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## WISCONSIN ADMINISTRATIVE REGISTER

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Questions, comments, or corrections should be directed to:

Bruce Hoesly (608) 266-7590  
email: [bruce.hoesly@legis.wisconsin.gov](mailto:bruce.hoesly@legis.wisconsin.gov)

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## Emergency Rules Now in Effect

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

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

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

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

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

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

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

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### Administration (2)

**1. EmR1305** — The Department of Administration hereby adopts an order to repeal **Adm 2.14 (2) (vr) c.**; to renumber and amend **Adm 2.14 (2) (vr) a. and b.**; to amend **Adm 2.02 (1) (a), 2.04 (1), 2.04 (2), (3), (5), and (7), 2.07 (2), 2.08 (1) and (1) (d), 2.11, 2.14 (2), (2) (v), (2) (vm) and (2) (vm) 5.; and to create Adm 2.03 (3m), (3r), and (6m), 2.04 (1m) and (1r)**, relating to facility use.

The statement of scope for this rule, SS 028–13, was approved by the Governor on March 15, 2013, and published in Register No. 687 on March 31, 2013. This emergency rule was approved by the Governor on April 11, 2013.

#### Finding of Emergency

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

state. Section 16.845, Wis. Stats., and s. Adm 2.04, Wis. Adm Code.

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

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

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

Occupation of the Capitol rotunda and other areas has caused disruptions to the properly permitted events and normal government activities, including but not limited to, a Red Cross blood drive, a high school science exhibit, school group tours, general public tours, and legislative committee meetings and sessions. The State does not refuse permits for the lawful and safe use of State facilities by any group or groups. Neither can the State allow any group to occupy the Capitol in disregard of the rights of permit holders, public employees or visitors. It is imperative that the Department continue to gain greater compliance from user groups in order to protect the public safety and welfare.

<b>Filed with LRB:</b>	<b>April 15, 2013</b>
<b>Publication Date:</b>	<b>April 16, 2013</b>
<b>Effective Dates:</b>	<b>April 16, 2013 through September 12, 2013</b>
<b>Hearing Date:</b>	<b>July 12, 2013</b>

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

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

#### Finding of Emergency

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

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

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

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## Children and Families

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

**EmR1216** — The Wisconsin Department of Children and Families orders the creation of **section DCF 201.04 (2j)**, relating to circumstances for a waiver to allow child care subsidy payments for a parent who is a child care provider and affecting small businesses.

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

The statement of scope for this rule, SS 054–12, was approved by the governor on July 30, 2012, published in Register No. 680 on August 14, 2012, and approved by Secretary Eloise Anderson on August 27, 2012.

#### **Finding of Emergency**

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

Section 49.155 (3m) (d), Stats., as affected by 2011 Wisconsin Act 32, provides that no child care subsidy funds may be used for child care services that are provided for a child by a child care provider who is the parent of the child or who resides with the child. In addition, no child care subsidy funds may be used for child care services that are provided by another child care provider if the child's parent is a child care provider. The prohibition on assistance does not apply if the child's parent has applied for, and been granted, a waiver. Implementation of an emergency rule specifying the circumstances under which the department or an agency will grant a waiver is necessary to protect certain vulnerable children.

**Filed with LRB:** November 13, 2012  
**Publication Date:** November 15, 2012  
**Effective Dates:** November 15, 2012 through April 13, 2013  
**Extension Through:** August 11, 2013  
**Hearing Date:** January 14, 2013

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## Employment Relations Commission

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

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

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

#### **Finding of Emergency**

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

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

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## Insurance

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

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

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

#### **Finding of Emergency**

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

These changes must be in place with an effective date prior to July 1, 2013, in order for the new fiscal year assessments to be issued in accordance with s. 655.27 (3), Wis. Stats. The permanent rule-making process cannot be completed prior to the effective date of the new fee schedule. The fiscal year fund fees were established by the Board of Governors at the meeting held on December 19, 2012, and the mediation panel fees were established by the Board of Governors at the meeting held on March 20, 2013.

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



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## Natural Resources (3)

### *Fish, Game, etc., Chs. NR 1—*

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

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

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

#### Finding of Emergency

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

**Filed with LRB: August 15, 2012**

**Publication Date: August 18, 2012**

**Effective Dates: August 18, 2012 through the date on which the permanent rules take effect, as provided in 2011 Wisconsin Act 169, section 21.**

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

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

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

#### Finding of Emergency

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

**Filed with LRB: September 14, 2012**

**Publication Date: October 1, 2012**

**Effective Dates: October 1, 2012 through the date on which the permanent rules take effect, as provided in 2011 Wisconsin Act 169, section 21.**

**3. EmR1304** (DNR # FH-23-12(E)) — The Wisconsin Natural Resources Board proposes an order to amend **sections NR 20.20 (73) (m) 4., 25.06 (1) (a), and 25.09 (1) (am) 3. e.**, relating to lake trout harvest limits in Lake Superior.

The statement of scope for this rule, SS 097-12, was approved by the Governor on December 14, 2012, published in Register No. 684 on December 31, 2012, and approved by the Natural Resources Board on January 23, 2013.

#### Finding of Emergency

Pursuant to s. 227.24, Stats., the department finds that an emergency exists and that this rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. The welfare of state-licensed commercial fishers, tribal commercial fishers, recreational anglers, and associated businesses is threatened by a decline in the lake trout population in the Apostle Islands vicinity of Lake Superior. The continued, persistent decline in lake trout population abundances and predicted further declines necessitate the current reductions in order to ensure a sustainable lake trout fishery over the long-term. Lake trout harvest limits were negotiated in October 2012 among the Department of Natural Resources and the Red Cliff and Bad River Bands of Lake Superior Chippewa and those changes must be ordered through administrative code. This emergency rule is needed to preserve the public welfare.

**Filed with LRB: March 9, 2013**

**Publication Date: March 27, 2013**

**Effective Dates: March 27, 2013 through August 23, 2013**

**Hearing Date: April 11, 2013**

**Extension Through: October 22, 2013**

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## Public Instruction

**EmR1303** — The state superintendent of public instruction hereby creates **ch. PI 47**, relating to the equivalency process for approving alternative models to evaluate educator practice.

The scope statement for this rule, SS 013-13, was published in Register No. 686, on February 14, 2013, and approved by Superintendent Evers, on February 25, 2013. Per the Dane County Circuit Court order issued in *Coyne, et al. v. Walker, et al.*, Case No. 11-CV-4573, the Department of Public Instruction is not required to get the Governor's approval for the statement of scope or this rule.

#### Finding of Emergency

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

Section 115.415 (3), Stats., requires the department to establish an equivalency process for reviewing alternative educator effectiveness systems. The statute also specifies criteria on which the process shall be based, including alignment to the 2011 Interstate Teacher Assessment and Support Consortium and the 2008 Interstate School Leaders Licensure Consortium Educational Leadership Policy Standards. Additionally, the statute explains certain approval requirements.

The Educator Effectiveness System will be fully implemented and mandatory throughout the entire state by the 2014-15 school year. The pilot, which allows schools and districts to implement the system and inform modifications, will go into effect during the 2013-14 school year.

In order to have possible alternative models available for pilot use in 2013-14, there is an urgent need to get the equivalency process in place to approve other evaluation

models. Districts intending on applying for an equivalency review of an alternative model must alert the department in writing by March 15, 2013, and January 15 each subsequent year. They must submit their application by April 15 of this year and March 15 each subsequent year in order to be approved.

**Filed with LRB:** March 4, 2013  
**Publication Date:** March 8, 2013  
**Effective Dates:** March 8, 2013 through August 4, 2013.  
**Hearing Date:** June 6, 2013

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

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

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

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

#### Finding of Emergency

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

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

**Filed with LRB:** February 14, 2013  
**Publication Date:** February 14, 2013  
**Effective Dates:** February 14, 2013 through July 13, 2013  
**Hearing Date:** April 30, 2013  
**Extension Through:** September 10, 2013

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

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

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

#### Finding of Emergency

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

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

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

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

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

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

#### Finding of Emergency

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

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

Section SPS 34.04 currently accepts only those certifier applicants who have received training as a police or security firearms instructor and who have either (1) current approval as a firearms instructor by the Wisconsin Law Enforcement Standards Board (LESB); (2) current certification as a law enforcement firearms instructor by the National Rifle

Association, Inc., (NRA) or; (3) approval on or after January 1, 1995, as a firearms instructor by the LESB or NRA and have completed a refresher course presented by a regional training school approved by the LESB or the NRA.

Due to enactment of 2011 Wisconsin Act 35 (commonly referred to as the concealed carry law), which became effective on November 1, 2011, there is a greater need for additional entities who can provide training and approve applicants as firearms proficiency certifiers. Section 175.60 (4) of the Statutes currently allows technical colleges, colleges, and universities to provide this training for concealed-carry purposes. No such provision is made as it relates to private security personnel, private detectives, and private investigators or special investigators, for carrying a

weapon openly. Moreover, the training needed for DSPS firearms certifiers differs significantly from that needed and provided by the LESB curriculum and under 2011 Act 35. To that end, a new standard needs to be developed and implemented, separate and distinct from the LESB standards. Because the need to approve applicants for firearm proficiency certifiers is immediate and pressing, emergency rules are warranted.

**Filed with LRB: June 13, 2013**  
**Publication Date: June 13, 2013**  
**Effective Dates: June 13, 2013 through November 9, 2013**

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## Scope Statements

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### Government Accountability Board

SS 080-13

This statement of scope was approved by the governor on July 11, 2013.

#### Rule No.

Revises sections GAB 6.03 and 9.03.

#### Relating to

Assistance by government accountability board staff and voting procedures for challenged electors.

#### Rule Type

Permanent.

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

N/A

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

The proposed change to s. GAB 6.03, Wis. Adm. Code, is simply to amend statutory references that occurred with the adoption of 2007 Wisconsin Act 1. The proposed change to s. GAB 9.03, Wis. Adm. Code, removes a single reference to “lever” voting machines which are no longer permitted in Wisconsin.

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

The proposed revisions do not result in any policy changes. The changes bring the rules into conformity with current Wisconsin statutes.

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

Section 5.05 (1) (f), Stats., expressly authorizes the Board to promulgate rules under ch. 227, Stats., for the purpose of interpreting or implementing the laws regulating the conduct of elections or election campaigns or ensuring their proper administration.

Section 5.05 (6a), Stats., permits the Board to authorize staff to provide informal opinions to individuals requesting advice. In s. GAB 6.03 the Board has authorized the staff to provide these informal opinions.

Section 6.95, Stats., provides procedures for challenged electors to cast a ballot. In s. GAB 9.03, additional detail is provided on the voting procedures for challenged electors.

Section 227.11 (2) (a), Stats., expressly authorizes the Board to promulgate rules to interpret the provisions of statutes the Board enforces or administers.

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

10-15 hours.

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

This will affect individuals requesting advice from the Government Accountability Board staff and challenged electors.

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

Requests for assistance from the Government Accountability Board staff and voting procedures for challenged electors are state and local functions, not functions of the federal government. Federal regulations do not govern on these matters.

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

There is no economic impact anticipated to implement the rule changes.

#### 9. Contact Person

Michael Haas, 608-266-0136, [michael.haas@wisconsin.gov](mailto:michael.haas@wisconsin.gov).

### Government Accountability Board

SS 081-13

This statement of scope was approved by the governor on July 11, 2013.

