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Emergency Rules Now in Effect

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

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

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

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

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

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

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

Agriculture, Trade and Consumer Protection

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

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

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

Finding of Emergency

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

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

Children and Families

Safety and Permanence, Chs. DCF 37-59

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

Exemption from Finding of Emergency

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

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

Publication Date: September 2, 2010
Effective Dates: September 2, 2010 through the date permanent rules become effective
Hearing Date: October 21, 2010

Employment Relations Commission (2)

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

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

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

Finding of Emergency

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

Publication Date: September 15, 2011
Effective Dates: September 15, 2011 thru February 12, 2012
Extension Through: June 11, 2012
Hearing Date: February 2, 2012

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

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

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

Finding of Emergency

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

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

Health Services

Health, Chs. DHS 110—

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

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

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

Exemption from Finding of Emergency

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

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

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

Insurance (2)

1. EmR1117 — Rule adopted to revise **Chapter Ins 18**, relating to grievances and independent review requirements and affecting small business.

The statement of scope for this rule, SS 027–11 Ch. Ins 18, was approved by the governor on September 30, 2011, published in Register No. 670, on October 14, 2011, and approved by the Commissioner Theodore Nickel on October 26, 2011. The emergency rule was approved by the governor on November 3, 2011.

Finding of Emergency

The Commissioner of Insurance finds that an emergency exists and that the attached proposed emergency rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. Portions of Wisconsin’s insurance law and regulations governing grievances and independent review processes are in conflict with federal law and regulation following the amendment of 42 USC 300gg 19 (a) and (b), as implemented by 45 CFR 147.136, as amended. Therefore, the Commissioner, pursuant to s. 631.01 (5), Stats., has determined that it is in the interest of the State of Wisconsin, Wisconsin insureds and the public to exempt insurers, certified independent review organizations and self-insured governmental health plans that elect to comply with ch. Ins 18, Wis. Adm. Code, as revised, from being required to comply with provisions contained in s. 632.83 and 632.835, Stats., that are inconsistent with 42 USC 300gg–19 (a) and (b), and 45 CFR 147.136 et seq., as amended.

Facts constituting the emergency arise from the desire for the State of Wisconsin to retain jurisdiction and regulatory control over the grievance and the independent review processes and independent review organizations operating in the state. The Secretary of the US Department of Health and Human Services issued interim final regulations and guidance, most recently released late June 2011. The regulations require states that desire to retain regulatory oversight of the grievance and independent external review processes, to demonstrate compliance with the federal internal appeal and external review laws and regulations to the Center for Consumer Information and Insurance Oversight (“CCIIO”). The Commissioner received notice on July 29, 2011, from CCIIO that Wisconsin’s current regulatory oversight is not compliant.

The Commissioner has requested reconsideration of that initial determination, however, to ensure retention of regulatory oversight of the grievance and independent external review processes revisions to ch. Ins 18, Wis. Adm. Code, must be made and be applicable for claims arising on or after January 1, 2012. Assembly Bill 210 has been introduced, a bill that repeals inconsistent provisions in accordance with federal requirements, but it is unlikely that AB 210 will be enrolled within the reconsideration timeframe. Therefore the Commissioner is proposing this emergency rule to comply with the federal requirements in order to retain regulatory jurisdiction of grievance and independent review processes.

Publication Date: November 16, 2011
Effective Dates: November 16, 2011 through April 13, 2012

Repealed by EmR1119: December 29, 2011

2. EmR1119 — Rule to repeal EmR1117, which was to revise **Chapter Ins 18**, relating to grievances and independent review requirements, and affecting small business.

The emergency rule was approved by the governor on December 27, 2011.

The statement of scope SS 045-11 was approved by the governor on December 1, 2011, and published December 14, 2011 in Register No. 672. The Statement of Scope was signed by Commissioner Nickel on December 24, 2011.

Finding of Emergency

The Commissioner of Insurance finds that an emergency exists and that the attached proposed emergency rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. Emergency Rule 1117 (EmR1117), was effective November 16, 2011 and is to be first applicable on January 1, 2012. EmR1117 contained provisions modifying Wisconsin's insurance regulations governing grievances and independent review processes to comply with federal law provisions of 42 USC 300gg 19 (a) and (b), as implemented by 45 CR 147.136, as amended. It has been determined that this may not be in the best interest of the state.

The proposed emergency rule will repeal EmR1117 in its entirety and maintain Wisconsin's prior existing regulations and oversight of the grievance and independent review process. To avoid full implementation of EmR1117 and industry and consumer confusion, the Commissioner has determined that this emergency rule must be effective prior to January 1, 2012.

Publication Date: December 29, 2011
Effective Dates: December 29, 2011 through May 26, 2012
Hearing Date: January 26, 2012

Justice

2. EmR1115 — Rule to create **section Jus 17.13**, relating to the recognition by Wisconsin of concealed carry licenses issued by other states.

This emergency rule was approved by the governor on October 14, 2011.

The statement of scope for this rule, SS 009-11, was approved by the governor on August 4, 2011, published in Register No. 668, on August 31, 2011, and approved by Attorney General J.B. Van Hollen on September 12, 2011.

Finding of Emergency

Section 100 (1) of 2011 Wis. Act 35 expressly authorizes and requires DOJ to use the emergency rulemaking procedures of s. 227.24, Stats., to promulgate the emergency rule required under s. 165.25 (12), Stats., and further provides that DOJ is not required to provide evidence that promulgating this rule as an emergency rule is necessary for the preservation of public peace, health, safety, or welfare.

