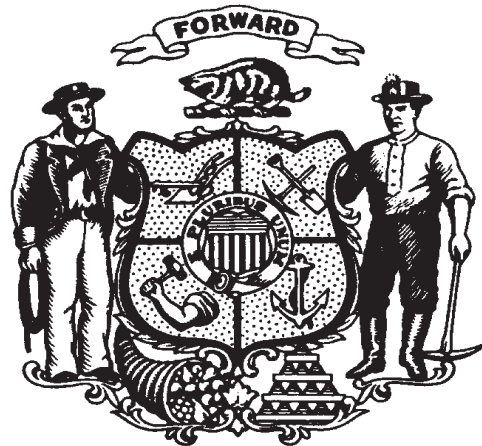


Wisconsin Administrative Register

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WISCONSIN ADMINISTRATIVE REGISTER

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Table of Contents

Emergency Rules Now in Effect.**Pages 4 to 7**

Children and Families:

Safety and Permanence, Chs. DCF 37–59

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

Employment Relations Commission:

Create Chapters ERC 70 to 74 and ERC 80, relating to initial annual certification elections. **EmR1113**

Insurance:

Revise Chapter Ins 18, relating to grievances and independent review requirements and affecting small business. **EmR1117**

Repeal EmR1117 which was to revise **Chapter Ins 18**, relating to grievances and independent review requirements, and affecting small business. **EmR1119**

Justice:

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. **EmR1114**

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

Natural Resources:

Fish, Game, etc., Chs. NR 1—

Repeal section NR 40.02 (28m), amends section NR 40.04 (3m), and repeals and recreates section NR 40.07 (8), relating to the identification, classification and control of invasive species. **EmR1045**

Amend section NR 25.05 (1) (c), relating to commercial fishing in outlying waters. **EmR1116**

Revenue:

Revise section Tax 7.23, relating to the activities of brewers, bottlers, out-of-state shippers, and wholesalers. **EmR1201**

Safety and Professional Services:
(formerly Regulation and Licensing)

Create 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. **EmR0827**

Scope Statements.**Pages 8 to 10**

Natural Resources:

Fish, Game, etc., Chs. NR 1—

Revises Chapter NR 40, relating to invasive species. **SS 016–12**

Revises Chapter NR 47, relating to County Forest Time Standards Grant. **SS 018–12**

Public Service Commission:

Revises Chapter PSC 114, relating to updating the State Electrical Code and adopting electric safety code provisions. **SS 017–12**

Submittal of Proposed Rules to Legislative Council Clearinghouse.

Page 11

Natural Resources:

Fish, Game, etc., Chs. NR 1—

Creates section NR 19.058, relating to requiring access to a wire cutter or other device capable of severing any line pulled behind the boat when trolling in outlying waters. **CR 12–022**

Hearing Notices.

Pages 12 to 15

Natural Resources:

Fish, Game, etc., Chs. NR 1—

Creates section NR 19.058, relating to requiring access to a wire cutter or other device capable of severing any line pulled behind the boat when trolling in outlying waters. **CR 12–022**

Submittal of Proposed Rules to Legislature.

Pages 16 to 18

Agriculture, Trade and Consumer Protection:

Revise Chapter ATCP 30, relating to Atrazine Pesticides. **CR 11–046**

Revise Chapters ATCP 10, 12, and 15, relating to animal diseases and movement, animal markets, dealers and truckers, and humane officer training and certification. **CR 11–048**

Revise Chapter ATCP 21, relating to voluntary certification of firewood dealers. **CR 11–051**

Children and Families:

Safety and Permanence, Chs. DCF 35–59

Revise Chapter DCF 57, relating to determination of need for new group homes. **CR 10–105**

Revenue:

Revise Chapter Tax 2, relating to pre–2009 net business loss carryforwards. **CR 12–006**

Revise Chapters Tax 1, 2, 3, and 8, relating to tax law changes made by 2011 Wisconsin Act 32 and other legislation. **CR 12–011**

Create section Tax 2.985, relating to electronic medical records credit. **CR 12–012**

Revise section Tax 7.23, relating to the activities of brewers, bottlers, out–of–state shippers, and wholesalers. **CR 12–013**

Revise Chapters Tax 1 and 11, relating to sales and use tax law changes made by 2011 Wisconsin Act 32 and other legislation. **CR 12–014**

Create section Tax 11.20, relating to sales and use tax exemptions for biotechnology. **CR 12–015**

Safety and Professional Services:

***Safety, Buildings, and Environment
General Part I, Chs. SPS 301–319***

Revise Chapter SPS 305, relating to thermal insulator credentials. **CR 12–007**

***Safety, Buildings, and Environment
General Part II, Chs. SPS 326–360***

Revise Chapter SPS 333, relating to passenger ropeways and affecting small business. **CR 12–008**

Safety and Professional Services — Board of Nursing:

Revise Chapter N 3, relating to endorsement licensure. **CR 12–004**

<p>Safety and Professional Services — Cemetery Board:</p>	<p>Repeal Chapters SPS 52, 53, and 54 (formerly RL 52, 53, 54), and to create Chapters CB 2, 3, and 4, relating to warehouses storing cemetery pre-need merchandise, changing trustees of care or pre-need trust funds, and alternative care funds investments. CR 12-021</p>
<p>Safety and Professional Services — Controlled Substances Board:</p>	<p>Create Chapter CSB 3, relating to requirements and procedures for granting special use authorizations. CR 12-010</p>
<p>Safety and Professional Services — Pharmacy Examining Board:</p>	<p>Create Chapter Phar 18, relating to the prescription drug monitoring program and affecting small business. CR 12-009</p>
<p>Safety and Professional Services — Physical Therapy Examining Board:</p>	<p>Revise Chapters PT 1, 2, 3, 4, 5, 6, 8, and 9 relating to licensure, examinations, temporary licenses, locum tenens license, referrals, and continuing education. CR 12-002</p>
<p>Technical College Board:</p>	<p>Revise section TCS 6.05, relating to procurement. CR 11-053</p>
<p>Rule Orders Filed with the Legislative Reference Bureau.</p>	<p>Page 19</p>
<p>Agriculture, Trade and Consumer Protection:</p>	<p>Revise Chapter ATCP 160, relating to county and district fairs. CR 11-037</p>
<p>Safety and Professional Services — Real Estate Examining Board:</p>	<p>Revise Chapters REEB 24 and 25 (formerly RL 24 and 25), relating to definitions, duties of brokers, broker disclosure requirements, written proposals, ethical requirements, and educational requirements. CR 10-136</p>
<p>Rules Published with this Register and Final Regulatory Flexibility Analyses.</p>	<p>Page 20</p>
<p>Safety and Professional Services — Barbering and Cosmetology Examining Board:</p>	<p>Amend sections BC 1.01 (intro.), 9.01 (3) and 9.02; and to repeal and recreate Chapter BC 11, relating to late renewal and continuing education. CR 11-011</p>
<p>Public Service Commission:</p>	<p>Revise Chapter PSC 118, relating to renewable resource credits. CR 10-147</p>
<p>Sections Affected.</p>	<p>Pages 21 to 23</p>
<p>Executive Orders.</p>	<p>Page 24</p>
<p>Public Notices.</p>	<p>Pages 25 to 27</p>
<p>Children and Families:</p>	<p>Revision of Child Care Co-Payment Schedule for Licensed and Certified Care under s. DCF 201.08 (3) (a) 4., Wisconsin Administrative Code.</p>
<p>Health Services:</p>	<p>Medical Assistance Reimbursement of Ambulatory Surgical Centers.</p> <p>Medical Assistance Reimbursement to Hospitals Pay For Performance Payment Plan for State Fiscal Year 2012-2013.</p>
<p>Natural Resources:</p>	<p>Notice of Invalidation of Part of Section NR 106.10 (1) pursuant to section 227.40 (6), Stats.</p>
<p>Natural Resources:</p>	<p>Notice of Repeal of Chapter NR 411 pursuant to section 227.26 (2) (i), Stats.</p>

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.

