

Wisconsin Administrative Register

No. 681



Publication Date: September 14, 2012

Effective Date: September 15, 2012



Legislative Reference Bureau
<http://www.legis.state.wi.us/rsb/code.htm>



WISCONSIN ADMINISTRATIVE REGISTER

The Wisconsin Administrative Register is published twice monthly by the Legislative Reference Bureau.

NOTICE TO READERS: Beginning with the Mid-March Register, No. 675, the Administrative Register will be posted on the Internet upon completion of the pre-printing preparation of the Register, approximately 10 to 12 days prior to the stated publication date. Administrative Code chapters inserted into the Administrative Code in end-of-month registers will be accessible from the Internet Register upon posting from the Administrative Code Chapters Inserted and Removed by this Register link of the first page of the Register. Administrative Code chapters will be inserted into the Administrative Code on, or shortly before, the publication date.

(Print Register only) The Internet address for the Administrative Register is: <http://legis.wisconsin.gov/rsb/regindex.htm>

Questions, comments, or corrections should be directed to:

Bruce Hoesly (608) 266-7590

email: bruce.hoesly@legis.wisconsin.gov

The Wisconsin Administrative Register and Administrative Code may be obtained from the:

Department of Administration

Office of Document Sales

(608) 266-3358

and may be accessed on the internet at:

<http://www.legis.state.wi.us/rsb/code.htm>

Table of Contents

Emergency Rules Now in Effect.**Pages 4 to 8**

Agriculture, Trade and Consumer Protection:

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. **EmR1202**

Revise section ATCP 21.17 (1) (b) and to create section ATCP 21.17 (1) (c), relating to the quarantines of Rock County and Walworth County for emerald ash borer. **EmR1209**

Amend **section ATCP 21.17 (1) (b)** and to create **section ATCP 21.17 (1) (c)**, relating to the quarantine of Trempealeau County for emerald ash borer. **EmR1211** *[First Appearance]*

Children and Families:

Safety and Permanence, Chs. DCF 37–59

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

Creation of **Chapter DCF 55**, relating to subsidized guardianship. **EmR1212** *[First Appearance]*

Employment Relations Commission:

Create Chapters ERC 90 and 100, relating to the calculation and distribution of collectively bargained base wages. **EmR1203**

Health Services:

Health, Chs. DHS 110—

Create section DHS 115.05 (3), relating to fees for screening newborns for congenital and metabolic disorders and other services. **EmR1204**

Insurance:

Revise section Ins 17.01 (3) and repeal and recreate section Ins 17.28 (6), relating to the Injured Patients and Families Compensation Fund annual fund fees and mediation panel fees for fiscal year 2013 and affecting small business. **EmR1208**

Justice:

Repeal and re–create Chapter Jus 17 and Chapter Jus 18, relating to licenses authorizing persons to carry concealed weapons; concealed carry certification cards for qualified former federal law enforcement officers; and the certification of firearms safety and training instructors. **EmR1206**

Natural Resources:

Fish, Game, etc., Chs. NR 1—

Revise Chapter NR 64, relating to the all–terrain vehicle grant programs and trail–route combinations. **EmR1205**

Revise section NR 10.01 (3) (d) 1., relating to the bobcat hunting and trapping season. **EmR1207**

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, 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. **EmR1210**

Safety and Professional Services:
(formerly Regulation and Licensing)

Create 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. **EmR0827**

Scope Statements.

Pages 9 to 12

Health:

Health, Chs. DHS 110—

Revises Chapter DHS 132, relating to Nursing homes. **SS 065–12**

Natural Resources:

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

(Revised Statement) Revisions to Chapters NR 405 and 408 to maintain consistency with federal permit guidelines and to Chapters NR 400 and 410 consistent with the repeal of Chapter NR 411 for indirect source permits. **SS 066–12**

Safety and Professional Services — Pharmacy Examining Board:

Revises section Phar 7.01 (1) (e), relating to delivery of prescription drugs. **SS 064–12**

Submittal of Proposed Rules to Legislative Council Clearinghouse.

Pages 13 to 14

Agriculture, Trade and Consumer Protection:

Revises Chapter ATCP 127, relating to telephone solicitations and the No–Call and No–Text list. **CR 12–036**

Revises Chapter ATCP 70, relating to Wisconsin’s shellfish shippers and processors. **CR 12–037**

Financial Institutions — Banking:

Creates Chapter DFI—Bkg 78, relating to auto title loans. **CR 12–034**

Revises Chapter DFI—Bkg 75, relating to payday lending. **CR 12–035**

Health:

Health, Chs. DHS 110—

Revises Chapter DHS 196, relating to restaurants and the Wisconsin Food Code and affecting small business. **CR 12–038**

Rule–Making Notices.

Pages 15 to 36

Agriculture, Trade and Consumer Protection:

Revises Chapter ATCP 127, relating to telephone solicitations and the No–Call and No–Text list. **CR 12–036**

Revises Chapter ATCP 70, relating to Wisconsin’s shellfish shippers and processors. **CR 12–037**

Financial Institutions — Banking:

Create Chapter DFI—Bkg 78, relating to auto title loans. **CR 12-034**

Revise sections DFI—Bkg 75.01 (3), 75.02 (intro), 75.03 (3) and (3) (c), 75.05 (4), 75.06 (2), 75.07 (a), 75.08 (4) and (4) (b), and 75.09 (3) (a) 3.; create sections 75.01 (9), 75.03 (5), (6) and (7), 75.06 (5) and 75.08 (d); repeal sections 75.02 (1) and (2), and 75.10 (6); and repeal and recreate section 75.08 (1), relating to payday lending. **CR 12-035**

Health:

Health, Chs. DHS 110—

Revising Chapter DHS 196, relating to restaurants and the Wisconsin Food Code. **CR 12-038**

Submittal of Proposed Rules to Legislature.

Page 37

Natural Resources:

Fish, Game, etc., Chs. NR 1—

Creates section NR 19.058, relating to requiring access to wire cutters when trolling in outlying waters. **CR 12-022**

Rule Orders Filed with the Legislative Reference Bureau.

Page 38

Controlled Substances Board:

Create Chapter CSB 3, relating to the requirements and procedures for granting special use authorization. **CR 12-010**

Safety and Professional Services — Massage Therapy and Bodywork Therapy Affiliated Examining Board:

Create section SPS 91.01 (3) (k) and SPS 93.02 (4), relating to training and proficiency in the use of automated external defibrillators for licensure as a massage therapist or bodywork therapist. (Chapters SPS 91 and 93 were renumbered Chapters MTBT 2 and 4, effective 9-1-12, and the created sections will be renumbered accordingly by the Legislative Reference Bureau.) **CR 08-086**

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 (3)

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

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

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

Finding of Emergency

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

Filed with LRB: March 22, 2012
Publication Date: March 30, 2012
Effective Dates: March 30, 2012 through August 26, 2012
Hearing Date: June 28, 2012

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

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

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

Finding of Emergency

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

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

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

3. EmR1211 — The state of Wisconsin department of agriculture, trade and consumer protection hereby adopts the following emergency rule to amend **section ATCP 21.17 (1) (b)** and to create **section ATCP 21.17 (1) (c)**, relating to the quarantine of Trempealeau County for emerald ash borer.

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

The scope statement for this rule, SS 042–11, was approved by the governor on November 8, 2011, published in Register No. 671 on November 30, 2011, and approved by the Board of Agriculture, Trade and Consumer Protection on December 15, 2011.

Finding of Emergency

(1) On August 16, 2012, APHIS identified Emerald Ash Borer (EAB) in Trempealeau County, at Perrot State Park. EAB is an exotic pest that poses a dire risk to the ash forest. When APHIS declares quarantine, DATCP has regulatory

authority for import controls and quarantine for EAB under s. ATCP 21.17. It is anticipated that APHIS will declare quarantines for Trempealeau 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 the county to areas of Wisconsin or other states that are not infested with EAB.

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

Filed with LRB: September 6, 2012
Publication Date: September 7, 2012
Effective Dates: September 7, 2012 through February 3, 2013

Children and Families (2)

Safety and Permanence, Chs. DCF 37–59

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

Filed with LRB: August 31, 2010
Publication Date: September 2, 2010
Effective Dates: September 2, 2010 through the date permanent rules become effective
Hearing Date: October 21, 2010

2. EmR1212 — The Wisconsin Department of Children and Families orders the creation of **Chapter DCF 55**, relating to subsidized guardianship.

Finding of Emergency

The Department of Children and Families 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 facts constituting the emergency is:

Guardians who entered into subsidized guardianship agreements with an agency when the statewide subsidized guardianship program was implemented in August 2011 are now eligible for consideration of an amendment to increase the amount of the subsidized guardianship payments. The rule includes the process for determining eligibility for an amendment.

Filed with LRB: August 31, 2012
Publication Date: September 3, 2012
Effective Dates: September 3, 2012 through January 30, 2013

Employment Relations Commission

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

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

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

Finding of Emergency

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

Filed with LRB: April 16, 2012
Publication Date: April 19, 2012
Effective Dates: April 19, 2012 through September 15, 2012

Health Services

Health, Chs. DHS 110—

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

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

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

Exemption from Finding of Emergency

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

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

Filed with LRB: May 1, 2012
Publication Date: May 4, 2012
Effective Dates: May 4, 2012 through
September 30, 2012
Hearing Date: May 25, 2012

Insurance

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

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

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

Finding of Emergency

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

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

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

Justice

EmR1206 — The State of Wisconsin Department of Justice (“DOJ”) proposes an order to repeal and re-create **Chapter Jus 17** and **Chapter Jus 18**, relating to licenses authorizing persons to carry concealed weapons; concealed carry certification cards for qualified former federal law enforcement officers; and the certification of firearms safety and training instructors.

Governor Walker approved the final draft emergency rules on March 15, 2012. Attorney General Van Hollen signed an order approving the final emergency rules on March 15, 2012, and the emergency rules were published in the Wisconsin State Journal on March 21, 2012.

The statement of scope for these emergency rules, SS 010–12, was approved by Governor Walker on February 15, 2012, published in Administrative Register No. 674, on February 29, 2012, and approved by Attorney General J.B. Van Hollen on March 12, 2012.

Finding of Emergency

Under section 101 of 2011 Wis. Act 35, DOJ has been statutorily required to receive and process concealed carry license applications and to issue or deny licenses since November 1, 2011. The Legislature has thus determined that the public welfare requires the licensing system commenced

on that date to remain continuously in effect. Emergency rules governing the licensing process were adopted on October 25, 2011, and have been in effect since November 1, 2011.

On November 7, 2011, JCRAR suspended certain portions of the emergency rules adopted on October 25, 2011. Since that time, DOJ has implemented concealed carry licensing without enforcing the suspended provisions. DOJ is also in the process of developing proposed permanent rules that do not include the substance of any of the provisions in the emergency rules that were suspended by JCRAR.

Under Wis. Stat. s. 227.26 (2) (i), if a bill supporting JCRAR’s suspension action of November 7, 2011, is not enacted into law by the end of the current legislative session on March 15, 2012, then the suspension would be lifted and the original version of the emergency rules — including the previously suspended portions — would go back into legal effect. At that point, the emergency rules in effect would be inconsistent both with the emergency rules as they have been administered by DOJ since November 7, 2011, and with the proposed permanent rules, the scope of which has already been approved by the Governor and the Attorney General. Any such lack of continuity in the operation of DOJ’s concealed carry rules would be confusing and disruptive both for permit applicants and for DOJ staff administering the concealed carry permit program.

In order to prevent such a discontinuity in the operation of the concealed carry rules, it is necessary to re-promulgate the existing emergency rules in their entirety, with the exception of the portions that were suspended by JCRAR on November 7, 2011. Only if DOJ utilizes the emergency rulemaking procedures of s. 227.24, Stats., can the revised emergency rules be promulgated and in effect in time to prevent discontinuity in the operation of the existing rules. The public welfare thus necessitates that the rules proposed here be promulgated as emergency rules under s. 227.24, Stats.

Filed with LRB: May 24, 2012
Publication Date: March 21, 2012
Effective Dates: March 21, 2012 through
August 17, 2012
Hearing Date: July 16, 24, 25, 2012
Extension Through: October 16, 2012

Natural Resources (3)

Fish, Game, etc., Chs. NR 1—

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

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

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

Finding of Emergency

The department is aware that several ATV trails in Wisconsin overlap existing roads. From the onset of the

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

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

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

Filed with LRB: May 9, 2012
Publication Date: June 1, 2012
Effective Dates: June 15, 2012 through November 11, 2012
Hearing Date: June 25, 2012

2. EmR1207 — The Wisconsin Natural Resources Board proposes an order to amend **section NR 10.01 (3) (d) 1.**, relating to the bobcat hunting and trapping season.

This emergency rule was approved by the governor on May 4, 2012. This emergency rule, modified to reflect the correct effective date, was approved by the governor on May 25, 2012.

The statement of scope for this rule, SS 009–12, was approved by the governor on February 15, 2012, published in Register No. 674, on February 29, 2012, and approved by the Natural Resources Board on March 28, 2012.

This rule was approved and adopted by the State of Wisconsin Natural Resources Board on April 25, 2012.

Finding of Emergency

Pursuant to s. 227.24, Stats., the Department of Natural Resources finds that an emergency exists and that the attached

rule is necessary for the immediate preservation of the public peace, health, safety, or welfare.

If emergency rules are not promulgated, the season automatically reverts back to a single permit period beginning on the Saturday nearest October 17 and continuing through December 31 in 2012. Frequent change of season dates and regulations for hunting and trapping can be confusing and disruptive to the public, can result in citations being issued, and is not necessary for protection of the bobcat population in this situation. Some people will view a reversion to the single season framework as a reduction of opportunity that is not socially acceptable. Therefore, this emergency rule is needed to preserve the public welfare.

