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Emergency Rules Now in Effect

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

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

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

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

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

Copies of emergency rule orders can be obtained from the promulgating agency. The text of current emergency rules can be viewed at www.legis.state.wi.us/rsb/code.

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

Agriculture, Trade and Consumer Protection

EmR1202 — Rule adopted to create **section ATCP 161.50 (3) (e)** and **subchapter VI of Chapter ATCP 161**, relating to the "grow Wisconsin dairy producer" grant and loan program created under sections 20.115 (4) (d) and 93.40 (1) (g), Stats.

This emergency rule was approved by the governor on March 27, 2012.

The scope statement for this rule, SS 002–12, was approved by the governor on January 9, 2012, published in Register No. 673, on January 31, 2012, and approved by the Board of Agriculture, Trade and Consumer Protection on February 22, 2012.

Finding of Emergency

Enactment of a rule is necessary to establish criteria the department will use to make determinations for grants, loans or other forms of financial assistance to dairy producers to promote and develop the dairy industry. An emergency rule is needed to ensure that funds are used to assist dairy producers during the first year of the annual appropriation as permanent rules cannot be adopted in time to provide the basis for grant determinations for the first year appropriations.

Filed with LRB: **March 22, 2012**
Publication Date: **March 30, 2012**
Effective Dates: **March 30, 2012 through August 26, 2012**
Hearing Date: **June 28, 2012**

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.

Filed with LRB: **August 31, 2010**
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 (2)

1. **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 No. 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.

Filed with LRB: **September 15, 2011**
Publication Date: **September 15, 2011**
Effective Dates: **September 15, 2011 through February 12, 2012**
Extension Through: **June 11, 2012**
Hearing Date: **February 2, 2012**

2. EmR1203 — Rule adopted to create **Chapters ERC 90** and **100**, relating to the calculation and distribution of collectively bargained base wages.

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

The statement of scope for this rule, SS 005−11, was approved by the governor on August 31, 2011, published in Register No. 669, on September 14, 2011, and approved by the Employment Relations Commission on September 19, 2011.

Finding of Emergency

An emergency exists because the public peace, health, safety and welfare necessitate putting these rules in effect so that the State of Wisconsin and municipal employers can proceed to bargain over base wages with labor organizations that represent State and municipal employees.

Filed with LRB: **April 16, 2012**

Publication Date: **April 19, 2012**

Effective Dates: **April 19, 2012 through September 15, 2012**

Health Services

Health, Chs. DHS 110—

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

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

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

Exemption from Finding of Emergency

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

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

Filed with LRB: **May 1, 2012**

Publication Date: **May 4, 2012**

Effective Dates: **May 4, 2012 through September 30, 2012**

Hearing Date: **May 25, 2012**

Insurance

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

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

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

Finding of Emergency

The Commissioner of Insurance finds that an emergency exists and that the attached rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. Facts constituting the emergency are as follows:

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

Filed with LRB: **June 12, 2012**

Publication Date: **June 14, 2012**

Effective Dates: **June 14, 2012 through November 10, 2012**

Hearing Date: **June 19, 2012**

(See the Notice in the June 15, 2012 Register)

Justice

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

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

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

Finding of Emergency

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

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

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

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

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

Filed with LRB: **May 24, 2012**

Publication Date: **March 21, 2012**

Effective Dates: **March 21, 2012 through August 17, 2012**

Hearing Date: **July 16, 24, 25, 2012**

(See the Notice in this Register)

Natural Resources (3)

Fish, Game, etc., Chs. NR 1—

1. 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.**

Filed with LRB: **December 19, 2010**

Publication Date: **December 13, 2010**

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

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

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

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

Finding of Emergency

The department is aware that several ATV trails in Wisconsin overlap existing roads. From the onset of the program, these overlapping paths were identified as trails, signed accordingly, and were eligible to receive ATV grant funds. A few years ago, the ORV Advisory Council and WI County Forestry Association proposed that the department revise Ch. NR 64 to accommodate paths used by both ATVs and motor vehicles. These trail–route combinations – also called hybrid trails but commonly referred to as "troutes" – will be eligible for future maintenance grant funding at the current rate if it can be shown that the hybrid trails ("troute") existed prior to the effective date of this rule.

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

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

Filed with LRB: **May 9, 2012**

Publication Date: **June 1, 2012**

Effective Dates: **June 15, 2012 through November 11, 2012**

Hearing Date: **June 25, 2012**

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

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

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

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

Finding of Emergency

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

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

Filed with LRB:	**May 30, 2012**
Publication Date:	**June 10, 2012**
Effective Dates:	**October 1, 2012 through February 27, 2013**
Hearing Date:	**August 27, 2012**

(See the Notice in this Register)

Revenue

EmR1201 — Rule to revise **section Tax 7.23**, relating to the activities of brewers, bottlers, out–of–state shippers, and wholesalers.

The scope statement for this rule, SS 018–11, was approved by the governor on August 16, 2011, published in Register No. 669 on September 14, 2011, and approved by the Secretary of Revenue on September 26, 2011.

Finding of Emergency

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

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

It is necessary to promulgate this rule order so that the above provisions may be administered in a fair and consistent manner.

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

Filed with LRB:	**January 25, 2012**
Publication Date:	**January 27, 2012**
Effective Dates:	**January 27, 2012 through June 24, 2012**
Hearing Date:	**February 27, 2012**

Safety and Professional Services
(Formerly Regulation and Licensing)

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 safety and professional services (formerly 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.

Filed with LRB:	**September 8, 2008**
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**

Scope Statements

Children and Families

Safety and Permanence, Chs. DCF 35−59

SS 040−12

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

Rule No.

Chapter DCF 55

Relating to

Subsidized guardianship.

Rule Type

Emergency.

Finding/Nature of Emergency (Emergency Rule Only)

An emergency rule will need to be effective August 2012 because guardians who entered into subsidized guardianship agreements with an agency when the statewide subsidized guardianship program was implemented in August 2011 will begin to be eligible for an amendment to increase the amount of the subsidized guardianship payments. The rule will include the process for determining eligibility for an amendment.

Detailed Description of the Objective of the Proposed Rule

The emergency rule will implement s. 48.623, Stats., as created by 2011 Wisconsin Act 32, relating to the subsidized guardianship program.

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

The procedures for determining whether a subsidized guardianship payment should be adjusted based on a substantial change in circumstances will be similar to the procedures used for adoption assistance and foster care.

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

Section 48.623 (7), Stats., as created by 2011 Wisconsin Act 32, provides that the department shall promulgate rules to implement s. 48.623, Stats. Those rules shall include all of the following:

- A rule defining the substantial change in circumstances under which a person receiving monthly subsidized guardianship payments may request that an agreement be amended to increase the amount of those payments.
- Rules establishing requirements for submitting a request and criteria for determining the amount of the increase in monthly subsidized guardianship payments that a county department or the department shall offer if there has been a substantial change in circumstances and if there has been no substantiated report of abuse or neglect of the child by the person receiving those payments.
- Rules establishing the criteria for determining the amount of the decrease in monthly subsidized guardianship payments that the department shall offer if a substantial change in circumstances no longer exists. The criteria shall provide that the amount of the decrease offered by the department may not result in a monthly subsidized guardianship payment that is less than the initial monthly subsidized guardianship payment provided for the child.

Section 48.623 (3) (d), Stats., as created by 2011 Wisconsin Act 32, provides that the department or a county department may recover an overpayment made from a guardian or interim caretaker who continues to receive those payments by reducing the amount of the person's monthly payment. The department may by rule specify other methods for recovering those overpayments. A county department that recovers an overpayment under this paragraph due to the efforts of its officers and employees may retain a portion of the amount recovered, as provided by the department by rule.

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

250 hours.

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

Children in out−of−home care, relatives of children in out−of−home care, and county departments of social or human services.

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

The Fostering Connections to Success and Increasing Adoptions Act of 2008 creates an option for states to operate a guardianship assistance program and receive federal reimbursement for a percentage of the expenditures under Title IV−E of the Social Security Act. Once a state adopts the option in the state plan, assistance must be provided to any child who is eligible.

42 USC 671 (a) (28) provides that an agency may enter into kinship guardianship assistance agreements to provide kinship guardianship assistance payments on behalf of children to grandparents and other relatives who have assumed legal guardianship of the children for whom they have cared as foster parents and for whom they have committed to care on a permanent basis.

42 USC 673 (d) provides that a child is eligible for kinship guardianship assistance payments if all of the following apply:

- The child was removed from his or her home pursuant to a voluntary placement agreement or as a result of a judicial determination that continuation in the home would be contrary to the welfare of the child.
- The child was eligible for foster care maintenance payments while residing for at least 6 consecutive

months in the home of the prospective relative guardian.

- Being returned home or adopted are not appropriate permanency options for the child.
- The child demonstrates a strong attachment to the prospective relative guardian and the relative guardian has a strong commitment to caring permanently for the child.
- With respect to a child who has attained 14 years of age, the child has been consulted regarding the kinship guardianship arrangement.

An agency may provide kinship guardianship assistance payments for a sibling of a child determined eligible, regardless of whether the sibling meets the eligibility requirements, if the agency and the relative agree on the appropriateness of placing the sibling in the home of the relative.

If subsidized guardianship payments are provided, an agency is required to enter into a written, binding kinship guardianship assistance agreement with the prospective relative guardian that provides the following:

- The amount of each kinship guardianship assistance payment and the manner in which the payment may be adjusted periodically based on the circumstances of the relative guardian and the needs of the child, in consultation with the guardian. A kinship guardianship assistance payment on behalf of a child cannot exceed the foster care maintenance payment that would have been paid on behalf of the child if the child had remained in a foster home.
- Any additional services and assistance that the child and relative guardian will be eligible for under the agreement and the procedure by which the relative guardian may apply for additional services as needed.
- That the agency will pay nonrecurring expenses associated with obtaining legal guardianship of the child up to $2,000.
- That the agreement shall remain in effect without regard to the state residency of the relative guardian.

42 USC 671 (a) (20) requires a state to provide procedures for fingerprint–based criminal records checks of relative guardians and child abuse and neglect registry checks of relative guardians and adults living the guardians' home before guardianship assistance payments may be made.

42 USC 673 (b) (3) (C) provides that a child for whom kinship guardianship assistance payments are being made is categorically eligible for Medicaid in the same manner as a child for whom foster care maintenance payments are made.

Before the Fostering Connections to Success and Increasing Adoptions Act of 2008 was adopted, 11 states operated subsidized guardianship programs as demonstration projects under federal waivers, including a Wisconsin program in Milwaukee County. The demonstration projects found that the availability of subsidized guardianship increases the number of children who exit foster care to permanent homes, maintains child safety, and saves money through reductions in out–of–home placement days and subsequent decreases in the administrative costs associated with supervising foster care cases. For a synthesis of the findings of the subsidized guardianship demonstration projects, see http://www.acf.hhs.gov/programs/cb/programs_fund/cwwaiver/2011/subsidized.pdf.

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

Minimal or no impact.

Contact Person

Jonelle Brom, Division of Safety and Permanence
(608) 264–6933

Children and Families

Early Care and Education, Chs. DCF 201–252

SS 041–12

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

Subject

Chapter DCF 201, incentive program for child care administrative agencies that identify subsidy fraud committed by child care providers.

Objective and Policy Analysis

The proposed rules for the incentive program will be in accordance with the department's plan as approved by the Joint Committee on Finance on January 23, 2012.

Statutory Authority

Section 49.197 (2), Stats., as repealed and recreated by 2011 Wisconsin Act 32, provides that the department shall by rule establish an incentive program that, using moneys from the allocation under s. 49.175 (1) (p), Stats., rewards county departments, Wisconsin Works (W–2) agencies, and tribal governing bodies that administer the subsidy program for identifying fraud in the subsidy program.

The rules shall specify that a county department, W–2 agency, or tribal governing body shall receive, for identifying fraudulent activity under the subsidy program on the part of a child care provider, an amount equal to the average monthly subsidy payment per child during the prior fiscal year, multiplied by the number of children participating in the subsidy program for whom the provider provides care, multiplied by 1.5 months. A county department, W–2 agency, or tribal governing body may use payments received for any purpose for which moneys under the Temporary Assistance for Needy Families block grant program may be used under federal law.

No later than January 1, 2012, the department shall submit its plan for the incentive program to the Joint Committee on Finance for review by the committee. The department shall promulgate the rules for the incentive program in accordance with the plan as approved by the committee.

The department administers the child care subsidy program under s. 49.155, Stats. Section 227.11 (2) (a) (intro.), Stats., expressly confers rule–making authority on each agency to 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.

Entities that may be Affected by the Rule

Child care administrative agencies.

Summary of Federal Requirements

None.

Anticipated Economic Impact

No or minimal impact.

Staff Time Required

80 hours.

Contact Information

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Children and Families

Family and Economic Security, Chs. DCF 101–153

SS 042–12

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

Rule No.

Chapter DCF 101

Relating to

Sanctions in the Wisconsin Works Program.

Rule Type

Permanent.

Detailed Description of the Objective of the Proposed Rule

The proposed rules will specify guidelines for determining when a participant, or individual in the participant's Wisconsin Works (W–2) group, who engages in a behavior specified in s. 49.151 (1) (a), (b), (c), (d), or (e), Stats., is demonstrating a refusal to participate.

The proposed rules will also establish procedures for providing written notice before taking any action against a participant that would result in a 20 percent or more reduction in the participant's benefits or in termination of the participant's eligibility to participate in W–2. In addition, the proposed rules will include a definition of the "reasonable time" that a W–2 agency is required to allow a participant to rectify a deficiency, failure, or other behavior to avoid the proposed action under s. 49.153 (1) (c), Stats.

Detailed Explanation of Statutory Authority for the Rule

Section 49.1515 (1), Stats., as created by 2009 Wisconsin Act 28 and affected by 2011 Wisconsin Act 32, provides that the department shall by rule specify guidelines for determining when a Wisconsin Works participant, or individual in the participant's group, who engages in behavior in s. 49.151 (1) (a) to (e), Stats., is demonstrating a refusal to participate.

Section 49.151 (1), Stats., as affected by 2009 Wisconsin Act 28 and 2011 Wisconsin Act 32, provides that a participant who refuses to participate as determined under guidelines promulgated under s. 49.1515, Stats., in any W–2 employment position is ineligible to participate in the W–2 program for 3 months. A participant is also ineligible if a nonparticipant parent who is required to work under the 2–parent family requirement in s. 49.15 (2), Stats., refuses to participate as required. A participant or a nonparticipant parent who is required to work under the 2–parent family requirement in s. 49.15 (2), Stats., demonstrates a refusal to participate if the individual does any of the following:

- Expresses verbally or in writing to the W–2 agency that he or she refuses to participate.
- Fails, without good cause, to appear for an interview with a prospective employer or fails to appear for an assigned activity if the individual is a participant in a W–2 transitional placement.
- Voluntarily leaves appropriate employment or training without good cause.
- Loses employment as a result of being discharged for cause.
- Demonstrates through other behavior or action, as specified by the department by rule, that he or she refuses to participate in a W–2 employment position.

Section 49.153 (1), Stats., as created by 2005 Wisconsin Act 25 and affected by 2009 Wisconsin Act 28 and 2011 Wisconsin Act 32, provides that before taking any action against a participant that would result in a 20 percent or more reduction in the participant's benefits or in termination of the participant's eligibility to participate in W–2, a W–2 agency shall do all of the following:

(a) Provide to the participant written notice of the proposed action and of the reasons for the proposed action.

(c) After providing the notice under par. (a), allow the participant a reasonable time to rectify the deficiency, failure, or other behavior to avoid the proposed action.

Section 49.153 (2), Stats., as created by 2005 Wisconsin Act 25 and affected by 2011 Wisconsin Act 32, provides that the department shall promulgate rules that establish procedures for the notice under sub. (1) (a) and define "reasonable time" for the purpose of sub. (1) (c).

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

175 hours.

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

W–2 agencies, W–2 participants, and nonparticipant parents required to work under the 2–parent family requirement in s. 49.15 (2), Stats.

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

If an individual refuses to engage in work, the state must reduce or terminate the amount payable to the family, subject to any good cause exceptions the state may establish. The state must, at a minimum, reduce the amount of assistance otherwise payable to the family pro rata with respect to any period during the month in which the individual refuses to work.

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

No or minimal impact.

Contact Person

Margaret McMahon, Division of Family and Economic Security
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margaret.mcmahon@wisconsin.gov

Children and Families

Early Care and Education, Chs. DCF 201–252

SS 043–12

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

Rule No.

Chapters DCF 202, 250, 251, and 252.

Relating to

Child care vehicle safety alarms.

Rule Type

Permanent.

Detailed Description of the Objective of the Proposed Rule

The proposed rules will incorporate the requirements of s. 48.658, Stats., regarding child care vehicle safety alarms into the child care certification and licensing rules.

Detailed Explanation of Statutory Authority for the Rule

Section 48.658, Stats., as created by 2009 Wisconsin Act 19, requires a child care vehicle that meets certain criteria to have a child safety alarm that will prompt the driver of the vehicle to inspect the vehicle for children before exiting the vehicle. Vehicles that meet the following criteria must be have a child safety alarm installed:

- The vehicle is used to transport children to and from the child care provider.
- The vehicle has a seating capacity of 6 or more passengers in addition to the driver.
- The vehicle is owned or leased by a child care provider or a contractor of a child care provider.