Children and Families

Safety and Permanence, Chs. DCF 37–59

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

Exemption From Finding of Emergency

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

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

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

Employment Relations Commission

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

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

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

Finding of Emergency

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

Publication Date: September 15, 2011
Effective Dates: September 15, 2011 thru February 12, 2012
Extension Through: April 12, 2012
Hearing Date: February 2, 2012

Insurance (2)

1. 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

Repealed by EmR1119: December 29, 2011

2. EmR1119 — Rule to repeal EmR1117, which was to revise **Chapter Ins 18**, relating to grievances and independent review requirements, and affecting small business.

The emergency rule was approved by the governor on December 27, 2011.

The statement of scope SS 045-11 was approved by the governor on December 1, 2011, and published December 14, 2011 in Register No. 672. The Statement of Scope was signed by Commissioner Nickel on December 24, 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. Emergency Rule 1117 (EmR1117), was effective November 16, 2011 and is to be first applicable on January 1, 2012. EmR1117 contained provisions modifying Wisconsin’s insurance regulations governing grievances and independent review processes to comply with federal law provisions of 42 USC 300gg 19 (a) and (b), as implemented by 45 CR 147.136, as amended. It has been determined that this may not be in the best interest of the state.

The proposed emergency rule will repeal EmR1117 in its entirety and maintain Wisconsin’s prior existing regulations and oversight of the grievance and independent review process. To avoid full implementation of EmR1117 and industry and consumer confusion, the Commissioner has determined that this emergency rule must be effective prior to January 1, 2012.

Publication Date: December 29, 2011

Effective Dates: December 29, 2011 through May 26, 2012

Hearing Date: January 26, 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

Correction: The extension previously shown for this rule was erroneous. There was no extension granted for this rule.

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 (2) *Fish, Game, etc., Chs. NR 1—*

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

Exemption From Finding of Emergency

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

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

2. 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

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

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

Finding of Emergency

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

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

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

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

Publication Date: January 27, 2012
Effective Dates: January 27, 2012 through
 June 24, 2012
Hearing Date: February 27, 2012

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.

Safety and Professional Services
 (Formerly Regulation and Licensing)

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

Exemption From Finding of Emergency

Section 41 (2) (b) of the nonstatutory provisions of 2007

Publication Date: September 10, 2008
Effective Dates: September 10, 2008
 through the date on which
 the final rules take effect
Hearing Date: November 26, 2008
 April 13, 2009

Scope Statements

Natural Resources

Fish, Game, etc., Chs. NR 1—

SS 016–12

This statement of scope was approved by the governor on March 12, 2012.

Rule No.

SS–04–12

Relating to

Invasive species.

Rule Type

Permanent.

Finding of Emergency (Emergency Rule Only)

Not an Emergency Rule.

Detailed Description of the Objective of the Proposed Rule

The proposed rule revision will classify additional invasive species into existing categories established in Ch. NR 40, Wis. Admin. Code, making them subject to existing administrative rules and statutes that regulate the introduction, possession, transfer, and transport of invasive species in order to prevent them from becoming established in Wisconsin or to prevent already-established invasive species from spreading within the state. Other proposed revisions will address accommodations to facilitate compliance with NR 40, clarify language, and improve organization of the rule.

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

The proposed rule revision will identify or list additional invasive species into existing categories set out in Ch. NR 40, making them subject to existing administrative rules and statutes. When Ch. NR 40 became effective Sept. 1, 2009, a number of invasive species intentionally were not included in the initial rule. During the public input and drafting processes, it was recognized that many additional species may need to be evaluated and, if appropriate, categorized and listed in the rule. Most of these species are used by some sector of society and evaluation will need to involve the affected stakeholders. There likely will be many species of terrestrial plants, several aquatic plants, and a few vertebrates, terrestrial invertebrates, and aquatic invertebrates assessed and possibly categorized. Other proposed revisions will facilitate compliance with NR 40, clarify language, and improve organization of the rule.

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

The legislature granted specific rule-making authority to the department in the context of “invasive species” in s. 23.09 (2), Stats., which states: “The department may promulgate rules...as it deems necessary to carry out the provisions and purpose of this section.” The purpose of this statute section,

pursuant to s. 23.09 (1), Stats., is “to provide an adequate and flexible system for the protection, development and use of forests, fish and game, lakes, streams, plant life, flowers and other outdoor resources in this state.”

More specifically, the legislature has directed the department, through the enactment of s. 23.22, Stats., to control invasive species in Wisconsin in the furtherance of the purpose outlined in s. 23.09 (1) Stats. Particularly, ss. 23.22 (2) (a) and (b), Stats., outline the duties and authority of the department concerning the regulation of “invasive species.” Section 23.22 (2) (a), Stats., states the department “shall establish a statewide program to control invasive species in this state.” Importantly, s. 23.22 (1) (a), Stats., defines “control” to mean “to cut, remove, destroy, suppress, or prevent the introduction or spread of.” Furthermore, s. 23.22 (2) (b) 1. through 6., Stats., outlines certain aspects of the program the department is required to implement. Of utmost importance in this context is s. 23.22 (2) (b) 6., Stats., which provides that the department shall “[p]romulgate rules to identify, classify, and control invasive species for the purposes of the program [established under s. 23.22 (2) (a), Stats.]” This proposed rule revision will effectuate this directive in two ways. First, this rule revision will alter what species the department classifies as “invasive species.” Second, this rule will alter how the department will “control” “invasive species” through revisions in how the public will comply with the department’s rules concerning “invasive species.”

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

We estimate that this revision will require approximately 6,240 hours of DNR staff time over 2 years (1.5 FTE). In addition, the Wisconsin Council on Invasive Species, species experts, and various partners and stakeholders will be involved in assessing species and evaluating rule revisions.

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

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

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

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

U.S.C. 3371–3378), primarily species that are already too widespread for a more cost–effective prevention approach.

Anticipated Economic Impact of Implementing the Rule

The potential economic impact of this proposed rule revision is estimated to be Level 1. This is a conservative estimate reflecting the diversity of species under assessment, as well as the fact that a number of these species may be used by various sectors of society. These rule revisions also have the potential to provide valuable economic benefits by reducing future control and management costs for regulated invasive species. Businesses may potentially mediate costs by substituting non–invasive species in their practices. During the species assessment process, the economic costs and benefits will be evaluated for each species considered for inclusion in the rule revisions. Certain species may have larger potential economic impacts than others.

Contact Person

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Natural Resources

Fish, Game, etc., Chs. NR 1—

SS 018–12

This statement of scope was approved by the governor on March 14, 2012.

Rule No.

FR–07–12, amending Chapter NR 47.

Relating to

County Forest Time Standards Grant (new).

Rule Type

New Administrative Rule.

Finding/Nature of Emergency (Emergency Rule Only)

This is not an emergency rule request.

Detailed Description of the Objective of the Proposed Rule

Create rules to direct the distribution of grant funding for the County Forest Time Standards grant.

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

This is a new rule and grant program. Presently the DNR Division of Forestry (DOF) provides assistance to County Forests, aligning workload with the statutory role of the DNR in oversight of the County Forest program. An agreed upon number of hours are provided to each county based on the workload for that particular county. The DOF’s Strategic Direction process in 2011–12 realigned forest resources to better accomplish the DOF’s mission in Wisconsin’s Statewide Forest Plan. As part of that process each County Forest was given the opportunity to modify the suite of grants and assistance the DOF provides to their best advantage. Three counties (Iron, Jackson and Clark) have elected to reduce their assistance from DNR in exchange for funding that would allow them to hire contractors or seasonal staff to accomplish forestry work. The thought is that some of the forestry tasks can be done adequately using contracted or

lesser paid staff, the end result being the ability to get more work done with the same amount of resources. The proposed grant program would be structured to focus on tasks already identified in the time standards agreement for each county. This funding would provide for on–the–ground sustainable forestry practices with the reallocation of funding into appropriation 20.370 (5) (bw).

