

# Wisconsin Administrative Register

No. 683



Publication Date: November 30, 2012

Effective Date: December 1, 2012



Legislative Reference Bureau  
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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  
**Hearing Date:** November 30, 2012

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## **Children and Families**

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

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

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

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

#### **Finding of Emergency**

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

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

**Filed with LRB:** November 13, 2012  
**Publication Date:** November 15, 2012  
**Effective Dates:** November 15, 2012 through April 13, 2013

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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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## 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.

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

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## Natural Resources (4)

### *Fish, Game, etc., Chs. NR 1—*

**1. 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

**2. 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

**3. 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 NR 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

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

#### SS 088-12

This statement of scope was approved by the governor on November 8, 2012.

The Department of Agriculture, Trade and Consumer Protection (DATCP) gives notice, pursuant to s. 227.135, Stats., that it proposes to adopt an emergency administrative rule as follows:

#### Rule No.

Chapter ATCP 21, Wis. Adm. Code.

#### Relating to

Exotic plant pest emergency rule.

#### Rule Type

Emergency.

#### Statutory Authority

Sections 93.07 (1), 93.07 (12), 94.01 and 227.24, Stats.

#### Preliminary Objectives

An emergency rule authorized by this statement of scope will create county or multi-county or township or multi-township quarantines for an exotic plant pest in counties and townships where the pest is detected. Any emergency rule authorized by this scope statement will be submitted to the governor for approval pursuant to s. 227.24 (1) (e), 1g., Stats., each time the department finds that a quarantine area for an exotic plant pest is required. The authorization to draft an emergency rule creating a quarantine area pursuant to this statement of scope will expire on the first day following the twelfth month of publication of this statement of scope pursuant to s. 227.135 (3), Stats., and a new statement of scope must be approved and published pursuant to ss. 227.135 (2) and (3), Stats., to continue the authorization of emergency rulemaking related to exotic pest quarantines.

A rule authorized by this statement of scope will do the following:

- Create county or multi-county or township or multi-township quarantines in which an exotic pest is detected. The quarantine will prohibit the movement of all articles potentially harboring the damaging pest. These regulated articles would likely include: firewood, nursery stock, green lumber, and other woody material living, dead, cut or fallen, including logs, stumps, roots, branches and composted and uncomposted chips in the cases of Emerald Ash Borer (EAB), Asian Longhorned Beetle (ALB), Hemlock Woolly Adlegid (HWA) or Thousand Cankers Disease (TCD), as examples.
- Provide an exemption for items that have been inspected and certified by a pest control official and are accompanied by a written certificate issued by the pest control official (some products, such as nursery stock, cannot be given an exemption).
- Provide an exemption for businesses that enter into a state or federal compliance agreement. The compliance

agreement describes in detail what a company can and cannot do with regulated articles.

#### Preliminary Policy Analysis

DATCP has authority under s. 93.07 (12), Stats. to conduct surveys and inspections for the detection and control of pests injurious to plants, and to make, modify, and enforce reasonable rules needed to prevent the dissemination of pests. DATCP also has plant inspection and pest control authority under s. 94.01, Stats. DATCP may by rule impose restrictions on the importation or movement of serious plant pests, or items that may spread serious plant pests.

In recent years the rate of arrival of new exotic plant pests to the United States has increased significantly. Some of the exotic pests which have already invaded our country include Emerald Ash Borer (EAB), Asian Longhorned Beetle (ALB), Hemlock Woolly Adlegid (HWA), Thousand Cankers Disease (TCD) and Gypsy Moth (GM). The annual cost of these invasive forest insects to local governments is estimated at more than \$2 billion; residential property value loss due to exotic forest pests averages \$1.5 billion per year nationally. To date, EAB and GM have infested Wisconsin. EAB is an exotic pest that endangers Wisconsin's 770 million ash trees and ash tree resources. This insect has the potential to destroy entire stands of ash, including up to 20% of Wisconsin's urban street trees and residential landscaping trees, and may result in substantial losses to forest ecosystems. The insect can cause great harm to state lands and to the state's tourism and timber industries. At this time, EAB has been identified in eighteen states including Wisconsin, and two Canadian provinces. Fifteen Wisconsin counties are currently quarantined to restrict the movement of ash wood in order to prevent the spread of EAB.

This emergency rule is necessary to create a timely quarantine of the counties or townships, and possibly bordering counties or townships, with new exotic plant pest detections until a federal quarantine is enacted. The federal quarantine will take effect up to six months after a formal submission by the state plant regulatory official.

#### Current and Proposed Federal Legislation and Comparison to Proposed Rule

In order to limit the spread of exotic plant pests, the Animal and Plant Health Inspection Service of the United States Department of Agriculture (APHIS) has imposed quarantines for EAB in 18 states, ALB in 4 states, and GM in 18 states. Including Wisconsin, six states plus Canada have imposed an external quarantine for HWA, and fourteen states have done the same for TCD. DATCP rules currently prohibit movement of regulated plant articles from any federally quarantined area except under authorized conditions. This proposed rule is consistent with current state and federal rules.

#### Entities Affected

According to the American Forest and Paper Association (June 2011), Wisconsin is first in the nation in forestry jobs, employing over 56,000 workers and annually shipping forest industry products valued over \$16.2 billion. Each year the agricultural industry also produces \$1.38 billion of corn grain, and \$511 million in soybeans. Additionally, Wisconsin leads

the nation in snap bean production (\$61 million annually) and ranks third in potato production (\$293 million annually). Wisconsin apple orchards produce an annual yield of \$28 million. This emergency rule could have an impact on persons or companies that deal in any agricultural crop or forest product from the quarantined counties or townships to locations outside of the quarantined counties.

The Wisconsin Department of Tourism reports that travelers to Wisconsin spent a total of \$9.9 billion in 2011. Tourism directly sustains an estimated 128,000 jobs, or 5.5% of total employment in the state. Should Wisconsin's forests, parks, and recreational areas be significantly damaged by an exotic plant pest, our tourism industry could also suffer substantially.

Nurseries, firewood producers/dealers, saw mills and farmers that sell or distribute articles potentially harboring the damaging exotic plant pest would all be impacted. In order to sell regulated products outside of a quarantined county, veneer mills and wood processors will have to enter into a compliance agreement with DATCP or APHIS. The agreement authorizes movement of products outside the quarantine only when there is assurance that the movement will not spread the plant pest to other locations. Licensed nursery growers will not be able to sell regulated nursery stock outside of the quarantined counties. Firewood dealers would need to be certified to sell firewood outside of the quarantined counties. Farmers would be required to treat with an approved treatment option, should one exist, before movement out of the quarantine. Grain elevators could enter into compliance agreements with DATCP or APHIS.

### Policy Alternatives

If DATCP does nothing, potentially infested wood or agricultural products will be allowed to move freely and the department will not be able to regulate its movement. The department would have no regulatory authority in the counties with new exotic plant pest finds, raising the potential of a more rapid spread of an exotic invasive plant pest.