Filed with LRB: May 30, 2012
Publication Date: June 10, 2012
Effective Dates: October 1, 2012 through February 27, 2013
Hearing Date: August 27, 2012

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

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

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

Finding of Emergency

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

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

Safety and Professional Services
(Formerly Regulation and Licensing)

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

Exemption from Finding of Emergency

Section 41 (2) (b) of the nonstatutory provisions of 2007 Wisconsin Act 104 provides that notwithstanding section 227.24 (1) (a) and (3) of the statutes, the department of safety and professional services (formerly regulation and licensing) is not required to provide evidence that promulgating a rule as

an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated to implement 2007 Wisconsin Act 104. Notwithstanding section 227.24 (1) (c) and (2) of the statutes, these emergency rules will remain in effect until the date on which the final rules take effect.

Filed with LRB: September 8, 2008
Publication Date: September 10, 2008
Effective Dates: September 10, 2008
**through the date on which
the final rules take effect**
Hearing Date: November 26, 2008
April 13, 2009

Scope Statements

Health Services

Health, Chs. DHS 110—

SS 065–12

This statement of scope was approved by the governor on July 26, 2012.

Rule No.

DHS 132, Nursing homes.

Relating to

The establishment of rules to guide the actions of the quality assurance and improvement committee to review proposals and award moneys for innovative projects.

Rule Type

Permanent.

Detailed Description of the Objective of the Proposed Rule

The department intends to cross–reference s. 50.04 (8) (b), Stats., as authority to establish and maintain a quality assurance and improvement committee to review proposals and award moneys for innovative projects, and to promulgate rules to guide the actions of the quality assurance and improvement committee.

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

Existing s. DHS 132.16 requires the department to establish a quality assurance and improvement committee to review proposals and award funds for innovative projects approved by the committee as directed under s. 50.04 (8) (b), Stats., as created by 2011 Wisconsin Act 70. Under s. DHS 132.16, members are appointed by the department’s secretary for a term of up to 12 months and include representatives from the department, the board on aging and long term care, disability, aging and long term care advocates, facilities, and other persons with an interest or expertise in quality improvement or delivery of long term care services. Facility members must comprise at least half of the committee membership. The committee is required to:

- Meet at least annually.
- Develop criteria for review and approval of projects for the Secretary of Health Service’s approval.
- Review proposals submitted by facilities and approve proposals, defer a determination pending additional information, or deny proposals submitted based upon the criteria approved by the Secretary.
- Identify projects to be addressed based on areas of need within a facility or corporation, the state or regions.
- Develop opportunities and strategies for general improvement of licensed facilities.
- Encourage proposals that develop innovative cost–effective methods for improving the operation

and maintenance of facilities and that protects residents’ rights, health, safety and welfare and improves residents’ quality of life.

- Disseminate within the department and to facilities and other interested individuals and organizations the information learned from approved projects.
- Prepare an annual report to the Secretary of Health Services.

In reviewing s. DHS 132.16, the department has determined that except for not referencing s. 50.04 (8), Stats., as authority for the committee and rules, s. DHS 132.16 establishes and maintains a quality assurance and improvement committee to review proposals and award moneys for innovative projects and guides the actions of the committee, as directed by s. 50.04 (8), Stats.

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

The department’s authority to promulgate the rules are as follows:

Section 50.02 (2) (a), Stats.: The department, by rule, shall develop, establish and enforce regulations and standards for the care, treatment, health, safety, rights, welfare and comfort of residents in community–based residential facilities and nursing homes and for the construction, general hygiene, maintenance and operation of those facilities which, in the light of advancing knowledge, will promote safe and adequate accommodation, care and treatment of residents in those facilities; and promulgate and enforce rules consistent with this section. Such standards and rules shall provide that intermediate care facilities, which have 16 or fewer beds may, if exempted from meeting certain physical plant, staffing and other requirements of the federal regulations, be exempted from meeting the corresponding provisions of the department’s standards and rules. The department shall consult with the department of safety and professional services when developing exemptions relating to physical plant requirements.

Section 50.04 (8), Stats.: PROTECTION AND COST EFFECTIVENESS PROGRAMS; QUALITY ASSURANCE.

(a) The department may distribute moneys from the appropriation account under s. 20.435 (6) (g) for innovative projects designed to protect the property and the health, safety, and welfare of residents in nursing homes and to improve the efficiency and cost effectiveness of the operation of facilities so as to improve the quality of life, care, and treatment of residents.

(b) The department shall establish and maintain a quality assurance and improvement committee to review proposals and award moneys for innovative projects, as described in par. (a), that are approved by the committee. The department shall promulgate rules to guide the actions of the quality assurance and improvement committee.

Section 227.11 (2), 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. 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.

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 spend approximately 8 staff hours for rulemaking. No other resources are necessary to develop the rule.

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

The proposed rule would affect nursing homes and any individual or entity that submits a proposal to the quality assurance and improvement committee for review and request for money.

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

Section 1919(h)(2)(A)(ii) of the Social Security Act provides that Civil Money Penalty (CMP) funds collected by a state must be applied to the protection of the health or property of residents of nursing facilities that the state. The Centers for Medicare and Medicaid Services (CMS) collects CMP funds from nursing facilities that have failed to maintain compliance with federal nursing home requirements. CMS then distributes those funds received from Medicaid nursing facilities and from the Medicaid part of dually-participating skilled nursing facilities (SNFs) to the states. CMP funds may be used to support activities that benefit residents, including assistance to support and protect residents of a facility that closes or is decertified; projects that support resident and family councils and other consumer involvement in assuring quality care in facilities; and facility improvement initiatives approved by the Secretary of Health and Human Services. The quality assurance and improvement committee is the mechanism used by the Department of Health to review proposals and award CMP funds approved by the U. S. Department of Health and Human Services.

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

The department anticipates that the proposed rule will have little or no economic impact locally or statewide.

Contact Person

Pat Benesh, 608–264–9896.

Natural Resources

Environmental Protection—Air Pollution Control, Chs. NR 400— SS 066–12

(Revises SS 056–12)

This revised statement of scope was approved by the governor on August 30, 2012. The original was approved by the governor on July 25, 2012 and published in Register No. 680 on August 14, 2012.

Rule No.

AM–21–12

Relating to

Revisions to Chapters NR 405 and 408 to maintain consistency with federal permit guidelines and to Chapters NR 400 and 410 consistent with the repeal of Chapter NR 411 for indirect source permits.

Rule Type

Permanent.

Detailed Description of the Objective of the Proposed Rule

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

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

Chapter NR 405.02 (25i) defines “Regulated NSR air contaminant” and specifically identifies volatile organic compounds as a precursor for ozone. USEPA has requested inclusion of nitrogen oxides (NO_x) in the definition for clarification purposes. Similarly USEPA requires, through its 2008 New Source Review Rule, explicit identification of NO_x and sulfur dioxide (SO₂) as precursors to particulate matter with a diameter of 2.5 micrometers or less (PM_{2.5}) within the definition of “Regulated NSR air contaminant”. The WDNR proposes to make the necessary rule changes to address these issues.

On April 27, 2011, the Joint Committee for Review of Administrative Rules (JCRAR) adopted a motion under s. 227.26 (2) (d), Wis. Stats., suspending ch. NR 411. Subsequent passage of legislation introduced by JCRAR in support of the suspension (see [2011 Wisconsin Act 121](#)), resulted in the repeal of ch. NR 411. The primary purpose of

ch. NR 411 had been to control carbon monoxide emissions from indirect sources through conditions established in construction and operation permits. Therefore the WDNR proposes to repeal rules whose only purpose is in support of ch. NR 411. Rules proposed for repeal include ss. NR 400.02 (101) and (106), and 410.03 (3). Sections NR 400.02 (101) and (106) define ‘modified indirect source’ and ‘new indirect source’ respectively. Section NR 410.03 (3) establishes fees for the application and issuance of permits to construct or modify an indirect source under ch. NR 411.

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

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

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

The proposed clarifications of NO_x as a precursor to ozone and NO_x and SO₂ as precursors to PM_{2.5} are not policy changes, but statements of fact. On June 15, 2012, USEPA disapproved a narrow portion of Wisconsin’s SIP for the 1997 ozone National Ambient Air Quality Standard pertaining to air construction permitting. This was done because NO_x was not identified as a precursor to ozone as part of PSD permit program requirements. The final disapproval triggered a requirement that USEPA promulgate a FIP addressing the deficiency no later than 2 years from the date of disapproval. In a federal register notice dated August 2, 2012, USEPA proposed to disapprove additional portions of Wisconsin’s SIP submission for the 2006 PM_{2.5} NAAQS because PM_{2.5} precursors are not specifically identified. Section 110(a)(2)(c) of the Clean Air Act requires that precursors to PM_{2.5} are identified in the PSD program requirements. Final disapproval to portions of the SIP relating to identifying precursors of PM_{2.5} will also result in the promulgation of a FIP unless the deficiencies are addressed.

Not repealing sections of chs. NR 400 and 410 in response to the repeal of ch. NR 411 by the legislature would potentially

create confusion and perpetuate an inconsistency with WDNR rules.

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

Section 285.11 (17), Wis. Stat., requires WDNR to “Promulgate rules, consistent with the federal clean air act, that modify the meaning of the term ‘modification’ as it relates to specified categories of stationary sources...”. The proposed rule to make the WDNR definition of “major modification” consistent with the federal definition is necessary to be consistent with the statutes and the federal clean air act.

Section 285.11 (1), Wis. Stats., establishes that the WDNR shall “Promulgate rules implementing and consistent with this chapter and s. 299.15.”. Section 285.60 (11) (b), Stats., effective March 21, 2012, establishes that the WDNR may not require a permit under this chapter for an indirect source. The proposed repeal of rules whose sole purpose is to support the issuance of permits for indirect sources is therefore necessary to be consistent with the statutes and to establish consistency within the administrative code.

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

Approximately 300 hours will be spent by WDNR staff.

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

The WDNR believes that the number of major sources affected by the proposed rule changes to chs. NR 405 and 408 will be small, if any. Under Wisconsin’s Title V operation permit program all requirements that apply to a source are included in its operation permit. WDNR clearly recognizes that requirements contained in a federally issued major source construction permit apply to the source and are therefore included in the source’s Title V operation permit issued by the WDNR, making the requirement fully enforceable under state and federal law. The WDNR is not aware of a single situation where this type of requirement existed in a federal construction permit and was not included the state Title V operation permit.

The addition of language to clarify that NO_x is a precursor to ozone and NO_x and SO₂ are precursors to PM_{2.5} will have no impact on any entities.

No entities will be affected by the proposed repeal of rules related to indirect sources. Since ch. NR 411 has already been repealed through legislative action, rules whose only purpose was to support the implementation of ch. NR 411 are already moot. Therefore the proposed repeal of these rules will not have any effect.

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 rule changes proposed to chs. NR 405 and 408 are requested by USEPA to maintain consistency with federal major modification definitions.

The rule changes proposed to ch. NR 405 with regard to precursor identification are required by USEPA to maintain consistency with federal definitions and avoid FIP promulgation with regard to portions of Wisconsin’s infrastructure SIP.

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

The economic impact due to the changes proposed to chs. NR 405 and 408 is expected to be minimal, in part because there are few permits that would be affected by this change. PSD sources are large emitters by definition and do not typically include small business, so the impact to small businesses should be minimal at most.

Chapter NR 411 has been repealed, and the department is now proposing to repeal rules whose only purpose was to support the implementation of ch. NR 411. Therefore, the proposed repeal of these rules will have no economic impact.

Contact Person

Gail Good, Wisconsin Department of Natural Resources, 101 South Webster Street, PO Box 7921, Madison, WI 53707–7921, 608 267–0803, gail.good@wisconsin.gov.

**Safety and Professional Services —
Pharmacy Examining Board**

SS 064–12

This statement of scope was approved by the governor on August 23, 2012.

Rule No.

Phar 7.01 (1) (e).

Relating to

Delivery of prescription drugs.

Rule Type

Permanent.

Finding/Nature of Emergency (Emergency Rule Only)

N/A.

Detailed Description of the Objective of the Proposed Rule

The Wisconsin Pharmacy Examining Board seeks to modify s. Phar 7.01 (1) (e) to allow the delivery of prescription medications to a location of the patient's choice. Under the current rule, a pharmacist, or pharmacist–intern under the direct supervision of a pharmacist, may only deliver prescription drugs directly to the patient at the pharmacy or the prescription drug may be delivered to patient's residence. If a patient wanted the prescription drug to be delivered elsewhere or if the pharmacy wanted to deliver elsewhere, the pharmacy was required to obtain a variance to the delivery pursuant to s. Phar 7.01 (4). The proposed modification to s. Phar 7.01 (1) (e) would allow the pharmacy, pharmacist, or pharmacist–intern to deliver the prescription drug to the location of a patient's choice without being required to first obtain a delivery variance from the Board.

**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 Board has determined that the rule, as it currently exists, does not grant enough flexibility for a patient to have the prescription medication delivered to a location of his or her choice because the rule does not permit pharmacies or pharmacists to deliver to a location of a patient's choice, without first obtaining a delivery variance from the Board. The Board has determined that permitting the delivery to a location of a patient's choice would be a helpful service to patients and to pharmacies/pharmacists without negatively impacting public safety. In addition, if the proposed modifications to the rule are enacted, the pharmacy or pharmacist would not need to wait until the board's next scheduled meeting for a determination on a delivery variance request, if previously submitted to the board.

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

Section 450.02 (3) (a), Stats., authorizes the board to promulgate rules “[r]elating to the...distribution and dispensing of prescription drugs.” Under s. 450.01 (7), Stats., the definition of dispense “means to deliver a prescribed drug or device to an ultimate user...”

