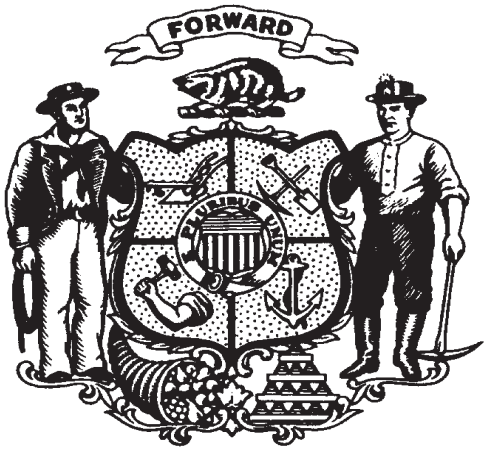
# Wisconsin Administrative Register

**No. 669**

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# WISCONSIN ADMINISTRATIVE REGISTER

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# Emergency Rules Now in Effect

*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.*

*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.*

## Agriculture, Trade and Consumer Protection

**EmR1112** — Rule adopted to create **sections ATCP 99.126 (6) and ATCP 99.235 (5)** and to amend **sections ATCP 99.126 (1) and ATCP 99.235 (1)**, relating to grain dealer and grain warehouse keeper agricultural producer security fund assessments.

This emergency rule was approved by the governor on July 14, 2011.

The statement of scope for this rule, SS 002−11, was approved by the governor on July 14, 2011, published in Register 667, on July 31, 2011, and approved by The Board of Agriculture, Trade and Consumer Protection on August 12, 2011.

**Finding of Emergency**

In Wisconsin, grain dealers (persons who purchase grain from producers), grain warehouse keepers (persons who store grain that is owned by others), milk contractors (persons who purchase milk from producers, and vegetable contractors (persons who purchase vegetables from producers for use in processing), must obtain a license to do these activities and are collectively referred to as "contractors". Most contractors are "contributing contractors", which means they must pay annual assessments into the Wisconsin Agricultural Producer Security Fund. This fund is designed to help partially reimburse producers in the event that a contractor defaults on payment to producers. The annual assessments are calculated based on the total dollar value of commodities purchased or stored, the length of time that the contractor has participated in the fund, and certain financial ratios from the contractor's balance sheet.

All else equal, a contractor who purchases small amounts will pay lower assessments than one who purchases large amounts. All else equal, a contractor who is in a conservative financial position will pay lower assessments than one who carries higher levels of liabilities relative to their assets or equity. All else equal, a contractor who has participated in the fund for more than five years will pay lower assessments than one who has participated for less than five years. The annual assessment, calculated from the factors discussed above, vary considerably from one contractor to another. An annual assessment may be as low as $100, or as high as several hundred thousand dollars.

The grain dealer and grain warehouse keeper license years begin on September 1 of each year. At that point, DATCP calculates the assessment for the new license year that will be due in four quarterly payments over the course of that year. Calculations are based on purchase data and financial statement data for the grain dealer or grain warehouse keeper's most recently completed fiscal year and annual financial statement.

For the license years that will begin on September 1, 2011, a very unusual combination of business financing and recent high commodity prices has lead to unusually high assessment calculations for one grain company. In fact, if the existing rule remains unmodified, there will be one individual elevator that will be charged over $1.2 million in assessments (for both grain dealer and grain warehouse combined). This is roughly four times greater than the previous highest annual assessment and roughly six times higher than the second highest annual assessment in the grain (dealer and warehouse combined) producer security fund program. Further, this potential assessment for next license year is more than double the highest assessment that has ever occurred in the milk contractor portion of the fund. This is significant because the dollar amount of a large milk contractor's annual purchase of milk tends to be much higher the dollar amount of a large grain dealer's annual purchase (or store) of grain.

In the majority of cases, the assessment calculation formulas reasonably charge contractors for the overall risk that they pose to the fund in the event that they should default on amounts owed to producers. However, at least in the short term, this is not true for this one elevator. DATCP will analyze whether or not it is appropriate for this emergency rule to also be promulgated as a permanent rule, and if so, begin a separate rulemaking process at a later date.

This temporary emergency rule is necessary to protect the welfare of the many hundreds of grain farmers who do business with this grain elevator, and to help prevent major disruptions in the grain industry.

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| **Publication Date:** | **September 2, 2011** |
| **Effective Dates:** | **September 2, 2011 through January 29, 2012** |
| **Hearing Date:** | **October 5, 2011** |

(See the Notice in this Register)

## Children and Families (2)

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

**1. EmR1034** — Rule adopted to create **sections DCF 57.485 and 57.49 (1) (am)**, relating to determination of need for new group homes.

**Exemption From Finding of Emergency**

Section 14m (b) of 2009 Wisconsin Act 335 provides that the department is not required to provide evidence that promulgating a rule under s. 48.625 (1g), Stats., as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency.

Section 14m (b) also provides that notwithstanding s. 227.24 (1) (c) and (2), Stats., an emergency rule promulgated under s. 48.625 (1g), Stats., remains in effect until the permanent rules promulgated under s. 48.625 (1g), Stats., take effect.

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| **Publication Date:** | **September 2, 2010** |
| **Effective Dates:** | **September 2, 2010 through the date permanent rules become effective** |
| **Hearing Date:** | **October 21, 2010** |

**2. EmR1106** — Rule adopted to revise **Chapters DCF 52, 54, and 57**, relating to regulation of rates charged by residential care centers for children and youth, child−placing agencies, and group homes.

**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:

2009 Wisconsin Act 28 directed the department to implement rate regulation effective January 1, 2011. Implementation was delayed and this rule is phasing−in rate regulation at the earliest feasible date.

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| **Publication Date:** | **April 18, 2011** |
| **Effective Dates:** | **April 18, 2011 through September 16, 2011** |
| **Hearing Date:** | **May 18, 2011** |

## Government Accountability Board

**EmR1049** — Rule adopted to amend **section GAB 1.28,** relating to the definition of the term "political purpose."

**Finding of Emergency**

The Government Accountability Board amends s. GAB 1.28 (3) (b), Wis. Adm. Code, relating to the definition of the term "political purpose." Section GAB 1.28 as a whole continues to clarify the definition of "political purposes" found in s. 11.01 (16) (a) 1., Stats., but repeals the second sentence of s. GAB 1.28 (3) (b) which prescribes communications presumptively susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate.

This amendment to s. GAB 1.28 (3) (b) is to the rule that was published on July 31, 2010 and effective on August 1, 2010, following a lengthy two year period of drafting, internal review and study, public comment, Legislative review, and consideration of U.S. Supreme Court decisions. Within the context of ch. 11, Stats, s. GAB 1.28 provides direction to persons intending to engage in activities for political purposes with respect to triggering registering and reporting obligations under campaign financing statutes and regulations. In addition, the rule provides more information for the public so that it may have a more complete understanding as to who is supporting or opposing which candidate or cause and to what extent, whether directly or indirectly.

Pursuant to s. 227.24, Stats., the Government Accountability Board finds an emergency exists as a result of pending litigation against the Board and two decisions by the United States Supreme Court: *Federal Election Commission (FEC) v. Wisconsin Right to Life, Inc. (WRTL II)*, 550 U.S. 549 (2007) and *Citizens United v. FEC*, 558 U.S. ___, (No. 08−205) (January 21, 2010). Following the effective date of the August 1, 2010 rule, three lawsuits were filed seeking a declaration that the rule was unconstitutional and beyond the Board's statutory authority: one in the U.S. District Court for the Western District of Wisconsin, one in the U.S. District Court for the Eastern District of Wisconsin, and one in the Wisconsin Supreme Court. On August 13, 2010, the Wisconsin Supreme Court temporarily enjoined enforcement of the August 1, 2010 rule, pending further order by the Court.

In the lawsuit in the U.S. District Court for the Western District of Wisconsin, the parties previously executed a joint stipulation asking the Court to permanently enjoin application and enforcement of the second sentence of s. GAB 1.28 (3) (b). On October 13, 2010, the Court issued an Opinion and Order denying that injunction request. In denying the injunction, the Court noted that "G.A.B. has within its own power the ability to refrain from enforcing, or removing altogether, the offending sentence from a regulation G.A.B. itself created" and emphasized that "removing the language — for example, by G.A.B. issuing an emergency rule — would be far more 'simple and expeditious' than asking a federal court to permanently enjoin enforcement of the offending regulation." *Wisconsin Club for Growth, Inc. v. Myse*, No. 10−CV−427, slip op. at 2 (W.D. Wis. Oct. 13, 2010). The Court further noted that staying the case would give the Board time to resolve some or all of the pending issues through further rulemaking. *Id.*, slip op. at 14.

In addition, the Board, through its litigation counsel, has represented to the Wisconsin Supreme Court that it does not intend to defend the validity of the second sentence of s. GAB 1.28 (3) (b) and that it would stipulate to the entry of an order by that Court permanently enjoining the application or enforcement of that sentence.

This amendment brings s. GAB 1.28 (3) (b) into conformity with the above stipulation, with the representations that have been made to the Wisconsin Supreme Court, and with the suggestions made in the October 13, 2010, Opinion and Order of the U.S. District Court for the Western District of Wisconsin. The Board finds that the immediate adoption of this amendment will preserve the public peace and welfare by providing a simple and expeditious clarification of the meaning of s. GAB 1.28 for litigants, for the regulated community, and for the general public and by doing so in advance of the 2011 Spring Election and any other future elections.

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| **Publication Date:** | **January 7, 2011** |
| **Effective Dates:** | **January 7, 2011 through June 5, 2011** |
| **Extension Through:** | **October 3, 2011** |
| **Hearing Date:** | **February 16, 2011** |

## Natural Resources (6)

***Fish, Game, etc., Chs. NR 1—***

**1. EmR1036** — Rule adopted to create **section NR 40.04 (2) (g)**, relating to the identification, classification and control of invasive species.

**Exemption From Finding of Emergency**

Section 227.24 (1) (a), Stats., authorizes state agencies to promulgate a rule as an emergency rule without complying with the notice, hearing and publication requirements under ch. 227, Stats., if preservation of the public peace, health, safety or welfare necessitates putting the rule into effect prior to the time it would take effect if the agency complied with the procedures. However, s. 23.22 (2t) (a), Stats., authorizes the department to promulgate emergency rules to identify, classify, or control an invasive species without having to provide evidence that an emergency rule is necessary for the preservation of public peace, health, safety, or welfare or to provide a finding of emergency. **In addition, such emergency rules may remain in effect until whichever of the following occurs first: the first day of the 25th month beginning after the effective date of the emergency rule, the effective date of the repeal of the emergency rule, or the date on which the permanent rule identifying, classifying, or controlling the invasive species, promulgated under s. 23.22 (2) (b) 6., Stats., takes effect.**

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| **Publication Date:** | **September 29, 2010** |
| **Effective Dates:** | **September 29, 2010 through *See bold text above*** |
| **Hearing Date:** | **October 25 to 29, 2010** |

**2. EmR1039** (DNR # IS−49−10(E)) — Rule adopted to create **sections NR 40.02 (7g), (7r), (25m), (28m) and (46m), 40.04 (3m) and 40.07 (8)**, relating to the identification, classification and control of invasive bat species.

**Exemption From Finding of Emergency**

Section 227.24 (1) (a), Stats., authorizes state agencies to promulgate a rule as an emergency rule without complying with the notice, hearing and publication requirements under ch. 227, Stats., if preservation of the public peace, health, safety or welfare necessitates putting the rule into effect prior to the time it would take effect if the agency complied with the procedures. However, s. 23.22 (2t) (a), Stats., authorizes the department to promulgate emergency rules to identify, classify, or control an invasive species without having to provide evidence that an emergency rule is necessary for the preservation of public peace, health, safety, or welfare or to provide a finding of emergency. **In addition, such emergency rules may remain in effect until whichever of the following occurs first: the first day of the 25th month beginning after the effective date of the emergency rule, the effective date of the repeal of the emergency rule, or the date on which the permanent rule identifying, classifying, or controlling the invasive species, promulgated under s. 23.22 (2) (b) 6., Stats., takes effect.**

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| **Publication Date:** | **November 3, 2010** |
| **Effective Dates:** | **November 3, 2010 through *See bold text above*** |
| **Hearing Date:** | **November 29, 2010** |

**3. EmR1045** (DNR # IS−07−11(E)) — Rule to repeal **section NR 40.02 (28m)**, to amend **section NR 40.04 (3m)**, and to repeal and recreate **section NR 40.07 (8)**, (all as created by Natural Resource Board emergency order EmR1039, DNR # IS−49−10(E)), relating to the identification, classification and control of invasive species.

**Exemption From Finding of Emergency**

Section 227.24 (1) (a), Stats., authorizes state agencies to promulgate a rule as an emergency rule without complying with the notice, hearing and publication requirements under ch. 227, Stats., if preservation of the public peace, health, safety or welfare necessitates putting the rule into effect prior to the time it would take effect if the agency complied with the procedures. However, s. 23.22 (2t) (a), Stats., authorizes the department to promulgate emergency rules to identify, classify, or control an invasive species without having to provide evidence that an emergency rule is necessary for the preservation of public peace, health, safety, or welfare or to provide a finding of emergency. **In addition, such emergency rules may remain in effect until whichever of the following occurs first: the first day of the 25th month beginning after the effective date of the emergency rule, the effective date of the repeal of the emergency rule, or the date on which the permanent rule identifying, classifying, or controlling the invasive species, promulgated under s. 23.22 (2) (b) 6., Stats., takes effect.**

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| **Publication Date:** | **December 13, 2010** |
| **Effective Dates:** | **December 13, 2010 through *See bold text above*** |

**4. EmR1107** — Rule to amend **section NR 25.09 (2) (b) 2. a. and f.**, and create **section NR 25.09 (1) (b) 11.**, relating to commercial fishing in outlying waters.

**Finding of Emergency**

The Department of Natural Resources finds that an emergency exists and the foregoing rules are necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of facts constituting the emergency is: Commercial trap nets in Lake Michigan pose a hazard to the safety of recreational fishermen trolling submerged fishing lines. The preservation of public safety requires appropriate measures to assure that recreational boaters can know the location of trap nets and are able to release themselves from entanglement with the commercial nets. Accordingly, this NRB Order requires that 1) boat operators engaged in trolling with downriggers carry wire cutters on board capable of severing fishing line or downrigger cable, 2) the enhanced net marking requirements on Lake Michigan be applied to trap nets on Lake Superior, 3) all parts of trap nets set in Zone 3 of Lake Michigan between June 29 and Labor Day be within designated areas, and 4) the marking of trap nets in Lake Michigan be enhanced by the use of reflective tape on buoy staffs.

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| **Publication Date:** | **May 23, 2011** |
| **Effective Dates:** | **May 23, 2011 through October 19, 2011** |
| **Hearing Date:** | **June 27, 2011** |

**5. EmR1109** — Rule to amend **sections NR 10.01 (3) (ed) 1. a., 10.01 (3) (et) 2., 10.104 (7) (a) 1.**, and **10.104 (7) (b)**, relating to deer hunting seasons and carcass tag use.