A person who is required to have a child safety alarm installed shall ensure that the alarm is properly maintained and in good working order each time the child care vehicle is used for transporting children to or from a child care provider.

Section 48.658 (4) (a), Stats., directs the department to promulgate rules to implement s. 48.658, Stats. Those rules shall include a rule requiring the department, whenever it inspects a child care provider that is licensed under s. 48.65 (1), Stats., or established or contracted for under s. 120.13 (14), Stats., and a county department, whenever it inspects a child care provider that is certified under s. 48.651, Stats., to inspect the child safety alarm of each child care vehicle that is used to transport children to and from the child care provider to determine whether the child safety alarm is in good working order.

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

40 hours.

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

Child care providers and certification agencies.

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

None.

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

No or minimal impact.

Contact Person

For licensed child care:
Anne Carmody
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(608) 267–9761
For certified child care:
Jolene Ibeling
Bureau of Early Care Regulation
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(608) 267–2079

Financial Institutions — Banking

SS 044–12

This statement of scope was approved by the governor on May 23, 2012.

Rule No.

DFI–Bkg 78.

Relating to

Title loans.

Rule Type

Permanent.

Detailed Description of the Objective of the Proposed Rule

As a result of the passage of 2011 Wisconsin Act 32, a licensed lender that holds the proper certificate of authorization may make title loans. However, no licensed lender may make a title loan to a borrower that results in the borrower having liability for the loan, in principal, of more than 50 percent of the retail value of the motor vehicle used as security for the loan.

The objective is to promulgate a rule for determining the retail value of a motor vehicle, including specifying nationally recognized pricing guides that may be used for determining retail value at the time of loan origination.

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

Current policy: Since July 1, 2011, a licensed lender that holds a certificate of authorization issued by the division of banking can make title loans. No title loan that results in the borrower having liability for the loan, in principal, of more than 50 percent of the retail value of the motor vehicle used as security for the loan, may be made. Currently, there is no rule setting forth how the lender should determine the retail value of the vehicle.

Proposed change: Create a rule that sets forth how the lender should determine the retail value of a motor vehicle,

including specifying nationally recognized pricing guides that may be used for determining retail value at the time of loan origination.

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

Section 138.16 (2), Stats., which states that "[t]he division shall promulgate rules for determining the retail value of a motor vehicle for purposes of this paragraph, including rules specifying nationally recognized pricing guides that may be used for determining retail value at the time of loan origination."

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

Approximately 30 hours.

Description of all Entities that may be Impacted by the Rule

The proposed rule change would impact lenders licensed under s. 138.09, Stats., that are authorized to make title loans and consumers obtaining title loans from such licensees. No impact is expected for business associations, public utility rate payers, or local government units.

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

DFI is unaware of any existing or proposed federal regulation that is intended to address the activities to be regulated by the rule.

Anticipated Economic Impact of Implementing the Rule

The division anticipates that any economic impact of implementing the rule would be minimal.

Contact Person

Eric Knight
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Department of Financial Institutions
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Hearing and Speech Examining Board

SS 045–12

This statement of scope was approved by the governor on May 4, 2012.

Rule No.

HAS 6

Relating to

Deceptive advertising.

Rule Type

Permanent.

Finding/Nature of Emergency (Emergency Rule Only)

Not Applicable.

Detailed Description of the Objective of the Proposed Rule

To add the new statutory definition as it relates to "Deceptive" advertising and to revise the rule relative to the grounds for discipline for such advertising.

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

The passage of 2009 Wisconsin Act 356 amended s. 459.34 (2) (d), Wis. Stats., to expand and further clarify the definition of false, misleading and deceptive advertising. Accordingly, s. HAS 6.175, Wis. Admin. Code, shall be revised to reflect the new definition. In addition, the statutory change requires revision of the language in s. HAS 6.18 (1) (d), Wis. Admin. Code, which provides that deceptive advertising is a basis for professional discipline.

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

Section 15.08 (5) (b) Each examining board: shall promulgate rules for its own guidance and for the guidance of the trade or profession to which it pertains and define and enforce professional conduct and unethical practices not inconsistent with the law relating to the particular trade or profession.

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

20 Hours.

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

Speech Language Pathologists and Audiologists.

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

None.

Anticipated Economic Impact of Implementing the Rule

There is no anticipated economic impact of implementing the rule. It is not likely to have an economic impact on small businesses.

Contact Person

Sharon Henes, Paralegal, (608) 261–2377

Technical College System Board

SS 039–12

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

Rule No.

TCS 2

Relating to

District board member appointments.

Rule Type

Permanent.

Finding/Nature of Emergency (Emergency Rule Only)

N/A

Detailed Description of the Objective of the Proposed Rule

To establish criteria and procedures for the review of district board member appointments by the board as required under s. 38.04 (15), Stats., and to interpret the board's authority to require under s. 38.10 (2) (c), Stats., that district board appointments comply with the plan of representation and interprets s. 38.10 (2) (f) and (fm), Stats., requiring the board to formulate the plan of representation and appoint district board members upon the occurrence of certain specified circumstances.

Amendments to TCS 2 proposed to align references to the membership of the Milwaukee Area Technical College District Board with the member representation established by the Legislature and the Governor in 2011 Wisconsin Act 286.

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

Wisconsin Technical College System Board Policy 100, *District Board Appointments,* refers to statutory and administrative rule requirements. 2011 Wisconsin Act 286 does not require any modification of Policy 100. No new Board policies are anticipated.

TCS 2 will be modified to reflect the new district board and appointment committee membership requirements for Milwaukee Area Technical College District pursuant to 2011 Wisconsin Act 286.

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

Sections 38.04 (15), 38.08 and 38.10, Stats.

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

40 hours of staff time. Minimal printing resources required.

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

Wisconsin Technical College System Board

Milwaukee Area Technical College District

Milwaukee Area Technical College District Board

Milwaukee Area Technical College District Board Appointment Committee

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

Not applicable.

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

None.

Contact Person

Morna Foy, 608–266–2449

Submittal of Proposed Rules to Legislative Council Clearinghouse

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

Justice
CR 12–030

In accordance with Wis. Stat. sections 227.14 (4m) and 227.15, the Department of Justice is submitting proposed rules to the Wisconsin Legislative Council Rules Clearinghouse on June 8, 2012.

The scope statement for these rules, SS 048–11, was approved by the governor on December 19, 2011, published in Administrative Register No. 672, on December 31, 2011, and approved by Attorney General J.B. Van Hollen on January 10, 2012.

Analysis

The purposed rule creates Chapters Jus 17 and Jus 18, relating to licenses authorizing persons to carry concealed weapons; concealed carry certification cards for qualified former federal law enforcement officers; the recognition by Wisconsin of concealed carry licenses issued by other states; and the certification of firearms safety and training instructors.

Agency Procedure for Promulgation

The Department of Justice will hold public hearings regarding these rules on July 16, 24, and 25.

Contact Information

The contact for the organizational unit of the Department of Justice that is primarily responsible for the promulgation of these rules is Brian O'Keefe, (608) 266–7598.

Natural Resources
Fish, Game, etc., Chs. NR 1—
CR 12–029
(DNR # FR–19–11)

The Wisconsin Department of Natural Resources submits a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse on June 4, 2012.

The scope statement for this rule, SS 028–11, was approved by the governor on July 14, 2011, published in Administrative Register No. 670, on October 31, 2011, and approved by the Natural Resources Board on April 25, 2012.

Analysis

The proposed rule revises Chapter NR 47, relating to the Wisconsin Forest Landowner Grant Program (WFLGP).

Agency Procedure for Promulgation

A public hearing date will be held July 20, 2012.

Name and Organizational Unit of Agency Contact

Carol Nielsen
Private Forestry Specialist
Department of Natural Resources
101 S. Webster Street, FR/4
P.O. Box 7921
Madison, WI 53707–7921
(608) 267–7508

Natural Resources
Fish, Game, etc., Chs. NR 1—
CR 12–031
(DNR # WM–09–11)

The Wisconsin Department of Natural Resources submits a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse on June 11, 2012.

This rule is not subject to s. 227.135 (2), Stats., as affected by 2011 Wis. Act 21. The scope statement for this rule, published in Administrative Register No. 663, on March 31, 2011, was sent to the Legislative Reference Bureau prior to June 8, 2011.

Analysis

The proposed rule revises Chapter NR 10, relating to Bobcat hunting and trapping season modification.

Agency Procedure for Promulgation

A public hearing date will be held August 27, 2012.

Name and Organizational Unit of Agency Contact

Scott Loomans
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P.O. Box 7921
Madison, WI 53707–7921
(608) 267–2452
Scott.loomans@wisconsin.gov

Rule−Making Notices

Notice of Hearing
Justice
EmR1206, CR 12−030

NOTICE IS HEREBY GIVEN that pursuant to the authority granted under sections 165.25 (12m), 175.60 (7), 175.60 (14g), 175.60 (15) (b), and 227.11 (2) (a), Stats., the Department of Justice (DOJ) will hold public hearings to consider the adoption of emergency and permanent rules creating Chapters Jus 17 and Jus 18, Wis. Adm. Code, relating to licenses authorizing persons to carry concealed weapons; concealed carry certification cards for qualified former federal law enforcement officers; the recognition by Wisconsin of concealed carry licenses issued by other states; and the certification of firearms safety and training instructors.

Hearing Information

DOJ will hold public hearings at the times and places noted below.

Date: **Monday, July 16, 2012**
Time: 10:00 a.m.
Location: Superior Police Department
1316 North Fourteenth Street
Superior, WI 54880

Date: **Tuesday, July 24, 2012**
Time: 11:00 a.m.
Location: Green Bay Police Training Center
307 South Adams Street
Green Bay, WI 54301

Date: **Wednesday, July 25, 2012**
Time: 10:00 a.m.
Location: Waukesha County Technical College
Business Building Room B130/B140
800 Main Street
Pewaukee, WI 53072

Copies of the Proposed Rules, Fiscal Estimate, and Economic Impact Analysis

You may access a free copy of the emergency and permanent rules athttp://www.doj.state.wi.us/dles/cib/ConcealedCarry/ConcealedCarry.asp. The emergency and permanent rules are also available online at http://adminrules.wisconsin.gov.

You may obtain a free copy of the emergency and permanent rules, the fiscal estimates, and the economic impact analyses by contacting the Wisconsin Department of Justice, Attn: David Zibolski, P.O. Box 7857, Madison, WI 53707−7857. You can also obtain a free copy by calling (608) 266−5710 or e−mailing zibolskidb@doj.state.wi.us.

Place Where Comments are to be Submitted and Deadline for Submission

Comments on the emergency and permanent rules should be submitted by no later than **4p.m. on August 1, 2012,** and can be faxed to (608) 267−2223 to the attention of David Zibolski, emailed to zibolskidb@doj.state.wi.us, or mailed to the attention of David Zibolski at the Wisconsin Department of Justice, P.O. Box 7857, Madison, WI 53707−7857.

Analysis Prepared by the Department of Justice

On October 25, 2011, DOJ adopted emergency 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. On March 15, 2012, DOJ repealed and re−created those emergency rules, with the exception of those portions of the emergency rules that had been suspended on November 7, 2011, by the Joint Committee for the Review of Administrative Rules ("JCRAR").

Like the emergency rules, the permanent rules proposed here will be located in two chapters. The first chapter is designated Ch. Jus 17 and is titled "Licenses to Carry a Concealed Weapon." The second chapter is designated Ch. Jus 18 and is titled "Certification of Former Federal Law Enforcement Officers."

The scope of these proposed permanent rules was described in a scope statement approved by the governor on December 19, 2011.

Statutes interpreted

Sections 165.25 (12m), 175.49 (3)−(5m), and 175.60, Stats.

Statutory authority

Sections 165.25 (12m), 175.60 (7), 175.60 (14g), 175.60 (15) (b), and 227.11 (2) (a), Stats.

Explanation of statutory authority

A. Section 165.25 (12m), Stats.

The portions of the proposed rules designating those states other than Wisconsin that conduct a background check for concealed carry licenses 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 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 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 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 2011 Wis. 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 firearms 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;
- the recognition by Wisconsin of concealed carry licenses issued by other states; and
- the qualification and certification of firearms instructors by DOJ and the identification of those firearms instructors who are certified by a national or state organization.

DOJ further finds that the rules here proposed:

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

For these reasons, those portions of the proposed rules that are not specifically authorized by ss. 165.25 (12m), 175.60

(7), (14g), and (15) (b), Stats., are authorized by s. 227.11 (2) (a), Stats.

Related rules or statutes

Prior to the enactment of 2011 Wis. Act 35, Wisconsin statutes and administrative rules contained no provisions for licenses authorizing members of the general public to carry concealed weapons, no provisions for state certification of instructors to teach firearms safety and training to the general public, and no provisions for state issuance of firearm certification cards for qualified former federal law enforcement officers. There are thus no other related statutes or rules other than the emergency rules that DOJ proposes to repeal and re−create.

Plain language analysis

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 provides for the recognition by Wisconsin of concealed carry licenses issued by other states, if those states meet specified conditions. In addition, the legislation authorizes DOJ to issue concealed carry certification cards to qualified former federal law enforcement officers who reside in Wisconsin.

The proposed rules carry into effect the legislative directives set forth in Act 35. In a few areas, the proposed rules give substance to undefined statutory terms and supply standards 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 legislative intent of Act 35.

The proposed permanent rules cover six subject areas:

(1) Issuance of concealed carry licenses

First, the proposed rules govern the issuance of concealed carry licenses to qualified applicants by DOJ pursuant to s. 175.60, Stats. These rules govern all aspects of the licensing process and describe the procedures and standards under which DOJ processes applications, collects fees, and verifies 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.

(2) Administration of concealed carry licenses

Second, the proposed rules govern the administration of concealed carry licenses that have been issued by DOJ. These rules 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 and for issuing a new concealed carry license or certification card to an individual who changes his or her name; 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 concealed carry licenses issued by a court pursuant to s. 175.60 (9r). The rules for administrative review of a denial, suspension, or revocation of a license include procedures for conducting fingerprint checks to verify the identity of any applicant who has been found to be ineligible based on a background check.

(3) Recognition by Wisconsin of concealed carry permits issued by other states

Third, pursuant to s. 165.25 (12m), Stats., the proposed rules designate those states other than Wisconsin that issue a concealed carry permit or other authorization that is entitled to recognition in Wisconsin because the permit or authorization issued by the other state 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 concealed carry licensees. Under s. 175.60 (1) (f), (1) (g), and (2g), Stats., a concealed carry permit or other authorization issued by another state is entitled to recognition in Wisconsin if the state is included in that list of states promulgated by DOJ.

The background check that DOJ must conduct on each applicant for a Wisconsin concealed carry license is required to include a search in the national instant criminal background check system ("NICS") operated by the Federal Bureau of Investigation. DOJ has determined that a background search conducted by another state is comparable to a Wisconsin background check only if it similarly includes a NICS search. Accordingly, the rules proposed here designate three categories of states that meet this requirement:

The first category consists of each state that, by statute or administrative rule, expressly requires a background check that includes a NICS search as a prerequisite for obtaining a concealed carry permit.

The second category consists of each state that, through the office of its attorney general or another appropriate state agency or official, has informed DOJ that the state, as a matter of policy, requires a background check that includes a NICS search as a prerequisite for obtaining a concealed carry permit.

The third category consists of any state that does not fall into either of the first two categories, but that issues concealed carry permits which designate if the permit holder has voluntarily submitted to a background check, provided that the state, through the office of its attorney general or another appropriate state agency or official, has informed DOJ that the background check includes a NICS search.

The proposed rules further require DOJ to maintain a list of the names of the states in each of the three categories and to make that list available to the public on DOJ's Internet site. If DOJ at any time identifies any inaccuracies in the list of state names, the rules require that those inaccuracies be corrected. If any person possesses information indicating that the list of state names is inaccurate, the rules permit the person to submit that information to DOJ and require DOJ to take reasonably necessary and appropriate steps to review the accuracy of the list and correct any inaccuracies.

(4) Issuance of concealed carry certification cards to former federal law enforcement officers

Fourth, the rules govern the procedures and standards under which DOJ issues concealed carry certification cards to qualified former federal law enforcement officers pursuant to s. 175.49 (3), Stats. These rules govern all aspects of the certification process for former federal officers who reside in

Wisconsin and describe the procedures and standards under which DOJ processes applications, collects fees, and verifies 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.

(5) Administration of concealed carry certification cards held by former federal law enforcement officers

Fifth, the rules also cover the administration of concealed carry certification cards issued to former federal law enforcement officers by DOJ, including: 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 procedure includes procedures for checking fingerprints to verify the identity of any certification applicant who has been found to be ineligible based on a background check.

(6) Certification of firearms instructors

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

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

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

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

Comparison with rules in adjacent states

A. Iowa

Iowa provides by statute that any person who meets specified eligibility and training requirements and who files a proper application shall be issued a nonprofessional permit to carry weapons. Iowa Code s. 724.7(1). Iowa further provides by statute that a concealed carry permit or license issued by another state to a nonresident of Iowa shall be considered a valid permit or license to carry weapons under Iowa law. Iowa Code s. 724.11A. Iowa’s statutory recognition of permits issued by other states is not tied to the nature of any background checks performed by those other states.