Section 15.08 (5) (b), Stats., allows each examining board to “promulgate rules for its own guidance and for the guidance of the trade or profession to which it pertains and define and enforce professional conduct and unethical practices not inconsistent with the law relating to the particular trade or profession.”

Estimate of 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

Pharmacies, pharmacists, and patients.

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

No economic impact.

Contact Person

Kris Anderson, DSPS (608) 261–2385.

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 12–036

(DNR # 12–R–04)

The Department of Agriculture, Trade and Consumer Protection submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse on August 30, 2012.

The statement of scope for this rule, SS 024–12, was approved by the governor on April 12, 2012, published in Register No. 676 on April 30, 2012, and approved by the ATPC board on May 12, 2012.

Analysis

The proposed rule revises Chapter ATPC 127, relating to telephone solicitations; No–Call and No–Text list.

Agency Procedure for Promulgation

The department will hold a public hearing on this rule on September 27, 2012. The department’s Division of Trade and Consumer Protection is primarily responsible for this rule.

Contact Information

If you have questions, you may contact Kevin LeRoy at (608) 224–4928.

Agriculture, Trade and Consumer Protection CR 12–037

(DNR # 11–R–5)

The Department of Agriculture, Trade and Consumer Protection submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse on August 30, 2012.

The statement of scope for this rule, SS 008–11, was approved by the governor on July 27, 2011, published in Register No. 668 on August 14, 2011, and approved by the ATPC board on September 7, 2011.

Analysis

The proposed rule revises Chapter ATPC 70, relating to Wisconsin’s shellfish shippers and processors.

Agency Procedure for Promulgation

The department will hold public hearings on this rule after the Rules Clearinghouse has completed its review. The department’s Division of Food Safety is primarily responsible for this rule.

Contact Information

If you have questions, you may contact Tim Anderson at (608) 224–4716.

Financial Institutions — Banking CR 12–034

The Department of Financial Institutions submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse on August 23, 2012.

The scope statement for this rule, SS 044–12, was approved by the governor on June 8, 2012, published in Register No. 678 on June 30, 2012, and approved by the Secretary, Department of Financial Institutions on July 20, 2012.

Analysis

The rule creates Chapter DFI—Bkg 78, relating to auto title loans.

Agency Procedure for Promulgation

The department will hold public hearings on this rule at 11:00 a.m. on October 1, 2012.

The organizational unit that is responsible for preparing the rule is the Department of Financial Institutions, Division of Banking.

Contact Information

Eric Knight
Executive Assistant
Department of Financial Institutions
Office of the Secretary
345 W. Washington Avenue, 5th Floor
Madison, WI 53703
tel. (608) 267–1718
e–mail Eric.Knight@wisconsin.gov

Financial Institutions — Banking CR 12–035

The Department of Financial Institutions submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse on August 23, 2012.

The scope statement for this rule, SS 030–12, was approved by the governor on May 9, 2012, published in Register No. 677 on May 31 2012, and approved by the Secretary, Department of Financial Institutions on June 13, 2012.

Analysis

The rule revises Chapter DFI—Bkg 75, relating to payday lending.

Agency Procedure for Promulgation

The department will hold public hearings on this rule on October 1, 2012.

The organizational unit that is responsible for preparing the rule is the Department of Financial Institutions, Division of Banking.

Contact Information

Eric Knight
Executive Assistant
Department of Financial Institutions
Office of the Secretary
345 W. Washington Avenue, 5th Floor
Madison, WI 53703
tel. (608) 267–1718
e–mail Eric.Knight@wisconsin.gov

Health Services

Health, Chs. DHS 110—
CR 12–038

The Department of Health Services submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse on August 31, 2012.

This rule is not subject to s. 227.135 (2), as affected by 2011 Wis. Act 21. The statement of scope for this rule, published in Register No. 644, on August 14, 2009, was sent to the Legislative Reference Bureau prior to June 8, 2011 (the effective date of 2011 Wis. Act 21).

Analysis

The proposed rule revises Chapter DHS 196, relating to restaurants and the Wisconsin Food Code and affecting small business.

Agency Procedure for Promulgation

A public hearing is required, but is not yet scheduled. The organizational unit that is responsible for preparing the proposed rule is the Division of Public Health.

Contact Information

Jim Kaplanek, 608–261–8361

Rule–Making Notices

Notice of Hearing

Agriculture, Trade and Consumer Protection

CR 12–036

Rule Relating to Telephone Solicitations; No–Call and No–Text List

The Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) announces that it will hold a public hearing on a proposed rule relating to Chapter ATCP 127, telephone solicitations and the no–call and no–text list.

Hearing Information

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

Date: Thursday, September 27, 2012

Time: 2:00 p.m.

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

Accessibility

Hearing impaired persons may request an interpreter for this hearing. Please make reservations for a hearing interpreter by **September 13, 2012**, by writing to Kevin LeRoy, Division of Trade and Consumer Protection, P.O. Box 8911, Madison, WI 53708–8911; or by emailing kevin.leroy@wisconsin.gov; or by telephone at (608) 224–4928. Alternatively, you may contact the DATCP TDD at (608) 224–5058. The hearing facility is handicap accessible.

Appearances at the Hearing and Submittal of Comments

DATCP invites the public to attend the hearings and comment on the proposed rule. Following the public hearings, the hearing record will remain open until October 4, 2012, for additional written comments. Comments may be sent to the Division of Trade and Consumer Protection at the address below, or to kevin.leroy@wisconsin.gov, or 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.

Copies of the 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 Trade and Consumer Protection, 2811 Agriculture Drive, P.O. Box 8911, Madison, WI 53708. You can also obtain a copy by calling (608) 224–4928 or by emailing kevin.leroy@wisconsin.gov. Copies will also be available at

the hearing. To view the hearing draft rule online, go to: <http://adminrules.wisconsin.gov>.

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

This rule implements 2011 Wisconsin Act 197, which prohibits text message solicitation to residential customers enrolled in the Wisconsin No Call program. This rule updates the existing ch. ATCP 127, Subchapter V – Telephone Solicitations; No–Call List, to align the rule with recent changes to s. 100.52, Stats. In addition, this rule prohibits a telephone solicitation practice known as “spoofing.”

Statutes interpreted

Sections 100.20 (1) and 100.52, Stats.

Statutory authority

Sections 93.07 (1), 100.20 (2), and 100.52, Stats.

Explanation of statutory authority

DATCP has broad general authority, under s. 93.07 (1), Stats., to interpret laws under its jurisdiction. DATCP has authority under s. 100.20 (2), Stats., to promulgate rules forbidding methods of competition or trade practices which the department determines to be unfair, and to prescribe fair methods of competition and trade practices. Section 100.52, Stats., directs DATCP to establish by rule a nonsolicitation directory of residential telephone numbers (the “no–call list”), establish a registration system for telephone solicitors, and distribute the nonsolicitation directory to the telephone solicitors.

Related rules or statutes

Section 100.20 (1), Stats., requires trade practices in business to be fair. Unfair trade practices are prohibited. DATCP has rulemaking authority under s. 100.20 (2), Stats., to regulate unfair trade practices through administrative rules.

Section 100.52, Stats., governs telephone solicitations. It directs DATCP to maintain a nonsolicitation directory listing of residential telephone numbers and register telephone solicitors.

Chapter ATCP 127, Subchapter II – Telephone Solicitations, was promulgated under DATCP's authority to regulate unfair trade practices. Among other things, this subchapter requires a telephone solicitor to disclose its name and prohibits it from using a fictitious name or misrepresenting its identity, affiliation, location or other characteristics.

Chapter ATCP 127, Subchapter V – Telephone Solicitations; No–Call List, implements s. 100.52, Stats. This subchapter establishes procedures for a telephone customer to include telephone numbers onto the no–call list and for telephone solicitors to register with DATCP.

Plain language analysis

Background

The Wisconsin no–call program was established by statute in 2001 and DATCP promulgated a rule, ch. ATCP 127, to implement the program in 2002. Telephone solicitors are prohibited from calling residential customers on the state no–call list. There are exceptions for calls made to current

clients and for calls made on behalf of non–profit and political organizations. Solicitors are required to register with DATCP and to pay an annual or quarterly fee to solicit residential customers located in Wisconsin. A residential customer who does not want to receive unsolicited commercial calls must provide his or her telephone number and zip code to DATCP every two years to remain on the no–call and no–text list. In 2008, the statute was amended (by 2007 Wisconsin Act 226) to include cellular phones. In 2012, the statute was further amended (by 2011 Wisconsin Act 197) to include regulation of text messages.

Rule Content

GENERAL

This rule does all of the following:

- Defines “caller identification information” and “caller identification service.”
- Prohibits telephone solicitors from transmitting misleading or inaccurate caller identification information.
- For purposes of the no–call list, clarifies that the definition of “telephone solicitation” includes text messages, and creates a definition of “text message.”

“SPOOFING”

Under current rules, telephone solicitors are required to disclose the name of the primary seller, and the name of the person making the telephone solicitation, before asking any questions or making any statements other than an initial greeting. Current rules prohibit sellers from using fictitious names or otherwise misrepresenting the seller’s identity, location, or other characteristics.

This rule prohibits telephone solicitors from causing, either directly or indirectly, caller identification services to transmit or display misleading or inaccurate caller identification information. This practice has come to be known as “spoofing.”

NO TEXT

Under s. 100.52, Stats., and current rules, telephone customers may enroll for the Wisconsin no–all list. Telephone solicitors are prohibited from calling telephone numbers on the list, and must register annually with DATCP.

This rule follows recent changes to s. 100.52, Stats., and includes text messaging under the definition of “telephone solicitation.”

Federal and surrounding state programs

Federal Programs

The Federal Trade Commission (FTC) and Federal Communications Commission (FCC) administer the Telephone Consumer Protection Act (TCPA). This act established the national Do–Not–Call list. FCC rules prohibit sending unwanted text messages to wireless phone numbers if they are sent using an autodialer, or the number is on the national Do–Not–Call list.

FTC and FCC also administer the CAN–SPAM Act (Controlling the Assault of Non–Solicited Pornography and Marketing). This law (and its associated rules) prohibits sending unwanted commercial email messages to wireless devices without prior permission.

Surrounding State Programs

Many states have do–not–call programs. Several states, like Wisconsin, maintain their own do–not–call list. Others, including Illinois, Michigan, and Minnesota, have laws

allowing for state enforcement of do–not–call provisions, but rely on the FTC’s registry rather than maintaining their own. Under FTC rules, texting is included in the do–not–call provisions.

Iowa does not presently have statutes or rules relating to a do–not–call program.

Fiscal Impact

This rule, together with 2011 Wisconsin Act 197, may result in some increase to both DATCP’s revenues and costs. However, DATCP does not have sufficient data to estimate a dollar amount. There may be new revenue from telephone solicitor registration fees from solicitors who specialize in text message solicitations (and therefore must now register for the first time) and from solicitors who are currently registered, but must now pay a supplemental fee for using additional lines. There may be some one–time costs incurred as DATCP makes programmatic changes to accommodate the new rule. These one–time costs include such items as revising hand–outs, brochures, and solicitor registration forms, updating databases, and educating registered solicitors and consumers about the change in law. The additional revenues and costs represent small changes, and the costs can be absorbed within DATCP’s budget.

DATCP anticipates additional annual costs as a result of new consumer complaints and investigations. Last year DATCP received approximately 1,200 consumer complaints related to telemarketing practices and the no–call list. Because this rule, along with 2011 Wisconsin Act 197, expands the types of communications to which the no–call list applies, it is likely that the number of complaints will increase. However, there is insufficient data to predict the rate of increase.

Business Impact

This rule will have minimal impact on business. This rule might affect the following businesses in the following ways (many of which are “small businesses”):

- *Direct marketers that conduct both telephone solicitation and text message solicitation.* Wisconsin’s no–call program was established in 2001. Therefore, businesses in this category are already regulated under current law, and will only experience minimal additional regulatory obligations or expenses. Currently, there are approximately 460 telephone solicitors registered for the Wisconsin no–call program.
- *Direct marketers that conduct text message solicitation but are not currently registered telephone solicitors.* Under this rule (as well as s. 100.52, Stats., as amended by 2011 Wisconsin Act 197), businesses that send text message solicitations must register with the Wisconsin No Call program and refrain from sending text messages to numbers on the no–call list. The annual registration fees consist of the following; subject to a maximum limit of \$20,000:
 - A basic fee of \$700 for the first year and \$500 each subsequent year.
 - An additional fee of \$75 for each telephone line used for registrants greater than four lines.
 - An additional \$25 fee for each e–mail address the registrant would like DATCP to transmit the no–call list, in excess of one.
 - An additional \$25 fee for each compact disc set the registrant would like DATCP to mail, in excess of one.
 - An additional \$1,000 for each hard–copy the registrant would like DATCP to mail, in excess of one.

Many of the businesses affected by this rule are “small businesses.” However, given the subject matter, there are very few accommodations or special exceptions that can be made for small businesses.

This rule and the existing rule include many provisions that will benefit large and small businesses alike. For example:

- DATCP publishes a fact–sheet for solicitors, explaining the requirements and prohibitions contained in the rule.
- The rule allows solicitors to obtain the no–call list in a variety of formats, so they can use what is most convenient to them.

This new law and proposed rule may result in savings for some consumers on their monthly wireless service bills. On some plans, the provider charges the customer for each text message received. The new no–text provision protects consumers from these charges. DATCP does not have

sufficient data to estimate a dollar amount that consumers might save.

Environmental Impact

This rule will not have any environmental impact.