**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 rule is necessary in order to foster participation by hunters and landowners so they will continue to hunt and cooperate in CWD control and deer herd

management. This rule proposal balances pressing social concerns about the quality of the deer hunt with the need for effective herd control measures such as additional antlerless deer harvest in management units that are more than 20% over population goals or simply over population goals in units that are part of the CWD Management Zone. This rule will increase harvest of bucks in the CWD zone which have a higher prevalence of CWD and, because of their greater dispersal distances, have a higher likelihood of spreading CWD. However, the rule retains a herd control tool which requires that antlerless deer be harvested before additional bucks (beyond the initial one) may be taken. The federal government and state legislature have delegated to the appropriate agencies rule−making authority to control and regulate hunting of wild animals. The State of Wisconsin must provide publications describing the regulations for deer hunting to more than 630,000 deer hunters prior to the start of the season. These regulations must be approved prior to printing nearly 1 million copies of the regulations publication.

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| **Publication Date:** | **July 2, 2011** |
| **Effective Dates:** | **September 17, 2011 through February 13, 2012** |

**6. EmR1111** — Rule to repeal and recreate **sections NR 10.01 (1) (b), (g) and (u)** and **10.32** and to amend **section NR 10.01 (1) (v)**, relating to hunting and the 2011 migratory game bird seasons and waterfowl hunting zones.

**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.

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| **Publication Date:** | **September 3, 2011** |
| **Effective Dates:** | **September 3, 2011 through January 30, 2012** |
| **Hearing Date:** | **October 3, 2011** |

(See the Notice in this Register)

## Revenue (3)

**1. EmR1104** — Rule adopted creating **section Tax 2.957**, relating to income and franchise tax credits and deductions for businesses that relocate to Wisconsin.

**Finding of Emergency**

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

The emergency rule is to reflect changes in Wisconsin's tax laws due to the creation of income and franchise tax credits and deductions for businesses that relocate to Wisconsin.

It is necessary to promulgate this rule order so that these credits and deductions, created to help bring much needed jobs to Wisconsin, may be administered in a fair and consistent manner.

This rule is therefore promulgated as an emergency rule and shall take effect upon publication in the official state newspaper. Certified copies of this rule have been filed with the Legislative Reference Bureau, as provided in s. 227.24, Stats.

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| **Publication Date:** | **April 7, 2011** |
| **Effective Dates:** | **April 7, 2011 through September 3, 2011** |
| **Extension Through:** | **November 2, 2011** |
| **Hearing Date:** | **June 14, 2011** |

**2. EmR1105** — Rule adopted creating **section Tax 3.05**, relating to income and franchise tax deductions for job creation.

**Finding of Emergency**

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

The emergency rule is to reflect changes in Wisconsin's tax laws due to the creation of income and franchise tax deductions for job creation.

It is necessary to promulgate this rule order so that these deductions, created to help bring much needed jobs to Wisconsin, may be administered in a fair and consistent manner.

This rule is therefore promulgated as an emergency rule and shall take effect upon publication in the official state newspaper. Certified copies of this rule have been filed with the Legislative Reference Bureau, as provided in s. 227.24, Stats.

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|---|---|
| **Publication Date:** | **April 7, 2011** |
| **Effective Dates:** | **April 7, 2011 through September 3, 2011** |
| **Extension Through:** | **November 2, 2011** |
| **Hearing Date:** | **June 14, 2011** |

**3. EmR1110** — The Wisconsin Department of Revenue hereby adopts an emergency rule interpreting s. 77.54 (56), Stats., creating **section Tax 11.10**, relating to wind, solar, and certain gas powered products.

The statement of scope for this emergency rule, SS 001−11, was approved by the governor on June 17, 2011, and published in Register 667 on July 14, 2011. This emergency rule was approved by the governor on June 20, 2011

**Finding of Emergency**

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

The emergency rule is to reflect changes in Wisconsin's tax laws due to the creation of a sales and use tax exemption for certain energy−producing wind, solar, and gas powered products and the electricity or energy they produce.

It is necessary to promulgate this rule order so that this exemption, which is effective July 1, 2011, may be administered in a fair and consistent manner.

This rule is therefore promulgated as an emergency rule and shall take effect upon publication in the official state

newspaper. Certified copies of this rule have been filed with the Legislative Reference Bureau, as provided in s. 227.24, Stats.

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| **Publication Date:** | **June 29, 2011** |
| **Effective Dates:** | **June 29, 2011 through November 25, 2011** |

## Safety and Professional Services

**(Formerly Commerce)**

***Financial Resources for Businesses and Communities, Chs. Comm 100−149***

**EmR1041** — Rule adopted creating **Chapter Comm 103**, relating to certification of disabled−veteran−owned businesses, and affecting small businesses.

**Exemption From Finding of Emergency**

The Legislature, by SECTION 101 (1) in 2009 Wisconsin Act 299, exempts the Department from providing evidence that this emergency rule is necessary for the preservation of public peace, health, safety or welfare; and exempts the Department from providing a finding of emergency for the adoption of this rule.

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| **Publication Date:** | **November 14, 2010** |
| **Effective Dates:** | **November 14, 2010 through April 12, 2011** |
| **Extension Through:** | **August 10, 2011** |
| **Hearing Date:** | **February 15, 2011** |

## Safety and Professional Services (3)

**(Formerly Regulation and Licensing)**

**1. EmR0827** — Rule adopted creating **section RL 91.01 (3) (k)**, relating to training and proficiency in the use of automated external defibrillators for certification as a massage therapist or bodyworker.

**Exemption From Finding of Emergency**

Section 41 (2) (b) of the nonstatutory provisions of 2007 Wisconsin Act 104 provides that notwithstanding section 227.24 (1) (a) and (3) of the statutes, the department of regulation and licensing is not required to provide evidence that promulgating a rule as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated to implement 2007 Wisconsin Act 104. Notwithstanding s. 227.24 (1) (c) and (2) of the statutes, these emergency rules will remain in effect until the date on which the final rules take effect.

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| **Publication Date:** | **September 10, 2008** |
| **Effective Dates:** | **September 10, 2008 through the date on which the final rules take effect** |
| **Hearing Date:** | **November 26, 2008 April 13, 2009** |

**2. EmR0828** — Rules adopted to amend **section RL 181.01 (2) (c);** and to create **sections RL 180.02 (1m), (3m) and (11), 181.01 (1) (d), (2) (c) 1. and 2.**, relating to training and proficiency in the use of automated external defibrillators for licensure as a licensed midwife.

**Exemption From Finding of Emergency**

Section 41 (2) (b) of the nonstatutory provisions of 2007 Wisconsin Act 104 provides that notwithstanding section 227.24 (1) (a) and (3) of the statutes, the department of regulation and licensing is not required to provide evidence that promulgating a rule as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated to implement 2007 Wisconsin Act 104. Notwithstanding s. 227.24 (1) (c) and (2) of the statutes, these emergency rules will remain in effect until the date on which the final rules take effect.

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| **Publication Date:** | **September 10, 2008** |
| **Effective Dates:** | **September 10, 2008 through the date on which the final rules take effect** |
| **Hearing Date:** | **November 26, 2008** |

**3. EmR1102** — Rule adopted creating **Chapters RL 200 to 202**, relating to governing professional conduct of individuals licensed as sign language interpreters, and for the treatment of state resident licensure exemption requests.

**Finding of Emergency**

2009 Wisconsin Act 360 created laws regulating the practice of sign language interpreting, and became effective on December 1, 2010. Under the act, codified at s. 440.032, Stats., individuals practicing as sign language interpreters must now be licensed by the department, and must comply with a code of professional conduct to be promulgated by the department. The new law also provides for exemptions from the licensure requirement under certain circumstances, and requires the council to promulgate rules establishing the criteria and procedures for granting state resident exemptions. As s. 440.032, Stats., is already in effect, an emergency rule is necessary to implement the law pending promulgation of a similar permanent rule.

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| **Publication Date:** | **March 16, 2011** |
| **Effective Dates:** | **March 16, 2011 through August 12, 2011** |
| **Extension Through:** | **October 11, 2011** |
| **Hearing Date:** | **May 3, 2011** |

## Safety and Professional Services — Barbering and Cosmetology Examining Board

**EmR1047** — Rule adopted to revise **Chapters BC 9 and 11**, relating to late renewal and continuing education.

**Finding of Emergency**

The rule as currently promulgated fails to adequately protect the public to the extent that several provisions are underdeveloped, ambiguous or silent. As a result, inconsistent interpretations and contradictory information has led to significant confusion within the profession. Given that the rules require licensees to comply by March 31, 2011, the errors and omissions need to be addressed immediately so licensees can receive adequate training to provide safe and competent services to the public, and comply with the requirements for renewal of a license.

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| **Publication Date:** | **December 23, 2010** |
| **Effective Dates:** | **December 23, 2010 through May 21, 2011** |
| **Extension Through:** | **September 18, 2011** |
| **Hearing Date:** | **April 4, 2011** |

## Safety and Professional Services — Veterinary Examining Board

**EmR1103** — Rule adopted to revise **sections VE 2.01 (2), 3.03 (intro) and (5)**, relating to the requirements for the initial licensure of veterinarians, specifically, the procedures for, and the types of examinations required.

**Finding of Emergency**

As currently written, the veterinary examining board rules regarding licensure candidates' deadlines for submission of applications to take the North American Veterinary Licensing Examination (NAVLE) do not align with the deadlines established by the National Board of Veterinary Medical Examiners (NBVME). The rules thus also conflict with the deadlines defined in the board's NBVME NAVLE agreement. The rules state that a candidate shall file a completed NAVLE application with the board at least 60 days prior to the date of the scheduled examination. However, NAVLE's deadlines require submission of applications approximately 115 days ahead of the examination date. This inconsistency between the rules and NAVLE's deadlines will likely cause significant confusion for licensure candidates. At worst, it could preclude a candidate from taking the particular NAVLE he or she applies for due to missing the application deadline. In addition, recently−passed legislation now allows foreign veterinary graduates to show evidence of successful completion of the Program for the Assessment of Veterinary Education Equivalence (PAVE) as an alternative to the American Veterinary Medical Association (AMVA) Educational Commission for Foreign Veterinary Graduates Certification (ECFVGC) program. The board adopts this emergency rule effecting the necessary changes pending the promulgation of a similar permanent rule.

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| **Publication Date:** | **March 28, 2011** |
| **Effective Dates:** | **March 28, 2011 through August 24, 2011** |
| **Extension Through:** | **October 23, 2011** |
| **Hearing Date:** | **May 25, 2011** |

# Scope Statements

## Agriculture, Trade and Consumer Protection

**SS 019−11**

In accordance with 2011 Wisconsin Act 21 (s. 227.135 (2), Stats.), this scope statement was approved by the governor on August 29, 2011, before DATCP took any action in proceeding with this proposed rule, including submission of this scope statement for publication.

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

**Subject**

Emerald Ash Borer Emergency Rule.

**Administrative Code Reference**

Chapter ATCP 21, Wis. Adm. Code.

**Statutory Authority**

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

**Preliminary Objectives**

This rule will do the following:

- Create county−level quarantines for emerald ash borer for counties where the beetle is detected. The quarantine will prohibit the movement of all hardwood species of firewood, nursery stock, green lumber, and other material living, dead, cut or fallen, including logs, stumps, roots, branches and composted and uncomposted chips of the genus *Fraxinus* (Ash wood), out of the county or out of adjoining contiguous quarantined counties.
- 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 spells out 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.

EAB is a very serious plant pest risk that has destroyed large numbers of ash trees in neighboring Midwestern states. 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 can 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. Currently, EAB has been identified in 15 states, including Wisconsin, and two Canadian provinces. Eleven Wisconsin counties have been quarantined to restrict the movement of ash wood in order to prevent the spread of EAB.

This emergency rule is necessary to create an immediate quarantine of the counties with new EAB detections until the 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 EAB, the Animal and Plant Health Inspection Service of the United States Department of Agriculture (USDA−APHIS) has imposed quarantines on the movement of ash wood from Illinois, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Missouri, New York, Ohio, Pennsylvania, Tennessee, Virginia, West Virginia, and Wisconsin, as well as the Canadian provinces of Ontario and Quebec. DATCP rules currently prohibit imports of hardwood firewood and any wood of the genus *Fraxinus* from any federally quarantined area, except under authorized conditions. This proposed rule is consistent with current state and federal rules.

**Entities Affected**

This emergency rule may have an impact on persons or companies that deal in any hardwood firewood or ash materials in the quarantined counties. This emergency rule restricts the sale or distribution of ash products plus any hardwood firewood from the quarantined counties to locations outside of the quarantined counties.

The business impact of this emergency rule depends on the number of nurseries that sell/distribute ash nursery stock outside the quarantined counties, firewood producers/dealers that sell/distribute outside the quarantined counties, saw mills that move untreated ash stock outside the quarantined counties, and green wood waste that is moved outside the quarantined counties.

Licensed nursery growers will not be able to sell ash nursery stock outside of the quarantined counties. Firewood dealers would need to be certified under s. ATCP 21.20 to sell firewood outside of the quarantined counties. To obtain certification a firewood dealer will have to pay an annual certification fee to DATCP of $50 and treat the firewood in a manner that insures it is free of emerald ash borer. In order to sell ash wood products outside of their counties, veneer mills and wood processing mills that deal with ash will have to enter into a compliance agreement with DATCP or APHIS that authorizes movement of ash products outside of their counties only when there is assurance that the movement will not spread the emerald ash borer to other locations.

**Policy Alternatives**

If DATCP does nothing, potentially infested wood 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 EAB finds, raising the potential of a more rapid spread of EAB.

**Statutory Alternatives**

None at this time.

**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 this rule until the Board of Agriculture, Trade and Consumer Protection approves this scope statement. The Board may not approve this scope statement sooner than 10 days after this scope statement is published in the Wisconsin Administrative Register. Before the department may publish the emergency rule, it must receive written approval of the proposed emergency rule from the Governor.

## Corrections

**SS 016−11**

The statement of scope for this rule, SS 410−DOC 302−11 Act 38 Modifications of Sentences, was approved by the governor on August 4, 2011.

**Subject**

Revises Chapter DOC 302, relating to the repeal under 2011 Wis. Act 38 of statutory provisions relating to modification of sentences under s. 973.01, Stats.

**Description of the Objective of the Rule**

The objective of the rule is to bring chapter DOC 302 into compliance with 2011 Wis. Act 38. The legislature repealed the provisions of 2009 Wis. Act 28, relating to modification of bifurcated sentences under s. 973.01, Wis. Stats. The department seeks to repeal and amend the provisions of chapter DOC 302 which were promulgated in response to 2009 Wis. Act 28.

**Description of Existing Policies and New Policies Included in the Proposed Rule and An Analysis of Policy Alternatives**

In response to 2009 Wis. Act 28, the department promulgated rules to address mechanisms for modification of bifurcated sentences under s. 973.01, Stats. The legislature recently repealed the provisions of Act 28. (See 2011 Wis. Act 38.) The department seeks to repeal and amend the provisions of chapter DOC 302, relating to modification of bifurcated sentences to come into compliance with 2011 Wis. Act 38.

Failure to engage in the rule making process will result in the department's rules not being in compliance with 2011 Wis. Act 38.

