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## WISCONSIN ADMINISTRATIVE REGISTER

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Questions, comments, or corrections should be directed to:

Bruce Hoesly (608) 266-7590  
email: [bruce.hoesly@legis.wisconsin.gov](mailto:bruce.hoesly@legis.wisconsin.gov)

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## Emergency Rules Now in Effect

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*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](http://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.*

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### Agriculture, Trade and Consumer Protection (2)

**1. 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

**2. EmR1209** — The state of Wisconsin department of agriculture, trade and consumer protection hereby adopts the following emergency rule to amend **section ATCP 21.17 (1) (b)** and to create **section ATCP 21.17 (1) (c)**, relating to the quarantines of Rock County and Walworth County for emerald ash borer.

This rule was approved by the governor on July 12, 2012.

The scope statement for this rule, SS 019–11, was approved by the governor on August 29, 2011, published in Register No. 669, on September 14, 2011, and approved by the Board of Agriculture, Trade and Consumer Protection on December 15, 2011.

#### Finding of Emergency

(1) On June 11, 2012, APHIS identified EAB in Walworth County, near the village of Walworth. Subsequently, APHIS also positively identified EAB in Rock County in the city of Janesville on June 25, 2012. EAB is an exotic pest that poses a dire risk to the ash forest. When APHIS declares quarantine, DATCP has regulatory authority for import controls and quarantine for EAB under s. ATCP 21.17. It is anticipated that APHIS will declare quarantines for Rock County and Walworth County but that it will take six to eight weeks for APHIS to act. A six week delay until enactment of the federal quarantines leaves too much time for businesses or individuals to move potentially EAB infested material out of these counties to areas of Wisconsin or other states that are not infested with EAB.

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

**Filed with LRB:** July 16, 2012  
**Publication Date:** July 17, 2012  
**Effective Dates:** July 17, 2012 through December 13, 2012  
**Hearing Date:** August 28, 2012

(See the Notice in this Register)

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### 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

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### Employment Relations Commission

**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

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### 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  
**Effective Dates:** May 4, 2012 through September 30, 2012  
**Hearing Date:** May 25, 2012

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### Insurance

**EmR1208** — The Commissioner of Insurance purposes an order to amend **section Ins 17.01 (3)** and repeal and recreate **section Ins 17.28 (6)**, relating to the Injured Patients and Families Compensation Fund annual fund fees and mediation panel fees for fiscal year 2013 and affecting small business.

This emergency rule was approved by the governor on May 25, 2012.

The statement of scope SS 001–12, was approved by the governor on January 4, 2011, published in Register No. 673, on January 31, 2012, and approved by the Commissioner of Insurance on February 14, 2012.

#### Finding of Emergency

The Commissioner of Insurance finds that an emergency exists and that the attached rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. Facts constituting the emergency are as follows:

These changes must be in place with an effective date of July 1, 2012 for the new fiscal year assessments in accordance with s. 655.27 (3), Wis. Stats. The permanent rule making process during an even-numbered year cannot complete the rule-making process prior to the effective date of the new fee schedule. The fiscal year fees were established by the Board of Governors at the meeting held on December 14, 2011.

**Filed with LRB:** June 12, 2012  
**Publication Date:** June 14, 2012  
**Effective Dates:** June 14, 2012 through November 10, 2012  
**Hearing Date:** June 19, 2012

(**Note:** The affected sections were incorrectly shown as **Ins 17.01 (3)** and **17.28 (6)** in Register 679, July 15, 2012)

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### 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, SS 010–12, 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  
**Hearing Date:** July 16, 24, 25, 2012  
**Extension Through:** October 16, 2012

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## Natural Resources (3)

### *Fish, Game, etc., Chs. NR 1—*

**1. EmR1205** (DNR # CF-26-11(E)) — The Wisconsin Department of Natural Resources proposes an emergency order to revise **Chapter NR 64**, relating to 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

**2. 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  
**Hearing Date:** August 27, 2012

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

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

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

### Finding of Emergency

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

**Filed with LRB:** August 15, 2012  
**Publication Date:** August 18, 2012  
**Effective Dates:** August 18, 2012 through January 14, 2013

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### 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 safety and professional services (formerly 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

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## Scope Statements

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### Natural Resources

#### *Fish, Game, etc., Chs. NR 1—*

#### SS 062–12

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

#### Rule No.

WM–01–13, Chapters NR 1, 10, 11, 12, 15, 17, and 45.

#### Relating to

The 2013 Wildlife Management spring hearing rule related to hunting, trapping, dog training, and the use of department managed lands.

#### Rule Type

Permanent.

#### Finding/Nature of Emergency (Emergency Rule Only)

These will be permanent rules.

#### Detailed Description of the Objective of the Proposed Rule

These rule changes are proposed for inclusion on the 2013 Spring Hearing rules package and questionnaire. This rule package will create and amend regulations for hunting, trapping, closed areas, dog training, and the use of department lands found in Chapters. NR 1, 10, 11, 12, 15, 17 and 45.

Specifically, these rules would;

1. Simplify pheasant hunting regulations by eliminating the requirement to tag harvested birds at stocked hen/rooster pheasant hunting areas. Instead, field dressed carcasses of all birds would need to retain proof of species and sex identification while being transported. [NR 10.01 (2) 2]
2. Simplify firearm deer hunting regulations by allowing the use of rifles statewide. Currently, only shotguns may be used in some areas. If the statewide use of rifles were not to win support at some point during the rule making process, the department would consider expanding rifle use in individual counties including, but not limited to, Shawano and Outagamie as recommended in Conservation Congress voting. [NR 10.01 (3) (e) 1. a.]
3. Simplify mink and muskrat trapping regulations by creating more consistent opening dates throughout the state and require reporting the harvest of certain species such as otter and fisher within 24 hours. [NR 10]
4. Establish a controlled dove hunt at Bong State Recreation Area in Racine County in order to improve hunter satisfaction by reducing hunter interference. [NR 10.06]
5. Simplify regulations for pheasant hunters at Richard Bong State Recreation Area in Racine County, including eliminating the arm band requirement for pheasant hunters.
6. Expand open water hunting opportunities for waterfowl by allowing the activity on 12 additional lakes. [NR 10.12 (3)]

7. Simplify Canada goose hunting regulations and permit issuance procedures. [NR 10.125]
8. Lengthen the period of time that trappers have to check traps, as recommended in voting by the Conservation Congress in 2012. [NR 10.13]
9. Eliminate the refuge/closed area at Mecan Springs, Waushara County, as recommended in voting by the Conservation Congress in 2012. [NR 11.011]
10. Modify the type of refuge at Tichigan Wildlife Area in Racine County to prevent disturbance of waterfowl during the waterfowl hunting season. [NR 15.04]
11. Establish regulations on training dogs used for wolf hunting. Regulations may be similar to those established for training dogs used for bear hunting. [NR 17]
12. Establish that, when the bear hunting season is open, hunting hours apply to people who are training bear hunting dogs as well as to people who are hunting bears. [NR 17.04]
13. Establish that, in addition to collecting certain food items, it is also legal to cut and gather willow stakes on department managed lands for non-commercial uses. Willow stakes are often used by trappers. [NR 45.04]
14. Allow unattended, overnight placement of portable tree stands on department managed lands. [NR 45.09]
15. Increase the daily pheasant hunting fee at Bong State Recreation Area in Racine County from \$3.00 to \$12.00 (\$5.00 if stocking was not done on the previous day) because the current fee is not sufficient to cover the cost of this stocking program. [NR 45.12]
16. The department may include other, minor, non-controversial rule proposals passed at the annual Spring Fish & Wildlife Hearings as advisory questions by the Conservation Congress.
17. This rule proposal may make modifications to white-tailed deer hunting regulations including modifying seasons, carcass tag use, and other regulations if necessary implement provisions of the report and review of deer management practices prepared by the state's deer trustee. These changes may modify chapters. NR 1, 10 or 12.

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

All of the policies in this rule are generally consistent with past board policies of regulating fish and game harvest for conservation purposes.

The harvest of hen pheasants is generally prohibited in the wild but is allowed at certain stocked public hunting grounds. Hunters at these properties must tag the leg of harvested birds before transporting them in any way. Eliminating the tag requirement will save money for the department. By instead requiring that all harvested bird carcasses retain evidence of species and sex identification, such as the head or a fully feathered wing, a conservation warden will still be able to identify a hen pheasant and can ask the person who possesses it where it was harvested.

The use of firearms for deer hunting is restricted to shotguns, muzzleloaders and handguns only in certain portions of the state. At one time people generally believed that these firearms were safer but research and experience indicate that is not the case. Allowing the use of rifles statewide will be a simplification of regulations. Residents of Shawano County have asked for a stand-alone rule proposal, in addition to the statewide proposal, so that a Shawano County proposal can advance if a statewide rule does not. In Conservation Congress voting, residents of Outagamie County have also requested expanded use of rifles.

Currently there are four separate zones for mink and muskrat harvest, with slightly different opening or closing dates. This proposal would consolidate zones in order to simplify regulations that are no longer needed.