DATCP Contact

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

Kevin LeRoy
 Department of Agriculture, Trade and Consumer Protection
 P.O. Box 8911
 Madison, WI 53708–8911
 Telephone (608) 224–4928
 E–Mail: kevin.leroy@wisconsin.gov

STATE OF WISCONSIN DEPARTMENT OF ADMINISTRATION DOA 2049 (R 07/2011)		
ADMINISTRATIVE RULES FISCAL ESTIMATE AND ECONOMIC IMPACT ANALYSIS		
Type of Estimate and Analysis		
<input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected		
Administrative Rule Chapter, Title and Number		
ATCP 127, Direct Marketing		
Subject		
Prohibiting text message solicitations to numbers on the Do Not Call list, prohibiting “spoofing”.		
Fund Sources Affected		Chapter 20 , Stats. Appropriations Affected
GPR FED <input checked="" type="checkbox"/> PRO PRS SEG SEG–S		s. 20.115 (1) (im), stats.
Fiscal Effect of Implementing the Rule		
No Fiscal Effect <input checked="" type="checkbox"/> Indeterminate	Increase Existing Revenues Decrease Existing Revenues	Increase Costs Could Absorb Within Agency’s Budget Decrease Costs
The Rule Will Impact the Following (Check All That Apply)		
State’s Economy Local Government Units	<input checked="" type="checkbox"/> Specific Businesses/Sectors Public Utility Rate Payers	
Would Implementation and Compliance Costs Be Greater Than \$20 million?		
Yes <input checked="" type="checkbox"/> No		
Policy Problem Addressed by the Rule		
<p>The Wisconsin no–call program was established by statute in 2001 and DATCP promulgated a rule, ch. ATCP 127, Subchapter V, to implement the program in 2002. Under the previous statute and existing rule, telephone solicitors must register with DATCP and refrain from contacting consumers who have enrolled for the no–call list. Recently enacted 2011 Wisconsin Act 197 extended the no–call provisions to include text messaging. This proposed rule revises ch. ATCP 127 to accommodate the change in statute. For purposes of the no–call program, this rule clarifies that the definition of “telephone solicitation” includes text message solicitations and creates a definition of “text message.”</p> <p>In addition, this rule prohibits the practice known as “spoofing;” transmitting misleading or inaccurate call identification information. This proposed prohibition against “spoofing” is similar to the current rule requirements that telephone solicitors disclose the name of the seller, and not misrepresent the seller’s identity, location or characteristics.</p>		

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

This rule, together with 2011 Wisconsin Act 197, may result in some increase to both DATCP's revenues and costs. However, DATCP does not have sufficient data to estimate a dollar amount. There may be new revenue generated from telephone solicitor registration fees from solicitors who specialize in text message solicitations (and therefore must now register for the first time) and from solicitors who are currently registered, but must now pay a supplemental fee for using additional lines. There may be some one–time costs incurred as DATCP makes programmatic changes to accommodate the new rule. These one–time costs include such items as revising hand–outs and brochures, solicitor registration forms, updating databases, and educating registered solicitors and consumers about the change in law. The additional revenues and costs represent small changes and the costs can be absorbed within DATCP's budget.

DATCP anticipates additional annual costs as a result of new consumer complaints and investigations. Last year, DATCP received approximately 1,200 consumer complaints related to telemarketing practices and the no–call list. Because this rule, along with 2011 Wisconsin Act 197, expands the types of communications to which the no–call list applies, it is likely that the number of complaints will increase. However, there is insufficient data to predict the rate of increase.

Economic Impact Analysis Comments

DATCP posted the proposed rule online and sought comments from businesses and the public about the potential economic impact of the rule. The department did not receive any comments about the potential economic impact of the rule.

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

Implementing this proposed rule will bring congruity to existing statutes and rules. Not implementing the rule could lead to confusion because text messaging is now regulated as part of the no–call program (by statute), but is not specifically mentioned in the rule.

Long Range Implications of Implementing the Rule

Long–term, implementing the rule will benefit business and consumers by harmonizing the administrative rule with the existing statute.

Compare With Approaches Being Used by Federal Government

The federal CAN–SPAM Act prohibits sending commercial electronic mail messages to wireless devices, including cellular phones and pagers, unless the recipient provided prior authorization to receive such messages. In addition, Federal Communications Commission (FCC) rules prohibit sending unwanted text messages to a wireless phone number if they are sent using an auto dialer. Finally, FCC rules prohibit sending unwanted text messages to a telephone number on the national Do Not Call List.

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

Many states have do–not call programs. Several states, like Wisconsin, maintain their own do–not call list. Others, including the neighboring states of Illinois, Michigan and Minnesota have laws allowing for state enforcement of do–not call provisions, but rely on the FTC's registry rather than maintaining their own. Under FTC rules, texting is included in the do–not call provisions.

Iowa does not presently have any statutes or rules related to a do–not call program.

Name and Phone Number of Contact Person

Kevin LeRoy, Program and Planning Analyst, 608/224–4928

Notice of Hearing
Agriculture, Trade and Consumer Protection
CR 12–037

Rule Relating to Food Processing Plants

The Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) announces that it will hold public hearings on a proposed rule relating to Chapter ATCP 70, relating to Food Processing Plants. The proposed rule will modify Chapter ATCP 70, Food Processing Plants, to adopt portions of the National Shellfish Sanitation Program (NSSP) Guide required to allow Wisconsin food processing plants to process and ship shellfish in interstate commerce.

Hearing Information

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

Date: Tuesday, October 9, 2012
Time: 9:00 a.m.–9:45 a.m.
Location: Department of Agriculture, Trade and Consumer Protection
 Board Room (1st Floor)
 2811 Agriculture Drive
 Madison, WI 53718

Date: Thursday, October 11, 2012
Time: 9:00 a.m.–9:45 a.m.
Location: Waupaca County Courthouse
 Room LL42
 811 Harding Street
 Waupaca, WI 54981

Accessibility

Hearing impaired persons may request an interpreter for this hearing. Please make reservations for a hearing interpreter by **September 21, 2012**, by writing to Division of Food Safety, P.O. Box 8911, Madison, WI 53708–8911; by emailing Timothy.Anderson@wisconsin.gov; or by telephone at (608) 224–4682. Alternatively, you may contact the DATCP TDD at (608) 224–5058. The hearing facility is handicap accessible.

Appearances at the Hearing and Submittal of Comments

DATCP invites the public to attend the hearings and comment on the proposed rule. Following the public hearings, the hearing record will remain open until **October 25, 2012** for additional written comments. Comments may be sent to the Division of Food Safety at the address below, or by [emailing Timothy.Anderson@wisconsin.gov](mailto:Timothy.Anderson@wisconsin.gov), or 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.

Copies of the 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, WI 53708.

You can also obtain a copy by calling (608) 224–4682 or by emailing Timothy.Anderson@wisconsin.gov. Copies will also be available at the hearing. To view the hearing draft rule online, go to: <http://adminrules.wisconsin.gov>.

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

The Department of Agriculture, Trade and Consumer Protection (“DATCP” or “department”) currently licenses and inspects food processing plants. This rule modifies ch. ATCP 70, Food Processing Plants, to incorporate changes that apply to processing molluscan shellfish (e.g., oysters, clams and scallops). Wisconsin does not produce molluscan shellfish. However, food processors may receive molluscan shellfish from other states and sell them within Wisconsin only. This rule will allow Wisconsin food processing plants to reprocess and sell molluscan shellfish in interstate commerce.

Statutes interpreted

Section 97.29 (2), Stats.

Statutory authority

Sections 93.07 (1), 97.09 (4) and 97.29 (5), Stats.

Explanation of agency authority

DATCP has broad general authority, under s. 93.07 (1), Stats., to interpret laws 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. DATCP has specific authority, under s. 97.29 (5), Stats., to promulgate rules related to food processing, including food handling and storage, sanitary production and processing, and food sources and labeling.

Related rules or statutes

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

Plain language analysis

Background

This proposed rule would modify ch. ATCP 70, Food Processing Plants, to incorporate changes that apply to processing molluscan shellfish (e.g., oysters, clams and scallops). Under current rules, food processing plants in Wisconsin that perform fish processing may receive and process molluscan shellfish from another state for final sale only within Wisconsin. The proposed rule would establish a program that would allow Wisconsin food processing plants, that choose to participate in the program, to process and repack molluscan shellfish for sale in other states and internationally. Thirty–seven other states are members of the Interstate Shellfish Sanitation Conference (ISSC), which is the primary voluntary national organization of state shellfish regulatory officials. Acting under a Memorandum of Understanding with the United States Food and Drug Administration (FDA), the ISSC provides guidance and counsel on matters involving the sanitary control of shellfish. Participating states codify this guidance to regulate the processing of molluscan shellfish in their jurisdictions for interstate commerce and FDA recognizes regulations based on the guidance as suitable for ensuring compliance with the Federal Food, Drug and Cosmetic Act.

Rule Content

This rule does all of the following:

- Defines terms related to activities associated with the receipt, processing, labeling, and shipping of molluscan shellfish.

- Modifies current rules to include provisions of the National Shellfish Sanitation Program (NSSP) and the guidelines of the Interstate Shellfish Sanitation Conference (ISSC) related to receiving, processing, repacking, labeling and shipping molluscan shellfish for wholesale interstate trade.
- Applies existing standards for facilities, sanitation, and personal hygiene in food processing plants to molluscan shellfish shippers and reprocessors.
- Sets standards for record-keeping consistent with NSSP guidelines.

Federal and surrounding state programs

Federal Programs

There is no federal law related to the transportation and processing of molluscan shellfish. However, FDA administers the National Shellfish Sanitation Program (NSSP), which developed a model ordinance that states may use to develop uniform shellfish regulations. Compliance with the model ordinance is deemed consistent with meeting applicable provisions in the Federal Food, Drug and Cosmetic Act.

Surrounding State Programs

Illinois is the only surrounding state currently participating in this program. Illinois' rules are consistent with this proposed rule. Unlike this proposed rule, Illinois requires molluscan shellfish processors to pay additional fees to participate in the program. Iowa, Michigan, and Minnesota do not participate. These states may be potential customers for molluscan shellfish sold by Wisconsin businesses.

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

This rule was requested by the large wholesale businesses it is most likely to impact. Small businesses are unlikely to participate in this program. DATCP provided an opportunity for comment on the economic impact of the rule during the Economic Impact Analysis comment period. No comments related to the economic impact were received.

Data and analytical methodologies

DATCP staff reviewed information to determine the extent to which other states have adopted NSSP guidelines and contacted staff in Illinois involved with regulating molluscan shellfish to determine the extent to which their rules are consistent with this proposed rule. DATCP obtained additional information about the applicable requirements through communications and training with FDA officials overseeing the NSSP.

Fiscal Estimate

This rule will not have a significant fiscal impact on state government and DATCP will absorb any costs with current budget and staff since food processing plants are already regulated by DATCP. This rule will have no fiscal effect on local governments or public utility rate payers. DATCP estimates it will use the equivalent of .1 Full-Time Employee (FTE) to revise this rule, and it will utilize existing staff for that work.

Business Impact Analysis and Effects on Small Business

This rule will have a positive impact on businesses in Wisconsin. Currently, Wisconsin businesses may receive and

process molluscan shellfish from out of state, but may only sell these products within Wisconsin. This rule will allow Wisconsin businesses to expand their markets for these products by allowing them to process and sell molluscan shellfish in interstate commerce. In addition, as one of only two states in the Midwest to participate in the program, this rule will provide an incentive to large wholesalers that operate in several states to locate molluscan shellfish processing operations in Wisconsin.

The implementation costs for businesses to participate in this program are expected to be minimal. The provisions of this rule are consistent with general facility and sanitation standards that food processors must already meet. Businesses that choose to participate in the program would not need to modify existing facilities or implement unusual recordkeeping. Participation in the program is voluntary and only businesses that choose to sell molluscan shellfish in interstate commerce would be required to meet the requirements. There will be no additional licensing fees beyond those already required for a food processing plant license.

This rule will primarily benefit large businesses that provide wholesale food products to retail food establishment, restaurants, and other wholesale food industries nationwide. Small businesses are unlikely to participate in this program, with current regulations allowing them to receive and sell molluscan shellfish in their local market sufficient to meet their needs. Any business regardless of size that sells molluscan shellfish products in interstate commerce must meet NSSP requirements. However, a small business that chooses to participate in the program is expected to be able to easily meet program requirements. DATCP would also provide support and guidance to any small business interested in participation to ensure they meet Hazard Analysis Critical Control Points (HACCP) and other regulatory requirements.

Standards Incorporated by Reference

This rule incorporates by reference Section IV Chapter III .01 of the Shellfish Industry Equipment Construction Guide, National Shellfish Sanitation Program, Guide for the Control of Molluscan Shellfish, 2009. Consent will be requested from the Attorney General to incorporate these standards by reference. A copy of this document will be kept on file with DATCP and the Legislative Reference Bureau. The Shellfish Industry Equipment Construction Guide is also available in electronic format at:

<http://www.fda.gov/Food/FoodSafety/Product-SpecificInformation/Seafood/FederalStatePrograms/NationalShellfishSanitationProgram/ucm070560.htm>.

