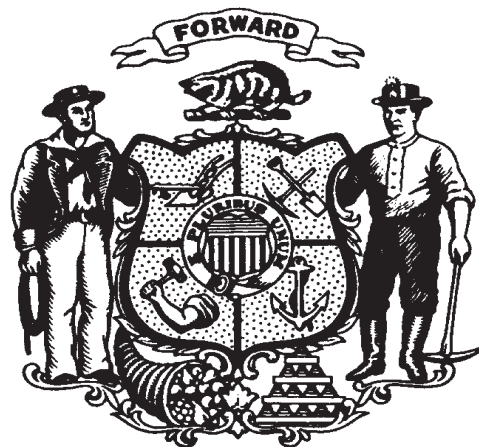


# Wisconsin Administrative Register

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Affirmative action order of the Controlled Substances Board.

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## Emergency Rules Now in Effect

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

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

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

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

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

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

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

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### Agriculture, Trade and Consumer Protection (2)

**1. EmR1413** (ATCP DOCKET # 14-R-09) — The Wisconsin Department of Agriculture, Trade and Consumer Protection adopts the following emergency rule to amend **chapter ATCP 127, subchapter V (Title) and section 127.82 (2)**; to repeal **sections ATCP 127.81 (3) (c), (d), (e) and (Note) and 127.82 (3), (4), (5), (6), and (7)**; to repeal and recreate **sections ATCP 127.80 (5), 127.81 (2) (j), 127.82 (Title) and (1) and 127.82 (8)**; and to create **section ATCP 127.80 (6r)**, relating to telephone solicitations and the state do-not-call registry.

This emergency rule was approved by the Governor on July 29, 2014.

The scope for this rule, SS 049-14, was approved by the Governor on May, 14, 2014, published in register No. 701 on May 31, 2014, and approved by the Board of Agriculture, Trade and Consumer Protection on June 12, 2014.

#### Finding of Emergency

(1) In Wisconsin, businesses wishing to solicit consumers by telephone must register with the department and pay an annual registration fee.

(2) A recent statutory change eliminated Wisconsin's separate no-call list and requires telephone solicitors to use the Wisconsin portion of the national do-not-call registry.

(3) The law also requires the department to create telephone solicitor registration requirements by rule that will show proof that the businesses have registered with the federal trade commission's do-not-call registry to obtain and use the Wisconsin portion of the national do-no-call registry.

(4) The statutory change takes effect August 1, 2014. However, the permanent rule-making establishing these registration requirements will not be effective until mid-2015.

(5) The department must adopt registration requirements by emergency rule by August 1, 2014 so telephone solicitors can register with the department and comply with the law before the permanent rule is completed.

(6) This temporary emergency rule is necessary to protect the welfare of businesses that wish to register as telephone solicitors in Wisconsin. Without this emergency rule, telephone solicitors would not be able to register with the department and would not be able to comply with the no-call law.

<b>Filed with LRB:</b>	<b>July 29, 2014</b>
<b>Publication Date:</b>	<b>August 1, 2014</b>
<b>Effective Dates:</b>	<b>August 1, 2014 through December 28, 2014</b>

**2. EmR1424** — The Wisconsin Department of Agriculture, Trade and Consumer Protection 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 Columbia, Door, Grant, Green, Iowa, Lafayette, Monroe, and Richland Counties for the emerald ash borer beetle.

This emergency rule was approved by the Governor on September 11, 2014.

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 and Consumer Protection on December 10, 2013.

#### Finding of Emergency

(1) The United States Department of Agriculture — Animal and Plant Health Inspection Service ("APHIS") positively identified Emerald Ash Borer ("EAB") in the village of Fish Creek, Door County on June 10, 2014. EAB was also identified in the city of Sturgeon Bay on June 19, 2014. APHIS subsequently identified EAB in Nelson Dewey State Park, Grant County, and in the Village of Oakdale, Monroe County, on July 11, 2014. On July 17, 2014, APHIS identified EAB in the Town of Lodi, Columbia County. While EAB has not yet been positively identified in the southwestern contiguous counties of Richland, Iowa, Lafayette, and Green, these four counties are now completely surrounded by the state and federal EAB quarantine. It is very likely that these counties already contain some level of EAB infestation, and there is little economic or ecological benefit to keeping them out of the quarantine. 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

Columbia, Door, Grant, Green, Iowa, Lafayette, Monroe, and Richland Counties but that it will take six to eight weeks for APHIS to act. An eight-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.

(2) 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 25, 2014  
**Publication Date:** September 26, 2014  
**Effective Dates:** September 26, 2014 through February 22, 2015  
**Hearing Date:** October 27, 2014

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## Children and Families

### *Safety and Permanence, Chs. DCF 35—59*

**EmR1414** — The Wisconsin Department of Children and Families orders the renumbering of sections **DCF 50.06 (2), 57.515 (1), and 58.04 (4) (a) and (b)**; the renumbering and amendment of section **DCF 57.515**; the amendment of sections **DCF 50.06 (3) (b) 1., 52.02 (2) (a) and (note), 52.03 (23), 52.12 (8) (b) and (9) (c) (intro.) and 1., 52.21 (3) (d) 2. a. and (9), 52.22 (1) (d), 52.41 (1) (a) 3., 52.48 (1) (b), 52.56 (24) (a), 52.58 (4) (b) 1. and 2., 52.61 (7) (a) 2. c. to e., 52.62 (4) (b) 4., and (7) (a) (intro.) and 2. to 5., 55.10 (4) (a) (intro.), 1., and 2. a., 56.03 (12), (13), (34p), and (38), 57.02 (2) and (note), 57.05 (1) (c) (note), 57.13 (1) (j), 57.14 (2) and (4) (a) 1., 57.16 (4), 57.17 (2) (h), 57.23 (2) (a) (intro.), 57.25 (6) (b) and (c), 57.33 (2), 57.38 (2), and 58.03 (12) and (15)**; the repeal and recreation of sections **DCF 52.03 (22), 52.21 (3) (d) (title), 1., and 2.c., 52.62 (4) (b) 5., 54.01 (4) (b), 56.03 (5), 57.04 (6) and (34), 57.19 (6), 58.03 (3), and 58.04 (4) (title)**; and the creation of **Chapter DCF 21 and sections DCF 50.06 (2) (a) (title) and 11., (2) (b), and (3) (b) 1. c., 52.03 (27m), 52.21 (3) (d) (note), 52.62 (4) (d) and (note), 55.10 (4) (a) 3. and (am), 56.04 (39), 56.09 (1m) (cm), 57.14 (2) (c), 57.23 (2) (a) 13., 57.515 (2) and (note), 58.03 (20), and 58.04 (4) (b)**, relating to the extension of out-of-home care to children and youth 18 years of age or over, but under 21 years of age, and affecting small businesses.

This emergency rule was approved by the governor on July 25, 2014.

The statement of scope for this rule, SS 045–14, was approved by the governor on May 8, 2014, published in Register 701, on May 31, 2014, and approved by Secretary Eloise Anderson on June 20, 2014.

### Finding of Emergency

Section 118 (1) (b) of 2013 Wisconsin Act 334 allows the department to promulgate an emergency rule to implement the extension of out-of-home care to children and youth 18 years of age or over, but under 21 years of age, under ss. 48.366 and 938.366, Stats., as an emergency rule without a finding of emergency.

**Filed with LRB:** July 29, 2014  
**Publication Date:** August 1, 2014  
**Effective Dates:** August 1, 2014 through December 28, 2014  
**Hearing Date:** October 16, 2014

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## Health Services

### *Health, Chs. DHS 110—*

**EmR1410** — The Wisconsin Department of Health Services hereby adopts emergency rules to renumber and amend section **DHS 115.05 (3)**; to amend sections **115.01, 115.02, and 115.04 (intro.)**; and to create section **115.04 (15) and (16)**, relating to screening newborns for congenital and metabolic disorders.

This emergency rule was approved by the Governor on June 27, 2014.

The statement of scope for this rule, SS 057–14, was approved by the Governor on June 5, 2014, published in Register 702, on June 14, 2014, and approved by Secretary Rhoades on June 25, 2014.

### Finding of Emergency

The Department of Health Services finds that an emergency exists and that the adoption of an emergency rule is necessary for the immediate preservation of the public health, safety and welfare. The facts constituting the emergency are as follows:

1. Section 253.13 (1), Stats., requires attending physicians and nurses licensed under s. 441.15, Stats., to cause every infant born in each hospital or maternity home, prior to the infant's discharge to be subjected to tests for congenital and metabolic disorders, as specified in rules promulgated by the department. If the infant is born elsewhere than in a hospital or maternity home, the attending physician, nurse licensed under s. 441.15, Stats., or birth attendant who attended the birth shall cause the infant, within one week of birth, to be subjected to these tests.

2. Section DHS 115.04 lists the disorders for which newborns must be tested under s. 253.13 (1), Stats.

3. Critical congenital heart disease (CCHD) is described as those congenital cardiac malformations in which surgical or catheter-based therapy is necessary within the first months of life. There are 12 lesions commonly considered as CCHD. In some circumstances, infants with CCHD may be asymptomatic and have a normal physical examination prior to routine hospital discharge or completion of home birth care. Unrecognized CCHD can result in death or disability shortly after hospital discharge.

4. Death due to unrecognized CCHD from 2002 to 2006 occurred in 1:38,397 Wisconsin births and death or re-hospitalization occurred in 1:24,684 Wisconsin births before two weeks of age. The median age at death due to unrecognized CCHD was 4.5 days.

5. Pulse oximetry, a point of care testing, is the recognized screening method for CCHD.

6. Prior to 2013 Wisconsin Act 135, adding pulse oximetry screening for CCHD to the mandatory panel was not permitted because testing for congenital and metabolic disorders under s. 235.13 (1), Stats. (2011–12), was explicitly limited to blood testing. Section 253.13 (1), Stats., as amended by 2013 Wisconsin Act 135, now allows testing for congenital and metabolic disorders using other screening methods including blood testing.

7. The Wisconsin State Laboratory of Hygiene (WSLH) tests newborns for organic acidemias (OA), a group of inherited disorders that lead to an abnormal buildup of particular acids, known as organic acids, in the body.

8. Abnormal levels of organic acids in the blood (organic acidemia), urine (organic aciduria), and tissues can be toxic and can cause serious health problems. A baby affected with an OA is usually well at birth and for the first few days of life. The usual clinical presentation is that of toxic encephalopathy



and includes vomiting, poor feeding, neurologic symptoms such as seizures and abnormal tone, and lethargy progressing to coma. Outcome is improved by diagnosis and treatment in the first ten days of life.

9. Propionic acidemia and methylmalonic acidemia are two types of organic acidemias. In propionic acidemia and methylmalonic acidemia, the body is unable to process certain parts of proteins and lipids (fats) properly. In most cases, the features of propionic acidemia become apparent within a few days after birth. Propionic acidemia affects about 1 in 100,000 people in the United States. The effects of methylmalonic acidemia, which usually appear in early infancy, vary from mild to life-threatening. Without treatment, this disorder can lead to coma and death in some cases. This condition occurs in an estimated 1 in 50,000 to 100,000 people.

10. Though OA was determined to have met the criteria under s. DHS 115.06 for being added to the list of congenital and metabolic disorders for which WSLH must test the blood samples of newborns, the conditions were inadvertently omitted from the list of conditions in s. DHS 115.04 during subsequent revisions.

11. The process for promulgating permanent rules may take 24 months to complete, or longer if the department is unable to submit the permanent rules to the legislature prior to its last general business floor period in 2016.

**Filed with LRB:** June 27, 2014  
**Publication Date:** July 3, 2014  
**Effective Dates:** July 3, 2014 through November 29, 2014  
**Hearing Date:** August 15, 2014

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## Insurance

**EmR1408** — The Commissioner of Insurance proposes an order to amend section Ins 17.01 (3); and to repeal and recreate section. Ins 17.28 (6), Wis. Admin. Code, relating to the Injured Patients and Families Compensation Fund Annual Fund and mediation panel fees, for the fiscal year beginning July 1, 2014 and affecting small business.

This emergency rule was approved by the Governor on June 12, 2014.

The statement of scope for this rule, SS 147–13, was approved by the Governor on November 18, 2013, published in Register No. 695, on November 30, 2013, and approved by the Commissioner on May 8, 2014.

### 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, 2014 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 18, 2013 and the mediation panel fees established by the Board of Governors at the meeting held on March 19, 2014.

