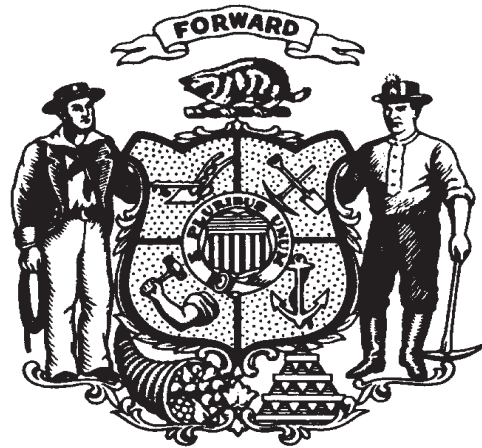


# Wisconsin Administrative Register

No. 673



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## WISCONSIN ADMINISTRATIVE REGISTER

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Questions, comments, or corrections should be directed to:

Bruce Hoesly (608) 266-7590

email: [bruce.hoesly@legis.wisconsin.gov](mailto:bruce.hoesly@legis.wisconsin.gov)

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## Emergency Rules Now in Effect

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

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

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

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

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

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

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

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### Agriculture, Trade and Consumer Protection

**1. EmR1112** — Rule adopted to create **sections ATP 99.126 (6) and ATP 99.235 (5)** and to amend **sections ATP 99.126 (1) and ATP 99.235 (1)**, relating to grain dealer and grain warehouse keeper agricultural producer security fund assessments.

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

The statement of scope for this rule, SS 002-11, was approved by the governor on July 14, 2011, published in Register No. 667, on July 31, 2011, and approved by The Board of Agriculture, Trade and Consumer Protection on August 12, 2011.

#### Finding of Emergency

In Wisconsin, grain dealers (persons who purchase grain from producers), grain warehouse keepers (persons who store grain that is owned by others), milk contractors (persons who purchase milk from producers, and vegetable contractors (persons who purchase vegetables from producers for use in processing), must obtain a license to do these activities and are collectively referred to as “contractors”. Most contractors are

“contributing contractors”, which means they must pay annual assessments into the Wisconsin Agricultural Producer Security Fund. This fund is designed to help partially reimburse producers in the event that a contractor defaults on payment to producers. The annual assessments are calculated based on the total dollar value of commodities purchased or stored, the length of time that the contractor has participated in the fund, and certain financial ratios from the contractor’s balance sheet.

All else equal, a contractor who purchases small amounts will pay lower assessments than one who purchases large amounts. All else equal, a contractor who is in a conservative financial position will pay lower assessments than one who carries higher levels of liabilities relative to their assets or equity. All else equal, a contractor who has participated in the fund for more than five years will pay lower assessments than one who has participated for less than five years. The annual assessment, calculated from the factors discussed above, vary considerably from one contractor to another. An annual assessment may be as low as \$100, or as high as several hundred thousand dollars.

The grain dealer and grain warehouse keeper license years begin on September 1 of each year. At that point, DATCP calculates the assessment for the new license year that will be due in four quarterly payments over the course of that year. Calculations are based on purchase data and financial statement data for the grain dealer or grain warehouse keeper’s most recently completed fiscal year and annual financial statement.

For the license years that will begin on September 1, 2011, a very unusual combination of business financing and recent high commodity prices has lead to unusually high assessment calculations for one grain company. In fact, if the existing rule remains unmodified, there will be one individual elevator that will be charged over \$1.2 million in assessments (for both grain dealer and grain warehouse combined). This is roughly four times greater than the previous highest annual assessment and roughly six times higher than the second highest annual assessment in the grain (dealer and warehouse combined) producer security fund program. Further, this potential assessment for next license year is more than double the highest assessment that has ever occurred in the milk contractor portion of the fund. This is significant because the dollar amount of a large milk contractor’s annual purchase of milk tends to be much higher the dollar amount of a large grain dealer’s annual purchase (or store) of grain.

In the majority of cases, the assessment calculation formulas reasonably charge contractors for the overall risk that they pose to the fund in the event that they should default on amounts owed to producers. However, at least in the short term, this is not true for this one elevator. DATCP will analyze whether or not it is appropriate for this emergency rule to also be promulgated as a permanent rule, and if so, begin a separate rulemaking process at a later date.

This temporary emergency rule is necessary to protect the welfare of the many hundreds of grain farmers who do business with this grain elevator, and to help prevent major disruptions in the grain industry.

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

## Children and Families

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

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

#### Exemption From Finding of Emergency

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

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

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

## Employment Relations Commission

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

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

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

#### Finding of Emergency

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

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

(See the Notice this Register)

## Insurance (2)

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

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

#### Finding of Emergency

The Commissioner of Insurance finds that an emergency exists and that the attached proposed emergency rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. Portions of Wisconsin's insurance law and regulations governing grievances and independent review processes are in conflict with federal law and regulation following the amendment of 42 USC 300gg 19 (a) and (b), as implemented by 45 CFR 147.136, as amended. Therefore, the Commissioner, pursuant to s. 631.01 (5), Stats., has determined that it is in the interest of the State of Wisconsin, Wisconsin insureds and the public to exempt insurers, certified independent review organizations and self-insured governmental health plans that elect to comply with ch. Ins 18, Wis. Adm. Code, as revised, from being required to comply with provisions contained in s. 632.83 and 632.835, Stats., that are inconsistent with 42 USC 300gg–19 (a) and (b), and 45 CFR 147.136 et seq., as amended.

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

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

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

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

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



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

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

### Finding of Emergency

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

The proposed emergency rule will repeal EmR1117 in its entirety and maintain Wisconsin's prior existing regulations and oversight of the grievance and independent review process. To avoid full implementation of EmR1117 and industry and consumer confusion, the Commissioner has determined that this emergency rule must be effective prior to January 1, 2012.

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

**Hearing Date:** January 26, 2012

(See the Notice this Register)

## Justice (2)

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

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

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

### Finding of Emergency

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

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

November 1, 2011, it must complete the promulgation of such administrative rules prior to that date.

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

**Publication Date:** October 25, 2011  
**Effective Dates:** November 1, 2011 through March 29, 2012  
**Suspended in Part:** November 9, 2011

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

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

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

### Finding of Emergency

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

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

## Natural Resources (6)

### *Fish, Game, etc., Chs. NR 1—*

**1. EmR1036** — Rule adopted to create **section NR 40.04 (2) (g)**, relating to the identification, classification and control of invasive species.

### Exemption From Finding of Emergency

Section 227.24 (1) (a), Stats., authorizes state agencies to promulgate a rule as an emergency rule without complying with the notice, hearing and publication requirements under ch. 227, Stats., if preservation of the public peace, health, safety or welfare necessitates putting the rule into effect prior to the time it would take effect if the agency complied with the procedures. However, s. 23.22 (2t) (a), Stats., authorizes the department to promulgate emergency rules to identify, classify, or control an invasive species without having to

provide evidence that an emergency rule is necessary for the preservation of public peace, health, safety, or welfare or to provide a finding of emergency. **In addition, such emergency rules may remain in effect until whichever of the following occurs first: the first day of the 25th month beginning after the effective date of the emergency rule, the effective date of the repeal of the emergency rule, or the date on which the permanent rule identifying, classifying, or controlling the invasive species, promulgated under s. 23.22 (2) (b) 6., Stats., takes effect.**

**Publication Date:** September 29, 2010  
**Effective Dates:** September 29, 2010 through  
*See bold text above*  
**Hearing Date:** October 25 to 29, 2010

**2. EmR1039** (DNR # IS-49-10(E)) — Rule adopted to create **sections NR 40.02 (7g), (7r), (25m), (28m) and (46m), 40.04 (3m) and 40.07 (8)**, relating to the identification, classification and control of invasive bat species.

