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Direct questions to Bruce Hoesly (608) 266-7590, bruce.hoesly@legis.wi.gov.

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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: March 27, 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
Hearing Date: February 21, 2014

Agriculture, Trade and Consumer Protection (3)

1. 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

2. EmR1325 — The Wisconsin Department of Agriculture, Trade and Consumer Protection adopts the following emergency rule to repeal **sections ATCP 136.02 (4) (d) and 136.10 (2) (c), (3) (a) 2., and (b) 4.,** and to amend **sections ATCP 136.02 (4) (g) (Note), (5), (7), (8) (a), 136.08 (1), (7) (Note), and 136.12 (1) (b) (Note) and (2) (Note),** relating to mobile air conditioners, reclaiming or recycling refrigerant.

This emergency rule was approved by the Governor on December 23, 2013.

The scope statement for this rule, SS 122–13, was approved by the Governor on September 20, 2013 published in register No. 694 on October 14, 2013, and approved by the Board of Agriculture, Trade & Consumer Protection on November 13, 2013.

Finding of Emergency

In Wisconsin, businesses that repair mobile air conditioners must register with the department and pay an annual registration fee of \$120 for each registered location. In addition, each technician working on mobile air conditioners at these businesses must attend a DATCP–approved training course and pass an exam.

A recent statutory change harmonized Wisconsin’s state mobile air conditioner law with federal law, and Wisconsin’s unique training course content is no longer applicable.

The registration year begins on March 1 of each year. By that date, all mobile air conditioning businesses and technicians must be registered with the department or pay a surcharge fee.

DATCP has determined that it has sufficient alternative revenue sources to fund the mobile air conditioning program and is undergoing rule–making to permanently eliminate the \$120 registration fee. However, the rule–making will not be effective for the upcoming registration year that begins March 1, 2014. The department has also determined that its technician training requirements can be modified due to recent changes in state statute that harmonize Wisconsin law with federal law. Technicians who complete the federally approved training course will now meet Wisconsin’s training requirement.

This temporary emergency rule is necessary to protect the welfare of the small businesses that would otherwise pay the registration fee. In addition, the emergency rule is needed to protect the welfare of small businesses and their employees by eliminating an unnecessary training requirement.

Filed with LRB: December 27, 2013
Publication Date: December 31, 2013
Effective Dates: December 31, 2013 through May 29, 2014
Hearing Date: January 21, 2014

3. EmR1402 (DATCP Docket No. 13–R–17) — The Wisconsin department of Agriculture, Trade and Consumer Protection hereby adopts the following emergency rule to amend **sections ATCP 161.50 (3) (f), 161.60, and 161.62 (1) (intro.),** relating to the “grow Wisconsin dairy processor” grant program created under ss. 20.115 (4) (dm) and 93.40 (1) (g), Stats.

This emergency rule was approved by the Governor on January 10, 2014.

The scope statement for this rule, SS 140–13, was approved by the Governor on October 29, 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

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

Filed with LRB: January 21, 2014

Publication Date: January 20, 2014
Effective Dates: January 20, 2014 through
 June 18, 2014

Publication Date: June 12, 2013
Effective Dates: June 12, 2013 through
 November 8, 2013
Hearing Date: July 23, 2013
Extension Through: March 8, 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
Extension Through: April 8, 2014

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

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
Extension Through: April 7, 2014

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. 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

4. 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

5. EmR1401 (DNR # FH-26-13(E)) — The Wisconsin Natural Resources Board proposes an order to amend **sections NR 20.20 (73) (n) 4. and 25.06 (1) (a)**, Wis. Adm. Code, relating to lake trout harvest limits in Lake Superior.

This rule was approved by the Governor on December 30, 2013.

The statement of scope for this rule, SS 108-13, was approved by the Governor on August 13, 2013, published in Register No. 692 on August 31, 2013, and approved by the Natural Resources Board on September 25, 2013.

Finding of Emergency

Pursuant to s. 227.4, Stats., the department finds that an emergency exists and that this rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. The welfare of state-licensed commercial fishers, tribal commercial fishers, recreational anglers, and associated businesses is threatened by a decline in the lake trout population in the Apostle Islands vicinity of Lake Superior. The continued, persistent decline in lake trout population abundances and predicted further declines necessitate the current reductions in order to ensure a sustainable lake trout fishery over the long-term. Lake trout harvest limits were negotiated in October 2013 among the Department of Natural Resources and the Red Cliff and Bad River Bands of Lake Superior Chippewa and those changes must be ordered through administrative code. This emergency rule is needed to preserve the public welfare.

Filed with LRB: January 14, 2014

Publication Date: January 13, 2014
Effective Dates: January 13, 2014 through June 11, 2014

Public Instruction

EmR1324 — The State Superintendent of Public Instruction hereby proposes to amend **sections PI 5.02 (6) and (11m), 5.035 (6), and 5.04**, relating to high school equivalency diplomas and certificates of general educational development.

Per the Dane County Circuit Court order issued in *Coyne, et al. v. Walker, et al.*, Case No. 11-CV-4573, the Department of Public Instruction is not required to obtain the Governor's approval for the statement of scope or this rule.

The scope statement for this rule, SS 093-13, was published in Register No. 692, on August 14, 2013, and approved by State Superintendent Tony Evers on August 27, 2013.

Finding of Emergency

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

The number of subtests and the passing scores for the General Educational Development (GED) Test will be changing in January 2014 when a new test is implemented by the GED Testing Service.

Unless the rule is changed to reflect these new subtests and passing scores, the Department may be prevented from issuing credentials for test takers who pass the GED Test because the required passing scores will be incorrect.

Filed with LRB: December 27, 2013
Publication Date: December 27, 2013
Effective Dates: December 27, 2013 through May 25, 2014
Hearing Date: February 24, 2014

Revenue

EmR1323 — The Wisconsin Department of Revenue hereby adopts an emergency rule interpreting s. 77.58 (1) (a) and (5), Stats., and amending **section Tax 11.93**, relating to sales tax filing frequency.

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

The scope statement for this rule, SS 100-13, was approved by the Governor on August 2, 2013, published in Register No. 692 on August 31, 2013, and approved by the Secretary of Revenue on September 10, 2013.

Finding of Emergency

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

Section 77.58 (1), Stats., provides that retailers must file sales tax returns quarterly, except as provided in s. 77.58 (1) (a) and (b), Stats., which allows for sales tax returns to be filed monthly.

Section 77.58 (5), Stats., provides that the department may require returns and payments on the amount of taxes for other than a quarterly period if it deems it necessary to ensure payment to or facilitate the collection by the state of the amount of taxes. The department has provided for annual sales tax returns by rule in s. Tax 11.93 (1) for retailers that have an annual tax liability of \$300 or less.

Because 2013 Wis. Act 20 doubles the threshold upon which a monthly sales tax return is required to be filed (\$600 to \$1200), s. Tax 11.93 (1) should also be changed to reflect a similar increase in the threshold upon which an annual sales tax return can be filed.

As the statutory change to the monthly filing standard goes into effect on January 1, 2014, the corresponding change to the annual filing standard in s. Tax 11.93 (1) should also go into effect on January 1, 2014. There is insufficient time for the permanent rule to be effective on January 1, 2014.

Filed with LRB: December 19, 2013
Publication Date: January 1, 2014
Effective Dates: January 1, 2014 through May 30, 2014
Hearing Date: January 27, 2014

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: March 14, 2014

Publication Date: June 13, 2013
Effective Dates: June 13, 2013 through
 November 9, 2013
Hearing Date: August 6, 2013
Extension Through: March 9, 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

Safety and Professional Services

Uniform Dwelling Code, Chs. 320–325

EmR1403 — The Wisconsin Department of Safety and Professional Services adopts an order to amend **sections SPS 321.02 (1) (c), 321.23, Table 321.25–A, 321.25 (7) (d) and (8) (a) (Note), and Chapters 320 to 325 Appendix — Minimum Fastener Schedule Table**; and to repeal and recreate **section SPS 321.25 (8) (b) to (h) and (9)**, relating to wall bracing for one– and two–family dwellings.

This emergency rule was approved by the Governor on January 28, 2014.

The statement of scope for this rule, SS 139–13, was approved by the Governor on October 28, 2013, published in Register 695 on November 14, 2013, and approved by the Department on November 26, 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.

Some building designers find the current rules for wall bracing for one– and two–family dwellings are too difficult to understand and apply, which results in unnecessary costs and delays in home building. Promulgating revisions to the rules through the emergency rule process is needed in order to avoid these costs and delays as soon as possible. In addition, the report that the Dwelling Code Council is required to complete by July 1, 2014, under section 101.62 (4) of the Statutes is expected to include recommendations to clarify and simplify these rules through the emergency rule process.

Filed with LRB: February 13, 2014
Publication Date: February 19, 2014
Effective Dates: April 1, 2014 through
 August 28, 2014
Hearing Date: March 11, 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

Transportation

EmR1404 — The Wisconsin Department of Transportation proposes an order to create **section Trans 327.14**, relating to motor carrier safety and affecting small businesses.

This emergency rule was approved by the Governor on February 10, 2014.

The statement of scope for this rule, SS 155-13, was approved by the Governor on December 16, 2013, published in Register 696, on December 31, 2013, and approved by Secretary Mark Gottlieb as required by s. 227.135 (2), Stats., on January 13, 2014.

Finding 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.

Filed with LRB: February 14, 2014
Publication Date: February 16, 2014
Effective Dates: February 16, 2014 through July 15, 2014

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

Extension Through: April 26, 2014

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

Extension Through: April 28, 2014

Scope Statements

Employee Trust Funds

SS 016-14

This statement of scope was approved by the governor on February 26, 2014.

Rule No.

Chapters ETF 10, 11, 20, 40, 50, 60, and 70 (revise), Chapter ETF 41 (repeal).

Relating to

Technical changes to ETF rules.

Rule Type

Permanent

1. Detailed Description of the Objective of the Proposed Rule

The objective of this technical rule is to make technical updates to existing ETF rules, delete obsolete language in ETF rules, create consistency with provisions in 2013 Wisconsin Act 20 related to rehired annuitants, and make other minor substantive changes.

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

This rule is technical in nature does not contain significant changes in policy. It is designed to update ETF rules by deleting obsolete regulatory provisions, terms, and cross-references and making ETF regulations consistent with recent statutory changes. The alternative is continuing with the outdated language in ETF's current code.

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

Wis. Stat. s. 40.03 (2) (i) The secretary...Shall promulgate, with the approval of the board, all rules, except rules promulgated under par. (ig) or (ir), that are required for the efficient administration of the fund or of any of the benefit plans established by this chapter. In addition to being approved by the board, rules promulgated under this paragraph relating to teachers must be approved by the teachers retirement board and rules promulgated under this paragraph relating to participants other than teachers must be approved by the Wisconsin retirement board, except rules promulgated under s. 40.30.

Wis. Stat. s. 40.03 (2) (ig) The secretary...Shall promulgate, with the approval of the group insurance board, all rules required for the administration of the group health, long-term care, income continuation or life insurance plans established under subchs. IV to VI.

Wis. Stat. s. 40.03 (2) (ir) The secretary...Shall promulgate, with the approval of the deferred compensation board, all rules required for the administration of deferred compensation plans established under subch. VII.

Wis. Stat. s. 227.11 (2) Rule-making authority is expressly conferred as follows:

(a) Each agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute, but a rule is not valid if the rule exceeds the bounds of correct interpretation. All of the following apply to the promulgation of a rule interpreting the provisions of a statute enforced or administered by an agency:

1. A statutory or nonstatutory provision containing a statement or declaration of legislative intent, purpose, findings, or policy does not confer rule-making authority on the agency or augment the agency's rule-making authority beyond the rule-making authority that is explicitly conferred on the agency by the legislature.
2. A statutory provision describing the agency's general powers or duties does not confer rule-making authority on the agency or augment the agency's rule-making authority beyond the rule-making authority that is explicitly conferred on the agency by the legislature.
3. A statutory provision containing a specific standard, requirement, or threshold does not confer on the agency the authority to promulgate, enforce, or administer a rule that contains a standard, requirement, or threshold that is more restrictive than the standard, requirement, or threshold contained in the statutory provision.