Iowa statutes specify a variety of methods by which a license applicant may demonstrate the requisite knowledge of firearms safety. Iowa Code s. 724.9(1). Satisfaction of any of these methods may be documented by submitting: (1) a copy of a certificate of completion or similar document for a course or class that meets the statutory requirements; (2) an affidavit from the instructor or organization conducting such a course or class that attests that the applicant has completed the course or class; or (3) a copy of any document indicating participation in a firearms shooting competition. Iowa’s administrative rules give these requirements additional substantive content through definitions of “firearm training and documentation” and “firearm training program.” Iowa Admin. Code s. 661.91.1(724).

The information to be included on the application form is prescribed by statute. Iowa Code s. 724.10(1). Upon receipt of a completed application, the commissioner of public safety is required to conduct a criminal background check to determine whether the applicant is statutorily eligible for a permit. Iowa Code s. 724.10(2); Iowa Admin. Code s. 661–91.5(724)(1). The commissioner must approve or deny a permit application within 30 days. Iowa Admin. Code s. 661–91.5(724)(2). Denial decisions must be issued in writing, with reasons. Iowa Admin. Code s. 661–91.5(724)(4). If a permit holder is arrested for a disqualifying offense, the commissioner may immediately suspend the permit and immediately notify the holder in writing. Iowa Admin. Code s. 661–91.6(724)(1). If the arrest results in a disqualifying conviction, the permit is revoked. Iowa Adm. Code s. 661–91.6(724)(4). If there is no conviction, the permit is reinstated. Iowa Adm. Code s. 661–91.6(724)(3). Iowa’s administrative rules provide an administrative hearing procedure for appealing the denial, suspension, or revocation of a *professional* weapons permit, but do not expressly provide an appeal procedure for a non–professional permit.

B. Minnesota

Minnesota provides by statute that any person who meets specified eligibility and training requirements and who files a proper application shall be issued a permit to carry a pistol. Minn. Stat. s. 624.714(2). Minnesota further requires the state commissioner of public safety to annually establish and publish a list of states whose concealed carry laws are not substantially similar to Minnesota’s concealed carry laws. Minn. Stat. s. 624.714(16)(a). A nonresident of Minnesota holding a carry permit from a state not on the list may use that permit in Minnesota, subject to the requirements of Minnesota law. Minn. Stat. s. 624.714(16)(a). Minnesota’s statutory recognition of a permit issued by another state is not directly tied to the nature of any background checks performed by the other state, but is tied to a general determination that the other state’s concealed carry laws are substantially similar to Minnesota’s.

Applications are made to the sheriff of the county in which the applicant resides. Minn. Stat. s. 624.714(2). The information to be included on the application form is prescribed by statute. Minn. Stat. s. 624.714(3). A permit applicant must have received training in the safe use of a pistol

within one year prior to the application. Minn. Stat. s. 624.714(2a)(a). To establish such training, an applicant must submit a copy of a certificate signed by the training instructor and attesting that the applicant attended and completed the training. Minn. Stat. s. 624.714(3)(c)(2).

Upon receiving a permit application, the sheriff is required to conduct a criminal background check to determine whether the applicant is statutorily eligible for a permit. Minn. Stat. s. 624.714(4). The sheriff must approve or deny a permit application within 30 days. Minn. Stat. s. 624.714(6). A denied applicant is given the right to submit additional information and the sheriff then has 15 days to reconsider the denial. Minn. Stat. s. 624.714(6)(b). All denial decisions must be issued in writing, with reasons, including the factual basis for the denial. Minn. Stat. s. 624.714(6)(b). A permit is void any time the holder becomes legally prohibited from possessing a firearm. Minn. Stat. s. 624.714(8)(a). If the sheriff has knowledge that a permit is void, the sheriff must give written notice to the holder, who must return the permit. Minn. Stat. s. 624.714(8)(a). If a permit holder is convicted of a disqualifying offense, the convicting court must take possession of the permit and send it to the issuing sheriff. Minn. Stat. s. 624.714(8)(b). A decision denying or revoking a permit may be appealed to the district court of the jurisdiction in which the permit application was submitted. The appeal is heard by the court de novo without a jury. Minn. Stat. s. 624.714(12).

C. Michigan

Michigan provides by statute that any person who meets specified eligibility and training requirements and who files a proper application shall be issued a license to carry a concealed pistol. Mich. Comp. Laws s. 28.425b(7). Applications are made to the concealed weapon licensing board of the county in which the applicant resides. Mich. Comp. Laws s. 28.425b(1). The information to be included on the application form is prescribed by statute. Mich. Comp. Laws s. 28.425b(1). Michigan affords statutory recognition to non−residents who are licensed by another state to carry a concealed pistol. Mich. Comp. Laws s. 28.432a(1)(h). That recognition is not tied to the nature of any background checks performed by the other state.

A license applicant must demonstrate knowledge and training in the safe use and handling of a pistol by successfully completing a pistol safety training program that meets statutorily prescribed requirements. Mich. Comp. Laws s. 28.425b(7)(c). The training program must consist of at least eight hours of instruction, must cover specified subject areas, must include at least three hours on a firing range, must require firing at least 30 rounds of ammunition, and must be taught by an instructor certified by the state or by a national organization. Mich. Comp. Laws s. 28.425j(1). The training program must provide an instructor−signed certificate indicating that the program meets the statutory requirements and was successfully completed by the license applicant and the applicant must include a copy of that certificate with the license application. Mich. Comp. Laws ss. 28.425b(1)(j) and 28.425j(1)(c).

After submitting an application, an applicant is statutorily required to submit a fingerprint card to the state police. Mich. Comp. Laws s. 28.425b(9)−(10). The fingerprints are sent to the FBI and checked against state police records. Mich. Comp. Laws s. 28.425b(10). Within 10 days after receiving fingerprint comparison results from the FBI, the state police must provide a fingerprint report to the appropriate county concealed weapon licensing board. Mich. Comp. Laws s. 28.425b(10). The licensing board must grant or deny a license within 45 days after receiving the fingerprint report, except that if the state police do not send a fingerprint report to the licensing board within 60 days after results are received from the FBI, then the licensing board shall issue the applicant a temporary license which is valid for 180 days. Mich. Comp. Laws s. 28.425b(13)−(14).

License denial decisions must be issued in writing with reasons and supporting facts. Mich. Comp. Laws s. 28.425b(13). Denial decisions may be appealed to the circuit court of the jurisdiction in which the applicant resides. Mich. Comp. Laws s. 28.425d(1). Court review is based on the written record of the application proceeding, except in cases in which a determination has been made that the applicant is a safety risk, in which case there is a hearing de novo before the court. Mich. Comp. Laws s. 28.425d(1).

If a license holder is charged with a disqualifying criminal offense, the prosecuting attorney must promptly notify the county licensing board. Mich. Comp. Laws s. 28.425m. The prosecutor must also notify the board of the subsequent disposition of the charge. Mich. Comp. Laws s. 28.425m. Upon receiving notice that a licensee has been charged with a disqualifying offense, a licensing board must immediately suspend the person's license until there is a final disposition of the charge. Mich. Comp. Laws s. 28.428(3). The licensee must be given written notice of the suspension and may request a prompt administrative hearing on the suspension. Mich. Comp. Laws s. 28.428(3). If the licensing board determines that a licensee is no longer eligible for a license, the license shall be revoked. Mich. Comp. Laws s. 28.428(4).

D. Illinois

Illinois does not issue licenses for the carrying of concealed weapons.

Summary of factual data and analytical methodologies

The proposed rule is predicated primarily on legal analysis by DOJ staff of the language and requirements of Act 35. DOJ staff also considered factual information about NICS and other state and federal background check systems obtained through DOJ's experience in conducting background checks for law enforcement and handgun hotline purposes. In addition, DOJ staff informally contacted appropriate officials in all other states and requested information about a variety of their requirements and practices related to concealed carry. Finally, DOJ sent formal written inquiries to the attorneys general of all other states, requesting relevant information about the requirements and practices of those states regarding background checks for concealed carry purposes. To date, DOJ has received and processed responses to those inquiries from 33 states. Based upon its legal analysis and the factual information obtained from other states, DOJ has determined that the proposed rules are necessary for DOJ to carry out its responsibilities under Act 35.

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

From April 20 through May 4, 2012, pursuant to s. 227.137, Stats., DOJ solicited comments on the economic impact of the proposed rules. Public notification of the comment period was posted on DOJ's public website, the Wisconsin administrative rules website, and the Wisconsin Law Enforcement Network (WILENET). Notification was also sent to the Governor's Office of Regulatory Compliance and to: all DOJ firearms instructors, interested concealed

carry training organizations, firearms dealers, district attorneys' offices, technical colleges, and law enforcement agencies.

A total of 14 sets of comments were received and reviewed by DOJ and follow−up conversations with commenters were conducted. Based on the results of that comment and review process, DOJ has concluded that the proposed permanent rules will not have any adverse material effect on the economy, a sector of the economy, productivity, jobs, or the overall economic competitiveness of this state and that the proposed rules do not impose any financial or compliance burdens that will have a significant effect on small businesses or a significant economic impact. The content of the comment and review process is described in greater detail in the economic impact report that is being simultaneously submitted by DOJ, pursuant to s. 227.137, Stats.

Effect on Small Business

Based on the comment and review process described above, DOJ has concluded that the proposed permanent rules will not have a significant effect on small business.

Fiscal Estimate and Economic Impact Analysis

Fiscal and economic costs associated with implementing the program are not driven by the proposed rules. Rather, administrative costs are driven by the statutory requirements established in Act 35. DOJ does not believe the rules impose additional costs beyond those necessary to fulfill the requirements of Act 35.

Prior to the enactment of 2011 Wis. Act 35, Wisconsin statutes and administrative rules contained no provisions for issuance of licenses/certification cards to carry concealed weapons to qualified applicants. The proposed rules are the first to address these subjects.

Act 35 requires DOJ to issue licenses authorizing eligible Wisconsin residents to carry concealed weapons in Wisconsin and to certify firearms safety and training instructors. Wisconsin has not issued licenses/certification cards previously, so there is the potential for wide variability in the number of licenses/certification cards issued. Based on other States' experience and additional factors including the percentage of Wisconsin's population with hunting licenses and current handgun sales, the department estimates, at a minimum, that 150,000 licenses/certification cards will be issued over a two year period. The department's best estimate is that it will issue at least 100,000 permits in the first year, approximately 50,000 in the second year, and may issue more than 200,000 over the 5 year period. While these figures represent the department's best estimate, each states experience with citizen participation in concealed carry is unique and the actual number of licenses issues cannot be stated with certainty without the supporting data that will be developed in the first two years. Revenues will be directly correlated with the number of completed applications submitted and approved.

The rules establish a statutorily allowed license fee of $37, as determined by the department, to cover the cost of issuing the license on a five year renewal cycle and a $12 renewal fee for the subsequent five years. Act 35 mandates a $13 fee for the required background check. The annual fee for a certification card for former federal law enforcement officers is $12 for the license and $13 for the background check. The revenue generated by this rule will be dependent on the number of licenses/certification cards issued. It is estimated that these emergency rules will generate approximately $5,000,000 in revenue in FY 2012 and $2,500.000 in FY 2013.

The rules will not have an economic effect on public utilities or their taxpayers. For additional information, please see the fiscal estimates and economic impact analyses relating to the emergency and permanent rules.

Agency Contact Person

The agency contact person is David Zibolski, zibolskidb@doj.state.wi.us, (608) 266−5710.

Emergency Rule Economic Impact Analysis

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

ADMINISTRATIVE RULES FISCAL ESTIMATE AND ECONOMIC IMPACT ANALYSIS

Type of Estimate and Analysis	
X Original Updated Corrected	
Administrative Rule Chapter, Title and Number	
Wis. Admin. Code Chapters Jus 17, Licenses to Carry Concealed Weapons and Jus 18, Certification of Former Federal Law Enforcement Officers	
Subject	
Establishing standards and procedures for the issuance and administration of licenses authorizing persons to carry concealed weapons; concealed carry certification cards for qualified former federal law enforcement officers; the review of license/certification card decisions by the department; the certification of firearms safety and training instructors; and the recognition by Wisconsin of concealed carry licenses issued by other states.	
Fund Sources Affected	Chapter 20, Stats. Appropriations Affected
GPR FED **X** PRO PRS SEG SEG−S	20.455 (2) (gs) and 20.455 (2) (gu)

Fiscal Effect of Implementing the Rule		
No Fiscal Effect **X** Indeterminate	**X** Increase Existing Revenues Decrease Existing Revenues	Increase Costs Could Absorb Within Agency's Budget Decrease Costs

The Rule Will Impact the Following (Check All That Apply)	
State's Economy Local Government Units	Specific Businesses/Sectors Public Utility Rate Payers

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

Yes **X** No

Policy Problem Addressed by the Rule

Implementation of 2011 WI Act 35.

Act 35 created a procedure by which a person may apply to the Department of Justice (DOJ) for a license to carry a concealed weapon. Under s. 175.60, Wis. Stats., DOJ shall issue a license to an applicant who meets all of the statutory requirements. Under s. 175.49, Wis. Stats., DOJ may issue a certification card to qualified former federal law enforcement officers who reside in Wisconsin. The statutes require DOJ to:

- Develop and manage a concealed carry license application and renewal process.
- Conduct background checks on applicants.
- Produce tamper–proof licenses.
- Issue a concealed carry license to qualified applicants.
- Maintain, update, and publish a list of other states that conduct similar background checks relating to concealed carry licenses.
- Maintain a database file of Wisconsin licensees that is accessible to law enforcement.
- Maintain and monitor an interface with state courts of all proceedings that may result in the suspension, revocation, or restoration of a concealed carry license.
- Establish and manage renewal, suspension, revocation, replacement and, appeal processes.
- Produce annual statistical reports relating to licenses issued, denied, suspended and revoked.

The department has approved 109,577 concealed carry licenses as of May 24, 2012 and is receiving approximately 2,000 applications per week. Sufficient revenue is being generated to support the program. To fulfill its many new responsibilities, DOJ required additional resources in FY 2012 to support the implementation of Act 35. These resources, both personnel and equipment, were funded with the PR and spending authority increase granted through 16.515 requests approved by the Joint Committee on Finance (JCF). The remaining funding and position authority needed to support the program through FY 2013 will be requested as needed.

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)

Fiscal and Economic costs associated with implementing the program are not driven by the Administrative Rule. Rather, administrative costs are driven by the statutory requirements established in Act 35. DOJ does not believe the rule imposes additional costs beyond those necessary to fulfill the requirements of Act 35.

On April 20, 2012, DOJ solicited public comment from businesses, business sectors, associations representing business, local government units, and individuals that may be affected by the proposed rule was solicited pursuant to s. 227.137(3), Wis. Stats., and Executive Order #50. The public comment period ended on May 4, 2012. Fourteen persons provided comments in response to DOJ's solicitation. Four persons responded merely to state that the proposed rules had no economic impact on them or their business. One person was concerned that the rules did not include the many Hmong and Lao veterans of the Vietnam War who served in the "clandestine services," and thus, did not have a DD214 and could not afford to pay for training. One person was concerned that: Active military were not covered in the rules; DOJ should accept electronic fingerprints; and thought state identification number was not defined. Three persons believed a concealed carry licensee should not have to go through a background check when purchasing a firearm. One person believed that the instructor–student ratio should not be limited. One person advocated for stricter rules that would not accept hunters safety or military experience, included an instructor auditing capacity, and would require photograph and fingerprints upon application. One person felt Jus 18 was more restrictive than federal law. One person corresponded to express a positive economic impact on his business. One person commented that the rules helped to clarify the law.

Based on the responses received and the follow–up conversations with the respondents, there does not appear to be any adverse material effect to the economy, a sector of the economy, productivity, jobs, or the overall economic competitiveness of this state as a result of the proposed permanent concealed carry administrative rules. None of the respondents indicated that the proposed rules would have any adverse economic impact on their business or livelihood. The rule will not have an economic effect on public utilities or their taxpayers. Many of the comments related to issues other than the economic impact of the proposed rules. DOJ will give further consideration to those comments during the public hearing process on the proposed rules.

Prior to the enactment of 2011 Wis. Act 35, Wisconsin statutes and administrative rules contained no provisions for issuance of licenses/ certification cards to carry concealed weapons to qualified applicants. The proposed rules are the first to address these subjects.

Act 35 requires DOJ to issue licenses authorizing eligible Wisconsin residents to carry concealed weapons in Wisconsin and to certify DOJ firearms safety and training instructors. Based on the current volume of concealed carry applications, the department estimates that 120,000 licenses will be issued by the end of FY 2012, while another 100,000 will be issued in FY 2013. While these figures represent the department's experience thus far, each states experience with citizen participation in concealed carry is unique and the actual number of licenses issued over the five year period cannot be stated with certainty without the supporting data that will be developed in the first two years. Revenues will be directly correlated with the number of completed applications submitted and approved.

