

Wisconsin Administrative Register

No. 708

Printing Ends
December 31, 2014



Publication Date: December 31, 2014
Effective Date: January 1, 2015



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

NOTICE TO SUBSCRIBERS

Printing of Administrative Code and Register Will End December 31, 2014

As required by 2013 Wisconsin Act 20, state-sponsored printing and distribution of the Wisconsin Administrative Code and Register will end January 1, 2015, and the Code and Register will become electronic-only publications.

Important points:

- The LRB will continue to publish the Code and Register at their present locations on the Legislature's and Legislative Reference Bureau's Internet sites.
- Publication of the Register will occur every Monday, beginning January 5, 2015.
- Updated and new Code chapters, with insertion and removal instructions, will still be published in the last Register of each month (published on the last Monday of each month).

Code chapters will be published in the Register as PDF files in the exact format as they are currently printed, including page numbers.

Users can continue loose-leaf notebook use by printing chapters to 3-hole punch paper from any printer or by making arrangements with commercial printers. The state Department of Administration will also sell full and part agency codes, but not individual chapters, on a print-on-demand basis. (See http://legis.wisconsin.gov/rsb/Pre_Printed_Code.pdf) Looseleaf binders will no longer be available from the state and the code volume for insertion will no longer be designated for published chapters.

- The format for Internet publication of the Code will not change. The Code will continue to be published in its entirety in both HTML and PDF formats and updated on the first day of each month to reflect changes published in the most recent end-of-month Register.
- An Email notice system is being developed to alert users to changes in only those rules and rulemaking notices that are of interest to the user and will be available at <http://legis.wisconsin.gov/rsb/code.htm> and <https://docs.legis.wisconsin.gov/code/preferences/toc> by late December 2014 or January 2015.
- RSS feeds providing notice of new Registers and changes to the whole Code, Code chapters grouped by agency, and individual Code chapters are currently available. (For more information on RSS feeds see <https://docs.legis.wisconsin.gov/feed>.) Details on the email notice system will be published in future Registers prior to January 1, 2015.

Direct questions on Internet publication to:

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

Table of Contents

Emergency Rules Now in Effect.**Pages 5 to 12**

Agriculture, Trade and Consumer Protection:

Amends Chapter ATCP 127, subchapter V (Title) and section 127.82 (2); repeals sections ATCP 127.81 (3) (c), (d), (e) and (Note) and 127.82 (3), (4), (5), (6), and (7); repeals and recreates sections ATCP 127.80 (5), 127.81 (2) (j), 127.82 (Title) and (1) and 127.82 (8); and creates section ATCP 127.80 (6r), relating to telephone solicitations and the state do-not-call registry. **EmR1413**

Amends section ATCP 21.17 (1) (b) and creates section ATCP 21.17 (1) (c), relating to the quarantine of Columbia, Door, Grant, Green, Iowa, Lafayette, Monroe and Richland Counties for the emerald ash borer beetle. **EmR1424**

Children and Families:

Safety and Permanence, Chs. DCF 35—59

Renumbers sections DCF 50.06 (2), 57.515 (1), and 58.04 (4) (a) and (b); renumbers and amends section DCF 57.515; amends sections DCF 50.06 (3) (b)1., 52.02 (2) (a) and (note), 52.03 (23), 52.12 (8) (b) and (9) (c) (intro.) and 1., 52.21 (3) (d) 2. a. and (9), 52.22 (1) (d), 52.41 (1) (a) 3., 52.48 (1) (b), 52.56 (24) (a), 52.58 (4) (b) 1. and 2., 52.61 (7) (a) 2. c. to e., 52.62 (4) (b) 4., and (7) (a) (intro.) and 2. to 5., 55.10 (4) (a) (intro.), 1., and 2. a., 56.03 (12), (13), (34p), and (38), 57.02 (2) and (note), 57.05 (1) (c) (note), 57.13 (1) (j), 57.14 (2) and (4) (a) 1., 57.16 (4), 57.17 (2) (h), 57.23 (2) (a) (intro.), 57.25 (6) (b) and (c), 57.33 (2), 57.38 (2), and 58.03 (12) and (15); repeals and recreates sections DCF 52.03 (22), 52.21 (3) (d) (title), 1., and 2.c., 52.62 (4) (b) 5., 54.01 (4) (b), 56.03 (5), 57.04 (6) and (34), 57.19 (6), 58.03 (3), and 58.04 (4) (title); and creates Chapter DCF 21 and sections DCF 50.06 (2) (a) (title) and 11., (2) (b), and (3) (b) 1. c., 52.03 (27m), 52.21 (3) (d) (note), 52.62 (4) (d) and (note), 55.10 (4) (a) 3. and (am), 56.04 (39), 56.09 (1m) (cm), 57.14 (2) (c), 57.23 (2) (a) 13., 57.515 (2) and (note), 58.03 (20), and 58.04 (4) (b), relating to the extension of out-of-home care to children and youth 18 years of age or over, but under 21 years of age, and affecting small businesses. **EmR1414**