Publication Date: October 25, 2011
Effective Dates: November 1, 2011 through March 29, 2012
Extension Through: May 28, 2012

Natural Resources (2)

Fish, Game, etc., Chs. NR 1—

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

Exemption from Finding of Emergency

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

Publication Date: December 13, 2010
Effective Dates: December 13, 2010 through
See bold text above

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

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

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

Finding of Emergency

The Department is aware that several ATV trails in Wisconsin overlap existing roads. From the onset of the program, these overlapping paths were identified as trails, signed accordingly, and were eligible to receive ATV grant funds. A few years ago, the ORV Advisory Council and WI County Forestry Association proposed that the Department revise ch. NR 64 to accommodate paths used by both ATVs and motor vehicles. These trail-route combinations – also called hybrid trails but commonly referred to as “troutes” – will be eligible for future maintenance grant funding at the current rate if it can be shown that the hybrid trails (“troute”) existed prior to the effective date of this rule.

This emergency rule will establish a new category of all-terrain trail commonly called a “troute”, or a trail-route combination, that provides a connector between trails and allows grant funding for these unique trails. An emergency

rule is needed because we anticipate that the permanent rule revisions to ch. NR 64 that will include troutes will not be effective until Sept 2012, at the earliest. Without this emergency rule, DNR will not be able to award grants to project sponsors for ATV “troutes” in July 2012, as is our practice. About one–third of the trails in northern Wisconsin are “troutes” and have been funded as trails since the program started. Our partners count upon grant funds for troute maintenance.

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

Publication Date: June 1, 2012
Effective Dates: June 15, 2012 through
 November 11, 2012
Hearing Date: June 25, 2012

Revenue

EmR1201 — Rule to revise **section Tax 7.23**, relating to the activities of brewers, bottlers, out–of–state shippers, and wholesalers.

The scope statement for this rule, SS 018–11, was approved by the governor on August 16, 2011, published in Register No. 669 on September 14, 2011, and approved by the Secretary of Revenue on September 26, 2011.

Finding of Emergency

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

The emergency rule is to administer the provisions of ss. 125.28 (5) (e) and 125.29 (3), Stats., as created by 2011 Wisconsin Act 32, and reflect revisions made by the Act to the authorized activities of persons holding wholesalers’ and brewers’ permits.

It is necessary to promulgate this rule order so that the above provisions may be administered in a fair and consistent manner.

This rule is therefore promulgated as an emergency rule and shall take effect upon publication in the official state newspaper. Certified copies of this rule have been filed with the Legislative Reference Bureau, as provided in s. 227.24, Stats.

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

Safety and Professional Services (Formerly Regulation and Licensing)

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

Exemption from Finding of Emergency

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

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

Scope Statements

Veterinary Examining Board

SS 025-12

This statement of scope was approved by the governor on April 19, 2012.

Rule No.

VE 1.02

Relating to

Definitions of "Patient" and "Prescription Legend Animal Drugs."

Rule Type

Permanent.

Finding/nature of Emergency (Emergency Rule only)

N/A

Detailed Description of the Objective of the Rule

The objective is to revise the definition of "patient" so that it is identical to the definition in s. 453.02 (4s); and repeal the definition for "prescription legend animal drugs" due to no longer being referenced in the VE Code.

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 amendment of the rule will create consistency with the statute and remove an unnecessary definition.

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

s. 15.08 (5) (b) Each examining board: shall promulgate rules for its own guidance and for the guidance of the trade or profession to which it pertains and define and enforce professional conduct and unethical practices not inconsistent with the law relating to the particular trade or profession.

under s. 453.02 (6), establishing the scope of practice permitted for veterinarians and veterinary technicians and shall review the rules at least once every 5 years to determine whether they are consistent with current practice. The examining board may promulgate rules relating to licensure qualifications, denial of a license, certificate or temporary permit, unprofessional conduct and disciplinary proceedings.

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

20 hours.

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

Veterinarians and Certified Veterinary Technicians.

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.

Anticipated Economic Impact of Implementing the Rule

No or minimal economic impact.

Contact Person

Sharon Henes, (608) 261-2377

Veterinary Examining Board

SS 026-12

This statement of scope was approved by the governor on April 19, 2012.

Rule No.

VE 1.02, 7, 8, and 9.

Relating to

Standards of practice and unprofessional conduct of Veterinarians and Certified Veterinary Technicians.

Rule Type

Permanent.

Finding/nature of Emergency (Emergency Rule only)

N/A

Detailed Description of the Objective of the Proposed Rule

The objective of the rule is to make the VE rules consistent with current veterinary practice and statutory changes. This rule will provide guidance to the profession, which includes defining and enforcing professional conduct and unethical practices not inconsistent with the law relating to the profession.

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

Pursuant to s. 453.03, the Veterinary Examining Board shall review the rules at least once every 5 years to determine whether they are consistent with current practice. These rules will make our rules consistent with current veterinary practice. Pursuant to s. 15.08 (5) (b), each examining board shall promulgate rules for its own guidance and for the guidance of the trade or profession to which it pertains and define and enforce professional conduct and unethical practices not inconsistent with the law relating to the particular trade or profession.

As a result of the above authority, these rules should amend and create various rule provisions and definitions related to the veterinary profession, such as advertising, extractions, obstetrical treatment, types of patients, records, and professional conduct, which may include amendments to language for clarity or to remove requirements that are inconsistent with current veterinary practice.

In addition, the rule will update the delegation of administration of a rabies vaccination to the acts which can be

delegated to a Certified Veterinary Technician pursuant to 2005 Wisconsin Act 236.

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

s. 15.08 (5) (b) Each examining board: shall promulgate rules for its own guidance and for the guidance of the trade or profession to which it pertains and define and enforce professional conduct and unethical practices not inconsistent with the law relating to the particular trade or profession.

s. 453.03 (1) The examining board shall promulgate rules, within the limits of the definition under s. 453.02 (6), establishing the scope of practice permitted for veterinarians and veterinary technicians and shall review the rules at least once every 5 years to determine whether they are consistent with current practice.