Richard Bong Recreation Area, located in Racine County, currently experiences very heavy dove hunting pressure that detracts from the quality of the hunting experience. A “managed hunting program” could require hunting only from established “blinds” and establish other regulations that will be conducive to a high quality hunt. Additionally, arm bands must be worn by pheasant hunters. This requirement may no longer be needed and the department will evaluate eliminating it.

Wisconsin has a long tradition of restricting waterfowl hunting to the near shore and marsh areas of lakes and flowages. This provides safe open water resting areas for migrating waterfowl and may help ducks remain in an area for a longer period during the hunting season. However, “open water” hunting is allowed on some large lakes and the Great Lakes where it is believed that open water hunting does not eliminate safe resting areas. This proposal would expand open water hunting opportunities to as many as 12 additional lakes.

Currently, there are no restrictions on the time of day for training bears. In the past, training dogs by trailing wild bears was not legal during the hunting season for bears. With the passage of 2011 ACT 28, dog training is now allowed during the bear hunting season. This proposal will require that all bear pursuit activities take place only during daylight hours when the bear hunting season is open in order to eliminate the need to determine who is hunting and who is only training. Bear dog training typically is done during daylight hours so this will not result in a significant loss of opportunity.

With the passage of 2011 ACT 169, hunting wolves with the aid of trained dogs is allowed. While not addressed in the ACT, training dogs used for wolf hunting will also be allowed because that species is no longer on lists of threatened or endangered species. Regulations on the times dogs may be trained and the number of dogs that may be used in pack will be established and may be similar to existing regulations for training dog used for bear hunting.

Collecting plants from department managed lands is generally prohibited except for some edibles and the removal of invasive plants. This proposal would also allow collecting willow stakes on department managed lands for non-commercial uses. Willow stakes are often used by trappers for marking trap locations and anchoring traps. Willow is a fast growing species that, although native, is sometimes considered invasive in certain areas.

Currently the overnight, unattended placement of tree stands for hunting is not allowed on department managed lands. This regulation is designed to prevent the “staking out” or making advance claims to hunting locations in favor of a first-come-first served practice. However, the overnight

placement, remaining in place for as long as an entire season, of stands is allowed on some lands may also be practical on department lands.

Waterfowl refuges are commonly established to provide safe resting areas for migratory birds and also have the effect of improving hunting by allowing them to remain in an area for longer periods of time during the hunting season. Under this proposal, entry into the Tichigan Wildlife Manage Area refuge would be prohibited at any time a waterfowl season is open. Deer hunting would still be allowed after waterfowl seasons close.

At Richard Bong Recreation Area hunters pay a daily entrance fee of \$3.00 to hunt stocked pheasants and the daily bag limit is two birds. This fee has not been updated since being established in 1982. An increase to \$12.00 (\$5.00 if stocking was not done on the previous day) will allow the managed pheasant hunt program to continue in a sustainable manner while improving the quality and consistency of the hunt for program participants.

The department has evaluated the policy alternatives for a handful of proposals that were topics of voting at Conservation Congress spring hearings in 2012. For instance, extending amount of time that trappers have to check traps, currently daily checks are required, and eliminating the Mecan River Springs waterfowl closed area. Both of these won popular support in voting this spring and may be advanced by the department.

This rule proposal may make modifications to white-tailed deer hunting regulations including modifying seasons, carcass tag use, and other regulations if necessary implement provisions of the report and review of deer management practices prepared by the state’s deer trustee. The report does recommend new policies on making deer management decisions. However, Wisconsin will continue to manage for a deer herd that provides recreational hunting opportunity and that is in balance with the habitat that supports it and while considering other impacts of deer populations. The report was released to the public in July, 2012, and further evaluation will occur before specific rule changes are proposed.

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

The chapter on wild animals and plants, in s. 29.014, “rule making for this chapter”, establishes that the department shall maintain open and closed seasons for fish and game and any limits, rest days, and conditions for taking fish and game. This grant of rule-making authority allows the department to make changes related to deer hunting and management, simplify Canada goose hunting regulations, eliminate previous rules on the possession of hen pheasants but require that the species and sex of birds being transported be identifiable. This section authorizes other rule-making such as establishing the types of firearms that may be used for hunting, waterfowl hunting regulations, and bear and wolf pursuit regulations and other hunting regulations. Finally, this section authorizes setting season dates for species such as coyotes, mink and muskrat and establishing trap-check and carcass harvest reporting requirements.

The establishment of game refuges is authorized in s. 23.09 (b) relating to the department’s ability to designate locations reasonably necessary for the purpose of providing safe retreats in which birds may rest and replenish adjacent hunting grounds.

Managed hunting opportunities which control activities within zones at Bong Air Base, the Richard Bong Recreation Area, are authorized by s. 23.09 (13) and 23.091. Special fees

for use of the recreation areas for certain types of visitation, such as pheasant hunting, are authorized under 27.01 (9) (c).

Sections 23.095, 23.11 and 29.014, Stats. allow for the protection of natural resources, establish general department powers, and authority to establish hunting and trapping regulations on department managed lands including regulations on the placement of tree stands, collecting willow stakes, and dog training.

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

306 hours.

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

Hunters, trappers, dog trainers, and recreational users of DNR lands are the principal groups that will be affected by this rulemaking.

**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**

Federal regulations allow states to manage the wildlife resources located within their boundaries provided they do not conflict with regulations established in the Federal Register. None of these rule changes violate or conflict with the provisions established in the Federal Code of Regulations.

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

These rules, and the legislation which grants the department rule making authority, do not have a significant fiscal effect on the private sector or small businesses. These rules are applicable to individual sportspersons and impose no compliance or reporting requirements for small business, nor are any design or operational standards contained in the rule.

This scope statement contains a proposal to increase the daily fee for pheasant hunting at Richard Bong Recreation Area from \$3.00 to \$12.00. The daily bag limit is two birds per day beginning on the third day of the season (1 per day on opening weekend). A survey of privately owned southern Wisconsin pheasant game farms showed that most charge between \$44.00 and \$50.00 for two birds. The Illinois Department of Natural Resources conducts similar managed pheasant hunts and charges \$25.00 per day with a daily bag limit of two. Because the fee at the recreation area will continue to be significantly lower than similar opportunities available in the region, no shift in hunting activity or hunter's related expenditures is anticipated.

Allowing the use of rifles for firearm deer hunting statewide will result in an increase in firearm sales in subsequent years. Many hunters perceive that hunting deer with rifles is preferable to hunting with shotguns, muzzleloaders, or handguns. Because ordering and shipping firearms is difficult, many or most of these purchases will occur at shops in Wisconsin. It is difficult to estimate how many purchases will occur because people would still be able to hunt with shotguns, muzzleloader and handguns. Purchases may be spread out over a period of years as people update their firearms. While the amount of economic impact is difficult to estimate, an increase in firearm sales would be

an assured result of this rule change and is something that sporting goods outlets are already anticipating.

The economic impacts of deer hunting regulations are difficult to estimate and range from no impact in most cases to significant impacts if opportunities to hunt are significantly impacted or if deer populations are significantly impacted. Specific changes that may be considered under this scope statement have not been selected at this time however; only changes recommended in a report and review of deer management practices prepared by the state's deer trustee would be considered under this scope statement.

Other proposed rule changes are not expected to significantly influence the spending activities or hunting and trapping activity of hunters, trappers, dog trainers, or other outdoor enthusiasts. Correspondingly, no related economic impacts are anticipated.

**Contact Person**

Scott Loomans, Wildlife Regulation Policy Specialist, 608-267-2452, [scott.loomans@wisconsin.gov](mailto:scott.loomans@wisconsin.gov).

**Safety and Professional Services —  
Podiatry Affiliated Credentialing Board**

**SS 061-12**

This statement of scope was approved by the governor on August 10, 2012.

**Rule No.**

Chapters Pod 1 to 3 (165-POD X-ray Exams-SS).

**Relating to**

Requirements of a course of instruction related to X-ray examinations by persons under direct supervision of podiatrists under s. 462.02 (2) (f).

**Rule Type**

Permanent.

**Finding/Nature of Emergency (Emergency Rule Only)**

None.

**Detailed Description of the Objective of the Proposed Rule**

The rule is intended to comply with the legislative directive in Wis. Stat. s. 448.695 that the Podiatry Affiliated Credentialing Board, "shall promulgate rules specifying the requirements for a course of instruction related to X-ray examinations by persons under the direct supervision of a podiatrist under s. 462 (2) (f)."

Generally, persons who practice radiography are required to be credentialed by the Radiography Examining Board. Wis. Stat. s. 462.02 (1). An exception exists for uncredentialed persons who practice under the direct supervision of a podiatrist. Wis. Stat. s. 462.02 (2) (f). The proposed rule is intended to specify education requirements for these unlicensed delegates that provide for patient safety, without unduly burdening the unlicensed delegate or the podiatrist/employer.

