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Notice to Subscribers Inside!

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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.

Direct questions on Internet publication to:

Bruce Hoesly (608) 266−7590, bruce.hoesly@legis.wi.gov

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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 (2)

1. 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**
Extension Through:	**March 27, 2014**

2. EmR1321 — The Department of Administration hereby adopts an order to repeal **section Adm 2.14 (2) (vr) c.**; to renumber and amend section **Adm 2.14 (2) (v) 9. a. and b.**; to amend **sections Adm 2.02 (1) (a), 2.04 (1), 2.04 (2), (3), (5), and (7), 2.07 (2), 2.08 (1) and (1) (d), 2.11, 2.14 (2), (2) (v), (2) (vm) and (2) (vm) 5.**; and to create **sections Adm 2.03 (3m), (3r) and (6m), 2.04 (1m), (2m), (2r), (2z), (9), and (10), and 2.14 (2) (vm) and (2) (vm) 5.**

The statement of scope for this rule, SS 131−13, was approved by the Governor on October 8, 2013, and published in Register No. 694 on October 31, 2013, and approved by Department of Administration Secretary Mike Huebsch on November 13, 2013. This emergency rule was approved by the Governor on November 21, 2013.

Finding of Emergency

Since 1979 the legislature has vested the department of administration with the responsibility and authority to manage various state buildings and grounds, including those of the Wisconsin state capitol. S. 16.84 (1), Stats. 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. s. 16.845, Stats., and s. Adm 2.04.

Each year, the Wisconsin state capitol police issue nearly 500 permits for the use of various state facilities. Permits are used for a variety of purposes, whether political, non−political, charitable, or commercial. Permits are issued regardless of political party, affiliation, or content. Permits are given to any person free of charge.

Occupation of the capitol rotunda and other areas has caused disruptions to the properly permitted events and normal government 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 person or persons, and the state cannot allow any person or persons to occupy the capitol in disregard of the rights of permit holders, public employees, or visitors. It is imperative that the

department gain compliance in order to protect the public safety and welfare.

On October 24, 2013, a lawsuit was dismissed based upon a stipulation of and settlement agreement between the parties. The department is obligated under the settlement agreement to advance certain changes in procedure. The department seeks to fulfill its obligations in a timely manner, which is not possible without engaging in the emergency rule process.

Filed with LRB:	**November 26, 2013**
Publication Date:	**November 27, 2013**
Effective Dates:	**November 27, 2013 through April 25, 2014**
Hearing Date:	**February 21, 2014**

Agriculture, Trade and Consumer Protection (5)

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 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**

4. EmR1322 — 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) (f)**, relating to the quarantine of Dane County for the emerald ash borer.

This emergency rule was approved by the Governor on December 10, 2013.

The blanket scope for this rule, SS 141−13, was approved by the Governor on October 30, 2013 published in register No. 695 on November 14, 2013, and approved by the Board of Agriculture, Trade & Consumer Protection on December 10, 2013.

Finding of Emergency

The United States Department of Agriculture — Animal and Plant Health Inspection Service ("APHIS") positively identified Emerald Ash Borer ("EAB") in Madison, Dane County on November 22, 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 Dane 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 this county 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:	**December 17, 2013**
Publication Date:	**December 18, 2013**
Effective Dates:	**December 18, 2013 through May 16, 2014**
Hearing Date:	**January 13, 2014**

5. EmR1325 — The Wisconsin Department of Agriculture, Trade and Consumer Protection adopts the following emergency rule to repeal **sections ATCP 136.02 (4) (d) and 136.10 (2) (c), (3) (a) 2., and (b) 4.**, and to amend **sections ATCP 136.02 (4) (g) (Note), (5), (7), (8) (a), 136.08 (1), (7) (Note), and 136.12 (1) (b) (Note) and (2) (Note)**, relating to mobile air conditioners, reclaiming or recycling refrigerant.

This emergency rule was approved by the Governor on December 23, 2013.

The scope statement for this rule, SS 122−13, was approved by the Governor on September 20, 2013 published in register No. 694 on October 14, 2013, and approved by the Board of Agriculture, Trade & Consumer Protection on November 13, 2013.

Finding of Emergency

In Wisconsin, businesses that repair mobile air conditioners must register with the department and pay an annual registration fee of $120 for each registered location. In addition, each technician working on mobile air conditioners at these businesses must attend a DATCP−approved training course and pass an exam.

A recent statutory change harmonized Wisconsin's state mobile air conditioner law with federal law, and Wisconsin's unique training course content is no longer applicable.

The registration year begins on March 1 of each year. By that date, all mobile air conditioning businesses and technicians must be registered with the department or pay a surcharge fee.

DATCP has determined that it has sufficient alternative revenue sources to fund the mobile air conditioning program and is undergoing rule−making to permanently eliminate the $120 registration fee. However, the rule−making will not be effective for the upcoming registration year that begins March 1, 2014. The department has also determined that its technician training requirements can be modified due to recent changes in state statute that harmonize Wisconsin law with federal law. Technicians who complete the federally approved training course will now meet Wisconsin's training requirement.

This temporary emergency rule is necessary to protect the welfare of the small businesses that would otherwise pay the registration fee. In addition, the emergency rule is needed to protect the welfare of small businesses and their employees by eliminating an unnecessary training requirement.

Filed with LRB:	**December 27, 2013**
Publication Date:	**December 31, 2013**
Effective Dates:	**December 31, 2013 through May 29, 2014**

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**
Extension Through:	**February 7, 2014**

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**
Extension Through:	**March 8, 2014**

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 (6)

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, 2103.

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**

4. EmR1319 (DNR # WM−22−13(E)) — The Wisconsin Natural Resources Board proposes an order to amend **sections NR 10.275 (intro.) and 45.09 (1)** and to create **sections NR 10.13 (Note) and 10.275**, relating to hunting and trapping in state parks.

This rule was approved by the Governor on October 31, 2013.

The statement of scope for this emergency rule, SS 083−13, was approved by the Governor on July 15, 2013, published in Register No. 691 on July 31, 2013 and approved by the Natural Resources Board on August 14, 2013.

Finding of Emergency

The department finds that putting this rule into effect prior to the time it would take effect using the permanent rule process is necessary to protect the public safety and welfare. By restricting gun and archery hunting to certain areas, and trapping to certain areas and methods, this rule will prevent those activities in locations where they may jeopardize the safety and welfare of visitors to the Wisconsin State Park System.

Filed with LRB:	**November 7, 2013**
Publication Date:	**November 15, 2013**
Effective Dates:	**November 15, 2013 through April 13, 2014**

5. EmR1320 (DNR # FH−27−13(E)) — The Wisconsin Natural Resources Board proposes an order to create **Chapter NR 85**, relating to development of a competitive grant program for cities, villages, towns, counties, federally recognized Indian tribes or bands located in this state, and fish farms in order to increase the capacity to raise walleye for stocking in Wisconsin waters.

This rule was approved by the Governor on November 8, 2013.

The statement of scope for this emergency rule, SS 104−13, was approved by the Governor on August 12, 2013, published in Register No. 692 on September 1, 2013 (August 31, 2013), and approved by the Natural Resources Board on September 25, 2013.

Finding of Emergency — Exemption

2013 Wisconsin Act 20, the 2013−15 state budget, included the following nonstatutory language: The department of natural resources may promulgate emergency rules under section 227.24 of the statutes implementing sections 29.739 and 29.740 of the statutes, as created by this act. Notwithstanding section 227.24 (1) (c) and (2) of the statutes, emergency rules promulgated for walleye population maintenance and enhancement grants remain in effect until June 30, 2016, or the date on which permanent rules take effect, whichever is sooner. Notwithstanding section 227.24 (1) (a) and (3) of the statutes, the department is not required to provide evidence that promulgating this rule as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under this subsection.

Filed with LRB:	**November 14, 2013**
Publication Date:	**November 21, 2013**
Effective Dates:	**November 21, 2013 through June 30, 2016, or the date on which permanent rules take effect, whichever is sooner.**
Hearing Date:	**December 12, 2013 and December 19, 2013**

6. EmR1401 (DNR # FH−26−13(E)) — The Wisconsin Natural Resources Board proposes an order to amend **sections NR 20.20 (73) (n) 4. and 25.06 (1) (a)**, Wis. Adm. Code, relating to lake trout harvest limits in Lake Superior.

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

The statement of scope for this rule, SS 108−13, was approved by the Governor on August 13, 2013, published in Register No. 692 on August 31, 2013, and approved by the Natural Resources Board on September 25, 2013.

Finding of Emergency

Pursuant to s. 227.4, Stats., the department finds that an emergency exists and that this rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. The welfare of state−licensed commercial fishers, tribal commercial fishers, recreational anglers, and associated businesses is threatened by a decline in the lake trout population in the Apostle Islands vicinity of Lake Superior. The continued, persistent decline in lake trout population abundances and predicted further declines necessitate the current reductions in order to ensure a sustainable lake trout fishery over the long−term. Lake trout harvest limits were negotiated in October 2013 among the Department of Natural Resources and the Red Cliff and Bad River Bands of Lake Superior Chippewa and those changes must be ordered through administrative code. This emergency rule is needed to preserve the public welfare.

Filed with LRB:	**January 14, 2014**
Publication Date:	**January 13, 2014**
Effective Dates:	**January 13, 2014 through June 11, 2014**

Public Instruction

EmR1324 — The State Superintendent of Public Instruction hereby proposes to amend **sections PI 5.02 (6)**

and (11m), 5.035 (6), and 5.04, relating to high school equivalency diplomas and certificates of general educational development.

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.

The scope statement for this rule, SS 093−13, was published in Register No. 692, on August 14, 2013, and approved by State Superintendent Tony Evers on August 27, 2013.

Finding of Emergency

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

The number of subtests and the passing scores for the General Educational Development (GED) Test will be changing in January 2014 when a new test is implemented by the GED Testing Service.

Unless the rule is changed to reflect these new subtests and passing scores, the Department may be prevented from issuing credentials for test takers who pass the GED Test because the required passing scores will be incorrect.

Filed with LRB:	**December 27, 2013**
Publication Date:	**December 27, 2013**
Effective Dates:	**December 27, 2013 through May 25, 2014**
Hearing Date:	**February 24, 2014**

Revenue

EmR1323 — The Wisconsin Department of Revenue hereby adopts an emergency rule interpreting s. 77.58 (1) (a) and (5), Stats., and amending **section Tax 11.93**, relating to sales tax filing frequency.

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

The scope statement for this rule, SS 100−13, was approved by the Governor on August 2, 2013, published in Register No. 692 on August 31, 2013, and approved by the Secretary of Revenue on September 10, 2013.

Finding of Emergency

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

Section 77.58 (1), Stats., provides that retailers must file sales tax returns quarterly, except as provided in s. 77.58 (1) (a) and (b), Stats., which allows for sales tax returns to be filed monthly.

Section 77.58 (5), Stats., provides that the department may require returns and payments on the amount of taxes for other than a quarterly period if it deems it necessary to ensure payment to or facilitate the collection by the state of the amount of taxes. The department has provided for annual sales tax returns by rule in s. Tax 11.93 (1) for retailers that have an annual tax liability of $300 or less.

Because 2013 Wis. Act 20 doubles the threshold upon which a monthly sales tax return is required to be filed ($600 to $1200), s. Tax 11.93 (1) should also be changed to reflect a similar increase in the threshold upon which an annual sales tax return can be filed.

As the statutory change to the monthly filing standard goes into effect on January 1, 2014, the corresponding change to the annual filing standard in s. Tax 11.93 (1) should also go into effect on January 1, 2014. There is insufficient time for the permanent rule to be effective on January 1, 2014.

Filed with LRB:	**December 19, 2013**
Publication Date:	**January 1, 2014**
Effective Dates:	**January 1, 2014 through May 30, 2014**
Hearing Date:	**January 27, 2014**

Safety and Professional Services (2)

Professional Services, Chs. SPS 1—299

1. 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**
Extension Through:	**March 14, 2014**

2. 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**
Extension Through:	**March 9, 2014**

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

Agriculture, Trade and Consumer Protection

SS 005−14

This statement of scope was approved by the governor on January 14, 2014.

Rule No.

Chapter ATCP 134 (revise).

Relating to

Residential rental practices.

Rule Type

Permanent

1. Description of the Objective of the Rule

This proposed rule will modify current rules related to trade practices in residential rental transactions, ch. ATCP 134. Because of recent changes to ch. 704, Stats. (Landlord and Tenant) by 2011 Act 143 and 2013 Act 76, there are now some provisions of ch. ATCP 134 that are inconsistent with ch. 704, Stats.

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

Ch. ATCP 134 was first adopted (as Ag. 134) in 1980. DATCP made some revisions to the rule in 1998.

Chapter ATCP 134 prescribes requirements for earnest money, security deposits, and lease provisions. It also prohibits various practices and rental agreement provisions, limits the landlord's ability to enter the premises without notice, and requires landlords to make certain disclosures (for example, uncorrected building code violations of which the landlord is aware).

Chapter ATCP 134 regulates residential rental transactions and does not regulate commercial or agricultural rental practices. Chapter 704, Stats., governs relationships between landlords and tenants and includes all rental arrangements – not just residential. DATCP does not administer ch. 704, Stats. With the passage of 2011 Act 143 and 2013 Act 76, there are some sections of ATCP 134 that conflict with the recent revisions to the statute.

DATCP initiated rulemaking on ATCP 134 after the passage of 2011 Act 143 (*see* Rules Clearinghouse #13−02). However, DATCP withdrew that rule proposal when 2013 Act 76 was enacted. Act 76 made a few additional changes to ch. 704, Stats. With this scope statement, DATCP intends to restart the rulemaking process to make sure that the final rule is consistent with both acts.

Proposed policies

DATCP proposes only limited changes to the rule as necessary to resolve inconsistencies with recently revised ch. 704, Stats.

Policy alternatives

Do nothing. If the department does not revise the rule, it could be confusing to both rental property owners and tenants because the existing rule is inconsistent with new statutory provisions.

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

Sections 93.07 (1) and 100.20 (2) (a), and 704.95, Stats.

Section 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.

Section 100.20 (2) (a).

The department, after public hearing, may issue general orders forbidding methods of competition in business or trade practices in business which are determined by the department to be unfair. The department, after public hearing, may issue general orders prescribing methods of competition in business or trade practices in business which are determined by the department to be fair.

Section 704.95 Practices regulated by the department of agriculture, trade and consumer protection (as amended by Act 76).

Practices in violation of s. 704.28 or 704.44 may also constitute unfair methods of competition or unfair trade practices under s. 100.20. However, the department of agriculture, trade and consumer protection may not issue an order or promulgate a rule under s. 100.20 that changes any right or duty arising under 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 existing rule affects residential rental property owners, managers and tenants.

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 law does not generally regulate landlord and tenant relationships. The Federal Fair Housing Act of 1968, however, does prohibit a landlord from discriminating because of a renter's race, sex, national origin, or religion.

Many states, including all of Wisconsin's neighbors, have statutes or regulations that regulate landlord and tenant relationships.

7. Anticipated Economic Impact

DATCP expects the proposed rule to have no economic impact statewide and locally. DATCP proposes to make relatively minor changes to existing rule to bring the existing rule into conformity with recent statutory changes.

Contact Person

Kevin LeRoy, Program and Planning Analyst, DATCP; Phone (608) 224−4928

Agriculture, Trade and Consumer Protection

SS 006−14

This statement of scope was approved by the governor on January 14, 2014.

Rule No.

Chapter ATCP 104 (repeal).

Relating to

Leaf tobacco, buying and selling.

Rule Type

Permanent

1. Description of the Objective of the Rule

DATCP is proposing to repeal Chapter ATCP 104, which regulates transactions between tobacco growers and the buyers who purchase their product.

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

Ch. ATCP 104 prohibits leaf tobacco buyers from engaging in certain practices:

- Attempting to induce another tobacco buyer to engage in specific activities that would artificially manipulate the market price for tobacco.
- Refusing to negotiate with any grower for the purchase of tobacco because such tobacco was previously graded or submitted for grade.
- Falsely representing in negotiations with a grower that any particular lot or crop of tobacco was purchased at less than the price actually paid, or that another tobacco buyer has or will cease buying tobacco.
- Purchasing tobacco under any contract which does not include a specific time within which delivery and payment are to be made.
- Giving or offering to give any grower any secret or separately stated bonus, commission, payment or other consideration.

Chapter ATCP 104 also prohibits tobacco growers or sellers from soliciting or receiving any secret or separately stated bonus, commission, payment or other consideration.

This rule was initially promulgated in the 1950s when tobacco farming was a prominent business in Wisconsin, and much of the crop was sold in cash markets at the conclusion of the growing season. This rule was necessary to ensure fair transactions between growers and buyers.

Today, the crop is generally produced and sold under contract (as opposed to a cash market at the end of the season). This means that ch. ATCP 104, as it is currently written, is not relevant to the current industry.

Proposed policies

- DATCP proposes to repeal ch. ATCP 104 in its entirety. This will allow for a simplification of the overall administrative code.
- Alternatively, if the public hearing process reveals that the rule does or could play an important role in the tobacco growing industry, DATCP may consider either of the following:
    - Maintain the rule in its current form.
    - Modify the rule to bring it into alignment with current tobacco leaf buying and selling practices.

Policy alternatives

- Do nothing.

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

Sections 93.07 (1) and 100.20 (2) (a), Stats.

Section 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.

Section 100.20 (2) (a).

The department, after public hearing, may issue general orders forbidding methods of competition in business or trade practices in business which are determined by the department to be unfair. The department, after public hearing, may issue general orders prescribing methods of competition in business or trade practices in business which are determined by the department to be fair.

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 0.15 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

DATCP's initial analysis shows that the existing rule is obsolete. Therefore, the proposed repeal of the rule will have no impact on any entities.

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 are a number of federal regulations that relate, generally, to the tobacco industry. For example, the IRS enforces regulations that control the manufacture and distribution of tobacco products. Further, the 2010 Family Smoking Prevention and Tobacco Control Act grants FDA

authority to write rules that may require growers and brokers to disclose certain information to manufactures about the type of tobacco, levels of certain chemicals, and curing methods used. However, our search does not reveal any federal law or regulation that regulates the transaction between tobacco growers and buyers comparable to ch. ATCP 104.

7. Anticipated Economic Impact

DATCP expects the proposed rule to have no economic impact locally or statewide.

Contact Person

Kevin LeRoy, Program and Policy Analyst, DATCP; Phone (608) 224−4928.

Health Services

Community Services, Chs. 30—
Medical Assistance, Chs. 101—

SS 004−14

This statement of scope was approved by the governor on December 30, 2013.

Rule No.

Sections DHS 35.16 (4) (b), 107.02 (2m) (a) 7., and 107.13 (2) (a) (intro.), 2. and 4., (b) 4. b., and (d) 3. (revise).

Relating to

Medical Assistance coverage for outpatient mental health services.

Rule Type

Permanent

1. Finding/Nature of Emergency

Not applicable.

2. Detailed Description of the Objective of the Proposed Rule

The objective of the rulemaking is to update rules to reflect current policy and to conform rules to statute concerning MA reimbursement for outpatient mental health services.

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

Section DHS 35.16 (4) (b) requires as a condition for MA reimbursement a physician's prescription for psychotherapy services. Similarly, ss. DHS 107.02 (2m) (a) 7. and 107.13 (2) (a) (intro.) and 2. and (b) 4. b., require a physician's prescription for mental health services, alcohol and other drug abuse services, and psychotherapy services as a condition for MA reimbursement. Pursuant to ss. 49.45 (30f) and 49.46 (2) (b) 6. f., fm., k., and Lr., Stats., the department is prohibited from requiring a prescription from a physician or other health care provider for psychotherapy services, medical day treatment services, or mental health and alcohol and other drug abuse services as a condition for MA reimbursement. Thus, the department proposes to conform ss. DHS 35.16 (4) (b), 107.02 (2m) (a) 7., and 107.13 (2) (a) (intro.) and 2. and (b) 4. b. to existing state law.

2013 Wisconsin Act 20 included funding to expand MA outpatient mental health coverage to in−home psychotherapy services for children. See, *LFB Budget Summary.* To effectuate this, the department proposes to revise s. DHS 107.13 (2) (a) 4. and (d) 3. to authorize in−home psychotherapy services as a covered service for children.

3.b. Alternatives

The policy alternative to rulemaking to authorize outpatient in−home psychotherapy for children as a covered service is to explicitly authorize the services by statute or do nothing. There is no alternative to conforming ss. DHS 35.16 (4) (b), 107.02 (2m) (a) 7., and 107.13 (2) (a) (intro.) and 2. and (b) 4. b. to state law.

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

The department's authority to revise the referenced rules is as follows:

Section 49.45 (10), Stats., reads: RULE−MAKING POWERS AND DUTIES. The department is authorized to promulgate such rules as are consistent with its duties in administering medical assistance.

Section 227.11 (2) (a) 1. to 3., 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:

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

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

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

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 it will take 22 hours to develop the rule. No other resources will be necessary.

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

Children receiving MA that need psychotherapy services in the home and psychotherapy providers individually certified under s. DHS 105.22 and who work in an outpatient mental health clinic that is certified under s. DHS 105.22 may be affected by the proposed changes to s. DHS 107.13 (2) (a) 4. and (d) 3. The proposed changes to conform ss. DHS 35.16 (4) (b), 107.02 (2m) (a) 7., and 107.13 (2) (a) (intro.) and 2. and (b) 4. b. to state law will have no effect on the public.

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

There appears to be no existing or proposed federal regulations that address the activities to be regulated by the rules.

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 anticipates that the proposed rules would have little to no economic impact.

Contact Person

Dan Zimmerman, 608−266−7072, Daniel.Zimmerman@wisconsin.gov

Al Matano, 608−267−6848, Alfred.Matano@wisconsin.gov

Dave Stepien, 608−267−9314, david.stepien@wisconsin.gov

Jami Crespo, 608−267−9697, jami.crespo@wisconsin.gov

Submittal of Proposed Rules to Legislative Council Clearinghouse

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

Administration
CR 14−001

On January 9, 2014, the Wisconsin Department of Administration submitted a proposed rule order to the Wisconsin Legislative Council Rules Clearinghouse.

The statement of scope for this rule, SS 131−13, was approved by the Governor on October 8, 2013, published in Register No. 694 on October 31, 2013, and approved by Department of Administration Secretary Mike Huebsch on November 13, 2013.

Analysis

Statutory Authority: Sections 16.004 (1), 16.846 (1) (a), and 227.11, Stats

Statutes Interpreted: Section16.846, Stats

The rule order amends Chapter Adm. 2, relating to use of state buildings and facilities. The objective of the rule is to obtain compliance regarding use of state facilities including the Capitol building. This objective will be achieved by codifying historical department practices and more clearly detailing certain provisions of the administrative code as informed by judicial interpretations.

Agency Procedure for Promulgation

A public hearing is required and will be held on February 21, 2014. The organizational unit responsible for promulgation of the proposed rules is the Division of Legal Services.

Contact Person

If you have any questions regarding the proposed rule, please contact:

Andrew Hitt
Department of Administration
101 E. Wilson Street, 10th Floor
Madison, WI 53702
(608) 266−1741

Agriculture, Trade and Consumer Protection
CR 14−007

(DATCP DOCKET # 12−R−05)

The Wisconsin Department of Agriculture, Trade and Consumer Protection has referred a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse, pursuant to s. 227.15, Stats.

The scope statement for this rule, SS 031−12, was approved by the Governor on May 11, 2012, published in register No. 677 on May 31, 2012, and approved by the Board of Agriculture, Trade & Consumer Protection on June 14, 2012.

Analysis

The rule revises Chapter ATCP 34, relating to the clean sweep program.

Agency Procedure for Promulgation

The department will hold public hearings on this rule. The public hearings are scheduled for February 17, 18, and 19, 2014. The department's Division of Agricultural Resource Management is primarily responsible for this rule.

