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## WISCONSIN ADMINISTRATIVE REGISTER

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## Emergency Rules Now in Effect

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

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

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

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

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

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

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

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

**1. EmR1112** — Rule adopted to create **sections ATP 99.126 (6) and ATP 99.235 (5)** and to amend **sections ATP 99.126 (1) and ATP 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 No. 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 led 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.

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

**2. EmR1118** — Rule adopted to revise **Chapter ATCP 53**, relating to agricultural enterprise areas (AEAs).

The statement of scope for this rule, published in Register No. 664, on April 30, 2011, was sent to the Legislative Reference Bureau prior to the effective date of 2011 Wis. Act 21.

#### **Exemption From Finding of Emergency**

Under s. 91.84 (2), the department may use the procedure under s. 227.24 to promulgate a rule designating an agricultural enterprise area or modifying or terminating the designation of an agricultural enterprise area. Notwithstanding s. 227.24 (1) (c) and (2), a rule promulgated under that subsection remains in effect until the department modifies or repeals the rule. Notwithstanding s. 227.24 (1) (a) and (3), the department is not required to determine that promulgating a rule under that subsection as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under that subsection.

**Publication Date:** November 14, 2011  
**Effective Dates:** January 1, 2012 until modified or repealed by the department.  
**Hearing Date:** December 12, 2011

### **Children and Families**

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

**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.

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

### **Employment Relations Commission**

**EmR1113** — Rule adopted to create Chapters **ERC 70 to 74** and **ERC 80**, relating to initial annual certification elections.

These emergency rules were approved by the governor on September 13, 2011.

The statement of scope for this rule, SS 004–11, was approved by the governor on July 20, 2011, published in Register 667, on July 31, 2011, and approved by the Wisconsin Employment Relations Commission as required by s. 227.135 (2) on August 15, 2011.

#### **Finding of Emergency**

An emergency exists because the public peace, health, safety and welfare necessitate putting these rules into effect so that the Wisconsin Employment Relations Commission can meet its election obligations under ss. 111.70 (4) (d) 3. b. and 111.83 (3) (b), Stats., and nonstatutory provisions ss. 9132 (1) (b) and 9155 (1) (b) of 2011 Wisconsin Act 10 as amended by nonstatutory provisions ss. 3570f and 3570h of 2011 Wisconsin Act 32.

**Publication Date:** September 15, 2011  
**Effective Dates:** September 15, 2011 thru February 12, 2012

### **Insurance**

**EmR1117** — Rule adopted to revise **Chapter Ins 18**, relating to grievances and independent review requirements and affecting small business.

The statement of scope for this rule, SS 027–11 Ch. Ins 18, was approved by the governor on September 30, 2011, published in Register No. 670, on October 14, 2011, and approved by the Commissioner Theodore Nickel on October 26, 2011. The emergency rule was approved by the governor on November 3, 2011.

#### **Finding of Emergency**

The Commissioner of Insurance finds that an emergency exists and that the attached proposed emergency rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. Portions of Wisconsin's insurance law and regulations governing grievances and independent review processes are in conflict with federal law and regulation following the amendment of 42 USC 300gg 19 (a) and (b), as implemented by 45 CFR 147.136, as amended. Therefore, the Commissioner, pursuant to s. 631.01 (5), Stats., has determined that it is in the interest of the State of Wisconsin, Wisconsin insureds and the public to exempt insurers, certified independent review organizations and self-insured governmental health plans that elect to comply with ch. Ins 18, Wis. Adm. Code, as revised, from being required to comply with provisions contained in s. 632.83 and 632.835, Stats., that are inconsistent with 42 USC 300gg–19 (a) and (b), and 45 CFR 147.136 et seq., as amended.

Facts constituting the emergency arise from the desire for the State of Wisconsin to retain jurisdiction and regulatory control over the grievance and the independent review processes and independent review organizations operating in the state. The Secretary of the US Department of Health and Human Services issued interim final regulations and guidance, most recently released late June 2011. The regulations require states that desire to retain regulatory oversight of the grievance and independent external review processes, to demonstrate compliance with the federal internal appeal and external review laws and regulations to the Center for Consumer Information and Insurance Oversight ("CCIIO"). The Commissioner received notice on July 29, 2011, from CCIIO that Wisconsin's current regulatory oversight is not compliant.

The Commissioner has requested reconsideration of that initial determination, however, to ensure retention of

regulatory oversight of the grievance and independent external review processes revisions to ch. Ins 18, Wis. Adm. Code, must be made and be applicable for claims arising on or after January 1, 2012. Assembly Bill 210 has been introduced, a bill that repeals inconsistent provisions in accordance with federal requirements, but it is unlikely that AB 210 will be enrolled within the reconsideration timeframe. Therefore the Commissioner is proposing this emergency rule to comply with the federal requirements in order to retain regulatory jurisdiction of grievance and independent review processes.

**Publication Date:** November 16, 2011  
**Effective Dates:** November 16, 2011 through April 13, 2012

## Justice (2)

**1. EmR1114** — Rule to create **Chapter Jus 17 and Chapter Jus 18**, relating to licenses authorizing persons to carry concealed weapons; concealed carry certification cards for qualified former federal law enforcement officers; and the certification of firearms safety and training instructors.

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

The statement of scope for this rule, SS 020–11, was approved by the governor on August 31, 2011, published in Register No. 669, on September 14, 2011, and approved by Attorney General J.B. Van Hollen on September 26, 2011.

### Finding of Emergency

Under section 101 of 2011 Wis. Act 35, most of the provisions of that Act — including the provisions governing the licensing and certification processes covered by the rules proposed here 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), Stats., 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 such administrative rules prior to that date.

Under the non-emergency rulemaking 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 rulemaking 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.

**Publication Date:** October 25, 2011  
**Effective Dates:** November 1, 2011 through March 29, 2012  
**Suspended in Part:** November 9, 2011

**2. EmR1115** — Rule to create **section Jus 17.13**, relating to the recognition by Wisconsin of concealed carry licenses issued by other states.

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

The statement of scope for this rule, SS 009–11, was approved by the governor on August 4, 2011, published in Register No. 668, on August 31, 2011, and approved by Attorney General J.B. Van Hollen on September 12, 2011.

### Finding of Emergency

Section 100 (1) of 2011 Wis. Act 35 expressly authorizes and requires DOJ to use the emergency rulemaking procedures of s. 227.24, Stats., to promulgate the emergency rule required under s. 165.25 (12), Stats., and further provides that DOJ is not required to provide evidence that promulgating this rule as an emergency rule is necessary for the preservation of public peace, health, safety, or welfare.

**Publication Date:** October 25, 2011  
**Effective Dates:** November 1, 2011 through March 29, 2012

## 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.**

**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.**

**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.**

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

**4. 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.

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

**5. 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.

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

**6. EmR1116** — Rule to amend section NR 25.05 (1) (c), relating to commercial fishing in outlying waters.

This emergency rule was approved by the governor on October 19, 2011.

The statement of scope for this rule, SS 023-11, was approved by the governor on September 15, 2011, published in Register No. 669, on September 30, 2011, and approved by The Natural Resources Board on October 26, 2011.

#### Finding of Emergency

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

The current commercial season for whitefish from Lake Michigan and Green Bay closes one week before the season

closure for state-licensed fishers in the State of Michigan. This limitation on fishing opportunities threatens the welfare of state-licensed commercial fishers in Wisconsin and makes these Wisconsin businesses less competitive with counterparts in Michigan. The additional business revenue, approximately \$161,300, and improved competitiveness of the commercial fishing industry, rises to the standard of preservation and improvement of the public welfare required for emergency rule making.

The number of commercial fishers has been declining over the last 20 years from 145 to 57. While some of this decline has been due to consolidation, some of the reduction is due to adverse economics of the industry. This rule requires emergency action to enhance public welfare as it applies to the economic health of the commercial fishing industry, which requested this rule change.

**Publication Date:** October 26, 2011  
**Effective Dates:** October 26, 2011 through March 23, 2012

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### **Safety and Professional Services (2)** **(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 section 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.

**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.

**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

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## Scope Statements

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### Government Accountability Board

SS 047-11

This statement of scope was approved by the governor on December 2, 2011.

#### Rule No.

Chapter GAB 10

#### Relating to

Use of technical college system student identification cards for voting.

#### Subject

Creates GAB Chapter 10 – Voter Identification, and specifies that a Wisconsin Technical College System (WTCS) student identification card may be used for voting.

#### Objective of the Rule

The proposed rule implements a directive from the Joint Committee for the Review of Administrative Rules (JCRAR). The directive requires the Government Accountability Board (G.A.B.) to promulgate an emergency rule specifying that a Wisconsin Technical College System (WTCS) student identification card may be used as acceptable identification for voting.

#### Emergency Rule Authority

The agency is authorized to promulgate the rule as an emergency rule because it has been directed to do so by the Joint Committee for the Review of Administrative Rules pursuant to Wis. Stats. ss. 227.10 (1), 227.26 (2).

#### Permanent Rule

The agency plans to promulgate this rule as both an emergency rule and a permanent rule. This scope statement is submitted in support of both the emergency rule and the permanent rule.

#### Policy Analysis

The proposed rule clarifies that a WTCS student identification card is included in the description of student identification cards that may be used as acceptable identification in order to receive a ballot. In 2011 Wisconsin Act 23, the Legislature established a voter identification requirement for electors to receive a ballot. The legislation delineates the types of identification that may be used to meet the requirement. Wis. Stats. s. 5.02 (6m). These types of identification are:

1. An operator's license issued under Ch. 343;
2. An identification card issued under s. 343.50;
3. An identification card issued by a U.S. uniformed service;
4. A U.S. passport;
5. A certificate of U.S. naturalization;
6. An unexpired driving receipt under s. 343.11;
7. An unexpired identification card receipt under s. 343.50;

8. An identification card issued by a federally recognized Indian tribe in this state;
9. An unexpired identification card issued by a university or college in this state that is accredited as defined in s. 39.30 (1) (d).

