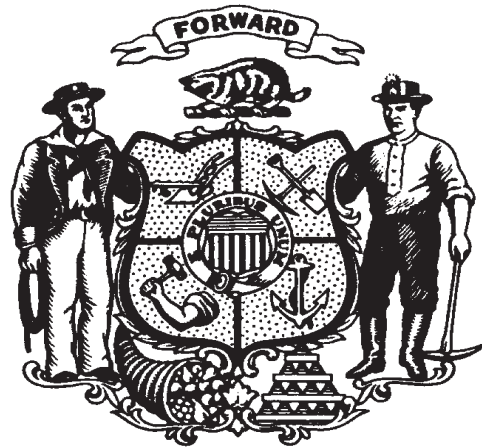


Wisconsin Administrative Register

No. 684



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WISCONSIN ADMINISTRATIVE REGISTER

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Emergency Rules Now in Effect

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

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

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

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

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

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

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

Agriculture, Trade and Consumer Protection (2)

1. 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

Hearing Date: October 12, 2012

2. EmR1213 (DATCP Docket # 11-R-11) — The Wisconsin department of agriculture, trade and consumer protection hereby adopts the following emergency rule to amend **sections ATCP 55.04 (title), (2) (title), (a) and (b), and (6), 55.07 (1) (a), (2) (a) and (3) (a)**; and to create **sections ATCP 55.02 (4m), 55.03 (2) (f), 55.04 (1m), 55.06 (5) (j), 55.07 (1) (c), (2) (d) and (3) (c)**, relating to allowing certain selected Wisconsin state-inspected meat establishments to sell meat and meat products in other states and thereby affecting small business.

This rule was approved by the governor on September 6, 2012.

The statement of scope for this rule, SS 005-12, was approved by the governor on January 11, 2012, published in Register No. 673, on January 31, 2012, and approved by the Natural Resources Board on February 22, 2012.

Finding of Emergency

The department of agriculture, trade and consumer protection finds that an emergency exists and that the attached rule is necessary for the immediate preservation of the public welfare. Statements of the facts constituting the emergency are:

(1) Wisconsin has more than 270 small state-inspected meat establishments that contribute to the vitality of the state's rural economy, producing many unique, specialty products. Wisconsin's state-inspected meat and poultry establishments are inspected by Wisconsin's Bureau of Meat Safety and Inspection under a cooperative agreement with the United States Department of Agriculture's (USDA's) Food Safety and Inspection Service (FSIS) program. Under the cooperative agreement, state meat inspection programs must provide inspection that is "at least equal to" federal inspection under the Federal Meat Inspection Act (FMIA) (21 USC 661) and the Poultry Products Inspection Act (PPIA) (21 USC 454). State-inspected meat and poultry establishments are prohibited from selling their products in other states.

(2) USDA recently established the new Cooperative Interstate Shipment (CIS) program, which will allow state-inspected meat and poultry establishments to sell their products in other states. To qualify for participation in the CIS program, state meat and poultry inspections programs must inspect establishments that volunteer to participate in the program using procedures that are the "same as", rather than "at least equal to," USDA's federal inspections under FMIA and PPIA. This emergency rule incorporates certain federal regulations that Wisconsin's state meat inspection program

must adopt in order to establish a regulatory foundation deemed the “same as” the foundation for the federal program, and thereby allowing Wisconsin to participate in the CIS program.

(3) The department of agriculture, trade and consumer protection (DATCP) is adopting this emergency rule to prevent a potential hardship to Wisconsin’s state-inspected meat establishments selected to participate in the program; adoption of the emergency rule will ensure that these establishments are not prevented from selling their meat and poultry products in other states because the pending “permanent” rules cannot be adopted in time.

Filed with LRB: September 10, 2012
Publication Date: September 13, 2012
Effective Dates: September 13, 2012 through February 9, 2013
Hearing Date: October 15, 18, 19, 2012

Children and Families

Safety and Permanence, Chs. DCF 37–59

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

This emergency rule was approved by the governor on August 28, 2012.

The statement of scope for this rule, SS 040–12, was approved by the governor on June 8, 2012, published in Register No. 678 on June 30, 2012, and approved by Secretary Eloise Anderson on July 16, 2012.

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
Hearing Date: November 30, 2012

Children and Families

Early Care and Education, Chs. DCF 201–252

EmR1216 — The Wisconsin Department of Children and Families orders the creation of **section DCF 201.04 (2j)**, relating to circumstances for a waiver to allow child care subsidy payments for a parent who is a child care provider and affecting small businesses.

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

The statement of scope for this rule, SS 054–12, was approved by the governor on July 30, 2012, published in Register No. 680 on August 14, 2012, and approved by Secretary Eloise Anderson on August 27, 2012.

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:

Section 49.155 (3m) (d), Stats., as affected by 2011 Wisconsin Act 32, provides that no child care subsidy funds may be used for child care services that are provided for a child by a child care provider who is the parent of the child or who resides with the child. In addition, no child care subsidy funds may be used for child care services that are provided by another child care provider if the child’s parent is a child care provider. The prohibition on assistance does not apply if the child’s parent has applied for, and been granted, a waiver. Implementation of an emergency rule specifying the circumstances under which the department or an agency will grant a waiver is necessary to protect certain vulnerable children.

Filed with LRB: November 13, 2012
Publication Date: November 15, 2012
Effective Dates: November 15, 2012 through April 13, 2013
Hearing Date: January 14, 2013

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
Extension Through: January 28, 2013

Justice

EmR1217 — The State of Wisconsin Department of Justice (“DOJ”) proposes an order to 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; the recognition by Wisconsin of concealed carry licenses issued by other states; and the certification of firearms safety and training instructors.

The statement of scope for these emergency rules 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.

These emergency rules were approved in writing by the governor on December 4, 2012, pursuant to Wis. Stat. s. 227.24 (1) (e) 1g.

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. In order for DOJ to accomplish that goal and comply with all applicable statutory requirements, it is necessary to continuously have in effect administrative rules establishing the procedures and standards that govern the enforcement and administration of those requirements.

Emergency rules governing the licensing process were first adopted on October 25, 2011, and have been continuously in effect since November 1, 2011. The emergency rules were subsequently repealed and recreated with an effective date of March 21, 2012. Pursuant to s. 227.24 (2) (a), Stats., the Joint Committee for the Review of Administrative Rules has authorized the current emergency rules to remain in effect through December 15, 2012.

DOJ is in the process of promulgating permanent administrative rules which, when completed, will replace the emergency rules. On September 5, 2012, the final draft of the proposed permanent rules and accompanying reports were submitted for legislative review, pursuant to s. 227.19 (2), Stats. The permanent rulemaking process, however, will not be completed prior to the anticipated expiration of the existing emergency rules on December 15, 2012. Upon such expiration, DOJ would no longer have in effect administrative rules establishing the procedures and standards that govern the concealed carry licensing program. Any such lack of continuity in the operation of the licensing program would be confusing and disruptive both for license applicants and for DOJ staff administering the program.

The public welfare thus requires that additional emergency rules be promulgated, in order to ensure that there is no interruption in DOJ’s ability to continue to carry out all of its statutory responsibilities in administering and enforcing the concealed carry licensing program. These rules will prevent such a discontinuity and ensure continuous and uniform

operation of the concealed carry program through the time of completion of the permanent rulemaking process that is already under way. Only if DOJ utilizes the emergency rulemaking procedures of s. 227.24, Stats., can these 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: December 10, 2012
Publication Date: December 15, 2012
Effective Dates: December 15, 2012 through May 13, 2013

Natural Resources (4)

Fish, Game, etc., Chs. NR 1—

1. 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

2. 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

(corrected) the date on which the permanent rules take effect, as provided in 2011 Wisconsin Act 169, section 21.

3. EmR1214 (DNR # WM–02–12(E)) — The Wisconsin Natural Resources Board proposes an order to repeal and recreate **sections NR 10.01 (1) (b), (g) and (u), 10.06 (9) (a) and 10.32,** to amend **section NR 10.01 (1) (v),** and to create **section NR 10.12 (3) (e),** relating to hunting and the 2012 migratory game bird seasons and waterfowl hunting zones.

