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Emergency Rules Now in Effect

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

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

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

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

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

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

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

Agriculture, Trade and Consumer Protection (2)

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

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

The statement of scope for this rule, SS 002-11, was approved by the governor on July 14, 2011, published in Register No. 667, on July 31, 2011, and approved by The Board of Agriculture, Trade and Consumer Protection on August 12, 2011.

Finding of Emergency

In Wisconsin, grain dealers (persons who purchase grain from producers), grain warehouse keepers (persons who store grain that is owned by others), milk contractors (persons who purchase milk from producers, and vegetable contractors (persons who purchase vegetables from producers for use in processing), must obtain a license to do these activities and are collectively referred to as “contractors”. Most contractors are

“contributing contractors”, which means they must pay annual assessments into the Wisconsin Agricultural Producer Security Fund. This fund is designed to help partially reimburse producers in the event that a contractor defaults on payment to producers. The annual assessments are calculated based on the total dollar value of commodities purchased or stored, the length of time that the contractor has participated in the fund, and certain financial ratios from the contractor’s balance sheet.

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

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

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

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

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

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

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

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

Exemption From Finding of Emergency

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

Publication Date: November 14, 2011
Effective Dates: January 1, 2012 until modified or repealed by the department.
Hearing Date: December 12, 2011
 (See the Notice in this Register)

Children and Families (2)

Safety and Permanence, Chs. DCF 37–59

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

Exemption From Finding of Emergency

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

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

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

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

Finding of Emergency

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

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

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

Employment Relations Commission

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

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

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

Finding of Emergency

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

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

Insurance

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

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

Finding of Emergency

The Commissioner of Insurance finds that an emergency exists and that the attached proposed emergency rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. Portions of Wisconsin's insurance law and regulations governing grievances and independent review processes are in conflict with federal law and regulation following the amendment of 42 USC 300gg 19 (a) and (b), as implemented by 45 CFR 147.136, as amended. Therefore, the Commissioner, pursuant to s. 631.01 (5), Stats., has determined that it is in the interest of the State of Wisconsin, Wisconsin insureds and the public to exempt

insurers, certified independent review organizations and self-insured governmental health plans that elect to comply with ch. Ins 18, Wis. Adm. Code, as revised, from being required to comply with provisions contained in s. 632.83 and 632.835, Stats., that are inconsistent with 42 USC 300gg-19 (a) and (b), and 45 CFR 147.136 et seq., as amended.

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

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

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

Justice (2)

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

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

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

Finding of Emergency

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

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

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

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

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

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

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

Finding of Emergency

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

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

Natural Resources (6)

Fish, Game, etc., Chs. NR 1—

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

Exemption From Finding of Emergency

Section 227.24 (1) (a), Stats., authorizes state agencies to promulgate a rule as an emergency rule without complying with the notice, hearing and publication requirements under

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

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

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

Exemption From Finding of Emergency

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

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

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

Exemption From Finding of Emergency

Section 227.24 (1) (a), Stats., authorizes state agencies to promulgate a rule as an emergency rule without complying with the notice, hearing and publication requirements under Ch. 227, Stats., if preservation of the public peace, health, safety or welfare necessitates putting the rule into effect prior to the time it would take effect if the agency complied with the procedures. However, s. 23.22 (2t) (a), Stats., authorizes the

department to promulgate emergency rules to identify, classify, or control an invasive species without having to provide evidence that an emergency rule is necessary for the preservation of public peace, health, safety, or welfare or to provide a finding of emergency. **In addition, such emergency rules may remain in effect until whichever of the following occurs first: the first day of the 25th month beginning after the effective date of the emergency rule, the effective date of the repeal of the emergency rule, or the date on which the permanent rule identifying, classifying, or controlling the invasive species, promulgated under s. 23.22 (2) (b) 6., Stats., takes effect.**

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

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

Finding of Emergency

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to protect the public welfare. The rule is necessary in order to foster participation by hunters and landowners so they will continue to hunt and cooperate in CWD control and deer herd management. This rule proposal balances pressing social concerns about the quality of the deer hunt with the need for effective herd control measures such as additional antlerless deer harvest in management units that are more than 20% over population goals or simply over population goals in units that are part of the CWD Management Zone. This rule will increase harvest of bucks in the CWD zone which have a higher prevalence of CWD and, because of their greater dispersal distances, have a higher likelihood of spreading CWD. However, the rule retains a herd control tool which requires that antlerless deer be harvested before additional bucks (beyond the initial one) may be taken. The federal government and state legislature have delegated to the appropriate agencies rule-making authority to control and regulate hunting of wild animals. The State of Wisconsin must provide publications describing the regulations for deer hunting to more than 630,000 deer hunters prior to the start of the season. These regulations must be approved prior to printing nearly 1 million copies of the regulations publication.

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

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

Finding of Emergency

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to protect the public welfare. The federal government and state legislature have delegated to the appropriate agencies rule-making authority to control the hunting of migratory birds. The State of Wisconsin must comply with federal regulations in the establishment of migratory bird hunting seasons and conditions. Federal regulations are not made available to this state until late July of each year. This order is designed to bring the state hunting regulations into conformity with the federal regulations. Normal rule-making procedures will not allow the establishment of these changes by September 1. Failure to modify our rules will result in the failure to provide hunting opportunity and continuation of rules which conflict with federal regulations.

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

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

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

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

Finding of Emergency

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

The current commercial season for whitefish from Lake Michigan and Green Bay closes one week before the season closure for state–licensed fishers in the State of Michigan. This limitation on fishing opportunities threatens the welfare of state–licensed commercial fishers in Wisconsin and makes these Wisconsin businesses less competitive with counterparts in Michigan. The additional business revenue, approximately \$161,300, and improved competitiveness of the commercial fishing industry, rises to the standard of preservation and improvement of the public welfare required for emergency rule making.

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

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

Revenue (3)

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

Finding of Emergency

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

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

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

This rule is therefore promulgated as an emergency rule and shall take effect upon publication in the official state newspaper. Certified copies of this rule have been filed with

the Legislative Reference Bureau, as provided in s. 227.24, Stats.

Publication Date: April 7, 2011
Effective Dates: April 7, 2011 through September 3, 2011
Hearing Date: June 14, 2011

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

Finding of Emergency

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

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

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

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

Publication Date: April 7, 2011
Effective Dates: April 7, 2011 through September 3, 2011
Hearing Date: June 14, 2011

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

The statement of scope for this emergency rule, SS 001–11, was approved by the governor on June 17, 2011, and published in Register No. 667 on July 14, 2011. This emergency rule was approved by the governor on June 20, 2011.

Finding of Emergency

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

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

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

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

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

Safety and Professional Services (2)
(Formerly Regulation and Licensing)

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

Exemption From Finding of Emergency

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

Publication Date: September 10, 2008
Effective Dates: September 10, 2008
 through the date on which
 the final rules take effect

Hearing Date: November 26, 2008
 April 13, 2009

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

Exemption From Finding of Emergency

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

Publication Date: September 10, 2008
Effective Dates: September 10, 2008
 through the date on which
 the final rules take effect

Hearing Date: November 26, 2008

Scope Statements

Agriculture, Trade and Consumer Protection

SS 042–11

This statement of scope was approved by the governor on November 8, 2011.

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

Subject

Exotic Plant Pest Emergency Rule

Administrative Code Reference

Revises Chapter ATCP 21, Wis. Adm. Code

Statutory Authority

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

Preliminary Objectives

An emergency rule authorized by this statement of scope will create county or multi-county or township or multi-township quarantines for an exotic plant pest in counties and townships where the pest is detected. Any emergency rule authorized by this scope statement will be submitted to the governor for approval pursuant to section 227.24 (1) (e) 1g each time the department finds that a quarantine area for an exotic plant pest is required. The authorization to draft an emergency rule creating a quarantine area pursuant to this statement of scope will expire on the first day following the twelfth month of publication of this statement of scope pursuant to section 227.135 (3) and a new statement of scope must be approved and published pursuant to sections 227.135 (2) and (3) to continue the authorization of emergency rulemaking related to exotic pest quarantines.

A rule authorized by this statement of scope will do the following:

- Create county or multi-county or township or multi-township quarantines in which an exotic pest is detected. The quarantine will prohibit the movement of all articles potentially harboring the damaging pest. These regulated articles would likely include: hardwood species of firewood, nursery stock, green lumber, and other material living, dead, cut or fallen, including logs, stumps, roots, branches and composted and uncomposted chips in the cases of Emerald Ash Borer (EAB), Asian Longhorned Beetle (ALB), Hemlock Woolly Adlegid (HWA), or Thousand Cankers Disease (TCD), as examples.
- Provide an exemption for items that have been inspected and certified by a pest control official and are accompanied by a written certificate issued by the pest control official (some products, such as nursery stock, cannot be given an exemption).
- Provide an exemption for businesses that enter into a state or federal compliance agreement. The compliance agreement spells out what a company can and cannot do with regulated articles.

Preliminary Policy Analysis

DATCP has authority under s. 93.07 (12), Stats., to conduct surveys and inspections for the detection and control of pests injurious to plants, and to make, modify, and enforce reasonable rules needed to prevent the dissemination of pests. DATCP also has plant inspection and pest control authority under s. 94.01, Stats. DATCP may by rule impose restrictions on the importation or movement of serious plant pests, or items that may spread serious plant pests.

In recent years the rate of arrival of new exotic plant pests to the United States has increased significantly. Some of the exotic pests which have already invaded our country include Emerald Ash Borer (EAB), Asian Longhorned Beetle (ALB), Hemlock Woolly Adlegid (HWA), Thousand Cankers Disease (TCD) and Gypsy Moth. The cost of these exotic forest insects to local governments is estimated at more than \$2 billion per year and residential property value loss due to exotic forest pests averages \$1.5 billion a year nationally. So far, EAB and the Gypsy Moth have made it into Wisconsin. EAB is an exotic pest that endangers Wisconsin's 770 million ash trees and ash tree resources. This insect has the potential to destroy entire stands of ash, including up to 20% of Wisconsin's urban street trees and residential landscaping trees, and can result in substantial losses to forest ecosystems. The insect can cause great harm to state lands, and to the state's tourism and timber industries. Currently, EAB has been identified in 15 states, including Wisconsin, and two Canadian provinces. Eleven Wisconsin counties have been quarantined to restrict the movement of ash wood in order to prevent the spread of EAB.

This emergency rule is necessary to create a timely quarantine of the counties or townships, and possibly bordering counties or townships with new exotic plant pest detections until a federal quarantine is enacted. The federal quarantine will take effect up to six months after a formal submission by the state plant regulatory official.

Current and Proposed Federal Legislation and Comparison to Proposed Rule

In order to limit the spread of exotic plant pests, the Animal and Plant Health Inspection Service of the United States Department of Agriculture (USDA-APHIS) has imposed quarantines for EAB in 15 states, ALB in 4 states, Gypsy Moth in 18 states, and external quarantines for HWA in 6 states, including Wisconsin and TCD in 9 states, including Wisconsin. DATCP rules currently prohibit movement of regulated plant articles from any federally quarantined area, except under authorized conditions. This proposed rule is consistent with current state and federal rules.

Entities Affected

According to the American Forest and Paper Association's June report, Wisconsin is number one among states in forestry jobs, employing 56,533 workers and in economic value of wood and paper products shipped at a combined total of \$16,201,241,000. On top of that, each year the agricultural industry produces \$1.38 billion of corn grain, and 1.6 million acres of soybeans, valued at more than \$511 million. Additionally, Wisconsin leads the nation in snap bean production (\$61 million, annually) and ranks third in potato

production (\$293 million). Wisconsin apple orchards produce a yield of \$28 million. This emergency rule could have an impact on persons or companies that deal in any agricultural crop or forest product from the quarantined counties or townships to locations outside of the quarantined counties.

The Wisconsin Department of Tourism reported that Wisconsin travelers spent an estimated total of \$12.303 billion in 2010. Those staying in cabins/cottages/condominiums spent \$651 million while those camping in Wisconsin spent \$656 million. Those visiting just for the day or passing through Wisconsin spent \$813 million. If Wisconsin were to lose its forests to an exotic plant pest, the tourism industry would also suffer substantial losses.

Nurseries, firewood producers/dealers, saw mills and farmers that sell/distribute articles potentially harboring the damaging exotic plant pest would all be impacted. In order to sell regulated wood products outside of their counties, veneer mills and wood processors will have to enter into a compliance agreement with DATCP or APHIS that authorizes movement of products outside of their counties only when there is assurance that the movement will not spread the exotic plant pest to other locations. Licensed nursery growers will not be able to sell regulated nursery stock outside of the quarantined counties. Firewood dealers would need to be certified to sell firewood outside of the quarantined counties. Farmers would be required to treat with an approved treatment option, should one exist, before movement out of the quarantine. Grain elevators could enter into compliance agreements with DATCP or APHIS.

Policy Alternatives

If DATCP does nothing, potentially infested wood or agricultural crops will be allowed to move freely and the department will not be able to regulate its movement. The department would have no regulatory authority in the counties with new exotic plant pest finds, raising the potential of a more rapid spread of an exotic injurious plant pest.

Statutory Alternatives

None at this time.

Staff Time Required

DATCP estimates that it will use approximately 0.1 FTE staff time to develop these rules. This includes time required for investigation and analysis, rule drafting, preparing related documents, holding public hearings, and communicating with affected persons and groups. DATCP will use existing staff to develop this rule.

Datcp Board Authorization

DATCP may not begin drafting a rule until the governor and the Board of Agriculture, Trade and Consumer Protection approves this scope statement. The Board may not approve this scope statement sooner than 10 days after this scope statement is published in the Wisconsin Administrative Register. The scope statement may not be published in the Administrative Register until DATCP has received written approval of the scope statement from the governor. Before the department may publish an emergency rule, it must receive written approval of the proposed emergency rule from the governor.

Children and Families

Early Care and Education, Chs. DCF 201–252

SS 043–11

This statement of scope was approved by the governor on November 15, 2011.

Objective

To create Chapter DCF 205, relating to a child care quality rating system.

Policy Analysis

The proposed rules will implement the department's child care quality rating system known as Youngstar. The rules will include the following topics:

- The provider application process.
- Participation requirements for providers.
- The availability of training, technical assistance, and micro-grants to assist providers with improving the quality of their program.
- The process used to evaluate providers and assign a rating.
- The process for providers to appeal an assigned rating.

Statutory Authority

Section 48.659, Stats., provides that the department shall provide a child care quality rating system that rates the quality of the child care provided by a child care provider who is licensed under s. 48.65, Stats., and receives reimbursement under s. 49.155, Stats., for the child care provided or that volunteers for a rating.

Section 49.155 (6) (e) 1. and 3., Stats., as created by 2011 Wisconsin Act 32, provides that beginning on July 1, 2012, the department may modify a child care provider's reimbursement rate on the basis of the provider's quality rating, as described in the quality rating plan submitted by the department under 2009 Wisconsin Act 28, section 9108 (7f). Section 9108 (7f) (a) 1. provides that the plan shall include various options for the design of the rating system. All of those options shall require the department to include in the rating system child care providers certified under s. 48.651, Stats.

Section 227.11 (2) (a) (intro.), Stats., expressly confers rule-making authority on each agency to promulgate rules interpreting the provisions of any statute enforced or administered by the agency if the agency considers it necessary to effectuate the purpose of the statute.

Entities that may be Affected by the Rule

Child care providers.

