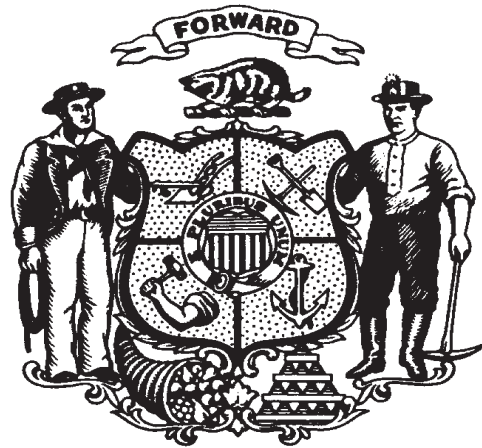


Wisconsin Administrative Register

No. 678



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WISCONSIN ADMINISTRATIVE REGISTER

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Emergency Rules Now in Effect

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

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

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

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

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

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

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

Agriculture, Trade and Consumer Protection

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

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

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

Finding of Emergency

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

Filed with LRB: March 22, 2012

Publication Date: March 30, 2012
Effective Dates: March 30, 2012 through August 26, 2012
Hearing Date: June 28, 2012

(See the Notice in this Register)

Children and Families

Safety and Permanence, Chs. DCF 37–59

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

Exemption from Finding of Emergency

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

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

Filed with LRB: August 31, 2010
Publication Date: September 2, 2010
Effective Dates: September 2, 2010 through the date permanent rules become effective
Hearing Date: October 21, 2010

Employment Relations Commission (2)

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

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

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

Finding of Emergency

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

Filed with LRB: September 15, 2011
Publication Date: September 15, 2011

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

Extension Through: June 11, 2012

Hearing Date: February 2, 2012

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

Hearing Date: May 25, 2012

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

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

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

Finding of Emergency

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

Filed with LRB: April 16, 2012

Publication Date: April 19, 2012

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

Health Services

Health, Chs. DHS 110—

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

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

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

Exemption from Finding of Emergency

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

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

Filed with LRB: May 1, 2012

Publication Date: May 4, 2012

Justice

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

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

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

Finding of Emergency

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

On November 7, 2011, JCRAR suspended certain portions of the emergency rules adopted on October 25, 2011. Since that time, DOJ has implemented concealed carry licensing without enforcing the suspended provisions. DOJ is also in the process of developing proposed permanent rules that do not include the substance of any of the provisions in the emergency rules that were suspended by JCRAR.

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

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

Filed with LRB: May 24, 2012

Publication Date: March 21, 2012
Effective Dates: March 21, 2012 through August 17, 2012

Natural Resources (3)
Fish, Game, etc., Chs. NR 1—

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

Exemption from Finding of Emergency

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

Filed with LRB: December 19, 2010
Publication Date: December 13, 2010
Effective Dates: December 13, 2010 through
See bold text above

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

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

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

Finding of Emergency

The department is aware that several ATV trails in Wisconsin overlap existing roads. From the onset of the program, these overlapping paths were identified as trails, signed accordingly, and were eligible to receive ATV grant funds. A few years ago, the ORV Advisory Council and WI County Forestry Association proposed that the department

revise Ch. NR 64 to accommodate paths used by both ATVs and motor vehicles. These trail-route combinations – also called hybrid trails but commonly referred to as “troutes” – will be eligible for future maintenance grant funding at the current rate if it can be shown that the hybrid trails (“troute”) existed prior to the effective date of this rule.

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

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

Filed with LRB: May 9, 2012
Publication Date: June 1, 2012
Effective Dates: June 15, 2012 through November 11, 2012
Hearing Date: June 25, 2012

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

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

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

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

Finding of Emergency

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

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

Filed with LRB: May 30, 2012

Publication Date: June 10, 2012
Effective Dates: October 1, 2012 through
 February 27, 2013

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

Filed with LRB: January 25, 2012

Safety and Professional Services (Formerly Regulation and Licensing)

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

Exemption from Finding of Emergency

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

Filed with LRB: September 8, 2008
Publication Date: September 10, 2008
Effective Dates: September 10, 2008
 through the date on which
 the final rules take effect
Hearing Date: November 26, 2008
 April 13, 2009

Scope Statements

Natural Resources

Fish, Game, etc., Chs. NR 1— SS 038–12

This statement of scope was approved by the governor on May 29, 2012.

Rule No.

WM-15-12 and WM-16-12 (E), Chapter NR 10.

Relating to

Amending Chapter NR 10 to establish that coyote hunting is allowed during firearm deer seasons in Wolf Management Zone 1.

Rule Type

Both permanent and emergency.

Finding/Nature of Emergency (Emergency Rule Only)

Non-statutory provisions in SECTION 21 of 2011 ACT 169 require the department to submit rules necessary for

implementation or interpretation and establish that the department is not required to make a finding of emergency.

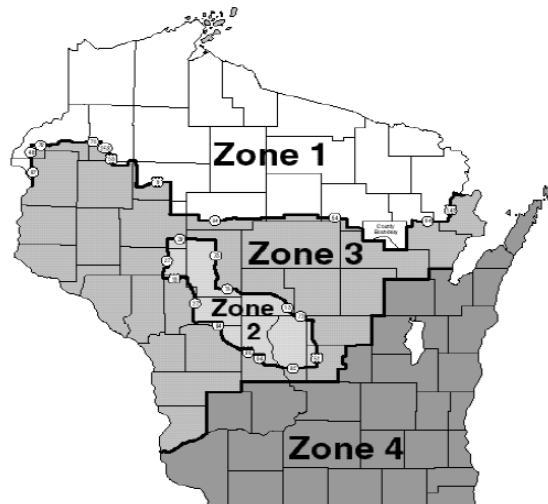
Detailed Description of the Objective of the Proposed Rule

The coyote hunting season is currently closed at times when firearm deer seasons are open in Wolf Management Zone 1. This rule would open the coyote season.

Under this proposal, wolves would continue to be protected during the firearm deer season and harvest would only be allowed by a person who possesses a valid wolf harvesting license.

The current closure was established when wolves were listed in Wisconsin and federally as an endangered species, to prevent incidents of misidentification by people who intended to harvest coyotes. The closure is no longer needed for protection of the wolf population and this coyote hunting opportunity can be restored. The wolf population has expanded and packs are established in many areas outside of Wolf Management Zone 1, where the current coyote season closure has never been in effect.

NR 10.20 Wolf management zones.



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

Policies relevant to the rule are consistent with existing policies for hunting. Coyote harvest is currently and has historically been allowed during firearm deer seasons outside of Zone 1 and this does not seem to have impacted wolf management in those areas. The department has regulations in place establishing open and closed seasons or continuous open seasons for many established species.

Detailed Explanation of Statutory Authority for the Rule

Opening the coyote hunting season at times when a firearm deer season is also open is specifically authorized under 29.185 (5) (d) which was created by 2011 ACT 169.

Non-statutory provisions of 2011 ACT 169 exempt the department from making a finding of emergency in promulgating any rules that are necessary to implement the ACT.

The department is also directed by s. 29.014, Wis. Stats., to establish regulations for the taking of game that conserve populations, including coyotes, and provide opportunities for good hunting.

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

Fewer than 20 additional hours of effort will be needed to expand the coyote hunting season. The department is already actively promulgating rules to implement 2011 ACT 169 and promulgating this additional rule can be part of the ongoing effort.

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

Coyotes are commonly harvested incidentally by deer hunters during the firearm deer season. Expanding that opportunity to hunters in Wolf Management Zone 1 will increase opportunity for those hunters and they are the only people who are likely to be affected by the proposed rule.

These rules are applicable to individual sportspersons and impose no compliance or reporting requirements for small businesses and no design or operational standards are established in the rule.

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 department is not aware of any existing or proposed federal regulations related to coyote hunting.

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

The department does not anticipate any economic impact from implementing this proposal. During the firearm deer season, hunters are primarily pursuing deer and that is what drives a person's decision to participate. Hunters may appreciate the opportunity to harvest a coyote incidentally to their deer hunting activities, but the opportunity is not anticipated to have any impact on hunter participation or their related activities and expenditures.

Contact Person

Scott Loomans, Wildlife Regulation Policy Specialist, 101 South Webster St., Madison, WI 53707. (608) 267-2452, scott.loomans@wisconsin.gov.

Natural Resources

Environmental Protection — General, Chs. NR 100—SS 035-12

This statement of scope was approved by the governor on May 29, 2012.

Rule No.

WT-11-12, Chapter NR 106.

Relating to

Revisions to Chapter NR 106 related to the Wisconsin's Pollutant Discharge Elimination System Permit (WPDES) Program for the purpose of making the rules consistent with federal regulations (Rule Package #4).

Rule Type

Permanent.

Finding/Nature of Emergency (Emergency Rule Only)

Not applicable.

Detailed Description of the Objective of the Proposed Rule

The proposed rule will include changes to Chapter NR 106 to address some of the issues raised by U.S. Environmental Protection Agency (EPA) in a July 18th 2011 letter. In the letter, EPA identified 75 potential inconsistencies between Wisconsin's state statutory or regulatory authority and federal

regulations. The proposed changes to Ch. NR 106 will address some of the issues included in EPA's letter and will also include other related minor clarifying changes and corrections. Any proposed changes to current practices are discussed below. The proposed changes to Ch. NR 106 include changes related to acute limit calculations, the allowance for extended compliance schedules for tier II value based limitations, ammonia water quality based effluent limitations, time periods for expression of certain water quality based effluent limitations, chloride water quality based effluent limitations, alternative limitations when test methods are not sufficiently sensitive, whole effluent toxicity testing (WET) reasonable potential procedures and other WET issues, and TMDL procedures required under the Great Lakes Initiative federal regulations. It should be noted that the department will be proposing a total of eight packages to address most of the 75 issues identified in EPA's July 18th letter. The department combined issues together based on subject matter. There will be other packages that include revisions to Ch. NR 106.

