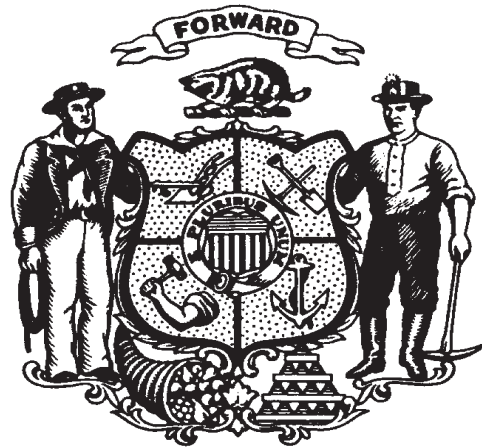


# Wisconsin Administrative Register

No. 673



Publication Date: January 31, 2012  
Effective Date: February 1, 2012



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



## WISCONSIN ADMINISTRATIVE REGISTER

The Wisconsin Administrative Register is published twice monthly by the Legislative Reference Bureau.

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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 led 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)

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

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

#### Finding of Emergency

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

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

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

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

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

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

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

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

#### **Finding of Emergency**

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

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

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

(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

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

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

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

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

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

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## Scope Statements

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### Agriculture, Trade and Consumer Protection

SS 002-12

This Scope Statement was approved by the governor on January 9, 2012.

#### Rule No.

Section ATCP 161.60, Wis. Adm. Code (New)

#### Relating to

Dairy Industry Promotion Grants and Loans

#### Description of the Objective of the Rule

The Department of Agriculture, Trade and Consumer Protection (DATCP) proposes an emergency and permanent rule that will establish criteria DATCP will use to make determinations for grants, loans or other forms of financial assistance to dairy producers to promote and develop the dairy industry. The emergency and permanent rules are necessitated by the addition of authority and general purpose revenue funding appropriated to the Department as part of 2011 Wis. Act 32, the Biennial Budget.

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

**History and background.** 2011 Wis. Act 32, eliminated the Department of Commerce and transferred the bulk of its responsibilities to the Wisconsin Economic Development Corporation (WEDC). Responsibilities not transferred to the WEDC were transferred to other state agencies, including DATCP. Those responsibilities transferred to DATCP included dairy promotion and development activities that had operated under the program umbrella called Dairy 2020. The budget act includes language amending DATCP's authority and creating an appropriation (see underlined text).

(from 2011 Act 32)

Section 375g. 20.115 (4) (d) of the statutes is created to read: 20.115 (4) (d) Dairy industry promotion. The amounts in the schedule for promoting the growth of the dairy industry by providing grants and loans to dairy producers.

Section 2299r. 93.40 (1) (g) of the statutes is amended to read:

93.40 (1) (g) Promote the growth of the dairy industry through research, planning, and assistance, including grants and loans to dairy producers.

The Legislative Fiscal Bureau's Comparative Summary of Budget Recommendations for 2011 Act 32 states:

11. Transfer dairy 2020 and administration of agriculture related tax credits [LFB Paper 238]

**Governor:** Transfer from the Department of Commerce (Commerce) to DATCP administration of the following programs: (a) Dairy 2020, which assists dairy operations with accessing funding for expansions and modernization;.....

The Dairy 2020 Initiative was created to focus resources available under several Commerce programs toward economic development in the state dairy industry. These programs include: (1) the early planning grant [EPG] program; and (2) the Milk Volume Production [MVP] program, which provides for low-interest loans to dairy farmers. Dairy 2020 is guided by an advisory Dairy 2020 Council, consisting of 26 gubernatorial appointees including dairy farmers, industry representatives, state legislators and officials and representatives of educational institutions.

The act does not transfer from Commerce to DATCP any statutory authorities for the Dairy 2020 financial assistance programs. Commerce and the Department of Administration (DOA) indicate that although Dairy 2020 coordinates dairy industry access to various programs, the programs themselves operate independently. The act repeals statutory authorities and state appropriations for these rural economic development programs.

Also, DATCP administers parts of the Dairy Business Initiative (DBI), which was previously known as the Value-Added Dairy Initiative (VADI). DBI/VADI has been supported by federal funding and in-kind efforts of DATCP, Commerce, the University of Wisconsin Center for Dairy Profitability, the UW-Extension, the Wisconsin Technical Colleges, and dairy industry trade groups. DBI/VADI is broadly intended to help the state dairy industry modernize and expand operations, as well as develop supply and distribution chains to economically increase product offerings and market presence of Wisconsin dairy products. Dairy 2020 has generally constituted the Commerce contributions to DBI/VADI operations.....

**Joint Finance/Legislature:** Adopt the Governor's recommendation. In addition, include the following:

a. Transfer \$200,000 GPR annually from the Wisconsin Economic Development Corporation (WEDC) to a newly-created GPR appropriation to fund grants and loans to dairy producers for promoting the growth of the dairy industry.

#### **Nature of the Emergency**

An emergency rule is necessary to ensure that funds are used to assist dairy producers during the first year of the annual appropriation as permanent rules cannot be adopted in time to provide the basis for grant determinations for that first year appropriation. The emergency is necessary for the welfare of those dairy producers who the Legislature has determined require assistance to maintain and expand their operations and for the welfare of the entire dairy industry. The emergency and permanent rules will have identical provisions.

#### **Policy Alternatives**

Do nothing. If DATCP fails to adopt rules that contain the basis for grant and loan determinations it will not be able to expend the funds and provide the assistance to dairy producers that the Legislature directed in 2011 Act 32, the biennial budget.



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

Section 93.07 (1), Stats., directs DATCP to make such regulations as are necessary for the discharge of all the powers and duties of the department. While granting the authority to make grants and loans to dairy producers, the budget language does not specify the bases for grant and loan determinations. The agency considers it necessary to adopt rules needed to establish the bases for grant and loan determinations in order to effectuate the purposes of s. 20.114 (4) (d) and 93.40 (1) (g), Stats.

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

DATCP estimates that it will use approximately 0.25 FTE staff to develop this rule. This includes time required for the investigation and analysis, financial assistance criteria, rule drafting, preparing related documents, holding public hearings and communicating with affected persons and groups. DATCP will use existing staff to develop this rule.

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

This rule will enable dairy producers to obtain financial assistance to expand, modernize, or improve the efficiency or profitability of their operations or who seek product, market or production process opportunities.

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

The United States Department of Agriculture's Rural Development Agency Value Added Producer Grant Program offers funding for activities that expand markets or add value to agricultural products.

### **Anticipated Economic Impact**

The proposed rule will enable DATCP to provide financial assistance to dairy producers who wish to expand, modernize, or improve the efficiency or profitability of their operations or who seek product, market or production process opportunities. DATCP expects the proposed rule to have a positive economic impact upon the dairy industry and to have no negative economic impact statewide and locally.

### **Contact Person**

Linda Merriman Hitchman, DATCP; Phone (608) 224-5132, [linda.merrimanhitchman@wisconsin.gov](mailto:linda.merrimanhitchman@wisconsin.gov).

## **Agriculture, Trade and Consumer Protection**

SS 005-12

This statement of scope was approved for both the permanent and emergency rule proceedings by the governor on January 11, 2012.

### **Rule No.**

Chapter ATCP 55, Wis. Adm. Code (Existing)

### **Relating to**

Meat and Meat Food Products

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

The Department of Ag, Trade and Consumer Protection proposes emergency and non-emergency, permanent rule changes to incorporate federal regulations into Ch. ATCP 55, Wis. Adm. Code, Meat and Meat Food Products. State meat inspection programs operate under contract with the United States Department of Agriculture's (USDA) Food Safety and Inspection Service (FSIS). State-inspected meat establishments may currently only sell their products within the state where they are located. These rule revisions would include adoption of the Cooperative Interstate Shipment (CIS) regulations and the regulations prescribing rules of practice that will allow selected Wisconsin state-inspected meat establishments to participate in interstate sales of their products.

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

#### **Background**

Wisconsin operates the nation's largest state meat inspection program, with 286 official licensed establishments. Twenty-seven states currently operate state meat inspection programs. All state-inspected Wisconsin meat establishments are very small and fill an important niche in the state's economy. According to USDA, state meat inspection programs provide unique services to these small plants by "providing more personalized guidance to establishments in developing their food safety oriented operations." USDA provides half of the funding for state meat inspection programs.

State meat inspection programs operate under a cooperative agreement with USDA FSIS. Under this agreement, states must provide inspection services "at least equal to" federal meat inspection. Each program conducts a self-assessment annually and USDA FSIS conducts an on-site audit every three years to determine whether the program meets federal "at least equal to" requirements. Wisconsin meets these "at least equal to" standards.

Currently state-inspected meat establishments may only sell their products within the state where the plant is located. However, USDA recently finalized rules that will allow some selected state-inspected meat establishments to sell their meat and poultry products in other states. To qualify for this program, known as the Cooperative Interstate Shipment (CIS) program, states must provide inspection that is the "same as" (identical to) federal inspection. USDA will compensate states 60 percent of the cost of providing regulatory oversight at state-inspected meat establishments selected to participate in the CIS program.

#### **ATCP 55, Meat and Meat Food Products**

DATCP proposes revising existing administrative rules for Wisconsin's state meat inspection program found in Chapter ATCP 55, Wis. Admin. Code, Meat and Meat Food Products. Chapter ATCP 55 includes licensing and inspection requirements for state-inspected meat establishments and requires meat establishments that slaughter and process meat products to comply with relevant federal regulations and standards. It describes requirements for inspection marks, meat labeling, meat formula approval, and transportation. Finally, Chapter ATCP 55 describes prohibited practices and the enforcement process for violations of the meat processing and slaughter regulations.

### ***Proposed Rule Changes***

The proposed rules will incorporate, by reference, federal regulations creating the CIS program and specifying rules of practice that ensure the state program operates the “same as” the federal program when overseeing plants selected for the CIS program. The proposed rules will, for consistency, adopt federal rules governing the maximum amount of meat products that can be sold at wholesale by retail food establishments without requiring a meat establishment license. DATCP seeks to develop both an emergency and a non-emergency, permanent rule.

**Emergency Rule** — The emergency rule will specifically incorporate federal regulations essential for implementing the CIS program. An emergency rule is necessary to ensure Wisconsin has the regulatory foundation required for participation in USDA’s new CIS program allowing interstate sales of state-inspected meat products. The emergency rule is necessary to the welfare of very small meat establishments in Wisconsin because adopting the rule will ensure that selected state-inspected meat establishments may enter the CIS program and sell their products in other states.

**Permanent Rule** — In addition to the emergency rule, DATCP plans to begin work on a permanent, non-emergency rule immediately. The permanent rule will be identical in substance to the emergency rule and incorporate, by reference, federal regulations creating the CIS program. DATCP may also adopt any additional, non-emergency rules of practice needed to conform to federal regulations for participation in the CIS program.

### ***Policy Alternatives***

Do nothing. If the department does not incorporate rules for the CIS program and rules of FSIS practice, USDA FSIS may determine that Wisconsin cannot participate in the CIS program, thereby preventing expansion of market area for Wisconsin establishments seeking to increase their sales.

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

Statutory authority for revising this rule may be found in sections 93.07 (1), 97.09 (4), and 97.42 (4), Stats., as follows:

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

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

#### **97.09 Rules**

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

#### **97.42 (4) Rules**

The department may issue reasonable rules requiring or prescribing any of the following:

(j) Any other rules reasonably necessary to the administration and enforcement of this section.

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

DATCP estimates that it will use approximately 0.1 FTE staff to develop this rule. That includes time required for investigation and analysis, rule drafting, preparing related documents, coordinating advisory committee meetings, holding public hearings and communicating with affected persons and groups. DATCP will use existing staff to develop this rule.

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

These rule changes would impact small and very small state-inspected meat establishments that wish to sell their meat or poultry products in other states. Approximately thirty establishments have expressed interest in participating in the CIS program.

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

The Federal Meat Inspection Act (FMIA) and the Poultry Products Inspection Act (PPIA) require federal inspection to ensure all meat and poultry products are safe, wholesome, and accurately labeled. Section 661 of the FMIA and 454 of the PPIA allows FSIS to develop cooperative agreements with states to administer state meat inspection programs. Section 11015 of Title XI of the Food, Conservation, and Energy Act of 2008 (farm bill) amended the acts and established the new CIS program allowing certain state-inspected establishments to sell products in interstate commerce. USDA released the final rules for the CIS program in May 2011. These federal regulations are found in 9 CFR Parts 321, 332, and 381. Wisconsin’s administrative rules do not currently incorporate these new regulations, which are needed to implement CIS.

### **Anticipated Economic Impact**

DATCP expects the proposed rule to have no negative economic impact statewide and locally. Since state-inspected meat establishments are already inspected, rule revisions should result in no to minimal costs to establishments who choose to participate in this voluntary program, and participating establishments would be expected to experience a positive economic impact due to sales over a larger geographic region. The rule changes will have no economic impact on local governmental units or public utility taxpayers.

### **Contact Person**

Sandra Cleveland, Division of Food Safety, DATCP; phone (608) 224-4670

### **Insurance**

#### **SS 001-12**

This statement of scope was approved by the governor on January 4, 2012.

### **Rule No.**

Agency No. 145 – Chapter Ins 17.01 and 17.28 (6)

### **Relating to**

Injured Patients and Families Compensation Fund Annual Fund Fees and Mediation Panel Fees for fiscal year 2013.



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

The Office of the Commissioner of Insurance's objective is to establish the annual fees that participating health care providers must pay to the Injured Patients and Families Compensation Fund as required by s. 655.57 (3), Wis. Stat., for the fiscal year beginning July 1, 2012. The proposed rule will also establish the mediation panel fees for fiscal year 2013 commencing on July 1, 2012.

