who have either (1) current approval as a firearms instructor by the Wisconsin Law Enforcement Standards Board (LESB); (2) current certification as a law enforcement firearms instructor by the National Rifle Association, Inc., (NRA) or; (3) approval on or after January 1, 1995, as a firearms instructor by the LESB or NRA and have completed a refresher course presented by a regional training school approved by the LESB or the NRA.

Due to enactment of 2011 Wisconsin Act 35 (commonly referred to as the concealed carry law), which became

effective on November 1, 2011, there is a greater need for additional entities who can provide training and approve applicants as firearms proficiency certifiers. Section 175.60 (4) of the Statutes currently allows technical colleges, colleges, and universities to provide this training for concealed-carry purposes. No such provision is made as it relates to private security personnel, private detectives, and private investigators or special investigators, for carrying a weapon openly. Moreover, the training needed for DSPS firearms certifiers differs significantly from that needed and provided by the LESB curriculum and under 2011 Act 35. To that end, a new standard needs to be developed and implemented, separate and distinct from the LESB standards. Because the need to approve applicants for firearm proficiency certifiers is immediate and pressing, emergency rules are warranted.

Filed with LRB: June 13, 2013
Publication Date: June 13, 2013
Effective Dates: June 13, 2013 through November 9, 2013
Hearing Date: August 6, 2013

Safety and Professional Services — Controlled Substances Board

EmR1318 — The Controlled Substances Board adopts an order to create **section CSB 2.36**, relating to scheduling controlled substances.

This emergency rule was approved by the Governor on September 20, 2013.

The statement of scope for this rule, SS 062–13, was approved by the Governor on May 29, 2013, published in Register 690 on June 15, 2013, and approved by the Controlled Substances Board on July 15, 2013.

Finding of Emergency

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

The Brown County District Attorney's office has provided the Controlled Substances Board with information relevant to emergency scheduling and the commencement of a prosecution concerning a controlled substance analog. UR–144, XLR–11, and AKB48 are pharmacologically similar to Schedule I substances THC and JWH–018. By sharing pharmacological similarities with the Schedule I substances, synthetic cannabinoids pose a risk both to the individual user and other affected individuals. UR–144, XLR–11, and AKB48 are being marketed as “legal” alternatives to marijuana. This characterization (and the reputation as potent herbal intoxicants) has increased their popularity and prevalence.

The Controlled Substances Board finds that scheduling of UR–144, XLR–11, and AKB48 on an emergency basis is necessary to avoid an imminent hazard to public safety. The substances are not included in any other schedule and no exemption or approval is in effect for the substance under 21 USC 355.

On May 16, 2013, the U.S. Department of Justice Drug Enforcement Administration emergency scheduled UR–144,

XLR11, and AKB48 as Schedule I, illegal drugs under the Controlled Substances Act.

Filed with LRB: October 17, 2013
Publication Date: October 13, 2013
Effective Dates: October 13, 2013 through October 12, 2014
Hearing Date: November 11, 2013

Workforce Development

Unemployment Insurance, Chs. DWD 100–150

EmR1316 — The Wisconsin Department of Workforce Development hereby adopts an order to repeal **sections DWD 126.02 (2), (3), and (4), 126.03 (1), 126.04, 126.05, 127.01 (2) (b), (f) to (i), and (3), 127.02 (intro.), (1), (2), (3), and (4), 127.02 (5) and (10), and 127.08**; to renumber and amend **section DWD 126.02 (1)**; to amend **sections DWD 126.01, 126.03 (intro.) and (2), 127 (title), 127.01 (1), (2) (intro.), (a), (c), and (d), 127.02 (7), (9), and (11), 127.04 (title), (1), and (2), 127.05, 127.06 (1), (2), and (3), 127.07 (title) and (1), 128.01 (2) (a), and 129.01 (1) and (2)**; to repeal and recreate **sections DWD 127.01 (2) (j) and 127.07 (2)**; and to create **sections DWD 126.02 (Note), 126.03 (3), (4), (5), (6), and (7), 127.01 (2) (em), 127.02 (12), 127.04 (1m) (e), and 127.06 (1) (c)**, relating to unemployment insurance work registration, work search, and benefit claiming procedures.

This emergency rule was approved by the Governor on September 20, 2013.

The statement of scope for this emergency rule, SS 106–13, was approved by the Governor on August 14, 2013, published in Register No. 692 on August 31, 2013, and approved by the Secretary of Workforce Development on September 11, 2013.

Finding of Emergency

The Department of Workforce Development finds that an emergency exists and that the attached rule is necessary for the immediate preservation of the public welfare. Statements of the facts constituting the emergency are:

- (1) In order to fulfill the new statutory directives to require claimants for unemployment insurance benefits to increase their number of weekly work search actions from two to at least four;
- (2) In order to simplify the process and compliance with respect to requirements for unemployment insurance claimants to register for work;
- (3) In order to execute the new statutory requirement to request additional information from claimants;
- (4) In order to improve the unemployment insurance trust fund balance and thereby relieve employers of the burden of additional taxation;
- (5) In order to better assist unemployment insurance benefit claimants to obtain gainful employment; and,
- (6) In order to promote the improvement in the Wisconsin economy as a result of the immediate implementation of legislative directives with respect to the unemployment insurance program contained in 2013 Wisconsin Act 20 and 2013 Wisconsin Act 36.

Adoption of the emergency rule will ensure that these legislative directives are implemented within the time-frame envisioned with enactment of 2013 Wisconsin Act 20 and 2013 Wisconsin Act 36.

Filed with LRB: September 25, 2013

Publication Date: September 29, 2013

Effective Dates: September 29, 2013 through February 25, 2014, except that changes to ss. DWD 126.03 and 127.02 take effect after the Secretary determines the Department has the technological ability to implement the changes.

Hearing Date: November 4, 2013

Workforce Development

Employment and Training, Chs. DWD 805–830

EmR1317 — The Wisconsin Department of Workforce Development hereby adopts an order to create **Chapter DWD 801**, relating to workforce training grants under the Wisconsin Fast Forward program.

This emergency rule was approved by the Governor on September 20, 2013.

The statement of scope for this rule, SS 109–13, was approved by the Governor on August 15, 2013, published in

Register No. 692 on August 31, 2013, and approved by the Department of Workforce Development on September 11, 2013.

Finding of Emergency

The Department of Workforce Development (DWD) finds that an emergency exists and emergency rules are necessary for the immediate preservation of the public peace, health, safety, or welfare. The reason for the emergency is:

DWD proposes to create new rules in Chapter DWD 801 to implement the program of workforce training grants enacted by 2013 Wisconsin Act 9. DWD held a public hearing on the permanent rule for this new program on July 15, 2013, and has made revisions to the text of the proposed permanent rule in response to the comments received. It would now benefit the public welfare to proceed with the rules in emergency form so that the program can begin this fall.

Filed with LRB: September 25, 2013

Publication Date: September 29, 2013

Effective Dates: October 1, 2013 through February 27, 2014

Hearing Date: November 5, 2013

Scope Statements

Administration

SS 131–13

This statement of scope was approved by the Governor on October 8, 2013.

Rule No.

Chapter Adm 2.

Relating to

Use of State Buildings and Facilities.

Rule Type

Emergency and Permanent.

1. Finding/Nature of Emergency (for Emergency Rule Only)

The legislature has vested management authority over various state buildings and grounds, including those of the Wisconsin State Capitol, in the Department of Administration since 1979. See Wis. Stats. s. 16.84 (1). Since 1979, the Department has permitted the use of these buildings and grounds for the free discussion of public questions and other purposes, so long as such uses did not interfere with the prime uses of these facilities, or otherwise infringe on interests of the state. See Wis. Stats. s. 16.845; Wis. Admin. Code s. Adm 2.04.

Beginning February 2011, groups of persons began to occupy the Wisconsin State Capitol building without permits. This included appropriating rooms and hallways in the Capitol building for purposes such as camping and storage of bulk supplies. To restore order to the building and to return the building to a point where the work of the Wisconsin State Legislature and the Supreme Court of Wisconsin could perform their constitutionally authorized functions without undue disruption, the Department expended funds in excess of \$7,400,000 for law enforcement personnel. The continuous occupation of the State Capitol was formally terminated in March of 2011.

Groups of persons continue to occupy rooms in the Wisconsin State Capitol building without permits, including the Capitol rotunda. These groups constitute an exception to the norm.

The Wisconsin State Capitol Police (WSCP) issue more than 400 permits annually for the use of various state facilities. Permits are issued for a variety of purposes, whether political, non-political, charitable, or commercial. Permits are issued regardless of political party, affiliation, or content.

Occupation of the Capitol rotunda and other areas has caused disruptions to properly permitted events and normal governmental activities, including, but not limited to, a Red Cross blood drive, a high school science exhibit, school group tours, general public tours, and legislative committee meetings and sessions. The State does not refuse permits for the lawful and safe use of State facilities by any group or groups. Neither can the State allow any group to occupy the Capitol in disregard of the rights of permit holders, public

employees, or visitors. It is imperative that the Department continue to gain greater compliance from user groups in order to protect public safety and welfare.

Recently, the Department has engaged in mediation discussions with the American Civil Liberties Union as part of an on-going lawsuit related to the rules. Possible resolutions that would not compromise the ability of the Department to protect the core functions of the building have been discussed. This scope statement accounts for possible resolutions discussed with the ACLU, while still preserving the ability of the three Constitutional branches of government to function within the building. To that end, acoustical testing performed in preparation for litigation may provide input for balancing uses of the Capitol with the functioning of our representative democracy; the ACLU was informed of this possibility in the course of mediation.

2. Detailed Description of the Objective of the Proposed Rule

The objective of the proposed rule is to obtain greater compliance from user groups regarding facility use. This objective will be achieved by codifying historical Department practices, more clearly detailing certain provisions of the administrative code as informed by judicial interpretations and mediation discussions.

This proposed rule-making may do the following:

- A. Codify the WSCP's historical practice of issuing permits to any person requesting such permits, rather than restrict permit requests to only a limited class of governmental officials, non-profit organizations, and the like.
- B. Codify limits on the discretion of the WSCP currently found in the Department publication entitled, "Wisconsin State Facilities Access Policy" (WSFAP).
- C. Codify historical practices and constitutional protections found in the Department's current facilities use policy manual, including, but not limited to, the appeals procedure.
- D. Adopt the historical interpretation of the WSCP, that persons may be cited for violations of Wis. Admin. Code s. Adm 2.14 (2) for conduct occurring in rooms reserved for use by the Legislature.
- E. Define terms such as "event," "exhibit," and "room," or others as deemed appropriate to increase the clarity of the code.
- F. Codify alternative avenues for use of state facilities, including the "spontaneous event" exception developed as part of the facilities use manual, and the creation of a lesser category of "notice" use, which, could be superseded by a permitted event or by DOA-led tour groups.
- G. Further clarify the distinction between an exhibit and signs and the like which are incidental to events.
- H. Further clarify that a person who creates a hazardous condition and refuses to cease doing so may be cited for such conduct under Wis. Admin. Code s. Adm 2.14 (2) (zd).

- I. Further clarify that even common materials can pose a hazard when used or deployed in a hazardous manner.
- J. Further clarify that materials deployed in a hazardous manner may be disposed of by WSCP.
- K. Further clarify the appropriate interpretation of Wis. Admin. Code s. Adm 2.14 (2) (v) by sub-dividing the text.
- L. Codification of the ability of the Department to set specific decibel limits for events after considering the place where the event is occurring, the time the event is occurring, and the needs of other normal uses of the place; in the alternative, codification of specific decibel limits.
- M. Codification of factors to be considered in setting limits on the number of persons who may attend events in or on state buildings or facilities, or in the alternative, codification of specific numerical limits by location, date, time, and other uses affected.

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

Policies relevant to the rule are existing policies as found in Wis. Stats. ss. 16.84 and 16.845, Wis. Admin. Code ch. Adm 2, and the historical interpretations of the law as found in WSFAP. Alternatives to codifying historical practice and further clarifying the existing administrative code include: a) terminating the use of the Wisconsin State Capitol as a designated public forum; b) restricting the manners of use of the designated public forum; or c) disposing of the permitting system in favor of a “voluntary permit system.”

Terminating the use of the Wisconsin State Capitol building as a designated public forum is an alternative. The United States Capitol building and a substantial number of other state capitol buildings are not public forums. Employing this alternative is not desirable since the vast majority of users have demonstrated that they are capable of holding events or displaying exhibits without undue interference with the functions of the Legislature or the Department. Similarly, restricting the manner of use (e.g., prohibiting rallies and the like) in the Wisconsin State Capitol building is an alternative that is not recommended for the same reasons.

Allowing the free use of the Capitol building without need for a permit is not practicable. There is no known legal or factual precedent for this type of arrangement in any other state capitol buildings. More importantly, the potential for conflict between user groups is too high to make such an approach a realistic or practical alternative, as demonstrated by the issues cited in the finding of emergency.

4. Detailed Explanation of Statutory Authority for the Rule, Including the Statutory Citation and Language

The Department is the managing authority of numerous state properties, and is required to, “Have charge of, operate and maintain... the state capitol building... and such other state properties as are designated by law.” Wis. Stats. s. 16.84 (1). “The department shall promulgate under ch. 227, and shall enforce or have enforced, rules of conduct for property leased or managed by the department.” Wis. Stats. s. 16.846 (1). Additionally, “the managing authority of any facility owned by the state... may permit its use for free discussion of public questions, or for civic, social or recreational activities.” Wis. Stats. s. 16.845 (1). Further, “Whoever does or attempts

an act for which a permit is required under this section without first obtaining a permit may be fined... or imprisoned... or both.” Id.

5. Estimate of Amount of Time that State Employees Will Spend Developing the Rule and Other Resources Necessary to Develop the Rule

Excluding time spent reviewing existing rules, historical information, and other sources in the preparation of this scope statement, we estimate that completion of the Final Draft of this emergency rule will require an additional 80 hours of staff time.

6. List with Description of all Entities that may be Affected by the Proposed Rule

This proposed emergency rule will clarify and protect the rights of all of the hundreds of user groups who obtain permits to use State facilities each year, as well as the Legislature, Supreme Court, the Attorney General’s Office, and the numerous citizens and school groups who visit or work in our State Capitol and other State facilities.

7. 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

Existing federal regulations allow no permitted activities inside the U.S. Capitol building. Existing federal regulations require permits of activities on the exterior grounds of the U.S. Capitol whenever 20 or more persons are involved. Existing federal regulations concerning other facilities vary widely by the nature and location of the facility.

8. Anticipated Economic Impact of Implementing the Rule. Also, Please Note if the Rule is Likely to have an Economic Impact on Small Businesses

None.

9. Contact Person

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Department of Administration
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Madison, WI 53707-7864
(608) 266-1741

Agriculture, Trade and Consumer Protection

SS 129-13

This statement of scope was approved by the Governor on October 11, 2013.

Rule No.

Chapter ATP 55.

Relating to

Drug residues in animals for human food, and affecting small business.

Rule Type

Permanent.

1. Description of the Objective of the Rule

The department proposes a rule revision for ch. ATP 55, Wis. Adm. Code, specifying corrective actions to be enforced against livestock producers registered under Wisconsin’s livestock premises regulations who, on two or more occasions

during any calendar year, submit animals, which test positive for any drug residue, to be slaughtered at a state– or federally–inspected meat establishment for human consumption.

2. 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

Medications are important for maintaining healthy livestock. However, if not carefully managed, drug residues may remain in animals submitted for slaughter. Residues of medications, particularly antibiotics and anti–inflammatory agents, in meat can pose a direct health risk to people who consume the meat. For example, some people may have an allergic reaction if exposed to penicillin. The drug flunixin may cause gastrointestinal and kidney problems. Drug residues may disrupt normal meat fermentation processes, such as is needed to make summer sausage, and increase the risk that disease–causing bacteria will grow during processing.

Meat establishment operators are expected by the United States Department of Agriculture — Food Safety and Inspection Service (USDA–FSIS) to check the published Residue Repeat Violators list. The list identifies livestock producers whose animals have had two or more positive drug residue test results in the past year. Meat establishment operators are also expected to take appropriate measures before accepting animals from these producers. Regulatory action, if it is taken by USDA, is taken against the establishment operator. However, there is no state regulatory corrective action that can be enforced against these repeat offenders. Recent federal data suggest that dairy cattle are responsible for a high proportion of repeat tissue drug residue offenses. As a leading producer of dairy cattle, the reputation of Wisconsin’s agriculture is jeopardized by Wisconsin producers who repeatedly violate prohibitions against drug residue in livestock and meat products.

Currently ch. ATPC 55 (Meat and meat food products) addresses the production of meat and meat food products starting with the submission of an animal for slaughter for human consumption and, by reference, adopts United States Department of Agriculture regulations prohibiting the slaughter of “downer” cattle (non–ambulatory) for human food or feed destined for bovine animals. Chapter ATPC 57 (Inedible animal by–products) deals generally with the slaughter of animals not for human consumption and the collection and processing of inedible byproducts of animal slaughter. Chapter 12 (Animal markets, dealers and truckers) addresses the handling of downer animals and requires that these animals be slaughtered for rendering or euthanized.

The department proposes consulting with industry to determine whether to implement mandatory education–based corrective action, involving the livestock producer and his/her veterinarian, to be enforced the first time a producer is determined to be a repeat residue violator. The department also proposes consideration of more stringent corrective actions, which would be determined after consultation with industry, to be enforced following violations that occur after the initial corrective action is completed.

Policy alternatives

If the department does not alter the current rules, the department will lack a clearly stated rapid enforcement step for tissue drug–residue repeat violations. Federal action against residue repeat violators is generally not taken unless the US Food and Drug Administration investigates, issues a

warning letter, and upon further violations, obtains an injunction against the livestock producer. Warning letters and injunctions are seldom issued by the FDA on the basis of tissue drug–residue repeat violations. Instances of tissue drug–residue repeat violation could reduce consumer confidence in the safety of Wisconsin’s meat products and place the reputation of Wisconsin’s livestock industry in jeopardy.

3. Statutory Authority for the Rule (Including the Statutory Citation and Language)

Statutory Authority: ss. 93.07 (1), 97.09 (4), 97.42 (4), 95.38, and 95.67, Stats.

93.07 Department duties. It shall be the duty of the department:

(1) REGULATIONS. To make and enforce such regulations, not inconsistent with law, as it may deem necessary for the exercise and discharge of all the powers and duties of the department, and to adopt such measures and make such regulations as are necessary and proper for the enforcement by the state of chs. 93 to 100, Stats., which regulations shall have the force of law.

97.09 Rules.

(4) The department may, by rule, establish and enforce standards governing the production, processing, packaging, labeling, transportation, storage, handling, display, sale, including retail sale, and distribution of foods that are needed to protect the public from the sale of adulterated or misbranded foods.

97.42 Compulsory inspection of animals, poultry and carcasses.

(4) RULES. The department may issue reasonable rules requiring or prescribing any of the following:

(a) The inspection before and after slaughter of all animals and poultry killed or dressed for human consumption at any establishment.

95.38 Altering records; tampering with ear tags.

(1) It shall be unlawful for any person to in any manner change any test record, falsely record any test, misrepresent the identification of any animal or any other material fact on any test record, certificate of veterinary inspection, vaccination record, claim for indemnity, or any disease control report or application to the department. It shall be unlawful for any person to induce or to conspire with another, either directly or indirectly, to do any of the said prohibited acts.

(2) No person is permitted to in any way tamper with, insert or remove from the ear of any animal any ear tag or registration mark which is or may be used for identification in disease control work except upon authorization from the department.

(3) The department may adopt rules that are necessary to administer this section.

95.67 Proper use of animal care and disease control products. No person may use chemical, biological or disease control products in the treatment or care of food producing animals without substantially complying with instructions, warnings and directions for use on the product label. No animal or food product including milk of the animal shall be marketed for processing or use as food prior to the time specified on the label of a product used in the treatment or care of the animal. This section applies neither to licensed veterinarians who prescribe or administer drugs in conformity with federal restrictions nor to persons using drugs in a manner prescribed by a licensed veterinarian. This section

shall not prevent a farmer from administering animal disease control products to livestock in compliance with instructions on the product label.

4. Estimate of the Amount of Time that State Employees Will Spend to Develop the Rule and of Other Resources Necessary to Develop the Rule

DATCP estimates that it will use approximately 0.10 FTE staff to develop this rule. That includes time required for investigation and analysis, rule drafting, preparing related documents, coordinating stakeholder meetings, holding public hearings, and otherwise communicating with affected persons and groups. DATCP will use existing staff to develop this rule.

5. Description of all Entities that may be Impacted by the Rule

Consumers, meat establishment operators, and livestock producers will all benefit from the department having progressive enforcement capabilities for repeat tissue drug-residue violations.

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

Federal meat and poultry inspection regulations require meat and poultry processors to adopt Hazard Analysis and Critical Control Point (HACCP) systems. HACCP is an approach for preventing food safety hazards that involves identifying key food processing steps essential for ensuring safety. Plants must develop a plan to monitor and document that each of these key steps is functioning properly and minimizing food safety risks. As part of their HACCP plan, federally-inspected plants are required by 9 CFR 417.2 (a) (3) (v) to identify preventive measures for food safety hazards that could arise from drug residues. Drug residues include veterinary drugs, pesticides, and environmental contaminants.

One approach for minimizing drug residue risks is for producers to avoid purchasing animals from sources that have had drug residue violations in the past. Since past performance is often the best indicator as to whether an animal may have a drug residue problem, federal plants are expected to consult the federal Residue Repeat Violator List before purchasing animals for slaughter. The National Residue Program (NRP) at FSIS has collected data on drug residues in meat, poultry, and egg products since 1967. Producers who are found to have had more than one residue violation in the previous 12 months under this sampling program are placed on the federal Residue Repeat Violator List.

State meat inspection programs operate under a cooperative agreement with the United States Department of Agriculture (USDA) Food Safety and Inspection Service (FSIS). Under this agreement, state meat inspection programs are required to adopt regulations that are “at least equal to” federal meat and poultry inspection regulations. In addition, Wisconsin is one of three states recently accepted into the Cooperative Interstate Shipment (CIS) program allowing certain selected meat establishments to ship their products in interstate commerce. States in the CIS program must adopt regulations that are the “same as” federal meat inspection regulations.

The proposed rule will ensure Wisconsin’s state meat inspection program is consistent with federal regulations and

expectations for minimizing the risk of drug residue violations at state-inspected meat plants. It will enhance the effectiveness of these procedures by adding an additional educational corrective action that would be implemented well before federal regulatory action is needed.

7. Anticipated Economic Impact

This rule change is anticipated to have no impact on the vast majority of livestock producers who follow existing regulations and have a strong working relationship with their veterinarian. There will be a minor short-term negative economic impact on livestock producers who must attend a workshop and improve documentation of animal medications as a result of the proposed rule. To the extent that the proposed rule prevents drug residue problems and condemnation of carcasses, there will be a positive long-term economic impact. The rule will not modify fees or have an economic impact on local governmental units or public utility taxpayers.

8. Contact Person

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DATCP

Phone: (608) 224-4701

Agriculture, Trade and Consumer Protection

SS 130-13

This statement of scope was approved by the Governor on October 11, 2013.

Rule No.

Chapter ATCP 142, Wis. Adm. Code (Existing).

Relating to

The Cranberry Marketing Order.

Rule Type

Permanent.

1. Description of the Objective of the Rule

This proposed rule would increase the maximum amount the Cranberry Marketing Order Board may assess cranberry growers to enable the Board to more effectively achieve the purposes of ch. 96, Stats., (the Agricultural Marketing Act) and particularly to more effectively maintain and expand the sale of cranberries.

2. 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

History and background

The Cranberry Marketing Order that currently exists was adopted in 1983. It provides for a maximum annual assessment for each cranberry producer covered by the order of 10 cents per barrel of cranberries produced. The primary purpose of the marketing order is to maintain and expand the sale of cranberries. To that end, funds collected through assessments may be used by the marketing board for marketing research and development, industrial research and education programs that serve to meet the purpose of the marketing order.

Proposed policies

At the request of the Cranberry Marketing Board, DATCP will explore an increase to the maximum annual assessment

sufficient to enable the Cranberry Marketing Board to continue the expansion of the sale of Wisconsin grown cranberries. Any amendment to the marketing order must be approved at a referendum of the growers.

Policy alternatives

Leave the current rule as it is with the same assessment maximum which has not increased since 1983. There has been tremendous growth of Wisconsin cranberry sales and the Board's use of assessment funds has played an important role in that growth. To maintain that success, the Cranberry Board is requesting the increase.

3. Statutory Authority for the Rule (Including the Statutory Citation and Language)

Sections 93.07 (1) and 96.15, Stats.

93.07 Department duties. It shall be the duty of the department:

(1) REGULATIONS. To make and enforce such regulations, not inconsistent with law, as it may deem necessary for the exercise and discharge of all the powers and duties of the department, and to adopt such measures and make such regulations as are necessary and proper for the enforcement by the state of chs. 93 to 100, which regulations shall have the force of law.

96.15 Rules. The secretary may, in consultation with the appropriate marketing board or council, issue such rules as necessary to facilitate the administration and enforcement of this chapter.

4. Estimate of the Amount of Time that State Employees Will Spend to Develop the Rule and of Other Resources Necessary to Develop the Rule

DATCP estimates that it will use approximately 0.20 FTE staff to develop this rule. That includes time required for investigation and analysis, rule drafting, preparing related documents, coordinating advisory committee meetings, holding public hearings, and communicating with affected persons and groups. DATCP will use existing staff to develop this rule.

5. Description of all Entities that may be Impacted by the Rule

This rule would affect cranberry growers. The proposed rule would increase the maximum annual assessment that the Cranberry Board may charge to growers from the current maximum of 10 cents per barrel. Any amendment to the marketing order including a proposal to increase the maximum annual assessment must be approved at referendum by a majority of all Wisconsin cranberry growers.

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

There is a federal cranberry marketing order program. The federal cranberry marketing order program serves to promote orderly and efficient marketing of cranberries in the United States. The state and federal programs are complementary and the state program works in close coordination with the federal program. The Department is not aware of any proposals pending to alter the federal cranberry marketing program.

7. Anticipated Economic Impact

DATCP expects the proposed rule to have minimal economic impact statewide and locally.

8. Contact Person

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Agriculture, Trade and Consumer Protection

SS 132-13

This statement of scope was approved by the Governor on October 14, 2013.

Rule No.

Chapter ATCP 80, Wis. Adm. Code (Existing).

Relating to

Dairy plants, and affecting small business.

Rule Type

Permanent.

1. Description of the Objective of the Rule

The department proposes a comprehensive review and revision of ch. ATCP 80, relating to the food safety oversight of dairy plants in Wisconsin. The objective of this proposed rule is to modernize current dairy plant inspection rules in order to ensure compliance with federal Food and Drug Administration's (FDA) Pasteurized Milk Ordinance (PMO), accommodate advances in manufacturing dairy products, and continue ensuring the safety and quality of Wisconsin dairy products. The department will also determine whether and the extent to which revisions are needed to harmonize Wisconsin regulations with federal risk-based preventive controls regulations implemented under the Food Safety Modernization Act.

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

Wisconsin has more than 400 licensed dairy plants. Grade A dairy plants produce pasteurized fluid milk and milk products such as cottage cheese, cream, and yogurt made using Grade A milk from Grade A dairy farms. Grade A milk and milk products must be processed in accordance with standards in the FDA's PMO and are thereby eligible for interstate commerce. The PMO is a guidance document and ch. ATCP 80 is in substantial compliance with it. Ninety-eight percent of the milk produced in Wisconsin is Grade A. Chapter ATCP 80 (Dairy Plants) is a comprehensive rule designed to address the specific challenges of manufacturing milk and dairy products and ensuring that these products are high-quality and safe to consume. Chapter ATCP 80 establishes milk bacteriological and compositional quality standards, sets pasteurization requirements, requires milk testing to measure whether these standards are met, and establishes procedures for testing milk and recording results. Chapter ATCP 80 also requires dairy plants to keep records of information needed to monitor the safety of their products, and ensure proper financial reporting. The rule also establishes inspection and enforcement requirements, including a requirement that Grade A plants be periodically audited against federal sanitation compliance standards.

Finally, ch. ATCP 80 includes labeling requirements for dairy products not sold for human food or animal feed.

Grade B dairy plants make products not covered under the PMO such as butter, ice cream, and cheese. Grade B products may be made from either Grade A or Grade B milk. Grade B milk comes from farms that have less stringent bacteriological requirements and are inspected less frequently.

FDA revises the PMO every two years. The current ch. ATCP 80 rules, although largely in compliance with the PMO, must be revised periodically to maintain the needed consistency with the latest version of the PMO and to adapt to new innovations in the dairy industry. For example, the most recently adopted PMO contains new requirements related to aseptic processing and packaging of dairy products which have not been incorporated in ch. ATCP 80.

The department will consider a variety of potential rule changes which mainly, but not exclusively, involve maintaining consistency with the PMO, and relate to topics such as: the statutory definition of a dairy product; delineation of financial responsibilities for milk contractors and dairy plant operators; equipment and facility standards; evaluation of a plant's water supply; microbiological standards for different products; limits for operating a pasteurizer after a seal has been broken; and variance procedures.

As part of its overall review of ch. ATCP 80, the department will explore provisions consistent with impending federal regulations (implemented under the Food Safety Modernization Act) that require food processing plants to conduct a hazard analysis and develop a risk-based system of preventive controls. The department may propose rule changes addressing this topic, as needed.

Policy alternatives

FDA revises the PMO every two years and the department must periodically revise ch. ATCP 80 to ensure substantial compliance with the PMO. If the department does not alter the current rule, the rule may not remain consistent with the PMO which could eventually lead to problems when the FDA audits the Wisconsin dairy inspection program for compliance. A failing regulatory audit score could jeopardize the ability of Wisconsin dairy producers and plants to participate in the Grade "A" program and to maintain Wisconsin's reputation as the Dairy State. Current regulations may not be adequate for addressing emerging food safety issues related to dairy processing.

3. Statutory Authority for the Rule (Including the Statutory Citation and Language)

Statutory Authority: ss. 93.07 (1), 97.09 (4), and 97.20 (4), Stats.

93.07 Department duties. It shall be the duty of the department:

(1) REGULATIONS. To make and enforce such regulations, not inconsistent with law, as it may deem necessary for the exercise and discharge of all the powers and duties of the department, and to adopt such measures and make such regulations as are necessary and proper for the enforcement by the state of chs. 93 to 100, which regulations shall have the force of law.

97.09 Rules.

(4) The department may, by rule, establish and enforce standards governing the production, processing, packaging, labeling, transportation, storage, handling, display, sale, including retail sale, and distribution of foods that are needed

to protect the public from the sale of adulterated or misbranded foods.

97.20 Dairy plants.

(4) RULE MAKING. The department may promulgate rules to establish the fees required under sub. (2) (c) to (2) (w) or to govern the operation of dairy plants. The rules may include standards for the safety, wholesomeness and quality of dairy products; the construction, maintenance and sanitary operation of dairy plants; the design, installation, cleaning and maintenance of equipment and utensils; personnel sanitation; storage and handling of milk and fluid milk products; pasteurization and processing procedures; sampling and testing; and reports and record keeping. The rules may also set forth duties of dairy plants to inspect dairy farms, collect and test producer milk samples and make reports to the department.

4. Estimate of the Amount of Time that State Employees Will Spend to Develop the Rule and of Other Resources Necessary to Develop the Rule

DATCP estimates that it will use approximately 0.20 FTE staff to develop this rule. That includes time required for investigation and analysis, rule drafting, preparing related documents, holding public hearings, and communicating with affected stakeholders. DATCP will use existing staff to develop this rule.

5. Description of all Entities that may be Impacted by the Rule

Dairy plant operators will benefit from increased consistency of Wisconsin regulations with the PMO.

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

The proposed rule makes ch. ATCP 80 more consistent with the PMO. Although compliance with the PMO is technically a voluntary effort by state regulatory agencies, Wisconsin is periodically evaluated by the FDA for compliance with the PMO. Failure to pass the FDA audit would jeopardize the state's interstate and international dairy industry.

