



COSMETOLOGY EXAMINING BOARD
Room 121A, 1400 East Washington Avenue, Madison
Contact: Brittany Lewin (608) 266-2112
February 2, 2015

The following agenda describes the issues that the Board plans to consider at the meeting. At the time of the meeting, items may be removed from the agenda. Please consult the meeting minutes for a record of the actions of the Board.

AGENDA

9:30 AM

OPEN SESSION – CALL TO ORDER – ROLL CALL

- A. Adoption of Agenda (1-3)**
- B. Approval of Minutes of November 17, 2014 (4-8)**
- C. Administrative Matters – Discussion and Consideration**
 - 1) Staff Updates
 - 2) Board Member Introductions
 - 3) Election of Board Officers **(9)**
 - 4) Appointment of Liaisons and Delegated Authorities **(9-11)**
- D. Legislative/Administrative Rule Matters**
 - 1) Cos 1-11 Cosmetology Schooling, Licensure and Practice Requirements **(12-21)**
 - 2) Executive Order 50 and Executive Order 61 **(22-32)**
- E. Education and Examination Matters**
 - 1) Continuing Education Curriculum
- F. Deliberation on Items Added After Preparation of Agenda:**
 - 1) Introductions, Announcements and Recognition
 - 2) Administrative Updates
 - 3) Education and Examination Matters
 - 4) Credentialing Matters
 - 5) Practice Matters
 - 6) Legislation/Administrative Rule Matters
 - 7) Liaison Reports
 - 8) Informational Items
 - 9) Disciplinary Matters
 - 10) Presentations of Petitions for Summary Suspension
 - 11) Presentation of Proposed Stipulations, Final Decisions and Orders
 - 12) Presentation of Proposed Decisions
 - 13) Presentation of Interim Orders

- 14) Petitions for Assessments
- 15) Petitions to Vacate Orders
- 16) Petitions for Designation of Hearing Examiner
- 17) Requests for Disciplinary Proceeding Presentations
- 18) Motions
- 19) Petitions
- 20) Appearance from Requests Received or Renewed
- 21) Speaking Engagement(s), Travel, or Public Relation Request(s)

G. Public Comments

CONVENE TO CLOSED SESSION to deliberate on cases following hearing (s. 19.85(1)(a), Stats.); to consider licensure or certification of individuals (s. 19.85(1)(b), Stats.); to consider closing disciplinary investigations with administrative warnings (ss. 19.85 (1)(b), and 440.205, Stats.); to consider individual histories or disciplinary data (s. 19.85 (1)(f), Stats.); and to confer with legal counsel (s. 19.85(1)(g), Stats.).

H. Monitoring Matters

- 1) Angela Gruber – Petition for Payment Plan **(33-56)**

I. Deliberation of Citation(s)

- 1) 13 BAC 118 (B.J.S. and F.N.) **(57-58)**
- 2) 13 BAC 120 (A.D.M. and I.B.S.) **(59-60)**

J. Deliberation of Proposed Stipulations, Final Decisions and Orders

- 1) 13 BAC 158 – Cindi R. Sandvick **(61-66)**
- 2) 13 BAC 158 – Kiley J. Semke and Salon Inspired **(67-73)**
- 3) 14 BAC 013 – Martha J. Chavez and Unique Cuts **(74-79)**

K. Deliberation of Proposed Administrative Warnings

- 1) 13 BAC 158 (C.M.P.) **(80-81)**

L. Case Closings

- 1) 13 BAC 009 **(82-86)**
- 2) 13 BAC 037 **(87-90)**
- 3) 13 BAC 045 **(91-94)**
- 4) 14 BAC 013 **(95-98)**
- 5) 14 BAC 022 **(99-102)**
- 6) 14 BAC 050 **(103-105)**
- 7) 14 BAC 051 **(106-109)**
- 8) 14 BAC 063 **(110-113)**
- 9) 14 BAC 082 **(114-117)**

M. Case Status Report (118-123)

N. Deliberation of Items Added After Preparation of the Agenda

- 1) Application Issues and/or Reviews
- 2) Monitoring Matters
- 3) Administrative Warnings
- 4) Review of Administrative Warnings
- 5) Proposed Stipulations, Final Decision(s) and Order(s)
- 6) Proposed Final Decisions and Orders

- 7) Orders Fixing Costs/Matters Related to Costs
- 8) Petitions for Summary Suspension
- 9) Petitions for Re-hearings
- 10) Complaints and Case Closings
- 11) Examination Issues
- 12) Credentialing Matters
- 13) Appearances from Requests Received or Renewed
- 14) Motions

O. Consulting with Legal Counsel

RECONVENE TO OPEN SESSION IMMEDIATELY FOLLOWING CLOSED SESSION

Vote on Items Considered or Deliberated Upon in Closed Session, if Voting is Appropriate

ADJOURNMENT

**COSMETOLOGY EXAMINING BOARD
MEETING MINUTES
November 17, 2014**

PRESENT: Kristin Allison, Vicky McNally, Lori Paul, Geraldine Reuter, Gail Sengbusch

STAFF: Brittany Lewin, Executive Director; Taylor Thompson, Bureau Assistant; and other Department staff

CALL TO ORDER

Geraldine Reuter, Chair, called the meeting to order at 9:41 a.m. A quorum of five (5) members was confirmed.

ADOPTION OF AGENDA

MOTION: Vicky McNally moved, seconded by Lori Paul, to adopt the agenda as published. Motion carried unanimously.

APPROVAL OF MINUTES OF SEPTEMBER 30, 2014

MOTION: Lori Paul moved, seconded by Vicky McNally, to approve the minutes of September 30, 2014 as published. Motion carried unanimously.

LEGISLATIVE/ADMINISTRATIVE RULE MATTERS

Wis. Admin. Code Ch. Cos 5 Course of Instruction

MOTION: Lori Paul moved, seconded by Gail Sengbusch, to approve the Emergency rule draft of COS 5 as amended for forwarding to the Governor's Office. Motion carried unanimously.

MOTION: Lori Paul moved, seconded by Kristin Allison, to approve the public hearing draft of COS 5 as amended as the proposed permanent rule. Motion carried unanimously.

MOTION: Kristin Allison moved, seconded by Vicky McNally, to appoint the Board Chair to adopt the final Emergency Rule of Cos 5 course of instruction before forwarding the rule for publication. Motion carried unanimously.

CLOSED SESSION

MOTION: Kristin Allison moved, seconded by Vicky McNally, to convene to closed session to deliberate on cases following hearing (s. 19.85(1)(a), Stats.); to consider licensure or certification of individuals (s. 19.85 (1)(b), Stats.); to consider closing disciplinary investigation with administrative warning (ss.19.85(1)(b), Stats. and 440.205, Stats.); to consider individual histories or disciplinary data (s. 19.85 (1)(f), Stats.); and, to confer with legal counsel (s.19.85(1)(g), Stats.). Geraldine Reuter read the language of the motion. The vote of each member was ascertained by voice vote. Roll Call Vote: Kristin Allison – yes; Vicky McNally – yes; Lori Paul – yes; Geraldine Reuter – yes; Gail Sengbusch - yes. Motion carried unanimously.

The Board convened into closed session at 11:42 a.m.

RECONVENE TO OPEN SESSION

MOTION: Kristin Allison moved, seconded by Lori Paul, to reconvene into open session. Motion carried unanimously.

The Board reconvened into open session at 12:16 p.m.

VOTING ON ITEMS CONSIDERED OR DELIBERATED ON IN CLOSED SESSION

MOTION: Kristin Allison moved, seconded by Vicky McNally, to affirm all motions made in closed session. Motion carried unanimously.

MONITORING MATTERS

Liv Mueller & Salon Divine – Petition for Payment Plan

MOTION: Kristin Allison moved, seconded by Lori Paul, to grant the request of Liv Mueller & Salon Divine for a payment plan of \$100.00 per month for 10 months. Motion carried unanimously.