DATCP Contact

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

Tim Anderson
 Chief, Regulatory and Technical Services
 Department of Agriculture, Trade and Consumer
 Protection–Division of Food Safety
 P.O. Box 8911
 Madison, WI 53708–8911
 Telephone (608) 224–4716
 E-Mail: Timothy.Anderson@wisconsin.gov

STATE OF WISCONSIN DEPARTMENT OF ADMINISTRATION DOA 2049 (R 07/2011)		
ADMINISTRATIVE RULES FISCAL ESTIMATE AND ECONOMIC IMPACT ANALYSIS		
Type of Estimate and Analysis		
<input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected		
Administrative Rule Chapter, Title and Number		
ATCP 70, Food Processing Plants		
Subject		
Wisconsin’s Shellfish Shippers and Processors		
Fund Sources Affected	Chapter 20 , Stats. Appropriations Affected	
GPR FED PRO PRS SEG SEG–S		
Fiscal Effect of Implementing the Rule		
<input checked="" type="checkbox"/> No Fiscal Effect Indeterminate	<input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Decrease Existing Revenues	<input type="checkbox"/> Increase Costs <input checked="" type="checkbox"/> Could Absorb Within Agency’s Budget <input type="checkbox"/> Decrease Costs
The Rule Will Impact the Following (Check All That Apply)		
<input checked="" type="checkbox"/> State’s Economy Local Government Units	<input checked="" type="checkbox"/> Specific Businesses/Sectors Public Utility Rate Payers	
Would Implementation and Compliance Costs Be Greater Than \$20 million?		
Yes <input checked="" type="checkbox"/> No		
Policy Problem Addressed by the Rule		
<p>This proposed rule would modify ch. ATCP 70, Food Processing Plants, to incorporate changes that apply to processing molluscan shellfish (e.g., oysters, clams and scallops). Currently, Wisconsin food processors may only sell these products within the state. The rule would establish a voluntary program that would allow Wisconsin businesses to process and repack molluscan shellfish for sale in other states and internationally. In general, the proposed rule adopts portions of the National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish (2009), which sets the sanitary control standards for molluscan shellfish for human consumption.</p> <p>The rule revisions would add Wisconsin as a member of the Interstate Shellfish Sanitation Conference (ISSC). The ISSC is the primary voluntary national organization of state shellfish regulatory officials; it provides guidance and counsel on matters for the sanitary control of shellfish. The ISSC entered into a memorandum of understanding with the FDA to create a federal and state cooperative program called the National Shellfish Sanitation Program (NSSP). The NSSP promotes uniformity and improves the sanitation of shellfish moving in interstate commerce. Participating states codify this guidance to regulate the processing of shellfish in their jurisdictions for interstate commerce. FDA then recognizes regulations based on the guidance as suitable for ensuring compliance with the Federal Food, Drug and Cosmetic Act. Under the rule, Wisconsin food processing businesses that meet the standard would then be certified to process and ship shellfish in interstate commerce. Thirty–seven other states are currently members of ISSC. The rule does all of the following:</p> <ul style="list-style-type: none"> • Defines terms related to activities associated with the receipt, processing, labeling, and shipping of molluscan shellfish. • Modifies current rules to include provisions of the National Shellfish Sanitation Program (NSSP) and the guidelines of the Interstate Shellfish Sanitation Conference (ISSC) related to receiving, processing, repacking, labeling and shipping molluscan shellfish for wholesale interstate trade. • Applies existing standards for facilities, sanitation, and personal hygiene in food processing plants to molluscan shellfish shippers and reprocessors. • Sets standards for record–keeping consistent with NSSP guidelines. 		

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

Businesses and Business Sectors

The rule was requested by businesses that expressed an interest in processing and repackaging molluscan shellfish for sale in other states. Large businesses that provide wholesale food products to retail food establishments, restaurants, and other wholesale food industries nationwide are most likely to participate in the program. The rule will provide these large-scale food wholesalers with the option, under a food processing plant license, of breaking down and further processing shipments of molluscan shellfish to Wisconsin to meet the needs of their customers in other states.

The department believes small businesses are unlikely to participate in the program, with current regulations that allow small business to receive and sell molluscan shellfish in their local market sufficient to meet their needs. However, the department expects any small business licensed as a food processor and who chooses to participate in the program to be able to easily meet program requirements.

The department is unable to quantify the compliance costs to businesses of this rule, but these costs are expected to be minimal. The provisions of this rule are consistent with general facility and sanitation standards that food processors must already meet. Businesses that choose to participate in the program would not need to modify existing facilities or implement unusual recordkeeping. Participation in the program is voluntary and only businesses that choose to sell molluscan shellfish in interstate commerce would be required to meet the requirements. There will be no additional licensing fees beyond those already required for a food processing license.

State's Economy

Wisconsin does not produce molluscan shellfish, but some businesses bring this product in from other states and package and reprocess it for sale within the state. This rule will allow these businesses to sell this product in interstate commerce. Although the department cannot quantify the positive economic impact, this rule will benefit Wisconsin's economy by opening this new market and it will allow certain Wisconsin food processing businesses who participate in the program to increase sales. Adopting this rule will help eliminate an economic disadvantage with the 37 other states who currently participate in the program and allow the sale of molluscan shellfish in interstate commerce. For example, the rule will put Wisconsin on an equal footing with molluscan shellfish shippers and processors in Illinois—specifically in the Chicago area. The rule will also allow large wholesalers operating in several states to have the option of locating molluscan shellfish processing operations in Wisconsin, which may be more convenient for servicing markets in other states such as the Twin Cities, Michigan's Upper Peninsula, Iowa and the Dakotas.

Local Governmental Units and Public Utility Rate Payers

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

Economic Impact Analysis Comments

DATCP posted the proposed rule online as required under Wis. Stat. s. 227.137 and solicited comments from food processor businesses that the department believed might have an interest in processing and packaging molluscan shellfish for interstate sales, the Midwest Food Processors Association, the Wisconsin Restaurant Association, the Wisconsin Grocers Association, and state and local health employees. The department did not receive any comments on the economic impact of the rule.

Fiscal Impact

This rule will not have a significant fiscal impact on state government and DATCP will absorb any costs with current budget and staff since food processing plants are already regulated by DATCP. This rule will have no fiscal effect on local governments.

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

This rule will have a positive impact on business in Wisconsin by opening new markets in other states for processed or repackaged molluscan shellfish for businesses that choose to participate in the program. If the rule is not implemented, there will be no provision to allow state food processing plants to process and repackage shellfish obtained from outside the state for sale in interstate commerce. If the rule is not adopted, Wisconsin will continue to have an economic disadvantage to other states, such as Illinois, that have adopted the standards and allow interstate sales of processed and repackaged molluscan shellfish.

Long Range Implications of Implementing the Rule
There are no long range negative implications of implementing the rule. In the long run, the rule will allow certain Wisconsin businesses to increase sales of molluscan shellfish in interstate commerce, while also helping to protect the public health of consumers who purchase molluscan shellfish.
Compare With Approaches Being Used by Federal Government
There is no federal law related to the transportation and processing of molluscan shellfish. However, FDA administers the National Shellfish Sanitation Program (NSSP), which developed a model ordinance that states may use to develop uniform shellfish regulations. Compliance with the model ordinance is deemed consistent with meeting applicable provisions in the Federal Food, Drug and Cosmetic Act.
Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)
Illinois is the only surrounding state currently participating in this program. Iowa, Michigan, and Minnesota do not participate and may be potential customers for molluscan shellfish sold by Wisconsin businesses.
Name and Phone Number of Contact Person
Tim Anderson Chief, Regulatory and Technical Services Department of Agriculture, Trade and Consumer Protection–Division of Food Safety P.O. Box 8911 Madison, WI 53708–8911 Telephone (608) 224–4716 E–Mail: Timothy.Anderson@wisconsin.gov

Notice of Hearing
Financial Institutions — Banking
CR 12–034

NOTICE IS HEREBY GIVEN that the Wisconsin Department of Financial Institutions will hold a public hearing on a proposed rule to create Chapter DFI—Bkg 78, relating to auto title loans.

Hearing Information

Date: Monday, October 1, 2012
Time: 11:00 a.m.
Location: Department of Financial Institutions
345 W. Washington Avenue, 5th Floor
Madison, WI 53703

Accessibility

If you need accommodations because of a disability, or need an interpreter or translator, at least one week prior to the hearing contact Eric Knight, Department of Financial Institutions, Office of the Secretary, 345 W. Washington Avenue, Madison, WI 53703, tel. (608) 267–1718, e–mail eric.knight@wisconsin.gov. Alternately hearing impaired callers may contact the DFI TTY at (608) 266–8818. The hearing facility is handicap accessible.

Copies of the Rule and Fiscal Estimate

A copy of the rule, fiscal estimate and related rule documents may be obtained at no charge from the department’s website, www.wdfi.org; the Wisconsin Administrative Rules Website, <http://adminrules.wisconsin.gov>; or by contacting Eric Knight, Department of Financial Institutions, Office of the Secretary, 345 W. Washington Avenue, Madison, WI 53703, tel. (608) 267–1718, e–mail eric.knight@wisconsin.gov.

Submitting Comments on the Rule

Written comments on the rule should be submitted to Eric Knight, Department of Financial Institutions, Office of the Secretary, 345 W. Washington Avenue, Madison, WI 53703, e–mail eric.knight@wisconsin.gov. Comments may also be submitted through the Wisconsin Administrative Rule Website, <http://adminrules.wisconsin.gov>. The deadline for submitting comments is **4:30 p.m.** on the 14th day after the date for the hearing.

Analysis Prepared by the Department of Financial Institutions, Division of Banking

Statutes interpreted

Section 138.16, Stats.

Statutory authority and explanation of statutory authority

The statutory authorities for the rule are the following:

Section 138.16 (2), Stats., which states that “[t]he division shall promulgate rules for determining the retail value of a motor vehicle for purposes of this paragraph, including rules specifying nationally recognized pricing guides that may be used for determining retail value at the time of loan origination.”

Related rules or statutes

Section 138.09, Stats.

Plain language analysis

As a result of the passage of 2011 Wisconsin Act 32, a licensed lender that holds the proper certificate of authorization may make title loans. However, no licensed lender may make a title loan to a borrower that results in the borrower having liability for the loan, in principal, of more than 50 percent of the retail value of the motor vehicle used as security for the loan.

The objective is to promulgate a rule for determining the retail value of a motor vehicle, including specifying

nationally recognized pricing guides that may be used for determining retail value at the time of loan origination.

Summary of and comparison with existing or proposed federal regulations

DFI is unaware of any existing or proposed federal regulation that is intended to address the activities to be regulated by the rule.

Comparison with rules in adjacent states

Michigan and Iowa have no title lending rules.

Illinois has rules on title lending; however they do not address determining the retail value of a motor vehicle.

Minnesota has a limited number of rules regarding licensed regulated lenders, which may include payday lenders. Their rules cover the following topics: licensed office, maximum loan applies to multiple offices, licensees to be responsible for acts of assignees, management and control, transferred accounts, and computing date and time.

Summary of factual data and analytical methodologies

In developing these rules, the department reviewed title

lending laws in states across the country. The department is engaged in outreach with title lenders and consumer organizations to gather input. Because the department regulates licensed financial services for the state, the division could rely on extensive staff expertise and experience in drafting regulations for these entities.

Analysis and supporting documents used to determine effect on small business

N/A.

Effect on Small Business

N/A.

Summary of Fiscal Estimate and Economic Impact Analysis

No impact.

Small Business Regulatory Coordinator

The agency's small business regulatory coordinator is Eric Knight, tel. (608) 267–1718, e–mail eric.knight@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
Chapter 76, Title Loans

3. Subject
Title Loans

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

5. Chapter 20, Stats. Appropriations Affected
s. 20.144 (1) (g)

6. Fiscal Effect of Implementing the Rule

<input checked="" type="checkbox"/> 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	<input checked="" type="checkbox"/> Specific Businesses/Sectors
Local Government Units	Public Utility Rate Payers
	Small Businesses (if checked, complete Attachment A)

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

Yes No

9. Policy Problem Addressed by the Rule

2011 Wisconsin Act 32 requires the department to promulgate rules to approve the sources used to determine market value for vehicles in title loans.

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.

Industry representatives and consumer groups.

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
Provides guidance and clarification to the industry related to title lending.

14. Long Range Implications of Implementing the Rule
Continued guidance and clarification for the industry.

15. Compare With Approaches Being Used by Federal Government
None.

16. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)
Michigan and Iowa have no related rules. Illinois has rules covering title lending, but the rules do not cover market value sources. Minnesota has a limited number of rules regarding licensed regulated lenders, but nothing that specifically addresses this subject.

17. Contact Name
Susan Dietzel

18. Contact Phone Number
608–267–0399

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

Notice of Hearing Financial Institutions — Banking CR 12–035

NOTICE IS HEREBY GIVEN that the Wisconsin Department of Financial Institutions will hold a public hearing on a proposed rule to amend sections DFI—Bkg 75.01 (3), 75.02 (intro), 75.03 (3) and (3) (c), 75.05 (4), 75.06 (2), 75.07 (a), 75.08 (4) and (4) (b), and 75.09 (3) (a) 3.; create sections 75.01 (9), 75.03 (5), (6) and (7), 75.06 (5) and 75.08 (d); repeal sections 75.02 (1) and (2), and 75.10 (6); and repeal and recreate section 75.08 (1), relating to payday lending.

Hearing Information

Date: Monday, October 1, 2012
Time: 10:00 a.m.
Location: Department of Financial Institutions
345 W. Washington Avenue, 5th Floor
Madison, WI 53703

Accessibility

If you need accommodations because of a disability, or need an interpreter or translator, at least one week prior to the hearing contact Eric Knight, Department of Financial Institutions, Office of the Secretary, 345 W. Washington Avenue, Madison, WI 53703, tel. (608) 267–1718, e–mail eric.knight@wisconsin.gov. Alternately hearing impaired callers may contact the DFI TTY at (608) 266–8818. The hearing facility is handicap accessible.

Copies of the Rule and Fiscal Estimate

A copy of the rule, fiscal estimate and related rule documents may be obtained at no charge from the department’s website, www.wdfi.org; the Wisconsin Administrative Rules Website, <http://adminrules.wisconsin.gov>; or by contacting Eric Knight, Department of Financial Institutions, Office of the Secretary, 345 W. Washington Avenue, Madison, WI 53703, tel. (608) 267–1718, e–mail eric.knight@wisconsin.gov.