The rule establishes a statutorily allowed license fee of $37, as determined by the department, to cover the cost of issuing the license on a five year renewal cycle and a $12 renewal fee for the subsequent five years. Act 35 mandates a $13 fee for the required background check. The annual fee for a certification card for former federal law enforcement officers is $12 for the license and $13 for the background check. The revenue generated by this rule will be dependent on the number of licenses/ certification cards issued. It is estimated that these permanent rules will generate approximately $5,000,000 in revenue in FY2013.

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

The proposed rules are predicated on legal analysis by DOJ staff of the language and requirements of Act 35. Based on that analysis, DOJ has determined that the proposed rules are necessary for DOJ to carry out its responsibilities and the legislative directives set forth in Act 35. The alternative to implementing the rule would be non–compliance with Act 35.

Long Range Implications of Implementing the Rule

There are no known long range implications of implementing the rule.

Compare With Approaches Being Used by Federal Government

No comparable information available.

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

Iowa

Iowa provides by statute that any person who meets specified eligibility and training requirements and who files a proper application shall be issued a nonprofessional permit to carry weapons. Iowa Code § 724.7(1). Iowa further provides by statute that a concealed carry permit or license issued by another state to a nonresident of Iowa shall be considered a valid permit or license to carry weapons under Iowa law. Iowa Code § 724.11A. Iowa's statutory recognition of permits issued by other states is not tied to the nature of any background checks performed by those other states.

Iowa statutes specify a variety of methods by which a license applicant may demonstrate the requisite knowledge of firearms safety. Iowa Code § 724.9(1). Satisfaction of any of these methods may be documented by submitting: (1) a copy of a certificate of completion or similar document for a course or class that meets the statutory requirements; (2) an affidavit from the instructor or organization conducting such a course or class that attests that the applicant has completed the course or class; or (3) a copy of any document indicating participation in a firearms shooting competition. Iowa's administrative rules give these requirements additional substantive content through definitions of "firearm training and documentation" and "firearm training program." Iowa Admin. Code § 661.91.1(724).

The information to be included on the application form is prescribed by statute. Iowa Code § 724.10(1). Upon receipt of a completed application, the commissioner of public safety is required to conduct a criminal background check to determine whether the applicant is statutorily eligible for a permit. Iowa Code § 724.10(2); Iowa Admin. Code § 661–91.5(724)(1). The commissioner must approve or deny a permit application within 30 days. Iowa Admin. Code § 661–91.5(724)(2). Denial decisions must be issued in writing, with reasons. Iowa Admin. Code § 661–91.5(724)(4). If a permit holder is arrested for a disqualifying offense, the commissioner may immediately suspend the permit and immediately notify the holder in writing. Iowa Admin. Code § 661–91.6(724)(1). If the arrest results in a disqualifying conviction, the permit is revoked. Iowa Adm. Code § 661–91.6(724)(4). If there is no conviction, the permit is reinstated. Iowa Adm. Code § 661–91.6(724)(3). Iowa's administrative rules provide an administrative hearing procedure for appealing the denial, suspension, or revocation of a *professional* weapons permit, but do not expressly provide an appeal procedure for a non–professional permit.

Minnesota

Minnesota provides by statute that any person who meets specified eligibility and training requirements and who files a proper application shall be issued a permit to carry a pistol. Minn. Stat. § 624.714(2). Minnesota further requires the state commissioner of public safety to annually establish and publish a list of states whose concealed carry laws are not substantially similar to Minnesota's concealed carry laws. Minn. Stat. § 624.714(16)(a). A nonresident of Minnesota holding a carry permit from a state not on the list may use that permit in Minnesota, subject to the requirements of Minnesota law. Minn. Stat. § 624.714(16)(a). Minnesota's statutory recognition of a permit issued by another state is not directly tied to the nature of any background checks performed by the other state, but is tied to a general determination that the other state's concealed carry laws are substantially similar to Minnesota's.

Applications are made to the sheriff of the county in which the applicant resides. Minn. Stat. § 624.714(2). The information to be included on the application form is prescribed by statute. Minn. Stat. § 624.714(3). A permit applicant must have received training in the safe use of a pistol within one year prior to the application. Minn. Stat. § 624.714(2a)(a). To establish such training, an applicant must submit a copy of a certificate signed by the training instructor and attesting that the applicant attended and completed the training. Minn. Stat. § 624.714(3)(c)(2).

Upon receiving a permit application, the sheriff is required to conduct a criminal background check to determine whether the applicant is statutorily eligible for a permit. Minn. Stat. § 624.714(4). The sheriff must approve or deny a permit application within 30 days. Minn. Stat. § 624.714(6). A denied applicant is given the right to submit additional information and the sheriff then has 15 days to reconsider the denial. Minn. Stat. § 624.714(6)(b). All denial decisions must be issued in writing, with reasons, including the factual basis for the denial. Minn. Stat. § 624.714(6)(b). A permit is void any time the holder becomes legally prohibited from possessing a firearm. Minn. Stat. § 624.714(8)(a). If the sheriff has knowledge that a permit is void, the sheriff must give written notice to the holder, who must return the permit. Minn. Stat. § 624.714(8)(a). If a permit holder is convicted of a disqualifying offense, the convicting court must take possession of the permit and send it to the issuing sheriff. Minn. Stat. § 624.714(8)(b). A decision denying or revoking a permit may be appealed to the district court of the jurisdiction in which the permit application was submitted. The appeal is heard by the court de novo without a jury. Minn. Stat. § 624.714(12).

Michigan

Michigan provides by statute that any person who meets specified eligibility and training requirements and who files a proper application shall be issued a license to carry a concealed pistol. Mich. Comp. Laws § 28.425b(7). Applications are made to the concealed weapon licensing board of the county in which the applicant resides. Mich. Comp. Laws § 28.425b(1). The information to be included on the application form is prescribed by statute. Mich. Comp. Laws § 28.425b(1). Michigan affords statutory recognition to non–residents who are licensed by another state to carry a concealed pistol. Mich. Comp. Laws § 28.432a(1)(h). That recognition is not tied to the nature of any background checks performed by the other state.

A license applicant must demonstrate knowledge and training in the safe use and handling of a pistol by successfully completing a pistol safety training program that meets statutorily prescribed requirements. Mich. Comp. Laws § 28.425b(7)(c). The training program must consist of at least eight hours of instruction, must cover specified subject areas, must include at least three hours on a firing range, must require firing at least 30 rounds of ammunition, and must be taught by an instructor certified by the state or by a national organization. Mich. Comp. Laws § 28.425j(1). The training program must provide an instructor–signed certificate indicating that the program meets the statutory requirements and was successfully completed by the license applicant and the applicant must include a copy of that certificate with the license application. Mich. Comp. Laws §§ 28.425b(1)(j) and 28.425j(1)(c).

After submitting an application, an applicant is statutorily required to submit a fingerprint card to the state police. Mich. Comp. Laws § 28.425b(9)–(10). The fingerprints are sent to the FBI and checked against state police records. Mich. Comp. Laws § 28.425b(10). Within 10 days after receiving fingerprint comparison results from the FBI, the state police must provide a fingerprint report to the appropriate county concealed weapon licensing board. Mich. Comp. Laws § 28.425b(10). The licensing board must grant or deny a license within 45 days after receiving the fingerprint report, except that if the state police do not send a fingerprint report to the licensing board within 60 days after results are received from the FBI, then the licensing board shall issue the applicant a temporary license which is valid for 180 days. Mich. Comp. Laws § 28.425b(13)–(14).

License denial decisions must be issued in writing with reasons and supporting facts. Mich. Comp. Laws § 28.425b(13). Denial decisions may be appealed to the circuit court of the jurisdiction in which the applicant resides. Mich. Comp. Laws § 28.425d(1). Court review is based on the written record of the application proceeding, except in cases in which a determination has been made that the applicant is a safety risk, in which case there is a hearing de novo before the court. Mich. Comp. Laws § 28.425d(1).

If a license holder is charged with a disqualifying criminal offense, the prosecuting attorney must promptly notify the county licensing board. Mich. Comp. Laws § 28.425m. The prosecutor must also notify the board of the subsequent disposition of the charge. Mich. Comp. Laws § 28.425m. Upon receiving notice that a licensee has been charged with a disqualifying offense, a licensing board must immediately suspend the person's license until there is a final disposition of the charge. Mich. Comp. Laws § 28.428(3). The licensee must be given written notice of the suspension and may request a prompt administrative hearing on the suspension. Mich. Comp. Laws § 28.428(3). If the licensing board determines that a licensee is no longer eligible for a license, the license shall be revoked. Mich. Comp. Laws § 28.428(4).

Illinois

Illinois does not issue licenses for the carrying of concealed weapons.

See "Analysis by the Department of Justice" in the department's order adopting the permanent rules, DOJ–2012–01.

Name and Phone Number of Contact Person

Brian O'Keefe, Administrator
DOJ– Division of Law Enforcement Services
608–266–7598

Permanent Rule Economic Impact Analysis

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

ADMINISTRATIVE RULES FISCAL ESTIMATE AND ECONOMIC IMPACT ANALYSIS

Type of Estimate and Analysis

X Original Updated Corrected

Administrative Rule Chapter, Title and Number

Wis. Admin. Code Chapters Jus 17, Licenses to Carry Concealed Weapons and Jus 18, Certification of Former Federal Law Enforcement Officers

Subject

Establishing standards and procedures for the issuance and administration of licenses authorizing persons to carry concealed weapons; concealed carry certification cards for qualified former federal law enforcement officers; the review of license/certification card decisions by the department; the certification of firearms safety and training instructors; and the recognition by Wisconsin of concealed carry licenses issued by other states.

Fund Sources Affected	Chapter 20, Stats. Appropriations Affected
GPR FED **X** PRO PRS SEG SEG–S	20.455 (2) (gs) and 20.455 (2) (gu)

Fiscal Effect of Implementing the Rule

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

The Rule Will Impact the Following (Check All That Apply)	
State's Economy	Specific Businesses/Sectors
Local Government Units	Public Utility Rate Payers

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

Yes **X** No

Policy Problem Addressed by the Rule

Implementation of 2011 WI Act 35.

Act 35 created a procedure by which a person may apply to the Department of Justice (DOJ) for a license to carry a concealed weapon. Under s. 175.60, Wis. Stats., DOJ shall issue a license to an applicant who meets all of the statutory requirements. Under s. 175.49, Wis. Stats., DOJ may issue a certification card to qualified former federal law enforcement officers who reside in Wisconsin. The statutes require DOJ to:

- Develop and manage a concealed carry license application and renewal process.
- Conduct background checks on applicants.
- Produce tamper–proof licenses.
- Issue a concealed carry license to qualified applicants.
- Maintain, update, and publish a list of other states that conduct similar background checks relating to concealed carry licenses.
- Maintain a database file of Wisconsin licensees that is accessible to law enforcement.
- Maintain and monitor an interface with state courts of all proceedings that may result in the suspension, revocation, or restoration of a concealed carry license.
- Establish and manage renewal, suspension, revocation, replacement and, appeal processes.
- Produce annual statistical reports relating to licenses issued, denied, suspended and revoked.

The department has approved 109,577 concealed carry licenses as of May 24, 2012 and is receiving approximately 2,000 applications per week. Sufficient revenue is being generated to support the program. To fulfill its many new responsibilities, DOJ required additional resources in FY 2012 to support the implementation of Act 35. These resources, both personnel and equipment, were funded with the PR and spending authority increase granted through 16.515 requests approved by the Joint Committee on Finance (JCF). The remaining funding and position authority needed to support the program through FY 2013 will be requested as needed.

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)

Fiscal and Economic costs associated with implementing the program are not driven by the Administrative Rule. Rather, administrative costs are driven by the statutory requirements established in Act 35. DOJ does not believe the rule imposes additional costs beyond those necessary to fulfill the requirements of Act 35.

On April 20, 2012, DOJ solicited public comment from businesses, business sectors, associations representing business, local government units, and individuals that may be affected by the proposed rule was solicited pursuant to s. 227.137(3), Wis. Stats., and Executive Order #50. The public comment period ended on May 4, 2012. Fourteen persons provided comments in response to DOJ's solicitation. Four persons responded merely to state that the proposed rules had no economic impact on them or their business. One person was concerned that the rules did not include the many Hmong and Lao veterans of the Vietnam War who served in the "clandestine services," and thus, did not have a DD214 and could not afford to pay for training. One person was concerned that: Active military were not covered in the rules; DOJ should accept electronic fingerprints; and thought state identification number was not defined. Three persons believed a concealed carry licensee should not have to go through a background check when purchasing a firearm. One person believed that the instructor–student ratio should not be limited. One person advocated for stricter rules that would not accept hunters safety or military experience, included an instructor auditing capacity, and would require photograph and fingerprints upon application. One person felt Jus 18 was more restrictive than federal law. One person corresponded to express a positive economic impact on his business. One person commented that the rules helped to clarify the law.

Based on the responses received and the follow–up conversations with the respondents, there does not appear to be any adverse material effect to the economy, a sector of the economy, productivity, jobs, or the overall economic competitiveness of this state as a result of the proposed permanent concealed carry administrative rules. None of the respondents indicated that the proposed rules would have any adverse economic impact on their business or livelihood. The rule will not have an economic effect on public utilities or their taxpayers. Many of the comments related to issues other than the economic impact of the proposed rules. DOJ will give further consideration to those comments during the public hearing process on the proposed rules.

Prior to the enactment of 2011 Wis. Act 35, Wisconsin statutes and administrative rules contained no provisions for issuance of licenses/certification cards to carry concealed weapons to qualified applicants. The proposed rules are the first to address these subjects.

Act 35 requires DOJ to issue licenses authorizing eligible Wisconsin residents to carry concealed weapons in Wisconsin and to certify DOJ firearms safety and training instructors. Based on the current volume of concealed carry applications, the department estimates that 120,000 licenses will be issued by the end of FY 2012, while another 100,000 will be issued in FY 2013. While these figures represent the department's experience thus far, each states experience with citizen participation in concealed carry is unique and the actual number of licenses issued over the five year period cannot be stated with certainty without the supporting data that will be developed in the first two years. Revenues will be directly correlated with the number of completed applications submitted and approved.

The rule establishes a statutorily allowed license fee of $37, as determined by the department, to cover the cost of issuing the license on a five year renewal cycle and a $12 renewal fee for the subsequent five years. Act 35 mandates a $13 fee for the required background check. The annual fee for a certification card for former federal law enforcement officers is $12 for the license and $13 for the background check. The revenue generated by this rule will be dependent on the number of licenses/certification cards issued. It is estimated that these permanent rules will generate approximately $5,000,000 in revenue in FY 2013.

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

The proposed rules are predicated on legal analysis by DOJ staff of the language and requirements of Act 35. Based on that analysis, DOJ has determined that the proposed rules are necessary for DOJ to carry out its responsibilities and the legislative directives set forth in Act 35. The alternative to implementing the rule would be non–compliance with Act 35.

Long Range Implications of Implementing the Rule

There are no known long range implications of implementing the rule.

Compare With Approaches Being Used by Federal Government

No comparable information available

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

Iowa

Iowa provides by statute that any person who meets specified eligibility and training requirements and who files a proper application shall be issued a nonprofessional permit to carry weapons. Iowa Code § 724.7(1). Iowa further provides by statute that a concealed carry permit or license issued by another state to a nonresident of Iowa shall be considered a valid permit or license to carry weapons under Iowa law. Iowa Code § 724.11A. Iowa's statutory recognition of permits issued by other states is not tied to the nature of any background checks performed by those other states.

Iowa statutes specify a variety of methods by which a license applicant may demonstrate the requisite knowledge of firearms safety. Iowa Code § 724.9(1). Satisfaction of any of these methods may be documented by submitting: (1) a copy of a certificate of completion or similar document for a course or class that meets the statutory requirements; (2) an affidavit from the instructor or organization conducting such a course or class that attests that the applicant has completed the course or class; or (3) a copy of any document indicating participation in a firearms shooting competition. Iowa's administrative rules give these requirements additional substantive content through definitions of "firearm training and documentation" and "firearm training program." Iowa Admin. Code § 661.91.1(724).

The information to be included on the application form is prescribed by statute. Iowa Code § 724.10(1). Upon receipt of a completed application, the commissioner of public safety is required to conduct a criminal background check to determine whether the applicant is statutorily eligible for a permit. Iowa Code § 724.10(2); Iowa Admin. Code § 661–91.5(724)(1). The commissioner must approve or deny a permit application within 30 days. Iowa Admin. Code § 661–91.5(724)(2). Denial decisions must be issued in writing, with reasons. Iowa Admin. Code § 661–91.5(724)(4). If a permit holder is arrested for a disqualifying offense, the commissioner may immediately suspend the permit and immediately notify the holder in writing. Iowa Admin. Code § 661–91.6(724)(1). If the arrest results in a disqualifying conviction, the permit is revoked. Iowa Adm. Code § 661–91.6(724)(4). If there is no conviction, the permit is reinstated. Iowa Adm. Code § 661–91.6(724)(3). Iowa's administrative rules provide an administrative hearing procedure for appealing the denial, suspension, or revocation of a *professional* weapons permit, but do not expressly provide an appeal procedure for a non–professional permit.