This emergency rule was approved by the governor on September 6, 2012.

The statement of scope for this rule, SS 011–12, 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 May 23, 2012.

Finding of Emergency

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to protect

the public welfare. The federal government and state legislature have delegated to the appropriate agencies rule–making authority to control the hunting of migratory birds. The State of Wisconsin must comply with federal regulations in the establishment of migratory bird hunting seasons and conditions. Federal regulations are not made available to this state until late July of each year. This order is designed to bring the state hunting regulations into conformity with the federal regulations. Normal rule–making procedures will not allow the establishment of these changes by September 1. Failure to modify our rules will result in the failure to provide hunting opportunity and continuation of rules which conflict with federal regulations.

Filed with LRB: September 10, 2012

Publication Date: September 12, 2012

Effective Dates: September 13, 2012 through February 9, 2013

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

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

The statement of scope for this rule, SS 038–12, was approved by the governor on May 29, 2012, published in Register No. 678, on June 14, 2012, and approved by the Natural Resources Board on June 27, 2012.

Finding of Emergency

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

Filed with LRB: September 14, 2012

Publication Date: October 1, 2012

Effective Dates: October 1, 2012 through February 27, 2013

Scope Statements

Natural Resources

Fish, Game, etc., Chs. NR 1—

SS 097–12

The statement of scope was approved by the governor on December 14, 2012.

Rule No.

FH–23–12(E) Revising Chapter NR 25.

Relating to

Lake Trout harvest limits in Lake Superior.

Rule Type

Emergency.

Finding/Nature of Emergency (Emergency Rule Only)

The welfare of state–licensed commercial fishers, tribal commercial fishers, recreational anglers, and associated businesses is threatened by a decline in the lake trout population in the Apostle Islands vicinity of Lake Superior. The emergency rule is necessary to implement harvest limits for the 2012–13 lake trout commercial harvest season.

Detailed Description of the Objective of the Proposed Rule

The purpose of the emergency rule is to amend Lake Superior lake trout harvest limits as required by revisions to the State–Tribal Lake Superior Agreement. The total allowable catch of lake trout in Wisconsin waters of Lake Superior is divided among tribal commercial fisheries, state–licensed commercial fisheries, tribal subsistence fishers, and state sport anglers. The 10–year State–Tribal Lake Superior Agreement specifies annual allowable lake trout harvests, defines refuges and special fishing areas, and establishes other terms and arrangements for state and tribal commercial fishing. The Agreement was last negotiated in 2005, and has been amended twice, most recently in November 2009. Lake trout harvest limits were amended in October 2012 among the Department of Natural Resources and the Red Cliff and Bad River Bands of Lake Superior Chippewa and those changes must be ordered through Administrative Code.

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 allowable lake trout harvests are reviewed by a state–tribal biological committee, using the latest available data and modeling results. Based on those results and recommendations from the biological committee, the Agreement is re–negotiated as needed to change the total annual harvest of lake trout by all fishers, and possibly to address other issues related to shared harvest of lake trout and other species by state and tribal fishers.

There has been a steady decline in lean lake trout abundance in Lake Superior since the early 2000s. This decline has been confirmed by independent surveys

conducted by the department and has been projected by models used to set safe harvest levels. Some level of decline was expected due to high harvest limits in the early 2000s, which were in response to several large year classes (numbers of fish spawned in the same year) predicted to enter the fishery. However, sea lamprey mortality over the last eight years has also been higher than Lake Superior target levels. This combination of increased harvest and lamprey mortality has caused lake trout abundance to decline. While relatively stable abundances of spawning lake trout suggest that this decline is still reversible, action needs to be taken to arrest the lean lake trout population's decline. The continued, persistent decline in lake trout population abundances and predicted further declines necessitate the current reductions in order to ensure a sustainable lake trout fishery over the long–term.

The rule will reduce the annual commercial fishing harvest limit for lake trout on Lake Superior, revise rules limiting gill–net fishing effort, and authorize limitations on recreational fishing if the recreational lake trout harvest exceeds specified limits. Rule alternatives are not being considered because the recommendations have been negotiated to develop the State–Tribal Lake Superior Agreement.

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

The proposed rule amends the annual commercial fishing harvest limit for lake trout on Lake Superior, which is an “outlying water.” Commercial fishing harvest limits are authorized under s. 29.014(1), Stats., which directs the department to establish and maintain any bag limits and conditions governing the taking of fish that will conserve the fish supply and ensure the citizens of this state continued opportunities for good fishing.

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

Section 29.519 (1m) (b), Stats., grants discretion to the department to establish commercial fish species harvest limits after giving due consideration to the recommendations made by the commercial fishing boards. It also specifies that the limitations on harvests must be based on the available harvestable population of fish and in the wise use and conservation of the fish, so as to prevent over–exploitation.

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

Employees may spend up to 200 hours in total developing the emergency rule. It will require in–state travel to meet with tribal negotiators.

List with Description of All Entities that May Be Affected by the Proposed Rule

- State–licensed commercial fishers on Lake Superior
- Recreational fishers on Lake Superior
- Red Cliff Band of Lake Superior Chippewa
- Bad River Band of Lake Superior Chippewa

State–licensed and tribal commercial fishers may be affected by the amount of fish they are able to harvest. It is not

expected that fishers will have any compliance expenditures or reporting changes associated with the rule.

Summary and Preliminary Comparison with Any Existing or Proposed Federal Regulation that Is Intended to Address the Activities to be Regulated by the Proposed Rule

No federal regulations apply.

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

The rule may limit the commercial harvest of lake trout and other species by state-licensed and tribal commercial fishers. The total dockside value of the reported state commercial lake trout harvest in 2011 was approximately \$20,000. Harvest is not expected to be reduced by more than 25% and therefore the lost value of lake trout is not expected to exceed \$5,000. However, this rule will also limit the amount of gill net effort commercial fishers can use to target whitefish since lake trout are frequently caught in the same nets. Reductions in gill net effort therefore have the potential to cause commercial fishers additional income reductions. The total dockside value of whitefish harvested by state commercial fishers in gill nets was approximately \$160,000 in 2011. Harvest is expected to be reduced by no more than 25% putting the total loss at no more than \$40,000 and likely less because fishers can shift to using trap nets that are not subject to the same effort restrictions governing gill nets. Moreover, commercial fishers can continue current efforts to adjust the location, time, and manner in which they set gill nets targeting whitefish so as to reduce harvest of non-target lake trout. The exact amount of economic impact is unknown, but is not expected to exceed \$50,000.

Contact Person

William Horns, Great Lakes Fisheries Specialist, 608-266-8782.

**Safety and Professional Services —
Wisconsin Auctioneer Board**

SS 093-12

The statement of scope was approved by the governor on December 4, 2012.

Rule No.

Section SPS 128.04.

Relating to

Educational programs.

Rule Type

Permanent.

Finding/Nature of Emergency (Emergency Rule Only)

N/A.

Detailed Description of the Objective of the Proposed Rule

The Wisconsin Auctioneer Board seeks to amend section SPS 128.04 to allow persons who have extensive knowledge regarding the sale of goods and real estate, but are not

auctioneers, or attorneys, or real estate appraisers, be a course instructor to teach continuing education.

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 seeks to amend various provisions of Chapter SPS 128 because section SPS 128.04 (6) only permits Wisconsin licensed auctioneers, Wisconsin licensed attorneys, and real estate appraisers who are approved by the AQB of the Appraisal Foundation to provide continuing education. The Board is concerned that: (1) professionals in the field of auctioneering who are licensed in the other states, or (2) unlicensed professionals who work in state agencies, or (3) other licensed professionals in this state would not be able to provide expert knowledge regarding the sale of goods and real estate. The Board seeks to expand the types of course instructors that can provide continuing education in this state in order to best protect the public by increasing the knowledge base of licensed auctioneers.