Summary of Federal Requirements

None.

Staff Time Required

250 hours.

Contact Information

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Natural Resources

Fish, Game, etc., Chs. NR 1—

SS 037-11

(DNR # FR-24-11)

This statement of scope was approved by the governor on November 3, 2011.

Rule No.

DNR # FR-24-11: Revises Chapter NR 1.

Subject

Creates new rule for regenerating harvested areas of Wisconsin DNR owned and managed lands.

Description of the Objective of the Rule

This rule would establish a mechanism that allows cooperating foresters and private contractors to assist the WDNR in regenerating harvested areas of state owned lands to meet the annual allowable timber harvest established under Wis. Stat. s. 28.025. This rule will create a funding mechanism for artificial and natural regeneration treatments conducted by cooperating foresters and private contractors directly related to timber sales specified in 2005 Act 166. Regeneration treatments include site preparation, tree planting, and invasive species control associated with forest regeneration.

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

2005 Act 166 promulgated the process to provide an inventory of all forested public lands, identify the forest resources available for management, develop annual allowable harvest levels, and undertake such management within 90% and 110% of those levels. Act 166 further provided a mechanism, through the use of cooperating foresters, to assist the department in establishing timber sales (Wis. Stat. s. 28.05 (3)). What was not provided with these previous provisions was a mechanism and funding source to implement harvest regeneration treatments in managed areas. Regenerating forest lands is a critical component of sustainable forest management, and the department has a commitment and responsibility to ensure state owned forest lands are regenerated. Funds are needed to ensure harvested areas will continue to produce re-occurring forest products and other public benefits within state and certification guidelines.

This rule will include provisions authorizing the department to contract with cooperating foresters and private contractors to conduct artificial and natural forest regeneration activities including site preparation, tree planting, and invasive species control associated with forest regeneration. The rule shall authorize cooperating foresters and private contractors with whom the department contracts under this paragraph to receive a portion of the proceeds from timber harvests on state lands.

In the absence of the new rule the department would rely on gifts, grants, and limited existing regeneration funds to implement regeneration activities on state owned lands. In the event that these funding sources would fall short of regeneration needs, the ability to achieve future desired conditions on state lands will continue to be hampered. In

addition, land managers may be apprehensive to manage more complex ecosystems where a quick response of regeneration is required. The new rule will provide assurance that funding will be available to implement forest regeneration activities after harvesting has occurred.

Statutory Authority for the Rule

2011 Act 32, Section 913e., Wis. Stat. s. 28.05 (3) (am), directs the department to, by rule, establish a program that allows cooperating foresters and private contractors to assist the state in regenerating harvested areas of state lands to meet the annual allowable timber harvest established under Wis. Stat. s. 28.025.

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

The department estimates that approximately 170 hours of existing staff time will be needed to develop this new rule. No other additional resources will be needed to develop the rule.

Description of all Entities that may be Affected by the Rule

- Cooperating foresters and private contractors that perform regeneration services
- Forest nurseries that grow seedlings for regeneration
- Companies that sell pesticides used in site preparation, invasive plant control, and tree planting work
- Companies that manufacture or sell equipment used in regeneration services (e.g. sprayers, tree planting equipment, etc.)
- The forest products industry through continued maintenance of managed forests

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 Federal Government provides a similar mechanism on federal lands. The USDA Forest Service utilizes the KV (Knutson-Vandenberg) – BD (Brush Disposal) accounts, which are deductions from timber sales to fund forest regeneration and reduce fire hazard. The USDI Bureau of Indian Affairs utilizes FMD (Forest Management Deductions) under 25. CFR § 163.25 for a similar purpose and method.

Economic Impact

Level 3 – Little to no economic impact expected. A positive economic impact may occur for businesses that provide regeneration services.

Agency Contact Person

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Natural Resources

Fish, Game, etc., Chs. NR 1—

SS 041–11

(DNR # ER–27–11)

This statement of scope was approved by the governor on November 14, 2011.

Rule No.

Revises Chapter NR 27.

Relating to

Revision of Chapter NR 27, Wis. Adm. Code, pertaining to the Wisconsin Endangered/Threatened Species list.

Description of the Objective of the Rule

The department is requesting authorization to revise Chapter NR 27, Wis. Adm. Code, pertaining to the Wisconsin Endangered/Threatened (E/T) species list. Since the first list of Wisconsin E/T species was developed in 1972, the list has been revised 10 times. The major list revisions, where greater than 5 species were removed or added, took place in 1978–1979, 1985, 1989, and 1997. While the last major list revision was in 1997, the list has been occasionally revised for individual species: Gray Wolf (delisted in 2004), Bald Eagle (delisted in 2007), Osprey (delisted in 2009), Trumpeter Swan (delisted in 2009), and 4 cave bat species (listed in 2011).

In 2006, the Bureau of Endangered Resources (BER) drafted and the BER Policy Team approved program guidance that lays out the process for reviewing and making recommendations to revise the E/T list. The guidance document recommends conducting a list-wide review at least every 5 years and earlier as needed, based on changes in species population condition. Changes in population condition of species typically occur more frequently than the E/T list is revised, and are reflected in the Natural Heritage Inventory (NHI) Working List and NHI system of global and state rarity ranks. Global and state rarity ranks are assigned to every species following standardized methodology developed by NatureServe, a non-governmental umbrella organization for NHI and similar programs throughout the U.S., Canada, and Latin America. The NHI system of global and state rarity ranks is the primary trigger for initiating a status assessment of a species, which inform the E/T list revision process.

Between January 2010 and August 2011, BER initiated and completed a review of Wisconsin's rare species using the 2006 E/T list revision document as guidance. The review resulted in over 1000 state rarity rank changes and a list of recommended revisions to the E/T species list. Biologists from a variety of state and national agencies, organizations, and universities, as well as naturalists throughout the state with taxonomic expertise provided new or updated information on the population condition and distribution of rare species in the state.

Department biologists focused attention and resources on conducting status assessments on species that are at risk of extirpation in the state and where application of Wisconsin's Endangered Species Law (ESL) would be effective in their protection. Because minimal protection is afforded to plants through Wisconsin's application of the ESL, it was decided that no plants would be proposed for listing at this time regardless of rarity. The process was documented including the creation of a database to capture the recommendations and information provided. Status assessments were conducted

and resulted in the following proposed changes to the Wisconsin's E/T list. Also included is a summary statement supporting the E/T list change.

Proposed E/T List Changes

(Format: Common name (*Scientific name*), current listing status – current state rarity rank)

Proposed Delist (16 species):

Barn Owl (*Tyto alba*), END – SNA

DELIST: Species has always been edge of range in WI. Not considered a regular breeder in the state.

Bewick's Wren (*Thryomanes bewickii*), END – SXB

DELIST: Extirpated. Species has not been observed breeding in WI or neighboring states for over 40 years.

Snowy Egret (*Egretta thula*), END – SNA

DELIST: Species has always been edge of range in WI. Not considered a regular breeder in the state.

Greater Redhorse (*Moxostoma valenciennesi*), THR – S3

DELIST: Species appears stable in WI. Found consistently in multiple watersheds.

Blanding's Turtle (*Emydoidea blandingii*), THR – S3S4

DELIST: Species still slightly declining in WI, however large population numbers and wide distribution. Not at risk of extirpation.

Butler's Gartersnake (*Thamnophis butleri*), THR – S3S4

DELIST: Species appears stable in WI. New information on abundance, range, and hybridization support delisting.

Pygmy Snaketail (*Ophiogomphus howei*), THR – S4

DELIST: Species appears stable in WI. New populations found using modeling of habitat and targeted surveys.

American Fever-few (*Parthenium integrifolium*), THR – S3S4

DELIST: Population in WI appears stable. Reproducing well on managed sites.

Bog Bluegrass (*Poa paludigena*), THR – S3

DELIST: Population in WI appears stable. New records have resulted from inventories.

Canada Horse-balm (*Collinsonia canadensis*), END – SX

DELIST: Extirpated. Only two native occurrences known in the state. One is presumed extirpated and the other has not been observed for 150 years. Species is conspicuous and easy to identify.

Drooping Sedge (*Carex prasina*), THR – S3

DELIST: Population in WI stable. Narrow habitat preference, however fairly wide distribution and found regularly in suitable habitat.

Hemlock Parsley (*Conioselinum chinense*), END – SX

DELIST: Extirpated. Only six native occurrences known in the state. All are presumed extirpated or historical. Species is conspicuous and easy to identify.

Prairie Indian-Plantain (*Cacalia tuberosa*), THR – S3

DELIST: Population in WI stable to increasing. Has responded well to prairie management.

Snowy Campion (*Silene nivea*), THR – S2

DELIST: Population in WI appears stable. Able to persist with reed canary grass and in degraded streamside habitats. Species no longer imperiled.

Yellow Gentian (*Gentiana alba*), THR – S4

DELIST: Population in WI increasing. Most of the population expansion and increases have occurred in old fields.

Yellow Giant Hyssop (*Agastache nepetoides*), THR – S3
DELIST: Population in WI stable to increasing. Has responded well to savanna management and restoration.

Proposed List (8 species):

Black Tern (*Chlidonias niger*), SC/M – S2B

LIST – Endangered: Species declining in WI. Surveys indicate declines as much as 36% in recent years and a 78% decline over 30 years. Once reported at 79 sites; found only 7 breeding colonies in 2010.

Kirtland's Warbler (*Dendroica kirtlandii*), SC/FL – S1B

LIST – Endangered: Species nesting in WI consistently since 2007. Historic records of individuals in the state. Twelve new populations. Global rank is G1 (“critically imperiled”).

Upland Sandpiper (*Bartramia longicauda*), SC/M – S2B

LIST – Threatened: Species declining in WI. Some of the largest in its range. Once reported at 55 sites. May disappear from WI without large blocks of idle and/or grazed grasslands.

Beach-dune Tiger Beetle (*Cicindela hirticollis rhodensis*), SC/N – S1

LIST – Endangered: Species rare and declining in WI (30%). Once reported from 9–10 sites statewide, however only one known viable population remains.

Ottoe Skipper (*Hesperia ottoe*), SC/N – S1

LIST – Endangered: Species very rare and declining in WI. Once known to 16 sites; as of 2011 only 4 are extant (a 75% decline since the mid-1990s). Many populations gone rangewide. Very few sites have the size, quality–structure–connectivity to sustain this species.

A Leafhopper (*Attenuipyga vanduzeei*), SC/N – S1

LIST – Endangered: Species very rare in WI. Only 4 extant populations known. Restricted to the highest quality prairie remnants. Poor dispersal ability and sensitive to management and woody encroachment.

An Issid Planthopper (*Fitchiella robertsoni*), SC/N – S1S2

LIST – Threatened: Species very rare in WI. Only 4 extant populations known. Restricted to high quality prairie remnants, which are extremely rare.

Fawnsfoot (*Truncilla donaciformis*), SC/P – S1S2

LIST – Threatened: Species declining in WI. Populations disappearing rangewide. Once widespread and abundant, this species is rarely found in recent years. Numbers have greatly declined in the WI's remaining viable populations (St. Croix and Lower WI Rivers).

Proposed Scientific Name Update (20 species)

Northern Cricket Frog (*Acris crepitans blanchardi*), END – S1

Update Scientific Name: *Acris crepitans**

Worm-eating Warbler (*Helmitheros vermivorus*), END – S1B

Update Scientific Name: *Helmitheros vermivorum*

Pallid Shiner (*Notropis amnis*), END – S1

Update Scientific Name: *Hybopsis amnis*

Shoal Chub (*Macrhybopsis aestivalis*), THR – S2

Update Scientific Name: *Macrhybopsis hyostoma*

Spatterdock Darner (*Aeshna mutata*), THR – S1

Update Scientific Name: *Rhionaeschna mutata**

Beak Grass (*Diarrhena americana*), END – S2

Update Scientific Name: *Diarrhena obovata**

Canada Gooseberry (*Ribes oxycanthoides*), THR – S2
Update Scientific Name: *Ribes oxycanthoides ssp. oxycanthoides*

Cliff Cudweed (*Gnaphalium obtusifolium var saxicola*), THR – S2

Update Scientific Name: *Pseudognaphalium saxicola*

Early Anemone (*Anemone multifida var hudsoniana*), END – S1

Update Scientific Name: *Anemone multifida var. multifida*

Forked Aster (*Aster furcatus*), THR – S3

Update Scientific Name: *Eurybia furcata*

Green Spleenwort (*Asplenium viride*), END – S1

Update Scientific Name: *Asplenium trichomanes–ramosum*

Hall's Bulrush (*Scirpus hallii*), END – S1

Update Scientific Name: *Schoenoplectus hallii*

Lanceolate Whitlow–cress (*Draba lanceolata*), END – S1

Update Scientific Name: *Draba cana*

Large-leaved Sandwort (*Moehringia macrophylla*), END – S1

Update Scientific Name: *Arenaria macrophylla*

Long-beaked Baldrush (*Psilocarya scirpoides*), THR – S2

Update Scientific Name: *Rhynchospora scirpoides*

Plains Ragwort (*Senecio indecorus*), THR – S1

Update Scientific Name: *Packera indecora*

Sticky False–asphodel (*Tofieldia glutinosa*), THR – S2S3

Update Scientific Name: *Triantha glutinosa*

Tea-leaved Willow (*Salix planifolia*), THR – S2

Update Scientific Name: *Salix planifolia ssp. planifolia*

Thickspike (*Elymus lanceolatus ssp psammophilus*), THR – S2

Update Scientific Name: *Elytrigia dasystachya*

Tufted Bulrush (*Scirpus cespitosus*), THR – S2

Update Scientific Name: *Trichophorum cespitosum*

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

Wisconsin Adm. Codes, NR 27 and NR 10.02 and State statute, s. 29.604 (3) (b) Wis. Stats. No new policies proposed.

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

State statute, s. 29.604 (3) (b) Wis. Stats., gives the DNR the authority to periodically review and, after public hearing, to revise the E/T list.

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

The department anticipates that approximately 700 hours (over 2 years) of staff time will be needed to develop the rule. It is anticipated that minimal funding is needed for public hearings.

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

A revision to the E/T list will likely generate a large amount of interest that will be addressed through systematic review, discussion, and transparency of the process. Groups likely to

be impacted or interested in the issue include: the conservation community, project applicants through the environmental review process, and the general public.

The regulatory impact of listing a species:

- E/T species are checked for when department staff conduct, fund or approve an activity. Avoidance measures are provided to project applicants to enable them to avoid take of the species.
- For projects that are not able to avoid take, Wisconsin's endangered species law allows for the issuance of incidental take permits. Incidental take permits allow for projects to occur where take of an endangered or threatened species is likely and where take can also be minimized and mitigated.
- The department has also created several broad incidental take permits to provide blanket incidental take coverage for routine activities. A broad incidental take permit, unlike an individual incidental take permit, does not require an application, processing time or a fee. The most recent broad incidental take permits cover grassland management and cave bats.

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

There are no known federal regulations or decisions.

The only Federal Endangered, Threatened, or Candidate species proposed for a change is Kirtland's Warbler, which is currently Federally Endangered.