On November 9, 2011, the G.A.B. made a determination that a Wisconsin Technical College System institution is accredited under Wis. Stats. s. 39.30 (1) (d). Based on that determination, the Board directed staff to include WTCS student ID cards as an acceptable form of identification for voting in its training and educational materials as part of the agency's responsibility to administer the voter identification law pursuant to Wis. Stats. s. 5.05 (1).

The Board's analysis applied judicially accepted rules of statutory interpretation. It looked first to the plain language of the statute. The Board determined that WTCS institutions are accredited under Wis. Stats. s. 39.30 (1) (d). In the absence of an applicable statutory definition of college or university, the Board relied on commonly used dictionary definitions of college which included institutions similar to the WTCS.

In applying the plain language of the statute as required by law, the Board chose not to rely on a staff analysis which traced the legislative history of the student identification card provision in Act 23. The Board noted in its consideration that a comparison of the new identification requirement with statutory provisions related to the use of student identification cards for voter registration was not applicable because the separate reference to technical colleges was a result of a Revisor's correction in the 1990's to harmonize the terms technical college and technical institution.

The Board did not give weight to a failed legislative amendment explicitly authorizing the use of WTCS student ID cards for voting because it relied on the plain language of the statute defining the types of higher education institutions whose student identification cards were acceptable for use for voting. In addition, the Board recognized a failed legislative amendment could be viewed as failing because it was not necessary, not just because the Legislature was explicitly denying the policy. In view of the plain language of the statute linking the use of identification cards to those higher education institutions accredited under Wis. Stats. s. 39.30 (1) (d), the Board determined that it and a reviewing court would not attempt to decipher legislative intent under standard rules of statutory construction.

The Board did not determine whether permitting the use of WTCS student ID cards for voting was good public policy. It determined that the law as written included WTCS institutions. As a result, 400,000 WTCS students have as an alternative the same use of a student identification card for voting purposes that is available to students at other universities and colleges in Wisconsin. The Board viewed its determination as equivalent to acknowledging that students at University of Wisconsin System institutions could use a student ID card for voting purposes, a conclusion which would seem to not require separate rule-making to implement.

The alternative to promulgating this rule is to significantly restrict the number of electors who may use a student identification card in order to receive a ballot. The Board

addressed this issue because agency staff raised a question about legislative intent as it was developing its implementation approach to training local election officials and educating the public on the voter identification requirement which goes into effect for the February 2012 Spring Primary Election.

### Statutory Authority

The Board issued its determination pursuant to its responsibility and authority to issue advisory opinions under section 5.05 (6a), Stats., and to conduct voter education under section 5.05 (12). However, given the directive of JCRAR, section 5.05 (1) (f) Stats., provides explicit authority for the G.A.B. to promulgate rules to ensure the proper administration of elections. Section 227.11 (2) (a), Stats., provides clear authority for the G.A.B. to promulgate rules to ensure the proper administration of statutes under its jurisdiction, which includes laws related to the administration of elections.

### Comparison with Federal Regulations

The 2002 federal Help America Vote Act (HAVA), 42 USC 15301 et seq., contains a provision requiring states to receive identification from individuals who register to vote for the first time, by mail. HAVA Section 303 (b)(2)(A)(i)(I). That requirement is a voter registration requirement and is much more general than the state identification requirement for receiving a ballot. The federal requirement simply refers to a “current and valid photo identification.” The federal requirement does not delineate specific types of photo identification as does the Wisconsin statute.

### Entities Affected by the Rules

WTCS institutions desiring to issue student identification cards acceptable for voting purposes will be affected by this rule. All students at a WTCS institution also will be affected by this rule as well as Wisconsin’s 1,851 municipal clerks responsible for administering elections and approximately 25,000 poll workers who staff voting locations on Election Day. The impact of the rule will be on town, village and city government. The rule does not impact businesses, private economic sectors or public utility ratepayers.

### Economic Impact

The rule will have minimal or no impact on the governmental entities impacted by the rule. Municipal clerks and poll workers will be provided with informational and training materials on the acceptable forms of identification for voting. This rule merely adds some additional types of identification to the materials. In fact the rule will eliminate possible confusion if a voter offers a technical college student identification card when appearing at the polling place to vote.

### Estimate of Time Needed to Develop the Rules

10 hours.

### Agency Contact

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### Justice

SS 048-11

This statement of scope was approved by the governor on December 19, 2011.

### Rule No.

Wis. Admin. Code sections Jus 17.01 through 17.13 and Jus 18.01 through 18.10.

### Relating to

Licenses authorizing persons to carry concealed weapons; the certification of firearm safety and training instructors; the recognition by Wisconsin of concealed carry licenses issued by other states; and concealed carry certification cards for qualified former federal law enforcement officers.

### Description of the Objectives of the Rules

The State of Wisconsin Department of Justice (“DOJ”) proposes to promulgate permanent administrative rules relating to the implementation of DOJ’s statutory responsibilities under 2011 Wis. Act 35 regarding licenses authorizing persons to carry concealed weapons, the certification of firearm safety and training instructors, the recognition by Wisconsin of concealed carry licenses issued by other states, and concealed carry certification cards for qualified former federal law enforcement officers.

The proposed permanent rules will correspond to and have the same scope as the emergency rules covering the same subjects, the scope and substance of which were approved by the Governor on August 5 and October 14, 2011, and which were adopted by DOJ on October 25, 2011, with an effective date of November 1, 2011. *See* Orders Adopting Emergency Rules DOJ-2011-01 and DOJ-2011-02. The emergency rules are effective for 150 days, until March 30, 2012. At the present time, there have been no requests to extend the life of the emergency rules under Wis. Stat. s. 227.24 (2).

On November 7, 2011, the Joint Committee for the Review of Administrative Rules, acting pursuant to Wis. Stat. s. 227.26 (2) (d), suspended the following portions of the above-referenced emergency rules:

- Portion of Jus 17.03 (8) requiring that a “firearms safety or training course” be reasonably calculated to “test” a student’s comprehension and application of firearm safety rules and safe firearm handling;
- Portion of Jus 17.03 (8) requiring that a “firearms safety or training course” include “at least four hours” of training;

- Portion of Jus 17.03 (13) requiring that a “national or state organization that certifies firearms instructors” must “require[] firearms instructors to successfully complete instructor training of at least eight hours in length;”
- Jus 17.05 (2) (c), requiring that documentation of a license applicant’s firearms training must include the “length in hours of the firearms safety or training course;”
- Jus 17.05 (2) (e), requiring that documentation of a license applicant’s firearms training must include “the city and state in which the applicant completed the firearms safety or training course;”
- Jus 17.05 (2) (f), requiring that documentation of a license applicant’s firearms training must include “the name, address and telephone number of the person or entity responsible for the firearms safety or training course;” and
- Jus 17.05 (2) (h), requiring that documentation of a license applicant’s firearms training must include a “signed statement by the instructor who taught the firearms safety or training course to the applicant affirming that the course satisfied the definition of a firearms safety or training course in Jus 17.03 (8) and that the applicant successfully completed the course.”

In accordance with Wis. Stat. s. 227.26 (2) (L), the permanent rules proposed in the present scope statement will not include the substance of any of the suspended provisions enumerated above. The scope of the permanent rules, as described in this statement, is consistent with this requirement.

The proposed rules will cover five 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.

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. The administrative review process will include procedures for conducting fingerprint checks to verify the identity of any applicant who seeks review of an ineligibility determination based on the initial background check.

Third, 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.

Fourth, pursuant to s. 165.25 (12m), Stats., the rules will designate those states other than Wisconsin 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., because the permit, license, approval, or other authorization requires, or designates that the holder chose to submit to, a background search that is comparable to the type of background check that DOJ is required to conduct for Wisconsin licensees under s. 175.60 (9g), Stats.

Fifth, 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 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. The administrative review process will include procedures for conducting fingerprint checks to verify the identity of any applicant who seeks review of an ineligibility determination based on the initial background check.

#### **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 new, there are no existing DOJ practices or policies that cover the subject areas of the administrative rules here proposed other than the emergency rules that went into effect on November 1, 2011.

Most of the proposed rules simply carry into effect the legislative directives set forth in Act 35. In a few areas, the proposed rules 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 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 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. 175.6(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.

Likewise, the proposed rule designating those states other than Wisconsin that conduct a background check for concealed carry licensees comparable to Wisconsin’s background check is necessary to comply with the statutory requirement of s. 165.25 (12m), Stats. That rule will enable law enforcement officers and others to determine whether a particular concealed carry license issued by another state is entitled to recognition as an “out-of-state license” as defined in s. 175.60 (1) (f), Stats. The alternative of not promulgating such a rule would violate the requirements of s. 165.25 (12m), Stats., and would be contrary to the purpose of facilitating recognition of out-of-state licenses.

The proposed rules also contain 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 165.25 (12m), Stats.

The portion of the proposed rules designating those states other than Wisconsin that conduct a background check for concealed carry licensees comparable to Wisconsin’s background check is expressly authorized by s. 165.25 (12m), Stats., which requires DOJ to:

Promulgate by rule a list of states that issue a permit, license, approval, or other authorization to carry a concealed weapon if the permit, license, approval, or other authorization requires, or designates that the holder chose to submit to, a background search that is comparable to a background check as defined in s. 175.60 (1) (ac).

#### B. 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.

#### C. 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.

#### D. 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.

#### E. Section 227.11 (2) (a), Stats.

Those portions of the proposed rules that are not specifically authorized by ss. 165.25 (12m), 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

non-statutory 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.

#### **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 500 hours on the rule-making process for the proposed rules, including research, drafting, and compliance with required rule-making 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 rule designating those states other than Wisconsin that conduct a background check for concealed carry licensees comparable to Wisconsin's background check will make it possible to determine whether a particular concealed carry license issued by another state is entitled to recognition in Wisconsin. The rule thus will affect the interests of all out-of-state concealed carry licensees. The rule will also affect the interests of law enforcement officials and others who may need to determine whether an out-of-state license is entitled to recognition in Wisconsin.

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.

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.

**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, including the recognition by one state of a concealed carry license issued by a different state, 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 reciprocal recognition of concealed carry licenses between states or 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. ss. 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.

**Anticipated Economic Impact of Proposed Rules**

DOJ anticipates that the proposed rules will have minimal or no economic impact.

