

# Wisconsin Administrative Register

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# NOTICE TO SUBSCRIBERS

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

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

### Important points:

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

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

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

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

Direct questions on Internet publication to:

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

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

#### Finding of Emergency

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

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

**Filed with LRB:** June 28, 2013  
**Publication Date:** July 1, 2013  
**Effective Dates:** July 1, 2013 through November 27, 2013  
**Hearing Date:** November 18, 2013  
**Extension Through:** January 26, 2014

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

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

#### Finding of Emergency

Since 1979 the legislature has vested the department of administration with the responsibility and authority to manage various state buildings and grounds, including those of the Wisconsin state capitol. S. 16.84 (1), Stats. Since 1979, the department has permitted the use of these buildings and grounds for the free discussion of public questions and other purposes, so long as such uses did not interfere with the prime uses of these facilities, or otherwise infringe on interests of the state. s. 16.845, Stats., and s. Adm 2.04.

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

Occupation of the capitol rotunda and other areas has caused disruptions to the properly permitted events and normal government activities, including but not limited to, a Red Cross blood drive, a high school science exhibit, school group tours, general public tours, and legislative committee meetings and sessions. The state does not refuse permits for the lawful and safe use of state facilities by any person or persons, and the state cannot allow any person or persons to occupy the capitol in disregard of the rights of permit holders, public employees, or visitors. It is imperative that the



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

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

**Filed with LRB:** November 26, 2013  
**Publication Date:** November 27, 2013  
**Effective Dates:** November 27, 2013 through April 25, 2014 (corrected)

## Agriculture, Trade and Consumer Protection (5)

**1. EmR1311** — The state of Wisconsin Department of Agriculture, Trade and Consumer Protection hereby adopts the following emergency rule to amend **section ATCP 21.17 (1) (b)** and to create **section ATCP 21.17 (1) (c)**, relating to the quarantine of Jefferson County for emerald ash borer.

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

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

### Finding of Emergency

On June 25, 2013, the Wisconsin Department of Natural Resources positively identified Emerald Ash Borer (EAB) in Walworth County at the University of Wisconsin Whitewater Campus, about 750 meters from the Jefferson County line. EAB is an exotic, invasive pest that poses a dire risk to the ash forest. When APHIS declares quarantine, DATCP has regulatory authority for import controls and quarantine for EAB under s. ATCP 21.17. It is anticipated that APHIS will declare a quarantine for Jefferson County but that it will take six to eight weeks for APHIS to act. A six week delay until enactment of the federal quarantines leaves too much time for businesses or individuals to move potentially EAB infested material out of these counties to areas of Wisconsin or other states that are not infested with EAB.

DATCP is adopting this rule as a temporary emergency rule, pending completion of federal quarantine regulations. DATCP does not anticipate completing a permanent rule.

**Filed with LRB:** July 24, 2013  
**Publication Date:** July 24, 2013  
**Effective Dates:** July 24, 2013 through December 20, 2013  
**Hearing Date:** September 26, 2013

**2. EmR1312** — The state of Wisconsin Department of Agriculture, Trade and Consumer Protection hereby adopts the following emergency rule to amend **section ATCP 21.17 (1) (b)** and to create **section ATCP 21.17 (1) (d)**, relating to the quarantine of Sauk County for emerald ash borer.

The blanket statement of scope for this rule, SS 08-12, was approved by the Governor on November 8, 2012, published

in Register No. 683, on November 30, 2012, and approved by the Board of Agriculture, Trade and Consumer Protection (as required by s. 227.135 (2), Stats.) on December 18, 2012.

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

### Finding of Emergency

On July 11, 2013, the United States Department of Agriculture — Animal and Plant Health Inspection Service (“APHIS”) positively identified Emerald Ash Borer (“EAB”) in Sauk County at Mirror Lake State Park. EAB is an exotic, invasive pest that poses a dire risk to the ash forest. When APHIS declares quarantine, DATCP has regulatory authority for import controls and quarantine for EAB under s. ATCP 21.17. It is anticipated that APHIS will declare a quarantine for Sauk County but that it will take six to eight weeks for APHIS to act. A six week delay until enactment of the federal quarantines leaves too much time for businesses or individuals to move potentially EAB infested material out of these counties to areas of Wisconsin or other states that are not infested with EAB.

DATCP is adopting this rule as a temporary emergency rule, pending completion of federal quarantine regulations. DATCP does not anticipate completing a permanent rule.

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

**3. EmR1315** — The state of Wisconsin department of agriculture, trade and consumer protection hereby adopts the following emergency rule to amend **section ATCP 21.17 (1) (b)** and to create **section ATCP 21.17 (1) (e)**, relating to the quarantines of Dodge, Douglas, and Winnebago counties for emerald ash borer.

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

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

### Finding of Emergency

The United States Department of Agriculture — Animal and Plant Health Inspection Service (“APHIS”) positively identified Emerald Ash Borer (“EAB”) in Watertown, Dodge County on August 1, 2013; in Black Wolf township, Winnebago County on August 6, 2013; and subsequently in Superior, Douglas County on August 13, 2013. EAB is an exotic, invasive pest that poses a dire risk to the ash forest. When APHIS declares quarantine, DATCP has regulatory authority for import controls and quarantine for EAB under s. ATCP 21.17. It is anticipated that APHIS will declare a quarantine for Dodge, Douglas, and Winnebago counties but that it will take six to eight weeks for APHIS to act. A six week delay until enactment of the federal quarantines leaves too much time for businesses or individuals to move potentially EAB infested material out of these counties to areas of Wisconsin or other states that are not infested with EAB.

DATCP is adopting this rule as a temporary emergency rule, pending completion of federal quarantine regulations. DATCP does not anticipate completing a permanent rule.

**Filed with LRB:** September 11, 2013



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

**4. EmR1322** — The state of Wisconsin Department of Agriculture, Trade and Consumer Protection hereby adopts the following emergency rule to amend **section ATCP 21.17 (1) (b)** and to create **section ATCP 21.17 (1) (f)**, relating to the quarantine of Dane County for the emerald ash borer.

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

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

#### Finding of Emergency

The United States Department of Agriculture — Animal and Plant Health Inspection Service (“APHIS”) positively identified Emerald Ash Borer (“EAB”) in Madison, Dane County on November 22, 2013. EAB is an exotic, invasive pest that poses a dire risk to the ash forest. When APHIS declares quarantine, DATCP has regulatory authority for import controls and quarantine for EAB under s. ATCP 21.17. It is anticipated that APHIS will declare a quarantine for Dane County but that it will take six to eight weeks for APHIS to act. A six week delay until enactment of the federal quarantines leaves too much time for businesses or individuals to move potentially EAB infested material out of this county to areas of Wisconsin or other states that are not infested with EAB.

DATCP is adopting this rule as a temporary emergency rule, pending completion of federal quarantine regulations. DATCP does not anticipate completing a permanent rule.

**Filed with LRB:** December 17, 2013  
**Publication Date:** December 18, 2013  
**Effective Dates:** December 18, 2013 through May 16, 2014  
**Hearing Date:** January 13, 2014

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

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

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

#### Finding of Emergency

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

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

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

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

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

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

### Employment Relations Commission

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

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

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

#### Finding of Emergency

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

**Filed with LRB:** July 15 2013  
**Publication Date:** July 13, 2013  
**Effective Dates:** July 13, 2013 through December 9, 2013  
**Extension Through:** February 7, 2014

### Insurance (2)

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

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

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

#### Finding of Emergency

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

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

**Filed with LRB:** June 10, 2013  
**Publication Date:** June 12, 2013  
**Effective Dates:** June 12, 2013 through November 8, 2013  
**Hearing Date:** July 23, 2013  
**Extension Through:** January 7, 2014

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

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

#### Finding of Emergency

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

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

## Natural Resources (5)

### *Fish, Game, etc., Chs. NR 1—*

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

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

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

#### Finding of Emergency

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

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

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

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

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

#### Finding of Emergency

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

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

**3. EmR1313** (DNR # WMH-07-13(E)) — The Wisconsin Natural Resources Board proposes an order to repeal **section**

**NR 10.06 (9) (b)**; to amend **section NR 10.01 (1) (v)**; to repeal and recreate **sections NR 10.01 (1) (b) to (u) and 10.12 (3) (c)**; and to create **section NR 10.12 (3) (e)**, relating to migratory bird hunting regulations.

This emergency rule was approved by the Governor on August 30, 2103.

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

#### Statutory Authority

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

**Filed with LRB:** September 4, 2013  
**Publication Date:** September 6, 2013  
**Effective Dates:** September 6, 2013 through February 2, 2014  
**Hearing Date:** October 28, 2013

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

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

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

#### Finding of Emergency

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

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

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

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

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

#### Finding of Emergency — Exemption

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

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

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#### Public Instruction

**EmR1324** — The State Superintendent of Public Instruction hereby proposes to amend **sections PI 5.02 (6) and (11m), 5.035 (6), and 5.04**, relating to high school equivalency diplomas and certificates of general educational development.

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

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

#### Finding of Emergency

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

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

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

**Filed with LRB:** December 27, 2013



**Publication Date:** December 27, 2013  
**Effective Dates:** December 27, 2013 through May 25, 2014

## Revenue

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

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

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

### Finding of Emergency

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

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

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

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

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

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

## Safety and Professional Services (2)

### Professional Services, Chs. SPS 1–299

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

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

The statement of scope for this rule, SS 012–13, was approved by the Governor on January 28, 2013, published in

Register No. 686 on February 14, 2013, and approved by the Department of Safety and Professional Services on February 28, 2013.

### Finding of Emergency

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

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

**Filed with LRB:** June 12, 2013  
**Publication Date:** June 18, 2013  
**Effective Dates:** June 18, 2013 through November 14, 2013  
**Extension Through:** January 13, 2014

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

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

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

### Finding of Emergency

The Department of Safety and Professional Services (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  
**Hearing Date:** August 6, 2013  
**Extension Through:** January 8, 2014

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### Safety and Professional Services — Controlled Substances Board

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

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

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

#### Finding of Emergency

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

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

The Controlled Substances Board finds that scheduling of UR–144, XLR–11, and AKB48 on an emergency basis is necessary to avoid an imminent hazard to public safety. The substances are not included in any other schedule and no

exemption or approval is in effect for the substance under 21 USC 355.

On May 16, 2013, the U.S. Department of Justice Drug Enforcement Administration emergency scheduled UR–144, XLR11, and AKB48 as Schedule I, illegal drugs under the Controlled Substances Act.

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

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### Workforce Development

#### Unemployment Insurance, Chs. DWD 100–150

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

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

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

#### Finding of Emergency

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

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

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

**Filed with LRB:** September 25, 2013  
**Publication Date:** September 29, 2013  
**Effective Dates:** September 29, 2013 through February 25, 2014, except that changes to ss. DWD 126.03 and 127.02 take effect after the Secretary determines the Department has the technological ability to implement the changes.  
**Hearing Date:** November 4, 2013

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### **Workforce Development**

#### *Employment and Training, Chs. DWD 805–830*

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

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

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

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

#### **Finding of Emergency**

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

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

**Filed with LRB:** September 25, 2013  
**Publication Date:** September 29, 2013  
**Effective Dates:** October 1, 2013 through February 27, 2014  
**Hearing Date:** November 5, 2013



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## Scope Statements

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### Natural Resources

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

SS 001-14

(DNR # WY-23-13)

This statement of scope was approved by the governor on December 19, 2013.

#### Rule No.

Chapter NR 102, Subchapter III (create).

#### Relating to

Processes for waterbody assessments and impaired waters listing, biological criteria for water quality standards, and biological confirmation of phosphorus impairments.

#### Rule Type

Permanent

#### 1. Finding/Nature of Emergency

The rules will be proposed as permanent rules.

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

Every two years, under federal Clean Water Act requirements, the department assesses the state's waters and updates its list of impaired waters. The goal of this new subchapter is to document this obligation and Wisconsin's process for fulfilling it. Further, this subchapter would create new water quality criteria for a suite of biological metrics that are used to assess waterbodies and determine impairments.

This subchapter would have two main components:

- a) The first component would contain rules relating to conducting waterbody assessments and listing impaired waters, including the process used, public participation requirements, and EPA approval. This rule addition would document and codify Wisconsin's current process of conducting impairment assessments, which is currently not contained in code although it is a federal requirement.
- b) The second component would establish new water quality criteria for a suite of biological metrics ("biocriteria") that are used for assessing attainment of designated uses for different waterbody types. These criteria represent critical assessment benchmarks for determining the health of the state's streams, rivers, and lakes. Biocriteria would be used to determine whether a waterbody should be placed on the impaired waters list (303(d) list). Codified biocriteria could also be used as confirmation of impairment for waterbodies that exceed nutrient criteria. Within certain limits appropriate to each waterbody type, waterbodies exceeding nutrient criteria but not exhibiting biological or recreational use impairment would not be considered impaired for purposes of 303(d) listing.

Additional rule changes may be considered which are needed to effectuate the goals described in this scope statement.

#### 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

##### *Waterbody assessments and impaired waters listing*

Under the Clean Water Act, all states are required to conduct waterbody assessments and impaired waters listing; these are submitted to U.S. EPA every two years. However, Wisconsin codes do not contain any reference to these obligations. This Subchapter would document and codify Wisconsin's assessment and listing process, in a generalized manner. It would establish requirements for public participation and recognize EPA's approval process. The rule addition is not meant to necessitate any specific changes to how these assessments are currently conducted. The department's protocols for assessing waterbodies and listing impaired waters are contained in a guidance document titled "*Wisconsin's Consolidated Assessment and Listing Methodology*" (WisCALM), which is updated every two years. This guidance document would still be used for more detailed protocols than those that would be codified.

##### *Biological metrics (biocriteria)*

The department has developed several biological metrics that are indicative of the health of aquatic biological communities and the ability of the public to recreate. These metrics include, but are not limited to, fish, aquatic insects, algae (chlorophyll a), and aquatic plants. The metrics are tailored for different waterbody types, with thresholds indicating whether waterbodies are attaining their uses or are impaired. Under the WisCALM guidance, the department currently assesses waterbodies in regard to some of these biological metrics, and deems it appropriate to codify certain components of the guidance for consistency.

Some of these biological metrics are specifically responsive to phosphorus concentrations in the water. In the 2010 revision to ch. NR 102, Wis. Adm. Code, the rule contained a note that specified that for the purpose of determining which waters should be placed on the impaired waters list for phosphorus, the department considers such biological response variables in conjunction with phosphorus criteria exceedance before listing a waterbody as impaired. This subchapter would move these concepts from the note into the body of rule text, with more detailed definition, recognizing the Department's consideration of biological or related responses to phosphorus during waterbody assessments and impairment determinations.

Such authority is consistent with other states that are addressing nutrients through rule language, such as Minnesota, Ohio, and Maine, which all have — or are developing — biological metrics for assessments and for verification of nutrient impairments. U.S. EPA actively encourages states to use biological metrics for assessment purposes.

