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WISCONSIN ADMINISTRATIVE REGISTER

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(Revised Notice — Original published September 30, 2013, Register No. 693)

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Emergency Rules Now in Effect

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

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

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

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

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

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

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

Administration

EmR1309 — The Department of Administration hereby adopts an order to create **Chapter Adm 93**, relating to the community development block grant program.

The statement of scope for this rule, SS 041–13, was approved by the Governor on April 15, 2013, and published in Register No. 688 on April 30, 2013, and approved by the Department of Administration Secretary, Mike Huebsch, effective May 13, 2013. This emergency rule was approved by the Governor on June 19, 2013.

Finding of Emergency

Each year the federal government makes funding available to the several states for economic and housing development through a program known as the Community Development Block Grant Program (CDBG). The CDBG is governed under 42 USC 5301 to 5319 and 24 CFR Part 570, and is administered by the US Department of Housing and Urban Development (HUD). Since the dissolution of the Wisconsin Department of Commerce, the Wisconsin Department of Administration (DOA) has received CDBG grants from HUD, and entered into agreements with the Wisconsin Economic Development Corporation (WEDC) for the

administration of those funds. Under this arrangement, state administrative code Chapter Commerce 108 was unneeded, as WEDC operated under substantially similar internal policies. Recently, DOA and WEDC have mutually determined that the expertise of DOA is better suited to administration of CDBG funds, while the expertise of WEDC is best suited to consultation with localities and businesses seeking to access CDBG funds. The parties intend to formalize the transfer of administrative responsibility of CDBG funds to DOA shortly. Consequently, it is imperative for the welfare of the State of Wisconsin that administrative code provisions concerning the CDBG program be made.

Filed with LRB: June 28, 2013

Publication Date: July 1, 2013

Effective Dates: July 1, 2013 through
November 27, 2013

Agriculture, Trade and Consumer Protection (3)

1. EmR1311 — 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 quarantine of Jefferson County for emerald ash borer.

This emergency rule was approved by the Governor on July 15, 2013.

The blanket statement of scope for this rule, SS 0088–12, was approved by the Governor on November 8, 2012, published in Register No. 683, on November 30, 2012, and approved by the Board of Agriculture, Trade and Consumer Protection as required by s. 227.135 (2), Stats., on December 18, 2012.

Finding of Emergency

On June 25, 2013, the Wisconsin Department of Natural Resources positively identified Emerald Ash Borer (EAB) in Walworth County at the University of Wisconsin Whitewater Campus, about 750 meters from the Jefferson County line. EAB is an exotic, invasive 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 a quarantine for Jefferson 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.

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 24, 2013

Publication Date: July 24, 2013

Effective Dates: July 24, 2013 through
December 20, 2013

2. EmR1312 — The state of Wisconsin Department of Agriculture, Trade and Consumer Protection hereby adopts the following emergency rule to to amend **section ATCP**

21.17 (1) (b) and to create **section ATCP 21.17 (1) (d)**, relating to the quarantine of Sauk County for emerald ash borer.

The blanket statement of scope for this rule, SS 08–12, was approved by the Governor on November 8, 2012, published in Register No. 683, on November 30, 2012, and approved by the Board of Agriculture, Trade and Consumer Protection (as required by s. 227.135 (2), Stats.) on December 18, 2012.

This emergency rule was approved by the Governor on August 1, 2013.

Finding of Emergency

On July 11, 2013, the United States Department of Agriculture — Animal and Plant Health Inspection Service (“APHIS”) positively identified Emerald Ash Borer (“EAB”) in Sauk County at Mirror Lake State Park. EAB is an exotic, invasive 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 a quarantine for Sauk 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.

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: August 13, 2013
Publication Date: August 14, 2013
Effective Dates: August 14, 2013 through January 10, 2014

3. EmR1315 — 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) (e)**, relating to the quarantines of Dodge, Douglas, and Winnebago counties for emerald ash borer.

This emergency rule was approved by the Governor on August 29, 2013.

The blanket statement of scope for this rule, SS 0088–12, was approved by the Governor on November 8, 2012, published in Register No. 683, on November 30, 2012, and approved by the Board of Agriculture, Trade & Consumer Protection (as required by s. 227.135 (2), Stats.) on December 18, 2012.

Finding of Emergency

The United States Department of Agriculture — Animal and Plant Health Inspection Service (“APHIS”) positively identified Emerald Ash Borer (“EAB”) in Watertown, Dodge County on August 1, 2013; in Black Wolf township, Winnebago County on August 6, 2013; and subsequently in Superior, Douglas County on August 13, 2013. EAB is an exotic, invasive 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 a quarantine for Dodge, Douglas, and Winnebago counties 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.

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: September 11, 2013
Publication Date: September 11, 2013
Effective Dates: September 11, 2013 through February 7, 2014
Hearing Date: October 11, 2013

Employment Relations Commission

EmR1310 — The Wisconsin Employment Relations Commission hereby creates **Chapters ERC 70, 71, and 80**, relating to annual certification elections.

This emergency rule was approved by the Governor July 3, 2013.

The statement of scope for this rule, SS 045–13, was approved by the Governor on April 19, 2013, published in Register 689, on May 14, 2013, and approved by the Wisconsin Employment Relations Commission on June 3, 2013.

Finding of Emergency

An emergency exists because the public peace, health, safety and welfare necessitate putting these rules into effect so that the Wisconsin Employment Relations Commission can meet its obligation to conduct annual certification elections as required by ss. 111.70 (4) (d) 3. b. and 111.83 (3) (b), Stats.

Filed with LRB: July 15 2013
Publication Date: July 13, 2013
Effective Dates: July 13, 2013 through December 9, 2013

Insurance (2)

1. EmR1306 — The Commissioner of Insurance adopts an order to amend **sections Ins 17.01 (3) and 17.28 (3) (c)** and to repeal and recreate **section Ins 17.28 (6)**, Wis. Admin. Code, relating to Injured Patients and Families Compensation Fund Annual Fund and Mediation Panel Fees, and ISO code amendments for the fiscal year beginning July 1, 2013, and affecting small business.

This emergency rule was approved by the Governor on June 4, 2013.

The statement of scope for this rule, SS 042–13, was approved by the Governor on April 16, 2013, published in Register No. 688, on April 30, 2013, and approved by the Commissioner on May 10, 2013.

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 prior to July 1, 2013, in order for the new fiscal year assessments to be issued in accordance with s. 655.27 (3), Wis. Stats. The permanent rule-making process cannot be completed prior to the effective date of the new fee schedule. The fiscal year fund fees were established by the Board of Governors at the meeting held on December 19, 2012, and the mediation panel

fees were established by the Board of Governors at the meeting held on March 20, 2013.

Filed with LRB: June 10, 2013
Publication Date: June 12, 2013
Effective Dates: June 12, 2013 through November 8, 2013
Hearing Date: July 23, 2013

2. EmR1314 — The Commissioner of Insurance proposes an order to create **Chapter Ins 6 subch. II, subch. II (title), and sections Ins 6.91 to 6.98**, relating to navigators, nonnavigator assisters, and related entities and affecting small business.

The statement of scope for this rule SS 078–13, was approved by the Governor on July 1, 2013, published in Register No. 691, on July 15, 2013, and approved by the Commissioner on July 26, 2013. This emergency rule was approved by the Governor on August 30, 2013.

Finding of Emergency

In accordance with s. 623.98, Stats., the commissioner may promulgate rules under ss. 227.24 (1) (a) and (3), Stats., without providing evidence that promulgating a rule is necessary for the preservation of the public peace, health, safety, or welfare and without a finding of emergency. The commissioner intends to publish the proposed rule sufficiently in advance of October 1, 2013 to permit proper licensing, certification, and training of navigators and nonnavigator assisters and to permit proper registration of navigator and nonnavigator assister entities. The commissioner intends to promulgate permanent rules close in time to the emergency rules so not to create a gap in requirements.

Filed with LRB: September 5, 2013
Publication Date: September 10, 2013
Effective Dates: September 10, 2013 through February 6, 2014
Hearing Date: September 27, 2013

Natural Resources (4)

Fish, Game, etc., Chs. NR 1—

1. EmR1210 (DNR # WM–09–12(E)) — 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 the date on which the permanent rules take effect, as provided in 2011 Wisconsin Act 169, section 21.

2. EmR1215 (DNR # WM–16–12(E)) — The Wisconsin Natural Resources Board proposes an order to repeal and recreate **section NR 10.01 (3) (h) 1.**, relating to the coyote hunting season.

This emergency rule was approved by the Governor on August 30, 2012.

The statement of scope for this rule, SS 038–12, was approved by the Governor on May 29, 2012, published in Register No. 678, on June 14, 2012, and approved by the Natural Resources Board on June 27, 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: September 14, 2012
Publication Date: October 1, 2012
Effective Dates: October 1, 2012 through the date on which the permanent rules take effect, as provided in 2011 Wisconsin Act 169, section 21.

3. EmR1304 (DNR # FH–23–12(E)) — The Wisconsin Natural Resources Board proposes an order to amend **sections NR 20.20 (73) (n) 4., 25.06 (1) (a), and 25.09 (1) (am) 3. e.**, relating to lake trout harvest limits in Lake Superior.

The statement of scope for this rule, SS 097–12, was approved by the Governor on December 14, 2012, published in Register No. 684 on December 31, 2012, and approved by the Natural Resources Board on January 23, 2013.

Finding of Emergency

Pursuant to s. 227.24, Stats., the department finds that an emergency exists and that this rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. The welfare of state–licensed commercial fishers, tribal commercial fishers, recreational anglers, and associated businesses is threatened by a decline in the lake trout population in the Apostle Islands vicinity of Lake Superior. The continued, persistent decline in lake trout population abundances and predicted further declines necessitate the current reductions in order to ensure a sustainable lake trout fishery over the long–term. Lake trout harvest limits were negotiated in October 2012 among the Department of Natural Resources and the Red Cliff and Bad River Bands of Lake Superior Chippewa and those changes must be ordered through administrative code. This emergency rule is needed to preserve the public welfare.

Filed with LRB: March 9, 2013

Publication Date: March 27, 2013
Effective Dates: March 27, 2013 through August 23, 2013
Hearing Date: April 11, 2013
Extension Through: October 22, 2013

4. EmR1313 (DNR # WMH-07-13(E)) — The Wisconsin Natural Resources Board proposes an order to repeal **section NR 10.06 (9) (b)**; to amend **section NR 10.01 (1) (v)**; to repeal and recreate **sections NR 10.01 (1) (b) to (u) and 10.12 (3) (c)**; and to create **section NR 10.12 (3) (e)**, relating to migratory bird hunting regulations.

This emergency rule was approved by the Governor on August 30, 2103.

The statement of scope for this rule, SS 018-13, was approved by the Governor on February 18, 2013, published in Register No. 687, on March 14, 2013, and approved by the Natural Resources Board on April 24, 2013.

Statutory Authority

The chapter on wild animals and plants, in s. 29.014, Stats., “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 promulgate rules related to migratory game bird hunting. Additional statutory authority is found in ss. 23.11, 29.192 and 29.041, Stats. The emergency rule making process is established in s. 227.24, Stats.

Filed with LRB: September 4, 2013
Publication Date: September 6, 2013
Effective Dates: September 6, 2013 through February 2, 2014

Safety and Professional Services (3)

Professional Services, Chs. SPS 1—299

1. EmR1302 — The Wisconsin Department of Safety and Professional Services hereby adopts an order to amend **sections SPS 60.01; SPS 61.02 (1) (a), (2) (a), (3) (a), and (4) (a); 62.10 (title) and 62.10; 65.01; 65.02 (1); 65.07; and 65.12 (1) (h) and (i) 6.**; and to create **chapter SPS 205** relating to barbers and to barbering and cosmetology schools and instructors, and affecting small business.

This emergency rule was approved by the Governor on February 5, 2013.

The statement of scope for this rule, SS 063-12, was approved by the Governor on August 10, 2012, published in Register 680, on August 31, 2012, and approved by Secretary Dave Ross on October 15, 2012.

Finding of Emergency

The Department of Safety and Professional Services finds that an emergency exists within the state of Wisconsin and that adoption of an emergency rule is necessary for the immediate preservation of the public health, safety and welfare. A statement of the facts constituting the emergency is as follows.

On July 1, 2012, 2011 Wisconsin Act 190 transferred regulatory authority over barbers from the Barbering and Cosmetology Examining Board to the Department of Safety and Professional Services. Act 190 also changed the educational requirements for initial licensure of barbers, and

the continuing-education requirements for renewal of barber licenses. Due to the transfer of authority and the changes in education requirements, immediate rulemaking by the Department is needed to implement corresponding rule changes prior to April 1, 2013, which is the renewal date mandated by section 440.08 (2) (a) of the Statutes for all barbering licenses.

Filed with LRB: February 14, 2013
Publication Date: February 14, 2013
Effective Dates: February 14, 2013 through July 13, 2013
Hearing Date: April 30, 2013
Extension Through: November 9, 2013

2. EmR1307 — The Wisconsin Department of Safety and Professional Services adopts an order to repeal **section SPS 81.04 (1) (c) 3. and 4.**, and to amend **section SPS 81.04 (2)**, relating to reciprocity.

This emergency rule was approved by the Governor on May 20, 2013.

The statement of scope for this rule, SS 012-13, was approved by the Governor on January 28, 2013, published in Register No. 686 on February 14, 2013, and approved by the Department of Safety and Professional Services on February 28, 2013.

Finding of Emergency

The Department of Safety and Professional Services finds that an emergency exists and that this rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. A statement of facts constituting the emergency is as follows:

Title XI of the Federal Financial Institutions Reform and Recovery Enforcement Act of 1989, as amended by the Dodd-Frank Act of 2010, dictates reciprocity requirements for real estate appraisers in each state. The federal body that oversees reciprocity requirements is the Appraisal Subcommittee (ASC). Currently, Wis. Admin. Code s. SPS 81.04 is not in compliance with the federal legislation. The Code must be brought into compliance by July 1, 2013. At that time, the ASC will conduct an audit to determine which states are in compliance. If Wisconsin is designated “out of compliance,” then federally regulated financial institutions may not engage a Wisconsin certified or licensed appraiser to perform an appraisal of property for a federally related transaction and other states will not be required to recognize Wisconsin credentialed appraisers seeking reciprocity. In order to implement the federally mandated reciprocity requirements before July 1, 2013, an emergency rule is needed.

Filed with LRB: June 12, 2013
Publication Date: June 18, 2013
Effective Dates: June 18, 2013 through November 14, 2013

3. EmR1308 — The Wisconsin Department of Safety and Professional Services adopts an order to create **section SPS 34.04 (2) (a) 4.**, relating to training of firearms instructors for private security personnel, private detectives, and private investigators or special investigators, and affecting small business.

This emergency rule was approved by the Governor on May 29, 2013.

The statement of scope for this rule, SS 080-12, was approved by the Governor on October 2, 2012, published in

Register No. 682 on October 31, 2012, and approved by the Department of Safety and Professional Services on December 4, 2012.

Finding of Emergency

The Department of Safety and Professional Services (DPS) finds that an emergency exists and that this rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. A statement of facts constituting the emergency is as follows.

Under section SPS 34.02 (1), private security personnel, private detectives, and private investigators or special investigators, who are seeking a firearms permit from the Department must obtain a certificate of firearms proficiency. Section SPS 34.02 (2) mandates that the certification be received from a Department–approved firearms–proficiency certifier pursuant to section SPS 34.04.

Section SPS 34.04 currently accepts only those certifier applicants who have received training as a police or security firearms instructor and who have either (1) current approval as a firearms instructor by the Wisconsin Law Enforcement Standards Board (LESB); (2) current certification as a law enforcement firearms instructor by the National Rifle Association, Inc., (NRA) or; (3) approval on or after January 1, 1995, as a firearms instructor by the LESB or NRA and have completed a refresher course presented by a regional training school approved by the LESB or the NRA.

Due to enactment of 2011 Wisconsin Act 35 (commonly referred to as the concealed carry law), which became effective on November 1, 2011, there is a greater need for additional entities who can provide training and approve applicants as firearms proficiency certifiers. Section 175.60 (4) of the Statutes currently allows technical colleges, colleges, and universities to provide this training for concealed–carry purposes. No such provision is made as it relates to private security personnel, private detectives, and private investigators or special investigators, for carrying a weapon openly. Moreover, the training needed for DPS firearms certifiers differs significantly from that needed and provided by the LESB curriculum and under 2011 Act 35. To that end, a new standard needs to be developed and implemented, separate and distinct from the LESB standards. Because the need to approve applicants for firearm proficiency certifiers is immediate and pressing, emergency rules are warranted.

Filed with LRB: June 13, 2013
Publication Date: June 13, 2013
Effective Dates: June 13, 2013 through November 9, 2013

Workforce Development

Unemployment Insurance, Chs. DWD 100–150

EmR1316 — The Wisconsin Department of Workforce Development hereby adopts an order to repeal **sections DWD 126.02 (2), (3), and (4), 126.03 (1), 126.04, 126.05, 127.01 (2) (b), (f) to (i), and (3), 127.02 (intro.), (1), (2), (3), and (4), 127.02 (5) and (10), and 127.08**; to renumber and amend **section DWD 126.02 (1)**; to amend **sections DWD 126.01, 126.03 (intro.) and (2), 127 (title), 127.01 (1), (2) (intro.), (a), (c), and (d), 127.02 (7), (9), and (11), 127.04 (title), (1), and (2), 127.05, 127.06 (1), (2), and (3), 127.07 (title) and (1), 128.01 (2) (a), and 129.01 (1) and (2)**; to repeal and recreate **sections DWD 127.01 (2) (j) and 127.07 (2)**; and to create **sections DWD 126.02 (Note), 126.03 (3), (4), (5), (6),**

and (7), 127.01 (2) (em), 127.02 (12), 127.04 (1m) (e), and 127.06 (1) (c), relating to unemployment insurance work registration, work search, and benefit claiming procedures.

This emergency rule was approved by the Governor on September 20, 2013.

The statement of scope for this emergency rule, SS 106–13, was approved by the Governor on August 14, 2013, published in Register No. 692 on August 31, 2013, and approved by the Secretary of Workforce Development on September 11, 2013.

Finding of Emergency

The Department of Workforce Development finds that an emergency exists and that the attached rule is necessary for the immediate preservation of the public welfare. Statements of the facts constituting the emergency are:

- (1) In order to fulfill the new statutory directives to require claimants for unemployment insurance benefits to increase their number of weekly work search actions from two to at least four;
- (2) In order to simplify the process and compliance with respect to requirements for unemployment insurance claimants to register for work;
- (3) In order to execute the new statutory requirement to request additional information from claimants;
- (4) In order to improve the unemployment insurance trust fund balance and thereby relieve employers of the burden of additional taxation;
- (5) In order to better assist unemployment insurance benefit claimants to obtain gainful employment; and,
- (6) In order to promote the improvement in the Wisconsin economy as a result of the immediate implementation of legislative directives with respect to the unemployment insurance program contained in 2013 Wisconsin Act 20 and 2013 Wisconsin Act 36.

Adoption of the emergency rule will ensure that these legislative directives are implemented within the time–frame envisioned with enactment of 2013 Wisconsin Act 20 and 2013 Wisconsin Act 36.

Filed with LRB: September 25, 2013
Publication Date: September 29, 2013
Effective Dates: September 29, 2013 through February 25, 2014, except that changes to ss. DWD 126.03 and 127.02 take effect after the Secretary determines the Department has the technological ability to implement the changes.

Hearing Date: November 4, 2013
 (see Notice in this Register)

Workforce Development

Employment and Training, Chs. DWD 805–830

EmR1317 — The Wisconsin Department of Workforce Development hereby adopts an order to create **Chapter DWD 801**, relating to workforce training grants under the Wisconsin Fast Forward program.

This emergency rule was approved by the Governor on September 20, 2013.

The statement of scope for this rule, SS 109–13, was approved by the Governor on August 15, 2013, published in Register No. 692 on August 31, 2013, and approved by the Department of Workforce Development on September 11, 2013.

Finding of Emergency

The Department of Workforce Development (DWD) finds that an emergency exists and emergency rules are necessary

for the immediate preservation of the public peace, health, safety, or welfare. The reason for the emergency is:

DWD proposes to create new rules in Chapter DWD 801 to implement the program of workforce training grants enacted by 2013 Wisconsin Act 9. DWD held a public hearing on the permanent rule for this new program on July 15, 2013, and has made revisions to the text of the proposed permanent rule in response to the comments received. It would now benefit the public welfare to proceed with the rules in

emergency form so that the program can begin this fall.

Filed with LRB: September 25, 2013
Publication Date: September 29, 2013
Effective Dates: October 1, 2013 through February 27, 2014
Hearing Date: November 5, 2013
(see Notice in this Register)

Scope Statements

Agriculture, Trade and Consumer Protection

SS 122–13

This statement of scope was approved by the Governor on September 20, 2013.

Rule No.

Revises Chapter ATCP 136.

Relating to

Mobile air conditioners, reclaiming or recycling refrigerant.

Rule Type

Permanent and Emergency.

1. Description of the Objective of the Rule

This proposed rule and emergency rule would modify current trade and consumer protection rules related to mobile air conditioners. Currently, ch. ATCP 136, Wis. Adm. Code., requires businesses that install, repair, or service mobile air conditioners to pay an annual registration fee and obtain an annual registration certificate from the department. The rule also requires businesses to register their mobile air service technicians, and for those technicians to successfully complete a department–approved training course or satisfy other training requirements.

DATCP proposes to eliminate the registration fee and streamline the registration and training requirements currently required under this rule. These modifications will harmonize DATCP’s rule with federal requirements and reduce overall regulatory burdens by eliminating duplicative training and registration requirements. The Department will also remove references to obsolete Department of Safety and Professional Services (DSPS) licensing requirements and make other minor modifications needed to ensure uniformity between the statute and rule. The proposed emergency rule would enable the fee reductions to take effect for the 2014 licensing year, which begins March 1, 2014.

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

History and background

This rule, along with its enabling statute s. 100.45, Wis. Stats., regulates the sale and distribution of refrigerants used in motor vehicle air conditioners and trailer refrigeration equipment. It also requires businesses (such as automobile repair shops) and technicians who service this equipment to be registered with DATCP. Technicians must also complete a training course or satisfy other training requirements. In 2012, 3,122 businesses holding 3,602 licenses (160 businesses held more than one location license) and about 11,000 technicians registered with the department.

The 1989 enabling statute required the department to write rules to regulate the use of ozone–depleting refrigerants. DATCP promulgated the initial rule in 1990 and expanded the

rule in 1995 to include registration requirements for technicians and used refrigerant brokers, control the sale and distribution of used refrigerant, and establish purity standards for reclaimed or recycled refrigerants. In 2000, the department modified the rule again to increase the registration fee for businesses engaged in repairing and servicing mobile air conditioners and trailer refrigeration equipment, eliminate references to “used refrigerant broker,” and regulate the use of substitute refrigerants. Technical changes to the rule were made in 2009 and also are currently being promulgated. The most recent technical rule changes will align the rule with 2011 statutory changes repealing the ban on selling containers holding less than 15 pounds of refrigerant (“small can ban”).

As a result of the 2011 statutory changes, Wisconsin’s regulations are now consistent with EPA requirements and the EPA–approved training program should meet Wisconsin’s training needs.

In 2013, the legislature repealed requirements that refrigerant technicians be certified by DSPS. These former licensing requirements are housed in s. SPS 305.72 and referenced in ch. ATCP 136. This rulemaking will modify the rule to remove references to those requirements.

Nature of the emergency

An emergency rule is necessary because the registration fee and training requirements are unnecessary expenses and regulations that affect the welfare of business and industry. Permanent rules cannot be adopted in time to eliminate the fee and training requirements for the 2014 registration year. The emergency and permanent rules will have similar provisions.

Proposed policies

DATCP proposes to streamline the annual registration requirements and eliminate the annual registration fee for operators of mobile air conditioner repair or service businesses. In addition, DATCP proposes to designate the technician training course approved by the EPA under 40 CFR 82.40 as a department–approved course. DATCP also proposes to modify the rule to remove outdated references and make any other minor revisions that may be necessary to harmonize the statute and rule. The proposed emergency rule would allow these changes to take effect for the 2014 licensing year.

Policy alternatives

The department could maintain the existing registration requirements and fees for operators of mobile air conditioner repair and service businesses. Alternatively, the department could reduce the annual registration fee, but not eliminate it. In addition, the department could continue to require additional Wisconsin–specific training for technicians. The department also could skip the emergency rule, which would keep existing fees and training requirements in effect until the permanent rule is promulgated.

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

Sections 93.07 (1) and 100.45 (5), Stats.

93.07 Department duties. It shall be the duty of the department:

(1) REGULATIONS. To make and enforce such regulations, not inconsistent with law, as it may deem necessary for the exercise and discharge of all the powers and duties of the department, and to adopt such measures and make such regulations as are necessary and proper for the enforcement by the state of chs. 93 to 100, which regulations shall have the force of law.

100.45 Mobile air conditioners

(5) DEPARTMENT DUTIES. The department shall do all of the following:

(a) Promulgate rules for the administration of this section including establishing all of the following:

1. A standard of purity for recycled refrigerant from mobile air conditioners that is based on recognized national industry standards.

2. Qualifications, which may include training or certification requirements, for individuals who use approved refrigerant recycling equipment or approved refrigerant recovery equipment to ensure that those individuals use procedures for containment of ozone–depleting refrigerant.

3. Fees to cover the costs of administering this section.

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

DATCP estimates that it will use approximately 0.25 FTE staff to develop this rule. That includes time required for investigation and analysis, rule drafting, preparing related documents, holding public hearings, and communicating with affected persons and groups. DATCP will use existing staff to develop this rule.

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

Approximately 3,600 mobile air conditioning repair and servicing businesses and 11,000 technicians will be impacted by the rule. The proposed streamlined registration requirements, reduced fees, and expanded training options will save both technicians and their employers time and money and have a positive financial impact on those businesses.

Wisconsin technical colleges may also be impacted by the rule. Currently, the technical colleges are the major provider of the DATCP–required technician training. If the EPA–approved course is automatically considered to be “department–approved,” attendance at the technical colleges’ training courses may decline. Technicians could still choose to attend training provided by the technical colleges if they and their employers find it value–added. Technical colleges may also become authorized to provide EPA–approved training.

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

At the national level, the EPA requires technicians to be trained and certified by an EPA–approved organization. The training must cover specific content areas, and technicians must pass a test demonstrating competency to be certified. Under the current DATCP rule, the EPA–approved course does not automatically meet the DATCP training standards. Therefore, a technician seeking certification in Wisconsin—who has already successfully completed the EPA approved course—must also (in most circumstances)

complete a DATCP–approved course. Under the proposed rule revision, a technician who completes the EPA–approved course would meet the DATCP training requirements.

7. Anticipated Economic Impact

DATCP expects the proposed rule and emergency rule to have a positive economic effect on mobile air conditioning businesses. By eliminating the registration fee, approximately 3,600 licensed locations will save \$120 per registered location, or about \$420,000 statewide. In addition, by removing the duplicative training requirement, technicians (or their employers) will only be required to pay for and attend one training course, saving an unknown amount of time and money.

8. Contact Person

Jennifer Heaton–Amrhein, Program and Planning Analyst, DATCP; Phone (608) 224–5164.

Natural Resources

Fish, Game, etc., Chs. NR 1—

SS 124–13

(DNR # ER–30–13 and ER–31–13E)

This statement of scope was approved by the Governor on September 20, 2013.

Rule No.

Revises sections NR 10.02, 16.12, 19.275, 21.13, and 22.13.

Relating to

Addition of the Blanding’s turtle to the State’s Protected Wild Animal List, possession exemptions for native amphibians and reptiles, and turtle seasons and limits.

Rule Type

Permanent and Emergency.

1. Finding/Nature of Emergency (Emergency Rule Only)

An emergency rule, pursuant to s. 227.24, Stats., is necessary to preserve the public welfare and interest in ensuring a sustainable population of Blanding’s turtles. The Blanding’s turtle is proposed for delisting from the State’s Threatened Species list per administrative rule ER–27–11, which is expected to take effect as early as December 2013. Although the Blanding’s turtle no longer meets the scientific criteria for listing, the Department feels that the population is nonetheless too vulnerable to survive the threat of harvest and collection, and believes emergency rules are needed to ensure a proper recovery before these activities are permitted.

All turtles not listed as threatened or endangered in ch. NR 27 or as otherwise specified have a 135–day open season (July 15–November 30) during which members of the public may capture and possess up to 5 individuals [ss. NR 19.275 (4), 21.13 (4), and 22.13 (4)] per day. Permanent rule–making to protect Blanding’s turtles from this harvest will not go into effect until after the 2014 open season for turtles is already underway. An emergency rule is therefore necessary to prevent the harvest and possession of Blanding’s turtles during the 2014 open season until the permanent rule goes into effect.

The anticipated impact of collection and harvest to Blanding’s turtle conservation and recovery in the state necessitates putting the emergency rule into effect during the

2014 open season for turtles while the agency complies with the permanent rule–making procedures.

2. Detailed Description of the Objective of the Proposed Rule

The objective of this emergency and permanent rule is to protect Blanding’s turtles from the threat of harvest and collection once they are removed from the Wisconsin Threatened species list. The Blanding’s turtle is proposed for delisting from the Threatened list per administrative rule ER–27–11, which is expected to take effect as early as December 2013. As a result of that delisting, the Blanding’s turtle is subject to turtle harvest regulations as all turtles not listed as threatened or endangered in ch. NR 27 or otherwise specified have a 135–day open season (July 15–November 30) where the public may capture and possess up to 5 individuals [ss. NR 19.275 (4), 21.13 (4), and 22.13 (4)].

Through the Endangered and Threatened species list revision process for administrative rule ER–27–11, the Blanding’s turtle was recommended by the public for addition to the Protected Wild Animal list and associated rules to address the threat of collection to species recovery once delisting from the Threatened list takes effect. The Department received considerable public comment on the issue of collection and harvest and the intrinsic vulnerability of the Blanding’s turtle given its population age structure.

The Blanding’s turtle is a long–lived species that is slow to mature. Life spans may exceed 75 years and individuals may not reach sexual maturity for 14–25 years. Adult females are most at risk for collection because they are easier to locate, as they nest in open areas like fields and roadways, and may receive a higher price in the pet trade. Inherently, losses of adult females have a greater long–term impact on the population. It may be difficult for populations to recover from these losses.

Internationally, there is concern for this species. In 2013, the United States Fish and Wildlife Service proposed addition of the Blanding’s turtle to The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) list because of the increasing trend in the pet trade internationally:

<http://www.fws.gov/international/cites/cop16/blandings–turtle.html>. The IUCN/SSC Tortoise and Freshwater Turtle Specialist Group identified the elimination of commercial collecting as an immediate conservation need for this species worldwide: <http://www.iucn–tftsg.org/emyoidea–blandingii–015/>.

Since 1979, when the Blanding’s turtle was added to the threatened list, there has not been a pet trade industry for this species in the state. Regionally, the Blanding’s turtle is state protected in Illinois, Iowa, and Minnesota. In Michigan, Blanding’s turtles cannot be taken or possessed except as authorized by the Director of the Department of Natural Resources.

Given the population–age structure of the species, the impact of collection may be severe enough to place the Blanding’s turtle’s long term survival in the state in jeopardy, causing the species to be considered for addition back to the state’s endangered and threatened species list. The proposed rule changes will continue similar possession and collection limits that the Blanding’s turtle receives on the State’s Threatened list. As such, minimal controversy is anticipated.

The emergency and permanent rules both contemplate the following changes: add Blanding’s turtle to the list of Wild Protected Animals (s. NR 10.02); add Blanding’s turtles to the Captive Wildlife — Reptile/Amphibian Possession

Exemptions [s. NR 16.12 (3) (b)]; and add Blanding’s turtles to the turtle season/limits with a season/limit of none/zero on ss. NR 19.275 (4), 21.13 (4), and 22.13 (4). Permanent rule–making procedures will not allow the establishment of these proposed rule changes before the start of the 2014 open season for turtles. The impact of collection and harvest to Blanding’s turtle conservation necessitates putting the emergency rule into effect during the 2014 open season for turtles while the agency complies with the permanent rule making procedures.

The permanent rule only will also contemplate performing housekeeping on scientific and common names of several plant and animal species, Federal Protection Status on administrative rules ss. NR 10.02, 16.12, 19.275, 21.13, 22.13, and ch. NR 27, and other related rules listing native plant and animal species. Additional rule changes may be pursued which are reasonably related to those discussed here.

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

Existing policies relevant to the rule are Wisconsin Adm. Code ch. NR 27 and ss. NR 10.02, 16.12, 19.275, 21.13, and 22.13. No new policies are being proposed.

The emergency and permanent rules both contemplate the following changes: add Blanding’s turtle to the list of Wild Protected Animals [s. NR 10.02]; add Blanding’s turtles to the Captive Wildlife — Reptile and Amphibian Possession Exemptions [s. NR 16.12 (3) (b)]; and add Blanding’s turtles to the turtle season/limits with a season/limit of none/zero on ss. NR 19.275 (4), 21.13 (4), and 22.13 (4).

The permanent rule only, will also contemplate performing housekeeping on scientific and common names, and Federal Protection Status on administrative rules 10.02, 16.12, 19.275, 21.13, 22.13, 27, and other related rules listing native plant and animal species.

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

Statutes that authorize the promulgation of these rules include: ss. 29.011, 29.014, and 29.039, Stats. These statutes establish management authority, provide that the title to wild animals is vested with the state, and provide the department with authority to maintain open and closed seasons and other regulations and programs to conserve game and nongame species. All rules promulgated under this authority are subject to review under ch. 227, Stats.

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

160 hours.

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

The proposed rule changes will continue similar possession and collection limits that the Blanding’s turtle receives under the protections afforded to the species on Wisconsin’s Threatened species list. The Blanding’s turtle was added to the Threatened species list in 1979. As such, there has not been a market for its collection and possession since then.

No changes to the permitting process for researchers and rehabilitators are expected as part of this proposed rule change. As part of the administrative rule ER–27–11, researchers will need to apply for a Scientific Collectors Permit or Research License Authorization to collect or

possess a Blanding’s turtle instead of an Endangered and Threatened Species Permit.

The effect of this proposed rule will be minimal with few entities affected as collection and possession limits will not change. Interested parties may include individuals using turtles as bait or food, and the turtle pet/food trade.

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

There are no federal regulations that would be in conflict with this proposed action. In 2013, the United States Fish and Wildlife Service proposed addition of the Blanding’s turtle to The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) list: <http://www.fws.gov/international/cites/cop16/blandings-turtle.html>.

There are similar laws in other states. The Blanding’s turtle is state protected in Illinois, Iowa, and Minnesota. In Michigan, Blanding’s turtles shall not be taken or possessed except as authorized by the Director of the Department of Natural Resources.

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

The Department estimates minimal economic impact as there has not been a market for this species in Wisconsin since 1979, when it was added to the Threatened species list. However, in the absence of this proposed emergency and permanent rule, development of a trade for Blanding’s turtles collected in Wisconsin is expected.

9. Anticipated Number, Month, and Locations of Public Hearings

The Department anticipates holding 1 public hearing in the month of March, 2014. The hearing location will be the DNR office in Madison with remote participation at the DNR offices in Green Bay, Eau Claire, and Wausau. The Department will hold these hearings in these locations to allow for greater participation across the state and to effectively use staff time and resources.

10. Contact Person

Terrell Hyde at (608) 264–9255 or terrell.hyde@wisconsin.gov; or Erin Crain at (608) 267–7479 or erin.crain@wisconsin.gov. Natural Heritage Conservation NHC/6, Wisconsin Department of Natural Resources, 101 S Webster St., Madison, WI 53707–7921.

Natural Resources

Environmental Protection — Air Pollution Control, Chs. NR 400—

SS 126–13

(DNR # AM–32–13)

This statement of scope was approved by the Governor on September 24, 2013.

Rule No.

Revises Chapters NR 400 to 439, 445, and 484 to 499.

Relating to

Reporting, monitoring, and record–keeping requirements for stationary source owners or operators and additional changes of a clarifying or clean–up nature.

Rule Type

Permanent.

1. Finding/Nature of Emergency (Emergency Rule Only)

N/A.

2. Detailed Description of the Objective of the Proposed Rule

The Department proposes to initiate an evaluation of reporting, monitoring, and record–keeping requirements that apply to owners and operators of stationary sources, as that term is defined in s. 285.01 (41), Stats., with the objective of identifying opportunities, and then promulgating rules, to simplify, reduce, and increase the efficiency of those requirements, while remaining consistent with all applicable requirements under the Clean Air Act. The Department, in part, is required to initiate this rulemaking effort under s. 285.17 (4), Stats.

The Department is also proposing rulemaking of a clarifying or clean–up nature in the identified chapters. The Department may propose changes where existing rule language has been found to be unclear or susceptible to unintended interpretation. Changes of a clean–up nature are periodically necessary, for example, to correct errors in internal administrative code or statutory references, or to update references as a result of changes to federal regulations or reference test methods.

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

The proposed rulemaking will not affect existing policy or include any new policies. The Department did not prepare an analysis of policy alternatives since the proposed rulemaking is only intended to simplify, reduce, and increase the efficiency of certain requirements, or is of a clarifying or clean–up nature.

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

The following statutory provisions provide authority for the proposed rulemaking; ss. 227.11 (2) (a), 285.11 (1) and (6), and 285.17 (1) (a), (2) (a), and (4), Stats.

Sections 227.11 (2) (a) and 285.11 (1), Stats., provide general rulemaking authority to promulgate rules interpreting and implementing the provisions of ch. 285, Stats., which is enforced and administered by the Department. Section 285.11 (6), Stats., requires that the Department develop, and thereafter be responsible for the revision and implementation of, plans for the prevention, abatement, and control of air pollution in the state. Numerous chapters potentially affected by the proposed rulemaking have been submitted to the U.S. Environmental Protection Agency under the Clean Air Act and are part of these plans. These rules must conform to the Clean Air Act except as provided for in s. 285.11 (6), Stats. The Department does not believe these exceptions apply to the proposed rulemaking. Authority for rulemaking specific to reporting, monitoring, and recordkeeping is contained in s. 285.17, Stats. Section 285.17 (1) (a), Stats., establishes that the Department may by rule, after classifying air contaminant sources, require reporting for any of the classes. Similarly, s.

285.17 (2) (a), Stats., establishes that the Department may by rule require the owner or operator of an air contaminant source to monitor emissions or to monitor the ambient air in the vicinity of the source and to report the results of the monitoring to the Department. Section 285.17 (4), Stats., which became effective on July 2, 2013, and was created under 2013 Wisconsin Act 20, specifically directs the Department to evaluate reporting, monitoring, and record-keeping requirements imposed on owners or operators of stationary sources of air pollution that are required to have an operation permit under s. 285.60, Stats., but are not required to have an operation permit under the federal Clean Air Act. This statutory provision further directs the Department to promulgate rules to simplify, reduce, and increase the efficiency of these requirements.

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

The Department anticipates that approximately 1,000 hours of state employee time will be needed to complete the promulgation process for this proposed rulemaking.

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

Rule requirements for reporting, monitoring, and record-keeping are established based on a variety of factors including the pollutant involved and the amount being emitted, the units of the applicable emission limitation, whether emission control equipment is being used and the type of equipment, and the compliance demonstration method being used, to mention a few. Existing rules establish these requirements for a broad array of industrial source categories from small businesses involved in painting operations to major sources like paper mills and electric utilities. Any of these sources or source categories may potentially be affected by this proposed rulemaking.