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

60 hours.

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

Veterinarians and Certified Veterinary Technicians.

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.

Anticipated Economic Impact of Implementing the Rule

No or minimal economic impact.

Contact Person

Sharon Henes, (608) 261-2377

Veterinary Examining Board

SS 027-12

This statement of scope was approved by the governor on April 19, 2012.

Rule No.

VE 2, 3, 4, 5, and 6.

Relating to

Licensure, temporary permits, and examinations.

Rule Type

Permanent.

Finding/nature of Emergency (Emergency Rule only)

N/A

Detailed Description of the Objective of the Rule

Amend rules related to licensure, temporary permits, and examinations to update to current testing and to allow greater access for veterinary candidates to licensure by endorsement and temporary permit.

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 would remove the test review process under Wis. Admin. Code s. VE 2.04 due to the fact that it is no longer feasible. The test is currently taken online and, therefore, the department is unable to provide a copy of the test, answer sheet, and master answer sheet. The current practice does allow the test to be completed more than once. An applicant who has failed the test may retake it at any time.

This rule would remove a reference to the date of November 1, 2000 under s. VE 3.05 (1) as unnecessary and amend Ch. VE 3 to reflect current examination and testing practices. Other amendments to Ch. VE 3 will also update the examination and education language to reflect current terminology.

This rule will adjust the hours necessary under Ch. VE 4 to qualify for licensure by endorsement to be more realistic which will allow greater access to veterinarians who wish to come to our state to practice. It will also allow foreign candidates who successfully complete PAVE to be eligible for licensure.

This rule will adjust the language under Chs. VE 5 to reflect current practice related to veterinary schools and to refer to a degree from a school of veterinary medicine under s. VE 5.03. This rule will adjust the language under Ch. VE 6 to reflect current practice related to temporary consulting permits and refine provisions related to veterinarian duties while holding the permit.

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

s. 15.08 (5) (b) Each examining board: shall promulgate rules for its own guidance and for the guidance of the trade or profession to which it pertains and define and enforce professional conduct and unethical practices not inconsistent with the law relating to the particular trade or profession.

s. 453.03 (1)...The examining board may promulgate rules relating to licensure qualifications, denial of a license, certificate or temporary permit, unprofessional conduct and disciplinary proceedings.

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

30 hours.

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

Veterinarians and Certified Veterinary Technicians.

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.

Anticipated Economic Impact of Implementing the Rule

No or minimal economic impact.

Contact Person

Sharon Henes, (608) 261-2377

Veterinary Examining Board

SS 028-12

This statement of scope was approved by the governor on April 19, 2012.

Rule No.

Sections VE 10.04, 10.02 (1) (a) 1., and 10.02 (2) (a) 1., 7.06 (22), and 9.05 (12).

Relating to

Continuing education and training in the use of pesticides by Veterinarians and Certified Veterinary Technicians in s. VE 10.04, and removing all references to s. VE 10.04 in other rule provisions.

Rule Type

Permanent.

Finding/nature of Emergency (Emergency Rule only)

N/A

Detailed Description of the Objective of the Rule

2009 Wisconsin Act 139 removes the requirement that veterinarians and certified veterinary technicians have training or continuing education concerning the use, handling, distribution and disposal of pesticides, with the exception of requiring training or continuing education for disciplinary purposes. The objective of the proposed rule revisions is to repeal the training and continuing education requirement (with the exception for disciplinary purposes) in Wis. Admin. Code s. VE 10.04 and all references to this requirement in other rules.

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 passage of 2009 Wisconsin Act 139 amended Wis. Stat. s. 453.03 (2) to create an exception to the promulgation of rules requiring training and continuing education sufficient to assure the competency of veterinarians and certified veterinary technicians in the practice of veterinary medicine.

Pursuant to the statutory amendment, the Board may not require training or continuing education concerning the use,

handling, distribution, and disposal of pesticides other than for disciplinary purposes. Accordingly, s. VE 10.04 shall be repealed to reflect this prohibition. In addition, ss. VE 7.06 (22), 9.05 (12), and 10.02 (1) (a) 1. including 10.02 (2) (a) 1. and any subsections or subdivisions of these rules which all reference s. VE 10.04 shall be amended.

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

s. 15.08 (5) (b) Each examining board: shall promulgate rules for its own guidance and for the guidance of the trade or profession to which it pertains and define and enforce professional conduct and unethical practices not inconsistent with the law relating to the particular trade or profession.

s. 453.03 (2) The examining board shall promulgate rules requiring training and continuing education sufficient to assure competency of veterinarians and veterinary technicians in the practice of veterinary medicine, except that the board may not require training or continuing education concerning the use, handling, distribution, and disposal of pesticides other than for disciplinary purposes.

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

20 hours.

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

Veterinarians and Certified Veterinary Technicians.

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.

Anticipated Economic Impact of Implementing the Rule

No or minimal economic impact.

Contact Person

Sharon Henes, (608) 261-2377

Rule–Making Notices

Notice of Hearing Health Services

*Health, Chs. DHS 110—
CR 12–025, EmR1204*

NOTICE IS HEREBY GIVEN that pursuant to section 253.13 (2), Stats., as amended by 2011 Wisconsin Act 32, and interpreting section 253.13 (2), Stats., the Department of Health Services will hold a public hearing on the emergency rule and proposed permanent rule to consider revisions to Chapter DHS 115, relating to a fee for screening newborns for congenital and metabolic disorders and other services.

Hearing Information

Date: Friday, May 25, 2012
Time: 1:00 p.m. – 4:00 p.m.
Location: Department of Health Services
 1 W. Wilson St.
 Conference Room 630
 Madison, WI 53703

Accessibility

DHS is an equal opportunity employer and service provider. If you need accommodations because of a disability or need an interpreter or translator, or if you need this material in another language or in an alternate format, you may request assistance to participate by contacting Katherine Vaughn–Jehring at 608–237–2173. You must make your request at least 7 days before the activity.