Safety and Permanence, Chs. DCF 35—59

Creates chapter DCF 40, relating to the review of a determination of child abuse or neglect. [*First Appearance*] **EmR1427**

Health Services:

Health, Chs. DHS 110—

Renumbers and amends section DHS 115.05 (3), amends sections 115.01, 115.02, and 115.04 (intro.), and creates section 115.04 (15) and (16), relating to screening newborns for congenital and metabolic disorders. **EmR1410**

Insurance:

Amends section Ins 17.01 (3) and repeals and recreates section Ins 17.28 (6), relating to the Injured Patients and Families Compensation Fund Annual Fund and mediation penal fees, for the fiscal year beginning July 1, 2014 and affecting small business. **EmR1408**

Natural Resources:

Fish, Game, etc., Chs. NR 1—

Revises Chapters NR 10, 12, and 19, relating to the wolf hunting and trapping season and regulations and a depredation program. **EmR1210**

Fish, Game, etc., Chs. NR 1—

Repeals and recreates section NR 10.01 (3) (h) 1., relating to the coyote hunting season. **EmR1215**

Fish, Game, etc., Chs. NR 1—

Creates Chapter NR 85, relating to development of a competitive grant program for cities, villages, towns, counties, federally recognized Indian tribes or bands located in this state, and fish farms in order to increase the capacity to raise walleye for stocking in Wisconsin waters. **EmR1320**

Fish, Game, etc., Chs. NR 1—

Revise Chapter NR 10, relating deer management, hunting, and implementation of the 2012 White-tailed Deer Trustee Report. **EmR1405**

Fish, Game, etc., Chs. NR 1—

Revises sections NR 20.36 and 23.055, relating to modifications in daily bag limits and minimum size limits in response to tribal harvest. **EmR1409**

Fish, Game, etc., Chs. NR 1—

Amends sections NR 10.01 (b) and 10.06 (5) and creates sections NR 10.01 (1) (a) and 10.06 (5) (a), related to establishing an early duck season for teal-only and the hunting regulations for teal and mourning doves. **EmR1418**

Fish, Game, etc., Chs. NR 1—

Amends section NR 10.01 (1) (b) and (1) (g) 1. d. and creates section NR 10.01 (1) (g) 1. dm., related to migratory bird hunting regulations. **EmR1419**

Fish, Game, etc., Chs. NR 1—

Repeals section NR 10.001 (2e), 10.09 (1) (c) 1. e. and (Note); amends sections NR 10.06 (5), 10.06 (8) (a) and (b), 10.07 (1) (b) 3., 10.07 (2m) (g) 2., 10.09 (1) (c), 10.09 (3), 10.10 (2), 10.11 (5) (a), 10.103 (1), 10.104 (7), 10.104 (9r), 10.15 (1) (a), 10.15 (6), 10.16 (Intro.), 10.16 (2), 10.22 (1), 10.23 (2) (a), 10.24 (2), 10.25 (4) (a), 11.042 (intro.), 11.043 (intro.), 11.11 (intro.), 12.16 (4), 15.01 (intro.), 15.015 (intro.), 15.10 (1) (intro.) and 15.12 (intro.), 45.09 (1), and 45.13 (18), (21), and (24); and creates sections NR 10.01 (3) (em) (Note) and (3) (ep), 10.104 (7) (c), 10.15 (3m), and 10.16 (2m), related to establishing a season for hunting deer with crossbows-only. **EmR1420**

Fish, Game, etc., Chs. NR 1—

Amends section NR 10.104 (8) (a) and creates sections NR 10.001 (7p) and (7w), 10.104 (9m) (a) and (b), 10.104 (5) (b) 8. and 10.104 (5) (c), related to implementation of the Deer Management Assistance Program and County Deer Management Advisory Committee. **EmR1422**