Nicole Schwark & East Town Spa Inc. – Petition for Payment Plan

MOTION: Kristin Allison moved, seconded by Lori Paul, to grant the request of Nicole Schwark & East Town Spa Inc. for a payment plan of \$50.00 per month for herself and \$50.00 per month for East Town Spa Inc. for a total of \$100.00 a month for 20 months. All other terms of the original order remain in effect. Motion carried unanimously.

CITATIONS

MOTION: Vicky McNally moved, seconded by Kristin Allison, to close the following case(s) according to the citation(s) by the Division of Legal Services and Compliance:

- a) 14 BAC 050 (K.N.)
- b) 14 BAC 063 (N.K.T.)
- c) 14 UNL 063 (E.T.)

Motion carried unanimously.

CITATION PAYMENT PLAN

MOTION: Lori Paul moved, seconded by Gail Sengbusch, to approve of the citation payment plan for 14 BAC 036 (U.S.N. and N.H.L.). Motion carried unanimously.

PROPOSED STIPULATIONS, FINAL DECISIONS AND ORDERS

MOTION: Kristin Allison moved, seconded by Vicky McNally, to adopt the Findings of Fact, Conclusions of Law, Final Decision and Order in the matter of disciplinary proceedings against **Chau T. Nguyen and Nails Plus Spa, case 13 BAC 101**. Motion carried unanimously.

MOTION: Vicky McNally moved, seconded by Kristin Allison, to adopt the Findings of Fact, Conclusions of Law, Final Decision and Order in the matter of disciplinary proceedings against **Thuy Tu T. Nguyen, case 13 BAC 107**. Motion carried unanimously.

PROPOSED STIPULATIONS, FINAL DECISIONS AND ORDERS OF DEFAULT

MOTION: Lori Paul moved, seconded by Gail Sengbusch, to adopt the Findings of Fact, Conclusions of Law, Final Decision and Order of Default in the matter of disciplinary proceedings against **Askia X. Lawrence, case 13 BAC 009**. Motion carried unanimously.

MOTION: Kristin Allison moved, seconded by Lori Paul, to adopt the Findings of Fact, Conclusions of Law, Final Decision and Order of Default in the matter of disciplinary proceedings against **Jalena R. Boden, case 14 BAC 051**. Motion carried unanimously.

**PROPOSED FINAL DECISION AND ORDER: IN THE MATTER OF THE
DISCIPLINARY PROCEEDINGS AGAINST
JOSLYN J. WINTER, RESPONDENT
(DHA CASE SPS-14-0038)(DLSC CASE 12 BAC 104)**

MOTION: Kristin Allison moved, seconded by Vicky McNally, to adopt the ALJ's proposed Final Decision and Order with variance as follows: the discipline attaching to Josie's Studio One Salon is revocation of license and/or revocation of right to renew, in the matter of disciplinary proceedings against **Joslyn J. Winter (DHA case SPS-14-0038) (DLSC case 12 BAC 104)**. Motion carried unanimously.

CASE CLOSINGS

MOTION: Kristin Allison moved, seconded by Lori Paul, to close the following cases according to the recommendations by the Division Legal Services and Compliance:

- a) 13 BAC 015 (D.R.D.) for Lack of Jurisdiction (L2)
- b) 13 BAC 084 (F.I.H.S.) for Prosecutorial Discretion (P1)
- c) 13 BAC 107 (4 Seasons Nail & Spa) for No Violation (NV)
- d) 13 BAC 110 (D.H.N., H.P., and P.N.) for Insufficient Evidence (IE)
- e) 13 BAC 142 (J.M.A.) for Insufficient Evidence (IE)
- f) 14 BAC 001 (H.M.H. and H.M.H.D.) for Insufficient Evidence (IE)
- g) 14 BAC 010 (L.C.P.) for Insufficient Evidence (IE)
- h) 14 BAC 021 (M.E.C.) for Prosecutorial Discretion (P3)
- i) 14 BAC 021 (H.D.S.) for Prosecutorial Discretion (P1)
- j) 14 BAC 030 (F.S.) for Prosecutorial Discretion (P3)
- k) 14 BAC 030 (S.L.W.) for no violation (NV)

Motion carried unanimously.

RESCIND ORDERS AND CLOSE CASES

13 BAC 138 (J.N. and S.N.)

MOTION: Lori Paul moved, seconded by Kristin Allison, to rescind motion from September 30, 2014 to close the case against S.N. (13 BAC 138) for P7. Motion carried unanimously.

MOTION: Kristin Allison moved, seconded by Gail Sengbusch, to rescind motion from September 30, 2014 to close the case against J.N. (13 BAC 138). Motion carried unanimously.

13 BAC 162 (M.S.N. and Q.M.N.)

MOTION: Kristin Allison moved, seconded by Vicky McNally, to rescind motion from September 30, 2014 to close the case against Q.M.N. (13 BAC 162) for P7. Motion carried unanimously.

MOTION: Kristin Allison moved, seconded by Lori Paul, to rescind motion from September 30, 2014 to close the case against M.S.N. (13 BAC 162). Motion carried unanimously.

ADJOURNMENT

MOTION: Vicky McNally moved, seconded by Kristin Allison, to adjourn the meeting. Motion carried unanimously.

The meeting adjourned at 12:19 p.m.

DRAFT

2014 OFFICER ELECTION RESULTS	
Board Chair	Geraldine Reuter
Vice Chair	Vicky McNally
Secretary	Kristin Allison

2014 LIAISON APPOINTMENTS	
Practice Questions Liaison(s)	Kristin Allison
DLSC Monitoring and PAP Liaison(s)	Geraldine Reuter
Credentialing Liaison(s)	Vicky McNally
Education and Exams Liaison(s)	Kristin Allison
Legislative Liaison(s)	Kristin Allison Vicky McNally

2014 SCREENING PANEL APPOINTMENTS	
January-December 2014	Geraldine Reuter Vicky McNally

**State of Wisconsin
Department of Safety & Professional Services**

AGENDA REQUEST FORM

1) Name and Title of Person Submitting the Request: Ashley Horton Department Monitor Division of Legal Services and Compliance		2) Date When Request Submitted: December 20, 2013 Items will be considered late if submitted after 4:30 p.m. and less than: <ul style="list-style-type: none"> ▪ 10 work days before the meeting for Medical Board ▪ 14 work days before the meeting for all others 	
3) Name of Board, Committee, Council, Sections:			
4) Meeting Date:	5) Attachments: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	6) How should the item be titled on the agenda page? Monitoring: Appointment of Monitoring Liaison and Delegated Authority Motion	
7) Place Item in: <input checked="" type="checkbox"/> Open Session <input type="checkbox"/> Closed Session <input type="checkbox"/> Both	8) Is an appearance before the Board being scheduled? <input type="checkbox"/> Yes (Fill out Board Appearance Request) <input checked="" type="checkbox"/> No	9) Name of Case Advisor(s), if required:	
10) Describe the issue and action that should be addressed: 1. Appointment of 2014 Monitoring Liaison 2. Delegated Authority Motion: <i>“_____ moved, seconded by _____ to adopt/reject the Roles and Authorities Delegated to the Monitoring Liaison and Department Monitor document as presented in today’s agenda packet.”</i>			
11) Authorization <div style="display: flex; justify-content: space-between;"> <div style="width: 30%;">  </div> <div style="width: 30%; text-align: center;"> December 20, 2013 </div> <div style="width: 30%;"></div> </div> <hr/> <div style="display: flex; justify-content: space-between;"> <div style="width: 60%;">Signature of person making this request</div> <div style="width: 20%; text-align: center;">Date</div> <div style="width: 20%;"></div> </div> <hr/> <div style="display: flex; justify-content: space-between;"> <div style="width: 60%;">Supervisor (if required)</div> <div style="width: 20%; text-align: center;">Date</div> <div style="width: 20%;"></div> </div> <hr/> <div style="display: flex; justify-content: space-between;"> <div style="width: 60%;">Executive Director signature (indicates approval to add post agenda deadline item to agenda)</div> <div style="width: 20%; text-align: center;">Date</div> <div style="width: 20%;"></div> </div>			
Directions for including supporting documents: 1. This form should be attached to any documents submitted to the agenda. 2. Post Agenda Deadline items must be authorized by a Supervisor and the Policy Development Executive Director. 3. If necessary, Provide original documents needing Board Chairperson signature to the Bureau Assistant prior to the start of a meeting.			

