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## WISCONSIN ADMINISTRATIVE REGISTER

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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 (3)

**1. EmR1209** — The state of Wisconsin department of agriculture, trade and consumer protection hereby adopts the following emergency rule to amend **section ATCP 21.17 (1) (b)** and to create **section ATCP 21.17 (1) (c)**, relating to the quarantines of Rock County and Walworth County for emerald ash borer.

This rule was approved by the governor on July 12, 2012.

The scope statement for this rule, SS 019-11, was approved by the governor on August 29, 2011, published in Register No. 669, on September 14, 2011, and approved by the Board of Agriculture, Trade and Consumer Protection on December 15, 2011.

#### Finding of Emergency

(1) On June 11, 2012, APHIS identified EAB in Walworth County, near the village of Walworth. Subsequently, APHIS also positively identified EAB in Rock County in the city of Janesville on June 25, 2012. EAB is an exotic 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 quarantines for Rock County and Walworth County but that it will take six to eight weeks for

APHIS to act. A six week delay until enactment of the federal quarantines leaves too much time for businesses or individuals to move potentially EAB infested material out of these counties to areas of Wisconsin or other states that are not infested with EAB.

(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: July 16, 2012**  
**Publication Date: July 17, 2012**  
**Effective Dates: July 17, 2012 through December 13, 2012**  
**Hearing Date: August 28, 2012**

**2. EmR1211** — The state of Wisconsin department of agriculture, trade and consumer protection hereby adopts the following emergency rule to amend **section ATCP 21.17 (1) (b)** and to create **section ATCP 21.17 (1) (c)**, relating to the quarantine of Trempealeau County for emerald ash borer.

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

The scope statement for this rule, SS 042-11, was approved by the governor on November 8, 2011, published in Register No. 671 on November 30, 2011, and approved by the Board of Agriculture, Trade and Consumer Protection on December 15, 2011.

#### Finding of Emergency

(1) On August 16, 2012, APHIS identified Emerald Ash Borer (EAB) in Trempealeau County, at Perrot State Park. EAB is an exotic 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 quarantines for Trempealeau County but that it will take six to eight weeks for APHIS to act. A six week delay until enactment of the federal quarantines leaves too much time for businesses or individuals to move potentially EAB infested material out of the 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 6, 2012**  
**Publication Date: September 7, 2012**  
**Effective Dates: September 7, 2012 through February 3, 2013**  
**Hearing Date: October 12, 2012**

**3. EmR1213** (DATCP Docket # 11-R-11) — The Wisconsin department of agriculture, trade and consumer protection hereby adopts the following emergency rule to amend **sections ATCP 55.04 (title), (2) (title), (a) and (b), and (6), 55.07 (1) (a), (2) (a) and (3) (a);** and to create **sections ATCP 55.02 (4m), 55.03 (2) (f), 55.04 (1m), 55.06 (5) (j), 55.07 (1) (c), (2) (d) and (3) (c)**, relating to allowing certain selected Wisconsin state-inspected meat establishments to sell meat and meat products in other states and thereby affecting small business.

This rule was approved by the governor on September 6, 2012.

The statement of scope for this rule, SS 005–12, was approved by the governor on January 11, 2012, published in Register No. 673, on January 31, 2012, and approved by the Natural Resources Board on February 22, 2012.

**Finding of Emergency**

The department of agriculture, trade and consumer protection finds that an emergency exists and that the attached rule is necessary for the immediate preservation of the public welfare. Statements of the facts constituting the emergency are:

(1) Wisconsin has more than 270 small state–inspected meat establishments that contribute to the vitality of the state’s rural economy, producing many unique, specialty products. Wisconsin’s state–inspected meat and poultry establishments are inspected by Wisconsin’s Bureau of Meat Safety and Inspection under a cooperative agreement with the United States Department of Agriculture’s (USDA’s) Food Safety and Inspection Service (FSIS) program. Under the cooperative agreement, state meat inspection programs must provide inspection that is “at least equal to” federal inspection under the Federal Meat Inspection Act (FMIA) (21 USC 661) and the Poultry Products Inspection Act (PPIA) (21 USC 454). State–inspected meat and poultry establishments are prohibited from selling their products in other states.

(2) USDA recently established the new Cooperative Interstate Shipment (CIS) program, which will allow state–inspected meat and poultry establishments to sell their products in other states. To qualify for participation in the CIS program, state meat and poultry inspections programs must inspect establishments that volunteer to participate in the program using procedures that are the “same as”, rather than “at least equal to,” USDA’s federal inspections under FMIA and PPIA. This emergency rule incorporates certain federal regulations that Wisconsin’s state meat inspection program must adopt in order to establish a regulatory foundation deemed the “same as” the foundation for the federal program, and thereby allowing Wisconsin to participate in the CIS program.

(3) The department of agriculture, trade and consumer protection (DATCP) is adopting this emergency rule to prevent a potential hardship to Wisconsin’s state–inspected meat establishments selected to participate in the program; adoption of the emergency rule will ensure that these establishments are not prevented from selling their meat and poultry products in other states because the pending “permanent” rules cannot be adopted in time.

**Filed with LRB:** September 10, 2012  
**Publication Date:** September 13, 2012  
**Effective Dates:** September 13, 2012 through February 9, 2013  
**Hearing Date:** October 15, 18, 19, 2012

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**Children and Families**

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

**EmR1212** — The Wisconsin Department of Children and Families orders the creation of **Chapter DCF 55**, relating to subsidized guardianship.

This emergency rule was approved by the governor on August 28, 2012.

The statement of scope for this rule, SS 040–12, was approved by the governor on June 8, 2012, published in

Register No. 678, on June 30, 2012, and approved by Secretary Eloise Anderson on July 16, 2012.

**Finding of Emergency**

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

Guardians who entered into subsidized guardianship agreements with an agency when the statewide subsidized guardianship program was implemented in August 2011 are now eligible for consideration of an amendment to increase the amount of the subsidized guardianship payments. The rule includes the process for determining eligibility for an amendment.

**Filed with LRB:** August 31, 2012  
**Publication Date:** September 3, 2012  
**Effective Dates:** September 3, 2012 through January 30, 2013

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**Health Services**

*Health, Chs. DHS 110—*

**EmR1204** — The Wisconsin Department of Health Services hereby adopts emergency rules to create **section DHS 115.05 (3)**, relating to fees for screening newborns for congenital and metabolic disorders and other services.

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

The statement of scope for this rule, SS 033–11, was approved by the governor on October 25, 2011, published in Register No. 671, on November 14, 2011, and approved by the Department of Health Services Secretary, Dennis G. Smith, effective November 25, 2011.

**Exemption from Finding of Emergency**

The legislature by 2011 Wisconsin Act 32, SECTION 9121 (9) provides an exemption from a finding of emergency to adopt these emergency rules. The exemption is as follows:

2011 Wisconsin Act 32, SECTION 9121 (9) CONGENITAL DISORDER TESTING FEES; RULES. Using the procedure under section 227.24 of the statutes, the department of health services shall promulgate rules required under section 253.13 (2) of the statutes, as affected by this act, for the period before the effective date of the permanent rules promulgated under section 253.13 (2) of the statutes, as affected by this act, but not to exceed the period authorized under section 227.24 (1) (c) of the statutes, subject to extension under section 227.24 (2) of the statutes. Notwithstanding section 227.24 (1) (a), (2) (b), and (3) of the statutes, the department of health services is not required to provide evidence that promulgating a rule under this subsection as an emergency rule is necessary for the preservation of public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under this subsection.

**Filed with LRB:** May 1, 2012  
**Publication Date:** May 4, 2012  
**Effective Dates:** May 4, 2012 through September 30, 2012  
**Hearing Date:** May 25, 2012  
**Extension Through:** November 29, 2012

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## Insurance

**EmR1208** — The Commissioner of Insurance purposes an order to amend **section Ins 17.01 (3)** and repeal and recreate **section Ins 17.28 (6)**, relating to the Injured Patients and Families Compensation Fund annual fund fees and mediation panel fees for fiscal year 2013 and affecting small business.

This emergency rule was approved by the governor on May 25, 2012.

The statement of scope SS 001–12, was approved by the governor on January 4, 2011, published in Register No. 673, on January 31, 2012, and approved by the Commissioner of Insurance on February 14, 2012.

### 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 of July 1, 2012 for the new fiscal year assessments in accordance with s. 655.27 (3), Wis. Stats. The permanent rule making process during an even-numbered year cannot complete the rule-making process prior to the effective date of the new fee schedule. The fiscal year fees were established by the Board of Governors at the meeting held on December 14, 2011.