**Filed with LRB:** June 13, 2014

**Publication Date:** June 18, 2014  
**Effective Dates:** June 18, 2014 through November 14, 2014  
**Hearing Date:** August 12, 2014

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## Natural Resources (10)

### *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. 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

**4. EmR1405** (DNR # WM-24-13(E)) — The Wisconsin Natural Resources Board proposes an order to repeal sections **NR 10.01 (3) (ed), (es) 3., and (et), 10.07 (3), 10.09 (2), 10.28 (3), and 45.09 (9)**, to amend sections **NR 1.15 (1) (a), (b), and (c) 1., (2) (a) (intro.) and (at), and (3), 10.001 (2e), (6p), and (19e), 10.01 (3) (es) 1. and 2. and (3) (ev), 10.02 (3), 10.06 (8) (b) and (note), 10.07 (2m) (b) 1., 10.102 (1) (e) 4., 10.105 (1), (2), (4), and (7), 10.106 (intro.) and (1), 12.06 (1), (2), and (4), 12.16 (4), 13.38 (2) (b) and (Note), and 19.60 (2) (b) 1.**, to repeal and recreate sections **NR 1.15 (2) (a) 8., 10.01 (3) (e) and (em), 10.104, 10.106 (2), 10.28 (1) and (2), 10.28 (4), and 10.41**, and to create **Chapter NR 10 (Title.) and sections NR 10.001(1k) and (23a) and (b), 10.01 (2) (b) (Note) and (4) (dm) (Note), and Subchapter II**, relating to deer management, hunting, and implementation of the 2012 White-tailed Deer Trustee Report.

This emergency rule was approved by the Governor on February 10, 2014

The statement of scope for this rule, SS 098-13, was approved by the Governor on July 23, 2013, published in

Register No. 692, on August 14, 2013, and approved by the Natural Resources Board on September 25, 2013.

#### Finding of Emergency

A non-statutory provision, SECTION 9132 of 2013 Act 20, establishes that the department may promulgate rules to implement the 2012 final deer management report and that the department is not required to make a finding of emergency.

**Filed with LRB:** February 25, 2014

**Publication Date:** March 7, 2014

**Effective Dates:** March 7, 2014 through June 30, 2015

**5. EmR1409** (DNR # FH-03-14(E)) — The Wisconsin Natural Resources Board proposes an order to amend sections **NR 20.36 (2) and 23.055 (2)**, relating to modifications in daily bag limits and minimum size limits in response to tribal harvest.

This emergency rule was approved by the Natural Resources Board on May 28, 2014, and by the governor on June 6, 2014.

The statement of scope for this rule was approved by the governor on February 14, 2014, published in Register No. 698 on February 28, 2014, and approved by the Natural Resources Board on March 19, 2014.

#### Statement of Emergency

This emergency rule is needed to promote the preservation and protection of public peace, health, safety, and welfare in the Ceded Territory of Wisconsin by minimizing regional social and economic disruption known to be associated with reductions in walleye bag limits on off-reservation waters.

**Filed with LRB:** June 16, 2014

**Publication Date:** June 14, 2014

**Effective Dates:** June 14, 2014 through November 10, 2014

**Hearing Date:** July 14, 2014 and July 16, 2014

**6. EmR1412** (DNR # ER-31-13(E)) — The Wisconsin Natural Resources Board proposes an order to create sections **NR 10.02 (11), 16.12 (3) (b) 12., 19.275 (4) (bm), 21.13 (4) (bm), and 22.13 (4) (bm)**, relating to the addition of the Blanding's turtle to the State's Protected Wild Animal list, possession exemptions, and turtle seasons and limits.

This emergency rule was approved by the Governor on June 25, 2014.

The statement of scope for this rule, SS 124-13, was approved by the governor on September 20, 2013, published in Register No. 694, on October 14, 2013, and approved by the Natural Resources Board on December 11, 2013.

#### Finding of Emergency

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified to preserve the public welfare and interest in ensuring a sustainable population of Blanding's turtles. The Blanding's turtle is proposed for delisting from the State's Threatened Species list per administrative rule ER-27-11, which is expected to take effect as early as December 2013. Although the Blanding's turtle no longer meets the scientific criteria for listing, the Department feels that the population is nonetheless too vulnerable to survive the threat of harvest and collection, and believes emergency rules are needed to ensure a proper recovery before these activities are permitted.

All turtles not listed as threatened or endangered in ch. NR 27 or as otherwise specified have a 135-day open season (July

15–November 30) during which members of the public may capture and possess up to 5 individuals [s. NR 19.275 (4), 21.13 (4) and 22.13 (4)] per day. Permanent rule–making to protect Blanding’s turtles from this harvest will not go into effect until after the 2014 open season for turtles is already underway. An emergency rule is therefore necessary to prevent the harvest and possession of Blanding’s turtles during the 2014 open season until the permanent rule goes into effect.

The anticipated impact of collection and harvest to Blanding’s turtle conservation and recovery in the state necessitates putting the emergency rule into effect during the 2014 open season for turtles while the agency complies with the permanent rule–making procedures.

**Filed with LRB:** July 10, 2014  
**Publication Date:** July 13, 2014  
**Effective Dates:** July 13, 2014 through December 9, 2014  
**Hearing Date:** August 27, 2014

**7. EmR1418** (DNR # WM–11–14(E)) — The Wisconsin Natural Resources Board proposes an order to amend **sections NR 10.01 (b) and 10.06 (5)** and to create **sections NR 10.01 (1) (a) and 10.06 (5) (a)**, related to establishing an early duck season for teal–only and the hunting regulations for teal and mourning doves.

The rule was adopted by the Natural Resources Board on June 25, 2014, approved by the Governor on August 27, 2014, and signed by Policy Director Michael L. Bruhn for Secretary Cathy Stepp, also on August 27, 2014.

The statement of scope for this rule, SS 020–14, was approved by the Governor on March 10, 2014, published in Register No. 699, on March 31, 2014, and approved by the Natural Resources Board on May 27, 2014.

#### Statement of Emergency

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

**Filed with LRB:** August 28, 2014  
**Publication Date:** September 1, 2014  
**Effective Dates:** September 1, 2014 through January 28, 2015  
**Hearing Date:** October 29, 2014

**8. EmR1419** (DNR # WM–04–14(E)) — The Wisconsin Natural Resources Board proposes an order to amend **section NR 10.01 (1) (b) and (1) (g) 1. d.** and to create **section NR 10.01 (1) (g) 1. dm.**, related to migratory bird hunting regulations.

This rule was approved by the Governor on August 27, 2014.

The statement of scope for this rule, SS 020–14, was approved by the Governor on March 10, 2014, published in Register No. 699, on March 31, 2014, and approved by the Natural Resources Board on May 27, 2014.

#### Finding of Emergency

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

**Filed with LRB:** September 8, 2014  
**Publication Date:** September 11, 2014  
**Effective Dates:** September 11, 2014 through February 7, 2015  
**Hearing Date:** October 29, 2014

**9. EmR1420** (DNR # WM–05–14(E)) — The Wisconsin Natural Resources Board proposes an order to repeal section **NR 10.001 (2e)**, **10.09 (1) (c) 1. e. and (Note)**; to amend **sections NR 10.06 (5), 10.06 (8) (a) and (b), 10.07 (1) (b) 3., 10.07 (2m) (g) 2., 10.09 (1) (c), 10.09 (3), 10.10 (2), 10.11 (5) (a), 10.103 (1), 10.104 (7), 10.104 (9r), 10.15 (1) (a), 10.15 (6), 10.16 (Intro.), 10.16 (2), 10.22 (1), 10.23 (2) (a), 10.24 (2), 10.25 (4) (a), 11.042 (intro.), 11.043 (intro.), 11.11 (intro.), 12.16 (4), 15.01 (intro.), 15.015 (intro.), 15.10 (1) (intro.) and 15.12 (intro.), 45.09 (1), and 45.13 (18), (21), and (24)**; and to create **sections NR 10.01 (3) (em) (Note) and (3) (ep), 10.104 (7) (c), 10.15 (3m), and 10.16 (2m)**, related to establishing a season for hunting deer with crossbows–only.

This rule was approved by the governor on September 8, 2014.

The statement of scope for this rule, SS 018–14, was approved by the Governor on March 10, 2014, published in Register No. 699, on March 31, 2014, and approved by the Natural Resources Board on May 27, 2014.

#### Finding of Emergency

The department is not required to make a finding of emergency before promulgating these rules. The department is directed to promulgate these rules in 2013 Act 61 and is exempted from making a finding of emergency under non–statutory provisions of the ACT.

**Filed with LRB:** September 9, 2014  
**Publication Date:** September 12, 2014  
**Effective Dates:** September 12, 2014 through February 8, 2015  
**Hearing Date:** October 29, 2014

**10. EmR1422** (DNR # WM–08–14(E)) — The Wisconsin Natural Resources Board proposes an order to amend **section NR 10.104 (8) (a)** and to create **sections NR 10.001 (7p) and (7w), 10.104 (9m) (a) and (b), 10.104 (5) (b) 8. and 10.104 (5) (c)**, related to implementation of the Deer Management Assistance Program and County Deer Management Advisory Committee.

This emergency rule was approved by the Governor on September 10, 2014.

The statement of scope for this rule, SS 056–14, was published in Register No. 702, on June 14, 2014 and approved by the Natural Resources Board at its June 25, 2014 meeting.

### Finding of Emergency

The department is not required to make a finding of emergency before promulgating these rules. The department is directed to promulgate these rules in s. 29.040 Stats., established by 2013 ACT 20 and is exempted from making a finding of emergency under non-statutory provisions in Section 9132 of the ACT.

**Filed with LRB:** September 15, 2014  
**Publication Date:** September 19, 2014  
**Effective Dates:** September 19, 2014 through February 15, 2015  
**Hearing Date:** October 29, 2014

## Natural Resources

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

**EmR1417** (DNR # OE–10–14(E)) — The Wisconsin Natural Resources Board proposes an order to repeal **sections NR 150.10 (1m) (b) and 150.20 (3) (a) 4. and 5.**; to amend **sections NR 150.03 (1), (15) (intro.), (19), (25), and (26), 150.10 (1) and (1m) (a), (c) (intro.), and (2) (a), 150.20 (1), (1m) (j), (k), and (L), (2) (a) (intro.), 4., 10., 11., and 16., (3) (a) (intro.), and (4) (b) (intro.), and 150.35**; and to create **section NR 150.20 (1) (Note), (1m) (k) (Note), (m) to (y), and (2) (a) 20. to 27.**, relating to the department's environmental analysis and review procedures under the Wisconsin Environmental Policy Act.

The emergency rule was adopted by the Natural Resources Board On August 13, 2014, approved by the Governor on August 27, 2014 and signed by Policy Director Michael L. Bruhn for Secretary Cathy Stepp, also on August 27, 2014.

The scope statement number is SS 051–14. The governor approved the scope statement on May 15, 2014, and the scope statement was published in register No. 701 on May 31, 2014.

### Finding of Emergency

Significant revisions to ch. NR 150 became effective on April 1, 2014. The changes proposed are needed to clarify procedures for the review and analysis of new administrative rules and other actions and policies to assure that the intent of the recent revisions to ch. NR 150 is being met and potential procedural questions do not invalidate years of work and public engagement. Additionally, the changes will clarify the intent of the April 1, 2014 revisions for procedures for WEPA compliance determinations, publication requirements, and plan approvals for various actions and policies, to prevent any misunderstandings or resulting challenge or delay regarding that intent.

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary to allow timely processing and implementation of department rule proposals, actions, and policies. Preservation of the public welfare necessitates putting the forgoing rule into effect prior to the time that it would take if the Department complied with normal rule promulgation procedures.

**Filed with LRB:** August 28, 2014

**Publication Date:** August 31, 2014  
**Effective Dates:** August 31, 2014 through January 27, 2015  
**Hearing Date:** September 26, 2014

## Public Instruction

**EmR1411** — The State Superintendent of Public Instruction hereby creates **Chapter PI 80**, relating to community programs and services.

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 043–14, was published in Register No. 701, on May 14, 2014, and approved by State Superintendent Tony Evers, on May 27, 2014.

### 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:

Unless an emergency rule is promulgated, school districts will not know which activities would be considered ineligible costs for the Community Programs and Services Fund for the 2014–15 school year. Not having this information could result in school districts unintentionally making expenditures from the Community Programs and Services Fund in 2014–15 that are deemed “ineligible costs” after the school board has made budget decisions and set a tax levy for the 2014–15 school fiscal year. Such a finding would then result in a negative adjustment to the district's revenue limit authority for the following 2015–16 school year, per s. 121.91 (4) (r), Stats., as created by 2013 Wisconsin Act 306. A district's revenue limit authority controls the amount of combined State General Aid and local property taxes revenues for a district. Thus, a district's revenue limit authority for the 2015–16 school year could be negatively impacted based on a definition of “ineligible costs” that was not in place at the time the district made its 2014–15 budget decisions and set the 2014–15 tax levy (by November 2014) for the Community Programs and Services Fund.

**Filed with LRB:** June 27, 2014  
**Publication Date:** July 1, 2014  
**Effective Dates:** July 1, 2014 through November 27, 2014  
**Hearing Date:** September 4, 2014

## Safety and Professional Services

### *General Part I, Chs. 301—319*

**EmR1415** — An order of the Department of Safety and Professional Services to amend **section SPS 305.40 (2) (b), (3) (b), (4) (a) 1., (b), (c), and (d) 1., and (5)** and to create **sections SPS Table 305.02 Row 24r, Table 305.06 Row 19r, 305.40 (1) (bm), and 305.437**, relating to credentials for electricians.