Roles and Authorities Delegated to the Monitoring Liaison and Department Monitor

The Monitoring Liaison is a board designee who works with department monitors to enforce the Board's orders as explained below.

Current Authorities Delegated to the Monitoring Liaison

The Liaison may take the following actions on behalf of the Board:

1. Grant a temporary reduction in random drug screen frequency upon Respondent's request if he/she is unemployed and is otherwise compliant with Board order. The Department Monitor will draft an order and sign on behalf of the Liaison. The temporary reduction will be in effect until Respondent secures employment in the profession.
2. Grant a stay of suspension if Respondent is eligible per the Board order. The Department Monitor will draft an order and sign on behalf of the Liaison.
3. Remove the stay of suspension if there are repeated violations or a substantial violation of the Board order. The Department Monitor will draft an order and sign on behalf of the Liaison.
4. Grant or deny approval when Respondent proposes continuing/remedial education courses, treatment providers, mentors, supervisors, change of employment, etc. unless the order specifically requires full-Board approval. The Department Monitor will notify Respondent of the Liaison's decision.
5. Grant a maximum 90-day extension, if warranted and requested in writing by Respondent, to complete Board-ordered CE, pay proceeding costs, and/or pay forfeitures upon Respondent's request.

Current Authorities Delegated to the Department Monitor

The Department Monitor may take the following actions on behalf of the Board, draft an order and sign:

1. Grant full reinstatement of licensure if CE is the sole condition of the limitation and Respondent has submitted the required proof of completion for approved courses.
2. Suspend the license if Respondent has not completed Board-ordered CE and/or paid costs and forfeitures within the time specified by the Board order. The Department Monitor may remove the suspension and issue an order when proof completion and/or payment have been received.

Clarification

1. In conjunction with removal of any stay of suspension, the Liaison may prohibit Respondent from seeking reinstatement of the stay for a specified period of time. (This is consistent with current practice.)

**State of Wisconsin
Department of Safety & Professional Services**

AGENDA REQUEST FORM

1) Name and Title of Person Submitting the Request: Shawn Leatherwood, Administrative Rules Coordinator		2) Date When Request Submitted: December 12, 2014 <small>Items will be considered late if submitted after 12:00 p.m. and less than: ▪ 8 work days before the meeting</small>	
3) Name of Board, Committee, Council, Sections: Cosmetology Examining Board			
4) Meeting Date: February 2, 2015	5) Attachments: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	6) How should the item be titled on the agenda page? Legislative and Administrative Rule Matters-Discussion and Consideration <ul style="list-style-type: none"> • Cos 1-11 Cosmetology Schooling, Licensure and Practice Requirements 	
7) Place Item in: <input checked="" type="checkbox"/> Open Session <input type="checkbox"/> Closed Session <input type="checkbox"/> Both	8) Is an appearance before the Board being scheduled? If yes, who is appearing? <input type="checkbox"/> Yes by _____ (name) <input checked="" type="checkbox"/> No	9) Name of Case Advisor(s), if required: NA	
10) Describe the issue and action that should be addressed: <p>The Board will review and discuss a draft of Cos 1 to 11 Cosmetology Schooling, Licensure and Practice Requirements. The Board will address the activities permitted for inactive licensees.</p> <p>The Board will authorize the chair, or another member of the board, to approve the revisions to Cos 1 to 11 relating to Cosmetology Schooling, Licensure and Practice Requirements for posting of EIA Comments and submission to the Clearinghouse.</p>			
11) Signature of person making this request Shawn Leatherwood		Authorization	Date December 12, 2014
Supervisor (if required)		Date	
Bureau Director signature (indicates approval to add post agenda deadline item to agenda) Date			
Directions for including supporting documents: 1. This form should be attached to any documents submitted to the agenda. 2. Post Agenda Deadline items must be authorized by a Supervisor and the Board Services Bureau Director. 3. If necessary, Provide original documents needing Board Chairperson signature to the Bureau Assistant prior to the start of a meeting.			

STATE OF WISCONSIN
COSMETOLOGY EXAMINING BOARD

IN THE MATTER OF RULEMAKING	:	PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE	:	COSMETOLOGY EXAMINING
COSMETOLOGY EXAMINING BOARD	:	BOARD
	:	ADOPTING RULES
	:	(CLEARINGHOUSE RULE)

PROPOSED ORDER

An order of the Cosmetology Examining Board to repeal Cos. 1.01 (11e), 1.01 (17) and Cos 3.02 (3);

to amend Cos 1.01 (6m), 2.04 (2), 2.06 (5), 2.07, 3.01(6) and (10), 3.02 (a) to (c) and (2) (b), 3.04 (2), 3.05 (1), 4.01 (2) and (3), 4.02 (3), 4.02 (6) (Note), 6.04, 7.03 (2), and 7.04, 8.01(2) and 8.02 (intro.), 11.01, 11.03 (5) (b) and (c) 2. and 5.;

to repeal and recreate Cos 9.03;

to create Cos 1.01 (3e), 1.01 (3m), 2.405 (1m), 3.01 (10) (Note), 4.04 (1m), 8.03, 11.04 (1) (e), relating to cosmetology schooling, licensure, and practice requirements.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted:

Sections 454.06 (8m)(d) and 454.08 (1) (a), Stats.

Statutory authority:

Sections 15.08 (5) (b), 227.11 (2) (a), 454.06 (8m)(d), 454.08 (1) (a), Stats., 2011 Wisconsin Act 190

Explanation of agency authority:

Pursuant to ss. 15.08 (5) (b) and 227.11 (2) (a), Stats., the Cosmetology Examining Board (Board) is generally empowered by the legislature to promulgate rules that will provide guidance within the profession and to interpret the statutes it administers. Section 454.06 (8m) (d), Stats., requires the Board to establish, by rule, the limits of minimal cosmetology work for inactive licensees. Section 454.08 (1) (a), Stats., authorizes the Board to promulgate rules providing for cosmetology services outside of licensed cosmetology establishments. The passage of 2011 Wisconsin Act 190 prompted the Board to review all of the regulations concerning cosmetology and undertake a

comprehensive update of the rules making them consistent with the new legislation as well as contemporary industry practices.

Related statute or rule:

Wis. Admin. Code Cos. chs. 1 to 11

Plain language analysis:

The Cosmetology Examining Board undertook a comprehensive review of the rules governing cosmetology practice in Wisconsin. This review was prompted by the passage of 2011 Wisconsin Act 190 which separated the Barbering and Cosmetology Examining Board, leaving the regulation of cosmetology practice to the Cosmetology Examining Board and transferring the regulation of the practice of barbering to the Department of Safety and Professional Services. This proposed rule deals with the changes made by Act 190 to Wis. Admin. Code chs. 1 to 11, which includes redefining the term manager to cosmetology manager and creating an inactive license classification. Other changes the proposed rule addresses include identifying the settings that are excluded from providing cosmetology services outside of a licensed cosmetology establishment and eliminating the requirement for a separate establishment license for electrologists.

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

None.

