

Wisconsin Administrative Register

No. 692



Publication Date: August 31, 2013
Effective Date: September 1, 2013



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



WISCONSIN ADMINISTRATIVE REGISTER

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

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

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

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

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

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

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

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

Administration (2)

1. EmR1305 — The Department of Administration hereby adopts an order to repeal **Adm 2.14 (2) (vr) c.; to renumber and amend Adm 2.14 (2) (vr) a. and b.; to amend Adm 2.02 (1) (a), 2.04 (1), 2.04 (2), (3), (5), and (7), 2.07 (2), 2.08 (1) and (1) (d), 2.11, 2.14 (2), (2) (v), (2) (vm) and (2) (vm) 5.; and to create Adm 2.03 (3m), (3r), and (6m), 2.04 (1m) and (1r)**, relating to facility use.

The statement of scope for this rule, SS 028–13, was approved by the Governor on March 15, 2013, and published in Register No. 687 on March 31, 2013. This emergency rule was approved by the Governor on April 11, 2013.

Finding of Emergency

The Legislature has vested management authority over various state buildings and grounds, including those of the Wisconsin State Capitol, in the Department of Administration since 1979. Section 16.84 (1), Wis. Stats. Since 1979 the Department has permitted the use of these buildings and grounds for the free discussion of public questions and other purposes, so long as such uses did not interfere with the prime uses of these facilities, or otherwise infringe on interests of the

state. Section 16.845, Wis. Stats., and s. Adm 2.04, Wis. Adm Code.

Beginning February 2011, groups of persons began to occupy the Wisconsin State Capitol Building without permits. This included appropriating rooms and hallways in the Capitol building for purposes such as camping and storage of bulk supplies. To restore order to the building and return the building to a point where the work of the Wisconsin State Legislature and the Supreme Court of Wisconsin could perform their constitutionally authorized functions without undue disruption, the Department expended funds in excess of \$7,400,000 for law enforcement personnel. The continuous occupation of the State Capitol was formally terminated in March of 2011.

Groups of persons continue to occupy rooms in the Wisconsin State Capitol building without permits, including the Capitol rotunda. These groups constitute an exception to the norm.

The Wisconsin State Capitol Police (WSCP) issue more than 400 permits annually for the use of various state facilities. Permits are used for a variety of purposes, whether political, non-political, charitable or commercial. Permits are issued regardless of political party, affiliation or content.

Occupation of the Capitol rotunda and other areas has caused disruptions to the properly permitted events and normal government activities, including but not limited to, a Red Cross blood drive, a high school science exhibit, school group tours, general public tours, and legislative committee meetings and sessions. The State does not refuse permits for the lawful and safe use of State facilities by any group or groups. Neither can the State allow any group to occupy the Capitol in disregard of the rights of permit holders, public employees or visitors. It is imperative that the Department continue to gain greater compliance from user groups in order to protect the public safety and welfare.

Filed with LRB:	April 15, 2013
Publication Date:	April 16, 2013
Effective Dates:	April 16, 2013 through September 12, 2013
Hearing Date:	July 12, 2013

2. EmR1309 — The Department of Administration hereby adopts an order to create **Chapter Adm 93**, relating to the community development block grant program.

The statement of scope for this rule, SS 041–13, was approved by the Governor on April 15, 2013, and published in Register No. 688 on April 30, 2013, and approved by the Department of Administration Secretary, Mike Huebsch, effective May 13, 2013. This emergency rule was approved by the Governor on June 19, 2013.

Finding of Emergency

Each year the federal government makes funding available to the several states for economic and housing development through a program known as the Community Development Block Grant Program (CDBG). The CDBG is governed under 42 USC 5301 to 5319 and 24 CFR Part 570, and is administered by the US Department of Housing and Urban Development (HUD). Since the dissolution of the Wisconsin Department of Commerce, the Wisconsin Department of Administration (DOA) has received CDBG grants from HUD, and entered into agreements with the Wisconsin

Economic Development Corporation (WEDC) for the administration of those funds. Under this arrangement, state administrative code Chapter Commerce 108 was unneeded, as WEDC operated under substantially similar internal policies. Recently, DOA and WEDC have mutually determined that the expertise of DOA is better suited to administration of CDBG funds, while the expertise of WEDC is best suited to consultation with localities and businesses seeking to access CDBG funds. The parties intend to formalize the transfer of administrative responsibility of CDBG funds to DOA shortly. Consequently, it is imperative for the welfare of the State of Wisconsin that administrative code provisions concerning the CDBG program be made.

Filed with LRB: June 28, 2013
Publication Date: July 1, 2013
Effective Dates: July 1, 2013 through November 27, 2013

Agriculture, Trade and Consumer Protection (2)

1. EmR1311 — The state of Wisconsin Department of Agriculture, Trade and Consumer Protection hereby adopts the following emergency rule to amend **section ATCP 21.17 (1) (b)** and to create **section ATCP 21.17 (1) (c)**, relating to the quarantine of Jefferson County for emerald ash borer.

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

The blanket statement of scope for this rule, SS 0088–12, was approved by the Governor on November 8, 2012, published in Register No. 683, on November 30, 2012, and approved by the Board of Agriculture, Trade and Consumer Protection as required by s. 227.135 (2), Stats., on December 18, 2012.

Finding of Emergency

On June 25, 2013, the Wisconsin Department of Natural Resources positively identified Emerald Ash Borer (EAB) in Walworth County at the University of Wisconsin Whitewater Campus, about 750 meters from the Jefferson County line. EAB is an exotic, invasive pest that poses a dire risk to the ash forest. When APHIS declares quarantine, DATCP has regulatory authority for import controls and quarantine for EAB under s. ATCP 21.17. It is anticipated that APHIS will declare a quarantine for Jefferson County but that it will take six to eight weeks for APHIS to act. A six week delay until enactment of the federal quarantines leaves too much time for businesses or individuals to move potentially EAB infested material out of these counties to areas of Wisconsin or other states that are not infested with EAB.

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

Filed with LRB: July 24, 2013
Publication Date: July 24, 2013
Effective Dates: July 24, 2013 through December 20, 2013

2. EmR1312 — The state of Wisconsin Department of Agriculture, Trade and Consumer Protection hereby adopts the following emergency rule to amend **section ATCP 21.17 (1) (b)** and to create **section ATCP 21.17 (1) (d)**, relating to the quarantine of Sauk County for emerald ash borer.

The blanket statement of scope for this rule, SS 08–12, was approved by the Governor on November 8, 2012, published in Register No. 683, on November 30, 2012, and approved by the Board of Agriculture, Trade and Consumer Protection (as required by s. 227.135 (2), Stats.) on December 18, 2012.

This emergency rule was approved by the Governor on August 1, 2013.

Finding of Emergency

On July 11, 2013, the United States Department of Agriculture — Animal and Plant Health Inspection Service (“APHIS”) positively identified Emerald Ash Borer (“EAB”) in Sauk County at Mirror Lake State Park. EAB is an exotic, invasive pest that poses a dire risk to the ash forest. When APHIS declares quarantine, DATCP has regulatory authority for import controls and quarantine for EAB under s. ATCP 21.17. It is anticipated that APHIS will declare a quarantine for Sauk County but that it will take six to eight weeks for APHIS to act. A six week delay until enactment of the federal quarantines leaves too much time for businesses or individuals to move potentially EAB infested material out of these counties to areas of Wisconsin or other states that are not infested with EAB.

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

Filed with LRB: August 13, 2013
Publication Date: August 14, 2013
Effective Dates: August 14, 2013 through January 10, 2014

Employment Relations Commission

EmR1310 — The Wisconsin Employment Relations Commission hereby creates **Chapters ERC 70, 71, and 80**, relating to annual certification elections.

This emergency rule was approved by the Governor July 3, 2013.

The statement of scope for this rule, SS 045–13, was approved by the Governor on April 19, 2013, published in Register 689, on May 14, 2013, and approved by the Wisconsin Employment Relations Commission on June 3, 2013.

Finding of Emergency

An emergency exists because the public peace, health, safety and welfare necessitate putting these rules into effect so that the Wisconsin Employment Relations Commission can meet its obligation to conduct annual certification elections as required by ss. 111.70 (4) (d) 3. b. and 111.83 (3) (b), Stats.

Filed with LRB: July 15, 2013
Publication Date: July 13, 2013
Effective Dates: July 13, 2013 through December 9, 2013

Insurance

EmR1306 — The Commissioner of Insurance adopts an order to amend **sections Ins 17.01 (3) and 17.28 (3) (c)** and to repeal and recreate **section Ins 17.28 (6)**, Wis. Admin. Code, relating to Injured Patients and Families Compensation Fund Annual Fund and Mediation Panel Fees, and ISO code amendments for the fiscal year beginning July 1, 2013, and affecting small business.

This emergency rule was approved by the Governor on June 4, 2013.

The statement of scope for this rule, SS 042–13, was approved by the Governor on April 16, 2013, published in Register No. 688, on April 30, 2013, and approved by the Commissioner on May 10, 2013.

Finding of Emergency

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

These changes must be in place with an effective date prior to July 1, 2013, in order for the new fiscal year assessments to be issued in accordance with s. 655.27 (3), Wis. Stats. The permanent rule-making process cannot be completed prior to the effective date of the new fee schedule. The fiscal year fund fees were established by the Board of Governors at the meeting held on December 19, 2012, and the mediation panel fees were established by the Board of Governors at the meeting held on March 20, 2013.

Filed with LRB: June 10, 2013
Publication Date: June 12, 2013
Effective Dates: June 12, 2013 through November 8, 2013
Hearing Date: July 23, 2013

Natural Resources (3)

Fish, Game, etc., Chs. NR 1—

1. EmR1210 (DNR # WM–09–12(E)) — The Wisconsin Natural Resources Board proposes an order to amend **sections NR 10.001 (25c), 10.02 (1), 10.06 (5) and (8) (intro.), 10.07 (2) (b) 2., 10.07 (2m) (intro.) and (e) (intro.), 10.07 (2m) (f) (intro.), 10.09 (1), 10.13 (1) (b) 9., 10.13 (1) (b) 15., 10.13 (1) (b) 16., 10.145 (intro), 10.145 (3) to (8), 12.10 (intro.), 12.10 (1) (a) 4., 12.10 (1) (b) 2., 12.15 (13) and 19.25** and to create **sections NR 10.001 (22q), 10.001 (23a), 10.001 (23am), 10.001 (23b), 10.001 (26g), 10.001 (33), 10.01 (3) (j), 10.07 (1) (m), 10.07 (2m) (em), 10.07 (2m) (g) 3., NR 10.07 (4), 10.13 (1) (b) 15m., 10.13 (1) (b) 18., 10.145 (1m), (1u) and Note, sections NR 10.16 (5), 10.295, 12.15 (11) (e), 12.60 to 12.63, 12.64 (1) (a) and (b) (intro.) 1., 12.64 (1) (b) 2. and 3., 12.64 (1) (b) 4. and 5., 12.64 (2) (a) to (c), 12.64 (2) (d), 12.64 (3) and 12.65**, relating to the wolf hunting and trapping season and regulations and a depredation program.

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

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

Finding of Emergency

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

Filed with LRB: August 15, 2012

Publication Date: August 18, 2012

Effective Dates: August 18, 2012 through the date on which the permanent rules take effect, as provided in 2011 Wisconsin Act 169, section 21.

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

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

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

Finding of Emergency

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

Filed with LRB: September 14, 2012

Publication Date: October 1, 2012

Effective Dates: October 1, 2012 through the date on which the permanent rules take effect, as provided in 2011 Wisconsin Act 169, section 21.

3. EmR1304 (DNR # FH–23–12(E)) — The Wisconsin Natural Resources Board proposes an order to amend **sections NR 20.20 (73) (n) 4., 25.06 (1) (a), and 25.09 (1) (am) 3. e.**, relating to lake trout harvest limits in Lake Superior.

The statement of scope for this rule, SS 097–12, was approved by the Governor on December 14, 2012, published in Register No. 684 on December 31, 2012, and approved by the Natural Resources Board on January 23, 2013.

Finding of Emergency

Pursuant to s. 227.24, Stats., the department finds that an emergency exists and that this rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. The welfare of state–licensed commercial fishers, tribal commercial fishers, recreational anglers, and associated businesses is threatened by a decline in the lake trout population in the Apostle Islands vicinity of Lake Superior. The continued, persistent decline in lake trout population abundances and predicted further declines necessitate the current reductions in order to ensure a sustainable lake trout fishery over the long–term. Lake trout harvest limits were negotiated in October 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. This emergency rule is needed to preserve the public welfare.

Filed with LRB: March 9, 2013

Publication Date: March 27, 2013

Effective Dates: March 27, 2013 through August 23, 2013

Hearing Date: April 11, 2013

Extension Through: October 22, 2013

Safety and Professional Services (3)

Professional Services, Chs. SPS 1—299

1. EmR1302 — The Wisconsin Department of Safety and Professional Services hereby adopts an order to amend

sections SPS 60.01; SPS 61.02 (1) (a), (2) (a), (3) (a), and (4) (a); 62.10 (title) and 62.10; 65.01; 65.02 (1); 65.07; and 65.12 (1) (h) and (i) 6.; and to create **chapter SPS 205** relating to barbers and to barbering and cosmetology schools and instructors, and affecting small business.

This emergency rule was approved by the Governor on February 5, 2013.

The statement of scope for this rule, SS 063–12, was approved by the Governor on August 10, 2012, published in Register 680, on August 31, 2012, and approved by Secretary Dave Ross on October 15, 2012.

Finding of Emergency

The Department of Safety and Professional Services finds that an emergency exists within the state of Wisconsin and that adoption of an emergency rule is necessary for the immediate preservation of the public health, safety and welfare. A statement of the facts constituting the emergency is as follows.

On July 1, 2012, 2011 Wisconsin Act 190 transferred regulatory authority over barbers from the Barbering and Cosmetology Examining Board to the Department of Safety and Professional Services. Act 190 also changed the educational requirements for initial licensure of barbers, and the continuing–education requirements for renewal of barber licenses. Due to the transfer of authority and the changes in education requirements, immediate rulemaking by the Department is needed to implement corresponding rule changes prior to April 1, 2013, which is the renewal date mandated by section 440.08 (2) (a) of the Statutes for all barbering licenses.

Filed with LRB: February 14, 2013
Publication Date: February 14, 2013
Effective Dates: February 14, 2013 through July 13, 2013
Hearing Date: April 30, 2013
Extension Through: September 10, 2013

2. EmR1307 — The Wisconsin Department of Safety and Professional Services adopts an order to repeal **section SPS 81.04 (1) (c) 3. and 4.**, and to amend **section SPS 81.04 (2)**, relating to reciprocity.

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

The statement of scope for this rule, SS 012–13, was approved by the Governor on January 28, 2013, published in Register No. 686 on February 14, 2013, and approved by the Department of Safety and Professional Services on February 28, 2013.

Finding of Emergency

The Department of Safety and Professional Services finds that an emergency exists and that this rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. A statement of facts constituting the emergency is as follows:

Title XI of the Federal Financial Institutions Reform and Recovery Enforcement Act of 1989, as amended by the Dodd–Frank Act of 2010, dictates reciprocity requirements for real estate appraisers in each state. The federal body that oversees reciprocity requirements is the Appraisal Subcommittee (ASC). Currently, Wis. Admin. Code s. SPS 81.04 is not in compliance with the federal legislation. The Code must be brought into compliance by July 1, 2013. At that time, the ASC will conduct an audit to determine which states are in compliance. If Wisconsin is designated “out of

compliance,” then federally regulated financial institutions may not engage a Wisconsin certified or licensed appraiser to perform an appraisal of property for a federally related transaction and other states will not be required to recognize Wisconsin credentialed appraisers seeking reciprocity. In order to implement the federally mandated reciprocity requirements before July 1, 2013, an emergency rule is needed.