This emergency rule was approved by the Governor on July 29, 2014.

The statement of scope for this rule, SS 041–14, was approved by the Governor on April 30, 2014, published in

Register No. 701 on May 14, 2014, and approved by the Department on May 27, 2014.

### 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.

SECTION 15 of 2013 Wisconsin Act 143 exempts any electrician who was born on or before January 1, 1956, and who has at least 15 years of experience in installing, repairing, or maintaining electrical wiring, from the electrical licensure and supervision requirements in sections 101.862 (2) and (3) of the Statutes. SECTION 15 also requires the Department to promulgate rules establishing criteria and procedures for issuing a corresponding credential to these grandfathered electricians.

Because of Act 143, the statutory requirements are now out of step with the Department's administrative rules – and the stakeholders who are affected by these statutory changes are confused by the differences. For example, there has been substantial confusion on what these grandfathered electricians can or need to do and how local governmental units should treat them. Promulgating revisions to the rules through the emergency rule process is needed in order to minimize the confusion and any hardship as soon as possible.

**Filed with LRB:** August 1, 2014  
**Publication Date:** August 6, 2014  
**Effective Dates:** August 6, 2014 through January 2, 2015  
**Hearing Date:** September 12, 2014

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## Safety and Professional Services

### Plumbing, Chs. SPS 381—387

**EmR1423** — An order of the Department of Safety and Professional Services to renumber **Chapter SPS 384 Table 384.10 rows 1 to 5**, to renumber and amend **Chapter SPS 384 Table 384.10 row 6**, and to create **Chapter SPS 384 Table 384.10 rows 1 and 9 and (Note)**, relating to water-treatment devices.

This emergency rule was approved by the Governor on September 12, 2014.

The statement of scope for this rule, SS 037–14, was approved by the Governor on April 17, 2014, published in Register 701 on May 14, 2014, and approved by the Department on May 29, 2014.

### 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.

Under current rules, water treatment devices — including water softeners — may need two separate approvals before being used in Wisconsin. The first approval is typically from a third party, such as NSF International, and is based on an industry standard. The second approval is under SPS chapter 384, which addresses situations where a plumbing product must receive approval from the Department. Due to prolonged extreme weather conditions this past winter, spring, and summer, more private well owners than usual have

chosen to upgrade their water supply systems this year. The Department has reason to believe that its secondary review is delaying some of these well owners from accessing plumbing products which would improve the safety of their drinking water. These products have been approved under industry standards and are available to consumers in other states but have not yet received approval from the Department. Promulgating revisions through the emergency rule process is needed to avoid further delays in using these products.

**Filed with LRB:** September 25, 2014  
**Publication Date:** September 27, 2014  
**Effective Dates:** September 27, 2014 through February 23, 2015  
**Hearing Date:** October 27, 2014, 2014

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## Transportation (2)

**1. EmR1421** — The Wisconsin Department of Transportation proposes an order to amend **Chapter Trans 102**, relating to operator's licenses and Identification cards.

This emergency rule was approved by the Governor on September 11, 2014.

The scope statement for this rule, SS 080–14, was approved by the Governor on August 19, 2014, and published in Wisconsin Administrative Register No. 704, on August 31, 2014 and approved by the Secretary of Transportation on September 10, 2014.

### Finding of Emergency

On July 31, 2014, the Wisconsin Supreme Court upheld 2011 Wisconsin Act 23, which requires certain identification in order to vote at a polling place or obtain an absentee ballot. *NAACP v. Walker*, 2014 WI 98.

The Department of Transportation's Division of Motor Vehicles ("DMV") is required by 2011 Wisconsin Act 23 to issue an identification ("ID") card free of charge to any U.S. citizen who will be at least 18 years of age on the date of the next election and who requests the ID card free of charge for voting purposes, provided they meet statutory requirements.

This emergency rule may be necessary to preserve public welfare by ensuring that DMV will implement the requirements of 2011 Wisconsin Act 23 in a manner consistent with the requirements of *NAACP v Walker*, should the federal injunction against that act be lifted.

**Filed with LRB:** September 15, 2014  
**Publication Date:** September 17, 2014  
**Effective Dates:** September 17, 2014 through February 13, 2015

**2. EmR1425** — The Wisconsin Department of Transportation proposes an order to create **Chapter Trans 319**, relating to towing of vehicles.

This Emergency Rule was approved by the Governor on September 26, 2014.

The Statement of Scope for this Emergency Rule, SS 064–14, was approved by the Governor on July 1, 2014, published in Register No. 703 on July 14, 2014, and approved by Secretary of the State of Wisconsin Department of Transportation Mark Gottlieb, P.E., as required by s. 227.135(2), Stats, on July 28, 2014.

### Exemption from Finding of Emergency

The Legislature by 2013 Wisconsin Act 76 s. 59 (2) provides an exemption from a finding of emergency for the adoption of the rule.

**Filed with LRB:** October 1, 2014  
**Publication Date:** October 2, 2014  
**Effective Dates:** October 2, 2014 through February 28, 2015  
**Hearing Date:** November 11, 2014

Secretary of the Department of Workforce Development on March 11, 2014.

### 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 facts constituting an emergency include:

(1) Wisconsin currently has more than 2,100 employers participating in, and training individuals, under the apprenticeship program.

(2) During 2013, Wisconsin had 9,723 valid apprenticeship contracts.

(3) Over the past ten years, the completion rate of the apprenticeship program averaged between 55–60%.

(4) 2013 Wisconsin Act 57 creates an apprenticeship completion award program to be administered by the department of workforce development to partially reimburse tuition costs incurred by an apprentice who has successfully completed part or all of the requirements of their apprenticeship contract, and is employed in the trade, occupation, or business under the apprenticeship contract, or the sponsor of the apprentice.

(5) The department of workforce development has received general purpose revenue (GPR) funds of \$225,000 in fiscal year 2013–14 and 2014–15, to distribute up to 25%, or \$1,000, whichever is less, of the tuition costs incurred by the apprentice and sponsor of the apprentice. The amount of the first payment upon successful completion by the apprentice of the first year of the contract may not exceed \$250.

(6) The department of workforce development is adopting this emergency rule to prevent a potential hardship to Wisconsin's apprenticeship program participants. Adoption of this emergency rule will ensure those participating in an eligible apprenticeship contract may begin receiving apprenticeship completion awards as soon as possible. Because a permanent rule cannot be adopted in time, GPR funds for fiscal year 2013–14 would be lost if the emergency rule is not adopted.

**Filed with LRB:** March 26, 2014  
**Publication Date:** March 27, 2014  
**Effective Dates:** March 27, 2014 through August 23, 2014  
**Hearing Date:** May 15, 2014  
**Extension Through:** October 22, 2014

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## Veterans Affairs

**EmR1416** — The Department of Veterans Affairs hereby adopts an order to create **section VA 2.07**, relating to grants to non-profit organizations.

This emergency rule was reviewed by the Board of Veterans Affairs on July 15, 2014 and approved by the Governor on August 20, 2014.

The statement of scope for this rule, SS 038–14, was approved by the Governor on April 21, 2014, published in Register No. 701 on May 14, 2014, and approved by Secretary John A. Scocos on May 27, 2014.

### Finding of Emergency

The Legislature by Section 9 of 2013 Act 190 provides an exemption from a finding of emergency for the adoption of this rule.

**Filed with LRB:** August 28, 2014  
**Publication Date:** August 29, 2014  
**Effective Dates:** August 29, 2014 through January 25, 2015  
**Hearing Date:** November 12, 2014

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## Workforce Development

### *Apprenticeship, Chs. DWD 295–296*

**EmR1406** — The Wisconsin Department of Workforce Development hereby adopts the following emergency rule to create **section DWD 295.25**, relating to apprenticeship completion awards.

The emergency rule was approved by the governor on March 21, 2014.

The statement of scope for this emergency rule was approved by the Governor on February 13, 2014, published in Register No. 698 on February 28, 2014, and approved by the

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## Scope Statements

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### Agriculture, Trade and Consumer Protection

SS 111-14

The statement of scope was approved by the governor on October 8, 2014.

#### Rule No.

Chapters ATPC 10 and 12 (revise).

#### Relating to

Animal disease and movement; animal markets, dealers, and truckers.

#### Rule Type

Permanent.

#### 1. Description of the Objective of the Rule

The current rules will be reviewed to ensure provisions are clearly written and consistently stated throughout chs. ATPC 10 and 12, Wis. Admin. Code. The department will make minor modifications resulting from that review.

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

Division of Animal Health staff have concluded that certain provisions in chs. ATPC 10 and 12 are unclear, or inconsistent with other rule provisions, with related statute provisions, or with federal regulations. Those issues have arisen: while implementing programs with requirements specified in chs. ATPC 10 and 12; in contacts with individuals licensed through the division; or, in contacts with veterinarians and industries regulated by the division and the United States Department of Agriculture. The division has also received requests from individuals and industries to modify certain program requirements through amendments to ch. ATPC 10 or 12.

The following subjects in chs. ATPC 10 and 12, Wis. Admin. Code, will be reviewed to address these issues, and may be modified as a result. The statutory authority to promulgate rules is identified for each subject area.

- Import requirements (see ss. 93.07 (1), (2), and (10), 95.20, 95.45 (3), 95.55 (6), 95.60 (4s), 95.68 (8), 95.69 (8), 95.71 (8), and 95.715 (2) (d), Wis. Stats.).
- Disease testing requirements of animals (see ss. 93.07 (1) and (10), 95.20, 95.22 (1) and (2), 95.42, 95.43, 95.45 (3), 95.55 (6), and 95.60 (4s), Wis. Stats.).
- Disease reporting requirements (see ss. 93.07 (1) and (10), 93.15, 95.20, 95.22 (1) and (2), 95.38, 95.43, 95.55 (6), 95.60 (4s), 95.68 (8), 95.69 (8), 95.71 (8) and 95.715 (2) (d), Wis. Stats.).
- Federal/state requirements for the training and certification of veterinarians in Wisconsin (see ss. 93.07 (1) and (2), 93.15, 95.22 (1) and (2), 95.38, 95.42, 95.43, and 95.60 (4s), Wis. Stats.).

- Requirements for approval by the department for persons collecting test samples, laboratories, out-of-state forms, etc. (see ss. 93.07 (1), (2), and (10), 93.15, 95.20, 95.38, 95.42, 95.43, 95.45 (4) (c), 95.55 (6), and 95.60 (4s), Wis. Stats.).
- Recordkeeping requirements by licensees, including acceptability of electronic storage of records (see ss. 93.07 (1), (2), and (10), 93.15, 95.20, 95.22 (1) and (2), 95.38, 95.42, 95.43, 95.45 (3), 95.55 (6), 95.60 (4s), 95.68 (8), 95.69 (8), 95.71 (8), and 95.715 (2) (d), Wis. Stats.).
- Application requirements and exemptions from licensing (see ss. 93.07 (1) and (2), 95.55 (6), 95.68 (2m) (b), 95.69 (2m) and 95.71 (8), Wis. Stats.).

As of this date, there are no existing policies and no new policies that will be incorporated into the proposed rule.

If the department does not modify current rule provisions, identified as unclear or inconsistent, it may cause difficulties for individuals or entities in Wisconsin attempting to follow rule requirements.

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

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

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

(2) FORMS. To prescribe forms for all applications, notices and reports required to be made to the department or which are necessary in its work.

\* \* \*

(10) ANIMAL HEALTH; QUARANTINE. To protect the health of animals located in this state and of humans residing in this state and to determine and employ the most efficient and practical means for the prevention, suppression, control, and eradication of communicable diseases among animals. For these purposes, the department may establish, maintain, enforce, and regulate such quarantine and such other measures relating to the importation, movement, and care of animals and their products, the disinfection of suspected localities and articles, and the disposition of animals, as the department determines are necessary. The definition of "communicable disease" in s. 990.01 (5g) does not apply to this subsection.

#### **93.15 Reports to department; inspections.**

(1) The department may, by general or special order, require persons engaged in business to file with the department, at such time and in such manner as the department may direct, sworn or unsworn reports or sworn or unsworn answers in writing to specific questions, as to any matter which the department may investigate.

(2) The department or any of its authorized agents may have access to and may copy any document, or any part

thereof, which is in the possession or under the control of any person engaged in business, if such document, or such part thereof, is relevant to any matter which the department may investigate.