(b) Each agency may prescribe forms and procedures in connection with any statute enforced or administered by it, if the agency considers it necessary to effectuate the purpose of the statute, but this paragraph does not authorize the imposition of a substantive requirement in connection with a form or procedure.

(c) Each agency authorized to exercise discretion in deciding individual cases may formalize the general policies evolving from its decisions by promulgating the policies as rules which the agency shall follow until they are amended or repealed. A rule promulgated in accordance with this paragraph is valid only to the extent that the agency has discretion to base an individual decision on the policy expressed in the rule.

(d) An agency may promulgate rules implementing or interpreting a statute that it will enforce or administer after publication of the statute but prior to the statute's effective date. A rule promulgated under this paragraph may not take effect prior to the effective date of the statute that it implements or interprets.

(e) An agency may not inform a member of the public in writing that a rule is or will be in effect unless the rule has been filed under s. 227.20 or unless the member of the public requests that information.

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

State employees will spend an estimated 40 hours to develop these rules.

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

The new rule will affect state and local public employers, members, subscribers, their beneficiaries and dependents who interact with ETF regarding the benefit programs administered by ETF.

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

No existing or proposed federal regulation addresses the contemplated rule changes.

7. Anticipated economic impact of implementing the rule (note if the rule is likely to have a significant economic impact on small businesses)

ETF anticipates that the proposed rule will have minimal or no economic impact locally or statewide and will not impact small businesses.

Contact Person

ETF General Counsel David Nispel. Phone: (608) 264–6936.

Health Services

Health, Chs. 110—

SS 015–14

This statement of scope was approved by the governor on February 24, 2014.

Rule No.

Chapter DHS 157 (revise).

Relating to

Radiation protection requirements for radiation producing machines and radioactive materials.

Rule Type

Permanent

Type of Statement of Scope

Revised

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

Not applicable.

2. Detailed Description of the Objective of the Proposed Rule

The department intends to revise ch. DHS 157 to meet the following objectives:

1. Compatibility with current applicable regulations of the federal Nuclear Regulatory Commission (NRC) in 10 CFR Parts 19, 20, 31–37, 39, 40, 70, 71, and 150, relating to notices, instructions and reports to workers regarding inspections and investigations; standards for protection against radiation; general domestic licenses for byproduct material; specific domestic licenses to manufacture or transfer certain items containing byproduct material; specific domestic licenses of broad scope for byproduct material; licenses for industrial radiography and radiation safety requirements for industrial radiographic operations; physical protection of byproduct material; medical use of byproduct material; licenses and

radiation safety requirements for irradiators; licenses and radiation safety requirements for well logging; domestic licensing of source material; domestic licensing of special nuclear material; packaging and transportation of radioactive material; and exemptions and continued regulatory authority in agreement states and in offshore waters.

2. Compatibility with current applicable regulations of the federal Food and Drug Administration (FDA) in 21 CFR Parts 900, 1020, 1030, and 1040, relating to mammography quality standards, performance standards for ionizing radiation emitting products; microwave and radio frequency emitting products; and light-emitting products for the protection against hazards of radiation.

3. Codification of recommendations from the FDA of methods designed to protect patients from radiation injuries during high dose medical procedures by requiring medical professionals to record the patient's radiation dose in the patient's medical record.

4. Codification of suggested national standards for x-ray device imaging from the Conference of Radiation Control Program Directors in the *Suggested State Regulations for the Control of Radiation*.

5. Maintenance of accurate and current rules that comply with current applicable state and federal law and nationally recognized standards.

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

The department proposes to revise ch. DHS 157 to be compatible with applicable federal regulations in Titles 10 and 21 CFR. The department is required under s. 254.34 (1) (a), Stats., and the *Agreement Between The United States Nuclear Regulatory Commission and The State of Wisconsin for Discontinuance of Certain Commission Regulatory Authority and Responsibility Within the State Pursuant to Section 274 of the Atomic Energy Act of 1954, as Amended* (Agreement) to maintain compatibility with 42 USC 2011 to 2114 and the regulations adopted thereunder by the NRC, namely Title 10 CFR relating to radioactive materials. The Agreement transferred authority over certain radioactive material from the NRC to Wisconsin. As the radiation control agency and pursuant to the policy specified in s. 254.33, Stats., the department must also maintain compatibility with rules adopted by the FDA under Title 21 CFR, relating to ionizing radiation devices such as diagnostic, therapeutic and cabinet x-ray devices. Titles 10 and 21 CFR have both been revised since the department last revised ch. DHS 157 in 2010. Revisions to Title 10 include the creation of 10 CFR 37, effective March 13, 2013, which codifies security requirements for quantities of radioactive material considered to be risk significant and warrant additional protection. These requirements were initially issued nationally by order of the NRC in 2005 and 2008 to regulated entities. The department implemented the NRC order, as a license condition. The department will codify the requirements in ch. DHS 157 and remove the license condition. Because the regulated entities have operated under these requirements beginning in 2005, codification of the requirements in ch. DHS 157 should result in no change for the regulated entities.

The FDA as a response to the multiple incidents of radiation injuries to patients during high dose medical procedures has recommended recording the patient's radiation dose in the medical record for certain procedures. Dose recording will allow physicians to better evaluate radiation risk versus treatment options. The department proposes to include these recommendations in ch. DHS 157.

In order to address changes in medical x-ray technologies, including computed tomography, the department intends to propose revising ch. DHS 157 to include the updated quality control, operational, and training standards for medical x-ray imaging issued by the Conference of Radiation Control Program Directors in its publication *Suggested State Regulations for the Control of Radiation*.

The department further proposes to update ch. DHS 157 to correct errors and make other minor revisions to the rule, and to conform with ch. 462, Stats., relating to licensing and the practice of radiographers and limited x-ray machine operators by removing any conflicts with ch. 462, Stats., or rules promulgated thereunder by the radiography examining board.

3. b. There is no acceptable alternative to the rule revision. Sections 254.34 (1), 254.33, and 254.365 (4), Stats., and the Agreement require periodic revision of ch. DHS 157 to remain compatible with comparable federal regulations.

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

Section 227.11 (2) (a), Stats., reads: (2) Rule-making authority is expressly conferred as follows:

(a) Each agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute, but a rule is not valid if the rule exceeds the bounds of correct interpretation. All of the following apply to the promulgation of a rule interpreting the provisions of a statute enforced or administered by an agency:

1. A statutory or nonstatutory provision containing a statement or declaration of legislative intent, purpose, findings, or policy does not confer rule-making authority on the agency or augment the agency's rule-making authority beyond the rule-making authority that is explicitly conferred on the agency by the legislature.

2. A statutory provision describing the agency's general powers or duties does not confer rule-making authority on the agency or augment the agency's rule-making authority beyond the rule-making authority that is explicitly conferred on the agency by the legislature.

3. A statutory provision containing a specific standard, requirement, or threshold does not confer on the agency the authority to promulgate, enforce, or administer a rule that contains a standard, requirement, or threshold that is more restrictive than the standard, requirement, or threshold contained in the statutory provision.

Section 254.34 (1) (a) and (b), Stats., reads: (1) The department is the state radiation control agency and shall do all of the following:

(a) Promulgate and enforce rules, including registration and licensing of sources of ionizing radiation, as may be necessary to prohibit and prevent unnecessary radiation exposure. The rules may incorporate by reference the recommended standards of nationally recognized bodies in the field of radiation protection and other fields of atomic energy, under the procedure established by s. 227.21 (2). The rules for by-product material, source material and special nuclear material shall be in accordance with the requirements of 42 USC 2021 (o) and shall otherwise be compatible with the requirements under 42 USC 2011 to 2114 and regulations adopted under 42 USC 2011 to 2114.

(b) Administer this subchapter and the rules promulgated under this subchapter.

Section 254.33, Stats., reads: Since radiations and their sources can be instrumental in the improvement of the health and welfare of the public if properly utilized, and may be destructive or detrimental to life or health if carelessly or excessively employed or may detrimentally affect the environment of the state if improperly utilized, it is hereby declared to be the public policy of this state to encourage the constructive uses of radiation and to prohibit and prevent exposure to radiation in amounts which are or may be detrimental to health. It is further the policy for the department to advise, consult and cooperate with other agencies of the state, the federal government, other states and interstate agencies and with affected groups, political subdivisions, and industries; and, in general, to conform as nearly as possible to nationally accepted standards in the promulgation and enforcement of rules.

Section 254.365 (4), Stats., reads: (4) The department shall promulgate rules for all of the following:

(a) The issuance, modification, suspension, termination and revocation of specific licenses under sub. (1) (a) under the standards specified in s. 254.34 (1) (a).

(b) The requirements for a general license under sub. (1) (b).

Section 254.37 (3), Stats., reads: The department shall promulgate and enforce the rules pertaining to ionizing radiation.

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

The department will require approximately 250 hours of staff time to develop the rule. The department will form an ad hoc advisory group consisting of representative users of radioactive materials and x-ray devices to provide input on the proposed rules. Associations representing business and hospitals will be asked to recommend members to the advisory group.

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

Hospitals, academic facilities, medical clinics, dental facilities, chiropractic offices, veterinary facilities, and industrial facilities that use radioactive materials or x-ray devices may be affected by the proposed rules.

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

The radiation protection requirements in ch. DHS 157 are based on or identical to the following federal regulations as required under state statute and the Agreement:

10 CFR 19, 20, 31-37, 39, 40, 70, 71, and 150 for radioactive materials.

21 CFR 900 for mammography and parts 1020, 1030, and 1040 for diagnostic, therapeutic, and cabinet x-ray devices.

8. Anticipated Economic Impact of Implementing the Rule

The proposed rules are anticipated to have no to minimal economic impact.

Contact Person

Paul Schmidt
 Division of Public Health
 Bureau of Environmental and Occupational Health
 608 267–4792

Safety and Professional Services**Professional Services, Chs. 1—299**

SS 014–14

This statement of scope was approved by the governor on February 26 2014.

Rule No.

Chapters SPS 160 to 168 (revise).

Relating to

Substance abuse professionals.

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

N/A

2. Detailed Description of the Objective of the Proposed Rule

The proposed rulemaking project is intended to update the administrative rules relating to substance abuse professionals by incorporating current industry standards and technological advances and to reorganize pertinent administrative rules for clarity, consistency, and greater ease of use. The proposed rules also would address policy problems facing the substance abuse professional industry including workforce shortage issues.

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

Current department administrative rules relating to substance abuse professionals resulted from an initial, large-scale rule-writing effort. Since initial promulgation, a number of areas of the code have been identified as redundant, confusing, and/or outdated. Proposed modifications would revise existing rules for greater clarity and update credential requirements to incorporate current industry standards and technological advances. The proposed rule would address credential requirements that exacerbate workforce shortage issues including modifying restrictions on internet-based coursework and establishing alternative education options.

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

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

Section 440.88 (3) (a) and (b), Wis. Stats. Subject to pars. (b) and (c) and except as provided in sub. (3m), the department shall promulgate rules that establish minimum standards and

qualifications for the certification of all of the following, including substance abuse counselors and clinical supervisors described under s. HFS 75.02 (11) and (84), Wis. Adm. Code, in effect on December 15, 2006: 1. Substance abuse counselors–in–training., 2. Substance abuse counselors., 3. Clinical substance abuse counselors., 4m. Clinical supervisors–in–training., 5. Intermediate clinical supervisors., 6. Independent clinical supervisors., 7. Prevention specialists–in–training., and 8. Prevention specialists. (b) Rules promulgated under par. (a) shall include standards based on demonstrated requisite competency, knowledge, skills, and attitudes of professional practice that are culturally competent and evidence-based.

Section 440.88 (9), Wis. Stats. The department may do all of the following: (a) Establish the minimum number of hours of continuing education required for renewal of certification under this section and the topic areas that the continuing education must cover. (b) Require continuing education as part of any disciplinary process for an individual.

Section 440.88 (10), Wis. Stats. Continuing education course approval. The department shall establish the criteria for the approval of continuing education programs and courses required for renewal of certification of a substance abuse counselor, clinical supervisor, or prevention specialist and the criteria for the approval of the sponsors and cosponsors of those continuing education programs and courses. The department shall approve continuing education programs and courses in accordance with the criteria established under this subsection.