**Contact Person**

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

**Natural Resources**

*Fish, Game, etc., Chs. NR 1—  
SS 046–11*

This statement of scope was approved by the governor on December 2, 2011.

**Rule No.**

DNR # CF–26–11 (E), Ch. NR 64

**Relating to**

Emergency Rule for Chapter NR 64, Wis. Adm. Code, to Establish a Trail / Route Combination for All–Terrain Vehicles.

**Description of the Objective of the Rule**

This emergency rule will establish a new category of all–terrain vehicle (ATV) trails under Ch. NR 64, Wis. Adm. Code, called a “troute” or a trail/route combination that provides a trail connector and allow grant funding for said troutes.

*Nature of Emergency*

An emergency rule is needed to bridge the gap between the effective date of permanent revisions of Ch. NR 64 now underway (CF–16–11) and the anticipated date of the next funding cycle. Having an emergency rule will mean that project sponsors do not lose a construction/maintenance

season (summer 2012) and that troutes can be funded with ATV trail grants in July 2012.

**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**

The department is aware that several all–terrain vehicle (ATV) paths exist that also allow motor vehicle traffic. From the onset of the program, these paths were identified as trails and signed accordingly. The Off Road Vehicle Council and the Wisconsin County Forestry Association propose that the department revise Ch. NR 64 to accommodate paths used by both ATV and motor vehicles and are used as trail connectors.

These trail/route combinations – often called “troutes” – will be eligible for existing grant funding if it can be shown that the troute existed prior to the effective date of this rule. Revisions to Ch. NR 64 will include a definition of a troute. Grant funding will be possible for routes that are used as trail connectors, as defined in s. NR 64.02 (3), Wis. Adm. Code, if the trail connector is proposed after the effective date of this rule. Signage requirements will be needed for troutes. The purpose of the troute combination is so that roads are not used in lieu of ATV trails.

In the absence of the emergency rule, the department would not be able to fund trail maintenance for over one–third of the ATV trails in the state until the permanent rule becomes effective. This would mean the loss of one year of grant funding and the needed trail maintenance for general upkeep and for repair from potential storm damage. Not having established the troute category could impact tourism in ATV trail areas as ATV riders may not be able to ride on continuous trails as the troutes act as trail connectors. Further, decreased maintenance may mean that some ATV riders may chose not to ride on poorly maintained trails and some trail segments may be closed if safety concerns exist due to lack of needed maintenance. Also, this may impact some snowmobile riders as some ATV trails are used year round, including by snowmobiles.

ATVs’ use of trails causes soils to shift, creating rough conditions and pockets for standing water. Disrepair of trails creates more difficult riding conditions. Without ongoing maintenance, these pockets grow deeper. Trail ruts pose a safety threat, especially among less–skilled riders including children. ATVs can be used by children as young as twelve years of age if they have completed an ATV safety course.

If ruts are allowed to freeze, they pose a similar safety threat to snowmobiles. Snowmobiles’ ski method of traversing the ground requires that the ground be smoothed before the ground freezes to maintain trail safety.

The maintenance and availability of these troute trails also plays a key safety role by offsetting the need for ATV users to travel along roads with higher vehicular traffic in attempt to reach their destination. Consistent trail maintenance is therefore crucial component to the safety and welfare of those recreating in the state.

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

Section 23.33 (8) (a), Stats., directs the department to encourage and supervise a system of all–terrain vehicle routes and trails. Likewise, section 23.33 (9) (b) sets forth the various all–terrain vehicle projects eligible for funding. The department seeks to continue the funding of those projects by the implementation of this emergency rule.



**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 that approximately 60 hours of existing staff time will be needed to develop this emergency rule.

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

- Counties or municipalities that apply for grants and work with contractors on trails – Minimal. If a county does not have the funds to maintain their trails, they will most likely close the trail segments that cannot be maintained. Therefore, they would see minimal impact beyond the complaints and questions that they would have to respond to.
- Contractors that assist with the construction, development, and maintenance of specific trails or small businesses that create trail signs – Moderate. Contractors in some portions of the state rely on the business they received from development projects on these trails such as bridge construction, grading contracts, etc.
- Local ATV clubs that rely on this maintenance work to pay for equipment purchased. – Significant. Without the maintenance dollars that these clubs

receive by providing the majority of labor to maintain, brush, and sign these trails, they would probably dissolve. Approximately 75–90% of the dollars spent are to reimburse clubs for the equipment and labor they provide.

**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 department is not aware of any counterpart existing or proposed federal regulations that would govern the current or proposed ATV rules.

**Estimated Economic Impact**

The Department anticipates level 3, minimal or no economic impact from the emergency rule.

**Contact Person**

Diane Conklin  
ATV and Snowmobile Grant Manager  
Wisconsin DNR  
P.O. Box 397  
Cumberland, WI 54829  
Phone: 715/822–8583  
E–mail: [diane.conklin@wisconsin.gov](mailto:diane.conklin@wisconsin.gov)

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# Submittal of Rules to Legislative Council Clearinghouse

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

**Natural Resources**  
***Fish, Game, etc., Chs. NR 1—***  
**CR 11–049**  
(DNR # FH–25–11)

On December 8, 2011 the Wisconsin Department of Natural Resources announces that it has referred the following proposed rule to the Wisconsin Legislative Council Rules Clearinghouse, pursuant to s. 227.15, Stats.

The scope statement for this rule, SS 023–11, was approved by the Governor on September 15, 2011, published in Register No. 669, on September 30, 2011, and approved by Natural Resources Board for the agency as required by s. 227.135 (2), Stats., on October 26, 2011.

**Analysis**

The proposed rule revises Chapter NR 25, relating to adding six days to the commercial harvest season for whitefish in Lake Michigan and Green Bay.

**Agency Procedure for Promulgation**

The department will hold a public hearing on this rule January 17, 2012, in Sturgeon Bay, Wisconsin. The department's Bureau of Fisheries Management is primarily responsible for this rule.

**Contact Information**

William Horns, Bureau of Fisheries Management, (608) 266–8782.

**Natural Resources**  
***Fish, Game, etc., Chs. NR 1—***  
**CR 11–050**  
(DNR # CF–16–11)

On December 9, 2011 the Wisconsin Department of Natural Resources announces that it has referred the following proposed rule to the Wisconsin Legislative Council Rules Clearinghouse, pursuant to s. 227.15, Stats.

This rule is not subject to s. 227.135 (2), as affected by 2011 Wisconsin Act 21. The statement of scope for this rule, published in Register No. 665, on May 14, 2011, was sent to Legislative Reference Bureau prior to June 8, 2011 (the effective date of 2011 Wisconsin Act 21).

**Analysis**

The proposed rule revises Chapters NR 50 and 64, relating to revisions of county snowmobile aids and all-terrain vehicle grant programs.

**Agency Procedure for Promulgation**

The department will hold a public hearing on this rule January 11, 2012. The department's Bureau of Community Financial Assistance is primarily responsible for this rule.

**Contact Information**

Diane Conklin, DNR ATV and Snowmobile Grant Manager(715) 822–8583.

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## Rule-Making Notices

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### Notice of Hearing Natural Resources

*Fish, Game, etc., Chs. NR 1—*  
**EmR1116, CR 11-049**

(DNR # FH-22-11(E) & FH-25-11)

NOTICE IS HEREBY GIVEN THAT pursuant to sections 23.11 (1), 29.014 (1), 29.041, 29.519 (1m) (b), and 227.11 (2) (a), Wis. Stats., interpreting sections 29.014 (1), 29.041, and 29.519 (1m) (b), Wis. Stats., the Department of Natural Resources will hold a public hearing on revisions to Chapter NR 25, Wis. Adm. Code, in permanent rule Order FH-25-11, relating to commercial fishing in outlying waters.

NOTICE IS HEREBY FURTHER GIVEN THAT pursuant to section 227.24 (4), Wis. Stats., the Department will, on the same date and at the same time and location, hold a public hearing on revisions in emergency rule Order FH-22-11(E), adopted by the Natural Resources Board on October 17, 2011 and which was published and became effective on October 26, 2011.

#### Hearing Information

The hearing will be held on:

**Date:** Tuesday, January 17, 2012  
**Time:** 5:00 P.M.  
**Location:** Department of Natural Resources Service Center  
110 S. Neenah Avenue  
Sturgeon Bay, WI 54235

Pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of information material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call William Horns at (608) 266-8782 with specific information on your request at least 10 days before the date of the scheduled hearing.

#### Availability of Rules

The emergency order, proposed rule, and supporting documents may be reviewed and comments electronically submitted at the following internet site: <http://adminrules.wisconsin.gov>.

A copy of the proposed rules and supporting documents may also be obtained from William Horns, Bureau of Fisheries Management, P.O. Box 7921, Madison, WI 53707 or [William.Horns@wisconsin.gov](mailto:William.Horns@wisconsin.gov).

#### Submitting Comments

Written comments on the proposed rule may be submitted via U.S. mail or email to William Horns at the addresses noted above. 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. Comments may be submitted until **January 18, 2012**.

### Analysis Prepared by the Department of Natural Resources

The proposed permanent rule will:

- Add six days to the commercial harvest season for whitefish in Lake Michigan and Green Bay

The Natural Resources Board approved an emergency rule (FH-22-11E) to extend the whitefish season for six days in October 2011 because a limitation on fishing opportunities threatened the welfare of Wisconsin-licensed commercial fishers. The commercial season for whitefish from Wisconsin waters of Lake Michigan and Green Bay closed one week before the season closure for Michigan-licensed fishers. The extended season was for the benefit of Wisconsin commercial fishing businesses.

Commercial harvesting of yellow perch, rainbow smelt, and chubs has declined significantly since 1990. As a result, whitefish are now the mainstay of the commercial fishery in Lake Michigan. The Department estimates that the value to the commercial fishing industry of extending the whitefish season by 6 days is approximately \$161,300 annually. This is a wholesale value which would increase if some of the catch is marketed retail, however, there are no available numbers for retail sales or value. It is assumed that the increased revenues will contribute toward the health and welfare of businesses.