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

DNR’s responsibilities for oversight of the County Forest program can be found in s. 28.11 (5) Wis. Stats. and the authority for sustainable forestry funding is included in 28.11 (5r) Wis. Stats. Section 28.11 (5r) (b) states: “The department may make grants, from the appropriation under s. 20.370 (5) (bw), to counties having lands entered under sub.(4) to fund the cost of activities designed to improve sustainable forestry on the lands”. Finally, Wis. Stat. s. 227.11 (2) (a) allows the DNR to promulgate rules for any statute if the DNR considers it necessary to effectuate the purpose of the statute. Without rulemaking authority for this rule, the DNR will not be able to administer or enforce the grant program authorized by statute, since the DNR would not be able to establish criteria that would uniformly apply across grant applicants without running afoul of the definition of “rule” found under Wis. Stat. s. 227.01 (13).

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

It is anticipated that rule development will require 80 hours of staff time and a minor amount of travel and conferencing costs.

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

Currently there are twenty–nine counties with county forests that could take advantage of this grant opportunity. In the near future (FY14 & 15) only three counties have indicated an interest in taking advantage of this option – Clark, Iron and Jackson. To the extent that counties utilize this grant, independent forestry consultants may stand to gain work. Conversely, DNR Forestry staff time would be reduced.

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

This rule/grant does not impact any federal regulations.

Anticipated Economic Impact of Implementing the Rule

This grant would provide an option for counties to receive grant funding as an alternative to DNR staff assistance. As such, there would be no anticipated economic impact, rather just a reallocation of resources for this purpose.

Contact Person

Jeff Barkley (608–264–9217) or Chris Martin (608–264–6039).

Public Service Commission

SS 017–12

This statement of scope was approved by the governor on March 13, 2012.

Rule No.

PSC 114

Relating to

Update State Electrical Code—Adopt Electric Safety Code Provisions.

Description of the Objective of the Rule and Expected Financial Impact

To incorporate into the Administrative Code revisions to the National Electric Safety Code that have been adopted since 2008, to correct deficiencies, and make any other necessary changes to update and improve the safety code.

The Commission anticipates moderate economic impact from this proposed rule.

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

Volume 1 of the Wisconsin State Electrical Code (WSEC), codified in Wis. Admin. Code Ch. PSC 114, is administered by the Commission. It deals with safety requirements for the installation, operation, and maintenance of primarily outdoor electric supply and communications lines and facilities used by utilities, including electric and telecommunications suppliers, railroads, and cable television providers.

Wisconsin Admin. Code Ch. PSC 114 has been, and is, based on the National Electrical Safety Code (NESC). The NESC is revised and updated every five years necessitating subsequent periodic revision of WSEC, Volume 1, to adopt the latest national standard. In 1979, 1982, 1985, 1988, 1991, 1994, 1997, 2003, and 2008, the Commission adopted the 1977, 1981, 1984, 1987, 1990, 1993, 1997, 2002, and 2007 editions of the NESC, respectively, with certain changes, deletions, and additions which apply in Wisconsin only and are contained in Wis. Admin. Code Ch. PSC 114.

The 2012 edition of the NESC was issued in August 2011. A corresponding revision of Wis. Admin. Code Ch. PSC 114 is necessary to implement the latest edition of the national code and make any other necessary changes to update and improve the code.

While it is difficult to predict the expected financial impact before the rule is written, at this time it is expected to be moderate.

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

The Commission relies on an explicit grant of authority from the legislature to promulgate this rule. Wisconsin Stat. s. 196.74 provides in relevant part: “Each public utility and

railroad which owns, operates, manages or controls along or across any public or private way any wires over which electricity or messages are transmitted shall construct, operate and maintain the wires and any related equipment in a manner which is reasonably adequate and safe and which does not unreasonably interfere with the service furnished by any other public utility or railroad. The commission may issue orders or rules, after hearing, requiring electric construction and operating of such wires and equipment to be safe. The commission may revise the orders or rules as may be required to promote public safety”

The Commission has a general grant of rulemaking authority under the following statutory provisions. Wisconsin Stat. s. 196.02 (3) provides: “The commission may adopt reasonable rules to govern its proceedings and to regulate the mode and manner of all inspections, tests, audits, investigations and hearings.” And, Wis. Stat. s. 227.11 (2) (a) provides in relevant part: “Each agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute”

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

Approximately 200 hours of Commission staff time will be required in this rulemaking.

Description of all Entities that may be Impacted by the Rule

This rulemaking may affect electric, telecommunications, and cable providers.

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

The National Electric Safety Code, which is incorporated by reference in Wis. Admin. Code Ch. PSC 114, covers provisions for safeguarding of persons from hazards arising from installation, operation, or maintenance of conductors and equipment in electric supply stations, and overhead and underground electric supply and communication lines. The federal standard is applicable to systems and equipment owned by utilities.

Contact Person

Diane M. Ramthun
diane.ramthun@wisconsin.gov
 (608) 267-9203

Submittal of Proposed Rules to Legislative Council Clearinghouse

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

Natural Resources
Fish, Game, etc., Chs. NR 1—
CR 12-022
(DNR # FH-21-11)

On March 6, 2012, the Wisconsin Department of Natural Resources submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse revising Chapter NR 19, relating to prohibiting persons from trolling with downriggers on outlying waters (Lake Superior, Lake Michigan, Green Bay, Sturgeon Bay, Sawyer's Harbor, and the Fox River from its mouth up to the dam at DePere, s. 29.001 (63), Stats.) without direct and immediate access to a wire cutter or other device capable of severing any line pulled behind the boat.

The scope statement for this rule, SS 011-11, was approved by the Governor on August 15, 2011, published in Register No. 668, on August 31, 2011, and approved by Natural Resources Board as required by s. 227.135 (2), Stats.) on December 14, 2011.

Agency Procedure for Promulgation

A public hearing has been scheduled for April 11, 2012, in Cleveland, Wisconsin. The department's Bureau of Fisheries Management is primarily responsible for promulgation of this rule.

Contact Information

William Horns
Bureau of Fisheries Management
Telephone: (608) 266-8782

Rule–Making Notices

Notice of Hearing

Natural Resources

Fish, Game, etc., Chs. NR 1—

CR 12–022

(DNR # FH–21–11)

NOTICE IS HEREBY GIVEN THAT pursuant to sections 23.11 (1), 29.014 (1), 29.041, 30.62 (1), and 227.11 (2) (a), Wis. Stats., interpreting sections 29.014 (1), 29.041, and 30.62 (1), Wis. Stats., the Department of Natural Resources will hold a public hearing to consider the creation of section NR 19.058, Wis. Adm. Code, in permanent rule Order FH–21–11, relating to requiring access to wire cutters when trolling in outlying waters.

Hearing Information

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

Date: Wednesday, April 11, 2012
Time: 5:00 P.M.
Location: Lakeshore Technical College
 Sheboygan County Training Room
 1290 North Avenue
 Cleveland, WI 53015

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

Copies of Rules and Submitting Comments

The proposed rule and supporting documents may be reviewed and comments electronically submitted at the following internet site: <http://adminrules.wisconsin.gov>. A copy of the proposed rules and supporting documents may also be obtained from William Horns, Bureau of Fisheries Management, P.O. Box 7921, Madison, WI 53707 or William.Horns@wisconsin.gov.

Written comments on the proposed rule may be submitted via U.S. mail or email to William Horns at the addresses noted above. Written comments, whether submitted electronically or by U.S. mail, will have the same weight and effect as oral statements presented at the public hearings. Comments may be submitted until **April 12, 2012**.