### Statutory Alternatives

At this time there are no existing or proposed statutory alternatives.

### Staff Time Required

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

### DATCP Board Authorization

DATCP may not begin drafting a rule until the Governor and the Board of Agriculture, Trade and Consumer Protection approves this scope statement. The Board may not approve this scope statement any sooner than 10 days after this scope statement is published in the Wisconsin Administrative Register. The scope statement may not be published in the administrative register until DATCP has received written approval of the scope statement from the Governor. Before the department may publish an emergency rule, it must receive written approval of the proposed emergency rule from the Governor.

## Agriculture, Trade and Consumer Protection

### SS 089-12

This statement of scope was approved by the governor on November 8, 2012.

### Rule No.

Chapters ATCP 90, 91, 92, 113, 136, Wis. Adm. Code (Existing).

### Relating to

Reclaiming or recycling refrigerant from mobile air conditioners, and various minor and technical rule changes.

### Rule Type

Permanent. (Revisions)

### Description of the Objective of the Rule

Chapter ATCP 136 prohibits the sale or purchase of refrigerants in containers holding less than 15 pounds of refrigerant. This prohibition is sometimes informally referred to as "the small can ban." Since the passage of 2011 Wisconsin Act 187, however, this rule is now in direct conflict with s. 100.45 (5e) (b), Stats. DATCP intends to amend Ch. ATCP 136 to resolve this conflict.

Chapter ATCP 136 also requires persons who recover or recycle refrigerant or any substance used as a substitute for a refrigerant to use equipment that meets industry standards referenced in the rule. On March 29, 2011, the United States Environmental Protection Agency ("EPA") updated the Federal Register (77 FR 47768) to include HFO-1234yf as an acceptable substitute for ozone-depleting refrigerants. DATCP intends to amend the rule to reference the industry standards for equipment used to recover or recycle HFO-1234yf.

DATCP regulates sales of a number of products through its Weights & Measures program in the following existing Administrative Rule Chapters: ATCP 90 – Fair Packaging and Labeling; ATCP 91 – Selling Commodities by Weight, Measure or Count; and ATCP 92 – Weights and Measures. In addition, existing Ch. ATCP 113 prohibits sellers of gasoline from misrepresenting the octane rating or other qualities of the gasoline.

DATCP proposes to make minor, technical changes to these rules to keep them current and consistent with statutory language and standards from organizations such as the National Institute of Standards and Technology (NIST) and the Society of Automotive Engineers (SAE).

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

History and background. Chapter ATCP 136 interprets and implements s. 100.45, Stats. Together, the statute and rule regulate mobile air conditioners. The legislature originally enacted the statute in 1989 and the department promulgated Ch. ATCP 136 in 1990.

Section 100.45, Stats., prohibits the sale of mobile air conditioners that contain ozone-depleting refrigerants (defined by reference to EPA rules), prohibits the sale of ozone-depleting refrigerants in containers of less than 15 pounds, and regulates servicing of mobile air conditioners and trailer refrigeration equipment. Section 100.45, Stats.,

requires DATCP to promulgate rules administering the statute, identify approved recovery and recycling equipment, and issue registration certificates to mobile air conditioner and trailer refrigeration technicians.

Chapter ATCP 136 specifies registration requirements for businesses that install or service mobile air conditioners or trailer refrigeration equipment, registration requirements for technicians, minimum training requirements for registered technicians, regulations relating to equipment and practices for the recovery and recycling of used refrigerants.

The regulations related to recycling of used refrigerants prohibit a person from recovering or recycling a refrigerant unless that person uses equipment that meets certified standards identified in the rule. The EPA, as part of its Significant New Alternatives Policy Program under section 612 of the Clean Air Act Amendments, evaluates alternatives to ozone-depleting substances and regularly updates lists of acceptable and non-acceptable substances in the Federal Register. On March 29, 2011, the EPA added HFO-1234yf to its list of acceptable alternatives to ozone-depleting refrigerants under 77 FR 47768. Subsequently, the Society of Automotive Engineers has published standards for equipment that may be used for removing and recycling HFO-1234yf.

Chapter ATCP 90 regulates fair packaging and labeling for a variety of products. It conforms to the federal standards adopted under the Fair Packaging and Labeling Act and the Nutrition Labeling and Education Act.

Chapter ATCP 91 regulates the selling of commodities by weight, measure or count. Generally, it requires that liquids be sold by liquid measure, and non-liquids be sold by weight.

Chapter ATCP 92 regulates weighing and measuring of products. It establishes a system for testing scales, meters, and other devices used in the delivery a wide variety of commodities.

Chapter ATCP 113 prohibits sellers of gasoline from representing that gasoline is of higher octane value than its actual octane rating, as measured by ASTM standards.

Proposed policies. DATCP proposes to replace the provision in Ch. ATCP 136 that bans all refrigerants in containers of 15 pounds or less with a less restrictive ban that would apply only to ozone-depleting refrigerants. This change will bring the rule into alignment with recent changes to the existing state statute.

DATCP proposes to update portions of Ch. ATCP 136 that refer to products approved by EPA or standards specified by the Society of Automotive Engineers to allow for the new HFO-1234yf refrigerant. DATCP may also make other minor technical revisions to Ch. ATCP 136, but these other revisions would not represent any change in existing policy.

DATCP proposes to make technical changes to Chs. ATCP 90, 91, 92, and 113. These changes are technical in nature (mostly to keep these rules in conformance with NIST standards) and do not represent any change in existing policies.

Policy Alternatives. Do nothing. If the department does not alter the existing rule, the small can ban will be unenforceable because it conflicts with a Wisconsin statute. Equipment standards for repairing cars equipped with currently used auto refrigerants would not be current. Several references to national standards would not accurately identify the most recent versions of those standards.

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

Sections 93.07 (1), 97.09 (1) and (4), 97.42 (4) (j), 98.03 (2), 98.07 (3) and (4), 98.16 (4), 98.18 (2), 98.224 (4), 98.245 (9), 100.20 (2), and 100.45 (5) (a) and (e), Stats.

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

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

### **Section 97.09 Rules**

(1) Definitions and standards of identity, composition, quality and fill of container for foods, and amendments thereto, now or hereafter adopted under the federal act or this chapter are definitions and standards of identity, composition, quality and fill of container under s. 97.03. However, when such action will promote honesty and fair dealing in the interest of consumers, the department may amend, stay or reject such federal regulations or make rules establishing definitions and standards of identity, composition, quality and fill of container for foods where no federal regulations exist, or which differ from federal regulations.

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

### **Section 97.42 Compulsory inspection of animals, poultry and carcasses.**

(4) RULE. The department may issue reasonable rules requiring or prescribing any of the following:

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

### **Section 98.03 State standards; specifications and tolerances.**

(2) The department may issue rules governing the construction, installation and use of commercial weights and measures and prescribing tolerances therefor. The specifications, tolerances and regulations for commercial weighing and measuring devices issued by the national institute of standards and technology shall apply in this state except as modified by such rules.