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

The policies as set forth in the statutes require the Office of the Commissioner of Insurance to promulgate a rule to establish the amount of fees to be paid into the Fund annually as approved by the Board of Governor's of the Injured Patients and Families Compensation Fund. The fees include the annual assessments for the coverage provided to the participating health care providers, and the mediation fund fees which are collected by the Injured Patients and Families Compensation Fund and paid to the Director of State Courts for the operations of the Medical Mediation Panels.

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

The Injured Patients and Families Compensation Fund was established by and operated under Chapter 655, Wis. Stat. Section 655.004 states that the director of state courts and the Commissioner may promulgate such rules under ch. 227, Wis. Stat., as are necessary to enable them to perform their responsibilities under this chapter. Pursuant to s. 655.27 (3) (b), Wis. Stat., the Commissioner, after approval by the board of governors, shall by rule set the fees, and s. 655.61, Wis. Stat., requires that the board of governors, by rule, set fees to charge health care providers a level sufficient to provide the necessary revenue to fund the medical mediation panels. Further, section 601.41 (3), Wis. Stat., provides that the Commissioner shall have rule-making authority under s. 227.11 (2), Wis. Stat.

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

120 hours of time including the time of state employees and of the Board of Governors of the Injured Patients and Families Compensation Fund.

### **Description of all Entities that this Rule may Have an Economic Impact On**

All health care provider participants in the Fund as set forth in s. 655.002 (1), Wis. Stat., will be required to pay an additional 5% assessment for their medical malpractice coverage under Chapter 655 Wis. Stat. This impact is considered to be minimal in that the majority of the Fund's participants are physicians and the majority of the physicians are assessed fees in the Class 1 and Class 2 categories. The 5% increase in annual Fund fees will result in an additional \$73 and \$131 for Class 1 and Class 2 physicians, respectively, for fiscal year 2013.

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

There is no existing or proposed federal regulation addressing any medical malpractice fund like the Wisconsin Injured Patients and Families Compensation Fund.

### **Statement of Scope for Permanent and Emergency Rule**

The Fund issues invoices for the next fiscal year in June of each year. In order for the invoices to correctly reflect the assessment increase approved by the Board of Governors, a rule must be promulgated and take effect prior to June 2<sup>nd</sup>. Due to the length of time that may be required to promulgate the rule, the scope is being submitted for both the permanent rule and an emergency rule to ensure that procedures are in place to promulgate the rule on an emergency basis to ensure that the invoices can be issued reflecting the assessments approved by the Board of Governors.

### **Contact Person**

Theresa L Wedekind, 608-266-0953.

## **Transportation**

### **SS 003-12**

This statement of scope was approved by the governor on January 13, 2012.

### **Rule No.**

Chapter Trans 265 (Create)

### **Relating to**

Annual or consecutive month permits for vehicles or combinations of vehicles transporting hay or straw that exceed the height limitation designated in s. 348.06, Stats., providing an exemption from emergency rule procedures, and granting rule-making authority.

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

This emergency rule and proposed permanent rule will implement sections 348.25 (3), 348.25 (4) (intro.), 348.27 (1), 348.28 (1), and 348.27 (16), Stats., which were amended and created by 2011 Wisconsin Act 58. The law creates an annual or consecutive month permit for vehicles and vehicle combinations transporting loads of hay or straw that exceed the height limitations designated in s. 348.06, Stats., grants rule-making authority, and provides an exemption from some emergency rule procedures. The law establishes conditions for the permit and limitations on operation. The law designates DOT as the issuing authority for this permit. All applications under sec. 348.27 (16) shall be made utilizing an electronic process prescribed by the department. The rule will: 1) define "urban area" and shall provide information to the permit holders as to the meaning of this term with each permit issued under this subsection, 2) prescribe the electronic application procedure, 3) establish parameters for how loads of hay and straw are to be secured for safe travel, 4) set forth guidance for written approval by local road authorities, 5) specify the number of business days within which permit applications will be reviewed, 6) establish reasonable conditions prerequisite for granting this permit; establish reasonable conditions for operation under this permit; establish reasonable conditions necessary for safe travel and protection of the highways; establish any additional reasonable conditions necessary, in view of statewide or local conditions.

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

This emergency rule and proposed permanent rule will implement 2011 Wisconsin Act 58. Prior to the passage of 2011 Wisconsin Act 58, loads of hay and straw were not eligible for over height permits because the loads were divisible. 2011 Wisconsin Act 58 allows DOT to issue over height permits for loads of hay or straw that exceed the statutory height limit of 13.5 feet, but do not exceed 14.5 feet in urban areas, or 15 feet on any other highway. 2011 Wisconsin Act 58 will allow over height loads of hay or straw to be transported on Interstate highways.

Executive Order #50 explains that an economic impact analysis is not required when an agency promulgates an emergency rule (General Provisions I.5 and Economic Impact Analysis IV. 1)

This rule will implement 2011 Wis. Act 58 and will allow businesses, including small businesses, to transport loads of hay or straw that exceed the height limitations designated in s. 348.06, Stats. The department anticipates that there will be no economic impact on any county, city, village, town, school district, vocational, technical and adult education district, sewerage district, or federally-recognized tribes or bands. The department anticipates that there will be a moderately beneficial economic impact on private sector businesses since it will reduce their transportation costs.

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

Sections 348.25 (3), 348.25 (4) (intro.), 348.27 (1) 348.28 (1), and 348.27 (16), Stats., as amended and created by 2011 Wisconsin Act 58.

The Department of Transportation is authorized in chapter 348, Stats., to administer statutes and administrative regulations related to vehicle weights, widths, heights, and lengths. 2011 Wis. Act 58 amended sections 348.25 (3),

348.25 (4) (intro.), 348.27 (1), 348.28 (1), Stats., and created section 348.27 (16). These statutes **require** the department to promulgate permanent and emergency rules implementing a newly-created multiple trip permit for transporting loads of hay or straw that exceed the height limitations designated in s. 348.06, Stats.

Non-statutory provisions created in 2011 Wis. Act 58, section 6, subsection (2) **require** the department to promulgate emergency rules implementing this permit without a finding of emergency.

“...the department is not required to provide evidence that promulgating a rule under this subsection as an emergency rule is necessary for the preservation of public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under this subsection.”

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

200 Hours.

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

Motor Carriers and Shippers that transport hay and straw; agricultural interests.

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

There is no existing or proposed federal regulation that is intended to address the activities to be regulated by this rule. Federal law establishes restrictions on the length, width and weight of vehicles on the interstate highway system. 23 U.S.C. section 127, and 23 C.F.R. Part 658. However, federal law does not restrict the height of vehicles on the interstate highway system.

**Contact Person**

Reed McGinn (608) 266-7857.

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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 12–003**

(DATCP DOCKET # 08–R–08)

The Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) announces that on January 13, 2012 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), Stats., as affected by 2011 Wis. Act. The scope statement for this rule, published in Register No. 635, on November 14, 2008, was sent to the Legislative Reference Bureau prior to June 8, 2011, the effective date of 2011 Wisconsin Act 21.

### **Analysis**

The proposed rule revises Chapter ATCP 29, relating to pesticide use and control.

### **Agency Procedure for Promulgation**

DATCP has scheduled public hearings for this rule on February 21, 2012, and February 29, 2012. DATCP will not hold any hearings until the Rules Clearinghouse completes its review. The department's Agricultural Resource Management Division is primarily responsible for this rule.

### **Contact Information**

If you have questions, you may contact Mike Murray at (608) 224–4551.

## **Revenue CR 12–006**

On January 13, 2012, the Wisconsin Department of Revenue submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse revising sections Tax 2.60 and 2.61, relating to pre–2009 net business loss carryforwards.

The scope statement for this rule, SS 007–11, was approved by the governor on July 25, 2011, published in Register No. 668 on August 14, 2011, and approved by the Secretary of Revenue on August 25, 2011.

### **Analysis**

The proposed rule prescribes the method that members of the same combined group must use to share net business losses with other members of the same commonly controlled group for net business losses incurred prior to January 1, 2009, and not fully used before January 1, 2012, for purposes of s. 71.255 (6) (bm), Stats. It also provides clarity regarding the 15 year and 20 year net business loss carryforwards for

purposes of ss. 71.26 (4) (a) and (b) and 71.45 (4) (a) and (b), Stats.

### **Agency Procedure for Promulgation**

A public hearing on the proposed rule is required and has been scheduled for February 13, 2012 at 9:00 a.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)

## **Safety and Professional Services Safety, Buildings and Environment, General Part I, Chs. SPS 301–319 CR 12–007**

On January 17, 2012, pursuant to sections 227.14 (4m) and 227.17, Stats., the department of Safety and Professional Services submitted proposed rules to the Legislative Council and a written notice of hearing to the Legislative Reference Bureau, for publication in the Administrative Register.

The statement of scope for this rule SS 010–11, was approved by the governor on August 5, 2011, published in Register No. 668, on August 31, 2011, and approved by the Secretary of the Department of Safety and Professional Services on October 9, 2011.

### **Analysis**

The proposed order revises Chapter SPS 305, relating to thermal insulators.

### **Agency Procedure for Promulgation**

A public hearing on the proposed rule is required and will be held February 13, 2012 at 10:00 a.m. The department's Safety and Buildings Division is primarily responsible for promulgation of the proposed rule.

### **Contact Information**

Jim Quast, Program Manager  
(608) 266–9292  
[Jim.quast@wisconsin.gov](mailto:Jim.quast@wisconsin.gov)

## **Safety and Professional Services Medical Examining Board CR 12–005**

On January 17, 2012, the Medical Examining Board submitted a proposed rule to the Legislative Council Rules Clearinghouse to revise Chapter Med 8, relating to

definitions, practice prescribing limitations, employment requirements, and supervising physician responsibilities.

This rule is not subject to s. 227.135 (2), Stats., as affected by 2011 Wis. Act 21. The scope statement for this rule was published in Register No. 660 on December 31, 2010 and was sent to the Legislative Reference Bureau prior to June 8, 2011, the effective date of 2011 Wisconsin Act 21.

#### **Analysis**

This proposed rule-making order increases the maximum number of physician assistants a physician may concurrently supervise from 2 to 4.

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

A public hearing is required and will be held on Wednesday, February 15, 2012 at 9:00 a.m. at 1400 East Washington Avenue, Room 121A Madison, Wisconsin (enter at 55 North Dickinson Street).

#### **Contact Person**

If you have questions you may contact Shawn Leatherwood at (608) 261-4438.

### **Safety and Professional Services Board of Nursing CR 12-004**

On January 13, 2012, the Board of Nursing submitted a proposed rule to the Legislative Council Rules Clearinghouse.

#### **Analysis**

Statutory Authority: sections 15.08 (5) (b), 227.11 (2), and 441.01, Stats.

This proposed rule-making order revises Chapter N 3, relating to endorsement licensure.

#### **Scope**

This rule is not subject to s. 227.135 (2), as affected by 2011 Wis. Act 21. The scope statement for this rule, published in Register No. 666 on June 30, 2011, was sent to the Legislative

Reference Bureau prior to June 8, 2011, the effective date of Wisconsin Act 21.

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

A public hearing is required and will be held on February 23, 2012 at 1400 East Washington Avenue, Room 121, Madison, Wisconsin (enter at 55 North Dickinson Street).

#### **Contact Person**

Sharon Henes, Paralegal, Department of Safety and Professional Services, Division of Board Services, (608) 261-2377.

### **Safety and Professional Services Physical Therapy Examining Board CR 12-002**

On January 6, 2012, the Physical Therapy Examining Board submitted a proposed rule to the Legislative Council Rules Clearinghouse.

This rule is not subject to s. 227.135 (2), Stats., as affected by 2011 Wis. Act 21. The scope statement for this rule was published in Register No. 659 on November 14, 2010 and was sent to the Legislative Reference Bureau prior to June 8, 2011, the effective date of 2011 Wisconsin Act 21.

#### **Analysis**

This proposed rule-making order revises Chapters PT 1, 2, 3, 4, 5, 6, 8, and 9, relating to conforming current regulations regarding licensure, examinations temporary licenses, locum tenens license, referrals and continuing education of physical therapists and physical therapist assistants with the passage of 2009 Wisconsin Act 149.

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

A public hearing is required and will be held on February 16, 2012 at 9:00 a.m. at 1400 East Washington Avenue, Room 121A, Madison, Wisconsin (enter at 55 North Dickinson Street).

#### **Contact Information**

If you have questions you may contact Shawn Leatherwood at (608) 261-443.



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## Rule–Making Notices

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### Notice of Hearing Agriculture, Trade and Consumer Protection CR 12–003

(DATCP DOCKET # 08–R–08)

NOTICE IS HEREBY GIVEN that 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 ATCP 29, relating to pesticide use and control.

#### Hearing Information

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

- Date:** Tuesday, February 21, 2012  
**Time:** 1:00 P.M.–3:00 P.M.  
**Location:** Outagamie County UW Extension  
 Room ABC  
 3365 W. Brewster St.  
 Appleton, WI 54914
- Date:** Wednesday, February 29, 2012  
**Time:** 1:00 P.M.–3:00 P.M.  
**Location:** Department of Agriculture, Trade and  
 Consumer Protection  
 Board Room (Room 106) 1st Floor  
 2811 Agriculture Drive  
 Madison, WI 53718–6777

Hearing-impaired persons may request an interpreter for this hearing. Please make reservations for a hearing interpreter by **February 7, 2012**, by writing to Michael Murray, Division of Agricultural Resource Management, P.O. Box 8911, Madison, WI 53708–8911, telephone (608) 224–4551. Alternatively, you may contact the DATCP TDD at (608) 224–5058. The hearing facility is handicap accessible.

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

DATCP invites the public to attend the hearing and comment on the proposed rule. Following the public hearings, the hearing record will remain open until **March 30, 2012**, for additional written comments. Comments may be sent to the Division of Agricultural Resource Management at the address below, by email to [michael.murray@wisconsin.gov](mailto:michael.murray@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.