Filed with LRB: June 12, 2013
Publication Date: June 18, 2013
Effective Dates: June 18, 2013 through November 14, 2013

3. EmR1308 — The Wisconsin Department of Safety and Professional Services adopts an order to create **section SPS 34.04 (2) (a) 4.**, relating to training of firearms instructors for private security personnel, private detectives, and private investigators or special investigators, and affecting small business.

This emergency rule was approved by the Governor on May 29, 2013.

The statement of scope for this rule, SS 080–12, was approved by the Governor on October 2, 2012, published in Register No. 682 on October 31, 2012, and approved by the Department of Safety and Professional Services on December 4, 2012.

Finding of Emergency

The Department of Safety and Professional Services (DPS) finds that an emergency exists and that this rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. A statement of facts constituting the emergency is as follows.

Under section SPS 34.02 (1), private security personnel, private detectives, and private investigators or special investigators, who are seeking a firearms permit from the Department must obtain a certificate of firearms proficiency. Section SPS 34.02 (2) mandates that the certification be received from a Department–approved firearms–proficiency certifier pursuant to section SPS 34.04.

Section SPS 34.04 currently accepts only those certifier applicants who have received training as a police or security firearms instructor and who have either (1) current approval as a firearms instructor by the Wisconsin Law Enforcement Standards Board (LESB); (2) current certification as a law enforcement firearms instructor by the National Rifle Association, Inc., (NRA) or; (3) approval on or after January 1, 1995, as a firearms instructor by the LESB or NRA and have completed a refresher course presented by a regional training school approved by the LESB or the NRA.

Due to enactment of 2011 Wisconsin Act 35 (commonly referred to as the concealed carry law), which became effective on November 1, 2011, there is a greater need for additional entities who can provide training and approve applicants as firearms proficiency certifiers. Section 175.60 (4) of the Statutes currently allows technical colleges, colleges, and universities to provide this training for concealed–carry purposes. No such provision is made as it relates to private security personnel, private detectives, and private investigators or special investigators, for carrying a weapon openly. Moreover, the training needed for DPS firearms certifiers differs significantly from that needed and provided by the LESB curriculum and under 2011 Act 35. To that end, a new standard needs to be developed and implemented, separate and distinct from the LESB standards. Because the need to approve applicants for firearm proficiency certifiers is immediate and pressing, emergency rules are warranted.

Filed with LRB: June 13, 2013
Publication Date: June 13, 2013
Effective Dates: June 13, 2013 through
November 9, 2013

Scope Statements

Children and Families

Safety and Permanence, Chs. DCF 35—59

SS 103–13

This statement of scope was approved by the Governor on August 6, 2013.

Rule No.

Amends Chapter DCF 37.

Relating to

Information to be provided to physical custodians of children in out-of-home care.

Rule Type

Permanent.

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

2. Detailed Description of the Objective of the Proposed Rule

If a child is removed from his or her home and placed in a foster home or family-operated group home, ch. DCF 37 requires the placing agency to gather information about the child's medical, physical, mental, and emotional conditions and provide the information to the child's foster parent or family-operated group home parent. The purposes of ch. DCF 37 are to not jeopardize the health, safety, or welfare of the foster child, foster parent, or other community members and to ensure that foster parents can be as effective as possible in providing appropriate care for the child because they have received full information about the child from the placing agency.

Currently, the information that the placing agency is required to gather is in forms that are appendices to ch. DCF 37. Chapter DCF 37 and the forms in the appendices were created in 1995 and have not been updated since then. The proposed rule will repeal and recreate ch. DCF 37 to include the kinds of information that must be gathered and will require the use of forms designated by the department but will not include the actual forms in the rule. The proposed rule will also require that the forms be used when a child is placed in a foster home; group home; residential care center for children and youth; shelter care; unlicensed home of a person who is not a relative under s. 48.207 (1), Stats.; or the home of a relative when the child is placed with that relative by a court order under ch. 48 or 938, Stats.

This rule change is necessary for the department to comply with a directive from the federal Administration for Children and Families that the department do all of the following:

- Provide greater assessment of a child's needs and provide that information to caregivers providing services to the child.
- Provide consistent information to all out-of-home care providers.

- Establish plans for caregivers to follow in case of a crisis or emergency with a child.

The revised forms will categorize information so that a child's specific needs are more readily apparent and will provide more information to caseworkers and out-of-home care providers about the child's additional assessment and treatment needs. New sections on the child's crisis response plan, emotional triggers, and previous crisis interventions will also be included.

3. Detailed Explanation of Statutory Authority for the Rule

Section 895.485 (4), Stats., provides that the department shall promulgate rules specifying the kind of information that an agency that places a child in a foster home or family-operated group home shall disclose to the foster parent or family-operated group home operator that relates to a medical, physical, mental, or emotional condition of the child.

Section 48.67 (intro.), Stats., provides that the department shall promulgate rules establishing minimum requirements for the issuance of licenses to, and establishing standards for the operation of, child welfare agencies, child care centers, foster homes, group homes, shelter care facilities, and county departments. Those rules shall be designed to protect and promote the health, safety, and welfare of the children in the care of all licensees.

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

130 hours.

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

The Bureau of Milwaukee Child Welfare, county human and social service agencies, and licensed child-placing agencies.

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

42 USC 671 (a) (24) requires that the state plan under Title IV-E of the Social Security Act for foster care and adoption assistance include a certification that, before a child in foster care under the responsibility of the state is placed with prospective foster parents, the prospective foster parents will be prepared adequately with the appropriate knowledge and skills to provide for the needs of the child, and that such preparation will be continued, as necessary, after the placement of the child.

Under 45 CFR 1337.20, "foster care" means 24-hour substitute care for children placed away from their parents or guardians and for whom the state agency has placement and care responsibility, including placements with a relative caregiver or in a foster home, treatment foster home, group home, shelter care, or residential care center for children and youth.

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

No or minimal economic impact.

8. Contact Person

Jonelle Brom, Bureau of Permanence and Out-of-Home Care, jonelle.brom@wisconsin.gov, (608) 264-6463.

Natural Resources

Fish, Game, etc., Chs. NR 1—

SS 104-13

(DNR # FH-27-13 (E))

This statement of scope was approved by the Governor on August 12, 2013.

Rule No.

Revises Chapter NR 25.

Relating to

Creating a competitive grant program for municipal fish hatcheries and private fish farms in order to increase the capacity to raise walleye for stocking in Wisconsin waters.

Rule Type

Emergency.

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

2013 Wisconsin Act 20, the 2013-15 state budget, included the following: notwithstanding section 227.24 (1) (c) and (2) of the statutes, emergency rules promulgated for walleye population maintenance and enhancement grants remain in effect until June 30, 2016, or the date on which permanent rules take effect, whichever is sooner. In addition, notwithstanding section 227.24 (1) (a) and (3) of the statutes, the department is not required to provide evidence that promulgating this rule as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under this subsection.

2. Detailed Description of the Objective of the Proposed Rule

2013 Wisconsin Act 20 directed the department to establish a grant program to award grants on a competitive basis to cities, villages, towns, and counties; to federally recognized Indian tribes or bands located in this state; and to fish farms for the purpose of increasing their capacity to raise walleye for stocking in the waters of the state. The grants may be used to build, improve, or repair any of the following:

- (a) Buildings and structures used as fish hatcheries or for fish rearing.
- (b) Fish rearing ponds.
- (c) Wells or water recirculation systems.
- (d) Biosecurity systems to ensure fish health.
- (e) Holding facilities and equipment used for fish brood stock.
- (f) Equipment used for the distribution of fish or for the collection of fish spawn.

For a fish farm to be eligible for a grant under this section, the fish farm must be registered with the Department of

Agriculture, Trade and Consumer Protection under s. 95.60, Stats., and be in compliance with all applicable state and federal environmental laws and all applicable state and federal laws related to fish health.

A contract awarding a grant under this section shall state the number of walleye fingerlings that will be reared as a result of the increased capacity and the purchase price the grantee shall charge for the fingerlings when the construction, improvement, or repair is completed.

In addition, the department may enter into contracts with local governmental units, federally recognized Indian tribes or bands located in this state, and fish farms for the purpose of increasing the amount of walleye available for stocking in the waters of the state.

The terms of a contract, which shall not exceed five years, may include all of the following:

(a) Authorization for the department to furnish fish eggs and fish for free or at cost to a local governmental unit, tribe, band, or fish farm that is a party to the contract.

(b) Authorization for the department to purchase fish from a local governmental unit, tribe, band, or fish farm that is a party to the contract.

Additional rule changes may be pursued which are reasonably related to those discussed here.

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

The proposals in this rule would support the efforts of the new "Wisconsin Walleye Initiative," which is intended for state, municipal, tribal, and private fish hatchery operations to increase the production of large walleye fingerlings for stocking in Wisconsin waters. The Fisheries Management Bureau does not currently manage a grant program for that purpose, but the department has extensive experience with managing grant programs to private and municipal entities that can serve as examples for this program.

The department is statutorily required to create the grant program through administrative rule using policy listed in statute.

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

Section 29.014(1), Stats., directs the department to establish and maintain conditions governing the taking of fish that will conserve the fish supply and ensure the citizens of this state continued opportunities for good fishing.

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

Section 29.709, Stats., provides that the department may operate state fish hatcheries, including receiving fish eggs or fish donated to the state or purchased, and procure, receive, exchange, distribute, and dispose of fish eggs and fish.

Section 29.739, Stats., directs the department to establish a grant program to award grants on a competitive basis to cities, villages, towns, and counties; to federally recognized Indian tribes or bands located in this state; and to fish farms.

Section 29.740, Stats., provides that the department may enter into contracts with local governmental units, federally recognized Indian tribes or bands located in this state, and fish farms for the purpose of increasing the amount of walleye available for stocking in the waters of the state.

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

200 hours.

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

- Municipal fish hatcheries: fish hatcheries that are owned or operated by a city, village, town, county, or a federally recognized Indian tribe or band located in Wisconsin.
- Private fish farms: farms registered with the Department of Agriculture, Trade and Consumer Protection under s. 95.60, Stats.
- Tribal and non-tribal fishers: sustenance and recreational fishers will likely benefit from additional walleye stocking opportunities.

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

There is no federal authority over the proposed actions. None of the rule proposals violate or conflict with federal regulations.

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

Minimal to no negative economic impact (Level 3).

The rule is not expected to have an adverse effect on the economy, a sector of the economy, productivity, jobs, or the overall economic competitiveness of the State. It will have a positive impact by providing \$1 million annually in the 2013–15 biennium to municipal fish hatcheries and private fish farms through a competitive grant program. Grants will be used for building and improving hatchery buildings, rearing ponds, equipment and other facilities. In addition, \$500,000 will be available annually starting in fiscal year 2014–15 for the department to contract with municipal fish hatcheries and private fish farms to purchase fish for the purpose of raising walleye for stocking with Wisconsin waters.

The rule will not allow for the potential to establish a reduced fine for small businesses, nor will it establish “alternative enforcement mechanisms” for “minor violations” of administrative rules made by small businesses.

9. Anticipated Number, Month and Locations of Public Hearings

The Department anticipates holding one public hearing in the month of January 2014. Hearing cities will be: Madison, WI.

The Department will hold this hearing in this location to gather input on the implementation of walleye population maintenance and enhancement grants that are required by the 2013–15 state budget.

10. Contact Person

Mike Staggs, Fisheries Management Bureau Director, 608–267–0796.

Natural Resources

Fish, Game, etc., Chs. NR 1—

SS 108–13

(DNR # FH–26–13 (E))

This statement of scope was approved by the Governor on August 13, 2013.

Rule No.

Revises Chapter NR 25.

Relating to

Lake trout harvest limits in Lake Superior.

Rule Type

Emergency.

1. 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 2013–14 lake trout commercial harvest season.

2. 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 recreational 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 three times, most recently in November 2012. Lake trout harvest limits will be amended by October 2013 via negotiation between the Department of Natural Resources and the Red Cliff and Bad River Bands of Lake Superior Chippewa and put in place by emergency rule for the 2013–14 open season. The Wisconsin State–Tribal Technical Committee, which is made up of Department, Red Cliff, and Bad River biologists, has recommended about a 15 percent reduction in lake trout harvest for the 2013–14 and 2014–15 seasons. However, this is only a recommendation and must be formally agreed upon through the negotiation process before becoming final. These harvest limits must be ordered through Administrative Code by emergency rule so limits are in place by November 28, 2013, the beginning of the 2013–14 season.

The rule will:

- Modify the annual commercial fishing harvest limit for lake trout on Lake Superior.
- Revise rules used to determine the footage of gill net that may be set in the water by each fisher, also called “fishing effort.” No commercial fisher may set more than his or her allowable gill net effort during the lake trout open season, based on a formula to determine each commercial fisher’s allowable gill net effort in feet of net. When targeting whitefish with gill nets, each fisher is allowed to fish only the amount of net

that would cause an incidental catch and kill of his or her lake trout quota. However, harvest may be only moderately affected because fishers can shift to using trap nets that are not subject to the same effort restrictions governing gill nets.

- Allow the department to enforce a reduced recreational daily bag limit for lake trout in Lake Superior if the recreational lake trout harvest exceeds a percentage of the total allowable harvest. Lake trout harvest limits are created for both commercial and recreational fishers in Lake Superior in order to manage the total population.

Additional rule changes may be pursued which are reasonably related to those discussed in this scope.

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

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 because of high harvest limits in the early 2000s, which were in response to several large year classes (numbers of fish spawned in the same year) predicted to enter the fishery. However, these year classes did not attain the abundance originally anticipated and, as a result, the overall lake trout population did not reach the levels previously expected. This combination of increased harvest and re-scaled estimates of lake trout abundance has caused actual 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 harvest reductions in order to ensure a sustainable lake trout fishery over the long-term.

Lake trout harvest limits were reduced by emergency rule for the 2012-13 open season. Rule alternatives are not being considered because the recommendations must be negotiated through the State-Tribal Lake Superior Agreement.

4. 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.

5. 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 developing the emergency rule. It will require in-state travel to meet with tribal negotiators.

6. 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.

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

No federal regulations apply. None of the rule proposals violate or conflict with federal regulations.

8. 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 impact the commercial harvest of lake trout and other species by state-licensed and tribal commercial fishers. The total dockside value of the reported state commercial lake trout harvest in 2012 was approximately \$20,000. Harvest is not expected to change by more than 15 percent. Therefore the impacted to the value of the lake trout fishery is not expected to exceed \pm \$3,000. However, this rule may also alter the amount of gill net effort commercial fishers can use to target whitefish since lake trout are frequently caught in the same nets. Changes in gill net effort therefore have the potential to cause commercial fishers additional income changes. The total dockside value of whitefish harvested by state commercial fishers using gill nets was approximately \$155,000 in 2012. Harvest is expected to be modified by no more than 15 percent putting the total value adjustment at no more than \pm \$23,000 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.