**Statutory Authority**

Sections 227.11 (2), 301.02, 301.03 (2), and 302.07, Stats.

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

The Department estimates that it will take approximately 50 hours to develop this rule, including drafting the rule and complying with rulemaking requirements.

**Description of All of the Entities That Will be Affected by the Rule**

The rule affects persons who are convicted of criminal offenses and receive a sentence under s. 973.01, Stats., and DOC staff.

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

There are no federal regulations which address the issue of modification of sentences under s. 973.01, Wis. Stats.

**Contact Person**

Kathryn R. Anderson, Chief Legal Counsel, Wisconsin Department of Corrections, 3099 East Washington Avenue, P.O. Box 7925, Madison, WI 53707−7925, (608) 240−5049, kathryn.anderson@wisconsin.gov.

## Employment Relations Commission

**SS 005−11**

This statement of scope regarding both an emergency rule and a proposed permanent rule was approved by the governor on August 31, 2011.

**Subject**

The Wisconsin Employment Relations Commission plans to promulgate emergency and permanent administrative rules regarding: (1) the calculation of the maximum allowable collectively bargained change in total base wages authorized by 2011 Wisconsin Act 10 and 2011 Wisconsin Act 32 and; (2) how the Commission will coordinate with the Wisconsin Department of Revenue when providing the consumer price index to the State of Wisconsin, municipal employers, and collective bargaining representatives as mandated by said Section 315 of Act 10 and Section 2409br of Act 32.

**Statutory Authority**

Statutory authority to promulgate the rules is found in ss. 111.71, 111.94, 227.11 and 227.44, Stats.

**Estimate of Time Needed to Develop the Rule**

It is estimated that 50 hours of state employee time will be spent to develop the rules.

**Policy Analysis**

The rules will affect all municipal employers, the State of Wisconsin, all municipal and state employees who are eligible to be represented by a labor organization for the purposes of collective bargaining, and all labor organizations who do or wish to represent employees of a municipal employer or of the State of Wisconsin for the purposes of collective bargaining.

**Comparison with Federal Regulations.**

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

**Contact Person**

Scope Statement prepared July 15, 2011 by Peter G. Davis, Chief Legal Counsel, Wisconsin Employment Relations Commission. (608) 266−2993; peterg.davis@wisconsin.gov.

## Government Accountability Board

**SS 015−11**

This statement of scope was approved by the governor in writing on August 24, 2011.

**Subject**

Revises section GAB 1.28 (3) (b), relating to the definition of the term "political purpose."

**Objective of the Rule**

The present amendment involves only the repeal of the second sentence of s. GAB 1.28 (3) (b). All other portions of s. GAB 1.28 effected on August 1, 2010, including the first sentence of s. GAB 1.28 (3) (b), are unchanged.

The first sentence of s. GAB 1.28 (3) (b), provides that any communication that "is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate" is a communication "for political purposes" within the meaning of s. 11.01 (16), Stats., and hence is subject to all of the campaign finance regulations under ch. 11 of the Wisconsin Statutes that apply to communications for a political purpose — subject, of course, to any additional requirements or limitations contained in particular statutes.

The second sentence of s. GAB 1.28 (3) (b) additionally identifies communications which are susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate. That is, any communications that possess the characteristics enumerated in the second sentence of s. GAB 1.28 (3) (b) would automatically be deemed communications for a political purpose and, as a result, would automatically be subject to the applicable campaign finance regulations under ch. 11 of the Wisconsin Statutes.

As a result of litigation challenging the validity of the August 1, 2010, amendments to s. GAB 1.28, the Board has entered into a stipulation to refrain from enforcing the second sentence of s. GAB 1.28 (3) (b). The Board, through its litigation counsel, has also represented that it does not intend to defend the validity of that sentence and has sought judicial orders permanently enjoining its application or enforcement. This sentence is removed by this rule.

**Policy Analysis**

The revised rule will subject to regulation communications that are "susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate." The revised rule will subject communications meeting this criterion to the applicable campaign finance regulations and requirements of ch. 11, Stats. The scope of regulation will be subject to the United States Supreme Court Decision, *Citizens United vs. FEC* (No. 08−205), permitting the use of corporate and union general treasury funds for independent expenditures.

**Statutory Authority**

Sections 5.05 (1) (f) and 227.11 (2) (a), Stats.

**Comparison with Federal Regulations**

The United States Supreme Court upheld regulation of political communications called "electioneering communications" in its December 10, 2003 decision: *McConnell et al. v. Federal Election Commission, et al.* (No.02−1674), its June 25, 2007 decision of: *Federal Election Commission (FEC) v. Wisconsin Right to Life, Inc. (WRTL II)*, (No.06−969and 970), and pursuant to its January 21, 2010 decision of: *Citizens United vs. FEC* (No. 08−205).

The *McConnell* decision is a review of relatively recent federal legislation – The Bipartisan Campaign Reform Act of 2002 (BCRA) – amending, principally, the Federal Election Campaign Act of 1971 (as amended). A substantial portion of the *McConnell* Court's decision upholds provisions of BCRA that establish a new form of regulated political communication – "electioneering communications" – and that subject that form of communication to disclosure requirements as well as to other limitations, such as the prohibition of corporate and labor contributions for electioneering communications in BCRA ss. 201, 203. BCRA generally defines an "electioneering communication" as a broadcast, cable, or satellite advertisement that "refers" to a clearly identified federal candidate, is made within 60 days of a general election or 30 days of a primary election and, if for House or Senate elections, is targeted to the relevant electorate.

In addition, the Federal Election Commission (FEC) promulgated regulations further implementing BCRA (generally 11 CFR Parts 100−114) and made revisions incorporating the *WRTL II* decision by the United States Supreme Court (generally 11 CFR Parts 104, 114). The FEC regulates "electioneering communications."

**Entities Affected by the Rules**

Any person, committee, individual or political group that will sponsor communications "susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate."

**Estimate of Time Needed to Develop the Rules**

20 hours.

## Justice

**SS 020−11**

This statement of scope was approved by the governor on August 31, 2011.

**Rule No.:**

These proposed emergency rules will be placed in a new chapter, to be designated Wis. Admin. Code Chapter Jus 17. Rule numbers have not yet been designated.

**Relating to:**

Licenses authorizing persons to carry concealed weapons; concealed carry certification cards for qualified former federal law enforcement officers; and the certification of firearm safety and training instructors.

**Description of the Objectives of the Rules**

The State of Wisconsin Department of Justice ("DOJ") proposes to promulgate emergency administrative rules relating to the implementation of DOJ's statutory responsibilities under 2011 Wis. Act 35 regarding licenses authorizing persons to carry concealed weapons, concealed carry certification cards for qualified former federal law

enforcement officers, and the certification of firearm safety and training instructors. The proposed emergency rules will cover four subject areas:

First, there will be rules governing the issuance of concealed carry licenses to qualified applicants by DOJ pursuant to s. 175.60, Stats. These rules will govern all aspects of the licensing process and will describe the procedures and standards under which DOJ will process applications, set and collect fees, and verify that each license applicant meets all of the license eligibility requirements under s. 175.60 (3), Stats., including procedures and standards for certifying that an applicant has satisfied the applicable statutory training requirements and procedures for conducting the statutorily required background check of each applicant to determine whether the applicant is prohibited from possessing a firearm under state or federal law. The background check rules will include procedures for conducting fingerprint checks to verify the identity of any applicant who is initially found to be ineligible based on the background check.

Second, the rules will govern the administration of concealed carry licenses that have been issued by DOJ. These rules will cover: the maintenance and treatment of licensing records by DOJ; the receipt and processing by DOJ of information from courts regarding individuals subject to a court−imposed disqualification from possessing a dangerous weapon; procedures for renewing a license and replacing a license that is lost, stolen, or destroyed; procedures for processing address changes or name changes by licensees; procedures and standards for revoking or suspending a license; procedures for the administrative review by DOJ of any denial, suspension, or revocation of a license; and procedures governing DOJ's cooperation with courts and law enforcement agencies in relation to emergency licenses issued by a court.

Third, the rules will govern the procedures and standards under which DOJ will issue concealed carry certification cards to qualified former federal law enforcement officers pursuant to s. 175.49, Stats. These rules will govern all aspects of the certification process for former federal officers who reside in Wisconsin and will describe the procedures and standards under which DOJ will process applications, set and collect fees, and verify that each applicant meets all of the certification eligibility requirements under s. 175.49 (3) (b), Stats., including procedures and standards for certifying that an applicant has satisfied the firearm qualification requirement under s. 175.49 (3) (b) 5., Stats., and procedures for conducting the statutorily required background check of each applicant to determine whether the applicant is prohibited from possessing a firearm under federal law. The background check procedures will include procedures for checking fingerprints to verify the identity of any certification applicant who is initially found to be ineligible based on the background check. The rules will also cover: the maintenance and treatment of certification records by DOJ; procedures for renewing a certification card and replacing a card that is lost, stolen, or destroyed; procedures for processing address changes or name changes by a certified former federal officer; procedures and standards for revoking or suspending a certification; and procedures for the administrative review by DOJ of any denial, suspension, or revocation of a certification.

Fourth, the rules will govern the procedures and standards for the qualification and certification of firearms instructors by DOJ under s. 175.60 (4) (b), Stats., and will provide a definition identifying those firearm instructors who are certified by a national or state organization, as provided in s. 175.60 (4) (a), Stats.

DOJ's existing administrative rules are located at Wis. Admin. Code chs. Jus 8−12, 14, and 16. The emergency rules proposed here will be placed in a new chapter, to be designated Wis. Admin. Code Chapter Jus 17, and to be titled "Licenses to carry a concealed weapon." In addition to the rules proposed here, the new chapter will also contain another emergency rule — being separately promulgated by DOJ — that lists those states that issue a permit, license, approval, or other authorization to carry a concealed weapon that is entitled to recognition in Wisconsin under s. 175.60 (1) (f), Stats.

**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**

In 2011 Wisconsin Act 35, the state of Wisconsin established a new system under which DOJ is required to issue licenses authorizing eligible Wisconsin residents to carry concealed weapons in Wisconsin and to certify firearms safety and training instructors. The legislation also authorizes DOJ to issue concealed carry certification cards to qualified former federal law enforcement officers who reside in Wisconsin. Because the concealed carry licensing and certification programs established by Act 35 are entirely new, there are no existing DOJ practices or policies that cover the subject areas of the administrative rules here proposed.

Most of the proposed rules will simply carry into effect the legislative directives set forth in Act 35. In a few areas, the proposed rules will articulate policies which give substance to undefined statutory terms or are needed to ensure that licenses and certification cards are issued only to eligible individuals and that all applicants and licensees are properly identified at all times. Such rules are specifically intended to carry out the legislature's intent reflected in Act 35.

For example, the proposed rules will provide definitions of such undefined statutory terms as "firearms safety or training course" and "national or state organization that certifies firearms instructors." Such definitions are necessary to give substantive content to these otherwise undefined statutory terms so as to carry out the legislative purposes of ensuring that all licensees have been trained in firearms and firearms safety and of ensuring that all certified firearms instructors have demonstrated the ability and knowledge required for providing training in firearms and firearms safety. The policy alternative of not defining such terms in DOJ's administrative rules would be contrary to those important legislative purposes.

Similarly, the proposed rules will specify the types of information that must be included in a training certificate or affidavit in order for DOJ to find that certificate or affidavit to be sufficient to satisfy the training documentation requirements in s. 175.60 (4) (a), Stats. Such specification is necessary to give substantive content to the statutory documentation requirements so as to carry out the legislative purpose of ensuring that every successful applicant for a concealed carry license has adequately demonstrated completion of at least one of the forms of statutorily required training. The policy alternative of not specifying the required contents of an acceptable training certificate or affidavit in DOJ's administrative rules would be contrary to that important legislative purpose.

The proposed rules will also contain procedures for conducting fingerprint checks to verify the identity of any license or certification applicant who is initially found to be

ineligible based on a background check, procedures for issuing a new concealed carry license or certification card to an individual who changes his or her name, and procedures under which DOJ will work cooperatively with courts and law enforcement agencies in relation to any emergency concealed carry license that may be issued by a court, pursuant to s. 175.60 (9r). These procedures are not specifically required by statute but are necessary to carry out the legislative purposes of ensuring that licenses and certification cards are issued only to eligible individuals and that all applicants and licensees are properly identified at all times. The policy alternative of not including such procedures in DOJ's administrative rules would be contrary to those important legislative purposes.

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

A. Section 175.60 (7), Stats.

Those portions of the proposed rules that will establish the amount of the fee to be charged for a concealed carry license are expressly and specifically authorized and required by s. 175.60 (7), Stats., which provides:

> SUBMISSION OF APPLICATION. An individual may apply for a license under this section with the department by submitting, by mail or other means made available by the department, to the department all of the following:
>
> (c) A license fee in an amount, as determined by the department by rule, that is equal to the cost of issuing the license but does not exceed $37. The department shall determine the costs of issuing a license by using a 5−year planning period.

B. Section 175.60 (14g), Stats.

Those portions of the proposed rules that will establish procedures for the administrative review by DOJ of any denial, suspension, or revocation of a license are expressly and specifically authorized by s. 175.60 (14g), Stats., which provides:

> DEPARTMENTAL REVIEW. The department shall promulgate rules providing for the review of any action by the department denying an application for, or suspending or revoking, a license under this section.

C. Section 175.60 (15) (b), Stats.

Those portions of the proposed rules that will establish the amount of the fee to be charged for the renewal of a concealed carry license are expressly and specifically authorized by s. 175.60 (15) (b), Stats., which provides:

> The department shall renew the license if, no later than 90 days after the expiration date of the license, the licensee does all of the following:
>
> 4. Pays all of the following:
>
> a. A renewal fee in an amount, as determined by the department by rule, that is equal to the cost of renewing the license but does not exceed $12. The department shall determine the costs of renewing a license by using a 5−year planning period.

D. Section 227.11 (2) (a), Stats.

Those portions of the proposed rules that are not specifically authorized by ss. 175.60 (7), (14g), and (15) (b), Stats., as described above, are authorized by s. 227.11 (2) (a), Stats., which provides:

> (2) Rule−making authority is expressly conferred as follows:
>
> (a) Each agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute, but a rule is not valid if the rule exceeds the bounds of correct interpretation. All of the following apply to the promulgation of a rule interpreting the provisions of a statute enforced or administered by an agency:
>
> 1. A statutory or nonstatutory provision containing a statement or declaration of legislative intent, purpose, findings, or policy does not confer rule−making authority on the agency or augment the agency's rule−making authority beyond the rule−making authority that is explicitly conferred on the agency by the legislature.
>
> 2. A statutory provision describing the agency's general powers or duties does not confer rule−making authority on the agency or augment the agency's rule−making authority beyond the rule−making authority that is explicitly conferred on the agency by the legislature.
>
> 3. A statutory provision containing a specific standard, requirement, or threshold does not confer on the agency the authority to promulgate, enforce, or administer a rule that contains a standard, requirement, or threshold that is more restrictive than the standard, requirement, or threshold contained in the statutory provision.