<b>Filed with LRB:</b>	<b>June 12, 2012</b>
<b>Publication Date:</b>	<b>June 14, 2012</b>
<b>Effective Dates:</b>	<b>June 14, 2012 through November 10, 2012</b>
<b>Hearing Date:</b>	<b>June 19, 2012</b>

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## Justice

**EmR1206** — The State of Wisconsin Department of Justice (“DOJ”) proposes an order to repeal and re-create **Chapter Jus 17** and **Chapter Jus 18**, relating to licenses authorizing persons to carry concealed weapons; concealed carry certification cards for qualified former federal law enforcement officers; and the certification of firearms safety and training instructors.

Governor Walker approved the final draft emergency rules on March 15, 2012. Attorney General Van Hollen signed an order approving the final emergency rules on March 15, 2012, and the emergency rules were published in the Wisconsin State Journal on March 21, 2012.

The statement of scope for these emergency rules, SS 010–12, was approved by Governor Walker on February 15, 2012, published in Administrative Register No. 674, on February 29, 2012, and approved by Attorney General J.B. Van Hollen on March 12, 2012.

### Finding of Emergency

Under section 101 of 2011 Wis. Act 35, DOJ has been statutorily required to receive and process concealed carry license applications and to issue or deny licenses since November 1, 2011. The Legislature has thus determined that the public welfare requires the licensing system commenced on that date to remain continuously in effect. Emergency rules governing the licensing process were adopted on October 25, 2011, and have been in effect since November 1, 2011.

On November 7, 2011, JCRAR suspended certain portions of the emergency rules adopted on October 25, 2011. Since

that time, DOJ has implemented concealed carry licensing without enforcing the suspended provisions. DOJ is also in the process of developing proposed permanent rules that do not include the substance of any of the provisions in the emergency rules that were suspended by JCRAR.

Under Wis. Stat. s. 227.26 (2) (i), if a bill supporting JCRAR’s suspension action of November 7, 2011, is not enacted into law by the end of the current legislative session on March 15, 2012, then the suspension would be lifted and the original version of the emergency rules — including the previously suspended portions — would go back into legal effect. At that point, the emergency rules in effect would be inconsistent both with the emergency rules as they have been administered by DOJ since November 7, 2011, and with the proposed permanent rules, the scope of which has already been approved by the Governor and the Attorney General. Any such lack of continuity in the operation of DOJ’s concealed carry rules would be confusing and disruptive both for permit applicants and for DOJ staff administering the concealed carry permit program.

In order to prevent such a discontinuity in the operation of the concealed carry rules, it is necessary to re-promulgate the existing emergency rules in their entirety, with the exception of the portions that were suspended by JCRAR on November 7, 2011. Only if DOJ utilizes the emergency rulemaking procedures of s. 227.24, Stats., can the revised emergency rules be promulgated and in effect in time to prevent discontinuity in the operation of the existing rules. The public welfare thus necessitates that the rules proposed here be promulgated as emergency rules under s. 227.24, Stats.

<b>Filed with LRB:</b>	<b>May 24, 2012</b>
<b>Publication Date:</b>	<b>March 21, 2012</b>
<b>Effective Dates:</b>	<b>March 21, 2012 through August 17, 2012</b>
<b>Hearing Date:</b>	<b>July 16, 24, 25, 2012</b>
<b>Extension Through:</b>	<b>December 15, 2012</b>

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## Natural Resources (5)

### *Fish, Game, etc., Chs. NR 1—*

**1. EmR1205** (DNR # CF–26–11(E)) — The Wisconsin Department of Natural Resources proposes an emergency order to revise **Chapter NR 64**, relating to All-Terrain Vehicles, as follows: to renumber section NR 64.14 (9) (d); to amend section NR 64.12 (7) (a) and section NR 64.14 (9) (a) 1.; and to create sections NR 64.02 (9m), NR 64.02 (15), NR 64.12 (7) (am), NR 64.14 (2r) (a) and (b), and NR 64.14 (9) (d), relating to the all-terrain vehicle grant programs and trail-route combinations.

This emergency rule was approved by the governor on April 26, 2012.

The statement of scope for this rule, SS 046–11, was approved by the governor on December 2, 2011, published in Register No. 672 on December 31, 2011, and approved by the Natural Resources Board on February 22, 2012.

### Finding of Emergency

The department is aware that several ATV trails in Wisconsin overlap existing roads. From the onset of the program, these overlapping paths were identified as trails, signed accordingly, and were eligible to receive ATV grant funds. A few years ago, the ORV Advisory Council and WI County Forestry Association proposed that the department revise Ch. NR 64 to accommodate paths used by both ATVs and motor vehicles. These trail-route combinations – also

called hybrid trails but commonly referred to as “troutes” – will be eligible for future maintenance grant funding at the current rate if it can be shown that the hybrid trails (“troute”) existed prior to the effective date of this rule.

This emergency rule will establish a new category of all-terrain trail commonly called a “troute”, or a trail-route combination, that provides a connector between trails and allows grant funding for these unique trails. An emergency rule is needed because we anticipate that the permanent rule revisions to Ch. NR 64 that will include troutes will not be effective until Sept 2012, at the earliest. Without this emergency rule, DNR will not be able to award grants to project sponsors for ATV “troutes” in July 2012, as is our practice. About one-third of the trails in northern Wisconsin are “troutes” and have been funded as trails since the program started. Our partners count upon grant funds for troute maintenance.

Without this Emergency Rule, the integrity and safety of troutes could be severely compromised. Our partners may be forced to close troutes without grant funding to maintain them until the permanent rule is effective. If troutes are closed, riders could be stranded in an unfamiliar location or be forced to turn around and ride back the same way they came instead of continuing onto their destination.

**Filed with LRB:** May 9, 2012  
**Publication Date:** June 1, 2012  
**Effective Dates:** June 15, 2012 through November 11, 2012  
**Hearing Date:** June 25, 2012

**2. EmR1207** — The Wisconsin Natural Resources Board proposes an order to amend **section NR 10.01 (3) (d) 1.**, relating to the bobcat hunting and trapping season.

This emergency rule was approved by the governor on May 4, 2012. This emergency rule, modified to reflect the correct effective date, was approved by the governor on May 25, 2012.

The statement of scope for this rule, SS 009–12, was approved by the governor on February 15, 2012, published in Register No. 674, on February 29, 2012, and approved by the Natural Resources Board on March 28, 2012.

This rule was approved and adopted by the State of Wisconsin Natural Resources Board on April 25, 2012.

#### Finding of Emergency

Pursuant to s. 227.24, Stats., the Department of Natural Resources finds that an emergency exists and that the attached rule is necessary for the immediate preservation of the public peace, health, safety, or welfare.

If emergency rules are not promulgated, the season automatically reverts back to a single permit period beginning on the Saturday nearest October 17 and continuing through December 31 in 2012. Frequent change of season dates and regulations for hunting and trapping can be confusing and disruptive to the public, can result in citations being issued, and is not necessary for protection of the bobcat population in this situation. Some people will view a reversion to the single season framework as a reduction of opportunity that is not socially acceptable. Therefore, this emergency rule is needed to preserve the public welfare.

**Filed with LRB:** May 30, 2012

**Publication Date:** June 10, 2012  
**Effective Dates:** October 1, 2012 through February 27, 2013  
**Hearing Date:** August 27, 2012

**3. EmR1210** — 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 January 14, 2013

**4. EmR1214** (DNR # WM–02–12(E)) — The Wisconsin Natural Resources Board proposes an order to repeal and recreate **sections NR 10.01 (1) (b), (g) and (u), 10.06 (9) (a) and 10.32**, to amend **section NR 10.01 (1) (v)**, and to create **section 10.12 (3) (e)**, relating to hunting and the 2012 migratory game bird seasons and waterfowl hunting zones.

This emergency rule was approved by the governor on September 6, 2012.

The statement of scope for this rule, SS 011–12, was approved by the governor on February 15, 2012, published in Register No. 674, on February 29, 2012, and approved by the Natural Resources Board on May 23, 2012.

#### 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 10, 2012  
**Publication Date:** September 12, 2012  
**Effective Dates:** September 13, 2012 through February 9, 2013

**5. 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 February 27, 2013

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## Scope Statements

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### Employee Trust Funds

SS 079–12

This statement of scope was approved by the governor on October 2, 2012.

**Rule No.**

Chapters ETF 10 and ETF 20.

**Relating to**

Internal Revenue Code Compliance.

**Rule Type**

Permanent. (Revisions)

The Department of Employee Trust Funds (ETF) gives notice pursuant to s. 227.135, Stats., that it proposes to amend existing administrative rules in Chapter ETF 10 and create new rules in Chapter ETF 20 to maintain compliance with requirements of the Internal Revenue Service (IRS).