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

Chapter NR 106 will be modified to address the following specific issues identified by EPA in its July 18, 2011 letter:

- Issue #10 – Revisions regarding the Great Lakes Initiative and its impact on Total Maximum Daily Loads (TMDL), waste load allocations (WLA), determining reasonable potential and establishing water quality-based effluent limits (WQBEL). These requirements already apply directly to Wisconsin waters in the Great Lakes basin because EPA overpromulgated the procedures for Wisconsin waters in 40 CFR 132.6(h).
- Issue #28 – Revise rule for calculating acute toxicity limits (would not affect strictness of limits when viewed in context with chronic toxicity limits).
- Issue #32 – Revise language addressing compliance schedules for limits based on “secondary” values in Great Lakes Basin permits.
- Issues #31, #35, #36, #37 and #38 – Ammonia rule language clarifications regarding compliance schedules, water quality based effluent limits and variances.
- Issues #2, #30, #34, #41 – Language clarifications addressing the expression of contaminant limits, including the duration of time over which limits for toxic substances are expressed, mass limitations, chloride effluent limits, ammonia effluent limits, contaminants in intake water and internal waste streams.
- Issues # 39, #40, #42 and #43 – Chloride rule language clarifications addressing variances, water quality based effluent limits, Whole Effluent Toxicity (WET) Testing and chlorinated source water.
- Issue #70 – Rule changes regarding alternative limits.
- Issue #74 – Language clarification regarding Whole Effluent Toxicity (WET) testing. This rule will result in procedural changes, including an increase in testing requirements following failed WET tests.

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

The purpose of this proposed rule package is to ensure that Wisconsin's WPDES permit program is consistent with federal regulations. Stat. s. 283.11 (1) states that the department shall promulgate by rule effluent limitations, standards of performance for new sources, toxic effluent

standards or prohibitions and pretreatment standards for any category or class of point sources established by the U.S. environmental protection agency and for which that agency has promulgated any effluent limitations, toxic effluent standards or prohibitions or pretreatment standards for any pollutant. Subject to a few exceptions, Wis. Stat. s. 283.11 (2) further states that rules must comply with and not exceed federal law and regulations. Wis. Stat. s. 283.11 clearly provides rulemaking authority for this rule package. Additional authority is discussed below.

Section 283.55 (1) (d) provides the department with rulemaking authority for effluent sampling methods. Section 283.55 (1) (e) requires that permittees provide any other information to the department that is needed to determine the type and quantity of pollutants discharged.

Wisconsin Stat. s. 283.15 provides the department with authority for rules on variance procedures.

In addition, s. 283.31 (3) and (4), Stats., states that the department may issue a permit upon condition that the permit contains limitations necessary to comply with any applicable federal law or regulation, state water quality standards and total maximum daily loads. Wis. Stat. s. 283.13 (5) states that the department shall establish more stringent limitations than required under subs. (2) and (4) (technology based requirements) and shall require compliance with such limitations in any permit issued, reissued or modified if these limitations are necessary to meet applicable water quality standards, treatment standards, schedules of compliance or any other state or federal law, rule or regulations. All of these explicit statutory requirements in combination with s. 227.11 (2) provide the department with authority to promulgate rules that are consistent with federal regulations.

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

To comply with the requirements noted by U.S. EPA in its July 2011 letter, it is estimated that rule development will require staff time of about 600 hours.

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

Publicly-owned Treatment Works (POTW) facilities and other facilities requiring Wisconsin Pollutant Discharge Elimination System (WPDES) permits may be affected by the proposed rule.

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

The proposed changes in this rule will bring Wisconsin Administrative Code Ch. NR 106 into compliance with federal regulations 40 C.F.R. s. 122 and with the Federal Clean Water Act.

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

Many of the rule changes are not substantive, as the changes would merely clarify language without changing current interpretation or departmental procedures. Potential increases in the frequency of sample collection and the amount of water quality tests conducted, including increases in WET testing are expected to have a moderate economic impact on small businesses.

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Natural Resources

*Environmental Protection — General, Chs. NR 100—
Environmental Protection — Wis. Pollutant Discharge
Elimination System, Chs. NR 200—
SS 033-12*

This statement of scope was approved by the governor on May 29, 2012.

Rule No.

WT-12-12, Chapters NR 106, 200, 205, 210, and 220 through 296.

Relating to

Rule revisions related to the Wisconsin Pollutant Discharge Elimination System (WPDES) Permit Program to ensure that permit limitations and requirements are consistent with federal regulations (Rule Package #5).

Rule Type

Permanent.

Finding/Nature of Emergency (Emergency Rule Only)

Not applicable.

Detailed Description of the Objective of the Proposed Rule

On July 18, 2011, the department received a letter from EPA identifying seventy five questions or potential inconsistencies with Wisconsin's authority to administer its National Pollutant Discharge Elimination System (NPDES) approved program. In the letter, EPA stated that the department must either demonstrate that it has adequate authority to administer the program for the seventy five issues, or promulgate rules or enact statutory language clarifying the department's authority. In response to the questions and comments, the department proposed a broad based approach that included rulemaking, statutory changes, a demonstration of authority through an Attorney General's statement, and an addendum to Memorandum of Agreement.

For the rule making component of this broad based approach, the department is proposing eight different rule packages to address some of the listed concerns. Four of the rule packages have already initiated the rule making process. The department had begun addressing the issues in the four rule packages prior to EPA's letter because the department was aware that rule revisions were needed for consistency with federal regulations.

In addition to the rule packages already started, the department is proposing four additional rule packages to address EPA's concerns and this proposed rule is one of the four. The department has compiled the issues into packages based on either subject matter or rule chapter. Each proposed rule packages will also include minor clarification changes to affected chapters.

This proposed package will address some of the issues raised in EPA's July 18th letter, and includes revisions to Chapters NR 106, 200, 205, 210, and 220 through 296. The purpose of the proposed changes is to ensure that the state's regulations are consistent with federal regulations. Specifically, the proposed rules will address EPA's issues regarding Technology Based Limits, New Source Performance Standards (NSPS), Expression of Limits in

Permits and other limitation provisions in 40 CFR 122.45, Mass limits in Permits, General Reasonable Potential Procedures, Pollutants in the Intake for Technology Based Limits, Best Management Practices in Permits, General Compliance Schedule provisions, Permit Application requirements for Industrial dischargers, and Intake requirements for new facilities under CWA (316(b)). Minor corrections, reorganization and clarifying changes may also be made to Chapters NR 106, 200, 205, 210, and 220 through 296 to incorporate the federal changes.

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

In the July 18, 2011 letter, EPA notified Wisconsin that changes must be made to state rules or statutes to ensure consistency with federal laws and regulations for the NPDES permit program, or alternatively, the state must demonstrate that it has adequate authority (through an Attorney General's Statement or other information). For all of the issues addressed in this rule package, the department determined that rule changes should be made so state rules for the WPDES permit program are more specific and clearly consistent with the federal regulations specified below.

For most of the issues addressed in the proposed rules, the department has been issuing permits under state statutory provisions that are consistent with federal regulations. Therefore in most cases, there will be little change for permittees affected by these proposed rule changes. One exception may be EPA Issue involving expression of limits in permits. For some permits there may be added limits. Although there may be changes in how limits are expressed in some permits, the changes should not significantly impact a permittee's ability to meet the limits or the monitoring necessary to demonstrate compliance. The department continues to work on this issue with EPA.

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

Wisconsin Stat. s. 283.11 (1) states that the department shall promulgate by rule effluent limitations, standards of performance for new sources, toxic effluent standards or prohibitions and pretreatment standards for any category or class of point sources established by the U.S. environmental protection agency and for which that agency has promulgated any effluent limitations, toxic effluent standards or prohibitions or pretreatment standards for any pollutant. Subject to a few exceptions, Wis. Stat. s. 283.11 (2) further states that rules must comply with and not exceed federal law and regulations. Wis. Stat. s. 283.11 clearly provides rulemaking authority for the majority of this rule package. Additional authority is discussed below.

Wisconsin Stat. s. 283.37 (1) specifies that the department shall promulgate rules relating to applications for permits under this chapter which shall require at a minimum that every owner or operator of a point source discharging pollutants into the waters of the state shall have on file either a completed permit application on forms provided by the department or a completed permit application under section 13 of the rivers and harbors act of 1899, 33 USC 407 or under the federal water pollution control act, as amended, 33 USC 1251 to 1376. This statutory provision provides rulemaking authority related to permit applications.

Wisconsin Stat. s. 283.55 (1) (d) provides the department with rulemaking authority for effluent sampling methods. Section 283.55 (1) (e) requires that permittees provide any

other information to the department that is needed to determine the type and quantity of pollutants discharged.

Wisconsin Stat. s. 283.13 (1) states that the department shall promulgate a list of categories and classes of point sources which is at least as comprehensive as the list appearing in applicable federal laws. One of the proposed rule changes will update the list of categories and classes of point sources consistent with federal regulations. Wis. Stat. ss. 283.13 (2) – (4) requires compliance with treatment technology limitations. Wis. Stat. s. 283.19 states that the department shall promulgate by rule new source performance standards and Wis. Stat. s. 283.21 (1) provides authority for the department to promulgate by rule effluent standards.

In addition, Wis. Stat. ss. 283.31 (3) and (4), state that the department may issue a permit upon condition that the permit contains limitations necessary to comply with any applicable federal law or regulation and state water quality standards. Wis. Stat. s. 283.13 (5) states that the department shall establish more stringent limitations than required under subs. (2) and (4) (technology based requirements) and shall require compliance with such limitations in any permit issued, reissued or modified if these limitations are necessary to meet applicable water quality standards, treatment standards, schedules of compliance or any other state or federal law, rule or regulations. Wis. Stat. s. 283.31 (6) states that any permit issued by the department may require that the location, design, construction and capacity of water intake structures reflect the best technology available for minimizing adverse environmental impacts. All of these explicit statutory requirements in combination with Wis. Stat. s. 227.11 (2) provide the department with authority to promulgate rules that are consistent with federal regulations. The purpose of these proposed rule changes is to include specific federal permit procedures and requirements that apply to state NPDES permit programs.

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

500 hours of state employee time to develop the rule. The department will consult with permitted facilities and other interested groups as well as EPA in developing these rule revisions.

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

Municipal and industrial wastewater dischargers with specific or general WPDES permits.

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 would make State rules consistent with federal regulations. Specifically, this rule will include revisions regarding the following federal statutes and regulations that were included in the July 18th letter: Dissolved metal limits, limit duration, intake credits in limit calculations, internal waste streams and mass limits in 40 CFR 122.45 (EPA Issue #2); Federal New Source Performance Standards in 40 CFR 400 series (EPA Issue #7); General reasonable potential procedures for water quality based effluent limitations and narrative standards in 40 CFR 122.44(d) (EPA Issue #11); Best management practices in permits in 40 CFR 122.44(k) (EPA Issue # 13); Antidegradation requirements in 33 USC 1342(o) and 40 CFR 122.44(l) (EPA Issue # 14); Compliance schedules in 40 CFR 122.47 (EPA Issue #15 and #31 and #32);

Adjustment of technology effluent limits when part of wastewater is discharged in POTWs or land applied in 40 CFR 122.50 (EPA Issue # 20 and #2); Compliance schedules where landfill leachate is an issue in 40 CFR 122.47 (EPA Issue #29); Expedited variance procedures in 40 CFR 122.21(o) (EPA Issue #46); and Application requirements for existing manufacturing, commercial, mining, silvicultural discharger, aquatic animal production facilities, new sources, new discharges and cooling water intake structures in 40 CFR 122.21(g), (i), (k) and (r) (EPA Issue #61).