Analysis Prepared by the Department of Natural Resources

The proposed permanent rule will:

- Prohibit persons from trolling with downriggers on outlying waters (Lake Superior, Lake Michigan, Green Bay, Sturgeon Bay, Sawyer’s Harbor, and the Fox River from its mouth up to the dam at DePere, s. 29.001(63), Stats.) without direct and immediate access to a wire cutter or other device capable of severing any line pulled behind the boat.

This rule is pursuant to recommendations of the Natural Resources Board (NRB). Trap nets are fixed structures on the lake bottom that can pose a risk to sport trollers whose lures and downriggers can become entangled in the trap net ropes. This has been the subject of controversy and rule making over the past three decades. Current department policy reflects legislative intent to accommodate both sport and commercial fishing in the Great Lakes. In April 2011, the NRB approved permanent rule changes (FH–50–10, CR 11–008) related to the marking and placement of trap nets. The NRB also implemented these rules on an emergency basis so they would be in effect for the 2011 fishing season (FH–10–11E). As part of the emergency rule, there was also a requirement that sport anglers carry wire cutters sufficient to cut themselves free should a downrigger cable become snagged in a trap net or other obstruction. That requirement was not included in the permanent rules because it was outside of the scope of the original public hearings, but it is addressed by this rule proposal.

Statutes interpreted

Sections 29.014 (1), 29.041, and 30.62 (1), Wis. Stats.

Statutory authority

Sections 23.11 (1), 29.014 (1), 29.041, 30.62 (1), and 227.11 (2) (a), Wis. Stats.

Explanation of agency authority

Section 23.11 (1), Wis. Stats., grants the department such powers as may be necessary or convenient to enable it to exercise the functions and perform the duties required of it by ch. 23, Wis. Stats., and by other provisions of law.

Section 29.014 (1), Wis. Stats., directs the department to establish and maintain conditions governing the taking of fish that will conserve the fish supply and ensure the citizens of this state continued opportunities for good fishing.

Section 29.041, Wis. Stats., provides that the department may regulate fishing on and in all interstate boundary waters and outlying waters.

Section 30.62 (1), Wis. Stats., provides that when equipment is required no person shall operate any boat on the waters of this state unless such boat is equipped as required by statute or rules of the department promulgated under 30.62 (1), Stats.

Section 227.11 (2) (a), Wis. Stats., expressly confers rulemaking authority on the department to promulgate rules interpreting any statute enforced or administered by it, if the agency considers it necessary to effectuate the purpose of the statute.

Related statutes and rules

- 29.924 Investigations; searches.
- 29.931 Seizures.
- 29.971 General penalty provisions.
- 29.984 Commercial fish protection surcharge.
- 29.9905 Great Lakes resource surcharge.
- 29.991 Fishing net removal surcharge

Plain language analysis

SECTION 1. of the Order prohibits persons from trolling with downriggers on outlying waters (Lake Superior, Lake

Michigan, Green Bay, Sturgeon Bay, Sawyer's Harbor, and the Fox River from its mouth up to the dam at DePere, s. 29.001 (63), Wis. Stats.) without direct and immediate access to a wire cutter or other device capable of severing any line pulled behind the boat.

The rule will require sport trollers on outlying waters to carry wire cutters for emergency release from entanglement with trap nets or other obstructions. This rule is pursuant to recommendations of the Natural Resources Board. Trap nets are fixed structures on the lake bottom that can pose a risk to sport trollers whose lures and downriggers can become entangled in the trap net ropes. This has been the subject of controversy and rule making over the past three decades. Current department policy reflects legislative intent to accommodate both sport and commercial fishing in the Great Lakes. In April 2011, the Natural Resources Board (NRB) approved permanent rule changes (FH-50-10, CR 11-008) related to the marking and placement of trap nets. The NRB also implemented these rules on an emergency basis so they would be in effect for the 2011 fishing season (FH-10-11E). As part of the emergency rule, there was also a requirement that sport anglers carry wire cutters sufficient to cut themselves free should a downrigger cable become snagged in a trap net or other obstruction. That requirement was not included in the permanent rules because it was outside of the scope of the original public hearings, but it is addressed by this rule proposal.

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

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

Comparison with rules in adjacent states

None of the adjacent states require wire-cutting equipment to be on board boats.

Summary of factual data and analytical methodologies

SECTION 1 of the rule reflects an effort by the department to take steps to minimize the risk of conflicts between sport trollers and commercial trap nets. This change reflects the judgment of Fisheries and Law Enforcement staff following examination of Great Lakes accident data, discussions with appropriate sport and commercial advisory groups and the Natural Resources Board, and internal discussions.

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

There would be no implementation costs for the department and no expected costs or impacts on small businesses. Compliance costs would be minimal for individual sport anglers who need to purchase wire cutters. A quick online search for the cost of wire cutters showed prices ranging from \$3 to \$56.

Rules Proposed by the Department of Veterans Affairs

No information.

Effects on Small Business

The rule would directly affect sport anglers who engage in trolling with downriggers on the Great Lakes. It is not expected to have an effect on small business.

The rule will be enforced by department Conservation Wardens under the authority of chapters 23 and 29, Wis. Stats., through routine patrols, with a total citation penalty of \$243.

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

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

Agency Contact Person

William Horns
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STATE OF WISCONSIN DEPARTMENT OF ADMINISTRATION DOA 2049 (R 07/2011)		
ADMINISTRATIVE RULES FISCAL ESTIMATE AND ECONOMIC IMPACT ANALYSIS		
Type of Estimate and Analysis		
Original <input checked="" type="checkbox"/> Updated Corrected		
Administrative Rule Chapter, Title and Number		
Chapter NR 19 Miscellaneous Fur, Fish, Game, and Outdoor Recreation; NR 19.058		
Subject		
Requiring sport anglers trolling on outlying waters to carry wire cutters for emergency release from entanglement with trap nets or other obstructions		
Fund Sources Affected		Chapter 20 , Stats. Appropriations Affected
GPR FED PRO PRS SEG SEG-S		
Fiscal Effect of Implementing the Rule		
<input checked="" type="checkbox"/> No Fiscal Effect Indeterminate	Increase Existing Revenues Decrease Existing Revenues	Increase Costs Could Absorb Within Agency's Budget Decrease Costs
The Rule Will Impact the Following (Check All That Apply)		
State's Economy Local Government Units	Specific Businesses/Sectors Public Utility Rate Payers	
Would Implementation and Compliance Costs Be Greater Than \$20 million?		
Yes <input checked="" type="checkbox"/> No		
Policy Problem Addressed by the Rule		
<p>Trap nets or other fixed structures on the lake bottom can pose a risk to sport trollers whose lures and downriggers can become entangled in the trap net ropes. This rule would address safety concerns and require trollers to have direct and immediate access to a wire cutter or other device capable of severing any line pulled behind a boat.</p> <p>The rule reflects an effort by the Department to take steps to minimize the risk of conflicts between sport trollers and commercial trap nets. This change reflects the judgment of Fisheries and Law Enforcement staff following examination of Great Lakes accident data, discussions with appropriate sport and commercial advisory groups and the Natural Resources Board, and internal discussions.</p>		
Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)		
<p>Sport anglers who fish by trolling in a boat on outlying waters will be required to have direct and immediate access to a wire cutter or other hand-held device on board capable of immediately severing any fishing line or cable being used in the water behind the boat. This may impact some anglers who need to purchase wire cutters or a similar device, which is not a substantial cost. A quick online search for the cost of wire cutters showed prices ranging from \$3 to \$56. The rule will be enforced by Department conservation wardens under the authority of chapters 23 and 29, Wis. Stats., through routine patrols and with a total citation penalty of \$243.</p> <p>This rule does not impose any compliance or reporting requirements on businesses, business sectors, public utility rate payers, or local governmental units. The Department has determined that this rule would not adversely affect in a material way the economy, a sector of the economy, productivity, jobs, or the overall economic competitiveness of this state.</p>		

Economic Impact – Request for Comments

Prior to the January 30–February 13 open period for economic impact comments, the Department requested comments from the Lake Michigan and Lake Superior Commercial Fishing Boards, 17 port city mayors offices and the same cities’ chambers of commerce, the Wisconsin Wildlife Federation, Wisconsin Conservation Congress, Wisconsin Federation of Great Lakes Sport Fishing Clubs, UW Sea Grant, and the Great Lakes Indian Fish and Wildlife Commission, as well as posted the proposed rule documents to the Department website and the Wisconsin Administrative Rules website. The Department received the following two comments:

Tom Kocourek, President, Northeastern Wisconsin Great Lakes Sport Fishermen

As President of the Northeastern Wisconsin Great Lakes Sport Fishermen’s organization I am speaking on behalf of our 650 members. I am aware of this proposal and do not see it as having a negative impact on our local community or the fishing community. The proposed rule adds an element of safety to fishermen using downrigger equipment and I am confident that the vast majority of fishermen currently using downrigger equipment already have such wire cutter equipment on board their boats.