##### *Policy alternatives*

The department is currently assessing waterbodies using biological information, as well as pollutant data such as

phosphorus concentrations. Because these methods are based on a sound body of science and contribute critical information to the assessment process, DNR recommends they be codified at this time. Without codification of biocriteria, the department could still assess waters for biological metrics and list as impaired under the authority of existing *narrative* criteria (i.e. using a descriptive protection of uses based on professional judgment instead of *numeric* criteria as proposed in this rule package). However, without biocriteria, the department cannot use biological data in conjunction with nutrient data to determine impairment. The department is currently placing a subgroup of waters that do *not* exhibit a biological impairment but that exceed state phosphorus criteria into a holding category on the impaired waters list labeled “5P”. If the status quo is maintained and this rule change is not promulgated, listing category 5P could be made permanent and such waters would be considered impaired unless site-specific criteria are granted.

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

- Sections 281.11 and 281.12, Wis. Stats., grant necessary powers and organize a comprehensive program under the WDNR to enhance quality management and protection of all waters of the state. It grants the WDNR general supervision and control to carry out the planning, management and regulatory programs necessary for prevention/reduction of water pollution and for improvement of water quality.
- Section 281.15, Wis. Stats. mandates that the department promulgate water quality standards, including water quality criteria and designated uses. It recognizes that different use categories and criteria are appropriate for different types of waterbodies, and that the department shall establish criteria which are not more stringent than reasonably necessary to assure attainment of the designated use for the water bodies in question.
- Section 281.65 (4) (c) and (cd), Wis. Stats., directs the Department to prepare a list of waters impaired by nonpoint source pollution.

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

Estimate: 800 hours

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

*Business/industry, municipalities, and agricultural operators:*

The proposed changes are expected to have little impact on existing businesses, municipalities, or agricultural operators. Point source dischargers to a waterbody that exceeds phosphorus criteria will still be subject to discharge limits calculated under ch. NR 217, Wis. Adm. Code, regardless of whether the waterbody is listed as impaired. Waters that fall into category 5P that may be affected by the rule change will be likely candidates for development of site-specific phosphorus criteria, which may be less stringent and may therefore allow less stringent discharge limits.

*Shoreline property owners and local communities:*

The proposed change may benefit shoreline property owners and local communities, by more appropriately listing

or not listing waters as impaired based on degradation of fish and aquatic life or recreational uses. Listing waters as impaired when they are not can have a localized impact on marketing valuation of properties, and could have a perceived effect on tourism or property values.

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

The proposed changes for this rulemaking package are in accordance with the following federal regulations. The federal regulations stipulate that states are required to assess waters and create an impaired waters list every two years. Further, they require states to develop water quality criteria. However, federal law does not specify processes for assessing waters or listing them as impaired, and it does not mandate or limit which criteria must be developed. This rule package would recognize the state’s federal obligations and provide a general structure that the state will work within. It will also create new criteria to address the state’s water quality needs.

- Sec. 303(d)(1)(A) of the Federal Water Pollution Control Act (Clean Water Act) requires states to develop an impaired waters list by stating that to identify waters that are not meeting any water quality standard.
- Sec. 305(b)(1) of the Federal Water Pollution Control Act (Clean Water Act) requires states to prepare a biennial report documenting which waterbodies are attaining their designated uses.
- 40 CFR Sec. 130.7 provides additional information related to requirements for developing the impaired waters list.
- 40 CFR Sec. 130.3. Water quality standards. This section defines water quality standards as setting water quality goals for a waterbody that will protect its designated uses (such as protection of fish, wildlife, recreation, and public health and welfare). Criteria will be set to protect those uses.
- 40 CFR Sec. 131.11 Criteria. States must adopt those water quality criteria that protect the designated use. Such criteria must be based on sound scientific rationale and must contain sufficient parameters or constituents to protect the designated use. For waters with multiple use designations, the criteria shall support the most sensitive use.

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

It is expected that this change will not have more than a “moderate” (Level 2) economic impact, and therefore the department recommends a 30 day comment period. The proposed rule change will allow the department to more accurately list impaired waters, listing only those waters that are actually experiencing an impairment of fish and aquatic life or recreational uses. Listing waters as impaired when they are not can have a localized impact on marketing valuation of properties, and could have a perceived effect on tourism or property values. Permittees discharging to waters that exceed the applicable phosphorus criteria will remain subject to discharge limits calculated under ch. NR 217, Wis. Adm. Code, regardless of whether the waterbody is listed as impaired. At this point it is not expected that there will be a significant impact to small businesses.

## 9. Anticipated Number, Month, and Locations of Public Hearings

The Department anticipates holding 2 public hearings in the month of January 2015. Hearing cities will be: Madison and Wausau or Eau Claire (or other as appropriate).

The Department will hold these hearings in these locations to receive input from affected parties based in the Madison area and at a centrally located city in the state.

### Contact Person

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## Natural Resources

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

SS 002-14

(DNR # WY-25-13)

This statement of scope was approved by the governor on December 19, 2013.

### Rule No.

Chapters NR 102, 104, and 105 (revise).

### Relating to

Surface water designated uses, associated water quality criteria, variance waters and qualifying factors for variances based on economic impacts.

### Rule Type

Permanent

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

The rules will be proposed as permanent rules.

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

Designated Uses are a critical component of Surface Water Quality Standards. Each waterbody has certain Designated Uses assigned to it, such as Fish and Aquatic Life, Recreation, Wildlife, and Public Health. The objectives of the proposed rule modifications are to bring outdated Designated Use categories and subcategories into alignment with current scientific understanding of waterbody types and their aquatic communities, and to correspondingly adjust water quality criteria based on these Uses. These changes are needed in order to a) perform accurate and scientifically-defensible assessments of waterbody quality, b) ensure that permittees are not required to meet over- or under-protective discharge limits, and c) match appropriate water quality management tools (best management practices, etc.) with the correct uses of a waterbody. As part of this rule package, updates to individual waterbody uses and certain variances to those uses will also be made as needed.

The majority of the revisions will likely cover the Fish and Aquatic Life subcategories and their associated water quality criteria, which affect permit effluent limits. It has long been recognized that these subcategories do not scientifically or

adequately reflect the variety of waterbody types statewide. Therefore, some effluent limits may be overly restrictive, whereas others may be under-protective. Until staff are allowed to begin revising this rule, uncertainty remains about which and how many effluent permits will be affected with less-restrictive or more-protective limits. For waters already receiving effluent, sufficient information usually exists for making use designations and perhaps variance determinations, so during the course of the rulemaking the number of permits affected should become clear.

WDNR is cognizant of the potential socio-economic ramifications of revising waterbody use designations and is committed to working with the permitted entities, public, and U.S. EPA through technical advisory groups, public meetings, and the review process to collaboratively resolve all challenges. The package will establish factors the Department will consider when granting either a facility-specific variance or a modification to a use designation based on the statutory standard of substantial and widespread socioeconomic impacts. Although this rule package will address the process for determining variances, changes to existing variances under ch. NR 104 are not a focus of this rule package. Other possible solutions suggested by our customers and advisory group will also be considered.

In order to streamline the process of designating uses, this code package includes a recommendation to establish new procedures for designating and updating uses for individual waterbodies. This procedure may include a dual process for updating uses, whereby some updates may be made via rulemaking while others may be made through triennial publication of a non-codified list. Additional rule changes may be considered which are needed to effectuate the goals described in this scope statement.

### 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

#### *Modifications proposed for this rule package:*

*Chapter NR 102: Updating Designated Use categories to reflect current science*

Wisconsin's waterbodies are classified according to Designated Uses defined in s. NR 102.04, Wis. Adm. Code. However, several of these use categories/subcategories have not been modified since they were first promulgated in 1973. Scientific understanding of aquatic systems has advanced significantly since that time, and supports a revision of the state's Designated Uses categorization system. WDNR proposes updating the Designated Use categories and subcategories to more accurately classify and assess the state's waterbodies.

*Chapters NR 102 and 105: Updating corresponding Surface Water Quality Criteria*

Surface water quality criteria, which regulate levels of substances in waterbodies, are based upon Designated Uses and protection of the uses for each waterbody type. Concurrent with updates to the uses, water quality criteria found in chs. NR 102 and 105, Wis. Adm. Code, need to be re-evaluated to ensure that human health, fish and aquatic life, and wildlife are being adequately protected, and reflect the appropriate level of protection for each specific use.

*NR 102: Updating individual waterbodies' Designated Uses triennially, via rule or non-codified list*

The Clean Water Act specifies that an opportunity to update Designated Uses for individual waterbodies should be made available every three years<sup>1</sup>, though this has not been done since the 1980s. Wisconsin has 88,000 stream miles and



15,000 lakes, and the outdated code “defaults” the vast majority of these waters to an unspecified fish and aquatic life Use. Much more is now known about these waters, and reclassifications need to be made so that our permitting programs are based on the receiving waters’ actual Uses, and are not potentially over- or under- protective. A mechanism for making these updates in a periodic, timely way is needed.

To this end, WDNR proposes promulgating a new procedure for assigning specific water bodies to the updated use categories. WDNR would then use this process to periodically review new data for individual waterbodies and initiate any necessary updates to their uses. To increase efficiency, the new procedure may contain a dual process through which the majority of updates could be done through a non-codified list that is updated and published triennially, while others would proceed through the rulemaking process. During the update cycle, all updates will go through public hearing. Based on the results of the public hearing, if there are substantive issues raised and significant public concern regarding a proposed classification, it would proceed through the formal rulemaking process.

Input from permittees, the public and U.S. EPA will be part of the process for establishing the initial list and updates to the list. This approach will enable decisions to be made using the most relevant information about a waterbody, while ensuring public participation, transparency, and EPA oversight.

<sup>1</sup>It is important to note that while the Designated Uses list would be updated periodically, this does not mean that each waterbody’s use would continue to change over time. On the contrary, for any specific waterbody, once the Uses are set based on field data, they are not expected to vary year to year. The update period primarily provides opportunity to evaluate field data and assign/verify Uses for waterbodies that were previously unsampled. Occasional corrections and Use modifications based on socio-economic impacts can also be made during these update periods.

#### *NR 102: Defining variance options*

As a part of this effort, the Department plans to better define two types of variance options for circumstances where “substantial and widespread socioeconomic impact” or other specific factors apply (s. 283.15 (4), Wis. Stats.). WDNR currently has authority under current Statute and Admin. Code to use these options; however, better definition of protocols is needed in order to implement them. Protocols and qualifying factors for these options may be included as part of the rule package if appropriate.

- Facility-specific variances: If a discharger would experience short-term “substantial and widespread socioeconomic impacts”, it may be eligible for a facility-specific variance to water quality standards during one or more permit terms. As part of this rulemaking effort, WDNR plans to establish a process for industries and municipalities to demonstrate their eligibility for such variances, including a better definition of what constitutes “substantial and widespread socioeconomic impact”.
- Modification of Designated Uses: In cases of longer term “substantial and widespread socioeconomic impact” that precludes a waterbody from meeting water quality standards, a designated use for a waterbody may be modified, resulting in less stringent standards applied to that waterbody. This process is also known as a “Use Attainability Analysis.” WDNR plans to establish protocols for modifying a waterbody’s use, and to define the level of socioeconomic impact needed to demonstrate eligibility for a modified use.

#### *NR 104: Updating historic variances to Designated Uses*

Historically, certain individual waterbodies have received variances to their appropriate Designated Uses; these variances were codified in 1976, with slight modifications in the 1980s, in ch. NR 104, Wis. Adm. Code. Because several of these historic variances may no longer be appropriate, they need re-evaluation and updates. Portions of the language in ch. NR 104 and some individual variance water listings may be updated as a part of this rule package; however, it is expected that most variances under ch. NR 104 will be updated as part of a separate, future rule package due to the workload that is expected in order to complete such analyses.

#### *Policy alternatives*

##### *No change to Designated Use categories or Water Quality Criteria*

If updates to the Designated Use categories/subcategories and their corresponding Water Quality Criteria are not made, waterbodies will continue to be assessed based on outdated and inaccurate information. Because Designated Uses are the foundation of many of WDNR’s water quality programs, this leads to inaccurate assessments, inappropriate target goals for Total Maximum Daily Load analyses, and over- or under-protective discharge limits for permittees with Wisconsin Pollutant Discharge Elimination System (WPDES) permits. Inefficiencies resulting from these problems will continue if no changes are made to improve the code.

##### *No change to allow triennial non-codified, published updates of Designated Uses*

One component of this rulemaking package is the proposal to allow some Designated Uses to be updated in a non-codified publication (with public participation and EPA review) every three years, rather than updating administrative codes for all waterbodies. If this component of the process does not go forward, then WDNR staff would be required to conduct periodic rulemaking efforts for all waterbody updates in code—a process that would be extremely inefficient and require excessive staff time and public funds. Additionally, the code would have to contain over 100,000 entries for uses for individual waterbodies, which would be highly impractical.

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

Section 281.15, Wis. Stats., mandates that the Department promulgate water quality standards, including both Designated Uses and Water Quality Criteria that are based upon those uses. It recognizes that different use categories and criteria are appropriate for different types of waterbodies. This statutory authority is consistent with Federal requirements in ss. 40 CFR 131.10, 131.11, and 131.20 (see Question #7 below). Section 283.15, Wis. Stats., specifies the Department’s authority to grant variances to water quality standards.

#### **5. Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule**

- 2400 hours for developing rule content
- 2200 hours for rulemaking

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

- *Business/Industry and Municipalities:* Businesses and municipalities that discharge to surface waters and hold a WPDES permit may receive modified permit

limits to match the water quality criteria corresponding to the appropriate Designated Uses for their receiving water. Entities holding Federal Energy Regulatory Commission (FERC) licenses regulating stream flow may also be impacted. Municipalities that obtain drinking water from surface waters may be affected if human health criteria are modified and require minor operational adjustments to drinking water treatment systems. These entities may benefit from clarified procedures for granting facility-specific variances or modification of designated uses.

- *State Government:* The rule updates will enable WDNR staff to gain efficiencies in several internal processes, allowing state funds to be used more economically.
- *Public:* The public and shoreland property owners will benefit from more accurate waterbody assessments and management actions.

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

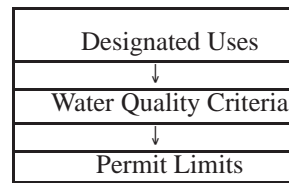
The proposed changes for this rulemaking package are in accordance with, but do not duplicate, the following federal regulations.

- 40 CFR 131.10 states that “Each state must specify appropriate water uses to be achieved and protected.” It allows that “States may adopt sub-categories of a use and set appropriate criteria to reflect varying needs of such sub-categories of uses...”. It also specifies in which cases a state must conduct a Use Attainability Analysis to change a Designated Use.
- 40 CFR 131.11 (a)(1) requires that “States must adopt those water quality criteria that protect the designated use. Such criteria must be based on sound scientific rationale and must contain sufficient parameters or constituents to protect the designated use. For waters with multiple use designations, the criteria shall support the most sensitive use.”
- 40 CFR 131.20 provides requirements for state review and revision of water quality standards: “(a) The State shall from time to time, but at least once every three years, hold public hearings for the purpose of reviewing applicable water quality standards and, as appropriate, modifying and adopting standards.” It also sets requirements for public participation and U.S. EPA review and approval of standards changes.

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

Estimates of the potential economic impact of this rule are difficult to derive until certain initial stages of rulemaking are completed. The Department wishes to provide ample time for review and input on this rule from the public and stakeholders. Because it is unclear at this time whether the rule will have a moderate or possibly significant economic impact, the Department recommends a 60 day public comment period for a Level 1 Economic Impact Analysis. A change in Designated Uses will likely necessitate corresponding modifications in certain water quality criteria such as biological oxygen demand (BOD), dissolved oxygen (DO), or temperature (the rule change is not expected to have much, if any, impact to

criteria for toxics or phosphorus). If criteria are modified, permit limits for dischargers based on these criteria will also need to be adjusted during the following permit term.