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

The department believes there will be limited to moderate economic impacts of implementing the proposed rule because either: the state has already been implementing these requirements in permits through general statutory or regulatory authority, the regulatory changes are very minor or the regulations are not applicable to any permittees in Wisconsin. There are three issues that potentially have more impact. In a small number of cases, effluent limits may be added to permits for pollutants already limited in the permit with a different averaging period. Although there may be changes in how limits are expressed in some permits, the changes should not significantly impact a permittee's ability to meet the limits or the monitoring necessary to demonstrate compliance. The department continues to work on this issue with EPA. A second issue is Best Management Practices (BMP). The department believes it already has authority to require BMPs in permits and requires BMPs for storm water and CAFO permits but will make changes to rule to broaden BMP authority consistent with federal regulations. A third issue is reasonable potential to achieve narrative water quality standards. This issue could result in some cases of stricter requirements to control such things as objectionable deposits, scum or odor, but this is unlikely since the department already has the authority to consider exceedances of narrative standards in permit issuances. The department simply intends to clarify its authority.

For the purpose of this scope statement, the department has considered four aspects of the economic analysis: essence of rule, affected groups, response of affected groups and total costs.

Essence of Rule: The rule changes mainly to form of certain permit limits. For example, it might add a monthly average where previously the department had only required only a daily limit.

Affected Groups: Municipal and industrial wastewater dischargers with specific or general WPDES permits.

Response of Affected Groups: Affected groups will need to spend some resources (time, money) to implement any changes that are made to their permits based on any rule changes. These changes will occur over the next 10 years as permits are renewed.

Total Costs: We believe for all impacted permittees in the state the proposed rule will have less than \$ 20,000,000 total implementation and compliance costs including any one time costs to adjust business practices and operations and ongoing costs for the future. Therefore we will analyze this proposed rule using a moderate solicitation period for economic analysis.

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Natural Resources

Environmental Protection — Wis. Pollutant Discharge Elimination System, Chs. NR 200—
SS 034-12

This statement of scope was approved by the governor on May 29, 2012.

Rule No.

WT-13-12, Chapters NR 200, 201, 203, and 205.

Relating to

The proposed rules involve the administration of the Wisconsin Pollutant Discharge Elimination System (WPDES) permit program to ensure consistency with federal regulations related to processing of permits and other related permit issues (Rule Package # 6).

Rule Type

Permanent.

Finding/Nature of Emergency (Emergency Rule Only)

Not applicable.

Detailed Description of the Objective of the Proposed Rule

On July 18, 2011, the department received a letter from EPA identifying seventy five questions and potential inconsistencies between Wisconsin's statutory or regulatory authority to administer its National Pollutant Discharge Elimination System (NPDES) approved program and federal statutes or regulations. In the letter, EPA stated that the department must either demonstrate that it has adequate authority to administer the program for the seventy five issues, or promulgate rules or enact statutory language providing that authority. In response to the questions and comments, the department proposed a broad based approach that included rulemaking, statutory changes, a demonstration of authority through an Attorney General's statement, and an addendum to Memorandum of Agreement.

For the rule making component of this broad based approach, the department is proposing eight different rule packages to address some of the listed concerns. For four of the rule packages, the department has already initiated the rule making process. The department had begun addressing the issues in these rule packages prior to EPA's letter because the department was aware that rule revisions were needed for consistency with federal regulations.

In addition to the packages already started, the department is proposing four additional rule packages to address EPA's concerns of which this proposed rule is one. The department has compiled the issues into packages based on either subject matter or rule chapter. The proposed rule package may also include minor corrections and clarifying changes to the affected chapters.

This proposed rule package addresses 13 of the issues raised in EPA's July 18th letter, and includes revisions to Chapters NR 200, 201, 203, and 205. The purpose of the proposed changes is to ensure that the state's regulations are consistent with federal regulations as well as recent statutory revisions in 2011 Act 167. Specifically, the proposed rule package will address EPA's issues with state authority regarding permit processing issues and other permit issuance procedural matters. The federal issue in EPA's July 18th letter and corresponding DNR rule chapters proposed for change are shown below.

<u>Issue</u>	<u>Description</u>	<u>40 CFR Part</u>	<u>Wis. Adm. Code</u>
3	Process and reasons for permit modifications, terminations and revocation, and reissuances.	124.5(a),(c)(d) 122.62 and 122.64	NR 203
18	Signatures and certification statement for permit applications.	122.22(a),(b),(d)	NR 205.07(1)(g)
21	Description of elements in fact sheets.	122.56	NR 201
22	Sending draft permits to agencies and others.	124.10	NR 203
45	Permits not a property interest, permit shield, etc. provisions.	122.5	NR 205
47	Signatory to permit.	122.22	NR 205.07(1)(g)
48	Termination of permit for certain violations.	122.41(a)	NR 205.07(1)(a)
49	Notification of facility changes.	122.41(1)(1)(i)	NR 205.07(1)(q)(1)
50	Notice of intent to terminate permit.	124.5(a)-(d)	NR 203
51	Public information hearing requests.	124.11	NR 203.05(2)(c)
62	Suspension of permits eliminated.	122.41(f)	NR 205.07(1)(b)
65	Preparation of draft permit required.	124.6	NR 200.10
66	Fact sheet for every WPDES facility.	124.8 and 124.56	NR 201.01

Minor clarifications and corrections will also be made to these chapters. In addition, the department will revise the terms used throughout the chapter so that they are consistent with federal regulations, and include changes to incorporate recent statutory revisions in 2011 Act 167 for permit processing and notices (e.g. electronic notices, reissuance, revoked and reissuance, termination, and 14 day comment period for substantial changes to CAFO nutrient management plans).

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

In the July 18th letter, EPA notified Wisconsin that changes must be made to state rules or statutes to ensure consistency with federal laws and regulations for the NPDES permit program, or alternatively, the state must demonstrate that it has adequate authority (through an Attorney General's Statement or other information). For all of the issues addressed in this rule package, the department determined that proposing rule changes should be made so state rules for the WPDES permit program are more detailed and clearly consistent with federal regulations.

For most of the issues addressed in the proposed rules, the department has been issuing permits under state statutory provisions that are consistent with federal regulations. Therefore in most cases, there will be little change for the permittee affected by these proposed rule changes or other citizens. The issues in the proposed rule package are minor technical discrepancies that have little bearing on the administration of the WPDES program.

The proposed rule changes will include new requirements for electronic and web notices established pursuant to 2011 Act 167. Mandatory electronic notification is an added step for the department in the permit public notification process. Also, pursuant to 2011 Act 167, there are different notice procedures and comment periods for substantial changes to nutrient management plans of permitted concentrated animal feeding operations (CAFOS). These new state statutory requirements state that notices may be done electronically and state the department shall provide a 14-day period for comments and hearing requests on substantial changes to nutrient management plans. Allowing less than 30 days notice for these types of changes are consistent with federal regulations in 40 CFR 122.42(e)(6).

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

The primary purpose of this proposed rule package is to incorporate specific federal NPDES permit procedures and requirements that apply to Wisconsin's WPDES permit program, and to include new permit processing requirements for the WPDES permit program in 2011 Act 167. Wis. Stat. s. 283.11 (1) states that the department shall promulgate by rule effluent limitations, standards of performance for new sources, toxic effluent standards or prohibitions and pretreatment standards for any category or class of point sources established by the U.S. Environmental Protection Agency and for which that agency has promulgated any effluent limitations, toxic effluent standards or prohibitions or pretreatment standards for any pollutant. Subject to a few exceptions, Wis. Stat. s. 283.11 (2) further states that rules must comply with and not exceed federal law and regulations. Wis. Stat. s. 283.11 clearly provides rulemaking authority for the majority of this rule package. Additional authority is discussed below.

Wisconsin Stat. s. 283.37 (1) specifies that the department shall promulgate rules relating to applications for permits under this chapter which shall require at a minimum that every owner or operator of a point source discharging pollutants into the waters of the state shall have on file either a completed permit application on forms provided by the department or a completed permit application under section 13 of the rivers and harbors act of 1899, 33 USC 407 or under the federal water pollution control act, as amended, 33 USC 1251 to 1376. This statutory provision provides rulemaking authority related to permit applications.

Wisconsin Stat. ss. 283.39 (1) and s. 283.41 state that the department shall promulgate by rule procedures for providing notice of permit applications and permit actions.

In addition, Wis. Stat. ss. 283.31 (3) and (4) states that the department may issue a permit upon condition that the permit contains limitations necessary to comply with any applicable federal law or regulation and state water quality standards. Wis. Stat. s. 283.13 (5) states that the department shall establish more stringent limitations than required under subs. (2) and (4) (technology based requirements) and shall require compliance with such limitations in any permit issued, reissued or modified if these limitations are necessary to meet applicable water quality standards, treatment standards, schedules of compliance or any other state or federal law, rule

or regulations. All of these explicit statutory requirements in combination with s. 227.11 (2) provide the department with authority to promulgate rules that are consistent with federal regulations.

Finally, the following list of sections in Chapter 283, Wis. Stats., in combination with s. 227.11 (2), Wis. Stats., provides the department with authority to promulgate rules that are consistent with federal regulations.

<u>Wis. Stats.</u>	<u>Description</u>
283.49	Public hearing.
283.45	Fact sheets.
283.53	Permit duration, modification, revocation and reissuance.
283.63	Review of permits, decisions, terms and conditions.

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

400 hours of state employee time to develop the rule package. The department will consult with permitted facilities and other interested groups as well as EPA in developing these rule revisions.

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

- Municipal wastewater treatment systems with individual or general WPDES permits.
- Industries with individual or general WPDES permits.
- Public participation procedures in the permit issuance process, including new procedures for substantial changes to the nutrient management plans for permitted CAFOs.

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 package will ensure state rules are consistent with federal regulations identified by EPA in its July 18th letter that are specified in section 2 above.

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

The department believes the economic impact would be minimal because the regulatory changes are very minor (insignificant impact on small businesses). Initially, there will be some additional work for department staff to establish procedures for electronic notices.

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Natural Resources

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

SS 032-12

This statement of scope was approved by the governor on May 29, 2012.

Rule No.

SS-14-12, Chapter NR 219.

Relating to

Analytical test methods and procedures for analysis of wastewater samples.

Rule Type

Permanent.

Finding/Nature of Emergency (Emergency Rule Only)

Not applicable.

Detailed Description of the Objective of the Proposed Rule

This rule change is necessary to comply with findings by the Environmental Protection Agency (EPA).