7. 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

Many of the Department's air pollution control rules, including those for reporting, monitoring, and record-keeping, are based on existing U.S. Environmental Protection Agency regulations or guidance or are required as part of Wisconsin's state implementation plan under the Clean Air Act. After an evaluation of reporting, monitoring, and record-keeping requirements has been completed, the Department will be able to identify those specific changes to be pursued to simplify, reduce, and increase the efficiency of these requirements. At that time, as part of the preparation of any proposed rules, the Department is required under s. 227.14 (2) (a) 3., Stats., to, and will be in a better position to, conduct this same comparison to relevant federal regulations. Any changes made under this proposed rulemaking will be consistent with all applicable requirements under the Clean Air Act.

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

The Department assumes that the overall economic impact of implementing the proposed rules will be minimal to moderate and that the proposed rules will not have a significant impact on small businesses. Given the objectives of the proposed rulemaking as detailed in Section 2, the

economic impact is expected to be positive. That is, the simplification, reduction, and increased efficiency of reporting, monitoring, and record-keeping rules, and the general clarification and correction of other rules should lead to cost savings for all sources affected by these requirements.

9. Anticipated Number, Month, and Locations of Public Hearings

Considerable time and effort will be required to complete, as proposed in this rulemaking, an evaluation of reporting, monitoring, and record-keeping requirements and to develop and consider opportunities to simplify, reduce, and increase the efficiency of these requirements. The Department will work with interested stakeholders in the evaluation and any subsequent rulemaking effort.

During the evaluation and rulemaking process, the Department will develop a more complete picture of those potentially affected by this effort. This will allow the Department to plan for an appropriate number of hearings as well as locations and timing for hearings.

10. Contact Person

Kristin Hart
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Safety and Professional Services

Professional Services, Chs. SPS 1-299

SS 123-13

This statement of scope was approved by the Governor on September 20, 2013.

Rule No.

Revises Chapters SPS 80 to 87.

Relating to

Real estate appraiser requirements.

Rule Type

Permanent.

1. Finding/Nature of Emergency (Emergency Rule Only)

N/A.

2. Detailed Description of the Objective of the Proposed Rule

The purpose of the proposed rule is to bring current administrative code regulating appraisers in line with the federal policy generated by the Appraiser Qualifications Board (AQB). In addition, pursuant to Executive Order #61, the department will take this opportunity to review chs. SPS 80 to 87 in order to discover ways to reduce the regulatory impact on small business as long as it does not result in non-compliance with AQB standards.

3. 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 December of 2011, the Appraiser Qualifications Board of the Appraisal Foundation adopted changes to the Real Property Appraiser Qualification Criteria. These changes will go into effect on January 1, 2015. This new criteria will impact education, experience, and examination requirements for licensed appraisers, certified general appraisers, and

certified residential appraisers. As a result of the new federal policy, the department seeks to revise chs. SPS 80 to 87. This is a federal mandate prompted by the Appraiser Qualifications Board. Since the AQB sets the minimum requirements for each state to implement and licensees must be AQB compliant in order to conduct federally related transactions, there is no alternative to rule making.

The Department will review chs. SPS 80 to 87, pursuant to Executive Order #61, and look for ways to reduce the regulatory impact on small business in areas which do not impact AQB compliance.

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

The Department of Safety and Professional Services has specific rule making authority pursuant to s. 227.11 (2) (a), Stats., which provides that, “each agency may promulgate rules interpreting the provisions of any statute enforced or administered by it...” Section 444.03 (1), Stats., specifies, “the department may promulgate rules defining uniform procedures to be used by the department, [and] the real estate appraisers board...” In s. 458.03 (1) (b), Stats., the board may, “promulgate rules establishing criteria for the approval of educational and continuing educational programs and courses of study for appraisers and establishing criteria for the approval of the courses required under ss.458.06 (2) (d) and 458.08 (2) (d).”

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

125 hours.

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

Licensed appraisers, certified residential appraisers, and certified general appraisers as well as applicants and individuals who hold these credentials.

7. 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

Title XI Financial Institutions Reform, Recovery, and Enforcement Act of 1989 mandates that all state certified appraisers must meet the minimum education, experience, and examination requirements promulgated by the Appraisal Qualifications Board (AQB).

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

The Department anticipates a minimal economic impact.

9. Contact Person

Shawn Leatherwood, (608) 261–4438.

Workforce Development

Unemployment Insurance, Chs. DWD 100–150

SS 125–13

This statement of scope was approved by the Governor on September 27, 2013.

Rule No.

Amends Chapters DWD 111, 113, 115, 132, and 140.
Creates Chapter DWD 114.

Relating to

Amendments to unemployment insurance Administrative Code provisions under 2013 Wisconsin Act 20 and 2013 Wisconsin Act 36.

Rule Type

Permanent.

1. Finding/Nature of the Emergency (Emergency Rule Only).

N/A.

2. Detailed Description of the Objective of the Proposed Rule

The proposed rule will ensure that the Department of Workforce Development (Department) is enacting amendments to the unemployment insurance (UI) administrative rules that are required by or necessary as a result of the passage of 2013 Wisconsin Act 20 and 2013 Wisconsin Act 36. Consistent with this legislation, the proposed rule will also create the administrative procedures to:

- Waive or decrease interest charged to an employer that submits a late payment for UI taxes.
- Provide procedural protections to employers who are subject to a denial or revocation of a license based on delinquent UI contributions.
- Provide a standardized affidavit form for use in UI administrative appeal hearings.
- Accept a late optional successorship application from a business.
- Implement a financial record matching program.

In addition, the Department will repeal various rule sections due to amendments to the statutes requiring repeal of the administrative code provisions and make minor and technical corrections to current rules.

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

Section 108.22, Stats., grants the Department the authority to assess a tardy filing fee on employers that file a late quarterly wage report. Section DWD 111.07 identifies when the Department will assess the tardy filing fee and the criteria for determining the amount of the fee. 2013 Wisconsin Act 36 amended s. 108.22, Stats., and provides that an employer shall be charged a tardy filing fee for each delinquent quarterly report in the amount of \$100, or \$20 per employee, or, if the report is filed within 30 days of its due date, in the amount of \$50. The changes made by 2013 Wisconsin Act 36 are inconsistent with the current provisions of s. DWD 111.07. As a result, the provisions of s. DWD 111.07 should be amended to reflect current law.

Section 108.22, Stats., provides that the Department shall charge interest when an employer is delinquent in paying UI taxes. 2013 Wisconsin Act 36 creates s. 108.22 (1) (cm), Stats. In limited circumstances, s. 108.22 (1) (cm), Stats., grants the Department the authority to waive or decrease the interest charged to employers who are late in making their unemployment insurance tax payments and provides that the Department shall prescribe rules to exercise this authority. Chapter DWD 113 controls the Department’s ability to waive

or decrease the interest charged. The Department intends to amend this chapter to reflect the changes provided by 2013 Wisconsin Act 36.

2013 Wisconsin Act 36 creates s. 108.227, Stats., and grants the Department for the first time the ability to revoke various licenses or deny an application for various licenses based on delinquent UI contributions. 2013 Wisconsin Act 36 requires the Department to promulgate rules with respect to the process the Department will use when it seeks to revoke a license or deny an application for a license as a result of the employer being delinquent in paying UI contributions. The Department will promulgate these rules by creating ch. DWD 114.

2013 Wisconsin Act 36 creates s. 108.223, Stats., and grants the Department for the first time the authority to operate a financial records matching program. This program allows the Department to identify the assets held at financial institutions of persons who are delinquent in paying debts related to the UI program. Chapter DWD 114 will be created to include procedures and requirements for financial institutions for implementation of the program. Similar programs are being operated by the Departments of Children and Families, Revenue, and Health Services. The Department intends to promulgate rules to ensure that the program operated by the Department can be run consistently with the Departments of Children and Families, Revenue, and Health Services. These rules will be promulgated within the newly created ch. DWD 114.

Section 108.16 (8) (b) 4., Stats., outlines the statutory requirements for the Department to accept an optional successorship application from a business. Successorship occurs when all or a portion of the former owner’s UI account is transferred to the new owner due to a transfer of all, or a portion of, the business. If a former business has a positive UI account, in limited circumstances the new owner of the business may elect to file an optional successorship application with the Department. Consistent with s.108.16 (8) (b) 4., Stats., s. DWD 115.07 (2) affords the requirements the Department must follow in accepting an optional successorship application from a business. 2013 Wisconsin Act 36 amended the provisions of s. 108.16 (8) (b) 4., Stats., to allow the Department the ability to accept a late optional successorship application from a business, if the application was late as a result of excusable neglect. Amendments to s. DWD 115.07 (2) are necessary to make rule provisions consistent with the newly amended s. 108.16 (8) (b) 4., Stats.

2013 Wisconsin Act 20 repealed s. 108.04 (7) (k), Stats. This provision provided that a UI claimant who quits a job was still eligible for UI benefits if the claimant had two jobs and the claimant had quit a part–time job because it was economically not feasible to maintain due to the loss of his or her full–time job. Section DWD 132.03 clarified the provisions of s. 108.04 (7) (k) prior to its repeal by 2013 Wisconsin Act 20, Stats., and is no longer needed.

2013 Wisconsin Act 36 created s. 108.14 (26), Stats. Section 108.14 (26), Stats., provides that the Department shall prescribe by rule a standard affidavit form that may be used by parties involved in UI administrative appeals. Chapter DWD 140 provisions control appeals, and the Department will prescribe the standard affidavit form within this chapter. In addition, the Department will amend sections within ch. DWD 140 to incorporate modern technology changes for UI administrative appeals.

The policy alternative of doing nothing is not acceptable. If the Department fails to adopt these amendments to the

already existing rules and create ch. DWD 114, the administrative rules will be inconsistent with recently adopted amendments to state statutes as a result of the passage of 2013 Wisconsin Act 20 and 2013 Wisconsin Act 36.

4. Detailed Explanation of Statutory Authority for the Rule, Including the Statutory Citation and Language

Section 108.14 (2), Stats., provides in part, “[t]he department may adopt and enforce all rules which it finds necessary or suitable to carry out this chapter.”

Section 108.22 (1) (cm), Stats., provides in part, “[i]n limited circumstances as prescribed by rule of the department, the department may waive or decrease the interest charged” to employers subject to the UI program.

Section 108.227 (1m), Stats., provides in part, “[t]he department shall promulgate rules specifying procedures to be used before taking action” to suspend a license of an employer who is delinquent in paying UI taxes.

Section 108.14 (26), Stats., provides in part, “[t]he department shall prescribe by rule a standard affidavit form that may be used by parties to [UI] appeals.”

5. Estimate of Amount of Time that State Employees Will Spend Developing the Rule, and Other Resources Necessary to Develop the Rule

The total amount of staff time for developing the rule is estimated to be 480 hours.

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

These amendments will impact employers who are subject to the Wisconsin UI system as follows:

- First, these amendments to the rules will impact employers who are delinquent in filing UI reports or in paying UI taxes.
- Second, these amendments to the rules will impact the process that a new employer must use if they satisfy the statutory requirements and elect to be optional successor to the UI account of a former employer.

These amendments will make the Department’s operation of its newly created financial records matching program be consistent with the same program operated by the Department of Revenue. Therefore, these amendments also impact financial institutions in the state. Finally, these amendments will impact parties to hearings related to UI appeals.

7. 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

Unemployment insurance was initiated on a national basis in the United States as Title III and Title IX of the Social Security Act of 1935 and is a Federal–State coordinated program. Each state administers its own program within national guidelines promulgated under federal law. As a condition of a state receiving its unemployment compensation administrative grant, 42 U.S.C. s. 503 (a) provides that the Secretary of Labor must find that the law of the state includes certain requirements. One of those requirements is that a claimant must have the opportunity for a fair hearing, before an impartial tribunal, if a state UI agency denies a claim for unemployment compensation. The newly created requirement, under s. 108.14 (26), Stats., provides that the Department shall prescribe by rule a standard affidavit form that may be used by parties involved in UI administrative appeals. Use of a standard affidavit as part of the UI appeal process, is consistent with this federal mandate.

8. Anticipated Economic Impact of Implementing the Rule (Note if the Rule is Likely to have an Economic Impact on Small Businesses)

Because these rules carry forward the UI proposals contained in 2013 Wisconsin Act 36, the fiscal note for this Act (copy attached for 2013 Wisconsin Act 36) also incorporates the economic impact of the amendments to the rules.

9. Contact Person

Janell Knutson, Director, UI Bureau of Legal Affairs, (608) 266–1639, janell.knutson@dwd.wisconsin.gov.

Submittal of Proposed Rules to Legislative Council Clearinghouse

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

Administration CR 13–069

On September 20, 2013, the Wisconsin Department of Administration submitted a proposed rule order to create Chapter Adm 93 of the Wisconsin Administrative Code to the Wisconsin Legislative Council Rules Clearinghouse.

The statement of scope for this rule, SS 041–13, was approved by the Governor on April 15, 2013, published in Register No. 688 on April 30, 2013, and approved by Secretary Mike Huebsch on May 15, 2013.

Analysis

Statutory Authority: ss. 16.309 (2) and (3) and 227.11, Stats.

Statutes Interpreted: s.16.309, Stats.

The objective of the rule is to set forth the criteria the department will use to administer the CDBG program.

Agency Procedure for Promulgation

A public hearing is required and will be scheduled at a future date. The organizational unit responsible for promulgation of the proposed rules is the Division of Housing.

Contact Person

If you have any questions regarding the proposed rule, please contact:

Mark Herman, Assistant Legal Counsel
Division of Legal Services
Department of Administration
101 E. Wilson Street, 10th Floor
Madison, WI 53702
(608) 267–7877

Natural Resources *Fish, Game, etc., Chs. NR 1—* CR 13–071

(DNR # WM–11–13)

On September 26, 2013, the Department of Natural Resources submitted a proposed rule to the Legislative Council Rules Clearinghouse.

The scope statement for this rule, SS 024–13, was approved by the Governor on March 13, 2013, published in Register No. 687 on March 30, 2013, and approved by the Natural Resources Board on April 24, 2013.

Analysis

Administrative Code: chs. NR 1, 8, 10, 11, 12, 13, 15, and 19.

Subject: 2012 Deer Trustee Report.

Department authority to conduct a variety of habitat and wildlife management activities is established in ss. 23.09 (2) (b), (d), (h), (k), (km), and (p), Stats. These sections authorize rulemaking related to deer and deer habitat management and: plans and priorities for conservation, game refuges, cooperative forest protection, research, resources inventory, and disease control. These sections authorize many of the existing provisions of ch. NR 1 (Natural Resources Board Policy), 11 (closed areas), 15 (game refuges), and 45 (use of department properties), Wis. Adm. Code.

Agency Procedure for Promulgation

Public hearings; followed by Natural Resources Board adoption; followed by legislative review.

Dates of Public Hearings: October 22, 23, 24, 29, 30, and 31, 2013.

Contact Person

Linda Haddix, Legal Services
(608) 266–1959

Natural Resources *Fish, Game, etc., Chs. NR 1—* CR 13–079

(DNR # FH–01–12)

On September 30, 2013, the Department of Natural Resources submitted a proposed rule to the Legislative Council Rules Clearinghouse.

The REVISED scope statement for this rule, SS 006–12, was approved by the Governor on May 8, 2013, published in Register Number 689 on May 31, 2013, and approved by the Natural Resources Board on March 28, 2012.

Analysis

Administrative Code: ch. NR 20.

Subject: Fishing tournaments on inland, outlying, and boundary waters of Wisconsin.

This rule is being proposed to simplify and create more effective fishing tournament rules that should increase user satisfaction and address concerns about crowding, tournament associated fish mortality, and the spread of invasive species.

Agency Procedure for Promulgation

Three public hearings in Fitchburg, La Crosse, and Oshkosh; Natural Resources Board final adoption; Governor’s Office of Regulatory Compliance final approval; followed by legislative review.

Dates of Public Hearings: October 30 in La Crosse; November 4 in Fitchburg; November 6 in Oshkosh.

Contact Person

Kate Strom Hiorns, Bureau of Fisheries Management
(608) 266-0828

Linda Haddix, Bureau of Legal Services
(608) 266-1959

Natural Resources
Fish, Game, etc., Chs. NR 1—
CR 13-080

(DNR # FR-20-12)

On September 30, 2013, the Department of Natural Resources submitted a proposed rule to the Legislative Council Rules Clearinghouse.

The statement of scope for this rule, SS 055-12, was approved by the Governor on July 25, 2013, published in Register No. 680 on August 14, 2013, and approved by the Natural Resources Board on October 24, 2012.

Analysis

Statutes interpreted: ss. 23.09 (2) (intro), 23.091, 23.11 (4), 23.17, 23.175, 23.22 (2) (a), 23.28 (3), 23.293, 27.01 (2) (i) and (j), and 28.04 (2), Stats.

Administrative Code: s. NR 45.045 (2) (a) and (b).

Subject: Regulation of firewood that may be brought onto state lands.

The Wisconsin Natural Resources Board proposes an order to amend s. NR 45.045 (2) (a) and (b), decreasing the distance from which firewood may be brought onto state lands from 25 to 10 miles and allowing wood from out of state to enter state lands if originating within 10 miles.

Agency Procedure for Promulgation

Public hearings; followed by Natural Resources Board adoption; followed by legislative review.

Date of Public Hearing: October 29, 2013.

Contact Person

Linda Haddix, Legal Services
(608) 266-1959

Natural Resources
Fish, Game, etc., Chs. NR 1—
CR 13-082

(DNR # FH-25-12)

On October 1, 2013, the Department of Natural Resources submitted a proposed rule to the Legislative Council Rules Clearinghouse.

The statement of scope for this rule, **SS 003-12*** [**SS 003-13**], was approved by the Governor on December 28, 2012, published in Register No. 685 on January 31, 2013, and approved by the Natural Resources Board on February 27, 2013.

NOTE: The scope statement, SS 003-13, was incorrectly identified as SS 003-12 in Register No. 685B published January 31, 2013.

Analysis

Administrative Code: ch. NR 25.

Subject: Number, placement, and removal of commercial fishing trap nets in the Restricted Use Area of Lake Superior.

This rule is being proposed to define the number and placement of trap nets for commercial fishing activity in the Restricted Use Area of Lake Superior, which is bounded by the Bayfield Ferry line, a line between Houghton Point and Long Island Point, and a line between Long Island Point and the southernmost point on Madeline Island.

Agency Procedure for Promulgation

Date of Public Hearing: November 7, 2013 in Bayfield.

Contact Person

Kate Strom Hiorns, Bureau of Fisheries Management
(608) 266-0828

Linda Haddix, Bureau of Legal Services
(608) 266-1959

Natural Resources
Environmental Protection — Air Pollution Control,
Chs. NR 400—
CR 13-070

(DNR # AM-21-12)

On September 27, 2013, the Department of Natural Resources submitted a proposed rule to the Legislative Council Rules Clearinghouse.

The statement of scope for this rule, SS 066-12, was approved by the Governor on August 30, 2012, published in Register No. 681, on September 15, 2012, and approved by the Natural Resources Board on October 25, 2012.

Analysis

Administrative Code: chs. NR 400, 405, 408, and 410.

Subject: Proposed rules related to consistency with federal major new stationary source permit review requirements and clean-up of rules related to the former indirect source permit program.

The main focus of the proposed rules is to correct deficiencies in chs. NR 405 and 408 identified by the U.S. Environmental Protection Agency (EPA) and which resulted in disapproval of select portions of the Department's State Implementation Plan (SIP). These corrections are required by the U.S. EPA to ensure that the Department implements the major new stationary source review permit programs consistent with the Clean Air Act and U.S. EPA requirements. Failure to maintain consistency may lead to the promulgation of a federal implementation plan (FIP), whereby the U.S. EPA can take back implementation authority for a portion of a state's permit program.

The Department is also proposing to repeal portions of chs. NR 400 and 410, relating to the former indirect source permit program. The Department previously operated an indirect source permit program under ch. NR 411, as previously authorized in s. 285.60, Stats. Chapter NR 411 was repealed through legislative action under 2011 Wisconsin Act 121. The Department is proposing to repeal rules in chs. NR 400 and 410, which previously had the sole purpose of supporting the indirect source permit program.

Agency Procedure for Promulgation

Public hearings; Natural Resources Board final adoption; Governor approval; followed by legislative review.

Date of Public Hearing: November 5, 2013.

Contact Person

Linda Haddix, Legal Services
(608) 266-1959

Revenue
CR 13–078

On September 27, 2013, the Wisconsin Department of Revenue submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

The scope statement for this rule, SS 044–13, was approved by the Governor on April 17, 2013, published in Register No. 689 on May 14, 2013, and approved by the Secretary of Revenue on May 24, 2013.

Analysis

The proposed rule order concerns apportionment of apportionable income of interstate air freight forwarders affiliated with a direct air carrier.

Agency Procedure for Promulgation

A public hearing on the proposed rule is required and has been scheduled for October 28, 2013.

The Office of the Secretary is primarily responsible for the promulgation of the proposed rule.

Contact Person

If you have questions, please contact:
Dale Kleven
Income, Sales and Excise Tax Division
Telephone: (608) 266–8253
Email: dale.kleven@revenue.wi.gov

Safety and Professional Services —
Professional Services, Chs. SPS 1–299
CR 13–077

On September 27, 2013, the Department of Safety and Professional Services submitted a proposed rule to the Legislative Council Rules Clearinghouse.

The scope statement for this rule, SS 022–13 was approved by the Governor on March 6, 2013, published in Register No. 687 on April 1, 2013, and approved by the Department of Safety and Professional Services on April 15, 2013.

Analysis

This proposed rule–making order revises chs. SPS 1, 2, and 8, and relates to hearings, injunctions, and warnings.

Agency Procedure for Promulgation

A public hearing is required and will be held on October 30, 2013, at 1400 East Washington Avenue, Room 121C, Madison, Wisconsin (enter at 55 North Dickinson Street).

Contact Person

Katie Paff
Department of Safety and Professional Services
Division of Policy Development
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Email: kathleen.paff@wisconsin.gov

Safety and Professional Services —
Dentistry Examining Board
CR 13–074

On September 27, 2013, the Dentistry Examining Board submitted a proposed rule to the Legislative Council Rules Clearinghouse.

The scope statement for this rule, SS 070–13, was approved by the Governor on June 19, 2013, published in Register No. 691 on July 15, 2013, and approved by the Dentistry Examining Board on May 30, 2013.

Analysis

Statutory Authority: ss. 15.08 (5) (b) and 447.02 (2) (b), Stats.

This proposed rule–making order to renumber and amend s. DE 12.03 (intro.) as s. DE 12.03 (1) and (2), and to amend ss. DE 12.02 (intro.) and DE 12.03 (intro.), relating to training of unlicensed persons.

Agency Procedure for Promulgation

A public hearing is required and will be held on November 6, 2013, at 9:30 a.m. at 1400 East Washington Avenue, Room 121A, Madison, Wisconsin (enter at 55 North Dickinson Street).

Contact Person

Jean MacCubbin
Department of Safety and Professional Services
Division of Policy Development
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Safety and Professional Services —
Pharmacy Examining Board
CR 13–075

On September 27, 2013, the Pharmacy Examining Board submitted a proposed rule to the Legislative Council Rules Clearinghouse.

The scope statement for this rule, SS 094–12, was approved by the Governor on December 4, 2012, published in Register No. 684 on December 31, 2012, and approved by the Pharmacy Examining Board on January 31, 2012.

Analysis

Statutory Authority: ss. 15.08 (5) (b), 450.02 (3) (a), and 961.31, Stats.

This proposed rule–making order repeals s. Phar 7.08 (1) (Note), amends ss. Phar 8.05 (4), 8.07 (2), 8.09 (1), (2), (3), and (4), and relates to electronic prescriptions.

Agency Procedure for Promulgation

A public hearing is required and will be held on October 30, 2013, at 1400 East Washington Avenue, Room 121, Madison, Wisconsin (enter at 55 North Dickinson Street).

Contact Person

Sharon Henes, Administrative Rules Coordinator
Department of Safety and Professional Services
Division of Policy Development
(608) 261–2377

Safety and Professional Services —
Pharmacy Examining Board
CR 13–076

On September 27, 2013, the Pharmacy Examining Board submitted a proposed rule to the Legislative Council Rules Clearinghouse.

The scope statement for this rule, SS 095–12, was approved by the Governor on December 4, 2012, published in

Register No. 684 on December 31, 2012, and approved by the Pharmacy Examining Board on January 31, 2012.

Analysis

Statutory Authority: ss. 15.08 (5) (b) and 450.02 (3), Stats.

This proposed rule–making order repeals s. Phar 7.04 (1) (e) 2. (Note), amends s. Phar 7.04 (1) (e) 2., and relates to return or exchange of health items.

Agency Procedure for Promulgation

A public hearing is required and will be held on October 30, 2013, at 1400 East Washington Avenue, Room 121, Madison, Wisconsin (enter at 55 North Dickinson Street).

Contact Person

Sharon Henes, Administrative Rules Coordinator
Department of Safety and Professional Services
Division of Policy Development
(608) 261–2377

Safety and Professional Services — Real Estate Examining Board CR 13–072

On September 27, 2013, the Real Estate Examining Board submitted a proposed rule to the Legislative Council Rules Clearinghouse.

The scope statement for this rule, SS 081–12, was approved by the Governor on October 2, 2012, published in Register No. 682 on November 1, 2012, and approved by the Real Estate Examining Board on August 16, 2012.

Analysis

Statutory Authority: ss. 15.405 (11), 227.11 (2), 452.07 (1m), and 452.07, Stats.

This proposed rule–making order repeals ss. REEB 18.08, 18.11 (2), 18.12, and 18.12 (Note); rennumbers and amends s. REEB 18.11 (1) as s. REEB 18.11 (intro.); amends ss. REEB 18.01 (title), 18.02 (5) (intro.), (a), and (b), 18.02 (6) (intro.) and (a) to (g), 18.031 (1) (intro.), (a), and (b), 18.033 (title) and (2), 18.035 (2), 18.037 (intro.) and (Note), 18.06, 18.09 (1) (intro.) and (a) to (f), and 18.13 (1) (intro.), (a) to (d), (2) to (4), and (6) (e); repeals and recreates ss. REEB 18.02 (1) and 18.10; and creates ss. REEB 18.02 (intro.) (Note), 18.02 (1e) and (Note), 18.02 (4) and (Note), 18.034 (1) (title), and 18.10, relating to real estate trust accounts.

Agency Procedure for Promulgation

A public hearing is required and will be held on October 31, 2013, at 10:00 a.m. at 1400 East Washington Avenue, Room 121A, Madison, Wisconsin (enter at 55 North Dickinson Street).

Contact Person

Jean MacCubbin
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Division of Policy Development
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Safety and Professional Services — Real Estate Examining Board CR 13–073

On September 27, 2013, the Real Estate Examining Board submitted a proposed rule to the Legislative Council Rules Clearinghouse.

The scope statement for this rule, SS 082–12, was approved by the Governor on October 2, 2012, published in Register No. 682 on November 1, 2012, and approved by the Real Estate Examining Board on November 15, 2012.

Analysis

Statutory Authority: ss. 15.405 (11), 227.11 (2), 452.07 (1m), 452.05 (1) (b), and 452.07 (1m), Stats.

This proposed rule–making order repeals s. REEB 16.03 (2) (Note); rennumbers s. REEB 16.02 (1) as s. REEB 16.02 (1e); amends ss. REEB 16.02 (3), 16.03 (1) (intro.), (a), and (b), 16.03 (2), 16.05 (1) and (2), 16.06 (1) (intro.), (a), (b), (e), and (f), 16.06 (4) (intro.), (a), and (b), 16.06 (5) (intro.) and (a) to (c), and 16.06 (6) and (7); and creates ss. REEB 16.02 (1) and (Note), (1m), (2e), (2m), (2r), (3m), and (4m), 16.03 (3), (Note [1]), and (Note [2]), and 16.06 (8), relating to use of approved forms and legal advice.

Agency Procedure for Promulgation

A public hearing is required and will be held on October 31, 2013, at 10:00 a.m. at 1400 East Washington Avenue, Room 121A, Madison, Wisconsin (enter at 55 North Dickinson Street).

Contact Person

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Workforce Development Unemployment Insurance, Chs. DWD 100–150 CR 13–081

The Wisconsin Department of Workforce Development announces it has referred the following proposed rule on October 1, 2013, to the Wisconsin Legislative Council Rules Clearinghouse, pursuant to s. 227.15, Stats.

The scope statement for this rule, SS 097–13, was approved by the Governor on August 1, 2013.

Analysis

Administrative Code: chs. DWD 126, 127, and 129.

Subject: Unemployment Insurance work registration, work search, and benefit claiming procedures.

Agency Procedure for Promulgation

The department will hold a public hearing at three locations on this rule on November 4, 2013, in Milwaukee, Appleton, and Madison.

Contact Person

The department's Division of Unemployment Insurance is primarily responsible for this rule. If you have questions, you may contact Janell Knutson at telephone (608) 266–1639 or by e–mail at janell.knutson@dwd.wi.gov.

Rule–Making Notices

Notice of Hearing

Natural Resources

Fish, Game, etc., Chs. NR 1—

EmR1313

(DNR # WM–07–13(E))

NOTICE IS HEREBY GIVEN that pursuant to ss. 29.014, 29.041, 227.11 (2) (a), and 227.24, Stats., and interpreting ss. 29.014, 29.041, and 29.192, Stats., the Department of Natural Resources will hold public hearings on revisions to ch. NR 10, Wis. Adm. Code, relating to the 2013 migratory game bird seasons and waterfowl hunting zones. This emergency order took effect upon publication in the official state paper on September 6, 2013.

Hearing Information

Date: Monday, October 28, 2013
Time: 1:00 p.m.
Location: DNR State Office Building (GEF–2)
 Room 606
 101 S. Webster St.
 Madison, WI 53707

Appearances at Hearing

Pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Scott Loomans at (608) 267–2452 with specific information on your request at least 10 days before the date of the scheduled hearing.

Copies of the Rule and Written Comments

The proposed rule and fiscal estimate may be reviewed and comments electronically submitted at the following Internet site: <http://adminrules.wisconsin.gov>. Written comments on the proposed rule may be submitted via U.S. mail to Mr. Scott Loomans, Bureau of Wildlife Management, P.O. Box 7921, Madison, WI 53707 or by email to scott.loomans@wisconsin.gov. Comments may be submitted until **October 29, 2013**. Written comments, whether submitted electronically or by U.S. mail, will have the same weight and effect as oral statements presented at the public hearings. A personal copy of the proposed rule and fiscal estimate may be obtained from Mr. Loomans.

Analysis Prepared by the Department

Plain language analysis

SECTION 1 of this rule order establishes the season length and bag limits for the 2013 Wisconsin migratory game bird seasons. For ducks, the state is divided into three zones, each with 60–day seasons. The proposed seasons in each zone are:

North duck zone — The season begins at 9:00 a.m. September 22 and continues through November 4, followed by a 5 day split, and reopens on November 10 and continues through November 25.

South duck zone — The season begins at 9:00 a.m. on September 29 and continues through October 7, followed by a 5–day split, and then reopens on October 13 and continues through December 2.

Mississippi River duck zone — The season begins at 9:00 a.m. on September 22 and continues through September 30, followed by a 12 day split, reopening on October 13 and continuing through December 2.

The daily bag limit is 6 ducks including no more than: 4 mallards, of which only 1 may be a hen, 1 black duck, 1 canvasback, 3 wood ducks, 4 scaup, 2 pintails and 2 redheads.

For Canada geese, the state is apportioned into 2 goose hunting zones, Horicon and Exterior, each with a 92 day season. The Mississippi River Subzone is a special goose management subzone within the Exterior Zone. Season lengths are:

Horicon zone — Two hunting periods, the first period beginning September 16 and the second on October 29.

Exterior zone in the northern duck zone — September 16 to November 4 and November 10 to December 21.

Exterior zone in the southern duck zone — September 16 to October 7 and October 13 to December 21.

Mississippi River subzone — September 22 to September 30 and October 13 to January 3.

The statewide daily bag limit for Canada geese in all zones is 2 birds per day during the open seasons within the zones.

SECTION 2 establishes that the youth waterfowl hunting season will be held on September 15 and 16.

Section 3 lifts a sunset of special migratory bird hunting regulations at the Mead and Zeloski Marsh Wildlife Management Areas.

SECTION 4 relaxes the prohibition on hunting waterfowl in open water for holders of permits for hunters with disabilities.

SECTION 5 reestablishes a duck hunting zone that consists of the Wisconsin portions of the Mississippi River west of the Burlington Northern Santa Fe Railroad tracks. This is the same zone configuration that was in place for the 2011 season and has been approved by the USFWS for a five year period.

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

Under international treaty and Federal law, migratory game bird seasons are closed unless opened annually via the U.S. Fish and Wildlife Service (USFWS) regulations process. As part of the Federal rule process, the USFWS proposes a duck harvest–management objective that balances hunting opportunities with the desire to achieve waterfowl population goals identified in the North American Waterfowl Management Plan (NAWMP). Under this harvest–management objective, the relative importance of hunting opportunity increases as duck populations approach the goals in the NAWMP. Thus, hunting opportunity would be maximized when the population is at or above goals. Additionally, while USFWS believes that the NAWMP’s population goals would tend to exert a conservative influence on overall duck harvest–management. Other factors, such as habitat, are to be considered.

Wisconsin Canada goose harvest is supported by 2 different Canada goose populations; the local giant Canada geese which are part of the Temperate Breeding Population (TBP) of the Mississippi Flyway provide about 40% of our fall harvest while the Mississippi Valley Population (MVP) that breeds in northern Ontario provide about 60% of the fall harvest. These 2 populations are managed under cooperative management plans developed by several states and provinces. The TBP population has steadily grown and management goals are to provide additional harvest opportunity and control population growth. In contrast, the MVP population has been on a slow decline so management objectives are to maintain a lower rate of harvest and have a stable or increasing population. These contrasting goals create a challenge in the development of hunting regulations. In order to improve our harvest management, the Mississippi Flyway Council tested the use of a standard season framework for 5 years while monitoring population size and harvest rates for the MVP and TBP. From 2007 to 2011, season lengths and bag limits for each MVP harvest state were unchanged. Each state retained the flexibility to schedule the timing of their Canada goose season. In addition, if the MVP spring population numbers dropped to a predetermined low level during the 5–year period, the stable season framework could be adjusted. At the winter 2012 flyway meeting, analysis of the impacts of these 5 years of stable regulation were reviewed and the results were mixed with regard to the management objectives. It was decided among the member states that a cautious and slow approach be taken toward continued liberalization of Canada goose hunting seasons.

The proposed modifications included in this rule order are consistent with these parameters and guidelines which are annually established by the USFWS in 50 CFR 20.

Comparison with rules in adjacent states

Since migratory bird species are managed under international treaty, each region of the country is organized in a specific geographic flyway which represents an individual migratory population of migratory game birds. Wisconsin, along with Minnesota, Michigan, Illinois and Iowa, are members of the Mississippi Flyway. Each year the states included in the flyways meet to discuss regulations and guidelines offered to the flyways by the USFWS. The FWS regulations and guidelines apply to all states within the Flyway and therefore the regulations in the adjoining states closely resemble the rules established in this rule order, and only differ slightly based on hunter desires, habitat and population management goals. However, these variations fall within guidelines and sideboards established by the USFWS.

Summary of factual data and analytical methodologies

For the regular duck season, a data based process called Adaptive Harvest Management is used annually by the USFWS and the Flyways to determine which of 3 framework alternatives best matches the current year's data on populations and habitat (data from the spring pond and duck survey). The option of a closed season is also possible if survey conditions indicated that this is necessary for the management of duck populations. The determination of which alternative is selected is based in part on the spring wetland conditions on the breeding grounds and the Mid–Continent Mallard population. These data come from the May Pond and Breeding Waterfowl Population Surveys conducted by the USFWS and Canadian Wildlife Service on

traditional survey areas as well as surveys from select states, including Wisconsin.

In 2011, the USFWS gave our state the option of reconfiguring duck hunting zones and after an 11 month public input process Wisconsin implemented changes for a 5 year period. Waterfowl hunters appear to have been supportive of the new zone configuration and this proposal contains the same zone configuration that was in effect for the 2011 season. The department's position has been that the configuration of duck zones is an issue of hunter opportunity and satisfaction which does not have significant impact on duck populations.

The parameters of Wisconsin's regular goose seasons are guided by the Mississippi Flyway management plans for the MVP and TBP Canada goose populations and approved by the Mississippi Flyway Council and the USFWS. The health of these populations was measured with spring breeding population surveys, survival data and harvest rates obtained from banding and production studies. The surveys and studies are conducted annually and are supported by the State of Wisconsin as part of the MFC. The result of this work is reviewed annually by the MFC committee and the USFWS to measure the impact of the stable season framework trial period.

The primary elements of Wisconsin's waterfowl regulatory process include conducting spring waterfowl surveys, participation in MFC meetings, commenting on federal proposals, and soliciting input from the public. The state process begins with Flyway meetings in February and March each year where staff provide input to the development of federal framework alternatives and requests related to the early seasons. In spring and summer, breeding waterfowl surveys and banding are conducted in support of the regulatory process.

In early July, staff conducted a public meeting to solicit input from interest groups, including representatives of the Conservation Congress Migratory Committee. At this meeting, staff provided the attendees with breeding status information and asked for any items that they wish the department to pursue at the MFC meeting in mid July. Department staff then attended the MFC Technical and Council meetings. At these meetings, staff were provided status information and the proposed framework alternative from the USFWS. Department staff worked with the other states in our Flyway to discuss and develop proposals and recommendations that were voted upon by the MFC. Proposals that passed at the MFC meeting were forwarded to the USFWS for consideration by the Service Regulations Committee (SRC) at their meeting. The USFWS announced its final waterfowl season framework recommendation at the end of July. Department staff then summarized waterfowl status and regulation information for Wisconsin citizens and presented this information to the Migratory Committee of the Conservation Congress and at a public meeting (Post–Flyway Meeting) of interest groups and individuals on July 28. Staff gathered public input and citizen suggestions at those meetings for the development of Wisconsin's waterfowl regulations, given the federal framework. Public hearings were held from July 30–August 2 around the state to solicit additional input on the proposed annual waterfowl rule.

This rule will expand opportunity for waterfowl hunters with disabilities. Open water waterfowl hunting is currently prohibited on all but a handful of lakes in WI. A hunter who

is “concealed” in emergent vegetation under current rules is not considered to be in open water. The concern is that those with disabilities may physically not be able to get into a smaller John boat, skiff, or blind and that it may be difficult or impossible to place an accessible boat or blind near vegetation capable of meeting the concealment requirements. This proposal will make it possible for disabled permit holders, and their companions, to hunt from a craft such as a pontoon boat, which may be impossible to conceal in emergent vegetation.

Closing migratory bird hunting hours early on managed public hunting areas in some states has been shown to provide good hunting across an entire property rather than just near refuges, hold ducks in an area for a longer period of time, and provide better hunting opportunities throughout the season. An experimental early closure has been applied at the Mead Wildlife Area in Marathon and Wood counties and at Zeloski Marsh in Jefferson. The regulation has been in place only during the early part of the season when hunting pressure is heaviest. The regulation has sunset after a three year trial period. There continues to be support for the special regulations and reauthorization by rule is needed for them to remain in effect.

Anticipated Private Sector Costs

These rules, and the legislation which grants the department rule making authority, do not have a significant fiscal effect on the private sector. Additionally, no costs are associated with compliance to these rules.

Effects on Small Business

These rules are applicable to individual sportspersons and impose no compliance or reporting requirements for small businesses, and no design or operational standards are contained in the rule. Because this rule does not add any regulatory requirements for small businesses, the proposed rules will not have a significant economic impact on a

substantial number of small businesses under s. 227.24 (3m), Stats.

