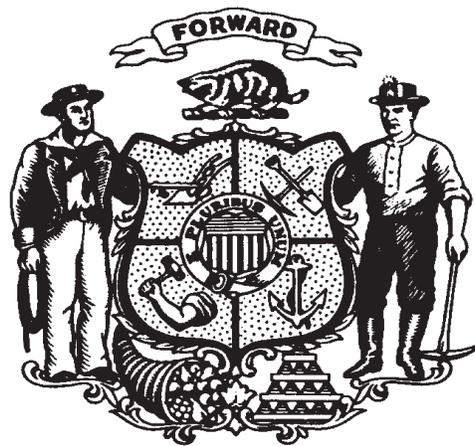


Wisconsin Administrative Register

No. 696



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NOTICE TO SUBSCRIBERS

Printing of Administrative Code and Register Will End January 1, 2015

As required by 2013 Wisconsin Act 20, state-sponsored printing and distribution of the Wisconsin Administrative Code and Register will end January 1, 2015, and the Code and Register will become electronic-only publications.

Important points:

- The LRB will continue to publish the Code and Register at their present locations on the Legislature's and Legislative Reference Bureau's Internet sites.
- Publication of the Register will occur every Monday rather than the current practice of bimonthly publication.
- Updated and new Code chapters, with insertion and removal instructions, will still be published in the last Register of each month.

Code chapters will be published in the Register as PDF files in the exact format as they are currently printed, including page numbers.

Users can continue loose-leaf notebook use by printing chapters to 3-hole punch paper from any printer or by making arrangements with commercial printers. (Notebooks will no longer be available from the state and the notebook volume for insertion will no longer be designated for published chapters.)

- The format for Internet publication of the Code will not change. The Code will continue to be published in its entirety in both HTML and PDF formats and updated on the first day of each month to reflect changes published in the most recent end-of-month Register.
- An Email notice system is being developed to alert users to changes in only those rules and rulemaking notices that are of interest to the user. RSS feeds providing notice of new Registers and changes to the whole Code, Code chapters grouped by agency, and individual Code chapters are currently available. (For more information on RSS feeds see <https://docs.legis.wisconsin.gov/feed>.) Details on the email notice system will be published in future Registers prior to January 1, 2015.
- The cost of all subscriptions and renewals will be prorated to January 1, 2015 by DOA.

Direct questions on Internet publication to:

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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 (2)

1. 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
Hearing Date: November 18, 2013
Extension Through: January 26, 2014

2. EmR1321 — The Department of Administration hereby adopts an order to repeal **section Adm 2.14 (2) (vr) c.**; to renumber and amend **section Adm 2.14 (2) (v) 9. a. and b.**; to amend **sections Adm 2.02 (1) (a), 2.04 (1), 2.04 (2), (3), (5), and (7), 2.07 (2), 2.08 (1) and (1) (d), 2.11, 2.14 (2), (2) (v), (2) (vm) and (2) (vm) 5.**; and to create **sections Adm 2.03 (3m), (3r) and (6m), 2.04 (1m), (2m), (2r), (2z), (9), and (10), and 2.14 (2) (vm) and (2) (vm) 5.**

The statement of scope for this rule, SS 131–13, was approved by the Governor on October 8, 2013, and published in Register No. 694 on October 31, 2013, and approved by Department of Administration Secretary Mike Huebsch on November 13, 2013. This emergency rule was approved by the Governor on November 21, 2013.

Finding of Emergency

Since 1979 the legislature has vested the department of administration with the responsibility and authority to manage various state buildings and grounds, including those of the Wisconsin state capitol. S. 16.84 (1), Stats. Since 1979, the department has permitted the use of these buildings and grounds for the free discussion of public questions and other purposes, so long as such uses did not interfere with the prime uses of these facilities, or otherwise infringe on interests of the state. s. 16.845, Stats., and s. Adm 2.04.

Each year, the Wisconsin state capitol police issue nearly 500 permits for the use of various state facilities. Permits are used for a variety of purposes, whether political, non-political, charitable, or commercial. Permits are issued regardless of political party, affiliation, or content. Permits are given to any person free of charge.

Occupation of the capitol rotunda and other areas has caused disruptions to the properly permitted events and normal government activities, including but not limited to, a Red Cross blood drive, a high school science exhibit, school group tours, general public tours, and legislative committee meetings and sessions. The state does not refuse permits for the lawful and safe use of state facilities by any person or persons, and the state cannot allow any person or persons to occupy the capitol in disregard of the rights of permit holders, public employees, or visitors. It is imperative that the

department gain compliance in order to protect the public safety and welfare.

On October 24, 2013, a lawsuit was dismissed based upon a stipulation of and settlement agreement between the parties. The department is obligated under the settlement agreement to advance certain changes in procedure. The department seeks to fulfill its obligations in a timely manner, which is not possible without engaging in the emergency rule process.

Filed with LRB: November 26, 2013
Publication Date: November 27, 2013
Effective Dates: November 27, 2013 through April 25, 2014 (corrected)

Agriculture, Trade and Consumer Protection (4)

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
Hearing Date: September 26, 2013

2. EmR1312 — 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) (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
Hearing Date: September 26, 2013

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

4. EmR1322 — 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) (f)**, relating to the quarantine of Dane County for the emerald ash borer.

This emergency rule was approved by the Governor on December 10, 2013.

The blanket scope for this rule, SS 141–13, was approved by the Governor on October 30, 2013 published in register No. 695 on November 14, 2013, and approved by the Board of Agriculture, Trade & Consumer Protection on December 10, 2013.

Finding of Emergency

The United States Department of Agriculture — Animal and Plant Health Inspection Service (“APHIS”) positively identified Emerald Ash Borer (“EAB”) in Madison, Dane County on November 22, 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 Dane 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 this county 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: December 17, 2013
Publication Date: December 18, 2013
Effective Dates: December 18, 2013 through May 16, 2014
Hearing Date: January 13, 2014

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
Extension Through: January 7, 2014

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 (5)
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. 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
Hearing Date: October 28, 2013

4. EmR1319 (DNR # WM-22-13(E)) — The Wisconsin Natural Resources Board proposes an order to amend **sections NR 10.275 (intro.) and 45.09 (1)** and to create **sections NR 10.13 (Note) and 10.275**, relating to hunting and trapping in state parks.

This rule was approved by the Governor on October 31, 2013.

The statement of scope for this emergency rule, SS 083-13, was approved by the Governor on July 15, 2013, published in Register No. 691 on July 31, 2013 and approved by the Natural Resources Board on August 14, 2013.

Finding of Emergency

The department finds that putting this rule into effect prior to the time it would take effect using the permanent rule process is necessary to protect the public safety and welfare. By restricting gun and archery hunting to certain areas, and trapping to certain areas and methods, this rule will prevent those activities in locations where they may jeopardize the safety and welfare of visitors to the Wisconsin State Park System.

Filed with LRB: November 7, 2013
Publication Date: November 15, 2013
Effective Dates: November 15, 2013 through April 13, 2014

5. EmR1320 (DNR # FH-27-13(E)) — The Wisconsin Natural Resources Board proposes an order to create **Chapter NR 85**, relating to development of a competitive grant program for cities, villages, towns, counties, federally

recognized Indian tribes or bands located in this state, and fish farms in order to increase the capacity to raise walleye for stocking in Wisconsin waters.

This rule was approved by the Governor on November 8, 2013.

The statement of scope for this emergency rule, SS 104–13, was approved by the Governor on August 12, 2013, published in Register No. 692 on September 1, 2013 (August 31, 2013), and approved by the Natural Resources Board on September 25, 2013.

Finding of Emergency — Exemption

2013 Wisconsin Act 20, the 2013–15 state budget, included the following nonstatutory language: The department of natural resources may promulgate emergency rules under section 227.24 of the statutes implementing sections 29.739 and 29.740 of the statutes, as created by this act. Notwithstanding section 227.24 (1) (c) and (2) of the statutes, emergency rules promulgated for walleye population maintenance and enhancement grants remain in effect until June 30, 2016, or the date on which permanent rules take effect, whichever is sooner. Notwithstanding section 227.24 (1) (a) and (3) of the statutes, the department is not required to provide evidence that promulgating this rule as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under this subsection.

Filed with LRB: November 14, 2013

Publication Date: November 21, 2013

Effective Dates: November 21, 2013 through June 30, 2016, or the date on which permanent rules take effect, whichever is sooner.

Hearing Date: December 12, 2013 and December 19, 2013

Safety and Professional Services (2)

Professional Services, Chs. SPS 1–299

1. 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

Extension Through: January 13, 2014

2. 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
Hearing Date: August 6, 2013
Extension Through: January 8, 2014

Safety and Professional Services — Controlled Substances Board

EmR1318 — The Controlled Substances Board adopts an order to create **section CSB 2.36**, relating to scheduling controlled substances.

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

The statement of scope for this rule, SS 062–13, was approved by the Governor on May 29, 2013, published in Register 690 on June 15, 2013, and approved by the Controlled Substances Board on July 15, 2013.

Finding of Emergency

The Controlled Substances Board 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:

The Brown County District Attorney’s office has provided the Controlled Substances Board with information relevant to emergency scheduling and the commencement of a prosecution concerning a controlled substance analog. UR–144, XLR–11, and AKB48 are pharmacologically similar to Schedule I substances THC and JWH–018. By sharing pharmacological similarities with the Schedule I substances, synthetic cannabinoids pose a risk both to the individual user and other affected individuals. UR–144, XLR–11, and AKB48 are being marketed as “legal” alternatives to marijuana. This characterization (and the reputation as potent herbal intoxicants) has increased their popularity and prevalence.

The Controlled Substances Board finds that scheduling of UR–144, XLR–11, and AKB48 on an emergency basis is necessary to avoid an imminent hazard to public safety. The substances are not included in any other schedule and no exemption or approval is in effect for the substance under 21 USC 355.

On May 16, 2013, the U.S. Department of Justice Drug Enforcement Administration emergency scheduled UR–144, XLR11, and AKB48 as Schedule I, illegal drugs under the Controlled Substances Act.

Filed with LRB: October 17, 2013
Publication Date: October 13, 2013
Effective Dates: October 13, 2013 through October 12, 2014
Hearing Date: November 11, 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

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

Scope Statements

Transportation

SS 155–13

This statement of scope was approved by the Governor on December 16, 2013.

Rule No.

Chapter Trans 327 (revise).

Relating to

Motor carrier safety.

Rule Type

Emergency

1. Finding/Nature of Emergency

The welfare of commercial motor vehicle drivers who hold a commercial driver license (“CDL”) issued by the State of Wisconsin who operate commercial motor vehicles outside this state will be harmed beginning January 30, 2014, if they cannot demonstrate compliance with recent federal regulations because they will be treated by other states as unlicensed drivers. Beginning on January 1, 2014, federal regulations require CDL holders to have certified to DOT the type of commercial driving they do and, if required, to have submitted proof of medical fitness to drive, and to have their driving records updated by DOT to show these actions, before driving a commercial motor vehicle. The Department published the scope statement for permanent rulemaking in September 2011 to implement these federal requirements. The permanent rulemaking effort is ongoing but will not take effect before the January 30, 2014 deadline for compliance.

Description of the Objective of the Rule

The federal regulations at 49 CFR 383 and 391 were revised by “Medical Certification Requirements as Part of the CDL”, 73 FR 73096 (Dec. 1, 2008; RIN 2126–AA10). These federal regulations require, no later than January 30, 2014, all commercial driver license (“CDL”) holders to provide information to their state driver licensing agency (“SDLA”) regarding the type of commercial motor vehicle operation they drive in or expect to drive in with their CDL. Drivers operating in certain types of commerce will be required to submit a current medical examiner’s certificate to their SDLA to obtain a “certified” medical status as part of their driving record. Federal regulations require states to downgrade the CDL privileges of any CDL holder required to have a “certified” medical status who fails to provide and keep up-to-date their medical examiner’s certificate with their SDLA. The revisions to the regulations did not change the requirement to obtain medical certifications.

This rule implements the federal requirements for commercial drivers obtaining and submitting medical certificates in conformity with those federal regulations. Section 343.065 (3) of the Wisconsin statutes, created by 2011 Wisconsin Act 32, authorizes the Department to downgrade commercial drivers licenses of drivers who fail to provide

federally mandated medical certifications, and to promulgate rules defining this downgrade process.

This rulemaking will allow the Department to:

- Define the procedures for drivers to certify their driving type (Tier) to the Department;
- Define the procedures for submitting federally required medical certifications to the Department, and for the Department to enter that certification on the driving record;
- Create the process for downgrading a CDL and reinstating a CDL after the downgrade has occurred; and
- Describe the types of notifications drivers and employers will receive prior to the federal medical card expiration; when the driver is downgraded; and when the driver is reinstated.

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

Starting in January 2012, all original and renewal applicants for a commercial driver’s license must certify their driving type (Tier). Drivers operating in interstate commerce who are not subject to the exceptions identified (Tier 1) must furnish and maintain a current, valid copy of their federal medical certificate (sometimes called a “Fed Med card”) to the Department. The Department must electronically capture the information on the federal medical certificate, and retain a copy of the federal medical certificate on file.

In January 2014, **all** persons in Wisconsin who hold a commercial driver’s license (CDL) will be required to comply with these requirements. The Department will downgrade drivers who fail to comply with these requirements in accordance with the procedures defined below.

These federal regulations require, and s. 343.065 (3), Stats., authorizes the Department to downgrade a driver’s commercial driving privileges if the driver does not certify a tier, or if the driver is operating in non-expected interstate commerce (Tier 1) and fails to submit a federal medical certificate or to keep his or her federal medical certificate up-to-date.

Several alternatives exist to implementing these new regulations for allowing drivers to certify their driving type as well as the downgrade process.

Alternatives for commercial drivers to certify driving type

1. Do nothing. Ignoring the federal regulations will result in drivers who hold Wisconsin CDL’s being treated as unlicensed drivers when traveling out of state. In addition, Wisconsin would lose approximately \$4.7 million dollars in motor carrier safety assistance program (MCSAP) and highway funds annually. The Department believes taking no action is impractical.

2. Require all CDL holders to visit a DMV field service station to certify their Tier of driving and provide proof of their federal medical certificate.

This approach is burdensome, and is not feasible for Wisconsin drivers who are currently out of state.

3. Require all CDL holders to use an electronic or online process to certify their driving type and provide federal medical certificate information to DMV.

This approach is not feasible for drivers with limited access to computers and the Internet.

4. Create a hybrid system that allows drivers to choose to certify and provide federal medical documentation electronically, or to certify and present the federal medical certificate in person at a DMV field station.

This approach will allow drivers and their employers' flexibility in how they provide this information. As such, the Department will pursue this approach.

Alternatives for downgrade process

The federal regulations offer several alternatives for downgrading a CDL for drivers that are operating in interstate, non-excepted commerce (Tier 1). Note: The following downgrade process does not apply to drivers who will not operate in interstate, non-excepted commerce. Those drivers are **not** required to keep updated federal medical information on file with the Department.

1. Do nothing. Ignoring the federal regulations will result in drivers who hold Wisconsin CDL's being treated as unlicensed drivers when traveling out of state. In addition, Wisconsin would lose approximately \$4.7 million dollars in motor carrier safety assistance program (MCSAP) and highway funds annually. The Department believes taking no action is impractical.

2. Change the Tier 1 driver's certification of their driving type to operating exclusively in intrastate commerce (Tier 3).

Drivers operating solely in intrastate commerce must have restrictions added to their CDL. As such, to implement this alternative, the Department would have to re-issue the CDL document every time a Tier 1 driver was downgraded to ensure the physical license matched the electronic record. To remove the downgrade, drivers would be required to visit a DMV field station, provide their federal medical certificate, and pay a fee for a duplicate license. This would be burdensome and impractical for Wisconsin CDL drivers who are currently out of state. This approach would require considerable staff resources and potential delays for drivers, since DMV field stations are not open seven days a week.

3. Remove the CDL privileges from the driver's license.

The CDL privileges will be removed from the driver's license using a "Voluntary Temporary Surrender" (VTS), which will appear on the electronic record only. The driver's commercial classes & endorsements will remain printed on the license document, but drivers will not be able to legally operate in interstate commerce until a copy of an updated federal medical certificate is provided to the Department.

While this alternative may seem unduly burdensome, it is actually much easier for the drivers to get their privileges back. They (or their employer) can submit their federal medical certificate to the Department either in person or electronically via the Department's secure web system. Once the new federal medical certificate is recorded on the driver's record, the driver's commercial privileges are restored. Drivers can easily comply, even from out of state.

In addition, the drivers can retain their current physical driver licenses, and will not be required to pay a fee to regain their commercial operating privileges. The Department will pursue this approach for downgrading.

Other policy items

The Department plans to use the VTS process for commercial drivers who may be revoked, suspended, or disqualified for other reasons. The VTS allows the Department to track the federal medical requirements as well as the underlying reason for the suspension, revocation, or disqualification.

In accordance with federal regulations, the Department will notify Tier 1 commercial drivers 60 days prior to the expiration of their federal medical certificate. If the Department does not receive an updated federal medical certificate, the driver will be downgraded ten days after the expiration of the current federal medical certificate, using the VTS process described above. The driver will receive notification of this action.

The Department also plans to use its Employer Notification system to provide up-to-date information to employers about each of their drivers' certified Tier of operation and current status of their federal medical certificates.

This rule-making defines federal medical certificates as part of the driver application. This allows the Department to take appropriate action when receiving a fraudulent federal medical certificate.

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

2011 Wisconsin Act 32 (the biennial budget bill) created s. 343.065 (a), Stats., which gives the Department authority to downgrade a commercial driver license if a federal medical certificate is not on file. Section 343.065 (3) (b), Stats., requires the Department to:

1. Promulgate rules to define "downgrade" in accordance with federal law and regulations or guidance from the applicable federal agency.
2. Establish the process for downgrading a commercial driver license and whether a new commercial driver license document will be issued after a commercial driver license is downgraded.
3. Establish the process for reinstating a downgraded commercial driver license after the Department receives from the licensee a valid medical certification or other appropriate certification of physical qualifications.

Section 343.06 (3), Stats., requires the Department to ensure that CDL holders meet federal physical qualifications for drivers contained in 49 CFR 391.

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

It is estimated this emergency rule will take approximately 10 hours to develop. The Department is currently drafting a permanent rule on the same subject, but the permanent rule will not take effect before the January 30, 2014, deadline. Other resources necessary to successfully implement the emergency rule include computer programming resources, and an outreach campaign to affected commercial drivers and other interested stakeholders, which would otherwise be done for the permanent rule.

Description of all Entities that may be Impacted by the Rule

This emergency rule will affect all Wisconsin drivers who currently hold a Commercial Driver License (CDL). As of

December 2010, when the permanent rule—making commenced, there were 289,596 persons holding commercial drivers licenses, of which 224,860 were valid (not withdrawn or expired). It will also indirectly impact motor carrier companies, employers of commercial drivers, law enforcement, other state driver licensing agencies, and the Federal Motor Carrier Safety Administration.

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

This emergency rule—making is intended to ensure Wisconsin's compliance with new federal regulations in 49 CFR Parts 383 and 391, requiring drivers of commercial motor vehicles to certify their type of driving to the Department, and to submit a copy of their federal medical certificate to the Department.

All states are required to comply with these new federal regulations.

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

Comments to the proposed federal regulations identified

the following potential burdens on drivers: 1) Requiring drivers to travel to the DMV to make the certification or provide medical certifications; 2) The extra cost for drivers to obtain new CDLs or medical certifications; 3) The extra cost to drivers of corresponding more frequently with the SDLA; 4) Requiring drivers to maintain proof of medical fitness during extended periods of absence from driving. The Department intends to minimize these impacts on drivers, as those actions carry proportionate cost increases to the Department.

Comments to the proposed federal regulations noted that prior to the federal rule—making; drivers provided the proof of medical certification directly to the employer. Under the new federal regulation, the employer must now verify the driving record by inquiry to the SDLA.

Currently, employers are required to verify the driver is legal to drive at the time of employment, and requiring employers to query the Department for this status seems insignificant.

The Department anticipates no significant economic impact on parties affected by this rule.

Contact Person

Alison Lebwohl, (608) 266-0054

Submittal of Proposed Rules to Legislative Council Clearinghouse

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

Agriculture, Trade and Consumer Protection CR 13-104

(DATCP DOCKET # 13-R-03)

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

The scope statement for this rule, SS 067-13, was approved by the Governor on June 14, 2013, published in Register No. 690 on June 30, 2013, and approved by the Board of Agriculture, Trade and Consumer Protection as required by s. 227.135(2), Stats., on July 16, 2013.

Analysis

The proposed rule revises Chapter ATCP 82, relating to milk haulers.

Agency Procedure for Promulgation

The department will hold public hearings on this rule on January 15, 2014 in Eau Claire, January 16, 2014 in Madison, and on January 17, 2014 in Green Bay.

The department's Division of Food Safety is primarily responsible for this rule. If you have questions, you may contact Peter Haase at (608) 224-4711.

Contact Person

Questions and comments related to this rule will be accepted until January 31, 2014, and may be directed to

Peter Haase

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Agriculture, Trade and Consumer Protection CR 13-107

(DATCP DOCKET # 13-R-11)

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

The scope statement for this rule, SS 122-13, was approved by the Governor on September 20, 2013, published in Register No. 694A on October 14, 2013, and approved by

the Board of Agriculture, Trade and Consumer Protection as required by s. 227.135 (2), Stats., on November 13, 2013.

Analysis

The rule revises Chapter ATCP 136, relating to mobile air conditioners; reclaiming or recycling refrigerants.

Agency Procedure for Promulgation

The department will hold a public hearing on this rule on January 21, 2014.

The department's Division of Trade and Consumer Protection is primarily responsible for this rule.

Contact Person

If you have questions, you may contact Jennifer Heaton-Amrhein at (608) 224-5164.

Natural Resources Fish, Game, etc., Chs. 1— CR 13-108

(DNR # WM-21-13)

On December 13, 2013, the Department of Natural Resources submitted a proposed rule to the Legislative Council Rules Clearinghouse.

The statement of scope for this permanent rule, SS 082-13, was approved by the Governor on July 15, 2013, published in Register No. 691 on July 31, 2013 and approved by the Natural Resources Board on August 14, 2013.

Analysis

The rule revises Chapters NR 10, 19, and 45, relating to hunting and trapping in state parks.

Agency Procedure for Promulgation

Public hearings will be held as follows:

January 14, 2014 Appleton, Fox Valley Technical College, D.J. Bordini Business & Industry Center, 5 Systems Drive, 54912

January 21, 2014 Eau Claire DNR Service Center, 1300 W Clairemont, 54701

January 22, 2014 Wausau, Town of Rib Mountain Town Hall, 3700 N. Mountain Rd, 54401

January 23, 2014 Fitchburg DNR Service Center, 3911 Fish Hatchery Rd, 53711

Name and Organizational Unit of Agency Contact

Unit of Agency Contact: Landon Williams, Bureau of Parks and Recreation (608) 266-7616 or Scott Loomans, Bureau of Wildlife Management (608) 267-2452.

Natural Resources
Fish, Game, etc., Chs. 1—
CR 13–111

(DNR # FH–26–12)

On December 16, 2103, the Department of Natural Resources submitted a rule to the Legislative Council Administrative Rules Clearinghouse.

The statement of scope for this rule, SS 098–12, was approved by the governor on December 14, 2012, published in Register No. 685 on January 14, 2012, and approved by the Natural Resources Board on February 27, 2013.

Analysis

The rule revises Chapter NR 25, relating to lake trout harvest limits in Lake Superior.

Agency Procedure for Promulgation

A Public Hearing will be held January 15, 2014.

Name and Organizational Unit of Agency Contact

Linda Haddix — Legal Services, (608) 266–1959.

Peter Stevens — Fisheries Management, (715) 779–4035, Ext. 12.

Public Service Commission
CR 13–101

(PSC DOCKET # 1–AC–242)

On December 6, 2013, the Public Service Commission of Wisconsin submitted a proposed rule to the Joint Legislative Council Staff (Rules Clearinghouse) for review pursuant to s. 227.14 (4m), Stats.

The statement of scope for this rule, SS 079–13, was approved by the Governor on July 2, 2013, published in Wisconsin Administrative Register No. 691 on July 31, 2013, and approved by the Commission on August 12, 2013.

Analysis

The proposed rule revises section PSC 111.51 (4) (b) 2., regarding the electronic delivery of applications for a Certificate of Public Convenience and Necessity (CPCN).

Agency Procedure for Promulgation

This rulemaking will be done without a hearing because, under s. 227.16 (2) (b), Stats., no hearing is required when an existing rule is being brought into conformity with a statute that has changed. However, written comments will be accepted until January 14, 2014.

The Gas and Energy Division of the Commission is the organizational unit responsible for the promulgation of the rule.

Contact Person

Justin Chasco, (608) 266–3708 or
Justin.chasco@wisconsin.gov

Revenue
CR 13–102

On December 9, 2013, the Wisconsin Department of Revenue submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

The scope statement for this rule, SS 084–13, was approved by the Governor on July 15, 2013, published in

Register No. 691 on July 31, 2013, and approved by the Secretary of Revenue on August 12, 2013.

Analysis

The proposed rule order revises section Tax 18.05 (1) (d) and (e), relating to assessment of agricultural property.

Agency Procedure for Promulgation

A public hearing on the proposed rule is required and has been scheduled for January 14, 2014.

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

E–mail: dale.kleven@revenue.wi.gov.

Safety and Professional Services
General Part I, Chs. 301–319
Commercial Building Code, Chs. 361–366
CR 13–105

On December 12, 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 038–11, was approved by the Governor on November 8, 2011, published in Register No. 671 on December 1, 2011, and approved by the Department of Safety and Professional Services on December 18, 2011.

Analysis

The proposed rule revises Chapters SPS 314 and 362, relating to fire prevention.

Agency Procedure for Promulgation

A public hearing is required and will be held on January 27, 2014, at 1400 East Washington Avenue, Room 121C, Madison, Wisconsin (enter at 55 North Dickinson Street).

Contact Person

Sam Rockweiler, Department of Safety and Professional Services, Division of Board Services, 608.266.0797,
sam.rockweiler@wi.gov.

Executive Order 50, Paragraph III.2. Statement

The Department ensured the accuracy, integrity, objectivity, and consistency of the data used in preparing the proposed rules and corresponding analysis.

Safety and Professional Services —
Occupational Therapists Affiliated
Credentialing Board Board
CR 13–109

On December 13, 2013, the Occupational Therapist Affiliated Credentialing Board submitted a proposed rule to the Legislative Council Rules Clearinghouse.

The scope statement for this rule, SS 076–12, was approved by the Governor on September 28, 2012, published in Register No. 682 on October 14, 2012, and approved by Occupational Therapist Affiliated Credentialing Board on October 29, 2013.

Analysis

Statutory Authority: sections 15.085 (5) (b), 227.11 (2) (a), 448.965, Stats.

This proposed rule-making order repeals sections OT 2.07 (5) and 3.06 (b) (Note); amends sections OT 2.03 (2) (e) and (j), 2.07 (6), 3.02, 3.05, 4.02 (2) (intro.), 4.02 (2) (a) and (b), 4.03 (1) (a), (2) (title), (c), (d), and (e), (3) (a), (b), and (f), (5) (b) and (c), and (6) (b) and (c), 4.05 (6) and (7) (a); repeals and recreates section OT 1.02; and creates section OT 3.06 (r), 4.02 (2) (j) to (q) and 4.02 (2) (intro.) (Note), relating to occupational therapy practice standards.

Agency Procedure for Promulgation

A public hearing is required and will be held on February 10, 2014 at 1400 East Washington Avenue, Room 121C, Madison, Wisconsin (enter at 55 North Dickinson Street).

Contact Person

Shawn Leatherwood, Administrative Rules Coordinator,
Department of Safety and Professional Services, Division of
Policy Development, (608)–261–4438,
Shancethea.Leatherwood@wisconsin.gov

**Safety and Professional Services —
Podiatry Affiliated Credentialing Board
CR 13–110**

On December 13, 2013, the Podiatry Affiliated Credentialing Board submitted a proposed rule to the Legislative Council Rules Clearinghouse.

The scope statement for this rule, SS 061–12, was approved by the Governor on August 10, 2012, published in Register No. 680 on August 31, 2012, and approved by Podiatry Affiliated Credentialing Board on July 30, 2013.

Analysis

Statutory Authority: Sections 227.11 (2) (a), 448.695 (3), 462.02 (2) (f), Stats.

This proposed rule-making order amends section Pod 1.02 (intro) and creates sections Pod 1.02 (2m) and (6m) and 7.01 (title), relating to podiatric x-ray assistants.

Agency Procedure for Promulgation

A public hearing is required and will be held on February 4, 2014 at 1400 East Washington Avenue, Room 121A, Madison, Wisconsin (enter at 55 North Dickinson Street).

Contact Person

Shawn Leatherwood, Administrative Rules Coordinator,
Department of Safety and Professional Services, Division of
Policy Development, (608)–261–4438,
Shancethea.Leatherwood@wisconsin.gov

**Safety and Professional Services —
Psychology Examining Board
CR 13–103**

On December 10, 2013, the Psychology Examining Board

submitted a proposed rule to the Legislative Council Rules Clearinghouse.

The scope statement for this rule, SS 085–12, was approved by the Governor on October 18, 2012, published in Register No. 683 on November 14, 2012, and approved by the Psychology Examining Board on November 27, 2012.

Analysis

Statutory Authority: Sections 15.08 (5) (b) and 455.065 (1) and (3), Wis. Stats.

This proposed rule-making order revises Chapter Psy 4, relating to continuing education.

Agency Procedure for Promulgation

A public hearing is required and will be held on January 15, 2014 at 1400 East Washington Avenue, Room 121, Madison, Wisconsin (enter at 55 North Dickinson Street).

Contact Person

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

**Workforce Development
Unemployment Insurance, Chs. 100–150
CR 13–106**

The Wisconsin Department of Workforce Development has referred a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse, pursuant to s. 227.15, Stats.

The scope statement, SS 125–13, was approved by the governor on September 10, 2013, printed in Register No. 694 on October 15, 2013, and approved by the Secretary on October 28, 2013.

Analysis

The rule revises Chapters DWD 111, 113, 115, 132, and 140 and creates Chapter DWD 114, relating to quarterly wage reporting, settlement of disputes and compromise of liabilities, license revocation and financial record matching, business transfers, determining eligibility of benefits, and unemployment insurance appeals.

Agency Procedure for Promulgation

The department will hold a public hearing on January 21, 2014, in Madison. The department's Division of Unemployment Insurance is primarily responsible for this rule. If you have questions, you may contact Janell Knutson at (608) 266–1639 or by e-mail at janell.knutson@dwd.wi.gov.

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

Rule–Making Notices

Notice of Hearing

Agriculture, Trade and Consumer Protection

EmR1322

The state of Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) announces that it will hold a public hearing on an emergency rule to revise section ATCP 21.17, Wis. Adm. Code, relating to the quarantine of Dane County for the emerald ash borer beetle.

DATCP will hold a public hearing at the time and place shown below.