### **Section 98.07 Declaration of quantity.**

(3) With respect to commodities packaged prior to sale, the department shall issue rules permitting reasonable variations from declared quantity which unavoidably occur in good packaging and distribution practices.

(4) In order to prevent consumer deception, the department shall prescribe, by rule, standards for determining and declaring weight, measure, or count, including the conspicuousness of quantity declarations.

### **Section 98.16 Vehicle scale operators; scale installation and testing.**

(4) RULES. The department shall promulgate rules to regulate the construction, operation, testing, and

maintenance of vehicle scales, including a rule specifying the amount of the fee under sub. (2) (cm) 1. The department may promulgate rules to adjust fees and surcharges under subs. (2) (cm) 2. and (2m) (a) and (b) and to impose a testing surcharge upon a vehicle scale operator if the operator fails to file a vehicle scale test report as required by a rule promulgated by the department under this subsection.

**Section 98.18 Installing and servicing weights and measures.**

(2) Rules. The department may promulgate rules to establish license fees under sub. (1h) and to regulate the installation, servicing, testing and certification of weights and measures. The rules may include record-keeping and reporting requirements.

**Section 98.224 Vehicle tank meters.**

(4) RULES (a) The department shall promulgate rules that establish all of the following:

1. License fee and surcharge amounts under sub. (2) (c).
2. Standards for the testing, reporting, and record keeping required under sub. (3).

(b) The department may promulgate rules that establish standards for the construction, operation, and maintenance of vehicle tank meters.

**Section 98.245 Liquefied petroleum gas sales.**

(9) RULES (a) The department shall promulgate rules that establish all of the following:

1. License fee and surcharge amounts under sub. (7m) (c).
2. Standards for the testing, reporting, and record keeping required under sub. (8).

(b) The department may promulgate rules that establish standards for the construction, operation, and maintenance of liquefied petroleum gas meters.

**Section 100.20 Methods of competition and trade practices.**

(2) (a). The department, after public hearing, may issue general orders forbidding methods of competition in business or trade practices in business which are determined by the department to be unfair. The department, after public hearing, may issue general orders prescribing methods of competition in business or trade practices in business which are determined by the department to be fair.

**Section 100.45 Mobile air conditioners.**

(5) DEPARTMENT DUTIES. The department shall do all of the following:

(a) Promulgate rules for the administration of this section including establishing all of the following:

1. A standard of purity for recycled refrigerant from mobile air conditioners that is based on recognized national industry standards.
2. Qualifications, which may include training or certification requirements, for individuals who use approved refrigerant recycling equipment or approved refrigerant recovery equipment to ensure that those individuals use procedures for containment of ozone-depleting refrigerant.
3. Fees to cover the costs of administering this section.

**(5e) DEPARTMENT POWERS**

(a) Except as provided in par. (b), the department may promulgate rules providing that any portion of sub. (3) or (4) applies with respect to a substance used as a substitute for an ozone-depleting refrigerant.

(b) The department may not promulgate rules prohibiting the sale or offering for sale of any substance used as a substitute for an ozone-depleting refrigerant in a container holding less than 15 pounds of the substance or regulating an individual's noncommercial use of such a substance that is sold in such a container.

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

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

**Description of All Entities that May be Impacted by the Rule**

Existing Administrative Code Chs. ATCP 90, 91, 92, 113, and 136 directly impact wholesale and retail businesses that sell packaged products, commodities by weight, measure or count, use devices such as flow meters and scales, sell gasoline, and service mobile air conditioners. These existing rules also indirectly impact the customers of these businesses. However, the changes envisioned under this proposed rulemaking are mostly technical in nature and, therefore, will have minimal impact on any of these businesses or consumers.

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

EPA maintains a list of acceptable substitute refrigerants that are non-ozone-depleting. FDA enforces federal laws and rules regarding packaging and labeling of a number of products regulated by DATCP administrative rules.

**Anticipated Economic Impact**

DATCP expects the proposed rule to have minimal to no economic impact statewide and locally. The changes envisioned are mostly technical in nature and would have minimal practical impact.

**Contact Person**

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**Agriculture, Trade and Consumer Protection**

SS 090-12

This statement of scope was approved by the governor on November 8, 2012.

**Rule No.**

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

**Relating to**

Dairy industry promotion grants and loans.

**Rule Type**

Emergency.

**Description of the Objective of the Rule**

The Department of Agriculture, Trade and Consumer Protection (DATCP) proposes an emergency rule to establish criteria DATCP will use to make determinations for grants, loans or other forms of financial assistance to dairy producers to promote and develop the dairy industry for 2013 fiscal year funding. The emergency rule is necessitated by the addition of authority and general purpose revenue funding appropriated to the department as part of 2011 Wis. Act 32, the Biennial Budget.

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

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

(from 2011 Act 32)

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

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

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

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

**11. TRANSFER DAIRY 2020 AND ADMINISTRATION OF AGRICULTURE RELATED TAX CREDITS [LFB Paper 238]**

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

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

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

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

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

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

DATCP adopted an emergency rule on March 30, 2012 to enable it to expend the 2012 fiscal year funds designated by the Legislature for dairy producer grants and loans and at the same time started the process of adopting a permanent rule. The permanent rule received final approval from the DATCP Board at the Board's August, 2012, meeting and will be submitted to the Legislature for its review at the start of the next Legislature in January, 2013.

Nature of the Emergency

An emergency rule is necessary to ensure that funds are used to assist dairy producers during the 2013 fiscal year as permanent rules cannot be adopted in time to provide the basis for grant determinations throughout the 2013 fiscal year. The emergency rule is necessary for the welfare of those dairy producers who the Legislature has determined require assistance to maintain and expand their operations and for the welfare of the entire dairy industry.

### Policy Alternatives

Do nothing. If DATCP fails to adopt rules that contain the basis for grant and loan determinations it will not be able to continue to expend the 2012 fiscal year funds and provide the assistance to dairy producers that the Legislature directed in 2011 Act 32, the biennial budget.

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

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

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

As the permanent version of this rule has been developed the emergency rule will not require more than a few hours of state employee time to complete the process.

### **Description of All Entities that May Be Impacted by the Rule**

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

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

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

### **Anticipated Economic Impact**

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

### **Contact Person**

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## **Safety and Professional Services**

### **Professional Services, Chs. SPS 1-299**

SS 087-12

The statement of scope was approved by the governor on November 8, 2012.

### **Rule No.**

Section SPS 132.05 (1).

### **Relating to**

Home inspector renewal date.

### **Rule Type**

Permanent. (Revision)

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

N/A.

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

The objective of this rule is to amend the renewal date in Wis. Admin. Code s. SPS 132.05 (1).

### **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 sole purpose of this proposed rule is to alleviate an inconsistency regarding the renewal date for home inspectors. Currently, Wis. Admin. Code s. SPS 132.05 (1) states the renewal date for home inspectors is January 1, of each odd-numbered year. Wis. Stats. s. 440.08 (2) (a) (38g) states that the renewal date is December 15 of each even-numbered year. The statute is controlling. Therefore, Wis. Admin Code s. SPS 132.05 (1) should be changed to reflect the correct date. There are no new policies proposed by the rule.