Additionally, the proposed rule will define "direct supervision" and any other terms, as yet unidentified, which become apparent during the process, and which the Board deems necessary to comply with s. 448.695.

### **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 2009 Wisconsin Act 106, the legislature determined that persons who engage in the practice of radiography should be regulated. The purpose of professional regulation is primarily to remove unacceptable risks of harm to patients under the care of licensees.

Radiographers use radioactivity in the diagnostic process. Radioactivity, at certain levels or with repeat imaging, creates a risk of harm to patients. In the hands of unqualified persons, the risk of harm is unacceptable.

There are differences between radiography performed in the practice of podiatric medicine and surgery and that in other settings. Those differences result in fewer and less potentially harmful collateral consequences in podiatric medicine than in radiography generally. First, the proposed rule is applicable to persons who take x-rays only under the direct supervision of podiatrists. Persons credentialed by the Radiography Board practice without direct supervision in most instances. Second, radiography equipment used in podiatrists' offices is much less powerful than more comprehensive equipment used in other health care settings. Third, in podiatric medicine diagnostic x-rays are limited to extremities—the foot, ankle and lower leg below the knee. These areas of the body are less vulnerable to the collateral consequences of an x-ray than are chest, head and other more vascular areas of the body for which more powerful radiology equipment is used.

Because the practice of radiography within podiatric medicine is inherently less dangerous to patients than radiography is in other settings, this rule will further the social policies of avoiding unnecessary restrictions on employment of health care professionals and potentially reducing costs to health care consumers.

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

Generally, persons who practice radiography are required to be credentialed by the Radiography Examining Board. Wis. Stat. s. 462.02 (1). An exception exists for uncredentialed persons who practice under the direct supervision of a podiatrist. Wisconsin Stat. s. 462.02 (2) (f) specifies that credentialing by the Radiography Examining Board is not required for:

A podiatrist licensed under s. 448.63 or a person under the direct supervision of such a podiatrist, if the person has successfully completed a course of instruction approved by the podiatrists affiliated credentialing board related to X-ray examinations under s. 448.695 (3).

The legislature has directed the Podiatry Affiliated Credentialing Board to identify education requirements for persons who practice radiography only under the direct supervision of licensed podiatrists:

448.695 (3) The [podiatry] affiliated credentialing board shall promulgate rules specifying the requirements for a course of instruction related to X-ray examinations by persons under the direct supervision of a podiatrist under s. 462.02 (2) (f). In promulgating the rules, the affiliated credentialing board shall consult with the radiography examining board and shall examine laws and rules in other states. The affiliated credentialing board shall approve courses that meet the requirements set forth in the rules.

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

60 hours.

### **List with Description of All Entities that may be Affected by the Proposed Rule**

Podiatry patients, podiatrists, unlicensed persons employed by podiatrists, third-party payers and educational organizations.

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

The Consumer–Patient Radiation Health & Safety Act of 1981 (42 USC 10001, et seq.) is relevant because it specifies education and credentialing standards for radiographers, radiation therapists, dental radiographers, sonographers and nuclear medicine technologists. More research would be necessary to confirm whether or not the Act concerns radiography in podiatric medicine and surgery. Regardless, there are no enforcement provisions in current law and therefore, compliance with the Act is voluntary and dependent upon state regulation.

However, the proposed amendments to federal law could make enforcement of federal standards relevant to Medicare funding. The Consistency, Accuracy, Responsibility and Excellence (CARE) in Medical Imaging and Radiation Therapy bill, H.B. 2104 would amend current law by creating an enforcement provision in federal standards for education and certification of certain radiography professionals. In short, if a state declined to adopt federal standards for education and credentialing of certain radiography professionals, the state would lose certain federal Medicare funding.

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

Any resulting course of instruction could result in more business opportunity for private vocational educators.

### **Contact Person**

Shawn Leatherwood, (608) 261–4438,  
[Shancethea.L Leatherwood@wisconsin.gov](mailto:Shancethea.L Leatherwood@wisconsin.gov).

### **Safety and Professional Services**

#### ***Professional Services, Chs. SPS 1–299 SS 063–12***

This statement of scope was approved by the governor on August 10, 2012.

### **Rule No.**

SPS 60–65, 205–?

### **Relating to**

Regulation of Barbers.

### **Rule Type**

Emergency & Permanent.

### **Finding/Nature of Emergency (Emergency Rule Only)**

On July 1, 2012, 2011 Wisconsin Act 190 (the Act) took effect, transferring regulatory authority of barbers from the

former Barbering and Cosmetology Examining Board to the Department of Safety and Professional Services (DSPS). The Act also changed the education requirements for barbers' initial licensure, and the continuing education requirements for renewal. The transfer of authority and the changes in requirements require immediate rule-making by DSPS to implement these changes.

#### **Detailed Description of the Objective of the Proposed Rule**

This rule-making project will create all rules relevant to the practice of barbering pursuant to 2011 Wisconsin Act 190. Among other things, Act 190 separated the previously combined barbering and cosmetology professions, and transferred the authority for regulation of the barbering profession from the former Barbering and Cosmetology Examining Board to the Department of Safety and Professional Services (DSPS). The primary objective of this proposed rule-making is to create DSPS rules consistent with the changes to chs. 440 and 454, Stats., thus effectuating the transfer of authority. Any substantive changes to the rules governing barbering as they existed before the effective date of Act 190 will also be reflected in this proposal. In addition, certain provisions of the DSPS Code regarding the curriculum requirements for, and the licensure of, what were schools of barbering and cosmetology, but will now be schools of barbering only, as well as the licensure of their instructors will be amended based on Act 190's separation of the professions.

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

Prior to the effective date of Act 190, July 1, 2012, the Barbering and Cosmetology Examining Board was charged with regulating both the barbering and cosmetology professions. Act 190 transferred the authority to regulate the barbering profession from the Board to DSPS. Consequently, the administrative code relating to both professions must be revised. The rules sought to be drafted by this Statement of Scope are statutorily mandated and serve only to implement the authority transfer and to create rules to govern barbering practice as necessitated by Act 190. Beyond that, there are no existing policies being modified, nor new policies being added.

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

Section 227.11 (2) (a), Stats., authorizes an agency to promulgate rules interpreting the statutes it enforces or administers, when deemed necessary to effectuate the purpose of such statutes. Section 440.62 (2) (e), Stats., obligates DSPS to promulgate rules establishing requirements for surety bonds in all schools and specialty schools of barbering and/or cosmetology. Section 440.62 (5) (b) 2., Stats., obligates DSPS to establish the required curriculum for barbering schools and the minimum standards for instruction, materials, and equipment at barbering schools. Section 440.64 (1) (b), Stats., requires DSPS to promulgate marketing and other fiscally-related regulations

for all schools and specialty schools of barbering and/or cosmetology. Section 454.25 (1) (a), Stats., authorizes DSPS to promulgate rules regarding the provision of barbering services outside of a licensed barbering establishment under certain circumstances. Sections 454.25 (2) and (3), Stats., allow DSPS to establish requirements for licensure of barbering establishments, and require DSPS to promulgate minimum health and safety standards for such establishments, respectively. Section 454.265 (1), Stats., obligates DSPS to promulgate continuing education requirements, subject to the specified statutory limitations, for licensed barbers.

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

225 hours.

#### **List with Description of All Entities that may be Affected by the Proposed Rule**

Barbers, barbering managers, barbering establishments, and their cosmetology counterparts; apprentices in the barbering and cosmetology professions; barbering and cosmetology schools and instructors; continuing education providers in the barbering and cosmetology professions; consumers of barbering and cosmetology; DSPS staff.

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

The federal government does not regulate the barbering and cosmetology professions in the states. However, it does have regulations applicable to apprenticeships in all trades and professions registered with the United States Department of Labor (DOL). Such regulations are generally administered by state laws governing apprenticeship programs in a particular state. In Wisconsin, the Department of Workforce Development is charged with that responsibility.

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

These proposed rules are strictly for the purpose of implementing the mandates of Act 190, which took effect on July 1, 2012. The rules contemplated in this project will have no economic impact on the entities listed above beyond that which arose from the statutory changes to the barbering and cosmetology professions made by Act 190. Moreover, the rules created by this proposal will not become effective for at least a year past that date. Thus, although many of the above-listed entities either have been or may be significantly affected by the separation of regulatory authority for the barbering and cosmetology professions, these proposed rules will not cause any economic impact that such entities have not already absorbed.

#### **Contact Person**

Kris Anderson, (608) 261-2385.

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## Submittal of Proposed Rules to Legislative Council Clearinghouse

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

### **Agriculture, Trade and Consumer Protection CR 12-033**

(DATCP Docket # 9-R-01)

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

This rule is not subject to s. 227.185. The statement of scope for this rule, published in Register 637, on February 1, 2009, was sent to the Legislative Reference Bureau prior to the effective date of 2011 Wis. Act 21.

### **Analysis**

The proposed order revises Chapter ATCP 75 Appendix, relating to retail food establishments.

