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Direct questions to Bruce Hoesly (608) 266-7590, bruce.hoesly@legis.wi.gov.

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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.

purposes, so long as such uses did not interfere with the prime uses of these facilities, or otherwise infringe on interests of the state. s. 16.845, Stats., and s. Adm 2.04.

Each year, the Wisconsin state capitol police issue nearly 500 permits for the use of various state facilities. Permits are used for a variety of purposes, whether political, non-political, charitable, or commercial. Permits are issued regardless of political party, affiliation, or content. Permits are given to any person free of charge.

Occupation of the capitol rotunda and other areas has caused disruptions to the properly permitted events and normal government activities, including but not limited to, a Red Cross blood drive, a high school science exhibit, school group tours, general public tours, and legislative committee meetings and sessions. The state does not refuse permits for the lawful and safe use of state facilities by any person or persons, and the state cannot allow any person or persons to occupy the capitol in disregard of the rights of permit holders, public employees, or visitors. It is imperative that the department gain compliance in order to protect the public safety and welfare.

On October 24, 2013, a lawsuit was dismissed based upon a stipulation of and settlement agreement between the parties. The department is obligated under the settlement agreement to advance certain changes in procedure. The department seeks to fulfill its obligations in a timely manner, which is not possible without engaging in the emergency rule process.

Filed with LRB:	November 26, 2013
Publication Date:	November 27, 2013
Effective Dates:	November 27, 2013 through April 25, 2014
Hearing Date:	February 21, 2014
Extension Through:	June 24, 2014

Administration

EmR1321 — The Department of Administration hereby adopts an order to repeal **section Adm 2.14 (2) (vr) c.**; to renumber and amend **section Adm 2.14 (2) (v) 9. a. and b.**; to amend **sections Adm 2.02 (1) (a), 2.04 (1), 2.04 (2), (3), (5), and (7), 2.07 (2), 2.08 (1) and (1) (d), 2.11, 2.14 (2), (2) (v), (2) (vm) and (2) (vm) 5.**; and to create **sections Adm 2.03 (3m), (3r) and (6m), 2.04 (1m), (2m), (2r), (2z), (9), and (10), and 2.14 (2) (vm) and (2) (vm) 5.**

The statement of scope for this rule, SS 131–13, was approved by the Governor on October 8, 2013, and published in Register No. 694 on October 31, 2013, and approved by Department of Administration Secretary Mike Huebsch on November 13, 2013. This emergency rule was approved by the Governor on November 21, 2013.

Finding of Emergency

Since 1979 the legislature has vested the department of administration with the responsibility and authority to manage various state buildings and grounds, including those of the Wisconsin state capitol. S. 16.84 (1), Stats. Since 1979, the department has permitted the use of these buildings and grounds for the free discussion of public questions and other

Agriculture, Trade and Consumer Protection (4)

1. EmR1322 — The state of Wisconsin Department of Agriculture, Trade and Consumer Protection hereby adopts the following emergency rule to amend **section ATCP 21.17 (1) (b)** and to create **section ATCP 21.17 (1) (f)**, relating to the quarantine of Dane County for the emerald ash borer.

This emergency rule was approved by the Governor on December 10, 2013.

The blanket scope for this rule, SS 141–13, was approved by the Governor on October 30, 2013 published in register No. 695 on November 14, 2013, and approved by the Board of Agriculture, Trade & Consumer Protection on December 10, 2013.

Finding of Emergency

The United States Department of Agriculture — Animal and Plant Health Inspection Service (“APHIS”) positively identified Emerald Ash Borer (“EAB”) in Madison, Dane County on November 22, 2013. EAB is an exotic, invasive pest that poses a dire risk to the ash forest. When APHIS declares quarantine, DATCP has regulatory authority for import controls and quarantine for EAB under s. ATCP 21.17. It is anticipated that APHIS will declare a quarantine for Dane County but that it will take six to eight weeks for APHIS to act.

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

DATCP is adopting this rule as a temporary emergency rule, pending completion of federal quarantine regulations. DATCP does not anticipate completing a permanent rule.

Filed with LRB: December 17, 2013
Publication Date: December 18, 2013
Effective Dates: December 18, 2013 through May 16, 2014
Hearing Date: January 13, 2014

2. EmR1325 — The Wisconsin Department of Agriculture, Trade and Consumer Protection adopts the following emergency rule to repeal **sections ATCP 136.02 (4) (d) and 136.10 (2) (c), (3) (a) 2., and (b) 4.,** and to amend **sections ATCP 136.02 (4) (g) (Note), (5), (7), (8) (a), 136.08 (1), (7) (Note), and 136.12 (1) (b) (Note) and (2) (Note),** relating to mobile air conditioners, reclaiming or recycling refrigerant.

This emergency rule was approved by the Governor on December 23, 2013.

The scope statement for this rule, SS 122–13, was approved by the Governor on September 20, 2013 published in register No. 694 on October 14, 2013, and approved by the Board of Agriculture, Trade & Consumer Protection on November 13, 2013.

Finding of Emergency

In Wisconsin, businesses that repair mobile air conditioners must register with the department and pay an annual registration fee of \$120 for each registered location. In addition, each technician working on mobile air conditioners at these businesses must attend a DATCP–approved training course and pass an exam.

A recent statutory change harmonized Wisconsin’s state mobile air conditioner law with federal law, and Wisconsin’s unique training course content is no longer applicable.

The registration year begins on March 1 of each year. By that date, all mobile air conditioning businesses and technicians must be registered with the department or pay a surcharge fee.

DATCP has determined that it has sufficient alternative revenue sources to fund the mobile air conditioning program and is undergoing rule–making to permanently eliminate the \$120 registration fee. However, the rule–making will not be effective for the upcoming registration year that begins March 1, 2014. The department has also determined that its technician training requirements can be modified due to recent changes in state statute that harmonize Wisconsin law with federal law. Technicians who complete the federally approved training course will now meet Wisconsin’s training requirement.

This temporary emergency rule is necessary to protect the welfare of the small businesses that would otherwise pay the registration fee. In addition, the emergency rule is needed to protect the welfare of small businesses and their employees by eliminating an unnecessary training requirement.

Filed with LRB: December 27, 2013
Publication Date: December 31, 2013
Effective Dates: December 31, 2013 through May 29, 2014
Hearing Date: January 21, 2014

3. EmR1402 (DATCP Docket No. 13–R–17) — The Wisconsin department of Agriculture, Trade and Consumer Protection hereby adopts the following emergency rule to amend **sections ATCP 161.50 (3) (f), 161.60, and 161.62 (1) (intro.),** relating to the “grow Wisconsin dairy processor” grant program created under ss. 20.115 (4) (dm) and 93.40 (1) (g), Stats.

This emergency rule was approved by the Governor on January 10, 2014.

The scope statement for this rule, SS 140–13, was approved by the Governor on October 29, 2013, published in register No. 695 on November 14, 2013, and approved by the Board of Agriculture, Trade & Consumer Protection on December 10, 2013.

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 processors 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 program as permanent rules cannot be adopted in time to provide the basis for grant and loan determinations during that first year of the program.

Filed with LRB: January 21, 2014
Publication Date: January 20, 2014
Effective Dates: January 20, 2014 through June 18, 2014

4. EmR1407 — The Wisconsin Department of Agriculture, Trade and Consumer Protection hereby adopts the following emergency rule to amend **section ATCP 21.10 (1) (b)** and to create **section ATCP 21.10 (1) (c),** relating to the quarantine of Iowa County for the gypsy moth.

This emergency rule was approved by the Governor on March 13, 2014.

The blanket scope for this rule, SS 141–13, was approved by the Governor on October 30, 2013, published in register No. 695 on November 14, 2013, and approved by the Board of Agriculture, Trade & Consumer Protection on December 10, 2013.

Finding of Emergency

Gypsy moth is an exotic, invasive pest that poses a serious risk to Wisconsin’s forest, shade and commercial trees. The 2013 DATCP survey in Iowa County shows that current and projected GM populations in that county have reached the threshold level to trigger implementation of further regulatory measures. Since 2011, multiple trap sites in Iowa County have caught over 100 individual moths, with an average trap count of 28 in 2013 (a five–fold increase from 2011). The survey data indicate that reproducing populations of GM now exist at significant levels in Iowa County and that eradication is not feasible. This evidence supports the need for a quarantine to limit movement from this infestation. When APHIS declares a quarantine, DATCP has regulatory authority for import controls and quarantine for GM under s. ATCP 21.10. It is anticipated that APHIS will declare a quarantine for Iowa County but that it will take six to eight weeks for APHIS to act. A six week delay until enactment of the federal quarantines leaves too much time for businesses or individuals to move potentially GM infested material out of this county to areas of Wisconsin or other states that are not infested with GM.

DATCP is adopting this rule as a temporary emergency rule, pending completion of federal quarantine regulations. DATCP does not anticipate completing a permanent rule.

Filed with LRB: March 28, 2014

Publication Date: March 31, 2014
Effective Dates: March 31, 2014 through August 27, 2014
Hearing Date: April 29, 2014

Publication Date: September 10, 2013
Effective Dates: September 10, 2013 through February 6, 2014
Hearing Date: September 27, 2013
Extension Through: April 7, 2014

Employment Relations Commission

EmR1310 — The Wisconsin Employment Relations Commission hereby creates **Chapters ERC 70, 71, and 80**, relating to annual certification elections.

This emergency rule was approved by the Governor July 3, 2013.

The statement of scope for this rule, SS 045–13, was approved by the Governor on April 19, 2013, published in Register 689, on May 14, 2013, and approved by the Wisconsin Employment Relations Commission on June 3, 2013.

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 obligation to conduct annual certification elections as required by ss. 111.70 (4) (d) 3. b. and 111.83 (3) (b), Stats.

Filed with LRB: July 15 2013
Publication Date: July 13, 2013
Effective Dates: July 13, 2013 through December 9, 2013
Extension Through: April 8, 2014

Insurance

EmR1314 — The Commissioner of Insurance proposes an order to create **Chapter Ins 6 subch. II, subch. II (title), and sections Ins 6.91 to 6.98**, relating to navigators, nonnavigator assisters, and related entities and affecting small business.

The statement of scope for this rule SS 078–13, was approved by the Governor on July 1, 2013, published in Register No. 691, on July 15, 2013, and approved by the Commissioner on July 26, 2013. This emergency rule was approved by the Governor on August 30, 2013.

Finding of Emergency

In accordance with s. 623.98, Stats., the commissioner may promulgate rules under ss. 227.24 (1) (a) and (3), Stats., without providing evidence that promulgating a rule is necessary for the preservation of the public peace, health, safety, or welfare and without a finding of emergency. The commissioner intends to publish the proposed rule sufficiently in advance of October 1, 2013 to permit proper licensing, certification, and training of navigators and nonnavigator assisters and to permit proper registration of navigator and nonnavigator assister entities. The commissioner intends to promulgate permanent rules close in time to the emergency rules so not to create a gap in requirements.

Filed with LRB: September 5, 2013

Natural Resources (6)

Fish, Game, etc., Chs. NR 1—

1. EmR1210 (DNR # WM–09–12(E)) — The Wisconsin Natural Resources Board proposes an order to amend **sections NR 10.001 (25c), 10.02 (1), 10.06 (5) and (8) (intro.), 10.07 (2) (b) 2., 10.07 (2m) (intro.) and (e) (intro.), 10.07 (2m) (f) (intro.), 10.09 (1), 10.13 (1) (b) 9., 10.13 (1) (b) 15., 10.13 (1) (b) 16., 10.145 (intro), 10.145 (3) to (8), 12.10 (intro.), 12.10 (1) (a) 4., 12.10 (1) (b) 2., 12.15 (13) and 19.25** and to create **sections NR 10.001 (22q), 10.001 (23a), 10.001 (23am), 10.001 (23b), 10.001 (26g), 10.001 (33), 10.01 (3) (j), 10.07 (1) (m), 10.07 (2m) (em), 10.07 (2m) (g) 3., NR 10.07 (4), 10.13 (1) (b) 15m., 10.13 (1) (b) 18., 10.145 (1m), (1u) and Note, sections NR 10.16 (5), 10.295, 12.15 (11) (e), 12.60 to 12.63, 12.64 (1) (a) and (b) (intro.) 1., 12.64 (1) (b) 2. and 3., 12.64 (1) (b) 4. and 5., 12.64 (2) (a) to (c), 12.64 (2) (d), 12.64 (3) and 12.65**, relating to the wolf hunting and trapping season and regulations and a depredation program.

This emergency rule was approved by the Governor on August 10, 2010.

The statement of scope for this rule, SS 023–12, was approved by the Governor on April 12, 2012, published in Register No. 676, on April 30, 2012, and approved by the Natural Resources Board on May 23, 2012.

Finding of Emergency

A non–statutory provision, SECTION 21, of 2011 ACT 169 requires the department to submit rules necessary for implementation or interpretation and establishes that the department is not required to make a finding of emergency.

Filed with LRB: August 15, 2012
Publication Date: August 18, 2012
Effective Dates: August 18, 2012 through the

date on which the permanent rules take effect, as provided in 2011 Wisconsin Act 169, section 21.

2. EmR1215 (DNR # WM–16–12(E)) — The Wisconsin Natural Resources Board proposes an order to repeal and recreate **section NR 10.01 (3) (h) 1.**, relating to the coyote hunting season.

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

The statement of scope for this rule, SS 038–12, was approved by the Governor on May 29, 2012, published in Register No. 678, on June 14, 2012, and approved by the Natural Resources Board on June 27, 2012.

Finding of Emergency

A non–statutory provision, Section 21, of 2011 ACT 169 requires the department to submit rules necessary for implementation or interpretation and establishes that the department is not required to make a finding of emergency.

Filed with LRB: September 14, 2012

Publication Date: October 1, 2012

Effective Dates: October 1, 2012 through the date on which the permanent rules take effect, as provided in 2011 Wisconsin Act 169, section 21.

3. EmR1319 (DNR # WM-22-13(E)) — The Wisconsin Natural Resources Board proposes an order to amend sections **NR 10.275 (intro.) and 45.09 (1)** and to create sections **NR 10.13 (Note) and 10.275**, relating to hunting and trapping in state parks.

This rule was approved by the Governor on October 31, 2013.

The statement of scope for this emergency rule, SS 083-13, was approved by the Governor on July 15, 2013, published in Register No. 691 on July 31, 2013 and approved by the Natural Resources Board on August 14, 2013.

Finding of Emergency

The department finds that putting this rule into effect prior to the time it would take effect using the permanent rule process is necessary to protect the public safety and welfare. By restricting gun and archery hunting to certain areas, and trapping to certain areas and methods, this rule will prevent those activities in locations where they may jeopardize the safety and welfare of visitors to the Wisconsin State Park System.

Filed with LRB: November 7, 2013

Publication Date: November 15, 2013

Effective Dates: November 15, 2013 through April 13, 2014

Extension Through: June 12, 2014

4. EmR1320 (DNR # FH-27-13(E)) — The Wisconsin Natural Resources Board proposes an order to create **Chapter NR 85**, relating to development of a competitive grant program for cities, villages, towns, counties, federally recognized Indian tribes or bands located in this state, and fish farms in order to increase the capacity to raise walleye for stocking in Wisconsin waters.

This rule was approved by the Governor on November 8, 2013.

The statement of scope for this emergency rule, SS 104-13, was approved by the Governor on August 12, 2013, published in Register No. 692 on September 1, 2013 (August 31, 2013), and approved by the Natural Resources Board on September 25, 2013.

Finding of Emergency — Exemption

2013 Wisconsin Act 20, the 2013-15 state budget, included the following nonstatutory language: The department of natural resources may promulgate emergency rules under section 227.24 of the statutes implementing sections 29.739 and 29.740 of the statutes, as created by this act. Notwithstanding section 227.24 (1) (c) and (2) of the statutes, emergency rules promulgated for walleye population maintenance and enhancement grants remain in effect until June 30, 2016, or the date on which permanent rules take effect, whichever is sooner. Notwithstanding section 227.24 (1) (a) and (3) of the statutes, the department is not required to provide evidence that promulgating this 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 under this subsection.

Filed with LRB: November 14, 2013

Publication Date: November 21, 2013

Effective Dates: November 21, 2013 through June 30, 2016, or the date on which permanent rules take effect, whichever is sooner.

Hearing Date: December 12, 2013 and December 19, 2013

5. EmR1401 (DNR # FH-26-13(E)) — The Wisconsin Natural Resources Board proposes an order to amend sections **NR 20.20 (73) (n) 4. and 25.06 (1) (a)**, Wis. Adm. Code, relating to lake trout harvest limits in Lake Superior.

This rule was approved by the Governor on December 30, 2013.

The statement of scope for this rule, SS 108-13, was approved by the Governor on August 13, 2013, published in Register No. 692 on August 31, 2013, and approved by the Natural Resources Board on September 25, 2013.