For example, it would be very helpful to auctioneers if licensed real estate salespersons and/or brokers could provide continuing education on real estate matters. It would also be very helpful if tax professionals can teach on state and federal tax laws, which apply to auctions, or if a professional from the Department of Transportation can provide continuing education on the motor vehicle auction requirements. As a final example, it would be helpful if a professional with expert knowledge regarding certain goods, such as the value of specific antiques, could provide continuing education.

The Board concludes that the proposed rule amendment would benefit auctioneers and the public by allowing professionals, including Wisconsin licensed professionals, to assist auctioneers in increasing their understanding in the various fields related to auctioneering.

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

Section 480.04 (1), Stats., authorizes the Board to “advise the secretary on matters relating to auctioneers or auction companies.” Section 480.04 (2), Stats. states that “the Board does not have rule-making authority.” The department has rulemaking authority under section 480.06, Stats.

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

80 hours.

List with Description of All Entities that May Be Affected by the Proposed Rule

Auctioneers and other professionals yet to be determined.

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)

None.

Contact Person

Kris Anderson, DSPS (608) 261-2385.

Safety and Professional Services — Pharmacy Examining Board

SS 094-12

The statement of scope was approved by the governor on December 4, 2012.

Rule No.

Sections Phar 7.08 (1), 8.05, 8.07 (2), and 8.09.

Relating to

Electronic prescriptions for schedule II controlled substances.

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 7.08 (1) and note, ss. Phar 8.05, 8.07 (2), and 8.09, to allow pharmacists/pharmacies to dispense a Schedule II controlled substance with an electronic prescription by a practitioner, instead of only pursuant to a written order. Further, the Board seeks to modify the above rules to allow pharmacists/pharmacies to dispense a Schedule II controlled substance in emergency cases with the requirement that the prescription is promptly reduced to a written hard copy or electronic record.

2011 Wisconsin Act 159 provides that, except when dispensed directly by a practitioner, other than a pharmacy, to an ultimate user, a Schedule II controlled substance may be dispensed by a pharmacy by either a written hard copy or electronic prescription of a practitioner. Act 159 also provides that when a Schedule II controlled substance is dispensed upon an oral prescription in an emergency, the prescription must be reduced promptly to a written hard copy or electronic record.

Prior to 2011 Act 159, except when dispensed directly by a practitioner, other than a pharmacy, to an ultimate user, no controlled substance included in Schedule II could be dispensed without the written prescription of a practitioner under s. Phar 8.05 (4). However, in emergency situations, under s. Phar 8.09, Schedule II controlled substances could be dispensed upon oral or electronic prescription of a practitioner, reduced promptly to writing, and filed by the pharmacy.

As a result of the statutory changes to ss. 450.11 (2), 961.38 (1r), and 961.38 (2), Stats., due the passage of 2011 Act 159, the Board has determined that the above rules must be amended to conform to the revised statutes.

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

The proposed modifications to s. Phar 7.08 (1) and note, ss. Phar 8.05, 8.07 (2), and 8.09 would allow a pharmacy/pharmacist to use modern technology to dispense Schedule II controlled substances in a manner that efficiently meets patient needs by allowing electronic prescriptions for all Schedule II controlled substances and allowing oral

prescriptions to be reduced to an electronic record while maintaining public safety.

The Board seeks to conform the above rules to the revised statutes. Moreover, the Board has determined that the rules, as they currently exist, do not grant enough flexibility for patients to have their prescriptions received by the pharmacy of their choice in a timely manner.

The Board has determined that the rule changes will help to cut down on dispensing errors or patients misplacing their written prescription orders by allowing electronic prescriptions for Schedule II controlled substances, rather than only written prescription orders.

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 450.02 (3) (d), Stats., authorizes the Board to promulgate rules necessary for the administration and enforcement of Chapters 450 and 961, Stats.

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

30 hours.

List with Description of All Entities that May Be Affected by the Proposed Rule

Pharmacies, pharmacists, and practitioners.

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

Federal law under 21 C.F.R. Parts 1300, 1304, 1306, and 1311 pertain to the transfer of electronic prescriptions. The Drug Enforcement Administration (DEA) revised its rules, effective June 1, 2010, to provide practitioners with the option of writing prescriptions for controlled substances electronically. The regulations permit pharmacies to receive, dispense, and archive these electronic prescriptions. The regulations provide pharmacies, hospitals, and practitioners with the ability to use modern technology for controlled substance prescriptions while maintaining the closed system of controls on controlled substances dispensing. In effect, federal law permits Wisconsin to allow schedule II controlled substances to be dispensed by a pharmacy upon an oral prescription of a practitioner, that is promptly reduced to a written hard copy or electronic record, and filed by the pharmacy, as provided in 2011 WI Act 159.

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

Minimal or no economic impact.

Contact Person

Sharon Henes (608) 261-2377.

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

SS 095–12

The statement of scope was approved by the governor on December 4, 2012.

Rule No.

Section Phar 7.04 (1) (e) 2.

Relating to

Return or exchange of health items.

Rule Type

Permanent.

Finding/Nature of Emergency (Emergency Rule Only)

N/A.

Detailed Description of the Objective of the Proposed Rule

The Board seeks to amend s. Phar 7.04 (1) (e) 2., which defines “secured institutional health care patient” by references to Wis. Stat. s. 938.02 that were either repealed, recreated, or renumbered in 2005 Wis. Act 344. The changes proposed by this scope statement would further amend the terms in s. Phar 7.04 (1) (e) 2. to match the terms referenced in Wis. Stat. s. 938.02 and also repeal the Note following s. Phar 7.04 (1) (e) 2.

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

The policies upon which s. Phar 7.04 (1) (e) 2. rest have not changed since the time this rule was originally promulgated. This rule-making is proposed strictly for the purpose of making the administrative rule consistent with the statutes referenced therein.

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

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

Section 450.02 (3), Stats. The board may promulgate rules: (a) Relating to the manufacture of drugs and the distribution and dispensing of prescription drugs. (b) Establishing security standards for pharmacies. (c) Relating to the manufacture, distribution and dispensing of hypodermic syringes, needles and other objects used, intended for use or designed for use in injecting a drug. (d) Necessary for the administration and enforcement of this Chapter and Ch. 961, Stats. (e) Establishing minimum standards for the practice of pharmacy. (f) Establishing procedures for identifying pharmacists impaired by alcohol or other drugs or physical or mental disability or disease and for assisting those pharmacists in obtaining treatment.

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

No entities will be affected by the proposed amendments to s. Phar 7.04 (1) (e) 2., as neither the statutory reference changes, nor the changes in terminology have any substantive 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

There are no federal regulations comparable to s. Phar 7.04 (1) (e); the Wisconsin statutes and rules involved in this proposed rule-making set forth definitions of terms applicable to Wisconsin only.

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

None.

Contact Person

Sharon Henes, (608) 261–2377.

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

SS 096–12

The statement of scope was approved by the governor on December 4, 2012.

Rule No.

Section Phar 7.015.

Relating to

Pharmacy technicians.

Rule Type

Permanent.

Finding/Nature of Emergency (Emergency Rule Only)

N/A.

Detailed Description of the Objective of the Proposed Rule

The Pharmacy Examining Board seeks to add two requirements for a person to qualify as a “pharmacy technician” under s. Phar 7.015 (1): the person must be 18 years of age or older and the person must have a high school diploma or equivalent education.

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 is authorized to promulgate rules establishing the minimum standards for the practice of pharmacy, which includes the supervision of pharmacist support personnel. Pharmacy technicians are non-pharmacists and non-pharmacist-interns who are considered pharmacy support personnel. In order to better protect the public, the Board is seeking to amend s. Phar 7.015 to create a new provision requiring that pharmacies may only hire pharmacy technicians meeting the following minimum requirements: the person must be 18 years of age or older and the person must have a high school diploma or equivalent education.

A similar rule was previously adopted by the Board under ss. Phar 7.095 (7) (a) and (b), regarding the operation of remote dispensing sites. This rule requires that pharmacy technicians and pharmacy interns employed at a remote dispensing site be 18 years of age or older and have a high school diploma or equivalent education.