### **Agency Procedure for Promulgation**

The department will hold public hearings on this rule. Dates for public hearings on October 9, 11, and 12. The department's Division of Food Safety is primarily responsible for this rule.

### **Contact Information**

If you have questions, you may contact Steve Ingham at (608) 224-4701.

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## Rule-Making Notices

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### Notice of Hearing

#### Agriculture, Trade and Consumer Protection

CR 12-033

(DATCP Docket # 09-R-01)

#### Rule Relating to Retail Food Establishments

The Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) announces that it will hold public hearings on a proposed rule relating to updating the Wisconsin Food Code contained in the Appendix of Chapter ATCP 75, relating to Retail Food Establishments. The proposed rule will update the Code based on the 2009 version of Food and Drug Administration's (FDA's) U.S. Public Health Service's Model Food Code. The Wisconsin Department of Health Services (DHS) also uses the model Food Code to regulate restaurants under Chapter DHS 196. DATCP and DHS cooperated in the development of this rule and these public hearings will be held jointly with DHS.

#### Hearing Information

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

- Date:** Tuesday, October 9, 2012  
**Time:** 10:00 a.m.–2:00 p.m.  
**Location:** Wisconsin Department of Agriculture, Trade and Consumer Protection Board Room  
 2811 Agriculture Drive  
 Madison, WI 53718
- Date:** Thursday, October 11, 2012  
**Time:** 10:00 a.m.–2:00 p.m.  
**Location:** Waupaca County Courthouse  
 Room LL42  
 811 Harding Street  
 Waupaca, WI 54981
- Date:** Friday, October 12, 2012  
**Time:** 10:00 a.m.–2:00 p.m.  
**Location:** Eau Claire State Office Building  
 Room 129  
 718 W. Clairemont Ave.  
 Eau Claire, WI 54701

Hearing impaired persons may request an interpreter for this hearing. Please make reservations for a hearing interpreter by **September 21, 2012**, by writing to Division of Food Safety, P.O. Box 8911, Madison, WI 53708-8911; or by emailing [Timothy.Anderson@wisconsin.gov](mailto:Timothy.Anderson@wisconsin.gov); or by telephone at (608) 224-4682. 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 hearings and comment on the proposed rule. Following the public hearings, the hearing record will remain open until **October**

**25, 2012**, for additional written comments. Comments may be sent to the Division of Food Safety at the address below, or to [Timothy.Anderson@wisconsin.gov](mailto:Timothy.Anderson@wisconsin.gov), or to <http://adminrules.wisconsin.gov>.

#### Copies of the Proposed Rules

You can obtain a free copy of this hearing draft rule and related documents, including the economic impact analysis, by contacting the Wisconsin Department of Agriculture, Trade and Consumer Protection, Division of Food Safety, 2811 Agriculture Drive, P.O. Box 8911, Madison, WI 53708. You can also obtain a copy by calling (608) 224-4682 or by emailing [Timothy.Anderson@wisconsin.gov](mailto:Timothy.Anderson@wisconsin.gov). Copies will also be available at the hearing. To view the hearing draft rule online, go to: <http://adminrules.wisconsin.gov>.

Comments or concerns relating to small business may also be addressed to DATCP's small business regulatory coordinator Keeley Moll at the address above, or by email to [keeley.moll@wisconsin.gov](mailto:keeley.moll@wisconsin.gov), or by telephone at (608) 224-5039.

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

The Department of Agriculture, Trade and Consumer Protection ("DATCP" or "department") currently licenses and inspects retail food establishments such as grocery stores. DATCP has adopted food safety rules, including the Wisconsin Food Code, for retail food establishments. This rule updates the Wisconsin Food Code, based on changes contained in the 2009 edition of the federal model food code. This rule also makes other minor changes to clarify current rules.

This department has worked with the Department of Health Services ("DHS"), an agency that administers a separate but identical Wisconsin Food Code in the Appendix to Ch. HFS 196, Wis. Adm. Code, which applies solely to the licensing and inspection of restaurants. The department has collaborated with DHS on the changes to its rule to maintain consistency between the DHS and DATCP food codes.

#### Statutory authority

Sections 93.07 (1), 97.30 (5) and 227.14 (1s), Stats.

#### Statutes interpreted

Section 97.30, Stats.

#### Explanation of statutory authority

Section 93.07 (1), Stats, provides the department the broad authority to make and enforce rules as it may deem necessary and to adopt such measures and make such regulations that are necessary and proper for the enforcement of chs. 93 to 100, Stats., which cover the areas of agriculture, food regulation, animal health, and agricultural markets.

DATCP's authority to make rules relating to retail food establishments, except for restaurants, is found in s. 97.30 (5), Stats., which provides that the department may promulgate rules to govern the operation of retail food establishments. Rules may include standards for the construction and maintenance of facilities; the design, installation, cleaning and maintenance of equipment and utensils; personnel



sanitation; food handling, display and storage; and food sources and food labeling.

The format of the Wisconsin Food Code is different from that of most state administrative rules. DATCP and DHS are authorized, under s. 227.14(1s), Stats., to use the drafting format of the federal model food code. This rule follows that authorized format.

#### ***Related rules or statutes***

Related statutes include Ch. 97, Stats., titled “Food Regulation”, and food safety rules in Chs. ATCP 55 to 88, Wis. Adm. Code.

#### ***Plain language analysis***

This rule updates the Wisconsin Food Code to be consistent with the 2009 edition of the federal model food code. The rule amends the code to be consistent with the revised numbering and new prioritization system found in the 2009 edition and also makes other updates and minor changes to clarify current rules.

#### ***Background***

The United States Food and Drug Administration publishes the federal model food code to provide practical, science-based guidance and enforceable provisions for mitigating risk factors known to cause foodborne illness. While the model food code is not federal law, it serves as a model for state and local regulation of retail food establishments. Forty-nine states based their retail food regulations on a version of the federal model food code. The model food code was modified and published in 1999, 2001, 2005, and 2009.

The Department of Agriculture, Trade and Consumer Protection (DATCP) currently licenses and inspects 3,667 retail food establishments, under s. 97.30, Stats. These retail food establishments include grocery stores, bakeries, and convenience stores. In addition, s. 97.41, Stats., allows cities and counties to choose to contract with DATCP as local agents and inspect retail food establishments in their jurisdiction. Currently, 44 local agents contract with DATCP to inspect 6,127 retail food establishments.

Concurrently, the Department of Health Services (DHS) will propose an identical version of DATCP’s food code for their administrative rules so that the same rules will also apply to the restaurants they inspect. DHS also operates a local agent program that allows cities and counties to contract to inspect restaurants in their jurisdiction. This rule-making is a joint effort by DATCP and DHS to maintain consistent and up-to-date standards for all retail food operations. Some grocery stores include restaurants, and vice-versa. DATCP and DHS coordinate their licensing and inspection activities so that there is no regulatory overlap.

In addition to the extensive collaboration between DATCP and DHS, input has been sought from key stakeholders, including local health departments and the retail food industry. This rule was developed in consultation with an advisory committee that included local health agencies (large and small), the Wisconsin Grocers Association, the Wisconsin Restaurant Association, the Tavern League of Wisconsin, Wisconsin Technical Colleges, the Wisconsin Department of Public Instruction and the University of Wisconsin–Madison, Department of Food Science.

DATCP has adopted the model food code as an Appendix to Ch. ATCP 75, Wis. Adm. Code (the Wisconsin Food Code). DHS has adopted the model food code as an Appendix to Ch. DHS 196, Wis. Adm. Code.

#### ***Rule content***

This rule updates the Wisconsin Food Code, which was last updated in 2006, and was based on the 2005 federal model food code. Although the substance of most of the provisions of the Wisconsin Food Code has not changed, this rule has been amended to be consistent with the internal formatting and prioritization system changes in the 2009 federal model food code. These changes include (1) the removal of the entire numbering system of definitions, (2) the use of new terms reflecting the internal prioritization system within the food code, and (3) the use of different superscript letters (reflecting the changed terms) throughout the Wisconsin Food Code.

In addition to changes in prioritization and formatting, the rule does the following:

#### ***Definitions***

- The term “potentially hazardous food” has been replaced with “potentially hazardous food (time/temperature control for safety food)” to be consistent with the federal model food code and to clarify that “potentially hazardous food” is food that requires time and/or temperature control to promote food safety.
- “Potentially hazardous foods (time–temperature control for safety foods)” now include “cut leafy greens” and “cut tomatoes”.

#### ***Food Establishment Management and Personnel***

- “Food allergy awareness” has been added as part of the food safety training required to be provided to employees by the “person in charge”.
- Food establishment managers are required to inform food employees of their responsibility to report certain symptoms of illness, as they relate to diseases transmittable through food. As a result of certain symptoms or diseases, activities of food employees temporarily may be limited.
- Food employees’ bare-hand contact with ready-to-eat foods is restricted to certain limited conditions, using the detailed guidelines in the model food code (special training requirements by management must be implemented).