7. Anticipated Economic Impact

This rule change is anticipated to have no negative impact, but a positive economic impact for Wisconsin's dairy industry. In many respects, it will make Wisconsin's regulations consistent with practices in other states, including those elsewhere in the Upper Midwest which adopt the latest version of the PMO by reference. The rule will not modify fees or have an economic impact on local governmental units or public utility taxpayers.

8. Contact Person

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Agriculture, Trade and Consumer Protection

SS 133-13

This statement of scope was approved by the Governor on October 15, 2013.

Rule No.

Chapter ATCP 60, Wis. Adm. Code (Existing).

Relating to

Dairy farms, and affecting small business.

Rule Type

Permanent.

1. Description of the Objective of the Rule

The department proposes a comprehensive review and revision of ch. ATCP 60, relating to the inspection of dairy farms in Wisconsin. The objective of this proposed rule is to modernize current dairy farm inspection rules in order to ensure compliance with the most recent version of the Federal Food and Drug Administration's ("FDA's") Pasteurized Milk Ordinance (PMO), accommodate advances in dairying, and continue ensuring the safety and quality of Wisconsin milk. The department will also determine whether, and the extent to which, revisions are needed to improve the efficiency of Grade "A" dairy farm inspections and certain compliance procedures.

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

Wisconsin ranks second nationally in milk production and operates the nation's largest state dairy inspection program. Wisconsin has by far the largest number of dairy farms operated by licensed dairy producers; the milk from each of these farms is shipped to one of the more than 400 licensed dairy plants in the state, or to a licensed dairy plant in another state. Chapter. ATCP 60 (Dairy Farms) lists dairy producer license and Grade "A" permit requirements, dairy farm standards, milk quality standards, procedures for examination of milk from dairy farms, and inspection and enforcement practices.

The department proposes working with industry to modernize language, definitions, and requirements for consistency with the PMO. The vast majority of dairy producers in Wisconsin have Grade "A" permits, which means that their milk, or pasteurized milk and certain other dairy products made from it, can be shipped across state and international boundaries. Milk moving in this manner, referred to as Grade "A" milk, must be produced, transported, and processed in accordance with the PMO. State regulations governing Grade "A" milk must be at least as stringent, and consistent with, the PMO. FDA revises the PMO every two years. The current ch. ATCP 60 rules, although largely in compliance with the PMO, must be revised periodically to maintain the needed consistency with the latest version of the PMO and adapt to new innovations in the dairy industry. For example, the PMO now specifically addresses automated milking installations ("robotic" milking), while ch. ATCP 60 does not.

The department will consider a variety of potential rule changes which relate to topics such as dairy farm water supply and well testing, reporting by dairy plants of milk quality test results, procedures and ramifications of Grade A permit suspension, variance procedures, robotic milking, and review of plumbing projects and dairy farm equipment installations. The department will also work with industry to determine whether changes in the Somatic Cell Count (SCC) standard in ch. ATCP 60 are needed for Wisconsin to maintain a competitive position in national and international dairy markets.

As part of its overall review of ch. ATCP 60, the department will explore alternatives, consistent with the PMO, for

conducting Grade A farm inspections more efficiently. The department will also re-evaluate rules that require progressive corrective actions to be taken by dairy producers. For example, the department will assess the adequacy of the current rule specifying a corrective action to be taken after the first milk sample yielding a positive drug residue result. The department may also evaluate whether ch. ATCP 60 provides adequate milk safety regulatory oversight when cattle sold for slaughter by a dairy producer are found to contain drug residues. The department may propose rule changes addressing these topics, as needed.

Policy alternatives

FDA revises the PMO every two years and the department must periodically revise ch. ATCP 60 to incorporate changes to ensure compliance with the PMO. If the department does not alter the current rule, the rule may not remain consistent with the PMO, which could eventually lead to problems when the FDA audits the Wisconsin dairy inspection program for compliance. A failing regulatory audit score could jeopardize the ability of Wisconsin dairy producers and plants to participate in the Grade "A" program and to maintain Wisconsin's reputation as the Dairy State. Current regulations may not be adequate for addressing emerging economic and food safety issues related to dairy farming. For example, maintaining the current SCC standard may result in many of the state's Grade "A" dairy producers trying to meet different SCC standards if they export Grade "A" dairy products to countries with a more stringent SCC standard than the one currently in place in ch. ATCP 60. Without a rule revision, the department would continue trying to enforce rules that were designed for more traditional milking operations without consideration of innovative dairying practices such as robotic milking. Finally, if the current rules are not revised, the department may miss opportunities to improve the cost-effectiveness of on-site dairy farm inspections.

3. Statutory Authority for the Rule (Including the Statutory Citation and Language)

Statutory Authority: ss. 93.07 (1), 97.09 (4), and 97.22 (8), Stats.

93.07 Department duties. It shall be the duty of the department:

(1) REGULATIONS. To make and enforce such regulations, not inconsistent with law, as it may deem necessary for the exercise and discharge of all the powers and duties of the department, and to adopt such measures and make such regulations as are necessary and proper for the enforcement by the state of chs. 93 to 100, which regulations shall have the force of law.

97.09 Rules.

(4) The department may, by rule, establish and enforce standards governing the production, processing, packaging, labeling, transportation, storage, handling, display, sale, including retail sale, and distribution of foods that are needed to protect the public from the sale of adulterated or misbranded foods.

97.22 Milk producers.

(8) RULE MAKING. The department may promulgate rules to establish the fees required under sub. (2) (b) or (4) (a) or to govern the operation of dairy farms by milk producers. The rules may include standards for any of the following:

(a) The safety, wholesomeness and quality of milk.

(b) The sanitary construction and maintenance of dairy farm facilities used in milk production.

(c) The availability of safe and adequate water supplies for milk production.

(d) The sanitary construction, maintenance and cleaning of equipment and utensils used in milk production.

(e) Personnel sanitation related to milk production.

(f) Sanitary procedures for the production of milk, including but not limited to the handling, transfer, and storage of milk on a dairy farm.

4. Estimate of the Amount of Time that State Employees Will Spend to Develop the Rule and of Other Resources Necessary to Develop the Rule

DATCP estimates that it will use approximately 0.20 FTE staff to develop this rule. That includes time required for investigation and analysis, rule drafting, preparing related documents, holding public hearings, and communicating with affected stakeholders. DATCP will use existing staff to develop this rule.

5. Description of all Entities that may be Impacted by the Rule

Dairy producers and dairy plant operators will benefit from increased consistency of Wisconsin regulations with the PMO. Consumers and the department will benefit from greater cost-effectiveness in conducting on-site dairy farm inspections.

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

The proposed rule makes ch. ATCP 60 more consistent with the PMO. Although compliance with the PMO is technically a voluntary effort by state regulatory agencies, Wisconsin is periodically evaluated by the FDA for compliance with the PMO. Failure to pass the FDA audit would jeopardize the state's interstate and international dairy industry.

7. Anticipated Economic Impact

This rule change is anticipated to have no negative impact, but a positive economic impact for Wisconsin's dairy industry. In many respects, it will make Wisconsin's regulations consistent with practices in other states, including those elsewhere in the Upper Midwest which have adopted the latest version of the PMO by reference. The rule will not modify fees or have an economic impact on local governmental units or public utility taxpayers.

8. Contact Person

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Agriculture, Trade and Consumer Protection

SS 134-13

This statement of scope was approved by the Governor on October 15, 2013.

Rule No.

Chapters ATCP 93 (existing as ch. SPS 310 — to be renumbered by LRB) and 94 (existing as ch. SPS 348 — to be renumbered by LRB); sections SPS 305.02, 305.06, 305.68, and 305.82 to 305.89, Wis. Adm. Code.

Relating to

Flammable, Combustible and Hazardous Liquids; and Petroleum and Other Liquid Fuel Products.

Rule Type

Permanent.

1. Description of the Objective of the Rule

1.1 Incorporating programs transferred from DSPS

With the enactment of 2013 Wisconsin Act 20 (the biannual budget bill), the state of Wisconsin transferred the *Flammable, Combustible and Hazardous Liquids program* ("tanks inspection program") and *Petroleum and Other Liquid Fuel Products program* ("petroleum inspection program") from the Department of Safety and Professional Services ("DSPS") to the Department of Agriculture, Trade and Consumer Protection ("DATCP"). Act 20 authorizes the transfer of existing administrative rules relating to these programs from DSPS to DATCP (with the approval of the Secretary of the Department of Administration). [See Section 9138, (2) (fm) and (4) (f).] The Legislative Reference Bureau will use its authority to renumber the affected rules from Chapters SPS 310 and 348 to Chapters ATCP 93 and 94.

Other aspects of the transfer must be addressed through administrative rulemaking. DATCP intends to initiate rule revisions to make technical and organizational changes to the portions of chs. SPS 302 and 305 that relate specifically to the tanks and petroleum inspection programs. Chapters SPS 302 and 305 also contain general administrative provisions (licensing, enforcement, etc.) that relate to a wide variety of DSPS regulatory programs. DATCP will consider incorporating similar provisions directly into Chs. SPS 310 and SPS 348 as necessary to administer the tanks and petroleum inspection programs. These changes will integrate the tanks and petroleum inspection programs into DATCP's other regulatory programs and will provide clarity to regulated industries.

1.2 Updating existing rule relating to tanks

Before these programs were transferred to DATCP (effective July 1, 2013), tanks inspection program staff and DSPS legal staff had been actively working on rule changes to SPS 310. The scope statement for this rulemaking was published in January, 2011. A working draft of a proposed rulemaking order has been transferred to DATCP. DATCP intends to evaluate and further develop this draft and incorporate many of the proposed changes into this rulemaking project. The proposed revisions would make numerous minor technical changes to the rule to make it more readable and practical. The proposed revisions would also bring the rule into alignment with current EPA standards and current generally accepted industry practices.

DATCP will also consider updating the fee structure for underground storage tank permits to conform to other DATCP licensing and permit programs. Currently, there is no financial penalty for tank operators who fail to file permit renewals by the annual expiration date. Many similar DATCP programs incorporate a late surcharge or other penalty.

1.3 Updating existing rule relating to petroleum and other liquid fuel products.

Chapter SPS 348 incorporates by reference ASTM standards for fuel specifications and testing procedures. Many of the standards referenced in the current version of SPS 348 are from 2007 or 2008. DATCP will consider updating these references to more recent versions of the ASTM standards. The more recent standards for gasoline

require gasoline to meet specifications after ethanol is mixed into the gasoline.

2. 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

History and background

During the 1980's and early 1990's, Wisconsin's tanks and petroleum inspection programs were housed within the Department of Industry Labor, and Human Relations (DILHR). These programs were transferred to the Department of Commerce ("Commerce") in 1996. They were transferred from Commerce to DSPS as part of the 2011-13 Biannual Budget (2011 Wisconsin Act 32). Chapter SPS 310 was previously titled chs. ILHR 10 and Comm 10. Chapter SPS 348 was previously titled chs. ILHR 48 and Comm 48. In 2008, Commerce completed an extensive and comprehensive update to ch. SPS 310 (which was ch. Comm 10 at the time).

Proposed policies

DATCP will reorganize the rules to conform to other ATCP chapters of the administrative rules. Generally, each existing ATCP chapter consists of an individual program or subject matter, and is largely self-contained. In contrast, existing SPS chapters of the administrative code are organized by function as well as by subject matter. For example, a number of individual DSPS programs (including tank inspection and petroleum inspection) rely on ch. SPS 302 to designate fee amounts, ch. SPS 303 to establish administrative procedures, and ch. SPS 305 to specify required licenses, certifications, and registrations. DATCP intends to reorganize chs. SPS 310 and 348 to incorporate fees, enforcement provisions, licensing requirements, and other administrative topics directly into the chapters.

DATCP proposes to continue work begun by DSPS on a number of updates and revisions to ch. SPS 310. These updates and revisions are, generally technical in nature, clarify existing requirements, or update requirements to conform to EPA requirements.

DATCP will also consider updating the fee structure for underground storage tank permits and reinspections to conform to other DATCP licensing and permit programs. Currently, there is no financial penalty for tank operators who fail to file permit renewals by the annual expiration date or tank operators who fail to fix relatively minor problems, thereby requiring inspectors to make multiple reinspection trips. Many similar DATCP programs incorporate surcharges or other penalties.

DATCP proposes to review ch. SPS 348 and revise it as necessary to conform to recent industry practices and the latest nationally accepted fuel specifications and testing procedures (as published by ASTM International).

DATCP will also contemplate adapting by reference the engine fuel quality standards published in NIST Handbook 130. About 15 states (including Illinois but not Wisconsin's other neighbors) have adopted this model regulation.

Policy alternatives

Do nothing. If the department does not alter the structure of the existing rules, its authority to administer the tanks and petroleum inspection programs will continue to rely on a non-statutory provision (Section 9138) of 2013 Act 20. This would become increasingly impractical and confusing as time goes on.

If the department does not implement the numerous technical updates, the rule would be more difficult to understand than necessary, and remain inconsistent with the latest national standards.

3. Statutory Authority for the Rule (Including the Statutory Citation and Language)

Sections 168.04, 168.16 (4), 168.23¹, and 168.28 (2)², Stats.

168.04 Standards. (1) The department by rule shall prescribe minimum product grade specifications for gasoline, automotive gasoline, gasoline-alcohol fuel blends, reformulated gasoline, as defined in s. 285.37 (1), and kerosene and may prescribe product grade specifications for aviation gasoline, fuel oils, and diesel fuel.

(2) (a) Except as provided in par. (b), the rules required under sub. (1) shall prohibit gasoline, automotive gasoline, gasoline-alcohol fuel blends, and reformulated gasoline, as defined in s. 285.37 (1), beginning on August 1, 2004, from containing more than 0.5%, by volume, of methyl tertiary-butyl ether.

(b) The rules required under sub. (1) shall not prohibit racing fuel used at racing events or in preparation for racing events from containing any amount of methyl tertiary-butyl ether.

(3) Except as otherwise provided in this section, rules promulgated under this section shall be in conformity with nationally recognized standards, specifications, and classifications, such as those published by the American Society for Testing and Materials, the Society of Automotive Engineers, and the U.S. Environmental Protection Agency. The department may not promulgate or enforce a rule prohibiting the placement of additional information on the dispensing device.

168.16 (4) The department may promulgate reasonable rules relating to the administration and enforcement of this subchapter.

168.23 Rules. (1) The department shall promulgate by rule construction, maintenance and abandonment standards applicable to tanks for the storage, handling or use of liquids that are flammable or combustible or are federally regulated hazardous substances, and to the property and facilities where the tanks are located, for the purpose of protecting the waters of the state from harm due to contamination by liquids that are flammable or combustible or are federally regulated hazardous substances. The rule shall comply with ch. 160. The rule may include different standards for new and existing tanks, but all standards shall provide substantially similar protection for the waters of the state. The rule shall include maintenance requirements related to the detection and prevention of leaks. The rule may require any person supplying heating oil to any noncommercial storage tank for consumptive use on the premises to submit to the department, within 30 days after the department requests, the location, contents and size of any such tank.

(2) The department may transfer any information which the department receives under sub. (1) to any other agency or governmental unit. The department and any such agency shall treat the name of the owner and the location of any noncommercial storage tank which stores heating oil for consumptive use on the premises, required to be submitted to the department under sub. (1), as confidential and shall not permit inspection or copying under s. 19.35 of any record containing the information.

(3) The rule promulgated under sub. (1) may require the certification or registration of persons who install, remove,

clean, line, perform tightness testing on and inspect tanks and persons who perform site assessments. Any rule requiring certification or registration shall also authorize the revocation or suspension of the certification or registration. The department may not require an individual who is eligible for the veterans fee waiver program under s. 45.44 to pay any fee that may be charged pursuant to such a rule.

(4) The department shall promulgate a rule specifying fees for plan review and inspection of tanks for the storage, handling, or use of flammable or combustible liquids and for any certification or registration required under sub. (3).

(5) (a) Subject to par. (b), in addition to any fee charged by the department by rule for plan review and approval for the construction of a new or additional installation or change in operation of a previously approved installation for the storage, handling or use of a liquid that is flammable or combustible or a federally regulated hazardous substance, as defined in s. 168.21 (3), the department shall collect a groundwater fee of \$100 for each plan review submittal. The moneys collected under this subsection shall be credited to the environmental fund for environmental management.

(b) Notwithstanding par. (a), an installation for the storage, handling or use of a liquid that is flammable or combustible or a federally regulated hazardous substance, as defined in s. 168.21 (3), that has a capacity of less than 1,000 gallons is not subject to the groundwater fee under par. (a).

168.28 (2) INVENTORY OF STORAGE TANKS. The department shall undertake a program to inventory and determine the location of aboveground storage tanks and underground storage tanks. The department may require its deputies and any person engaged in the business of distributing petroleum products to provide information on the location of aboveground storage tanks and underground storage tanks.

¹ Under the 2013 Wisconsin Statutes. Previous to July 1, 2013, this provision was numbered s. 101.09, Stats. See sections 1615 to 1619 of 2013 Wisconsin Act 20.

² Under the 2013 Wisconsin Statutes. Previous to July 1, 2013, this provision was numbered s. 101.142 (2), Stats. See section 1633 of 2013 Wisconsin Act 20.

4. Estimate of the Amount of Time that State Employees Will Spend to Develop the Rule and of Other Resources Necessary to Develop the Rule

DATCP estimates that it will use approximately 0.50 FTE staff to develop this rule. That includes time required for investigation and analysis, rule drafting, preparing related documents, coordinating advisory committee meetings, holding public hearing,s and communicating with affected persons and groups. DATCP will use existing staff to develop this rule.

5. Description of all Entities that may be Impacted by the Rule

Businesses that design, install, inspect, or operate storage tank systems for flammable, combustible, or hazardous liquids may be impacted by this rule. This may include retail gasoline stations, fuel wholesalers or distributors, fleet operators, or farmers. It also may include petroleum equipment service companies and fire prevention inspectors.

This rule may also impact businesses that sell or distribute petroleum and other liquid fuel products; either at wholesale or retail. It may also impact businesses that manufacture, sell or distribute chemical liquids regulated under the federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). These businesses are already

regulated under the existing rule, but there may be minor changes to the specific requirements.

If DATCP adopts the model regulations published in NIST Handbook 130, businesses that sell or distribute engine lubricants may be impacted. The current rule contains technical specifications and requirements for fuel, but not lubricant. The NIST Handbook 130 contains specifications for lubricants.

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

Federal regulations for aboveground storage tanks do not address fire and public safety issues or groundwater pollution issues, except for protecting potable water supply sources. Federal regulations for underground storage tanks do not address fire and public safety issues or surface water pollution issues, except for protecting potable water supply sources. The planned rule changes are not expected to conflict with these federal regulations.

The EPA regulates standards for gasoline in a number of ways. EPA regulates the amount of sulfur in gasoline and certain toxic substances that can be emitted when fuel is burned. EPA also mandates reformulated gasoline (RFG) in certain metropolitan areas. EPA also mandates that fuels sold during the summer meet certain Reid vapor pressure standards to reduce emissions that contribute to smog.

7. Anticipated Economic Impact

The proposed rule may have moderate economic impact statewide and locally. The majority of the proposed rule is limited to updating and reorganizing provisions in the current rule and therefore would have a minimal economic impact — if any at all. However, adopting more recent fuel quality standards may have a moderate economic impact on certain businesses within the petroleum industry.

8. Contact Person

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Safety and Professional Services

*Safety, Buildings, and Environment —
General Part I, Chs. SPS 301–319,
Uniform Dwelling Code, Chs. SPS 320–325,
General Part II, Chs. SPS 326–360*

SS 136–13

This statement of scope was approved by the Governor on October 15, 2013.

Rule No.

Chapters SPS 302, 305, 320, 321, 326, and 328.

Relating to

Manufactured Homes and Manufactured Home Communities.

Rule Type

Permanent.

1. Finding/Nature of Emergency (Emergency Rule Only)

Not applicable.

2. Detailed Description of the Objective of the Proposed Rule

This rulemaking is expected to include comprehensively reviewing and updating all of the Department's rules relating

to manufactured homes and manufactured-home communities in order to make the rules consistent with contemporary industry and regulatory practices, any corresponding statutory and federal aspects, and Executive Order 61.

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

These chapters currently contain all of the Department's rules relating to manufactured homes and manufactured-home communities. These rules include criteria for installation of manufactured homes, construction and operation of manufactured-home communities, and corresponding credentials and fees.

The alternatives of either partially updating or not updating these rules would be less beneficial to the entities affected by these rules.

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

Section 227.11 (2) (a) of the Statutes authorizes the Department to promulgate rules interpreting any statute that is enforced or administered by the Department, if the rule is considered necessary to effectuate the purpose of the statute.

Section 101.92 (3) requires the Department to annually review the rules adopted under subchapter V of chapter 101, which addresses manufactured homes and mobile homes.

Section 101.92 (9) requires the Department to promulgate rules for licensing manufactured-home dealers and salespersons, as required under sections 101.951 and 101.952.

Sections 101.9203 (3) and 101.921 (1) (a) infer that the Department may promulgate rules authorizing a nonresident owner of a manufactured home to apply for a certificate of title without the home being subject to a security interest or without having the dealer determine that a certificate is necessary to protect the interests of a secured party.

Section 101.921 (1) (b) infers that the Department may promulgate rules authorizing a manufactured-home dealer to apply for a certificate of title naming the dealer as the owner even though not all available spaces for a dealer's reassignment on a certificate have been completed.

Section 101.921 (1) (c) infers that the Department may promulgate rules exempting a manufactured home dealer from otherwise needing to apply for a certificate of title naming the dealer as the owner of a for-sale home when all of the available spaces for a dealer's reassignment on a certificate have been completed.

Section 101.935 (2) (c) 2. requires the Department to establish fees by rule for issuing operational permits relating to manufactured-home communities.

Section 101.935 (2m) (a) 2. requires the Department to define by rule the modifications of a manufactured-home community that trigger a required inspection by the Department.

Section 101.935 (3) authorizes the Department to promulgate rules for administering and enforcing the permit process that the section requires for manufactured-home communities.

Section 101.937 (1) requires the Department to promulgate rules establishing prescribed standards for providing water or sewer service to a manufactured-home-community occupant.

Section 101.95 requires the Department to promulgate rules prescribing how manufacturers become licensed to manufacture, distribute, or sell manufactured homes.

Sections 101.951 (2) (b) 1. and (bm) require the Department to promulgate rules establishing the license period and fees for a dealer's license.

Section 101.951 (2) (b) 2. authorizes the Department to promulgate rules establishing a uniform expiration date for all dealer licenses.

Sections 101.952 (2) (b) 1. and (bm) require the Department to promulgate rules establishing the license period and fees for a salesperson's license.

Section 101.952 (2) (b) 2. authorizes the Department to promulgate rules establishing a uniform expiration date for all salesperson's licenses.

Section 101.953 (1) (b) requires the Department to promulgate rules defining reasonable care and maintenance for a manufactured home.

Section 101.953 (1) (d) requires the Department to promulgate rules defining manufactured homes that are uninhabitable.

Section 101.957 requires the Department to promulgate rules establishing an alternative, non-judicial dispute resolution process for defects in a manufactured home or in its installation.

Sections 101.96 (1) (a) and (b) require the Department to promulgate rules establishing standards for safe installation of manufactured homes, and for ensuring compliance with the standards.

Section 101.96 (1) (b) requires the Department to promulgate rules establishing prescribed criteria for licensure of third-party inspectors.

Sections 101.96 (2) (b) 6., (br) and (c) require the Department to promulgate rules establishing standards of financial responsibility for installers; how to demonstrate adequate experience in installation, in lieu of passing a required examination; license terms; conditions for revoking or suspending licenses; and license fees.

5. Estimate of Amount of Time that State Employees Will Spend Developing the Rule and of Other Resources Necessary to Develop the Rule

200 hours.

6. List with Description of all Entities that may be Affected by the Proposed Rule

Manufactured-home manufacturers, dealers, salespersons, installers, inspectors, and occupants, and owners or operators of manufactured-home communities.

7. 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

Federal construction requirements that preempt state or local requirements for constructing manufactured homes are addressed in Title 42 of the United States Code under sections 5401 to 5425, and in Title 24 of the Code of Federal Regulations under Part 3280. Federal minimum, model installation requirements for manufactured homes are addressed in 24 CFR 3285. Any rule revisions resulting under this scope statement will not infringe on the federal construction requirements, and will not provide less protection than the federal minimum installation requirements.

No current federal regulations were found relating to construction or operation of manufactured-home communities.

No corresponding proposed federal regulations were found.

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

The rule changes contemplated in this project are not expected to have any negative economic impacts on any of the entities listed above.

9. Contact Person

Sam Rockweiler, Rules Coordinator

sam.rockweiler@wi.gov

(608) 266-0797

**Safety and Professional Services —
Dentistry Examining Board**

SS 127-13

This statement of scope was approved by the Governor on October 7, 2013.

Rule No.

Chapter DE 8.

Relating to

Patient Dental Record Retention.

Rule Type

Permanent.

1. Finding/Nature of Emergency (Emergency Rule Only)

N/A.

2. Detailed Description of the Objective of the Proposed Rule

The Dentistry Examining Board desires to develop guidelines for patient dental record retention. The issue lies with the burden of patient records storage, both in having no guidance on the time limit of retention and with records dating prior to the availability of electronic storage. Chapters DE 1 to 13 do not contain standards in the preparation or retention of patient dental records; therefore, Chapter DE 8, Patient Dental Records, is proposed to be created.

3. 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 Dentistry Examining Board desires guidelines for patient dental record retention to be consistent within the industry, recognizing recommendations by professional organizations, other health care providers and other states with regard to record retention. Currently, there are no policies or directives for a time limit on retention.

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

Section 15.08 (5) (b), Stats., requires all examining boards to "...promulgate rules for its own guidance and for the guidance of the trade or profession to which it pertains, and

define and enforce professional conduct and unethical practices not inconsistent with the law relating to the particular trade or profession."

Section 227.11 (2) (a), Stats., authorizes all agencies to promulgate rules interpreting the statutes it enforces or administers, when deemed necessary to effectuate the purpose of such statutes; the section reads: "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..."

Section 447.02 (2) (d), Stats., authorizes the dentistry examining board to promulgate rules: "(d) Specifying practices, in addition to the practices specified under s. 447.01 (3) (a) to (f), that are included within the practice of dental hygiene."

5. Estimate of Amount of Time that State Employees Will Spend Developing the Rule and of Other Resources Necessary to Develop the Rule

The department estimates that approximately 80 hours will be needed to perform the review and develop any needed rule changes. This time includes meeting with the Dentistry Examining Board, drafting the rule changes and processing the changes through public hearing, legislative review, and adoption. The department will assign existing staff to perform the review and develop the rule changes; no other resources are expected to be needed.

6. List with Description of all Entities that may be Affected by the Proposed Rule

Licenses.

7. 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 Federal health and human services (HHS) administration provides incentives for dental offices providing treatment to Medicaid patients to move to electronic health records with respect to x-rays or imaging. An Internet-based search of the U.S. Code or Federal Register revealed that these types of electronic patient dental records for Medicaid patients will be required beginning in 2016; no other laws relating to patient record requirements were found.

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

It is anticipated that after rule promulgation, hard copy record storage may decrease over time, thus resulting in lowered overhead costs to the healthcare provider.

9. Contact Person

Jean MacCubbin, (608) 266-0955.

**Safety and Professional Services —
Massage Therapy and Bodywork Therapy
Affiliated Credentialing Board**

SS 128-13

This statement of scope was approved by the Governor on October 10, 2013.

Rule No.

Chapter MTBT 5.

Relating to

Unprofessional Conduct.

Rule Type

Permanent.

1. Finding/Nature of Emergency (Emergency Rule Only)

N/A.

2. Detailed Description of the Objective of the Proposed Rule

The objective of this proposed rule is to modernize the unprofessional conduct rules governing licensed massage therapists and bodywork therapist to reflect current trends in the profession.

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

Currently, Wis. Admin Code s. MTBT 5.01 — Unprofessional Conduct sets forth the existing grounds for disciplinary actions against massage therapists and bodywork therapists in Wisconsin. With the passage of 2009 Wisconsin Act 355, the Massage Therapy and Bodywork Council was transformed into the Massage Therapy and Bodywork Therapy Affiliated Credentialing Board. (MTBT Board). The Act granted the newly formed MTBT Board rule-making authority and provided that the MTBT Board would now be attached to the Medical Examining Board. The MTBT Board has seized this opportunity to undertake a review of its current unprofessional conduct rules.

The legislature fully purposed delegating rule-making authority to the MTBT Board to establish ethical standards of conduct for massage therapist and bodywork therapist as evidenced by s. 460.04, Stats., which states the MTBT Board may promulgate rules that establish standards that govern the professional conduct of MTBT licensees. The Board's review of the current unprofessional conduct rules will not result in a significant policy change but rather a further clarification of the ethical goals of the profession.

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

Section 227.11 (2) (a), Stats., discusses the parameters of an agency's rule-making authority stating, an 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, but a rule is not valid if it exceeds the bounds of correct interpretation." Section 227.01 (1), Stats., defines agency as a board. The Massage Therapy and Bodywork Therapy Affiliated Credentialing Board falls within this definition. Therefore, it may promulgate administrative rules which interpret the statutes it enforces or administers as long as the proposed rules do not exceed the proper interpretation of the statute.

Section 460.04 (2) (a), Stats., authorizes the MTBT Board to promulgate rules, "that govern the professional conduct of license holders in practicing massage therapy or bodywork therapy."

This section is an express grant of authority to draft rules regarding unprofessional conduct. Section 460.14 (2) (a) through (j), Stats., sets forth a number of grounds for disciplinary action by the MTBT Board. The Board may reprimand, deny, limit, suspend, or revoke a licensee

including but not limited to the following conduct: making a material misstatement in an application for licensure, false or deceptive advertising, practicing under another's name, practicing while impaired by alcohol or other drugs, making a false statement, engaging in conduct that jeopardizes the health, safety, or welfare of a client, engaging in conduct that illustrates a lack of knowledge or skills as a massage therapist or bodywork therapist.

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

It is estimated that state employees may spend up to 70 hours in developing the proposed rules.

6. List with Description of all Entities that may be Affected by the Proposed Rule

MTBT instructors, students who are currently matriculating in MTBT educational programs, and licensed MTBT professionals.

7. 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.

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

The Department estimates that this rule will not result in any economic impact on small businesses.

9. Contact Person

Shawn Leatherwood, (608) 261-4438.

Safety and Professional Services — Optometry Examining Board

SS 135-13

This statement of scope was approved by the Governor on October 15, 2013.

Rule No.

Chapters Opt 2, 5, and 6.

Relating to

Updating board and profession practices.

Rule Type

Permanent.

1. Finding/Nature of Emergency (Emergency Rule Only)

N/A.

2. Detailed Description of the Objective of the Proposed Rule

The Optometry Examining Board reviewed their rules per Executive Order #61. The Board proposes to update the chapter on organization of the Board as well as update unprofessional conduct and the use of diagnostic and therapeutic pharmaceutical agents and removal of superficial foreign bodies from an eye chapters to reflect current standards and practices.

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

Currently the Board is required to use the latest copyright of Robert's Rules of Order to conduct business. The Board also has antiquated procedures for membership in international association of boards and payment of fees for delegates.

In addition, the Board would like to modify s. Opt 5.11 and ch. Opt 6 to reflect current practices in an effort to reduce the burden on business and remove outdated standards.

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

Section 15.08 (5) (b). Each examining board: shall promulgate rules for its own guidance and for the guidance of the trade or profession to which it pertains and define and enforce professional conduct and unethical practices not inconsistent with the law relating to the particular trade or profession.

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

75 hours.

6. List with Description of all Entities that may be Affected by the Proposed Rule

Board members, licensees, and consumers.

7. 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.

8. Anticipated Economic Impact of Implementing the Rule (Note if the Rule is Likely to Have a Significant Economic Impact on Small Businesses)

There is minimal or no economic impact of implementing this rule and is not likely to have a significant economic impact on small businesses.

9. Contact Person

Sharon Henes, Administrative Rules Coordinator
(608) 261-2377

Submittal of Proposed Rules to Legislative Council Clearinghouse

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

Employment Relations Commission CR 13-092

The Wisconsin Employment Relations Commission hereby provides notice that on October 15, 2013, it submitted proposed administrative rules to create Chapters ERC 70, 71, and 80 regarding annual certification elections to the Rules Clearinghouse.