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... dispensing of prescription drugs.” Moreover, s. 450.02 (3) (e), Stats., authorizes the Board to promulgate rules “[e]stablishing the minimum standards for the practice of pharmacy.” The “practice of pharmacy” is defined under s. 450.01 (16) (g), Stats., to include the “[s]upervision of pharmacist support personnel.”

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, supervising and/or managing pharmacists, and Department of Safety and Professional Services credentialing personnel.

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 or minimal 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.

Employee Trust Funds CR 12-054

On December 17, 2012, the Department of Employee Trust Funds submitted a proposed rule to Wisconsin Legislative Council Rules Clearinghouse.

The statement of scope for this rule, SS 059-12, was approved by the governor on July 30, 2012, published in Administrative Register No. 680, on August 14, 2012, and approved by ETF Secretary Robert Conlin on September 27, 2012.

Analysis

The purpose of this rule is to revise existing administrative rules of the Department of Employee Trust Funds in Chapters ETF 10, 20, and 40, to make them conform with 2011 Wisconsin Acts 10, 32, and 133, to reflect current practices of the department, to provide flexibility regarding due dates for filing reports with the department, and to make other technical changes.

Agency Procedure for Promulgation

A public hearing is required and will be held on January 31, 2013, at 1:00 p.m. in the downstairs Conference Room GA at the offices of the Department of Employee Trust Funds, 801 West Badger Road, Madison, Wisconsin.

The Department's General Counsel is primarily responsible for this rule.

Contact Information

David H. Nispel, General Counsel
Email: david.nispel@etf.wi.gov
Telephone: (608) 264-6936

Safety and Professional Services — Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors Examining Board CR 12-053

On December 6, 2012, the Examining Board of Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors submitted a proposed rule to the Legislative Council Rules Clearinghouse.

This rule is not subject to s. 227.135 (2), Stats., as affected by 2011 Wis. Act 21. The scope statement for this rule, published in Administrative Register No. 662 on February 14, 2011, and was sent to the LRB prior to June 8, 2011 the effective date of 2011 Wisconsin Act 21.

Analysis

This proposed rule-making order conforms current section A-E 4.05, regarding education and work experience requirements for registration as a professional engineer, with 2009 Wisconsin Act 350.

Agency Procedure for Promulgation

A public hearing is required and will be held on January 31, 2013 at 1400 East Washington Avenue, Madison, Wisconsin (enter at 55 North Dickinson Street).

Contact Person

If you have any questions you may contact Shawn Leatherwood at 608-261-4438 or by email at Shancethea.Leathrewood@wisconsin.gov.

Rule–Making Notices

Notice of Hearings Employee Trust Funds CR 12–054

The Wisconsin Department of Employee Trust Funds proposes an order to amend sections ETF 10.01 (3i), 10.63 (1) (a), (b), (c), (d), (e), and (f), (2), and (3), and 40.10 (1) (2) and (3) (e), to repeal and recreate sections ETF 20.015 (1) and (2), and to create section ETF 10.86, relating to technical and minor substantive changes in existing ETF administrative rules.

Hearing Information

Date: Thursday, January 31, 2013
Time: 1:00 p.m.
Location: Offices of the Department of Employee Trust Funds
 Conference Room GA
 801 West Badger Road
 Madison, WI 53713

Persons wishing to attend should come to the reception desk up the stairs (or by elevator) from the main entrance to the building. The public hearing sites are accessible to people with disabilities. If you have special needs or circumstances that may make communication or accessibility difficult at the hearing, please contact David Nispel, General Counsel, Department of Employee Trust Funds, P.O. Box 7931, Madison, WI 53707. The e-mail address: david.nispel@etf.wi.gov. The telephone number is: (608) 264–6936.

Place Where Comments Are to be Submitted and Deadline For Submissions

Written comments on the proposed rule may be submitted to: David Nispel, General Counsel, Department of Employee Trust Funds, P.O. Box 7931, Madison, WI 53707. Written comments must be received at the Department of Employee Trust Funds no later than **4:30 p.m. on January 31, 2013**.

Free Copies of Proposed Rule

Copies of the proposed rule are available without cost by contacting the General Counsel, Department of Employee Trust Funds, P. O. Box 7931, Madison, WI 53707–7931. You can also obtain a copy by calling (608) 264–6936 or by emailing david.nispel@etf.wi.gov.

Analysis Prepared by the Department of Employee Trust Funds

Statutes interpreted

Sections 40.01 (1), 40.01 (2), 40.02 (55), 40.05 (1), 40.05 (2), 40.06 (1), 40.06 (2), 40.06 (3), 40.22 (1), 40.22 (2), 40.22 (2m), 40.22 (2r), 40.22 (3), 40.51 (7), Stats.

Statutory authority

Sections 40.03 (2) (i), (ig), 40.51 (7) (a), and 227.11 (2) (a), Stats.

Explanation of agency authority

By statute, the ETF Secretary is expressly authorized, with appropriate board approval, to promulgate rules required for the efficient administration of any benefit plan established in ch. 40 of the Wisconsin statutes.

Section 40.51 (7) (a), Stats., allows the department to establish by rule different eligibility standards or contribution requirements for any employer, other than the state, including an employer that is not a participating employer, that elects to offer to all of its employees a health care coverage plan through a program offered by the group insurance board.

In addition, each state 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.

Related statutes or rules

There are no other related statutes or administrative rules directly related to this technical rule.

Plain language analysis

The purpose of this rule is to revise existing administrative rules of the Department of Employee Trust Funds to make them conform with 2011 Wisconsin Acts 10, 32 and 133, to reflect current practices of the department, to provide flexibility regarding due dates for filing reports with the department, and to make other technical changes.

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

The only federal regulations that may be affected by this proposed rule are provisions of the Internal Revenue Code regulating qualified pension plans. The Wisconsin Retirement System is required to be maintained as a qualified plan by s. 40.015, Stats.

Comparison to rules in adjacent states

Periodically, retirement systems in adjacent states promulgate technical rules to update existing administrative rules.

Summary of factual data and analytical methodologies

The department is proposing this rule to update existing rules and interpretations of existing statutes.

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

This rule does not have an effect on small businesses because private employers and their employees do not participate in, and are not covered by, the Wisconsin Retirement System. Please see attached economic impact analysis.

Effect on Small Business

The rule has no effect on small businesses.

Regulatory Flexibility Analysis

The proposed rule has no significant effect on small businesses because only governmental employers and their employees may participate in the benefit programs under ch. 40 of the statutes administered by the Department of Employee Trust Funds.

Fiscal Estimate

Please see the attached fiscal estimate.

Agency Contact Person (including e-mail and telephone)

Please direct any questions about the proposed rule to

David Nispel, General Counsel, Department of Employee Trust Funds, P.O. Box 7931, Madison, WI 53707. The e-mail address: david.nispel@etf.wi.gov. The telephone number is: (608) 264-6936.

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

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

ADMINISTRATIVE RULES

Fiscal Estimate & Economic Impact Analysis

1. Type of Estimate and Analysis

Original Updated Corrected

2. Administrative Rule Chapter, Title and Number

Chapters ETF 10, 20, and 40.

3. Subject

Technical and minor substantive changes in existing ETF administrative rules.

4. Fund Sources Affected

GPR FED PRO PRS SEG SEG-S

5. Chapter 20, Stats. Appropriations Affected

6. Fiscal Effect of Implementing the Rule

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

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

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

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

Yes No

9. Policy Problem Addressed by the Rule

The objective of this technical rule is to make technical updates to existing ETF rules, create consistency with statutes recently amended by the legislature, and make other minor substantive changes.

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.

Information, including the proposed rule language, will be made available by posting on the ETF website and the Wisconsin administrative rules website and by submitting the information to the Governor's Office of Regulatory Compliance.

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)

No substantive impact is anticipated.

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

ETF 10.01 (3i) is amended to remove the language referencing the benefit adjustment contribution, since that type of contribution to the Wisconsin Retirement System was eliminated by 2011 Wisconsin Act 10.

ETF 10.63 establishes various deadlines by which reports are due to be filed with the department. The proposed rule allows employers more flexibility in the deadlines for submitting monthly reports to ETF and will allow the ETF Secretary to respond rapidly to future changes and needs. The need for flexibility arose because of changes made by 2011 Wisconsin Act 10.