Pursuant to s. 227.114, Stats., it is not anticipated that the proposed rule will have an economic impact on small businesses. The Department’s Small Business Regulatory Coordinator may be contacted at smallbusiness@dnr.state.wi.us or by calling (608) 266–1959.

The Department has made a determination that this action does not involve significant adverse environmental effects and does not need an environmental analysis under ch. NR 150, Wis. Adm. Code.

Agency Contact Person

Mr. Scott Loomans, Bureau of Wildlife Management, P.O. Box 7921, Madison, WI 53707 or by email at scott.loomans@wisconsin.gov.

Revised Notice of Hearing

(Original published September 30, 2013, Register No. 693)

Natural Resources

Fish, Game, etc., Chs. NR 1—

CR 13–071

(There is no emergency rule number for this rule as the emergency rule has not been filed.)

(DNR # WM–11–13 and WM–24–13 (E))

NOTICE IS HEREBY GIVEN that pursuant to ss. 29.014, 29.041, and 227.11 (2) (a), Stats., interpreting ss. 29.014, 29.041, and 29.192, Stats., the Department of Natural Resources will hold public meetings on revisions to chs. NR 1, 10, 13, and 45, Wis. Adm. Code, related to deer management, hunting, and implementation of the 2012 White-tailed Deer Trustee Report.

Hearings will be held October 22 through October 31 at each of the following locations at the following times:

October 22

Eagle River	Northland Pines HS Auditorium	1800 Pleasure Island Rd.	6 to 8 p.m.
Eau Claire	DNR Service Center Conf. Rm	1300 W. Clairemont Ave.	7 to 9 p.m.
Park Falls	Park Falls High School Auditorium	400 9th Street North	6 to 8 p.m.
Prairie du Chien	Prairie du Chien City Hall	214 East Blackhawk Ave.	7 to 9 p.m.
Richland Center	Richland County Courthouse Board Room	181 West Seminary St.	6 to 8 p.m.
Schofield	D.C. Everest Middle School Auditorium	9302 Schofield Ave.	7 to 9 p.m.

October 23

Superior	Superior Public Library	1530 Tower Ave.	6 to 8 p.m.
Black River Falls	BRF Middle School/Lunda Auditorium	1202 Pierce St.	7 to 9 p.m.
Burlington	Veterans Terrace — Stars and Stripes Room	589 Milwaukee Ave.	6 to 8 p.m.
Fitchburg	DNR Service Center—Gathering Waters CR	3911 Fish Hatchery Road	6 to 8 p.m.
Horicon	Horicon Marsh Education and Visitor Center	N7725 Hwy 28	6 to 8 p.m.
Plymouth	Plymouth High School	125 Highland Ave.	7 to 9 p.m.
Rhineland	James Williams Middle School, Auditorium	915 Acacia Lane	6 to 8 p.m.

October 24

Green Bay	NWTC Room SC 132	2740 W. Mason St.	7 to 9 p.m.
Wautoma	Wautoma High School Cafeteria	514 S. Cambridge St.	7 to 9 p.m.
Hayward	Hayward High School, Auditorium	10320 Greenwood Ln.	6 to 8 p.m.
Portage	Law Enforcement Center	711 East Cook St.	6 to 8 p.m.
La Crosse	DNR Service Center Room B–19	3550 Mormon Coulee Rd.	7 to 9 p.m.
Mauston	Mauston High School Auditorium	800 Grayside Ave.	7 to 9 p.m.

October 29

Ashland	Northern Great Lakes Visitor Center	29270 County Hwy G	6 to 8 p.m.
Baldwin	DNR Service Center, Conference Room	890 Spruce St.	7 to 9 p.m.
Clintonville	Clintonville High School	64 West Green Tree Rd.	7 to 9 p.m.
Florence	Natural Resources Center Conference Room	55631 Forestry Dr.	7 to 9 p.m.
Grantsburg	Crex Meadows Wildlife Education and Visitors Center	102 E. Crex Avenue	7 to 9 p.m.
Janesville	DNR Service Center — Janesville	2514 Morse St.	6 to 8 p.m.
Medford	Medford High School Red – White Theater	1015 W. Broadway Ave.	6 to 8 p.m.
Pewaukee	Wildwood Lodge — Hudson Bay Room	N14 W24121 Tower Place	6 to 8 p.m.

October 30

Antigo	Antigo High School Auditorium	1900 10th Ave.	7 to 9 p.m.
Barron	Barron Cnty Government Cntr, Room 110	355 East Monroe Ave.	7 to 9 p.m.
Crivitz	Crivitz High School	400 South Ave.	7 to 9 p.m.
Dodgeville	DNR Service Center	1500 N. Johns St.	6 to 8 p.m.
Fountain City	Cochrane/Fountain City HS Auditorium	S2770 STH 35	7 to 9 p.m.
Oshkosh	Webster Stanley Middle School	915 Hazel St.	7 to 9 p.m.

October 31

Ladysmith	Ladysmith High School Auditorium	1700 E. Edgewood Ave.	6 to 8 p.m.
Darlington	Darlington Elementary School Auditorium	11630 Center Hill Rd.	6 to 8 p.m.

Appearances at Hearing

Pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Scott Loomans at (608) 267–2452 with specific information on your request at least 10 days before the date of the scheduled hearing.

Copies of Rule and Written Comments

The proposed rule and fiscal estimate may be reviewed and comments electronically submitted at the following Internet site: <http://adminrules.wisconsin.gov> or by searching the keywords “administrative rules” on the department’s website. Written comments on the proposed rule may be submitted via U.S. mail to Mr. Scott Loomans, Bureau of Wildlife Management, P.O. Box 7921, Madison, WI 53707 or by email to scott.loomans@wisconsin.gov. Comments may be submitted until **October 31**. Written comments, whether submitted electronically or by U.S. mail, will have the same

weight and effect as oral statements presented at the public hearings. A personal copy of the proposed rule and fiscal estimate may be obtained from Mr. Loomans.

Analysis Prepared by the Department***Statutory authority and explanation of agency authority***

Department authority to conduct a variety of habitat and wildlife management activities is established in ss. 23.09 (2) (b), (d), (h), (k), (km), and (p), Stats. These sections authorize rulemaking related to deer and deer habitat management and: plans and priorities for conservation, game refuges, cooperative forest protection, research, resources inventory, and disease control. These sections authorize many existing provisions of ch. NR 1 (Natural Resources Board Policy), 11 (closed areas), 15 (game refuges), and 45 (use of department properties), Wis. Adm. Code.

The primary authority to establish hunting regulations for deer and other species is established in s. 29.014, Stats. This section directs the department to establish and maintain open and closed seasons, bag limits, size limits, rest days, and other conditions for the taking of game that conserves the game

supply and provides citizens with good hunting opportunities. This section authorizes many of the existing provisions of chs. NR 8 (license and permit procedures), 10 (game and hunting) and 19 (Miscellaneous Fur, Fish, Game and Outdoor Recreation), Wis. Adm. Code.

The wildlife damage and nuisance program and rulemaking authority are established in s. 29.889 (2) (b), Stats., which directs the department to establish rules for program eligibility and funding, methods of abating damage, forms and procedures, prorating claims, record keeping, audits, and inspections. This is the authorizing legislation for much of ch. NR 12, Wis. Adm. Code, related to wildlife damage.

Rules related to Chippewa treaty rights (ch. NR 13) are promulgated under general authority to establish hunting regulations in s. 29.014, Stats., and these rules are the department’s interpretation of how laws must be interpreted or limited in order to comply with the general limitations on state regulatory authority expressed in *Lac Courte Oreilles v. State of Wisconsin*, 668 F. Supp. 1233 (W.D. Wis. 1987) and the specific limitations expressed in the regulatory phase of the Voigt litigation. (See e.g., *Lac Courte Oreilles v. State of Wisconsin*, 707 F. Supp. 1034 (W.D. Wis. 1989).

Additional specific rule–making authority was established by 2013 ACT 20, the biennial state budget. The Deer Management Assistance Program is created in s. 29.020, Stats., and the department is directed to promulgate rules and establish fees. In s. 29.040, Stats., the department is authorized to promulgate rules that implement recommendations of the 2012 deer trustee’s report. Under s. 29.181 (4), Stats., the department is authorized to establish by rule the fee for a bonus deer hunting permit that is issued for use in a county or deer management area where CWD has been identified.

Statutes interpreted and explanation

Statutes interpreted or explained in this rule order include ss. 23.09 (2), 29.014, 29.020, 29.040, 29.181 (4), 29.889 (2) (b), and 227.11, Stats. In particular, s. 29.014, Stats., grants rule–making authority to the department to establish open and closed seasons for hunting and trapping and to establish other regulations. All rules promulgated under this authority are subject to review under ch. 227, Stats.

Related statute or rule

Board Order WM–24–13 (E) is the identical emergency rule companion to the permanent rule. That emergency rule shall remain in effect until June 30, 2015, or the date on which this permanent rule takes effect, whichever is sooner.

Board Order WM–01–13, the wildlife management spring hearing rule, WM–04–13, related to remedial and

housekeeping updates, and WM–21–13, related to hunting and trapping in state parks, are currently being promulgated and may affect some of the same sections as this board order. Where possible, the department will choose only one board order to make needed updates. When it is necessary to modify a section that is also being modified by another board order, that will be indicated in the treatment clause.

Plain language analysis

There has been dissatisfaction with various issues related to white–tailed deer management and hunting in Wisconsin. Gubernatorial candidate Scott Walker made a promise to appoint a “Deer Trustee” to review programs. In October of 2011, Dr. James C. Kroll, officially known as Wisconsin’s white–tailed deer trustee, entered into a contract with the State of Wisconsin to conduct an independent, objective, and scientifically–based review of Wisconsin’s deer management practices. The White–tailed Deer Trustee’s report was released to the public in July 2012.

The objective of these proposed rules is to work with sportsmen and sportswomen and other stakeholders in order to implement ideas and solutions from the Deer Trustee’s report to forge a new age for deer management.

Sections 1 to 6 update Natural Resources Board policy so that the term “population objective” and “goal” are used consistently and for concise wording.

Section 7 creates introductory material that organizes the current ch. NR 10 as Subchapter 1 and prepares for the creation of another subchapter.

Sections 8, 28, and 29 establish that CWD management zones will be identified as CWD–affected areas and are based on counties and not the previous configuration of deer management units and portions of units. These sections also establish that the population density objective in CWD–affected areas or portions of counties in CWD–affected areas is to decrease the deer herd.

Section 9 creates a definition of “afield” for the purpose of establishing that a deer cannot be accompanied by someone other than the person who tagged it if the person who tagged the deer is not also present while afield, similar to current rules.

Section 10 updates cross references and makes a cross–reference to the law which establishes the archer license more general so that it will continue to be accurate if new statutes related to hunting with crossbows are enacted.

Sections 11 to 17 of this proposal establish the deer hunting season dates for gun, archery, muzzleloader, and deer hunting by youth hunters. The standard deer hunting season framework established in these sections is:

Bow & Arrow/Archery	Saturday nearest September 15 and continuing through the Sunday nearest January 6.
Youth	Two consecutive days beginning on the Saturday nearest October 8.
October antlerless–only firearm (<i>occurs only in those units where CWD or other disease has been found, and only after promulgation of emergency rules pursuant to s. 29.016 (2), Stats.</i>)	Four consecutive days beginning on a Thursday and ending on the Saturday nearest, but not later than October 15 th .
Traditional firearm deer season	Saturday before Thanksgiving Day Holiday and continuing for 9 days.

Muzzleloader only	Beginning on the day after the traditional November firearm deer season and continuing for 14 days.
Holiday firearm deer season (South of State HWY 64)	Beginning on December 24 and continuing through the Sunday nearest January 6.

Noteworthy changes to current rule are that there is no longer a 4–day December antlerless–only, any–firearm–type deer season. These 4 days are instead added to the muzzleloader only season, extending that season from 10 to 14 days. This section establishes that a season commonly referred to as the December holiday hunt, beginning on December 24 and continuing through the Sunday nearest January 6, is an either sex season south of State Highway 64 rather than open only in the CWD management zone. For consistency with statewide firearm hunting regulations, these sections repeal the extended firearm deer season that had been established for Metropolitan deer hunting units. Metropolitan units would continue to have a longer archer season which continues through the end of January. This section eliminates references to state park hunting seasons which are no longer needed because state statute has established that deer hunting is generally allowed in state parks. This section retains language which establishes the seasons for certain state parks when it is still needed because the existing seasons are different than the general statewide seasons. Finally, this section eliminates state park deer management unit designations and limited entry state park deer hunts.

These sections establish a bag limit of one buck during firearm deer seasons and one buck during bow & arrow seasons, plus additional antlerless deer where permits are available.

Finally, these sections make a number of remedial changes for consistency with state statute related to the elimination of earn–a–buck regulations for the first buck harvested.

Sections 18, 19, and 22 update cross references related to sharp–tailed grouse, fisher, and bear management zones or subzones so that the deer management unit map in effect in 2013 continues to be the one cross referenced.

Section 20 restores the protected status of white deer in a CWD management area.

Section 21 repeals a cross–reference related to blaze orange requirements during deer seasons in CWD zones which is not necessary because blaze orange requirements are already established in statute.

Section 23 revises population goals so that they will be expressed as management objectives to increase, maintain, or decrease the deer population density in a management unit. This section also establishes antlerless permits and their allowable uses and methods of distribution. This section establishes a \$12.00 fee for bonus permits which are issued for a CWD–affected area and a \$6.00 fee for bonus permits issued under the Deer Management Assistance Program. Finally, this section establishes that one bonus buck may be harvested in units with an objective to decrease the deer population instead of just in a CWD management zone. The harvest of two antlerless deer is required first and there is a limit of one bonus buck per year.

Section 24 modifies the tagging procedures so that a deer possessed in the field must be accompanied by the person who tagged it, even if the deer has already been registered. Deer which have been registered may be transported on roadways or possessed at home by someone other than the person who tagged it, consistent with current rules.

Section 25 establishes that a harvest registration number must be printed on the carcass tag to show proof that a deer has been registered with the department.

Section 26 modifies deer registration procedures to allow telephone or electronic recording of harvest. The ability to require in person registration in a CWD area is retained if the department determines that is necessary at times. Deer and bear harvest must be registered with the department by 5:00 p.m. of the day after the deer is taken into possession. Registration requirements will be the same statewide for both firearm and archer harvested deer.

Section 27 establishes deer management units, including metropolitan units. The note in this Section also maintains the deer management unit map that was in effect in 2013 because those boundaries continue to be used for other purposes such as the basis for the fisher management zone map. [For purposes of rules hearings in October 2013, the department will be evaluating a map based on the consolidation of existing deer management units and an alternative proposal to use counties as deer management units.]

Section 30 establishes the Deer Management Assistance Program to assist with specialized management of deer in localized areas and for specific purposes. This section establishes fees and other conditions for participation in the program.

Section 31 updates a cross–reference related to establishing the harvest quota for tribal members in the ceded territories.

Section 32 repeals the requirement to obtain a special permit before hunting deer in a state park in the CWD management zone.

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

These state rules and statutes do not relieve individuals from the restrictions, requirements, and conditions of federal statutes and regulations. Regulating the hunting and trapping of native species has been delegated to state fish and wildlife agencies.

Comparison with rules in adjacent states

All of Wisconsin's surrounding states use hunting seasons to provide hunting opportunities and to manage white–tailed deer herds. All of the surrounding states utilize a range of hunting seasons and allow the use of archery equipment, firearms, and muzzleloading firearms at certain times. The seasons proposed in this rule order do not vary significantly from the hunting opportunities that are available in other states.

Illinois: The Illinois archery season runs from October 1, 2013 to January 19, 2014 except that it is closed during the firearm deer season in those portions of the state that hold a firearm deer season. Illinois has two periods for firearm deer hunting, a muzzleloader season, and special CWD and antlerless–only seasons. The first firearm season in 2013 is November 22 to 24 and the second season is December 5 to 8. The muzzleloader season is Dec. 13 to 15. The special CWD and antlerless–only seasons occur on December 26 to 29 and January 17 to 19, 2014. A youth firearm deer hunt is open on October 12 to 14. All firearm hunting permits are

distributed first through a tiered drawing system where residents have a higher chance of being selected for a permit than non–residents, then through a random daily drawing, and finally they are offered over–the–counter on a first–come first–served basis until the unit’s quota is reached. Hunters who are eligible to purchase a hunting permit receive an either–sex permit and one bonus antlerless–only permit. There is no limit on the number of resident archery licenses that will be issued, and each resident archery license includes an antlerless–only and an either sex permit. Non–resident archery licenses also include an either sex permit and an antlerless–only permit, but are allocated through a lottery system.

Iowa: In Iowa, there are two archery seasons, two muzzleloader seasons, and two shotgun seasons. There is also an antlerless–only season, a youth hunt for residents, and a holiday season for nonresidents. The archery season runs from October 1 to December 6 and December 23 to January 10, 2014. The muzzleloader seasons run from October 12 to 20 (residents only) and December 23 to January 10, 2014. The shotgun seasons run from December 7 to 11 and December 14 to 22. The antlerless–only season runs from January 11 to 19, 2014, the youth hunt runs from September 21 to October 6, and the holiday season runs from December 24 to January 2, 2014. When a hunter purchases an ‘Any Deer License,’ they are entitled to harvesting either a buck or an antlerless deer statewide. Hunters also have the option to purchase an ‘Antlerless–only License’ which is valid for a specific zone in the state. The number of antlerless licenses available in any particular zone is determined by a quota system, and hunters are able to purchase these licenses on a first–come first–served basis until the quota is reached.

Michigan: Michigan has one firearm season, two archery seasons, and one muzzleloader season, as well as two antlerless–only seasons and a youth hunt. The firearm season runs November 15 to 30. The archery seasons runs October 1 to November 14 and December 1 to January 1, 2014. Michigan’s muzzleloader–only season is split into three zones with each zone’s season occurring in December and lasting for either 10 or 17 days. The antlerless–only seasons run from September 21 to 22 and December 23 to January 1, 2014 and the youth hunt occurs on Sept 21 to 22. Hunters interested in harvesting an antlerless deer must purchase an antlerless license that is valid within a specific DMU for use on either public land or private land. In some DMUs, these licenses may only be purchased over the counter, whereas in others there is an application process and drawing.

Minnesota: Minnesota has one archery season, one firearm season that is divided into four separate zones, and one muzzleloader season. There is also a special archery season on Camp Ripley (a military base) and a youth season. The archery season runs from September 14 to December 31. The firearm season runs November 9 to 17, November 9 to 24, or November 23 to December 1 depending on the zone. The muzzleloader season runs November 30 to December 15. The special archery hunt on Camp Ripley occurs on October 26 to 27 and November 2 to 3. The youth hunt runs from October 17 to 20. Antlerless permits are distributed through a license lottery in “lottery” areas of the state. In “Hunter Choice,” “Managed,” or “Intensive” areas licenses are either–sex. Bonus permits for antlerless deer are available over the counter for use in managed and intensive areas.

Summary of factual data and analytical methodologies

Implementation of the Deer Trustee’s report will result in establishing a number of new policies for deer management and hunting management compared to current rules. The primary policy alternatives evaluated in development of these rules are ones recommended in the report. Throughout this rulemaking process, the department and its partners did evaluate other policy alternatives as they were identified.

The full report is located on the Wisconsin Department of Administration’s website at: <http://www.doa.state.wi.us/section.asp?linkid=239&locid=0>

Revisions to ch. NR 1 are minor and consist of an update to Natural Resources Board policy so that the term “population objective” and “goal” are used consistently throughout the board order and for concise wording. This rule order favors the term “objective” to describe the deer population level that management activities are designed to achieve. The terms “objective” and “goal” are very similar and “objective” is favored in this rulemaking because it was a recommendation of the trustee’s report.

Chapter NR 10 establishes most of the deer population management policy and practices and hunting regulations that are in place today. Currently, ch. NR 10 establishes the Sex–Age–Kill model for estimating deer populations, deer population goals, and deer management units. These rules repeal that specific population model from the chapter. However, these rules do not prohibit the department from continuing to analyze deer populations using the Sex–Age–Kill model or others as methods of developing population information. These rules will replace the current population goals by eliminating numeric goals and replacing them with a simplified statement of objectives to “increase, stabilize, or decrease the deer population.” These rules establish a set of metrics to monitor progress towards the objective. These rules significantly reduce the number of deer management units. These rules do not change the department’s current requirement to evaluate deer management unit boundaries and population goals or objectives on a recurring three year basis.

Under these rules, the department will be able to modify antlerless harvest quotas and permit levels on an annual basis. These rules recommend that the department consult with groups or representatives for certain deer related interests in establishing quotas each year. Historical demand for antlerless permits has not been a factor that the department was required to consider in quota setting in the past but would be a mandatory consideration under these rules. Under this proposal, hunters in most of the state will continue to receive an antlerless deer tag with the purchase of a firearm or archery license. This tag will be comparable to the current “herd control unit” tag which is issued in units that are 20% or more over the established population goal. Under the proposal, these tags will be valid in any farmland unit. The department currently issues additional herd control tags for the cost of a \$2.00 issuance fee but those tags will be discontinued by this rule. Under this proposal, the standard fee of \$12.00, also the current fee for a bonus permit, will apply for all antlerless permits which are in addition to the one that was issued with hunting licenses. These rules also establish a \$12.00 fee for additional antlerless tags which allow harvest of deer in the CWD–affected area. Under statute, \$5.00 of the fee for these permits will be credited to an account for management and

testing of chronic wasting disease. Finally, through the Deer Management Assistance Program, these rules allow establishing unique antlerless deer permits that are specific for use on properties enrolled in the Deer Management Assistance Program. A recommendation resulting from the public involvement process that preceded development of these rules was that the fee for bonus permits should be \$10.00. That is not proposed in these rules because the bonus permit fee is already established by statute and the department does not have rulemaking authority to change it. Other permits, the fee for which the department does have rulemaking authority, are generally also \$12.00 for consistency with bonus permits.

A variety of related hunting regulations changes are proposed in these rules. Many of them are simplifications to current rules. Changes include the names for permits and the allowable use of various deer permits. Deer carcass tags, tagging, and transportation requirements are modified where possible in order to simplify regulations or as opportunities will arise during development of new automated licensing systems. The current requirement to register deer is replaced in these rules with a more customer–friendly harvest reporting procedure using telephone or internet. Black bear are another species for which in–person registration of harvested animals is required. These rules will modify bear harvest recording requirements because deer and bear registration occur at the same locations and through the same process under current rules. These rules will eliminate deadlines to register deer and bear that currently vary by season, harvest method, and location. Instead, a simple statewide requirement to register deer and bear harvest before midnight of the date of harvest is established. This allows fewer hours to register an animal than under current law but electronic registration will be significantly more convenient. Faster registration of deer will provide the department and others who are interested with very timely harvest information. The shorter deadline may also help with enforcing bag limit restrictions. The option to require in–person registration of deer carcasses is preserved in areas that are part of a CWD affected area or where necessary for deer population and herd health monitoring purposes. The department could take advantage of this authority in order to collect tissue specimens for sampling for a wide variety of diseases or biometrics associated with deer populations. Finally, in order to assure hunter accountability and compliance with group bagging restrictions, these rules establish that a deer carcass possessed in the field must be accompanied by the person who tagged it. For practical purposes, this requirement is the same as current rules because in–the–field registration of harvested deer was not possible previously. However, now that deer could be registered while in the field, rules will continue to require that the person who tagged the carcass accompany it during dragging or other field transport. Deer that have been registered could be transported by other people on public roads or possessed at home.

Season date modifications will have the impact of opening a number of refuges, which are established in chs. NR 11 and 15, to additional deer hunting during the late firearm season that begins on December 24. These refuges are located primarily on department managed lands and most of them were established to provide undisturbed resting areas for migrating waterfowl. This deer hunt will occur very late in fall migration and will normally be after all waterfowl seasons are closed.

The department is recommending deer hunting season date modifications as a result of this rulemaking. While the report generally recommended that, “keeping seasons and bag limits consistent for longer periods of time would allow better assessment of management progress”, it is challenging to discuss management system changes of this scale without considering season dates. These rules will maintain the current season for hunting deer by archery methods. This proposal maintains the traditional Wisconsin firearm deer season opener on the Saturday before Thanksgiving and 9 day structure. The current 10 day muzzleloader season is extended by four days under this proposal and this extended muzzleloader–only season will replace what had previously been a statewide four day any–firearm season for antlerless deer only. This proposal establishes an additional firearm deer hunting opportunity in the portion of the state South of HWY 64 beginning on December 24 and continuing to the Sunday nearest January 6. This holiday deer hunt occurs under current rules in the CWD management zone. It has been a low–pressure event but, for some, a greatly appreciated opportunity for additional deer hunting at a time when families are together and around which some new deer hunting traditions are developing. The late firearm season, or holiday hunt, is similar to seasons offered in other adjacent states and will occur during a time of the year when more residents are traditionally taking vacation or home for the holidays as in the case of veterans. Finally, only in areas that are part of the CWD season under current rules, archery deer hunting has been allowed on the day before the traditional 9–day firearm season opens. Under this proposal, the archery deer season will be open statewide on the day before the traditional 9–day firearm season for consistency with the rest of the state.

Under current rule, numerous state parks are listed in the table that establishes deer seasons because the DNR was required to establish hunting seasons in state parks by administrative rule. Under 2011 ACT 168, hunting is allowed at state parks except where, or at times when, the Natural Resources Board has prohibited the activity in order to protect public safety or a unique plant or animal community. Because the old presumption that state parks are closed unless opened by rule has been replaced by a presumption that state parks are open unless board action has been taken to close them, most state park names have been removed from the table. Those parks will be open to deer hunting under normal statewide regulations at times when hunting has not been prohibited for safety related purposes. A number of parks, which had deer hunting seasons or regulations which are not the same as the ones that apply statewide are still found in the season table in order to preserve those unique seasons or regulations. All state park deer management unit number designations have been repealed and state parks are simply referred to by their name. Finally, current rules require that deer hunters in state parks in the CWD management zone obtain a free access permit to a park. The number of access permits is not restricted. This rule repeals that requirement because it is no longer needed considering that access to other parks will not be monitored to this extent.

The trustee’s report generally recommends a more passive approach than current department policy to the management of Chronic Wasting Disease. This approach is reflected by the establishment of deer seasons in CWD affected areas that are the same as in other areas of the state. Management of CWD in the state’s deer herd is still important under these rules.

These rules retain the firearm deer season occurring over the Christmas holiday, the option to issue landowner permits for sampling or for additional harvest opportunities, and provide advice on when an October firearm season will be held if necessary in a CWD areas. While the promulgation of emergency rules is required under s. 29.016, Stats., before an October firearm season can be held, establishing by permanent rule when that season would occur is intended to simplify development of an emergency rule if that authority is utilized. These rules modify the current CWD zone management system by designating it as the CWD–affected area using county boundaries to describe the zone instead of the previous DMU configuration based on roads and natural features such as rivers. A process for efficiently adding new counties as CWD–affected areas when the disease is discovered in new areas is created. The department currently establishes numeric population goals for deer units that are in a CWD zone. Those goals are modified by these rules so that they are consistent with the objectives for other units to increase, maintain, or decrease the density of the deer herd.

This rulemaking establishes a Deer Management Assistance Program that will allow landowners and hunters to work together with the department to manage deer on a site–specific basis. The program will actively involve members of the public in the collection, analysis, and reporting of deer harvest information and improve management of the deer herd at the local level. The rule establishes enrollment fees for participation in the program and statute has established that revenue will be credited back to implementation of the program. This proposal establishes a separate half–price fee of \$6.00 for antlerless deer hunting permits obtained through participation in the program. The lower fee is intended to be an incentive for participation. The program is a central recommendation of the report which recommended that the department establish: a) applicability to private and public lands, b) initial areas eligible to participate, c) administration of DMAP, d) funding, e) personnel and training, f) minimum property size to participate, g) fees, h) participation requirements, i) data collection requirements, j) registration of deer harvested on DMAP properties, k) data analysis and reporting, and l) assessment of DMAP effectiveness.

Chapter NR 13 is intended to regulate off–reservation treaty rights of treaty rights participants recognized by *Lac Courte Oreilles Band v. Voigt*, 700 F. 2d 341 (7th Cir. 1983). Modifications to ch. NR 13 updates a cross reference with ch. NR 10. Other out–of–date cross–references exist in this chapter but are not revised here as that might be more appropriate as a stand–alone, more thorough review. The report did not recommend changes to this chapter of administrative code.

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

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. Additionally, no significant costs are associated with compliance to these rules.

Effects on Small Businesses

The department estimates that the economic impact of these rules will be none or minimal and, pursuant to 2011 Executive Order 50, will facilitate a 14 day period for

comment on a draft economic impact analysis. The comment period will begin in September 2013.

This proposal modifies rules that establish the department’s habitat and deer harvest management strategies. Examples of the new management efforts include: increased emphasis of habitat management on private land through the Deer Management Assistance Program, eliminating the requirement to use a specific method of measuring and estimating deer populations even though that model may still be used and considered, and new ways to describe desired deer population levels. These rules will result in moderate revisions to regulations that apply to individual deer hunters. Examples of the types of changes proposed include adjustments to deer management unit boundaries, simplified harvest registration procedures, different deer hunting regulations on private versus public lands, and different uses and changes in the availability of antlerless deer harvest permits.

Deer population, harvest, and habitat management affect many entities in this state. A broad description of affected industries includes agriculture, forestry, tourism, and retail. Governments may be impacted by these rules because many do have programs to manage nuisance deer locally. Many non–profit groups are focused on natural resource conservation, wildlife resources, or deer in particular, and may be affected by these rules.

The department anticipates there may be none or a minimal effect on the financial health of industries, governments, and groups. The department anticipates there will be no economic effects of these regulations for individual hunters and landowners.

Affected entities are likely to base their evaluations of economic impact on their opinions of whether–or–not the rules will result in deer population increases, stabilization, or decreases. For instance, agriculture and forest–products interests may benefit from low deer populations and resulting low levels of crop and tree damage. The tourism and retail industries may benefit from high deer populations that result in greater enthusiasm and participation in deer hunting. This rule package will be designed to balance competing interests with a different approach than current rules.

It may be important to note that the department is statutorily prohibited from managing deer populations with regulations that require a hunter to first harvest an antlerless deer before harvesting a buck. The department also lacks rulemaking authority for certain deer hunting season frameworks. These changes to the department’s regulatory authority result from recently enacted statutes and they will not be considered as part of an economic analysis prepared for these rules. While deer may have significant positive or negative impacts to different entities, removal of these harvest regulations likely moderates the economic impact of this rule package.

The department anticipates that there will be no or very few implementation and compliance costs for the affected entities. These rules will not establish reporting or compliance requirements or other regulations for small business. A possible outcome of these rules is the elimination of deer registration stations at local businesses throughout the state. The department has summarized the value of registration fees paid by the department to businesses, and related impacts of this voluntary program, in the economic impact analysis.

This is not a complete estimate of economic impacts but, rather, a summary which indicates that these rules could have

none or minimal economic effects. The final economic analysis for these rules includes a description of the specific impacts of deer and deer hunting in this state based on surveys and research done by the department and other state and federal agencies. However, even though significant research exists, the impact of wild deer on the environment and to people under various conditions cannot be anticipated with exact precision. The final analysis includes significant narrative descriptions of anticipated economic impacts.

Pursuant to s. 227.114, Stats., it is not anticipated that the proposed rule will have an economic impact on small businesses. The Department’s Small Business Regulatory Coordinator may be contacted at smallbusiness@dnr.state.wi.us or by calling (608) 266–1959.

Environmental Impact

The Department has made a preliminary determination that

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

Agency Contact Person

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STATE OF WISCONSIN
DEPARTMENT OF ADMINISTRATION
DOA–2049 (R03/2012)

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**ADMINISTRATIVE RULES
Fiscal Estimate & Economic Impact Analysis**

1. Type of Estimate and Analysis

Original Updated Corrected

2. Administrative Rule Chapter, Title and Number

Chapters NR 1 Natural Resources Board Policies, NR 8 License and Permit Procedures, NR 10 Game and Hunting, NR 11 Closed Areas, NR 15 Game Refuges, NR 12 Wildlife Damage and Nuisance Control, NR 13 Chippewa Treaty Rights Participants, NR 19 Miscellaneous Fur, Fish, Game and Outdoor Recreation, and NR 45 Use of Department Properties.

3. Subject

Deer management, hunting, and implementation of the 2012 White–tailed Deer Trustee’s Report, Board Orders WM–11–13 and WM–24–13 (E).

4. Fund Sources Affected

GPR FED PRO PRS SEG SEG–S

5. Chapter 20, Stats. Appropriations Affected

s. 20.370 (Lv), (Hs), (Hx), and (Fq).

6. Fiscal Effect of Implementing the Rule

No Fiscal Effect Increase Existing Revenues Increase Costs
 Indeterminate Decrease Existing Revenues Could Absorb Within Agency’s Budget
 Decrease Cost

7. The Rule Will Impact the Following (Check All That Apply)

State’s Economy Specific Businesses/Sectors
 Local Government Units Public Utility Rate Payers
 Small Businesses (if checked, complete Attachment A)

8. Would Implementation and Compliance Costs Be Greater Than \$20 million?

Yes No

9. Policy Problem Addressed by the Rule

There was dissatisfaction with various aspects of white–tailed deer management and hunting in Wisconsin following the 2009 season. Gubernatorial candidate Scott Walker made a promise to appoint a “Deer Trustee” to review programs. In October of 2011 Dr. James C. Kroll entered into a contract with the State of Wisconsin to conduct an independent, objective and scientifically–based review of Wisconsin’s deer management practices. The White–tailed Deer Trustee’s report was released to the public in July, 2012.

The objective of the process that resulted in these rules is to integrate the work of the Deer Trustees and the publicly driven action teams into the policies and procedures to enhance deer research, management and hunting in Wisconsin.

10. Summary of the businesses, business sectors, associations representing business, local governmental units, and individuals that may be affected by the proposed rule that were contacted for comments.

Deer population, harvest, and habitat management affect many entities in this state. A broad description of affected industries includes agriculture, forestry, tourism, and retail. Governments may be impacted by these rules because many have programs to manage nuisance deer locally. Many non–profit groups are focused on natural resource conservation, wildlife resources, or deer in particular, and may be affected by these rules. During a comment period beginning in September, the department will contact representatives of all of these groups.

Affected entities are likely to base their evaluations of economic impact on their opinions of whether–or–not the rules will result in deer population increases, stabilization, or decreases. For instance, agriculture and forest–products interests may benefit from low deer populations and resulting low levels of crop and tree damage. The tourism and retail industries may benefit from high deer populations that result in greater enthusiasm and participation in deer hunting. This rule package is designed to balance competing interests with a different approach than current rules.

It is important to note that the department is statutorily prohibited from utilizing management tools or regulations that had previously been implemented at times when deer populations were 20% or more above established overwinter population goals and not likely to be reduced to goal under standard season frameworks and regulations. Notably, this includes regulations that require a hunter to first harvest an antlerless deer before harvesting a buck. The department also lacks rulemaking authority for certain deer hunting early season frameworks except when a finding of emergency is made under s. 227.24 Stats. These changes to the department’s regulatory authority are a result of 2011 ACT 50 and they are not considered as part of an economic analysis prepared for these rules. While deer may have significant positive or negative impacts to different entities, removal of these harvest regulations likely changes the department’s ability to manage deer populations in farmland regions. A result is that any economic impact of rule changes the department currently has statutory authority to establish is minimized in farmland regions.

Prior to drafting rule language the department anticipated, in its scope statements for permanent and emergency rules, that the proposal could have a moderate level of economic impact, as described in 2011 Executive Order 50. Upon completion of the public involvement and rule drafting process, the department has revised its estimate and anticipates that these rules will have none or a minimal economic impact locally or statewide.

11. Identify the local governmental units that participated in the development of this EIA.

During a comment period beginning in September the department will solicit comments from local governments using an email distribution list, posting on a website, and by contacting groups who represent associations of local governments.

12. 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)

– Economic Impacts –

The department anticipates that there will be no implementation and compliance costs for the affected entities. These rules will not establish reporting or compliance requirements or other regulations for small business.

The state’s economy as a whole will continue to benefit from the presence of a well managed deer herd. The management tools established in these rules will ensure that continued opportunities for good hunting and wildlife–based recreation are available well into the future. Like previous rules, a significant purpose for establishing deer population management objectives, managing antlerless deer harvest levels, and focus hunting activities through programs such as the Deer Management Assistance Program, landowner permits in CWD zones, and the Agricultural Damage Abatement and Assistance program is to maintain a deer herd that is in balance with the needs of industries such as agriculture, forestry, and others. In certain urban and agricultural regions the department estimates that deer herds are already increasing under current rules. While increasing deer herds may have negative impacts on industries such as agriculture, the impacts are currently occurring and are in part a result of a lack of hunting access in certain areas and less authority under statutes to implement certain harvest regulations. Increasing deer herds in certain areas following implementation of these rules should not be attributed to these rules.

CWD was first detected in Wisconsin on February 28, 2002. The department's goal has been to minimize the negative impact of CWD on deer and elk populations and the state's economy, hunters, landowners and others. The available evidence indicates that CWD has the potential for significant, negative impacts on the future of deer hunting and the related economic benefits of white-tailed deer in Wisconsin. The proposals contained in these rules are not likely to result in a reduction in the rate of infection in deer or geographic location of infected animals. However, the department continues to have the ability to implement strategies recommended in its CWD management plan which could result in reduced deer numbers in affected areas and could help control disease spread. Those include additional firearm hunting opportunities following the traditional 9-day firearm season, landowner permits allowing deer harvest by landowners and their agents following the end of regular seasons, and population objectives to decrease the density of the deer herd. Under the proposal, the department will continue to provide a free antlerless deer permit which can be used in a CWD-affected area. While additional harvest permits will need to be purchased for a fee, part of that fee is earmarked for CWD testing of hunter harvested deer. Continuing to provide low cost CWD testing for hunters may be an important feature to keep hunters interested in harvesting and utilizing their deer. With the implementation of 2011 ACT 51 some people would say that Wisconsin has taken a more passive approach to managing CWD – a recommendation of the Deer Trustee's Report – but that approach is not a result of these rules. Considering these factors, the department estimates that these rules are unlikely to have a significant impact on the management of CWD. These rules are also unlikely to have an economic impact that would result from CWD management efforts.

Conflict has occurred between farmers (traditional crop farmers, Christmas tree farmers, orchard growers, cranberry growers, and many other agriculturalists) who are trying to protect their crops and a public who wants abundant deer for viewing and hunting. With the population above state management objectives in certain areas under current rules, deer will likely continue to create agricultural problems. Deer damage complaints outnumber the other three program eligible species combined. Corn, soybeans, sweet corn and hay account for the majority of acreage damaged by deer. The creation of a Deer Management Assistance Program provides another opportunity for management of deer in specific areas which may assist in reducing agricultural damage. Overall, however, the department does not anticipate significant impacts to agriculture specifically from these rule proposals. Additional analysis of the Agricultural Damage and Nuisance Abatement program is found below under the section on fiscal impacts to the department.

White-tailed deer range throughout the state, adapting to every habitat type in Wisconsin. Their ability to live in close proximity to people has allowed deer to flourish in environments with significant human development, thus the agriculture damage they cause is no longer restricted to traditional rural areas. Additionally, damage is not restricted to agricultural products. Again, the department does not anticipate significant impacts from these proposals. Where hunting access is available in proximity to urban areas, the Deer Management Assistance Program may provide additional opportunities for hunters to act as deer managers.