#### ***Food Safety and Labeling***

- Frozen, commercially processed, and packaged raw animal foods (*e.g.*, meat) are exempted from the requirement that they be separated from ready-to eat foods (raw or cooked) during storage.
- Serving hamburgers and other ground meats in an undercooked form upon a consumer’s request is no longer an option for items offered on a children’s menu.
- Certain requirements related to methods for processing of foods stored in reduced-oxygen packaging, such as “cook–chill” and “sous vide”, are described.
- Criteria are provided for using a non-continuous process for cooking of raw animal foods (meat, in particular).

## ***Federal and surrounding state programs***

### *Federal Programs*

Federal law, like state law, generally prohibits the sale of adulterated or misbranded food. There are no federal regulations that specifically address retail food operations. However, FDA publishes a model food code that is based on the best available science and information related to retail food safety.

The FDA (part of the United States Department of Health and Human Services), and the United States Department of Agriculture encourage state and local governments to adopt retail food safety regulations that are consistent with the federal model food code. The current Wisconsin Food Code is based on the 2005 edition of the federal model food code. This rule updates the Wisconsin Food Code to incorporate changes contained in the 2009 edition of the federal model food code.

### *State Programs*

The states adjacent to Wisconsin have all adopted retail food regulations based on some version of the federal model food code:

Minnesota – Minnesota's current regulations are based on the 1997 edition of the federal model food code.

Iowa – Iowa's current regulations are based on the 2005 edition of the federal model food code. Iowa reported they plan to update their rules to the 2009 food code.

Illinois – Illinois' current regulations are based on the 2005 edition of the federal model food code.

Michigan – Michigan's current regulations are based on the 2005 edition of the federal model food code.

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

No supporting documents were used. DATCP relied on information obtained through an advisory group (See Data and Analytical Methodologies, below), as well as any comments received through the Economic Impact Analysis comment period.

### ***Data and analytical methodologies***

This rule is based primarily on the *Model Food Code 2009*, U. S. Department of Health and Human Services, Public Health Service, Food and Drug Administration, College Park, MD 20740. In developing the rule, DATCP and DHS sought input from an advisory group that included local health agencies, the Wisconsin Grocers Association, the Wisconsin Restaurant Association, the Tavern League of Wisconsin, Wisconsin Technical Colleges, the Wisconsin Department of Public Instruction, and the UW–Madison Department of Food Science. Surrounding states were contacted to determine the extent to which they have adopted the 2009 federal model food code.

### ***Standards incorporated by reference***

This rule incorporates, by reference, U. S. Public Health

Service, Food and Drug Administration National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish, 2009, and U. S. Public Health Service Publication, Food and Drug Administration, Grade "A" Pasteurized Milk Ordinance, 2011. Consent has been requested from the Attorney General to incorporate these standards by reference. A copy of these documents will be kept on file with DATCP and the Legislative Reference Bureau. The National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish is also available in electronic format at: [http://www.issc.org/client\\_resources/2009%20nssp%20guide/2009%20nssp%20guide%20updated%2008-08-2011.pdf](http://www.issc.org/client_resources/2009%20nssp%20guide/2009%20nssp%20guide%20updated%2008-08-2011.pdf) and the 2011 version of the Grade "A" Pasteurized Milk Ordinance may be found in electronic format at: <http://www.fda.gov/downloads/Food/FoodSafety/ProductSpecificInformation/MilkSafety/NationalConferenceonInterstateMilkShipmentsNCIMSMModelDocuments/UCM291757.pdf> DATCP Contact.

### **Fiscal Estimate**

Revisions to Chapter ATCP 75 and the Wisconsin Food Code will have no ongoing fiscal effect on state or local government. Proposed revisions will not significantly alter state or local retail food enforcement activities.

Staff time for developing and drafting the rule revisions, conducting public hearings and finalizing the rule, and training affected personnel and businesses on the revisions, should be no more than 1000 hours.

Cost to local government agencies would be limited to staff time to attend training. A complete fiscal estimate is attached.

### **Business Impact Analysis and Effects on Small Business**

This rule is not expected to have a major impact on business, including small business, because the food sanitation requirements contained in this rule are similar to those that currently apply. This rule will require some additional training of retail food establishment personnel. However, it should not be necessary for retail food establishments to hire additional professional services to comply with this rule.

DATCP will provide training, fact sheets, and handouts to Wisconsin retail food establishments, including small businesses, to help explain and implement the modified requirements contained in this rule.

### **DATCP Contact**

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

Mr. Tim Anderson

Chief, Regulatory and Technical Services

Department of Agriculture, Trade and Consumer Protection–Division of Food Safety

P.O. Box 8911

Madison, WI 53708–8911

Telephone (608) 224–4716

E–mail: [Timothy.Anderson@wisconsin.gov](mailto:Timothy.Anderson@wisconsin.gov)

STATE OF WISCONSIN DEPARTMENT OF ADMINISTRATION DOA 2049 (R 07/2011)		
<b>ADMINISTRATIVE RULES                  FISCAL ESTIMATE AND                  ECONOMIC IMPACT ANALYSIS</b>		
Type of Estimate and Analysis		
<input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected		
Administrative Rule Chapter, Title and Number		
Appendix to ATCP 75, Retail Food Establishments		
Subject		
Revision to ATCP 75 appended Wisconsin Food Code		
Fund Sources Affected	Chapter 20 , Stats. Appropriations Affected	
<input checked="" type="checkbox"/> GPR <input type="checkbox"/> FED <input checked="" type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S	20.115 (1) (1a) and 20.115 (1) (gb)	
Fiscal Effect of Implementing the Rule		
<input checked="" type="checkbox"/> No Fiscal Effect Indeterminate	<input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Decrease Existing Revenues	<input type="checkbox"/> Increase Costs <input checked="" type="checkbox"/> Could Absorb Within Agency's Budget <input type="checkbox"/> Decrease Costs
The Rule Will Impact the Following (Check All That Apply)		
<input type="checkbox"/> State's Economy <input checked="" type="checkbox"/> 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		
<p>This rule will update the Wisconsin Food Code for retail food establishments, which is included as an appendix to chapter ATCP 75, Retail Food Establishments. The United States Food and Drug Administration (FDA) publishes the federal model food code to provide practical, science-based guidance and enforceable provisions for mitigating risk factors known to cause foodborne illness. FDA updates the food code every four years. The Wisconsin Food Code for retail food establishments was last updated in 2006 and is based on the 2005 federal model food code.</p> <p>This rule generally does the following:</p> <ul style="list-style-type: none"> <li>• Incorporates the 2009 federal model food code into the Wisconsin Food Code for retail food establishments to reflect current food science standards. The revised rule clarifies previously undefined terms and will reduce error in interpreting the rules.</li> <li>• Makes technical and other minor changes to correct or update the current rules relating to retail food establishments and the Wisconsin Food Code.</li> <li>• Coordinates DATCP's licensing requirements for food establishments with the licensing requirements for restaurants, which are regulated by the Department of Health Services (DHS) under DHS's Admin. Code DHS 196, Restaurants. The agencies have collaborated to consistently modify their food codes.</li> </ul>		

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)

### **Businesses and Business Sectors**

This rule applies to retail food establishments regulated by DATCP under Admin. Code ATCP 75, Retail Food Establishments. Specific businesses affected include groceries, bakeries, and convenience stores. DATCP licenses 3,667 of these retail food establishments. In addition, s. 97.41, Stats., allows cities and counties to choose to contract with DATCP as local agents to inspect retail food establishments in their jurisdiction. Currently, 44 local agents contract with DATCP to inspect 6,127 retail food establishments. The rule will also apply to these establishments. The Department of Health Services (DHS) is proposing identical rules for the restaurants they inspect, as well as restaurants inspected under their local agent program.

DATCP worked with DHS and sought advice about the content and potential impact of the rule from an advisory group that included local health agencies, the Wisconsin Grocers Association, the Wisconsin Restaurant Association, the Tavern League of Wisconsin, Wisconsin Technical Colleges, the Wisconsin Department of Public Instruction, and the UW–Madison Department of Food Science.

Although DATCP worked with an advisory group to determine the impact of the rule, it is unable to specifically quantify the compliance costs to businesses of this rule due to unavailability of specific data. But DATCP does not expect the proposed rule to have a significant economic or fiscal impact on large or small retail food establishments licensed by DATCP. It is likely that many establishments have already implemented the requirements contained in the rule and will incur no additional compliance costs. The department also expects that retail food establishments will be able to implement this rule with their existing personnel. DATCP will assist with providing training materials to businesses. Finally, the rule will not increase licensing fees for retail food establishments.

### **Local Governmental Units**

Revisions to the Wisconsin Food Code will have no ongoing fiscal effect on state or local government. Proposed revisions will not significantly alter state or local retail food enforcement activities. Cost to local government agencies would be limited to staff time to attend training offered by the department. This training will be incorporated into annual training the department already provides to local food enforcement officials.

### **Public Utility Rate Payers**

The rule will have no impact on public utility rate payers as a group.