9. Anticipated Number, Month and Locations of Public Hearings

The Department anticipates holding one public hearing in the month of December 2013. Hearing city will be: Bayfield.

The Department will hold the hearing in this location to collect public input on the proposed lake trout harvest quota.

10. Contact Person

Peter Stevens, Lake Superior Fisheries Supervisor,
715-779-4035 ext. 12.

Natural Resources

Environmental Protection — General, Chs. NR 100—

SS 107-13

(DNR # AM-28-13 and AM-29-13 (E))

This statement of scope was approved by the Governor on August 14, 2013.

Rule No.

Creates Chapter NR 171.

Relating to

Stage 2 Vapor Recovery System Removal Grants.

Rule Type

Permanent and Emergency.

1. Finding/Nature of Emergency

The Department is requesting authority to begin both a permanent and an emergency rulemaking process to establish a grant program for the removal of stage 2 vapor recovery equipment at gasoline stations located in the counties of Kenosha, Kewaunee, Manitowoc, Milwaukee, Ozaukee, Racine, Sheboygan, Washington, and Waukesha.

Stage 2 vapor recovery equipment captures fuel vapors (*volatile organic compounds or VOC*) that have the potential to escape during refueling and returns them to an underground gasoline storage tank where they condense. Beginning with 1998 model year cars, the U.S. Environmental Protection Agency (EPA) phased in requirements for onboard (*on the vehicle*) refueling vapor recovery (ORVR) systems. These systems essentially serve the same purpose as stage 2 vapor recovery equipment at a gasoline station. On May 16, 2012, the U.S. EPA published a finding in the Federal Register that ORVR technology is in “widespread use” (77 FR 28772). They stated that “more than 75 percent of gasoline refueling nationwide occurs with ORVR-equipped vehicles, so stage 2 programs have become largely redundant control systems.” The U.S. EPA also stated that the limited compatibility between ORVR and stage 2 vapor recovery equipment may ultimately result in an emissions increase. As such, the U.S. EPA authorized states to remove the requirements for stage 2 vapor recovery equipment from their ozone State Implementation Plans (SIPs).

This grant program will provide incentive to gasoline station owners and operators to remove their stage 2 vapor recovery equipment in a timely manner. Removal of this equipment will allow station owners and operators to avoid those costs associated with maintenance of the equipment that would otherwise be incurred. Timely removal will also hasten the avoidance of potential VOC emission increases cited by the U.S. EPA above.

2. Description of the Objective of the Proposed Rule

The proposed rule will establish a grant program for the removal of stage 2 vapor recovery equipment, as required by s. 285.31 (6) (b), Stats. For the purposes of the proposed rule, the term “remove” will be defined as proper decommissioning of stage 2 vapor recovery equipment, thereby removing it from service. A description of what

constitutes proper decommissioning will be included as part of the proposed rule. In addition, the proposed rule will focus on the administration of the grant program, including which costs are eligible grant costs.

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

The U.S. EPA’s ORVR widespread use finding authorized states to remove the requirement for stage 2 vapor recovery systems from their ozone SIPs. Wisconsin had stage 2 requirements codified in s. NR 420.045, Wis. Adm. Code, that applied to gasoline stations located in the counties of Kenosha, Kewaunee, Manitowoc, Milwaukee, Ozaukee, Racine, Sheboygan, Washington, and Waukesha. However, s. 285.31 (5), Wis. Stats., now states that this rule no longer applies. In response, the Department submitted a SIP revision to the U.S. EPA on November 12, 2012 to remove the state’s stage 2 requirements from the ozone SIP. The U.S. EPA proposed approval of the requested SIP revision on June 11, 2013. The U.S. EPA has not yet issued the final approval, but that is expected soon.

The new policy associated with the proposed rulemaking is to establish a grant program for the removal of stage 2 vapor recovery equipment. There are no policy alternatives because s. 285.31 (6), Wis. Stats., requires the Department to promulgate rules for a stage 2 vapor recovery equipment removal grant program.

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

Section 285.31 (6) of the Wisconsin Statutes requires the Department to implement rulemaking for the establishment of a stage 2 vapor recovery removal grant program. The statute reads as follows:

285.31 (6) VAPOR RECOVERY SYSTEM REMOVAL GRANTS. (a) *The department shall administer a program to provide grants to owners and operators of retail stations for eligible costs incurred after April 15, 2012, to remove vapor control systems described in sub. (3) (a). The maximum grant under this subsection is 50 percent of eligible costs of removing a vapor control system from a retail station or \$8,000, whichever is less. The department shall award grants under this subsection in the order in which applications are received.*

(b) *The department shall promulgate rules for the administration of the program under this subsection, including rules specifying which costs are eligible costs.*

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

The Department estimates 700 hours of state employee time are needed for the development of the proposed permanent rule and an additional 300 hours of state employee time for the development of the proposed emergency rule.

6. Description of all Entities that may be Impacted by the Rule

There are 846 gasoline stations located in the counties of Kenosha, Kewaunee, Manitowoc, Milwaukee, Ozaukee, Racine, Sheboygan, Washington, or Waukesha that would be potentially eligible for grant funding as a result of this proposed rule.

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

There is no comparable federal grant program for the removal of stage 2 vapor recovery equipment.

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

The Department anticipates the proposed rule will have a positive moderate economic impact. The purpose of this proposed rule is to establish a grant program to provide economic assistance to gasoline stations to offset the costs of removing stage 2 vapor recovery equipment. One million dollars was allocated for the stage 2 vapor recovery system removal grant program as part of Wisconsin Act 20 (2013). Gasoline stations will be able to receive 50 percent of eligible costs of removing a vapor control system up to a maximum amount of \$8,000. By removing the equipment affected gasoline station owners and operators will also avoid equipment maintenance costs. Station owners and operators could qualify as small businesses under s. 227.114 (1), Wis. Stats.

9. Anticipated Number, Month and Locations of Public Hearings

In accordance with s. 227.24 (4), Wis. Stats., the Department is required to hold a public hearing within 45 days after it promulgates the proposed emergency rule. The Department anticipates conducting one public hearing in Milwaukee in March of 2014 related to the emergency rule. In addition, the Department anticipates conducting another public hearing in Milwaukee in August of 2014 related to the proposed permanent rule.

10. Contact Person

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Revenue

SS 099-13

This statement of scope was approved by the Governor on August 2, 2013.

Rule No.

Amends Chapter Tax 11.

Relating to

Sales and use tax provisions.

Rule Type

Permanent.

1. Detailed Description of the Objective of the Proposed Rule

The objectives of the rule are (1) reflect law changes in 2013 Wisconsin Act 20, and (2) correct two errors in current rule provisions.

- a. **Custom farming services.** Reflect the creation of s. 77.51 (2d), Stats., to provide that “custom farming services” includes services performed by veterinarians to farm livestock or work stock used exclusively in the business of farming. This requires updates to the provisions of ss. Tax 11.12 and 11.61.
- b. **“Drugs.”** In s. Tax 11.20 (3) (a) 2., reflect the amendment to s. 77.54 (57) (b) 4., Stats., to replace “medicines” with “drugs” so the rule correctly reflects the updated exemption.
- c. **Health Insurance Risk-Sharing Plan Authority.** Reflect the amendment to s. 77.54 (9) (a), Stats. Due to the dissolution of the Health Insurance Risk-Sharing Plan and Authority, the exemption for sales made to the authority is being rescinded. This requires updates to ss. Tax 11.04 (1), 11.05 (4), and 11.49 (2) (b).
- d. **Lump sum contracts.** Reflect the creation of the exemption in sec. 77.54 (60), Stats. This provision exempts certain property sold by a contractor as a part of a lump sum contract and deems the contractor the consumer of such property, with exception. Amendments are needed to s. Tax 11.68 (7) (b) and the examples following it.
- e. **“Place of primary use.”** In s. Tax 11.66 (1) (u), reflect the amendments to s. 77.522 (4) (a) 9., Stats., so the definition of “place of primary use” in the rule is the same as current law. Remove s. Tax 11.66 (u) 1. and 2. as these are included in the amended definition.
- f. **“Prepaid wireless calling service.”** In s. Tax 11.66 (1) (x), reflect the amendments to s. 77.51 (10f), Stats., so the definition of “prepaid wireless calling service” in the rule is the same as current law.
- g. **Printing exemptions.** Reflect the creation of s. 77.54 (61), Stats. This requires updates to the provisions of s. Tax 11.56.
- h. **Property transferred incidentally with a taxable service.** Amend the first note at the end of s. Tax 11.48 and the first note at the end of s. Tax 11.67 to reference s. 77.52 (21), Stats.
- i. **“Prosthetic device.”** In ss. Tax 11.08 (4) (a) and 11.45 (3) (a), reflect the amendments to s. 77.51 (11m), Stats., so the definition of “prosthetic device” in the rule is the same as current law.
- j. **Qualified research and animal raising.** Reflect the repeal of s. 77.54 (57) (b) 1. and 2., Stats., the renumbering of s. 77.54 (57) (a) 1f., Stats., to s. 77.51 (1c), Stats., the renumbering of s. 77.54 (57) (a) 1m., Stats., to s. 77.51 (1d), Stats., the renumbering of s. 77.54 (57) (a) 4., Stats., to s. 77.51 (10rn), Stats., the amending of s. 77.54 (57) (a) 5. and (b) 4., Stats., and the creation of s. 77.54 (57d), Stats. This requires updates to the provisions of s. Tax 11.20.
- k. **Self-service laundry machines.** Reflect the amendment to sec. 77.52 (2) (a) 6., Stats. Receipts from self-service laundry machines that are operated by tokens and magnetic cards are no longer subject to sales and use tax. This requires an update to s. Tax 11.52 (5) (a).
- l. **Services resulting in advertising and promotional direct mail.** Reflect the amendment to s. 77.52 (2) (a) 11., Stats. The sale of advertising and promotional direct mail became exempt from sales and use tax effective July 1, 2013, pursuant to 2011 Wis. Act 32. The amendment of sec. 77.52 (2) (a) 11., Stats.,

provides that the services of producing, fabricating, processing, printing, or imprinting that result in advertising and promotional direct mail are also not taxable. This requires updates to ss. Tax 11.19 (2) (a), 11.56 (7) (bm), and 11.70 (2) (e).

m. “Sales price” and “purchase price.”

- In s. Tax 11.26 (3), reflect the amendments to s. 77.51 (12m) (a) and (15b) (a), Stats., along with the creation of s. 77.51 (12m) (b) 3m. and (15b) (b) 3m., Stats., to exclude from “sales price” and “purchase price” taxes imposed on the seller that are separately stated that the seller may, but is not required to, pass on and collect from the user or consumer.
- Include “fees and charges” as an addition to taxes in several parts of the rule to make it clear that taxes, fees and charges are covered under this rule.
- Amend s. Tax 11.26 (2), to include “regardless of whether they are separately stated on the invoice, bill of sale, or other similar document given by the seller to the purchaser,” for taxes, fees and charges included in sales price and the purchase price.
- Amend s. Tax 11.26 (2) (c) to include “and ammunition” after firearms to the list of federal excise taxes.
- Amend the list of taxes, fees and charges included and excluded from “sales price” and “purchase price” contained s. Tax 11.26 (2) and (3) as follows:
 - i. Move s. Tax 11.26 (3) (b), example 2, federal excise tax on heavy trucks and trailers, from the excluded to the included in s. Tax 11.26 (2)
 - ii. Add the following taxes, fees and charges in s. Tax 11.26 (2):
 - Federal medical device excise tax imposed under s. 4191 of the internal revenue code.
 - Federal universal service fund fee
 - Dry cleaning fee imposed under s. 77.9961, Stats.
 - Dry cleaning products fee imposed under s. 77.9962, Stats.
 - PUC fee imposed under s. 196.85, Stats.
 - Telephone relay service surcharge imposed under s. 196.858, Stats.
 - Telecommunications utility trade practices surcharge imposed under s. 196.859, Stats.
 - State issued franchise fee (video) imposed under s. 66.0420 (7), Stats.
 - Petroleum inspection fee imposed under s. 168.12, Stats.
 - Motor fuel taxes imposed under s. 78.01, Stats.
 - iii. Remove s. Tax 11.26 (3) (b) and change examples 1, 3, 4, 5, 6 and 7 to specific

items excluded from “sales price” and “purchase price” similar to s. Tax 11.26 (3) (a) or (c).

- iv. Add the following taxes, fees and charges in s. Tax 11.26 (3)
 - Police and fire protection fee imposed under s. 196.025 (6), Stats.
 - Low-income assistance fees imposed under s. 16.957 (4) & (5), Stats.
 - Landline 911 charge imposed under s. 256.35 (3), Stats.
 - Wireless 911 charge imposed under s. 256.35 (3m)
 - State USF fee imposed under s. 196.218, Stats.
- n. Correct error.** Correct error in Example 1 under s. Tax 11.33 (4) (f).
- o. Correct error.** Amend sec. Tax 11.39 (1) (b), to correct a typographical error. This provision quotes the law and is needed for accuracy.

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

Existing policies are as set forth in the rules. New policy is being proposed to reflect the law changes described above. If the rules are not changed, they will be incorrect in that they will not reflect current law or current department policy.

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

Section 77.65 (3), Stats., provides “[t]he department may promulgate rules to administer this section...”

Section 227.11 (2) (a), Stats., provides “[e]ach 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...”

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

The department estimates it will take approximately 100 hours to develop the rule.

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

Purchasers and sellers of the products described above.

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

There is no existing or proposed federal regulation that is intended to address the activities to be regulated by the rule.

7. 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 is anticipated.

8. Contact Person

Dale Kleven, (608) 266-8253.

Revenue

SS 100-13

This statement of scope was approved by the Governor on August 2, 2013.

Rule No.

Revises section Tax 11.93.

Relating to

Sales tax filing frequency.

Rule Type

Permanent and Emergency.

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

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

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

Section 77.58 (1) (a), Wis. Stats., as amended by 2013 Wis. Act 20, requires retailers to file sales tax returns monthly if their tax liability exceeds \$1,200 in any quarter. This change goes into effect on January 1, 2014. Under prior law, retailers were required to file monthly sales tax returns if their tax liability exceeded \$600 in any quarter.

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

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

2. Detailed Description of the Objective of the Proposed Rule

The objectives of the rule are to:

- Amend the reference in sec. Tax 11.93 to increase the annual filing standard to \$600 (currently \$300) to allow more retailers to file sales tax returns annually. This is consistent with changes made to s. 77.58 (1) (a), Stats., by 2013 Wisconsin Act 20, to allow more retailers to file sales tax returns less frequently (quarterly rather than monthly).

This change would make this rule consistent with recent changes to s. 77.58 (1) (a), Stats.

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

Existing policies are as set forth in the rules. A new policy is being proposed to reflect a law change concerning how

frequently smaller retailers must file sales tax returns. If the rule is not changed, only a portion of smaller filers will be allowed to file less frequently.

This change would make this rule consistent with recent changes to s. 77.58 (1) (a), Stats.

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

Section 77.58 (5), Stats., provides “The department, if it deems it necessary to ensure payment to or facilitate the collection by the state of the amount of taxes, may require returns and payments of the amount of taxes for other than quarterly periods. The department may, if satisfied that the revenues will be adequately safeguarded, permit returns and payments of the amount of taxes for other than quarterly periods...”

Section 77.65 (3), Stats., provides “[t]he department may promulgate rules to administer this section...”