The scope statement for this rule, SS 045-13, was approved by the Governor on April 19, 2013, published in Register No. 689 on May 14, 2013, and approved by the Wisconsin Employment Relations Commission on June 3, 2013.

Agency Procedure for Promulgation

A public hearing is required and will be held November 19, 2013.

Contact Person

Peter Davis
(608) 243-2421
peterg.davis@wisconsin.gov

Natural Resources

Environmental Protection — Air Pollution Control, Chs. 400— CR 13-089

(DNR # AM-19-13)

On October 8, 2013, the Department of Natural Resources Submitted to the Rules Clearinghouse a proposed rule order to revise Subch. III of ch. NR 446, relating to control of mercury emissions from coal-fired electric generating units (EGUs).

The statement of scope for this rule, SS 050-13, was approved by the Governor on May 1, 2013, published in Register No. 689 on May 14, 2013, and approved by the Natural Resources Board on June 26, 2013.

Agency Procedure for Promulgation

Date of Public Hearing: November 12, 2013.

Contact Information

Linda Haddix — Legal Services, (608) 266-1959.

Public Instruction CR 13-083

On October 8, 2013, the Wisconsin Department of Public Instruction submitted a proposed rule revising Chapter PI 21 to the Wisconsin Legislative Council Rules Clearinghouse. The proposed rule repeals ss. PI 21.01 (Note), 21.04 (4)

(Note), and 21.05 (1) (Note), (2), and (2) (Note); amends s. PI 21.04 (intro); and repeals and recreates s. PI 21.04 (4), relating to driver education programs.

The scope statement for this rule, SS 071-13, was published in Register No. 691 on July 14, 2013, and approved by State Superintendent Tony Evers on July 24, 2013. Per the Dane County Circuit Court order issued in *Coyne, et al. v. Walker, et al.*, Case No. 11-CV-4573, the Department of Public Instruction is not required to obtain the Governor's approval for the statement of scope or this rule.

Agency Procedure for Promulgation

The rules are being adopted under s. 227.16 (2) (e), Stats., which provides that rulemaking does not need to be preceded by notice and public hearing if the proposed rule and fiscal estimate are published in the notice section of the Administrative Register and the required petition is not received by the agency within 30 (thirty) days after publication of the notice.

Thus, the proposed rule will be promulgated without public hearing unless a petition is received by the agency within 30 (thirty) days after publication of this notice. The petition must be signed by any of the following:

1. Twenty-five natural persons who will be affected by the proposed rule.
2. A municipality that will be affected by the proposed rule.
3. An association which is representative of a farm, labor, business, or professional group that will be affected by the proposed rule.

The Division for Learning Support within the Department of Public Instruction is primarily responsible for promulgation of this rule.

Contact Information

If you have questions regarding this rule, you may contact Katie Schumacher, Administrative Rules Coordinator, at katie.schumacher@dpi.wi.gov or (608) 267-9127.

Public Instruction CR 13-084

On October 8, 2013, the Wisconsin Department of Public Instruction submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse. The proposed rule repeals Chapter PI 29, relating to the grants for Preschool Through Grade 5 programs.

The scope statement for this rule, SS 058-13, was published in Register No. 690 on June 14, 2013, and approved by State Superintendent Tony Evers on June 27, 2013. Per the Dane County Circuit Court order issued in *Coyne, et al. v. Walker, et al.*, Case No. 11-CV-4573, the Department of Public Instruction is not required to obtain the Governor's approval for the statement of scope or this rule.

Agency Procedure for Promulgation

The rules are being adopted under s. 227.16 (2) (b), Stats., which provides that rulemaking does not need to be preceded by notice and public hearing if the proposed rule brings an existing rule into conformity with a statute that has been changed.

The Division for Student and School Success within the Department of Public Instruction is primarily responsible for the promulgation of this rule.

Contact Information

If you have questions regarding this rule, you may contact Katie Schumacher, Administrative Rules Coordinator, at katie.schumacher@dpi.wi.gov or (608) 267-9127.

Public Instruction
CR 13-085

On October 8, 2013, the Wisconsin Department of Public Instruction submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse. The proposed rule repeals Chapter PI 31, relating to grants for STEM programs.

The scope statement for this rule, SS 095-13, was published in Register No. 692 on August 14, 2013, and approved by State Superintendent Tony Evers, on August 27, 2013. Per the Dane County Circuit Court order issued in *Coyne, et al. v. Walker, et al.*, Case No. 11-CV-4573, the Department of Public Instruction is not required to obtain the Governor's approval for the statement of scope or this rule.

Agency Procedure for Promulgation

The rules are being adopted under s. 227.16 (2) (b), Stats., which provides that rulemaking does not need to be preceded by notice and public hearing if the proposed rule brings an existing rule into conformity with a statute that has been changed.

The Division for Academic Excellence within the Department of Public Instruction is primarily responsible for the promulgation of this rule.

Contact Information

If you have questions regarding this rule, you may contact Katie Schumacher, Administrative Rules Coordinator, at katie.schumacher@dpi.wi.gov or (608) 267-9127.

Public Instruction
CR 13-086

On October 8, 2013, the Wisconsin Department of Public Instruction submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse. The proposed rule repeals ss. PI 32.01 (4) (Note), 32.03 (2) (intro) (Note), (4) (a) (Note), and 32.05; and amends ss. PI 32.01 (4) and 32.03 (2) (intro) and (4) (a), relating to grants for alcohol and other drug abuse programs.

The scope statement for this rule, SS 072-13, was published in Register No. 691 on July 14, 2013, and approved by State Superintendent Tony Evers on July 24, 2013. Per the Dane County Circuit Court order issued in *Coyne, et al. v. Walker, et al.*, Case No. 11-CV-4573, the Department of Public Instruction is not required to obtain the Governor's approval for the statement of scope or this rule.

Agency Procedure for Promulgation

The rules are being adopted under s. 227.16 (2) (e), Stats., which provides that rulemaking does not need to be preceded by notice and public hearing if the proposed rule and fiscal estimate are published in the notice section of the Administrative Register and the required petition is not received by the agency within 30 (thirty) days after publication of the notice.

Thus, the proposed rule will be promulgated without public hearing unless a petition is received by the agency within 30 (thirty) days after publication of this notice. The petition must be signed by any of the following:

1. Twenty-five natural persons who will be affected by the proposed rule.
2. A municipality that will be affected by the proposed rule.
3. An association which is representative of a farm, labor, business, or professional group that will be affected by the proposed rule.

The Division for Learning Support within the Department of Public Instruction is primarily responsible for promulgation of this rule.

Contact Information

If you have questions regarding this rule, you may contact Katie Schumacher, Administrative Rules Coordinator, at katie.schumacher@dpi.wi.gov or (608) 267-9127.

Public Instruction
CR 13-087

On October 8, 2013, the Wisconsin Department of Public Instruction submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse. The proposed rule repeals Chapter PI 33, relating to Grants for Nursing Services.

The scope statement for this rule, SS 073-13, was published in Register No. 691 on July 14, 2013, and approved by State Superintendent Tony Evers on July 24, 2013. Per the Dane County Circuit Court order issued in *Coyne, et al. v. Walker, et al.*, Case No. 11-CV-4573, the Department of Public Instruction is not required to obtain the Governor's approval for the statement of scope or this rule.

Agency Procedure for Promulgation

The rules are being adopted under s. 227.16 (2) (b), Stats., which provides that rulemaking does not need to be preceded by notice and public hearing if the proposed rule brings an existing rule into conformity with a statute that has been changed.

The Division for Learning Support within the Department of Public Instruction is primarily responsible for the promulgation of this rule.

Contact Information

If you have questions regarding this rule, you may contact Katie Schumacher, Administrative Rules Coordinator, at katie.schumacher@dpi.wi.gov or (608) 267-9127.

Public Instruction
CR 13-088

On October 8, 2013, the Wisconsin Department of Public Instruction submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse. The proposed rule amends section PI 34.35 (1) (c), relating to the definition of immoral conduct.

The scope statement for this rule, SS 053–13, was published in Register No. 689 on May 31, 2013, and approved by State Superintendent Tony Evers on June 10, 2013. Per the Dane County Circuit Court order issued in *Coyne, et al. v. Walker, et al.*, Case No. 11–CV–4573, the Department of Public Instruction is not required to obtain the Governor’s approval for the statement of scope or this rule.

Agency Procedure for Promulgation

The rules are being adopted under s. 227.16 (2) (b), Stats., which provides that rulemaking does not need to be preceded by notice and public hearing if the proposed rule brings an existing rule into conformity with a statute that has been changed.

The Division for Academic Excellence within the Department of Public Instruction is primarily responsible for promulgation of this rule.

Contact Information

If you have questions regarding this rule, you may contact Katie Schumacher, Administrative Rules Coordinator, at katie.schumacher@dpi.wi.gov or (608) 267–9127.

Safety and Professional Services — Joint Board of Professional Geologists, Hydrologists and Soil Scientists CR 13–091

On October 14, 2013, the Joint Board of Professional Geologists, Hydrologists and Soil Scientists submitted a proposed rule to the Legislative Council Rules Clearinghouse.

The rule is not subject to s. 227.135 (2), Stats., as affected by 2011 Wis. Act 21. The scope statement for this rule was published in Register No. 537 on October 1, 2000, and approved by the Joint Board of Professional Geologists, Hydrologists and Soil Scientists on September 7, 2000.

Analysis

Statutory Authority: ss. 15.08 (5) (b), 227.11 (2), and 470.03 (2), Stats.

This proposed rule–making order amends ss. GHSS 1.01, 1.02, 2.02 (Note), 2.03 (10) (Note), 2.05 (title), 3.02 (Note), 3.05 (title), 3.06 (10) (Note), 4.02 (Note), 4.05 (title), and 4.06

(10) (Note); repeal and recreate s. GHSS 1.05; and create s. GHSS 1.055 and ch. GHSS 6, relating to continuing education requirements for professional geologists, hydrologists, and soil scientists.

Agency Procedure for Promulgation

A public hearing is required and will be held on November 20, 2013, at 9:00 a.m. at 1400 East Washington Avenue, Room 121, Madison, Wisconsin (enter at 55 North Dickinson Street).

Contact Person

Jean MacCubbin, Department of Safety and Professional Services, Division of Policy Development

Phone: (608) 266–0955

Email: jean.maccubbin@wisconsin.gov

Safety and Professional Services — Medical Examining Board CR 13–090

On October 14, 2013, the Medical Examining Board submitted a proposed rule to the Legislative Council Rules Clearinghouse.

The scope statement for this rule was published in Register No. 636 on December 14, 2008, and was sent to the LRB prior to the effective date of 2011 Wis. Act 21.

Analysis

Statutory Authority: ss. 15.08 (5) (b), 227.11 (2) (a), 448.05 (2), and 448.40 (1), Stats. This proposed rule–making order revises s. Med 1.02 (2) and relates to applicants for medical licensure to provide to the Medical Examining Board verified copies of their diplomas.

Agency Procedure for Promulgation

A public hearing is required and will be held on November 20, 2013, at 1400 East Washington Avenue, Room 121A, Madison, Wisconsin (enter at 55 North Dickinson Street).

Contact Person

Shawn Leatherwood, Department of Safety and Professional Services, Division of Policy Development

Phone: (608) 261–4438

Email: shancethea.leatherwood@wisconsin.gov

Rule–Making Notices

Notice of Hearing

Administration

CR 13–069

EmR1309

NOTICE IS HEREBY GIVEN that pursuant to ss. 16.004 (1) and 227.11 (2) (a), Stats., the Department of Administration will hold a public hearing on the emergency rule and proposed permanent rule to amend Chapter Adm 93, relating to the distribution of Community Development Block Grant funds.

Hearing Information

Date: Monday, November 18, 2013
Time: 2:00 p.m. to 4:00 p.m.
Location: Pecatonica Room, Room No. 132
 WI Dept. of Administration Building
 101 E. Wilson St., 1st Floor
 Madison, WI 53702

Appearance at Hearing and Submission of Written Comments

Interested persons are invited to appear at the hearing and present comments on the proposed rule. Persons appearing may make an oral presentation but are also urged to submit facts, opinions, and arguments in writing as well. Facts, opinions, and arguments may also be submitted in writing without personal appearance. Written comments on the proposed rule may be submitted to:

Donna Sorenson
 Department of Administration
 P.O. Box 7864
 Madison, WI 53707–7864
 Email: donna.sorenson@wisconsin.gov
 Fax: (608) 267–3842

The deadline for submitting comments to the Department is **4:30 p.m. on November 19, 2013.**

Availability of Rules

Copies of this proposed rule and fiscal estimate are available upon request to Donna Sorenson, Department of Administration, P.O. Box 7864, Madison, WI 53707–7864, or by email at donna.sorenson@wisconsin.gov.

Analysis Prepared by the Department

Statutes interpreted

Section 16.309, Stats.

Statutory authority

Section 16.309, Stats.

Explanation of agency authority

The Department has been vested with the authority to administer programs funded by Community Development Block Grant (CDBG) program grants received from the federal government pursuant to 42 USC 5301 to 5320. The Department has further been vested with authority to promulgate rules for the administration of said grant funds.

The Department hereby proposes an order to create Wis. Admin. Code Chapter 93.

Related statute or rule

Section 16.309, Stats., and former Wis. Admin. Code Chapter Comm. 108.

Summary and plain language analysis

The objective of the rule is to set forth the criteria the department will use to administer the CDBG program.

Section 1 — The proposed rule will do the following:

- a. Reconstitute many portions of the former ch. Comm 108.
- b. Decline to reconstitute portions of ch. Comm 108 which added unnecessary confusion by duplicating federal regulations where reference to such regulations will suffice, such as the former ss. Comm 108.04, 108.07, and 108.14 (1).
- c. Decline to reconstitute portions of ch. Comm 108 which could vary from year to year, such as the table found in the former s. Comm 108.06.
- d. Decline to reconstitute portions of ch. Comm 108 that add complexity to the code without adding meaning, such as point ranges found in the former s. Comm 108.10.
- e. Such other changes as are necessary to comply with current HUD requirements, or which will otherwise increase the efficiency or effectiveness of the program and are allowed by HUD requirements.

As of this writing the exact language of the proposed rule is identical to the language of the EmR1309, a complete copy of which is available as noted above or at: https://docs.legis.wisconsin.gov/code/emergency_rules/current/emr1309.

Summary of and comparison with, existing or proposed federal regulations

The proposed chapter of administrative rules arises out of existing federal requirements.

Comparison with rules in adjacent states

All adjacent states have similar administrative code provisions.

Illinois — Eligible applicants must have populations of 50,000 or less and must not be located in an urban county or the 38 cities that receive federal “entitlement” funds. Illinois allows two or more municipalities with similar issues to file a joint application, provided they show a joint effort is required to solve the stated problem. Economic Development may be submitted on an “as–need” basis, there are no deadlines. Applications for both ‘housing stock upgrades’ and public facilities do have deadlines. Another DCEO funding category with no deadline is the “Mobility and Accessibility Rehabilitation Supplement,” which provides funding for housing improvement to aid the physically impaired. Municipalities are allowed only one application per category, per program year. All funding provided by CDBG for housing renovation must be specifically for single–family owner occupied.

Iowa — Eligible applicants are municipalities and they may apply directly or on behalf of a sub–recipient and they

may file a joint application with another eligible applicant. All applications must include a housing needs assessment; all must demonstrate sustainable community activities. In addition, all award amounts are negotiable, and no project shall exceed 24 months in length. Applicants may submit multiple applications for each of the multiple categories of activity. CBDG funds are distributed into five separate funds, each with their own application rules. Categories include: water and sewer set aside, housing fund, job creation (ED), ‘contingency,’ and the ‘competitive program,’ and each category contains specific rules. The competitive program limits the grant amount to a proportion relative to the applying municipality’s size.

Michigan — Eligible applicants have less than 50,000 people and are non-entitlement communities. There are four distinct programs that are similar to Wisconsin’s CDBG programs, these are ‘Infrastructure,’ ED, Planning, and Blight Elimination. Minimum Leverage Ratios are required of the majority of activities. Blight elimination projects must provide certification from a Licensed Building Inspector that the project sight meets the definition of blight. Economic Development is subject to strict underwriting guidelines that require projects submit cost quotes from independent third parties. Criminal background checks are also required under this category. All projects must be completed within 24 months from the date the funding is awarded. Downtown development is also a distinct category. Downtown development provides funding for façade improvements for small rural communities, funding is also provide for the acquisition, and renovation of a historic “signature building,” in small communities.

Minnesota — State of Minnesota CDBG is part of larger program known as “Small Cities Development Program.” The state provides CDBG funding to Housing grants, as well as PF grants, and “Comprehensive Grants,” which may be used for Housing, PF, or Economic Development. Minnesota does not appear to set aside money for emergency or contingency grant programs. Minnesota requires any single family rehabilitation projects whose loan comes from CDBG Housing Grant program to comply with state building codes, and a state defined single family rehabilitation standard. Minnesota also requires detailed progress reports on October 15th of each year, as well as an ‘anti-displacement’ plan and the submission of a “drug free work place” plan to DEED. Money provided for affordable housing construction must provide a rental market analysis and ensure fair market rents.

Effect on Small Business

The proposed rule chapter will have no direct impact upon small businesses, as the State may only grant funds to units of local government.

Initial Regulatory Flexibility Analysis

The proposed rule will not affect small businesses.

Fiscal Estimate

The proposed rule chapter will have no impact upon the State’s fiscal obligations. A copy of the Fiscal Estimate may be obtained from the agency at no charge by contacting Donna Sorenson at the address, phone number, or e-mail address listed on the first page of this Notice, or at: https://docs.legis.wisconsin.gov/code/emergency_rules/curr ent/emr1309_fe.

Summary of Economic Impact Analysis

Creation of the proposed rule chapter will have a positive impact on the economy of the state by ensuring continued eligibility of the State of Wisconsin to receive additional CDBG grant funds, which are used to promote economic development throughout the state. A copy of the Economic Impact analysis may be obtained from the agency at no charge by contacting Donna Sorenson at the address, phone number or e-mail address listed on the first page of this Notice, or at: https://docs.legis.wisconsin.gov/code/emergency_rules/curr ent/emr1309_fe.

Small Business Regulatory Coordinator

Joe Knilans
sbrrb@wisconsin.gov
(608) 267-7873

Internet Link to Rule

http://docs.legis.wisconsin.gov/code/register/2013/688b/emergency_rules/1/1

Contact Person

Lisa Marks
Department of Administration
Division of Housing
101 E. Wilson Street, 5th Floor
Madison, WI 53702

STATE OF WISCONSIN
DEPARTMENT OF ADMINISTRATION
DOA-2049 (R03/2012)

DIVISION OF EXECUTIVE BUDGET AND FINANCE
101 EAST WILSON STREET, 10TH FLOOR
P.O. BOX 7864
MADISON, WI 53707-7864
FAX: (608) 267-0372

ADMINISTRATIVE RULES

Fiscal Estimate & Economic Impact Analysis

1. Type of Estimate and Analysis

Original Updated Corrected

2. Administrative Rule Chapter, Title and Number

Ch. Adm 93, Small Cities Community Development Program for Community and Economic Development

3. Subject

Community Development Block Grant Program

4. Fund Sources Affected

GPR FED PRO PRS SEG SEG-S

5. Chapter 20, Stats. Appropriations Affected
s. 20.505 (7) (a), (m), (n)

6. Fiscal Effect of Implementing the Rule

No Fiscal Effect Increase Existing Revenues Increase Costs
 Indeterminate Decrease Existing Revenues Could Absorb Within Agency's Budget
 Decrease Cost

7. The Rule Will Impact the Following (Check All That Apply)

State's Economy Specific Businesses/Sectors
 Local Government Units Public Utility Rate Payers
 Small Businesses (if checked, complete Attachment A)

8. Would Implementation and Compliance Costs Be Greater Than \$20 million?

Yes No

9. Policy Problem Addressed by the Rule

Documenting compliance with federally required rules on the Community Development Block Grant Program.

10. Summary of the businesses, business sectors, associations representing business, local governmental units, and individuals that may be affected by the proposed rule that were contacted for comments.

Will contact and complete a full summary of information provided by units of local government, consultants and past grantees.

11. Identify the local governmental units that participated in the development of this EIA.

Will identify following the full economic impact analysis.

12. 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)

Overall federal funding remains consistent. The rule may impact certain units of general local government, but fiscal impact can not be predicted.

13. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

The benefit of implementing the rule, is State's ability to document compliance with federally required rules on the Community Development Block Grant Program.

14. Long Range Implications of Implementing the Rule

To maintain compliance with federal regulations.

15. Compare With Approaches Being Used by Federal Government

N/A

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

Illinois — Eligible applicants must have populations of 50,000 or less and must not be located in an urban county or the 38 cities that receive federal “entitlement” funds. Illinois allows two or more municipalities with similar issues to file a joint application, provided they show a joint effort is required to solve the stated problem. Economic Development may be submitted on an “as–need” basis, there are no deadlines. Applications for both ‘housing stock upgrades’ and public facilities do have deadlines. Another DCEO funding category with no deadline is the “Mobility and Accessibility Rehabilitation Supplement,” which provides funding for housing improvement to aid the physically impaired. Municipalities are allowed only one application per category, per program year. All funding provided by CDBG for housing renovation must be specifically for single–family owner occupied.

Iowa — Eligible applicants are municipalities and they may apply directly or on behalf of a sub–recipient and they may file a joint application with another eligible applicant. All applications must include a housing needs assessment; all must demonstrate sustainable community activities. In addition, all award amounts are negotiable, and no project shall exceed 24 months in length. Applicants may submit multiple applications for each of the multiple categories of activity. CBDG funds are distributed into five separate funds, each with their own application rules. Categories include: water and sewer set aside, housing fund, job creation (ED), ‘contingency,’ and the ‘competitive program,’ and each category contains specific rules. The competitive program limits the grant amount to a proportion relative to the applying municipality’s size.

Michigan — Eligible applicants have less than 50,000 people and are non–entitlement communities. There are four distinct programs that are similar to Wisconsin’s CDBG programs, these are ‘Infrastructure,’ ED, Planning, and Blight Elimination. Minimum Leverage Ratios are required of the majority of activities.. Blight elimination projects must provide certification from a Licensed Building Inspector that the project sight meets the definition of blight. Economic Development is subject to strict underwriting guidelines that require projects submit cost quotes from independent third parties. Criminal background checks are also required under this category. All projects must be completed within 24 months from the date the funding is awarded. Downtown development is also a distinct category. Downtown development provides funding for façade improvements for small rural communities, funding is also provide for the acquisition, and renovation of a historic “signature building,” in small communities.

Minnesota — State of Minnesota CDBG is part of larger program known as “Small Cities Development Program.” The state provides CBDG funding to Housing grants, as well as PF grants, and “Comprehensive Grants,” which may be used for Housing, PF, or Economic Development. Minnesota does not appear to set aside money for emergency or contingency grant programs. Minnesota requires any single family rehabilitation projects whose loan comes from CDBG Housing Grant program to comply with state building codes, and a state defined single family rehabilitation standard. Minnesota also requires detailed progress reports on October 15th of each year, as well as an ‘anti–displacement’ plan and the submission of a “drug free work place” plan to DEED. Money provided for affordable housing construction must provide a rental market analysis and ensure fair market rents.

17. Contact Name Lisa Marks	18. Contact Phone Number (608) 267–0770
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This document can be made available in alternate formats to individuals with disabilities upon request.

ATTACHMENT A

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1. Summary of Rule’s Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)
n/a

 2. Summary of the data sources used to measure the Rule’s impact on Small Businesses
n/a

 3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?
 - Less Stringent Compliance or Reporting Requirements
 - Less Stringent Schedules or Deadlines for Compliance or Reporting
 - Consolidation or Simplification of Reporting Requirements
 - Establishment of performance standards in lieu of Design or Operational Standards
 - Exemption of Small Businesses from some or all requirements
 - Other, describe:

 4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses
n/a

 5. Describe the Rule’s Enforcement Provisions
n/a

 6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)
 Yes No
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Notice of Hearing

Employment Relations Commission CR 13-092 EmR1310

NOTICE IS HEREBY GIVEN that the Wisconsin Employment Relations Commission will hold a public hearing regarding promulgated emergency rules and the proposed creation of permanent rules to create Chapters ERC 70, 71, and 80, relating to annual union certification elections.

Hearing Information

Date: Tuesday, November 19, 2013
Time: 10:00 a.m.
Location: 4868 High Crossing Blvd.
Madison, WI

Appearance at Hearing and Submission of Written Comments

The hearing site is accessible to people with disabilities. However, if you have special needs or circumstances that may make communication or accessibility difficult at the hearing, please contact Peter Davis at 608 243-2421 or peterg.davis@wisconsin.gov.

Comments on the proposed rule should be submitted by **November 22, 2013**, and can be faxed to (608) 243-2433, emailed to peterg.davis@wisconsin.gov, or mailed/hand-delivered to 4868 High Crossing Blvd., Madison, Wisconsin 53704-7403.

Analysis Prepared by the Commission

Statutes interpreted

The promulgated emergency rules and proposed permanent administrative rules interpret ss. 111.70 (4) (d) 3. b. and 111.83 (3) (b), Stats.

Statutory authority

Sections 111.71, 111.94, 227.11, and 227.24, Stats.

Explanation of agency authority

The Municipal Employment Relations Act and the State Employment Labor Relations Act both require that the Commission adopt administrative rules to regulate various proceedings. In addition, ss. 111.70 (4) (d) 3. b. and 111.83 (3) (b), Stats., require that the Commission assess a fee for each annual certification election and the fee level must be established by administrative rule.

Related statute or rule

None.

Rule summary

By these promulgated emergency rules and proposed rules, the Wisconsin Employment Relations Commission created and proposes to permanently create chs. ERC 70, 71, and 80 concerning the cost, timing, and procedures for any requested annual certification elections required by 2011 Wisconsin Act 10 and 2011 Wisconsin Act 32 to determine whether a bargaining unit of general (i.e., non-public safety and non-transit) employees in the municipal or state sector that is represented by a labor organization for collective bargaining with the employer involved shall continue to be represented by that organization or by another organization or shall not be so represented.

These rules do not require the retroactive conduct of elections that would have been conducted on or before December 1, 2012, and May 1, 2013, but for a March 2012 federal court order enjoining such elections under the State Employment Labor Relations Act and the Commission's related March 2012 determination to suspend the conduct of such elections under the Municipal Employment Relations Act until the federal court litigation was concluded.

These rules are not applicable to the plaintiffs in Case 11CV3744 unless and until the Circuit Court's decision is no longer in effect.

Under these rules, a labor organization continues to represent employees (and thus is eligible to file a certification election petition under these rules) unless that organization lost an initial annual certification election conducted by the Commission or was required to but failed to file a petition for an annual certification election prior to March 2012.

2011 Wisconsin Act 32 requires that the Commission charge a fee for conducting any requested election. These rules require that the labor organization or organizations requesting the election should pay the fee and that the following fee structure applies.

\$200: 1 to 100 eligible voters
\$350: 101 to 250 eligible voters
\$500: 251 to 500 eligible voters
\$750: 501 to 1000 eligible voters
\$1500: 1001 to 3000 eligible voters
\$2000: over 3000 eligible voters

Under these rules, the timing of requested elections is as follows:

- No later than December 1 for units of all general state employees who, as of August 30, are not covered by a collective bargaining agreement or are covered by a collective bargaining agreement entered into on or after June 29, 2011 (covered in ch. ERC 80). Unions wishing to continue as the collective bargaining representative must file an election petition and applicable fee on or before August 30;
- No later than December 1 for units of general municipal school district employees who, as of August 30, are not covered by a collective bargaining agreement or are covered by a collective bargaining agreement entered into on or after June 29, 2011 (covered in ch. ERC 70). Unions wishing to continue as the collective bargaining representative must file an election petition and applicable fee on or before August 30;
- No later than May 1 for units of general municipal employees who, as of January 30, are not covered by a collective bargaining agreement or are covered by a collective bargaining agreement entered into on or after June 29, 2011 (covered in ch. ERC 71). Unions wishing to continue as the collective bargaining representative must file an election petition and applicable fee on or before January 30.

Under these rules, if a union does not timely file an election petition and fee, the union loses its status as the collective bargaining representative as of the filing deadline.

In each of the new chapters, the first section, Section ERC xx.01, describes the general policy and purpose of chapter.

Section ERC xx.02, include definitions of terms as used in the chapter and defines the scope of application of the chapter as is outlined above.

Sections ERC xx.03(1) limit the right to file a petition to the existing representative and other any labor organization

interested in representing the bargaining unit. No provision is made for petitions by employees or by the employer because decertification automatically results if no timely petition is filed by a labor organization.

Sections ERC xx.03(5) provide that no showing of interest is required to support a petition filed by the existing exclusive representative of the bargaining unit, but that a petition filed by another organization must be supported by a 30% showing of interest. The practice and procedure for submission and determination of the showing of interest is made parallel to that in existing s. ERC 11.05 (2), which generally involve a commission determination as to the sufficiency of the showing of interest in the context of the employee personnel data provided by the employer, without providing a copy of the showing of interest to any party other than the party that submitted it.

Sections ERC xx.03(7) specify the time by which a petition must be filed and the consequences that follow from no timely petition being filed by any labor organization. Sections ERC xx.03 (7) (c) each provide that the commission will issue a notice equivalent to a decertification upon the request of any interested party or any affected employee.

Sections ERC xx.04 provide the procedures and consequences of a withdrawal of a petition. Each provides that if withdrawal of a petition leaves no pending timely petition, the consequences are the same as if the existing representative filed the only timely petition, an election was conducted, and no representative achieved the support of 51% of the eligible voters.

Sections ERC xx.05 describe the obligation of the employer and petitioning union(s) to provide the Commission with lists of proposed eligible voters and related information.

Sections ERC xx.06 provide for commission issuance of a direction of election or other dispositional order without an intervening hearing to resolve possible disputes concerning voter eligibility or other matters. In cases where the commission is directing an election, the direction shall provide that all individuals on the list provided by the municipal employer and on the list, if any, provided by the petitioner or any other interested party, shall be allowed to complete and submit a ballot, subject to the right of any interested party to challenge the eligibility of the voter during post-balloting procedures.

Sections ERC xx.07 provide that all elections are to be conducted by secret ballot and under the supervision of the commission or impartial agents designated by the commission, with the commission determining on a case by case basis whether the secret balloting shall be conducted on-site, by mail or automated telephone system. Each chapter also contains provisions generally paralleling those in s. ERC 11.09, regarding notice of election, observers, challenge of voters, and count and tally of ballots.

Sections ERC xx.07 (6) provide that if more than one proposed representative appears on the ballot and if at least 51% of the eligible voters favor representation but no single representative receives the votes of at least 51% of the eligible voters, the commission, on receipt of a timely request of any party, may conduct a runoff election as provided in ss. 111.70 (4) (d) 4. or 111.83 (4), Stats.

Sections ERC xx.08 and xx.09 provide procedures concerning the commission's certification of results of election and the filing and service of objections to election.

Sections ERC xx.10 provide procedures for commission action on challenges or objections, including the conduct of a hearing if one is needed.

Sections ERC xx.11 list the consequences of no representative achieving support of 51% of the eligible voters in the election. Those consequences are that the commission will issue a certification of the results of the election decertifying the existing representative, and providing that for 12 months from the date of decertification the affected employees shall be nonrepresented and shall not be included in any substantially similar bargaining unit.

Sections ERC xx.12 outline the procedures by which any person aggrieved by a final order of the commission may file and have processed a petition for rehearing.

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

None.

Comparison of proposed rules with rules promulgated by adjacent state labor relations agencies

Not applicable. A review of the following adjacent state rules reveals none providing procedures for certification elections conducted on an annual or other regularly periodic basis.