#### Rule No.

Amends section GAB 20.01 and repeals sections GAB 21.01 and 21.04

#### Relating to

Complaint procedure and enforcement of campaign finance, lobbying, and ethics laws relating to ss. 5.05 (1) (f), 5.05 (2) (m), 5.93, 11.60, 13.69, 19.55, 227.11 (2) (a), Stats., and interpreting Subchapter I of Chapter 5 of the Wisconsin Statutes.

#### Rule Type

Permanent.

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

N/A

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

This rule repeals rules ss. GAB 21.01 and 21.04 and amends s. GAB 20.01 as they are no longer operable subsequent to the merger of the State Ethics Board with the State Elections Board under 2007 Wisconsin Act 1. These rules prescribe procedures relating to processing complaints that were propagated under those particular state agencies. Because those agencies merged into the Government

Accountability Board under 2007 Wisconsin Act 1, the associated complaint procedure of the former Ethics Board and the campaign finance complaint procedure of the former Elections Board are no longer consistent with current practices. The Government Accountability Board complaint procedures are provided by statute and not by administrative rule; therefore, the existing rules need to be repaired and repealed.

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

Existing policy: The existing policy prescribes rules that were intended for agencies that no longer exist and delineate complaint procedures that are inaccurate (e.g., the GAB address that is given in s. GAB 21.01 is not the address of the GAB's current location) or are superfluous to procedures that are prescribed in state statutes.

Proposed policy: Repealed ss. GAB 21.01 and 21.04 will reconcile the administrative code with the statutory changes that have occurred since 2007 and the amended s. GAB 20.01 will accurately describe the provisions in the state statutes consistent with the complaint procedures currently in effect at the Government Accountability Board.

#### Alternatives:

A) Do Nothing — leave chapters GAB 20 and 21 as they are.

1) Pros: This alternative means that no rule revision is necessary and staff resources will not be diverted from other tasks and duties needing the attention of the GAB.

2) Cons: The absence of rule revision and repeal in this instance will perpetuate out of date procedures and leave intact inaccurate rules in the administrative code.

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

Section 5.05 (1) (f), Stats., expressly authorizes the Board to promulgate rules under ch. 227, Stats., for the purpose of interpreting or implementing the laws regulating the conduct of elections or election campaigns or ensuring their proper administration.

Section 5.93, Stats., establishes that the board may promulgate "reasonable rules" for its administration.

Section 227.11 (2) (a), Stats., expressly authorizes the Board to promulgate rules to interpret the provisions of statutes the Board enforces or administers.

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

10–15 hours

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

This rule will affect those wishing to file complaints with the Board pursuant to enforcement of the election laws and in compliance with the Help America Vote Act.

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

Because this proposal repeals two existing former Ethics Boards rules and effectively repeals a portion of a former

Elections Board rule, there is no congruent federal regulation for comparison.

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

The anticipated economic impact from the implementation of the proposed order is minimal to none.

### **9. Contact Person**

Shane Falk, 608–266–2094, [shane.falk@wisconsin.gov](mailto:shane.falk@wisconsin.gov).

## **Natural Resources**

### *Fish, Game, etc., Chs. 1 —*

SS 082–13

(DNR # WM–21–13)

This statement of scope was approved by the governor on July 15, 2013.

### **Rule No.**

Modifying Chapters NR 10 and 45

### **Relating to**

Hunting and trapping in state parks.

### **Rule Type**

Permanent.

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

These will be permanent rules.

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

These will be the first rule revisions related to hunting and trapping in state parks since passage of 2011 Act 168 which established that those activities are generally allowed. These rules will amend or repeal portions of chs. NR 10 and 45 so that hunting regulations promulgated under previous statutory authority will be consistent with the act. These rules will amend the same chapters so that hunting and trapping regulations in state parks are not in conflict with policies established by the Natural Resources Board under authority created by the act. Through this proposal, the department may significantly simplify hunting regulations.

For safety purposes, these rules may prohibit the discharge of firearms from—or—across certain trails. These rules may restrict trapping to the use of dog proof traps only and define those traps.

The department will not use this rulemaking to establish new season dates or to modify periods when hunting and trapping are allowed in state parks.

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

Prior to 2011 Act 168, state parks were statutorily closed to hunting unless the department had written rules specifically allowing a hunting opportunity at an individual state park. Statutes did not grant rule authority for the department to allow bear hunting. Statutes did not grant rule authority to allow trapping. Today, hunting and trapping are both allowed at state parks except where the Natural Resources Board has prohibited the activities in order to protect public safety or a unique plant or animal community. Under Act 168, the

Department may prohibit hunting or trapping on lands within 100 yards of a designated use area. Examples of designated use areas include locations such as campgrounds and beaches.

Because the old presumption that state parks are closed unless opened by rule has been replaced by a presumption that state parks are open unless board action has been taken to close them, some provisions of administrative rule have been pre-empted by the actor may no longer be needed. For example, s. NR 45.09 (1) prohibits firearms discharge in state parks, except where seasons have been established in s. NR 10.01 (3). This is no longer accurate because hunting is now allowed in many areas in addition to those established in s. NR 10.01 (3).

Rules which establish certain small game hunting seasons at Governor Dodge, Mill Bluff, and Mirror Lake state parks may be in conflict with actions that have already been taken by the board under their new statutory authority. These rules will be reviewed.

State Ice Age Trail Areas fall under the statutory definition of state parks and are affected by the act in the same way as other state park properties. Specific hunting season frameworks and firearm possession and discharge restrictions established in s. NR 10.275 (4) will also be modified for consistency with the act and subsequent action by the Natural Resources Board or may be repealed.

Other state trails and the North Country trail are also part of the state park system and these rules could apply to those properties as well.

Under previous statutory authority to allow turkey hunting at state parks, the department has established 18 state park turkey management units by rule. The only people who are allowed to hunt in those parks are people who draw one of a limited number of turkey permits specifically for that unit. Through these rules, the department proposes simplifying turkey hunting regulations by eliminating those units. Turkey hunting would be allowed at those parks by hunters who possess a harvest permit for the larger unit in which the state park property is located. This will simplify hunting regulations, expand the area for which turkey permits are valid, and streamline administration of the turkey permit system for the department. Through the hearing process, this proposal will be compared to the policy alternative of maintaining current rules, which some hunters may appreciate because competition from other hunters in a park is limited through the permit system.

Under previous statutory authority to allow deer hunting at state parks, the department has established 16 state park deer management units by rule. The only people who are allowed to hunt in parks for which a specific deer management unit is designated are people who purchase an access permit. Access permits are limited in number and issued on a first-come-first served basis. Through this rulemaking process, the department will evaluate simplifying hunting regulations by eliminating the access permit requirement and simply allowing deer hunting by anyone who possess the correct carcass tags for the surrounding deer unit. This will simplify hunting regulations, expand the area for which antlerless deer permits are valid, and streamline administration of permit systems for the department. Through the hearing process, this proposal will be compared to the policy alternative of maintaining current rules, which some hunters may appreciate because competition from other hunters in a park is limited through the access permit system.

Also under previous statutory authority, another 25 state parks are listed by rule and deer hunting seasons are established, although they do not have specific unit designations. Instead, they are simply a part of the surrounding deer management unit. Specifically naming these state parks by rule is no longer necessary and this rule proposal will strike most of that language.

These rules will establish that, in addition to the statutorily established prohibition of hunting from certain state park trails, no person may discharge a firearm, bow, crossbow or air gun from, on, or across any trail corridor on lands in the Wisconsin State Park system which are identified on a map produced by the department as a designated use area. This provision protects public safety by reducing the likelihood of archery gear and gun discharge from or across locations where people are likely to be present.

These rules may restrict trapping to the use of dog proof traps only and define those traps or modify existing trap-type definitions. A type of trap that would meet the requirements of being a "dog proof trap" is an "enclosed trigger trap". These are any trap with a pull-activated trigger, inside an enclosure, and recessed 1 1/4 inches or more, from an opening that is no greater than 1 3/4 inches in diameter. While these trap types are very effective for catching raccoons, they may be the only animal that is capable of activating the trigger and being captured.

Under 2011 Acts 35 and 51, the possession of concealed handguns and firearms transportation requirements have changed and this proposal will update administrative code to reflect those changes.

The department will consider creating, repealing, or amending other rules where an opportunity to simplify or clarify regulations is identified during this rule making process.

These rules will modify additional chapters of natural resources code where it is necessary to maintain cross references with chs. NR 10 and 45.

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

The state trails system and department responsibilities and powers are established in s. 23.175, Stats. State trails are described as part of the state park system in sub. (2) (a).

The state park system is established in s. 27.01, Stats. and specific authority for the department to promulgate rules necessary to govern the conduct of state park visitors and for the protection of state parks is found in sub. (2) (j).

The department's authority to establish and maintain open and closed seasons for fish and game and any bag limits, size limits, rest days and conditions governing the taking of fish and game is established in s. 29.014, Stats.

These proposed rules may use the statutory authority described above to interpret s. 29.089, Stats., related to trapping on land in state parks. This provision establishes that state parks are open to hunting and trapping and that the department may prohibit hunting or trapping in a park or portion of a park if necessary to protect public safety or a unique animal or plant community.

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

The department estimates that 400 hours of employee time will be needed to promulgate these rules.

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

Hunters, trappers, and other recreational users of state park lands are the principal groups that will be affected by this rulemaking. However, the department anticipates that the impacts of these rules for various state park enthusiasts will be minimal. The major policy decisions were made with the passage of 2011 Act 168 and refined through decisions made by the Natural Resources Board using authority established in the act. Any impacts of this subsequent rule making are likely to be minor.

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

Federal regulations allow states to manage the wildlife resources located within their boundaries provided they do not conflict with regulations established in the Federal Register. None of these rule changes violate or conflict with the provisions established in the Federal Code of Regulations.

## 8. Anticipated economic impact of implementing the rule (note if the rule is likely to have a significant economic impact on small businesses)

These rules, and the legislation which grants the department rule making authority, will have no effect on the private sector or small businesses. These rules are applicable to individual sportspersons and impose no compliance or reporting requirements for small business.

Significant policy decisions that could potentially result in increased use of state parks by some users or decreased use by other users were made with enactment of 2011 Act 168 and again when the Natural Resources Board developed policies under authority of the act. These rules will not have significant additional impacts on the use of the state park system or the related economic activity of park users.

This is not a complete estimate of economic impacts but, rather, a summary which indicates that these rules could have none or a minimal economic effect locally or statewide. A 14 day comment period to gather public information will be sufficient to assist in the preparation of a final economic impact analysis.

## 9. Contact Person

Scott Loomans, 608-267-2452.

### Natural Resources

*Fish, Game, etc., Chs. 1 —*

SS 083-13

(DNR # WM-22-13 (E))

This statement of scope was approved by the governor on July 15, 2013.

### Rule No.

Modifying Chapters NR 10 and 45.

### Relating to

Hunting and trapping in state parks.

### Rule Type

Emergency.

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

This rule is necessary to protect the public safety and welfare of visitors to Wisconsin State Park properties by restricting gun and archery shooting activities in certain areas and trapping activities to certain methods.

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

These will be the first rule revisions related to hunting and trapping in state parks since passage of 2011 Act 168 which established that those activities are generally allowed.

For safety purposes, these rules may prohibit the discharge of firearms from—or—across certain trails. These rules may restrict trapping to the use of dog proof traps only and define those traps.

The department will not use this rulemaking to establish new season dates or to modify periods when hunting and trapping are allowed in state parks.