Section 227.11 (2) (a), Stats., provides “[e]ach 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...”

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

The department estimates it will take approximately 100 hours to develop the rule.

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

An estimated 11,929 retailers will file less frequently.

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

There is no existing or proposed federal regulation that is intended to address the activities to be regulated by the rule.

8. 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 is anticipated.

9. Contact Person

Dale Kleven, (608) 266-8253.

Revenue

SS 101-13

This statement of scope was approved by the Governor on August 2, 2013.

Rule No.

Revises Chapters Tax 2 and 3.

Relating to

Income and franchise tax provisions.

Rule Type

Permanent.

1. Detailed Description of the Objective of the Proposed Rule

The objective of the rule is to reflect law changes in the 2013-2014 Legislative session:

- Revise s. Tax 2.32 to reflect that, for taxable years beginning after December 31, 2012, the economic development surcharge does not apply to individuals, estates, trusts, partnerships, and limited liability companies treated as partnerships.
- Revise s. Tax 2.88 to reflect, effective July 2, 2013, the reduction in the rate of refund interest from 9 percent to 3 percent.
- Revise s. Tax 2.957 to reflect that the relocated business credit and deduction may not be claimed by a business that relocates to Wisconsin in a taxable year beginning after December 31, 2013.
- Repeal s. Tax 2.985 to reflect that the electronic medical records credit may not be claimed for taxable years beginning after December 31, 2013.
- Create s. Tax 2.986 to administer the registration of “qualified Wisconsin businesses” for purposes of the capital gains exclusion in s. 71.05 (25), Stats., and the income tax deferral in s. 71.05 (26), Stats.
- Revise s. Tax 2.99 to reflect that the dairy and livestock farm investment credit may not be claimed for taxable years beginning after December 31, 2013.
- Revise s. Tax 3.095 to reflect that, effective for taxable years beginning after December 31, 2012, certain interest from bonds issued by the Wisconsin Health and Educational Facilities Authority is exempt.

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

Existing policies are as set forth in the rules. New policy is being proposed to reflect the law changes described above. If the rules are not changed, they will be incorrect in that they will not reflect current law or current department policy.

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

Sections 71.05 (6) (b) 47.e., 71.28 (9s) (d) 2., and 71.47 (9s) (d) 2., Stats., provide “[t]he department shall promulgate rules...” These provisions apply to the revisions to s. Tax 2.957.

Section 73.03 (69) (c), Stats., provides “[t]he department may promulgate rules for the administration of this subsection.” This provision applies to the creation of s. Tax 2.986.

Section 73.15 (3), Stats., provides “[t]he department of revenue shall promulgate rules...” This provision applies to the repeal of s. Tax 2.985.

Under s. 71.80 (1) (c), Stats., the department may make such regulations as it shall deem necessary in order to carry out chapter 71 of the Wisconsin Statutes, relating to income and franchise taxes. This provision applies to the revision of ss. Tax 2.88, 2.99, and 3.095.

Section 77.96 (4), Wis. Stats., provides that the authority under s. 71.80 (1) (c), Stats., applies to the economic development surcharge. This provision applies to the revision to s. Tax 2.32.

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

The department estimates it will take approximately 100 hours to develop the rule.

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

Tax professionals, businesses, and others who rely on clear, current, and concise rules

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

There is no existing or proposed federal regulation that is intended to address the activities to be regulated by the rule.

7. 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 is anticipated.

8. Contact Person

Dale Kleven, (608) 266-8253.

Safety and Professional Services

Professional Services, Chs. SPS 1—299

General Part I, Chs. SPS 301—319

General Part II, Chs. SPS 326—360

SS 102-13

This statement of scope was approved by the Governor on August 6, 2013.

Rule No.

Revises Chapters SPS 5, 135, 305, 310, 346, 347.

Relating to

Licensing, certifications and registrations of trades credentials, continuing education requirements of home inspectors, and rule changes affected by 2013 Wisconsin Act 20.

Rule Type

Permanent.

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

2. Detailed Description of the Objective of the Proposed Rule

The proposed rulemaking project is intended to review the procedures for licenses, certifications and registrations covered under ch. SPS 305, Wis. Adm. Code., revise the home inspector continuing education requirements covered under ch. SPS 135, Wis. Adm. Code., and incorporate rule changes to SPS chapters affected by the enactment of the 2013 Wisconsin Act 20.

The Department is evaluating a number of modifications to SPS chapters. Modifications are needed to:

1. Improve the efficiency in the Department’s processing of the various licenses, certifications and registrations as it relates to continuing education and credential renewal for trades credentials.
2. Establish an alternative testing avenue for individuals to obtain a journeyman plumber–restricted appliance license.
3. Address the qualifications for elevator inspectors in light of changes occurring with the American

Society of Mechanical Engineers. This specific objective would only be pursued if enabling legislation were enacted under ss. 101.984 (3), Stats.

4. Increase transparency in the Department's criteria for the approval of continuing education for dwelling contractor qualifiers.
5. Provide greater clarity with regards to continuing education requirements for home inspectors.
6. Address the continuing education requirements for home inspectors in light of changes to ss. 440.974 (2), Stats. This specific objective would only be pursued if enabling legislation were enacted under ss. 440.974 (2), Stats.
7. Incorporate rule changes to chs. SPS 5, 305, 310, 346, 347, and other SPS chapters affected by the enactment of 2013 Wisconsin Act 20.

The rules are also to be reviewed for clarity, consistency and format which may result in non-substantive revisions.

The objectives of this rule project may be incorporated into more than one rule package, and may include revisions to other chapters affected by the proposal.

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

Chapter SPS 305 establishes licensing, certification and registration programs for a variety of building-related trades, both for individuals and businesses. The current rules establish provisions for the activities, qualifications, exams, responsibilities and renewal obligations for the various credentials.

Not evaluating and updating ch. SPS 305 periodically would not provide the department the opportunity to increase efficiencies in the processes relating to the issuance and renewal of credentials.

Chapter SPS 135 establishes the continuing education requirements for home inspectors. Proposed rule changes would provide greater clarity with regards to continuing education requirements. By not amending the rules in this manner, home inspectors may inadvertently fail to meet the requirements and as a result may not be able to practice as home inspectors.

2013 Wisconsin Act 20 affected numerous Department rules. It is necessary to amend Department rules to efficiently incorporate and implement the relevant provisions of 2013 Wisconsin Act 20.

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

The statutory authority for home inspector continuing education falling under the scope of ch. SPS 135 can be found under ch. 440, Stats. Specifically, statutory provisions include:

- **440.974 (2)** The department shall promulgate rules establishing continuing education requirements for individuals registered under this subchapter. The rules promulgated under this subchapter shall require the completion of at least 20 hours of continuing education during each calendar year.

The statutory authority for the credentials falling under the scope of ch. SPS 305 can be found under chs. 101 and 145, Stats. Specifically, statutory provisions include:

- **101.09 (3) (c)** The rule promulgated under par. (a) may require the certification or registration of persons who install, remove, clean, line, perform tightness testing on and inspect tanks and persons who perform site assessments. Any rule requiring certification or registration shall also authorize the revocation or suspension of the certification or registration.
- **101.147 Contractor registration. (1)** No person may hold himself or herself out or act as a construction contractor unless that person is registered as a construction contractor by the department.
(2) The department shall promulgate rules to administer and enforce this section.
- **101.178 (3) (a)** The department shall promulgate rules for a voluntary program under which a person who engages in the business of installing or servicing heating, ventilating or air conditioning equipment may obtain certification by passing an examination developed or selected by the department.
- **101.63 (2)** Adopt rules for the certification, including provisions for suspension and revocation thereof, of inspectors for the purpose of inspecting building construction, electrical wiring, heating, ventilating, air conditioning and other systems, including plumbing, as defined in s. 145.01 (10), of one- and 2-family dwellings under sub. (1). The rules shall specify that the department may suspend or revoke the certification of an inspector under this subsection for knowingly authorizing the issuance of a building permit to a contractor who is not in compliance with s. 101.654.
- **101.63 (2m)** Promulgate rules for certifying the financial responsibility of contractors under s. 101.654. These rules shall include rules providing for the assessment of fees upon applicants for certification of financial responsibility under s. 101.654 and for the suspension and revocation of that certification.
- **101.73 (5)** Adopt rules for the certification, including provisions for suspension and revocation thereof, of on-site inspectors of the installation of modular homes for dwellings. Persons certified as on-site inspectors may be employees of the department, a city, village, town or county or an independent agency.
- **101.73 (6)** Adopt rules for the certification, including provisions for suspension and revocation thereof, of independent inspection agencies to conduct in-plant inspections of manufacturing facilities, processes, fabrication and assembly of modular homes for dwellings and to certify compliance with this subchapter.
- **101.82 (1m)** Promulgate rules that establish criteria and procedures for the registration of beginning electricians and for the examination and licensing of different types of electricians, including journeymen electricians and master electricians.
- **101.82 (1v)** Promulgate rules that establish criteria and procedures for the licensing of electrical contractors.
- **101.92 (9)** Shall promulgate rules and establish standards necessary to carry out the purposes of ss. 101.951 and 101.952.
- **101.96 (2) (c)** The department, by rule shall establish the term of installers' licenses and the conditions under which the department may revoke or suspend installers' licenses. The department shall establish an

initial installer's license fee and license renewal fee by rule under s. 101.19.

- **101.985 (3)** The department shall issue an elevator inspector license to each individual who demonstrates to the satisfaction of the department that the individual is adequately qualified and able to provide elevator inspection services. The department shall promulgate rules that establish the qualifications required for issuance of an elevator inspector license.
- **145.02 (4) (a)** The department shall prescribe rules as to the qualifications, examination and licensing of master and journeyman plumbers and restricted plumber licensees, for the licensing of utility contractors, for the registration of plumbing apprentices and pipe layers and for the registration and training of registered learners. The plumbers council, created under s. 15.407 (16), shall advise the department in formulating the rules.
(b) The department may promulgate rules for the qualification and registration of cross-connection control testers.
- **145.15 (2)** The department shall prescribe rules as to the qualifications, examination and licensing of journeymen automatic fire sprinkler system fitters and automatic fire sprinkler contractors and for the registration and training of automatic fire sprinkler system apprentices. The automatic fire sprinkler system contractors and journeymen council, created under s. 15.407 (17), shall advise the department in formulating the rules.
- **145.175** An automatic fire sprinkler-maintenance only registration certificate is required before any business establishment may maintain or repair existing automatic fire sprinkler systems in its physical facilities. The department shall, by rule, specify the qualifications for issuing an automatic fire sprinkler-maintenance only registration certificate. The department shall, by rule, specify the activities in which a person holding a registration certificate under this section may engage.

The statutory authority for many of the rule changes affected by 2013 Wisconsin Act 20 can be found under chs. 101, 168, and 440, Stats. Specifically, statutory provisions include:

- **101.09 (3) (a)** The department shall promulgate by rule construction, maintenance and abandonment standards applicable to tanks for the storage, handling or use of liquids that are flammable or combustible or are federally regulated hazardous substances, and to the property and facilities where the tanks are located, for the purpose of protecting the waters of the state from harm due to contamination by liquids that are flammable or combustible or are federally regulated hazardous substances. The rule shall comply with ch. 160. The rule may include different standards for new and existing tanks, but all standards shall provide substantially similar protection for the waters of the state. The rule shall include maintenance requirements related to the detection and prevention of leaks. The rule may require any person supplying heating oil to any noncommercial storage tank for consumptive use on the premises to submit to the department, within 30 days after the department requests, the location, contents and size of any such tank.

- **101.09 (3) (c)** The rule promulgated under par. (a) may require the certification or registration of persons who install, remove, clean, line, perform tightness testing on and inspect tanks and persons who perform site assessments. Any rule requiring certification or registration shall also authorize the revocation or suspension of the certification or registration.
- **101.09 (3) (d)** The department shall promulgate a rule specifying the fees for plan review and inspection of tanks for the storage, handling, or use of flammable or combustible liquids and for any certification or registration required under par. (c).
- **101.45 (5m) Rules.** The department shall promulgate rules for the administration of the program under this section.
- **101.143 (2) (b)** The department shall promote the program under this section to persons who may be eligible for awards under this section.
- **101.143 (2) (e)** The department shall promulgate rules, with an effective date of no later than January 1, 1996, specifying the methods the department will use under sub. (3) (ae), (ah), (am) and (ap) to identify the petroleum product storage system or home oil tank system which discharged the petroleum product that caused an area of contamination and to determine when a petroleum product discharge that caused an area of contamination occurred. The department shall write the rule in a way that permits a clear determination of what petroleum product contamination is eligible for an award under sub. (4) after December 31, 1995.
- **101.143 (2) (em) 1.** The department may promulgate rules that specify a fee that must be paid by a service provider as a condition of submitting a bid to conduct an activity under sub. (3) (c) for which a claim for reimbursement under this section will be submitted. Any fees collected under the rules shall be deposited into the petroleum inspection fund.
- **101.143 (2) (f)** The department shall promulgate a rule establishing a priority system for paying awards under sub. (4) for petroleum product storage systems that are owned by school districts and that are used for storing heating oil for consumptive use on the premises where stored.
- **101.143 (2) (g)** The department may promulgate, by rule, requirements for the certification or registration of persons who provide consulting services to owners and operators who file claims under this section. Any rule requiring certification or registration shall also authorize the revocation or suspension of the certification or registration.
- **101.143 (2) (h)** The department of safety and professional services and the department of natural resources, jointly, shall promulgate rules designed to facilitate effective and cost-efficient administration of the program under this section that specify all of the following:
- **101.143 (2) (i)** The department of safety and professional services and the department of natural resources, jointly, shall promulgate rules specifying procedures for evaluating remedial action plans and procedures to be used by employees of the department of safety and professional services and the department of natural resources while remedial actions are being conducted. The departments shall specify procedures