Preliminary Estimate of Economic Impact (Level 1 – \$20 million and over; Level 2 – less than \$20 million; Level 3 – little or no economic impact)

Level 2: Less than \$20 million

The economic cost of listing a species is highly dependant on its range and distribution, seasonal occurrence, habitat requirements, management needs, sensitivity to disturbance etc. An economic impact assessment will be required for every proposed list change. Two examples from currently listed species:

- Henslow's Sparrow (*Ammodramus henslowii*) – Since only the species is protected and not its habitat, impacts to birds can easily be avoided by scheduling activity outside of the breeding season. Henslow's sparrow does not often come into conflict with development projects because of the location and distribution of this species in the state. Little to no economic impact.
- Ellipse mussel (*Venustaconcha ellipsiformis*) – Since mussels occupy the same site annually with little movement, relocations are often necessary for projects impacting the ellipse, such as bridge repairs or replacements, utility crossings, and other river alterations. Modest costs.

Updating the E/T list to focus conservation efforts and avoidance/minimization measures on WI's most at risk species will ultimately save money. All actions that the department conducts, funds or approves on public or private lands must be screened for potential impacts to rare species. Endangered Resources Screening relies on NHI data for records of rare species occurrences. The number of NHI records for species proposed for addition to the E/T list is far fewer than the number of records for species proposed for

listing – eight species are proposed for listing (with a total of 195 NHI occurrences) versus 16 species proposed for delisting (with a total of 1071 NHI occurrences). Reducing the number of E/T species records will lessen regulatory impacts to businesses and individuals.

Contact Person

Laurie Osterndorf
Bureau Director, Endangered Resources
Department of Natural Resources
P.O. Box 7921
Madison, WI 53707-7921
Telephone: (608) 267-7552
E-mail: Laurie.Osterndorf@wisconsin.gov

Revenue

SS 040-11

This scope statement was approved by the governor on November 14, 2011

Rule No.

Creates section Tax 11.07.

Relating to

Sales and use tax exemptions for biotechnology.

Description of the Objective of the Rule

The objective of the proposed rule is to create Section Tax 11.07, relating to sales and use tax exemptions for biotechnology under s. 77.54 (57), Stats. The proposed rule will prescribe the manner in which a biotechnology business will be certified. It will also prescribe the manner of determining the percent needed to establish if the definition of "primarily," which is defined as "more than 50%" under s. 77.54 (57) (a) 4., Stats., is met.

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

Existing policies are as set forth in the rules. No new policies are being proposed, other than to reflect law changes.

Statutory Authority

Section 227.11 (2) (a), Stats., provides "[e]ach 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..."

Section 77.54 (57) (a) 1m., Stats., provides: "Biotechnology business' means a business, as certified by the department in the manner prescribed by the department, that is primarily engaged in the application of biotechnologies that use a living organism or parts of an organism to produce or modify products to improve plants or animals, develop microorganisms for specific uses, identify targets for small molecule pharmaceutical development, or transform biological systems into useful processes and products."

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

The department estimates it will take approximately 100 hours to develop the proposed rule order.

Description of all of the Entities that will be Affected by the Rule

Biotechnology businesses seeking certification for purposes of the exemptions under s. 77.54 (57), Stats. Tax practitioners and others who rely on up-to-date and accurate administrative rules.

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

There is no existing or proposed federal regulation that is intended to address the activities to be regulated by the rule.

Contact Person

Dale Kleven (608) 266-8253.

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

***Fire Prevention, Ch. Comm 14*
SS 038-11**

Date of governor's approval: November 8, 2011.

Rule No.

Revises Chapter Comm 14.

Relating to

Fire prevention.

Description of the Objective of the Rule

The primary objective of this rulemaking project is to evaluate and update provisions of Wisconsin's *Fire Prevention Code*, Chapter Comm 14. This rulemaking update is intended to keep this Code consistent with dynamic, contemporary regional and national construction and fire prevention practices and standards.

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

Wisconsin's *Fire Prevention Code* primarily contains standards for the use, operation and maintenance of public buildings and places of employment. The current rules adopt and reference the 2009 edition of the National Fire Protection Association's NFPA[®] 1, Fire Code. The *Fire Prevention Code* also establishes duties and requirements for fire departments and municipalities that receive fire dues payments through the department.

The primary purpose of the rules under consideration is to protect public health, safety, and welfare. Periodic review and update of the rules is necessary to ensure that the rules still achieve that purpose. In addition, the review and update allows the opportunity to recognize and stay current with new construction and new fire prevention products and practices. The review and update process will include evaluation of the 2012 edition of NFPA 1.

The primary alternative would be to delay the rule-review process. This delay would reduce the public benefits that would otherwise occur by beginning this review now.

Statutory Authority

Sections 101.02 (1) and (15) and 101.14.

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

The department estimates approximately 500 hours will be needed to perform the review and develop any needed rule changes. This time includes drafting the changes – in consultation with the department's Comm 14 advisory council – and processing the changes through public hearings, legislative review, and adoption. The department plans to assign existing staff to perform the review and develop the rule changes, and no other resources will be needed.

Description of all of the Entities that will be Affected by the Rule

This update of the *Fire Prevention Code* may impact any entity, regardless of size, that owns or utilizes a public building or place of employment in Wisconsin, and may impact any fire department or municipality that participates in the fire dues distribution under sections 101.573 and 101.575 of the Statutes.

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

An Internet-based search for "fire prevention" in the *Code of Federal Regulations* identified the following existing federal regulations that potentially address fire prevention at places of employment in Wisconsin: 29 CFR 1910–Occupational Safety and Health Standards, 29 CFR 1926–Safety and Health Regulations for Construction, 30 CFR 56–Safety and Health Standards–Surface Metal and Nonmetal Mines, 30 CFR 57–Safety and Health Standards–Underground Metal and Nonmetal Mines, 33 CFR 127–Waterfront Facilities Handling Liquefied Natural Gas and Liquefied Hazardous Gas, and 41 CFR 102–Federal Management Regulation (for federally owned and leased buildings). Federal regulations addressing fire prevention for vehicles on public thoroughfares include 46 CFR 28–Requirements for Commercial Fishing Industry Vessels, 46 CFR 34–Firefighting Equipment (on tank vessels), and 46 CFR 76–Fire Protection Equipment (on passenger vessels).

An Internet-based search for "fire prevention" in the January 3 to September 7, 2011, issues of the *Federal Register* did not identify any proposed federal regulations that address fire prevention at public buildings or places of employment in Wisconsin. Proposed federal regulations addressing fire prevention for vehicles on public thoroughfares include 46 CFR 142 and 143 (for inspection of towing vessels).

No changes to Comm 14 are expected to supersede the above federal requirements, so no comparison is made here to those requirements.

**Safety and Professional Services — Physical
Therapists Affiliated Credentialing Board**

SS 044-11

This scope statement was approved by the Physical Therapy Examining Board for publication on September 29, 2011 and by Governor Walker on November 8, 2011.

Rule No.

SPS # 165 – Revises Chapter PT 7 — Unprofessional Conduct and Chapter PT 8 — Biennial License Renewal.

Relating to

Standards of professional conduct by physical therapists and physical therapist assistants.

Description of the Objective of the Rule

Modernize the rules governing the standard of conduct for licensed physical therapists and physical therapy assistants and licensure renewal to reflect current trends in the profession and the passage of recent legislation.

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

Wis. Admin Code Chapter PT 7, Unprofessional Conduct sets forth grounds for disciplinary actions against physical therapists and physical therapy assistants. The current rules became effective on May 4, 2004. The Physical Therapy Examining Board has undertaken a review of the current rules as a response to changes within the profession. One recent change was becoming an examining board, pursuant to 2009 Wisconsin Act 149. Another change was the American Physical Therapy Association's (APTA) revision of the Code of Ethics for Physical Therapist and Standards of Ethical Conduct for Physical Therapist Assistants which became effective in July of 2010.

The legislature fully purposed delegating rule making authority to the Physical Therapy Examining Board to establish ethical standards of conduct for physical therapists and physical therapist assistants in Wisconsin as seen by the passage of 2001 Wisconsin Act 70. 2001 Wisconsin Act 70, created Wis. Stat. § 448.527, which requires the Board to "promulgate rules establishing a code of ethics. . ." The Physical Therapy Examining Board's review of the current unprofessional conduct rules will not result in a significant policy change but rather a further clarification of the ethical goals the profession seeks to attain.

The Physical Therapy Examining Board also seeks to update the credential renewal date pursuant to 2009 Wisconsin Act 28. Wis. Admin Code § PT 8.02 currently reflects a November 1st credential renewal date. The proposed rule would amend the credential renewal date from November 1st to March 1st and all other references to the credential renewal date within the rules. This proposed rule as required by the 2009 legislation will not result in a change in policy.

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

Wis. Stat. § 15.08 (5) (b) states the parameters of the general powers of examining boards and councils. Specifically, the statute provides that an examining board "shall promulgate rules for its own guidance and for the guidance of the trade or profession to which it pertains, and define and enforce professional conduct and unethical practices not inconsistent with the law relating to the particular trade or profession." The proposed rules will provide guidance related to professional standards of conduct and ethical practice within the physical therapy profession.

Wis. Stat. § 227.11 (2) (a) discusses the parameters of an agency's rule-making authority stating, an agency "may promulgate rules interpreting the provisions of any statute enforced or administered by it, if the agency considers it necessary to effectuate the purpose of the statute, but a rule is not valid if it exceeds the bounds of correct interpretation." Wis. Stat. §227.01(1) defines agency as a board. The Physical Therapy Examining Board falls within this definition.

Therefore, it may promulgate administrative rules which interpret the statutes it enforces or administers as long as the proposed rules do not exceed proper interpretation of the statute.

Wis. Stat. § 440.035(1) grants to each examining board attached to the department of Safety and Professional Services the independent exercise of its rule-making authority. The section states, "each examining board or affiliated credentialing board attached to the department or an examining board shall: (1) Independently exercise its powers, duties and functions prescribed by law with regard to rule-making, credentialing and regulation." The proposed rule is an independent use of the Board's rule-making authority as well as pursuant to a 2009 legislative act. In both instances, the Board is seeking to regulate the behavior of licensees within the profession by setting forth standards of unprofessional conduct and renewal requirements.

Wis. Stat. § 448.527 is an express grant of authority by the legislature to the Physical Therapy Examining Board to ". . . promulgate rules establishing a code of ethics governing the professional conduct of physical therapists and physical therapist assistants." The legislative intent is clearly stated and further evidenced by Wis. Stat. § 448.57(2) (f), which requires the Physical Therapy Examining Board to discipline a licensee when a licensee has, "engaged in unprofessional or unethical conduct in violation of the code of ethics established in the rules promulgated under s. 448.527."

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

It is estimated state employees may spend up to 150 hours in developing the proposed rules.

Description of all Entities that may be Impacted by the Rule

Entities that may be impacted by the rule include all currently licensed physical therapists and physical therapist assistants as well as applicants for licensure.

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

There are no comparable federal regulations directly related to the proposed rules.

Contact Person

Shancethea (Shawn) Leatherwood 608-261-4438.

Technical College System

SS 039-11

This Statement of Scope was approved by the governor on November 7, 2011.

Rule No.

Revises Chapter TCS 6.

Relating to

Procurement.

Description of the Objective of the Rule

To establish policies and procedures under s. 38.04 (14) (a), Stats., relating to district employee and district board member travel and expenses, procurement and personnel, and to administratively interpret s. 38.12 (7), Stats., requiring district boards to establish written policies under these rules.

Amendment proposed to align the procurement policies and cost minimums for procurement requirements of the Wisconsin Technical College System with the policies and cost minimums established by the Legislature and the Governor for state agency procurements in 2011 Wisconsin Act 32.

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

2011 Wisconsin Act 32 raised procurement cost minimums for various procurement requirements for state agencies in Ch. 16 Stats., and provided new procurement autonomy for the University of Wisconsin System under Chs. 16 and 36, Wis. Stats. The proposed rules changes would increase the procurement cost minimums in each of the following rule sections:

TCS 6.05 (2) (c) procurement cost minimums requiring competitive bids

TCS 6.05 (2) (f) procurement cost minimums requiring solicitation of written quotes

TCS 6.05 (2) (g) procurement cost minimums requiring procedures

TCS 6.05 (2) (j) procurement cost minimums requiring records be created and retained

The proposed changes are limited to increasing current procurement cost minimums of \$10,000 to \$25,000 and current procurement cost minimums of \$25,000 to \$50,000.

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

Section 38.04 (14) (a), Stats.

38.04 Technical college system board; powers and duties.

(14) GENERAL DISTRICT POLICIES

(a) The board shall promulgate rules, applicable to all district boards, establishing general district policies and procedures on all of the following:

2. Procurement.

4. Contracts to provide services.

(b) The board may direct district boards to establish written policies relating to any matter not enumerated under par. (a).

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

Minimal.

Description of all Entities that may be Impacted by the Rule

The Wisconsin Technical College System Board and the 16 technical college districts within the Wisconsin Technical College System.

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

None.

Contact Person

Morna Foy, (608) 266-2449, morna.foy@wtcssystem.edu.

Submittal of Rules to Legislative Council Clearinghouse

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

Agriculture, Trade and Consumer Protection

CR 11–048

(DATCP # 09–R–14)

The Wisconsin Department of Agriculture, Trade and Consumer Protection announces that it has referred the following proposed rule to the Wisconsin Legislative Council Rules Clearinghouse, pursuant to s. 227.15, Stats.

This rule is not subject to s. 227.135 (2), as affected by 2011 Wis. Act 21. The statement of scope for this rule, published in Register No. 647, on November 14, 2009, was sent to Legislative Reference Bureau prior to the effective date of 2011 Wis. Act 21.

Analysis

The proposed rule revises Chapters ATCP 10, 12 and 15, relating to animal health and disease control and humane officer certification.

Agency Procedure for Promulgation

The department will hold public hearings on this rule after the Rules Clearinghouse completes its review. The department's Division of Animal Health is primarily responsible for this rule.

Contact Information

Melissa Mace, (608) 224–4883

Rule–Making Notices

Notice of Hearing

Agriculture, Trade and Consumer Protection

EmR1118

The Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) announces that it will hold a public hearing on a rule revising Chapter ATCP 53 designating 5 new agricultural enterprise areas (AEAs) encompassing a total of approximately 140,000 acres pursuant to s. 91.84, Stats. An AEA is a contiguous land area, devoted primarily to agricultural use, which is locally targeted for agricultural preservation and agricultural development.

Hearing Information

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

Date: Monday, December 12, 2011
Time: 4:00–6:00 P.M.
Location: Department of Agriculture, Trade and Consumer Protection
 Board Room
 2811 Agriculture Drive
 Madison, WI 53714

Hearing impaired persons may request an interpreter for these hearings. Please make reservations for a hearing interpreter by **December 5, 2011** by contacting Coreen Fallat, Department of Agriculture, Trade and Consumer Protection, Division of Agricultural Resource Management, P.O. Box 8911, Madison, WI 53708–8911, coreen.fallat@wisconsin.gov, telephone (608) 224–4625. Alternatively, you may contact the DATCP TDD at (608) 224–5058. Handicap access is available at the hearings.

Appearances at the Hearing and Submittal of Written Comments

DATCP invites the public to attend the hearing and comment on the rule. Following the hearing, the hearing record will remain open until Tuesday, **January 31, 2012** for additional written comments. Comments may be sent to the Division of Agricultural Resource Management at the address below, by email to DATCPWorkingLands@wisconsin.gov or online at:

<https://health.wisconsin.gov/admrules/public/Home>.

To provide comments or concerns relating to small business, you may also contact DATCP's small business regulatory coordinator Keeley Moll at the address above, or by emailing to Keeley.Moll@wisconsin.gov or by telephone at (608) 224–5039.