For the majority of dischargers, it is expected that permit limits will stay the same, with no costs accrued. However, the Department recognizes that there are existing facilities that will likely be impacted by these rule changes, and these facilities may be eligible for several flexibility options that are in place or are under development. Of those dischargers affected, the Department expects most permit adjustments to be minor, such as low-cost chemical treatment, though some could involve more significant structural improvements. For affected permittees, flexibility options include:

- *Facility-specific variance:* For facilities which should be able to meet the waterbody’s designated use over time, but for which permit limit adjustments are cost-prohibitive in the short-term, facility-specific variances allowable under s. 283.15, Wis. Stats. may be an option.
- *Modification of a waterbody’s designated use:* If it is found that the initial designated use is incorrect or unattainable due to certain natural or socioeconomic factors, the designated use may be modified using the Use Attainability Analysis process, and the applicable criteria and permit limits would be adjusted accordingly.
- *Site-specific criteria:* In cases where there is an exceedance of the water quality criteria, but the designated uses of the receiving water are being met (i.e. the biological metrics in the receiving water are good), the waterbody may be eligible for a less-stringent site-specific criteria for specific pollutants. In cases where site-specific criteria are established, permit limits for dischargers would be modified accordingly.

The Department expects that estimates of permit limit changes will be available once the evaluation of water quality criteria has been completed as part of the rulemaking process. These estimates will be made available to the public during the solicitation period for information and advice on the economic impact of the proposed rule. There are also several cost benefits of the rule, including more accurate protection of the state’s waterbodies and public health, governmental efficiencies in conducting statewide waterbody assessments and management actions, and improved water resources for the public. The Department will solicit public input on the projected economic impact, and will convene an advisory group to provide input on the proposed rule modifications.

### 9. Anticipated Number, Month, and Locations of Public Hearings

The Department anticipates holding 4 public hearings in the month of September, 2015. Hearing cities will be: Eau Claire, Green Bay, Madison, and Milwaukee (or others as appropriate).

The Department will hold these hearings in these locations to receive input from affected parties around the state. It is expected there will be broad interest in this rule package.

**Contact Person**

Kristi Minahan  
Water Quality Standards Specialist

Bureau of Water Quality  
Wisconsin Department of Natural Resources  
608-266-7055  
[kristi.minahan@wisconsin.gov](mailto:kristi.minahan@wisconsin.gov)



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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.*

## Insurance CR 13–113

The Office of the Commissioner of Insurance submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse on December 23, 2013, in accordance with ss. 227.14 (4m) and 227.15, Stats.

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

### Analysis

These changes will affect sections Ins 6.91 to 6.99, relating to navigator, nonnavigator assisters, and related entities and affecting small business.

### Agency Procedure for Promulgation

The date for the public hearing is January 29, 2014.

### Contact Person

A copy of the proposed rule may be obtained from the Web site at: <http://oci.wi.gov/ocirules.htm> or by contacting Inger Williams, Public Information and Communications, Office of the Commissioner of Insurance, at (608) 264–8110. For additional information, please contact Julie E. Walsh at (608) 264–8101 or e-mail at [julie.walsh@wisconsin.gov](mailto:julie.walsh@wisconsin.gov) in the OCI Legal Unit.

## Natural Resources

*Environmental Protection — General, Chs. 100—*

*Environmental Protection — WPDES, Chs. 200—*

## CR 13–112

(DNR # SS–14–12)

On December 19, 2013, the Department of Natural Resources submitted a rule to the Legislative Council Administrative Rules Clearinghouse.

The scope statement for this rule, SS 032–12, was approved by the Governor on May 29, 2102, published in Register Number 678, on June 15, 2102, and approved by the Natural Resources Board on June 27, 2102.

### Analysis

This rule revises Chapters NR 157 and 219, relating to analytical test methods and procedures for the analysis of wastewater and biosolids.

### Agency Procedure for Promulgation

A Public Hearing will be held on January 27, 2104

## Name and Organizational Unit of Agency Contact

Linda Haddix — Legal Services (608) 266–1959

Richard Mealy — Science Services (608) 264–6006

## Public Instruction CR 13–114

On December 27, 2013, the Wisconsin Department of Public Instruction submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

The scope statement for this rule, SS 145–13, was published in Register No. 695, on November 14, 2013, and approved by State Superintendent Tony Evers, on November 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 obtain the Governor’s approval for the statement of scope or this rule.

### Analysis

The proposed rule amends sections PI 5.02 (6) and (11m), 5.035 (6), and 5.04, relating to high school equivalency diplomas and certificates of general educational development.

### Agency Procedure for Promulgation

Public hearings will be scheduled as required under ss. 227.16 (1) and 227.24 (4), Stats.

## Name and Organizational Unit of Agency Contact

The Division for Academic Excellence within the Department of Public Instruction is primarily responsible for promulgation of this rule. If you have questions regarding this rule, you may contact Katie Schumacher, Administrative Rules Coordinator, at [Katie.Schumacher@dpi.wi.gov](mailto:Katie.Schumacher@dpi.wi.gov) or (608) 267–9127.

## Public Instruction CR 13–115

On December 27, 2013, the Wisconsin Department of Public Instruction submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

The scope statement for this rule, SS 094–13, was published in Register No. 692, on August 14, 2013, and approved by State Superintendent Tony Evers, on August 27, 2013. Per the Dane County Circuit Court order issued in Coyne, et al. v. Walker, et al., Case No. 11–CV–4573, the Department of Public Instruction is not required to obtain the Governor’s approval for the statement of scope or this rule.

### Analysis

The proposed rule amends section PI 25.05 (1) (intro.), relating to the Children at Risk Plan and Program.

### Agency Procedure for Promulgation

The rules are being adopted under s. 227.16 (2) (b), Stats., which provides that rulemaking does not need to be preceded by notice and public hearing if the proposed rule brings an existing rule into conformity with a statute that has been changed. Comments on the rule change must be submitted no later than 15 days after publication of the Notice of Submittal of Rules to the Legislative Council Clearinghouse in the Administrative Register. Please submit your comments to Katie Schumacher at [Katie.Schumacher@dpi.wi.gov](mailto:Katie.Schumacher@dpi.wi.gov), or Katie Schumacher, 125 S. Webster Street, P.O. Box 7841, Madison, WI 53707-7841.

### Name and Organizational Unit of Agency Contact

The Division for Academic Excellence within the Department of Public Instruction is primarily responsible for the promulgation of this rule. If you have questions regarding this rule, you may contact Katie Schumacher, Administrative Rules Coordinator, at [Katie.Schumacher@dpi.wi.gov](mailto:Katie.Schumacher@dpi.wi.gov) or (608) 267-9127.

## Public Instruction CR 13-116

On December 27, 2013, the Wisconsin Department of Public Instruction submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

The scope statement for this rule, SS 113-13, was published in Register No. 693, on September 14, 2013, and approved by State Superintendent Tony Evers, on September 24, 2013. Per the Dane County Circuit Court order issued in *Coyne, et al. v. Walker, et al.*, Case No. 11-CV-4573, the Department of Public Instruction is not required to obtain the Governor's approval for the statement of scope or this rule.

### Analysis

The proposed rule repeals PI 42, relating to the School Breakfast Program.

### Agency Procedure for Promulgation

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

Comments on the rule change must be submitted no later than 15 days after publication of the Notice of Submittal of Rules to the Legislative Council Clearinghouse in the Administrative Register. Please submit your comments to Katie Schumacher at [Katie.Schumacher@dpi.wi.gov](mailto:Katie.Schumacher@dpi.wi.gov), or Katie Schumacher, 125 S. Webster Street, P.O. Box 7841, Madison, WI 53707-7841.

### Name and Organizational Unit of Agency Contact

The Division for Finance and Management within the Department of Public Instruction is primarily responsible for the promulgation of this rule. If you have questions regarding this rule, you may contact Katie Schumacher, Administrative Rules Coordinator, at [Katie.Schumacher@dpi.wi.gov](mailto:Katie.Schumacher@dpi.wi.gov) or (608) 267-9127.

## Safety and Professional Services — Marriage and Family Therapy, Professional Counseling and Social Work Examining Board CR 13-117

On December 26, 2013, the Marriage and Family Therapy, Professional Counseling and Social Work Examining Board submitted a proposed rule to the Legislative Council Rules Clearinghouse.

The scope statement for this rule, SS 029-13, was approved by the Governor on March 26, 2013, published in Register No. 688 on April 14, 2013, and approved by Marriage and Family Therapy, Professional Counseling and Social Work Examining Board on June 11, 2013.

### Analysis

Statutory Authority: Sections 15.08 (5) (b) and 457.22 (1), Wis. Stats.

This proposed rule-making order repeals Chapter MPSW 8 and section MPSW 14.03 and repeals and recreates Chapter MPSW 19, relating to continuing education.

### Agency Procedure for Promulgation

A public hearing is required and will be held on February 4, 2014, at 1400 East Washington Avenue, Room 121, Madison, Wisconsin (enter at 55 North Dickinson Street).

### Contact Person

Sharon Henes, Administrative Rules Coordinator, Services, Division of Policy Development, (608) 261-2377.

## Safety and Professional Services — Marriage and Family Therapy, Professional Counseling and Social Work Examining Board CR 13-118

On December 26, 2013, the Marriage and Family Therapy, Professional Counseling and Social Work Examining Board submitted a proposed rule to the Legislative Council Rules Clearinghouse.

The scope statement for this rule, SS149-13, was approved by the Governor on November 15, 2013, published in Register No. 695 on November 30, 2013, and approved by Marriage and Family Therapy, Professional Counseling and Social Work Examining Board on December 11, 2013.

### Analysis

Statutory Authority: Section 15.08 (5) (b), Wis. Stats.

This proposed rule-making order repeals sections MPSW 2.01 (14) and 10.01 (3m) and relates to psychotherapy definition.

### Agency Procedure for Promulgation

A public hearing is required and will be held on February 4, 2014, at 1400 East Washington Avenue, Room 121, Madison, Wisconsin (enter at 55 North Dickinson Street).

### Contact Person

Sharon Henes, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, (608) 261-2377

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## Rule-Making Notices

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### Notice of Hearing

#### Insurance CR 13-113

Notice is hereby given that pursuant to the authority granted under s. 601.41 (3), Stats., and the procedures set forth in under s. 227.24 (3), Stats., the Office of the Commissioner of Insurance (OCI) will hold a public hearing to consider the adoption of the attached proposed rulemaking order affecting sections Ins 6.91 to 6.99, Wis. Adm. Code, relating to navigators, nonnavigator assisters, and related entities and affecting small business.

#### Hearing Information

**Date:** Wednesday, January 29, 2014  
**Time:** 9:30 a.m., or as soon thereafter as the matter may be reached  
**Location:** Office of the Commissioner of Insurance  
 Room 227  
 125 South Webster Street, 2nd Floor  
 Madison, Wisconsin

#### Submittal of Written Comments

Written comments can be mailed to:

Julie E. Walsh  
 Legal Unit — OCI Rule Comment for Rule Ins 691  
 Office of the Commissioner of Insurance  
 PO Box 7873  
 Madison WI 53707-7873

Written comments can be hand delivered to:

Julie E. Walsh  
 Legal Unit — OCI Rule Comment for Rule Ins 691  
 Office of the Commissioner of Insurance  
 125 South Webster St – 2<sup>nd</sup> Floor  
 Madison WI 53703-3474

Comments can be emailed to:

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

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

The deadline for submitting comments is **4:00 p.m. on February 7, 2014.**

#### Analysis Prepared by the Office of the Commissioner of Insurance (OCI)

##### *Statutes interpreted*

Sections 601.31, 601.41, 601.62, 601.65, and chs. 628 and 631, Stats.

##### *Statutory authority*

Sections 227.11, 601.41, and 628.98, Stats.

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

The office has authority to promulgate rules interpreting ch. 628, Stats., as amended, relating to the oversight and licensing of navigators and registering navigator entities and nonnavigator assisters through the registration of nonnavigator assister entities. The commissioner has general authority to promulgate rules necessary to administer and enforce chs. 600 to 655, Stats., in accordance with ss. 227.11 (2) (a) and 601.41 (3), Stats. Further under s. 628.98, Stats., the commissioner is permitted to promulgate any rules necessary to carry out the purposes of subch. V of ch. 628, Stats. Additionally, the commissioner may promulgate rules under authority granted in ss. 601.42, and 628.34 (12), Stats.

#### *Related statutes or rules*

Chapters Ins 6, 26, and 28, Wis. Admin. Code.

#### *The plain language analysis and summary of the proposed rule*

The proposed rule establishes training and licensing requirements for navigators in accordance with state law and consistent with federal law. Navigators must have contracts with and grants from the federal government to assist consumers in enrolling in the federally facilitated health insurance exchange. When navigators facilitate enrollment of consumers into the federal exchange they are by law transacting an insurance business. As such, the office through this proposed rule sets forth basic requirements of licensure including fingerprinting, criminal background checks, and consideration of prior personal and financial transactions that may provide insight to the individual's character. Since as navigators will have access to personal and financial information of the consumers they assist the proposed regulations includes requirements for record keeping in the case where a navigator retains personal or financial information in addition to the federally established privacy and security requirements. Further to ensure if a consumer were harmed by the acts of a navigator, the proposed rule implements the statutory requirement of financial responsibility for wrongful acts of a navigator.

Under the proposed rule nonnavigator assisters, navigators, and nonnavigator assister entities are required to be registered with the Office. The nonnavigator assisters are registered with the commissioner through the nonnavigator assister entity with whom the nonnavigator assister is employed, supervised or affiliated with. Navigators, navigator entities, and nonnavigator assister entities are designated by the federally facilitated exchange and navigators and navigator entities are under contract with the federally facilitated exchange to assist consumers enrolling in the exchange.

The state registration process will allow the office to ensure those persons and entities having direct contact with consumers have developed and implemented policies and procedures to ensure accurate guidance is given to consumers by properly trained persons. Through registration, the office will have current information for consumers of navigators and nonnavigator assisters who are compliant with training and knowledgeable of the exchange. The entities are legally



responsible for the acts of the navigators or nonnavigator assisters that are employed, supervised or affiliated with the entities and are required to ensure the navigators and nonnavigator assisters are current in their training and of good character, competent and trustworthy.

Both navigators and nonnavigator assisters will be trained to understand not only the federal exchange health insurance products, but will also be familiar with public assistance programs and premium tax credits. The proposed rule requires initial and on-going training to ensure that the navigators and nonnavigator assisters who are providing assistance to Wisconsin consumers are providing the most recent and accurate information.

The proposed rule contains provisions intended to protect consumers from deceptive practices by restricting the use of terms, including navigator, nonnavigator assister, and certified application counselors, for use by only those persons who possess the proper training, licensure or registration status. The rule also delineates prohibited acts by navigators and nonnavigator assisters including making false or misleading statements, performing acts for which an insurance agent license is required, and receiving compensation from an insurer. Finally, the rule exempts governmental entities or persons acting on behalf of governmental entities from the regulations.