Hearing Information

Date: Monday, January 13, 2014
Time: 1:00 p.m.
Location: Department of Agriculture, Trade and Consumer Protection
 Conference Room 266 (2nd Floor)
 2811 Agriculture Drive
 Madison, Wisconsin 53718

Hearing impaired persons may request an interpreter for this hearing. Please make reservations for a hearing interpreter by January 7, 2014, by writing to Barbara Stalker, Division of Agricultural Resource Management, P.O. Box 8911, Madison, WI 53708–8911, telephone (608) 224–4660. Alternatively, you may contact the DATCP TDD at (608) 224–5058. The hearing facility is accessible to disabled users.

Public Comments and where to Obtain Copies of the Rule

DATCP invites the public to attend the hearing and comment on the emergency rule. Following the public hearing, the hearing record will remain open until Monday, **January 27, 2014**, for additional written comments. Comments may be sent to the Division of Agricultural Resource Management at the address below, to Christopher.Deegan@wisconsin.gov or at <http://adminrules.wisconsin.gov>.

You may obtain a free copy of this emergency rule by contacting the Wisconsin Department of Agriculture, Trade and Consumer Protection, Division of Agricultural Resource Management, 2811 Agriculture Drive, P.O. Box 8911, Madison, WI 53708. You can also obtain a copy by calling (608) 224–4573 or emailing Christopher.Deegan@wisconsin.gov. Copies will also be available at the hearing. To view the emergency rule online, please go to: <http://adminrules.wisconsin.gov>.

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

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

This emergency rule creates quarantines for Dane County for the emerald ash borer beetle (“EAB”). Under this rule, the Department of Agriculture, Trade and Consumer Protection

(“DATCP”) quarantines Dane County to mitigate the movement of emerald ash borer to other areas of Wisconsin and other states.

DATCP is adopting this temporary emergency rule pending the adoption of a federal regulation to quarantine Dane County. This emergency rule will take effect immediately upon publication in the official state newspaper, and will remain in effect for 150 days. The Legislature’s Joint Committee for Review of Administrative Rules may extend the emergency rule for up to 120 additional days.

Statutes interpreted

Sections 93.07 (12) and 94.01, Stats.

Statutory authority

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

Explanation of statutory authority

DATCP has broad general authority, under s. 93.07 (1), Stats., to adopt regulations to enforce laws under its jurisdiction. DATCP also has broad general authority under ss. 93.07 (12) and 94.01, Stats., to adopt regulations to prevent and control plant pest infestations. Emerald ash borer quarantines created by this rule are part of an overall state strategy to prevent and control plant pest infestations, including EAB infestations. DATCP is adopting this temporary emergency rule under authority of s. 227.24, Stats., pending the adoption of federal regulations on the same subject.

Background

The United States Department of Agriculture — Animal and Plant Health Inspection Service (“APHIS”) positively identified EAB in Dane County near Warner Park in the City of Madison on November 22, 2013. This emergency rule creates a DATCP quarantine for Dane County. A Federal quarantine will be enacted approximately six to eight weeks after a formal submission by the state plant regulatory official. EAB is carried and spread by untreated ash wood products. A six week delay until enactment of the federal quarantine leaves too much time for businesses or individuals to move potentially EAB infested material out of the county to areas of Wisconsin or other states that are not infested with EAB.

EAB is an injurious exotic pest that now endangers Wisconsin’s 750 million ash trees and ash resources. This insect has the potential to destroy entire stands of ash, and any incursion of EAB can result in substantial losses both to forest ecosystems and to urban trees, as well as the state’s vital tourism and timber industries. The emerald ash borer has killed over fifty million trees in the Midwest and has cost several hundred million dollars in losses to the woodlot, nursery, landscape industries and municipalities. APHIS predicts the national urban impact alone from this pest may exceed \$370 billion.

DATCP has plant inspection and pest control authority under s. 94.01, Stats., to adopt rules establishing quarantines or other restrictions on the importation into, or movement of, plants or other materials within this state, if these measures are necessary to prevent or control the spread of injurious plant pests. A quarantine order may prohibit the movement of any

pest, or any plant, pest host or pest–harboring material, which may transmit or harbor a pest.

Emergency rule content

Under this emergency rule, movement of all hardwood (non–coniferous) firewood of any type, plus movement of any ash wood out of Dane County, is prohibited with certain exceptions. The emergency rule will do the following:

- Create a quarantine for EAB for Dane County that prohibits the movement of all hardwood species of firewood, nursery stock, green lumber, and other material living, dead, cut or fallen, including logs, stumps, roots, branches and composted and uncomposted chips of the genus *Fraxinus* (Ash wood), out of this county or any contiguous EAB quarantined counties.
- Provide an exemption for items that have been inspected and certified by a pest control official and are accompanied by a written certificate issued by the pest control official (some products, such as nursery stock, cannot be given an exemption).
- Provide an exemption for businesses that enter into a state or federal compliance agreement. The compliance agreement describes in detail what a company can and cannot do with regulated articles.

Summary of factual data and analytical methodologies

Data for this analysis was obtained from DATCP nursery license records, local business directories and field surveys of the wood products industry (e.g. timber, lumber, firewood) in the area. This analysis was based on the regulatory language of ATCP 21.17 and 7 CFR 301.53, on the observations of DATCP nursery inspectors, and on conversations with stakeholders in the nursery and other timber–related industries.

Analysis and supporting documents used to determine effect on small business

DATCP searched its nursery license database to obtain current records for licensed nursery growers operating in Dane County. Based on previous and ongoing work with Wisconsin’s Gypsy Moth and firewood certification programs, DATCP staff also identified known saw mills, wood products companies and firewood industry concerns. Finally, online Yellow Pages business listings were also searched to find related tree nursery, timber, firewood and tree service companies.

Business Impact

This emergency rule may have an impact on persons or companies that deal in any hardwood firewood or ash materials in Dane County. The affected businesses are all small businesses. This emergency rule restricts the sale or distribution of ash trees, ash wood products, and any hardwood firewood from Dane County to locations outside of this county or any contiguously quarantined counties, and to neighboring states.

The business impact of this emergency rule depends on the number of 1) nurseries that sell or distribute ash nursery stock outside these counties, 2) firewood producers/dealers that sell or distribute outside these counties, 3) sawmills that move untreated ash stock (green lumber) outside these counties, and 4) untreated wood waste (e.g. ash brush, chips or mulch) that is moved outside these counties.

Dane County has a total of 61 licensed nursery growers that could possibly be growing ash nursery stock. Those growers

will not be able to move or sell ash nursery stock outside of the quarantine area, though discussions with the Wisconsin Nursery Association indicate that few, if any, nurseries continue to sell ash trees. There are also 35 known firewood producers or dealers in Dane County. Firewood dealers would need to be certified under s. ATCP 21.20 to sell or move firewood outside of the quarantine area. To obtain certification a firewood dealer pays a \$50 annual certification fee to DATCP and treats the firewood in a manner that ensures it is free of EAB. There are three lumber mills in Dane County and an estimated 20 other tree service/wood processing facilities that may also deal with ash. To transport ash wood products outside of the quarantine area they will have to enter into a compliance agreement with DATCP or APHIS that authorizes movement of ash products outside of the quarantine only when there is assurance that the movement will not spread EAB to non–quarantined locations. Certification and compliance agreements will require some additional recordkeeping on the part of those businesses.

Initial Regulatory Flexibility Analysis

Rule description

This emergency rule creates a quarantine for Dane County for emerald ash borer (“EAB”). Under this rule, the Department of Agriculture, Trade and Consumer Protection (“DATCP”) quarantines Dane County to mitigate the movement of EAB to other areas of Wisconsin and other states.

DATCP is adopting this temporary emergency rule pending the adoption of a federal regulation to quarantine Dane County. The emergency rule will take effect immediately upon publication in the official state newspaper, and will remain in effect for 150 days. The Legislature’s Joint Committee for Review of Administrative Rules may extend the emergency rule for up to 120 additional days.

The United States Department of Agriculture – Animal and Plant Health Inspection Service (“APHIS”) positively identified EAB in Dane County near Warner Park in Madison on November 22, 2013. This emergency rule creates a DATCP quarantine for Dane County. A Federal quarantine will be enacted approximately six to eight weeks after a formal submission by the state plant regulatory official. EAB is carried and spread by untreated ash wood products. A six week delay until enactment of the federal quarantine leaves too much time for businesses or individuals to move potentially EAB infested material out of the county to areas of Wisconsin or other states that are not infested with EAB.

Key rule provisions

This rule includes the following key provisions:

- Creates a quarantine for EAB for Dane County that prohibits the movement of all hardwood species of firewood, nursery stock, green lumber, and other material living, dead, cut or fallen, including logs, stumps, roots, branches, and composted and uncomposted chips of the genus *Fraxinus* (Ash wood), out of Dane County or any contiguous EAB quarantined counties.
- Provides an exemption for items that have been inspected and certified by a pest control official and are accompanied by a written certificate issued by the pest control official (some products, such as ash nursery stock, cannot be given an exemption).
- Provides an exemption for businesses that enter into a state or federal compliance agreement. The

compliance agreement describes in detail what a company can and cannot do with regulated articles.

Small business affected

This emergency rule may have an impact on persons or companies that deal in any hardwood firewood or ash materials in Dane County. The affected businesses are all small businesses. This emergency rule restricts the sale or distribution of ash trees and ash wood products plus any hardwood firewood from Dane County to locations outside of the county or any contiguously quarantined counties, and neighboring states.

The business impact of this emergency rule depends on the number of 1) nurseries that sell/distribute ash nursery stock outside these counties, 2) firewood producers/dealers that sell/distribute outside these counties, 3) sawmills that move untreated ash stock (green lumber) outside these counties, and 4) untreated wood waste (e.g. ash brush, chips, or mulch) that is moved outside these counties.

Dane County has a total of 61 licensed nursery growers that could possibly be growing ash nursery stock. Those growers will not be able to move or sell ash nursery stock outside of the quarantine area, though discussions with the Wisconsin Nursery Association indicate that few, if any, nurseries continue to sell ash trees. There are also an estimated 35 known firewood dealers in Dane County. Firewood dealers would need to be certified under s. ATCP 21.20 to sell or move firewood outside of the contiguous quarantine area. To obtain certification, a firewood dealer pays a \$50 annual certification fee to DATCP and treats the firewood in a manner that ensures it is free of EAB. There are three lumber mills in Dane County and an estimated 20 other tree service/wood processing facilities that may also deal with ash. To transport ash wood products outside of the quarantine area they will have to enter into a compliance agreement with DATCP or APHIS that authorizes movement of ash products outside of the quarantine only when there is assurance that the movement will not spread EAB to non-quarantined locations.

Reporting, bookkeeping and other procedures

Nursery growers will not have any additional reporting or record-keeping requirements. Wood products industries (e.g. firewood producers or saw mills) who enter into a compliance agreement shall keep records of all regulated product movement that leaves the contiguous quarantine area.

Professional skills required

No additional professional skills are required.

Accommodation for small business

DATCP recognizes that every small business is different. DATCP will work with individual businesses to meet the requirements of the quarantine while accommodating the unique character of the individual business. Therefore compliance agreements will be designed to satisfy the regulations with minimal negative effects to the business.

Conclusion

This rule will help affected businesses in Dane County to move ash wood and material without moving EAB to areas free from EAB. This will in turn help to protect the resources on which the businesses depend. This rule may impose additional costs on some businesses, including small businesses, depending on the nature of their reliance on ash trees or ash wood products. The department works closely with each affected business to minimize any costs and these costs are outweighed by the protection of Wisconsin’s ash resource.

Environmental Impact

This emergency rule will not have a significant impact on the environment.

Federal and Surrounding State Programs

Federal Programs

Under the federal Plant Protection Act, APHIS has responsibility for excluding, eradicating and controlling serious plant pests, including EAB. APHIS has instituted statewide quarantines on the movement of all ash wood for Illinois, Indiana, Missouri, Ohio, Pennsylvania, Virginia, and West Virginia, in addition to portions of Connecticut, Iowa, Kansas, Kentucky, Maryland, Massachusetts, Michigan, Minnesota, New Hampshire, New York, North Carolina, and Tennessee. APHIS has also enacted quarantines for Brown, Kenosha, Racine, Walworth, Rock, Milwaukee, Waukesha, Jefferson, Ozaukee, Washington, Dodge, Sheboygan, Fond du Lac, Winnebago, Trempealeau, La Crosse, Vernon, Sauk, Crawford, and Douglas Counties in Wisconsin. The quarantines include restrictions on the movement of any hardwood (non-coniferous) firewood.

Surrounding State Programs

Surrounding states where EAB has been identified (Illinois, Indiana, Iowa, Minnesota, and Michigan) have state and federal quarantines that prohibit the movement of regulated articles out of quarantined areas. A regulated article can only move out of quarantined areas after it is certified by USDA or state officials.

DATCP Contact

Questions and comments (including hearing comments) related to this rule may be directed to:

Brian Kuhn or Christopher Deegan
 Department of Agriculture, Trade and Consumer Protection
 P.O. Box 8911
 Madison, WI 53708-8911
 Telephone (608) 224-4590 or (608) 224-4573
 E-Mail: brian.kuhn@wisconsin.gov or christopher.deegan@wisconsin.gov

FISCAL ESTIMATE		LRB or Bill No. / Adm. Rule No. Ch. ATCP 21
DOA-2048 (R 10/94)	<input checked="" type="checkbox"/> ORIGINAL <input type="checkbox"/> UPDATED <input type="checkbox"/> CORRECTED <input type="checkbox"/> SUPPLEMENTAL	
		Amendment No. (If Applicable)
Subject: Emergency Rule for Quarantine of Dane County for Emerald Ash Borer		

Fiscal Effect

State: No State Fiscal Effect

Increase Costs –

Check below only if **bill** makes a direct appropriation or affects a sum sufficient appropriation.

May be possible to absorb within agency's budget? Yes No

- Increase Existing Appropriation Increase Existing Revenues
- Decrease Existing Appropriation Decrease Existing Revenues
- Create New Appropriation

Decrease Costs

Local:

No local government costs

5. Types of Local Gov. Unit Affected:

- Towns Villages
- Counties Cities
- Other: County Drainage Boards
- School Districts
- WTCS Districts

- 1. Increase Costs
 Permissive Mandatory
- 2. Decrease Costs
 Permissive Mandatory

- 3. Increase Revenues
 Permissive Mandatory
- 4. Decrease Revenues
 Permissive Mandatory

Fund Source Affected:

- GPR FED PRO PRS SEG SEG-S

Affected Ch. 20 Appropriations:

Assumptions Used in Arriving at Fiscal Estimate

The United States Department of Agriculture – Animal and Plant Health Inspection Service (APHIS) positively identified Emerald Ash Borer (EAB) in Dane County near Warner Park in Madison on November 22, 2013. This emergency rule creates a Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) quarantine for Dane County. A federal quarantine will be enacted approximately six to eight weeks after a formal submission by the state plant regulatory official. EAB is carried and spread by untreated ash wood products. 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.

EAB is an injurious exotic pest that now endangers Wisconsin's 750 million ash trees and ash resources. This insect has the potential to destroy entire stands of ash, and any incursion of EAB can result in substantial losses both to forest ecosystems and to urban trees, as well as the state's vital tourism and timber industries. The emerald ash borer has killed over fifty million trees in the Midwest and has cost several hundred million dollars in losses to the woodlot, nursery, landscape industries and municipalities. APHIS predicts the national urban impact alone from this pest may exceed \$370 billion.

DATCP has plant inspection and pest control authority under s. 94.01, Stats., to adopt rules establishing quarantines or other restrictions on the importation into or movement of plants or other materials within this state, if these measures are necessary to prevent or control the spread of injurious plant pests. A quarantine order may prohibit the movement of any pest, or any plant, pest host or pest-harboring material which may transmit or harbor a pest.

The proposed rule will do the following:

- Create a quarantine for EAB for Dane County that prohibits the movement of all hardwood species of firewood, nursery stock, green lumber, and other material living, dead, cut or fallen, including logs, stumps, roots, branches and composted and uncomposted chips of the genus *Fraxinus* (Ash wood), out of Dane County or any contiguous EAB quarantined counties.
- Provide an exemption for items that have been inspected and certified by a pest control official and are accompanied by a written certificate issued by the pest control official.
- Provide an exemption for businesses that enter into a state or federal compliance agreement. The compliance agreement describes in detail what a company can and cannot do with regulated articles.

This rule will be administered by DATCP. DATCP will have additional workload related to enforcing the quarantine but it will be able to absorb the projected workload and costs within DATCP's current budget and with current staff. The presence of EAB may produce additional workload for local governments in Dane County, but the quarantine itself will not produce any local fiscal impact.

Long – Range Fiscal Implications

If multiple infestations are found in this state, DATCP may experience substantial costs and personnel demands for providing regulatory oversight and working with affected industries. Costs may vary, depending on the nature and scope of the infestations, and cannot be accurately predicted at this time.

Agency Prepared by (Name & Phone No.):

DATCP / Christopher Deegan
(608-224-4573)

Authorized Signature:

Date:

November 26, 2013

Notice of Hearing**Agriculture, Trade and Consumer Protection****CR 13-104**

(DATCP DOCKET # 13-R-03)

The Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) announces that it will hold public hearings on a proposed rule to revise Chapter ATCP 82, relating to milk haulers.

DATCP will hold three public hearings at the times and places shown below. DATCP invites the public to attend the hearings and comment on the proposed rule.

Hearing Information

Date: **Wednesday, January 15, 2014**

Time: 10:00 a.m. to 12:00 p.m.

Location: Room 129
Eau Claire State Office Building
718 West Clairemont Avenue
Eau Claire, Wisconsin 54701

Date: **Thursday, January 16, 2014**

Time: 9:00 a.m. to 11:30 a.m.

Location: Room 090 (Training Room)
Department of Agriculture, Trade and Consumer Protection
2811 Agriculture Drive
Madison, Wisconsin 53718

Date: **Friday, January 17, 2014**

Time: 10:00 a.m. to 12:00 p.m.

Location: Room 152B
200 N. Jefferson Street
Green Bay, Wisconsin 54301

Hearing impaired persons may request an interpreter for this hearing. Please make reservations for a hearing interpreter by January 3, 2014, by writing to Sandra Cleveland, Division of Food Safety, P.O. Box 8911, Madison, Wisconsin 53708-8911; or by emailing sandy.cleveland@wisconsin.gov; or by telephone at (608) 224-4712. Alternatively, you may contact the DATCP TDD at (608) 224-5058. The hearing facility is handicap accessible.

Place where Comments are to be Submitted and Copies of the Rule

Following the public hearings, the hearing record will remain open until January 31, 2014 for additional written public comments. Comments may be sent to the Division of Food Safety at the address below, or to Peter.Haase@wisconsin.gov, or to <http://adminrules.wisconsin.gov>.

You can obtain a free copy of this hearing draft rule and related documents including the economic impact analysis by contacting the Wisconsin Department of Agriculture, Trade

and Consumer Protection, Division of Food Safety, 2811 Agriculture Drive, P.O. Box 8911, Madison, Wisconsin 53708. You can also obtain a copy by calling Sandra Cleveland at (608) 224-4670 or by emailing sandy.cleveland@wisconsin.gov. Copies will also be available at the hearing. To view the hearing draft rule online, go to: <http://adminrules.wisconsin.gov>.

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

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

Chapter ATCP 82 (Milk Haulers) regulates bulk milk tanker licensing, construction, maintenance, cleaning, and sanitizing requirements; bulk milk weigher and sampler requirements, and mandatory procedures for collecting milk from dairy farms and delivering milk to a dairy plant and collecting milk samples for testing. This rule revision will align Wisconsin's regulations with the Food and Drug Administration's (FDA) Pasteurized Milk Ordinance (PMO) by allowing bulk milk weighers and samplers to collect partial loads of milk.

Statutes interpreted

Section 97.21, Stats., (Milk haulers and milk distributors).

Statutory authority

Sections 93.07 (1), 97.09 (4), and 97.21 (6), Stats.

Explanation of statutory authority

DATCP has broad general authority, under s. 93.07 (1), Stats., to adopt rules to implement programs under its jurisdiction. DATCP also has general authority under s. 97.09 (4), Stats., to adopt rules specifying standards to protect the public from the sale of adulterated or misbranded foods. The department has specific authority to promulgate rules related to milk haulers under s. 97.21 (6), Stats., which allows the department to establish rules related to: fees and regulations for bulk milk tanker operators and milk distributors; standards for the construction, maintenance, and sanitary operation of bulk milk tankers, milk distribution vehicles, and milk distribution facilities; the design, installation, cleaning, and maintenance of equipment and utensils; personnel sanitation; storage and handling of milk and fluid milk products; identification of bulk milk tankers and milk distribution vehicles; and record keeping.

Related statutes and rules

Wisconsin's milk haulers are governed by ch. 97, Stats. (Food Regulation). Milk haulers and milk distributors are regulated under s. 97.21, Stats., (Milk haulers and milk distributors). Chapter 82, Wis. Adm. Code, interprets ch. 97, Stats., as it relates to milk haulers and milk distributors.

Plain language analysis

The dairy industry is an important part of Wisconsin's economy. Wisconsin ranks second nationally in milk production and has 10,900 licensed dairy farms. Milk is shipped from each of these farms in a licensed bulk milk tanker (approximately 4,000 in Wisconsin) to one of more than 400 licensed dairy plants in the state or to a licensed dairy plant in another state. Safe and sanitary handling of milk throughout the collection and transportation process is critical for protecting the quality of milk produced in this state. Accurate measurement of collected milk and proper sampling of milk for analysis help ensure fair payment and milk safety, respectively.

The following proposed rule changes are needed to maintain Wisconsin's reputation for its world class dairy products by ensuring that inspection practices are aligned with the Food and Drug Administration's (FDA's) Grade "A" Pasteurized Milk Ordinance (PMO). The PMO establishes minimum standards for Grade "A" dairy products. Wisconsin dairy producers and bulk milk weighers and samplers must meet state regulatory standards equivalent to or more stringent than those in the PMO to be allowed to ship Grade "A" milk in interstate commerce. The PMO standards are established by the National Conference on Interstate Milk Shipments (NCIMS), which consists of voting representatives from dairy regulatory agencies in each state.

Partial collections of milk from bulk milk tanks

The rule proposes adopting a provision of the PMO that allows bulk milk weighers and samplers to make partial collections of milk from bulk tanks on dairy farms under certain conditions. Currently, ch. ATCP 82 essentially requires bulk milk weighers and samplers to empty a bulk milk tank each time they collect milk from the farm. The regulation states that no milk can be added to the bulk milk tank until after the tank has been emptied. The original intent of the regulation was to ensure that a dairy producer's bulk tank was regularly cleaned and sanitized and to ensure that collection-to-collection transfers of illegal drug residues did not occur, which could result in increased financial losses to dairy producers forced to dump multiple loads of milk.

Despite these worthwhile intentions, the requirement prohibiting partial collection of milk from a bulk tank is outdated. Farm sanitation methods have improved since Wisconsin's rule was first adopted. Frequent testing can allow dairy plants to quickly address problems related to bulk tank cleanliness and drug residues. As the number of dairy farms has decreased, farms have become larger, and per cow milk production has risen, many farms have purchased larger or additional bulk tanks, thereby creating new challenges for managing milk collection. On other farms, milk production increases have outpaced the expansion of milk tank volume, which also creates milk collection challenges. Allowing partial collection of milk from bulk tanks will provide industry with the flexibility needed to manage milk collection from farms more efficiently. In the long run, increased flexibility for collection of milk may result in fewer trips required to haul milk, with associated fuel savings, and less wear and tear on roadways.

The PMO allows partial collection of milk provided that certain practices are used to maintain the quality of milk. The proposed rule adopts these practices, which include a requirement that the bulk tank is emptied, cleaned and sanitized within 72 hours and that an acceptable

temperature-recording device is installed and operating on the tank. To ensure proper regulatory oversight of partial collections of milk, the proposed rule also requires a bulk milk weigher and sampler to record when a partial pickup is made and when the bulk tank is emptied.

Bulk milk tanker grade "A" permit reciprocity

The proposed rule also seeks to clarify and strengthen reciprocity requirements for bulk milk tanker Grade "A" permits. The PMO requires that each bulk milk tank truck delivering Grade "A" raw milk and milk products bear a Grade "A" permit. Grade "A" permits may only be issued after satisfactory completion of an inspection that addresses specific items outlined in the PMO. Each bulk milk tanker is required to be inspected once per year and the bulk milk tanker operator must be able to show proof of a current permit and passed inspection to deliver Grade "A" milk and milk products. The PMO requires that each bulk milk tanker only need bear one permit from an appropriate state regulatory agency and that each permit be recognized by the appropriate regulatory agencies in other states under the reciprocal agreements of the NCIMS.

Under s. 97.21 (2) (a) and (b), Stats., any bulk milk tanker that operates in Wisconsin must hold a license and a Grade "A" permit. Under the current rule, a Grade "A" permit is routinely issued for each tanker as an endorsement on the license. Since any tanker that operates in Wisconsin must hold a license, Grade "A" permits are issued both to tankers based in Wisconsin and out-of-state tankers that operate in Wisconsin. However, because Wisconsin-licensed tankers are not necessarily based in Wisconsin, it may not be possible to conduct the annual inspection required to make the Grade "A" permit valid.

The proposed rule will end the practice of routinely providing a Grade "A" permit as part of the licensing process and clarify that a Grade "A" permit will only be granted after completion of the required annual inspection, as required by the PMO. It also clarifies that the department will recognize valid Grade "A" permits issued by another equivalent state regulatory agency if the bulk milk tanker operator can provide proof of a current passed inspection. These changes will allow out-of-state tankers to seek Grade "A" inspections from the regulatory agency in the state in which their tankers are based and will bring Wisconsin into compliance with reciprocity requirements of the PMO and the NCIMS.

Certified industry inspection program for bulk milk tankers

Often, logistical issues make it difficult for the department to schedule annual bulk milk tanker inspections in a timely manner. Bulk milk tankers must hold a valid Grade "A" permit and demonstrate they've passed an annual inspection to deliver Grade "A" milk and milk products. If a Wisconsin tanker tries to deliver Grade "A" milk or milk products without a current inspection, the tanker load may be turned away or another state regulatory agency may conduct an inspection and charge the tanker operator a fee. To ensure that all Wisconsin-based bulk milk tankers receive an annual inspection, the proposed rule will also establish a certified industry inspection program for inspecting bulk milk tankers.

Section 5 of the PMO allows state regulatory agencies to certify certain industry personnel to carry out bulk milk tanker inspections. Certified industry inspections are carried out under a cooperative arrangement with the state regulatory agency. Section 97.32, Stats., also establishes procedures that allow the department to appoint industry personnel to conduct special food and dairy inspections. The proposed rule allows

the department to select industry inspection personnel for the certified inspection program in accordance with s. 97.32, Stats., and adopts PMO procedures for conducting certified industry inspections. The PMO establishes stringent procedures for ensuring proper regulatory oversight of industry inspections so that inspections are conducted consistently and that they effectively evaluate bulk milk tanker equipment construction, cleaning, sanitation and repair. The rule authorizes certified industry inspectors to perform all regulatory actions associated with issuing a Grade “A” permit for bulk milk tankers, establishes selection procedures, establishes a certification period of 3 years, and establishes record retention requirements. The proposed rule allows the department to revoke certification if a certified industry inspector fails to meet the requirements of the program. Under the proposed rule, bulk milk tankers must be inspected annually by the department, another equivalent regulatory agency, or a certified industry inspector.

Other changes to modernize Chapter ATCP 82

In addition to clarifying practices for recognizing reciprocity with other states for bulk milk tanker Grade “A” permits and allowing partial collection of milk from bulk tanks, the proposed rule also makes other changes designed to modernize the rule and further align the rule with the PMO. The proposed rule:

- Removes the definition of “milk hauler” and use of the term “milk hauler” and instead defines and uses “bulk milk weigher and sampler” to reflect current terminology which more fully encompasses the tasks performed. The definitions are also revised to clarify that use of the term “department” throughout the rule refers to the Department of Agriculture, Trade and Consumer Protection.
- Removes the requirement that a bulk milk tanker operator must clean and sanitize the milk tankers and instead specifies that the tanker must be cleaned and sanitized adequately. The proposed rule focuses on the task that must be accomplished, rather than who must accomplish it.
- Clarifies that personnel at the entity responsible for cleaning and sanitizing a bulk milk tanker must remove the old cleaning tag and retain it, and put a new cleaning tag on the tanker. Formerly, the tanker operator retained the old tag. The proposed rule thereby keeps the records at the location where the documented action occurred.
- Adds a requirement that, in addition to obtaining a license, a Bulk Milk Weigher and Sampler who seeks to hold the Grade “A” permit necessary for collection of Grade “A” samples must be inspected every two years. This requirement will bring Wisconsin’s bulk milk weigher and sampler requirements into compliance with the PMO. There will be no additional fees for these inspection and permit requirements.
- Removes the requirements that the tanker access port(s) be sealed after the tanker is filled with milk, and that a broken seal(s) must be reported to the department. This requirement was originally added to ch. ATCP 82 in response to industry concerns about intentional adulteration (tampering). However, the PMO does not require tanker access ports to be sealed after filling, and the Wisconsin requirement to report broken seals to the department has only been occasionally invoked. When the requirement has been invoked, it has proven to be superfluous in light of existing industry food defense practices.

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

The PMO establishes minimum standards for regulation of Grade “A” dairy products. States must set standards equivalent to, or more stringent than, those in the PMO to be allowed to ship Grade “A” milk in interstate commerce. These rule changes will bring Wisconsin’s regulations regarding milk pick up, sampling and delivery in line with the 2011 PMO.

Comparison with rules in adjacent states

Michigan, Minnesota, Iowa, and Illinois adopt the PMO as part of their dairy regulations and therefore already allow partial collection of milk from bulk milk tanks. The proposed rule will also align Wisconsin’s regulations with the PMO and these neighboring states for licensing and permitting of Grade “A” tankers and Bulk Milk Weighers and Samplers. Each of these states licenses milk tankers, and issues a Grade “A” permit after inspection. Some states charge a fee associated with these inspections.

Summary of factual data and analytical methodologies

Proposed rule changes were developed after consultation with industry, a review of PMO requirements, and a review of practices in neighboring states.

Analysis and supporting documents used to determine effect on small business

The PMO makes no distinction between large and small businesses in establishing requirements for Grade “A” collecting, sampling and transporting milk and milk products. The expected cost for installing a 7–day temperature recording device was determined after consultation with industry.

Effect on Small Business

The proposed rule changes will impact dairy producers, dairy plants, and companies that operate bulk milk tankers, many of which may be small businesses. The proposed rule does not substantially alter requirements which dairy–related businesses already meet. The rule does not increase license or permit fees. All Grade “A” dairy businesses, whether large or small, must meet regulations that are substantially in compliance with the FDA’s PMO in order to collect, sample, and transport Grade “A” dairy products and no special accommodation may be made for small businesses. Allowing partial collection of milk from bulk tanks will be voluntary, but will provide management flexibility to businesses of all sizes, including small businesses. Other provisions, such as clarifying reciprocity procedures and adopting a certified industry inspection program for bulk milk tankers, will also benefit small businesses by ensuring the timely inspection of tankers for Grade “A” permits. A valid Grade “A” permit is required to transport and deliver Grade “A” dairy products.

If the proposed rule is adopted, some dairy producers may incur costs if they need to purchase a 7–day temperature recording–device for their bulk milk tank. The PMO requires all bulk milk tanks produced after January 1, 2000 to be equipped with an approved temperature recording device, but dairy producers who own older tanks may need to purchase a temperature recording device to allow partial collection of milk from their bulk tanks. However, partial collection of milk from bulk tanks will be voluntary and individual dairy businesses will determine whether to use this option based on their own business needs. Producers will not be required to install a 7–day temperature recording device if partial collections of milk are not made from the tank. Producers

who have partial collections of milk from their bulk tanks may expect to offset some costs through reduced water and chemical use for bulk tank cleaning.