Copies of Proposed Rule

You may obtain free copies of the proposed rule by contacting the Wisconsin Department of Agriculture, Trade and Consumer Protection, Division of Agricultural Resource Management, 2811 Agriculture Drive, Attention Coreen Fallat, Madison, WI 53708. You may also obtain copies by calling (608) 224–4625 or emailing DATCPWorkingLands@wisconsin.gov. Copies will also be

available at the hearing. To view the proposed rule online, go to: <https://health.wisconsin.gov/admrules/public/Home>.

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

This rule designates agricultural enterprise areas (AEAs) pursuant to s. 91.84, Stats. An AEA is a contiguous land area, devoted primarily to agricultural use, which is locally targeted for agricultural preservation and agricultural development. Based upon evaluation of petitions submitted in February 2011, this rule will designate five additional designated AEAs. The five additional AEAs designated by this rule encompass just over 140,000 acres and include land in four counties and 12 towns (some of the AEAs cross town lines). Following promulgation of this rule, 17 areas, totaling approximately 340,000 acres in 14 counties and 39 towns, will be designated as AEAs in Wisconsin.

The designation of an AEA does not control or restrict land use. However, the owners of farms located within an AEA may enter into voluntary 15–year farmland preservation agreements with DATCP. That enables them to claim farmland preservation tax credits under s. 71.613, Stats.

Statutes interpreted

Sections 91.84 and 91.86, Stats.

Statutory authority

Sections 91.84 (1) and (2), Stats.

Explanation of agency authority

Under s. 91.84 (1), Stats., DATCP may designate AEAs, encompassing a total of not more than 1,000,000 acres. Under s. 91.84 (2), the department may use the procedure under s. 227.24 to promulgate a rule designating an agricultural enterprise area or modifying or terminating the designation of an agricultural enterprise area. Notwithstanding s. 227.24 (1) (c) and (2), a rule promulgated under that subsection remains in effect until the department modifies or repeals the rule. Notwithstanding s. 227.24 (1) (a) and (3), the department is not required to determine that promulgating a rule under that subsection as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under that subsection.

DATCP may designate AEAs in response to local petitions under s. 91.86, Stats. Each petition must be signed by at least 5 farmers within the AEA. Affected county and local governments must pass a resolution in support of the petition requesting the designation. Other persons may sign in support of a petition.

Related statute or rule

Owners of farms located within an AEA may enter into voluntary 15–year farmland preservation agreements with DATCP, pursuant to s. 91.60, Stats. Those farmers may claim farmland preservation tax credits under s. 71.613, Stats. Tax credits are higher for farms that are also covered by a certified farmland preservation zoning ordinance under subch. III of ch. 91, Stats. An owner of a farm located within an AEA may enter into a farmland preservation agreement, regardless of whether the farm owner signed the petition requesting designation of the AEA.

Rule summary

Based upon the evaluation of petitions submitted in 2011, this rule designates five additional AEAs, totaling just over 140,000 acres, in the locations described. With designation of the five new areas, there will be 17 AEAs totaling approximately 340,000 acres around the state. Maps and associated tax parcel numbers describing the AEAs are

available at <http://workinglands.wi.gov>. The maps will be published with this rule in the Wisconsin administrative register. Hard copies of the maps are on file with the legislative reference bureau. Hard copies of the maps and associated tax parcel numbers are on file with DATCP and may be obtained by contacting DATCP at the contact address shown below.

AEA name	AEA Location (County and Town)
Burnett AEA	Dodge County, <i>Town of Burnett</i>
Fairfield AEA	Sauk County, <i>Town of Fairfield</i>
Heart of America's Dairyland AEA	Clark County, <i>Towns of Mayville, Colby, Unity, Beaver, Loyal</i>
Hilbert Ag Land on Track AEA	Calumet County, <i>Towns of Brillion, Chilton, Rantoul, Woodville</i>
Trenton AEA	Dodge County, <i>Town of Trenton</i>

Considerations for small businesses

There are two main types of small businesses that may be affected by promulgation of this rule; farm businesses and farm-related businesses. However, this rule does not have a direct impact on businesses and imposes no new mandates on small business as defined by s. 227.114 (1) (a), Stats. (farmland preservation agreements are entirely voluntary). This rule is not subject to the small business delayed effective date under s. 227.22 (2) (e), Stats.

Farm Businesses:

The designation of the agricultural enterprise areas enables eligible landowners owning land in a designated AEA to voluntarily enter into a farmland preservation agreement with the State of Wisconsin. Additional local programs may also be adopted or made available to businesses in these designated areas. As a result, the designation of AEAs through ATP 53, Wis. Adm. Code has the potential to affect businesses, specifically farmers. Most of the affected farmers will meet the description of small business in Wisconsin, as defined by s. 227.114 (1) (a), Stats.

The greatest small business impact of the designation will be a farmer's ability to enter into a voluntary farmland preservation agreement to claim income tax credits under s. 71.613, Stats., in return for keeping land in agricultural use for at least 15 years and implementing soil and water conservation practices.

The available tax credit for eligible farmers is at least \$5 an acre, although farmers located in designated areas that are also certified for farmland preservation zoning may claim \$10 an acre. The average farm size in Wisconsin is 195 acres, which would enable an average-sized farmer to claim an average of \$975 to \$1,950 annually, depending on the available tax credit. The costs for implementing soil and water conservation practices will vary from farm to farm, depending upon the type of operation and existing compliance status. The costs to implement these practices will be offset by the farmland preservation tax credit.

In addition to establishing eligibility for tax credits, designation of an AEA may also foster agricultural investment, and promote collaborative working relationships among landowners, agriculture-related businesses and local governments. It may also promote a more secure and attractive climate for the continuation of agricultural land-use and focused agriculture-related investment. Local government and other organizations may also develop other local programs that target resources to farmers in a designated area.

Farm-related businesses:

Other businesses that may benefit from designation of the AEA are farm-related businesses. The designation may create a more stable agricultural industry in the area, maintaining or increasing business transactions and promoting future agricultural-related investment. These businesses may include food processing and farm supply companies, nutrient management planners, soil testing laboratories, agricultural engineers, construction contractors, food processors, testing laboratories, and agri-tourism interests located within and near the designated area. Some of these businesses may be small businesses in Wisconsin, as defined by s. 227.114 (1) (a), Stats.

DATCP's small business regulatory coordinator is Keeley Moll at the address above. Email Keeley.Moll@wisconsin.gov. Telephone (608) 224-5039.

Comparison to federal and surrounding state programs

There are no federal programs comparable to the AEA program implemented by this rule. Over 15 states have "agricultural district" programs that bear some resemblance to the AEA program implemented by this rule, including the neighboring states of Illinois, Iowa, and Minnesota. However, each of those state programs has its own unique features.

None of the programs in other states is exactly comparable to the AEA program implemented by this rule, and some are more comparable to Wisconsin's farmland preservation zoning program. Some include limits on non-farm development, local planning requirements, right-to-farm protection, rewards for conservation practices, per acre property tax credits, and eligibility for participation in a conservation easement program.

Summary of factual data and analytical methodologies

DATCP evaluated AEA petitions in consultation with a panel that included independent reviewers. DATCP and the reviewers considered factors identified in ss. 91.84 and 91.86, Stats., as well as a variety of other factors identified in the petition forms. Petitioners were invited to submit, and did submit, extensive data and information to support their petitions.

Fiscal Impact

Eligible landowners located within the designated agricultural enterprise areas may voluntarily enter into farmland preservation agreements with the state. These agreements are signed by DATCP, and allow the landowner to claim tax credits paid by the Department of Revenue (DOR). Although promulgating this rule will not cost the department additional funds, the DOR will pay tax credits equal to \$5.00

per acre if the land is only subject to the agreement, and pay \$10 per acre if the land is subject to an agreement and covered by a certified farmland preservation zoning ordinance. The \$10 per acre tax credit is a \$2.50 per acre increase over the \$7.50 per acre credit available to a landowner under a certified farmland preservation zoning ordinance under the new ch. 91, Stats. The \$7.50 per acre credit does not require an agreement and would not be affected by promulgation of this rule. Landowners must meet conservation standards to claim the income tax credit, which may require some costs to ensure these standards are met. Overall, however, the rule is anticipated to have positive long-range fiscal implications for farmer owners and potentially indirectly for businesses that depend upon agriculture.

Following promulgation of this rule, the 5 areas totaling nearly 141,000 acres will be located within designated agricultural enterprise areas and eligible for farmland preservation agreements with the state, with nearly 50% of this land also covered by farmland preservation zoning. If we assume that 50% of the eligible landowners within an area covered by farmland preservation zoning enter into an agreement to claim the \$10/acre credit, that is \$355,000 in tax credits to small businesses. In addition, if 50% of the remaining landowners in the designated areas (not covered by zoning) enter into an agreement to claim the \$5/acre credit, that is \$175,000 in tax credits to those small businesses. It is anticipated that this additional \$530,000 in tax credits will support and encourage robust rural economies that make up Wisconsin's \$59 billion agricultural industry.

Environmental Impact

This rule, by itself, does not have a direct impact on the environment. This rule enables eligible farmers to enter into voluntary farmland preservation agreements with the state. Those agreements will have a positive effect on the environment by preserving agricultural land and promoting compliance with state soil and water standards.

This rule is not a "major action significantly affecting the quality of the environment," for purposes of s. 1.11, Stats. No environmental impact statement is required under s. 1.11, Stats. or ch. ATCP 3, Wis. Adm. Code.

DATCP Contact

Questions, comments, and requests for maps or associated tax parcel numbers related to AEAs designated by this rule may be directed to:

Coreen Fallat
Department of Agriculture, Trade and Consumer Protection
P.O. Box 8911
Madison, WI 53708-8911
Telephone (608) 224-4625
E-Mail: coreen.fallat@wisconsin.gov

Notice of Hearing

Agriculture, Trade and Consumer Protection CR 11-048

The Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) announces that it will hold public hearings on a proposed rule revising Chapters ATCP 10, 12, and 15, relating to animal health and disease control, and human officer training.

Hearing Information

DATCP will hold public hearings at the times and places shown below.

Date: Monday, December 12, 2011

Time: 11:00 A.M.–1:00 P.M.

Location: Wausau Public Library/Marathon County Public Library
Wausau Room
300 North First St.
Wausau, WI 54403

Date: Monday, December 12, 2011

Time: 6:00 P.M.–8:00 P.M.

Location: Chippewa Valley Tech College
Room 112
620 W. Clairemont Ave.
Eau Claire, WI 54701

Date: Tuesday, December 13, 2011

Time: 3:00 P.M.–5:00 P.M.

Location: Fox Valley Technical College Public Library
DJ Bordini Center, Room 112A
5 Systems Drive
Appleton, WI 54912

Date: Tuesday, December 13, 2011

Time: 3:00 P.M.–5:00 P.M.

Location: Department of Agriculture, Trade and Consumer Protection
First Floor Boardroom – Room 106
2811 Agriculture Drive
Madison, WI 53714

Hearing impaired persons may request an interpreter for these hearings. Please make reservations for a hearing interpreter by **November 29, 2011**, by writing to Melissa Mace, Division of Animal Health, P.O. Box 8911, Madison, WI 53708-8911, telephone (608) 224-4883. Alternatively, you may contact the DATCP TDD at (608) 224-5058. Handicap access is available at the hearings.

Appearances at the Hearing and Submittal of Written Comments

DATCP invites the public to attend the hearings and comment on the proposed rule. Following the public hearings, the hearing record will remain open until Tuesday, **January 3, 2012** for additional written comments. Comments may be sent to the Division of Animal Health at the address below, by email to DATCPHearingCommentsAH@wisconsin.gov or online <http://AdminRules.Wisconsin.gov/>.

To provide comments or concerns relating to small business, please contact DATCP's small business regulatory coordinator Keeley Moll at the address above, by emailing to Keeley.Moll@wisconsin.gov or by telephone at (608) 224-5039.

Copies of Proposed Rule

You may obtain a free copy of this rule by contacting the Wisconsin Department of Agriculture, Trade and Consumer Protection, Division of Animal Health, 2811 Agriculture Drive, P.O. Box 8911, Madison, WI 53708. You can also obtain a copy by calling (608) 224-4883 or emailing Melissa.mace@wisconsin.gov. Copies will also be available at the hearings. To view the proposed rule online, go to: <http://AdminRules.Wisconsin.gov/>.

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

This rule modifies current Wisconsin animal health and disease control rules administered by the Department of Agriculture, Trade and Consumer Protection (“DATCP”). Among other things, this rule:

- Modifies current rules related to cattle, including rules related to voluntary Johne’s disease testing and classification, tuberculosis import testing, and imports of cattle from states with tuberculosis positive herds.
- Modifies current rules related to equine and equine infectious anemia testing and branding.
- Modifies current rules related to imported poultry.
- Modifies current rules related to farm–raised deer, including rules related to herd registration, hunting preserves, chronic wasting disease testing and the chronic wasting disease herd status program.
- Modifies current rules related to fish farms and fish health, including rules related to fish farm registration, import permits and fish health certificate requirements.
- Modifies enforcement of current rules by allowing a department waiver to rule requirements if reasonable and necessary. Statutory provisions cannot be waived.
- Modifies current rules related to animal markets, dealers and truckers, including rules related to animal identification, record keeping requirements, and facility and vehicle requirements.
- Modifies current rules related to humane officer training, including rules related to fees, training, and humane officer certification.
- Makes minor drafting changes to update, clarify and correct current rules.

Statutes interpreted

Sections 93.07, 93.08, 93.21, 95.18, 95.19, 95.195, 95.197, 95.20, 95.21, 95.22, 95.23, 95.25, 95.26, 95.30, 95.45, 95.49, 95.50, 95.55, 95.57, 95.60, 95.65, 95.68, 95.69, 95.71, 95.715, 95.72, 173.05, and 173.27, Stats.

Statutory authority

Sections 93.07 (1), (10), (10m) and (11), 93.08, 93.21 (5), 95.18, 95.19 (3), 95.195 (4), 95.197 (2), 95.20, 95.21 (2), 95.22 (2), 95.27 (8), 95.38 (3), 95.45 (4) (c) and (5), 95.49 (1), 95.50 (4), 95.55 (1), (3), (5) and (6), 95.57 (1), 95.60 (2), (3), (4), (4s), (5) and (5m), 95.65 (2), 95.68 (2m), (4) and (8), 95.69 (2m), (4) and (8), 95.71 (5) and (8), 95.715 (2) and (3), 95.72 (5) and 173.27 (1) and (3), Stats.

Explanation of agency authority

DATCP has broad general authority to adopt rules interpreting statutes under its jurisdiction (*see s. 93.07(1), Stats.*). DATCP is specifically authorized to adopt rules to protect the health of animals in this state, and to prevent, control and eradicate communicable diseases among animals.

Rule contents

Definitions and General Provisions

This rule makes the following additions and updates to the definitions used in ATCP 10:

- Creates a definition for commercial swine clarifying that requirements of ATCP 10 apply to commercial swine and not to feral swine.

- Updates the version of the Johne’s Disease National Program Standards referenced by rule to the most recent publication date.
- Clarifies that menagerie animals for purposes of this rule are animals kept as part of a collection of multiple different species.
- Updates the version of the National Poultry Improvement Plan (NPIP) and auxiliary provisions referenced by rule to the most recent publication date.
- Removes the prohibition on the use of a blood tuberculosis (BTB) test and allows other tuberculosis tests to be approved by the department. This rule does not authorize the use of a BTB test, but does open the door for rapid approval by the department if a viable BTB test is approved by the USDA.