Submitting Comments on the Rule

Written comments on the rule should be submitted to Eric Knight, Department of Financial Institutions, Office of the Secretary, 345 W. Washington Avenue, Madison, WI 53703, e–mail eric.knight@wisconsin.gov. Comments may also be submitted through the Wisconsin Administrative Rule Website, <http://adminrules.wisconsin.gov>. The deadline for submitting comments is **4:30 p.m.** on the 14th day after the date for the hearing.

Analysis Prepared by the Department of Financial Institutions, Division of Banking

Statutes interpreted

Section 138.14, Stats.

Statutory authority and explanation of statutory authority

The statutory authorities for the rule are the following:

Section 138.14 (8) (b), Stats., which states that “[t]he division may promulgate such rules as it considers necessary for the administration of this section, including rules establishing database transaction fees under sub. (14) (h) and other fees considered reasonable and necessary by the division,” and

Section 138.14 (14) (h), Stats., which states that “[t]he division shall, by order or rule, specify a database transaction fee of no more than \$1 that the database provider shall charge to licensees to cover the costs of developing and implementing the database, and accessing the database to verify that a customer does not have any payday loans with the licensee or others that in combination with a new transaction will create a violation of this section.”

Related statutes or rules

Section 138.09, Stats.

Plain language analysis

As a result of the passage of 2011 Wisconsin Act 32, changes to the existing payday lending rule are necessary to address conflicts that may exist between the current law and the existing rule.

A further objective is to provide clarity and direction for lenders making payday loans, as well as create clear guidance

for the Department of Financial Institutions (“DFI”), which is charged with enforcing s. 138.14, Stats.

Summary of and comparison with existing or proposed federal regulations

DFI is aware that the Consumer Financial Protection Bureau intends to focus some of its resources on payday lending, but is unaware of any currently proposed regulation or rule.

Comparison with rules in adjacent states

An internet–based search of payday lending regulations for the states of Illinois, Iowa, Michigan and Minnesota found the following:

All four states now regulate payday lending.

Illinois has an extensive number of payday lending rules including rules covering topics such as: loan terms, a certified database method of verification and gross monthly income verification.

Iowa has no applicable rules at this time.

Michigan has a limited number of payday lending rules. An internet search of rules for Michigan finds their rules focus on definitions in regards to a database.

Minnesota has a limited number of rules regarding licensed regulated lenders, which may include payday lenders. Their rules cover the following topics: licensed office, maximum loan applies to multiple offices, licensees to be responsible for acts of assignees, management and control, transferred accounts, and computing date and time.

Summary of factual data and analytical methodologies

In developing these rules, the department reviewed payday lending laws in states across the country. The department is engaged in outreach with payday lenders and consumer

organizations to gather input. Because the department regulates licensed financial services for the state, the division could rely on extensive staff expertise and experience in drafting regulations for these entities.

Analysis and supporting documents used to determine effect on small business

The division anticipates that any economic impact of implementing the rule would be minimal. The rule provides clarity to the payday lending industry with clear definitions and requirements which now must be made as the result of 2011 Wisconsin Act 32. Overall the requirements of this rule are straight–forward for ease in compliance.

Effect on small business

The proposed rule may require payday lenders to make minor changes to websites and/or forms. The agency’s experience in making similar changes to DFI’s website or forms indicates that the cost of making such changes is minimal.

Summary of Fiscal Estimate and Economic Impact Analysis

The division of banking anticipates that any economic impact of implementing the rule would be minimal. The proposed rule may require payday lenders to make minor changes to websites and/or forms. The agency’s experience in making similar changes to the department’s website or forms indicates that the cost of making such changes is minimal.

Small Business Regulatory Coordinator

The agency’s small business regulatory coordinator is Eric Knight, tel. (608) 267–1718, e–mail eric.knight@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

Chapter DFI–Bkg 75 Payday Lending

3. Subject

Payday Lending

4. Fund Sources Affected

GPR FED PRO PRS SEG SEG–S

5. Chapter 20, Stats. Appropriations Affected

20.144 (1) (g)

6. Fiscal Effect of Implementing the Rule

No Fiscal Effect Increase Existing Revenues
 Indeterminate Decrease Existing Revenues

Increase Costs
Could Absorb Within Agency’s Budget
Decrease Cost

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

State’s Economy
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

As a result of the passage of 2011 Wisconsin Act 32, changes to the existing payday lending rule are necessary to address conflicts that may exist between the current law and the existing rule.

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.

Industry representatives and consumer groups.

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

None.

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

The division of banking anticipates that any economic impact of implementing the rule would be minimal. The proposed rule may require payday lenders to make minor changes to websites and/or forms. The agency's experience in making similar changes to the department's website or forms indicates that the cost of making such changes is minimal.

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

14. Long Range Implications of Implementing the Rule

The rule provides clarity to the payday lending industry with clear definitions and requirements. There should be no long term impact associated with implementing the rule. Overall the requirements of this rule are straight-forward for ease in compliance.

15. Compare With Approaches Being Used by Federal Government

DFI is aware that the Consumer Financial Protection Bureau intends to focus some of its resources on payday lending, but is unaware of any currently proposed regulation or rule.

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

An internet-based search of payday lending regulations for the states of Illinois, Iowa, Michigan and Minnesota found the following:

All four states now regulate payday lending. Illinois has an extensive number of payday lending rules including rules covering topics such as: loan terms, a certified database method of verification and gross monthly income verification. Iowa has no applicable rules at this time. Michigan has a limited number of payday lending rules. An internet search of rules for Michigan finds their rules focus on definitions in regards to a database. Minnesota has a limited number of rules regarding licensed regulated lenders, which may include payday lenders. Their rules cover the following topics: licensed office, maximum loan applies to multiple offices, licensee to be responsible for acts of assignees, management and control, transferred accounts, and computing date and time.

17. Contact Name

Susan Dietzel

18. Contact Phone Number

608-267-0399

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

Notice of Hearing
Health Services
Health, Chs. DHS 110—
CR 12–038

DHS 196 and Appendix (WI Food Code)

NOTICE IS HEREBY GIVEN That pursuant to sections 254.74 (1) (a) and (d) Stats., the Department of Health Services will hold a public hearing to consider the amendment of rules revising Chapter DHS 196, relating to restaurants and the Wisconsin Food Code.

Hearing Information

Date: **Tuesday, October 9, 2012**
Time: 10:00 a.m.–2:00p.m.
Location: Wisconsin Department of Agriculture, Trade and Consumer Protection
 2811 Agriculture Drive
 Madison, WI 53708–8911

Date: **Thursday, October 11, 2012**
Time: 10:00 a.m.–2:00p.m.
Location: Waupaca Public Courthouse
 Room LL42
 811 Harding Street
 Waupaca, Wisconsin 54981

Date: **Friday, October 12, 2012**
Time: 10:00 a.m.–2:00p.m.
Location: Eau Claire State Office Building
 718 W. Clairemont Ave
 Eau Claire, WI 54701

Accessibility

English

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 James Kaplanek at 608–261–8361. You must make your request at least 7 days before the activity.

Spanish

DHS es una agencia que ofrece igualdad en las oportunidades de empleo y servicios. Si necesita algún tipo de acomodaciones debido a incapacidad o si necesita un interprete, traductor o esta información en su propio idioma o en un formato alterno, usted puede pedir asistencia para participar en los programas comunicándose con James Kaplanek al número 608–261–8361. Debe someter su petición por lo menos 7 días de antes de la actividad.

Hmong

DHS yog ib tus tswv hauj lwm thiab yog ib qhov chaw pab cuam uas muab vaj huam sib luag rau sawv daws. Yog koj xav tau kev pab vim muaj mob xiam oob qhab los yog xav tau ib tus neeg pab txhais lus los yog txhais ntaub ntawv, los yog koj xav tau cov ntaub ntawv no ua lwm hom lus los yog lwm hom ntawv, koj yuav tau thov kev pab uas yog hu rau James Kaplanek ntawm 608–261–8361. Koj yuav tsum thov qhov kev pab yam tsawg kawg 7 hnuv ua ntej qhov hauj lwm ntawd.

Copies of Proposed Rule and Fiscal Estimate–Economic Impact Analysis

copy of the proposed rule and the fiscal estimate–economic impact analysis may be obtained from the Department of Health Services at no charge by downloading the documents from www.adminrules.wisconsin.gov or by contacting:

James Kaplanek
 Food Safety and Recreational Licensing Section
 1 W. Wilson Street
 Room # 150
 Madison, WI 53701

Place Where Comments are to be Submitted and Deadline for Submission

Comments may be submitted to James Kaplanek or to the Wisconsin Administrative Rules Website at www.adminrules.wisconsin.gov until **Friday, October 12, 2012, 4:30 p.m.**

Analysis Prepared by the Department of Health Services

Statutes interpreted

Sections 254.61, 254.62, 254.64 to 254.72, 254.74 and 254.85, Stats.

Statutory authority

Section 254.74 (1) Stats.

Explanation of agency authority

Section 254.74 (1) Stats, gives the department the broad authority to administer and enforce this subchapter, the rules promulgated under this subchapter and any other rules or laws relating to the public health and safety in hotels, tourist rooming houses, bed and breakfast establishments, restaurants, vending machine commissaries, vending machines and vending machine locations.

DHS’s authority to make rules relating to restaurants is found in s. 254.74 (1) (d), Stats., which provides that DHS may prescribe rules and fix standards, including rules covering the general sanitation and cleanliness of premises regulated under this subchapter, the proper handling and storing of food on such premises, the construction and sanitary condition of the premises and equipment to be used and the location and servicing of equipment.

The format of the Wisconsin Food Code is different than that of most state administrative rules. DHS is authorized under s. 227.14 (1s), Stats., to use the drafting format of the Federal Drug Administration (FDA) Model Food Code. This rule follows that authorized format.

Related rules or statutes

DATCP 75.

Plain language analysis

DHS currently licenses (issues permits to) and inspects restaurants under ch. DHS 196 and its appendix, the Wisconsin Food Code. The proposed changes updates ch. DHS 196, and the existing Wisconsin Food Code to the 2009 FDA Model Food Code. DHS last revised the Wisconsin Food Code in 2006 when it adopted the 2005 FDA Model Food Code in a joint effort with the Department Agriculture, Trade and Consumer Protection (DATCP) which administers the Wisconsin Food Code (appendix to ch. ATCP 75) with respect to licensing and inspection of retail food establishments such as grocery stores. Since that time food safety practices have advanced and the new 2009 FDA Model

Food Code reflects the current science regarding food safety practices, procedures, and policies. The FDA Model Food Code is a living breathing document that is updated every 4 years to reflect current thinking and science in the areas of food safety. DHS tries to adhere to that schedule to provide their operators the most updated rules that reflect current trends and science in food safety.

The proposed Wisconsin Food Code incorporates by reference, the U.S. Department of Health and Human Services, Public Health Service, FDA, publication *Grade “A” Pasteurized Milk Ordinance*, (2011 Revision) and the Interstate Shellfish Sanitation Conference and U.S. Department of Health and Human Services, FDA publication, *National Shellfish Sanitation Program, Guide for the Control of Molluscan Shellfish*, (2009 Revision). DHS is currently seeking the consent of the Attorney General to incorporate these standards in the final proposed rules.

The following is a summary of the changes made to ch. DHS 196 and its appendix, the Wisconsin Food Code:

DHS 196

- Clarifies language requiring plan review for new and extensively remodeled restaurants and additional areas.
- Updates references to the 2009 FDA Model Food Code.
- Adds a new definition for “extensively remodeled.”
- Removes definitions from the Wisconsin Food Code relating to restaurant permitting and places them into ch. DHS 196, where they were previously located. The terms include “General Public”, “Meal”, “Occasional”, and “Temporary Restaurant”. The definitions are updated to provide clarity.

DHS 196 Appendix (Wisconsin Food Code) –Broad–Based Changes to the Wisconsin Food Code

1. Errors in punctuation, spelling and use of defined terms were corrected throughout.
2. The term Potentially Hazardous Food was changed to Potentially Hazardous Food (Time/Temperature Control for Safety Food) throughout the Wisconsin Food Code.
3. The word “person” is replaced with the word “individual” throughout the Wisconsin Food Code.
4. “Of this section” follows ¶ (X) throughout the Wisconsin Code to be consistent with 2009 FDA Model Food Code language.
5. “Handwashing sink” replaces “handsink” throughout the Wisconsin Food Code.
6. The superscript (C), (N), and (S) are replaced with superscript (P) and (Pf) throughout the Wisconsin Food Code.
7. References to other federal and state codes as well as references referring to other food code sections have been updated throughout the Wisconsin Food Code.
8. Sections containing “exceptions” are now located in the first sentence to conform to 2009 FDA Model Food Code language.
9. The word “an exposure” is replaced with “a contact” throughout the Wisconsin Food Code.
10. The word “certified manager” is replaced with “certified food manager” throughout the Wisconsin Food Code.

–Specific Changes to DHS 196 Appendix (Wisconsin Food Code)

Preface

1. Structural Nomenclature section was rewritten to provide clarity.
2. Section Designations were changed to reflect new criticality terms. The terms “C”, “N”, and “S” are replaced with “P” Priority, “Pf” Priority foundation, and unmarked sections are referred to as “Core Items”.
3. Font style section was reformatted into a table for easier reading.