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

Prior to 2011 Act 168, state parks were statutorily closed to hunting unless the department had written rules specifically allowing a hunting opportunity at an individual state park. Statutes did not grant rule authority for the department to allow bear hunting. Statutes did not grant rule authority to allow trapping. Today, hunting and trapping are both allowed at state parks except where the Natural Resources Board has prohibited the activities in order to protect public safety or a unique plant or animal community. Under Act 168, the Department may prohibit hunting or trapping on lands within 100 yards of a designated use area. Examples of designated use areas include locations such as campgrounds, certain hiking trails and beaches.

The act allowed the department to prohibit hunting in designated use areas. For safety purposes, these rules would also prohibit the discharge of firearms, air—guns, bows, and crossbows from—or—across trails. For instance, under these rules, it would be illegal to discharge a firearm from an area where hunting is allowed to another area where hunting is allowed if the two areas are separated by a designated hiking trail.

These rules may restrict trapping to the use of dog proof traps only and define those traps or modify existing trap—type definitions. A type of trap that would meet the requirements of being a “dog proof trap” is an “Enclosed trigger trap”. These are any trap with a pull—activated trigger, inside an enclosure, and recessed 1 1/4 inches or more, from an opening that is no greater than 1 3/4 inches in diameter. While these trap types are very effective for catching raccoons, they may be the only animal that is capable of activating the trigger and being captured. These rules may allow additional trap types in certain situations where the traps are submerged by water.

The effective dates of this rule will be delayed so that the provisions will be in effect for as long as possible while permanent rules are being promulgated.

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

The state trails system and department responsibilities and powers are established in s. 23.175, Stats. State trails are described as part of the state park system in sub. (2) (a).

The state park system is established in s. 27.01, Stats., and specific authority for the department to promulgate rules

necessary to govern the conduct of state park visitors and for the protection of state parks is found in sub. (2) (j).

The department's authority to establish and maintain open and closed seasons for fish and game and any bag limits, size limits, rest days and conditions governing the taking of fish and game is established in s. 29.014, Stats.

These proposed rules may use the statutory authority described above to interpret s. 29.089, Stats. related to trapping on land in state parks. This provision establishes that state parks are open to hunting and trapping and that the department may prohibit hunting or trapping in a park or portion of a park if necessary to protect public safety or a unique animal or plant community.

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

The department estimates that 200 hours of employee time will be needed to promulgate these rules.

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

Hunters, trappers, and other recreational users of state park lands are the principal groups that will be affected by this rulemaking. However, the department anticipates that the impacts of these rules for various state park enthusiasts will be minimal. The major policy decisions were made with the passage of 2011 Act 168 and refined through decisions made by the Natural Resources Board using authority established in the act. Any impacts of this subsequent rule making are likely to be minor.

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

Federal regulations allow states to manage the wildlife resources located within their boundaries provided they do not conflict with regulations established in the Federal Register. None of these rule changes violate or conflict with the provisions established in the Federal Code of Regulations.

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

These rules, and the legislation which grants the department rule making authority, will have no effect on the private sector or small businesses. These rules are applicable to individual sportspersons and impose no compliance or reporting requirements for small business.

Significant policy decisions that could potentially result in increased use of state parks by some users or decreased use by other users were made with enactment of 2011 Act 168 and again when the Natural Resources Board developed policies under authority of the act. These rules will not have significant additional impacts on the use of the state park system or the related economic activity of park users.

This is not a complete estimate of economic impacts but, rather, a summary which indicates that these rules could have none or a minimal economic effect locally or statewide. A 14 day comment period to gather public information will be sufficient to assist in the preparation of a final economic impact analysis.

#### **9. Contact Person**

Scott Loomans, 608-267-2452

#### **Public Instruction**

SS 085-13

Per the Dane County Circuit Court order issued in Coyne, et al. v. Walker, et al., Case No. 11-CV-4573, the Department of Public Instruction is not required to obtain the Governor's approval for this statement of scope.

#### **Rule No.**

Revises Chapter PI 15.

#### **Relating to**

Revenue limit exemptions for energy efficiencies.

#### **Rule Type**

Permanent.

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

N/A

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

This rule change will modify ch. PI 15 to reflect changes in the corresponding statutes as a result of 2011 Wisconsin Act 32 and 2013 Wisconsin Act 20. The rule will also be updated to reflect other statutory changes and agency practice.

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

Chapter PI 15 was promulgated on March 1, 2010. This rule change is designed to modify the existing rule so that the rule is reflective of current law.

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

Under s. 227.11 (2) (a) (intro), Stats., "Each agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute, but a rule is not valid if the rule exceeds the bounds of correct interpretation." As such, a rule is required to effectively implement and provide transparency to the revenue limit exemptions for energy efficiencies under s. 121.91 (4) (o), Stats.

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

The amount of time needed for rule development by department staff and the amount of other resources necessary are minimal.

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

This rule change will affect school districts.

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

N/A.



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

The proposed rules will have no significant economic impact on small businesses, as defined in s. 227.114 (1), Stats.

**9. Contact Person**

Katie Schumacher, Bureau for Policy and Budget, 267-9127, or [katie.schumacher@dpi.wi.gov](mailto:katie.schumacher@dpi.wi.gov).

**Public Instruction**

SS 086-13

Per the Dane County Circuit Court order issued in Coyne, et al. v. Walker, et al., Case No. 11-CV-4573, the Department of Public Instruction is not required to obtain the Governor's approval for this statement of scope.

**Rule No.**

Revises Chapter PI 35.

**Relating to**

Milwaukee Parental Choice Program.

**Rule Type**

Permanent.

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

N/A.

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

Section 119.23 (11) (a), Stats., requires the DPI to promulgate rules to implement and administer the Milwaukee Parental Choice Program. The 2013-15 budget, 2013 Wisconsin Act 20, made several modifications to the Milwaukee Parental Choice Program. The rule needs to be updated to reflect statutory changes and changes in practice.

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

The DPI is proposing to update Ch. PI 35 so that it reflects how the Milwaukee Parental Choice Program is implemented and administered. The alternative to not updating this rule is to have an administrative rules chapter that is outdated.

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

**119.23 Milwaukee parental choice program.**

(11) The department shall do all of the following:

(a) Promulgate rules to implement and administer this section. The department may not by rule establish standards under sub. (7) (am) that exceed the standards established by the American Institute of Certified Public Accountants.

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

The amount of time needed for rule development by department staff and the amount of other resources necessary is indeterminate.

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

Private schools participating in the Milwaukee Parental Choice Program will be impacted by this rule change.

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

N/A.

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

The proposed rules will have no significant economic impact on small businesses, as defined in s. 227.114 (1), Stats.

**9. Contact Person**

Katie Schumacher, Bureau for Policy and Budget, 267-9127, or [katie.schumacher@dpi.wi.gov](mailto:katie.schumacher@dpi.wi.gov).

**Public Instruction**

SS 087-13

Per the Dane County Circuit Court order issued in Coyne, et al. v. Walker, et al., Case No. 11-CV-4573, the Department of Public Instruction is not required to obtain the Governor's approval for this statement of scope.

**Rule No.**

Creates Chapter PI 48.

**Relating to**

Parental Choice Program for Eligible School Districts and Other School Districts.

**Rule Type**

Emergency and Permanent.

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

The 2011-13 budget, 2011 Wisconsin Act 32, created the Parental Choice Programs for Eligible School Districts under s. 118.60, Stats. The 2013-15 budget, 2013 Wisconsin Act 20, significantly modified s. 118.60, Stats., including creating the Parental Choice Program for Eligible School Districts and Other School Districts. Section 118.60 (11) (a), Stats., requires the DPI to promulgate rules to implement and administer both programs. Unless a new rule is in place, DPI may be prevented from efficiently implementing and administering these programs.

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

The 2011-13 budget, 2011 Wisconsin Act 32, created the Parental Choice Programs for Eligible School Districts under s. 118.60, Stats. The 2013-15 budget, 2013 Wisconsin Act 20, significantly modified s. 118.60, Stats., including creating the Parental Choice Program for Eligible School Districts and Other School Districts. The DPI is proposing to create a rule to govern the implementation and administration of both programs.

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

The DPI is proposing to create a rule, Chapter PI 48, to implement and administer the Parental Choice Program for

Eligible School Districts and Other School Districts based on s. 118.60, Stats. Without a rule, the DPI will not be able to provide transparency in how it is implementing and administering these programs.

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

The DPI is explicitly required by statute to create a rule to implement and administer s. 118.60, Stats. Specifically, s. 118.60 (11) (a), Stats., provides:

##### **118.60 Parental choice program for eligible school districts and other school districts.**

(11) The department shall do all of the following:

(a) Promulgate rules to implement and administer this section. The department may not by rule establish standards under sub. (7) (am) that exceed the standards established by the American Institute of Certified Public Accountants.

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

The amount of time needed for rule development by department staff and the amount of other resources necessary is indeterminate.

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

Private schools participating in these programs will be impacted by this rule.

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

N/A.

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

The proposed rules will have no significant economic impact on small businesses, as defined in s. 227.114 (1), Stats.

#### **9. Contact Person**

Katie Schumacher, Bureau for Policy and Budget, 267-9127, or [katie.schumacher@dpi.wi.gov](mailto:katie.schumacher@dpi.wi.gov).

### **Public Service Commission**

SS 079-13

(PSC Docket # 1-AC-242)

This statement of scope was approved by the governor on July 2, 2013.

#### **Rule No.**

Revises Chapter PSC 111.

#### **Relating to**

The electronic delivery of applications for a Certificate of Public Convenience and Necessity (CPCN).

#### **Rule Type**

Permanent.

#### **1. Description of the objective of The Rule and Expected Financial Impact**

Currently, s. 196.491, Stats., requires the commission to send a copy of an application for a Certificate of Public Convenience and Necessity (CPCN) to clerks and public libraries. While s. PSC 111.51 (4) currently requires the commission to send an electronic copy of an initial CPCN application to municipal and town clerks and public libraries, it requires the commission to send a paper copy of a completed application.

2013 Wisconsin Act 10 made changes to s. 196.491, Stats., to require the commission to send an electronic copy of both an initial and a completed CPCN application to clerks and public libraries. Upon request, the commission is also required to send a paper copy of the application. This rulemaking will make the 2013 Wisconsin Act 10 changes to s. PSC 111.51 (4). No financial impact is expected.

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

This rulemaking is being undertaken in order to conform s. PSC 111.51 with changes made by 2013 Wisconsin Act 10.

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

This rule is authorized under ss. 196.02 (1) and (3), 196.491 (3) (a), and 227.11, Stats.

Section 227.11, Stats., authorizes agencies to promulgate administrative rules. Section 196.02 (1), Stats., authorizes the commission to do all things necessary and convenient to its jurisdiction. Section 196.02 (3), Stats., grants the commission specific authority to promulgate rules. Section 196.491 (3) (a), Stats., references commission rules about certificates of public convenience and necessity.

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

Approximately 80 hours of state employee time will be spent developing and processing the rule. No additional resources should be necessary.

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

The commission, municipal, town and county clerks, and county main public libraries.

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

None.

#### **7. Contact Person**

Scot Cullen, Docket Coordinator  
(608) 267-9229 or  
[scot.cullen@wisconsin.gov](mailto:scot.cullen@wisconsin.gov).

### **Revenue**

SS 084-13

This statement of scope was approved by the governor on July 15, 2013.

**Rule No.**

Revises section Tax 18.05.

**Relating to**

Assessment of agricultural property.

**Rule Type**

Permanent.

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

The proposed rule will amend s. Tax 18.05 (1) to provide further clarity regarding what land in federal and state pollution control and soil erosion programs should be classified as agricultural property that qualifies for use-value assessment.

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

Section Tax 18.05 (1) currently defines what land in specific federal and state pollution control and soil erosion programs qualifies for agricultural use. This listing has not been updated since 2000.