#### Copies of Proposed Rule

You can obtain a free copy of this rule by contacting the Wisconsin Department of Agriculture, Trade and Consumer Protection, Division of Agricultural Resource Management,

2811 Agriculture Drive, P.O. Box 8911, Madison, WI 53708. You can also obtain a copy by calling (608) 224–4551 or emailing [michael.murray@wisconsin.gov](mailto:michael.murray@wisconsin.gov). Copies will be available at the hearings. To view the proposed rule online, go to: <http://adminrules.wisconsin.gov>.

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

The Wisconsin department of agriculture, trade and consumer protection (DATCP) regulates the sale and use of pesticides in this state. This rule modifies current rules related to pesticides. Among other things, this rule:

- Repeals the provision that veterinarians and animal technicians who use pesticides for animal treatment be required to obtain individual commercial applicator licenses. This change will make the current rule consistent with a recent law change that removes the requirement for veterinary clinics to obtain special veterinary clinic pesticide use permits.
- Modifies an existing pesticide applicator certification category to include pesticide applications to natural areas, which is of interest to those committed to rehabilitating or maintaining natural areas and also is an area of business growth for pesticide applicators.
- Allows regulated persons to give certain notices and submit certain permit applications by electronic transmission to customers, if customers choose to receive important pesticide safety information in that way. It also reduces paperwork for some businesses by eliminating duplicative recordkeeping requirements and clarifies that certain paperwork will be submitted to the department primarily by electronic means.
- Updates current rules related to structural pesticide applications, including rules related to perimeter barrier applications and application notices.
- Harmonizes current rules with existing rules related to fertilizer and pesticide bulk storage.
- Updates current rules related to non-agricultural chemigation systems. The rule also provides minimum requirements for the installation and use of urban pesticide misting systems.
- Creates labeling requirements for pesticide bait stations that are set out by commercial applicators, such as rodent bait stations, which often are placed outdoors in areas that are accessible to animals and the public.
- Modernizes the rules related to spill containment and spill containment surfaces. The rule also clarifies that spill containment surface repairs shall be made according to good engineering practices and manufacturer specifications.
- Removes obsolete pesticide license fee provisions to avoid confusion when reading the rule.
- Updates the administrative rule note regarding current worker protection provisions to remove outdated requirements, which are set by federal regulations.
- Makes a number of other minor drafting changes designed to update, clarify and correct current rules.



***Statutes interpreted***

Sections 94.645 (2) and (3), 94.67, 94.676, 94.69 (1), 94.703, 94.704, and 94.705, Stats.

***Statutory authority***

Sections 93.07 (1), 94.69 (1), and 94.705 (2), Stats.

***Rule content***

This rule updates administrative rules relating to pesticide use and control. Some of the key changes include the following:

***Veterinary Clinics Applying Pesticides***

2009 Wis. Act 139 repealed a statutory provision that required veterinary clinics to have an annual DATCP permit to use, repackage or prescribe pesticides as part of a veterinary treatment. This rule modifies current rules to reflect that statutory change. This rule also clarifies that veterinarians and certified veterinary technicians are not required to have an individual commercial applicator license in order to use a pesticide as part of a veterinary treatment.

***Applying Pesticides to Natural Areas; Applicator Certification***

Under current rules, commercial pesticide applicators must be certified for competence in relevant application categories. This rule expands the current turf and landscape category to include applications to natural areas. Applicators applying pesticides to natural areas must have relevant knowledge related to the restoration and maintenance of natural areas and the treatment of common pests affecting natural areas.

***Pesticide Mixing and Loading Sites; Spill Containment***

DATCP recently updated its rules in Ch. ATCP 33 related to fertilizer and pesticide bulk storage. This rule updates related pesticide rules in Ch. ATCP 29 to make them consistent with Ch. ATCP 33, including construction and maintenance standards for pesticide mixing and loading sites. The updated standards include standards related to construction materials, sumps, catch basins, spill containment and cleanup.

***Urban Pesticide Misting System***

Under the existing rule, chemigation systems generally are defined as systems that mix pesticides with irrigation water and apply the pesticide irrigation water mixture to plants. These types of pesticide application systems must meet certain standards and posting requirements. Existing standards and posting requirements apply to chemigation systems used in either agricultural or nonagricultural settings.

New forms of non-agricultural chemigation systems are being installed at residential and commercial sites for the purpose of controlling pests such as mosquitoes. These urban pesticide misting systems are considered to be a type of chemigation but do not use irrigation water and are not used to apply water to lands, crops or plants. These chemigation systems disperse a mixture of pesticides and water into the air in the form of a mist to kill or control pests such as mosquitoes. In this rule, the definition of “non-agricultural chemigation system” includes urban pesticide misting systems and establishes standards and posting requirements specifically for these systems.

***Perimeter Barrier Applications***

This rule creates a definition for “perimeter barrier applications” and establishes that these are pesticide applications made on or within ten feet of a building or

structure to discourage pests. The rule also clarifies the notification requirements for these applications.

***Worker Protection Provisions***

Under the existing rule and in a Note to s. ATCP 29.61, Wis. Adm. Code, DATCP summarized worker protection requirements established by the United State Environmental Protection Agency (EPA) that are on the labels of pesticides or simply referenced on other pesticide labels. Some of the requirements in the Note are outdated. In this rule, DATCP notifies persons that worker protection requirements established by the EPA may be obtained at an EPA internet site or that DATCP will provide, upon request, a summary of those requirements.

***Electronic Notifications***

Many of the notification requirements throughout the rule require written notification to customers. In this proposed rule, DATCP is explicitly permitting the use of electronic notifications if the customer agrees to that method of notification. DATCP is also allowing persons to apply for special pesticide permits via electronic methods in order to decrease the time it takes to submit, review and issue these permits. DATCP is also clarifying the rules related to the landscape registry to allow explicitly for electronic registration and publication.

***Pesticide Bait Stations***

Many bait stations used by commercial applicators containing a pesticide to control rodents are not labeled or have labeling that becomes unreadable due to being outside and exposed to the elements. The concern is that human or non-target species exposure to unknown products may delay timely medical assistance. This rule establishes labeling requirements for bait stations containing a pesticide to control rodents and used by commercial pesticide applicators. The exterior of the bait stations must be labeled with the company responsible for maintaining the bait station and the EPA registration number of the pesticide(s) in the bait station. This information must be readily accessible and remain legible while the bait station is in service.

***Other Changes***

The rule makes a number of other minor drafting changes designed to update, clarify and correct current rules, including deleting outdated time frames and fee changes.

**Federal and Surrounding State Programs*****Federal programs***

The EPA regulates pesticides at the federal level under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and through the use of pesticide product labels. The EPA has delegated authority to Wisconsin to enforce federal pesticide regulations and to assure proper use and handling of pesticides in this state. EPA recently established new regulations related to bait stations for ten rodenticides.

***Surrounding state programs***

Surrounding states, including Michigan, Minnesota, Illinois and Iowa are also delegated authority by EPA to enforce federal pesticide regulations. Each state also has state-specific pesticide regulations, similar to Wisconsin's. The state-specific regulations must be at least as stringent as EPA's, but may be more or less stringent than Wisconsin's, depending on the topic.

***Chemigation***

Nearly all states have chemigation laws, including Illinois, Michigan and Minnesota. EPA has minimum standards in

place for states that do not have their own regulations, such as Iowa. Minnesota's chemigation regulations are more stringent than Wisconsin's and require applicators obtain a chemigation permit annually before chemigating. This rule updates Wisconsin's chemigation laws to reflect emerging industry practices.

Urban pesticide misting systems are an emerging application method. Surrounding states have existing regulations that govern the use of these systems (including label, drift, and pesticide applicator certification requirements), although they do not apply only to this specific type of application. Wisconsin's proposed requirements to monitor windspeed and prevent time-delayed applications complement label requirements and will help ensure applicators avoid serious pesticide use violations and help protect human and companion animal health.

#### *Natural Areas Certification*

None of the surrounding states has a separate certification category for natural areas applications. Surrounding states include these applicators in the turf and landscape category, which is what is proposed in this rule. Surrounding states also include these applicators in the field and vegetable crop category, when the natural areas are in a grassland-type setting.

#### *Bait Station Labeling*

Many states are considering modifying their bait station requirements in response to EPA's new rodenticide regulations. Iowa does not require bait station labeling but does require notification to the Department of Agriculture prior to use of certain hazardous rodenticides, which is more stringent than what this rule proposes. Minnesota, Illinois and Michigan do not require exterior labeling of bait stations at this time. Other states, including California, New York and Tennessee, require exterior labeling of rodenticide bait stations similar to what Wisconsin is proposing.

#### *Electronic Information*

Surrounding states allow electronic transmittal of information between commercial application businesses and customers, as Wisconsin is proposing.

### **Fiscal Impact**

This rule will not have a significant state or local fiscal impact.

### **Economic Impact Analysis**

This rule was developed in consultation with an advisory committee that included a diverse cross-section of affected industry, consumers, and government officials. The advisory committee did not find that this rule will adversely affect in a material way the economy, a sector of the economy, productivity, jobs or the overall economic competitiveness of the state. The committee endorsed the provisions of this rule, which are designed to update, clarify and modernize the existing rule. The department does not anticipate any significant expenses imposed upon the regulated community as a result of these changes.

### **Business Impact**

This rule updates current rules related to pesticide use and control. This rule modifies and clarifies existing rule language to facilitate understanding, compliance, and efficiency. This rule also protects human health and the environment.

This rule may have minimal compliance costs for affected pesticide applicators, pesticide application businesses, or the general public. However, this rule will not have a significant effect on local markets, on the sale or distribution of pesticide products, or on the overall economy of this state.

Pesticide applicators choosing to obtain natural area certification may experience minimal additional costs every five years to purchase a new training manual (\$45). Many commercial application businesses cover the cost of the training manual for their employees. The average cost per year for the manual is \$9. The restoration of natural areas is considered to be a growth area for business and may positively impact pesticide businesses through increased revenue.

Pesticide application businesses may experience cost savings as a result of clarifying existing regulations, improving regulatory consistency and modifying administrative requirements, including the ability to provide certain notices and submit certain permit applications by electronic means.

Businesses that are not currently labeling their bait stations may have some minimal economic costs to comply with the bait station labeling requirement. Costs may include purchasing stickers or another bait station labeling system (e.g. "luggage tags") and personnel time to fill out the label. Businesses will have a number of cost-effective ways to meet this requirement, including the ability to design their own or choose from among a wide-variety of labeling systems.

Businesses should not have any direct costs to comply with the non-agricultural chemigation and urban pesticide misting system requirements. Few, if any, pesticide application businesses in Wisconsin currently are known to be using these application systems. If pesticide application businesses do decide to sell these systems in the future, costs to comply with these regulations could be included in the initial cost of the system.

Because Ch. ATCP 33, Wis. Adm. Code was revised in 2006, many businesses are already in compliance with the spill containment and sump requirements. Those businesses not required to comply with Ch. ATCP 33 may have some minor costs to comply if a spill containment surface fails and a repair would be inadequate. If a new spill containment surface is required, and the facility is not already regulated under Ch. ATCP 33, Wis. Adm. Code., there will be some incremental costs to comply with the proposed requirements, which now prohibit some materials (e.g. asphalt) that were previously allowed. These materials are now prohibited because they have been prone to failure and unable to contain spills.

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### **Environmental Assessment**

The majority of these rule changes are administrative in nature and are not expected to affect the environment. These administrative changes include the removal of the administrative rule licensing requirements for veterinarians and animal technicians due to a recent law change, clarifying an administrative rule note describing the worker protection standard (which is set by federal regulations), harmonizing this rule with Ch. ATCP 33 (Bulk Storage of Pesticides and Fertilizers), enabling more efficient communication between

pesticide application businesses and customers and a more efficient permit application process, removing duplicative recordkeeping requirements, and removing obsolete rule provisions, including references to past fee holidays and veterinary clinic permits (already deleted in statute). The substance of these rule changes will not directly affect the natural environment but may reduce duplicative recordkeeping and the unnecessary use of paper by pesticide businesses and the department.

The addition of the turf and landscape pesticide applicator certification category to include natural areas may have a positive environmental impact because it facilitates the rehabilitation or preservation of natural areas. Expertise by pesticide applicators could lead to a reduction in the harm to native plants during the removal of (non-native) invasive plants, which ensures that the adverse effects to these natural areas are minimized.

This rule updates the regulations on chemigation to include non-agricultural chemigation systems and urban pesticide misting systems (a type of non-agricultural chemigation system). While these systems are not widely used in Wisconsin at this time, underground irrigation systems and urban pesticide misting systems are being installed more frequently in residential settings in many states (often to control mosquitoes). Chapter ATCP 29 already includes regulations on agricultural chemigation systems, such as backflow prevention devices to prevent contamination of groundwater by pesticides. This proposed rule will extend those environmental protections to non-agricultural chemigation systems that may use underground irrigation systems. Reasonable regulations on these systems are needed to prevent harm to humans, non-target wildlife species, and groundwater (drinking water) contamination.

The proposed rule also will require exterior labeling of bait stations. Bait stations often contain highly toxic rodenticides, which can be deadly to children, pets, and non-target wildlife if accidentally ingested. Bait station labeling will maintain a more safe environment by ensuring veterinarians, homeowners, and others will have the information they need to respond rapidly and appropriately if non-target animals or individuals accidentally ingest pesticides from bait stations.

This proposed rule updates the current rules related to spill containment and the repair of spill containment surfaces. This rule is expected to protect the public, soil and groundwater from pesticide contamination.

## Notice of Hearing

### Revenue CR 12-006

NOTICE IS HEREBY GIVEN that, pursuant to section 71.255 (6) (bm) 4., Stats., the Department of Revenue will hold a public hearing to consider permanent rules revising sections Tax 2.60 and 2.61, relating to pre-2009 net business loss carryforwards.