- that include all of the following: 1. Annual reviews that include application of the method in the rules promulgated under sub. (2e) (b) to determine the risk posed by discharges that are the subject of the remedial actions. 2. Annual reports by consultants estimating the additional costs that must be incurred to comply with sub. (3) (c) 3. and with enforcement standards. 3. A definition of “reasonable time” for the purpose of determining whether natural attenuation may be used to achieve enforcement standards. 4. Procedures to be used to measure concentrations of contaminants.
- **101.143 (2) (j)** The department of safety and professional services and the department of natural resources, jointly, shall promulgate rules specifying all of the following: 1. The conditions under which employees of the department of commerce [safety and professional services] and the department of natural resources must issue approvals under sub. (3) (c) 4. Note: The correct agency name is shown in brackets. Corrective legislation is pending. 2. Training and management procedures to ensure that employees comply with the requirements under subd. 1.
 - **101.143 (2) (L)** The department may promulgate rules for the assessment and collection of fees to recover its costs for providing approval under sub. (3) (c) 4. and for providing other assistance requested by applicants under this section. Any moneys collected under this paragraph shall be credited to the appropriation account under s. 20.165 (2) (Lm).
 - **101.143 (2e) (b)** If the department of safety and professional services and the department of natural resources are unable to reach an agreement under par. (a), they shall refer the matters on which they are unable to agree to the secretary of administration for resolution. The secretary of administration shall resolve any matters on which the departments disagree in a manner that is consistent with par. (a). The department of safety and professional services and the department of natural resources, jointly, shall promulgate rules incorporating any agreement between the department of safety and professional services and the department of natural resources under par. (a) and any resolution of disagreements between the departments by the secretary of administration under this paragraph.
 - **101.143 (4) (ce)** Eligible cost; service providers. The department may promulgate rules under which the department selects service providers to provide investigation or remedial action services in specified areas. The rules may provide that the costs of a service for which the department has selected a service provider in an area are not eligible costs under par. (b), or that eligible costs are limited to the amount that the selected service provider would have charged, if an owner or operator of a petroleum product storage system located in that area, or a person owning a home oil tank system located in that area, uses a service provider other than the service provider selected by the department to perform the services. If the department selects service providers under this paragraph, it shall regularly update the list of service providers that it selects.
 - **101.143 (4) (di)** Rules concerning deductible for underground systems. The department may promulgate rules describing a class of owners and operators of underground petroleum product storage tank systems otherwise subject to par. (dg) for whom the deductible is based on financial hardship.
 - **101.143 (4) (h) 2.** The department shall promulgate a rule identifying the ineligible costs to which subds. 1. and 1m. apply.
 - **101.143 (9) (a)** The department shall promulgate rules prescribing requirements for the records to be maintained by an owner or operator, person owning a home oil tank system or service provider and the periods for which they must retain those records.
 - **101.144 (3g) (a)** If, on December 1, 1999, more than 35% of sites classified under this section, excluding sites that are contaminated by a hazardous substance other than a petroleum product or an additive to a petroleum product, are classified as high-risk sites, the department of safety and professional services and the department of natural resources shall attempt to reach an agreement that specifies standards for determining whether the site of a discharge of a petroleum product from a petroleum storage tank is classified as high risk. The standards shall be designed to classify no more than 35% of those sites as high-risk sites and may not classify all sites at which an enforcement standard is exceeded as high-risk sites. If the department of safety and professional services and the department of natural resources are unable to reach an agreement, they shall refer the matters on which they are unable to agree to the secretary of administration for resolution. The secretary of administration shall resolve any matters on which the departments disagree in a manner that is consistent with this paragraph. The department of safety and professional services shall promulgate rules incorporating any agreement between the department of safety and professional services and the department of natural resources under this paragraph and any resolution of disagreements between the departments by the secretary of administration under this paragraph.
 - (b) If, 6 months after rules under par. (a) are in effect, more than 35% of the sites classified under this section, excluding sites that are contaminated by a hazardous substance other than a petroleum product or an additive to a petroleum product, are classified as high-risk sites, the department of safety and professional services shall revise the rules using the procedure for promulgating the rules in par. (a).
 - **168.04 (1)** The department by rule shall prescribe minimum product grade specifications for gasoline, automotive gasoline, gasoline alcohol fuel blends, reformulated gasoline, as defined in s. 285.37 (1), and kerosene and may prescribe product grade specifications for aviation gasoline, fuel oils, and diesel fuels.
 - **168.16 (4)** The department may promulgate reasonable rules relating to the administration and enforcement of this chapter.
 - **440.42 (3) (am)** A charitable organization that operates solely within one community and that received less than \$50,000 in contributions during its most recently completed fiscal year may apply to the department for an exemption from the reporting requirement under par. (a). The department shall promulgate rules specifying the criteria for eligibility for an exemption under this paragraph, and shall grant

exemptions from the reporting requirement under par. (a) to a charitable organization that satisfies those criteria.

- **440.42 (8) Contribution limits.** The department may promulgate rules that adjust the threshold amounts in subs. (3) (a), (b), (bm), and (c) and (5) (a) 3. and (b) to account for inflation.
- **440.455 (4)** A charitable organization that operates solely within one community and that received less than \$50,000 in contributions during its most recently completed fiscal year may apply to the department for an exemption from the disclosure requirements under this section. The department shall promulgate rules specifying the criteria for eligibility for an exemption under this paragraph, and shall grant exemptions from the disclosure requirements under this section to a charitable organization that satisfies those criteria.

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

The Department estimates that for each rule package approximately 500 hours will be needed to perform the review and develop any needed rule changes. This time includes meeting with various advisory councils, if necessary, drafting the rule changes and processing the changes through public hearings, legislative review, and adoption. The Department will assign existing staff to perform the review and develop the rule changes, and no other resources will be needed.

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

The current rules of chs. SPS 135 and SPS 305 cover the credentialing of blasters, firework manufacturers, building contractors, dwelling contractors, HVAC contractors, welders, electricians, inspectors, plumbers, elevator and lift installers, automatic fire sprinkler installers, soil testers, automatic fire sprinkler testers, manufactured home manufacturers, dealers, salespersons and installers, liquefied gas suppliers, and home inspectors.

Entities affected by the proposed rule changes that incorporate 2013 Wisconsin Act 20 will not be affected beyond the impacts of 2013 Wisconsin Act 20.

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

An internet-based search of the *Code of Federal Regulations* (CFR) and the *Federal Register* did not find any federal regulations, existing or proposed, relating to the licensing activities to be regulated under the rules.

8. Anticipated Economic Impact of Implementing the Rule

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

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

9. Contact Person

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

Safety and Professional Services — Pharmacy Examining Board

SS 105-13

This statement of scope was approved by the Governor on July 18, 2013.

Rule No.

Revises Chapter Phar 18.

Relating to

The operation of the prescription drug monitoring program.

Rule Type

Permanent.

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

N/A.

2. Detailed Description of the Objective of the Proposed Rule

The Pharmacy Examining Board (Board) seeks to modify ch. Phar 18 based on feedback and information it has obtained while developing and deploying the Wisconsin Prescription Drug Monitoring Program (PDMP). The modifications would seek to improve the efficiency of the PDMP by ensuring consistency between the language in the rule and how the PDMP functions. Specifically, the Board seeks authorization to consider modifying definitions in ss. Phar 18.02 and 18.04, to modify the list of required data elements in s. Phar 18.04, to clarify the language describing the obligation to submit zero reports in s. Phar 18.06 and the language describing the obligation to notify the department when a dispenser decides to no longer dispense monitored prescription drugs in s. Phar 18.08, to clarify who may access PDMP data in s. Phar 18.09, and to modify the language in ss. Phar 18.10 and 18.11.

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

Currently, the Board is aware that some provisions of ch. Phar 18 create inefficiencies and ambiguities that the PDMP has to overcome to be as effective of a tool to combat prescription drug misuse and abuse as it can be. The Board has noted the feedback it has received while developing and deploying the PDMP and has gained considerable expertise in ways to improve the PDMP once it becomes fully operational. All of the modifications the Board seeks to make are based on feedback from stakeholders and PDMP users or other information obtained while developing and deploying the PDMP.

An alternative to the making the modifications is to not make the modifications, which would not enable the Board to improve the PDMP based on information obtained while developing and deploying the PDMP and the feedback of stakeholders and PDMP users.

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

In s. 450.19 (2), Stats., the legislature directs the Board to establish rules to govern the PDMP. In s. 961.31, Stats., the legislature also authorizes the Board to promulgate rules relating to the dispensing of controlled substances. Finally, in

ss. 15.08 (5) (b), and 227.11 (2) (a), Stats., the legislature confers to the Board the powers to promulgate rules for the guidance of the profession and to interpret the provisions of statutes it enforces.

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

80 hours.

6. List with description of all entities that may be affected by the proposed rule

1) Licensees who are authorized to prescribe and dispense controlled substances: Advanced Practice Nurse Prescribers, Anesthesiologist Assistants, Dentists, Pharmacies, Pharmacists, Physicians, Physician Assistants, and Podiatrists

2) Department of Safety and Professional Services Staff.

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

There are no existing or proposed federal regulations intended to address the activities regulated by the proposed rule.

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

There is no anticipated economic impact of the proposed rule.

Contact Person

Sharon Henes, 608-261-2377.

Workforce Development

Unemployment Insurance, Chs. DWD 100—150

SS 106-13

This statement of scope was approved by the Governor on August 14, 2013.

Rule No.

Amends Chapters DWD 126, 127, and 129.

Relating to

Work registration, work search, and unemployment insurance benefit claiming procedures.

Rule Type

Emergency.

Finding/Nature of Emergency

The Department of Workforce Development (department) finds that an emergency exists and emergency rules are necessary for the immediate preservation of the public peace, health, safety, or welfare. The reason for the emergency is:

- To fulfill the new statutory directives to require claimants for Unemployment Insurance (UI) benefits to increase their number of weekly work search actions from two to at least four;
- To execute the new statutory requirement to request additional information from claimants;

- To promote the improvement in the Wisconsin economy as a result of the immediate implementation of legislative directives with respect to the UI program contained in 2013 Wisconsin Act 20 and 2013 Wisconsin Act 36;
- To improve the Unemployment Insurance Trust Fund balance and thereby relieve employers of the burden of additional taxation;
- To simplify the process and compliance with respect to requirements for UI claimants to register for work; and,
- To better assist UI benefit claimants to obtain gainful employment.

The Department is considering the possibility of flexible effective date provisions in the rules, so that the rule changes in different areas of the rules can be brought into effect as soon as the necessary program policies and procedures have been developed, staff training has been completed, and programming changes have been implemented and tested. In addition, phasing in the changes for UI claim procedures, job search requirements, and reemployment services requirements will allow adequate time for public education.

Detailed Description of the Objective of the Proposed Rule

The emergency rules will amend and update current rules related to the UI program by disqualifying claimants who are not actively seeking work and reducing the amount of time that claimants collect UI benefits. The emergency rules will ensure that those receiving UI benefits are engaging in activities that an unemployed person who wants to work would perform. The emergency rules will enhance the department's ability to guarantee that claimants perform those activities directed by the department to assist claimants in becoming reemployed and prescribe methods by which claimants will be notified of requirements with respect to benefit eligibility.

- Section 108.04 (2) (a) 3., Stats., as amended by 2013 Wis. Act 20, requires weekly work search activities for a UI Benefit claimant be increased from 2 to at least 4 searches per week, and some claimants may be required to conduct more than 4 work searches per week.
- Section 108.04 (15), Stats., created by 2013 Wis. Act 36 authorizes the department to request information from UI benefit claimants related to work search efforts.
- Section 108.04 (2) (a) 4., Stats., as created by 2013 Wis. Act 36, authorizes the department to request information from UI benefit claimants related to work search efforts.

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

UI benefits provide a temporary safety net for unemployed individuals who are out of work through no fault of their own until they secure additional employment. Section 108.04 (2), Stats., provides that an otherwise qualified claimant is eligible for UI benefits in any given week if the individual is able and available to work, has registered for work, and the individual conducts a reasonable search for suitable work.

2013 Wisconsin Act 20 amended these qualification requirements. First, it clarified that a claimant's registration for work must be done as directed by the department. Second, it increased the number of weekly work search actions a

claimant must conduct from two to at least four, unless the department waives the work search requirement. Third, the department must adopt rules to prescribe when it may require a claimant to conduct more than four work search actions in a week. Finally, as the department enhances its focus on assisting claimants to become reemployed, the administrative rules must enable the department to provide claimants with notifications through email and other modern technological means.

The emergency rules will make the rules consistent with the newly enacted legislation and will clarify and narrow the exemptions available to a claimant who is required to conduct work searches. These emergency rules will strengthen the requirements for unemployed individuals to actively seek employment and thereby improve their employment prospects and align the job search requirements with the underlying goal of the UI program.

Under current administrative rules, the department may require claimants to participate in a public employment office workshop which offers instructions in improving a claimant's skills for finding and obtaining employment. Consistent with the statutory changes provided by 2013 Wisconsin Act 36, the emergency rule will enable the department to identify additional services it may provide claimants to become more quickly employed and potentially require claimants to attend training services to enhance their job prospects.

Finally, as required by 2013 Wisconsin Act 20, the emergency rules will provide criteria as to when the department may in a particular week require a claimant to conduct more than four weekly work search actions.

The policy alternative to not amend the administrative rules by the emergency rule process is unacceptable. First, the administrative rules will be inconsistent with state statutes. Second, without adopting the emergency rules, the department may not be able to require claimants to provide information to the department as prescribed by the department. This will deter the department from verifying that claimants are actively seeking work and enabling the department to provide needed employment services to claimants. Moreover, not amending the rules by the emergency rule process may encourage some claimants to remain unemployed and to continue to collect unemployment benefits rather than obtain employment, resulting in additional taxes being imposed on employers.

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

Section 108.04 (2) (b), Stats., provides: “[t]he requirements for registration for work and search for work shall be prescribed by rule of the department, and the department may by general rule waive these requirements under certain stated conditions.”

In addition, s. 108.14 (2), Stats., provides in part: [https://docs.legis.wisconsin.gov/document/statutes/108.14\(2\)](https://docs.legis.wisconsin.gov/document/statutes/108.14(2)) “[t]he department may adopt and enforce all rules which it finds necessary or suitable to carry out this chapter.”

Other statutory authority includes:

Sec. 108.03, Wis. Stats. Payment of benefits — authority to prescribe conditions for the payment of benefits.

Sec. 108.04, Wis. Stats. Eligibility for benefits — authority to adopt rules on the requirement for work registration and work searches.

Sec. 108.08, Wis. Stats. Notification of unemployment — authority to adopt rules for how a claimant shall notify the department of his or her unemployment.

Sec. 108.09, Wis. Stats. Settlement of benefit claims — authority to adopt rules on how claimants shall file claims.

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

The total amount of staff time is estimated to be approximately 30 additional hours of effort will be needed to develop these rules by the emergency rule process. The department has already submitted a scope statement to make these rules permanent rules and enacting these amendments by the emergency rule process can be part of the ongoing effort.

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

These emergency rules will impact all individuals who qualify for UI benefits. These emergency rules will also impact businesses in two aspects. First, the emergency rules are projected to result in more UI claimants finding employment faster. As a result, unemployed individuals will be collecting lower amounts of UI benefits and there will be fewer charges to employers' UI accounts. This will result in employers having to pay lower amounts of unemployment tax. Second, more unemployed individuals will seek employment. As a result, there are likely to be more job applications for employers to review when employers are seeking to hire individuals.

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 states UI claimants must be registered for work and must be available and actively seeking work to be eligible for UI benefits. In addition, federal law requires claimants to participate in reemployment services to which they have been referred as a condition of UI eligibility. These rules will clarify what are the required work search activities a claimant must conduct and strengthen the ability of the department to monitor claimants' efforts to obtain employment and require him or her to participate in reemployment services.

Anticipated economic impact of implementing the rule (note if the rule is likely to have an economic impact on small businesses)

These emergency rules will have a positive economic impact. The increase in the requirement for work search activities and work registration will likely decrease charges to the UI trust fund due to individuals obtaining employment sooner or becoming disqualified for not actively seeking work. This will have a positive economic impact on employers, due to fewer charges to employers' UI accounts. In addition, claimants who are regularly collecting a paycheck rather than an unemployment check will have a larger, more positive economic impact on the community.

Contact Person

Janell Knutson, Director, UI Bureau of Legal Affairs, (608) 266-1639, janell.knutson@dwd.wisconsin.gov

Workforce Development

Employment and Training, Chs. DWD 805—830

SS 109-13

This statement of scope was approved by the Governor on August 15, 2013.

Rule No.

Creates Chapter DWD 801.

Relating to

Workforce training grants under 2013 Wisconsin Act 9.

Rule Type

Emergency.