Chapter 1 – Purpose and Definitions

1. In section 1–103.10, the “as defined in Subparagraph 210.10(B)(37) was removed.
2. In section 1–104.10, the “as defined in Subparagraph 210.10(B)(37) was removed.
3. In section 1–104.12, (D)(4) was removed as a duplicated statement.
4. In section 1–201.10, the number system was removed consistent with the 2009 FDA Model Food Code.
5. In section 1–201.10, the following new definitions have been added: “Asymptomatic”, “Balut”, “Conditional employee”, “Core Item”, “Count–mounted equipment”, “Cut leafy greens”, “Dealer”, “Egg Product”, “Enterohemorrhagic Escherichia coli”, “Handwashing sink”, “Health practitioner”, “Major Food Allergen”, “mechanically Tenderized”, “Non–Continuous Cooking”, “Priority item”, “Priority foundation Item”, “Ratite”, “Re–service”, and “Risk control plan”.
6. In section 1–201.10, the following definitions have been deleted: “Critical Item”, “General Public”, “Incidental food service”, “Meal”, “Occasional”, “Preparation”, “Processing”, and “Table mounted equipment”.
7. In section 1–201.10, the term “Accredited Program”, was updated to reflect the 2009 FDA Model Food Code.
8. In section 1–201.10, the term “Code of Federal Regulations” was replaced with “CFR”
9. In section 1–201.10, “Wis Admin Code” was added to the term “Drinking Water”.
10. In section 1–201.10, the term “Egg” was updated to 2009 FDA Model Food Code language.
11. In section 1–201.10, the word “apparatuses” replaced the word “items”.
12. In section 1–201.10, the term “Exclude” was updated to meet 2009 FDA Model Food Code language.
13. In section 1–201.10, “as defined under Subparagraph 1–201.10(B)(37)” was removed from the term “Food Processing Plant”.
14. In section 1–201.10, “as defined in Subparagraph 1–201.10(B)(31)” was removed from the term “Game Animal”.
15. In section 1–201.10, “Pesticides classified for restricted use” was added to the term “General use pesticide”.
16. In section 1–201.10, “and Grade A Condensed and Dry Milk Ordinance” was removed from the term “Grade A standards”.
17. In section 1–201.10, the term “Immediate danger” was changed to “Imminent health hazard”.
18. In section 1–201.10, the term “Injected” was modified to meet 2009 FDA Model Food Code language.

19. In section 1–201.10, the term “Juice” was modified to reflect 2009 FDA Model Food Code language.
20. In section 1–201.10, “whether tenant, owner, lessee or licensee, or the agent, heir or assignee of any of these” was removed from the term “Person”.
21. In section 1–201.10, “and as defined in s. 145.01(10) Stats” was added to the term “Plumbing system”.
22. In section 1–201.10, the term “Potentially Hazardous Food” is changed to “Potentially hazardous food (time/temperature control for safety food)” and the term is updated to reflect 2009 FDA Model Food Code language.
23. In section 1–201.10, the term “Poultry” was modified to meet 2009 FDA Model Food Code language.
24. In section 1–201.10, “each individual building, space or stand where food is prepared, served or sold” is removed from the term “Premises”.
25. In section 1–201.10, statutory references were added to the term “Public water system”.
26. In section 1–201.10, the term “Ready-to-Eat Food” was modified to meet 2009 FDA Model Food Code language.
27. In section 1–201.10, the term “Reduced Oxygen Packaging” was modified to meet 2009 FDA Model Food Code language.
28. In section 1–201.10, the term “Shiga toxin–producing Escherichia coli” was modified to meet 2009 FDA Model Food Code language.
29. In section 1–201.10, the word “spinach” is replaced by the word “shrimp” for the term “Slacking”.

Chapter 2 – Management and Personal

1. In section 2–101.11, language was added to ensure that a person in charge is present during all hours of operation.
2. In section 2–102.11(A), the term “priority items” replaced the term “risk factor”.
3. In section 2–102.11(C)(9), language was added referring to the person in charge requirements to demonstrate knowledge about major food allergens.
4. In section 2–102.11(C)(15), additional language was added to this section requiring the person in charge to understand and demonstrate knowledge on approved procedures and risk control plans.
5. In section 2–102.11(C)(16), “Conditional employee” was added.
6. In section 2–102.11(C)(17), language was added to the person in charge demonstration of knowledge responsibilities for understanding reporting requirements for ill employees and the actions taken by the person in charge.
7. In section 2–102.20, language was added to indicate a Wisconsin certified food manager satisfies the demonstration of knowledge requirements.
8. In section 2–103.11(L), allergy awareness was added to the training responsibilities of the person in charge.
9. In section 2–103.11(M), language was added for the person in charge to inform employees their reporting requirements regarding information about their health and activities as they relate to diseases that are transmissible through food.
10. In section 2–201.11, the format was substantially modified to reflect 2009 FDA Model Food Code language. Norovirus has been added as reportable illness to the person in charge.
11. In section 2–201.12, the format was substantially modified to reflect 2009 FDA Model Food Code language. Exclusions and restrictions concerning Norovirus were added.
12. In section 2–201.13, the format was substantially modified to reflect 2009 FDA Model Food Code language for removal, adjustment or retention of exclusions and restrictions for ill food employees. Additional language for Norovirus was added.
13. Section 2–201.14 was removed.
14. Section 2–201.15 was removed.
15. In section 2–301.12(A), Subpart 6–301 was added for clarity.
16. In section 2–301.12(B)–(D), language was reformatted to meet 2009 FDA Model Food Code language.
17. In section 2–301.15, the approval was removed for handwashing in pre–wash sinks in new food establishments and provisions established for existing food establishments.
18. In section 2–301.16, “hand sanitizer” was changed to “hand antiseptic” and language was reformatted to meet 2009 FDA Model Food Code language.
19. In section 2–403.11, the subparagraph reference was changed from 6–501.115(B)(2)–(4) to 6–501.115(B)(2)–(5).

Chapter 3 – Food

1. In section 3–201.11, “all law relating to food and food labeling” was removed and replaced with “laws”.
2. In section 3–201.11(D), removes the term molluscan shellfish and leaves the section only applying to fish and those fish specified in subparagraph 3–402.11(B) and adds “or undercooked form”.
3. In section 3–201.11(G), removed the word “shell” when referring to eggs.
4. In section 3–201.13, removed “in ch. ATCP 80” and replaced with “law”.
5. In section 3–201.11(G), Cheese curds may be received at temperatures other than 410F was added.
6. In section 3–202.13, the word “shell” was removed from egg and “ch. ATCP 88” was removed and replaced with “Law”.
7. In section 3–202.14(A), the words “liquid, frozen and dry eggs” were removed when referring to eggs.
8. In section 3–202.14(B), the format was restructured to conform to 2009 FDA Model Food Code language.
9. In section 3–202.110, a note was added at the end providing clarification for pre–packaged juice for sale at retail and juice packaged in a food establishment.
10. In section 3–203.11(D), language was modified to include additional language regarding labeling requirements for shucked shellfish.
11. In section 3–203.12, language was restructured to meet 2009 FDA Model Food Code language.
12. In section 3–301.11, language was restructured to meet 2009 FDA Model Food Code language.

13. In section 3–302.11(A)(1)(c), language was added allowing commercially packaged raw frozen animal food to be stored with commercially packaged frozen ready–to–eat food.

14. In section 3–304.11, Single–service and single–use items were added as food contact surfaces and language was reformatted to meet 2009 FDA Model Food Code language.

15. In section 3–304.14, this section on wiping cloths and working containers was reformatted to 2009 FDA Model Food Code language.

16. In section 3–401.11(A)(2), the defined term “mechanically tenderized” is added.

17. In section 3–401.11(B), language was reformatted to meet 2009 FDA Model Food Code language.

18. In section 3–401.11(D)(2), added that undercooked comminuted meat be removed from the children’s menu.

19. In section 3–401.14, new language is added on non–continuous cooking of raw animal foods.

20. In section 3–402.11, this language was reformatted to meet 2009 FDA Model Food Code language.

21. In section 3–402.12, language is added for uncooked fish served in a ready–to–eat form and the documentation required of the fish is received from a supplier or aquaculturist.

22. In section 3–403.11(D), language was reformatted to meet 2009 FDA Model Food Code language and reheating time is extended to 2–hours.

23. In section 3–403.11(E), “roasts of beef” was changed to “meat roasts”.

24. In section 3–404.11(B)(2), warning label was modified to meet 2009 FDA Model Food Code language.

25. In section 3–501.14, language was reformatted to meet 2009 FDA Model Food Code language. Language for cheese curds was added.

26. In section 3–501.16(C), language was removed and added under 3–501.19. New language was added regarding potentially hazardous foods in a homogenous liquid form.

27. In section 3–501.17, language was reformatted to meet 2009 FDA Model Food Code language. Includes additional language for those food items that do not require date marking.

28. In section 3–501.19, language was reformatted to 2009 FDA Model Food Code language and additional sections now include provisions for time as a public health control for holding potentially hazardous foods out of temperature control for 4–hours, 6–hours, and for cheese curds.

29. In section 3–502.11(D), language was modified to 2009 FDA Model Food Code language. *Listeria monocytogenes* was added to section.

30. In section 3–502.11(G), the wording “serving or transporting” was removed.

31. In section 3–502.11(H), the wording “in a food establishment” was removed.

32. In section 3–502.11(I), language was added requiring a variance if slaughter and evisceration is done in a food establishment.

33. In section 3–502.12, language was modified to 2009 FDA Model Food Code language regarding reduced oxygen packaging.

34. In section 3–602.11(B)(5), language added that the name of the major food allergen be on the label to meet 2009 FDA Model Food Code language.

35. In section 3–602.11(D), Language was modified to 2009 FDA Model Food Code language regarding bulk unpackaged foods.

36. In section 3–603.11, language was modified to 2009 FDA Model Food Code language regarding consumer advisories.

37. In section 3–801.11, language regarding highly susceptible populations was modified regarding re–service of food and reformatted to 2009 FDA Model Food Code language.

Chapter 4 – Equipment, Utensils, and Linens

1. In section 4–101.13, (B) and (C) were added replacing sections on pewter alloys and solder and flux containing lead.

2. In section 4–101.14(B), wording was changed to italics.

3. In section 4–101.17, “lead and pewter alloys, use limitation” was removed and replaced with “wood, use limitation”.

4. In section 4–101.18, language regarding “lead in solder and flux” was removed and replaced with “nonstick coating, use limitation”.

5. In section 4–101.19, “wood, use limitation” was removed and replaced with “nonfood–contact surfaces”.

6. Section 4–101.110 was removed

7. Section 4–101.111 was removed.

8. In section 4–203.13, language was modified to 2009 FDA Model Food Code language regarding pressure gauge readings.

9. In section 4–204.13(E), language was modified to 2009 FDA Model Food Code language for dispensing equipment used to hold potentially hazardous food in a homogenous fluid.

10. In section 4–204.115(B) the word “hot water” was added for clarity.

11. In section 4–204.118(B) the word “hot water” was added for clarity.

12. In section 4–204.122, the word “equipment” was removed and replaced with “apparatuses”.

13. In section 4–205.11, language was reformatted into subparagraphs (A) and (B).

14. In section 4–301.11, the entire section was deleted and replaced with a single statement regarding equipment used for heating and cooling shall be sufficient in number and capacity to provide safe temperatures.

15. In section 4–301.12, language regarding manual warewashing sink requirements was modified to 2009 FDA Model Food Code language.

16. In section 4–301.13, the word “self–draining tables” was replaced with “drainboards” and the word “drainboards” was replaced with “tables”.

17. In section 4–301.16, wording was modified requiring the use and installation of a food preparation sink.

18. In section 4–402.11(B), the word “table–mounted” was replaced with “counter–mounted”. This same change is made throughout this section.

19. In section 4–501.113, the wording for pressure reading on gauges has been modified to current 2009 FDA Model Food Code language. 100 kilopascals was changed to 35 as a minimum pressure and 170 kilopascals was changed to 200 as a maximum pressure.

20. In section 4–501.114, wording for EPA registered label use instructions has been added and the section is modified to 2009 FDA Model Food Code language.

21. In section 4–703.11(C), wording was added referring that chemical contact times shall be consistent with those on EPA registered label use instructions.

22. In section 4–802.11(B), the words “or poultry” have been added to the use of cloth gloves.

23. In section 4–901.11(A), language was modified to 2009 FDA Model Food Code language by adding CFR 180.940 reference.

24. In section 4–904.13, was reformatted to 2009 FDA Model Food Code language.

25. In section 4–904.14, language was added with respect to rinsing after sanitation of equipment and utensils and section was modified to 2009 FDA Model Food Code language.

Chapter 5 – Water, Plumbing, and Waste

1. In section 5–101.12, language was provided from the department of safety and professional services regarding a drinking water system and the section was reworded from those recommendations.

2. In section 5–102.12(B), the word “and irrigation” was removed.

3. In section 5–102.14, language was modified to 2009 FDA Model Food Code language for water sample reports.

4. In section 5–202.11(B) language was modified that plumbing fixtures shall be easily cleanable. Language was modified to 2009 FDA Model Food Code language.

5. In section 5–203.12, Wisconsin language was replaced with 2009 FDA Model Food Code language regarding toilet and urinal requirements.

6. In section 5–203.13(B), language was added that toilets and urinal shall not be used as a service sink. And (C) was added that alternative methods may be approved by the department.

7. In section 5–203.15, the word “double” is replaced by the word “dual”.

8. In section 5–402.11, backflow prevention language was modified to 2009 FDA Model Food Code language.

9. In section 5–402.13, language was modified to reflect SPS 382–384 administered by the department of safety and professional services and NR 113 as administered by the department of natural resources.

Chapter 6 – Physical Facilities

1. In section 6–102.11(A), the language “and refuse storage” was removed.

2. In section 6–102.11(C), the reference to 5–501.11 is added.

3. Section 6–202.110 was added regarding outdoor refuse areas, curbed and graded to drain.

4. In section 6–301.12(C) and (D) we added providing alternative hand drying devices.

5. In section 6–303.11(A), the wording “in walk–in refrigeration units” was added to section on light intensity.

6. In section 6–303.11(B)(3), the wording “in walk–in refrigeration units” was deleted.

7. In section 6–501.18, language was reformatted to 2009 FDA Model Food Code language.

8. In section 6–501.111, language was added that the premise shall be maintained free of insects, rodents, and other pests.