Proposed rule changes related to inspecting and providing Grade “A” permits for bulk milk tankers and bulk milk weighers and samplers who seek to hold a Grade “A” permit will have no impact on small business since bulk milk tankers and bulk milk weighers and samplers are already required to be licensed and inspected. The rule does not increase license or permit fees.

The proposed rule also assists small businesses by simplifying regulations regarding cleaning and sanitizing milk tankers, clarifying procedures for retaining bulk milk tanker cleaning tags, and removing an unnecessary requirement for reporting broken seals on tankers.

Regulatory Flexibility Analysis

Rule summary

The following proposed rule changes are needed to maintain Wisconsin’s reputation for its world class dairy products by ensuring that inspection practices are aligned with the Food and Drug Administration’s (FDA’s) Grade “A” Pasteurized Milk Ordinance (PMO). The PMO establishes minimum standards for Grade “A” dairy products. Wisconsin dairy producers and bulk milk weighers and samplers must meet state regulatory standards substantially equivalent to, or more stringent than, those in the PMO in order for Wisconsin Grade “A” milk to enter interstate commerce. The PMO standards are established by the National Conference on Interstate Milk Shipments (NCIMS), which consists of voting representatives from dairy regulatory agencies in each state.

Partial collection of milk from bulk milk tanks

The rule proposes adopting a provision of the PMO that allows, but does not require, bulk milk weighers and samplers to make partial collections of milk from bulk tanks on dairy farms. The PMO allows partial collections if certain practices are used to maintain the quality of milk. The proposed rule adopts these practices, including a requirement that the bulk tank is emptied, cleaned and sanitized within 72 hours and that an acceptable temperature–recording device is installed and operating on the tank. To ensure proper regulatory oversight of partial collections of milk, the proposed rule also requires a bulk milk weigher and sampler to record when a partial pickup is made and when the bulk tank is emptied.

Bulk milk tanker grade “A” permit reciprocity

The proposed rule also clarifies and strengthens reciprocity requirements for bulk milk tanker Grade “A” permits. The PMO requires that each bulk milk tank truck delivering Grade “A” raw milk and milk products bear a Grade “A” permit, which may only be issued after satisfactory completion of an annual inspection. The bulk milk tanker operator must be able to show proof of a current permit and passed inspection to deliver Grade “A” milk and milk products. The PMO requires that each bulk milk tanker only need bear one permit from an appropriate state regulatory agency and that each permit be recognized by the appropriate regulatory agencies in other states under the reciprocal agreements of the NCIMS.

Under s. 97.21 (2) (a) and (b), Stats., any bulk milk tanker that operates in Wisconsin must hold a license and a Grade “A” permit. Under the current rule, a Grade “A” permit is routinely issued for each tanker as an endorsement on the license. Since any tanker that operates in Wisconsin must hold a license, Grade “A” permits are issued both to tankers

located in Wisconsin and out-of-state tankers that operate in Wisconsin. However, because some Wisconsin-licensed tankers are not necessarily based in Wisconsin, it may not be possible to conduct the annual inspection required to make the Grade “A” permit valid.

The proposed rule will end the current practice of routinely providing a Grade “A” permit as part of the licensing process and clarifies that a Grade “A” permit will only be granted after completion of the annual inspection, as required by the PMO. It also clarifies that the department will recognize valid Grade “A” permits issued by an equivalent regulatory agency in another state if the bulk milk tanker operator can provide proof of a current passed inspection. These changes will allow out-of-state tankers to seek Grade “A” inspections from the regulatory agency in the state in which their tankers are located and will bring Wisconsin into compliance with reciprocity requirements of the PMO.

Certified industry inspection program for bulk milk tankers

Often, logistical issues make it difficult for the department to schedule annual bulk milk tanker inspections in a timely manner. If a Wisconsin tanker tries to deliver Grade “A” milk or milk products outside Wisconsin without proof of a current inspection, the tanker load may be turned away or another state regulatory agency may conduct an inspection and charge the tanker operator an inspection fee. To further ensure that all Wisconsin-based bulk milk tankers receive an annual inspection in a timely manner, the proposed rule will also establish a voluntary certified industry inspection program, in accordance with the PMO, for inspecting bulk milk tankers. The PMO requires, and the proposed rule adopts, stringent procedures for ensuring proper regulatory oversight of certified industry inspections so that inspections are conducted consistently and that they effectively evaluate bulk milk tanker equipment, construction, cleaning, sanitation and repair. The proposed rule would allow the department to select industry inspection personnel who wish to participate in the program in accordance with s. 97.32, Stats., which outlines procedures for the department to appoint special food and dairy inspectors.

Other changes to modernize Chapter ATCP 82

The proposed rule also makes other changes designed to modernize the rule and further align the rule with the PMO, including:

- Replacing the term “milk hauler” with “bulk milk weigher and sampler” to reflect current terminology which more fully encompasses the tasks performed by a bulk milk weigher and sampler. The definitions would also be revised to clarify that use of the term “department” throughout the rule refers to the Department of Agriculture, Trade and Consumer Protection.
- Removing the requirement that a bulk milk tanker operator must clean and sanitize the milk tankers, while maintaining the requirement that the tanker must be cleaned and sanitized adequately. The proposed rule focuses on the task that must be accomplished, rather than who must accomplish it.
- Clarifying that personnel at the entity responsible for cleaning and sanitizing a bulk milk tanker must remove the old cleaning tag and retain it, and put a new cleaning tag on the tanker. Formerly, the tanker operator retained the old tag. Under the proposed rule the records would be kept at the location where the documented action occurred.

- Adding a requirement that, in addition to obtaining a license, a bulk milk weigher and sampler who seeks to hold the Grade “A” permit necessary for collection of Grade “A” samples must be inspected every two years. There will be no additional fee for the inspection and permit.
- Removing the requirements that the tanker access port(s) be sealed after the tanker is filled with milk, and that a broken seal(s) must be reported to the department. This requirement was originally added to ch. ATCP 82 in response to industry concerns about intentional adulteration (tampering). However, the PMO does not require tanker access ports to be sealed after filling, and the Wisconsin requirement to report broken seals to the department has only been occasionally invoked. When the requirement has been invoked, it has proven to be superfluous in light of existing industry food defense practices.

Small businesses affected

The proposed rule changes will impact dairy producers, dairy plants, and companies that operate bulk milk tankers, many of which may be small businesses. The proposed rule does not substantially alter requirements dairy-related businesses already meet. The rule does not increase license or permit fees. All Grade “A” dairy businesses, whether large or small, must meet regulations that are substantially in compliance with the FDA’s PMO in order to collect, sample, and transport Grade “A” dairy products and no special accommodation may be made for small businesses. Allowing partial collection of milk from bulk tanks will be voluntary, but will provide management flexibility to businesses of all sizes, including small businesses. Other provisions, such as clarifying reciprocity procedures and adopting a certified industry inspection program for bulk milk tankers, will also benefit small businesses by ensuring the timely inspection of tankers for Grade “A” permits. A valid Grade “A” permit is required to transport and deliver Grade “A” dairy products.

If the proposed rule is adopted, some dairy producers may incur costs if they need to purchase a 7-day temperature recording device for their bulk milk tank. The PMO requires all bulk milk tanks produced after January 1, 2000 to be equipped with an approved temperature recording device, but dairy producers who own older tanks may need to purchase a temperature recording device to allow partial collection of milk from their bulk tanks. However, partial collection of milk from bulk tanks will be voluntary and individual dairy businesses will determine whether to use this option based on their own business needs. Producers will not be required to install a 7-day temperature recording device if partial collections of milk are not made from the tank. Producers who have partial collections of milk from their bulk tanks may expect to offset some costs through reduced water and chemical use for bulk tank cleaning.

Proposed rule changes related to inspecting and providing Grade “A” permits for bulk milk tankers and bulk milk weighers and samplers who seek to hold a Grade “A” permit will have no impact on small business since bulk milk tankers and bulk milk weighers and samplers are already required to be licensed and inspected. The rule does not increase license or permit fees.

The proposed rule also assists small businesses by simplifying regulations regarding cleaning and sanitizing

milk tankers, clarifying procedures for retaining bulk milk tanker cleaning tags, and removing an unnecessary requirement for reporting broken seals on tankers.

Reporting, bookkeeping and other procedures

The proposed rule would require a bulk milk weigher and sampler to record when they make a partial collection of milk from a bulk milk tank. The rule would not require any additional reporting, bookkeeping or other procedures.

Professional skills required

The proposed rule does not require any new professional skills by small businesses.

Accommodation for small business

All Grade “A” dairy businesses, whether large or small, must meet regulations that are substantially in compliance with the Food and Drug Administration’s Pasteurized Milk Ordinance in order to collect, sample, and transport Grade “A” dairy products. The provision in the rule allowing partial collection of milk from bulk tanks is optional and while it is expected to primarily benefit larger businesses, it could also provide small businesses with more management flexibility. Other provisions in the rule will not substantially alter current practice. No special accommodation for small business may be made.

Conclusion

The provisions in this proposed rule will benefit Wisconsin’s dairy industry. If adopted, this rule will provide more flexibility for dairy-related businesses that collect and transport bulk milk. It will clarify and simplify Grade “A” permit requirements for milk tankers and bulk milk weighers and samplers. It will remove an unnecessary reporting requirement. Implementation costs associated are expected to be minimal and the rule does not increase license or permit fees.

This rule will not have a significant adverse effect on “small business” and is not subject to the delayed “small business” effective date provided in s. 227.22 (2) (e), Stats.

DATCP will, to the maximum extent feasible, seek voluntary compliance with this rule.

DATCP Contact

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Place where Comments are to be Submitted and Deadline for Submission

Questions and comments related to this rule will be accepted until January 31, 2014, and may be directed to

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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

ATCP 82, Milk Haulers

3. Subject

Bulk milk collection, sampling and transportation

4. Fund Sources Affected

GPR FED PRO PRS SEG SEG-S

5. Chapter 20, Stats. Appropriations Affected

20.115(1)(gb)

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 dairy industry is an important part of Wisconsin's economy. Wisconsin ranks second nationally in milk production and has 10,900 licensed dairy farms. Milk is shipped from each of these farms in a licensed bulk milk tanker (approximately 4,000 in Wisconsin) to one of more than 400 licensed dairy plants in the state or to a licensed dairy plant in another state. Safe and sanitary handling of milk throughout the collection and transportation process is critical for protecting the quality of milk produced in this state. Accurate measurement of collected milk and proper sampling of milk for analysis help ensure fair payment and milk safety, respectively. The proposed rule changes are needed to maintain Wisconsin's reputation for its world class dairy products by aligning inspection practices with the Food and Drug Administration's (FDA's) Grade "A" Pasteurized Milk Ordinance (PMO). The PMO establishes minimum standards for Grade "A" dairy products. States must set and enforce standards substantially equivalent to, or more stringent than, those in the PMO to be allowed to ship Grade "A" milk and milk products in interstate commerce. The PMO standards are revised every two years, requiring DATCP to make periodic changes to dairy-related rules to ensure that Wisconsin maintains substantial compliance with the PMO and can continue to ship Grade "A" milk and milk products to other states.

The proposed rule updates terminology related to bulk milk weighers and samplers, adopts procedures for allowing partial collections of milk from bulk milk tanks, establishes procedures for ensuring state-to-state reciprocity for inspecting and issuing Grade "A" permits for bulk milk tankers and also establishes a certified industry inspection program for issuing Grade "A" permits for bulk milk tankers. The proposed rule adds a requirement that a bulk milk weigher and sampler who seeks to hold a Grade "A" permit necessary for collection of Grade "A" samples be inspected every two years, as required under the PMO. The rule allows more flexibility in who may clean and sanitize a bulk milk tanker, clarifies where the cleaning tag must be retained, and removes an unnecessary reporting requirement for broken seals on tanker access ports.

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 rule impacts milk hauling companies, dairy plants and dairy producers. Division of Food Safety administrators met with the Board of Directors for the Wisconsin Milk Haulers Association and the Board of Directors of the Wisconsin Cheesemakers Association. The Division also contacted the following organizations requesting comments on the potential economic impact of the rule: Dairy Business Association, Professional Dairy Producers of Wisconsin, Cooperative Network, Wisconsin Milk Haulers Association, Wisconsin Association of Dairy Plant Field Representatives, Midwest Food Processors Association, Wisconsin Cheesemakers Association, and the Wisconsin Dairy Products Association.

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

Grade "A" standards for bulk milk collection, sampling, and transportation are regulated by the State of Wisconsin's Department of Agriculture, Trade and Consumer Protection. Local governmental units are not impacted by this rule and did not participate in development of this 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)

The rule will impact the dairy industry as a whole, dairy plants, milk hauling companies, and dairy producers.

Overall, the rule changes are expected to have a positive economic impact on the dairy industry. Allowing partial collections of milk from bulk milk tanks may have a positive financial impact on trucking firms as it will allow them to more efficiently plan daily pickup routes, saving fuel and time costs. These cost savings may be significant for some dairy plants and trucking firms. Adopting this rule change will bring Wisconsin's dairy regulations in alignment with the PMO and with regulations adopted by neighboring states, providing a level playing field for Wisconsin businesses. As a voluntary option, this rule change will allow dairy plants and bulk milk tanker operators to decide whether to make partial collections of milk from bulk milk tanks based on business needs.

Under the proposed rule, partial collections of milk from bulk tanks will be allowed if a bulk milk tank is equipped with a seven day temperature recording device. Bulk tanks that were manufactured and installed prior to 2001 may not be equipped with this device; installation would be required if partial collections of milk are made from the tank. The cost for installing a recording device on an existing tank is expected to be approximately \$1,500. However, an unknown number of bulk tanks, especially bulk tanks on larger farms where partial collections of bulk milk may be most likely to occur, may already be equipped with the necessary recording devices. Some of the cost for installing a temperature recording device may be offset over time from savings in reduced water and chemical usage for bulk tank cleaning and time saved in conducting milking operations.

Rule changes regarding Grade "A" permits for bulk milk tankers will also provide a positive economic benefit to companies that operate milk tankers by ensuring they receive a Grade "A" inspection and permit in a timely manner. Bulk milk tanker operators must be able to show proof of a current Grade "A" permit and passed inspection to deliver Grade "A" milk and milk products. If a Wisconsin tanker tries to deliver Grade "A" milk or milk products outside Wisconsin without proof of a current inspection, the tanker load may be turned away or a regulatory agency from the receiving state may conduct the required inspection and charge the tanker operator an inspection fee in addition to the licensing fees they have already paid. To ensure that all Wisconsin-based bulk milk tankers receive an annual inspection in a timely manner, the proposed rule establishes procedures which clarify and strengthen reciprocity requirements for bulk milk tankers based in other states, allowing Wisconsin to focus inspection resources on tankers based primarily in Wisconsin. The rule also establishes a certified industry inspection program which is an additional method allowed under the PMO that may be used to conduct required annual bulk milk tanker inspections.

This rule will have no impact on local governmental units or public utility rate payers.

Comments Received and Response

The Division received one comment from an industry representative regarding the potential economic impact of the rule. The comment indicated support of the provision that would allow partial collections of milk from bulk tanks, indicating that it will help their business in the logistical planning of milk pick ups, and allow them to cut some of their trucking costs.

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

Allowing the partial collection of milk from bulk tanks may allow dairy producers to produce larger quantities of milk without investment in new bulk tanks and may allow trucking firms more flexibility in planning milk pick up logistics. It will provide dairy plants and other companies that operate bulk milk tankers to more efficiently plan pick-up routes, saving fuel and time costs. It will also bring Wisconsin’s regulations into alignment with regulations in neighboring states, allowing dairy-related companies in Wisconsin to continue to compete fairly with the dairy industry in other states. By recognizing Grade “A” permit inspections issued in other states to out-of-state tankers that operate in Wisconsin, Wisconsin will more clearly be in compliance with reciprocity requirements in the PMO. Establishing reciprocity procedures will also allow Wisconsin to focus inspection resources on tankers based primarily in Wisconsin and ensuring that they receive Grade “A” inspections and permits in a timely and efficient manner. The voluntary certified industry inspection program for bulk milk tankers, as authorized by the PMO, will provide another tool for ensuring all Wisconsin bulk milk tankers receive an annual inspection in a timely manner. Other rule changes provide businesses with more flexibility by deleting the requirement that a bulk milk tanker operator must be the person who cleans and sanitizes the tanker and removing an unnecessary reporting requirement for broken tanker seals.

Currently, Wisconsin’s dairy regulations are substantially in compliance with the PMO. The PMO is updated every two years and it is important that Wisconsin periodically revise its dairy regulations to maintain equivalency with the PMO. The alternative of not adopting these rule changes will not immediately impact Wisconsin’s ability to ship Grade “A” milk and milk products in interstate commerce, but eventually could lead to Wisconsin failing an FDA audit of compliance with the PMO. However, these rule changes will ensure Wisconsin’s regulations related to the collection, sampling, and transportation of Grade “A” milk and milk products are better aligned with the PMO. Without these rule changes, some Wisconsin dairy businesses may find themselves at a disadvantage to dairy businesses in other states that have adopted regulations allowing partial collections of milk from milk tanks. These rule changes also will allow Wisconsin to more effectively manage required annual Grade “A” inspections for the 4,000 bulk milk tankers that operate in the state.

14. Long Range Implications of Implementing the Rule

Implementing this rule will ensure that Wisconsin continues to maintain substantial compliance with the PMO and can continue to ship Grade “A” milk and milk products in interstate commerce. It will ensure that Wisconsin’s dairy-related businesses continue to fairly compete against dairy businesses in other states that have adopted the PMO.

15. Compare With Approaches Being Used by Federal Government

The Food and Drug Administration’s (FDA’s) Grade “A” Pasteurized Milk Ordinance (PMO) establishes minimum regulatory standards for Grade “A” dairy products. States must enact standards substantially equivalent to, or more stringent than, those in the PMO to be allowed to ship Grade “A” milk in interstate commerce. The proposed rule changes are consistent with approaches in the PMO.

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

Michigan, Minnesota, Iowa and Illinois adopt the PMO as part of their dairy regulations and therefore already allow partial collections of milk from bulk milk tanks. The proposed rule will also align Wisconsin’s regulations with the PMO and neighboring states for licensing and permitting of Grade “A” tankers and Bulk Milk Weighers and Samplers. Each of these states licenses milk tankers, and issues a Grade “A” permit after inspection. Some states charge an inspection fee associated with these inspections.

17. Contact Name Pete Haase, Director–Bureau of Food Safety and Inspection	18. Contact Phone Number (608) 224–4711
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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)**

This rule is expected to have a positive impact and will not have an adverse effect on small business. It does not substantially alter requirements small dairy-related businesses already meet and does not increase license or permit fees. Allowing partial collection of milk from bulk tanks will be voluntary and will allow businesses of all sizes, including small businesses, to manage milk collection and transportation efficiently. Since partial collection of milk will be voluntary, each business will determine whether to use this option based on their own business needs. Other provisions, such as clarifying reciprocity procedures and adopting a certified industry inspection program for bulk milk tankers will also benefit small businesses that operate bulk milk tankers by ensuring the timely inspection of tankers for Grade "A" permits. A valid Grade "A" permit is required to transport and deliver Grade "A" dairy products. Provisions allowing more flexibility for who cleans and sanitizes bulk milk tankers and removing an unnecessary reporting requirement for broken seals on tankers will also benefit businesses of all sizes.

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

The agency requested comment on the potential economic impact of the rule from the following organizations: Dairy Business Association, Professional Dairy Producers of Wisconsin, Cooperative Network, Wisconsin Milk Haulers Association, Wisconsin Association of Dairy Plant Field Representatives, Midwest Food Processors Association, Wisconsin Cheesemakers Association, and the Wisconsin Dairy Products Association.

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

While the agency considered methods for reducing the impact of the rule on small businesses, all Grade "A" dairy businesses, whether large or small, must meet regulations that are substantially in compliance with the Food and Drug Administration's Pasteurized Milk Ordinance in order to collect, sample, and transport Grade "A" dairy products. No special accommodation may be made for small businesses. The provision in the rule allowing partial collection of milk from bulk tanks is optional and while it is expected to primarily benefit larger businesses, it could also provide small businesses with more management flexibility. Other provisions in the rule will not substantially alter current practice.

5. Describe the Rule's Enforcement Provisions

The proposed rule does not modify existing enforcement provisions related to the collection, sampling, and transportation of milk. All food, dairy and state-inspected meat businesses are regulated under Chapter 97 of the Wisconsin Statutes. Enforcement provisions for these businesses are outlined in s. 97.72 and 97.73 and apply to both small and large businesses. ATCP 82.16 also contains specific provisions against falsifying records or reports required under ATCP 82, including records related to milk samples and records describing the amount of milk collected from a dairy farm.

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

- Yes No

Notice of Hearing**Agriculture, Trade and Consumer Protection****CR 13-107**

(DATCP DOCKET # 13-R-11)

The Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) announces that it will hold a public hearing on an emergency rule and proposed permanent rule to revise Chapter ATCP 136, relating to mobile air conditioners; reclaiming or recycling refrigerant.

(Note: The emergency rule had not been filed with the Legislative Reference Bureau at the time this Register was compiled.)

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

Hearing Information**Date:** **Tuesday, January 21, 2014****Time:** 1:00 p.m. to 3:00 p.m.

Location: Board Room (1st Floor)
 Department of Agriculture, Trade and
 Consumer Protection
 2811 Agriculture Drive
 Madison, Wisconsin 53718-6777

Hearing impaired persons may request an interpreter for this hearing. Please make reservations for a hearing interpreter by January 17, 2014, by writing to Jennifer

Heaton–Amrhein, Division of Trade and Consumer Protection, P.O. Box 8911, Madison, WI 53708–8911; or by emailing jennifer.heaton-amrhein@wisconsin.gov; or by telephone at (608) 224–5164. Alternatively, you may contact the DATCP TDD at (608) 224–5058. The hearing facility is handicap accessible.

Appearances at Hearing and Submission of Written Comments

DATCP invites the public to attend the hearings and comment on the emergency rule and proposed permanent rule. Following the public hearing, the hearing record will remain open until **January 24, 2014**, for additional written comments. Comments may be sent to the Division of Trade and Consumer Protection at the address below, or to jennifer.heaton-amrhein@wisconsin.gov or to <http://adminrules.wisconsin.gov>.

Copies of Rule

You can obtain a free copy of the emergency rule and the hearing draft rule and related documents, including the economic impact analysis, by contacting the Wisconsin Department of Agriculture, Trade and Consumer Protection, Division of Trade and Consumer Protection, 2811 Agriculture Drive, P.O. Box 8911, Madison, WI 53708. You can also obtain a copy by calling (608) 224–5164 or by emailing jennifer.heaton-amrhein@wisconsin.gov. Copies will also be available at the hearing. To view the emergency rule or hearing draft rule online, go to: <http://adminrules.wisconsin.gov>.

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

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

This hearing draft rule and the emergency rule make changes to an existing rule, ch. ATCP 136, Mobile Air Conditioners; Recycling and Reclaiming of Refrigerants administered by the department of Agriculture, Trade and Consumer Protection (“DATCP”). The existing rule contains environmental protections related to allowable refrigerants and their handling and disposal and registration and training requirements for business operators and technicians. This rule will eliminate the \$120 annual registration fee for operators of mobile air conditioning businesses, harmonize training requirements with EPA to eliminate duplication, and remove outdated references to statutes that no longer exist.

Statutes interpreted

Section 100.45, Wis. Stats.

Statutory authority

Sections 93.07 (1), 100.20 (2), 100.45 (5) and (5e), Wis. Stats.

Explanation of statutory authority

DATCP has broad general authority, under s. 93.07 (1), Stats., to interpret laws under its jurisdiction.

DATCP has broad authority under s. 100.20 (2), Stats., to write general orders to forbid methods of competition in business or trade practices in business which are determined by the department to be unfair or to prescribe methods of

competition in business or trade practices in business which are determined by the department to be fair.

DATCP has specific authority under s. 100.45 (5) (a), Stats., to promulgate rules establishing standards for recycled refrigerant based on recognized national industry standards and qualifications for individuals and businesses that service mobile air conditioners.

Related statutes and rules

This proposed rule and the emergency rule modify an existing rule chapter. Chapter ATCP 136, Mobile Air Conditioners; Reclaiming or Recycling Refrigerant, regulates the repair or service of motor vehicle air conditioners and trailer refrigeration equipment. This rule relates to s. 100.45, Stats., Mobile Air Conditioners.

Plain Language Analysis

Background

The existing ch. ATCP 136 establishes requirements for buying, selling, reclaiming and recycling ozone depleting refrigerants. The requirements are consistent with those under federal law. The rule also 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 requires businesses to register their mobile air service technicians and technicians to successfully complete a department–approved training course or satisfy other training requirements.

Prior to 2011, Wisconsin was the only state where the sale of the small cans of substitute, non–ozone depleting refrigerant was prohibited. In 2011, the Legislature modified s. 100.45, Stats., to allow the sale of these products. One result of the law change was that the Wisconsin specific training became redundant with the EPA required training. Mobile air conditioner repair businesses also report they have lost business to do it yourselves who can now purchase supplies to make the repairs themselves.

Rule content

This rule and the emergency rule do all of the following:

- Eliminates the mobile air conditioner repair business \$120 annual registration fee. Surcharge fees are maintained.
- Modifies mobile air conditioner repair technician training requirements.
- Removes references to obsolete Department of Safety and Professional Services (DSPA) licensing requirements.

DATCP proposes to eliminate the \$120 annual registration fee and streamline the training requirements currently required under this rule. These modifications will harmonize DATCP’s rule with federal law and reduce overall regulatory burdens. The proposed rule also removes references to obsolete DSPA licensing requirements and makes other minor modifications needed to ensure uniformity between the statute and rule. Surcharge fees for operating without a registration are required under s. 100.45 (5m), Stats., and are not affected by this rule change.

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

At the federal level, the Environmental Protection Agency (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 existing

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 and the emergency rule, a technician who completes the EPA approved course would meet the DATCP training requirements.

This rule is consistent with federal laws related to buying, selling, reclaiming, and recycling ozone-depleting refrigerants.

Comparison with rules in adjacent states

The existing ch. ATCP 136 exceeds the training requirements for technicians in adjacent states. The proposed rule and the emergency rule bring Wisconsin's training requirements into conformity with rules in neighboring states.

Summary of factual data and analytical methodologies

This proposed rule does not depend on a complex analysis of data. The 2011 Legislative change to the statute prompted the change to this rule. This rule and the emergency rule harmonize Wisconsin's training requirements with federal law and improves consistency with surrounding states. The department has determined it has adequate revenues to administer the program with the fee reduction.

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

This proposed rule and the emergency rule eliminate registration fees and modifies training requirements. Businesses will benefit from the reduction in fee and training expenses. The rule would save approximately 3,500 businesses a \$120 annual registration fee for a total savings of about \$420,000 each year. In addition, the 11,000 technicians who register annually with the department would be able to use their EPA approved training course to meet Wisconsin's training requirements. This cost savings is indeterminate, but would save technicians and businesses both training registration fees and time away from their jobs.

Effect on Small Business

This proposed rule and the emergency rule will eliminate a minimum of \$420,000 annually in unneeded registration fees and duplicative training requirements. This rule will not have a negative effect on small business.

Initial Regulatory Flexibility Analysis

Rule summary

The rule interprets s. 100.45, Stats., the Mobile Air Conditioner; reclaiming and recycling refrigerants law administered by the Department of Agriculture, Trade and Consumer Protection ("DATCP"). Chapter ATCP 136 establishes requirements for buying, selling, reclaiming and recycling ozone depleting refrigerants. The requirements are consistent with those under federal law. The rule also 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 requires businesses to register their mobile air service technicians and technicians to successfully complete a department approved training course or satisfy other training requirements.

Rule content

The proposed rule does all of the following:

- Eliminates the mobile air conditioner repair business \$120 annual registration fee. Surcharge fees are maintained.
- Modifies mobile air conditioner repair technician training requirements.
- Removes references to obsolete Department of Safety and Professional Services (DSPS) licensing requirements.

DATCP proposes to eliminate the \$120 annual registration fee and streamline the training requirements currently required under this rule. These modifications will harmonize DATCP's rule with federal law and reduce overall regulatory burdens. The proposed rule also removes references to obsolete DSPS licensing requirements and makes other minor modifications needed to ensure uniformity between the statute and rule. Surcharge fees for operating without a registration are required under s. 100.45 (5m), Stats., and are not affected by this rule change.

Small business affected

The proposed rule will have a positive impact on operators of mobile air conditioner repair businesses and will not have a negative effect on businesses. This rule affects businesses in the following ways:

Eliminates the annual registration fee

- Under the proposed rule, the \$120 annual registration fee for operators of mobile air conditioner repair businesses will be eliminated. With approximately 3500 businesses statewide, this will result in a savings of \$420,000 annually for small businesses.

Eliminates duplicative training requirements

- Prior to 2011, Wisconsin was the only state that prohibited the sale of small cans of non-ozone depleting ("substitute") refrigerant. For this reason, the state had Wisconsin specific technician training requirements. With the change in law that now allows the sale of small cans of substitute refrigerant, the Wisconsin specific training is no longer needed. Under this proposed rule, technicians who pass an EPA approved training course will meet Wisconsin's training requirement. This will save businesses and technicians an indeterminate amount of time and money as the technicians will no longer have to complete an additional training course.

Reporting, bookkeeping and other procedures

The proposed rule does not change existing reporting, bookkeeping or other procedures in the proposed rule for small businesses.

Professional skills required

The proposed rule eliminates the duplicative training requirements for technicians of mobile air conditioner businesses. However, technicians must still complete an approved training course.

Accommodation for small business

Many of the businesses affected by this rule are "small businesses." This proposed rule does not make special exceptions for small businesses because the program encompasses mobile air conditioner repair businesses of all sizes. The proposed registration fee and technician training rule changes will benefit large and small businesses alike.

Conclusion

This proposed rule will generally benefit affected businesses, including “small businesses.” This rule will not have a negative effect on “small business,” and is not subject to the delayed “small business” effective date provided in s. 227.22 (2) (e), Stats.

have an environmental impact.

Agency contact

Jennifer Heaton–Amrhein, Division of Trade and Consumer Protection
 P.O. Box 8911
 Madison, WI 53708–8911
 Email jennifer.heaton-amrhein@wisconsin.gov
 Telephone (608) 224–5164.