Finding of Emergency

The Department of Workforce Development (DWD) finds that an emergency exists and emergency rules are necessary for the immediate preservation of the public peace, health, safety, or welfare. The reason for the emergency is:

DWD proposes to create new rules in Chapter DWD 801 to implement the program of workforce training grants enacted by 2013 Wisconsin Act 9. DWD held a public hearing on the permanent rule for this new program on July 15, 2013, and has made revisions to the text of the proposed permanent rule in response to the comments received. It would now benefit the public welfare to proceed with the rules in emergency form so that the program can begin this fall.

Detailed Description of the Objective of the Proposed Rule

In 2013 Wisconsin Act 9, the Governor and Legislature have enacted s. 106.27, Wis. Stats., which provides that DWD shall award grants to public and private organizations for the development and implementation of workforce training programs. The organizations that receive the grants are allowed to use the funds for the training of unemployed and underemployed workers and incumbent employees of businesses in this state. The grants are intended to respond to the identified needs of employers and employees. The objective of this proposed rule, as required by the statute, is to prescribe the procedures and criteria for awarding these grants and to specify the information that is to be contained in reports to describe how grant funds are expended and what outcomes are achieved.

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

The new policies which will be proposed in the rule will establish the basic procedures and criteria for the awarding of grants, which will include requirements for written proposals, standards for the evaluation of the proposals, and a description of the extent to which matching funds will be required. The new policies will also describe the reports

required by the statute which are intended to provide a record of how the grant funds were expended and what outcomes were achieved.

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

Sec. 106.27(2g), Wis. Stats., provides as follows:

(2g) IMPLEMENTATION. (a) *Duties*. To implement this section, the department shall do all of the following: 1. Promulgate rules prescribing procedures and criteria for awarding grants under sub. (1) and the information that must be contained in the reports required under subd. 3.

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

The estimated time is 40 hours.

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

The grant program, and therefore these rules, will primarily affect employers or organizations that are interested or involved in providing workforce training programs and individuals who are seeking training to improve their prospects for obtaining employment.

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

These grants are intended to complement and coordinate with existing job training opportunities under federal Workforce Investment Act, 29 U.S. Code 2801, 20 CFR Part 652.

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

Because this rule carries forward the initiative created by 2013 Wisconsin Act 9, the fiscal note for the bill that was enacted as Act 9, 2013 Assembly Bill 14 also states the anticipated economic impact of the rules.

Contact Person

For program questions:

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For rulemaking questions:

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Submittal of Proposed Rules to Legislative Council Clearinghouse

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

Agriculture, Trade and Consumer Protection CR 13-066

(DATCP Docket # 12-R-08)

On August 12, 2013, the Wisconsin Department of Agriculture, Trade and Consumer Protection referred a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse, pursuant to s. 227.15, Stats.

The scope for this rule, SS 049-12, was approved by the Governor on July 6, 2012, published in register No. 679 on July 31, 2012, and approved by the Board of Agriculture, Trade & Consumer Protection on August 14, 2012.

Analysis

The proposed rule revises chapters ATCP 110 and 111, relating to home improvement practices and basement waterproofing practices, affecting small businesses.

Agency Procedure for Promulgation

The department will hold public hearings on this rule. The public hearings are scheduled for September 24, September 26, October 1, and October 2. The department's Division of Trade and Consumer Protection is primarily responsible for this rule.

Contact Person

Kevin LeRoy, (608) 224-4928, Department of Agriculture, Trade and Consumer Protection, (608) 224-4928, kevin.leroy@wisconsin.gov.

Safety and Professional Services — Pharmacy Examining Board CR 13-065

On August 6, 2013, the Pharmacy Examining Board

submitted a proposed rule to the Legislative Council Rules Clearinghouse.

The scope statement for this rule, SS 047-13, was approved by the Governor on April 29, 2013, published in Register No. 689 on May 15, 2013, and approved by Pharmacy Examining Board on April 15, 2013. (Motion on 4/15/2013 included approving Scope and Implementation post-Publication.)

Analysis

Statutory Authority: ss. 450.19 (2) and 961.31, Wis. Stats.

This proposed rule-making order repeals ss. Phar 18.02 (22), 18.06 (4) to (6) and (9); renumbers s. Phar 18.06 (8) to (5); renumbers and amends s. Phar 18.06 (7) to (4); amends ss. Phar 18.02 (7), (16), and (17), 18.03 (intro.), 18.04 (1) (b) and (e), and (3) (b), (d), (i), and (k), 18.06 (1) to (3) (intro.); creates s. Phar 18.02 (13e); and repeals and recreates s. Phar 18.02 (3), relating to the prescription drug monitoring program (PDMP) and the exclusion of veterinarians from reporting.

Agency Procedure for Promulgation

A public hearing is required and will be held on September 11, 2013 at 9:00 a.m. at 1400 East Washington Avenue, Room 121, Madison, Wisconsin (enter at 55 North Dickinson Street).

Contact Person

Jean MacCubbin, Department of Safety and Professional Services, Division of Policy Development, (608) 266-0955, jean.maccubbin@wisconsin.gov.

Rule–Making Notices

Notice of Hearing

Agriculture, Trade and Consumer Protection CR 13–066

(DATCP Docket # 12–R–08)

The Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) announces that it will hold public hearings on a proposed rule revising Chapters ATCP 110 and 111, relating to home improvement practices and basement waterproofing practices.

DATCP will hold four public hearings at the times and places shown below:

Hearing Information

Date: Tuesday, September 24, 2013
Time: 3:00 p.m. to 4:30 p.m.
Location: Board Room (BR–106)
 Department of Agriculture, Trade and Consumer Protection
 2811 Agriculture Drive
 Madison, WI 53718–6777

Date: Thursday, September 26, 2013
Time: 2:30 p.m. to 4:00 p.m.
Location: Room 131
 Eau Claire State Office Building
 718 West Clairemont Ave.
 Eau Claire, WI 54701

Date: Tuesday, October 1, 2013
Time: 2:00 p.m. to 3:30 p.m.
Location: Room 40
 Milwaukee State Office Building
 819 North 6th Street
 Milwaukee, WI 53203

Date: Wednesday, October 2, 2013
Time: 3:00 p.m. to 4:30 p.m.
Location: Room 152A
 Green Bay State Office Building
 200 N Jefferson Street
 Green Bay, WI 54301

Hearing impaired persons may request an interpreter for this hearing. Please make reservations for a hearing interpreter by September 10, 2013, by writing to Kevin LeRoy, Division of Trade and Consumer Protection, P.O. Box 8911, Madison, WI 53708–8911; or by emailing kevin.leroy@wisconsin.gov or by telephone at (608) 224–4928. Alternatively, you may contact the DATCP TDD at (608) 224–5058. The hearing facility is handicap accessible.

Appearances at the Hearings, Copies of Proposed Rule, and Submittal of Written Comments

DATCP invites the public to attend the hearings and comment on the proposed rule. Following the public hearings, the hearing record will remain open until October 16, 2013, for additional written comments. Comments may

be sent to the Division of Trade and Consumer Protection at the address below, or to kevin.leroy@wisconsin.gov, or to <http://adminrules.wisconsin.gov>.

You can obtain a free copy of this hearing draft rule and related documents including the economic impact analysis by contacting the Wisconsin Department of Agriculture, Trade and Consumer Protection, Division of Trade and Consumer Protection, 2811 Agriculture Drive, P.O. Box 8911, Madison, WI 53708. You can also obtain a copy by calling (608) 224–4928 or by emailing kevin.leroy@wisconsin.gov. Copies will also be available at the hearing. To view the hearing draft rule online, go to: <http://adminrules.wisconsin.gov>.

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

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

This rule revises and updates current rule relating to home improvement practices.

Statutes interpreted

Section 100.20, Stats.

Statutory authority

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

Explanation of statutory authority

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

DATCP has authority under s. 100.20 (2) (a), Stats., to promulgate rules forbidding methods of competition in business or trade practices in business that are determined to be unfair. DATCP also has authority to promulgate rules prescribing methods of competition or trade practices that that DATCP determines to be fair.

Related statutes and rules

Some of the home improvement contractors regulated by ch. ATCP 110 may also be regulated by Ch. 101 — Subchapter II, One and Two Family Dwelling Code, Wis. Stats., associated Department of Safety and Professional Services (DSPS) administrative rules, and building codes administered by local units of government.

Under statutes and rules administered by DSPS, persons who apply for building permits for one or two unit dwellings (and who are not an owner and resident), are required to have a Dwelling Unit Contractor Certification from DSPS. These statutes and rules do not distinguish between building permits for new construction and building permits for home repairs or improvement. Therefore, certified dwelling unit contractors who specialize in new home construction are not regulated by ch. ATCP 110. And home improvement contractors who perform jobs that do not require building permits are not regulated by the dwelling unit contractor certification program.

Plain language analysis**Rule content**

Chapter ATCP 110 currently regulates home improvement practices. Pursuant to the definition of “home improvement,” new residential construction is outside of the scope of the current rule and DATCP does not regulate trade practices in the construction of new homes.

Under this rule, the rights and duties contained in ch. ATCP 110 would not apply to very large home improvement projects; those where the value of the project is more than 100% of the assessed value of the property. A typical example of this might be a contract to build a new structure on a preexisting foundation.

Under the current rule, home improvement contractors are required to obtain all required state or local building permits before work can begin under the contract. Under this proposed rule, if a home improvement contract consists of multiple subprojects, contractors may start work on the overall project before obtaining all building permits. However, they may not begin work on a subproject that requires a building permit until after they obtain the permit.

Under the current rule, sellers must provide manufacturers product warranties either at the time the buyer and seller enter into the contract or when the product is installed. Under this proposed rule, the seller has the option of providing written manufacturers’ warranties at the completion of the project – as long as it is specified in the contract.

Under the current rule, if a home improvement contract contains liquidated damages that penalize a buyer for breaching the contract, the liquidated damages may not exceed 10% of the contract price or \$100, whichever is less. This proposed rule maintains the 10 percent limit, but it repeals the \$100 maximum.

Under the current rule, the seller may not substitute products or materials from those specified in the home improvement contract, or for those which the seller represented would be used, without prior consent from the buyer. If the home improvement contract is in writing, the prior consent must also be in writing. Under this proposed rule, the seller may deviate from the written home improvement contract, but only under the following limited conditions:

- The buyer verbally agrees to the deviation
- The seller maintains documentation of the deviation, and the buyer agreed to the deviation.
- The deviation does not represent any additional cost to the buyer
- The deviation does not represent a decrease in the value of the finished product.

Under the current rule, the seller is required to provide the buyer with lien waivers before accepting final payment. Further, if the contract requires partial payments at various stages in the performance of the contract, the seller is required to provide lien waivers for the proportionate value of all labor, services and products or materials furnished or delivered as of

the time payment is made. This rule does not alter the current rule’s treatment of lien waivers before final payment. However, it does allow the seller to forego proportionate lien waivers before partial payments as long as the seller takes steps to educate the buyer about lien waivers and the buyer provides written consent to foregoing the partial waivers.

Under the current rule, sellers are required to give buyers timely notice of any impending delay in contract performance. If the home improvement contract is in writing (or required to be in writing), the buyer must agree in writing to the change in the schedule. This rule qualifies this requirement by specifying that, if the seller can show that the delay was caused by the buyer, the seller is not responsible for the delay.

The current rule contains protections for buyers in the event that the seller fails to complete the project, but also assigns the rights to collect payment to a third party. This rule does not alter this provision. But it does insert an explanatory note that includes an example of how it might be applied.

Under current rules, sellers who provide basement waterproofing services are regulated both as home improvement contractors under ch. ATCP 110 and also under ch. ATCP 111 — Basement Waterproofing Practices. This rule consolidates the content of ch. ATCP 111 into a section of ATCP 110, without making any substantial changes.

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

The federal government does not, in general, regulate home improvement practices.

Comparison with rules in adjacent states

Most states, including all of Wisconsin’s neighbors, have home improvement practices laws. Many of the provisions in ATCP 110 are common in these other states as well.

Illinois regulates home improvement practices through its Home Repair and Remodeling Act and its Home Repair Fraud Act. These provisions are generally similar to Wisconsin’s Home Improvement Practices rule.

Iowa grants consumers a private right of action which enables consumers to sue businesses that engage in deceptive or unfair practices or misrepresentation, or that fail to disclose material facts. This law covers home improvement practices, among other areas.

Contractors who do home improvement work in Minnesota and Michigan are required to obtain a license from the state (there are some exceptions). In Minnesota, licensed contractors are required to pay into the Minnesota Contractor’s Recovery Fund. This fund compensates people who have suffered losses due to a licensed contractor’s fraudulent, deceptive or dishonest practices, misuse of funds, or failure to do the work the contractor was hired to do.

Summary of factual data and analytical methodologies

We do not have statistics specific to Wisconsin, but fixr.com (a web-based contractor referral service) has reported the extent of the home improvement industry on a national basis.

United States Annual Averages 1995 – 2009

	Number of Projects	Total Expenditure	Average Cost Per Project
Room additions and alterations	1,156,018	\$ 23,141,745,151	\$ 20,019
Systems and equipment	9,462,782	\$ 15,061,419,820	\$ 1,592
Outside attachments	549,917	\$ 3,560,131,931	\$ 6,474
Kitchen remodels	1,052,211	\$ 10,638,971,786	\$ 10,111
Other property additions and replacements	3,758,351	\$ 19,767,613,249	\$ 5,260
Exterior additions and replacements	5,636,949	\$ 23,734,265,908	\$ 4,210
Interior additions and replacements	5,186,460	\$ 13,211,085,021	\$ 2,547
Bath remodels	1,030,736	\$ 6,475,917,156	\$ 6,283
Disaster repairs	528,062	\$ 6,448,663,562	\$ 12,212

<http://www.fixr.com/infographics/us-home-improvement-industry-at-a-glance.html>

Complaints against home improvement contractors are consistently ranked in the top ten complaint categories received by the department's bureau of consumer protection. In 2012, DATCP received 391 written complaints against home improvement contractors.

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

DATCP has consulted with the Wisconsin Builders Association and the National Association of Remodelers – Milwaukee Chapter on the economic impact and the small business impact of this rule.

Effect on Small Business

The existing ch. ATCP 110 regulates businesses that provide home improvement services. Many of these businesses are “small businesses.” They include general contractors, landscapers, plumbers, roofers, window installers, cabinet makers, electricians, and many more. Some of the changes to ch. ATCP 110 proposed in this rule will have an effect on some of these businesses. DATCP anticipates that the majority of these effects will be beneficial. The rule streamlines existing regulations to make them easier for home improvement providers to comply. But the rule does not eliminate these regulations, thereby preserving important protections for consumers.

This rule may benefit home improvement contractors in the following ways:

- General contractors working on significant reconstruction projects would no longer be regulated under this proposed rule. Currently, ch. ATCP 110 does not regulate new home construction but it does regulate home improvement projects. Under this proposal, major reconstructions — those projects where the price of the contract is greater than the assessed property value — would be treated like new home construction.
- For all home improvement contractors, this rule provides some additional flexibility (as long as certain conditions are met). Including:
 - Building permits need only be obtained before work on that portion of the project concerning the building permit. Otherwise, all required building permits must be obtained before any work is completed.
 - Sellers can provide written manufacturers' warranties at the conclusion of the work. Otherwise, written manufacturers' warranties must be provided at the time the product is installed.

- Under very limited circumstances, sellers can deviate from the written contract based on verbal agreements between the buyer and the seller.
- The seller cannot be held responsible for delays in contract performance if the seller can demonstrate that delay was caused by actions or inactions of the buyer.