#### Hearing Information

The hearing will be held:

**Date:** Monday, February 13, 2012  
**Time:** 9:00 A.M.  
**Location:** State Revenue Building  
 Events Room

2135 Rimrock Road  
 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 13, 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)

#### Analysis by the Department of Revenue

##### *Statutes interpreted*

Sections 71.255 (6) (bm), 71.26 (4) (a) and (b), and 71.45 (4) (a) and (b), Stats.

##### *Statutory authority*

Section 71.255 (6) (bm) 4., Stats.

##### *Explanation of agency authority*

Section 71.255 (6) (bm) 4., Stats., requires the department to promulgate rules to administer the provisions of 2011 Wisconsin Act 32 concerning the treatment of pre-2009 net business loss carryforwards under combined reporting.

##### *Related statute or rule*

There are no other applicable statutes or rules.

##### *Plain language analysis*

This proposed rule prescribes the method that members of the same combined group must use to share net business losses with other members of the same commonly controlled group for net business losses incurred prior to January 1, 2009, and not fully used before January 1, 2012, for purposes of s. 71.255 (6) (bm), Stats. It also provides clarity regarding the 15 year and 20 year net business loss carryforwards for purposes of ss. 71.26 (4) (a) and (b) and 71.45 (4) (a) and (b), Stats.

##### *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 proposed rule.

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

Illinois is the only adjacent state that allows net business loss carryforwards to be shared among combined group members. Michigan and Minnesota have combined reporting laws but do not allow the sharing of net business loss carryforwards among other companies in the combined group.

Illinois has its own unique regulations relating to the net business loss carryforward statute, including: IL Regs. 100.2310, 100.2330, 100.2340, 100.2350, and 100.5270.

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

The department has created this proposed rule order to comply with the statutory requirement to administer the



changes under 2011 Wisconsin Act 32 to the treatment of pre-2009 net business loss carryforwards under combined reporting. No other data was used in the preparation of this proposed rule order or this analysis.

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

As explained above, this proposed rule is created to administer changes in Wisconsin's income and franchise 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.

**Initial Regulatory Flexibility Analysis**

This proposed rule order does not have a significant economic impact on a substantial number of small businesses.

**Anticipated Costs Incurred by Private Sector**

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

**Effect on Small Business**

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

**Text of Rule**

**SECTION 1.** Tax 2.60 (2) (Lm) is created to read:

Tax 2.60 (2) (Lm) "Pre-2009 net business loss carryforward" has the meaning given to "pre-2009 net business loss carry-forward" in s. 71.255 (6) (bm) 1., Stats.

**SECTION 2.** Tax 2.61 (9) (intro.), (a) (intro.) and 1., and (b) (intro.) are amended to read:

Tax 2.61 (9) (intro.) A combined group member may carry forward its net business loss as provided in ss. 71.26 (4) and 71.45 (4), Stats. A net business loss carryforward is an attribute of the separate corporation rather than of the combined group. However, s. 71.255 (6) (b) and (bm), Stats., provides that a combined group member may share all or a portion of its net business loss carryforward with the other members of its combined group if certain conditions are met. This subsection explains which net business loss carryforwards are sharable, how to compute the sharable amount, and how to apply the shared losses. The following rules apply:

(a) (intro.) A combined group member may share its net business loss carryforward incurred in a taxable year beginning on or after January 1, 2009 with other combined group members to the extent that all of the following conditions are met:

1. The net business loss ~~originated in a taxable year beginning on or after January 1, 2009~~ and is attributable to combined unitary income included in a combined report.

(b) (intro.) A combined group member's net business loss carryforward incurred in a taxable year beginning on or after January 1, 2009 that cannot be shared with other combined group members includes amounts attributable to the following:

**SECTION 3.** Tax 2.61 (9) (b) 1. is repealed

**SECTION 4.** Tax 2.61 (9) (b) 2. and 3. are renumbered 2.61 (9) (b) 1. and 2.

**SECTION 5.** Tax 2.61 (9) (c) is repealed and recreated to read:

Tax 2.61 (9) (c) *Order of carryforwards.* A combined group member shall apply net business loss carryforwards in the following order:

1. Net business loss carryforwards incurred by that same member in taxable years beginning before January 1, 2009, in the order that the underlying net business losses were incurred.

2. Sharable and non-sharable net business loss carryforwards under par. (d) incurred in taxable years beginning on or after January 1, 2009, in the order that the underlying net business losses were incurred. If the net business loss carryforward to be used consists of both a sharable amount and a non-sharable amount incurred in the same taxable year, the amount of sharable and non-sharable carryforward used shall be determined on a pro rata basis according to the amount of each type of carryforward available from that year.

3. For loss carryforwards shared in a taxable year that begins after December 31, 2011, pre-2009 net business loss carryforwards under par. (dm).

**Example:** Combined Group EFG consists of Member E, Member F, and Member G. E has the following loss carryforwards:

Year Incurred	Sharable Carryforward	Non-sharable Carryforward
2008	—	(\$10,000)
2009	(\$6,000)	(\$2,000)

In 2010, E's share of combined unitary income plus its separate entity items equal \$14,000. After using its carryforwards to offset this income, E has \$4,000 of remaining net business loss carryforward (= (\$10,000) + (\$6,000) + (\$2,000) + \$14,000). Of this amount, a portion is a sharable carryforward that may be applied against F and G's shares of combined unitary income in the manner described in par. (d). Since loss carryforwards are applied in the order incurred, the \$10,000 carryforward from 2008 is used in its entirety, and \$4,000 of the 2009 carryforward is used. The portion of E's remaining carryforward from 2009 that is sharable is \$3,000 (= \$4,000 x [\$6,000 / \$8,000]) and the portion that is non-sharable is \$1,000 (= \$4,000 x [\$2,000 / \$8,000]).

In 2012, E has the following loss carryforwards:

Year Incurred	Sharable Carryforward	Non-sharable Carryforward
2009	(\$3,000)	(\$1,000)
2010	—	—
2011	(\$4,000)	(\$6,000)

In addition, E has a pre-2009 net business loss carryforward of \$3,000. E's share of combined unitary income plus its separate entity items for 2012 equal \$16,000. After using its carryforwards to offset this income, E has \$1,000 of remaining net business loss carryforward (= (\$3,000) + (\$3,000) + (\$1,000) + (\$4,000) + (\$6,000) + \$16,000). Since the loss carryforwards are first applied to the net business loss carryforwards incurred in 2009 and after, the \$4,000 carryforward from 2009 and the \$10,000 carryforward from 2011 are used in their entirety. The remaining \$2,000 of loss carryforwards are applied to the pre-2009 net business loss carryforward. The remaining pre-2009 net business loss carryforward is \$1,000.

**SECTION 6.** Tax 2.61 (9) (d) (intro.) is amended to read:

Tax 2.61 (9) (d) (intro.) *Method of sharing*. The amount of net business loss carryforward under par. (c) 2. eligible for sharing shall be computed and assigned as follows:

**SECTION 7.** Tax 2.61 (9) (dm) is created to read:

Tax 2.61 (9) (dm) *Pre-2009 net business loss carryforwards*. 1. For a combined group member's first taxable year beginning after December 31, 2011, the member may, after using the pre-2009 net business loss carryforward to offset its own income for the taxable year, and after using sharable losses to offset its own income for the taxable year, use 5% of the pre-2009 net business loss carryforward to offset the income of all other members of the combined group for the taxable year and for each of the 19 subsequent taxable years.

**Example:** Member A of Wisconsin Combined Group ABC has pre-2009 net business loss carryforwards of \$100 million as of December 31, 2008. A's share of the combined group's income is \$2 million in 2009, \$3 million in 2010, and \$5 million in 2011. A's one-time calculation of the annual 5% sharable amount is \$4.5 million, computed as follows: [\$100 million pre-2009 net business loss carryforward less the taxable income offset by the net business loss carryforward (\$2 million in 2009, \$3 million in 2010, and \$5 million in 2011) multiplied by 5 percent].

In 2012 Member A's share of the combined group's Wisconsin income is \$1 million. Member A first applies its pre-2009 net business loss carry-forward against its \$1 million share of the combined group's Wisconsin income. The remaining members of the group may use the \$4.5 million sharable loss to offset the remaining group income on a proportionate basis. Assuming the combined group has enough income in 2012 to fully use the entire \$4.5 million in pre-2009 net business loss carryforward, the pre-2009 net business loss carryforward available in 2013 is \$84.5 million (\$90 million total sharable loss less \$1 million of Member A's income offset by the net business loss carry-forward, less \$4.5 million sharable loss utilized by the corporation in 2012). If Member A's share of the combined group's income is \$0 for all the remaining years of the pre-2009 carry-forward, and the remaining members of the combined group were eligible to share the full \$4.5 million net business loss carry-forward each year, the sharable pre-2009 net business loss available in 2031 will be \$3.5 million (\$4.5 million annual sharable loss computed in 2012 less \$1 million loss used by Member A in 2012).

2. Except as provided in par. (g), relating to insurance companies, the sharable pre-2009 net business loss carryforward under subd. 1. shall be assigned to each

combined group member in proportion to its share of combined unitary income as computed in subs. (6) to (8), net of any losses from separate entity items or loss carryforwards already applied. An amount may not be assigned to a combined group member whose share of combined unitary income is zero or less. Any remaining sharable amount becomes part of the combined group's pre-2009 net business loss carryforward that may be shared by all combined group members in subsequent years.

**Example:** Member D of Combined Group DEF has a pre-2009 net business loss carry-forward of \$2 million as of January 1, 2012. The 5% sharable amount allowed to members E and F in each year for taxable years 2012 through 2031 is \$100,000 (\$2 million net business loss carryforward multiplied by 5%). Member E's proportional share of the \$100,000 sharable net business loss in 2012 is \$30,000. After using all other allowable losses, Member E has \$20,000 in income remaining to offset against its share of the pre-2009 net business loss carryforward. The remaining \$10,000 net business loss carryforward not used by Member E in 2012 becomes part of the combined group's pre-2009 net business loss carryforward that may be shared by all combined group members in 2013 and is in addition to the 5% net business loss carryforward previously computed. As a result, the net business loss carryforward available in 2013 is \$110,000 (\$100,000 combined group yearly sharable loss plus Member E's \$10,000 proportional share of the \$100,000 loss in 2012 that was not fully utilized by Member E in 2012).

3. Notwithstanding the provisions of ss. 71.26 (4) (a) and 71.45 (4) (a), Stats., under ss. 71.26 (4) (b) and 71.45 (4) (b), Stats., any unused pre-2009 net business loss carryforward under subd. 1. may be offset against the income of the members of the combined group for the 20 taxable years that begin after December 31, 2011.

**Example:** As of December 31, 2008, Member G of Combined Group GHI has a loss carryforward of \$30,000 that is in the 14<sup>th</sup> year of the 15 year carryforward period under s. 71.26 (4) (a), Stats. Member G does not have any income to offset the \$30,000 loss carryforward in its taxable years beginning in 2009, 2010, or 2011. For taxable years beginning on or after January 1, 2012, Member G is allowed to use the \$30,000 pre-2009 net business loss carryforward to offset any of its own income first, then offset its proportional share of Combined Group GHI's income, and finally, any remaining loss may be shared proportionately among the other members of Combined Group GHI. Under s. 71.26 (4) (b), Stats., Member G's pre-2009 net business loss carryforward of \$30,000 begins a new carryforward period of 20 years from its taxable year beginning in 2012.

<b>ADMINISTRATIVE RULES FISCAL ESTIMATE AND ECONOMIC IMPACT ANALYSIS</b>		
Type of Estimate and Analysis		
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Administrative Rule Chapter, Title and Number		
Section Tax 2.60 – Definitions relating to combined reporting and Section Tax 2.61 – Combined reporting		
Subject		
Treatment of pre-2009 net business loss carryforwards under combined reporting		



Fund Sources Affected		Chapter 20 , Stats. Appropriations Affected	
GPR FED PRO PRS SEG SEG-S			
Fiscal Effect of Implementing the Rule			
<input checked="" type="checkbox"/> No Fiscal Effect Indeterminate	Increase Existing Revenues Decrease Existing Revenues	Increase Costs Could Absorb Within Agency's Budget Decrease Costs	
The Rule Will Impact the Following (Check All That Apply)			
State's Economy Local Government Units		Specific Businesses/Sectors Public Utility Rate Payers	
Would Implementation and Compliance Costs Be Greater Than \$20 million? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>			
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)			
As indicated in the attached fiscal estimate, the fiscal effect of allowing commonly controlled groups to share losses generated before January 1, 2009, was included in the fiscal effect of 2011 Wisconsin Act 32. The rule itself does not create any further economic or fiscal impact or implementation and compliance costs beyond the statutes it interprets, except that, by providing clarifications and examples, may reduce the costs that businesses and individuals would otherwise incur to comply with the statutes.  No comments concerning the economic effect of the rule were submitted in response to the department's solicitation.			
Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule			
Clarifications and guidance provided by administrative rules may lower the compliance costs for businesses, local governmental units, and individuals.  If the rule is not implemented, Chapter Tax 2 will be incomplete in that it will not reflect current law.			
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)			
Illinois has its own unique provisions concerning the treatment of net business loss carryforwards, which differ from Wisconsin's provisions substantively enough to prohibit consideration of the Illinois approach.			

***Assumptions used in arriving at fiscal estimate***

The proposed rule prescribes the method that members of the same combined group must use to share net business losses with other members of the same commonly controlled group for net business losses incurred prior to January 1, 2009, and not fully used before January 1, 2012. It also provides clarity regarding the 15 year and 20 year net business loss carryforwards for purposes of ss. 71.26 (4) (a) and (b) and 71.45 (4) (a) and (b), Stats.