### **State's Economy**

This rule will not adversely affect the economy, productivity, jobs or the economic competitiveness of the state. Adopting this rule, as other states across the country also adopt rules based on the 2009 federal model food code, may help Wisconsin retail food companies operate more efficiently if they have locations in multiple states.

### **General Implementation Costs**

The department will provide training, fact sheets, and handouts to Wisconsin retail food establishments and our regulatory partners to help implement the modified requirements contained in this rule. The cost for these outreach activities is estimated to be \$2,500 or less and will be covered by the department's existing budget. Staff time for developing and drafting the rule revisions, conducting public hearings and finalizing the rule, followed by delivery of limited training on the revisions, should be no more than 1,000 hours.

### **Economic Impact Analysis Comments**

DATCP posted the proposed rule online as required under Wis. Stat. s. 227.137 and solicited comments from businesses, local government units, and the public about the potential economic impact of the rule.

The department did not receive any comments about the potential economic impact of the rule.

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

*Benefits of Implementing the Rule*

This rule will benefit retail food establishments and the general public.

**Retail Food Establishments**

This rule will help small businesses maintain public confidence in the retail food supply by adopting the most current, generally accepted practices for reducing risk associated with foodborne illness. A foodborne illness outbreak has the potential to decrease sales and threaten the economic viability of an industry. The rule will also clarify certain requirements. For example, requirements related to methods of reduced oxygen packaging are described in the rule and criteria for non-continuous cooking have been added, making it easier for businesses to safely prepare food using these methods. Also, the revised rule has been directly compared and altered along with DHS's proposed rule to change its version of the food code, which will also help prevent inconsistent regulation of retail food establishments and restaurants.

**General Public**

Retail establishments that implement the 2009 model food code will be using the most current methods identified by FDA as effective for protecting public health and ensuring food provided to consumers at retail food establishments is safe.

*Alternative to Implementing the Rule*

If the rule is not adopted, retail food establishments will continue to be regulated under the version of the Wisconsin Food Code which is based on the 2005 edition of the federal model food code and Wisconsin's regulations will not be consistent with current best practice. As other states adopt the 2009 version of the food code, Wisconsin's code could become outdated and inconsistent with national standards. In order to be a full partner in an integrated national food safety system, Wisconsin must comply with the FDA Retail Food Regulatory Program Standards, which require Wisconsin to have an up-to-date regulatory foundation for its program activities. Failure to adopt this rule may jeopardize Wisconsin's ability to integrate into the national food safety system and obtain technical and funding assistance from FDA.

## Long Range Implications of Implementing the Rule

There are no long range fiscal implications of implementing the rule. In the long run, the rule changes will benefit businesses and the general public by better protecting public health through use of current practices for preventing foodborne illness.

## Compare With Approaches Being Used by Federal Government

Federal law, like state law, generally prohibits the sale of adulterated or misbranded food. There are no federal regulations that specifically address retail food operations. However, FDA publishes a model food code that is based on the best available science and information related to retail food safety. FDA and the United States Department of Agriculture encourage state and local governments to adopt retail food safety regulations that are consistent with the federal model food code. The current Wisconsin Food Code is based on the 2005 edition of the federal model food code. This rule updates the Wisconsin Food Code to incorporate changes contained in the 2009 edition of the federal model food code.

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

**Minnesota**– Minnesota's current regulations are based on the 1997 edition of the federal model food code.  
**Iowa**– Iowa's current regulations are based on the 2005 edition of the federal model food code. Iowa reported plans to update their food code to the 2009 version soon.  
**Illinois**– Illinois' current regulations are based on the 2005 edition of the federal model food code.  
**Michigan**– Michigan's current regulations are based on the 2005 edition of the federal model food code.

## Name and Phone Number of Contact Person

Tim Anderson  
 Chief, Regulatory & Technical Services  
 Department of Agriculture, Trade and Consumer Protection–Division of Food Safety  
 PO Box 8911  
 Madison, Wisconsin 53708–8911  
 Telephone: (608) 224–4716  
 Email: [Timothy.Anderson@wisconsin.gov](mailto:Timothy.Anderson@wisconsin.gov)

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## Rules Published with this Register and Final Regulatory Flexibility Analyses

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

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

### **Agriculture, Trade and Consumer Protection**

#### **CR 11-046**

(DATCP # 10-R-10)

The Department of Agriculture, Trade and Consumer Protection (DATCP) hereby submits an order to revise Chapter ATCP 30 Appendix A, relating to pesticide product restrictions. Effective 9-1-12.

#### **Summary of Final Regulatory Flexibility Analysis**

This rule will update existing maps in Chapter ATCP 30, Wis. Adm. Code Appendix A ("Atrazine Prohibition Areas"). These maps show areas where use of atrazine is prohibited because testing of local groundwater for the pesticide atrazine indicates that state standards have been met or exceeded.

DATCP is *not adding to or changing* any of the current Atrazine Prohibition Areas on any of the maps in Appendix A. Maps presently being used contain surface features that require updating, such as new roadways, modified street names, and other features. Moreover, current mapping software allows for reliance on data from numerous sources to provide for improved accuracy in mapping. The maps in this rule provide more accurate, up-to-date maps of the same Atrazine Prohibition Areas than are presently in ch. ATCP 30 Appendix A

This rule will have no adverse economic impact on businesses, large or small. The rule will assist Wisconsin businesses that use atrazine because the rule revises maps that have become or are becoming outdated due to the passage of time. Using updated maps that contain correct street names, new roadways, and other mapped features will reduce confusion for users of atrazine and make it easier to prevent the inadvertent applications of that pesticide where it is prohibited due to its detection in groundwater.

#### **Summary of Comments of Legislative Standing Committees**

On March 6, 2012, DATCP transmitted the above rule for legislative review. The rule was assigned to the Senate Committee on Energy, Biotechnology, and Consumer Protection and the Assembly Committee on Agriculture. Neither committee took action on the rule. The Senate referred the rule to the Joint Committee for Review of Administrative Rules (JCRAR) on April 9, 2012, and the Assembly referred the rule to JCRAR on May 17, 2012. JCRAR took no action on the rule.

### **Insurance**

#### **CR 10-151**

The Office of the Commissioner of Insurance hereby submits an order to revise Chapters Ins 2, 7, and 28, relating

to life settlements and affecting small business. Effective 9-1-12.

#### **Summary of Final Regulatory Flexibility Analysis**

The office of the Commissioner of Insurance has determined that this rule will not have a significant economic impact on a substantial number of small businesses and therefore a final regulatory flexibility analysis is not required.

#### **Summary of Comments of Legislative Standing Committees**

No comments were received.

### **Justice**

#### **CR 11-036**

The Wisconsin Department of Justice submits an order to revise Chapter Jus 10, relating to firearms restriction records searches. Effective 9-1-12.

#### **Summary of Final Regulatory Flexibility Analysis**

There are no provisions in this rule that have any significant effect on small business.

#### **Summary of Comments of Legislative Standing Committees**

No comments were reported.

### **Natural Resources**

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

#### **CR 11-032**

(DNR # WM-11-11)

The Wisconsin Department of Natural Resources submits and order to revise Chapter NR 10, relating to hunting and the 2011 migratory game bird seasons and waterfowl hunting zones. Effective 9-1-12.

#### **Summary of Final Regulatory Flexibility Analysis**

These rules are applicable to individual sportspersons and impose no compliance or reporting requirements for small business, nor are any design or operational standards contained in the rule. Therefore, under s. 227.19 (3m), Stats., a final regulatory flexibility analysis is not required.

#### **Summary of Comments of Legislative Standing Committees**

No comments were reported.

### **Natural Resources**

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

#### **CR 11-049**

(DNR # FH-25-11)

The Wisconsin Department of Natural Resources submits and order to revise section NR 25.05 (1) (c), relating to commercial fishing in outlying waters. Effective 9-1-12.

### Summary of Final Regulatory Flexibility Analysis

The proposed rule does not impose any additional compliance or reporting requirements on small businesses nor are any design or operational standards contained in the rule. The Department has determined that this rule would not adversely affect in a material way the economy, a sector of the economy, productivity, jobs, or the overall economic competitiveness of this state. This rule will have a positive economic effect on commercial fishing businesses as well as Wisconsin-licensed wholesale fish dealers. Increased revenues will contribute toward the health and welfare of these businesses. There would be no implementation or compliance costs expected to be incurred by the proposed rule. No fiscal impacts are expected for public utility rate payers or local governmental units. This determination was made after conducting an economic impact analysis. The Department requested economic impact comments from all Wisconsin-licensed commercial fishers, the Lake Michigan Commercial Fishing Board, 17 port city mayors offices and the same cities' chambers of commerce, the Wisconsin Wildlife Federation, Wisconsin Conservation Congress, Wisconsin Federation of Great Lakes Sport Fishing Clubs, UW Sea Grant, the Great Lakes Indian Fish and Wildlife Commission, and Wisconsin-licensed wholesale fish dealers, as well as posted the proposed rule documents to the Department website and the Wisconsin Administrative Rules website.