Environmental Impact

The proposed rule changes and the emergency rule do not

ADMINISTRATIVE RULES FISCAL ESTIMATE AND ECONOMIC IMPACT ANALYSIS		
Type of Estimate and Analysis		
<input type="checkbox"/> Original <input type="checkbox"/> Updated <input checked="" type="checkbox"/> Corrected		
Administrative Rule Chapter, Title and Number		
Ch. ATCP 136, Mobile Air Conditioners; Reclaiming or Recycling Refrigerant		
Subject		
Mobile Air Conditioners, fees and training		
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 checked="" type="checkbox"/> SEG <input type="checkbox"/> SEG–S		20.115(1)(hm)
Fiscal Effect of Implementing the Rule		
<input type="checkbox"/> No Fiscal Effect <input type="checkbox"/> Indeterminate	<input type="checkbox"/> Increase Existing Revenues <input checked="" type="checkbox"/> Decrease Existing Revenues	<input type="checkbox"/> Increase Costs <input checked="" type="checkbox"/> Could Absorb Within Agency’s Budget <input type="checkbox"/> Decrease Costs
The Rule Will Impact the Following (Check All That Apply)		
<input type="checkbox"/> State’s Economy <input type="checkbox"/> Local Government Units	<input checked="" type="checkbox"/> Specific Businesses/Sectors <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		
ATCP 136, Wisconsin’s mobile air conditioner; recycling and reclaiming refrigerant rule, contains requirements that duplicate federal requirements. This rule revision is needed to harmonize Wisconsin’s rules with federal regulations and reduce costs for businesses.		
This proposed rule will modify the existing ch. ATCP 136, Wis. Adm. Code in three main areas. The rule:		
<ul style="list-style-type: none"> • Eliminates unneeded business registration fees; surcharge fees required by statute that apply to late registrations will continue. • Harmonizes current rules with existing federal regulations related to training of mobile air conditioner technicians. • Removes references to obsolete Department of Safety and Professional Services (DSPS) regulations. 		

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 proposed rule updates current rules related to mobile air conditioners. This rule modifies existing rule language to eliminate registration fees, harmonizes state training requirements with existing federal requirements, and makes needed administrative changes. There will be cost savings for the regulated community as a result of these changes.

Local Governments

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

Mobile Air Conditioning Businesses

This rule will impact mobile air conditioning businesses. The changes to the rule are advantageous to businesses, including small businesses. These changes are discussed under the "Benefits" section of this analysis.

This proposed rule eliminates registration fees and eliminates duplicate training requirements. These changes benefit businesses and their technicians, with no negative effects on consumers or the environment.

Utility Rate Payers

The rule will have no impact on utility rate payers.

General Public

This rule will have no impact on the general public.

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

Benefits

This rule will benefit mobile air conditioner repair businesses and technicians.

Mobile Air Conditioner Repair Technicians

Mobile air conditioner repair technicians will benefit from this rule because they will no longer need to take a Wisconsin specific training course to maintain their registration in Wisconsin. Under this rule, completion of the federally approved training program will satisfy Wisconsin's training requirements.

Mobile Air Conditioner Repair Businesses

Mobile air conditioner repair businesses will benefit as this rule will eliminate the annual registration fee and additional training requirements for technicians. This will save each business location a minimum of \$120 annually, plus associated administrative costs.

Alternatives

This rule will eliminate fees and ensure regulatory consistency between Wisconsin and federal law. If DATCP does not adopt this rule, Wisconsin will continue to require training for technicians that duplicates federal training requirements. In addition, if DATCP does not adopt this rule, businesses will continue to be required to pay the \$120 annual registration fee to the department. The alternative to adopting this rule is to maintain the existing ATCP 136 requirements.

Long Range Implications of Implementing the Rule

Long-term, implementing the rule will benefit business. The rule modifications will save businesses a minimum of \$120 annually for each business location currently required to be registered, or approximately \$420,000 annually, statewide. In addition, businesses will no longer need to pay for technicians to complete (or ensure they have completed) a Wisconsin specific training program. This rule will have no impact on the environment, as existing environmental protections in the rule and in state and federal laws will remain in effect.

Compare With Approaches Being Used by Federal Government

The training requirements in the existing rule duplicate federal requirements. With the proposed changes, the rule will be consistent with federal law.

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

All surrounding states, including Michigan, Minnesota, Illinois and Iowa, let EPA implement the mobile air conditioner regulations. Any state-specific regulations must be at least as stringent as EPA's. With the proposed changes, Wisconsin's regulations will be consistent with the EPA regulations applied in surrounding states.

Comments Received in Response to Web Posting and DATCP Response

DATCP received no comments in response to the web posting.

Notice of Hearing

Natural Resources

Fish, Game, etc., Chs. 1—

CR 13-108

(DNR # WM-21-13)

NOTICE IS HEREBY GIVEN that pursuant to sections 227.11 (2) (a) and 227.16 Stats., the Department of Natural Resources will hold public meetings on revisions to Chapters NR 1, 10, 19, and 45 Wis. Adm. Code, related to hunting and trapping in state parks.

The hearings will begin at 6:00 p.m. at each of the following locations:

Hearing Information

Date: Tuesday, January 14, 2014
Time: 6:00 p.m.
Location: Fox Valley Technical College
 D.J. Bordini Business & Industry Center
 5 Systems Drive
 Appleton, Wisconsin 54912

Date: Tuesday, January 21, 2014
Time: 6:00 p.m.
Location: DNR Service Center
 1300 W Clairemont
 Eau Claire, Wisconsin 54701

Date: Wednesday, January 22, 2014
Time: 6:00 p.m.
Location: Town of Rib Mountain Town Hall
 3700 N. Mountain Rd
 Wausau, Wisconsin, 54401

Date: Thursday, January 23, 2014
Time: 6:00 p.m.
Location: DNR Service Center
 3911 Fish Hatchery Rd.
 Fitchburg, Wisconsin, 53711

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.

Where to Submit Public Comments and Copies of the Rule

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, Department of Natural Resources, P.O. Box 7921, Madison, WI 53707 or by email to

scott.loomans@wisconsin.gov. Comments may be submitted until **January 24**. 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 of Natural Resources

Plain language analysis

These will be the first rule revisions related to hunting and trapping in state parks since passage of 2011 Act 168 which established that those activities are generally allowed. These rules will eliminate language that is no longer needed, simplify existing regulations, and create new rules related to safety. These rules will not establish new season dates or modify periods when hunting and trapping are allowed in state parks. Specifically, these rules will:

SECTION 1 updates a cross-reference to reflect where the authority to allow hunting on Ice Age Trail area properties is now established.

SECTIONS 2, 12, and 13 simplify turkey hunting regulations by eliminating the state park turkey hunting zones so that they will become part of the surrounding zone.

SECTION 3 corrects a misspelled word.

Section 4 creates a note in the section of ch. NR 10 related to furbearing animals and trapping to alert readers that additional trapping regulations are established in the section related to hunting and trapping in state parks.

SECTIONS 5 and 11 establish that dry land trapping on lands which are part of the Wisconsin State Park System is limited to the use of dog proof traps in order to protect the public safety as established in s. 29.089 (1m) (b) 2. Stats., a provision created by 2011 Act 168. Trapping on dry land will be allowed with the use of enclosed-trigger-type-traps. Raccoons are the primary species which are targeted with this trap type. Trapping will continue to be allowed using any type of trap that is otherwise legal if it is completely submerged under water.

SECTION 6 clarifies, consistent with natural resources board policy established following the enactment of 2011 ACT 168, that hunting can be allowed using archery gear after December 15 at Mirror Lake, Governor Dodge, and Mill Bluff state parks. The type of hunting specifically addressed in this section is migratory bird hunting if the seasons are still open after December 15.

SECTION 7 eliminates a prohibition of hunting small game with rifles or pistols at three state parks where small game hunting is allowed under current rules. Where hunting is allowed, rifles may be used at all other state parks and the department recently allowed the use of rifles for deer hunting statewide.

SECTION 8 creates an exception to the current noon closure of hunting hours at Governor Dodge, Mill Bluff, and

Mirror Lake state parks (except that all day hunting is allowed for migratory birds at Mirror Lake) so that hunting is allowed all day at times when hunting is generally allowed at most state parks.

SECTION 9 repeals a specific exemption from the state park leash law for hunters' dogs actively engaged in hunting at three specific parks. This provision is not necessary because a similar exemption in s. NR 45.06 (2) applies to all DNR managed lands where hunting is allowed, including state parks.

SECTION 10 eliminates registration and check-in requirements for small game hunting at three state parks where small game hunting is allowed under current rules. Additionally, this section repeals rules which would have allowed hunting at State Ice Age Trail areas. These rules are no longer needed following the enactment of 2011 Act 168.

SECTION 14 updates a cross reference to statute and clarifies that special educational hunting events may be held at state parks for species in addition to deer and turkeys, with the enactment of 2011 Act 168.

SECTION 15 clarifies that it is illegal to discharge a firearm, bow, crossbow, or air gun in an area of a state park where hunting is not allowed.

SECTION 16 amends an exception to a prohibition of hunting in state parks to reflect new rules and current law, including elimination of a cross-reference with statutes that is no longer relevant.

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

Federal regulations allow states to manage the wildlife and property 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.

Comparison with rules in adjacent states

These rule change proposals do not represent significant policy changes and do not differ significantly from surrounding states. All surrounding states have regulations and rules in place for the management and recreational use of public lands which are under their control.

Summary of factual data and analytical methodologies

Prior to 2011 Act 168, state parks were statutorily closed to hunting unless the department had written rules specifically allowing a hunting opportunity at an individual state park. Statutes did not grant rule authority for the department to allow bear hunting. Statutes did not grant rule authority to allow trapping. Today, hunting and trapping are both allowed at state parks except where the Natural Resources Board has prohibited the activities in order to protect public safety or a unique plant or animal community. Under the act, the Department may prohibit hunting or trapping on lands within 100 yards of a designated use area. Examples of designated use areas include locations such as campgrounds, certain hiking trails and beaches.

These rules simplify turkey hunting regulations by eliminating the 16 state park turkey hunting zones so that they will become part of the surrounding unit. As a result, most parks will be open to turkey hunting by people who possess a turkey permit for the zone surrounding the state park. Under previous law, it was necessary under the authorizing statute for each state park to have a season established by administrative rule. With changes that resulted from the 2011

Act 168, these parks can now open to hunting without establishing a specific season by rule for each park. This change may result in an initial increase in turkey hunting pressure because anyone who holds a turkey hunting permit for the surrounding larger zone would be able to hunt in a state park in that zone. However, turkey hunter numbers are controlled in the larger zone by the use of a permit system. The limited nature of the spring turkey season helps to assure a high quality hunt with limited amounts of interference from other hunters. The department anticipates that our limited draw permit system for the larger zone will continue to assure a quality hunt on state park areas, just as the permit system does for other public properties in a zone.

Of the 16 state park hunting zones repealed by these rule, the following 11 were open to all applicants; Governor Dodge, Devils Lake, Wyalusing, Wildcat Mountain, Mirror Lake, Buckhorn (including the wildlife area), Newport, Hartman Creek, Interstate, Willow River, and Straight Lake. Another 5 state parks turkey hunting zones which are currently open only to applicants who hold disabled permits are; Natural Bridge, Nelson Dewey, Belmont Mound, New Glarus Woods, and Rocky Arbor. Special turkey hunting opportunities for disabled hunters on private lands are not affected by these rules.

The act allowed the department to prohibit hunting in designated use areas. For safety purposes, these rules would also prohibit the discharge of firearms, air-guns, bows, and crossbows from-or-across closed areas. For instance, under these rules, it would be illegal to discharge a firearm from an area where hunting is allowed to another area where hunting is allowed if the two areas are separated by a designated hiking trail or other area which is closed to hunting.

These rules restrict trapping to the use of dog proof traps only. The type of trap that meets the requirement of being a "dog proof trap" is an "enclosed trigger trap". These are already defined by administrative rule as any trap with a pull-activated trigger, inside an enclosure, and recessed 1 1/4 inches or more, from an opening that is no greater than 1 3/4 inches in diameter. While these trap types are very effective for catching raccoons, they may be the only animal that is capable of activating the trigger and being captured. These rules allow all trap types which are normally allowed in locations where the traps are completely submerged under water.

These rules expand an exemption from the state park leash law for hunters' dogs actively engaged in hunting from three named parks under current rules to any areas where hunting is allowed.

These rules allow small game hunting with rifles or handguns at three parks where small game hunting has been allowed under current rules; Governor Dodge, Mill Bluff, and Mirror Lake. Other state parks where hunting is now allowed under 2011 Act 168 do not have similar restrictions and the department believes that the prohibition is not necessary for safety or wildlife management purposes.

These rules eliminate a requirement to obtain an access permit and sign-in at a check station before small game hunting at three parks where small game hunting has been allowed under current rules; Governor Dodge, Mill Bluff, and Mirror Lake. Other state parks where hunting is now allowed under 2011 Act 168 do not have similar requirements. Experience with these requirements has demonstrated that they are not necessary to control hunter activity and the

information collected is infrequently or not used by the department.

Additionally, this proposal repeals rules which would have allowed hunting at State Ice Age Trail areas. These rules are no longer needed following the enactment of 2011 Act 168 because State Ice Age Trail areas are established by statute as part of the state park system.

Current rule clarifies current rules primarily related to special learn-to-hunt events because, with the enactment of 2011 Act 168, it is no longer necessary to limit them to just deer and turkey if they are held at state parks.

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

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 an 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.

Environmental Impact

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.

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.

Contact Person

Scott Loomans
 Telephone: (608) 267-2452
 Email: scott.loomans@wisconsin.gov

STATE OF WISCONSIN DEPARTMENT OF ADMINISTRATION DOA 2049 (R 07/2011)		ADMINISTRATIVE RULES FISCAL ESTIMATE AND ECONOMIC IMPACT ANALYSIS	
Type of Estimate and Analysis			
<input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected			
Administrative Rule Chapter, Title and Number			
Natural Resources Board Order WM-21-13 amending Ch.’s NR 10, Game and Hunting, and NR 45, Use of Department Properties			
Subject			
Hunting and trapping in state parks			
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 checked="" type="checkbox"/> SEG <input type="checkbox"/> SEG-S		None	
Fiscal Effect of Implementing the Rule			
<input checked="" type="checkbox"/> No Fiscal Effect <input type="checkbox"/> Indeterminate	<input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Decrease Existing Revenues	<input type="checkbox"/> Increase Costs <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"/> Local Government Units		<input type="checkbox"/> Specific Businesses/Sectors <input type="checkbox"/> Public Utility Rate Payers	

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

Yes No

Policy Problem Addressed by the Rule

These will be the first rule revisions related to hunting and trapping in state parks since passage of 2011 ACT 168 which established that those activities are generally allowed. These rules will eliminate language that is no longer needed, simplify existing regulations, and create new rules related to safety. These rules will not establish new season dates or modify periods when hunting and trapping are allowed in state parks.

The department's analysis indicates that these rules will have none or a minimal economic impact. Pursuant to the Governor's Executive Order 50, Section II, this is a level 3 economic impact analysis.

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)

Background Information

Following enactment of 2011 ACT 168, hunting and trapping are both allowed at state parks except where the Natural Resources Board has prohibited the activities in order to protect public safety or a unique plant or animal community. Under previous laws, state parks were statutorily closed to hunting unless the department had written rules specifically allowing a hunting opportunity at an individual state park. Statutes did not grant rule authority for the department to allow bear hunting. Statutes did not grant rule authority to allow trapping.

Some objectives of these proposed rules are to simplify hunting regulations, accomplish remedial updates to code language that is no longer needed, and to help assure the safety of state park visitors and, by extension, their pets.

Economic Impact

These rules will have none or a minimal impact on the amount of hunting or trapping that occurs at state parks. Correspondingly, it is expected that there will be no impact on the related expenditures of hunters and trappers and no economic impacts. Restricting dry land trapping activities to dog proof trap-types does have the incidental effect of restricting the species available for dry land trapping primarily to raccoons. However, raccoons are a desirable species for trappers and may be one of the primary dry land trapping opportunities at state parks – regardless of the types of regulations which are enacted. Enclosed trigger, dog proof traps are very effective for catching raccoons. The use of traps which are completely underwater is not affected by these proposed rules.

These rules are not expected to have an impact on the recreational activities of other state park visitors and no corresponding effects on their related expenditures and economic impacts. Potential state park visitors who are interested in activities other than hunting and trapping may make decisions about state park attendance based on their views of the compatibility of their recreation with hunting and trapping. However, these rules will not expand hunting and trapping activities and and, for safety purposes, hunting and trapping are already limited seasonally. Therefore, decisions about state park attendance are not likely to be made as a result of these rules.

These rules are applicable to individual hunters and impose no compliance or reporting requirements for small business. No design or operational standards are contained in these rules.

Fiscal Impact on the Department

The department anticipates that there will be no fiscal impacts as a result of implementing these rules. The Wisconsin State Park system already has a law enforcement program to enforce regulations on the properties it manages. Hunting and trapping can already legally occur under the provisions of 2011 ACT 168 and department guidance on implementing that ACT. These rules are not expected to result in any significant need for enforcement efforts.

<p>Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule</p> <p>These rule are a potential benefit to the safety of state park visitors and their pets because they prohibit the discharge of firearms from—or—across certain trails. These rules also restrict trapping to the use of dog proof traps.</p> <p>These rules will benefit turkey hunters by simplifying the number of hunting zone choices they need to consider and expanding the areas where they may hunt. Under current rules, a person who applies for a state park hunting zone can hunt only in that state park zone. Under the proposal, state parks will become part of the surrounding zones and hunting would be allowed anywhere in the new, larger zones.</p> <p>These rules will simplify hunting regulations by eliminating a requirement to obtain an access permit and sign-in at a check station before small game hunting at three parks where small game hunting has been allowed under current rules; Governor Dodge, Mill Bluff, and Mirror Lake. Other state parks where hunting is now allowed under 2011 ACT 168 do not have similar requirements. Experience with these requirements has demonstrated that they are not necessary to control hunter activity and the information collected is infrequently or not used by the department. At the same three parks, these rules allow small game hunting with rifles or handguns where small game hunting has been allowed under current rules. Other state parks where hunting is now allowed under 2011 ACT 168 do not have firearm-type restrictions and the department believes that the prohibition is not necessary for safety or wildlife management purposes.</p> <p>While there will be benefits to implementing these rules, they are not likely to have economic impacts.</p> <p>The alternatives to be considered during this rules process are limited because statute establishes that hunting and trapping are legal activities at state parks. Prohibitions of those activities can only be made by the Natural Resources Board in order to protect public safety or a unique plant or animal community. The board has considered these concerns and has established restrictions for purposes of protecting public safety.</p>
<p>Long Range Implications of Implementing the Rule</p> <p>The state park system will continue to be a source of significant recreational opportunity and preserve prominent features of Wisconsin's landscape. The activities of visitors will continue to generate significant economic activity.</p>
<p>Compare With Approaches Being Used by Federal Government</p> <p>Federal regulations allow states to manage the wildlife, recreational, and property 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.</p>
<p>Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)</p> <p>These rule change proposals do not represent significant policy changes and do not differ significantly from surrounding states. All surrounding states have regulations and rules in place for the management and recreational use of public lands which are under their control.</p>
<p>Name and Phone Number of Contact Person</p> <p>Scott Loomans, Wildlife Regulation Policy Specialist, 608-266-3534.</p>

Notice of Hearing

Natural Resources

Fish, Game, etc., Chs. 1—

CR 13-111

(DNR # FH-26-12 and FH-26-13(E))

NOTICE IS HEREBY GIVEN THAT pursuant to sections 227.16 and 227.17, Stats., the Department of Natural Resources, hereinafter the Department, will hold a public hearing on revisions to Chapter NR 25, Wis. Adm. Code, in permanent rule Order FH-26-12 and emergency rule Order FH-26-13(E), relating to lake trout harvest limits in Lake Superior on the date, time, and location listed below.

(Note: The emergency rule had not been filed with the Legislative Reference Bureau at the time this Register was compiled.)

Hearing Information

Date: Wednesday, January 16, 2014

Time: 6:00 p.m.

Location: Bayfield DNR Office
141 S. Third Street
Bayfield, Wisconsin 54814

Reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Contact Peter Stevens by email at peter.stevens@wisconsin.gov or by calling 715-779-4035,

ext. 12. 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 website 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 Kate Strom Hiorns, Department of Natural Resources, Bureau of Fisheries Management, 101 S. Webster St, Madison, WI, 53703, or by calling 608-266-0828.

Submitting Comments

Comments on the proposed permanent rule must be received on or before **January 15, 2014**. 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:

Peter Stevens
 Department of Natural Resources
 Bureau of Fisheries Management
 141 S. Third Street, Bayfield WI, 54814
 Phone: 715-779-4035, ext. 12
 Email: peter.stevens@wisconsin.gov
 Internet: Use the Administrative Rules System Web site accessible through the link provided

Analysis Prepared by the Department of Natural Resources

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.

Plain language analysis of the proposed rule

The rules are necessary to implement lake trout commercial harvest limits. They reduce the annual commercial fishing harvest limit for lake trout on Lake Superior and place reduced bag limits on recreational fishing if the recreational lake trout harvest exceeds specified limits.

The continued, persistent decline in lake trout population abundances in the Apostle Islands vicinity of Lake Superior and predicted further declines necessitate the reductions in order to ensure a sustainable lake trout fishery over the long-term. Lake trout harvest limits were negotiated in October 2013 among the Department and the Red Cliff and

Bad River Bands of Lake Superior Chippewa and those changes must be ordered through administrative code. The rule elements are a result of regular negotiations stipulated in the State-Tribal Lake Superior Agreement.

Section 1 of both rules puts in place a reduced daily bag limit for lake trout in Lake Superior if the recreational lake trout harvest in a season exceeds 95% of the total allowable recreational lake trout harvest of 26,050 fish ($26,050 \times 0.95 = 24,748$). If total lake trout harvest in a season exceeds 98% of the total allowable recreational harvest ($26,050 \times 0.98 = 25,529$), a zero bag limit would be enforced and no fish could be harvested for the rest of the season. Recreational lake trout harvest is measured by Department creel surveys during which staff gather harvest information directly from anglers. The open season for recreational lake trout harvest in Lake Superior is December 1 through September 30.

Section 2 of both rules reduces the annual state-licensed and tribal commercial fishing harvest quota for lake trout on Lake Superior. The open season for commercial lake trout harvest in Lake Superior is November 28 through September 30.

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 commercial fishing in Wisconsin's waters of Lake Superior.

Comparison with rules in adjacent states

Of the four adjacent states, only Minnesota and Michigan have lake trout fisheries on the Great Lakes. The commercial harvest of lake trout from Minnesota waters of Lake Superior is limited to a population assessment fishery. In Michigan waters of Lake Superior there is no state-licensed commercial fishery, but tribal harvest is guided by the same modeling approach as in Wisconsin.

Summary of factual data and analytical methodologies

The total allowable catch of lake trout in Wisconsin waters of Lake Superior is divided among tribal commercial fisheries, state-licensed commercial fisheries, tribal subsistence fishers, and state sport anglers. A ten-year State-Tribal Lake Superior Agreement specifies annual allowable lake trout harvests, defines refuges and special fishing areas, and establishes other terms and arrangements for state and tribal commercial fishing. The allowable lake trout harvests are reviewed by a state-tribal biological committee using the latest available data and modeling results. Based on those results and recommendations from the biological committee, the Agreement is re-negotiated as needed to change the total annual harvest of lake trout by all fishers, and possibly to address other issues related to shared harvest of lake trout and other species by state and tribal fishers.

There has been a steady decline in lean lake trout abundance in Lake Superior since the early 2000s. This decline has been confirmed by independent surveys conducted by the Department and has been projected by models used to set safe harvest levels. Some level of decline was expected due to high harvest limits in the early 2000s, which were in response to several large year classes (numbers of fish spawned in the same year) predicted to enter the fishery. However, these year classes were not as large as predicted. This combination of increased harvest and lower than predicted population size has caused lake trout abundance to decline. While relatively stable abundances of

spawning lake trout suggest that this decline is still reversible, action needs to be taken to arrest the lean lake trout population's decline. The decline in lake trout population abundances and predicted further declines necessitate the harvest reductions in order to ensure a sustainable lake trout fishery over the long-term.

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. State-licensed and tribal commercial fishers may be affected by the amount of fish they are able to harvest. It is not expected that fishers will have any compliance expenditures or reporting changes associated with the rule.

The decline in lean lake trout abundance in Lake Superior has been confirmed by surveys conducted by the Department and has been projected by models used to set safe harvest levels. Rule changes are necessary in order to ensure a sustainable lake trout fishery over the long-term.

Effects on small business

The proposed rule change would impact state-licensed commercial fishers, tribal commercial fishers, fish wholesalers, and others whose interests or businesses are affected by commercial fishing. Based on data available to the Department, 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.

If the rule is not put in place, the negative economic impact would be much greater. Allowing harvest at current quota limits is not biologically sustainable. If no action is taken, the continued decline and potential collapse of the lake trout fishery in Lake Superior would result in greater income losses to both state and tribal commercial fishers, as well as businesses that support recreational lake trout fishing.

The rule will be enforced by Department conservation wardens under the authority of ch. 29, Stats., through routine patrols, record audits of wholesale fish dealers and commercial fishers, and follow up investigations of citizen complaints.

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

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

Chs. NR 20, Fishing-Inland Waters Outlying Waters, and NR 25, Commercial Fishing-Outlying Waters

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 Summary

The proposed rules do not impose any compliance or reporting requirements on small businesses nor are any design or operational standards contained in the rules. Public utility rate payers and local governmental units will not be affected by the rules.

Based on data available to the Department, minimal impact is expected for businesses or business associations. The rules may limit the commercial harvest of lake trout and other species by state-licensed and tribal commercial fishers. The total dockside value of the reported state commercial lake trout harvest in 2012 was approximately \$20,000. Harvest is not expected to be reduced by more than 25% and therefore the lost value of lake trout is not expected to exceed \$5,000. However, the result of this rule may also limit the amount of gill net effort commercial fishers can use to target whitefish because lake trout are frequently caught in the same nets. Reductions in gill net effort therefore have the potential to cause commercial fishers additional income reductions. The total dockside value of whitefish harvested by state commercial fishers in gill nets was approximately \$145,000 in 2012. Harvest is expected to be reduced by no more than 25% putting the total loss at no more than \$36,250 and likely less because fishers can shift to using trap nets that are not subject to the same effort restrictions governing gill nets. Moreover, commercial fishers can continue current efforts to adjust the location, time, and manner in which they set gill nets targeting whitefish so as to reduce harvest of non-target lake trout. The exact amount of economic impact is unknown, but is not expected to exceed \$50,000.

Agency Contact

Peter Stevens
Department of Natural Resources
Bureau of Fisheries Management
141 S. Third Street, Bayfield WI, 54814
Phone: 715-779-4035, ext. 12
Email: peter.stevens@wisconsin.gov
Internet: Use the Administrative Rules System Web site accessible through the link provided

3. Subject

Amending Lake Superior lake trout harvest limits as required by revisions to the State–Tribal Lake Superior Agreement: The rule would reduce the annual commercial fishing harvest limit for lake trout on Lake Superior and list potential limitations on recreational fishing limits.

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 being submitted to address a decline in the lake trout population in the Apostle Islands vicinity of Lake Superior that threatens harvest capability of state–licensed commercial fishers, tribal commercial fishers, and recreational anglers.

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 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.

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

The EIA comment period was conducted from October 25 to November 8, 2013. No local governments indicated that they would like to participate in the development of the final 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)

The proposed rule does not impose any compliance or reporting requirements on small businesses nor are any design or operational standards contained in the rule. The rule does not allow for the potential to establish a reduced fine for small businesses, nor does it establish "alternative enforcement mechanisms" for "minor violations" of administrative rules made by small businesses. Public utility rate payers and local governmental units will not be affected by the rule.

Based on data available to the Department, minimal impact is expected for businesses or business associations. The rule may limit the commercial harvest of lake trout and other species by state-licensed and tribal commercial fishers. The total dockside value of the reported state commercial lake trout harvest in 2012 was approximately \$20,000. Harvest is not expected to be reduced by more than 25% and therefore the lost value of lake trout is not expected to exceed \$5,000. However, the result of this rule may also limit the amount of gill net effort commercial fishers can use to target whitefish because lake trout are frequently caught in the same nets. Reductions in gill net effort therefore have the potential to cause commercial fishers additional income reductions. The total dockside value of whitefish harvested by state commercial fishers in gill nets was approximately \$145,000 in 2012. Harvest is expected to be reduced by no more than 25% putting the total loss at no more than \$36,250 and likely less because fishers can shift to using trap nets that are not subject to the same effort restrictions governing gill nets. Moreover, commercial fishers can continue current efforts to adjust the location, time, and manner in which they set gill nets targeting whitefish so as to reduce harvest of non-target lake trout. The exact amount of economic impact is unknown, but is not expected to exceed \$50,000.

The Department received two comments during the EIA comment period that suggested the impact would be greater than estimated. The comments are summarized below:

Halvorson Fisheries, LLC, (Bayfield, WI):

- In the years prior to 2013 we had received 1075 lake trout tags per license. In March of 2013, that number was reduced to 800 tags and footage was reduced by 26,442 feet of net. Based on this new proposal, each license would see cuts of an additional 300 tags and the loss of 20,000 feet more of gill net effort. The impact of this new proposal would almost certainly force us to lay off or let go employees, potentially lose clients to whom we supply fish and absolutely result in money loss in fish sales.
 - The estimated dockside value of lake trout in the draft EIA is based on the fish prices in 2011, which were considerably lower than they are at present, or at any time in the past year. Furthermore, these estimates of the lake trout dockside value are not valid to our business, as we fillet all of our lake trout. Lake trout fillets, or fillets of any other type of fish, are far more profitable than the whole, dressed fish. Our business estimates a loss of \$15,000 based on the sale of lake trout fillets in 2013. This figure is just for our business with five licenses, and still is three times higher a loss than the numbers in the draft EIA for all ten state licenses! The proposed decrease in gill net footage would only amplify our business' profit loss. I calculate that a reduction of about 20,000 feet of gill net footage per license would result in a loss of 5000 pounds of whitefish and a current dockside value of \$10,000. Considering the five licenses within our business, we stand to lose around \$50,000 from the sale of whitefish. This figure is just a rough estimate based on an average of the prior years' catch, and is subject to how much fish is caught and the market value.
 - Halvorson Fisheries would also be affected by cuts to tribal quotas. Numerous local restaurants depend on our business to supply them with Lake Superior lake trout and whitefish. In order to meet the demand for trout fillets from our restaurant trade and retail store, we must purchase lake trout from Native American fisherman. A reduction to tribal quota has the potential to decrease the amount of available lake trout to purchase by our business, making it impossible for us to meet the demands of restaurant orders and consumer requests. Again, our business would experience monetary loss, but so too would Native American fishermen who supply us with lake trout, and potentially the local restaurants that serve our products.
 - The rule would not only result in profit loss for our business, but for other local businesses, persons employed in the fishing industry and quite possibly persons who rely on local tourism to make a living.
-

Red Cliff Band of Lake Superior Chippewa:

- The Fiscal Estimate provided by the State is narrowly focused and largely underestimates the economic impact to Bayfield and Ashland Counties.

Bayfield and Ashland Counties:

- When developing the fiscal estimate, only state harvest was considered, and even those calculations seem low. State fishermen harvested 170,770 lbs. of whitefish with gillnets in 2011. Whitefish wholesale averaged \$1.60/lb. through most of 2013, and the economic impact needs to consider current price structure. This would put the value of the 170,770 pound catch for whitefish caught in state gillnets at \$273,232, and this does not include the harvest from the trap net fishery by state license holders.
- The economic impact does not even attempt to address the impact to the tribal commercial fishery. In 2013, 100% of the tribal fishery in Wisconsin was by gillnet harvest. Because of the effort restrictions on gillnets that are based on the lake trout quota, a lake trout quota reduction will lead to severe reduction in tribal whitefish harvest. In 2011, Red Cliff harvested 377,407 pounds of whitefish and 74,536 pounds of lake trout. Bad River harvested 264,906 pounds of whitefish and 83,007 pounds of lake trout that same year.
- A true economic impact analysis cannot simply multiply pounds harvested by wholesale price per pound. The fishing industry circulates dollars throughout the counties through employment, dock fees, equipment purchases, fuel and maintenance costs, direct sales to restaurants, etc. The State's estimate that, "the exact estimate of economic impact is unknown, but is not expected to exceed \$50,000" is almost comical in its inaccuracy. Especially since the EIA doesn't even consider the loss of tourism dollars that would occur if the recreational fishery faced emergency closure.
- Estimating the direct economic costs should be undertaken through a focus group consisting of tribal fishermen, state fishermen, fish processors, retailers and biologists.