The proposed rule will address changes in the listed programs that have occurred since the rule was enacted and will also identify general criteria for determining what land that is in federal and state pollution control and soil erosion programs qualifies for agricultural use under the subchapter. This will provide consistency and clear standards for property owners and assessors.

**3. Detailed explanation of statutory authority for the rule (including the statutory citation and language)**

Section 70.32 (2) (c) 1i., Stats., reads:

“Agricultural use” means agricultural use as defined by the department of revenue by rule and

includes the growing of short rotation woody crops, including poplars and willows, using agronomic practices.

Section 70.32 (2) (c) 1i., Stats., authorizes the department to promulgate a definition of agricultural use. This definition is found in s. Tax 18.05 (1). The proposed rule will merely modify the definition of agricultural use as described in parts 1 and 2 above.

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

The department estimates it will take approximately 200 hours to develop the rule.

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

Property owners and property assessors.

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

Property assessment is not regulated by federal statutes or regulations.

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

The proposed rule will have minimal or no economic impact.

The rule will have no economic impact on small business.

**8. Contact Person**

Nate Ristow, (608) 266-6466 or Dale Kleven, (608) 266-8253.

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# Submittal of Proposed Rules to Legislative Council Clearinghouse

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

## Natural Resources

### *Environmental Protection — General, Chs. 100—*

#### CR 13–054

(DNR # WT–29–09)

On July 11, 2013, the Department of Natural Resources submitted a proposed rule to the Legislative Council Clearinghouse.

This rule is not subject to s. 227.135 (2), Stats., as affect by 2011 Wis. Act 21. The scope statement for this rule, published in Register No. 653 on May 14, 2010, was sent to LRB prior to June 8, 2011, the effective date of Act 21.

#### Analysis

The proposed rule revises Chapter NR 114, subchapter I, relating to certification of wastewater treatment system and plant operators.

#### Agency Procedure for Promulgation

Public hearings will be held August 13, 16, 27, 28, and 29, 2013.

#### Name and Organizational Unit of Agency Contact

Jack Saltes  
Bureau of Water Quality  
P.O. Box 7921  
101 South Webster Street  
Madison, WI 53707  
[jack.saltes@wisconsin.gov](mailto:jack.saltes@wisconsin.gov)

## Safety and Professional Services

### *Professional Services, Chs. 1—299*

#### CR 13–053

On July 9, 2013, the Department of Safety and Professional Services submitted a proposed rule to the Legislative Council Rules Clearinghouse.

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

#### Analysis

Statutory Authority: Sections 227.11 (2) (a), 440.03 (1), and 458.12, Stats.

This proposed rule-making order repeals s. SPS 81.04 (1) (c) 3. and 4. and amends s. SPS 81.04 (2), relating to reciprocity for real estate appraisers.

## Agency Procedure for Promulgation

A public hearing is required and will be held on August 12, 2013, at 1400 East Washington Avenue, Room 121A, Madison, Wisconsin (enter at 55 North Dickinson Street).

#### Contact Person

Shawn Leatherwood Department of Safety and Professional Services, Division of Policy Development, 608–261–4438 [shancethea.leatherwood@wisconsin.gov](mailto:shancethea.leatherwood@wisconsin.gov).

Shancethea Leatherwood

Division of Policy Development

Wisconsin Department of Safety and Professional Services  
P.O. Box 8935

Madison, WI 53703–8935

Office: 608–261–4438

Fax: 608–267–3816.

## Safety and Professional Services

### *Professional Services, Chs. 1—299*

#### CR 13–056

On July 12, 2013, the Department of Safety and Professional Services submitted a proposed rule to the Legislative Council Rules Clearinghouse.

The scope statement for this rule, SS 093–12, was approved by the Governor on December 4, 2012, published in Register No. 684 on December 31, 2012, and approved by the Department on May 30, 2013.

#### Analysis

Statutory Authority: ss. 15.405 (3), 480.08 (6), Stats.

This proposed rule-making order revises s. SPS 128.04, relating to course instructors for auctioneers.

#### Agency Procedure for Promulgation

A public hearing is required and will be held on October 15, 2013, at 1400 East Washington Avenue, Room 121A, Madison, Wisconsin (enter at 55 North Dickinson Street).

#### Contact Person

Shawn Leatherwood, Department of Safety and Professional Services, Division of Policy Development, 608–261–4438 [shancethea.leatherwood@wisconsin.gov](mailto:shancethea.leatherwood@wisconsin.gov).

Shancethea Leatherwood

Division of Policy Development

Wisconsin Department of Safety and Professional Services  
P.O. Box 8935

Madison, WI 53703–8935

Office: 608–261–4438

Fax: 608–267–3816.

**Safety and Professional Services — Massage  
Therapy and Bodywork Therapy Affiliated  
Credentialing Board  
CR 13-055**

On July 12, 2013, the Massage Therapy and Bodywork Therapy Affiliated Credentialing Board submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

The scope statement for this rule, SS 007-12, was approved by the Governor on January 13, 2012, published in Register No. 674 on February 14, 2012, and approved the Board on June 28, 2013.

**Analysis**

Statutory Authority: ss. 15.085 (5) (b), 460.04 (2), 460.10 (1), Stats., and 2009 Wisconsin Act 355.

This proposed rule-making order revises Chapters MTBT

1 to 7, relating to temporary licensure and continuing education.

**Agency Procedure for Promulgation**

A public hearing is required and will be held on August 13, 2013, at 1400 East Washington Avenue, Room 121A, Madison, Wisconsin (enter at 55 North Dickinson Street).

**Contact Person**

Shancethea Leatherwood, Department of Safety and Professional Services, Division of Policy Development, 608-261-4438 or [shancethea.leatherwood@wisconsin.gov](mailto:shancethea.leatherwood@wisconsin.gov).

Shancethea Leatherwood

Division of Policy Development

Wisconsin Department of Safety and Professional Services  
P.O. Box 8935

Madison, WI 53703-8935

Office: 608-261-4438

Fax: 608-267-3816.

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## Rule-Making Notices

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### Notice of Hearing

#### Natural Resources

#### *Environmental Protection — General, Chs. 100—*

#### CR 13-054

(DNR # WT-29-09)

NOTICE IS HEREBY GIVEN THAT pursuant to s. 227.11 Stats., interpreting s. 281.17 (3), Wis. Stats., the Department of Natural Resources will hold public hearings on proposed revisions to Chapter NR 114 Subchapter I, Wis. Adm. Code, relating to the certification requirements of wastewater treatment system and plant operators.

#### Hearing Information

- Date:** Tuesday, August 13, 2013  
**Time:** 11:00 a.m.  
**Location:** WDNR West Central Service Center  
 1300 W. Clairemont Ave., Room 185  
 Eau Claire, WI 54701
- Date:** Friday, August 16, 2013  
**Time:** 11:00 a.m.  
**Location:** WDNR Service Center Conference Room  
 5301 Rib Mountain Drive  
 Wausau WI, 54401
- Date:** Tuesday, August 27, 2013  
**Time:** 11:00 a.m.  
**Location:** WDNR Northeast Region Service Center  
 Lake Michigan Conference Room  
 2984 Shawano Ave.  
 Green Bay, WI 54313
- Date:** Wednesday, August 28, 2013  
**Time:** 11:00 a.m.  
**Location:** WDNR Southeast Region Service Center  
 2300 N. Martin Luther King Jr. Drive  
 Rooms 140 and 141  
 Milwaukee, WI 53212
- Date:** Thursday, August 29, 2013  
**Time:** 10:00 a.m.  
**Location:** WDNR Southern Region Service Center  
 Glaciers Edge Conference Room  
 3911 Fish Hatchery Road  
 Fitchburg, WI 53911

Pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request as noted below. The public hearing sites are accessible to people with disabilities. If you have special needs or circumstances that may make communication or accessibility difficult at a hearing site or require other accommodation, please contact Jack Saltes at (608) 264-6045 (email: [jack.saltes@wisconsin.gov](mailto:jack.saltes@wisconsin.gov)) with specific information on your request at least 10 days before the date of the scheduled hearing.

#### Availability of the Proposed Rule and the Fiscal Estimate and Economic Impact Analysis

The proposed rule revisions, including the Fiscal Estimate and the Economic Impact Analysis may be viewed and downloaded and comments electronically submitted at the following internet site at the following internet site. The public comment period closes on August 29<sup>th</sup>, 2013: <https://health.wisconsin.gov/admrules/public/Rmo?nRmofd=8023>

Pursuant to s. 227.114, Stats., it is not anticipated that the proposed rule will have an economic impact on small businesses. The Department's Small Business Regulatory Coordinator may be contacted at: [DNRSmallBusinessCoordinator@Wisconsin.gov](mailto:DNRSmallBusinessCoordinator@Wisconsin.gov) or by calling (608) 266-1959.

If you do not have internet access, a copy of the proposed rules and supporting documents, including the Economic Impact Analysis may be obtained from Jack Saltes, DNR-WY/3, P.O. Box 7921, Madison, WI 53707-7921, or by calling (608) 264-6045.

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

Written comments on the proposed rules may be submitted via U. S. mail to Jack Saltes, DNR-WY/3, P.O. Box 7921, Madison, WI 53707-7921 or by e-mail to: [jack.saltes@wisconsin.gov](mailto:jack.saltes@wisconsin.gov)

Comments may be submitted using the internet site where the rule and other documents have been posted [<https://health.wisconsin.gov/admrules/public/Rmo?nRmofd=8023>]. Please follow the guidelines stated on this site when submitting comments.

Comments submitted on or before August 29, 2013, will be considered in developing a final rule. Written comments whether submitted electronically or by U. S. mail will have the same weight and effect as oral statements presented at the public hearings.

#### Analysis Prepared by Department of Natural Resources

##### *Statutory authority*

Section 227.11, Stats.

##### *Statutes interpreted*

Section 281.17 (3), Stats.

##### *Explanation of agency authority*

Chapter 281, Stats. — Water and Sewage, grants authority to the Department to serve, to protect, maintain and improve the quality and management of the waters of the state, ground and surface, public and private. To the end that these vital purposes may be accomplished, all rules and orders promulgated under chapter 281, Stats., are to be liberally construed in favor of the policy objectives set forth in the chapter. Section 281.17 (3), Stats., specifically directs the department to promulgate rules establishing an examining program for certifying wastewater treatment system and plant operators.

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

Chapter NR 114, Wis. Adm. Code, relates to regulation of wastewater discharges in the chapter NR 200, Wis. Adm.

Code, series of rules. The quality of the discharge from wastewater treatment plants directly relates to the design and construction of the facility, as well the knowledge and competency of the operators, who run and manage the state's wastewater treatment plants. A well operated and managed wastewater treatment plant produces a high quality effluent thus protecting and maintaining water quality in the state.

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

Operator certification requirements in Wisconsin originated with Chapter 614, Wisconsin laws of 1965. After passage of the Clean Water Act of 1972, the operator certification program became more solidified with the establishment of wastewater treatment plant classifications (1, 2, 3, 4) and numerous subclasses. Study guides and exams were developed for operators of the different classes and subclasses of treatment plants. The Bureau of Science Services administers the certification program, while the Bureau of Water Quality provides the technical base and support. Examinations are given in each of the regions twice a year in May and November.