The October 25 closure date was established around 1970 and was implemented when whitefish populations were in a much more reduced state, but recovering. Current abundance and recruitment data indicate Wisconsin's population is healthy. This fishery is managed through a quota system that controls the total annual harvest. In addition, anecdotal information indicates that fish are spawning at a later date than they have historically, possibly as a result of increasing average water temperatures. At present, whitefish harvest limits are not being reached. The total reported whitefish harvest (pounds dressed weight) for the past 5 years indicates that commercial fishers are catching significantly fewer pounds of whitefish than in past years. Department biologists believe that the additional six days will not threaten whitefish stocks in Wisconsin waters.

The Department is not aware of any existing or proposed federal regulation that would govern commercial fishing in Wisconsin's waters of Lake Michigan and Green Bay. There is no commercial whitefish harvest in Illinois. In Michigan, the season for state-licensed commercial fishers closes on November 1, while for tribal fishers it lasts one week longer.

This rule change was requested by the Lake Michigan Commercial Fishing Board, which was established under s. 15.345, Wis. Stats., and advises the Department regarding commercial fishing issues on the Great Lakes. This rule was initiated in response to the expressed concerns of commercial fishers and it does not impose any additional compliance or reporting requirements on small businesses nor are any design or operational standards contained in the rule. The rule will be enforced by Department Conservation Wardens under the authority of Chapters 23 and 29, Wis. Stats., through routine patrols, record audits of wholesale fish dealers and

commercial fishers, and follow up investigations of citizen complaints.

**Economic Impact**

Pursuant to ss. 227.114 and 227.137, Wis. Stats., it is not anticipated that the proposed rules will have a significant economic impact on small businesses, although small businesses engaged in commercial fishing would benefit from the rule. The department conducted an economic impact analysis in consultation with businesses, business associations, local governmental units, and individuals. The department has determined that this rule would not adversely affect in a material way the economy, a sector of the economy, productivity, jobs, or the overall economic competitiveness of this state. The department’s Small Business Regulatory Coordinator may be contacted at [SmallBusiness@dnr.state.wi.us](mailto:SmallBusiness@dnr.state.wi.us) or by calling (608) 266–1959.

**Environmental Impact**

The department has made a preliminary determination that this action does not involve significant adverse environmental effects and does not need an environmental analysis under Ch. NR 150, Wis. Adm. Code. However, based on the comments received, the department may prepare an environmental analysis before proceeding with the proposal. This environmental review document would summarize the department’s consideration of the impacts of the proposal and reasonable alternatives.

**Agency Contact**

William Horns  
 Department of Natural Resources  
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 Madison, WI 53707–7921  
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 Email: [William.Horns@wisconsin.gov](mailto:William.Horns@wisconsin.gov)

STATE OF WISCONSIN DEPARTMENT OF ADMINISTRATION DOA 2049 (R 07/2011)		
<b>ADMINISTRATIVE RULES FISCAL ESTIMATE AND ECONOMIC IMPACT ANALYSIS</b>		
Type of Estimate and Analysis		
<input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected		
Administrative Rule Chapter, Title and Number		
NR 25.05 (1) (c), Wis. Adm. Code		
Subject		
Adding six days to the commercial harvest season for whitefish in Lake Michigan and Green Bay		
Fund Sources Affected		Chapter 20 , Stats. Appropriations Affected
GPR   FED   PRO   PRS   SEG   SEG–S		
Fiscal Effect of Implementing the Rule		
<input checked="" type="checkbox"/> No Fiscal Effect	Increase Existing Revenues	Increase Costs
<input type="checkbox"/> Indeterminate	Decrease Existing Revenues	Could Absorb Within Agency’s Budget
		Decrease Costs
The Rule Will Impact the Following (Check All That Apply)		
<input type="checkbox"/> State’s Economy	<input checked="" type="checkbox"/> Specific Businesses/Sectors	
<input type="checkbox"/> Local Government Units	<input type="checkbox"/> Public Utility Rate Payers	
Would Implementation and Compliance Costs Be Greater Than \$20 million?		
Yes <input checked="" type="checkbox"/> No		
Policy Problem Addressed by the Rule		
This rule change was requested by the Lake Michigan Commercial Fishing Board, which was established under s. 15.345, Wis. Stats., to advise the department regarding commercial fishing issues on the Great Lakes. The seven member Board includes five licensed, active commercial fishers; one licensed, active wholesale fish dealer; and one state citizen. The proposed rule extends the commercial fishing season for whitefish from the Wisconsin waters of Lake Michigan and Green Bay for the benefit of Wisconsin commercial fishing businesses.		

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 department has determined that this rule would not adversely affect in a material way the economy, a sector of the economy, productivity, jobs, or the overall economic competitiveness of this state. This rule will have a positive economic effect on commercial fishing businesses as well as Wisconsin-licensed wholesale fish dealers. Increased revenues will contribute toward the health and welfare of these businesses. There would be no implementation or compliance costs expected to be incurred by the proposed rule. No fiscal impacts are expected for public utility rate payers or local governmental units.

**Background Information**

Commercial fishing is managed in Wisconsin by a limited number of licenses, by harvest limits, and by individual transferable quotas. There are 65 available licenses for Lake Michigan. Since 1990, commercial harvesting of yellow perch, rainbow smelt, and chubs has declined significantly. As a result, whitefish are now the mainstay of the commercial fishery in Lake Michigan. The current open season for whitefish in Green Bay and Lake Michigan is December 1 through October 25, both dates inclusive. If this rule is promulgated, the projected added harvest of whitefish during October 26–31 is 137,184 pounds, which is the average harvest during October 20 25 over the last five years. In addition, as shown in the table below, the whitefish harvest limit was not reached in the 2010–11 fishing year, which ran from July 2010 to June 2011, and it is expected that additional harvest will not harm the whitefish population.

**2010–11\* Whitefish Harvest – Lake Michigan**

Harvest Zone	Whitefish Quota Holders	Harvest Limit (pounds)	Reported Harvest (pounds)	Percentage of Limit
1	23	362,185	263,633	73%
2	31	2,166,329	1,025,648	47%
3	12	351,487	270,395	77%

\*July 2010–June 2011

The department estimates that the value to the commercial fishing industry of extending the whitefish season by six days is approximately \$161,300 annually. This is a wholesale value which would increase if some of the catch is marketed retail, however, there are no available numbers for retail sales or value. The table below shows the reported value of whitefish harvests by fishing year.

**Dockside value by fishing year\* – Lake Michigan**

Product	2007–08	2008–09	2009–10	2010–11
Dressed Whitefish	\$2,268,837	\$1,342,070	\$1,927,781	\$2,022,978
Whitefish Eggs	\$52,718	\$63,245	\$63,473	\$63,395

\*Fishing years run from July to June

**Emergency Rule**

The Natural Resources Board (NRB) approved an emergency rule (FH–22–11E) to extend the whitefish season for six days in October 2011. During the NRB hearing to approve the rule, Charles Henriksen, a member of the Lake Michigan Commercial Fishing Board and President of the Wisconsin Commercial Fisheries Association provided the following testimony: “This rule is necessary because of the difficulty and unpredictability that has recently beset the Lake Michigan whitefish harvest. Quagga mussels, cladophora, and cormorants along with varying weather conditions have drastically altered our ability to fish and made an already challenging occupation even more difficult. The whitefish fishery is the last remaining success on Lake Michigan and for most whitefish fishers October is vitally important. Many of us produce 30–50% of our annual income in October and adding six days will be immensely beneficial and may be the difference maker to our survival in business. We give all the people of Wisconsin access to their wonderful renewable resource. Enacting this rule change will benefit and preserve the public welfare of our great state and aid the preservation and welfare of our first industry.”

As of December 2, 2011, commercial fishers reported harvesting 78,416 pounds of whitefish less than the projected 137,184 pounds and 3,642 pounds of whitefish eggs during October 26–31, 2011, but not all harvest data had been reported.

**Economic Impact – Request for Comments**

Prior to the November 10–26 open period for economic impact comments, the department requested comments from all Wisconsin-licensed commercial fishers, the Lake Michigan Commercial Fishing Board, 17 port city mayors offices and the same cities' chambers of commerce, the Wisconsin Wildlife Federation, Wisconsin Conservation Congress, Wisconsin Federation of Great Lakes Sport Fishing Clubs, UW Sea Grant, the Great Lakes Indian Fish and Wildlife Commission, and Wisconsin-licensed wholesale fish dealers, as well as posted the proposed rule documents to the Department website and the Wisconsin Administrative Rules website. The department received the following comments:

Mike LeClair, President of Susie-Q Fish Company, Two Rivers, WI

The rule proposal FH-25-11 would be very beneficial economically to our business. We would be able to purchase 10 to 15 thousand pounds of whitefish in late October to process in our wholesale and retail markets over the winter months. Although our fishing season in Two Rivers is usually over by October 1st, it still would give us the opportunity to buy fish from fishermen in Door County the whole month of October. This rule also gives the restaurants and stores a fresh product for a longer time. As far as I can see, there are no adverse effects in ratifying this rule.

Ken Koyen, Commercial fisher, Washington Island, Door County

Mr. Koyen stated during a phone conversation with Department staff that he is opposed to the extension of the whitefish harvest season proposed in FH 25 11 because he thinks the extended catch time, along with a growing whitefish sport fishery, would be risky for the future population of whitefish. Mr. Koyen said he benefited economically from the extended season in October 2011, but he said the current season dates are fine. He said he was concerned that economic benefits may not be there in the future. Mr. Koyen noted that he fished during the six-day extension in October 2011 because he was unable to fish during the week prior to that time. He said that he caught a large amount during those six days: 300 pounds of eggs and 6,000 pounds of fish. He said he was concerned that a lot of eggs would not be allowed to spawn due to the extended season.

Robert Ruleau III, President Ruleau Bros. Inc.

As both a Michigan and Wisconsin Commercial Fisher, I would be in favor of extending the whitefish harvest from Oct 25 to Oct 31. I would though, like to see some cooperation between Michigan DNR and Wis DNR in treating the entire Upper Lake Michigan "Spawning" areas, such as Moonlight Bay and Big Bay deNoc with equal management...just because Wisconsin has come around to the Oct 31 end date, should not mean that Michigan should extend their season by one more week...that is not only not good for the overall stock of whitefish but also extremely harms the price and effects the few commercial fishers that try to fish the entire season...Instead of a 2-3 week spawning season fishery, which many are now undertaking...we need to get back to a year round fishery, to save both the fish and the Fishermen themselves.