Comparison with rules in adjacent states:

Illinois: Cosmetology managers are not licensed in Illinois. Licensed cosmetologists, cosmetology teachers, or cosmetology clinic teachers may elect to place their license on inactive status. 225 ILCS410/3-7.1. Once a cosmetologist, cosmetology teacher or cosmetology clinic teacher's license is in an inactive status, the licensee may not practice in Illinois. Unlike the Wisconsin provision which allows a licensee to work if the work is minimal. Wis. Stats. §454.06 (8m) (d).

Iowa: Iowa does not license cosmetology managers but there are provisions regarding inactive license classification. "A licensee who fails to renew the license by the end of the grace period has an inactive license. A licensee whose license is inactive continues to hold the privilege of licensure in Iowa, but may not practice cosmetology arts and sciences in Iowa until the license is reactivated." 645 IAC 60.8(6).

Michigan: Michigan does not issue a license for cosmetology managers and does not have an inactive licensure classification.

Minnesota: Similar to Wisconsin, Minnesota regulates salon managers. Minn. Stat. §155A.23. Minnesota also allows for an inactive license for applicants who have ceased

all practice of cosmetology. An inactive license does not allow a licensee to engage in the practice of cosmetology. Minn. R. 2105.0200

Summary of factual data and analytical methodologies:

The methodologies used in drafting the proposed rule was reviewing 2011 Wisconsin Act 190, reviewing neighboring states statutes and rules, and receiving input from the Cosmetology Examining Board.

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

Fiscal Estimate and Economic Impact Analysis:

The Department is currently soliciting information and advice from businesses, local government units and individuals in order to prepare the Economic Impact Analysis.

Effect on small business:

Agency contact person:

Shawn Leatherwood, Administrative Rule Coordinator, Department of Safety and Professional Services, Division of Policy Development, 1400 East Washington Avenue, Room 151, P.O. Box 8935, Madison, Wisconsin 53708; telephone 608-261-4438; email at Shancethea.L Leatherwood@wisconsin.gov.

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

Comments may be submitted to Shawn Leatherwood, Administrative Rule 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 on or before * to be included in the record of rule-making proceedings.**

TEXT OF RULE

SECTION 1. Cos 1.01 (3e) is created to read:

Cos. 1.01 (3e) "Cosmetologist" has the meaning given in s. 454.01 (7e), Stats.

SECTION 2. Cos 1.01 (3m) is created to read:

Cos 1.01 (3m) "Cosmetology manager" has the meaning given in s. 454.01 (7s), Stats.

SECTION 3. Cos. 1.01 (11e) is repealed.

SECTION 4. Cos. 1.01 (6m) is amended to read:

Cos. 1.01 (6m) “Division” means the division of ~~enforcement~~ legal services and compliance in the department of safety and professional services.

SECTION 5. Cos. 1.01 (17) is repealed.

SECTION 6. Cos. 2.04 (2) is amended to read:

Cos 2.04 (2) Licensees shall report to the board unauthorized or unlicensed practice or other violations of ch. 454, Stats., and chs. ~~Cos 1 to 9~~ Cos 1 to 11.

SECTION 7. Cos 2.045 (1m) is created to read

Cos 2.045 (1m) Licensees shall not perform personal care services in any setting in which a persons is not confined to their home or an institution; these settings may include on-site wedding parties, adult day care centers, or assisted living facilities.

SECTION 8. Cos 2.06 (5) is amended to read:

Cos 2.06 (5) In the case of an owner of a cosmetology establishment, employ a cosmetology manager who shall have direct authority over the operations of the establishment. If the cosmetology manager of an establishment leaves employment or becomes otherwise unavailable, an owner may continue to operate the establishment for no more than 90 days without a cosmetology manager. The owner shall notify the board that the cosmetology manager is no longer employed or has become otherwise unavailable within 10 days following the cosmetology manager's last day of employment.

SECTION 9. Cos 2.07 is amended to read:

Cos 2.07 Responsibilities of the cosmetology manager. (1) The licensed cosmetology manager of a cosmetology establishment shall be responsible for the daily operations of an establishment and ensure that the establishment is in compliance with ch. 454, Stats., and chs. Cos 3 and 4. The cosmetology manager shall maintain supplies and equipment necessary to ensure safe and sanitary establishment conditions.

(1g) A cosmetology manager shall train and supervise any apprentices in accordance with s. Cos 6.04 (1) and shall supervise any temporary permit holders and training permit holders.

(1r) The cosmetology manager shall maintain and provide appropriate records for apprentices, temporary permit holders, training permit holders, and practitioners, including employment records, to enable apprentices or practitioners to meet the

requirements of s. 454.06 (3) (b), 440.63 (3) (a) 2., or 454.10 (2), Stats., for credentialing as a practitioner, manager or instructor.

(2) The cosmetology manager shall post all required licenses, permits and notices.

SECTION 10. Cos 3.01 (6) and (10) are amended to read:

Cos 3.01 (6) Establishments shall provide safe and secure areas for storing, cleaning and disinfecting equipment. Poisonous substances stored in public areas shall be locked in a cabinet or closet, with the exception of over-the-counter products used for room deodorizing. These products shall be kept in an elevated location out of the reach of children.

Cos 3.01 (10) Pets Animals shall not be kept in an establishment ~~during business hours,~~ except for service animals.

SECTION 11. Cos 3.01 (10) (Note) is created to read:

Note: Section 106.52 (1) (fm) of the Statutes reads as follows: “ ‘Service animal’ means a guide dog, signal dog, or other animal that is individually trained or is being trained to do work or perform tasks for the benefit of a person with a disability, including the work or task of guiding a person with impaired vision, alerting a person with impaired hearing to intruders or sound, providing minimal protection or rescue work, pulling a wheelchair, or fetching dropped items.”

SECTION 12. Cos 3.02 (a) to (c) and (2) (b) is amended to read:

Cos. 3.02 Other establishment requirements. (1) COSMETOLOGY MANAGER REQUIRED. The owner of a cosmetology establishment shall not operate the establishment unless a licensed cosmetology manager has been employed for the establishment, subject to the exception for temporary unavailability of a cosmetology manager in s. Cos 2.06 (5). The cosmetology manager shall be responsible for supervising and managing the operation of the establishment. The owner and the cosmetology manager shall ensure that the establishment operates in compliance with ch. 454, Stats., and rules of the board as follows:

(a) The owner of more than one establishment shall employ a sufficient number of cosmetology managers to satisfy the requirement that a cosmetology manager be present full time in each establishment as defined in s. Cos 1.01 (7).

(b) The owner of a cosmetology establishment may satisfy the requirement in this section by employing a cosmetology manager who also works at an establishment owned by a different person, provided the cosmetology manager works full time as defined in s. Cos 1.01 (7) at each establishment where he or she is employed as a cosmetology manager.

(c) A cosmetology manager is required to be present in an establishment full time, as defined in s. Cos 1.01 (7), but if an establishment is open for more than 30 hours per week, the cosmetology manager is not required to be present in the establishment at all times when the establishment is open for business, and the cosmetology manager may be absent for reasonable brief periods during a day.

(2) (b) The lessee of a chair or booth shall be responsible for ensuring that the leased chair or booth operates in compliance with ch. 454, Stats., and the rules of the board, and the lessee shall hold a cosmetology manager's and an establishment license. ~~Lessees of chairs or booths leased prior to the effective date of this paragraph shall come into compliance with this paragraph by October 1, 2004.~~

SECTION 13. Cos 3.02 (3) is repealed.

SECTION 14. Cos 3.04 (2) and 3.05 (1) are amended to read:

Cos 3.04 (2) The board shall require identification of the owner, business address, cosmetology manager, type of business, and a copy of the floor plan showing dimensions and required equipment, in addition to other information which may be needed to approve the issuance of a license.

Cos 3.05 Inspections. (1) Inspections by field representatives or agents of the board may be conducted to assure compliance with ch. 454, Stats., and chs. ~~Cos 1 to 6~~ Cos 1 to 11.