Initial Regulatory Flexibility Analysis

Reporting, bookkeeping and other procedures

Generally, reporting, bookkeeping and other procedures are the same as the current rule. However, this proposed rule does allow home improvement contractors some choices. For example under the current rule, any changes to the home improvement contract must be in writing before any work can proceed under the contract. Under the proposed rule, work can proceed, but only if the seller agrees to maintain certain documentation.

Professional skills required

This rule does not represent any requirements for professional skills.

Accommodation for small business

Many of the businesses affected by this rule are “small businesses.” This rule does not make special exceptions for small businesses because the subject matter does not lend itself to treating different sized home improvement contractors differently.

Conclusion

This rule will generally benefit affected businesses, including “small businesses.” Negative effects, if any, will be few and limited. This rule will not have a significant adverse effect on “small business,” and is not subject to the delayed “small business” effective date provided in s. 227.22 (2) (e), Stats.

Environmental Impact

This rule does not have an environmental impact.

Contact Information

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**ADMINISTRATIVE RULES
FISCAL ESTIMATE
AND ECONOMIC IMPACT ANALYSIS**

Type of Estimate and Analysis

Original Updated Corrected

Administrative Rule Chapter, Title and Number

Ch. ATCP 110 and 111, Home Improvement Practices and Basement Waterproofing

Subject

Home improvement practices and basement waterproofing

Fund Sources Affected

Chapter 20 , Stats. Appropriations Affected

GPR FED PRO PRS SEG SEG-S

20.115 (1) (a) and (jb)

Fiscal Effect of Implementing the Rule

No Fiscal Effect
 Indeterminate

Increase Existing Revenues
 Decrease Existing Revenues

Increase Costs
 Could Absorb Within Agency's Budget
 Decrease Costs

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

State's Economy
 Local Government Units

Specific Businesses/Sectors
 Public Utility Rate Payers

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

Yes No

Policy Problem Addressed by the Rule

ATCP 110, Home Improvement Practices, helps ensure fair transactions between home improvement contractors and their customers. This rule regulates many different types of home improvement, remodeling, and repair projects. This rule has been in existence since 1940 and has been modified a number of times, most recently in 2001.

The changes proposed in this rule, generally, represent updates and revisions to keep the rule consistent with current industry practices. It does not represent a major shift in policy from the existing rules.

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)

Local Governments

This rule will not impact local governments.

Home Improvement Contractors – General

This proposed rule is updated to reflect current practices in the home improvement industry. The rule will reduce the cost of compliance on home improvement contractors by reducing required paperwork, streamlining processes, and eliminating unnecessary, burdensome requirements. In general, the rule benefits both contractors and consumers by providing additional flexibility, while retaining prohibitions against unfair business practices. Contractors that take advantage of the proposed rule's added flexibility may incur minimal cost as they revise their standard contracts to conform to the new rule.

Home Improvement Contractors that Specialize in Major Reconstruction or Rebuilding of Existing Structures

The current rule (generally) regulates any home improvement work that is done on an existing residential building (see ATCP 110.01 (2), the definition of "home improvement," for a more precise description). The current rule does not, however, regulate new home construction. Under this proposed rule, very large projects, those where the value of the project is greater than the assessed value of the property, would be outside the scope of the rule. This allows contractors who do this type of work to interact with their customers as they would when building a new home.

Basement Waterproofers

Ch. ATCP 111 regulates business practices by basement waterproofers. This proposed rule streamlines the code by moving these provisions into a section of ATCP 110. However, it does not make any substantive changes to the requirements.

Utility Rate Payers

This rule does not impact utility rate payers.

General Public

Chs. ATCP 110 and 111 impact buyers of home improvement services by placing certain requirements and restrictions on home improvement contractors. This proposed rule does not represent a measurable change from this impact.

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

Benefits

Home improvement contractors

The proposed rule is intended to reduce the cost of compliance to contractors, which will in turn lead to increased efficiency and profitability. The rule also retains important prohibitions against unfair trade practices that harm honest businesses and consumers. This rule should benefit home improvement contractors.

General Public

The rule provides additional flexibility in transactions between contractors and consumers. Consumers may benefit when contractors' gains in efficiency and flexibility translate into lower costs and increased competition.

Alternatives

DATCP could continue regulating the home improvement industry under existing rules. However, this proposed rule updates and refines existing ATCP 110, Home Improvement Practices. The intent of this rulemaking is to modernize and streamline the requirements, but without sacrificing important consumer protections.

Long Range Implications of Implementing the Rule

Implementing the rule will benefit business, consumers, and the general public. The rule modifications will provide flexibility for businesses while retaining protection for consumers.

Compare With Approaches Being Used by Federal Government

The federal government does not, in general, regulate home improvement practices.

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

Most states, including all of Wisconsin's neighbors have home improvement practices laws. Many of the provisions in ATCP 110 are common in these other states as well.

Illinois regulates home improvement practices through its Home Repair and Remodeling Act and its Home Repair Fraud Act. These provisions are generally similar to Wisconsin's Home Improvement Practices rule.

Iowa grants consumers a private right of action, which enables consumers to sue businesses that engage in deceptive or unfair practices, misrepresentation, or failure to disclose material facts. This law covers home improvement practices, among other areas.

Contractors who do home improvement work in Minnesota and Michigan are required to obtain a license from the state (there are some exceptions). In Minnesota, licensed contractors are required to pay into the Minnesota Contractor's Recovery Fund. This fund compensates people who have suffered losses due to a licensed contractor's fraudulent, deceptive or dishonest practices, misuse of funds, or failure to do the work the contractor was hired to do.

Notice of Hearing

**Safety and Professional Services — Pharmacy
Examining Board
CR 13-065**

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Pharmacy Examining Board in ss. 450.19 (2) and 961.31, Wis. Stats., and interpreting ss. 15.08 (5) (b) and 227.11 (2) (a) Wis. Stats., the Pharmacy Examining Board

will hold a public hearing at the time and place indicated below to consider an order to repeal ss. Phar 18.02 (22), 18.06 (4) to (6) and (9); renumber s. Phar 18.06 (8) to (5); renumber and amend s. Phar 18.06 (7) to (4); amend ss. Phar 18.02 (7), (16), and (17), 18.03 (intro.), 18.04 (1) (b) and (e), and (3) (b), (d), (i), and (k), 18.06 (1) to (3) (intro.); create s. Phar 18.02 (13e); and repeal and recreate s. Phar 18.02 (3), relating to the prescription drug monitoring program (PDMP) and the exclusion of veterinarians from reporting.

Hearing Information

Date: Wednesday, September 11, 2013
Time: 9:00 a.m.
Location: 1400 East Washington Avenue (Enter at 55 No. Dickenson Street)
 Room 121
 Madison, Wisconsin

Appearances at the Hearing

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but are urged to submit facts, opinions and argument in writing as well. Facts, opinions and argument may also be submitted in writing without a personal appearance by mail addressed to the Department of Safety and Professional Services, Division of Policy Development, P.O. Box 8935, Madison, Wisconsin 53708–8935. Written comments must be received at or before the public hearing to be included in the record of rule-making proceedings.

Place Where Comments Are to be Submitted and Deadline for Submission

Comments may be submitted to Jean MacCubbin, Program Manager, Department of Safety and Professional Services, Division of Policy Development, 1400 East Washington Avenue, Room 151, P.O. Box 8935, Madison, WI 53708–8935, or by email to jean.maccubbin@wisconsin.gov; or via telecommunications relay services at 711. Comments must be received at or before the public hearing to be held on **September 11, 2013** to be included in the record of rule-making proceedings.

Copies of Rule

Copies of this proposed rule are available upon request to Jean MacCubbin, Program Manager, Department of Safety and Professional Services, Division of Policy Development, 1400 East Washington Avenue, P.O. Box 8935, Madison, WI 53708–8935, by email at jean.maccubbin@wisconsin.gov or on our website at <http://dsps.wi.gov/Default.aspx?Page=44e541e8-abdd-49da-8fde-046713617e9e>.

Analysis prepared by the Department of Safety and Professional Services**Statutes interpreted**

Section 450.19 (2), Stats.

Statutory authority

Sections 15.08 (5) (b), 227.11 (2) (a), and 961.31, Stats.

Explanation of agency authority

Section 450.19 (2), Stats., directs the Board to establish rules to govern the PDMP. Section 961.31, Stats., authorizes the Board to promulgate rules relating to the dispensing of controlled substances. Finally, ss. 15.08 (5) (b) and 227.11 (2) (a), Stats., confers to the Board the powers to promulgate rules for the guidance of the profession and to interpret the provisions of statutes it enforces.

Related statute or rule

Chapter 450, Stats., and chs. Phar 1 to 17, Wis. Admin. Code.

Plain language analysis

Chapter Phar 18, Prescription Drug Monitoring Program (PDMP), created a prescription drug monitoring program to collect and maintain information relating to the prescribing and dispensing of prescription drugs, particularly controlled substances. Chapter Phar 18 became effective January 1, 2013, in response to s. 961.31, Stats., which provided the board authority to promulgate rules. As promulgated ch. Phar 18 contradicts the statutory directive to create the PDMP in s. 450.19, Stats., as modified by 2013 Act 3.

Sections 1 to 4 either create, amend, or repeal definitions relating to changes consistent with 2013 Act 3 and the PDMP. Section 5 corrects statutory citations changed from the enactment of 2013 Act 3. Section 6 updates data requirements now that veterinarians are no longer required to report to the PDMP. Section 7 and 8 remove code text specific to veterinarian dispensers. Section 9 renumbers subsections after deleting text in Sections 7 and 8.

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

There is no existing or proposed federal regulation.

Comparison with rules in adjacent states

An Internet-based search for similar prescription drug monitoring programs revealed that the states of Illinois, Michigan, and Minnesota allow veterinarians to access their on-line reporting website or specifically require veterinarians to report dispensing through their statuses or codes. The search did not reveal that Iowa codes or statutes require or exempt veterinarians from their prescription drug monitoring program.

No factual data or analytical methodologies were used to draft the rules; the main purpose of the rule revisions is to conform to the Statutes after the enactment of 2013 Act 3.

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

None undertaken to draft the rules; the main purpose of the rule revisions is to conform to the Statutes after the enactment of 2013 Act 3.

Fiscal Estimate and Economic Impact Analysis

The Fiscal Estimate and Economic Impact Analysis is attached.

Initial Regulatory Flexibility Analysis or Summary

This rule change will not have an effect on small business.

Environmental Assessment/Statement

N/A.

Agency Contact

Jean MacCubbin, Program Manager
 Department of Safety and Professional Services
 Division of Policy Development
 1400 East Washington Avenue, Room 151
 P.O. Box 8935
 Madison, WI 53708–8935
 Telephone: (608) 266–0955
 Email: jean.maccubbin@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

Ch. Phar 18, PRESCRIPTION DRUG MONITORING PROGRAM (PDMP)

3. Subject

Revise the rule too be consistent with 2013 Act 3, removing veterinarians from the definition of “practitioners” and the requirement to collect and submit data to the PDMP.

4. Fund Sources Affected

GPR FED PRO PRS SEG SEG-S

5. Chapter 20, Stats. Appropriations Affected

20.165 (1) (a)

6. Fiscal Effect of Implementing the Rule

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

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

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

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

Yes No

9. Policy Problem Addressed by the Rule

The rule as it currently reads is not consistent with 2013 Act 3, which removed veterinarians from the definition of “practitioners” no longer requiring them to collect and submit data to the PDMP.

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.

Veterinarians

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

None identified.

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

None known.

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

The rule will be consistent with 2013 Act 3, which removed veterinarians from the definition of “practitioners” no longer requiring them to collect and submit data to the PDMP. Doing nothing with result in a rule not reflecting state statutes.

14. Long Range Implications of Implementing the Rule

None known.

15. Compare With Approaches Being Used by Federal Government

There is no existing or proposed federal regulation.

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

An Internet-based search for similar prescription drug monitoring programs revealed that the states of Illinois, Michigan, and Minnesota allow veterinarians to access their on-line reporting website or specifically require veterinarians to report dispensing through their statutes or codes. The search did not reveal that Iowa codes or statutes require or exempt veterinarians from reporting to their prescription drug monitoring program.

17. Contact Name

Jean MacCubbin

18. Contact Phone Number

608-266-0955

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

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.

Employee Trust Funds

CR 13-004

The Wisconsin Department of Employee Trust Funds adopts an order repealing section ETF 10.65 (1) (a) to (f), (2) and (3); amending sections ETF 10.01 (3i) and 10.65 (1) (intro); and creating sections ETF 10.65 (Note), 10.85, 20.0251, and 20.0251 (Note), relating to clarifying how ETF complies with applicable provisions of the Internal Revenue Code (IRC). Effective 8-31-13.

Effect on Small Business

There is no effect on small business.

Legislative Comments

No comments were reported.

Natural Resources

Fish, Game, etc., Chs. NR 1—

CR 13-001

(DNR # FH-19-12)

The Wisconsin Department of Natural Resources adopts an order making revisions to Chapters NR 19 to 23, 25, and 26, relating to housekeeping changes to Wisconsin fishing rules. Effective 8-31-13 and 4-1-14.

Final Regulatory Flexibility Analysis

The proposed rule will have minimal to no impact on businesses and members of the public. As with any change in regulations, there will be a requirement for anglers to learn the new rules. However, a majority of this rule change clarified code to reflect existing policies with which anglers must already comply. The Fisheries Management Bureau works to notify the public of new regulations via press releases, the internet and fishing regulation pamphlets.

The Department has determined that this rule would not adversely affect in a material way the economy, a sector of the economy, productivity, jobs, or the overall competitiveness of this state. It is not expected that there will be any economic impact directly related to these rule changes on anglers or fishing related businesses. The proposed rule does not impose any compliance or reporting requirements on small businesses nor are any design or operational standards contained in the rule. No fiscal impacts are expected for public utility rate payers or local governmental units.

The goal is to ensure the rule language that governs fishing inland, outlying and boundary waters.

The determination was made after the Department requested economic impact comments from Wisconsin Conservation Congress, WI Wildlife Federation, Great Lakes Indian Fish & Wildlife Commission, WI Association of Lakes, WI Bow Hunters Association, WI Archery Alliance,

WI Traditional Archers, WI Federation of Great Lakes Sport Fishing Clubs, WI Council of Sport Fishing Organizations, Federation of Fly Fishers — Wisconsin Council, Musky Clubs Alliance of Wisconsin, Inc., Salmon Unlimited — WI Council, Walleyes for Tomorrow, WI Bass Federation, Izaak Walton League — Wisconsin Division, Lake Michigan Fisheries Forum, Wisconsin Aquaculture Association, American Fisheries Society — Wisconsin Chapter, Natural Resources Foundation of WI, Gathering Waters, River Alliance of Wisconsin, UW Sea Grant, League of WI Municipalities, WI Towns Association, WI Counties Association, Northeast WI Great Lakes Sport Fisherman, and Great Lakes Sport Fisherman of Milwaukee. Proposed rule documents were also posted on the Department website and the Wisconsin Administrative Rules website.

Legislative Comments

No comments were received.

Revenue

CR 13-011

The Wisconsin Department of Revenue adopts an order revising Chapter Tax 11, relating to sales and use tax provisions concerning advertising and promotional direct mail and prosthetic devices. Effective 8-31-13.