Michael J. LeClair, President of Susie–Q Fish Company, Two Rivers, WI

I am a whitefish trap net fisherman out of Two Rivers, Wisconsin. The rule you have proposed, FH–21–11, would greatly **help** my business. When the sport fishers get their downrigger balls caught in our net, they become entangled. Then, the sport fishers try to pull them out and rip large holes in our nets. These holes make our nets inefficient at catching whitefish, which hurts our business. This rule would help stop these sport fishers from putting holes in our nets. This rule would also protect sport fishers and stop any possible lawsuits that might occur, if any sport fishers become entangled in our nets. A lawsuit would hurt our business. This rule would protect us.

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

Current Department policy reflects legislative intent to accommodate both sport and commercial fishing in the Great Lakes. In June 2010, the fishing gear of a recreational fishing boat became entangled in a commercial trap net buoy line near Sheboygan. The boat capsized and one of the fishermen subsequently died of a heart attack. This incident re–ignited a long–standing controversy regarding where and when commercial trap nets should be allowed in southern Lake Michigan. Subsequently in April 2011, the Natural Resources Board (NRB) approved permanent rule changes related to the marking and placement of trap nets (FH–50–10, CR 11–008). The NRB also implemented these rules on an emergency basis so they would be in effect for the 2011 fishing season (FH–10–11E). As part of the emergency rule, there was also a requirement that sport anglers on outlying waters carry wire cutters sufficient to cut themselves free should a downrigger cable become snagged in a trap net or other obstruction. That requirement was not included in the permanent rule because it was outside of the scope of the original public hearings, but it is addressed by this rule proposal.

The alternative would be to not require wire cutters on board trolling boats on outlying waters, which is the current law. Although the overall risk of accidents attributable to tangling in trap nets may be small compared with other hazards such as collisions, the consequences for sport anglers can be serious. Four out of the 82 reportable boating accidents on Lake Michigan during the years 2000 through 2010 in the U.S. Coast Guard’s Boating Accident Report Database were associated with trolling. Reportable accidents are those causing death, injury requiring medical attention, or property damage in excess of \$2,000. The tragic incident near Sheboygan was one of the accidents in this 11–year period in which the activity was trolling and the cause was “struck submerged object.”

Long Range Implications of Implementing the Rule

There would be no implementation costs for the Department and no expected costs or impacts on small businesses. Compliance costs would be minimal for individual sport anglers who need to purchase wire cutters.

Through education, having wire cutters on board sport trolling boats will become a common and easy to comply with safety measure, similar to having life jackets on board all boats.

Compare With Approaches Being Used by Federal Government

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

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

None of the adjacent states require wire–cutting equipment to be on board boats.

Submittal of Proposed Rules to Legislature

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

Agriculture, Trade and Consumer Protection **CR 11-046**

(DATCP Docket # 10-R-10)

The Department of Agriculture, Trade and Consumer Protection announces that it is submitting the following rule for legislative committee review, pursuant to s. 227.19, Stats. The proposed rule revises Chapter ATCP 30, relating to Atrazine Pesticides.

This rule is not subject to s. 227.185, Stats. The statement of scope for this rule, published in Register No. 659, on November 14, 2010, was sent to the Legislative Reference Bureau prior to June 8, 2011, the effective date of 2011 Wisconsin Act 21.

Agriculture, Trade and Consumer Protection **CR 11-048**

(DATCP Docket # 09-R-14)

The Department of Agriculture, Trade and Consumer Protection announces that it is submitting the following rule for legislative committee review, pursuant to s. 227.19, Stats. The proposed rule revises Chapters ATCP 10, 12, and 15, relating to animal diseases and movement, animal markets, dealers and truckers, and humane officer training and certification.

This rule is not subject to s. 227.185, Stats. The statement of scope for this rule, published in Register No. 647, on November 14, 2009, was sent to the Legislative Reference Bureau prior to June 8, 2011, the effective date of 2011 Wisconsin Act 21.

Agriculture, Trade and Consumer Protection **CR 11-051**

(DATCP Docket # 10-R-05)

The Department of Agriculture, Trade and Consumer Protection announces that it is submitting the following rule for legislative committee review, pursuant to s. 227.19, Stats. The proposed rule revises Chapter ATCP 21, relating to voluntary certification of firewood dealers.

This rule is not subject to s. 227.185, Stats. The statement of scope for this rule, published in Register No. 655, on July 31, 2010, was sent to the Legislative Reference Bureau prior to June 8, 2011, the effective date of 2011 Wisconsin Act 21.

Children and Families *Safety and Permanence, Chs. DCF 35-59* **CR 10-105**

A rule to revise Chapter DCF 57, relating to determination of need for new group homes.

This rule is not subject to s. 227.185, Stats. The statement of scope for this rule, published in Register No. 654 on June 30, 2010, was sent to the Legislative Reference Bureau prior to June 8, 2011, the effective date of 2011 Wisconsin Act 21.

Revenue **CR 12-006**

A rule to revise Chapter Tax 2, relating to pre-2009 net business loss carryforwards.

The scope statement for this rule, SS 007-11, was approved by the Governor on July 25, 2011, published in Register No. 668 on August 14, 2011, and approved by the Secretary of Revenue on August 25, 2011.

Revenue **CR 12-011**

A rule to revise Chapters Tax 1, 2, 3, and 8, relating to tax law changes made by 2011 Wisconsin Act 32 and other legislation.

The scope statement for this rule, SS 030-11, was approved by the Governor on October 21, 2011, published in Register No. 671 on November 14, 2011, and approved by the Secretary of Revenue on November 28, 2011.

Revenue **CR 12-012**

A rule to create section Tax 2.985, relating to electronic medical records credit.

The scope statement for this rule, SS 032-11, was approved by the Governor on October 25, 2011, published in Register No. 671 on November 14, 2011, and approved by the Secretary of Revenue on November 28, 2011.

Revenue **CR 12-013**

A rule to revise section Tax 7.23, relating to the activities of brewers, bottlers, out-of-state shippers, and wholesalers.

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

Revenue
CR 12–014

A rule to revise Chapters Tax 1 and 11, relating to sales and use tax law changes made by 2011 Wisconsin Act 32 and other legislation.

The scope statement for this rule, SS 031–11, was approved by the Governor on October 21, 2011, published in Register No. 671 on November 14, 2011, and approved by the Secretary of Revenue on November 28, 2011.

Revenue
CR 12–015

A rule to create section Tax 11.20, relating to sales and use tax exemptions for biotechnology.

The scope statement for this rule, SS 040–11, was approved by the Governor on November 14, 2011, published in Register No. 671 on November 30, 2011, and approved by the Secretary of Revenue on December 12, 2011.

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

The Wisconsin Department of Safety and Professional Services (formerly the Department of Regulation and Licensing) proposes an order to amend Chapter SPS 305, relating to thermal insulator credentials.

The Governor approved the rule under sec. 227.185, Stats on March 15, 2012.