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

ETF seeks to clarify how the Department administers provisions of the Internal Revenue Code (IRC), including § 415 (c) as provided in § 40.03 (2) (t), Stats., to ensure compliance with federal law.

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

As the administrator of the WRS, ETF is responsible for ensuring that the WRS complies with all applicable provisions of the IRC in order to maintain the tax-qualified status of the WRS. IRC § 401 (a) (16) provides that a trust is not a qualified trust under IRC § 401 if the plan of which such trust is a part provides for benefits or contributions that exceed the IRC § 415 limitation. The IRC requires certain plan language regarding refunding excess contributions, prohibited transactions and the “exclusive benefit” rule under the IRC.

The proposed rule will clarify how ETF treats these specific situations under the IRC, to ensure that the WRS maintains compliance.

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

Sections 40.03 (2) (i), (t) and 227.11 (2), Stats.

**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 an estimated 30 hours to develop these rules.

**List with Description of All Entities that May Be Affected by the Proposed Rule**

The rules could affect any WRS participating employees or retirees whose benefits or additional contributions exceed

limits in IRC § 415. Safeguards are currently in place to avoid any such benefits or contributions. This rule could also affect any WRS employers who employ such participants.

**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**

Certain plan amendments are required to ensure compliance with the IRC, including: maximum contributions to the WRS, refunding excess contributions, prohibited transactions and the “exclusive benefit” rule.

The contemplated rule changes will be drafted to facilitate compliance and to promote better understanding amongst members and ETF staff of the application of these IRC sections. None of the contemplated rule changes violate or conflict with IRC provisions.

**Contact Person**

Mary Alice McGreevy

[MaryAlice.McGreevy@etf.state.wi.us](mailto:MaryAlice.McGreevy@etf.state.wi.us)

(608) 267–2354

### Natural Resources

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

SS 078–12

This statement of scope was approved by the governor on October 2, 2012.

**Rule No.**

SS–22–12 Chapter NR 149.

**Relating to**

Laboratory Certification and Registration.

**Rule Type**

Permanent. (Revisions)

**Finding/Nature of Emergency (Emergency Rule Only):**

Not applicable.

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

Chapter NR 149, Wis. Admin. Code, establishes requirements for laboratories participating in the laboratory certification and registration program. The rule was last updated in 2008 and there is a need to revise the rule to update it, provide clarity to regulations, and correct minor errors.

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

Chapter NR149 establishes a program for the registration and certification of laboratories that submit data to the Department under covered programs. The purpose of this proposed rule package is to amend Chapter NR 149, Wis. Admin. Code, to bring it up to date with federal regulations,

address technological changes and to clarify the regulations. The rule currently contains sections on: the process for obtaining certification, on-site laboratory evaluations of registered/certified laboratories, and required quality systems. Proposed changes will ensure that each section of the rule is current and clear. Some examples of needed changes include: updating appendices, changing regulations to mirror Federal requirements, clarifying definitions, and updating applicable technologies.

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

Section 299.11 (7), Wis. Stats., authorizes the Department to prescribe by rule the registration and certification of laboratories. Section 299.11 (4), Wis. Stats., authorizes the Department to require that data submitted to the Department under a “covered program” be generated in a laboratory that is registered or certified. Covered programs are defined in s. 299.11 (d), Wis. Stats., and include solid waste, mining, wastewater, groundwater, drinking water, and hazardous substances. Section 299.11 (7) (a), Wis. Stats., specifies that the Department shall establish the criteria that will be used to register and certify laboratories.

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

It will take state employees approximately 300 hours to develop the rule and other resources to make the changes needed.

#### **List with Description of All Entities that May Be Affected by the Proposed Rule**

74 Commercial Analytical Laboratories — these are laboratories that analyze environmental (aqueous, solid and drinking water) samples for hire.

56 Industrial Analytical Laboratories — these are laboratories that are a part of an industry and analyze environmental samples on their own behalf.

242 Municipal Analytical Laboratories — these are laboratories owned by a municipality that generally do analysis of samples for the community’s wastewater treatment facility.

9 Public Health/Public Water Utility Analytical Laboratories — these are generally county laboratories that support the public health department in that area and analyze primarily drinking water samples but may do some wastewater analyses.

#### **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**

This rule package will ensure state rules comply with federal regulations, are current and easily understood.

#### **Anticipated Economic Impact of Implementing the Rule (Note If the Rule Is Likely To Have a Significant Economic Impact on Small Businesses)**

These proposed rule changes will not have a significant economic impact on any entities or small businesses. Changes to the rule will be minor in scope to update requirements and provide clarity. The Department believes the economic impact would be no additional cost to the laboratories because the regulatory changes will be minor

(insignificant impact on small businesses) and would not impact our fee structure.

#### **Contact Person**

Camille Turcotte  
608.266.0245

### **Safety and Professional Services**

#### **SS 080–12**

This statement of scope was approved by the governor on October 2, 2012.

#### **Rule No.**

Section SPS 34.04.

#### **Relating to**

Approval as firearms proficiency certifiers.

#### **Rule Type**

Emergency and Permanent. (Revisions)

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

Wis. Admin. Code s. SPS 34.02 (1) requires private security personnel seeking a firearms or other dangerous weapons permit to obtain a certificate of proficiency to carry a firearm from the Department of Safety and Professional Services (DSPS). Wis. Admin Code s. SPS 34.02 (2) mandates that the certification be received from a department approved firearms proficiency certifier pursuant to Wis. Admin Code s. SPS 34.04.

Wis. Admin. Code s. SPS 34.04, as it presently exists, allows only those certifier applicants who have received training as police or security firearms instructor and who either have current approval as a firearms instructor by the Wisconsin law enforcement standards board (LESB), certification as a law enforcement firearms instructor by the national rifle association (NRA) or, any applicant who, prior to Jan. 1, 1995, was approved as a firearms instructor by the LESB or NRA and who has also completed a refresher course presented by a regional training school approved by the LESB or the NRA.

In light of the enactment of 2011 Wisconsin Act 35 (commonly referred to as the concealed carry law or “CCL”), which became effective November 1, 2011, there is a greater need for additional entities who can provide training and approve applicants as firearms proficiency certifiers. Wis. Stats. s.175.60 (4) presently allows technical colleges, colleges and universities to provide this training for concealed carry purposes. No such provision is made as it relates to private security personnel, investigators and private detectives for purposes of carrying a weapon openly. Moreover, the training needed for DSPS firearms certifiers differs significantly from that needed and provided by LESB curriculum and under the CCL. To that end, a new standard needs to be developed and implemented, separate and distinct from the LESB standards. Because the need to approve applicants for firearm proficiency certifiers is immediate and pressing, emergency rules are warranted.

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

The objective of this proposed rule-making is to revise, create or otherwise modify Wis. Admin. Code s. SPS 34.04 and related provisions, to include Wisconsin Technical College System schools and other U.S. Department of

Education approved institutions to the list of those able to provide training to those applicants seeking approval as firearms proficiency certifiers. Further, the rule revision will allow DSPS to adopt or approve firearms certifier/student curriculum separate and distinct from the LESB curriculum currently mandated.

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

The changes proposed herein will provide greater and more accurate training and availability of those able to approve firearms certifiers. Beyond that, there are no existing policies being modified, nor new policies being added.

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

Section 227.11 (2) (a), Stats., authorizes an agency to promulgate rules interpreting the statutes it enforces or administers, when deemed necessary to effectuate the purpose of such statutes. More specifically, s. 440.26 (2) (c), Stats., obligates DSPS to prescribe by rule such qualifications as it deems appropriate related to/bearing on the professional competence of those licensed pursuant to Wis. Stats. s. 440.26.

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

200 hours.

**List with Description of All Entities that May Be Affected by the Proposed Rule**

Private detectives, private security persons, private detective agencies, individuals applying to become firearms proficiency certifiers, and Wisconsin Technical College System schools and other US Dept. of Education institutions.

**Summary and Preliminary Comparison with Any Existing or Proposed Federal Regulation that Is Intended To Address the Activities To Be Regulated by the Proposed Rule**

The federal government does not regulate approval of firearms certifiers in the states; accordingly, there are none.

**Anticipated Economic Impact of Implementing the Rule (Note If the Rule Is Likely To Have a Significant Economic Impact on Small Businesses)**

The proposed changes contemplated in this project will have no economic impact on the entities listed above.

**Contact Person**

Shawn Leatherwood  
(608) 261-4438

**Safety and Professional Services —  
Real Estate Examining Board**

SS 081-12

The statement of scope was approved by the governor on October 2, 2012.

**Rule No.**

Chapter REEB 18.