Forest landowners may be economically impacted by white-tailed deer, depending upon their goals and objectives for the land. Economic impacts of deer on forest vegetation focus primarily on the foraging of plants, although antler rubbing on high value forest crops such as Christmas trees can have significant economic impacts as well. There is evidence found in research documenting site specific examples of deer impacts on forest vegetation. The effects of deer on desirable forest vegetation for a specific site can be detrimental and can create economic losses. However, a cumulative approach to assessing the impact of deer on forest landowners and desirable vegetation has not been done. Research to increase our understanding of forest habitat and white-tailed deer, in response to a recommendation of the Deer Trustee's report, is ongoing. The department's estimate that these rules will have none or a minimal effect on the forest products industry is based on estimates that these rules will not result in significant increases of deer population density. These rules maintain existing methods of controlling deer populations including a flexible system for the issuance of antlerless deer harvest permits and an Agricultural Damage Claims and Abatement Program for which certain forest products producers are eligible. Additionally, owners of industrial forest may benefit from the services that will be available through the Deer Management Assistance Program.

Vehicle deer collisions are a factor in determining how many deer the public will accept and are a cause of millions of dollars of property damage and personal injury in this state. The total number of deer salvaged after traffic accidents or removed from roadways by contractors was 26,114 in 2011. The actual number of collisions is estimated to be greater. Significant increases in deer numbers may be expected to result in higher numbers of vehicle deer collisions, particularly considering that traffic volume is not likely to decline. A goal of these rule proposals, however, is to continue managing deer herds to be in balance with ecological and social tolerances. The department's estimate that these rules will have none or a minimal effect on the economy as a result of vehicle deer collisions is based on estimates that these rules will not result in a significant increase in deer population density.

Deer impacts on the ecological composition and function of Wisconsin's ecosystems may be occurring and may have resulting impacts on tourism, gathering wild plants, species other than deer which have economic significance, and other effects. Land use by agriculture, development, silviculture, cessation of fire, and invasive species may be having more wide-sweeping impacts compared to deer.

An outcome of these rules would be the elimination of 626 deer registration stations, most at local businesses such as convenience and sporting goods stores throughout the state. These rules will relieve businesses of implementation costs they may have voluntarily incurred as registration stations. While these rules will not have any implementation or compliance costs for former registration stations, there may be an economic impact to the businesses whose customers may not come to stores to register deer and spend money on other transactions which are incidental to registering deer.

Department payments and distribution of materials to registration stations totalled approximately \$182,000 in 2012, a value of approximately \$290 on average to an individual registration station. Many stations employ extra help to register deer meaning that direct payments for services may cover costs to register deer but may not have a direct financial benefit. The value of incidental purchases made by deer hunters are likely the primary reason stations volunteer to register deer. Even without registration stations, the economic benefits of deer hunting for convenience stores and other businesses will continue to be significant. This can be seen by the heavy traffic at convenience stores as early as 4:30 a.m., before the season has opened, and the need some stores have to employ extra staff. A likely benefit to convenience stores in general is that spending activity may be distributed more equally between stores, as certain ones will not have the unique selling point of being a registration station. Department staff have heard both positive and negative comments from registration stations about an electronic registration system. At this time, we anticipate the impacts will be minimal under the criteria established in 2011 Executive Order 50.

– Fiscal Impacts on the Department –

Mandatory, in–person registration for deer began in Wisconsin in 1953. A subset of the 626 stations (~110) collect age– and sex–structure data from 20–30,000 deer annually during the traditional 9–day gun season. In–person registration provides accurate counts of annual harvest, recruitment, adult buck mortality rates and sex ratios, deer health assessments, buck antler characteristics, and allows for the collection of biological samples that are used to determine the age structure of the population and for CWD monitoring.

Eliminating or reducing in–person registration of deer will result in savings of approximately \$180,000 in supplies and services for maintaining registration stations each year for the department. The department’s expenditure authority will not change, allowing a shift of financial resources and staff time to other purposes such as implementation of the Deer Trustee Report recommendation to establish a Deer Management Assistance Program. Based upon a budget analysis for FY13 (through 6/11/13) on all expenditures department wide for the activity codes WMAP (Registration of Deer, Bear, and Turkey) and WMUB (Deer Registration/CWD Sampling), in–person registration costs totalled \$674,042.30. Electronic registration costs may be half the amount of in–person during the initial year, and less than \$50,000 in future years. This total includes the following expenditures (estimates of potential savings do not include CWD zone expenditures because the department will continue to place an emphasis on contacting hunters and collecting samples in CWD areas):

- Permanent labor & fringe – (\$125,158)
- Permanent labor allocables – (\$21,353)
- LTE labor & fringe – (\$22,767)
- LTE labor allocables – (\$327)
- Total supplies & services – Mileage, Station Materials, Station Payments, Aging Materials, and stipends (\$182,056)
- CWD registration and sampling expense – (\$322,381)
- CWD permanent labor & fringe*
- CWD LTE labor & fringe*
- Total supplies & services* – CWD carcass tags, bonus buck tags, rent, mileage, electric bills, cell phone bills, CWD samples, and stipends.

The department evaluated the following benefits and drawbacks to eliminating in person registration of deer. The benefit of increased convenience to deer hunters was seen as a significant improvement.

Pros:

- Significant reduction in staff time and costs
- Increase in customer convenience
- Immediate collection and tabulation of harvest data

Cons:

- Alternative methods (potentially less accurate) of collecting age data would have to be considered
 - CWD samples would become difficult to collect
 - Economic impact to registration stations (loss of revenue from payments and business)
 - The face–to–face interaction between DNR staff and hunters and the social aspect of hunting would be lost
 - Potential enforcement issues
 - Potential loss in public trust of population estimates
-

The department currently administers an Agricultural Damage and Nuisance Abatement program which reimburses participating farmers for damage caused by certain wildlife species, including deer. These rules do not impact the organization of the program or rules for participation. The program is currently funded in part from the sales of bonus antlerless deer permits. It is likely that bonus antlerless deer permit sales will increase under this proposal, resulting in an increase in available funding to reimburse farmers for damage and for the costs of abatement measures. Under the proposal, the department will charge a fee of \$12.00 for antlerless permits issued in a CWD management zone which are free under current rule. While \$5.00 of the cost of those permits is now statutorily earmarked for CWD management, the remaining \$7.00 is earmarked for the damage program. Another possible opportunity for increased funding exists in units which are designated herd control under current rules, antlerless deer permits are free except for a \$2.00 issuance fee. Under the proposal, one free antlerless deer permit for farmland units would still be included with the purchase of a deer hunting license, but additional permits would cost \$12.00 and the revenue is earmarked for the damage and abatement program. Charging a fee for additional antlerless permits may result in hunters obtaining fewer antlerless permits and harvesting fewer deer overall, potentially offsetting economic benefits to farmers of increased damage program funding. However, decreased antlerless harvest is not an assured outcome. Hunters may be more motivated to utilize permits they have spent money on versus free permits. When statutes were changed to allow the sales of additional turkey hunting permits for \$10.00 each to residents, versus issuing them for free, demand for extra turkey hunting permits remained very high. Under these proposed rules, the department anticipates continuing to generate enough revenue to reimburse farmers for the full amount of damage allowed under the program. The department anticipates that it will not need to prorate the amount paid for claims at current or a slightly increased level of agricultural damage claims.

In the past, changes in the issuance of hunting licenses and permits have resulted in fiscal impacts from the expenses of revising automated license system programming. However, the department's current contract already contains many options for the issuance of \$12.00 bonus permits and free permits with the issuance of archery and firearm deer licenses. Implementation of these rules will require name changes and updates to descriptions of the allowable use of tags, but may not require extensive or expensive programming to create new license types. Additionally, these rule revisions may occur concurrently with a new contract for administration of an automated licensing system and can be included in the initial construction of a new system without additional expense.

The fiscal impact to the department of these proposed rules is expected to be an effect that can be absorbed under the department's current budget. These rules will result in savings of staff time with reduced duties to set up registration stations, keep them supplied through the season, collect registration stubs, and enter data. These savings in staff time will be offset by new emphasis on consulting with owners of private and public land through the newly established Deer Management Assistance Program. The level of offset will be a result of the level of landowner and manager interest and will vary as the program becomes established and cannot be anticipated at this time. The department's Bureau of Law Enforcement has established a flexible system of conservation and environmental law enforcement and already places a significant emphasis on the most popular activities like deer hunting. Deer hunting and deer herd management has historically been a significant source of segregated funds for department management, licensing, and enforcement activities and will continue to be a significant expenditure under these proposed rules.

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

These proposed rules establish additional methods of managing deer harvest at the statewide and local level. Under s. 29.016 Stats., the department is prohibited from requiring hunters to harvest an antlerless deer before harvesting their first buck and the ability to establish firearm seasons early in the fall season is reduced. The department is proposing more consistent seasons frameworks in these rules that are more likely to be accepted by hunters but which will still result in increases in deer hunting opportunities and provide deer herd management opportunities.

Not implementing these rules will result in maintaining the current deer season frameworks. Maintaining the current deer season framework will not address dissatisfaction that some members of the public have expressed to the department, legislators, and governor. The establishment of a Deer Management Assistance Program is statutorily required.

14. Long Range Implications of Implementing the Rule

White-tailed deer will still be a prominent feature of Wisconsin's landscape whose presence generates economic activity from the related activities of hunters and other wildlife enthusiasts. Deer have historically impacted small and large businesses, and will continue to do so. However, the negative economic impacts of deer abundance on agriculture, forestry, and other industries is not expected to increase as a result of these rules.

15. Compare With Approaches Being Used by Federal Government

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 and the federal government is not involved in any large scale way with deer herd management in Wisconsin.

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

All of Wisconsin’s surrounding states use hunting seasons to provide hunting opportunities and allow or encourage antlerless deer harvest and other strategies to manage white–tailed deer herds. All of the surrounding states utilize a range of hunting seasons and allow the use of archery equipment, firearms and muzzleloading firearms at certain times. The seasons proposed in this rule order do not vary in any significant way from the hunting opportunities that are available in other states.

Illinois

The Illinois archery season runs from October 1, 2013 – January 19, 2014 except that it is closed during the firearm deer season in those portions of the state that hold a firearm deer season. Illinois has two periods for firearm deer hunting, a muzzleloader season, and special CWD and antlerless–only seasons. The first firearm season in 2013 is November 22 – 24 and the second season is December 5 – 8. The muzzleloader season is Dec. 13 – 15. The special CWD and antlerless–only seasons occur on December 26 – 29 and January 17 – 19, 2014. A youth firearm deer hunt is open on October 12 – 14. All firearm hunting permits are distributed first through a tiered drawing system where residents have a higher chance of being selected for a permit than non–residents, then through a random daily drawing, and finally they are offered over–the–counter on a first–come first–served basis until the unit’s quota is reached. Hunters who are eligible to purchase a hunting permit receive an either–sex permit and one bonus antlerless–only permit. There is no limit on the number of resident archery licenses that will be issued, and each resident archery license includes an antlerless–only and an either sex permit. Non–resident archery licenses also include an either sex permit and an antlerless–only permit, but are allocated through a lottery system.

Iowa

In Iowa, there are two archery seasons, two muzzleloader season, and two shotgun seasons. There is also an antlerless–only season, a youth hunt for residents, and a holiday season for non–residents. The archery season runs from October 1 – December 6 and December 23 – January 10, 2014. The muzzleloader seasons run from October 12 – 20 (residents only) and December 23 – January 10, 2014. The shotgun seasons run from December 7 – 11 and December 14 – 22. The antlerless–only season runs from January 11 – 19, 2014, the youth hunt runs from September 21 – October 6, and the holiday season runs from December 24 – January 2, 2014. When a hunter purchases an ‘Any Deer License’, they are entitled to harvesting either a buck or an antlerless deer statewide. Hunters also have the option to purchase an ‘Antlerless–only License’ which is valid for a specific zone in the state. The number of antlerless licenses available in any particular zone is determined by a quota system, and hunters are able to purchase these licenses on a first–come first–served basis until the quota is reached.

Michigan

Michigan has one firearm season, two archery seasons, and one muzzleloader season, as well as two antlerless–only seasons and a youth hunt. The firearm season runs November 15 – 30. The archery seasons run October 1 – November 14 and December 1 – January 1, 2014. Michigan’s muzzleloader–only season season is split into three zones with each zone’s season occurring in December and lasting for either 10 or 17 days. The antlerless–only seasons run from September 21–22 and December 23 – January 1, 2014 and the youth hunt occurs on Sept 21–22. Hunters interested in harvesting an antlerless deer must purchase an antlerless license that is valid within a specific DMU for use on either public land or private land. In some DMUs, these licenses may only be purchased over the counter, whereas in other DMU’s there is an application process and drawing.

Minnesota

Minnesota has one archery season, one firearm season that is divided into four separate zones, and one muzzleloader season. There is also a special archery season on Camp Ripley (a military base) and a youth season. The archery season runs from September 14 – December 31. The firearm season runs November 9 – 17, November 9 – 24, or November 23 – December 1 depending on the zone. The muzzleloader season runs November 30 – December 15. The special archery hunt on Camp Ripley occurs on October 26 – 27 and November 2–3. The youth hunt runs from October 17 – 20. Antlerless permits are distributed through a license lottery in “lottery” areas of the state. In “Hunter Choice”, “Managed”, or “Intensive” areas licenses are either–sex. Bonus permits for antlerless deer are available over the counter for use in managed and intensive areas.

17. Contact Name
Scott Loomans

18. Contact Phone Number
(608) 267–2452

ATTACHMENT A

1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

Wisconsin's deer hunting opportunities are enthusiastically enjoyed by more than 600,000 participants each year, resulting in significant economic and fiscal benefits for small business. Additionally, high deer populations impact the agriculture, forestry, and other industries in ways that may not be positive. The department anticipates that this will continue to be true after implementation of these rules. The department will continue to manage the deer herd with a goal to obtain a balance between the positive and negative impacts of white-tailed deer. Some management strategies which may have been viewed as aggressive are no longer available to the department. New management strategies proposed in this rule will be viewed by some as a more cooperative effort to manage deer herds and may improve management success over current rules. Improved cooperation between hunters, landowners, other stakeholders, and the department will have a beneficial impact for everyone who is affected by white-tailed deer, although the specific economic impact cannot be measured. Over all, the department anticipates none or a minimal impact on small businesses.

A minimal impact to certain small businesses could be a loss of incidental sales at convenience stores or sporting good shops who currently volunteer to register deer for the department. A corresponding increase in sales for other area stores as that type of shopping effort is dispersed among stores that do not register deer, will negate any overall impact to small businesses.

2. Summary of the data sources used to measure the Rule's impact on Small Businesses

Deer Population Goals and Harvest Management Environmental Assessment, 1995.

Information related to registration of deer at private businesses such as convenience and sporting goods stores is from an analysis of department's own budget information for FY 2013.

Wisconsin's Chronic Wasting Disease Management Plan: 2010 – 2025

The 2011 Wisconsin Deer Hunting Summary records that firearm deer hunter numbers exceeded 600,000 for the first time in 1977 and have remained above that number since then. This information provides a basis for the estimate that deer hunting and related economic and fiscal benefits for small business will continue to exist after implementation of these rules.

USDA–APHIS–Wildlife Services Wisconsin Wildlife Damage Abatement and Claims Program – 2012 Summary Report.

Project Summary – Evaluating the interdependency between white-tailed deer and northern hardwood habitat; increasing our understanding of forest management and white-tailed deer health.

Reported Vehicle Killed Deer Removed from Wisconsin Roadways – FY 2011

DNR Spring Turkey Harvest Report – 2011. This document contains information on sales of leftover turkey permits.

3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- Less Stringent Compliance or Reporting Requirements
- Less Stringent Schedules or Deadlines for Compliance or Reporting
- Consolidation or Simplification of Reporting Requirements
- Establishment of performance standards in lieu of Design or Operational Standards
- Exemption of Small Businesses from some or all requirements
- Other, describe:

These rules are applicable to individual deer hunters and impose no compliance or reporting requirements for small businesses.

4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

These rules are applicable to individual sportspersons and impose no compliance or reporting requirements for small businesses, and no design or operational standards are contained in the rule. Because this rule does not add any regulatory requirements for small businesses, the proposed rules will not have a significant economic impact on a substantial number of small businesses under 227.114(6) or 227.14(2g).

5. Describe the Rule's Enforcement Provisions

These rules do not establish any new enforcement provisions. The department has determined that existing enforcement efforts and penalties will continue to be effective at assuring a level of compliance with hunting regulations which results in a fair distribution of resources among hunters and other deer enthusiasts, safe hunting seasons, and effective deer herd management.

6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

- Yes No
-

Notice of Hearing

Natural Resources

Fish, Game, etc., Chs. NR 1—

CR 13–079

(DNR # FH–01–12)

NOTICE IS HEREBY GIVEN that pursuant to and interpreting ss. 29.014 (1), 29.041, 29.403 (1g), and 29.403 (2), Stats., the Department of Natural Resources will hold public hearings on revisions to ch. NR 20, Wis. Adm. Code, in permanent rule Order FH–01–12 relating to fishing tournaments on inland, outlying, and boundary waters of Wisconsin.

Hearing Information

Date: Wednesday, October 30, 2013
Time: 6:30 p.m.
Location: South Side Neighborhood Center
 1300 S. 6th St.
 La Crosse, WI 54601

Date: Monday, November 4, 2013
Time: 6:00 p.m.
Location: Fitchburg Public Library
 5530 Lacy Road
 Meeting Room A & B
 Fitchburg, WI 53711

Date: Wednesday, November 6, 2013
Time: 6:00 p.m.
Location: James P. Coughlin Center/
 DNR Service Center
 625 E. County Road Y
 Main Conference Room
 Oshkosh, WI 54901

Appearances at Hearing

Pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of information material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Jonathan Hansen at (608) 266–6883 with specific information on your request at least 10 days before the date of the scheduled hearing.

Availability of Rules and Submitting Comments

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

Written comments on the proposed rule may be submitted via U.S. mail or email to Jonathan Hansen at the addresses noted above. Written comments, whether submitted electronically or by U.S. mail, will have the same weight and effect as oral statements presented at the public hearings. Comments may be submitted until **November 8, 2013**.

Analysis Prepared by the Department of Natural Resources

Statutes interpreted

Sections 29.014 (1), 29.041, and 29.403, Stats., have been interpreted as giving the department the authority to make

changes to fishing regulations on waters of Wisconsin and to write fishing tournament rules that help to ensure good fishing opportunities.

Statutory authority

Sections 29.014 (1), 29.041, 29.403 (1g), and 29.403 (2), Stats.

Explanation of agency authority to promulgate the proposed rules under the statutory authority

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

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

Section 29.403 (1g), Stats., authorizes the department to promulgate rules to establish a program to authorize and regulate fishing tournaments and establish the scope and applicability of the program.

Section 29.403 (2), Stats., provides that the department may require a permit to conduct a fishing tournament and may impose terms and conditions that apply to a specific permit.

Related statutes or rules

Section 23.095 (1g), Stats., Protection of natural resources: No person may damage or attempt to damage any natural resource within the state. “Damage” means to commit a physical act that unreasonably destroys, molests, defaces, removes or wastes.

Plain language analysis of the proposed rule

This rule is being proposed to simplify and create more effective fishing tournament rules that should increase user satisfaction and address concerns about crowding, tournament associated fish mortality, and the spread of invasive species.

SECTIONS 1 and 2 define culling and require bass fishing tournaments of any size that intend to cull to obtain a permit. “Cull” or “Culling” is the practice of releasing a live fish that was held in an angler’s possession and replacing it with another fish. Live fish that are released and capable of swimming away under their own power are not considered part of the angler’s daily bag limit provided the total number of fish possessed at any one time does not exceed the angler’s daily bag limit. Section 29.403 (1m), Stats., allows culling only during largemouth and smallmouth bass fishing tournaments authorized by the department.

SECTION 3 creates a permit exception for season–long tournaments. Many resorts and bars have season–long events for which participants must pay to enter, however, the associated fishing pressure is minimal because it is dispersed over many weeks. Creating a permit exception would allow Wisconsin resorts and bars to continue to hold season–long tournaments without applying for a permit and with little chance of adding to typical tournament related crowding or fish mortality.

SECTION 4 adjusts the lower bounds of prize values used to determine the permit application fee. Tournament permit applicants must pay an application fee based on prize values. Tournament permit applicants tend to estimate the maximum prize values on their application at a level that results in an unnecessarily high application fee. This change would add \$1 to the lower bounds of the prize value structure in order to reduce application fees for some applicants from \$50 to \$25 and from \$200 to \$50.

SECTION 5 removes the open period and lottery process from the permit application process and allows applicants to apply starting on January 1 of the preceding year for traditional tournaments (a fishing tournament that was issued permits 4 out of 5 years from 2004 to 2008 for the same water and time period) and April 1 of the preceding year for non–traditional tournaments. All permits would be issued on a first come first served basis. Language was also included that allows the department to process late applications provided the applicant pays a late fee. This is necessary in order for department staff to expedite reviews and give incentive for applicants to apply earlier.

SECTION 6 excludes small permitted bass tournaments from calculations to determine the total number of tournaments allowed on individual waters. The size and number of permitted fishing tournaments allowed on a water body may not exceed limits in administrative code based on lake acreage and the numbers of boats, fishing days, and participants. 2011 Wisconsin Act 24 allowed culling in department–authorized bass tournaments, and as a result bass tournaments with fewer than 20 boats that formerly did not need permits are now applying for them in order to cull fish. The increase in permit applications could create a shortage of permits on certain waterbodies, potentially preventing large tournaments in need of a permit from receiving one. Prior to Act 24, these tournaments would already occur without a permit and not be counted toward the tournament permit limit because the small number of participants would not cause crowding on the water. Small bass tournaments (<20 boats) that apply for a permit only so participants can cull fish would not be counted toward any participation limits (maximum daily number of boats, maximum monthly boat days, maximum daily concurrent tournaments).

SECTION 7 increases the maximum daily number of participants allowed for permitted ice fishing events in small lakes: 150 daily participants would be allowed on lakes less than 100 acres and 250 daily participants would be allowed on lakes between 100 to 449 acres. Numerous community–oriented fundraising events with ice fishing tournaments are limited by the current participation limits.

SECTION 8 explicitly recognizes Minnesota’s tournament permits on border waters. The fishing tournament permitting program administered by the Minnesota Department of Natural Resources that authorizes tournament activity on WI–MN boundary waters of the Mississippi River is very similar to that of Wisconsin. Accordingly, the states have recognized tournament permits and allowed tournament activity in their waters under the other states’ permits. The number of permits available per river pool was set to reflect this agreement.

SECTIONS 9 and 10 specify that boat and live well requirements only apply to open water tournaments and that any fish transported to or from the weigh–in site in a catch–hold–release ice fishing tournament must be held in water if the fish will be released.

SECTIONS 11 and 15 include standard conditions associated with catch–hold–release muskellunge tournaments. The permit provisions for fish transport, measurement, and release have always been included on permits for catch–hold–release muskellunge tournaments. The provisions will now be codified rather than only included on permit forms.

SECTIONS 12, 13, and 14 clarify the use of tournament specific conditions for catch–hold–release bass and walleye

tournaments. The department currently places tournament–specific conditions on catch–hold–release bass and walleye tournaments to address issues related to post–release mortality. Specifically, the department may reduce the daily bag limit when water temperatures are typically elevated and restrict the areas anglers are allowed to fish on large waterbodies to reduce the distance fish are transported. Both of these tournament specific conditions have at different times generated substantial controversy and, because of mutual miscommunication, been received with some element of surprise. The department worked with tournament anglers in developing a standard approach to implementing these conditions. The proposed changes explicitly state when and where bag limits will be reduced as well as provide exceptions for high profile tournaments. The proposed changes also state exactly where anglers will be allowed to fish on Green Bay based on the species they are targeting and the location of a tournament’s weigh–in site. Finally, the department is adding language that clarifies the reasoning for the condition: whether the conditions are to be used to address issues associated with waste from post–release mortality or whether the conditions are meant to address potential detrimental effects on the fish population.

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

The department is not aware of any existing or proposed federal regulation that would govern tournament fishing in Wisconsin’s inland, outlying, or boundary waters.

Comparison with rules in adjacent states

Iowa: A tournament permit is required from the DNR for all organized fishing events with 6 or more boats or 12 or more participants (except for the Mississippi River where it is 20 or more boats or 40 or more participants) where an entry fee is required or prize values awarded. Tournament permits must be applied for online and cost \$25. Tournament activity is limited based on waterbody size and permit applications can be denied at the discretion of the reviewing biologist. The DNR may impose special conditions for any fishing tournament if deemed necessary to protect the resource or to assure public safety, including but not limited to:

- fish measured to length and released from a boat.
- designated release areas.
- multiple weigh–ins when water temperatures exceed 70 degrees Fahrenheit.
- scheduled weigh–in no later than 1:00 PM in the months of June, July, and August.
- no weigh–in tournaments allowed for walleye, northern pike, and muskellunge in the months of June, July, and August.

Minnesota: Fishing tournaments are regulated very similarly to Wisconsin. Tournament permits are available based on waterbody size and a lottery exists if limits are reached. Permit application fees are more substantial than Wisconsin. Additionally, the DNR may include the following restrictions as part of a fishing contest permit:

- Restrictions on live–release or off–site weigh–ins, or denial of live–release or off–site weigh–ins to prevent undue loss of fish;
- Restrictions on hours that a fishing contest is conducted including specified start and stop times;
- Limits on pre–fishing and proof that such limits were communicated to contest participants and enforced; and

- Limits on the use of parking spaces at state–owned public water access sites and proof that such limits were communicated to the participants and enforced.

Illinois: A permit is needed from the DNR if prizes are offered for tagged fish, the event is more than 5 days, or if special exemptions are requested. There are no set limits to tournament activity nor a permit fee. Permit applications are reviewed and issued or denied based on various criteria. There is no set application process except that applications must be received at least 60 days in advance.

Michigan: Fishing tournament permits are obtained through the Michigan Recreational Boating Information Center for the use of the waterbody access site.

Summary of factual data and analytical methodologies

This rule is intended to simplify and create more effective fishing tournament rules that increase user satisfaction while still addressing concerns about crowding, tournament associated fish mortality, and the spread of invasive species. The Tournament Rule Review Task Force, which includes DNR Fisheries Management and Law Enforcement staff and public tournament organizers from the Wisconsin Bass Federation Nation, Wisconsin Bass Federation, Wisconsin Conservation Congress, and the Midwest Walleye Series, developed the fishing tournament rule changes. Letters soliciting input on the suggested changes will be sent to Wisconsin Federation of Great Lakes Sportfishing Clubs, the Wisconsin Conservation Congress, the Wisconsin Association of Lakes, the Wisconsin Wildlife Federation, and the Musky Clubs Alliance of Wisconsin, among others.

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

There would be no implementation costs for the department and no expected costs or impacts on small businesses. Programming changes would be made to the department’s online permitting system in order to simplify and quicken the application process for tournament organizers and reduce workload for staff.

Effects on Small Business

The rule would directly affect sport anglers who engage in

tournament fishing. It is not expected to have an effect on small businesses. Resorts or taverns that choose to organize season–long fishing tournaments would have permit exemptions to do so. Local businesses that cater to tournament anglers and spectators may be indirectly affected by this rule.

No negative impact is expected for businesses or business associations. No additional compliance or reporting requirements will be imposed on small businesses as a result of these rule changes. The department will conduct an economic impact analysis prior to rule implementation.

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

Environmental Impact

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

Agency Contact Person

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STATE OF WISCONSIN
 DEPARTMENT OF ADMINISTRATION
 DOA–2049 (R03/2012)

DIVISION OF EXECUTIVE BUDGET AND FINANCE
 101 EAST WILSON STREET, 10TH FLOOR
 P.O. BOX 7864
 MADISON, WI 53707–7864
 FAX: (608) 267–0372

**ADMINISTRATIVE RULES
 Fiscal Estimate & Economic Impact Analysis**

1. Type of Estimate and Analysis

Original Updated Corrected

2. Administrative Rule Chapter, Title and Number

Chapter NR 20, Fishing: Inland Waters; Outlying Waters

3. Subject

Fishing Tournament Rule Changes, FH–01–12

4. Fund Sources Affected
 GPR FED PRO PRS SEG SEG–S

5. Chapter 20, Stats. Appropriations Affected

6. Fiscal Effect of Implementing the Rule

- No Fiscal Effect Increase Existing Revenues Increase Costs
 Indeterminate Decrease Existing Revenues Could Absorb Within Agency's Budget
 Decrease Cost

7. The Rule Will Impact the Following (Check All That Apply)

- State's Economy Specific Businesses/Sectors
 Local Government Units Public Utility Rate Payers
 Small Businesses (if checked, complete Attachment A)

8. Would Implementation and Compliance Costs Be Greater Than \$20 million?

- Yes No

9. Policy Problem Addressed by the Rule

The rule is intended to simplify and create more effective fishing tournament rules that increase user satisfaction while addressing concerns about crowding, tournament associated fish mortality, and the spread of invasive species.

10. Summary of the businesses, business sectors, associations representing business, local governmental units, and individuals that may be affected by the proposed rule that were contacted for comments.

For comments on the economic impact of the rule, the department contacted current and former fishing tournament permit holders, local governments where tournaments often occur, the Wisconsin Conservation Congress, the Wisconsin Wildlife Federation, the Great Lakes Indian Fish and Wildlife Commission, Wisconsin Association of Lakes, WI Federation of Great Lakes Sport Fishing Clubs, WI Council of Sport Fishing Organizations, Musky Clubs Alliance of Wisconsin, Inc., Salmon Unlimited, Sturgeon for Tomorrow, Trout Unlimited – WI Council, Walleyes for Tomorrow, WI Bass Federation, Izaak Walton League–Wisconsin Division, Lake Michigan Fisheries Forum, WI Commercial Fisheries Association, American Fisheries Society–Wisconsin Chapter, Natural Resources Foundation of WI, Gathering Waters, River Alliance of Wisconsin, UW Sea Grant, League of WI Municipalities, WI Towns Association, WI Counties Association, NE WI Great Lakes Sport Fishermen, Great Lakes Sport Fishermen of Milwaukee, and the Lake Michigan and Lake Superior Commercial Fishing Boards.

The Department received five comments during the August 22 to September 5 open comment period, including:

—Ron Lappin, Tournament Director for FLW Outdoors: We are a compliant company and we have no issue with the proposed rule. We applaud efforts to help us help our customers have a great experience fishing in your states waters.

—Fred Iantorno, President of Blackhawk Bassmasters: Thank you for the opportunity to review the proposed changes. And thank you for the changes. Blackhawk Bassmasters is a small fishing club that has obtained permits in 2013 in order to cull. We fall under the minimum requirements do to our size. There is no economic impact to us unless the fees are raised from the \$25.00. There is still one point that I believe needs to be clarified. It is the three fish rule during warmer weather. The issue is that of the temperature exceptions. How will a club such as ours be notified that the 3 fish rule (for the appropriate summer period) is NOT in effect. Water temperature varies all over a body of water. Without some way of know definitively in writing, the temperature rule has no effect. Not wanting to violate any law, I, for one, would have to assume that the rule is in effect. Please consider something to the effect of posting a web page with this information and making it easily available to anglers. Thank you for the opportunity to review the documents, and for considering my reply.

(Department response to the above question is that the appropriate regulation would be listed in the permit obtained by tournament organizers.)

—Gary Swanson, WI River Lions: Thank you for asking for our input. We have held the "Early Bird Fishing Tournament" for the past 30 years. We are the Wisconsin River Lions and as a charitable organization using our April fishing tournament on the Wisconsin River as a fund raiser, lowering the permit fee would be great. We do not allow culling in our tournament, so that aspect of your proposal does not apply to us. We also have a very low mortality due to the water temperature in late April. Most of your proposal will not impact our tournament, but maybe you could waive the permit fee for charitable organizations? Thanks again for asking.

—Marc A. Schultz, Chairman La Crosse County Conservation Alliance: I quickly reviewed the information provided and did not notice any big issues however getting input from member organizations is impaired by the short comment period. I do have an issue with the short turn around on the comment time. I suspect that some fishing organizations have followed this process but most anglers have not. Many conservation organizations meet once a month. If the organization meeting does not fall within the time period Aug 22 to Sept 5 and having not been aware of the details of the proposals before today the organization would not usually be able to comment. This economic impact process needs a minimum of 30 days for comment.

(The Department responded directly to Mr. Schultz with the following: Thanks for your comments. This rule is expected to have minimal economic impact, which put it in the 14–day comment period category. However, the rule must still be approved for public hearings by the Natural Resources Board and afterward there will be a public hearing and comment period, so there will be ample opportunity for anyone we’ve missed to still comment. If anyone has specific economic impact comments at a later time, we can update the analysis as needed. Mr. Schultz then responded: OK. I do not expect any real issues and it is good to know the details of the process. Thanks.)

—Scott Gartner, Bob’s Bait and Tackle in LaCrosse, WI: The new rules I just read, and believe to understand, would be a great benefit to my small bait and tackle company in La Crosse, WI. We are right on the Mississippi River and tournaments are a catalyst for a considerable amount of our yearly revenue. These loosened rules will be great for our business and I believe are more appropriate for such a wonderful and large tournament body of water. The areas that are very small may have some crowding issues with fewer permits needed, but I can’t speak for them.

11. Identify the local governmental units that participated in the development of this EIA.

No local governments requested to participate in the development of the EIA.

12. 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)

Based on one comment received during the economic impact comment period, the rule may have a beneficial impact for some businesses, such as bait and tackle shops located near popular tournament areas. Minimal economic impact is expected overall for businesses, business associations, public utility rate payers, or local governmental units. The proposed rule would not adversely affect in a material way the economy, a sector of the economy, productivity, jobs, or the overall economic competitiveness of the State.

The proposed rule change would impact fishing tournament organizers and sport anglers who participate in fishing tournaments. No additional compliance or reporting requirements will be imposed on small businesses as a result of these rule changes.

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

The proposed rule change would positively impact fishing tournament organizers and sport anglers who participate in fishing tournaments. The Tournament Rule Review Task Force – which includes DNR Fisheries Management and Law Enforcement staff, a WI Conservation Congress representative, and public tournament organizers from Wisconsin BASS and the Midwest Walleye Series – developed these fishing tournament rule changes.

There would be no implementation costs for the Department and no expected costs or impacts on small businesses. Programming changes would be made to the Department’s online permitting system in order to simplify and quicken the application process for tournament organizers and potentially reduce workload for staff.

The alternative would be to not implement the rule, which would reduce the benefits expected for fishing tournament organizers and Department staff. All parties will benefit from clarification of existing rules as well as ensuring administrative code reflects the statutory changes made in 2011 Wisconsin Act 24.

14. Long Range Implications of Implementing the Rule

Changes are expected to make the tournament permitting process simpler and to clarify rules for anglers. No negative impact is expected for businesses, business associations, public utility rate payers, or local governmental units.

15. Compare With Approaches Being Used by Federal Government

The Department is not aware of any existing or proposed federal regulation that would govern fishing tournaments.

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

Iowa

A tournament permit is required from the DNR for all organized fishing events with 6 or more boats or 12 or more participants (except for the Mississippi River where it is 20 or more boats or 40 or more participants) where an entry fee is required or prize values awarded. Tournament permits must be applied for online and cost \$25. Tournament activity is limited based on waterbody size and permit applications can be denied at the discretion of the reviewing biologist. The DNR may impose special conditions for any fishing tournament if deemed necessary to protect the resource or to assure public safety, including but not limited to:

- fish measured to length and released from a boat
 - designated release areas
 - multiple weigh–ins when water temperatures exceed 70 degrees Fahrenheit
 - scheduled weigh–in no later than 1:00 PM in the months of June, July, and August
 - no weigh–in tournaments allowed for walleye, northern pike, and muskellunge in the months of June, July and August
-

Minnesota

Fishing tournaments are regulated very similarly to Wisconsin. Tournament permits are available based on waterbody size and a lottery exists if limits are reached. Permit application fees are more substantial than Wisconsin. Additionally, the DNR may include the following restrictions as part of a fishing contest permit:

- Restrictions on live–release or off–site weigh–ins, or denial of live–release or off–site weigh–ins to prevent undue loss of fish;
- Restrictions on hours that a fishing contest is conducted including specified start and stop times;
- Limits on pre–fishing and proof that such limits were communicated to contest participants and enforced; and
- Limits on the use of parking spaces at state–owned public water access sites and proof that such limits were communicated to the participants and enforced.

Illinois

A permit is needed from the DNR if prizes are offered for tagged fish, the event is more than 5 days, or if special exemptions are requested. There are no set limits to tournament activity nor a permit fee. Permit applications are reviewed and issued or denied based on various criteria. There is no set application process except that applications must be received at least 60 days in advance.

Michigan

Fishing tournament permits are obtained through the Michigan Recreational Boating Information Center for the use of the waterbody access site.

17. Contact Name Jonathan Hansen, Tournament Program Manager	18. Contact Phone Number 608–266–6883
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This document can be made available in alternate formats to individuals with disabilities upon request.

Notice of Hearing

Natural Resources

Fish, Game, etc., Chs. NR 1–

CR 13–080

(DNR # FR–20–12)

NOTICE IS HEREBY GIVEN that pursuant to ss. 227.16 and 227.17, Stats., the Department of Natural Resources, hereinafter the Department, will hold a public hearing on amendment of s. NR 45.045 (2) (a) and (b), relating to decreasing the distance from which firewood may be brought onto state lands from 25 to 10 miles and allowing wood from out of state to enter state lands if originating within 10 miles on the date and at the time and locations listed below.

Hearing Information

- Date:** Tuesday, October 29, 2013
Time: 7:00 p.m.
Locations: Pyle Center, UW–Madison campus
 702 Langdon St.
 Room DE 227
 Madison, WI
- UW–Eau Claire campus
 105 Garfield Ave.
 Old Library Room 1132
 Eau Claire, WI
- UWC/UW–Marathon County campus
 518 S. 7th Ave.
 Room 218
 Wausau, WI
- UW–Green Bay campus
 2420 Nicolet Dr.
 Room IS 1034
 Green Bay, WI

Appearances at Hearing

Reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Contact Andrea Diss–Torrance, Madison, WI 53707; by e–mail at andrea.disstorrance@wi.gov or by calling (608) 264–9247. A request must include specific information and be received at least 10 days before the date of the scheduled hearing.

Availability of the Proposed Rules and Fiscal Estimate

The proposed rule and supporting documents, including the fiscal estimate, may be viewed and downloaded from the Administrative Rules System Web site which can be accessed through the link <https://health.wisconsin.gov/admrules/public/Home>. If you do not have Internet access, a printed copy of the proposed rule and supporting documents, including the fiscal estimate, may be obtained free of charge by contacting Andrea Diss–Torrance, Department of Natural Resources, Bureau of Forest Management, 101 S. Webster St, Madison, WI 53703, or by calling (608) 264–9247.

Submitting Comments

Comments on the proposed rule must be received on or before **Monday November 4, 2013**. Written comments may be submitted by U.S. mail, fax, e–mail, or through the Internet and will have the same weight and effect as oral statements presented at the public hearing. Written comments and any questions on the proposed rules should be submitted to:

- Andrea Diss–Torrance
 Department of Natural Resources
 Bureau of Forest Management
 101 S Webster St, Madison, WI 53703
 Telephone: (608) 264–9247
 Fax: (608) 266–8576
 E–mail: andrea.disstorrance@wi.gov
 Internet: Use the Administrative Rules System Web site accessible through the link provided.

Analysis Prepared by the Department

Statutes interpreted

Sections 23.09 (2) (intro), 23.091, 23.11 (4), 23.17, 23.175, 23.22 (2) (a), 23.28 (3), 23.293, 27.01 (2) (i) and (j), and 28.04 (2), Stats.