Environmental Protection — General, Chs. NR 100—

Revises Chapter NR 150, relating to the department's environmental analysis and review procedures under the Wisconsin Environmental Policy Act. **EmR1417**

Public Instruction:

Creates Chapter PI 80, relating to community programs and services. **EmR1411**

Safety and Professional Services:

General Part I, Chs. 301—319

Amends section SPS 305.40 (2) (b), (3) (b), (4) (a) 1., (b), (c), and (d) 1., and (5) and creates sections SPS Table 305.02 Row 24r, Table 305.06 Row 19r, 305.40 (1) (bm), and 305.437, relating to credentials for electricians. **EmR1415**

	<i>Plumbing, Chs. 381—387</i> Renumbers Chapter SPS 384 Table 384.10 rows 1 to 5, renumbers and amends Chapter SPS 384 Table 384.10 row 6, and creates Chapter SPS 384 Table 384.10 rows 1 and 9 and (Note), relating to water-treatment devices. EmR1423
Transportation:	Amends Chapter Trans 102, relating to operator's licenses and identification cards. EmR1421 Creates Chapter Trans 319, relating to towing of vehicles. EmR1425 Creates section Trans 327.14, relating to motor carrier safety and affecting small business. EmR1426
Veterans Affairs:	Creates section VA 2.07, relating to grants to non-profit organizations. EmR1416
Workforce Development:	<i>Apprenticeship, Chs. DWD 295—296</i> Creates section DWD 295.25, relating to apprenticeship completion awards. EmR1406
Scope Statements.	Pages 13 to 17
Natural Resources:	<i>Environmental Protection — Air Pollution Control, Chs. NR 400—</i> Revises Chapters NR 400, 404, 405, and 420, relating to maintaining consistency with U.S. Environmental Protection Agency air pollution control regulations and repealing obsolete rules. SS 127–14
Safety and Professional Services — Optometry Examining Board:	Revises Chapter Opt 8, relating to continuing education. SS 128–14 Revises Chapters Opt 3, 5, and 7, relating to examination, unprofessional conduct, and renewal. SS 129–14
Safety and Professional Services — Podiatry Affiliated Credentialing Board:	Revises Chapter Pod 6, relating to duty to obtain informed consent. SS 130–14
Submittal of Proposed Rules to Legislative Council Clearinghouse.	Pages 18 to 19
Children and Families:	<i>Safety and Permanence, Chs. DCF 35—59</i> Creates Chapter DCF 40, relating to review of a determination of child abuse or neglect. CR 14–072
Health Services:	<i>Community Services, Chs. DHS 30—</i> <i>Medical Assistance, Chs. 101—</i> Revises Chapter DHS 35 and 107, relating to medical assistance (MA) coverage for outpatient mental health services. CR 14–066
Insurance:	Revises Chapters Ins 16 and 40, relating to holding company reporting for insurers and affecting small business. CR 14–071
Justice:	Revises Chapter Jus 9, relating to procedures and standards for the submission of human biological specimens, the analysis of DNA in those specimens, the maintenance of a data bank of DNA analysis data, and the use and disposition of specimens and data in the data bank. CR 14–070