The current rule allows the department to test an animal at the owner’s expense if the animal is not imported or moved in accordance with law. This rule clarifies that the department may conduct testing or order testing be done, at the owner’s expense. This rule also authorizes the department to order testing if the animal may have been exposed to a reportable disease listed in ATCP 10, Appendix A and Appendix B.

The current rule requires a certificate of veterinarian inspection (CVI) be issued on a form provided by the department. This rule allows the department to accept CVIs on forms that are approved, but not issued, by the department, facilitating the use of electronic CVIs that meet the department’s informational needs but are not on forms issued by the department.

This rule also makes technical changes to the contents of a CVI and incorporates references to ATCP 16 as necessary to make the rule requirements clear and consistent.

This rule clarifies that an import permit issued by the department may be issued verbally and that the import permit number issued must be recorded on the official CVI.

This rule makes technical changes to the import application process and content to make the rule consistent with current practice.

Bovine

Current rules require that a Johne’s disease–certified veterinarian renew certification every 3 years. This rule extends the certification period to 5 years, consistent with federal requirements.

Current rules allow for bovine animals to be imported into this state without pre–import tuberculosis testing as long as they are imported directly to a federally approved livestock import market. This rule removes this exemption to tuberculosis testing because there are no federally–approved livestock markets for tuberculosis.

Current rules require that bovine animals from an accredited tuberculosis–free state or nation, not normally required to be tested, test negative on a pre–import tuberculosis test if the state or nation has a confirmed tuberculosis positive herd. In the current rule, the pre–import test is required, until the herd is depopulated. This rule modifies that requirement so that bovine animals imported from an accredited tuberculosis–free state or nation, where there has been a confirmed tuberculosis–positive herd, must have a pre–import test until the positive herd is in compliance with state or federal herd plans and all quarantines on the herd have been released. This modification recognizes that herd owners may choose to remain under quarantine and test the animals, as determined necessary by the state and federal

officials in compliance with the federal uniform methods and rules, rather than depopulate the herd.

Current rules exempt veal calves from a pre-import tuberculosis test if they comply with established criteria post import. This rule requires that imported veal calves obtain an import permit to qualify for the test exemption in order to ensure the importer understands the post-import requirements for veal calves that do not have a pre-import tuberculosis test.

Equine

The current rule states that no person may sell or transfer ownership of any equine animal without a negative equine infectious anemia (EIA) test. This rule clarifies that a purchaser of an equine animal shares responsibility for ensuring equine animals are tested negative for EIA prior to transfer of ownership.

The current rule allows for an equine animal that tested positive for EIA to be released from a quarantine once branded. This rule corrects the current rule by removing that provision. Branding does nothing to prevent disease spread.

Poultry

The current rule requires imported poultry or poultry eggs be accompanied by a certificate of veterinary inspection (CVI). This rule allows National Poultry Improvement Plan (NPIP) enrolled birds to move into Wisconsin without a CVI if they are accompanied by a federal bureau form VS 9-3. This modification makes our rules consistent with federal rules that allow for interstate movement of NPIP-enrolled poultry and poultry eggs with a valid VS 9-3 that documents the poultry and poultry eggs origination from a NPIP flock.

Farm-Raised Deer

Current rules do not require a registered farm-raised deer keeper to notify the department when going out of business. The lack of notification requires the department waste resources at renewal time, making contacts to verify that the farm-raised deer keeper is out of business and that all farm-raised deer were disposed of in accordance with the rules. This rule requires registered farm-raised deer keepers to notify the department if they go out of business. This notification must include information regarding the disposition of the farm-raised deer.

Current rules have two registration categories for farm-raised deer based solely on number of farm-raised deer kept. This rule adds an additional category of registration for non-commercial farm-raised deer keepers that have fewer than 15 farm-raised deer, that are not enrolled in the chronic wasting disease herd status program, and that do not move live deer from their farms other than directly to slaughter. This rule establishes a lower registration fee of \$85.00 for these deer keepers.

Current rules require a farm-raised deer keeper to report to the department whenever a farm-raised deer in their herd escapes and when the deer is returned to the herd. This rule requires that the farm-raised deer keeper maintain a record of the escape and return dates in addition to filing a report with the department.

Current rules require farm-raised deer keepers to have a chronic wasting disease test performed on all farm-raised deer that die or are killed and are at least 16 months of age. Under this rule, only if the herd is enrolled in the chronic wasting disease herd status program, must all deer that die, are killed, or shipped to slaughter be tested. This rule reduces the requirement for testing of farm-raised deer that die or are

killed only for farm-raised deer herds that are not enrolled in the chronic wasting disease herd status program. Testing in those herds is as follows:

- All farm-raised deer that die by accidental death or natural causes.
- Twenty-five percent of all farm-raised deer that are intentionally killed other than at a certified hunting preserve.
- Fifty percent of all farm-raised deer that are killed on the premises of a certified hunting preserve.

Current rules prohibit the commingling of farm-raised deer and bovine animals under any circumstance. This rule allows them to be commingled as long as no live farm-raised deer or live bovine animals are moved off the premises, except to go directly to slaughter under a department-approved form. In practice this commingling is occurring and it would have a significant financial impact on these facilities to separate these animals. The current rule does not clearly indicate the reasons a hunting preserve certificate could be revoked. This rule clarifies that a hunting preserve certificate could be suspended or revoked for violations of laws governing hunting preserves.

The current rule does not clearly state that a veterinarian conducting a tuberculosis test on farm-raised deer must have initial training. It requires a veterinarian conducting single cervical tuberculosis tests be recertified every three years. Federal standards do not require veterinarians conducting single cervical tuberculosis tests to be recertified every three years. This rule clarifies that initial training is required for certification. The requirement to be recertified is removed in this rule.

This rule makes the following clarifications to the farm-raised deer rule:

- For initial tuberculosis herd certification and maintenance of herd certification, the federal uniform methods and rules must be followed. For tuberculosis and brucellosis herd certification, the fee is \$150 for three years of certification and may be prorated.
- A farm-raised deer keeper must have an active farm-raised deer keeper registration with the department in order to be enrolled in the chronic wasting disease herd status program.

Under current rules all farm-raised deer over 12 months of age must bear official identification and be individually reported on the herd census for both initial and continued enrollment in the chronic wasting disease herd status program. Farm-raised deer under 12 months do not need to bear official identification or be individually reported on the herd census. This rule requires all farm-raised deer, regardless of age, to bear official identification and be individually reported on the initial herd census for enrollment.

Current rules require that all herds that are enrolled in the chronic wasting disease herd status program complete an initial herd census upon enrollment, and annually submit a complete herd census for continued enrollment. This rule attempts to make the requirements for the herd census clearer and less redundant. This rule makes the following substantive changes to the herd census report:

- Current rule requires records of farm-raised deer escapes and returns but neglects to require documentation of escapes that were killed and not returned to the herd. This rule requires that farm-raised deer keepers' report, on their annual census, the date an escaped farm-raised

deer was killed and the date the chronic wasting disease sample was submitted.

- Current rule requires that the age of a farm-raised deer be recorded on the annual herd census for both initial and continued enrollment in the chronic wasting disease herd status program. This rule modifies that requirement to the farm-raised deer's month and year of birth.

Under the current rule a herd owner does not need to notify the department of the decision to discontinue enrollment in the CWD herd status program, causing staff to do unnecessary follow-up when an annual census is not received. This rule requires a farm-raised deer keeper that discontinues participation in the CWD herd status program to submit a final census to document the final disposition and number of farm-raised deer in the herd.

Current rules require participants to report to the department if they add to their herds any deer that originate from a herd with a lesser CWD herd status program status. This rule reduces some of this paperwork requirement. Under this rule no change in herd status would result as long as all farm-raised deer added to the herd originate from herds with at least five years status in a recognized CWD herd status program. After attaining five years in the CWD herd status program, or an equivalent out-of-state program, animals can move legally. It is inefficient and unnecessary to track specific status of a herd after five years. Any animals added to a herd with less than five years CWD herd monitoring status will continue to result in the lowering of the receiving herd's status to the lowest status of the added animals.

Under current rules a veterinarian is required to apply official identification, if not already present, to any farm-raised deer tested for specified diseases, including CWD. This rule clarifies that veterinarians are required to officially identify a farm-raised deer when they test farm-raised deer, as well as when they are collecting test samples.

Fish Farms

Current rules require fish farmers to record the livestock premises registration, if any, of the source premises and destination premises of any fish or fish eggs shipped from, or to, the fish farm. This rule removes the requirement. This requirement is considered unnecessary because all registered fish farms in the state have a premises registration number which the department has in its records.

The definition of a fish farm under current rules has proven to be cumbersome and difficult to interpret. This rule seeks to clarify the definition by specifying the purpose for which the fish are held. Additionally, the rule more clearly defines what is considered a wild source, both in this state and in other states.

Under current rules, fish farm records, health certificates and import permits must identify all fish and fish eggs on the farm or in the shipment of fish, as applicable, without exception. This standard has proven unworkable. Individual shipments of fish, and fish farms themselves may have trace amounts of live fish or fish eggs that are not intended to be on the fish farm, or in the shipment, and are nearly impossible to detect or remove. This rule recognizes that difficulty and requires that fish farm records, health certificates and import permits list all the species that are intended to be in the shipment or kept at the fish farm. A species of fish in the shipment or on the fish farm that is not a listed species is

considered to be incidentally or unknowingly included in the shipment or located on the fish farm.

Current rules require that any means used to render water pathogen-free be approved by the department. This rule removes the requirement for department approval. Water treatment methods to disinfect for pathogens are currently not standardized.

Under current rules some activities are exempt from the requirement to have a fish farm registration. This rule creates the following additional exemptions from the fish farm registration requirement:

- Educational facilities that hold or rear live fish or fish eggs as long they are in fully enclosed buildings for the remainder of their lives, and all of the following apply:
 - Live fish or fish eggs are not commingled with fish intended for other purposes.
 - Water used to hold the fish is not discharged to waters of the state, unless it is treated.
 - All of the dead fish and offal from the building are disposed of by rendering, composting, municipal solid waste disposal, or other approved methods.
- Temporary public fishing events if they meet the following criteria:
 - No fish leave the event live, unless returning to the farm of origin or going directly to slaughter.
 - Fish are held in a self-contained enclosure.
 - Fish are not commingled with fish from another source.
 - Water used to hold the fish is not discharged to waters of the state, unless it is treated.
 - The event lasts no more than 15 days.
- Holding or rearing live fish solely for the purpose of sale as pet fish for personal home aquaria, provided that they are not commingled with fish or fish eggs that will be used for other purposes, and the facility does not discharge to waters of the state any untreated water used to hold or process those fish or fish eggs.

This rule authorizes a holder of a type 1, 2, or 3 fish farm to sell fish from a location other than the registered fish farm directly to consumers, provided that the registered fish farm operator does the following:

- No fish leave the event live, except to return to the farm of origin or directly to slaughter.
- Fish are held in a self-contained enclosure.
- Fish are not commingled with fish from any other source.
- Water used to hold the fish is not discharged to waters of the state, unless it is treated.
- The fish farm operator keeps records for 5 years on the direct sale of the live fish or fish eggs including address of sale location, species and quantity delivered to the location, sold at the location, taken to slaughter and returned to the fish farm of origin.

This rule creates a process to amend a registration during the registration year, without requiring a new application for a fish farm registration. The amendment can add or remove ponds, change registration type or combine previously separated fish farms operated by the same legal entity on the same or contiguous parcels. This process:

Does not exempt the fish farmer from paying any applicable fees when changing fish farm type.

- Does not exempt the fish farmer from meeting current requirements to change from a type 3 to type 2 fish farm.

Current rules require medical separation if two fish farms are registered separately on the same premises, regardless of type. Currently, a fish health certificate is required for any movement of fish or fish eggs between those fish farms. This rule requires a fish health certificate only for species the federal bureau has found to be susceptible to viral hemorrhagic septicemia and only if the fish or fish eggs are leaving a type 3 fish farm. Under this rule, medical separation is required only when one of the farms is a type 3 fish farm.

Current rules require a fish health certificate on fish or fish eggs moved between fish farms in this state or from a fish farm to any other location in this state including waters of this state. This rule removes the requirements for a fish health certificate for fish or fish eggs moved between fish farms in this state or to other locations in this state (except into waters of the state), unless the species of fish or fish eggs has been found to be susceptible to viral hemorrhagic septicemia (VHS) and the fish or fish eggs are coming from a type 3 fish farm. Fish health certificate requirements for fish or fish eggs moved into waters of the state remain unchanged.

This rule makes the following changes to fish import permit requirements:

- Changes the fish import permit to expiration on the next December 31, rather than a year from issuance.
- Allows a single import permit to be valid for imports from multiple sources. Additional sources cannot be added after issuance of the import permit. If sources of fish are being added, an additional import permit must be obtained. Current rules require an annual import permit for each source.
- Clarifies that every import shipment must be covered by a valid fish health certificate and an import permit.
- Expands exemptions to the requirement for a fish import permit to include educational facilities that meet established criteria.
- Creates an exemption to the requirement for a fish import permit for bait imported for personal use. The exemption is limited to 600 fish or fish eggs in the shipment, and limited to species not susceptible to VHS.
- Removes the requirement that an import permit application list fish or fish egg recipients. Requires this information be kept by the person required to hold the import permit.
- Clarifies that records kept by the importer on the destination of the imported fish must be made available to the department upon request.
- Removes the requirement that fish health certificates be submitted with the import permit application. All fish health certificates must be kept in the import permit holder records, a copy must accompany the import shipment, and a copy of the fish health certificate is required to be supplied to the department when it is issued by a fish health inspector.
- Requires fish health certificates cover all listed species of fish or fish eggs imported under the permit.

This rule makes the following changes to fish health certificate forms and contents:

- Allows for forms, other than DATCP's, to be used, as long as the forms are approved by the department. The current rule requires the form be *provided by* the department.
- Reduces VHS testing required on imported fish. VHS testing, under this rule, is required only on susceptible species (as defined by the federal bureau) from states or provinces where the disease is known to exist. The current rule requires testing of all live fish or fish eggs imported from known VHS-infected states and regions. This change will make Wisconsin consistent with federal requirements.
- Allows for egg disinfection processes, as approved by the federal bureau, as an acceptable method of ensuring the disease-free status of fish eggs. Under current rules, fish health certificates are based on testing of the brood stock.

Sheep and Goats

This rule exempts imported sheep and goats from the requirement of a certificate of veterinary inspection if the sheep and goats are going to a federally-approved import market.

Other Animals

The current rule allows dogs and domestic cats to be imported into this state if they do not have a current rabies vaccination, but requires that the animal be vaccinated within 30 days after the dog or domestic cat enters the state. This is extremely difficult to monitor and enforce. Under this rule, all dogs and domestic cats must have a current rabies vaccination in order to be imported, unless the dog or domestic cat is under 5 months of age. This rule requires that an imported dog or cat under 5 months of age must be vaccinated for rabies by a licensed veterinarian, by the date on which the dog or cat reaches 5 months of age.

The current rule requires animals imported for racing events to get an import permit as well as a CVI, with testing appropriate for the species being imported. This rule removes the specific requirement for racing animals to get an import permit. All animals used for racing will still need to comply with the CVI and import requirements appropriate for the species.