#### Exemption From Finding of Emergency

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

**Publication Date:** November 3, 2010  
**Effective Dates:** November 3, 2010 through  
*See bold text above*  
**Hearing Date:** November 29, 2010

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

#### Exemption From Finding of Emergency

Section 227.24 (1) (a), Stats., authorizes state agencies to promulgate a rule as an emergency rule without complying with the notice, hearing and publication requirements under Ch. 227, Stats., if preservation of the public peace, health, safety or welfare necessitates putting the rule into effect prior to the time it would take effect if the agency complied with the procedures. However, s. 23.22 (2t) (a), Stats., authorizes the department to promulgate emergency rules to identify, classify, or control an invasive species without having to provide evidence that an emergency rule is necessary for the preservation of public peace, health, safety, or welfare or to provide a finding of emergency. **In addition, such**

**emergency rules may remain in effect until whichever of the following occurs first: the first day of the 25th month beginning after the effective date of the emergency rule, the effective date of the repeal of the emergency rule, or the date on which the permanent rule identifying, classifying, or controlling the invasive species, promulgated under s. 23.22 (2) (b) 6., Stats., takes effect.**

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

**4. EmR1109** — Rule to amend **sections NR 10.01 (3) (ed) 1. a., 10.01 (3) (et) 2., 10.104 (7) (a) 1., and 10.104 (7) (b)**, relating to deer hunting seasons and carcass tag use.

#### Finding of Emergency

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to protect the public welfare. The rule is necessary in order to foster participation by hunters and landowners so they will continue to hunt and cooperate in CWD control and deer herd management. This rule proposal balances pressing social concerns about the quality of the deer hunt with the need for effective herd control measures such as additional antlerless deer harvest in management units that are more than 20% over population goals or simply over population goals in units that are part of the CWD Management Zone. This rule will increase harvest of bucks in the CWD zone which have a higher prevalence of CWD and, because of their greater dispersal distances, have a higher likelihood of spreading CWD. However, the rule retains a herd control tool which requires that antlerless deer be harvested before additional bucks (beyond the initial one) may be taken. The federal government and state legislature have delegated to the appropriate agencies rule-making authority to control and regulate hunting of wild animals. The State of Wisconsin must provide publications describing the regulations for deer hunting to more than 630,000 deer hunters prior to the start of the season. These regulations must be approved prior to printing nearly 1 million copies of the regulations publication.

**Publication Date:** July 2, 2011  
**Effective Dates:** September 17, 2011 through  
 February 13, 2012  
**Hearing Date:** June 28, 2011

**5. EmR1111** — Rule to repeal and recreate **sections NR 10.01 (1) (b), (g) and (u) and 10.32** and to amend **section NR 10.01 (1) (v)**, relating to hunting and the 2011 migratory game bird seasons and waterfowl hunting zones.

#### Finding of Emergency

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



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

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

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

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

**Finding of Emergency**

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

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

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

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

**Safety and Professional Services (2)**  
**(Formerly Regulation and Licensing)**

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

**Exemption From Finding of Emergency**

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

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

**2. EmR0828** — Rules adopted to amend **section RL 181.01 (2) (c)**; and to create **sections RL 180.02 (1m), (3m) and (11), 181.01 (1) (d), (2) (c) 1. and 2.**, relating to training and proficiency in the use of automated external defibrillators for licensure as a licensed midwife.

**Exemption From Finding of Emergency**

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

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

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## Submittal of Rules to Legislative Council Clearinghouse

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

### **Agriculture, Trade and Consumer Protection CR 11-051**

(DATCP DOCKET # 10-R-05)

The Wisconsin Department of Agriculture, Trade and Consumer Protection announces that on December 22, 2011 it referred the following proposed rule to the Wisconsin Legislative Council Rules Clearinghouse, pursuant to s. 227.15, Stats.

This rule is not subject to s. 227.135 (2), as affected by 2011 Wis. Act 21. The statement of scope for this rule, published in Register No. 655, on July 31, 2010, was sent to Legislative Reference Bureau prior to the effective date of 2011 Wis. Act 21.

#### **Analysis**

The proposed rule revises Chapter ATCP 21, relating to voluntary certification of firewood dealers.

#### **Agency Procedure for Promulgation**

The department will hold a public hearing on this rule January 18 and 19, 2012. The department's Agricultural Resource Management Division is primarily responsible for this rule.

#### **Contact Information**

Anna Healy, (608) 224-4546.

Revenue submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

This rule is not subject to s. 227.135 (2), as affected by 2011 Wisconsin Act 21. The statement of scope for this rule, published in Register No. 666 on June 14, 2011, was sent to LRB prior to June 8, 2011 (the effective date of 2011 Wisconsin Act 21).

#### **Analysis**

The proposed permanent rule creating section Tax 11.10, defines the term "product" as it applies to the sales and use tax exemption under s. 77.54 (56), Stats., provides examples of items that are and are not considered products, and clarifies the exemption requirements and scope.

#### **Agency Procedure for Promulgation**

A public hearing on the proposed rule is required and has been scheduled for January 27, 2012 at 1:00 p.m. 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](mailto:dale.kleven@revenue.wi.gov)

### **Employment Relations Commission CR 12-001**

The Wisconsin Employment Relations Commission hereby provides notice that on January 3, 2012 it submitted a proposed administrative rule creating Chapters ERC 70 to 74 and ERC 80, regarding initial annual certification elections to the Rules Clearinghouse.

The scope statement for this rule, SS 004-11, was approved by the Governor on July 20, 2011, published in Register No. 667 on July 31, 2011 and approved by the Wisconsin Employment Relations Commission on August 15, 2011.

#### **Analysis**

A public hearing is required and is scheduled for February 2, 2012.

#### **Contact Information**

Peter Davis (608) 266-2993,  
[peterg.davis@wisconsin.gov](mailto:peterg.davis@wisconsin.gov)

### **Revenue CR 11-052**

On December 23, 2012 the Wisconsin Department of

### **Technical College System Board CR 11-053**

The Wisconsin Technical College System Board submitted a proposed rule amendment to the Legislative Council Rules Clearinghouse on December 23, 2011.

Pursuant to s. 227.16 (2) (b), a public hearing is not required as the proposed rule amendment brings the existing rule into conformity with cost minimums established in 2011 Wisconsin Act 32.

The scope statement for this rule, SS 039-11, was approved by the Governor on November 7, 2011, published in Register No. 671 on November 30, 2011, and approved by the Wisconsin Technical College System Board on December 14, 2011.

#### **Analysis**

The proposed order revises section TCS 6.05, relating to procurement.

#### **Contact Information**

Questions concerning these rules may be directed to Morna Foy, Vice President, Wisconsin Technical College System, 4622 University Avenue, P.O. Box 7874, Madison, Wisconsin 53707-7874; telephone (608) 266-2449; e-mail [morna.foy@wtcsystem.edu](mailto:morna.foy@wtcsystem.edu).

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## Rule-Making Notices

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### Notice of Hearing

#### Agriculture, Trade and Consumer Protection

**CR 11-051**

(DATCP DOCKET # 10-R-05)

The state of Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) announces that it will hold public hearings on a proposed rule to revise Chapter ATPC 21, relating to voluntary certification of firewood dealers.

#### Hearing Information

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

**Date:** **Wednesday, January 18, 2012**  
**Time:** 11:00 A.M.–1:00 P.M.  
**Location:** Wausau Public Library/Marathon County  
 Public Library  
 Wausau Room  
 300 North First St.  
 Wausau, WI 54403

**Date:** **Thursday, January 19, 2012**  
**Time:** 10:00 A.M.–12:00 P.M.  
**Location:** Department of Agriculture, Trade and  
 Consumer Protection  
 Conference Room 266  
 2811 Agriculture Drive  
 Madison, WI 53718

Hearing impaired persons may request an interpreter for these hearings. Please make reservations for a hearing interpreter by **January 6, 2012**, by writing to Anna Healy, Division of Agricultural Resource Management, P.O. Box 8911, Madison, WI 53708–8911, telephone (608) 224–4546. Alternatively, you may contact the DATCP TDD at (608) 224–5058. Handicap access is available at the hearings.