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

The proposed law dovetails with federal law and extends consumer protections through licensure, training and financial responsibility requirements. The federal law set forth in 45 CFR ch. 155, as amended, outlines federal training, grants, privacy and security and contracting requirements. The proposed rule ensures that persons assisting Wisconsin consumers are also trained in Wisconsin insurance laws and public assistance programs available in this state. The proposed rules include financial responsibility for wrongful acts as a measure to provide greater protection to Wisconsin consumers. By requiring licensing or registration the proposed rule provides ready, verifiable information so consumers can be confident that the information and assistance they are provided by navigators and nonnavigator assisters are from persons of good character and who have successfully completed training.

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

**Illinois:** Public Act 098-0541, was signed into law on August 23, 2013. The law requires navigators to be licensed by the Insurance Department and comply with state and federal training, clarifies the roles of navigators from licensed insurance agents, establish requirements including licensing, training, and financial responsibility. The law is similar to the law passed in Wisconsin.

**Iowa:** Iowa Code § 522D (2013). The law establishes licensing requirements for navigators and navigator entities similar to the law passed in Wisconsin. The Insurance Division is in the process of promulgating administrative rules establishing training, licensing, fees and evidence of financial responsibility similar to this proposed rule.

**Michigan:** No similar laws or rules.

**Minnesota:** Minn. Stat. § 62V.05 (2013). Law was effective March 21, 2013 and requires the Minnesota exchange board to establish policies and procedures for the ongoing operation of a navigator program including in-person assisters. The law requires navigators and in-person assisters to have training and certified prior to selling for the exchange.

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

The Office considered federal law and laws of surrounding states to ensure the consumer safety and balance state oversight of navigators, nonnavigator assisters and related entities. The proposed regulations provide similar oversight for navigators, nonnavigator assisters, and related entities to that existing for insurance agents, brokers, and managing agencies. The approach minimizes potential consumer harm by ensuring those serving the public meet basic qualifications and establish state regulation and control over the navigator and nonnavigator activities in the transaction of an insurance business.

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

The proposed rule may affect small businesses; however, the office has taken steps to minimize the impact of the rule by limiting the effect of the regulation to those navigators or nonnavigator assisters who are working on behalf of the federal government. For perspective, the federal government only awarded six navigator grants for the entire state of Wisconsin. The proposed rules and law impose no restrictions or regulations for governmental entities. There are many such entities already providing assistance to consumers with health insurance and public assistance concerns. By keeping the scope of the proposed rule very narrow, the impact on small businesses is significantly lessened.

The proposed rule fee amounts are consistent or lesser than similarly situated agents and managing broker agencies. Further, there is no imposition of fees for nonnavigator assisters or nonnavigator assister entities other than the cost of prelicensing training and examination costs. To further minimize the impact to navigators and nonnavigator assisters, the office provided extensive free prelicensing training to interested parties and in locations throughout the state in advance of the first open enrollment period.

**See the Attached Private Sector Fiscal Analysis**

**A Description of the Effect on Small Business**

This rule may have an effect on small businesses by requiring licensure or registration for navigators, nonnavigator assisters and related entities. However, the office minimized the impact by establishing less stringent requirements than those imposed on licensed insurance agents and agencies. Further, the office provided extensive free prelicensing training to interested parties and in locations throughout the state in advance of the first open enrollment period. Additionally, the office approved licensed vendors to provide prelicensing training both in-person and on-line to reduce imposition on organizations. Finally the office

imposed slightly lower fees than is required for licensed agents.

### Initial Regulatory Flexibility Analysis

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

#### a. Types of small businesses affected:

Insurance agents, community outreach organizations, consumer support organizations who are designated and under contract with the federally facilitated exchange as navigators, nonnavigator assisters, or related entities. Governmental agencies are exempt from this rule.

#### b. Description of reporting and bookkeeping procedures required:

Navigator and nonnavigator assister entities, in addition to any federal requirements, will be required to maintain training records as well as current names and addresses of those who they employ, supervise or are affiliated with. Additionally, for entities handling consumer's money, and for navigators not affiliated with a navigator entity, proper financial accounts must be maintained.

#### c. Description of professional skills required:

Basic consumer, employee and business financial record keeping in addition to any requirements of the federal government.

### OCI Small Business Regulatory Coordinator

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

### Agency Contact Person

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

Phone: (608) 264-8110

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

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

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

### Proposed Rule Changes

#### SECTION 1. Subchapter II and title are created to read:

Subchapter II — Navigators, Nonnavigator Assistors and Related Entities.

#### SECTION 2. Ins 6.91 to 6.99 is created to read:

**Ins 6.91 Definitions.** In addition to the definitions in s. 628.90, Stats., which apply to this subchapter, in this subchapter:

(1) “Agent” means an agent as defined in s. 628.02, Stats.

(2) “Business checking account” means any account utilized by a navigator, navigator entity, nonnavigator assister or nonnavigator assister entity for insurance-related transactions.

(3) “Cash disbursed record” means a record showing all monies paid out by the navigator, navigator entity, nonnavigator assister or nonnavigator assister entity in transacting the business of insurance.

(4) “Cash receipts record” means a record showing all monies received by the navigator, navigator entity, nonnavigator assister or nonnavigator assister entity in transacting the business of insurance.

(5) “Certified application counselors” means a nonnavigator assister who is employed, supervised or affiliated with a registered nonnavigator assister entity as established by 45 CFR § 155.225, as amended, and who works for a nonnavigator assister entity that has been designated by and entered into an agreement with the exchange.

(6) “Commissioner” means the commissioner of insurance.

(7) “Formal administrative action” means consent decrees, cease and desist orders, stipulations, suspensions, revocations, license denials, fines, forfeitures, settlement agreements, navigator license restrictions or other actions limiting the navigator’s method of transacting the business of insurance.

(8) “Navigator entity” means an entity or organization that employs, supervises or is affiliated with, one or more licensed navigators; is designated by the exchange as a navigator, works on behalf of the exchange and enters into an federal navigator grant funding agreement in accordance with 45 CFR § 155.210 (c), as amended; and is registered with the commissioner.

(9) “Nonnavigator assister entity” means entity or organization that employs, supervises or is affiliated with one or more nonnavigator assistors including certified application counselors; is designated by and works on behalf of the exchange and enters into an agreement with the exchange in accordance with 45 CFR § 155.225 (b) (1), as amended; and is registered with the commissioner.

(10) “Personnel records” means those records pertaining to anyone who is employed by, supervised by or affiliated with a navigator entity or nonnavigator assister entity including independent contractors.

(11) “Policyholder records” means all records, applications, request for changes, and complaints associated with a policy generated by or through the navigator, navigator entity, certified application counselor or nonnavigator assister entity.

**Ins 6.92 Individual navigators.** (1) PURPOSE. This section protects insurance consumers by establishing procedures for the licensing of navigators when transacting the business of insurance, prescribing minimum standards and requirements to ensure timely and reliable information will exist and be available to the commissioner. This section implements and interprets ss. 628.095, 628.097, 628.10, 628.90 to 628.93, Stats., as applicable.

(2) PROCEDURE. (a) *Application for navigator license.* An individual applying for a navigator license shall submit an application to the office in the form prescribed by the commissioner. A completed application consists of the navigator’s name, the navigator’s residence, mailing and business addresses, confirmation of successful completion of prelicensing training, fingerprints provided in a format specified by the commissioner to complete, an electronic confirmation of criminal history from the Wisconsin department of justice, crime information bureau, and the federal bureau of investigation completed not more than 180 days prior to the test date, payment of the nonrefundable fees to the testing vendor, an electronic photograph of the applicant taken by the test service at the time of testing, confirmation of previous navigator licensure in another state,

if applicable, and any documentation required in answer to questions on the application.

Note: A copy of the navigator license application form OCI 11-090, required in par. (a), may be obtained at no cost from the Office of the Commissioner of Insurance at 125 S. Webster Street, Madison WI 53703, or at the Office's web address: oci.wi.gov.

(b) *Prelicensing Training.* An individual seeking a navigator license, in addition to any training requirements of the federal government, shall complete at least 16 hours of commissioner-approved navigator prelicensing training and pass with a satisfactory grade a commissioner-approved written navigator examination. Training required under this subsection must be approved by the commissioner and provided by an education provider that is approved by the commissioner.

(c) *Scheduling the navigator licensing examination.* An applicant shall notify the testing vendor, at least twenty-four hours prior to the desired navigator licensing examination date. The written examination will test the applicant's knowledge of the duties and responsibilities of a navigator; the insurance laws and regulations of this state; and the state's public assistance programs and eligibility. The written examination shall be commissioner approved offered through a commissioner-approved testing vendor.

(d) *Exception.* 1. An agent who holds an active resident license with the accident and health line of authority and is in compliance with continuing education requirements may apply to be licensed as a navigator if the currently licensed agent can meet all of the following:

a. Demonstrate compliance as set forth in s. 628.92 (1), Stats., including competence and trustworthiness.

b. Demonstrate satisfactory completion of 4 hours of navigator training specific to public assistance programs, including Medicaid, in addition to the completion of any federally required navigator training and compliance with federal restrictions and requirements including those set forth in 45 CFR §§ 155.205 (d), 155.210, 155.215 (b) and (c), and 155.260 (b), as amended. The state training required under this subsection must be approved by the commissioner and provided by an education provider that is approved by the commissioner.

2. A currently licensed agent that is in compliance with subd. 1. is exempt from passing the navigator examination and photograph requirements described in sub. (2) (a). The currently licensed agent will be required to obtain new fingerprints unless the office has received current, valid fingerprint results provided in a format specified by the commissioner and an electronic confirmation of criminal history from the Wisconsin department of justice, crime information bureau, and the federal bureau of investigation that were completed not more than 180 days from the date of the application. The currently licensed agent shall submit a completed application and pay the licensing fee in accordance with s. 601.31 (1) (nm), Stats., to the commissioner.

Note: A copy of the navigator license application form OCI 11-090, required in par. (a), may be obtained at no cost from the Office of the Commissioner of Insurance at 125 S. Webster Street, Madison WI 53703, or at the Office's web address: oci.wi.gov.

(e) *Issuance of license.* An applicant for an original navigator license who completes and satisfies the

requirements in pars. (a) and (b), in addition to any federal training or requirements including the requirements set forth in 45 CFR §§ 155.205 (d), 155.210, 155.215 (b) and (c), and 155.260 (b), as amended, and meets the standards of competence and trustworthiness as described in sub. (3), shall be issued a navigator license. Examination scores are valid for 180 days. Failure to apply for a license within 180 days will require the applicant to re-take the examination. Determination of the acceptance or rejection of a completed application shall be made within 90 days of receipt by the commissioner of the completed application including any documentation required.

(3) **COMPETENCE AND TRUSTWORTHINESS.** The following criteria may be used in assessing trustworthiness and competence:

(a) *Criminal record.* The conviction for crimes which are substantially related to the circumstances of holding an insurance or navigator license, including a felony or misdemeanor conviction that is significantly related to the circumstances of holding a navigator or insurance license.

(b) *Accuracy of information.* Any material misrepresentation in the information submitted on the application form.

(c) *Regulatory action.* Any formal regulatory action taken in any jurisdiction with regard to any occupational license held, such as insurance licenses in other states, real estate licenses and security licenses.

(d) *Other criteria.* Other criteria which the commissioner considers evidence of untrustworthiness or incompetence, including but not limited to:

1. Providing incorrect, misleading, incomplete or materially untrue information in the licensing application.

2. Violating any insurance laws, or violating any regulation, subpoena or order of the insurance commissioner or of another state's insurance commissioner, or of the federal government.

3. Obtaining or attempting to obtain a license through misrepresentation or fraud;

4. Improperly withholding, misappropriating or converting any monies or properties received in the course of acting as a navigator or insurance agent.

5. Intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance.

6. Having admitted or been found to have committed any insurance unfair trade practice or fraud.

7. Using fraudulent, coercive, or dishonest practices in the conduct of business in this state or elsewhere.

8. Demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of personal financial transactions or professional business in this state or elsewhere.

9. Having an insurance producer license, or its equivalent, denied, suspended or revoked in any other state, province, district or territory.

10. Forging another's name to an application for insurance or to any document related to an insurance transaction.

11. Improperly using notes or any other reference material to complete an examination for an insurance or navigator license.

12. Failing to comply with an administrative or court order imposing a child support obligation.



13. Failing to pay state income tax or comply with any administrative or court order directing payment of state income tax.

(e) *Minimum Age and Residency.* An applicant for navigator licensure shall have attained at least eighteen (18) years of age and shall be a resident of this state or maintain his or her principal place of business in this state.

(f) *Proof of Financial Responsibility.* An applicant who is not affiliated with a navigator entity shall comply with the requirements of s. 628.92 (5) (b), Stats., or provide evidence of an equivalent coverage alternative subject to the commissioner's prior approval.

(4) **CHANGE OF NAME OR ADDRESS.** (a) Each navigator shall, within 30 days, notify the commissioner in writing of any change in the navigator's name, residence address, principal place of business, and mailing address.

(b) A navigator who is not employed or supervised by or affiliated with a navigator entity and changes residency to a location outside of this state or changes his or her principal place of business to an address outside this state and is not a resident of this state shall have his or her navigator license terminated effective 60 days after the change of address.

(c) Criteria used by the insurance commissioner to establish state residency shall include, but not be limited to:

1. Jurisdiction for payment of state taxes.
2. Jurisdiction for automobile driver's license and motor vehicle registration.
3. Location of voter registration.
4. Location of principal residence, such as owned or rented dwelling, condominium or apartment.
5. Location of principal place of business.

(5) **APPLICABILITY OF OTHER LAWS.** Licensed navigators are subject to the requirements contained at ss. 628.095, 628.097 and 628.10, Stats., as applicable to individual navigators.

(6) **LICENSE RENEWALS.** (a) The nonrefundable renewal fee of \$35.00 is due before October 1 of each year. The commissioner shall send notice of the renewal fee by 1st-class mail at least 60 days prior to the fee due date to each navigator at the mailing address on file. Applications for navigator license renewal shall be submitted before the October 1 renewal deadline. The navigator shall provide proof of a bond in compliance with s. 628.92 (5) (b), or evidence of an equivalent coverage alternative subject to the commissioner's prior approval.

(b) An individual navigator is required to complete at least 8 hours of health insurance continuing education training before October 1 of each year. Training must be completed prior seeking annual renewal of a navigator license. Recurring training shall be completed and reported at a rate of not less than 8 hours each 12 months of each compliance period. Training required under this subsection must be approved by the commissioner and provided by an education provider that is approved by the commissioner.

(c) Any navigator whose license is revoked for failing to pay renewal fees, failing to complete required annual navigator continuing education, or failing to pay delinquent taxes may, within 12 months from the revocation date, apply to reinstate for the same navigator license without completing preclicensing navigator training or passing a written examination. The navigator must satisfy the requirement of s. 628.10 (a), (am) or (cm), Stats., satisfactorily complete a

reinstatement application and pay twice the amount of the license renewal fee under par. (a). If a navigator license has been revoked for more than 12 months, the navigator shall, in order to be relicensed, satisfy the examination and other licensing requirements established by subs. (2) to (6).

(7) **FINANCIAL RESPONSIBILITY REQUIREMENTS.** Each individual navigator not affiliated with a navigator entity shall comply with the requirements of s. 628.92 (5) (b), Stats., or provide evidence of an equivalent coverage alternative subject to the commissioner's prior approval.