On July 28, 2011, the department received a letter (dated July 18, 2011) from EPA identifying seventy-five questions and potential inconsistencies between Wisconsin's statutory or regulatory authority to administer its National Pollutant Discharge Elimination System (NPDES) approved program and federal statutes or regulations.

DNR is taking a broad-based approach in response to EPA's letter. For the rule making component of this broad based approach, the department is proposing eight different rule packages to address some of the listed concerns. This is the eighth proposed rule package which is designed to address the ninth citation in EPA's July 18th letter. After conferring with EPA, the department is proposing to respond to the ninth citation through revisions to Chapter NR 219. The purpose of the proposed changes is to ensure that the state's regulations are consistent with federal regulations.

Specifically, the proposed rule package will address EPA's issues with the department rule incorporating SW 846 methods for wastewater sample analysis. The EPA publication SW-846, entitled *Test Methods for Evaluating Solid Waste, Physical/Chemical Methods*, is the waste division of EPA's official compendium of analytical and sampling methods that have been evaluated and approved for use in complying with the federal Resource Conservation and Recovery Act (RCRA) regulations. The DNR has allowed SW 846 methods for analysis of wastewater samples since 1995 because the methods are revised frequently and contain stringent quality control measures. However, EPA has requested that DNR remove from Chapter NR 219 all references to allowing SW 846 methods as "approved" methods for analysis of wastewater samples. EPA has also requested that DNR update Chapter NR 219 to incorporate analytical methods that have been federally approved in the Federal Register (40 CFR 136).

Therefore, one objective of this rule change is to remove analytical methods that EPA has not approved for wastewater from the list of approved analyses in Chapter NR 219. The other objective is to add methods that are currently allowed by EPA per 40 CFR Part 136 but are not included in Chapter NR 219 at this time.

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

Chapter NR 219 establishes analytical test methods, preservation procedures, requirements for laboratories, and procedures applicable to effluent limitations for discharges from point sources as authorized by ss. 299.11 and 283.55 (1), Stats. The proposed changes to this rule will remove SW 846

analytical methods that EPA has determined are not allowed for WPDES wastewater analyses. Chapter NR 219 will also be changed to include methods now allowed by EPA under 40 CFR 136. In the July 18th letter, EPA notified Wisconsin that changes must be made to state rules or statutes to ensure consistency with federal laws and regulations for the NPDES permit program, or alternatively, the state must demonstrate that it has adequate authority (through an Attorney General's Statement or other information). For all of the issues addressed in this rule package, the department determined that proposing rule changes should be made so state rules for the WPDES permit program are clearly consistent with federal regulations.

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

The purpose of this proposed rule package is to amend Chapter NR 219, Wis. Admin. Code, to comply with specific federal NPDES testing requirements that apply to Wisconsin's WPDES permit program.

Wisconsin Stat. s. 299.11 (7) (b) authorizes the department to prescribe by rule the accepted methodology to be followed by certified laboratories in conducting tests. This section requires the department to attempt to prescribe this methodology so that it is consistent with any methodology requirements under federal law, including under the federal water pollution control act, as amended, 33 USC 1251 to 1376.

Wisconsin Stat. s. 283.31 (3) authorizes the department to issue permits for the discharge of any pollutant or combination of pollutants upon certain conditions, including that such discharges will meet effluent limitations, standards of performance for new sources, effluent standards, prohibitions, and pretreatment standards, and any more stringent limitations including those necessary to comply with any applicable federal law.

Wisconsin Stat. s. 283.55 (1) authorizes the department to prescribe by rule the methods, locations, and manner of sampling of effluents from each owner or operator of a point source who is required to obtain a permit under 283.31. Samples and test results are required to meet the requirements in Wisconsin Stat. s. 283.55 (1) to provide records to the department regarding, among other things, the volume of effluent discharged and the amount of each pollutant discharged from each point source under the owner's or operator's control.

Wisconsin Stat. s. 281.19 (1) authorizes the department to adopt rules applicable throughout the state for the construction, installation, use and operation of practicable and available systems, methods, and means for preventing and abating pollution of waters of the state. Chapter NR 219 prescribes procedures and test methods for determining the concentration and quantities of pollutants discharged under WPDES permits.

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

It will take state employees approximately 160 hours to develop the rule and other resources to make the changes required by the EPA.

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

75 Commercial Analytical Laboratories – these are laboratories that analyze environmental (aqueous, solid and drinking water) samples for hire.

57 Industrial Analytical Laboratories – these are laboratories that are a part of an industry and analyze environmental samples on their own behalf.

245 Municipal Analytical Laboratories – these are laboratories owned by a municipality that generally do analysis of samples for the community's wastewater treatment facility.

10 Public Health/Public Water Utility Analytical Laboratories – these are generally county labs that support the public health department in that area and analyze primarily drinking water samples but may do some wastewater analyses.

WPDES Permittees – these are the permittees that have a WPDES permit which requires samples to be analyzed by approved methods.

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 package will ensure state rules are consistent with federal regulations identified by EPA in its July 18th letter that are specified in section 2 above.

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

This rule change will not have a significant impact on any entities or small businesses. It will only change the options for the analytical methods that a laboratory can use to assess WPDES samples. There could be a small cost to laboratories that have been using the SW 846 methods that will no longer be allowed. The cost would be for obtaining copies of allowed methods, and staff time needed to update their methodology and change forms or other documents that reference the SW 846 methods. The department believes that any change in test procedures should not significantly change the fees charged to permittees by laboratories. The department believes the economic impact would be minimal because the regulatory changes are very minor (insignificant impact on small businesses).

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Transportation

SS 036-12

This statement of scope was approved by the governor on May 25, 2012.

Rule No.

Wisconsin Administrative Code Chapter Trans 102.

Relating to

Operator's licenses and identification cards.

Rule Type

Permanent.

Finding/Nature of Emergency (Emergency Rule Only)

N/A

Detailed Description of the Objective of the Proposed Rule

Chapter Trans 102, *Operator's Licenses and Identification Cards*, is an existing rule that provides administrative interpretation of Wisconsin State Statute 343 relative to the issuance of operator's licenses, identification cards and vehicle titles & registration.

Chapter Trans 102 was last amended in 2007. Since that time, changes have occurred in federal and state laws affecting the issuance of driver's licenses (DL's), identification cards (ID's), and titles and registration documents. In addition, the Wisconsin Department of Transportation's Division of Motor Vehicles (DMV) modified internal policies regarding documentation requirements and transaction methods to reflect current technologies used to further improve the customer's experience. As a result, modifications to the rule are necessary. The anticipated modifications will not change the objective of the rule.

Changes to federal laws over the past several years have tightened security and identification standards for DL's and ID's. Modifications to the Chapter Trans 102 language to reflect these changes will ensure that the DMV is in compliance with the federal requirements related to "REAL ID" (*Minimum Standards for Driver's Licenses and Identification Cards Acceptable by Federal Agencies for Official Purposes* (6 CFR Part 37)).

Modifications to the rule are necessary to ensure that the DMV is fully compliant with all statutory changes that have occurred since the last Administrative Code rule update, and reflect administrative changes that have occurred since 2007.

Description of the Existing Policies Relevant to the Rule, New Policies Proposed to be Included in the Rule and an Analysis of Policy Alternatives***Existing state statutes and department policies that need to be updated in the Rule:******State statute changes regarding state identification cards***

Wis. Stat. s. 343.50 (5) defines the valid period and fees associated with issuing state identification cards. Wis. Stat. s. 343.50 (5) (a) 3. requires the department to issue an applicant a free identification card if the applicant is a U.S. citizen, is at least 18 years of age on the date of the next election, and requests the card be provided without charge for the purpose of voting. Wis. Stat. s. 343.50 (5m) defines the card issuance fee structure the department must use when issuing identification cards to eligible applicants. Under this statute, the department may not charge a fee for the issuance of an original, duplicate or reissued identification card, if Wis. Stats. ss. 343.50 (5) (a) 2. or 3. or (7) apply.

Wis. Stat. s. 343.50 (5) (b) requires an identification card to be valid for the succeeding period of 8 years from the applicant's next birthday after the date of issuance.

State statute changes regarding religious belief exemption for Real ID non-compliant credentials

Wis. Stat. s. 343.50 (4g) creates a religious belief photograph exemption for Real ID non-compliant credentials.

DMV policy changes regarding acceptable documentation requirements

Current s. Trans 102.15 (4m) allows DMV to require proof that a person is a Wisconsin resident. The Wisconsin Department of Transportation (WisDOT) currently accepts utility bills, pay stubs, bank account statements and mortgage documents as evidence of residency.

The general public's increased use and reliance on computer technology to manage finances and pay personal bills often makes these documents unavailable on official letterhead. The most many persons can provide is a printout from an online system. DMV will accept print outs from online bill pay systems in lieu of documents produced by a utility or bank, and proposes to modify its rule to make this clear. Changes are expected to include additions to the current acceptable documentation for residency list.

This rulemaking also proposes to update requirements related to electronic documentation, provide standards for acceptance of Wisconsin college/university identification products, and will establish a standard process for homeless persons to prove residency for the purpose of obtaining identification.

New Federal Policies:

The federal REAL ID Act, Pub. L. 109-13, Section 202, establishes minimum standards for driver's licenses and state issued identification documents used for "official purposes." Two key components of the REAL ID law that are expected to be integrated into Chapter Trans 102 include:

- Designation of both compliant and non-compliant credentials
- Recognition of central issuance processes

MINIMUM STANDARDS FOR DRIVER'S LICENSES AND IDENTIFICATION CARDS ACCEPTABLE BY FEDERAL AGENCIES FOR OFFICIAL PURPOSES (6 CFR PART 37).

Designation of both compliant and non-compliant credentials

Wis. Stats. ss. 343.03 (3r), 343.165 (7) (a) and 343.165 (7) (b) allow DMV, upon the state's implementation of the federal Real ID Act on January 15, 2013, to process applications for operator's licenses and identification cards that are not compliant with the federal Real ID Act if the licenses and cards are marked accordingly.

Recognition of central issuance processes

DMV is in the process of transitioning to full central issuance of its driver's license and identification products beginning in mid-May, 2012. This means all drivers licenses and identification products will be issued from a secure site through a contracted vendor to ensure Wisconsin's drivers licenses meet the federal REAL ID security standards and secured facility requirements required under the federal law.

Policy alternatives

The proposed modifications to existing Ch. Trans 102 must be made to ensure that DMV's regulation governing driver licensing is consistent with current state and federal laws.