Statutory authority

Section 23.09 (intro.), Stats.: Departmental rules; studies; surveys; services; powers; long–range planning. The department may promulgate such rules, inaugurate such studies, investigations and surveys, and establish such services as it deems necessary to carry out the provisions and purposes of this section. The department shall establish long–range plans, projects and priorities for conservation. The department may:

Section 23.09 (2m) (b), Stats.: Forest land plans and management. The department shall manage forest land under its jurisdiction in a manner that is consistent with, and that furthers the purpose of, the designation of that forest land as a state forest, southern state forest, state park, state trail, state natural area, state recreation area, or similar designation.

Section 23.09 (10), Stats.: Conservation easements and rights in property. Confirming all the powers hereinabove granted to the department and in furtherance thereof, the department may acquire any and all easements in the furtherance of public rights, including the right of access and use of lands and waters for hunting and fishing and the enjoyment of scenic beauty, together with the right to acquire all negative easements, restrictive covenants, covenants running with the land, and all rights for use of property of any nature whatsoever, however denominated, which may be lawfully acquired for the benefit of the public. The department also may grant leases and easements to properties and other lands under its management and control under such covenants as will preserve and protect such properties and lands for the purposes for which they were acquired.

Section 23.091 (1), Stats.: Designation. The department may acquire, develop, operate and maintain state recreation areas. State lands and waters may be designated as state recreation areas that are environmentally adaptable to multiple recreational uses, or are so located to provide regional or urban recreational opportunities or for preservation.

Section 23.11 (1), Stats.: General powers. In addition to the powers and duties heretofore conferred and imposed upon said department by this chapter it shall have and take the general care, protection and supervision of all state parks, of all state fish hatcheries and lands used therewith, of all state forests, and of all lands owned by the state or in which it has any interests, except lands the care and supervision of which are vested in some other officer, body or board; and said department is granted such further powers as may be necessary or convenient to enable it to exercise the functions and perform the duties required of it by this chapter and by other provisions of law. But it may not perform any act upon state lands held for sale that will diminish their salable value.

Section 23.11 (4), Stats.: The department shall have police supervision over all state–owned lands and property under its supervision, management and control, and its duly appointed agents or representatives may arrest, with or without warrant, any person within such area, committing an offense against the laws of this state or in violation of any rule of the

department in force in such area, and deliver such person to the proper court of the county wherein such offense has been committed and make and execute a complaint charging such person with the offense committed. The district attorney of the county wherein such offense has been committed shall appear and prosecute all actions arising under this subsection.

Section 26.30 (2), Stats.: Powers. The department is vested with authority and jurisdiction in all matters relating to the prevention, detection and control of forest pests on the forest lands of the state, and to do all things necessary in the exercise of such authority and jurisdiction, except that this shall not be construed to grant any powers or authority to the department for the silvicultural control of forest pests on any land. This section shall apply only to the detection and control of forest pests on forest lands and does not affect the authority of the department of agriculture, trade and consumer protection under chs. 93 and 94(4). The action of the department under sub. (4) shall be coordinated with the department of agriculture, trade and consumer protection in accordance with s. 20.901. The secretaries of natural resources and agriculture, trade and consumer protection shall execute annually a memorandum of agreement to enable the coordination of pest control work of their departments.

Section 27.01(2)(i), Stats.: Establish and operate in state parks such services and conveniences and install such facilities as will render such parks more attractive for public use and make reasonable charges for the use thereof.

Section 27.01 (2) (j), Stats.: Promulgate rules necessary to govern the conduct of state park visitors, and for the protection of state park property, or the use of facilities, including the use of boats and other watercraft on lakes or rivers within the limits of a state park, and the use of roads, trails or bridle paths.

Section 28.04 (2) (a), Stats.: The department shall manage the state forests to benefit the present and future generations of residents of this state, recognizing that the state forests contribute to local and statewide economies and to a healthy natural environment. The department shall assure the practice of sustainable forestry and use it to assure that state forests can provide a full range of benefits for present and future generations. The department shall also assure that the management of state forests is consistent with the ecological capability of the state forest land and with the long–term maintenance of sustainable forest communities and ecosystems. These benefits include soil protection, public hunting, protection of water quality, production of recurring forest products, outdoor recreation, native biological diversity, aquatic and terrestrial wildlife, and aesthetics. The range of benefits provided by the department in each state forest shall reflect its unique character and position in the regional landscape.

Section 28.04 (2) (c), Stats.: In managing the state forests, the department shall recognize that management may consist of both active and passive techniques.

Section 227.11 (2) (a), Stats.: Rule–making authority is expressly conferred as follows: Each agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute, but a rule is not valid if the rule exceeds the bounds of correct interpretation. All of the following apply to the promulgation of a rule interpreting the provisions of a statute enforced or administered by an agency:

Explanation of agency authority

Section 23.11 (1), Stats., states that the department shall have and take general care, protection and supervision of all state parks, of all state fish hatcheries and lands used therewith, of all state forests, and of all lands owned by the state or in which it has any interests, except lands where the care and supervision of which are vested in some other officer, body or board; said department is granted such further powers as may be necessary or convenient to enable it to exercise the functions and perform the duties required of it by this chapter and by other provisions of the law. Sections 23.09 (2) (intro.), 23.091, 23.28 (3), and 27.01 (2) (j), Stats., describe department responsibilities on specific types of properties covered in s. 23.11 (1), Stats. The department interprets s. 23.22 (2) (a), Stats., to require the department to establish a statewide program to control invasive species in this state. Rules to control the spread of emerald ash borer, and invasive species, are a part of that program. Finally, s. 227.11 (2) (a), Stats., expressly confers rulemaking authority on the department to promulgate rules interpreting any statute enforced or administered by it, if the agency considers it necessary to effectuate the purpose of the statute.

Related statutes or rules

Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) ch. ATCP 21 regulates import and movement of firewood and other host material of the emerald ash borer, Asian longhorn beetle, hemlock woolly adelgid, and sudden oak death. The Wisconsin Department of Natural Resources ch. NR 40 prohibits the movement of materials carrying specific invasive species, such as firewood with emerald ash borer (EAB) or asian longhorned beetle. This rule supports chs. ATCP 21 and NR 40.

Plain language analysis

DNR currently limits firewood entering state lands to that wood originating from within 25 miles and within the state or from dealers that are certified by the state as treating their wood to prevent transmission of pests or diseases. In response to concerns from the public, we propose to reduce the allowable distance to 10 miles. A model of the changing risk of introduction of an invasive pest with decreasing allowable distance shows a significant reduction in level of risk between 25 and 10 miles and that difference in reduction in risk is greater with increasing numbers of infestations in WI. With the establishment of emerald ash borer and beech bark disease at several sites in Wisconsin and the new threat of thousand cankers disease of walnut, reducing the allowable distance for wood brought onto state lands seems to be a prudent step to take.

If the allowable distance is reduced to 10 miles, the prohibition of out-of-state wood will no longer provide the additional protection it once contributed. If a pest is established within 10 miles, it will be a short time before it can spread on its own onto the property. In this situation, the out-of-state prohibition doesn't provide additional protection. Regulation that doesn't provide a benefit should be dropped. We also expect a long term benefit of simplifying the message that safe wood is local or treated and avoiding the appearance of blaming other states for invasive pests.

Summary and comparison with existing and proposed federal regulations

The Apostle Islands National Park has prohibited all firewood into the park since 2006. The Chequamegon–Nicolet National Forest prohibits firewood from south of Route 29 or from outside Wisconsin. The Huron–Manistee National Forest in Michigan prohibits bringing ash firewood onto the forest. The Army Corps of Engineers regulates firewood they allow onto their lands in Wisconsin.

Comparison of similar rules in adjacent states

Michigan prohibits movement of ash products including firewood from quarantined counties from entering state properties in un-quarantined areas. Campers from quarantined areas entering Michigan parks are questioned if they brought firewood from the quarantined area, and if so, confiscation of firewood and fines could result. Minnesota state parks allow wood from DNR approved vendors: wood must not include ash, be from within Minnesota and from within 50 miles of the destination park or be certified by MN Department of Agriculture as being treated to EAB standards. Firewood from EAB quarantined counties is not allowed into parks outside the quarantined area. Iowa state parks prohibit wood from EAB or gypsy moth quarantined areas unless carrying a USDA certificate stamp indicating the wood has been treated to prevent transmission of the pest. Illinois prohibits the movement of ash wood out of counties quarantined by the state for EAB, individual parks may have firewood regulations. Indiana prohibits all wood except from certified vendors.

Summary of factual data and analytical methodologies

These changes are being made in response to requests from the public to do more to protect state lands, increasing threat from highly damaging invasive pests moving on firewood and a model of risk of introduction of invasive pests on firewood.

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

We are directly contacting firewood dealers who could be affected by these changes to solicit their input in the development of the EIA: those who sell wood close to state campgrounds and those who are certified by WI DATCP as treating their wood to kill infesting organisms.

Effect on Small Business

The changes proposed to this rule would affect firewood vendors. Those within 10 miles of state properties and those that are certified as treating their wood to kill infesting organisms would be benefited by these changes. Those vendors getting their wood from less than 25 miles but more than 10 miles and who are not certified would lose sales to campers going to the state campground.

The Small Business Regulatory Coordinator may be contacted at smallbusiness@dnr.state.wi.us, or by calling (608) 266–1959.

Environmental Analysis

The Department has made a preliminary determination that adoption of the proposed rules would not involve significant

adverse environmental effects and would not need an environmental analysis under ch. NR 150, Wis. Adm. Code. However, based on comments received, an environmental analysis may be prepared before proceeding. This analysis would summarize the Department’s consideration of the impacts of the proposal and any reasonable alternatives.

lands and getting their wood from less than 25 miles but more than 10 miles and who are not certified.

Fiscal Estimate Summary

No fiscal effect of these changes is expected on state or local government. The effect on the private sector is anticipated to be insignificant as the change would negatively affect only those firewood vendors selling to campers on state

Agency Contact

Andrea Diss-Torrance
Department of Natural Resources
Bureau of Forest Management
101 S Webster St, Madison, WI 53703
Telephone: (608) 264-9247
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E-mail: andrea.disstorrance@wi.gov

STATE OF WISCONSIN
DEPARTMENT OF ADMINISTRATION
DOA-2049 (R03/2012)

DIVISION OF EXECUTIVE BUDGET AND FINANCE
101 EAST WILSON STREET, 10TH FLOOR
P.O. BOX 7864
MADISON, WI 53707-7864
FAX: (608) 267-0372

**ADMINISTRATIVE RULES
Fiscal Estimate & Economic Impact Analysis**

1. Type of Estimate and Analysis
 Original Updated Corrected

2. Administrative Rule Chapter, Title and Number

s. NR 40.045 Firewood

3. Subject

Regulation of firewood that may enter state lands.

4. Fund Sources Affected
 GPR FED PRO PRS SEG SEG-S

5. Chapter 20, Stats. Appropriations Affected
s. 20.370 (1) (mv)

6. Fiscal Effect of Implementing the Rule
 No Fiscal Effect Increase Existing Revenues Increase Costs
 Indeterminate Decrease Existing Revenues Could Absorb Within Agency’s Budget
 Decrease Cost

7. The Rule Will Impact the Following (Check All That Apply)
 State’s Economy Specific Businesses/Sectors
 Local Government Units Public Utility Rate Payers
 Small Businesses (if checked, complete Attachment A)

8. Would Implementation and Compliance Costs Be Greater Than \$20 million?
 Yes No

9. Policy Problem Addressed by the Rule

In order to provide better protection from an increasing threat from wood borne invasive pests and diseases to forests of the state, the proposed change to NR 45.045(2)(a) would reduce the distance from the state campground campground or property from which allowable firewood may originate from 25 to 10 miles. The proposed elimination of NR45.045(2)(b) would remove a regulation that would no longer provide significant additional protection if the change to (a) is approved.

10. Summary of the businesses, business sectors, associations representing business, local governmental units, and individuals that may be affected by the proposed rule that were contacted for comments.

WDATCP certified firewood vendors and firewood vendors near state campgrounds identified by State Park and Forest staff.

11. Identify the local governmental units that participated in the development of this EIA.

None, as this rule change is unlikely to affect local governments.

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

The changes proposed to this rule would affect some firewood vendors. Those sourcing their wood within 10 miles of state properties where they sell and those that are certified as treating their wood to kill infesting organisms would be benefited by these changes. Those vendors getting their wood from less than 25 miles but more than 10 miles and who are not certified would lose sales to campers going to the park.

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

Firewood vendors within 10 miles of state properties and those that are certified as treating their wood to kill infesting organisms would be benefited by these changes. Campers at state campgrounds near the borders of WI would have a greater choice of firewood vendors. The alternative is to leave the distance from a state campground or property from which allowable firewood may originate at 25 miles.

14. Long Range Implications of Implementing the Rule

These changes would slow the spread of wood borne invasive pests and diseases onto state lands, delaying losses and damage and allowing more time to prepare and deal with them. By delaying establishment of pests in state properties, we will benefit from development of management tools such as pesticides, biological controls and resistant trees. Modeling a cautious approach to the movement of firewood can also influence the behavior of the public as we have seen already from the current regulation. As more people get their wood from local sources or from vendors who treat the wood to prevent infestation, the rate of spread of all pests and diseases moving on firewood will be slowed to the general benefit of the residents and forests of WI.

15. Compare With Approaches Being Used by Federal Government

The Apostle Islands National Park has prohibited all firewood into the park since 2006. The Chequamegon–Nicolet National Forest prohibits firewood from south of Route 29 or from outside Wisconsin. The Army Corps of Engineers allows only firewood certified or approved by a state or federal agency to enter their camping area at Blackhawk in WI.

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

Minnesota only allows wood from approved vendors for the state property the wood will be entering. Illinois state properties prohibit wood from state and federally quarantined counties and also the counties bordering the quarantined area for EAB. Michigan state properties prohibit ash firewood and also enforce the state and federal EAB quarantines on all hardwood firewood. Iowa state properties enforce state and federal quarantines for EAB on hardwood firewood and requires all firewood to be labeled with county and state of origin. Indiana only allows state or federally certified treated wood, lumber scraps or debarked wood onto its state properties.

17. Contact Name

Andrea Diss–Torrance

18. Contact Phone Number

608–264–9247

This document can be made available in alternate formats to individuals with disabilities upon request.

Notice of Hearing

Natural Resources

Fish, Game, etc., Chs. NR 1—

CR 13–082

(DNR # FH–25–12)

NOTICE IS HEREBY GIVEN that pursuant to and interpreting ss. 29.014 (1), 29.041, and 29.519 (1m) (b), Stats., the Department of Natural Resources will hold a public hearing on revisions to ch. NR 25, Wis. Adm. Code, in permanent rule order FH–25–12, relating to the number, placement, and removal of commercial fishing trap nets in the Restricted Use Area of Lake Superior.

Hearing Information

Date: Thursday, November 7, 2013

Time: 6:00 p.m.

Locations: Bayfield Ranger Station
141 S. Third St.
Bayfield, WI 54814

Appearances at Hearing

Pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of information material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Kate Strom Hiorns at (608) 266–0828 with specific information on your request at least 10 days before the date of the scheduled hearing.

Availability of Rules and Submitting Comments

The proposed rule and supporting documents may be reviewed and comments electronically submitted at the following internet site: <http://adminrules.wisconsin.gov>. A copy of the proposed rules and supporting documents may also be obtained from Kate Strom Hiorns, DNR, P.O. Box 7921, Madison, WI 53707–9721; or at kathryn.stromhiorns@wisconsin.gov.

Written comments on the proposed rule may be submitted via U.S. mail or email to Kate Strom Hiorns at the addresses noted above. Written comments, whether submitted electronically or by U.S. mail, will have the same weight and effect as oral statements presented at the public hearings. Comments may be submitted until **November 8, 2013**.

Analysis Prepared by the Department

This rule is being proposed to define the number and placement of trap nets for commercial fishing activity in the Restricted Use Area of Lake Superior, which is bounded by the Bayfield Ferry line, a line between Houghton Point and Long Island Point, and a line between Long Island Point and the southernmost point on Madeline Island.

The primary issues with current trap net placement are navigational safety and user conflict. Nets must be clearly marked according to regulations, but excessive use of this area creates confusion about the exact placement and orientation of individual nets and makes navigation through the area potentially hazardous. Given that the area is the only ingress or egress from Chequamegon Bay and a popular sport fishing and recreational boating corridor, the risks can be significant. Also, in each of the last two seasons, commercial fishers

setting nets in this area have experienced acts of vandalism to their nets resulting in expensive repair costs.

The rule lists three changes:

- 1) Commercial fishers would be limited to using a single trap net per commercial license in the Restricted Use Area to address concerns about high trap net density in the Area.
- 2) Trap nets would be excluded from a “zone of safe passage” within the Restricted Use Area to address safety concerns with recreational boaters and anglers.
- 3) The Code would be clarified to explicitly mandate that nets be rendered inoperable by the close of the special season in the Restricted Use Area and be physically removed within three days. This clarifies a recent point of confusion regarding timely removal of trap nets following the season closure in the Restricted Use Area.

Statutes interpreted

Sections 29.014 (1), 29.041, and 29.519 (1m) (b), Stats.

Statutory authority

Sections 29.014 (1), 29.041, and 29.519 (1m) (b), Stats.

Explanation of agency authority to promulgate the proposed rules under the statutory authority

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

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

Section 29.519 (1m) (b), Stats., authorizes the department to limit the number of Great Lakes commercial fishing licenses, designate the areas in the outlying waters under the jurisdiction of this state where commercial fishing operations are restricted, establish species harvest limits, and designate the kind, size, and amount of gear to be used in the harvest.

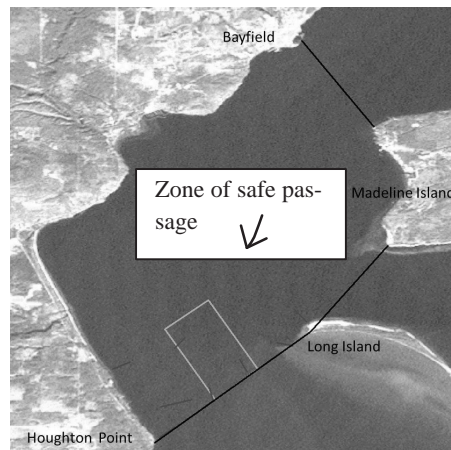
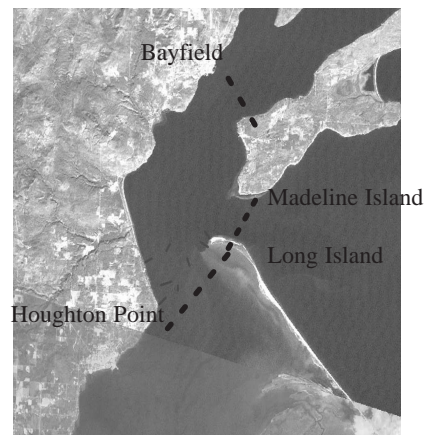
Related statutes or rules

Section 30.74 (2) (a), Stats., authorizes the department to establish by rule uniform marking of the water areas of this state through the placement of aids to navigation and regulatory markers, including but not limited to fishing buoys.

Plain language analysis

This rule will revise ch. NR 25, Wis. Adm. Code, to define the number and placement of trap nets for commercial fishing activity in the Restricted Use Area of Lake Superior, which is bounded by the Bayfield Ferry line, a line between Houghton Point and Long Island Point, and a line between Long Island Point and the southernmost point on Madeline Island.

SECTION 1 lists three changes. First, commercial fishers are limited to using a single trap net per commercial license in the Restricted Use Area to address concerns about high trap net density in the Area. Second, trap nets are excluded from a “zone of safe passage” within the Restricted Use Area to address safety concerns with recreational boaters and anglers. Third, the Code is clarified to explicitly mandate that nets be rendered inoperable by the close of the special season in the Restricted Use Area and be physically removed within three days. This clarifies a recent point of confusion regarding timely removal of trap nets following the season closure in the Restricted Use Area.



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

There is no existing or proposed federal regulation that would govern commercial fishing in Wisconsin’s waters of Lake Superior.

Comparison with rules in adjacent states

Trap nets are not used in Minnesota waters of the Great Lakes. The Michigan Department of Natural Resources has the authority to limit trap netting by individual license holders if and when conflicts arise. Pursuant to that authority the MDNR prohibits trap nets during June, July, and August in one area near Tawas on Lake Huron.

Summary of factual data and analytical methodologies

Commercial fishers may currently place trap nets in the Restricted Use Area, described above, for the taking of whitefish or herring from June 1 to August 15. Currently, the only limit on how many nets an individual fisher or all fishers combined may place in this small area is the total number of trap nets allowed per commercial licensee, which is 10, and distance restrictions limiting the proximity of adjacent trap nets. Over the last two years, there have been complaints received from sport/recreational anglers about a proliferation of trap nets within this area.

The primary issues with current trap net placement are navigational safety and user conflict. Nets must be clearly marked according to regulations, but excessive use of this area creates confusion about the exact placement and orientation of individual nets and makes navigation through the area potentially hazardous. Given that the area is the only ingress or egress from Chequamegon Bay and a popular sport fishing

and recreational boating corridor, the risks can be significant. Also, in each of the last two seasons, commercial fishers setting nets in this area have experienced acts of vandalism to their nets with repair costs ranging into the thousands of dollars. Out of concern for these issues, the department decided to seek a rule change.

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

The rule addresses the number and placement of trap nets in the Restricted Use Area. There would be no implementation costs for the department.

This rule would increase navigational safety and likely expand safe fishing and boating opportunities for the charter fishers and recreational anglers. Commercial fishers may need to reduce the number or alter placement of trap nets in the Restricted Use Area, but the rule is not expected to significantly impact their ability to harvest fish from this area according to applicable laws and statutes.

Minimal economic impact is anticipated as a result of this rule change. Fishing effort may be redistributed to other areas, possibly requiring additional travel for some fishers, but no quota or fishing effort changes are expected. No significant economic impacts are expected for commercial fishers. The department is proposing a balanced approach that protects the navigational safety of the recreational fishing and boating public and the economic needs of commercial fishers. Based on public input received during the economic impact analysis comment period, there would be a positive economic benefit for some fishing related small businesses, such as charter fishing businesses.

Effect on Small Business

The proposed rule change would impact state–licensed commercial fishers, charter fishers, and recreational anglers. Minimal impact is expected for businesses or business associations. No additional compliance or reporting requirements will be imposed on small businesses as a result of these rule changes. The department will conduct an economic impact analysis prior to rule implementation.

STATE OF WISCONSIN
DEPARTMENT OF ADMINISTRATION
DOA–2049 (R03/2012)

DIVISION OF EXECUTIVE BUDGET AND FINANCE
101 EAST WILSON STREET, 10TH FLOOR
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FAX: (608) 267–0372

**ADMINISTRATIVE RULES
Fiscal Estimate & Economic Impact Analysis**

1. Type of Estimate and Analysis
 Original Updated Corrected

2. Administrative Rule Chapter, Title and Number
Chapter NR 25, Commercial Fishing — Outlying Waters

3. Subject
This rule will revise ch. NR 25, Wis. Adm. Code, to define the number and placement of trap nets for commercial fishing activity in the Restricted Use Area of Lake Superior, which is bounded by the Bayfield Ferry line, a line between Houghton Point and Long Island Point, and a line between Long Island Point and the southernmost point on Madeline Island.

4. Fund Sources Affected
 GPR FED PRO PRS SEG SEG–S

The rule will be enforced by department conservation wardens under the authority of ch. 29, Stats., through routine patrols and investigations of citizen complaints.

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

Environmental Impact

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

Agency Contact Persons

Kate Strom Hiorns
Department of Natural Resources
P.O. Box 7921
Madison, WI 53707–7921
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Peter Stevens
Department of Natural Resources
141 S. Third Street
Bayfield, WI 54814
Telephone: (715) 779–4035 Ext: 12
Email: peter.stevens@wisconsin.gov

5. Chapter 20, Stats. Appropriations Affected

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

The proposed rule change would have a minimal economic impact on state–licensed commercial fishers, charter fishers, and sport/recreational anglers. Minimal impact is expected for businesses or business associations. No additional reporting requirements will be imposed on small businesses as a result of these rule changes. This rule does not directly affect public utility rate payers or local governmental units.

The department received five comments during the economic impact analysis comment period (August 1–15):

1– Jeff Bodin, commercial fishing small business owner, stated that the rule will change nothing because tribal commercial fishing nets would move into the area instead.

(The department determined that although this is possible, tribal commercial fishing trap nets are not currently placed in this area, nor do any tribal fishers fish trap nets anywhere at this time. Therefore, they currently do not present impediments to navigational safety. Tribal fishers are subject to tribal regulations and therefore would not be required to follow the boundary changes in this rule proposal. However, Bad River and/or Red Cliff bands could agree to adopt the State's boundary changes pursuant to the State–Tribal Agreement.)

2– Darryl Fenner, D's Superior Fishing Charters (Washburn, WI), stated that he has a small charter fishing business located on the Chequamegon Bay of Lake Superior and the rule change would result in no compliance costs to his business, but it would have an economic and safety benefit. Mr. Fenner's letter also included: The high number and density of commercial trap nets in the Restricted Use Area (RUA) during June 1–August 15 does not allow him to charter fish in a significant portion of the RUA, and effectively separates fishing in Chequamegon Bay from other areas of Lake Superior. He said net density is high, with nets oriented in all directions, making it impossible to charter fish or sport fish through this area. Marker buoys, net flags, netting, and ropes criss–cross the area. One entanglement of charter fishing gear may result in significant loss of gear, costing hundreds to thousands of dollars and a ruined charter fishing experience for his clients. He said the number and density of trap nets require additional travel time and expense for each charter fishing trip. Due to location and density, each charter fishing trip must start outside the RUA or result in net entanglement. He said this doubles his daily fuel costs, and by raising charter fishing rates to cover those costs he has fewer trips booked. With few or no nets in the RUA, he said he could charter fish closer to the Washburn/Bayfield area, resulting in lower rates and more days booked as well as increased business for the local economy and improved income for his business. Limiting the number and placement of trap nets within the RUA would allow some charter fishing within the proposed "safe passage area" however it is likely trap nets will surround this area, again making it impossible to charter or sport fish there. Removal of all netting within the RUA would be a better choice for the area economy. ... Additional restrictions on the number, size, and location of trap and gill nets are necessary to allow the sport fisherman a fair chance at harvest of the fishing resource. Boater safety is a serious concern with the current number and density of trap nets within the RUA. He said the net markers are difficult to see during the day, and nearly impossible to see at night. The safe passage area may be a small improvement, but will likely result in trap nets placed around the perimeter of the area, again resulting in a safety hazard. He said the entire RUA should be a safe passage area.

3– Mark R. Johnson, on behalf of the Apostle Islands Sportfisherman's Association, (Ashland, WI) stated that the AISA supports the proposed rule as a first step in rebalancing sportfishing and commercial interests. He also listed a number of concerns regarding commercial netting including: 1) nets are placed in popular fishing areas creating a safety hazard, 2) sportfisherman are choosing not to fish the area over concerns about net entanglement, 3) each entanglement costs sportfisherman ~\$100 in equipment, 4) Apostle Islands and Chequamegon Bay provide a shelter from weather but not nets, 5) nets obstruct recreational boat traffic as well as fisherman, 6) all businesses benefit from sportfishing and many jobs are created; commercial fishing benefits a few and creates few jobs, 7) when sportfishing is poor the entire area suffers. Further, he expressed the AISA's displeasure at the limited 15 day comment period. He stated more groups would comment if the period were longer and that many groups do not meet in the summer.

4– Robert S. Gowdy, Washburn, WI, stated that he has lived in Washburn and fished Chequamegon Bay for 23 years. His comments were focused on navigational safety of the area rather than any economic impact. He said that the nets are poorly marked in the RUA and are placed directly in the path known locally as "salmon alley." He stated: "If safety is a top priority for the state, I believe nets should not be placed anywhere inside the boundaries shown on the map."

5– Cliff Halvorson, on behalf of Halvorson Fisheries (Cornucopia, WI), stated their opposition to the proposed rule. He stated that the rule was unfair as the "zone of safe passage" disproportionately impacted Halvorson Fisheries nets and would take "money out of his pocket." He stated that these nets had been in place for a number of years and had never been an issue before and that recreational traffic can travel right over the deeper nets with no risk of entanglement. He stated that the current half–mile required separation between commercial trap nets should be more than sufficient to ensure safe navigation. He repeatedly reiterated his strong opposition to this measure and intention to continue to actively oppose it.

(The department determined the proposed location and size of the "zone of safe passage" is necessary to minimize navigation hazards to recreational boaters and fisherman. It was determined that a route through the middle of the channel would provide the safest passage through deepest water with no other known navigational obstructions. Of the seven trap nets Halvorson Fisheries have permitted in the RUA, a maximum of two would be impacted by the proposed location of the "zone of safe passage.")

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

This rule would increase navigational safety and likely expand safe fishing and boating opportunities for the charter fishers and recreational anglers. Commercial fishers may need to reduce the number or alter placement of trap nets in the Restricted Use Area, but the rule is not expected to significantly impact their ability to harvest fish from this area according to applicable laws and statutes.

Minimal economic impact is anticipated as a result of this rule change. Fishing effort may be redistributed to other areas, possibly requiring additional travel for some fishers, but no quota or fishing effort changes are expected. No significant economic impacts are expected for commercial fishers. The department is proposing a balanced approach that protects the navigational safety of the recreational fishing and boating public and the economic needs of commercial fishers. Based on public input, there would be a positive economic benefit for some fishing related small businesses, such as charter fishing businesses.

14. Long Range Implications of Implementing the Rule

As noted, this rule would increase navigational safety and likely expand safe fishing and boating opportunities for the charter fishers and recreational anglers.

15. Compare With Approaches Being Used by Federal Government

There is no existing or proposed federal regulation that would govern commercial fishing in Wisconsin’s waters of Lake Superior.

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

Trap nets are not used in Minnesota waters of the Great Lakes. The State of Michigan has uniform trap net marking requirements for all of its Great Lakes Waters (parts of Lakes Superior, Michigan, Huron, and Erie). The Michigan Department of Natural Resources and Environment has the authority to limit trap netting by individual license holders if and when conflicts arise. Pursuant to that authority the MI DNRE prohibits trap nets during June, July, and August in one area near Tawas on Lake Huron.

17. Contact Name

Peter Stevens, Lake Superior Fisheries Field Unit Supervisor

18. Contact Phone Number

(715) 779–4035 Ext: 12

This document can be made available in alternate formats to individuals with disabilities upon request.

ATTACHMENT A

1. Summary of Rule’s Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

Commercial fishers may need to reduce the number or alter placement of trap nets in the Restricted Use Area, but the rule is not expected to significantly impact their ability to harvest fish from this area according to applicable laws and statutes.

2. Summary of the data sources used to measure the Rule’s impact on Small Businesses

Minimal economic impact is anticipated as a result of this rule change. Fishing effort may be redistributed to other areas, possibly requiring additional travel for some fishers, but no quota or fishing effort changes are expected.

3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- Less Stringent Compliance or Reporting Requirements
- Less Stringent Schedules or Deadlines for Compliance or Reporting
- Consolidation or Simplification of Reporting Requirements
- Establishment of performance standards in lieu of Design or Operational Standards
- Exemption of Small Businesses from some or all requirements
- Other, describe:

4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

The department’s main concern is to increase navigational safety and expand safe fishing and boating opportunities. The rule was written to ensure commercial fishers’ economic needs were included.

5. Describe the Rule’s Enforcement Provisions

The rule will be enforced by department conservation wardens under the authority of ch. 29, Stats., through routine patrols and investigations of citizen complaints.

6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

- Yes
 - No
-

Notice of Hearing

Natural Resources

*Environmental Protection — Air Pollution Control,
Chs. NR 400—
CR 13–070*

(DNR # AM–21–12)

NOTICE IS HEREBY GIVEN that pursuant to ss. 227.16, 227.17, and 285.11, Wis. Stats, the Department of Natural Resources, hereinafter the Department, will hold a public hearing to consider the proposed changes to chs. NR 400, 405, 408, and 410, related to consistency with federal major source permit review requirements and clean–up of rules related to the former indirect source program on the date and at the time and location listed below.

The proposed revisions relate to issues for State Implementation Plan approvability, and the State Implementation Plan developed under s. 285.11 (6), Stats., will be revised. The Department will also be accepting comment at this hearing on the submittal to the U.S. Environmental Protection Agency of final rules promulgated under this rulemaking as part of a revision to Wisconsin’s State Implementation Plan.

Hearing Information

Date: Tuesday, November 5, 2013
Time: 1:00 to 2:00 p.m.
Locations: Natural Resources Building
 101 S. Webster St.
 Room 713
 Madison, WI 53703

Appearances at Hearing

Reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Contact Robert Eckdale in writing at the Department of Natural Resources, Bureau of Air Management (AM/7), 101 S. Webster St., Madison, WI 53703; by email to robert.eckdale@wisconsin.gov; or by calling (608) 266–2856. A request must include specific information and be received at least 10 days before the date of the scheduled hearing.

Availability of the Proposed Rules and the Fiscal Estimate and Economic Impact Analysis

The proposed rule and supporting documents, including the fiscal estimate and economic impact analysis, may be viewed and downloaded from the Administrative Rules System Website at <https://health.wisconsin.gov/admrules/public/Rmo?nRmoId=13843>. If you do not have internet access, a printed copy of the proposed rule and supporting documents, including the fiscal estimate and economic impact analysis, may be obtained free of charge by contacting Robert Eckdale, Department of Natural Resources, Bureau of Air Management (AM/7), 101 S. Webster St., Madison, WI 53703, or by calling (608) 266–2856.

Submitting Comments

Comments on the proposed rule must be received on or before **November 8, 2013**. Written comments may be submitted by U.S. mail, fax, email, or through the internet and will have the same weight and effect as oral statements

presented at the public hearing. Written comments and any questions on the proposed rules should be submitted to:

Gail Good
 Department of Natural Resources
 Bureau of Air Management (AM/7)
 101 S Webster St.
 Madison, WI 53703
 Phone: (608) 266–1058
 Fax: (608) 267–0560
 E–mail: gail.good@wisconsin.gov

Internet: Use the page for this rulemaking on the Administrative Rules System Website (requires registration to comment) at: <https://health.wisconsin.gov/admrules/public/Rmo?nRmoId=13843>.

Analysis Prepared by the Department

Statutes interpreted

Section 285.11 (1) and (6), Stats. The State Implementation Plan developed under s. 285.11 (6), Stats., is revised.

Statutory authority

Sections 227.11 (2) (a), 285.11 (1), (16), and (17), and 285.60 (11) (b), Stats.

Explanation of agency authority

Section 227.11 (2) (a), Stats., gives state agencies general rule–making authority. Section 285.11 (1), Stats., gives the Department the authority to promulgate rules implementing and consistent with, ch. 285, Stats. Section 285.11 (6), Stats., requires the Department to develop a plan for the prevention, abatement, and control of air pollution. The plan must conform with the Clean Air Act and is necessary for new source review implementation. Section 285.11 (16), Stats., requires the Department to promulgate rules that may limit the classification of a major source to specified air contaminants. Section 285.11 (17), Stats., requires the Department to promulgate rules, consistent with the federal Clean Air Act, that modify the term ‘modification’ as it relates to specific categories of stationary sources. Section 285.60 (11) (b), Stats., establishes that the Department may not require a permit for an indirect source under ch. 285, Stats.

Related statute or rule

There are no related statutes that are not identified above.

Plain language analysis

The objective of this rule package is to revise language in chs. NR 400, 405, and 408 to maintain consistency with federal requirements and definitions. Additionally, sections of chs. NR 400 and 410 need to be repealed due to the repeal of ch. NR 411.

In May 2006, the Department requested approval by the U.S. Environmental Protection Agency (USEPA) of rules promulgated by Wisconsin to incorporate federal New Source Review Reform requirements as a revision to the State Implementation Plan (SIP). The USEPA approved the SIP revisions, but subsequently requested changes to language in chs. NR 405 and 408. The changes pertain to the fuel use prohibition that is part of the definition of “major modification.”

Section NR 405.02 (25i) defines “Regulated NSR air contaminant” and specifically identifies volatile organic compounds as a precursor for ozone. USEPA has requested inclusion of nitrogen oxides (NO_x) in the definition for

clarification purposes. Similarly, USEPA requires, through its 2008 New Source Review Rule, explicit identification of NO_x and sulfur dioxide (SO₂) as precursors to particulate matter with a diameter of 2.5 micrometers or less (PM_{2.5}) within the definition of “Regulated NSR air contaminant.” The Department has also amended the definition of “Regulated NSR air contaminant” in s. NR 408.02 (29m) to specifically address precursor pollutants in nonattainment areas. Additionally, the Department will amend the definitions of PM_{2.5} and particulate matter with a diameter of 10 micrometers or less (PM₁₀) to address a USEPA–identified SIP deficiency. The definitions as currently written do not specifically mention condensables as required in the federal 2008 New Source Review Rule.

On April 27, 2011, the Joint Committee for Review of Administrative Rules (JCRAR) adopted a motion under s. 227.26 (2) (d), Stats., suspending ch. NR 411. Subsequent passage of legislation introduced by JCRAR in support of the suspension (see 2011 Wisconsin Act 121), resulted in the repeal of ch. NR 411. The primary purpose of ch. NR 411 had been to control carbon monoxide emissions from indirect sources through conditions established in construction and operation permits. Therefore, the Department proposes to repeal rules whose only purpose is in support of ch. NR 411. Rules proposed for repeal include ss. NR 400.02 (101) and (106), and 410.03 (3). Section NR 400.02 (101) and (106) define ‘modified indirect source’ and ‘new indirect source’ respectively. Section NR 410.03 (3) establishes fees for the application and issuance of permits to construct or modify an indirect source.

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

In a letter dated June 17, 2009, the USEPA notified the Department that the definition of the term “major modification” in s. NR 405.02 was inadequate because it failed to identify permits issued under federal authority. Wisconsin’s Prevention of Significant Deterioration (PSD) program was approved into its SIP on June 28, 1999. Before that, PSD construction permits were issued under federal authority. When s. NR 405.02 (21) (b) (5) was written, the references to federal authority were inadvertently omitted. Because the federal citations were omitted from the rule, USEPA identified that in a very limited situation, the current state definition would allow a source to make a change to use a different fuel or raw material without undergoing major new source permit review for the change, even though the change could be prohibited under a federal permit. The Department will amend this definition to ensure that it is consistent with USEPA rule and policy and recognizes all federally–issued permits. The Department is likewise amending the definition of “major modification” at s. NR 408.02 (20) for nonattainment area new source review.

The alternative to this rule action is to keep the rules as they are, which USEPA has already identified as an inconsistency with federal rules. However, in a Federal Register filed June 15, 2012, USEPA disapproved narrow portions of the SIP pertaining to permit requirements in chs. NR 405 and 408 that would be addressed with this rulemaking. In the Federal Register, USEPA stated that they are under obligation to promulgate a Federal Implementation Plan (FIP) addressing the disapproved portions of the SIP within 2 years. The Federal Register states that the FIP will not be promulgated if

Department rectifies the deficiencies within the 2–year timeframe.