Finding of Emergency

Pursuant to s. 227.4, Stats., the department finds that an emergency exists and that this rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. The welfare of state-licensed commercial fishers, tribal commercial fishers, recreational anglers, and associated businesses is threatened by a decline in the lake trout population in the Apostle Islands vicinity of Lake Superior. The continued, persistent decline in lake trout population abundances and predicted further declines necessitate the current reductions in order to ensure a sustainable lake trout fishery over the long-term. Lake trout harvest limits were negotiated in October 2013 among the Department of Natural Resources and the Red Cliff and Bad River Bands of Lake Superior Chippewa and those changes must be ordered through administrative code. This emergency rule is needed to preserve the public welfare.

Filed with LRB: January 14, 2014

Publication Date: January 13, 2014

Effective Dates: January 13, 2014 through June 11, 2014

6. EmR1405 (DNR # WM-24-13(E)) — The Wisconsin Natural Resources Board proposes an order to propose an order to repeal sections **NR 10.01 (3) (ed), (es) 3., and (et), 10.07 (3), 10.09 (2), 10.28 (3), and 45.09 (9)**, to amend sections **NR 1.15 (1) (a), (b), and (c) 1., (2) (a) (intro.) and (at), and (3), 10.001 (2e), (6p), and (19e), 10.01 (3) (es) 1. and 2. and (3) (ev), 10.02 (3), 10.06 (8) (b) and (note), 10.07 (2m) (b) 1., 10.102 (1) (e) 4., 10.105 (1), (2), (4), and (7), 10.106 (intro.) and (1), 12.06 (1), (2), and (4), 12.16 (4), 13.38 (2) (b) and (Note), and 19.60 (2) (b) 1.**, to repeal and recreate sections **NR 1.15 (2) (a) 8., 10.01 (3) (e) and (em), 10.104, 10.106 (2), 10.28 (1) and (2), 10.28 (4), and 10.41**, and to create **Chapter NR 10 (Title.) and sections NR 10.001(1k) and (23a) and (b), 10.01 (2) (b) (Note) and (4) (dm) (Note), and Subchapter II**, relating to deer management, hunting, and implementation of the 2012 White-tailed Deer Trustee Report.

This emergency rule was approved by the Governor on February 10, 2014

The statement of scope for this rule, SS 098-13, was approved by the Governor on July 23, 2013, published in Register No. 692, on August 14, 2013, and approved by the Natural Resources Board on September 25, 2013.

Finding of Emergency

A non-statutory provision, SECTION 9132 of 2013 Act 20, establishes that the department may promulgate rules to

implement the 2012 final deer management report and that the department is not required to make a finding of emergency.

Filed with LRB: February 25, 2014
Publication Date: March 7, 2014
Effective Dates: March 7, 2014 through June 30, 2015

Public Instruction

EmR1324 — The State Superintendent of Public Instruction hereby proposes to amend **sections PI 5.02 (6) and (11m), 5.035 (6), and 5.04**, relating to high school equivalency diplomas and certificates of general educational development.

Per the Dane County Circuit Court order issued in *Coyne, et al. v. Walker, et al.*, Case No. 11–CV–4573, the Department of Public Instruction is not required to obtain the Governor’s approval for the statement of scope or this rule.

The scope statement for this rule, SS 093–13, was published in Register No. 692, on August 14, 2013, and approved by State Superintendent Tony Evers on August 27, 2013.

Finding of Emergency

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

The number of subtests and the passing scores for the General Educational Development (GED) Test will be changing in January 2014 when a new test is implemented by the GED Testing Service.

Unless the rule is changed to reflect these new subtests and passing scores, the Department may be prevented from issuing credentials for test takers who pass the GED Test because the required passing scores will be incorrect.

Filed with LRB: December 27, 2013
Publication Date: December 27, 2013
Effective Dates: December 27, 2013 through May 25, 2014
Hearing Date: February 24, 2014
Extension Through: July 24, 2014

Revenue

EmR1323 — The Wisconsin Department of Revenue hereby adopts an emergency rule interpreting s. 77.58 (1) (a) and (5), Stats., and amending **section Tax 11.93**, relating to sales tax filing frequency.

This emergency rule was approved by the Governor on November 15, 2013.

The scope statement for this rule, SS 100–13, was approved by the Governor on August 2, 2013, published in Register No. 692 on August 31, 2013, and approved by the Secretary of Revenue on September 10, 2013.

Finding of Emergency

The Department of Revenue finds that an emergency exists and that the attached rule order is necessary for the immediate

preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency is:

Section 77.58 (1), Stats., provides that retailers must file sales tax returns quarterly, except as provided in s. 77.58 (1) (a) and (b), Stats., which allows for sales tax returns to be filed monthly.

Section 77.58 (5), Stats., provides that the department may require returns and payments on the amount of taxes for other than a quarterly period if it deems it necessary to ensure payment to or facilitate the collection by the state of the amount of taxes. The department has provided for annual sales tax returns by rule in s. Tax 11.93 (1) for retailers that have an annual tax liability of \$300 or less.

Because 2013 Wis. Act 20 doubles the threshold upon which a monthly sales tax return is required to be filed (\$600 to \$1200), s. Tax 11.93 (1) should also be changed to reflect a similar increase in the threshold upon which an annual sales tax return can be filed.

As the statutory change to the monthly filing standard goes into effect on January 1, 2014, the corresponding change to the annual filing standard in s. Tax 11.93 (1) should also go into effect on January 1, 2014. There is insufficient time for the permanent rule to be effective on January 1, 2014.

Filed with LRB: December 19, 2013
Publication Date: January 1, 2014
Effective Dates: January 1, 2014 through May 30, 2014
Hearing Date: January 27, 2014

Safety and Professional Services

Uniform Dwelling Code, Chs. 320—325

EmR1403 — The Wisconsin Department of Safety and Professional Services adopts an order to amend **sections SPS 321.02 (1) (c), 321.23, Table 321.25–A, 321.25 (7) (d) and (8) (a) (Note), and Chapters 320 to 325 Appendix — Minimum Fastener Schedule Table**; and to repeal and recreate **section SPS 321.25 (8) (b) to (h) and (9)**, relating to wall bracing for one– and two–family dwellings.

This emergency rule was approved by the Governor on January 28, 2014.

The statement of scope for this rule, SS 139–13, was approved by the Governor on October 28, 2013, published in Register 695 on November 14, 2013, and approved by the Department on November 26, 2013.

Finding of Emergency

The Department of Safety and Professional Services finds that an emergency exists and that this rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. A statement of facts constituting the emergency is as follows.

Some building designers find the current rules for wall bracing for one– and two–family dwellings are too difficult to understand and apply, which results in unnecessary costs and delays in home building. Promulgating revisions to the rules through the emergency rule process is needed in order to avoid these costs and delays as soon as possible. In addition, the report that the Dwelling Code Council is required to complete by July 1, 2014, under section 101.62 (4) of the Statutes is expected to include recommendations to clarify and simplify these rules through the emergency rule process.

Filed with LRB: February 13, 2014

Publication Date: February 19, 2014
Effective Dates: April 1, 2014 through August 28, 2014
Hearing Date: March 11, 2014

Transportation

EmR1404 — The Wisconsin Department of Transportation proposes an order to create **section Trans 327.14**, relating to motor carrier safety and affecting small businesses.

This emergency rule was approved by the Governor on February 10, 2014.

The statement of scope for this rule, SS 155–13, was approved by the Governor on December 16, 2013, published in Register 696, on December 31, 2013, and approved by Secretary Mark Gottlieb as required by s. 227.135 (2), Stats., on January 13, 2014.

Finding of Emergency

The welfare of commercial motor vehicle drivers who hold a commercial driver license (“CDL”) issued by the State of Wisconsin who operate commercial motor vehicles outside this state will be harmed beginning January 30, 2014, if they cannot demonstrate compliance with recent federal regulations because they will be treated by other states as unlicensed drivers. Beginning on January 1, 2014, federal regulations require CDL holders to have certified to DOT the type of commercial driving they do and, if required, to have submitted proof of medical fitness to drive, and to have their driving records updated by DOT to show these actions, before driving a commercial motor vehicle. The Department published the scope statement for permanent rulemaking in September 2011 to implement these federal requirements. The permanent rulemaking effort is ongoing but will not take effect before the January 30, 2014 deadline for compliance.

Filed with LRB: February 14, 2014
Publication Date: February 16, 2014
Effective Dates: February 16, 2014 through July 15, 2014

Workforce Development

Unemployment Insurance, Chs. DWD 100–150

EmR1316 — The Wisconsin Department of Workforce Development hereby adopts an order to repeal **sections DWD 126.02 (2), (3), and (4), 126.03 (1), 126.04, 126.05, 127.01 (2) (b), (f) to (i), and (3), 127.02 (intro.), (1), (2), (3), and (4), 127.02 (5) and (10), and 127.08**; to renumber and amend **section DWD 126.02 (1)**; to amend **sections DWD 126.01, 126.03 (intro.) and (2), 127 (title), 127.01 (1), (2) (intro.), (a), (c), and (d), 127.02 (7), (9), and (11), 127.04 (title), (1), and (2), 127.05, 127.06 (1), (2), and (3), 127.07 (title) and (1), 128.01 (2) (a), and 129.01 (1) and (2)**; to repeal and recreate **sections DWD 127.01 (2) (j) and 127.07 (2)**; and to create **sections DWD 126.02 (Note), 126.03 (3), (4), (5), (6), and (7), 127.01 (2) (em), 127.02 (12), 127.04 (1m) (e), and 127.06 (1) (c)**, relating to unemployment insurance work registration, work search, and benefit claiming procedures.

This emergency rule was approved by the Governor on September 20, 2013.

The statement of scope for this emergency rule, SS 106–13, was approved by the Governor on August 14, 2013, published in Register No. 692 on August 31, 2013, and approved by the Secretary of Workforce Development on September 11, 2013.

Finding of Emergency

The Department of Workforce Development finds that an emergency exists and that the attached rule is necessary for the immediate preservation of the public welfare. Statements of the facts constituting the emergency are:

- (1) In order to fulfill the new statutory directives to require claimants for unemployment insurance benefits to increase their number of weekly work search actions from two to at least four;
- (2) In order to simplify the process and compliance with respect to requirements for unemployment insurance claimants to register for work;
- (3) In order to execute the new statutory requirement to request additional information from claimants;
- (4) In order to improve the unemployment insurance trust fund balance and thereby relieve employers of the burden of additional taxation;
- (5) In order to better assist unemployment insurance benefit claimants to obtain gainful employment; and,
- (6) In order to promote the improvement in the Wisconsin economy as a result of the immediate implementation of legislative directives with respect to the unemployment insurance program contained in 2013 Wisconsin Act 20 and 2013 Wisconsin Act 36.

Adoption of the emergency rule will ensure that these legislative directives are implemented within the time-frame envisioned with enactment of 2013 Wisconsin Act 20 and 2013 Wisconsin Act 36.

Filed with LRB: September 25, 2013
Publication Date: September 29, 2013
Effective Dates: September 29, 2013 through February 25, 2014, except that changes to ss. DWD 126.03 and 127.02 take effect after the Secretary determines the Department has the technological ability to implement the changes.
Hearing Date: November 4, 2013
Extension Through: June 25, 2014

Workforce Development

Apprenticeship, Chs. DWD 295–296

EmR1406 — The Wisconsin Department of Workforce Development hereby adopts the following emergency rule to create **section DWD 295.25**, relating to apprenticeship completion awards.

The emergency rule was approved by the governor on March 21, 2014.

The statement of scope for this emergency rule was approved by the Governor on February 13, 2014, published in Register No. 698 on February 28, 2014, and approved by the Secretary of the Department of Workforce Development on March 11, 2014.

Finding of Emergency

The department of workforce development finds that an emergency exists and that the attached rule is necessary for the immediate preservation of the public welfare. Statements of facts constituting an emergency include:

(1) Wisconsin currently has more than 2,100 employers participating in, and training individuals, under the apprenticeship program.

(2) During 2013, Wisconsin had 9,723 valid apprenticeship contracts.

(3) Over the past ten years, the completion rate of the apprenticeship program averaged between 55–60%.

(4) 2013 Wisconsin Act 57 creates an apprenticeship completion award program to be administered by the department of workforce development to partially reimburse tuition costs incurred by an apprentice who has successfully completed part or all of the requirements of their apprenticeship contract, and is employed in the trade, occupation, or business under the apprenticeship contract, or the sponsor of the apprentice.

(5) The department of workforce development has received general purpose revenue (GPR) funds of \$225,000 in fiscal year 2013–14 and 2014–15, to distribute up to 25%, or \$1,000, whichever is less, of the tuition costs incurred by the apprentice and sponsor of the apprentice. The amount of the first payment upon successful completion by the apprentice of the first year of the contract may not exceed \$250.

(6) The department of workforce development is adopting this emergency rule to prevent a potential hardship to Wisconsin's apprenticeship program participants. Adoption of this emergency rule will ensure those participating in an eligible apprenticeship contract may begin receiving apprenticeship completion awards as soon as possible. Because a permanent rule cannot be adopted in time, GPR funds for fiscal year 2013–14 would be lost if the emergency rule is not adopted.

Filed with LRB: March 26, 2014
Publication Date: March 27, 2014
Effective Dates: March 27, 2014 through August 23, 2014
Hearing Date: May 15, 2014

Workforce Development

Employment and Training, Chs. DWD 805–830

EmR1317 — The Wisconsin Department of Workforce Development hereby adopts an order to create **Chapter DWD 801**, relating to workforce training grants under the Wisconsin Fast Forward program.

This emergency rule was approved by the Governor on September 20, 2013.

The statement of scope for this rule, SS 109–13, was approved by the Governor on August 15, 2013, published in Register No. 692 on August 31, 2013, and approved by the Department of Workforce Development on September 11, 2013.

Finding of Emergency

The Department of Workforce Development (DWD) finds that an emergency exists and emergency rules are necessary for the immediate preservation of the public peace, health, safety, or welfare. The reason for the emergency is:

DWD proposes to create new rules in Chapter DWD 801 to implement the program of workforce training grants enacted by 2013 Wisconsin Act 9. DWD held a public hearing on the permanent rule for this new program on July 15, 2013, and has made revisions to the text of the proposed permanent rule in response to the comments received. It would now benefit the public welfare to proceed with the rules in emergency form so that the program can begin this fall.

Filed with LRB: September 25, 2013
Publication Date: September 29, 2013
Effective Dates: October 1, 2013 through February 27, 2014
Hearing Date: November 5, 2013
Extension Through: June 27, 2014

Scope Statements

Public Instruction

SS 043-14

Per the Dane County Circuit Court order issued in *Coyne, et al. v. Walker, et al.*, Case No. 11-CV-4573, the Department of Public Instruction is not required to obtain the Governor's approval for this statement of scope.

Rule No.

Chapter PI 80 (create).

Relating to

Community programs and services (Fund 80).

Rule Type

Emergency and Permanent.

1. Finding/Nature of the Emergency (Emergency Rule Only)

An emergency rule may be needed so school districts know which activities would be considered ineligible costs for the Community Programs and Services Fund for the 2014-15 school year. Per statute, ineligible costs are affecting school districts' revenue limit authority beginning in the 2015-16 school year.

2. A Description of the Objective of the Proposed Rule

This proposed rule change will create Chapter PI 80, as required by 2013 Wisconsin Act 306. Under 2013 Wisconsin Act 306, the department must define ineligible costs related to community programs and services.

3. A Description of the Existing Policies and New Policies Included in the Proposed Rule and an Analysis of Policy Alternatives

This proposed rule is created to define ineligible costs, as required under s. 120.13 (19), Stats.

4. The Statutory Authority for the Proposed Rule

120.13 School board powers. The school board of a common or union high school district may do all things reasonable to promote the cause of education, including establishing, providing and improving school district programs, functions and activities for the benefit of pupils, and including all of the following:

(19) COMMUNITY PROGRAMS AND SERVICES. Establish and maintain community education, training, recreational, cultural or athletic programs and services, outside the regular curricular and extracurricular programs for pupils, under such terms and conditions as the school board prescribes. The school board may establish and collect fees to cover all or part of the costs of such programs and services. The school board may not expend moneys on ineligible costs, as defined by the department by rule. Costs associated with such programs and services shall not be included in the school district's shared cost under s. 121.07 (6).

5. An Estimate of the Amount of Time Agency Employees Will Spend Developing the Proposed Rule and of Other Resources Needed to Develop the Rule

The amount of time needed for rule development by department staff and the amount of other resources necessary are indeterminate.

6. A Description of all of the Entities that Will Be Affected by the Proposed Rule

School districts and the communities they serve will be impacted by this rule.

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

N/A.