Contact Person

If you have questions, you may contact Jane Larson at (608) 224−4545.

Revenue
CR 14−005

On January 8, 2014 the Wisconsin Department of Revenue submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

The scope statement for this rule, SS 101−13, was approved by the Governor on August 2, 2013, published in Register No. 692 on August 31, 2013, and approved by the Secretary of Revenue on September 10, 2013.

Analysis

The proposed rule order revises Chapters Tax 2 and 3, relating to income and franchise tax provisions.

Agency Procedure for Promulgation

A public hearing on the proposed rule is required and has been scheduled for February 11, 2014.

The Office of the Secretary is primarily responsible for the promulgation of the proposed rule.

Contact Information

If you have questions, please contact:

Dale Kleven
Income, Sales and Excise Tax Division
Telephone: (608) 266−8253
E−mail: dale.kleven@revenue.wi.gov

Revenue
CR 14−006

On January 8, 2014 the Wisconsin Department of Revenue submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

The scope statement for this rule, SS 099−13, was approved by the Governor on August 2, 2013, published in Register No. 692 on August 31, 2013, and approved by the Secretary of Revenue on September 10, 2013.

Analysis

The proposed rule order revises Chapter Tax 11, relating to sales and use tax provisions.

Agency Procedure for Promulgation

A public hearing on the proposed rule is required and has been scheduled for February 11, 2014.

The Office of the Secretary is primarily responsible for the promulgation of the proposed rule.

Contact Information

If you have questions, please contact:

Dale Kleven

Income, Sales and Excise Tax Division

Telephone: (608) 266−8253

E−mail: dale.kleven@revenue.wi.gov

Safety and Professional Services — Board of Nursing
CR 14−002

On January 10, 2014, the Board of Nursing submitted a proposed rule to the Legislative Council Rules Clearinghouse.

The scope statement for this rule, SS 030−13, was approved by the Governor on March 26, 2013, published in Register No. 688 on April 14, 2013, and approved by Board of Nursing on May 9, 2013.

Analysis

Statutory Authority: Sections 15.08 (5) (b) and 441.01 (3), Wis. Stats.

This proposed rule−making order revises Chapters N 2 and 3, relating to licensure and examining councils.

Agency Procedure for Promulgation

A public hearing is required and will be held on February 13, 2014 at 1400 East Washington Avenue, Room 121, Madison, Wisconsin (enter at 55 North Dickinson Street).

Contact Person

Sharon Henes, Department of Safety and Professional Services, Division of Policy Development, 608−261−2377.

Safety and Professional Services — Board of Nursing
CR 14−004

On January 10, 2014, the Board of Nursing submitted a proposed rule to the Legislative Council Rules Clearinghouse.

The scope statement for this rule, SS 092−12, was approved by the Governor on December 4, 2012, published in Register No. 684 on December 14, 2012, and approved by Board of Nursing on December 26, 2012.

Analysis

Statutory Authority: Sections 441.01 (3) and (4) and 441.12, Wis. Stats.

This proposed rule−making order revises Chapter N 1, and relates to school of nursing approval process.

Agency Procedure for Promulgation

A public hearing is required and will be held on February 13, 2014 at 1400 East Washington Avenue, Room 121, Madison, Wisconsin (enter at 55 North Dickinson Street).

Contact Person

Sharon Henes, Department of Safety and Professional Services, Division of Policy Development, 608−261−2377.

Safety and Professional Services — Pharmacy Examining Board
CR 14−003

On January 10, 2014, the Pharmacy Examining Board submitted a proposed rule to the Legislative Council Rules Clearinghouse.

The scope statement for this rule, SS 049−13, was approved by the Governor on April 29, 2013, published in Register No. 689 on May 14, 2013, and approved by Pharmacy Examining Board on May 28, 2013.

Analysis

Statutory Authority: Sections 15.08 (5) (b), 450.19 (2), and 961.31, Wis. Stats.

This proposed rule−making order revises Chapter Phar 18, relating to operation of prescription drug monitoring program

Agency Procedure for Promulgation

A public hearing is required and will be held on February 12, 2014 at 1400 East Washington Avenue, Room 121, Madison, Wisconsin (enter at 55 North Dickinson Street).

Contact Person

Sharon Henes, Department of Safety and Professional Services, Division of Policy Development, 608−261−2377.

Rule−Making Notices

Notice of Hearing

Administration

CR 14−001, EmR1321

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 2, relating to use of state buildings and facilities.

Hearing Information

Date:	**Friday, February 21, 2014**
Time:	2:30 p.m. to 4:30 p.m.
Location:	St. Croix Room CR 136 WI Department of Administration Building 101 East Wilson Street, 1st Floor Madison, Wisconsin 53713

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 argument 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 February 24, 2014.**

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. Copies of this rule are also available online at https://docs.legis.wisconsin.gov/code/chr/2014/cr_14_001.

Analysis prepared by the Department of Administration

Statutes interpreted

Section 16.846, Stats.

Statutory authority

Sections 16.004 (1), 16.846 (1) (a), and 227.11, Stats.

Explanation of agency authority

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." s. 16.84 (1), Stats. "The department shall promulgate under ch. 227, and shall enforce or have enforced, rules of conduct for property leased or managed by the department." S. 16.846 (1), Stats. 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." s. 16.845 (1), Stats. 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." S. 16.845 (1), Stats.

Related statute or rule

Section 16.84, Stats., and Chapter Adm 2.

Summary and plain language analysis

The objective of the rule is to obtain compliance regarding use of State facilities, including the capitol building. This objective will be achieved by codifying historical department practices and more clearly detailing certain provisions of the administrative code as informed by judicial interpretations.

Section 1 codifies the historical practice of the state capitol police in enforcing the law in legislative areas upon invitation by the Legislature. *See* 1971 Act 183.

Section 2 codifies historical categories of permits granted by the Wisconsin state capitol police, defines the categories, and defines "spontaneous event," which is a mechanism allowing for expressive activity in response to unforeseen and newsworthy events.

Section 3 makes clear that although the Wisconsin state capitol police may enforce the law in any area of the building, at the invitation of the legislature, the legislature retains management authority over areas reserved for its use in the capitol building. Additionally, section 3 codifies the historical practice of the Wisconsin state capitol police of granting permits to any person, and not only to any "governmental body or official, or any nonprofit, fraternal, religious, or veterans' organization."

Section 4 codifies historical practices with respect to the grant and denial of permits, and extends those same protections to the new category of events held under advance notices, as providing such protections naturally arises out of the recent settlement agreement. Further, section 4 creates as categories of use 'spontaneous events' and 'advance notices' for the reasons set forth above. Moreover, section 4 allows for use of the capitol building's rotunda by 12 or fewer persons without notice and without constituting a "spontaneous event" within the meaning of this chapter. Finally, section 4 codifies the department's policy on severance clauses and appeal procedure.

Section 5 codifies the historical practice of the Wisconsin state capitol police of resolving conflicts of use on a first−come first−served basis. This section provides that the department may publish content−neutral guidance limiting or explaining any potential imposition of charges arising out of the use of State facilities. The section codifies the historical practice of the Wisconsin state capitol police of not discriminating on the basis of sexual orientation in the use management of State facilities.

Section 6 provides that permitting requirements for exhibits shall not be applied to persons who simply wear clothing bearing an expressive message, or who simply hold signs bearing an expressive message, provided that the sign is of a certain size.

Section 7 clarifies that a person who creates a hazardous condition is subject to citation under the existing code. Section 7 further clarifies that hazardous conditions can be created by the deployment of not only holiday trees and holiday decorations, but by similar exhibit items that are not related to a holiday.

Section 8 clarifies that there is no conflict between s. Adm 2.08 (1) and s. Adm 2.11, in accordance with standard rules of legal interpretation, and places a reasonable limitation on the retention of items by the Wisconsin state capitol police.

Section 9 clarifies existing prohibitions against conducting or participating in events occurring without permits. Prohibition against participating in events is redefined in accordance with recent settlement. Clarity to the sub−section is sought by separating the violations for conducting such events from violations for participating in such events into separate sub−sections. The potential offense of occupying space is clarified by removing excess language from the paragraph. Additionally, introductory statements, which do not constitute elements leading to a citation, are moved to the appropriate introductory clause for the section. Finally, a new paragraph is added, codifying a decibel limitation currently found in policy, and lowering it in accordance with an expert witness report commissioned by the Wisconsin Department of Justice.

Section 10 continues the attempt to clarify existing prohibitions against unauthorized events by simplifying the arrangement and using newly defined terms. Section 10 also improves protections for the public by eliminating an alternative rationale for prosecution.

Section 11 also continues the attempt to clarify existing prohibitions by eliminating language that, substantively, is now located in other portions of this subsection. The result is a sub−section that is less complicated to read and interpret.

Summary of and comparison with, existing or proposed federal regulations

Existing federal regulations vary by agency, state, and facility, and are too numerous to permit meaningful comparative analysis. However, the department notes that no protests or the like are permitted within the United States capitol building, and that persons attempting to do so have been successfully prosecuted under the federal criminal code.

Comparison with rules in adjacent states

All adjacent states have similar administrative code provisions. Illinois requires permits for demonstrations or other events to be submitted at least 48 hours in advance of the use, unless the requestor can prove by a preponderance of the evidence that the cause of the event was unknown or resulted from changed circumstances. Michigan does not permit demonstrations or other activities without written authorization. Michigan also requires written authorization for displays, and requires that such requests "normally" be submitted 30 days in advance. Likewise, Minnesota requires a written permit, with the State and the applicant reaching agreement on topics including, "security, police protection, liability for damages, and cleanup of areas" prior to issuance of a permit. Iowa also requires a written application and approval by written letter or a memorandum of understanding signed by the event director.

Effect on Small business

The proposed rule changes will have no impact upon small businesses.

Initial Regulatory Flexibility Analysis

The proposed rule will not affect small businesses.

Fiscal Estimate

Modification of the existing rules should decrease the costs of gaining compliance with the rules by reducing the number of issues currently subject to litigation. In the long term, modification of existing rules to conform to practice and to expand the legally recognized categories of permitted users should increase the legitimacy of the permitting process for the general public, leading to greater voluntary compliance and reduced costs.

Summary of Economic Impact Analysis

The rule modifications are expected to have no economic impact. A copy of the Economic Impact analysis may be obtained from the agency at no charge by contacting Donna Sorenson at the contact information listed on the first page of this Notice.

Small Business Regulatory Coordinator

Joe Knilans
Email: sbrrb@wisconsin.gov
Telephone: 608−267−7873

Contact Person

Andrew Hitt
Department of Administration
101 E. Wilson Street, 10th Floor
Madison, WI 53702
(608) 266−1741
June 14, 2013.

Notice of Hearing

Agriculture, Trade and Consumer Protection

CR 14−007

(DATCP DOCKET # 12−R−05)

The Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) announces that it will hold public hearings on a proposed rule relating to the clean sweep program. This rule revises Chapter ATCP 34, Wis. Admin. Code, related to Wisconsin's "clean sweep" program.

DATCP will hold three public hearings at the times and places shown below.

Hearing Information

Date:	**Monday, February 17, 2014**
Time:	1:00 to 4:00 p.m.
Location:	Rooms 8 and 9 University of Wisconsin Cooperative Extension — Jefferson County 864 Collins Road Jefferson, WI 53549
Date:	**Tuesday, February 18, 2014**
Time:	1:00 to 4:00 p.m.
Location:	Rooms 185 and 158

DNR Service Center
1300 West Clairemont Avenue
Eau Claire, WI 54701

Date: **Wednesday, February 19, 2014**
Time: 1:00 to 4:00 p.m.
Location: Education Room
Outagamie County Recycling Center
Door #12
1419 Holland Road
Appleton, WI 54911

Hearing impaired persons may request an interpreter for this hearing. Please make reservations for a hearing interpreter by February 3, 2014, by writing to Jane Larson, Division of Agricultural Resource Management, DATCP, P.O. Box 8911, Madison, WI 53708−8911; or by emailing jane.larson@wisconsin.gov or by telephone at (608) 224−4545. Alternatively, you may contact the DATCP TDD at (608) 224−5058. The hearing facilities are handicap accessible.

Appearance at Hearing, Submission of Written Comments, and Availability of Rules

DATCP invites the public to attend the hearings and comment on the proposed rule. Following the public hearings, the hearing record will remain open until 4:30 p.m. on **March 5, 2014**, for additional written comments. Comments may be sent to the Division of Agricultural Resource Management at the address below, or to jane.larson@wisconsin.govhttp://adminrules.wisconsin.gov, or to http://adminrules.wisconsin.gov.

You can obtain a free copy of this hearing draft rule and related documents, including the economic impact analysis, by contacting Jane Larson at the Wisconsin Department of Agriculture, Trade and Consumer Protection, Division of Agricultural Resource Management, DATCP, 2811 Agriculture Drive, P.O. Box 8911, Madison, WI 53708−8911. You can also obtain a copy by calling (608) 224−4545 or by e−mailing jane.larson@wisconsin.gov. Copies will also be available at the hearing. To view the hearing draft rule online, go to: http://adminrules.wisconsin.gov.

Comments or concerns relating to small business may also be addressed to DATCP's small business regulatory coordinator Keeley Moll at the address above, or by email to keeley.moll@wisconsin.gov, or by telephone at (608) 224−5039.

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

This rule modifies ch. ATCP 34, Wis. Admin. Code, related to Wisconsin's "clean sweep" program. The department of agriculture, trade and consumer protection ("DATCP" or "department") administers the program pursuant to its authority in Chapter 93, Stats. The clean sweep program is designed to distribute grant funds to counties and municipalities. The funds pay for costs associated with collecting and safely disposing of agricultural pesticides, farm chemical waste and household hazardous waste that might otherwise pose a threat to public health or the environment. Program funds are also used to collect unwanted prescription drugs and veterinary drugs from individuals. This rule does not alter the level of available funding for the clean sweep program.

This rule will:

- Update provisions related to grant applications, grant evaluation and approval, grant contracts, reporting requirements, reimbursement procedures, selection of hazardous waste handlers, and other matters to keep up with developments in programs relating to the collection of hazardous wastes.
- Add standards for the statutory prescription drug component of the clean sweep program to the rule.
- Amend the rule to resolve existing conflicts between the statute and rule concerning funding amounts for the grants and to take into consideration the overall needs of grant recipients.
- Reduce paperwork by permitting electronic applications for grants. Make changes to improve the administrative and operational efficiency of the "clean sweep" program.

Statutes interpreted

Statutes Interpreted: Sections 93.55 and 93.57, Stats.

Statutory authority

Statutory Authority: Sections 93.07 (1), 93.55, and 93.57, Stats.

Explanation of agency authority

DATCP has authority under s. 93.07 (1), Stats., to make regulations as necessary for the proper enforcement of Chapters 93 to 100, Stats., which includes the administration of the clean sweep grant program. Grants go to local governments for the collection of agricultural and household hazardous waste, including prescription drugs, as required under ss. 93.55 and 93.57, Stats. The department considers it necessary to adopt rules to establish the basis for grant determinations in order to effectuate these laws.

Related rules or statutes

Wisconsin statutes and rules relating to the manufacture, distribution, and use of pesticides in Wisconsin are set forth in ss. 94.67 to 94.71, Stats., and chs. ATCP 29 and 30, Wis. Admin. Code. Waste management is governed by ch. 289, Stats., and ch. NR 500, Wis. Admin Code. The manufacture, distribution and dispensing of prescription drugs falls under the authority of the Pharmacy Examining Board. *See* ch. 450, Stats. "Veterinary drugs" is defined in s. 453.02 (9), Stats. The Uniform Controlled Substances Act sets standards for prescription drugs that are "controlled substances," pursuant to ch. 961, Stats.

Plain language analysis

Under the clean sweep program, DATCP distributes grants to counties and other local governments to assist in funding their hazardous waste collection events and permanent waste collection sites. The clean sweep program was established in 1990 to provide financial assistance to Wisconsin counties to collect unwanted agricultural pesticides. In 2004, the program expanded to provide grants to local governments to collect household hazardous wastes such as acids, flammable chemicals, mercury, lead paint, and solvents. In 2007, Wis. Act 20 was enacted, which authorized the department to include the funding of county, municipal, and regional planning commission programs to collect unwanted prescription drugs, including controlled substances, analgesics, anti−inflammatory drugs, antibiotics, gastrointestinal drugs, and antihistamines. DATCP implemented a pilot prescription drug program to develop standards for issuing grants related to collection of unwanted prescription drugs, and those standards are now incorporated into this proposed rule.

Other changes in the rule are designed to improve the operational and administrative efficiency of the program for the department and local governments that participate in the "clean sweep" program. Since 1990, the program has matured and several current requirements are no longer needed. At the same time, the needs of the grant recipients have changed. These rule revisions address these changes and reflect the current state of hazardous waste collection in Wisconsin.

Rule content

This proposed rule amends ch. ATCP 34, relating to the clean sweep program. The following provides a summary of the rule changes by section:

Purpose of the rule

The establishment of procedures for making grants to local governments to dispose of unwanted prescription drugs will be added to the "Purpose" section of the rule.

Definitions

The term "unwanted prescription drugs" is added and includes Schedule II to V controlled substances, and all other drugs that can be prescribed for human health needs, including drugs such as analgesics, anti−inflammatory drugs, antibiotics, gastrointestinal drugs, inhalers, and antihistamines. Unwanted prescription drugs also include certain veterinary drugs.

When local governments first decided to collect pesticide and household wastes, they often held one− or two−day collection "events." Since then, many local governments have expanded to multiple collections or have established permanent collection sites that offer convenience for local residents. The rule removes the term "event" and references a project as a "collection."

In this rule, "temporary collection" means a clean sweep project that collects hazardous waste five days or less in a calendar year. A "continuous collection" means a clean sweep project that collects chemicals on six or more days in a calendar year. A "permanent collection" means a clean sweep project that operates at least six months out of the year and includes permanent infrastructure dedicated to clean sweep collections. Comments received during our listening sessions showed a desire to broaden the gap between temporary and continuous collections. Local governments holding temporary collections are still required to use the state hazardous waste contractor as their waste hauler.

Grants to counties and municipalities

- Drug Drop Boxes. Currently, clean sweep grant funds cannot be used to purchase permanent equipment. However, a large expense associated with the collection of unwanted prescription drugs is a drug drop box. These drop boxes are a secure place for residents to dispose of their unwanted prescription and veterinary drugs. The boxes typically are located within law enforcement agencies and are designed in such a way that drugs cannot be removed except by authorized personnel. The rule would allow a local government to request funds for the direct costs associated with the purchase and installation of a drug drop box.
- Disposal of Dual−Hazardous Waste. This proposed rule will allow counties and municipalities to request reimbursement for the disposal of "sharps" that contain medication such as epinephrine auto−injectors (an example is an EpiPen®) or prefilled syringes. Disposal costs for sharps such as needles or lancets would remain ineligible for reimbursement.

Grant applications

- Grant Solicitation Announcements. This proposed rule expands the methods of announcing a request for proposals for clean sweep grant funds beyond a written announcement.
- Grant Fund Amounts. Ch. ATCP 34 states that the department shall offer no less than $400,000 for farm chemical waste collection and not less than $200,000 for household hazardous waste collection. In recent years, the demand for the collection and disposal of household hazardous waste has outpaced agricultural pesticides and farm chemical waste. Also, with the statutory addition of grants for unwanted prescription drug collections in 2008, a different allocation of funds among the collection grants is now required. The new statutory language requires the department to offer a minimum of two−thirds of the available funds for household hazardous waste under s. 93.57, Stats. This proposed rule reflects the change in statutory requirements and eliminates the conflict between rule and statute. This change is also supported by the data collected from clean sweeps in recent years. The demand for household hazardous waste disposal is increasing while the demand for agricultural waste disposal is declining. Household waste disposal demand is outpacing agricultural demand by about a 3:1 margin.
- Grant Applications. The current rule requires that grant applications be submitted on a form provided by the department. To keep up with changing and available technology such as electronic or web−based applications, the rule specifies that future applications will be submitted in a manner designated by DATCP.
- Required Information in Applications. Because of the gap between grant submittal and acceptance and the possibility that a grant may not be funded, this rule specifies that applicants no longer have to provide specific dates, locations and facilities for collections. The department will gather that information after grants are awarded. The proposed rule also removes the requirement that an applicant describe its plans for collecting, handling and disposing of chemical waste. Clean sweep collections are not new and local governments and waste haulers have developed much experience since 1990. Unwanted prescription drug collection information will be incorporated into clean sweep applications. Finally, because multi−government collections are quite common as a way to reach more residents and gain efficiencies with collections, applicants no longer need to describe the role of each government participant under this rule.

Evaluating grant applications

Under this proposed rule, the department will modify the criteria used to assess clean sweep grant applications. Early in the program's history, applicants were encouraged to collect farm and household waste and determine what chemicals were of concern in their areas. Now the majority of applicants are experienced project coordinators familiar with local needs and available resources. For some, it is impractical to collect more than one waste type because there is no need. Because of the experience of the local government coordinators and their staff, evaluating an application based on its safety and suitability is no longer necessary. Coordination across multiple governments is encouraged and

points are awarded for these types of collections, but it is no longer necessary to place a priority on such coordination.

Grant awards

Farm Waste and Household Waste. This proposed section reflects the changes in the statute for grant awards and removes the discrepancy between statue and rule. The current rule states that the department will annually award grants totaling at least $400,000 for farm chemical waste, while the statute directs that the department to offer a minimum of two−thirds of the available funds for household hazardous waste. This rule corrects the discrepancy by taking into consideration the current appropriation under s. 20.115 (7) (va), Stats.

Grant contracts

- Hazardous Waste Contract. This proposed rule removes the requirement that the written contract between the department and the clean sweep grant recipient include the recipient's contract with its hazardous waste contractor. The department has found that the information provided in the grant applications is sufficient to make awards.
- Limited Funding. Should the amount of grant funds available be insufficient to cover the awarded grants, the department has the ability to cancel one of more of the grants at its discretion.

Collecting waste pesticides from very small quantity generators (VSQGs)

Generally, a "VSQG" is an individual or business who generates limited quantities of waste pesticides and can include certain hardware stores, farm supply stores, cooperatives, municipalities, or commercial pesticide applicators. This proposed section removes the requirement that a county must collect the license status of a VSQG licensed under ch. ATCP 29. As long as the VSQG's name and address is captured, the department can verify licensure, if necessary.

Hazardous waste

Hazardous Waste Contractor. This proposed section incorporates unwanted prescription drug collection into the rule. It also removes the requirement that hazardous waste contractors selected by grant recipients attend a training session provided by the department. This was a necessary requirement in the early days of the program but is no longer needed since the program participants, including waste contractors, have gained experience and familiarity with the clean sweep program rules.

Reports and payments

Final Report. This proposed section allows for a 45−day extension on the final report deadline. Other required elements of the final report are consolidated within the rule. This proposed section removes the requirement to estimate future collection needs, the timing of collection and suggestions on how to collect chemical waste. This is no longer necessary with a mature program.

Comparison with existing or proposed federal statutes and regulations

The United States Environmental Protection Agency (EPA) administers the Resource Conservation and Recovery Act (RCRA), which includes regulations affecting the collection, movement, and disposal of hazardous agricultural and household waste. EPA has also adopted universal waste management rules under 40 CFR 273. Wisconsin's "clean sweep" grantees and vendors must comply with all applicable RCRA and universal waste provisions. Prescription drugs that are controlled substances are regulated under the federal Controlled Substance Act (21 USC 801) and the Controlled Substances Import and Export Act (21 USC 951). Wisconsin's prescription drug "clean sweep" program must comply with these and related federal laws.

Comparison with rules in adjacent states

The surrounding states of Illinois, Iowa, Michigan, and Minnesota also collect unwanted pesticides, household hazardous waste or unwanted prescription drugs. The agencies involved, their funding sources, and distribution of funds vary greatly. Wisconsin is the only state that has one agency overseeing these various types of grants.