AGENCY Name and Source of Rules:

Minnesota Bureau of Mediation Services

Minnesota Rules,

Chapter 5505 – Private Rules

5505.0100 Definitions.

5505.0200 Purpose, Construction, And Waiver.

5505.0300 Request For Investigation.

5505.0400 Required Information.

5505.0500 Notice Of Hearing And Investigation.

5505.0600 Hearings.

5505.0700 Examination Of Witnesses.

5505.0800 Subpoenas.

5505.0900 Determination Of Representative.

5505.1000 Election Procedure.

5505.1100 Challenge Of Voter.

5505.1200 Consent Election.

5505.1300 Certification Order.

5505.1400 Objections To Certification.

5505.1500 Reconsideration Within One Year.

Chapter 5510 – Public Rules

Representation Matters And Fair Share Fee Challenges; Proceedings Before The Commissioner

Negotiation, Mediation, Impasse Certification, Arbitration, And Intent To Strike Notice

Grievance Procedure

Chapter 520 LMC – Grant Rules

Chapter 5530 – Arbitration Roster Rules

5530.0100 Application.

5530.0200 Policy.

5530.0300 Definitions.

5530.0400 Role Of Bureau.

5530.0500 Status Of Arbitrators.

5530.0600 Arbitrator Qualifications.

5530.0700 Appointment To Roster.

5530.0800 Arbitrator Conduct And Standards.

5530.0900 Panel Selections And Referrals.

5530.1000 Arbitration Proceedings.

5530.1200 Performance Measures.

5530.1300 Disciplinary Or Removal Procedures.

Chapter 7315 – Independent Review Rules

7315.0210 Scope.
 7315.0300 Policy.
 7315.2300 Request For Rehearing.
 7315.2400 Petition For Rehearing.
 7315.2500 Consideration.
 7315.2600 Determination.
 7315.2700 Notice Of Rehearing.
 7315.2800 Rehearing Procedure.
 7315.2900 Decision After Rehearing.

Michigan Public Employment Relations Commission

Michigan Rules

R 423.101 – 423.499 – General Rules

Part 1. General Provisions

Part 2. Mediation Of Labor Disputes

Part 3. Fact Finding

Part 4. Representation Proceedings.

Part 5. Unfair Labor Practice Charges

Part 6. Motion Practice

Part 7. Hearings

Part 8. Filing And Service Of Documents

Part 9. Notice Of Public School Strike Or Lockout

R 423.501 – 423.514 Administration Of Compulsory Arbitration Act For Labor Disputes In

Municipal Police And Fire Departments

Iowa Public Employment Relations Board

Iowa Rules [621]

Chapter 1 General Provisions

Chapter 2 General Practice And Hearing Procedures

Chapter 3 Prohibited Practice Complaints

Chapter 4 Bargaining Unit And Bargaining Representative Determination

Chapter 5 Elections

Chapter 6 Negotiations And Negotiability Disputes

Chapter 7 Impasse Procedures

Chapter 8 Internal Conduct Of Employee Organizations

Chapter 9 Administrative Remedies

Chapter 10 Declaratory Orders

Chapter 11 State Employee Appeals Of Grievance Decisions And Disciplinary Actions

Illinois Labor Relations Board

Title 80: Public Officials And Employees

Subtitle C: Labor Relations

Chapter IV: Illinois Labor Relations Board

Part 1200 General Procedures

Part 1210 Representation Proceedings

Part 1220 Unfair Labor Practice Proceedings

Part 1230 Impasse Resolution

Part 1240 Police Officer Decertification Proceedings

Illinois Educational Labor Relations Board

Title 80: Public Officials and Employees

Subtitle C: Labor Relations

Chapter III: Illinois Educational Labor Relations Board

Part 1100 General Procedures

Part 1105 Hearing Procedures

Part 1110 Representation Proceedings

Part 1120 Unfair Labor Practice Proceedings

Part 1125 Fair Share Fee Objections

Part 1130 Collective Bargaining And Impasse Resolution

Part 1135 University Of Illinois Bargaining Units

Summary of factual data

Not applicable.

Initial Regulatory Flexibility Analysis

The emergency rules and proposed rules have no impact on small business.

Fiscal Estimate

Because the filing fees applicable to the annual certification elections are paid by the labor organizations seeking the elections, the emergency rules and proposed rules have no fiscal impact on any public or private sector employer or on the State of Wisconsin.

Economic Impact Analysis

The emergency rules and proposed permanent rules do not have an economic impact on businesses, local governmental units, or individuals. The rules do not adversely affect in a material way the economy, a sector of the economy, productivity, jobs, or the overall economic competitiveness of the state. The rules provide the benefit of advising affected labor organizations and public sector employers as to how the Commission will conduct the elections mandated by the Legislature. Without the rules, the affected parties would have to guess as to how the elections would be conducted, what the level of the filing fee mandated by 2011 Wisconsin Act 32 will be, and who is obligated to pay said fee. There are no equivalent approaches available for comparison in the federal sector or contiguous states.

Agency Contact Person

Peter G. Davis

Chief Legal Counsel

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Text of Proposed Rule

CHAPTER ERC 70

ANNUAL CERTIFICATION ELECTIONS FOR REPRESENTED MUNICIPAL SECTOR GENERAL SCHOOL DISTRICT EMPLOYEES WHO, AS OF AUGUST 30 ARE NOT SUBJECT TO A COLLECTIVE BARGAINING AGREEMENT OR ARE SUBJECT TO A COLLECTIVE BARGAINING AGREEMENT ENTERED INTO ON OR AFTER JUNE 29, 2011.

ERC 70.01 Policy. This chapter implements the portion of s. 111.70 (4) (d) 3. b., Stats., requiring the commission to conduct an annual election, no later than December 1, to determine whether collective bargaining representation shall continue for represented municipal sector general school district employees who, as of August 30, are not subject to a collective bargaining agreement or are subject to a collective bargaining agreement entered into on or after June 29, 2011. The existing exclusive representative of such employees that wishes to continue said representation, or any other labor organization interested in representing such employees must file a petition on or before August 30 requesting the commission to conduct a secret ballot election to determine whether at least 51% of the bargaining unit employees eligible to vote favor collective bargaining representation by the petitioner or another petitioning labor organization. If no timely petition is filed, the result is the same as if only the existing representative filed a timely petition and the election resulted in decertification of the existing representative. The procedures in this chapter are intended to expedite the processing of a petition so that the ballots are cast as soon as possible following the filing of the petition, while providing for an orderly and fair procedure after the ballots have been

cast for resolving outcome–determinative issues concerning which ballots should be counted and any other potentially outcome–determinative issues. Once a timely petition has been filed, an existing representative’s exclusive representative status is not adversely affected if the balloting is not concluded or the results of the election are not certified on or before December 1.

ERC 70.02 Scope (1) BARGAINING UNITS COVERED. This chapter applies only to bargaining units of general municipal employees as defined in s. 111.70 (1) (fm), Stats., who, as of August 30, are all of the following:

- (a) School district employees.
- (b) Represented by an exclusive representative.
- (c) Not subject to a collective bargaining agreement or subject to a collective bargaining agreement entered into on or after June 29, 2011.

(2) BARGAINING UNITS NOT COVERED. This chapter does not apply to bargaining units of employees who, as of August 30, are any of the following:

- (a) Public safety employees defined in s. 111.70 (1) (mm), Stats.
- (b) Transit employees defined in s. 111.70 (1) (p), Stats.
- (c) Nonschool district employees.

ERC 70.03 Petition for election. (1) WHO MAY FILE. A petition for an annual election to determine whether a represented municipal sector general school district employee collective bargaining unit shall continue to be represented by an exclusive representative may be filed by the exclusive representative of a bargaining unit to which this chapter applies or by any other labor organization interested in representing the bargaining unit.

(2) FORM. The petition shall be in writing on a form provided by the commission, or a facsimile of the commission’s form, and shall include the signature or a facsimile of the signature of the party or representative filing the petition. A petition is not filed unless it is accompanied by the applicable fee established by s. ERC 70.03 (4), contains the required signature or signature facsimile and has been actually received by the commission at its Madison office during normal business hours specified in s. ERC 10.06 (1). The petition shall be transmitted to the commission as set forth in s. ERC 10.06 (1). If the petition is filed in paper form, a total of two copies of the petition shall be included. If a showing of interest in support of the petition is required by sub. (3), the showing of interest shall be transmitted to the commission in paper form by physical delivery or mail. A petition requiring a showing of interest is not filed until both the petition and the showing of interest have been received by the commission at its Madison office during normal business hours specified in s. ERC 10.06 (1).

(3) SERVICE ON A MUNICIPAL EMPLOYER. At the same time the labor organization files a petition for election with the commission, it shall electronically serve a copy of the petition on the municipal employer of the employees the labor organization currently represents or wishes to represent.

(4) FEE SCHEDULE. For a bargaining unit of 1–100 eligible voters, the petitioning labor organization shall pay the commission a fee of \$200. For a bargaining unit of 101–250 eligible voters, the petitioning labor organization shall pay the commission a fee of \$350. For a bargaining unit of 251–500 eligible voters, the petitioning labor organization shall pay the commission a fee of \$500. For a bargaining unit of 501–1000

eligible voters, the petitioning labor organization shall pay the commission a fee of \$750. For a bargaining unit of 1001–3000 eligible voters, the petitioning labor organization shall pay the commission a fee of \$1500. For a bargaining unit of more than 3000 eligible voters, the petitioning labor organization shall pay the commission a fee of \$2000. The fee shall be transmitted to the commission by physical delivery or mail. If more than one labor organization files an election petition, each labor organization shall pay its proportionate share of the fee. If the number of eligible voters determined by the commission differs from the number asserted in the petition and results in a change in the applicable fee amount, the petitioning labor organization(s) shall pay the additional fee to the commission or receive a refund, as appropriate.

(5) SHOWING OF INTEREST. No showing of interest is required in support of a petition by the existing representative. A 30% showing of interest is required in support of a petition by any other interested labor organization, regardless of whether any other petition has been filed. Practice and procedure for submission and determination of the showing of interest shall be as set forth in s. ERC 11.05 (2).

(6) CONTENTS. The petition shall include all of the following:

(a) The name, address and affiliation, if any, of the petitioner, and the name, address and phone number of its principal representative. Fax numbers and e–mail addresses shall be included, if available.

(b) The name and address of the municipal employer involved, and the name, address and phone number of its principal representative. Fax numbers and e–mail addresses shall be included, if available.

(c) A description of the bargaining unit involved, specifying inclusions and exclusions, as well as the approximate number of personnel in the unit.

(d) A description of the status of the most recent collective bargaining agreement.

(e) The names and addresses of any known labor organizations who either currently represent or claim to represent any of the personnel in the claimed appropriate collective bargaining unit.

(f) A brief statement including the following:

1. Whether the petitioner is currently the exclusive collective bargaining representative for the bargaining unit.

2. That the petitioner wishes to represent the bargaining unit.

3. That the petitioner requests that the commission conduct an annual certification election to determine whether the bargaining unit shall be represented by the petitioner for purposes of collective bargaining with the municipal employer.

(g) A statement that the petitioner has served a copy of the petition on the municipal employer.

(h) Any other relevant facts.

(7) TIME FOR FILING, CONSEQUENCES OF FAILURE TO TIMELY FILE, NOTICE. (a) *Time for filing.* To be timely, a petition must be filed on or before August 30.

(b) *Consequences of failure to timely file.* If no timely petition is filed by any labor organization, then the following consequences shall apply:

1. If no collective bargaining agreement is in effect, the existing representative shall no longer be entitled to exclusive representative status for purposes of collective bargaining as of August 30. If a collective bargaining agreement is in effect,

the existing representative shall no longer be entitled to exclusive representative status for purposes of collective bargaining as of the expiration of the agreement.

2. The employees in the bargaining unit shall not be included in a substantially similar collective bargaining unit for at least a period of one year following the applicable date in sub. (b). 1.

(c) *Notice of consequences of failure to timely file petition.* At the request of the municipal employer or of any other interested party, the commission shall issue a notice of the consequences set forth in par. (b). Before issuing such a notice, the commission will provide the exclusive representative an opportunity to respond to the propriety of the request. When issued, copies of the notice will be sent to the municipal employer, the former exclusive representative and any interested party who requested the issuance of the notice.

ERC 70.04 Withdrawal of petition. Any petition may be withdrawn at any time prior to the issuance of a final order based on it, by motion granted by the commission. A motion to withdraw shall be granted unless withdrawal would result in an injustice to any party. If the sole pending petition is withdrawn after the petition filing deadline set forth in s. ERC 70.03 (7) (a), then the consequences and notice of consequences of withdrawal of the petition shall be as set forth in ss. ERC 70.03 (7) (b) and (c) but with the date of dismissal of the withdrawn petition applying in place of the date specified in s. ERC 70.03 (7) (a).

ERC 70.05 Action following filing of petition. (1) FURNISHING OF PERSONNEL DATA BY MUNICIPAL EMPLOYER. Within 10 days of its receipt of the petition pursuant to s. ERC 70.03, the municipal employer shall furnish to the commission in an electronically sortable format an alphabetical list of the names of the personnel and the last four digits of said personnel's social security numbers who were employed in the collective bargaining unit involved as of the pay period in which the first timely petition was filed or another date specified by the commission. If the commission so directs, the list shall also include the employees' mailing addresses including zip code and the employee's work unit and location. The commission shall designate the number of copies of the paper form list to be provided. If the commission so directs, the municipal employer shall, within the same time period, submit two sets of mailing labels including the employee's name and mailing address, suitable for use in a mail ballot procedure. At the same time the municipal employer furnishes the commission with personnel data, the municipal employer shall furnish the petitioning labor organization with an electronically sortable alphabetical list of the names of the personnel provided to the commission. The period of time for furnishing the personnel data may be extended by the commission for good cause shown.

(2) **RESPONSE TO PERSONNEL DATA.** Within 10 days of receipt of the personnel data from the municipal employer, the petitioner shall electronically provide the commission and the municipal employer with an alphabetical list of the names of personnel that should be added to or deleted from the municipal employer's personnel list.

ERC 70.06 Direction of election or other dispositional order. As soon as possible after receipt and service of the personnel data, the commission shall, in writing, either direct an election, dismiss the petition, or make other orders regarding the disposition of the petition. In cases where the

commission is directing an election, the direction shall establish the date on or before which an employee shall have been employed to be eligible to vote. The date shall be a date specified by the commission in the pay period in which the first timely petition was filed under this chapter regarding the bargaining unit, or another date specified by the commission. The direction of election shall provide that all individuals on the list provided by the municipal employer and on the list, if any, provided by a petitioning labor organization shall be allowed to vote, subject to the right the municipal employer and any petitioning labor organization to challenge the eligibility of the voter.

ERC 70.07 Elections. (1) NATURE OF BALLOTING; BY WHOM CONDUCTED; EXTENSION OF TIME TO CONDUCT. All elections shall be conducted by secret ballot and under the supervision of the commission or impartial agents designated by the commission. The commission shall determine on a case by case basis whether the secret balloting shall be conducted on-site or by mail or by other means determined by the commission to be fair and reliable. The time within which the commission has directed an election to be conducted may be extended by the commission.

(2) **NOTICE OF ELECTION.** The municipal employer shall post notices to personnel concerning the election at times, locations and in a form specified by the commission.

(3) **OBSERVERS.** Any interested party may be represented by observers at on-site election locations and at locations at which vote counts are conducted. Observers shall be selected in accordance with limitations, if any, established by the commission.

(4) **CHALLENGE OF VOTERS. (a) Who may challenge; nature of challenge.** Any party, observer or commission agent conducting the election may challenge, for good cause, the eligibility of any person to vote in the election. The ballots of challenged voters shall be impounded or otherwise segregated without being opened or counted.

(5) **COUNT AND TALLY OF BALLOTS.** Upon the conclusion of the election, the physical ballots, if any, shall be counted in the presence of the parties or their observers, and the commission agent conducting the election shall furnish a tally of ballots to the parties.

(6) **INCONCLUSIVE ELECTIONS.** When more than one proposed representative appears on the ballot, if at least 51% of the eligible voters favor representation but no single representative receives the votes of at least 51% of the eligible voters, the commission, on request of any party, may conduct a runoff election as provided in s. 111.70 (4) (d) 4., Stats. A request for a runoff election shall be made within 30 days from the date of the certification of the results of the election.

ERC 70.08 Certification of results of election. If challenged ballots are insufficient in number to affect the results, and no runoff election is needed, and no timely objections are filed under s. ERC 70.09, the commission shall issue to the parties a certification of the results of the election.

ERC 70.09 Objections to election. (1) FILING; FORM; COPIES. Within 8 days after receiving the tally of ballots, any party may file with the commission objections to the conduct of the election or conduct affecting the results of the election. Objections shall be in writing and shall include the signature or a facsimile of the signature of the party or representative filing the objections. The objections shall contain a brief statement of facts upon which the objections are based. A statement of objections is not filed unless it contains the

required signature or signature facsimile and has been actually received by the commission at its Madison office during normal business hours specified in s. ERC 10.06 (1). The objections shall be transmitted to the commission as set forth in s. ERC 10.06 (1). If the objections are filed in paper form, a total of two copies of the objections shall be included.

(2) **SERVICE ON OTHER PARTIES.** The party filing objections shall, at the same time, serve each of the other parties with a copy as set forth in s. ERC 10.07.

ERC 70.10 Commission action on challenges or objections. (1) **HEARING.** If ballot challenges may affect the election outcome or if objections raise a substantial question which cannot be resolved without a hearing, the commission may issue and serve a notice of hearing concerning the issues to be resolved. Practice and procedure for hearings on challenges or objections shall be as set forth in ss. ERC 18.06 to 18.08.

(2) **AFTER HEARING.** As soon as possible after submission of the case, the commission shall, in writing, either sustain or overrule each challenge or objection.

(a) If the commission directs that challenged ballots be opened and counted, the ballots shall be opened and counted, and the commission shall issue a revised tally and a certification of election results.

(b) If the commission sustains one or more objections, it may direct a new election to be held at a time and under conditions specified by the commission.

(c) If the commission overrules all objections, it shall promptly issue a certification of the election results.

ERC 70.11 Consequences of failure to achieve support of 51% of those eligible to vote in the annual certification election. If no representative is ultimately supported by at least 51% of the employees eligible to vote, the commission will issue a certification of the results of the election including a notice of the following:

(1) If no collective bargaining agreement is in effect, the existing representative shall no longer be entitled to exclusive representative status for purposes of collective bargaining as of the date of the commission's certification of results. If a collective bargaining agreement is in effect, the existing representative shall no longer be entitled to exclusive representative status for purposes of collective bargaining as of the expiration of the agreement.

(2) The employees in the bargaining unit shall not be included in a substantially similar collective bargaining unit for at least a period of one year following the applicable date specified in sub. (1).

ERC 70.12 Petition for rehearing. Any person aggrieved by a final order of the commission may, within 20 days after service of the order, file a written petition for rehearing which shall specify in detail the grounds for the relief sought and supporting authorities. Practice and procedure for filing and processing a petition for rehearing shall be as set forth in s. ERC 18.11.

CHAPTER ERC 71

ANNUAL CERTIFICATION ELECTIONS FOR REPRESENTED MUNICIPAL SECTOR GENERAL NONSCHOOL DISTRICT EMPLOYEES WHO, AS OF JANUARY 30, ARE NOT SUBJECT TO A COLLECTIVE BARGAINING AGREEMENT OR ARE SUBJECT TO A COLLECTIVE BARGAINING

AGREEMENT ENTERED INTO ON OR AFTER JUNE 29, 2011.

ERC 71.01 Policy. This chapter implements the portion of s. 111.70 (4) (d) 3. b., Stats., requiring the commission to conduct an annual election, no later than May 1, to determine whether collective bargaining representation shall continue for represented municipal sector general nonschool district employees who, as of January 30, are not subject to a collective bargaining agreement or are subject to a collective bargaining agreement entered into on or after June 29, 2011. The existing exclusive representative of such employees that wishes to continue said representation, or any other labor organization interested in representing such employees must file a petition on or before January 30 requesting the commission to conduct a secret ballot election to determine whether at least 51% of the bargaining unit employees eligible to vote favor collective bargaining representation by the petitioner or another petitioning labor organization. If no timely petition is filed, the result is the same as if only the existing representative filed a timely petition and the election resulted in decertification of the existing representative. The procedures in this chapter are intended to expedite the processing of a petition so that the ballots are cast as soon as possible following the filing of the petition, while providing for an orderly and fair procedure after the ballots have been cast for resolving outcome-determinative issues concerning which ballots should be counted and any other potentially outcome determinative issues. Once a timely petition has been filed, an existing representative's exclusive representative status is not adversely affected if the balloting is not concluded or the results of the election are not certified on or before May 1.

ERC 71.02 Scope. (1) **BARGAINING UNITS COVERED.** This chapter applies only to bargaining units of general municipal employees as defined in s. 111.70 (1) (fm), Stats., who, as of January 30, are all of the following:

(a) Nonschool district employees.

(b) Represented by an exclusive representative.

(c) Not subject to a collective bargaining agreement or subject to a collective bargaining agreement entered into on or after June 29, 2011.

(2) **BARGAINING UNITS NOT COVERED.** This chapter does not apply to bargaining units of employees who, as of January 30, are any of the following:

(a) Public safety employees defined in s. 111.70 (1) (mm), Stats.

(b) Transit employees defined in s. 111.70 (1)(p), Stats.

(c) School district employees.

ERC 71.03 Petition for election (1) **WHO MAY FILE.** A petition for an annual election to determine whether a represented municipal sector general employee collective bargaining unit shall continue to be represented by an exclusive representative may be filed only by the exclusive representative of a bargaining unit to which this chapter applies or by any other labor organization interested in representing the bargaining unit.

(2) **FORM.** The petition shall be in writing on a form provided by the commission, or a facsimile of the commission's form, and shall include the signature or a facsimile of the signature of the party or representative filing the petition. A petition is not filed unless it is accompanied by the applicable fee established by s. ERC 71.03 (4), contains the required signature or signature facsimile and unless and

has been actually received by the commission at its Madison office during normal business hours specified in s. ERC 10.06 (1). The petition shall be transmitted to the commission as set forth in s. ERC 10.06 (1). If the petition is filed in paper form, a total of two copies of the petition shall be included. If a showing of interest in support of the petition is required by sub. (3), the showing of interest shall be transmitted to the commission in paper form by physical delivery or mail. A petition requiring a showing of interest is not filed until both the petition and the showing of interest have been received by the commission at its Madison office during normal business hours specified in s. ERC 10.06 (1).

(3) **SERVICE ON MUNICIPAL EMPLOYER.** At the same time the labor organization files a petition for election with the commission, it shall electronically serve a copy of the petition on the municipal employer of the employees the labor organization currently represents or wishes to represent.

(4) **FEE SCHEDULE.** For a bargaining unit of 1–100 eligible voters, the petitioning labor organization shall pay the commission a fee of \$200. For a bargaining unit of 101–250 eligible voters, the petitioning labor organization shall pay the commission a fee of \$350. For a bargaining unit of 251–500 eligible voters, the petitioning labor organization shall pay the commission a fee of \$500. For a bargaining unit of 501–1000 eligible voters, the petitioning labor organization shall pay the commission a fee of \$750. For a bargaining unit of 1001–3000 eligible voters, the petitioning labor organization shall pay the commission a fee of \$1500. For a bargaining unit of more than 3000 eligible voters, the petitioning labor organization shall pay the commission a fee of \$2000. The fee shall be transmitted to the commission by physical delivery or mail. If more than one labor organization files an election petition, each labor organization shall pay its proportionate share of the fee. If the number of eligible voters determined by the commission differs from the number asserted in the petition and results in a change in the applicable fee amount, the petitioning labor organization(s) shall pay the additional fee to the commission or receive a refund, as appropriate.

(5) **SHOWING OF INTEREST.** No showing of interest is required in support of a petition by the existing representative. A 30% showing of interest is required in support of a petition by any other interested labor organization, regardless of whether any other petition has been filed. Practice and procedure for submission and determination of the showing of interest shall be as set forth in s. ERC 11.05 (2).

(6) **CONTENTS.** The petition shall include all of the following:

(a) The name, address and affiliation, if any, of the petitioner, and the name, address and phone number of its principal representative. Fax numbers and e-mail addresses shall be included, if available.

(b) The name and address of the municipal employer involved, and the name, address and phone number of its principal representative. Fax numbers and e-mail addresses shall be included, if available.

(c) A description of the bargaining unit involved, specifying inclusions and exclusions, as well as the approximate number of personnel in the unit.

(d) A description of the status of the most recent collective bargaining agreement.

(e) The names and addresses of any known labor organizations who either currently represent or claim to

represent any of the personnel in the claimed appropriate collective bargaining unit.

(f) A brief statement including the following:

1. Whether the petitioner is currently the exclusive collective bargaining representative for the bargaining unit.

2. That the petitioner wishes to represent the bargaining unit.

3. That the petitioner requests that the commission conduct an annual certification election to determine whether the bargaining unit shall be represented by the petitioner for purposes of collective bargaining with the municipal employer.

(g) A statement that the petitioner has served a copy of the petition on the municipal employer.

(h) Any other relevant facts.

(7) **TIME FOR FILING, CONSEQUENCES OF FAILURE TO TIMELY FILE, NOTICE.** (a) *Time for filing.* To be timely, a petition must be filed on or before January 30.

(b) *Consequences of failure to timely file.* If no collective bargaining agreement is in effect, the existing representative shall no longer be entitled to exclusive representative status for purposes of collective bargaining as of January 30. If a collective bargaining agreement is in effect, the existing representative shall no longer be entitled to exclusive representative status for purposes of collective bargaining as of the expiration of the agreement.

2. The employees in the bargaining unit shall not be included in a substantially similar collective bargaining unit for at least a period of one year following the applicable date in sub. (b). 1.

(c) *Notice of consequences of failure to timely file petition.* At the request of the municipal employer or of any other interested party, the commission shall issue a notice of the consequences set forth in par. (b). Before issuing such a notice, the commission will provide the exclusive representative an opportunity to respond to the propriety of the request. When issued, copies of the notice will be sent to the municipal employer, the former exclusive representative and any interested party who requested the issuance of the notice.

ERC 71.04 Withdrawal of petition. Any petition may be withdrawn at any time prior to the issuance of a final order based on it, by motion granted by the commission. A motion to withdraw shall be granted unless withdrawal would result in an injustice to any party. If the sole pending petition is withdrawn after the petition filing deadline set forth in s. ERC 71.03 (7) (a), then the consequences and notice of consequences of withdrawal of the petition shall be as set forth in ss. ERC 71.03 (7) (b) and (c) but with the date of dismissal of the withdrawn petition applying in place of the date specified in s. ERC 71.03 (7) (a).

ERC 71.05 Action following filing of petition. (1) FURNISHING OF PERSONNEL DATA BY MUNICIPAL EMPLOYER. Within 10 days of its receipt of the petition pursuant to s. ERC 71.03, the municipal employer shall furnish the commission in an electronically sortable format an alphabetical list of the names of the personnel and the last four digits of said personnel's social security numbers who were employed in the collective bargaining unit involved as of the pay period during which the first timely election petition was filed or another date specified by the commission. If the commission so directs, the list shall also include the employees' mailing addresses including zip code and the employee's work unit

and location. If the commission so directs, the municipal employer shall, within the same time period, submit two sets of mailing labels including the employee's name and mailing address, suitable for use in a mail ballot procedure. At the same time the municipal employer furnishes the commission with personnel data, the municipal employer shall furnish the petitioning labor organization with an electronically sortable alphabetical list of the names of the personnel provided to the commission. The period of time for furnishing the personnel data may be extended by the commission for good cause shown.

(2) **RESPONSE TO PERSONNEL DATA.** Within 10 days of receipt of the personnel data from the municipal employer, the petitioner shall electronically provide the commission and the municipal employer with an alphabetical listing of the names of personnel that should be added to or deleted from the municipal employer's personnel list.

ERC 71.06 Direction of election or other dispositional order. As soon as possible after receipt and service of the personnel data, the commission shall, in writing, either direct an election, dismiss the petition, or make other orders regarding the disposition of the petition. In cases where the commission is directing an election, the direction shall establish the date on or before which an employee shall have been employed to be eligible to vote. The date shall be a date specified by the commission in the pay period in which the first timely petition was filed under this chapter regarding the bargaining unit, or another date specified by the commission. The direction of election shall provide that all individuals on the list provided by the municipal employer and on the list, if any, provided by a petitioning labor organization shall be allowed to vote, subject to the right of the municipal employer and any petitioning labor organization to challenge the eligibility of the voter.

ERC 71.07 Elections. (1) NATURE OF BALLOTING; BY WHOM CONDUCTED; EXTENSION OF TIME TO CONDUCT. All elections shall be conducted by secret ballot and under the supervision of the commission or impartial agents designated by the commission. The commission shall determine on a case by case basis whether the secret balloting shall be conducted on-site or by mail or by other means determined by the commission to be fair and reliable. The time within which the commission has directed an election to be conducted may be extended by the commission.

(2) **NOTICE OF ELECTION.** The municipal employer shall post notices to personnel concerning the election at times, locations and in a form specified by the commission.

(3) **OBSERVERS.** Any interested party may be represented by observers at on-site election locations and at locations at which vote counts are conducted. Observers shall be selected in accordance with limitations, if any, established by the commission.

(4) **CHALLENGE OF VOTERS. (a) Who may challenge; nature of challenge.** Any party, observer or commission agent conducting the election may challenge, for good cause, the eligibility of any person to vote in the election. The ballots of challenged voters shall be impounded or otherwise segregated without being opened or counted.

(5) **COUNT AND TALLY OF BALLOTS.** Upon the conclusion of the election, the physical ballots, if any, shall be counted in the presence of the parties or their observers. The commission agent conducting the election shall furnish a tally of ballots to the parties.

(6) **INCONCLUSIVE ELECTIONS.** When more than one proposed representative appears on the ballot, if at least 51% of the eligible voters favor representation but no single representative receives the votes of at least 51% of the eligible voters, the commission, on request of any party, may conduct a runoff election as provided in s. 111.70 (4) (d) 4., Stats. A request for a runoff election shall be made within 30 days from the date of the certification of the results of the election.

ERC 71.08 Certification of results of election. If challenged ballots are insufficient in number to affect the results, and no runoff election is needed, and no timely objections are filed under s. ERC 71.09, the commission shall issue to the parties a certification of the results of the election.

ERC 71.09 Objections to election. (1) FILING; FORM; COPIES. Within 8 days after receiving the tally of ballots, any party may file with the commission objections to the conduct of the election or conduct affecting the results of the election. Objections shall be in writing and shall include the signature or a facsimile of the signature of the party or representative filing the objections. The objections shall contain a brief statement of facts upon which the objections are based. A statement of objections is not filed unless it contains the required signature or signature facsimile and has been actually received by the commission at its Madison office during normal business hours specified in s. ERC 10.06 (1). The objections shall be transmitted to the commission as set forth in s. ERC 10.06 (1). If the objections are filed in paper form, a total of two copies of the objections shall be included.

(2) **SERVICE ON OTHER PARTIES.** The party filing objections shall, at the same time, serve each of the other parties with a copy as set forth in s. ERC 10.07.

ERC 71.10 Commission action on challenges or objections. (1) HEARING. If ballot challenges may affect the election outcome or if objections raise a substantial question which cannot be resolved without a hearing, the commission may issue and serve a notice of hearing concerning the issues to be resolved. Practice and procedure for hearings on challenges or objections shall be as set forth in ss. ERC 18.06 to 18.08.

(2) **AFTER HEARING.** As soon as possible after submission of the case, the commission shall, in writing, either sustain or overrule each challenge or objection.

(a) If the commission directs that challenged ballots be opened and counted, the ballots shall be opened and counted, and the commission shall issue a revised tally and a certification of election results.

(b) If the commission sustains one or more objections, it may direct a new election to be held at a time and under conditions specified by the commission.

(c) If the commission overrules all objections, it shall promptly issue a certification of the election results.

ERC 71.11 Consequences of failure to achieve support of 51% of those eligible to vote in the annual certification election. If no representative is ultimately supported by at least 51% of the employees eligible to vote, the commission will issue a certification of the results of the election including a notice of the following:

(1) If no collective bargaining agreement is in effect, the existing representative shall no longer be entitled to exclusive representative status for purposes of collective bargaining as the date of commission's certification of results. If a collective bargaining agreement is in effect, the existing representative shall no longer be entitled to exclusive representative status

for purposes of collective bargaining as of the expiration of the agreement.

(2) The employees in the bargaining unit shall not be included in a substantially similar collective bargaining unit for at least a period of one year following the applicable date specified in sub.(1).