The program underwent code revisions in the 1990's and currently has a critical need of revisions with the advent of changes and innovation in computer and wastewater technologies over the past two decades. Wisconsin permits over 1000 industrial and municipal wastewater treatment works and has 2400 certified operators operating these wastewater facilities. In the past 25 years, most treatment plants have more received stringent effluent limitations, and have become more complex and technologically advanced through upgrading and new construction. Well operated and maintained wastewater treatment works (sewer systems and treatment plants) by knowledgeable and skilled operators directly translates into protections of public health and the environment. Increased competency of operators also results in more consistent and improved compliance with Wisconsin Pollutant Discharge Elimination System (WPDES) permit requirements. This then leads to fewer instances of noncompliance and a lowered potential for costs due to enforcement of permit violations by the Department.

Chapter NR 114, Subchapter I — Certification of Waterworks and Wastewater Treatment Plant Operators, Wis. Adm. Code, is being repealed and recreated to achieve five objectives: (1) update and revise treatment plant classifications and subclasses to reflect new and changed technologies; (2) eliminate advanced certification examinations and replace them with an advanced certification point system to allow operators more flexibility and educational options towards advancement; (3) expand certification to include sanitary sewer collection systems; (4) provide more options for a new generation of operators to gain knowledge and competency through on-line classes and apprenticeship opportunities; and (5) separate the certification requirements for waterworks and wastewater works operators for improved readability and understanding.

Chapter NR 114, Wis. Adm. Code, establishes revised plant classification levels (basic or advanced) and subclasses; an advanced certification point system; future certification requirements for sanitary sewer collection systems and a fair conversion (grandfathering) process of transferring existing operators into the new certification system.

#### ***Summary and comparison with existing and proposed federal regulations***

While 33 USC 1251, federal Clean Water Act, does not mandate operator certification for wastewater treatment plants, the need for operating and maintaining wastewater treatment plants properly by knowledgeable and highly skilled operators is recognized by all states. All fifty states have wastewater treatment plant operator certification programs.

#### ***Comparison of similar rules in adjacent states***

All U.S. Environmental Protection Agency (EPA) Region 5 states (Illinois, Indiana, Michigan, Minnesota, and Ohio) have wastewater treatment plant operator certification programs. These certification programs are based on examination and experience.

Of the EPA Region 5 states, Ohio is the only state that requires a certified operator in charge for wastewater collection systems. Minnesota requires a collection system certificate for operation of wastewater collection, pumping, and conveyance facilities that are managed separately from the wastewater treatment facility. Illinois offers a voluntary wastewater collection system operator certificate while, Indiana and Michigan do not offer state certification.

**ILLINOIS:** In Illinois, a voluntary collection system operator certification is available for wastewater operators. The certification is administered by the Illinois State Environmental Protection Agency's Bureau of Water. Prerequisites for certification include a high school diploma (or equivalent), 6 months collection system operating experience and the equivalent of 6 months substitution experience. There is only one level of voluntary certification offered.

**INDIANA:** The Indiana Department of Environmental Management, who oversees certification of Wastewater Operators, does not offer collection system certification. The professional member association, Indiana Water Environment Association has a Collection System Committee (30+ members) who administer a voluntary collection system operation certification at 4 levels for wastewater operators.

**MICHIGAN:** The State of Michigan's Department of Environmental Quality, who certifies Wastewater Operators, does not offer certification for collection systems.

**MINNESOTA:** The Minnesota Pollution Control Agency (MPCA), who certifies wastewater operators, requires at least one certified collection system operator for a system of collection, pumping, and conveyance facilities that is operated separately from the facility that treats, stabilizes and disposes of wastewater. The MPCA classifies these facilities as type-S facilities with four subclasses (A, B, C, & D), based upon the size of the population served. If the collection facility is not operated separately from the treatment facility, the designated operator of the treatment facility is responsible and does not need a type S certificate.

**OHIO:** The Ohio Environmental Protection Agency's Division of Drinking and Groundwater certifies the person responsible and in charge of a collection system. Sewerage systems, a.k.a. collection systems, are classified. Sewerage systems may be classified at one of two levels (I and II) based upon design flow (< or > 0.15 MGD respectively).

***Summary of factual data and analytical methodologies used in the rules and how any related findings support the regulatory approach chosen***

Given the increase in on-line training courses and programs for wastewater treatment plant operators, especially in the last ten years, it became apparent and imperative that the Department revise and modernize its certification program to allow operators more flexibility and choices in achieving advanced certification beyond only examinations. During the revisions of ch. NR 114, Wis. Adm. Code, the Department of Workforce Development, Bureau of Apprenticeship Standards received federal grant monies to develop an Apprenticeship Program for Wastewater Treatment plant operators. The Apprenticeship Program has since been developed and now available for wastewater treatment plant operators. Operators earn 6 of 10 points towards advanced certification by completing this program.

The concept of an advanced certification point system came from the Kansas wastewater operator certification program. Kansas uses a point system to determine what level exam an operator is eligible to take. The Department adapted the point system concept by developing one for advanced certification. Advanced certification allows operators to gain a deeper insight and knowledge about a particular aspect of wastewater treatment. A deeper and stronger knowledge through advanced certification is critical in operating more complex wastewater treatment plants or require greater operational skills because of various factors.

Concurrent to these ch. NR 114, Wis. Adm. Code, revisions, the Department has also drafted revisions to various rules for collection systems, more commonly referred to as the "Sanitary Sewer Overflow (SSO) Rules" (WT-23-11). These rule revisions are primarily intended to prevent, to the extent possible, the overflow of untreated sewage to state waters and land surfaces and/or the backup of sewage into basements and buildings where such discharges present a risk to public health and may cause environmental harm. The SSO rules require that all sewage collection system owners implement defined programs to assure the long-term viability of those systems. Effective programs for the proper operation and maintenance of the systems will be less costly in the long-term by reducing and preventing infiltration and inflow that lead to SSOs and building backups, assuring treatment facility capacity is not exceeded, and proactively dealing with potential failures of the system components. The SSO rules will require that all collection system owners develop and implement a Capacity, Management, Operation and Maintenance (CMOM) program within three years to assure proper long-term operation of sewage collection systems. The SSO Rules will also specify what components must be included in a CMOM and the documentation and reporting requirements associated with such a program.

With CMOM requirements and implementation of the SSO Rules, certification requirements for collection system operators will complement those rule revisions. It will provide the needed knowledge and skills for operators to develop and implement successful CMOM Programs and better operate and maintain their collection systems. Improved operational knowledge of sanitary sewer systems directly translates into protecting public health and water quality from basement back-ups and sanitary sewer overflows. Knowledgeable collection system operators also help protect and maintain the large investment of government

funding of infrastructure. The Department evaluated collection system certification programs for every state in the nation. Approximately 46% of the states require some level of collection system certification.

In March 2010, the Department established a wastewater operators trainers stakeholders workgroup to assist and advise the Department in revising the certification program for wastewater treatment plant operators. The workgroup consisted of representatives from the Wisconsin Wastewater Operators Association (WWOA), Wisconsin Rural Water Association (WRWA), private trainers, consultants, technical colleges, UW-Stevens Point, and EPA. Several workgroup meetings were held during 2010-2012 in crafting the revisions. Comments and ideas for revisions from the workgroup members contributed significantly to the changes and modernization of the certification program.

***Analysis and supporting documentation used to support the small business analysis***

No small businesses, as defined in s. NR 227.114 (1), Wis. Adm. Code, will be affected by changes in wastewater treatment plant operator certification requirements. Small businesses, as defined, do not generally own and operate treatment plants, or at least mechanical treatment plants with surface water discharges, that require certified operators under ch. NR 114, Wis. Adm. Code. Any fiscal impacts that would occur from these rule changes would affect municipalities and larger industries, that have treatment plants or municipal sanitary sewer collection systems.

For example, in the small businesses analysis prepared for the phosphorus water quality criteria, Board Order WT-25-08, that could also potentially apply to treatment plant operator certification, 11 dairy operations were identified that met the small business definition. Small cheese factories may be the best example of a small business. Of those 11, 6 apply wastes to the land through a variety of methods and are exempt from certification requirements. The other 5 discharge their wastes to municipal wastewater treatment plants, also exempt from certification requirements.

Based on this analysis, the Department concluded there are few, if any, small businesses that will be affected by changes in wastewater treatment plant or sanitary sewer system operator certification requirements.

***Effect on small business, including how this rule will be enforced***

Based on the above analysis, the Department determined that few, if any, small businesses would be affected by the proposed changes in wastewater treatment plant operator certification requirements. Small cheese factories may be the best example of a small business that would have wastewater treatment and management needs. Many of these small dairies land apply their wastewater and thus are excluded from operator certification requirements.

A positive effect on small business will be additional training opportunities for consultants and private trainers to provide advanced training (on-line or classroom) to operators, especially those seeking advanced certification through education. The requirement for municipal collection systems to have a certified operator will result in the development of sanitary sewer collection system classes by wastewater education based businesses and technical colleges for municipal operators who will need this certification in the next 5-10 years.



### Initial Regulatory Flexibility Analysis Summary

No small businesses, as defined in s. NR 227.114 (1), Wis. Adm. Code, will be affected by changes in wastewater treatment plant operator certification requirements. Small businesses, as defined, do not generally own and operate treatment plants, or at least mechanical treatment plants with surface water discharges, that require certified operators under ch. NR 114, Wis. Adm. Code. Any fiscal impacts that would occur from these rule changes would affect municipalities and larger industries, that have treatment plants or municipal sanitary sewer collection systems.

For example, in the small businesses analysis prepared for the phosphorus water quality criteria, Board Order WT-25-08, that could also potentially apply to treatment plant operator certification, 11 dairy operations were identified that met the small business definition. Small cheese factories may be the best example of a small business. Of those 11, 6 apply wastes to the land through a variety of methods and are exempt from certification requirements. The other 5 discharge their wastes to municipal wastewater treatment plants, also exempt from certification requirements.

Based on this analysis, the Department concluded there are few, if any, small businesses that will be affected by changes in wastewater treatment plant or sanitary sewer system operator certification requirements.

### Fiscal Analysis and Economic Impact Analysis Summary

Ultimately, the impact on the state's economy will be moderate. Most of the changes that result from this rule are transfers rather than costs. The advanced exam will be slightly more expensive, but there will be fewer exams for operators to take and the exam is not mandatory. Wastewater treatment facilities may need to pay higher salaries that they offset by increasing rates (or absorbing), but employees will benefit from the raises. Operators may choose to pay for preparatory classes, but those offering these courses will realize an increase in their business.

While there is some variability, we predict the total statewide costs and transfers to be between \$100,000 and \$200,000 for the first year of implementation as facilities pursue operator certification necessitated by facility reclassification and the new sanitary system requirements. After the first year, economic impacts will be reduced to transfers resulting from salary increases and changes in exam costs.

We anticipate that the Department will absorb implementation costs into the existing program. Table 1 in Appendix 2 of the Fiscal Estimate & Economic Impact Analysis (DOA-2049) provides a summary of the costs associated with different aspects of the point system.

### Environmental Impact

The Department has made a determination that these rule revisions are a Type IV action under Chapter NR 150, Wis. Adm. Code, and no environmental analysis is required.

### Agency Contact

Jack Saltes, WY/3  
Bureau of Water Quality  
P.O. Box 7921

101 South Webster Street  
Madison, WI 53707  
[jack.saltes@wisconsin.gov](mailto:jack.saltes@wisconsin.gov)  
(608) 264-6045.

## Notice of Hearing

### Safety and Professional Services Professional Services, Chs. 1—299 CR 13-053

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Department of Safety and Professional Services in sections 227.11 (2) (a), 440.03 (1), and 458.12, Stats., and interpreting section 440.03 (1), Stats., the Department of Safety and Professional Services will hold a public hearing at the time and place indicated below to consider an order to repeal s. SPS 81.04 (1) (c) 3. and 4. and to amend s. SPS 81.04 (2), relating to reciprocity. As provided in section 227.24 (4), Stats., this hearing will also be for emergency rules currently in effect that have identically created this SPS section.