SECTION 15. Cos 4.01 (2) and (3) are amended to read:

Cos 4.01 (2) Licensees shall wash their hands thoroughly with soap and running water prior to serving each patron and following removal of gloves. Waterless hand washing agents with alcohol as an active ingredient with a concentration of at least 70% 60% are an acceptable substitute for washing hands that are not visibly soiled with soap and running water.

Cos 4.01 (3) Powder puffs, sponges, and emery boards and other contact equipment ~~that cannot be cleaned with soap or detergent and water~~ shall be disposed of following each use.

SECTION 16. Cos 4.02 (3) is amended to read:

Cos 4.02 (3) Disinfection for combs, lifts, brushes, rollers and any other contact equipment shall consist of cleaning with soap and water to remove all organic material, ~~spraying with a tuberculocidal~~ treating with a disinfectant as defined in s. Cos 1.01, and air-drying.

SECTION 17. Cos 4.02 (6) (Note) is amended to read:

Cos 4.02 (6) (Note) Chlorine bleach and Lysol® (brown bottle) are germicidal compounds.

SECTION 18. Cos 4.04 (1m) is created to read:

Cos 4.04 (1m) All establishments shall supply licensees with at least one antiseptic listed in s. Cos 4.05.

SECTION 19. Cos 6.04 is amended to read:

Cos 6.04 Practical training for apprentices. (1) (a) The establishment owner with whom an apprentice contracts shall employ a cosmetology manager, whose cosmetology manager's license is not an inactive license, to train and supervise the apprentice, except as provided in pars. (b) and (c). An apprentice shall only work under the supervision of a cosmetology manager, except as provided in pars. (b) and (c).

(b) A cosmetology manager may delegate their supervisory duty to a practitioner who has completed at least 2,000 hours of licensed practice.

(c) A cosmetology manager may delegate their supervisory duty to a barber licensed under ch. 454, Stats., who has completed at least 2,000 hours of licensed practice, but only if the apprentice is a barbering apprentice as referenced in s. 454.22 (1) (c), Stats., and if the apprentice engages only in barbering.

SECTION 20. Cos 7.03 (2) and 7.04 are amended to read:

Cos 7.03 (2) COSMETOLOGY MANAGER. An applicant for licensure as a cosmetology manager shall complete a written examination.

Cos 7.04 Passing scores. The passing score of the examinations for licensure as a cosmetologist, aesthetician, manicurist, electrologist, or cosmetology manager, shall be based on the board's determination of the level of examination performance required for minimum competence in the profession.

SECTION 21. Cos 8.01 (2) and 8.02 (intro.) are amended to read:

Cos 8.01 (2) An applicant for licensure as a cosmetology manager shall satisfy the requirements in s. 454.06 (1) and (3), Stats.

Cos 8.02 Licensing requirement without examination. The board may grant a license to practice cosmetology, aesthetics, electrology, or manicuring, or to practice as a cosmetology manager without examination to a licensee of another state provided that the following conditions are met:

SECTION 22. Cos 8.03 is created to read:

Cos 8.03 Inactive license. (a) Any person who has been granted an inactive license, under s. 454.06 (8m), Stats., may not receive compensation for personal care services performed by a licensee and may not practice in a licensed establishment.

(b) activities permitted under this subsection include

SECTION 23. Cos 9.03 is repealed and recreated to read:

Cos 9.03 Reinstatement of license. (1) If the application for renewal is 5 years or more after the expiration of the applicant's last license, the board in its discretion may require as a condition of renewal that the applicant successfully pass the examination required in s. Cos 7.03.

(2) A licensee who has a license with unmet disciplinary requirements which has not been renewed within five years of the renewal date or whose license has been surrendered or revoked may apply to have the license reinstated in accordance with all of the following:

(a) Evidence of completion of the requirements in sub. 1, if the credential has not been active within the last 5 years.

(b) Evidence of completion of disciplinary requirements, if applicable.

(c) Evidence of rehabilitation or change in circumstances warranting reinstatement of the credential.

(3) A licensee may not practice as a cosmetologist, aesthetician, electrologist, manicurist or cosmetology manager prior to being granted reinstatement of their respective license.

SECTION 24. Cos 11.01 is amended to read:

Cos 11.01 Authority and purpose. The rules in this chapter are adopted under the authority in ss. 15.08 (5) (b), 227.11 (2), and 454.12, Stats., and govern biennial continuing education for aesthetics and cosmetology practitioner and cosmetology manager, electrology and manicuring licenses.

SECTION 25. Cos 11.04 (1) (e) is created to read:

Cos 11.04 (1) (e) Private continuing education providers shall refrain from using promotional materials that give the impression that a course they offer was created or delivered by the cosmetology examining board, the department of safety and professional services or any other state entity. The prohibition against such representations shall include all promotional material regarding provider name, course or business name, websites, advertisements, e-mails or mailings. This does not prohibit continuing education providers from disclosing relevant state approvals, licensures, or appointments in promotional materials.

SECTION 26. Cos 11.03 (5) (b) and (c) 2. and 5. are amended to read:

Cos 11.03 (5) (b) Teaching a continuing education program. A person who teaches may only receive credit for the initial offering or presentation of a course or program during a biennium. Fifty minutes of actual instruction is equivalent to one continuing education credit hour. A maximum of 3 4 credit hours may be obtained by teaching in any biennial reporting period. Full-time faculty may not claim continuing education credits for teaching done as part of their regular duties.

Cos 11.03 (5) (c) 2. The course or program requires assignments that are completed and prepared by the licensee and submitted to the provider for correction, grading, or both. The assignment must be graded or corrected by the continuing education provider and returned to the licensee before the licensee is allowed to take the course examination. The continuing education provider may not provide a licensee with the assignment answers before the licensee has submitted their completed assessment.

Cos 11.03 (5) (c) 5. The course or program contains a minimum of 50 minutes of actual instruction for each credit hour offered. For purposes of calculating actual instruction time, the time spent for testing and assessment purposes shall not be included. All continuing education courses made available online, including booklets and text based courses, must include a timer that cannot be fast-forwarded by the licensee unless they have already completed that section of the course and are reviewing the material again. The timer shall ensure that there is a minimum of 50 minutes of actual instruction for each credit hour offered. Text based courses that require licensees to read a substantial amount of course material must include a minimum of 5,000 words per continuing education hour of educational material.

SECTION 27. 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.

(END OF TEXT OF RULE)

Dated _____

Agency _____

Chairperson
Cosmetology Examining Board



EXECUTIVE ORDER # 50

Relating to Guidelines for the Promulgation of Administrative Rules

WHEREAS, 2011 Wisconsin Act 21 reformed the administrative rulemaking process in Wisconsin in order to increase accountability, clarify agency regulatory authority, and evaluate the economic impact of all new and amended state administrative rules; and

WHEREAS, Wis. Stat. § 227.10(1) requires that each agency statement of policy and each interpretation of a statute adopted to govern its enforcement or administration of that statute shall be promulgated as a rule, and Wis. Stat. § 227.01(13) defines a rule as “a regulation, standard, statement of policy or general order of general application which has the effect of law and which is issued by an agency to implement, interpret or make specific legislation enforced or administered by the agency or to govern the organization or procedure of the agency;” and

WHEREAS, Wis. Stat. § 227.10(2m) requires an explicit grant of authority under statute or administrative rule before a state agency can implement or enforce any standard, requirement, or threshold, including as a term or condition of any license issued by the agency; and

WHEREAS, Wis. Stat. §§ 227.11(2)(a)1. to 3. defines agency authority to promulgate administrative rules, specifically providing the following:

- A statutory or nonstatutory provision containing a statement or declaration of legislative intent, purpose, findings, or policy does not confer rulemaking authority on the agency or augment the agency’s rulemaking authority beyond the rulemaking authority that is explicitly conferred on the agency by the legislature.
- A statutory provision describing the agency’s general powers or duties does not confer rulemaking authority on the agency or augment the agency’s rulemaking authority beyond the rulemaking authority that is explicitly conferred on the agency by the legislature.
- A statutory provision containing a specific standard, requirement, or threshold does not confer on the agency the authority to promulgate, enforce, or administer a rule that contains a standard, requirement, or threshold that is more restrictive than the standard, requirement, or threshold contained in the statutory provision; and

WHEREAS, Wis. Stat. §§ 227.135(2), 227.24(1)(e)1d. requires the Governor to approve a statement of scope before an agency may proceed with rulemaking, Wis. Stat. § 227.185 requires the Governor to approve a final draft rule before it is submitted to the Legislature for review, and Wis. Stat. § 227.24(1)(e)1g. requires the Governor to approve an emergency rule before it is filed with the Legislative Reference Bureau and published in the official state newspaper; and

WHEREAS, Wis. Stat. § 227.137 requires state agencies to complete an Economic Impact Analysis (EIA) for every proposed rule in coordination with local governmental units that may be affected and to solicit information and advice from and consult with businesses,

associations representing businesses, local governmental units and individuals that may be affected by the proposed rule; and

WHEREAS, Wis. Stat. § 227.10(2m) establishes that “[t]he Governor, by executive order, may prescribe guidelines to ensure that rules are promulgated in compliance with [Subchapter II of Chapter 227 of the Wisconsin Statutes].”

NOW THEREFORE, I, Scott Walker, Governor of the State of Wisconsin, by virtue of the authority vested in me by the Constitution and the laws of Wisconsin, specifically Wis. Stat. § 227.10(2m), do hereby direct that state agencies shall comply with the requirements of Subchapter II of Chapter 227 and this Executive Order when promulgating administrative rules.

I. General Provisions

1. To assure timely and proficient review of administrative rules in accordance with this Executive Order and with Wis. Stat. § 227.10(2m), the Governor’s Office of Regulatory Compliance is hereby established.
2. Each agency that develops any document interpreting, clarifying, or explaining statutes and rules that regulate individuals or entities or local governmental units, shall submit a copy to the Governor’s Office of Regulatory Compliance via AdministrativeRules@Wisconsin.gov prior to its finalization by that agency.
3. Each agency shall submit to the Governor’s Office of Regulatory Compliance all materials required to be submitted under Subchapter II of Chapter 227. This includes all publicly available materials submitted to the Legislative Council Rules Clearinghouse, Legislative Reference Bureau, Department of Administration, Chief Clerks of the State Assembly and State Senate, legislative standing committees, and the Joint Committee for Review of Administrative Rules.
4. The electronic submission of materials to the State Budget Office, via SBOAdminRules@wisapps.wi.gov or as the State Budget Office otherwise prescribes, shall fulfill an agency’s duty, under Chapter 227 and Paragraph I.3. of this Executive Order, to submit materials to the Governor, the Governor’s Office of Regulatory Compliance, or the Department of Administration.
5. Each statement of scope submitted by an agency on or after June 8, 2011 is subject to review and approval by the Governor as required by Wis. Stat. §§ 227.135(2), 227.24(1)(e)1d. and Paragraph II.1. of this Executive Order. An EIA shall be prepared as required by Wis. Stat. § 227.137 and Paragraph IV.1. of this Executive Order if the draft rule is submitted to the Legislative Council Rules Clearinghouse under Wis. Stat. § 227.15 on or after June 8, 2011. An EIA is not required when an agency promulgates an emergency rule. A final draft rule or emergency rule is subject to review and approval by the Governor, as required by Wis. Stat. §§ 227.185, 227.24(1)(e)1g. and Paragraph V.1. of this Executive Order, if the statement of scope for the rule or emergency rule was submitted on or after June 8, 2011.
6. The language of Wis. Stat. § 990.001(11) concerning severability and Wis. Stat. § 990.01 concerning construction of words and phrases are intended to apply to this Executive Order.

II. Statements of Scope

1. A statement of scope shall be submitted to the Governor’s Office of Regulatory Compliance for approval by the head of the agency proposing a rule or emergency rule or by a deputy or executive assistant who has been authorized to do so by the agency head under Wis. Stat. §§ 15.04(2) or 15.05(3). Statements of scope shall be submitted electronically, as prescribed in Paragraph I.4. of this Executive Order, and contain the following information as required by Wis. Stat. § 227.135(1).
 - a. A detailed description of the objective of the rule.

- b. A detailed description of existing policies relevant to the rule and new policies proposed to be included in the rule and an analysis of policy alternatives. The description shall include an overview of the requirement or program that the rule will implement. If the proposed rule will amend an existing rule, the description shall also include an overview of the existing rule and the general changes. If the proposed rule will replace an emergency rule currently in effect, the agency shall summarize the status of any legislative action under Wis. Stat. § 227.24(2) or § 227.26(2) and identify any implementation issues that have arisen since the rule was promulgated.
 - c. A detailed description of the statutory authority for the rule. The agency shall reference each statute that authorizes the promulgation of the proposed rule and each statute or rule that will affect the proposed rule or be affected by it. The agency shall also explain in detail the agency's authority to promulgate the proposed rule under those statutes. An agency shall rely on an explicit grant of authority from the Legislature to promulgate a rule, if one exists. An agency shall not rely upon general statements of legislative purpose or legislative findings or agency general powers and duties clauses to confer authority to promulgate rules. Pursuant to Wis. Stat. § 227.11(2)(a), in the absence of an explicit grant of rulemaking authority, an agency may promulgate a rule if:
 - i. The agency considers it necessary to effectuate the purpose of the statute; and
 - ii. The agency has a general grant of rulemaking authority to administer or enforce the chapter, subchapter, or section of the Wisconsin statutes.
 - d. An estimate of the amount of time that state employees will spend to develop the rules and of other resources necessary to develop the rule.
 - e. A description of all of the entities that may be affected by the rule. This includes a description of any local governmental units, businesses, economic sectors, or public utility ratepayers who may reasonably be anticipated to be affected by the rule.
 - f. A summary and preliminary comparison, with state law, of any existing or proposed federal regulation that is intended to address the activities to be regulated by the rule.
2. A statement of scope shall also include a statement of whether the agency anticipates that the proposed rule will have minimal or no economic impact, may have a moderate economic impact, or is likely to have a significant economic impact locally or statewide.
 3. A statement of scope for a proposed emergency rule shall also include an explanation of why the rule is necessary for the preservation of the public peace, health, safety, or welfare. If the rule is exempt from the required finding of emergency, the statement of scope shall cite the Wisconsin Act number and section authorizing the promulgation of an emergency rule or the statute section providing the exemption. The statement of scope shall also indicate whether the agency will promulgate a non-emergency rule and when it will begin the non-emergency rulemaking process.
 4. An agency that intends to simultaneously draft an emergency and a non-emergency rule that are identical in substance may submit one scope statement indicating this intent.
 5. Pursuant to Wis. Stat. § 227.135(2), no state employee may begin work on a proposed rule or emergency rule until the statement of scope has been approved by the Governor, published in the Administrative Register, and approved by the agency head or body with policy making powers for the agency.
 6. A statement of scope not submitted in accordance with Wis. Stat § 227.135(1) and this Executive Order will be returned to the agency and the Governor's Office of

Regulatory Compliance's review will be suspended until a complete description and analysis is resubmitted.