Safety and Professional Services:	<i>Professional Services, Chs. SPS 1—299</i> Creates sections SPS 4.02 (5s) and 4.10, relating to credential renewal and reinstatement. CR 14-067
Safety and Professional Services — Chiropractic Examining Board:	Revises Chapters Chir 2 and 3, relating to practical exams for chiropractors. CR 14-068 Creates Chapter Chir 13, relating to the duty to inform patients of treatment options. CR 14-069
Rule-Making Notices.	Pages 20 to 66
Children and Families:	<i>Safety and Permanence, Chs. DCF 35—59</i> Creates Chapter DCF 40, relating to review of a determination of child abuse or neglect. CR 14-072
Health Services:	<i>Community Services, Chs. DHS 30—</i> <i>Medical Assistance, Chs. 101—</i> Revises Chapter DHS 35 and 107, relating to medical assistance (MA) coverage for outpatient mental health services. CR 14-066
Insurance:	Revises Chapters Ins 16 and 40, relating to holding company reporting for insurers and affecting small business. CR 14-071
Natural Resources:	<i>Fish, Game, etc., Chs. NR 1—</i> Revises Chapters NR 1, 10, 11, 12, 13, 15, and 45, related to deer management, hunting, and implementation of the 2012 White-tailed Deer Trustee Report. CR 13-071
Safety and Professional Services:	<i>Professional Services, Chs. SPS 1—299</i> Creates sections SPS 4.02 (5s) and 4.10, relating to credential renewal and reinstatement. CR 14-067
Safety and Professional Services — Chiropractic Examining Board:	Revises Chapters Chir 2 and 3, relating to practical exams for chiropractors. CR 14-068 Creates Chapter Chir 13, relating to the duty to inform patients of treatment options. CR 14-069
Transportation:	Revises Chapter Trans 327, relating to motor carrier safety. EmR1426
Submittal of Proposed Rules to Legislature.	Page 67
Natural Resources:	<i>Fish, Game, etc., Chs. NR 1—</i> Amends Chapter NR 47, relating to county forest time standards grant. CR 14-036
Safety and Professional Services — Podiatry Affiliated Credentialing Board:	Revises sections Pod 3.01 and 3.04, relating to continuing education audits of podiatrists. CR 14-035
Administrative Code Sections Affected by Rule Revisions, Legislative Acts, and Corrections.	Pages 68 to 69
Executive Orders.	Page 70
Public Notices.	Pages 71 to 72
Health Services:	Medicaid Reimbursement for Residential Care Centers

Emergency Rules Now in Effect

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

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

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

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

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

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

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

Agriculture, Trade and Consumer Protection (2)

1. EmR1413 (ATCP DOCKET # 14-R-09) — The Wisconsin Department of Agriculture, Trade and Consumer Protection adopts the following emergency rule to amend **chapter ATCP 127, subchapter V (Title) and section 127.82 (2)**; to repeal **sections ATCP 127.81 (3) (c), (d), (e) and (Note) and 127.82 (3), (4), (5), (6), and (7)**; to repeal and recreate **sections ATCP 127.80 (5), 127.81 (2) (j), 127.82 (Title) and (1) and 127.82 (8)**; and to create **section ATCP 127.80 (6r)**, relating to telephone solicitations and the state do-not-call registry.

This emergency rule was approved by the Governor on July 29, 2014.

The scope for this rule, SS 049-14, was approved by the Governor on May, 14, 2014, published in register No. 701 on May 31, 2014, and approved by the Board of Agriculture, Trade and Consumer Protection on June 12, 2014.

Finding of Emergency

(1) In Wisconsin, businesses wishing to solicit consumers by telephone must register with the department and pay an annual registration fee.

(2) A recent statutory change eliminated Wisconsin's separate no-call list and requires telephone solicitors to use the Wisconsin portion of the national do-not-call registry.

(3) The law also requires the department to create telephone solicitor registration requirements by rule that will show proof that the businesses have registered with the federal trade commission's do-not-call registry to obtain and use the Wisconsin portion of the national do-no-call registry.

(4) The statutory change takes effect August 1, 2014. However, the permanent rule-making establishing these registration requirements will not be effective until mid-2015.

(5) The department must adopt registration requirements by emergency rule by August 1, 2014 so telephone solicitors can register with the department and comply with the law before the permanent rule is completed.

(6) This temporary emergency rule is necessary to protect the welfare of businesses that wish to register as telephone solicitors in Wisconsin. Without this emergency rule, telephone solicitors would not be able to register with the department and would not be able to comply with the no-call law.

Filed with LRB: July 29, 2014
Publication Date: August 1, 2014
Effective Dates: August 1, 2014 through December 28, 2014
Extension Through: February 26, 2015

2. EmR1424 — The Wisconsin Department of Agriculture, Trade and Consumer Protection 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 Columbia, Door, Grant, Green, Iowa, Lafayette, Monroe, and Richland Counties for the emerald ash borer beetle.

This emergency rule was approved by the Governor on September 11, 2014.

The blanket scope for this rule, SS 141-13, was approved by the Governor on October 30, 2013, published in register No. 695 on November 14, 2013, and approved by the Board of Agriculture, Trade and Consumer Protection on December 10, 2013.