Safety and Professional Services
Safety, Buildings, and Environment
General Part II, Chs. SPS 326–360
CR 12–008

The Wisconsin Department of Safety and Professional Services (formerly the Department of Regulation and Licensing) proposes an order to amend Chapter SPS 333, relating to passenger ropeways and affecting small business.

This rule is not subject to s. 227.185, Stats. The statement of scope for this rule was published in Register No. 619 on July 31, 2007 and was sent to the Legislative Reference Bureau prior to June 8, 2011, the effective date of 2011 Wis. Act 21.

Safety and Professional Services
Board of Nursing
CR 12–004

The proposed rule revises Chapter N 3, relating to endorsement licensure.

This rule-making proposal is not subject to s. 227.185, Stats. The scope statement for this proposal, published in Register No. 666, on June 30, 2011, was sent to the Legislative Reference Bureau prior to June 8, 2011 (the effective date of 2011 Wis. Act 21)

Safety and Professional Services
Cemetery Board
CR 12–021

An order to repeal Chapters SPS 52, 53, and 54 (formerly RL 52, 53, 54), and to create Chapters CB 2, 3, and 4, relating to warehouses storing cemetery pre-need merchandise, changing trustees of care or pre-need trust funds, and alternative care funds investments.

This rule is not subject to s. 227.185, Stats. The statement of scope for this rule, published in Register No. 636, on December 31, 2008, was sent to the Legislative Reference Bureau prior to June 8, 2011, the effective date of 2011 Wis. Act 21.

Safety and Professional Services
Controlled Substances Board
CR 12–010

An order to create Chapter CSB 3, relating to requirements and procedures for granting special use authorizations.

This rule is not subject to s. 227.185, Stats. The statement of scope for this rule, which was published in Register No. 661 on January 14, 2011, was sent to the Legislative Reference Bureau prior to June 8, 2011, the effective date of 2011 Wis. Act 21.

Safety and Professional Services
Pharmacy Examining Board
CR 12–009

An order to create Chapter Phar 18, relating to the prescription drug monitoring program and affecting small business.

This rule is not subject to s. 227.185, Stats., as affected by 2011 Wis. Act 21. The scope statement for this rule, published in Register No. 660, on December 14, 2010, was sent to Legislative Reference Bureau prior to June 8, 2011, the effective date of 2011 Wisconsin Act 21.

Safety and Professional Services
Physical Therapy Examining Board
CR 12–002

An order to revise Chapters PT 1, 2, 3, 4, 5, 6, 8, and 9 relating to licensure, examinations, temporary licenses, locum tenens license, referrals, and continuing education.

This rule is not subject to s. 227.185, Stats. The statement of scope for this rule was published in Register No. 659 on November 14, 2010 and was sent to the Legislative Reference Bureau prior to June 8, 2011, the effective date of 2011 Wis. Act 21.

Technical College Board
CR 11-053

The proposed rule revises section TCS 6.05, relating to

procurement.

On March 13, 2012, pursuant to 227.185, Wis. Stats., the Wisconsin Technical College System Board received the Governor's written approval of the proposed rule modifying Chapter TCS 6.05.

Rule Orders Filed with the Legislative Reference Bureau

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

Agriculture, Trade and Consumer Protection CR 11-037

(DATCP Docket # 09-R-20)

Revises Chapter ATCP 160, relating to county and district fairs.
Effective 5-1-12.

Safety and Professional Services Real Estate Examining Board CR 10-136

Revises Chapters REEB 24 and 25 (formerly RL 24 and 25), relating to definitions, duties of brokers, broker disclosure requirements, written proposals, ethical requirements, and educational requirements.
Effective 7-1-12.

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.

Safety and Professional Services Barbering and Cosmetology Examining Board CR 11-011

An order of the Barbering and Cosmetology Examining Board to amend sections BC 1.01 (intro.), 9.01 (3) and 9.02; and to repeal and recreate Chapter BC 11, relating to late renewal and continuing education. Effective 4-1-12.

Summary of Final Regulatory Flexibility Analysis

These proposed rules will not have a significant economic impact on a substantial number of small businesses, as defined in s. 227.114 (1), Stats. The Department's Regulatory Review Coordinator may be contacted by email at john.murray@wisconsin.gov, or by calling (608) 266-8608.

Summary of Comments of Legislative Standing Committees

No comments were reported.

Public Service Commission CR 10-147

(PSC Docket # 1-AC-234)

Revises Chapter PSC 118, relating to renewable resource credits. Effective 4-1-12.

Summary of Final Regulatory Flexibility Analysis

The final rule will have no negative impact on small businesses, as defined in s. 227.11 (1), Stats. The final rule may have a beneficial impact for small businesses in either of two ways:

1) The final rule establishes new ways for Wisconsin electric providers to create renewable resource credits (RRCs), in addition to all of the existing ways in the current rule. RRCs can be used to comply with Wisconsin's Renewable Portfolio Standard (RPS) mandate. By giving electric providers new options for creating RRCs, but not requiring the use of those options, the costs of complying with the RPS mandate may decrease. Electric providers are authorized to recover their RPS compliance costs in the rates they charge customers and members. Thus, if an electric provider's RPS compliance costs are reduced, their customers or members (including small businesses) may indirectly benefit through reduced electric rates.

2) The final rule also makes it possible for a small business (or any other customer or member of an electric provider) to benefit more directly, if the business is using a qualifying technology or resource to produce non-electric energy. In such circumstances, the final rule allows the electric provider to create RRCs based on energy produced by the small business, but only with the permission of the small business. A small business could request compensation from the electric provider in exchange for granting permission to create those RRCs.

This rulemaking will affect electric generating utilities (EGUs). Because of Wisconsin's RPS mandate, renewable resources must account for a certain percentage of an EGU's electricity generation. This final rule expands the types of renewable resources that may be used to create RRCs, thus giving an EGU more options to meet the RPS requirements.

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 **March 2012**, and will be effective as indicated in the history note for each particular section. For additional information, contact the Legislative Reference Bureau at (608) 266-7590.

Revisions

Barbering and Cosmetology

Ch. BC 1

BC 1.01 (intro.)

Ch. BC 9

BC 9.01 (3)

BC 9.02

Ch. BC 11

Entire chapter

Natural Resources

Ch. NR 406

NR 406.04 (3) (e)

(pursuant to 2011 Wis. Act 122)

Ch. NR 407

NR 407.03 (2) (d)

(pursuant to 2011 Wis. Act 122)

Ch. NR 411

Entire chapter

(pursuant to 2011 Wis. Act 121)

Ch. NR 445

NR 445.08 (3) (c), (6) (d)

(pursuant to 2011 Wis. Act 122)

Public Service Commission

Ch. PSC 118

PSC 118.01

PSC 118.02 (1), (1e), (1m), (2), (3m), (4), (5), (5m), (6), (6g), (6r), (7), (7g), (7r), (9), (10), (12) to (16)

PSC 118.025

PSC 118.03 (title), (1) (intro.), (a), (1) (c), (2), (3) (b), (4)

PSC 118.04 (title), (1), (1m), (2) (e) to (g), (3) to (5)

PSC 118.05 (1)

PSC 118.055

PSC 118.06 (title), (1), (2) (b), (c) (intro.), (cm), (d), (em), (3), (4) (a), (5)

PSC 118.07

PSC 118.08

PSC 118.09

Editorial Corrections

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

Administration

Ch. Adm 10

Adm 10.03 (note)

Ch. NR 408

NR 408.01 (1) (note)

Ch. NR 410

NR 410.03 (3) (note)

Agriculture, Trade and Consumer Protection

Ch. ATCP 3

ATCP 3.02 (1) (g) (note)

Ch. ATCP 34

ATCP 34.02 (13), (18)

ATCP 34.14 (1) (c)

Transportation

Ch. Trans 1

Trans 1.06 (6)

Ch. Trans 2

Trans 2.05 (3)

Ch. Trans 4

Trans 4.02 (c)

Trans 4.03

Ch. Trans 6

Trans 6.04 (1) (b)

Trans 6.07 (6)

Ch. Trans 29

Trans 29.03 (21)

Ch. Trans 31

Trans 31.02 (11)

Ch. Trans 105

Trans 105.02 (1)

Barbering and Cosmetology

Ch. BC 2

BC 2.03 (8)

Natural Resources

Ch. NR 400

NR 400.02 (64)

Trans 105.11 (4) (d)

Ch. Trans 106

Trans 106.07 (1) (intro.)