Note: A copy of a sample navigator and navigator entity bond form OCI 11-093, required in sub. (7), may be obtained at no cost from the Office of the Commissioner of Insurance at 125 S. Webster Street, Madison WI 53703, or at the Office's web address: [oci.wi.gov](http://oci.wi.gov).

**Ins 6.93 Registration of navigator entities.** (1) (a) *Registration application for navigator entity.* An entity registering as a navigator entity shall submit an application to the commissioner in the form prescribed by the commissioner. A completed application consists of the navigator entity's name, the names of the entity's officers, the current mailing address, the name of at least one licensed designated responsible navigator, names, license number and mailing addresses for the navigators it employs, supervises or is affiliated with, and any documentation required to questions on the application. The navigator entity shall be designated by the exchange as a navigator entity, receive funding through a federal grant, and be in compliance s. 628.92 (2), Stats., and with applicable federal requirements including 45 CFR § 155.215 (a) (1), as amended.

Note: A copy of the navigator entity registration application form OCI 11-091, required in par. (a), may be obtained at no cost from the Office of the Commissioner of Insurance at 125 S. Webster Street, Madison WI 53703, or at the Office's web address: [oci.wi.gov](http://oci.wi.gov).

(b) *Payment of fees.* An applicant for an original registration shall pay an initial, non-refundable, registration fee of \$100.00 is due with submission of the application.

(c) *Acknowledgement of registration.* An applicant for an original registration who satisfies the requirements in pars. (a) and (b) shall be registered as a navigator entity. Determination of the acceptance or rejection of a completed application shall be made within 90 days of receipt by the commissioner of the completed application including any required or requested documentation.

(2) **REGISTRATION RENEWALS.** The renewal fee of \$100.00 is due before October 1 of each year. The commissioner will send notice of the registration renewal fee by 1<sup>st</sup>-class mail at least 60 days prior to the fee due date to each navigator entity at the mailing address on file. Applications for navigator entity renewal shall be submitted before the October 1 renewal deadline. The navigator entity shall provide proof of a current bond in compliance with s. 628.92 (5) (a), or evidence of an equivalent coverage alternative subject to the commissioner's prior approval.

(3) **ENTITY REPORTING.** A navigator entity shall comply with s. 628.92 (4), Stats., by filing with the commissioner the list of individual licensed navigators it employs, supervises or is affiliated with in a manner prescribed by the commissioner. After providing the commissioner with an initial notification of navigators in the application form, the navigator entity shall report any updates to the list of navigators, including additions, deletions or modifications, within 30 days of the addition, deletion or modification to the list of navigators.

(4) **ENTITY LIABILITY.** (a) A navigator entity assumes full legal responsibility for the acts of the navigators whom the entity employs, supervises or is formally affiliated with for acts that are performed in this state and that are within the scope of the apparent authority to act as a navigator on behalf of the entity.

(b) The entity shall provide evidence of financial responsibility consistent with s. 628.92 (5) (a), Stats., by submitting the original bond and form to the office in the form prescribed by the commissioner. Alternatively the navigator entity, subject to the commissioner's prior approval, may provide evidence of an equivalent coverage alternative.

Note: A copy of a sample navigator and navigator entity bond form OCI 11-093, required in sub. (5), may be obtained at no cost from the Office of the Commissioner of Insurance at 125 S. Webster Street, Madison WI 53703, or at the Office's web address: [oci.wi.gov](http://oci.wi.gov).

**Ins 6.94 Registration of certified application counselors and other nonnavigator assisters.** Certified application counselors and other nonnavigator assisters shall be employed or supervised by a registered nonnavigator assister entity, or be affiliated with a registered nonnavigator assister entity. To be registered with a nonnavigator assister entity as a certified application counselor or other nonnavigator assister, the individual is required to comply with all of the following:

(1) **PROCEDURE.** (a) Certified application counselors and other nonnavigator assisters must be authorized by the exchange to provide consumer assistance and compliant with federal requirements set forth in 45 CFR § 155.225, as amended.

(b) Certified application counselors shall complete 16 hours of prelicensing navigator training, successfully pass a written examination, and annually thereafter complete 8 hours of health insurance continuing education training, in addition to any federal training or other federal requirements. The commissioner will provide guidance on the topics for the continuing education training required under this subsection.

(2) **EXCEPTION.** (a) An agent who holds an active resident license with the accident and health line of authority and is in compliance with continuing education requirements, may apply to be registered as a nonnavigator assister by a nonnavigator assister entity if the currently licensed agent can meet all of the following:

1. Demonstrate compliance as set forth in s. 628.96, Stats., including competence and trustworthiness.

2. Demonstrate satisfactory completion of 4 hours of navigator training specific to public assistance programs, including Medicaid, in addition to the completion of any federally required nonnavigator assister training and compliance with federal restrictions and requirements including those set forth in 45 CFR § 155.225, as amended. The nonnavigator assister entity will maintain records that the certified application counselors working for or with the nonnavigator entity have completed the 8 hours of continuing education each year and will provide an attestation to the commissioner in a form prescribed by the commissioner by October 1 of each year. The commissioner will provide guidance on the topics for the continuing education training required under this subsection.

(b) A currently licensed agent that is in compliance with par. (a) is exempt from taking prelicensing training and passing the written navigator examination.

(3) **REFUSAL TO REGISTER NONNAVIGATOR ASSISTERS.** The commissioner may refuse to register a nonnavigator assister for any of the following reasons:

(a) Failing to possess requisite character, integrity, competency and trustworthiness. In addition to the requirements set forth in s. 628.04, Stats., the commissioner may consider the criteria established in s. Ins 6.92 (3), in assessing trustworthiness and competence.

(b) Commission of any act that would warrant the denial, suspension, or revocation of an insurance license or registration including any of the acts delineated in s. Ins 6.92 (3).

**Ins 6.95 Registration of nonnavigator assister entities.**

(1) **ELECTRONIC REGISTRATION FOR A NONNAVIGATOR ASSISTER ENTITY.** An entity registering as a nonnavigator assister entity shall provide all of the following information to the commissioner in the form prescribed by the commissioner:

(a) The nonnavigator assister entity's name and current mailing address.

(b) The name and contact information for the nonnavigator assister entity.

(c) The name, business address and type of nonnavigator assister for each nonnavigator assister it employs, supervises or is affiliated with.

(d) An attestation that each nonnavigator assister is in compliance with applicable state law including any nonnavigator assister who is a certified application counselor and who has complied with s. 628.96 (2), Stats.

(e) The nonnavigator assister entity's agreement to provide to the commissioner all supporting documents as requested by the commissioner.

(2) **ENTITY REPORTING OF UPDATES.** A nonnavigator assister entity shall comply with s. 628.96 (1), Stats., reporting in an electronic format as prescribed by the commissioner, any updates to the list of nonnavigator assisters that the nonnavigator assister entity provided when it first registered with the commissioner, including additions, deletions or modifications. The information shall be provided within 30 days of the addition, deletion or modification to the list of nonnavigator assisters.

(3) **ENTITY LIABILITY.** A nonnavigator assister entity assumes legal responsibility, in accordance with s. 628.95 (3), Stat., for the acts of the nonnavigator assisters, on behalf of the entity, that the entity employs, supervises or is formally affiliated with, that are performed in this state and that are within the scope of the apparent authority to act as a nonnavigator assister.

(4) **REVOCATION OF ENTITY REGISTRATION.** The commissioner may revoke a nonnavigator assister entity registration if the nonnavigator assisters it employs, supervises or is affiliated with, fail to comply with s. Ins 6.95 (3), or the nonnavigator assister entity fails to comply with any provision contained in this section or by failing to comply with requests of the commissioner.

**Ins 6.96 Prohibited business practices.** In addition to the prohibited acts contained in s. 628.95 (2), Stats., navigators and nonnavigator assisters are prohibited from all of the following:

(1) Receiving compensation from an insurer, stop-loss insurance or a third-party administrator.

(2) Receiving compensation that is dependent upon, in whole or in part, on whether an individual enrolls in or renews coverage in a health benefit plan.

(3) Providing any information related to enrollment or other insurance products not offered in the federal exchange.

(4) Making or causing to be made false or misleading statements.

(5) Providing advice comparing health benefit plans that may be better or worse for the consumer or employer.

(6) Recommending a particular health benefit plan or insurer or advising consumers or employers regarding a particular insurer or health benefit plan selection.

(7) Engaging in any fraudulent, deceptive or dishonest acts or unfair methods of competition.

(8) Receiving consideration directly or indirectly from any health insurance issuer in connection with the enrollment of individual or employees into a qualified health plan as defined 45 CFR § 155.20, as amended.

**6.97 Navigator, nonnavigator assister, navigator entity, and nonnavigator assister entity records.** (1) **PURPOSE.** This section protects consumers by prescribing minimum standards and techniques of accounting and data handling of navigators, nonnavigator assisters, navigator entities and nonnavigator assister entities to ensure that timely and reliable information will exist, if applicable, and be available to the commissioner. This section implements and interprets ss. 601.42, and 628.34, Stats., by establishing the minimum records that are to be maintained.

(2) **CASH DISBURSED RECORD.** The cash disbursed record shall show the name of the party to whom the payment was made, date of payment, and reason for payment.

(3) **CASH RECEIPTS RECORD.** The cash receipts record shall show the name of the party who remitted the money, date of receipt, and reason for payment.

(4) **PERSONNEL RECORDS.** Personnel records shall include dates of employment, supervision or affiliation; position held; description of principal duties; name and last known address and telephone number of employee, supervisee or affiliated person.

(5) **RECORDKEEPING REQUIREMENTS.** Beginning October 1, 2013, each navigator, nonnavigator assister, navigator entity or nonnavigator assister entity shall maintain, for at least a 3-year period, unless a specific period is provided elsewhere, all of the following financial, consumer and employee records, as applicable:

- (a) Business checking account.
- (b) Cash disbursed records.
- (c) Cash receipts records.
- (d) Personnel records.
- (e) Consumer or policyholder records.

(6) **PLACE OF MAINTAINING RECORDS.** (a) The navigator shall maintain records required by subs. (2) to (5), at the business address of the navigator or the navigator entity, or at

another location only if the navigator provides written notice of the other location to the commissioner of insurance.

(b) The nonnavigator assister shall maintain records required by subs. (2) to (5), at the business address of the nonnavigator assister entity or at another location only if the nonnavigator assister entity provides written notice of the other location to the commissioner of insurance.

(7) **UPDATING RECORDS.** The navigator entities and nonnavigator assister entities shall maintain financial records, if any, all records of compliance with preclicensing training completion, successful passage of the examination and continuing education completion, compliance with federal training and other federal requirements for the navigators and nonnavigator assisters it employs, supervises, or is affiliated with, as applicable for at least 3 years from the transaction of an insurance business.

**Ins 6.98 Prohibition of uses of designations.** (1) **PROHIBITED USES OF DESIGNATIONS.** It is an unfair and deceptive trade practice under s. 628.34 (12), Stats., for an agent to use terms including “navigator,” “navigator entity,” “nonnavigator assister,” “certified application counselor,” and “nonnavigator assister entity,” in such a way as to mislead a purchaser or prospective purchaser that the agent has special certification or training in advising or providing services to consumers in connection with the advertising, solicitation, sale, or purchase of a health insurance policy or in the provision of advice as to the advisability of purchasing a health insurance policy, either directly or indirectly, offered in the state either within or outside the exchange. The terms may not be used by an agent who is not licensed as a navigator or registered as a nonnavigator assister. The terms may not be used alone or be combined with one or more such terms as “certified,” “licensed,” “registered,” or like words, in the name of the certification or professional designation that appears as a certification or professional designation.

(2) **PENALTIES.** A violation of this section is an unfair and deceptive trade practice under s. 628.34 (12), Stats., and shall subject the violator to ss. 601.41, 601.62, 601.64, 601.65 and 628.10, Stats.

**Ins 6.99 Exemption.** Governmental entities or any persons acting on behalf of a governmental entity are exempt from subch. II.

**SECTION 3. Effective Date.** This rule will take effect on the first day of the month after publication, as provided in s. 227.22 (2) (intro.), Stats.

### **Private Sector Fiscal Analysis**

Section Ins 6.91 relating to navigators and nonnavigator assisters and affecting small business.

The proposed rule will not have a significant effect on the private sector. With an exemption for governmental entities, there will be no effect on county, city, village, town, school district, technical college district and sewerage districts. Additionally the office will be able to manage any cost associated with maintaining the licensure and registration process without additional state funds being provided to the office during this current biennium.

STATE OF WISCONSIN  
DEPARTMENT OF ADMINISTRATION  
DOA-2049 (C04/2011)

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**

**1. Fiscal Estimate Version**

Original    Updated    Corrected

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**2. Administrative Rule Chapter Title and Number**

**INS 6.91**

---

**3. Subject**

navigators and nonnavigator assisters and affecting small business

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**4. State Fiscal Effect:**

<input checked="" type="checkbox"/> No Fiscal Effect	<input type="checkbox"/> Increase Existing Revenues	<input type="checkbox"/> Increase Costs <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	May be possible to absorb within agency's budget.
<input type="checkbox"/> Indeterminate	<input type="checkbox"/> Decrease Existing Revenues	<input type="checkbox"/> Decrease Costs	

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**5. Fund Sources Affected:**

GPR    FED    PRO    PRS    SEG    SEG-S

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**6 Affected Ch. 20, Stats. Appropriations:**

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**7. Local Government Fiscal Effect:**

<input checked="" type="checkbox"/> No Fiscal Effect	<input type="checkbox"/> Increase Revenues	<input type="checkbox"/> Increase Costs
<input type="checkbox"/> Indeterminate	<input type="checkbox"/> Decrease Revenues	<input type="checkbox"/> Decrease Costs

---

**8. Local Government Units Affected:**

Towns    Villages    Cities    Counties    School Districts    WTCS Districts    Others: None

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**9. Private Sector Fiscal Effect (small businesses only):**

<input checked="" type="checkbox"/> No Fiscal Effect	<input type="checkbox"/> Increase Revenues	<input type="checkbox"/> Increase Costs
<input type="checkbox"/> Indeterminate	<input type="checkbox"/> Decrease Revenues	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	May have significant economic impact on a substantial number of small businesses
		<input type="checkbox"/> Decrease Costs

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**10. Types of Small Businesses Affected:**

Individual licensed agents working as a navigator or nonnavigator assister, small organizations that work with consumers, and some surety bond issuers that may be considered a small business.

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11. Fiscal Analysis Summary

The proposed rule may affect small businesses; however, the Office has taken steps to minimize the impact of the rule by limiting the effect of the regulation to those navigators or nonnavigator assisters who are working on behalf of the federal government. For perspective, the federal government only awarded six navigator grants for the entire state of Wisconsin. There are no restrictions or regulations for governmental entities or persons who work with such entities. These governmental entities currently assist consumers with health insurance and public assistance concerns and will not be impacted by this regulation. By keeping the scope of the proposed rule very narrow, the impact on small businesses is lessened. Further, the proposed rule limited the amount of fees navigator and navigator entities are required to pay annually and did not impose fees on nonnavigator assisters or nonnavigator assister entities other than the cost of preclicensing training and examination costs. The office minimized the impact by establishing less stringent requirements than those imposed on licensed insurance agents and agencies. Further, the office provided, and continues to provide, some free preclicensing training to interested parties and in locations throughout the state in advance of the first open enrollment period. Additionally, the office approved licensed vendors to provide preclicensing training both in-person and on-line to reduce imposition on organizations. Finally the office imposed slightly lower fees than is required for licensed agents.