(3) No person shall refuse or fail to render any report or answer required under this section at such time and in such manner as the department may prescribe. No person shall refuse, neglect or fail to submit, for the purpose of inspection or copying, any document demanded under this section. No person shall willfully make any false entry or statement in any report or answer required or document demanded under this section. No person shall willfully fail to make full and true entries and statements in any report or answer required or document demanded under this section. No person shall, for the purpose of embarrassing the department in the conduct of any investigation, hearing or proceeding, remove out of the state or mutilate or alter any document. No person shall, except through judicial process, resist or obstruct any official or subordinate of the department in the exercise of the official's or subordinate's lawful authority.

**95.20 Import and movement of animals.** The department may prohibit or regulate the importing of animals into this state or the movement of animals within this state if the department has reasonable grounds to believe that regulation or prohibition is necessary to prevent the introduction or spread of a disease in this state that threatens the health of animals or of humans.

**95.22 Reporting animal diseases.**

(1) A veterinarian and the department of natural resources shall report to the department of agriculture, trade and consumer protection any disease specified in the rules promulgated under sub. (2) (a) each time a veterinarian or the department of natural resources discovers that such a disease is present in any animal in this state.

(2) The department shall promulgate rules that specify all of the following:

(a) The diseases that a veterinarian or the department of natural resources must report under this section.

(b) For each disease specified in par. (a), the deadline for reporting the disease after the date of its discovery.

(c) The information that a veterinarian or the department of natural resources must include in his or her report.

(d) Procedures to be used in preparing and submitting the report.

\* \* \*

**95.38 Altering records; tampering with ear tags.**

\* \* \*

(3) The department may adopt rules that are necessary to administer this section.

**95.42 Revocation of permit to test.** Only veterinarians approved by the department may apply the tuberculin test to cattle and farm-raised deer, and no veterinarian applying the test may tag or brand reactors except as specifically authorized or directed by the department. Any veterinarian who fails to comply with this section and the rules and instructions furnished by the department shall forfeit all right to apply the tuberculin test.

**95.43 Application of brucellosis test.**

(1) The brucellosis test shall be applied only by approved veterinarians. Any veterinarian who fails to comply with the laws or regulations of the department relating to disease control may be denied such approval.

(2) Every veterinarian who applies the brucellosis test shall promptly reactor tag and permanently mark all reactors in conformity with the law and the regulations of the department, and shall promptly report the result of each test to the department. No person shall interfere in any way with the identification of reactors as required herein.

**95.45 Certificates of veterinary inspection; tests for interstate shipment.**

\* \* \*

(4) (c) The department may promulgate rules to impose requirements on the form, issuance, and filing of certificates of veterinary inspection.

\* \* \*

**95.55 Farm-raised deer.**

\* \* \*

(6) RULES. (a) The department shall promulgate rules to regulate persons who keep farm-raised deer. The rules shall establish disease testing requirements for bovine tuberculosis and chronic wasting disease and may establish testing requirements for other diseases.

(b) The rules promulgated under this subsection may include any of the following:

1. Standards to be followed by persons keeping farm-raised deer to prevent the spread of disease.

2. Provisions requiring that registration under this section be on an annual basis.

3. Exemptions from any annual registration requirements established under subd. 2.

**95.60 Importing fish; fish farms.**

\* \* \*

(4s) The department shall do all of the following:

(a) In consultation with the department of natural resources, promulgate rules specifying requirements for the labeling and identification, in commerce, of fish reared in fish farms.

(b) In consultation with the department of natural resources, promulgate rules specifying fish health standards and requirements for certifying that fish meet those standards for the purpose of s. 29.736.

(c) Promulgate rules specifying the qualifications that a person who is not a veterinarian must satisfy in order to provide evidence of fish health.

(d) In consultation with the department of natural resources, promulgate rules specifying diseases and requirements for certifying that fish are free of those diseases for the purposes of sub. (2) (b).

(e) Promulgate rules establishing the period for which a record required under sub. (4) (c) must be retained.

\* \* \*

**95.68 Animal markets.**

\* \* \*

**(2m) EXEMPTIONS.**

(a) A person is not required to obtain a license under sub. (2) to operate an occasional auction sale sponsored by a livestock breeder association or a youth agricultural organization if records of the transactions at the sale are maintained by an auctioneer registered under ch. 480 or by an animal dealer licensed under s. 95.69.

(b) The department may promulgate rules to exempt groups of persons from the licensing requirement under sub. (2) or the registration requirement under sub. (7) or both.

\* \* \*



(8) RULES. The department may promulgate rules to regulate the operation of animal markets, including rules related to market operator qualifications, market construction and maintenance, construction and maintenance of animal transport vehicles, identification of animal transport vehicles, disease sanitation, humane treatment of animals, identification of animals, record keeping, reports to the department and compliance with applicable financial security requirements under state or federal law.

\* \* \*

**95.69 Animal dealers.**

\* \* \*

(2m) EXEMPTION. The department may promulgate rules to exempt groups of persons from the licensing requirement under sub. (2) or the registration requirement under sub. (7) or both.

\* \* \*

(8) RULES. The department may promulgate rules to regulate animal dealers, including rules related to animal dealer qualifications, construction and maintenance of animal transport vehicles, identification of animal transport vehicles, disease sanitation, humane treatment of animals, identification of animals, record keeping, reports to the department and compliance with applicable financial security requirements under state or federal law.

\* \* \*

**95.71 Animal truckers.**

\* \* \*

(8) RULES. The department may promulgate rules to regulate animal truckers, including rules related to animal trucker qualifications, construction and maintenance of animal transport vehicles, identification of animal transport vehicles, disease sanitation, humane treatment of animals, identification of animals, record keeping, reports to the department and compliance with applicable financial security requirements under state or federal law.

\* \* \*

**95.715 Feed lots and veal lots.**

\* \* \*

**(2) APPROVED FEED LOT.**

\* \* \*

(d) The department may promulgate rules to specify permit fees under par. (a) and to regulate feed lots. The rules may include requirements related to the construction and maintenance of approved feed lots, the segregation of imported feeder cattle and record-keeping requirements related to feeder cattle.

\* \* \*

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

DATCP estimates that it will use approximately 0.80 FTE staff to develop this rule. That includes time required for investigation and analysis, rule drafting, preparing related documents, coordinating advisory committee meetings, holding public hearings and communicating with affected persons and groups. DATCP will use existing staff to develop this rule.

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

The rule will make minor modifications in order to provide consistency and clarity to chs. ATCP 10 and 12 and will provide important health protection for the Wisconsin livestock industry. This rule will have a direct impact on animal markets, animal dealers, animal truckers, veterinarians, livestock operators, and other persons licensed by the department.

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

Existing federal accreditation standards for veterinarians and animal traceability requirements will require changes in Wisconsin Administrative Rule requirements for accredited and state certified veterinarians.

Also, to comply with existing federal traceability requirements, Wisconsin administrative rules must be updated to allow only the acceptance of official, individual identification of cattle when dealing with vaccination or official disease testing.

**7. Anticipated Economic Impact**

DATCP expects the rule to have minimal to no economic impact statewide and locally.

**Contact Person**

Darlene Konkle, DVM, Assistant State Veterinarian, DATCP; Phone (608) 224-4902.

**Health Services**

*Community Services, Chs. 30—*

SS 109-14

The statement of scope was approved by the governor on September 12, 2014.

**Rule No.**

Chapter DHS 62 (revise).

**Relating to**

Federally recognized American Indian tribes or bands participating in the intoxicated driver program.

**Rule Type**

Permanent.

**Type of Statement of Scope**

Original

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

Not applicable.

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

The objective of the rulemaking is to conform ch. DHS 62 to ch. 51, Stats., and s. 343.30 (1q), Stats., as amended by 2013 Wisconsin Act 246, relating to federally recognized American Indian tribes or bands participating in the intoxicated driver program.

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

Chapter DHS 62 establishes, under ss. 343.30 (1q) (c) 2. and 343.305 (10) (c) 2., Stats., the standards for assessment procedures, driver safety plan programs, and conflict of interest guidelines for approved public and private intoxicated driver assessment facilities designated by a county board to conduct intoxicated driver assessments. The conflict of interest provisions prohibit an assessment facility from also being a person's driver safety plan provider unless specified conditions apply.

The legislature by 2013 Wisconsin Act 246 amended or created provisions in chs. 20, 46, 51, 343, 345, and 346, Stats., making it possible for approved tribal treatment facilities, as defined in s. 51.01 (2c), Stats., to operate an intoxicated driver program, which includes conducting intoxicated driver assessments and developing driver safety plans. If the person who is court-ordered to submit to and comply with an intoxicated driver assessment is a member or relative of a member of a federally-recognized American Indian tribe or band, the approved tribal treatment facility may conduct an assessment for that person. The department's conflict of interest guidelines may not preclude an approved tribal treatment facility from conducting assessments and providing treatment under s. 343.30 (1q), Stats., as amended by 2013 Wisconsin Act 246.

To conform ch. DHS 62 to ch. 51, Stats., and s. 343.30 (1q), Stats., as amended by 2013 Wisconsin Act 246, the department proposes to revise ch. DHS 62 to reflect that approved tribal treatment agencies as defined in s. 51.01 (2c), Stats., are subject to ch. DHS 62, and to ensure that the conflict of interest guidelines established in ch. DHS 62 do not preclude approved tribal treatment agencies, as defined in s. 51.01 (2c), Stats., from meeting their responsibilities under s. 343.30 (1) (q), Stats.

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

Section 227.11 (2) (a), Stats., reads: Rule-making authority is expressly conferred on an agency as follows:

(a) Each agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute, but a rule is not valid if the rule exceeds the bounds of correct interpretation. All of the following apply to the promulgation of a rule interpreting the provisions of a statute enforced or administered by an agency:

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

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

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

restrictive than the standard, requirement, or threshold contained in the statutory provision.

Section 343.30 (1q) (c) 2., Stats., reads: The department of health services shall establish standards for assessment procedures and the driver safety plan programs by rule. The department of health services shall establish by rule conflict of interest guidelines for providers. The conflict of interest guidelines may not preclude an approved tribal treatment facility, as defined in s. 51.01 (2c), from conducting assessments and providing treatment under this subsection.

Section 343.305 (10) (c) 2., Stats., reads: The department of health services shall establish standards for assessment procedures and the driver safety plan programs by rule. The department of health services shall establish by rule conflict of interest guidelines for providers.

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

Department staff may spend 80 hours promulgating the rule. No other resources are necessary to develop the rule.

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

Federally recognized American Indian tribes or bands and approved tribal treatment agencies, as defined under s. 51.01 (2c), Stats.

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

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

### 8. Anticipated Economic Impact of Implementing the Rule

The department anticipates little to no economic impact from the proposed revisions to ch. DHS 62.

### Contact Person

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### Safety and Professional Services — Medical Examining Board

SS 110-14

The statement of scope was approved by the governor on October 2, 2014.

### Rule No.

Chapter Med 1 (revise).

### Relating to

Entrance to exams.

### Rule Type

Permanent.

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

None.

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

The purpose of the proposed rule is to bring current Wisconsin Administrative Code in line with recent legislation, specifically 2013 Wisconsin Act 114.

**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**

Pursuant to the enactment of 2013 Wisconsin Act 114, the Department of Safety and Professional Services and its attached boards may no longer require any person applying for professional licensure to complete their postsecondary education prior to being eligible to take an examination for a credential. In accordance with this legislation, the Wisconsin Medical Examining Board must allow applicants for physician licensure to take their credentialing exam before completing their postsecondary education. The proposed rule will implement this change by amending Wis. Admin. Code ch. Med 1.

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

Section 15.08 (5) (b), Stats., provides examining boards, “shall promulgate rules for its own guidance and for the guidance of the trade or profession to which it pertains. . .” The proposed rule seeks to provide guidance on eligibility for licensure examination.

Section 227.11 (2) (a), Stats., discusses the parameters of an agency’s rule-making authority by stating that an agency, “may promulgate rules interpreting provisions of any statute enforced or administered by the agency. . .but a rule is not valid if it exceeds the bounds of correct interpretation. . .” This section allows an agency to promulgate administrative rules which interpret the statutes it enforces or administers as long as the proposed rule does not exceed proper interpretation of the statute.

Section 440.071 (1), Stats., provides that, “the department or a credentialing board or other board in the department may not require a person to complete any postsecondary education or other program before the person is eligible to take an examination for a credential the department or credentialing board or other board in the department grants or issues.”

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

State employees will spend approximately 50 hours developing the proposed rule.

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

The proposed rule will affect applicants for physician licensure.

**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**

None.

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

The proposed rule is likely to have minimal or no economic impact on small businesses.

**Contact Person**

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**Transportation**

SS 112-14

The statement of scope was approved by the governor on October 16, 2014.

**Rule No.**

Chapter Trans 327 (revise).

**Relating to**

Motor carrier safety.

**Rule Type**

Emergency.