#### Copies of Proposed Rule

You may obtain a free copy of this rule, the fiscal estimate, or economic impact analysis by contacting the Wisconsin Department of Agriculture, Trade and Consumer Protection, Division of Agricultural Resource Management, 2811 Agriculture Drive, P.O. Box 8911, Madison, WI 53708. You can also obtain a copy by calling (608) 224–4546 or emailing [anna.healy@wisconsin.gov](mailto:anna.healy@wisconsin.gov). Copies will also be available at the hearings. To view the proposed rule online, go to: <http://AdminRules.Wisconsin.gov>.

#### Submittal of Comments

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 Thursday, **February 2, 2012** for additional written comments. Comments may be sent to the Division of Agricultural Resource Management at the address below, by email at [anna.healy@wisconsin.gov](mailto:anna.healy@wisconsin.gov) or online <http://AdminRules.Wisconsin.gov>.

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

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

The Department of Agriculture, Trade and Consumer Protection ("DATCP") has administered a voluntary certification program for firewood dealers since 2008. The purposes of the program are to prevent the spread of pests such as Emerald Ash Borer and to enable firewood dealers to sell firewood for use in state parks and other state lands. DATCP is proposing changes to the certification program based on its experience administering the program. The Wisconsin Department of Natural Resources ("DNR") has adopted rules limiting the use of firewood from *uncertified* sources in Wisconsin state parks and other state lands. Firewood from a *certified* dealer, if treated and labeled according to our rule, may be used in Wisconsin state parks and other state lands.

#### Statutes interpreted

Sections 93.06 (1p) and (1q), 93.07 (12), 94.01 and 100.20, Stats.

#### Statutory authority

Sections 93.06 (1p) and (1q), 93.07 (1), 93.07 (12), 94.01 and 100.20, Stats.

#### Explanation of statutory authority

DATCP has general authority, under s. 93.07 (1), Stats. to interpret laws under its jurisdiction. DATCP has authority, under ss. 93.07 (12) and 94.01, Stats. to adopt regulations to prevent and control plant pest infestations. DATCP has authority, under ss. 93.06 (1p) and (1q), to provide inspection and marketing services upon request and to charge a fee for its services. DATCP has authority, under s. 100.20 (2), Stats. to regulate business practices and methods of competition.

#### Related rules or statutes

This rule supplements and is consistent with s. NR 45.045, Wis. Admin. Code.

#### Plain language analysis

The DATCP voluntary firewood certification program was created to allow firewood to move onto state lands. When s. NR 45.045 was adopted it prohibited firewood on state lands if the wood was harvested from a distance of 50 miles or more from those state lands unless the firewood was certified by DATCP. The DNR has since amended that rule and shortened the distance to 25 miles.

#### Rule content

This rule makes changes to the voluntary certification program for firewood dealers that will do the following:

- Alters the definition of firewood so that some forms of wood such as slabs and trimmings from saw mills will now be considered firewood.
- Alters the definition of a firewood dealer to provide that a minimum annual distribution of 20 cords is required to meet the definition in order to limit certification to commercial operations.

- Provides that, in addition to the certification number, the firewood label must identify the treatment method and the state and county where the wood was harvested and requires a minimum font size for the certification number on the label.
- Changes the expiration date of the certification from December 31 to the anniversary date of the initial certification.
- Provides for a fee of \$200 to a dealer for each additional test DATCP must observe for certification for heat treatment when the dealer does not meet the time and temperature requirements during the first observed run.
- Eliminates fumigation as a treatment option. Currently, Wisconsin has no commercial fumigation facilities and there are no plans for one to be built in the future.
- Terminates bark removal as a treatment option after 2014.
- Lowers the heat treatment temperature and time from 160° to 140° F and from 75 to 60 minutes. New research has found that heating to 140° F for 60 minutes is effective in killing the Emerald Ash Borer (EAB). The federal standard is now 140° F for 60 minutes and surrounding states have adopted the federal standard.
- Requires a dealer that employs heat treatment to have time and temperature recording equipment and retain records of each run for three years at a central location.

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

##### *Federal Programs*

Under the federal Plant Protection Act, the Animal and Plant Health Inspection Service of the United States Department of Agriculture (USDA-APHIS) has responsibility for excluding, eradicating and controlling serious plant pests, including EAB. USDA-APHIS has instituted statewide quarantines for emerald ash borer on the interstate movement of ash for Illinois, Indiana, Ohio, Pennsylvania, West Virginia and the Lower Peninsula of Michigan. These quarantines include restrictions on the interstate movement of any hardwood (non-coniferous) firewood, and are in addition to the regulations adopted by each state related to the movement of firewood. Firewood cannot be moved from a quarantined area unless it is accompanied by a USDA-APHIS certificate that shows the firewood to be treated in accordance of federal regulations.

The USDA-APHIS is working on rules governing labeling of firewood for interstate movement and record keeping requirements.

##### *Surrounding State Programs*

Surrounding states where EAB has been identified (Illinois, Iowa, Indiana, Michigan, and Minnesota) have state and federal quarantines that prohibit the movement of regulated articles, including all hardwood firewood, out of quarantined areas. Firewood can only move out of quarantined areas after it is certified by USDA-APHIS or state officials. Only Minnesota has a state certification program for the heat treatment of firewood. The other surrounding states defer to federal treatment options for firewood movement.

#### ***Data and analytical methodologies***

DATCP consulted DNR and firewood dealers and utilized a substantial body of research conducted by the United States

Department of Agriculture (“USDA”) to determine effective methods for eliminating pests from firewood.

#### **Fiscal Impact**

The voluntary firewood dealer certification program was created in 2008. With experience operating the certification program DATCP has identified areas where certification standards could be improved, streamlined and have more transparency. The provisions contained in this rule will not significantly increase department workload and therefore the rule has no fiscal effect on DATCP. The rule will not affect local government costs or revenues.

#### **Business Impact**

The proposed rule will not have a significant impact on firewood dealers. The record keeping requirements may produce a minor expense for certified firewood dealers, as will the fee for additional heat treatment run exams. However, certification remains voluntary. The time and temperature reductions for heat treatment will produce a savings for dealers using this method and the reduced expense may result in more businesses to becoming certified. The changes proposed by the rule will benefit firewood dealers and those that heat treat wood. A complete *Business Impact Analysis* is attached.

#### **Economic Impact Analysis**

The proposed rule will not have a significant impact on firewood dealers or the state economy. The proposed rule has no effect upon local governments or utility ratepayers. The provisions in this rule and the economic impact analysis of the proposed rule were developed in consultation with the DNR and firewood dealers.

#### **Environmental Impact**

This rule will not have a significant impact on the environment. DATCP will inspect at least annually to verify that the certified firewood dealer has the necessary facilities and equipment to treat firewood so that it is free of pests.

#### **DATCP Contact**

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

Anna Healy  
Department of Agriculture, Trade and Consumer  
Protection  
Division of Agricultural Resource Management  
P.O. Box 8911  
Madison, WI 53708-8911  
Telephone (608) 224-4546  
E-Mail: [anna.healy@wisconsin.gov](mailto:anna.healy@wisconsin.gov)

### **Notice of Hearing Employment Relations Commission EmR1113, CR 12-001**

NOTICE IS HEREBY GIVEN that pursuant to sections 111.71, 111.94, 227.11 and 227.24, Stats., the Wisconsin Employment Relations Commission will hold a public hearing regarding promulgated emergency rules and the proposed creation of permanent rules, creating Chapters ERC 70 to 74 and ERC 80, relating to initial annual union certification elections.