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

The department is empowered to promulgate rules interpreting the provision of any statute it enforces or administers pursuant to ss. 227.11 (2) (a) and 440.974 (1), Stats. The department administers s. 440.08 (2) (1), Stats., which establishes the fees and renewal dates for each profession it regulates. As a result, the department is authorized to promulgate the proposed rule.

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

250.

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

Individuals that will be affected by the proposed rule include licensed home inspectors and applicants for licensure as home inspectors. Persons and entities employing licensed home inspectors may be impacted as well.

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

None.

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

It is anticipated that the implementation of this rule will have no economic impact on small businesses.

### **Contact Person**

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## Transportation

### SS 091-12

The statement of scope was approved by the governor on November 13, 2012.

#### Rule No.

Chapters Trans 254 and 255.

#### Relating to

Single trip and multiple trip permits for oversize or overweight vehicles or loads.

#### Rule Type

Permanent. (Revisions)

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

Not applicable.

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

The purpose of this rulemaking is to propose modifications to the regulations related to the transportation of oversize loads on Wisconsin highways. It is almost impossible to briefly summarize all the various rules and exceptions to rules governing the transportation of oversize loads. In general, trucks and their loads should be 8' 6" or narrower, 13' 6" or shorter, and less than 75' in length. Length requirements, in particular, are highly variable and range from 45' to 75' depending on the configuration of the truck hauling the load.

If practical, loads that exceed legal dimensions should be divided into manageable loads that meet the size restrictions. If the load consists of commodities that are indivisible, the load must be hauled in one trip. Special permission and precautions must be taken to insure the highway facility and other property is not damaged by the transport. A permitting system coordinates the granting of special permission to transport oversize vehicles and loads.

##### A. Current Restrictions

Under current law, the Wisconsin Department of Transportation (WisDOT) and local authorities regulate the time of day oversize vehicles can operate. Oversize loads can generally travel on weekdays during daylight hours on state highways. Under s. Trans 254.11, travel times are restricted to keep these oversize loads from slowing traffic and reducing safety during heavy traffic periods.

Travel times were established many years ago and currently restrict the travel time for oversize loads as follows:

- To reduce traffic slowdowns and accidents, and protect public safety during peak tourist travel times, an oversize vehicle/load that is *equal to or less than* 12 feet in width, 13 1/2 feet in height, and 100 feet in length, may NOT be operated:
  - o Between 4:00 p.m. and 11:00 p.m. on Sunday;
  - o Between 4:00 p.m. and 11:00 p.m. on Fridays between the 4<sup>th</sup> Friday in May and Labor Day.
  - o Between 4:00 p.m. and 11:00 p.m. on any holiday, or, when Independence Day falls on Sunday, on the following Monday;
  - o Between 4:00p.m. and 11:00 p.m. on the day before any holiday, except that this restriction does not apply to Independence Day when it falls on a Sunday.
- Because oversize loads are more than one-lane wide, higher than many overhead obstructions such as bridges

and wires, too long to easily navigate much of the highway system, and create a greater risk to travelers, an oversize vehicle/load that *exceeds* 12 feet in width, 13 1/2 feet in height, or 100 feet in length, cannot operate at any of the times listed above, nor may it operate:

- o During the hours of darkness;
- o During the period beginning at 12:00 noon on the preceding day, and continuing until sunrise on the day following every Sunday and holiday.
- To protect commuter traffic on the Milwaukee County Freeway System, oversize vehicles *equal to or less than* 12 feet in width, 13 1/2 feet in height, and 100 feet in length, may NOT be operated:
  - o Between 6:00 a.m. and 9:00 a.m., and between 3:00 p.m. and 6:00 p.m. on Monday through Thursday;
  - o Between 6:00 a.m. and 9:00 a.m., and between 3:00 p.m. and 11:00 p.m. on Fridays and Sundays;
  - o These Milwaukee restrictions do not apply to U.S. highway 45 between West Florist Avenue and West Hampton Avenue, or on interstate highway 94 between the Waukesha county line and 108<sup>th</sup> Street.
- Oversize vehicles/loads that *exceed* 11 feet in width, 13 1/2 feet in height, or 100 feet in length, cannot operate on the Milwaukee County Freeway System at any time. Section Trans 254.12 (2). Such loads are currently transported over non-freeway system routes through the county. Travel is permitted on U.S. highway 45 between West Florist Avenue and West Hampton Avenue and on interstate highway 94 between the Waukesha county line and 108<sup>th</sup> Street.

Notwithstanding these limitations on when oversize vehicles/loads may travel, a permitting authority, such as WisDOT, may override these time restrictions. Under extraordinary circumstances, the issuing authority may impose additional conditions to promote the safe operation of the vehicle and load when it believes public health and welfare are better served.

The general purpose of these time restrictions is to protect public safety during weekday commuter travel periods and weekend tourist travel periods. These times were chosen based on the empirical observation of traffic movements and limited data available on traffic volumes at that time. The complete prohibition of the transportation of loads that exceed 11 feet in width, 13 1/2 feet in height, or 100 feet in length from the Milwaukee County Freeway System reflected a number of significant shortcomings in the freeway system, such as a large number of low bridges and tight radius ramps.

Chapter Trans 254 is the administrative rule applicable to permits issued under s. 348.26 (2), Stats.,— the Single Trip Permit for transport of non-divisible commodities other than manufactured housing. The Single Trip Permit is the most commonly issued oversize and overweight vehicle permit. WisDOT issues approximately 42,000 such permits each year. Highway maintenance authorities in cities, villages, townships and counties may also issue permits authorized by s. 348.26 (2), Stats., however, the changes considered in this rulemaking will not affect permit issuance by those jurisdictions.

Chapter Trans 255 is the administrative rule applicable to permits issued under s. 348.27 (2), Stats.,— “Annual and Consecutive Month Permit.” This refers to multiple use permits issued for the transport of non-divisible equipment and material. WisDOT issues approximately 8,000 such permits each year. Only WisDOT may issue permits authorized by s. 348.27 (2), Stats. Local units of government

do not issue permits similar to those issued by WisDOT under Ch. Trans 255; WisDot permits grant authority to operate on both state and local highways.

### **B. Changes Proposed**

Modern data collection tools used by WisDOT now make it possible for the department to propose more specific limitations on travel times than those specified in current law to better facilitate oversize vehicle/load movements. The department believes better traffic modeling that has resulted from new traffic control systems permits WisDOT to target closures to oversize transportation more strategically. Improvements and changes to the Milwaukee County Freeway System have eliminated some of the structural shortcomings of that system. However, given the impact of hauling such loads over surface streets, WisDOT believes consideration should be given to modifying the complete ban on transportation of larger oversize loads on the Milwaukee County Freeway System. Indeed, some of these largest loads, such as bridge components, must be transported over that system during hours of darkness to facilitate repair of that system.