Agency Contact

Policy And Budget Team

ATTN: Katie Schumacher

267-9127 or katie.schumacher@dpi.wi.gov.

Public Service Commission

SS 042-14

(PSC DOCKET # 1-AC-246)

This statement of scope was approved by the governor on April 30, 2014.

Rule No.

Chapter PSC 135 (revise).

Relating to

Adoption of federal gas pipeline safety regulations.

Rule Type

Permanent.

1. Description of the Objective of the Rule and Expected Financial Impact

The proposed rule revision adopts, for state purposes, changes to the federal pipeline safety code that have been enacted since the last revisions to the state pipeline safety code were adopted. The state has adopted federal pipeline safety provisions in Wis. Admin. Code ch. PSC 135. Adoption of these amendments will keep the Commission in compliance with its obligation to adopt all federal changes in the pipeline safety area.

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

Under an agreement with the U.S. Department of Transportation, Office of Pipeline Safety, the Commission is authorized to enforce federal natural gas pipeline safety requirements as set out in the Code of Federal Regulations, 49

C.F.R. Parts 192, 193, and 199. As part of the agreement, the Commission adopts the federal pipeline safety code in Wis. Admin. Code s. PSC 135.019. The Commission’s latest version of that rule adopts the federal code up to January 1, 2013. New gas pipeline safety code requirements are generally enacted in October of each year. As a result, the Commission needs to amend its rule to include the latest federal rule changes.

This rule will result in no economic impact since pipeline operators are required, under federal law, to follow the federal regulations. Any economic impact of those federal regulations has already occurred. This rulemaking just updates the state’s enforcement authority.

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

Sections 196.02 (1) and (3), and s. 227.11, Stats., authorize agencies to promulgate administrative rules. Section 196.02 (1), Stats., authorizes the Commission to do all things necessary and convenient to its jurisdiction. Section 196.02 (3), Stats., grants the Commission specific authority to promulgate rules.

Under an agreement with the U.S. Department of Transportation, Office of Pipeline Safety, the Commission agrees to adopt those parts of the federal code that apply to pipeline safety.

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

The Commission estimates that fewer than 100 hours of employee time will be required to develop the rules.

5. Description of all Entities that may be Impacted by the Rule

Every intrastate gas pipeline operator that operates gas transmission or distribution facilities in this state will be impacted by the rule.

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

Under an agreement with the U.S. Department of Transportation, Office of Pipeline Safety, the Commission is authorized to enforce federal natural gas pipeline safety requirements as set out in the Code of Federal Regulations, 49 C.F.R. Parts 192, 193, and 199. As part of the agreement, the Commission agrees to adopt those parts of the federal code that apply to pipeline safety.

Contact Person

Tom Stemrich, Pipeline Safety Manager, (608) 266–2800 or tom.stemrich@wisconsin.gov.

Safety and Professional Services

General Part 1, Chs. 301—319

SS 041–14

This statement of scope was approved by the governor on April 30, 2014.

Rule No.

Chapters SPS 302, 305, and 316 (revise).

Relating to

Wisconsin’s electrical code.

Rule Type

Emergency and permanent.

1. Finding/Nature of Emergency (Emergency Rule Only)

Under 2013 Wisconsin Act 143 the department is required to promulgate rules “establishing criteria and procedures for issuing licenses to electricians who were born on or before January 1, 1956, and who have at least 15 years of experience in installing, repairing, or maintaining electrical wiring.” Since the enactment of Act 143 there has been a great deal of confusion on what grandfathered electricians need to do and how local municipalities should treat individuals who meet the grandfathering provisions of the new law. In order to protect the public safety and avoid any undue hardship and confusion, the department is seeking to write these emergency rules.

2. Detailed Description of the Objective of the Proposed Rule

The objective of this rulemaking project is to establishing criteria and procedures for issuing licenses to electricians who were born on or before January 1, 1956, and who have at least 15 years of experience in installing, repairing, or maintaining electrical wiring.

Code chapters that are incidentally affected by this project may be revised to assure clarity and consistency of the rules.

3. 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 Department’s current rules for licensing and registering electricians are contained in ch. SPS 305. These rules address various categories of electricians, such as master electricians, journeyman electricians, beginning electricians, and electrical apprentices. The rules also establish the qualifications and administrative structure for becoming licensed or registered, and for renewing these credentials — as well as the corresponding workplace responsibilities and disciplinary provisions.

The proposed rules are expected to create a grandfathered electrical license for any person born before January 1, 1956 and who has at least 15 years of experience in electrical work.

Because of Act 143, the statutory requirements are now out of step with the administrative rules. The stakeholders who are affected by these statutory changes are confused by the differences. Further confusion and complaints are expected if the rules are not updated to eliminate the differences.

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

Section 227.11 (2) (a) of the Statutes empowers the Department to promulgate rules interpreting the provision of any statute the Department enforces or administers. Further generalized rulemaking authority is conveyed by section 101.02 (1), Stats., which states “[t]he department shall adopt reasonable and proper rules and regulations relative to the exercise of its powers and authorities and proper rules to govern its proceedings and to regulate the mode and manner of all investigations and hearings.”

Section 101.862 (5) (b) The department shall promulgate rules establishing criteria and procedures for issuing licenses to electricians who were born on or before January 1, 1956,

and who have at least 15 years of experience in installing, repairing, or maintaining electrical wiring. Upon promulgation of these rules, an electrician who meets these age and experience requirements may not install, repair, or maintain electrical wiring unless he or she is licensed in compliance with these rules or is otherwise licensed or registered as an electrician under this subchapter.

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

The staff time needed to revise the rules is expected to be 80 hours. This time includes research, consulting with stakeholders, drafting rule revisions, processing the rule revisions through public hearings, legislative review, and adoption. There are no other resources necessary to revise the rules.

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

Electricians who were born on or before January 1, 1956, and who have at least 15 years of experience in installing, repairing, or maintaining electrical wiring.

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

There are several existing federal regulations that relate to the installation of electrical wiring and equipment. Some of these regulations require compliance with various editions of the *National Electrical Code*[®] (NEC[®]), which is adopted by reference in chapter SPS 316. A search of the Code of Federal Regulations (CFR) found the following regulations pertaining to activities that may be covered by this rule.

- Title 29 CFR, Sections 1910.302 through 1910.308 — Design Safety Standards for Electrical Systems, and 1910.331 through 1910.335 — Electrical Safety-Related Work Practices Standards. Subpart S of this regulation in the Department of Labor contains design safety standards for electrical systems, safety-related work practices and maintenance requirements and safety requirements for special electrical equipment to safeguard employees in their workplaces. Subpart R contains industrial lighting requirements and safe practices relating to lockouts and emergency lighting requirements for the safety of employees working in special industries. These regulations are part of the federal Occupational Safety and Health Administration's standards.
- Title 29 CFR, Part 1926 — Safety and Health Regulations for Construction. Subpart K of this regulation in the Department of Labor contains installation safety requirements, and safety requirements and environmental considerations for special equipment necessary to safeguard employees working in special industries.
- Title 30 CFR, Part 75 — Mandatory Safety Standards — Underground Coal Mines. Subpart F contains specific electrical safety requirements for the protection of employees working in underground metal and nonmetal mines.
- Title 30 CFR, Part 57 — Safety and Health Standards — Underground Metal and Nonmetal Mines. Subpart K of this regulation in the Department of Labor

contains specific electrical safety requirements for the protection of employees working in underground metal and nonmetal mines.

- Title 24 CFR, Part 3280 — Manufactured Home Construction and Safety Standards. Subpart I of this regulation in the Department of Housing and Urban Development covers electrical systems in manufactured homes, and requires compliance with the 2005 NEC.
- Title 7 CFR, Part 1755 — Telecommunication Standards and Specifications for Materials, Equipment, and Construction. This regulation in the Department of Agriculture applies to telecommunications wiring and equipment and requires compliance with the NEC.

8. Anticipated Economic Impact of Implementing the Rule

The Department believes that the proposed changes will have little or no adverse economic impact. Nevertheless, it plans to solicit information and advice from businesses, local government units, and individuals in relation to the economic effects of the new provisions.

Contact Person

Sam Rockweiler, Rules Coordinator,
sam.rockweiler@wi.gov, (608) 266-0797.

Safety and Professional Services

Plumbing, Chs. 381—387

SS 037-14

This statement of scope was approved by the governor on April 17, 2014.

Rule No.

Chapter SPS 384 (revise).

Relating to

Plumbing products approval.

Rule Type

Emergency and permanent.

1. Finding/Nature of Emergency (Emergency Rule Only)

Under current law, certain plumbing products, such as water treatment and water softening devices, may receive two separate approvals before their use is permitted in Wisconsin. The first approval is usually issued by a third party, such as NSF International, and based on a national standard. The second layer of approval derives from ch. SPS 384 which describes situations when a plumbing product must also be submitted to the Department for review and approval. Due to the extreme and prolonged freezing this winter, it is expected that a greater number of private well owners will choose to upgrade their water supply systems at this time. The Department has reason to believe its secondary review delays or prevents Wisconsin residents from readily accessing plumbing products that would improve the safety of Wisconsin's drinking water this spring. These products have been approved under national plumbing standards and are available to consumers of other states but have not yet completed the Department's review process. Promulgating revisions through the emergency rule process is needed to avoid delays in the utilization of these technologies.

2. Detailed Description of the Objective of the Proposed Rule

The objective of this rulemaking project is to streamline the Department's plumbing products approval processes outlined in ch. SPS 384. The Department will consider eliminating its approval process for water treatment products that are already certified under nationally recognized standards.

The Department seeks to increase the efficiency of its plumbing product review processes and ease administrative burdens on manufacturers. These goals are substantially in accordance with Governor Walker's Executive Order No. 61 which directs the Department to analyze its rules to increase efficiency and decrease costs to small businesses.

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

Plumbing products are usually reviewed and approved by third party inspectors based on prevailing national standards without the Department's additional review. Chapter SPS 384 describes certain situations when a producer of plumbing products must submit materials for the Department's review. For these products, the Department's review is required even after a national certification has been obtained. Water treatment devices or bottled water vending machines that are listed as complying with NSF Standard 44 do not require additional review by the Department; however, water treatment devices that comply with other national standards must still obtain a second approval from the Department. Wisconsin is one of only a handful of states that require additional product approval beyond a national certification.

The Department would like to deem other national standards that assure the quality of plumbing products sufficient for approval without the Department's secondary review. This would maintain a high standard for plumbing products while decreasing the time Department staff spend reviewing product submissions. It also decreases the costs to companies who have already paid for testing pursuant to a national standard by relieving them of the cost of a second review. For these reasons, the Department would like to exempt other nationally certified plumbing products from the second layer of review currently required.

Not conducting this review would result in unnecessary costs to product manufacturers, consumers of plumbing equipment, and the Department.

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

Generally, **Wis. Stat. s. 227.11 (2) (a)** empowers the Department of Safety and Professional Services to promulgate rules interpreting the provision of any statute the Department enforces or administers.

The Department also has the following duties and powers:

Wis. Stat. s. 101.02 (1) states, "[t]he department shall adopt reasonable and proper rules and regulations relative to the exercise of its powers and authorities and proper rules to govern its proceedings and to regulate the mode and manner of all investigations and hearings."

Wis. Stat. s. 145.02 Powers of department.

(1) The construction, installation and maintenance of plumbing in connection with all buildings in this state, including buildings owned by the state or any political subdivision thereof, shall be safe, sanitary and such as to safeguard the public health and the waters of the state.

(2) The department shall have general supervision of all such plumbing and shall after public hearing prescribe and publish and enforce reasonable standards therefor which shall be uniform and of statewide concern so far as practicable. Any employee designated by the department may act for the department in holding such public hearing. To the extent that the historic building code applies to the subject matter of these standards, the standards do not apply to a qualified historic building if the owner elects to be subject to s. 101.121.

(3) The department may exercise such powers as are reasonably necessary to carry out the provisions of this chapter. It may, among other things:

(b) Conduct investigations and experiments for the advancement of technical knowledge relating to plumbing and may hold public meetings and attend or be represented at such meetings within or without the state.

(f) Issue special orders directing and requiring compliance with the rules and standards of the department promulgated under this chapter whenever, in the judgment of the department, the rules or standards are threatened with violation, are being violated or have been violated. The circuit court for any county where violation of such an order occurs has jurisdiction to enforce and shall enforce any order brought before it by injunctive and other appropriate relief. The attorney general or the district attorney of the county where the violation of the order occurs shall bring action for its enforcement. The department may issue an order under this paragraph to abate a violation of s. 254.59.

(g) By rule, fix fees for the examination and approval of plans of plumbing systems and collect the same.

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

The staff time needed to revise the rules is expected to be approximately 80 hours. This time includes research, consulting, drafting the rule revisions, consulting with stakeholders, processing the rule revisions through public hearings, legislative review, and adoption. There are no other resources necessary to revise the rules.

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

This rulemaking project may affect plumbing product manufacturers, plumbers, building owners, home owners, retail stores, and the people they serve.

7. 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

An Internet-based search of the *Code of Federal Regulations* (CFR) and the *Federal Register* revealed the following laws and regulations related to plumbing products:

- 42 USC § 1417. The Reduction of Lead in Drinking Water Act. This federal law amends the Safe Drinking Water Act (SDWA) and sets new, lower standards for the amount of lead permissible in plumbing products that come into contact with potable water. The U.S. Environmental Protection Agency (EPA) has primary responsibility for interpreting the SDWA with individual states using health or plumbing codes or other standards consistent with the SDWA and EPA regulations to enforce those standards. The new law reduces the permissible levels of lead in the wetted surfaces of pipes, pipe fittings, plumbing fittings and

fixtures to a weighted average of not more than 0.25%.

- 40 CFR § 141. Primary Drinking Water Regulations. These regulations set maximum levels for contaminants in drinking water.
- 10 CFR § 430.31–35. Energy and Water Conservation Standards. The Energy Policy and Conservation Act, as amended (EPCA), requires the Department of Energy to administer an energy and water conservation program for certain major household appliances and commercial equipment, including certain plumbing products.
- 16 CFR § 305.16. This section establishes requirements for consumer appliance products including many plumbing products. It sets requirements for labeling and energy consumption.

8. Anticipated Economic Impact of Implementing the Rule

The Department believes the proposed changes will have no adverse economic impact. The changes under consideration are intended to alleviate unnecessary economic burdens on plumbing product manufacturers and their customers. The revisions are also anticipated to decrease the Department's costs of administration.

Contact Person

Kristin Degeneffe, kristin.degeneffe@wisconsin.gov, (608) 261-0117.

Safety and Professional Services

*Plumbing, Chs. 381–387
General Part IV, Chs. 388–
SS 040–14*

This statement of scope was approved by the governor on April 28, 2014.

Rule No.

Chapters SPS 381 to 387 and 391 (revise).

Relating to

Comprehensive update of the POWTS (private onsite wastewater treatment systems) and Wisconsin Fund (POWTS replacement and rehabilitation financial assistance fund) codes.

Rule Type

Permanent.

1. Finding/Nature of Emergency (Emergency Rule Only)

N/A

2. Detailed Description of the Objective of the Proposed Rule

The major objective of this proposed rule is to conduct a comprehensive update of the POWTS, (private onsite wastewater treatment systems) and the Wisconsin Fund (POWTS replacement and rehabilitation financial assistance fund) codes. This revision may result in revisions being made to other chapters in the state plumbing code, specifically: ch. SPS 381, definitions and standards, ch. SPS 382, plumbing installation, ch. SPS 384, plumbing products, ch. SPS 385, soil and site evaluation, and possibly ch. SPS 391, sanitation.

The POWTS code, ch. SPS 383, has not been reviewed in its entirety since April 2000. Recent technological advances and improved methodologies will be reviewed for possible inclusion in this revision.

Under s. 145.245 (7) (c), Stats., the funding tables for the Wisconsin Fund code, ch. SPS 387, are to be revised when it is determined that 60% of current costs of private sewage system rehabilitation or replacement exceed the amounts in the grant funding tables by more than 10% and shall not revise these table more than every two years. These tables were last revised in February 1999.

The provisions of Executive Order 61 establish the basis for the department's comprehensive review with respect to assisting small business owners, reducing economic impact on small business, creating job growth, and identifying strategies for increasing code compliance. Any statutory changes enacted after the last revision that affect these rules will also be used as a basis for revision, as well as incorporating by reference updated national standards and recognizing current technology and methodology where related to the POWTS code. In developing the proposed rules, the department expects to utilize the input from an advisory code council with representatives from various sectors of the industry.

In addition, corrections may be made to correct typographical errors, and update statutory references, internal cross references, and Notes to reflect current information. Appendix material, where appropriate, will direct readers to the information via a URL link; some material now copied in whole or part in the Appendix may be deleted; Notes within the rule text will include a URL link to the appropriate information.