12. Long-Range Fiscal Implications

None.

13. Name — Prepared by Julie E. Walsh	Telephone Number (608) 264-8101	Date Dec. 20, 2013
14. Name – Analyst Reviewer	Telephone Number	Date
Signature—Secretary or Designee	Telephone Number	Date

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

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

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

1. Type of Estimate and Analysis

Original       Updated       Corrected

2. Administrative Rule Chapter, Title and Number

Ch. Ins 6.91 to 6.99

3. Subject

Navigators, nonnavigator assisters and related entities

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

Ensuring the persons working on behalf of the federal exchange are of good character, have proper training and have sufficient oversight as navigators and nonnavigator assisters will have access to consumer's financial information.

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.

Navigators, nonnavigator assisters and related entities and possibly health care providers offering such assistance.

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

None

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

The navigators and navigator entities have licensing or registration fees, costs for individual background checks and pre–licensing education classes. Nonnavigator assisters and entities have pre–licensing education class fees. As a condition of licensing have received federal funding to off–set costs of their contract.

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

The rule provides consistent oversight for similarly situated organizations and ensures the public receives accurate information and personal financial information is securely handled.

14. Long Range Implications of Implementing the Rule

None.

15. Compare With Approaches Being Used by Federal Government

The requirements dove–tail with federal requirements and ensure Wisconsin consumers are protected. The rule does not duplicate federal requirements but ensures navigators and nonnavigator assisters are familiar with health insurance and public assistance programs available in the state.

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

The approach is very similar to laws or regulations passed in Iowa, Minnesota and Illinois, Michigan does not have such a law or regulation.

17. Contact Name

Louie Cornelius

18. Contact Phone Number

608–264–8113

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

## ATTACHMENT A

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

The proposed rule may affect small businesses that perform outreach services to consumers to assist in educating consumers about the federal health exchange. The navigators were awarded federal grants and the nonnavigator assister entities are registered with the federal government. Both the navigators and nonnavigator assister entities will provide assistance and education to consumers regarding the federal health exchange and will refer consumers to licensed insurance agents should the individuals need advice or additional assistance in applying for the federal exchange or private insurance. The impact of the proposed rule include the fees associated with licensing or registration and 16 hours of pre–licensing training. Navigators are additionally required to complete finger printing and criminal background checks similar to licensed agents and pay an annual licensing fee of \$75. Navigator entities pay an annual registration fee of \$100. Nonnavigator assisters must complete 16 hours pre–licensing education and pass the pre–licensing exam. Both navigator and nonnavigator assister entities must carry a bond or similar coverage to protect against errors that cause consumer harm.

## 2. Summary of the data sources used to measure the Rule's impact on Small Businesses

The office held a public hearing on September 27, 2013 regarding the emergency rule that was issued September 10th and published in the Wisconsin Administrative Register on September 15 that included a 14 day comment period. Also the office sought input from interested parties and received comments both during and prior to the emergency rule comment period. Based upon those comments, the office revised the rule to lessen some of the burden for small businesses.

## 3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- Less Stringent Compliance or Reporting Requirements  
 Less Stringent Schedules or Deadlines for Compliance or Reporting  
 Consolidation or Simplification of Reporting Requirements  
 Establishment of performance standards in lieu of Design or Operational Standards  
 Exemption of Small Businesses from some or all requirements  
 Other, describe:

The office provided free pre-licensing training to approximately 6,500 persons throughout the state to lessen the cost of the pre-licensing training.

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

The office changed the annual reporting dated from September to October to give entities more time, clarified that financial record keeping was only needed if the entities received money from consumers, exempted entities working with or that are governmental entities doing a similar business. Additionally, the office has worked with nonnavigator and navigator entities to facilitate obtaining affordable bond or similar coverage.

## 5. Describe the Rule's Enforcement Provisions

The rule may be enforced as a violation of unfair and deceptive trade practice under ss. 601.41, 601.62, 601.64, 601.65, 628.10.

## 6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

- Yes  No

**Notice of Hearing****Natural Resources**

*Environmental Protection — General, Chs. 100—  
 Environmental Protection — WPDES, Chs. 200—*

**CR 13-112**

(DNR # SS-14-12)

NOTICE IS HEREBY GIVEN THAT pursuant to ss. 227.16 and 227.17, Stats, the Department of Natural Resources, hereinafter the Department, will hold a public hearing on an order to repeal section NR 219.04, Table BM; to renumber sections NR 219.05 and 219.06; to amend sections NR 157.21, 219.04 (1), (2), (4) (Note), and 233.40 (2); to repeal and recreate section NR 219.04 Tables A, B, C, D, E, EM, ES and F; and to create section NR 219.04 Tables G and H, relating to analytical methods used for Wisconsin Pollutant Discharge Elimination System (WPDES) compliance on the date(s) and at the time(s) and location(s) listed below.

**Hearing Information**

**Date:** Monday, January 27, 2014  
**Time:** 11:00 a.m. to 12:00 p.m.  
**Location:** DNR — LaCrosse  
 3550 Mormon Coulee Rd  
 McGilvray Room  
 LaCrosse, WI  
**Date:** Monday, January 27, 2014  
**Time:** 11:00 a.m. to 12:00 p.m.

**Location:** DNR — Madison  
 101 S. Webster St.  
 Room 707  
 Madison, WI

**Date:** Monday, January 27, 2014

**Time:** 2:00 p.m. to 3:00 p.m.

**Location:** DNR — Green Bay  
 2984 Shawano Ave.  
 Lake Michigan Room  
 Green Bay, WI

Reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Contact Richard Mealy, Madison, WI 53707; by E-mail to [Richard.mealy@wisconsin.gov](mailto:Richard.mealy@wisconsin.gov) or by calling (608) 264-6006. A request must include specific information and be received at least 10 days before the date of the scheduled hearing.

**Availability of the Proposed Rules and Fiscal Estimate**

The proposed rule and supporting documents, including the fiscal estimate, may be viewed and downloaded from the Administrative Rules System Web site which can be accessed through the link <https://health.wisconsin.gov/admrules/public/Home>. If you do not have Internet access, a printed copy of the proposed rule and supporting documents, including the fiscal estimate, may be obtained free of charge by contacting Richard Mealy, Department of Natural Resources, Bureau of Science Services, 101 S. Webster St, Madison, WI, 53703, or by calling (608) 264-6006.

### Submitting Comments

Comments on the proposed rule must be received on or before **Monday January 27, 2014**. Written comments may be submitted by U.S. mail, fax, E-mail, or through the Internet and will have the same weight and effect as oral statements presented at the public hearing. Written comments and any questions on the proposed rules should be submitted to:

Richard Mealy  
 Department of Natural Resources  
 Bureau of Science Services SS/7  
 101 S Webster St, Madison, WI 53703  
 Phone: (608) 264-6006  
 Fax: (608) 266-5226  
 E-mail: [Richard.Mealy@wisconsin.gov](mailto:Richard.Mealy@wisconsin.gov)  
 Internet: Use the Administrative Rules System Web site accessible through the link provided.

### Analysis Prepared by the Department of Natural Resources

#### *Statutes interpreted*

Sections 283.31, 283.55 (1), 299.11, and 299.15 (2), Stats.

#### *Statutory authority*

Sections 227.11 (2), 281.19 (1), 283.31, 283.55 (1), 299.11, and 299.15 (2), Stats.

#### *Explanation of agency authority*

Section 281.19 (1), Stats., authorizes the department to issue general orders, and adopt rules applicable throughout the state for the construction, installation, use, and operation of systems, methods, and means to prevent and abate pollution of the waters of the state. Section 283.31, Stats., prohibits the discharge of any pollutant into any waters of the state or the disposal of sludge from a treatment work by any person unless such discharge or disposal is done under a permit issued by the department. Section 283.55 (1), Stats., requires permittees to use monitoring methods, including where appropriate, biological monitoring methods, to identify and determine the amount of each pollutant discharged from each point source under the owner's or operator's ownership or control. Section 299.15 (2) (a), Stats., authorizes the department by rule to prescribe methods of analysis for pollutants.

#### *Related statutes or rules*

Chapters NR 157 and 233, Wis. Adm. Code, and Chapter 283, Stats.

#### *Plain language analysis*

Specifically, the proposed rule package will address EPA's issues with the Department rule (ch. NR 219) incorporating SW 846 methods for wastewater sample analysis. The EPA publication SW-846, entitled Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, is the waste division of EPA's official compendium of analytical and sampling methods that have been evaluated and approved for use in complying with the federal Resource Conservation and Recovery Act (RCRA) regulations. The DNR has allowed SW 846 methods for analysis of wastewater samples since 1995 because the methods are revised frequently and contain stringent quality control measures. However, EPA has requested that DNR remove from NR 219 all references to allowing SW 846 methods as "approved" methods for analysis of wastewater samples. EPA has also requested that DNR update ch. NR 219 to incorporate analytical methods

that have been federally approved in the Federal Register (40 CFR 136). Therefore, one objective of this rule change is to remove analytical methods that EPA has not approved for wastewater from the list of approved analyses in ch. NR 219. The other objective is to add methods that are currently allowed by EPA per 40 CFR Part 136 but are not included in ch. NR 219 at this time.

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

The federal counterpart to this rule is 40 CFR 136. On May 18, 2012, EPA published as final rule, "Guidelines Establishing Test Procedures for the Analysis of Pollutants Under the Clean Water Act; Analysis and Sampling Procedures". The proposed revision to ch. NR 219 incorporates these changes and is consistent with the federal regulations.

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

The States of Illinois, Iowa, Michigan, and Minnesota have wastewater programs delegated to them from the U.S. Environmental Protection Agency. Wisconsin has been the only state within EPA Region 5 which has allowed the use of SW-846 methods for NPDES compliance monitoring. Therefore, removing SW-846 methods from the rule will bring Wisconsin into line with other states.

With respect to new methods promulgated by the EPA, the Illinois EPA incorporated changes to 40 CFR Part 136 with legislation which took effect February 2013. The State of Michigan does not certify laboratories that perform analyses of wastewater. The Minnesota Environmental Laboratory Accreditation Program incorporated the changes to 40 CFR Part 136 for its October 2013 application period. The Iowa Department of Natural Resources rules reference the 2007 edition of 40 CFR Part 136 at this time.

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

This proposed rule revision brings Wisconsin up to date with the current federal rules that establish analytical test methods.

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

Alternate approved methods from different authoritative sources are available for all of the analytical methods that are being deleted. The quality control requirements for analyses are established in ch. NR 149; these will not change with updating methods tables. For several analyses, newer methods and techniques have been added. It is possible for a laboratory to change the analytical method it uses and not incur additional costs or, in some cases, actually reduce costs.

The requirements imposed upon small business include following approved analytical methods listed in the rule. There are no reporting requirements in ch. NR 219. The small businesses that will likely be impacted by this rule are commercial laboratories certified under ch. NR 149. The vast majority of these laboratories likely follow approved analytical methods that are being maintained in this chapter.

#### *Effect on small business*

The proposed changes to ch. NR 219 potentially only affect larger certified commercial laboratories and larger municipal wastewater facilities that analyze samples for compliance with their Wisconsin Pollutant Discharge Elimination System (WPDES) permit. There are 371 laboratories certified or registered to perform analyses by the department. Of these,



238 municipal wastewater laboratories, 48 industrial environmental, and 71 commercial environmental will be impacted by this rule. The remaining laboratories are public health laboratories that analyze drinking water and those that perform testing at hazardous waste facilities. This update will allow laboratories to utilize new techniques that currently require approval by the U. S. Environmental Protection Agency and deletes outdated methods that lack adequate quality control procedures.

Of the 371 certified or registered laboratories that will be impacted by this rule, there are less than 12, 3% of the total, that fit the definition of “small businesses”. This proposed rule would affect commercial, industrial, and municipal laboratories that analyze effluent discharges to determine compliance with WPDES permit limitations. All laboratories performing analyses to determine WPDES compliance are expected to keep detailed records of all laboratory information, including: analytical methods and results, corrective action logs, equipment records, quality control records, and sample receipt logbooks.

This proposal does not change analytical testing requirements, nor does it address any change in reporting, schedule or deadline requirements. Sections 299.11 and 283.55, Stats., do not allow for less stringent schedules, deadlines or reporting requirements. Laboratories may seek approval of an alternate test procedure, as specified in s. NR 219.05, Wisc. Adm. Code, from U.S. EPA. WPDES permit terms and conditions and other related regulations require that permitted facilities conduct analytical tests in compliance with the procedures of ch. NR 219. The Laboratory Certification and Registration Program audits laboratories performing these analyses to ensure that testing is performed in compliance with the proposed rule. If a laboratory does not follow an approved method, it is cited during the audit

process; a laboratory must correct all identified deficiencies to maintain their certification under ch. NR 149.

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

**Environmental Analysis**

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

**Fiscal Estimate Summary**

This rule will have no fiscal effect on state government. Minimal economic impact associated with this rule revision is anticipated for local governments and the private sector. The majority of the costs are upfront costs resulting from labs having to change SOPs and from validating the new EPA methods. Even the minimal fiscal impact is unavoidable as this rule revision is being directed by the U.S. EPA.

**Contact Person**

Richard Mealy  
 Department of Natural Resources  
 Bureau of Science Services SS/7  
 101 S Webster St, Madison, WI 53703  
 Phone: (608) 264-6006  
 Fax: (608) 266-5226  
 E-mail: [Richard.Mealy@wisconsin.gov](mailto:Richard.Mealy@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

NR 219

3. Subject

Analytical test procedures and approved methods.

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)

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

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

- Yes  No

## 9. Policy Problem Addressed by the Rule

Current wastewater analysis methods being used are not in compliance with EPA requirements. The EPA is requiring the WDNR to remove the SW 846 methods for wastewater analysis from the rule. SW 846 methods will still be included in NR 219 and allowed to be used for the analysis of sludge (currently Table EM). In addition, we will be adding methods the EPA has promulgated in the Method Update Rule (MUR) dated May 18, 2012.

## 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.

Laboratories using SW 846 methods could potentially be affected. These include small businesses, businesses, and municipal wastewater treatment facilities (WWTF). In our preliminary research we conducted a survey of 57 labs that could potentially be using SW-846 methods.

We received 19 responses. Sixty-seven percent (thirteen respondents) anticipated no economic impact. Thirty-three percent (six respondents) anticipated some, but minimal economic impact.

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

See above.

## 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)

We expect the economic and fiscal impact of this rule revision to be minimal. Those who responded to our survey reported costs ranging from \$50 to \$25,000. One lab did not provide a cost estimate. Four of the six respondents estimated costs less than \$4,500.

To estimate the economic impact statewide, we assume (based on responses) that 30 percent of state labs will need to revise their methods.

The majority of the costs come from staff time spent revising SOPs and validating the new methods. Alternative methods are available online for free through the EPA. Methods are similar enough that laboratory equipment and supplies will likely be comparable in cost. Costs to laboratories will primarily be incurred from time spent validating new methods and revising SOPs.