Minnesota

Minnesota provides by statute that any person who meets specified eligibility and training requirements and who files a proper application shall be issued a permit to carry a pistol. Minn. Stat. § 624.714(2). Minnesota further requires the state commissioner of public safety to annually establish and publish a list of states whose concealed carry laws are not substantially similar to Minnesota's concealed carry laws. Minn. Stat. § 624.714(16)(a). A nonresident of Minnesota holding a carry permit from a state not on the list may use that permit in Minnesota, subject to the requirements of Minnesota law. Minn. Stat. § 624.714(16)(a). Minnesota's statutory recognition of a permit issued by another state is not directly tied to the nature of any background checks performed by the other state, but is tied to a general determination that the other state's concealed carry laws are substantially similar to Minnesota's.

Applications are made to the sheriff of the county in which the applicant resides. Minn. Stat. § 624.714(2). The information to be included on the application form is prescribed by statute. Minn. Stat. § 624.714(3). A permit applicant must have received training in the safe use of a pistol within one year prior to the application. Minn. Stat. § 624.714(2a)(a). To establish such training, an applicant must submit a copy of a certificate signed by the training instructor and attesting that the applicant attended and completed the training. Minn. Stat. § 624.714(3)(c)(2).

Upon receiving a permit application, the sheriff is required to conduct a criminal background check to determine whether the applicant is statutorily eligible for a permit. Minn. Stat. § 624.714(4). The sheriff must approve or deny a permit application within 30 days. Minn. Stat. § 624.714(6). A denied applicant is given the right to submit additional information and the sheriff then has 15 days to reconsider the denial. Minn. Stat. § 624.714(6)(b). All denial decisions must be issued in writing, with reasons, including the factual basis for the denial. Minn. Stat. § 624.714(6)(b). A permit is void any time the holder becomes legally prohibited from possessing a firearm. Minn. Stat. § 624.714(8)(a). If the sheriff has knowledge that a permit is void, the sheriff must give written notice to the holder, who must return the permit. Minn. Stat. § 624.714(8)(a). If a permit holder is convicted of a disqualifying offense, the convicting court must take possession of the permit and send it to the issuing sheriff. Minn. Stat. § 624.714(8)(b). A decision denying or revoking a permit may be appealed to the district court of the jurisdiction in which the permit application was submitted. The appeal is heard by the court de novo without a jury. Minn. Stat. § 624.714(12).

Michigan

Michigan provides by statute that any person who meets specified eligibility and training requirements and who files a proper application shall be issued a license to carry a concealed pistol. Mich. Comp. Laws § 28.425b(7). Applications are made to the concealed weapon licensing board of the county in which the applicant resides. Mich. Comp. Laws § 28.425b(1). The information to be included on the application form is prescribed by statute. Mich. Comp. Laws § 28.425b(1). Michigan affords statutory recognition to non–residents who are licensed by another state to carry a concealed pistol. Mich. Comp. Laws § 28.432a(1)(h). That recognition is not tied to the nature of any background checks performed by the other state.

A license applicant must demonstrate knowledge and training in the safe use and handling of a pistol by successfully completing a pistol safety training program that meets statutorily prescribed requirements. Mich. Comp. Laws § 28.425b(7)(c). The training program must consist of at least eight hours of instruction, must cover specified subject areas, must include at least three hours on a firing range, must require firing at least 30 rounds of ammunition, and must be taught by an instructor certified by the state or by a national organization. Mich. Comp. Laws § 28.425j(1). The training program must provide an instructor–signed certificate indicating that the program meets the statutory requirements and was successfully completed by the license applicant and the applicant must include a copy of that certificate with the license application. Mich. Comp. Laws §§ 28.425b(1)(j) and 28.425j(1)(c).

After submitting an application, an applicant is statutorily required to submit a fingerprint card to the state police. Mich. Comp. Laws § 28.425b(9)–(10). The fingerprints are sent to the FBI and checked against state police records. Mich. Comp. Laws § 28.425b(10). Within 10 days after receiving fingerprint comparison results from the FBI, the state police must provide a fingerprint report to the appropriate county concealed weapon licensing board. Mich. Comp. Laws § 28.425b(10). The licensing board must grant or deny a license within 45 days after receiving the fingerprint report, except that if the state police do not send a fingerprint report to the licensing board within 60 days after results are received from the FBI, then the licensing board shall issue the applicant a temporary license which is valid for 180 days. Mich. Comp. Laws § 28.425b(13)–(14).

License denial decisions must be issued in writing with reasons and supporting facts. Mich. Comp. Laws § 28.425b(13). Denial decisions may be appealed to the circuit court of the jurisdiction in which the applicant resides. Mich. Comp. Laws § 28.425d(1). Court review is based on the written record of the application proceeding, except in cases in which a determination has been made that the applicant is a safety risk, in which case there is a hearing de novo before the court. Mich. Comp. Laws § 28.425d(1).

If a license holder is charged with a disqualifying criminal offense, the prosecuting attorney must promptly notify the county licensing board. Mich. Comp. Laws § 28.425m. The prosecutor must also notify the board of the subsequent disposition of the charge. Mich. Comp. Laws § 28.425m. Upon receiving notice that a licensee has been charged with a disqualifying offense, a licensing board must immediately suspend the person's license until there is a final disposition of the charge. Mich. Comp. Laws § 28.428(3). The licensee must be given written notice of the suspension and may request a prompt administrative hearing on the suspension. Mich. Comp. Laws § 28.428(3). If the licensing board determines that a licensee is no longer eligible for a license, the license shall be revoked. Mich. Comp. Laws § 28.428(4).

Illinois

Illinois does not issue licenses for the carrying of concealed weapons.

See "Analysis by the Department of Justice" in the department's order adopting the permanent rules, DOJ–2012–01.

Name and Phone Number of Contact Person

Brian O'Keefe, Administrator
DOJ– Division of Law Enforcement Services
608–266–7598

Notice of Hearing

Natural Resources

Environmental Protection — General, Chs. NR 100—

Environmental Protection — Wis. Pollutant Discharge Elimination System, Chs. NR 200—

CR 12–027

(DNR # WT–23–11)

NOTICE IS HEREBY GIVEN THAT pursuant to sections 227.11 (2) (a), 281.41, 283.11, 283.31, and 283.55, Stats., interpreting sections 281.41, 283.11, 283.31, 283.55 and 283.59, Wis. Stats., the Department of Natural Resources will hold public hearings on proposed revisions to Chapters NR 110, NR 205, NR 208 and NR 210, Wis. Adm. Code, relating to the operation and maintenance of sewage collection systems.

Hearing Information

NOTICE IS HEREBY FURTHER GIVEN that hearings will be held on:

Date: **Monday, July 16, 2012**
Time: 10:00 a.m.
Location: WDNR Northeast Region, Oshkosh Office
Rooms 1 and 2; Suite 700
625 E. County Rd Y
Oshkosh, WI 54901

Date: **Tuesday, July 17, 2012**
Time: 10:00 a.m.
Location: WDNR West Central Region Headquarters
Room 158
1300 W. Clairemont Ave
Eau Claire, WI 54701

Date: **Wednesday, July 18, 2012**
Time: 10:00 a.m.
Location: WDNR Southeast Region Headquarters
Rooms 140 and 141
2300 N. Martin Luther King Jr. Drive
Milwaukee, WI 53212

Pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request as noted below. The public hearing sites are accessible to people with disabilities. If you have special needs or circumstances that may make communication or accessibility difficult at a hearing site or require other accommodation, please contact Michael Lemcke at (608) 266–2666 (email: michael.lemcke@wisconsin.gov) with specific information on your request at least 10 days before the date of the scheduled hearing

Availability of the Proposed Rule and the Fiscal Estimate and Economic Impact Analysis

The proposed rule revisions, including the Fiscal Estimate and the Economic Impact Analysis may be viewed and downloaded and comments electronically submitted at the following internet site: https://health.wisconsin.gov/admrules/public/Rmo?nRmoId=10943 [type "NR 210" in the "search" field].

If you do not have internet access, a copy of the proposed rules and supporting documents, including the Fiscal Estimate and Economic Impact Analysis, may be obtained from Michael Lemcke, DNR–WT/3, P.O. Box 7921, Madison, WI 53707–7921, or by calling (608) 266–2666.

Place Where Comments are to be Submitted and Deadline for Submission

Written comments on the proposed rules may be submitted via U. S. mail to Duane Schuettpelz, DNR–WT/3, P.O. Box 7921, Madison, WI 53707–7921 or by e–mail to: duane.schuettpelz@wisconsin.gov

Comments may be submitted using the internet site where the rule and other documents have been posted [https://health.wisconsin.gov/admrules/public/Rmo?nRmoId=10943]. Please follow the guidelines stated on this site when submitting comments.

Comments submitted on or before **July 31, 2012** will be considered in developing a final rule. 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.

Analysis Prepared by the Department of Natural Resources

The purpose of these proposed rule additions and amendments is primarily to establish clear regulatory requirements associated with unpermitted and potentially hazardous discharges of untreated or partially treated sewage. These discharges are included under the broad definition of "bypass" in current state and federal regulations. The changes will make Wisconsin's rules conform more closely with the U.S. Environmental Protection Agency's (U.S. EPA) interpretation of federal regulations, a long–standing point of concern by that agency. The proposed rules should also address U.S. EPA's concerns regarding existing sanitary sewer overflow (SSO) and bypassing regulations. In a letter dated July 18, 2011, US EPA notified the department that the definitions, regulations and reporting requirements for bypassing in existing state regulations appeared to be inconsistent with federal regulations.

The rules primarily establish definitions and requirements that apply to untreated or partially treated sewage discharges and create consistency in the requirements applicable to publicly owned treatment works and privately owned facilities collecting and treating primarily sanitary sewage. Section 283.31 (4) (d), Wis. Stats., requires "… the permittee shall at all times maintain in good working order and operate as efficiently as possible any facilities or systems of control installed by the permittee to achieve compliance with the terms and conditions of the permit." Because sewage collection systems are an integral part of pollution control facilities, the department has for years regulated the operation and maintenance of these systems to prevent discharges of untreated sewage.

To interpret and implement the statutory requirement for "proper operation and maintenance", the proposed rules require that all owners of sewage collection systems (primarily municipalities) create a capacity, management, operation, and maintenance (CMOM) program. The CMOM program is an effective management tool that owners use to help construct, maintain and operate sustainable sewage collection systems and prevent overflows. It helps sewage collection system owners proactively maintain this significant and valuable community infrastructure by optimizing planned maintenance and prioritizing rehabilitation or replacement activities. These implementation activities are and have been required under the general "proper operation and maintenance" requirements of existing rules. The proposed rule revisions establish more detailed procedures for this requirement.

In addition to municipalities that own and operate both a sewage collection system and a sewage treatment facility, these rules apply to two other types of systems. Satellite sewage collection system owners do not own and operate a sewage treatment facility. Rather, these municipalities, such as an adjacent city or a sanitary district, own and operate only the sewage collection system which discharges into another municipality's sewers for treatment and disposal. Secondly, these rules also apply to a small number of privately–owned sewerage systems in the state that collect, treat and dispose of sewage (e.g., mobile home parks) or that operate as satellite sewage collection systems. The CMOM requirement also applies to these privately–owned and satellite collection systems.

Discharges of untreated or inadequately treated sewage from any place in sewage collection systems designed to collect and transport only sanitary sewage are most commonly called sanitary sewer overflows (SSOs). Systems designed to collect and transport both sanitary sewage and storm water in the same pipes are called combined sewer systems and discharges are referred to as combined sewer overflows (CSOs). Discharges of untreated sewage are a potential hazard to human health and can have significant impacts on water quality. Typically, SSOs occur as a result of either the entry of an excessive amount of precipitation or groundwater into the sanitary sewers (infiltration/inflow (I/I)) or because there is a mechanical, electrical or structural failure in a component of the collection system.

When a sewage collection system has insufficient capacity to transport the sewage and the I/I entering the sewers, the system will relieve itself by discharging the excess flow as a SSO in one or more ways. Sewage may back up into buildings or basements through the building sewer. Sewage may also be discharged to nearby drainage–ways, to surface waters or to the land surface from sewage collection system components such as overflowing manholes or lift station overflow pipes. In some instances, sewage may be discharged, usually into surface waters through a gravity overflow structure or a portable or permanently installed pump. Once wastewater enters the sewage treatment facility, an overflow to the land surface and into nearby surface waters may occur if a treatment unit is too small to accommodate the quantity of flow. This rule–making is intended to establish specific requirements applicable to sewage collection system owners that will prevent or reduce the potential for SSOs and, thereby, prevent water quality impairment and human health hazards associated with such discharges. Effective development and implementation of a CMOM program will reduce the costs incurred by a permittee when building backups cause damage to private property.

Initial regulatory flexibility analysis summary

The only new direct cost of these rules is associated with the preparation of the CMOM by private sewage collection system owners and by municipalities that have not yet developed such a program. The effect of this rule on other small businesses will be indirectly through the actions of municipal sewage collection system owners. Costs for sewage collection system maintenance and improvements are normally assessed to all users of the system, including small business owners. Such costs are determined at the local level. Because the costs to any given system owner will likely be assessed to all system users, the cost to an individual small business owner for this activity will be low.

In some instances, it may be determined through activities identified in the CMOM program that excessive I/I originates from a building sewer. If the building sewer from a small business is identified as a source of excessive I/I, the municipality may require rehabilitation of the building sewer by the property owner. Under the "proper operation and maintenance" provisions of state statutes and rules, sewage collection system maintenance activities that may be identified through the CMOM process are existing requirements and, therefore, are not specific new provisions established by these rules.

In the case of private ownership of a sewerage system (e.g., a mobile home park) identified as a source of SSO, replacement or repair of sewerage system components would be the responsibility of the owner. The number of these cases is likely to be very limited because of the small number of

private sewage collection system permittees and, therefore, the statewide cost will be low.

Fiscal Analysis and Economic Impact Analysis Summary

Sewage collection system owners have a fiduciary responsibility to the citizens of their community to operate, maintain, repair, replace or otherwise manage these systems in the best interest of the community. Furthermore, robust and well–maintained sewage collections systems (and other infrastructure) are beneficial to the economic health of communities and attractive to new and existing businesses. Therefore, irrespective of these proposed rule changes, sewage collection system owners will, in the course of normal proper operations, undertake actions to protect community infrastructure, prevent illegal SSOs or other system failures, eliminate building backups and minimize risks to human health and the environment. That being the case, any costs associated with the on–going operation and maintenance of a sewage collection system cannot be directly and solely attributed to these rule revisions.

It is well–documented that the long–term benefits of maintaining public infrastructure significantly outweigh the short–term costs associated with those maintenance activities. Reducing the entry of I/I into sewage collection systems through implementation of a CMOM program will be less costly than responding to unplanned emergencies. Furthermore, the resulting reductions in wastewater volume means that ratepayers (including businesses) will not have to pay the increased costs for additional sewerage system capacity to deal with the excessive flow from leaking sewage collection systems.

Under current state and federal statutes and rules, SSOs are not permitted, with certain specific exceptions, and subject to enforcement action by the state or federal government. Establishing and implementing a CMOM program will reduce permit violations due to SSO discharges, thereby reducing the number of enforcement actions necessary. A well–developed and effectively implemented CMOM program can significantly change the nature of the department's enforcement response and reduce the short–term enforcement–related fiscal implications.

Building backups and damages caused to private property by such incidents and that may be caused by deficiencies in the sewage collection system create potential financial liability issues for the system owner. Implementation of the actions required by the rule will serve to reduce the number of building backups and any subsequent emergency activities for which the permittee may be responsible.

Therefore, the principal "new" cost associated with implementation of these proposed rules is the requirement that all owners of sewage collection systems develop or create a CMOM program. These are primarily municipalities, but also include a small number of private sewage collection systems. Under the proposed rule, creating a CMOM program requires the preparation of all documents and plans necessary to implement activities for the proper operation and maintenance of the sewage collection system. Many system owners already have in place preventative maintenance practices that essentially meet the principles of the CMOM program requirements established in the rules. The department, U.S. EPA and other organizations have been actively promoting such a program among the regulated community for the past several years and the CMOM concept has received considerable support from system owners.

Many small communities, including those serving populations less than 10,000 to 15,000 and most satellite sewage collection systems, likely do not have the full capacity to develop a CMOM program without assistance, training and/or guidance from consulting professionals. Consultants and other businesses involved in sewage collection system work will realize monetary benefits from the services they provide assisting owners with CMOM development.

Statewide costs to develop CMOM programs for all sewage collection system owners is difficult to predict due to the variability in size of systems and the status of each individual community's current operation and maintenance program. Based on information available, the estimated cost to develop a CMOM program for a small community that has minimal documentation of its preventative maintenance activities and has the ability to develop the program in–house could be as low as $1,000. More likely, costs will range upward of $5,000. If a consultant is involved to provide training or was contracted to actually prepare the CMOM documentation, the costs would be in the range of $10,000 to $15,000. CMOM program development for medium–sized communities is estimated to cost in the range of $15,000 to $20,000. Larger systems might expect costs proportionately greater. It should be noted that these costs are estimates only and should not be used for budgeting purposes. Careful, individual assessments of needs are important considerations in determining what the actual costs will be in each case.

Once the CMOM program is created, the permittee will likely have to collect and analyze sewage collection system data and undertake construction or other rehabilitation projects to implement the program. Irrespective of a CMOM program, these activities could be very costly, but are a necessary component to the effective and efficient management and proper operation of a sewage collection system and those costs cannot be directly attributed to the enactment of these rules.