Section 440.88 (11), Wis. Stats. Scope of practice. The department shall promulgate rules establishing minimum standards for the practice of substance abuse counseling, supervision, and prevention.

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

200 hours.

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

Individuals certified, or attempting to obtain certification, under s. 440.88, Stats., as any level of prevention specialist, substance abuse counselor, or clinical supervisor.

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

None.

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

The Department believes that the proposed revisions will have minimal to no economic impact.

The Department believes that the proposed revisions will have minimal to no impact on small businesses.

Contact Person

Kathleen Paff, Program and Policy Analyst,
kathleen.paff@wisconsin.gov, (608) 261–4472.

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 14-024

(DATCP DOCKET # 13-R-07)

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

The scope statement for this rule, SS 129-13, was approved by the Governor on October 11, 2013, published in Register No. 694 on October 31, 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 proposed rule-making order revises Chapter ATCP 55, relating to meat and meat food products.

Agency Procedure for Promulgation

The department will hold public hearings on this rule on April 22, 2014 in Madison, April 23, 2014 in Eau Claire, and on April 25, 2014 in Green Bay.

The department's Division of Food Safety is primarily responsible for this rule.

Contact Person

If you have questions, you may contact Cindy Klug at (608) 224-4729.

Natural Resources *Fish, Game, etc., Chs. 1—* CR 14-025

(DNR # ER-30-13)

On February 28, 2014, the Department of Natural Resources submitted a proposed rule to the Wisconsin Legislative Council Clearinghouse pursuant to s. 227.15 (1), Wis. Stats.

The statement of scope for this rule, SS 124-13, was approved by the governor on September 20, 2013, published in Register No. 694, on October 14, 2013, and approved by the Natural Resources Board on December 11, 2013.

Analysis

The proposed rule-making order revises sections NR 10.02, 16.12, 16.13, 19.275, 21.13, and 22.13 and Chapter NR 27, relating to the addition of the Blanding's turtle to the State's Protected Wild Animal list, possession exemptions, and turtle seasons and limits and to updating scientific and common names and federal listing status.

Agency Procedure for Promulgation

A public hearing will be held on April 2, 2014.

Contact Person

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

Safety and Professional Services — Pharmacy Examining Board CR 14-023

On February 26, 2014, the Pharmacy Examining Board submitted a proposed rule to the Legislative Council Rules Clearinghouse.

The scope statement for this rule was published in Register No. 660 on December 14, 2010, prior to the effective date of 2011 Act 21.

Analysis

Statutory Authority: Sections 450.035 and 450.085, Wis. Stats.

This proposed rule-making order revises sections Phar 1.02, 7.10, and 16.03, relating to council and exam names.

Agency Procedure for Promulgation

A public hearing is required and will be held on March 26, 2014, at 1400 East Washington Avenue, Room 121, Madison, Wisconsin (enter at 55 North Dickinson Street).

Contact Person

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

Technical College System CR 14-022

On February 24, 2014, the Wisconsin Technical College System submitted a proposed rule to the Wisconsin Legislative Council Clearinghouse pursuant to s. 227.15 (1), Wis. Stats.

The scope statement for this rule, SS 088-13, was approved by the governor on July 18, 2013, published in Register No. 692 on August 14, 2013, and approved by WTCS President Morna Foy on February 24, 2014.

Analysis

The proposed rule-making order revises Chapter TCS 3, relating to certification of personnel.

Agency Procedure for Promulgation

A public hearing is required and will be held on a date to be determined.

Contact Person

The contact person for the proposed rule is Nancy A Merrill, Senior Policy Advisor & Federal Relations Office, WTCS, (608) 267-9514, nancy.merrill@wtcsystem.edu.

Rule-Making Notices

Notice of Hearing

Agriculture, Trade and Consumer Protection

CR 14-024

(DATCP DOCKET # 13-R-07)

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 55, relating to drug residues in meat and meat food products.

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

Hearing Dates and Locations

Date: Tuesday, April 22, 2014
Time: 10:00 a.m. to 12:00 p.m.
Location: Room 106 (Board Room)
 Department of Agriculture, Trade and Consumer Protection
 2811 Agriculture Drive
 Madison, WI 53718

Date: Tuesday, April 23, 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, WI 54701

Date: Friday, April 25, 2014
Time: 10:00 a.m. to 12:00 p.m.
Location: Room 152B
 200 N. Jefferson Street
 Green Bay, WI 54301

Hearing impaired persons may request an interpreter for this hearing. Please make reservations for a hearing interpreter by April 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 Deadline For Submission

DATCP invites the public to attend the hearings and comment on the proposed rule. Following the public hearings, the hearing record will remain open until **May 9, 2014**, for additional written public comments. Comments may be sent to the Division of Food Safety at the address below, or to Cindy.Klug@wisconsin.gov, or to <http://adminrules.wisconsin.gov>.

Copies of Rule

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

The Department of Agriculture, Trade and Consumer Protection (DATCP) proposes a rule revision for ch. ATCP 55, Wis. Adm. Code, specifying corrective actions that must be imposed by state-licensed meat establishments on certain livestock producers before the establishment operator accepts animals from the producer for slaughter. The required corrective actions apply to livestock producers who, on two or more occasions during the past year, submit animals testing positive for any illegal drug residue to be slaughtered at a state or federally inspected meat establishment.

Statutes interpreted

Section 97.42, Stats.

Statutory authority

Sections 93.07 (1), 97.09 (4), and 97.42 (4), 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 compulsory inspection of animals, poultry and carcasses under s. 97.42 (4), Stats., which allows the department to establish rules related to the inspections before and after slaughter of all animals and poultry killed or dressed for human consumption at any establishment.

Related statutes and rules

Wisconsin's state meat and poultry inspection program is governed by ch. 97, Stats. (Food Regulation), including s. 97.42, Stats. (Compulsory inspection of animals, poultry and carcasses). Chapter ATCP 55 interprets and implements ch. 97, Stats., as it relates to Meat and Meat Food Products.

State meat and poultry inspection programs operate under a cooperative agreement with the USDA's Food Safety and Inspection Service (FSIS) to provide inspection services to small and very small meat establishments. State meat and poultry inspection programs were established by the Wholesome Meat Act of 1967 and the Wholesome Poultry Products Act of 1968, which amended the Federal Meat Inspection Act (FMIA) to create 21 USC 661 and the Poultry Products Inspection Act (PPIA) to create 21 USC 454. Section 11015 of Title XI of the Food, Conservation, and Energy Act of 2008 (the 2008 "Farm Bill"), enacted on June 18, 2008, amended FMIA and PPIA to establish a new

voluntary program that will allow certain selected state–inspected meat establishments to sell their products in interstate commerce.

Title 9, Animal and Animal Products, of the Code of Federal Regulations (CFR) interprets and implements the federal FMIA and PPIA. Section 97.42 (4m), Stats., and ch. ATCP 55 adopt certain relevant sections of Title 9 that establish slaughter and processing standards for meat and meat products.

Plain language analysis

Medications are important for maintaining healthy livestock. However, if not carefully managed, drug residues may remain in animals submitted for slaughter. Residues of medications, particularly antibiotics and anti–inflammatory agents, in meat can pose a direct health risk to people who consume the meat. For example, some people may have an allergic reaction if exposed to penicillin. The anti–inflammatory drug flunixin may cause gastrointestinal and kidney problems. Drug residues may disrupt normal meat fermentation processes, such as is needed to make summer sausage, and increase the risk that disease–causing bacteria will grow during processing.

Meat establishment operators are expected by the United States Department of Agriculture — Food Safety and Inspection Service (USDA–FSIS) to check the published Residue Repeat Violators list. The list identifies livestock producers whose animals have had two or more positive drug residue test results in the past year. Meat establishment operators are also expected to take appropriate measures before accepting animals from these producers. Recent federal data suggest that dairy cattle are responsible for a high proportion of repeat tissue drug residue offenses. As a leading producer of dairy cattle, the reputation of Wisconsin’s agriculture industry is jeopardized by the few Wisconsin producers who repeatedly violate prohibitions against drug residues in livestock and meat products.

Currently ch. ATCP 55 (Meat and meat food products) addresses the production of meat and meat food products starting with the submission of an animal for slaughter for human consumption and, by reference, adopts United States Department of Agriculture regulations prohibiting the slaughter of “downer” cattle (non–ambulatory) for human food or feed destined for bovine animals.

Current rules prohibit slaughter of a food animal for human consumption or submission of a food animal for slaughter if the person knows or has reason to know the animal is diseased or injured. The proposed rule will further prohibit someone from slaughtering or submitting for slaughter a food animal for human consumption if they know that the animal is adulterated. The rule then defines animals from producers included on the USDA Residue Repeat Violator List for use by Livestock Markets and Establishments as adulterated unless the producer provides written evidence that they have completed a course on proper administration of animal medications. The department will approve an acceptable course or courses. Completion of the approved course(s) will require the involvement of the livestock producer’s veterinarian.

The proposed rule also revises s. ATCP 55.07, which requires a person who knows or has reason to know that he or she is submitting a diseased or injured animal for slaughter to sign and deliver a written statement to the person who will perform the slaughter. The proposed rule will revise the

requirement that the written statement include a list of all drugs administered to the animal as treatments or feed within 30 days prior to the slaughter submission date. The rule will instead require that the statement certify that the withdrawal time following administration of all drugs as treatments or feed additives has complied with the manufacturer’s recommendations. This revision acknowledges that some drugs may require a longer withdrawal time than 30 days.

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

Federal meat and poultry inspection regulations require meat and poultry processors to adopt Hazard Analysis and Critical Control Point (HACCP) systems. HACCP is an approach for preventing food safety hazards that involves identifying key food processing steps essential for ensuring safety. Plants must develop a plan to monitor and document that each of these key steps is functioning properly and minimizing the risk associated with food safety hazards. As part of their HACCP plan, federally–inspected plants are required by 9 CFR 417.2 (a) (3) (v) to identify preventive measures for food safety hazards that could arise from drug residues. Drug residues include veterinary drugs, pesticides, and environmental contaminants.

One approach for minimizing drug residue risks is for abattoir operators to avoid accepting animals from sources that have had drug residue violations in the past. Since past performance is often the best indicator as to whether an animal may have a drug residue problem, federal plants are expected to consult the federal Residue Repeat Violator List for use by Livestock Markets and Establishments before accepting animals for slaughter. The National Residue Program (NRP) at FSIS has collected data on drug residues in meat, poultry and egg products since 1967. Producers who are found to have had more than one residue violation in the previous 12 months under this sampling program are placed on the federal Residue Repeat Violator List.

State meat inspection programs operate under a cooperative agreement with the United States Department of Agriculture (USDA) Food Safety and Inspection Service (FSIS). Under this agreement, state meat inspection programs are required to adopt regulations that are “at least equal to” federal meat and poultry inspection regulations. In addition, Wisconsin is one of three states recently accepted into the Cooperative Interstate Shipment (CIS) program allowing certain selected meat establishments to ship their products in interstate commerce. States in the CIS program must adopt regulations that are the “same as” federal meat inspection regulations.

The proposed rule will ensure Wisconsin’s state meat inspection program is consistent with federal regulations and expectations for minimizing the risk of drug residue violations at state–inspected meat plants. It will enhance the effectiveness of these procedures by adding an additional educational corrective action that would be required of the producer by the abattoir operator well before federal regulatory action is needed.

Comparison with rules in adjacent states

Michigan currently does not operate a state meat and poultry inspection program and all meat slaughtered and processed in Michigan is federally–inspected by USDA. Illinois’ state meat inspection program includes USDA’s Federal–State Cooperative program (formerly known as the “Talmadge–Aiken” program). Under this program, state inspectors conduct federal inspections. Minnesota and Iowa

operate state meat inspection programs. All processors of meat and meat products, whether operating under state meat–inspection programs or by the USDA program, are expected to minimize the risk associated with drug residues and to consult the USDA’s Residue Repeat Violator List for use by Livestock Markets and Establishments before purchasing animals for slaughter. The approach proposed in this rule revision is innovative and goes beyond requirements in neighboring states which operate state meat inspection programs. Although enforcement of the provisions in the proposed rule is expected to be infrequent, the provisions are necessary to protect consumer trust in meat from Wisconsin–inspected establishments.