Finding of Emergency

(1) The United States Department of Agriculture — Animal and Plant Health Inspection Service ("APHIS") positively identified Emerald Ash Borer ("EAB") in the village of Fish Creek, Door County on June 10, 2014. EAB was also identified in the city of Sturgeon Bay on June 19, 2014. APHIS subsequently identified EAB in Nelson Dewey State Park, Grant County, and in the Village of Oakdale, Monroe County, on July 11, 2014. On July 17, 2014, APHIS identified EAB in the Town of Lodi, Columbia County. While EAB has not yet been positively identified in the southwestern contiguous counties of Richland, Iowa, Lafayette, and Green, these four counties are now completely surrounded by the state and federal EAB quarantine. It is very likely that these counties already contain some level of EAB infestation, and there is little economic or ecological benefit to keeping them out of the quarantine. 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 Columbia, Door, Grant, Green, Iowa, Lafayette, Monroe, and Richland Counties but that it will take six to eight weeks for APHIS to act. An eight-week delay until enactment of the federal quarantines leaves too much time for businesses or individuals to move potentially EAB infested material out of this county to areas of Wisconsin or other states that are not infested with EAB.

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

Filed with LRB: September 25, 2014
Publication Date: September 26, 2014
Effective Dates: September 26, 2014 through February 22, 2015
Hearing Date: October 27, 2014

Children and Families (2)

Safety and Permanence, Chs. DCF 35—59

EmR1414 — The Wisconsin Department of Children and Families orders the renumbering of sections **DCF 50.06 (2), 57.515 (1), and 58.04 (4) (a) and (b)**; the renumbering and amendment of section **DCF 57.515**; the amendment of sections **DCF 50.06 (3) (b) 1., 52.02 (2) (a) and (note), 52.03 (23), 52.12 (8) (b) and (9) (c) (intro.) and 1., 52.21 (3) (d) 2. a. and (9), 52.22 (1) (d), 52.41 (1) (a) 3., 52.48 (1) (b), 52.56 (24) (a), 52.58 (4) (b) 1. and 2., 52.61 (7) (a) 2. c. to e., 52.62 (4) (b) 4., and (7) (a) (intro.) and 2. to 5., 55.10 (4) (a) (intro.), 1., and 2. a., 56.03 (12), (13), (34p), and (38), 57.02 (2) and (note), 57.05 (1) (c) (note), 57.13 (1) (j), 57.14 (2) and (4) (a) 1., 57.16 (4), 57.17 (2) (h), 57.23 (2) (a) (intro.), 57.25 (6) (b) and (c), 57.33 (2), 57.38 (2), and 58.03 (12) and (15); the repeal and recreation of sections **DCF 52.03 (22), 52.21 (3) (d) (title), 1., and 2.c., 52.62 (4) (b) 5., 54.01 (4) (b), 56.03 (5), 57.04 (6) and (34), 57.19 (6), 58.03 (3), and 58.04 (4) (title)**; and the creation of **Chapter DCF 21 and sections DCF 50.06 (2) (a) (title) and 11., (2) (b), and (3) (b) 1. c., 52.03 (27m), 52.21 (3) (d) (note), 52.62 (4) (d) and (note), 55.10 (4) (a) 3. and (am), 56.04 (39), 56.09 (1m) (cm), 57.14 (2) (c), 57.23 (2) (a) 13., 57.515 (2) and (note), 58.03 (20), and 58.04 (4) (b)**, relating to the extension of out-of-home care to children and youth 18 years of age or over, but under 21 years of age, and affecting small businesses.**

This emergency rule was approved by the governor on July 25, 2014.

The statement of scope for this rule, SS 045-14, was approved by the governor on May 8, 2014, published in Register 701, on May 31, 2014, and approved by Secretary Eloise Anderson on June 20, 2014.

Finding of Emergency

Section 118 (1) (b) of 2013 Wisconsin Act 334 allows the department to promulgate an emergency rule to implement the extension of out-of-home care to children and youth 18 years of age or over, but under 21 years of age, under ss. 48.366 and 938.366, Stats., as an emergency rule without a finding of emergency.

Filed with LRB: July 29, 2014

Publication Date: August 1, 2014
Effective Dates: August 1, 2014 through December 28, 2014
Hearing Date: October 16, 2014
Extension Through: February 26, 2015

2. EmR1427 — The Wisconsin Department of Children and Families orders the creation of **Chapter DCF 40**, relating to the review of a determination of child abuse or neglect.