Illinois

Illinois offers a grant for agricultural and structural pesticide collections through the Illinois department of agriculture. The Illinois environmental protection agency also offers four one−day collections for household hazardous waste and unwanted drugs, in addition to some county hosted events. Illinois's Prescription Pill and Drug Disposal Fund provides reimbursement to law enforcement agencies for collection, transport and incineration of medicines collected from residential sources.

Iowa

Iowa no longer holds household hazardous waste collection days and eliminated the award of grants to fund those one−day collections. Instead, the Iowa department of natural resources offers Regional Collection Centers (RCCs) that are open year−round. These RCCs take household waste but can also accept agricultural waste at their discretion. In addition to main RCCs, there are satellite RCC sites and mobile collections that contract with an RCC and travel within a county for collections. Iowa offers two kinds of funds: (1) reimbursement funds to cover operating expenses/disposal costs, and (2) establishment funds to help a county set up a permanent site. Unlike Wisconsin's clean sweep program, Iowa allows its funds to be used to build permanent facilities.

Iowa also offers a pharmaceutical disposal program called TakeAway, in which patients or caregivers can bring unwanted or expired medicines into participating TakeAway pharmacies. The pharmacist will dispose of the returned medications (prescription drugs or over−the−counter products) into a waste bin specially designed to safely store discarded pharmaceutical products, along with their packaging. Once filled, the TakeAway system is sealed and shipped to a medication disposal facility where the system and its contents are incinerated at a waste−to−energy facility. Some participating pharmacies also sell TakeAway envelopes, pre−addressed, postage pre−paid large envelopes that can be taken into the home, filled with unused and expired medicine, and mailed through the United States postal service to the disposal facility. Controlled substances must go to law enforcement or one of the United State drug enforcement administration collections.

Michigan

Michigan offers a clean sweep program for agricultural pesticides through its department of agriculture & rural development (MDARD). The Michigan department of environmental quality covers household collections, supported by an EPA grant. No grants are given. MDARD

will cover the cost of transportation and disposal costs of pesticides collected at household events.

Minnesota

Minnesota enters into cooperative agreements with counties to collect non−agricultural and agricultural waste pesticides. For those counties without a cooperative agreement, the Minnesota department of agriculture (MDA) holds collections. Agricultural pesticides are collected every other year and household hazardous wastes are collected each year. MDA pays supplies, transportation and disposal costs and $0.25/lb. for "reasonable overhead costs." The Minnesota pollution control agency (MPCA) provides stipends to counties for household hazardous waste collections. Stipends cover about 10 percent of costs and are determined by different formulas. Minnesota does not offer drug grants. Collections, transportation and disposal are overseen by county law enforcement and the counties pay all associated costs.

Summary of factual data and analytical methodologies

To develop this rule, four listening sessions were held throughout Wisconsin. Participants included representatives from local government entities that are current and past grant recipients, many of whom manage county or municipal solid waste programs. Comments were also received from law enforcement agencies that administer unwanted prescription drug collections.

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

No supporting documents were used. DATCP relied on information obtained through the listening sessions (See Summary of Data and Analytical Methodologies, above), as well as any comments received through the economic impact analysis comment period.

Effects on Small Business

This rule revision will have no effect on small business. By statute, the department may only award grants under the clean sweep program to *local government entities* for expenses related to the collection of and disposal of unused agricultural pesticides, household waste, and unwanted prescription drugs. No changes have been made to the current rule that directly would impact small businesses. The proposed rule will continue to benefit certain small businesses such as farmers, farm supply stores, and cooperatives that generate small quantities of waste pesticides per month, since clean sweep collections provide a no− or low−cost method of disposing of agricultural pesticides and other farm chemical waste.

Contact Person

Jane Larson
Division of Agricultural Resource Management, DATCP
P.O. Box 8911, Madison,WI 53708−8911
Email: jane.larson@wisconsin.gov
Telephone: (608) 224−4545.

STATE OF WISCONSIN
DEPARTMENT OF ADMINISTRATION
DOA 2049 (R 07/2011)

ADMINISTRATIVE RULES
FISCAL ESTIMATE AND
ECONOMIC IMPACT ANALYSIS

Type of Estimate and Analysis		
X Original ☐ Updated ☐ Corrected		
Administrative Rule Chapter, Title and Number		
Chapter ATCP 34, Clean Sweep Program		
Subject		
Clean sweep grant program		
Fund Sources Affected		Chapter 20, Stats. Appropriations Affected
☐ GPR ☐ FED ☐ PRO ☐ PRS ☐ SEG **X** SEG−S		20.115(7) (va)
Fiscal Effect of Implementing the Rule		
X No Fiscal Effect ☐ Indeterminate	☐ Increase Existing Revenues ☐ Decrease Existing Revenues	☐ Increase Costs ☐ Could Absorb Within Agency's Budget ☐ Decrease Costs
The Rule Will Impact the Following (Check All That Apply)		
☐ State's Economy **X** Local Government Units	☐ Specific Businesses/Sectors ☐ Public Utility Rate Payers	

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

☐ Yes **X** No

Policy Problem Addressed by the Rule

This proposed rule makes changes to improve the administrative and operational efficiency of the "clean sweep" program (ch. ATCP 34, Wis. Admin. Code), which provides grants to local governments for the collection and safe disposal of agricultural pesticides, farm chemical waste and household hazardous waste. This rule (1) updates provisions related to grant applications, grant evaluation and approval, grant contracts, reporting requirements, reimbursement procedures, selection of hazardous waste handlers, and other matters to keep up with developments in programs relating to the collection of hazardous waste; (2) adds standards for the statutory prescription drug component of the clean sweep program to the rule; (3) amends the rule to resolve existing conflicts between the statute and rule concerning funding amounts for the grants and to take into consideration the overall needs of grant recipients; and (4) reduces paperwork by permitting electronic applications for grants. This rule does not alter the level of available funding for the clean sweep program.

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)

Effects on Specific Businesses and Business Sectors

This proposed rule revision awards grants only to *local government entities* for expenses related to clean sweep collections. Accordingly, the rule does not directly impact businesses or business sectors. The funding of local governments' waste disposal programs comes from other sources besides the clean sweep program, including the local governments themselves. The proposed rule will continue to benefit certain small businesses such as farmers, farm supply stores, and cooperatives that generate small quantities of waste pesticides per month, since clean sweep collections provide a no− or low−cost method of disposing of agricultural pesticides, unwanted prescription drugs, certain veterinary drugs, and farm chemical waste.

Local Governments

The grants provided under the current clean sweep program assist local governments and tribal nations that are eligible to apply for and receive clean sweep grants. The grants are used to reimburse eligible costs related to

the collection and proper disposal of hazardous waste, unused agricultural chemicals, and unwanted prescription drugs. Proposed rule changes would streamline the application process and provide administrative and operational efficiencies.

Public Utility Rate Payers

This rule will have no impact on utility rate payers as a group.

State's Economy

While it is difficult to assess the rule's specific impact on the state's economy as a whole, the overall impact is expected to be negligible due to the fact that the amount of funding available for grants under the clean sweep program will not change under the proposed rule.

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

Benefits

The rule will benefit local governments, as inconsistencies between the statute and rule would be addressed and greater efficiency and streamlining of the grant application process will occur. Since 1990, the program has matured, and the department has found that certain requirements are no longer necessary now that the waste collection programs and procedures are well−established. The rule will also reduce paperwork permitting electronic submittal for grant applications. The general public benefit will continue to benefit from a program that offers a safe no− or low−cost disposal option for certain hazardous wastes and unwanted medications.

Alternatives

If DATCP takes no action, current rules will remain in effect. However, the current rules are outdated and inconsistent in certain respects. This rule would create permanent rules concerning the prescription drug component of the program and allow for the modernization and streamlining of the "clean sweep" program overall.

Long Range Implications of Implementing the Rule

Certain non−essential requirements in the current clean sweep grant applications will be eliminated, which will simplify the application process for local governments that apply for grants in the future. The conflict in minimum spending amounts between the current statute and rule due to a shift in the statutory appropriation in recent years will be corrected. Long−term, the rule will continue to benefit local governments, farmers, businesses, and the general public by providing funding to assist with clean sweep collection and disposal of unwanted potentially hazardous products.

Compare With Approaches Being Used by Federal Government

The United States Environmental Protection Agency (EPA) administers the Resource Conservation and Recovery Act (RCRA), which includes regulations affecting the collection, movement, and disposal of hazardous agricultural and household waste. EPA has also adopted universal waste management rules under 40 CFR 273. Wisconsin's "clean sweep" grantees and vendors must comply with all applicable RCRA and universal waste provisions.

Prescription drugs that are controlled substances are regulated under the federal Controlled Substance Act (21 USC 801) and the Controlled Substances Import and Export Act (21 USC 951). Wisconsin's prescription drug "clean sweep" program must comply with these and related federal laws.

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

Surrounding states also collect unwanted pesticides, household hazardous waste or unwanted prescription drugs. The agencies involved, their funding sources, and distribution of funds vary greatly. Wisconsin is the only state that has one agency overseeing these types of grants.

Illinois

Illinois offers a grant for agricultural and structural pesticide collections through the Illinois Department of Agriculture. The Illinois Environmental Protection Agency also offers four, one−day collections for household hazardous waste and unwanted drugs, in addition to some county−hosted events. Illinois' Prescription Pill and Drug Disposal fund provides reimbursement to law enforcement agencies for collection, transport and incineration of medicines collected from residential sources.

Iowa

Iowa no longer holds hazardous waste collection days and eliminated the award of grants to fund those one−day collections. Instead, the Iowa Department of Natural Resources offers Regional Collection Centers (RCCs) that are open year−round. These RCCs take household waste but can also accept agricultural waste at their discretion. In addition to main RCCs, there are satellite RCC sites and mobile collections that contract with an RCC and travel within a county for collections. Iowa offers two kinds of funds: (1) reimbursement funds to cover operating expenses/disposal costs, and (2) establishment funds to help a county set up a permanent collection site. Unlike Wisconsin's clean sweep program, Iowa allows its funds to be used to build permanent facilities.

Iowa also offers a pharmaceutical disposal program called TakeAway in which patients or caregivers can bring unwanted or expired medicines into participating TakeAway pharmacies. The pharmacist will dispose of the returned medications (prescription drugs or over−the−counter products) into a waste bin specially designed to safely store discarded pharmaceutical products, along with their packaging. Once filled, the TakeAway system is sealed and shipped to a medication disposal facility where the system and its contents are incinerated at a waste−to−energy facility. Some participating pharmacies also sell TakeAway envelopes. They are pre−addressed, postage pre−paid large envelopes that can be taken into the home, filled with unused and expired medicine, and mailed through the United States Postal Service to the disposal facility. Controlled substances must go to law enforcement or one of the United States Drug Enforcement Administration collections.

Michigan
Michigan offers a clean sweep program for agricultural pesticides through its Department of Agriculture & Rural Development (MDARD). The Michigan Department of Environmental Quality covers household collections, supported by an EPA grant. No grants are given. MDARD will cover the cost of transportation and disposal costs of pesticides collected at household events.

Minnesota
Minnesota enters into cooperative agreements with counties to collect non−agricultural and agricultural waste pesticides. For those counties without a cooperative agreement, the Minnesota Department of Agriculture (MDA) holds collections. Agricultural pesticides are collected every other year and household hazardous wastes are collected each year. MDA pays supplies, transportation and disposal costs and $0.25/lb. for "reasonable overhead costs." The Minnesota Pollution Control Agency (MPCA) provides stipends to counties for household hazardous waste collections. Stipends cover about 10 percent of costs and are determined by different formulas. Minnesota does not offer drug grants. Collections, transportation and disposal are overseen by county law enforcement and counties pay all associated costs.

Public comments including comments in Response to Web Posting

The department solicited comments on the economic impact analysis for this proposed rule from interested parties and sought responses by posting both on DATCP's website and also the state's rules website. Three comments were received during this period, but all comments had to do with revisions to the proposed rule and not to the economic impact analysis. The department will review all rule revision comments received during the upcoming public hearing and comment portion of the rulemaking process.

Name and Phone Number of Contact Person

Jane Larson, Clean Sweep Program Manager, DATCP
Telephone: 608−224−4545
E−mail: jane.larson@wisconsin.gov

Notice of Hearing

Public Instruction

CR 13−114, EmR1324

NOTICE IS HEREBY GIVEN That pursuant to s. 115.29 (4), Stats., and interpreting s. 115.29 (4), Stats., the Department of Public Instruction will hold a public hearing as follows to consider the revision of Chapter PI 5, relating to high school equivalency diplomas and certificates of general development. This hearing will be regarding both the PI 5 emergency and permanent rule changes.

Hearing Information

Date:	**Monday, February 24, 2014**
Time:	3:00 to 5:00 p.m.*
Location:	GEF 3 Building 125 South Webster St. Room 041 Madison, WI

*If no speakers are remaining, the hearing will conclude early (but no earlier than 3:30 p.m.). Those that would like to testify should plan to be there at the beginning of the hearing. For those who cannot attend the public hearing, comments received by the Department will be given the same weight as testimony.

The hearing site is fully accessible to persons with disabilities. If you require reasonable accommodation to access the meeting, please call Katie Schumacher at (608) 267−9127, or leave a message with the Teletypewriter (TTY) at (608) 267−2427, at least 10 days prior to the hearing date. Reasonable accommodation includes materials prepared in an alternative format, as provided under the Americans with Disabilities Act.

Place Where Comments Are to Be Submitted and Deadline for Submission

The proposed administrative rule is available to review at http://pb.dpi.wi.gov/pb_rulespg or https://health.wisconsin.gov/admrules/public/Rmo?nRmoId=15524. Comments can be made by using the contact information below. Written comments on the proposed rules received no later than February 28, 2014, will be given the same consideration as testimony presented at the hearing.

Agency Contact Person

Katie Schumacher, Administrative Rules Coordinator and Small Business Regulatory Coordinator, Katie.Schumacher@dpi.wi.gov, Department of Public Instruction, 125 South Webster Street, P.O. Box 7841, Madison, WI 53707−7841.

Analysis by the Department of Public Instruction

Statute interpreted

Section 115.29 (4), Stats.

Statutory authority

Section 115.29 (4), Stats.

Explanation of agency authority

115.29 General powers. The state superintendent may:

(4) HIGH SCHOOL GRADUATION EQUIVALENCY.

(a) Grant declarations of equivalency of high school graduation to persons, if in the state superintendent's judgment they have presented satisfactory evidence of having completed a recognized high school course of study or its

equivalent. The state superintendent may establish the standards by which high school graduation equivalency is determined. Such standards may consist of evidence of high school courses completed in high schools recognized by the proper authorities as accredited, results of examinations given by or at the request of the state superintendent, successful completion of correspondence study courses given by acceptable correspondence study schools, a general educational development certificate of high school equivalency issued by an agency of the U.S. government, course credits received in schools meeting the approval of the state superintendent or other standards established by the state superintendent.

(b) Promulgate rules establishing fees for issuing a declaration of equivalency of high school graduation or a general educational development certificate under par. (a). The rules may provide exemptions from the fees based on financial need.

Related statute or rule

N/A.

Plain language analysis

PI 5 governs the issuance of high school completion credentials by the State Superintendent, which includes the certificate for completion of the General Educational Development (GED) Test and the High School Equivalency Diploma (HSED). This rule change is designed to align the rule with changes in the GED Test. The current rule references the number of subtests and the passing scores for the GED, which will be changing in January 2014 when a new test is implemented by GED Testing Service. Additionally, technical changes are needed to align the rule with statute.

The following changes were made to PI 5:

- Changed the name of the corporation who owns the test based on changes in incorporation for GED Testing Service, LLC.
- Changed the number of subtests from 5 to 4 because the new test only has 4 subtests.
- Corrected the language to indicate that the passing score will now be 150 on each of the 4 subtests and that there will be no average score to be attained.

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

This rule change is designed to align the rule with changes in the GED Test and with current statute.

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

The GED Test and the HSED credentials are used by persons applying for employment or post−secondary education to demonstrate high school completion. A well educated work force that is college and career ready is critical to the economic prosperity of the citizens of Wisconsin. Aligning the rule to the changes in the GED test facilitates this process.

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

Beth Lewis
Alternative Education and GED/HSED Administrator
Wisconsin Department of Public Instruction
Email: Beth.lewis@dpi.wi.gov
Telephone: (608)267−1062

Katie Schumacher
Budget and Policy Analyst
Wisconsin Department of Public Instruction
Email: Katie.Schumacher@dpi.wi.gov
Telephone: (608) 267−9127

Text of Rule

SECTION 1. PI 5.02 (6) and (11m) are amended to read:

PI 5.02

(6) "General educational development test" means the test developed by ~~the American council on education~~ GED Testing Service, and administered in Wisconsin at testing sites approved by the state superintendent and ~~the American council on education.~~ GED Testing Service.

(11m) "Subtest" means one of the ~~5~~ 4 content area tests given under the general educational development test.

SECTION 2. PI 5.035 (6) is amended to read:

PI 5.035

(6) Based on the process specified under sub. (3), the state superintendent establishes the general educational development subtest and test passing scores as ~~follows:~~

~~**(a)** A~~ a minimum standard score of no less than ~~410~~150 shall be required on each subtest in the battery of ~~5~~4 subtests~~; and~~.

~~**(b)** A total average score of the 5 subtests may not be less than 450.~~

SECTION 3. PI 5.04 is amended to read:

PI 5.04

The state superintendent shall grant a certificate of general educational development to a person who meets the requirements under s. PI 5.03 and completes the general educational development test with a passing score on each subtest ~~and a passing average score~~ as determined by the state superintendent.

SECTION 4. 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 AND ECONOMIC IMPACT ANALYSIS

Type of Estimate and Analysis

X Original ☐ Updated ☐ Corrected

Administrative Rule Chapter, Title and Number

PI 5, High School Equivalency Diplomas and Certificates of General Educational Development

Subject

Aligning the Rule with Changes in the GED Test

Fund Sources Affected	Chapter 20, Stats. Appropriations Affected
☐ GPR ☐ FED ☐ PRO ☐ PRS ☐ SEG ☐ SEG−S	

Fiscal Effect of Implementing the Rule

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

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

X State's Economy ☐ Local Government Units	☐ Specific Businesses/Sectors ☐ Public Utility Rate Payers

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

☐ Yes **X** No

Policy Problem Addressed by the Rule

PI 5 governs the issuance of high school completion credentials by the State Superintendent, which includes the certificate for completion of the General Educational Development (GED) Test and the High School Equivalency Diploma (HSED). This rule change is designed to align the rule with changes in the GED Test. The current rule references the number of subtests and the passing scores for the GED, which will be changing in January 2014 when a new test is implemented by GED Testing Service. Additionally, technical changes are needed to align the rule with statute.

The following changes were made to PI 5:

- Changed the name of the corporation who owns the test based on changes in incorporation for GED Testing Service, LLC.
- Changed the number of subtests from 5 to 4 because the new test only has 4 subtests.
- Corrected the language to indicate that the passing score will now be 150 on each of the 4 subtests and that there will be no average score to be attained.

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. These are technical changes to the GED Test.

State:
None. These are technical changes to the GED Test.

Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule
This rule change will align PI 5 with changes in the GED Test. This will avoid possible confusion because the rule will be consistent with the current version of the GED Test.
Long Range Implications of Implementing the Rule
PI 5 will be consistent with the current version of the GED Test.
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 Hearing

Revenue

CR 14−005

NOTICE IS HEREBY GIVEN That, pursuant to ss. 71.05 (6) (b) 47.e., 71.28 (9s) (d) 2., 71.47 (9s) (d) 2., 73.03 (69) (c), 73.15 (3), 71.80 (1) (c), and 77.96 (4), Stats., the Department of Revenue will hold a public hearing to consider permanent rules revising Chapters Tax 2 and 3, relating to income and franchise tax provisions.

Hearing Information

Date:	**Tuesday, February 11, 2014**
Time:	9:00 a.m.
Location:	Events Room State Revenue Building 2135 Rimrock Road Madison, Wisconsin 53713

Handicap access is available at the hearing location.

Appearances at the Hearing and Submittal of Written Comments

Interested persons are invited to appear at the hearing and may make an oral presentation. It is requested that written comments reflecting the oral presentation be given to the department at the hearing. Written comments may also be submitted to the contact person listed below or to adminrules.wisconsin.gov no later than **February 11, 2014**, and will be given the same consideration as testimony presented at the hearing.

Dale Kleven
Department of Revenue
Mail Stop 6−40
2135 Rimrock Road
P.O. Box 8933
Madison, WI 53708−8933
Telephone: (608) 266−8253
E−mail: dale.kleven@revenue.wi.gov

Analysis by the Department of Revenue

Statutes interpreted

Sections 71.05 (1) (c) 11. and (6) (b) 47., 71.07 (3n) and (5i) (b), 71.28 (3n), (5i) (b), and (9s), 71.47 (3n), (5i) (b), and (9s), 71.82 (1) (b), 71.90 (1), 73.03 (69), and subch. VII of ch. 77, Stats.

Statutory authority

Sections 71.05 (6) (b) 47. e., 71.28 (9s) (d) 2., 71.47 (9s) (d) 2., 73.03 (69) (c), 73.15 (3), 71.80 (1) (c), and 77.96 (4), Stats.

Explanation of agency authority:

Sections 71.05 (6) (b) 47.e., 71.28 (9s) (d) 2., and 71.47 (9s) (d) 2., Stats., provide "[t]he department shall promulgate rules…" These provisions apply to the revisions to s. Tax 2.957.

Section 73.03 (69) (c), Stats., provides "[t]he department may promulgate rules for the administration of this subsection." This provision applies to the creation of s. Tax 2.986.

Section 73.15 (3), Stats., provides "[t]he department of revenue shall promulgate rules…" This provision applies to the repeal of s. Tax 2.985.

Under s. 71.80 (1) (c), Stats., the department may make such regulations as it shall deem necessary in order to carry out chapter 71 of the Wisconsin Statutes, relating to income and franchise taxes. This provision applies to the revision of ss. Tax 2.88, 2.99, and 3.095.

Section 77.96 (4), Stats., provides that the authority under s. 71.80 (1) (c), Stats., applies to the economic development surcharge. This provision applies to the revision to s. Tax 2.32.

Related statute or rule

There are no other applicable statutes or rules.

Plain language analysis

The proposed rule makes the following changes:

- Revises ss. Tax 2.32 and 3.01 to reflect that, for taxable years beginning after December 31, 2012, the economic development surcharge does not apply to individuals, estates, trusts, partnerships, and limited liability companies treated as partnerships.
- Revises s. Tax 2.88 to reflect, effective July 2, 2013, the reduction in the rate of refund interest from 9% to 3%.
- Revises s. Tax 2.957 to reflect that the relocated business credit and deduction may not be claimed by a business that relocates to Wisconsin in a taxable year beginning after December 31, 2013.

- Repeals s. Tax 2.985 to reflect that the electronic medical records credit may not be claimed for taxable years beginning after December 31, 2013.
- Creates s. Tax 2.986 to administer the registration of "qualified Wisconsin businesses" for purposes of the capital gains exclusion in s. 71.05 (25), Stats., and the income tax deferral in s. 71.05 (26), Stats.
- Revises s. Tax 2.99 to reflect that the dairy and livestock farm investment credit may not be claimed for taxable years beginning after December 31, 2013.
- Revises s. Tax 3.095 to reflect that, effective for taxable years beginning after December 31, 2012, certain interest from bonds issued by the Wisconsin Health and Educational Facilities Authority is exempt.
- Revises ss. Tax 3.01 and 3.05 to correct a web address and a statutory reference.

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

There is no existing or proposed federal regulation that is intended to address the activities to be regulated by the rule.

Comparison with rules in adjacent states

The department is not aware of a similar rule in an adjacent state.