Summary of factual data and analytical methodologies

Proposed rule changes were developed after careful analysis of federal regulations and expectations for minimizing the risk of drug residue violations at state–inspected meat plants. The department consulted with a large livestock medication and veterinary services company, and with the Wisconsin Veterinary Medical Association before developing the proposed rule. Each of these entities supported the intent of the proposed rule.

Effect on Small Business

This rule change is anticipated to have a very slight impact on meat establishment operators, who will be required to determine whether livestock producers presenting animals for slaughter are on the USDA Residue Repeat Violators List. Since very few livestock producers from Wisconsin and neighboring states are on this list, the proposed rule change will have no impact on the vast majority of livestock producers who follow existing regulations and have a strong working relationship with their veterinarian. There will be a minor short–term negative economic impact on livestock producers who must attend a course and improve documentation of animal medications as a result of the proposed rule. To the extent that the proposed rule prevents drug residue problems and condemnation of carcasses, there will be a positive long–term economic impact. The rule will not modify fees or have an economic impact on local governmental units or public utility rate payers.

Initial Regulatory Flexibility Analysis

Rule summary

The proposed rule will specify corrective actions that must be imposed by state–licensed meat establishments on certain livestock producers before the establishment operator accepts animals from the producer for slaughter. The required corrective actions apply to livestock producers who, on two or more occasions during the past year, submit animals testing positive for any illegal drug residue to be slaughtered at state– or federally–inspected meat establishments.

Medications are important for maintaining healthy livestock. However, if not carefully managed, drug residues may remain in animals submitted for slaughter. Residues of medications, particularly antibiotics and anti–inflammatory agents, in meat can pose a direct health risk to people who consume the meat. For example, some people may have an allergic reaction if exposed to penicillin. The drug flunixin may cause gastrointestinal and kidney problems. Drug residues may disrupt normal meat fermentation processes, such as is needed to make summer sausage, and increase the risk that disease–causing bacteria will grow during processing.

Meat establishment operators are expected, but not required in regulation, by the United States Department of Agriculture — Food Safety and Inspection Service (USDA–FSIS) to check the published Residue Repeat Violators List. The list identifies livestock producers whose animals have had two or more positive drug residue test results in the past year. Meat establishment operators are also expected to take appropriate measures before accepting animals from these producers. Recent federal data suggest that dairy cattle are responsible for a high proportion of repeat tissue drug residue offenses. As a leading producer of dairy cattle, the reputation of Wisconsin’s agriculture industry is jeopardized by the few Wisconsin producers who repeatedly violate prohibitions against drug residue in livestock and meat products.

Current rules prohibit slaughter of a food animal for human consumption or submission of a food animal for slaughter if the person knows or has reason to know the animal is diseased or injured. The proposed rule will further prohibit someone from slaughtering or submitting for slaughter a food animal for human consumption if they know that the animal is adulterated. The rule then defines animals from producers included on the USDA Residue Repeat Violator List for use by Livestock Markets and Establishments as adulterated unless the producer provides written evidence that they have completed a course on proper administration of animal medications. The department will approve an acceptable course or courses. Completion of the approved course(s) will require the involvement of the livestock producer’s veterinarian.

The proposed rule also revises s. ATCP 55.07, which requires a person who knows or has reason to know that he or she is submitting a diseased or injured animal for slaughter to sign and deliver a written statement to the person who will perform the slaughter. The proposed rule will revise the requirement that the written statement include a list of all drugs administered to the animal as treatments or feed within 30 days prior to the slaughter submission date. The rule will instead require that the statement certify that the withdrawal time following administration of all drugs as treatments or feed additives has complied with the manufacturer’s recommendations. This revision acknowledges that some drugs may require a longer withdrawal time than 30 days.

Small businesses affected

State–inspected meat establishment operators, who accept livestock for slaughter, and livestock producers included on USDA’s Residue Repeat Violator list who submit their animals for slaughter at state meat establishments, will be affected by this rule. This proposed rule is anticipated to have a very slight impact on meat establishment operators, who will be required to determine whether livestock producers presenting animals for slaughter are on the USDA Residue Repeat Violators List. Since very few livestock producers from Wisconsin and neighboring states are on this list, the proposed rule change will have no impact on the vast majority of livestock producers who follow existing regulations and have a strong working relationship with their veterinarian. There will be a minor short–term negative economic impact on a small number of livestock producers listed on the USDA’s Residue Repeat Violator list who, under the proposed rule, would be required to attend a course and improve documentation of their use of animal medications. There will be a slight impact on the veterinarians of these few producers, because completion of the course will require involvement of

the veterinarian. To the extent that the proposed rule prevents drug residue problems and condemnation of carcasses, there will be a positive long–term economic impact. The rule will not modify fees or have an economic impact on local governmental units or public utility taxpayers.

Reporting, bookkeeping, and other procedures

The proposed rule would require state–licensed meat establishment operators who slaughter livestock to determine whether livestock producers presenting animals for slaughter are on the USDA Residue Repeat Violators List. The proposed rule would require a producer who is listed on the federal Residue Repeat Violators List to provide written evidence to a meat establishment operator that they have completed a course on proper administration of animal medications before the state–licensed meat establishment may accept animals for slaughter from that producer.

Professional skills required

The proposed rule does not require any new professional skills by small businesses. However, livestock producers included on USDA’s Residue Repeat Violator list who wish to submit their animals for slaughter will need to complete a course on proper administration of animal medications. Completion of the approved course will require the involvement of the livestock producer’s veterinarian.

Accommodation for small business

State meat inspection programs only regulate small businesses. State meat inspection programs operate under a cooperative agreement under USDA’s authority and must meet federal “at least equal to” requirements. No special accommodation may be made for small businesses to meet the

requirements of this proposed rule. However, the rule is expected to have very little impact on meat establishment operators and a slight impact on only a very small number of livestock producers. The rule will affect this small number of livestock producers, but it will benefit small state–inspected meat establishments by further ensuring that the livestock they accept for slaughter are free of drug residues.

Conclusion

Given the potential health risks associated with drug residues in animals for human food, consumers, meat establishment operators, and livestock producers will all benefit from a mandatory procedure for reducing the likelihood that the human food supply contains animals from producers who have been listed for repeated tissue drug–residue violations.

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

Cindy Klug, Director
 Bureau of Food Safety and Inspection
 Department of Agriculture, Trade and Consumer Protection
 P.O. Box 8911
 Madison, WI 53708–8911
 Telephone: (608) 224–4729
 E–Mail: Cindy.Klug@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

ATCP 55–Meat and Meat Products

3. Subject

Drug residues in meat and meat products

4. Fund Sources Affected

GPR FED PRO PRS SEG SEG–S

5. Chapter 20, Stats. Appropriations Affected

102

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
 Local Government Units
 Specific Businesses/Sectors
 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 will specify corrective actions that must be required by state–licensed meat establishments from certain livestock producers before the establishment operator accepts animals from the producers for slaughter. The required corrective actions apply to livestock producers who, on two or more occasions during the past year, submit animals testing positive for any illegal drug residue to be slaughtered at state– or federally–inspected meat establishments.

Medications are important for maintaining healthy livestock. However, if not carefully managed, drug residues may remain in animals submitted for slaughter. Residues of medications, particularly antibiotics and anti–inflammatory agents, in meat can pose a direct health risk to people who consume the meat. For example, some people may have an allergic reaction if exposed to penicillin. The drug flunixin may cause gastrointestinal and kidney problems. Drug residues may disrupt normal meat fermentation processes, such as is needed to make summer sausage, and increase the risk that disease–causing bacteria will grow during processing.

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 will have little impact on state inspected meat establishments at which livestock are slaughtered (about 100 establishments), and will have a slight impact on a very small number of livestock producers and veterinarians.

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

Local governmental units are not impacted by this rule change and did not participate 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)

State–Inspected Meat Establishments: Current rules prohibit submission for slaughter of a food animal for human consumption if the person submitting the animal knows or has reason to know the animal is diseased or injured. This rule change will further prohibit someone from slaughtering or submitting for slaughter a food animal for human consumption if they know that the animal is adulterated, with animals from producers included on the USDA Residue Repeat Violator List defined as adulterated unless the producer provides written evidence that they have completed a course on the proper administration of animal medications. This rule change is anticipated to have little impact on operators of meat establishment at which livestock are slaughtered, who will be required to determine whether livestock producers presenting animals for slaughter are on the USDA Residue Repeat Violators List.

Livestock Producers: Under the rule change, livestock producers who are listed on the USDA Residue Repeat Violator List will be required to complete a course on the proper administration of animal medications and present written documentation of their course completion before submitting animals for human consumption for slaughter at a state–inspected meat establishment. Very few livestock producers from Wisconsin and neighboring states are on this list and this rule change will have no impact on the majority of livestock producers who follow proper procedures for the administration of animal medications. Livestock producers who take a course in proper administration of animal medications will have to bear costs associated with the course presentation (likely a registration fee to cover expenses incurred by the course presenters) and time away from their regular work. We characterize this impact as slight.

Veterinarians: Successful completion of a course in proper administration of animal medications by a producer will require the involvement of the livestock producer's veterinarian. This involvement will require a time commitment by a very small number of veterinarians. We characterize this impact as slight.

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

The rule change will benefit state inspected meat establishments, all of whom are small businesses, by clarifying procedures they must follow in the event that a producer on the Repeat Residue Violators List submits a food animal for slaughter. Implementing these mandatory procedures will further decrease the likelihood that animals with illegal drug residues enter the human food chain, and will protect consumer trust in meat from Wisconsin-inspected establishments. The proposed rule will ensure Wisconsin's state meat inspection program is consistent with federal regulations and expectations for minimizing the risk of drug residue violations. It adds an additional educational corrective action that would be required of the producer by the abattoir operator well before federal regulatory action would normally be taken. The rule change will help livestock producers who are on the USDA Residue Repeat Violators List improve their practices for administering animal medications and avoid future problems. If the rule is not implemented, there is a chance that producers on the Repeat Residue Violators List would present animals containing illegal residues to unknowing meat establishment operators. Although this scenario is unlikely, the economic importance of the meat industry in Wisconsin is high enough that prudent steps should be taken to make illegal drug residues in meat even more unlikely to occur.

14. Long Range Implications of Implementing the Rule

To the extent that the proposed rule prevents drug residue problems and condemnation of carcasses, the rule change will have a positive long-term economic impact on Wisconsin's meat industry.

15. Compare With Approaches Being Used by Federal Government

Federal meat and poultry inspection regulations require meat and poultry processors to adopt Hazard Analysis and Critical Control Point (HACCP) systems. HACCP is an approach for preventing food safety hazards that involves identifying key food processing steps essential for ensuring safety. Plants must develop a plan to monitor and document that each of these key steps is functioning properly and minimizing the risk associated with food safety hazards. As part of their HACCP plan, federally-inspected plants are required by 9 CFR 417.2 (a) (3) (v) to identify preventive measures for food safety hazards that could arise from drug residues. Drug residues include veterinary drugs, pesticides, and environmental contaminants.

One approach for minimizing drug residue risks is for abattoir operators to avoid accepting animals from sources that have had drug residue violations in the past. Since past performance is often the best indicator as to whether an animal may have a drug residue problem, federal plants are expected, but not required in regulation, to consult the federal Residue Repeat Violator List for use by Livestock Markets and Establishments before accepting animals for slaughter. The list is compiled by the National Residue Program (NRP) at FSIS which has collected data on drug residues in meat, poultry and egg products since 1967. Producers who are found to have had more than one residue violation in the previous 12 months under this sampling program are placed on the federal Residue Repeat Violator List. Federal regulations do not require producers on the list to take any corrective actions prior to submitting animals for slaughter. Federal action against residue repeat violators is generally not taken unless the US Food and Drug Administration investigates, issues a warning letter and, upon further violations, obtains an injunction against the livestock producer. This process is cumbersome, lengthy, and does not happen often.