Enforcement

This rule creates a waiver process that will allow the department to grant an individual a waiver from any requirements under ATCP 10, if the department finds that the waiver is reasonable and necessary under the circumstances and will not compromise the purpose served by the rule. This waiver is a written department order and may not waive any statutory requirements.

Appendix B

The current rule requires a person who diagnoses, or obtains, credible diagnostic evidence of a disease listed in appendix B report that finding to the department within 10 days. This rule removes equine rhino pneumonitis from appendix B and adds equine herpes virus. Rhino pneumonitis is a form of equine herpes virus and the use of equine herpes virus will catch all equine herpes viruses, of which there are nine forms.

This rule also updates the spelling of some listed diseases to the American spelling.

Animal Markets, Animal Dealers and Animal Truckers

The current rule requires a licensed and accredited veterinarian to write a graphic description as official identification for an equine animal. This rule allows for

department or USDA–approved staff to write a graphic description of an equine animal.

The current rule requires that the person having custody of the animal have a reader in order for a microchip to be a valid form of official identification. This rule deletes the provision. Current readers can read a multitude of different brands of microchips.

Current rules do not require official identification for animals that are received by a person licensed under ATCP 12 for shipment to slaughter. It has not been clear what qualifies as shipment to slaughter. This rule defines “shipment to slaughter” in order to allow licensed markets and dealers to congregate enough animals, at a single premises, to go to slaughter in a cost effective manner, as long as there is no change of ownership, without having to apply official identification to the animals. The process of “shipment to slaughter” cannot exceed 10 consecutive days. Downer animals may not be held for more than 24 hours before being sent for rendering or euthanized in a humane manner.

This rule includes the statutory exemption from animal market licensure for occasional auctions by breed and youth groups, and specifies the entities that must maintain the records of those sales.

The current rule requires that licensed animal markets clean and disinfect between public sales. This rule removes that requirement. Markets are still required to maintain their premises in a clean and sanitary condition. Cleaning and disinfection is only required when a suspect or reactor animal is known to be present.

The current rule requires equine markets to have equine stocks. This rule allows more flexibility for equine market operators, but requires that the equine be restrained in a safe and humane manner. Equine stocks are not required.

This rule clarifies that all animals at licensed animal markets must be confined in a safe and humane manner.

Current rules require dead animal holding areas and manure holding areas to be enclosed, or the entire market fenced, to keep out dogs and wild animals. This rule removes that requirement. In practice, it is not practical to keep gates closed at all times, or to build a fence that could keep out all wild animals.

Current rules exempt a licensed animal market operator from the requirement to have an animal dealer license. This rule clarifies that the exemption also applies to an employee of a licensed animal market operator who acts solely on behalf of the licensed animal market.

Current rules prohibit a licensed animal market from accepting delivery of livestock or wild animals from an unlicensed animal trucker, if the operator knows, or has reason to know, that the animal trucker is unlicensed. This rule expands this requirement to prohibit accepting livestock or wild animals from an unlicensed animal dealer, as well, if the market operator has reason to know that the animal dealer is unlicensed.

Current rules require the operator of an animal transport vehicle to display the operator’s name, license number and business address on both sides of the vehicle. This rule allows that information to be displayed either on both sides of the transport vehicle or on both sides of the power unit. Additionally, this rule requires only the city and state, rather than the full address, be displayed. The requirement that vehicle stickers, indicating current licensure, be displayed on both sides of the transport vehicle remains unchanged.

Current rules require vehicles used to transport diseased or downer animals to be cleaned and disinfected before being used to transport other animals. The disinfectant used must be approved by the department. This rule removes the requirement that a disinfectant must be approved by the department. Disinfectants must be used according to label instructions but need not be approved by the department.

The current rule requires that persons licensed under ATCP 12 record any official identification present on an animal whether or not the official identification is required. This rule modifies this provision, requiring the official identification to be listed in the records only if the animal is required to bear official identification.

Current rules require a licensed animal trucker to keep the same records as a licensed animal market or animal dealer. This is duplicative since the animal market or animal dealer will record the official identification of all animals, thus insuring traceability. This rule reduces the record keeping requirements for animal truckers by removing the requirement to record the official identification of all animals. This rule retains the licensed animal trucker’s obligation to keep other records of the source, destination, number and general description of the animals and applicable premises codes. Slaughter identification is also required if shipping to slaughter. Additional information is required when an animal dies in the animal trucker’s custody.

Current rules require licensed facilities that handle downer animals to register with the department and be equipped in a specified manner to handle them humanely. Federal law now prohibits these downer animals from being sent to slaughter, eliminating the market for downer animals. Therefore, there will not be animal markets or animal dealers that intentionally handle downer animals. This rule removes the requirement of registering with the department. Licensed entities will still be required to handle animals that become downer animals while they are in a licensee’s possession in a humane manner that is prescribed in the current rule.

The current rule restricts the commingling of different animal species during transit. This rule clarifies that different animal species cannot be commingled if they are not of a comparable size, or if one species poses a known disease threat to the other species being hauled.

This rule prohibits an animal market, animal dealer, or animal trucker from selling, moving or disposing of any live animal, that has been tested for a disease identified in ATCP 10 *Appendix A or B*, before the result of that test is known.

This rule makes minor technical changes to the rule, removes outdated references and corrects errors.

Humane Officer Training and Certification

The current fee to be certified as a humane officer is \$25. This rule increases the application fee to \$35 and clarifies that this fee is nonrefundable.

Current rules require certified humane officers to complete 32 hours of continuing education (CE) in order to renew the biennial certification. (This requirement does not apply at initial certification because humane officers have already just completed an initial 40–hour training program.) This rule clarifies individuals who allow their certification to expire, will still need to demonstrate compliance with the requirement for 32 hours of CE before the certification will be renewed. If more than 2 years expired, other rules apply (see below). If the CE courses taken to comply with the 32 hours of CE are taken in the current certification biennium, this rule clarifies that those continuing education hours will count

towards the renewal certification only. To renew the following biennium, the individual will need to complete an additional 32 hours of CE.

Current rules do not specify whether after humane officer certification expires, the person may renew the certification, or must apply as a new applicant. This rule clarifies humane officers that allow their certification to expire, and remain expired for over two years, must apply as a new applicant, retake the initial training required and pass the test. Certifications which have been expired more than 2 years may not, therefore, be renewed.

This rule also clarifies that late fees will apply if the certification has expired.

This rule requires certified humane officers to notify the department of changes in name, address and phone numbers that occur during the certification period.

Current rules set minimum education hours requirements for each topic of the humane officer training program. This rule keeps the requirement that the humane officer training program provide at least 40 hours of training, but removes the specific hours required for each topic.

Under current rules, a person who takes the initial exam to be certified, and fails it twice, may not retake it. This rule allows for the exam to be retaken but only if the person retakes the training program.

Re-inspection Fees

The department has statutory authority to assess a re-inspection fee on a licensed or registered entity, if during a previous inspection, violations are noted that require the department's staff to come back and verify that compliance has been achieved. This rule codifies the authority for re-inspection fees, and sets the re-inspection fee at \$150. Our focus is on education and progressive enforcement and these fees are not expected to generate significant future routine revenue.

Federal and surrounding state programs

Federal Programs

Most animal health regulations are adopted and administered at the state level. However, the United States Department of Agriculture (USDA) administers federal regulations related to the interstate movement of animals, particularly with respect to certain major diseases. States regulate intrastate movement and imports into the state. States certify the disease status of certain herds, at the request of herd owners, to facilitate interstate movement of animals from those herds. States also license and regulate entities such as animal markets, animal dealers and animal truckers (regulations vary by state).

State regulation of interstate animal movement is generally consistent with federal standards, where applicable. However, states may impose additional import requirements if those requirements are reasonably designed to prevent the spread of disease, and do not impose an unreasonable burden on interstate commerce.

Wisconsin's current rules related to farm-raised deer are consistent with applicable federal rules. However, USDA is proposing changes to federal rules related to CWD in farm-raised deer. The proposed federal rules may modify current testing and monitoring requirements for interstate movement, and may modify current identification requirements for interstate movement. DATCP may modify

current state rules in the future, as necessary, to be consistent with the new federal rules.

USDA has less well-developed programs for new or localized diseases, or emerging animal-based industries. States often take a lead role in developing programs to address new animal health issues and disease threats (farm-raised deer and fish diseases, for example), particularly if those issues or threats have a more local or regional focus. Wisconsin's program related to fish and farm-raised deer are perhaps the leading programs in the nation, and have provided models for proposed federal programs.

Surrounding State Programs

GENERAL

Surrounding state animal health programs are broadly comparable to those in Wisconsin, but vary in a variety of ways. Differences in disease regulations and control programs may reflect differences in animal populations, animal-based industries, and disease threats in the different states. Programs for historically important diseases, such as tuberculosis and brucellosis, tend to be fairly similar between states and are based on well-established federal standards. Programs for newer forms of agriculture, such as farm-raised deer and aquaculture, tend to be more variable.

AQUACULTURE

All of the surrounding states regulate aquaculture, to some degree:

- Minnesota requires fish import permits, and licenses fish farms and fish dealers. Health certification is required for fish imports, but not for fish farms. Bait imports are prohibited.
- Iowa requires fish import permits, and licenses fish farms. Health certification is required for fish imports, but not for fish farms.
- Illinois licenses fish farms and fish dealers. An import permit and health certification is required for certain fish imports (salmonids). There is limited regulation of fish transport vehicles.
- Michigan licenses fish farms. Health certification is required for fish imports.

FARM-RAISED DEER

All of the surrounding states require CWD testing of farm-raised deer:

- Illinois requires any farm-raised deer dying from an unknown cause that has exhibited neurological disorder be tested for CWD, and any farm-raised deer exhibiting symptoms of CWD to be destroyed and tested, or quarantined until it can be determined that the animal does not have CWD.

Additionally, two 'voluntary' CWD herd monitoring programs have been established ("Certified Monitored" and "Contained Monitored") – intrastate movement or sales of farm-raised deer are contingent upon participation in one of the programs.

- Iowa requires that farm-raised deer purchased or moved be enrolled in a CWD surveillance program. The voluntary surveillance program requires collecting and submitting appropriate samples from all cases of mortality, including slaughter, in animals 16 months of age and older and requires copies of the laboratory reports to be maintained.
- Michigan requires mandatory CWD surveillance; all death losses due to illness in farm-raised deer herds for

deer that are over 12 months of age, and 25% of hunted/culled deer must be reported to Department of Agriculture and samples submitted for CWD testing.

- Minnesota requires mandatory CWD testing for all farm-raised deer.

ANIMAL MARKETS, ANIMAL TRUCKERS, AND ANIMAL DEALERS

All surrounding states license Animal Markets and Dealers. These licensed entities are required to meet minimum standards regarding facilities and animal handling, and record keeping.

HUMANE OFFICERS

- Iowa has no related program.
- The Minnesota Federated Humane Societies (MFHS) is authorized to provide a one-day training class on the Minnesota animal laws and related topics. The MFHS administers a test at the end of the one-day training, and certifies those that pass. There is no requirement for additional training or continuing education.
- Michigan requires individuals to complete 100 hours of training classes, or other experience on their own. Documentation of the training is submitted to the Michigan Department of Agriculture for approval. If the training is approved, the department issues a letter of approval. The individual is then able to seek employment with a jurisdiction. No additional continuing education is required.
- Illinois requires volunteers that are sponsored by a humane society, to attend a ½ day training course conducted by the Department of Agriculture reviewing the animal laws of the state. An exam is then administered after the review. The individual must pass the test once every 2 years to maintain certification. The individual is then authorized to conduct investigations of animal welfare complaints. No additional continuing education is required.

Data and analytical methodologies

USDA specifies standard animal disease test methods and procedures that are incorporated by reference in current DATCP rules.

Fiscal Impact

This rule will not have a significant state or local fiscal impact. This rule reduces overall revenue to the state by an estimated \$3,200 in the following manner:

- This rule creates an additional category of farm-raised deer keeper that has a lower fee. The department estimates that this provision will affect 44 currently registered deer farmers, allowing them to register at the lower fee, reducing state revenues by \$3,400.
- This rule increase the fee for humane officer certification by \$10 (from \$25 to \$35) generating \$240 in additional revenue annually.

Business Impact

This rule will have a generally positive impact on business. This rule will have few, if any, negative impacts on business. Negative impacts, if any, will be limited.

DATCP's small business regulatory coordinator is Keeley Moll at the address above. Email Keeley.Moll@wisconsin.gov. Telephone (608) 224-5039.

Economic Impact

This rule will have no impact on local units of government or public utility rate payers. This rule will have limited impact on specific businesses and business sectors a majority of which are small businesses as summarized above. In general this rule will have a generally positive impact on the effected industries.

This rule's overall economic impact is limited in scope and will not have an impact on the overall economy of the state.

Standards Incorporated by Reference

Pursuant to s. 227.21, Stats., DATCP is seeking permission from the attorney general to incorporate the following standards by reference in this rule, without reproducing the standards in full in this rule:

- Program standards for the national voluntary Johne's disease control program, United States department of agriculture, animal and plant health inspection service, publication number 91-45-016 (September, 2010).
- National Poultry Improvement Plan and Auxiliary Provisions, United States department of agriculture, animal and plant health inspection service, publication number 91-55-088, (July, 2011).

Contact Person

Melissa Mace, Division of Animal Health, P.O. Box 8911, Madison, WI 53708-8911; telephone (608) 224-4883; email: Melissa.Mace@wisconsin.gov.

Submittal of Proposed Rules to the Legislature

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

Military Affairs

CR 10-111

Creates Chapter DMA 1, relating to military family financial aid.

This rule is not subject to s. 227.185, Stats. The statement of scope for this rule, published in Register No. 656, on August 14, 2010, was sent to Legislative Reference Bureau prior to the effective date of 2011 Wisconsin Act 21.

Rule Orders Filed with the Legislative Reference Bureau

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

Children and Families

Safety and Permanence, Chs. DCF 35-59

CR 11-026

Revises Chapters DCF 52, 54 and 57, relating to regulation of rates charged by residential care centers for children and youth, child-placing agencies, and group homes.
Effective 1-1-12.

Natural Resources

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

CR 11-013

(DNR # FR-45-10)

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

Safety and Professional Services (formerly Commerce)

Licenses, Certifications and Registrations, Ch. Comm 5

CR 11-020

Revises Chapter Comm 5, relating to licenses, certifications and registrations.
Effective 1-1-12 in part, 1-1-13 in part, 4-1-13 in part.

Safety and Professional Services — Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyor Examining Board

CR 11-014

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

Rules Published with this Register and Final Regulatory Flexibility Analyses

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

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

Agriculture, Trade and Consumer Protection

CR 11-010

(DATCP # 11-R-08)

(Authority for this rule was transferred from the Department of Commerce by 2011 Wis. Act 32)

Creates Chapter ATCP 166, relating to investment tax credits for harvesting or processing woody biomass. Effective 12-1-11.

Summary of Final Regulatory Flexibility Analysis

The rule is not expected to impose significant costs or other impacts on small businesses because the rule addresses submittal of documents only by applicants that choose to pursue tax credits for purchasing equipment which is utilized primarily to harvest or process woody biomass for use as fuel or as a component of fuel.

Comments from Legislative Committees (Summary)

On May 26, 2011, Commerce transmitted the above rule for legislative committee review. The rule was assigned to the Senate Committee on Energy, Biotechnology and Consumer Protection and to the Assembly Committee on Forestry. Neither the Senate committee nor the Assembly committee took any action on the rule.