Response from the Department:

The Department thanks both Halvorson Fisheries, LLC, and the Red Cliff Band of Lake Superior Chippewa for their comments. The Department will work with both groups as it moves through the rule making process.

Comments received from these state and tribal commercial fishers assume the economic impact of the permanent rule is greater than the Department's estimate. The economic impact was estimated by the Department using available reported data from 2012 dockside values of lake trout and whitefish sales, as well as commercial fishing harvest reports submitted to the Department. Commercial fishers and tribes are not required to submit any additional economic information to the Department, therefore the estimate of minimal economic impact was the best analysis based on available data.

If the rule is not put in place, the estimate of negative economic impact would be much greater. Allowing harvest at current quota limits is not biologically sustainable. If no action is taken, the continued decline and potential collapse of the lake trout fishery in Lake Superior would result in greater income losses to both state and tribal commercial fishers, as well as businesses that support recreational lake trout fishing.

In addition, lake trout harvest limits were negotiated in October 2013 among the Department and the Red Cliff and Bad River Bands of Lake Superior Chippewa and those changes are reflected in this rule. This State-Tribal Agreement amendment was agreed to by all parties. While negotiations do not preclude the Red Cliff Band from providing EIA comments, it was assumed that they were aware of the economic effects of the harvest limit when the Agreement amendment was made.

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

A predicted continued decline in lake trout population abundances necessitates the current reductions in harvest numbers to support a sustainable lake trout fishery over the long-term. Allowing harvest at current quota limits – an alternative to implementing the rule – is not biologically sustainable and could create negative economic impacts for commercial fishers.

14. Long Range Implications of Implementing the Rule

Reducing quota limits for commercial fishers, authorizing harvest limits on recreational fishers, and monitoring lake trout populations will support a sustainable lake trout fishery over the long-term.

15. Compare With Approaches Being Used by Federal Government

Authority to promulgate fishing regulations is granted to states. None of the proposed changes violate or conflict with federal regulations.

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

Of the four states, only Minnesota and Michigan have lake trout fisheries on the Great Lakes. The commercial harvest of lake trout from Minnesota waters of Lake Superior is limited to a population assessment fishery. In Michigan waters of Lake Superior there is no state-licensed commercial fishery, but there is a tribal harvest guided by the same modeling approach as Wisconsin.

17. Contact Name

Peter Stevens, Lake Superior Fisheries 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)

Based on data available to the Department, minimal impact is expected for businesses or business associations. The rule may limit the commercial harvest of lake trout and other species by state-licensed and tribal commercial fishers. The total dockside value of the reported state commercial lake trout harvest in 2012 was approximately \$20,000. Harvest is not expected to be reduced by more than 25% and therefore the lost value of lake trout is not expected to exceed \$5,000. The result of this rule may also limit the amount of gill net effort commercial fishers can use to target whitefish because lake trout are frequently caught in the same nets. Reductions in gill net effort therefore have the potential to cause commercial fishers additional income reductions. The total dockside value of whitefish harvested by state commercial fishers in gill nets was approximately \$145,000 in 2012. Harvest is expected to be reduced by no more than 25% putting the total loss at no more than \$36,250 and likely less because fishers can shift to using trap nets that are not subject to the same effort restrictions governing gill nets. Moreover, commercial fishers can continue current efforts to adjust the location, time, and manner in which they set gill nets targeting whitefish so as to reduce harvest of non-target lake trout.

Economic impact comments were provided during the comment period suggesting the impact to small businesses would be greater than the Department's estimate. However, if the rule is not put in place, the negative economic impact would be much greater. Allowing harvest at current quota limits is not biologically sustainable. If no action is taken, the continued decline and potential collapse of the lake trout fishery in Lake Superior would result in greater income losses to both state and tribal commercial fishers, as well as businesses that support recreational lake trout fishing.

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

Dockside values of fish; commercial fishing harvest reports

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

No additional compliance or reporting requirements will be imposed on small businesses as a result of these rule changes.

5. Describe the Rule's Enforcement Provisions

The rule will be enforced by Department Conservation Wardens under the authority of chapter 29, Stats., through routine patrols, record audits of wholesale fish dealers and commercial fishers, and follow up investigations of citizen complaints.

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

Yes No

Notice of Hearing

Public Service Commission

CR 13-101

(PSC DOCKET # 1-AC-242)

The Public Service Commission of Wisconsin proposes an order to amend section PSC 111.51 (4) (b) 2., regarding the electronic delivery of applications for a Certificate of Public Convenience and Necessity (CPCN).

This rulemaking will be done without a hearing because, under s. 227.16 (2) (b), Stats., no hearing is required when an existing rule is being brought into conformity with a statute that has changed. However, written comments will be accepted.

Written Comments

Any person may submit written comments on these proposed rules. The record will be open for written comments from the public, effective immediately, and until Tuesday, **January 14, 2014, at 12:00 noon**. All written comments must include a reference on the filing to docket 1-AC-242. File by one mode only.

Industry: File comments using the Electronic Regulatory Filing system. This may be accessed from the commission's website (psc.wi.gov).

Members of the Public: Please submit your comments in one of the following ways:

- **Electronic Comment.** Go to the commission's web site at <http://psc.wi.gov>, and click on the "ERF — Electronic Regulatory Filing" graphic on the side menu bar. On the next page, click on "Need Help?" in the side menu bar for instructions on how to upload a document.

- **Web Comment.** Go to the commission's web site at <http://psc.wi.gov>, click on the "Public Comments" button on the side menu bar. On the next page select the "File a comment" link that appears for docket number 1-AC-242.

- **Mail Comment.** All comments submitted by U.S. mail must include the phrase "Docket 1-AC-242 Comments" in the heading, and shall be addressed to:

Sandra J. Paske, Secretary to the Commission
Public Service Commission
P.O. Box 7854
Madison, WI 53707-7854

The commission does not accept comments submitted via e-mail or facsimile (fax). Any material submitted to the commission is a public record and may appear on the commission's web site.

Analysis Prepared by the Public Service Commission of Wisconsin

Statutory authority and explanation of authority

This rule is authorized under ss. 196.02 (1) and (3), 196.491 (3) (a), and 227.11, Stats.

Section 227.11, Stats., authorizes agencies to promulgate administrative rules. Section 196.02 (1), Stats., authorizes the commission to do all things necessary and convenient to its jurisdiction. Section 196.02 (3), Stats., grants the commission specific authority to promulgate rules. Section 196.491 (3) (a), Stats., references commission rules about certificates of public convenience and necessity.

Statutes interpreted

This rule interprets s. 196.491 (3), Stats.

Related statutes or rules

None.

Brief summary of rule

Currently, s. 196.491, Stats., requires the commission to send a copy of an application for a Certificate of Public Convenience and Necessity (CPCN) to clerks and public libraries. While s. PSC 111.51 (4) currently requires the commission to send an electronic copy of an initial CPCN application to municipal and town clerks and public libraries, it requires the commission to send a paper copy of a completed application.

2013 Wisconsin Act 10 made changes to s. 196.491, Stats., to require the commission to send an electronic copy of both an initial and a completed CPCN application to clerks and public libraries. Upon request, the commission is also required to send a paper copy of the application. This rulemaking will make the 2013 Wisconsin Act 10 changes to s. PSC 111.51 (4).

Comparison with existing or proposed federal regulations

The commission is not aware of any existing or proposed federal regulations on this matter.

Comparison with similar rules in adjacent states

The Illinois Commerce Commission generally uses electronic filing and services of records related to their proceedings, however, their administrative code does not specify the manner in which CPCN applications will be served upon interested persons. (Ill. Admin. Code tit. 83, pt. 200.150 (h)). The Minnesota Public Utilities Commission requires applicants to file paper copies of CPCN applications and serves those paper copies on interested agencies of government. Minn. R. 7849.0200 (2). The Michigan Public Utilities Commission's administrative rules do not identify the manner in which CPCN applications will be provided to local units of government (Mich. Admin. Code r. 460.7601), but generally require parties serve paper copies upon interested parties (Mich. Admin Code r. 460.17105). The Iowa Utilities Board requires applicants to file paper copies of applications for CPCN in paper form and transmits those forms on behalf of the applicant to other "regulatory agencies." Iowa Admin. Code r. 199-24.3(476A).

Effect on Small Business

This rulemaking will not have an effect on small business. The s. 227.114 (12), Stats., definition of "small business" states that to be considered a small business, the business must not be dominant in its field. Since electric utilities are monopolies in their service territories, they are dominant in their fields and, so, are not small businesses.

Initial Regulatory Flexibility Analysis

This rulemaking will not have an effect on small business. The s. 227.114 (12), Stats., definition of "small business" states that to be considered a small business, the business must not be dominant in its field. Since electric utilities are monopolies in their service territories, they are dominant in their fields and, so, are not small businesses.

Fiscal Estimate

This rule will result in no fiscal impact since it only changes how CPCN copies are delivered by the commission. Further, even if there were a fiscal impact, it would be the result of the law change and not this rulemaking.

The Economic Impact Analysis for this rulemaking follows below.

Contact Person

Questions regarding this matter should be directed to Justin Chasco at (608) 266-3708 or justin.chasco@wisconsin.gov. Small business questions may be directed to Anne Vandervort at (608) 266-5814 or anne.vandervort@wisconsin.gov. Media questions should be directed to Nathan Conrad, Communications Director at (608) 266-9600. Hearing or speech-impaired individuals may also use the commission's TTY number, if calling from Wisconsin (800) 251-8345, if calling from outside Wisconsin (608) 267-1479.

The commission does not discriminate on the basis of disability in the provision of programs, services, or employment. Any person with a disability who needs accommodations to participate in this proceeding or who

needs to get this document in a different format should contact Justin Chasco, as indicated in the previous paragraph, as soon as possible.

Text of Proposed Rule

SECTION 1. PSC 111.51 (4) (b) 2. is amended to read:

PSC 111.51 (4) (b) 2. As soon as is practicable, but no more than 30 days after the commission has determined that a CPCN application is complete, the commission shall send a ~~paper~~ an electronic copy of the complete application to the clerk of each municipality and town in which the proposed facility is to be located and to the main public library in each county in which the proposed facility is to be located.

SECTION 2. 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) (intro.), Stats.

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 PSC 111, Requirements For Strategic Energy Assessments, Certificates Of Public Convenience And Necessity, And Fixed Financial Parameters For Certain Rate Base Electric Generating Facilities1

3. Subject

The electronic delivery of applications for a Certificate of Public Convenience and Necessity (CPCN)

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

This rulemaking is intended to harmonize PSC regulations with 2013 Wisconsin Act 10 which requires the Commission to send a electronic copy of an application for a Certificate of Public Convenience and Necessity to clerks and public libraries.

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.

Citizens' Utility Board, League of Wisconsin Municipalities, Municipal Electrical Utilities of Wisconsin, Wisconsin Counties Association, Wisconsin Industrial Energy Group, Wisconsin Towns Association, Wisconsin Utilities Association, Wisconsin Alliance of Cities, all electric utilities

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

Members of the League of Wisconsin Municipalities, Wisconsin Towns Association, and Wisconsin Alliance of Cities.

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)

None.

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

The rulemaking with will bring Wis. Admin. Code § PSC 111.51 (4) (b) 2. into conformity with 2013 Wisconsin Act 10.

14. Long Range Implications of Implementing the Rule

The rulemaking with will bring Wis. Admin. Code § PSC 111.51 (4) (b) 2. into conformity with 2013 Wisconsin Act 10.

15. Compare With Approaches Being Used by Federal Government

Not applicable.

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

The Illinois Commerce Commission generally uses electronic filing and services of records related to their proceedings, however, their administrative code does not specify the manner in which CPCN applications will be served upon interested persons. (Ill. Admin. Code tit. 83, pt. 200.150 (h)). The Minnesota Public Utilities Commission requires applicants to file paper copies of CPCN applications and serves those paper copies on interested agencies of government. Minn. R. 7849.0200 (2). The Michigan Public Utilities Commission's administrative rules do not identify the manner in which CPCN applications will be provided to local units of government (Mich. Admin. Code. r. 460.7601), but generally require parties serve paper copies upon interested parties (Mich. Admin Code r. 460.17105). The Iowa Utilities Board requires applicants to file copies of applications for CPCN in paper form and transmits those forms on behalf of the applicant to other "regulatory agencies." Iowa Admin. Code r. 199-24.3(476A)

17. Contact Name

Lisa Farrell

18. Contact Phone Number

608-267-9086

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

Notice of Hearing

Revenue CR 13-102

NOTICE IS HEREBY GIVEN That, pursuant to section 70.32 (2) (c) 1i., Stats., the Department of Revenue will hold a public hearing to consider permanent rules revising Chapter Tax 18, relating to assessment of agricultural property.

Hearing Information

Date: Tuesday, January 14, 2014
Time: 1:30 p.m.
Location: Events Room
 State Revenue Building
 2135 Rimrock Road
 Madison, Wisconsin 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 **January 14, 2014**, and will be given the same consideration as testimony presented at the hearing.

Place where Comments are to be Submitted and Deadline for Submission

Comments may be submitted to the contact person shown below no later than the date on which the public hearing on this proposed rule order is conducted. Information as to the place, date, and time of the public hearing will be published in the Wisconsin Administrative Register.

Dale Kleven
 Department of Revenue
 Mail Stop 6-40
 2135 Rimrock Road
 P.O. Box 8933
 Madison, WI 53708-8933

Analysis by the Department of Revenue

Statutes interpreted

Section 70.32 (2) (c) 1i., Stats.

Statutory authority

Section 70.32 (2) (c) 1i., Stats.

Explanation of agency authority

Section 70.32 (2) (c) 1i., Stats., provides that agricultural use "means agricultural use as defined by the department of revenue by rule..."

Related statute or rule

There are no other applicable statutes or rules.

Plain language analysis

The proposed rule revises s. Tax 18.05 (1) to provide further clarity regarding what land in federal and state pollution control and soil erosion programs should be classified as agricultural property that qualifies for use-value assessment.

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 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

Section Tax 18.05 (1) currently defines what land in specific federal and state pollution control and soil erosion programs qualifies for agricultural use. This listing has not been updated since 2000.

The proposed rule will address changes in the listed programs that have occurred since the rule was enacted and will also identify general criteria for determining what land that is in federal and state pollution control and soil erosion programs qualifies for agricultural use under the subchapter. This will provide consistency and clear standards for property owners and assessors.

Analysis and supporting documents used to determine effect on small business

This rule order makes changes to reflect current law and current department policy. It makes no policy or other changes having an effect on small business.

Anticipated costs incurred by private sector

Complying with the proposed rule will not have a fiscal effect on the private sector.

Effect on Small Business

This 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 rule order.

Text of the Rule

SECTION 1. Tax 18.05 (1) (d) and (e) are repealed and recreated to read:

Tax 18.05 (1) (d) Commencing with the January 1, 2015 assessment, land without improvements subject to a temporary federal or state easement or enrolled in a temporary federal or state program if that land was in agricultural use under par. (a), (b), or (c) when it was entered into the easement or program, and that the terms of the easement or program do not restrict the return of the land to agricultural use under par. (a), (b), or (c) after the easement or program is satisfactorily completed. Qualifying easements and programs shall adhere to standards and practices provided under the July 2011 No. 667 version of s. ATCP 50.04, 50.06, 50.72, 50.83, 50.88, or 50.98. The Wisconsin Property Assessment Manual, authorized under s. 73.03 (2a), Stats., shall list the qualifying easements and programs according to the ATCP provisions.

(e) Commencing with the January 1, 2015 assessment, land without improvements subject to a permanent federal or state easement or enrolled in a permanent federal or state program if that land was in agricultural use under par. (a), (b), or (c) when it was entered into the easement or program. Qualifying easements and programs shall adhere to standards and practices provided under the July 2011 No. 667 version of s. ATCP 50.04, 50.06, 50.72, 50.83, 50.88, or 50.98. The Wisconsin Property Assessment Manual, authorized under s. 73.03 (2a), Stats., shall list the qualifying easements and programs according to the ATCP provisions.

SECTION 2. 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) (intro.), Stats.

ADMINISTRATIVE RULES FISCAL ESTIMATE AND ECONOMIC IMPACT ANALYSIS		
Type of Estimate and Analysis		
<input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected		
Administrative Rule Chapter, Title and Number		
Chapter Tax 18 – Assessment of Agricultural Property		
Subject		
Property subject to use value assessment		
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 type="checkbox"/> No Fiscal Effect <input type="checkbox"/> Indeterminate	<input type="checkbox"/> Increase Existing Revenues <input checked="" type="checkbox"/> Decrease Existing Revenues	<input checked="" type="checkbox"/> Increase Costs <input checked="" type="checkbox"/> Could Absorb Within Agency’s Budget <input type="checkbox"/> Decrease Costs

The Rule Will Impact the Following (Check All That Apply)	
<input type="checkbox"/> State's Economy <input checked="" type="checkbox"/> Local Government Units	<input type="checkbox"/> Specific Businesses/Sectors <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 provides clarification regarding what land in federal and state pollution control and soil erosion programs qualify as agricultural land for purposes of agricultural use value assessment.	
Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)	
<p>Some of the affected land is currently assessed as "undeveloped" land. Such land is currently assessed at 50% of market value. The average statewide value for "undeveloped" land in 2012 was \$636 per acre. "Agricultural" land is assessed at use value. The average statewide value for "agricultural" land in 2012 was \$177 per acre, which is \$459 per acre less than the value for "undeveloped" land. To the extent that a farmer's land can shift from "undeveloped" to "agricultural" as a result of the rule, his or her property taxes will decrease.</p> <p>Total property taxes will not change due to the rule. Instead, there will be a shift in property taxes. The department does not have information to determine the portion of program land that was in agricultural use when it was entered into a program or whether the programs adhere to the standards and practices provided in ATCP 50.04, 50.06, 50.72, 50.83, 50.88, or 50.98. If all such program land qualifies, the department estimates approximately 87,000 acres may be affected by this rule, the rule will cause a reduction in statewide taxable property value of about \$40 million. Based on the average net tax rate for agricultural and undeveloped land for the 2012-13 property tax year of \$18.1676 per \$1,000 in value, about \$725,000 in property taxes would be shifted under the rule.</p> <p>Comments on the economic impact were received from Erin O'Brien of the Wisconsin Wetlands Association. Ms. O'Brien was consulted about her comments regarding the limited economic impact of the rule changes, in part based on a study performed by the Wisconsin Wetlands Association that showed lands in programs not covered by the current rule were often currently assessed as agricultural land. The Department of Revenue requested data from that study, but ultimately determined that the sample size of five counties was too small to rely on to make any assumptions and the economic impact of the rule change should not account for erroneous assessments, but rather be based on the regulatory requirements as written. Ms. O'Brien's comments also highlighted the nominal economic impact of the potential property tax shift on individual property owners, which is reflected in the estimated statewide economic impact above. Lastly, she commented on the tangential positive economic impact of wetlands. This rule does not deal specifically with wetland restoration or conservation, and to the extent that this is an indirect effect of the rule change, the department is unable to measure the impact.</p> <p>The Department of Revenue received several other comments on the current and proposed rule, but none that commented on the economic impact of the proposed rule.</p>	
Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule	
Clarifications and guidance provided by administrative rules will permit local assessors to assess the affected lands on a more consistent basis.	
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

X ORIGINAL [] UPDATED

[] CORRECTED [] SUPPLEMENTAL

LRB #
INTRODUCTION #
Admin rule # Tax 18: Agricultural Use Value Assessment

Subject
Proposed order of the Department of Revenue relating to sales tax filing frequency

Fiscal Effect

State: X 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 X 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. X Decrease Revenues [] Permissive [] Mandatory

- 5. Types of Local Governmental Units Affected:
X Towns X Villages X Cities
X Counties X Others All taxing entities
X 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:

There are several programs available to property owners under which the permitted uses of the land are limited for purposes of conserving natural resources, preventing erosion, enhancing stream quality, and the like. Under the existing statutes and rules for determining which land qualifies for assessment under the "agricultural use value" rules, some program land is not being assessed at use value because the state or federal program in which the land is enrolled is not on the list of qualifying programs in Tax 18 and many of these programs do not permit crops to be grown or animals to be grazed on this land.

The intent of this rule is to clarify this situation so that the land under these programs will qualify for "agricultural use value" assessment in the same circumstances as other program land.

Currently, land under these programs would potentially be classified as "undeveloped" land, which by law is assessed at 50% of market value (average statewide value in 2012 was \$636 per acre). "Agricultural" land is assessed at use value (average statewide value in 2012 was \$177 per acre). The difference in value in 2012 was \$459 per acre. To the extent that a farmer's land can shift from "undeveloped" to "agricultural" as a result of the rule, his or her property taxes will decrease.

Total property taxes will not change due to the rule. Instead, there will be a shift in property taxes. The department does not have information to determine the portion of program land that was in agricultural use when it was entered into a program or whether the programs adhere to the standards and practices provided in ATCP 50.04, 50.06, 50.72, 50.83, 50.88, or 50.98. If all such program land qualifies, the department estimates approximately 87,000 acres may be affected by this rule, the rule will cause a reduction in statewide taxable property value of about \$40 million. Based on the average net tax rate for agricultural and undeveloped land for the 2012-13 property tax year of \$18.1676 per \$1,000 in value, about \$725,000 in property taxes would be shifted under the rule.

Notice of Hearing

Safety and Professional Services
General Part I, Chs. 301-319
Commercial Building Code, Chs. 361-366
CR 13-105

Hearing Information

Date: Monday, January 27, 2014
Time: 9:30 a.m.
Location: 1400 East Washington Avenue
Room 121C
Madison, Wisconsin

Appearance 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 e-mail to sam.rockweiler@wi.gov or by mail addressed to the Department of Safety and Professional Services, Division of Policy Development, P.O. Box 8366, Madison, Wisconsin

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Department of Safety and Professional Services by sections 101.02 (15) (j), 101.14 (1) (a), and 227.11 (2) (a) of the Wisconsin Statutes, and interpreting sections 101.02 (15) (j), 101.14 (1) (a), and 101.575 of the Wisconsin Statutes, the Department will hold a public hearing at the time and place indicated below to consider the proposed order to revise Chapters SPS 314 and 362, relating to fire prevention.

53708–8366. 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 Sam Rockweiler, Rules Coordinator, at the Department of Safety and Professional Services, Division of Policy Development, 1400 East Washington Avenue, Room 151, P.O. Box 8366, Madison, WI, 53708–8366; or by e-mail to sam.rockweiler@wi.gov. Comments must be received on or before **January 27, 2014**, to be included in the record of rule-making proceedings.

Copies of Rule

Copies of this proposed rule are available upon request to Sam Rockweiler, Rules Coordinator Department of Safety and Professional Services, Division of Policy Development, 1400 East Washington Avenue, P.O. Box 8366, Madison, Wisconsin 53708–8366, by email at sam.rockweiler@wi.gov or on our website at <http://dsps.wi.gov/Default.aspx?Page=44e541e8-abdd-49da-8fde-046713617e9e>

Analysis Prepared by the Department of Safety and Professional Services

Statutes interpreted

Sections 101.02 (15) (j), 101.14 (1) (a), and 101.575, Stats.

Statutory authority

Sections 101.02 (15) (j), 101.14 (1) (a), and 227.11 (2) (a), Stats.

Explanation of agency authority

Section 101.02 (15) (j) of the Statutes requires the Department to promulgate rules for the construction, repair and maintenance of safe public buildings and places of employment.

Section 101.14 (1) (a) of the Statutes authorizes the Department to make reasonable orders for the repair or removal of any buildings or other structures or combustible or explosive materials or inflammable conditions which are dangerous to any other building or premises or to occupants or which hinder firefighters in case of fire.

Section 227.11 (2) (a) of the Statutes authorizes the Department to promulgate rules interpreting any statute that is enforced or administered by the Department, if the rule is considered necessary to effectuate the purpose of the statute.

Related statute or rule

The Department has various statutory obligations and rules relating to fire prevention and building safety – which include the design and construction requirements in chapters SPS 361 to 366 for public buildings and places of employment, as promulgated under sections 101.02 (15) (j) and 101.14 (4) of the Statutes.

Plain language analysis

The proposed rule revisions primarily would update the incorporated National Fire Protection Association® NFPA® 1 fire prevention code from the 2009 edition to the 2012 edition, after approval for incorporating the 2012 edition is received from the Attorney General.

In addition to including several minor clarifications and updates, the proposed rule revisions would also (1) repeal exempting federally leased buildings, in SECTION 4,

because 41 CFR 102–80.85 makes them subject to local code requirements and inspections in fire protection; (2) define what is meant by “design requirements” because those requirements in NFPA 1 are typically excluded in order to have building–design requirements contained in chs. SPS 361 to 366 rather than both in those chapters and in ch. SPS 314; (3) delete having the requirements for flammable, combustible, and hazardous liquids in ch. ATCP 93 (formerly ch. SPS 310) from prevailing if they differ from ch. SPS 314, because those requirements are now administered by the Department of Agriculture, Trade and Consumer Protection; (4) clarify that a fire inspector can issue an order to stop construction if the order relates to a fire hazard or explosion hazard or to prevention of fire; (5) newly require providing firefighter–access pathways on roofs when installing rooftop photovoltaic systems; (6) newly require an Underwriters Laboratories® listing for fire–department access boxes that are provided after the effective date of these rules; (7) correlate use and handling of hazardous materials with NFPA 400, *Hazardous Materials Code*; (8) newly prohibit storing fuel with open–flame–type cooking equipment on a balcony; (9) clarify how portable fire extinguishers are maintained and recharged by industry–credentialed technicians; (10) update the fire–dues entitlement process to be consistent with a new statutory tie–in to reporting fire incidents, and with the Department’s changeover to a Web–based system; (11) clarify how substantial compliance with the fire–dues–entitlement requirements is determined; and (12) newly require an owner, operator, or occupant of a building to notify the authority having jurisdiction before changing the occupancy of the building.

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

Fire protection, prevention, and inspection regulations for federally owned and leased buildings are addressed in Title 41 of the Code of Federal Regulations, in Part 102, Subpart C, Sections 80.80 to 80.135. Under Section 80.85, “Federally owned buildings are generally exempt from State and local code requirements in fire protection; however, in accordance with 40 U.S.C. 619, each building constructed or altered by a Federal agency must be constructed or altered, to the maximum extent feasible, in compliance with one of the nationally recognized model building codes and with other nationally recognized codes. Leased buildings are subject to local code requirements and inspection.” No other existing or proposed federal regulations were found relating to these proposed rule revisions.

Comparison with rules in adjacent states

An Internet–based search of Web sites from the four adjacent states produced the following results relating to statewide fire–prevention rules.

Illinois: The Office of the State Fire Marshall has adopted the 2000 edition of NFPA 101®, *Life Safety Code*® to serve as the State’s rules for fire prevention and safety. That Code applies statewide to all occupancy classifications except for public elementary and secondary schools, which are under the jurisdiction of the Illinois State Board of Education. Illinois Statutes require local fire chiefs to enforce that Code except in localities which have adopted fire prevention and safety standards equal to or higher than that Code.

Iowa: The State Fire Marshal’s Office inspects facilities that are regulated by the State, such as schools, jails, prisons, daycares, residential care facilities, assisted–living facilities, and group homes. Other inspections are conducted in

response to complaints. Most state inspections are conducted using the 2009 *International Fire Code*®.

Michigan: The Bureau of Fire Services in the Department of Licensing and Regulatory Affairs applies the fire safety requirements in numerous chapters of the 2006 edition of NFPA 1 to the operation and maintenance of commercial buildings, industrial buildings, and residential buildings, excluding 1- and 2-family dwellings.

Minnesota: Minnesota has adopted the 2006 edition of the *International Fire Code*®, with various modifications, as its State Fire Code.

Summary of factual data and analytical methodologies

The data and methodology for developing these rule revisions were derived from and consisted primarily of comparing the 2009 and 2012 editions of NFPA 1. The Department's review and assessment process included evaluating the 2012 NFPA 1 changes in detail with a fire prevention advisory council. The members of the council include representatives of the major stakeholders including fire chiefs, fire inspectors, firefighters, and building owners and managers. The Department utilized the council to obtain information on any potential impacts of both the technical and administrative elements of the rule revisions. A responsibility of council members is to bring forth concerns their respective organizations may have with the requirements, including concerns regarding economic impacts.

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

The primary documents that were used to determine the effect of the proposed rule revisions on small businesses, and to prepare an economic impact analysis were the 2009 and 2012 editions of NFPA 1, and *NFPA 1 Fire Code™ Technical/Substantive Changes From the 2009 Edition to the 2012 Edition* as prepared by the NFPA Fire Code Field Office.

Fiscal Estimate and Economic Impact Analysis

The Fiscal Estimate and Economic Impact Analysis is attached.

Effect on Small Business

The proposed rule revisions are not expected to have an effect on small businesses because the 2012 edition of NFPA 1, as it would be modified by ch. SPS 314, is not expected to impose costs that would substantially exceed the costs imposed by the currently adopted 2009 edition.

The Department's Regulatory Review Coordinator may be contacted by e-mail at Tom.Engels@wi.gov, or by calling (608) 266-8608.

Agency Contact Person

Sam Rockweiler, Rules Coordinator, at the 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 at telephone (608) 266-0797; or by e-mail at sam.rockweiler@wi.gov; or by 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

SPS 314, Fire Prevention

3. Subject

Fire Prevention

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 current rule adopts by reference the 2009 edition of the National Fire Protection Association's® NFPA® 1 fire prevention code. The proposed rule replaces the 2009 edition of NFPA 1 with the 2012 edition.

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.

Representatives of school boards, building owners and managers, fire chiefs, firefighters, and fire inspectors.

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

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

Fire prevention efforts would be guided by more up-to-date standards and information. Leaving the rule reference out-of-date standards and information would potentially increase risks to public safety.

14. Long Range Implications of Implementing the Rule

Fire losses would be reduced.

15. Compare With Approaches Being Used by Federal Government

See comparison in the rule analysis that accompanies the proposed rule revisions.

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

See comparison in the rule analysis that accompanies the proposed rule revisions.

17. Contact Name

Sam Rockweiler

18. Contact Phone Number

608-266-0797

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

Notice of Hearing

Safety and Professional Services — Occupational Therapists Affiliated Credentialing Board

CR 13-109

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Occupational Therapists Affiliated Credentialing Board in sections 15.085 (5) (b), 227.11 (2) (a), and 448.965, Wis. Stats., and interpreting s. 448.965, Wis. Stats., the Occupational Affiliated Credentialing Board will hold a public hearing at the time and place indicated below to consider an order to repeal sections OT 2.07 (5) and 3.06 (b) (Note); to amend sections OT 2.03 (2) (e) and (j), 2.07 (6), 3.02, 3.05, 4.02 (2) (intro.), (a), and (b), 4.03 (1) (a), (2) (title), (c), (d), and (e), (3) (a), (b), and (f), (5) (b) and (c), and (6) (b) and (c), and 4.05 (6) and (7) (a); to repeal and recreate sections OT 1.02; and to create sections OT 3.06 (r), 4.02 (2) (j) to (q) and 4.02 (2) (intro.) (Note), relating to occupational therapy practice standards.