**Relating to**

Trust Accounts.

**Rule Type**

Permanent. (Revisions)

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

NA

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

The Board seeks to correct internal inconsistencies in s. REEB 18.09 (1); modernize the trust account rules to reflect current practices by removing antiquated provisions (s. REEB 18.11); and repeal s. REEB 18.12, because the enabling statute for that rule, s. 453.23 (3) (b), Stats., was repealed in 2001 Wis. Act 16.

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

As the proposed changes are “clean-up” provisions, no existing policies are being changed, and no new policies are being proposed.

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

Section 15.08 (5) (b), requires all examining boards to “...promulgate rules for its own guidance and for the guidance of the trade or profession to which it pertains, and define and enforce professional conduct and unethical practices not inconsistent with the law relating to the particular trade or profession.” Section 227.11 (2) (a), Stats., authorizes all agencies to promulgate rules interpreting the statutes it enforces or administers, when deemed necessary to effectuate the purpose of such statutes. Section 452.07 (1), Stats., obligates the Real Estate Examining Board to “promulgate rules for the guidance of the real estate profession and define professional conduct and unethical practice.”

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

A total of 150 hours for changes to all affected provisions is estimated.

**List with Description of All Entities that May Be Affected by the Proposed Rule**

Real Estate licensees, their clients and customers, trustees and/or financial institutions

**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 are no federal laws specifically related to a state real estate board’s regulation of its licensees’ trust account practices.

**Anticipated Economic Impact of Implementing the Rule (Note If the Rule Is Likely To Have a Significant Economic Impact on Small Businesses)**

The rules resulting from this proposal will not carry any economic impact to any individual or entity, including small businesses, as they merely clarify existing provisions or remove those that are long obsolete.

**Contact Person**

Sharon Henes  
 (608) 261-2377  
[Sharon.Henes@wisconsin.gov](mailto:Sharon.Henes@wisconsin.gov)

**Safety and Professional Services —  
 Real Estate Examining Board**

SS 082-12

The statement of scope was approved by the governor on October 2, 2012.

**Rule No.**

Chapter REEB 16.

**Relating to**

Use of Approved Forms, Legal Advice.

**Rule Type**

Permanent. (Revisions)

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

NA

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

The Board seeks to update, clarify, correct, or repeal provisions related to definitions of terms, use of approved forms, the list of approved forms, who may draft addenda, and other such updates, clarifications, or corrections. Proposed changes include: amending s. 16.02 to include definitions of additional terms commonly used or referenced in the chapter; updating ss. 16.06 (4) and (5) to bring the existing rule into conformance with the practice of using addenda drafted by an attorney; and lastly, updating the Note to RL 16.03 to include approved forms not presently listed.

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

As the proposed changes will serve only to clarify, correct, or repeal current provisions, no existing policies have changed, and no new policies are reflected in this proposed project.

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

Sections 15.08 (5) (b), 227.11 (2) (a), and 452.07, Stats. Section 15.08 (5) (b), requires all examining boards to "...promulgate rules for its own guidance and for the guidance of the trade or profession to which it pertains, and define and enforce professional conduct and unethical practices not inconsistent with the law relating to the particular trade or profession." Section 227.11 (2) (a), Stats., authorizes all agencies to promulgate rules interpreting the statutes it enforces or administers, when deemed necessary to effectuate the purpose of such statutes. Section 452.07 (1), Stats., obligates the Real Estate Examining Board to "promulgate rules for the guidance of the real estate profession and define professional conduct and unethical practice."

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

150 hours

**List with Description of All Entities that May Be Affected by the Proposed Rule**

Real Estate licensees, and their clients and customers

**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 are no federal laws related to a state real estate board's regulation of its licensees' use of board-approved forms, or to a board's prohibition against its licensees giving legal advice to any parties to a real estate transaction.

**Anticipated Economic Impact of Implementing the Rule (Note If the Rule Is Likely To Have a Significant Economic Impact on Small Businesses)**

The rules resulting from this proposal will not carry any economic impact to any individual or entity, including small businesses, as they merely clarify existing provisions or remove those that are no longer applicable.

**Contact Person**

Sharon Henes  
 (608) 261-2377  
[Sharon.Henes@wisconsin.gov](mailto:Sharon.Henes@wisconsin.gov)

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## Submittal of Proposed Rules to Legislative Council Clearinghouse

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

### **Agriculture, Trade and Consumer Protection CR 12-043**

**(DATCP Docket # 12-R-03)**

The Wisconsin Department of Agriculture, Trade and Consumer Protection has referred the following proposed rule to the Wisconsin Legislative Council Rules Clearinghouse, pursuant to s. 227.15, Stats.

#### **Subject**

Discretion in Enforcement of Rule Violations by Small Businesses.

#### **Adm. Code Reference**

Chapter ATCP 1.

The scope statement for this rule, SS 021-12, was approved by the Governor on April 9, 2012, published in Register No. 676, on April 30, 2012, and approved by the Board of Agriculture, Trade and Consumer Protection on May 16, 2012.

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

The department will hold public hearings on this rule. The date for public hearing is November 13, 2012. The department's Office of Legal Counsel is primarily responsible for this rule.

#### **Contact Information**

If you have questions, you may contact Dennis Fay at (608) 224-5006.

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## Rule-Making Notices

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### Notice of Hearing

#### Agriculture, Trade and Consumer Protection

CR 12-043

(DATCP Docket No. 12-R-03)

The Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) will hold a public hearing on a proposed rule revising Chapter ATCP 1 relating to discretion in enforcement of rule violations by small businesses.

DATCP will hold the public hearing at the time and place shown below:

#### Hearing Information

**Date:** Tuesday, November 13, 2012  
**Time:** 9:00 a.m. to 11:00 a.m.  
**Location:** Room 456  
 Department of Agriculture, Trade and  
 Consumer Protection  
 2811 Agriculture Drive  
 Madison, WI 53718-6777

#### Accessibility

Hearing impaired persons may request an interpreter for this hearing. Please make reservations for a hearing interpreter by November 12, 2011, by writing to Karen Schultz, Office of Legal Counsel, P.O. Box 8911, Madison, WI 53708-8911; or by emailing [karen.schultz@wisconsin.gov](mailto:karen.schultz@wisconsin.gov) or by telephone at (608) 224-5023. Alternatively, you may contact the DATCP TDD at (608) 224-5058. The hearing facility is handicap accessible.

#### Written Comments

DATCP invites the public to attend the hearings and comment on the proposed rule. Following the public hearing, the hearing record will remain open until November 27, 2012 for additional written comments. Comments may be sent to the Office of Legal Counsel at the address below, or to [dennis.fay@wisconsin.gov](mailto:dennis.fay@wisconsin.gov), or to <http://adminrules.wisconsin.gov>.

Comments or concerns relating to small business may also be addressed to DATCP's small business regulatory coordinator Keeley Moll at the address below, or by email to [keeley.moll@wisconsin.gov](mailto:keeley.moll@wisconsin.gov), or by telephone at (608) 224-5039.

#### Copies of Documents

You can obtain a free copy of this hearing draft rule and related documents including the economic impact analysis by contacting the Wisconsin Department of Agriculture, Trade and Consumer Protection, Office of Legal Counsel, 2811 Agriculture Drive, P.O. Box 8911, Madison, WI 53708. You can also obtain a copy by calling (608) 224-5006 or by emailing [dennis.fay@wisconsin.gov](mailto:dennis.fay@wisconsin.gov). Copies will also be available at the hearing. To view the hearing draft rule online, go to: <http://adminrules.wisconsin.gov>.

#### Analysis prepared by the Public Service Commission of Wisconsin

This rule complies with the requirements of s. 227.04 (2) (b), Stats., created by 2011 Wisconsin Act 46, which requires each state agency to "establish by rule, reduced fines and alternative enforcement mechanisms for minor violations of administrative rules made by small businesses," and which requires that the rule include a definition of "minor violation."

#### Statutes Interpreted

Sections 227.04 (2) (b) and 895.59, Stats.

#### Statutory Authority

Sections. 227.04 (2) (b) and 895.59 (2), Stats.

#### Explanation of Statutory Authority

Section 227.04 (2) (b), Stats., provides that each state agency shall "establish by rule, reduced fines and alternative enforcement mechanisms for minor violations of administrative rules made by small businesses", and requires that the rule include a definition of "minor violation." Section 895.59 (2), Stats., provides that "each state agency shall promulgate a rule that requires the agency to disclose in advance the discretion that the agency will follow in the enforcement of rules and guidelines against a small business."