The fiscal effect of allowing commonly controlled groups

to share losses generated before January 1, 2009 was included in the fiscal effect of 2011 Act 32. The rule only implements the provisions of Act 32 as it relates to the sharing of losses, it does not modify them. Therefore, the rule has no fiscal effect.

**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 proposed rule.

**Notice of Hearing**  
**Safety and Professional Services**  
*Safety, Buildings, and Environment,*  
*General Part I Chs. SPS 301–319*  
**CR 12–007**

NOTICE IS HEREBY GIVEN that pursuant to sections 101.02 (1) and 227.10 (1), Stats., the Department of Safety and Professional Services will hold a public hearing on proposed rules under Chapter SPS 305, relating to thermal insulator credentials.

**Hearing Information**

The public hearing will be held as follows:

**Date:** Monday, February 13, 2012  
**Time:** 10:00 A.M.  
**Location:** Conference Room 121A  
 125 South Webster St.  
 Madison, WI 53703

This hearing is held in an accessible facility. If you have special needs or circumstances that may make communication or accessibility difficult at the hearing, please call (608) 266–8741 or (608) 264–8777 (TTY) at least 10 days before the hearing date. Accommodations such as interpreters, English translators, or materials in audio tape format will, to the fullest extent possible, be made available upon a request from a person with a disability.

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

Interested persons are invited to appear at the hearing and present comments on the proposed rules. Persons making oral presentations are requested to submit their comments in writing. Persons submitting comments will not receive individual responses. The hearing record on this proposed rulemaking will remain open until Monday, **February 20, 2012**, to permit submittal of written comments from persons who are unable to attend the hearing or who wish to supplement testimony offered at the hearing. Written comments should be submitted to James Quast, at the Department of Safety and Professional Services, P.O. Box 2689, Madison, WI 53701–2689, or Email at [jim.quast@wisconsin.gov](mailto:jim.quast@wisconsin.gov).

The small business regulatory coordinator for the Department of Safety and Professional Services is Bill Wendle, who may be contacted at telephone (608) 266–8608, or Email at [bill.wendle@wisconsin.gov](mailto:bill.wendle@wisconsin.gov).

**Copies of Proposed Rules**

The proposed rules and an analysis of the proposed rules are available on the Internet at the Safety and Buildings Division Web site at <http://dsps.wi.gov/sb/SB-HomePage.html>. Paper copies may be obtained without cost from Norma McReynolds, at the Department of Safety and Professional Services, Board Services Division, P.O. Box 2689, Madison, WI 53701–2689, or Email [norma.mcreeynolds@wisconsin.gov](mailto:norma.mcreeynolds@wisconsin.gov), or at telephone (608) 267–7907 or TDD Relay dial 711 in Wisconsin or (800) 947–3529. Copies will also be available at the public hearing.

**Statutes interpreted**

Sections 101.02 (1) and 227.10 (1), Stats.

**Statutory authority**

Sections 101.02 (1) and 227.10 (1), Stats.

**Related statute or rule**

None.

**Explanation of agency authority**

Under 2009 Wisconsin Act 16, s. 101.136, Stats., on and after July 1, 2011, only individuals licensed as insulation mechanics or working under the supervision of licensed insulation mechanics may install or maintain thermal system insulation. Thermal insulation was statutorily defined as a product that is used in a heating, ventilating, cooling, plumbing or refrigeration system to insulate any hot or cold surface, including a pipe, duct, valve, boiler, flue, or tank, or equipment on or in a building. 2011 Wisconsin Act 32 repealed s. 101.136, Stats.

**Summary of proposed rules**

The proposed rules repeal the credentialing procedures established for thermal system insulators under s. 101.136, Stats., as mandated under 2009 Wisconsin Act 16.

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

An internet search on U.S. federal regulations and U.S. federal register yielded no results regarding the licensing of thermal insulators.

**Comparison with rules in adjacent states**

An Internet–based search of thermal insulation mechanic licenses in the states of Illinois, Iowa, Michigan and Minnesota found that none of the states have specific rules or programs regarding these types of licenses.

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

The proposed rules were developed because of 2011 Wisconsin Act 32 which repealed s. 101.136, Stats.

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

The proposed rule action follows the direction provided by 2011 Wisconsin Act 32.

**Initial Regulatory Flexibility Analysis**

1. Types of small businesses that will be affected by the rules.

2011 Wisconsin Act 32 repealed the statutory mandate for thermal insulators previously enacted by 2009 Wisconsin Act 16, s. 101.136, Stats. Thermal insulation was statutorily defined as a product that is used in a heating, ventilating, cooling, plumbing or refrigeration system to insulate any hot or cold surface, including a pipe, duct valve, boiler flue, or tank or equipment on or in a building. The repeal of the credential rules will most likely affect HVAC contractors, plumbing contractors, and mechanical refrigeration contractors.

2. Reporting, bookkeeping and other procedures required for compliance with the rules.

No new or additional reporting, bookkeeping and other procedures are required for compliance with the rules.

3. Types of professional skills necessary for compliance with the rules.

No new or additional types of professional skills are necessary for compliance with the rules.

The small business regulatory coordinator for the Department of Safety and Professional Services is Bill

Wendle, who may be contacted at telephone (608) 266-8608, or Email at [bill.wendle@wisconsin.gov](mailto:bill.wendle@wisconsin.gov).

**Environmental Analysis**

Notice is hereby given that the department has considered the environmental impact of the proposed rules. In accordance with Chapter SPS 301, the proposed rules are a Type III action. A Type III action normally does not have the potential to cause significant environmental effects and normally does not involve unresolved conflicts in the use of available resources. The department has reviewed these rules and finds no reason to believe that any unusual conditions exist. At this time, the department has issued this notice to

serve as a finding of no significant impact.

**Text of Rule**

**SECTION 1.** SPS 305.02 Table 305.02 lines 50r. to 50t. are repealed.

**SECTION 2.** SPS 305.06 Table 305.06 lines 45r. to 45t. are repealed.

**SECTION 3.** SPS 305.74 and 305.741 to 305.743 are repealed.

**Agency Contact**

James Quast, Program Manager,  
[jim.quast@wisconsin.gov](mailto:jim.quast@wisconsin.gov), (608) 266-9292

STATE OF WISCONSIN DEPARTMENT OF ADMINISTRATION DOA 2049 (R 07/2011)		
<b>ADMINISTRATIVE RULES FISCAL ESTIMATE AND ECONOMIC IMPACT ANALYSIS</b>		
Type of Estimate and Analysis		
<input checked="" type="checkbox"/> Original    Updated    Corrected		
Administrative Rule Chapter, Title and Number		
Chapter SPS 305, Licenses, Certifications and Registrations		
Subject		
Thermal System Insulators		
Fund Sources Affected		Chapter 20 , Stats. Appropriations Affected
GPR   FED <input checked="" type="checkbox"/> PRO   PRS   SEG   SEG-S		
Fiscal Effect of Implementing the Rule		
<input checked="" type="checkbox"/> No Fiscal Effect Indeterminate	Increase Existing Revenues Decrease Existing Revenues	Increase Costs Could Absorb Within Agency's Budget Decrease Costs
The Rule Will Impact the Following (Check All That Apply)		
State's Economy Local Government Units	Specific Businesses/Sectors Public Utility Rate Payers	
Would Implementation and Compliance Costs Be Greater Than \$20 million?		
Yes <input checked="" type="checkbox"/> No		
Policy Problem Addressed by the Rule		
Section 101.136, Stats., as created by 2009 Wisconsin Act 16, mandates as of July 1, 2011 only individuals licensed as insulation mechanics or working under the direct supervision of licensed insulation mechanics may install or maintain thermal system insulation. The department promulgated rules under Chapter SPS 305 effective February 1, 2011 that implemented the licensing mandates of 2009 Wisconsin Act 16. Subsequently, 2011 Wisconsin Act 32, has repealed s. 101.136, Stats., and therein eliminated the licensing mandates for thermal system insulators.		
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)		
It was estimated that the credential rules implemented pursuant to 2009 Wisconsin Act 16 regarding thermal insulators would most likely affect HVAC contractors, plumbing contractors, and mechanical refrigeration contractors. Fees for the various credentials ranged from \$15 for apprentices and helpers to \$250 for mechanics. In light of the Act 32, the thermal insulator credentials were not implemented and the associated fees not collected.		

<b>Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule</b>
The proposed repeal of the credential rules for thermal insulators will clarify and allow individuals to continue to install and maintain thermal system insulation without the necessity of acquiring a specific credential. An alternative of leaving the rules in place and requiring the credentials under the broad authority of Chapter 101, Stats., would not reflect the latest direction provided by 2011 Wisconsin Act 32.
<b>Long Range Implications of Implementing the Rule</b>
No long range implications are anticipated.
<b>Compare With Approaches Being Used by Federal Government</b>
An internet search on U.S. federal regulations and U.S. federal register yielded no results regarding the licensing of thermal insulators.
<b>Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)</b>
An Internet-based search of thermal insulation mechanic licenses in the states of Illinois, Iowa, Michigan and Minnesota found that none of the states have specific rules or programs regarding these types of licenses.
<b>Name and Phone Number of Contact Person</b>
James Quast, program manager, (608) 266-9292

**Notice of Hearing**  
**Safety and Professional Services**  
**Medical Examining Board**  
**CR 12-005**

NOTICE IS HEREBY GIVEN That pursuant to sections 15.08 (5) (b), 227.11 (2), 448.05 (5), 448.20 (3) (a), 448.40 (2) (f), Stats., and interpreting sections 448.21 (2) and (3), Stats., the Medical Examining Board will hold a public hearing at the time and place indicated below to consider an order to repeal section Med 8.10 (2); to renumber section Med 8.02 (1); to renumber and amend sections Med 8.01 and Med 8.10 (3) and (4); to amend sections Med 8.05 (2) (title), Med 8.05 (2) (b), Med 8.05 (2) (b) (7), Med 8.05 (2) (c), Med 8.07 (1), Med 8.07 (2) (a) and (e), Med 8.08 (title), Med 8.08 (1), Med 8.08 (3) (b), Med 8.10 (title), Med 8.10 (1); to repeal and recreate sections Med 8.08 (2) and Med 8.08 (3) (a) and to create sections Med 8.01 (2), Med 8.02 (1), Med 8.02 (4m), Med 8.02 (7), Med 8.05(2) (e), Med 8.07 (1) (a) and (b), and Med 8.08 (1) (a), (b), (c) and (d), and Med 8.08 (3) (c) and (d), relating to definitions, practice prescribing limitations, employment requirements and supervising physician responsibilities.

**Hearing Information**

**Date:** Wednesday, February 15, 2012  
**Time:** 9:00 A.M.  
**Location:** 1400 East Washington Avenue (enter at 55 North Dickinson Street)  
Room 121  
Madison, WI 53703

**Appearances at the Hearing**

Interested persons are invited to present information at the hearing. You may make a presentation in person or submit a brief statement regarding facts, opinions and arguments, or both. You may also submit a brief statement of facts, opinions and arguments in writing without a personal appearance by mail addressed to Shawn Leatherwood, Department of Safety

and Professional Services, Division of Board Services, P.O. Box 8935, Madison, WI 53708. Written comments will be accepted until **February 15, 2012**.

**Place Where Comments are to be Submitted and Deadline For Submission**

Comments may be submitted to Shawn Leatherwood, Paralegal, Department of Safety and Professional Services, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708-8935, or by email to [Shancethea.Leatherwood@wisconsin.gov](mailto:Shancethea.Leatherwood@wisconsin.gov). Comments must be received on or before **February 15, 2012**, to be included in the record of rule-making proceedings.

**Copies of Proposed Rule, Fiscal Estimate, and Economic Impact Analysis**

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

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

*Statutes interpreted*

Sections 448.21 (2) and (3), Stats.

*Statutory authority*

Sections 15.08 (5) (b), 227.11 (2) (a), 448.05 (5), 448.20 (3) (a), 448.40 (2) (f), Stats.

*Explanation of agency authority*

The legislature, via Wis. Stats. ss. 15.08 (5) (b), and 227.11 (2) (a), conferred upon the Medical Examining Board general powers to promulgate rules for the guidance of the profession and to interpret the provisions of statutes it enforces. Section 448.05 (5) authorizes the Board to promulgate rules that establish licensing and practice standards for physician assistants. Section 448.40 (2) (f), Stats., directs the board to promulgate rules regarding the prescriptive practice of



physician assistants. Therefore, the Medical Examining Board is both generally and specifically authorized to promulgate these proposed rules.

Section 448.20 (3) (a) confers upon the Council on Physician Assistants the authority to advise the Medical Examining Board on revisions of standards in licensing, practice, education and training of physician assistants.

**Related statute or rule**

Sections 448.01 (6), 448.20 (3), Stats., Wis. Admin. Code section Med 10.02 (2) (t).

**Plain language analysis**

Physician assistants practice as part of a physician–led team with physicians supervising the health care services they provide. Currently, one physician may supervise no more than two physician assistants at one time without permission from the Medical Examining Board (Board). The proposed rule increases the maximum number of physician assistants a physician may concurrently supervise from 2 to 4.

Under current law the Board may, in an exercise of discretion, authorize a physician to supervise more than two physician assistants concurrently. A physician requesting an increase in the numbers of physician assistants to be supervised must submit a written plan for the Board’s review. The Board may grant the request if the Board is satisfied that the increased number of physician assistants will not compromise patient safety. The proposed rules retain the Board’s authority to increase the number of physician assistants a physician may concurrently supervise on a case–by–cases basis.

The proposed rule defines terms necessary to clarify responsibilities in the physician–led teams in which physician assistants work. It further eliminates any reference to the outdated term, “substitute supervising physician.”

Current law provides that applicants for licensure as physician assistants may be required to submit to an oral examination. The existing term is outdated and does not reflect that during a personal appearance the Board may also require an applicant to submit to an interview, or a review of credentials, or both. The proposed rule clarifies that the Board may require, as a prerequisite to licensure, successful completion of an oral examination or a personal appearance or both.