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

These revisions may be based on one or more of the following: petitions received since the last code update, comparison of the 2012 International Private Sewage Disposal Code, field observations, and knowledge of improved technology, processes and methods. A review of the funding requests for the Wisconsin Fund will also be undertaken to determine any changes needed in the funding assistance tables.

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

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

Section 145.02, Stats.: The authority provides that all plumbing in connection with buildings and facilities in the state, including buildings owned by the state or any political subdivision thereof, shall be safe, sanitary and such as to safeguard the public health and the waters of the state.

Section 145.245 (5) (c) 4., Stats.: The department shall promulgate rules establishing criteria for determining what constitutes satisfactory evidence of federal adjusted gross income or projected federal adjusted gross income in a current year.

Section 145.245 (5) (d) 2., Stats.: The department shall promulgate rules establishing criteria for determining what constitutes satisfactory evidence of gross revenue in a prior taxable year.

Section 145.245 (5) (d) 4., Stats.: The department shall promulgate rules establishing criteria for determining what constitutes satisfactory evidence of gross revenue in a current year.

Section 145.245 (7) (c), Stats.: The department shall prepare and publish private on–site wastewater treatment system grant funding tables which specify the maximum state share limitation for various components and costs involved in the rehabilitation or replacement of a private on–site wastewater treatment system based upon minimum size and other requirements specified in the state plumbing code promulgated under s. 145.02, Stats.

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

The Department estimates approximately 650 hours will be needed to perform the review and develop the proposed rule revisions. This time includes comparing updated national standards, meeting with stakeholders, drafting the rule revisions, and processing the revisions through public hearings, legislative review, and adoption. The Department will assign existing staff to perform the review and develop the rule revisions, and no other resources will be needed.

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

Public and private entities that own private sewage systems (POWTS) or are involved in program administrative functions such as soil testing, design, installation and construction, inspection and maintenance, as well as product manufacture and sales. Homeowners and small business owners that may be eligible for financial assistance in the replacement or rehabilitation of a POWTS.

7. 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

Under 7 CFR 1924.107, utilities, all development under this subpart must have adequate, economic, safe, energy efficient, dependable utilities with sufficient easements for installation and maintenance. (Utilities include POWTS.)

Under 40 CFR 35.918, individual systems and the requirements for discharge of effluents, the U.S. EPA has the authority to prescribe requirements for individual on–site wastewater treatment systems, as well as the provisions of financial assistance. In addition, best practicable waste treatment criteria published by EPA under section 304(d)(2) of this Act shall be met for disposal of effluent on or into the soil from individual POWTS systems.

Under 40 CFR, subch. B, part 31, this rule establishes uniform criteria for POWTS where financial assistance is available on the state and local levels.

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

The review is being conducted with the provisions of Executive Order 61 in mind; therefore, the rule changes contemplated in this project are not expected to have any negative economic impacts on any of the affected entities listed above.

Contact Person

Jean MacCubbin, Administrative Rules Coordinator, phone (608) 266–0955.

Transportation

SS 036–14

This statement of scope was approved by the governor on April 16, 2014.

Rule No.

Chapter Trans 2 (revise).

Relating to

Elderly and disabled transportation capital assistance program.

Rule Type

Permanent.

1. Finding/Nature of Emergency (Emergency Rule Only)

N/A

2. Detailed Description of the Objective of the Proposed Rule

Prior to MAP–21 — the most recent federal transportation budget reauthorization — Federal Transportation Assistance’s (FTA’s) 5310 (“Enhanced Mobility of Seniors and Individuals with Disabilities”) program was a competitive, state–administered program that funded capital projects designed to improve mobility for elderly individuals and individuals with disabilities.

While the general program objective remains the same under MAP–21, the FTA 5310 grant program rules have changed significantly. The most substantive changes include:

- 1) The revised FTA 5310 program includes the former 5317 (New Freedom) program, which provides mobility options beyond Americans with Disabilities Act (ADA) requirements for individuals with disabilities. In Wisconsin, the New Freedom program has primarily funded mobility managers across the State.
- 2) The revised FTA 5310 is a sub–allocated program, with funding going directly to large urban areas, and separate categories of funding for small urban and rural projects to be administered by the Wisconsin Department of Transportation (WisDOT).
- 3) Operating projects are eligible for funding under the revised FTA 5310 program. However, only 45% of federal program funds in each demographic category may be used for such projects. At least 55% of federal program funds must be used for capital projects.
- 4) Grant awards under the revised FTA 5310 program need not be based on a competitive application process.

Chapter Trans 2 is now outdated, given the FTA 5310 program changes established under MAP–21. The existing rule establishes an outdated and overly–prescriptive FTA 5310 application process, causing unnecessary work for applicants and WisDOT staff members, and complicates potential automation of the application process.

This rule revision would acknowledge the new program rules and would afford WisDOT Transit Staff the flexibility

needed to administer the program more efficiently and reduce the effort required of applicants and grant recipients. The proposed rule-making would reflect the new program structure, but would be written in a manner that would allow WisDOT to administer a statewide program in the future should federal rules change.

Based on WisDOT Transit's experience with other competitive grant applications, the department is certain that it can conduct a high-quality, compliant application process yielding equitable results and good projects in a much more efficient manner.

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

As referenced above, the FTA 5310 program has been a capital-only program. Chapter Trans 2 currently reflects a WisDOT Transit policy established long ago that limits FTA 5310, s. 85.22-funded capital grants to vehicle purchases. (In contrast, FTA defines "capital project" to include such things as mobility management projects, ancillary vehicle equipment, such as communications equipment, preventative maintenance, etc.) For reasons of consistency with new FTA 5310 program rules and sound program administration, this restriction should be eliminated.

Mobility management projects have been funded through the federal 5317 (New Freedom) program. Under MAP-21, such projects must now be funded with FTA 5310 funds. While FTA permits mobility management projects to be funded as either capital projects or operating projects, funding them as capital projects permits a higher level of reimbursement (80% of capital project cost vs. 50% for operating projects).

Both mobility management and vehicle acquisition projects are critical to meeting Wisconsin's transportation needs for seniors and individuals with disabilities. Funding one type of project over the other, or displacing either for other types of projects would be disruptive to Wisconsin's elderly and disabled transportation networks. Consequently, the department intends to maintain the practice of funding worthy projects of both types. The department anticipates having the ability to consider funding other types of eligible projects that maintain or substantially improve transportation services for Wisconsin's elderly and disabled citizens as a result of this rule-making.

Because of the program structure changes establishing sub-allocation and allowing large urban areas (Appleton, Green Bay, Madison, and Milwaukee) to become direct recipients, the department will update the coordination provisions that are currently found in ch. Trans 2 to reflect coordination between WisDOT and the state's new direct recipients. However, the department intends to revise these provisions in a way that would accommodate a subsequent return to the previous direct recipient arrangement, with WisDOT as the sole statewide direct recipient. Strong nationwide support already exists to return to the previous direct recipient arrangement with the next reauthorization.

The department does not anticipate any changes (or objections) regarding its policy of simplifying the application process wherever possible. Eliminating some provisions of s. Trans 2.05 will enable the department to pursue this policy more effectively without compromising application or project evaluation procedures.

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

The statutory authority for ch. Trans 2 is found in s. 85.22, Wis. Stats. Chapter Trans 2 codifies portions of ss. 85.22 (3) and 85.22 (4), Stats., as follows:

85.22 (3) ADMINISTRATION. The department shall administer the grant program and shall have all the powers necessary and convenient to implement this section, including the following powers:

(a) To receive and review annually applications for aid under this section and to prescribe the form, nature and extent of information which shall be contained in applications. Each applicant shall indicate whether the transportation services it provides or proposes to provide conflict with any transportation services being provided under s. 85.21, Stats.

(b) To establish criteria for evaluating all applications and for placing each application in a statewide priority ranking for distribution of available federal and state moneys.

(c) To make and execute agreements with eligible applicants to provide for the undertaking of transportation services to elderly or disabled persons.

(d) To audit the records of all eligible applicants receiving aids under this section in accordance with generally accepted accounting principles and practices.

(e) To require eligible applicants receiving aids under this subsection to furnish information deemed necessary by the department.

(f) To apply for and receive federal grants on behalf of eligible recipients.

(g) To establish an annual application cycle for the program.

(h) To establish, by rule, standards for the coordination of transportation services to elderly and disabled persons for purposes of s. 85.22 (2) (am) 2. b. These standards may require certification by a local public body that any application for aid under this section shall be consistent with the recommendations of a local coordinating committee on transportation that has membership which is, in the department's judgment, sufficient to provide for adequate coordination of services available in the applicable area.

85.22 (4) AMOUNT AND USE OF AID. (a) Commencing with the highest ranked application and to the extent that state moneys are available, the department shall offer to each eligible applicant an amount of state aid such that the sum of federal and state aid received by an applicant does not exceed any of the following:

1. The percentage specified by the department by rule, of the estimated capital project costs.

2. For the specific type or category of capital equipment for which aid is paid, the percentage of the estimated capital costs that are eligible for federal aid.

(b) State aid available under this section shall not be available for operating purposes.

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

The department anticipates that work on the rule revision will require 6 meetings of 2 hours each, involving 4 staff members, for a total of 48 hours. In addition, the department

anticipates 2 hours for 4 staff members at a public hearing, plus 4 hours of attorney review and 4 hours of Administrative Rules Coordinator involvement in the revision process. This is a total of 64 hours of WisDOT staff time.

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

WisDOT's intent is to provide continuity for stakeholders that historically have participated in and benefitted from both the FTA 5310 and 5317 programs. The participants primarily fall into two groups: 1) mobility managers, who are represented by the Wisconsin Association of Mobility Managers (WAMM), and 2) private non-profit organizations and public agencies that provide specialized transportation service and rely on the FTA 5310 program for purchasing vehicles. Active 5310 grantees include 26 county and tribal agencies and 52 non-profit organizations. Numerous other organizations participate in the program via sublease agreements and alternate arrangements with our grantees.

The beneficiaries of the 5310- and 5317-funded services are Wisconsin's elderly and disabled citizens.

The department does not expect that its proposed rule revisions will have a harmful impact on any of these stakeholders.

7. 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 proposed revisions are largely a response to the previously referenced changes to FTA's 5310 program under MAP-21, and the coincident elimination of the 5317 program. Effective with the use of FFY 2013 funds, the department must operate the FTA 5310 program consistent with new program rules, the most significant of which are noted in Section 2 above.

The department anticipates rule revisions will acknowledge the new program structure, but will also make allowances for the old program structure should it return to its original program structure.

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

The Department anticipates the proposed rule revisions to have a modest but beneficial impact on participants in our FTA 5310, s. 85.22 program. It will enable the department to simplify the grant application process and reporting burden for sub-recipients. Small non-profit organizations that require outside help in the form of hired grant-writers are likely to benefit the most from the rule changes.

Contact Person

Steven Hirshfeld, (608) 267-0209
Judy Foss, (608) 266-8968

Veterans Affairs

SS 038-14

This statement of scope was approved by the governor on April 21, 2014.

Rule No.

Section VA 2.07 (create).

Relating to

Grants to non-profit organizations.

Rule Type

Emergency and permanent.

1. Finding/Nature of Emergency (Emergency Rule Only)

Exempt. Section 9 of 2013 Act 190 authorizes the Department of Veterans Affairs to promulgate emergency rules under section 227.24 of the statutes to implement section 45.46 of the statutes, as created by the act.

2. Detailed Description of the Objective of the Proposed Rule

The proposed rule relates to new authority by which the Department of Veterans Affairs may award grants to nonprofit organizations that assist veterans or their families.

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

There is no existing policy relevant to this rule because this is a new program. The Department has existing rules related to grants awarded to veterans service organizations and counties for the delivery of services to veterans, and also specifically for transportation services provided to veterans. The existing rules, however, are insufficient and inappropriate for the new grant authority.

The proposed new policies will create a process for non-profit organizations that provide financial assistance or other services to veterans and their dependents to apply for grant funds not to exceed \$25,000 per fiscal year. The proposed rule will require a non-profit organization to submit: (1) proof of non-profit status; (2) a description of the financial assistance or other services it provides to veterans and their dependents; (3) and describe their need for the requested funds. The proposed rule will require the Board of Veterans Affairs to review the applications for these grants and make recommendations of award to the Secretary of the Department.

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

Act 190 creates s. 45.46, Stats., which provides the Department of Veterans Affairs authority to award grants to non-profit organizations that provide assistance to veterans or their families.

Section 45.03 (1), Stats., authorizes the Secretary of the Department of Veterans Affairs to promulgate rules necessary to carry out the purposes of Chapter 45 and the powers and duties conferred upon it.

Section 227.10 (1), Stats., directs each agency to promulgate as a rule each statement of policy to govern its enforcement and interpretation of a statute.

Section 227.10 (2m), Stats., directs each agency to promulgate rules for the implementation or enforcement of any standard, requirement, or threshold.

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

120 hours

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

Non-profit organizations that provide financial assistance or other services to veterans and their dependents.

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

There are no known existing or proposed federal regulations that address this new state grant program.

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

There is no anticipated economic impact.

Contact Person

Kathy Marschman, Assistant Deputy Secretary, Department of Veterans Affairs, 608-266-2256, Kathy.marschman@dva.wisconsin.gov.

Veterans Affairs

SS 039-14

This statement of scope was approved by the governor on April 21, 2014.

Rule No.

Chapter VA 13 (revise).

Relating to

The veterans assistance program: aid to indigent veterans and veterans housing program.

Rule Type

Permanent.

1. Finding/Nature of Emergency (Emergency Rule Only)

N/A

2. Detailed Description of the Objective of the Proposed Rule

The proposed rule change relates to the two programs within the Veterans Assistance Program.

Aid to Indigent Veterans (AIV): The Legislative Audit Bureau (Report 11-3) recommended the Department promulgate rules to: (1) establish clear eligibility requirements, including any type and amount of assets to be excluded from eligibility determinations; (2) establish a policy on divestment, including requiring applicants to provide sufficient documentation for determining whether the timing and nature of any asset transfers, including the establishment of trusts, is allowable; (3) clearly define any limits on the amounts and types of life insurance and burial assets that are exempt, and require applicants to provide sufficient documentation to assess them; and (4) require Union Grove staff to verify financial information provided at the time of application to the assisted living facilities, and annually thereafter.

Additionally, the rule will more clearly distinguish the AIV program from the program by which the Department provides transitional housing and supportive services to homeless veterans, or those veterans at risk of becoming homeless, currently named the Veterans Assistance Program (VAP) which will be renamed Veterans Housing and Recovery Program (VHRP) by the proposed rule.

3. 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 AIV program provides state funds to enable indigent veterans to remain in the assisted living center operated at the Wisconsin Veterans Home at Union Grove. The Legislative Audit Bureau, in a 2011 audit of the Homes, recommended that departmental policies related to eligibility be codified in rule.

Chapter VA 13 also encompasses the Department's program that provides transitional and supportive housing and services to homeless veterans, funded largely by the US Department of Veterans Affairs Grant and Per Diem program. This program is distinct from the AIV, however, confusion arises because it is named the Veterans Assistance Program (VAP), the same as the title of the chapter. The new rule will clearly distinguish the two programs within the Veterans Assistance Program.

The policy alternative is to not promulgate rules; however, the Legislative Audit Bureau (LAB) recommended that rules be promulgated.

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

Section 45.43, Stats., directs the Department of Veterans Affairs to administer a program to provide assistance to veterans whose need for services is based upon homelessness, incarceration, or other circumstances designated by the Department by rule.

Section 227.10 (1), Stats., directs each agency to promulgate as a rule each statement of policy to govern its enforcement and interpretation of a statute.

Section 227.10 (2m), Stats., directs each agency to promulgate rules for the implementation or enforcement of any standard, requirement, or threshold.

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

120 hours

6. List with description of all entities that may be affected by the proposed rule

Entities that may be affected by the proposed rule will be individuals who apply for the Aid to Indigent Veterans program.

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

There is no existing or proposed federal regulation that addresses the AIV activities regulated by the proposed rule.

Federal regulations applicable to the VHP are not implicated by the changes proposed in this rule.

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

There is no anticipated economic impact.

Contact Person

Kathy Marschman, Assistant Deputy Secretary, Department of Veterans Affairs, 608-266-2256, Kathy.marschman@dva.wisconsin.gov.

Submittal of Proposed Rules to Legislative Council Clearinghouse

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

Natural Resources
Fish, Game, etc., Chs. 1—
CR 14-034

(DNR # SS-04-12)

The Wisconsin Department of Natural Resources has submitted a proposed rule to the Legislative Council Rules Clearinghouse.

The statement of scope for this rule, SS 16-012, was approved by the governor on March 12, 2012, published in Register No. 375 on March 31, 2012, and approved by the Natural Resources Board on June 27, 2012.