### Hearing Information

**Date:** Monday, August 12, 2013  
**Time:** 11:00 a.m.  
**Location:** 1400 East Washington Avenue  
Room 121A  
Madison, Wisconsin

### Appearances at the Hearing

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but are urged to submit facts, opinions and argument in writing as well. Facts, opinions and argument may also be submitted in writing without a personal appearance. All submittals must be directed to Shawn Leatherwood, Rules Coordinator, at [shancethea.leatherwood@wisconsin.gov](mailto:shancethea.leatherwood@wisconsin.gov); or by mail addressed to the Department of Safety and Professional Services, Division of Policy Development, P.O. Box 8935, Madison, Wisconsin 53708. Written comments must be received at or before the public hearing to be included in the record of rule-making proceedings.

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

Comments may be submitted to Shawn Leatherwood, Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 1400 East Washington Avenue, Room 151, P.O. Box 8935, Madison, WI 53708-8935, or by email to [shancethea.leatherwood@wisconsin.gov](mailto:shancethea.leatherwood@wisconsin.gov). Comments must be received at or before the public hearing to be held on August 12, 2013 to be included in the record of rule-making proceedings.

### Copies of Rule

Copies of this proposed rule are available upon request to Shawn Leatherwood, Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708, by email at [shancethea.leatherwood@wisconsin.gov](mailto:shancethea.leatherwood@wisconsin.gov) or on our website at <http://dsps.wi.gov/Default.aspx?Page=44e541e8-abdd-49da-8fde-046713617e9e>

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

### ***Statutes interpreted***

Section 440.03 (1), Stats.

### ***Statutory authority***

Sections 227.11 (2) (a), 440.03 (1), 458.12, Stats.

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

The Department is empowered to promulgate rules interpreting the provision of any statute it enforces or administers pursuant to s. 227.11 (2) (a), Stats. Under the authority of s. 440.3 (1), Stats., the department may promulgate rules defining uniform procedures to be used by the Real Estate Appraisers Board. Under s. 458.12, Stats., the Real Estate Appraisers Board is allowed to enter into reciprocal agreements. The subject of these proposed rules deals with the procedure for entering into reciprocity agreements with other states. Therefore, the Board is authorized to draft these proposed rules

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

Section SPS 81.04

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

A procedure for reciprocity for real estate appraisers is the topic of these proposed rules. Presently applicants seeking reciprocity in Wisconsin must hold a current credential from another state, which has not been subject to discipline, and was granted in compliance with the Financial Institutions Reform Recovery Act of 1989, (FIRREA) 12 USC 3331 et. seq. Applicants must also pass a Wisconsin statutes and rules examination, have no arrests or convictions and have satisfied the required experience. As a result of federal legislation, namely FIRREA Title XI as amended by the Dodd–Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd–Frank Act), less strenuous procedures for reciprocity must be put into place on or before July 1, 2013.

The Dodd–Frank Act directs states to refrain from imposing additional barriers on the issuance of reciprocity credentials to appraisers from other states. Under the federal legislation, an applicant seeking reciprocity in Wisconsin must be from a state that is in compliance with FIRREA Title XI. Also, the applicant must hold a valid credential from that state. Furthermore, the credentialing requirements of that state, as they currently exist, must meet or exceed the credentialing requirement in Wisconsin, as they currently exist.

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

FIRREA Title XI regulates real estate appraisers on the federal level. The purpose of FIRREA Title XI “is to provide that Federal financial and public policy interests in real estate related transactions will be protected by requiring that real estate appraisals utilized in connection with federally related transactions are performed in writing, in accordance with uniform standards, by individuals whose competency has been demonstrated and whose professional conduct will be subject to effective supervision.” 12 U.S.C. 3331. This federal mandate is accomplished via the Appraisal Subcommittee (ASC). The ASC monitors state regulation of licensed appraisers and reviews each state’s compliance with the federal legislation. The ASC also monitors appraisal standards for federally–related transactions and determines whether state licensed appraisers will be required for these real estate transactions.

The Dodd–Frank Act amended the reciprocity requirement of FIRREA XI. Instead of merely encouraging states to develop reciprocity agreements, the Act requires that states may not impose additional impediments when issuing reciprocity credentials. However, states may be more lenient in issuing reciprocity credentials and advance a more open door policy.

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

**Illinois:** Illinois does not grant licensure by reciprocity for real estate appraisers but allows licensure by endorsement for non–resident applicants. Endorsement applicants must submit an application, the required fee, and a certification of good standing from the jurisdiction of the applicant’s place of residence. ILL. ADMIN. CODE tit. 68 §1455.100.

**Iowa:** Iowa grants non–resident applicants licensure by reciprocity. Applicants seeking reciprocity must submit the appropriate form, pay the required fee and demonstrate good standing in another state. The good standing requirement may be demonstrated by being listed as an appraiser in good standing on the National Registry of the Appraisal Subcommittee. IOWA ADMIN. CODE r. 193F–10.01 (2).

**Michigan:** Michigan provides for licensing without examination. MCL 339.2623. The state will issue a certified general real estate appraiser, or state licensed real estate appraiser licensure without examination as long as that applicant is licensed, registered, certified, or otherwise regulated by another state and if the requirements of that state are at least equal to Michigan’s requirements.

**Minnesota:** Minnesota requires non–resident applicants to comply with the same application requirements as in–state applicants. MINN. STAT. §82B.071 SUBD.7.

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

The rules were developed primarily by reviewing and comparing federal legislation with Wisconsin’s rules regulating real estate appraisers in an effort to bring the Wisconsin Administrative Code language in line with the federal statutes. No other analytical methodologies were used.

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

These proposed rules do not have an economic impact on small businesses as defined in s. 227.114 (1), Stats. The Department’s Regulatory Review Coordinator may be contacted by email at [greg.gasper@wisconsin.gov](mailto:greg.gasper@wisconsin.gov) or by calling (608) 266–8608.

### **Fiscal Estimate and Economic Impact Analysis**

The Fiscal Estimate and Economic Impact Analysis are attached.

### **Initial Regulatory Flexibility Analysis or Summary**

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

### **Agency Contact Person**

Shawn Leatherwood, Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 1400 East Washington Avenue, Room 151, P.O. Box 8935, Madison, Wisconsin 53708; telephone 608–261–4438; email at [shancethea.leatherwood@wisconsin.gov](mailto:shancethea.leatherwood@wisconsin.gov).

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

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

## ADMINISTRATIVE RULES

### Fiscal Estimate & Economic Impact Analysis

1. Type of Estimate and Analysis

Original       Updated       Corrected

2. Administrative Rule Chapter, Title and Number

165-SPS 81.04

3. Subject

Reciprocity

4. Fund Sources Affected

GPR    FED    PRO    PRS    SEG    SEG-S

5. Chapter 20, Stats. Appropriations Affected

6. Fiscal Effect of Implementing the Rule

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

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

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

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

Yes    No

9. Policy Problem Addressed by the Rule

Title XI of the Federal Financial Institutions Reform and Recovery Enforcement Act of 1989, (FIRREA) as amended by the Dodd-Frank Act of 2010, dictates the reciprocity requirements for real estate appraisers in each state. State standards cannot overly burden applicants seeking reciprocity in Wisconsin. These proposed rules seek to bring Wisconsin's reciprocity rule in line with the federal standard.

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

The rule was posted on the Department of Safety and Professional Service's website for 14 days in order to solicit comments from the public regarding the rule. No comments were received from the public regarding the rule.

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

No local governmental units participated in the development of this EIA.

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

This rule will not have an economic or fiscal impact on specific businesses, business sectors, public utility rate payers, local governmental units or the state's economy as a whole.

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

The proposed rule will generate greater consistency between federal and state standards.

14. Long Range Implications of Implementing the Rule

As long as the proposed rule is consistent with the federal standard, real estate appraisals will be conducted in a uniform manner, by individuals whose competence has been demonstrated.

15. Compare With Approaches Being Used by Federal Government

The federal government provides the regulatory scheme which states must follow. The federal standard is FIRREA Title XI §1122, 12 U.S.C. 3351 (b) as amended by the Dodd Frank Act, which provides that, “[N]otwithstanding any other provisions of this title, a federally related transaction shall not be appraised by a certified or licensed appraiser unless the State appraiser certifying or licensing agency of the State certifying or licensing such appraiser has in place a policy of issuing a reciprocal certification or license for an individual from another state when—“(1) the appraiser licensing and certification program of such other State is in compliance with the provisions of this title; and “(2) the appraiser holds a valid certification from a state whose requirements for certification or licensing meet or exceed the licensure standards established by the State where an individual seeks appraisal licensure.” In order to comply with the federal standards, states must insure that a reciprocity applicant’s home state is in compliance with FIRREA Title XI, as amended by the Dodd Frank Act, and that the reciprocity applicant holds a valid certification from their home state that meet or exceeds the certification and licensure standards established by the state where an individual seeks reciprocity.

The purpose of FIRREA, “is to provide the Federal financial and public policy interests in real estate related transactions will be protected by requiring that real estate appraisals utilized in connection with federally related transactions are preformed in writing, in accordance with uniform standards, by individuals whose competency has been demonstrated and whose professional conduct will be subject to effective supervision.”. FIRREA Title XI §1101, 12 U.S.C. 3331. The purpose of FIRREA is carried out by the Appraisal Subcommittee (ASC). The ASC monitors the requirements established by states regarding the certification and licensure of real estate appraisers. The ASC conducts audits to determine whether states are in compliance with FIRREA. States that are designated “out of compliance” may not engage a certified or licensed appraiser to perform an appraisal of property for a federally related transaction and will not be recognized by other states when applicants from that state are seeking reciprocity.

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

**Illinois:** Illinois does not grant licensure by reciprocity for real estate appraisers but allows licensure by endorsement for non-resident applicants. Endorsement applicants must submit an application, the required fee, and a certification of good standing from the jurisdiction of the applicant’s place of residence. ILL. ADMIN. CODE tit. 68 §1455.100.

**Iowa:** Iowa grants non-resident applicants licensure by reciprocity. Applicants seeking reciprocity must submit the appropriate form, pay the required fee and demonstrate good standing in another state. The good standing requirement may be demonstrated by being listed as an appraiser in good standing on the National Registry of the Appraisal Subcommittee. IOWA ADMIN. CODE r. 193F-10.01 (2).

**Michigan:** Michigan provides for licensing without examination. MCL 339.2623. The state will issue a certified general real estate appraiser, or state licensed real estate appraiser licensure without examination as long as that applicant is licensed, registered, certified, or otherwise regulated by another state and if the requirements of that state are at least equal to Michigan’s requirements.

**Minnesota:** Minnesota requires non-resident applicants to comply with the same application requirements as in-state applicants. MINN. STAT. §82B.071 SUBD.7.