ERC 71.12 Petition for rehearing. Any person aggrieved by a final order of the commission may, within 20 days after service of the order, file a written petition for rehearing which shall specify in detail the grounds for the relief sought and supporting authorities. Practice and procedure for filing and processing a petition for rehearing shall be as set forth in s. ERC 18.11.

CHAPTER ERC 80

ANNUAL CERTIFICATION ELECTIONS FOR REPRESENTED STATE SECTOR GENERAL EMPLOYEES WHO AS OF AUGUST 30 ARE NOT SUBJECT TO A COLLECTIVE BARGAINING AGREEMENT OR ARE SUBJECT TO A COLLECTIVE BARGAINING AGREEMENT ENTERED INTO ON OR AFTER JUNE 29, 2011.

ERC 80.01 Policy. This chapter implements the portion of s. 111.83 (3) (b), Stats., requiring that the commission conduct an annual election no later than December 1, to determine whether collective bargaining representation shall continue for represented state sector general employees who, as of August 30, are not subject to a collective bargaining agreement or are subject to a collective bargaining agreement entered into on or after June 29, 2011. The existing exclusive representative of such employees that wishes to continue said representation, or any other labor organization interested in representing such employees, must file a petition on or before August 30 requesting the commission to conduct a secret ballot election to determine whether at least 51% of the bargaining unit employees eligible to vote favor collective bargaining representation by the petitioner or another petitioning labor organization. If no timely petition is filed, the result is the same as if only the existing representative filed a timely petition and the election resulted in decertification of the existing representative. The procedures in this chapter are intended to expedite the processing of a petition so that the ballots are cast as soon as possible following the filing of the petition, while providing for an orderly and fair procedure for resolving outcome determinative issues after the ballots have been cast concerning which ballots should be counted and any other potentially outcome-determinative issues. Once a timely petition has been filed, an existing representative's exclusive representative status is not adversely affected if the balloting is not concluded or the results of the election are not certified on or before December 1.

ERC 80.02 Scope. (1) BARGAINING UNITS COVERED. This chapter applies only to bargaining units that are all of the following:

(a) General state employee bargaining units defined in s. 111.825, Stats.

(b) Represented by an exclusive representative.

(2) BARGAINING UNITS NOT COVERED. This chapter does not apply to bargaining units of any of the following:

(a) Public safety employees defined in s. 111.81 (15r), Stats.

(b) General state employees who are not represented for purposes of collective bargaining.

ERC 80.03 Petition for election (1) WHO MAY FILE. A petition for an annual election to determine whether a represented state sector general employee collective bargaining unit shall continue to be represented by an exclusive representative may be filed only by the exclusive representative of a bargaining unit to which this chapter applies or by any other labor organization interested in representing the bargaining unit.

(2) FORM. The petition shall be in writing on a form provided by the commission, or a facsimile of the commission's form, and shall include the signature or a facsimile of the signature of the party or representative filing the petition. A petition is not filed unless it is accompanied by the applicable filing fee established by s. ERC 80.03 (3), contains the required signature or signature facsimile and has been received by the commission at its Madison office during normal business hours specified in s. ERC 10.06 (1). The petition shall be transmitted to the commission as set forth in s. ERC 10.06 (1). If the petition is filed in paper form, a total of two copies of the petition shall be included. If a showing of interest in support of the petition is required by sub. (3), the showing of interest shall be transmitted to the commission in paper form by physical delivery or mail. A petition requiring a showing of interest is not filed until both the petition and the showing of interest have been received by the commission at its Madison office during normal business hours specified in s. ERC 10.06 (1).

(3) SERVICE ON STATE EMPLOYER. At the same time the labor organization files a petition for election with the commission, it shall electronically serve a copy of the petition on the State employer.

(4) FEE SCHEDULE. For a bargaining unit of 1–100 eligible voters, the petitioning labor organization shall pay the commission a fee of \$200. For a bargaining unit of 101–250 eligible voters, the petitioning labor organization shall pay the commission a fee of \$350. For a bargaining unit of 251–500 eligible voters, the petitioning labor organization shall pay the commission a fee of \$500. For a bargaining unit of 501–1000 eligible voters, the petitioning labor organization shall pay the commission a fee of \$750. For a bargaining unit of 1001–3000 eligible voters, the petitioning labor organization shall pay the commission a fee of \$1500. For a bargaining unit of more than 3000 eligible voters, the petitioning labor organization shall pay the commission a fee of \$2000. The fee shall be transmitted to the commission by physical delivery or mail. If more than one labor organization files an election petition, each labor organization shall pay its proportionate share of the fee. If the number of eligible voters determined by the commission differs from the number asserted in the petition and results in a change in the applicable fee amount, the petitioning labor organization(s) shall pay the additional fee to the commission or receive a refund, as appropriate.

(5) SHOWING OF INTEREST. No showing of interest is required in support of a petition by the existing representative. A 30% showing of interest is required in support of a petition by any other interested labor organization, regardless of whether any other petition has been filed. Practice and procedure for submission and determination of the showing of interest shall be as set forth in s. ERC 11.05 (2).

(6) CONTENTS. The petition shall include all of the following:

(a) The name, address and affiliation, if any, of the petitioner, and the name, address and phone number of its

principal representative. Fax numbers and e-mail addresses shall be included, if available.

(b) The name and address of the state employer involved, and the name, address and phone number of its principal representative. Fax numbers and e-mail addresses shall be included, if available.

(c) A description of the statutory bargaining unit involved, specifying inclusions and exclusions, as well as the approximate number of personnel in the unit.

(d) A description of the status of the most recent collective bargaining agreement.

(e) The names and addresses of any known labor organizations who either currently represent or claim to represent any of the personnel in the claimed appropriate collective bargaining unit.

(f) A brief statement including the following:

1. Whether the petitioner is currently the exclusive collective bargaining representative for the bargaining unit.

2. That the petitioner wishes to continue to represent the bargaining unit.

3. That the petitioner requests that the commission conduct an annual certification election to determine whether the bargaining unit shall continue to be represented by the petitioner for purposes of collective bargaining with the state employer.

(g) A statement that the petitioner has served a copy of the petition on the employer.

(h) Any other relevant facts.

(7) TIME FOR FILING, CONSEQUENCES OF FAILURE TO TIMELY FILE, NOTICE. (a) *Time for filing.* To be timely, a petition must be filed on or before August 30.

(b) *Consequences of failure to timely file.* If no timely petition is filed by any labor organization, then the following consequences shall apply:

1. The existing representative shall no longer be entitled to exclusive representative status for purposes of collective bargaining as of August 30.

2. The employees in the bargaining unit shall not be included in a substantially similar collective bargaining unit for at least a period of one year following the applicable date in sub. (b) 1.

(c) *Notice of consequences of failure to timely file petition.* At the request of the State employer or of any employee in the bargaining unit involved, the commission shall issue a notice of the consequences set forth in par. (b). Before issuing such a notice, the commission will provide the exclusive representative an opportunity to respond to the propriety of the request. When issued, copies of the notice will be sent to the State employer, the former exclusive representative and any interested party who requested the issuance of the notice.

ERC 80.04 Withdrawal of petition. Any petition may be withdrawn at any time prior to the issuance of a final order based on it, by motion granted by the commission. A motion to withdraw shall be granted unless withdrawal would result in an injustice to any party. If the sole pending petition is withdrawn after the petition filing deadline set forth in s. ERC 80.03 (7) (a), then the consequences and notice of consequences of withdrawal of the petition shall be as set forth in ss. ERC 80.03 (7) (b) and (c) but with the date of dismissal of the withdrawn petition applying in place of the date specified in s. ERC 80.03 (7) (a).

ERC 80.05 Action following filing of petition. (1) FURNISHING OF PERSONNEL DATA BY STATE EMPLOYER. Within 10 days of its receipt of the petition pursuant to s. ERC 80.03, the State employer shall furnish the commission in an electronically sortable format an alphabetical list of the names of the personnel and the last four digits of said personnel's social security numbers who were employed in the collective bargaining unit involved as of the pay period during which the first timely election petition was filed or another date specified by the commission. If the commission so directs, the list shall also include the employees' mailing addresses including zip code and the employee's work unit and location. If the commission so directs, the State employer shall, within the same time period, submit two sets of mailing labels including the employee's name and mailing address, suitable for use in a mail ballot procedure. At the same time the State employer furnishes the commission with personnel data, the State employer shall furnish the petitioning labor organization with an electronically sortable alphabetical list of the names of the personnel provided to the commission. The period of time for furnishing the personnel data may be extended by the commission for good cause shown.

(2) RESPONSE TO PERSONNEL DATA. Within 10 days of receipt of the personnel data from the State employer, the petitioner shall electronically provide the commission and the State employer with an alphabetical list of the names of personnel that should be added to or deleted from the State employer's personnel list.

ERC 80.06 Direction of election or other dispositional order. As soon as possible after receipt and service of the personnel data, the commission shall, in writing, either direct an election, dismiss the petition, or make other orders regarding the disposition of the petition. In cases where the commission is directing an election, the direction shall establish the date on or before which an employee shall have been employed to be eligible to vote. The date shall be a date specified by the commission in the pay period in which the first timely petition was filed under this chapter regarding the bargaining unit, or another date specified by the commission. The direction of election shall provide that all individuals on the list provided by the State employer and on the list, if any, provided by a petitioning labor organization, shall be allowed to vote, subject to the right of the State employer and any petitioning labor organization to challenge the eligibility of the voter.

ERC 80.07 Elections. (1) NATURE OF BALLOTING; BY WHOM CONDUCTED; EXTENSION OF TIME TO CONDUCT. All elections shall be conducted by secret ballot and under the supervision of the commission or impartial agents designated by the commission. The commission shall determine on a case by case basis whether the secret balloting shall be conducted on-site or by mail or by other means determined by the commission to be fair and reliable. The time within which the commission has directed an election to be conducted may be extended by the commission.

(2) NOTICE OF ELECTION. The State employer shall post notices to personnel concerning the election, at times, locations and in a form specified by the commission.

(3) OBSERVERS. Any interested party may be represented by observers at on-site election locations and at locations at which vote counts are conducted. Observers shall be selected in accordance with limitations, if any, established by the commission.

(4) **CHALLENGE OF VOTERS.** (a) *Who may challenge; nature of challenge.* Any party, observer or commission agent conducting the election may challenge, for good cause, the eligibility of any person to vote in the election. The ballots of challenged voters shall be impounded or otherwise segregated without being opened or counted.

(5) **COUNT AND TALLY OF BALLOTS.** Upon the conclusion of the election, the physical ballots, if any, shall be counted in the presence of the parties or their observers, and the commission agent conducting the election shall furnish a tally of ballots to the parties.

(6) **INCONCLUSIVE ELECTIONS.** When more than one proposed representative appears on the ballot, if at least 51% of the eligible voters favor representation but no single representative receives the votes of at least 51% of the eligible voters, the commission, on request of any party, may conduct a runoff election as provided in s. 111.83 (4), Stats. A request for a runoff election shall be made within 30 days from the date of the certification of the results of the election.

ERC 80.08 Certification of results of election. If challenged ballots are insufficient in number to affect the results, and no runoff election is needed, and no timely objections are filed under s. ERC 80.09, the commission shall issue to the parties a certification of the results of the election.

ERC 80.09 Objections to election. (1) **FILING; FORM; COPIES.** Within 8 days after receiving the tally of ballots, any party may file with the commission objections to the conduct of the election or conduct affecting the results of the election. Objections shall be in writing and shall include the signature or a facsimile of the signature of the party or representative filing the objections. The objections shall contain a brief statement of facts upon which the objections are based. A statement of objections is not filed unless it contains the required signature or signature facsimile and unless and until it has been actually received by the commission at its Madison office during normal business hours specified in s. ERC 10.06 (1). The objections shall be transmitted to the commission as set forth in s. ERC 10.06 (1). If the objections are filed in paper form, a total of two copies of the objections shall be included.

(2) **SERVICE ON OTHER PARTIES.** The party filing objections shall, at the same time, serve each of the other parties with a copy as set forth in s. ERC 10.07.

ERC 80.10 Commission action on challenges or objections. (1) **HEARING.** If ballot challenges may affect the election outcome or if objections raise a substantial question which cannot be resolved without a hearing, the commission may issue and serve a notice of hearing concerning the issues to be resolved. Practice and procedure for hearings on challenges or objections shall be as set forth in ss. ERC 18.06 to 18.08.

(2) **AFTER HEARING.** As soon as possible after submission of the case, the commission shall, in writing, either sustain or overrule each challenge or objection.

(a) If the commission directs that challenged ballots be opened and counted, the ballots shall be opened and counted, and the commission shall issue a revised tally and a certification of election results.

(b) If the commission sustains one or more objections, it may direct a new election to be held at a time and under conditions specified by the commission.

(c) If the commission overrules all objections, it shall promptly issue a certification of the election results.

ERC 80.11 Consequence of failure to achieve support of 51% of those eligible to vote in the annual certification election. If no representative is ultimately supported by at least 51% of the employees eligible to vote, the commission will issue a certification of the results of the election including a notice of the following:

(1) The existing representative shall no longer be entitled to exclusive representative status for purposes of collective bargaining as of the date of the commission's certification of results.

(2) The employees in the bargaining unit shall not be included in a substantially similar collective bargaining unit for at least a period of one year following the date specified in sub. (1).

ERC 80.12 Petition for rehearing. Any person aggrieved by a final order of the commission may, within 20 days after service of the order, file a written petition for rehearing which shall specify in detail the grounds for the relief sought and supporting authorities. Practice and procedure for filing and processing a petition for rehearing shall be as set forth in s. ERC 18.11.

Effective Date.

These permanent rules 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.

Notice of Hearings

Natural Resources

*Environmental Protection — General, Chs. NR 100—,
Environmental Protection — Wis. Pollutant Discharge
Elimination System, Chs. NR 200—*

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

*Environmental Protection — Solid Waste Management,
Chs. NR 500—*

*Environmental Protection — Water Supply,
Chs. NR 800—*

CR 13-057

(DNR # WA-14-13)

NOTICE IS HEREBY GIVEN that pursuant to ss. 227.16 and 227.17, Wis. Stats, the Department of Natural Resources, hereinafter the Department, will hold two public hearings on proposed rule revisions required by Section 103 of 2013 Wisconsin Act 1, the Ferrous Mining Law. The proposed rules revise sections of chs. NR 130, 131, 132, 182, 500 to 538, and other chapters of the Wisconsin Administrative Code that contain exemptions (NR 103, 123, 135, 140, 213, 214, 406, 812, and 815, Wis. Adm. Code) for nonferrous mining as required by Section 103 of 2013 Wisconsin Act 1. The public hearing will be held on the dates, times and locations listed below.

The Department has proposed these modifications to certain existing rules in order to conform with the statutory changes contained in 2013 Wisconsin Act 1, as required by section 103 of the Act. No changes other than those mandated by section 103 are proposed. The proposed rules apply statewide and are not specific to any one project. The proposed rules clarify that ferrous mining activities are regulated by subchapter III of chapter 295 and nonferrous mining activities are regulated under chapter 293 and the nonferrous mining regulations.

Hearing Information

Date: Monday, November 11, 2013
Time: 4:00 p.m. to 7:00 p.m..
Location: WI Indianhead Technical College
 Room 305
 2100 Beaser Avenue
 Ashland, WI

Date: Friday, November 15, 2013
Time: 1:00 p.m. to 4:00 p.m..
Location: WI Dept. of Natural Resources (GEF 2)
 Room G09
 101 South Webster Street
 Madison, WI

Reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Contact Jane Washburn, Bureau of Waste and Materials Management, 101 S. Webster St, Madison, WI, 53707; by e-mail to jane.washburn@wisconsin.gov or by calling (608) 266-2111. A request must include specific information and be received at least 10 days before the date of the scheduled hearing.

Availability of the Proposed Rules and Fiscal Estimate

The proposed rule and supporting documents, including the fiscal estimate, may be viewed and downloaded from the Administrative Rules System Web site which can be accessed through the link: <https://health.wisconsin.gov/admrules/public/Home>. If you do not have Internet access, a printed copy of the proposed rule and supporting documents, including the fiscal estimate, may be obtained free of charge by contacting Jane Washburn, Wisconsin Department of Natural Resources, Bureau of Waste and Materials Management, 101 S. Webster St, Madison, WI, 53707, or by calling (608) 266-2111.

Submitting Comments

Comments on the proposed rule must be received on or before **Monday, December 2, 2013**. Written comments may be submitted by U.S. mail, fax, e-mail, or through the Internet and will have the same weight and effect as oral statements presented at the public hearing. Written comments and any questions on the proposed rules should be submitted to:

Mail: Mining Rule Comments — WA/5
 Bureau of Waste and Materials Management
 101 South Webster Street
 Madison, WI 53707 – 7921

Email: DNR WA Mining Rules —
DNRWAMININGRULES@wisconsin.gov

Fax: (608) 267-2768

Written comments may also be submitted to the Department using the Wisconsin Administrative Rules Internet Web site at <http://adminrules.wisconsin.gov>.

Analysis Prepared by the Department**Statutes interpreted**

In promulgating these rules, section 103 of 2013 Wisconsin Act 1 has been interpreted as authorizing rule revisions. Section 103 is a non-statutory provision directing the Department to revise certain rules and to clarify the rules' applicability to ferrous mining activities that are regulated

under the new provisions of subchapter III of Chapter 295, Wis. Stat.

Statutory authority

Section 103 of 2013 Wisconsin Act 1.

Explanation of agency authority

2013 Wisconsin Act 1 modified existing laws relating to metallic mining and created a new subchapter, subchapter III of chapter 295, for the regulation of ferrous metallic mining. A "ferrous mineral" is an ore that exists primarily in the form of an iron oxide, including taconite and hematite. Section 103 of 2013 Wisconsin Act 1 directs the Department to propose revisions to certain rules so that the rules are consistent with subchapter III of chapter 295 and with the other statutory revisions made by 2013 Wisconsin Act 1.

- Section 103 (1) (a) of 2013 Wisconsin Act 1 directs the Department to revise the mining regulations in chapters NR 130, 131, 132, and 182, Wis. Adm. Code to clarify that these rules do not apply to ferrous metallic mining regulated under subchapter III of ch. 295, Stats.
- Section 103 (1) (b) of 2013 Wisconsin Act 1 directs the Department to revise the solid waste rules in chapters NR 500 to 555 and the hazardous waste rules in chapters NR 660 to 679, Wis. Adm. Code so that the rules are consistent with the provisions of subchapter III of ch. 295, Stats.
- Section 103 (1) (c) of 2013 Wisconsin Act 1 directs the Department to revise any rules that provide exemptions for nonferrous mining or associated activities to provide the same exemptions for ferrous mining and associated activities.

Related statutes or rules

Exemptions for metallic mining appear in sections of the Wisconsin Administrative Code relating to water quality standards for wetlands (s. NR 103.06), the well compensation program (s. NR 123.02), nonmetallic mining (s. NR 135.02), groundwater quality (s. NR 140.03), industrial lagoons (s. NR 213.02), land treatment of industrial liquid wastes (s. NR 214.02), air program construction permits (s. NR 406.08), well construction and pump installation (s. NR 812.02), and injection wells (ss. NR 815.03 (30) (Note), 815.06, and 815.11).

Plain language analysis

The objective of the proposed rules is to implement 2013 Wisconsin Act 1. The proposed rules clarify that ferrous mining activities are regulated under the new subchapter III of Chapter 295, Wis. Statutes created by 2013 Wisconsin Act 1. The proposed rules 1) revise the mining regulations in chapters NR 130, 131, 132, and 182, Wis. Adm. Code, to clarify that these rules apply only to nonferrous mining; 2) revise the solid waste regulations in chapters NR 500 through 538 to be consistent with the new ferrous mining law and to clarify that the rules apply only to solid waste facilities that are not regulated under the mining laws; and 3) revise sections of other regulations that currently provide an exemption for metallic mining activities so that the rules are consistent with 2013 Wisconsin Act 1.

The Department has reviewed all NR chapters and has proposed amendments to those rules where amendments are required by section 103 of 2013 Wisconsin Act 1. The proposed rules generally add language to specific sections so that the rules are consistent with the new ferrous mining law,

subch. III of ch. 295, Wis. Statutes, and with other statutory amendments made by 2013 Wisconsin Act 1.

The Department has determined that some rules identified in section 103 do not require revision. The Department has not proposed revisions to chs. NR 540 to 555 of the solid waste rules because these rules do not apply to metallic mining. The Department has not proposed revisions to chs. NR 660 to 679, the hazardous waste rules, because the applicable rules are required by federal law and thus the existing rules are in accordance with the new ferrous mining law.

The Department has also determined that certain rules identified in the scope statement do not require amendment. No changes to ch. NR 150, Wis. Adm. Code, are needed in this Board Order because a separate Board Order, OE-46-10, proposes to amend ch. NR 150 in a way that complies with 2013 Wisconsin Act 1. The proposed revision to ch. NR 150 (which was approved for public hearing by the Natural Resources Board in February 2013) includes a s. NR 150.30 (j) that applies equally to ferrous and nonferrous mining and that provides generally that if there are conflicting procedures for environmental review in other statutes, those procedures govern. No changes are required to the fee exemption provision of ch. NR 216 provided for nonferrous metallic mining storm water permits because no storm water permit fee will be required for a ferrous mining storm water permit application. No changes are required in ch. NR 350 because the applicable provisions in ch. NR 350 are consistent with the statutory provisions for regulation of ferrous and nonferrous mining.

Summary and comparison with existing and proposed federal regulations

The changes in state law made by 2013 Wisconsin Act 1 and the changes in state rules proposed in this Board Order apply to the State of Wisconsin's regulation of mining activity. All applicable federal laws continue to apply to proposed ferrous and nonferrous mining activities. The proposed changes do not conflict with any applicable federal laws and regulations.

Both ferrous and nonferrous metallic mining activities must meet the requirements of federal laws such as the Clean Water Act, 42 U.S.C. ss. 1342, and the Clean Air Act, 42 U.S.C. ss. 4209. These federal laws are administered by EPA and the U.S. Army Corps of Engineers (ACOE). In addition, hazardous wastes are subject to federal hazardous waste laws under RCRA, Subtitle C, although mining wastes are generally exempt from federal hazardous waste laws under the Bevill Exclusion (42 U.S.C. s. 6921 (b) (3) (A)).

The ferrous metallic mining statute, s. 295.51 (1e) (b), specifies that mining wastes that are hazardous are subject to regulation under subchapter III of chapter 295, and not under chs. NR 660 to 679, the state's hazardous waste rules, except as necessary to comply with applicable federal hazardous waste regulations adopted under the federal Resource Conservation and Recovery Act, 42 U.S.C. ss. 6901 to 6991m (RCRA). The Department is authorized by the EPA to administer the federal hazardous waste program in Wisconsin. The state is required to have regulations that are at least as stringent as those required by federal law. State hazardous waste rules that identify when a waste is hazardous (e.g., if the waste has certain characteristics or meets specific listings) parallel and are equivalent to the federal hazardous waste regulations. State regulations that identify when a mining waste is exempt from regulation also exactly parallel

to federal law under the Bevill Exclusion. Because the applicable state regulations in chs. NR 660 to 679 are necessary to comply with federal hazardous waste regulations, no changes are proposed in these chapters.

Comparison of similar rules in adjacent states

The Department's proposed rules implement changes required by 2013 Wisconsin Act 1. The Department has not prepared a detailed analysis of ferrous mining rules in adjacent states. In a memorandum dated October 26, 2011, the Wisconsin Legislative Council prepared an analysis of the mine permitting process in adjacent States at the request of the Senate Select Committee On Mining Jobs. The analysis is titled, "*Ferrous Mining Permit Application Process in Wisconsin, Minnesota, and Michigan.*" At present, both Minnesota and Michigan have active ferrous mining operations.

Summary of factual data and analytical methodologies

The Department reviewed current rules to determine if amendments were required by section 103 of 2013 Wisconsin Act 1. The Department did not conduct any other analysis or use specific data to support the proposed changes to the rules. The Department made no changes other than those directed by section 103.

Analysis and supporting documents used to determine effect on small business or in preparation of an economic impact analysis:

The department did complete the Fiscal Estimate and Economic Impact Analysis form [DOA-2049 (RO3/2012)] as part of this rule analysis.

Effect on Small Business (Initial Regulatory Flexibility Analysis)

The Department does not believe these proposed rule changes will affect small businesses.

The Small Business Regulatory Coordinator may be contacted at smallbusiness@dnr.state.wi.us, or by calling (608) 266-1959.

Environmental Analysis

The Department has made a preliminary determination that adoption of the proposed rules would not involve significant adverse environmental effects and would not need an environmental analysis under ch. NR 150, Wis. Adm. Code. However, based on comments received, an environmental analysis may be prepared before proceeding. This analysis would summarize the Department's consideration of the impacts of the proposal and any reasonable alternatives.

Fiscal Estimate Summary

The Department believes the proposed rule changes will have no economic effects as the proposed rule changes simply act to ensure the rules are consistent with current statutory provisions governing ferrous and nonferrous metallic mining. Consequently, the Department believes the promulgation of these proposed rule changes will have no economic effect on small or large businesses or on state or local governments. This rule drafting effort followed the direction set forth in section 103 of 2013 Wisconsin Act 1 to clarify the applicability of existing metallic mining administrative rules to nonferrous mining activities regulated under subchapter III of chapter 295, as described in Wisconsin Act 1. The proposed rules clarify the applicability of administrative rules to ferrous and nonferrous mining activities and will align administrative codes to the current mining law. To the extent

that there are economic impacts due to changes in the law, those impacts will come from the changes made by the Legislature, not these proposed rule changes.

and of themselves, will not have an economic impact on any private sector businesses and consequently the significance level of these rules will be minimal.

The Department believes these proposed rule changes, in

STATE OF WISCONSIN
DEPARTMENT OF ADMINISTRATION
DOA-2049 (R03/2012)

DIVISION OF EXECUTIVE BUDGET AND FINANCE
101 EAST WILSON STREET, 10TH FLOOR
P.O. BOX 7864
MADISON, WI 53707-7864
FAX: (608) 267-0372

ADMINISTRATIVE RULES

Fiscal Estimate & Economic Impact Analysis

1. Type of Estimate and Analysis
 Original Updated Corrected

2. Administrative Rule Chapter, Title and Number

Several Administrative codes:

Chapters NR 130, 131, 132, and 182, Wis. Adm. Code relating to metallic mining,
 Chapters NR 500 to 518, 524, 528 and 538, Wis. Adm. Code relating to solid waste management, and,
 Chapters NR 103, 123, 135, 140, 213, 214, 406, 812, and 815, Wis. Adm. Code to provide the same exemptions for ferrous mining and associated activities that exist for nonferrous mining activities.

3. Subject

Implementation of Section 103 of Wisconsin Act 1. The proposed rules will revise the following:

- Chapters NR 130, 131, 132, and 182, Wis. Adm. Code and other rules promulgated under section 293.13 (1) (a) of the statutes to clarify these chapters do not apply to ferrous metallic mining,
- Chapters NR 500 to 518, 524, 528, and 538, Wis. Adm. Code and any other rules promulgated under sections 289.05 and 289.06 (1) of the statutes so these rules are consistent with ferrous mining law, subch. III of chapter 295 of the statutes, and,
- Other rules that provide exemptions for nonferrous mining or associated activities to provide the same exemptions for ferrous mining and associated activities in accordance with 2013 Wisconsin Act 1.

4. Fund Sources Affected
 GPR FED PRO PRS SEG SEG-S

5. Chapter 20, Stats. Appropriations Affected
 No

6. Fiscal Effect of Implementing the Rule

- | | | |
|--|---|--|
| <input checked="" type="checkbox"/> No Fiscal Effect | <input type="checkbox"/> Increase Existing Revenues | <input type="checkbox"/> Increase Costs |
| <input type="checkbox"/> Indeterminate | <input type="checkbox"/> Decrease Existing Revenues | <input type="checkbox"/> Could Absorb Within Agency's Budget |
| | | <input type="checkbox"/> Decrease Cost |

7. The Rule Will Impact the Following (Check All That Apply)

- | | |
|---|---|
| <input type="checkbox"/> State's Economy | <input type="checkbox"/> Specific Businesses/Sectors |
| <input type="checkbox"/> Local Government Units | <input type="checkbox"/> Public Utility Rate Payers |
| | <input type="checkbox"/> Small Businesses (if checked, complete Attachment A) |

8. Would Implementation and Compliance Costs Be Greater Than \$20 million?

- Yes No

9. Policy Problem Addressed by the Rule

These proposed rule changes do not address a specific policy problem, but rather align administrative rules with current law as directed by section 103 of 2013 Wisconsin Act 1. The changes will clarify the applicability of existing metallic mining administrative rules and 2013 Wisconsin Act 1.

10. Summary of the businesses, business sectors, associations representing business, local governmental units, and individuals that may be affected by the proposed rule that were contacted for comments.

The Department does not believe the proposed rule changes will have any economic impacts. However, the Department did solicit comments on a draft of this Fiscal Estimate / Economic Impact Analysis (FE/EIA) from parties that could be interested in the proposed rule changes. These interested parties included Native American Tribes, environmental groups, federal environmental agencies, mining companies, business associations, etc. The Department received one response letter from the Red Cliff Band of Lake Superior Chippewa. The letter states that the Fiscal Estimate/Economic Impact Analysis is inherently flawed. However, the Band's comments appear directed primarily to 2013 Wisconsin Act 1 and potential future mining activity. The Department believes that the proposed rules will not have an economic impact on Native American Tribes or tribal members.

11. Identify the local governmental units that participated in the development of this EIA.

The Department shared the draft of this FE/EIA with local government representatives. The Department did not receive comments from local governments or from associations representing local governments. The Department does not believe the proposed changes will have economic impacts to local governments.

12. 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)

The Department believes the proposed rule changes will have no economic effects as the proposed rule changes simply act to ensure the rules are consistent with current statutory provisions governing ferrous and nonferrous metallic mining. Spending will not be affected as the changes should not influence commercial activities related to mining. The proposed rules clarify the applicability of administrative rules to ferrous and nonferrous mining activities and will align administrative codes to the current mining law. The changes do not affect the location or quantity of ferrous or nonferrous metallic material that may be mined as the amount and location of mining activities is driven by location of the mineral deposit. Spending will not be affected as the changes should not influence commercial activities related to mining.

13. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

The proposed rules will provide for a more clear understanding, and consistent implementation, of administrative rules as they apply to mining activities. Other alternatives were not considered because this approach is directed in the non–statutory provisions of section 103 of 2013 Wisconsin Act 1.

14. Long Range Implications of Implementing the Rule

The proposed rules clarify the applicability of the Department’s administrative rules to both ferrous and nonferrous mining activities.

15. Compare With Approaches Being Used by Federal Government

The changes in state law made by the 2013 Wisconsin Act 1 and the proposed changes in state administrative rules constitute the State of Wisconsin’s regulation of mining activity. All applicable federal laws continue to apply to proposed ferrous and nonferrous mining activities. The proposed rule changes do not conflict with any applicable federal laws and regulations. Both ferrous and nonferrous metallic mining activities must meet the requirements of federal laws such as the Clean Water Act and the Clean Air Act administered by the U.S. Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (ACOE).

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

The Department’s proposed rules implement changes required by the 2013 Wisconsin Act 1. In a memorandum dated October 26, 2011, the Wisconsin Legislative Council prepared an analysis of the mine permitting process in adjacent States at the request of the Senate Select Committee On Mining Jobs. The analysis is titled, “Ferrous Mining Permit Application Process in Wisconsin, Minnesota, and Michigan”. A copy of this analysis will be provided upon request. At present, both Minnesota and Michigan have active ferrous mining operations. Neither Iowa or Illinois have active metallic mining programs. Iowa does not have metallic mining regulations. Illinois regulations for mining are focused on specific areas covering mine reclamation, mine safety, abandoned mines, and oil & gas.

17. Contact Name
Edward Lynch

18. Contact Phone Number
(608) 267–0545

This document can be made available in alternate formats to individuals with disabilities upon request.

Notice of Hearing

Natural Resources
Environmental Protection —
Air Pollution Control, Chs. NR 400—
CR 13–089
(DNR # AM–19–13)

NOTICE IS HEREBY GIVEN that pursuant to ss. 227.16 and 227.17, Wis. Stats, the Department of Natural Resources, hereinafter the Department, will hold a public hearing to consider modification of requirements under subch. III of ch. NR 446, Wis. Adm. Code, related to the control of mercury emitted by coal–fired electric generating units, on the date and at the time and location listed below.