The proposed rule will ensure Wisconsin's state meat inspection program is consistent with federal regulations and expectations, and it will enhance the effectiveness of these procedures by adding an additional educational corrective action that would be required of the producer by the abattoir operator well before federal regulatory action is needed.

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

Michigan currently does not operate a state meat and poultry inspection program and all meat slaughtered and processed in Michigan is federally-inspected by USDA. Illinois' state meat inspection program includes USDA's Federal-State Cooperative program (formerly known as the "Talmadge-Aiken" program). Under this program, state inspectors conduct federal inspections. Minnesota and Iowa operate state meat inspection programs. All processors of meat and meat products, whether operating under state meat-inspection programs or the USDA program, are expected to minimize the risk associated with drug residues and to consult the USDA's Residue Repeat Violator List for use by Livestock Markets and Establishments before purchasing animals for slaughter. The approach proposed in this rule revision is innovative and goes beyond requirements in neighboring states which operate state meat inspection programs. Although enforcement of the provisions in the proposed rule is expected to be infrequent, the provisions are necessary to protect consumer trust in meat from Wisconsin-inspected establishments.

17. Contact Name

Cindy Klug, Director — Bureau of Meat Safety and Inspection

18. Contact Phone Number

(608) 224-4729

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 proposed rule is anticipated to have little impact on meat establishment operators, who will be required to determine whether livestock producers presenting animals for slaughter are on the USDA Residue Repeat Violators List. However, meat establishments are already expected to review the list before accepting animals for slaughter. Since very few livestock producers from Wisconsin and neighboring states are on this list, the proposed rule change will have no impact on the vast majority of livestock producers who follow existing regulations and have a strong working relationship with their veterinarian. There will be a slight short-term negative economic impact on a small number of livestock producers listed on the USDA's Residue Repeat Violator list who, under the proposed rule, would be required to attend a course and improve documentation of the use of animal medications. The primary economic impact for these producers would be the registration cost for the course and time away from their farm duties. There will be a slight impact on the veterinarians of these few producers, because completion of the course will require involvement of the veterinarian.

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

To determine the potential impact on small businesses, DATCP requested input from a meat processors professional organization, and the Wisconsin Veterinary Medical 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

The rule is expected to only have an appreciable impact on meat establishments interacting with a small number of livestock producers. The rule will affect this small number of livestock producers, but it will benefit small state-inspected meat establishments by further ensuring that the livestock they accept for slaughter is free of drug residues. Under the proposed rule, DATCP must approve the course on proper administration of animal medications that livestock producers on the Repeat Residue Violators List would be required to attend before they can submit animals for slaughter at a state-inspected meat establishment. In evaluating course(s) for approval, the DATCP will carefully balance the effectiveness of the learning activities in the course with the number and duration (and thus economic impact) of these learning activities to ensure that an undue economic burden is not placed course attendees.

5. Describe the Rule's Enforcement Provisions

Enforcement of the rule will occur as part of normal meat establishment regulatory activities. Typically, noncompliance with regulatory requirements results in a Noncompliance Report (NR). Upon receiving an NR, the establishment operator takes corrective actions, which are described to the Meat Safety Inspector. In cases of noncompliance related to suspected drug residues, carcasses may be retained for testing. Non-violative carcasses would be released for further processing and/or sale. Violative carcasses would be condemned in accordance with normal procedures.

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

- Yes No

Notice of Hearing

Natural Resources

Fish, Game, etc., Chs. 1—

EmR1205

(DNR# WM-24-13(E))

NOTICE IS HEREBY GIVEN that pursuant to ss. 29.014, 29.041, and 227.24 (4), Stats., interpreting ss. 29.014, 29.041, and 29.192, Stats., the Department of Natural Resources will hold public meetings on revisions to Chapters NR 1, 10, 13, and 45, Wis. Adm. Code, related to deer management,

hunting, and implementation of the 2012 White-tailed Deer Trustee Report. This emergency order has been adopted by the Natural Resources Board and the public hearing is being held to fulfill statutory requirements.

Hearing Dates and Locations

Date: Friday, March 28, 2014
Time: 2:00 p.m.
Location: Natural Resources State Office Building (GEF-2)
 101 S. Webster St.
 Room 613
 Madison, WI 53707

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

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

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

Environmental Impact

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

Analysis Prepared by the Department of Natural Resources

Plain language rule analysis

Gubernatorial candidate Scott Walker made a promise to appoint a “Deer Trustee” to review white-tailed deer management programs and hunting in Wisconsin. In October of 2011 Dr. James C. Kroll, officially known as Wisconsin’s white-tailed deer trustee, entered into a contract with the State of Wisconsin to conduct an independent, objective and

scientifically-based review of Wisconsin’s deer management practices. The White-tailed Deer Trustee’s report was released to the public in July, 2012.

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

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

Section 7 creates introductory material that organizes the current contents of ch. NR 10 as Subchapter 1 and prepares for the creation of another subchapter related to the deer management assistance program.

Section 8 creates a definition of “afield” for the purpose of establishing that a deer cannot be possessed by someone other than the person who tagged it if the person who tagged the deer is not also present with the deer while afield, similar to current rules.

Section 9 updates the definition of “archery hunt” and the associated cross-reference to the laws which establish the archery licenses so that it continues to be accurate following the enactment of statutes related to hunting with crossbows.

Sections 10, 11, 25, 34, 36, 38, and 41 establish that CWD management zones will be identified as CWD-affected areas and are based on counties, consistent with proposed deer management unit boundaries.

Sections 12 and 13 establish definitions of private and public land so that bonus deer hunting permits can be issued as valid only for use on land not open to public hunting or as valid only for use on lands which are open to public hunting, but not valid on both types of land. Lands which are privately owned but open to public hunting under the managed forest law program are public lands for purposes of this provision.

Sections 14, 22, and 28 update cross references related to sharp-tailed grouse, fisher, and bear management zones or subzones so that the deer management unit map in effect in 2013 continues to be the one cross referenced.

Sections 15 to 21 of this proposal establish the deer hunting season dates for gun, archery, muzzleloader, and deer hunting by youth hunters. The standard deer hunting season framework established in these sections is:

Bow & Arrow/Archery	Saturday nearest September 15 and continuing through the Sunday nearest January 6.
Youth	Two consecutive days beginning on the Saturday nearest October 8.
October antlerless-only firearm (<i>occurs only in those units or subunits where CWD or other disease has been found, and only after promulgation of emergency rules pursuant to s. 29.016(2), Stats.</i>)	Four consecutive days beginning on a Thursday and ending on the Sunday nearest, but not later than October 15 th .
Traditional 9-day November firearm deer season	Saturday before Thanksgiving Day Holiday and continuing for 9 days.
Muzzleloader only	Beginning on the day after the traditional November firearm deer season and continuing for 10 days.
December 4-day antlerless season (in central forest and central farmland zone counties only)	Beginning on the second Thursday following the Thanksgiving Day holiday.
Holiday antlerless firearm deer season (in southern farmland zone counties)	Beginning on December 24 and continuing through January 1.

Noteworthy changes to current rule are that there is no longer a 4-day December antlerless-only, any-firearm-type deer season in the northern forest or southern farmland zones.

This section establishes that a season commonly referred to as the December holiday hunt will now begin on December 24 and continue through January 1 and it will be antlerless only.

The holiday hunt will be held in all areas of the former CWD management zone and the entire portion of counties which had previously been partially located in the CWD management zone. The department could extend the holiday season to additional counties and this would normally happen after a recommendation by the counties deer management advisory committee. This section eliminates references to state park hunting seasons which are no longer needed because state statute has established that deer hunting is generally allowed in state parks. This section retains language which establishes the seasons for certain state parks when it is still needed because the existing seasons are different than the general statewide seasons. Muzzleloader only seasons are an example of the type season variations that have existed at some state parks. Finally, this section eliminates state park deer management unit designations and limited entry state park deer hunts.

These sections establish a general bag limit of one buck during firearm deer seasons and one buck during the archery seasons, plus additional antlerless deer where permits are available.

Finally, these sections make a number of remedial changes for consistency with state statute related to the elimination of earn-a-buck regulations for the first buck harvested and establish that, when bonus buck regulations are in place, there is a maximum season limit of three between all license types.

Section 23 restores the protected status of white deer in a CWD affected area.

Section 24 maintains cross-references related to hunting hours for species that have no hunting hour restrictions except at times when a firearm deer season is open.

Section 26 repeals a cross-reference related to blaze orange requirements during deer seasons in CWD zones which is not necessary because blaze orange requirements are already established in statute.

Section 27 repeals a historic prohibition of the possession of firearms in the field on the day before the traditional 9-day firearm deer season.

Section 29 revises population goals so that they will be expressed as management objectives to increase, maintain, or decrease the deer population density in a management unit. Deer management units will generally be the same as counties with exceptions for metropolitan subunits and areas within the exterior boundaries of the Bad River, Lac Courte Oreilles, Lac du Flambeau, Menominee, and Red Cliff reservations. This section establishes county deer management committees which will be advisory to the department. This section also establishes antlerless permits and their allowable uses and methods of distribution. This section establishes a \$12.00 fee for bonus permits which are issued for a CWD-affected area and a \$6.00 fee for bonus permits issued under the deer management assistance program. Finally, this section establishes that one bonus buck may be harvested in the southern farmland zone or units with an objective to decrease or stabilize the deer population instead of just in a CWD affected area. The harvest of one antlerless deer is required before the harvest of a bonus buck and there is a limit of one bonus buck per year. Bonus buck regulations are in effect for the 2015 season except that hunters who earned buck authorization stickers in 2013 may use them in 2014.

Section 30 modifies the tagging procedures so that a deer possessed in the field must be accompanied by the person who tagged it, even if the deer has already been registered. Deer

which have been registered may be possessed and transported on roadways or possessed at a home or established businesses (taxidermist, butcher shop, etc.) by someone other than the person who tagged it, consistent with current rules.

Section 31 establishes that a harvest registration confirmation number must be legibly printed on the carcass tag to show proof that a deer has been registered with the department under an electronic or telephone registration system. This section also maintains the current prohibition of processing a deer while in the field, except that it may be divided into as many as 5 parts to help with removing it from the field.

Section 32 modifies deer registration procedures to allow telephone or electronic recording of harvest. The ability to require in-person registration in areas is retained if the department determines that is necessary for research, collecting tissue samples, or during transition periods. Deer and bear harvest must be registered with the department by 5:00 p.m. of the day after the deer is taken into possession. Registration requirements will be the same statewide for both firearm and archer harvested deer. This section also clarifies that an antlerless deer may not be possessed in the field outside of the unit of harvest except on a public highway or at a dwelling or established business such as a butcher shop or taxidermist's place of business, and then only after first being registered. This is similar to current restrictions which prohibit transportation of a deer outside the unit of harvest prior to registration but is amended so the rule remains effective to enforce restrictions on illegal use of tags when electronic harvest registration is allowed.

Section 33 establishes deer management units which will generally be based on counties and establishes metropolitan deer management subunits and identifies tribal lands. This section preserves the current metropolitan deer management units. The note in this Section also maintains the deer management unit map that was in effect in 2013 because those boundaries continue to be used for other purposes such as the basis for the fisher management zone map.

Section 35 repeals the existing deer management regions map and replaces it with a comparable but simplified zone map that is more aligned along county boundaries. This map also identifies where certain antlerless tags can be used and to describe deer season frameworks.

Section 37 establishes the deer management assistance program to assist with specialized management of deer in localized areas and for specific purposes. This section establishes fees and other conditions for participation in the program.

Section 39 eliminates the prohibition on shooting deer under an agricultural deer damage shooting permit on the day before the traditional 9-day November firearm deer season.

Section 40 updates a cross-reference related to establishing the harvest quota for tribal members in the ceded territories.

Section 42 repeals the requirement to obtain a special permit before hunting deer in a state park in the CWD management zone.

Federal regulatory analysis

These state rules and statutes do not relieve individuals from the restrictions, requirements and conditions of federal statutes and regulations. Regulating the hunting and trapping of native species falls within the purview of state fish and wildlife agencies.