WisDOT believes that some of the special operation conditions imposed by these regulations are no longer necessary to ensure that oversize commercial vehicles can operate safely and without causing excessive travel delays for standard trucks and passenger vehicles. The specialized motor carrier industry has requested changes to these rules to reduce operating costs and meet customer needs.

Finally, as with any regulatory scheme, Chs. Trans 254 and 255 contain some provisions that are simply outdated. This rulemaking will consider modifying or revising some outdated provisions of these chapters. In addition, the proposed changes to Chs. Trans 254 and 255 will reflect changes in the processes, locations and technology by which oversize/overweight permits may be obtained and how they are processed.

For example, WisDOT would propose:

- To require permit applicants who have e-mail addresses to provide that e-mail address to the department to facilitate communication with the permittee.
- To eliminate provisions in the rule related to telephonic call-in procedures that are no longer used. (An internet application process has replaced it.)
- To amend or eliminate references to freeway or expressway system restrictions which are no longer necessary because improvements in the system have eliminated the hazards targeted by the restrictions.

The proposed changes will affect only those regulatory conditions associated with vehicle dimension – regulations governing the height and width of loads. Proposed changes will not affect current operating limitations associated with vehicle weight.

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

#### **CURRENT LAW – Chs. Trans 254 and 255:**

1. Set operating conditions for permitted vehicles based on vehicle dimension (ss. Trans 254.11 and 255.11):
  - a. That limit operation during specified times of day based on route, e.g., no travel between 3 p.m. and 11 p.m. on Friday, year-round, in Milwaukee; and

- b. That limit operation based on a specified day of the week, e.g., no travel on Sunday between 4 p.m. and 11 p.m. year-round and state-wide; and
  - c. That limits operation based on proximity to legal holidays and during the summer.
2. Establish maximum dimensions allowed for vehicles operating on the Milwaukee County Freeway System (ss. Trans 254.12 (2) and 255.12 (2)):
    - a. 11 feet in width;
    - b. 13% feet in height, and
    - c. 100 feet in length
  3. Prohibit operation of some vehicles on the Milwaukee County Freeway System, except in extraordinary circumstances (ss. Trans 254.12 (3) and 255.12 (3)):
    - a. Vehicles exceeding the dimensions specified –+– in No. 2 above; and
    - b. Certain other vehicle types, e.g., scrapers.
  4. Require “hazard markers” of a specific size and color, placed in a specific location (ss. Trans 254.10 (5) and 255.10 (5)).
  5. Identify the technology and locations at which to obtain an oversize/overweight permit (ss. Trans 254.03 (2) and 255.03 (2)).

#### **PROPOSED CHANGES – A through D**

##### **A) Chapters Trans 254.11 and 255.11, Times of Operation**

1. Consider eliminating restrictions on Sunday hours of operation in all counties except Milwaukee, Dane, Brown, Rock, Eau Claire, Waukesha and Columbia Counties (counties where peak tourist travel volumes suggest ending restrictions may create traffic and safety problems).
2. Consider eliminating restrictions on Friday evening hours of operation in all counties, except Milwaukee, Dane, Brown, Rock, Eau Claire, Waukesha and Columbia Counties (counties where peak tourist travel volumes suggest ending restrictions may create traffic and safety problems).
3. Consider modifying time of day restrictions to allow more hours of operation in those counties that would continue to have weekend tourist travel time limits on hours of operation.
4. Current law prohibits oversize vehicle operation on Fridays and Sundays during the tourist season between 3 p.m. and 11 p.m. in Milwaukee County and between 4 p.m. and 11 p.m. in all other counties. WisDOT will consider reducing the prohibited travel period to the hours between 3:30 p.m. and 7:30 p.m. on Fridays and Sundays in selected counties that traffic data suggest need weekend oversize operation limits.
5. WisDOT will consider extending the tourist season during which the Friday and Sunday limit on hours of operation are in effect. The current tourist season restriction period runs from the 4<sup>th</sup> Friday in May through Labor Day. Travel statistics show, however, that the tourist season now stretches well into the fall. WisDOT proposes extending the tourist season restriction period through November 1<sup>st</sup>. Highway traffic statistics reflect a demonstrable need for Friday night travel restrictions during the early fall.

##### **ALTERNATIVES CONSIDERED**

There is a myriad combination of alternatives that could be considered. This list of alternatives reflects only those

variations that WisDOT believes are safe because of changes in the transportation environment, and that would be responsive to requests from the motor carrier industry.

1. Not changing the hours when oversize operation is prohibited in Milwaukee County.
2. Retaining Sunday hours of operation restrictions in a greater number of counties.
3. Retaining Friday hours of operation restrictions in a greater number of counties.
4. Basing Friday and Sunday hours of operation restrictions on different variables:
  - a. Highway characteristics, e.g., four-lane divided highway—no restriction of /bi-directional traffic – maintain current restrictions; or
  - b. Population of metropolitan areas; or
  - c. Current traffic volume as measured by WisDOT service levels.
5. Not extending Friday tourist season time restrictions into the fall.

**WHY THESE ALTERNATIVES ARE NOT RECOMMENDED**

1. WisDOT has greatly increased maintenance and construction work that must be performed at night. Although not exclusive, restrictions on hours of operation in Milwaukee County are often in direct conflict with the contractual requirements of public projects. Since the enactment of the current rule provisions, WisDOT has improved highway design and added highway lane miles. Improvements to Wisconsin's highways make the proposed changes feasible and justifiable without compromising safe and convenient highway use.

2. Analysis of traffic volume data supports reducing limitations on hours of operation in urban counties, but does not support elimination of commuter-hour restrictions.

3. Traffic volume data strongly supports reducing limits on Sunday operation.

4. Traffic volume data supports extending Friday travel limitations into the fall in certain areas of Wisconsin.

5. Traffic volume data supports reducing the number of hours during which Friday night tourist season restrictions are imposed.

6. WisDOT hopes to achieve a balance between very narrowly targeted restriction and restrictions that are simple enough to be easily understood by the regulated industry and are enforceable at the roadside.

7. The department believes that restrictions based on county of operation are a recognizable and familiar variable for the industry.

**B) Sections Trans 254.12 (2) and 255.12 (2), Route Limitations**

WisDOT proposes to:

1. Increase the maximum vehicle width, height and length allowed for vehicles operating on the Milwaukee County Freeway System:
  - a. From a maximum length of 100 feet to a length of 125 feet; and
  - b. From a maximum height of 13% feet to a height of 14 feet; and
  - c. From a maximum width of 11 feet to a width of 14 feet.

**ALTERNATIVES CONSIDERED**

These alternatives reflect only those variations that WisDOT believes are safe because of changes in the transportation environment and that would be responsive to requests from the motor carrier industry.

1. Make no change to maximum length or height allowed on the Milwaukee County Freeway System;
2. Increase width to 12 feet on the Milwaukee County Freeway System;
3. Increase width to 12 feet from 9:00 a.m. to 3:00 p.m., and to 14 feet from 7:30 p.m. to 6:00 a.m., on the Milwaukee County Freeway System.