Given that the anticipated rule changes will be done to reflect existing state and federal laws, policy alternatives are limited. The following policy alternatives might be considered (please note, published statutory requirements were not considered in this analysis of policy alternatives):

- Acceptable documentation

As described above, DMV proposes to clarify that proof of residency could be accomplished with a printed online bill as well as with a bill delivered by U.S. Postal authorities to reflect current technologies and improve the DMV's customer's experience. DMV could refuse online documents and accept only documents delivered to the driver license

applicant via U.S. mail as proof of residency. Permitting only use of delivered mail as proof of residency would not account for the individual's reliance on technology to conduct business, and would be inconsistent with DMV's customer service improvement efforts.

- REAL ID compliance

The state of Wisconsin could decide not to pursue being designated as a REAL ID compliant state relative to the issuance of driver's licenses and identification cards. This means Wisconsin residents would not be issued a compliant product, thereby limiting their ability to conduct federal official business, such as boarding a commercial aircraft. A decision not to pursue designation as a REAL ID compliant state would be significant, and would require changes to state statutes that currently require DMV to comply with REAL ID. Wisconsin has already invested resources into REAL ID compliance and is working to become fully compliant by January 15, 2013, the federal deadline.

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

DMV statutory authority to administer and modify Chapter Trans 102 is established in Chapter 343 of the Wisconsin State Statutes. Further authority is found in Wis. Stat. s. 85.16 (1). More specific authority is found in the following statutes:

Wis. Stat. s. 343.02 defines the department's authority to administer and enforce the issuance of operator licenses and state identification cards. It also specifies that the department has the authority to promulgate rules as the secretary considers necessary.

343.02 Administration of driver license law.

(1) The department shall administer and enforce this chapter and may promulgate for that purpose such rules as the secretary considers necessary. Rules promulgated under this chapter may not conflict with and shall be at least as stringent as standards set by the federal commercial motor vehicle safety act, 49 USC 31301 to 31317 and the regulations adopted under that act.

(2) The state of Wisconsin assents to the provisions of the federal law and regulations specified in sub. (1). The state of Wisconsin declares its purpose and intent to make provisions to implement and enforce that law and those regulations so as to ensure receipt by this state of any federal highway aids that have been or may be allotted to the state under 23 USC 104 (b) (1), (2), (5) and (6), including all increased and advanced appropriations.

History: 1971 c. 164 s. 83; 1977 c. 29 s. 1654 (7) (a); 1981 c. 390 s. 252; 1989 a. 105; 1995 a. 113.

Cross-reference: See also chs. Trans 102 and 115, Wis. adm. code.

Wis. Stat. ss. 343.03 (1) (a) and (b) establishes the department's requirement to institute a classified driver license system that meets all federal standards.

343.03 Classified driver license system.

(1) COMPLIANCE WITH FEDERAL STANDARDS.

(a) The department shall institute a classified driver license system meeting all federal standards under 49 USC 30304 (e) and 31301 to 31317 and 49 CFR 383 and 384.

(b) The department shall issue operator's licenses in conformity with the Classified driver license system to each licensee upon renewal, initial application, or cancellation under s. 343.26 (1).

Wis. Stat. s. 343.50 (1) (a) defines the department's authority to issue identification cards to every qualified applicant.

343.50 Identification cards.

(1) ISSUANCE.

(a) The department shall issue to every qualified applicant, who has paid all required fees, an identification card as provided in this section.

(c) The department may issue a receipt to any applicant for an identification card, which receipt shall constitute a temporary identification card while the application is being processed and shall be valid for a period not to exceed 60 days.

Wis. Stat. s. 343.50 (4g) details the legal standing for a person to request a photograph exemption for the identification cards; applicants must provide an affidavit stating they have a sincerely held religious against being photographed.

343.50 (4g) PHOTOGRAPH REQUIREMENT; EXCEPTION. An application for an identification card may be processed and the identification card issued or renewed without a photograph being taken of the applicant if the applicant provides to the department an affidavit stating that the applicant has a sincerely held religious belief against being photographed; identifying the religion to which he or she belongs or the tenets of which he or she adheres to; and stating that the tenets of the religion prohibit him or her from being photographed.

Wis. Stat. s. 343.50 (5) defines the fee structure the department must use when issuing identification cards to qualified applicants. Wis. Stat. s. 343.50 (5) (a) 3. prohibits the department from charging an applicant the initial issuance or reinstatement fee for an identification card if the applicant is a U.S. citizen, is at least 18 years of age on the date of the next election, and requests the card be provided without charge for the purpose of voting.

343.50 (5) VALID PERIOD; FEES.

(a) 1. Except as provided in subds. 2. and 3., the fee for an original card and for the reinstatement of an identification card after cancellation under sub. (10) shall be \$18.

2. The department may not charge a fee to an applicant for the initial issuance of an identification card if any of the following apply:

a. The department has canceled the applicant's valid operator's license after a special examination under s. 343.16 (5) and, at the time of cancellation, the expiration date for the canceled license was not less than 6 months after the date of cancellation.

b. The department has accepted the applicant's voluntary surrender of a valid operator's license under s. 343.265 (1) and, at the time the department accepted surrender, the expiration date for the surrendered license was not less than 6 months after the date that the department accepted surrender.

3. The department may not charge a fee to an applicant for the initial issuance or reinstatement of an identification card if the applicant is a U.S. citizen who will be at least 18 years of age on the date of the next election and the applicant requests that the identification card be provided without charge for purposes of voting.

Wis. Stat. s. 343.50 (5m) defines the fees associated with issuing state identification cards. The card issuance fee does not apply if the applicant meets the requirements defined under Wis. Stat. s. 343.50 (5) (a) 3.

343.50 (5m) CARD ISSUANCE FEE. In addition to any other fee under this section, for the issuance of an original identification card or duplicate identification card or for the renewal or reinstatement of an identification card after cancellation under sub. (10), a card issuance fee of \$10 shall be paid to the department. The fee under this subsection does not apply to an applicant if the department may not charge the applicant a fee under sub. (5) (a) 2. or 3. or (7).

Wis. Stat. s. 343.50 (6) defines the renewal fees associated with the issuance of state identification cards. The renewal fee does not apply if the applicant meets the requirements defined under Wis. Stat. s. 343.50 (5) (a) 3.

343.50 (6) RENEWAL. At least 30 days prior to the expiration of an identification card, the department shall provide to the card holder notice of renewal of the card either by mail at the card holder's last-known address or, if desired by the card holder, by any electronic means offered by the department. The department shall include with the notice information, as developed by all organ procurement organizations in cooperation with the department, that promotes anatomical donations and which relates to the anatomical donation opportunity available under s. 343.175. The fee for a renewal identification card shall be \$18 except that, if the identification card holder satisfies the requirements for an applicant specified in sub. (5) (a) 3., there shall be no fee for renewal of the identification card. The renewal identification card shall be valid for 8 years, except that a card that is issued to a person who is not a United States citizen and who provides documentary proof of legal status as provided under s. 343.14 (2) (er) shall expire on the date that the person's legal presence in the United States is no longer authorized. If the documentary proof as provided under s. 343.14 (2) (er) does not state the date that the person's legal presence in the United States is no longer authorized, then the card shall be valid for 8 years. The department may renew an identification card by mail or by any electronic means available to the department, but the department may not make consecutive renewals by mail or electronic means.

Wis. Stat. s. 343.50 (7) defines the fee structure for duplicate identification cards. The fees do not apply if an applicant meets the requirements defined under 343.50 (5) (a) (3).

343.50 (7) DUPLICATE. The fee for a duplicate card is \$6 except that, if the card holder satisfies the requirements for an applicant specified in sub. (5) (a) 3., there is no fee for a duplicate card.

Wis. Stat. s. 85.16 (1) defines the department secretary's authority to make "reasonable and uniform orders and rules deemed necessary."

85.16 Department rules and forms. (1) The secretary may make reasonable and uniform orders and rules deemed necessary to the discharge of the powers, duties and functions vested in the department. The secretary may also prescribe forms for applications, notices and reports required by law to be made to the department or which are deemed necessary to the efficient discharge of all powers, duties and functions and prescribe the form and manner in which those applications, notices and reports may be filed or submitted.

REAL ID provisions are scattered throughout Ch. 343, Stats. Most of the provisions were adopted as part of the 2007–2009 State Budget, 2009 Wis. Act 20. A concise

explanation of the provisions was produced by the Legislative Fiscal Bureau as 2007 Budget Paper #795, dated May 17, 2009, and is available online at:

<http://legis.wisconsin.gov/lfb/publications/budget/2007–09–Budget/Documents/Budget%20Papers/795.pdf>

2011 Wis. Act 23, the "Voter ID" legislation, modified the changes to state law made by 2007 Wis. Act 20 to allow the issuance of ID's and driver licenses that are not REAL ID compliant. All such licenses must clearly show that they do not comply with REAL ID requirements in accordance with federal law.

The requirements for REAL ID compliant cards (driver license and identification) are defined under **6 CFR Part 37, Minimum Standards for Driver's Licenses and Identification Cards Acceptable by Federal Agencies for Official Purposes** (also known as REAL ID). The law details the requirements for states to be found fully compliant. Efforts are underway to document DMV's REAL ID compliance and assemble a compliance package for Department of Homeland Security review by the fall of 2012. In short, federal regulations require states to:

- To collect and keep fully approved identity documentation in a prescribed manner. 6 CFR s. 37.11
- Verify documents such as Social Security Numbers, to birth certificates, and out-of-state driver licenses and determine whether the person has false identities. 6 CFR s. 37.13
- Include required security features to deter forgery and counterfeiting and detection of fraudulent cards in any compliant driver license or ID. 6 CFR ss. 37.15–37.19
- Issue only temporary or limited-term cards to immigrants who lack permanent status in the U.S. 6 CFR s. 37.21
- Establish procedures that verify an applicant's identity each time a driver license or ID is issued or renewed. 6 CFR ss. 37.22–37.25
- Ensure that an individual is not issued more than one REAL ID compliant card. This requires close communication with all other states to determine if the applicant currently holds a driver's license or REAL ID identification card from another state. 6 CFR s. 37.29
- Retain documents for future use or reference in the manner required by federal law. 6 CFR s. 37.31
- Maintain its computer database of driver records in a manner that complies with federal requirements. 6 CFR s. 37.33
- Develop a Security Plan that addresses the physical security of the facilities that produce the cards, and the safeguards required to protect the security and confidentiality of the information collected, stored, and maintained in DMV records. 6 CFR ss. 37.41–37.43
- Conduct a background check of each person who is involved in the manufacture or production of REAL ID driver's licenses and identification cards, or who has the ability to affect the identity information that appears on the driver's license or identification card. 6 CFR s. 37.45
- Insure that non-real ID licenses and ID's issued by the state be clearly different from REAL ID compliant licenses and ID's. 6 CFR s. 37.71

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

Current estimates indicate that modifications to the rule will require about 1040 hours of department staff time. Other resources necessary to develop the rule include: the general

public, other impacted state agencies, impacted federal agencies, the Wisconsin Legislature, and the Governor's Office.