**Finding/Nature of Emergency (Emergency Rules Only)**

The welfare of commercial motor vehicle drivers who hold a commercial driver license (“CDL”) issued by the State of Wisconsin who operate commercial motor vehicles outside this state, and the welfare of Wisconsin shippers who engage those driving services, will be harmed if they cannot demonstrate compliance with recent federal regulations because other states will view them as unlicensed drivers and will delay transport of those loads. Federal regulations require CDL holders to have certified to their state of licensure the type of commercial driving operations in which they engage and, if required, to have filed with the state of licensure proof of medical fitness to drive, and to have their electronic driving records updated by the state of licensure to show they have completed these actions, before driving a commercial motor vehicle. The Department published the scope statement for permanent rulemaking in September 2011 to implement these federal requirements. The permanent rulemaking effort is ongoing but cannot take effect before the Wisconsin Legislature reconvenes in January 2015.

**Description of the Objective of the Rule**

The federal regulations at 49 CFR 383 and 391 were revised by “Medical Certification Requirements as Part of the CDL”, 73 FR 73096 (Dec. 1, 2008; RIN 2126-AA10). These federal regulations require, no later than January 30, 2014, all commercial driver license (“CDL”) holders to provide information to their state driver licensing agency (“SDLA”) regarding the type of commercial motor vehicle operation they drive in or expect to drive in with their CDL. Drivers operating in certain types of commerce will be required to submit a current medical examiner’s certificate to their SDLA to obtain a “certified” medical status as part of their driving record. Federal regulations require states to downgrade the CDL privileges of any CDL holder required to have a “certified” medical status who fails to provide and keep up-to-date their medical examiner’s certificate with their SDLA. The revisions to the regulations did not change the requirement to obtain medical certifications.

This rule implements the federal requirements for commercial drivers obtaining and submitting medical certificates in conformity with those federal regulations. Section 343.065 (3) of the Wisconsin statutes, created by 2011 Wisconsin Act 32, authorizes the Department to downgrade commercial drivers licenses of drivers who fail to provide federally mandated medical certifications, and to promulgate rules defining this downgrade process.

This rulemaking will allow the Department to:

- Define the procedures for drivers to certify their driving type (Tier) to the Department;
- Define the procedures for submitting federally required medical certifications to the Department, and for the Department to enter that certification on the driving record;
- Create the process for downgrading a CDL and reinstating a CDL after the downgrade has occurred; and
- Describe the types of notifications drivers and employers will receive prior to the federal medical card expiration; when the driver is downgraded; and when the driver is reinstated.

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

Since January 2012, federal law requires all original and renewal applicants for a commercial driver's license to certify their driving type (Tier). Drivers operating in interstate commerce who are not subject to the exceptions identified (Tier 1) must furnish and maintain a current, valid copy of their federal medical certificate (sometimes called a "Fed Med card") to the Department. The Department must electronically capture the information on the federal medical certificate, and retain a copy of the federal medical certificate on file.

In January 2014, all persons in Wisconsin who hold a commercial driver's license (CDL) will be required to comply with these requirements. The Department will downgrade drivers who fail to comply with these requirements in accordance with the procedures defined below. The Department has already downgraded any driver who has not complied with these requirements, and the Department believes that all drivers have either complied or have already been downgraded.

These federal regulations require, and s. 343.065 (3), Wis. Stats., authorizes, the Department to downgrade a driver's commercial driving privileges if the driver does not certify a tier, or if the driver is operating in non-excepted interstate commerce (Tier 1) and fails to submit a federal medical certificate or to keep his or her federal medical certificate up-to-date.

Several alternatives exist to implementing these new regulations for allowing drivers to certify their driving type as well as the downgrade process.

#### **Alternatives for Commercial Drivers to Certify Driving Type**

1. Do nothing. Ignoring the federal regulations will result in drivers who hold Wisconsin CDL's being treated as unlicensed drivers when traveling out of state. This will delay transport of loads, harming shippers and buyers. In addition, Wisconsin would lose approximately \$4.7 million dollars in motor carrier safety assistance program (MCSAP) and

highway funds annually. The Department believes taking no action is impractical.

2. Require all CDL holders to visit a DMV field service station to certify their Tier of driving and provide proof of their federal medical certificate.

This approach is burdensome, and is not feasible for Wisconsin drivers who are currently out of state.

3. Require all CDL holders to use an electronic or online process to certify their driving type and provide federal medical certificate information to DMV.

This approach is not feasible for drivers with limited access to computers and the Internet.

4. Create a hybrid system that allows drivers to choose to certify and provide federal medical documentation electronically, or to certify and present the federal medical certificate in person at a DMV field station.

This approach will allow drivers and their employers' flexibility in how they provide this information. As such, the Department will pursue this approach.

#### **Alternatives for Downgrade Process**

The federal regulations offer several alternatives for downgrading a CDL for drivers that are operating in interstate, non-excepted commerce (Tier 1). Note: The following downgrade process does not apply to drivers who will not operate in interstate, non-excepted commerce. Those drivers are **not** required to keep updated federal medical information on file with the Department.

1. Do nothing. Ignoring the federal regulations will result in drivers who hold Wisconsin CDL's being treated as unlicensed drivers when traveling out of state. In addition, Wisconsin would lose approximately \$4.7 million dollars in motor carrier safety assistance program (MCSAP) and highway funds annually. The Department believes taking no action is impractical.

2. Change the Tier 1 driver's certification of their driving type to operating exclusively in intrastate commerce (Tier 3).

Drivers operating solely in intrastate commerce must have restrictions added to their CDL. As such, to implement this alternative, the Department would have to re-issue the CDL document every time a Tier 1 driver was downgraded to ensure the physical license matched the electronic record. To remove the downgrade, drivers would be required to visit a DMV field station, provide their federal medical certificate, and pay a fee for a duplicate license. This would be burdensome and impractical for Wisconsin CDL drivers who are currently out of state. This approach would require considerable staff resources and potential delays for drivers, since DMV field stations are not open seven days a week.

3. Remove the CDL privileges from the driver's license.

The CDL privileges will be removed from the driver's license using a "Voluntary Temporary Surrender" (VTS), which will appear on the electronic record only. The driver's commercial classes & endorsements will remain printed on the license document, but drivers will not be able to legally operate in interstate commerce until a copy of an updated federal medical certificate is provided to the Department.

While this alternative may seem unduly burdensome, it is actually much easier for the drivers to get their privileges back. They (or their employer) can submit their federal medical certificate to the Department either in person or electronically via the Department's secure web system. Once the new federal medical certificate is recorded on the driver's record, the driver's commercial privileges are restored. Drivers can easily comply, even from out of state.

In addition, the drivers can retain their current physical driver licenses, and will not be required to pay a fee to regain their commercial operating privileges. The Department will pursue this approach for downgrading.

### **Other Policy Items**

The Department plans to use the VTS process for commercial drivers who may be revoked, suspended, or disqualified for other reasons. The VTS allows the Department to track the federal medical requirements as well as the underlying reason for the suspension, revocation, or disqualification.

In accordance with federal regulations, the Department will notify Tier 1 commercial drivers 60 days prior to the expiration of their federal medical certificate. If the Department does not receive an updated federal medical certificate, the driver will be downgraded ten days after the expiration of the current federal medical certificate, using the VTS process described above. The driver will receive notification of this action.

The Department also plans to use its Employer Notification system to provide up-to-date information to employers about each of their drivers' certified Tier of operation and current status of their federal medical certificates.

This rule-making defines federal medical certificates as part of the driver application. This allows the Department to take appropriate action when receiving a fraudulent federal medical certificate.

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

2011 Wisconsin Act 32 (the biennial budget bill) created s. 343.065 (a), Stats., which gives the Department authority to downgrade a commercial driver license if a federal medical certificate is not on file. Section 343.065 (3) (b), Stats., requires the Department to:

1. Promulgate rules to define "downgrade" in accordance with federal law and regulations or guidance from the applicable federal agency.
2. Establish the process for downgrading a commercial driver license and whether a new commercial driver license document will be issued after a commercial driver license is downgraded.
3. Establish the process for reinstating a downgraded commercial driver license after the Department receives from the licensee a valid medical certification or other appropriate certification of physical qualifications.

Section 343.06 (3), Stats., requires the Department to ensure that CDL holders meet federal physical qualifications for drivers contained in 49 CFR 391.

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

It is estimated this emergency rule will take approximately 10 hours to develop. The Department is currently drafting a permanent rule on the same subject to comply with existing federal requirements, but the permanent rule cannot take

effect before the Wisconsin Legislature reconvenes in January 2015. Other resources necessary to successfully implement the emergency rule include computer programming resources, and an outreach campaign to affected commercial drivers and other interested stakeholders, which would otherwise be done for the permanent rule.

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

This emergency rule will affect all Wisconsin drivers who currently hold a Commercial Driver License (CDL). As of December 2010, when the permanent rule-making commenced, there were 289,596 persons holding commercial drivers licenses, of which 224,860 were valid (not withdrawn or expired). It will also indirectly impact motor carrier companies, employers of commercial drivers, law enforcement, other state driver licensing agencies, and the Federal Motor Carrier Safety Administration.

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

This emergency rule-making is intended to ensure Wisconsin's compliance with new federal regulations in 49 CFR Parts 383 and 391, requiring drivers of commercial motor vehicles to certify their type of driving to the Department, and to submit a copy of their federal medical certificate to the Department.

All states are required to comply with these new federal regulations.

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

Comments to the proposed federal regulations identified the following potential burdens on drivers: 1) Requiring drivers to travel to the DMV to make the certification or provide medical certifications; 2) The extra cost for drivers to obtain new CDLs or medical certifications; 3) The extra cost to drivers of corresponding more frequently with the SDLA; 4) Requiring drivers to maintain proof of medical fitness during extended periods of absence from driving. The Department intends to minimize these impacts on drivers, as those actions carry proportionate cost increases to the Department.

Comments to the proposed federal regulations noted that prior to the federal rule-making, drivers provided the proof of medical certification directly to the employer. Under the new federal regulation, the employer must now verify the driving record by inquiry to the SDLA.

Currently, employers are required to verify the driver is legal to drive at the time of employment, and requiring employers to query the Department for this status seems insignificant.

The Department anticipates no significant economic impact on parties affected by this rule.

### **Contact Person**

Alison Lebwohl, (608) 266-0054.

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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.*

### **Veterans Affairs**

#### **CR 14-058**

On October 9, 2014, the Department of Veterans Affairs submitted a proposed rule order to the Legislative Council Rules Clearinghouse.

The statement of scope for this rule, SS 038-14, was approved by the Governor on April 21, 2014, published in Register No. 701 on May 14, 2014, and approved by Secretary John A. Scocos on May 27, 2014.

A related emergency rule, EmR1416, affecting the same rules contained in this proposed rule and relating to the same purpose has been published and is in effect.

### **Analysis**

The proposed rule order affects Chapter VA 2, relating to the implementation and administration of grants to nonprofit organizations that provide financial assistance or other services to Wisconsin veterans and their dependents.

### **Agency Procedure for Promulgation**

A public hearing is required and will be held in Madison.

The organizational unit responsible for the promulgation of the proposed rules is Department of Veterans Affairs.

### **Contact Person**

Kathy Marschman

Telephone: (608) 266-2256

Email: [kathy.marschman@dva.wisconsin.gov](mailto:kathy.marschman@dva.wisconsin.gov)

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## Rule–Making Notices

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### Notice of Hearings

#### Transportation EmR1425

NOTICE IS HEREBY GIVEN that, pursuant to ss. 227.17 and 227.24 (4), Stats., the State of Wisconsin Department of Transportation (“WisDOT”) will hold a public hearing on EmR1425, an Emergency Rule that created Wis. Admin. Code Chapter Trans 319, relating to towing of vehicles. This emergency rule, EmR1425, was published and effective on October 2, 2014. WisDOT will hold the public hearing as follows:

#### Hearing Information

**Date:** Tuesday, November 11, 2014  
**Time:** 1:30 p.m.  
**Location:** Hill Farms State Transportation Building  
 4802 Sheboygan Avenue  
 Room 144B  
 Madison, WI 53707–7910

#### Appearances at the Hearing, Submission of Written Comments, and Copies of the Rule

Interested persons are invited to appear at the hearing and will be afforded the opportunity to make an oral presentation of their positions. As noted below, WisDOT will accept written comments until **November 14, 2014 at 4:30 p.m.** Written comments, including those relating to small businesses, may be sent to Laura Vande Hey, WisDOT Division of State Patrol, 4802 Sheboygan Avenue, Room 551, Madison, Wisconsin 53705, (608) 267–5136, [laura.vandehy@dot.wi.gov](mailto:laura.vandehy@dot.wi.gov). Copies of the Fiscal Estimate may be obtained at no charge from Laura Vande Hey as well. The Emergency Rule, Fiscal Estimate, Certification, and Letter to the Legislative Reference Bureau may be viewed at <https://health.wisconsin.gov/admrules/public/Home>. Written comments may also be submitted at this internet address. The deadline for submitting comments and this notice of public hearing will be posted on the Wisconsin Administrative Rules Website at <http://adminrules.wisconsin.gov>.