Hearing Information

Date: Monday, February 10, 2014
Time: 10:00 a.m.
Location: 1400 East Washington Avenue

Room 121C
Madison, Wisconsin

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 argument in writing as well. Facts, opinions and argument 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 Shawn Leatherwood, 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 Shancethea.L Leatherwood@wisconsin.gov. Comments must be received at or before the public hearing to be held on **February 10, 2014**, or to be included in the record of rule-making proceedings.

Copies of Rule

Copies of this proposed rule are available upon request to Shawn Leatherwood, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 1400 East Washington Avenue, P.O. Box 8366, Madison, Wisconsin 53708-8366, by email at Shancethea.Leaherwood@wisconsin.gov or on our website at <http://dsps.wi.gov/Default.aspx?Page=44e541e8-abdd-49da-8fde-046713617e9e>.

Analysis prepared by the Department of Safety and Professional Services

Statutes interpreted

Section 448.965, Stats.

Statutory authority

Sections 15.085 (5) (b), 227.11 (2) (a), 448.965, Stats.

Explanation of agency authority

The Occupational Therapists Affiliated Credentialing Board (Board) is authorized generally, pursuant to s. 15.08 (5) (b), Stats., to promulgate rules for guidance within its profession. The Board may also promulgate rules that interpret statutes they enforce or administer per s. 227.11 (2) (a), Stats. Section 448.965 (2), Stats., is administered by the Occupational Therapist Affiliated Credentialing Board and provides, “[t]he affiliated credentialing board may promulgate rules that define the scope of practice of occupational therapy or the scope of assisting in the practice of occupational therapy.” The proposed rule seeks to modernize practice standards captured in the current rules and bring the code in line with current practice within the profession. Therefore, the Board is authorized both generally and specifically to promulgate the proposed rules.

Related statute or rule

None.

Plain language analysis

The Occupational Therapist Affiliated Credentialing Board (Board) reviewed its rules and determined that the rules were outdated. The Board identified several key areas in the rules that were not typical of practice within the profession. The Board addressed these key areas by redefining terms throughout the entire chapter for the purpose of adding clarity to the rules. The Board was also prompted by the American Occupational Therapy Association (AOTA) to modernize its rules and make them more consistent with the AOTA’s Model Practice Act. The Board will incorporate some of the language from the AOTA Model Practice Act within the proposed rules, where necessary, to give greater direction to practicing occupational therapist and occupational therapy assistants. Ultimately, the Board, via the proposed rule, seeks to institute changes that will update the rules regulating occupational therapist with current practices within the profession.

SECTION 1. repealed and recreated the definitions section.

SECTION 2. increases the time period from 3 to 5 years that an applicant may be required to complete an oral examination, if they have not practiced prior to their application.

SECTION 3. amends s. OT 2.03 (2) (j) by omitting the term “been”.

SECTION 4. repeals s. OT 2.07 (5).

SECTION 5. amends language regarding expiration of temporary licensure.

SECTION 6. amends the biennial renewal date from November 1 to June 1.

SECTION 7. repeals the note found in s. OT 3.06 (b) and the corresponding table.

SECTION 8. creates OT 3.06 (r) and added it to the table.

SECTION 9. amends language found in s. OT 4.02 (2), (a) and (b).

SECTION 10. creates a note following s. OT 4.02 (2) (intro.).

SECTION 11. creates additional provisions to the occupational therapy services listed in s. OT 4.02 (2).

SECTION 12. adds language to s. OT 4.03 (1) (a) specifying the objectives of occupational therapy.

SECTION 13. amends the title in s. OT 4.03 (2) by striking the terms “referral” and “physician”.

SECTION 14. removes terms and clarifies the distinction between orders and referrals.

SECTION 15. adds terms to substitute health care professional instead of health care provider as well as updated terms related to performance skills and performance patterns.

SECTION 16. clarifies the terms related to program implementation.

SECTION 17. amends s. OT 4.03 (6) (b) and (c) by adding terms that specify the support system that should be in place for discontinuation of services.

SECTION 18. amends s. OT 4.05 (6) and (7) (a) by deleting unnecessary language.

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

None.

Comparison with rules in adjacent states

Illinois: The Illinois Occupational Therapy Practice Act ILL. Admin. Code tit. 68 §1315.100 governs OT practice in Illinois. The code sets forth provisions for modalities in occupational therapy, supervision of occupational therapy assistants and several other sections that the Wisconsin rules do not cover.

Iowa: Iowa administrative code defines occupational therapy practice which includes physical agent modalities 645 IAC 206.1, and sets forth a Code of Ethics for occupational therapist 645 IAC 208.1, and grounds for discipline. 645 IAC 209. Other topics covered include continuing education and supervision requirements.

Michigan: In Michigan Occupational Therapists are governed under the Public Health Code 333.18313 MCL and the Department of Consumer and Industry Services. Michigan statutes and administrative code do not set forth provisions regarding modalities in occupational therapy or practice and supervision nor does it outline topic areas for the completion of continuing education credits unlike the current Wisconsin rules.

Minnesota: Minnesota statutes govern the scope of practice for Occupational Therapists. Minn. Stat. §§ 148.6401–148.6450. The provisions cover such topics as physical agent modalities and supervision of occupational therapy assistants similar to the current Wisconsin rules.

Summary of factual data and analytical methodologies

The impetus for the proposed rule was a review by the Board which indicated that there was a gap between terminology currently being used in the profession and the language that was in the rule. The Board decided to address this issue by drafting the proposed rule. No other factual data or analytical methodologies were used.

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

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

Fiscal Estimate and Economic Impact Analysis

See the attached Fiscal Estimate and Economic Impact

Analysis.

Initial Regulatory Flexibility Analysis or Summary

None.

Environmental Assessment/Statement

None.

Agency Contact Person

Shawn Leatherwood, Administrative Rules Coordinator,
Department of Safety and Professional Services, Division of
Policy Development, 1400 East Washington Avenue, Room
151, P.O. Box 8935, Madison, Wisconsin 53708; telephone
608-261-4438; email at
Shancethea.Leatherwood@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

OT 1, 2., 3,

3. Subject

Occupational therapy practice standards

4. Fund Sources Affected

GPR FED PRO PRS SEG SEG-S

5. Chapter 20, Stats. Appropriations Affected

20.165 (1) (g)

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 Occupational Therapist Affiliated Credentialing Board reviewed its rules and determined that several key areas in the rules were not typical of practice within the profession. The Board was also prompted by the American Occupational Therapy Association (AOTA) to modernize its rules and make them more consistent with the AOTA's Model Practice Act. Ultimately, by promulgating the proposed rule, the Board seeks to update the current rules to reflect changes in occupational therapy practice.

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 proposed rule will primarily affect licensed occupational therapists and occupational therapy assistants. The rule was posted on the Department of Safety and Professional Services website for 14 days in order to solicit comments from the public regarding the rule. No comments were received from any business, business sectors, and associations representing business, local governmental units, or interested individuals regarding the rule.

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

No local governmental units participated in the development of this 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)

This proposed 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

The proposed rule will provide greater guidance for practicing occupational therapists and occupational therapy assistants on standards within their profession.

14. Long Range Implications of Implementing the Rule

The proposed rule will bring the current rules in line with practice within the occupational therapy profession.

15. Compare With Approaches Being Used by Federal Government

None.

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

Illinois: The Illinois Occupational Therapy Practice Act ILL. Admin. Code tit. 68 §1315.100 governs OT practice in Illinois. The code sets forth provisions for modalities in occupational therapy, supervision of occupational therapy assistants and several other sections that the Wisconsin rules do not cover.

Iowa: Iowa administrative code defines occupational therapy practice which includes physical agent modalities 645 IAC 206.1, and sets forth a Code of Ethics for occupational therapist 645 IAC 208.1, and grounds for discipline. 645 IAC 209. Other topics covered include continuing education and supervision requirements.

Michigan: In Michigan Occupational Therapists are governed under the Public Health Code Act 368 of 1978 MCL and the Department of Consumer and Industry Services. Michigan statutes and administrative code do not set forth provisions regarding modalities in occupational therapy or practice and supervision nor does it outline topic areas for the completion of continuing education credits unlike the current Wisconsin rules.

Minnesota: Minnesota statutes govern the scope of practice for Occupational Therapists. Minn. Stat. §§ 148.6401 –148.6450. The provisions cover such topics as physical agent modalities and supervision of occupational therapy assistants similar to the current Wisconsin rules.

17. Contact Name
Shawn Leatherwood

18. Contact Phone Number
608–261–4438

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

Notice of Hearing

**Safety and Professional Services —
Podiatry Affiliated Credentialing Board
CR 13–110**

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Podiatry Affiliated Credentialing Board in sections 227.11 (2) (a), 448.695 (3), 462.02 (2) (f), Wis. Stats., and interpreting section 462.02 (2) (f), Wis. Stats., the Podiatry Affiliated Credentialing Board will hold a public hearing at the time and place indicated below to consider an order to amend section Pod 1.02 (intro) and create sections

Pod 1.02 (2m) and (6m) and 7.01 (title), relating to podiatric x–ray assistants.

Hearing Information

Date: Tuesday, February 4, 2014
Time: 10:00 a.m.
Location: 1400 East Washington Avenue
Room 121A
Madison, Wisconsin

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 argument in

writing as well. Facts, opinions and argument 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 Shawn Leatherwood, 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 Shancethea.L Leatherwood@wisconsin.gov. Comments must be received at or before the public hearing to be held on **February 4, 2014**, to be included in the record of rule-making proceedings.

Copies of Rule

Copies of this proposed rule are available upon request to Shawn Leatherwood, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 1400 East Washington Avenue, P.O. Box 8366, Madison, Wisconsin 53708-8366, by email at Shancethea.L Leatherwood@wisconsin.gov or on our website at <http://dsps.wi.gov/Default.aspx?Page=44e541e8-abdd-49da-8fde-046713617e9e>

Analysis prepared by the Department of Safety and Professional Services

Statutes interpreted

Section 462.02 (2) (f), Stats.

Statutory authority

Sections 227.11 (2) (a), 448.695 (3), 462.02 (2) (f), Stats.

Explanation of agency authority

Pursuant to s. 227.11 (2) (a), Stats., the Podiatrist Affiliated Credentialing Board (Board) is generally empowered by the legislature to promulgate rules that will provide guidance within the profession and rules that interpret the statutes it enforces or administers. Section 448.695 (3), Stats., specifically empowers the Board to, “promulgate rules specifying the requirements for a course of instruction related to x-ray examinations by persons under the direct supervision of a podiatrist. . .” The proposed rule seeks to carry out this mandate by specifying the necessary course of instruction for podiatric x-ray assistants. Therefore, the Board is empowered both generally and specifically to promulgate the proposed rule.

Related statute or rule

None.

Plain language analysis

The proposed rule deals with the requirements for a course of instruction for x-ray examinations by persons under the direct supervision of a podiatrist. Generally, a person who practices radiography is required to be credentialed by the Radiography Examining Board. However, under s. 462.02 (2) (f), Stats., if a person is under the direct supervision of a podiatrist and has successfully completed a course of instruction approved by the Podiatrists Affiliated Credentialing Board they are not required to have a permit to

conduct radiography. Pursuant to s. 448.695 (3), Stats., the Board is authorized to promulgate rules that identify the specific courses a person who is under the direct supervision of a podiatrist must complete in order to be qualified to conduct podiatric x-ray examinations. The statute also requires the Podiatry Examining Board to consult with the Radiography Examining Board in drafting the proposed course of instruction.

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

The Consumer-Patient Radiation Health & Safety Act of 1981, 42 USCS 10001, et seq. establishes federal guidelines for standards of accreditation of educational programs for certain occupations that administer radiologic procedures. The standards are in place to protect the public from excessive exposure to radiation by health care professionals who most often use radiation in the treatment of disease or other medical conditions. The regulations are directed towards radiographers, dental hygienists, dental assistants, nuclear medicine technologists, and radiation therapy technologists.

42 USCS § 10003 (5) broadly defines, “persons who administer radiologic procedures” as any person, other than a practitioner, who intentionally administers radiation to other persons for medical purposes and includes medical radiologic technologists (including dental hygienists and assistants), radiation therapy technologists and nuclear medicine technologists.” 42 CFR 75.2 defines radiation therapy technologist as, “a person other than a licensed practitioner who utilizes ionizing radiation-generating equipment for therapeutic purposes on human subjects.” Although non-licensed personnel who assist podiatrists, the topic of these proposed rules, are not specifically addressed, they could be captured under the broad definition of radiation therapy technologists. The federal statute and regulations are comparable to the proposed rule in that they both set forth course instructions for persons who administer radiologic procedures such as podiatric x-ray assistants.

Comparison with rules in adjacent states

Illinois: Technicians under the general supervision of a podiatric physician are exempt from being certified. Ill Admin. Code tit. 32 §401.30 (5).

Iowa: Iowa grants permits to podiatric X-ray equipment operators defined as one who “performs radiography of only the foot and ankle using dedicated podiatric equipment”. IAC 641-42.2 (136C).

Michigan: Michigan does not regulate podiatric x-ray assistants.

Minnesota: Minnesota regulates limited x-ray operators. They may only practice medical radiography on limited regions of the body as long as he or she has successfully passed the American Registry of Radiologic Technologists (ARRT) exam, or the American Chiropractic Registry of Radiologic Technologists (ACRRT) exam. Minn. Stats. 144.121 subd. 5a.

Summary of factual data and analytical methodologies

The Board ensures the accuracy, integrity, objectivity and consistency of the data used in preparing the proposed rule and related analysis.

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

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 Tom.Engels@wisconsin.gov, or by calling (608) 266-8608.

Agency Contact Person

Shawn Leatherwood, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 1400 East Washington Avenue, Room 151, P.O. Box 8935, Madison, Wisconsin 53708; telephone 608-261-4438; email Shancethea.Leatherwood@wisconsin.gov at

Fiscal Estimate and Economic Impact Analysis

The Fiscal Estimate and Economic Impact Analysis are attached.

Initial Regulatory Flexibility Analysis or Summary

None.

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

165-POD 1, 7

3. Subject

Pod X-ray assistants

4. Fund Sources Affected

GPR FED PRO PRS SEG SEG-S

5. Chapter 20, Stats. Appropriations Affected

20.165(1)(g)

6. Fiscal Effect of Implementing the Rule

No Fiscal Effect Increase Existing Revenues
 Indeterminate Decrease Existing Revenues

Increase Costs
 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 proposed rule sets forth the required course of instruction for persons who will be conducting radiography under the direct supervision of a licensed podiatric physician. Pursuant to s. 462.02 (1) (a), Stats., a person must be credentialed by the Radiography Examining Board in order to conduct radiography. However under, 462.02 (2) (f), Stats., a person conducting radiography under the direct supervision of a podiatrist who has successfully completed a course of instruction approved by the Podiatrists Affiliated Credentialing Board is exempt from the requirement. This proposed rule will identify the required course of instruction approved by the Podiatrists Affiliated Credentialing Board for persons who will be directly supervised by a podiatrist.

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 proposed rule will primarily affect licensed podiatrist and podiatric x-ray assistants working under the direct supervision of a licensed podiatrist. The rule was posted on the Department of Safety and Professional Service's website for 14 days in order to solicit comments from businesses, business sectors, and associations representing business, local governmental units, and other individuals that may be affected by the proposed rule. No comments were received from the public regarding the rule.

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

No local governmental units participated in the development of this 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)

The proposed 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

The benefit of implementing this rule is to give guidance within the profession for persons who seek to practice podiatric radiography, prevent the excessive use of radiation by health care professionals, and to protect the public from excessive exposure to radiation by health care professionals who use radiation in the treatment of disease or other medical conditions.

14. Long Range Implications of Implementing the Rule

There will be greater consistency in the training of persons who will be conducting podiatric radiography and greater protection of the public from excessive exposure to radiation.

15. Compare With Approaches Being Used by Federal Government

The Consumer-Patient Radiation Health & Safety Act of 1981, 42 USC 10001, et seq. establishes federal guidelines for standards of accreditation of educational programs for certain occupations that administer radiologic procedures. The standards are in place to protect the public from excessive exposure to radiation by health care professionals who use radiation in the treatment of disease or other medical conditions. The regulations are directed towards radiographers, dental hygienists, dental assistants, nuclear medicine technologists, and radiation therapy technologists. The federal statute and regulations are comparable to the proposed rule in that they both set forth course instructions for persons who administer radiologic procedures such as podiatric x-ray assistants.

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

Illinois: Technicians under the general supervision of a podiatric physician are exempt from being certified. Ill Admin. Code tit. 32 §401.30

Iowa: Iowa grants permits to podiatric X-ray equipment operators defined as one who "performs radiography of only the foot and ankle using dedicated podiatric equipment". IAC 641-42.2 (136C).

Michigan: Michigan does not regulate podiatric x-ray assistants.

Minnesota: Minnesota regulates limited x-ray operators. They may only practice medical radiography on limited regions of the body as long as he or she has successfully passed the American Registry of Radiologic Technologists (ARRT) exam, or the American Chiropractic Registry of Radiologic Technologists (ACRRT) exam. Minn. Stats. 144.121 subd. 5a.

17. Contact Name
Shawn Leatherwood

18. Contact Phone Number
608-261-4438

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

Notice of Hearing

Safety and Professional Services — Psychology Examining Board CR 13-103

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Psychology Examining Board in sections 15.08

(5) (b) and 455.065 (1) and (3), Wis. Stats., and interpreting sections 455.06 and 455.065, Wis. Stats., the Psychology Examining Board will hold a public hearing at the time and place indicated below to consider an order to renumber and amend section Psy 4.03; amend Chapter Psy 4 (title); repeal and recreate section Psy 4.02; and create sections Psy 4.015, 4.03, 4.04, and 4.05, relating to psychology continuing education.

Hearing Information

Date: Wednesday, January 15, 2014
Time: 9:00 a.m.
Location: 1400 East Washington Avenue
 Room 199B
 Madison, Wisconsin

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 argument in writing as well. Facts, opinions and argument 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 **January 15, 2014**, 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, or by email at Sharon.Henes@wisconsin.gov.

Analysis Prepared by the Department of Safety and Professional Services

Statutes interpreted

Sections 455.06 and 455.065, Wis. Stats.

Statutory authority

Sections 15.08 (5) (b) and 455.065 (1) and (3), Wis. Stats.

Explanation of agency authority

The examining board shall promulgate rules for its own guidance and 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 profession.

Specifically, the board shall promulgate rules establishing the minimum number of hours of continuing education, the topic areas that the continuing education must cover, the criteria for the approval of continuing education programs and courses required for renewal of a license, the criteria for the approval of the sponsors and cosponsors of those continuing education programs and courses, and the criteria for the approval of continuing education programs and courses required for the exemptions from the examination requirements under s. 455.04 (1) (e) and (4) (f).

Related statute or rule

Section 455.06, Wis. Stats.

Plain language analysis

The rule reorganizes and clarifies the continuing education requirements for psychologists.

Section 1 inserts the words “continuing education” into the title in order to provide an easy reference for licensees.

Section 2 creates a definition section.

Section 3 repeals the current continuing education requirements in order to reorganize and create clarity. This section is recreated to include the general continuing education requirements.

Section 4 moves the current s. Psy 4.03 section to the end of the chapter. In addition, the section is amended to specify the number of continuing education hours which must be completed to renew a license which expired less than five years from the application for renewal.

Section 5 creates three new sections. The first section specifies approved continuing education. A psychologist may obtain continuing education as follows: completing courses from an organization approved by the American Psychological Association or National Association of School Psychologists; category I courses approved by the American Medical Association or the American Osteopathic Association; courses approved in another state the licensee holder also holds a license; teaching and presenting programs or courses; serving on a professional board or committee; authorship of a book, book chapter or article in peer reviewed journal; board certification; completion of a master’s or doctoral degree in psychopharmacology; providing supervision to trainees and evaluation of community outpatient mental health programs. The second section provides postponement, waiver and exemptions to the continuing education requirements based upon hardship or retirement. The third section specifies records of continuing education must be kept for a minimum period of six years. In addition, current rule requires a continuing education audit every biennium and this rule changes it to an audit may be done.

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

None.

Comparison with rules in adjacent states

Illinois: Illinois requires 24 hours of continuing education and of those 24 hours at least 3 hours must be related to the ethics. Continuing education may be earned by participating in a course or program by an approved continuing education sponsor; postgraduate training programs and for teaching in the field of psychology in an accredited college, university, graduate school or as an instructor of a program by approved sponsors. Postgraduate course and teaching courses do have maximums as to the number to be counted towards the required 24 hours. Continuing education records are to be maintained for the previous 8 years. Illinois does have provisions for waivers of continuing education for hardship.

Iowa: Iowa requires 40 hours of continuing education each biennium. For the second renewal period, licensees’ continuing education shall include 6 hours in either Iowa mental health laws and regulations or risk management. For all subsequent renewals, licensees’ continuing education shall include 6 hours in any of the following: ethics, federal mental health laws, Iowa mental health laws or risk management. Board members may obtain continuing education hours based upon attendance and participation at board meetings. Continuing education may be earned as

follows: mandatory reporter training; programs sponsored by the American Psychological Association or Iowa Psychological Association; approved workshops, conferences or symposiums; academic coursework; home study or electronically transmitted courses; scholarly research published in recognized professional publication; and preparing and teaching courses or programs. Iowa does not have provisions on hardship waivers.

Michigan: Michigan does not require continuing education for psychologists.

Minnesota: Minnesota requires 40 hours of continuing education each biennium. Continuing education may be earned as follows: developing and teaching an academic course; attending courses or presentations based on scientific, practice or professional standards foundations; graduate level courses in psychology; developing presentation, or taped or computerized materials based on scientific, practice or professional standards foundations; and authoring, editing or reviewing a psychological publication. Continuing education records must be maintained for 8 years after the renewal date. Variances may be granted for completion of continuing education outside the biennium. The board randomly audits a percentage of renewing licensees each month for compliance with continuing education.

Summary of factual data and analytical methodologies

The Board considered the Association of State and Provincial Psychology Board’s recommendations for

continuing education and the continuing education requirements of other states. In addition, the Board reviewed the recent audit results to determine what issues required clarification for the credential holders.

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

This rule was posted for 14 days for economic comments and none were received.

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 Tom.Engels@wisconsin.gov, or by calling (608) 266-8608.

Agency Contact Person

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, Wisconsin 53708; telephone 608-261-2377; email at 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

Psy 4

3. Subject

Continuing education

4. Fund Sources Affected

GPR FED PRO PRS SEG SEG-S

5. Chapter 20, Stats. Appropriations Affected

20.165(1)(g)

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

Recent continuing education audits have revealed confusion in the continuing education requirements, including whether specific topic areas, if any, must be addressed by their continuing education.

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

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. The rule addresses the licensee's continuing education.

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

The benefits of implementing the rule is to streamline the approval process for continuing education, reflect current continuing education programs and create clarity in the continuing education requirements.

The alternate is the rule will not be in conformity with the statutory requirements as it relates to required topics.

14. Long Range Implications of Implementing the Rule

The long range implication is to create clarity in the continuing education requirements.

15. Compare With Approaches Being Used by Federal Government

None

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

Illinois requires 24 hours of continuing education with 3 hours in ethics. Iowa requires 40 hours of continuing education including designating topics for 6 hours. Minnesota requires 40 hours of continuing education. Michigan does not require continuing education for psychologists.

17. Contact Name

Sharon Henes

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

Workforce Development Unemployment Insurance, Chs. 100—150 CR 13-106

The Wisconsin Department of Workforce Development (DWD) announces that it will hold a public hearing on a permanent rule to revise Chapters DWD 111, 113, 115, 132 and 140, and to create Chapter DWD 114, Wis. Admin. Code, relating to quarterly wage reporting, settlement of disputes and compromise of liabilities, license revocation and financial record matching, business transfers, determining eligibility of benefits and unemployment insurance appeals.

Hearing Information

Date: Tuesday, January 21, 2014
Time: 11:00 a.m. to 2:00 p.m.
Location: Department of Workforce Development
Division of Unemployment Insurance
201 East Washington Avenue, Room H304
Madison, Wisconsin 53703

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) 261-6805 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 Copies of the Rule

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, January 31, 2014. 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>.

You can obtain a free copy of the 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 53708. 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 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 of Workforce Development

Statutes interpreted

Chapter 108, Stats.

Statutory authority

Sections 108.14 (2) and (26), 108.22 (1) (cm), and 108.227 (1m), Stats.

Explanation of statutory authority

The Department of Workforce Development (DWD) has specific and general authority to establish rules interpreting and clarifying provisions of ch. 108, Stats., unemployment insurance (UI) and reserves. Under s. 108.14 (2), Stats., DWD may adopt and enforce all rules necessary or suitable to carry out ch. 108, Stats. 2013 Wisconsin Act 20 (Act 20) and 2013 Wisconsin Act 36 (Act 36) granted additional statutory authority for the promulgation of rules including:

- Section 108.14 (26), Stats., instructs DWD to prescribe by rule a standard affidavit form that may be used by parties involved in UI administrative appeals.
- Section 108.22 (1) (cm), Stats., allows DWD to waive or decrease the interest charged to employers due to delinquent payment of UI taxes in limited circumstances as prescribed by administrative rule.
- Section 108.227 (1m), Stats., instructs DWD to promulgate rules regarding certification of a person delinquent for UI contributions whose license or credential is to be denied, not renewed, discontinued, suspended or revoked.

Related statutes or rules

Chapter 108, Stats., governs the state's unemployment insurance system and the related rules are chs. DWD 100, 111, 113, 115, 132, and 140.

Plain language analysis

DWD is proposing to amend chs. DWD 111, 113, 115, 132, and 140 and create ch. DWD 114. Amendments to these chapters and the creation of ch. DWD 114 are necessary to align DWD's administrative rules to the changes under ch. 108, Stats., enacted under Act 20 and Act 36.

DWD is proposing amendments to the following:

Quarterly wage reporting

- Under ch. 108, Stats., employers are required to file a quarterly wage report with DWD. If an employer files a late quarterly wage report, s. DWD 111.07 details the process used in assessing a penalty against the employer and the amount of the penalty. The provisions with respect to the amount and process of assessing a penalty against the employer who files a tardy quarterly wage report are now set forth in s. 108.22, Stats., as a result of Act 36. Section DWD 111.07 should be repealed.

Settlement of disputes and compromise of liabilities

- Chapter DWD 113 establishes standards for the settlement of disputes between the department and parties to determinations, decisions or actions and the compromises of liabilities for contributions, reimbursements in lieu of contribution, interest penalties and costs assessed under ch. 108, Stats. Act 36 permits DWD to waive or decrease the interest charged to an employer in limited circumstances as prescribed by administrative rule.

Business transfers

- 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. There are both mandatory and optional provisions for successorship. Act 36 provides that DWD may accept an optional successorship application that is filed late as a result of excusable neglect. DWD shall not accept a late application for successorship more than 90 days after the due date, regardless of whether there is excusable neglect for the application being late. The amendments to ch. DWD 115, which regulates business transfers, make the rule consistent with the provisions of Act 36.

Determining eligibility for benefits

- The law provides that under certain circumstances, employees may be eligible for benefits even though they voluntarily quit their job. One circumstance involves an employee who terminates part-time employment because loss of the employee's full-time employment makes it economically unfeasible for the employee to continue the part-time employment. Act 20 repealed this exception. Section DWD 132.02 clarified the provisions of s. 108.04 (7) (k), Stats., and should be repealed.

Unemployment insurance appeals

- Act 36 instructs the department to create a standard affidavit form that may be used by both claimants and employers during UI administrative appeals. Procedures regarding appeals are contained in ch. DWD 140 and DWD will prescribe the standard affidavit form within this chapter.

DWD is proposing the creation of the following:

License revocation and financial record matching

- Act 36 requires various state agencies and boards (licensing departments) that issue various licenses and other credentials (licenses) to revoke a license or deny

an application for a license if DWD certifies that the license holder or applicant owes DWD delinquent UI taxes. The creation of ch. DWD 114 provides procedures for persons whose license or credential is to be denied, not renewed, discontinued, suspended or revoked based on being certified delinquent in paying UI contributions. Act 36 requires DWD to promulgate rules for the process to deny or revoke a license based on delinquent UI taxes.

- Act 36 authorized DWD to operate a financial record matching program. The creation of ch. DWD 114 creates proposed rules that are consistent with the requirements used by other state agencies operating a similar financial record matching program.

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 the Department of Labor must find that the law of the state includes certain requirements. With respect to these rules, 42 USC 503 (a) (3) provides that state laws grant an opportunity for a fair hearing, before an impartial tribunal, for all individuals whose claims for unemployment insurance are denied.

Comparison with rules in adjacent states

Waiving or decreasing interest charged to employers delinquent in paying UI tax

Illinois

The Director of Employment Security is authorized to waive the payment of all or part of any interest and penalty upon proper application and showing of good cause. (Sections 1401 and 1402)

Good cause has been defined by Department rule to consist of any or all of the following:

- Where the delay was caused by the death or serious illness of the employer or a member of his immediate family, or by the death, or serious illness of the person in the employer’s organization responsible for the preparation and filing of the report or for making the payment.
- Where the delay was caused by the destruction of the employer’s business records by fire or other casualty without fault.
- Where the Department, in its written communication or through a specifically identified employee in oral communication directed to a specific employer account, affirmatively misled the employer as to its duties and obligations such that the charging of interest to the employer would violate the principle of equitable estoppel.
- For the purposes of waiver of interest only: Where the employer relied to its detriment on a certificate issued by the Director pursuant to Section 2600 of the Act and the Director agrees, at a later date, that the certificate was issued in error, such waiver shall be granted from the date the erroneous certificate was issued to a date 30 days after notice that the original certificate was in error.

Interest can also be waived according to Department rule whenever the employer can demonstrate extreme financial hardship and files with the Director a repayment agreement. However, the waiver in this instance only applies to additional interest that would have accrued during the period of the repayment agreement. (56 Ill. Adm. Code Section 2765.65)

The Director will waive interest for a nonprofit organization or for a local governmental entity, if:

- The organization or entity had never filed any of the reports or forms required of it under the Act; and
- It had not been determined to be the “chargeable employer” as result of the filing of an unemployment insurance claim; and
- Its chief operating officer files an affidavit with the Director in which he states that, upon learning of the organization or entity’s liability under the Act, he took immediate action to bring the organization or entity into compliance. (56 Ill. Adm. Code 2765.70)

Indiana

Indiana’s Unemployment Insurance employer handbook states that “Delinquent employers should either pay the amount due, or contact the Indiana Department of Workforce Development as soon as possible to discuss payment options. Payment agreements are available to any employer that needs to arrange for payment over–time that has not previously defaulted on a payment agreement.” There is no discussion of waiving or decreasing the interest owed by employers who are delinquent in paying unemployment insurance taxes.

Iowa

Chapter 96 of the Iowa Code does not include provisions for the waiver or forgiveness of interest charged to an employer who is delinquent in paying unemployment insurance taxes.