Copies of the Rule

A copy of the rules may be obtained at no charge from the Wisconsin Administrative Rules Website at <http://adminrules.wisconsin.gov> or by contacting:

Katherine Vaughn–Jehring
 608–267–2173
Katherine.VaughnJehring@dhs.wisconsin.gov

Analysis Prepared by the Department of Health Services

Statutes interpreted

Section 253.13 (2), Stats.

Statutory authority

Section 253.13 (2), Stats.

Explanation of agency authority

The legislature under s. 253.13 (2), Stats., as amended by 2011 Wis. Act 32, authorizes the department to impose by rule, a fee sufficient to pay for: 1) the cost of testing newborns for the congenital and metabolic disorders provided by the Wisconsin State Laboratory of Hygiene (WSLH); 2) to fund the provision of services, including follow–up diagnostic services, physician prescribed special dietary treatment and follow–up counseling to the patient and the patient’s family; 3) periodic evaluation of infant screening programs; 4) the costs of consulting with experts in reviewing and evaluating the program; 5) the costs of administering the newborn

hearing screening required under s. 253.115, Stats.; and 6) the costs of the department to administer the congenital disorder program. The department is required to credit the amounts received to appropriations accounts under s. 20.435 (1) (ja) and (jb), Stats.

Previous to 2011 Wis. Act 32, the fee was imposed by WSLH by policy.

Related statute or rule

See the “Statute interpreted” section.

Plain language analysis

Section 253.13 (1), Stats., requires attending physicians, nurse–midwives, and certified midwives to cause every infant born in Wisconsin to be screened for the congenital and metabolic disorders specified by the department by rule.

Congenital and metabolic disorders screening, also known as newborn screening, are special tests for all newborns. Newborn screening helps parents find out if their baby has certain health problems. A newborn baby can look healthy, but have a serious disorder that cannot be seen. If not treated, these disorders can lead to slow growth, severe illness, brain damage, or possibly death. Early treatment can help prevent these serious problems.

Section 253.13 (2), Stats. (2009–10) authorized the WSLH to impose a fee in an amount sufficient to pay for the cost of the screening provided by the WSLH, and to fund services, including certain follow–up diagnostic services, physician prescribed special dietary treatment and certain follow–up genetic counseling to the patient and the patient’s family, as well as periodic evaluation of infant screening programs, the costs of consulting with experts in reviewing and evaluating the program, the costs of administering the newborn hearing screening required under s. 253.115, Stats., and the costs of the department to administer the congenital disorders program.

To comply with s. 253.13 (1), Stats., hospitals, stand alone birth centers, physicians, nurse–midwives, certified midwives, and other entities (purchasers) purchase newborn screening sample collection cards from the WSLH for use when obtaining the newborn’s blood sample for testing. When the blood sample is obtained, a purchaser or its agent returns the newborn screening sample collection card to the WSLH to test for the conditions specified by the department under s. DHS 115.04. The department provides certain follow–up services as prescribed by a physician or as otherwise determined. The WSLH currently imposes, at the time the newborn screening sample collection card is purchased, a fee of \$109. This amount includes amounts to fund the testing, services and programs directed under s. 253.13 (2), Stats. (2009–10).

Section 253.13 (2), Stats., as amended by 2011 Wis. Act 32, now requires the department to impose a fee by rule.

The department under emergency rules and proposed permanent rules creates s. DHS 115.05 (3) to impose, by rule, a fee of \$109 for screening newborns for congenital and metabolic disorders and other services as directed under s. 253.13 (2), Stats., as amended by 2011 Wis. Act 32. The fee amount being imposed is the same fee amount that is currently

being imposed by the WSLH by policy to fund the same testing, services and programs that will be funded under the emergency rules and proposed permanent rules. In effect, the emergency and proposed permanent rules conforms Ch. DHS 115 to statute.

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

There appears to be no existing or proposed federal regulations that address the activities of this rule.

Comparison with rules in adjacent states

Illinois, Iowa, Michigan and Minnesota require newborns to be screened for congenital and other disorders, and the provision of other services and programs. Also similar to Wisconsin, these states impose a fee for the screening and other services. However, it is not possible to accurately and specifically compare Wisconsin's fee of \$109 to the fees set by these states because the disorders to be screened may differ, and the additional services and programs funded as permitted by statute and their level of needed funding may differ.

Illinois

Illinois's Department of Public Health assesses institutions or persons submitting a sample for newborn screening a fee of \$78, which may be increased if screening for additional disorders. Statements are mailed on a monthly basis to facilities submitting specimens for analysis. Payment is required upon receipt of the statement. 77 Ill. Adm. Code 660.70

Iowa

Iowa's Department of Public Health assesses a fee of \$112 for activities associated with the Iowa Newborn Neonatal Metabolic Screening Program. Included in the fee is an amount to fund a program for eligible individuals with certain inherited diseases identified through the program who may be

unable to pay the fee. The Department of Public Health is required to review and determine the fee annually. 641 IAC 4.3(9)

Michigan

Michigan's fee for screening newborns and other services is established under Michigan statute, MCLS s. 333.5431 (4) by annual adjustment based on the cumulative annual percentage change in the Detroit Consumer Price Index. The current fee amount is \$97.69. Under MCLS s. 333.5430 (3), the newborn screening quality assurance advisory committee must conduct a financial review of any recommended changes to the list of newborn screening tests and make a recommendation to increase or decrease in the amount charged pursuant to section 5431 for newborn screening tests. The recommended change is limited to any net change in the amount of the actual cost of any proposed additional tests and follow-up minus savings from any proposed deleted tests and follow-up.