Angie Schafer, Schafer Fisheries, Inc.

We feel that this will benefit our company in that we will be able to receive the fish in question for a longer period of time during one of our busiest sales seasons and don't see how this would affect our business negatively in any way.

Charles W Henriksen

I am commenting as a commercial fisherman, wholesaler, President of Wisconsin Commercial Fisheries Association and as a member of the Lake Michigan Commercial Fishing Board. As this was the most difficult fishing fall in most of our experience it is difficult to quantify the extended season benefit, but without the (emergency) rule change every fisher who participates in the fall whitefish harvest would have had their worst year ever. Not implementing this rule permanently will adversely affect our economic competitiveness. To put this in perspective: During October my business produced 50,000# - 40% in the extra six days - while this was still our smallest catch (by 17 - 65,000#), the extra time prevented a complete disaster. My business bought roe from 5 gillnet boats - all but 1 had 50-80% of their production during the extra six days. The one that did not had crew problems at the end and a couple excellent lifts just prior to the extension, they still produced 36% during the extra six days. It appears that we have only scratched the surface of what is possible, but in these difficult economic times the chance to compete for those extra days is vitally important in order to maintain an economically viable fishery. And there is no downside.

Jeff and Mark Weborg, J & M Fisheries

This rule not only positively affects us personally financially, but all of the people and their families that work with us. It also enables us to be more competitive economically with our counterparts in other states. This rule helps us to ensure more product to our buyers when it is most needed. We will have no increased cost as a result of this rule. We see no adverse affects of this rule.

Kurt Dramm, President of Dramm Corporation, Manitowoc, WI

Dramm Corporation supports adding six days to the whitefish commercial harvest. Dramm Corporation produces fertilizers from fish scraps for organic crop production. This product is also exported to nine foreign countries. Due to the lack of commercial fishing on Lake Michigan we have a very difficult time obtaining the quantity of fish scraps we require. The additional six days of whitefish fishing will help to supply fish for the strong demand for whitefish as a food and it will provide us with a few more scraps.

Paul Becker, Riverside Foods, Two Rivers, WI

The lengthening of the season will help Riverside Foods procure product that is from Wisconsin, USA versus bringing in product from a foreign country and keeping our monies local.

Based on these comments, the Department has determined that this rule would not adversely affect in a material way the economy, a sector of the economy, productivity, jobs, or the overall economic competitiveness of this state. The department consulted with Mr. Ken Koyen, a commercial fisher from Washington Island, who said he benefited economically from the emergency rule change but did not support the permanent rule because of potential future population and economic losses. He said he believes that additional information from the October 2011 harvest of eggs and fish as well as future harvests would need to be reviewed in order to know if extending the season would not adversely affect the commercial fishing economy in Wisconsin.

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

As noted above, the extended season is for the economic benefit of Wisconsin commercial fishing and wholesale fish dealer businesses. Current abundance and recruitment data indicate Wisconsin's whitefish population is healthy. This fishery is managed through a quota system that controls the total annual harvest and, at present, whitefish harvest limits are not being reached. This rule will allow commercial fishing businesses to catch and sell more fish, and department biologists believe that the additional six days will not threaten whitefish stocks in Wisconsin waters.

#### Alternatives to implementing this rule:

If the rule would extend the season into November, angling pressure would infringe upon whitefish spawning time. Adequate spawning time is necessary for continued health of the population. Over the past 20 years, department biologists have noticed lower levels of whitefish egg production and delays in maturation. And because whitefish eggs are a highly-valued product of the commercial fishery, extending the harvest closer to the peak of spawning may result in a differential harvest of females over males, resulting in less spawning opportunity over time. For the past five years, whitefish assessment data show the harvest ratio has generally either favored males or been close to a 1:1 catch ratio.

If this rule is not implemented, commercial fishing businesses would have limited fishing opportunities compared with Michigan commercial fishing businesses that can fish for whitefish until November 1. Wisconsin businesses would miss the opportunity to earn approximately \$161,300 during the extra six days of fishing. Department biologists believe that the six day extension to October 31 will not harm the whitefish population.

#### Long Range Implications of Implementing the Rule

It is expected that this rule would annually contribute to the economic viability of commercial fishing businesses in Wisconsin.

In consultation with entities that would be affected by this rule, it was determined that the rule would not adversely affect in a material way the economy, a sector of the economy, productivity, jobs, or the overall economic competitiveness of this state.

The proposed rule will not have an economic effect on public utilities or their ratepayers.

The department is planning to hold a public hearing on the proposed rule in January 2012 to solicit any additional comments.

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

The department is not aware of any existing or proposed federal regulation that would govern commercial fishing in Wisconsin's waters of Lake Michigan and Green Bay.

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

There is no Lake Michigan commercial whitefish harvest in Illinois. In Michigan, the season for licensed commercial fishers closes on November 1, while for tribal fishers it lasts one week longer.

#### Name and Phone Number of Contact Person

William Horns, Great Lakes Coordinator 608-266-8782

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

*Fish, Game, etc., Chs. NR 1—*  
**CR 11–050**

(DNR # CF–16–11)

NOTICE IS HEREBY GIVEN THAT pursuant to ss. 23.09 (26), 23.33 (8) (a), 23.33 (9) (b) 3. to 5., 350.12 (4) (b), 350.12 (4) (bm) 2., and 227.11, Wis. Stats., interpreting ss. 23.33 (8) (a), 23.33 (9) (b) 3. to 5., 350.12 (4) (b), and 227.11, Wis. Stats., the Department of Natural Resources will hold a public hearing on revisions in permanent Rule Order CF–16–11, Chapter NR 50, relating to Administration of Outdoor Recreation Program Grants and State Aids (County Snowmobile Aids), and Chapter NR 64, relating to All–Terrain Vehicles, Wis. Adm. Code.

**Hearing Information**

NOTICE IS HEREBY FURTHER GIVEN THAT the hearing will be held concurrently at the following locations on:

- Date:** **Wednesday, January 11, 2012**
- Time:** **6:00 P.M. (in all locations)**
- Location:** Wisconsin Indianhead Technical College  
(WITC)  
Conference Center Room 247–249  
1900 College Drive  
Rice Lake, WI 54868
- Location:** Nicolet College  
Northwoods Center, Room 111  
5364 College Drive  
Rhineland, WI 54501
- Location:** UW Madison  
Pyle Center, Room 327  
702 Langdon Street.  
Madison, WI 53706

Pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of information material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Diane Conklin at (715) 822–8583 with specific information on your request at least 10 days before the date of the scheduled hearing.

**Availability of Rules**

The proposed rule and supporting documents may be reviewed and comments electronically submitted at the following internet site: <http://adminrules.wisconsin.gov>. A copy of the proposed rules and supporting documents may also be obtained from Diane Conklin, DNR ATV and Snowmobile Grant Manager, P.O. Box 397, Cumberland, WI 54829 or [Diane.Conklin@wisconsin.gov](mailto:Diane.Conklin@wisconsin.gov).

**Submitting Comments**

Written comments on the proposed rule may be submitted via U.S. mail or by e–mail to Diane Conklin at the addresses noted above. 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. Comments may be submitted until **7:30 p.m. on Wednesday, January 11, 2012**.

**Analysis Prepared by the Department of Natural Resources**

The proposed permanent rule will:

A. Revise Ch. NR 50, Administration of Outdoor Recreation Program Grants and State Aids (County Snowmobile Aids), Wis. Adm. Code, as follows:

- Increase bridge design load requirements from 12,000 pounds to 14,000 pounds to better accommodate the weight of modern trail grooming equipment. This change was recommended by the Governor’s Snowmobile Trail Council and the Department’s Chief Engineer.
- Clarify minimum duration for easements or lease agreements between the grant recipient and owners of private land on which a bridge will be located if up to \$50,000 of snowmobile trail aids funds are used for either bridge construction or rehabilitation. This change recognizes that higher–cost structures need to be maintained where placed in order for the greatest benefit to be realized for the funds awarded. This change was recommended by the Governor’s Snowmobile Trail Council.
- Identify a process by which the Governor’s Snowmobile Trail Council can establish higher minimum year length for easements or lease agreements if the cost of a bridge receiving grant funding is more than \$50,000. This change was recommended by the Governor’s Snowmobile Trail Council.
- Increase from \$130 per mile to \$150 per mile the minimum expenditure needed before a county is eligible to apply for a supplemental snowmobile trail maintenance grant. Making this change will make ch. NR 50 consistent with s. 350.12 (4) (bm) 2., Wis. Stats.

B. Revise Ch. NR 64, All–Terrain Vehicles, Wis. Adm. Code, as follows:

- Include first–ever guidelines for bridge design load requirements and modify method for calculating load conditions. This change would make all–terrain vehicle (ATV) grant provisions identical to snowmobile grant conditions in this regard and would better accommodate the weight of modern trail grooming equipment as some ATV trails are used by snowmobiles during the winter.
- Include a minimum three–year length for easements or lease agreements between the grant recipient and owners of land on which bridge construction or rehabilitation is funded with ATV trail aids funds.
- Increase per–mile ATV trail summer maintenance reimbursement rates from \$450 per mile to \$600 per mile. Existing per–mile reimbursement rate for local governments for summer ATV trail maintenance is not compatible with current costs and county funds are used to fill the funding gap. This change was recommended by the Off Road Vehicle Advisory Council.
- Identify changes for seasonal signage to make trails safer.
- Create a new trail + route (referred to as a “troute”) category that is eligible for ATV grant funding. These hybrid trails have been in use in WI for several years.