#### Related Statutes and Rules

In compliance with s. 895.59, Stats., which was created by 2003 Wisconsin Act 145, DATCP adopted ATCP Ch. 1, Subch. VII which identifies the discretion DATCP will use in enforcing rule violations against small businesses. Section 227.04, Stats., is closely related to s. 895.59, Stats. This rule making will make those changes necessary to comply with the new requirements created by s. 227.04 (2) (b), Stats., and will conform to the requirements of s. 895.59 (2), Stats.

#### Plain Language Analysis

#### Background

DATCP adopted Ch. ATCP 1, Subch. VII, in November, 2006, to comply with the requirements of s. 895.59, Stats. Prior to the creation of s. 895.59, Stats., and the DATCP rules subchapter, DATCP exercised much the same discretion as is provided in the statute and rule when determining if and how to enforce regulation violations committed by small businesses. For example, DATCP has always considered the seriousness of the violation, the risk of harm to the public and the history of compliance when making enforcement determinations.

#### Rule Content

##### General

This rule does all of the following:

- Creates a definition of "minor violation" for certain violations of department rules by small businesses.
- Provides that the department may exercise the discretion to forego formal sanctions or to seek reduced sanctions when a minor violation of department rules has been committed by a small business.

##### Fiscal Impact

This rule will not have a significant fiscal impact on state government. DATCP enforcement practice has exercised

much the same discretion as is directed by s. 227.04 (2) (b), Stats., both before and after adopting the current rule as required by s. 895.59 (2), Stats., when determining if, and how, to enforce regulation violations committed by small businesses. For example, DATCP has always considered the seriousness of the violation, the risk of harm to the public and the history of compliance when making enforcement determinations. This rule will have no fiscal effect on local governments.

**Business Impact**

This rule will not increase any costs for businesses. The rule may produce an economic benefit for small businesses that commit minor violations of DATCP regulations when discretion is exercised to forego formal sanctions or to seek reduced sanctions.

Comments or concerns relating to small business may also be addressed to DATCP’s small business regulatory coordinator Keeley Moll at the address above, or by email to [keeley.moll@wisconsin.gov](mailto:keeley.moll@wisconsin.gov), or by telephone at (608) 224-5039.

**Economic Impact**

This rule will not have an economic impact upon the state, any business sector, citizens, utility rate payers or any geographical area in the state.

**Environmental Impact**

This rule will not have any environmental impact.

**Federal and Surrounding State Programs**

**Federal Programs**

Federal agencies exercise similar enforcement discretion.

**Surrounding State Programs**

Agencies in the surrounding states exercise similar enforcement discretion.

**Data and Analytical Methodologies**

Each DATCP division contributed to the analysis of the effect of the proposed rule.

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

Supporting documentation includes files of enforcement activities in DATCP and the DATCP compliance manual.

**DATCP Contact**

Questions and comments related to this rule may be directed to:

Dennis Fay  
 Department of Agriculture, Trade and Consumer Protection  
 P.O. Box 8911  
 Madison, WI 53708-8911  
 Telephone (608) 224-5006  
 E-Mail: [dennis.fay@wisconsin.gov](mailto:dennis.fay@wisconsin.gov)

<b>ADMINISTRATIVE RULES FISCAL ESTIMATE AND ECONOMIC IMPACT ANALYSIS</b>		
Type of Estimate and Analysis		
<input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected		
Administrative Rule Chapter, Title and Number		
Ch. ATCP 1, Subch. VII		
Subject		
Discretion in enforcement of rule violations by small businesses		
Fund Sources Affected		Chapter 20 , Stats. Appropriations Affected
GPR   FED   PRO   PRS   SEG   SEG-S		None
Fiscal Effect of Implementing the Rule		
<input checked="" type="checkbox"/> No Fiscal Effect	<input type="checkbox"/> Increase Existing Revenues	<input type="checkbox"/> Increase Costs
<input type="checkbox"/> Indeterminate	<input type="checkbox"/> Decrease Existing Revenues	<input type="checkbox"/> Could Absorb Within Agency’s Budget
		<input type="checkbox"/> Decrease Costs
The Rule Will Impact the Following (Check All That Apply)		
<input type="checkbox"/> State’s Economy	<input type="checkbox"/> Specific Businesses/Sectors	
<input type="checkbox"/> Local Government Units	<input type="checkbox"/> Public Utility Rate Payers	
Would Implementation and Compliance Costs Be Greater Than \$20 million?		
Yes <input checked="" type="checkbox"/> No		

<b>Policy Problem Addressed by the Rule</b>
This rule complies with the requirements of s. 227.04 (2) (b) created by 2011 Wis. Act 46, which requires each state agency to “establish by rule, reduced fines and alternative enforcement mechanisms for minor violations of administrative rules made by small businesses”, and which requires that the rule include a definition of “minor violation”.
<b>Summary of Rule’s Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State’s Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)</b>
This rule will not increase any costs for businesses. The rule may produce an economic benefit for small businesses that commit minor violations of DATCP regulations when discretion is exercised to forego formal sanctions or to seek reduced sanctions.
<b>Local Governments</b> This rule will not impact local governments. Local governments will not have any implementation or compliance costs.
<b>Utility Rate Payers</b> The rule will have no impact on utility rate payers.
<b>General Public</b> This rule will have no impact on the general public.
<b>Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule</b>
<b>Benefits</b>
This rule may benefit small businesses that commit minor violations of DATCP rules.
<b>Alternatives</b>
Adoption of this rule is required by the provisions of s. 227.04 (2) (b).
<b>Long Range Implications of Implementing the Rule</b>
There are no long range implications.
<b>Compare With Approaches Being Used by Federal Government</b>
Federal agencies exercise similar enforcement discretion.
<b>Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)</b>
Agencies in surrounding states exercise similar enforcement discretion.
<b>Comments Received in Response to Web Posting and DATCP Response</b>
No comments were received in response either to the posting on the DATCP external website or the statewide administrative rules website.

**Notice of Hearing**

**Department of Natural Resources**

*Fish, Game, etc., Chs. 1 —*

**EmR1215**

**(DNR # WM-16-12(E))**

NOTICE IS HEREBY GIVEN that pursuant to SECTION 21 of 2011 Act 169, ss. 227.11, and 227.24, Stats., and interpreting 2011 Act 169 and ss. 29.014, and 29.185 (5) (d), Stats., the Department of Natural Resources will hold public hearings on revisions to Chapter NR 10, Wis. Adm. Code, relating to the coyote hunting season. This emergency order took effect upon publication in the official state paper on Monday October 1, 2012.

**Hearing Information**

**Date:** Monday, November 12, 2012

**Time:** 11:00 a.m.

**Location:** Room 613  
Natural Resources State Office Building  
(GEF-2)  
101 South Webster St.  
Madison, WI 53707

**Accessibility**

Pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Scott Loomans at (608) 267-2452 with

specific information on your request at least 10 days before the date of the scheduled hearing.

### Written Comments and Copies of Rule

The proposed rule and fiscal estimate may be reviewed and comments electronically submitted at the following Internet site: <http://adminrules.wisconsin.gov>. Written comments on the proposed rule may be submitted via U.S. mail to Mr. Scott Loomans, Bureau of Wildlife Management, P.O. Box 7921, Madison, WI 53707 or by email to [scott.loomans@wisconsin.gov](mailto:scott.loomans@wisconsin.gov). Comments may be submitted until November 12, 2012. Written comments whether submitted electronically or by U.S. mail will have the same weight and effect as oral statements presented at the public hearings. A personal copy of the proposed rule and fiscal estimate may be obtained from Mr. Loomans.

### Plain Language Analysis

The Bureau of Wildlife Management recommends promulgating rules modifying chapter NR 10 Wis. Admin. Code related to the coyote hunting season.

SECTIONS 1 and 2 repeal the coyote hunting season closure in Wolf Management Zone 1 and create a statewide open season.

### Summary of, and Comparison with, Existing or Proposed Federal Regulations

These state rules and statutes do not relieve individuals from the restrictions, requirements and conditions of federal statutes and regulations. Regulating the hunting and trapping

of native species has been delegated to state fish and wildlife agencies.

### Comparison with Rules in Adjacent States

Coyotes are an unprotected species in Minnesota and they may be hunted year-round. In Michigan, the coyote hunting season begins on July 15 and ends on April 15. The Iowa coyote season is open continuously, year-round. In Illinois, the coyote season is open year-round except that, during firearm deer seasons, coyote hunters must also possess a valid, unfilled deer tag.