The clarifications of NO_x as a precursor to ozone and NO_x and SO₂ as precursors to PM_{2.5}, as well as the clarification of accounting for PM_{2.5} and PM₁₀ condensables as a portion of PM_{2.5} and PM₁₀ emissions are not policy changes nor do they change how Department currently implements chs. NR 405 and 408 requirements. On June 15, 2012, USEPA disapproved a narrow portion of Wisconsin’s SIP for the 1997 ozone National Ambient Air Quality Standard pertaining to air construction permitting. This was done because NO_x was not explicitly identified as a precursor to ozone as part of PSD permit program requirements. The final disapproval triggered a requirement that USEPA promulgate a FIP addressing the deficiency no later than 2 years from the date of disapproval. USEPA published a proposed disapproval of Wisconsin’s submittal on December 18, 2012, because the submittal did not meet the 2008 PM_{2.5} SIP requirements. Specifically, the revisions submitted did not explicitly define the precursors of PM_{2.5}, nor did they contain the prescribed language to ensure that gases that condense to form particulate matter (PM), known as condensables are regulated as part of PM_{2.5} and PM of less than 10 micrometer (PM₁₀) emissions. Final disapproval to portions of the SIP relating to identifying precursors of PM_{2.5} will also result in the promulgation of a FIP unless the deficiencies are addressed.

Not repealing sections of chs. NR 400 and 410 in response to the repeal of ch. NR 411 by the legislature would potentially create confusion and perpetuate an inconsistency with Department rules.

Comparison with similar rules in adjacent states (Illinois, Iowa, Michigan, and Minnesota)

Illinois and Minnesota are delegated states, so they are directly implementing the federal program and not implementing their programs through a State Implementation Plan (SIP), as Wisconsin does. Iowa and Michigan, similar to Wisconsin, are SIP approved states, so they are also implementing a federal program, but through their own state rules and regulations. It is the goal of SIP–approved states to implement federal programs in accordance with the regulations set out in federal code. The majority of this rule package addresses changes necessary to comply with federal regulations. Those changes not dictated by federal regulations are associated with the repeal of fees related to the indirect source program which no longer exists in Wisconsin, thereby addressing a current internal inconsistency.

Summary of factual data and analytical methodologies used and how any related findings support the regulatory approach chosen

The Department did not use any factual data or analytical methodologies in developing the proposed rules. The changes proposed in this rule package are based on deficiencies in the rules identified by the USEPA and a comparison of the current state rules to the federal rules.

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

The proposed changes to the new source permit review programs only affect major sources which typically do not include small businesses. The proposed changes related to the former indirect source permit program will not have any effect on small businesses since the indirect permit program

has been repealed and the proposed changes are of a clean–up nature only. The Department did not use existing documentation in determining the effect on small business or in preparation of the economic impact analysis.

Effect on Small Business (Initial Regulatory Flexibility Analysis)

The Department does not believe that the proposed rule revisions will have an economic impact on small businesses.

The Small Business Regulatory Coordinator may be contacted at smallbusiness@dnr.state.wi.us, or by calling (608) 266–1959.

Environmental Analysis

The Department has made a preliminary determination that adoption of the proposed rules would not involve significant adverse environmental effects and would not need an environmental analysis under ch. NR 150, Wis. Adm. Code. However, based on comments received, an environmental analysis may be prepared before proceeding. This analysis would summarize the Department’s consideration of the impacts of the proposal and any reasonable alternatives.

Fiscal Estimate and Economic Impact Analysis Summary

The Department believes the proposed rules will have no fiscal effect. The changes being proposed either amend rules to match current practice and maintain consistency with federal requirements and definitions, or eliminate definitions and fees for a program no longer used in Wisconsin.

The Department solicited information and advice on the

economic impacts of the proposed rules from those who potentially could be affected or who might likely be interested. Most responders to the solicitation indicated that they had no input because they believe the proposed rules will have no economic impact on them. One responder felt there was economic benefit from the proposed rules and asked the Department to quantify that benefit. Additionally, the commenter felt that the proposed rules addressed broader policy issues whose economic benefits should be analyzed. The Department does not believe the proposed rules provide economic benefit. The economic benefit from the repeal of ch. NR 411 occurred when the chapter was repealed through legislative action and is not due to the clean–up of related rules proposed. Testimony, including an estimate of the costs associated with the indirect source permit program, was given at the time of the legislative action. The portions of the rule package associated with the major new source review program found in chs. NR 405 and 408 are amendments to ensure that the rules align with current Department practice as well as USEPA policy and do not represent changes in implementation. The economic impact analysis speaks to the economic impacts of the proposed rules, not the underlying statutes that give the Department authority for rulemaking. There were no revisions to the Economic Impact Analysis.

Agency Contact Person

Gail Good
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 E–mail: gail.good13@wisconsin.gov

STATE OF WISCONSIN
 DEPARTMENT OF ADMINISTRATION
 DOA–2049 (R03/2012)

DIVISION OF EXECUTIVE BUDGET AND FINANCE
 101 EAST WILSON STREET, 10TH FLOOR
 P.O. BOX 7864
 MADISON, WI 53707–7864
 FAX: (608) 267–0372

**ADMINISTRATIVE RULES
 Fiscal Estimate & Economic Impact Analysis**

1. Type of Estimate and Analysis
 Original Updated Corrected

2. Administrative Rule Chapter, Title and Number
 Chapters NR 400 Air Pollution Control Definitions, NR 405 Prevention of Significant Deterioration, NR 408 Construction Permits for Direct Major Sources in Nonattainment Areas, and NR 410 Air Permit, Emission, and Inspection Fees.

3. Subject
 Proposed rules relating to consistency with federal major source permit review requirements and clean–up of rules related to the former indirect source permit program.

4. Fund Sources Affected <input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG–S	5. Chapter 20, Stats. Appropriations Affected
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6. Fiscal Effect of Implementing the Rule <input checked="" type="checkbox"/> No Fiscal Effect <input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Indeterminate <input type="checkbox"/> Decrease Existing Revenues	<input type="checkbox"/> Increase Costs <input type="checkbox"/> Could Absorb Within Agency’s Budget <input type="checkbox"/> Decrease Cost	
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7. The Rule Will Impact the Following (Check All That Apply)

<input type="checkbox"/> State’s Economy <input type="checkbox"/> Local Government Units	<input checked="" type="checkbox"/> Specific Businesses/Sectors <input type="checkbox"/> Public Utility Rate Payers <input type="checkbox"/> Small Businesses (if checked, complete Attachment A)
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8. Would Implementation and Compliance Costs Be Greater Than \$20 million?
 Yes No

9. Policy Problem Addressed by the Rule

The DNR is proposing to amend definitions in chs. NR 400, 405, and 408, Wis. Adm. Code, related to the major new source permit review program for both attainment and nonattainment areas. Definitions proposed to be amended include PM2.5 emissions, PM10 emissions, major modification, and regulated New Source Review (NSR) air contaminant. These changes do not represent a policy problem, but are being proposed in response to deficiencies identified by the U.S. Environmental Protection Agency (EPA), and are necessary to maintain approval of the state implementation plan.

The DNR is also proposing to repeal several rule provisions whose purpose was in support of an indirect source permit program. This permit program was previously implemented through ch. NR 411, which was repealed through legislative action. The provisions include several definitions and permit fees in chs. NR 400 and 410, Wis. Adm. Code, respectively. These proposed changes do not represent a policy problem, but are appropriate since the purpose of the rules affected was only related to ch. NR 411.

10. Summary of the businesses, business sectors, associations representing business, local governmental units, and individuals that may be affected by the proposed rule that were contacted for comments.

The businesses that were contacted for comment were all those listed as major sources by the WDNR. Additionally, Wisconsin Manufacturers and Commerce, Wisconsin Paper Council, and the Wisconsin Utilities Association were contacted.

11. Identify the local governmental units that participated in the development of this EIA.

None

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

The proposed changes to the new source review program are being made to ensure consistency with federal regulations and implementation policy governing this permit program. DNR believes that the proposed rule changes will not have an economic impact on any of the entities listed or on the state’s economy as a whole. Two companies responded to the request for input to say that they had no input because they believed the proposed rule changes would not have an economic impact on them. The proposed repeal of rules related to the former indirect source permit program will have no economic impact since the requirements to obtain such a permit have already been repealed.

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

The alternative to this rule action is to keep the rules as they are which U.S. EPA has already identified as an inconsistency with the major source permit program. In the Federal Register, U.S. EPA stated that they are under obligation to promulgate a Federal Implementation Plan (FIP) addressing the disapproved portions of the associated state implementation plan within 2 years. The Federal Register states that the FIP will not be promulgated if DNR rectifies the deficiencies within the 2 year timeframe. Not repealing sections of chs. NR 400 and 410 in response to the repeal of NR 411 by the legislature would potentially create confusion and perpetuate an inconsistency with DNR rules.

14. Long Range Implications of Implementing the Rule

The proposed rule changes to the new source review program do not represent changes in operation by WDNR, so there are no long term implications. The proposed rule changes to the indirect source fee structure are of a clean–up nature and also have no long term implications.

15. Compare With Approaches Being Used by Federal Government

The purpose of the proposed changes related to the major source permit program is to ensure state rules are consistent with federal regulations. The federal government does not have regulations for an indirect source permit program.

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

Illinois and Minnesota are states delegated by the U.S. EPA to implement the federal air pollution program, so they are directly implementing the federal program. Iowa and Michigan, similar to Wisconsin, are SIP–approved states, so they are also implementing a federal program, but through their own state rules and regulations. It is the goal of SIP–approved states to implement federal programs in accordance with federal regulations. The majority of this rule package addresses changes necessary to comply with federal regulations. Those changes not dictated by federal regulations are associated with the repeal of fees related to the indirect source program which is no longer existing in Wisconsin, thereby addressing a current internal inconsistency.

17. Contact Name
Gail Good

18. Contact Phone Number
(608) 266–1058

Notice of Hearing

Revenue CR 13–078

NOTICE IS HEREBY GIVEN that, pursuant to ss. 71.04 (8) (c) and (11) and 71.25 (10) (c) and (12), Stats., the Department of Revenue will hold a public hearing to consider permanent rules revising Chapter Tax 2, relating to apportionable income of interstate air freight forwarders affiliated with a direct air carrier.

Hearing Information

The hearing will be held:

Date: Monday, October 28, 2013
Time: 9:00 a.m.
Locations: Events Room
 State Revenue Building
 2135 Rimrock Road
 Madison, WI 53713

Handicap access is available at the hearing location.

Appearances at the Hearing and Submittal of Written Comments

Interested persons are invited to appear at the hearing and may make an oral presentation. It is requested that written comments reflecting the oral presentation be given to the department at the hearing. Written comments may also be submitted to the contact person listed below or to adminrules.wisconsin.gov no later than **October 28, 2013**, and will be given the same consideration as testimony presented at the hearing.

Dale Kleven
 Department of Revenue
 Mail Stop 6–40
 2135 Rimrock Road
 P.O. Box 8933
 Madison, WI 53708–8933
 Telephone: (608) 266–8253
 E–mail: dale.kleven@revenue.wi.gov

Analysis Prepared by the Department

Statutes interpreted

Sections 71.04 and 71.25, Stats.

Statutory authority

Sections 71.04 (8) (c) and (11) and 71.25 (10) (c) and (12), Stats.

Explanation of agency authority

Sections 71.04 (8) (c) and 71.25 (10) (c), Stats., provide “[t]he net business income of railroads, sleeping car companies, car line companies, pipeline companies, financial organizations, telecommunications companies, air carriers, and public utilities requiring apportionment shall be apportioned pursuant to rules of the department of revenue, but the income taxed is limited to the income derived from business transacted and property located within the state.”

Sections 71.04 (11) and 71.25 (12), Stats., provide “[i]f the income...properly assignable to the state of Wisconsin cannot be ascertained with reasonable certainty by the methods under this section, then the same shall be apportioned and allocated under such rules as the department of revenue may prescribe.”

Related statute or rule

Section Tax 2.45 interprets s. 71.25 (12), Stats., and provides for apportionment in special cases.

Section Tax 2.46 prescribes the method of apportionment to be used by interstate air carriers.

Section Tax 2.47 prescribes the method of apportionment to be used by interstate motor carriers.

Plain language analysis

The proposed rule prescribes the method of apportionment to be used by air freight forwarders.

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

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

Comparison with rules in adjacent states

The department is not aware of a similar rule in an adjacent state.

Summary of factual data and analytical methodologies

The department knows of a type of entity, an “air freight forwarder,” which is engaged in the facilitation of transportation of property by air, does not itself operate aircraft, and is affiliated with a direct air carrier. The income of this type of entity properly assignable to Wisconsin cannot be determined with reasonable certainty under s. Tax 2.46, which prescribes the method of apportionment to be used by interstate air carriers, or s. Tax 2.47, which prescribes the method of apportionment to be used by interstate motor carriers. Therefore, the department finds it necessary to create a rule that prescribes the method of apportionment to be used by this type of entity.

Analysis and supporting documents used to determine effect on small business

Based on the nature and scope of its activities (the facilitation of the transportation of property by air between states), the type of entity this proposed rule affects would not be a small business as defined in s. 227.114 (1), Stats.

Anticipated costs incurred by private sector

This proposed rule order does not have a fiscal effect on the private sector.

Effect on Small Business

This proposed rule order does not affect small business.

Agency Contact Person

Please contact Dale Kleven at (608) 266–8253 or dale.kleven@revenue.wi.gov if you have any questions regarding this proposed rule order.

Text of Rule

SECTION 1. Tax 2.465 is created to read:

Tax 2.465 Apportionment of apportionable income of interstate air freight forwarders affiliated with a direct air carrier. (1) GENERAL. The apportionable income of a qualified air freight forwarder affiliated with a direct air carrier and engaged in business in and outside this state shall be apportioned to Wisconsin as described in this section, except if the qualified air freight forwarder is in a combined group, its Wisconsin share of the combined group’s apportionable income is computed as provided in s. 71.255 (5), Stats., and further detailed in s. Tax 2.61 (7).

Note: A qualified air freight forwarder that is a corporation may be in a combined group for taxable years beginning on or after January 1, 2009. See s. Tax 2.61 (2) for a description of corporations required to use combined reporting.

(2) DEFINITIONS. In this section:

(a) An air freight forwarder is “affiliated” with a direct air carrier if all of the following apply:

1. The air freight forwarder owns or controls either directly or indirectly at least 80% of the ownership interests of the direct air carrier, or at least 80% of the ownership interests of the air freight forwarder is owned or controlled either directly or indirectly by the direct air carrier, or at least 80% of the ownership interests of both the air freight forwarder and the direct air carrier is owned or controlled either directly or indirectly by the same interests.

2. The air freight forwarder is principally engaged in the business of air freight forwarding.

3. The air freight forwarder’s air freight forwarding business is carried on principally with the direct air carrier.

(b) “Combined group” has the same meaning as in s. Tax 2.60 (2) (a).

(c) “Direct air carrier” means a business entity principally engaged in air transportation through the direct operation of aircraft under a certificate issued by the federal aviation administration.

(d) “Engaged in business in and outside this state” has the same meaning as in s. Tax 2.39 (2) (b).

(e) “Originating revenue in this state” means all revenue derived from shipments that were first physically consigned to a qualified air freight forwarder in this state for transportation, regardless of the method or methods of transportation.

(f) “Qualified air freight forwarder” means a person to whom all of the following apply:

1. The person is engaged primarily in the facilitation of the transportation of property by air.

2. The person does not operate aircraft.

3. The person is in the same combined group as an affiliated direct air carrier.

(3) APPORTIONMENT FORMULA COMPUTATION. For taxable years beginning on or after January 1, 2014, a qualified air freight forwarder that is engaged in business in and outside this state shall apportion its apportionable income to this state on the basis of the ratio obtained by taking the arithmetical average of the following 3 ratios:

(a) The ratio which aircraft arrivals and departures within this state scheduled by the affiliated direct air carrier during the calendar or fiscal year bears to the total aircraft arrivals and departures within and without this state scheduled by such direct air carrier during the same period; provided that if the affiliated direct air carrier conducts nonscheduled operations all arrivals and departures shall be substituted for scheduled arrivals and departures.

(b) The ratio which the revenue tons handled by the affiliated direct air carrier at airports within this state during the calendar or fiscal year bears to the total revenue tons handled at airports within and without this state during the same period.

(c) The ratio which such qualified air freight forwarder’s originating revenue in this state for the calendar or fiscal year

bears to the total revenue of such qualified air freight forwarder within and without this state for the same period.

SECTION 2. Tax 2.61 (7) (a) 4., (b) 4., and (g) (intro.) and 1. are amended to read:

Tax 2.61 (7) (a) 4. For combined group members that are required to apportion their income using more than one factor under s. 71.25 (10), Stats., and ss. Tax 2.46, 2.465, 2.47, 2.475, 2.48, 2.50, or 2.502, the numerator of the member’s modified sales factor is determined as provided in par. (g).

(b) 4. For combined group members that are required to apportion their income using more than one factor under s. 71.25 (10), Stats., and ss. Tax 2.46, 2.465, 2.47, 2.475, 2.48, 2.50, or 2.502, the member’s separate company denominator for purposes of the modified sales factor is determined as provided in par. (g).

(g) (intro.) *Multiple factor formulas.* If a combined group member is required under s. 71.25 (10), Stats., to use an apportionment formula prescribed in ss. Tax 2.46, 2.465, 2.47, 2.475, 2.48, 2.50, or 2.502, the member’s modified sales factor is computed as follows:

1. The numerator of the modified sales factor is the product of the member’s apportionment percentage computed under ss. Tax 2.46, 2.465, 2.47, 2.475, 2.48, 2.50, or 2.502, as applicable, as if the member were not a member of a combined group except as provided in subds. 3. to 5., and the member’s separate company denominator determined in subd. 2.

SECTION 3. Tax 2.62 (2) (d) 1. is amended to read:

Tax 2.62 (2) (d) 1. For any participant in the unitary business that is not a member of a commonly controlled group of corporations as provided in s. Tax 2.61 (3), the participant’s income from the unitary business is generally apportioned in the manner provided by ss. Tax 2.39, 2.395, 2.45, 2.46, 2.465, 2.47, 2.475, 2.48, 2.49, 2.495, 2.50, or 2.502, as applicable. However, the participant may be required to apportion its income under the combined reporting rules provided in s. Tax 2.61 if certain conditions apply, as further explained in s. Tax 2.61 (2) (f).

SECTION 4. Tax 2.64 (2) (a), (b) 7., (c), and (e) 3. are amended to read:

Tax 2.64 (2) (a) *Qualifying combined group.* A qualifying combined group is a combined group for which 30 percent or more of the combined unitary income would, in the absence of combined reporting, be required to be apportioned using more than one factor under a method described in ss. Tax 2.46, 2.465, 2.47, 2.475, 2.48, 2.50, or 2.502.

(b) 7. A calculation of each combined group member’s tax liability for the first taxable year to which the petition applies and for the previous taxable year, similar to the calculations in subds. 5. and 6., computed as if each corporation were not a member of the combined group and using the method prescribed by ss. Tax 2.39, 2.395, 2.45, 2.46, 2.465, 2.47, 2.475, 2.48, 2.49, 2.495, 2.50, or 2.502, as applicable to each corporation.

(c) *Limitation.* The department may not grant a taxpayer’s petition for an alternative apportionment method if the alternative method would result in a lower tax liability than the sum of the tax liabilities of the combined group members computed as if they were not members of a combined group and using the apportionment method prescribed by ss. Tax 2.39, 2.395, 2.45, 2.46, 2.465, 2.47, 2.475, 2.48, 2.49, 2.495, 2.50, or 2.502, as applicable to each corporation.

(e) 3. A calculation of each combined group member’s tax liability for the taxable year included in the combined return

computed as if each corporation were not a member of the combined group and using the apportionment method prescribed by ss. Tax 2.39, 2.395, 2.45, 2.46, 2.465, 2.47, 2.475, 2.48, 2.49, 2.495, 2.50, or 2.502, as applicable to each corporation.

SECTION 5. Effective date. This rule shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22 (2), Stats.

ADMINISTRATIVE RULES		
Fiscal Estimate & Economic Impact Analysis		
Type of Estimate and Analysis		
<input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected		
Administrative Rule Chapter, Title and Number		
Chapter Tax 2 — Income taxation, returns, records, and gross income		
Subject		
Apportionment of apportionable income of interstate air freight forwarders affiliated with a direct air carrier.		
Fund Sources Affected		Chapter 20 , Stats. Appropriations Affected
<input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG–S		
Fiscal Effect of Implementing the Rule		
<input checked="" type="checkbox"/> No Fiscal Effect	<input type="checkbox"/> Increase Existing Revenues	<input type="checkbox"/> Increase Costs
<input type="checkbox"/> Indeterminate	<input type="checkbox"/> Decrease Existing Revenues	<input 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 type="checkbox"/> Specific Businesses/Sectors
<input type="checkbox"/> Local Government Units		<input type="checkbox"/> Public Utility Rate Payers
Would Implementation and Compliance Costs Be Greater Than \$20 million?		
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
Policy Problem Addressed by the Rule		
The rule does not create or revise policy, other than to reflect current law and department policy.		
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)		
As indicated in the attached fiscal estimate, the proposed rule clarifies the tax treatment of air freight forwarders and provides certainty for taxpayers and the department. The proposed rule is not expected to have a significant fiscal effect.		
No comments concerning the economic effect of the rule were submitted in response to the department’s solicitation.		
Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule		
Clarifications and guidance provided by administrative rules may lower the compliance costs for businesses, local governmental units, and individuals.		
If the rule is not implemented, Chapter Tax 2 will be incomplete in that it will not reflect current law or department policy.		
Long Range Implications of Implementing the Rule		
No long–range implications are anticipated.		
Compare With Approaches Being Used by Federal Government		
N/A		
Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)		
N/A		

FISCAL ESTIMATE FORM

2013 Session

ORIGINAL UPDATED

CORRECTED SUPPLEMENTAL

LRB # 11–

INTRODUCTION #

Admin. Rule # Tax 2.465

Subject

Fiscal Effect

State: No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation

- Increase Existing Appropriation Increase Existing Revenues
- Decrease Existing Appropriation Decrease Existing Revenues
- Create New Appropriation

Increase Costs — May be Possible to Absorb Within Agency’s Budget Yes
 No

Decrease Costs

Local: No Local Government Costs

- 1. Increase Costs
 Permissive Mandatory
- 2. Decrease Costs
 Permissive Mandatory

- 3. Increase Revenues
 Permissive Mandatory
- 4. Decrease Revenues
 Permissive Mandatory

5. Types of Local Governmental Units Affected:
- Towns Villages Cities
 - Counties Others
 - School Districts WTCS Districts

Fund Sources Affected

GPR FED PRO PRS SEG SEG–S

Affected Ch. 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate:

The proposed rule creates Section Tax 2.465, which prescribes the method of apportionment to be used by air freight forwarders that are affiliated with a direct air carrier. The proposed rule also amends certain other rule sections, where appropriate, to incorporate references to the newly created section. The proposed rule would be effective for taxable years beginning on or after January 1, 2014.

The proposed rule clarifies the tax treatment of air freight forwarders and provides certainty for taxpayers and the Department. The proposed rule is not expected to have a significant fiscal effect.

Long–Range Fiscal Implications:

Agency/Prepared by:	Authorized Signature	Date
Wisconsin Department of Revenue Michael Oakleaf (608)261–5173	Wisconsin Department of Revenue John Koskinen (608)267–8973	July 16, 2013

Notice of Hearing

Safety and Professional Services
Professional Services, Chs. SPS 1–299
CR 13–077

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Department of Safety and Professional Services in ss. 440.03 (1), 440.205, and 227.11 (2), Wis. Stats., and interpreting ss. 440.03 (1) and 440.205, Wis. Stats., the Department of Safety and Professional Services will hold a public hearing at the time and place indicated below to consider an order to amend ss. SPS 1.08 (2), SPS 2.10 (1), and SPS 8.03 (3), relating to hearings, injunctions, and warnings.

Hearing Information

Date: Wednesday, October 30, 2013
Time: 9:00 a.m.
Locations: 1400 East Washington Ave.
 Room 121C
 Madison, WI

Appearances at the Hearing, Copies of Proposed Rule, and Submittal of Written Comments

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but are urged to submit facts, opinions, and arguments in writing as well. Facts, opinions, and arguments may also be submitted in writing without a personal appearance. All submittals must be directed to Katie Paff, Program and Policy Analyst, at kathleen.paff@wisconsin.gov; or by mail addressed to the Department of Safety and Professional Services, Division of Policy Development, P.O. Box 8935, Madison, Wisconsin 53708. Written comments must be received at or before the public hearing to be included in the record of rule–making proceedings.

Copies of this proposed rule are available upon request to Katie Paff, Program and Policy Analyst, Department of Safety and Professional Services, Division of Policy Development, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708, by email at kathleen.paff@wisconsin.gov or on our website at

<http://dsps.wi.gov/Default.aspx?Page=44e541e8-abdd-49da-8fde-046713617e9e>

Comments may be submitted to Katie Paff, Program and Policy Analyst, Department of Safety and Professional Services, Division of Policy Development, 1400 East Washington Avenue, Room 151, P.O. Box 8935, Madison, WI 53708, or by email to kathleen.paff@wisconsin.gov. Comments must be received at or before the public hearing to be held on **October 30, 2013**, to be included in the record of rule-making proceedings.

Analysis Prepared by the Department

Statutes interpreted

Sections 440.03 (1) and 440.205, Stats.

Statutory authority

Sections 440.03 (1), 440.205, and 227.11 (2), Stats.

Explanation of agency authority

Section 227.11 (2), Stats. Each agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute, but a rule is not valid if the rule exceeds the bounds of correct interpretation.

Section 440.03 (1), Stats. The department may promulgate rules defining uniform procedures to be used by the department, the real estate appraisers board, and all examining boards and affiliated credentialing boards, attached to the department or an examining board, for receiving, filing and investigating complaints, for commencing disciplinary proceedings and for conducting hearings.

Section 440.205, Stats. The department shall promulgate rules establishing uniform procedures for the issuance and use of administrative warnings.

Related statute or rule

Chapters SPS 1, 2, and 8.

Plain language analysis

Sections SPS 1.08 (2) and 2.10 (1) currently provide for the designation of the presiding officer of a disciplinary or application denial review hearing to be employed by the Department unless the credentialing authority designates otherwise. These sections also indicate the administrative law judge shall be an attorney in the department designated by department general counsel, an employee borrowed from another agency or a person employed as a special project or limited term employee.

The Department of Safety and Professional Services no longer has designated administrative law judges within the Department and contracts with Department of Administration, Division of Hearing and Appeals to preside over hearings. The proposed policy is to have the presiding officer of Class 1 and Class 2 hearings be an administrative law judge employed by the Department of Administration.

The rule also proposes to correct a typographical error in s. SPS 8.03 (3).

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

None.

Comparison with rules in adjacent states

Illinois: The Illinois Administrative Procedure Act states that the agency head, one or more members of the agency head, or any other person meeting the qualifications set forth by rule under Section 10–20 may be the administrative law judge. The agency must provide by rule for disqualification of an administrative law judge for bias or conflict of interest. An adverse ruling, in and of itself, shall not constitute bias or conflict of interest (5 ILCS 100/10–30).

Section 10–20 requires that all agencies adopt rules concerning the minimum qualifications of administrative law judges for contested case hearings. The agency head or an attorney licensed to practice law in Illinois may act as an administrative law judge or panel for an agency without adopting any rules under this Section.

Iowa: Iowa Code section 17A.11 states that if the agency or an officer of the agency under whose authority the contested case is to take place is named a party to that proceeding or a real party in interest to that proceeding the presiding officer may be, in the discretion of the agency, the agency, one or more members of a multimember agency, or one or more administrative law judges assigned by the Division of Administrative Hearings in accordance with the provisions of section 10A.801. However, a party may, within a time period specified by rule, request that the presiding officer be an administrative law judge assigned by the Division of Administrative Hearings. The agency must grant a request by a party for an administrative law judge unless otherwise provided by statute or one of a list of conditions exists.

If the agency or an officer of the agency under whose authority the contested case is to take place is not named party to that proceeding or a real party in interest to that proceeding the presiding officer may be, in the discretion of the agency, either the agency, one or more members of a multimember agency, an administrative law judge assigned by the Division of Administrative Hearings in accordance with the provision of section 10A.801, or any other qualified person designated as a presiding officer by the agency. Any other person designated as a presiding officer by the agency may be employed by and officed in the agency for which that person acts as a presiding officer, but such a person shall not perform duties inconsistent with that person's duties and responsibilities as a presiding officer.

Agency is defined as each board, commission, department, officer or other administrative office or unit of the state in Iowa Code Section 17A.2.

The Division of Administrative Hearings established in section 10A.801 shall be treated as a wholly separate agency from the Department of Inspections and Appeals (Iowa Code Section 17A.11).

Any person serving or designated to serve alone or with others as a presiding officer is subject to disqualification for bias, prejudice, interest, or any other cause provided in Iowa Code Chapter 17A or for which a judge is or may be disqualified (Iowa Code Section 17A.11).

Michigan: The Michigan Administrative Procedures Act of 1969 states that the presiding officer of a contested case may be an agency, 1 or more members of the agency, a person designated by statute or 1 or more hearing officers designated and authorized by the agency to handle contested cases (Michigan Statutes Section 24.279).

Michigan Executive Order 2011–4 created the Michigan Administrative Hearing System (MAHS), an independent

and autonomous agency within the Michigan Department of Licensing and Regulatory Affairs. Administrative law judges from MAHS preside over professional licensure disciplinary and denial hearings.

Minnesota: Minnesota Statutes Chapter 214, Section 10, subd. 2. states that examining and licensing boards schedule disciplinary hearings in accordance with Chapter 14 which specifies that hearings are required to be conducted by an administrative law judge employed by the Office of Administrative Hearings (OAH). The Chief Administrative Law Judge of the OAH must assign a judge to hear the case (Minnesota Code Section 1400.5010 to 1400.8400). The OAH is an independent tribunal within the executive branch.

Summary of factual data and analytical methodologies

DSPS currently does not employ an administrative law judge. This change updates the rule to reflect the policy that the Department of Administration, Division of Hearing and Appeals employs the administrative law judges that DSPS and attached boards use to preside over their contested denial and disciplinary hearing cases.

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

The rule was posted currently for public comment on the

economic impact of the proposed rule, including how this proposed rule may affect businesses, local government units and individuals, for a period of 14 days. No comments were received relating to the economic impact of the rule.

Fiscal Estimate and Economic Impact Analysis

The Fiscal Estimate and Economic Impact Analysis is attached.

Initial Regulatory Flexibility Analysis or Summary

These proposed rules do not have an economic impact on small businesses, as defined in s. 227.114 (1), Stats. The Department's Regulatory Review Coordinator may be contacted by email at greg.gasper@wisconsin.gov, or by calling (608) 266–8608.

Agency Contact Person

Katie Paff, Program and Policy Analyst
Department of Safety and Professional Services, Division
of Policy Development
1400 East Washington Avenue, Room 151
P.O. Box 8935
Madison, WI 53708
Telephone: (608) 261–4472
Email: kathleen.paff@wisconsin.gov

STATE OF WISCONSIN
DEPARTMENT OF ADMINISTRATION
DOA–2049 (R03/2012)

DIVISION OF EXECUTIVE BUDGET AND FINANCE
101 EAST WILSON STREET, 10TH FLOOR
P.O. BOX 7864
MADISON, WI 53707–7864
FAX: (608) 267–0372

ADMINISTRATIVE RULES

Fiscal Estimate & Economic Impact Analysis

1. Type of Estimate and Analysis

Original Updated Corrected

2. Administrative Rule Chapter, Title and Number

Sections SPS 1.08 (2), SPS 2.10 (1) and SPS 8.03 (3).

3. Subject

Hearings, injunctions, and warnings.

4. Fund Sources Affected

GPR FED PRO PRS SEG SEG–S

5. Chapter 20, Stats. Appropriations Affected
s. 20.165(1)(g) and (2)(j), Stats.

6. Fiscal Effect of Implementing the Rule

No Fiscal Effect Increase Existing Revenues Increase Costs
 Indeterminate Decrease Existing Revenues Could Absorb Within Agency's Budget
 Decrease Cost

7. The Rule Will Impact the Following (Check All That Apply)

State's Economy Specific Businesses/Sectors
 Local Government Units Public Utility Rate Payers
 Small Businesses (if checked, complete Attachment A)

8. Would Implementation and Compliance Costs Be Greater Than \$20 million?

Yes No

9. Policy Problem Addressed by the Rule

The rule also proposes to correct a typographical error in s. SPS 8.03 (3).

10. Summary of the businesses, business sectors, associations representing business, local governmental units, and individuals that may be affected by the proposed rule that were contacted for comments.

This rule was posted for 14 days for economic impact comments and none were received.

11. Identify the local governmental units that participated in the development of this EIA.

None. This rule does not affect local government units.

12. 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)

This rule will not have an economic or fiscal impact on specific businesses, business sectors, public utility rate payers, local governmental units or the state's economy as a whole.

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

Implementing the rule would better align the administrative rules with current processes and would provide greater assurance that the presiding administrative law judge does not have a conflict of interest or bias. This creates consistency across the Department and attached boards.

14. Long Range Implications of Implementing the Rule

The rules would provide greater assurance that the presiding administrative law judge does not have a conflict of interest or bias. This creates consistency across the Department and attached boards.

15. Compare With Approaches Being Used by Federal Government

None.

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

Michigan, Minnesota and Iowa have central agencies that employ administrative law judges who preside over contested denial and disciplinary hearing cases.

17. Contact Name

Katie Paff

18. Contact Phone Number

(608) 261–4472

This document can be made available in alternate formats to individuals with disabilities upon request.

Notice of Hearing

Safety and Professional Services — Dentistry Examining Board

CR 13–074

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Dentistry Examining Board in ss. 15.08 (5) (b) and 447.02 (2) (b), Stats., and interpreting s. 447.02 (2) (b), Stats., the Dentistry Examining Board will hold a public hearing at the time and place indicated below to consider an order to renumber and amend s. DE 12.03 (intro.) as DE 12.03 (1) and (2), and to amend ss. DE 12.02 (intro.) and 12.03 (intro.), relating to training of unlicensed persons.

Hearing Information

Date: Wednesday, November 6, 2013
Time: 9:30 a.m.
Locations: 1400 East Washington Ave.
 (Enter at 55 N. Dickinson St.)
 Room 121A
 Madison, WI

Appearances at the Hearing

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but are urged to submit facts, opinions, and arguments in writing as well. Facts, opinions, and arguments may also be submitted in writing without a personal appearance by mail addressed to the Department of Safety and Professional

Services, Division of Policy Development, P.O. Box 8935, Madison, Wisconsin 53708–8935. Written comments must be received at or before the public hearing to be included in the record of rule–making proceedings.

Place Where Comments are to be Submitted and Deadline for Submission

Comments may be submitted to Jean MacCubbin, Program Manager, Department of Safety and Professional Services, Division of Policy Development, 1400 East Washington Avenue, Room 151, P.O. Box 8935, Madison, WI 53708–8935, or by email to jean.maccubbin@wisconsin.gov. Comments must be received on or before the public hearing to be included in the record of rule–making proceedings.

Copies of Rule

Copies of this proposed rule are available upon request to Jean MacCubbin, Department of Safety and Professional Services, Division of Policy Development, 1400 East Washington Avenue, P.O. Box 8935, Madison, WI 53708–8935, by email at jean.maccubbin@wisconsin.gov, or on our website at <http://dsps.wi.gov/Default.aspx?Page=44e541e8-abdd-49da-8fde-046713617e9e>.

Analysis prepared by the Department

Statutes interpreted

Section 447.02 (2) (b), Stats.

Statutory authority

Sections 15.08 (5) (b) and 447.02 (2) (b), Stats.

Explanation of agency authority

Section 15.08 (5) (b), Stats. The examining board shall promulgate rules for the guidance of the profession to which it pertains and define and enforce professional conduct and unethical practices not inconsistent with the law relating to the particular trade or profession.

Section 447.02 (2) (b), Stats. The examining board shall promulgate rules specifying the "...standards, conditions and any educational requirements that are in addition to the requirements specified in s. 447.04 (1) that must be met by a dentist to be permitted to induce general anesthesia or conscious sedation in connection with the practice of dentistry."

Related statute or rule

Section 447.01 (8), Stats.

Plain language analysis

The Board desires to provide clarity on delegating procedures and functions to unlicensed persons and in addition, clarifying licensee's roles in reporting such violations.

Section 1. includes a minor amendment relating to currently acceptable format and adds the phrase "and functions" in s. DE 12.01 (intro.) to the list of activities to be delegated to an unlicensed person. The term "function" is used throughout the chapter when dental procedures are listed.

Sections 2. and 3. are the major revisions to this rule whereby deleting the verification form and the reporting to the board if training of unlicensed persons is made. In addition, this section also clarifies various violations if a licensee fails to report any known violations conducted by other licensees.

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

No existing or proposed rules or laws were found in an Internet–based search of the U.S. Code or the Code of Federal Register (CFR) regarding dentists training unlicensed individuals and required forms verifying such training.

Comparison with rules in adjacent states

An Internet–based search of the statutes, rules, and codes of the four adjacent states revealed the following with respect to training of unlicensed individuals, and any required forms to verify such training.

Illinois: The Illinois Department of Financial & Professional Regulation issues temporary training licenses during residency requirements for dentists, hygienists and dental specialists. In the code, there is no mention of a requirement to apply or report such activity to the Division of Professional Regulation.

Iowa: The Iowa Dental Board has responsibility over dentistry, dental hygiene and dental assisting and administers the state code, section 1220.156. Iowa chapter 11, Licensure to Practice Dentistry or Dental Hygiene, contains no reference to training of unlicensed individuals or for any forms so required.

Michigan: The Michigan Board of Dentistry is charged with the licensing and practice requirements of dentists; these rules include dentists training on various methods of sedation and proper handling of waste. No rules currently list training and verification forms for the training of unlicensed individuals. [Public Health Code: Act 368 of 1978, Part 166, Dentistry].

Minnesota: Under the Minnesota Board of Dentistry, "...dentists employing, assisting, or enabling in any manner an unlicensed person to practice dentistry..." as found in Minnesota Statutes, section 150A.08, subdivision 1, is in violation of the state code. A brief review of the code did not reveal that a licensee has the authority to train an unlicensed individual, nor is there a means to report such training to the board. [Chapter 3100, Dentists, Hygienists, and Assistants].

Summary of factual data and analytical methodologies

The Board, in reviewing their rules in response to Executive Order 61, recognized that in practice, no form has been approved by the Board or required to be submitted to the Board for each circumstance of training an unlicensed person.

The proposed provisions are expected to reflect current practice.

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

The Dentistry Examining Board in reviewing their rules in response to Executive Order 61 found that neither the Board nor the industry was in conformance to the rule, which was deemed unnecessary.

Effect on Small Business

These proposed rules do not have an economic impact on small businesses, as defined in s. 227.114 (1), Stats. The Department's Regulatory Review Coordinator may be contacted by email at greg.gasper@wisconsin.gov, or by calling (608) 266–8608.

Fiscal Estimate and Economic Impact Analysis

The Fiscal Estimate and Economic Impact Analysis is attached.

Initial Regulatory Flexibility Analysis or Summary

This rule change will not have an effect on small business.