Ch. Trans 107

Trans 107.02 (2)

Trans 107.07 (1)

Trans 107.08 (1) (o)

Ch. Trans 113

Trans 113.01 (note)

Ch. Trans 118

Trans 118.01 (note)

Ch. Trans 129

Trans 129.09 (1) (note)

Ch. Trans 132

Trans 132.01 (1)

Trans 132.02 (2), (4)

Ch. Trans 133

Trans 133.06 (3)

Ch. Trans 134

Trans 134.06 (1) (c)

Ch. Trans 140

Trans 140.01 (1), (2) (b)

Trans 140.022 (1) (intro.)

Trans 140.027 (2) (a), (d)

Trans 140.028 (1) (c)

Trans 140.20 (5)

Trans 140.21 (1) (c)

Ch. Trans 142

Trans 142.02 (7) (a) (note)

Ch. Trans 143

Trans 143.01

Trans 143.02 (1), (3), (5) to (7), (9), (10), (12)

Trans 143.03 (1), (2) (c)

Trans 143.05 (3)

Trans 143.06 (4) (c), (d), (10)

Trans 143.07 (2) (b), (c), (h)

Trans 143.08 (1) (intro.)

Trans 143.10 (1), (2) (e)

Trans 143.11 (3) (a), (c)

Ch. Trans 144

Trans 144.04 (1) (note)

Ch. Trans 146

Trans 146.01 (title)

Ch. Trans 155

Trans 155.01 (1)

Ch. Trans 156

Trans 156.01 (1)

Ch. Trans 175

Trans 175.01

Trans 175.02 (1)

Ch. Trans 176

Trans 176.01 (2)

Ch. Trans 200

Trans 200.07 (1)

Ch. Trans 204

Trans 204.01

Ch. Trans 205

Trans 205.02 (5) (note)

Trans 205.03 (1) (note)

Ch. Trans 206

Trans 206.02 (7), (8)

Ch. Trans 207

Trans 207.02 (1) (a)

Trans 207.03 (2)

Ch. Trans 214

Trans 214.01

Ch. Trans 215

Trans 215.07 (2) (d) (note)

Trans 215.10 (note)

Ch. Trans 220

Trans 220.01 (3) (b)

Trans 220.06 (7)

Ch. Trans 230

Trans 230.01 (3) (e)

Trans 230.08 (3) (intro.)

Ch. Trans 231

Trans 231.02 (1)

Ch. Trans 258

Trans 258.06 (5)

Ch. Trans 257

Trans 257.11 (2)

Ch. Trans 261

Trans 261.04 (3) (note)

Ch. Trans 262

Trans 262.10 (3)

Ch. Trans 267

Entire Chapter

Ch. Trans 268

Entire Chapter

Ch. Trans 275

Trans 275.05 (1)

Ch. Trans 277

Trans 277.02 (19)

Trans 277.04 (3) (a)

Trans 277.07 (1) (intro.)

Trans 277.11 (2)

Ch. Trans 300

Trans 300.16 (2)

Trans 300.20 (1) (intro.)

Ch. Trans 301

Trans 301.03 (4)

Trans 301.05 (8)

Trans 301.96 (3) (d)

Ch. Trans 302

Entire Chapter

Ch. Trans 303

Trans 303.03 (4) (note)

Ch. Trans 304

Trans 304.03

Trans 304.04

Ch. Trans 307

Trans 307.02 (6) (note)

Trans 307.12 (note)

Ch. Trans 308

Trans 308.02 (4) (b)
Trans 308.14 (5)

Ch. Trans 310

Trans 310.03 (intro.)
Trans 310.04

Ch. Trans 311

Trans 311.10 (1) (a)

Ch. Trans 312

Trans 312.01 (1)

Ch. Trans 313

Trans 313.01 (note)

Ch. Trans 330

Trans 330.05 (2)
Trans 330.11

Ch. Trans 401

Trans 401.01
Trans 401.07 (1j) (d)

Ch. Trans 504

Trans 504.05 (3) (b)
Trans 504.06 (3) (b)

Executive Orders

The following are recent Executive Orders issued by the Governor.

Executive Order 60. Relating to an Authorization for the Flag of the United States and the Flag of the State of Wisconsin to be Flown at Half-Staff as a Mark of Respect for Former Mayor Francis Havey. **(February 17, 2012)**

Executive Order 61. Relating to Job Creation and Small Business Expansion. **(February 2, 2012)**

Executive Order 62. Relating to a Proclamation that the Flag of the United States and the Flag of the State of Wisconsin be Flown at Half-Staff as a Mark of Respect for Firefighter Jamison Kampmeyer of the Colby Fire Department. **(March 7, 2012)**

Executive Order 63. Relating to the Improved Energy Performance of State Facilities and the Revision of Governor Doyle's Executive Order #145. **(March 9, 2012)**

Public Notices

Children and Families

Revision of Child Care Co-Payment Schedule for Licensed and Certified Care under s. DCF 201.08 (3) (a) 4., Wisconsin Administrative Code

Chapter DCF 201

Table DCF 201.08

Effective April 29, 2012

Under s. DCF 201.08 the department sets a schedule for parent copayment responsibilities for all parents who receive child care financial assistance under s. 49.155, Stats. Section DCF 201.08 (3) allows the department to adjust the amounts in the schedule based on a change in the federal poverty level by publishing the adjustments in the Administrative Register. The new parental copayment amounts will be effective April 29, 2012.

Child Care Co-Payment Schedule for Licensed and Certified Care

Look down the column for the family size until you find the gross monthly income level at or just below the family income. Look to the right to find the appropriate co-payment by family size.

	[-----Gross Monthly Income-----]										WEEKLY CO-PAY AMOUNT				
	FAMILY SIZE										CHILDREN IN SUBSIDIZED CARE:				
	2	3	4	5	6	7	8	9	10+	1	2	3	4	5+	
70% FPL	883	1114	1345	1576	1807	2038	2269	2500	2731	6	10	16	20	26	
75% FPL	946	1193	1441	1688	1936	2183	2431	2678	2926	6	13	19	25	31	
80% FPL	1009	1273	1537	1801	2065	2329	2593	2857	3121	9	15	21	28	34	
85%FPL	1072	1352	1633	1913	2194	2474	2755	3035	3316	13	19	25	31	40	
90%FPL	1135	1432	1729	2026	2323	2620	2917	3214	3511	14	23	30	38	45	
95% FPL	1198	1511	1825	2138	2452	2765	3079	3392	3706	19	28	36	45	52	
100% FPL	1261	1591	1921	2251	2581	2911	3241	3571	3901	21	31	39	50	58	
105% FPL	1324	1670	2017	2363	2710	3056	3403	3749	4096	24	33	44	52	61	
110% FPL	1387	1750	2113	2476	2839	3202	3565	3928	4291	27	37	45	55	64	
115% FPL	1450	1829	2209	2588	2968	3347	3727	4106	4486	30	39	49	59	67	
120% FPL	1513	1909	2305	2701	3097	3493	3889	4285	4681	33	44	52	61	72	
125% FPL	1576	1989	2401	2814	3226	3639	4051	4464	4876	37	47	55	66	76	
130% FPL	1639	2068	2497	2936	3355	3784	4213	4642	5071	39	51	61	73	83	
135% FPL	1702	2148	2593	3039	3484	3930	4375	4821	5266	43	55	67	79	91	
140% FPL	1765	2227	2689	3151	3613	4075	4537	4999	5461	45	58	71	83	97	
145% FPL	1828	2307	2785	3264	3742	4221	4699	5178	5656	49	61	72	86	99	
150% FPL	1891	2386	2881	3376	3871	4366	4861	5356	5851	52	64	77	89	103	
155% FPL	1954	2466	2977	3489	4000	4512	5023	5535	6046	54	66	80	92	105	
160% FPL	2017	2545	3073	3601	4129	4657	5185	5713	6241	58	71	83	96	109	
165% FPL	2080	2625	3169	3714	4258	4803	5347	5892	6436	59	73	86	98	111	
170% FPL	2143	2704	3265	3826	4387	4948	5509	6070	6631	60	77	89	103	114	
175% FPL	2206	2784	3361	3939	4516	5094	5671	6249	6826	62	78	92	106	117	
180% FPL	2269	2863	3457	4051	4645	5239	5833	6427	7021	65	81	96	109	120	
185% FPL	2333	2943	3554	4164	4775	5385	5996	6606	7217	66	84	99	111	123	
190% FPL	2396	3023	3650	4277	4904	5531	6158	6785	7412	67	85	102	114	126	
195% FPL	2459	3102	3746	4389	5033	5676	6320	6963	7607	70	88	105	117	130	
200% FPL	2522	3182	3842	4502	5162	5822	6482	7142	7802	72	90	107	120	132	