ETF 10.86 is created to allow a member, beneficiary, or distributee of an estate who has benefits paid via electronic deposit into a financial institution account owned by him/her to designate a representative payee, nursing home, religious order or other entity that is approved by ETF.

ETF 20.515 (1) and (2) are repealed and replaced with language to comply with 2011 Wisconsin Act 32 eligibility requirements, including two paragraphs concerning educational support personnel employees.

ETF 40.10 is amended to comply with 2011 Wisconsin Act 133 and permit governmental employers who are not participating employers in the Wisconsin Retirement System to be covered in the local governmental health insurance plan offered by the Group Insurance Board.

The alternative would be to fail to comply with recent legislative changes, to have little flexibility in establishing deadlines for filing reports with ETF, and to not offer options for a member, beneficiary, or distributee of an estate to meet their financial obligations.

14. Long Range Implications of Implementing the Rule

Implementation will bring the affected ETF rules into compliance with recent legislative changes and create flexibility for employers, members, beneficiaries and distributees of estates.

15. Compare With Approaches Being Used by Federal Government

Not applicable.

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

Periodically, retirement systems in adjacent states promulgate technical rules to update existing administrative rules.

17. Contact Name

David H. Nispel, General Counsel

18. Contact Phone Number

608-264-6936

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

Notice of Hearing

Safety and Professional Services — Examining Board of Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors

CR 12-053

NOTICE IS HEREBY GIVEN that pursuant to sections 227.11 (2) (a) and 443.015 (2), Stats. and interpreting sections 443.04, 443.09, and 443.10, Stats. the Examining Board of Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors will hold a public hearing at the time and place indicated below to consider an order to repeal sections A-E 4.06 and 4.08 (7); to renumber sections A-E 4.07, 4.08 (8), 4.08, 4.09, and 4.08 (2) (b) to amend sections A-E 4.03 (2) (a) 4., 4.08 (2) (a) and (b) and 4.09 (1) (b); to repeal and recreate section A-E 4.05, and to create sections A-E 4.08 (2) (b) and (c), relating to requirements for registration as a professional engineer.

Hearing Information

Date: Thursday, January 31, 2013

Time: 9:00 a.m.

Location: 1400 East Washington Avenue
(Enter at 55 North Dickinson Street)
Room 121
Madison, WI 53703

Appearances at the Hearing

Interested persons are invited to present information at the hearing. You may make a presentation in person, submit a brief statement regarding facts, opinions or arguments, or both. You may also submit a brief statement of facts, opinions and arguments in writing without a personal appearance by mail addressed to Shawn Leatherwood, Department of Safety and Professional Services, Division of Board Services, P.O. Box 8935, Madison, WI 53708. Written comments will be accepted up until **January 31, 2013**.

Copies of Proposed Rule, Fiscal Estimate, and Economic Impact Analysis

Copies of the proposed rule are available upon request to Shawn Leatherwood, Paralegal, Department of Safety and Professional Services, Division of Policy Development, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708 or by email at Shancethea.L Leatherwood@wisconsin.gov.

Place Where Comments Are to be Submitted and Deadline For Submission

Comments may be submitted to Shawn Leatherwood, Paralegal, Department of Safety and Professional Services, Division of Board Services, 1400 East Washington Avenue, Room 117, P.O. Box 8935, Madison, WI 53708–8935, or by email to Shancethea.L Leatherwood@wisconsin.gov. Comments must be received on or before **January 31, 2013, at 9:30 a.m.**, to be included in the record of rule-making proceedings.

Analysis Prepared by the Department of Safety and Professional Services

Statutes interpreted

Sections 443.04, 443.09, 443.10, Stats.

Statutory authority

Sections 227.11 (2) (a), 443.015 (2), Stats.

Explanation of agency authority

Section 227.11 (2) (a), Stats., authorizes state agencies to promulgate rules interpreting the statutes they enforce or administer when deemed necessary to effectuate the purpose of those statutes. Section 443.015 (2), Stats., authorizes the Professional Engineer Section of the Examining Board of Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors (Joint Board) to promulgate rules governing the practice of professional engineering.

Related statute or rule

No statutes or administrative rules beyond those referenced above are related to this proposed rule-making.

Plain language analysis

This proposal is solely based on legislation that became effective on May 28, 2010. 2009 Wisconsin Act 350 amended the statutory requirements for registration as a professional engineer, which were then set forth in the now-former versions of ss. 443.04 and 443.09, Stats. As relevant to this proposal, Act 350 repealed former ss. 443.04 (1) (c) and (d), and (2), and 443.09 (6), Stats. Prior to Act 350's effective date, s. 443.04 (1), Stats., provided four alternative means for an applicant to satisfy the education and experience requirements for licensure as a professional engineer by examination, and s. 443.04 (2), Stats., allowed a failed examinee to obtain review of his or her examination by the appropriate section of the examining board. Act 350 recreated s. 443.04, Stats., which now provides for only two paths to professional engineer licensure by examination in new subsections (1m) and (2m). Act 350 also removed provisions within the former s. 443.09 (4), Stats., as necessitated by the statutory changes. The repeal of s. 443.09 (6), Stats., eliminated the examination review provision.

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

None.

Comparison to rules in adjacent states

Illinois:

In Illinois, an applicant for licensure as a professional engineer by examination must graduate either from an approved 4-year engineering curriculum and have an additional 4 years or more of qualifying work experience; or graduate from a non-approved 4-year engineering or other related science curriculum and have an additional 8 years or more of qualifying work experience. 225 ILCS 325/10. Both types of applicants must also pass two 8-hour examinations, one on engineering fundamentals, and the other on engineering principles and practice. *Id.*

The statutes do not address examination review for applicants who fail the required licensure examinations.

<http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=1344&ChapterID=24>

With respect to the education and experience requirements for licensure as a professional engineer by examination, the Illinois Administrative Code merely restates the statutory provisions on the same. 68 Ill. Admin. Code 1380.230 (c). The Illinois rules specifically prohibit examination review by failed examinees, including the rescore of an examination, but do allow for a retabulation of the numerical score. 68 Ill. Admin. Code 1380.260 (h).

<http://www.ilga.gov/commission/jcar/admincode/068/06801380sections.html>

Iowa:

The Iowa statutes (Iowa Code) require that applicants for licensure as a professional engineer graduate from a 4-year course in engineering in a school or college which, in the opinion of the Iowa Engineering and Land Surveying Examining Board, has properly prepared the applicant for the first required examination, which covers engineering fundamentals. Section 542B.14 1.a.(1), Iowa Code. The applicant must also show a specific record of four years or more of practical engineering experience of a character satisfactory to the Board. Section 542B.14 1.c., Iowa Code. Entrance into the second required examination, engineering principles and practice, is contingent upon the applicant showing that he or she has the necessary work experience. Section 542B.14 1.d., Iowa Code.

Although failed examinees may request information from the Board concerning their examination grades and incorrectly answered questions, the statutes do not provide for a review of a failed examination by the Board. Section 542B.15, Iowa Code.

<http://search.legis.state.ia.us/nxt/gateway.dll?f=templates&fn=default.htm>

Referring to the requirements for licensure as a professional engineer set forth in s. 542B.14, Iowa Code, Iowa's administrative rules note that the Iowa Engineering and Land Surveying Examining Board will issue an initial license only upon an applicant's chronological satisfaction of those requirements. Section 193C—4.1, Iowa Admin. Code. The rule goes on to state that applicants who did not graduate from a nationally accredited engineering curriculum must, in addition to their 4-year degree, complete an extra year of practical experience prior to sitting for the engineering fundamentals examination. Section 193C—4.1(1)a.(1), Iowa Admin. Code. Finally, the rules provide that the applicant must successfully complete the engineering principles and practice examination, eligibility for which requires a record of 4 years of practical engineering work experience of a

character satisfactory to the Board. Section 193C—4.1(3)a., Iowa Admin. Code.