Minnesota

Minnesota assesses its newborn screening fee in statute. Minn. Stat. s. 144.125 (1) requires its state commissioner of health to charge a fee of \$106 per specimen "so that the total of fees collected will approximate the costs of conducting the tests and implementing and maintaining a system to follow-up infants with heritable or congenital disorders, including hearing loss detected through early hearing detection and intervention program". Per an interview of a Minnesota Newborn Screening Program representative, unlike Wisconsin, Minnesota does not pay for special dietary treatment or diagnostic or clinical services. Minnesota pays for intensive review and follow-up for obtaining a blood test and initiating follow-up.

Below is a chart sampling of what the newborn screening fee pays for in Wisconsin, Illinois, Iowa, Michigan, and Minnesota.

		Wisconsin	Illinois	Iowa	Michigan	Minnesota
Newborn Screening Fee		\$109	\$88	\$112	\$97.69	\$106
What you get for the Newborn Screening Fee						
Lab services (cost – taken from fee)		\$58.50	\$44 (approx.)	Can not be separated out	\$46.79	Can not be separated out
DHS Surcharge		\$50.50	\$44 (approx.)		\$41.42 Admin–\$9.48	
Special Dietary Treatment	Formula (A specialized drink that provides protein and essential nutrients in a safe form for people with certain diseases)	✓	✓	✓	✓	
	Low-Protein Food (A food source with digestible protein for people with certain diseases)	✓		✓		
	Special Dietary Supplements (Necessary for appropriate growth – similar to vitamins)	✓		✓	✓ (some)	
Follow-up (case management, non-clinical follow-up, provider education, short-term follow-up)		✓	✓	✓	✓	✓
Clinical Services (Genetic Counseling, nutritionists, clinical nurses, specialists for follow-up)		✓	✓		✓	
Staffing		(2 + lab)	✓ (17 + lab)	✓ (17 + lab)	✓ (8 + lab)	✓ (16 + lab)
Additional Funding Information						
Does your program have supplemental money to support the Newborn Screening Program?		No	No	Yes	Yes	Yes
Breakdown of additional funding				State Appropriations \$160,000	Medicaid \$170,000 WIC \$87,500 Small Federal grants	Small Federal grants

Summary of factual data and analytical methodologies

In 2010, the department developed the \$109 fee amount for the newborn screening sample card which consists of \$58.50 to cover the costs of testing provided by the WSLH and \$50.50 to cover the services and programs authorized under s. 253.13 (2), Stats. The department analyzed past actual costs and then projected out future costs until SFY 13.

The costs for the Wisconsin Newborn Screening (NBS) program (Program) determine the newborn screening sample card fee. The costs do not solely rely on the number of babies that need to be screened for congenital disorders. The NBS Program costs include the WSLH costs of purchasing, storing, and distributing the cards; laboratory equipment, consumables, and staff salaries to perform the testing for conditions listed under s. DHS 115.04; short term follow up of all non-normal results reported by the laboratory; and education activities for health care providers regarding newborn screening issues such as specimen collection and reporting of test results. The costs for the NBS Program also include the department costs based on the number of participants in the NBS Program; diagnostic and counseling

services (i.e. clinical assessment, nutritional and genetic counseling); special dietary treatment (i.e. coordinating payment of specialty formula and vitamins); consulting with experts (i.e. hosting and coordinating the newborn screening advisory group meetings); administering the congenital disorder program (i.e. program staff and program operations); administering the hearing screening program under s. 253.115, Stats.; periodic evaluation of infant screening programs; and testing due to advancements in science or laboratory procedures. The NBS Program pays in part for the expertise to provide follow-up and individual telephone consultation between the pediatric subspecialist experts and the primary care physicians each time an abnormal result is found on a newborn screening test.

The number of people participating in the NBS Program has increased. Each child with a positive screening result gets a confirmatory test in a specialty center and receives the necessary dietary treatment for life. As children live longer and the cumulative number of patients increases, the overall cost of the program rises. In SFY 2004, the program served 824 patients compared to 954 patients in SFY 2009. In SFY

2008 and SFY 2009 there was a 3.9% and 4.5% increase in patient population respectively. (Citation: Number tabulated from NBS Program Annual Reports and recorded in a DHS Excel file: Newborn Screening Population Increases)

NBS Program costs have been increasing.

- The costs of the formula and other food products have been rising. Depending on the vendor and product, the annual price increase has been as high as 20% (Example: Applied Nutrition's PhenylAde MTE Amino Acid Blend for PKU prior to September 1, 2008 was \$347.67 per case; after September 1, 2008 the cost was increased to \$417.15). Expenditures for special dietary treatment were \$1,163,155.87 in SFY 2009, \$1,385,646.20 in SFY 2010, and \$1,450,197.82 in SFY 2011. (Citation: DHS Excel file: SFY Summaries by Condition 09 to 12). Another contributing factor is the rarity of disorders and limited product. There are few vendors providing product so it is not possible to find the same or similar product at a different vendor for a lower cost.
- The increasing number of adults and growing teens on product is shifting the age (and weight) distribution upward. Adults and growing teens require increased caloric intake compared to that of young children thus increasing the average amount of formula or food product per person.