Agency Contact Person

Jean MacCubbin, Program Manager
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1400 East Washington Avenue, Room 151
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Telephone: (608) 266–0955
Email: jean_maccubbin@wisconsin.gov
Telecommunications: contact at 711

STATE OF WISCONSIN
DEPARTMENT OF ADMINISTRATION
DOA-2049 (R03/2012)

DIVISION OF EXECUTIVE BUDGET AND FINANCE
101 EAST WILSON STREET, 10TH FLOOR
P.O. BOX 7864
MADISON, WI 53707-7864
FAX: (608) 267-0372

ADMINISTRATIVE RULES

Fiscal Estimate & Economic Impact Analysis

1. Type of Estimate and Analysis

Original Updated Corrected

2. Administrative Rule Chapter, Title and Number

Ch. DE 12, Delegation of Functions to Unlicensed Persons

3. Subject

Training of Unlicensed Persons and Deletion of Required Form(s)

4. Fund Sources Affected

GPR FED PRO PRS SEG SEG-S

5. Chapter 20, Stats. Appropriations Affected
s. 20.165 (1) (g), Stats.

6. Fiscal Effect of Implementing the Rule

No Fiscal Effect Increase Existing Revenues Increase Costs
 Indeterminate Decrease Existing Revenues Could Absorb Within Agency's Budget
 Decrease Cost

7. The Rule Will Impact the Following (Check All That Apply)

State's Economy Specific Businesses/Sectors
 Local Government Units Public Utility Rate Payers
 Small Businesses (if checked, complete Attachment A)

8. Would Implementation and Compliance Costs Be Greater Than \$20 million?

Yes No

9. Policy Problem Addressed by the Rule

Chapter DE 12, delegation of functions to unlicensed persons, has not been revised since 1991. The Dentistry Examining Board requests to repeal the requirements for the submittal of a form to verify a dentist's training and delegation of any remediable dental procedure to an unlicensed person.

10. Summary of the businesses, business sectors, associations representing business, local governmental units, and individuals that may be affected by the proposed rule that were contacted for comments.

Licensed dentists.

11. Identify the local governmental units that participated in the development of this EIA.

None known.

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

The proposed rule would have no affect on Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole. The major impact would be the deletion of a process not currently followed while maintaining both the delegation responsibilities with the licensed dentist and reporting of violations by dentists and dental hygienists.

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

Rules will be contemporary and reflect current practice in the industry.

14. Long Range Implications of Implementing the Rule

Licensed dentists will continue to be responsible for training unlicensed persons in practices and functions, but so communicating to the board will not be practice.

15. Compare With Approaches Being Used by Federal Government

An Internet-based search of the U.S. Code or the Code of Federal Register did not reveal any current or proposed rules relating to dentists training unlicensed individuals or any forms recording such training.

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

Illinois: The rules for Illinois Department of Financial & Professional Regulation for dentistry has no mention of a licensed dentist providing such training be required to apply or report such activity to the Division of Professional Regulation. Iowa: The rules for the Iowa Dental Board have no reference to training of unlicensed individuals or forms so required. Michigan: Under the Michigan Board of Dentistry, there are no rules currently listing training and verification forms for unlicensed individuals. Minnesota: Under the Minnesota Board of Dentistry rules, a review did not reveal that a licensee has the authority to train an unlicensed individual, nor is there a means to report such training to the Board.

17. Contact Name
Jean MacCubbin

18. Contact Phone Number
608.266.0955

This document can be made available in alternate formats to individuals with disabilities upon request.

Notice of Hearing

Safety and Professional Services — Pharmacy Examining Board CR 13–075

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Pharmacy Examining Board in ss. 15.08 (5) (b), 450.02 (3) (a), and 961.31, Stats., and interpreting ss. 450.11 (2) and 961.38, Stats., the Pharmacy Examining Board will hold a public hearing at the time and place indicated below to consider an order to repeal s. Phar 7.08 (1) (Note) and amend ss. Phar 8.05 (4), 8.07 (2), and 8.09 (1), (2), (3), and (4), relating to electronic prescriptions.

Hearing Information

Date: Wednesday, October 30, 2013
Time: 9:05 a.m.
Locations: 1400 East Washington Ave.
Room 121
Madison, WI

Appearances at the Hearing

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but are urged to submit facts, opinions, and arguments in writing as well. Facts, opinions, and arguments may also be submitted in writing without a personal appearance by mail addressed to the Department of Safety and Professional Services, Division of Policy Development, P.O. Box 8935, Madison, Wisconsin 53708. Written comments must be received at or before the public hearing to be included in the record of rule-making proceedings.

Place Where Comments are to be Submitted and Deadline for Submission

Comments may be submitted to Sharon Henes, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 1400 East Washington Avenue, Room 151, P.O. Box 8935, Madison, WI 53708–8935, or by email to sharon.henes@wisconsin.gov. Comments must be received at or before the public hearing to be held on **October 30, 2013**, to be included in the record of rule-making proceedings.

Copies of Rule

Copies of this proposed rule are available upon request to Sharon Henes, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708, by email at sharon.henes@wisconsin.gov, or on our website at

<http://dpsps.wi.gov/Default.aspx?Page=44e541e8-abdd-49da-8fde-046713617e9e>

Analysis Prepared by the Department

Statutes interpreted

Sections 450.11 (2) and 961.38, Stats.

Statutory authority

Sections 15.08 (5) (b), 450.02 (3) (a), and 961.31, Stats.

Explanation of agency authority

Section 15.08 (5) (b), Stats., allows each examining board to “promulgate rules for its own guidance and for the guidance of the trade or profession to which it pertains and define and enforce professional conduct and unethical practices not inconsistent with the law relating to the particular trade or profession.”

Section 450.02 (3) (a), Stats., authorizes the Board to promulgate rules “[r]elating to the...distribution and dispensing of prescription drugs.”

Section 961.31, Stats., authorizes the Board to promulgate rules relating to the manufacture, distribution, and dispensing of controlled substances within the state.

Related statute or rule

Section 961.38, Stats.

Plain language analysis

2011 Wisconsin Act 159 amended s. 961.38, Stats. to allow electronic prescriptions for schedule II controlled substances. This rule updates the Pharmacy Examining Board rules accordingly.

Section 1 repeals the note following s. Phar 7.08 (1) which stated that prescription orders for schedule II controlled substances may not be transmitted electronically except in emergency.

Section 2 amends s. Phar 8.05 (4) to indicate that a prescription containing a controlled substance can only be dispensed pursuant to a written hard copy or electronic order signed by the prescribing practitioner.

Section 3 amends s. Phar 8.07 (2) to indicate the notation of the partial quantity provided is written on the hard copy of the prescription or the electronic order. The word “emergency” is moved to solely modify oral prescription.

Sections 4, 5, and 7 amend s. Phar 8.09 (1), (2), and (4) to remove electronic from the emergency prescriptions and to reflect the provisions relate solely to oral authorizations in an emergency situation.

Section 6 amends s. Phar 8.09 (3) to remove the reference to electronic in this emergency prescription provision. It also removes the reference to the “practitioner’s phone number as listed in the telephone directory” to reflect current

technologies may be used rather than the outdated method of looking phone numbers up in a telephone directory.

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

21 CFR §1311 allows electronic prescriptions for controlled substances.

Comparison with rules in adjacent states

Illinois: Per Ill. Admin. Code Title 68, s. 1330.760, electronically transmitted prescriptions for controlled substances may be dispensed only as provided by federal law.

Iowa: Per Iowa Admin. Code 657 to 8.19, electronic prescriptions may be accepted for controlled substances.

Michigan: Per Mich. Admin. Code s. 333.7333, electronic prescriptions of controlled substances are allowed, if not prohibited by federal law.

Minnesota: Per Minnesota Rules 6800.3000 Subp. 3, electronic prescriptions are allowed if they conform to the rules of the federal Drug Enforcement Administration.

Summary of factual data and analytical methodologies

The methodology used was to update the rule to reflect the changes to the statutes as a result of 2011 Wisconsin Act 159.

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

This rule was posted for economic comments for 14 days and none were received. This rule updates the code to reflect the statutory change to allow for electronic prescriptions and will not have an economic impact.

Fiscal Estimate and Economic Impact Analysis

The Fiscal Estimate and Economic Impact Analysis is attached.

Initial Regulatory Flexibility Analysis or Summary

There is no effect on small business as defined under s. 227.114 (1), Stats.

Agency Contact Person

Sharon Henes, Administrative Rules Coordinator
 Department of Safety and Professional Services, Division of Policy Development
 1400 East Washington Avenue, Room 151
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 Madison, WI 53708
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 Email: sharon.henes@wisconsin.gov

STATE OF WISCONSIN
 DEPARTMENT OF ADMINISTRATION
 DOA-2049 (R03/2012)

DIVISION OF EXECUTIVE BUDGET AND FINANCE
 101 EAST WILSON STREET, 10TH FLOOR
 P.O. BOX 7864
 MADISON, WI 53707-7864
 FAX: (608) 267-0372

ADMINISTRATIVE RULES

Fiscal Estimate & Economic Impact Analysis

1. Type of Estimate and Analysis
 Original Updated Corrected

2. Administrative Rule Chapter, Title and Number
 Chapters Phar 7, 8

3. Subject
 Allowing electronic prescriptions for controlled substances schedule II.

4. Fund Sources Affected <input 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	5. Chapter 20, Stats. Appropriations Affected
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6. Fiscal Effect of Implementing the Rule
 No Fiscal Effect Increase Existing Revenues Increase Costs
 Indeterminate Decrease Existing Revenues Could Absorb Within Agency's Budget
 Decrease Cost

7. The Rule Will Impact the Following (Check All That Apply)
 State's Economy Specific Businesses/Sectors
 Local Government Units Public Utility Rate Payers
 Small Businesses (if checked, complete Attachment A)

8. Would Implementation and Compliance Costs Be Greater Than \$20 million?
 Yes No

9. Policy Problem Addressed by the Rule
 2011 Wisconsin Act 159 amended § 961.38, Stats. to allow electronic prescriptions for schedule II controlled substances. This rule updates the Pharmacy Examining Board rules accordingly.

10. Summary of the businesses, business sectors, associations representing business, local governmental units, and individuals that may be affected by the proposed rule that were contacted for comments.
 This rule was posted for 14 days for economic comments and none were received.

11. Identify the local governmental units that participated in the development of this EIA.
 None. This rule does not affect local governments.

12. 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)

This rule will not have an economic or fiscal impact on specific businesses, business sectors, public utility rate payers, local governmental units or the state’s economy as a whole. This rule updates the code to reflect the statutory change to allow for electronic prescriptions.

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

The benefit of implementing the rule would allow a pharmacy/pharmacist to use modern technology in a manner that efficiently meets patient needs by allowing electronic prescriptions for schedule II controlled substances and allowing oral prescriptions to be reduced to an electronic record while maintaining public safety. This rule updates the code to reflect the revision in statute created by 2011 Act 159 to allow for electronic prescriptions to schedule II controlled substances.

14. Long Range Implications of Implementing the Rule

The long range implication is to increase public safety by cutting down on dispensing errors or patients misplacing their written prescription orders by allowing electronic prescriptions, rather than only written prescription orders.

15. Compare With Approaches Being Used by Federal Government

The federal government allows for electronic prescriptions for schedule II controlled substances.

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

Our four neighboring states allow for electronic prescriptions for scheduled II controlled substances, if not prohibited by federal law.

17. Contact Name

Sharon Henes, Administrative Rules Coordinator

18. Contact Phone Number

(608) 261–2377

This document can be made available in alternate formats to individuals with disabilities upon request.

Notice of Hearing

Safety and Professional Services — Pharmacy Examining Board CR 13–076

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Pharmacy Examining Board in ss. 15.08 (5) (b) and 450.02 (3), Stats., and interpreting ss. 450.01 (7) and 450.02 (3), Stats., the Pharmacy Examining Board will hold a public hearing at the time and place indicated below to consider an order to repeal s. Phar 7.04 (1) (e) 2. (Note) and amend s. Phar 7.04 (1) (e) 2., relating to return or exchange of health items.

Hearing Information

Date: Wednesday, October 30, 2013
Time: 9:00 a.m.
Locations: 1400 East Washington Ave.
 Room 121
 Madison, WI

Appearances at the Hearing

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but are urged to submit facts, opinions, and arguments in writing as well. Facts, opinions, and arguments may also be submitted in writing without a personal appearance by mail addressed to the Department of Safety and Professional Services, Division of Policy Development, P.O. Box 8935, Madison, Wisconsin 53708. Written comments must be received at or before the public hearing to be included in the record of rule–making proceedings.

Place Where Comments are to be Submitted and Deadline for Submission

Comments may be submitted to Sharon Henes, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 1400 East Washington Avenue, Room 151, P.O. Box 8935, Madison, WI 53708–8935, or by email to sharon.henes@wisconsin.gov. Comments must be received at or before the public hearing to be held on **October 30, 2013**, to be included in the record of rule–making proceedings.

Copies of Rule

Copies of this proposed rule are available upon request to Sharon Henes, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708, by email at sharon.henes@wisconsin.gov, or on our website at <http://dsps.wi.gov/Default.aspx?Page=44e541e8-abdd-49da-8fde-046713617e9e>.

Analysis Prepared by the Department

Statutes interpreted

Sections 450.01 (7) and 450.02 (3), Stats.

Statutory authority

Sections 15.08 (5) (b) and 450.02 (3), Stats.

Explanation of agency authority

Section 15.08 (5) (b), Stats., allows each examining board to “promulgate rules for its own guidance and for the guidance of the trade or profession to which it pertains and define and enforce professional conduct and unethical practices not inconsistent with the law relating to the particular trade or profession.”

Section 450.02 (3), Stats., allows the Pharmacy Examining Board to promulgate rules relating to the manufacture of drugs and the distribution and dispensing of prescription drugs; establish security standards for pharmacies and the manufacture, distribution, and dispensing of hypodermic syringes, needles, and other objects used, intended for use or designed for use in injecting a drug.

Related statute or rule

Section 938.02, Stats

Plain language analysis

Section 1 updates the language in the rule to reflect the statutory changes in the language and citations resulting from 2005 Wisconsin Act 344. “Secured correctional facility” was changed to “juvenile correctional facility” and “secure detention facility” was changed to “juvenile detention facility.” As a result of these changes, the statutory citations were amended to reflect their new position in the alphabet in s. 938.02, Stats. In addition, 2005 Wisconsin Act 344 repealed s. 938.02 (15p), Stats.

Section 2 repeals the note which followed s. Phar 7.04 (1) (e) 2. advising the public of the changes. The note is no longer necessary due to the updating of this rule.

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

None.

Comparison with rules in adjacent states

Illinois: In Illinois’s section relating to the return of drugs, it does not address correction facilities separately.

Iowa: In Iowa’s section relating to the return or exchange of health items, it does not address correction facilities separately.

Michigan: In Michigan’s section relating to return or exchange of health items, there is a definition for “state correctional facility” which means a facility or institution that

houses a prisoner population under the jurisdiction of the department of corrections.

Minnesota: In Minnesota’s section relating to return of drugs and devices, such a return is only allowed by hospitals, nursing homes, and assisted living facilities.

Summary of factual data and analytical methodologies

On June 26, 2012, the Governor’s Office recommended that the Pharmacy Examining Board review and update this rule to reflect current statutes.

Currently there is a note indicating the changes. This rule moves the updates from the note into the rule itself to reflect the statutory language change.

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

This rule was posted for economic comments for 14 days and none were received. This rule corrects statutory references only and has no economic impact.

Fiscal estimate and Economic Impact Analysis

The Fiscal Estimate and Economic Impact Analysis is attached.

Initial Regulatory Flexibility Analysis or Summary

There is no effect on small business as defined under s. 227.114 (1), Stats.

Agency Contact Person

Sharon Henes, Administrative Rules Coordinator
 Department of Safety and Professional Services, Division of Policy Development
 1400 East Washington Avenue, Room 151
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 Email: sharon.henes@wisconsin.gov

STATE OF WISCONSIN
 DEPARTMENT OF ADMINISTRATION
 DOA–2049 (R03/2012)

DIVISION OF EXECUTIVE BUDGET AND FINANCE
 101 EAST WILSON STREET, 10TH FLOOR
 P.O. BOX 7864
 MADISON, WI 53707–7864
 FAX: (608) 267–0372

ADMINISTRATIVE RULES

Fiscal Estimate & Economic Impact Analysis

1. Type of Estimate and Analysis
 Original Updated Corrected

2. Administrative Rule Chapter, Title and Number
 Section Phar 7.04 (1) (e) 2.

3. Subject
 Statutory reference changes within return or exchange of health items.

4. Fund Sources Affected <input 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	5. Chapter 20, Stats. Appropriations Affected
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6. Fiscal Effect of Implementing the Rule
 No Fiscal Effect Increase Existing Revenues Increase Costs
 Indeterminate Decrease Existing Revenues Could Absorb Within Agency’s Budget
 Decrease Cost

7. The Rule Will Impact the Following (Check All That Apply)

<input type="checkbox"/> State’s Economy	<input type="checkbox"/> Specific Businesses/Sectors
<input type="checkbox"/> Local Government Units	<input type="checkbox"/> Public Utility Rate Payers
	<input type="checkbox"/> Small Businesses (if checked, complete Attachment A)

8. Would Implementation and Compliance Costs Be Greater Than \$20 million?
 Yes No

9. Policy Problem Addressed by the Rule

Currently there is a note for this section indicating various statutory references have been changed. This rule updates the section with current statutory references and eliminates the note.

10. Summary of the businesses, business sectors, associations representing business, local governmental units, and individuals that may be affected by the proposed rule that were contacted for comments.

This rule was posted for 14 days for economic comments and none were received.

11. Identify the local governmental units that participated in the development of this EIA.

None. This rule does not affect local governments.

12. 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)

This rule will not have an economic or fiscal impact on specific businesses, business sectors, public utility rate payers, local governmental units, or the state's economy as a whole. This rule only corrects statutory references in the current rule.

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

The benefit is to clean-up the rule to match current statutory references.

14. Long Range Implications of Implementing the Rule

The long range implication is the rule will have clarity without having to refer to the note to understand the references.

15. Compare With Approaches Being Used by Federal Government

None.

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

This rule purely updates the rule to reflect the current Wisconsin statute references. A comparison of the underlying rule which is not changing, Illinois and Iowa do not address correction facilities separately; Michigan's section relating to return or exchange of health items has a definition for "state correctional facility"; and Minnesota only allows the return of drugs and devices by hospitals, nursing homes and assisted living facilities.

17. Contact Name

Sharon Henes, Administrative Rules Coordinator

18. Contact Phone Number

(608) 261-2377

This document can be made available in alternate formats to individuals with disabilities upon request.

Notice of Hearing

Safety and Professional Services — Real Estate Examining Board CR 13-072

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Real Estate Examining Board in ss. 15.405 (11), 227.11 (2), 452.07 (1m), and 452.07, Stats., and interpreting ss. 452.07 (1m), and 452.07, Stats., the Board will hold a public hearing at the time and place indicated below to consider an order to repeal ss. REEB 18.08, 18.11 (2), and 18.12 and Note; renumber and amend s. REEB 18.11 (1) as s. REEB 18.11 (intro.); amend ss. REEB 18.01 (title), 18.02 (5) (intro.) and (a) and (b) and (6) (intro.) and (a) to (g), 18.031 (1) (intro.), (a), and (b), 18.033 (title) and (2), 18.035 (2), 18.037 (intro.) and Note, 18.06, 18.09 (1) (intro.) and (a) to (f), and 18.13 (1) (intro.), (a) to (d), (2) to (4), and (6) (e); repeal and recreate ss. REEB 18.02 (1) and 18.10; and create ss. REEB 18.02 (intro.) (Note), (1e) and Note, and (4) and Note, 18.034 (1) (title) and 18.10, relating to real estate trust accounts.

Hearing Information

Date: Thursday, October 31, 2013
Time: 10:00 a.m.
Locations: 1400 East Washington Ave.

(Enter through 55 N. Dickinson St.)
Room 121A
Madison, WI

Appearances at the Hearing

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but are urged to submit facts, opinions, and arguments in writing as well. Facts, opinions, and arguments may also be submitted in writing without a personal appearance by mail addressed to the Department of Safety and Professional Services, Division of Policy Development, P.O. Box 8935, Madison, Wisconsin 53708. Written comments must be received at or before the public hearing to be included in the record of rule-making proceedings.

Place Where Comments are to be Submitted and Deadline for Submission

Comments may be submitted to Jean MacCubbin, Program Manager, Department of Safety and Professional Services, Division of Policy Development, 1400 East Washington Avenue, Room 151, P.O. Box 8935, Madison, WI 53708-8935, or by email to jean.maccubbin@wisconsin.gov. Comments must be received at or before the public hearing to be held on **October 31, 2013**, to be included in the record of rule-making proceedings.

Copies of Proposed Rule

Copies of this proposed rule are available upon request to Jean MacCubbin, Program Manager, Department of Safety and Professional Services, Division of Policy Development, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708, by email at jean.maccubbin@wisconsin.gov or on our website at <http://dsps.wi.gov/Default.aspx?Page=44e541e8-abdd-49da-8fde-046713617e9e>

Analysis prepared by the Department

Statutes interpreted

Sections 452.07 (1m), and 452.07, Stats.

Statutory authority

Sections 15.405 (11), 227.11 (2), 452.07 (1m), and 452.07, Stats.

Explanation of agency authority

Examining boards are generally authorized by ss. 15.08 (5) (b) and 227.11 (2) (a), Stats., to promulgate rules for its own guidance and for guidance within the profession and to promulgate rules interpreting any statute enforced or administered by it. Under ss. 452.07 (1m) and 452.07, Stats., the board shall promulgate rules for the guidance of the real estate profession.

Related statute or rule

Section 452.13 (2), Stats.

Plain language analysis

This proposed rule-making order clarifies the rules relating to real estate trust accounts by correcting internal inconsistencies, reflecting current practices, and removing antiquated provisions. In addition, format changes and typographical/punctuation errors are being corrected.

SECTION 1: The proposed rules modify the section title to be consistent with section titles in other chapters within this series, chs. REEB 11 to 26. For example, the statutory authority provided to the board is now separated from the definitions subsection.

SECTIONS 2 to 6: The proposed rules add or update definitions commonly used in the real estate industry. When applicable, the statutory definition is cited. In addition, the proposed rules update formatting now in use since the last chapter revision and use terms consistent with those used in ch. 452, Stats. As an example; in lists such as SECTION 6., s. REEB 18.02 (6), colons are no longer in use and have been replaced by periods; the use of and is deleted as the introductory clause is amended to indicate all of the items in the list apply.

SECTION 7: The proposed rules correct minor typos, grammatical and punctuation errors, and utilize the new rule-making format required since the last revision of this chapter.

SECTIONS 8 to 10: The intent of the proposed changes is to clarify when a trust account can be opened and the naming of such accounts; no substantive changes are proposed.

SECTION 11: The proposed rules move existing text to a more appropriate subsection and provide information to access forms via the department webpage.

SECTION 12: The proposed rules clarify designating responsibilities as to who holds escrow funds.

SECTION 13: The proposal repeals a section relating to cooperating brokers, a practice that has ceased.

SECTION 14: Proposed changes are for clarification purposes only.

SECTION 15: The proposed rules clarify when comingling of funds are prohibited; in addition, subsection titles are created to assist the reader.

SECTIONS 16 and 17: The proposed rules renumber the subsection as an introductory clause due to the repeal of sub. (2). The proposed rules repeal sections that are determined to be no longer in use or antiquated to the real estate industry—promissory notes and branch offices.

SECTIONS 18, 19, and 20: The proposed rules relate to recordkeeping, specifically ledgers, journals, and trial balances. Clarification of terms and designating responsibilities are also proposed.

SECTION 21: This section establishes an effective date of July 1, 2014, which is timely for upcoming training and examinations.

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

There are no existing or proposed federal regulations addressing real estate trust accounts with respect to licensees.

Comparison with rules in adjacent states

An Internet-based search revealed the following:

Illinois: In Illinois, the Bureau of Real Estate Professions administers and enforces the Illinois Real Estate License Act of 2000, the Real Estate Timeshare Act, the Land Sales Registration Act, the Real Estate Appraiser Licensing Act of 2002, Provisions and Rules of the Uniform Standards of Professional Appraisal Practice, the Auction License Act, and the Home Inspector License Act. The Bureau has responsibility for licensing and regulating real estate brokers, managing brokers, leasing agents, real estate firms, real estate appraisers, auctioneers, auction firms, home inspectors, and home inspector entities. An internet search did not reveal details relating to any Illinois codes and statutes pertaining to real estate trust accounts.

Iowa: In Iowa, the Professional Licensing Division (IPLD) oversees the real estate industry through the following rules: Iowa Code ch. 543B, Real Estate Brokers and Salespersons; ch. 543C, Sales of Subdivided Land Outside of Iowa; and ch. 557A, Iowa Time–Share Act. These rules are published in the Iowa Administrative Code ch. 193E. Under the jurisdiction of the IPLD, the Iowa Real Estate Commission regulates and administers the real estate laws in Iowa. Notification of opening, closing and transferring accounts, naming the accounts, as well as submitting interest to a designated state agency is similar to rules and statutes in Wisconsin.

Michigan: In Michigan, Article 25 of Public Act 299 of 1980, licenses and regulates the real estate industry through the Board of Real Estate Brokers and Salespersons. In Michigan, R339.22313, rule 313, real estate trust accounts are held in non–interest bearing, demand–checking accounts. Received funds must be deposited within two banking days, with some exceptions. A third party may manage the funds if interest is being sought. Disbursement, co–mingling and recordkeeping are detailed in the state guidelines for trust accounts.

[<http://www.rentupm.com/wp-content/uploads/2011/11/Michigan-Trust-Account-Guidelines.pdf>].

Minnesota: The Minnesota statutes are similar to Wisconsin and require all real estate trust accounts to pool interest from interest bearing accounts. The commissioner of management and budget shall deposit such funds into the housing trust fund account. Chapter 82.75, subd. 5, Trust accounts, outlines the state requirements, which include: maintaining and retaining records, timeliness of transaction including deposits within three business days. [<https://www.revisor.mn.gov/statutes/?id=82.75>].

Summary of factual data and analytical methodologies

The Board relied upon their knowledge of processes and procedures currently in place in the industry and made determinations on modifying or eliminating out–dated practices and terms when found in their review. Practices relating to bookkeeping and keeping ledgers have changed with the introduction of computer software, for example.

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

Data was obtained from the Division of Professional Credential Processing regarding the number of licensees that would be affected by this regulatory change. As of 4/15/2013, there are 6,139 active licensed real estate salespersons and

10,373 active licensed real estate brokers. There are 1,051 licensed real estate business entities. The majority of real estate licensees work in small business environments; however, the proposed rules do not include any policy changes that would impact licensees or small business.

Fiscal Estimate and Economic Impact Analysis

The Fiscal Estimate and Economic Impact Analysis is attached.

Initial Regulatory Flexibility Analysis or Summary

This rule will not have a significant adverse effect on “small business.”

Agency Contact Person

Jean MacCubbin, Program Manager
 Department of Safety and Professional Services, Division of Policy Development
 1400 East Washington Avenue, Room 151
 P.O. Box 8935
 Madison, WI 53708
 Telephone: (608) 266–0955
 Email: jean_maccubbin@wisconsin.gov
 Telecommunications relay services: at 711

STATE OF WISCONSIN
 DEPARTMENT OF ADMINISTRATION
 DOA–2049 (R03/2012)

DIVISION OF EXECUTIVE BUDGET AND FINANCE
 101 EAST WILSON STREET, 10TH FLOOR
 P.O. BOX 7864
 MADISON, WI 53707–7864
 FAX: (608) 267–0372

ADMINISTRATIVE RULES

Fiscal Estimate & Economic Impact Analysis

1. Type of Estimate and Analysis
 Original Updated Corrected

2. Administrative Rule Chapter, Title and Number
 Chapter REEB 18, Trust Accounts.

3. Subject
 Modernize the rules to reflect best practices by removing antiquated provisions, and repeal sections deleted by 2001 Act 18.

4. Fund Sources Affected <input 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	5. Chapter 20, Stats. Appropriations Affected s. 20.165 (1) (g), Stats.
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6. Fiscal Effect of Implementing the Rule		
<input checked="" type="checkbox"/> No Fiscal Effect	<input type="checkbox"/> Increase Existing Revenues	<input type="checkbox"/> Increase Costs
<input type="checkbox"/> Indeterminate	<input type="checkbox"/> Decrease Existing Revenues	<input type="checkbox"/> Could Absorb Within Agency’s Budget
		<input type="checkbox"/> Decrease Cost

7. The Rule Will Impact the Following (Check All That Apply)

<input type="checkbox"/> State’s Economy	<input type="checkbox"/> Specific Businesses/Sectors
<input type="checkbox"/> Local Government Units	<input type="checkbox"/> Public Utility Rate Payers
	<input type="checkbox"/> Small Businesses (if checked, complete Attachment A)

8. Would Implementation and Compliance Costs Be Greater Than \$20 million?
 Yes No

9. Policy Problem Addressed by the Rule

With the exception of renumbering the chapter, this chapter has not been updated since 1983; the board has indicated various practices which are outdated.

10. Summary of the businesses, business sectors, associations representing business, local governmental units, and individuals that may be affected by the proposed rule that were contacted for comments.

Licensees, real estate brokers, and salespersons.

11. Identify the local governmental units that participated in the development of this EIA.

None known.

12. 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)

There are no new or increased costs associated with the promulgation of these rules on any of the business sectors listed.

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

For new applicants for licenses, the rules will reflect contemporary practices specific to the real estate industry.

14. Long Range Implications of Implementing the Rule

The rule is not expected to need further revisions in the long–term.

15. Compare With Approaches Being Used by Federal Government

There is no existing or proposed legislation regarding real estate (investment) accounts.

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

IA and MN have similar rules and require the interest to be forwarded to the state; MI has similar rules on the establishment and operation of trust accounts; IL has no state–level rules or laws pertaining to real estate trust accounts.

17. Contact Name
Jean MacCubbin

18. Contact Phone Number
(608) 266–0955

This document can be made available in alternate formats to individuals with disabilities upon request.

Notice of Hearing

Safety and Professional Services — Real Estate Examining Board CR 13–073

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Real Estate Examining Board in ss. 15.405 (11), 227.11 (2), 452.07 (1m), 452.05 (1) (b), and 452.07 (1m), Stats., and interpreting ss. 452.07 (1m), 452.05 (1) (b), and 452.07, Stats., the Real Estate Examining Board will hold a public hearing at the time and place indicated below to consider an order of the Real Estate Examining Board to repeal s. REEB 16.03 (2) Note; to renumber s. REEB 16.02 (1) to s. REEB 16.02 (1e); to amend ss. REEB 16.03 (1), (intro.), (a), (b), and (e) and (2), 16.05 (1) and (2), 16.06 (1) (intro.), (a), (b), (e), and (f), (4) (intro.) and (a) to (b), (5) (intro.) and (a) to (c), (6) and (7); to repeal and recreate s. REEB 16.03 (2) Note, and to create ss. REEB 16.02 (intro.), (1) and Note, (1m), (2e), (2m), (2r), (3m), and (4m), and 16.03 (2) Note, relating to use of approved forms and legal advice.

Hearing Information

Date: Thursday, October 31, 2013
Time: 10:00 a.m.
Locations: 1400 East Washington Ave.
(Enter through 55 N. Dickinson St.)
Room 121A
Madison, WI

Appearances at the Hearing

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but are urged to submit facts, opinions, and arguments in writing as well. Facts, opinions, and arguments may also be submitted in writing without a personal appearance by mail addressed to the Department of Safety and Professional Services, Division of Policy Development, P.O. Box 8935, Madison, Wisconsin 53708–8935. Written comments must be received at or before the public hearing to be included in the record of rule–making proceedings.

Place Where Comments are to be Submitted and Deadline for Submission

Comments may be submitted to Jean MacCubbin, Program Manager, Department of Safety and Professional Services, Department of Safety and Professional Services, Division of Policy Development, 1400 East Washington Avenue, Room 151, P.O. Box 8935, Madison, WI 53708–8935, or by email to jean.maccubbin@wisconsin.gov. Comments must be received on or before the public hearing to be held **October 31, 2013**, to be included in the record of rule–making proceedings.

Copies of Rule

Copies of this proposed rule are available upon request to Jean MacCubbin, Program Manager, Department of Safety and Professional Services, Division of Policy Development, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708–8935, by email at jean.maccubbin@wisconsin.gov, or on our website at <http://dsps.wi.gov/Default.aspx?Page=44e541e8-abdd-49d-a-8fde-046713617e9e>.

Analysis Prepared by the Department

Statutes interpreted

Sections 452.07 (1m), 452.05 (1) (b), and 452.07, Stats.

Statutory authority

Sections 15.405 (11), 227.11 (2), 452.07 (1m), 452.05 (1) (b), and 452.07 (1m), Stats.

Explanation of agency authority

Examining boards are generally authorized by ss. 15.08 (5) (b) and 227.11 (2) (a), Stats., to promulgate rules for its own guidance and for guidance within the profession and to promulgate rules interpreting any statute enforced or administered by it. Under s. 452.05 (1) (b), Stats., the board shall approve forms for real estate practice. Under s. 452.07 (1m), Stats., the board shall promulgate rules for the guidance of the real estate profession and define professional conduct and unethical practice.

Related statute or rule

There are no other statutes or rules other than those listed above.

Plain language analysis

With the exception of renumbering to reflect the Real Estate Examining Board, this rule has not been updated since 1986. The Board's intent is to update the rule to reflect current practice, update references to approved forms, and define terms. Specifically, this proposed rule-making order clarifies the rules relating to the use of approved forms and legal advice.

SECTIONS 1 to 4: These proposed changes clarify and create various terms used in the industry not previously defined in this rule or in chs. REEB 11 to 26. The terms relate primarily to types of agreements, contracts and listings.

SECTIONS 5 to 7 and 9: These proposed changes relate to board-approved forms for use by licensees. The listing previously was in a Note; the listing will now be maintained on-line for downloading and will reflect the most current titles, numbering and forms. A Note is created to provide information on how to obtain board-approved forms.

SECTION 8. This section merely substitutes the term "provides" for "gives" when referring to legal advice.

SECTIONS 10 to 13: These proposed changes relate to the authority provided to the board in s. 452.05 (1) (b), Stats., regarding approving forms as well as the conditions of use and amending such forms. In addition, rule format changes enacted since the last revision are proposed.

SECTION 14. An effective date is stated as the July 1, 2014, date will be timely for training and examination purposes.

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

Under the Real Estate Settlement Procedures Act (RESPA) various federally-created forms are required for use in all states, particularly for settlement transactions and closings. An example is a form FmHA, or its successor agency, requires under Public Law 103–354 1940–59, Settlement Statement. [<http://www.law.cornell.edu/cfr/text/7/1940.406>]. There is no indication that current Federal laws dictate the use of approved forms for state use other than those related to federally-backed mortgages, HUD property transactions and radon disclosure.

Comparison with rules in adjacent states

An Internet-based search revealed the following:

Illinois: In Illinois, the Bureau of Real Estate Professions administers and enforces the Illinois Real Estate License Act of 2000, the Real Estate Timeshare Act, the Land Sales Registration Act, the Real Estate Appraiser Licensing Act of 2002, Provisions and Rules of the Uniform Standards of Professional Appraisal Practice, the Auction License Act, and the Home Inspector License Act. The Bureau has responsibility for the licensing and regulating real estate brokers, managing brokers, leasing agents, real estate firms, real estate appraisers, auctioneers, auction firms, home inspectors, and home inspector entities. In Illinois there are 'standard' forms for various real estate transactions; these forms were not found to be state-approved forms, but available from various sources such as legal firms and professional groups. The Internet-based search did not reveal any details relating to Illinois codes and statutes pertaining to state- or board- approved forms or any provisions for relating to legal advice provided by licensees.

Iowa: In Iowa, the Professional Licensing Division (IPLD) oversees the real estate industry through the following

rules: Iowa Code ch. 543B, Real Estate Brokers and Salespersons; ch. 543C, Sales of Subdivided Land Outside of Iowa; and ch. 557A, Iowa Time–Share Act. These rules are published in the Iowa Administrative Code ch. 193E. Under the jurisdiction of the IPLD, the Iowa Real Estate Commission regulates and administers the real estate laws in Iowa. An index of state-approved forms used in the real estate industry is found at: http://www.state.ia.us/government/com/prof/sales/forms_indexNew.html. Other than recommending buyers to obtain the advice of an attorney prior to signing contracts or offers, the rules were silent regarding allowing or prohibiting licensees providing legal advice.

Michigan: In Michigan, Article 25 of Public Act 299 of 1980, licenses and regulates the real estate industry. The Board of Real Estate Brokers and Salespersons approves forms, which are listed on: <http://www.dleg.state.mi.us/dms/results.asp?docowner=BCSC&docat=Real+Estate&doccata=LicDiv&Search=Search>. No information was found to determine if the Michigan Board of Real Estate Brokers and Salespersons limits or allows licensees to provide legal advice.

Minnesota: The Minnesota statutes licensing and regulating the real estate industry is Article 25 of Public Act 299 of 1980, published in ch. 384. The Board of Real Estate Brokers and Salespersons, part of the Department of Commerce, approves forms; these are listed on: <http://www.dleg.state.mi.us/dms/results.asp?docowner=BCSC&docat=Real+Estate&doccata=LicDiv&Search=Search>. No information was found regarding licensees providing legal advice.

Summary of factual data and analytical methodologies

The primary purpose of the proposed rule is to update and clarify rule provisions to reflect current practice. Other than the Board undertaking a review of their rules, no specific data or analytical methodology was used.

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

Data was obtained from the Division of Professional Credential Processing regarding the number of licensees that would be affected by this regulatory change. As of 4/15/2013, there were 6,139 active licensed real estate salespersons and 10,373 active licensed real estate brokers. There were 1,051 licensed real estate business entities. The majority of real estate licensees work in small business environments; however, the proposed rules do not include any policy changes which would impact licensees or small business.

Fiscal Estimate and Economic Impact Analysis

The Fiscal Estimate and Economic Impact Analysis is attached.

Initial Regulatory Flexibility Analysis or Summary

This rule will not have a significant adverse effect on small business.

Effect on Small Business

These proposed rules do not have an economic impact on small businesses, as defined in s. 227.114 (1), Stats. The Department's Regulatory Review Coordinator may be contacted by email at greg.gasper@wisconsin.gov, or by calling (608) 266–8608.

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

IL, MI, and MN regulate and license the real estate industry through a board or a commission that approves forms for real estate licensees to use; IA does not.

17. Contact Name
Jean MacCubbin

18. Contact Phone Number
(608) 266–0955

This document can be made available in alternate formats to individuals with disabilities upon request.

Notice of Hearing

Workforce Development

Unemployment Insurance, Chs. DWD 100–150 **EmR1316 and CR 13–081**

The Wisconsin Department of Workforce Development (DWD) announces that it will hold joint public hearings on an emergency rule and permanent rule relating to unemployment insurance work registration, work search, and benefit claiming procedures.

Hearing Information

Date: Monday, November 4, 2013
Time: 11:00 a.m. to 2:00 p.m.
Locations: Milwaukee State Office Building
819 North 6th Street
Room 312
Milwaukee, WI 53203

Fox Valley Hearing Office
54 Park Place
Suite 800, Room 2
Appleton, WI 54914

Department of Workforce Development
Division of Unemployment Insurance
201 East Washington Ave.
Room H305
Madison, WI 53703

Appearances at the Hearing, Copies of Proposed Rule, and Submittal of Written Comments

DWD will hold a public hearing at the three locations indicated on November 4, 2013, from 11:00 a.m. to 2:00 p.m. Interested persons are invited to appear at the hearing and will be afforded the opportunity to make an oral presentation of their positions. Persons making oral presentations are requested to submit their facts, views, and suggested rewording in writing. Written comments will be accepted until **Friday, November 8, 2013**. Comments may be sent to the Division of Unemployment Insurance at the address below, or to janell.knutson@dwd.wi.gov, or to <http://adminrules.wisconsin.gov>.

Visitors to the GEF 1 building are requested to enter through the left East Washington Avenue door and register with the customer service desk. The entrance is accessible via a ramp from the corner of Webster Street and East Washington Avenue. If you have special needs or circumstances regarding communication or accessibility at the hearing, please call (608) 266–9427 at least 10 days prior to the hearing date. Accommodations such as ASL interpreters, English translators, or materials in audiotape format will be made available on request to the fullest extent possible.