The Iowa rules also state that the results of all professional engineer licensure examinations will be reported as pass or fail, but that failed examiners may obtain a converted score and a diagnostic report indicating areas of weakness, as available. Section 193C—4.1(8)g., Iowa Admin. Code. The rules otherwise do not address examination review.

<http://search.legis.state.ia.us/nxt/gateway.dll?f=templates&fn=default.htm>

Michigan:

To become licensed by examination as a professional engineer in Michigan, Michigan's statutes require an applicant to have at least a 4-year degree in engineering from an accredited program or its equivalent, as determined by the Board of Professional Engineers. Section 339.2005 (2) (b), MCL. The applicant must also have not less than 8 years of professional experience in engineering work acceptable to the Board. Section 339.2005 (2) (a), MCL. Not more than 6 years of education will count toward the experience requirement. *Id.* Upon the applicant's fulfillment of those requirements, the applicant must then pass both the engineering fundamentals and professional practice examinations, or show proof of equivalent qualification for practice acceptable to both the Department of Licensing and Regulatory Affairs and the Board of Professional Engineers. Section 339.2004 (2) (b), MCL.

The Michigan statutes do not address review of a failed examination for professional engineer licensure applicants.

[http://www.legislature.mi.gov/\(S\(20fedfyiyad30amdcuypsx45\)\)/mileg.aspx?page=MCLIndex&objectname=mcl-cha p339](http://www.legislature.mi.gov/(S(20fedfyiyad30amdcuypsx45))/mileg.aspx?page=MCLIndex&objectname=mcl-cha p339)

The Michigan administrative rules establish the standards used by the Board of Professional Engineers in determining the acceptability of bachelor's degrees for professional engineer licensure, and what will qualify as acceptable work experience. Sections 339.16021, 339.16022, Mich. Admin. Code. A bachelor's degree from an acceptable program will fulfill 4 of the 8 years' work experience requirement. Section 339.16021 (4), Mich. Admin. Code. Each advanced engineering degree, such as a master's or a doctorate, will count as 1 additional year of experience. Section 339.16021 (5), Mich. Admin. Code. The rules provide for an equivalency alternative to the engineering fundamentals examination for certain applicants, but otherwise do not address examination results or review. Section 339.16026, Mich. Admin. Code.

http://www7.dleg.state.mi.us/orr/Files/AdminCode/932_2009-032LR_AdminCode.pdf

Minnesota:

The Minnesota statutes regarding the licensure of professional engineers contain very few specific provisions, but delegate licensing authority to the 560.70 (2m) (b) and 560.701 to 560.706 – as created by 2009 Wisconsin Act 2.

<https://www.revisor.mn.gov/statutes/?id=326>

The Board of Architecture, Engineering, Land Surveying, Landscape Architecture, Geoscience, and Interior Design requires applicants for licensure as a professional engineer to pass two 8-hour written examinations, one on the fundamentals of engineering (FE) and the other on engineering principles and practice. Section 1800.2500

Subp. 1., Minn. Admin. Rules. The Board must waive the FE examination requirement for applicants with 20 or more years of qualifying engineering experience and a doctorate degree in either engineering or an equivalent field. Section 1800.2800, Minn. Admin. Rules. To qualify to take the FE, an applicant must have at least a 4-year degree in engineering from either an accredited curriculum or one non-accredited that includes the minimum number of engineering science and design credits required by an accredited curriculum. Section 1800.2500, Subp. 2., A., C., Minn. Admin. Rules. An applicant whose bachelor's degree was in a non-engineering program, but who has a master's degree in engineering, will also qualify to take the FE. Section 1800.2500, Subp. 2., D., Minn. Admin. Rules.

Eligibility for the principles and practice examination requires, beyond the educational component, a certain number of years' engineering work experience, depending on the type of degree held by the applicant. Section 1800.2500, Subp. 2a., B., Minn. Admin. Rules. A graduate of a 4-year accredited engineering program must show at least 4 years of qualifying work experience; a graduate of a non-accredited 4-year engineering or a non-engineering curriculum must have had 6 years of experience; and an applicant with a master's degree or doctorate in engineering, but whose bachelor's degree was in a non-engineering program must have had 5 years' experience. Section 1800.2500, Subp. 2a., B. (1)–(3), Minn. Admin. Rules. Finally, an applicant with both a bachelor's and master's degrees in engineering need only have completed 3 years' experience. Section 1800.2500, Subp. 2a., B. (4), Minn. Admin. Rules.

The Minnesota rules do not provide for examination review, but under S. 1800.0900, Subp. 4, Minn. Admin. Rules, require a failed examinant to retake the examination.

<https://www.revisor.mn.gov/rules/?id=1800>

Summary of factual data and analytical methodologies

No factual data was required for the rule-making in this proposal, as the changes were necessitated by statute. For that reason, no analysis was involved in the preparation of these proposed rules.

Analysis and Supporting Documents Used to Determine Effect On Small Business or In Preparation of Economic Impact Analysis

Fiscal estimate and economic impact analysis

The Fiscal Estimate and Economic Impact Analysis are attached.

Effect on small business

Because the statutory changes that prompted this proposal took effect over two years ago, these proposed rules will not have an economic impact on small businesses, as defined in s. 227.114 (1), Stats., beyond that which such businesses have already experienced and absorbed. The Department's Regulatory Review Coordinator may be contacted by email at Greg.Gasper@wisconsin.gov, or by calling (608) 266-8608.

Agency Contact Person

Shawn Leatherwood, Paralegal, Department of Safety and Professional Services, Division of Board Services, 1400 East Washington Avenue, Room 117, P.O. Box 8935, Madison, Wisconsin 53708; telephone (608) 261-2385; email at Shancethea.L Leatherwood@wisconsin.gov.

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

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

ADMINISTRATIVE RULES

Fiscal Estimate & Economic Impact Analysis

1. Type of Estimate and Analysis

Original Updated Corrected

2. Administrative Rule Chapter, Title and Number

Section A-E 4.05

3. Subject

Requirements for registration as a professional engineer.

4. Fund Sources Affected

GPR FED PRO PRS SEG SEG-S

5. Chapter 20, Stats. Appropriations Affected

6. Fiscal Effect of Implementing the Rule

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

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

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

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

Yes No

9. Policy Problem Addressed by the Rule

The proposed rule implements the directive of 2009 Wisconsin Act 350. The primary focus of the Act was to create a new path to register as a professional engineer. The proposed rule will allow applicants with two years of education and six years of experience may register as a professional engineer.

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

This proposed rule will not affect small businesses as defined in s. 227.114 (1), Stats., business sectors, associations representing business or local governmental units.

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

No local governmental unit participated in the development of these rules.

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

The proposed rule will not have an economic or fiscal impact on any specific businesses, business sectors, public utility rate payers, local governmental units or the state's economy as a whole beyond that which such businesses have already experienced and absorbed.

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

The primary benefit will be bringing current Wis. Admin. Code concerning the registration of professional engineers into conformity with 2009 Wisconsin Act 305.

 14. Long Range Implications of Implementing the Rule

Clearer communication to applicants as to the education and experience requirements for licensure as a professional engineer by examination.

 15. Compare With Approaches Being Used by Federal Government

There are no comparable federal rules.

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

Illinois:

In Illinois, an applicant for licensure as a professional engineer by examination must graduate either from an approved 4-year engineering curriculum and have an additional 4 years or more of qualifying work experience; or graduate from a non-approved 4-year engineering or other related science curriculum and have an additional 8 years or more of qualifying work experience. 225 ILCS 325/10. Both types of applicants must also pass two 8-hour examinations, one on engineering fundamentals, and the other on engineering principles and practice. *Id.*

Iowa:

The Iowa statutes (Iowa Code) require that applicants for licensure as a professional engineer graduate from a 4-year course in engineering in a school or college which, in the opinion of the Iowa Engineering and Land Surveying Examining Board, has properly prepared the applicant for the first required examination, which covers engineering fundamentals. Section 542B.14 1.a.(1), Iowa Code. The applicant must also show a specific record of four years or more of practical engineering experience of a character satisfactory to the Board. Section 542B.14 1.c., Iowa Code. Entrance into the second required examination, engineering principles and practice, is contingent upon the applicant showing that he or she has the necessary work experience. Section 542B.14 1.d., Iowa Code.