Date Submitted to the Clearinghouse: April 29, 2014

Subject: Clarification to the language and changes to the species listed under ss. NR 40.04 (2) and 40.05 (2), relating to Wisconsin's regulated invasive species list.

Administrative Codes: Ch. NR 40

Date of Public Hearing: June 17 and 18, 2014

Name and Organization

Unit of Agency Contact: Linda Haddix
DNR Administrative Rules
Officer
bureau of Legal Services
(608) 266-1959
Linda.haddix@wisconsin.gov

Safety and professional Services —
Medical Examining Board
CR 14-033

On April 17, 2014 the Medical Examining Board submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

Statutory Authority: ss. 15.08 (5) (b), 227.11 (2) (a), and 448.13, Stats.

This proposed rule-making order revises s. Med 13.06, relating to requirements for continuing education audits.

Scope

The scope statement for this rule, SS 151-13, was approved by the Governor on November 15, 2013, published in Register No. 696A on December 14, 2013, and approved by the Medical Examining Board on January 15, 2014.

Agency Procedure for Promulgation

A public hearing is required and will be held on May 21, 2014, at 1400 East Washington Avenue, Room 121A, Madison, Wisconsin (enter at 55 North Dickinson Street).

Contact Person

Shawn Leatherwood, Department of Safety and Professional Services, Division of Policy Development, (608) 261-4438, Shancethea.Leatherwood@wisconsin.gov.
Shancethea Leatherwood
Division of Policy Development
Wisconsin Department of Safety and Professional Services
P.O. Box 8366
Madison, WI 53708-8366
Office: 608-261-4438
Fax: 608-267-3816

Rule-Making Notices

Notice of Hearing

Natural Resources

Fish, Game, etc., Chs.1—

CR 14-034

(DNR # SS-04-12)

NOTICE IS HEREBY GIVEN THAT pursuant to ss. 227.16 and 227.17, Stats, the Department of Natural Resources, hereinafter the Department, will hold a public hearing on amendments to Chapter NR 40, relating to Chapter NR 40 including clarification to the language and changes to the species listed under sections NR 40.04 (2) and 40.05 (2), regarding Wisconsin's regulated invasive species list, at the time(s) and location(s) listed below.

Hearing Information

Date: Tuesday, June 17, 2014*
Time: 4:00 p.m.
Location: Wisconsin Natural Resources Building
 101 S. Webster Street
 Room G09
 Madison, WI 53707

*The public hearing on June 17, 2014 will be webcasted live for those who are unable to participate in person. To request a **webcast link**, please contact Terrell Hyde by noon on June 16, 2014, at DNRInvasiveSpecies@wisconsin.gov or by calling (608) 264-9255.

Date: Wednesday, June 18, 2014
Time: 4:00 p.m.
Location: Wisconsin Natural Resources Service Center — Green Bay
 Lake Michigan Room
 2984 Shawano Avenue
 Green Bay, WI 54313

Reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Contact Terrell Hyde, Department of Natural Resources, Bureau of Natural Heritage Conservation, 101 S. Webster St, Madison, WI, 53707-7921; by E-mail to DNRInvasiveSpecies@wisconsin.gov or by calling (608) 264-9255. A request must include specific information and be received at least 10 days before the date of the scheduled hearing.

Availability of the Proposed Rules and Fiscal Estimate

The proposed rule and supporting documents, including the fiscal estimate, may be viewed and downloaded from the Administrative Rules System Web site which can be accessed through the link <https://health.wisconsin.gov/admrules/public/Home>. If you do not have Internet access, a printed copy of the proposed rule and supporting documents, including the fiscal estimate, may be obtained free of charge by contacting Terrell Hyde, Department of Natural Resources, Bureau of Natural

Heritage Conservation, 101 S. Webster St, Madison, WI, 53707-7921; or by calling (608) 264-9255.

Submitting Comments

Comments on the proposed rule must be received on or before **June 30, 2014**. Written comments may be submitted by U.S. mail, fax, E-mail, or through the Internet and will have the same weight and effect as oral statements presented at the public hearing. Written comments and any questions on the proposed rules should be submitted to:

Terrell Hyde
 Department of Natural Resources
 Bureau of Natural Heritage Conservation
 101 S. Webster St, Madison, WI 53707-7921
 Fax: 608-266-2925
 E-mail: DNRInvasiveSpecies@wisconsin.gov
 Internet: <https://health.wisconsin.gov/admrules/public/Home>, search "SS-04-12"

Analysis Prepared by the Department of Natural Resources

Statutes interpreted

In promulgating this rule, s. 227.11 (2) (a), Wis. Stats., has been interpreted as allowing the department the authority to create and amend rules. Section 23.22 (2) (a) and (b) 6., Wis. Stats., has been interpreted as allowing the department the authority to create and amend the list of invasive species in Wisconsin and create related provisions, ch. NR 40, Wis. Admin. Code.

Statutory authority

The state statutes that authorize the promulgation of this rule are ss. 23.09 (2) (intro), 23.091, 23.11 (1), 23.22 (2) (a) and (b) 6., 23.28 (3), 27.01 (2) (j), 29.014 (1), 29.039 (1) 29.041, and 227.11 (2) (a), Wis. Stats.

Explanation of agency authority

Section 23.22 (2) (a) and (b) 6., Wis. Stats., grants rule-making authority for regulation of invasive species.

Related statutes or rules

Section 23.22 (2) (b) 6., Wis. Stats., required the department to establish an invasive species rule. Chapter NR 40, Wis. Admin. Code, provides the lists of invasive species and associated requirements for preventing the introduction and spread of invasive species.

Plain language analysis

The department's Invasive Species Team worked with the Wisconsin Invasive Species Council and affected stakeholders to review and propose revisions to ch. NR 40, Wis. Admin. Code, relating to the lists of regulated invasive species.

Revisions classify additional invasive species into existing categories established in ch. NR 40, Wis. Admin. Code, making them subject to existing administrative rules and statutes that regulate the introduction, possession, transfer, and transport of invasive species in order to prevent them from becoming established in Wisconsin or to prevent already-established invasive species from spreading within the state.

In 2009, during the public input and initial rule drafting of ch. NR 40, it was recognized that many additional species may need to be evaluated and, if appropriate, categorized and listed under this rule. Most of these species are used by some sector of society and require input from the affected stakeholders. The proposed revisions in this Board Order will add species of plants, vertebrates, and invertebrates to the invasive species rule, and will clarify rule language, facilitate compliance, and improve organization of the rule.

A summary of the proposed revisions follows, ordered by Board Order SECTION and grouped by the type of revision. Additional supporting documents including the literature reviews for each of the proposed invasive species are available on the DNR's website (dnr.wi.gov) keyword "invasives."

SECTION 1 creates a definition for crayfish in ch. NR 40.

SECTION 2 revises the following ch. NR 40 definitions:

- The definition of "disposal" is amended to include the consumption of an invasive species as food or other purposes that do not lead to the establishment, introduction, or spread of the species as disposal.
- The note under the definition of "invasive species" is amended to clarify that the definition of "invasive species" does not apply to organisms that are dead.
- The definition of "nonnative" or "nonnative species" is amended to include genetically modified (GM) variants of both native and nonnative fish and crayfish. GM fish are available for sale or may soon be available for aquaculture. Potential GM alterations, such as increased rate of growth, substantially alter how these organisms interact with the environment. The invasive species rule defines what it means to be genetically modified but does not differentiate GM fish from their parent species. Given that the risk they pose may differ, a mechanism to evaluate them separately is needed. These proposed revisions would allow for the continued sale of nonviable genetically modified aquarium fish such as the "GloFish™".
- The definitions of "nonnative fish species in the aquaculture industry" and "nonnative viable fish species in the aquarium trade" are amended to exclude GM variants of fish and crayfish of the species listed for the same reasons listed above in the "nonnative" definition amendment.
- The definition of "pet" is amended to exclude fish, crayfish and other aquatic invertebrates. Due to the risk posed by fish, crayfish and by other aquatic invertebrates the definition is revised to exclude these organisms from the exemption provided for pets.
- The definition of "species" is amended to exclude GM fish and crayfish species, cultivars, hybrids, and sub-specific taxa for the same reasons listed above in the "nonnative" definition amendment.
- The definition of "wild animal" is amended to exclude other aquatic invertebrates.

SECTIONS 2 and 30 remove eastern and western mosquitofish from the list of prohibited species under section NR 40.04 and adds them to the list of "established nonnative fish species and established nonnative crayfish species" as defined in ch. NR 40.02. "Established nonnative fish species and established nonnative crayfish species" are regulated as a restricted species under ch. NR 40.05 (c) (1). Best management practices (BMPs) to reduce the risk of importing mosquitofish (*Gambusia affinis*) have been made available, but concerns remain because the BMPs do not provide a

guarantee against possible enforcement action. In order to accommodate the use of imported bait that may be contaminated with the species, these revisions move the species from the prohibited category to the in the restricted fish category, "established nonnative fish species." This revision will not in itself authorize possession of mosquitofish, but would allow the department to permit possession in bait shipments and registered fish farm raceways, subject to specified conditions. This would enable the department to address concerns regarding the potential for dispersal of mosquitofish by bait dealers through additional requirements in permit conditions.

SECTION 3 clarifies the note on non-regulated species classification and removes the reporting and in-store education suggestions. Additionally, language on the beneficial use of non-restricted invasive species is removed as it creates the false impression that any beneficial use will exempt a species from listing.

SECTIONS 4 and 7 renumber the initial species listed in the ch. NR 40 Prohibited Category to maintain alphabetical order.

SECTIONS 5, 8, 10, 12, 15, 17, 19, 21, 23, 27, 29, 33, and 35 add new species to the ch. NR 40 Prohibited Category. The below species proposed for addition to the prohibited category are invasive species that the department has determined are likely to survive and spread if introduced into the state, potentially causing economic or environmental harm or harm to human health, but which are not found in the state or in those regions of the state where the species are listed as prohibited in s. NR 40.04 (2), with the exception of isolated individuals, small populations or small pioneer stands of terrestrial species, or in the case of aquatic species, that are isolated to a specific watershed in the state or the Great Lakes, and for which statewide or regional eradication or containment may be feasible.

- *Caulerpa taxifolia* (Killer algae)
- *Achyranthes japonica* (Japanese chaff flower)
- *Akebia quinata* (Fiveleaf akebia or Chocolate vine)
- *Arundo donax* (Giant reed)
- *Azolla pinnata* (Mosquito fern)
- *Berberis vulgaris* (Common barberry)
- *Cardamine impatiens* (Narrow leaf bittercress)
- *Celastrus loeseneri* (Asian loeseneri bittersweet)
- *Centaurea diffusa* (Diffuse knapweed)
- *Centaurea repens* (Russian knapweed)
- *Digitalis lanata* (Grecian foxglove)
- *Dioscorea batatas* or *Dioscorea polystacha* (Chinese yam)
- *Eichhornia azurea* (Anchored water hyacinth)
- *Eichhornia crassipes* (Water hyacinth, floating)
- *Fallopia x bohemicum* or *F. x bohemia* or *Polygonum x bohemicum* (Bohemian knotweed)
- *Glossostigma cleistanthum* (Mudmat)
- *Hydrocotyle ranunculoides* (Floating marsh pennywort)
- *Hygrophila polysperma* (Indian swampweed)
- *Impatiens glandulifera* (Policeman's helmet)
- *Ipomoea aquatica* (Water spinach)
- *Limnophila sessiliflora* (Asian marshweed)
- *Linaria dalmatica* (Dalmatian toadflax) except in Juneau and Bayfield counties
- *Lythrum virgatum* (Wanded loosestrife)

- *Nelumbo nucifera* (Sacred lotus)
- *Oenanthe javanica* (Java waterdropwort or Vietnamese parsley)
- *Oplismenus hirtellus ssp. undulatifolius* (Wavy leaf basket grass)
- *Ottelia alismoides* (Ducklettuce)
- *Petasites hybridus* (Butterfly dock)
- *Phellodendron amurense* (Amur cork tree) except male cultivars and seedling rootstock
- *Pistia stratiotes* (Water lettuce)
- *Ranunculus ficaria* (Lesser celandine)
- *Rubus armeniacus* (Himalayan blackberry)
- *Sagittaria sagittifolia* (Hawaii arrowhead)
- *Salvinia herzogii* (Giant salvinia)
- *Salvinia molesta* (Giant salvinia)
- *Solidago sempervirens* (Seaside goldenrod) except in Kenosha, Milwaukee and Racine counties
- *Sorghum halepense* (Johnsongrass)
- *Stratiotes aloides* (Water soldiers)
- *Taeniatherum caput–medusae* (Medusahead)
- *Tussilago farfara* (Colt’s foot)
- *Typha domingensis* (Southern cattail)
- *Typha laxmannii* (Graceful cattail)
- *Wisteria floribunda* (Japanese wisteria)
- *Wisteria sinensis* (Chinese wisteria)
- *Dikergammarus villosus* (Killer shrimp)
- *Melanoides tuberculata* (Malaysian trumpet snail)
- *Dendroctonus ponderosae* (Mountain pine beetle)
- *Geosmithia morbida* (Thousand cankers disease of walnut)
- *Grosmannia clavigera* (Blue stain fungus)
- *Ophiostoma montium* (Blue stain fungus)
- *Pityophthorus juglandis* (Walnut twig beetle)
- *Myocastor coypus* (Nutria)

SECTIONS 6 and 43 clarify that certain invasive plants are listed under both the prohibited and restricted categories in ch. NR 40. These plant species are sometimes called split listed plants. Split listed plants are currently isolated to a specific region in the state but if introduced into other parts of the state are likely to survive and spread, potentially causing significant environmental or economic harm or harm to human health. These plants are regulated as restricted in the counties listed that have known populations and are prohibited elsewhere in the state.

SECTIONS 9, 11, 14, 18, 20, 22, and 28 update the list of county exceptions for split listed plants in the ch. NR 40 Prohibited Category. Species are restricted in the listed counties and are prohibited elsewhere.

- *Anthriscus sylvestris* (Wild chervil) except in Adams, Barron, Crawford, Columbia, Dane, Dodge, Fond du Lac, Green, Green Lake, Iowa, Jefferson, Juneau, Kenosha, Lacrosse, Lafayette, Marquette, Milwaukee, Monroe, Ozaukee, Polk, Racine, Richland, Rock, Sauk, Sheboygan, Taylor, Vernon, and Walworth, Waukesha, and Washington counties
- *Bunias orientalis* (Hill mustard) except in Dane, Grant, Green, Iowa, and Lafayette, and Rock counties
- *Cirsium palustre* (European marsh thistle) except in Ashland, Bayfield, Chippewa, Clark, Door, Florence,

Forest, Iron, Langlade, Lincoln, Marathon, Marinette, Menominee, Oconto, Oneida, Price, Rusk, Sawyer, Shawano, Taylor and Vilas counties

- *Conium maculatum* (Poison hemlock) except in Crawford, Dane, Grant, Green, Iowa, Jefferson, Kenosha, Lafayette, Milwaukee, Ozaukee, Racine, Richland, Rock, and Sauk, Sheboygan, Walworth, and Waukesha counties
- *Epilobium hirsutum* (Hairy willow herb) except in Brown, Calumet, Door, Kenosha, Kewaunee, and Manitowoc county counties
- *Glyceria maxima* (Tall or reed mannagrass) except in Brown, Calumet, Columbia, Dane, Dodge, Door, Fond du Lac, Green, Jefferson, Kenosha, Kewaunee, Manitowoc, Milwaukee, Outagamie, Ozaukee, Racine, Rock, Sheboygan, Walworth, Washington, Waukesha and Winnebago counties
- *Humulus japonicus* (Japanese hops) except in Buffalo, Crawford, Dane, Grant, Green, Iowa, Jackson, La Crosse, Lafayette, Monroe, Pepin, Richland, Sauk, Trempealeau, and Vernon counties
- *Leymus arenarius* or *Elymus arenarius* (Lyme grass or sand ryegrass) except in Door, Kenosha, Kewaunee, Manitowoc, Milwaukee, Ozaukee, Racine, and Sheboygan counties
- *Torilis japonica* (Japanese hedgeparsley or erect hedgeparsley) in Ashland, Barron, Bayfield, Buffalo, Burnett, Chippewa, Clark, Douglas, Dunn, Eau Claire, Florence, Forest, Iron, Jackson, Lincoln, Oneida, Pepin, Pierce, Polk, Price, Rusk, St. Croix, Sawyer, Trempeleau, Taylor, Washburn, and Wood except in Adams, Brown, Calumet, Columbia, Crawford, Dane, Dodge, Door, Fond du Lac, Grant, Green, Green Lake, Iowa, Jefferson, Juneau, Kenosha, Kewaunee, La Crosse, Lafayette, Langlade, Manitowoc, Marathon, Marinette, Marquette, Menominee, Milwaukee, Monroe, Oconto, Outagamie, Ozaukee, Portage, Racine, Richland, Rock, Sauk, Shawano, Sheboygan, Vernon, Walworth, Washington, Waukesha, Waupaca, Waushara, and Winnebago counties

SECTIONS 13 and 34 remove the following species from the ch. NR 40 Prohibited Category.