17. Contact Name  
Shawn Leatherwood

18. Contact Phone Number  
608-261-4438

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

**Notice of Hearing**  
**Safety and Professional Services —**  
**Massage Therapy and Bodywork Therapy**  
**Affiliated Credentialing Board**  
**CR 13-055**

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Massage Therapy and Bodywork Therapy Affiliated Credentialing Board in ss. 15.085 (5) (b), 460.04 (2), 460.10 (1), Wis. Stats., and interpreting ss. 460.04 (2) (a), (c), (d), (f), and 460.08, Wis. Stats., and 2009 Wisconsin Act

355 the Massage Therapy and Bodywork Therapy Affiliated Credentialing Board will hold a public hearing at the time and place indicated below to consider an order to repeal s. MTBT 2.05 and (Note); to amend ss. MTBT 1.01, 2.01 (title), 2.03 (title), (1) (a) and (c), 3.01 (1), 3.01 (5) (b), 4.01 (title), (intro.), 4.02 (title), (intro.), (1), (3), 4.03, 4.04 (1) (a), 4.04 (1) (c), (2) (a) and (b), 5.01 (9), (16), (17), (18), (19), (20), (27), (28), (32), 5.02 (1), (2) (b), (c), (3), and (4); to repeal and recreate s. MTBT 1.02; to create ss. MTBT 6.01, 6.02, 7.01, 7.02, and 7.03, relating to temporary licensure and continuing education.

**Hearing Information**

**Date:** Tuesday, August 13, 2013  
**Time:** 10:00 a.m.  
**Location:** 1400 East Washington Avenue  
 Room 121A  
 Madison, Wisconsin

**Appearances at the Hearing**

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

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

Comments may be submitted to Shawn Leatherwood, Rules Coordinator Department of Safety and Professional Services, Division of Policy Development, 1400 East Washington Avenue, Room 151, P.O. Box 8935, Madison, WI 53708-8935, or by email to [shancethea.leatherwood@wisconsin.gov](mailto:shancethea.leatherwood@wisconsin.gov). Comments must be received at or before the public hearing to be held on to be included in the record of rule-making proceedings.

**Copies of Rule**

Copies of this proposed rule are available upon request to Shawn Leatherwood Department of Safety and Professional Services, Division of Policy Development, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708, by email at [shancethea.leatherwood@wisconsin.gov](mailto:shancethea.leatherwood@wisconsin.gov) or on our website at <http://dsps.wi.gov/Default.aspx?Page=44e541e8-abdd-49da-8fde-046713617e9e>.

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

Sections 460.04 (2) (a), (c), (d), and (f), and 460.08, Stats., and 2009 Wisconsin ACT 355.

**Statutory authority**

Sections 15.085 (5) (b), 460.04 (2), 460.10 (1), Stats., and 2009 Wisconsin Act 355.

**Explanation of agency authority**

Affiliated credentialing boards are generally empowered by the legislature pursuant to s. 15.085 (5) (b), Stats., to promulgate rules that govern their profession. The Massage Therapy and Bodywork Therapy Affiliated Credentialing Board has recently been empowered with the passage of 2009 Wisconsin Act 355, to promulgate rules concerning temporary licenses and continuing education. Therefore, the Massage Therapy and Bodywork Therapy Affiliated Credentialing Board is authorized both generally and specifically to promulgate the proposed rules.

**Related statute or rule**

Wis. Admin. Code chs. MTBT 1 to 5

**Plain language analysis**

2009 Wisconsin Act 355 transformed the Massage Therapy and Bodywork Therapy Council into the Massage Therapy and Bodywork Therapy Affiliated Credentialing Board. (Board) The newly formed board, under the oversight of the Medical Examining Board, was granted rule making authority by the legislature as well as the authority to grant licenses instead of certificates. This proposed rule carries out the intent of the legislature by making the necessary changes to Wis. Admin. Code chs. MTBT 1 to 5. The necessary changes include defining terms such as informed consent, intimate parts, sexually oriented business, and setting forth the requirements for temporary licensure and continuing education.

SECTION 1. amends the authority section by replacing department with board and bodyworker with bodywork therapist.

SECTION 2. repeals and recreates the definition section to include additional terms.

SECTION 3. amends title of s. MTBT 2.01 to replace certificate with license.

SECTION 4. amends the title of s. MTBT 2.03 replacing certificate with license.

SECTION 5. repeals s. MTBT 2.05 and the corresponding note.

SECTIONS 6 to 11. primarily replace department with board and certificate with license.

SECTION 12. creates provisions regarding temporary licensure.

SECTION 13. creates provisions regarding continuing education

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

None

**Comparison with rules in adjacent states**

**Illinois:** Illinois regulates massage therapy via the Massage Licensing Act. Ill. Admin. Code tit.68 §1284 (2012). Illinois exempts students from the licensure requirement as long as they are practicing in conjunction with an approved massage school or program. Approved massage therapy schools are required to meet certain criteria including maintaining written programs, written plans of study, written course outlines and student handbooks. Applicants are required to obtain 500 hours of supervised hands-on instruction from an approved massage therapy school. Ill. Admin. Code tit. 68 §1284.20. With regards to continuing education 24 hours are required per biennium. Illinois does not issue a temporary license.

**Iowa:** Iowa regulations encompass both massage and bodywork therapy. IA. r. 645-131.1. Iowa requires "500 hours in massage therapy education" for licensure. IAC r. 645-131.3. Furthermore, Iowa only allows temporary licensure for applicants from other states with less stringent licensure criteria. IAC 131-5 (1). Students are not exempt from the licensure requirement. However, students may participate in "clinical practicum," meaning, "hands-on" massage therapy provided to members of the public," at the massage therapy school's primary location which is similar to an on-site student clinic. Lastly, Iowa requires 24 hours of continuing education per biennium.

**Michigan:** Michigan regulates massage therapy by statute under MCL 333.17591-333.17969 (2012). The practice act

defines such terms as “massage therapist,” and “practice of massage therapy.” The terms bodywork or bodywork therapist are not included. 18 hours of continuing education are required by statute. There are no provisions for temporary licensure. The Michigan practice act allows students to practice massage therapy as a part of program of study if they are enrolled in school and under the supervision of a licensed massage therapist.

**Minnesota:** Massage and bodywork therapist are not licensed, certified, or registered in Minnesota. Minnesota maintains general oversight of the practice of massage therapy and bodywork through Minn. Stat. §146A, (2011). The Unlicensed Complementary and Alternative Health Care Practice Act. This act identifies bodywork, massage, and massage therapy as encompassed within the, “broad domain of complementary and alternative healing methods and treatment.”

**Summary of factual data and analytical methodologies**

The Massage Therapy and Bodywork Therapy Affiliated Credentialing Board ensures the accuracy, integrity, objectivity and consistency of data were used in preparing the proposed rule and related analysis. The proposed rule brings current administrative code regarding massage therapy and bodywork therapy into compliance with 2009 Wisconsin Act

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

355. No other factual data or analytical methodologies were used.

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

This proposed rule was posted on the Department’s website for 14 days to solicit comments from small business. No comments were received.

**Fiscal Estimate and Economic Impact Analysis**

The Fiscal Estimate and Economic Impact Analysis are attached.

**Initial Regulatory Flexibility Analysis or Summary**

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

**Agency Contact Person**

Shawn Leatherwood, Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 1400 East Washington Avenue, Room 151, P.O. Box 8935, Madison, Wisconsin 53708; telephone 608-261-4438; email at [shancethea.leatherwood@wisconsin.gov](mailto:shancethea.leatherwood@wisconsin.gov).

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

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

1. Type of Estimate and Analysis		
<input checked="" type="checkbox"/> Original	<input type="checkbox"/> Updated	<input type="checkbox"/> Corrected
2. Administrative Rule Chapter, Title and Number		
MTBT 1 to 5		
3. Subject		
Temporary licensure and continuing education		
4. Fund Sources Affected		5. Chapter 20, Stats. Appropriations Affected
<input type="checkbox"/> GPR <input type="checkbox"/> FED <input checked="" type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S		
6. Fiscal Effect of Implementing the Rule		
<input type="checkbox"/> No Fiscal Effect	<input type="checkbox"/> Increase Existing Revenues	<input type="checkbox"/> Increase Costs
<input type="checkbox"/> Indeterminate	<input type="checkbox"/> Decrease Existing Revenues	<input checked="" type="checkbox"/> Could Absorb Within Agency’s Budget
<input type="checkbox"/> Decrease Cost		
7. The Rule Will Impact the Following (Check All That Apply)		
<input type="checkbox"/> State’s Economy	<input type="checkbox"/> Specific Businesses/Sectors	
<input type="checkbox"/> Local Government Units	<input type="checkbox"/> Public Utility Rate Payers	
	<input type="checkbox"/> Small Businesses (if checked, complete Attachment A)	
8. Would Implementation and Compliance Costs Be Greater Than \$20 million?		
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		

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9. Policy Problem Addressed by the Rule

The proposed rule will update current Wis. Admin. Code Chapter MTBT 1 to MTBT 5 pursuant to the passage of 2009 Wisconsin Act 355. The legislation transformed the former Massage and Bodywork Advisory Council into the Massage Therapy and Bodywork Therapy Affiliated Credential board. The legislation also granted the newly created board rule making authority and the authority to issue licenses instead of certificates. The proposed rule updates the language of the current rule by replacing the term department and inserting the term board as well as replacing the term certificate and inserting the term licensure. Furthermore, the proposed rule will define additional terms such as informed consent, intimate parts, and sexually oriented business. Lastly, the proposed rule sets forth the requirements for temporary licensure and continuing education.

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

This proposed rule was posted on the Department of Safety and Professional Services website and on the state website for 14 business days to solicit comments from the public. No businesses, business sectors, associations representing businesses, local governmental units, or individuals contacted the department about the proposed rule.

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

No local governmental entities participated in the development of this EIA.

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

This proposed rule will not have an economic or fiscal impact on specific businesses, business sectors, public utility rate payers, local government units or the state's economy as a whole.

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

The major benefit of implementing the proposed rule is making the current rules consistent with 2009 Wisconsin Act 355.

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14. Long Range Implications of Implementing the Rule

The proposed rule will provide greater guidance within the profession for licensees, applicants, and local massage therapy schools on the temporary licensure and continuing education requirements.

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15. Compare With Approaches Being Used by Federal Government

NA

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

**Illinois:**

Illinois regulates massage therapy via the Massage Licensing Act. Ill. Admin. Code tit.68 §1284 (2012) Illinois exempts students from the licensure requirement as long as they are practicing in conjunction with an approved massage school or program. Approved massage therapy schools are required to meet certain criteria including maintaining written programs, written plans of study, written course outlines and student handbooks. Applicants are required to obtain 500 hours of supervised hands-on instruction from an approved massage therapy school. Ill. Admin. Code tit. 68 §1284.20 With regards to continuing education 24 hours are required per biennium. Illinois does not issue a temporary license

**Iowa:**

Iowa allows temporary licensure for applicants who hold a current license in other states with less stringent licensure criteria. IAC 131-5 (1) Temporary licensure is valid for one year and may not be renewed. Iowa requires 24 hours of continuing education per biennium. IAC 133.2 (152C)

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**Michigan:**

Michigan regulates massage therapy by statute under MCL 333.17591–333.17969 (2012). Administrative rules are pending as of December 19, 2011. 18 hours of continuing education are required by statute. There are no provisions for temporary licensure. The Michigan practice act allows students to practice massage therapy as a part of program of study if they are enrolled in school and under the supervision of a licensed massage therapist.

**Minnesota:**

Massage and bodywork therapist are not licensed, certified, or registered in Minnesota. Minnesota maintains general oversight of the practice of massage therapy and bodywork through Minn. Stat. §146A, (2011) The Unlicensed Complementary and Alternative Health Care Practice Act. This act identifies body work, massage, and massage therapy as encompassed within the, “broad domain of complementary and alternative healing methods and treatment”.

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17. Contact Name  
Shawn Leatherwood

18. Contact Phone Number  
608–261–4438

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



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## Submittal of Proposed Rules to Legislature

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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 13-003**

(DATCP # 12-R-03)

The Department of Agriculture, Trade and Consumer Protection has submitted a rule for legislative committee review, pursuant to s. 227.19, Stats. The proposed rule revises Chapter ATCP 49, relating to the Wisconsin Farmland Preservation Program.