Summary of factual data and analytical methodologies

The 2013−2014 Legislative session has made various changes to Wisconsin's income and franchise tax provisions. The department has created this proposed rule order to reflect these statutory changes. No other data was used in the preparation of this proposed rule order or this analysis.

Analysis and supporting documents used to determine effect on small business

This rule order makes changes to reflect current law and current department policy. It makes no policy or other changes having an effect on small business.

Anticipated Costs Incurred by Private Sector

This rule order does not have a fiscal effect on the private sector.

Effect on Small Business

This rule order does not affect small business.

Agency Contact Person

Please contact Dale Kleven at (608) 266−8253 or dale.kleven@revenue.wi.gov, if you have any questions regarding this rule order.

Text of Rule

SECTION 1. Tax 2.32 (1) (Note) is amended to read:

Tax 2.32 (1) (Note) For ~~any~~ taxable ~~year~~ years beginning before January 1, 2013, an economic development surcharge is imposed on: (a) individuals, estates, trusts, statutory employees and partnerships that have at least $4,000,000 in gross receipts from a trade or business for the taxable year; (b) corporations and insurers that have at least $4,000,000 in gross receipts from all activities for the taxable year; and (c) individuals, estates, trusts and partnerships engaged in farming that have at least $4,000,000 in gross receipts from farming for the taxable year. For taxable years beginning on or after January 1, 2013, an economic development surcharge is only imposed on corporations and insurers that have at least $4,000,000 in gross receipts from all activities for the taxable year.

SECTION 2. Tax 2.32 (2) (e) to (h) and (3) (Note 1) are repealed.

SECTION 3. Tax 2.88 (3) (a) and (4) are amended to read:

Tax 2.88 (3) (a) Any refund of individual income or corporate franchise or income taxes~~, where the tax being refunded is from a return which has a filing due date on or after November 1, 1975,~~ shall include interest at the rate of ~~9%~~ 3% per year from the due date of the return to the date paid by the department, except as provided in par. (b).

(4) INTEREST ON DEPOSIT OF CONTESTED TAXES. Any refund of an amount deposited with the department pursuant to s. 71.90 (1), Stats., shall include interest at the rate of ~~9%~~ 3% per year from the date the funds were deposited to the date refunded~~, provided the funds being refunded are from a return which has a filing due date on or after November 1, 1975~~.

SECTION 4. Tax 2.88 (5) (Note) is created to read:

Tax 2.88 (5) (Note) **Note:** 2013 Wis. Act 20 reduced the rate of interest on refunds of taxes and refunds of the deposit of contested taxes from 9% to 3%. The 3% rate applies to refunds paid on or after July 2, 2013, regardless of the taxable periods to which the refunds pertain.

SECTION 5. Tax 2.957 (7) (title) is amended to read:

Tax 2.957 (7) (title) ~~LIMITATION~~ LIMITATIONS ON CREDIT AND DEDUCTION.

SECTION 6. Tax 2.957 (7) is renumbered Tax 2.957 (7) (a).

SECTION 7. Tax 2.957 (7) (b) is created to read:

Tax 2.957 (7) (b) The credit or deduction under this section may not be claimed by a business that relocates to Wisconsin in a taxable year beginning after December 31, 2013.

SECTION 8. Tax 2.985 is repealed.

SECTION 9. Tax 2.986 is created to read:

Tax 2.986 **Registration of a business under s. 73.03 (69), Stats.** (1) PURPOSE. This section establishes the method of valuing property and the registration deadline for purposes of s. 73.03 (69), Stats.

(2) DEFINITION. In this section, "doing business in this state" has the meaning given in s. 71.22 (1r), Stats.

(3) METHOD OF VALUING PROPERTY. For purposes of s. 73.03 (69) (b) 2., Stats., real and tangible personal property owned by the business shall be valued at its original cost and real and tangible personal property rented by the business shall be valued at an amount equal to the annual rental paid by the business, less any annual rental received by the business from sub−rentals, multiplied by 8.

(4) REGISTRATION DEADLINE. (a) Except as provided in par. (b), a business shall register with the department under s. 73.03 (69), Stats., on or before the close of the calendar year for which the business desires registration. A business may not be registered for a calendar year if the registration is not within the time provided in this subsection.

(b) A business that desires registration for the calendar year in which it begins doing business in this state shall register with the department during the following calendar year.

Example: Business A begins doing business in Wisconsin on March 8, 2014. Business A must register with the department for calendar year 2014 between January 1, 2015, and December 31, 2015.

SECTION 10. Tax 2.99 (1) (Note) is created to read:

Tax 2.99 (1) (Note) **Note:** Sections 71.07 (3n), 71.28 (3n), and 71.47 (3n), Stats., were revised by 2013 Wis. Act 20 to provide the credit under this section may not be claimed for taxable years beginning on or after January 1, 2014.

SECTION 11. Tax 3.01 (4) (c) 8. (Note) and (e) 4.b. are amended to read:

Tax 3.01 (4) (c) 8. (Note) Financial Accounting Standards Board Interpretation number 48 is available on the Financial Accounting Standards Board's web site at ~~http://www.fasb.org/pdf/fin%2048.pdf~~ www.fasb.org.

(e) 4.b. The Wisconsin economic development surcharge, which is imposed on ~~partnerships and~~ tax-option (S) corporations pursuant to s. 77.93 (1)~~, (3), and (5)~~, Stats.

SECTION 12. Tax 3.05 (6) is amended to read:

Tax 3.05 (6) PROFESSIONAL EMPLOYER ORGANIZATIONS. The provisions of s. ~~461.04~~ 202.24 (4) (b), Stats., apply to this section and ss. 71.05 (6) (b) 47m., 71.26 (1) (h), and 71.45 (1) (c), Stats.

SECTION 13. Tax 3.095 (2) (e) and (4) (a) 21. are created to read:

Tax 3.095 (2) (e) "WHEFA" means "Wisconsin Health and Educational Facilities Authority."

(4) (a) 21. WHEFA bonds or notes, if the bonds or notes are issued for the benefit of a person who is eligible to receive the proceeds of bonds or notes from another entity for the same purpose for which the bonds or notes are issued and the interest income received from the other bonds or notes is exempt from taxation under subch. I of ch. 71, Stats.

SECTION 14. Effective date. This rule shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22 (2) (intro.), Stats.

ADMINISTRATIVE RULES
FISCAL ESTIMATE
AND ECONOMIC IMPACT ANALYSIS

Type of Estimate and Analysis

X Original ☐ Updated ☐ Corrected

Administrative Rule Chapter, Title and Number

Chapters Tax 2 and 3 — Income taxation, returns, records, gross income, deductions, exclusions, and exemptions

Subject

Income and franchise tax provisions

Fund Sources Affected	Chapter 20 , Stats. Appropriations Affected
☐ GPR ☐ FED ☐ PRO ☐ PRS ☐ SEG ☐ SEG-S	

Fiscal Effect of Implementing the Rule

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

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

☐ State's Economy ☐ Local Government Units	☐ Specific Businesses/Sectors ☐ Public Utility Rate Payers

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

☐ Yes **X** No

Policy Problem Addressed by the Rule

The rule does not create or revise policy, other than to reflect current law and department policy.

Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)

As indicated in the attached fiscal estimate, the proposed rule is intended to reflect and clarify existing law and does not impose any additional fiscal impact.

No comments concerning the economic effect of the rule were submitted in response to the department's solicitation.

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

Clarifications and guidance provided by administrative rules may lower the compliance costs for businesses, local governmental units, and individuals.

If the rule is not implemented, Chapters Tax 2 and 3 will be incomplete in that they will not reflect current law or department policy.

Long Range Implications of Implementing the Rule

No long−range implications are anticipated.

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

FISCAL ESTIMATE FORM **2013 Session**

X ORIGINAL ☐ UPDATED

☐ CORRECTED ☐ SUPPLEMENTAL

LRB #

INTRODUCTION #

Admin. Rule # to be assigned

Subject

Proposed order of the Department of Revenue relating to income and franchise tax provisions

Fiscal Effect

State: X No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation

☐ Increase Existing Appropriation ☐ Increase Existing Revenues
☐ Decrease Existing Appropriation ☐ Decrease Existing Revenues
☐ Create New Appropriation

☐ Increase Costs — May be Possible to Absorb Within Agency's Budget ☐ Yes ☐ No

☐ Decrease Costs

Local: X No Local Government Costs

1. ☐ Increase Costs
☐ Permissive Mandatory

2. ☐ Decrease Costs
☐ Permissive Mandatory

3. ☐ Increase Revenues
☐ Permissive Mandatory

4. ☐ Decrease Revenues
☐ Permissive Mandatory

5. Types of Local Governmental Units Affected:
☐ Towns ☐ Villages ☐ Cities
☐ Counties ☐ Others _____
☐ School Districts ☐ WTCS Districts

Fund Sources Affected

☐ GPR ☐ FED ☐ PRO ☐ PRS ☐ SEG ☐ SEG−S

Affected Ch. 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate:

The proposed rule makes the following changes:

- Revises s. Tax 2.32 to reflect that, for taxable years beginning after December 31, 2012, the economic development surcharge does not apply to individuals, estates, trusts, partnerships, and limited liability companies treated as partnerships.
- Revises s. Tax 2.88 to reflect, effective July 2, 2013, the reduction in the rate of refund interest from 9% to 3%.
- Revises s. Tax 2.957 to reflect that the relocated business credit and deduction may not be claimed by a business that relocates to Wisconsin in a taxable year beginning after December 31, 2013.
- Repeals s. Tax 2.985 to reflect that the electronic medical records credit may not be claimed for taxable years beginning after December 31, 2013.
- Creates s. Tax 2.986 to administer the registration of "qualified Wisconsin businesses" for purposes of the capital gains exclusion in s. 71.05 (25), Stats., and the income tax deferral in s. 71.05 (26), Stats.
- Revises s. Tax 2.99 to reflect that the dairy and livestock farm investment credit may not be claimed for taxable years beginning after December 31, 2013.
- Revises s. Tax 3.095 to reflect that, effective for taxable years beginning after December 31, 2012, certain interest from bonds issued by the Wisconsin Health and Educational Facilities Authority is exempt.

These changes reflect current law enacted during the 2013−2014 Legislative session. The rules are intended to reflect and clarify existing law and do not impose any additional fiscal impact.

Notice of Hearing

Revenue
CR 14−006

NOTICE IS HEREBY GIVEN That, pursuant to ss. 77.65 (3) and 227.11 (2) (a), Stats., the Department of Revenue will hold a public hearing to consider permanent rules revising Chapter Tax 11, relating to sales and use tax provisions.

Hearing Information

Date:	**Tuesday, February 11, 2014**
Time:	2:00 p.m.
Location:	Events Room State Revenue Building 2135 Rimrock Road Madison, Wisconsin 53713

Handicap access is available at the hearing location.

Appearances at the Hearing and Submittal of Written Comments

Interested persons are invited to appear at the hearing and may make an oral presentation. It is requested that written comments reflecting the oral presentation be given to the department at the hearing. Written comments may also be submitted to the contact person listed below or to adminrules.wisconsin.gov no later than **February 11, 2014**, and will be given the same consideration as testimony presented at the hearing.

Dale Kleven
Department of Revenue
Mail Stop 6−40
2135 Rimrock Road
P.O. Box 8933
Madison, WI 53708−8933
Telephone: (608) 266−8253
E−mail: dale.kleven@revenue.wi.gov

Analysis by the Department of Revenue

Statutes interpreted

Sections 77.51 (2d), (10f), (11m), (12m), and (15b), 77.52 (2) (a) 6. and 11., 77.522 (4) (a) 9., and 77.54 (9) (a), (57), (57d), (59), (60), and (61), Stats.

Statutory authority

Sections 77.65 (3) and 227.11 (2) (a), Stats.

Explanation of agency authority

Section 77.65 (3), Stats., provides "[t]he department may promulgate rules to administer this section…"

Section 227.11 (2) (a), Stats., provides "[e]ach 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..."

Related statute or rule

There are no other applicable statutes or rules.

Plain language analysis

The rule (1) reflects law changes in 2013 Wisconsin Act 20, (2) corrects two errors in current rule provisions, and (3) deletes an obsolete reference.

a. **Custom farming services.** Reflects the creation of s. 77.51 (2d), Stats., to provide that "custom farming services" includes services performed by veterinarians to farm livestock or work stock used exclusively in the business of farming. This requires updates to the provisions of ss. Tax 11.12 and 11.61.

b. **"Drugs."** In s. Tax 11.20 (3) (a) 2., reflects the amendment to s. 77.54 (57) (b) 4., Stats., to replace "medicines" with "drugs" so the rule correctly reflects the updated exemption.

c. **Health Insurance Risk−Sharing Plan Authority.** Reflects the amendment to s. 77.54 (9) (a), Stats. Due to the dissolution of the Health Insurance Risk−Sharing Plan and Authority, the exemption for sales made to the authority is being rescinded. This requires updates to ss. Tax 11.04 (1), 11.05 (4) (a), and 11.49 (2) (b).

d. **Lump sum contracts.** Reflects the creation of the exemption in s. 77.54 (60), Stats. This provision exempts certain property sold by a contractor as a part of a lump sum contract and deems the contractor the consumer of such property, with exception. Amendments are needed to s. Tax 11.68 (7) (b) and the examples following it.

e. **"Place of primary use."** In s. Tax 11.66 (1) (u), reflects the amendments to s. 77.522 (4) (a) 9., Stats., so the definition of "place of primary use" in the rule is the same as current law. Removes s. Tax 11.66 (u) 1. and 2. as these are included in the amended definition.

f. **"Prepaid wireless calling service."** In s. Tax 11.66 (1) (x), reflects the amendments to s. 77.51 (10f), Stats., so the definition of "prepaid wireless calling service" in the rule is the same as current law.

g. **Printing exemptions.** Reflects the creation of s. 77.54 (61), Stats. This requires updates to the provisions of s. Tax 11.56.

h. **Property transferred incidentally with a taxable service.** Amends the first note at the end of s. Tax 11.48 and the first note at the end of s. Tax 11.67 to reference s. 77.52 (21), Stats.

i. **"Prosthetic device."** In ss. Tax 11.08 (4) (a) and 11.45 (3) (a), reflects the amendments to s. 77.51 (11m), Stats., so the definition of "prosthetic device" in the rule is the same as current law.

j. **Qualified research and animal raising.** Reflects the repeal of s. 77.54 (57) (b) 1. and 2., Stats., the renumbering of s. 77.54 (57) (a) 1f., Stats., to s. 77.51 (1c), Stats., the renumbering of s. 77.54 (57) (a) 1m., Stats., to s. 77.51 (1d), Stats., the renumbering of s. 77.54 (57) (a) 4., Stats., to s. 77.51 (10rn), Stats., the amending of s. 77.54 (57) (a) 5.and (b) 4., Stats., and the creation of s. 77.54 (57d), Stats. This requires updates to the provisions of s. Tax 11.20.

k. **Self−service laundry machines.** Reflects the amendment to s. 77.52 (2) (a) 6., Stats. Receipts from self−service laundry machines that are operated by tokens and magnetic cards are no longer subject to sales and use tax. This requires an update to s. Tax 11.52 (5) (a).

l. **Services resulting in advertising and promotional direct mail.** Reflects the amendment to s. 77.52 (2) (a) 11., Stats. The sale of advertising and promotional direct mail became exempt from sales and use tax effective July 1, 2013, pursuant to 2011 Wis. Act 32. The amendment of s. 77.52 (2) (a) 11., Stats., provides that the services of producing, fabricating, processing, printing, or imprinting that result in advertising and promotional direct mail are also not taxable. This requires updates to ss. Tax 11.19 (2) (a), 11.56 (7) (bm), and 11.70 (2) (e).

m. "Sales price" and "purchase price."

- In s. Tax 11.26 (3), reflects the amendments to s. 77.51 (12m) (a) and (15b) (a), Stats., along with the creation of s. 77.51 (12m) (b) 3m. and (15b) (b) 3m., Stats., to exclude from "sales price" and "purchase price" taxes imposed on the seller that are separately stated that the seller may, but is not required to, pass on and collect from the user or consumer.
- Includes "fees and charges" as an addition to taxes in several parts of the rule to make it clear that taxes, fees and charges are covered under this rule.
- Amends s. Tax 11.26 (2) to include "regardless of whether they are separately stated on the invoice, bill of sale, or other similar document given by the seller to the purchaser," for taxes, fees and charges included in sales price and the purchase price.
- Amends s. Tax 11.26 (2) (c) to include "and ammunition" after firearms to the list of federal excise taxes.
- Amends the list of taxes, fees, and charges included and excluded from "sales price" and "purchase price" contained s. Tax 11.26 (2) and (3)

n. Correct error. Corrects an error in Example 1 under s. Tax 11.33 (4) (f).

o. Correct error. Amends s. Tax 11.39 (1) (b), to correct a typographical error. This provision quotes the law and is needed for accuracy.

p. Delete obsolete reference. Amends the note following s. Tax 11.11 (2m) (b) to delete a reference to s. Tax 12.40.

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

There is no existing or proposed federal regulation that is intended to address the activities to be regulated by the rule.

Comparison with rules in adjacent states

The department is not aware of a similar rule in an adjacent state.

Summary of factual data and analytical methodologies

2013 Wisconsin Act 20 made numerous changes to Wisconsin's sales and use tax laws. The department has created this proposed rule order to reflect these statutory changes. No other data was used in the preparation of this proposed rule order or this analysis.

Analysis and supporting documents used to determine effect on small business

This rule order makes changes to reflect current law and current department policy. It makes no policy or other changes having an effect on small business.

Anticipated Costs Incurred by Private Sector

This proposed rule does not have a fiscal effect on the private sector.

Effect on Small Business

This proposed rule does not affect small business.

Agency Contact Person

Please contact Dale Kleven at (608) 266−8253 or dale.kleven@revenue.wi.gov, if you have any questions regarding this proposed rule.

Text of Rule

SECTION 1. Tax 11.04 (1) is amended to read:

Tax 11.04 (1) DEFINITION. In this rule, "exempt entity" means a person qualifying for an exemption under s. 77.54 (9a) or 77.55 (1), Stats. Section 77.54 (9a), Stats., provides an exemption for sales to this state or any agency thereof, the University of Wisconsin Hospitals and Clinics Authority, the Wisconsin Aerospace Authority, the Wisconsin Economic Development Corporation, ~~the Health Insurance Risk−Sharing Plan Authority,~~ and the Fox River Navigational System Authority; any county, city, village, town or school district in this state; a county−city hospital established under s. 66.0927, Stats.; a sewerage commission organized under s. 281.43 (4), Stats., or a metropolitan sewerage district organized under ss. 200.01 to 200.15 or 200.21 to 200.65, Stats.; any other unit of government in this state or any agency or instrumentality of one or more units of government in this state; any federally recognized American Indian tribe or band in this state; any joint local water authority created under s. 66.0823, Stats.; any corporation, community chest fund, foundation or association organized and operated exclusively for religious, charitable, scientific or educational purposes, or for the prevention of cruelty to children or animals, except hospital service insurance corporations under s. 613.80 (2), Stats., no part of the net income of which inures to the benefit of any private stockholder, shareholder, member or corporation; a local exposition district under subch. II of ch. 229, Stats.; a local cultural arts district under subch. V of ch. 229, Stats.; a cemetery company or corporation described under section 501 (c) 13 of the Internal Revenue Code, if the tangible personal property or taxable services are used exclusively by the cemetery company or corporation for the purposes of the company or corporation. Section 77.55 (1), Stats., provides an exemption for sales to the United States, its unincorporated agencies and instrumentalities, and any unincorporated [incorporated] agency or instrumentality of the United States wholly owned by the United States or by a corporation wholly owned by the United States.

SECTION 2. Tax 11.05 (4) (a) is amended to read:

Tax 11.05 (4) (a) Section 77.54 (9a), Stats., exempts sales to and the storage, use or other consumption of tangible personal property and items and property under s. 77.52 (1) (b) and (c), Stats., and services by Wisconsin or by any agency of Wisconsin, the University of Wisconsin Hospitals and Clinics Authority, the Wisconsin Aerospace Authority, the Wisconsin Economic Development Corporation, ~~the Health Insurance Risk−Sharing Plan Authority,~~ and the Fox River Navigational System Authority; any county, city, village, town or school district in this state; a county−city hospital established under s. 66.0927, Stats.; a sewerage commission organized under s. 281.43 (4), Stats., or a metropolitan sewerage district organized under ss. 200.01 to 200.15 or 200.21 to 200.65, Stats.; any other unit of government in this state or any agency or instrumentality of one or more units of government in this state; any federally recognized American Indian tribe or band in this state; any joint local water authority created under s. 66.0823, Stats.; any corporation, community chest fund, foundation or association organized and operated exclusively for religious, charitable, scientific or educational purposes, or for the prevention of cruelty to children or animals, except hospital service insurance corporations under s. 613.80 (2), Stats., no part of the net income of which inures to the benefit of any private stockholder, shareholder, member or corporation; a local

exposition district under subch. II of ch. 229, Stats.; a local cultural arts district under subch. V of ch. 229, Stats.; and a cemetery company or corporation described under section 501 (c) (13) of the Internal Revenue Code, if the tangible personal property or taxable services are used exclusively by the cemetery company or corporation for the purposes of the company or corporation.

SECTION 3. Tax 11.08 (4) (a) and (6) (Note 2) are amended to read:

Tax 11.08 (4) (a) "Prosthetic device" is defined in s. 77.51 (11m), Stats., to mean a replacement, corrective, or supportive device, including the repair parts and replacement parts for the device, that is placed in or worn on the body to artificially replace a missing portion of the body; to prevent or correct a physical deformity or malfunction; or to support a weak or deformed portion of the body.

(6) (Note 2) The interpretations in s. Tax 11.08 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) Charges for oxygen equipment became exempt September 1, 1983, pursuant to 1983 Wis. Act 27; (b) Charges for motorized wheelchairs and scooters became exempt September 1, 1985, pursuant to 1985 Wis. Act 29; (c) Charges for apparatus or equipment for the injection of insulin or the treatment of diabetes and supplies used to determine blood sugar levels became exempt March 1, 1989, pursuant to 1987 Wis. Act 399; (d) Charges for antiembolism elastic hose and stockings prescribed by a physician became exempt October 1, 1989, pursuant to 1989 Wis. Act 31; (e) The exemption for adaptive equipment for a handicapped person's vehicle became exempt effective June 1, 1990, pursuant to 1989 Wis. Act 238, renumbered by 1989 Wis. Act 359; (f) The exemption for parts and accessories became effective August 15, 1991, pursuant to 1991 Wis. Act 39; (g) The exemptions provided in s. 77.54 (14s) and (22), Stats., were repealed effective October 1, 2009, and replaced with the exemptions provided under s. 77.54 (22b), Stats., pursuant to 2009 Wis. Act 2; ~~and~~ (h) The exemption in s. 77.54 (28), Stats., was amended to remove the exemption for apparatus and equipment for the injection of insulin or the treatment of diabetes. These items will still qualify for exemption under s. 77.54 (22b), Stats., if they are for home use, pursuant to 2009 Wis. Act 2; and (i) The clarification that a "prosthetic device" must be a replacement, corrective, or supportive device became effective July 2, 2013, pursuant to 2013 Wis. Act 20.

SECTION 4. Tax 11.11 (2m) (b) (Note) is amended to read:

Tax 11.11 (2m) (b) (Note) ~~Refer to s. Tax 12.40 for information related to the property tax exemption for industrial waste treatment facilities.~~ For ~~more~~ information regarding the property tax exemption for industrial waste treatment facilities of manufacturers write or call the district office of the Wisconsin Department of Revenue, Bureau of Manufacturing and Telco Assessments. To locate the district office, write or call Wisconsin Department of Revenue, Bureau of Manufacturing and Telco Assessment, PO Box 8971, Madison WI 53708−8971; telephone (608) 266−1147. The web site is www.revenue.wi.gov/contact/slfbmta.html. To ascertain whether a non−manufacturing property would be exempt under s. 70.11(21), Stats., owners may refer to the Wisconsin Property Assessment Manual or contact the local property tax assessor.