Because existing rules and permits contain reporting requirements similar to those specified in this proposed rule, there should be no or minimal additional cost associated with this activity. If a system owner, under the Compliance Maintenance Annual Reporting (NR 208) rule, identifies more than 4 SSO events (as defined in the rule) in any given year, a "failing grade" for this section of the report will be noted in the reporting system. Some owners have indicated that adverse publicity and potential lawsuits by third parties could result in significant costs, even though the sewage collection system is operating within all design parameters.

The City of Superior believes the proposed rule will impose significant additional costs due to the current unique configuration of their combined sewer system. They have estimated "…a conservative expenditure of 20 million dollars…will result in a 40% increase to the residential user volume discharge."

The additional costs to the department resulting from these rule revisions will be minimal. Minor revisions to permit documents will be necessary and can be easily incorporated into the permit data management system.

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

There are no federal regulations that correspond to ch. NR 110. The revisions to ch. NR 205 will make Wisconsin's rules

more compatible with current U.S. EPA regulations. Current NR 205 language applicable to "bypassing" is contained in a section of the rule that applies only to publicly owned treatment works and, therefore, does not apply to bypasses at industrial waste treatment facilities. Federal rules do not distinguish between publicly owned treatment works and industrial facilities. One amendment to NR 205 addresses this issue.

Current federal regulations are ambiguous concerning their application to SSO discharges. Inconsistency in U.S. EPA's interpretation of their regulations has created uncertainty in expectations. Therefore, revisions to ch. NR 210 will create greater specificity with respect to provisions governing SSO discharges. Other changes to NR 205 also make this rule more compatible with U.S. EPA regulations concerning bypasses within treatment facilities that are necessary for purposes of essential maintenance and operation as well as addressing some discrepancies associated with anticipated or scheduled bypasses.

There is no federal regulation mandating establishment and implementation of CMOM programs. U.S. EPA has incorporated CMOM requirements into many enforcement actions across the country. Over the past decade, the practice of diverting sewage around biological treatment units at sewage treatment facilities under specific conditions and recombining or "blending" this diverted wastewater with fully treated effluent has been subject to several U.S. EPA proposals. None of the proposals for allowing blending have been finalized and U.S. EPA's application of the federal "bypass prohibition" rule to blending has been sporadic and inconsistent creating great uncertainty about the acceptability of this practice.

Comparison with similar rules in adjacent states

All the other U.S. EPA Region 5 states (Illinois, Indiana, Michigan, Minnesota and Ohio) and the state of Iowa regulate SSOs through state statutes, regulations or guidance in a manner similar to past interpretation of U.S. EPA's bypass regulation. The general bypassing prohibition language and reporting requirements in these states are similar to current Department of Natural Resources rules and permits. Most states, over the past several years, have implemented enhancements to the reporting requirements and tracking (including making such information available to the public) of SSO releases. None of the states have rules relating to blending, though it is apparent from reviewing information available that this practice is not unusual at some sewage treatment facilities. No adjacent states issue permits to satellite sewage collection systems nor do they specifically require that all sewage collection system owners operate a CMOM program.

Environmental Analysis

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.

Agency Contacts

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Department of Natural Resources
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Notice of Hearing
Natural Resources
Fish, Game, etc., Chs. NR 1—
CR 12–029
(DNR # FR–19–11)

NOTICE IS HEREBY GIVEN THAT pursuant to sections 227.16 and 227.17, Stats, the Department of Natural Resources, hereinafter the department, will hold public hearings on changes to Chapter NR 47 Subchapter VII, regarding administration of the Private Forest Landowner Grant Program (WFLGP) and the creation of Subchapter XIII regarding the establishment of the Weed Management Area Private Forest Grant Program (WMA–PFGP) on the date(s) and at the time(s) and location(s) listed below.

Hearing Information

NOTICE IS HEREBY FURTHER GIVEN that the hearings will be held on:

Date: **Tuesday, July 20, 2012**
Time: 10:00 a.m.
Location: Wisconsin DNR Service Center
Gathering Waters Meeting Room
3911 Fish Hatchery Road
Fitchburg, WI 53711

Date: **Tuesday, July 20, 2012**
Time: 10:00 a.m.
Location: Wisconsin DNR Service Center
Conference Room 1
107 Sutliff Avenue
Rhinelander, WI 54501

Date: **Tuesday, July 20, 2012**
Time: 10:00 a.m.
Location: Wisconsin DNR Service Center
Rooms 158/185
1300 W. Clairemont
Eau Claire, WI 54702

Pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please contact Carol Nielsen in writing at the Department of Natural Resources, Private & Community Forest Section (FR/4), 101 S Webster, Madison, WI 53707; by E–mail to carol.nielsen@wisconsin.gov; or by calling (608) 267–7508 with specific information on your request at least 10 days before the date of the scheduled hearing.

Availability of the Proposed Rule and the Fiscal Estimate and Economic Impact Analysis

The proposed rule and supporting documents, including the fiscal estimate may be viewed and downloaded and comments electronically submitted at the following Internet site: http://adminrules.wisconsin.gov. (Search this Web site using the Natural Resources Board Order No. FR–19–11).

Place Where Comments are to be Submitted and Deadline for Submission

Written comments on the proposed rule may be submitted via U.S. mail to contacting Carol Nielsen, Department of

Natural Resources, Private & Community Forest Section (FR/4), 101 S. Webster St, Madison, WI 53703, or by calling (608) 267–7508. Comments may be submitted until **July 31, 2012**. Written comments whether submitted electronically or by U.S. mail will have the same weight and effect as oral statements presented at the public hearings. If you do not have Internet access, a personal copy of the proposed rule and supporting documents, including the fiscal estimate may be obtained from Kristin Lambert, Bureau of Forest Management, P.O. Box 7921, Madison, WI 53707 or by calling (608) 261–0754.

Related rules or statutes

Section 23.2355, Weed Management Grants was created to disperse federal dollars that are no longer available. Under subch. III of Ch. NR 47, Admin. Code, the Stewardship Incentives Program was created to disperse federal dollars that are no longer available.

Plain language analysis

The proposed rules address 1) revision to the current Wisconsin Forest Landowner Grant Program (WFLGP) for NIPF landowners in subch. VII of Ch. NR 47 Admin. Code and 2) the establishment of WMA–PFGP in subch. XIII of Ch. NR 47, Admin. Code.

Revisions of Ch. NR 47 are proposed to implement changes to the Wisconsin Forest Landowner Grant Program (WFLGP) for NIPF lands and to create WMA–PFGP to award weed management groups interested in controlling invasive plants on NIPF lands.

A review of the 12 year old WFLGP was completed by the Division of Forestry's Private Land Management Specialist Team to identify ways to streamline administration, more efficiently use the dollars available and to continue to address landowner and forest resource needs. The team includes internal forestry and wildlife staff, and external landowner, consulting forester and educator representatives.

Creation of subch. XIII of Ch. NR 47, Admin. Code, will enable the department to award funds to control invasive plants on NIPF lands in WMA–PFGPs, by defining application requirements, eligible practices and costs, and rules for administration.

Proposed revisions of subch. VII NR 47 Forest Landowner Grant Program

These recommendations were developed through a review of the existing program and are recommended to provide greater flexibility in meeting landowner and program goals, more efficient use of funding, and to address current and future resource needs identified in the Statewide Forest Strategy.

- Modify rule to allow the department to annually set funding levels and priorities. Currently funding levels for practices are set in rule. This change would allow the department to be more responsive to changing forest resources concerns, address statewide forest strategies and respond to private forest landowner needs.
- Modify application deadlines from four to two and allow for additional dates to be established on the application. This will allow the department to be more responsive to landowner needs as the deadlines for other related programs change (e.g., MFL application deadline).
- Modify rule to limit matching grants to not more than 75% of actual costs. Currently matching grants cannot be less than 50% nor more than 65%. Providing for up to 75% will allow for focusing funding on higher priority resource and landowner needs (e.g., recovery after a catastrophic event).
- Modify grant period from 18 to 24 months. The grant period is being expanded to respond to landowner needs to implement the practices and to decrease the dollars that may other wise be returned when a practices is not fully implemented.
- Create a waiting period (24 months) for individuals who fail to use any portion of the funds awarded before the grant expires. Since this grant program is not a continuing appropriation any grants awarded in a biennium and not used cannot be given out again. This revision would encourage landowners who are awarded a grant to complete the practice or return the money earlier so it can be awarded to another landowner. This would not be applied when circumstance are beyond the landowners control.
- Update practice descriptions to reflect changes in practice components and purposes.
- Modify language to allow for the use of nonprofit organization funding similar to federal funding currently provided for in the rule.

Creation of subch. XIII NR 47 Weed Management Area Private Forest Grant Program

- Define eligible and ineligible applicants. Weed management groups (WMG), non–profit organizations, government entities may be applicants as long as funds are being used on NIPF land. A WMG consists of 3 or more persons of which at least one must be a person participating.
- Define eligible practices. Education and outreach if it pertains to invasive plants; inventory, control, and monitoring of invasive plants; development of long–term management plans; and establishing a WMG are all eligible practices under this grant program.
- Define eligible costs and ineligible costs. Eligible costs are those identified in the application and are associated with implementing eligible practices. Ineligible costs are those incurred before grant is awarded; practices that have not been approved by the department; costs to repair damages caused by implementing a practice, work on industrial forests; work on public land and travel to and from sites.
- Create grant criteria. The department will review applications to determine if the practice is needed and feasible, that there is evidence of at least one participation agreement at the time of application, and that there is a person participating who owns 500 acres or less of NIPF land.
- Create grant selection criteria. Preference will be given to projects which accomplish one or more of the following criteria: work on prohibited invasive plants, work on early detection species, protect sustainability of forest lands, applicants have a long–term management plan, work on forested land that is not heavily infested with invasive plants, or forest land where invasive plant species may be contained or eradicated.
- Define rapid response practices. These practices aid the department in allowing for control of prohibited or early detection invasive plant populations. Grant applications for rapid response practices are accepted at any time of year to offer more flexibility with prohibited or early detection invasive plant control.

The department may cover up to 100% of the eligible costs for rapid response practices.

- Create requirements for payment, reconsideration, and enforcement. Reports detailing work completed are due before payment will be awarded. If grant extensions are needed due to conditions beyond the applicant's control, the department can award up to a one year extension. If funds are used for ineligible practices or costs, reimbursement may be withheld.
- Allow for other state, federal, or non–profit organization funds to be distributed through this program.

Summary and comparison with existing and proposed federal regulations

There are no known federal regulations that apply to the Wisconsin Forest Landowner Grant Program or the Weed Management Area Private Forest Grant Program. Federal funds distributed through subch. VII and subch. XIII are subject to the rules of the specific program.

Comparison with rules in adjacent states

There are no known programs in adjacent states regarding cost–sharing grants for invasive plant control. Michigan, Minnesota, Illinois, and Iowa primarily use federal cost–sharing programs for development and implementation of forest stewardship plans on NIPF lands. Programs include USDA–Natural Resource Conservation Service (NRCS): Environmental Quality Incentives Program (EQIP) and Conservation Stewardship Program (CSP); and USDA–Farm Service Agency (FSA), Conservation Reserve Program (CRP). Illinois is the only one with a sate funded cost–sharing program for NIPF. This program covers practices similar to WFLGP and is funded from a timber harvest fee.

Summary of factual data and analytical methodologies

The Department of Natural Resources Private Land Management Team completed a program review of WFLGP policies and procedures which was referenced during the rule revision.

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

The total amount of funding from the WFLGP appropriation under s. 20.370 (5) (av), Wis Stats., is not changing from the past amounts; therefore the overall secondary effect on small businesses will be the same as it has been in the past. The only change is to shift $60,000 of the WFLGP funds to be awarded through WMA–PFGP total $60,000.00; this shift in funds will have a positive secondary impact on small businesses that provide services or equipment for controlling terrestrial invasive plants.

Effect on Small Business

This rule positively affects small business as a secondary benefit, specifically contractors (restoration consultants, cooperating foresters, loggers) and retailers who provide services or equipment for controlling terrestrial invasive plants or forest stewardship plan development and implementation.

Pursuant to s. 227.114, Stats., it is not anticipated that the proposed rule will have an economic impact on small businesses.

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

Environmental Analysis

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.

Agency Contact Person

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

ADMINISTRATIVE RULES FISCAL ESTIMATE AND ECONOMIC IMPACT ANALYSIS

Type of Estimate and Analysis

X Original Updated Corrected

Administrative Rule Chapter, Title and Number

Chapter NR 47 Subchapter VII– The Private Forest Landowner Grant Program, and Subchapter XIII – The Weed Management Area Private Forest Grant Program. FR–19–11

Subject

Chapter NR 47 Subch. VII – Rule revision and Subch. XIII – Rule creation.

Fund Sources Affected	Chapter 20 , Stats. Appropriations Affected
GPR FED PRO PRS **X** SEG SEG–S	s. 20.370 (5) (av), Stats.

Fiscal Effect of Implementing the Rule		
X No Fiscal Effect Indeterminate	Increase Existing Revenues Decrease Existing Revenues	Increase Costs **X** Could Absorb Within Agency's Budget Decrease Costs

The Rule Will Impact the Following (Check All That Apply)	
State's Economy Local Government Units	**X** Specific Businesses/Sectors Public Utility Rate Payers

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

Yes **X** No

Policy Problem Addressed by the Rule

Wis. Stats. 26.38 Forest Grant Program (2m) (a) The Department of Natural Resources shall establish a program to award grants for developing and implementing forest stewardship management plans by owners of nonindustrial private forest (NIPF) land and award grants to groups of interested parties for projects to control invasive plants in weed management areas.

Subch. VII revisions will amend policy issues and implement updates and improvements to the program related to the implementation and administration, including practice description and priorities, grant calculations, allowable costs, funding sources, and eligibility of applicants who previously failed to use or misused grant funds.

Subch. XIII rule development will implement a cost–sharing grant program for controlling invasive plants in weed management areas on NIPF lands. This includes administration, practice description and priorities, grant calculations, allowable costs, and eligibility for applicants and practices.

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)

Subch. VII – There will be no change to the current economic impact based on the proposed rule revisions as the amount of funding and eligibility are not changing. NIPF landowners wishing to apply for grants to create a forest stewardship plan or implement a forestry practice on their land, cooperating foresters, and resource managers or other private businesses that may be hired by a landowner to implement a practice under the grant program have been positively impacted by this voluntary cost–share grant program from its inception.

Subch. XIII – There will be a small positive impact with the implementation of this new voluntary cost–share grant program, with $60,000.00 awarded annually. The impact will be to any party, organized landowner group, or organization owning less than 500 acres of NIPF land whishing to apply for a grant for the control of invasive plants; federal, state, and local agencies interested in the control of invasive plants on NIPF land; and any cooperating forester, restoration/landscape consultant, farm coop or other private businesses that may be hired to implement a practice under the grant program.

For both subchapters, there are administration costs that will be absorbed by the department.

During the solicitation period, one comment was received from a cooperating forester stating that there would not be an economic impact associated with the proposed rule change and rule creation.

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

Subch. VII – Implementing the rule changes would allow needed improvements and efficiencies in the implementation and administration of the program. The alternative is to continue with the program as is.

Subch. XIII – Benefits of implementing this rule would be to the interested parties who want to control invasive plants or implement a practice for invasive plants. There are currently very limited funds available to persons for controlling invasive plants. Implementing this rule would be well received by all interested parties. If this rule is not implemented, NIPF landowners will either continue paying for the control of invasive plants or they will choose not to control due to cost restrictions.

Long Range Implications of Implementing the Rule

Subch. VII – Increased efficiency in administering the grant program and increased understanding by partners and landowners.

Subch. XIII – Development of a cost–sharing grant program benefits weed management groups who have interest in controlling invasive plants on NIPF land.

Compare With Approaches Being Used by Federal Government
There are no known federal rules or programs that apply directly to the control of invasive plants on NIPF lands. There are several programs that provide cost−sharing for development and implementation of forest stewardship plans on NIPF lands. However, the programs were developed for, and primarily focus on agricultural lands, and the funding is inconsistent. Programs include USDA−Natural Resource Conservation Service (NRCS): Environmental Quality Incentives Program (EQIP) and Conservation Stewardship Program (CSP); and USDA−Farm Service Agency (FSA), Conservation Reserve Program (CRP).
Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)
There are no known programs in neighboring states regarding cost−sharing grants for invasive plant control. Michigan, Minnesota, Illinois, and Iowa primarily use federal cost−sharing programs for development and implementation of forest stewardship plans on NIPF lands. Programs include USDA−NRCS: EQIP and CSP; and USDA−FSA, CRP. Illinois is the only one with a state funded cost−sharing program for NIPF lands. The program covers practices similar to WFLGP and is funded from a timber harvest fee.
Name and Phone Number of Contact Person
Carol Nielsen (608) 267−7508 and Thomas Boos II (608) 266−9276

Notice of Hearing
Natural Resources
Fish, Game, etc., Chs. NR 1—
EmR1207, CR 12−031

(DNR # WM−09−11 and WM−03−12(E))

NOTICE IS HEREBY GIVEN that pursuant to sections 29.011, 29.014, 29.192, 227.11 and 227.24 Stats., interpreting sections 29.011, 29.014 and 29.192, Stats., the Department of Natural Resources will hold public hearings on permanent and emergency rules revising Chapter NR 10 Wis. Adm. Code, relating to the bobcat hunting and trapping season.