**WHY THESE ALTERNATIVES ARE NOT RECOMMENDED**

The vehicle dimensions currently allowed on the Milwaukee County Freeway System, specified in Chapters Trans 254 and 255, were a cautious compromise between WisDOT, Milwaukee County, the City of Milwaukee, and industry, 25 years ago. Prior to that time, no vehicles with dimensions outside those referenced in Chapters Trans 254 and 255 were allowed to operate on the Milwaukee County Freeway System. More than 20 years of experience has demonstrated that moving freight with oversize dimensions on roadways other than the Milwaukee County Freeway System, many of which are narrower and less suitable, is less acceptable than changing the dimensions of loads permitted upon the Milwaukee County Freeway System. Moreover, WisDOT engineers believe the expressway system will safely accommodate the oversized loads.

WisDOT has received numerous requests for modification of these rules from businesses that transport oversize goods. Operating only on non-freeway roadways in Milwaukee County adds miles and time to most trips in and through Milwaukee County. Added miles and time increase the cost of each trip, contribute more to pollution in the urban non-attainment area than freeway routed travel, and make the county less attractive to manufacturers of large equipment.

**C) Sections Trans 254.10 (5) (a) and (b), and 255.10 (5) (a) and (b), Hazard Markers**

WisDOT proposes to eliminate the provisions requiring black and white or black and yellow diagonally striped reflectorized hazard markers, not less than 12 inches wide by 36 inches high, be fastened to, or in front of and behind, each oversize load. Federal regulations no longer require such markers, and they are no longer commonly available. WisDOT currently grants permit holders an exemption from the hazard marker requirement on virtually every permit issued.

**ALTERNATIVES CONSIDERED**

Make no change to this section of administrative law or propose other marking requirements.

**WHY THIS ALTERNATIVE IS NOT RECOMMENDED**

1. The "hazard marker" requirement was based on a federal motor carrier regulation that has been rescinded.
2. Hazard markers, as described in administrative law, are very difficult to purchase. Trucking companies are forced to fabricate such markers or modify bridge abutment markers.
3. Practices in other states have shown that other load marking requirements adequately protect public safety.

**D) Sections Trans 254.03 (2) and 255.03 (2), Permit Application Provisions**

WisDOT proposes amendments to existing provisions and new provisions:

1. Eliminate references in the rules that suggest permit applications may be processed at district offices. All permits are now centrally issued by WisDOT from Madison (often via online systems).
2. Remove provisions in the rule that refer to telephone application processes, and replace them with a reference to online application processes.
3. Immediately prior to departure, require all operators of permitted motor vehicles use online systems to verify the intended and permitted route is free from construction impediments, traffic incidents or congestion due to special events.
4. Require permit applicants who have e-mail addresses to provide those addresses to WisDOT to facilitate communication between WisDOT and the permit applicant/permittee.

#### *ALTERNATIVES CONSIDERED*

1. There is no viable alternative.
2. There is no viable alternative.
3.
  - a. Eliminate the requirement for carriers to check the route prior to proceeding.
  - b. Do not use current technology to check the route.
4. Other near-instant communication mechanisms such as twitter, text messaging, Facebook and other electronic online communication systems.

#### *WHY THIS ALTERNATIVE IS NOT RECOMMENDED*

1. WisDOT permits are now centrally issued (often via online systems). The rule should reflect current practice.
2. WisDOT no longer receives applications by telephone. Advanced dynamic routing software and online application processes ended the need for a telephone permit application process.
3.
  - a. The requirement to check the route before use is a basic safety precaution that cannot be disregarded. It prevents the load from striking overhead wires, bridges, and other obstructions.
  - b. It would make little sense to use obsolete technology. WisDOT has several no-cost online electronic options for checking route clearance immediately before departure and the commercial motor carriers have become adept at the use of that technology. Timely use of such systems alerts drivers to potential hazards that could jeopardize safe transport of the load.
4. E-mail is well supported in the state infrastructure and can be used and implemented with relatively few costs and little or no development costs. Other mechanisms would require research and development expenditures and delay implementation. Moreover, e-mail permits greater detail and transmission of larger, more complex messages than text messaging or twitter permit.

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

Section 348.25 (3), Stats., authorizes WisDOT to adopt rules regulating the operation of vehicles transporting oversize loads to the extent it deems necessary for safe travel and protection of the highways. This statute authorizes WisDOT to limit use of the highways to specified hours of the day or days of the week for any permit issued.

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

400 hours.

#### **List with Description of All Entities that may be Affected by the Proposed Rule**

Manufacturers of large and heavy goods, especially those located in the eastern part of the State; construction firms; trucking firms that transport large and heavy goods, especially those transporting bridge components and construction materials; local delivery vehicles; Port of Milwaukee and other surface transportation trans-loading facilities; all counties, especially Milwaukee County; tourists; commuters and the general motoring public.

#### **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**

A good discussion of federal vehicle size limits may be found online at:

[http://ops.fhwa.dot.gov/freight/publications/size\\_regs\\_final\\_rpt/index.htm](http://ops.fhwa.dot.gov/freight/publications/size_regs_final_rpt/index.htm).

The Federal Government first enacted size regulations for commercial motor vehicles ("CMVs") with the passage of the Federal-Aid Highway Act of 1956. This Act provided a maximum vehicle width of 96 inches (8 feet or 2.44 meters) on the Interstate Highway System. Subsequently, the Federal-Aid Highway Act of 1976 increased the allowable width for buses to 102 inches (8.5 feet or 2.6 meters). The Surface Transportation Assistance Act of 1982 extended the same bus width requirement of 102 inches to commercial trucks. At the same time, the Surface Transportation Assistance Act of 1982 expanded the highway network (on which the Federal width provision applied) from the Interstate to the National Network of highways.

Loads exceeding these dimensions may only be transported on the National Network with an oversize permit.

The Surface Transportation Assistance Act of 1982 also regulated the length of CMV's. In 1982, Congress established minimum length standards for most commercial truck tractor-semitrailers and for twin trailers pulled behind a truck tractor. Congressional involvement in vehicle length reflected the desire to standardize the enforcement of length along the National Network. This standardization sought to eliminate administrative or operating confusion caused by varying State provisions governing commercial vehicle length.

Wisconsin complies with these federal requirements. This rule governs vehicles much larger than the minimum dimensions for which permits are required for operation under federal law.

There is no Federal vehicle height requirement or restriction for commercial motor vehicles. Thus, States may set their own height restrictions. Most state height limits range from 13 feet, 6 inches (4.11 meters) to 14 feet (4.27 meters), with exceptions granted for lower clearance on particular roads.

Federal standards for construction of interstate highways set minimum vertical clearance under overhead structures (including over paved shoulders) at 16 feet (4.88 meters) in rural areas, and at 14 feet (4.27 meters) in urban areas, with allowance for extra layers of pavement. In urban areas, at least one route should have 16 foot (4.88 meters) clearances. Sign supports and pedestrian overpasses must be at least 17

feet (5.18 meters) above the road, with exceptions for some urban routes.