This rule was approved by the governor on June 19, 2013.

### **Public Instruction**

#### **CR 13-024**

On July 8, 2013, the Department of Public Instruction submitted proposed rules to the Chief Clerks of the Senate and Assembly for review by the Legislature under s. 227.19, Stats. The rules create Chapter PI 47, relating to the equivalency process for approving alternative models to evaluate educator practice.

Per the Dane County Circuit Court order issued in *Coyne, et al. v. Walker, et al.*, Case No. 11-CV-4573, the Department of Public Instruction is not required to obtain the Governor's approval of this proposed rule under s. 227.185, Stats.

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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.*

**Children and Families**  
**Early Care and Education, Chs. 201—252**  
**CR 12-048**

An order revise to Chapter DCF 201, relating to circumstances for a waiver to allow child care subsidy payments for a parent who is a child care provider. Effective 8-1-13.

**Employee Trust funds**  
**CR 13-004**

An order to repeal section ETF 10.65 (1) (a) to (f), (2), and (3); to amend sections ETF 10.01 (3i) and 10.65 (1) (intro); and to create sections ETF 10.65 (Note), 10.85, 20.0251, and 20.0251 (Note), relating to clarifying how ETF complies with applicable provisions of the Internal Revenue Code (IRC). Effective 9-1-13.

**Natural Resources**  
**Fish, Game, etc., Chs.1—**  
**CR 13-001**

(DNR # FH-19-12)

An order to revise Chapters NR 19, 20, 21, 22, 23, 25, and 26, relating to fishing rules on inland, outlying, and boundary waters of Wisconsin and harvest of turtles. Effective 9-1-13 and 4-1-14.

**Natural Resources**  
**Environmental Protection — General, Chs. 100—**  
**Environmental Protection — Investg. & Remediation,**  
**Chs. 700—**  
**CR 12-023**

An order to revise Chapters NR 169 and 700 to 750, relating to investigation and remediation of contaminated properties. Effective 9-1-13.

**Revenue**  
**CR 13-011**

An order to revise Chapter Tax 11, relating to sales and use tax provisions concerning advertising and promotional direct mail and prosthetic devices. Effective 9-1-13.

**Revenue**  
**CR 13-012**

An order to revise Chapters Tax 1, 2, and 11, relating to general provisions of income taxation and sales and use tax. Effective 9-1-13.

**Revenue**  
**CR 13-013**

An order to revise Chapters Tax 4, 8, and 9, relating to general provisions of excise taxation and enforcement. Effective 9-1-13.

**Safety and Professional Services —**  
**Cosmetology Examining Board**  
**CR 12-016**

An order of the Cosmetology Examining Board to renumber and amend section Cos 6.04 (1), to amend section Cos 2.07 (1g), and to create section Cos 6.04 (1) (b), (c), and Note, relating to responsibilities of the manager and practical training for apprentices. Effective 9-1-13.

**Safety and Professional Services —**  
**Hearing and Speech Examining Board**  
**CR 12-050**

An order of the Hearing and Speech Examining Board to amend section HAS 6.18 (1) (d) and to create section HAS 6.175 (1m), relating to deceptive advertising. Effective 9-1-13.

**Safety and Professional Services —**  
**Psychology Examining Board**  
**CR 12-055**

An order of the Psychology Examining Board to repeal section Psy 2.12 (2) and to amend section Psy 2.09 (4), relating to applicant appearances. Effective 9-1-13.

**Technical College System Board**  
**CR 12-032**

An order to revise sections TCS 2.02 (1), (3), (5), 2.04 (3) (a) 4., 6., and (4) (c), (d); and to create sections TCS 2.02 (5m) and 2.04 (3) (a) 4m., (4) (e), relating to district board member appointments. Effective 9-1-13.

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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.*

### Children and Families

#### *Early Care and Education, Chs. 201—252*

#### CR 12-048

The Wisconsin Department of Children and Families adopts an order amending Chapter DCF 201, relating to circumstances for a waiver to allow child care subsidy payments for a parent who is a child care provider and affecting small businesses. Effective 8-1-13.

#### Summary of Final Regulatory Flexibility Analysis

The Small Business Regulatory Review Board determined that the proposed rules will not have a significant economic impact on a substantial number of small businesses.

#### Summary of Comments by Legislative Review Committees

None.

### Natural Resources

#### *Fish, Game, etc., Chs. 1—*

#### CR 12-031

(DNR # WM-09-11)

The Wisconsin Department of Natural Resources adopts an order amending section 10.01 (3) (d) 1., relating to the bobcat hunting and trapping season. Effective 8-1-13.

#### Final Regulatory Flexibility Analysis and Effects on Small Business

These rules are applicable to individual sportspersons and impose no compliance or reporting requirements for small businesses, and no design or operational standards are contained in the rule. Because this rule does not add any regulatory requirements for small businesses, the proposed rules will not have a significant economic impact on a substantial number of small businesses under s. 227.114 (6) or 227.14 (2g), Stats.

#### Summary of Comments by Legislative Review Committees

No comments were reported.

### Natural Resources

#### *Fish, Game, etc., Chs. 1—*

#### CR 13-005

(DNR # ER-19-10)

The Wisconsin Department of Natural Resources adopts an order amending Chapter NR 18, relating to the sport of falconry. Effective 8-1-13.

### Final Regulatory Flexibility Analysis

A final Regulatory Flexibility Analysis was not prepared since the proposed rule only affects private individuals and has no effect on small businesses.

#### Comments of Legislative Standing Committees

No comments were reported.

### Natural Resources

#### *Environmental Protection — General, Chs. 100—*

#### *Environmental Protection — WPDES, Chs. 200—*

#### CR 12-027

(DNR # WT-23-11)

The Wisconsin Department of Natural Resources adopts an order amending Chapters NR 100 and 200, relating to wastewater treatment works. Effective 8-1-13.

#### Final Regulatory Flexibility Analysis

The only new direct cost of these rules is associated with the preparation of the CMOM by private sewage collection system owners and by municipalities that have not yet developed such a program. The effect of this rule on other small businesses will be indirectly through the actions of municipal sewage collection system owners. Costs for sewage collection system maintenance and improvements are normally assessed to all users of the system, including small business owners. Such costs, which are included under current general requirements of program rules, are determined at the local level. Because the costs to any given system owner will likely be assessed to all system users, the cost to an individual small business owner for this activity will be low. In the case of private ownership of sewerage system (e.g., a mobile home park) identified as a source of SSO, replacement or repair of sewerage system components would be the responsibility of the owner. The number of these cases is likely to be very limited because of the small number of private sewage collection system permittees and, therefore, the statewide cost will be low.

#### Summary of Comments by Legislative Review Committees

No comments were reported.

### Public Defender

#### CR 12-017

The Wisconsin State Public Defender adopts an order amending section PD 3.03 (2) and (3), relating to determination of eligibility for assignment of publicly appointed counsel. Effective 8-1-13.

#### Effect on Small Business

None.

#### Comments of Legislative Standing Committees

No comments were reported.

**Public Defender**

**CR 12-018**

The Wisconsin State Public Defender adopts an order amending section PD 6.025, relating to determination of ability to pay. Effective 8-1-13.

**Effect on Small Business**

None.

**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 **July 2013**, and will be effective as indicated in the history note for each particular section. For additional information, contact the Legislative Reference Bureau at (608) 266-7590.

### Revisions

#### Children and Families

##### Ch. DCF 201

DCF 201.04 (2j)

#### Natural Resources

##### Ch. NR 10

NR 10.01 (3) (d) 1.

##### Ch. NR 18

NR 18.01 (1), (1g), (1r), (4) to (6), (6m), (7), (7m), (8m), (9) to (11), (14), (15)

NR 18.02 (1), (Note)

NR 18.03 (1), (3), (Note), (4) to (6), (Note)

NR 18.04 (1), (Note), (2), (Note)

NR 18.05 (1) to (4)

NR 18.06 (1) (intro.), (2) (intro.), (Note)

NR 18.07 (1), (2) (a) 1., 2., (b) 5.

NR 18.08

NR 18.10 (intro.), (1) (a), (b) (intro.), 1., 1m., 2., 3., (c), to (e), (2), (3) (b) to (e)

NR 18.12 (2) (a), (c), (d), (f), (Note), (3) (a) to (d), (4) (a) to (e), (Note), (7), (7m), (8) to (11), (12) (b), (13) to (15)

NR 18.13 (1), (1m), (2) (title)

NR 18.14 (1), (2)

NR 18.15 (1) to (3)

NR 18.16 (2) (a), (b), (3) (a), (b) (intro.), 3. a. to e., (3) (b) 4. g., h., (4), (Note)

NR 18.17 (2) (a), (b), (3)

##### Ch. NR 110

NR 110.03 (6m), (6e), (6s), (7), (7e), (7m), (7s), (8) to (10) (17), (26m), (27e), (27m), (27s), (28), (29), (29d), (29h), (30p), (31), (32g), (32i), (32r)

NR 110.05 (2) to (4), (5) (c), (7)

NR 110.09 (1) (Note)

NR 110.10 (1) (h), (4)

NR 110.11 (1) (d) 5., (1) (Note)

NR 110.13 (6)

NR 110.15 (2) (c) to (e), (5) (d), (g), (h)

NR 110.22 (5) (b) 2., (c) 1.

##### Ch. NR 205

NR 205.03 (3m), (4m), (5), 96e), (6m), (6s), (9m)), (31g), (31r), (35e), (35m), (35s), (39g), (39r), (43m)

NR 205.07 (1) (s), (u), (v), (2) (d), (1) (b) (Note)

##### Ch. NR 208

NR 208.03 (1m)

NR 208.05 (3) (m)

208.06 (1)

##### Ch. NR 210

NR 210.01

NR 210.02

NR 210.03 (intro.), (2e), (2m), (2s), (3d), (3h), (3p), (3t), (6e), (6m), (6s), (8m), (9m), (10) to (16)

NR 210.035

NR 210.08

NR 210.12

NR 210.19

NR 210.20

NR 210.205

NR 210.21

NR 210.22

NR 210.23

NR 210.24

NR 210.25

#### Public Defender

##### Ch. PD 3

PD 3.03 (2), (3)

##### Ch. PD 6

PD 6.025 (1), (2) (a)

### Editorial Corrections

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

#### Natural Resources

##### Ch. NR 110

NR 110.03 (13c), (14), (29m), (30p), (31c), (31t), (32i), (32r)

##### Ch. NR 205

NR 205.03 (39r), (Note)

NR 205.07 (1) (n) (Note), (r) 1. (Note)

##### Ch. NR 210

NR 210.23 (3) (c), (4) (c) 5. (Note)

NR 210.03 (14), (Note)

##### Ch. NR 345

NR 345.03 (10r) (Note)

NR 345.04 (2) (b) (Note), (c) 10. (Note), (im) 12. (Note)

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## Executive Orders

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

**Executive Order 105.** Relating to a Proclamation that the Flag of the United States and the Flag of the State of Wisconsin be Flown at Half-Staff in Vilas County as a Mark of Respect for Vilas County Sheriff Frank Tomlanovich. **(June 24, 2013)**

**Executive Order 106.** 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 Lance Corporal Merlin Raye Allen of the United States Marine Corps Who Lost His Life While Serving His Country During the Vietnam War. **(June 25, 2013)**

**Executive Order 107.** Relating to a Proclamation Declaring a State of Emergency in Response to Widespread Flooding. **(June 26, 2013)**

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