- *Chelidonium majus* (Celandine), a split listed plant, is proposed to be listed in the Restricted Category statewide.
- *Agrilus planipennis* (Emerald ash borer) is proposed to be moved from the Prohibited Category to the Restricted Category.
- *Cryptococcus fagisuga* (Scale associated with beech bark disease) is proposed for delisting from both of Wisconsin’s regulated invasive species lists.

SECTIONS 16, 24, 25, and 26 revise scientific and common names in the ch. NR 40 Prohibited Category to include accepted synonyms. Giant knotweed is renumbered to maintain alphabetical order.

- *Dioscorea oppositifolia* (Chinese Indian yam)
- *Egeria densa* (Brazilian waterweed or wide-leaf anacharis)
- *Polygonum perfoliatum* or *Persicaria perfoliata* (Mile–a–minute vine)
- *Fallopia sachalinensis* or *Polygonum sachalinense* (Giant knotweed)
- *Pueraria montana* or *P. lobata* (Kudzu)

SECTIONS 31 and 32 simplify the rule language and facilitate compliance by removing the list of nonviable fish

species the department has determined to date and by referencing the definition of nonviable. The department has a definition of nonviable and a protocol for determining if a fish is nonviable.

SECTIONS 35 and 65 clarify that the department has made the formal determination that compliance with the conditions of permits issued for activities in navigable waters (Chapters 30 and 31, Wis. Stats.), constitute reasonable precautions as defined in NR40 that will prevent the spread of prohibited and restricted invasive species.

SECTIONS 36 and 66 clarify that the exemption for pets only applies to pets obtained prior to their being listed as prohibited and restricted and the exemption would not allow for possession of offspring covered under the exemption to be transferred, except as a gift for restricted species only.

SECTIONS 37 and 67 remove the unnecessary note defining “wild animal” as it is already defined in s. NR 40.02 of this chapter.

SECTIONS 38, 39, 68, and 69 clarify that the transport, possession, transfer, or introduction of forest pests under quarantine is allowed within quarantine zones. Both prohibited and restricted forest pests may be subject to quarantine zones. If a quarantine is in effect, the intent of the invasive species rule in restricting the movement of invasive species has been met. Revisions specify that if movement of regulated materials such as untreated wood is taking place within a quarantine zone then the invasive species rule does not apply.

SECTIONS 40 and 75 update the list of DNR reporting and permitting contacts to a single “Statewide Invasive Species Coordinator, SS/7” in Wisconsin’s regulated invasive species rule to simplify the reporting and permitting process and to enable the department to issue and monitor permits and reports statewide.

SECTIONS 41 and 74 create an exemption for the department staff to transport, possess, transfer, or introduce a regulated invasive plant, in the performance of their official duties.

SECTIONS 42, 70, 71, and 72 remove reporting requirement for restricted aquatic plants, algae and cyanobacteria and would allow the use of any restricted aquatic/wetland plants for identification, education, control, or disposal without a permit.

SECTIONS 44 and 62 renumber the initial species listed in the ch. NR 40 Restricted Category to maintain alphabetical order

SECTIONS 45, 47, 49, 51, 53, 55, 57, 59, 61, and 63 add new species to the ch. NR 40 Restricted Category. The below species proposed for addition to the restricted category are invasive species that the department has determined are already established in the state or in that region of the state where the species are listed as restricted in s. NR 40.05 (2) and that causes or has the potential to cause economic or environmental harm or harm to human health, and for which statewide or regional eradication or containment may not be feasible. Plants proposed for addition to the restricted list will have the rule’s effective date listed, added by the Legislative Reference Bureau when the rule is published. Restricted plants not also listed as prohibited under s. NR 40.04 (2) (b) and located in Wisconsin prior to the date the species is listed in s. NR 40.05 (2) may be transported, transferred, and introduced without a permit for a period not to exceed 3 years for herbaceous plants and woody vines, or 5 years for trees

and shrubs, from the time that the species were included for listing by the department under this chapter.

- *Acer tataricum subsp. ginnala* (Amur maple) except all cultivars
- *Aegopodium podagraria* (Bishop’s goutweed)
- *Alnus glutinosa* (Black alder) except all cultivars and hybrids
- *Artemisia absinthium* (Wormwood)
- *Berberis thunbergii* (Japanese barberry). This restriction only applies to the parent type, the variety *atropurpurea*, the hybrid of *B. thunbergii* x *B. Koreana*, and the following cultivars. *Berberis thunbergii* cultivars: Sparkle, ‘Anderson’ Lustre Green™, Erecta, ‘Bailgreen’ Jade Carousel®, Angel Wings, Painter’s Palette, Inermis (‘Thornless’), Pow Wow, Golden Ring, Kelleriis, Kobold, ‘JN Variegated’ Stardust™ and Antares. Variety *atropurpurea* cultivars: Marshall Upright (‘Erecta’), Crimson Velvet, ‘Bailtwo’ Burgundy Carousel®, Red Rocket, ‘Monomb’ Cherry Bomb™, ‘Bailone’ Ruby Carousel®, JN Redleaf, Rose Glow and Silver Mile. Hybrid of *B. thunbergii* x *B. koreana* cultivars: Tara and ‘Bailsel’ Golden Carousel®.
- *Caragana arborescens* (Siberian peashrub) except the cultivars Lorbergii, Pendula, and Walkerii
- *Centaurea jacea* (Brown knapweed)
- *Centaurea nigra* (Black knapweed)
- *Centaurea nigrescens* (Tyrol knapweed)
- *Coronilla varia* (Crown vetch)
- *Euonymus alatus* (Burning bush) including the cultivar ‘Nordine’ and excluding all other cultivars
- *Filipendula ulmaria* (Queen of the meadow)
- *Galium mollugo* (White bedstraw)
- *Impatiens balfourii* (Balfour’s touch–me–not)
- *Iris pseudacorus* (Yellow iris)
- *Knautia arvensis* (Field scabiosa)
- *Linaria dalmatica* (Dalmation toadflax) in Juneau and Bayfield counties
- *Lysimachia nummularia* (Moneywort) except the cultivar Aurea
- *Lysimachia vulgaris* (Garden yellow loosestrife)
- *Morus alba* (White mulberry) except male cultivars
- *Myosotis scorpioides* (Aquatic forget–me–not)
- *Myosotis sylvaticum* (Woodland forget–me–not)
- *Najas marina* (Spiny naiad)
- *Phalaris arundinacea* var. *picta* (ribbon grass or gardener’s garters) and other ornamental variegated varieties and cultivars. This restriction only applies to the ornamental variegated varieties and cultivars of *Phalaris arundinacea* and does not include the parent type reed canary grass.
- *Pimpinella saxifraga* (Scarlet pimpernel)
- *Populus alba* (White poplar)
- *Robinia hispida* (Rose acacia)
- *Robinia pseudoacacia* (Black locust) except all cultivars
- *Solidago sempervirens* (Seaside goldenrod) in Kenosha, Milwaukee and Racine counties
- *Ulmus pumila* (Siberian elm) except hybrids and individuals used as rootstock
- *Valeriana officinalis* (Garden heliotrope)

- *Cipangopaludina japonica* (Japanese trapdoor snail or Japanese mystery snail)
- *Valvata piscinalis* (European valve snail)
- *Viviparus georgianus* (Banded mystery snail)
- *Agrilus planipennis* (Emerald ash borer)

SECTIONS 46, 48, 50, 52, 54, 56, and 60 update the list of counties with restricted designations for species in the ch. NR 40 Restricted Category (prohibited elsewhere in the state):

- *Anthriscus sylvestris* (Wild chervil) in Adams, Barron, Crawford, Columbia, Dane, Dodge, Fond du Lac, Green, Green Lake, Iowa, Jefferson, Juneau, Kenosha, Lacrosse, Lafayette, Marquette, Milwaukee, Monroe, Ozaukee, Polk, Racine, Richland, Rock, Sauk, Sheboygan, Taylor, Vernon, and Walworth, Waukesha, and Washington counties
- *Bunias orientalis* (Hill mustard) in Dane, Grant, Green, Iowa, and Lafayette, and Rock counties
- *Chelidonium majus* (Celandine) ~~except in Ashland, Barron, Bayfield, Burnett, Chippewa, Douglas, Dunn, Florence, Forest, Iron, Langlade, Lincoln, Marinette, Oconto, Oneida, Polk, Price, Rusk, St. Croix, Sawyer, Taylor, Vilas and Washburn~~ counties
- *Conium maculatum* (Poison hemlock) in Crawford, Dane, Grant, Green, Iowa, Jefferson, Kenosha, Lafayette, Milwaukee, Ozaukee, Racine, Richland, Rock, and Sauk, Sheboygan, Walworth, and Waukesha counties
- *Epilobium hirsutum* (Hairy willow herb) in Brown, Calumet, Door, Kenosha, Kewaunee, and Manitowoc county counties
- *Glyceria maxima* (Tall or reed mannagrass) in Brown, Calumet, Columbia, Dane, Dodge, Door, Fond du Lac, Green, Jefferson, Kenosha, Kewaunee, Manitowoc, Milwaukee, Outagamie, Ozaukee, Racine, Rock, Sheboygan, Walworth, Washington, Waukesha and Winnebago counties
- *Humulus japonicus* (Japanese hops) in Buffalo, Crawford, Dane, Grant, Green, Iowa, Jackson, La Crosse, Lafayette, Monroe, Pepin, Richland, Sauk, Trempealeau, and Vernon counties
- *Leymus arenarius* or *Elymus arenarius* (Lyme grass or sand ryegrass) in Door, Kenosha, Kewaunee, Manitowoc, Milwaukee, Ozaukee, Racine, and Sheboygan counties
- *Torilis japonica* (Japanese hedgeparsley or erect hedgeparsley) ~~except in Ashland, Barron, Bayfield, Buffalo, Burnett, Chippewa, Clark, Douglas, Dunn, Eau Claire, Florence, Forest, Iron, Jackson, Lincoln, Oneida, Pepin, Pierce, Polk, Price, Rusk, St. Croix, Sawyer, Trempealeau, Taylor, Washburn, and Wood~~ in Adams, Brown, Calumet, Columbia, Crawford, Dane, Dodge, Door, Fond du Lac, Grant, Green, Green Lake, Iowa, Jefferson, Juneau, Kenosha, Kewaunee, La Crosse, Lafayette, Langlade, Manitowoc, Marathon, Marinette, Marquette, Menominee, Milwaukee, Monroe, Oconto, Outagamie, Ozaukee, Portage, Racine, Richland, Rock, Sauk, Shawano, Sheboygan, Vernon, Walworth, Washington, Waukesha, Waupaca, Waushara, and Winnebago counties

SECTION 58 revises scientific names in the ch. NR 40 Restricted Category to include accepted synonyms and renumbers to maintain alphabetical order.

- *Fallopia japonica* var. *japonica* or *Polygonum cuspidatum* (Japanese knotweed)

SECTION 61 adds viable genetically modified fish species to the list of restricted species.

SECTION 64 removes the red-eared slider with a carapace (top shell) less than 4 inches from the ch. NR 40 Restricted Category as the sale of turtles of the size are already banned via Code of Federal Regulation — Title 21.

SECTION 73 removes the rusty crayfish from the list of species that may be transported, possessed, or transferred without a permit. Additionally this section clarifies that the rusty crayfish may be taken from the Mississippi River for use as bait on the Mississippi River as authorized under s. NR 19.27 (4) (a) 1. a. While rusty crayfish (*Orconectes rusticus*) are abundant in many lakes, there are many lakes that are free of this species and their movement should be limited as with other restricted species. This revision will allow live crayfish to be used as bait on the Mississippi River as per ch. NR 19 and will eliminate the exemption that allows live rusty crayfish to be transported.

SECTION 74 clarifies rule language pertaining to dead crayfish as bait, and creates a phase out period for restricted plants to facilitate compliance. The department exemption is explained with SECTION 41.

- The use of dead crayfish, including rusty crayfish, on all waters as bait are not prohibited under ch. NR 40, but may be restricted under other applicable department rules relating to the use of bait for fishing purposes.
- A phase out period for restricted plants is created, where they may be transported, transferred, and introduced without a permit for a period not to exceed 3 years for herbaceous plants and woody vines, or 5 years for trees and shrubs, from the time that the species was added to the ch. NR 40 Restricted Category. All plants listed in the ch. NR 40 Prohibited Category are not included in this exemption. Plants added to the restricted list after 2009 have the rule's effective date listed. All plants without an effective date have been restricted since 2009 and remain restricted. Growing out potted trees and shrubs to a marketable size takes several years. When new species that are grown commercially in Wisconsin are added to the invasive species rule, businesses that have these species in inventory may have several years invested in their production. A phase out period for newly listed, restricted plants will reduce the burden for businesses to comply with the invasive species rule. As a similar but shorter investment may be made in planting crops for seed production or herbaceous perennial plants, a two tiered 3 and 5 year phase out period is proposed. This phase out applies only to restricted plants, not prohibited or split-listed species.

SECTION 76 updates the department's website address.

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

There are no known proposed federal regulations that would provide the ability for the state to act when newly establishing invasive species are discovered. Existing regulations address a narrow subset of noxious weeds under the Federal Noxious Weed Act (7 U.S.C. 2801 et seq; 88 Stat, 2148) or animals under the Lacey Act (18 U.S.C. 42–43, 16 U.S.C. 3371–3378), primarily species that are already too widespread for a more cost-effective prevention approach.

Comparison with rules in adjacent states

- Illinois: The Illinois Department of Agriculture maintains a statutory list under Illinois Noxious Weed

- Law of about 9 species (www.agr.state.il.us/Laws/Regs/8iac220.pdf) and the Illinois Department of Natural Resources links to a more comprehensive list of 102 invasive species and a shorter list of plants, animals, insects and diseases (www.invasive.org/illinois/SpeciesofConcern.html).
- Iowa: Regulates several species of aquatic invasive plants, aquatic invasive invertebrates, and invasive fish (www.iowadnr.gov/idnr/Fishing/AboutFishinginIowa/FightingInvasiveSpecies/AquaticInvasiveInvertebrates.aspx)
 - Michigan: Regulates a number of invasive aquatic plants — 18, fish — 12 plus all snakeheads, and other animals — 11 through Act 451 and requires prevention actions especially for aquatic invasive species ([www.legislature.mi.gov/\(S\(brw3y4554cagkv4554a24a45\)\)/documents/mcl/pdf/mcl-451-1994-iii-2-1-wildlife-conservation-413.pdf](http://www.legislature.mi.gov/(S(brw3y4554cagkv4554a24a45))/documents/mcl/pdf/mcl-451-1994-iii-2-1-wildlife-conservation-413.pdf))
 - Minnesota: Regulates both aquatic and terrestrial invasive species in a process similar to Wisconsin with prohibited, restricted, and non-regulated categories as well as prevention requirements including regulating the transport of water. The species regulated as prohibited include aquatic plants — 14 plus all federally listed species except *Ipomoea aquatica*, fish — 14, aquatic invertebrates — 5, mammals — 4. The species regulated as restricted include aquatic plants — 6, birds — 3, fish — 5, and aquatic invertebrates — 3. In addition all crayfish are regulated.

Summary of factual data and analytical methodologies

Following the enactment of ch. NR 40, Wis. Adm. Code, in September of 2009, a list of species remained in need of assessment. These species and additional species presented to the department formed the list of species considered during ch. NR 40 revisions. For each considered species, department staff completed a literature review to establish the potential ecological and economic threats presented by the species.

In 2012, at the request of the Wisconsin Invasive Species Council, species assessment groups (SAGs) convened with the charge of recommending a regulatory category (Prohibited or Restricted) or non-regulatory category (Caution, Pending, Non-restricted, or not invasive) for each considered species to the Council. SAGs are comprised of taxa experts representing governmental, industrial, environmental, educational, and scientific organizations. SAGs are facilitated by DNR staff species experts. Each group utilized the completed literature reviews and professional expert knowledge of the species to make their determinations. The literature reviews are available for review.