Hearing Information

Date: Tuesday, November 12, 2013
Time: 10:00 a.m..
Location: Natural Resources State Office Building
Room 713
101 South Webster Street
Madison, WI

Reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Contact Robert Eckdale in writing at the Department of Natural Resources, Bureau of Air Management (AM/7), 101 S. Webster St., Madison, WI 53703; by email to robert.eckdale@wisconsin.gov; or by calling (608) 266–2856. A request must include specific information and be received at least 10 days before the date of the scheduled hearing.

Availability of the Proposed Rules and the Fiscal Estimate and Economic Impact Analysis

The proposed rule and supporting documents, including the fiscal estimate and economic impact analysis, may be viewed and downloaded from the Administrative Rules System Website at <https://health.wisconsin.gov/admrules/public/Rmo?nRmoId=14923>. If you do not have internet access, a printed copy of the proposed rule and supporting documents, including the fiscal estimate and economic impact analysis, may be obtained free of charge by contacting Robert Eckdale, Department of Natural Resources, Bureau of Air

Management (AM/7), 101 S. Webster St., Madison, WI, 53703, or by calling (608) 266–2856.

Submitting Comments

Comments on the proposed rule must be received on or before **November 14, 2013**. Written comments may be submitted by U.S. mail, fax, email, or through the internet and will have the same weight and effect as oral statements presented at the public hearing. Written comments and any questions on the proposed rules should be submitted to:

Tom Karman
 Department of Natural Resources
 Bureau of Air Management (AM/7)
 101 S. Webster St., Madison, WI 53703
 Phone: (608) 264–8856
 Fax: (608) 267–0560
 E–mail: thomas.karman@wisconsin.gov
 Internet: Use the Administrative Rules System Website (requires registration) at <https://health.wisconsin.gov/admrules/public/Rmo?nRmold=14923>.

Analysis Prepared by the Department

Statutes interpreted

Sections 227.11 (2) (a) and 285.11 (9), Wis. Stats.

Statutory authority

Sections 227.11 (2) (a) and 285.11 (9), Wis. Stats.

Explanation of agency authority

Wisconsin statute s. 227.11 (2) (a) authorizes the Department to promulgate rules interpreting the provisions of any statutes enforced or administered by it. Wisconsin statute s. 285.11 (9) authorizes the Department to prepare and adopt minimum standards for the control of mercury emissions.

Related statutes or rules

This proposed rulemaking affects control of mercury emissions as required under subchs. II and III of ch. NR 446, Wis. Adm. Code. These rules were established in 2008 under authority of s. 285.11 (9), Wis. Stats., which in turn refers to requirements under s. 285.27 (2) (b), Wis. Stats. The latter statute allows promulgation of state emissions limitations for hazardous pollutants only if there is a finding that control of emissions is needed to protect human health and welfare. A health and welfare finding was made for the 2008 mercury rulemaking process.

Wisconsin statute s. 285.27 (2) (d) specifies that sources of hazardous air pollutants are exempt from state rule requirements when emissions are regulated by federal rules promulgated under section 112 of the Clean Air Act (CAA). This means that electric generating utilities (EGUs) will be exempt from requirements under subchs. II and III of ch. NR 446, Wis. Adm. Code, when their mercury emissions are regulated under the federal Mercury and Air Toxics Standards (MATS) and Industrial, Commercial and Institutional (ICI) Boiler rules.

Plain language analysis

Mercury emitted by coal–fired EGUs is regulated by the state under subchs. II and III of ch. NR 446, Wis. Adm. Code. This administrative code is commonly referred to as the “state mercury rule” with subchapter II referred to as phase 1 and subchapter III as phase 2. The action proposed in this Board Order will delay the initial compliance date for emission

reductions required under phase 2 of the state mercury rule until April 16, 2016.

Under phase 2 of the original state mercury rule, 31 EGUs are required to achieve 90 percent control of mercury by January 1, 2015. Currently, these EGUs are subject to a 40 percent control requirement under phase 1 of the state mercury rule. Phase 2 of the state mercury rule will also require four smaller EGUs not affected under phase 1 to begin operating best available control technology (BACT) by January 1, 2015.

The same coal–fired EGUs subject to the state mercury rule will also be subject to mercury emission limits under one of two recently promulgated federal rules: the MATS rule or the ICI Boiler rule. EGUs subject to the MATS rule must demonstrate compliance by April 16, 2015. The EGUs subject to the ICI Boiler rule must demonstrate compliance by January 31, 2016. However, individual EGUs may request a one–year extension to any federal rule regulating hazardous air pollutant emissions as allowed under section 112 of the Clean Air Act.

Under the current schedule of compliance dates, EGUs will be subject to phase 2 of the state rule three and a half months before compliance is required under the MATS rule and thirteen months before compliance is required under the ICI Boiler rule. However, according to s. 285.27 (2) (d), *Wis. Stats.*, EGUs will be exempt from state mercury rule requirements when mercury emissions are regulated under the federal rules. Therefore, under the current compliance schedules, EGUs would comply with phase 2 of the state mercury rule for only a short period of time.

The Department has concluded that requiring compliance with phase 2 of the state mercury rule for a short period of time is not warranted for a number of reasons. First, state law directs that mercury emissions will be regulated in the long–term by any promulgated federal requirement. Second, the Department believes that meeting requirements of both the state and federal rules adds complexity, cost, and compliance burden for the affected EGUs. Lastly, with the federal rules becoming effective on April 16, 2015 and January 31, 2016, and the state rule no longer applicable after those dates, delaying the state mercury rule requirements will not result in higher levels of mercury emissions compared to implementing only the state rule.

Therefore, the Department is proposing to delay the compliance date for phase 2 of the state mercury rule from January 1, 2015 to April 16, 2016. The Department is proposing this date to accommodate individual EGUs subject to the MATS rule that may require a one–year extension. It is the Department’s opinion that EGUs affected by the ICI Boiler rule will not request a one–year extension and therefore will not require the compliance date for phase 2 of the state mercury rule to be one year after the ICI Boiler rule’s compliance date.

In summary, this rule change will achieve the following objectives:

- Allows EGUs to comply with only the federal rules and not phase 2 of the state mercury rule at this time, thus simplifying administrative requirements, compliance planning, and installation of equipment which will avoid undue cost.
- Maintains the existing state mercury rule requirement for 40 percent mercury control, as provided under subch. II of ch. NR 446, Wis. Adm. Code, until the

affected EGUs regulate mercury emissions in accordance with the federal standards.

- Maintains state mercury rule phase 2 emission standards, under subch. III of ch. NR 446, *Wis. Adm. Code*, in the event that the federal rules are delayed or rescinded. Maintaining the state mercury rule in a backup position will ensure that the state health and welfare finding requiring mercury control is fulfilled within a practical time-frame.
- Accommodates EGUs that may require a one-year extension to the MATS rule compliance date of April 16, 2015, as allowed under section 112 of the CAA. As stated above, it is the Department’s opinion that EGUs will not require an extension in meeting requirements of the ICI Boiler rule, therefore the compliance date in this rulemaking is only extended to April 16, 2016, in order to address a possible extension that may be requested by EGUs affected by the MATS rule.

Information and analysis supporting this rule change are provided in the report “Wisconsin’s State Mercury Air Emission Rule.” This report was presented to the Natural Resources Board on May 22, 2013. At that time, the Board

approved the report’s recommendation to extend the compliance date for meeting requirements under subch. III of ch. NR 446, *Wis. Adm. Code* to April 16, 2016.

Summary and comparison with existing and proposed federal regulations

As discussed in Item 5 of this Board Order, mercury emitted by 35 coal-fired boilers will be regulated under phase 2 of the state mercury rule beginning January 1, 2015. Mercury emission standards will apply to these same EGUs under either the federal MATS beginning on April 16, 2015, or the ICI Boiler rule beginning on January 31, 2016. The resulting control and mercury emission levels anticipated under either the state or federal rules are summarized in the following table. Emissions are presented through 2021 in order to show the effects of delayed implementation of mercury reductions under the state mercury rule multi-pollutant compliance option. A detailed comparison of the state and federal rules is presented in the report provided to the Natural Resources Board on May 22, 2013. The information in the table shows that the state and federal rules are expected to achieve comparable mercury emission reductions.

Year	State Rule Compliance		Federal Rule Compliance	
	Percent Control	Remaining Hg Emissions (lbs.)	Percent Control	Remaining Hg Emissions (lbs.)
2015	83 – 87%	550 – 743	84 – 86%	584 – 663
2016	83 – 87%	550 – 743	87 – 89%	446 – 558
2021	89 – 92%	345 – 449	87 – 89%	446 – 558

Note: Percent control is measured from the baseline uncontrolled emissions of 4,275 pounds per year as determined under s. NR 446.06, *Wis. Adm. Code*. The baseline uncontrolled emissions are the average of uncontrolled emissions for 2002, 2003, and 2004.

Comparison of similar rules in adjacent states

The federal MATS and ICI Boiler rules will affect EGUs in adjacent states in the same manner as EGUs in Wisconsin. Like Wisconsin, some of these states also have existing state mercury emission standards in place. These states are responding in a variety of ways, as summarized in the following table:

State	Existing State Hg Rule (Y/N)	Response to Federal MATS
Illinois	Yes	Have not considered state response to federal MATS in detail. Expect that sources will need to meet both state and federal regulations.
Michigan	Yes	Revising the state rule to be consistent with MATS.
Minnesota	Yes	Adopting federal MATS rule. Will also require compliance with more stringent state rule.
Iowa	No	No action at this time. Waiting for EPA’s response to reconsideration of the MATS rule.

Summary of factual data and analytical methodologies

The Department reviewed all applicable state statutes and administrative code. The Department determined that affected EGUs will be exempt from state mercury rule requirements when mercury emissions are regulated under federal rules. This exemption from state requirements is provided under s. 285.27 (2) (d), *Wis. Stats*.

The Department evaluated mercury emission control levels and remaining emissions that are expected under full implementation of either the state mercury rule or the two federal rules. The Department determined that the current

compliance date of the state mercury rule may result in undue compliance burden and cost even though mercury emissions, in the long-term, will be regulated under the current federal MATS and ICI Boiler rules. Therefore, the Department evaluated options to transition regulation of mercury emissions from under the state mercury rule to the federal rules in a manner consistent with the applicable statutes. The factual data and methodologies used to evaluate the state and federal mercury rule requirements are documented in the report presented to the Natural Resources Board on May 22,

2013, which can be accessed from the May 22, 2013, agenda on the Natural Resource Board’s website.

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

One goal of the proposed rule change is to avoid undue regulatory cost. In accordance with s. 227.137, Wis. Stats., the Department solicited information and advice from affected sources and stakeholders concerning the economic impacts of the proposed rule. The Department received comments from two affected utilities which supports the conclusion that the rule change will reduce compliance burden and cost. This information was considered in preparing the fiscal estimate and economic impact analysis.

Effect on Small Business

The proposed rule will only affect electric utilities generating electricity and will not affect small businesses.

Environmental Analysis

The Department has made a preliminary determination that adoption of the proposed rules would not involve significant adverse environmental effects and would not need an environmental analysis under ch. NR 150, Wis. Adm. Code. However, based on comments received, an environmental analysis may be prepared before proceeding. This analysis would summarize the Department’s consideration of the impacts of the proposal and any reasonable alternatives.

Fiscal Estimate and Economic Impact Analysis Summary

Fiscal estimate

1. Fiscal effect on state and local government

The proposed rule will not result in additional cost to state and local government. The proposed rule is intended to avoid additional compliance costs for coal–fired electric generating units. Manitowoc Public Utility, the one local government entity that is affected by the rule change, has commented that the proposed rule will reduce compliance burden and avoid additional costs.

2. Fiscal effect on the private sectors

The proposed rule is intended to avoid additional compliance costs to coal–fired electric generating units, and therefore, the private sector will incur no additional cost that is related to this rule change. The non–government electric utility companies affected by the rule change include Dairyland Power Cooperative, Wisconsin Power and Light, Wisconsin Public Service Corporation, We Energies and Xcel Energy. Xcel Energy and Dairyland Power Cooperative provided comments supporting the conclusion that the rule change will reduce compliance burden and avoid additional costs.

Economic impact analysis (EIA)

1. Summary of analysis under s. 227.137 (4), Wis. Stats.

The objective of the proposed rule change is to aid transition of mercury emission regulation from under state rule to federal rule and therein reduce potential compliance costs and burden. As a result, there is no increase in the costs incurred by affected EGUs and electric rate payers. Likewise, there is no negative impact on the state’s economy.

2. Summary of revised analysis

The Department received comments from three affected EGUs which supports the original conclusion provided in the EIA that the rule change will reduce compliance burden and cost. No other comments were received.

3. Summary of report prepared by the Department of Administration (DOA) for purposes of s. 227.137(6), Wis. Stats.

A report from the DOA is not required by s. 227.137 (6), Wis. Stats., for this proposed rule change.

Agency Contact Person

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STATE OF WISCONSIN
 DEPARTMENT OF ADMINISTRATION
 DOA–2049 (R03/2012)

DIVISION OF EXECUTIVE BUDGET AND FINANCE
 101 EAST WILSON STREET, 10TH FLOOR
 P.O. BOX 7864
 MADISON, WI 53707–7864
 FAX: (608) 267–0372

**ADMINISTRATIVE RULES
 Fiscal Estimate & Economic Impact Analysis**

1. Type of Estimate and Analysis
 Original Updated Corrected

2. Administrative Rule Chapter, Title and Number

Chapter NR 446 Subchapter III – Control of Mercury Emissions from Coal–fired Electric Generating Units

3. Subject

Revision of the initial compliance date under subch. III of ch. NR 446, Wis. Adm. Code, from January 1, 2015 to April 16, 2016.

4. Fund Sources Affected
 GPR FED PRO PRS SEG SEG–S

5. Chapter 20, Stats. Appropriations Affected
 NA

6. Fiscal Effect of Implementing the Rule
 No Fiscal Effect Increase Existing Revenues Increase Costs
 Indeterminate Decrease Existing Revenues Could Absorb Within Agency’s Budget
 Decrease Cost

ATTACHMENT A

1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

The proposed rule change does not have a fiscal impact on small business for purposes of this EIA.

2. Summary of the data sources used to measure the Rule's impact on Small Businesses

3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- Less Stringent Compliance or Reporting Requirements
- Less Stringent Schedules or Deadlines for Compliance or Reporting
- Consolidation or Simplification of Reporting Requirements
- Establishment of performance standards in lieu of Design or Operational Standards
- Exemption of Small Businesses from some or all requirements
- Other, describe:

4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

5. Describe the Rule's Enforcement Provisions

6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

- Yes No

Notice of Rule Making Without Public Hearing

Public Instruction

CR 13-083

The State Superintendent of Public Instruction proposes to repeal ss. PI 21.01 (Note), 21.04 (4) (Note), and 21.05 (1) (Note), (2), and (2) (Note); amend s. PI 21.04 (intro); and to repeal and recreate s. PI 21.04 (4), relating to driver education programs.

The rules are being adopted under s. 227.16 (2) (e), Stats., which provides that rulemaking does not need to be preceded by notice and public hearing if the proposed rule and fiscal estimate are published in the notice section of the Administrative Register and the required petition is not received by the agency within 30 days after publication of the notice.

Place Where Comments are to be Submitted and Deadline for Submission

As provided in s. 227.16 (2) (e), Stats., a public hearing will not be held for this rule change unless the required petition is received by the Department.

Analysis by the Department

Statute interpreted

Section 115.28 (11), Stats.

Statutory authority

Section 227.11 (2) (a) (intro), Stats.

Explanation of agency authority

Under s. 227.11 (2) (a) (intro), Stats., "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." Under s. 115.28 (11), Stats., the DPI is required to approve driver education course plans that meet certain guidelines.

Related statute or rule

N/A.

Plain language analysis

Section PI 21.05 requires the Department of Public Instruction (DPI) to issue certificates. This will soon be unnecessary since the Department of Transportation (DOT) is going to issue on-line certificates which will apply to students in school driver education programs. This rule change will not take effect until DOT begins issuing these on-line certificates.

Additionally, s. PI 21.04 requires DPI to approve driver education course plans. However, to be more efficient, DPI is modifying the way it reviews driver education course plans. The DPI proposes modifying s. PI 21.04 to state that a public or private high school, county children with disabilities education board, or a CESA submitting on behalf of a district that it has contracted with to provide driver education instructional services, must submit an assurance stating it is complying with the program requirements in s. PI 21.04 in order to receive DPI approval. This assurance will substitute for DPI actively approving the specific program components. The DPI will continue to review each program's instructors to verify that their departmental driver education certification is current and valid.

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

N/A.

Comparison with rules in adjacent states

No information.

Summary of factual data and analytical methodologies

These changes are designed to update the rule to reflect future practice. If these changes are not made, the rule may not align with agency practice.

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

First, this rule change will avoid duplication of effort on the DPI's part because the DOT will be issuing on-line certificates for students in school driver education programs. Second, this rule change will make the approval process for driver education course plans faster because public or private high schools, county children with disabilities education

boards, and CESAs will provide an assurance that their driver education course plans meet the necessary requirements and then the plans are approved. It will also save the DPI resources because employees will not need to spend time reviewing driver education course plans.

Anticipated Costs Incurred by Private Sector

There is not expected to be a cost to the private sector.

Effect on Small Business

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

Agency Contact Person

Katie Schumacher
 Budget and Policy Analyst
 Wisconsin Department of Public Instruction
katie.schumacher@dpi.wi.gov
 (608) 267-9127

Text of Rule

- SECTION 1. PI 21.01 (Note) is repealed.**
- SECTION 2. PI 21.04 (intro) is amended to read:**

PI 21.04 (intro) A public school, private school, CCDEB, or CESA driver education program ~~shall be~~ is approved by the department under s. 343.06 (1) (c), Stats., if the program uses vehicles which meet the requirements of s. PI 21.03 and the program meets all of the following requirements:

SECTION 3. PI 21.04 (4) is repealed and recreated to read:

PI 21.04 (4) REQUIRED ASSURANCE. A public or private school, CCDEB, or CESA shall electronically submit to the department an assurance that its driver education course plan complies with the requirements of this subsection along with a list of their driver education instructors and their DPI teacher file numbers.

SECTION 4. PI 21.04 (4) (Note) is repealed.

SECTION 5. PI 21.05 (1) (Note) is repealed.

SECTION 6. PI 21.05 (2) is repealed.

SECTION 7. PI 21.05 (2) (Note) is repealed.

SECTION 8. EFFECTIVE DATE:

The proposed rules contained in this order shall take effect on the first day of the month commencing after the date of publication in the Wisconsin Administrative Register, as provided in s. 227.22 (2) (intro.), Stats.

STATE OF WISCONSIN DEPARTMENT OF ADMINISTRATION DOA 2049 (R 07/2011)	
ADMINISTRATIVE RULES FISCAL ESTIMATE & ECONOMIC IMPACT ANALYSIS	
Type of Estimate and Analysis	
<input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected	
Administrative Rule Chapter, Title and Number	
PI 21, Driver Education Programs	
Subject	
Modifying the Course Plan Approval Process and the Driver Education Certificate Process	
Fund Sources Affected	Chapter 20, Stats. Appropriations Affected
<input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S	
Fiscal Effect of Implementing the Rule	
<input type="checkbox"/> No Fiscal Effect <input checked="" type="checkbox"/> Indeterminate	<input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Decrease Existing Revenues
<input type="checkbox"/> Increase Costs <input type="checkbox"/> Could Absorb Within Agency's Budget <input checked="" type="checkbox"/> Decrease Costs	
The Rule Will Impact the Following (Check All That Apply)	
<input type="checkbox"/> State's Economy <input type="checkbox"/> Local Government Units	<input type="checkbox"/> Specific Businesses/Sectors <input type="checkbox"/> Public Utility Rate Payers
Would Implementation and Compliance Costs Be Greater Than \$20 million?	
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	

Policy Problem Addressed by the Rule
<p>PI 21.05 requires the Department of Public Instruction (DPI) to issue certificates. This will soon be unnecessary since the Department of Transportation (DOT) is going to issue on-line certificates which will apply to students in school driver education programs. This rule change will not take effect until DOT begins issuing these on-line certificates.</p> <p>Additionally, PI 21.04 requires DPI to approve driver education course plans. However, to be more efficient, DPI is modifying the way it reviews driver education course plans. The DPI proposes modifying PI 21.04 to state that a public or private high school, county children with disabilities education board, or a CESA submitting on behalf of a district that it has contracted with to provide driver education instructional services, must submit an assurance stating they are complying with the program requirements in PI 21.04 in order to receive DPI approval. This assurance will substitute for DPI actively approving the specific program components. The DPI will continue to review each program's instructors to verify that their departmental driver education certification is current and valid.</p>
Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)
<p>Local: None. School districts would only need to provide DPI with the names and teacher file numbers of driver education instructors as well as an assurance that they are complying with the program requirements. Students in driver education programs would still receive credit for completing these programs but DOT, instead of DPI, would be in charge of that process. Additionally, this eliminates the need for storage of paper completion certificates; schools were required to store paper copies for 7 years but now local completion records will be able to be maintained and stored electronically.</p> <p>State: This rule change will avoid duplication of effort on DPI's part because DOT is going to be issuing on-line certificates which will apply to students in school driver education programs. This rule change will eliminate printing costs associated with the printing of PI 1714 forms; eliminate shipping and postage associated with getting certificates to schools; and eliminates the time required to ship and mail certificates to schools. It will also save the Department resources because employees will not need to spend time reviewing driver education course plans.</p>
Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule
<p>This rule change will avoid duplication of effort on DPI's part because DOT is going to be issuing on-line certificates which will apply to students in school driver education programs. It will also save the Department resources because employees will not need to spend time reviewing driver education course plans.</p>
Long Range Implications of Implementing the Rule
<p>The Department will reduce its role with regards to driver education programs while the roles of the DOT and those submitting driver education course plans will increase.</p>
Compare With Approaches Being Used by Federal Government
<p>No information.</p>
Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)
<p>No information.</p>
Name and Phone Number of Contact Person
<p>Katie Schumacher, Department of Public Instruction Administrative Rules Coordinator, (608) 267-9127.</p>

Notice of Rule Making Without Public Hearing

Public Instruction CR 13-084

The State Superintendent of Public Instruction hereby proposes an order to repeal Chapter PI 29, relating to grants for Preschool Through Grade 5 programs.

The rules are being adopted under s. 227.16 (2) (b), Stats., which provides that rulemaking does not need to be preceded

by notice and public hearing if the proposed rule brings an existing rule into conformity with a statute that has been changed.

Place Where Comments are to be Submitted and Deadline for Submission

As provided in s. 227.16 (2) (b), there is no requirement that a public hearing be held for this rule because the proposed rule brings an existing rule into conformity with a statute that has been changed.

Analysis by the Department

Statute interpreted

None. 2011 Wisconsin Act 32 eliminated s. 115.45, Stats.

Statutory authority

None.

Explanation of agency authority

The Department of Public Instruction is repealing a rule that no longer has any statutory authority.

Related statute or rule

None.

Plain language analysis

This proposed rule change is a technical change that would repeal a rule that no longer has any statutory authority.

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

N/A.

Comparison with rules in adjacent states

N/A.

Summary of factual data and analytical methodologies

N/A.

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

N/A.

Anticipated Costs Incurred by Private Sector

N/A.

Effect on Small Business

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

Agency Contact Person

Katie Schumacher
 Budget and Policy Analyst
 Wisconsin Department of Public Instruction
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 (608) 267-9127

Text of Rule

SECTION 1. Chapter PI 29 is repealed.

SECTION 2. EFFECTIVE DATE:

The proposed rules contained in this order shall take effect on the first day of the month commencing after the date of publication in the Wisconsin Administrative Register, as provided in s. 227.22(2)(intro.), Stats.

STATE OF WISCONSIN DEPARTMENT OF ADMINISTRATION DOA 2049 (R 07/2011)		
ADMINISTRATIVE RULES FISCAL ESTIMATE & ECONOMIC IMPACT ANALYSIS		
Type of Estimate and Analysis		
<input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected		
Administrative Rule Chapter, Title and Number		
PI 29, Grants for Preschool Through Grade 5 Programs		
Subject		
Repeal of PI 29		
Fund Sources Affected		Chapter 20, Stats. Appropriations Affected
<input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S		
Fiscal Effect of Implementing the Rule		
<input checked="" type="checkbox"/> No Fiscal Effect <input type="checkbox"/> Indeterminate	<input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Decrease Existing Revenues	<input type="checkbox"/> Increase Costs <input type="checkbox"/> Could Absorb Within Agency's Budget <input type="checkbox"/> Decrease Costs
The Rule Will Impact the Following (Check All That Apply)		
<input type="checkbox"/> State's Economy <input type="checkbox"/> Local Government Units	<input type="checkbox"/> Specific Businesses/Sectors <input type="checkbox"/> Public Utility Rate Payers	
Would Implementation and Compliance Costs Be Greater Than \$20 million?		
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
Policy Problem Addressed by the Rule		
There is no longer funding or statutory authority for the Grants for Preschool Through Grade 5 Programs. Thus, the rule needs to be repealed.		

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)
Local: None. Preschool Through Grade 5 Program grants were eliminated in 2011 Act 32; repeal of the rule will have no fiscal effect.
State: No fiscal effect.
Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule
The rule needs to be repealed since there is no longer any statutory authority for the program. Otherwise, the rule will not reflect current law.
Long Range Implications of Implementing the Rule
Elimination of the rule will align the DPI Administrative Code with statutes.
Compare With Approaches Being Used by Federal Government
N/A.
Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)
N/A.
Name and Phone Number of Contact Person
Katie Schumacher, Department of Public Instruction Administrative Rules Coordinator, (608) 267-9127.

Notice of Rule Making Without Public Hearing

Public Instruction CR 13-085

The State Superintendent of Public Instruction hereby proposes an order to repeal Chapter PI 31, relating to grants for STEM programs.

The rules are being adopted under s. 227.16 (2) (b), Stats., which provides that rulemaking does not need to be preceded by notice and public hearing if the proposed rule brings an existing rule into conformity with a statute that has been changed.

Place Where Comments are to be Submitted and Deadline for Submission

As provided in s. 227.16 (2) (b), there is no requirement that a public hearing be held for this rule because the proposed rule brings an existing rule into conformity with a statute that has been changed.

Analysis by the Department

Statute interpreted

None. 2011 Wisconsin Act 32 eliminated ss. 115.28 (46) and 20.255 (2) (fz), Stats.

Statutory authority

None.

Explanation of agency authority

The Department of Public Instruction is repealing a rule that no longer has any statutory authority or funding.

Related statute or rule

N/A.

Plain language analysis

This proposed rule change is a technical change that would repeal a rule that no longer has any statutory authority.

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

N/A.

Comparison with rules in adjacent states

N/A.

Summary of factual data and analytical methodologies

N/A.

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

N/A.

Anticipated Costs Incurred by Private Sector

N/A.

Effect on Small Business

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

Agency Contact Person

Katie Schumacher
Budget and Policy Analyst
Wisconsin Department of Public Instruction
katie.schumacher@dpi.wi.gov
(608) 267-9127

Text of Rule

SECTION 1. Chapter PI 31 is repealed.

SECTION 2. EFFECTIVE DATE:

The proposed rules contained in this order shall take effect on the first day of the month commencing after the date of publication in the Wisconsin Administrative Register, as provided in s. 227.22 (2) (intro.), Stats.

STATE OF WISCONSIN DEPARTMENT OF ADMINISTRATION DOA 2049 (R 07/2011)		
ADMINISTRATIVE RULES FISCAL ESTIMATE & ECONOMIC IMPACT ANALYSIS		
Type of Estimate and Analysis		
<input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected		
Administrative Rule Chapter, Title and Number		
PI 31, Grants for STEM Programs		
Subject		
Repeal of PI 31		
Fund Sources Affected		Chapter 20, Stats. Appropriations Affected
<input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S		
Fiscal Effect of Implementing the Rule		
<input checked="" type="checkbox"/> No Fiscal Effect <input type="checkbox"/> Indeterminate	<input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Decrease Existing Revenues	<input type="checkbox"/> Increase Costs <input type="checkbox"/> Could Absorb Within Agency's Budget <input type="checkbox"/> Decrease Costs
The Rule Will Impact the Following (Check All That Apply)		
<input type="checkbox"/> State's Economy <input type="checkbox"/> Local Government Units	<input type="checkbox"/> Specific Businesses/Sectors <input type="checkbox"/> Public Utility Rate Payers	
Would Implementation and Compliance Costs Be Greater Than \$20 million?		
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
Policy Problem Addressed by the Rule		
There is no longer funding or statutory authority for Grants for STEM Programs. Thus, the rule needs to be repealed.		
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)		
Local: None. Grants for STEM Programs were eliminated in 2011 Act 32; repeal of the rule will have no fiscal effect.		
State: No fiscal effect.		
Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule		
The rule needs to be repealed since there is no longer any statutory authority for the grant program. Otherwise, the rule will not reflect current law.		
Long Range Implications of Implementing the Rule		
Elimination of the rule will align the DPI Administrative Code with statutes.		
Compare With Approaches Being Used by Federal Government		
N/A.		
Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)		
N/A.		
Name and Phone Number of Contact Person		
Katie Schumacher, Department of Public Instruction Administrative Rules Coordinator, (608) 267-9127.		

Notice of Rule Making Without Public Hearing

Public Instruction CR 13-086

The State Superintendent of Public Instruction proposes to repeal ss. PI 32.01 (4) (Note), 32.03 (2) (intro) (Note), (4) (a) (Note), and 32.05; and amend ss. PI 32.01(4) and 32.03 (2) (intro) and (4) (a), relating to grants for alcohol and other drug abuse programs.

The rules are being adopted under s. 227.16 (2) (e), Stats., which provides that rulemaking does not need to be preceded by notice and public hearing if the proposed rule and fiscal estimate are published in the notice section of the Administrative Register and the required petition is not received by the agency within 30 days after publication of the notice.

Place Where Comments are to be Submitted and Deadline for Submission

As provided in s. 227.16 (2) (e), Stats., a public hearing will not be held for this rule change unless the required petition is received by the Department.

Analysis by the Department

Statute interpreted

Section 115.36 (3), Stats.

Statutory authority

Section 115.36 (3) (a) 5., Stats.

Explanation of agency authority

Under s. 115.36 (3) (a) 5., Stats., the Department has authority to promulgate necessary rules to implement s. 115.36 (3), Stats.

Related statute or rule

N/A.

Plain language analysis

First, the proposed rule change would realign ch. PI 32 with the Wisconsin Statutes. 2011 Wisconsin Act 32 deleted ss. 20.255 (2) (dm) and 115.361, Stats. Thus, this rule change would eliminate the references to those statutory sections in the rule.

Second, this rule change would eliminate s. PI 32.05, which provides a detailed description for the Alcohol and Other Drug Abuse (AODA) Program Advisory Council required under s. 115.36 (2) (e), Stats. The requirements in s. PI 32.05 are no longer needed because 2011 Wisconsin Act 32 deleted one of the AODA appropriations (s. 20.255 (2) (dm), Stats.), which had the majority of the AODA grant funds. Given the reduced grant appropriations, the DPI believes that the size of the AODA Council can be reduced accordingly. Additionally, the description of the AODA Council is no longer needed in rule because, given the constantly changing amount of AODA funding, DPI needs the flexibility to adjust the Council's structure quickly through policy instead of the rulemaking process.

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

N/A.

Comparison with rules in adjacent states

No information.

Summary of factual data and analytical methodologies

The requirements in s. PI 32.05 are no longer needed because 2011 Wisconsin Act 32 deleted one of the AODA appropriations (s. 20.255 (2) (dm), Stats.), which had the majority of the AODA grant funds. Given the reduced grant appropriations, the DPI believes that the size of the AODA Council can be reduced accordingly.

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

If the size of the AODA Council is reduced, DPI will have to expend fewer resources staffing the AODA Council.

Anticipated Costs Incurred by Private Sector

There is not expected to be a cost to the private sector.