In order to maintain the NBS Program, revenue should match rising costs; however, revenue has declined because Wisconsin births have declined more than expected. The number of births in Wisconsin has decreased since 2007 which in turn affects the number of blood-testing cards purchased by hospitals. In SFY 2007, 72,453 cards were purchased compared to 66,789 in SFY 2011. (WSLH Surcharge Report (2011))

Statement on the Quality of the Agency Data

To prepare the text and analysis of these rules, the department relied on the following sources or interviews:

1. WSLH Clinical Orders Department NBS Program Customers List (2008)
2. WSLH Surcharge Report (2011)
3. DHS NBS Program Annual Reports
4. DHS Excel file: Newborn Screening Population Increases
5. DHS Excel file: SFY Summaries by Condition 09 to 12
6. Department interview of a Michigan Newborn Screening Program representative (11/30/11)
7. Department interview of a Minnesota Newborn Screening Program representative (11/30/11)

Analysis and supporting documents used to determine effect on small business

The \$109 fee imposed under these rules will have no additional economic impact on purchasers of newborn screening sample cards, whether or not the purchasers are small businesses because the rules conform to statute by imposing the fee by rule, instead of by policy. The fee is unchanged from the current amount being imposed by the WSLH.

According to the WSLH Surcharge Report, the number of newborn screening sample cards purchased in SFY 2011 was 66,789. Accordingly, the department estimates that the current economic impact on the private sector, including

small businesses in SFY 2011 is approximately \$7,280,001 (\$109*66,789). This estimate may be higher or lower in future years depending on factors such as the number of births or cards purchased in a given year.

Purchasers of newborn screening sample collection cards may seek reimbursement of the costs of the newborn screening sample cards and any related costs incurred from private insurers, Medicaid, parents of newborns, or the NBS Program for eligible parents.

Effect on Small Business

The \$109 fee will have no impact on businesses, including small businesses, because the fee is unchanged since it was initially imposed by the WSLH in 2010. The department expects that purchasers will continue to seek reimbursements of their costs related to the NBS Program.

Small business considerations

The \$109 fee in the emergency rules and proposed permanent rules will not have an impact on businesses, including small businesses, because the fee is unchanged since it was initially imposed by the WSLH in 2010. The emergency rules and proposed permanent rules only codify the existing fee amount of \$109 in administrative rule. The rule does not include any requirements, including reporting requirements, schedules or deadlines for compliance, or performance standards, from which the department can exempt small businesses. It would be contrary to the objectives of s. 253.13 (2) Stats., to exempt small businesses from the fee required under s. 253.13 (2), Stats. Section 253.13 (2), Stats., requires the department to impose a fee sufficient to pay for testing provided by the WSLH and include as part of the fee amounts to fund the provision of diagnostic and counseling services, special dietary treatment as prescribed by a physician, and periodic evaluation of infant screening programs, the costs of consulting with experts under s. 253.13 (5), Stats., the costs of administering the hearing screening program under s. 253.115, Stats., and the costs of administering the congenital disorder program operated under s. 253.13 (2), Stats. The \$109 fee amount is based on the costs to fund the provision of testing and services required under s. 253.13 (2), Stats.

Initial regulatory flexibility analysis

The \$109 fee in this proposed order will not have an impact on businesses, including small businesses, because the fee is unchanged since it was initially imposed by the WSLH in 2010. This proposed order only codifies the existing fee amount of \$109 in administrative rule. The rule does not include any requirements, including reporting requirements, schedules or deadlines for compliance, or performance standards, from which the department can exempt small businesses. It would be contrary to the objectives of s. 253.13 (2) Stats., to exempt small businesses from the fee required under s. 253.13 (2), Stats. Section 253.13 (2), Stats., requires the department to impose a fee sufficient to pay for testing provided by the WSLH and include as part of the fee amounts to fund the provision of diagnostic and counseling services, special dietary treatment as prescribed by a physician, and periodic evaluation of infant screening programs, the costs of consulting with experts under s. 253.13 (5), Stats., the costs of administering the hearing screening program under s. 253.115, Stats., and the costs of administering the congenital disorder program operated under s. 253.13 (2), Stats. The \$109 fee amount is based on the costs to fund the provision of testing and services required under s. 253.13 (2), Stats.

The existing fee applies to hospitals, clinics and laboratories on behalf of hospitals, nurse-midwives, midwives, other birth attendants, other birth facilities, physicians, nurses, parents of newborns, insurers, the WSLH and the Newborn Screening Program.

Small business regulatory coordinator

Rosie Greer

608.266.1279

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Fiscal and Economic Impact Analysis

Since 2010, the WSLH has imposed a fee of \$109 by policy to pay for the testing and services mandated under s. 253.13 (2), Stats. The fee in the proposed rules is unchanged from the current amount being imposed for testing and other services. As a result, the department does not expect any additional implementation or compliance costs to be incurred by purchasers of newborn sample screening cards. Because there are no new or changed conditions and no estimated increased or decreased costs that would occur if the \$109 fee amount is codified in administrative rule, the rule will not have an economic impact on businesses, business sectors, local governmental units, public utility rate payers or the state's economy as a whole.

For increased public participation in the rule, the department established an advisory committee that included representatives from private hospitals, statewide health provider organizations, the State Laboratory of Hygiene, Universities, statewide consumer organizations, local public health departments, and a consumer of the Newborn Screening Program services to help draft the rule and summary (analysis). The majority of the comments (and questions) received from advisory committee members was on the manner and substance of the rule's summary (analysis), including requesting additional information about the newborn screening programs in adjacent states and their program costs. Other comments concerned the reimbursement rate of the fee by the Medicaid program. No member of the advisory committee commented on the fee amount. In response to advisory committee comments, the department made changes to the summary (analysis) by adding additional information on newborn screening programs of neighboring states, accurately describing program costs, and explaining the newborn screening program in greater detail. Also, a second paragraph within the text of the permanent rule was removed after a committee member questioned the purpose and suggested it was not needed. Because the reimbursement rate of the Medicaid program is not germane to the codification of the fee for screening and other services for congenital and metabolic disorders in administrative rules, the department does not address that matter in this analysis.

On January 23, 2012, the department began soliciting information and advice as required under s. 227.137, Stats., and Executive Order #50, to help prepare this economic impact analysis. The comment period ended on February 6, 2012.