Natural Resources

Environmental Protection—Air Pollution Control,

Chs. NR 400—

CR 07-082

Revises Chapters NR 404 and 484, relating to repeal of the state's secondary 24-hour ambient air quality standard for particulate matter measured as a total suspended particulate. Effective 12-1-11.

Summary of Final Regulatory Flexibility Analysis

The proposed rule revisions will make Wisconsin's ambient air quality standards for particulate matter consistent with the national ambient quality standards, and will not have a significant economic impact on a substantial number of small businesses.

Summary of Comments of Legislative Standing Committees

The rules were reviewed by the Assembly on Natural Resources, the Senate Committee on Natural Resources and the Environment, and the Joint Committee for Review of Administrative Rules. No Comments or requests for modification were received from the committees.

Natural Resources

Fish, Game, etc., Chs. NR 1—

CR 11-008

(DNR # FH-50-10)

Revises Chapter NR 25, relating to commercial fishing in outlying waters. Effective 12-1-11.

Summary of Final Regulatory Flexibility Analysis

The rule is of interest to commercial fishers and was initiated in response to the expressed concerns of recreational fishers. Small businesses engaged in commercial fishing and wholesale fish dealing may be affected by the rule. Currently, there is no basis for quantifying the economic impacts of the rule. However, in testimony at public hearings on the rule, Lake Michigan commercial fishers indicated that the time and area restrictions set out in the original version of the rule might have an impact on their catch, and thus have a negative economic impact. These and other comments are reflected in the changes made to the rule and it should not have a significant economic impact on small businesses. An emergency rule with the same net marking and net depth conditions was in place during the summer of 2011.

Summary of Comments of Legislative Standing Committees

The rules were reviewed by the Senate Committee on Environment and Natural Resources and the Assembly Committee on Natural Resources. The Department did not receive any comments or requests for modification of the rule.

Revenue

CR 11-023

Creates section Tax 2.957, relating to income and franchise tax credits and deductions for businesses that relocate to Wisconsin. Effective 12-1-11.

Summary of Final Regulatory Flexibility Analysis

This rule order does not have a significant economic impact on a substantial number of small businesses.

Summary of Comments of Legislative Standing Committees

No comments were reported.

Revenue

CR 11-024

Creates section Tax 3.05, relating to income and franchise tax deductions for job creation. Effective 12-1-11.

Summary of Final Regulatory Flexibility Analysis

This rule order does not have a significant economic impact on a substantial number of small businesses.

Summary of Comments of Legislative Standing Committees

No comments were reported.

Sections Affected by Rule Revisions and Corrections

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

Revisions

Agriculture, Trade and Consumer Protection

Ch. ATCP 166

Entire Chapter

Ch. NR 484

NR 484.04 (3)

Natural Resources

Ch. NR 25

NR 25.09 (1) (b) 11.

NR 25.09 (2) (b) 2. a., f.

Ch. NR 404

NR 404.02 (11)

NR 404.04 (3)

Revenue

Ch. Tax 2

Tax 2.957

Ch. Tax 3

Tax 3.05

Ch. Tax 20

Tax 20.09 (2) (a), (b)

Editorial Corrections

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

Accounting Examining Board

Ch. Accy 3

Accy 3.11 (2) (a)

Dietitians Affiliated Credentialing Board

Ch. DI 3

DI 3.02 (1) (a)

Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors Examining Board

Ch. A-E 3

A-E 3.05 (6)

Ch. A-E 4

A-E 4.08 (4)

Ch. A-E 5

A-E 5.04 (4), (7) (Note)

Ch. A-E 6

A-E 6.05 (6), (8) (Note)

Ch. A-E 8

A-E 8.08 (4)

Ch. A-E 9

A-E 9.05 (4)

Geologists, Hydrologists and Soil Scientists

Ch. GHSS 2

GHSS 2.06 (5)

Ch. GHSS 3

GHSS 3.05 (5)

Ch. GHSS 4

GHSS 4.05 (5)

Health Services

Ch. DHS 35

DHS 35.03 (5) (b), (20), (21), (22)

DHS 35.14 (4) (b)

Ch. DHS 75

DHS 75.02 (9m), (11), (15), (21m), (68), (70g), (70r),

(84) (a), (b), (c), (d)

DHS 75.03 (4) (d), (e)

DHS 75.04 (3) (a), (b)

DHS 75.10 (5) (a), (b)

DHS 75.10 (5) (a), (b)

DHS 75.11 (5) (a), (b)

DHS 75.12 (5) (a), (b)

DHS 75.13 (4) (a), (b)

DHS 75.14 (5) (a), (b)

DHS 75.15 (4) (dm), (e)

Ch. DHS 139

DHS 139.06 (1), (2)

Administration

Ch. Adm 80

Entire Chapter

Chiropractic Examining Board

Ch. Chir 4

Chir 4.04 (1) (Note)

DHS 139.07 (1), (2)

Ch. DHS 192

DHS 192.03 (7)

DHS 192.05 (1), (2)

Higher Educational Aids Board

Ch. HEA 15

Entire Chapter

Medical Examining Board

Ch. Med 1

Med 1.02 (5), (6)

Med 1.10 (3)

Ch. Med 3

Med 3.02 (5)

Med 3.03

Ch. Med 4

Med 4.02 (5), (6)

Ch. Med 8

Med 8.056 (3)

Ch. Med 9

Med 9.01

Ch. Med 13

Med 13.03 (2)

Ch. Med 20

Med 20.07 (3)

Ch. Med 22

Med 22.06 (2) (d), (e)

Marriage & Family Therapy, Counseling & Social Worker Examining Board

Ch. MPSW 1

MPSW 1.02 (2)

MPSW 1.04 (2) (Note)

MPSW 1.06 (1)

MPSW 1.09 (1) (a) to (c), (3) (a), (b), (4) (a) 1.

Ch. MPSW 6

MPSW 6.02

MPSW 6.03

MPSW 6.04 (Note)

Ch. MPSW 15

MPSW 15.02 (Note)

Nursing

Ch. N 2

N 2.02 (3)

N 2.08 (5) (c)

Occupational Therapists Affiliated Credentialing Board

Ch. OT 2

OT 2.06 (3)

Ch. OT 4

OT 4.03 (2) (e)

Optometry Examining Board

Opt 6

Opt 6.02 (1), (1m), (3), (6)

Opt 6.03 (4)

Opt 6.04 (4) (a) 1.

Pharmacy Examining Board

Ch. Phar 6

Phar 6.01

Ch. Phar 9

Phar 9.01

Ch. Phar 11

Phar 11.01

Ch. Phar 12

Phar 12.03 (5)

Ch. Phar 13

Phar 13.02 (3m)

Phar 13.07

Physical Therapists Affiliated Credentialing Board

Ch. PT 7

PT 7.03

Psychology Examining Board

Ch. Psy 2

Psy 2.07 (3)

Ch. Psy 3

Psy 3.01 (4)

Psy 3.02 (1)

Psy 3.09 (3)

Real Estate Examining Board

Entire Code

Regulation and Licensing

Entire Code

Revenue

Ch. Tax 2

Tax 2.92 (3) (a), (d), (e)

Safety and Professional Services

Chs. 1 to 299

All Chapters

Executive Orders

The following are recent Executive Orders issued by the Governor.

Executive Order 50. Relating to Guidelines for the Promulgation of Administrative Rules.

Executive Order 51. Relating to the Creation of the Wisconsin Technology Committee.

Public Notices

Health and Family Services (Medicaid 2014 Demonstration Project)

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

Section 1115 of the Social Security Act provides the Secretary of Health and Human Services broad authority to authorize Research & Demonstration Projects, which are experimental, pilot, or demonstration projects likely to assist in promoting the objectives of the Medicaid statute. Flexibility under Section 1115 is sufficiently broad to allow states to test substantially new ideas of policy merit.

In September, the Wisconsin Department of Health Services provided on its website an outline of its proposal to initiate what is now called the Medicaid 2014 Demonstration Project, which will be a Research & Demonstration Projects under the authority of Section 1115. Public comment was invited at that time as well as at the public hearings held on October 19 and 21. You may now receive the official waiver request and will have another opportunity to comment before it is legislatively approved and submitted to the federal government. The Medicaid 2014 Demonstration Project will be an initiative to test the policy impacts of the federal law on Medicaid to go into effect in 2014, including crowd-out policies, cost-sharing requirements, income determination methods, adverse selection provisions, the relevance of Transitional Medicaid and the impact of real-time eligibility on verification requirements and retroactive and presumptive determinations.

The Patient Protection and Affordable Care Act (PPACA) will fundamentally change policies that govern state Medicaid programs. Wisconsin is submitting this federal 1115 waiver to pilot several policies that will prepare our BadgerCare Plus programs to better align with the pending changes in federal law. The following paragraphs detail the key elements of this initiative.

Crowd Out

Lower-income families above the poverty line will be disqualified from eligibility for government-subsidized health coverage if they have access to an employer-sponsored plan that does not require cost sharing in excess of 9.5% of household income. The waiver evaluation will look at how individuals not eligible for BadgerCare Plus based on this crowd-out provision subsequently interact with the private health care market, in the hopes of determining whether or not individuals with access to an employer-sponsored plan follow through with maintaining coverage at the expected levels of cost-sharing.

In addition, lower-income young adults above the poverty line will be disqualified from eligibility for government-subsidized health coverage if they have access to coverage under a parent's employer-sponsored insurance plan. The Medicaid 2014 Waiver will implement BadgerCare Plus crowd-out provisions to test whether or not young adults subsequently enroll in their parents plan and maintain access to health coverage.

Cost Sharing

PPACA requires families and individuals to purchase insurance that will require premium and copayment contributions. According to a recent study released by the Urban Institute, the estimated average annual premium cost for families with incomes between 138% and 200% FPL is \$1,559 in 2014, with additional estimated out-of-pocket expenses of \$457.

Wisconsin's Medicaid 2014 waiver will move toward aligning BadgerCare Plus cost-sharing provisions with those authorized by PPACA. This will demonstrate the impact of cost-sharing provisions on lower-income families above the poverty line. Questions the waiver evaluation will address will include whether or not participants will pay cost sharing, as well as whether or not the cost-sharing requirements will slow the growth of health care spending. The demonstration will consider policy choices related to the alignment of benefits and the equity of cost-share provisions for Medicaid, the Basic Health Plan and subsidized insurance.

Transitional Medical Assistance

Transitional Medical Assistance (TMA) has existed for many years to support the transition from welfare to work. TMA allows individuals to maintain their Medicaid coverage for 12 additional months once their income changes from an amount that would have qualified them for benefits under the former Aid to Families with Dependent Children (AFDC) cash assistance program to an amount above that income threshold.

In Wisconsin, the AFDC income threshold is 100% of the federal poverty level (FPL). TMA policy in Wisconsin has never been adjusted to reconcile to expanded eligibility criteria for Medicaid. Beginning in 2008, parents with incomes up to 200% FPL became eligible for BadgerCare Plus.

Under PPACA, the program's authorization expires before 2014. Continuation of TMA will introduce inequities because it will result in families with the same income experiencing different eligibility outcomes.

Under the waiver, those who would otherwise be exempt from cost-sharing under TMA will be expected to make modest premium and other cost-sharing contributions to maintain their Medicaid coverage. This simulates how a Medicaid to subsidized insurance transition would work for these same individuals if TMA is ended nationally.

Restrictive Re-Enrollment

Currently under BadgerCare Plus, a member for whom a premium is owed for the current month who leaves BC+ by quitting or not paying a premium may be subject to a restrictive re-enrollment period. A restrictive re-enrollment period means the member cannot re-enroll in BC+ for six months from the termination date while their income remains high enough to owe a premium.

One of the issues a restrictive re-enrollment period is intended to address is the fact that consumers may have financial incentives to selectively purchase coverage for specific months in which they anticipate high utilization. This is true even with the tax penalties envisioned under PPACA for failure to comply with the insurance mandate. The Wisconsin 2014 waiver will test the impact of applying restrictive re-enrollment as a measure of protection against adverse selection.

The waiver will evaluate the impact of the policy on premium payment compliance and the overall PMPM for BadgerCare Plus members in populations subject to this policy.

Real-Time Eligibility

PPACA envisions an eligibility process for Medicaid and subsidized insurance to happen in as close to real-time as possible in 2014.

A key component of Wisconsin's Medicaid 2014 waiver will be to implement real-time eligibility during Demonstration Year 1. The Medicaid 2014 waiver will test the impact on eligibility by replacing retroactive and presumptive eligibility policies with a real-time, online application system designed to facilitate immediate access to Wisconsin's health care safety net.

The real-time system will redefine and modernize the logic of outdated methods used to calculate a recipient's eligibility begin date and end date. Wisconsin's Medicaid 2014 Waiver will demonstrate the potential efficiency of operating a real-time eligibility system and the potential savings states can achieve by avoiding the unnecessary costs associated with arbitrary backdating and end-dating.

To assure program integrity and the effective use of public tax dollars, the accuracy of online eligibility determinations must be supported by a strong back end quality control process. In our Medicaid 2014 Waiver, Wisconsin proposes to demonstrate the interaction of real-time eligibility with a back end verification process by strengthening our state residency verification requirements.

Redefining Household Income

"Modified Adjusted Gross Income" (MAGI) is a new method to measure income for Medicaid eligibility purposes. Based on Internal Revenue Service (IRS) rules, this method will be used under the authority of PPACA beginning in 2014.

To accurately capture the total sum of household resources available to applicants and recipients of Wisconsin's Medicaid program, Wisconsin will request authority to pilot an alternative methodology that considers the resources of all adults living in the household of the person who is filing the application. Income from grandparents and adults temporarily living in the household will be exempt.

In doing this, Wisconsin will gather data significant to assessing whether MAGI comprehensively captures household resources. This demonstration will also help Wisconsin assess the expected total Medicaid enrollment in 2014 based on a clearer picture of how the income methodology affects household eligibility.

Proposed Changes – Implementing Wisconsin's Medicaid 2014 Waiver

As previously noted, the Wisconsin Department of Health Services is proposing to initiate the Medicaid 2014 Demonstration Project, which will be a Research & Demonstration Projects under the authority of Section 1115.

As required under federal law, Early and Periodic Screening & Diagnostic Treatment Benefit (EPSDT) services are to be provided to individuals under 21 years of age as an additional benefit under section 1937 of the Act.

In addition to this public notice, Wisconsin's tribes were consulted at a meeting of the Tribal Health Directors on October 25, 2011. The effective date of this change will be July 1, 2012. The projected fiscal effect of this initiative is an annual savings of \$54 million general purpose revenue (GPR) and \$81 million federal match (FED) for a total savings of \$135 million all funds (AF) beginning July 1, 2012.

Copies of Proposed Changes

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

Regular Mail

Marlia Mattke
Division of Health Care Access and Accountability
P.O. Box 309
Madison, WI 53707-0309

Phone

Marlia Mattke
(608)266-9749

FAX

(608)266-1096

E-Mail

Marlia.Mattke@dhs.wisconsin.gov

Written Comments

Written comments are welcome. Written comments on the changes may be sent by FAX, e-mail, or regular mail to the Division of Health Care Access and Accountability. The FAX number is (608) 266-1096. The e-mail address is Marlia.Mattke@dhs.wisconsin.gov.

Regular mail can be sent to the above address.