**Economic Impact**

Pursuant to ss. 227.114 and 227.137, Wis. Stats., it is not anticipated that the proposed rules will have a significant economic impact on small businesses, although small



businesses engaged in construction of all-terrain vehicle and snowmobile trails would benefit from the rule. The department conducted an economic impact analysis in consultation with businesses, business associations, local governmental units, and individuals. The department has determined that this rule would not adversely affect in a material way the economy, a sector of the economy, productivity, jobs, or the overall economic competitiveness of this state. The Department's Small Business Regulatory Coordinator may be contacted at [SmallBusiness@dnr.state.wi.us](mailto:SmallBusiness@dnr.state.wi.us) or by calling (608) 266-1959.

### Environmental Impact

The department has made a preliminary determination that this action does not involve significant adverse environmental

effects and does not need an environmental analysis under Ch. NR 150, Wis. Adm. Code. However, based on the comments received, the department may prepare an environmental analysis before proceeding with the proposal. This environmental review document would summarize the department's consideration of the impacts of the proposal and reasonable alternatives.

### Agency Contact Person

Diane Conklin  
ATV and Snowmobile Grant Manager  
WI Department of Natural Resources  
P.O. Box 397  
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E-mail: [diane.conklin@wisconsin.gov](mailto:diane.conklin@wisconsin.gov)

STATE OF WISCONSIN DEPARTMENT OF ADMINISTRATION DOA 2049 (R 07/2011)		
<b>ADMINISTRATIVE RULES FISCAL ESTIMATE AND ECONOMIC IMPACT ANALYSIS</b>		
Type of Estimate and Analysis		
<input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected		
Administrative Rule Chapter, Title and Number		
Chs. NR 50, County Snowmobile Aids, and NR 64, All-Terrain Vehicles (ATVs)		
Subject		
Revise bridge design, signage requirements, and trail maintenance reimbursement rates; define trail/route combinations.		
Fund Sources Affected		Chapter 20, Stats. Appropriations Affected
GPR   FED   PRO   PRS <input checked="" type="checkbox"/> SEG   SEG-S		ss. 20.370 (5) (cr), (cs), (ct), (cu), Wis. Stats.
Fiscal Effect of Implementing the Rule		
<input checked="" type="checkbox"/> No Fiscal Effect Indeterminate	<input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Decrease Existing Revenues	<input type="checkbox"/> Increase Costs <input checked="" type="checkbox"/> Could Absorb Within Agency's Budget <input type="checkbox"/> Decrease Costs
The Rule Will Impact the Following (Check All That Apply)		
<input type="checkbox"/> State's Economy <input checked="" type="checkbox"/> Local Government Units	<input checked="" type="checkbox"/> Specific Businesses/Sectors Public Utility Rate Payers	
Would Implementation and Compliance Costs be Greater than \$20 million?		
Yes <input checked="" type="checkbox"/> No		
Policy Problem Addressed by the Rule		
<ul style="list-style-type: none"> <li>Standards for existing trail structures (e.g., bridges) do not accommodate the width and weight of modern grooming equipment.</li> <li>Existing easement terms for land under trail structures are not consistent with the cost of present-day structures.</li> <li>Inconsistency between the snowmobile and ATV vehicle grant programs for bridge specifications.</li> <li>Existing per-mile reimbursement rate for local governments for summer ATV trail maintenance is not compatible with current costs.</li> <li>Trail signage is not season-specific.</li> <li>Existing rules have no definition for trail/route combination; these hybrids (called "troutes") have been in use in WI for several years.</li> </ul>		
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)		

- No economic or fiscal impact is anticipated for public utility rate payers or the State's economy as a whole. Funding for both grant programs comes from Segregated accounts and not from General Purpose Revenue. No tax increase will be needed to implement the proposed rule revisions.
- The majority of businesses possibly impacted by this rule are those that manufacture structures to be used on trails. In particular, a group of Wisconsin small businesses have adapted their products to be used specifically in off-road conditions. Bridges constructed to higher standards may cost more to build; we expect that any increased costs will be rolled into the sales price. Grant funds will continue to be awarded to successful applicants to cover a percentage of total project costs, even if those costs are higher due to the improved standards.
- It is more likely that some local governmental units may be impacted by the proposed rule revisions. As a result, comments about possible economic and fiscal impacts of the proposed rule revisions were specifically solicited directly from 80 individuals, 48 of whom represented Wisconsin counties that contain active snowmobile and/or ATV trails. The remaining represent the following organizations:
  - Governor's Snowmobile Advisory Council
  - Off Road Vehicle Advisory Council
  - Wisconsin All-Terrain Vehicle Association
  - Wisconsin County Foresters Association

A total of seven comments were received and are summarized as follows:

- Comments ranged from "no negative effect on economic competitiveness, productivity, or jobs" to "minimal adverse effects". (See Attachment 1 for list of all comments received.)
- One commenter felt that increasing the minimum easement term on private lands when grant funding is provided for a bridge would be a negative impact because extra work would be required of county staff to secure longer-term easements from private landowners. However, that same commenter also indicated that the extra time spent securing the longer-term easement would be time well invested as it would provide for more permanence to the locations of trails.
- In addition to direct requests for comments, other interested parties were invited via the ATV and snowmobile web pages to provide economic and fiscal estimate comments about the proposed rule revisions. No comments were received from "other" parties.
- The department provided written clarification to one commenter regarding the difference between the department's permanent rule revision efforts and a parallel, ongoing emergency rule just about "troutes".

Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule
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I. Benefits include:
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- |   |
|---|
| <ul style="list-style-type: none"> <li>• Sustainability of rider safety on existing snowmobile and ATV trails.</li> <li>• Encouragement of tourism in local communities; support of local economies; increased snowmobile and ATV equipment sales.</li> <li>• Satisfaction of Governor's Snowmobile Advisory Council, Off Road Vehicle Advisory Council, Wisconsin All-Terrain Vehicle Association, Wisconsin County Foresters Association, and various Wisconsin counties where active snowmobile and/or ATV trails are located.</li> <li>• Potential for expansion of the WI trail system.</li> </ul> |
|---|

II. Alternatives to the proposed revisions to Chs. NR 50 and NR 64 are as follows:
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A. Maintain the <i>Status Quo</i>
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<p>This alternative means no increase in bridge construction requirements, no signage improvements, and no per-mile increase in trail maintenance reimbursements. This alternative is rejected because the Snowmobile Recreation Council, Off-road Vehicle Advisory Council, and WI ATV Association have requested all the proposed changes for the last five years. DNR staff vacancies and workload kept these changes from being made before now. In addition, refusal to increase reimbursement rates to keep up with actual costs is causing counties to have to pay the difference. County budgets are stretched to the point where some trail maintenance may have to be delayed. Refusing to increase reimbursement rates may result in improperly maintained trails, possible trail safety issues, a diminished recreational experience as a result, decreased visitor traffic, and decreased visitor revenues for local economies.</p>
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B. Pursue some but not all of the proposed rule revisions
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<p>This alternative would require us to eliminate some proposals. All proposals involve public safety in some way and are a "package". This alternative is rejected because the Snowmobile Recreation Council, Off-road Vehicle Advisory Council, and WI ATV Association have requested all the proposed changes for the last five years. DNR staff vacancies and workload kept these changes from being made before now. In particular, refusing to increase reimbursement rates mean that stretched county budgets might result in trail maintenance delays. Refusal to increase reimbursement rates may result in improperly maintained trails, increased safety risks, a diminished recreational experience as a result, decreased visitors traffic, and decreased visitor revenues for local economies.</p>
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C. Pursue additional rule revisions
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<p>This alternative is rejected because it is beyond the scope requested by the Snowmobile Recreation Council, Off-road Vehicle Advisory Council, and WI ATV Association. Higher bridge standards would require additional research. Increasing the per-mile reimbursement rate beyond that requested in light of limited fee revenues would mean fewer maintenance miles statewide and might be harmful to the overall trail system. Increase snowmobile or ATV license fees to make up revenue shortfalls due to increased per-mile reimbursement rates would be contrary to legislative directives and would be a penalty to snowmobile and ATV riders.</p>
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Long Range Implications of Implementing the Rule
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- |  |
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| <ul style="list-style-type: none"> <li>• Snowmobile Recreation Council, Off-road Vehicle Advisory Council, and WI ATV Association receive the satisfaction they have been seeking.</li> <li>• By increasing the state per-mile reimbursement rate for maintenance of summer ATV trails, counties can be reimbursed closer to 100% of their actual trail maintenance costs. Improving the state reimbursement rate ensures that trails will be maintained. Poorly maintained trails result in safety concerns. Economic opportunities are lost when poorly maintained trails are closed due to safety concerns. Increasing the per-mile reimbursement rate will mean fewer poorly maintained trails, fewer trail closures, and greater snowmobile and ATV rider safety.</li> <li>• Bridge designs would be safer.</li> <li>• Easement terms would be longer in keeping with the cost of more expensive bridges.</li> <li>• Trail signage would be improved, increasing rider safety.</li> <li>• Trail+route combinations (called "troutes") would be legally defined; troutes would be eligible for trail maintenance reimbursement.</li> </ul> |
|--|

Compare With Approaches Being Used by Federal Government
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None are known.
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<p><u>Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)</u></p> <p><u>Bridge Design Load requirements:</u> No bridge design load limits were found in adjacent states.</p> <p><u>Length of Easements or Lease Agreements:</u> Michigan requires an easement of not less than five years for bridge projects or any improvements located on private land costing more than \$10,000. Minnesota has a 3-month minimum easement length for all off-road vehicle grant programs. No other adjacent states require minimum easement terms.</p> <p><u>Expenditure Threshold Before Counties are Eligible for Supplemental Snowmobile Grants:</u> No per-mile maintenance expenditure threshold could be found in adjacent states.</p> <p><u>Combination Trail and Route trails (also called "troutes"):</u> Only Michigan allows ATVs on both trails and routes.</p> <p><u>Higher per-mile Rates for Summer Trail Maintenance:</u> Only Michigan allows for higher spring and summer maintenance reimbursement rates for trails.</p> <p><u>ATV Trail Seasonal Signage:</u> Only Illinois has seasonal signage requirements for their Off Highway Vehicle Program. In Illinois, grantees are responsible for posting appropriate signage.</p>
<p>Name and Phone Number of Contact Person</p>
<p>Diane Conklin, DNR ATV and Snowmobile Grant Manager, 715-822-8583</p>

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## Submittal of Proposed Rules to the Legislature

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

**Agriculture, Trade and Consumer Protection**  
**CR 10-128**

(DATCP DOCKET # 09-R-10)

Revises Chapter ATCP 160 relating to county and district fairs.