Effect on Small Business

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

Agency Contact Person

Katie Schumacher
Budget and Policy Analyst
Wisconsin Department of Public Instruction
katie.schumacher@dpi.wi.gov
(608) 267-9127

Text of Rule

SECTION 1. PI 32.01(4) is amended to read:

PI 32.01 (4) This chapter sets forth characteristics of a comprehensive kindergarten through grade 12 program including criteria and procedures in awarding grants under ~~ss. 115.36 and 115.361~~, Stats.

SECTION 2. PI 32.01 (4) (Note) is repealed.

SECTION 3. PI 32.03 (2)(intro) is amended to read:

PI 32.03 (2) (intro) AODA PROGRAM CONTENT. Under s. 115.36 (1), Stats., every public and private school is encouraged to develop AODA programs to prevent or ameliorate alcohol and other drug abuse among minors. ~~Sections Section 115.36 (3) and 115.361~~, Stats., provide for grants to assist school districts in developing or supplementing AODA programs. An AODA program under this section may include any of the following:

SECTION 4. PI 32.03 (2) (intro) (Note) is repealed.

SECTION 5. PI 32.03 (4) (a) is amended to read:

PI 32.03 (4) (a) The state superintendent, annually, shall establish funding limits for programs under this section based on the amount appropriated for the program under s. 20.255 (2) ~~(dm) and (kd)~~, Stats., using the criteria specified under par. (c) 2. The state superintendent shall inform school districts of the funding limits by letter which will accompany application materials.

SECTION 6. PI 32.03 (4) (a) (Note) is repealed.

SECTION 7. PI 32.05 is repealed.

SECTION 8. EFFECTIVE DATE:

The proposed rules contained in this order shall take effect on the first day of the month commencing after the date of publication in the Wisconsin Administrative Register, as provided in s. 227.22 (2) (intro.), Stats.

STATE OF WISCONSIN DEPARTMENT OF ADMINISTRATION DOA 2049 (R 07/2011)	
ADMINISTRATIVE RULES FISCAL ESTIMATE & ECONOMIC IMPACT ANALYSIS	
Type of Estimate and Analysis	
<input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected	
Administrative Rule Chapter, Title and Number	
PI 32, Grants for Alcohol and Other Drug Abuse Programs	
Subject	
2011 Wisconsin Act 32 Changes	
Fund Sources Affected	Chapter 20, Stats. Appropriations Affected
<input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S	
Fiscal Effect of Implementing the Rule	
<input type="checkbox"/> No Fiscal Effect <input checked="" type="checkbox"/> Indeterminate	<input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Decrease Existing Revenues
<input type="checkbox"/> Increase Costs <input type="checkbox"/> Could Absorb Within Agency's Budget <input checked="" type="checkbox"/> Decrease Costs	
The Rule Will Impact the Following (Check All That Apply)	
<input type="checkbox"/> State's Economy <input type="checkbox"/> Local Government Units	<input type="checkbox"/> Specific Businesses/Sectors <input type="checkbox"/> Public Utility Rate Payers
Would Implementation and Compliance Costs Be Greater Than \$20 million?	
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
Policy Problem Addressed by the Rule	
<p>First, the proposed rule change would realign PI 32 with the Wisconsin Statutes. 2011 Wisconsin Act 32 deleted Sections 20.255(2) (dm) and 115.361, Stats. Thus, this rule change would eliminate the references to those statutory sections in the rule.</p> <p>Second, this rule change would eliminate PI 32.05, which provides a detailed description for the Alcohol and Other Drug Abuse (AODA) Program Advisory Council required under s. 115.36(2)(e). The requirements in PI 32.05 are no longer needed because 2011 Wisconsin Act 32 deleted one of the AODA appropriations (s. 20.255(2)(dm), Stats.), which had the majority of the AODA grant funds. Given the reduced grant appropriations, the DPI believes that the size of the AODA Council can be reduced accordingly.</p>	
Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)	
Local: None.	
State: If the size of the AODA Council is reduced, DPI will have to expend fewer resources staffing the AODA Council.	
Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule	
This rule change aligns PI 32 with current statutes. Additionally, the requirements in PI 32.05 are no longer needed because 2011 Wisconsin Act 32 deleted one of the AODA appropriations (s. 20.255 (2) (dm), Stats.), which had the majority of the AODA grant funds. Given the reduced grant appropriations, the DPI believes that the size of the AODA Council can be reduced accordingly.	
Long Range Implications of Implementing the Rule	
The size of the AODA Council will reflect the amount of AODA funding the Council oversees.	
Compare With Approaches Being Used by Federal Government	
No information.	
Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)	
No information.	
Name and Phone Number of Contact Person	
Katie Schumacher, Department of Public Instruction Administrative Rules Coordinator, (608) 267-9127.	

Notice of Rule Making Without Public Hearing

**Public Instruction
CR 13-087**

The State Superintendent of Public Instruction hereby proposes an order to repeal Chapter PI 33, relating to grants for nursing services.

The rules are being adopted under s. 227.16 (2) (b), Stats., which provides that rulemaking does not need to be preceded by notice and public hearing if the proposed rule brings an existing rule into conformity with a statute that has been changed.

Place Where Comments are to be Submitted and Deadline for Submission

As provided in s. 227.16 (2) (b), Stats., there is no requirement that a public hearing be held for this rule because the proposed rule brings an existing rule into conformity with a statute that has been changed.

Analysis by the Department

Statute interpreted

None. 2011 Wisconsin Act 32 eliminated s. 115.28 (47), Stats.

Statutory authority

None.

Explanation of agency authority

The Department of Public Instruction is repealing a rule that no longer has any statutory authority.

Related statute or rule

N/A.

Plain language analysis

This proposed rule change is a technical change that would repeal a rule that no longer has any statutory authority.

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

N/A.

Comparison with rules in adjacent states

N/A.

Summary of factual data and analytical methodologies

N/A.

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

N/A.

Anticipated Costs Incurred by Private Sector

N/A.

Effect on Small Business

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

Agency Contact Person

Katie Schumacher
Budget and Policy Analyst
Wisconsin Department of Public Instruction
katie.schumacher@dpi.wi.gov
(608) 267-9127

Text of Rule

SECTION 1. Chapter PI 33 is repealed.

SECTION 2. EFFECTIVE DATE:

The proposed rules contained in this order shall take effect on the first day of the month commencing after the date of publication in the Wisconsin Administrative Register, as provided in s. 227.22 (2) (intro.), Stats.

STATE OF WISCONSIN DEPARTMENT OF ADMINISTRATION DOA 2049 (R 07/2011)		
ADMINISTRATIVE RULES FISCAL ESTIMATE & ECONOMIC IMPACT ANALYSIS		
Type of Estimate and Analysis		
<input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected		
Administrative Rule Chapter, Title and Number		
PI 33, Grants for Nursing Services		
Subject		
Repeal of PI 33		
Fund Sources Affected		Chapter 20, Stats. Appropriations Affected
<input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S		
Fiscal Effect of Implementing the Rule		
<input checked="" type="checkbox"/> No Fiscal Effect	<input type="checkbox"/> Increase Existing Revenues	<input type="checkbox"/> Increase Costs
<input type="checkbox"/> Indeterminate	<input type="checkbox"/> Decrease Existing Revenues	<input type="checkbox"/> Could Absorb Within Agency's Budget
		<input type="checkbox"/> Decrease Costs
The Rule Will Impact the Following (Check All That Apply)		
<input type="checkbox"/> State's Economy	<input type="checkbox"/> Specific Businesses/Sectors	
<input type="checkbox"/> Local Government Units	<input type="checkbox"/> Public Utility Rate Payers	

Would Implementation and Compliance Costs Be Greater Than \$20 million? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Policy Problem Addressed by the Rule
There is no longer funding or statutory authority for Grants for Nursing Services. Thus, the rule needs to be repealed.
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)
Local: None. Grants for Nursing Services were eliminated in 2011 Act 32; repeal of the rule will have no fiscal effect.
State: No fiscal effect.
Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule
The rule needs to be repealed since there is no longer any statutory authority for the grant program. Otherwise, the rule will not reflect current law.
Long Range Implications of Implementing the Rule
Elimination of the rule will align the DPI Administrative Code with statutes.
Compare With Approaches Being Used by Federal Government
N/A.
Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)
N/A.
Name and Phone Number of Contact Person
Katie Schumacher, Department of Public Instruction Administrative Rules Coordinator, (608) 267–9127.

Notice of Rule Making Without Public Hearing

**Public Instruction
CR 13–088**

The State Superintendent of Public Instruction hereby proposes to amend s. PI 34.35 (1) (c), relating to the definition of immoral conduct.

The rules are being adopted under s. 227.16 (2) (b), Stats., which provides that rulemaking does not need to be preceded by notice and public hearing if the proposed rule brings an existing rule into conformity with a statute that has been changed.

Place Where Comments are to be Submitted and Deadline for Submission

As provided in s. 227.16 (2) (b), Stats., there is no requirement that a public hearing be held for this rule because the proposed rule brings an existing rule into conformity with a statute that has been changed.

Analysis by the Department

Statute interpreted

Section 115.31 (1) (c), Stats.

Statutory authority

Section 115.31 (8), Stats.

Explanation of agency authority

The Department of Public Instruction has authority to promulgate rules to implement and administer s. 115.31, Stats., relating to license or permit revocation, reports, and investigation.

Related statute or rule

N/A.

Plain language analysis

This proposed rule change is a technical change that would modify the ch. PI 34 definition of “immoral conduct” to reflect the statutory definition.

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

N/A.

Comparison with rules in adjacent states

N/A.

Summary of factual data and analytical methodologies

N/A.

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

N/A.

Anticipated Costs Incurred by Private Sector

N/A.

Effect on Small Business

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

Agency Contact Person

Katie Schumacher
Budget and Policy Analyst
Wisconsin Department of Public Instruction
katie.schumacher@dpi.wi.gov
(608) 267–9127

Text of Rule

SECTION 1. PI 34.35 (1) (c) is amended to read:

PI 34.35 (1) (c) “Immoral conduct” ~~means conduct or behavior which is contrary to commonly accepted moral or ethical standards and endangers the health, welfare, safety or education of any pupil~~ has the meaning defined in s. 115.31

~~(1) (c), Stats.~~

SECTION 2. EFFECTIVE DATE:

The proposed rules contained in this order shall take effect on the first day of the month commencing after the date of publication in the Wisconsin Administrative Register, as provided in s. 227.22 (2) (intro.), Stats.

STATE OF WISCONSIN DEPARTMENT OF ADMINISTRATION DOA 2049 (R 07/2011)		
ADMINISTRATIVE RULES FISCAL ESTIMATE & ECONOMIC IMPACT ANALYSIS		
Type of Estimate and Analysis		
<input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected		
Administrative Rule Chapter, Title and Number		
PI 34, Teacher Education Program Approval and Licenses		
Subject		
The Definition of Immoral Conduct		
Fund Sources Affected	Chapter 20, Stats. Appropriations Affected	
<input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S		
Fiscal Effect of Implementing the Rule		
<input checked="" type="checkbox"/> No Fiscal Effect <input type="checkbox"/> Indeterminate	<input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Decrease Existing Revenues	<input type="checkbox"/> Increase Costs <input type="checkbox"/> Could Absorb Within Agency’s Budget <input type="checkbox"/> Decrease Costs
The Rule Will Impact the Following (Check All That Apply)		
<input type="checkbox"/> State’s Economy <input type="checkbox"/> Local Government Units	<input type="checkbox"/> Specific Businesses/Sectors <input type="checkbox"/> Public Utility Rate Payers	
Would Implementation and Compliance Costs Be Greater Than \$20 million?		
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
Policy Problem Addressed by the Rule		
The change in statutory definition, which will be reflected in the rule, was designed to specify that the intentional use of an educational agency’s equipment to download, view, solicit, seek, display or distribute pornographic material was included in the definition of immoral conduct and was conduct for which a WI educator license could be revoked by the State Superintendent.		
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)		
Local: None. The definition of immoral conduct was changed in 2011 Wisconsin Act 84; modification of this rule to reflect that statutory change will have no fiscal effect.		
State: No fiscal effect.		
Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule		
The Legislature intended to clarify what was included in the definition of immoral conduct by specifying that the definition includes the intentional downloading, viewing, or distributing of pornography on an educational agency’s equipment.		
Long Range Implications of Implementing the Rule		
Modification of the rule will align the DPI Administrative Code with statutes.		
Compare With Approaches Being Used by Federal Government		
N/A.		
Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)		
N/A.		
Name and Phone Number of Contact Person		
Katie Schumacher, Department of Public Instruction Administrative Rules Coordinator, (608) 267-9127.		

Notice of Hearing

Safety and Professional Services — Controlled Substances Board EmR1318

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Controlled Substances Board in ss. 961.11 (1) and 961.11 (4m), Wis. Stats., and interpreting s. 961.14, Wis. Stats., the Controlled Substances Board will hold a public hearing at the time and place indicated below to consider emergency rule creating s. CSB 2.36, relating to scheduling controlled substances.

Hearing Information

Date: Monday, November 11, 2013
Time: 9:00 a.m..
Location: 1400 East Washington Avenue
 Room 121A
 Madison, WI

Appearances at the Hearing

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but are urged to submit facts, opinions, and argument in writing as well. Facts, opinions, and argument may also be submitted in writing without a personal appearance by mail addressed to the Department of Safety and Professional Services, Division of Policy Development, P.O. Box 8935, Madison, Wisconsin 53708. Written comments must be received at or before the public hearing to be included in the record of rule-making proceedings.

Place Where Comments are to be Submitted and Deadline for Submission

Comments may be submitted to Sharon Henes, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 1400 East Washington Avenue, Room 151, P.O. Box 8935, Madison, WI 53708-8935, or by email to sharon.henes@wisconsin.gov. Comments must be received at or before the public hearing to be held on **November 11, 2013**, to be included in the record of rule-making proceedings.

Copies of Rule

Copies of this proposed rule are available upon request to Sharon Henes, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708, by email at sharon.henes@wisconsin.gov, or on our website at <http://dsps.wi.gov/Default.aspx?Page=44e541e8-abdd-49da-8fde-046713617e9e>

Finding of Emergency

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

The Brown County District Attorney's office has provided the Controlled Substances Board with information relevant to emergency scheduling and the commencement of a

prosecution concerning a controlled substance analog. UR-144, XLR-11, and AKB48 are pharmacologically similar to Schedule I substances THC and JWH-018. By sharing pharmacological similarities with the Schedule I substances, synthetic cannabinoids pose a risk both to the individual user and other affected individuals. UR-144, XLR-11, and AKB48 are being marketed as "legal" alternatives to marijuana. This characterization (and the reputation as potent herbal intoxicants) has increased their popularity and prevalence.

The Controlled Substances Board finds that scheduling of UR-144, XLR-11, and AKB48 on an emergency basis is necessary to avoid an imminent hazard to the public safety. The substances are not included in any other schedule and no exemption or approval is in effect for the substance under 21 USC 355.

On May 16, 2013, the U.S. Department of Justice Drug Enforcement Administration emergency scheduled UR-144, XLR11, and AKB48 as Schedule I, illegal drugs under the Controlled Substances Act.

Analysis Prepared by the Department

Statutes interpreted

Section 961.14, Wis. Stats.

Statutory authority

Sections 961.11 (1) and 961.11 (4m), Wis. Stats.

Explanation of agency authority

The controlled substances board shall administer this subchapter and may add substances to or delete or reschedule all substances listed in the schedules in ss. 961.14, 961.16, 961.18, 961.20, and 961.22, Stats., pursuant to the rule-making procedures of ch. 227, Stats.

The controlled substances board, by rule and without regard to the requirements of sub. (1m), may schedule a controlled substance analog as a substance in schedule I regardless of whether the substance is substantially similar to a controlled substance in schedule I or II, if the board finds that scheduling of the substance on an emergency basis is necessary to avoid an imminent hazard to the public safety and the substance is not included in any other schedule or no exemption or approval is in effect for the substance under 21 USC 355. Upon receipt of notice under s. 961.25, Stats., the board shall initiate scheduling of the controlled substance analog on an emergency basis under this subsection. The scheduling of a controlled substance analog under this subsection expires one year after the adoption of the scheduling rule. With respect to the finding of an imminent hazard to the public safety, the board shall consider whether the substance has been scheduled on a temporary basis under federal law or factors under sub. (1m) (d), (e), and (f), and may also consider clandestine importation, manufacture or distribution, and, if available, information concerning the other factors under sub. (1m). The board may not promulgate a rule under this subsection until it initiates a rule-making proceeding under subs. (1), (1m), (1r), and (2) with respect to the controlled substance analog. A rule promulgated under this subsection lapses upon the conclusion of the rule-making proceeding initiated under subs. (1), (1m), (1r), and (2) with respect to the substance.

Related statute or rule

Section 961.14, Wis. Stats.

Plain language analysis

This rule schedules three substances commonly known as UR-144, XLR-11, and AKB48 as Schedule I controlled substances.

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

On May 16, 2013, the U.S. Department of Justice Drug Enforcement Administration emergency scheduled UR-144, XLR-11, and AKB48 as Schedule I, illegal drugs under the Controlled Substances Act.

Comparison with rules in adjacent states

Illinois: A review of the Illinois Controlled Substances Act does not indicate scheduling of these three substances.

Iowa: On July 9, 2013, the Iowa Pharmacy Board temporarily classified these three substances as Schedule I controlled substances. The temporary scheduling action by emergency action will remain effective until 60 days following the commencement of the next legislative session, during which time the Iowa Legislature will determine whether to add the substances to the Iowa Controlled Substances Act.

Michigan: These three substances are scheduled in Michigan based upon any other synthetic chemical compound that is a cannabinoid receptor agonist and mimics the pharmacological effect of naturally occurring cannabinoids that is not listed in schedules II through V and is not approved by the federal food and drug administration as a drug.

Minnesota: A review of the Minnesota Controlled Substances Act does not indicate scheduling of these three substances.

Summary of factual data and analytical methodologies

Based upon the Brown County District Attorney's request for emergency scheduling and the federal government's emergency scheduling, the Controlled Substances Board decided to schedule UR-144, XLR-11, and AKB48.

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

This proposed rule schedules three synthetic cannabinoid substances as Schedule I controlled substances which will not have an effect on small business.

Fiscal Estimate

This proposed rule will have no fiscal impact.

Effect on Small Business

These proposed rules do not have an economic impact on small businesses, as defined in s. 227.114 (1), Stats. The Department's Regulatory Review Coordinator may be contacted by email at tom.engels@wisconsin.gov, or by calling (608) 266-8608.

Text of Rule

SECTION 1. CSB 2.36 is created to read:

CSB 2.36 Additions to Schedule 1.

(1) Section 961.14 (4) (ta), Stats., is created to read:

Section 961.14 (4) (ta) AKB48:
1-pentyl-N-(1-adamantyl)-1H-indazole-3-carboxamide.

(2) Section 961.14 (4) (tym), Stats., is created to read:

Section 961.14 (4) (tym) UR-144:
1-pentyl-3-(2,2,3,3-tetramethylcyclopropyl)indole

(3) Section 961.14 (4) (tz), Stats., is created to read:

Section 961.14 (4) (tz) XLR-11:
1-(5-fluoropentyl)-3-(2,2,3,3-tetramethylcyclopropyl)indole

SECTION 2. EFFECTIVE DATE. Pursuant to s. 227.24 (1) (c), Stats., these rules shall take effect upon publication in the official state newspaper. (Effective date was October 13, 2013.)

Notice of Hearing

**Safety and Professional Services —
Joint Board of Professional Geologists,
Hydrologists and Soil Scientists
CR 13-091**

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Joint Board of Professional Geologists, Hydrologists and Soil Scientists in ss. 15.08 (5) (b), 227.11 (2) and 470.03 (2), Stats., and interpreting s. 15.405 (2m), Stats., the Joint Board of Professional Geologists, Hydrologists and Soil Scientists will hold a public hearing at the time and place indicated below to consider an order to amend ss. GHSS 1.01, 1.02, 2.02 (Note), 2.03 (10) (Note), 2.05 (title), 3.02 (Note), 3.06 (10) (Note), 3.05 (title), 4.02 (Note), 4.06 (10) (Note), and 4.05 (title); repeal and recreate s. GHSS 1.05; and create s. GHSS 1.055 and ch. GHSS 6, relating to continuing education requirements for professional geologists, hydrologists and soil scientists.

Hearing Information

Date: Wednesday, November 20, 2013
Time: 9:00 a.m..
Location: 1400 East Washington Avenue
(Enter at 55 North Dickinson St.)
Room 121
Madison, WI

Appearances at the Hearing

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but are urged to submit facts, opinions, and argument in writing as well. Facts, opinions, and argument may also be submitted in writing without a personal appearance by mail addressed to the Department of Safety and Professional Services, Division of Policy Development, P.O. Box 8935, Madison, Wisconsin 53708-8935. Written comments must be received at or before the public hearing to be included in the record of rule-making proceedings.

Place Where Comments are to be Submitted and Deadline for Submission

Comments may be submitted to Jean MacCubbin, Administrative Rules Coordinator, Safety and Professional Services, Division of Policy Development, 1400 East Washington Avenue, Room 151, P.O. Box 8935, Madison, WI 53708-8935, or by email to jean.maccubbin@wisconsin.gov. Comments must be received at or before the public hearing to be held on **November 20, 2013** to be included in the record of rule-making proceedings.

Copies of Rule

Copies of this proposed rule are available upon request to Jean MacCubbin, Department of Safety and Professional

Services, Division of Policy Development, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708–8935, by email at jean.maccubbin@wisconsin.gov or on our website at <http://dsps.wi.gov/Default.aspx?Page=44e541e8-abdd-49d-a-8fde-046713617e9e>.

Analysis Prepared by the Department

Statutes interpreted

Section 15.405 (2m), Stats.

Statutory authority

Sections 15.08 (5) (b), 227.11 (2), and 470.03 (2), Stats.

Explanation of agency authority

The Examining Board of Professional Geologists, Hydrologist and Soil Scientists is established and provided authority as given ch. 470, Stats.

Section 15.08 (5) (b), Stats.: reads “Shall promulgate rules for its own guidance and for the guidance of the trade or profession to which it pertains, and define and enforce professional conduct and unethical practices not inconsistent with the law relating to the particular trade or profession.”

Section 227.11 (2), Stats., reads: “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:...”

Section 470.03 (2), Stats., reads: “Upon the advice of the appropriate section of the examining board, the examining board may promulgate rules that establish continuing education requirements that a person must satisfy to be eligible to renew a license that is issued under this chapter.”

Related statute or rule

Chapters GHSS 1 to 5.

Plain language analysis

This proposed rule-making order creates a new chapter, ch. GHSS 6, for continuing education requirements for licensed professional geologists, professional hydrologists and professional soil scientists within the jurisdiction of the Joint Board of Professional Geologists, Hydrologists and Soil Scientists as permitted in s. 470.03 (2), Stats. A scope statement to create continuing education (CE) requirements was approved and published in 2000; in 2013 the Joint Board convened a group having a representative from each section to work with department staff to create these rules.

The primary focus of this rule is the creation of a new chapter, ch. GHSS 6, Continuing Education. This chapter is drafted to be effective for the biennial renewal period beginning August 2014 and running through the end of July 2016; it does not apply to newly licensed individuals during this first biennial renewal period.

Licensees may accumulate the required 24 CEUs, continuing education units, over the 2-year period through a variety of providers and professional development activities. Also included are definitions pertinent to CE requirements, providers and professional development activities.

Licensees are expected to track their CEUs on a form designed for such purpose, although the submittal of the form

is not required when certifying at time of renewal. Upon a random audit, the selected licensees shall submit such form and associated documentation to verify compliance to ch. GHSS 6.

The rule also recognizes the need for postponements or waivers to the rule for active military service and other specific circumstances. The handling of late renewals and reciprocity are also included in the rule.

SECTIONS 1. and 2. These sections are redrafted to recognize the new chapter and the first biennial renewal period for which the CE rules apply. Various Notes were amended in chs. GHSS 2, 3, and 4, where appropriate, to provide the URL in addition to department mailing address as listed.

SECTION 3. This section is created to provide the options available to licensees who fail to renew and adding that continuing education requirements are now in place.

SECTION 4. This section amends subsection titles in each chapter, chs. GHSS 2 to 4, to clarify that these education requirements are for pre-licensure not continuing education.

SECTION 5. This section comprises the newly created chapter, ch. GHSS 6, Continuing Education.

SECTION 6. This section specifies the date the rules become effective.

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

An Internet-based search of the U.S. Code and Federal Register found that there is no existing or proposed federal regulation relating to continuing education for these professions.

Comparison with rules in adjacent states

An Internet-based search of professional licenses and any requirements for continuing education revealed the following:

Illinois: The state of Illinois licenses professional geologists, but has no continuing education requirements, part 1252 professional geologist licensing act. This state does not license professional hydrologists or professional soil scientists.

Iowa: The state of Iowa licenses groundwater professionals (much like hydrologists), but does not require any continuing education. This state does not license professional geologists or professional soil scientists.

Michigan: The state of Michigan does not license professional geologists, professional hydrologists, or professional soil scientists.

Minnesota: The state of Minnesota licenses and requires 24 (professional development) hours every two years for renewal for licensed geologists and licensed soil scientists. This state does not license professional hydrologists.

Summary of factual data and analytical methodologies

The Joint Board of Professional Geologists, Hydrologists and Soil Scientists authorized one member of each section to contribute to this rule-making project. With staff, they examined models of continuing education from various states and national organizations related to their respective professions, as well as from other regulatory boards aligned with the department.

The comparison information with the rules in adjacent states was obtained directly from administrative rules of those states when available through an Internet-based search. Reviewing rules of the two states having similar licenses and

continuing education requirements, the proposed rules are substantially consistent with the rules in those states.

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

Staff researched fees for various continuing education offerings applicable to the sections, primarily provided or sponsored by UW Madison, School of Engineering Professional Development and determined the following:

Course offerings fees*:

Offering	Min. Hours/Cost	Max. Hours/Cost
Classroom:	1 Hr./ \$49	21 Hrs./ \$1195
Online:	2 Hrs./ \$149	20 Hrs./ \$225

*Note: (local, no travel or lodging included)

Other professional development activities*:

Offering	Min. Hours/Cost	Max. Hours/Cost
Professional Meetings**	4 Hrs./ \$100	40 Hrs./ \$1000

*Note: (local, no travel or lodging included)

**Examples given include Geological Society of America (GSA) national or regional meeting, American Geophysical Union annual meeting, Wisconsin Section of the American Water Resources Association (AWRA) annual meeting, or

associated professional organizations involving section-related topics.

Research was conducted regarding the availability of continuing education credits offered via online courses, trade association sponsored seminars and other means, as well as the costs associated therewith. That data was then compared with the requirements outlined in the proposed rules and based thereon, appears that these rules will have no significant impact on a substantial number of small businesses.

Fiscal Estimate and Economic Impact Analysis

The Fiscal Estimate and Economic Impact Analysis is attached.

Initial Regulatory Flexibility Analysis or Summary

This rule will not have a significant adverse effect on small business.

Environmental Assessment/Statement

Not required.

Agency Contact Person

Jean MacCubbin, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 1400 East Washington Avenue, Room 151, P.O. Box 8935, Madison, Wisconsin 53708; telephone: (608) 266-0955; email at jean.maccubbin@wisconsin.gov; or contact by 711 relay telecommunications.

STATE OF WISCONSIN
DEPARTMENT OF ADMINISTRATION
DOA-2049 (R03/2012)

DIVISION OF EXECUTIVE BUDGET AND FINANCE
101 EAST WILSON STREET, 10TH FLOOR
P.O. BOX 7864
MADISON, WI 53707-7864
FAX: (608) 267-0372

ADMINISTRATIVE RULES

Fiscal Estimate & Economic Impact Analysis

1. Type of Estimate and Analysis

Original Updated Corrected

2. Administrative Rule Chapter, Title and Number

Chs. GHSS 1 to 6, General Requirements and Procedures, and Continuing Education Requirements (Professional Geologists, Professional Hydrologists and Professional Soil Scientists).

3. Subject

Continuing Education Requirements for Professional Geologists, Professional Hydrologists and Professional Soil Scientists.

4. Fund Sources Affected

GPR FED PRO PRS SEG SEG-S

5. Chapter 20, Stats. Appropriations Affected

s. 20.165 (1) (g)

6. Fiscal Effect of Implementing the Rule

No Fiscal Effect Increase Existing Revenues Increase Costs
 Indeterminate Decrease Existing Revenues Could Absorb Within Agency's Budget
 Decrease Cost

7. The Rule Will Impact the Following (Check All That Apply)

State's Economy Specific Businesses/Sectors
 Local Government Units Public Utility Rate Payers
 Small Businesses (if checked, complete Attachment A)

8. Would Implementation and Compliance Costs Be Greater Than \$20 million?

Yes No

9. Policy Problem Addressed by the Rule

Develop and maintain continued competency of licensed Professional Geologists, Professional Hydrologists and Professional Soil Scientists.

10. Summary of the businesses, business sectors, associations representing business, local governmental units, and individuals that may be affected by the proposed rule that were contacted for comments.

Licensed Professional Geologists, Professional Hydrologists and Professional Soil Scientists as well as those who benefit from or contract for their professional expertise.

11. Identify the local governmental units that participated in the development of this EIA.

None known.

12. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)

There is no direct impact on specific businesses, business sectors, public utility ratepayers or local governmental utilities or the state's economy as a whole.

Staff researched fees for various continuing education offerings applicable to the sections, primarily provided or sponsored by UW Madison, School of Engineering Professional Development [SOURCE: <http://epdweb.engr.wisc.edu/index.lasso>] and determined the following:

Course offerings fees*

Offering	Min. Hours/Cost	Max. Hours/Cost
Classroom:	1 Hr./\$49	21 Hrs./\$1195
Online:	2 Hrs./\$149	20 Hrs./\$225

*Note: (local, no travel or lodging included)

Other professional development activities*

Offering	Min. Hours/Cost	Max. Hours/Cost
Professional Meetings**	4 Hrs/\$100	40 Hrs/\$1000

*Note: (local, no travel or lodging included)

**Examples given include Geological Society of America (GSA) national or regional meeting, American Geophysical Union annual meeting, Wisconsin Section of the American Water Resources Association (AWRA) annual meeting, or associated professional organizations involving section-related topics.

Research was conducted regarding the availability of continuing education credits offered via online courses, trade association sponsored seminars and other means, as well as the costs associated therewith. That data was then compared with the requirements outlined in the proposed rules and based thereon, appears that these rules will have no significant impact on a substantial number of small businesses.

13. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

Develop and maintain continued competency of licensed Professional Geologists, Professional Hydrologists and Professional Soil Scientists. The status quo may negatively influence the creditability of maintaining a professional license.

14. Long Range Implications of Implementing the Rule

Industry is constantly changing and new technologies and methodologies are being introduced, as are the professional skills of the workforce. Continuing education for licensed professionals ensures the public the professional competence of the licensees.

15. Compare With Approaches Being Used by Federal Government

The Federal government does not license or mandate continuing education for Professional Geologists, Professional Hydrologists or Professional Soil Scientists.

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

Licensing for professional geologists—The state of Minnesota licenses and requires 24 (professional development) hours every two years for renewal. Illinois licenses professional geologists, but has no continuing education requirements.

Licensing for professional hydrologists—none of the four adjacent states license this profession. The state of Iowa licenses groundwater professionals (much like hydrologists), but does not require any continuing education.

Licensing for professional soil scientists—Of the four adjacent states, only the state of Minnesota licenses and requires 24 (professional development) hours every two years for renewal.

17. Contact Name

Jean MacCubbin

18. Contact Phone Number

(608) 266-0955

This document can be made available in alternate formats to individuals with disabilities upon request.

Notice of Hearing

Safety and Professional Services — Medical Examining Board CR 13-090

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Medical Examining Board in ss. 15.08 (5) (b), 227.11 (2) (a), 448.05 (2), and 448.40 (1), Stats., and interpreting s. 448.05 (2), Stats., the Medical Examining Board will hold a public hearing at the time and place indicated below to consider an order to amend s. Med 1.02 (2), relating to requiring applicants for medical licensure to provide to the Medical Examining Board verified copies of their diplomas.