### Summary of Comments of Legislative Standing Committees

No comments were received.

## Revenue CR 12-014

The Wisconsin Department of Revenue adopts an order to: repeal sections Tax 11.001 (2) (bw), 11.28 (3) (c) 1. b. (Example 1), 11.66 (2) (a) 9., 11.84 (2) (c) 2. and 3., 11.92 (1) (d) 3., and 11.96 (2) (g) and (h); renumber sections Tax 11.32 (7); renumber and amend sections Tax 11.05 (3) (b) and 11.83 (3) (a); amend sections Tax 1.12 (8) (c), 11.001 (1), (2) (e), and (3) (Note), 11.04 (1), 11.05 (4) (a) and (Note), 11.12 (3), 11.14 (2) (a) 3., (6) (b) 1., (8), (9), (10) (intro.), and (13) (b), 11.15 (3) (a), 11.17 (4) (b) 6., 11.26 (3) (b) (Example 1) and (Example 3) and (Note), 11.28 (3) (c) 1. (intro.), a., and b. and (7) (Note), 11.32 (6) (Example) and (8) (Note), 11.33 (5) (title), 11.34 (1) and (3) (a) and (b) (intro.), 11.35 (1), 11.49 (2) (b) and (d), 11.51 (2) (a) and (b) and (4) (b) 1. (Example) and 2. (Example 1) and (d) 1. (intro.), a., and b., 11.65 (4) (b), 11.66 (3) (a) 2. and 3., (b), and (c), 11.68 (13) (title), (a), (c), (d), (e), and (Note), 11.70 (7) (a) 2. and (Note), 11.71 (2) (c) (Example 2), 11.83 (11) (a) and (b), 11.84 (2) (c) 4., 11.85 (2) (b), 11.87 (4) (b), 11.88 (3) (b), 11.92 (1) (b), (d) (intro.), and (e), 11.95 (1) (a), and 11.96 (title), (1), (3) (intro.), and (Note); repeal and recreate sections Tax 11.33 (4), 11.51 (3) (a) 2., 11.84 (1) (b), and 11.97 (8); and create sections Tax 11.05 (3) (b) 2. and 3., 11.28 (3) (c) 1. a. (Example), ag., and ar., 11.32 (7) (b) and (c) and (8) (d), 11.33 (5) (b) (Example), 11.34 (3) (bg) and (br), 11.51 (3) (a) 3. to 10. and (4) (b) 3. (Example), (c) 3. (Examples) and 4. (Example), and (d) 1. b. (Examples), 11.65 (2) (L) and (4) (b) (Examples), 11.66 (2) (cm), 11.68 (4) (g), 11.83 (3) (a) (intro.) and 2. and (15), 11.84 (4) (g) to (i), 11.85 (2) (bm), 11.87 (3) (g) and (4) (b) (Examples), and 11.88(1) (bm), (3) (c), and (4m); relating to sales and use tax law changes made by 2011 Wisconsin Act 32 and other legislation. Effective 9-1-12.

### Summary of Final Regulatory Flexibility Analysis

This rule order does not affect small businesses.

### Summary of Comments of Legislative Standing Committees

No comments were reported.

## Safety and Professional Services — Cemetery Board CR 12-021

The Cemetery Board proposes an order to repeal Chapters SPS 52 to 54; and to create Chapters CB 3 to 5, relating to warehouses storing cemetery preneed merchandise, changing trustees of care or preneed trust funds, and alternative care funds investments. Effective 9-1-12.

### Summary of Final Regulatory Flexibility Analysis

These proposed rules do not have an economic impact on small businesses, as defined in s. 227.114 (1), Stats.

### Summary of Comments of Legislative Standing Committees

No comments were reported.

## Safety and Professional Services — Physical Therapy Examining Board CR 12-002

The Wisconsin Physical Therapy Examining Board proposes an order to repeal section PT 3.01 (7); to amend sections PT 1.02 (1) to (6), 1.03 (1) (c), 3.01 (1), 3.01 (4), 4.01 (4), 8.05 (intro.), and 9.01; to repeal and recreate section PT 1.01; and to create sections PT 2.001, 2.01 (1) (j), 3.001, 3.02, 4.001, 5.001, 6.001, 9.02 (1m) and (5), relating to licensure, examinations, temporary licenses, locum tenens license, referrals, and continuing education. Effective 9-1-12.

### Summary of Final Regulatory Flexibility Analysis

This rule will have no effect on small business as it is defined in s. 227.114 (1), Stats.

### Summary of Comments of Legislative Standing Committees

No comments were reported.

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

The Wisconsin Department of Safety and Professional Services proposes an order to revise Chapter SPS 333, relating to passenger ropeways and affecting small business. Effective 9-1-12.

### Summary of Final Regulatory Flexibility Analysis

These proposed rules will have an economic impact on small businesses, as defined in s. 227.114 (1), Stats., and have been submitted to the Small Business Regulatory Review Board for a determination on whether the rules will have a significant economic impact on a substantial number of small businesses.

### Summary of Comments of Legislative Standing Committees

No comments were reported.

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## Sections Affected by Rule Revisions and Corrections

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The following administrative code sections had rule revisions and corrections take place in **August 2012**, and will be effective as indicated in the history note for each particular section. For additional information, contact the Legislative Reference Bureau at (608) 266-7590.

### Revisions

#### Agriculture, Trade and Consumer Protection

##### Ch. ATCP 30

ATCP 30 Appendix A

#### Cemetery Board

##### Ch. CB 3

Entire Chapter

##### Ch. CB 4

Entire Chapter

##### Ch. CB 5

Entire Chapter

#### Commissioner of Insurance

##### Ch. Ins 2

Ins 2.18 entire section, Appendices I, II, III

##### Ch. Ins 6

Ins 6.17 Appendix 1, 2 (note)

Ins 6.19 Appendix 2 (note)

##### Ch. Ins 7

Ins 7.02 form

Ins 7.04 (2) form

##### Ch. Ins 28

Ins 28.06 (6) (a)

#### Justice

##### Ch. Jus 10

Jus 10.03 (4m)

Jus 10.095 entire section

Jus 10.11 (1)

#### Massage Therapy and Bodywork Therapy Affiliated Credentialing Board

##### Ch. MTBT 1

Entire Chapter

##### Ch. MTBT 2

Entire Chapter

##### Ch. MTBT 3

Entire Chapter

##### Ch. MTBT 4

Entire Chapter

##### Ch. MTBT 5

Entire Chapter

#### Natural Resources

##### Ch. NR 10

NR 10.01 (1) (b), (g), (u), (v)

NR 10.12 (4)

NR 10.32 entire section

##### Ch. NR 25

NR 25.05 (1) (c)

#### Physical Therapists Affiliated Credentialing Board

##### Ch. PT 1

PT 1.01

PT 1.02 (1) to (14)

PT 1.03 (1) (c)

##### Ch. PT 2

PT 2.001 entire section

PT 2.01 (1) (j)

##### Ch. PT 3

PT 3.001 entire section

PT 3.01 (1), (4), (7)

PT 3.02 entire section

##### Ch. PT 4

PT 4.001 entire section

PT 4.01 (4)

##### Ch. PT 5

PT 5.001 entire section

##### Ch. PT 6

PT 6.001 entire section

##### Ch. PT 8

PT 8.05 (intro.)

##### Ch. PT 9

PT 9.01

PT 9.02 (1m), (5)

#### Revenue

##### Ch. Tax 1

Tax 1.12 (8) (c)

##### Ch. Tax 11

Tax 11.001 (1), (2) (bw), (e)

Tax 11.04 (1)

Tax 11.05 (3) (b), (4) (a)

Tax 11.12 (3)

Tax 11.14 (2) (a), (6) (b), (8), (9), (10) (intro.), (13) (b)

Tax 11.15 (3) (a)

Tax 11.17 (4) (b)

Tax 11.26 (3) (b) (Example 1), (Example 3)



Tax 11.28 (3) (c)  
 Tax 11.32 (6) (Example), (7), (a) to (c), (8) (d)  
 Tax 11.33 (4), (5) (title), (b) (Example)  
 Tax 11.34 (1), (3) (a), (b) (intro.), (bg), (br)  
 Tax 11.35 (1)  
 Tax 11.49 (2) (b), (d)  
 Tax 11.51 (2) (a), (b), (3) (a), (4) (b), (d)  
 Tax 11.65 (2) (L), (4) (b)  
 Tax 11.65 (4) (b), (Examples)  
 Tax 11.66 (2) (a), (cm), (3) (a) to (c)  
 Tax 11.68 (4) (g), (13) (title), (a), (c) to (e)  
 Tax 11.70 (7) (a)  
 Tax 11.71 (2) (c) (Example 2)  
 Tax 11.83 (3) (a), (11) (a), (b), (15)  
 Tax 11.84 (1) (b), (2) (c), (4) (g) to (i)  
 Tax 11.85 (2) (b), (bm)  
 Tax 11.87 (3) (g), (4) (b), (Examples)

Tax 11.88 (title), (1) (bm), (3) (b), (c), (4m)  
 Tax 11.92 (1) (b), (d), (e)  
 Tax 11.95 (1) (a)  
 Tax 11.96 (title), (1), (2) (g), (h), (3) (intro.)  
 Tax 11.97 (8)

### **Safety and Professional Services**

#### **Ch. SPS 333**

SPS 333.03 (1), (3), (b), (4), (5)  
 SPS 333.12 (2)  
 SPS 333.15 (1), (2)  
 SPS 333.17 (1) to (3)  
 SPS 333.22 (1) (a) to (d)  
 SPS 333.23 entire section  
 SPS 333.24 entire section

### **Editorial Corrections**

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

#### **Natural Resources**

##### **Ch. NR 10**

NR 10.275 (4) (c), (d) 1.