Michigan

Section 15 (b) of the Michigan Employment Security Act requires the Unemployment Insurance Agency to bill an employer for delinquent unemployment insurance taxes and to charge interest. The law does not include provisions to enable the agency to waive or decrease this interest once it is charged.

Minnesota

Minnesota statutes at 268.067 states:

- The commissioner of employment and economic development may compromise in whole or in part any action, determination, or decision that affects only an employer and not an applicant. This paragraph applies if it is determined by a court of law, or a confession of judgment, that an applicant, while employed, wrongfully took from the employer \$500 or more in money or property.
- The commissioner may at any time compromise any unemployment insurance tax or reimbursement due from an employer under this chapter or Minnesota’s Special Assessment for Interest owed to the federal government.
- Any compromise involving an amount over \$10,000 must be authorized by an attorney licensed to practice law in Minnesota who is an employee of the department designated by the commissioner for that purpose.
- Any compromise must be in the best interest of the state of Minnesota.

Revoke or deny an application for licenses based on delinquent UI contributions

Illinois

Illinois' unemployment insurance administrative code does not authorize the Illinois unemployment insurance agency to revoke or deny an application for an employer's license based on delinquent UI contributions.

Indiana

Indiana's unemployment insurance law does not authorize the Indiana unemployment insurance agency to revoke or deny an application for an employer's license based on delinquent UI contributions.

Iowa

Iowa's unemployment insurance law does not authorize the Iowa unemployment insurance agency to revoke or deny an application for an employer's license based on delinquent UI contributions.

Michigan

Michigan's unemployment insurance law does not authorize the Michigan unemployment insurance agency to revoke or deny an application for an employer's license based on delinquent UI contributions.

Minnesota

The state of Minnesota or a political subdivision may not issue, transfer, or renew, and must revoke a license for the conduct of any profession, trade, or business, if the commissioner notifies the licensing authority that the licensee, applicant, or employer owes unemployment insurance contributions of \$500 or more. A licensing authority that has received a notice may issue, transfer, renew, or not revoke the license only if the licensing authority has received a copy of the debt clearance certificate. (M.S.A. § 268.0625 (Subdivision 1))

Creation of standard affidavit for UI administrative appeal hearings

Illinois

Illinois does not direct its unemployment insurance agency to create a standard affidavit for unemployment insurance administrative appeal hearings.

A review of Illinois' unemployment insurance agencies document entitled Preparing for your Appeal Hearing only references affidavits by stating "Any document submitted in evidence must be supported by testimony from a person at the hearing who has direct knowledge of the document's contents. For example, third party affidavits or test results without someone who can testify as to their meaning or validity cannot overcome direct testimony from the opposing party. Likewise, business records must be supported by testimony during the hearing."

Indiana

Indiana does not provide parties with a standard affidavit to be used in UI appeals heard before administrative law judges.

Indiana Code 22-4-17-6 (a) provides "Sec. 6. (a) The manner in which disputed claims shall be presented and the conduct of hearings and appeals, including the conduct of administrative law judges, review board members, and other individuals who adjudicate claims during a hearing or other adjudicative process, shall be in accordance with rules adopted by the department for determining the rights of the

parties, whether or not the rules conform to common law or statutory rules of evidence and other technical rules of procedure."

Indiana Code 22-4-17-7 provides "Sec. 7. In the discharge of the duties imposed by this article, any member of the board, the department, the review board, or an administrative law judge, or any duly authorized representative of any of them, shall have power to administer oaths and affirmations, take depositions, certify to official acts, and issue and serve subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records deemed necessary as evidence in connection with the disputed claim or the administration of this article."

Iowa

Iowa does not use a standard affidavit for UI appeals.

Michigan

Michigan does not utilize a standard affidavit for UI appeals. Referees conducting hearings shall accept competent, relevant, and material evidence.

Minnesota

268.105 (b) of the Minnesota statutes provides that affidavits may be used in unemployment insurance appeals as competent evidence of the facts contained in it, but does not provide that the Minnesota unemployment insurance agency shall create a standard affidavit to be used in the hearings.

Summary of factual data and analytical methodologies

This rule does not depend on any complex analysis of data. Instead, the changes to the rules are required by recent legislative enactments and represent common sense amendments that will assist employers in their dealings with the UI system.

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

This rule will have a positive impact on employers by allowing DWD flexibility with problems encountered by employers within the UI system due to inadvertent mistakes.

Effect on Small Business

The rule modifications impacting small businesses will ease program requirements and likely reduce costs for small businesses. The small businesses that may be affected by this rule include the following:

- *Small businesses that are delinquent in paying UI taxes:*
 1. DWD charges interest if an employer is delinquent in paying UI taxes. In limited circumstances, Act 36 grants DWD the authority to waive or decrease the interest charged to employers who are late in paying their UI taxes, but provides that DWD shall prescribe rules to exercise this authority. Thus, the rules will specify when all businesses, including small businesses, may be eligible for a waiver or reduction in interest charged to them as a result of their being delinquent in paying UI taxes.
 2. Act 36 requires various state agencies and boards (licensing departments) that issue various licenses and other credentials (licenses) to revoke a license or deny an application for a license if DWD certifies the license holder or applicant owes UI contributions. Act 36 provides that this collection tool may be used to collect UI contributions when the employer has exhausted all legal rights to challenge the employer's

liability. Act 36 also requires DWD to promulgate rules with respect to the process DWD will follow when it uses this collection tool.

- *Small businesses involved in UI administrative appeals:*

Act 36 directs DWD to prescribe by rule a standard affidavit form that may be used by parties, including small businesses, to UI administrative appeals. Employers and claimants will have discretion in whether or not to use these forms when involved in a UI administrative appeal. The standard affidavit form may be used by small business owners to reduce staff time and other resources associated with UI appeals.

Initial Regulatory Flexibility Analysis

Rule summary

The Department of Workforce Development (DWD) is proposing changes to the unemployment insurance (UI) administrative rules that are required by or necessary as a result of the passage of 2013 Wisconsin Act 20 (Act 20) and 2013 Wisconsin Act 36 (Act 36). These Acts granted DWD additional statutory authorization for the promulgation of rules. DWD is proposing to amend chs. DWD 111, 113, 115, 132, and 140 and create ch. DWD 114. Amendments to these chapters, and the creation of ch. DWD 114 are necessary to align DWD's administrative rules to the changes under ch. 108, Stats., enacted under Act 20 and Act 36.

DWD is proposing amendments to the following:

Quarterly wage reporting

- Under ch. 108, Stats., employers are required to file a quarterly wage report with DWD. If an employer files a late quarterly wage report, s. DWD 111.07 details the process used in assessing a penalty against the employer and the amount of the penalty. The provisions with respect to the amount and process of assessing a penalty against the employer who files a tardy quarterly wage report are now set forth in s. 108.22, Stats., as a result of Act 36. Section DWD 111.07 should be repealed.

Settlement of disputes and compromise of liabilities

- Chapter DWD 113 establishes standards for the settlement of disputes between DWD and parties to determinations, decisions or actions and the compromises of liabilities for contributions, reimbursements in lieu of contribution, interest penalties and costs assessed under ch. 108, Stats. Act 36 permits DWD to waive or decrease the interest charged to an employer in limited circumstances as prescribed by administrative rule.

Business transfers

- 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. There are both mandatory and optional provisions for successorship. Act 36 provides that DWD may accept an optional successorship application that is filed late as a result of excusable neglect, except if the optional successorship application is submitted more than 90 days after the due date. The amendments to ch. DWD 115, which regulates business transfers, make the rule consistent with the provisions of Act 36.

Determining eligibility for benefits

- The law provides that under certain circumstances, employees may be eligible for benefits even though they voluntarily quit their job. One circumstance involves an employee who terminates part-time employment because loss of the employee's full-time employment makes it economically unfeasible for the employee to continue the part-time employment. Act 20 repealed this exception that was contained in s. 108.04 (7) (k), Stats. Section DWD 132.02 clarified the provisions of s. 108.04 (7) (k), Stats., and should be repealed.

Unemployment insurance appeals

- Act 36 instructs DWD to create a standard affidavit form that may be used by both claimants and employers during UI administrative appeals. Procedures regarding appeals are contained in ch. DWD 140 and DWD will prescribe the rules with respect to the use of the standard affidavit form within this chapter.

DWD is proposing the creation of the following:

License revocation and financial record matching

- Act 36 requires various state agencies and boards (licensing departments) that issue various licenses and other credentials (licenses) to revoke a license or deny an application for a license if DWD certifies that the license holder or applicant owes DWD delinquent UI taxes. Act 36 requires DWD to promulgate rules for the process to deny or revoke a license based on delinquent UI taxes. The creation of ch. DWD 114 provides procedural protections for individuals whose license or credential is to be denied, not renewed, discontinued, suspended or revoked based on being certified delinquent in paying UI contributions.
- Act 36 authorized DWD to operate a financial record matching program. The creation of ch. DWD 114 creates proposed rules that are consistent with the requirements used by other state agencies operating a similar financial record matching program.

Small business affected

The rule modifications impacting small businesses will ease program requirements and likely reduce costs for small businesses. The small businesses that may be affected by this rule include the following:

Small businesses that are delinquent in paying UI taxes:

3. DWD charges interest if an employer is delinquent in paying UI taxes. In limited circumstances, Act 36 grants DWD the authority to waive or decrease the interest charged to employers who are late in paying their UI taxes, but provides that DWD shall prescribe rules to exercise this authority. Thus, the rules will specify when all businesses, including small businesses, may be eligible for a waiver or reduction in interest charged to them as a result of their being delinquent in paying UI taxes.
4. Act 36 requires various state agencies and boards (licensing departments) that issue various licenses and other credentials (licenses) to revoke a license or deny an application for a license if DWD certifies the license holder or applicant owes UI contributions. Act 36 also requires DWD to promulgate rules with respect to the process DWD will follow when it uses this collection tool.

- *Small Businesses involved in UI Administrative Appeals:*

Act 36 instructs DWD to prescribe by rule a standard affidavit form that may be used by both claimants and employers, including small businesses, during UI administrative appeals. Employers and claimants will have discretion in whether or not to use these forms when involved in a UI administrative appeal. The standard affidavit form may be used by small business owners to reduce staff time and other resources associated with UI appeals.

Reporting, bookkeeping and other procedures

The amendments to the rules do not require businesses, including small businesses, to perform additional reporting, bookkeeping or other procedures.

Professional skills required

The amendments to the rules do not require businesses, including small businesses, to acquire additional professional skills to comply with the amendments.

Accommodation for small business

The rule amendments do not make special exceptions for small businesses due to the fact the changes to the UI program will positively impact businesses of all sizes.

The proposed rule amendments and creation of ch. DWD 114 include provisions that will benefit large and small businesses alike. For example, this rule amendment will:

- Create standards for DWD to waive or decrease interest charged to an employer that is late in paying UI taxes.
- Provide procedural protections for employers who are subject to a denial or revocation of various licenses based on delinquent UI contributions.
- Create a standard affidavit form for use in UI administrative appeal hearings, which is designed to ease the administrative burdens encountered by employers involved in a UI appeal.

Conclusion

These amendments to the rules will benefit Wisconsin businesses, including many small businesses. These amendments will have no adverse impact on affected businesses and, as a result, the amendments are not subject to the small business delayed effective date under s. 227.22 (2) (e), Stats.

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

Chapters DWD 111 (QUARTERLY WAGE REPORTING PROCEDURES), 113 (SETTLEMENT OF DISPUTES AND COMPROMISE OF LIABILITIES), 114 (LICENSE REVOCATION AND FINANCIAL RECORD MATCHING), 115 (BUSINESS TRANSFERS), 132 (DETERMINING ELIGIBILITY FOR BENEFITS) and 140 (UNEMPLOYMENT INSURANCE APPEALS)

3. Date Rule promulgated and/or revised; Date of most recent Evaluation

- Chapter DWD 111 was originally ch. ILHR 111. Chapter ILHR 111 was created by an order of the Department of Industry, Labor and Human Relations on January 13, 1989 and was effective as of March 1, 1989. Chapter ILHR 111 was renumbered ch. DWD 111 pursuant to s. 13.93 (2m) (b) 1., Stats., as compiled in the June 1997 Administrative Register No. 498.
 - Chapter DWD 113 was originally ch. ILHR 113 and was effective on March 1, 1994. Chapter ILHR 113 was renumbered ch. DWD 113 pursuant to s. 13.93 (2m) (b) 1., Stats., as compiled in the June 1997 Administrative Register No. 498.
 - Chapter DWD 114 is necessary to create due to the recent passage of 2013 Wisconsin Act 36 (Act 36). Act 36 created s. 108.227 (1m), Stats., that instructed the Department of Workforce Development (DWD) to promulgate rules. The rules are to specify procedures to implement the process whereby employers who are delinquent in paying unemployment insurance (UI) contributions may have various licenses revoked or have an application for a license denied. In addition, Act 36 enabled DWD to operate a financial record matching program whereby DWD, for various asset verification or determination purposes, will match DWD data of delinquent debtors with the records of financial institutions. The proposed rule will ensure that the program operated by DWD can be run consistently with similar programs run by the Departments of Children and Families, Revenue, and Health Services.
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- Chapter DWD 115 was originally ch. Ind–UC 115 and this was renumbered to be chapter ILHR 115 pursuant to s. 13.93 (2m) (b). Chapter ILHR 115 was repealed and a new chapter ILHR 115 was created effective February 1, 1992. Chapter ILHR 115 was renumbered ch. DWD 115 pursuant to s. 13.93 (2m) (b), Stats., as compiled in the June 1997 Administrative Register No. 498.
 - Chapter DWD 132 was originally ch. Ind 132. Chapter Ind. 132 was repealed as it existed on August 31, 1987 and a new ch. ILHR 132 was created effective September 1, 1987. Chapter ILHR 132 was renumbered ch. DWD 132 pursuant to s. 13.93 (2m) (b) 1., Stats., as compiled in the June 1997 Administrative Register No. 498.
 - Chapter DWD 140 was originally ch. Ind.–UC 140 and this was repealed and a new ch. ILHR 140 was created effective December 1, 1985. Chapter ILHR 140 was renumbered ch. DWD 140 pursuant to s. 13.93 (2m) (b) 1., Stats., as compiled in the June 1997 Administrative Register No. 498.

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.

DWD is proposing to amend chs. DWD 111, 113, 115, 132, and 140 and create ch. DWD 114. Amendments to these chapters, and the creation of ch. DWD 114 are necessary to align DWD's administrative rules to the changes under ch. 108, Stats., enacted under Act 20 and Act 36.

DWD is proposing amendments to the following:

Quarterly Wage Reporting

- Under ch. 108, Stats., employers are required to file a quarterly wage report with DWD. If an employer files a late quarterly wage report, s. DWD 111.07 details the process used in assessing a penalty against the employer and the amount of the penalty. The provisions with respect to the amount and process of assessing a penalty against the employer who files a tardy quarterly wage report are now set forth in s. 108.22, Stats., as a result of Act 36. Section DWD 111.07 should be repealed.

Settlement of Disputes and Compromise of Liabilities

- Chapter DWD 113 establishes standards for the settlement of disputes between the department and parties to determinations, decisions or actions and the compromises of liabilities for contributions, reimbursements in lieu of contribution, interest penalties and costs assessed under ch. 108, Stats. Act 36 permits DWD to waive or decrease the interest charged to an employer in limited circumstances as prescribed by administrative rule.

Business Transfers

- 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. There are both mandatory and optional provisions for successorship. Act 36 provides that DWD may accept an optional successorship application that is filed late as a result of excusable neglect. DWD shall not accept a late application for successorship more than 90 days after the due date, regardless of whether there is excusable neglect for the application being late. The amendments to ch. DWD 115, which regulates business transfers, make the rule consistent with the provisions of Act 36.

Determining Eligibility for Benefits

- The law provides that under certain circumstances, employees may be eligible for benefits even though they voluntarily quit their job. One circumstance involves an employee who terminates part–time employment because loss of the employee's full–time employment makes it economically unfeasible for the employee to continue the part–time employment. Act 20 repealed this exception. Section DWD 132.02 clarified the provisions of s. 108.04 (7) (k), Stats., and should be repealed.
-

Unemployment Insurance Appeals

- Act 36 instructs the department to create a standard affidavit form that may be used by both claimants and employers during UI administrative appeals. Procedures regarding appeals are contained in ch. DWD 140 and DWD will prescribe the standard affidavit form within this chapter.

DWD is proposing the creation of the following:

License Revocation and Financial Record Matching

- Act 36 requires various state agencies and boards (licensing departments) that issue various licenses and other credentials (licenses) to revoke a license or deny an application for a license if DWD certifies that the license holder or applicant owes DWD delinquent UI taxes. The creation of ch. DWD 114 provides procedures for persons whose license or credential is to be denied, not renewed, discontinued, suspended or revoked based on being certified delinquent in paying UI contributions. Act 36 requires DWD to promulgate rules for the process to deny or revoke a license based on delinquent UI taxes.
- Act 36 authorized DWD to operate a financial record matching program. The creation of ch. DWD 114 creates proposed rules that are consistent with the requirements used by other state agencies operating a similar financial record matching program.

5. Describe the Rule's Enforcement Provisions and Mechanisms

The proposed rule will ease program requirements for employers involved with the UI program. As a result, additional enforcement provisions are not necessary. The proposed rule eases the burden faced by employers dealing by creating:

- Standards for DWD to waive or decrease interest charged to an employer that is late in paying UI taxes.
- A standard affidavit form for use in UI administrative appeal hearings which is designed to ease the burden encountered by employers involved in a UI appeal.
- Procedural protections for employers whose license or credential may be denied, not renewed, discontinued, suspended or revoked based on being certified delinquent in paying UI contributions. Act 36 requires various state agencies and boards (licensing departments) that issue licenses to revoke a license or deny an application for a license if DWD certifies that the license holder or applicant owes DWD delinquent UI taxes. Act 36 requires DWD to promulgate rules for the process for when it certifies to a licensing department that it should deny or revoke a license based on delinquent UI taxes.

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.

The proposed rule implements the UI proposals contained in Act 36. As a result, the fiscal note incorporates the economic impact related to the rule. A copy of Act 36 fiscal note is attached.

The rule modifications impacting businesses will ease program requirements and likely reduce costs for small businesses. The businesses, including small businesses, that may be affected by this rule include the following:

• Businesses that are Delinquent in Paying UI Taxes:

1. DWD charges interest if an employer is delinquent in paying UI taxes. In limited circumstances, Act 36 grants DWD the authority to waive or decrease the interest charged to employers who are late in paying their UI taxes, but provides that DWD shall prescribe rules to exercise this authority. Thus, the rules will specify when all businesses, including small businesses, may be eligible for a waiver or reduction in interest charged to them as a result of their being delinquent in paying UI taxes.

2. Act 36 requires various state agencies and boards (licensing departments) that issue various licenses and other credentials (licenses) to revoke a license or deny an application for a license if DWD certifies the license holder or applicant owes UI contributions. Act 36 also requires DWD to promulgate rules with respect to the process DWD will follow when it uses this collection tool.

• Businesses involved in UI Administrative Appeals:

Act 36 instructs DWD to prescribe by rule a standard affidavit form that may be used by both claimants and employers, including small businesses, during UI administrative appeals. Employers and claimants will have discretion in whether or not to use these forms when involved in a UI administrative appeal. The standard affidavit form may be used by small business owners to reduce staff time and other resources associated with UI appeals.

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 the DWD 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)

12. Fiscal Effect of Repealing or Modifying the Rule

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

13. Summary of Costs and Benefits of Repealing or Modifying the Rule

There are no costs and benefits of repealing and modifying the proposed rule that are independent of the fiscal effect of Acts 20 and 36.

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

The proposed rule will have a positive impact on employers by allowing DWD the flexibility with problems encountered by employers within the UI system due to inadvertent mistakes. The rule modifications will ease program requirements and likely reduce costs for all businesses, including small businesses.

16. Compare With Approaches Being Used by Federal Government

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 the Department of Labor must find that the law of the state includes certain requirements. With respect to these rules, 42 USC 503 (a) (3) provides that state laws grant an opportunity for a fair hearing, before an impartial tribunal, for all individuals whose claims for unemployment insurance are denied.

None of the other proposed rules impact an area in which the federal government has dictated that state law or rules must conform to federal requirements.

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

- Waiving or Decreasing Interest Charged to Employers Delinquent in Paying UI Tax

Illinois

The Director of Employment Security is authorized to waive the payment of all or part of any interest and penalty upon proper application and showing of good cause. (Sections 1401 and 1402)

Good cause has been defined by Department rule to consist of any or all of the following:

- (a) Where the delay was caused by the death or serious illness of the employer or a member of her immediate family, or by the death, or serious illness of the person in the employer’s organization responsible for the preparation and filing of the report or for making the payment.
- (b) Where the delay was caused by the destruction of the employer’s business records by fire or other casualty without fault.
- (c) Where the Department, in its written communication or through a specifically identified employee in oral communication directed to a specific employer account, affirmatively misled the employer as to its duties and obligations such that the charging of interest to the employer would violate the principle of equitable estoppel.
- (d) For the purposes of waiver of interest only: Where the employer relied to its detriment on a certificate issued by the Director and the Director agrees, at a later date, that the certificate was issued in error, such waiver shall be granted from the date the erroneous certificate was issued to a date 30 days after notice that the original certificate was in error.

Interest can also be waived according to Department rule whenever the employer can demonstrate extreme financial hardship and files with the Director a repayment agreement. However, the waiver in this instance only applies to additional interest that would have accrued during the period of the repayment agreement. (56 Ill. Adm. Code Section 2765.65)

The Director will waive interest for a nonprofit organization or for a local governmental entity, if all the following apply:

- (a) The organization or entity had never filed any of the reports or forms required of it under the UI law of Illinois.
 - (b) It had not been determined to be the “chargeable employer” as result of the filing of a UI claim.
 - (c) Its chief operating officer files an affidavit with the Director in which she states that, upon learning of the organization or entity’s liability under the Act, she took immediate action to bring the organization or entity into compliance. (56 Ill. Adm. Code 2765.70)
-

Iowa

Chapter 96 of the Iowa Code does not include provisions for the waiver or forgiveness of interest charged to an employer who is delinquent in paying UI taxes.

Michigan

Section 15 (b) of the Michigan Employment Security Act requires the UI Agency to bill an employer for delinquent UI taxes and to charge interest. The law does not include provisions to enable the agency to waive or decrease this interest once it is charged.

Minnesota

Minnesota statutes at 268.067 states:

- (a) The commissioner of employment and economic development may compromise in whole or in part any action, determination, or decision that affects only an employer and not an applicant. This paragraph applies if it is determined by a court of law, or a confession of judgment, that an applicant, while employed, wrongfully took from the employer \$500 or more in money or property.
- (b) The commissioner may at any time compromise any UI tax or reimbursement due from an employer under this chapter or Minnesota's Special Assessment for Interest owed to the federal government.
- (c) Any compromise involving an amount over \$10,000 must be authorized by an attorney licensed to practice law in Minnesota who is an employee of the department designated by the commissioner for that purpose.
- (d) Any compromise must be in the best interest of the state of Minnesota.

- **Revoke or Deny an Application for Licenses Based on Delinquent UI Contributions**

Illinois

Illinois' UI administrative code does not authorize the Illinois UI agency to certify to other state agencies that those agencies should revoke or deny an application for an employer's license based on delinquent UI contributions.

Iowa

Iowa's UI law does not authorize the Iowa UI agency to certify to other state agencies that they should revoke or deny an application for an employer's license based on delinquent UI contributions.

Michigan

Michigan's UI law does not authorize the Michigan UI agency to certify to other state agencies that those state agencies should revoke or deny an application for an employer's license based on delinquent UI contributions.

Minnesota

The state of Minnesota or a political subdivision may not issue, transfer, or renew, and must revoke a license for the conduct of any profession, trade, or business, if the commissioner notifies the licensing authority that the licensee, applicant, or employer owes unemployment insurance contributions of \$500 or more. A licensing authority that has received a notice may issue, transfer, renew, or not revoke the license only if the licensing authority has received a copy of the debt clearance certificate. (M.S.A. § 268.0625 (Subdivision 1))

- Creation of Standard Affidavit for UI Administrative Appeal Hearings

Illinois does not direct its UI agency to create a standard affidavit for UI administrative appeal hearings.

A review of a document created by the Illinois UI agency document entitled "Preparing for your Appeal Hearing" only references affidavits by stating "Any document submitted in evidence must be supported by testimony from a person at the hearing who has direct knowledge of the document's contents. For example, third party affidavits or test results without someone who can testify as to their meaning or validity cannot overcome direct testimony from the opposing party. Likewise, business records must be supported by testimony during the hearing."

Iowa

Iowa does not use a standard affidavit for UI appeals.

Michigan

Michigan does not utilize a standard affidavit for UI appeals. Referees conducting hearings shall accept competent, relevant, and material evidence.

Minnesota

Section 268.105 (b) of the Minnesota statutes provides that affidavits may be used in UI appeals as competent evidence of the facts contained in it, but does not provide that the Minnesota UI agency shall create a standard affidavit to be used in the hearings.

18. Contact Name

Janell Knutson

19. Contact Phone Number

608/266-1639

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

Submittal of Proposed Rules to Legislature

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

Agriculture, Trade and Consumer Protection

CR 13–058

(DATCP DOCKET # 13–R–01)

The Department of Agriculture, Trade and Consumer Protection has submitted proposed rules for legislative committee review, pursuant to s. 227.19, Stats. The rules revise Chapters ATCP 10 and 12, relating to animal disease control, animal movement, and animal markets, dealers, and truckers.

The Governor approved the rule on November 27, 2013.

Agriculture, Trade and Consumer Protection

CR 13–066

(DATCP DOCKET # 12–R–08)

The Department of Agriculture, Trade and Consumer Protection has submitted a proposed rule for legislative committee review, pursuant to s. 227.19, Stats. The rule revises Chapters ATCP 110 and 111, relating to home improvement practices and basement waterproofing practices.

The Governor approved the rule on November 27, 2013.

Public Service Commission

CR 13–040

(PSC DOCKET # 1–AC–240)

The Public Service Commission of Wisconsin has submitted a final draft of proposed rules to the presiding officer of each house of the Legislature for standing committee review, pursuant to Wis. Stat. s. 227.19 (2). The proposed rule revises Chapter PSC 118, relating to renewable resource credits.

The Governor approved the proposed rule on December 5, 2013.

Revenue

CR 13–078

On December 6, 2013, the Department of Revenue submitted a proposed rule to the Chief Clerks of the Senate for legislative committee review, pursuant to s. 227.19, Stats. The proposed rule order revises Chapter Tax 2, relating to apportionment of apportionable income of interstate air freight forwarders affiliated with a direct air carrier.

The governor approved the rule on November 27, 2013.

Safety and Professional Services

Professional Services, Chs. 1–299

CR 13–077

On December 10, 2013, the Department of Safety and Professional Services submitted a rule-making order to the Chief Clerks of the Senate and the Assembly for referral to appropriate standing committees for review under sec. 227.19, Stats. The proposed rule amends sections SPS 1.08 (2), 2.10 (1), and 8.03 (3), relating to hearings, injunctions, and warnings.

The Governor approved the rule under sec. 227.185, Stats., on December 10, 2013.

Safety and Professional Services — Marriage & Family Therapy, Counseling & Social Worker Examining Board

CR 13–009

On December 10, 2013, the Marriage & Family Therapy, Counseling & Social Worker Examining Board resubmitted a proposed rule-making order with germane modification to the Chief Clerks of the Senate and the Assembly for referral to appropriate standing committees for review under s. 227.19, Stats. The resubmitted rule repeals and recreates sections MPSW 10.01 (6) and 14.01, relating to professional counselor education.

This rule was previously submitted on April 23, 2013 and was recalled on July 2, 2013.

This rule is not subject to section 227.185, Stats. The statement of scope for this rule, published in Register No. 654, on July 1, 2010, was sent to LRB prior to June 8, 2011.

Safety and Professional Services — Medical Examining Board

CR 13–090

On December 10, 2013, the Medical Examining Board submitted a proposed rule to the Chief Clerks of the Senate and the Assembly for referral to appropriate standing committees for review under sec. 227.19, Stats. The proposed rule-making order amends section Med 1.02, relating to diploma copies.

This rule is not subject to s. 227.185, Stats. The statement of scope for this rule was published in Register No. 636 on December 14, 2008, and was sent to the LRB prior to the effective date of 2011 Wis. Act 21.

Workforce Development

Unemployment Insurance, Chs. 100–150

CR 13–081

The Wisconsin Department of has submitted a proposed rule for legislative committee review, pursuant to s. 227.19,

Stats. The proposed rule revises Chapters DWD 126, 127, and 129, relating to unemployment insurance work registration, work search, and benefit claiming procedures.

The Governor approved the rule on December 5, 2013.

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.

Natural Resources

Environmental Pollution — WPDES, Chs. 200—

CR 13-006

(DNR # WT-28-10)

An order to revise Chapter NR 211, relating to pretreatment requirements for industrial users, publicly owned wastewater treatment plants, and the Department of Natural Resources, and affecting small businesses.

Effective 2-1-14.

Public Defender

CR 13-049

An order to amend sections PD 3.02 (1), 6.01, and 6.02 (1), relating to the cost of retained counsel, payment for legal representation, and discount option.

Effective 2-1-14

Public Service Commission

CR 13-025

(PSC # 13-025)

An order to repeal sections PSC 8.07 (7) and (11), 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, 168.10 (1) (b) to (d) and (2), and 168.11, 168.12 (1) (f), 169, 171.06 (2) and (3), 171.07 (4) and (5), 171.08, and 171.10 (3) and Chapters PSC162, 163, 164, 166, 167, and 174; to renumber and amend sections PSC 168.10 (1) (intro.) and (a); to amend sections 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 to repeal and recreate section PSC 171.09, relating to regulation of telecommunications providers and services.

Effective 2-1-14

Rules Published with this Register and Final Regulatory Flexibility Analyses

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

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

Agriculture, Trade and Consumer Protection **CR 13-003**

(DATCP DOCKET # 12-R-03)

An order of the Department of Agriculture, Trade and Consumer Protection creating Chapter ATCP 49, relating to the Farmland Preservation Program.

Effective 1-1-14

Business Impact Analysis (Summary)

This rule will have a generally positive impact on agriculture-related businesses of all sizes, including farms. This rule will have no negative impact on non-agriculture related businesses. This rule affects businesses in the following ways:

Farmland Preservation Plans

- As part of the farmland preservation planning process, ch. 91, Stats., counties are required to describe the rationale used for determining the farmland preservation area. This rule clarifies that the rationale must be based on objective criteria related to characteristics of the land parcels themselves, including the proximity of parcels to agricultural infrastructure and the historical use of the land for agriculture-related purposes. As part of the farmland preservation planning process, counties are required to inventory and evaluate agriculture-related businesses and services, including agricultural production and enterprises related to agriculture. This process helps to ensure that agriculture-related businesses can be measured within the community and aids counties as they continue to plan for the presence of these businesses.

Farmland Preservation Zoning

- Chapter 91, Stats., allows a political subdivision to locate accessory and agriculture-related uses within a certified farmland preservation district. This rule provides guidance as to the types of uses that may be considered accessory and agriculture-related.