SECTION 5. Tax 11.12 (2) (b) and (7) (d) (Note 1) and (Note 2) are amended to read:

Tax 11.12 (2) (b) "Custom farming services" means the performance of an activity, defined as farming in this section, for a farmer for a fee. The fee may include a cash payment, a share of the harvest or other valuable consideration. "Custom farming services" also includes services performed by a veterinarian to animals that are farm livestock or farm work stock used exclusively in the business of farming.

(7) (d) (Note 1) Section Tax 11.12 interprets ss. 77.51 (2d), 77.52 (1) and (2) (a) 10., and 77.54 (3), (3m), (27), (30), and (33), Stats.

(Note 2) The interpretations in s. Tax 11.12 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) Semen became exempt effective July 22, 1971, pursuant to Chapter 64, Laws of 1971; (b) Baling wire and twine became exempt effective December 24, 1975, pursuant to Chapter 146, Laws of 1975; (c) The exemption for electricity for residential use and use in farming and for fuel oil, propane, coal, steam or wood for residential use became effective July 1, 1979, pursuant to Chapter 1, Laws of 1979; (d) The definition of "feed lot" became effective December 1, 1981; (e) Farm livestock medicine, milk house supplies and animal bedding became exempt effective July 1, 1986, pursuant to 1985 Wis. Act 29; (f) The definition of "exclusively used" became effective October 1, 1989, pursuant to 1989 Wis. Act 31; (g) The farm machinery exemption was revised effective October 1, 1989, pursuant to 1989 Wis. Act 31; (h) The exemption for farm fuel for items other than machines became effective October 1, 1991, pursuant to 1991 Wis. Act 39; (i) The exemption for electricity sold for use in farming was expanded to include sales of electricity during the entire year, effective for sales on or after May 1, 2000, pursuant to 1999 Wis. Act 9; (j) The expansion of the exemption for tangible personal property consumed in farming and the addition of "silviculture" to the definition of farming became effective July 1, 2007, pursuant to 2005 Wis. Act 366; ~~and~~ (k) The change of the term "gross receipts" to "sales price" and the separate impositions of tax on coins and stamps sold above face value under s. 77.52 (1) (b), Stats., certain leased property affixed to real property under s. 77.52 (1) (c), Stats., and digital goods under s. 77.52 (1) (d), Stats., became effective October 1, 2009, pursuant to 2009 Wis. Act 2; and (L) The clarification that "custom farming services" includes services performed by veterinarians to farm livestock or work stock used exclusively in the business of farming became effective July 2, 2013, pursuant to 2013 Wis. Act 20.

SECTION 6. Tax 11.19 (2) (a) is renumbered Tax 11.19 (2) (a) (intro.) and amended to read:

Tax 11.19 (2) (a) (intro.) Section 77.52 (2) (a) 11., Stats., imposes the sales and use tax on certain services. However, an exemption is provided for the printing or imprinting of tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., furnished by customers, that results in ~~printed materials, catalogs, or envelopes that are exempt under s. 77.54 (25) or (25m), Stats.~~ any of the following:

SECTION 7. Tax 11.19 (2) (a) 1. to 3. are created to read:

Tax 11.19 (2) (a) 1. Printed materials that are exempt under s. 77.54 (25), Stats.

2. Catalogs or their mailing envelopes that are exempt under s. 77.54 (25m), Stats.

3. Advertising and promotional direct mailing that is exempt under s. 77.54 (59), Stats.

SECTION 8. Tax 11.19 (6) (Note 1) and (Note 2) are amended to read:

Tax 11.19 (6) (Note 1) Section Tax 11.19 interprets ss. 77.51 (1fr), (8), and (13h), 77.52 (1)~~,~~ and (2) (a) 11., 77.54 (2m), (9a), (15), (25), (25m), ~~and~~ (43), and (59), and 77.55 (1), Stats.

(Note 2) The interpretations in s. Tax 11.19 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) The exemption for printing or imprinting of tangible personal property furnished by customers and used out−of−state in sub. (2) (a) became effective March 1, 1970; (b) The exemption for advertising materials used out−of−state in sub. (4) (a) became effective May 21, 1972; (c) The second class mail standard described in sub. (3) became effective August 1, 1974; (d) The exemption for sales of shoppers guides became effective July 1, 1978; (e) The exemption for ingredients and components of shoppers guides, newspapers and periodicals described in sub. (2) (d) became effective July 2, 1983; (f) The definition of newspaper in sub. (3) (a) and the limitation of the periodical exemption to "periodicals sold by subscription" became effective July 2, 1983; (g) The exemption for controlled circulation publication reflected in subs. (2) (b) and (3) (b) became effective September 1, 1983, pursuant to 1985 Wis. Act 149; (h) The provision for foreign publishers described in sub. (2) (e) became effective January 1, 1980 for publishers of books or periodicals or both other than catalogs and January 1, 1990, for all other foreign publishers pursuant to 1989 Wis. Act 336; (i) The definition of storage and use for purposes of imposing use tax does not include storing or using raw materials becoming printed materials to be shipped outside Wisconsin effective October 1, 1993, pursuant to 1993 Wis. Act 16; (j) The sales and use tax exemption for raw materials becoming printed materials transported and used solely outside Wisconsin became effective December 1, 1997, pursuant to 1997 Wis. Act 27; (k) The exemption for periodicals sold by subscription by educational associations and corporations which are exempt under s. 77.54 (9a) (f), Stats., became effective December 1, 1997 pursuant to 1997 Wis. Act 27; (L) The exemption for catalogs became effective April 1, 2009 pursuant to 2007 Wis. Act 20; (m) The change of the term "gross receipts" to "sales price" and the separate impositions of tax on coins and stamps sold above face value under s. 77.52 (1) (b), Stats., certain leased property affixed to real property under s. 77.52 (1) (c), Stats., and digital goods under s. 77.52 (1) (d), Stats., became effective October 1, 2009, pursuant to 2009 Wis. Act 2; (n) The definition of "direct mail" became effective October 1, 2009, pursuant to 2009 Wis. Act 2; (o) The definition of "advertising and promotional direct mail" became effective May 27, 2010, pursuant to 2009 Wis. Act 330; ~~and~~ (p) The sales and use tax exemption for advertising and promotional direct mail became effective July 1, 2013, pursuant to 2011 Wis. Act 32; and (q) Services resulting in advertising and promotional direct mail were excluded from taxable services effective July 1, 2013, pursuant to 2013 Wis. Act 20.

SECTION 9. Tax 11.20 (1) (cg) and (cr) are created to read:

Tax 11.20 (1) (cg) "Building" has the meaning given in s. 70.111 (10) (a) 1., Stats.

(cr) "Combined group" has the meaning given in s. 71.255 (1) (a), Stats.

SECTION 10. Tax 11.20 (1) (h) is amended to read:

Tax 11.20 (1) (h) "Qualified research" means qualified research as defined under section 41 (d) (1) of the Internal Revenue Code, except that it includes qualified research that is funded by a member of a combined group for another member of a combined group.

SECTION 11. Tax 11.20 (2) (a) is repealed and recreated to read:

Tax 11.20 (2) (a) The sales price from the sale of and the storage, use, or other consumption of machinery and equipment, including attachments, parts, and accessories, and other tangible personal property or items or property under s. 77.52 (1) (b) or (c), Stats., that are sold to any of the following and that are consumed or destroyed or lose their identities while being used exclusively and directly in qualified research is exempt:

1. A person engaged in manufacturing in this state at a building assessed under s. 70.995, Stats.

2. A person engaged primarily in biotechnology in this state.

3. A combined group member who is conducting qualified research for another combined group member and that other combined group member is a person described under subd. 1. or 2.

SECTION 12. Tax 11.20 (2) (b), (Example 2), (Example 3), (c), (d) (Example 1) to (Example 5), and (e) (L) (Example) and (3) (a) 2. and (b) are amended to read:

Tax 11.20 (2) (b) For purposes of determining whether a person is engaged primarily in ~~manufacturing or~~ biotechnology in this state under par. (a), only activities in Wisconsin are considered. When a person conducts activities in Wisconsin in addition to ~~manufacturing or~~ biotechnology, the person must allocate its activities between its ~~manufacturing and~~ biotechnology activities and its other activities using a reasonable and consistent method. If a person's ~~manufacturing and~~ biotechnology activities in Wisconsin are more than 50% of its total activities in Wisconsin, the person is engaged primarily in ~~manufacturing or~~ biotechnology in this state.

(Example 2) Company B performs research and development services at locations outside of Wisconsin that constitute biotechnology. Company B also manufactures tangible personal property at a ~~location~~ building in Wisconsin, assessed under s. 70.995, Stats. The manufacturing activity does not constitute biotechnology. This is Company B's only activity in Wisconsin. The products manufactured in Wisconsin are used by Company B in performing its research and development services at locations outside of Wisconsin. Company B is not engaged primarily in ~~manufacturing~~ biotechnology in Wisconsin ~~since~~ but is engaged in manufacturing ~~is its only activity~~ in Wisconsin at a building assessed under s. 70.955, Stats.

(Example 3) Company X manufactures machinery at a plant outside of Wisconsin. Company X operates a facility in Wisconsin that is devoted solely to research and development relating to the products Company X manufactures. Although Company X's activities in Wisconsin are research and development activities that constitute qualified research, its activities in Wisconsin are not biotechnology. The research and development activities are Company X's only activities in Wisconsin. Therefore, Company X is ~~not~~ neither engaged ~~primarily~~ in manufacturing in Wisconsin at a building assessed under s. 70.995, Stats., ~~or~~ nor engaged primarily in biotechnology in Wisconsin.

(c) For purposes of determining whether an activity is qualified research under par. (a) ~~1. or 2.~~, the regulations under Treas. Reg. section 1.41−4 apply, except that qualified research that is funded by a member of a combined group for another member of a combined group shall remain qualified research for purposes of this subsection.

(d) (Example 1) Company A is engaged ~~primarily~~ in manufacturing in Wisconsin at a building assessed under s. 70.995, Stats. Company A purchases a machine that it will use directly in conducting qualified research at its manufacturing plant in Wisconsin and purchases it exempt from Wisconsin sales tax claiming the exemption in par. (a). After completing the qualified research and having made no use of the machine other than direct use in qualified research, Company A begins using the machine exclusively and directly in its manufacturing operation, which is another exempt use under s. 77.54 (6) (a), Stats. Company A does not owe Wisconsin sales or use tax on its purchase of the machine since it ~~only used~~ uses the machine only in an exempt manner.

(Example 2) Company B is engaged ~~primarily~~ in manufacturing in Wisconsin at a building assessed under s. 70.995, Stats. Company B purchases a machine that it will use directly in conducting qualified research at its manufacturing plant in Wisconsin. More than 5% of Company B's total use of this machine will be for conducting research and development projects that do not meet the definition of qualified research. Company B's purchase of the machine is taxable because it is not used exclusively in qualified research.

(Example 3) Company C is engaged ~~primarily~~ in manufacturing in Wisconsin at a building assessed under s. 70.995, Stats. Company C develops a new product in an activity that is qualified research. Company C purchases a variety of raw materials. Some of these materials are used exclusively and directly and destroyed in qualified research. Once the qualified research is completed, Company C consumes the remaining raw materials in activities that are not qualified research. Company C's purchases of the raw materials that it uses exclusively and directly and destroys in qualified research are exempt under par. (a) 2. Company C's purchases of the raw materials that it uses in activities that are not qualified research do not qualify for ~~this~~ exemption under par. (a).

(Example 4) Manufacturer P is engaged ~~primarily~~ in manufacturing in Wisconsin at a building assessed under s. 70.995, Stats. Manufacturer P contracts with Company D to produce a prototype that is tangible personal property. Manufacturer P's primary objective in this transaction is to obtain the prototype, rather than a research and development service. Company D may purchase the materials used to construct the prototype without tax for resale. Manufacturer P will use the prototype exclusively and directly in one of its research and development activities that constitutes qualified research and may claim the exemption under par. (a) on its purchase of the prototype.

(Example 5) Manufacturer F is engaged ~~primarily~~ in manufacturing in Wisconsin at a building assessed under s. 70.995, Stats. Manufacturer F contracts with Company E to perform research services. Manufacturer F and Company E are not members of the same combined group. Company E will provide a prototype that is tangible personal property to Manufacturer F along with these services. Manufacturer F's primary objective in this transaction is to obtain the research and development services. Company E's primary activity in Wisconsin is the provision of professional engineering services that do not involve biotechnology, and Company E is not a manufacturer. Company E may not claim the exemptions under par. (a), since Company E is ~~not~~ neither engaged ~~primarily~~ in manufacturing in Wisconsin at a building assessed under s. 70.995, Stats., ~~or~~ nor engaged primarily in biotechnology in Wisconsin. In addition, Company E cannot purchase the materials without tax for resale that it uses to construct the prototype, because Company E uses the prototype in performing its research services. The prototype is transferred to Manufacturer F incidental to the research services.

(e) (L) (Example) This example illustrates records that are generally acceptable as adequate to document the exemptions under par. (a).

Company A is ~~primarily~~ engaged in manufacturing in Wisconsin at a building assessed under s. 70.995, Stats. Company A attempts to make a new and improved widget. Upon approval of a project, Company A documents the scope and goals of the project, the uncertainties that exist in accomplishing these goals, and the processes by which Company A hopes to eliminate the uncertainties. In addition, contemporaneously with conducting the research project, Company A documents: (1) the location or locations at which the research is conducted, (2) the machinery and equipment used in the project and the manner used, (3) the various materials and supplies used in attempting to produce the improved widget, the purpose and manner in which such items were used, (4) the processes applied, (5) the results achieved throughout the research process, and (6) the point at which Company A either abandons the research project or achieves the goal of eliminating the uncertainties involved with the development of the new widget. Company A purchased various machinery and equipment, and supplies and materials used in conjunction with development of the new widget without tax claiming the purchases are exempt under par. (a). In general, contemporaneous records kept in the manner and detail described will be accepted and used by the department in making its determinations regarding whether the taxpayer is entitled to claim the exemptions under par. (a).

(3) (a) 2. Seeds for planting, plants, feed, fertilizer, soil conditioners, animal bedding, sprays, pesticides and fungicides, breeding and other livestock, poultry, farm work stock, baling twine and baling wire, containers for fruits, vegetables, grain, hay, silage and animal wastes, plastic bags, plastic sleeves and plastic sheeting used to store or cover hay or silage, ~~medicines~~ drugs, semen for artificial insemination, fuel, and electricity, that are used exclusively and directly in raising such animals.

(b) For purposes of determining whether an activity is qualified research under par. (a), the regulations under Treas. Reg. section 1.41−4 apply, except that qualified research that is funded by a member of a combined group for another member of a combined group shall remain qualified research for purposes of this subsection.

SECTION 13. Tax 11.20 (4) (e) 2. (Note 1) and (Note 2) are created to read:

Tax 11.20 (4) (e) 2. (Note 1) **Note:** Section Tax 11.20 interprets ss. 77.51 (1c), (1d), and (10rn) and 77.54 (57) and (57d), Stats.

(Note 2) **Note:** The interpretations in s. Tax 11.20 are effective beginning January 1, 2012, pursuant to 2009 Wis. Act 28, except for the following amendments effective July 2,

2013, pursuant to 2013 Wis. Act 20: (a) "Qualified research" was amended to include research funded by one member of a combined group for another member of a combined group; (b) The exemption for property used in qualified research by persons engaged primarily in manufacturing in Wisconsin was amended to apply to property used in qualified research by a person engaged in manufacturing in Wisconsin at a building assessed under s. 70.995, Stats.; (c) The exemption for property used in qualified research was amended to include use by one member of a combined group who is conducting qualified research for another combined group member who is either engaged in manufacturing in Wisconsin at a building assessed under s. 70.995, Stats., or is primarily engaged in biotechnology; and (d) The change of the term "medicines" to "drugs."

SECTION 14. Tax 11.26 (title), (1) (a) and (b), and (2) (title), (intro.), (c), and (h) are amended to read:

Tax 11.26 (title) **Other taxes, fees, and charges in taxable sales price and purchase price.**

(1) (a) Tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., sold at retail are subjected to many direct and indirect taxes, fees, and charges prior to reaching a retailer. The taxes, fees, and charges are commonly included in the price the retailer pays for the property and are not separately identifiable as taxes, fees, and charges. Occasionally, however, a tax, fee, or charge is either separately passed on to a retailer or is imposed at the retail level of activity, but is different from and in addition to the sales tax. The tax, fee, or charge may be imposed by Wisconsin, the federal government, or a municipality.

(b) In determining the sales price or purchase price used to compute Wisconsin sales or use taxes, the treatment of a tax, fee, or charge for sales tax purposes is identical to the treatment that applies for use tax purposes. The same taxes, fees, and charges that are included or excluded from the sales price are also included or excluded from the purchase price.

(2) (title) TAXES, FEES, AND CHARGES INCLUDED AS PART OF SALES PRICE AND PURCHASE PRICE.

(intro.) The following taxes, fees, and charges are included in the sales price and the purchase price, regardless of whether they are separately stated on the invoice, bill of sale, or other similar document given by the seller to the purchaser, except as provided in sub. (3):

(c) Any federal stamp tax and manufacturer's or importer's excise tax not imposed directly on the purchaser. Federal excise taxes include excise taxes on alcohol, tobacco, motor and aviation fuel except motor fuel taxes refunded, tires, firearms and ammunition, sporting goods, and air or ship transportation.

(h) The federal gas guzzler tax imposed under s. 4064 of the ~~internal revenue code~~ Internal Revenue Code.

SECTION 15. Tax 11.26 (2) (i) to (s) are created to read:

Tax 11.26 (i) The federal excise tax imposed on the first retail sale of heavy trucks and trailers under s. 4051 of the Internal Revenue Code.

(j) The federal medical device excise tax imposed under s. 4191 of the Internal Revenue Code.

(k) The federal universal service fund fee.

(L) The dry cleaning fee imposed under s. 77.9961, Stats.

(m) The dry cleaning products fee imposed under s. 77.9962, Stats.

(n) The PUC fee imposed under s. 196.85, Stats.

(o) The telephone relay service surcharge imposed under s. 196.858, Stats.

(p) The telecommunications utility trade practices surcharge imposed under s. 196.859, Stats.

(q) The state−issued video service franchise fee imposed under s. 66.0420 (7), Stats.

(r) The petroleum inspection fee imposed under s. 168.12, Stats.

(s) The motor fuel taxes imposed under s. 78.01, Stats.

SECTION 16. Tax 11.26 (3) (title) and (intro.) are amended to read:

Tax 11.26 (3) (title) TAXES, FEES, AND CHARGES EXCLUDED FROM SALES PRICE OR PURCHASE PRICE.

(intro.) Section 77.51 (12m) (b) 3. and (15b) (b) 3., Stats., exclude from the sales price and purchase price any taxes legally imposed directly on the purchaser that are separately stated on the invoice, bill of sale, or similar document that the seller gives to the purchaser. Section 77.51 (12m) (b) 3m. and (15b) (b) 3m., Stats., exclude from the sales price and purchase price taxes imposed on the seller that are separately stated on the invoice, bill of sale, or similar document that the seller gives to the purchaser if the law imposing or authorizing the tax provides that the seller may, but is not required to, pass on to and collect the tax from the user or consumer. Therefore, the following taxes, fees, and charges are excluded from the sales price or the purchase price if they are separately stated on the invoice, bill of sale, or similar document given to the purchaser:

SECTION 17. Tax 11.26 (3) (ac) to (ax) are created to read:

Tax 11.26 (3) (ac) The room taxes imposed under s. 66.0615, Stats., which municipalities or local exposition districts impose on persons furnishing lodging to transients.

(ag) The county and stadium sales and use taxes imposed under s. 77.71, Stats.

(aL) The local exposition district food and beverage and rental car taxes imposed under ss. 77.98 and 77.99, Stats.

(ap) The premier resort area taxes imposed under s. 77.994, Stats.

(at) The state rental vehicle fee imposed under s. 77.995, Stats.

(ax) The federal luxury tax imposed under ss. 4001 to 4007 of the Internal Revenue Code.

SECTION 18. Tax 11.26 (3) (b) and (Example 1) to (Example 7) are repealed.

SECTION 19. Tax 11.26 (3) (c) (Note 2) is amended to read:

The interpretations in s. Tax 11.26 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) The exclusion for federal and Wisconsin motor vehicle excise taxes refunded became effective December 1, 1997, pursuant to 1997 Wis. Act 27; (b) The change of the term "gross receipts" to "sales price" and the separate impositions of tax on coins and stamps sold above face value under s. 77.52 (1) (b), Stats., certain leased property affixed to real property under s. 77.52 (1) (c), Stats., and digital goods under s. 77.52 (1) (d), Stats., became effective October 1, 2009, pursuant to 2009 Wis. Act 2; ~~and~~ (c) the regional transit authority taxes were authorized by 2009 Wis. Act 28 and repealed by 2011 Wis. Act 32; and (d) The definitions of "purchase price" and "sales price" were amended to provide when taxes are not included in the "purchase price" or "sales price," pursuant to 2013 Wis. Act 20.

SECTION 20. Tax 11.26 (3) (d) to (h) are created to read:

Tax 11.26 (3) (d) The police and fire protection fee imposed under s. 196.025 (6), Stats.

(e) The low−income assistance fees imposed under s. 16.957 (4) and (5), Stats.

(f) The landline 911 charge imposed under s. 256.35 (3), Stats.

(g) The wireless 911 charge imposed under s. 256.35 (3m), Stats.

(h) The state USF fee imposed under s. 196.218, Stats.

SECTION 21. Tax 11.33 (4) (f) (Example 1) is amended to read:

Tax 11.33 (4) (f) (Example 1) If the sales price from a person's garage and rummage sales, lawn maintenance services, bait sales to fishermen, sales of books, charges for parking and other normally taxable receipts are less than $1,000 during the calendar year, that person's receipts are deemed exempt occasional sales under par. ~~(g)~~ (f). However, purchases by the seller of the tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., which are sold are taxable.

SECTION 22. Tax 11.39 (1) (b) is amended to read:

Tax 11.39 (1) (b) "Plant" as defined in s. 77.51 (10b), Stats., means a parcel of property or adjoining parcels of property, including parcels that are ~~separate~~ separated only by a public road, and the buildings, machinery, and equipment that are located on the parcel, that are owned by or leased to the manufacturer. Plant inventory does not include unsevered mineral deposits as provided in s. 77.51 (10c), Stats.

SECTION 23. Tax 11.45 (3) (a) and (6) (Note 2) are amended to read:

Tax 11.45 (3) (a) "Prosthetic device" is defined in s. 77.51 (11m), Stats., to mean a replacement, corrective, or supportive device, including the repair parts and replacement parts for the device, that is placed in or worn on the body to artificially replace a missing portion of the body; to prevent or correct a physical deformity or malfunction; or to support a weak or deformed portion of the body.