For the revision process, eleven SAGs were formed:

1. Terrestrial Plants: Trees, Shrubs and Vines
2. Terrestrial Plants: Ornamental Forbs and Grasses
3. Terrestrial Plants: Other Forbs and Grasses
4. Terrestrial Plants: Forage, Turf and Biofuels
5. Aquatic Plants, Algae and Cyanobacteria
6. Aquatic Invertebrates (besides crayfish)
7. Fish and Crayfish
8. Plant Pests
9. Terrestrial Invertebrates
10. Vertebrates (except fish)

11. Fish and Wildlife Diseases (Funguses)

After complete review of the species at hand, each SAG formalized a recommended designation for each species via Species Assessment Group Forms. These forms are available for review. On October 22, 2012 the SAGs presented their recommendations to the Wisconsin Invasive Species Council. The Council subsequently voted and approved the SAG recommendations with minor amendments. The Council then advised the DNR to consider the Council recommendations to revise the invasive species rule.

DNR staff experts on the department Invasive Species Team met in 2012 to consider language changes that were needed in the rule to clarify meaning, ensure consistency with existing rules, and assure practicality of the rule. These language changes were developed with input from SAG groups and industry experts as appropriate and are reflected in the board packet. An overview of these changes was presented to the Council for review and to solicit feedback.

In the winter of 2012–2013, DNR staff presented the Council’s recommendations to the public in a series of informal public meetings. The department concurrently solicited public comments from scientific and industry partners as well as the general public. In the spring and summer of 2013 DNR staff used these comments and additional research to further refine DNR’s recommended amendments to the rule.

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

Pursuant to s. 227.127, Wis. Stats., the department is required to solicit comments on the economic impact of a proposed rule. Small businesses, as defined in s. 227.114 (1), Wis. Stats., were asked to identify themselves as a small business in their comments. Following the public comment period on the economic impacts, a revised “Fiscal Analysis and Economic Impact Analysis” (EIA) was prepared containing relevant information that the department received. The department will submit the rule package and economic impact analysis to the Wisconsin Legislative Council under s. 227.15, Wis. Stats., along with the public hearing notice in accordance with ss. 227.17 and 227.18, Wis. Stats.

A small business regulatory flexibility analysis that contains the following provisions in s. 227.19 (3) (e), Stats., will be included in the final rule order:

1. The agency’s reason for including or failing to include in the proposed rule any of the methods specified under s. 227.114 (2), Wis. Stats., for reducing its impact on small businesses.
2. A summary of the issues raised by small businesses during the hearings on the proposed rule, any changes in the proposed rule as a result of alternatives suggested by small businesses and the reasons for rejecting any alternatives suggested by small businesses.
3. The nature of any reports and the estimated cost of their preparation by small businesses that must comply with the rule.
4. The nature and estimated cost of other measures and investments that will be required of small businesses in complying with the rule.
5. The additional cost, if any, to the agency of administering or enforcing a rule which includes any of the methods specified under s.227.114 (2), Wis. Stats.

6. The impact on public health, safety and welfare, if any, caused by including in the rule any of the methods specified under s 227.114 (2), Wis. Stats.

The department's email distribution list used to solicit comments includes small businesses and small business associations. The distribution list will be available upon request to the Governor's Office of Regulatory Compliance.

Effect on Small Businesses

We expect considerable interest in the proposed rule revisions. Interested parties may include the nursery, landscape, forestry, seed and agriculture industries, fish farmers, bait dealers, commercial fishers and wholesale fish dealers, aquarium and ornamental fish dealers, game farms, anglers, landowners, gardeners, county and municipal governments, Native American Indian tribes, lake districts, state agencies, and environmental and conservation organizations.

The Wisconsin Invasive Species Council reviewed and assessed a list of species for inclusion in the proposed rule revision and actively engaged their contacts in the process. The Council includes representatives the Departments of Natural Resources; Administration; Agriculture, Trade and Consumer Protection; Tourism; Transportation and seven other Council members that are drawn from agriculture; nursery industry; NGOs (TNC); UW; and forestry.

As part of the information gathering and outreach process, Invasive Species Outreach Specialist Chrystal Schreck sent a letter to 600 retailers and growers and approximately 1100 licensed growers and dealers from the November 2, 2012 DATCP list of license holders updating them on the process in December, 2012. A series of informal public information sessions about the proposed changes to the rule were held from February 25 — March 15 in Madison, Milwaukee, Spooner, Rhinelander, and La Crosse to inform interested parties that the revisions were under development and to solicit informal comments on the potential impact of the rule. Approximately 41 people attended, and 52 public comments have been received during the informal discussion period.

For small businesses growing woody plants, a number of years have been invested into the infrastructure to grow particular species. To minimize economic impact of listing new species that are invasive in Wisconsin a phase out period of 5 years for trees and shrubs, and 3 years for all other plants once listed as Restricted would both reduce the economic impact and provide a defined period for achieving compliance without using permits for commercial activities. The compliance period would begin once the rule is in effect. Prohibited species would be immediately subject to regulation.

Through staff work with pet stores and other small businesses that had not previously been regulated by the DNR we learned that personal communication, clear and concise guides to regulated species, and education were important. Ensuring personal contact and taking an "education first" approach is consistent with DNR's policy of stepped enforcement and will be maintained for all taxa groups regulated under the invasive species rule.

Enforcement and administration for the invasive species rule and permits are already in place. Some changes due to the increased number of species requiring review and training for identification are anticipated but cost are expected to be absorbed within existing DNR budgets and by DATCP staff who enforce provisions of the rule at licensed nurseries. Staff

from both agencies have met and developed guidelines to continue a partnership of joint and cooperative enforcement. Management costs may rise with the addition of new species to the list but as the options for cost-sharing for control have not been funded in the past, it is unlikely that there will be any discernible operational impact. The policy of stepped enforcement is compatible with the changes proposed to the rule as "education first" is the priority for compliance.

Effect on local governmental units

Pursuant to s. 227.137 Wis. Stats., the department solicited comments on the economic impact of the proposed rule, and coordinated with local governments that requested in the preparation of an Economic Impact Analysis (EIA). The Village of Cecil requested the department coordinate with them in preparation of the EIA. Department staff have been in consultation with the Village President.

Summary of expected economic and fiscal impacts

The economic cost of listing a species is highly dependent on the impact it is having now, how wide spread it already is, how it is currently being used in trade, and the availability of species that can be substituted for the proposed species. The assumption of a significant impact is a conservative estimate that does not generally take into account the availability of substitute non-invasive species or the value of preventing the introductions of invasive species. The impact of removing newly regulated organisms from trade has a potentially high short term impact. It is anticipated that businesses will substitute alternative, non-invasive species over time. The high estimate also reflects the diversity of species under assessment, as well as the fact that a number of these species may be used by various sectors of society. During the species assessment process, the economic costs and benefits were discussed for each species considered for inclusion in the rule revisions. Certain species may have larger potential economic impacts than others and will be highlighted in the discussion that follows.

Summary of expected benefits of revisions to the rule

Updating the regulated list of invasive species under ch. NR 40 to include species that if removed from trade, or subject to reasonable precautions to prevent their spread can be contained, slowed, or prevented from establishing in Wisconsin reduces the ecological and economic harm caused by these invasive species in the future. Listing species under the invasive species rule encourages action across jurisdictions and can focus control and containment efforts, improving their effectiveness. Invasive species are species that are non-native to Wisconsin and cause or have the potential to cause economic or environmental harm or harm to human health. By regulating these species that have been identified as causing or potentially causing harm and that have the potential to be controlled through regulation the intent is to create the largest possible benefit to both the economy and the department's mission to protect and manage the resources of the state. These rule revisions provide valuable economic benefits by reducing future control and management costs for regulated invasive species.

The alternative considered in the detailed Economic Impact Analysis report is not listing additional invasive species for regulation. Past efforts to quantify where the economic impact from controlling invasive species falls have identified that individual landowners generally bear the highest cost to mitigate the damage these species cause while the economic benefits of continued use of a species are limited

to a much smaller contingent. The distributed impact of not listing species that are invasive species is likely to be greater.

Long range projections

The long range economic impacts include control costs, costs to comply with both the list of regulated species and with the required reasonable precautions, and increased enforcement burdens. The control costs for prohibited species where control is required when feasible will increase somewhat with the increased number of species listed as some of these species are likely to be introduced to Wisconsin and spread. However, it is anticipated that with a changing climate, continually increasing trade and exchange of materials, and the dispersal from populations already established, that the cost to control invasive species in Wisconsin will increase independent of the proposed regulation, and that regulation will reduce the number of these species being introduced.

The increased number of regulated species will reduce or eliminate those particular species in trade without restricting commerce overall since substitution of non-regulated species is likely. The long range implications for businesses are generally low as the initial cost to remove a species from sale and develop sources and propagation methods for substitute species will occur over a 1–7 year period and not reoccur. Costs to comply with reasonable precautions will be ongoing and are likely to decrease with time as new methods and tools increase the efficiency of these actions. The required reasonable precautions will continue to have benefits by reducing the likelihood that multiple species will spread through known pathways such as mowing equipment, forestry activities, boating, and nursery sales. The benefits of preventing the spread of invasive species will continue as long as the requirement to employ reasonable precautions remains in place.

The increased enforcement burden will require that both Department of Natural Resources and Department of Agriculture, Trade and Consumer Protection staff will spend more time reviewing and learning the listed species and working with regulated parties. It is anticipated that these increased costs will be absorbed by the existing staff and program.

The 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

adoption of the proposed rules would not involve significant adverse environmental effects and would not need an environmental analysis under ch. NR 150, Wis. Adm. Code. However, based on comments received, an environmental analysis may be prepared before proceeding. This analysis would summarize the Department's consideration of the impacts of the proposal and any reasonable alternatives.

Fiscal Estimate Summary

The economic cost of listing a species is highly dependent on the impact it is having now, how wide spread it already is, how it is currently being used in trade, and the availability of species that can be substituted for the proposed species. The assumption of a significant impact is a conservative estimate that does not generally take into account the availability of substitute non-invasive species or the value of preventing the introductions of invasive species. The impact of removing newly regulated organisms from trade has a potentially high short term impact. It is anticipated that businesses will substitute alternative, non-invasive species over time. The high estimate also reflects the diversity of species under assessment, as well as the fact that a number of these species may be used by various sectors of society. During the species assessment process, the economic costs and benefits were discussed for each species considered for inclusion in the rule revisions.

To determine implementation and compliance costs expected to be incurred, DNR Invasive Species Team staff and Wisconsin Invasive Species Council members compiled a list of individuals and organizations who might be economically impacted by the proposed rule revisions or were affected by invasive species. Types of positive and negative effects from both regulating and not regulating were identified along with a method on how they might be quantified. Given the unknowns and the complexity of assessing the impacts, a relative impact of low-moderate-high (L/M/H) was determined. The economic cost of listing a species is highly dependent on its commercial uses, distribution, response to control tools currently available, level of impact, management needs, etc.

Agency Contact Person

Dreux Watermolen, Section Chief, Social Science Services
Section, 101 S. Webster St., P.O. Box 7921 SS/7, Madison,
WI 53707–7921. (608) 266–8931,
Invasive.Species@Wisconsin.gov.

STATE OF WISCONSIN
DEPARTMENT OF ADMINISTRATION
DOA–2049 (R03/2012)

DIVISION OF EXECUTIVE BUDGET AND FINANCE
101 EAST WILSON STREET, 10TH FLOOR
P.O. BOX 7864
MADISON, WI 53707–7864
FAX: (608) 267–0372

ADMINISTRATIVE RULES

Fiscal Estimate & Economic Impact Analysis

1. Type of Estimate and Analysis

Original Updated Corrected

2. Administrative Rule Chapter, Title and Number

Chapter NR 40, Invasive Species Identification, Classification and Control

3. Subject

Revisions to classify additional invasive species into existing categories established in NR 40, address accomodations to facilitate compliance with NR 40, clarify language, and improve organization of the rule.

4. Fund Sources Affected

GPR FED PRO PRS SEG SEG-S

5. Chapter 20, Stats. Appropriations Affected

6. Fiscal Effect of Implementing the Rule

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

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

State's Economy Specific Businesses/Sectors
 Local Government Units Public Utility Rate Payers
 Small Businesses (if checked, complete Attachment A)

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

Yes No

9. Policy Problem Addressed by the Rule

Revisions of NR 40 will classify additional invasive species into existing categories established in ch. NR 40, Wis. Admin. Code, making them subject to existing administrative rules and statutes that regulate the introduction, possession, transfer, and transport of invasive species in order to prevent them from becoming established in Wisconsin or to prevent already-established invasive species from spreading with in the state.

When ch. NR 40 became effective Sept. 1, 2009, a number of invasive species were not included pending additional assessment. During the public input and drafting processes for the 2009 rule, it was recognized that many additional species may need to be evaluated and, if appropriate, categorized and listed under this rule. Most of these species are used by some sector of society and we need to get input from the affected stakeholders. The requested current rule change will add species of terrestrial plants, aquatic plants, vertebrates, and both terrestrial and aquatic invertebrates to the invasive species rule. Other proposed revisions will facilitate compliance with NR 40, clarify language, and improve organization of the rule.

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

Affected parties may include the nursery, landscape, forestry, seed and agriculture industries, fish farmers, bait dealers, commercial fishers and wholesale fish dealers, aquarium and ornamental fish dealers, game farms, anglers, landowners, gardeners, county and municipal governments, Native American Indian tribes, lake districts, state agencies, and environmental and conservation organizations.

The Wisconsin Invasive Species Council reviewed and assessed a list of species for inclusion in the proposed rule revision and actively engaged their contacts in the process. The Council includes representatives the Departments of Natural Resources; Administration; Agriculture, Trade and Consumer Protection; Commerce; Tourism; Transportation and seven other Council members that are drawn from agriculture; nursery industry; NGOs (TNC); UW; and forestry.

As part of the information gathering and outreach process, a letter was sent to 600 retailers and growers and approximately 1,100 licensed growers and dealers from the November 2, 2012 DATCP list of license holders updating them on the process in December 2012. A series of informal public information sessions about the proposed changes to the rule were held from February 25 – March 15 in Madison, Milwaukee, Spooner, Rhinelander, and La Crosse to inform interested parties that the revisions were under development and to solicit informal comments on the potential impact of the rule. Approximately 41 people attended and 52 public comments were received during the informal discussion period.

Between October 28 and December 31, 2013, the department solicited comments on the economic impact of the proposed rule revision. The preliminary Fiscal Estimate and Economic Impact Analysis were updated based on the economic comments received.

Prompted by public comments received on the economic impacts of the proposed rule changes, it was determined that the plant bittercress (*Cardamine hirsuta*) does not meet the definition of prohibited under NR 40 because eradication and containment is not feasible. This plant was removed from the proposed list of prohibited species included in the initial board order.

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

Pursuant to s. 227.137 Wis. Stats., the department solicited comments on the economic impact of the proposed rule, and coordinated with local governments that requested in the preparation of an Economic Impact Analysis (EIA). The Village of Cecil requested the department coordinate with them in preparation of the EIA. Department staff have been in consultation with the Village President.

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

The economic cost of listing a species is highly dependent on the impact it is having now, how wide spread it already is, how it is currently being used in trade, and the availability of species that can be substituted for the proposed species. The assumption of a significant impact is a conservative estimate that does not generally take into account the availability of substitute non-invasive species or the value of preventing the introductions of invasive species. The impact of removing newly regulated organisms from trade has a potentially high short term impact. It is anticipated that businesses will substitute alternative, non-invasive species over time. The high estimate also reflects the diversity of species under assessment, as well as the fact that a number of these species may be used by various sectors of society. During the species assessment process, the economic costs and benefits were discussed for each species considered for inclusion in the rule revisions. Certain species may have larger potential economic impacts than others and will be highlighted in the discussion that follows.

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

Updating the regulated list of invasive species under NR 40 to include species that if removed from trade, or subject to reasonable precautions to prevent their spread can be contained, slowed, or prevented from establishing in Wisconsin reduces the ecological and economic harm caused by these invasive species in the future. The Wisconsin Invasive Species Council and the DNR's Strategic Plan for Invasive species estimated financial impacts of invasive species and illustrated the fiscal significance of updating the list. Listing species under the invasive species rule encourages action across jurisdictions and can focus control and containment efforts, improving their effectiveness. Invasive species are species that are non-native to Wisconsin and cause or have the potential to cause economic or environmental harm or harm to human health. By regulating these species that have been identified as both causing or potentially causing harm and that have the potential to be controlled through regulation, the intent is to create the largest possible benefit to both the economy and the Department's mission to protect and manage the resources of the state. These rule revisions provide valuable economic benefits by reducing future control and management costs for regulated invasive species.

The alternative considered in the detailed Economic Impact Analysis report is not listing additional invasive species for regulation. Past efforts to quantify where the economic impact from controlling invasive species falls have identified that individual landowners generally bear the highest cost to mitigate the damage these species cause while the economic benefits of continued use of a species are limited to a much smaller contingent. Other adversely affected entities include land managers (NGOs, State and local government, utilities, and the forest business). The distributed impact of not listing species that are invasive species is likely to be greater.