7. The Governor's Office of Regulatory Compliance may request an agency to withdraw a statement of scope and resubmit separate statements of scope if, in the Governor's discretion, the original statement of scope encompasses more than one rule change.
8. Following a review of the statement of scope, the Governor's Office of Regulatory Compliance shall notify the agency in writing whether the statement of scope is approved or disapproved. A disapproval by the Governor may be accompanied by suggested modifications in the event an agency chooses to submit a revised statement of scope.
9. An agency must file a statement of scope approved by the Governor for publication by the Legislative Reference Bureau within thirty calendar days of approval if the agency intends to proceed with rulemaking, or the Governor's Office of Regulatory Compliance will deem the statement of scope to be withdrawn.
10. If at any time during the rulemaking process prior to final approval by the Governor, the scope of a proposed rule is changed in any meaningful or measureable way, including changing the scope so as to include any activity, business, material or product that is not specifically included in the original statement of scope under Wis. Stat. § 227.135(4), a revised statement of scope shall be submitted to the Governor's Office of Regulatory Compliance for approval. A meaningful or measurable change includes a change to the following:
 - a. The objectives of the proposed rule;
 - b. The basis and purpose of the proposed rule;
 - c. The policies to be included in the proposed rule;
 - d. The entities affected by the proposed rule; or
 - e. The overall breadth or scope of the regulation in the proposed rule.
11. If at any time following the Governor's approval of a statement of scope, prior to the submission of a final draft rule to the Legislature for review, the Governor's Office of Regulatory Compliance requests a revised statement of scope from the agency because the rule has been changed in a meaningful or measureable way under Wis. Stat. § 227.135(4), the agency shall submit the revised statement of scope to the Governor's Office of Regulatory Compliance electronically as prescribed in Paragraph I.4. of this Executive Order within fourteen calendar days of receiving the request.

III. Additional Agency Actions in the Rule-Making Process

1. If an agency intends to establish an advisory committee under Wis. Stat. § 227.13, it shall provide a list of members to the Governor's Office of Regulatory Compliance via AdministrativeRules@Wisconsin.gov prior to establishing the advisory committee.
2. The agency's draft rule analysis required under Wis. Stat. § 227.14(2) shall be submitted to the Governor's Office of Regulatory Compliance electronically, as prescribed in Paragraph I.4. of this Executive Order, upon completion and prior to finalization and submittal to the Legislative Council under Wis. Stat. § 227.15(1). In accordance with Wis. Stat. § 227.14(2m), the agency shall include a statement within the analysis describing how the requirements for ensuring the accuracy, integrity, objectivity and consistency of data were used in preparing the proposed rule and related analysis.

IV. Economic Impact Analysis

1. For each proposed rule that is not an emergency rule, an Economic Impact Analysis (EIA) shall be submitted to the Legislative Council, the Governor, the Department of Administration, and the Legislature by the head of the agency proposing a rule as required by § 227.137(4). An EIA shall be submitted electronically to the

Governor's Office of Regulatory Compliance as prescribed in Paragraph I.4. of this Executive Order and this submission shall also fulfill the requirement under § 227.137(4) to submit the EIA to the Governor and the Department of Administration.

2. Prior to initiating an EIA of a proposed rule, the agency shall review the statement of scope to determine whether it was changed in any meaningful or measurable way, under Wis. Stat. § 227.135(4) and Paragraph II.10. of this Executive Order, while the rule was being developed. If a meaningful or measurable change has been made, the agency shall revise and resubmit the statement of scope for approval as required by Wis. Stat. § 227.135(4) and Paragraph II.10. of this Executive Order.
3. In preparing an EIA, under Wis. Stat. § 227.137(3), the agency shall solicit information and advice from businesses, business sectors, associations representing business, local governmental units, and individuals that may be affected by the proposed rule by making information about the rule available and requesting comments.
 - a. Information including the proposed rule language shall be made available by posting on the agency website and the Wisconsin administrative rules website, submitting the information to the Governor's Office of Regulatory Compliance, as prescribed in Paragraph I.4. of this Executive Order, and by e-mailing individuals who have requested to receive information and other persons identified by the agency as potentially interested parties.
 - b. The agency shall accept comments for a period of at least fourteen calendar days if the statement of scope indicates that the draft rule will have no or minimal economic impact locally or statewide, at least thirty calendar days if the statement of scope indicates a moderate economic impact locally or statewide and at least sixty calendar days if the statement of scope indicates that the draft rule may or is likely to have a significant economic impact locally or statewide or on a sector of the economy. If the agency determines that the anticipated economic impact will be greater than indicated in the statement of scope, it shall adjust the comment period accordingly and a revised statement of scope is not required. If an agency determines that the anticipated economic impact will be less than indicated in the statement of scope, it may adjust the comment period accordingly and a revised statement of scope is not required.
 - c. The agency shall review the comments received and the statement of scope description of all of the persons that may be affected by the proposed rule. The agency shall update the list of businesses, business sectors, associations representing businesses, local governmental units, and individuals included in the statement of scope and submit the list to the Governor's Office of Regulatory Compliance via AdministrativeRules@Wisconsin.gov.
4. After soliciting information and advice from businesses, business sectors, associations representing business, local governmental units, and individuals that may be affected by the proposed rule, the agency shall prepare the EIA in coordination with the local governmental units that respond to the agency's solicitation of comments and request to coordinate with the agency, as required by Wis. Stat. § 227.137(3). The agency shall contact those local governmental units to discuss such comments and incorporate them into the EIA to the extent feasible. The agency may at the same time consult with the local governmental units about whether the proposed rule would adversely affect in any material way the economy, a sector of the economy, productivity, jobs or the overall economic competitiveness of the state as required by Wis. Stat. § 227.137(3)(e) and Paragraph IV.3. of this Executive Order.
5. After soliciting information and advice from businesses, business sectors, associations representing business, local governmental units, and individuals that may be affected by the proposed rule, the agency shall make a determination in the EIA as required by Wis. Stat. § 227.137(3)(e), in consultation with those businesses, business sectors, associations representing businesses, local governmental units, and individuals as to whether the proposed rule would adversely affect in a material way

the economy, a sector of the economy, productivity, jobs, or the overall economic competitiveness of this state in the following manner:

- a. The agency shall compile a list of affected persons and economic concerns identified in the comments solicited by the agency.
 - b. The agency shall contact those affected persons to discuss economic concerns and give consideration to those concerns in its EIA determination.
 - c. The agency shall document in the EIA the affected persons who were consulted and whether the agency's determination is disputed by any of the affected persons.
6. For purposes of developing an EIA for a proposed rule that is anticipated to have a significant economic impact locally or statewide, or on a sector of the economy, agencies are encouraged to establish an advisory committee of affected persons following its solicitation of comments in order to coordinate with local governmental units and consult with other affected persons. An agency that previously established an advisory committee under Wis. Stat. § 227.13 to advise it during rulemaking, including the development of the EIA, shall add to the committee affected persons, identified following the agency's solicitation of comments, who wish to serve on the committee.
7. The final EIA shall contain the following information as required by Wis. Stat. § 227.137 on the economic impact of the proposed rule on specific businesses, business sectors, public utility ratepayers, local governmental units, and the state's economy as a whole:
- a. An analysis and quantification of the policy problem that the proposed rule is intending to address, including comparisons with approaches used by the federal government and by Illinois, Iowa, Michigan, and Minnesota to address the policy problem and, if the approach chosen by the agency to address that policy problem is different from those approaches, a statement as to why the agency chose a different approach.
 - b. An analysis and detailed quantification of the economic impact of the proposed rule, including the implementation and compliance costs that are reasonably expected to be incurred by the businesses, local government units, and individuals that may be affected by the proposed rule. A summary of comments related to the implementation and compliance costs received by businesses, local governmental units, and individuals shall be included in the final analysis.
 - c. An analysis of the actual and quantifiable benefits of the proposed rule, including an assessment of how effective the proposed rule will be in addressing the policy problem that the rule is intended to address.
 - d. An analysis of the alternatives to the proposed rule including the alternative of not promulgating the proposed rule.
 - e. A determination made in consultation with the businesses, local governmental units, and individuals that may be affected by the proposed rule as to whether the proposed rule would adversely affect in a material way the economy, a sector of the economy, productivity, jobs, or the overall economic competitiveness of this state. Included in the final analysis shall be a summary of comments related to whether the proposed rule would adversely affect, in a material way, the economic competitiveness of this state received by businesses, local governmental units, and individuals.
 - f. If the agency finds that a proposed rule will not have an economic effect on public utilities or their ratepayers, it shall state this conclusion in the EIA. If the agency finds that a proposed rule will have an economic impact on public utilities or their ratepayers or both, it shall request the information necessary from the Public Service Commission to provide an estimate of the increased costs or resulting savings for public utilities and their ratepayers.