Not all freeways and interstate highways in Wisconsin meet these standards. Milwaukee County, in particular, has a concentration of overhead structure clearances that fail to meet these standards.

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

- Wisconsin days and hours of operation requirements will become more consistent with restrictions in Minnesota. This should facilitate commerce and transportation between the states.
- Economic activity, including that of small businesses that operate oversize trucks or depend on timely delivery of material, may be enhanced by the expansion of transport hours.
  - o The Specialized Carriers & Rigging Association (SCRA), the national organization representing the oversize and overweight motor carrier industry, estimates that transport delay due to regulatory limits cost motor carriers approximately \$1,500 per day.
    - If 5% of all truck trips authorized by a Wisconsin oversize permit are delayed for one-half day by the current Friday and Sunday afternoon and evening

restrictions on travel, the delay costs to the motor carrier industry amount to approximately \$2 Million each year – \$1.6 Million for loads authorized by Ch. Trans 254–Single Trip Permits, and \$399k for loads authorized by Ch. Trans 255–Annual & Consecutive Month Permits.

- Authorizing the operation of larger oversize vehicles on the Milwaukee County Freeway System, instead of the current diversion onto surface streets, will save businesses fuel and labor costs by reducing operating mileage and time spent on the road.
  - WisDOT has a formal body of motor carrier advisors comprised of a representative sample of specialized motor carriers called the WisDOT Motor Carrier Advisory Committee. The Committee estimates that operating on State highway 100 and Milwaukee surface streets instead of the Milwaukee County Freeway System adds \$100 to \$250 to each truck trip in and through the City of Milwaukee. An estimated 9,600 truck trips per year are made in this fashion with increased mileage and duration. Industry and transporters incur additional added trip costs of approximately \$1.7 million annually as a result.

**Contact Person**

Kathleen Nichols, Motor Carrier Permit Unit Supervisor,  
(608) 261–2574.

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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.*

**Safety and Professional Services —  
Podiatry Affiliated Credentialing Board  
CR 12-047**

On November 2, 2012, the Podiatry Affiliated Credentialing Board submitted a proposed rule to the Legislative Council Rules Clearinghouse.

This rule is not subject to section 227.135 (2), Stats., as affected by 2011 Wis. Act 21. The scope statement for this rule was published in Register No. 656 on August 31, 2010, and was sent to the Legislative Reference Bureau prior to June 8, 2011 the effective date of 2011 Wisconsin Act 21.

**Analysis**

This proposed rule-making order is to revise section Pod

1.08 (5), relating to temporary educational licenses, and to create sections Pod 3.02 (4) and 3.03 (3), relating to continuing education requirements for podiatrists.

**Agency Procedure for Promulgation**

A public hearing is required and will be held December 14, 2012 at 1400 East Washington Avenue, Madison, Wisconsin (enter at 55 North Dickinson Street).

**Contact Information**

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

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## Rule–Making Notices

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### Notice of Hearing

#### Safety and Professional Services — Podiatry Affiliated Credentialing Board CR 12–047

NOTICE IS HEREBY GIVEN That pursuant to sections 15.085 (5) (b), 440.035 (1), 448.63 (3), 448.665, Stats. and interpreting section 448.63 (3), Stats., the Podiatry Affiliated Credentialing Board will hold a public hearing at the time and place indicated below to consider an order to amend section Pod 1.08 (5) and to create sections Pod 3.02 (4) and 3.03 (3), relating to temporary educational license and continuing education.

#### Hearing Information

**Date:** Friday, December 14, 2012  
**Time:** 9:00 a.m.  
**Location:** 1400 East Washington Avenue  
 (Enter at 55 North Dickinson Street)  
 Room 121  
 Madison, WI 53703

#### Appearances at the Hearing

Interested persons are invited to present information at the hearing. You may make a presentation in person, submit a brief statement regarding facts, opinions or arguments, or both. You may also submit a brief statement of facts, opinions and arguments in writing without a personal appearance by mail addressed to: Shawn Leatherwood, Department of Safety and Professional Services, Division of Board Services, P.O. Box 8935, Madison, WI 53708. Written comments will be accepted up until **December 20, 2012**

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

Comments may be submitted to Shawn Leatherwood, Department of Safety and Professional Services, 1400 East Washington Avenue, Room 116, P.O. Box 8935, Madison, Wisconsin 53708–8935, or by email to [Shancethea.L Leatherwood@wiscosin.gov](mailto:Shancethea.L Leatherwood@wiscosin.gov). Comments must be received on or before **December 20, 2012** to be included in the record of rule–making proceedings.

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

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

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

#### *Statutes interpreted*

Section 448.63 (3), Stats.

#### *Statutory authority*

Sections 15.085 (5) (b), 440.035 (1), 448.63 (3), 448.665, Stats.

#### *Explanation of agency authority*

The Podiatry Affiliated Credentialing Boards is charged with promulgating rules that govern their profession via ss. 15.085 (5) (b), and 440.035 (1), Stats., under the oversight of the Medial Examining Board. Pursuant to s. 448.63 (3), Stats., the Podiatry Affiliated Credentialing Board has authority to write rules concerning various classes of temporary licensure. Section 448.665, Stats., grants rule writing authority for establishing requirements for continuing education. Therefore the Podiatry Affiliated Credentialing Board is generally and specifically vested with the authority to promulgate these rules.

#### *Related statute or rule*

Wis. Admin. Code Chapters Pod 1 and Pod 3.

#### *Plain language analysis*

The proposed rule will address two issues: license holders having to reapply for a temporary license half way through their post graduate training and the requirements for licensees seeking first time renewal. By changing the duration of the temporary license from 1 year to 2 years, the proposed rule eliminates the need for temporary licensees to reapply for licensure while they are completing their post graduate training. As to the second issue, the proposed rule allows first time renewal applicants to use proof of graduation from a school of podiatric medicine to comply with the 50 requisite continuing education hours currently required by rule. This alleviates the burden on new licensees who's first time renewal occurs towards the end of a renewal period.

SECTION 1. amends the provision governing the duration of temporary licensure changing the requirement from 1 year to 2 years.

SECTION 2. creates a provision for accepting proof that the podiatrist graduated from a school of podiatric medicine.

SECTION 3. creates a provision accepting a certified copy of an official transcript or a certified copy of a diploma from a school of podiatric medicine and surgery to verify, when audited, compliance with the continuing education requirement.

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

None.