## Hearing Information

The hearing will be held on:

**Date:** Thursday, February 2, 2012

**Time:** 10:00 A.M.

**Location:** 1457 East Washington Avenue  
Madison, WI 53703

The hearing site is accessible to people with disabilities. However, if you have special needs or circumstances that may make communication or accessibility difficult at the hearing, please contact Peter Davis at 608 266-2993 or [peterg.davis@wisconsin.gov](mailto:peterg.davis@wisconsin.gov).

## Copies of Proposed Rule

A copy of the text of the rule, fiscal estimate and economic impact analysis may be obtained from the Commission at no charge by contacting Peter Davis at 608 266-2993 or [peterg.davis@wisconsin.gov](mailto:peterg.davis@wisconsin.gov).

## Submittal of Comments

Comments on the proposed rule should be submitted by **February 9, 2012** and can be faxed (608) 266-6930, emailed ([peterg.davis@wisconsin.gov](mailto:peterg.davis@wisconsin.gov)) or mailed/hand-delivered to 1457 East Washington Avenue, Madison, Wisconsin 53707.

## Analysis Prepared by the Wisconsin Employment Relations Commission

### Statutes interpreted

The promulgated emergency administrative rules and proposed permanent administrative rules interpret ss. 111.70 (4) (d) 3. b. and 111.83 (3) (b), Stats., and nonstatutory provisions ss. 9132 (1) (b) and 9155 (1) (b) of 2011 Wisconsin Act 10 as amended by nonstatutory provisions ss. 3570f and 3570h of 2011 Wisconsin Act 32.

### Statutory authority

Sections 111.71, 111.94, 227.11 and 227.24, Stats.

### Explanation of agency authority

The Municipal Employment Relations Act and the State Employment Labor Relations Act both require that the Commission adopt administrative rules to regulate various proceedings.

### Related rules or statutes

None.

### Rule summary

By these promulgated emergency rules and proposed permanent rules, the Wisconsin Employment Relations Commission creates chs. ERC 70 to 74 and 80 concerning the cost, timing and procedures for any requested initial annual certification elections required by 2011 Wisconsin Act 10 and 2011 Wisconsin Act 32 to determine whether a bargaining unit of general (i.e., non-public safety and non-transit) employees in the municipal or state sector that is represented by a labor organization for collective bargaining with the employer involved shall continue to be represented by that organization or by another organization or shall not be so represented.

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

\$200	1-100 eligible voters
\$350	101-250 eligible voters
\$500	201-500 eligible voters
\$750	501-1000 eligible voters
\$1500	1001-3000 eligible voters
\$2000	over 3000 eligible voters

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

- in October 2011 for units of all general state employees (covered in ch. ERC 80)—union wishing to continue as the collective bargaining representative must file election petition and applicable fee on or before September 22, 2011;
- in October 2011 for units of general municipal employees who are subject to an extension of their collective bargaining agreement (covered in ch. ERC 70)—union wishing to continue as the collective bargaining representative must file election petition and applicable fee on or before September 22, 2011;
- no later than December 1, 2011, for units of general municipal school district employees who, as of September 30, 2011 are not subject to an extension of their collective bargaining agreement and not subject to a collective bargaining agreement or who, as of September 30, 2011, are covered by a collective bargaining agreement entered into on or after June 29, 2011. (covered in ch. ERC 71)—union wishing to continue as the collective bargaining representative must file election petition and applicable fee on or before September 30, 2011;
- no later than December 1 following the earliest of expiration, termination, extension, modification or renewal of a collective bargaining agreement that was in effect on September 30, 2011 and entered into before June 29, 2011 for units of general municipal school district employees (covered in ch. ERC 72)—union wishing to continue as the collective bargaining representative must file election petition and applicable fee on or before September 30 of the year following said expiration, termination, extension, modification or renewal;
- no later than May 1, 2012, for units of general municipal non-school district employees who as of January 30, 2012 are not subject to an extension of their collective bargaining unit and not subject to a collective bargaining agreement or who, as of January 30, 2012 are subject to a collective bargaining agreement entered into on or after June 29, 2011 (covered in ch. ERC 73)—union wishing to continue as the collective bargaining representative must file election petition and applicable fee on or before January 30, 2012.
- no later than May 1 following the earliest of expiration, termination, extension, modification or renewal of a collective bargaining agreement that was in effect on January 30 2012 and entered into before June 29, 2011 for units of general municipal non-school district employees (covered in ch. ERC 74)—union wishing to continue as the collective bargaining representative must file election petition and applicable fee on or before January 30 of the year following said expiration, termination, extension, modification or renewal.

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

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

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

Sections ERC xx.03(1) limit the right to file a petition to the existing representative and other any labor organization interested in representing the bargaining unit. No provision is made for petitions by employees or by the employer because decertification automatically results if no timely petition is filed by a labor organization.

Sections ERC xx.03(3) provide that no showing of interest is required to support a petition filed by the existing exclusive representative of the bargaining unit, but that a petition filed by another organization must be supported by a 30% showing of interest. The practice and procedure for submission and determination of the showing of interest is made parallel to that in existing s. ERC 11.05 (2), which generally involve a commission determination as to the sufficiency of the showing of interest in the context of the employee personnel data provided by the employer, without providing a copy of the showing of interest to any party other than the party that submitted it.

Sections ERC xx.03(5) specify the time by which a petition must be filed and the consequences that follow from no timely petition being filed by any labor organization. Sections. ERC xx.03 (5) (c) each provide that the commission will issue a notice equivalent to a decertification upon the request of any interested party or any affected employee.

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

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

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

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

Sections ERC xx.07 (6) provide that if more than one proposed representative appears on the ballot and if at least 51% of the eligible voters favor representation but no single representative receives the votes of at least 51% of the eligible voters, the commission, on receipt of a timely request of any

party, may conduct a runoff election as provided in ss. 111.70 (4) (d) 4. or 111.83 (4), Stats.

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

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

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

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

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

None.

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

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

*AGENCY Name and Source of Rules:*

MINNESOTA BUREAU OF MEDIATION SERVICES  
MINNESOTA RULES,

Chapter 5505 – Private Rules

5505.0100 Definitions.

5505.0200 Purpose, Construction, And Waiver.

5505.0300 Request For Investigation.

5505.0400 Required Information.

5505.0500 Notice Of Hearing And Investigation.

5505.0600 Hearings.

5505.0700 Examination Of Witnesses.

5505.0800 Subpoenas.

5505.0900 Determination Of Representative.

5505.1000 Election Procedure.

5505.1100 Challenge Of Voter.

5505.1200 Consent Election.

5505.1300 Certification Order.

5505.1400 Objections To Certification.

5505.1500 Reconsideration Within One Year.

Chapter 5510 – Public Rules

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

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

Grievance Procedure

Chapter 520 LMC – Grant Rules

Chapter 5530 – Arbitration Roster Rules

5530.0100 Application.

5530.0200 Policy.

5530.0300 Definitions.

5530.0400 Role Of Bureau.  
 5530.0500 Status Of Arbitrators.  
 5530.0600 Arbitrator Qualifications.  
 5530.0700 Appointment To Roster.  
 5530.0800 Arbitrator Conduct And Standards.  
 5530.0900 Panel Selections And Referrals.  
 5530.1000 Arbitration Proceedings.  
 5530.1200 Performance Measures.  
 5530.1300 Disciplinary Or Removal Procedures.  
 Chapter 7315 – Independent Review Rules  
 7315.0210 Scope.  
 7315.0300 Policy.  
 7315.2300 Request For Rehearing.  
 7315.2400 Petition For Rehearing.  
 7315.2500 Consideration.  
 7315.2600 Determination.  
 7315.2700 Notice Of Rehearing.  
 7315.2800 Rehearing Procedure.  
 7315.2900 Decision After Rehearing.