Finally, the proposed rule explains that the periodic review of physician assistant prescribing practices must occur at least annually, with more frequent review optional, depending upon applicable standards of care and other factors.

**SECTION 1.** Renumbers and amends Med 8.01

**SECTION 2.** creates a statement of intent and add it to the authority and purpose provision.

**SECTION 3.** Renumbers Med 8.02 (1) to 8.02 (1m).

**SECTION 4.** Defines the terms “adequate supervision”, “general supervision” and “supervising physician”.

**SECTION 5.** Clarifies that in addition to written and oral examinations, the Board may require satisfactory performance of a personal appearance for the purpose of an interview, a review of credential, or both.

**SECTION 6.** Amends Med 8.05(2) (b) (7) to remove outdated references to particular mental health disorders.

**SECTION 7.** Amends Med 8.05 (2) (c) to allow a personal appearance as well as an oral examination if required by the application review panel.

**SECTION 8.** Creates Med 8.05 (2) (e) a provision regarding the components of a satisfactory personal appearance.

**SECTION 9.** Amends Med 8.07(1) by clarifying that a physician assistant’s practice may be supervised by one or more supervising physicians.

**SECTION 10.** Creates Med 8.07 (1) (a) and (b) regarding physician assistant’s scope of practice.

**SECTION 11.** Amends Med 8.07 (2) (a) and (e) by striking repetitive and ambiguous language.

**SECTION 12.** Amends Med 8.08 (title) and Med 8.08 (1) to specify that the supervising physician and the physician assistant shall review guidelines for supervised prescriptive practice at least annually and clarifies the requirement that the guidelines for supervised prescriptive practice shall include the process and schedule for the supervising physician’s review.

**SECTION 13.** Creates Med 8.08 (1) (a), (b), (c) and (d) specifying the contents of the written guidelines for the required supervised prescriptive practice.

**SECTION 14.** Repeals and recreates Med 8.08 (2) to simplify when physician assistants are authorized to prescribe.

**SECTION 15.** Repeals and recreates Med 8.08 (3) (a).

**SECTION 16.** Amends Med 8.08 (3)(b) to require supervising physicians to document review of the physician assistant’s prescriptive practice in the patient records.

**SECTION 17.** Creates Med 8.08 (3) (c) and (d) regarding documenting the periodic review.

**SECTION 18.** Amends Med 8.10 (1) by increasing the number of physician assistants a physician may supervise from 2 to 4, and clarifying the nature of supervision.

**SECTION 19.** Repeals Med 8.10 (2) eliminating the provision regarding substitute supervising physicians.

**SECTION 20.** Amends Med 8.10 (3) and (4) striking repetitive language regarding supervising physicians.

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

There is no comparative existing or proposed federal rule.

**Comparison with rules in adjacent states**

*Illinois:* The state of Illinois limits the physician assistant to physician ratio to 2:1; unless the supervising physician designates an alternate supervising physician. An alternate supervising physician may supervise more than two physician assistants at the same time when the supervising physician is unable to fulfill the duties. 225 ILL. COMP. STAT. 95/7

*Iowa:* The state of Iowa limits the physician assistant to physician ratio to 2:1. 645 IAC 326.8 (3) (148 C)

*Michigan:* The state of Michigan allows a physician assistant to physician ratio of 4:1 when the supervising physician is a solo practitioner who practices in a group of physicians and treats patients on an outpatient basis. Physicians who have privileges at a health facility or agency or a state correctional facility may supervise more than four physician assistants; but the physician assistant to physician ratio is 2:1 if the physician supervises a physician assistant at more than one location. MCLS s. 333.17048

*Minnesota:* The state of Minnesota allows a physician to supervise five physician assistants simultaneously. In the case of an emergency a physician may supervise more than five physician assistants at any given time. MINN. STAT. S. 147A.01



**Summary of factual data and analytical methodologies**

In recognition of physician work–force shortages and at the request of the Council on Physician Assistants, the Medical Examining Board created a work group to research and advise the board on whether or not to increase the supervision ratio of physician assistants to physicians, and if so under what circumstances. The work group consisted of members of the Medical Examining Board, who are licensed physicians, the chairperson of the Council on Physician Assistants and consultation from the State Medical Society, the Wisconsin Council of Physician Assistants and the Wisconsin Hospital Association. Members of the work group examined the statutes and regulations of other states as well as recommendations of the Federation of State Medical Boards, the American Medical Association, the American Association of Family Practitioners and the American Academy of Physician Assistants.

The national trend, as recognized by the Federation of State Medical Boards and the American Academy of Physician Assistants, is to increase the number of physician assistants a physician may supervise. Both organizations have, as a national model, recommended that regulatory bodies refrain from specifying a particular number of physician assistants a physician may concurrently supervise. Rather, the recommendation is that supervising physicians make the determination based on prevailing standards for competent medical practice, day–to–day realities, and the nature of the physician’s actual practice.

The work group presented its findings to the Medical Examining Board with a recommendation that the board increase the ratio from 1:5. The board considered several factors including practice setting in which physician and physician assistants carry out their duties and patient care issues such as a growing shortage of health care practitioners in underserved communities. The board emphasized the need for adequate physician supervision of physician assistant’s practice and adopted the work group’s recommendation to increase the ratio of physician assistants a physician may supervise. However, after extensive discussion, the board decided to authorize a physician to physician assistant

supervision ratio of 1:4. The proposed rule would continue to allow the board, in its discretion, to increase the ratio in individual circumstances.

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

The department finds that this rule will have no effect on small business as small business is defined in 227.114 (1), Stats.

**Anticipated Costs Incurred by the Private Sector**

The department finds that this rule will incur no additional costs to the private sector.

**Fiscal Estimate and Economic Impact Analysis**

The proposed rule is not anticipated to have any fiscal impact on businesses, public utility rate payers, local government units or the state’s economy as a whole. The proposed rule was posted on the department’s website for 14 days. Comments were solicited. The department did not receive any comments regarding an economic impact from local government units, specific business sectors or public utility rate payers. Therefore, the department finds the proposed rule will have no economic impact.

**Effect on Small Business**

The department finds that this rule will have no effect on small business as small business is defined in s. 227.114 (1), Stats. The Department’s Regulatory Review Coordinator may be contacted at [Bill.Wendle@wisconsin.gov](mailto:Bill.Wendle@wisconsin.gov) or by calling (608) 267–2435.

**Initial Regulatory Flexibility Analysis**

It is anticipated that this rule will have no effect on small business as small business is defined in 227.114 (1), Stats.

**Agency Contact Person**

Shawn Leatherwood, Paralegal, Department of Safety and Professional Services, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708; telephone 608–261–4438; email [Shancethea.L Leatherwood@wisconsin.gov](mailto:Shancethea.L Leatherwood@wisconsin.gov) at

STATE OF WISCONSIN DEPARTMENT OF ADMINISTRATION DOA 2049 (R 07/2011)	
<b>ADMINISTRATIVE RULES FISCAL ESTIMATE AND ECONOMIC IMPACT ANALYSIS</b>	
Type of Estimate and Analysis	
<input checked="" type="checkbox"/> Original    Updated    Corrected	
Administrative Rule Chapter, Title and Number	
Wis. Admin Code Med 8	
Subject	
Increasing the number of physician assistants a physician may supervise	
Fund Sources Affected	Chapter 20 , Stats. Appropriations Affected
GPR   FED   PRO   PRS   SEG   SEG–S	

<b>Fiscal Effect of Implementing the Rule</b>		
<input checked="" type="checkbox"/> No Fiscal Effect Indeterminate	Increase Existing Revenues Decrease Existing Revenues	Increase Costs Could Absorb Within Agency's Budget Decrease Costs
<b>The Rule Will Impact the Following (Check All That Apply)</b>		
State's Economy Local Government Units	<input checked="" type="checkbox"/> Specific Businesses/Sectors Public Utility Rate Payers	
Would Implementation and Compliance Costs Be Greater Than \$20 million?  Yes <input checked="" type="checkbox"/> No		
<b>Policy Problem Addressed by the Rule</b>		
The proposed rule addresses the issue of whether to increase the number of physician assistants a physician may concurrently supervise. Currently, a physician may simultaneously supervise two physician assistants at one time. If a physician wishes to supervise more than two physician assistants he or she must submit a written plan to the Medical Examining Board for review and approval. The proposed rule will increase the number of physician assistants a physician may simultaneously supervise from 2 to 4.		
<b>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)</b>		
The proposed rule is not anticipated to have any fiscal impact on businesses, public utility rate payers, local government units or the state's economy as a whole. The proposed rule was posted on the department's website for 14 days. Comments were solicited. The department did not receive any comments regarding an economic impact from local government units, specific business sectors or public utility rate payers. Therefore, the department finds the proposed rule will have no economic impact.		
<b>Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule</b>		
The national trend, as recognized by the Federation of State Medical Boards, is to increase the number of physician assistants a physician may supervise as one of the means to address the problem of physician workforce shortages. Implementing this proposed rule will bring Wisconsin in line with the national trend and allow greater flexibility for physicians and physician assistants in providing health care. The alternative to implementing the rule is to allow the current physician to physician assistant ratio to remain the same.		
<b>Long Range Implications of Implementing the Rule</b>		
The primary long term effect of implementing this rule will be building physician and physician assistant health care teams that are equipped to meet the demands of providing adequate health care in spite of growing physician workforce shortages.		
<b>Compare With Approaches Being Used by Federal Government</b>		
There are no comparative federal rules.		
<b>Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)</b>		
Similar to the current rule, Illinois and Iowa limit the ration of physician assistants a physician may supervise to 2:1. Illinois allows "alternate supervising physicians" to supervise more than two physician assistants when the supervising physician is unable to perform supervisory duties. Michigan allows a physician assistant to physician ratio of 4:1 when the supervising physician practices within a group of physicians. If the supervising physician has privileges at a health facility, agency or state correctional facility he or she may supervise more than 4. However, if the physician assistant and physician are not in the same location the ratio is limited to 2:1. The proposed rule is most similar to Minnesota which allows a physician to simultaneously supervise five physician assistants at once. In an emergency, a Minnesota physician may supervise more than five physician assistants.		
<b>Name and Phone Number of Contact Person</b>		
Shawn Leatherwood 608-261-4438		

**Notice of Hearing**  
**Safety and Professional Services**  
**Board of Nursing**  
**CR 12-004**

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Board of Nursing in sections 15.08 (5) (b), 227.11 (2) and 441.01, Wis. Stats., and interpreting sections 441.06 (1) and 441.10 (3) (d), Wis. Stats., the Board of Nursing will hold a public hearing at the time and place indicated below to consider an order to amend sections N 3.03 (1) (a) 3., N 3.03 (1) (b) 6., N 3.03 (2) (a) 3., and N 3.03 (2) (b) 6., relating to endorsement licensure.

**Hearing Information**

**Date:** Thursday, February 23, 2012  
**Time:** 8:00 A.M.  
**Location:** 1400 East Washington Avenue  
Room ABC  
3365 W. Brewster St.  
Appleton, WI 54914

**Appearances at the Hearing**

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but are urged to submit facts, opinions and argument in writing as well. Facts, opinions and argument may also be submitted in writing without a personal appearance by mail addressed to the Department of Safety and Professional Services, Division of Board Services, P.O. Box 8935, Madison, Wisconsin 53708. Written comments must be received at or before the public hearing to be included in the record of rule-making proceedings.

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

Comments may be submitted to Sharon Henes, Paralegal, Department of Safety and Professional Services, Division of Board Services, 1400 East Washington Avenue, Room 151, P.O. Box 8935, Madison, WI 53708, or by email to [sharon.henes@wisconsin.gov](mailto:sharon.henes@wisconsin.gov). Comments must be received at or before the public hearing to be held at 8:00 a.m. on **February 23, 2012** to be included in the record of rule-making proceedings.

**Copies of Rule**

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

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

**Statutes interpreted**

Sections 441.06 (1) and 441.10 (3) (d), Stats.

**Statutory authority**

Sections 15.08 (5) (b), 227.11 (2); 441.01, Stats.

**Explanation of statutory authority**

An examining board shall promulgate rules for its own guidance and for the guidance of the profession to which it pertains. The Board may establish rules to prevent unauthorized persons from practicing professional nursing.

**Related statute or rule**

Sections 441.06 (1) and 441.10 (3) (d), Stats. and N 3.03, Wis. Admin. Code.

**Plain language analysis**

Currently, a person licensed as a nurse in another state, territory, province or other jurisdiction is prohibited from obtaining licensure as a registered nurse or licensed practical nurse through the endorsement process if there has ever been disciplinary action against their nurse license in any state, territory, province or other jurisdiction.

Section 1-4 are amended to allow the Board to license by endorsement those who have had disciplinary action except in the circumstances that within the Board's discretion the discipline does not warrant licensure in order to protect the public.

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

None.

**Comparison with rules in adjacent states**

**Illinois:** The Illinois Board of Nursing permits licensing by endorsement for professional and practical nurses, provided the other state's licensing requirements are similar to Illinois. The Illinois Board of Nursing looks at the disciplinary history from the last five years in making a decision to license by endorsement. While a decision is pending on licensure a temporary endorsement license is issued if the person holds an unencumbered license from another state and will be terminated if it is discovered that within the last five years, the applicant has had a license or permit related to the practice of nursing revoked, suspended or placed on probation by another jurisdiction, if at least one of the grounds is substantially equivalent to grounds in Illinois.

**Iowa:** The Iowa Board of Nursing permits licensing by endorsement and may consider in the application process a record of prior disciplinary action regardless of jurisdiction.

**Michigan:** The Michigan Board of Nursing permits licensing by endorsement provided the other state's licensing requirements are substantially the same as Michigan's requirements. The Board's rules do not address the issue of discipline in another state.