This statute expressly confers on DOJ the general power to determine whether administrative rules interpreting those statutory provisions in Act 35 that are to be enforced or administered by DOJ are necessary to effectuate the purpose of those statutory provisions and, if such necessity is found, to promulgate such administrative rules, as long as those rules do not exceed the bounds of correct interpretation of the governing statutes.

DOJ finds that the rules here proposed are necessary to effectuate those portions of ss. 175.49 and 175.60 that require DOJ to establish and operate procedures governing:

- the issuance of concealed carry licenses to qualified applicants, including verification that each applicant has satisfied the applicable statutory training requirements, has passed the mandatory background check, and has met all of the other statutory eligibility requirements for a license;
- the issuance of concealed carry certification cards to qualified former federal law enforcement officers residing in Wisconsin, including verification that each applicant has satisfied the applicable firearm certification requirements, has passed the mandatory background check, and has met all of the other statutory eligibility requirements for certification;
- the administration of concealed carry licenses and certifications that have been issued by DOJ, including the maintenance and treatment of records; the receipt and processing of information from courts about individuals subject to a court−imposed disqualification from possessing a dangerous weapon; the renewal of licenses and certifications and the replacement of those that are lost, stolen, or destroyed; the processing of address changes or name changes for licenses and certifications; procedures and standards for revoking or suspending a license or certification; procedures for the administrative review by DOJ of any denial, suspension, or revocation of a license or certification; and procedures governing DOJ's cooperation with courts and law enforcement agencies in relation to emergency licenses issued by a court; and

- the qualification and certification of firearms instructors by DOJ and the identification of those firearm instructors who are certified by a national or state organization.

DOJ further finds that the rules here proposed:

- do not exceed the bounds of correct interpretation of ss. 175.49 or 175.60;
- are authorized by the statutes described above and are not based on authority derived from any other statutory or nonstatutory statements or declarations of legislative intent, purpose, findings, or policy;
- are authorized as necessary interpretations of the specific requirements of ss. 175.49 and 175.60 and are not based on authority derived from any other general powers or duties of DOJ; and
- do not impose any standards or requirements that are more restrictive than the standards and requirements contained in ss. 175.49 and 175.60.

For these reasons, those portions of the proposed rules that are not specifically authorized by ss. 175.60 (7), (14g), and (15) (b), Stats., are authorized by s. 227.11 (2) (a), Stats.

E. Section 227.24 (1) (a), Stats.

The proposed rules may be promulgated as emergency rules under s. 227.24 (1) (a), Stats., which provides:

> An agency may promulgate a rule as an emergency rule without complying with the notice, hearing and publication requirements under this chapter if preservation of the public peace, health, safety or welfare necessitates putting the rule into effect prior to the time it would take effect if the agency complied with the procedures.

DOJ finds that the public welfare necessitates promulgating the proposed rules as emergency rules under s. 227.24 (1) (a), Stats.

Under section 101 of Act 35, most of the provisions of the Act — including the provisions governing the licensing and certification processes covered by the proposed rules and the provisions authorizing the carrying of a concealed weapon by the holder of a license, an out−of−state license, or a certification card — will have an effective date of November 1, 2011. In particular, s. 175.60 (9) will require DOJ to begin receiving and processing license applications and issuing or denying licenses as soon as that provision takes effect on November 1, 2011. The Legislature has thus determined that the public welfare requires the licensing system to take effect on November 1, 2011.

DOJ cannot comply with the requirements of s. 175.60 (9), Stats., and related statutory requirements until it has in effect administrative rules establishing the procedures and standards that will govern DOJ's enforcement and administration of those requirements. It follows that, in order for DOJ to meet its statutory duties that take effect on November 1, 2011, it must complete the promulgation of the administrative rules proposed here prior to that date.

Under the non−emergency rule−making procedures of ch. 227, Stats., before the proposed rules could be promulgated, numerous notice, hearing, and publication requirements would have to be fulfilled — including, but not limited to a public hearing on the proposed rules, preparation of a detailed report including a summary of public comments and DOJ's responses to those comments, and legislative review of the proposed rules. DOJ has determined that it is impossible for all of the required steps in that non−emergency rule−making process to be completed by November 1, 2011. Only if DOJ utilizes the emergency rulemaking procedures of s. 227.24, Stats., can the requisite rules be promulgated and in effect in time for DOJ to meet its statutory duties that take effect on November 1, 2011. The public welfare thus necessitates that the proposed rules be promulgated as emergency rules under s. 227.24, Stats. Once the proposed emergency rules have been promulgated, DOJ will promptly follow up with the promulgation of a permanent version of the rules under the full rulemaking procedures.

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

It is estimated that state employees will spend approximately 200 hours on the rulemaking process for the proposed rules, including research, drafting, and compliance with required rulemaking procedures.

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

The proposed rules governing procedures and standards for the issuance and administration of concealed carry licenses under s. 175.60, Stats., will directly affect the interests of all Wisconsin residents who wish to apply for a license to carry a concealed weapon. In addition, the proposed rules will also indirectly affect the interest of the general public to the extent that the proper training and licensing of concealed carry licensees generally affects public safety.

The proposed rules governing procedures and standards for the issuance and administration of certification cards under s. 175.49 (3), Stats., will directly affect the interests of all former federal law enforcement officers residing in Wisconsin who wish to apply for such certification. In addition, the proposed rules will also indirectly affect the interest of the general public to the extent that the proper firearm certification of former law enforcement officers generally affects public safety.

The proposed rules governing the procedures and standards for the qualification and certification of firearms instructors by DOJ under s. 175.60 (4) (b), Stats., will directly affect the interests of all eligible persons who wish to apply for such certification. The proposed rules identifying those firearm instructors who are certified by a national or state organization, as provided in s. 175.60 (4) (a), Stats., will directly affect the interests of all persons who wish to claim such certification as a basis for providing training in firearms and firearm safety under that statute. In addition, the proposed rules will also indirectly affect the interest of the general public to the extent that the proper certification of firearms instructors generally affects public safety.

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

For persons other than current and former law enforcement officers, the regulation of the carrying of concealed weapons is primarily governed at the state level. Numerous federal statutes and regulations restrict the possession of weapons that have been shipped in interstate commerce, but there are no federal regulations that relate to the licensing of concealed carry by such persons, nor are there federal regulations governing the certification of firearms instructors for concealed carry purposes.

For qualified current and former law enforcement officers, state and local laws restricting the carrying of concealed firearms are federally preempted by 18 U.S.C.

§§ 926B−926C (commonly referred to as "H.R. 218"). The provisions in 2011 Wis. Act 35 related to qualified current and former law enforcement officers are state−law codifications of the corresponding provisions in H.R. 218. Similarly, the rules proposed here governing procedures and standards for the issuance and administration of concealed carry certification cards for qualified former federal law enforcement officers also codify corresponding provisions in the federal law.

**Contact Person**

Assistant Attorney General Clayton P. Kawski, (608) 266−7477.

## Natural Resources

***Fish, Game, etc., Chs. NR 1—***

**SS 021−11**

This statement of scope was approved by the governor on August 24, 2011.

**Subject**

Revises Chapter NR 47, relating to the proposed establishment of rules for the WFLGP for Weed Management Areas.

**Objective of the Proposed Rule**

The objective of this proposed rule change is to create Chapter NR 47 Subchapter XIII which establishes the rules for the Wisconsin Forest Landowner Grant Program WFLGP for groups interested in controlling invasive plants in weed management areas authorized in 2007−09 Biennial Budget *(2007 Wis. Act 20)*.

**Description of Policy Issues/Analysis of Policy Alternatives**

The creation of Chapter NR 47 Subchapter XIII − The Private Forest Landowner Grant Program for Weed Management Areas (WMA) will provide for the implementation and administration of the WFLGP for groups in WMAs authorized in 2007 Wis. Act 20. Rules development will include a system to implement and administer the program; eligible practices; criteria for determining the amount of a matching grant; eligibility requirements for groups receiving grants; requirements for grants; and requirements for establishing weed management areas.

**Economic Impact**

Level 3 – Little to no economic impact expected. There would be no implementation costs for the Department.

**Statutory Authority**

Statutory authority for creation of this rule can be found in s. 26.38, Wis. Stats.

**Estimate of Time Needed to Develop the Rule**

The Department estimates that approximately 155 hours of existing staff time will be needed to develop this rule. This time includes collecting public input at listening sessions, drafting the rule, taking the rule to public hearings, presentations to the Natural Resource Board, legislative review, and rule adoption.

**Summary and Comparison of Applicable Federal Regulations**

There are no known federal rules which apply to the creation of WFLGP for groups in WMA.

**Entities Affected by the Rule**

- Non−industrial private forestland owners wishing to apply for grants to create a forest stewardship plan or implement a forestry practice on their land.
- Any party, organized landowner group, or organization wishing to apply for a grant for the control of invasive plants.
- Division of forestry staff involved in the administration of the grant programs.
- Federal, state and local agencies interested in the control of invasive plants or the implementation of forestry practices on non−industrial private forestland.
- Any cooperating forester, restoration/landscape consultant, farm coops or other private businesses that may be hired to implement a practice under either grant program.

**Agency Contact Person**

WFLGP for WMA
Thomas Boos II
Wisconsin Department of Natural Resources
101 South Webster Street
P.O. Box 7921
Madison WI 53707−7921
608−266−9276

## Parole Commission

**SS 017−11**

The statement of scope for this rule, SS 410−PAC 1−Sentence Modifications, was approved by the governor on August 4, 2011.

**Subject**

Revises Chapter PAC 1, relating to the repeal under 2011 Wis. Act 38 of statutory provisions relating to modification of sentences under s. 973.01, Stats.

**Description of the Objective of the Rule**

The objective of the rule is to bring Chapter PAC 1 into compliance with 2011 Wis. Act 38. The legislature repealed the provisions of 2009 Wis. Act 28, relating to modification of bifurcated sentences under s. 973.01, Wis. Stats. The commission seeks to repeal and amend the provisions of Chapter PAC 1 which were promulgated in response to 2009 Wis. Act 28.

**Description of Existing Policies and New Policies Included in the Proposed Rule and An Analysis of Policy Alternatives**

In response to 2009 Wis. Act 28, the commission promulgated rules to address mechanisms for modification of bifurcated sentences under s. 973.01, Stats. The legislature recently repealed the provisions of Act 28. (See 2011 Wis. Act 38.) The commission seeks to repeal and amend the provisions of Chapter PAC 1, relating to modification of bifurcated sentences to come into compliance with 2011 Wis. Act 38.

Failure to engage in the rule making process will result in the commission's rules not being in compliance with 2011 Wis. Act 38.

**Statutory Authority**

Sections 227.11 (2), 304.06 (1) (c), and 304.06 (1) (em), Stats.

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

The commission estimates that it will take approximately 50 hours to develop this rule, including drafting the rule and complying with rulemaking requirements.

**Description of All of the Entities that will be Affected by the Rule**

The rule affects persons who are convicted of criminal offenses and receive a sentence under s. 973.01, Stats., Department of Corrections staff, and Parole Commission staff.

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

There are no federal regulations which address the issue of modification of sentences under s. 973.01, Wis. Stats.

**Contact Person**

Kathryn R. Anderson, Chief Legal Counsel, Wisconsin Department of Corrections, 3099 East Washington Avenue, P.O. Box 7925, Madison, WI 53707−7925, (608) 240−5049, kathryn.anderson@wisconsin.gov.

## Public Defender Board

**SS 013−11**

This statement of scope was approved by the governor on August 9, 2011.

**Subject**

Revises section PD 3.03, relating to determination of financial eligibility.

**Objective of the Rule**

Proposed changes to section PD 3.03 are made in response to the directives of 2011 Act 32.

**Changes to Existing Law and Statutory Authority for changes**

Wis. Stats. s. 977.02 authorizes the State Public Defender Board to promulgate rules regarding indigency and eligibility for legal services. In determining indigency, s. 977.02 (3) directs the State Public Defender to consider a person's available assets and income. Section 977.02 (3) (c) directs the SPD to consider as income only that income which exceeds the income limitations in s. 49.145 (3) (b). The executive budget act of the 2011 legislature, Act 32, sections 3559d and 3559h, made the following changes to the way by which the SPD considers the assets and income of persons applying for public defender representation.

Assets:

Prior legislation, 2009 Act 164, directed the State Public Defender, in determining whether someone was eligible for public defender representation, to consider assets in the manner described in s. 49.145 (3) (a) (Wisconsin Works). 2011 Act 32 changed these Act 164 provisions relating to W2, and directs the SPD to make the eligibility determination based on a combined equity value of available assets, without regard to asset valuation under Wis. Stats. s. 49.145 (3) (a).

Income:

Prior legislation, 2009 Act 164, tied eligibility to the federal poverty guidelines. Under prior legislation, eligibility for public defender representation would automatically change if the federal poverty guidelines were adjusted.

Pursuant to 2011 Act 32, eligibility will not automatically change when the federal poverty guideline is updated. Instead, income eligibility is frozen at 115% of the 2011 federal poverty guideline. Thus, in the event the federal poverty guideline changes, eligibility for state public defender representation will still be determined by the 2011 rate.

**Time and Resources Necessary to Develop the Rule**

Changes mandated by 2011 Act 32 are ministerial in nature and will not require extensive expenditures of time or resources.

**Entities that May be Affected by the Rule**

Over time, as the poverty line adjusts, counties will spend additional resources on persons who do not qualify for State public defender representation.

**There are No Federal Regulations Governing this Area.**

## Public Defender Board

**SS 014−11**

This statement of scope was approved by the governor on August 16, 2011.

**Relating to**

Payment of legal fees; ability to pay; indigency.

**Description of the Objective of the Rule**

Revises section PD 6.025 are made in response to the directives of 2011 Act 32.

**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**

Wis. Stats. s. 977.02 authorizes the State Public Defender Board to promulgate rules regarding eligibility for legal services.

Prior legislation, 2009 Act 164, tied eligibility and ability to pay for SPD representation to the federal poverty guidelines. Pursuant to 2011 Act 32, sections 3559(d) and 3559(h) the guidelines used for determining whether someone is eligible for, and has ability to pay for, SPD representation will not automatically change when the federal poverty guideline is updated. Instead, the guidelines for income eligibility for representation and income available to repay the SPD for that representation, are frozen at 115% of the 2011 federal poverty guideline.

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

Pursuant to Wis. Stats. s. 977.02 (3) (b), 977.02 (3) (c), and 977.02 (4m), the SPD is directed to promulgate rules related

to the ability of persons eligible for SPD representation to re−pay the cost of that representation.

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

Changes mandated by 2011 Act 32 are ministerial in nature and will not require extensive expenditures of time or resources.

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

Over time, as the poverty line adjusts, counties will spend additional resources on appointing attorneys to represent persons who do not qualify for State public defender representation but cannot afford to retain private counsel.

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

N/A.

**Contact Person**

Kathleen Pakes, Legal Counsel, State Public Defender, (608) 261−0633.

## Revenue

**SS 018−11**

This scope statement was approved by the governor on August 16, 2011.

**Rule No.**

Revises Chapter Tax 7.

**Relating to**

Requirements for fermented malt beverage wholesalers' permits and authorized activities for persons holding wholesalers' and brewers' permits.