Hearing Information

NOTICE IS HEREBY FURTHER GIVEN that the hearing will be held on:

Date: **Monday, August 27, 2012**
Time: 11:00 a.m.
Location: Natural Resources State Office Building
Room 608
101 South Webster Street
Madison, WI 53703

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

Availability of the Proposed Rule and the Fiscal Estimate and Economic Impact Analysis

The proposed rule and fiscal estimate may be reviewed and comments electronically submitted at the following Internet site: http://adminrules.wisconsin.gov.

Place Where Comments are to be Submitted and Deadline for Submission

Written comments on the proposed rule may be submitted via U.S. mail to Mr. Scott Loomans, Bureau of Wildlife Management, P.O. Box 7921, Madison, WI 53707. Comments may be submitted until **August 27, 2012**. Written comments whether submitted electronically or by U.S. mail will have the same weight and effect as oral statements presented at the public hearings. A personal copy of the proposed rule and fiscal estimate may be obtained from Mr. Loomans.

Analysis Prepared by the Department of Natural Resources

Plain language analysis

These identical emergency and permanent rules establish that the bobcat hunting and trapping seasons are split into two time periods; the first beginning on the Saturday nearest Oct. 17 and continuing through Dec. 25 and the second beginning on Dec. 26 and continuing through Jan 31.

Related statute or rule

There are no related statutes or rules currently under promulgations. This emergency rule will take effect on October 1, 2012. The department anticipates that the identical permanent rule will be in effect for the 2013 bobcat hunting and trapping seasons.

Comparison with rules in adjacent states

Bobcats are not harvested in Illinois and Iowa but are present and increasing in number in both states. Michigan hunters and trappers can generally harvest two bobcats per season. Minnesota hunters and trappers have a season limit of five bobcats. The more liberal season frameworks in Michigan and Minnesota reflect greater abundance of the species in those states and significantly less hunter and trapper interest. Neither state has the long tradition of hunting with hounds that Wisconsin has.

Federal regulatory analysis

These state rules and statutes do not relieve individuals from the restrictions, requirements and conditions of federal statutes and regulations. Regulating the hunting and trapping of native species has been delegated to state fish and wildlife agencies.

Summary of factual data and analytical methodologies

Through this rulemaking, the department will make permanent a trial bobcat season framework that was split into two separate time periods in 2010 and 2011. The primary interest expressed by advocates for a split season framework is that ideal conditions for hunting with hounds occur when

there is snow cover. These conditions do not occur before the December 31 end of the traditional, straight–season framework every year. In order to provide the type of hunting opportunity that hunters have asked for, but still maintain opportunities that trappers and hunters who do not use hounds have enjoyed, this proposal would add an additional month and create an early and a late time period and require permit applicants to choose one–or–the–other.

The dates of the bobcat season under this proposal and during the 2010 and 2011 trial period were; the Saturday nearest Oct. 17 – Dec. 25 and Dec. 26 to Jan 31. There appears to have been public support for the new season framework and the opinion of department staff is that it provides the tools for sound use, management and protection of the bobcat resource. If permanent or emergency rules are not promulgated, the season automatically reverts back to a single permit period beginning on the Saturday nearest October 17 and continuing through December 31 in 2012.

All hunters and trappers must obtain a special harvest permit before pursuing bobcats, and the annual bag limit is one bobcat per permit. Bobcat harvest goals are set annually based upon population size in relation to management goals. The number of harvest permits issued is based on the highest success rate during the previous three years for the first time period and a conservative, high success rate for the later, new time period. Because these harvest controls are in place, the actual dates and length of the hunting and trapping seasons are more important for hunter/trapper satisfaction than for protecting the bobcat population from overharvest.

Anticipated Private Sector Costs

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

Effects on Small Business

These rules are applicable to individual sportspersons and impose no compliance or reporting requirements for small businesses, and no design or operational standards are contained in the rule. Because this rule does not add any regulatory requirements for small businesses, the proposed rules will not have a significant economic impact on a substantial number of small businesses under ss. 227.114 (6) or 227.14 (2g).

Pursuant to s. 227.114, Stats., it is not anticipated that the proposed rules will have a significant economic impact on small businesses. The Department's Small Business Regulatory Coordinator may be contacted at SmallBusiness@dnr.state.wi.us or by calling (608) 266–1959.

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

Scott Loomans, 101 South Webster St., PO BOX 7921, Madison, WI 53707–7921. (608) 267–2452, scott.loomans@wisconsin.gov.

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

ADMINISTRATIVE RULES
FISCAL ESTIMATE AND
ECONOMIC IMPACT ANALYSIS

Type of Estimate and Analysis

X Original Updated Corrected

Administrative Rule Chapter, Title and Number

Chapter NR 10, Game and Hunting, Natural Resources Board Order WM–09–11

Subject

Re–establishing seasons for bobcat hunting and trapping.

Fund Sources Affected	Chapter 20 , Stats. Appropriations Affected
GPR FED PRO PRS **X** SEG SEG–S	None

Fiscal Effect of Implementing the Rule

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

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

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

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

Yes **X** No

Policy Problem Addressed by the Rule

In 2010 and 2011, the bobcat season was split into two separate permit periods: the Saturday nearest Oct. 17 – Dec. 25 and Dec. 26 to Jan 31. There appears to have been public support for the new season framework and the opinion of department staff is that it provides the tools for sound use, management and protection of the bobcat resource. If emergency rules and a permanent rule that eliminates a sunset provision are not promulgated, the season automatically reverts back to a single permit period beginning on the Saturday nearest October 17 and continuing through December 31 in 2012.

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 bobcat hunting and trapping season framework proposed in this rulemaking will be the same as the season that was in place in 2010 and 2011. Because this rule preserves hunting and trapping opportunities which are identical to ones already in place, no fiscal or economic impacts are anticipated.

Pursuant to the Governor's Executive Order 50, Section II, this is a level 3 economic impact analysis. A notice for Solicitation of comments on the analysis was posted on the department's website from March 26 through April 8 and various interest groups were contacted by email. One general comment of support was received from the Wisconsin Bear Hunters Association.

An alternative to be considered during the rules process is to allow the new, split season framework to sunset. No significant fiscal or economic impacts would be expected under this scenario either. Under both the single and the split season frameworks, bobcat harvest is controlled through the issuance of permits. Bobcat population goals and harvest quotas will be the same under either season framework. The level of participation by hunters and trappers is expected to be similar and their activities would generate similar levels of economic activity. Economic activity generated under the split season framework would be spread over an additional month. The very high level of interest in the bobcat season, 12,431 applicants for 455 available permits in 2010, indicates that people will pursue bobcats regardless of the season framework.

The primary interest expressed by advocates for a split season framework is that ideal conditions for hunting with hounds occur when there is snow cover. These conditions do not occur before the December 31 end of that traditional, straight–season framework every year. In order to provide the type of hunting opportunity that hunters have asked for, but still maintain opportunities that trappers and hunters who do not use hounds have enjoyed, this proposal would add an additional month and create two time periods.

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

Implementing this rule will assure program continuity by preventing a return to the single, straight season framework. Some people will view a reversion to the single season framework as a reduction of opportunity that is not socially acceptable. Frequent change of season dates and regulations for hunting and trapping can be confusing and disruptive to the public, can result in citations being issued, and is not necessary for protection of the bobcat population in this situation.

Returning to the single, straight season framework for bobcat hunting and trapping is the primary alternative.

Another alternative would be to extend the trial period but that may not be needed because the department will have two years of harvest and survey data following the 2011 season. Extending the trial season framework is not particularly practical considering the length of time it will take to promulgate permanent rules to repeal the sunset.

Long Range Implications of Implementing the Rule

Following the two year trial, the department's opinion is that the new split season framework provides harvest management tools that allow for sound use, management and protection of the bobcat resource. We hope to provide this level of resource protection and provide bobcat hunting and trapping opportunities well into the future.

Compare With Approaches Being Used by Federal Government

Bobcat population goals, seasons, and regulations on the method of harvest are controlled by the state. There are no federal regulations and federal authorization is not required.

Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)
Bobcats are not harvested in Illinois and Iowa but are present and increasing in number in both states. Michigan hunters and trappers can generally harvest two bobcats per season. Minnesota hunters and trappers have a season limit of five bobcats. The more liberal season frameworks in Michigan and Minnesota reflect greater abundance of the species in those states and significantly less hunter and trapper interest. Neither state has the long tradition of hunting with hounds that Wisconsin has.
Name and Phone Number of Contact Person
Scott Loomans, Wildlife Regulation Policy Specialist, 608–266–3534.

Submittal of Proposed Rules to Legislature

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

Transportation
CR 11–043

Revises section Trans 100.02, relating to mandatory minimum liability limits for insurance policies under safety responsibility, damage judgment, and mandatory insurance laws.

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

Rule Orders Filed with the Legislative Reference Bureau

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

Agriculture, Trade and Consumer Protection
CR 11−048

(DATCP # 09−R−14)

The Department of Agriculture, Trade and Consumer Protection (DATCP) hereby submits an order to revise Chapters ATCP 10, 12, and 15, relating to animal health and disease control and humane officer training.
Effective 8−1−12.

Dentistry Examining Board
CR 11−033

An order of the Dentistry Examining Board to revise Chapter DE 2 and create Chapter DE 13, relating to licensure renewal and continuing education for dentists and dental hygienists.
Effective 8−1−12.

Dentistry Examining Board
CR 11−034

An order of the Dentistry Examining Board to revise Chapters DE 1 and 2, relating to the active practice of dentistry, specialty certification, and faculty licenses.
Effective 8−1−12.

Dentistry Examining Board
CR 11−035

An order of the Dentistry Examining Board to revise Chapters DE 2, 6, and 7, relating to CPR training for licensure renewal for dentists and dental hygienists and related to certification of dental hygienists to administer local anesthesia, and unprofessional advertising for dentists.
Effective 8−1−12.

Natural Resources
Fish, Game, etc., Chs. NR 1—

CR 11−050

An order of the State of Wisconsin Department of Natural Resources to revise Chapters NR 50 and 64, relating to administration of outdoor recreation program grants and state aids and all−terrain vehicles.
Effective 8−1−12.

Nursing
CR 12−004

An order of the Board of Nursing to amend Chapter N 3, relating to endorsement licensure.
Effective 8−1−12.

Public Service Commission
CR 11−039

(PSC # 1−AC−232)

The Public Service Commission of Wisconsin proposes an order to revise Chapters PSC 184 and 185, relating to water conservation and construction by water utilities and municipal combined water and sewer utilities.
Effective 8−1−12.

Revenue
CR 12−006

The Wisconsin Department of Revenue adopts an order to revise Chapter Tax 2, relating to pre−2009 net business loss carryforwards.
Effective 8−1−12.

Revenue
CR 12−011

The Wisconsin Department of Revenue adopts an order to revise Chapters Tax 2 and 3, relating to tax law changes made by 2011 Wisconsin Act 32 and other legislation.
Effective 8−1−12.

Revenue
CR 12−012

The Wisconsin Department of Revenue adopts an order to create section Tax 2.985, relating to the electronic medical records credit.
Effective 8−1−12.

Revenue
CR 12−013

The Wisconsin Department of Revenue adopts an order to revise section Tax 7.23, relating to the activities of brewers, bottlers, out−of−state shippers, and wholesalers.
Effective 8−1−12.

Revenue
CR 12–015

The Wisconsin Department of Revenue adopts an order to create section Tax 11.20, relating to sales and use tax exemptions for biotechnology.
Effective 8–1–12.

Safety and Professional Services
Safety, Buildings, and Environment, General Part I, Chs. SPS 301–319
CR 12–007

The Wisconsin Department of Safety and Professional Services purposes an order to revise Chapter SPS 305, relating to thermal insulator credentials.
Effective 8–1–12.

Technical College System
CR 11–053

The Wisconsin Technical College System Board purposes an order to amend section TCS 6.05, relating to procurement.
Effective 8–1–12.

Rules Published with this Register and Final Regulatory Flexibility Analyses

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.

Government Accountability Board

CR 10–087

The Government Accountability Board submits an order to create section GAB 1.91, Wis. Adm. Code, relating to organizations making independent disbursements.

Summary of Final Regulatory Flexibility Analysis

The rule may have a minimal effect on small businesses that will participate in receiving contributions or making independent disbursements. The economic impact of this effect is minor. Businesses may have a filing fee of $100.00, if the amount of aggregate independent disbursements made in any year exceeds $2,500.00.

The creation of this rule may have a minimal effect on small businesses as explained above.

The creation of this rule does not affect the normal operations of business.

Summary of Comments of Legislative Standing Committees

No comments reported.

Sections Affected by Rule Revisions and Corrections

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

Revisions

Government Accountability Board

Ch. GAB 1

GAB 1.91

Natural Resources

Ch. NR 115

NR 115.01 (note)
NR 115.05 (1) (a), (g) (note)
NR 115.06 (2) (b) (note)

Executive Orders

The following are recent Executive Orders issued by the Governor.

Executive Order 68. Relating to a Proclamation that the Flag of the United States and the Flag of the State of Wisconsin be Flown at Half–Staff as a Mark of Respect for Peace Officers Who Have Given Their Lives in the Line of Duty. (**May 11, 2012**)

Executive Order 69. Relating to the Expansion of the Ground–breaking Green Tier Program of the Department of Natural Resources. **(May 23, 2012)**

Executive Order 70. 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 Memorial Day. (**May 24, 2012**)

Executive Order 71. Relating to a Proclamation that the Flag of the United States and the Flag of the State of Wisconsin be Flown at Half–Staff in the City of Fennimore as a Mark of Respect for Gary A. Banker, Long–Time Principal and Fennimore Citizen. (**May 25, 2012**)

Executive Order 72. Relating to the Certification Application Requirements and Procedures of Minority–Owned, Woman–Owned, and Disabled–Veteran–Owned Businesses. (**May 25, 2012**)

Public Notices

Health Services
WAIVER RENEWAL
DEPARTMENT OF HEALTH SERVICES
NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that pursuant to s. 49.688, Stats., the Department of Health Services will hold a public hearing on renewal of the SenorCare program, which requires the submission of a waiver renewal application to the federal Centers for Medicare and Medicaid Services (CMS).

Hearing Date(s) and Location(s)

Date and Time	Location
Friday, July 13, 2012	St. Croix County Government Center
10:00 a.m. to 12:00 noon	County Board Room
	1101 Carmichael Road
	Hudson, WI 54016

Hearings in Stevens Point and Waukesha were announced in a previous notice.

Accessibility

English

DHS is an equal opportunity employer and service provider. If you need accommodations because of a disability or need an interpreter or translator, or if you need this material in another language or in an alternate format, you may request assistance to participate by contacting Al Matano at (608)267–6848. You must make your request at least 7 days before the activity.

Spanish

DHS es una agencia que ofrece igualdad en las oportunidades de empleo y servicios. Si necesita algún tipo de acomodaciones debido a incapacidad o si necesita un interprete, traductor o esta información en su propio idioma o en un formato alterno, usted puede pedir asistencia para participar en los programas comunicándose con Kim Reniero al número (608)267–7939. Debe someter su petición por lo menos 7 días de antes de la actividad.

Hmong

DHS yog ib tus tswv hauj lwm thiab yog ib qhov chaw pab cuam uas muab vaj huam sib luag rau sawv daws. Yog koj xav tau kev pab vim muaj mob xiam oob qhab los yog xav tau ib tus neeg pab txhais lus los yog txhais ntaub ntawv, los yog koj xav tau cov ntaub ntawv no ua lwm hom lus los yog lwm hom ntawv, koj yuav tau thov kev pab uas yog hu rau Al Matano ntawm (608)267–6848. Koj yuav tsum thov qhov kev pab yam tsawg kawg 7 hnub ua ntej qhov hauj lwm ntawd.

Copies of Waiver Documents

A copy of waiver documents, including the waiver application once complete, may be obtained from the department at no charge by downloading the documents from http://www.dhs.wisconsin.gov/seniorcare/ or by contacting:

Regular Mail
Al Matano
Division of Health Care Access and Accountability
P.O. Box 309
Madison, WI 53707–0309
Phone
Al Matano
(608)267–6848
FAX
(608)261–7792
E–Mail
Alfred.Matano@dhs.wisconsin.gov

Analysis Prepared by the Department of Health Services

Statute interpreted:

Section 49.688, Wis. Stats.

Statutory authority:

Section 49.688, Wis. Stats.

Explanation of agency authority:

Section 49.688 (11) directs the department to request from the federal Secretary of Health and Human services a waiver, under 42 USC 1315 (a), of federal Medicaid laws necessary to permit the Department of Health Services to conduct a project to expand eligibility for medical assistance, for purposes of receipt of prescription drugs as a benefit.

Related statute or rule:

N/A.

Plain language analysis:

The State of Wisconsin Department of Health Services (DHS) is requesting a three–year extension of its Section 1115 Demonstration Waiver for the SeniorCare prescription drug assistance program. The current waiver is scheduled to expire on December 31, 2012. The State requests that the waiver be extended for an additional three–year period, from January 1, 2013 to December 31, 2015.