Four persons provided comments in response to the department's solicitation. The first comment emphasized the importance of the program and expressed support for sustainable funding of the program. The second comment was a question about whether Amish midwives are charged fees for newborn screening cards. The third comment suggested edits to the explanation of the rule and increased specificity in the language related to counseling services and follow-up. The fourth comment expressed concerns about program sustainability under the current structure, sufficiency of Medicaid fee reimbursement of the fee, opportunity to explore alternative options to the current fee of \$109, as well as asked if consideration would be given to decrease the current fee by 10% because the fee was not based on program costs.

There were no comments received from businesses, associations representing businesses, local governmental units, or individuals that suggest that the existing fee being codified in rule would adversely affect, in a material way, such businesses, business sectors, local governmental units, individuals, the economy, productivity, jobs, or the overall competitiveness of the state.

A copy of the full fiscal estimate/economic impact analysis may be obtained at no charge from the Wisconsin Administrative Rules Website at <http://adminrules.wisconsin.gov> or by contacting: Katherine.VaughnJehring@dhs.wisconsin.gov

Agency Contact Person

For substantive questions contact:

Katherine Vaughn-Jehring, MPH, MPA

608.267.2173

Katherine.VaughnJehring@dhs.wisconsin.gov

For rulemaking questions and small business concerns contact:

Rosie Greer

608.266.1279

Rosie.Greer@dhs.wisconsin.gov

Place Where Comments are to be Submitted and Deadline for Submission

Comments may be submitted to Katherine.VaughnJehring@dhs.wisconsin.gov or to the Wisconsin Administrative Rules Website at <http://adminrules.wisconsin.gov> until **May 25, 2012**, 4:30 p.m.

Notice of Hearing
Natural Resources
Fish, Game, etc., Chs. NR 1—
EmR1205

(DNR # CF-26-11(E))

NOTICE IS HEREBY GIVEN THAT pursuant to sections 23.09 (26), 23.33 (8) (a), 23.33 (9) (b) 3. to 5., and 227.11, Wis. Stats., interpreting sections 23.33 (8) (a), 23.33 (9) (b) 3. to 5., and 227.11, Wis. Stats., the Department of Natural Resources will hold a public hearing on emergency rule Order CF-26-11(E), relating to Chapter NR 64, All-Terrain Vehicles, Wis. Adm. Code.

Hearing Information

NOTICE IS HEREBY FURTHER GIVEN THAT the hearing will be held at the following location on:

Date: Monday, June 25, 2012
Time: 6:00 p.m.
Location: The Grand Lodge
 805 Creske Ave.
 Rothschild, WI 54474

Pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of information material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Diane Conklin at (715) 822-8583 with specific information on your request at least 10 days before the date of the scheduled hearing.

Availability of Rules and Submitting Comments

The proposed rule and supporting documents may be reviewed and comments electronically submitted at the following internet site: <http://adminrules.wisconsin.gov>. A copy of the proposed rules and supporting documents may also be obtained from Diane Conklin, DNR All-Terrain Vehicle (ATV) Grant Manager, P.O. Box 397, Cumberland, WI 54829 or Diane.Conklin@wisconsin.gov.

Written comments on the proposed rule may be submitted via U.S. mail or by e-mail to Diane Conklin at the addresses noted above. Written comments, whether submitted electronically or by U.S. mail, will be given the same weight and effect as oral statements presented at the public hearings. Comments may be submitted until 7:30 p.m. on Monday, **June 25, 2012**.

Analysis Prepared by the Department of Natural Resources

The proposed emergency rule will revise Ch. NR 64, All-Terrain Vehicles, Wis. Adm. Code, to create a new category of all-terrain trail, commonly referred to as a "troute" or a trail and route combination, that provides a connector between trails and will be eligible for ATV grant funding. An emergency rule is needed since the permanent rule revisions to Ch. NR 64 in Board Order CF-16-11 that includes these hybrid trails are not expected to be effective until September 2012 at the earliest. These hybrid trails have been in use in WI for several years and account for approximately one-third of all trails in northern Wisconsin. Grant funds help with trail maintenance. This Emergency rule is needed so projects on routes can be eligible for grant funding during the next round of grant awards in July 2012.

Statutes interpreted

Sections 23.33 (8) (a), 23.33 (9) (b) 3. to 5. and 227.11, Stats.

Statutory authority

Sections 23.09 (26), 23.33 (8) (a), 23.33 (9) (b) 3. to 5., and 227.11, Stats.

Explanation of agency authority

Sections 23.33 (8) (a), 23.33 (9) (b) 3. to 5., and 227.11, Stats., authorizes the department to promulgate rules for the development and maintenance of all-terrain vehicle routes or all-terrain vehicle trails and the administration of state all-terrain vehicles grant program and related costs. Section 227.11, Stats., authorizes the department to promulgate rules for the general administration of department programs.

Related statute or rule

Section 23.33 (9) (b) 4., Stats., allows for development and maintenance of a snowmobile or off-road motorcycle trails if the trail is open for use by all-terrain vehicles (ATVs).

Plain language analysis

Chapter NR 64, Wis. Adm. Code, establishes standards for the implementation of an ATV grant program, including a trail aid program.

The department proposes to revise Ch. NR 64, Wis. Adm. Code, by creating a new trail + route category eligible for ATV grant funding (also referred to as a hybrid trail but commonly referred to as a "troute").

Section-by-section details of this rule order are outlined below:

Section 1 defines a hybrid trail, commonly referred to as a "troute", or ATV trail and route combination in Ch. NR 64, Wis. Adm. Code.

Section 2 defines a trail connector.

Section 3 amends signage requirements for ATV routes to include hybrid trails.

Section 4 adds hybrid trails to signage requirements for ATV routes.