Hearing Information

Date: Wednesday, November 20, 2013
Time: 9:00 a.m..
Location: 1400 East Washington Avenue
 (Enter at 55 North Dickinson St.)
 Room 121A
 Madison, WI

Appearances at the Hearing

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but are urged to submit facts, opinions, and argument in writing as well. Facts, opinions, and argument may also be submitted in writing without a personal appearance by mail addressed to the Department of Safety and Professional Services, Division of Policy Development, P.O. Box 8935, Madison, Wisconsin 53708. Written comments must be received at or before the public hearing to be included in the record of rule-making proceedings.

Place Where Comments are to be Submitted and Deadline for Submission

Comments may be submitted to Shawn Leatherwood, Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 1400 East Washington Avenue, Room 151, P.O. Box 8935, Madison, WI 53708-8935, or by email to shancethea.leatherwood@wisconsin.gov. Comments must be received at or before the public hearing to be held on **November 20, 2013**, to be included in the record of rule-making proceedings.

Copies of Rule

Copies of this proposed rule are available upon request to Shawn Leatherwood, Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708, by email at shancethea.leatherwood@wisconsin.gov or on our website at <http://dsps.wi.gov/Default.aspx?Page=44e541e8-abdd-49da-8fde-046713617e9e>.

Analysis Prepared by the Department

Statutes interpreted

Section 448.05 (2), Stats.

Statutory authority

Sections 15.08 (5) (b), 227.11 (2) (a), 448.05 (2), and 448.40 (1), Stats.

Explanation of agency authority

The Medical Examining Board (Board), pursuant to ss. 15.08 (5) (b) and 227.11, Stats., has the general power to promulgate rules for guidance within the profession and to interpret the statutes it enforces. Section 448.40 (1), Stats., grants the Board authority to promulgate rules that carry out the purposes of the Medical Practices Act. The Board seeks to interpret a statute that it administers specifically, s. 448.05 (2), Stats., which deals with applicants being required to possess a diploma. Therefore, the Board is both generally and specifically empowered to promulgate the proposed rule.

Related statute or rule

None.

Plain language analysis

The proposed rule seeks to amend Wis. Admin Code s. Med 1.02 (2) by eliminating the requirement that applicants provide a verified photographic copy of their diploma when applying for licensure. The requirement is duplicative and unnecessary since the board receives information regarding graduation directly from medical and osteopathic schools of medicine.

Section 1. amends s. Med 1.02 (2) by deleting the language pertaining to a copy of the applicant's diploma.

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

None.

Comparison with rules in adjacent states

Illinois

Illinois requires an official transcript and diploma or an official transcript and certification of graduation from the medical school. 68 Ill. Adm. Code 1285.70.

Iowa

Iowa requires a copy of the applicant's medical degree and a certification from the medical school. 653 IAC 9.4 (147,148).

Michigan

Michigan requires that an applicant establish that he or she is a graduate of medical school. Mich. Admin. Code R 338.2317.

Minnesota

Minnesota requires an original or certified copy of the diploma from the medical or osteopathic school. Minn. R. 5600.0200 Subp. 2.

Summary of factual data and analytical methodologies

The Medical Examining Board ensures the accuracy, integrity, objectivity, and consistency of data were used in preparing the proposed rule and related analysis.

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

These proposed rules do not have an economic impact on small businesses, as defined in s. 227.114 (1), Stats. The Department's Regulatory Review Coordinator may be contacted by email at greg.gasper@wisconsin.gov, or by calling (608) 266-8608.

Fiscal Estimate and Economic Impact Analysis

The Fiscal Estimate and Economic Impact Analysis are attached.

Initial Regulatory Flexibility Analysis or Summary

None.

Agency Contact Person

Shawn Leatherwood, Rules Coordinator, Department of Safety and Professional Services, Division of Policy

Development, 1400 East Washington Avenue, Room 151, P.O. Box 8935, Madison, Wisconsin 53708; telephone: (608) 261-4438; email: shancethea.leatherwood@wisconsin.gov

STATE OF WISCONSIN
DEPARTMENT OF ADMINISTRATION
DOA-2049 (R03/2012)

DIVISION OF EXECUTIVE BUDGET AND FINANCE
101 EAST WILSON STREET, 10TH FLOOR
P.O. BOX 7864
MADISON, WI 53707-7864
FAX: (608) 267-0372

ADMINISTRATIVE RULES

Fiscal Estimate & Economic Impact Analysis

1. Type of Estimate and Analysis X Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected		
2. Administrative Rule Chapter, Title and Number Section Med 1.02		
3. Subject Diploma Copies		
4. Fund Sources Affected <input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S	5. Chapter 20, Stats. Appropriations Affected	
6. Fiscal Effect of Implementing the Rule X No Fiscal Effect <input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Increase Costs <input type="checkbox"/> Indeterminate <input type="checkbox"/> Decrease Existing Revenues <input type="checkbox"/> Could Absorb Within Agency's Budget <input type="checkbox"/> Decrease Cost		
7. The Rule Will Impact the Following (Check All That Apply) <input type="checkbox"/> State's Economy <input type="checkbox"/> Specific Businesses/Sectors <input type="checkbox"/> Local Government Units <input type="checkbox"/> Public Utility Rate Payers <input type="checkbox"/> Small Businesses (if checked, complete Attachment A)		
8. Would Implementation and Compliance Costs Be Greater Than \$20 million? <input type="checkbox"/> Yes X No		
9. Policy Problem Addressed by the Rule This rule addresses Med 1.02 (2). Currently Med. 1.02 requires applicants for medical licensure to file both documentary evidence from a medical or osteopathic school of medicine and a verified photographic copy of their diploma. Since the necessary information is readily supplied by the medical or osteopathic school, there is no need for applicants for medical licensure to provide a verified photographic copy of their diploma. This proposed rule seeks to remove the requirement to submit to the Medical Examining Board a verified photographic copy of the diploma conferring the medical or osteopathic degree.		
10. Summary of the businesses, business sectors, associations representing business, local governmental units, and individuals that may be affected by the proposed rule that were contacted for comments. This rule will primarily impact applicants for medical licensure. This proposed rule was posted on the Department of Safety and Professional Services website for 14 days in order to solicit comments from the public regarding the rule. No comments were received from the public regarding the rule.		
11. Identify the local governmental units that participated in the development of this EIA. No local governmental units participated in the development of this EIA.		
12. 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) This rule will not have an economic or fiscal impact on specific businesses, business sector, public utility rate payers, local governmental units or the state's economy as a whole.		
13. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule This proposed rule will benefit applicants for medical licensure by relieving them from complying with a duplicate step in the application process.		
14. Long Range Implications of Implementing the Rule The proposed rule will advance the paperless initiative by reducing the use of paper copies.		
15. Compare With Approaches Being Used by Federal Government None.		
16. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)		

Illinois:

Illinois requires an official transcript and diploma or an official transcript and certification of graduation from the medical school. 68 Ill. Adm. Code 1285.70.

Iowa:

Iowa requires a copy of the applicant's medical degree and a certification from the medical school. 653 IAC 9.4 (147,148).

Michigan:

Michigan requires that an applicant establish that he or she is a graduate of medical school. Mich. Admin. Code R 338.2317.

Minnesota:

Minnesota requires an original or certified copy of the diploma from the medical or osteopathic school. Minn. R. 5600.0200 Subp. 2.

17. Contact Name Shawn Leatherwood	18. Contact Phone Number (608) 261-4438
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Submittal of Proposed Rules to Legislature

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

Natural Resources
Fish, Game, etc., Chs. NR 1—
CR 13–052

(DNR # WM–06–13)

Pursuant to s. 227.19, Stats., on October 2, 2013, final draft rules were submitted to the presiding officer of each house of the legislature. The rules revise Chapter NR 10, relating to migratory bird hunting regulations.

This rule was approved by the Governor on September 12, 2013.

Revenue
CR 13–037

On October 10, 2013, the Department of Revenue submitted a proposed rule to the presiding officers of the Senate and Assembly, indicating that Clearinghouse Rule 13–037 is in final draft form. This proposed rule:

- Amends s. Tax 6.50 (4) (b) to be consistent with national unit valuation standards.
- Updates department contact and form references throughout Chapter Tax 6.
- Repeals ss. Tax 15.03 (2) (b) and (c) and 15.05 (5) to reflect the creation of s. 77.25 (14), Stats., by 1985 Wis. Act 39.

The proposed rule was approved by the Governor on October 3, 2013.

Safety and Professional Services
Professional Services, Chs. SPS 1–299
CR 13–047

On October 14, 2013, the Department of Safety and

Professional Services submitted a copy of the rule-making order, CR 13–047, creating s. SPS 34.04 (2) (a) 4. and 5., relating to training of firearms instructors for private security personnel, private detectives, and private investigators or special investigators to the Chief Clerks of the Senate and the Assembly for referral to appropriate standing committees for review under section 227.19 of the Statutes.

The rule was approved by the Governor on October 3, 2013.

Safety and Professional Services —
Examining Board of Architects, Landscape
Architects, Professional Engineers, Designers,
and Land Surveyors
CR 12–039

On October 7, 2013, the Wisconsin Examining Board of Architects, Landscape Architects, Professional Engineers, Designers, and Land Surveyors, submitted a copy of the attached rule-making order to the chief clerk of each house of the legislature for referral to the appropriate standing committee for review under s. 227.19, Stats. The rule repeals s. A–E 9.05 (1) (b) and (6), rennumbers s. A–E 9.03 (1) as 9.03 (1) (a), amends ss. A–E 8.07 (1) and (2), 9.05 (1) (a), and 9.06 (3), and creates s. 9.03 (1) (b), relating to landscape architect licensure and practice.

This rule is not subject to s. 227.185, Stats. The statement of scope for this rule was published in Register No. 664 on April 30, 2011, and was sent to the LRB prior to June 8, 2011, effective date of 2011 Wis. Act 21.

Rule Orders Filed with the Legislative Reference Bureau

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 or (608) 266-7590 for updated information on the effective dates for the listed rule orders.

Employee Trust Funds CR 13-029

The Department of Employee Trust Funds Wisconsin Retirement Board proposes an order to renumber and amend s. ETF 52.02 (4m); to amend ss. ETF 52.02 (2), 52.04 (4), 52.06 (3) (b) to (e), 52.06 (5) (a), (Note), (6) (a), (7) (a),(b), (b) 1. to 3., and (c), 52.07 (3) (b) to (d), (4), 52.08 (3), 52.12 (1) (a) 1., (b), (c), 52.16 (4) (a), (c), 52.28 (2) (a), and to create ss. ETF 52.06 (7) (bm), 52.15, and 52.22 (3), relating to the administration of the Duty Disability Program under s. 40.65, Stats.
Effective 12-1-13.

Public Instruction CR 13-024

The state superintendent of public instruction hereby creates Chapter PI 47, relating to the equivalency process for approving alternative models to evaluate educator practice.
Effective 12-1-13.

Safety and Professional Services *Professional Services, Chs. SPS 1-299* CR 13-030

The Department of Safety and Professional Services proposes an order to amend s. SPS 132.05 (1), related to biennial renewal dates.
Effective 12-1-13.

Safety and Professional Services *Safety, Buildings, and Environment — General Part I, Chs. SPS 301-319* CR 13-042

The Department of Safety and Professional Services

proposes an order:

- to repeal ss. SPS 316.004 (2) Note [2], 316.210 (a) and (c), 316.210 (5), and 316.225 (1);
- to renumber ss. SPS 316.210 (2) (b), 316.210 (6), 316.225 (2), (3) (b), (4) and (5), and 316.230 (5);
- to renumber and amend ss. SPS 316.225 (3) (a), 316.230 (3), 316.230 (4), and 316.511;
- to amend ss. SPS 316.003 (title), 316.004 (1), 316.010, 316.012, 316.090 (title), 316.110, 316.310 (title) and (intro.), 316.314 (title), 316.334 (2) (title), 316.400 (title), 316.450 (title) and (1), 316.620 (title), 316.675, 316.680 (title), 316.700 (1) (intro.) and (3), 316.920 (2) (c), and 316.940 (2) (c) 1. and 2. and (4) (b);
- to repeal and recreate ss. SPS 316.005 Note [2], 316.014, 316.210 (4), 316.220 (1), 316.250, and 316.406; and
- to create ss. SPS 316.003 (5), 316.004 (1) Note, 316.013 Note, 316.210 (6), 316.300 (1) (a) 5., 316.511 (2), and 316.547, relating to electrical construction.
Effective 12-1-13.

Safety and Professional Services — Examining Board of Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors CR 12-053

The Examining Board of Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors proposes an order to repeal ss. A-E 4.06 and 4.08 (7); to renumber ss. A-E 4.07, 4.08 (8), 4.08, 4.09, and 4.08 (2) (b) to amend ss. A-E 4.03 (2) (a) 4, 4.08 (2) (a) and (b), and 4.09 (1) (b); and to repeal and recreate s. A-E 4.05, to create s. A-E 4.09 (2) (am) and (c), relating to requirements for registration as a professional engineer.
Effective 12-1-13.

Safety and Professional Services — Optometry Examining Board CR 13-017

The Optometry Examining Board proposes an order to amend s. Opt 5.02 (4), relating to lens prescription.
Effective 12-1-13.

Rules Published with this Register and Final Regulatory Flexibility Analyses

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

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

Employee Trust Funds CR 12-054

The Department of Employee Trust Funds adopts an order to amend ss. ETF 10.01 (3i), 10.63 (1) (a) to (f), 10.63 (2) and (3), and 40.10 (1), (2), and (3) (e); to repeal and recreate s. ETF 20.015 (1) and (2); and to create s. ETF 10.86, relating to technical and minor substantive changes in existing ETF administrative rules. Effective 11-1-13.

Regulatory Flexibility Analysis

The proposed rule has no effect on small businesses, because only governmental employers and their employees may participate in the benefit programs under ch. 40 of the statutes administered by the Department of Employee Trust Funds.

Comments of Legislative Standing Committees

No comments were reported.

Natural Resources *Fish, Game, etc., Chs. NR 1—* CR 13-021

(DNR # WM-01-13)

The Department of Natural Resources adopts an order to repeal ss. NR 10.001 (23v) and (24), 10.01 (2) (c) 3. to 7., 10.09 (1) (c) 3., and 11.011; to amend ss. NR 10.01 (3) (e), (et) 1., and (ev), 10.101 (2) (b) and (c) (Note), 10.145 (8) (a), 10.15 (2), 10.24 (5), 17.04 (3) (c) (intro.) and (Note), 17.08 (2) (c) and (3) (c) (intro.) and (Note), 45.04 (1) (a) 1., 45.09 (2), and 45.12 (4) (f) 2. a.; to repeal and recreate s. NR 10.01 (4) (a) and (e); and to create ss. NR 10.08 (6), 10.13 (3) (c) 4., 10.24 (10), 17.04 (3) (c) 3., and 17.08 (3) (c) 3., relating to hunting, trapping, closed areas, dog training, and the use of department lands. Effective 11-1-13.

Final Regulatory Flexibility Analysis

These rules, and the legislation which grants the department rule making authority, do not have an effect on the private sector or small businesses. These rules are applicable to individual sportspersons and impose no compliance or reporting requirements for small business, nor are any design or operational standards contained in the rule. Therefore, under s. 227.19 (3m), Stats., a final regulatory flexibility analysis is not required.

Comments by Legislative Review Committees

The rules were reviewed by the Assembly Committee on Natural Resources and Sporting Heritage and reported out of committee on August 9, 2013. These rules were reviewed by the Senate Committee on Natural Resources and reported out

of committee on July 29, 2013. These rules were reviewed by the Joint Committee for the Review of Administrative Rules and reported out of committee on September 13. No hearings were held and the department did not receive comments or requests for modifications.

Natural Resources

Environmental Protection — General, Chs. NR 100— Environmental Protection — Investigation and Remediation of Environmental Contamination, Chs. NR 700—

CR 12-023

(DNR # RR-04-11)

The Department of Natural Resources adopts an order to revise chs. NR 169 and 700 to 750, relating to investigation and remediation of contaminated properties. Effective 11-1-13.

Final Regulatory Flexibility Analysis

The major purpose of this rule making effort is to incorporate requirements set forth by statutes and to address policy changes that have been implemented over the years. Another major change is to streamline and consolidate the rule language so that out-of-date provisions are removed and the current regulatory requirements are easier to understand and comply with.

The one area of these rule revisions that have the potential to impact some small businesses is the proposal to increase the fees set out in ch. NR 749. These fees have not been increased since they were originally promulgated in 1998 and the average increase typically ranges from \$200 to \$300 depending on the type of submittal. The fee increases should not affect most small businesses for several reasons. First, only those persons that possess or control a hazardous substance which is discharged or who causes the discharge must take action to restore the environment. Second, the NR 700 rule series is largely self-implementing. This means that the responsible party typically decides whether or not they want regulatory agency review of the documents they prepare and only pay a fee if DNR assistance is requested. Finally, the fees are often one-time expenditures and generally are only a small percentage of the overall cost for completing a cleanup.

Comments

No public comments were received on the proposed fee increases. Additional information on the potential fiscal impacts of the proposed rule revisions is summarized in the Fiscal Estimate and Economic Impact Analysis.

Safety and Professional Services
Professional Services, Chs. SPS 1–299
CR 13–026

The Department of Safety and Professional Services adopts an order to create ch. SPS 50 and to amend ss. SPS 60.01, 61.02 (1) (a), (2) (a), (3) (a) and (4) (a), 62.10, 65.01, 65.02 (1), 65.07, and 65.12 (1) (e), (h), and (i) 6., relating to barbers and to barbering and cosmetology schools and instructors, and affecting small business. Effective 11–1–13.

Regulatory Flexibility Analysis

These rules do not have an economic impact on small businesses, as defined in section 227.114 (1) of the Statutes.

Comments

No comments were reported.

Safety and Professional Services —
Pharmacy Examining Board
CR 13–018

The Pharmacy Examining Board adopts an order to amend s. Phar 7.01 (1) (e), relating to delivery of prescription drugs. Effective 11–1–13.

Regulatory Flexibility Analysis

Delivery of prescriptions is already allowed by rule. The location of the delivery will not have an impact on small business. This rule change will not have an effect on small business.

Comments of Legislative Standing Committees

No comments were reported.

Sections Affected by Rule Revisions and Corrections

The following administrative code sections had rule revisions and corrections take place in **October 2013**, and will be effective as indicated in the history note for each particular section. For additional information, contact the Legislative Reference Bureau at (608) 266-7590.

Revisions

Employee Trust Funds

Ch. ETF 10

ETF 10.01 (3i)

ETF 10.63 (1) (a) to (f), (2), (3)

Ch. ETF 20

ETF 20.015 (title), (1), (2)

Ch. ETF 40

ETF 40.10 (1) (intro.), (a), (b), (2) (intro.), (3) (e)

Natural Resources

Ch. NR 10

NR 10.001 (23v), (24)

NR 10.01 (2) (c) 3. to 7., (3) (e), (et) 1., (ev)

NR 10.08 (6)

NR 10.09 (1) (c) 3.

NR 10.101 (2) (b), (c) (Note)

NR 10.13 (3) (c) 4.

NR 10.145 (8) (a)

NR 10.15 (2)

NR 10.24 (5), (10)

Ch. NR 11

NR 11.011

Ch. NR 17

NR 17.04 (3) (c) (intro.), 3., (Note)

NR 17.08 (2) (c), (3) (c) (intro.), 3., (Note)

Ch. NR 45

NR 45.04 (1) (a) 1.

NR 45.12 (4) (f) 2. a.

Ch. NR 169

NR 169.05 (12m), (Note), (16g), (16r), (Note), (29e), (Notes), (29m), (Notes), (29s), (Note)

NR 169.11 (1) (c) 9., (Note)

NR 169.13 (2) (f) 3., (Notes), (3) (a) 6.

NR 169.15 (1), (Note), (2)

NR 169.19 (4) (c)

NR 169.23 (9) (b) 1, (Note)

Ch. NR 700

NR 700.01 (1), (2), (Note)

NR 700.02 (1), (2), (Note), (2m), (3), (3m), (5) to (6), (Note)

NR 700.03 (intro.), (1), (1m), (1e), (note), (1s), (Note), (2) (a), (3m), (Note), (4m), (Note), (6), (6m), (Note), (11m), (Note), (17), (27), (Note), (28) (Note), (28m) (Note), (30g), (Note), (30r), (Note), (33m), (Note), (34m), (36), (Note), (39m), (43), (Note), (43g), (43r), (Note), (45e), (45m), (46m), (48), (49g),

(49r), (Note), (51) (intro.) to (c), (52m), (55m), (59m), (60), (60m), (62m), (64g), (64r), (Note), (66) (Note), (66p), (Note), (66s), (66w), (Note), (66y)

NR 700.05 (1), (2)

NR 700.07

NR 700.08

NR 700.09

NR 700.10

NR 700.11 (title), (intro.), (1) (a), (Notes), (1) (b) to (f), (Notes), (2), (3) (title), (intro.), (3) (a) to (d), (Notes), (3g), (Notes), (3r), (Note), (4)

NR 700.13 (1), (1m), (Note), (2), (3)

Ch. NR 706

NR 706.01

NR 706.02 (2), (Note), (3)

NR 706.03 (1), (Note), (3), (Note), (5) (Note), (7), (Note)

NR 706.05 (title), (1) (a), (Note), (b), (Note), (bm), (Note), (c) (intro.), 3., 3m., 3m. (Note), 11., (2)

NR 706.07 (intro.), (1) (title), (b) to (d), (2) (b) 1., (3)

NR 706.11 (title), (1), (3m), (Note), (4)

NR 706.13

NR 706.15

NR 706.17

Ch. NR 708

NR 708.01

NR 708.02 (1), (2) (Note), (2r)

NR 708.03 (intro.), (1), (2), (Note)

NR 708.05 (3) (b) 2., 4. (Note), (5) (b), (6) (c) 3.

NR 708.09 (2) (intro.), (a), (3), (Note)

NR 708.11 (1) (a), (Note), (b), (2) (d), (4) (b)

NR 708.15 (1), (2), (3) (b), (3k)

NR 708.17

Ch. NR 710

Entire Chapter

Ch. NR 712

NR 712.01

NR 712.02 (2) to (4)

NR 712.03 (1), (Note)

NR 712.05 (1)

NR 712.07 (1), (Note)

NR 712.09 (2), (3) (b)

NR 712.11 (1) (d), (f), (2) (b)

Ch. NR 714

Entire Chapter

Ch. NR 716

NR 716.01, (Note)

NR 716.02 (1) (a) to (d), (2), (Note)

NR 716.03 (2), (5), (8), (Note), (8m), (9), (Note), (10), (Note)

NR 716.05 (1), (2) (Note)

NR 716.07 (8) (a) to (e), (12)

NR 716.09 (1), (Note), (2) (a), (Note), (f), (g), (3) (b), (d) (Note)

NR 716.11 (3) (c), (d), (Notes), (5) (e) to (h)

NR 716.13

NR 716.14

NR 716.15

NR 716.17 (4)

Ch. NR 718

NR 718 (title)

NR 718.01, (Note)

NR 718.01 (1) (a) 1., 2., (Note), (b) 1., 2.

NR 718.03 (5), (8), (Note)

NR 718.05 (2) (f), (h) 5., 7., (i) 5., (4) (b)

NR 718.09 (4) (b) 2., 5., (8) (b) 1., 2., (c) 2., (d) 3., (e) (title), 1. to 5.

NR 718.11

NR 718.12

NR 718.13

NR 718.14

NR 718.15, (Note)

Ch. NR 720

NR 720.01

NR 720.02 (1) (intro.), (a), (Note), (b), (e), (Note), (1m), (Note), (3), (5) (Note)

NR 720.03 (1m), (Note), (3m), (Note), (4), (Note), (6) (Note), (8) to (12m), (14) to (16)

NR 720.05 (1) (title), (b), (c), (2), (3) (title), (intro.), (4), (Note), (5), (Notes)

NR 720.07 (title), (1), (c) 3. (Note), 4., (2) (b), (Notes), (d) 2., (3), (Notes)

NR 720.08

NR 720.09

NR 720.10

NR 720.11

NR 720.12

NR 720.13

NR 720.19

Ch. NR 722

NR 722.01

NR 722.02 (1), (2), (Note), (2m), (3), (Note), (3m), (Note), (4), (Note)

NR 722.03

NR 722.05 (2) (b), (c), (4), (5) (Note)

NR 722.07 (2) (Note), (3) (a), (Note), (am), (b), (4) (a) (intro.), 3., 4., (b), (5) (a) (Note), (b), (c)

NR 722.09 (2) (a) (Note), (b), (d), (e) (2), (2m), (Note), (4) (a) 1., (b) 3. (Note), (5)

NR 722.11 (3)

NR 722.13 (1), (2) (e) 1., 3., 7.

NR 722.15 (2) (d), (e), (Note), (3)

NR 722.17

Ch. NR 724

NR 724.01, (Note)

NR 724.02 (1) (intro.), (a), (bm), (Note), (2), (Note), (3), (4)

NR 724.03

NR 724.05 (1), (2) (title), (intro.), (b), (Note), (e) 2., (Note)

NR 724.09 (8)

NR 724.11 (6) (d)

NR 724.13 (1) (a) to (d), (2) (intro.), (a), (e) to (n), (3) (Note), (a) to (f), (4) (title), (c)

NR 724.17 (3), (3m), (4) (a), (Note), (c)

NR 724.19 (title), (1), (2)

Ch. NR 725

Entire Chapter

Ch. NR 726

Entire Chapter

Ch. NR 727

Entire Chapter

Ch. NR 728

NR 728 (title)

NR 728.01

NR 728.02

NR 728.03 (1), (3), (Note)

NR 728.05

NR 728.06

NR 728.065

NR 728.07 (title), (1), (2), (intro.), (b), (2) (bm), (c), (d), (f), (g)

NR 728.09 (1m), (3) (Note)

NR 728.10

Ch. NR 734

NR 734.01

NR 734.02

NR 734.03 (2), (4)

NR 734.05 (2), (3), (4) (Note)

NR 734.13 (title), (1) (f)

NR 734.15 (5) (g)

NR 734.21 (4)

Ch. NR 736

NR 736 (title)

NR 736.01

NR 736.02, (Note)

NR 736.03 (1), (5) to (7m)

MR 736.05 (1) (intro.), (2), (3) (intro.)

NR 736.07 (3)

NR 736.09 (1), (2) (intro.), (3), (5)

NR 736.15 (2) (a)

Ch. NR 738

NR 738.01, (Note)

NR 738.02, (Note)

NR 738.03 (4) (intro.) to (d), (5g), (Note), (5r), (Note), (6m), (Note), (9), (Note)

NR 738.04

NR 738.045

NR 738.06 (1) (a) to (c), (im), (Note), (2) (d)

NR 738.07

NR 738.08

NR 738.11 (1)

NR 738.09

NR 738.10

NR 738.11

NR 738.12

NR 738.13

NR 738.14

Ch. NR 746

Entire Chapter

Ch. NR 749

NR 749.01

NR 749.02
 NR 749.04 (1) (Note), Table 1
 NR 749.50
Ch. NR 750
 NR 750.01
 NR 750.03 (2) to (10)
 NR 750.05 (1), (Note), (2) (a) 1. to 3., (c), (4), (5)
 NR 750.07 (1) (a), (e), (f), (3) (a), (b), (6), (7)
 NR 750.09 (intro.), (2), (4), (5)

Pharmacy Examining Board

Ch. Phar 7
 Phar 7.01 (1) (e)

Safety and Professional Services

Ch. SPS 50
 Entire Chapter
Ch. SPS 60
 SPS 60.01
Ch. SPS 61
 SPS 61.02 (1) (a), (2) (a), (3) (a), (4) (a)
Ch. SPS 62
 SPS 62.10
Ch. SPS 65
 SPS 65.01
 SPS 65.02 (1)
 SPS 65.07
 SPS 65.12 (1) (e), (h), (i) 6.

Editorial Corrections

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

Agriculture, Trade and Consumer Protection

Ch. ATCP 92
 Entire Chapter (page numbers changed)
Ch. ATCP 93
 Entire Chapter (renumbered from SPS 310)
 ATCP 93.1605 (renumbered from SPS 302.43)
Ch. ATCP 94
 Entire Chapter (renumbered from SPS 348)

Ch. NR 720
 NR 720.10 (1) (Note)
Ch. NR 727
 NR 727.11 (3) (b)
Ch. NR 738
 NR 738.02 (Note)
 NR 738.03 (9), (Note)
Ch. NR 746
 Appendix (page numbers changed)
Ch. NR 747
 Entire Chapter (renumbered from SPS 347)
Ch. NR 811
 NR 811.12 (5) (d) 1., 4., 5., 7., 9.
 NR 811.27 (1) (a)

Employee Trust Funds

Ch. ETF 10
 ETF 10.01 (7)
 ETF 10.63 (1) (a) to (f), (3)
Ch. ETF 20
 ETF 20.17 (3) (b)
 ETF 20.19 (6) (b) (Note)

Public Service Commission

Ch. PSC 135
 PSC 135.735 (cw)

Financial Institutions — Division of Banking

Ch. DFI–Bkg 60
 Entire Chapter (renumbered from SPS 5)

Real Estate Examining Board

Ch. REEB 25
 REEB 25.03 (3) (q) 4.
 REEB 25.035 (2) (f) 1.

Natural Resources

Ch. NR 661
 NR 661.04 (2) (j)
Ch. NR 679
 NR 679.01 (intro.), (1)
 NR 679.22 (intro.)
 NR 679.45 (intro.)
 NR 679.54 (intro.)
 NR 679.64 (intro.)
Ch. NR 712
 NR 712.11 (1) (f)
Ch. NR 718
 NR 718.01
Ch. NR 712
 NR 712.03 (1) (Note)

Safety and Professional Services

Ch. SPS 3
 Appendix
Ch. SPS 5
 Entire Chapter (renumbered DFI–Bkg 60)
Ch. SPS 302
 Subchapter IV (title), (note)
 SPS 302.43 (renumbered ATCP 93.1605)
 SPS 302.52 (7)
 SPS 302.645 (1) (b), (Note), (2) (b)
 SPS 302.67 (1) (a) (Note)
Ch. SPS 305
 SPS 305.003 (50) (Note)
 SPS 305.01 (1) (Note), (4) (i) (Note)

SPS 305.02 Table (Note)
SPS 305.06 Table, (Note)
SPS 305.80 (1) (a), (b) 5., (2) (d), (4) (b), (5) (c) 2.
SPS 305.81 (1) (a), (2) (c), (4) (c) 1.
SPS 305.82 (1) (intro.)
SPS 305.84 (1) (intro.), (a), (6) (b) 2.
SPS 305.85 (1) (intro.), (5) (e), (Note), (6) (b) 2.
SPS 305.86 (1) (intro.), (a), (b), (5) (f), (m)
SPS 305.87 (1) (intro.), (a), (b)
SPS 305.88 (1) (intro.)
SPS 305.89 (1) (a), (b), (d), (3) (a)

Appendix
Ch. SPS 310
Entire Chapter (renumbered ATCP 93)
Ch. SPS 346
Entire Chapter (removed, merges into NR 746)
Appendix
Ch. SPS 347
Entire Chapter (renumbered NR 747)
Appendix
Ch. SPS 348
Entire Chapter (renumbered ATCP 94)

Executive Orders

The following are recent Executive Orders issued by the Governor.

Executive Order 114. Relating to a Proclamation Declaring a State of Emergency in Response to a Transportation Emergency in Brown County. **(September 27, 2013)**

Executive Order 115. Relating to a Proclamation that the Flag of the United States and the Flag of the State of Wisconsin be Flown at Half-Staff as a Mark of Respect for the Firefighters of this State Who Have Given Their Lives in the Line of Duty. **(October 3, 2013)**

Executive Order 116. Relating to a Proclamation that the Flag of the United States and the Flag of the State of Wisconsin may be Flown at Half-Staff at Hamilton High School as a Mark of Respect for Lance Corporal Jeremiah M. Collins, Jr. of the United States Marine Corps Who Lost His Life While Serving His Country During Operation Enduring Freedom—Afghanistan. **(October 10, 2013)**

Executive Order 117. Relating to a Special Session of the Legislature. **(October 10, 2013)**

Executive Order 118. Relating to a Special Election for the Eighty-Second Assembly District. **(October 15, 2013)**

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