(6) (Note 2) The interpretations in s. Tax 11.45 are effective under the general sales and use tax law, on and after September 1, 1969, except: (a) Charges for oxygen equipment became exempt September 1, 1983, pursuant to 1983 Wis. Act 27; (b) Charges for motorized wheelchairs and scooters became exempt September 1, 1985, pursuant to 1985 Wis. Act 29; (c) Charges for apparatus or equipment for the injection of insulin or the treatment of diabetes and supplies used to determine blood sugar level became exempt March 1, 1989, pursuant to 1987 Wis. Act 399; (d) Charges for antiembolism elastic hose and stockings prescribed by a physician became exempt October 1, 1989, pursuant to 1989 Wis. Act 31; (e) Sales of parts and accessories for certain medical items became exempt effective August 15, 1991, pursuant to 1991 Wis. Act 39; (f) The definitions of "drug," "durable medical equipment," "mobility−enhancing equipment," and "prosthetic devices" and the exemptions for these items became effective October 1, 2009, pursuant to 2009 Wis. Act 2; ~~and~~ (g) The change of the term "gross receipts" to "sales price" and the separate impositions of tax on coins and stamps sold above face value under s. 77.52 (1) (b), Stats., certain leased property affixed to real property under s. 77.52 (1) (c), Stats., and digital goods under s. 77.52 (1) (d), Stats., became effective October 1, 2009, pursuant to 2009 Wis. Act 2; and (h) The clarification that a "prosthetic device" must be a replacement, corrective, or supportive device became effective July 2, 2013, pursuant to 2013 Wis. Act 20.

SECTION 24. Tax 11.48 (3) (c) (Note 1) and (Note 2) are amended to read:

Tax 11.48 (3) (c) (Note 1) Section Tax 11.48 interprets ss. 77.51 (13) (n), 77.52 (1), (2) (a) 1., 2., and 9., ~~and~~ (2m), and (21), and 77.54 (36), Stats.

(Note 2) The interpretations in s. Tax 11.48 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) The provisions of sub. (1) (c) 1. are effective on or after August 9, 1989, pursuant to 1989 Wis. Act 31; ~~and~~ (b) The change of the term "gross receipts" to "sales price" and the separate impositions of tax on coins and stamps sold above face value under s. 77.52 (1) (b), Stats., certain leased property affixed to real property under s. 77.52 (1) (c), Stats., and digital goods under s. 77.52 (1) (d), Stats., became effective October 1, 2009, pursuant to 2009 Wis. Act 2; and (c) The clarification that a service provider who transfers tangible personal property, or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., incidentally with a taxable service is the consumer of such property, items, or goods became effective July 2, 2013, pursuant to 2013 Wis. Act 20.

SECTION 25. Tax 11.49 (2) (b) is amended to read:

Tax 11.49 (2) (b) Sales made directly to this state or any agency thereof, the University of Wisconsin Hospitals and Clinics Authority, the Wisconsin Aerospace Authority, the Wisconsin Economic Development Corporation, ~~the Health Insurance Risk−Sharing Plan Authority,~~ and the Fox River Navigational System Authority; any county, city, village, town, or school district in this state; a county−city hospital established under s. 66.0927, Stats.; a sewerage commission organized under s. 281.43 (4), Stats., or a metropolitan sewerage district organized under ss. 200.01 to 200.15 or 200.21 to 200.65, Stats.; any other unit of government in this state or any agency or instrumentality of one or more units of government in this state; any federally recognized American Indian tribe or band in this state; any joint local water authority created under s. 66.0823, Stats.; any corporation, community chest fund, foundation, or association organized and operated exclusively for religious, charitable, scientific, or educational purposes, or for the prevention of cruelty to children or animals, except hospital service insurance corporations under s. 613.80 (2), Stats., no part of the net income of which inures to the benefit of any private stockholder, shareholder, member, or corporation; a local exposition district under subch. II of ch. 229, Stats.; a local cultural arts district under subch. V of ch. 229, Stats. Sales to a cemetery company or corporation described under section 501 (c) (13) of the Internal Revenue Code, are exempt from sales and use tax if the cemetery company or corporation uses the items exclusively for the purposes of the company or corporation. Section 77.55 (1), Stats., provides an exemption for sales to the United States, its unincorporated agencies and instrumentalities, and any incorporated agency or instrumentality of the United States wholly owned by the United States or by a corporation wholly owned by the United States. Sales to employees of these entities are not exempt, even though the entity may reimburse the employee for the expenditure.

SECTION 26. Tax 11.52 (5) (a) and (7) (c) (Note 2) are amended to read:

Tax 11.52 (5) (a) Laundry, dry cleaning and pressing machines when the service is performed by the customer through the use of ~~coin-operated,~~ self−service machines.

(7) (c) (Note 2) The interpretations in s. Tax 11.52 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) ~~the~~ The definitions of "candy," "dietary supplement," "food and food ingredient," and "soft drink," the exemption for food and food ingredients, the change of the term "gross receipts" to "sales price," and the separate impositions of tax on coins and stamps sold above face value under s. 77.52 (1) (b), Stats., certain leased property affixed to real property under s. 77.52 (1) (c), Stats., and digital goods under s. 77.52 (1) (d), Stats., became effective October 1, 2009, pursuant to 2009 Wis. Act 2 and (b) Receipts from all self−service laundry, dry cleaning, pressing, and dyeing machines, including those that are not coin−operated, are not taxable effective October 1, 2013, pursuant to 2013 Wis. Act 20.

SECTION 27. Tax 11.56 (7) (bm) and (8) (Note 1) and (Note 2) are amended to read:

Tax 11.56 (7) (bm) Section 77.52 (2) (a) 11., Stats., provides that the tax does not apply to the service of printing or imprinting tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., that results in printed material, catalogs, or envelopes that are exempt under s. 77.54 (25), ~~or~~ (25m), or (59), Stats.

(8) (Note 1) Section Tax 11.56 interprets ss. 77.51 (7h), (8), (11), and (14) (h), 77.52 (1) and (2) (a) 11., and 77.54 (2), (2m), (6) (a) and (b), (25), (25m), (30) (a) 6., ~~and~~ (43), (59), and (61), Stats.

(Note 2) The interpretations in s. Tax 11.56 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) Sales of typeset material shall first be considered sales of tangible personal property on April 1, 1983; (b) The exemption in sub. (3) (b) 2. for ingredients of publications became effective July 2, 1983, pursuant to 1983 Wis. Act 27; (c) The definition of storage and use for purposes of imposing use tax does not include storing or using raw materials becoming printed materials to be shipped outside Wisconsin effective October 1, 1993, pursuant to 1993 Wis. Act 16; (d) The sales and use tax exemption for raw materials transported and used solely outside Wisconsin became effective December 1, 1997, pursuant to 1997 Wis. Act 27; (e) The exemption for fuel and electricity consumed in manufacturing became effective January 1, 2006, pursuant to 2003 Wis. Act 99; (f) The exemption for catalogs and the envelopes in which they are mailed became effective April 1, 2009 pursuant to 2007 Wis. Act 20; (g) The requirement that property and items which qualify for exemption under s. 77.54 (2) and (2m), Stats., be consumed exclusively and directly by a manufacturer in manufacturing property and items destined for sale became effective August 1, 2009 pursuant to 2009 Wis. Act 28; (h) The change of the term "gross receipts" to "sales price" and the separate impositions of tax on coins and stamps sold above face value under s. 77.52 (1) (b), Stats., certain leased property affixed to real property under s. 77.52 (1) (c), Stats., and digital goods under s. 77.52 (1) (d), Stats., became effective October 1, 2009, pursuant to 2009 Wis. Act 2; ~~and~~ (i) The sales and use tax exemption for advertising and promotional direct mail became effective July 1, 2013, pursuant to 2011 Wis. Act 32; (j) Services resulting in advertising and promotional direct mail were excluded from taxable services effective July 1, 2013, pursuant to 2013 Wis. Act 20; and (k) The additional printing exemptions under s. 77.54 (61), Stats., became effective October 1, 2013, pursuant to 2013 Wis. Act 20.

SECTION 28. Tax 11.56 (9) is created to read:

Tax 11.56 (9) ADDITIONAL EXEMPTIONS FOR PRINTING INDUSTRY. (a) *Definitions*. In s. 77.54 (61), Stats., and this subsection:

1. "Commercial printing, except screen printing and book printing, without publishing, except grey goods printing" means activities described in 2012 North American Industry Classification 323111.

2. "Copies of the product" means finished artwork in a digital form that is generated, furnished, and used for the purpose of printing; represents the object, such as a book, catalog, pamphlet, or magazine, as it is to appear in a printed form; and includes files containing instructions or other information required by the printer for printing the product, such as instructions for plate−making or setting ink−levels at the printing press, whether these instructions or other information are furnished to the printer or derived by the printer from the finished art files.

3. "Finished artwork" has the meaning given in s. 77.51 (3rm), Stats.

4. "Prepress and postpress services in support of printing activities" means activities described in 2012 North American Industry Classification 323120.

5. "Primarily" means more than 50 percent.

6. "Printing or printing and binding of books and pamphlets without publishing" means activities described in 2012 North American Industry Classification 323117.

7. "Sent to a printing press" includes transferring a copy of the product, either electronically or through the use of a tangible storage media, to printing presses, ink−jet printers, plate−making machines, and similar machines or to storage devices devoting to serving such machines.

8. "Stored" has the meaning of the term "storage" as defined in s. 77.51 (18), Stats.

9. "Used" has the meaning of the term "use" as defined in s. 77.51 (22), Stats.

(b) *Exemptions*. Section 77.54 (61), Stats., provides exemptions for purchases of computers and servers that are used to store copies of the product that is sent to a printing press and for purchases from out−of−state sellers of items that are temporarily stored, remain idle, and are not used in this state for not more than 180 days and that are then delivered and used outside this state, provided the purchaser is primarily engaged in any of the following:

1. Commercial printing, except screen printing and book printing, without publishing, except gray goods printing.

2. Printing or printing and binding books and pamphlets without publishing.

3. Performing prepress and postpress services in support of printing activities.

Examples: (1) Newspaper publishes a daily edition of a newspaper. Newspaper operates its own printing plant. The printing plant prints Newspaper's publications as well as printing under contract for third parties. More than 50 percent of Newspaper's sales are from sales of its newspaper and advertising revenues associated with sales of its newspaper. Newspaper's primary activity is described by NAICS code 511110: *Newspaper Publishers*. Newspaper does not qualify for the exemption under s. 77.54 (61), Stats.

(2) Insurance Company operates its own printing plant. Insurance Company's primary source of revenues is

insurance premiums. Insurance Company's primary NAICS code is described within NAICS subsector code 524: Insurance Carriers and Related Activities. Insurance Company does not qualify for the exemption under s. 77.54 (61), Stats.

(3) Business is engaged in screen printing of T−shirts, caps, and jackets. This is Business' only activity and source of revenue. Business' primary activity is described by NAICS code 323113: Commercial Screen Printing. Business does not qualify for the exemption under s. 77.54 (61), Stats.

(4) Company is primarily engaged in the business of printing on fabric grey goods. Company's primary activity is described by NAICS code 313310: Textile and Finishing Mills. As such, Company does not qualify for the exemption under s. 77.54 (61), Stats.

SECTION 29. Tax 11.61 (2) (c) (Note 1) is amended to read:

Tax 11.61 (2) (c) (Note 1) Section Tax 11.61 interprets ss. 77.51 (2d), (3pj), and (13) (m) and (o), 77.52 (2) (a) 10., and 77.54 (3), (33), and (42), Stats.

SECTION 30. Tax 11.66 (1) (u) is repealed and recreated to read:

Tax 11.66 (1) (u) "Place of primary use" means the residential street address or the primary business street address of the customer. In the case of mobile telecommunications services, "place of primary use" means a street address within the licensed service area of the home service provider.

SECTION 31. Tax 11.66 (1) (x) and (6) (Note 3) are amended to read:

Tax 11.66 (1) (x) "Prepaid wireless calling service" means a telecommunications service that provides the right to utilize mobile wireless service as well as other nontelecommunications services, including the download of digital products delivered electronically, content, and ancillary services, and that is paid for prior to use and sold in predetermined ~~dollar~~ units ~~whereby the number of units declines~~ or dollars that decrease with use in a known amount.

(6) (Note 3) The interpretations in s. Tax 11.66 are effective under the general sales and use tax law on or after September 1, 1969, except: (a) Chapter 39, Laws of 1975, effective July 31, 1975, expanded the telephone services subject to the tax to include "telephone services of whatever nature"; (b) Chapter 317, Laws of 1981, imposed the tax on interstate telegraph and telephone service, effective May 1, 1982; (c) "911" service became exempt on August 1, 1987, pursuant to 1987 Wis. Act 27; (d) Telecommunications services originating in Wisconsin and charged to a subscriber in Wisconsin became taxable October 1, 1989, pursuant to 1989 Wis. Act 31; (e) Telecommunications services originating in Wisconsin and charged to a service address in Wisconsin became taxable October 1, 1991, pursuant to 1991 Wis. Act 31; (f) The repeal of the exemption for equipment in central offices of telephone companies became effective September 1, 1995, pursuant to 1995 Wis. Act 27; (g) Telecommunications services paid for by the insertion of coins in a coin−operated telephone became taxable August, 1, 1996, pursuant to 1995 Wis. Act 351; (h) Certain telecommunications message services became taxable December 1, 1997, pursuant to 1997 Wis. Act 27; (i) Telecommunications services originating outside Wisconsin, terminating in Wisconsin and charged to a service address in Wisconsin, except certain services obtained by means of a toll−free number, became taxable December 1, 1997, pursuant to 1997 Wis. Act 27; (j) Credit for sales tax properly paid to another state on interstate telecommunications services became effective October 14, 1997, pursuant to 1997 Wis. Act 27; (k) Sales of rights to purchase telecommunications services became taxable August 1, 1998, pursuant to 1997 Wis. Act 237; (L) The exemption for interstate private line services no longer applies, effective December 1, 2002; (m) The definitions of air−to−ground radio telephone service, ancillary services, call−by−call basis, communications channel, conference bridging service, customer, customer channel termination point, detailed telecommunications billing services, directory assistance, eight hundred service, end user, fixed wireless service, home service provider, international telecommunications services, internet access services, interstate telecommunications services, intrastate telecommunications services, mobile telecommunications service, nine hundred service, paging service, place of primary use, postpaid calling service, prepaid calling service, prepaid wireless calling service, private communications service, radio service, radiotelegraph service, radiotelephone service, service address, telecommunications service, value−added nonvoice data service, vertical service, and voice mail service became effective October 1, 2009, pursuant to 2009 Wis. Act 2; (n) The specific imposition of tax on ancillary services and interstate, intrastate, and international telecommunications services became effective October 1, 2009, pursuant to 2009 Wis. Act 2; (o) The sourcing provisions related to telecommunications services became effective October 1, 2009, pursuant to 2009 Wis. Act 2; ~~and~~ (p) The change of the term "gross receipts" to "sales price" and the separate impositions of tax on coins and stamps sold above face value under s. 77.52 (1) (b), Stats., certain leased property affixed to real property under s. 77.52 (1) (c), Stats., and digital goods under s. 77.52 (1) (d), Stats., became effective October 1, 2009, pursuant to 2009 Wis. Act 2; and (q) The definition of "primary place of use" was amended to replace the reference to federal law with specific language, and the definition of "prepaid wireless calling service" was amended, pursuant to 2013 Wis. Act 20.

SECTION 32. Tax 11.67 (3) (m) (Note 1) and (Note 2) are amended to read:

Tax 11.67 (3) (m) (Note 1) Section Tax 11.67 interprets ss. 77.51 (1f), (12), (12m), (13), (14) (intro.) and (h), (15a), (15b), (20), and (22) (a) and (b) and 77.52 (1), (2) (a), (2m) (a) and (b), ~~and~~ (20), and (21), Stats.

(Note 2) The interpretations in s. Tax 11.67 are effective under the general sales and use tax law on and after September 1, 1969, except that (a) The fees paid to architects performing landscaping planning became taxable effective May 1, 1982, pursuant to Chapter 317, Laws of 1981; (b) The definition of bundled transactions became effective October 1, 2009, pursuant to 2009 Wis. Act 2; ~~and~~ (c) The change of the term "gross receipts" to "sales price" and the separate impositions of tax on coins and stamps sold above face value under s. 77.52 (1) (b), Stats., certain leased property affixed to real property under s. 77.52 (1) (c), Stats., and digital goods under s. 77.52 (1) (d), Stats., became effective October 1, 2009, pursuant to 2009 Wis. Act 2; and (d) The clarification that a service provider who transfers tangible personal property, or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., incidentally with a taxable service is the consumer of

such property, items, or goods became effective July 2, 2013, pursuant to 2013 Wis. Act 20.

SECTION 33. Tax 11.68 (7) (b) is repealed and recreated to read:

Tax 11.68 (7) (b) 1. In this paragraph, "lump sum contract" means a contract to perform real property construction activities and to provide tangible personal property, items or property under s. 77.52 (1) (b) or (c), Stats., or taxable services and for which the contractor quotes the charge for labor, services of subcontractors, tangible personal property, items and property under s. 77.52 (1) (b) and (c), Stats., and taxable services as one price, including a contract for which the contractor itemizes the charges for labor, services of subcontractors, tangible personal property, items and property under s. 77.52 (1) (b) and (c), Stats., and taxable services as part of a schedule of values or similar document.

2. A contractor's sales price of a lump sum contract is exempt from tax if the total sales price of all taxable products and services sold by the contractor as a part of the lump sum contract is less than 10 percent of the total amount of the lump sum contract. Except as provided in subd. 3., the contractor is the consumer of such taxable products and must pay tax on its purchase of the taxable products.

3. If the lump sum contract is entered into with an entity that is exempt from taxation under s. 77.54 (9a), Stats., the contractor is the consumer of all taxable products used by the contractor in real property construction activities, but the contractor may purchase without tax, for resale, tangible personal property, items and property under s. 77.52 (1) (b) and (c), Stats., and taxable services that are sold by the contractor as part of the lump sum contract with the entity and that are not consumed by the contractor in real property construction activities.

SECTION 34. Tax 11.68 (13) (e) (Note 1) and (Note 2) are amended to read:

Tax 11.68 (13) (e) (Note 1) Section Tax 11.68 interprets ss. 77.51 (2), (12m) (b) 7., (14) (intro.), (15a) (b) 1. and 4., (15b) (b) 7., 77.52 (2) (a) 10., 11., and 20., 77.53 (1), 77.54 (5) (d), (6) (a), (26), (26m), (31), ~~and~~ (41), and (60), 77.71 (3), and 77.77 (3), Stats.

(Note 2) The interpretations in s. Tax 11.68 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) Vault doors were not considered personal property until August 1, 1975; (b) Service station equipment such as underground tanks, gasoline pumps and hoists installed in or securely attached to their owner's land was real property, but the property was personal property if the personal property and land were owned by different persons prior to August 1, 1975; (c) Advertising signs were real property if erected on and securely attached to the owner's land prior to August 1, 1975; (d) Landscaping services became taxable effective May 1, 1982, pursuant to Chapter 317, Laws of 1981; (e) The exemption for waste reduction and recycling machinery and equipment became effective July 1, 1984, pursuant to 1983 Wis. Act 426; (f) The exemption for mobile units used for mixing and processing became effective July 20, 1985, pursuant to 1985 Wis. Act 29; (g) The credit for local sales taxes paid to other states became effective April 1, 1986, pursuant to 1987 Wis. Act 27; (h) The exemption for safety attachments for manufacturing machines became effective June 1, 1986, pursuant to 1985 Wis. Act 149; (i) The exemption of 35% of the selling price of new mobile homes and 100% of the selling price of used mobile homes became effective January 1, 1987, pursuant to 1985 Wis. Act 29; (j) The exemption for property used in constructing professional sports and home entertainment stadiums became effective October 1, 1991, pursuant to 1991 Wis. Act 37; (k) The 35% reduction in gross receipts for new mobile homes transported in 2 unattached sections became effective October 1, 1991, pursuant to 1991 Wis. Act 39; (L) Tangible personal property purchased outside Wisconsin, stored in Wisconsin and subsequently used outside Wisconsin became taxable October 1, 1991, pursuant to 1991 Wis. Act 39; (m) Raw materials purchased outside Wisconsin, manufactured, fabricated or otherwise altered by the contractor outside Wisconsin and used in real property construction by the contractor in Wisconsin became subject to use tax effective August 12, 1993, pursuant to 1993 Wis. Act 16; (n) In Tom Kuehne Landscape Contractor, Inc. vs. Wisconsin Department of Revenue, Wisconsin Court of Appeals, District IV, No. 86−1813, October 29, 1987 (CCH 202−919), highway signs, sign bridges, delineator posts and guardrails were found to remain tangible personal property after installation; (o) The stadium tax on building materials became effective January 1, 1996, pursuant to 1995 Wis. Act 56; (p) The change to the definition of "real property construction activities" to include only those activities that take place at a site where tangible personal property is affixed to real property became effective for sales of property pursuant to contracts entered into on or after December 1, 1997, pursuant to 1997 Wis. Act 27; (q) The clarification of the tax treatment of the original installation or complete replacement of certain deemed items became effective on October 1, 2001, pursuant to 2001 Wis. Act 16; (r) The changes in the use of the terms mobile homes and manufactured homes became effective January 1, 2008, pursuant to 2007 Wis. Act 11; (s) The change of the term "gross receipts" to "sales price" and the separate impositions of tax on coins and stamps sold above face value under s. 77.52 (1) (b), Stats., certain leased property affixed to real property under s. 77.52 (1) (c), Stats., and digital goods under s. 77.52 (1) (d), Stats., became effective October 1, 2009, pursuant to 2009 Wis. Act 2; ~~and~~ (t) The exemption for modular homes and manufactured homes used in real property construction activities outside Wisconsin became effective September 1, 2011 pursuant to 2011 Wis. Act 32; and (u) The exemption for lump sum contracts first applied to contracts entered into on or after October 1, 2013, pursuant to 2013 Wis. Act 20.

SECTION 35. Tax 11.70 (2) (e) and (7) (b) (Note 2) and (Note 3) are amended to read:

Tax 11.70 (2) (e) Producing, fabricating, processing, printing, or imprinting tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., for clients for a consideration, even though the client may furnish the materials used in producing, fabricating, processing, printing, or imprinting the property, items, or goods. However, the tax does not apply to the printing or imprinting of tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., that results in printed material, catalogs, or envelopes that are exempt under s. 77.54 (25), ~~or~~ (25m), or (59), Stats.

(7) (b) (Note 2) Section Tax 11.70 interprets ss. 77.51 (1f), (1fr), (3rm), (14) (intro.) and (h), 77.52 (1) and (2), 77.522, 77.54 (2), (2m), (6) (b), (25), (25m), ~~and~~ (43), and (59), and 77.585 (8), Stats.

(Note 3) The interpretations in s. Tax 11.70 are effective under the general sales and use tax law on and after September

1, 1969, except: (a) The exemption for printing or imprinting of tangible personal property furnished by customers and used out−of−state for advertising became effective March 1, 1970; (b) The exemption for printed advertising material used out−of−state became effective May 21, 1972; (c) The exemption for ingredients or components of shoppers guides, newspapers, and periodicals became effective July 7, 1983; (d) The sales and use tax exemption for raw materials for printed materials transported and used solely outside Wisconsin became effective December 1, 1997, pursuant to 1997 Wis. Act 27; (e) The exemption for catalogs and their mailing envelopes became effective April 1, 2009, pursuant to 2007 Wis. Act 20; (f) The provision that items must be consumed exclusively and directly by a manufacturer in manufacturing property or items destined for sale became effective August 1, 2009, pursuant to 2009 Wis. Act 28; (g) The definitions of bundled transaction and finished artwork became effective October 1, 2009, pursuant to 2009 Wis. Act 2; (h) The change of the term "gross receipts" to "sales price" and the separate impositions of tax on coins and stamps sold above face value under s. 77.52 (1) (b), Stats., certain leased property affixed to real property under s. 77.52 (1) (c), Stats., and digital goods under s. 77.52 (1) (d), Stats., became effective October 1, 2009, pursuant to 2009 Wis. Act 2; (i) The definition of "direct mail" became effective October 1, 2009 pursuant to 2009 Wis. Act 2; (j) The definition of "advertising and promotional direct mail" became effective May 27, 2010, pursuant to 2009 Wis. Act 330; ~~and~~ (k) The sales and use tax exemption for advertising and promotional direct mail became effective July 1, 2013, pursuant to 2011 Wis. Act 32; and (L) Services resulting in advertising and promotional direct mail were excluded from taxable services effective July 1, 2013, pursuant to 2013 Wis. Act 20.