#### MICHIGAN PUBLIC EMPLOYMENT RELATIONS COMMISSION

##### MICHIGAN RULES

R 423.101 – 423.499 – General Rules

Part 1. General Provisions

Part 2. Mediation Of Labor Disputes

Part 3. Fact Finding

Part 4. Representation Proceedings.

Part 5. Unfair Labor Practice Charges

Part 6. Motion Practice

Part 7. Hearings

Part 8. Filing And Service Of Documents

Part 9. Notice Of Public School Strike Or Lockout

R 423.501 – 423.514 Administration Of Compulsory Arbitration Act For Labor Disputes In Municipal Police And Fire Departments

#### IOWA PUBLIC EMPLOYMENT RELATIONS BOARD

Iowa Rules [621]

Chapter 1 General Provisions

Chapter 2 General Practice And Hearing Procedures

Chapter 3 Prohibited Practice Complaints

Chapter 4 Bargaining Unit And Bargaining Representative Determination

Chapter 5 Elections

Chapter 6 Negotiations And Negotiability Disputes

Chapter 7 Impasse Procedures

Chapter 8 Internal Conduct Of Employee Organizations

Chapter 9 Administrative Remedies

Chapter 10 Declaratory Orders

Chapter 11 State Employee Appeals Of Grievance Decisions And Disciplinary Actions

#### ILLINOIS LABOR RELATIONS BOARD

Title 80: Public Officials And Employees

Subtitle C: Labor Relations

Chapter IV: Illinois Labor Relations Board

Part 1200 General Procedures

Part 1210 Representation Proceedings

Part 1220 Unfair Labor Practice Proceedings

Part 1230 Impasse Resolution

Part 1240 Police Officer Decertification Proceedings

#### ILLINOIS EDUCATIONAL LABOR RELATIONS BOARD

Title 80: Public Officials and Employees

Subtitle C: Labor Relations

Chapter III: Illinois Educational Labor Relations Board

Part 1100 General Procedures

Part 1105 Hearing Procedures

Part 1110 Representation Procedures

Part 1120 Unfair Labor Practice Proceedings

Part 1125 Fair Share Fee Objections

Part 1130 Collective Bargaining And Impasse Resolution

Part 1135 University Of Illinois Bargaining Units

#### *Summary of factual data*

Not applicable.

#### *Initial regulatory flexibility analysis*

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

#### **Fiscal Estimate**

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

#### **Economic Impact Analysis**

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

#### **Agency Contact Person**

Agency Contact Person.

Peter G. Davis

[PeterG.davis@wisconsin.gov](mailto:PeterG.davis@wisconsin.gov)

(608) 266-2993



## Notice of Hearing

### Insurance

#### EmR1119

Notice is hereby given that pursuant to the authority granted under s. 601.41(3), Stats., and the procedures set forth in under s. 227.24 (4), Stats., OCI will hold a public hearing to consider the adoption of the attached proposed emergency rule affecting Chapter Ins 18, Wis. Adm. Code, relating to the repeal of EmR1117 and affecting small business.

#### Hearing Information

**Date:** Thursday, January 26, 2012  
**Time:** 10:00 A.M. (or as soon thereafter as the matter may be reached)  
**Location:** OCI  
 2nd Floor, Room 227  
 125 South Webster St.  
 Madison, WI 53703

#### Submittal of Comments

##### *Written comments can be mailed to:*

Julie E. Walsh  
 Legal Unit – OCI Rule Comment for Emergency Rule Ch.  
 Ins 18  
 Office of the Commissioner of Insurance  
 PO Box 7873  
 Madison WI 53707–7873

##### *Written comments can be hand delivered to:*

Julie E. Walsh  
 Legal Unit – OCI Rule Comment for Emergency Rule Ch.  
 Ins 18  
 Office of the Commissioner of Insurance  
 125 South Webster St – 2<sup>nd</sup> Floor  
 Madison WI 53703–3474

##### *Comments can be emailed to:*

Julie E. Walsh  
[julie.walsh@wisconsin.gov](mailto:julie.walsh@wisconsin.gov)

Comments submitted through the Wisconsin Administrative Rule Web site at: <http://adminrules.wisconsin.gov> on the proposed rule will be considered.

The deadline for submitting comments is **4:00 p.m.** on the 14<sup>th</sup> day after the date for the hearing stated in this Notice of Hearing.

#### Summary Of Proposed Rule & Fiscal Estimate

For a summary of the rule see the analysis contained in the attached proposed rulemaking order below. There will be no state or local government fiscal effect. The full text of the proposed changes, a summary of the changes and the fiscal estimate may be obtained from the contact person noted below.

#### Finding of Emergency

The Commissioner of Insurance finds that an emergency exists and that the attached proposed emergency rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. Emergency Rule 1117 (EmR1117), was effective November 16, 2011 and is to be first applicable on January 1, 2012. EmR1117 contained provisions modifying Wisconsin's insurance regulations governing

grievances and independent review processes to comply with federal law provisions of 42 USC 300gg 19 (a) and (b), as implemented by 45 CR 147.136, as amended. It has been determined that this may not be in the best interest of the state.

The proposed emergency rule will repeal EmR1117 in its entirety and maintain Wisconsin's prior existing regulations and oversight of the grievance and independent review process. To avoid full implementation of EmR1117 and industry and consumer confusion, the Commissioner has determined that this emergency rule must be effective prior to January 1, 2012.

#### Analysis Prepared by the Office of the Commissioner of Insurance

##### *Statutes interpreted*

Sections 600.01, 628.34 (12), 632.73, 632.76, 632.81, 632.83, 632.835, and 632.84, Stats.

##### *Statutory authority*

Sections 600.01 (2), 601.41 (3), 628.34 (12), 632.73, 632.76, 632.81, 632.835 (5) and (8), and 632.84, Stats.

##### *Explanation of OCI's authority to promulgate the proposed rule under these statutes*

The OCI has authority to promulgate rules interpreting s. 632.83 and 632.835, Stats., implementing grievance and independent review requirements and procedures. In addition s. 632.835, Stats., permits the OCI to promulgate rules for the certification of independent review organizations.

##### *Related statutes or rules*

None.

##### *Plain language analysis and summary of the proposed rule*

The proposed emergency rule reinstates all provisions of Ch. Ins 18, Wis. Adm. Code as it existed prior to November 16, 2011.

##### *Summary of and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule*

Amendments to the Public Health Service Act (42 USC 300gg–19 (a) and (b)) created an internal appeal and external review right for consumers covered by group or individual health insurance. Section 2719 of the Public Health Service Act is implemented by interim final rules and guidance as issued by the US Department of Health and Human Services (45 CFR 147.136, as amended).

##### *Comparison of similar rules in adjacent states as found by OCI*

**Illinois:** Effective August 26, 2011, Illinois passed House Bill 224 further implementing the Patient Protection and Affordable Care Act (PPACA) by including provisions for preexisting conditions and rescissions and modifying review timeframes to comply with federal requirements. This builds on Illinois' managed care reform and patients right act 215 ILCS 134, providing to insureds for insured enrolled in health maintenance organizations a right to external review of medical necessity determinations. Also on January 5, 2010, Illinois enacted the health carrier external review act that broadens the right to external review to all Illinois residents enrolled in health insurance plans under 215 ILCS 180.

**Iowa:** Effective March 23, 2011, Iowa enacted House File 597 to enact new procedures for external review in order to comply with federal law. Iowa updated its regulations 191–ch. 76 effective July 8, 2011 and is compliant with federal requirements.



*Michigan:* Effective October 1, 2000, Michigan offers external review for adverse determinations based upon medical necessity that are unresolved internally by the plan. 2000 PA 251, MCL 550.1911. Michigan is compliant with federal requirements.

*Minnesota:* Effective 2000 Minnesota enacted a law that provides external review relating to medical necessity determinations from managed care plans and indemnity carriers. Minn. Stat. 72A.327. Minnesota is compliant with federal requirements.