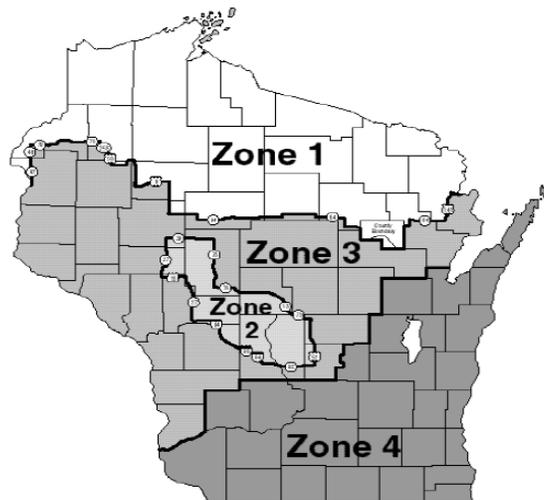
### Summary of Factual Data and Analytical Methodologies

The coyote hunting season is currently closed at times when firearm deer seasons are open in Wolf Management Zone 1. This rule would open the coyote season.

Under this proposal, wolves would continue to be protected during the firearm deer season and harvest would only be allowed by a person who possesses a valid wolf harvesting license.

The current closure was established when wolves were listed in Wisconsin and federally as an endangered species, to prevent incidents of misidentification by people who intended to harvest coyotes. The closure is no longer needed for protection of the wolf population and this coyote hunting opportunity can be restored. The wolf population has expanded and packs are established in many areas outside of Wolf Management Zone 1, where the current coyote season closure has never been in effect. Coyote harvest has also been allowed in Wolf Management Zone 1 at times when firearm deer seasons were not open.

### NR 10.20 Wolf management zones.



Policies relevant to the rule are consistent with existing policies for hunting. Coyote harvest is currently and has historically been allowed during firearm deer seasons outside of Zone 1 and this does not seem to have impacted wolf management in those areas. The department has regulations in place establishing open and closed seasons or continuous open seasons for many established species.

Coyotes are commonly harvested incidentally by people who primarily hunting deer during the firearm deer season. Expanding that opportunity to hunters in Wolf Management Zone 1 will increase opportunity for those hunters and they

are the only people who are likely to be affected by the proposed rule.

### Analysis and Supporting Documents Used to Determine Effect on Small Business or in Preparation of Economic Impact Report

These rules, and the legislation which grants the department rule making authority, do not have a significant fiscal effect on the private sector. Additionally, no costs are associated with compliance to these rules. During the firearm deer season, hunters are primarily pursuing deer and that is what drives a person's decision to participate. Hunters may

appreciate the opportunity to harvest a coyote incidentally to their deer hunting activities, but the opportunity is not anticipated to have any impact on hunter participation or their related activities and expenditures.

#### ***Effects on Small Business***

These rules are applicable to individual sportspersons and impose no compliance or reporting requirements for small businesses, and no design or operational standards are contained in the rule. Because this rule does not add any regulatory requirements for small businesses, the proposed rules will not have a significant economic impact on a substantial number of small businesses under 227.24 (3m), Stats.

Pursuant to s. 227.114, Stats., it is not anticipated that the proposed rule will have a significant economic impact on small businesses. The Department's Small Business Regulatory Coordinator may be contacted at

[SmallBusiness@dnr.state.wi.us](mailto:SmallBusiness@dnr.state.wi.us) or by calling (608) 266-1959.

#### **Environmental Impact**

That the department has determined these emergency rule revisions are a Type IV action which is exempt under Chapter NR 150, Wis. Adm. Code, and no environmental analysis is required.

#### **Fiscal Estimate**

State: No State Fiscal Effect.

Local: No Local Government Costs.

#### **Agency Contact Person**

Mr. Scott Loomans

Bureau of Wildlife Management

P.O. Box 7921

Madison, WI 53707

email to [scott.loomans@wisconsin.gov](mailto:scott.loomans@wisconsin.gov).

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## Submittal of Proposed Rules to Legislature

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

**Agriculture, Trade and Consumer Protection**  
**CR 12-024**

**(DATCP Docket # 11-R-07)**

Modifies Ch. ATCP 17 relating to livestock premises registration.

The proposed rule was approved by the Governor on September 5, 2012.

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## Rules Published with this Register and Final Regulatory Flexibility Analyses

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

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

### **Safety and Professional Services — Controlled Substances Board CR 12-010**

An order of the controlled substances board to create Chapter CSB 3, relating to the requirements and procedures for granting special use authorizations.

#### **Summary of Effect on Small Business**

The department concludes that the proposed rules will have no economic impact on small businesses. This proposal tracks legislation that has been in effect for several years.

#### **Summary of Comments**

No comments were reported.

### **Safety and Professional Services — Pharmacy Examining Board CR 12-009**

An order of the Pharmacy Examining Board to create Chapter Phar 18, relating to the prescription drug monitoring program and affecting small business.

#### **Background**

Under 2009 Act 362, the legislature directs the Wisconsin Pharmacy Examining Board (Board) to create a prescription drug monitoring program (PDMP) by rule. The proposed rule fulfills the legislative directive by establishing a PDMP to collect and maintain information regarding the prescribing and dispensing of monitored prescription drugs. The monitored prescription drugs are federally controlled substances in Schedules II-V, state controlled substances in Schedules II-V and Tramadol, a drug identified by the Board as having a substantial potential for abuse. A controlled substance that can be legally dispensed without a prescription order is not a monitored prescription drug under the proposed rule.

In general, the proposed rule requires dispensers to compile and submit to the Board information about each time they dispense a monitored prescription drug. The information must be submitted to the Board within 7 days, or 90 days for dispensers who dispense solely to animal patients (veterinary dispensers), of the dispensing of the monitored prescription drug. The proposed rule also requires dispensers to submit a zero report to the Board for each 7-day, or 90-day period for veterinary dispensers, during which he or she does not dispense a monitored prescription drug.

The proposed rule requires a dispenser to electronically submit the information to the Board using the data standards established by the American Society for Automation in Pharmacy's Implementation Guide for Prescription Monitoring Programs or other electronic format identified by the Board.

Under the proposed rule, the Board may grant a waiver to a dispenser who is unable to comply with the electronic data submission requirement described above. Further, the Board may grant an emergency waiver to a dispenser who is unable to submit information within 7 days, or 90 days for veterinary dispensers, of dispensing a monitored prescription drug.

The proposed rule also requires the Board to develop and maintain a database to store the information submitted to the Board as part of the PDMP. Practitioners and dispensers will be able create accounts with the Board to access the database and view information that will help them determine whether a patient is using monitored prescription drugs illicitly. Further, under the proposed rule, other entities, such as law enforcement authorities, patients and staff of the Department of Safety and Professional Services, may create accounts to request information from the Board in accordance with s. 146.82, Stats.

#### **Methods to Reduce the Impact on Small Businesses**

In accordance with s. 227.114 (2), Stats., the Board considered the methods to reduce the impact on small businesses identified in the statute and incorporated three of them into the proposed rule. Specifically, the Board incorporated the methods identified in ss. 227.114 (2) (a) to (c), Stats., into the proposed rule because they are feasible and consistent with the statutory objective of s. 450.19, Stats. The Board did not incorporate the method identified in s. 227.114 (2) (d), Stats., because it is inapplicable to the proposed rule. The Board also did not incorporate the method identified in s. 227.114 (2) (e), Stats., because the Board lacks statutory authority to do so.

In accordance with s. 227.114 (2) (a), Stats., the Board incorporated "less stringent compliance or reporting requirements for small businesses" into the proposed rule to reduce the impact on small businesses. In general, the proposed rule requires dispensers to electronically submit information about monitored prescription drugs dispensed in a specified format to the Board. The Board incorporated a waiver of the electronic reporting requirements to reduce the impact of the proposed rule on small businesses.

The waiver of the electronic reporting requirements reduces the proposed rule's impact on small businesses by giving dispensers options to submit information to the Board. Importantly, health care practitioners and pharmacists without the means to electronically submit information to the Board would not have to invest in hardware and software improvements to comply with the proposed rule. Instead, these dispensers may submit information to the Board on paper. The waiver is available to all dispensers and is especially beneficial to those who practice in small business settings.

The Board incorporated the waiver for less stringent compliance and reporting requirements, to give dispensers

options to comply with the proposed rule. Because “dispensers” under the proposed rule consist of many types of health care practitioners and pharmacies whose practices vary significantly, the most practical way for a dispenser to comply with the proposed rule will also vary significantly. For example, a dispenser in a small business setting may not have suitable computer access or choose not to electronically submit information to the Board and want a waiver of the electronic reporting requirement. Conversely, another dispenser in a similar situation may choose to improve his or her electronic medical records system (EMR) and to comply with the electronic reporting requirements of the proposed rule and submit information electronically.