Comparison with rules in adjacent states

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

Illinois

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

Iowa

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

Michigan

Michigan has one firearm season, two archery seasons, and one muzzleloader season, as well as two antlerless-only seasons and a youth hunt. The firearm season runs November 15 – 30. The archery seasons run October 1 – November 14 and December 1 – January 1, 2014. Michigan's muzzleloader-only season is split into three zones with each zone's season occurring in December and lasting for either 10 or 17 days. The antlerless-only seasons run from September

21–22 and December 23 – January 1, 2014 and the youth hunt occurs on Sept 21–22. Hunters interested in harvesting an antlerless deer must purchase an antlerless license that is valid within a specific DMU for use on either public land or private land. In some DMUs, these licenses may only be purchased over the counter, whereas in others there is an application process and drawing.

Minnesota

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

Summary of factual data and analytical methodologies

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

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

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

Chapter NR 10 establishes most of the deer population management policy and practices and hunting regulations that are in place today. Currently, ch. NR 10 establishes the Sex-Age-Kill model for estimating deer populations, deer population goals, and deer management units. These rules repeal a requirement to use that specific population model. However, these rules do not prohibit the department from continuing to analyze deer populations using population models. The department will continue to use population models, such as the Sex-Age-Kill model, to develop population information. These rules will replace the current population goals by eliminating numeric goals and replacing them with a simplified statement of objectives to "increase, stabilize, or decrease the deer population." These rules establish a set of metrics to monitor progress towards the objective. These rules significantly reduce the number of deer management units and establish that they are generally the same as the county boundaries with exceptions for metropolitan subunits and tribal lands. These rules do not change the department's current requirement to evaluate deer

management unit boundaries and population goals or objectives on a recurring three year basis.

Under these rules the department will be able to modify antlerless harvest quotas and permit levels on an annual basis. These rules establish that the department will seek input from groups or representatives for certain deer related interests in establishing quotas by creating *county deer management advisory committees*. Through these committees, the department will seek comment from members of the public on the status of the deer herd. The committees will usually be chaired by the chairperson for the county delegation of the Conservation Congress. Other members of the committee will normally be a representative of Wisconsin's Chippewa bands if in ceded territories and a representative for; agriculture, forestry, tourism, transportation and local government.

Under this proposal, hunters in most of the state will continue to receive an antlerless deer tag with the purchase of a firearm or archery license. This tag will be comparable to the current "herd control unit" tag which is issued in units that are 20% or more over the established population goal. Under the proposal, these tags will be valid in many but potentially not all farmland units. There is flexibility to establish that antlerless tags issued automatically with deer hunting licenses are not valid in farmland units that have a population objective to increase or stabilize the deer population. The department would establish this after natural resources board approval of a secretary's order, and following evaluation and a recommendation from county deer management advisory committees and the department. The department currently issues additional herd control tags for the cost of a \$2.00 issuance fee but those tags will be discontinued by this rule. Under this proposal, the standard fee of \$12.00, also the current fee for a bonus permit, will apply for all antlerless permits which are in addition to the one that was issued with hunting licenses. These rules also establish a \$12.00 fee for additional antlerless tags which allow harvest of deer in the CWD-affected area. Under statute, \$5.00 of the fee for these permits will be credited to an account for management and testing of chronic wasting disease. Through the deer management assistance program, these rules allow establishing unique antlerless deer permits that are specific for use on properties enrolled in the deer management assistance program. A recommendation resulting from the public involvement process that preceded development of these rules was that the fee for bonus permits should be \$10.00. That is not proposed in these rules because the bonus permit fee is already established by statute and the department does not have rulemaking authority to change it. Other permits, the fee for which the department does have rulemaking authority, are generally also \$12.00 for consistency with bonus permits.

An important change in the allowable use of most antlerless deer permits is that, under this proposal, they will be valid for harvesting antlerless deer only on private land or only on lands open to public hunting. Historically, bonus permits had been valid for hunting on any type of land in the correct management unit. This rule change is intended to address hunter concerns about harvest and hunting pressure on public lands. This regulation may reduce the level of antlerless deer harvest on lands open to public hunting. Under the proposal, public lands are defined as land owned, under easement to, or lease by federal, state or county government if that land is open to public hunting and also includes private

lands enrolled in the managed forest or forest crop program. This provision will be phased in over a two year period as automated license system updates are made.

A variety of related hunting regulations changes are proposed in these rules. Some of them are simplifications to current rules. Changes include the names for permits and the allowable use of various deer permits. Deer carcass tags, tagging, and transportation requirements are modified where possible in order to simplify regulations or where needed in anticipation of a new automated licensing system. The current requirement to register deer is replaced in these rules with a more customer-friendly harvest reporting procedure using telephone or internet. Black bear are another species for which in-person registration of harvested animals is required. These rules will modify bear harvest recording requirements because deer and bear registration occur at the same locations and through the same process under current rules. These rules will eliminate deadlines to register deer and bear that currently vary by season, harvest method, and location. Instead, a simple statewide requirement to register deer and bear harvest by 5:00 p.m. of the day after is established. This allows fewer hours to register an animal than under current law but electronic registration will be significantly more convenient. Faster registration of deer will provide the department and others who are interested with very timely harvest information. The shorter deadline may also help with enforcing bag limit, tagging, transportation and possession restrictions. The option to require in-person registration of deer carcasses is preserved in areas that are part of a CWD affected area or where necessary for deer population and herd health monitoring purposes. The department could take advantage of this authority in order to collect tissue specimens for sampling for a wide variety of diseases or biometrics associated with deer populations. Finally, in order to assure hunter accountability and compliance with group bagging restrictions, these rules establish that a deer carcass possessed in the field must be accompanied by the person who tagged it. These rules maintain the restriction that deer and bear can only be "quartered" while in the field, even if they have already been registered. Both of these regulations essentially maintain current requirements because in-the-field registration of harvested deer was not possible previously. Now that deer could be registered while in the field by using a cellular phone or other electronic means, these rules will continue to require that the person who tagged the carcass accompany it during dragging or other field transport or possession by others. Deer that have been registered could be possessed and transported by other people on public highways or possessed at a residence or business, such as a taxidermist or butcher shop. These requirements will also assure sex or size of deer or bear are identifiable in the field.

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

The department is recommending deer hunting season date modifications as a result of this rulemaking. The report generally recommended, "keeping seasons and bag limits consistent for longer periods of time to allow better

assessment of management progress". The season date modifications in the proposal may lead to more long term stability of seasons. These rules will maintain the current season for hunting deer by archery methods. This proposal maintains the traditional Wisconsin firearm deer season opener on the Saturday before Thanksgiving and 9 day structure. The current 10 day muzzleloader season is maintained under this proposal. This proposal modifies that "holiday hunt" which has been held in the CWD management zone so that it will be antlerless only and end on January 1 instead of the Sunday nearest January 6. The holiday hunt will be expanded geographically to include entire counties where previously the hunt was held only in a portion of the county. This holiday deer hunt occurs under current rules in the CWD management zone. It has been a low-pressure event but, for some, a greatly appreciated opportunity for additional deer hunting at a time when families are together and around which some new deer hunting traditions are developing. The late firearm season, or holiday hunt, is similar to seasons offered in other adjacent states and will occur during a time of the year when more residents are traditionally taking vacation or home for the holidays as in the case of veterans. Finally, only in areas that are part of the CWD season under current rules, archery deer hunting has been allowed on the day before the traditional 9-day firearm season opens. Under this proposal, the archery deer season will be open statewide on the day before the traditional 9-day firearm season for statewide consistency.

In metropolitan deer management subunits a 19-day firearm deer hunting season has been in place and is maintained by this rule proposal.

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

The trustee's report generally recommends a more passive approach than current department policy to the management

of Chronic Wasting Disease. This approach is reflected by the establishment of deer seasons in CWD affected areas that are similar to other areas of the state. Management of CWD in the state's deer herd is still important under these rules. These rules retain the firearm deer season occurring over the Christmas holiday, although it will now be an antlerless-only season and will end on January 1. There is an option to issue landowner permits for sampling or for additional harvest opportunities, and rule language that provides advice on when an October firearm season will be held if necessary in CWD affected areas. While the promulgation of emergency rules is required under s. 29.016, Stats., before an October firearm season can be held, establishing by permanent rule when that season would occur is intended to simplify development of an emergency rule if that authority is utilized. These rules modify the current CWD zone management system by designating it as the CWD-affected area using county boundaries to describe the zone instead of the previous DMU configuration based on roads and natural features such as rivers. A process for efficiently adding new counties as CWD-affected areas when the disease is discovered in new areas is created. The department currently establishes numeric population goals for deer units that are in a CWD zone. Those goals are modified by these rules so that they are consistent with the manner in which objectives for other units are expressed.

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

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

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

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

began on October 7 and ended on October 21, 2013. Although s. 227.14, Stats., does not require an economic impact analysis for emergency rules, an analysis was prepared for this rule and related permanent rules and is included for informational purposes and in fulfillment of the fiscal impact analysis requirement.

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

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

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

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

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

The department anticipates that there will be no or very few implementation and compliance costs for the affected entities. These rules will not establish reporting or compliance requirements or other regulations for small business. A possible outcome of these rules is the elimination of deer registration stations at local businesses throughout the state. The department has summarized the value of registration fees

paid by the department to businesses, and related impacts of this voluntary program, in the economic impact analysis.

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

Impact on Small Business

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.

Contact Person

Scott Loomans, Bureau of Wildlife Management
P.O. Box 7921
Madison, WI 53707
Phone: (608) 267-2452
E-mail: scott.loomans@wisconsin.gov

Notice of Hearing

Natural Resources

Fish, Game, etc., Chs. 1—

CR 14-025

(DNR# ER-30-13)

NOTICE IS HEREBY GIVEN THAT pursuant to ss. 227.16 and 227.17, Stats., the Department of Natural Resources, hereinafter the Department, will hold a public hearing on amendments to sections NR 10.02, 16.12, 16.13, 19.275, 21.13, and 22.13 and Chapter NR 27, relating to the addition of the Blanding's turtle to the State's Protected Wild Animal list, possession exemptions, and turtle seasons and limits and to updating scientific and common names and federal listing status on the date(s) and at the time(s) and location(s) listed below.

Hearing Dates and Locations

Date: Wednesday, April 2, 2014
Time: 11:00 a.m.
Location: Wisconsin Natural Resources Building
101 S. Webster St.
Room 613
Madison, WI 53707

There will be **Live Meeting** availability for those who are unable to attend in person. To request a **Live Meeting** link, please contact Terrell Hyde at terrell.hyde@wisconsin.gov or by calling (608) 264-9255.

Reasonable accommodations, including the provision of informational material in an alternative format, will be

provided for qualified individuals with disabilities upon request. Contact Terrell Hyde, Department of Natural Resources, Bureau of Natural Heritage Conservation, 101 S. Webster St, Madison, WI, 53707-7921; by E-mail to terrell.hyde@wisconsin.gov or by calling (608) 264-9255. A request must include specific information and be received at least 10 days before the date of the scheduled hearing.

Availability of the Proposed Rules and Fiscal Estimate

The proposed rule and supporting documents, including the fiscal estimate, may be viewed and downloaded from the Administrative Rules System Web site which can be accessed through the link <https://health.wisconsin.gov/admrules/public/Home>. If you do not have Internet access, a printed copy of the proposed rule and supporting documents, including the fiscal estimate, may be obtained free of charge by contacting Terrell Hyde, Department of Natural Resources, Bureau of Natural Heritage Conservation, 101 S. Webster St, Madison, WI, 53707-7921, or by calling (608) 264-9255.