#### Analysis Prepared by the Department of Transportation

##### *Statutes interpreted*

Section 349.13 (3m), Stats.

##### *Statutory authority*

Section 349.13 (3m) (e), Stats., and 2013 Wisconsin Act 76 s. 59 (2).

##### *Explanation of agency authority*

2013 Wisconsin Act 76 and s. 349.13 (3m) (e), Stats., in relevant part, provide that if a vehicle is illegally parked in a “properly posted” area, it is unnecessary for law enforcement to issue a citation prior to removal of the vehicle. 2013 Wisconsin Act 76 and s. 349.13 (3m) (e), Stats., provide that the State of Wisconsin Department of Transportation shall promulgate rules establishing all of the following:

1. Reasonable charges for removal and storage of vehicles under this subsection.
2. The form and manner of display of notice necessary to qualify as “properly posted” under par. (a) 2.
3. Guidelines for towing services to notify law enforcement under par. (d) upon removal of a vehicle.

2013 Wisconsin Act 76 provides that, using the emergency rules procedure established under s. 227.24, Stats., the State of Wisconsin Department of Transportation shall promulgate the rules required under s. 349.13 (3m) (e), Stats.

#### *Related statute or rule*

Section 349.13 (3m), Stats.

#### *Brief summary of the rule*

2013 Wisconsin Act 76 and s. 349.13 (3m) (e), Stats., create an exception to a provision under prior law relating to the towing of vehicles parked on private property without permission. Under prior law, vehicles generally could not be removed without the permission of the vehicle owner unless a traffic or police officer issued a citation for illegal parking. The exception created in 2013 Wisconsin Act 76 applies when notice has been “properly posted” stating that unauthorized vehicles may be removed from the property. When the exception applies, an unauthorized vehicle may be towed immediately, regardless of whether a parking citation has been issued, at the request of the property owner or certain other parties specified in 2013 Wisconsin Act 76, subject to certain procedural requirements in 2013 Wisconsin Act 76. 2013 Wisconsin Act 76 requires the State of Wisconsin Department of Transportation to promulgate rules establishing reasonable charges for removal and storage of vehicles; the form, manner of display, of the notice necessary to qualify as “properly posted” under the provisions described above; and guidelines for towing services to notify law enforcement of the removal of a vehicle.

Through this rulemaking, the State of Wisconsin Department of Transportation proposes to execute its obligation in the following manner. First, this rulemaking announces that its purpose is to establish reasonable charges for removal and storage of vehicles parked on private property that are not authorized to be parked there, to establish the form and manner of notice of display necessary to qualify as “properly posted” under s. 349.13 (3m) (a) 2., Stats., and guidelines for towing services to notify law enforcement under s. 349.13 (3m) (d), Stats., upon removal of a vehicle. Second, this rulemaking establishes various definitions that apply in Wis. Admin. Code ch. Trans 319, including, among others, those contained within ss. 340.01 and 349.13 (3m) (a), Stats. Third, this rulemaking establishes a schedule of charges for removal and storage of vehicles. Fourth, this rulemaking establishes that in order to qualify as “properly posted” under s. 349.13 (3m) (a) 2., Stats., a conspicuous notice must be displayed and must contain the words “private property” and “tow–away zone.” Fifth, this rulemaking establishes that prior to removal of a vehicle, a towing service must contact the law enforcement agency with primary jurisdiction over the area where the vehicle is parked and provide descriptive information about the vehicle, as well as

location and contact information for the location to which the car will be towed.

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

There is no existing or proposed federal regulation addressing towing vehicles parked on private property that are not authorized to be parked there.

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

*Illinois:*

Generally, in Illinois, the owner or lessor of privately owned real property or any person authorized by such owner may cause any motor vehicle abandoned or left unattended upon such property without permission to be removed by a towing service without liability for the costs of removal, transportation, or storage or damage caused by such removal, transportation, or storage. The towing or removal of any vehicle from private property without the consent of the registered owner or other legally authorized person in control of the vehicle is subject to compliance with the following conditions and restrictions:

- Any towed or removed vehicle must be stored at the site of the towing service's place of business. This site must be open during business hours, and for the purpose of redeeming vehicles, during the time that the person or firm towing such vehicle is open for towing purposes.
- The towing service must, within 30 minutes of completion of such towing or removal, notify the law enforcement agency having jurisdiction of such towing or removal, and the make, model, color and license plate number of the vehicle, and shall obtain and record the name of the person at the law enforcement agency to whom such information was reported.
- If the registered owner or legally authorized person entitled to possession of the vehicle arrives at the scene prior to actual removal or towing of the vehicle, the vehicle must be disconnected from the tow truck and that person shall be allowed to remove the vehicle without interference, upon the payment of a reasonable service fee of not more than one half the posted rate of the towing service, as provided in the law, for which receipt must be given.
- The rebate of payment or payment of money or any other valuable consideration from the towing service or its owners, manager, or employees to the owners or operators of the premises from which the vehicles are towed or removed, for the privilege of removing or towing those vehicles, is prohibited. Any person who violates this requirement is guilty of a Class A misdemeanor.
- Except for property appurtenant to and obviously a part of a single family residence, and except for instances where notice is personally given to the owner or other legally authorized person in control of the vehicle that the area in which the vehicle is parked is reserved or otherwise unavailable to unauthorized vehicles and they are subject to being removed at the owner or operator's expense, any property owner or lessor, prior to towing or removing any vehicle from the private property without the consent of the owner or other legally authorized person in control of that vehicle, must post a notice meeting the following requirements:

- Generally, the notice must be prominently placed at each driveway access or curb cut allowing vehicular access to the property within 5 feet from the public right-of-way line. If there are no curbs or access barriers, the sign must be posted not less than one sign each 100 feet of lot frontage. Alternatively, in a municipality with a population of less than 250,000, the notice for a parking lot contained within property used solely for a 2-family, 3-family, 4-family residence may be prominently placed at the perimeter of the parking lot, in a position where the notice is visible to the occupants of the vehicles entering the lot.
- The notice must indicate clearly, in not less than 2 inch high light-reflective letters on a contrasting background, that unauthorized vehicles will be towed away at the owner's expense.
- The notice must also provide the name and current telephone number of the towing service towing or removing the vehicle.
- The sign structure containing the required notices must be permanently installed with the bottom of the sign not less than 4 feet above ground level, and must be continuously maintained on the property for not less than 24 hours prior to the towing or removing of any vehicle.
- Any towing service that tows or removes vehicles and proposes to require the owner, operator, or person in control of the vehicle to pay the costs of towing and storage prior to redemption of the vehicle must file and keep on record with the local law enforcement agency a complete copy of the current rates to be charged for such services, and post at the storage site an identical rate schedule and any written contracts with property owners, lessor, or persons in control of property which authorize them to remove vehicles as provided in this section. There is a cap, however, set by the Illinois Commerce Commission.
- No person shall engage in the removal of vehicles from private property without filing a notice of intent in each community where he intends to do such removal, and such notice shall be filed at least 7 days before commencing such towing.
- No removal of a vehicle from private property shall be done except upon express written instructions of the owners or persons in charge of the private property upon which the vehicle is said to be trespassing.
- Vehicle entry for the purpose of removal shall be allowed with reasonable care on the part of the person or firm towing the vehicle. Such person or firm shall be liable for any damages occasioned to the vehicle if such entry is not in accordance with the standards of reasonable care.
- A vehicle towed must be released to its owners or custodian within one half hour after requested, if such request is made within business hours. Any vehicle owner or custodian or agent shall have the right to inspect the vehicle before accepting its return, and no release or waiver of any kind which would release the towing service from liability for damages incurred during the towing and storage may be required from any vehicle owner or other legally authorized person as a condition of release of that vehicle. A detailed, signed receipt showing the legal name of the towing service must be given to the person paying towing or storage charges at the time of payment, whether requested or not. Payment may be made using any major credit card, in addition to cash.



- Any person who fails to comply with these conditions and restrictions is guilty of a Class C misdemeanor and shall be fined not less than \$100 nor more than \$500.

*Iowa:*

In Iowa, the definition of “abandoned vehicle” includes a vehicle that has been unlawfully parked on private property or has been placed on private property without the consent of the owner or person in control of the property for more than twenty-four hours. A police authority, upon the authority’s own initiative or upon the request of any other authority having the duties of control of highways or traffic, may take into custody an abandoned vehicle on private property. The police authority may employ its own personnel, equipment, and facilities or hire a private entity, equipment, and facilities for the purpose of removing, preserving, storing, or disposing of abandoned vehicles. A property owner or other person in control of private property may employ a private entity who is a garagekeeper to dispose of an abandoned vehicle, and the private entity may take into custody the abandoned vehicle without a police authority’s initiative. If a police authority employs a private entity to dispose of abandoned vehicles, the police authority shall provide the private entity with the names and addresses of the registered owners, all lienholders of record, and any other known claimant to the vehicle or the personal property found in the vehicle.

A police authority or private entity that takes into custody an abandoned vehicle shall notify, within twenty days, by certified mail, the last known registered owner of the vehicle, all lienholders of record, and any other known claimant to the vehicle or to personal property found in the vehicle, addressed to the parties’ last known addresses of record, that the abandoned vehicle has been taken into custody. Notice shall be deemed given when mailed. The notice shall describe the year, make, model, and vehicle identification number of the vehicle, describe the personal property found in the vehicle, set forth the location of the facility where the vehicle is being held, and inform the persons receiving the notice of their right to reclaim the vehicle and personal property within ten days after the effective date of the notice upon payment of all towing, preservation, and storage charges resulting from placing the vehicle in custody and upon payment of the costs of notice required pursuant to this subsection. The notice shall also state that the failure of the owner, lienholders, or claimants to exercise their right to reclaim the vehicle or personal property within the time provided shall be deemed a waiver by the owner, lienholders, and claimants of all right, title, claim, and interest in the vehicle or personal property and that failure to reclaim the vehicle or personal property is deemed consent to the sale of the vehicle at a public auction or disposal of the vehicle to a demolisher and to disposal of the personal property by sale or destruction.

If the abandoned vehicle was taken into custody by a private entity without a police authority’s initiative, the notice shall state that the private entity may claim a garagekeeper’s lien and may proceed to sell or dispose of the vehicle. If the abandoned vehicle was taken into custody by a police authority or by a private entity hired by a police authority, the notice shall state that any person claiming rightful possession of the vehicle or personal property who disputes the planned disposition of the vehicle or property by the police authority or private entity or of the assessment of fees and charges may ask for an evidentiary hearing before the police authority to contest those matters. If the persons receiving notice do not ask for a hearing or exercise their right to reclaim the vehicle

or personal property within the ten-day reclaiming period, the owner, lienholders, or claimants shall no longer have any right, title, claim, or interest in or to the vehicle or the personal property. A court in any case in law or equity shall not recognize any right, title, claim, or interest of the owner, lienholders, or claimants after the expiration of the ten-day reclaiming period.

If it is impossible to determine with reasonable certainty the identity and addresses of the last registered owner and all lienholders, notice by one publication in one newspaper of general circulation in the area where the vehicle was abandoned shall be sufficient to meet all requirements of notice. The published notice may contain multiple listings of abandoned vehicles and personal property but shall be published within the same time requirements and contain the same information as prescribed for mailed notice.

If an abandoned vehicle has not been reclaimed as provided for, the police authority or private entity shall make a determination as to whether or not the vehicle shall be sold for use upon the highways. If the vehicle is not sold for use upon the highways, it shall be sold for junk, or demolished and sold as scrap. The police authority or private entity shall sell the vehicle at public auction. A police authority or private entity may dispose of the vehicle to a demolisher for junk without public auction after complying with the notification procedures. The purchaser of the vehicle takes title free and clear of all liens and claims of ownership, shall receive a sales receipt from the police authority or private entity, and is entitled to register the vehicle and receive a certificate of title if sold for use upon the highways. If the vehicle is sold or disposed of to a demolisher for junk, the demolisher shall make application for a junking certificate to the county treasurer within thirty days of purchase and shall surrender the sales receipt in lieu of the certificate of title.

From the proceeds of the sale of an abandoned vehicle the police authority, if the police authority did not hire a private entity, shall reimburse itself for the expenses of the auction, the costs of towing, preserving, and storing which resulted from placing the abandoned vehicle in custody, all notice and publication costs incurred, the cost of inspection, and any other costs incurred except costs of bookkeeping and other administrative costs. Any remainder from the proceeds of a sale shall be held for the owner of the vehicle or entitled lienholder for ninety days, and shall then be deposited in the road use tax fund. The costs to police authorities of auction, towing, preserving, storage, and all notice and publication costs, and all other costs which result from placing abandoned vehicles in custody, whenever the proceeds from a sale of the abandoned vehicles are insufficient to meet these expenses and costs, shall be paid from the road use tax fund and are the obligation of the last owner or owners, jointly and severally.