13. If an agency makes modifications to a proposed rule following the agency public hearing, the agency shall review the rule to determine whether the scope has been changed in any meaningful or measurable way under Wis. Stat. § 227.135(4) and Paragraph II.10. of this Executive Order and whether the economic impact of the proposed rule is significantly changed under Wis. Stat. § 227.137(4) and Paragraph IV.9. of this Executive Order.
 - a. The agency shall notify the Governor's Office of Regulatory Compliance via AdministrativeRules@Wisconsin.gov if it will submit a revised statement of scope to the Governor's Office of Regulatory Compliance for approval or a revised EIA to the Governor's Office of Regulatory Compliance, the Department of Administration, the Legislative Council Rules Clearinghouse and the Legislature, or both a revised statement of scope and a revised EIA. A revised statement of scope shall be submitted to the Governor's Office of Regulatory Compliance electronically as prescribed in Paragraph I.4. of this Executive Order within seven calendar days of the notification.
 - b. If neither a revised statement of scope nor a revised EIA is required, the agency shall submit the final draft rule to the Governor's Office of Regulatory Compliance for approval within thirty calendar days of the close of the public comment period following the public hearing if it intends to proceed with rulemaking, unless the agency has a policy making board that is required to approve the final rule language before it is submitted to the Governor's Office of Regulatory Compliance.

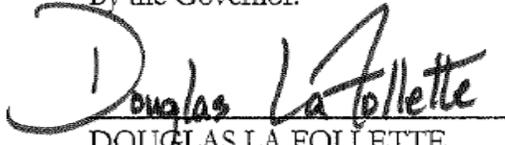
V. Final Draft Rule

1. A final draft rule shall be submitted electronically as prescribed in Paragraph I.4. of this Executive Order to the Governor's Office of Regulatory Compliance for approval by the head of the agency proposing a permanent or emergency rule or by a deputy or executive assistant who has been authorized to do so by the agency head under Wis. Stat. §§15.04(2) or 15.05(3).
2. For each non-emergency rule, the final draft rule submitted to the Governor's Office of Regulatory Compliance shall contain the following information:
 - a. The documents required under Wis. Stat. § 227.15(1), with any necessary updates;
 - b. A statement describing how the rule complies with any applicable requirement under Wis. Stat. § 227.116;
 - c. The final EIA required under Wis. Stat. § 227.137(2);
 - d. The report of the Department of Administration if required under Wis. Stat. § 227.137(6);
 - e. Any energy impact report completed under Wis. Stat. § 227.117(2), and a statement describing the agency's consideration of the energy impact report in accordance with Wis. Stat. § 227.117(3);
 - f. The report of the Small Business Regulatory Review Board required under Wis. Stat. § 227.14(2g);
 - g. Any regulatory flexibility analysis completed under Wis. Stat. § 227.114;
 - h. A list of persons who appeared or registered for or against the rule at the hearing;
 - i. A summary of public comments to the proposed rule and the agency's response to those comments;
 - j. An explanation of any modifications made in the proposed rule as a result of public comments or testimony received at the public hearing; and
 - k. The Legislative Council Rule Clearinghouse report completed under Wis. Stat. § 227.15 and the agency's response to the report as required by Wis. Stat. § 227.19(3)(d).
3. For each emergency rule, the final draft rule submitted to the Governor's Office of Regulatory Compliance shall contain the following information:
 - a. A fiscal estimate in the format required by Wis. Stat. § 227.14(4); and

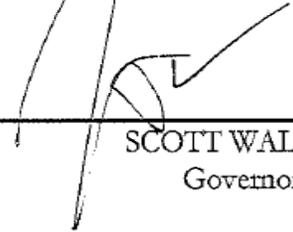
- b. A plain language analysis of the rule in the format required under Wis. Stat. § 227.14(2).
4. Following a review of the final draft rule, the Governor's Office of Regulatory Compliance shall notify the agency in writing whether the rule is approved or disapproved. A disapproval may be accompanied by suggested modifications. The agency may submit a revised rule for approval under the statement of scope that was previously approved by the Governor.



By the Governor:


DOUGLAS LA FOLLETTE
Secretary of State

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Wisconsin to be affixed. Done at the Capitol in the City of Madison this second day of November, in the year two thousand eleven.


SCOTT WALKER
Governor



EXECUTIVE ORDER # 61

Relating to Job Creation and Small Business Expansion

WHEREAS, creating jobs and growing our state's economy is dependent on a vibrant small business sector; and

WHEREAS, small businesses have generated 64% of net new jobs over the past fifteen years and employ over half of all private sector employees; and

WHEREAS, according to recent U.S. Census data, 86% of Wisconsin business employ fewer than 20 workers, and 74% have ten workers or less; and

WHEREAS, small businesses spend 80% more per worker than large employers to comply with government regulations and, according to a recent National Federation of Independent Business survey of Wisconsin employers, 91% said it was impossible to know about, comply with, and understand all of government's regulations; and

WHEREAS, according to the U.S. Small Business Administration, complying with government regulations costs small businesses \$10,585 per worker, which discourages investment and hiring by small businesses; and

WHEREAS, government regulations are regularly cited as one of the top three concerns for small business growth, according to NFIB's Small Business Optimism Index; and

WHEREAS, 2011 Wisconsin Act 46 strengthened Wisconsin's Small Business Regulatory Review Board (Board) empowering small business owners and giving them the ability to judge the economic impact of government regulation; and

WHEREAS, 2011 Wisconsin Act 46 requires state agencies to submit any rule with an economic impact to the Board for review and allows the Board to suggest changes to the agency that will improve compliance and reduce the rule's burden on small businesses; and

WHEREAS, pursuant to Wis. Stat. § 227.30, the Board has the authority to review rules and guidelines of any agency to determine whether any of those rules or guidelines place an unnecessary burden on the ability of small businesses to conduct their affairs; and

WHEREAS, state agencies and the Board should not only be reviewing new rules but collaborating to reform existing rules that hinder job creation and small business expansion and that this effort would help further the state's goal of creating 250,000 jobs by 2015.

NOW THEREFORE, I, SCOTT WALKER, Governor of the State of Wisconsin, by the authority vested in me by the Constitution and laws of this State, specifically Wis. Stat. § 227.10(2m), do hereby:

1. Require all state agencies to review 2011 Wisconsin Act 46 to ensure they are in compliance, ready to assist small business owners, and properly submitting any proposed rules with an economic impact to the Board;
2. Require all state agencies to cooperate with the Board to identify existing rules hindering job creation and small business growth;

3. Require all state agencies to work with the Board to recommend changes to these rules that will both reduce their burden on job creators while continuing to comply with the intent of the statutes that created them;
4. Require all state agencies to work with the Board to identify strategies that will increase compliance with existing rules;
5. Request that the Board engage small business owners and their representative organizations to gather input on any rules hindering job growth;
6. Request that the Board provide a report and analysis of these rules, in a manner similar to Wis. Stat. § 227.30(1), to the Governor's Office of Regulatory Compliance and the agency with the authority to amend the rules, which details the rules they have identified for modification.



IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Wisconsin to be affixed. Done in the City of Eau Claire this twenty-second day of February, in the year two thousand twelve.


SCOTT WALKER
Governor

By the Governor:


DOUGLAS LA FOLLETTE
Secretary of State