**Description of the Objective of the Rule**

The objective of the proposed rule changes is to administer the provisions of ss. 125.28 (5) (e) and 125.29 (3), Stats., as created by 2011 Wisconsin Act 32, and reflect revisions made by the Act to the authorized activities of persons holding wholesalers' and brewers' permits.

**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**

Existing policies are as set forth in the rules. No new policies are being proposed, other than to reflect law changes. If the rules are not changed, they will be incorrect in that they will not reflect current law or current Department policy.

Section 125.28 (5) (e), Stats., as created by 2011 Wisconsin Act 32, requires the Department to promulgate rules to administer and enforce the requirements for fermented malt beverage wholesaler's permits under the Act. In addition, Act 32 converted the wholesaler's license issued by a local municipality to a statewide permit issued by the Department of Revenue and revised the authorized activities for wholesalers and brewers. These law changes must be reflected appropriately in Chapter Tax 7.

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

Section 125.03, Stats., provides "[t]he department, in furtherance of effective control, may promulgate rules consistent with this chapter and ch. 139."

Section 125.28 (5) (e), Stats., as created by 2011 Wisconsin Act 32, provides "[t]he department shall promulgate rules to administer and enforce the requirements under this subsection. The rules shall ensure coordination between the department's issuance and renewal of permits under this section and its enforcement of the requirements of this subsection, and shall require that all applications for issuance or renewal of permits under this section be processed by department personnel generally familiar with activities of fermented malt beverages wholesalers. The department shall establish by rule minimum requirements for warehouse facilities on premises described in permits issued under this section and for periodic site inspections by the department of such warehouse facilities."

Section 227.24 (1) (a), Stats., provides "[a]n agency may promulgate a rule as an emergency rule without complying with the notice, hearing and publication requirements under this chapter if preservation of the public peace, health, safety or welfare necessitates putting the rule into effect prior to the time it would take effect if the agency complied with the procedures."

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

The department estimates it will take approximately 175 hours to develop the emergency and proposed permanent rule orders.

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

Municipal fermented malt beverage wholesaler licensees and retailer licensees, holders of brewer, brewpub and out−of−state shippers' permits, and all cities, villages, and towns issuing fermented malt beverage licenses.

**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 Federal Alcohol Administration Act, Title 27 United States Code, contains provisions regarding the qualification and operation of alternating proprietors at breweries and contract brewing arrangements as regulated by the U.S. Department of the Treasury, Alcohol and Tobacco Tax and Trade Bureau (TTB). The department's emergency and proposed rule orders will be influenced by these regulations, but will not interfere with or duplicate them.

**Contact Person**

Dale Kleven (608) 266−8253.

## Transportation

**SS 012−11**

This statement of scope was approved by the governor Scope on August 18, 2011.

**Subject**

Revises Chapter Trans 327, relating to motor carrier safety.

**Description of the Objective of the Rule**

The federal regulations at 49 CFR 383 and 391 were revised by "Medical Certification Requirements as Part of the

CDL", 73 FR 73096 (Dec. 1, 2008; RIN 2126−AA10). This rule implements new federal requirements for commercial drivers obtaining and submitting medical certificates conformity with those federal regulations. Section 343.065 (3) of the statutes, created 2011 Wisconsin Act 32, requires the department to downgrade commercial drivers licenses of drivers who fail to provide federally mandated medical certifications, and to promulgate rules defining this downgrade process.

This rule−making will allow the department to:

- define the procedures for drivers to certify their driving type (Tier) to the department;
- create the process for downgrading a license and reinstating a license after the downgrade has occurred; and
- describe the types of notifications drivers and employers will receive prior to the federal medical card expiration; when the driver is downgraded; and when the driver is reinstated.

**Description of 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**

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

In January 2014, ALL persons in Wisconsin that hold a commercial driver's license (CDL) will be required to comply with these requirements as well. The department will downgrade drivers that fail to comply with these requirements in accordance with the procedures defined below.

These federal regulations, as well as s. 343.065 (3), stats., require the department to downgrade a driver's commercial driving privileges if the driver is operating in non−excepted interstate commerce (Tier 1) and fails to submit a federal medical certificate or to keep his or her federal medical certificate current.

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

*Alternatives for Commercial Drivers to Certify Driving Type:*

1. Require all drivers subject to these requirements to visit a DMV field service station to select their Tier of driving and provide proof of their federal medical certificate.

This approach is cumbersome, and will not work for Wisconsin drivers who are currently out of state.

2. Require all drivers to certify their driving type and provide federal medical certificate information electronically to DMV.

This approach will not work for drivers with limited access to computers and the Internet.

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

This approach will allow drivers and their employers' flexibility to provide this information. **As such, the department will pursue this approach.**

*Alternatives for Downgrade Process:*

In addition, the federal regulations offer several alternatives for downgrading a CDL for drivers that are operating in interstate, non−excepted commerce (Tier 1). Note: this downgrade does not apply to drivers in the other Tiers and they are NOT required to provide updated federal medical information to the department.

1. Change the driver's certification of their driving type to operating exclusively in interstate, excepted commerce (Tier 2), intrastate commerce (Tier 3) or intrastate, excepted commerce (Tier 4).

Drivers operating in interstate, excepted commerce or any type of intrastate commerce must have special restrictions printed on their CDL. As such, if the department pursued this alternative, we would have to re−issue the CDL every time a Tier 1 driver was downgraded. To remove the downgrade, drivers would have to visit a DMV field station, provide their federal medical certificate, and pay a fee for a duplicate license. This will be cumbersome and difficult for Wisconsin CDL drivers who are currently out of state. This approach would also require considerable staff resources and potential delays for drivers, since DMV field stations are not open seven days a week.

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

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

While this alternative may seem unduly burdensome, it is actually much easier for the driver to get their privileges back. They (or their employer) can submit their federal medical certificate to the department either in person or electronically via our secure web system.

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

*Other policy items:*

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

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

The department also plans to use our Employer Notification system to provide up−to−date information to employers about each of their drivers' selected Tier of operation and current status of their federal medical certificates.

This rule−making also addresses the licensing action that will be taken for drivers who present fraudulent federal medical cards. The department will cancel these licenses,

which is the same action taken on a driver who presents fraudulent information for a regular, Class D license.

**Statutory authority for the rule (including the statutory citation and language)**

2011 Wisconsin Act 32 (the biennial budget bill) created s. 343.065 (1) (a) which gives the department authority to downgrade a commercial driver license if a federal medical certificate is not on file.

In addition, s. 343.065 (1) (b) requires the department to promulgate rules to define the process for downgrading a license in accordance with federal law and regulations. This paragraph also directs the rule−making to include whether or not a new commercial driver license document will be issued after the downgrade, and establish a process for reinstating a downgraded license after appropriate medical certification is received.

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

It is estimated this rule will take approximately 250 hours to develop. Other resources necessary to successfully implement the rule include computer programming resources and an outreach campaign to affected commercial drivers and other interested stakeholders.

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

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

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

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

All states are required to comply with these new regulations.

**Contact Person**

Erin Egan (608) 266−9901.

# Submittal of Rules to Legislative Council Clearinghouse

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

## Employee Trust Funds
**CR 11−042**

On August 17, 2011, the Department of Employee Trust Funds submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse. The rule is in relation to rehired annuitants and separation of employment.

This rule is not subject to s. 227.135 (2), as affected by 2011 Wis. Act 21. The statement of scope for this rule, published in Administrative Register No. 662 on February 14, 2011 was sent to the Legislative Reference Bureau prior to the effective date of 2011 Wis. Act 21.

**Analysis**

The proposed rule revises Chapters ETF 10 and 20, relating to governing rehired annuitants and separation from employment. This rule−making is needed to create a stronger and clearer relationship between ETF 20.02 and 10.08, to clarify rule language for general readability, and to make amendments needed to ensure compliance with the Internal Revenue Code (IRC).

**Agency Procedure for Promulgation**

A public hearing is required for this rule and is scheduled for October 21, 2011 as indicated by the Hearing Notice included in this Register.

The Department's Office of Policy Privacy and Compliance is primarily responsible for this rule.

**Contact Information**

Lucas Strelow, Policy Advisor
Email: lucas.strelow@etf.state.wi.us
Telephone: (608) 267−0722

## Transportation
**CR 11−043**

On August 31, 2011, the Department of Transportation submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse. The rule is in relation to rehired annuitants and separation of employment.

This rule is not subject to s. 227.135 (2), as affected by 2011 Wis. Act 21. The statement of scope for this rule,published in Administrative Register No. 665 on May 31, 2011 was sent to the Legislative Reference Bureau prior to the effective date of 2011 Wis. Act 21.

**Analysis**

The proposed rule revises section Trans 100.02, relating to changes to motor vehicle liability insurance limits.

**Agency Procedure for Promulgation**

A public hearing is not required for this rule. According to the procedure set forth in s. 227.16 (2) (b), Stats., the Wisconsin Department of Transportation proposes to adopt the rule amending Ch. Trans 100 without public hearing. The proposed rulemaking will bring Ch. Trans 100 into conformity with a statute that has been changed or enacted, namely the provisions of ch. 344, Stats., as amended by 2011 Wis. Act 14. The departments Division of Motor Vehicles, Safety Responsibility is primarily responsible for promulgation of the rule.

**Contact Information**

Jane Dederich, Accident Records Unit Supervisor, Division of Motor Vehicles
Room 804
P.O. Box 7983
Madison, WI 53707−7983
Email: dotuninsuredmotorist@dot.wi.gov
Telephone: (608) 264−7236

# Rule−Making Notices

## Notice of Hearing
## Agriculture, Trade and Consumer Protection
**EmR1112**

The Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) announces that it will hold a public hearing on an emergency rule revising Chapter ATCP 99, relating to revising grain dealer and grain warehouse keeper agricultural producer security fund assessments.

### Hearing Information

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

| | |
|---|---|
| **Date:** | **Wednesday, October 5, 2011** |
| **Time:** | 2:00 P.M. |
| **Location:** | Department of Agriculture, Trade & Consumer Protection<br>Conference Room 172<br>2811 Agriculture, Drive<br>Madison, WI 53718−6777 |

Hearing impaired persons may request an interpreter for this hearing. Please make reservations for a hearing interpreter by September 28, 2011, by writing to Kevin LeRoy, Division of Trade and Consumer Protection, P.O. Box 8911, Madison, WI 53708−8911, telephone (608) 224−4928. Alternatively, you may contact the DATCP TDD at (608) 224−5058. The hearing facility is handicap accessible.

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

DATCP invites the public to attend the hearing and comment on the proposed rule. Following the public hearing, the hearing record will remain open until **October 7, 2011** for additional written comments. Comments may be sent to the Division of Trade and Consumer Protection at the address below, or to kevin.leroy@wisconsin.gov, or to http://adminrules.wisconsin.gov. Comments or concerns relating to small business may also be addressed to DATCP's small business regulatory coordinator Keeley Moll at the address above, or by email to keeley.moll@wisconsin.gov, or by telephone at (608) 224−5039.

### Copies of Proposed Rule

You can obtain a free copy of this emergency rule by contacting the Wisconsin Department of Agriculture, Trade and Consumer Protection, Division of Trade and Consumer Protection, 2811 Agriculture Drive, P.O. Box 8911, Madison, WI 53708. You can also obtain a copy by calling (608) 224−4928 or emailing kevin.leroy@wisconsin.gov. Copies will also be available at the hearing. To view the hearing draft rule online, go to: http://adminrules.wisconsin.gov.

### Analysis Prepared by Department of Agriculture, Trade and Consumer Protection

This emergency rule places a cap on the total amount of annual producer security fund assessments that could be charged to any one licensed grain dealer or grain warehouse keeper.

The Wisconsin department of agriculture, trade and consumer protection (DATCP) is adopting this temporary emergency rule. At this time, DATCP has not yet determined if it will adopt a permanent rule on the same subject. This emergency rule will take effect immediately upon publication in the official state newspaper, and will remain in effect for 150 days. The legislature's joint committee for review of administrative rules may extend the emergency rule for up to 120 additional days.

***Statutes interpreted***

Sections 126.15 and 126.30, Stats.

***Statutory authority***

Sections 93.07 (1), 126.81 (1) (a), and 126.88 (1), 227.24, Stats.

***Explanation of statutory authority***

DATCP has broad general authority, under s. 93.07(1), Stats., to interpret laws under its jurisdiction. DATCP has specific authority under s. 126.81 (1) (a), Stats., to interpret and implement Chapter 126, Stats. DATCP also has specific authority under s. 126.88 (1), Stats., to modify agricultural producer security assessments prescribed under Chapter 126, Stats. DATCP is adopting this temporary emergency rule under authority of s. 227.24, Stats.

***Related rules or statutes***

The Agricultural Producer Security Program is governed under Chapter 126 of the Wisconsin Statutes. More specifically, assessments into the producer security fund are calculated pursuant to s. 126.15, Stats., for grain dealers and 126.30, Stats., for grain warehouse keepers.

Chapter ATCP 99 of the Wisconsin Administrative Code interprets and implements Chapter 126, Stats., as it relates to grain dealers and grain warehouse keepers. DATCP has explicit authority to implement administrative rules modifying the grain dealer and grain warehouse keeper assessments prescribed in the statutes. DATCP has exercised this authority in the case of grain warehouse keeper, see s. ATCP 99.235, Adm. Code. DATCP has not exercised this authority as it relates to grain dealers.

***Plain language analysis***

*Background*

Chapter 126 of the Statutes governs the Agricultural Producer Security Program. This program is designed to limit losses to producers in the event of a default by a grain dealer, grain warehouse keeper, vegetable contractor, or a milk contractor. It contains a number of provisions that are designed to reduce the risk that a default will occur. In the event a default does occur, the program includes the agricultural producer security fund. Producers who suffer losses may be able to make a claim to the fund to cover a portion of those losses.

The Agricultural Producer Security Fund relies on license fees and assessments paid by licensees for revenue. License fees are – generally – directly related to the number of bushels of grain that a grain dealer purchases or that a grain warehouse keeper stores. Assessments are more complicated. They are based on a formula that takes the grain dealers purchases, in

dollars, and certain balance sheet ratios from the grain dealers most recently completed fiscal year into account to calculate the amount of the assessment. All else equal, a grain dealer or grain warehouse keeper that purchases or stores more grain will pay higher assessments than one that purchases or stores less grain. Further, a grain dealer or grain warehouse keeper that has a conservative balance sheet will pay lower assessments than one that is more extended or leveraged.

The new grain dealer and grain warehouse keeper license year begins on September 1, 2011. Looking at data from grain dealers and grain warehouse keepers most recent financial statements, it appears that one grain dealer and grain warehouse keeper will have abnormally high assessments. Very large contractors (in the milk contractor, vegetable contractor, and grain dealer areas) have occasionally incurred six−digit annual assessments under this program. However, it appears that this year, without some change, there will be one annual assessment that exceeds one million dollars. This would more than double any previous annual assessment that has ever occurred under the program and more than four times higher than the next highest annual assessment in the grain area of the program.

*Rule Content*

Under this rule, if a grain dealer's annual producer security fund assessment (except for the portion of the assessment related to deferred payment contracts) exceeds $350,000, then that grain dealer shall pay $350,000, and no more.