Submitting Comments

Comments on the proposed rule must be received on or before April 2, 2014. Written comments may be submitted by U.S. mail, fax, E-mail, or through the Internet and will have the same weight and effect as oral statements presented at the public hearing. Written comments and any questions on the proposed rules should be submitted to:

Terrell Hyde
 Department of Natural Resources
 Bureau of Natural Heritage Conservation
 101 S Webster St, Madison, WI 53707-7921
 Phone: (608) 264-9255
 Fax: (608) 266-2925
 E-mail: terrell.hyde@wisconsin.gov
 Internet:
<https://health.wisconsin.gov/admrules/public/Home>
 search "ER-30-13"

Analysis Prepared by the Department of Natural Resources

Statutory authority, statutes interpreted and explanation

Statutes that authorize the promulgation of these rules are: ss. 29.011, 29.014, 29.039, and 29.604, Stats. These statutes establish management authority with the department, provide that the title to wild animals is vested with the state, and provide the department with authority to maintain open and closed seasons and other regulations and programs to conserve game and nongame species. Section 29.604 (3) (b), Stats., has been interpreted as allowing the department the authority to create and amend the list of Wisconsin's endangered and threatened species, s. NR 27.03, Wis. Admin. Code. All rules promulgated under this authority are subject to review under ch. 227, Stats.

Related statutes or rules

Existing policies relevant to the rule are Wisconsin Adm. Codes, Chapter NR 27 and sections NR 10.02, 16.12, 16.13, 19.275, 21.13, and 22.13. No new policies are being proposed.

The department is also promulgating a corresponding emergency rule (ER-31-13 (E)). The emergency and permanent rules both contemplate the following changes: add

Blanding's turtle to the list of Wild Protected Animals (s. NR 10.02); add Blanding's turtles to the Captive Wildlife — Reptile and Amphibian Possession Exemptions (s. NR 16.12 (3) (b)); and add Blanding's turtles to the turtle season/limits with a season/limit of none/zero on ss. NR 19.275 (4), 21.13 (4), and 22.13 (4). The permanent rule only will also contemplate performing housekeeping on scientific and common names, and Federal Protection Status on administrative rules ss. NR 10.02, 16.12, 16.13, 19.275, 21.13, and 22.13 and ch. NR 27, and other related rules listing native plant and animal species.

Plain language analysis

The objective of this proposed rule is to protect Blanding's turtles from the threat of harvest and collection once they are removed from the Wisconsin Threatened species list. The Blanding's turtle was delisted on January 1, 2014 per administrative rule ER-27-11. This emergency and permanent rule is a follow-up action that was proposed during the public comment for ER-27-11. As stated by the Department in the final adopted rule order for ER-27-11, that while the Blanding's turtle no longer meets the scientific criteria for listing as Threatened, the population is vulnerable to harvest and collection and should be added to the Protected Wild Animal list (s. NR 10.02) and harvest/collection limits.

SECTIONS 1, 3, 5, and 11-32 update scientific, common, and family names. These changes reflect current understanding of the scientific community and include mostly placement of species into a different Genus or taxonomic group. Several discrepancies in spelling and missing common names are also corrected. All of these taxa are still regarded as valid species.

SECTIONS 2, 4, 6, 7, and 8 add the Blanding's turtle to the list of Wild Protected Animals, Captive Wildlife Exemptions, and to the turtle season's and limits in Wisconsin's waters to protect them from harvest and collection.

SECTIONS 9 and 10 replace the list of endangered and threatened U.S. foreign and native species with a link to the latest publication as published in the Government Printing Office's Endangered and Threatened Wildlife and Plants 50 eCFR 17.11 and 17.12. This "adoption by reference" meets the expectation set by Wis. Stats. 29.604 (3) (b) to establish the list of wild animals and wild plants on the U.S. list of endangered and threatened foreign species; wild animals and wild plants on the U.S. list of endangered and threatened native species. The U.S. list is updated daily and is found on the US Fish and Wildlife Services' endangered species web page (<http://www.fws.gov/endangered/>).

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

There are no federal regulations that would be in conflict with this proposed action. Blanding's turtles are not federally listed. In 2013, the United States Fish and Wildlife Service proposed addition of the Blanding's turtle to The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) list: <http://www.fws.gov/international/cites/cop16/blandings-turtle.html>.

Comparison with similar rules in adjacent states

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

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

Since 1979, when the Blanding’s turtle was added to the threatened list, there has not been a pet or food trade industry for this species in the state. However, as a result of delisting, the Blanding’s turtle is subject to turtle harvest regulations as all turtles not listed as threatened or endangered in ch. NR 27 or otherwise specified have a 135–day open season between July 15 and November 30 where the public may capture and possess up to 5 individuals.

Internationally there is concern for this species because of the increasing trend in the pet trade and commercial collecting. Regionally the Blanding’s turtle is state protected in Illinois, Iowa, and Minnesota. In Michigan, Blanding’s turtles cannot be taken or possessed except as authorized by the Director of the Department of Natural Resources.

As stated by the Department in the final adopted rule order for ER–27–11, that while the Blanding’s turtle no longer meets the scientific criteria for listing as Threatened, the population is vulnerable to harvest and collection and should be added to the Protected Wild Animal list (s. NR 10.02) and harvest/collection limits.

These proposed rule changes were developed with the assistance of the Bureaus of Natural Heritage Conservation, Fisheries Management, Wildlife Management, and Legal Services.

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

Pursuant to s. 227.137, Wis. Stats., the department is required to solicit comments on the economic impact of the proposed rule. Small businesses, as defined in s. 227.114 (1), Wis. Stats., were asked to identify themselves as a small business in their comments. No comments were received in the 2–week comment period between January 22 and February 5, 2014.

The department anticipates minimal economic impact, with few entities affected as collection and possession limits will not change. Interested parties may include individuals using turtles as bait or food, and parties interested in developing a pet/food trade for the Blanding’s turtle in Wisconsin.

Effect on Small Business (Initial Regulatory Flexibility Analysis)

Pursuant to s. 227.137, Wis. Stats., the department is required to solicit comments on the economic impact of proposed rule. Small businesses, as defined in s. 227.114 (1),

Wis. Stats., were asked to identify themselves as a small business in their comments. No comments were received in the 2–week EIA comment period held between January 22 and February 5, 2014. The Department’s email distribution list will be submitted to the Governor’s Office of Regulatory Compliance. The EIA does not indicate that the proposed rule is reasonably expected to have a total impact of \$20,000,000 in implementation and compliance costs.

The department will submit the rule package and economic impact analysis to the Wisconsin Legislative Council under s. 227.15, Wis. Stats., and hearings on the proposed rule will be held by the department after proper notice in accordance with ss. 227.17 and 227.18, Wis. Stats. A small business regulatory flexibility analysis that contains the provisions in s. 227.19 (3) (e), Stats., will be included in the final rule order.

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

Environmental Analysis

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

Fiscal Estimate Summary

These proposed rules do not establish any requirements on businesses or local units of government.

The department anticipates minimal economic impact as the proposed rule changes will continue similar possession and collection limits that the Blanding’s turtle received under the protections afforded to the species on Wisconsin’s Threatened species list. The Blanding’s turtle was added to the Threatened species list in 1979. As such, there has not been a market for its collection and possession since then. No changes to the permitting process for researchers and rehabilitators are expected as part of this proposed rule change.

Agency Contact Persons

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

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

This rule modifies Ch.'s NR 10 related to the list of Wild Protected Animals, NR 16 related to Captive Wildlife – Reptile and Amphibian Possession Exemptions, NR 27 related to the list of US and Wisconsin Endangered and Threatened species, and Ch.'s NR 19, NR 21, and NR 22 related to turtle seasons and limits.

3. Subject

Preliminary economic impact analysis for public comment relating to adding Blanding's turtles (*Emydoidea blandingi*) to the list of Wild Protected Animals, and eliminating harvest and collection through the Department's list of turtle seasons and limits and captive wildlife exemptions.

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 objective of this proposed rule is to protect Blanding's turtles from the threat of harvest and collection since they were removed from the Wisconsin Threatened species list. The Blanding's turtle was delisted on January 1, 2014 per administrative rule ER-27-11. This emergency and permanent rule is a follow-up action that was proposed during the public comment for ER-27-11. As stated by the Department in the final adopted rule order for ER-27-11, that while the Blanding's turtle no longer meets the scientific criteria for listing as Threatened, the population is vulnerable to harvest and collection and should be added to the Protected Wild Animal list (NR 10.02) and harvest/collection limits.

Since 1979, when the Blanding's turtle was added to the threatened list, there has not been a pet or food trade industry for this species in the state. However, as a result of delisting, the Blanding's turtle is subject to turtle harvest regulations as all turtles not listed as threatened or endangered in NR 27 or otherwise specified have a 135-day open season between July 15 and November 30 where the public may capture and possess up to 5 individuals.

Internationally there is concern for this species because of the increasing trend in the pet trade and commercial collecting. Regionally the Blanding's turtle is state protected in Illinois, Iowa, and Minnesota. In Michigan, Blanding's turtles cannot be taken or possessed except as authorized by the Director of the Department of Natural Resources.

The proposed rule changes will continue similar possession and collection limits that the Blanding's turtle received on the State's Threatened list. As such, minimal controversy is anticipated.

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.

Pursuant to s. 227.137, Wis. Stats., the department was required to solicit comments on the economic impact of the proposed rule. Small businesses, as defined in s. 227.114(1), Wis. Stats., were asked to identify themselves as a small business in their comments. The 2–week EIA comment period was between January 22 and February 5, 2014. No comments were received.

The department anticipates minimal economic impact, with few entities affected as collection and possession limits will not change. Interested parties may include individuals using turtles as bait or food, and parties interested in developing a pet/food trade for the Blanding’s turtle in Wisconsin.

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

Pursuant to s. 227.137 Wis. Stats., the department is required to solicit comments on the economic impact of the proposed rule, and if requested to coordinate with local governments in the preparation of an Economic Impact Analysis (EIA). No comments or requests to coordinate were received.

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

No changes to the permitting process for researchers and rehabilitators are expected as part of this proposed rule change. As part of the administrative rule ER–27–11, researchers will need to apply for a Scientific Collectors Permit or Research License Authorization to collect or possess a Blanding’s turtle instead of an Endangered and Threatened Species Permit.

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

These proposed rules do not establish any requirements on businesses or local units of government.

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

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

14. Long Range Implications of Implementing the Rule

The long range implications of this rule proposal will be the same as the short term implications in protecting the Blanding’s turtle from the threat of harvest and collection and keeping them off the Wisconsin Threatened species list. These rule proposals will continue harvest and collection limits that the Blanding’s turtle received while listed on the State’s Threatened species list.

15. Compare With Approaches Being Used by Federal Government

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

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

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

17. Contact Name
Terrell Hyde

18. Contact Phone Number
608–264–9255

Notice of Hearing

Safety and Professional Services — Pharmacy Examining Board CR 14-023

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Pharmacy Examining Board in sections 15.08 (5) (b) and 450.02 (2), Wis. Stats., and interpreting sections 450.035 and 450.085, Wis. Stats., the Pharmacy Examining Board will hold a public hearing at the time and place indicated below to consider an order to amend sections Phar 1.02 (7), 7.10, and 16.03, relating to council and exam names.

Hearing Dates and Locations

Date: Wednesday, March 26, 2014
Time: 9:00 a.m.
Location: 1400 East Washington Avenue
 Room 121A
 (Enter at 55 North Dickinson Street)
 Madison, WI

Appearances at the Hearing

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but are urged to submit facts, opinions and argument in writing as well. Facts, opinions and argument may also be submitted in writing without a personal appearance by mail addressed to Sharon Henes, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, P.O. Box 8366, 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 8366, 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 **March 26, 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 8366, Madison, Wisconsin 53708, or by email at Sharon.Henes@wisconsin.gov.

Analysis Prepared by the Department of Safety and Professional Services

Statutes interpreted

Sections 450.035 and 450.085, Wis. Stats.

Statutory authority

Sections 15.08 (5) (b) and 450.02 (2), Wis. Stats.

Explanation of agency authority

The board has authority to promulgate rules for the guidance of the profession and to interpret the provisions of the statutes it enforces. The board shall adopt rules defining the active practice of pharmacy.

Related statute or rule

None

Plain language analysis

Section 1 capitalizes the proper name of the examination.

Sections 2 and 3 correct the name of the organization which approves the course of study to Accreditation Council for Pharmacy Education as amended in the statutes by 2013 Act 124. In addition, Section 3 removes the qualification of “pharmacist” for attendance and deletes in the note the reference to a list of board approved programs which is no longer compiled.

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

None.