**Minnesota:** The Minnesota Board of Nursing permits licensing by endorsement provided the applicant has the qualifications equivalent to Minnesota's requirements. The rules do not preclude an applicant from licensure solely on the basis of prior discipline and allows for Board discretion.

**Summary of factual data and analytical methodologies**

The proposed change would facilitate the ability of nurses to obtain licensure to work in our state and increase the available workforce, as well as promote efficiency and fairness. The Wisconsin rule is inconsistent with the rules in the (4) four border states which allow the exercise of discretion when applying for licensure through endorsement. The proposed rule change fosters continued mobility of the nurse workforce and benefits employers by increasing access to qualified nurses.

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

This rule creates a change in how licensure decisions are made which does not impact small businesses. This rule was posted for public comment on the economic impact of the proposed rule, including how this proposed rule may affect

businesses, local government units and individuals, for a period of 14 days. No comments were received relating to the economic impact of the rule.

**Fiscal Estimate and Economic Impact Analysis**

The Fiscal Estimate and Economic Impact Analysis are attached.

**Initial Regulatory Flexibility Analysis or Summary**

There is no effect on small businesses.

**Agency Contact Person**

Sharon Henes, Paralegal, Department of Safety and Professional Services, Division of Board Services, 1400 East Washington Avenue, Room 151, P.O. Box 8935, Madison, Wisconsin 53708; telephone 608-261-2377; email at [sharon.henes@wisconsin.gov](mailto:sharon.henes@wisconsin.gov).

**Text of Rule**

**SECTION 1.** N 3.03 (1) (a) 3. is amended to read:

N 3.03(1)(a)3. Has a license against which no disciplinary action, which the Board deems to warrant a denial, has been taken in any of the states, territories or provinces in which the applicant has held a license.

**SECTION 2.** N 3.03 (1) (b) 3. is amended to read:

N 3.03(1)(b)3. Has a license against which no disciplinary action, which the Board deems to warrant a denial, has been taken in any of the states, territories or provinces in which the applicant has held a license.

**SECTION 3.** N 3.03 (2) (a) 3. is amended to read:

N 3.03(2)(a)3. Has a license against which no disciplinary action, which the Board deems to warrant a denial, has been taken in any of the states, territories or provinces in which the applicant has held a license.

**SECTION 4.** N 3.03 (2) (b) 6. is amended to read:

N 3.03(2)(b)6. Has a license against which no disciplinary action, which the Board deems to warrant a denial, has been taken in any of the states, territories, provinces or countries in which the applicant has held a license.

STATE OF WISCONSIN DEPARTMENT OF ADMINISTRATION DOA 2049 (R 07/2011)		
<b>ADMINISTRATIVE RULES FISCAL ESTIMATE AND ECONOMIC IMPACT ANALYSIS</b>		
Type of Estimate and Analysis		
<input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected		
Administrative Rule Chapter, Title and Number		
N 3.03		
Subject		
Relating to endorsement licensure		
Fund Sources Affected		Chapter 20 , Stats. Appropriations Affected
GPR   FED   PRO   PRS   SEG   SEG-S		None
Fiscal Effect of Implementing the Rule		
<input checked="" type="checkbox"/> No Fiscal Effect Indeterminate	<input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Decrease Existing Revenues	<input type="checkbox"/> Increase Costs <input checked="" 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		
Currently, a person licensed as a nurse in another state is prohibited from obtaining licensure as a registered nurse or licensed practical nurse through the endorsement process if there has ever been disciplinary action against their nurse license in any state. This rule will allow the Board of Nursing to evaluate the circumstances of the discipline and determine whether to license the individual.		
Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)		
There is no economic and fiscal impact.		



<b>Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule</b>
This rule allows the Board of Nursing to evaluate the circumstances of the discipline, including but not limited to, the nature of the conduct, length of time since the conduct occurred, the discipline imposed, and whether the disciplinary requirements have already been fulfilled. Implementing this rule would benefit the ability to facilitate qualified nurses to obtain licensure to work in our state. In addition, it promotes efficiency and fairness.
<b>Long Range Implications of Implementing the Rule</b>
The long range implication of implementing the rule would be an increase in the available workforce of qualified and competent nurses.
<b>Compare With Approaches Being Used by Federal Government</b>
None
<b>Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)</b>
The rule would make Wisconsin's endorsement process consistent with our four neighboring states. All four neighboring states do not preclude an applicant with a disciplinary background from being licensed through endorsement. Each of the neighboring Boards of Nursing evaluate the circumstances surrounding the discipline and use their discretion in licensing decisions.
<b>Name and Phone Number of Contact Person</b>
Sharon Henes, Paralegal (608) 261-2377

**Notice of Hearing**  
**Safety and Professional Services**  
**Physical Therapy Examining Board**  
**CR 12-002**

NOTICE IS HEREBY GIVEN that pursuant to sections 15.08 (5) (b), 227.11 (2) 448.53 (2), 448.55 (3) and 448.56 (6) Stats., and interpreting sections 448.53, 448.535, 448.54, 448.55 (3), 448.56, Stats., and 2009 Wisconsin Act 149, the Physical Therapy Examining Board will hold a public hearing at the time and place indicated below to consider an order to repeal section PT 3.01 (7); to renumber and amend sections PT1.02 (1) to (6); to amend sections PT 1.03 (1) (c), PT 3.01 (title), PT 3.01 (4), PT 4.01 (4), PT 8.05 (intro), and PT 9.01; to repeal and recreate section PT 1.01; and to create sections PT 2.001, PT2.01 (1) (j), PT 3.001, PT 3.002, PT 3.02, PT 4.001, PT 5.001, Pt 6.001, and PT 9.02 (5), relating to licensure, examinations, temporary licenses, locum tenens license, referrals, and continuing education.

**Hearing Information**

**Date:** Thursday, February 16, 2012  
**Time:** 9:00 A.M.  
**Location:** 1400 East Washington Avenue (enter at 55 North Dickinson Street)  
Room 121A  
Madison, WI 53703

**Appearances at the Hearing**

Interested persons are invited to present information at the hearing. You may make a presentation in person, submit a brief statement regarding facts, opinions or arguments, or both. You may also submit a brief statement of facts, opinions and arguments in writing without a personal appearance by mail addressed to Shawn Leatherwood, Department of Safety and Professional Services, Division of Board Services, P.O. Box 8935, Madison, WI 53708. Written comments will be accepted up until **February 16, 2012**.

**Copies of Proposed Rule, Fiscal Estimate, and Economic Impact Analysis**

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

**Place Where Comments are to be Submitted and Deadline For Submission**

Comments may be submitted to Shawn Leatherwood, Paralegal, Department of Safety and Professional Services, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708-8935, or by email to [Shancethea.L Leatherwood@wisconsin.gov](mailto:Shancethea.L Leatherwood@wisconsin.gov). Comments must be received on or before **February 16, 2012** to be included in the record of rule-making proceedings.

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

*Statutes interpreted*

Sections 448.53, 448.535, 448.54, 448.55 (3), 448.56, and 2009 Wisconsin Act 149.

*Statutory authority*

Sections 15.08 (5) (b), 227.11 (2) (a), 448.53 (2), 448.55 (3), and 448.56 (6), Stats.

*Explanation of statutory authority*

The legislature via ss. 15.08 (5) (b), and 227.11 (2) (a), Stats., confers upon the Physical Therapy Examining Board general powers to promulgate rules for the guidance of the profession and to interpret the provisions of statutes it enforces. Sections 448.53 (2) and 448.55 (3), Stats., especially concerned with regulating health professions, authorizes the Physical Therapy Examining Board to promulgate rules regarding licensure and maintaining competence to practice in the profession. Section 448.56 (6) provides the Physical Therapy Examining Board may promulgate rules defining direct or general supervision of

physical therapist assistants. Therefore, the Physical Therapy Examining Board is authorized both generally and specifically to promulgate these proposed rules.

**Related statute or rule**

Wis. Admin. Code Chapters PT 1 to PT 9.

**Plain language analysis**

Due to the passage of 2009 Wisconsin Act 149, the administrative rules governing physical therapy professionals required updating. The legislation transformed the Physical Therapists Affiliated Credentialing Board into the Physical Therapy Examining Board. The newly formed board now functions independently without oversight by the Medical Examining Board. These proposed rules effectuate the changes mandated by the legislation by modernizing existing provisions, upgrading the authority sections in Chapters PT 1– 9, adding clarifying terms and revising the classes of temporary licensure.

With these proposed rules, the Physical Therapy Examining Board, pursuant to s. 448.53 (2), Stats., has formed two distinct classes of temporary licensure: the temporary license to practice under supervision, initial licensure and the temporary reentry license. The temporary license to practice under supervision, initial is distinguished from the temporary reentry license in that it is available only to those applicants who have not previously been licensed in Wisconsin. The temporary reentry license is targeted towards returning professional that have not engaged in clinical practice for three years prior to their application. Both classes of temporary licenses are designed to allow entry level professionals and returning professional gain employment opportunities while acquiring clinical experience. Along with revising the classes of temporary licensure, the board further defined the levels of supervision between licensed physical therapist.

**SECTION 1** repeals the former authority section and recreates PT 1.01 a new statement of authority.

**SECTION 2** rennumbers and amends PT 1.02 by adding terms such as, “candidate for reentry”, “client”, “direct, immediate, on premises supervision”, “direct, immediate, one-to-one supervision”, “general supervision”, “informed consent” and “intimate parts”. The terms will aid in clarifying the level of supervision for temporary licensees.

**SECTION 3** amends PT 1.03 (1) (c) to distinguish between the documentary evidence required for physical therapist and physical therapist assistants.

**SECTION 4** creates PT 2.001 as statement of authority to chapter PT 2.

**SECTION 5** creates PT 2.015 (1) (j) by adding a new category for applicants required to complete an oral examination to persons who have voluntarily limited the scope of their practice as a result of being investigated by a credentialing authority.

**SECTION 6** creates an authority and definitions sections in chapter PT 3.

**SECTION 7** amends PT 3.01 (title) by refining the definition of the temporary license to practice under supervision, initial licensure. This provision extends the class of temporary license holders under supervision to persons who have not previously been licensed in Wisconsin.

**SECTION 8** amends PT 3.02 (4) by deleting duplicative language regarding the supervision of physical therapist assistants.

**SECTION 9** repeals the renewal provision in PT 3.01 (7) for physical therapist and physical therapist assistants under supervision.

**SECTION 10** creates PT 3.02 regarding the temporary reentry license. Physical therapist and physical therapist assistants who have not engaged in the clinical practice of physical therapy for three years are eligible for the temporary reentry license. The temporary reentry license is valid for one year and is nonrenewable.

**SECTION 11** creates authority provisions for Chapters PT 4 to PT 6.

**SECTION 12** amends PT 4.01 (4) by adding language that allows the Physical Therapy Examining Board greater discretion in extending the expiration date of a locum tenens license. Currently, a locum tenens license expires within 90 days of being issued.

**SECTION 13** amends PT 8.05 (intro) by adding a renewal exception for the newly created class of temporary reentry applicants.

**SECTION 14** amends the authority and purpose provision in PT 9.01 to reflect the change in status from affiliated credentialing board to examining board.

**SECTION 15** creates PT 9.02 (5) adding the term “remedial education”. This term applies to continuing education for disciplinary purposes.

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

There is no comparative existing or proposed federal rule.

**Comparison with rules in adjacent states**

*Illinois:* Illinois does not issue a temporary license, Illinois allows applicants to apply for restoration of licenses that have expired or have been placed on inactive status for a period of 5 to 10 years. ILL. ADMIN. CODE tit.68 §1340.60 (4) (A) Individuals that have allowed their license to lapse must obtain 160 contact hours under the supervision of a licensed physical therapist, or twenty hours of continuing education on the clinical aspects of physical therapy or a combination of both.

*Iowa:* The state of Iowa does not issue a temporary license. Iowa allows individuals whose license have been inactive for five years or less and those individuals whose license have been inactive for more than five years to apply for reactivation of an inactive license. IOWA ADMIN. CODE R. 645–200.15 (17A, 147, 272C) However, Iowa does have provisions enumerating the supervision requirements for physical therapy assistants. IOWA ADMIN. CODE R. 645–200.6 (272C)

*Michigan:* Michigan issues a nonrenewable temporary license for physical therapist and physical therapist assistants who are applying for re-licensure and whose license has lapsed less than three years of their expiration date provided they have completed all other requirements other than examination. MICH. ADMIN. CODE R 338.7149 Michigan also issues a limited license for physical therapist assistants who graduated from a board approved program but still must complete a physical therapist assistant examination. MICH. ADMIN. CODE R 338.7143 Temporary license holders must practice under the supervision of license holders and may not be supervised by limited license holders or temporary license holders. MICH. COMP. LAWS §333.16181

*Minnesota:* By statute, Minnesota issues temporary permits to practice physical therapy. MINN. STAT. §148.71 The permit, once issued, expires 90 days after the next

examination for licensure given by the Board. The temporary permit cannot be renewed. Temporary license holders may be supervised by applicants for physical therapist, physical therapist assistants and licensed physical therapist. The level of supervision must be direct immediate and on premises.

**Summary of factual data and analytical methodologies**

The Physical Therapy Examining Board conducted an extensive review of its rules along with legal counsel. The Federation of State Boards of Physical Therapy Model Practice Act was also reviewed. The board and its legal counsel identified key areas that required updating pursuant to the passage of 2009 Wisconsin Act 149.

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

It is anticipated that this rule will have no effect on small business as it is defined in s. 227.114 (1), Stats.

**Anticipated costs incurred by the private sector**

The proposed rules will not incur additional costs to the private sector.

**Fiscal Estimate and Economic Impact Analysis**

With regard to the fiscal impact there would be additional IT costs of approximately \$2130 related to coding in the licensing system and additional costs of approximately \$340

for updating forms and the website. These costs would be absorbed within the DSPS budget. With regard to the economic impact, the proposed rule language was made available on the department’s website for 14 days. Comments were solicited. The department did not receive any comments regarding an economic impact from local government units, specific business sectors or public utility rate payers. The department finds the proposed rule will have no economic impact.