Co-payment types: REG is based on family size, FPL and number of children in care; this code is used for working parents, W-2, and FSET participants. KIN is \$0 and is used for families with court ordered kinship or guardianship care. NCK is based on 70% FPL and is used for families that have no court order but are caring for a relative child. FOS is \$0 and is used for foster families. PSP is 1/2 of regular copayment and is used for Milwaukee Public Schools before and after school care when the authorization is for more than 20 hours per week. WWE is based on 70% FPL and is used for W-2 participants in their first month of unsubsidized employment. THS is based on 70% FPL and is used for teen parents that are attending high school. When any authorization is for less than 35 hours of care per week, the copayment is pro-rated based upon the hours of authorized care.

Health Services

(Medical Assistance Reimbursement of Ambulatory Surgical Centers)

The State of Wisconsin reimburses ambulatory surgical centers for medically necessary services provided to low-income persons through the State's Medical Assistance program. The State's Medical Assistance program, also referred to as Medicaid, is administered by the Wisconsin Department of Health Services (the Department) and operates under the authority of Title XIX of the Federal Social Security Act and sections 49.43 to 49.47 of Wisconsin Statutes.

Federal statutes and regulations require the State to maintain a state plan that describes its policies for administering the Medical Assistance program.

The Department is proposing technical modifications to existing sections of the state plan related to the ambulatory surgical center assessment to correct for errors in the language to make the language consistent with the legislative intent of the assessment. The modifications will clarify the amount of increased Medicaid reimbursement to ambulatory surgical centers under the assessment and clarify the effective dates of the state plan changes. There will be no change to annual aggregate expenditures under these changes. The effective date of the change will be April 1, 2012.

Copies of the Proposed Changes

Copies of the proposed changes will be sent to every county social services or human service department main office where they will be available for public review. For more information, interested persons may fax or write to:

Division of Health Care Access and Accountability
P.O. Box 309
Madison, WI 53701-0309
Fax: (608) 266-1096

Department staff have notified the health directors of Native American tribes in Wisconsin of this proposal and consulted with them.

Written Comments

Written comments on the proposed changes are welcome and should be sent to the above address. The comments received on the changes will be available for public review between the hours of 7:45 a.m. and 4:30 p.m. at:

Division of Health Care Access and Accountability
Room 350, State Office Building
One West Wilson Street
Madison, WI 53703

Health Services

Medical Assistance Reimbursement to Hospitals

Pay For Performance Payment Plan for State Fiscal Year 2012-2013

The State of Wisconsin reimburses hospitals for services provided to Medical Assistance recipients under the authority of Title XIX of the Social Security Act and Chapter 49 of Wisconsin State Statutes. This program, administered by the State's Department of Health Services (Department), is called Medicaid or Medical Assistance.

The Department is proposing to modify inpatient hospital pay for performance measures and associated payment rates for state fiscal year 2012. The pay for performance measures are projected to distribute \$5,000,000 all funds in state fiscal year 2012, composed of \$1,978,000 general purpose revenue (GPR) and \$3,022,000 federal funds (FED). The effective date of the change will be April 1, 2012.

Copies of Proposed Change

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

Regular Mail
Division of Health Care Access and Accountability
P.O. Box 309
Madison, WI 537001-0309

State Contact
Sean Gartley
Bureau of Benefits Management
(608) 267-9313 (phone)
(608) 266-1096 (fax)
Sean.Gartley@wisconsin.gov

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

Written Comments

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

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

Natural Resources

Notice of Invalidity of Part of Section NR 106.10 (1) pursuant to section 227.40 (6), Stats.

On March 2, 2012, in Case No. 12-CV-0569, Midwest Environmental Defense Center Inc. v. Wisconsin Department of Natural Resources, et. al., an action for declaratory judgment under s. 227.40, Stats., the Circuit Court for Dane County, Branch 2, entered an Order pursuant to a Stipulation of the parties as follows:

STIPULATION AND ORDER

The plaintiff brought this action challenging the validity and reliance on a portion of Wis. Admin. Code s. NR 106.10 (1), which contains an exclusion to certain compounds subject to water quality based effluent limitations in WPDES permits. The parties wish to resolve this matter without additional litigation and believe this stipulation to be in the public interest and consistent with the requirements of the Clean Water Act and state laws and regulations implementing the Clean Water Act, and AGREE and STIPULATE as follows:

1. The part of the rule that reads, “but do not include the addition of compounds at a rate and quantity necessary to provide a safe drinking water supply, or the addition of substances in similar type and amount to those substances typically added to a public drinking water supply,” does not comply with the requirements of the federal Clean Water Act, 33 U.S.C. ss. 1251 to 1387, and regulations adopted under that act and is therefore declared to be invalid, and the Department of Natural Resources shall continue not to rely on that part of the rule.

2. As required by Wis. Stat. s. 227.40 (6), by copy of this Stipulation and Order, the Legislative Reference Bureau is ordered to publish a notice of the Court’s determination as to the invalidity of those portions of Wis. Admin. Code s. NR 106.10 (1) identified in this Stipulation and Order in the Wisconsin Administrative Register under Wis. Stat. s. 35.93 (4), and it shall insert an annotation of the Court’s determination in the Wisconsin Administrative Code under Wis. Stat. s. 13.92 (4) (a).

3. The Department of Natural Resources shall grant or deny the four pending Wis. Stat. s. 283.63 petitions identified in the complaint by no later than thirty days following the date of the Court’s entry of this Order, and if any of the petitions for hearing is granted, shall refer the matter to the Division of Hearings and Appeals within thirty days of the Department’s granting of the petition.

4. This action may be dismissed.

(party signatures and contact information omitted.)

ORDER

The terms of the foregoing stipulation are approved by and made the order of the Court, and this action is dismissed, this 2nd day of March 2012. This is a Final Order under Wis. Stat. s. 808.03 (1).

BY THE COURT:

/s/

MARYANN SUMI

Circuit Judge, Branch 2

This notice is given by the Legislative Reference Bureau as required by s. 227.40 (6), Stats., and the order of the court.

Natural Resources

Notice of Repeal of Chapter NR 411 pursuant to section 227.26 (2) (i), Stats.

Pursuant to 2011 Wisconsin Act 121, Chapter NR 411, Wisconsin Administrative Code is repealed as provided under section 227.26 (2) (i) of the statutes, effective March 22, 2012.

This notice is given by the Legislative Reference Bureau as required by Section 2 of 2011 Wisconsin Act 121.

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