#### **Safety and Professional Services**

##### **Ch. SPS 52**

##### **Ch. SPS 53**

##### **Ch. SPS 54**

##### **Ch. SPS 90**

##### **Ch. SPS 91**

##### **Ch. SPS 92**

##### **Ch. SPS 93**

##### **Ch. SPS 94**

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## Executive Orders

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**The following are recent Executive Orders issued by the Governor.**

**Executive Order 76.** Relating to a Proclamation Declaring a State of Emergency for the State of Wisconsin in Response to Drought Conditions and Incorporating Executive Order #75. **(July 18, 2012)**

**Executive Order 77.** Relating to a Proclamation of an Energy Emergency. **(July 20, 2012)**

**Executive Order 78.** Relating to the Termination of the Energy Emergency. **(July 20, 2012)**

**Executive Order 79.** Relating to Wisconsin's Response to Drought Conditions and amending Executive Order #77. **(July 24, 2012)**

**Executive Order 80.** Relating to a Proclamation that the Flag of the United States and the Flag of the State of Wisconsin be Flown at Half-Staff as a Mark of Respect for Deputy Sheriff Sergio Aleman of the Milwaukee County Sheriff's Office. **(August 3, 2012)**

**Executive Order 81.** Relating to a Proclamation that the Flag of the United States and the Flag of the State of Wisconsin be Flown at Half-Staff as a Mark of Respect for Victims of the Tragedy at the Sikh Temple of Wisconsin. **(August 6, 2012)**

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## Public Notices

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### Department of Health Services (Medicaid Reimbursement for Prescription Drugs – Medication Therapy Management)

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

#### Change in Payment Methods

The Department will be implementing a Medication Therapy Management benefit. The Medication Therapy Management benefit consists of services that are provided by a qualified, licensed pharmacist to a member, to optimize the therapeutic outcomes of that member's medications, and to reduce costs. Participation in Medication Therapy Management is voluntary and it is available to members in Wisconsin Medicaid, the BadgerCare Plus Standard Plan, the BadgerCare Plus Benchmark Plan, and the BadgerCare Plus Core Plan.

The Medication Therapy Management benefit will include two types of services: Intervention-Based Services and Comprehensive Medication Reviews and Assessments.

Intervention-Based Services are focused interventions between a pharmacist and a member. The services include the following:

- Instructing the member on using a medication device.
- Filling a pill box for a member.
- Changing a member's prescription when the member has an adverse reaction to the medication.

The prescriber must approve changes to the member's drug regimen. All members enrolled in a qualifying plan are eligible for this service.

Comprehensive Medication Reviews and Assessments (CMR/As) are comprehensive interventions between a pharmacist and a member to review the member's drug regimen. A CMR/A involves an in-depth, interactive review of the member's medication regimen, health history and lifestyle. The pharmacist must have a private or semi-private area in which to conduct the CMR/A. To be eligible for this service, a member must meet at least one of the following criteria:

- Is taking four or more prescriptions to treat two or more chronic conditions.
- Has diabetes.
- Has recently been discharged from a hospital or long-term care setting.
- Has experienced health literacy problems.
- Was referred by a prescriber due to issues that are impacting the member's health.
- Meets other criteria as defined by the Department.

Pharmacists must be specially trained through a Department-approved certification program in order to provide these services.

The change will be effective September 1, 2012, and will apply to claims with dates of service on or after that date. The change to Medicaid and BadgerCare Plus pharmacy reimbursement is projected to result in savings, reducing pharmacy expenditures by an estimated \$2.7 million All Funds (AF) in state fiscal year (SFY) 2013, composed of \$1.1 million general purpose revenue (GPR) and \$1.6 million federal match (FED). In SFY 2014, the savings are projected to be \$3.5 million AF, composed of \$1.4 million GPR and \$2.1 million FED.

## Copies of Changes

Copies of the legislative enactment directing the change and conforming state plan change may be obtained free of charge by calling or writing as follows:

Regular Mail:  
Rita Subhedar  
Bureau of Benefits Management  
Division of Health Care Access and Accountability  
P.O. Box 309  
Madison, WI 53701-0309

Fax:  
(608) 266-1096  
Attention: Rita Subhedar

Telephone:  
Rita Subhedar  
Bureau of Benefits Management  
(608) 266-3901

E-Mail:  
[rita.subhedar@wisconsin.gov](mailto:rita.subhedar@wisconsin.gov)

Copies of the state plan change will be made available for review at the main office of any county department of social services or human services.

## Written Comments

Written comments are welcome. Written comments on the proposed changes may be sent by FAX, e-mail, or regular mail to the Division of Health Care Access and Accountability. The FAX number is (608) 266-1096. The e-mail address is [rita.subhedar@wisconsin.gov](mailto:rita.subhedar@wisconsin.gov). Regular mail can be sent to the above address. All written comments will be reviewed and considered.

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

## Department of Health Services (Medical Reimbursement for Transportation Services)

The state of Wisconsin reimburses providers for services provided to low-income persons under the authority of Title XIX of the Social Security Act and sections 49.43 to 49.47, Wisconsin Statutes. The Wisconsin Department of Health Services administers this program, which is called Medical Assistance or Medicaid. In addition, Wisconsin has expanded this program to create the BadgerCare Plus programs under the authority of Title XIX and Title XXI of the Social Security Act and chapters 49.43 to 49.47 of Wisconsin Statutes. Together the Medical Assistance and BadgerCare Plus programs are referred to as ForwardHealth.

Among the providers reimbursed under the Medicaid and BadgerCare Plus programs are providers of transportation services. Recipients of medically necessary services are entitled to reimbursement for transportation services to medical appointments. Effective for dates of service on and after July 1, 2011, Wisconsin Medicaid and BadgerCare Plus began to provide transportation services through the use of a transportation manager. However, after that date, individuals who are enrolled in managed care in Milwaukee, Waukesha, Kenosha, Racine, Ozaukee, and Washington counties continued to receive transportation services through the managed care organizations who provide their health care services. Effective for dates of service on and after September 1, 2012, individuals in those counties – Milwaukee, Waukesha, Kenosha, Racine, Ozaukee, and Washington – will also begin to receive transportation services through the use of a transportation manager. Through a request for proposal (RFP) process, the Department of Health Services selected LogistiCare, LLC (LogistiCare) to provide transportation services through the transportation broker system. The transportation manager will begin to provide transportation services to Medicaid and BadgerCare Plus recipients in the six Wisconsin counties which were previously excluded from the use of the transportation manager.

The transportation manager system will be a more efficient way to deliver transportation services by providing a centralized way to provide these services. By centralizing administration of these services, it will also make it possible for the Department to control fraud or misuse of these services.

The cost of providing these services will not change. It is hoped that the efficiencies inherent in the transportation manager model will eventually result in some savings. However, current projections are for a fiscal impact of no change in costs to the federal government (FED), in the general purpose revenue (GPR), and in those two amounts together, referred to as all funds (AF). Federal fiscal year (FFY) 2012 began on October 1, 2011 and ends on September 30, 2012, while FFY 2013 will begin October 1, 2012 and end September 30, 2013.

**Written Comments and Copies of the Proposed Change:**

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

Regular Mail

Rob Thomas  
Division of Health Care Access and Accountability  
PO Box 309  
Madison, WI 53701-0309

Phone

Rob Thomas  
Division of Health Care Access and Accountability  
(608) 267-3551

FAX

(608) 261-7793

Attention: Rob Thomas

E-Mail

[rob.thomas@dhs.wisconsin.gov](mailto:rob.thomas@dhs.wisconsin.gov)

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

**Written Comments:**

Written comments are welcome. Written comments on the proposed change may be sent by FAX, e-mail, or regular mail to the Division of Health Care Access and Accountability. The FAX number is (608) 261-7793. The e-mail address is [rob.thomas@dhs.wisconsin.gov](mailto:rob.thomas@dhs.wisconsin.gov). Regular mail can be sent to the above address. All written comments will be reviewed and considered.

All written comments received will be available for public review between the hours of 7:45 a.m. and 4:30 p.m. daily in Room 472 of the State Office Building, 1 West Wilson Street, Madison, Wisconsin. Revisions may be made based on comments received.

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