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

General public – all individuals in the State of Wisconsin, their employers, and other groups with which those individuals interact

Airlines – required to confirm identity with a real ID as a condition of travel

Driving public – members of Wisconsin's general public who operate a motorized vehicle

Persons who need ID Cards – Any person who obtains a Wisconsin ID

Voters – all persons who vote

Other state agencies – Any state agency that requires a driver's license or state identification card from an individual, or a state agency that provides the documentation necessary for an individual to meet the requirements to be issued a compliant REAL ID product.

Department of Homeland Security – to the extent that it is the federal agency authorized to review and make a determination regarding DMV's compliance with REAL ID.

Other federal agencies – adhere to and enforce federal laws, who may require a REAL ID compliant card in order for an individual to conduct official federal business.

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

6 CFR Part 37 to establishes minimum standards for state-issued driver's licenses and identification cards in accordance with the federal REAL ID Act of 2005. These regulations are described in detail in Section 6 above. Pursuant to the Department of Homeland Security's REAL ID regulation, states must be in full compliance with the REAL ID Act of 2005 by January 15, 2013 (A final rule issued March 7, 2011 extended the date).

Chapter Trans 102 was last amended in 2007. Since that time, changes have been made to federal and state laws affecting the issuance of driver's licenses, identification cards, titles and registration documents. In addition, the DMV believes internal policies regarding acceptable documentation need updating to reflect current technologies. As a result, modifications to the rule are necessary. The anticipated modifications will not change the objective of the rule.

The following is a brief comparison of Chapter Trans 102 to the federal REAL ID Act. For the purpose of simplicity, the section headers of Chapter Trans 102 are used as an organizational tool for review and comparison.

Document condition and authenticity

Similar to REAL ID, Chapter Trans 102 describes the review and verification of documentation required by this state when issuing a driver's license or identification card. The details of the verification process, definition of any relevant exceptions (allowed under federal law) and the storage of relevant documents required by REAL ID need to be reviewed and the language updated as necessary for compliance with federal standards.

Photographs (exemptions, specifications, and special photo requirements)

Both REAL ID and Chapter Trans 102 include provisions related to the inclusion of photographs on driver's licenses and identification cards. REAL ID includes specific requirements regarding allowable head coverage, and the wearing of eyewear. Chapter Trans 102 includes text regarding retaking of photos, the allowance for head coverings due to religious belief, and the allowance of eye glasses (excluding sunglasses), depending on the individual's preference. The language needs to be compared to ensure appropriate consistency, or the documentation of possible differences between a compliant and non-compliant product.

Design of operator's license and identification card

The REAL ID law includes descriptions of the required security features for state issued cards to be compliant. The federal law also includes a description of what is required for non-compliant products. Chapter Trans 102 includes a section related to the design of the operator's license and identification card; however, it does not include any specific reference to compliant or non-compliant cards. The administrative code text does not include any references to the federally required integrated security features described in the REAL ID law. This rulemaking proposes to amend the rule to allow for compliant and non-compliant driver's licenses and ID's.

National driver registry and commercial driver license registration system

Chapter Trans 102 includes text regarding the National Driver Registry and commercial driver license registration system which requires the DMV to conduct inquiries into the commercial driver license information systems and the National Driver Registry to determine licensing eligibility. It does not, however, reference the REAL ID Act requirement that states must check with all other states to determine if an applicant currently holds a driver's license or REAL ID identification card in another state. These provisions may need to be amended to comply with REAL ID.

Prorated fees

REAL ID includes no references to fees; Chapter Trans 102 references fees authorized by statute.

Issuance

Both REAL ID and Chapter Trans 102 include a defined issuance period for driver's licenses and identification cards. The language in Chapter Trans 102 must be updated to maintain consistency with state statutes and REAL ID.

The REAL ID Law includes requirements for regarding the physical security expectations of the facilities involved in the production and manufacturing of driver licenses and identification cards. Chapter Trans 102 includes an outdated reference to central issuance that must be reviewed and updated if necessary.

Proof of identification

Both REAL ID and Chapter Trans 102 include specific provisions regarding acceptable documentation for proof of identity. The rule and federal laws must be reconciled.

Operator's license, license endorsement and ID issuance periods

REAL ID prescribes the validity periods and deadlines for REAL ID driver's licenses and identification cards. Chapter Trans 102 includes more detail related to the issuance of all driver license products. These laws must be reconciled if inconsistent.

Temporary operator's license or driver receipt

REAL ID specifies when a state may issue a temporary or limited-term REAL ID card. Chapter Trans 102 describes when DMV may issue a driver license or identification card

and when a driver receipt should be issued. These laws must be reconciled if inconsistent.

Instruction permits

REAL ID specifies when a state may issue a temporary or limited-term REAL ID card. Chapter Trans 102 provides more detail regarding the issuance, duration and use of the instruction permit. Chapter Trans 102 also includes detail regarding other types of instruction permits issued, including moped or motorcycle permits. These laws must be reconciled if inconsistent.

Farm service CDLs

Chapter Trans 102 includes the discussion and administration of farm service CDLs; the REAL ID law does not.

Copying of driver licenses

Chapter Trans 102 specifies who may make a copy of a driver license to use for the identification of the person to whom the license has been issued, and the person does not sell or transfer the copies to any third person. REAL ID makes no reference to copying for this purpose.

Current state statutes prohibit copying of ID's for legitimate business purposes. Wis. Stat. s. 343.50 (12) (e).

Sponsorship of persons under 18 years of age

Chapter Trans 102 defines who can be a sponsor of a minor who is licensed to drive in this state. REAL ID does not regulate license sponsors.

Military, firefighting, farmer and emergency government CDL exemptions

Chapter Trans 102 federal military, firefighting, farmer and emergency government CDL exemptions into state law. These provisions are not affected by REAL ID, but are affected by 49 CFR Parts 383 and 384.

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

At this time, it is anticipated that updates to the existing Chapter Trans 102, which are expected to include modifications that reflect existing state and federal law, will have an indeterminate economic impact. Until the rule is actually drafted, determining the economic impact of the rule is difficult.

Contact Person

WisDMV Bureau of Field Services Deputy Director Aileen Switzer, (608) 266-2743.

Transportation

SS 037-12

This statement of scope was approved by the governor on May 25, 2012.

Rule No.

Chapter Trans 200.

Relating to

The erection of signs on public highways.

Rule Type

Permanent.

Finding/Nature of Emergency (Emergency Rule Only)

N/A

Detailed Description of the Objective of the Proposed Rule

The objective of this proposed rule making is to amend section Trans 200.06 (7), relating to the number of business logo panels allowed on specific information signs, and to the number of specific information signs allowed for each type of motorist service at an interchange where greater or fewer than 6 qualified facilities are available in one or more of the categories of gas, food, lodging, camping, and attractions.

Also included are proposed amendments to sections Trans 200.06 (1) and 200.06 (3), which allow additional methods of approval or denial of permits for business logo panels if more business logo panels are requested than the number that is legally permitted. With certain limitations, business logo panels for 2 categories of motorist services may be displayed on the same specific information sign. A revision to the rule would increase flexibility, allowing more businesses to participate, while making optimal use of existing sign structures.

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

With some exceptions, the existing administrative rule requires that a separate specific information sign shall be provided for each type of motorist service for which business signs are displayed. At interchanges with double exits, or where not more than 3 qualified facilities are available for each of 2 or more types of motorist services, the existing administrative rule allows dividing a specific information sign into two sections to display business panels separately for each exit, or for 2 categories of motorist services. A maximum of three business panels may be displayed in each section of the sign. Another provision of the existing administrative rule specifies the process for approval and denial of permit applications when there are more applicants than can legally be granted permits.

The 2009 *Federal Manual on Uniform Traffic Control Devices* (MUTCD) allows more flexibility than Wisconsin's current Administrative Rule, Ch. Trans 200. According to the MUTCD, the proposed amendment to this rule would allow other combinations of the number of each type of business panel, and would allow for additional methods to be used to approve or deny permits at locations where there are high numbers of requests for signs. The alternative is to retain the existing administrative rule, which would require the placement of additional sign structures at some interchanges.

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

Specific information signs are authorized by s. 86.195, Stats. Section 86.195 (2) (a), Stats., refers to rules promulgated by the department in order to erect specific information signs in any city, village, or town.

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

40 Hours.

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

WisDOT; motorist service businesses under the categories for GAS, FOOD, LODGING, CAMPING, and ATTRACTIONS; and Derse-Wisconsin Highway Business Signs, who checks completed applications for sign and space availability and forwards the completed applications to the

WisDOT “Attractions” Advisory Council for approval. Derse–Wisconsin Highway Business Signs provides all of the approved Specific Information Signs for Wisconsin’s roadways.

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

By aligning Wisconsin’s administrative rule more closely with the 2009 MUTCD, more motorist service businesses could participate in the Specific Information Sign Program. This proposed administrative rule change is consistent with the MUTCD adopted by WisDOT.

Anticipated Economic Impact of Implementing the Rule

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

Implementation of these proposed rule changes would have very little economic impact on WisDOT. The number of statutory permit fees payable to WisDOT would increase, as well as the number of additional customers for Derse–Wisconsin Highway Business Signs. This rule making will establish policies and procedures for designating special groups eligible for distinctive license plates and procedures for plate issuance. These policies and procedures will be new, but the department will be guided by current special plate issuance policies and procedures so that it can be as consistent as possible in this new program.

Contact Person

John Noll 608–266–0318

Submittal of Proposed 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 12-028

(DATCP # 11-R-12)

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.

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

Analysis

These changes will revise Chapter ATCP 161, relating to the Grow Wisconsin Dairy Producer Grant and Loan Program.

Agency Procedure for Promulgation

The department will hold public hearings on this rule on June 28, 2012. The department's Division of Agriculture Development is primarily responsible for this rule. If you have questions, you may contact Nicole Breunig at (608) 224-5080.

Natural Resources

*Environmental Protection — General, Chs. NR 100—
Environmental Protection — Wis. Pollutant Discharge
Elimination System, Chs. NR 200—*

CR 12-027

(DNR # WT-23-11)

The Department of Natural Resources submitted a

proposed rule to the Wisconsin Legislative Council Rules Clearinghouse on May 17, 2012.

This rule is not subject to s. 227.135 (2), Stats., as affected by 2011 Wis. Act 21. The scope statement for this rule, published in Register No. 549 on September 30, 2001, was sent to the Legislative Reference Bureau prior to June 8, 2011.