**Effect on Small Business**

This rule will have no effect on small business as small business is defined in 227.114 (1), Stats.

The department’s Regulatory Review Coordinator may be contacted by email at [Bill.Wendle@wisconsin.gov](mailto:Bill.Wendle@wisconsin.gov) or by calling (608) 267-2435.

**Initial Regulatory Flexibility Analysis**

It is anticipated that this rule will have no effect on small business as small business is defined in 227.114 (1), Stats.

**Agency Contact Person**

Shawn Leatherwood, Paralegal, Department of Safety and Professional Services, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708; telephone 608-261-4438; email a [Shancthea.Leachwood@wisconsin.gov](mailto:Shancthea.Leachwood@wisconsin.gov).

STATE OF WISCONSIN DEPARTMENT OF ADMINISTRATION DOA 2049 (R 07/2011)		<b>ADMINISTRATIVE RULES FISCAL ESTIMATE AND ECONOMIC IMPACT ANALYSIS</b>	
Type of Estimate and Analysis			
<input checked="" type="checkbox"/> Original    Updated    Corrected			
Administrative Rule Chapter, Title and Number			
Wis. Admin. Code ss. PT 1– PT 9			
Subject			
Licensure, applications and credentials, examinations, temporary licenses, locum tenens license and continuing education of physical therapists and physical therapist assistants			
Fund Sources Affected		Chapter 20 , Stats. Appropriations Affected	
GPR   FED   PRO <input checked="" type="checkbox"/> PRS   SEG   SEG–S		20.165 (1) (g)	
Fiscal Effect of Implementing the Rule			
No Fiscal Effect Indeterminate		<input checked="" type="checkbox"/> Increase Costs Could Absorb Within Agency’s Budget Decrease Costs	
The Rule Will Impact the Following (Check All That Apply)			
State’s Economy Local Government Units		Specific Businesses/Sectors Public Utility Rate Payers	
Would Implementation and Compliance Costs Be Greater Than \$20 million?			
Yes <input checked="" type="checkbox"/> No			

<p><b>Policy Problem Addressed by the Rule</b></p> <p>The proposed rule effectuates the recent passage of 2009 Wisconsin Act 149. The act changed the Physical Therapists Affiliated Credentialing Board to the Physical Therapy Examining Board. The board now functions independently without oversight by the Medical Examining Board. In order to implement the legislation, the proposed rule modernizes existing provisions, revises the classes of temporary licensure and further defines the level of supervision within the profession.</p> <p>The proposed rule forms to distinct classes of temporary licensure, the temporary license to practice under supervision, initial licensure and the temporary reentry license. The temporary license to practice under supervision, initial licensure is distinguished from temporary reentry license in that it is available only to those applicants who have not previously been licensed in Wisconsin. The temporary reentry license is targeted towards individuals that are returning to practice after having not engaged in clinical practice for a period of three years prior to applying for licensure. Both classes of temporary licensure are designed to allow entry level professionals and returning professionals gain employment opportunities while acquiring clinical experience.</p>
<p><b>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)</b></p> <p>With regard to the fiscal impact there would be additional IT costs of approximately \$2130 related to coding in the licensing system and additional costs of approximately \$340 for updating forms and the website. These costs would be absorbed within the DSPS budget. With regard to the economic impact, the proposed rule language was made available on the department's website for 14 days. Comments were solicited. The department did not receive any comments regarding an economic impact from local government units, specific business sectors or public utility rate payers. The department finds the proposed rule will have no economic impact.</p>
<p><b>Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule</b></p> <p>The benefit of implementing the proposed rule will be creating opportunities for persons seeking to enter the practice of physical therapy valuable clinical experience and bringing the current regulations that govern the practice of physical therapy in conformity with 2009 WI Act 149. By distinguishing the classes of temporary licensure and defining the multiple levels of supervision, the proposed rule will provide greater protection for the public. An alternative to implementing the rule is to allow the current regulations to remain outdated and out of compliance with 2009 WI Act 149.</p>
<p><b>Long Range Implications of Implementing the Rule</b></p> <p>The anticipated long-term result of the proposed rules will be a more consistent scope of practice for licensed physical therapist and physical therapist assistants, as well as consistency in training for those entering the profession.</p>
<p><b>Compare With Approaches Being Used by Federal Government</b></p> <p>There is no comparative existing or proposed federal rule.</p>
<p><b>Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)</b></p> <p>Of the neighboring states only Minnesota and Michigan issue temporary licenses. The Minnesota temporary license cannot be renewed and expires 90 days after the next examination for licensure by the board. Michigan also issues a non-renewable temporary license for applicants waiting for exam results. Illinois and Iowa do not issue temporary licensure.</p>
<p><b>Name and Phone Number of Contact Person</b></p> <p>Shawn Leatherwood (608) 261-4438</p>



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## Rule Orders Filed with the Legislative Reference Bureau

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

### **Natural Resources**

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

#### **CR 10-127**

(DNR # CF-28-09)

Revises Chapter NR 51, relating to administration of Stewardship Grants.  
Effective 3-1-12.

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# Rules Published with this Register and Final Regulatory Flexibility Analyses

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

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

## **Agriculture, Trade and Consumer Protection** **CR 11-038**

Renumbers Chapter ATCP 157 to be ATCP 87 and amends, relating to Wisconsin Certified Honey and the sale of products represented as honey. Effective 2-1-12.

### **Summary of Final Regulatory Flexibility Analysis**

This rule will prohibit the fraudulent sale of adulterated or non-honey products as “honey.” The prohibition will benefit producers and sellers of real honey. This rule makes no exemption for small businesses, because small businesses as well as large businesses must refrain from fraudulent practices.

This rule also creates a “Wisconsin certified honey” program. Under this program, a honey producer may voluntarily apply to DATCP for biennial approval to sell honey as “Wisconsin certified honey” (DATCP approval is not required to sell honey, unless the honey is represented as “Wisconsin certified honey”). “Wisconsin certified honey” must be collected from hives in this state, and must comply with the honey standard in this rule. The producer must biennially submit a summary of lab test results and the methods used to obtain the results to document compliance with the honey standard.

DATCP estimates that 50 of the 900 honey producers in Wisconsin will apply for biennial approval to sell their honey as “Wisconsin certified honey.” Most, if not all, of those producers are “small businesses.” Participating producers will pay for biennial lab testing estimated to be \$250 and must pay a \$50 biennial fee to DATCP. However, participation is voluntary and there will not be a significant financial impact on participating producers.

### **Comments from Legislative Committees (Summary)**

On September 15, 2011, DATCP transmitted the above rule for legislative committee review. The rule was referred to the Senate Committee on Agriculture, Forestry, and Higher Education and the Assembly Committee on Agriculture. Neither committee took action on the rule. The Senate referred the rule to the Joint Committee for Review of Administrative Rules (JCRAR) on October 20, 2011 and the Assembly referred the rule to JCRAR on October 26, 2011. JCRAR took no action on the rule.

## **Natural Resources**

### **Environmental Protection — Air Pollution Control** **Chs. NR 400—** **CR 11-005**

Revises Chapters NR 400, 419, 420, 421, 422, 423, 439 and 484, relating to the correction of deficiencies identified by the U.S. Environmental Protection Agency with a portion of the

state’s current volatile organic compound reasonably available control technology rules. Effective 2-1-12.

### **Summary of Final Regulatory Flexibility Analysis**

The Department does not believe that the proposed rule revisions will have a significant economic impact for individual small businesses. For industrial solvent cleaning operations, the applicability threshold is 3 tons of volatile organic compound emissions from a facility on a 12 consecutive month rolling basis with all control equipment inoperative. The Department believes that this threshold will not affect the majority of small businesses. In addition, while industrial wastewater collection and treatment, and synthetic organic chemical manufacturing are affected by these rules, due the nature and complexity of these operations it is highly unlikely that small business, as defined in s. 227.114 (1), Wis. Stats., would have such an operation that triggers the volatile organic compound emission control requirements for these source categories.

### **Summary of Comments of Legislative Standing Committees**

The rules were reviewed by the Assembly Committee on Natural Resources, the Senate Committee on Natural Resources and Environment, and the Joint Committee for Review of Administrative Rules. No comments or requests for modification were received from the committees.

## **Safety and Professional Services** **CR 11-027**

Revises section SPS 4.08 (formerly RL 4.08), relating to background checks and fingerprinting. Effective 2-1-12.

### **Summary of Final Regulatory Flexibility Analysis**

On May 19, 2011, the department’s Small Business Review Advisory Committee determined that the proposed rule will not have any significant economic impact on a substantial number of small businesses, as defined in s. 227.114 (1), Stats.

### **Summary of Comments of Legislative Standing Committees**

No comments were reported.

## **Safety and Professional Services** **CR 11-029**

An order of the Department of Safety and Professional Services to revise section SPS 128.03 (1) (b); and to create section SPS 128.04 (6) (c), (formerly RL 128.03 (1) (b) and 128.04 (6) (c)), relating to continuing education for auctioneers. Effective 2-1-12.

### **Summary of Final Regulatory Flexibility Analysis**

These proposed rules were reviewed by the Small Business Review Advisory Committee and it was determined that the

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

**Summary of Comments of Legislative Standing Committees**

No comments were reported.

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## Sections Affected by Rule Revisions and Corrections

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

### Revisions

#### Agriculture, Trade & Consumer Protection

##### Ch. ATCP 157

Entire chapter renumbered to 87  
 ATCP 87.01 (1) to (12)  
 ATCP 87.015  
 ATCP 87.017

#### Natural Resources

##### Ch. NR 400

NR 400.02 (54m)

##### Ch. NR 419

NR 419.02 (1), (1e), (1m), (1s), (3e), (3m), (3s), (6g), (6r), (7m), (8e), (10g), (10m), (10r), (11m), (12m), (14b), (14e), (14g), (14h), (14L), (14p), (14u), (14y), (15d), (15h), (15m), (15p), (15t), (16m), (18e), (18m), (18s), (19), (20), (21), (22), (23)

NR 419.045

##### Ch. NR 420

NR 420.02 (31)

##### Ch. NR 421

NR 421.02 (18m), (23)  
 NR 421.05 (1) (a), (b) (intro.), (c), (2m), (3) (a) (intro.), (c), (4)  
 NR 421.06 (1) (a), (b) (intro.), (c), (2m), (3) (a) (intro.), (c), (4)  
 NR 421.07 (1) (a) (intro.), 1., 2., (3) (a) 5., (4) (a) 5., (5)

##### Ch. NR 422

NR 422.02 (12), (34g), (34r), (83), (84), (90r)  
 NR 422.03 (1), (2), (3), (4), (4m), (6), (8), (9)  
 NR 422.05 (1) (a) (intro.), 1., 2., (b), (1m), (3), (4)  
 NR 422.06 (1) (a) (intro.), 1., 2., (b), (3) (4)  
 NR 422.075 (3) (b)  
 NR 422.08 (1) (a) (intro.), 1., 2., (b), (3), (4)  
 NR 422.083 (1) (a), (b), (bm), (3), title in Table 1B, (3m)  
 NR 422.09 (1) (a), (b), (c), (d), (6)  
 NR 422.095 (1) (a), (b), (2) (a), (c) to (i), (6), (6m), (7), (8)  
 NR 422.105 (5) (b)  
 NR 422.115 (5) (b)

NR 422.125 (1) (a), (b), (4m)  
 NR 422.127 (2) (am) (intro.), 1., 2., 3., (bm), (3m), (4) (a) (intro.), (b)  
 NR 422.132 (1) (a), (am) (intro.), 1., 2., (bm) (intro.), 1., 2.  
 NR 422.135 (1) (a), (am) (intro.), 1., 2., (b)  
 NR 422.14 (1) (a) (intro.), 1., 2., (b), (1m), (4), (5)  
 NR 422.142 (5) (d)  
 NR 422.143 (3) (c) (intro.), 1., 2., (6) (d)  
 NR 422.144  
 NR 422.145 (1) (a) (intro.), 1., 2., (b), (1m), (2) (d), (2m), (4)  
 NR 422.15 (1) (am) (intro.), 1., 2., (bm), (cm) (intro.), 1. to 7., 8., (i), (9)  
 NR 422.155 (1) (a) (intro.), 1., 2., 3., (b), (5)

##### Ch. NR 423

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 NR 423.035 (2) (a) 1., (h), (4) (intro.), (a)  
 NR 423.037 (1), (2) (a) 1., 4. b., d., g., i., k., w., ze., zf., zg., zh., zi., (cg), (cr), Table 1 in (3), (4) (intro.), (a), (5), (9) (a) (intro.), 1., 2., 3., 4., (c) (intro.), 1g., 1r., 2.

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 NR 484.05 (1) in Table 3  
 NR 484.06 (4) (e), (f), (g) in Table 4D  
 NR 484.10 (6), (39m), (55b), (55bg), (55br) in Table 5  
 NR 484.11 (5) in Table 6E, (12)

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SPS 4.08 (1), (2)

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SPS 128.03 (1) (b)  
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### Editorial Corrections

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

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## Executive Orders

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

**Executive Order 54.** Relating to Supplemental Mandatory Reporting Requirements of Child Abuse and Neglect. **(December 19, 2011)**

**Executive Order 55.** Relating to a Proclamation that the Flag of the United States and the Flag of the State of Wisconsin be Flown at Half-Staff as a Mark of Respect for Staff Sergeant Joseph J. Altmann of the United States Army Who Lost His Life While Serving His Country During Operation Enduring Freedom-Afghanistan. **(January 4, 2012)**

**Executive Order 56.** Relating to the Creation of the College and Workforce Readiness Council. **(January 13, 2012)**



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