If a grain warehouse keeper's annual producer security fund assessment exceeds $150,000, then that grain warehouse keeper shall pay $150,000 and no more.

***Federal and surrounding state programs***

*Federal Programs*

The United States Warehouse Act is a voluntary regulatory program administered by Farm Service Agency (FSA), a unit within USDA. Under the act, warehouse keepers who obtain a warehouse license must comply with several FSA regulations. Generally, the warehouse keeper must maintain enough grain in inventory to cover 100% of depositor obligations at all times. Further, FSA licensed warehouse keepers must submit financial statements, submit to inspections by USDA auditors, and post surety bonds. In the event the warehouse defaults, FSA can convert the bonds to cash and disperse the proceeds to depositors. While the federal grain warehouse license is officially a voluntary program; in practice, it is not completely voluntary. Every state that has significant grain production (including Wisconsin) has some type of state grain warehousing law. These laws require grain warehouse keepers to obtain a license, but allow them to choose either a state license or a federal license. Those that choose a federal license are exempt for the state licensing program.

*Surrounding State Programs*

Like all states with a significant grain industry, Minnesota, Michigan, Illinois, Indiana, and Iowa all require persons who buy grain from producers to obtain a grain dealer license (though they may use different names), and all persons who store grain for others are required to obtain either a state or federal grain warehouse license. Licensees must file financial statements with the state, and the warehouses must maintain 100% of depositor owned grain in inventory at all times.

Minnesota requires grain dealers and grain warehouse keepers to post bonds with the state. Indiana, Illinois, and Iowa all have a state indemnity fund (like Wisconsin) that is made up of grain dealer and warehouse assessments. Michigan has a combination of bonds and indemnity fund contributions.

When compared to other states' grain programs, there are two things that make Wisconsin's program unique. First, while there are many states that have indemnity funds to protect producers, Wisconsin's indemnity fund (The Agricultural Producer Security Fund) is unique in that it pools risks and resources across multiple agricultural sectors. Second, where other states with indemnity funds tend to charge assessments on a flat rate per amount purchased or stored, Wisconsin's assessment formulas consider the licensee's balance sheet along with total purchases or storage capacity when calculating assessments.

**Small Business Impact**

This rule could have a direct impact on certain grain elevators. It would also have an indirect impact on the hundreds of grain farmers with whom the elevators do business, many of which are small businesses. This rule will help facilitate a stable and orderly grain industry and protect the welfare of grain farmers.

DATCP estimates that the balance of the Agricultural Producer Security Fund, as of June 30, 2012, would be about $11.5 million under this rule and about $12.2 million under current rules. The fund balance impacts both farmers and contractors, in certain specific situations.

For example, the maximum amount that can be paid out to producers in the event of a default is 60% of the fund balance. Therefore, in the event of a very large default, there would be more money available to help reimburse producers without this rule than with it. But there is a very low probability of a default occurring that would involve that much money.

Fund balances also play a role in "assessment holidays" for licensees. If the fund balance reaches certain minimum thresholds, licensees who have participated in the fund for at least five years do not have to make annual assessment payments that year. This rule might play a role in which years grain dealers and milk contractors have an assessment holiday. But in both cases, since the impact would only be to shift an assessment holiday from one license year to another, the overall assessments collections, averaged across several years, would be similar.

***Small business regulatory coordinator***

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

**Fiscal Impact**

The net fiscal impact for this rule could be a loss of revenue of up to $756,000. Under current rules, DATCP estimates that total assessments for both the upcoming license year (Sept. 1, 2011 to Aug. 31, 2012) and fiscal year (July 1, 2011 to June 30, 2012) could be about $1,612,000 for grain dealers and grain warehouse keepers. Under this rule, DATCP estimates that the total assessments could be about $856,000. Should the assessments be collected in accordance with the current rule, the $756,000 in revenue would represent an unexpected "windfall" to the producer security program.

This rule may affect the timing of when assessment revenues are collected in the next few years. The existing

producer security assessment formulas contain provisions for "assessment holidays" that are triggered when the balance in the producer security fund reaches certain minimum balances. Although this rule may affect how the formulas determine which years grain dealers and milk contractors will have an assessment holiday, the impact would only be to shift an assessment holiday from one license year to another. The overall assessments collections, averaged across several years, would be similar.

**Agency Contact Person**

Questions and comments (including hearing comments) related to this rule may be directed to:

Kevin LeRoy
Department of Agriculture, Trade and Consumer Protection
P.O. Box 8911
Madison, WI 53708−8911
Telephone (608) 224−4928
E−Mail: kevin.leroy@wisconsin.gov

## Notice of Hearing
## Employee Trust Funds
### CR 11−042

NOTICE IS HEREBY GIVEN that the Wisconsin Department of Employee Trust Funds (ETF) proposes an order pursuant to s. 227.14, Stats., to amend administrative rule ETF 10.08 (1) (a), (2) (a) and (b) (intro), (b) (2), (b) (3), (b) (5), (c), and (d), to amend sections ETF 20.02 (1), (2), and (3); and to create section ETF 20.02 (4), relating to governing rehired annuitants and separation from employment.

**Hearing Information**

| | |
|---|---|
| **Date:** | **Friday, October 21, 2011** |
| **Time:** | 1:00 P.M. |
| **Location:** | 801 W. Badger Road<br>Conference Room GB<br>Madison, WI 53713 |

Persons wishing to attend should come to the reception desk located up the stairs and directly to the left (or by elevator) from the main entrance to the building.

**Copies of Proposed Rule**

Copies of the proposed rule are available without cost from the Office of the Secretary, Department of Employee Trust Funds, P.O. Box 7931, Madison, WI 53707−7931. The telephone number is: (608) 266−1071.

**Submittal of Written Comments**

Comments may be submitted to Lucas Strelow, Policy Analyst, Department of Employee Trust Funds, 801 W Badger Rd, Madison, WI 53713−7931, P.O. Box 7931 (use ZIP Code 53707 for PO Box); Phone: 608−267−0722; E−mail: lucas.strelow@etf.state.wi.us no later than 4:30 p.m., Central Standard Time, on **October 24, 2011**.

**Analysis Prepared by Department of Employee Trust Funds**

***Statutes interpreted***

Sections 40.23 (1) (a), 40.22, Stats.; IRC 401 (a).

***Statutory authority***

Sections 40.03 (2) (i), (ig), (ir), (t), and 227.11 (2) (a) (intro), 1. to 3., Stats.

***Explanation of statutory authority***

By statute, the ETF Secretary is expressly authorized, with appropriate board approval, to promulgate rules required for the efficient administration of any benefit plan established in ch. 40 of the Wisconsin statutes. Also, each state agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency if the agency considers it necessary to effectuate the purpose of the statute.

This rule is not subject to s. 227.135 (2), as affected by 2011 Wis. Act 21. The statement of scope for this rule, submitted to the Legislative Reference Bureau on January 20, 2011 and published in the Administrative Register on February 14, 2011, was received by the Legislative Reference Bureau prior to the effective date of 2011 Wis. Act 21.

***Related rules or statutes***

1) Section 40.23 (1) (a), Stats., governs minimum break in service requirements as referenced in both ss. ETF 20.02 and 10.08 for proper termination from employment.
2) Section 40.22, Stats., sets forth the eligibility criteria for inclusion under the Wisconsin retirement system. Plan eligibility is relevant to both proper termination as well as becoming a rehired annuitant, and is referenced in both regulations.

***Plain language analysis***

The rule changes result from a need for general language clarification, stronger linkage between regulations, and better compliance with the IRC. These changes include the following:

- Sections ETF 20.02 and 10.08 are related regulations: s. ETF 20.02 governs the requirements for rehired annuitants while s. 10.08 provides the terms for an initial separation from employment. By definition, rehired annuitants must first have a valid separation from employment as set forth under s. ETF 10.08. Language has been added to both sections to clarify the interconnected nature of the sections through direct cross−reference. In addition, the change includes an amendment to the definition of rehired annuitant to specifically require a valid termination of employment as defined in s. ETF 10.08. The language has been added to improve understanding of the sections, as well as to ensure compliance with the IRC which requires a valid separation of service before an annuitant returns to employment.
- An additional section, s. ETF 20.02 (4), was added to require employers to report to the Department all rehired employees, regardless of whether they meet the requirements in s. 40.22, Stats., as a WRS participating employee. Employer reporting of all rehired employees will allow ETF to more accurately monitor whether rehires have had a proper separation from employment under s. ETF 10.08 so they qualify as a rehired annuitant under s. ETF 20.02. This will allow ETF to maintain compliance with the IRS break−in−service requirements under IRC s. 401 (a).
- A note following s. ETF 10.08 (2) (b) 3. was removed for risk of IRC noncompliance. Prior to retirement, discussion with one's employer regarding re−employment of any kind is impermissible for IRS purposes. Doing so provides evidence against the intent to completely sever the employee−employer

relationship. The note in this section could be construed to suggest that such agreements or discussions are acceptable.

- Language was added to an example provided under s. ETF 10.08 (2) (b) 5. to clarify that emeritus professors, as provided in the example, can only return to service if there is no compensation of any kind, including employer contributions to 403 (b) accounts. Contributions to 403 (b) accounts have been an issue in the past for emeritus−type programs.

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

IRC 401 (a), governing the qualified status of the pension plan, requires that there be a valid severance from employment before one can become a rehired annuitant. The changes and clarifications made to sections ETF 10.08 and 20.02 are intended in part to clarify language to strengthen understanding and to maintain compliance with this federal regulation. Under IRS guidelines, the IRS has made it clear that there must be a complete separation of the employee−employer relationship for a "bona fide" separation of service. The IRS has focused greatly on the intent of the employee to completely retire, with no prior arrangements to return to work for the employer. It was necessary to remove sections in the current regulation to clarify that such agreements are not permissible.

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

- *Illinois* – The relevant code for the State Retirement System of Illinois (SRS) is 40 ILCS 5/14−111, *Re−entry After Retirement*. The Illinois statute indicates that, with some exceptions, an annuitant who reenters service after retirement shall receive no payments from the retirement annuity during the time of employment. Only if the annuitant accepts temporary employment for a period not exceeding 75 working days in any calendar year can the employee continue to receive annuity payments.

  Unlike WRS, SRS statutes do not set forth conditions for a valid separation of service as a requirement for an annuitant's reemployment under the system. Therefore the proposed changes to ss. ETF 10.08 and 20.02 do not bear relationship to regulations governing SRS due to an absence of analogous regulatory standards. As such the SRS administrative code also does not include language for full reporting of all rehired annuitants to the agency, as created under the proposed changes to s. ETF 20.02 (4).

- *Iowa* – The relevant codes governing the Iowa Public Employees' Retirement System (IPERS) includes: Iowa Admin. Code 495−12.8, *Reemployment of retired members*; and Iowa Admin. Code 495−11.5, *Bona fide retirement and bona fide refund*. The relationship between these administrative codes does in fact bear a similar resemblance to the relationship being emphasized between ss. ETF 10.08 and 20.02 in the current rule change.

  One code is devoted to proper termination from employment (bona fide retirement in Iowa's case) and the other to rehired annuitants (reemployment of retired members). However, there is less direct reference in the Iowa language between the regulations, in part because Iowa's rehired annuitant code is devoted instead to a type of benefit payments that does not apply to WRS.

  Some of the amendments currently proposed in the ETF rule changes are, however, reflected in the Iowa code. There is a section under Iowa Admin. Code 495−11.5, for example, indicating that a school employee will not be considered to have a bona fide termination in service unless all of the employee's compensated duties for their current employer cease. Similarly, in the ETF rule change, language was added to s. ETF 10.08 (2) (b) 5. regarding "emeritus" professors to clarify that contributions to 403 (b) accounts are included in impermissible compensation. The Iowa code also indicates that a member will fail to have a bona fide separation of service if a contract for reemployment (of any nature) is made prior to the expiration of that state's minimum separation of service. A note following s. ETF 10.08 (2) (b) 3. was removed to make certain the no−contract requirement is properly reflected in the ETF code.

  The Iowa administrative code does not, however, include language for full reporting of all rehired annuitants to the agency, as created under the proposed changes to s. ETF 20.02 (4).

- *Michigan* – Mich. Admin. Code R. 38.38 states that a "retirement allowance" shall be suspended during any time period that the "retirant" returns to work in a covered position, unless there was a bona fide termination of employment. The statutes and regulations, however, do not set forth a definition of a bona fide termination of employment, nor do they lay out conditions for proper termination. Therefore the proposed changes to ss. ETF 10.08 and 20.02 do not bear relationship to regulations governing SRS due to an absence of analogous regulatory standards.

- *Minnesota* – The relevant code for the Minnesota State Retirement System (MSRS) is M.S.A. s. 352.115 Subd. 10, *Reemployment of annuitant*. The statute only indicates the maximum earnings allowable. Unlike WRS, MSRS does not have a regulation that sets forth conditions for a valid separation of service as requirement for rehired annuitants. Therefore the proposed changes to ss. ETF 10.08 and 20.02 do not bear relationship to regulations governing SRS due to an absence of analogous regulatory standards.

***Summary of data and analytical methodologies***

The proposed rule amendment is intended to make ETF's regulations governing rehired annuitants and proper separation from employment clearer and more flexible, as well as to bring it into closer harmony with federal statutes. Factual data was collected from ETF departments as to the current procedures and requirements for reporting of rehired annuitants from the employer. Data was also collected from the procedures and regulations of nearby states and comparable government pension systems. Analytical methodologies included discussion with legal counsel as to using the amendments to achieve the goal of the strengthening compliance with IRS requirements for a bona fide separation of service and proper re−employment of annuitants. ETF also utilized comparative analysis to draw from other pensions' methods and regulations, as well as position ETF's proposed amendments within the statutes and regulations that present the greatest compliance with the IRC.

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

The rule does not have an effect on small businesses because private employers and their employees do not participate in, and are not covered by, the Wisconsin Retirement System.

**Small Business Impact**

There is no effect on small business.

**Fiscal Estimate**

The rule will not have any fiscal effect on the administration of the Wisconsin Retirement System, nor will it have any fiscal effect on the private sector, the state or on any county, city, village, town, school district, technical college district, or sewerage districts.

**Agency Contact Person**

Lucas Strelow, Policy Analyst, Department of Employee Trust Funds, 801 W Badger Rd, Madison, WI 53713−7931, P.O. Box 7931 (use ZIP Code 53707 for PO Box); Phone: 608−267−0722; E−mail: lucas.strelow@etf.state.wi.us.

**ADMINISTRATIVE RULES**
**FISCAL ESTIMATE**
**AND ECONOMIC IMPACT ANALYSIS**

Type of Estimate and Analysis

**X** Original Updated Corrected

Administrative Rule Chapter, Title and Number

S. ETF 20.02 Rehired annuitants and s. ETF 10.08 Separation from employment.

Subject

Rehired Annuitants

| Fund Sources Affected | Chapter 20 , Stats. Appropriations Affected |
|---|---|
| GPR FED PRO PRS SEG SEG−S | |

Fiscal Effect of Implementing the Rule

| | | |
|---|---|---|
| **X** No Fiscal Effect | Increase Existing Revenues | Increase Costs |
| Indeterminate | Decrease Existing Revenues | Could Absorb Within Agency's Budget |
| | | Decrease Costs |

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

| | |
|---|---|
| State's Economy | Specific Businesses/Sectors |
| Local Government Units | Public Utility Rate Payers |

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

Yes **X** No

Policy Problem Addressed by the Rule

This rule−making is needed to create a stronger and clearer relationship between ss. ETF 20.02 and 10.08, to clarify rule language for general readability, and to make amendments needed to ensure compliance with the Internal Revenue Code (IRC).