Analysis

These changes will revise Chapters NR 110, 205, 208, and 210, relating to sanitary sewer overflows and bypasses.

Agency Procedure for Promulgation

A public hearing date has not yet been set.

Contact Information

Duane Schuettpelz at email address:
Duane.schuettpelz@wisconsin.gov

Michael Lemcke at email address:
Michael.lemcke@wisconsin.gov or phone number (608)
266-2666.

Both are at:
DNR Bureau of Water Quality
101 S. Webster Street, WT/3
P.O. Box 7921
Madison, WI 53707-7921

Rule-Making Notices

Notice of Hearing

Agriculture, Trade and Consumer Protection EmR1202, CR 12-028

Rule Relating to the Grow Wisconsin Dairy Producer Grant and Loan Program

The Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) announces that it will hold public hearing on both an emergency rule and a proposed rule revising Chapter ATCP 161, relating to the Grow Wisconsin Dairy Producer Grant and Loan Program.

Hearing Information

DATCP will hold one public hearing at the time and place shown below:

Date: Thursday, June 28, 2012
Time: 10:00 a.m. to 12:00 p.m.
Location: Department of Agriculture, Trade and Consumer Protection
 Board Room (1st Floor)
 2811 Agriculture Drive
 Madison, WI 53718-6777

Hearing impaired persons may request an interpreter for this hearing. Please make reservations for a hearing interpreter by **June 15, 2012**, by writing to Nicole Breunig, Division of Agriculture Development, P.O. Box 8911, Madison, WI 53708-8911; by emailing nicole.breunig@wisconsin.gov or by telephone at (608) 224-5080. Alternatively, you may contact the DATCP TDD at (608) 224-5058. The hearing facility is handicap accessible.

Appearances at the Hearing and Submittal of Written Comments

DATCP invites the public to attend the hearing and comment on the emergency and proposed rule. Following the public hearings, the hearing record will remain open until **July 12, 2012** for additional written comments. Comments may be sent to the Division of Agricultural Development at the address below, or to nicole.breunig@wisconsin.gov, or to <http://adminrules.wisconsin.gov>.

Copies of the Proposed Rule

You can obtain a free copy of the emergency and hearing draft rule and related documents including the economic impact analysis by contacting the Wisconsin Department of Agriculture, Trade and Consumer Protection, Division of Agriculture Development, 2811 Agriculture Drive, P.O. Box 8911, Madison, WI 53708. You can also obtain a copy by calling (608) 224-5080 or by emailing nicole.breunig@wisconsin.gov. Copies will also be available at the hearing. To view the emergency and hearing draft rule online, go to: <http://adminrules.wisconsin.gov>.

DATCP Small Business Regulatory Coordinator

Comments or concerns relating to small business may also be addressed to DATCP's small business regulatory

coordinator Keeley Moll at the address above, by email to keeley.moll@wisconsin.gov, or by telephone at (608) 224-5039.

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

This rule implements the "grow Wisconsin dairy producer" grant and loan program created under s. 20.115 (4) (d) and 93.40 (1) (g), Stats., by 2011 Wisconsin Act 32 (biennial budget act). Under s. 93.40 (1) (g), Stats., the Department of Agriculture, Trade and Consumer Protection ("DATCP") is authorized to award grants and loans to dairy producers for projects designed to promote the growth of the dairy industry. The budget act transferred an annual appropriation of \$200,000 for each year of the biennium from the then Department of Commerce to DATCP. (See s. 20.115 (4) (d), Stats.)

This rule does all of the following:

- Authorizes DATCP to make grant and loan awards and distribute grant and loan funds appropriated for the "grow Wisconsin dairy producer" grant and loan program.
- Specifies the procedures and criteria that DATCP will use to evaluate grant and loan proposals, make grant and loan awards and distribute grant and loan payments.
- Specifies the purposes for which grant and loan funds may be used, subject to the terms of the grant or loan contract.

Statutes interpreted

Sections 20.115 (4) (d) and 93.40 (1) (g), Stats.

Statutory authority

Sections 20.115 (4) (d), 93.40 (1) (g) and 93.07 (1), Stats.

Explanation of statutory authority

Section 93.07 (1), Stats., directs DATCP to make such regulations as are necessary for the discharge of all the powers and duties of the department. While granting the authority to make grants and loans to dairy producers, the budget language does not specify the bases for grant and loan determinations. The agency considers it necessary to adopt rules to establish the bases for grant and loan determinations in order to effectuate the purposes of s. 20.114 (4) (d) and 93.40 (1) (g), Stats. This rule implements the "grow Wisconsin dairy producer" grant and loan program on an interim basis, pending the adoption of "permanent" rules.

Related rules or statutes

There are no directly related rules or statutes, other than those cited above. DATCP rules for the "grow Wisconsin dairy producer" grant and loan program will be incorporated as a subchapter of Ch. ATCP 161, Wis. Adm. Code (agricultural development and market promotion).

Plain language analysis

The "grow Wisconsin dairy producer" grant and loan program is designed to promote the growth of the dairy industry by providing grants and loans to dairy producers. The biennial budget act transferred \$200,000 in grant funding

for each year of the FY 2011–13 fiscal biennium. This rule spells out grant and loan procedures and criteria. Under this rule, the “grow Wisconsin dairy producer” grant and loan program will support projects proposed by dairy producers intended to expand and diversify the dairy industry.

Grant and Loan Purposes

Under this rule, DATCP may award grants and loans for projects that create, expand, diversify or promote any of the following:

- New capital investment in the dairy industry.
- New technologies or practices related to dairy production.
- Improvement of the competitive position of the Wisconsin dairy industry.
- Efficient use of farmland and other agricultural resources for dairy production.
- Employment in the dairy industry.

Grant and Loan Limits

Under this rule, DATCP may award no more than \$50,000 of grant funding nor more than \$200,000 in loans to any person or entity in any state fiscal biennium. Once DATCP makes a grant award, DATCP may make the actual grant payments over an original contract term of up to 3 years. Loan awards may be for a term of up to 7 years.

Matching Contribution

DATCP may give preference to applicants providing matching funds which may be in the form of capital, land, labor, equipment or cash related to the grant or loan project.

Use of Grant and Loan Funds

Under this rule, grant funds may be used to reimburse any of the following expenses if those expenses are a reasonable and necessary part of the grant project:

- Operating expenses, including expenses for salaries and wages, contract and consulting services, travel, supplies and public information.
- Equipment rental.
- The purchase of equipment whose full value is ordinarily depreciable within one year.

Grant funds may not reimburse any of the following expenses:

- Real estate purchases.
- Repayment of loans or mortgages.
- Rent or contract payments for time periods extending beyond the term of the grant contract.
- Equipment purchases, except for certain equipment purchases and depreciation expenses specifically authorized by this rule.
- Administrative or overhead costs that are not direct costs of the grant project.

Loan funds are subject to the same use limitations as grant funds except that loan funds may be used for purchase of land and equipment without restriction so long as the purchase is related to the loan project.

Grant and Loan Proposals

Under this rule, DATCP must issue at least one request for grant and loan proposals in each state fiscal biennium (DATCP may issue more frequent requests, if it chooses to do so). The request for proposals must describe the required form and content of grant and loan proposals, and must specify a deadline for submitting grant and loan proposals.

Applicants must submit grant and loan proposals to DATCP, in the manner prescribed by DATCP’s request for proposals.

Grant and Loan Awards

Under this rule, DATCP must evaluate grant and loan proposals and issue its grant awards within 90 days after the application deadline. DATCP must clearly identify each award recipient, the amount of the award, and the purposes for which the award is given. DATCP must consider all of the following criteria when evaluating grant proposals and making grant and loan awards:

- The extent to which a proposed project will benefit the dairy industry.
- Whether the proposal complies with DATCP’s request for proposals.
- Whether the proposed project meets the standards prescribed in this rule.
- The viability of the proposed project.
- The management and technical qualifications of the grant applicant.
- The qualifications of the persons who will carry out the project.
- The financial capacity of the grant applicant to complete the project as proposed.
- The adequacy of the project plan and budget.
- Whether the grant proposal adequately identifies the nature of project expenses to be reimbursed under the proposed grant.

Grant Contracts

Under this rule, DATCP must enter into a contract with a grant or loan recipient before distributing any funds to that recipient. The contract must spell out grant or loan terms and conditions, including performance requirements, reporting requirements and payment terms.

Grant Payments

Under this rule, DATCP may distribute grant funds in one or more payments, based on documented progress toward completion of the grant project. Loan funds may be distributed upon execution of the loan contract. The contract must describe payment terms and conditions. DATCP may require a grant and loan recipient to file progress reports and require grant recipients to submit expense documentation as necessary to support grant payments.

Federal and surrounding state programs

Federal Programs

There are currently no similar federal programs.

Surrounding State Programs

The Minnesota Dairy Development and Profitability Enhancement program awards \$200,000 annually in grants of up to \$5,000 per dairy producer to cover half the cost of a comprehensive business plan to evaluate farm start-up, modernization and expansion.

In 2009–2010, 50 Minnesota producers were selected to share \$1 million in grants aimed at boosting the state’s livestock sector with projects that include renovation of milking facilities, barn upgrades, technology modernization, improved waste management systems and business transitions.

There are no similar programs in Illinois, Indiana, Iowa, or Michigan.

Data and analytical methodologies

DATCP worked with representatives of various dairy producer groups to develop standards for grant and loan determinations contained in this rule.

Fiscal Impact

This rule will have a fiscal impact on DATCP operations. Under this rule, DATCP must issue at least one request for grant proposals in each state fiscal biennium. DATCP staff must review grant applications, recommend grant awards, administer grants, and ensure compliance with applicable requirements. DATCP staff will also provide technical assistance to grant and loan applicants and recipients, as appropriate.

Program administration will occupy at least .5 FTE staff in DATCP’s Division of Agricultural Development (this does not include legal, managerial, DATCP central accounting, or other indirect staff support). The cost for the .5 FTE staff will be \$50,000 per year, including salary, fringe benefits and support costs (there will be a smaller proportionate cost for the remainder of the current fiscal year). DATCP will try to fill program staffing needs by shifting current staff from other agricultural development programs. A complete Fiscal Estimate is attached.

Business Impact

The “grow Wisconsin dairy producer” grant and loan program is voluntary and thus imposes no cost on businesses. By providing \$200,000 in grant and loan funding to dairy producers, the “grow Wisconsin dairy producer” grant and loan program will benefit dairy farms, other dairy businesses and communities that participate in production, distribution or marketing of dairy products. Grant and loan recipients will benefit directly, while others will benefit indirectly from the creation of a stronger dairy industry. DATCP plans to use application procedures that will make the cost of applying insignificant and particularly make it possible for small businesses to apply for funding without hiring consulting services. A complete Business Impact Analysis is attached.