14. Long Range Implications of Implementing the Rule

The long range economic impacts include control costs, costs to comply with both the list of regulated species and with the required reasonable precautions, and increased enforcement burdens. The control costs for prohibited species where control is required when feasible will increase somewhat with the increased number of species listed as some of these species are likely to be introduced to Wisconsin and spread. However, it is anticipated that with a changing climate, continually increasing trade and exchange of materials, and the dispersal from populations already established, that the cost to control invasive species in Wisconsin will increase independent of the proposed regulation, and that regulation will reduce the number of these species being introduced.

The increased number of regulated species will reduce or eliminate those particular species in trade without restricting commerce overall since substitution of non-regulated species is likely. The long range implications for businesses are generally low as the initial cost to remove a species from sale and develop sources and propagation methods for substitute species will occur over a 1-7 year period and not reoccur. Costs to comply with reasonable precautions will be ongoing and are likely to decrease with time as new methods and tools increase the efficiency of these actions. The required reasonable precautions will continue to have benefits by reducing the likelihood that multiple species will spread through known pathways such as mowing equipment, forestry activities, boating, and nursery sales. The benefits of preventing the spread of invasive species will continue as long as the requirement to employ reasonable precautions remains in place.

The increased enforcement burden will require that both Department of Natural Resources and Department of Agriculture, Trade and Consumer Protection staff will spend more time reviewing and learning the listed species and working with regulated parties. It is anticipated that these increased costs will be absorbed by the existing staff and programs.

15. Compare With Approaches Being Used by Federal Government

There are no known proposed federal regulations that would provide the ability for the state to act when newly establishing invasive species are discovered. Existing regulations address a narrow subset of noxious weeds under the Federal Noxious Weed Act (7 U.S.C. 2801 et seq; 88 Stat, 2148) or animals under the Lacey Act (18 U.S.C. 42–43, 16 U.S.C. 3371–3378), primarily species that are already too widespread for a more cost-effective prevention approach.

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

* Illinois: The Department of Agriculture maintains a statutory list under Illinois Noxious Weed Law of about 9 species (<http://www.agr.state.il.us/Laws/Regs/8iac220.pdf>) and the Illinois Department of Natural Resources links to a more comprehensive list of 102 invasive species and a shorter list of plants, animals, insects and diseases (<http://www.invasive.org/illinois/SpeciesofConcern.html>).

* Iowa: Regulates several species of aquatic invasive plants – 6, aquatic invasive invertebrates, and invasive fish – 7. (<http://www.iowadnr.gov/idnr/Fishing/AboutFishinginIowa/FightingInvasiveSpecies/AquaticInvasiveInvertebrates.aspx>)

* Michigan: Regulates a number of invasive aquatic plants – 18, fish – 12 plus all snakeheads, and other animals – 11 through Act 451 and requires prevention actions especially for aquatic invasive species ([http://www.legislature.mi.gov/\(S\(brw3y4554cagkv4554a24a45\)\)/documents/mcl/pdf/mcl-451-1994-iii-2-1-wildlife-conservation-413.pdf](http://www.legislature.mi.gov/(S(brw3y4554cagkv4554a24a45))/documents/mcl/pdf/mcl-451-1994-iii-2-1-wildlife-conservation-413.pdf))

* Minnesota: Regulates both aquatic and terrestrial invasive species in a process similar to Wisconsin with prohibited, restricted, and non-regulated categories as well as prevention requirements including regulating the transport of water. The species regulated as prohibited include aquatic plants – 14 plus all federally listed species except *Ipomoea aquatica*, fish – 14, aquatic invertebrates – 5, mammals – 4. The species regulated as restricted include aquatic plants – 6, birds – 3, fish – 5, and aquatic invertebrates – 3. In addition all crayfish are regulated.

17. Contact Name

Dreux Watermolen, Section Chief, Social Science Services

18. Contact Phone Number

(608) 266-8931

This document can be made available in alternate formats to individuals with disabilities upon request.

ATTACHMENT A

1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

[Detailed EIA report attached]

2. Summary of the data sources used to measure the Rule's impact on Small Businesses

Wisconsin Invasive Species Council, Wisconsin Nursery Industry member survey of the economic impact of potentially invasive species in Wisconsin, five informal public meetings to discuss recommended changes to the rule, Department Invasive Species Team staff, WDNR's Economist, and planned: collect public comments during the EIA comment period. Department staff met with the Small Business Environmental Council in January 2014 to discuss the proposed impacts to small businesses.

3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

Less Stringent Compliance or Reporting Requirements

Less Stringent Schedules or Deadlines for Compliance or Reporting

Consolidation or Simplification of Reporting Requirements

Establishment of performance standards in lieu of Design or Operational Standards

Exemption of Small Businesses from some or all requirements

Other, describe:

4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

For small businesses growing woody plants, a number of years have been invested into the infrastructure to grow particular species. To minimize economic impact of listing new species that are invasive in Wisconsin a phase out period of 5 years for trees and shrubs, and 3 years for all other plants once listed as Restricted would both reduce the economic impact and provide a defined period for achieving compliance without using permits for commercial activities. The compliance period would begin once the rule is in effect. Prohibited species would be immediately subject to regulation.

Through staff work with pet stores and other small businesses that had not previously been regulated by the DNR we learned that personal communication, clear and concise guides to regulated species, and education were important. Ensuring personal contact and taking an “education first” approach is consistent with DNR’s policy of stepped enforcement and will be maintained for all taxa groups regulated under the invasive species rule.

5. Describe the Rule’s Enforcement Provisions

Enforcement and administration for the invasive species rule and permits are already in place. Some changes due to the increased number of species requiring review and training for identification are anticipated but cost are expected to be absorbed within existing DNR budgets and by DATCP staff who enforce provisions of the rule at licensed nurseries. Staff from both agencies have met and developed guidelines to continue a partnership of joint and cooperative enforcement. Management costs may rise with the addition of new species to the list but as the options for cost-sharing for control have not been funded in the past, it is unlikely that there will be any discernible operational impact. The policy of stepped enforcement is compatible with the changes proposed to the rule as “education first” is the priority for compliance.

6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

Yes No

Notice of Hearing

Safety and Professional Services — Medical Examining Board CR 14-033

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Medical Examining Board in ss. 15.08 (5) (b), 227.11 (2) (a), and 448.13, Wis. Stats., and interpreting s. 448.13, Wis. Stats., the Medical Examining Board will hold a public hearing at the time and place indicated below to consider an order to amend section Med 13.06, relating to continuing education audits.

Hearing Information

Date: Wednesday, May 21, 2014
Time: 9:30 a.m.
Location: 1400 East Washington Avenue
 Room 121A
 (enter at 55 North Dickinson Street)
 Madison, Wisconsin

Appearances at the Hearing

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but are urged to submit facts, opinions, and argument in writing as well. Facts, opinions and argument may also be submitted in writing without a personal appearance by mail addressed to the Department of Safety and Professional Services, Division of Policy Development, P.O. Box 8366, Madison, Wisconsin 53708. Written comments must be received at or before the public hearing to be included in the record of rule-making proceedings.

Place Where Comments are to be Submitted and Deadline For Submission

Comments may be submitted to Shawn Leatherwood, Administrative Rules Coordinator, Department of Safety and

Professional Services, Division of Policy Development, 1400 East Washington Avenue, Room 151, P.O. Box 8366, Madison, WI 53708-8935, or by email to Shancethea.L Leatherwood@wisconsin.gov. Comments must be received at or before the public hearing to be held on **May 21, 2014**, to be included in the record of rule-making proceedings.

Copies of Rule

Copies of this proposed rule are available upon request to Shawn Leatherwood, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 1400 East Washington Avenue, P.O. Box 8366, Madison, Wisconsin 53708, by email at Shancethea.L Leatherwood@wisconsin.gov or on our website at <http://dsps.wi.gov/Default.aspx?Page=44e541e8-abdd-49da-8fde-046713617e9e>.

Analysis Prepared by the Department of Safety and Professional Services

Statutes interpreted

Section 448.13 (1m), Stats.

Statutory authority

Sections 15.08 (5) (b), 227.11 (2) (a), and 448.13, Stats.

Explanation of agency authority

Pursuant to ss. 15.08 (5) (b) and 227.11 (2) (a), Stats., the Medical Examining Board, (Board), is generally empowered by the legislature to promulgate rules that will provide guidance within the profession and rules that interpret the statutes it enforces or administers. The Board administers s. 448.13, Stats., which sets forth the Board’s authority to conduct random audits of continuing education compliance. The proposed rule seeks to require the performance of audits every two years in accordance with s. 448.13 (1m), Stats. Therefore, the Board is both generally and specifically empowered to promulgate the proposed rule.

Related statute or rule

None.

Plain language analysis

The Medical Examining Board reviewed its administrative rules and determined that there was no mechanism to require regular audits of licensee's compliance with continuing education requirement specified s. Med 13.02 (1). The Board sought to rectify the matter by requiring a random audit of licensee's continuing education compliance every two years. Auditing licensee's compliance with the continuing education requirement will act as a deterrent to non-compliance and ensure licensees are maintaining their skills in keeping with the highest standards within the profession.

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

None.

Comparison with rules in adjacent states

Illinois: Licensees in Illinois have a 36 month renewal cycle in which they must complete 150 hours of continuing medical education. Applicants are required to certify on their renewal application that they have complied with the continuing education requirement. It is the responsibility of each renewal applicant to retain or otherwise produce additional evidence of compliance in case of a random audit. ILL. ADMIN. CODE tit. 68 §1285.110 d).

Iowa: Licensees are required to maintain documentation evidencing completion of continuing education for five years after the date of continuing education and training. Conducting an audit is not compulsory but if an audit is conducted the licensee must respond within 30 days of a request made by the board. IOWA ADMIN. CODE r. 653-11.4 (7).

Michigan: Licensees must complete 150 hours of continuing education in 3 years. Licensees certify at the time of renewal that they have completed the required continuing education and must retain evidence of his or her compliance for a period of 4 years from the date of application. MICH. ADMIN. CODE r. 388.2381.

Minnesota: Minnesota has a 3 year cycle in which to complete 75 hours of continuing education. Licensees provide a signed statement to the board indicating compliance. Licensees that fail to comply are subject to discipline. Minn. R. 5605.0100.

STATE OF WISCONSIN
DEPARTMENT OF ADMINISTRATION
DOA-2049 (R03/2012)

Summary of factual data and analytical methodologies

The Board reviewed its current administrative rules and observed that the rules did not require a standardized audit of licensee's compliance with continuing education requirement. The proposed rule seeks to address this concern. No other factual data or analytical methodologies were used. The Board ensures the accuracy, integrity, objectivity and consistency of data were used in preparing the proposed rule and related analysis.

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

These proposed rules do not have an economic impact on small businesses, as defined in s. 227.114 (1), Stats. The Department's Regulatory Review Coordinator may be contacted by email at Tom.Engels@wisconsin.gov, or by calling (608) 266-8608.

Fiscal Estimate and Economic Impact Analysis

The Fiscal Estimate and Economic Impact Analysis are attached.

Agency Contact Person

Shawn Leatherwood, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 1400 East Washington Avenue, Room 151, P.O. Box 8366, Madison, Wisconsin 53708; telephone 608-261-4438; email Shancethea.L Leatherwood@wisconsin.gov

Text of Rule

SECTION 1. MED 13.06 is amended to read:

Med 13.06 The board shall conduct a random audit of licensees on a biennial basis for compliance with continuing education requirements stated in s. Med 13.02 (1). The board may require any physician to submit his or her evidence of compliance with the continuing education requirements to the board during the biennium for which 30 hours of credit are required for registration to audit compliance.

SECTION 2. Effective Date. The rules adopted in this order shall take effect on the first day of the month following publication in the Wisconsin Administrative Register, pursuant to s. 227.22 (2) (intro.), Stats.

DIVISION OF EXECUTIVE BUDGET AND FINANCE
101 EAST WILSON STREET, 10TH FLOOR
P.O. BOX 7864
MADISON, WI 53707-7864
FAX: (608) 267-0372

ADMINISTRATIVE RULES

Fiscal Estimate & Economic Impact Analysis

1. Type of Estimate and Analysis

Original Updated Corrected

2. Administrative Rule Chapter, Title and Number

Med 13.06

3. Subject

Continuing education audits

4. Fund Sources Affected

GPR FED PRO PRS SEG SEG-S

5. Chapter 20, Stats. Appropriations Affected

20.165(1) (hg)

6. Fiscal Effect of Implementing the Rule

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

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

State's Economy Specific Businesses/Sectors
 Local Government Units Public Utility Rate Payers
 Small Businesses (if checked, complete Attachment A)

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

Yes No

9. Policy Problem Addressed by the Rule

The Medical Examining Board reviewed its administrative rules concerning continuing education and determined that licensees were not being regularly audited for compliance with the continuing education requirement specified in s. Med 13.02 (1). The Board concluded that mandatory audits should take place every two years to ensure that licensees are acquiring the required 30 hours of continuing education. The proposed rule will amend s. Med 13.06 to reflect that change.

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

The rule was posted on the Department of Safety and Professional Service's website for 14 days in order to solicit comments from businesses, associations representing businesses, local governmental units and individuals that may be affected by the rule. No comments were received.

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

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

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

This proposed rule will not have a significant impact on specific businesses, business sectors, public utility rate payers, local governmental units or the state's economy as a whole.

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

The benefit of implementing the rule ensures that licensees will maintain their skill level and knowledge base by maintaining their required 30 hours of continuing education.

14. Long Range Implications of Implementing the Rule

Implementing the proposed rule will act as a deterrent to non-compliance with the continuing education requirement.

15. Compare With Approaches Being Used by Federal Government

None.

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

Illinois: Licensees in Illinois have a 36 month renewal cycle in which they must complete 150 hours of continuing medical education. Applicants are required to certify on their renewal application that they have complied with the continuing education requirement. It is the responsibility of each renewal applicant to retain or otherwise produce additional evidence of compliance in case of a random audit. ILL. ADMIN. CODE tit. 68 §1285.110 d).

Iowa: Licensees are required to maintain documentation evidencing completion of continuing education for five years after the date of continuing education and training. Conducting an audit is not compulsory but if an audit is conducted the licensee must respond within 30 days of a request made by the board. IOWA ADMIN. CODE r. 653-11.4 (7).

Michigan: Licensees must complete 150 hours in 3 years. Licensees certify at the time of renewal that they have completed the required continuing education and must retain evidence of his or her compliance for a period of 4 years from the date of application. MICH. ADMIN. CODE r. 388.2381.

Minnesota: Minnesota has a 3 year cycle in which to complete 75 hours of continuing education. Licensees provide a signed statement to the board indicating compliance. Licensees that fail to comply are subject to discipline. Minn. R. 5605.0100.

17. Contact Name Shawn Leatherwood	18. Contact Phone Number 608-261-4438
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Submittal of Proposed Rules to Legislature

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

Government Accountability Board
CR 10-130

On March 24, 2014, the Government Accountability Board submitted a rule-making order to the presiding officer of each house of the Legislature. The proposed rule creates Chapter

GAB 4, relating to election observers.

This rule is not subject to s. 227.185, Stats. The statement of scope for this rule was filed prior to the effective date of s. 227.185, Stats., and published in Register 657 on September 30, 2010.

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.

**Safety and Professional Services —
Examining Board of Architects, Landscape
Architects, Professional Engineers, Designers
and Land Surveyors**

CR 12-039

An order to repeal section A-E 9.05 (1) (b) and (6), to renumber section A-E 9.03 (1) as 9.03 (1) (a), to amend sections A-E 8.07 (1) and (2), 9.05 (1) (a), and 9.06 (3), and to create section A-E 9.03 (1) (b), relating to landscape architect licensure and practice.
Effective 7-1-14.

**Safety and Professional Services —
Examining Board of Architects, Landscape
Architects, Professional Engineers, Designers
and Land Surveyors**

CR 13-064

An order to amend sections A-E 13.08 (4) and 13.09,

relating to comity renewal requirements.
Effective 7-1-14

**Safety and Professional Services —
Massage Therapy and Bodywork Therapy
Affiliated Credentialing Board**

CR 13-055

An order to repeal section MTBT 2.05 and (Note); to amend sections MTBT 1.01, 2.01 (title), 2.03 (title), (1) (a) and (c), 3.01 (1) and (5) (b), 4.01 (title) (intro.), 4.02 (title) (intro.), (1), and (3), 4.03, 4.04 (1) (a) and (c) and (2) (a) and (b), 5.01 (9), (16), (17), (18), (19), (20), (27), (28), and (32), and 5.02 (1), (2) (b) and (c), (3), and (4); to repeal and recreate section MTBT 1.02; and to create section MTBT 4.02 (5) and Chapters 6 and 7, relating to temporary licensure and continuing education.
Effective 6-1-14.

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