If a private entity has been hired by a police authority, the police authority shall file a claim with the State of Iowa Department of Transportation for reimbursement of towing fees which shall be paid from the road use tax fund. Reimbursement shall be limited to \$50 per vehicle for towing services, actual postage or publication costs for notice services, \$5 per day per vehicle, not to exceed 45 days, for storage services, 10% of the vehicle’s sale price or \$10, whichever is less, for auction fees.

*Michigan:*

In Michigan, like in Iowa, the definition of “abandoned vehicle” includes a vehicle that has remained on private property without the consent of the owner. If a vehicle has

remained on private property without the consent of the property owner, the owner of the private property may have the vehicle taken into custody as an abandoned vehicle by contacting a local towing agency. A local towing agency is considered a towing agency whose storage lot is located within 15 miles from the border of the local unit of government having jurisdiction over the abandoned vehicle. Before removing the vehicle from private property, the towing agency must provide reasonable notice by telephone, or otherwise, to a police agency having jurisdiction over the vehicle that the vehicle is being removed. The police agency shall determine if the vehicle has been reported stolen and enter the vehicle into the law enforcement information network as an abandoned vehicle.

Within 24 hours after taking the abandoned vehicle into custody, the police agency shall notify the secretary of state through the law enforcement information network that the vehicle has been taken into custody as abandoned. Each notification shall contain the following information:

- The year, make, and vehicle identification number of the vehicle if available.
- The address or approximate location from which the vehicle was taken into custody.
- The date on which the vehicle was taken into custody.
- The name and address of the police agency that had the vehicle taken into custody.
- The name and business address of the custodian of the vehicle.
- The name of the court that has jurisdiction over the case.

Within 7 days after being notified, the secretary of state must do both of the following:

- Send to the owner and secured party, as shown by the records of the secretary of state, by first-class mail or personal service, notice that the vehicle is considered abandoned. The form for the notice shall be furnished by the secretary of state. Each notice form must contain the following information:
  - The year, make, and vehicle identification number of the vehicle if available.
  - The location from which the vehicle was taken into custody.
  - The date on which the vehicle was taken into custody.
  - The name of the towing agency that had the vehicle taken into custody.
  - The business address of the custodian of the vehicle.
  - The procedure to redeem the vehicle.
  - The procedure to contest the fact that the vehicle is considered abandoned or the reasonableness of the towing fees and daily storage fees.
  - A form petition that the owner may file in person or by mail with the specified court that requests a hearing on the custodian's action.
  - A warning that the failure to redeem the vehicle or to request a hearing within 20 days after the date of the notice may result in the sale of the vehicle and the termination of all rights of the owner and the secured party to the vehicle or the proceeds of the sale.
- Enter this information described on a website maintained by the department for public use in

locating vehicles that are removed under this section as abandoned.

The owner may contest the fact that the vehicle is abandoned or, unless the towing fees and daily storage fees are established by contract with the local governmental unit or local law enforcement agency, the reasonableness of the towing fees and daily storage fees by requesting a hearing. A request for a hearing must be made by filing a petition with the court specified in the notice within 20 days after the date of the notice. If the owner requests a hearing, the matter shall be resolved after a hearing. An owner who requests a hearing may obtain release of the vehicle by posting with the court a towing and storage bond in an amount equal to \$40.00 plus the accrued towing and storage fees. The owner of a vehicle who requests a hearing may obtain release of the vehicle by paying a fee of \$40.00 to the court plus the towing and storage fees instead of posting the towing and storage bond. An owner requesting a hearing but not taking possession of the vehicle shall post with the court a towing and storage bond in an amount equal to \$40.00 plus the accrued towing and storage fees.

If the owner does not request a hearing, he or she may obtain the release of the vehicle by paying a fee of \$40.00 plus the accrued charges to the custodian of the vehicle. The custodian must forward \$25.00 of the fee collected to the secretary of state within 30 days after receipt in a manner prescribed by the secretary of state, who must deposit the fee into the abandoned vehicle fund. If the owner does not redeem the vehicle or request a hearing within 20 days after the date of the notice, the secured party may obtain the release of the vehicle by paying a fee of \$40.00 and the accrued towing and storage fees to the custodian of the vehicle. The custodian must forward \$25.00 of the fee collected under this subsection to the secretary of state within 30 days after receipt in a manner prescribed by the secretary of state, who shall deposit the fee into the abandoned vehicle fund.

Not less than 20 days after the disposition of the hearing or, if a hearing is not requested, not less than 20 days after the date of the notice, the custodian of the vehicle must offer the vehicle for sale at a public sale. If the ownership of a vehicle that is considered abandoned cannot be determined either because of the condition of the vehicle identification numbers or because a check with the records of the secretary of state does not reveal ownership, the police agency may sell the vehicle at public sale not less than 30 days after public notice of the sale has been published. The secretary of state must release a vehicle for disposition within 45 days after the vehicle is entered into the law enforcement information network as an abandoned vehicle.

#### *Minnesota:*

In Minnesota, the definition of "abandoned vehicle" includes a motor vehicle that has remained illegally on private property for a period of time without the consent of the person in control of the property; and lacks vital component parts or is in an inoperable condition such that it has no substantial potential for further use consistent with its usual functions, unless it is kept in an enclosed garage or storage building. Further, an "unauthorized vehicle" subject to impoundment by units of government and peace officers is a vehicle that, while not an abandoned vehicle, has been on private property: (i) that is single-family or duplex residential property, immediately; (ii) that is private, nonresidential property, properly posted, immediately; (iii) that is private, nonresidential property, not posted, 24 hours; (iv) that is

private, nonresidential property of an operator of an establishment for the servicing, repair, or maintenance of motor vehicles, five business days after notifying the vehicle owner by certified mail, return receipt requested, of the property owner's intention to have the vehicle removed from the property; or (v) that is any residential property, properly posted, immediately. Such an unauthorized vehicle may also be towed. These provisions applicable to units of government and peace officers do not restrict the authority of the owner of private property to authorize the towing of a motor vehicle unlawfully parked on the private property. Indeed, private property owners seeking to have unauthorized vehicles removed from their property must make their own arrangements with a private towing service.

A person who tows and stores a motor vehicle at the request of a law enforcement officer shall have a lien on the motor vehicle for the value of the storage and towing and the right to retain possession of the motor vehicle until the lien is lawfully discharged. An impounded vehicle is eligible for disposal or sale 15 days after notice to the owner, if the vehicle is determined to be an abandoned vehicle. An unauthorized vehicle impounded by the city of Minneapolis or by the city of St. Paul is eligible for disposal or sale 15 days after notice is sent by certified mail, return receipt requested, to the registered owner, if any, of the unauthorized vehicle and to all readily identifiable lienholders of record. If, before the expiration of the 15-day period following notice of taking, the registered owner or lienholder of record delivers to the impound lot operator a written statement of intent to reclaim the vehicle, the vehicle is not eligible for disposal or sale until 45 days after the notice of taking, if the owner or lienholder has not reclaimed. If an unauthorized vehicle is impounded, other than by the city of Minneapolis or the city of St. Paul, the impounded vehicle is eligible for disposal or sale the earlier of 45 days after notice to the owner; or the date of a voluntary written title transfer by the registered owner to the impound lot operator. A voluntary written title transfer constitutes a waiver by the registered owner of any right, title, and interest in the vehicle.

For vehicles impounded by units of government and peace officers, the entity taking the vehicle into custody must give written notice of the taking within five days, excluding Saturdays, Sundays, and legal holidays, to the registered vehicle owner and any lienholders. The notice must:

- Set forth the date and place of the taking;
- Provide the year, make, model, and serial number of the impounded motor vehicle, if such information can be reasonably obtained, and the place where the vehicle is being held;
- Inform the owner and any lienholders of their right to reclaim the vehicle
- State that failure of the owner or lienholders to:
  - Exercise their right to reclaim the vehicle within the appropriate time allowed under and under the appropriate conditions constitutes a waiver by them of all right, title, and interest in the vehicle and a consent to the transfer of title to and disposal or sale of the vehicle
  - Exercise their right to reclaim the contents of the vehicle within the appropriate time allowed and under the appropriate conditions, constitutes a waiver by them of all right, title, and interest in the contents and consent to sell or dispose of the; and

- State that a vehicle owner who provides to the impound lot operator documentation from a government or nonprofit agency or legal aid office that the owner is homeless, receives relief based on need, or is eligible for legal aid services, has the unencumbered right to retrieve any and all contents without charge.

The notice shall be sent by mail to the registered owner, if any, of an impounded vehicle and to all readily identifiable lienholders of record. This information must be made available to impound lot operators for notification purposes. If it is impossible to determine with reasonable certainty the identity and address of the registered owner and all lienholders, the notice shall be published once in a newspaper of general circulation in the area where the motor vehicle was towed from or abandoned. Published notices may be grouped together for convenience and economy. If an unauthorized vehicle remains unclaimed after 30 days from the date the notice was sent, a second notice must be sent by certified mail, return receipt requested, to the registered owner, if any, of the unauthorized vehicle and to all readily identifiable lienholders of record.

The owner or any lienholder of an impounded vehicle shall have a right to reclaim such vehicle from the unit of government or impound lot operator taking it into custody upon payment of all towing and storage charges resulting from taking the vehicle into custody within 15 or 45 days, after the date of the notice. Nothing impairs any lien of a garagekeeper, or the right of a lienholder to foreclose.

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

The proposed rule was drafted with input from towing services, governmental entities, and the Wisconsin Housing Alliance. The schedule of charges was based on a recommendation from the City of Milwaukee's tow lot management. The schedule was the result of a survey of municipalities throughout the state and nation. The average total charge for tow and storage among the surveyed municipalities was \$125 and the goal was to establish a schedule that would be in keeping with that average. The design and display of the required notice was largely based on existing design standards for other signage (e.g. handicapped parking signs as defined in Wis. Admin. Code ch. Trans 200), as well as standards in other states. The guidelines for tow services to provide notice to law enforcement were based on input from law enforcement.

***Analysis regarding rule's effect on small businesses***

There are many towing services throughout the state and it seems likely that some would qualify as a small business under s. 227.114, Stats. It is unknown what the impact to those businesses would be. While, this rulemaking seeks to establish a schedule of reasonable charges for removal and storage of vehicles, as detailed in the previous section, it is possible that the established charges will be more or less than the charges some small businesses currently assess.

**Summary of Fiscal Estimate**

The Fiscal Estimate for EmR1425 may be summarized as follows. This rule establishes: (1) reasonable charges for removal and storage of vehicles; (2) the form and manner of display of notice necessary to qualify as "properly posted"; and (3) guidelines for towing services to notify law

enforcement of removal. No fund source or ch. 20, Stats., appropriations will be affected. Thus, implementing EmR1425 will have no fiscal effect on state government. EmR1425 will impact local governments, towing services, private property owners, traffic officers, parking enforcers, and law enforcement agencies, some of which may be small businesses. However, it is unknown what the impact on small businesses will be. While the goal of the rule is to standardize practice and rates statewide, it is possible that some small businesses may charge more or less than what is established in this rule. EmR1425 was drafted with input from towing services, governmental entities, and the Wisconsin Housing Alliance. The schedule of rates is based on a survey of municipalities throughout the state and nation, where \$125 was the average rate. The design and display of the required notice is based on signage requirements in other arenas, such as handicapped parking in ch. Trans 220, Admin. Code. The law enforcement call-in procedures are based on input from law enforcement agencies. Copies of the Fiscal Estimate may be obtained at no charge from the agency contact person listed above or at <https://health.wisconsin.gov/admrules/public/Home>.

### Small Business Matters

As noted above, there are many towing services throughout the state and it seems likely that some would qualify as a small business under s. 227.114, Stats. It is unknown what the impact to those businesses would be. While this rulemaking seeks to establish a schedule of reasonable charges for removal and storage of vehicles, as detailed in the previous section, it is possible that the established charges will be more or less than the charges some small businesses currently assess. Reporting and compliance requirements of EmR1425 include: (1) private property owners posting a conspicuous notice that contains the words “private property” and “tow-away zone”; and (2) towing services contacting the law enforcement agency with primary jurisdiction over the area where a vehicle is improperly parked and provide descriptive information about the vehicle, as well as location and contact information for the location to which the car will be towed. The agency contact person listed above is also the small business regulatory coordinator for EmR1425. As noted above, the Emergency Rule, Fiscal Estimate, Certification, and Letter to the Legislative Reference Bureau may be viewed at <https://health.wisconsin.gov/admrules/public/Home>. Written comments may also be submitted at this internet address.

### Agency Contact Person

Laura Vande Hey  
State of Wisconsin Department of Transportation  
Division of State Patrol  
4802 Sheboygan Avenue, Room 551  
Madison, Wisconsin 53705  
(608) 267-5136  
[laura.vandehey@dot.wi.gov](mailto:laura.vandehey@dot.wi.gov)

## Notice of Hearings

### Veterans Affairs CR 14-058, EmR1416

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Department of Veterans Affairs in section 45.46

of the Wisconsin Statutes, the Department will hold a public hearing at the time and place shown below to consider an order to create section VA 2.07, relating to grants to non-profit organizations. As provided in s. 227.24 (4) of the Statutes, this hearing will also be for emergency rules that identically address this chapter VA 2.07 criteria.