This rule is not subject to s. 227.185, Stats. The statement of scope for this rule, published in Register No. 649, on January 14, 2010, was sent to the Legislative Reference Bureau prior to June 8, 2011.

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## Rule Orders Filed with the Legislative Reference Bureau

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*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](mailto:bruce.hoesly@legis.wisconsin.gov) or (608) 266-7590 for updated information on the effective dates for the listed rule orders.*

### **Agriculture, Trade and Consumer Protection** **CR 11-026**

(DATCP DOCKET # 10-R-03)

Renumbering Chapter ATCP 157 to be ATCP 87 and creating ATCP 87.01 (6) and (12), 87.015 and 87.017, relating to Wisconsin certified honey and the sale of products represented as honey.  
Effective 2-1-12.

### **Natural Resources**

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

#### **CR 11-005**

(DNR # AM-44-10)

Revises Chapters NR 400, 419, 420, 421, 422, 423, 439, and 484, relating to the revision of the state's reasonably available control technology emission limitations for volatile organic compound to address deficiencies identified by the

U.S. Environmental Protection Agency, and affecting small business.  
Effective 2-1-12.

### **Safety and Professional Services** **(formerly Regulation and Licensing)**

#### **CR 11-027**

Revises section SPS 4.08 (formerly RL 4.08), relating to background checks and fingerprinting.  
Effective 2-1-12.

### **Safety and Professional Services** **(formerly Regulation and Licensing)**

#### **CR 11-029**

Revises Chapter SPS 128 (formerly RL 128), relating to continuing education for auctioneers.  
Effective 2-1-12.

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# Rules Published with this Register and Final Regulatory Flexibility Analyses

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

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

## **Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors**

**CR 11-014**

Amends Chapters A-E 1 and 2 and creates Chapter A-E 13, relating to continuing education requirements for professional engineers. Effective 1-1-12.

### **Summary of Final Regulatory Flexibility Analysis**

These proposed rules were reviewed by the department's Small Business Review Advisory Committee and found not to have any significant economic impact on a substantial number of small businesses, as defined in s. 227.114 (1), Stats. The department's regulatory review coordinator may be contacted by email at [john.murray@wisconsin.gov](mailto:john.murray@wisconsin.gov), or by calling (608) 266-2112.

### **Comments from Legislative Committees (Summary)**

No comments were reported.

## **Children and Families**

*Safety and Permanence, Chs. DCF 35-59*

**CR 11-026**

Revises 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. Effective 1-1-12.

### **Summary of Final Regulatory Flexibility Analysis**

The rule will affect small businesses as defined in s. 227.114 (1), Stats., but will not have a significant economic impact on a substantial number of businesses.

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

The Joint Committee for Review of Administrative Rules requested that the department make modifications to the rules regarding a licensee's maximum rate. The department submitted modifications that provide specific procedures for a licensee to request an exception to the maximum rate.

## **Natural Resources**

*Fish, Game, etc., Chs. NR 1-*

**CR 11-013**

(DNR # FR-45-10)

Revises Chapter NR 46, relating to the administration of the Forest Crop Law and Managed Forest Law. Effective 1-1-12.

## **Summary of Final Regulatory Flexibility Analysis**

This rule has some impact on certified plan writers (CPWs). CPWs are private foresters who write management plans for landowners entering into the MFL Program.

Management plans are now required with MFL application, requiring CPWs to adjust the time frame in which to complete work for their clients. Many CPWs have adjusted their work structure to accommodate the change in ch. 77, Wis. Stats. As a result of 2009 Wisconsin Act 365 already. Impact to CPWs regarding the changes to entry criteria in NR 46 will be minimal.

CPW certification requirements will be amended by NR 46 proposals. The certification requirements relate to the initial training taken by CPW candidates and allow the department additional flexibility to develop the training required to best meet the needs of the candidates. Impacts to CPWs regarding the changes to training requirements will be minimal and affect only CPW candidates during the certification process.

CPWs will be required to report management plan cost data on months early as a result of 2009 Wisconsin Act 364. Impacts to CPWs regarding reporting deadlines will be minimal.

Changes to development of management plans when landowners purchase lands from large landowners or large landowners lose their large landowner status will increase the number of management plans available for development by the private sector.

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

No comments were reported.

## **Safety and Professional Services (formerly Commerce)**

**CR 11-020**

Revises Chapter SPS 305 (formerly Comm 5), relating to licenses, certifications and registrations. Effective 1-1-12.

### **Summary of Final Regulatory Flexibility Analysis**

Pursuant to s. 227.19 (3m), Stats., the Department of Safety and Professional Services has determined that the proposed rules to update chapter Comm 5 will not have a significant impact on a substantial number of small businesses.

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

No comments were received.

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## Sections Affected by Rule Revisions and Corrections

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The following administrative code sections had rule revisions and corrections take place in **December 2011**, and will be effective as indicated in the history note for each particular section. For additional information, contact the Legislative Reference Bureau at (608) 266-7590.

### Revisions

#### Architects, Engineers, Designers and Land Surveyors

##### Ch. A-E 1

A-E 1.01

A-E 1.02 (intro.)

##### Ch. A-E 2

A-E 2.01

##### Ch. A-E 13

Entire Chapter

#### Agriculture, Trade and Consumer Protection

##### Ch. ATCP 53

ATCP 53.01 (title)

ATCP 53.02

ATCP 53 Appendix B

#### Children and Families

##### Ch. DCF 52

DCF 52.01

DCF 52.03 (4), (19m), (23), (28)

DCF 52.11 (2), (6), (18) to (24)

DCF 52.12 (3) (e), (5) (c) 6., (cm), (11)

DCF 52.41 (1) (a) 10., (3)

DCF 52.42 (1) (d), (2) (b), (5) (a), (ae), (am), (as), (b) (title), 5. f., 8., (6) (title), (a) 3., (7) (a) 2. (intro.), a., b., (8) (b)

DCF 52.46 (5) (f)

DCF 52.47 (6) (am), (b)

DCF 52.55 (4) (a), (9) (a), (b), (10) (c), (12)

DCF 52.555

DCF 52.62 (2) (c) 17.

DCF 52.64

DCF 52.65

DCF 52.66

DCF 52.67

DCF 52.68

DCF 52.69

##### Ch. DCF 54

DCF 54.01 (1), (2), (4) (a), (am), (em), (gm)

DCF 52.02 (3) (c) 7., (3m) (i)

DCF 54.04 (1) (a)

DCF 54.06 (title), (4) to (8)

DCF 54.065

DCF 54.07

DCF 54.08

DCF 54.09

DCF 54.10

DCF 54.11

DCF 54.12

##### Ch. DCF 57

DCF 57.01

DCF 57.04 (9m), (45)

DCF 57.045

DCF 57.05 (1) (f), (2) (p)

DCF 57.06 (5)

DCF 57.07

DCF 57.075

DCF 57.12 (3), (7), (8)

DCF 57.13 (4)

DCF 57.14 (4) (a), (b), (c) (intro.), (4m)

DCF 57.21

DCF 57.27 (1) (j), (k), (3)

DCF 57.33 (1)

DCF 57.36 (8)

DCF 57.37 (8), (11)

DCF 57.40 (7)

DCF 57.42 (4)

DCF 57.425

DCF 57.49 (1) (im)

DCF 57.50 (1) (a)

DCF 57.58 (3)

DCF 57.60

DCF 57.61

DCF 57.62

DCF 57.63

DCF 57.64

DCF 57.65

#### Natural Resources

##### Ch. NR 46

NR 46.10

NR 46.11

NR 46.15 (1), (1m), (18), (20s), (25), (26)

NR 46.16 (1) (intro.), (a), (b), (c), (cm), (d), (e), (2) (a) to (h), (3), (4), (5), (6), (7), (8), (9)

NR 46.165 (3) (a), (d), (4) (f)

NR 46.18 (1), (4) (intro.), (a) to (e), (5) (a) (intro.), 1. (intro.), 1., (intro.), a., b., c., d., 2., 3., (b), (c), (7), (8) (a) (intro.), 1., 2.

NR 46.23 (2m), (4), (5)

NR 46.24 (title), (1), (2), (3) (b), (c), (4)

NR 46.26



**Safety and Professional Services****Ch. SPS 305**

SPS 305.003 (1m) to (32h), (49), (32m) to (52)  
 SPS 305.004 (1), (2), (3), (4)  
 SPS 305.315 (2) (c) (intro.), 1., 2.  
 SPS 305.32 (3m), (4), (5), (6) (e) (intro.)  
 SPS 305.323 (6) (e) 4., (f), (g), (h), (i) (intro.), (j), (k),  
 (7) (b)  
 SPS 305.325 (1) (a), (b), (5) (a), (b)  
 SPS 305.34 (2) (b), (3) (a) 1., 2., 3., 4.  
 SPS 305.35 (2) (b), (5) (a) 2., 3., 4.  
 SPS 305.42  
 SPS 305.46 (2), (3), (4) (b) 2.  
 SPS 305.50 (2)  
 SPS 305.51 (2m) to (6), (7)  
 SPS 305.53 (3), (4) (b)  
 SPS 305.56 (2) to (5), (6) (c)  
 SPS 305.57  
 SPS 305.63 (5m), (6), (7)

SPS 305.68 (6) (a) to (f)  
 SPS 305.82 (1) (intro.), (a), (2) (intro.), (3), (4), (5) (a),  
 (b)  
 SPS 305.84 (1), (5) (intro.), (a), (6) (b) 1.  
 SPS 305.85 (1), (6) (b) 1.  
 SPS 305.86 (1)  
 SPS 305.87 (1)  
 SPS 305.88 (3) (a), (4) (intro.)  
 SPS 305.89 (title), (1) (c) (title)  
 SPS 305.90 (1) (b) 4.  
 SPS 305.91 (8) (b) 1.  
 SPS 305.92 (8) (b) 1. a., b.  
 SPS 305.93 (6) (b) 1. a., b.  
 SPS 305.94 (6) (b) 1. a., b.  
 SPS 305.95 (3), (4), (5) (b)  
 SPS 305.97 (1), (7) (c) 1.  
 SPS 305.994 (3), (4), (5) (b)  
 SPS 305.995 (3), (4), (5) (b)  
 SPS 305.998 (3), (4), (5) (b)