DATCP Contact

Questions and comments related to this rule may be directed to:

Nicole Breunig
 Department of Agriculture, Trade and Consumer Protection
 P.O. Box 8911
 Madison, WI 53708-8911
 Telephone (608) 224-5080
 E-Mail: nicole.breunig@wisconsin.gov

ADMINISTRATIVE RULES FISCAL ESTIMATE AND ECONOMIC IMPACT ANALYSIS		
Type of Estimate and Analysis		
<input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected		
Administrative Rule Chapter, Title and Number		
Ch. ATCP 161, Dairy Producer Grants and Loans		
Subject		
Dairy Producer Grants and Loans		
Fund Sources Affected	Chapter 20 , Stats. Appropriations Affected	
<input checked="" type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S	20.115 (4) (d)	
Fiscal Effect of Implementing the Rule		
No Fiscal Effect Indeterminate	Increase Existing Revenues Decrease Existing Revenues	<input checked="" type="checkbox"/> Increase Costs <input checked="" type="checkbox"/> Could Absorb Within Agency’s Budget Decrease Costs
The Rule Will Impact the Following (Check All That Apply)		
State’s Economy Local Government Units	<input checked="" type="checkbox"/> 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		
This rule implements the “grow Wisconsin dairy producer” grant and loan program created under s. 20.115 (4) (d) and 93.40 (1) (g), Stats., by 2011 Wisconsin Act 32 (biennial budget act). Under s. 93.40 (1) (g), Stats., the Department of Agriculture, Trade and Consumer Protection (“DATCP”) is authorized to award grants and loans to dairy producers for projects designed to promote the growth of the dairy industry. The budget act transferred an annual appropriation of \$200,000 for each year of the biennium from the then Department of Commerce to DATCP. (See s. 20.115 (4) (d), Stats.)		

This rule does all of the following:

- Authorizes DATCP to make grant and loan awards and distribute grant and loan funds appropriated for the “grow Wisconsin dairy producer” grant and loan program.
- Specifies the procedures and criteria that DATCP will use to evaluate grant and loan proposals, make grant and loan awards and distribute grant and loan payments.
- Specifies the purposes for which grant and loan funds may be used, subject to the terms of the grant or loan contract.

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

The “grow Wisconsin dairy producer” grant and loan program is voluntary and thus imposes no cost on businesses. By providing \$200,000 in grant and loan funding to dairy producers, the “grow Wisconsin dairy producer” grant and loan program will benefit dairy farms, other dairy businesses and communities that participate in production, distribution or marketing of dairy products. Grant and loan recipients will benefit directly, while others will benefit indirectly from the creation of a stronger dairy industry. DATCP plans to use application procedures that will make the cost of applying insignificant and particularly make it possible for small businesses to apply for funding without hiring consulting services.

This rule will have a fiscal impact on DATCP operations. Under this emergency rule, DATCP must issue at least one request for grant proposals in each state fiscal biennium. DATCP staff must review grant applications, recommend grant awards, administer grants, and ensure compliance with applicable requirements. DATCP staff will also provide technical assistance to grant and loan applicants and recipients, as appropriate.

Program administration will occupy at least .5 FTE staff in DATCP’s Division of Agricultural Development (this does not include legal, managerial, DATCP central accounting, or other indirect staff support). The cost for the .5 FTE staff will be \$50,000 per year, including salary, fringe benefits and support costs (there will be a smaller proportionate cost for the remainder of the current fiscal year). DATCP will try to fill program staffing needs by shifting current staff from other agricultural development programs.

Local Governments

This rule will not impact local governments. Local governments will not have any implementation or compliance costs.

Utility Rate Payers

The rule will have no impact on utility rate payers.

General Public

This rule will have a positive effect on the agricultural sector of the economy and therefore on the state economy and in that way will produce positive results for the general public.

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

Benefits

Dairy Producer grant and loan recipients will benefit directly, while others will benefit indirectly from the creation of a stronger dairy industry.

General Public

The general public will benefit from this rule because the state will have a stronger dairy industry.

Alternatives

This rule does all of the following:

- Authorizes DATCP to make grant and loan awards and distribute grant and loan funds appropriated for the “grow Wisconsin dairy producer” grant and loan program.
- Specifies the procedures and criteria that DATCP will use to evaluate grant and loan proposals, make grant and loan awards and distribute grant and loan payments.
- Specifies the purposes for which grant and loan funds may be used, subject to the terms of the grant or loan contract.

The legislation that created the dairy grant and loan program does not include criteria for grant and loan determination, to carry out legislative intent the only alternative is for DATCP to create those criteria by administrative rule.

<u>Long Range Implications of Implementing the Rule</u>
Long-term, implementing the rule will benefit dairy producers, the dairy industry and the general public.
<u>Compare With Approaches Being Used by Federal Government</u>
There are currently no similar federal programs.
<u>Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)</u>
<p>The Minnesota Dairy Development and Profitability Enhancement program awards \$200,000 annually in grants of up to \$5,000 per dairy producer to cover half the cost of a comprehensive business plan to evaluate farm start-up, modernization and expansion.</p> <p>In 2009–2010, 50 Minnesota producers were selected to share \$1 million in grants aimed at boosting the state’s livestock sector with projects that include renovation of milking facilities, barn upgrades, technology modernization, improved waste management systems and business transitions.</p> <p>There are no similar programs in Illinois, Indiana, Iowa, or Michigan.</p>
<u>Comments Received in Response to Web Posting and DATCP Response</u>
No comments were received in response either to the posting on the DATCP external website or the statewide administrative rules website.

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 11-051**

The Wisconsin Department of Agriculture, Trade and Consumer Protection hereby adopts the following order to revise Chapter ATCP 21, relating to voluntary certification of firewood dealers.
Effective 8-1-12.

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

Creates sections DCF 57.485 and 57.49 (1) (am), relating to determination of need for new group homes.
Effective 8-1-12.

Employee Trust Funds **CR 11-040**

Revises Chapters ETF 10, 11, 20, 40, 50, 52, 60, and 70, relating to technical and minor substantive changes in existing ETF administrative rules.
Effective 8-1-12.

Employee Trust Funds **CR 11-041**

Revises Chapter ETF 20, relating to the division of Wisconsin retirement system accounts under a qualified domestic relations order.
Effective 8-1-12.

Employee Trust Funds **CR 11-042**

Revises Chapters ETF 10 and 20, relating to rehired annuitants and separation from employment.
Effective 8-1-12.

Employee Trust Funds **CR 11-044**

Revises Chapter ETF 11, relating to the ETF appeals process.
Effective 8-1-12.

Revenue **CR 11-052**

Creates section Tax 11.10, relating to wind, solar, and certain gas powered products.
Effective 8-1-12.

Public Notices

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

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

Hearing Date(s) and Location(s)

Date and Time

Thursday, June 28, 2012

10:00 a.m. to 12:00 noon

Location

Portage County Annex

1462 Strongs Avenue

Stevens Point, WI 54481

Friday, June 29, 2012

10:00 a.m. to 12:00 noon

State Office Building

141 NW Barstow, Room 151

Waukesha, WI 53188

Testimony may be presented at either of the two hearings through a telephone conference line. After you call the conference line at (877) 402-9757, please enter the access code 5906120.

Accessibility

English

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

Spanish

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

Hmong

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

Copies of Waiver Documents

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

Regular Mail

Al Matano

Division of Health Care Access and Accountability

P.O. Box 309

Madison, WI 53707-0309

Phone

Al Matano

(608) 267-6848

FAX
(608) 261-7792

E-Mail
Alfred.Matano@dhs.wisconsin.gov

Analysis Prepared by the Department of Health Services

Statute interpreted:

Section 49.688, Wis. Stats.

Statutory authority:

Section 49.688, Wis. Stats.

Explanation of agency authority:

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

Related statute or rule:

N/A.

Plain language analysis:

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

The Department will request a waiver extension that keeps the SeniorCare program in its current form. Per the recommendation of the SeniorCare Advisory Committee, the Department will add one enhancement to the SeniorCare program: an enhancement to services provided to members by their pharmacist to assist them with taking their medication properly.

History of the Program

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

Population and Numbers Served

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

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

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

Agency contact person:

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

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

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

Fiscal Estimate

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

Health and Family Services

(Cost sharing component of Medicaid 2014 and BadgerCare Plus Demonstration Projects)

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 2011, the Wisconsin Department of Health Services provided on its website an outline of its proposal to initiate the Medicaid 2014 Demonstration Project, a Research & Demonstration Project 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. The waiver was approved by the federal government on April 27, 2012. Two waivers were approved – the Wisconsin Medicaid Section 1115 Health Care Reform Demonstration, and the Wisconsin BadgerCare Plus Health Insurance for Childless Adults Demonstration.

These two Demonstration Projects 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, and adverse selection provisions.

The Patient Protection and Affordable Care Act (PPACA) will fundamentally change policies that govern state Medicaid programs. Wisconsin submitted these federal 1115 waivers to pilot several policies that will prepare our BadgerCare Plus programs to better align with the pending changes in federal law.

Cost Sharing

PPACA requires families and individuals to purchase insurance that will require premium and copayment contributions. Under PPACA, families purchasing private insurance would receive tax credits that would limit the cost of premiums to a percentage of family income. The percentages would range from 3.5% for families with income at 133% of the Federal Poverty Level (FPL) to 9.5% for families with incomes of at least 300% of the FPL. 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 Demonstration Projects 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.

Proposed Changes – Implementing Wisconsin's Demonstration Projects

As previously noted, the Wisconsin Department of Health Services is preparing to implement the recently approved Demonstration Projects, which will be Research & Demonstration Projects under the authority of Section 1115. Under the demonstrations, adults aged 19 and older who are eligible for BadgerCare Plus for families or are eligible for BadgerCare Plus for Childless Adults and have family incomes in excess of 133% of the FPL will be required to pay a monthly premium, unless they are otherwise exempt. Persons exempt from paying a premium are pregnant women, persons with a confirmed disability and members of American Indian tribes or Alaskan Natives and others eligible to receive services from Indian Health Services.

Failure to pay the required premium will result in the adults having a 12-month period of ineligibility for BadgerCare Plus for families or BadgerCare Plus for Childless Adults.

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 \$23.9 million general purpose revenue (GPR) and \$35.8 million federal match (FED) for a total savings of \$59.7 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

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

Phone

Al Matano
(608) 267-6848

FAX

(608) 266-1096

E-Mail

alfred.matano@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 alfred.matano@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.

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