***Summary of the factual data and analytical methodologies that OCI used in support of the proposed rule and how any related findings support the regulatory approach chosen for the proposed rule***

The office reviewed state and federal law and regulations that reflect the National Association of Insurance Commissioners Uniform Health Carrier External Review Model Act and the Department of Labor's regulations for ERISA plans. Insurers and independent review organizations are required to comply with the federal requirements and state requirements by promulgation of this emergency rule. This rule reinstates Ch. Ins 18 Wis. Adm. Code, as it read prior to November 16, 2011.

***Analysis and supporting documentation that OCI used in support of OCI's determination of the rule's effect on small businesses under s. 227.114***

The independent review organizations are certified by the commissioner's designee to conduct independent reviews in the state and several are small businesses. The additional cost for complying with this rule is no different for an independent review organization cost for complying with the federal law. Further, if there is additional cost it will be primarily borne by large insurers who are required to pay for the cost of an independent review, not the independent review organizations. The proposed rule places few additional requirements on the independent review organizations and in clarifying what is and is not eligible for reviews, the costs incurred will be limited.

**Private Sector Fiscal Analysis**

This rule change will have no significant effect on the private sector regulated by OCI.

**Effect on Small Business**

This rule will have little or no effect on small businesses.

***Initial regulatory flexibility analysis***

Notice is hereby further given that pursuant to s. 227.114, Stats., the proposed rule may have an effect on small businesses. The initial regulatory flexibility analysis is as follows:

- a. Types of small businesses affected:  
Independent review organizations.
- b. Description of reporting and bookkeeping procedures required:  
None beyond those currently required.
- c. Description of professional skills required:  
None beyond those currently required.

Notice is hereby further given that pursuant to s. 227.14 (2g), Stats., the proposed rule may have an economic impact on small businesses.

***OCI small business regulatory coordinator***

The OCI small business coordinator is Louie Cornelius and may be reached at phone number (608) 264-8113 or at email address [Louie.Cornelius@wisconsin.gov](mailto:Louie.Cornelius@wisconsin.gov).

**Agency Contact Person**

A copy of the full text of the proposed rule changes, analysis and fiscal estimate may be obtained from the Web site at: <http://oci.wi.gov/ocirules.htm> or by contacting Inger Williams, OCI Services Section, at:

Phone: (608) 264-8110

Email: [inger.williams@wisconsin.gov](mailto:inger.williams@wisconsin.gov)

Address: 125 South Webster St – 2<sup>nd</sup> Floor, Madison WI 53703-3474

Mail: PO Box 7873, Madison, WI 53707-7873

**The Proposed Rule Changes Are:**

SECTION 1. Repeal EmR 1117.

SECTION 2. These changes first apply to claims occurring on or after January 1, 2012.

SECTION 3. This chapter may be enforced under ss. 601.41, 601.64, 601.65, 628.10, Stats., or ch. 645, Stats., or any other enforcement provision of chs. 600 to 646, Stats.

SECTION 4. These emergency rule changes will take effect on December 29, 2011, as provided in s. 227.24 (1) (c), Stats.

**Notice of Hearing**

**Revenue**

**CR 11-052**

NOTICE IS HEREBY GIVEN THAT, pursuant to section 227.11 (2) (a), Stats., the Department of Revenue will hold a public hearing to consider permanent rules creating section Tax 11.10, relating to wind, solar, and certain gas powered products.

**Hearing Information**

The hearing will be held:

**Date:** Friday, January 27, 2012

**Time:** 1:00 P.M.

**Location:** State Revenue Building  
Events Room  
2135 Rimrock Rd.  
Madison, WI 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 no later than **February 3, 2012**, 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](mailto:dale.kleven@revenue.wi.gov)

This rule is not subject to s. 227.135 (2), as affected by 2011 Wisconsin Act 21. The statement of scope for this rule, published in Register No. 666 on June 14, 2011, was sent to Legislative Reference Bureau prior to the effective date of 2011 Wisconsin Act 21.

## **Analysis Prepared by the Department of Revenue**

### ***Statutes interpreted***

Section 77.54 (56), Stats.

### ***Statutory authority***

Section 227.11 (2) (a), Stats.

### ***Explanation of agency authority***

Section 227.11 (2) (a), Stats., provides that each agency may promulgate rules interpreting the provisions of any statute enforced or administered by it, if the agency considers it necessary to effectuate the purpose of the statute.

### ***Related statute or rule***

Section Tax 11.68 (4), (5), and (6) provide information on the determination of the classification of property, including products defined and exemplified in this rule, after installation.

### ***Plain language analysis***

This rule defines the term “product” as it applies to the sales and use tax exemption under s. 77.54 (56), Stats., provides examples of items that are and are not considered products, and clarifies the exemption requirements and scope.

### ***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***

Minnesota and Iowa have sales and use tax exemptions relating to equipment involved in converting wind or solar energy into electricity or heat, Michigan and Illinois do not.

#### ***Minnesota***

M. S. 297A.67. Subd.29, *Solar energy products*. A solar energy system, as defined in section 216C.06, subdivision 17, is exempt.

M. S. 297A.68.Subd.12, *Wind energy conversion systems*. Wind energy conversion systems, as defined in section 216C.06, subdivision 12, that are used as an electric power source are exempt, and the materials used to manufacture, install, construct, repair, or replace them are exempt.

Minnesota has no rules pertaining to these statutes.

#### ***Iowa***

Iowa Code sec. 423.3.54, The sales price from the sale of wind energy conversion property to be used as an electric power source and the sale of the materials used to manufacture, install, or construct wind energy conversion property used or to be used as an electric power source.

For purposes of this subsection, “wind energy conversion property” means any device, including, but not limited to, a wind charger, windmill, wind turbine, tower and electrical equipment, pad mount transformers, power lines, and substation, which converts wind energy to a form of usable energy.

Iowa Code sec. 423.3.90, *The sales price from the sale of solar energy equipment*. For purposes of this subsection, “solar energy equipment” means equipment that is primarily

*used to collect and convert incident solar radiation into thermal, mechanical, or electrical energy or equipment that is primarily used to transform such converted solar energy to a storage point or to a point of use.*

Iowa has a rule (701—230.7(423)) relating to the statutory exemption for “wind energy conversion property.” However, the rule merely reiterates the statutory language and does not interpret the statute.

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

In reviewing the language of s. 77.54 (56), Stats., the department concluded that in order to administer the sales and use tax exemption being created, it needs to promulgate rules interpreting and clarifying the underlying statutory provisions.

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

As explained above, this rule is created to administer changes in Wisconsin’s sales and use tax laws. As the rule itself does not impose any significant financial or other compliance burden, the department has determined that it does not have a significant effect on small business.

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

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

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

This rule does not have a significant effect on small business.

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

Please contact Dale Kleven at (608) 266–8253 or [dale.kleven@revenue.wi.gov](mailto:dale.kleven@revenue.wi.gov), if you have any questions regarding this rule.

### ***Place where comments are to be submitted and deadline for submission***

Comments may be submitted to the contact person shown below no later than one week after the public hearing on this rule is conducted. Information as to the place, date, and time of the public hearing will be published in the Wisconsin Administrative Register.

Dale Kleven  
Department of Revenue  
Mail Stop 6–40  
2135 Rimrock Road  
P.O. Box 8933  
Madison, WI 53708–8933

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

**SECTION 1.** Tax 11.10 is created to read:

**Tax 11.10 Wind, solar, and certain gas powered products.** (1) GENERAL. Section 77.54 (56), Stats., provides a sales and use tax exemption for the following:

(a) The sales price from the sale of and the storage, use, or other consumption of a product whose power source is wind energy, direct radiant energy received from the sun, or gas generated from anaerobic digestion of animal manure and other agricultural waste, if the product produces at least 200 watts of alternating current or 600 British thermal units per day, except that the exemption does not apply to an uninterruptible power source that is designed primarily for computers.