You can obtain a free copy of the emergency rule, hearing draft rule, and related documents including the economic

impact analysis by contacting the Wisconsin Department of Workforce Development, Division of Unemployment Insurance, Bureau of Legal Affairs, 201 E. Washington Avenue, Madison, WI 53703. You can also obtain a copy by calling (608) 266–1639 or by emailing janell.knutson@dwd.wi.gov. Copies will also be available at the hearings. To view the emergency rule and hearing draft rule online, go to: <http://adminrules.wisconsin.gov>.

Comments or concerns relating to small business may also be addressed to DWD’s small business regulatory coordinator Howard Bernstein at the address above, or by email to howard.bernstein@dwd.wi.gov, or by telephone at (608) 266–1756.

Analysis Prepared by the Department

Statutes interpreted

Chapter 108, Stats.

Statutory authority

Sections 108.04, 108.08, 108.09, and 108.14, Stats.

Explanation of statutory authority

DWD has specific and general authority to establish rules interpreting and clarifying provisions of ch. 108, Stats., unemployment insurance and reserves. DWD has general authority for promulgating rules with respect to ch. 108, Stats., under s. 108.14 (2), Stats. 2013 Wisconsin Act 20 amended s. 108.04 (2) (a) 2., Stats., to provide that unemployment insurance claimants registration for work shall be done as directed by DWD. Section 108.04 (2) (b) provides DWD may prescribe rules that unemployment insurance claimants must follow to register work and search for work and may by general rule waive these requirements under certain stated conditions. Under s. 108.08 (1), Stats., in order to receive benefits, claimants shall give notice to DWD with respect to the claimants’ unemployment. The statute provides that the method used by claimants to provide notice of their unemployment shall be prescribed by rule of DWD. Under s. 108.09 (1), Stats., claims for benefits shall be filed pursuant to rules prescribed by DWD.

Related statutes or rules

Chapter 108, Stats., governs the state’s unemployment insurance system. Section 108.04, Stats. provides the primary eligibility requirements an unemployed person must satisfy in order to qualify for benefits. Section 108.04 (2), Stats., provides a claimant is eligible for benefits as to any given week only if the individual is able to work and available for work during that week, the individual has registered for work as directed by DWD, and the individual conducts a reasonable search for suitable work during that week. Moreover, it provides that a claimant must make available information or job application materials that are requested by DWD.

Plain language analysis

The permanent and emergency rules modify existing rules by simplifying and clarifying the intent of the administrative code provisions surrounding registration and work search

requirements for an unemployment insurance claimant. Also, emergency rule modification enables DWD to be able to adapt work registration and work search requirements as advances in technology make changes possible and necessary. Moreover, emergency rule changes facilitate DWD’s ability to audit the work search efforts of unemployment insurance claimants as required by the newly enacted statutory provision s. 108.14 (20), Stats., that was created by 2013 Wisconsin Act 36. In addition, the existing administrative rules provide for waivers from the work search requirement. The permanent and emergency rule amendments decrease and narrow the remaining waivers.

The permanent and emergency rule changes will streamline the ability of DWD to ensure that individuals receiving unemployment insurance benefits are actively seeking work to become reemployed. This emergency rule modification will also strengthen DWD’s objective that those receiving unemployment insurance are engaging in activities that constitute a reasonable effort to obtain employment.

The permanent and emergency rule amendments clarify that DWD has the authority to request information from claimants to assist them in finding employment. More specifically, the amendments to ch. DWD 129 grant DWD the flexibility to implement improvements with respect to the claims filing procedures. DWD also plans to adopt a permanent rule to revise chs. DWD 126, 127, and 129.

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

Unemployment insurance was initiated on a national basis

in the United States as Title III and Title IX of the Social Security Act of 1935 and is a Federal–State coordinated program. Each state administers its own program within national guidelines promulgated under federal law. As a condition of a state receiving its unemployment compensation administrative grant, 42 USC 503 (a) provides that the Secretary of Labor must find that the law of the state includes certain requirements. Specifically, 42 USC 503 (a) (12) provides that state laws must have as a condition of eligibility for unemployment insurance that claimants must be able to work, available to work, and actively seeking work. Moreover, 42 USC 503 (a) (10) provides that state laws must require that if claimants have been referred for reemployment services or similar services, to remain eligible for unemployment insurance benefits claimants must complete such services or there must be justifiable cause for the claimants failing to participate in such services.

Comparison with rules in adjacent states

As the Department of Labor’s Comparison of State UI Laws states: “[i]n addition to registration for work at a local employment office, all states..., whether by law or practice, require that a worker be actively seeking work or making a reasonable effort to obtain work.” The amendments to the rules bring Wisconsin’s rules more in line with neighboring states’ initiatives to facilitate unemployment insurance claimants’ ability to find employment.

Benefit Claiming Procedure

Illinois	Each claimant shall file his or her claim by telephone. The only exception is if the claimant files his or her claim by mail. To file a claim by mail the claimant must: speak neither English nor Spanish; be hearing impaired; or have no reasonable access to a touch–tone telephone. (56 IL Adm. Code 2720.112)
Indiana	A claimant must report on their job search on a weekly basis via submission of the online claim form, or in any other manner as required by the department. (646 IN 5–9–4 Administrative Code) A claimant is not eligible for benefits in any week unless he or she has filed a claim for benefits and reports to the department each week that he or she continues to meet all eligibility requirements. A claimant’s claim for benefits, and weekly report to the department, must be filed in the form and manner prescribed by the department. (646 IN 5–9–2 Administrative Code)
Iowa	An individual may file an initial claim for unemployment benefits by telephone, in person or other means prescribed by the department or may call the service center during regular business hours. Claims filed in accordance with this rule shall be deemed filed as of Sunday of the week in which the claim is filed, but must register for work at a workforce development center (IA 871–24.2 (96) Administrative Code)

Michigan	<p>Claims for benefits shall be made pursuant to regulations prescribed by the unemployment agency. The unemployment agency shall designate representatives who shall promptly examine claims and make a determination on the facts. (M.C.L.A. 421.32)</p> <p>An individual shall file a new, additional, or reopened claim or shall report to file a continued claim as directed by the agency. (Mich. Admin. Code R. 421.210 (3))</p>
Minnesota	<p>An application for unemployment benefits may be filed in person, by mail, or by electronic transmission as the unemployment insurance agency may require. (M.S.A. s. 268.07 Statutes Annotated)</p> <p>The unemployment insurance agency shall notify the claimant of the method that should be used to make ongoing claims for benefits. The first method is through electronic transmission which means the claims may be filed by electronic mail address, telephone number, or Internet address prescribed by the commissioner for that claimant. The other method that the unemployment insurance agency may designate for the claimant is for the claim to be filed by mail. (M.S.A. s. 268.0865 Statutes Annotated)</p>

Work Search Requirements

Illinois	<p>Unless otherwise instructed, a claimant must establish that he or she is able to work, available for work and actively seeking work during each week for which he or she is claiming benefits. The claimant must show that he or she is conducting a thorough, active and reasonable search for appropriate work on his or her own by keeping records of what he or she is doing to find work. (56 Il. Adm. Code 2865.100)</p>
Indiana	<p>To establish an effort to secure full–time work, a claimant is required to search for three (3) positions in each week for which benefits are claimed. (646 IN 5–9–3 Administrative Code)</p>
Iowa	<p>The Iowa law specifies that an individual must earnestly and actively seek work. This is interpreted to mean that a registration for work at a workforce development center or state employment service office in itself does not meet the requirements of the law. Nor is it interpreted to mean that every individual must make a fixed number of employer contacts each week to establish eligibility. The number of contacts that an individual must make is dependent upon the condition of the local labor market, the duration of benefit payments, a change in claimant characteristics, job prospects in the community, and such other factors as the department deems relevant. (IA 871–24.22 (96) f. Administrative Code)</p>
Michigan	<p>The claimant has registered for work and has continued to report in accordance with unemployment agency rules and is actively engaged in seeking work. Except for a period of disqualification, the requirement that the claimant shall seek work may be waived by the unemployment agency if it finds that suitable work is unavailable both in the locality where the individual resides and in those localities in which the individual has earned wages during or after the base period, an otherwise eligible individual shall not be ineligible for benefits because he or she is participating in training with the approval of the unemployment agency. (M.C.L.A. 421.28)</p>
Minnesota	<p>An applicant may be eligible to receive unemployment benefits for any week if the applicant was actively seeking suitable employment. “Actively seeking suitable employment” means those reasonable, diligent efforts an individual in similar circumstances would make if genuinely interested in obtaining suitable employment under the existing conditions in the labor market area. Limiting the search to positions that are not available or are above the applicant’s training, experience, and qualifications is not “actively seeking suitable employment.” (M.S.A. s. 268.085 Statutes Annotated)</p>

Registration for Work Requirements

Illinois	<ul style="list-style-type: none"> • A claimant must register with the Illinois Employment Service unless otherwise instructed by the local office. There are ten circumstances in which a claimant will not be required to register with the Illinois Employment Service (56 Il. Adm. Code 2865.100) • An unemployed individual shall be eligible to receive benefits with respect to any week only if he has registered for work at and thereafter, continues to report at an employment office in accordance with such regulations as may be prescribed. (820 ILCS 405/500 Compiled Statutes)
Indiana	<ul style="list-style-type: none"> • Registration is required and accomplished through enrollment in the Indiana Career Connect (ICC) Database. (646 IN 5–9–1 Administrative Code) • Claimant must register for work within ten (10) days of filing an initial claim for benefits. To enhance the registration, claimants should complete a resume and post online. (646 IN 5–9–1 Administrative Code) • An unemployed individual is eligible to receive benefits with respect to any week if the individual has registered for work at an employment office or branch thereof or other agency designated by the commissioner within the time limits that the department adopts by rule. (IC 22–4–14–2 Code)
Iowa	<ul style="list-style-type: none"> • Unemployed persons must report in person to the nearest workforce development center and register for work. (IA 871–24.2 (96) Administrative Code) • An unemployed individual is eligible to receive benefits with respect to any week only if the department finds that the individual has registered for work at, and thereafter, continues to report to an employment office in accordance with regulations as the department prescribes. (I.C.A. s. 96.4 Code)
Michigan	<ul style="list-style-type: none"> • A claimant shall register for work as instructed by the agency and fully and accurately supply information as to the claimant’s past work experience and training and other personal data as may be necessary to assure that the claimant is considered for referral to any available suitable work. (Mich. Admin. Code R. 421.208) • Unemployed workers must register and create a profile on www.mitalenet.org and report in person to verify their registration to any Michigan Works! Agency Service Center no later than three (3) business days before their first contact to file a claim. Claimants must retain form of verification as proof of registration of work for one year. (Fact sheet #76 Work Registration Needed for Jobless Benefits)
Minnesota	<ul style="list-style-type: none"> • An applicant may be eligible to receive unemployment benefits for any week if the applicant was available for suitable employment. (M.S.A. s. 268.085 Statutes Annotated)

Summary of factual data and analytical methodologies

The permanent and emergency rules do not depend on any complex analysis of data. Instead, the changes to the rules represent common sense amendments that will assist unemployment insurance claimants to provide additional information to DWD in order that DWD may better assist them in returning to work.

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

The permanent and emergency rule will have a positive impact on employers and unemployment insurance claimants.

Effect on Small Business

The permanent and emergency rules do not have any small business requirements but is expected to benefit all employers, including small business. First, the permanent and emergency rules are projected to result in more unemployment insurance claimants finding employment faster. As a result, unemployed individuals will be collecting unemployment insurance benefits for a shorter duration and there will be fewer charges to employers’ unemployment insurance accounts. This will result in employers having to pay lower amounts of unemployment tax. Second, more unemployed individuals will be required to seek employment and those unemployed individuals who already were required to seek employment will likely be assisted better by DWD in

applying for appropriate jobs. As a result, there are likely to be more and better job applications for employers to review as more employers seek to hire individuals.

Agency Contact Person

Questions and comments related to this rule may be

directed to:

Janell Knutson
 Department of Workforce Development
 Division of Unemployment Insurance
 P.O. Box 8942
 Madison, WI 53708–8942
 Telephone: (608) 266–1639
 E–Mail: janell.knutson@dwd.wi.gov

STATE OF WISCONSIN
 DEPARTMENT OF ADMINISTRATION
 DOA–2050 (C04/2012)

DIVISION OF EXECUTIVE BUDGET AND FINANCE
 101 EAST WILSON STREET, 10TH FLOOR
 P.O. BOX 7864
 MADISON, WI 53707–7864
 FAX: (608) 267–0372

EXISTING ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

1. Type of Estimate and Analysis

Repeal Modification

2. Administrative Rule Chapter, Title and Number

DWD s. 126 (Work Registration), 127 (Work Search), and 129 (Benefit Claiming Procedures), unemployment insurance requirements for claimants.

3. Date Rule promulgated and/or revised; Date of most recent Evaluation

- DWD s. 126 was originally ILHR s. 126. ILHR s. 126 was created by emergency rule and was effective January 8, 1984 and ILHR s. 126 was renumbered DWD s. 126 pursuant to s. 13.93 (2m) (b) 1., Stats. DWD s. 126 was last amended September of 2000.
- DWD s. 127 was originally ILHR s. 127. ILHR s. 127 was created by emergency rule and was effective January 8, 1984 and ILHR s. 127 was renumbered DWD s. 127 pursuant to s. 13.93 (2m) (b) 6. and 7., Stats. DWD s. 127 was last amended December of 2006.
- DWD s. 129 was originally ILHR s. 129. ILHR s. 129 was created by emergency rule and was effective January 8, 1984 and ILHR s. 129 was renumbered DWD s. 129 pursuant to s. 13.93 (2m) (b) 1., Stats. DWD s. 129 was last amended September of 2010.

4. Plain Language Analysis of the Rule, its Impact on the Policy Problem that Justified its Creation and Changes in Technology, Economic Conditions or Other Factors Since Promulgation that alter the need for or effectiveness of the Rule.

The rule modifies existing rules by simplifying and clarifying the intent of the administrative code provisions surrounding registration and work search requirements for an unemployment insurance claimant. Also the rule modification enables the Department of Workforce Development (DWD) to adapt work registration and work search requirements as advances in technology make changes possible and necessary. Moreover, the rule changes facilitate DWD's ability to audit the work search efforts of unemployment insurance claimants as required by the newly enacted statutory provision s. 108.14 (20), Stats., that was created by 2013 Wisconsin Act 36. In addition, the existing administrative rules provide for waivers from the work search requirement. The rule amendments decrease and narrow the remaining waivers.

The rule changes will streamline the ability of DWD to ensure that individuals receiving unemployment insurance benefits are actively seeking work to become reemployed. The rule modification will also strengthen DWD's objective that claimants are engaging in activities that constitute a reasonable effort to obtain employment.

The rule amendments clarify that DWD has the authority to request information from claimants to assist them in finding employment. More specifically, the amendments to DWD s. 129 grant DWD the flexibility to implement improvements with respect to claims filing procedures.

5. Describe the Rule’s Enforcement Provisions and Mechanisms

There are a number of enforcement mechanism for these rules:

- If an unemployment insurance claimant does not adhere to the benefit claiming procedures, work registration requirements, and work search requirements, the claimant may be determined to be ineligible for unemployment insurance benefits.
- If an unemployment insurance claimant conceals any material fact relating to his or her eligibility for benefits including the requirements of DWD ss. 126, 127, or 129, for:
 - (1) Each single act of concealment a claimant is ineligible for benefits in an amount equivalent to two times his or her weekly benefit rate;
 - (2) Each single act of concealment occurring after the first act of concealment a claimant is ineligible for benefits in an amount equivalent to four times his or her weekly benefit rate; and,
 - (3) Each single act of concealment occurring after the date of the second or subsequent determination of concealment a claimant is ineligible for benefits in an amount equivalent to eight times his or her weekly benefit rate.

The ineligibility for benefit framework for acts of concealment is contained in s. 108.04 (11) (be), Stats.

- In addition to the ineligibility for benefits noted above, if an unemployment insurance claimant conceals any material fact relating to his or her eligibility for benefits including the requirements of DWD §§ 126, 127, or 129, the claimant will be charged a penalty of fifteen percent of the benefit payments erroneously paid to the claimant as a result of the act of concealment. The penalty framework for acts of concealment is pursuant to s. 108.04 (11) (bh), Stats.

6. Repealing or Modifying the Rule Will Impact the Following
(Check All That Apply)

- State’s Economy
 Local Government Units

- Specific Businesses/Sectors
 Public Utility Rate Payers
 Small Businesses

7. Summary of the Impacts, including Compliance Costs, identifying any Unnecessary Burdens the Rule places on the ability of Small Business to conduct their Affairs.

These rule amendments do not have any small business requirements but are expected to benefit all employers, including small business. First, the amendments are projected to result in more unemployment insurance claimants becoming reemployed sooner. As a result, unemployed individuals will be collecting unemployment insurance benefits for a shorter duration and there will be fewer charges to employers’ unemployment insurance accounts. This will assist employers by reducing unemployment insurance tax. Second, more unemployment insurance claimants will be required to search for work and DWD will better be able to assist claimants who already are required to seek employment. Consequently, there are likely to be more and better job applications for employers to review as more employers seek to hire individuals.

8. List of Small Businesses, Organizations and Members of the Public that commented on the Rule and its Enforcement and a Summary of their Comments.

DWD posted the scope statement and proposed hearing draft on DWD’s website and on the Wisconsin Administrative Rules’ website for 14 days to solicit public comment on the economic impact of the rule. DWD did not receive any comments.

9. Did the Agency consider any of the following Rule Modifications to reduce the Impact of the Rule on Small Businesses in lieu of repeal?

- Less Stringent Compliance or Reporting Requirements
 Less Stringent Schedules or Deadlines for Compliance or Reporting
 Consolidation or Simplification of Reporting Requirements
 Establishment of performance standards in lieu of Design or Operational Standards
 Exemption of Small Businesses from some or all requirements
 Other, describe:

10. Fund Sources Affected

- GPR FED PRO PRS SEG SEG–S

11. Chapter 20, Stats. Appropriations Affected
s. 20.115 (1) (q), Stats.

12. Fiscal Effect of Repealing or Modifying the Rule

- | | | |
|---|---|--|
| <input type="checkbox"/> No Fiscal Effect | <input type="checkbox"/> Increase Existing Revenues | <input type="checkbox"/> Increase Costs |
| <input checked="" type="checkbox"/> Indeterminate | <input type="checkbox"/> Decrease Existing Revenues | <input type="checkbox"/> Could Absorb Within Agency’s Budget |
| | | <input type="checkbox"/> Decrease Cost |

 13. Summary of Costs and Benefits of Repealing or Modifying the Rule

The rule amendments will make the rules consistent with the newly enacted legislation and update and modernize existing requirements with respect to claim filing procedures and work search and work registration requirements. The rule changes will strengthen the requirements for unemployed individuals to actively seek employment and thereby improve their employment prospects and align the job search requirements with the underlying goal of the unemployment insurance program. The amendments accomplish this by:

- Providing explicit authority for DWD to require unemployment insurance claimants to provide information to DWD to facilitate their reemployment efforts;
- Updating actions by claimants that will be considered to constitute a reasonable search for suitable work;
- Decreasing and fine–tuning the remaining the circumstances in which DWD will waive the requirement that claimants to receive unemployment insurance benefits must perform work search actions; and,
- Enhancing the procedures required to file claims for benefits in order to facilitate the ability of DWD to assist claimants find employment.

 14. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

Yes No

 15. Long Range Implications of Repealing or Modifying the Rule

These rule amendments are projected to have a positive economic impact. The increase in the requirement for work search activities will likely decrease charges to the Unemployment Insurance Trust Fund due to individuals obtaining employment sooner or being disqualified from receiving unemployment insurance benefits for not actively seeking work. This will have a positive economic impact on employers due to fewer charges to their unemployment insurance accounts. As a result, employers will be charged a lower rate of unemployment insurance tax.

 16. Compare With Approaches Being Used by Federal Government

The unemployment insurance program was initiated on a national basis in the United States as Title III and Title IX of the Social Security Act of 1935 and is a Federal–State coordinated program. Each state administers its own program within national guidelines promulgated under federal law. As a condition of a state receiving its unemployment compensation administrative grant, 42 USC s. 503 (a) provides that the Secretary of Labor must find that the law of each state includes certain requirements. Specifically, 42 USC s. 503 (a) (12) provides that state laws must have as a condition of eligibility for unemployment insurance that claimants must be able to work, available to work, and actively seeking work. Moreover, 42 USC s. 503 (a) (10) provides that state laws must require that if claimants have been referred for reemployment services or similar services, to remain eligible for unemployment insurance benefits claimants shall complete such services or there must be justifiable cause for the claimants failing to participate in such services.

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

As the Department of Labor’s Comparison of State UI Laws states: “[i]n addition to registration for work at a local employment office, all states... , whether by law or practice, require that a worker be actively seeking work or making a reasonable effort to obtain work.” The amendments to the rules bring Wisconsin’s policies more in line with neighboring states’ initiatives to facilitate unemployment insurance claimants’ ability to find employment.

Benefit Claiming Procedure

- Illinois

Each claimant shall file his or her claim by telephone. The only exception is if the claimant files his or her claim by mail. To file a claim by mail the claimant must: speak neither English nor Spanish; be hearing impaired; or have no reasonable access to a touch–tone telephone. (56 Il. Adm. Code 2720.112)

- Iowa

An individual may file an initial claim for unemployment benefits by telephone, in person or other means prescribed by the department or may call the service center during regular business hours. Claims filed in accordance with this rule shall be deemed filed as of Sunday of the week in which the claim is filed, but a claimant must register for work at a workforce development center (IA 871–24.2 (96) Administrative Code)

- Michigan

Claims for benefits shall be made pursuant to regulations prescribed by the unemployment insurance agency. The unemployment insurance agency shall designate representatives who shall promptly examine claims and make a determination on the facts. (M.C.L.A. 421.32)

An individual shall file a new, additional, or reopened claim or shall report to file a continued claim as directed by the agency. (Mich. Admin. Code R. 421.210 (3))

- Minnesota

An application for unemployment insurance benefits may be filed in person, by mail, or by electronic transmission as the unemployment insurance agency may require. (M.S.A. s. 268.07 Statutes Annotated)

The unemployment insurance agency shall notify the claimant of the method that should be used to make ongoing claims for benefits. The first method is through electronic transmission which means the claims may be filed by electronic mail address, telephone number, or Internet address prescribed by the commissioner for that claimant. The other method that the unemployment insurance agency may designate for the claimant is for the claim to be filed by mail. (M.S.A. s. 268.0865 Statutes Annotated)

Work Search Requirements

- Illinois

Unless otherwise instructed, a claimant must establish that he or she is able to work, available for work and actively seeking work during each week for which he or she is claiming benefits. The claimant must show that he or she is conducting a thorough, active and reasonable search for appropriate work on his or her own by keeping records of what he or she is doing to find work. (56 Ill. Adm. Code 2865.100)

- Iowa

The Iowa law specifies that an individual must earnestly and actively seek work. This is interpreted to mean that a registration for work at a workforce development center or state employment service office in itself does not meet the requirements of the law. Nor is it interpreted to mean that every individual must make a fixed number of employer contacts each week to establish eligibility. The number of contacts that an individual must make is dependent upon the condition of the local labor market, the duration of benefit payments, a change in claimant characteristics, job prospects in the community, and such other factors as the department deems relevant. (IA 871–24.22 (96) f. Administrative Code)

- Michigan

The claimant has registered for work and has continued to report in accordance with unemployment agency rules and is actively engaged in seeking work. Except for a period of disqualification, the requirement that the claimant shall seek work may be waived by the unemployment insurance agency if it finds that suitable work is unavailable both in the locality where the individual resides and in those localities in which the individual has earned wages during or after the base period. An otherwise eligible individual shall not be ineligible for benefits because he or she is participating in training with the approval of the unemployment agency. (M.C.L.A. 421.28)

- Minnesota

An applicant may be eligible to receive unemployment benefits for any week if the applicant was actively seeking suitable employment. “Actively seeking suitable employment” means those reasonable, diligent efforts an individual in similar circumstances would make if genuinely interested in obtaining suitable employment under the existing conditions in the labor market area. Limiting the search to positions that are not available or are above the applicant’s training, experience, and qualifications is not “actively seeking suitable employment.” (M.S.A. s. 268.085 Statutes Annotated)

 Registration for Work Requirements

- Illinois

A claimant must register with the Illinois Employment Service unless otherwise instructed by the local office. There are ten circumstances in which a claimant will not be required to register with the Illinois Employment Service (56 Il. Adm. Code 2865.100)

An unemployed individual shall be eligible to receive benefits with respect to any week only if he or she has registered for work at and thereafter, continues to report at an employment office in accordance with such regulations as may be prescribed. (820 ILCS 405/500 Compiled Statutes)

- Iowa

Unemployed persons must report in person to the nearest workforce development center and register for work. (IA 871–24.2 (96) Administrative Code)

An unemployed individual is eligible to receive benefits with respect to any week only if the department finds that the individual has registered for work at, and thereafter, continues to report to an employment office in accordance with regulations as the department prescribes. (I.C.A. s. 96.4 Code)

- Michigan

A claimant shall register for work as instructed by the agency and fully and accurately supply information as to the claimant's past work experience and training and other personal data as may be necessary to assure that the claimant is considered for referral to any available suitable work. (Mich. Admin. Code R. 421.208)

Unemployed workers must register and create a profile on www.mitalenet.org and report in person to verify their registration to any Michigan Works! Agency Service Center no later than three (3) business days before their first contact to file a claim. Claimants must retain verification form as proof of registration of work for one year. (Fact sheet #76 Work Registration Needed for Jobless Benefits)

- Minnesota

An applicant may be eligible to receive unemployment insurance benefits for any week if the applicant was available for suitable employment. (M.S.A. s. 268.085 Statutes Annotated)

18. Contact Name Janell Knutson	19. Contact Phone Number (608) 266–1639
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This document can be made available in alternate formats to individuals with disabilities upon request.

Notice of Hearing

Workforce Development

Employment and Training, Chs. DWD 805–830

EmR1317

NOTICE IS HEREBY GIVEN that pursuant to section 227.24 (4), Stats., the Department of Workforce Development will hold a public hearing to review the emergency rule relating to workforce training grants under the Wisconsin Fast Forward program.

Hearing Information

Date: Tuesday, November 5, 2013
Time: 10:00 a.m.
Locations: G.E.F. 1 Building, B 105
 201 East Washington Ave.
 Madison, WI

Interested persons are invited to appear at the hearing and will be afforded the opportunity to make an oral presentation of their positions. Persons making oral presentations are requested to submit their facts, views, and suggested rewording in writing.

Visitors to the GEF 1 building are requested to enter through the left East Washington Avenue door and register with the customer service desk. The entrance is accessible via a ramp from the corner of Webster Street and East Washington Avenue. If you have special needs or circumstances regarding communication or accessibility at the hearing, please call (608) 266–9427 at least 10 days prior to the hearing date. Accommodations such as ASL interpreters, English translators, or materials in audiotape format will be made available on request to the fullest extent possible.

Written Comments and Deadline for Submission

Written comments may be submitted to Howard Bernstein, Office of Legal Counsel, Dept. of Workforce Development, P.O. Box 7946, Madison, WI 53707–7946 or by email to howard.bernstein@dwd.wisconsin.gov. The deadline for submission is **November 8, 2013**. Written comments will be given the same consideration as testimony presented at the hearing.

Copies of Rule

The proposed rules are available at the website <http://adminrules.wisconsin.gov>. This site allows you to view documents associated with this rule's promulgation, register to receive email notification whenever the Department posts

new information about this rulemaking order, and submit comments and view comments by others during the public comment period. You may receive a paper or electronic copy of the rule by contacting Howard Bernstein at the addresses given above or by telephone at (608) 266–9427.

Analysis Prepared by the Department

Statutory authority

Sections 103.005 (1) and 106.27 (2g), Stats.

Statute interpreted

Section 106.27, Stats.

Explanation of agency authority

2013 Wisconsin Act 9 creates a program in the Department of Workforce Development (DWD) for the development and implementation of workforce training grants to be used for the training of unemployed and underemployed workers in this state or for the training of incumbent employees of businesses in this state.

Act 9 mandates that grantees report to DWD regarding how grant money was used and the outcomes achieved, and requires DWD to promulgate rules prescribing the information to be contained in these reports. It also requires DWD to create grant application forms, procedures, and criteria, and permits DWD to audit and inspect the records of grantees.

Summary of the proposed rule

This rule establishes the general criteria, procedures, requirements and conditions for the award of Wisconsin Fast Forward workforce training grants. It allows for grant applications from any public or private organization, including an employer or an economic development agency or training provider that is working with an employer.

The rule provides for the solicitation of applications for grants in the form of Grant Program Announcements (GPAs). Each grant applicant will be asked to provide information about itself and a description of the its proposed training program, including the proposed program budget and the proposed matching funds to be provided by the applicant.

The proposed rule provides that grant applications shall receive a preliminary review to ensure that they meet the basic requirements of the GPA. Applications which satisfy this review shall then be evaluated and ranked in relation to a series of factors relating to the capability of the applicant, the specifics of the proposal, and the potential economic and workforce capacity impacts of the proposal. The Department may also consider factors such as underserved populations and geographic areas.

The rule establishes an overall procedure for awarding grants and guidelines for grant administration, the use of grant funds and the provision of matching funds by grantees. Each grantee will be required to report on the use and effect of the grant funds in terms of information on the number of trainees, the trainees that have completed the program, and whether trainees have obtained new employment with increased wages or increased hours of work.

Summary of analytical methodology

The rules of other public grant programs were reviewed as part of the process for developing this proposed rule. No other data or analysis was needed.

Comparison to federal law

The federal Workforce Investment Act of 1998 provides funding for employment and training programs to the state with the guidance of the State Council for Workforce Investment. Grant allocations go to 11 regional workforce development boards, which fund and supervise local programs. Programs for employment placement and retention, job training, and education–related training are delivered through the Wisconsin Job Centers.

Comparison with statutes and rules in adjacent states

Minnesota. The Minnesota Job Skills Partnership Program is a state grant program which links state businesses with colleges, technical colleges, and universities to provide skill development training to workers. Approximately 70% of the grants go to state manufacturers; the next most numerous category is health care industries. It is a financial match program in which employers provide approximately 2 dollars for every public dollar provided. Partnership grants are awarded in amounts up to \$400,000. About 80% of the grants are awarded to Colleges and Technical Colleges within the Minnesota State Community and Technical College system.

Illinois. The Illinois Department of Commerce and Economic Opportunity, Office of Business Development, offers a grant program entitled Employer Training Investment Program. Grants may be awarded to individual businesses or to intermediary organizations operating multi–company training programs. The grants are intended to enable companies to remain competitive, expand into new markets or introduce more efficient technology. ETIP grants may reimburse Illinois companies for up to 50 percent of the eligible cost of training their employees. In fiscal year 2010 this program gave out 15 grants totaling \$6.4 million ranging from \$60,000 to \$1.1 million.

Iowa. The Skilled Iowa Initiative offers assessments, certification programs and internships in cooperation with public schools, community colleges, and universities, to work with employers seeking to expand the number of available “middle–skill” workers.

Michigan. The Michigan Industry Cluster Approach strategy focuses on five industry clusters (agriculture, energy, healthcare, information technology, and manufacturing) and works with employers to identify industry demand and vacancies, and provide input into the design of educational program offerings and skills requirements. The state’s policy is to align services and programs with the identified needs for workers and skills. Programs are listed on Michigan’s “WIA Eligible Training Provider List” based on input from employers.

Analysis used to determine effect on small business

The analysis is based upon the text of 2013 Wisconsin Act 9 and the proposed rule.

Effect on Small Business

The proposed rule has no effect on a small business that does not apply for a workforce training grant. Any business

that chooses to apply for a grant, with or without partners, will have to comply with the administration and reporting requirements of the rule and the grant agreement.

Agency Contact for Program Issues

Dennis C. Schuh, Program Manager
DWD Office of Skills Development
P.O. Box 7946
Madison, WI 53707
(608) 267–3803
dennisc.schuh@dwd.wisconsin.gov

Agency Contact for Rulemaking Issues

Howard Bernstein, DWD Legal Counsel
P.O. Box 7946
Madison, WI 53707
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howard.bernstein@dwd.wisconsin.gov

STATE OF WISCONSIN DOA 2049 (R 07/2011)		
ADMINISTRATIVE RULES FISCAL ESTIMATE AND ECONOMIC IMPACT ANALYSIS		
Type of Estimate and Analysis		
X Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected		
Administrative Rule Chapter, Title and Number		
Chapter DWD 801		
Subject		
Workforce Training Grants under s. 106.27 (2g), Stats.		
Fund Sources Affected		Chapter 20 , Stats. Appropriations Affected
<input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG–S		
Fiscal Effect of Implementing the Rule		
<input checked="" type="checkbox"/> No Fiscal Effect	<input type="checkbox"/> Increase Existing Revenues	<input type="checkbox"/> Increase Costs
<input type="checkbox"/> Indeterminate	<input type="checkbox"/> Decrease Existing Revenues	<input 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 type="checkbox"/> Specific Businesses/Sectors	
<input type="checkbox"/> Local Government Units	<input type="checkbox"/> Public Utility Rate Payers	
Would Implementation and Compliance Costs Be Greater Than \$20 million?		
<input type="checkbox"/> Yes X No		
Policy Problem Addressed by the Rule		
The proposed rule implements the requirement in s. 106.27(2g), Stats., that DWD promulgate rules prescribing procedures and criteria for awarding grants and the information that must be contained in the reports that are required from the grantees.		
Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)		
The proposed rule does not create any costs in the administration of the workforce training grants program that are independent of the fiscal effect of 2013 Wisconsin Act 9 (2013 Assembly Bill 14), which created the program. A copy of the fiscal estimate for AB 14/Act 9 is attached.		
Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule		
The rule simply carries out the instructions of the statute.		
Long Range Implications of Implementing the Rule		
None distinct from the statute.		
Compare With Approaches Being Used by Federal Government		
The rule analysis contains a comparison to the federal Workforce Investment Act.		

Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)
These comparisons are also in the rule analysis.
Name and Phone Number of Contact Person
Howard Bernstein, Legal Counsel, DWD (608) 266-9427

FISCAL ESTIMATE DOA-2048 N(R03/97)		<input checked="" type="checkbox"/> ORIGINAL <input type="checkbox"/> UPDATED <input type="checkbox"/> CORRECTED <input type="checkbox"/> SUPPLEMENTAL	2013 Session LRB or Bill No./Adm. Rule No. DWD 801 Amendment No. if Applicable
Subject Wisconsin Fast Forward Workforce Training Grants			
Fiscal Effect			
State: <input checked="" type="checkbox"/> No State Fiscal Effect Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.			
<input type="checkbox"/> Increase Existing Appropriation <input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Decrease Existing Appropriation <input type="checkbox"/> Decrease Existing Revenues <input type="checkbox"/> Create New Appropriation		<input type="checkbox"/> Increase Costs – May be possible to Absorb Within Agency’s Budget <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Decrease Costs	
Local: <input checked="" type="checkbox"/> No local government costs			
1 <input type="checkbox"/> Increase Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory 2 <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	3. <input type="checkbox"/> Increase Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory 4. <input type="checkbox"/> Decrease Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	5. Types of Local Governmental Units Affected: <input type="checkbox"/> Towns <input type="checkbox"/> Villages <input type="checkbox"/> Cities <input type="checkbox"/> Counties <input type="checkbox"/> Others _____ <input type="checkbox"/> School Districts WTCS Districts	
Fund Sources Affected <input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S		Affected Ch. 20 Appropriations	
Assumptions Used in Arriving at Fiscal Estimate			
The proposed rule does not create any costs in the administration of the Wisconsin Fast Forward workforce training grants program that are independent of the fiscal effect of 2013 Wisconsin Act 9 (2013 Assembly Bill 14), which created the program. A copy of the fiscal estimate for AB 14/Act 9 is attached. Impact on businesses: A business is not required to comply with the proposed rule unless it applies for a workforce training grant. A business that applies for and receives a workforce training grant will be required to file reports to verify that it has incurred expenses that are allowable and reimbursable under the grant, and it will also be required to file reports documenting the results of the grant in terms of employee participation and improvement in qualifications.			
Long-Range Fiscal Implications None			
Agency/Prepared by: (Name & Phone No.) DWD/Howard Bernstein (608) 266-9427		Authorized Signature/Telephone No.	Date

Submittal of Proposed Rules to Legislature

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

Public Service Commission CR 13–025

(PSC Docket # 1–AC–237)

Pursuant to Wis. Stat. s. 227.19 (2), on September 30, 2013, the Public Service Commission of Wisconsin submitted a final draft of proposed rules, Clearinghouse Rule 13–025, to the presiding officer of each house of the Legislature for standing committee review. The proposed rule repeals s. PSC 8.07 (7) and (11), chs. PSC 162, 163, 164, ss. PSC 165.02 (1) to (6), (8), (11), (13) to (20), and (23), 165.031, 165.034 to 165.064, 165.065 (2), 165.066 to 165.10, chs. PSC 166, 167, ss. PSC 168.10 (1) (b) to (d) and (2), and 168.11, 168.12 (1) (f), ch. PSC 169, ss. PSC 171.06 (2) and (3), 171.07 (4) and (5), 171.08, 171.10 (3) and ch. PSC 174; renumbers and amends s. PSC 168.10 (1) (intro.) and (a); amends ss. PSC 100.01, 102.01, 104.02 (3), 165.01 (2), 165.032 (intro.), (2), (6), (7) and (9), 165.033, 165.065 (1), 168.05 (1) (d) and (3), 168.09 (4), 168.12 (1) (intro.), 168.13 (1) (a), 171.02 (5), 171.06 (1) and 171.10 (1); and repeals and re–creates s. PSC 171.09, relating to regulation of telecommunications providers. The Commission approved a draft order adopting proposed rules at its open meeting of August 12, 2013.

The Governor’s office approved this rule on September 24, 2013.

Safety and Professional Services *Professional Services, Chs. SPS 1–299* CR 13–053

On September 27, 2013, the Department of Safety and

Professional Services submitted a proposed rule to the Chief Clerks of the Senate and the Assembly for referral to the appropriate standing committees for legislative review in accordance with s. 227.19, Stats. The rule repeals s. SPS 81.04 (1) (c) 3. and 4. and amends s. SPS 81.04 (2) relating to reciprocity for real estate appraisers.

The Governor approved the rule under s. 227.185, Stats., on September 20, 2013.

Safety and Professional Services — Medical Examining Board CR 12–005

On September 27, 2013, the Medical Examining Board submitted a copy of the proposed rule to the Chief Clerks of the Senate and the Assembly for referral to the appropriate standing committees for legislative review under s. 227.19, Stats. The rule revises ch. Med 8, relating to physician assistants employment requirements and supervising physicians’ responsibilities.

This rule is not subject to s. 227.185, Stats. The statement of scope for this rule was published in Register No. 660 on December 31, 2010, and was sent to the LRB prior to the effective date of 2011 Wis. Act 21.

Rule Orders Filed with the Legislative Reference Bureau

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

**Safety and Professional Services —
Physical Therapy Examining Board
CR 13-007**

The Wisconsin Physical Therapy Examining Board proposes an order to amend ss. PT 7.01 (1) (title) and 8.02; to

repeal and recreate s. PT 7.02; and to create ss. PT 7.01 (2) and 7.025, relating to unprofessional conduct and biennial renewal date.

Effective 12-1-13.

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