The Department will request a waiver extension that keeps the SeniorCare program in its current form.

History of the Program

On July 1, 2002, The State of Wisconsin received the necessary waiver approvals from the Center for Medicare & Medicaid Services (CMS) to operate a portion of SeniorCare, a prescription drug benefit for seniors, as a five–year demonstration project. Through its partnership with the federal government, the SeniorCare waiver extends Medicaid eligibility through Title XIX to cover prescription drugs as a necessary primary health care benefit.

Population and Numbers Served

The target population for services under this demonstration project is seniors 65 years of age or older with income at or below 200% of the federal poverty level (FPL), which is $22,340 for an individual and $30,260 for a two–person family in 2012. Each month the SeniorCare waiver program serves about 60,000 seniors.

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

The federal equivalent to SeniorCare is Medicare Part D. SeniorCare is the only program of its kind.

Agency contact person:

Al Matano
Division of Health Care Access and Accountability
P.O. Box 309
Madison, WI 53707–0309
(608)267–6848 (telephone)
(608)261–7792 (fax)
Alfred.Matano@dhs.wisconsin.gov

Place where comments are to be submitted and deadline for submission:

Comments may be submitted to the agency contact person listed above or to http://www.dhs.wisconsin.gov/seniorcare/ until Monday, July 16, 2012 at 4:30 p.m.

Fiscal Estimate

A copy of the full fiscal estimate may be obtained from the department's contact person listed above upon request.

PUBLIC NOTICE
Health Services
Medical Assistance Reimbursement of Nursing Homes
State of Wisconsin Medicaid Nursing Facility Payment Plan: FY 12–13

The State of Wisconsin reimburses Medicaid–certified nursing facilities for long–term care and health care services provided to eligible persons under the authority of Title XIX of the Federal 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. Federal Statutes and regulations require that a state plan be developed that provides the methods and standards for setting payment rates for nursing facility services covered by the payment system. A plan that describes the nursing home reimbursement system for Wisconsin is now in effect as approved by the Centers for Medicare and Medicaid Services (CMS).

The Department is proposing changes in the methods of payment to nursing homes and, therefore, in the plan describing the nursing home reimbursement system. The changes proposed would be effective July 1, 2012.

The proposed changes would update the payment system and make various payment–related policy changes. Some of the changes are necessary to implement various budget policies enacted in the Wisconsin 2011–2013 Biennial Budget, and update the payment system and methodology. Some of the changes are technical in nature; some clarify various payment plan provisions.

The estimated net decrease in annual aggregate expenditures attributable to these changes for skilled nursing homes serving MA residents is approximately $26,053,060 (All Funds), or $16,868,066 (FFP), excluding patient liability.

The proposed changes are being implemented to comply with Wisconsin Statutes governing Medicaid payment systems, particularly s. 49.45 (6m), Wis. Stats. This notice represents information known as of June 11, 2012. The changes may be modified by later legislative mandates.

The proposed changes are as follows:

1. Modify the methodology to adjust the reimbursement for nursing homes within the parameters of 2011–2013 Biennial Budget Bill. These parameters are divided into two parts. First, the Department will disburse the additional $7,433,000 AF ($4,475,000 FFP) that was appropriated to fund an assumed acuity increase of approximately 1% for nursing homes. Second, the number of Medicaid–funded patient days is projected to decline, which generates the overall funding decrease identified above. These modifications will include adjustments to the maximums, per diems, and other payment parameters in Sections 5.400, 5.500, 5.700, 5.800 and 5.900, the inflation and deflation factors in Section 5.300, and targets in Sections 3.000 and 5.000.

2. The methodology will factor in the effect on patient liability of the 3.6% cost of living adjustment (COLA) increases in Social Security and Supplemental Security Income programs, which were effective January 1, 2012, as well as any additional COLA increase anticipated for January 1, 2013.

3. Incorporate changes, if any, related to the design and implementation of a nursing facility downsizing incentive program, the details of which are still under development.

4. Incorporate changes, if any, to other existing incentive payment provisions. These incentive programs may be enhanced for nursing facilities that choose to both modernize and downsize.

5. Evaluate the restricted use bed policy in Section 1.313 to determine whether or not an update to policy is warranted. Any such evaluation may or may not result in policy changes and/or reimbursement changes to providers.

6. Modifying references to previous years for descriptive reasons will be done where necessary.

7. Modify the labor factors listed in Section 5.410.

8. Change the dates of the definitions of base cost reporting period.

9. Clarify Section 1.248 regarding self–insurance as it relates to property insurance. Specify the section does not allow for reimbursement of property insurance claims as a function of self–insurance by adding the following language:

> "Property insurance expense may include only premiums paid to a non–related insurance company where the provider retains interest in no portion of that premium. Allowable costs resulting from the liability assumed by a provider under any property insurance plan (either through self–funding or deductable) will be reported and reimbursed under Section 3.500 or Section 2.200."

10. Alter Section 1.315 (RUGS .25 score and correct vent score references) and clarify both payment for bed–hold days. The language in paragraphs two and three, respectively, will read:

> "Bed hold days reimbursed by the fiscal intermediary or patient are considered a patient day (Medicaid bed hold days must meet the billable criteria identified in Section 1.500.) ~~A patient day can not be counted as both a patient day and a bed hold day.~~

For cost allocation purposes, all bed hold days will be assigned Non–DD or DD bed hold case mix index values as specified in Section 5.420. For cost allocation purposes, patient days meeting the ventilator dependent requirements in Section 4.691 shall be classified at the ventilator level of care with a case mix index as specified in Section 5.420."

11. Update the definition of "Rug–able" assessments in Section 2.140, and add "Medicare Assessment" to the last sentence, so that the passage reads:

"A RUG–able MDS assessment includes Admission Assessments, Annual Assessments, Quarterly Review Assessments, Medicare Assessments, Significant Change in Status MDS, and Significant Correction to Prior Comprehensive MDS Assessments."

12. Update Sections 2.140 and 2.145, respectively, to exclude vent days. The language in Section 2.140 will read:

"Medicaid residents receiving payment under Section 4.691 will not be included in the picture date Medicaid FFS Non–DD CMI."

The language in Section 2.145 will read:

"Residents receiving payment under Section 4.691 will not be included in the picture date All–Resident Non–DD CMI."

13. The following language will be added after the second paragraph of Section 2.140:

"Medicaid FFS Non–DD bed hold residents on the picture date are included in the Medicaid FFS Non–DD in–house CMI. The CMI applied to these bed hold residents is the RUG CMI applicable on the day prior to bed hold status, rather than the Non–DD Bedhold CMI specified in Section 5.420.

Non–DD bed hold residents on the picture date are included in the All–Resident Non–DD in–house CMI. The CMI applied to these bed hold residents is the RUG CMI applicable on the day prior to bed hold status, rather than the Non–DD Bedhold CMI specified in Section 5.420."

14. Incorporate the Department's changes to the behavioral add–on in Section 3.657 (and in Section 5.970) to reflect the change to the new MDS and RUG system. Delete the second paragraph in Section 3.100 because this is discussed in Section 3.657 and should not be included in the Direct Care Allowance component of the methodology.

15. Modify Sections 3.775 and 3.780 to reflect possible changes in the Medicare Upper Limit calculations.

16. Update Section 4.691 to specify the vent rate is $500, removing the reference to $475.

17. Update Section 3.122, 4.691 and 1.510 to clarify current practice, which is that vent bed–hold days will pay at the same bed–hold rate as any bed–hold day (i.e., 0.25), if qualified.

18. Alter the Reporting Period, Picture Dates, and Dates Available in Section 5.421 as follows:

Reporting Period	Picture Date	Date Available
Jan 2010–Mar 2010	Mar 31 2010	July 31 2012
Apr 2010–Jun 2010	Jun 30 2010	July 31 2012
Jul 2010–Sept 2010	Sept 30 2010	July 31 2012
Oct 2010–Dec2010	Dec 31 2010	July 31 2012
Jan 2011–Mar 2011	March 31 2011	July 31 2012
Apr 2011–Jun 2011	Jun 30 2011	July 31 2012
July 2011–Sept 2011	Sept 30 2011	July 31 2012
Oct 2011–Dec 2011	Dec 31 2011	July 31 2012

19. Alter the Picture Dates, and Dates Available as of Dates and Rate Effective Dates in Section 5.422 as follows:

Picture Date	Data Available As of Date	Rate Effective Date
Dec 31 201	July 31 2012	July 1 2012
Mar 31 2012	Aug 31 2012	Oct 1 2012
Jun 30 2012	Nov 30 2012	Jan 1 2013
Sept 30 2012	Feb 28 2013	Apr 1 2013

20. Update the dates in Section 4.720 as follows:

Cost report period includes month of:	Picture date	Data available "as of " date
April 2010–June 2010	June 30, 2010	July 31, 2012
July 2010–September 2010	September 30, 2010	July 31, 2012
October 2010–December 2010	December 31, 2010	July 31, 2012
January 2011–March 2011	March 31, 2011	July 31, 2012
April 2011–June 2011	June 30, 2011	July 31, 2012
July 2011–September 2011	September 30, 2011	July 31, 2012
October 2011–December 2011	December 31, 2011	July 31, 2012
January 2012–March 2012	March 31, 2012	August 31, 2012
April 2012–June 2012	June 30, 2012	November 30, 2012
July 2012–September 2012	September 30, 2012	February 28, 2013
October 2012–December 2012	December 31, 2012	May 31, 2013
January 2013–March 2013	March 31, 2013	August 31, 2013
April 2013–June 2013	June 30, 2013	November 30, 2013

21. Modify contact names and addresses, as necessary.

Copies of the Proposed Changes:

Copies of the available proposed changes and proposed rates may be obtained free of charge by writing to:

Division of Long Term Care
Bureau of Financial Management
Attention: Nursing Home Medicaid Payment Plan
P.O. Box 7851
Madison, WI 53703–7851

or by faxing Tom Lawless at 608–266–2713.

Written Comments/Meetings:

Written comments on the proposed changes may be sent to the Division of Long Term Care, at the above address. The comments will be available for public review between the hours of 7:45 a.m. and 4:30 p.m. daily in Room B274 of the State Office Building, 1 West Wilson Street, Madison, Wisconsin. Revisions may be made in the proposed changes based on comments received. There will also be public meetings to seek input on the proposed plan amendment. If you would like to be sent a public meeting notice, please write to the above address. Revisions may, also, be made in the proposed changes based on comments received at these forums.

PUBLIC NOTICE
Health Services
Medical Assistance Reimbursement to Hospitals
Pay For Performance Hospital Withhold for State Fiscal Year 2013

The State of Wisconsin reimburses providers, including hospitals, 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 (the Department), 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 Department is implementing withhold–based inpatient hospital pay for performance measures for state fiscal year 2013. Fee–for–service inpatient hospital claims with dates of discharge between July 1, 2012, and June 30, 2013 and fee–for–service outpatient hospital claims with dates of service between July 1, 2012 and June 30, 2013 will be subject

to a 1.5% withholding on each payable inpatient and outpatient hospital claim amount. The withheld amount will be redistributed at a later date to acute care, children's, critical access, and psychiatric hospitals that meet performance–based targets.

Copies of Proposed Change

A copy of the proposed change may be obtained free of charge at your local county agency or by calling or writing as follows:

Regular Mail
Division of Health Care Access and Accountability
P.O. Box 309
Madison, WI 537001–0309
State Contact
Sean Gartley
Bureau of Benefits Management
(608) 267–9313 (phone)
(608) 266–1096 (fax)
Sean.Gartley@wisconsin.gov

A copy of the proposed change is available for review at the main office of any county department of social services or human services. Department staff have notified the health directors of Native American tribes in Wisconsin of this proposal and consulted with them at a meeting of the tribal health directors on June 27, 2012.

Written Comments

Written comments are welcome. Written comments on the proposed change may be sent by FAX, email, or regular mail to the Division of Health Care Access and Accountability. The FAX number is (608) 266–1096. The email address is Sean.Gartley@wisconsin.gov. Regular mail can be sent to the above address. All written comments will be reviewed and considered.

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

PUBLIC NOTICE
Health Services
Medical Assistance Reimbursement to Hospitals
Medicaid Reimbursement for Inpatient Hospital Services: Acute Care Hospitals, Children's Hospitals, Major Border Status Hospitals, Non State Public and Private Psychiatric Hospitals State of Wisconsin Medicaid Payment Plan for State Fiscal Year 2012–2013

The State of Wisconsin reimburses providers, including hospitals, 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 (DHS), 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 Medicaid program uses a reimbursement system which is based on Diagnosis Related Groupings (DRGs). Under the current Medicaid Inpatient Hospital State Plan, effective July 1, 2011, the rate–setting methodology for Acute Care, Major Border Status and Children's Hospitals is a provider specific, DRG payment system adjusted by case mix that assigns each hospital a unique hospital specific DRG base rate. This rate includes adjustments for differences in wage levels, includes an amount for capital expenditures, and payment enhancements for qualifying Rural Hospitals and facilities with Graduate Medical Education programs. In addition, a cost outlier payment will be made when the cost of providing services exceeds a pre–determined trimpoint. Payments are adjusted as necessary to ensure budget compliance using a statewide base rate as the starting point of the rate setting process. Non State Public and Private Psychiatric and Rehabilitation Hospitals are paid on a provider specific, cost based per diem rate adjusted as necessary to ensure budget compliance.

The following will be new for 2012–2013 and not reflected in the 2011–2012 rate methods:

- Hospital Access Payments will be updated and made in addition to the DRG base payments.
- Critical Access Hospital Payments will be updated and made in addition to the DRG base payments.

In addition, the state plan will be modified to include language regarding non–payment policies for provider preventable conditions including health–care acquired conditions.

This notification is intended to provide notice of the type of changes that are included in the amendment. Interested parties should obtain a copy of the actual proposed plan amendment to comprehensively review the scope of all changes.

Proposed Change

It is estimated that these changes will have no impact on projected annual aggregate Medicaid expenditures in state fiscal year 2012–13.

The Department's proposals involves no change in the definition of those eligible to receive benefits under Medicaid, and the benefits available to eligible recipients remains the same. The effective date for these proposed changes will be July 1, 2012.

In addition to this public notice, Wisconsin's tribes were consulted at a meeting of the Tribal Health Directors on June 27, 2012.

Copies of the Proposed Change

A copy of the proposed change may be obtained free of charge at your local county agency or by calling or writing as follows:

Regular Mail
Division of Health Care Access and Accountability
P.O. Box 309
Madison, WI 53701–0309
State Contact
Krista Willing, Deputy Director
Bureau of Fiscal Management
(608) 266–2469 (phone)
(608)266–1096 (fax)
KristaE.Willing@wisconsin.gov

A copy of the proposed change is 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 change may be sent by FAX, email, or regular mail to the Division of Health Care Access and Accountability. The FAX number is (608) 266–1096. The email address is KristaE.Willing@wisconsin.gov. Regular mail can be sent to the above address. All written comments will be reviewed and considered.

All written comments received 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.

PUBLIC NOTICE
Health Services

Medicaid Reimbursement for Outpatient Hospital Services: Acute Care Hospitals, Children's Hospitals, Major Border Status Hospitals, Non State Public and Private Psychiatric Hospitals State of Wisconsin Medicaid Payment Plan for State Fiscal Year 2012–2013

The State of Wisconsin reimburses providers for services provided to Medical Assistance recipients, including hospitals, 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 (DHS), 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 Medicaid program uses a reimbursement system which is based on Diagnosis Related Groupings (DRGs). Under the current Medicaid Outpatient Hospital State Plan, effective July 1, 2011, the rate setting methodology for Acute Care, Major Border Status and Children's Hospitals is a provider specific, cost–based rate per visit. Out of state and new hospitals without cost reports are paid at a statewide average percent of charges.

The following changes will be contained in the July 1, 2012 outpatient hospital state plan amendment:

- Hospital Access Payments will be updated and made in addition to the DRG base payments.
- Critical Access Hospital Payments will be updated and made in addition to the DRG base payments.

In addition, the state plan will be modified to include language regarding non–payment policies for provider preventable conditions including health–care acquired conditions.

Proposed Change

It is estimated that these changes will have no impact on projected annual aggregate Medicaid expenditures in state fiscal year 2012–13.

The Department's proposals involves no change in the definition of those eligible to receive benefits under Medicaid, and the benefits available to eligible recipients remains the same. The effective date for these proposed changes will be July 1, 2012.

In addition to this public notice, Wisconsin's tribes were consulted at a meeting of the Tribal Health Directors on June 27, 2012.

Copies of the Proposed Change

A copy of the proposed change may be obtained free of charge at your local county agency or by calling or writing as follows:

Regular Mail
Division of Health Care Access and Accountability
P.O. Box 309
Madison, WI 53701–0309

State Contact
Krista Willing, Deputy Director
Bureau of Fiscal Management
(608) 266–2469 (phone)
(608)266–1096 (fax)
KristaE.Willing@wisconsin.gov

A copy of the proposed change is 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 change may be sent by FAX, email, or regular mail to the Division of Health Care Access and Accountability. The FAX number is (608) 266–1096. The email address is KristaE.Willing@wisconsin.gov. Regular mail can be sent to the above address. All written comments will be reviewed and considered.

All written comments received 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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