(b) Except for the sale of electricity or energy that is exempt from taxation under s. 77.54 (30), Stats., the sales price from

the sale of and the storage, use, or other consumption of electricity or energy produced by a product described in par. (a).

(2) **DEFINITION.** In this section and in s. 77.54 (56), Stats., “product” means tangible personal property that converts wind energy, direct radiant energy received from the sun, or gas generated from the anaerobic digestion of animal manure and other agricultural waste into alternating current electricity or heat.

(3) **ITEMS WHICH ARE PRODUCTS.** Products include the following items described in sub. (2):

(a) Wind turbine generators, including blade assembly and tower.

(b) Gas powered electric generators.

(c) Gas fueled furnaces, space heaters, and water heaters.

(d) Photovoltaic cells, modules, and arrays, including tracking equipment that maintains optimal orientation to the sun.

(e) Solar thermal collectors.

(f) Inverters used to transform direct current produced by an item described in sub. (2) into alternating current, including property used to convey the direct current from the product to the inverter.

(g) Hardware required for installation of an item described in pars. (a) to (f).

(4) **ITEMS WHICH ARE NOT PRODUCTS.** Items which are not products include the following:

(a) Tangible personal property that consumes electricity or heat produced by an item described in sub. (2).

**Example:** A refrigerator that consumes electricity produced by a wind turbine generator is not itself a product whose power source is wind energy.

(b) A foundation for an item described in sub. (2).

**Example:** A solar tracking device that holds an array of photovoltaic cells is installed onto a concrete foundation. The concrete foundation is not a product whose power source is direct radiant energy received from the sun.

(c) Except as provided in sub. (3) (f), property necessary to convey, transfer, or alter electricity or heat generated by an item described in sub. (2).

(d) Tangible personal property used to store electricity or heat produced by an item described in sub. (2).

**Example 1** A tank that stores hot water heated by a solar collector is not itself a product whose power source is direct radiant energy received from the sun.

**Example 2** Batteries used to store electricity produced by a wind turbine generator or photovoltaic cells are not themselves products whose power source is wind energy or direct radiant energy received from the sun.

(5) **EXEMPTION FOR PRODUCTS.** (a) For purposes of the exemption under sub. (1) (a), a product that produces direct current shall be considered to produce alternating current if the direct current is modified to alternating current prior to the direct current being stored, used, consumed, or sold by the producer.

**Example 1** An array of photovoltaic cells produces direct current. All of the current produced by the array is transferred directly to an inverter. The alternating current from the inverter is then either used to power equipment or it is sold to a utility. The photovoltaic array is considered to meet the

requirement that it be a product that produces alternating current.

**Example 2** A wind turbine generator produces direct current. The current is used to charge batteries. When needed, the batteries supply direct current to an inverter, producing alternating current used to power various devices. The direct current generator does not qualify for exemption since the direct current is being stored by the producer prior to changing it to alternating current.

(b) In order to qualify for the exemption under sub. (1) (a), a product using gas as a power source shall use gas from the anaerobic digestion of animal manure and other agricultural waste exclusively as its power source. A product that uses other fuels such as natural gas, propane, or gas generated from a landfill does not qualify for exemption.

(c) Products that qualify for the exemption under sub. (1) (a) include the following:

1. An alternating current wind turbine generator rated by the manufacturer to produce at least 200 watts of alternating current with a wind speed of 25 miles per hour.

2. A direct current wind turbine generator that is rated by the manufacturer to produce at least 250 watts of direct current at a wind speed of 25 miles per hour and produces alternating current as described in par. (a).

**Example:** A direct current wind turbine generator is rated by the manufacturer to produce at least 250 watts of direct current with a wind speed of 25 miles per hour. The generator is connected to an inverter that modifies the direct current to alternating current prior to the direct current being stored, used, consumed, or sold by the producer. The generator, inverter, and the property used to convey the direct current from the generator to the inverter qualify for exemption.

3. A direct current wind turbine generator that produces alternating current as described in par. (a) of at least 200 watts as measured at the inverter under normal operating conditions with a wind speed of no more than 25 miles per hour.

4. A solar thermal collector with an output rating of at least 600 British thermal units per day, as determined by the Solar Rating and Certification Corporation, that is normally in service every day throughout the year.

5. A photovoltaic cell, module, or array with a standard test condition output rating of at least 250 watts of direct current that produces alternating current as described in par. (a).

6. A direct current gas powered generator that meets the requirement in par. (b) and produces alternating current as described in par. (a) of at least 200 watts as measured at the inverter when producing direct current under its normal operating conditions.

7. A gas fueled furnace, space heater, or water heater that meets the requirement in par. (b) and can be expected to consume gas in an amount equivalent to at least 600 British thermal units per day throughout the year.

**Example:** Gas generated by the anaerobic digestion of animal manure or agricultural waste is used solely as the power source for a space heater and a water heater. Both products, when in use, produce over 600 British thermal units per day. The water heater is used every day of the year while the space heater is used only during the months of October through April. The water heater qualifies for exemption, the space heater does not.

(d) The exemption under sub. (1) (a) may be claimed by the consumer of the product who purchases the product as tangible personal property. A contractor who will purchase, furnish, and



install a product which will become real property when installed is the consumer of the product, and may provide its supplier with a properly completed exemption certificate, claiming the product is exempt under s. 77.54 (56), Stats. A contractor who will furnish and install a product that will remain tangible personal property when installed may purchase a product without tax for resale. The purchaser may then issue the contractor an exemption certificate, claiming the product is exempt under s. 77.54 (56) (a), Stats.

**Note:** See s. Tax 11.68 (4), (5), and (6) for information on the determination of the classification of property after installation.

**(6) EXEMPTION FOR ENERGY PRODUCED BY A PRODUCT.** (a) The exemption under sub. (1) (b) applies to a direct sale from the producer of electricity or energy to the consumer of the same electricity or energy where all of the following apply:

1. The electricity or energy is produced by a product that qualifies for exemption under sub. (1) (a).

2. The sale does not qualify for exemption under s. 77.54 (30), Stats.

**Note:** Section 77.54 (30) (a), Stats., provides an exemption, in part, for electricity sold during November through April for residential use, fuel and electricity sold for use in farming, and fuel and electricity consumed in manufacturing tangible personal property in Wisconsin.

(b) The exemption under sub. (1) (b) does not apply to

electricity or energy which is first purchased for resale from the producer and is then sold in a subsequent retail sale, unless the person making the retail sale is able to account for the quantity of electricity or energy that qualifies for exemption under s. 77.54 (56) (b), Stats., and is able to identify the person to whom such electricity or heat is sold.

**Example:** Electricity that would otherwise qualify for exemption under s. 77.54 (56) (b), Stats., is commingled in a distribution network with electricity that is not produced by a product whose power source is wind energy, direct radiant energy received from the sun, or gas generated from anaerobic digestion of animal manure and other agricultural wastes. It is not possible to determine to whom, or in what amount, the electricity that qualifies for exemption is sold. A purchaser of this electricity will not be able to provide an exemption certificate to a utility and properly claim what portion of the electricity it has purchased is exempt pursuant to s. 77.54 (56) (b), Stats., nor is it possible for a utility to know what portion of the electricity purchased by the consumer was from eligible sources.

(c) The exemption under sub. (1) (b) does not apply to the sale of, or the storage, use or other consumption of gas produced by the anaerobic digestion of animal manure or other agricultural wastes unless such gas is produced by a product described in sub. (1) (a).