**Editorial Corrections**

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

**Administration****Ch. Adm 9**

Adm 9.05 (2) (a)

**Ch. Adm 81**

Entire Chapter

**Ch. Adm 82**

Entire Chapter

**Ch. Adm 83**

Entire Chapter

**Ch. Adm 84**

Entire Chapter

**Ch. Adm 85**

Entire Chapter

**Ch. Adm 86**

Entire Chapter

**Ch. Adm 87**

Entire Chapter

**Ch. Adm 88**

Entire Chapter

**Ch. Adm 89**

Entire Chapter

**Ch. Adm 90**

Entire Chapter

**Ch. Adm 91**

Entire Chapter

**Ch. Adm 92**

Entire Chapter

**Children and Families****Ch. DCF 52**

DCF 52.42 (5) (b) 5. e., (7) (d) 6.  
 DCF 52.43 (1)  
 DCF 52.51 (1) (a) 1., (b), (c), (2) (a), (5) (a), (e)  
 DCF 52.52 (3) (b)

DCF 52.55 (4) (a), (9) (a), (b), (10) (c), (12)  
 DCF 52.56 (5) (a), (b), (7), (9), (12), (14)  
 DCF 52.62 (2) (c) 12., 14.

**Ch. DCF 54**

DCF 54.06 (5)

**Ch. DCF 57**

DCF 57.13 (10) (b) 4.

DCF 57.18 (3) (d)

DCF 57.49 (1) (im)

**Commerce**

Entire Code

**Health Services****Ch. DHS 83**

DHS 83.15 (1) (e)  
 DHS 83.24 (7) (b), (9) (b)  
 DHS 83.47 (1) (a) 2., (b) 3.  
 DHS 83.50 (2) (f)  
 DHS 83.55 (1) (b)  
 DHS 83.59 (intro.), (1) (b), (5) (a), (b), (f)  
 DHS 83.61 (2) (a)  
 DHS 83.62 (1) (a)  
 DHS 83.63 (1), (3) (a), (b)  
 DHS 83.64 (5)

**Natural Resources****Ch. NR 46**

NR 46.18 (5) (intro.), (a), (am), (bm), (8) (a) (intro.)  
 1m.

**Ch. NR 120**

NR 120.16 (3) (a) 1.  
 NR 120.186 (3) (d), (g)

**Ch. NR 153**

NR 155.15 (2) (j) 4.  
 NR 153.25 (6) (b) 3., (d)

**Ch. NR 155**

NR 155.15 (2) (g) 4.  
NR 155.25 (5) (b) 3., (d)

**Ch. NR 216**

NR 216.42 (4), (9)

**Ch. NR 811**

NR 811.02 (23), (74)  
NR 811.06  
811.09 (1) (a), (4) (j) 1. f.  
811.12 (5) (d) 1., 4., 5., 7., 9., (11) (a)  
811.25 (1) (h) 2. c., 4., (8)  
811.27 (1) (a)  
811.28 (5) (b), (d) 1.  
811.32 (2)  
811.40 (1) (p), (2) (c) 1., 3., (f)  
811.64 (11) (e), (f)  
811.67  
811.69 (2)  
811.78 (1)  
811.851

**Ch. NR 812**

NR 812.07 (29), (97)

NR 812.08 (4) (a) 1., 2., 4., (b) 4., 5., (c) 7., 10. b., 14.,  
(d) 1., Table A  
NR 812.22 (2) (c) 1., (6) (b)  
NR 812.27 (9)  
NR 812.32 (4) (b) 1. c.  
NR 812.35 (intro.), (3)  
NR 812.36 (2) (d) 1.  
NR 812.37 (2) (a), (c)  
NR 812.38 (2) (a) 3., (b) 3. (intro.), b.  
NR 812.42 (6) (a) 3.

**Safety and Professional Services****Chs. SPS 300 to 500**

All Chapters

**State Treasurer****Ch. Treas 1**

Entire Chapter

**Tourism****Ch. Tour 4**

Entire Chapter

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## Executive Orders

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

**Executive Order 52.** Relating to a Proclamation that the Flag of the United States and the Flag of the State of Wisconsin be Flown at Half-Staff on National Pearl Harbor Remembrance Day

**Executive Order 53.** Relating to an Authorization for the Flag of the United States and the Flag of the State of Wisconsin to be Flown at Half-Staff as a Mark of Respect for Mayor Dick Bolender

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## Public Notices

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### Department of Agriculture, Trade and Consumer Protection Notice of Dollar Amount Adjustments for Liens on Vehicles for Towing and Storage

Under Wis. Stat. s. 779.415 (1g) (c), the department is required to annually adjust the dollar amounts that may be charged for towing or storing a vehicle identified under Wis. Stat. s. 779.415 (1g) par. (a). Under this law, the department shall adjust the dollar amounts by the annual change in the consumer price index, all items, U.S. city average, as determined by the Bureau of Labor Statistics of the U.S. Department of Labor.

The Department has determined that current dollar amounts specified under Wis. Stat. s. 779.415 (1g) (a) shall be increased by 1.6%, according to the prior year annual change in the consumer price index. The dollar amounts contained in Wis. Stat. s. 779.415 (1g) (a) are adjusted to the following dollar amounts:

If the vehicle is subject to a lien perfected under Wis. Stat. ch. 342, a towing lien shall have priority only to the extent of \$102 for a vehicle having a manufacturer's gross weight rating of 20,000 pounds or less and \$356 for a vehicle having a manufacturer's gross weight rating of more than 20,000 pounds. A storage lien shall have priority only to the extent of \$10 per day but for a total amount of not more than \$610 for a vehicle having a manufacturer's gross weight rating of 20,000 pounds or less and \$25 per day but for a total amount of not more than \$1,524 for a vehicle having a manufacturer's gross weight rating of more than 20,000 pounds. If the value of the vehicle exceeds \$762, the lien may be enforced under Wis. Stat. s. 779.48 (2). If the value of the vehicle does not exceed \$762, the lien may be enforced by sale or junking as provided in sub. (2).

These revised dollar amounts for liens on vehicles for towing and storage shall apply to services commenced on or after January 1, 2012 for which a lien is claimed. These revised dollar amounts shall remain in effect until the first day of the first month following publication of new adjusted dollar amounts in the *Wisconsin Administrative Register*.

#### Contact Information:

Paul Dingee, Section Chief  
Trade Practices Bureau  
Department of Agriculture, Trade and Consumer Protection  
2811 Agriculture Drive  
P.O. Box 8911  
Madison, WI 53708-8911  
Telephone: (608) 224-4925  
[paul.dingee@wisconsin.gov](mailto:paul.dingee@wisconsin.gov)

### Health and Family Services Documentation of Medicaid Payment Rates

The State of Wisconsin reimburses providers for services provided to Medical Assistance recipients under the authority of Title XIX of the Social Security Act and ss. 49.43 to 49.47, Wisconsin Statutes. This program, administered by the State's Department of Health Services, is called Medical Assistance (MA) or Medicaid. In addition, Wisconsin has expanded this program to create the BadgerCare and BadgerCare Plus programs under the authority of Title XIX and Title XXI of the Social Security Act and ss. 49.471, 49.665, and 49.67 of the Wisconsin Statutes. Federal statutes and regulations require that a state plan be developed that provides the methods and standards for reimbursement of covered services. A plan that describes the reimbursement system for the services (methods and standards for reimbursement) is now in effect.

The Wisconsin Department of Health Services is proposing to amend the Medicaid state plan to insert language to assist the reader in locating rate tables for Medicaid services.

The Medicaid state plan currently includes language describing rate methodologies for non-institutional providers of services to Medicaid recipients. The current language indicates that "In general, the department will pay the lesser of a provider's usual and customary charge or a maximum fee established by the department."

The proposed amendment creates specific language that provides, in the Medicaid state plan, detail as to how to find the actual rates paid as well as the effective dates of rates for individual services. The amendment meets the requirement of 42 CFR s. 447.203(a), which requires the State Medicaid Agency to maintain documentation of payment rates.

The proposed language will provide an address (url) through which the reader can obtain actual rate schedules on the Department's web site. In addition, as noted in the proposed state plan language, the Department's web site provides the effective dates of current and past reimbursement rates.

**Proposed Change**

The proposal will have no change on existing rates or policies. It will merely provide additional information in the Medicaid state plan on how to obtain existing rate schedules and their effective dates. As a result, the projected fiscal effect of these changes will be zero, as it applies to general purpose revenue (GPR), federal match (FED), and all funds. The effective date of the proposal will be January 1, 2012.

**Copies of the Proposed Change:**

A copy of the proposed change may be obtained free of charge by calling or writing as follows:

**Regular Mail**

Curtis Cunningham  
Bureau of Fiscal Management  
Division of Health Care Access and Accountability  
P.O. Box 309  
Madison, WI 53701-0309

**Phone**

Curtis Cunningham  
(608) 261-6858

**FAX**

(608) 266-1096  
Attention: Curtis Cunningham

**E-Mail**

[curtis.cunningham@dhs.wisconsin.gov](mailto:curtis.cunningham@dhs.wisconsin.gov)

A copy of the proposed change are available for review at the main office of any county department of social services or human services.

**Written Comments:**

Written comments are welcome. Written comments on the proposed changes may be sent by FAX, e-mail, or regular mail to the Department. The FAX number is (608) 266-1096. The e-mail address is [curtis.cunningham@dhs.wisconsin.gov](mailto:curtis.cunningham@dhs.wisconsin.gov). Regular mail can be sent to the above address. All written comments will be reviewed and considered.

The written comments will be available for public review between the hours of 7:45 a.m. and 4:30 p.m. daily in Room 350 of the State Office Building, 1 West Wilson Street, Madison, Wisconsin. Revisions may be made in the proposed changed methodology based on comments received.

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