Chapter 7 – Poisonous or Toxic Materials

1. In section 7–202.12(B)(1), language was added that pesticides must be applied so as not to create a hazard to employees.

2. In section 7–204.11(B), new language was added removing 21 CFR reference and replacing with 40 CFR reference.

3. In section 7–204.12, wording for “treatment, storage and processing” was added to the title. New language was added to (B) for ozone as an antimicrobial agent.

4. In section 7–206.11, the specific CFR reference was inserted.

Chapter 8 – Public Toilet Rooms

1. Section 8–101.10 was added providing information that this section refers to toilet rooms provided for the general public.

2. In section 8–201.12, the language and title for “enclosures” was removed and replaced with wording and title for “location”.

3. Sections 8–201.14 to 8–201.17 are renumber to 8–201.13 to 8–201.16.

4. In section 8–301.11(D), wording for reference 5–201.12(C) was added.

Chapter 9 – Mobile Food Establishments

1. Section 9–102, “restricted operation” was reworded to “warewashing operation”

2. In section 9–102.11, language was modified to reflect what conditions need to be met if warewashing is not provided on a mobile food establishment.

3. In section 9–104.11(C), the word “department” is replaced with “regulatory authority”.

4. In section 9–104.11(C), the wording “at a temporary event” was added for clarification.

5. Section 9–4 was deleted and the space “reserved” for future use.

6. Section 9–501.11, the title and wording for “restrictions” was replaced with the title and new wording for “bottled or liquefied gas”.

7. Section 9–502.11 was renamed from “bottled and liquefied gas” to “toilet facilities” and section 9–503.11 referring to toilet facilities was deleted.

Chapter 12 – Certified Food Manager

1. In section 12–101.11, the language was reformatted for clarification.

2. In section 12–1001–12(A), wording was clarified that certified food manger means an individual.

3. In section 12–301.11(M), wording is provided for clarification that the exam for food manager certification conforms to the Conference for Food Protection Standards for Accreditation of Food Protection Manager Certification Programs.

4. In section 12–301.11(O), the wording “testing service” is added to provide clarification.

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

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

The FDA, the United States Department of Health and Human Services, and the United States Department of Agriculture encourage state and local governments to adopt retail food safety regulations that are consistent with the FDA Model Food Code. The existing Wisconsin Food Code reflects the 2005 FDA Model Food Code. This proposed order updates the Wisconsin Food Code to incorporate changes in the 2009 FDA Model Food Code.

Comparison with rules in adjacent states

All the states adjacent to Wisconsin have adopted restaurant regulations based on some version of the FDA Model Food Code:

Illinois: Illinois’ current regulations are based on the 2005 FDA Model Food Code.

Iowa: Iowa’s current regulations are based on the 2005 FDA Model Food Code.

Michigan: Michigan’s current regulations are based on the 2005 FDA Model Food Code.

Minnesota: Minnesota’s current regulations are based on the 1997 FDA Model Food Code. Like Wisconsin, Minnesota is proposing this year to update its regulations based on the 2009 FDA Model Food Code.

Summary of factual data and analytical methodologies

The existing Wisconsin Food Code is based on the 2005 FDA Model Food Code. This proposed order updates the Wisconsin Food Code based to the 2009 FDA Model Food Code. DHS and DATCP developed this rule in consultation with an advisory committee that included local health agencies (urban and rural), the Wisconsin Restaurant Association, the Tavern League of Wisconsin, the Wisconsin Grocers Association, Wisconsin Technical Colleges, Wisconsin department of public instruction, and the University of Wisconsin Extension–Food Service.

Analysis and supporting documents used to determine effect on small business

The FDA developed and published the Model Food Code based on the best available science and information related to food safety. The FDA Model Food Code encourages consistent state and local regulation of food establishments. Numerous states have adopted state food regulations based on the FDA Model Food Code. The FDA Model Food Code and the subsequent changes to the Wisconsin Food Code represent minimum requirements for safe food handling. DHS drafted the proposed changes in consultation with DATCP and an advisory committee included local health agencies (urban and rural), the Wisconsin Restaurant Association, the Tavern League of Wisconsin, the Wisconsin Grocers Association,

Wisconsin Technical Colleges, Wisconsin Department of Public Instruction, and the University of Wisconsin Extension–Food Service.

Small Business Considerations

(a) *The establishment of less stringent compliance or reporting requirements for small businesses*

The proposed rule contains the minimum requirements for safe food handling. DHS is unable to lessen or exempt small business from the requirements of this proposed rule offer the option for a variance or comparable compliance.

(b) *The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses*

The proposed rule contains the minimum requirements for safe food handling. DHS is unable to lessen or exempt small business from the requirements of this proposed rule or offer the option for a variance or comparable compliance.

(c) *The consolidation or simplification of compliance or reporting requirements for small businesses* The changes contain the minimum requirements for safe food handling. The proposed rule contains minimal reporting requirements mainly centered on alternative procedures that validate if a product or process is maintained safe.

(d) *The establishment of performance standards for small businesses to replace design or operational standards required in the rule*

The Wisconsin Food Code is based on the FDA Model Food Code which is a performance based code. This allows small business the opportunity to prepare foods many different ways as long as they can show that the processes and the product are maintained safe.

(e) *The exemption of small businesses from any or all requirements of the rule*

The proposed rule contains the minimum requirements for safe food handling to protect the general public. DHS is unable to lessen or exempt small business from the requirements of this proposed rule. The department does offer the option for a variance or comparable compliance.

Effect on Small Business

The rule adds some minor new requirements for some restaurants, but these requirements are not expected to impose any burdens. This rule will benefit businesses that have combined restaurant and grocery operations, because it will maintain consistency with DATCP retail food establishment rules.

Statement on the Quality of the Agency Data

DHS relied on the 2009 FDA Model Food Code to make changes to the Wisconsin Food Code. DHS also developed the proposed changes in consultation with local health agencies (urban and rural), the Wisconsin Restaurant Association, the Tavern League of Wisconsin, the Wisconsin Grocers Association, Wisconsin Technical Colleges, Wisconsin Department of Public Instruction, and the University of Wisconsin Extension–Food Service.

Initial Regulatory Flexibility Analysis

Please refer to the “*Analysis and supporting documents used to determine the effect on small businesses or in preparation of an economic impact analysis*” subsection of this hearing notice for the initial regulatory flexibility analysis.

Fiscal Estimate–Economic Impact Analysis

The Fiscal Estimate–Economic Impact Analysis is attached to this hearing notice.

P.O. Box 2659
 Madison, WI 53702–2659
 Telephone (608) 261–8361
 E–Mail: james.kaplanek@wisconsin.gov

Agency Contact Person

James Kaplanek
 Department of Health Services– Bureau of Environmental & Occupational Health
 1 West Wilson Street

Text of the Proposed Rule

Please refer to the “*Plain language analysis*” subsection of this hearing notice for a summary of the proposed rule. A copy of the proposed rule may be obtained as provided above.

STATE OF WISCONSIN DEPARTMENT OF ADMINISTRATION DOA 2049 (R 07/2011)		
ADMINISTRATIVE RULES FISCAL ESTIMATE AND ECONOMIC IMPACT ANALYSIS		
Type of Estimate and Analysis		
<input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected		
Administrative Rule Chapter, Title and Number		
DHS 196 Restaurants		
Subject		
<p>The proposed rules update ch. DHS 196 and its appendix, the Wisconsin Food Code to the 2009 FDA Model Food Code to reflect current trends, science and policy. The FDA model Food Code provides practical, science–based guidance and enforceable provisions for mitigating risk factors known to cause foodborne illness. The FDA Model Food Code is a reference document for regulatory agencies that oversee food safety in restaurants, retail food stores, and other food establishments at the retail level.</p> <p>In addition to making revisions to the Wisconsin Food Code, the department proposes changes to ch. DHS 196, to clarify language requiring plan reviews for new and extensively remodeled restaurants and additional areas; update references to the 2009 federal FDA Model Food Code; add a new definition for “extensively remodeled”; to update and relocate the definitions “general public”, “meal”, “occasional” and “temporary restaurant” from the Wisconsin Food Code to ch. DHS 196, where they were previously located.</p>		
Fund Sources Affected		Chapter 20 , Stats. Appropriations Affected
GPR FED <input checked="" type="checkbox"/> PRO PRS SEG SEG–S		
Fiscal Effect of Implementing the Rule		
<input checked="" type="checkbox"/> No Fiscal Effect Indeterminate	<input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Decrease Existing Revenues	<input type="checkbox"/> Increase Costs <input type="checkbox"/> Could Absorb Within Agency’s Budget <input type="checkbox"/> Decrease Costs
The Rule Will Impact the Following (Check All That Apply)		
<input type="checkbox"/> State’s Economy	<input checked="" type="checkbox"/> Specific Businesses/Sectors	
<input checked="" type="checkbox"/> Local Government Units	<input type="checkbox"/> Public Utility Rate Payers	
Would Implementation and Compliance Costs Be Greater Than \$20 million?		
Yes <input checked="" type="checkbox"/> No		
Policy Problem Addressed by the Rule		
<p>The policy problem addressed by this rulemaking is outdated science with respect to food safety practices. The proposed changes updates the existing Wisconsin Food Code to the 2009 FDA Model Food Code. DHS last revised the Wisconsin Food Code in 2006 when it adopted the 2005 FDA Model Food Code in a joint effort with DATCP which administers the Wisconsin Food Code (appendix to ch. ATCP 75) with respect to licensing and inspection of retail food establishments such as grocery stores. Since that time food safety practices have advanced and the new 2009 FDA Model Food Code reflect the current science regarding food safety practices, procedures, and policies. The FDA Model Food Code is a living breathing document that is updated every 4–years to reflect current thinking and science in the areas of food safety. Wisconsin tries to adhere to that schedule to provide their operators the most updated rules that reflect current trends and science in food safety.</p>		

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

The proposed rule was posted for comment for 14 days from July 16, 2012 to July 30, 2012 in accordance with s. 227.137, Stats., and Executive Order #50 to solicit comments on the economic impact of the proposed rule for preparation of this economic impact analysis. One person provided comments in response to the department's solicitation. The commenter commented on the layout of the proposed rule and requested clarification as to some of the changes.

There were no comments received from businesses, associations representing businesses, local governmental units, or individuals that suggest that the proposed changes 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.

The department does not expect any increase in costs with the implementation of this rule by business. The rule in fact gives operators wider latitude in implementing various food safety requirements. The proposed rule also incorporates other process and procedures that were previously only an option through the variance process, thereby decreasing the paperwork required to implement various procedures or processes. These processes include, but are not limited to Sous Vide, Reduced Oxygen Packaging, and Partial Cooking.

The department does not expect any increase in costs with the implementation of this rule by local government. The proposed rule does not change the inspection process or the way in which inspections are conducted. The rule provides inspectors alternatives that can be shared with operators to assist them in meeting compliance with the rule.

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

The proposed changes will positively affect operators of food service operations, state and local food safety inspectors, and the general public throughout the state by simplifying and clarifying the language of ch. DHS 196 and the Wisconsin Food Code. This rule will benefit businesses that have combined restaurant and grocery operations, because it will maintain consistency with DATCP retail food establishment rules. This rule will benefit affected businesses by clarifying existing regulatory requirements. In some cases, this rule gives affected businesses wider latitude to choose a preferred method of compliance. The proposed code reflects current science with respect to food processes and food safety practices. The alternative is not to adopt current rules, thereby denying restaurant operators the opportunity to take advantage of new and emerging trends in the areas of food preparation and processing.

Long Range Implications of Implementing the Rule

This rule affects restaurants. Many of these businesses are small businesses. This rule will benefit affected businesses by clarifying existing regulatory requirements. In some cases, this rule gives affected businesses wider latitude to choose a preferred method of compliance.

Compare With Approaches Being Used by Federal Government

There are no federal regulations that specifically address retail food operations. However, FDA publishes a model food code that is based on the best available science and information related to retail food safety.

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

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

All the states adjacent to Wisconsin have adopted restaurant regulations based on some version of the federal model food code:

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

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

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

Minnesota: Minnesota's current regulations are based on the 1997 edition of the federal model food code. Like Wisconsin, Minnesota is proposing this year to update its regulations based on the 2009 edition of the federal model food code.

Name and Phone Number of Contact Person
James Kaplanek 608-261-8361

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. NR 1—

CR 12-022

(DNR # FH-21-11)

Creates section NR 19.058, relating to requiring access to wire cutters when trolling in outlying waters.

This rule was approved by the governor on August 14, 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.

Controlled Substances Board CR 12–010

An order of the Controlled Substances Board to create Chapter CSB 3, relating to the requirements and procedures for granting special use authorization.
Effective 10–1–12.

Safety and Professional Services — Massage Therapy and Bodywork Therapy Affiliated Examining Board CR 08–086

An order to create section SPS 91.01 (3) (k) and SPS 93.02 (4), relating to training and proficiency in the use of automated external defibrillators for licensure as a massage therapist or bodywork therapist.

(Chapters SPS 91 and 93 were renumbered Chapters MTBT 2 and 4, effective 9–1–12, and the created sections will be renumbered accordingly by the Legislative Reference Bureau.)
Effective 10–1–12.

The State of Wisconsin
Department of Administration
Bureau of Document Services
Document Sales and Distribution Section
4622 University Avenue
Madison, Wisconsin 53705-2156



First Class Mail

Dated Material. Please Do Not Delay!