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

There is no economic and fiscal impact on small business, business sectors, public utility rate payers, local governmental units and the state's economy as a whole.

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

The rule language more brings ETF more clearly into compliance with the IRC, and clarifies the interrelationship between ss. ETF 20.03 and 10.08. The agency does not see alternatives to achieving the policy goal of the rule amendments.

Long Range Implications of Implementing the Rule

There are no long range economic or fiscal impacts of the rule.

Compare With Approaches Being Used by Federal Government

IRC 401 (a), governing the qualified status of the pension plan, requires that there be a valid severance from employment before one can become a rehired annuitant. The changes and clarifications made to ss. ETF 10.08 and 20.02 are intended in part to clarify language to strengthen understanding and to maintain compliance with this federal regulation. Under IRS guidelines, the IRS has made it clear that there must be a complete separation of the employee−employer relationship for a "bona fide" separation of service. The IRS has focused greatly on the intent of the employee to completely retire, with no prior arrangements to return to work for the employer. It was necessary to remove sections in the current regulation to clarify that such agreements are not permissible.

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

**Illinois** – The relevant code for the State Retirement System of Illinois (SRS) is 40 ILCS 5/14−111, Re−entry After Retirement. The Illinois statute indicates that, with some exceptions, an annuitant who reenters service after retirement shall receive no payments from the retirement annuity during the time of employment. Only if the annuitant accepts temporary employment for a period not exceeding 75 working days in any calendar year can the employee continue to receive annuity payments.
Unlike WRS, SRS statutes do not set forth conditions for a valid separation of service as a requirement for an annuitant's reemployment under the system. Therefore the proposed changes to ss. ETF 10.08 and 20.02 do not bear relationship to regulations governing SRS due to an absence of analogous regulatory standards. As such the SRS administrative code also does not include language for full reporting of all rehired annuitants to the agency, as created under the proposed changes to s. ETF 20.02 (4).

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One code is devoted to proper termination from employment (bona fide retirement in Iowa's case) and the other to rehired annuitants (reemployment of retired members). However, there is less direct reference in the Iowa language between the regulations, in part because Iowa's rehired annuitant code is devoted instead to a type of benefit payments that does not apply to WRS.
Some of the amendments currently proposed in the ETF rule changes are, however, reflected in the Iowa code. There is a section under Iowa Admin. Code 495−11.5, for example, indicating that a school employee will not be considered to have a bona fide termination in service unless all of the employee's compensated duties for their current employer cease. Similarly, in the ETF rule change, language was added to s. ETF 10.08 (2) (b) 5. regarding "emeritus" professors to clarify that contributions to 403 (b) accounts are included in impermissible compensation. The Iowa code also indicates that a member will fail to have a bona fide separation of service if a contract for reemployment (of any nature) is made prior to the expiration of that state's minimum separation of service. A note following s. ETF 10.08 (2) (b) 3. was removed to make certain the no−contract requirement is properly reflected in the ETF code.
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## Notice of Hearing

## Natural Resources

***Fish, Game, etc., Chs. NR 1—***

**EmR1111**

(DNR # WM−12−11(E))

NOTICE IS HEREBY GIVEN that pursuant to sections 29.014, 29.041 and 227.11 (2) (a), and 227.24 (4) Stats., interpreting sections 29.014, 29.041 and 29.192, Stats., the Department of Natural Resources will hold public hearings on revisions to Chapter NR 10, Wis. Adm. Code, relating to the 2011 migratory game bird seasons and waterfowl hunting zones. This emergency order takes effect upon publication in the official state newspaper on September 3, 2011.

### Hearing Information

The hearing will be held on:

| | |
|---|---|
| **Date:** | **Monday, October 3, 2011** |
| **Time:** | 1:00 P.M. |
| **Location:** | Natural Resources State Office Building (GEF 2)<br>101 South Webster Street<br>Room 608<br>Madison, WI 53703 |

Pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Scott Loomans at (608) 267−2452 with specific information on your request at least 10 days before the date of the scheduled hearing.

### Submittal of Written Comments

Comments may be submitted until **October 4, 2011**. Written comments whether submitted electronically or by U.S. mail will have the same weight and effect as oral statements presented at the public hearings. A personal copy of the proposed rule and fiscal estimate may be obtained from Mr. Van Horn.

### Copies of Proposed Rule

The emergency rule and fiscal estimate may be reviewed and comments electronically submitted at the following Internet site: http://adminrules.wisconsin.gov. Written comments on the proposed rule may be submitted via U.S. mail to Mr. Kent Van Horn, Bureau of Wildlife Management, P.O. Box 7921, Madison, WI 53707 or by email to kent.vanhorn@wisconsin.gov.

### Analysis Prepared by Department of Natural Resources

***Statutory interpreted***

Sections 29.014, 29.041 and 29.192, Stats.

***Statutory authority***

Sections 29.014, 29.041 and 227.11 (2) (a), and 227.24 (4) Stats.

***Plain language analysis***

SECTION 1 of this rule order establishes the season length and bag limits for the 2011 Wisconsin migratory game bird seasons. For ducks, the state is divided into three zones, each with 60−day seasons. The season begins at 9:00 a.m. September 24 and continues for 60 consecutive days in the north, closing on November 22. In the South the season begins at 9:00 a.m. on October 1 and continues through October 9, followed by a 5−day split, and then reopens on October 15 and continues through December 4. In the new Mississippi River zone the season begins at 9:00 am on September 24 and continues through October 2, followed by a 12 day split, reopening on October 15 for a 60 day season. The split in the Mississippi River zone is seven days longer than in previous years.

The daily bag limit is 6 ducks including no more than: 4 mallards, of which only 1 may be a hen, 1 black duck, 1 canvasback, 3 wood ducks, 2 scaup, 2 pintails and 2 redheads.

For Canada geese, the state is apportioned into 2 goose hunting zones, Horicon and Exterior. Other special goose management subzones within the Exterior Zone include Brown County and the Mississippi River. Season lengths are: Horicon Zone − 92 days (2 hunting periods, first period beginning September 16 and the second on October 31); Exterior Zone in the northern duck zone − 85 days (Sept. 16 – Dec. 9); Exterior Zone in the southern duck zone – 85 days (Sept. 16 – Oct. 9 and Oct. 15 – Dec. 14) and Mississippi River subzone − 85 days (Sept. 24 – Oct. 2 and Oct. 15 – Dec. 29). The statewide daily bag limit for Canada geese in all zones is 2 birds per day during the open seasons within the zones.

Section 2 establishes that the youth waterfowl hunting season will be held on September 17 and 18.

Section 3 establishes a new duck hunting zone that consists of the Wisconsin portions of the Mississippi River west of the Burlington Northern Railroad tracks.

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

Under international treaty and Federal law, migratory game bird seasons are closed unless opened annually via the U.S. Fish and Wildlife Service (USFWS) regulations process. As part of the Federal rule process, the USFWS proposes a duck harvest−management objective that balances hunting opportunities with the desire to achieve waterfowl population goals identified in the North American Waterfowl Management Plan (NAWMP). Under this harvest−management objective, the relative importance of hunting opportunity increases as duck populations approach the goals in the NAWMP. Thus, hunting opportunity would be maximized when the population is at or above goals. Additionally, while USFWS believes that the NAWMP's population goals would tend to exert a conservative influence on overall duck harvest−management. Other factors, such as habitat, are to be considered.

In the past, the regular Canada goose season was based on the allowable Mississippi Valley Population (MVP) harvest which was determined based on the spring breeding population estimate obtained from an aerial survey of the MVP breeding range as prescribed by the Mississippi Flyway MVP management plan. However, because locally produced giant Canada geese now constitute a considerable portion of the harvest in all states that also harvest Mississippi Valley Population birds, the Mississippi Flyway Council is testing the use of a standard season framework for 5 years. Beginning in the fall of 2007 and continuing through 2011, season lengths and bag limits for each MVP harvest state have remained unchanged. Each state retains the flexibility to schedule the timing of their Canada goose season. In addition, if the MVP spring population numbers dropped to a predetermined low level during the 5−year period, the stable season framework would be adjusted.

In 2011 the USFWS has given our state the option of reconfiguring duck hunting zones through their concurrent revisions of 50 CFR 20. SECTION 3 of this board order creates a third duck hunting zone along the Mississippi River.

The proposed modifications included in this rule order are consistent with these parameters and guidelines which are annually established by the USFWS in 50 CFR 20.

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

Since migratory bird species are managed under international treaty, each region of the country is organized in a specific geographic flyway which represents an individual migratory population of migratory game birds. Wisconsin along with Minnesota, Michigan, Illinois and Iowa are members of the Mississippi Flyway. Each year the states included in the flyways meet to discuss regulations and guidelines offered to the flyways by the USFWS. The FWS regulations and guidelines apply to all states within the Flyway and therefore the regulations in the adjoining states closely resemble the rules established in this rule order, and only differ slightly based on hunter desires, habitat and population management goals. However, these variations fall within guidelines and sideboards established by the USFWS.

***Summary of data and analytical methodologies***

For the regular duck season, a data based process called Adaptive Harvest Management is used annually by the USFWS and the Flyways to determine which of 3 framework alternatives best matches the current year's data on populations and habitat (data from the spring pond and duck survey). The option of a closed season is also possible if survey conditions indicated that this is necessary for the management of duck populations. The determination of which alternative is selected is based in part on the spring wetland conditions on the breeding grounds and the Mid−Continent Mallard population. These data come from the May Pond and Breeding Waterfowl Population Surveys conducted by the USFWS and Canadian Wildlife Service on traditional survey areas as well as surveys from select states, including Wisconsin.

In addition to the annual waterfowl hunting regulation process described below, 2011 is the open window to change state duck hunting zones as allowed by the USFWS every 5 years. Since 1991, the USFWS has regulated how states can arrange duck hunting zones and season splits. A season split is a temporary closure of the hunting season in order to extend the hunting later in the duck season. Beginning in 2011, Wisconsin can have three waterfowl hunting with the option for 1 split in each zone or 4 zones with no options for splits. Each zone can have a unique size or shape but must be contiguous and the boundaries clear.

In the past, the USFWS only allowed 3 configurations of duck zones and splits; 1) One statewide zone with the annual option to have 2 season splits, 2) Two zones with the annual option for 1 season split in each zone, 3) Three zones without the option for a split. While we have worked with the USFWS restrictions on duck hunting zones it has been our consistent position that the configuration of duck zones is an issue of hunter opportunity and satisfaction which does not have significant impact on duck populations, therefore, states should be allowed to manage zones without federal regulation.

Wisconsin's regular Canada goose season harvest consists of approximately a 50:50 ratio between resident giant and MVP population Canada geese. As a result, the parameters of Wisconsin's regular goose seasons are guided by the Mississippi Flyway management plans for the MVP and giant Canada goose populations and approved by the Mississippi Flyway Council and the USFWS. The health of these populations was measured with spring breeding population surveys, survival data and harvest rates obtained from banding and production studies. The surveys and studies are conducted annually and are supported by the State of Wisconsin as part of the MFC. The result of this work is reviewed annually by the MFC committee and the USFWS to measure the impact of the stable season framework trial period.

The primary elements of Wisconsin's waterfowl regulatory process include conducting spring waterfowl surveys, participation in MFC meetings, commenting on federal proposals, and soliciting input from the public. The state process begins with Flyway meetings in February and March each year where staff provide input to the development of federal framework alternatives and requests related to the early seasons. In spring and summer, breeding waterfowl surveys and banding are conducted in support of the regulatory process.

In early July, staff conducted a public meeting to solicit input from interest groups, including representatives of the Conservation Congress Migratory Committee. At this meeting staff provided the attendees with breeding status information and asked for any items that they wish the department to pursue at the MFC meeting in mid July. Department staff then attended the MFC Technical and Council meetings. At that meeting, staff were provided status information and the proposed framework alternative from the USFWS. Department staff worked with the other states in our Flyway to discuss and develop proposals and recommendations that were voted upon by the MFC. Proposals that passed at the MFC meeting were forwarded to the USFWS for consideration by the Service Regulations Committee (SRC) at their meeting. The USFWS announced its final waterfowl season framework recommendation on July 29. Department staff then summarized waterfowl status and regulation information for Wisconsin citizens and presented this information to the Migratory Committee of the Conservation Congress and at a public meeting (Post−Flyway Meeting) of interest groups and individuals on July 30. Staff gathered public input at these meetings regarding citizen suggestions for the development of Wisconsin's waterfowl regulations given the federal framework. Public hearings were held during the first week of August around the state to solicit additional input on the proposed annual waterfowl rule.

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

These rules, and the legislation which grants the department rule making authority, do not have a significant fiscal effect on the private sector or small businesses. Additionally, no significant costs are associated with compliance to these rules.

**Small Business Impact**

These rules are applicable to individual sportspersons and impose no compliance or reporting requirements for small businesses, nor are any design or operational standards contained in the rule. Pursuant to s. 227.114, Stats., it is not anticipated that the proposed rule will have an economic impact on small businesses.

***Small business regulatory coordinator***

The Department's Small Business Regulatory Coordinator may be contacted at SmallBusiness@dnr.state.wi.us or by calling (608) 266−1959.

**Fiscal Estimate**

***State fiscal effect***

None.

***Local government fiscal effect***

None.

***Private sector fiscal effect***

None.

Small businesses in the tourism industry may benefit when liberal migratory bird hunting season frameworks can be offered.

*Summary*

Because this proposal does not differ significantly from the season frameworks available in previous years, there are no new expenditures, record keeping requirements, or processes created.

**Agency Contact Person**

Mr. Kent Van Horn, Bureau of Wildlife Management, P.O. Box 7921, Madison, WI 53707 or by email to kent.vanhorn@wisconsin.gov.

## Notice of Proposed Rulemaking Without Public Hearing

## Transportation

### CR 11−043

The Wisconsin Department of Transportation proposes an order to amend sections Trans 100.02 (11m), (12m) and (13m), relating to mandatory minimum liability limits for insurance policies under safety responsibility, damage judgment and mandatory insurance laws.

NOTICE IS HEREBY GIVEN that pursuant to the authority of sections 85.16 (1), 227.11, and 343.02, Stats., and according to the procedure set forth in section 227.16 (2) (b), Stats., the Wisconsin Department of Transportation proposes to adopt the following rule amending Chapter Trans 100 without public hearing. The proposed rulemaking will bring Chapter Trans 100 into conformity with a statute that has been changed or enacted, namely the provisions of Chapter 344, Stats., as amended by 2011 Wis. Act 14.