Comparison with rules in adjacent states

Illinois: Illinois administrative code references the Accreditation Council for Pharmacy Education and the North American Pharmacy Licensing Examination.

Iowa: Iowa administrative code references the Accreditation Council for Pharmacy Education and the North American Pharmacy Licensing Examination.

Michigan: Michigan administrative code references the Accreditation Council for Pharmacy Education and the North American Pharmacy Licensing Examination.

Minnesota: Minnesota administrative code references the Accreditation Council for Pharmacy Education and the North American Pharmacy Licensing Examination.

Summary of factual data and analytical methodologies

The rule reflects the statutory change due to 2013 Act 124.

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

The rule was posted for economic impact comments for 14 days and none 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 8366, 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

Phar 1, 7, 16

3. Subject

Council and exam name

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 rule corrects the names of the North American Pharmacy Licensing Examination and Accreditation Council for Pharmacy 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.

None

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)

None

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

The benefit is to refer to both the exam and education council by their correct proper names.

14. Long Range Implications of Implementing the Rule

The benefit is to refer to both the exam and education council by their correct proper names.

15. Compare With Approaches Being Used by Federal Government

None

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

Our neighboring states reference the North American Pharmacy Licensing Examination and Accreditation Council for Pharmacy Education.

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.

Submittal of Proposed Rules to Legislature

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

Natural Resources
Fish, Game, etc., Chs. 1—
CR 13-067

(DNR # WM-05-13)

On February 19, 2014, the Department of Natural Resources submitted a proposed rule in final draft form to the chief clerk of the Senate and Assembly pursuant to s. 227.19 (2), Stats. The rule revises Chapter NR 10, relating to hunting and management of elk and bobcat.

This rule was approved by the Governor on February 18, 2014, pursuant to s. 227.185, Stats.

Public Instruction
CR 13-114

On March 3, 2014, the Department of Public Instruction submitted proposed rules to the Chief Clerks of the Senate and Assembly for review by the Legislature under s. 227.19, Stats. The rules revise Chapter PI 5, relating to high school equivalency diplomas and certificates of general educational development.

Per the Dane County Circuit Court order issued in Coyne, et al. v. Walker, et al., Case No. 11-CV-4573, the Department of Public Instruction is not required to obtain the Governor's approval of this proposed rule under s. 227.185, Stats.

Public Instruction
CR 13-115

On March 3, 2014, the Department of Public Instruction submitted proposed rules to the Chief Clerks of the Senate and Assembly for review by the Legislature under s. 227.19, Stats. The rules revise Chapter PI 25, relating to the children at risk plan and program.

Per the Dane County Circuit Court order issued in Coyne, et al. v. Walker, et al., Case No. 11-CV-4573, the Department of Public Instruction is not required to obtain the Governor's approval of this proposed rule under s. 227.185, Stats.

Public Instruction
CR 13-116

On March 3, 2014, the Department of Public Instruction submitted proposed rules to the Chief Clerks of the Senate and

Assembly for review by the Legislature under s. 227.19, Stats. The rules repeal Chapter PI 42, relating to the school breakfast program.

Per the Dane County Circuit Court order issued in Coyne, et al. v. Walker, et al., Case No. 11-CV-4573, the Department of Public Instruction is not required to obtain the Governor's approval of this proposed rule under s. 227.185, Stats.

Safety and Professional Services —
Pharmacy Examining Board
CR 13-075

On February 26, 2014, the Pharmacy Examining Board submitted a proposed rule-making order to the Chief Clerks of the Senate and the Assembly for referral to appropriate standing committees for review under s. 227.19, Stats. The rule revises Chapters Phar 7 and 8, relating to electronic prescriptions.

The Governor approved the rule on February 10, 2014, under s. 227.185, Stats.

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

On February 26, 2014, the Pharmacy Examining Board submitted a proposed rule-making order to the Chief Clerks of the Senate and the Assembly for referral to appropriate standing committees for review under s. 227.19, Stats. The rule revises section Phar 7.04, relating to return or exchange of health items.

The Governor approved the rule on February 10, 2014, under s. 227.185, Stats.

Technical College System
CR 13-050

On February 26, 2014, the Wisconsin Technical College System submitted a copy of proposed Clearinghouse Rule in its final draft form for legislative review, pursuant to s. 227.19, Stats. The rule revises Chapter TCS 5, related to facility development procedures.

The rule was approved by the Governor on December 30, 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.

Public Instruction

CR 13-084

Repeals Chapter PI 29, relating to grants for preschool through grade 5 programs.
Effective 5-1-14.

Public Instruction

CR 13-085

Repeals Chapter PI 31, relating to grants for STEM programs.
Effective 5-1-14.

Public Instruction

CR 13-087

Repeals Chapter PI 33, relating to grants for nursing services.
Effective 5-1-14.

Public Instruction

CR 13-088

Amends section PI 34.35 (1) (c), relating to the definition of immoral conduct.
Effective 5-1-14.

Safety and Professional Services

Professional Services, Chs. 1—299

CR 13-077

An order of the Wisconsin Department of Safety and

Professional Services to amend sections SPS 1.08 (2), 2.10 (1), and 8.03 (3) relating to hearings, injunctions, and warnings.
Effective 5-1-14.

Safety and Professional Services — Veterinary Examining Board

CR 13-031

An order of the Veterinary Examining Board to repeal sections VE 1.02 (9) and 7.02 (3) (d); to renumber section VE 1.02 (10m), (11m), and (12); to renumber and amend section VE 1.02 (10); to amend sections VE 1.02 (3), 7.01 (1), 7.02 (3) (a), (4) (c), and (8)(c), and 7.03 (1); to repeal and recreate section VE 7.03 (2) (a) to (r) and (3) (a) to (k); and to create sections VE 1.02 (3m), 7.03 (4), 7.06 (24), (25), and (26), and 9.05 (13), relating to standards of practice and unprofessional conduct of veterinarians and certified veterinary technicians.
Effective 5-1-14.

Safety and Professional Services — Veterinary Examining Board

CR 13-032

An order of the Veterinary Examining Board to repeal sections VE 2.04 and VE 3.05 (1) (a); to renumber section VE 5.03 (1) (e); to renumber and amend section VE 3.05 (1) (b); to amend sections VE 2.01 (2), 3.01 (2), 3.05 (5) (b), 4.01 (2) (a) and (3); and to create section VE 5.03 (1) (b), relating to licensure, temporary permits, and examinations.
Effective 5-1-14.

Public Notices

Health Services

Medicaid Reimbursement for Outpatient Hospital Services: Measurement Year 2015 Pay-for-Performance Program Updates

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 the Wisconsin Statutes. This program, administered by the State's Department of Health Services (DHS), is called Medicaid or Medical Assistance.

To promote quality outcomes for its members, Wisconsin Medicaid currently operates a pay-for-performance (P4P) program covering outpatient hospital services: the Withhold P4P program, funded by a 1.5% withhold from fee-for-service (FFS) outpatient hospital claims. The program uses hospital-specific results on enumerated quality metrics to reward top-performing hospitals with a distribution of the funds withheld under the program each year. The program operates on an April 1 – March 31 measurement year (MY), with payout by the December 31 following the conclusion of an MY.

Effective April 1, 2014, DHS will be updating this P4P program for MY 2015 (April 1, 2014 – March 31, 2015 with payout by December 31, 2015). The following changes will be contained in the April 1, 2014 outpatient hospital state plan amendment:

- Effective April 1, 2014, the list of quality measures for the Withhold P4P program will be updated to reflect data availability and program improvement for MY 2015.
- Effective April 1, 2014, the methodology for distributing the bonus pool resulting from the Withhold P4P program will be updated and streamlined for MY 2015.
- Effective April 1, 2014, an updated P4P Guide will be published detailing all of the above changes to the Wisconsin Medicaid Hospital P4P programs for MY 2015.

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 SFY 2014 (July 1, 2013 – June 30, 2014) or SFY 2015 (July 1, 2014 – June 30, 2015). 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 April 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 Inpatient Hospital Services: Measurement Year 2015 Pay-for-Performance Program Updates

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 the Wisconsin Statutes. This program, administered by the State's Department of Health Services (DHS), is called Medicaid or Medical Assistance.

To promote quality outcomes for its members, Wisconsin Medicaid currently operates two distinct pay-for-performance (P4P) programs covering inpatient hospital services: the Assessment P4P program, funded by a \$5 million (All Funds) allocation from Wisconsin Medicaid's Hospital Assessment program, and the Withhold P4P program, funded by a 1.5% withhold from fee-for-service (FFS) inpatient hospital claims. The two programs use different quality metrics and distribution methodologies to pay out their funds each year. Both programs operate on an April 1 – March 31 measurement year (MY), with payout by the December 31 following the conclusion of an MY, though the \$5 million for the Assessment P4P program is budgeted on a state fiscal year (SFY) basis.

Effective April 1, 2014, DHS will be updating both P4P programs for MY 2015 (April 1, 2014 – March 31, 2015 with payout by December 31, 2015). The following changes will be contained in the April 1, 2014 inpatient hospital state plan amendment:

- Effective April 1, 2014, the list of quality measures for both P4P programs will be updated to reflect data availability and program improvement for MY 2015.
- Effective April 1, 2014, the methodology for distributing the bonus pool resulting from the Withhold P4P program will be updated and streamlined for MY 2015.
- Effective April 1, 2014, an updated P4P Guide will be published detailing all of the above changes to the Wisconsin Medicaid Hospital P4P programs for MY 2015.

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 SFY 2014 (July 1, 2013 – June 30, 2014) or SFY 2015 (July 1, 2014 – June 30, 2015). 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 April 1, 2014.

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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 for Department of Corrections Inmates: Acute Care Hospitals and Critical Access Hospitals

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 the Wisconsin Statutes. This program, administered by the State's Department of Health Services (DHS), is called Medicaid or Medical Assistance.

As authorized under 2013 Wisconsin Act 20, Wisconsin Medicaid will begin reimbursing hospitals for state prison inmate inpatient hospital stays, when the inmate has been determined eligible for Medicaid, for dates of admission on or after April 1, 2014. Inmates will receive services on a fee-for-service basis. Acute care hospitals that provide services to inmates will be reimbursed at a percentage of their usual and customary charge. Critical access hospitals that provide services to inmates will be reimbursed according to their current methodology, which is based on Diagnosis Related Groupings (DRGs). Wisconsin Medicaid will reimburse professional services related to a Medicaid-eligible inmate's hospital stay (e.g., laboratory services, physician services, radiology services, or durable medical equipment) at the current maximum allowable fee. Other services, such as outpatient hospital services, including observations, will not be reimbursed by Wisconsin Medicaid for inmates. Emergency room (ER) services are only considered inpatient services if the patient is admitted to the hospital directly from the ER and is counted in the midnight census; otherwise, ER visits are considered outpatient services.

Effective April 1, 2014, DHS will be amending the inpatient hospital state plan to provide for the reimbursement for state prison inmate inpatient hospital stays. The following changes will be contained in the April 1, 2014 inpatient hospital state plan amendment:

- Effective April 1, 2014, acute care hospitals that provide services to Medicaid-eligible inmates will be reimbursed at a percentage of their usual and customary charge.
- Effective April 1, 2014, critical access hospitals that provide services to Medicaid-eligible inmates will be reimbursed according to their current, DRG-based methodology.

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 increase the projected annual aggregate Medicaid expenditures in state fiscal year 2014 by \$6,890,290 (All Funds), composed of \$2,809,050 general purpose revenue (GPR) and \$4,081,240 federal match (Fed). In state fiscal year 2015, the estimated increase is \$12,886,380 (All Funds), composed of \$5,264,756 GPR and \$7,621,624 Fed. State fiscal year 2014 is the period of time from July 1, 2013 through June 30, 2014, while state fiscal year 2015 is from July 1, 2014 through June 30, 2015.

The Department's proposal involves no change to the definition of those eligible to receive benefits under Medicaid, as individuals will be determined eligible based on criteria under Wisconsin's existing Medicaid State Plan and approved BadgerCare Reform 1115 waiver. The set of benefits available to eligible recipients remains the same; this proposal changes only Wisconsin Medicaid reimbursement policies. The effective date for these proposed changes will be April 1, 2014.

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