ADMINISTRATIVE RULES FISCAL ESTIMATE AND ECONOMIC IMPACT ANALYSIS		
Type of Estimate and Analysis		
<input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected		
Administrative Rule Chapter, Title and Number		
Section Tax 11.10: Wind, solar, and certain gas powered products		
Subject		
Sales and use tax exemption for certain energy-producing wind, solar, and gas powered products and the electricity or energy they produce		
Fund Sources Affected		Chapter 20, Stats. Appropriations Affected
GPR   FED   PRO   PRS   SEG   SEG-S		
Fiscal Effect of Implementing the Rule		
<input checked="" type="checkbox"/> No Fiscal Effect <input type="checkbox"/> Indeterminate	<input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Decrease Existing Revenues	<input type="checkbox"/> Increase Costs <input type="checkbox"/> Could Absorb Within Agency's Budget <input type="checkbox"/> Decrease Costs
The Rule Will Impact the Following (Check All That Apply)		
<input type="checkbox"/> State's Economy <input type="checkbox"/> Local Government Units		<input type="checkbox"/> Specific Businesses/Sectors <input type="checkbox"/> Public Utility Rate Payers
Would Implementation and Compliance Costs Be Greater Than \$20 million?		
Yes <input checked="" type="checkbox"/> No		
Policy Problem Addressed by the Rule		
The rule does not create or revise policy, other than to reflect a statutory change.		



Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)
<p>The statutory change to which this rule pertains created a state economic impact equal to the estimated state fiscal effect (described in the attached fiscal estimate form). The rule itself does not create any further impact or implementation and compliance costs, except that, by providing clarifications and examples, may reduce the costs that businesses and individuals would otherwise incur to comply with the new statute.</p> <p>The majority of comments submitted in response to the department's solicitation expressed general support or opposition, and did not address economic impact. Comments that addressed economic impact did so generally and were directed at the underlying statutory exemption. No comments related directly to implementation and compliance costs or indicated the proposed rule would adversely affect in a material way the economy, a sector of the economy, productivity, jobs, or the overall economic competitiveness of Wisconsin. As such, the comments received provide support to the above conclusion that the rule itself does not create any further economic impact beyond the statutory change to which it pertains.</p>
Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule
<p>Clarifications and guidance provided by administrative rules may lower the compliance costs for businesses, local governmental units, and individuals.</p> <p>If the rule is not implemented, Chapter Tax 11 will be incomplete in that it will not reflect current law.</p>
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)
Michigan and Illinois do not have related statutory provisions. Minnesota has related statutory provisions, but does not have rules pertaining to those statutes. Iowa has related statutory provisions and rules pertaining to those statutes. However, Iowa's rules merely reiterate the statutes and do not interpret them.

#### **Assumptions Used in Arriving at Fiscal Estimate:**

2007 Wisconsin Act 20 adopted an exemption (under s.77.54 (56)) for certain products whose power source is wind energy, direct radiant energy from the sun, or gas generated from the digestion of animal manure and other agricultural waste. The exemption also applies to electricity and energy produced by the exempt products.

2009 Wisconsin Act 28 changed the effective date of the exemption from July 1, 2009 to July 1, 2011.

The proposed rule modifies Chapter TAX 11 to reflect the law changes, improve clarity, and add examples to illustrate the tax treatment of certain items under the exemptions under s.77.54 (56).

The proposed rule includes:

- A definition for "product" as described in the exemption under s.77.54 (56);
- Examples of items that are considered "products" under the exemption; and
- Clarification that the exemption does not apply to electricity or energy which is purchased for resale and is then sold in a retail sale unless the retailer is able to account for the quantity of electricity or energy that qualifies for the exemption and is able to identify the person to whom the electricity or energy is sold.

As specified in the rule, examples of products that become exempt from sales and use tax effective July 1, 2011 under the statutory change include certain wind turbine generators, photovoltaic cells, anaerobic gas powered turbines, and certain other products.

The fiscal effect of the exemptions under s.77.54 (56) have already been reflected under general fund condition statements subsequent to 2007 Act 20 and 2009 Act 29 (where, under both acts, the annual sales tax loss of the exemptions was estimated at \$1.3 million annually). Since the fiscal impact of the statutory change has already been reflected, the proposed rule has no fiscal effect.

**Notice of Proposed Rulemaking  
Without Public Hearing  
Technical College System  
CR 11-053**

The Wisconsin Technical College System Board submitted the following proposed rule amendment to the Legislative Council Rules Clearinghouse on December 23, 2011. The proposed order revises section TCS 6.05, relating to procurement. A public hearing is not required as the proposed rule amendment brings the existing rule into conformity with cost minimums established in 2011 Wisconsin Act 32.

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

***Statutes interpreted***

Wis. Stats. section 38.04.

***Statutory authority***

Wis. Stats. sections 38.04 and 38.12.

***Explanation of statutory authority***

Section 38.04 (14) (a), Stats., authorizes the technical college system board to promulgate rules applicable to all district boards, establishing general district policies related to procurement and contracts to provide services.

***Related statute or rule***

Section TCS 6.05.

***Plain language analysis***

2011 Wisconsin Act 32 raised procurement cost minimums for various procurement requirements for state agencies in ch. 16, Stats. The proposed rule amendments are limited to increasing current procurement cost minimums for technical college districts to align with the minimums outlined for state agencies in Ch. 16, Stats.

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

Not applicable.

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

Not applicable.

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

Not applicable.

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

Not applicable.

**Effect on Small Business**

None.

**Final Regulatory Flexibility Analysis**

Not applicable.

**Fiscal Estimate**

The functions required by these rules can be absorbed within existing staff. Therefore, there is no fiscal effect on the agency.

**Agency Contact Person**

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

**Place Where Comments Are to be Submitted and Deadline for Submission**

Comments may be submitted to the contact person noted above. The deadline for comments is **February 15, 2012**.

A public hearing and notice are not required under s. 227.16 (2) (b), Stats., as the proposed rule amendment will align the cost minimums for procurement requirements of the Wisconsin Technical College System with the policies and cost minimums established by the Legislature and the Governor for state agency procurements in 2011 Wisconsin Act 32.

**Text of Rule**

Section TCS 6.05 (2) (c) is amended to read:

(c) *Competitive bids*. Require that all procurements where the total cost exceeds ~~\$25,000~~—~~\$50,000~~ and public construction under ss. 38.18 and 62.15 (1), (11) and (14), Stats., where the total cost exceeds ~~\$10,000~~ \$25,000 be accomplished through the use of competitive bids except as provided by pars. (d), (e), and (i).

Section TCS 6.05 (2) (f) is amended to read:

(f) *Solicitation of written quotes*. Except as provided under pars. (d), (e) and (i), require that all procurements where the total cost equals or exceeds ~~\$10,000~~ \$25,000 and does not exceed ~~\$25,000~~ \$50,000 be accomplished through the solicitation of written quotations from a minimum of 3 contractors or proposed contractors.

Section TCS 6.05 (2) (g) is amended to read:

(g) *Procurements less than*—~~\$10,000~~ *than* \$25,000. Establish a procedure for all procurements where the total cost is less than ~~\$10,000~~ \$25,000.

Section TCS 6.05 (2) (j) is amended to read:

(j) *Records required*. Require that records be created and retained for all procurements where the total cost equals or exceeds ~~\$10,000~~ \$25,000. These records shall include:

1. The rationale for the method of procurement.
2. The rationale for selection or rejection of any contractor or proposed contractor.
3. The basis for cost or price.

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## Submittal of Proposed Rules to the Legislature

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

**Safety and Professional Services**  
***Safety, Buildings, and Environment***  
***General Part II, Chs. SPS 326–360***  
**CR 11–047**

Revises Chapters SPS 341 and 345 (formerly Comm 41 and 45), relating to boilers and pressure vessels.

This rule is not subject to s. 227.185, Stats. The statement of scope for this rule, published in Register No. 664, on April 14, 2010, was sent to the Legislative Reference Bureau prior to the effective date of 2011 Wis. Act 21.

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