### Hearing Information

**Date:** Wednesday, November 12, 2014  
**Time:** 9:30 a.m.  
**Location:** 201 W. Washington Avenue  
Room 324  
Madison, WI 53703

Hearing impaired persons may request and interpreter for this hearing. Please make reservations for a hearing interpreter by November 5, 2014, by writing to Kathy Marschman, Wisconsin Department of Veterans Affairs, 201 W. Washington Ave., P.O. Box 7843, Madison, WI 53703; or by emailing [kathy.marschman@dva.wisconsin.gov](mailto:kathy.marschman@dva.wisconsin.gov); or by telephone at (608) 266-2256. This hearing facility is handicap accessible.

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

You may obtain a free copy of this hearing draft rule and related documents including the economic impact analysis by contacting the Wisconsin Department of Veterans Affairs, 201 W. Washington Ave., P.O. Box 7843, Madison, WI 53703. You may also obtain a copy by calling (608) 266-2256 or by emailing [kathy.marschman@dva.wisconsin.gov](mailto:kathy.marschman@dva.wisconsin.gov). Copies will be available at the hearing. To view the hearing draft rule online, go to: <http://adminrules.wisconsin.gov>.

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

Following the public hearing, the hearing record will remain open until **4:00 p.m. on November 19, 2014** for additional written comments. Comments may be sent to the Wisconsin Department of Veterans Affairs at the address above or to Kathy Marschman, [kathy.marschman@dva.wisconsin.gov](mailto:kathy.marschman@dva.wisconsin.gov).

### Analysis Prepared by the Department of Veterans Affairs

#### Statute interpreted

Section 45.46, Stats.

#### Statutory authority

Sections 227.10 (1), 227.11 (2) (a), and 45.03 (2).

#### Explanation of agency authority

Section 227.10 (1), Stats., requires each department to promulgate as a rule each statement of general policy and each interpretation of a statute which it specifically adopts to govern its enforcement or administration of that statute. Further, (2m) requires rule promulgation before a department may implement or enforce any standard, requirement, or threshold.

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

Section 45.03 (2), Stats., authorizes the Secretary to promulgate rules necessary to carry out the purposes of Chapter 45 and the powers and duties conferred upon it.

#### Related statute or rule

This rule administers a one-time competitive grant program for the award of grants to nonprofit organizations

that provide assistance to veterans or their families. Although the Department administers various grant programs to organizations and individuals, the existing rules are insufficient and inappropriate for the new grant authority. Grants provided under existing sections of Chapter VA 2 are not competitive grants as is created by this rule. The existing grants in Chapter VA 2 are awarded to individuals based on financial need and the satisfaction of certain established criteria. Grants under Chapter VA 7 are awarded in compliance with s. 45.41, Stats., which establishes eligibility criteria and specific award levels for veterans organizations that engage in veterans claims service. Grants under Chapter VA 8 are awarded in compliance with s. 45.82, Stats., which establishes a sliding-scale grant level to counties for improvement of service to veterans based on county population. Grants under Chapter VA 15 are awarded in compliance with s. 45.82, Stats., which establishes criteria and a sum-certain that is equally divided between qualifying tribes or bands that apply for the grant for improvement of service to veterans. Grants under Chapter VA 16 are awarded in compliance with s. 45.83, Stats., to counties that provide transportation to veterans; eligible counties receive a proportion of the total appropriation based on the number of miles veterans were transported during a specified 12-month period.

**Plain language analysis**

This rule establishes the general criteria, procedures, requirements and conditions for the award of grants to nonprofits. It allows for grant applications from any nonprofit as defined in s.108.02 (19), to provide financial assistance or other services to veterans and their dependents.

The rule provides for solicitation of applications for grants in the form of public notice. Each grant applicant will be asked to provide: (1) proof of nonprofit status; (2) information about itself; (3) description of the financial assistance or other services it provides to veterans and their dependents; and (4) description of the need for the requested funds.

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

Research revealed no completely analogous grant program within the federal government, although the federal government offers grants to nonprofit organizations that provide certain specified services to veterans or their families, or provide services to a specific segment of the veterans’

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

community, e.g., homeless veterans. An example is the US Department of Veterans Affairs Supportive Services for Veteran Families Program that provides grants to private nonprofit organizations and consumer cooperatives who coordinate or provide support services to very low income veteran families who meet certain criteria related to housing. Program grantees are responsible for providing outreach, case management, linkages to VA benefits, and linkages to other public benefits. This federal grant program is the mechanism for delivering the USDVA’s programmatic services via third-party organizations.

Conversely, the state grant program administered by this rule is intended to complement the WDVA’s services by providing financial assistance to nonprofit organizations that provide services to veterans not offered by the WDVA.

**Comparison with rules in adjacent states**

In reviewing the statutes, rules and websites of the veterans departments of adjacent states revealed no similar grant program.

**Summary of factual data and analytical methodologies**

The department analyzed the grant processes of organizations experienced in the administration of competitive grants and used those processes as a foundation for the rule and application procedures.

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

There is no effect on small business. This is a voluntary grant program available only to certain nonprofit organizations.

**Fiscal Estimate**

The proposed rule changes will have no additional fiscal impact.

**Effect on Small Business**

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

**Agency Contact Person**

Kathy Marschman  
[kathy.marschman@dva.wisconsin.gov](mailto:kathy.marschman@dva.wisconsin.gov)  
(608) 266-2256.

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

VA2 – Emergency, correspondence and part-time study, retraining and tuition and fee reimbursement grants.

3. Subject

Grants to Nonprofit organizations.

## 4. Fund Sources Affected

GPR  FED  PRO  PRS  SEG  SEG-S

## 5. Chapter 20, Stats. Appropriations Affected

20.485 (2) (tf).

## 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

Allows Nonprofits serving Veterans to apply for grant funding through WDVA

## 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.

N/A

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

N/A

## 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)

There should be no fiscal impact on the Business sector, Public Utility Rate Payers, local governments or the State's economy.

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

Provide a benefit to nonprofit organizations that are already serving Wisconsin veterans without assistance and encourage other nonprofits to provide benefit options for Wisconsin veterans.

## 14. Long Range Implications of Implementing the Rule

N/A

## 15. Compare With Approaches Being Used by Federal Government

N/A

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

N/A

## 17. Contact Name

Jim Parker

## 18. Contact Phone Number

608-266-1843

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)

Nonprofit businesses will apply for grant funds from WDVA to help offset costs of providing services to Wisconsin veterans.

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

N/A

## 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:

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

Minimum reporting standards are required without involvement in the nonprofit business operations.

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5. Describe the Rule's Enforcement Provisions

The WDVA has authority to audit all grantees, see s.45.47, record-keeping and audit requirements for grant programs administered by the department.

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

- Yes     No
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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.*

**Public Instruction**  
**CR 14-045**

On October 17, 2014, the Department of Public Instruction submitted proposed rules to the Chief Clerks of the Senate and Assembly for review by the Legislature under s. 227.19, Stats. The rules create Chapter PI 80, relating to community

programs and services.

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



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# Rules Published with this Register and Final Regulatory Flexibility Analyses and Repeals and Modifications of Rules by Legislative Acts

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*The following administrative rule orders and legislative acts that repeal or modify rule have been adopted or enacted and the changes, additions, and deletions to the Wisconsin Administrative Code contained in these rules and acts have been incorporated into the affected chapters of the Administrative Code. The affected chapters are published in this edition of the Wisconsin Administrative Register. (see sections 35.93 and 227.265, Wis. Stats.)*

*For subscription information, contact Document Sales at (608) 266–3358. (Paper publication of and subscriptions to the Wisconsin Administrative Code and the subscription service will cease January 1, 2015. The administrative code will be published on the Internet at <http://legis.wisconsin.gov/rsb/code.htm>. See that site or <http://legis.wisconsin.gov/rsb/codenews.pdf> for details.)*

## Administrative Rules Published

### Military Affairs

#### CR 10–111

The Department of Military Affairs has proposed an order to create Chapter DMA 1, relating to payments of military family financial aid as required under s. 321.45, Stats.

Effective 11–1–14.

#### Effect on Small Business

None.

#### Legislative Comments

No comments were reported.

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## Administrative Code Sections Affected by Rule Revisions, Legislative Acts, and Corrections

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*The following administrative code provisions were revised by rule orders, modified or repealed by legislative act, or corrected by the Legislative Reference Bureau in **October 2014**. Revised, modified, and corrected administrative code chapters are published in this Register. Repealed chapters of the administrative code are removed from the code on the first day of the first month following publication of this Register. For additional information, contact the Legislative Reference Bureau at (608) 266-3651.*

### Revisions by Rule Order

#### Controlled Substances Board

**Ch. CSB 2**  
CSB 2.37  
CSB 2.38

#### Military Affairs

**Ch. DMA 1**  
Entire Chapter (Created)

### Repeals and Modifications of Rules by Legislative Act

Repeals and modifications by legislative act under authority of s. 227.265, Stats.

### Editorial Corrections

Corrections by the Legislative Reference Bureau under the authority of s. 13.92 (4) (b) or 35.17 (2), Stats.

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## Executive Orders

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

**Executive Order 141.** Relating to a Proclamation that the Flag of the United States and the Flag of the State of Wisconsin be Flown at Half-Staff as a Mark of Respect for the Firefighters of this State Who Have Given Their Lives in the Line of Duty. **(October 3, 2014)**

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## Public Notices

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### STATE OF WISCONSIN CONTROLLED SUBSTANCES BOARD

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IN THE MATTER OF RULE-MAKING	:	AFFIRMATIVE ACTION
PROCEEDINGS BEFORE THE	:	ORDER OF THE
CONTROLLED SUBSTANCES BOARD	:	CONTROLLED SUBSTANCES BOARD

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#### FINDINGS

1. On August 22, 2014, the United States Food and Drug Administration, Drug Enforcement Administration published its final rule in the Federal Register rescheduling hydrocodone combination products from Schedule III to Schedule II of the federal Controlled Substances Act. The scheduling action is effective October 6, 2014.

2. The Controlled Substances Board did not receive an objection to similarly treating hydrocodone combination products as a schedule II under ch. 961, Stats. within 30 days of the date of publication in the federal register of the final order rescheduling hydrocodone combination products.

3. The Controlled Substances Board will promulgate a final rule, without making the determinations or findings required by ss. 961.11(1), (1m), (1r) and (2) or s. 961.15 and omitting the notice of proposed rule making, rescheduling hydrocodone combination products as schedule II controlled substances.

#### ORDER

Pursuant to s. 961.11(4), Stats., the Controlled Substances Board by affirmative action similarly treats hydrocodone combination products under chapter 961, Stats. by creating the following:

**CSB 2.37 Rescheduling of hydrocodone combination products.**

Sections 961.18(5)(c) and (d), Stats., are repealed.

This order shall take effect on November 1, 2014 to allow for publication in the Administrative Register. The order expires upon promulgation of a final rule.

Dated 10-7-14

\_\_\_\_\_  
/s/  
Doug Englebert, Chair  
Controlled Substances Board

STATE OF WISCONSIN  
CONTROLLED SUBSTANCES BOARD

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IN THE MATTER OF RULE-MAKING PROCEEDINGS BEFORE THE CONTROLLED SUBSTANCES BOARD	: : :	AFFIRMATIVE ACTION ORDER OF THE CONTROLLED SUBSTANCES BOARD
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FINDINGS

1. On August 28, 2014, the United States Food and Drug Administration, Drug Enforcement Administration published its final rule in the Federal Register placing Suvorexant into schedule IV of the federal Controlled Substances Act. The scheduling action is effective September 29, 2014.

2. The Controlled Substances Board did not receive an objection to similarly treating Suvorexant as a schedule IV under ch. 961, Stats. within 30 days of the date of publication in the federal register of the final order designating Suvorexant as a controlled substance.

3. The Controlled Substances Board will promulgate a final rule, without making the determinations or findings required by ss. 961.11(1), (1m), (1r) and (2) or s. 961.19 and omitting the notice of proposed rule making, designating Suvorexant as a schedule IV controlled substance.

ORDER

Pursuant to s. 961.11(4), Stats., the Controlled Substances Board by affirmative action similarly treats Suvorexant under chapter 961, Stats. by creating the following:

**CSB 2.38 Addition of suvorexant to schedule IV.** Section 961.20(2)(mr), Stats., is created to read:

*961.20(2)(mr) Suvorexant*

This order shall take effect on November 1, 2014 to allow for publication in the Administrative Register. The order expires upon promulgation of a final rule.

Dated 10/8/14

\_\_\_\_\_  
/s/  
Doug Englebert, Chair  
Controlled Substances Board

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