Further, the Board incorporated less stringent reporting requirements to reduce the impact on small businesses by including the phrase “or other electronic method identified by the board” in its description of the electronic reporting requirements. In the original text of the proposed rule, all dispensers would have been required to electronically submit information in the format identified in the American Society for Automation in Pharmacy (ASAP) Implementation Guide for Prescription Monitoring Programs. The Board received several comments stating that requiring all dispensers to comply with the ASAP format would significantly increase the compliance costs incurred by small businesses and non-pharmacy dispensers. The addition of “or other electronic method identified by the board” enables the Board to work with dispensers to identify appropriate and cost-effective electronic methods through which dispensers unable to comply with the ASAP format can electronically submit information as required by the proposed rule.

Next, the Board incorporated less stringent compliance requirements by allowing health care practitioners and pharmacies who do not dispense monitored prescription drugs to apply for a complete exemption from the reporting requirements of the proposed rule. The Board correlated the application and expiration of the exemption to the licensure renewal process by making the exemption effective until licensure renewal or until the dispenser dispenses a monitored prescription drug. Therefore, the Board minimized the administrative burden that applying for and renewing an exemption may have created. Besides renewing the exemption, an exempt practitioner or dispenser would not be subject to any ongoing compliance or reporting requirements under the proposed rule.

In accordance with s. 227.114 (2) (b), Stats., the Board incorporated “less stringent schedules or deadlines for compliance or reporting requirements for small businesses.” The Board reduced the impact of the proposed rule on small businesses by enabling veterinary dispensers to report information to the Board every 90 days instead of every 7 days. The change is based on the recommendation of the Small Business Regulatory Review Board and modification requested by the Assembly Committee on Health. The less stringent schedule is only available to veterinarian dispensers for several reasons. First, a large majority of veterinarians practice in a small business setting and dispense from their clinics. Second, the use of EMR systems is less prevalent among veterinarians than it is among other health care practitioners. Third, the prolonged reporting period lessens the usefulness of the information stored by the PDMP database.

In accordance with s. 227.114 (2) (c), Stats., the Board consolidated and simplified the compliance or reporting requirements for small businesses. Based on public comments, many of which were from or on behalf of small

businesses, the Board consolidated two of the originally separate data fields required to be submitted to the Board. Specifically, the proposed rule requires dispensers to submit either the National Drug Code (NDC) number or the name and strength of the monitored prescription drug. This consolidation gives dispensers more choice in how they report information to the Board. Pharmacies and other large volume dispensers with suitable EMR systems are able to submit the NDC number without having to manually enter the name and strength of the monitored prescription drug. Small volume dispensers who manually submit information to the Board may submit information to the Board without searching for the NDC number of every monitored prescription drug dispensed during a reporting period.

Further, the Board accepted the modification recommended by the Assembly Committee on Health to simplify several of the data fields that dispensers must submit to the Board. The Board modified the proposed rule to recognize state-issued credential number as an acceptable identifier for dispensers and practitioners. Previously, the rule only included DEA registration number and NPI number as acceptable identifiers for them. Next, the Board simplified the data fields regarding patient date of birth and address when the patient is an animal. The proposed rule specifies that the owner of the animal’s address and date of birth should be submitted to the Board when the patient is an animal.

While the consolidation and simplification of reporting requirements benefits dispensers who practice in small businesses, the change is not limited to those dispensers. Because the primary purpose of the PDMP is to correlate information in the database to identify patients exhibiting activities of prescription drug abuse, any significant modifications to the required data fields must affect all dispensers. Otherwise, the varied data fields would reduce the potential benefits of the PDMP. If the data fields and information are not standardized across all dispensers, queries for information would not return all relevant information and hinder the ability of the PDMP to effectively serve its purpose.

#### **Issues Raised by Small Businesses And Resulting Changes**

The Board solicited feedback from businesses, associations representing businesses and interested members of the public throughout the development of the proposed rule. Several of the comments submitted to the Board were from small businesses, as defined in s. 227.114 (1), Stats., or from associations representing small businesses in Wisconsin.

The issues raised by or on behalf of small businesses primarily comprise three categories. The first category regards the requirement to report small dose and post-procedure dispensing of monitored prescription drugs. The second category regards the requirement of a dispenser to submit “zero reports” to the Board. Finally, the third category regards the effect of the proposed rule on veterinarians. The Board considered all issues raised in the comments and made substantive modifications to the proposed rule, where possible, in an effort to minimize the proposed rule’s burden on small businesses.

#### ***Small Dose and Post-Operative Dispensing***

Under the proposed rule, dispensers are required to submit information to the Board about each dispensing of a monitored prescription drug. There is no differentiation between dosage forms or amounts or reasons for the dispensing. The Board received several comments regarding health care practitioners who dispense small doses of a monitored prescription drug to a patient following surgery or

other procedure. The comments suggest exempting the dispensing of small doses from the reporting requirements of the proposed rule. In general, the amount of drugs dispensed post-procedure is generally very small, 1–10 doses on average. Further, the comments state that because the dispensing is directly related to a medical procedure, it is unlikely that the patient underwent the procedure for the monitored prescription drugs or intends to use them illicitly.

Due to a lack of statutory authority, the Board made no changes to the proposed rule in response to the comments. Under s. 450.19 (2) (a), Stats., the Board shall create a PDMP that requires dispensers to “generate a record documenting each dispensing of a prescription drug and to deliver the record to the board, except that the program may not require the generation of a record when a drug is administered directly to a patient.” The statute does not authorize the Board to create more exceptions to the requirement to report dispensing information to the Board.

### **Zero Reports**

Under the proposed rule, dispensers are required to submit a “zero report” to the Board during a reporting period in which the dispenser did not dispense a monitored prescription drug. A reporting period is 7 days or 90 days for veterinarian dispensers. The Board received several comments suggesting that the Board eliminate the zero report requirements.

The Board rejects the comments that ask the Board to eliminate the zero report requirements to ensure the usefulness of the PDMP. The sole purpose of the zero report is to make certain that the Board has information from all dispensers at all times. Without complete information, the information stored as part of the PDMP is of limited value because the Board would have no way to determine whether a dispenser who failed to submit information during a reporting period simply forgot or did not dispense a monitored prescription drug during that time.

Further, the zero report is designed not to be a burden to a dispenser. In fact, a dispenser should be able to complete a zero report in seconds. As described by other state prescription monitoring programs, a dispenser can submit a zero report by entering the dates of the report and confirming that he or she did not dispense a monitored prescription drug during that time. Therefore, zero reports contain significantly less information than the reports with dispensing information and require no data compilation.

### **Veterinary Dispensers**

Under the proposed rule, veterinary dispensers are required to report information to the Board. The Board received several comments suggesting that the Board exempt veterinary dispensers from the requirements of the proposed rule. However, the Board lacks statutory authority to exempt veterinary dispensers. Under s. 450.19 (2) (a), Stats., the Board is directed to create a PDMP that shall require practitioners, that by definition includes veterinarians, and dispensers to “generate a record documenting each dispensing of a prescription drug and to deliver the record to the board, except that the program may not require the generation of a record when a drug is administered directly to a patient.” The statute does not authorize the Board to create any exemptions or more exceptions to the requirement to report dispensing information to the Board.

To lessen the burden on veterinarians, the Board modified the reporting period for veterinary dispensers. Based on the recommendation of the Small Business Regulatory Review Board and Assembly Committee on Health, the proposed rule

requires veterinary dispensers to submit information to the Board every 90 days instead of every 7 days.

In response to comments submitted by veterinary dispensers, the Board modified the language describing the electronic submission requirements to clarify that the phrase “electronically submit” is not intended to define a software or hardware platform through which a dispenser must submit information to the Board. The Board changed the language “the format identified in the American society for automation in pharmacy (ASAP) implementation guide for prescription monitoring programs” to “the data standards in the version and release of the American society for automation in pharmacy (ASAP) implementation guide for prescription monitoring programs identified by the board or other electronic format identified by the board.” The modification is intended to clarify that the Board does not limit electronic submission to a virtual interface between a dispenser and the Board through which databases can send and receive information. Based on the practices of operational prescription monitoring programs in other states, the Board would accept information entered through a secure website, sent in a secure e-mail, included on mailed CD-ROMs and included on mailed diskettes as “electronically submitted” information under the proposed rule. The Board also added the phrase “or other electronic format identified by the board” in response to comments suggesting that the Board adopt an electronic format suitable to the practice of veterinary medicine.

Further, the Board consolidated data fields to reduce the burden on veterinary dispensers, among the reasons already discussed. Specifically, the proposed rule requires a dispenser to submit either the National Drug Code (NDC) number or the name and strength of the monitored prescription drug. The consolidation gives veterinary dispensers more choice in how they choose to report information. The data field is also now relevant for veterinary drugs that may not have an NDC number. The Board also changed the rule to clarify how veterinary dispensers should report date of birth and address information.