Effect on small business

This rule does not affect small business.

Legislative Comments

No comments were reported.

Revenue

CR 13-012

The Wisconsin Department of Revenue adopts an order revising Chapters Tax 1, 2, and 11, relating to general provisions of income taxation and sales and use tax. Effective 8-31-13.

Effect on Small Business

This rule order does not affect small business.

Legislative Comments

No comments were reported.

Revenue

CR 13-013

The Wisconsin Department of Revenue adopts an order revising Chapters Tax 4, 8, and 9, relating to general provisions of excise taxation and enforcement. Effective 8-31-13.

Effect on Small Business

This rule order does not affect small business.

Legislative Comments

No comments were reported.

**Safety and Professional Services —
Cosmetology Examining Board
CR 12–016**

The Wisconsin Cosmetology Examining Board adopts an order renumbering and amending section Cos 6.04 (1), amending section Cos 2.07 (1g), and to creating section Cos 6.04 (1) (b), (c), and Note, relating to responsibilities of the manager and practical training for apprentices. Effective 8–31–13.

Effect on Small Business

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

Legislative Comments

No comments were reported.

**Safety and Professional Services —
Hearing and Speech Examining Board
CR 12–050**

The Wisconsin Hearing and Speech Examining Board adopts an order amending section HAS 6.18 (1) (d); and creating section HAS 6.175 (6), relating to deceptive advertising. Effective 8–31–13.

Effect on Small Business

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

Legislative Comments

No comments were reported.

**Safety and Professional Services —
Psychology Examining Board
CR 12–055**

The Wisconsin Psychology Examining Board adopts an order repealing section Psy 2.12 (2); renumbering section Psy 2.12 (3) and (4); and amending section Psy 2.09 (4), relating to applicant appearances. Effective 8–31–13.

Effect on Small Business

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

Legislative Comments

No comments were reported.

**Technical College System Board
CR 12–032**

The Wisconsin Technical College System Board adopts an order revising section TCS 2.02 (1), (3), and (5), 2.04 (3) (a) 4. and 6., and (4) (c) and (d); and creating section TCS 2.02 (5m), 2.04 (3) (a) 4m., and (4) (e), relating to district board member appointments. Effective 8–31–13

Effect on Small Business

None.

Legislative Comments

No comments were received.

Sections Affected by Rule Revisions and Corrections

The following administrative code sections had rule revisions and corrections take place in **August 2013**, and will be effective as indicated in the history note for each particular section. For additional information, contact the Legislative Reference Bureau at (608) 266-7590.

Revisions

Cosmetology Examining Board

Ch. Cos 2

Cos 2.07 (1g)

Ch. Cos 6

Cos 6.04 (1) (a) to (c), (Note)

Employee Trust Funds

Ch. ETF 10

ETF 10.01 (3i)

ETF 10.65

ETF 10.85

Ch. ETF 20

ETF 20.0251, (Note)

Financial Institutions — Banking

Ch. DFI-BKG

Entire Chapter

Hearing and Speech Examining Board

Ch. HAS 6

HAS 6.175 (1m)

HAS 6.18 (1) (d)

Natural Resources

Ch. NR 19

NR 19.273 (3) (b)

NR 19.90 (2) (d)

NR 19.91 (3)

NR 19.92 (intro.), (1) to (3)

NR 19.93 (1), (2), (4)

NR 19.94 (5), (7)

Ch. NR 20

NR 20.03 (31) (h), (38) (Note)

NR 20.06 (1)

NR 20.09 (1), (2)

NR 20.105 (1) (d)

NR 20.20 (2) (c), (4) (d), (g), (7) (d), (9) (c), (10) (b), (11) (f), (16) (d), (24) (d), (25) (c), (d), (26) (b), (27) (d), (32) (cm), (34) (b), (35) (c), (37) (d), (42) (bm), (44) (b), (49) (am), (b), (54) (e), (55) (bm), (58) (c), (60) (c), (61) (am), (62) (ae), (64) (c), (d), (65) (c), (66) (c), (73) (a), (L), (o)

NR 20.25 (1)

NR 20.38 (2)

Ch. NR 21

NR 21.015 (1)

NR 21.06 (1) (d)

NR 21.07

Ch. NR 22

NR 22.015 (1)

NR 22.06 (1) (d)

NR 22.07

Ch. NR 23

NR 23.015

NR 23.085

NR 23.09 (3)

Ch. NR 25

NR 25.02 (8), (9), (46)

NR 25.03 (1) (b), (2) (b)

NR 25.06 (3m)

NR 25.07 (2) (a) 2., (b) 2., (bg) 2., (br) 2., (g) 5., (3) (c)

NR 25.135 (1) (a) 1., (2) (a)

NR 25.18 (1) (c) 2.

Ch. NR 26

NR 26.01 (24), (39) (b), (64)

NR 26.015

NR 26.24 (13)

NR 26.32

Psychology Examining Board

Ch. Psy 2

Psy 2.09 (4)

Revenue

Ch. Tax 1

Tax 1.11 (4) (d)

Ch. Tax 2

Tax 2.085 (1) to (3)

Tax 2.50 (1) (Note)

Tax 2.90 (6)

Tax 2.97

Tax 2.98 (1) (b), (Note 2)

Ch. Tax 4

Tax 4.12 (3) (b) 2. (Example 1), (Example 2), 3. a. (Example)

Tax 4.55 (2) (a) (Note), (3) (b) (Note 1), (f) (Note 1)

Tax 4.65 (3) (f) (Note 1)

Ch. Tax 8

Tax 8.001 (2) (c) 1. (Note)

Tax 8.03 (2) (Note)

Tax 8.11

Ch. Tax 9

Tax 9.001 (2) (c) 1. (Note)

Tax 9.19 (Title), (1), (2)

Tax 9.21 (3)

Tax 9.26 (1)

Tax 9.47 (4)

Tax 9.51 (1)

Tax 9.68 (2) (a) (Note), (3) (b) (Note 1)

Tax 9.70 (3) (d) (Examples)

Ch. Tax 11

Tax 11.04 (1)

Tax 11.05 (2)

Tax 11.17 (3)

Tax 11.19 (2) (dm), (5s), (Note)

Tax 11.49 (2) (b)

Tax 11.56 (4) (b) 3., (Note)

Tax 11.70 (1) (a) to (d), (2) (c),(e), (3) (gm), (n), (Note)

Tax 11.94 (3) (a), (Note)

Tax 11.945 (3) (a) 1. to 6., (5) (d) (Note 2)

Technical College System**Ch. TCS 2**

TCS 2.04 (3) (a), (4) (c) to (e)

Editorial Corrections

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

Employee Trust Funds**Ch. ETF 20**

ETF 20.17 (1) (c) 3. a.

Revenue**Ch. Tax 2**

Tax 2.04 (8) (c) 2. (Note 3)

Tax 2.11 (4) (Note)

Tax 2.12 (6) (Note 2)

Tax 2.956 (2) (1), (Note)

Tax 2.98 (2) (b) (Note 5)

Ch. Tax 11

Tax 11.30 (3) (Note 1)

Tax 11.55 (Note 1)

Tax 11.61 (6) (Note 1)

Tax 11.68 (13) (Note 1)

Technical College System**Ch. TCS 2**

TCS 2.04 (4) (e)

Executive Orders

The following are recent Executive Orders issued by the Governor.

Executive Order 108. 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 Dr. Stanley Phillips III, UW Health Neonatal Physician Who Lost His Life During a Medical Transport. **(July 17, 2013)**

Executive Order 109. 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 Sergeant Brian Faust, Mailroom Sergeant at Sand Ridge Secure Treatment Center and Long-Time State Employee. **(July 19, 2013)**

Public Notices

Health Services

Medicaid Reimbursement for Outpatient Hospital Services: Psychiatric Hospitals State of Wisconsin Medicaid Payment Plan for State Fiscal Year 2013–2014

The State of Wisconsin reimburses providers for services provided to Medical Assistance recipients, including hospitals, under the authority of Title XIX of the Social Security Act and ss. 49.43 to 49.47, Wisconsin Statutes. This program, administered by the State's Department of Health Services (DHS), is called Medical Assistance (MA) or Medicaid. In addition, Wisconsin has expanded this program to create the BadgerCare and BadgerCare Plus programs under the authority of Title XIX and Title XXI of the Social Security Act and ss. 49.471, 49.665, and 49.67 of the Wisconsin Statutes. Federal statutes and regulations require that a state plan be developed that provides the methods and standards for reimbursement of covered services. A plan that describes the reimbursement system for the services (methods and standards for reimbursement) is now in effect.

The following changes will be contained in the October 1, 2013 outpatient hospital state plan amendment:

- Supplemental payments will be made to the county–owned psychiatric hospital(s) in the state. The amount of the payments will equal the difference between the current rates and their cost of providing services to Medicaid patients.

This notification is intended to provide notice of the type of changes that are included in the amendment. Interested parties should obtain a copy of the actual proposed plan amendment to comprehensively review the scope of all changes.

Proposed Change

It is estimated that these changes will have a projected impact of increased annual Medicaid expenditures in the amount of \$1,000,000 all funds, composed of \$409,400 in county certified public expenditures and \$590,600 in federal match.

The Department's proposal involves no change in the definition of those eligible to receive benefits under Medicaid, and the benefits available to eligible recipients remains the same. The effective date for these proposed changes will be October 1, 2013.

Copies of the Proposed Change

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

Regular Mail

Division of Health Care Access and Accountability
P.O. Box 309
Madison, WI 53701–0309

State Contact

Al Matano
Bureau of Fiscal Management
(608) 267–6848 (phone)
(608) 266–1096 (fax)
alfred.matano@wisconsin.gov

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

Written Comments

Written comments are welcome. Written comments on the proposed change may be sent by FAX, email, or regular mail to the Division of Health Care Access and Accountability. The FAX number is (608) 266–1096. The email address is alfred.matano@wisconsin.gov. Regular mail can be sent to the above address. All written comments will be reviewed and considered. All written comments received will be available for public review between the hours of 7:45 a.m. and 4:30 p.m. daily in Room 350 of the State Office Building, 1 West Wilson Street, Madison, Wisconsin. Revisions may be made in the proposed changed methodology based on comments received.

Health Services

Medicaid Reimbursement for Inpatient Hospital Services: Psychiatric Hospitals State of Wisconsin Medicaid Payment Plan for State Fiscal Year 2013–2014

The State of Wisconsin reimburses providers for services provided to Medical Assistance recipients, including hospitals, under the authority of Title XIX of the Social Security Act and ss. 49.43 to 49.47, Wisconsin Statutes. This program, administered by the State's Department of Health Services (DHS), is called Medical Assistance (MA) or Medicaid. In addition, Wisconsin has expanded this program to create the BadgerCare and BadgerCare Plus programs under the authority of Title XIX and Title XXI of the Social Security Act and ss. 49.471, 49.665, and 49.67 of the Wisconsin Statutes. Federal statutes and regulations require that a state plan be developed that provides the methods and standards for reimbursement of covered services. A plan that describes the reimbursement system for the services (methods and standards for reimbursement) is now in effect.

The following changes will be contained in the October 1, 2013 inpatient hospital state plan amendment:

- Supplemental payments will be made to the county-owned psychiatric hospital(s) in the state. The amount of the payments will equal the difference between the current rates and their cost of providing services to Medicaid patients.

This notification is intended to provide notice of the type of changes that are included in the amendment. Interested parties should obtain a copy of the actual proposed plan amendment to comprehensively review the scope of all changes.

Proposed Change

It is estimated that these changes will have a projected impact of increased annual Medicaid expenditures in the amount of \$1,200,000 all funds, composed of \$491,280 in county certified public expenditures and \$708,720 in federal match.

The Department's proposal involves no change in the definition of those eligible to receive benefits under Medicaid, and the benefits available to eligible recipients remains the same. The effective date for these proposed changes will be October 1, 2013.

Copies of the Proposed Change

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

Regular Mail

Division of Health Care Access and Accountability
P.O. Box 309
Madison, WI 53701-0309

State Contact

Al Matano
Bureau of Fiscal Management
(608) 266-2469 (phone)
(608) 266-1096 (fax)
alfred.matano@wisconsin.gov

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

Written Comments

Written comments are welcome. Written comments on the proposed change may be sent by FAX, email, or regular mail to the Division of Health Care Access and Accountability. The FAX number is (608) 266-1096. The email address is alfred.matano@wisconsin.gov. Regular mail can be sent to the above address. All written comments will be reviewed and considered. All written comments received will be available for public review between the hours of 7:45 a.m. and 4:30 p.m. daily in Room 350 of the State Office Building, 1 West Wilson Street, Madison, Wisconsin. Revisions may be made in the proposed changed methodology based on comments received.

Health Services

Medicaid Reimbursement for Physician and Non-Physician Professional Services: State of Wisconsin Medicaid Payment Plan for State Fiscal Year 2013-2014

The State of Wisconsin reimburses providers for services provided to Medical Assistance recipients, including physicians and non-physician professionals, under the authority of Title XIX of the Social Security Act and ss. 49.43 to 49.47, Wisconsin Statutes. This program, administered by the State's Department of Health Services (DHS), is called Medical Assistance (MA) or Medicaid. In addition, Wisconsin has expanded this program to create the BadgerCare and BadgerCare Plus programs under the authority of Title XIX and Title XXI of the Social Security Act and ss. 49.471, 49.665, and 49.67 of the Wisconsin Statutes. Federal statutes and regulations require that a state plan be developed that provides the methods and standards for reimbursement of covered services. A plan that describes the reimbursement system for the services (methods and standards for reimbursement) is now in effect.

The following changes will be contained in the October 1, 2013 physician services state plan amendment:

- Quarterly supplemental payments for services provided to physician and non-physician professionals who are members of medical practice group either employed by or contracted with the a state-owned hospital or a non-state public psychiatric hospital located in the state in order to recognize the unique role of these providers in the State Medicaid healthcare delivery system. The amount of the supplemental payment will be the difference between the current rate for services and the average commercial rate.

This notification is intended to provide notice of the type of changes that are included in the amendment. Interested parties should obtain a copy of the actual proposed plan amendment to comprehensively review the scope of all changes.

Proposed Change

It is estimated that these changes will have a projected impact of increased annual Medicaid expenditures in the amount of \$151,000 all funds, composed of \$61,000 in county certified public expenditures and \$90,000 in federal match.

The Department's proposal involves no change in the definition of those eligible to receive benefits under Medicaid, and the benefits available to eligible recipients remains the same. The effective date for these proposed changes will be October 1, 2013.

Copies of the Proposed Change

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

Regular Mail

Division of Health Care Access and Accountability
P.O. Box 309
Madison, WI 53701-0309

State Contact

Al Matano
Bureau of Fiscal Management
(608) 267-6848 (phone)
(608) 266-1096 (fax)
alfred.matano@wisconsin.gov

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

Written Comments

Written comments are welcome. Written comments on the proposed change may be sent by FAX, email, or regular mail to the Division of Health Care Access and Accountability. The FAX number is (608) 266-1096. The email address is alfred.matano@wisconsin.gov. Regular mail can be sent to the above address. All written comments will be reviewed and considered. All written comments received will be available for public review between the hours of 7:45 a.m. and 4:30 p.m. daily in Room 350 of the State Office Building, 1 West Wilson Street, Madison, Wisconsin. Revisions may be made in the proposed changed methodology based on comments received.

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