SECTION 36. Effective date. This rule shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22 (2) (intro.), Stats.

ADMINISTRATIVE RULES
FISCAL ESTIMATE
AND ECONOMIC IMPACT ANALYSIS

Type of Estimate and Analysis		
X Original ☐ Updated ☐ Corrected		
Administrative Rule Chapter, Title and Number		
Chapter Tax 11 — Sales and use tax		
Subject		
Sales and use tax provisions		
Fund Sources Affected		**Chapter 20 , Stats. Appropriations Affected**
☐ GPR ☐ FED ☐ PRO ☐ PRS ☐ SEG ☐ SEG−S		
Fiscal Effect of Implementing the Rule		
X No Fiscal Effect ☐ Indeterminate	☐ Increase Existing Revenues ☐ Decrease Existing Revenues	☐ Increase Costs ☐ Could Absorb Within Agency's Budget ☐ Decrease Costs
The Rule Will Impact the Following (Check All That Apply)		
☐ State's Economy ☐ Local Government Units	☐ Specific Businesses/Sectors ☐ Public Utility Rate Payers	
Would Implementation and Compliance Costs Be Greater Than $20 million?		
☐ Yes **X** No		
Policy Problem Addressed by the Rule		
The rule does not create or revise policy, other than to reflect current law and department policy.		

Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)
As indicated in the attached fiscal estimate, the proposed rule is intended to reflect law changes and clarify the tax treatment of certain items. Since the fiscal impact of the statutory changes has already been reflected, the proposed rule has no fiscal effect. No comments concerning the economic effect of the rule were submitted in response to the department's solicitation.
Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule
Clarifications and guidance provided by administrative rules may lower the compliance costs for businesses, local governmental units, and individuals. If the rule is not implemented, Chapter Tax 11 will be incomplete in that it will not reflect current law or department policy.
Long Range Implications of Implementing the Rule
No long−range implications are anticipated.
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

FISCAL ESTIMATE FORM

2013 Session

X ORIGINAL ☐ UPDATED

☐ CORRECTED ☐ SUPPLEMENTAL

LRB #

INTRODUCTION #

Admin. Rule # Tax 11: 2013−15 budget

Subject

Proposed order of the Department of Revenue related to sales tax

Fiscal Effect

State: X No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation

☐ Increase Existing Appropriation ☐ Increase Existing Revenues
☐ Decrease Existing Appropriation ☐ Decrease Existing Revenues
☐ Create New Appropriation

☐ Increase Costs — May be Possible to Absorb Within Agency's Budget ☐ Yes ☐ No

☐ Decrease Costs

Local: X No Local Government Costs

1. ☐ Increase Costs
☐ Permissive ☐ Mandatory

2. ☐ Decrease Costs
☐ Permissive ☐ Mandatory

3. ☐ Increase Revenues
☐ Permissive ☐ Mandatory

4. ☐ Decrease Revenues
☐ Permissive ☐ Mandatory

5. Types of Local Governmental Units Affected:
☐ Towns ☐ Villages ☐ Cities
☐ Counties ☐ Others
☐ School Districts ☐ WTCS Districts

Fund Sources Affected

☐ GPR ☐ FED ☐ PRO ☐ PRS ☐ SEG ☐ SEG−S

Affected Ch. 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate:

The proposed rule updates Chapter TAX 11 of the Administrative Code, pertaining to the sales and use tax, to reflect certain sales tax changes contained in 2013 Wisconsin Act 20, the 2013−15 Budget Bill.
The proposed rule modifies the administrative code to reflect law changes and clarify the tax treatment of certain items.
The proposed rule includes:

- A sales and use tax exemption for certain property sold by a contractor as part of a lump sum contract.
- Repeal of the sales tax imposition on receipts from self−service laundry machines that are operated by tokens and magnetic cards.
- A sales and use tax exemption for services resulting in advertising and promotional direct mail.
- A sales and use tax exemption for certain products used by commercial printers.
- Updates and clarifications to reflect changes to sales and use tax statutes.
- Dissolution of the Health Insurance Risk−Sharing Plan and Authority.

The fiscal effect of the exemptions created under 2013 Wisconsin Act 20 has already been reflected under general fund condition statements subsequent to 2013 Wisconsin Act 20. Since the fiscal impact of the statutory changes has already been reflected, the proposed rule has no fiscal effect.

Notice of Hearing

Safety and Professional Services — Board of Nursing

CR 14−002

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Board of Nursing in ss. 15.08 (5) (b) and 441.01 (3), Wis. Stats., and interpreting ss. 441.04, 441.05, 441.06, 441.0,8 and 441.10, Wis. Stats., the Board of Nursing will hold a public hearing at the time and place indicated below to consider an order to repeal and recreate Chapters N 2 and 3, relating to nurse licensure and examining councils.

Hearing Information

Date:	**Thursday, February 13, 2014**
Time:	8:05 a.m.
Location:	1400 East Washington Avenue Room 121A Madison, Wisconsin

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 8366, 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 Board Services, 1400 East Washington Avenue, Room 151, P.O. Box 8366, 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 **February 13, 2014**, 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 Board Services, 1400 East Washington Avenue, P.O. Box 8366, Madison, Wisconsin 53708, or by email at Sharon.Henes@wisconsin.gov.

Analysis Prepared by the Department of Safety and Professional Services

Statutes interpreted

Sections 441.04, 441.05, 441.06, 441.08, and 441.10, Wis. Stats.

Statutory authority

Sections 15.08 (5) (b) and 441.01 (3), Wis. Stats.

Explanation of agency authority

The board shall promulgate rules for its own guidance and for the guidance of the profession and define and enforce professional conduct and unethical practices not inconsistent with the law relating to the profession.

Specifically, the board may also establish rules to prevent unauthorized persons from practicing professional nursing. It shall approve all rules for the administration of ch. 441, Wis. Stats.

Related statute or rule

Sections 441.04, 441.05, 441.06, 441.08 and 441.10, Wis. Stats.

Plain language analysis

This proposed rule updates the licensure process.

Section 1 repeals and recreates ch. N 2. The first subsection is licensure by examination. The qualifications for professional nurse licensure are graduating from a high school or equivalent, does not have an arrest or conviction record related to the practice of nursing, graduated from a school of nursing and passes the NCLEX exam. The qualifications for practical nurse licensure are 2 years of high school, does not have an arrest or conviction record related to the practice of nursing, graduated from a school of nursing and passes the NCLEX exam. The application procedure is submitting an application, paying the fee, submitting proof of graduation, passing the NCLEX, and submitting all relevant information relating to criminal charges, convictions of crimes or any acts which would constitute unprofessional conduct. If the nurse is a graduate from a U.S. territory or outside the United States, the education credentials need to be evaluated by the Commission on Graduates of Foreign Nursing Schools.

The second subsection is licensure by endorsement. An applicant holding a current license from a compact state shall submit a completed application, pay the fee, declare Wisconsin as the primary state, and submit all relevant information relating to criminal charges, convictions of crimes, any acts which would constitute unprofessional conduct or discipline taken by another state. An applicant holding a current license from another U.S. state, territory or Canada shall submit evidence of initial licensure including graduation from an approved nursing school and passage of the NCLEX or evidence of educational qualifications and licensure examination. In addition, a applicant shall submit a completed application, pay the fee, verification from the state of initial licensure and current licensure, documentation of employment history, and submitting all relevant information relating to criminal charges, convictions of crimes, any acts which would constitute unprofessional conduct or discipline taken by another state. An applicant who does not have current nursing education or been employed in a position that requires a nursing license may apply for a limited license to complete a nurse refresher course.

The third subsection is temporary permits. A nurse who has graduated from an approved or comparable school may apply for a temporary permit upon submission of a completed application, payment of fee and verification of graduation from a nursing school. A graduate nurse may use the title of

G.N. for graduate nurse or G.P.N. for graduate practical nurse. The holder of a temporary permit may only work under direct supervision unless the person holds a nursing license in another state. The temporary permit is valid for a period of three months or the receipt of results indicating failing the NCLEX. A temporary permit may be renewed once and may be renewed subsequently on the basis of hardship. A temporary permit may be denied or revoked for providing false information on the application, misrepresentation of title without a valid permit or for unprofessional conduct.

Section 2 repeals and recreates chapter N 3. The examining councils serve the Board in an advisory capacity. The section states the appointment process and composition of the two nursing examining councils.

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

None

Comparison with rules in adjacent states

Illinois: In Illinois an applicant is eligible for nurse licensure by examination if the applicant completes an application, pays the fee, submits to a criminal background check and graduates from an approved school. If educated outside of the United States, the education is to be evaluated by the Commission on Graduates of Foreign Nursing Schools. A nurse is eligible for licensure if the applicant completes and application, pays the fee, submits to a criminal background check, graduates from an approved school, submits verification of licensure status from the jurisdiction of original licensure, the current state of licensure and all states the applicant has directly practiced in within the last 5 years. If educated outside of the United States, the education is to be evaluated by the Commission on Graduates of Foreign Nursing Schools.

Iowa: In Iowa an applicant is eligible for nurse licensure by examination if the applicant graduated from high school or the equivalent, completes an application, pays the fee, graduated from an approved program and passes NCLEX. If the person has a criminal conviction history or prior disciplinary action, the applicant must receive Board approval. If educated outside of the United States, the education is to be evaluated by the Commission on Graduates of Foreign Nursing Schools. A nurse from a compact state shall submit a completed application, pay the fee, declare Iowa as the primary state. A nurse is eligible for licensure by endorsement from a non−compact state if the applicant completes an application, pays a fee, has verification of original licensure and nursing program transcripts and submits a criminal background check. If educated outside of the United States, the education is to be evaluated by the Commission on Graduates of Foreign Nursing Schools. If the person has a criminal conviction history or prior disciplinary action, the applicant must receive Board approval.

Michigan: In Michigan an applicant is eligible for nurse licensure by examination if the applicant completed an application, pays the fees, completed approved nursing education program and passes NCLEX. If educated outside of the United States, the education is to be evaluated by the Commission on Graduates of Foreign Nursing Schools. A nurse is eligible for licensure by endorsement if the applicant completes an application, pays the fee, graduated from an approved school of nursing and was first licensed in another state pursuant to passage of NCLEX.

Minnesota: In Minnesota a nurse is eligible for licensure by examination if the applicant completes an application, pays the fee, graduated from an approved school and passes NCLEX. If educated outside of the United States, the education is to be evaluated by the Commission on Graduates of Foreign Nursing Schools. A nurse is eligible for licensure by endorsement if the applicant completes an application, pays the fee, shows verification of licensure in another jurisdiction, has passed an examination acceptable to the board and answers questions related to any prior disciplinary actions. If the applicant has not engaged in acceptable nursing practice within the 2 years of application, the applicant must complete one contact hour of continuing education for each month that the applicant was not engaged in acceptable practice for a maximum of 60 hours and if the person has not practiced for more than 5 years, the applicant must compete a nurse refresher course. Minnesota does issue privilege to practice nursing in Minnesota licenses to border state applicants upon meeting certain requirements.

Summary of factual data and analytical methodologies

The Board reviewed the National Council of State Board of Nursing's model rules and the licensing requirements in our neighboring states.

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

The rule was posted for economic comments for a period of 14 days and none were received. This rule is related to an individual's eligibility for licensure and does not effect small business.

Fiscal Estimate and Economic Impact Analysis

The Fiscal Estimate and Economic Impact Analysis is attached.

Initial Regulatory Flexibility Analysis or Summary

These proposed rules do not have an economic impact on small businesses, as defined in s. 227.114 (1), Stats.

Agency Contact Person

Sharon Henes, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Board Services, 1400 East Washington Avenue, Room 151, P.O. Box 8366, Madison, Wisconsin 53708; telephone 608−261−2377; email at Sharon.Henes@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 ☐ Updated ☐ Corrected

2. Administrative Rule Chapter, Title and Number

N 2, 3

3. Subject

Nurse Licensure

4. Fund Sources Affected

☐ GPR ☐ FED **X** PRO ☐ PRS ☐ SEG ☐ SEG−S

5. Chapter 20, Stats. Appropriations Affected

20.165(1)(g)

6. Fiscal Effect of Implementing the Rule

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

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

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

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

☐ Yes **X** No

9. Policy Problem Addressed by the Rule

This rule updates and creates clarity regarding the process of obtaining a nurse license. There has not been a review of these chapters since 1984.

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 was posted for economic comments for a period of 14 days and no comments were received.

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

None.

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)

None.

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

The benefit is to create clarity and bring the process in line with current technologies.

14. Long Range Implications of Implementing the Rule

The long range implication is an updated licensure procedure.

15. Compare With Approaches Being Used by Federal Government

None

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

Our neighboring states require graduation from an approved school and passage of the NCLEX. Both Illinois and Iowa require fingerprint criminal background checks. All of the neighboring states require a person educated outside of the U.S. to have their education evaluated by the Commission on Graduates of Foreign Nursing Schools. The endorsement requirements of our neighboring states include verification of licensure in the other jurisdiction(s) and consideration of past disciplinary actions. Illinois and Iowa require fingerprint criminal background checks. Minnesota requires nursing practice within 2 years of the application.

17. Contact Name	18. Contact Phone Number
Sharon Henes	(608) 261−2377

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

Notice of Hearing

Safety and Professional Services — Board of Nursing

CR 14−004

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Board of Nursing in ss.15.08 (5) (b) and 441.01 (3), Wis. Stats., and interpreting ss. 441.01 (3) and (4) and 441.12, Wis. Stats., the Board of Nursing will hold a public hearing at the time and place indicated below to consider an order to repeal and recreate Chapter N 1, relating to school approval.

Hearing Information

Date: **Thursday, February 13, 2014**
Time: 8:00 a.m.
Location: 1400 East Washington Avenue
Room 121A
Madison, Wisconsin

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 8366, 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 Board Services, 1400 East Washington Avenue, Room 151, P.O. Box 8366, 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 February 13, 2014 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 Board Services, 1400 East Washington Avenue, P.O. Box 8366, Madison, Wisconsin 53708, or by email at Sharon.Henes@wisconsin.gov.

Analysis prepared by the Department of Safety and Professional Services

Statutes interpreted

Sections 441.01 (3) and (4) and 441.12, Wis. Stats.

Statutory authority

Sections 15.08 (5) (b) and 441.01 (3), Wis. Stats.

Explanation of agency authority

The board shall promulgate rules for its own guidance and for the guidance of the profession to which it pertains.

Specifically, the board may establish minimum standards for schools for professional nurses and schools for licensed practical nurses, including all related clinical units and facilities, and make and provide periodic surveys and consultations to such schools. It may also establish rules to prevent unauthorized persons from practicing professional nursing. It shall approve all rules for the administration of chapter 441, Wis. Stats.

Related statute or rule

Sections 441.01 (3) and (4) and 441.12, Wis. Stats.

Plain language analysis

The proposed rule repeals and recreates the nursing school approval process chapter. The chapter has not been updated since 1989 and the school approval process has evolved since that time.

There are three stages to the approval process. The first stage is the authorization to plan a school of nursing. The institution will provide to the board the name and address of the controlling institution, accreditation status, statement of intent including the academic and licensure levels; evidence of the availability of clinical facilities, plan to recruit an educational administrator and faculty and the proposed timeline. The board will review the application and make a decision within two months of the completed application. The second stage is the authorization to admit students. The school of nursing will provide to the board verification of employment of an educational administrator, evidence of faculty, the school's philosophy and objectives, an overview of the curriculum, verification of student policies, the ability for the students to acquire clinical skills and an updated timeline. The board will review the materials and make a decision with two months. The last stage is approval of the school of nursing. A school may apply for approval upon graduation of the first class, but no later than graduation of the third class (class is defined as a 12 month period). The board

may conduct a site survey. The decision on the application will occur within two months of the completed site survey or the completed application whichever is later. The board may grant approval, conditional approval or deny approval. If the board grants conditional approval, the board will state the basis and the school of nursing may not admit any new students into the school until the board meets the standard and receives full approval. If the school of nursing is denied approval, the school will receive a notice of denial and will take steps to close the school. The school may request a hearing and the closure of the school may be postponed during the appeals process.

Out of state schools operating in the state of Wisconsin will be approve and continual to be approved if the school is approved by the board of the state where the school is located and the school has approved nursing accreditation.

A school of nursing must receive national nursing accreditation within 3 years of school approval and all schools which already have approval as of July 1, 2014, must have accreditation by July 1, 2017. Failure to maintain nursing accreditation will result in loss of school approval.

School of nursing standards include:

- The institution shall have legal responsibility for overall conduct of the school of nursing.
- The educational administrator will have a license or privilege to practice nursing in Wisconsin, a graduate degree with a major in nursing, knowledge of learning principles for adult education or 2 years experience as an instructor in a nursing education program within the last 5 years and current knowledge of nursing practice.
- Faculty will have a license or privilege to practice nursing in Wisconsin. Professional nursing faculty members will have a graduate degree with a major in nursing; practical nursing faculty members will have a baccalaureate degree with a major in nursing.
- If a school of nursing is unable to have faculty whom meeting the standards, the school may apply to the board for a faculty exception.
- Curriculum will enable to student to develop the knowledge, skills and abilities necessary for competent nursing practice expected at the level of licensure. It will be revised as necessary to reflect advances in health care and its delivery.
- There will be clinical learning experiences in a variety of clinical or simulated settings.
- Preceptors will be approved by the faculty of the school of nursing and have clear roles and responsibilities. The preceptors will have an unencumbered license or privilege to practice in Wisconsin.
- The school of nursing will implement a plan for ongoing evaluation.

The national council licensure exam (NCLEX) pass rate standards for the school is one of the following

- A minimum of 80% of first time test takers within 6 months of graduation
- A minimum of 80% of all students taking the NCLEX and a plan to meet the first time test taker standard.

Failure to meet the standard will result in a warning letter and school of nursing to submit an institutional plan for improvement of the NCLEX pass rate. The school of nursing will submit progress reports until the standard is met.

A school of nursing will submit annual self−evaluation reports, all documents submitted to or received from nursing accreditation agencies and notify the board if there is a change in accreditation status. Failure to maintain nursing accreditation will result in loss of school approval. The board may review the school of nursing to determine whether the standards are being met in the following situations:

- Change in accreditation status
- Nursing accreditation reports indicate accreditation standards are not being met
- Complaints received regarding the school
- Failure to meet NCLEX pass rate standard for more than 2 consecutive years
- Violation of any rules under this chapter.

The review of the school may include a site survey, self−study report or a progress report. If standards are not being met, the school of nursing shall submit a plan and progress reports as requested. The board may withdraw board approval if the school continues to not meet standards.

Closure of a school of nursing involves providing a placement for students and indicating where the academic records and transcripts will be stored and how access to those records will be maintained.

Nurse refresher courses are designed for nurses who have been out of practice for more than five years. The course will contain theory, skills labs and clinical experience. The board will review nurse the curriculum for inclusion on a listing of approved courses. The student who participates in a non−approved course may submit curriculum for approval.

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

None

Comparison with rules in adjacent states

Illinois: Illinois program approval process includes: a letter of intent, a feasibility study, hiring of a nurse administrator, submission of a curriculum proposal, and a site survey. Continued approval is based upon annual evaluation reports, full routine site visits and maintaining a NCLEX pass rate of 75% of first time test takers. Major and minor curricular changes are reported to the board. Closure of the school involves responsibility for assisting students in transferring and notification of location of records storage. The standards for the school include institutional requirements, curriculum standards, clinical standards, nurse administrator and faculty qualifications (allows for variances to faculty standards) and student standards.

Iowa: Iowa program approval process includes: first step involves an application with information regarding the controlling institution and needs assessment; second step involves verification of employment of the head of program, submission of program's philosophy and objectives, curriculum plan, letter of intent from clinical facilities, evidence of provision of faculty, proposed budget and timeframe for implementation; next step is interim approval based upon program proposal and site visit; final approval is upon graduation of first class and NCLEX pass rate results. Provisional approval may be granted to program until standards are met. Change of controlling institution and changes in administrative personnel in the program. The program shall submit annual reports. Closure of the school involves responsibility for assisting students in transferring and notification of location of records storage. The standards for the school include institutional requirements, curriculum

standards, clinical standards, nurse administrator and faculty qualifications, student standards and evaluation of the program. NCLEX pass rate standard is a minimum of 95% of the national passing percentage based upon first time test takers within 6 months of graduation.

Michigan: Michigan program approval process includes: the first step requires submission of a letter of intent, evidence of funding and other support, copy of Michigan Department of Career Development approval (if necessary), evidence of availability of clinical experiences, proposed number of students, proposed first date of admission, plans for recruiting director of the program and faculty and a site visit; initial approval involves a self−student report and annual progress reports; full approval is after the graduation of the 2nd class, but no later than graduation of the 4th class (a class for each 12 month period) and requires submission of a self−study report and a site visit. Every 4 years the school shall submit a self−study report and accredited schools shall follow the schedule of the accrediting agency. Program changes shall be submitted to the board. Closure of the school involves responsibility for assisting students in transferring and notification of location of records storage. The standards for the school include institutional requirements, curriculum standards, clinical standards, nurse administrator and faculty qualifications (allows for variances to faculty standards), student standards, and evaluation of the program. NCLEX pass rate standard is 75% of first time test takers.

Minnesota: Minnesota program approval process includes: Phase 1 requires letter of intent including institution information, timetable for development and implementation, documentation of availability of academic facilities, impact on nursing programs in the area; Phase II involves a site visit and documentation of compliance with educational standards in order to be granted initial approval; Phase III is full approval and continual approval based upon meeting the minimum first time NCLEX success rate and acquiring national nursing education accreditation. Minnesota requires surveys of all schools on a periodic basis to maintain approval. NCLEX pass rate standard is 75% of first time test takers. All schools must be accredited by 2016. Annual reports shall be submitted to the Board. Closure of the school involves responsibility for assisting students in transferring and notification of location of records storage. The standards for the school include institutional requirements, clinical standards, nurse administrator and faculty qualifications, student standards, and evaluation of the program. The curriculum standard is the program must provide diverse learning activities that are consistent with program outcomes. Minnesota has an approval process for schools applying for innovative approaches which may require exemption from certain rules.

Summary of factual data and analytical methodologies

The Board considered the National Council of State Boards of Nursing's model practice rules and the rules and processes of our neighboring states.

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

The rule was posted for 14 days for economic impact comments and none were received.

Fiscal Estimate and Economic Impact Analysis

The Fiscal Estimate and Economic Impact Analysis is attached.

Initial Regulatory Flexibility Analysis or Summary

These proposed rules do not have an economic impact on small businesses, as defined in s. 227.114 (1), Stats.

Agency Contact Person

Sharon Henes, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Board Services, 1400 East Washington Avenue, Room 151, P.O. Box 8366, Madison, Wisconsin 53708; telephone 608−261−2377; email at Sharon.Henes@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 ☐ Updated ☐ Corrected

2. Administrative Rule Chapter, Title and Number

N 1

3. Subject

School of Nursing Approval

4. Fund Sources Affected	5. Chapter 20, Stats. Appropriations Affected
☐ GPR ☐ FED ☐ PRO ☐ PRS ☐ SEG ☐ SEG−S	20.165(1)(g)

6. Fiscal Effect of Implementing the Rule

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

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

☐ State's Economy
☐ Local Government Units
☐ Specific Businesses/Sectors
☐ 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

This rule updates the school of nursing approval process. The current rules have been in place since 1985 and are not adequately addressing the changes in education.

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 was posted for economic comments for a period of 14 days and no comments were received.

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

None

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 sectors, 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

The benefit is to provide clarity and updates to the school of nursing approval process. The proposed rules also decrease the duplication between approval and national nursing school accreditation.