**Submittal of Written Comments**

The public record of this proposed rulemaking will be held open for 30 days from the date of this notice for the submission of comments. Any comments should be submitted to, and requests for copies of the proposed rule may be made to Jane Dederich, Accident Records Unit Supervisor, Division of Motor Vehicles, Room 804 P. O. Box 7983, Madison, WI 53707−7983. You may also contact Ms. Dederich by phone at (608) 264−7236 or via e−mail: dotuninsuredmotorist@dot.wi.gov.

**Copies of Proposed Rule**

To view the proposed amendments, view the current rule, and submit written comments via e−mail/internet, you may visit the following website http://www.dot.wisconsin.gov/library/research/law/rulenotices.htm.

**Analysis Prepared by the Department of Transportation**

***Statutes interpreted***

Sections 344.01 (2) (d), 344.15 (1), 344.33 (2) (a) to (c), Stats.

***Statutory authority***

Sections 85.16 (1), 227.11, and 343.02, Stats.

***Explanation of statutory authority***

The Department is charged with administering the safety responsibility, damage judgment, and mandatory insurance laws contained in ch. 344, Stats. This rule making implements ch. 344, Stats., as amended by 2011 Wis. Act 14.

***Related rules or statutes***

Chapter 344, Stats.

***Plain language analysis***

Current Wis. Admin. Code ch. Trans 100 reflects the mandatory minimum liability limit amounts established under 2009 Wis. Act 28 and the indexing system for adjustments to those limits. 2011 Wis. Act 14 lowered the mandatory minimum liability limit amounts and repealed the indexing system. This rule making will amend the mandatory minimum insurance limits in current Trans 100 to conform to those set by 2011 Wis. Act 14, and repeal the current rule's references to the indexing system.

The Property Casualty Insurers Association of America has produced a memo discussing the impact on the insurance industry of the liability limits set in 2009 Wis. Act 28. ["2009 Wisconsin Act 28: Analyzing the Repeal of Automobile Insurance−Related Provisions," Property Casualty Insurers Association of America, January 18, 2011.] According to that industry group, the $15,000, $50,000, $100,000 minimum insurance limits set in Act 28 affected about 10% of the state's insured population and increased premiums for that group by 10% to 12.5%.

The industry report suggests the higher limits were not needed because 96 out of 100 claims result in total economic claims of $25,000 or less, the average cost of property damage claims from motor vehicle accidents in Wisconsin is $2,600 and that the average cost of motor vehicle bodily injury claims in Wisconsin is $17,700. The paper claimed that repealing this provision would result in decreased premiums for those insured drivers affected by the Act 28 increases in liability limits.

The paper also concluded that the liability limit indexing system that was included in Act 28 was not necessary because the increased liability limits of Act 28 would insure that average claims would not exceed the liability limits until 2027. The paper stated that Wisconsin's bodily injury claim severity has been rising at roughly the same pace as its health care costs, i.e., about 5 to 6 percent a year. Applying that annual rate of change, to the current average injury claim cost of $17,700, the paper concluded that "it will take many years – possibly not until 2027 (10 years after the given 2017 date) – before the average injury claim cost of $17,700 reaches the new minimum per−person limit of $50,000."

Applying those same figures and methodology to the minimum mandatory limits set in 2011 Wis. Act 14, it appears that the average injury claim in Wisconsin will exceed Act 14's minimum per−person limit of $25,000 sometime between 2016 and 2018. Assuming the median personal injury claim is approximately the same as the mean (average), Wisconsin should expect the personal injury coverage limits set in 2011 Act 14 to be inadequate to cover the damages in

about ½ of all personal injury accidents in Wisconsin within 5 to 7 years.

| Year by Which Average Personal Injury Claims may be expected to exceed $25,000 Minimum Mandatory Insurance Limit for Single Coverage in Wisconsin | | | | | | | |
|---|---|---|---|---|---|---|---|
| Calculation at 5% Annual Increase | | | | | Calculation at 6% Annual Increase | | |
| Year | Expected Average PI Claim | Minimum Expected Increase in Claims | Annual Increase | | Expected Average PI Claim | Maximum Expected Increase in Claims | Annual Increase |
| | | | | | | | |
| 2010 | $ 17,700.00 | 5% | $ 885.00 | | $ 17,700.00 | 6% | $ 1,062.00 |
| 2011 | $ 18,585.00 | 5% | $ 929.25 | | $ 18,762.00 | 6% | $ 1,125.72 |
| 2012 | $ 19,514.25 | 5% | $ 975.71 | | $ 19,887.72 | 6% | $ 1,193.26 |
| 2013 | $ 20,489.96 | 5% | $ 1,024.50 | | $ 21,080.98 | 6% | $ 1,264.86 |
| 2014 | $ 21,514.46 | 5% | $ 1,075.72 | | $ 22,345.84 | 6% | $ 1,340.75 |
| 2015 | $ 22,590.18 | 5% | $ 1,129.51 | | $ 23,686.59 | 6% | $ 1,421.20 |
| 2016 | $ 23,719.69 | 5% | $ 1,185.98 | | $ 25,107.79 | 6% | $ 1,506.47 |
| 2017 | $ 24,905.68 | 5% | $ 1,245.28 | | $ 26,614.26 | 6% | $ 1,596.86 |
| 2018 | $ 26,150.96 | | | | $ 28,211.11 | | |

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

There are no existing or proposed federal regulations on this issue.

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

*Michigan:*

Owners of passenger vehicles, vans, and light trucks must purchase Michigan no−fault insurance before registering their vehicle. Michigan Law requires the following minimum liability amounts by type: "$20,000.00 because of bodily injury to or death of 1 person in any 1 accident and, subject to said limit for 1 person, $40,000.00 because of bodily injury to or death of 2 or more persons in any 1 accident, and $10,000.00 because of injury to or destruction of property of others in any 1 accident." Mich. Comp. Laws s. 257.520(b)(2) (2011). These limits do not appear to be adjusted by index.

*Minnesota:*

The Minnesota No−Fault Act, Minn. Stat. s. 65B.48 (2010), requires owners of registered motor vehicles to maintain no−fault insurance. Vehicle owners must be insured to the following minimum liability amounts by type: "not less than $30,000 because of bodily injury to one person in any one accident and, subject to said limit for one person, of not less than $60,000 because of injury to two or more persons in any one accident, and, if the accident has resulted in injury to or destruction of property, of not less than $10,000 because of such injury to or destruction of property of others in any one accident." Minn. Stat. s. 69B.49 subd. 3 (1) (2010). These limits do not appear to be adjusted by index.

*Illinois:*

All motor vehicles operated in Illinois must be covered by liability insurance. Vehicle owners are required to provide insurance information at the time of registration renewal. Illinois requires drivers to carry bodily injury or death liability limits of $20,000 for single−person and $40,000 for multiple−persons, as well as property damage liability limits of $15,000 and uninsured motorist coverage. 625 Ill. Comp. Stat. 5/7−203 (2011). These limits do not appear to be adjusted by index.

*Iowa:*

Iowa does not mandate that drivers or vehicle owners carry insurance. A driver who causes personal injury or damage exceeding $1,000 to another party must prove his or her financial responsibility or be subject to license suspension. Drivers can prove financial responsibility by showing that they were covered by automobile liability insurance at the time of the accident. An insurance policy is not an effective proof of financial responsibility unless it meets the following minimum liability amounts: $20,000 for bodily injury or death to one person, $40,000 for bodily injury or death to two or more persons, and $15,000 for property damage. Iowa Code s. 321A.5 subd. 3 (2011). These limits do not appear to be adjusted by index.

***Summary of data and analytical methodologies***

No factual data was analyzed in this rule making. The proposed rule revises the mandatory minimum liability limits to agree with new statutory limits, and removes the indexing adjustment system repealed by 2011 Wis. Act 14.

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

The Department anticipates that this regulatory change will have a fiscal effect on small business.

**Fiscal Estimate**

***Anticipated costs incurred costs by the private sector***

The Department anticipates that this regulatory change, which is compelled by statutory changes, will have a fiscal effect on private sector revenues and liabilities. Revenues to insurance companies can be expected to fall if drivers purchase less liability coverage. Conversely, the liability of drivers who carry only the minimum required insurance and who are involved in motor vehicle accidents can be expected to rise, because it will be more likely that the insurance coverage will be inadequate to cover damages caused by the accident. To the extent that medical bills and collision repair bills exceed insurance coverage, the impact of these changes may be felt by providers of medical services and auto repair services.

**Text of Proposed Rule**

**SECTION 1.** Trans 100.02 (11m), (12m), and (13m) are amended to read:

Trans 100.02 (11m) "Multiple injury minimum coverage" means ~~$100,000 until the department publishes adjusted liability limit amounts as required by s. 344.11, Stats., and means the most recently published adjusted liability amount for multiple injuries after that date~~$50,000.

(12m) "Property damage minimum coverage" means ~~$15,000 until the department publishes adjusted liability limit amounts as required by s. 344.11, Stats., and means the most recently published adjusted liability amount for property damage after that date~~$10,000.

(13m) "Single injury minimum coverage" means ~~$50,000 until the department publishes adjusted liability limit amounts as required by s. 344.11, Stats., and means the most recently published adjusted liability amount for a single person injured in an accident after that date~~$25,000.

STATE OF WISCONSIN
DEPARTMENT OF ADMINISTRATION
DOA 2049 (R 07/2011)

## ADMINISTRATIVE RULES FISCAL ESTIMATE AND ECONOMIC IMPACT ANALYSIS

**Type of Estimate and Analysis**

**X** Original Updated Corrected

**Administrative Rule Chapter, Title and Number**

Ch. Trans 100

**Subject**

Amendment of Trans 100.02 (11m), (12m), and (13m), relating to mandatory minimum liability limits for insurance policies under safety responsibility, damage judgment and mandatory insurance laws and repeal the current rule's references to the indexing system.

| Fund Sources Affected | Chapter 20 , Stats. Appropriations Affected |
|---|---|
| GPR FED PRO PRS SEG SEG−S | N/A |

**Fiscal Effect of Implementing the Rule**

| | | |
|---|---|---|
| **X** No Fiscal Effect | Increase Existing Revenues | Increase Costs |
| Indeterminate | Decrease Existing Revenues | Could Absorb Within Agency's Budget |
| | | Decrease Costs |

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

| | |
|---|---|
| State's Economy | **X** Specific Businesses/Sectors |
| Local Government Units | Public Utility Rate Payers |

**Would Implementation and Compliance Costs Be Greater Than $20 million?**

Yes **X** No

**Policy Problem Addressed by the Rule**

In 2010, the rule was changed from these limits to the current limits. The statute has now changed the limits to the limits that existed prior to 2010. The purpose of this amendment is to conform the rule to the requirements of ch. 344, Stats., as amended by 2011 Wisconsin Act 14.

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

The Dept. anticipates that this regulatory change, which is compelled by statutory changes, will have a fiscal effect on private sector revenues and liabilities. Revenues to insurance companies can be expected to fall if drivers purchase less liability coverage. The liability of drivers who carry only the minimum required insurance can be expected to rise because the insurance coverage will be inadequate to cover damages. When medical bills and collision repair bills exceed insurance coverage, the impact of these changes may be realized by providers of medical services and auto repair services.

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

The rule needs to be changed to reflect the changes to the statute.

Long Range Implications of Implementing the Rule

Implications should be minimal since previous law was only in place for one year.

Compare With Approaches Being Used by Federal Government

There are no existing or proposed federal regulations on this issue.

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

**Illinois:** All motor vehicles operated in Illinois must be covered by liability insurance. Vehicle owners are required to provide insurance information at the time of registration renewal. Illinois requires drivers to carry bodily injury or death liability limits of $20,000 for single−person and $40,000 for multiple−persons, as well as property damage liability limits of $15,000 and uninsured motorist coverage. 625 Ill. Comp. Stat. 5/7−203 (2011). These limits do not appear to be adjusted by index.

**Iowa:** Iowa does not mandate that drivers or vehicle owners carry insurance. A driver who causes personal injury or damage exceeding $1,000 to another party must prove his or her financial responsibility or be subject to license suspension. Drivers can prove financial responsibility by showing that they were covered by automobile liability insurance at the time of the accident. An insurance policy is not an effective proof of financial responsibility unless it meets the following minimum liability amounts: $20,000 for bodily injury or death to one person, $40,000 for bodily injury or death to two or more persons, and $15,000 for property damage. Iowa Code s. 321A.5 subd. 3 (2011). These limits do not appear to be adjusted by index.

**Michigan:** Owners of passenger vehicles, vans, and light trucks must purchase Michigan no−fault insurance before registering their vehicle. Michigan Law requires the following minimum liability amounts by type: "$20,000.00 because of bodily injury to or death of 1 person in any 1 accident and, subject to said limit for 1 person, $40,000.00 because of bodily injury to or death of 2 or more persons in any 1 accident, and $10,000.00 because of injury to or destruction of property of others in any 1 accident."

**Minnesota:** The Minnesota No−Fault Act, Minn. Stat. s. 65B.48 (2010), requires owners of registered motor vehicles to maintain no−fault insurance. Vehicle owners must be insured to the following minimum liability amounts by type: "not less than $30,000 because of bodily injury to one person in any one accident and, subject to said limit for one person, of not less than $60,000 because of injury to two or more persons in any one accident, and, if the accident has resulted in injury to or destruction of property, of not less than $10,000 because of such injury to or destruction of property of others in any one accident." Minn. Stat. s. 69B.49 subd. 3 (1) (2010). These limits do not appear to be adjusted by index.

Name and Phone Number of Contact Person

Jane Dederich (608) 264−7236

# Submittal of Proposed Rules to the Legislature

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

## Natural Resources

***Fish, Game, etc., Chs. NR 1—***

**CR 11−032**

(DNR # WM−11−11)

Revises Chapter NR 10, relating to the 2011 migratory game bird seasons and waterfowl hunting zones.

This rule is not subject to s. 227.185, Wis. Stats. The statement of scope for this rule, published in Register No. 664 on April 14, 2011, was sent to Legislative Reference Bureau prior to the effective date of 2011 Wis. Act 21.

## Natural Resources

***Environmental Protection — Air Pollution Control, Chs. NR 400—***

**CR 11−005**

(DNR # AM−44−10)

Proposed rules affecting Chapters NR 400, 419, 421, 423, 439, and 484, pertaining to the correction of deficiencies identified by the U.S. EPA with a portion of the state's current volatile organic compound reasonably available control technology rules.

This rule is not subject s. 227.185, Wis. Stats. The statement of scope for this rule, published in Register No. 657 on September 14, 2010, was sent to the Legislative Reference Bureau prior to the effective date of 2011 Wisconsin Act 21.

# Rule Orders Filed with the Legislative Reference Bureau

*The following administrative rule orders have been filed with the Legislative Reference Bureau and are in the process of being published. The date assigned to each rule is the projected effective date. It is possible that the publication date of these rules could be changed. Contact the Legislative Reference Bureau at bruce.hoesly@legis.wisconsin.gov or (608) 266−7590 for updated information on the effective dates for the listed rule orders.*

## Revenue
**CR 10−129**

Revises Chapters Tax 20, 20 Appendix and 53, relating to the lottery and gaming and school levy tax credits and plat review fees.
Effective 11−1−11.

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