Finally, under the proposed rule, disciplinary authority over each of the licensed health care practitioners, pharmacies and pharmacists affected by the rule is with the board that issued him, her or it the license authorizing the dispensing or prescribing of monitored prescription drugs. The Board received comments suggesting that the Board specifically give the disciplinary authority of veterinarians affected by the rule to the Veterinary Examining Board. In response to the public comments and the Clearinghouse Report, the Board modified the language describing the disciplinary authority of other licensing boards for violations of the proposed rule.

### **Nature of Reports Required and Their Estimated Costs**

In general, the proposed rule requires dispensers to submit two types of reports to the Board: reports containing dispensing information and zero reports. Dispensers must submit the reports containing dispensing information within 7 days, or 90 days for veterinary dispensers, of dispensing a monitored prescription drug to a patient. The reports contain specific information about the prescriber, dispenser, patient and monitored prescription drug.

The estimated cost of an individual report with dispensing information would range from *de minimis* to less than one hundred dollars. The range would not likely be static for dispensers and would depend on several variables. While there is no exhaustive list of variables, several variables have the most significant affect on the estimated cost of a report with dispensing information.

A significant variable that affects the cost of a report with dispensing information is whether the dispenser currently utilizes compatible EMR that can compile and submit information to the Board. For example, the cost of an individual report to a dispenser who already utilizes compatible EMR software and reports similar information to another state's prescription monitoring program would be less than a dispenser who decides to invest in retrofitting his or her EMR software to be compatible with the PDMP. Either way, the costs of an individual report will decrease over time for dispensers utilizing EMR.

The potential up-front costs of utilizing EMR to compile and submit information to the Board is not required. In fact, a dispenser may not use EMR at all and submit information to the Board through other electronic methods or by submitting the information on paper. In that case, a significant variable is whether the dispenser is required to report every 7 days or every 90 days. A dispenser submitting a report with dispensing information to the Board every 90 days would incur less frequent personnel costs to compile the reports to the Board than a dispenser who submits information to the Board every 7 days.

A related variable is the frequency a dispenser dispenses monitored prescription drugs. A dispenser who dispenses monitored prescription drugs numerous times per day would have more information to compile and submit than a dispenser who dispenses monitored prescription drugs infrequently. An individual report that contains information regarding numerous dispensing events that is compiled and submitted manually, either electronically or on paper, would likely cost more to compile and submit than a report that contains less information.

The estimated cost to complete a zero report is *de minimis*. The zero report contains little information, much less than the reports with dispensing information. In fact, a dispenser can complete a zero report in seconds by simply logging into their account and completing a brief form online. The zero reports require no data compilation and are intended to ensure that the PDMP has complete information from all non-exempt dispensers at all times.

Finally, under the proposed rule, a dispenser that does not dispense monitored prescription drugs may apply for a complete exemption from the reporting requirements. The proposed rule associates the expiration of the exemption to licensure renewal to eliminate the administrative burden that applying for an exemption may have created. Under the proposed rule, the exemption would last until licensure renewal or until the dispenser dispenses a monitored prescription drug. Therefore, a pharmacy, pharmacist or health care practitioner applying for the exemption can indicate so as part of the licensure renewal process. There would be no further reporting requirements or associated costs incurred by dispensers.

#### **Nature of Other Measures or Investments Required**

Besides the costs associated with the required compiling and submitting of information relating to the dispensing of monitored prescription drugs, there are no other investments required by the proposed rule. Large-volume dispensers, such as pharmacies and physicians in large practices, may invest in modifying their current EMR software to automatically compile the required information. However, the investment is not required by the proposed rule, because the proposed rule is flexible in the methods through which dispensers can submit information to the Board.

#### **Costs to the Agency of Administering the Proposed Rule**

Based on the operating costs incurred by similar prescription monitoring programs, the Department estimates that it will cost approximately \$210,000 annually to operate the PDMP created by the proposed rule. The annual costs are primarily comprised of a full-time program and planning analyst to monitor the program and work with the vendor and others to manage the PDMP and the contractual costs for a vendor to host and maintain the PDMP database, website and other related IT components of the PDMP.

#### **Impact on Health, Welfare, and Safety**

The PDMP created by the proposed rule will have a significant impact on the health, welfare and safety of the people of Wisconsin. It creates an effective tool that will enable the approximately 50,000 pharmacies; pharmacists; health care practitioners, including physicians, dentists and veterinarians; law enforcement agencies and public health officials to obtain invaluable information to assist in the effort to curb prescription drug abuse in Wisconsin.

Currently, "prescription drug abuse is America's fastest growing drug problem" (Controlled Substances Workgroup of the Wisconsin State Council on Alcohol and Other Drug Abuse (SCAODA), "Reducing Wisconsin's Prescription Drug Abuse: A Call to Action," 8, Jan. 2012, citing CDC, "Public Health Grand Round Presentation," 10, Feb. 2011). In fact, one person died every 19 minutes in the United States in 2007 because of an "unintentional drug overdose" (CDC, "Grand Rounds: Prescription Drug Overdoses — a U.S. Epidemic," Jan. 13, 2012). Unintentional drug overdoses have become the second leading cause of accidental death in the United States (Susan Okie, A "Flood of Opioids, a Rising Tide of Deaths," *New England Journal of Medicine*, Nov. 18, 2010).

The prescription drug problem in Wisconsin is similar to the national problem (see SCAODA, 5–9). Wisconsin's prescription drug abuse rate is slightly higher than the national average of approximately 5%, with 5.83% of Wisconsin residents age 12 and older reporting using pain relievers for non-medical purposes in 2005–06 (Wisconsin Department of Health Services (DHS), "Wisconsin Epidemiological Profile on Alcohol and Other Drug Use," 2008; SCAODA, 6). According to the Controlled Substances Workgroup of the Wisconsin State Council on Alcohol and Other Drug Abuse, the prescription drug abuse problem is exacerbated in Wisconsin because the State does not have a PDMP (SCAODA, 8). In its January 2012 report "Reducing Wisconsin's Prescription Drug Abuse: A Call to Action," SCAODA states that:

[a] well designed PDMP will provide an early warning system for emerging drug abuse trends, assist in enhancing patient care, and serve as a vehicle for communication with other states subsequently reducing doctor shopping across state lines. In addition, with appropriate confidentiality protections built into the Wisconsin PDMP for patient-identifiable health information, a PDMP will enhance the ability of law enforcement to conduct investigations of the illegal diversion of prescription medications. (id.)

Further, a Cost-Benefit Analysis conducted by the LaFollette School of Public Affairs states that "[p]rescription drug abuse has a significant impact on society. Drug abuse causes decreased productivity and absences from work, increased health care costs, and increased law enforcement costs" and that "[s]tates with PDMPs realize health care

benefits through the reduction in excess hospital admissions including both in- and out-patient, reduction in addiction treatment, and reduction of prescription drug costs associated with prescription drug abuse” (Christine Durkin, et al., “Cost-Benefit Analysis of a Prescription Drug Monitoring Program in Wisconsin,” LaFollette School of Public Affairs (LaFollette), 6, Dec. 20, 2010).

Finally, while the PDMP created by the proposed rule will improve the health, welfare and safety of Wisconsin citizens, the effectiveness of the PDMP is lessened by the modifications made to allow veterinarian dispensers to

submit information every 90-days as opposed to every 7-days. The usefulness of the PDMP to identify cases of “doctor shopping,” forged prescriptions and other activities at the time of providing a patient services is decreased because of the 90-day lapse in some of the information in the PDMP. In fact, the Board received comments suggesting the 7-day reporting requirement is too long and should be decreased as much as possible to increase the usefulness of the PDMP.

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

No comments were reported.

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## Sections Affected by Rule Revisions and Corrections

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

### Revisions

#### Controlled Substances Board

##### Ch. CSB 3

Entire Chapter

#### Pharmacy Examining Board

##### Ch. Phar 18

Entire Chapter

### Editorial Corrections

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

#### Pharmacy Examining Board

##### Ch. Phar 18

Phar 18.02 (5) (b)

Phar 18.03 (2)

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## Executive Orders

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

**Executive Order 84.** 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 2, 2012)**

**Executive Order 85.** 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 Private First Class Arthur W. Hopfensperger of the United States Army Who Lost His Life While Serving His Country During the Korean War. **(October 4, 2012)**

**Executive Order 86.** 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 Second Lieutenant James A. Des Jardins of the United States Army Who Lost His Life While Serving His Country During World War II. **(October 8, 2012)**

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