A survey was sent out to 57 labs known or believed to perform wastewater testing using the methods scheduled to be removed. There were 19 respondents (33% response rate). Survey questions and responses are as follows:

## 1. Do you use any of the SW-846 methods listed in NR219 for WPDES monitoring?

- Yes – 6 respondents
- No – 13 respondents.

## 2. Which SW-846 methods do you use?

- Respondents indicated an array of SW-846 methodologies, the majority of which were related to metals, volatile organics, and semivolatile organics.

3. Anticipated costs:

- \$50
- \$1,300
- \$2,000
- \$3,000–\$4,500
- \$25,000 (Note: There is no substantiation or rationale for this figure)
- Unknown

4. Lab equipment costs

- None/minor costs

5. Any anticipated difficulties

- Two said they would have to run both old and new methods which would be somewhat of a burden.

6. Other costs

• Most say none; one respondent said \$42,000/year resulting from running additional controls and standards. The elimination of SW-846 methods, however, will not result in any increased frequency for quality control samples or standards.

7. Respondent classification

- Small business: 4
- Business: 1
- Municipality/WWTF: 1

In summary:

Minimal economic impact associated with this rule revision is anticipated. The majority of the costs are upfront costs resulting from labs having to change SOPs and from validating the new EPA methods. Even the minimal fiscal impact is unavoidable as this rule revision is being directed by the U.S. EPA.

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

Wastewater analysis methods will be in compliance with EPA standards.

14. Long Range Implications of Implementing the Rule

The costs are primarily up-front implementation costs; therefore, there are very few long-range implications of implementing this rule beyond the WDNR being in compliance with EPA standards.

15. Compare With Approaches Being Used by Federal Government

These regulations are established by the U.S. EPA.

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

All the other U.S. EPA Region 5 states (Illinois, Indiana, Michigan, Minnesota and Ohio) are subject to the U.S. EPA regulations that are delegated to the states for implementation. Wisconsin's rules for laboratory standards should essentially be the same as the other states.

17. Contact Name

Richard Mealy

18. Contact Phone Number

(608) 264-6006

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

**Notice of Rulemaking Without Public Hearing**

**Public Instruction  
CR 13-115**

The State Superintendent of Public Instruction hereby proposes an order to amend section PI 25.05 (1) (intro), relating to the Children at Risk Plan and Program.

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

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

Comments can be submitted to Katie Schumacher using the contact information below. Comments must be submitted no later than 10 days after publication of the notice of submittal to the Rules Clearinghouse in the Administrative Register.

**Analysis by the Department of Public Instruction**

**Statute interpreted**

Section 118.153 (3) (c) 2., Stats.

**Statutory authority**

Section 118.153 (7), Stats.

**Explanation of agency authority**

Under s. 118.153 (7), Stats., the State Superintendent must promulgate rules to implement the program for children at risk of not graduating from high school.

**Related statute or rule**

None.

**Plain language analysis**

The proposed rule change will modify s. PI 25.05 to align it with the statutory change made in 2011 Wisconsin Act 32, which removed the statutory limitation on the number of children at risk a school district may contract with private agencies to provide services for.

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

N/A.

**Comparison with rules in adjacent states**

N/A.

**Summary of factual data and analytical methodologies**

N/A.

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

N/A.

**Anticipated Costs Incurred by Private Sector**

N/A.

**Effect on Small Business**

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

**Agency Contact Person**

Katie Schumacher  
Budget and Policy Analyst  
Wisconsin Department of Public Instruction  
[Katie.Schumacher@dpi.wi.gov](mailto:Katie.Schumacher@dpi.wi.gov)  
(608) 267-9127

**Text of Rule**

**SECTION 1. PI 25.05(1)(intro) is amended to read:**

**PI 25.05 (1)** The board of a school district may contract with private, nonprofit, nonsectarian agencies to provide programs for children at risk for not more than 30% of the children at risk enrolled in grades 5 through 12, if the board determines that the agencies can adequately serve such children. A board contracting under this section shall take all of the following actions:

**SECTION 2. EFFECTIVE DATE:**

The proposed rules contained in this order shall take effect on the first day of the month commencing after the date of publication in the Wisconsin Administrative Register, as provided in s. 227.22(2)(intro.), Stats.

STATE OF WISCONSIN DEPARTMENT OF ADMINISTRATION DOA 2049 (R 07/2011)	<b>ADMINISTRATIVE RULES FISCAL ESTIMATE AND ECONOMIC IMPACT ANALYSIS</b>
Type of Estimate and Analysis	
<input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected	
Administrative Rule Chapter, Title and Number	
PI 25, Children At Risk Plan and Program	
Subject	
Aligning the Rule with Statute	



Fund Sources Affected		Chapter 20, Stats. Appropriations Affected	
<input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S			
Fiscal Effect of Implementing the Rule			
<input checked="" type="checkbox"/> No Fiscal Effect <input type="checkbox"/> Indeterminate	<input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Decrease Existing Revenues	<input type="checkbox"/> Increase Costs <input type="checkbox"/> Could Absorb Within Agency's Budget <input type="checkbox"/> Decrease Costs	
The Rule Will Impact the Following (Check All That Apply)			
<input type="checkbox"/> State's Economy <input type="checkbox"/> Local Government Units		<input type="checkbox"/> Specific Businesses/Sectors <input type="checkbox"/> Public Utility Rate Payers	
Would Implementation and Compliance Costs Be Greater Than \$20 million?			
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
Policy Problem Addressed by the Rule			
The proposed rule change will modify PI 25.05 to align it with the statutory change made in 2011 Wisconsin Act 32, which removed the statutory limitation on the number of children at risk a school district may contract with private agencies to provide services for.			
Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)			
Local: None. 2011 Wisconsin Act 32 removed the statutory limitation on the number of children at risk a school district may contract with private agencies to provide services for; revision of the rule to align it with statute will have no fiscal effect.			
State: No fiscal effect.			
Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule			
The rule needs to be revised to align it with the statutory change made in 2011 Wisconsin Act 32. Otherwise, the rule will not reflect current law.			
Long Range Implications of Implementing the Rule			
This will help align PI 25 of the DPI Administrative Code with the Wisconsin Statutes.			
Compare With Approaches Being Used by Federal Government			
N/A.			
Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)			
N/A.			
Name and Phone Number of Contact Person			
Katie Schumacher, Department of Public Instruction Administrative Rules Coordinator, (608) 267-9127.			

**Notice of Rulemaking Without Public Hearing**

**Public Instruction  
CR 13-116**

The State Superintendent of Public Instruction hereby proposes an order to repeal Chapter PI 42, relating to the School Breakfast Program.

The rules are being adopted under s. 227.16 (2) (b), Stats., which provides that rulemaking does not need to be preceded

by notice and public hearing if the proposed rule brings an existing rule into conformity with a statute that has been changed.

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

Comments can be submitted to Katie Schumacher using the contact information below. Comments must be submitted no later than 10 days after publication of the notice of submittal to the Rules Clearinghouse in the Administrative Register.

**Analysis by the Department of Public Instruction****Statute interpreted**

None. 1999 Wisconsin Act 9 eliminated the grants awarded under the School Breakfast Program.

**Statutory authority**

None.

**Explanation of agency authority**

The Department of Public Instruction is repealing a rule that no longer has any statutory authority.

**Related statute or rule**

None.

**Plain language analysis**

This proposed rule change is a technical change that would repeal a rule that no longer has any statutory authority.

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

N/A.

**Comparison with rules in adjacent states**

N/A.

**Summary of factual data and analytical methodologies**

N/A.

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

N/A.

**Anticipated Costs Incurred by Private Sector**

N/A.

**Effect on Small Business**

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

**Agency Contact Person**

Katie Schumacher  
Budget and Policy Analyst  
Wisconsin Department of Public Instruction  
[Katie.Schumacher@dpi.wi.gov](mailto:Katie.Schumacher@dpi.wi.gov)  
(608) 267-9127

**Text of Rule**

**SECTION 1. Chapter PI 42 is repealed.**

**SECTION 2. EFFECTIVE DATE:**

The proposed rules contained in this order shall take effect on the first day of the month commencing after the date of publication in the Wisconsin Administrative Register, as provided in s. 227.22(2)(intro.), Stats.

STATE OF WISCONSIN DEPARTMENT OF ADMINISTRATION DOA 2049 (R 07/2011)		
<b>ADMINISTRATIVE RULES FISCAL ESTIMATE AND ECONOMIC IMPACT ANALYSIS</b>		
Type of Estimate and Analysis		
<input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected		
Administrative Rule Chapter, Title and Number		
PI 42, School Breakfast Program		
Subject		
Repeal of PI 42		
Fund Sources Affected		Chapter 20, Stats. Appropriations Affected
<input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S		
Fiscal Effect of Implementing the Rule		
<input checked="" type="checkbox"/> No Fiscal Effect <input type="checkbox"/> Indeterminate	<input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Decrease Existing Revenues	<input type="checkbox"/> Increase Costs <input type="checkbox"/> Could Absorb Within Agency's Budget <input type="checkbox"/> Decrease Costs
The Rule Will Impact the Following (Check All That Apply)		
<input type="checkbox"/> State's Economy <input type="checkbox"/> Local Government Units	<input type="checkbox"/> Specific Businesses/Sectors <input type="checkbox"/> Public Utility Rate Payers	
Would Implementation and Compliance Costs Be Greater Than \$20 million?		
Yes <input checked="" type="checkbox"/> No		

<b>Policy Problem Addressed by the Rule</b>
There is no longer funding or statutory authority for School Breakfast Program grants. Thus, the rule needs to be repealed.
<b>Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)</b>
Local: None. Grants for School Breakfast Programs were eliminated in 2011 Act 32; repeal of the rule will have no fiscal effect.  State: No fiscal effect.
<b>Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule</b>
The rule needs to be repealed since there is no longer any statutory authority for the grant program. Otherwise, the rule will not reflect current law.
<b>Long Range Implications of Implementing the Rule</b>
Elimination of the rule will align the DPI Administrative Code with statutes.
<b>Compare With Approaches Being Used by Federal Government</b>
N/A.
<b>Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)</b>
N/A.
<b>Name and Phone Number of Contact Person</b>
Katie Schumacher, Department of Public Instruction Administrative Rules Coordinator, (608) 267-9127.

## Notice of Hearing

### Revenue EmR1323

NOTICE IS HEREBY GIVEN That, pursuant to ss. 77.58 (5), 77.65 (3), and 227.11 (2) (a), Stats., the Department of Revenue will hold a public hearing to consider emergency rules revising Chapter Tax 11, relating to sales tax filing frequency.

#### Hearing Information

The hearing will be held:

**Date:** Monday, January 27, 2014  
**Time:** 1:00 p.m.  
**Location:** Events Room  
 State Revenue Building  
 2135 Rimrock Road  
 Madison, WI 53713

Handicap access is available at the hearing location.

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

Interested persons are invited to appear at the hearing and may make an oral presentation. It is requested that written comments reflecting the oral presentation be given to the department at the hearing. Written comments may also be submitted to the contact person listed below or to [adminrules.wisconsin.gov](http://adminrules.wisconsin.gov) no later than **January 27, 2014**, and will be given the same consideration as testimony presented at the hearing.

#### Place where Comments are to be Submitted and Deadline For Submission

Comments may be submitted to the contact person shown below no later than the date on which the public hearing on this rule is conducted.

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

#### Analysis by the Department of Revenue

##### *Statutes interpreted*

Section 77.58 (1) (a) and (5), Stats.

##### *Statutory authority*

Sections 77.58 (5), 77.65 (3), and 227.11 (2) (a), Stats.

##### *Explanation of agency authority*

Section 77.58 (5), Stats., provides "The department, if it deems it necessary to ensure payment to or facilitate the collection by the state of the amount of taxes, may require returns and payments of the amount of taxes for other than quarterly periods. The department may, if satisfied that the revenues will be adequately safeguarded, permit returns and payments of the amount of taxes for other than quarterly periods..."

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

Section 227.11 (2) (a), Stats., provides “[e]ach agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute...”

**Related statute or rule**

There are no other applicable statutes or rules.

**Plain language analysis**

This proposed rule amends the reference in s. Tax 11.93 to increase the annual filing standard to \$600 (currently \$300) to allow more retailers to file sales tax returns annually. This is consistent with changes made to s. 77.58 (1) (a), Stats., by 2013 Wis. Act 20, to allow more retailers to file sales tax returns less frequently (quarterly rather than monthly).

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

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

**Comparison with rules in adjacent states**

Illinois (86 ILL. Adm. Code 130.502), Iowa (Rule 701 12.1(422)), and Minnesota (Rule 8130.7300) also address sales tax filing frequency in their rules. As with Wisconsin, each of these state’s rules are based on unique underlying statutes and policy. Because of this, a meaningful comparison cannot be made.

**Summary of factual data and analytical methodologies**

2013 Wis. Act 20 doubled the threshold upon which a monthly sales tax return is required to be filed (\$600 to \$1200). The department has created this proposed rule order to be consistent with this statutory change by doubling the threshold upon which an annual sales tax return may be filed (\$300 to \$600). No other data was used in the preparation of this rule order or this analysis.

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

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

**Anticipated Costs Incurred by Private Sector**

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

**Effect on Small Business**

This rule does not affect small business.

**Agency Contact Person**

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

Dale Kleven  
Department of Revenue  
Mail Stop 6–40  
2135 Rimrock Road  
P.O. Box 8933  
Madison, WI 53708–8933  
[dale.kleven@revenue.wi.gov](mailto:dale.kleven@revenue.wi.gov)

**Finding of Emergency**

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

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

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

Section 77.58 (1) (a), Stats., as amended by 2013 Wis. Act 20, requires retailers to file sales tax returns monthly if their tax liability exceeds \$1,200 in any quarter. This change goes into effect on January 1, 2014. Under prior law, retailers were required to file monthly sales tax returns if their tax liability exceeded \$600 in any quarter.

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

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

**Text of Rule**

**SECTION 1.** Tax 11.93 (1) and (Note 2) are amended to read:

Tax 11.93 (1) A retailer holding a regular seller’s permit who during the previous calendar or fiscal year had a sales and use tax liability not exceeding ~~\$300~~ \$600 will be notified by the department that it must only file one sales and use tax return for the following year. If the retailer wants to continue to file returns on a quarterly basis, it must contact the department.

(Note 2) The interpretations in s. Tax 11.93 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) ~~The~~ A \$300 standard ~~applies~~ applied to taxable years beginning on and after January 1, 1979. Prior to that date, a \$100 standard applied; ~~and~~ (b) The “annual information return” was eliminated for 1981 and subsequent years, pursuant to Chapter 221, Laws of 1979; ~~and~~ (c) ~~The~~ \$600 standard applies on and after January 1, 2014.

**SECTION 2.** Effective date. This rule shall take effect upon publication in the official state newspaper as provided in s. 227.22 (2) (c), Stats.