Although failed examiners may request information from the Board concerning their examination grades and incorrectly answered questions, the statutes do not provide for a review of a failed examination by the Board. Section 542B.15, Iowa Code.

Michigan:

To become licensed by examination as a professional engineer in Michigan, Michigan's statutes require an applicant to have at least a 4-year degree in engineering from an accredited program or its equivalent, as determined by the Board of Professional Engineers. Section 339.2005 (2) (b), MCL. The applicant must also have not less than 8 years of professional experience in engineering work acceptable to the Board. Section 339.2005 (2) (a), MCL. Not more than 6 years of education will count toward the experience requirement. *Id.* Upon the applicant's fulfillment of those requirements, the applicant must then pass both the engineering fundamentals and professional practice examinations, or show proof of equivalent qualification for practice acceptable to both the Department of Licensing and Regulatory Affairs and the Board of Professional Engineers. Section 339.2004 (2) (b), MCL.

Minnesota:

The Minnesota statutes regarding the licensure of professional engineers contain very few specific provisions, but delegate licensing authority to the Board of Architecture, Engineering, Land Surveying, Landscape Architecture, Geoscience, and Interior Design. Section 326.10, subd. 1. (a), Minn. Stats. The Board's authority includes establishing the educational and experience requirements for professional engineer licensure by examination. Section 326.10, subd. 1. (a) (1), Minn. Stats. The Minnesota statutes do not address examination review.

<https://www.revisor.mn.gov/statutes/?id=326>

The Board of Architecture, Engineering, Land Surveying, Landscape Architecture, Geoscience, and Interior Design requires applicants for licensure as a professional engineer to pass two 8-hour written examinations, one on the fundamentals of engineering (FE) and the other on engineering principles and practice. Section 1800.2500 Subp. 1., Minn. Admin. Rules. The Board must waive the FE examination requirement for applicants with 20 or more years of qualifying engineering experience and a doctorate degree in either engineering or an equivalent field. Section 1800.2800, Minn. Admin. Rules. To qualify to take the FE, an applicant must have at least a 4-year degree in engineering from either an accredited curriculum or one non-accredited that includes the minimum number of engineering science and design credits required by an accredited curriculum. Section 1800.2500, Subp. 2., A., C., Minn. Admin. Rules. An applicant whose bachelor's degree was in a non-engineering program, but who has a master's degree in engineering, will also qualify to take the FE. Section 1800.2500, Subp. 2., D., Minn. Admin. Rules.

 17. Contact Name

Shawn Leatherwood

 18. Contact Phone Number

261-4438

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

Rule Orders Filed with the Legislative Reference Bureau

The following administrative rule orders have been filed with the Legislative Reference Bureau and are in the process of being published. The date assigned to each rule is the projected effective date. It is possible that the publication date of these rules could be changed. Contact the Legislative Reference Bureau at bruce.hoesly@legis.wisconsin.gov or (608) 266-7590 for updated information on the effective dates for the listed rule orders.

Public Service Commission CR 12-042

(PSC Docket # 1-C-241)

An order of the Public Service Commission to amend section PSC 135.019 (1), relating to the adoption of federal pipeline safety regulations.
Effective 1-1-13.

Rules Published with this Register and Final Regulatory Flexibility Analyses

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

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

Public Service Commission

CR 12-042

(PSC Docket # 1-C-241)

An order to amend section PSC 135.019 (1), regarding the adoption of federal pipeline safety regulations. Effective 1-1-13.

Summary of Effect on Small Business

This rule has no effect on small businesses since gas

utilities, as monopolies and unlike small businesses, are all dominant in their field. Further, the contract between the federal department of transportation and the commission requires that treatment be uniform across the state and across gas pipeline operators. As a result, the commission cannot make special provisions for small business.

Summary of Comments

No comments reported.

Sections Affected by Rule Revisions and Corrections

The following administrative code sections had rule revisions and corrections take place in **December 2012**, and will be effective as indicated in the history note for each particular section. For additional information, contact the Legislative Reference Bureau at (608) 266-7590.

Revisions

Public Service Commission

Ch. PSC 135

PSC 135.019 (1)

Editorial Corrections

Corrections to code sections under the authority of s. 13.92 (4) (b), Stats., are indicated in the following listing.

Financial Institutions – Banking

Ch. DFI-Bkg 4

DFI-Bkg 4.04 (Note)

Ch. DFI-Bkg 11

DFI-Bkg 11.02

Ch. DFI-Bkg 44

DFI-Bkg 44.01 (3) (Note)

DFI-Bkg 44.02 (3) (Note)

Financial Institutions – Corporate and Consumer Services

Ch. DFI-CCS 6

DFI-CCS 6.05 (2) (a) (Note), (b) (Note)

DFI-CCS 6.06 (1) (Note)

Ch. DFI-CCS 20

DFI-CCS 20.03 (1) (b)

DFI-CCS 20.10 (4)

Financial Institutions – Credit Unions

Ch. DFI-CU 56

DFI-CU 56.05

Ch. DFI-CU 57

DFI-CU 57.01 (Note)

Ch. DFI-CU 66

DFI-CU 66.01

Financial Institutions – Savings Banks

Ch. DFI-SB 2

DFI-SB 2.05 (2) (e) (Note)

DFI-SB 2.06 (3) (b) (Note)

Ch. DFI-SB 6

DFI-SB 6.01 (Note)

Ch. DFI-SB 17

DFI-SB 17.01 (2), (5)

Ch. DFI-SB 19

DFI-SB 19.04 (Note)

Ch. DFI-SB 21

DFI-SB 21.22 (1)

DFI-SB 21.25 (1) (a)

Financial Institutions – Savings and Loan

Ch. DFI-SL 6

DFI-SL 6.03 (Note)

Ch. DFI-SL 10

DFI-SL 10.02

Ch. DFI-SL 12

DFI-SL 12.02 (4)

Ch. DFI-SL 13

DFI-SL 13.04 (1) (Note), (2) (intro.) (Note)

Ch. DFI-SL 17

DFI-SL 17.01 (2), (5)

Ch. DFI-SL 21

DFI-SL 21.04 (Note)

Financial Institutions – Securities

Ch. DFI-Sec 9

DFI-Sec 9.01 (2) (Note)

Ch. DFI-Sec 24

DFI-Sec 24.01 (3) (c), (4) (b)

Natural Resources

Ch. NR 410

NR 410.03 (1) (ae) (note), (2) (n)

Public Service Commission

Ch. PSC 128

PSC 128.19 (4) (b)

Ch. PSC 135

PSC 135.163 (2) (cw), (3) (ew)

PSC 135.173 (1w)
PSC 135.189 (2) (cw)
PSC 135.735 (cw)
Ch. PSC 136
PSC 136.04 (5)

Safety and Professional Services

Ch. SPS 132
SPS 132.05 (1) (note)

Executive Orders

The following are recent Executive Orders issued by the Governor.

Executive Order 88. Relating to a Proclamation that the Flag of the United States and the Flag of the State of Wisconsin be Flown at Half-Staff on National Pearl Harbor Remembrance Day. **(December 5, 2012)**

Executive Order 89. Relating to a Proclamation that the Flag of the United States and the Flag of the State of Wisconsin be Flown at Half-Staff as a Mark of Respect for Fire Chief Steven Fritz of the Village of Rothschild Fire Department. **(December 14, 2012)**

Public Notices

Public Notice Department of Health Services (Medical Assistance Reimbursement for Coverage of Vaccine Administration)

The state of Wisconsin reimburses providers for services provided to low-income persons under the authority of Title XIX of the Social Security Act and sections 49.43 to 49.47 and 49.688, Wisconsin Statutes. The Wisconsin Department of Health Services (the Department) administers this program, which is called Medical Assistance or Medicaid. In addition, Wisconsin has expanded this program to create the BadgerCare Plus programs under the authority of Title XIX and Title XXI of the Social Security Act and chapters 49.43 to 49.47 of Wisconsin Statutes. Together the Medical Assistance and BadgerCare Plus programs are referred to as ForwardHealth.