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

Health and Family Services (Medical Assistance Reimbursement for Services Provided Under Benchmark Plans Implementing Medical Home Initiatives)

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

This serves as public notice for eight benefit plans: seven Section 1937 benchmark plans and one Section 1945 plan.

Section 1937 of the Social Security Act provides authority for States to provide for medical assistance to one or more groups of Medicaid-eligible individuals, specified by the State in an approved state plan amendment, through enrollment in coverage that provides benchmark or benchmark-equivalent health care benefit coverage. Wisconsin established a benchmark plan effective February 1, 2008. Wisconsin will establish several more benchmark plans.

There are four medical home benchmark plan initiatives that are the subject of this notice:

- Mental Health/Substance Abuse Medical Home (Alternative Benchmark Plan C)
- Medical Home Pilot for Persons With Chronic Conditions (Alternative Benchmark Plan D)
- Medical Home Pilot for Persons with Severe Mental Illness Leaving Criminal Justice System and Mental Health Institutes (Alternative Benchmark Plan E)
- Pregnant Women Medical Home Pilot (Alternative Benchmark Plan F)

For the medical home benchmark plans described above, the full benefit package under the Medicaid/Standard Plan are covered services. All of the medical homes add targeted benefits critical to manage the health care needs for the

population identified in each individual plan, such as care coordination, medical assessments and medication therapy management.

There are two additional benchmark plans subject to this public notice:

- Birth to Three Benchmark Plan (Alternative Benchmark Plan H)
- Community Recovery Services (CRS) Benchmark Plan (Alternative Benchmark Plan I)

Section 1945 of the Social Security Act provides authority for a State, at its option as a State plan amendment, medical assistance to Medicaid eligible individuals with chronic conditions who select a designated provider, a team of health care professionals operating with such a provider, or a health team as the individual's health home for purposes of providing the individual with health home services. Wisconsin will establish a health home targeting individuals with AIDS/HIV. **This health home initiative targeting individuals with AIDS/HIV is subject to this public notice.**

Details of these plans are provided in the following paragraphs:

- Mental Health/Substance Abuse Medical Home (Alternative Benchmark Plan C)

Mental health disorders are an enormous social and economic burden to society by themselves, but are also associated with increases in the risk of physical illness. Among Wisconsin adults, the burden of chronic physical disease falls heavily on those with mental health problems, as evidenced by comparatively higher rates of cardiovascular disease and diabetes.

The Mental Health and Substance Abuse Medical Home will initially pilot a medical home to enroll fee-for-service individuals who meet the appropriate criteria of having a serious mental illness or substance use disorder that experience risk factors such as two or more hospitalization or emergency room visits in the past year or other risk factors to be developed, into the Mental Health and Substance Abuse Medical Home Alternative Benchmark Plan. This plan emphasizes health care and behavioral health coordination through a Medical Home and other additional services.

The projected fiscal effect of this initiative is an annual savings of \$1.5 million GPR and \$2.250 million FED for a total of \$3.750 AF beginning on January 1, 2012.

- Medical Home Pilot for Persons With Chronic Conditions (Alternative Benchmark Plan D)

A medical home pilot targeting adult Fee-For-Service SSI members with multiple chronic conditions like asthma, diabetes or heart conditions (excluding mental health comorbidities) will enable this vulnerable population to receive the care coordination services they greatly need to improve health outcomes.

The projected fiscal effect of this initiative is an annual savings of \$1.5 million GPR and \$2.250 million FED for a total of \$3.750 million AF beginning in spring of 2012.

- Medical Home Pilot for Persons With Severe and Persistent Mental Illness Leaving Criminal Justice and Mental Health Institutes (Alternative Benchmark Plan E)

This medical home alternative benchmark plan targets three sets of individuals:

1) those eligible for Wisconsin Medicaid who have major mental illness and are placed in the community under supervision after leaving prisons and Mental Health Institutes

2) those eligible for Wisconsin Medicaid who have multiple chronic health conditions who are exiting the prison system

3) Medicaid Eligible individuals who are participants in the Department of Health Services' Conditional Release Program or the Department of Corrections' Opening Avenues to Re-entry Success (OARS) Program and placed within communities in the SE Region of the State.

Many of these individuals may have chronic conditions like asthma, diabetes or heart conditions which need care coordination services to improve health outcomes. Individuals with serious mental illnesses and substance use disorders often find it difficult to manage the primary health care system due to the symptoms of their illness and receive care only at the point of a health care crisis which results in poor health care outcomes and increased cost to the health care system.

The projected fiscal effect of this initiative is an annual savings of \$1.0 million GPR and \$1.5 million FED for a total of \$2.5 million AF beginning on July 1, 2012.

- Pregnant Women Medical Home Pilot (Alternative Benchmark Plan F)

Wisconsin has one of the worst infant mortality rates among African Americans in the country. Approximately eighty-five percent of African American births in Wisconsin are to mothers who are on Medicaid. The initiative will pilot a medical home to coordinate care for the pregnant mother and her baby to ensure a healthy pregnancy.

The projected fiscal effect of this initiative is an annual savings of \$900,000 general purpose revenue (GPR) and \$1.350 million federal match (FED) for a total of \$2.250 million all funds (AF) beginning at a date to be determined in 2012.

- Birth to Three Benchmark Plan (Alternative Benchmark Plan H)

The Birth to Three Program provides a comprehensive set of services for infants, toddlers with disabilities, and their families. This plan creates capacity for more services offered in the Birth to Three program to be eligible for federal funds. Children will continue to receive their current Medicaid Standard Plan benefits through their existing Medicaid delivery system. These Birth to Three services are an additional service provided through the county framework. Counties will continue to work with families who are eligible and develop individualized care plans based on the child's needs.

This initiative is budget neutral.

- Community Recovery Services (CRS) Benchmark Plan (Alternative Benchmark Plan I)

The State of Wisconsin currently provides psychosocial rehabilitation services to support individuals with mental illness under the authority of section 1915(i) of the Social Security Act. The three components of this category of services are community living supportive services, supported employment, and peer/advocate supports. The Department intends to provide these services under the authority of section 1937 of the Social Security Act as a benchmark plan.

The fiscal impact of this proposal is zero, as the proposal is budget neutral.

- AIDS/HIV Health Home

The Department is developing a comprehensive care coordination health home pilot for Medicaid eligible individuals with AIDS/HIV.

Persons with AIDS/HIV are at risk for having additional chronic conditions. Managing co-morbidities makes this population vulnerable for receipt of fragmented care.

Medicaid eligible members will continue to receive their current benefit package under the Medicaid program as covered services. This health home provides additional benefits critical to manage the health care needs for this vulnerable such as care coordination, medical assessments, medication therapy management, and social and community services.

This initiative is projected to be budget neutral as it uses up to \$3.5 million in existing state dollars to match federal funds for the care coordination fee.

A recent change to federal law required States to provide emergency and non-emergency transportation services to those receiving coverage under a benchmark plan. In addition, EPSDT services are to be provided to individuals under 21 years of age. EPSDT stands for Early & Periodic Screening & Diagnostic Treatment Benefit, and it is described in section 1905(r) of the Social Security Act. The services available under EPSDT are described at the following link: http://www.cms.gov/MedicaidEarlyPeriodicScrn/02_Benefits.asp.

EPSDT services are available under each of the proposed 1937 benchmark plans as an additional service.

The effective date of these proposals will instead be the dates specified above in calendar year 2012. In addition to this public notice, Wisconsin's tribes were consulted at a meeting of the Tribal Health Directors on October 25, 2011, in compliance with section 5006(e) of the American Recovery and Reinvestment Act of 2009, Public Law 111-5.

Proposed Change

The proposed change is to implement several medical home initiatives under benchmark plans for recipients of medical assistance.

The projected cumulative fiscal effect of these changes is an annual savings of \$4.9 million GPR and \$7.350 million FED for a total annual savings of \$12.250 million AF.

Copies of the Proposed Change:

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

Regular Mail

James Vavra
Bureau of Benefits Management
Division of Health Care Financing
P.O. Box 309
Madison, WI 53701-0309

Phone

James Vavra
(608) 261-7838

FAX

(608) 266-1096
Attention: James Vavra

E-Mail

james.vavra@dhs.wisconsin.gov

Information about these and other Medicaid reform proposals can be found on the Department's web site at:
<http://www.dhs.wisconsin.gov/mareform/>

The specific submissions this public notice refers to can be found at:
<http://www.dhs.wisconsin.gov/mareform/FinalJFCSubmission10.31.11.pdf>

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

Written Comments:

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

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

Health and Family Services (Medical Services Benchmark Plan Benefits for Family Medicaid)

The State of Wisconsin provides access to health care for low-income and medically needy persons under the authority of Title XIX of the Federal Social Security Act and sections 49.43 to 49.47 and 49.688, Wisconsin Statutes. The Wisconsin Department of Health Services administers this program, which is called Medical Assistance or Medicaid (MA). In addition, Wisconsin has expanded this program to create the BadgerCare and BadgerCare Plus programs under the authority of Title XIX and Title XXI of the Social Security Act, which authorizes State Children's Health Insurance Programs (SCHIP) for certain children who otherwise would not be eligible for MA, and ss. 49.471, 49.665, and 49.67 of the Wisconsin Statutes. Federal statutes and regulations require that a state plan be developed that provides the methods and standards for reimbursement of covered services. A plan that describes the reimbursement system for the services (methods and standards for reimbursement) is now in effect.

Sections 1937 and 2103 of the Social Security Act provided authority for States to provide for coverage to one or more groups of Medicaid- and SCHIP-eligible individuals, specified by the State in an approved state plan amendment, through enrollment in coverage that provides benchmark or benchmark-equivalent health care benefit coverage. Wisconsin did so, effective February 1, 2008. The current groups who receive benefits under Wisconsin's benchmark plan are pregnant women and infants with incomes between 200 and 300% of the Federal income poverty line, as well as newborns who are born to women with family incomes between 200 and 300% of the Federal income poverty line (FPL). As required under federal law, Early and Periodic Screening & Diagnostic Treatment Benefit (EPSDT) services are to be provided to individuals under 21 years of age as an additional service.

Proposed Changes – Additional Groups to be Added to those Receiving Benefits Under the Benchmark Plan

The proposed change is to enroll MA and SCHIP-eligible children and MA-eligible adults with income above 100% of the FPL into the BadgerCare Plus Benchmark benefit plan. The specific citations for these individuals are as follows:

- Caretakers and children above 100% of the FPL who are members of mandatory categorically needy low-income families and children and who are eligible under section 1925 of the Social Security Act (SSA) for Transitional Medical Assistance.
- Mandatory categorically needy poverty level infants eligible under 1902(a)(10)(A)(i)(IV) of the SSA whose family income is from 100 to 150% of the FPL.
- Mandatory categorically needy poverty level children aged 1 up to age 6 eligible under 1902(a)(10)(A)(i)(VI) of the SSA whose family income is from 100 to 185% of the FPL.
- Optional categorically needy poverty level infants eligible under 1902(a)(10)(A)(ii)(IX) of the SSA whose family income is from 150 to 200% of the FPL.
- Caretakers whose income is from 100 to 200% of the FPL who are members of the group optional categorically needy AFDC-related families and children eligible under 1902(a)(10)(A)(ii)(I).
- Children age 6-18 who are members of the group Medicaid expansion/optional targeted low-income children eligible under 1902(a)(10)(A)(ii)(XIV) of the SSA whose family income is between 100-150% FPL.

- Newborns who are deemed eligible under 1902(e)(4) and whose eligibility was determined under 1902(a)(10)(A)(ii) or 1902(a)(10)(C) whose income is from 150 to 200% of the FPL.
- The following groups of targeted low income children eligible for the separate SCHIP:
 - Children aged 1–5 with incomes between 185–200% FPL.
 - Children aged 6–18 with incomes between 150–200% FPL.

In addition to this public notice, Wisconsin's tribes were consulted at a meeting of the Tribal Health Directors in a meeting which was held on October 25, 2011.

Proposed Change

The proposed change is to enroll children and adults with income above 100% of the FPL into the BadgerCare Plus Benchmark benefit plan. The projected fiscal effect of this changes is an annual savings of \$10 million general purpose revenue, or GPR, and \$15 million federal match (FED) for a total savings of \$25 million all funds (AF) beginning on January 1, 2012.

Copies of the Proposed Change:

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

Regular Mail

James Vavra
Bureau of Benefits Management
Division of Health Care Financing
P.O. Box 309
Madison, WI 53701-0309

Phone

James Vavra
(608) 261-7838

FAX

(608) 266-1096
Attention: James Vavra

E-Mail

james.vavra@dhs.wisconsin.gov

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

Written Comments:

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

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

Notice of Suspension of Administrative Rule

Motion on EmR1114

That the Joint Committee for Review of Administrative Rules suspend the following provisions included in Emergency Rule 1114, pursuant to s. 227.26 (2) (d), Stats., effective November 7, 2011, on the basis of testimony received at its November 7, 2011 meeting, and on the grounds that these provisions included in Emergency Rule 1114 fail to comply with legislative intent as stated in s. 227.19 (4) (d) 3, Stats.

Jus 17.03 (8): “Firearms safety or training course” means a course that is reasonably calculated to instruct, practice, and test the student’s comprehension and application of firearm safety rules and safe firearm handling, that includes at least four hours of instructor-led training, and that provides a certificate or affidavit of successful completion that satisfies the content requirements of s. Jus 17.05 (2).

Jus 17.03 (13): “National or state organization that certifies firearms instructors” means any association, partnership, corporation, or limited liability company that is registered, certified, or has an appointed agent on file with the department of financial institutions or has equivalent legal recognition in another state; that requires firearms instructors to successfully complete instructor training of at least eight hours in length; and that requires instructors to demonstrate the ability and knowledge required for providing firearms safety and training.

Motion Passed: 7–3

Motion on EmR1114

That the Joint Committee for Review of Administrative Rules suspend the following provisions included in Emergency Rule 1114, pursuant to s. 227.26 (2) (d), Stats., effective November 7, 2011, on the basis of testimony received at its November 7, 2011 meeting, and on the grounds that these provisions included in Emergency Rule 1114 fail to comply with legislative intent and impose an undue hardship as stated in s. 227.19 (4) (d) 3 & 6, Stats.

Jus 17.05 (2): Except as otherwise provided in sub. (1), for purposes of satisfying the requirements of sub.(1) (b),(c),(d),(e),(f), or (g), a certificate or affidavit documenting that the applicant has successfully completed a firearms safety or training course must include all of the following information:

(a) The applicant’s name.

(b) The name of the firearms safety or training course.

~~(c) The length in hours of the firearms safety or training course.~~

(d) The date in which the applicant completed the firearms safety or training course.

~~(e) The city and state in which the applicant completed the firearms safety or training course.~~

~~(f) The name, address, and telephone number of the person or entity responsible for the firearms safety or training course. This may be an individual instructor, a national or state organization, a law enforcement agency, an educational institution, a firearms training school, or another public or private institution or organization.~~

(g) The name of the instructor who taught the firearms safety or training course to the applicant and the name of the agency or organization that certified the instructor.

~~(h) A signed statement by the instructor who taught the firearms safety or training course to the applicant affirming that the course satisfied the definition of a firearms safety or training course in s. Jus 17.03 (8) and that the applicant successfully complete the course. An affirmation that the applicant merely attended the course is not sufficient to satisfy this requirement.~~

Motion Passed: 6–4

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