**FISCAL ESTIMATE FORM**

**2013 Session**

ORIGINAL       UPDATED

CORRECTED       SUPPLEMENTAL

<b>LRB #</b>	
<b>INTRODUCTION #</b>	
Admin rule #	Tax 11: Sales Tax Filing Frequency

**Subject**

**Emergency Rule – Proposed order of the Department of Revenue relating to sales tax filing frequency**

**Fiscal Effect**

**State:**     No State Fiscal Effect  
 Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation

- |  |  |
|--|--|
| <input type="checkbox"/> Increase Existing Appropriation | <input type="checkbox"/> Increase Existing Revenues            |
| <input type="checkbox"/> Decrease Existing Appropriation | <input checked="" type="checkbox"/> Decrease Existing Revenues |
| <input type="checkbox"/> Create New Appropriation        |  |

Increase Costs – May be Possible to Absorb Within Agency’s Budget     Yes     No

Decrease Costs

**Local:**     No Local Government Costs

- |  |  |
|--|--|
| 1. <input type="checkbox"/> Increase Costs | <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory |
| 2. <input type="checkbox"/> Decrease Costs | <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory |

- |  |   |
|--|---|
| 3. <input type="checkbox"/> Increase Revenues            | <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory            |
| 4. <input checked="" type="checkbox"/> Decrease Revenues | <input type="checkbox"/> Permissive <input checked="" type="checkbox"/> Mandatory |

5. Types of Local Governmental Units Affected:
- |  |  |                                 |
|--|--|---------------------------------|
| <input type="checkbox"/> Towns               | <input type="checkbox"/> Villages          | <input type="checkbox"/> Cities |
| <input checked="" type="checkbox"/> Counties | <input checked="" type="checkbox"/> Others | Stadium Districts               |
| <input type="checkbox"/> School Districts    | <input type="checkbox"/> WTCS Districts    |                                 |

**Fund Sources Affected**

GPR     FED     PRO     PRS     SEG     SEG-S

**Affected Ch. 20 Appropriations**

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

The proposed rule modifies Chapter TAX 11 of the Administrative Code regarding the requirements for quarterly and annual sales and use tax filing. Currently, a registered business with an annual sales and use tax liability not exceeding \$300 must only file sales and use tax returns on an annual basis. If the retailer prefers to file on a quarterly basis, it must contact the department. The proposal would increase the \$300 threshold to \$600, allowing more businesses to file sales and use tax returns on an annual basis. The change to the filing threshold would be effective January 1, 2014.

Based on information from state sales and use tax returns, the rule change is expected to affect 8,091 filers. While the proposal does not impact tax liabilities, sales tax returns for quarters ending March 31 and June 30 would be due Dec 31 of the next fiscal year. Assuming all affected businesses file on an annual basis, the proposal would result in a \$1.7 million non-recurring loss in FY14.

County and stadium sales and use taxes were 8.2% of state sales and use taxes in FY13. Assuming this does not change, county and stadium taxes would decrease by \$140,000 (non-recurring loss) in FY14.

**Notice of Hearing**

Room 121C  
 Madison, Wisconsin

**Safety and Professional Services —  
 Marriage and Family Therapy, Professional  
 Counseling and Social Work Examining Board  
 CR 13-117**

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Marriage and Family Therapy, Professional Counseling and Social Work Examining Board in ss. 15.08 (5) (b) and 457.22 (1), Wis. Stats., and interpreting s. 457.22, Wis. Stats., the Marriage and Family Therapy, Professional Counseling and Social Work Examining Board will hold a public hearing at the time and place indicated below to consider an order to repeal Chapter MPSW 8 and section MPSW 14.03, and to repeal and recreate Chapter MPSW 19, relating to continuing education.

**Hearing Information**

**Date:**                    **Tuesday, February 4, 2014**  
**Time:**                    9:05 a.m.  
**Location:**              1400 East Washington Avenue

**Appearances at the Hearing**

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

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

Comments may be submitted to Sharon Henes, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 1400 East Washington Avenue, Room 151, P.O. Box 8935, Madison, WI 53708-8935, or by email to [Sharon.Henes@wisconsin.gov](mailto:Sharon.Henes@wisconsin.gov). Comments must be received at or before the public hearing to be held on February 4, 2014

at 9:05 a.m. to be included in the record of rule-making proceedings.

### **Copies of Rule**

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

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

#### *Statutes interpreted*

Section 457.22, Wis. Stats.

#### *Statutory authority*

Sections 15.08 (5) (b) and 457.22 (1), Wis. Stats.

#### *Explanation of agency authority*

The examining board shall promulgate rules for its own guidance and for the guidance of the professional.

The examining board may promulgate rules establishing requirements and procedures for social workers, advanced practice social workers, independent social workers, clinical social workers, marriage and family therapists, and professional counselors to complete continuing education programs or courses of study in order to qualify for renewal of their credential.

#### *Related statute or rule*

Section 457.22, Wis. Stats.

#### *Plain language analysis*

This rule combines the three current chapters on continuing education into one chapter which covers social workers, advanced practice social workers, independent social workers, clinical social workers, marriage and family therapists, and professional counselors.

Sections 1 and 2 delete the social worker and professional counselor continuing education requirements.

Section 3 repeals the marriage and family therapist continuing education requirements and recreates the new chapter which covers all professionals credentialed by Board.

The new chapter begins with definitions for the chapter.

The next section lists the continuing education requirement at 30 hours with at least 4 of those hours in ethics. As to ethics, marriage and family therapists would need to take ethics related to their profession only unless credentialed by another section and social worker ethics would need to be taken in an interactive learning format which is defined. Continuing education is not required during the initial licensure period. Continuing education may not be applied to a different credential period nor may continuing education taken as a result of a disciplinary action be counted.

The next section indicates how continuing education may be earned. Continuing education may be earned through approved program providers; postgraduate courses; in house trainings; presenting or developing professional materials for approved programs; postgraduate educators; authorship of published textbook or article; and authorship of alternative or electronic media or computer software.

The next section delineates the requirements for postponement and waivers for hardships and exemptions due

to retirement. If a person retires and then returns to practice, continuing education would need to be completed.

The last section of the chapter provides for a record retention requirement of a minimum of 4 years and that audits may be conducted to determine compliance with the continuing education requirements.

Section 4 is the effective date of the rules which is the first day of the month following publication in the administrative register.

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

None

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

**Illinois:** In Illinois, each marriage and family therapist, professional counselor and social worker credential holder shall complete 30 hours of continuing education. Continuing education hours may be earned for attending programs, courses, and postgraduate training programs; teaching and presenting programs and courses; and authorship of papers or books. Professional counselors also have an 18 credit hours in clinical supervision training as a one time (lifetime) requirement for continuing education. Social workers have a 3 credit hours requirement in ethics every two years.

**Iowa:** In Iowa, each marriage and family therapist and licensed mental health counselor, shall complete 40 hours of continuing education of which 3 hours shall be in the area of ethics. Continuing education may be earned by attendance at workshops, conferences and academic courses; presenting professional programs; and scholarly research which is published. Each social work credential holder shall complete 27 hours of continuing education of which 3 hours shall be in the area of ethics. Continuing education may be earned by attendance at sponsored activities and programs; pro-bono or volunteer work; instruction of a program or course; authorship of papers, publications; and preparation of presentations and exhibits before a professional audience. Those credential holders who provide supervision shall complete 3 hours of the required 27 hours in supervision.

**Michigan:** Michigan does not require continuing education for marriage and family therapists or professional counselors. In Michigan, social work credentials shall complete 45 hours continuing education in a three year period. At least 5 of the hours shall be in ethics and 1 hour in pain and pain symptom management.

**Minnesota:** In Minnesota, marriage and family therapists shall complete 30 hours of continuing education. Continuing education may be earned by attendance at workshops, seminars, symposia or postgraduate institutes; teaching a course, workshop, seminar, symposia or at a meeting of professional organizations; research; and authorship of a book or article. Professional counselors in the first four years shall complete 12 graduate semester credits and 40 hours of continuing education and after the first four years, only 40 hours of continuing education. Continuing education may be earned by attendance at approved programs or courses; teaching a postgraduate course; authoring, editing, producing or reviewing in the area of professional counseling; presentations at approved programs; and serving as a board or committee member of a major state or national professional counseling organization, national counselor certification board, a state counseling licensure board and a major counseling conference or convention. Each social worker credential shall complete 40 hours of continuing education

and at least 2 hours in ethics. Continuing education may be earned by academic coursework; educational workshops, seminars or conferences offered by an approved organization; staff training offered by public or private employer; and independent study. Licensed independent clinical social workers are required to complete 24 hours in the clinical content area. Those providing supervision shall complete at least 6 hours in supervision.

**Summary of factual data and analytical methodologies**

The Board examined each Section’s rules with the goal of having just one chapter on continuing education for all credentials granted by the Board. The Board also looked at recent audits which revealed confusion among credential holders who have more than one credential with the Board.

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

In preparation of the EIA, the rule was posted for economic

comments for a period of 14 days and received no comments.

**Fiscal Estimate and Economic Impact Analysis**

The Fiscal Estimate and Economic Impact Analysis is attached.

**Initial Regulatory Flexibility Analysis or Summary**

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

**Agency Contact Person**

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

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

MPSW 8, 14, 19

3. Subject

Continuing education

4. Fund Sources Affected

GPR    FED    PRO    PRS    SEG    SEG-S

5. Chapter 20, Stats. Appropriations Affected

20.165(1)(g)

6. Fiscal Effect of Implementing the Rule

No Fiscal Effect       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

This rule combines the three Sections of the Board’s continuing education rule into one chapter as well as updating the requirements to create clarity and utilize current methods of delivery.

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.

None

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

None

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

This rule will not have an economic nor fiscal impact on specific businesses, business sectors, public utility rate payers, local governmental units of the state's economy as a whole.

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

The benefit is to create clarity and reduce the confusion which was revealed during the recent continuing education audits.

14. Long Range Implications of Implementing the Rule

The long range implication is clarity with the continuing education requirements. Credential holders will not be face disciplinary action for failing to complete the correct continuing education due to confusion with the requirements if they hold multiple MPSW credentials.

15. Compare With Approaches Being Used by Federal Government

None

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

Illinois requires credential holders in all three professions to complete 30 hours of continuing education. Iowa requires marriage and family therapists and licensed mental health counselors to complete 40 hours of continuing education and social workers to complete 27 hours of continuing education. Michigan only requires continuing education for social workers and the number of hours is 45 for a three year period. Minnesota requires marriage and family therapists to complete 30 hours of continuing education and the professional counselors and social worker credential holders to complete 40 hours of continuing educations. All states list the acceptable methods in which continuing education may be earned as well as any specific topic areas which must be address in their continuing education.

17. Contact Name

Sharon Henes

18. Contact Phone Number

(608) 261–2377

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

## Notice of Hearing

### Safety and Professional Services — Marriage and Family Therapy, Professional Counseling and Social Work Examining Board CR 13–118

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Marriage and Family Therapy, Professional Counseling and Social Work Examining Board in s. 15.08 (5) (b), Wis. Stats., and interpreting s. 457.01 (8m), Wis. Stats., the Marriage and Family Therapy, Professional Counseling and Social Work Examining Board will hold a public hearing at the time and place indicated below to consider an order to repeal sections MPSW 2.01 (14) and 10.01 (3m), relating to the definition of psychotherapy.

#### Hearing Information

**Date:** Tuesday, February 4, 2014  
**Time:** 9:00 a.m.  
**Location:** 1400 East Washington Avenue  
Room 121C  
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 Sharon Henes, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 1400 East Washington Avenue, Room 151, P.O. Box 8935, Madison, WI 53708–8935, or by email to [Sharon.Henes@wisconsin.gov](mailto:Sharon.Henes@wisconsin.gov). Comments must be received at or before the public hearing to be held on **February 4, 2014, at 9:00 a.m.** to be included in the record of rule-making proceedings.



**Copies of Rule**

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

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

**Statutes interpreted**

Section 457.01 (8m), Wis. Stats.

**Statutory authority**

Section 15.08 (5) (b), Wis. Stats.

**Explanation of agency authority**

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

**Related statute or rule**

Section 457.01 (8m), Wis. Stats., and s. MPSW 1.02 (2m), Wis. Admin. Code

**Plain language analysis**

The rule repeals two definitions of psychotherapy. Section MPSW 1.02 (2) is a definition which applies to the all the MPSW chapters and is identical to s. 457.01 (8) statutory definition.

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

None

**Comparison with rules in adjacent states**

**Illinois:** The Illinois practice acts for marriage and family

therapy, professional counseling and social work do not define the word psychotherapy.

**Iowa:** The Iowa practice acts for marriage and family therapy, professional counseling, and social work do not define the word psychotherapy.

**Michigan:** The Michigan practice acts for marriage and family therapy, professional counseling, and social work do not define the word psychotherapy.

**Minnesota:** The Michigan practice acts for marriage and family therapy, professional counseling, and social work do not define the word psychotherapy.

**Summary of factual data and analytical methodologies**

The Board is repealing two definitions for a word that is already defined by the MPSW code therefore eliminating conflicting definitions.

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

This rule was posted for 14 days for economic impact comments and none were received. This rule repeals 2 definitions which did not match the statutory definition of psychotherapy.

**Fiscal Estimate and Economic Impact Analysis**

The Fiscal Estimate and Economic Impact Analysis is attached.

**Initial Regulatory Flexibility Analysis or Summary**

This rule does not have impact on small businesses.

**Agency Contact Person**

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

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

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

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

1. Type of Estimate and Analysis

Original     Updated     Corrected

2. Administrative Rule Chapter, Title and Number

MPSW 2.01(14) and 10.01(3m)

3. Subject

Psychotherapy definition

4. Fund Sources Affected

GPR    FED    PRO    PRS    SEG    SEG-S

5. Chapter 20, Stats. Appropriations Affected

20.165(1)(g)



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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 13-063**

(DATCP DOCKET # 12-R-02)

On December 19, 2013, the Department of Agriculture, Trade and Consumer Protection submitted a rule for legislative committee review, pursuant to s. 227.19, Stats. The proposed rule revises Chapters ATCP 17, 21, 53, 60, 70, and 80, relating to technical changes to livestock premises registration; plant inspection and pest control; agricultural enterprise areas; dairy farms; food processing plants; and dairy plants.

The Governor approved the rule on November 27, 2013.

### **Insurance** **CR 13-059**

The Office of the Commissioner of Insurance submitted proposed rules to the Chief Clerks of the Senate and Assembly for review by the Legislature under s. 227.19, Stats. The rules revise Chapter Ins 51, relating to risk based capital.

The rule was approved by the governor October 24, 2013.

### **Public Instruction** **CR 13-083**

On December 27, 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 revise Chapter PI 21, relating to driver education programs.

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.

### **Public Instruction** **CR 13-086**

On December 27, 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 proposed rules revise Chapter PI 32, relating to grants for alcohol and other drug abuse programs.

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.

### **Safety and Professional Services —** **Real Estate Examining Board** **CR 13-073**

The Real Estate Examining Board submitted a proposed rule-making order to the Chief Clerk of the Senate on December 26, 2013, and to the Chief Clerk of the Assembly on January 2, 2014 for referral to appropriate standing committees for review under sec. 227.19, Stats. The proposed rule repeals section REEB 16.03 (2) Note; renumbers section 16.02 (1) to 16.02 (1e); amends sections 16.03 (2), 16.03 (1) (intro.), (a), (b) and (e), 16.05 (1) and (2), 16.06 (1) (intro.), (a), (b), (e) and (f), 16.03 (2), 16.06 (4) (intro.) and (a) to (b), 16.06 (5) (intro.) and (a) to (c), and 16.06 (6) and (7); repeals and recreates section 16.03 (2) Note; and creates sections 16.02 (intro.), (1) and Note, (1m), (2e), (2m), (2s), (3m) and (4m), 16.03 (2) Note and 16.06 (9), relating to use of approved forms and legal advice.

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

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