Among the services provided, the state of Wisconsin covers legend and non-legend drugs and drug products and reimburses pharmacies for services provided to recipients of Medicaid and BadgerPlus. The Department proposes to make changes to coverage under these programs.

Proposed Change

The proposed change is as follows. The state plan lists the reimbursement rate for the administration of a vaccine as \$3.00. In practice, this rate has been \$3.31 for several years. The amount listed in the state plan will be increased to \$3.31 to conform to current practice.

This change will be effective for dates of service on and after January 1, 2013. The correction to the stated rate for vaccine administration will have no actual effect, since the higher rate is what is currently paid. However, the change in rate results in a calculated change of an increase in annual expenditures in the amount of \$52,500 all funds (AF), composed of \$31,500 federal match (FED) and \$21,000 state funds. The implementation date is the first day of the second quarter of federal fiscal year 2013 and is the first day of the third quarter of state fiscal year 2013.

Written Comments and Copies of the Proposed Change:

A copy of the proposed change may be obtained free of charge at your local county agency or by calling or writing as follows:

Regular Mail
Pam Appleby
Division of Health Care Access and Accountability
PO Box 309
Madison, WI 53701-0309

Phone
Pam Appleby
Division of Health Care Access and Accountability
(608) 261-9423

FAX
(608) 266-1096
Attention: Pam Appleby

E-Mail
Pamela.Appleby@dhs.wisconsin.gov

A copy of the proposed change is available for review at the main office of any county department of social services or human services.

Written Comments:

Written comments are welcome. Written comments on the proposed change may be sent by FAX, e-mail, or regular mail to the Division of Health Care Access and Accountability. The FAX number is (608) 266-1096. The e-mail address is Pamela.Appleby@dhs.wisconsin.gov. Regular mail can be sent to the above address. All written comments will be reviewed and considered.

All written comments received will be available for public review between the hours of 7:45 a.m. and 4:30 p.m. daily in Room 350 of the State Office Building, 1 West Wilson Street, Madison, Wisconsin. Revisions may be made based on comments received.

Public Notice Department of Health Services

(Medical Assistance Reimbursement for Coverage of Prescription Drugs Under Medicare Part D)

The state of Wisconsin reimburses providers for services provided to low-income persons under the authority of Title XIX of the Social Security Act and sections 49.43 to 49.47 and 49.688, Wisconsin Statutes. The Wisconsin Department of Health Services (the Department) administers this program, which is called Medical Assistance or Medicaid. In addition, Wisconsin has expanded this program to create the BadgerCare Plus programs under the authority of Title XIX and Title XXI of the Social Security Act and chapters 49.43 to 49.47 of Wisconsin Statutes. Together the Medical Assistance and BadgerCare Plus programs are referred to as ForwardHealth.

Among the services provided, the state of Wisconsin covers legend and non-legend drugs and drug products and reimburses pharmacies for services provided to recipients of Medicaid and BadgerPlus. The Department proposes to make changes to coverage under these programs.

Proposed Changes:

Effective for dates of service on and after January 1, 2013, benzodiazepines will become Medicare Part D-covered drugs. Claims for benzodiazepines for individuals covered under Medicare Part D and Medicaid should be submitted to Medicare Part D.

Effective for dates of service on and after January 1, 2013, barbiturates will become Medicare Part D-covered drugs when used for cancer, epilepsy, or chronic mental health disorder diagnoses. Claims for barbiturates for individuals with these diagnoses who are covered under Medicare Part D and Medicaid should be submitted to Medicare Part D.

This initiative is projected to result in decreased annual expenditures of \$2.5 million all funds (AF), composed of \$1.5 million federal match (FED) and \$1 million state funds. The implementation date is the first day of the second quarter of federal fiscal year 2013 and is the first day of the third quarter of state fiscal year 2013.

Written Comments and Copies of the Proposed Change:

A copy of the proposed change may be obtained free of charge at your local county agency or by calling or writing as follows:

Regular Mail

Kim Reniero
Division of Health Care Access and Accountability
PO Box 309
Madison, WI 53701-0309

Phone

Kim Reniero
Division of Health Care Access and Accountability
(608) 267-7939

FAX

(608) 266-1096

Attention: Kim Reniero

E-Mail

KimPI.Reniero@dhs.wisconsin.gov

A copy of the proposed change is available for review at the main office of any county department of social services or human services.

Written Comments:

Written comments are welcome. Written comments on the proposed change may be sent by FAX, e-mail, or regular mail to the Division of Health Care Access and Accountability. The FAX number is (608) 266-1096. The e-mail address is KimPI.Reniero@dhs.wisconsin.gov. Regular mail can be sent to the above address. All written comments will be reviewed and considered.

All written comments received will be available for public review between the hours of 7:45 a.m. and 4:30 p.m. daily in Room 350 of the State Office Building, 1 West Wilson Street, Madison, Wisconsin. Revisions may be made based on comments received.

Public Notice
Department of Health Services
(Medical Assistance Reimbursement for Physicians Services)

The state of Wisconsin reimburses providers for services provided to low-income persons under the authority of Title XIX of the Social Security Act and sections 49.43 to 49.47, Wisconsin Statutes. The Wisconsin Department of Health Services (the Department) administers this program to create the BadgerCare Plus programs under the authority of Title XIX and Title XXI of the Social Security Act and chapters 49.43 to 49.47 of Wisconsin Statutes. Together the Medical Assistance and BadgerCare Plus programs are referred to as ForwardHealth.

Among the providers reimbursed for services under ForwardHealth are physicians, physician assistants, and nurse practitioners. The Department proposes to reimburse eligible primary care providers for services provided to ForwardHealth recipients in a manner meeting the requirements of 42 CFR 447.400(a) at the Medicare Part B fee schedule rate. This will entail using the Medicare physician fee schedule rate in effect in calendar years 2013 and 2014 or, if greater, the payment rates that would be applicable in those years using the calendar year 2009 Medicare physician fee schedule conversion factor. Administration rates for vaccines provided as a part of the Vaccines for Children program will also increase for this same group of eligible providers. If there is no rate established by Medicare for a given code, the state will use the rate specified in a fee schedule established and announced by the federal Centers for Medicare and Medicaid Services, or CMS.

Proposed Change:

The proposed change is to adjust reimbursement for physicians to implement the requirements of 42 CFR 447.400(a), as described above, effective for dates of service on and after January 1, 2013.

Accurately determining the fiscal impact for this proposed change is difficult since the estimate depends upon the number of qualifying providers and the change in reimbursement for the qualifying medical codes. Currently, the increase in reimbursement applies only to providers that meet qualifying criteria. The list of qualified providers is still under development. In addition, not all of the CY 2013 Medicare rates have been published by CMS. Thus, it is not possible to fully analyze the rate differentials for each qualifying code at this time.

Assuming this provision will increase physician expenditures by five percent, this initiative is projected to result in increased annual expenditures of \$20.8 million all funds (AF), composed of \$20.8 million federal match (FED) and \$0 state funds.

Written Comments and Copies of the Proposed Change:

A copy of the proposed change may be obtained free of charge at your local county agency or by calling or writing as follows:

Regular Mail
Renee Walk
Division of Health Care Access and Accountability
PO Box 309
Madison, WI 53701-0309

Phone
Renee Walk
Division of Health Care Access and Accountability
(608) 266-2901

FAX
(608) 266-1096
Attention: Renee Walk

E-Mail
renee.walk@dhs.wisconsin.gov

A copy of the proposed change is available for review at the main office of any county department of social services or human services.

Written Comments:

Written comments are welcome. Written comments on the proposed change may be sent by FAX, e-mail, or regular mail to the Division of Health Care Access and Accountability. The FAX number is (608) 266-1096. The e-mail address is renee.walk@dhs.wisconsin.gov. Regular mail can be sent to the above address. All written comments will be reviewed and considered.

All written comments received will be available for public review between the hours of 7:45 a.m. and 5:40 p.m. daily in Room 365 of the State Office Building, 1 West Wilson Street, Madison, Wisconsin. Revisions may be made based on comments received.

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



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