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

##### *Illinois:*

A temporary license is valid for one year. 68 Ill. Adm. Code 1360.65(b) (2012) A renewal applicant is not required to comply with continuing education requirements for his/her first renewal. 68 Ill. Adm. Code 1360.70(a)(3) (2012)

##### *Iowa:*

A temporary license is valid for one year. 645 IAC 220.6(149)(1) (2012)

First time licensees are not required to complete continuing education requirements for their first renewal period. 645 IAC 222.2(149,272C)(2) (2012)



## 9. Policy Problem Addressed by the Rule

The Podiatry Affiliated Credentialing Board reviewed the pertinent rules and determined that s. Pod 1.08 (5) should be revised to address the issue of podiatric temporary license holders having to reapply for a temporary license half way through their required 2-year post graduate training. The issue is resolved by these proposed rules by changing the duration of temporary licensure from 1 year to 2 years. There was also a need to resolve the issue of new licensees undertaking their first renewal. The problem was new licensees would not have enough time to fulfill their 50 hours of continuing education if they had received their license towards the end of the renewal period. These proposed rules will allow new licensees to satisfy the continuing education requirement by providing approved verified documentary evidence of graduation from a school of podiatric medicine and surgery such as a verified copy of the diploma conferring the degree of doctorate of podiatric medicine.

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

N/A

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

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

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

This rule will have no economic or fiscal impact on specific businesses, business sectors, public utility rate payers, local governmental units or the State's economy as a whole.

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

Pursuant to Wis. Stat. s. 448.63, persons seeking licensure as a podiatrists in Wisconsin must complete 2 years of post graduate training. A temporary educational license allows individuals currently participating in postgraduate training to practice podiatric medicine. However, per Wis. Admin. Code section POD 1.08 (5), a temporary educational license is only one year. By changing the duration of the temporary educational license from 1 year to 2 years, applicants would be allowed to complete the required post graduate training without interruption of licensure.

14. Long Range Implications of Implementing the Rule

There are no long range implications of implementing this rule.

15. Compare With Approaches Being Used by Federal Government

There are no comparable federal rules specifically regarding temporary licenses and continuing education requirements.

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

*Illinois:*

A temporary license is valid for one year. 68 Ill. Adm. Code 1360.65(b) (2012) A renewal applicant is not required to comply with continuing education requirements for his/her first renewal. 68 Ill. Adm. Code 1360.70(a)(3) (2012)

*Iowa:*

A temporary license is valid for one year. 645 IAC 220.6(149)(1) (2012)

First time licensees are not required to complete continuing education requirements for their first renewal period. 645 IAC 222.2(149,272C)(2) (2012)

*Michigan:*

There is no language stating the duration for a temporary license. MICH. ADMIN. CODE R 338.8109 (2012) The Administrative code is silent with regards to the continuing education requirements for a first renewal. MICH. ADMIN. CODE R 338.3703 (2012)

*Minnesota:*

A temporary permit is valid for 12 months, starting on the first day of graduate training. Minn. R. 6900.0160 Subp. 2. (2011) The continuing education requirement for a first renewal is not entirely waived, but rather the hours are prorated according to how long the applicant has had his/her license. Minn. R. 6900.0300 Subp.1a. (2011)

17. Contact Name

Shawn Leatherwood

18. Contact Phone Number

608-261-4438

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## Submittal of Proposed Rules to Legislature

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

**Public Service Commission**  
**CR 12-042**

**(PSC Docket # 1-AC-241)**

NOTICE IS GIVEN, pursuant to Wis. Stat. s. 227.19 (2), that the Public Service Commission of Wisconsin is submitting a final draft of proposed rules, Clearinghouse Rule

12-042 to the presiding officer of each house of the Legislature for standing committee review. The proposed rule amends Chapter PSC 135, relating to gas safety regarding the adoption of federal pipeline safety regulations. This rule is not subject to s. 227.185, Stats.

The governor's office approved this rule on October 4, 2012.

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## Executive Orders

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

**Executive Order 87.** Relating to a Proclamation that the Flag of the United States and the Flag of the State of Wisconsin be Flown at Half-Staff in the City of Greenfield in Memory of Retired Police Lieutenant Edward S. Kaczowski. **(October 25, 2012)**

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## Public Notices

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**Department of Transportation**  
**Public Notice of effective date for statutes implementing REAL ID**  
**and enumerated in 2007 Wisconsin Act 20, 2009 Wisconsin Acts 28, 100, 103, 167,**  
**180, and 402, and 2011 Wisconsin Acts 23 and 32**

The Department of Transportation hereby publishes notice as provided in s. 85.515 (2) (b), Stats., that the department is ready to complete full implementation of the provisions of the federal REAL ID Act, as incorporated into 2007 Wisconsin Act 20. The department has previously published notices related to the federal REAL ID implementation as provided in s. 85.515, Stats., in the Wisconsin Administrative Register at No. 628, eff. 4/30/2008.

By this public notice, and under the authority of s. 85.515, Stats., Mark Gottlieb, P.E., Secretary of the Wisconsin Department of Transportation, declares that the sections of 2007 Wis. Act 20, of 2009 Wis. Acts 28, 100, 103, 167, 180, and 402, and of 2011 Wis. Acts 23 and 32, affecting all of the following statutes not yet in effect shall be given effect as of January 1, 2013:

125.07 (4) (cm)  
125.085 (3) (bp)  
343.01 (2) (d)  
343.027  
343.03 (3) (intro.)  
343.03 (3m)  
343.03 (3r)  
343.03 (6) (a)  
343.06 (1) (j)  
343.06 (1) (L)  
343.065 (3)  
343.10 (2) (a) (intro.)  
343.10 (7) (b)  
343.10 (7) (d)  
343.11 (3)  
343.14 (2) (a)  
343.14 (2) (br)  
343.14 (2) (er) 1. and 2.  
343.14 (2) (es) (intro.), 2., 3., 5., 6., and 7.  
343.14 (2) (f)  
343.14 (2r)  
343.14 (3)  
343.14 (3m)  
343.14 (4m)  
343.16 (3) (a)  
343.165  
343.17 (1)

343.17 (2)  
343.17 (3) (a) 1.  
343.17 (3) (a) 2.  
343.17 (3) (a) 5.  
343.17 (3)(a)14.  
343.17 (5)  
343.19 (1)  
343.20 (1) (a)  
343.20 (1) (f)  
343.20 (1m)  
343.20 (2) (a)  
343.22 (1)  
343.22 (2) (intro.)  
343.22 (2) (a)  
343.22 (2m)  
343.22 (3)  
343.23 (2) (a) (intro.)  
343.23 (2) (b)  
343.23 (5)  
343.235 (3) (a)  
343.237 (2)  
343.237 (3) (intro.)  
343.24 (3)  
343.24 (4) (c) 1.  
343.26 (1)  
343.30 (5)  
343.305 (11)  
343.43 (1) (g)  
343.50 (1)  
343.50 (2)  
343.50 (3)  
343.50 (4)  
343.50 (4g)  
343.50 (5)  
343.50 (6)  
343.50 (8) (a)  
343.50 (8) (c)  
343.50 (10)  
938.396 (4)

And any other statute not enumerated herein but for which the effective date is the date stated in the notice provided under s. 85.515 (2) (b). With this notice, the department intends that every statute having an effective date conditioned on notice provided under s. 85.515 (2) (b) for which a notice has not been published previously is now given effect.

For information regarding this notice, contact the REAL ID Project Manager of the Division of Motor Vehicles, Phone: (608) 266-2743.

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