14. Long Range Implications of Implementing the Rule

The benefit is to provide clarity and updates to the school of nursing approval process. The proposed rules also decrease the duplication between approval and national nursing school accreditation.

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 program approval process includes: a letter of intent, a feasibility study, hiring of a nurse administrator, submission of a curriculum proposal, and a site survey. Continued approval is based upon annual evaluation reports, full routine site visits and maintaining a NCLEX pass rate of 75% of first time test takers. Major and minor curricular changes are reported to the board. Closure of the school involves responsibility for assisting students in transferring and notification of location of records storage. The standards for the school include institutional requirements, curriculum standards, clinical standards, nurse administrator and faculty qualifications (allows for variances to faculty standards) and student standards.

Iowa: Iowa program approval process includes: first step involves an application with information regarding the controlling institution and needs assessment; second step involves verification of employment of the head of program, submission of program's philosophy and objectives, curriculum plan, letter of intent from clinical facilities, evidence of provision of faculty, proposed budget and timeframe for implementation; next step is interim approval based upon program proposal and site visit; final approval is upon graduation of first class and NCLEX pass rate results. Provisional approval may be granted to program until standards are met. Change of controlling institution and changes in administrative personnel in the program. The program shall submit annual reports. Closure of the school involves responsibility for assisting students in transferring and notification of location of records storage. The standards for the school include institutional requirements, curriculum standards, clinical standards, nurse administrator and faculty qualifications, student standards and evaluation of the program. NCLEX pass rate standard is a minimum of 95% of the national passing percentage based upon first time test takers within 6 months of graduation.

Michigan: Michigan program approval process includes: the first step requires submission of a letter of intent, evidence of funding and other support, copy of Michigan Department of Career Development approval (if necessary), evidence of availability of clinical experiences, proposed number of students, proposed first date of admission, plans for recruiting director of the program and faculty and a site visit; initial approval involves a self−student report and annual progress reports; full approval is after the graduation of the 2nd class, but no later than graduation of the 4th class (a class for each 12 month period) and requires submission of a self−study report and a site visit. Every 4 years the school shall submit a self−study report and accredited schools shall follow the schedule of the accrediting agency. Program changes shall be submitted to the board. Closure of the school involves responsibility for assisting students in transferring and notification of location of records storage. The standards for the school include institutional requirements, curriculum standards, clinical standards, nurse administrator and faculty qualifications (allows for variances to faculty standards), student standards, and evaluation of the program. NCLEX pass rate standard is 75% of first time test takers

Minnesota: Minnesota program approval process includes: Phase 1 requires letter of intent including institution information, timetable for development and implementation, documentation of availability of academic facilities, impact on nursing programs in the area; Phase II involves a site visit and documentation of compliance with educational standards in order to be granted initial approval; Phase III is full approval and continual approval based upon meeting the minimum first time NCLEX success rate and acquiring national nursing education accreditation. Minnesota requires surveys of all schools on a periodic basis to maintain approval. NCLEX pass rate standard is 75% of first time test takers. All schools must be accredited by 2016. Annual reports shall be submitted to the Board. Closure of the school involves responsibility for assisting students in transferring and notification of location of records storage. The standards for the school include institutional requirements, clinical standards, nurse administrator and faculty qualifications, student standards, and evaluation of the program. The curriculum standard is the program must provide diverse learning activities that are consistent with program outcomes. Minnesota has an approval process for schools applying for innovative approaches which may require exemption from certain rules.

17. Contact Name	18. Contact Phone Number
Sharon Henes	(608) 261−2377

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

Notice of Hearing

Safety and Professional Services — Pharmacy Examining Board

CR 14−003

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Pharmacy Examining Board in s.15.08 (5) (b), 450.19 (2), and 961.31, Wis. Stats., and interpreting s. 450.19, Wis. Stats., the Pharmacy Examining Board will hold a public hearing at the time and place indicated below to consider an order to repeal sections Phar 18.04 (3) (intro), 18.04 (3) (k), 18.11 (3), 18.11 (4), 18.11 (9) (a), 18.11 (9) (b), and 18.11 (9) (c); to renumber and amend section Phar 18.04 (2); to amend sections Phar 18.02 (8) (a), 18.02 (9), 18.02 (15) (intro), 18.02 (17), 18.04 (title), 18.04 (3) (L), 18.04 (3) (m), 18.04 (3) (n), 18.04 (4), 18.05 (1), (1) (note), (2) (note), (3) (b) (note), and (4), 18.06 (2), (3) (b) (note), (6) (b) (note), and (8), 18.07, 18.08 (1) (a) and (b) (note), 18.09, 18.10 (1) (intro), (2) (intro.) and (b), (3), (6), and (7), 18.11 (6) (intro) and (10) (c) (note), 18.12 (4), and 18.14 (1) (intro); and to create sections Phar 18.02 (11m), (15g), and (15r), 18.04 (2) (gg) and (gr), relating to the prescription drug monitoring program.

Hearing Information

Date: **Wednesday, February 12, 2014**
Time: 9:00 a.m.
Location: 1400 East Washington Avenue
Room 121A
Madison, Wisconsin

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 8366, 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 Board Services, 1400 East

Washington Avenue, Room 151, P.O. Box 8366, 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 February 12, 2014 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 Board Services, 1400 East Washington Avenue, P.O. Box 8366, Madison, Wisconsin 53708, or by email at Sharon.Henes@wisconsin.gov.

Analysis prepared by the Department of Safety and Professional Services

Statutes interpreted

Section 450.19, Wis. Stats.

Statutory authority

Sections 15.08 (5) (b), 450.19 (2), and 961.31, Wis. Stats.

Explanation of agency authority

The board has authority to promulgate rules for the guidance of the profession and to interpret the provisions of the statutes it enforces. The board also has authority to promulgate rules relating to the manufacture, distribution and dispensing of controlled substances within Wisconsin.

Specifically, the legislature directs the board to establish to govern the prescription drug monitoring program.

Related statute or rule

Section 450.19, Wis. Stats. and ch. Phar 18, Wis. Admin. Code.

Plain language analysis

This proposed rule modifies the ch. Phar 18 to improve the efficiency of the Prescription Drug Monitoring Program (PDMP) by ensuring consistency between the language of the rule and how PDMP functions.

Sections 1, 2, 3, 4, 5, and 6 clarify and simplify definitions. A dispenser is a pharmacy. Dispenser delegate is a managing pharmacist or an agent or employee of a practitioner who has the delegated responsibility for data compilation and submission to PDMP. Managing pharmacist, pharmacist and practitioner definitions are identical to definitions in the statutes. Pharmacist delegate is an agent of a pharmacist who has been delegated access to PDMP information.

Section 7 clarifies the title of s. Phar 18.04 to "compilation of dispensing data".

Section 8 changes the "he or she" to dispenser. It also becomes an introduction paragraph to the items currently listed under s. Phar 18.04 (3) (intro).

Section 9 repeals the introduction section. Therefore all of the times currently listed under it are now under new introduction paragraph created by Section 8.

Section 10, 11, 12 amends the dispensing data. The classification codes for payment type and refill number are added. The quantity prescribed is no longer required data. There is clarification of how to record an animal patient's name, address and birthdate.

Sections 13, 17, and 21 adds dispenser delegate as subject to discipline for failing to compile required dispensing data.

Section 14 clarifies the rule that unless exempt, a dispenser shall electronically submit data.

Sections 15, 16 , 19, 20, 24, and 35 update the P.O. Box number for the Department in all the notes in ch. Phar 18 which reference the Department's address.

Section 18 clarifies that the dispenser shall submit a zero report for each 7 day period which the dispenser did not dispense a monitored prescription drug.

Section 22 clarifies if incorrect dispensing data had been submitted, the dispenser shall submit the correct information within 7 days.

Section 23 removes the "he or she" reference and inserts "dispenser".

Sections 25, 26, 27, 29, and 30 remove "dispenser" and "dispenser delegate" throughout ss. Phar 18.09 and 18.10 (1) (intro), (2) (b), (3), (6), and (7) and replace with the terms "pharmacist" and "pharmacist delegate".

Section 28 requires a specific statute or rule to be given when requesting a review.

Section 31 repeals the requirement for board to disclose PDMP information to staff of a relevant agency in another state who are authorized to access confidential patient health care records under ss. 146.82 and 450.19, Stats. It also repeals the requirement to disclose minimum amount of PDMP information necessary to health care facility staff committees or accreditation or health care services review organizations.

Section 32 adds that the board will disclose the minimum amount of PDMP information necessary to staff who are investigating pharmacists and pharmacist delegates.

Section 33 clarifies that the board may disclose de−identified PDMP information which does not identify any patient upon request.

Section 34 repeals the requirements for a researcher to obtain PDMP information.

Section 36 adds pharmacist and pharmacist delegate to the list of people which the board maintains a log for their access to PDMP information.

Section 37 clarifies relevant agencies in other jurisdictions with prescription drug monitoring programs by adding the word "state."

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

None. Prescription drug monitoring programs are operated by the state jurisdictions.

Comparison with rules in adjacent states

Illinois: The statutes and administrative rules governing the Illinois Prescription Monitoring Program require dispensers to submit to a database similar information regarding the prescribing and dispensing of controlled substances. Dispensers are required to submit the method of payment the patient used for a prescription. *See* 720 Illinois Compiled Statutes 570/316−21 and Illinois Administrative Code Title 77, Chapter X, Subchapter e, Part 2080. Dispensers are not required to submit refill information.

Iowa: The statutes and administrative rules governing the Iowa Prescription Monitoring Program require dispensers to submit to a database similar information regarding the prescribing and dispensing of controlled substances. Dispensers are required to submit refill information and the method of payment the patient used for a prescription. *See* Iowa Code § 124.551−58 and Iowa Administrative Code Title 657, Chapter 37.

Michigan: The statutes, administrative rules, and requirements for the Michigan Automated Prescription System require dispensers to submit to a database similar information regarding the prescribing and dispensing of controlled substances. Dispensers are required to submit refill information and the method of payment the patient used for a prescription. *See* Michigan Public Health Code § 333.7333and Michigan Administrative Code R. 338.471, and "List of Required Fields," Michigan Automated Prescription System (MAPS). *See also* http://www.michigan.gov/documents/lara/lara_MAPS_ASAP2009_ListofRequiredFields_365562_7.pdf, accessed on Dec. 17, 2013.

Minnesota: The statutes governing the Minnesota Prescription Monitoring Program require dispensers to submit to a database similar information regarding the prescribing and dispensing of controlled substances on a daily basis. Dispensers are not required to submit refill information or the method of payment the patient used for a prescription. *See* Minnesota Statute 152.126.

Summary of factual data and analytical methodologies

The Board received feedback while developing and deploying the prescription drug monitoring program and gained considerable expertise in ways to improve it once it became fully operational.

The Board is aware that currently there are some provisions which create inefficiencies and ambiguities that the PDMP has to overcome to be as effective of a tool to combat prescription drug misuse and abuse as it can be. This proposed rule corrects and updates those provisions.

All the modifications are based on feedback from stakeholders and the prescription drug monitoring program uses as well as other information obtained while developing and deploying the prescription drug monitoring program.

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

This rule was posted for economic impact comments for 14 days and none were received.

Fiscal Estimate and Economic Impact Analysis

The Fiscal Estimate and Economic Impact Analysis is attached.

Initial Regulatory Flexibility Analysis or Summary

These proposed rules do not have an economic impact on small businesses, as defined in s. 227.114 (1), Stats.

Agency Contact Person

Sharon Henes, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Board Services, 1400 East Washington Avenue, Room 151, P.O. Box 8366, Madison, Wisconsin 53708; telephone 608−261−2377; email at Sharon.Henes@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 ☐ Updated ☐ Corrected

2. Administrative Rule Chapter, Title and Number

Phar 18

3. Subject

Prescription Drug Monitoring Program updates

4. Fund Sources Affected

☐ GPR ☐ FED **X** PRO ☐ PRS ☐ SEG ☐ SEG−S

5. Chapter 20, Stats. Appropriations Affected

20.165(1)(g) and 20.165(1)(hg)

6. Fiscal Effect of Implementing the Rule

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

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

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

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

☐ Yes **X** No

9. Policy Problem Addressed by the Rule

The Board is aware that currently there are provisions which create inefficiencies and ambiguities that the prescription drug monitoring program has to overcome to be as effective of a tool to combat prescription drug misuse and abuse as it can be. This proposed rule corrects and updates those provisions.

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.

Economic impact comments were solicited by posting on Department and Administrative Rules websites for 14 days and no comments were received. Stakeholders had provided feedback during the implementation of changes which should be made to the current rules.

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

None

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 sectors, 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

The Board received feedback while developing and deploying the prescription drug monitoring program (PDMP) and gained considerable expertise in ways to improve it once it became fully operational. The benefit to implementing the rule is to make those changes.

The alternative is to not make the modifications, which would not enable the Board to improve the PDMP based on information obtained while developing and deploying the PDMP and the feedback of stakeholders and PDMP users.

14. Long Range Implications of Implementing the Rule

The long range benefit is to have an effective prescription drug monitoring program.

15. Compare With Approaches Being Used by Federal Government

None

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

Our neighboring states require dispensers to submit to a database similar information regarding the prescribing and dispensing of controlled substances.

17. Contact Name	18. Contact Phone Number
Sharon Henes	(608) 261−2377

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

Submittal of Proposed Rules to Legislature

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

Administration
CR 13−069

On January 9, 2014, the Department of Administration submitted a proposed rule−making order to the Chief Clerks of the Senate and Assembly for referral to appropriate standing committees for review under s. 227.19, Stats. The proposed rule creates Chapter Adm 93, relating to the Community Development Block Grant Program.

The rule was approved by the governor on January 7, 2014.

Children and Families
Medical Assistance, Chs. 101—
CR 13−015

On January 9, 2014, the Department of Children and Families submitted proposed rules for review by legislative committees pursuant to s. 227.19, Stats. The rules revise Chapter DCF 101, relating to Wisconsin Works criteria for review of a job−ready placement.

These rules were approved by the Governor on August 6, 2013.

Corrections
CR 13−038

On January 15, 2014, the Wisconsin Department of Corrections submitted a proposed rule to the presiding officer of each house of the Legislature. The rule repeals and recreates chapter DOC 350, relating to jails.

This rule is not subject to s. 227.185, Stats. The statement of scope for this rule, published in Register 655, on July 31, 2010, was sent to LRB prior to June 8, 2011.

Natural Resources
Fish, Game, etc., Chs. 1—
CR 13−079

(DNR # FH−01−12)

On January 9, 2014, the Department of Natural Resources submitted a proposed rule in final draft form to the chief clerk of the Senate and Assembly pursuant to s. 227.19 (2), Stats. The rule revises Chapter NR 20, relating to fishing tournaments on inland, outlying, and boundary waters of Wisconsin.

This rule was approved by the governor on December 30, 2013, pursuant to s. 227.185, Stats.

Natural Resources
Fish, Game, etc., Chs. 1—
CR 13−082

(DNR # FH−25−12)

On January 7, 2014, the Department of Natural Resources submitted final draft rules to the presiding officer of each house of the legislature pursuant to s. 227.19. The rules being submitted amend section NR 25.10 (1) (c), relating to the number, placement, and removal of commercial fishing trap nets in the Restricted Use Area of Lake Superior.

The Governor approved the rule on December 30, 2013.

Natural Resources
Environmental Protection — General, Chs. 100—
CR 13−054

(DNR # WT−29−09)

On January 8, 2014, the Department of Natural Resources submitted final draft rules to the presiding officer of each house of the legislature pursuant to s. 227.19, Stats. The rules being submitted revise Chapter NR 114, relating to Wastewater Treatment Plant Operator Certification.

This rule is not subject to s. 227.185, Stats., as affected by 2011 Wis. Act 21. The statement of scope for this rule, published in Register No. 653, on May 14, 2010, was sent to LRB prior to June 8, 2011 (the effective date of 2011 Wisconsin Act 21).

Public Service Commission
CR 13−039

(PSC DOCKET # 1−AC−238)

The Public Service Commission of Wisconsin is submitting a final draft of a proposed rule to the presiding officer of each house of the Legislature for standing committee review, pursuant to s. 227.19 (2), Stats. The proposed rule repeals and recreates Chapter PSC 114, relating to the adoption of the 2012 Edition of the National Electrical Safety Code into Volume 1 of the State Electrical Code.

The Governor approved this rule on December 19, 2013.

Safety and Professional Services — Dentistry Examining Board
CR 13−060

On January 9, 2014, the Dentistry Examining Board submitted proposed rules to the Chief Clerks of the Senate and the Assembly for referral to appropriate standing committees for review under s. 227.19, Stats. The proposed rules repeal and recreate section DE 9.01, amend section DE 9.02 (intro.), (1), (2), and (4), and create section DE 9.015, relating to lab work authorizations.

The Governor approved the rule under s. 227.185, Stats., on January 7, 2014.

Safety and Professional Services — Dentistry Examining Board
CR 13−061

On January 9, 2014, the Dentistry Examining Board submitted proposed rules to the Chief Clerks of the Senate and the Assembly for referral to appropriate standing committees for review under s. 227.19, Stats. The proposed rules amend sections DE 11.05 (1), 11.06 (1), and 11.07 (1) and create sections DE 11.02 (1s), (1t), and (1u), and DE 11.025, relating to sedation permits and classes of permits.

The Governor approved the rule under s. 227.185, Stats., on January 7, 2014.

Safety and Professional Services — Dentistry Examining Board
CR 13−074

On January 9, 2014, the Dentistry Examining Board submitted proposed rules to the Chief Clerks of the Senate and the Assembly for referral to appropriate standing committees for review under s. 227.19, Stats. The proposed rules amend sections DE 12.01 (intro.), (1), (2), and (3), 12.02, and 12.03, relating to training of unlicensed persons.

The Governor approved the rule under s. 227.185, Stats., on January 7, 2014.

Safety and Professional Services — Real Estate Examining Board
CR 13−072

On January 2, 2014, the Real Estate Examining Board submitted a proposed rule−making order to the Chief Clerk of the Senate and to the Chief Clerk of the Assembly for referral to appropriate standing committees for review under s. 227.19, Stats. The proposed rule−making order repeals sections REEB 18.08, 18.11 (2), and 18.12 and (Note); renumbers and amends section REEB 18.11 (1); amends sections REEB 18.01 (title), 18.02 (5) (intro.), (a), and (b) and (6) (intro.) and (a) to (g), 18.031 (1) (intro.), (a), and (b), 18.033 (title) and (2), 18.035 (2), 18.037 (intro.) and (Note), 18.06, 18.09 (1) (intro.) and (a) to (f), and 18.13 (1) (intro.) and (a) to (d), (2) to (4), and (6) (e); repeals and recreates section REEB 18.02 (1) and 18.10; and creates sections REEB 18.02 (intro.) (Note), (1e) and (Note), and (4) (Note) and 18.034 (1) (title), relating to real estate trust accounts.

The Governor approved the rule under s. 227.185, Stats., on December 23, 2013.

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.

Agriculture, Trade and Consumer Protection

CR 13−016

(DATCP DOCKET # 11−R−01)

An order of the Wisconsin Department of Agriculture, Trade and Consumer Protection to revise Chapter ATCP 50, relating to soil and water resource management and affecting small business.
Publication 2−28−14
Effective 5−1−14

Agriculture, Trade and Consumer Protection

CR 13−043

(DATCP DOCKET # 12−R−11)

An order of the Wisconsin Department of Agriculture, Trade and Consumer Protection to revise Chapters ATCP 90 to 92, 113, and 136, relating to fair packaging and labeling; selling commodities by weight, measure or count; weights and measures; gasoline advertising; and mobile air conditioners, reclaiming or recycling refrigerant; various minor and technical rule changes; and affecting small business.
Publication 2−28−14
Effective 5−1−14

Revenue

CR 13−037

An order of the Department of Revenue to repeal section Tax 15.03 (2) (a) to (c) and 15.05 (5), renumber and amend section Tax 15.03 (2) (intro.), and amend section Tax 6.02, 6.40 (2) (a) and (b), and 6.50 (4) (b), relating to public utility taxation and real estate transfer fee.
Effective 3−1−14

Safety and Professional Services

Professional Services, Chs. 1—299

CR 13−047

An order of the Department of Safety and Professional Services to create 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.
Effective 3−1−14

Safety and Professional Services

Professional Services, Chs. 1—299

CR 13−053

An order of the Department of Safety and Professional Services to repeal section SPS 81.04 (1) (c) 3. and 4. and amend section SPS 81.04 (2), relating to reciprocity for real estate appraisers.
Effective 3−1−14

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.

Natural Resources

Environmental Protection — WPDES, Chs. 200—

CR 13−006

(DNR # WT−28−10)

An order to revise Chapter NR 211, relating to pretreatment requirements for industrial users, publicly owned wastewater treatment plants, and the Department of Natural Resources and affecting small businesses.

Effective 2−1−14

Summary of Effects on Small Business

As part of its research in creating the federal Pretreatment Streamlining Rule in 2005, U.S. EPA was required to address the economic impact of the same rule changes on small entities, i.e., small governmental units, industries and not−for−profit organizations, as are being proposed here. EPA concluded, in its Final Rule published Oct. 14, 2005, in the Federal Register, at 70 Fed. Reg. 60134 (Oct.14, 2005), that the national economic effect of its rule, "will either relieve regulatory burden or have no significant impact for all small entities." It also estimated that, overall, governmental units and industries would save $10.1 million annually by implementing the Streamlining changes.

Based on responses from Wisconsin industrial manufacturers, about one−half of small business manufacturers in Wisconsin are expected to realize small reductions in costs ($810 annually) for wastewater sampling due to implementation of the proposed Streamlining changes.

Summary of Comments from Legislative Committees

No comments were reported.

Public Defender

CR 13−049

An order to amend sections PD 3.02 (1), 6.01, and 6.02 (1), relating to the cost of retained counsel, payment for legal representation, and discount option.

Effective 2−1−14.

Summary of Effects on Small Business

None.

Summary of Comments from Legislative Committees

No comments were reported.

Public Service Commission

CR 13−025

(PSC # CR 13−025)

An order to repeal sections PSC 8.07 (7) and (11), 165.02 (1) to (6), (8), (11), (13) to (20), and (23), 165.031, 165.034 to 165.064, 165.065 (2), 165.066 to 165.10, 168.10 (1) (b) to (d) and (2), and 168.11, 168.12 (1) (f), 169, 171.06 (2) and (3), 171.07 (4) and (5), 171.08, and 171.10 (3) and Chapters PSC162, 163, 164, 166, 167, and 174; to renumber and amend section PSC 168.10 (1) (intro.) and (a); to amend sections PSC 100.01, 102.01, 104.02 (3), 165.01 (2), 165.032 (intro.), (2), (6), (7), and (9), 165.033, 165.065 (1), 168.05 (1) (d) and (3), 168.09 (4), 168.12 (1) (intro.), 168.13 (1) (a), 171.02 (5), 171.06 (1) and 171.10 (1); and to repeal and recreate section PSC 171.09, relating to regulation of telecommunications providers and services.

Effective 2−1−14

Effect on Small Business

The removal of the proposed regulations should have a positive effect on small business by removing obsolete regulations, thereby simplifying and reducing the costs incurred by small businesses.

Summary of Comments from Legislative Committees

No standing committee comments were reported.

Sections Affected by Rule Revisions and Corrections

The following administrative code sections had rule revisions and corrections take place in **January 2014,** and will be effective as indicated in the history note for each particular section. For additional information, contact the Legislative Reference Bureau at (608) 266−7590.

Revisions

Natural Resources

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Editorial Corrections

Corrections to code sections under the authority of ss. 13.92 (4) (b) or 35.17 (2), Stats., are indicated in the following listing.

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Executive Orders

The following are recent Executive Orders issued by the Governor.

Executive Order 128. Relating to a Natural Disaster and Energy Emergency. **(December 23, 2013**)

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