- Accessory uses, under the rule, include facilities for storing, processing, selling, and housing agricultural products. Such uses primarily support agricultural activities occurring on the farm. These uses can make it possible for a farm to generate income through direct-to-consumer sales, such as a roadside farm, or can add value to a product produced on the farm, such as a cheese processing facility. The rule also specifies that an accessory use may include those uses that generate income yet do not conflict with (or may be enhanced by) the farm operation. Listed uses include crop mazes, agricultural tourism, and you-pick operations. The clarification of permissible accessory uses facilitates the inclusion of agricultural businesses, particularly small

agricultural businesses, within the farmland preservation district.

- The rule also clarifies that agriculture-related uses include facilities that support agriculture even though the use itself may not be located on a farm. Such uses include facilities that primarily provide agricultural supplies, agricultural equipment, fertilizers, pesticides or other agricultural inputs, or other agricultural services directly to farms. These uses also include manure digesters, facilities that slaughter livestock, and agricultural processing plants. The rule clarifies that political subdivisions may include within a farmland preservation zoning district businesses that support agriculture. Allowing such businesses to locate within a farmland preservation district helps provide these businesses with a potential customer base and may add additional economic certainty to farmers with land in the certified farmland preservation district.

Farmland Preservation Agreements

- This rule clarifies that the department may deny an application for a farmland preservation agreement if the department determines that the agreement would conflict with the goals of the agricultural enterprise area program or would impair or limit agricultural uses on other lands in the agricultural enterprise area.

Comments from Legislative Committees (Summary)

On July 10, 2013, DATCP transmitted the above rule for legislative committee review. The rule was assigned to the Assembly Committee on Agriculture and the Senate Committee on Agriculture, Small Business, and Tourism. Neither committee took action. The Assembly referred the rule to the Joint Committee for Review of Administrative Rules (JCRAR) on August 22, 2013, and the Senate referred it to JCRAR on September 3, 2013.

Agriculture, Trade and Consumer Protection **CR 13-027**

(DATCP DOCKET # 12-R-06)

An order of the Department of Agriculture, Trade and Consumer Protection revising Chapters ATCP 125 and 134, relating to manufactured home communities — fair trade practices.

Effective 1-1-14

Business Impact Analysis (Summary)

The rule impacts manufactured home park operators. Many manufactured home park operators are small businesses. This rule does make minor changes to park operators' duties and responsibilities, but will only have a very minor monetary impact.

Comments from Legislative Committees (Summary)

On August 29, 2013, DATCP transmitted the above rule for legislative committee review. The rule was assigned to the

Assembly Committee on Consumer Protection and the Senate Committee on Agriculture, Small Business, and Tourism. Neither committee took action. The Senate referred the rule to the Joint Committee for Review of Administrative Rules (JCRAR) on October 9, 2013, and the Assembly referred it to JCRAR on October 11, 2013. JCRAR took no action on the rule.

Health Services

Health, Chs. 110—

CR 13–028

An order of the Department of Health Services revising Chapter DHS 132, relating to the establishment of rules to guide the actions of the quality assurance and improvement committee to review proposals and award moneys for innovative projects in regards to nursing homes.

Effective 1–1–14.

Final Regulatory Flexibility Summary

The department did not hold a public hearing or formally accept public comments on the proposed rule as permitted under s. 227.16 (2) (b), Stats. The rule change does not require reports. The rule change will have no effect on businesses.

Comments of Legislative Standing Committees

No comments were received.

Natural Resources

Fish, Game, etc., Chs. 1—

CR 13–010

(DNR # ER–27–11)

An order of the Wisconsin Natural Resources Board revising Chapter NR 27, relating to revising Wisconsin's endangered and threatened species list.

Effective 1–1–14.

Final Regulatory Flexibility Analysis

A final regulatory flexibility analysis was not prepared since the proposed rule does not impose 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. 227.114 (6) or 227.14 (2g), Stats. A review by the Small Business Regulatory Review Board was not required under s. 227.19 (3) (h), Stats.

Legislative Comments

No comments were reported.

Natural Resources

Fish, Game, etc., Chs. 1—

CR 13–019

(DNR # FH–18–12)

An order of the Wisconsin Natural Resources Board revising Chapters NR 20 and 23, relating to fishing regulations on inland, outlying, and boundary waters of Wisconsin.

Effective January 1, 2014, in part, and April 1, 2014, in part.

Final Regulatory Flexibility Analysis

The proposed rule will have minimal to no impact on businesses and members of the public. As with any change in regulations, there will be a requirement for anglers to learn the

new rules. However, the Fisheries Management Bureau works to notify the public of new regulations via press releases, the internet, and fishing regulations pamphlets.

The Department has determined that this rule would not adversely affect in a material way the economy, a sector of the economy, productivity, jobs, or the overall economic competitiveness of this state. It is not expected that there will be any economic impact directly related to these rule changes on anglers or fishing-related businesses. The proposed rule does not impose any compliance or reporting requirements on small businesses nor are any design or operational standards contained in the rule. No fiscal impacts are expected for public utility rate payers or local governmental units.

The goal is to ensure the rule language that governs fishing in inland, outlying, and boundary waters properly reflects the desired management of Wisconsin waters.

This determination was made after the Department requested economic impact comments from Wisconsin Conservation Congress, WI Wildlife Federation, Great Lakes Indian Fish & Wildlife Commission, WI Association of Lakes, WI Bow Hunters Association, WI Archery Alliance, WI Traditional Archers, WI Federation of Great Lakes Sport Fishing Clubs, WI Council of Sport Fishing Organizations, Federation of Fly Fishers — Wisconsin Council, Musky Clubs Alliance of Wisconsin, Inc., Salmon Unlimited, Trout Unlimited — WI Council, Walleyes for Tomorrow, WI Bass Federation, Izaak Walton League — Wisconsin Division, Lake Michigan Fisheries Forum, Wisconsin Aquaculture 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, Northeast WI Great Lakes Sport Fishermen, and Great Lakes Sport Fishermen of Milwaukee. Proposed rule documents were also posted on the Department website and the Wisconsin Administrative Rules website.

Legislative Comments

No comments were reported.

Natural Resources

Fish, Game, etc., Chs. 1—

CR 13–023

(DNR # FR–24–11)

An order of the Wisconsin Natural Resources Board creating section NR 1.27, relating to contracting for forest regeneration services on state lands.

Effective 1–1–14.

Effect on Small Business

This rule imposes no new compliance, reporting or bookkeeping requirements for small business, nor are any design or operational standards contained in the rule. There is no expected adverse impact on small business. Therefore, under s. 227.19 (3m), Stats., a final regulatory flexibility analysis is not required.

Legislative Comments

No comments were reported.

Revenue

CR 13–034

An order of the Department of Revenue amending section Tax 61.08 (11) (h) and (k) and (13) (a) and creating section Tax 61.08 (13) (cm), relating to lottery retailers.

Effective 1–1–14.

Effect on Small Business

This rule order does not affect small business.

Legislative Comments

No comments were reported.

Revenue
CR 13-035

An order of the Department of Revenue amending sections Tax 16.04 (2), 16.06 (4) (Note 1), and 19.03 (1) (c) (intro.), relating to local financial reporting and expenditure restraint payments.

Effective 1-1-14

Effect on Small Business

This rule order does not affect small business.

Legislative Comments

No comments were reported.

Revenue
CR 13-036

An order of the Department of Revenue repealing sections Tax 12.06 (1) (a) 1. a. to g. and (b) 1. a. to e., 12.075, 12.08, 12.40, 12.50 (4), subch. I of ch. Tax 18, subch. II (title) of ch. Tax 18, and 18.08; renumbering and amending section Tax 12.06 (1) (a) 1. (intro.) and (b) 1. (intro.); amending sections Tax 12.05 (1) (b) and (c) (intro.), 12.065 (1) (c), (2) (b), and (6), 12.50 (1) and (3) (b), 18.04, 18.05 (intro.) and (1) (a), and 18.07 (2); and repealing and recreating section Tax 12.07; relating to property tax and assessment of agricultural property.

Effective 1-1-14

Effect on Small Business

This rule order does not affect small business.

Legislative Comments

No comments were reported.

Safety and Professional Services
Plumbing, Chs. 381—387
CR 13-046

An order of the Department of Safety and Professional Services amending sections SPS 382.20 (2) (a) (intro.) and (2) (a) 2. (Note), 382.40 (6) (a), and 382 APPENDIX A-382.20 (2) and A-382.33 (9) (f)-1 (Note), relating to plumbing plan review by municipal agents.

Effective 1-1-14.

Effect on Small Business

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

Legislative Comments

No Comments were reported.

Transportation
CR 12-046

An order of the Department of Transportation amending section Trans 200.06 (7) (b) 3. a., relating to the erection of signs on public highways, and affecting small business.

Effective 1-1-14.

Effect on Small Business

To the extent that more small businesses participate in the SIS program, and more information about businesses is available to motorists, there may be a minimal positive economic impact on private sector revenues.

Legislative Comments

No comments were reported.

Sections Affected by Rule Revisions and Corrections

The following administrative code sections had rule revisions and corrections take place in **December 2013**, and will be effective as indicated in the history note for each particular section. For additional information, contact the Legislative Reference Bureau at (608) 266-7590.

Revisions

Agriculture, Trade and Consumer Protection

Ch. ATCP 49

Entire Chapter

Ch. ATCP 125

Title

ATCP 125.01 (1e) to (3), (7) (intro.), (8), (9), (10) (a), (c), (d)

ATCP 125.02 (1) to (4), (6)

ATCP 125.03 (1) (intro.), (a), (d) to (h), (4) (intro.), (a), (c) (Note), (5)

ATCP 125.04 (1) (intro.), (b), (c), (2) (b), (d), (e), (3) (a), (b)

ATCP 125.05 (Title), (2) (b), (c), (f), (3), (4)

ATCP 125.06 (Title), (1)

ATCP 125.07 (Title), (1)

ATCP 125.08 (1), (Note), (3)

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Ch. ATCP 134

ATCP 134.02 (2)

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NR 20.10 (10), (10m)

NR 20.15 (1), (1m)

NR 20.20 (1) (h), (2) (b), (3) (d), (f), (4) (c), (e), (5) (f), (6) (e), (7) (c), (f), (8) (b), (9) (d), (10) (c), (e), (g), (k), (13) (a), (14) (f), (15) (b), (16) (c), (f), (h), (17) (e), (18) (c), (e), (19) (c), (e), (20) (d), (21) (c), (24) (f), (26) (a), (e), (g), (27) (f), (29) (e), (h), (31) (a), (32) (e), (33) (am), (b), (g), (34) (b), (c), (35) (b), (e), (g), (36) (c), (37) (f), (i), (38) (b), (d), (39) (e), (42) (b) to (d), (f), (43) (d), (44) (b), (45) (e), (46) (dm), (e), (48) (a), (49) (am), (d), (f), (50) (e), (h), (51) (b), (54) (a), (55) (b), (c), (56) (j), (57) (d), (g), (j), (58) (e), 959 (a), 960 (b), (f), (61) (b), (62) (b), (64) (c), (h), (66) (bm), (e), (g), (68) (a), (69) (e), (70) (dm), (e), (71) (e), (72) (e), (h), (73) (f), (g), (L)

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NR 20.36 (2)

NR 20.41 (4)

Ch. NR 23

NR 23.05 (d), (e)

NR 23.055 (2)

Ch. NR 27

NR 27.03 (2) (b) 2., 3L., 3m., 5., 10., 11., (d) 1m., (e) 5m., 7., (f) 2g., 2r., 2w., (i) 2., 3., 5m., 14., 16., 17., 25d., 40d., (3) (b) 1g., (c) 2., 3., (e) 5t., 7., (f) 1., 1m., 2t., 3., (g) 7m., (i) 3., 4g., 8., 20., 28m., 28t., 31., 32m., 41m., 43., 45., 50p., 51., 51m., 51p., 51t., 51w., 53., 53m.

Revenue

Ch. Tax 12

Tax 12.05 (1) (b), (c) (intro.)

Tax 12.06 (1) (a), (b)

Tax 12.065 (1) (c), (2) (b), (6)

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Tax 12.075

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Tax 12.50 (1), (3) (b), (4)

Ch. Tax 16

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Ch. Tax 18

Tax 18 Subchapter I

Tax 18 Supchapter II (title)

Tax 18.04

Tax 18.05 (intro.), (1) (a)

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Ch. Tax 19

Tax 19.03 (1) (c) (intro.)

Ch. Tax 61

Tax 61.08 (11) (h), (k), (13) (a), (cm)

Safety and Professional Services

Ch. SPS 382

SPS 382.20 (2) (a) (intro.), (2) (a) 2. (Note)

SPS 382.40 (6) (a)

Ch. SPS 382 Appendix

A-382.20 (2), (Note)

A-382.33 (9) (f)-1 (Note)

Transportation

Ch. Trans 200

Trans 200.06 (7) (b) 3. a.

Editorial Corrections

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

Agriculture, Trade and Consumer Protection

Ch. ATCP 125

(Note [3])

ATCP 125.03 (1) (g)

Ch. ATCP 127

ATCP 127.80 (10) (a) 1., (Note)

Ch. ATCP 161

ATCP 161.50 (3) (e) (Note)

Health Services

Ch. DHS 10

DHS 10.13 (41)

DHS 10.62 (1), (2)

Ch. DHS 108

DHS 108.02 (10), (11) (a), (12) (a) 2., 5., (d) (intro.), (f), (15)

Ch. DHS 152

DHS 152.065 (7) (a), (b) 2., 5., (c)

Ch. DHS 153

DHS 153.07 (5) (a), (b) 2., 5., (c)

Ch. DHS 154

DHS 154.07 (5) (a), (b) 2., 5., (c)

Natural Resources

Ch. NR 1

NR 1.05 (4) (a) (Note)

NR 1.06 (1)

Ch. NR 19.057

NR 19.057 (3) (Note)

Ch. NR 20

NR 20.35 (3)

Ch. NR 27

NR 27.03 (3) (i) 19.

Ch. NR 168 (note)

Ch. NR 173 (note)

Safety and Professional Services

Ch. SPS 314

SPS 314.01 (1) (f) (Notes [1, 2]), (2) (b) 4., (Note)

Ch. SPS 314 Appendix

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Ch. SPS 316

SPS 316.310 (intro.), (1), (2)

Ch. SPS 323

SPS 323.16 (2) (a)

Ch. SPS 332

SPS 332.16 (4)

Ch. SPS 334

SPS 334.36

SPS 334.45 (4) (b)

Ch. SPS 362

SPS 362.0400 (2) (Note [2])

SPS 362.0401 (title), (Note)

Ch. SPS 382

SPS 382.34 (3) (b) (Note)

Ch. SPS 382 Appendix

A-382.30 (11) (d)

Transportation

Ch. Trans 200

(Note)

Executive Orders

The following are recent Executive Orders issued by the Governor.

Executive Order 123. Relating to a Special Session of the Legislature. **(November 22, 2013)**

Executive Order 124. Relating to an ongoing Energy Emergency and Amending Executive Orders #120, 121, and 122. **(November 27, 2013)**

Executive Order 125. Relating to a Proclamation that the Flag of the United States and the Flag of the State of Wisconsin be Flown at Half-Staff on National Pearl Harbor Remembrance Day. **(December 5, 2013)**

Executive Order 126. Relating to Nelson Mandela. **(December 6, 2013)**

Executive Order 127. Relating to an Ongoing Energy Emergency and Amending Executive Orders #120, 121, 122, and 124. **(December 13, 2013)**

Public Notices

Health Services

Medicaid Payment for Graduate Medical Education for Underserved and Rural Regions State of Wisconsin Medicaid Payment Plan for Rate Year 2014

The State of Wisconsin is implementing a new program to provide grants for new residency positions in existing graduate medical education (GME) programs, under the authority of Act 20, the 2013–2015 Biennial Budget. Eligible entities for these grant dollars will be hospitals with accredited GME programs serving low-income populations. This grant program will be administered by the State's Department of Health Services (DHS).

Payments will be used to support new residents in primary care (family medicine, general internal medicine, and pediatrics), general surgery, and psychiatry; priority will be given to hospital-based programs serving rural and underserved populations. No resident will receive more than \$75,000 and no existing GME program will receive more than \$225,000 annually. All eligible hospitals for the GME grant funds serve the State's Medical Assistance (MA/Medicaid) population.

The following changes will be contained in the January 1, 2014 inpatient hospital state plan amendment:

The criteria for eligibility and payment specifications will be defined.

The methodology used to award payments to residency programs will be defined.

This notification is intended to provide notice of the type of changes that are included in the amendment. Interested parties should obtain a copy of the actual proposed plan amendment to comprehensively review the scope of all changes.

Proposed Change

It is estimated that these changes will have a projected impact of an increase of graduate medical education residency funds in the amount of \$1,500,000 all funds per state fiscal year. This amount was provided for in Act 20 and is consistent with the current aggregate Medicaid budget approved by the Legislature.

The Department's proposal involves no change in the definition of those eligible to receive benefits under Medicaid, and the benefits available to eligible recipients remains the same. The effective date for the proposed change will be January 1, 2014.

Copies of the Proposed Change

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

Regular Mail

Division of Health Care Access and Accountability
P.O. Box 309
Madison, WI 53701-0309

State Contact

David Hoffert, Hospital Rate Setting Section Chief
Bureau of Fiscal Management
(608) 261-8397(phone)
(608)266-1096 (fax)

David.Hoffert@wisconsin.gov

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

Written Comments

Written comments are welcome. Written comments on the proposed change may be sent by FAX, email, or regular mail to the Division of Health Care Access and Accountability. The FAX number is (609) 266-1096. The email address is David.Hoffert@wisconsin.gov. Regular mail can be sent to the address listed above.

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

Health Services

Medicaid Reimbursement for Inpatient Hospital Services: Acute Care Hospitals, Children's Hospitals, Critical Access Hospitals, Major Border Status Hospitals, Non State Public, Psychiatric Hospitals, and Rehabilitation Hospitals State of Wisconsin Medicaid Payment Plan for Rate Year 2014

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

The Wisconsin Medicaid inpatient program uses a reimbursement system which is based on Diagnosis Related Groupings (DRGs). Under the current Medicaid Inpatient Hospital State Plan, effective February 1, 2013, the rate-setting methodology for Acute Care, Major Border Status and Children's Hospitals is a provider specific, DRG payment system adjusted by case mix that assigns each hospital a unique hospital specific DRG base rate. This rate includes adjustments for differences in wage levels, includes an amount for capital expenditures, and payment enhancements for qualifying Rural Hospitals and facilities with Graduate Medical Education programs. In addition, a cost outlier payment will be made when the cost of providing services exceeds a predetermined tripoint. Payments are adjusted as necessary to ensure budget compliance using a statewide base rate as the starting point of the rate setting process. Critical Access Hospitals are paid on a provider specific, cost based DRG base rate adjusted as necessary to ensure budget compliance. Non State Public and Private Psychiatric and Rehabilitation Hospitals are paid on a provider specific, cost based per diem rate adjusted as necessary to ensure budget compliance. Effective January 1, 2014, DHS will be updating the inpatient hospital rates for rate year 2014.

The following changes will be contained in the January 1, 2014 inpatient hospital state plan amendment:

- Effective January 1, 2014, inpatient hospital rates for Rate Year 2014 will be published.
- Effective January 1, 2014, outlier payment tripoints for Rate Year 2014 will be published.

This notification is intended to provide notice of the type of changes that are included in the amendment. Interested parties should obtain a copy of the actual proposed plan amendment to comprehensively review the scope of all changes.

Proposed Change

It is estimated that these changes will have no material impact on projected annual aggregate Medicaid expenditures in state fiscal year 2014. DHS maintains the same hospital budget approved by the Legislature.

The Department's proposal involves no change in the definition of those eligible to receive benefits under Medicaid, and the benefits available to eligible recipients remains the same. The effective date for these proposed changes will be January 1, 2014.

Copies of the Proposed Change

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

Regular Mail

Division of Health Care Access and Accountability
P.O. Box 309
Madison, WI 53701-0309

State Contact

David Hoffert, Hospital Rate Setting Section Chief
Bureau of Fiscal Management
(608) 261-8397(phone)
(608)266-1096 (fax)

David.Hoffert@wisconsin.gov

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

Written Comments

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

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

Health Services

Medicaid Reimbursement for Outpatient Hospital Services: Acute Care Hospitals, Children's Hospitals, Critical Access Hospitals, Major Border Status Hospitals, Non State Public, Psychiatric Hospitals, and Rehabilitation Hospitals State of Wisconsin Medicaid Payment Plan for Rate Year 2014

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

Under the current Medicaid Outpatient Hospital State Plan, effective April 1, 2013, the Wisconsin Medicaid outpatient program uses a reimbursement system which is based on Enhanced Ambulatory Patient Groupings (EAPGs). This is a discrete cost-specific reimbursement methodology that allows DHS to reimburse providers based on case mix. Acute Care, Psychiatric, Rehabilitation, Children's, Out-of-State, and new hospitals are paid under the EAPG system using a statewide base rate, which is adjusted to stay within the State's available funding for outpatient hospital services. Effective January 1, 2014, this rate will also include a payment enhancement for facilities with Graduate Medical Education programs. Critical Access Hospitals are also paid using the EAPG system, but the base rate is based on each hospital's specific, prospective costs. Effective January 1, 2014, DHS will be updating the outpatient hospital rates for rate year 2014.

Due to the redistributive nature of the implementation of the EAPG reimbursement system, DHS decided to limit the fiscal impact to individual providers during the first year of implementation. Specifically, DHS limited the financial impact to a +/- 5% corridor of the projected payments a non-Critical Access Hospital would have received under the outpatient per visit reimbursement methodology, effective February 1, 2013. The final base rate, therefore, for each non-Critical Access Hospital was based on this Fiscal Corridor adjustment to the Wisconsin statewide base rate for Rate Year 2013. Effective January 1, 2014, for Rate Year 2014, this corridor will be removed in conjunction with the publication of new EAPG base rates.

The following changes will be contained in the January 1, 2014 outpatient hospital state plan amendment:

- Effective January 1, 2014, outpatient hospital rates for Rate Year 2014 will be published.
- Effective January 1, 2014, these rates will also include a payment enhancement for facilities with Graduate Medical Education programs.
- Effective January 1, 2014, DHS will no longer be applying a Fiscal Corridor Adjustment to the statewide base rate for all Acute Care, Psychiatric, Rehabilitation, and Children's hospitals to limit the fiscal impact of the EAPG reimbursement system.

This notification is intended to provide notice of the type of changes that are included in the amendment. Interested parties should obtain a copy of the actual proposed plan amendment to comprehensively review the scope of all changes.

Proposed Change

It is estimated that these changes will have no material impact on projected annual aggregate Medicaid expenditures in state fiscal year 2014. DHS maintains the same hospital budget approved by the Legislature.

The DHS proposal involves no change in the definition of those eligible to receive benefits under Medicaid, and the benefits available to eligible recipients remains the same. The effective date for these proposed changes will be January 1, 2014.

Copies of the Proposed Change

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

Regular Mail

Division of Health Care Access and Accountability
P.O. Box 309
Madison, WI 53701-0309

State Contact

David Hoffert, Hospital Rate Setting Section Chief
Bureau of Fiscal Management
(608) 261-8397(phone)
(608)266-1096 (fax)

David.Hoffert@wisconsin.gov

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

Written Comments

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

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

Health Services

(Increased Federal Share of Funding for Clinical Preventive Services Provided Under Wisconsin Medicaid)

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

Change in Payment Methods

A broad array of services are provided to recipients of services under Medical Assistance, BadgerCare, and BadgerCare Plus. Among these services are clinical preventive services. A section of the federal Affordable Care Act (Public Law 111-148), section 4106(b), establishes a one percentage point increase in the federal medical assistance percentage (FMAP) for adult vaccines and clinical preventive services to states that cover, without cost-sharing, a full list of specified preventive services and adult vaccines. For a state to receive the one percentage point increase, the state must eliminate any requirements for co-payments for the list of preventive services. The Wisconsin Medicaid program intends to take advantage of this increase in FMAP and to meet the requirements to do so.

The change will be effective on January 1, 2014, and will apply to claims with dates of service on or after that date. The change to Medicaid, BadgerCare, and BadgerCare Plus is projected to result in increased annual expenditures of \$1,875,000 all funds (AF), composed of \$1,125,000 federal match and \$750,000 general purpose revenue.

Copies of Changes

Copies of the changes to the Medicaid state plan to implement this change may be obtained free of charge by calling or writing as follows:

Regular Mail:

Rachel Currans-Henry
Bureau of Benefits Management
Division of Health Care Access and Accountability
P.O. Box 309
Madison, WI 53701-0309

Fax:

(608) 266-1096
Attention: Rachel Currans-Henry

Telephone:

Rachel Currans-Henry
Bureau of Benefits Management
(608) 267-1421

E-Mail:

Rachel.CurransHenry@dhs.wisconsin.gov

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

Written Comments

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

is Rachel.CurransHenry@dhs.wisconsin.gov. Regular mail can be sent to the above address. All written comments will be reviewed and considered.

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

Health Services

(Medical Assistance Reimbursement for Health Home Services)

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

Section 1945 of the Social Security Act provides authority for a State, at its option as a State plan amendment, to provide health home services to individuals with chronic conditions. This authority allows states to pay a designated provider, a team of health care professionals operating with such a provider, or a health team as the individual's health home for purposes of providing the individual with health home services. Wisconsin has elected to use the designated provider approach for this benefit. Health home services will be available to individuals with chronic mental health or behavioral health conditions, starting March 1, 2014. The program will begin in Lincoln, Langlade, and Marathon Counties and expand statewide based on the results of the program in the three counties.

The health home model of care is a comprehensive approach to care management, integrating primary care, behavioral health, acute and long-term care. The patient's primary care physician and others involved in the patient's care collaborate on the development of a single plan of care. The patient is central to this care management approach. The primary goals are to improve the patient's experience of care, health outcomes and reduce costs.

Wisconsin Medicaid and BadgerCare Plus members with chronic mental health or behavioral health conditions will be eligible for these services.

This initiative is projected to result in increased annual expenditures of \$914,400 all funds (AF), composed of \$822,960 of federal match (FED) and \$91,440 general purpose revenue (GPR). The start date, March 1, 2014, is the first day of the third month of the third quarter of state fiscal year 2014 and the first day of the third month of the second quarter of federal fiscal year 2014.

Written Comments and Copies of the Proposed Change

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

Regular Mail

Jami Crespo, Policy Analyst
Division of Health Care Access and Accountability
PO Box 309
Madison, WI 53701-0309

Phone

Division of Health Care Access and Accountability
(608) 267-9697

FAX

(608) 266-1096
Attention: Jami Crespo

E-Mail

Jami.Crespo@dhs.wisconsin.gov

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

Written Comments

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

Regular mail can be sent to the above address. All written comments will be reviewed and considered.

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

Health Services

(Medical Assistance Reimbursement for Coverage of Prescription Drugs Under Medicare Part D)

The state of Wisconsin reimburses providers for services provided to low-income persons under the authority of Title XIX of the Social Security Act and sections 49.43 to 49.47 and 49.688, Wisconsin Statutes. The Wisconsin Department of Health Services (the Department) administers this program, which is called Medical Assistance or Medicaid. In addition, Wisconsin has expanded this program to create the BadgerCare Plus programs under the authority of Title XIX and Title XXI of the Social Security Act and chapters 49.43 to 49.47 of Wisconsin Statutes. Together the Medical Assistance and BadgerCare Plus programs are referred to as ForwardHealth.

Among the services provided, the state of Wisconsin covers legend and non-legend drugs and drug products and reimburses pharmacies for services provided to recipients of Medicaid and BadgerPlus. The Department proposes to make changes to coverage under these programs.

Proposed Changes

Effective for dates of service on and after January 1, 2014, barbiturates will become Medicare Part D-covered drugs in all instances. Claims for barbiturates for individuals who are dual-eligible, that is, are eligible for both Medicare and Medicaid, should be submitted to Medicare Part D. Non dual eligibles who are eligible for Medicaid may receive these drugs and be reimbursed under Medicaid.

This initiative is projected to result in reduced annual expenditures of \$210,000 all funds (AF), composed of \$126,000 federal match (FED) and \$84,000 general purpose revenue (state funds).

Written Comments and Copies of the Proposed Change

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

Regular Mail

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

Phone

Pam Appleby
Division of Health Care Access and Accountability
(608) 261-9423

FAX

(608) 266-1096
Attention: Pam Appleby

E-Mail

Pamela.Appleby@dhs.wisconsin.gov

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

Written Comments

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

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

Health Services

(Foster Care Medical Home)

The State of Wisconsin provides access to health care for low-income and medically needy persons under the authority of Title XIX of the Federal Social Security Act and sections 49.43 to 49.47 and 49.688, Wisconsin Statutes. The

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

The subject of this notice is the Foster Care Medical Home Benchmark Plan. A public notice describing the Foster Care Medical Home Benchmark Plan appeared in the Wisconsin Administrative Register mid-November 2011 edition. In November 2011, Wisconsin submitted amendment 11-016 to the Centers for Medicare and Medicaid Services (CMS). CMS approved this amendment, Benchmark Plan B, Foster Care Medical Home, on July 10, 2012, with an effective date of July 1, 2012. CMS staff have subsequently requested that Wisconsin resubmit this information in a new format to fulfill the Alternative Benefit Plan (ABP) requirements of the Affordable Care Act.

Recipients of coverage under Wisconsin's Foster Care Medical Home Benchmark Plan receive Wisconsin's full existing Medicaid benefit package; in other words, all Medicaid state plan services available under Wisconsin's current state plan. Additional services are provided under the Foster Care Medical Home.

Habilitative services are available to those receiving benefits under the Foster Care Medical Home Benchmark Plan. This ensures that Wisconsin meets federal requirements to cover all essential health benefits. Habilitative services allow individuals to maintain or attain certain functioning levels and are distinct from rehabilitative services, which focus on restoring individuals to functioning levels lost due to injury or illness. Covered habilitative services available through Wisconsin's existing state plan include the following: physical therapy, occupational therapy, and services for individuals with speech, hearing, and language disorders.

Copayments are not required from those who receive coverage under the Foster Care Medical Home Benchmark Plan.

In summary, the Foster Care Medical Home Benchmark Plan (Alternative Benefit Plan) will include all Medicaid state plan benefits, which include all of the following:

- Essential Health Benefits: ambulatory patient services; emergency services; hospitalization; maternity and newborn care; mental health and substance use disorder services; prescription drugs; rehabilitative and habilitative services; laboratory services; and preventive and wellness services.
- Enhanced periodicity schedule for Early and Periodic Screening, Diagnosis, and Treatment services (EPSDT).
- Case management services.
- Federally Qualified Health Center (FQHC) and Rural Health Clinic (RHC) services.
- Non-emergency transportation.
- Family planning services and supplies.

The resubmission of the Foster Care Medical Home Benchmark Plan will be effective January 1, 2014.

As indicated in the November 2011 public notice, the change in services is projected to decrease expenditures by \$300,000 in general purpose revenue (GPR) annually.

Copies of Proposed Changes

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

Regular Mail

Rachel Currans-Henry
Director, Bureau of Benefits Management
Division of Health Care Access and Accountability
P.O. Box 309
Madison, WI 53707-0309

Phone

Rachel Currans-Henry
(608)267-1421

FAX

(608)266-1096

E-Mail

Rachel.CurransHenry@dhs.wisconsin.gov

Written Comments

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

Regular mail can be sent to the above address.

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

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Madison, Wisconsin 53705-2156



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