Section 5 creates a subsection that describes the maintenance grant funding available for ATV hybrid trails.

Section 6 amends reimbursement for trail rehabilitation to include hybrid trails.

Section 7 renumbers a paragraph of the rule.

Section 8 creates criteria for grant funding for hybrid trail rehabilitation.

Section 9 provides information on effective dates of this rule.

Section 10 provides information on Board adoption.

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

The federal government has one program that is somewhat similar to the Wisconsin ATV grant program: the Recreational Trails Act (RTA) grants. This federal program provides grant funds for the acquisition, development, rehabilitation of trails and structures (such as bridges and culverts) and maintenance of motorized, non-motorized, and mixed-use trails. The department has received RTA funds for many years and often matches RTA grant funds from the motorized subprogram to Wisconsin ATV grant awards. In the RTA program, maintenance and rehabilitation activities are the two highest priority categories for grant funding; these priorities are shared by the Wisconsin ATV grant program.

The WI ATV grant program can make grant awards for 100% of eligible project costs. However, in order to stretch state grant funds farther, the department often matches a 50% grant from its ATV grant programs with a 50% RTA grant.

There is no current requirement for trail – route combination in the RTA program.

Comparison with rules in adjacent states

Minnesota, Michigan, Iowa, and Illinois all have ATV trail grant programs. Only Michigan allows ATVs on both trails and routes.

Summary of factual data and analytical methodologies

The department is aware that several ATV trails in Wisconsin overlap existing roads. From the onset of the program, these overlapping paths were identified as trails, signed accordingly, and were eligible to receive ATV grant funds. A few years ago, the ORV Advisory Council and WI County Forestry Association proposed that the department revise Ch. NR 64 to accommodate paths used by both ATVs and motor vehicles. These trail–route combinations – also called hybrid trails but commonly referred to as “troutes” – will be eligible for future maintenance grant funding at the current rate if it can be shown that the hybrid trails (“troute”) existed prior to the effective date of this rule.

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

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

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

Include new trail–route category in ATV grant program. The department expects that this emergency rule will have no negative fiscal effect on small business. Trail–route combinations already exist and are part of the ATV program, but identified only as trails. DNR legal counsel had earlier opined that a new ATV category be created to recognize trail–route hybrids thereby making program administration more consistent.

Positive Economic Impact of the ATV Grant Program in Wisconsin. A March 2004 Executive Summary of the Economic & Demographic Profile of Wisconsin’s ATV Users Report by the WI Division of Tourism in conjunction with the Wisconsin ATV Association (WATVA) and the University of Wisconsin – Madison Extension Department of Urban & Regional Planning, showed \$295.3 million was spent by ATV trail users during the period of June through October 2003.

The report showed that 86% of ATV trail users were from Wisconsin. The total annual spending in Wisconsin by out–of–state ATVer was \$34.7 million. Using the Consumer Price Index (CPI) to adjust, ATVer spending could be as high as \$362.2 million and spending by out–of–state ATVer as high as \$42.6 million during 2011. Specific information from the report is as follows:

ATVer Expenditures per Trip
During June through October 2003
(Daily Average Spending = \$200.62)

<u>Category</u>	<u>ATVer</u>
Food/beverage:	\$107.52
Entertainment:	\$50.98
Shopping:	\$87.15
Gas/Transportation:	\$100.72
Convenience Stores:	\$36.35
Lodging:	\$144.78
Gaming:	\$47.12
<u>Other:</u>	<u>\$67.38</u>
Total:	\$642.00

Effect on Small Business

ATV grants assist with the cost of construction, development, and maintenance of specific trails. Those trails draw riders and their disposable income. Small businesses located in the area of ATV trails benefit when trail users make the following purchases: fuel and other items at convenience stores; retail items; accommodations or lodging; sales of replacement vehicle parts; repair or maintenance of snowmobiles or ATVs; rider clothing, protective gear, and accessories; food and drink at restaurants and other establishments.

Pursuant to ss. 227.114 and 227.137, Wis. Stats., it is not anticipated that the proposed rules will have a significant economic impact on small businesses, although small businesses engaged in construction of all–terrain vehicle and snowmobile trails would benefit from the rule. The department conducted an economic impact analysis in consultation with businesses, business associations, local governmental units, and individuals. The department has determined that this rule would not adversely affect in a material way the economy, a sector of the economy, productivity, jobs, or the overall economic competitiveness of this state.

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

Small business and regulatory flexibility analysis

Proposed revisions to Ch. NR 64 contain no requirements for small business and so there is no direct impact to small business. There are no small business requirements for reporting, bookkeeping, or other procedures or a certain type of professional skill for compliance for the rule.

As is the case at present in Ch. NR 64, records must be kept by the ATV clubs that perform trail maintenance and then seek reimbursement for those costs from the county. The only changes for counties or clubs regarding reporting, bookkeeping, or other procedures comes from the need to keep similar records and follow the same procedures for the new hybrid trail project category as are already in place for all other current routes and trails. The proposed rule would not require skills any different than those required by the current Ch. NR 64.

Environmental Impact

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

department's consideration of the impacts of the proposal and reasonable alternatives.

Agency Contact Person

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Submittal of Proposed Rules to Legislature

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

Public Defender
CR 12-017

Revises section PD 3.03, relating to determination of financial eligibility, relates to the determination of eligibility for the assignment of publicly appointed counsel.

Approval by the governor was received on April 19, 2012.

Public Defender
CR 12-018

Revises section PD 6.025, relating to determination of ability to pay, relates to whether persons subject for payment for legal representation have the ability to pay all, or part of, the costs of representation.

Approval by the governor was received on April 19, 2012.

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.

Government Accountability Board CR 10-087

Creates section GAB 1.91, relating to organizations making independent disbursements.
Effective 7-1-12.

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