This emergency rule was approved by the governor on December 2, 2014.

The statement of scope for this rule, SS 0008-14, was approved by the governor on January 30, 2014, published in Register 698 on February 15, 2014, and approved by Secretary Eloise Anderson on March 12, 2014.

Finding of Emergency

Section 48.981 (3) (c), Stats., as affected by 2013 Wisconsin Act 20, creates a new statewide process for appeals of determinations by a county department, the department, or a licensed child welfare agency that a specific person has abused or neglected a child. The statutory changes creating the new appeal process will be effective January 1, 2015. Act 20 directs the department to promulgate rules to specify the procedures for the initial stage of the appeal process. An emergency rule is necessary for these rules to be effective January 1, 2015.

Filed with LRB: December 15, 2014
Publication Date: December 17, 2014
Effective Dates: January 1, 2015 through May 30, 2015
Hearing Date: January 27, 2015

Health Services

Health, Chs. DHS 110—

EmR1410 — The Wisconsin Department of Health Services hereby adopts emergency rules to renumber and amend section **DHS 115.05 (3)**; to amend sections **115.01, 115.02, and 115.04 (intro.)**; and to create section **115.04 (15) and (16)**, relating to screening newborns for congenital and metabolic disorders.

This emergency rule was approved by the Governor on June 27, 2014.

The statement of scope for this rule, SS 057-14, was approved by the Governor on June 5, 2014, published in Register 702, on June 14, 2014, and approved by Secretary Rhoades on June 25, 2014.

Finding of Emergency

The Department of Health Services finds that an emergency exists and that the adoption of an emergency rule is necessary for the immediate preservation of the public health, safety and welfare. The facts constituting the emergency are as follows:

1. Section 253.13 (1), Stats., requires attending physicians and nurses licensed under s. 441.15, Stats., to cause every infant born in each hospital or maternity home, prior to the infant's discharge to be subjected to tests for congenital and metabolic disorders, as specified in rules promulgated by the department. If the infant is born elsewhere than in a hospital

or maternity home, the attending physician, nurse licensed under s. 441.15, Stats., or birth attendant who attended the birth shall cause the infant, within one week of birth, to be subjected to these tests.

2. Section DHS 115.04 lists the disorders for which newborns must be tested under s. 253.13 (1), Stats.

3. Critical congenital heart disease (CCHD) is described as those congenital cardiac malformations in which surgical or catheter-based therapy is necessary within the first months of life. There are 12 lesions commonly considered as CCHD. In some circumstances, infants with CCHD may be asymptomatic and have a normal physical examination prior to routine hospital discharge or completion of home birth care. Unrecognized CCHD can result in death or disability shortly after hospital discharge.

4. Death due to unrecognized CCHD from 2002 to 2006 occurred in 1:38,397 Wisconsin births and death or re-hospitalization occurred in 1:24,684 Wisconsin births before two weeks of age. The median age at death due to unrecognized CCHD was 4.5 days.

5. Pulse oximetry, a point of care testing, is the recognized screening method for CCHD.

6. Prior to 2013 Wisconsin Act 135, adding pulse oximetry screening for CCHD to the mandatory panel was not permitted because testing for congenital and metabolic disorders under s. 235.13 (1), Stats. (2011–12), was explicitly limited to blood testing. Section 253.13 (1), Stats., as amended by 2013 Wisconsin Act 135, now allows testing for congenital and metabolic disorders using other screening methods including blood testing.

7. The Wisconsin State Laboratory of Hygiene (WSLH) tests newborns for organic acidemias (OA), a group of inherited disorders that lead to an abnormal buildup of particular acids, known as organic acids, in the body.

8. Abnormal levels of organic acids in the blood (organic acidemia), urine (organic aciduria), and tissues can be toxic and can cause serious health problems. A baby affected with an OA is usually well at birth and for the first few days of life. The usual clinical presentation is that of toxic encephalopathy and includes vomiting, poor feeding, neurologic symptoms such as seizures and abnormal tone, and lethargy progressing to coma. Outcome is improved by diagnosis and treatment in the first ten days of life.

9. Propionic acidemia and methylmalonic acidemia are two types of organic acidemias. In propionic acidemia and methylmalonic acidemia, the body is unable to process certain parts of proteins and lipids (fats) properly. In most cases, the features of propionic acidemia become apparent within a few days after birth. Propionic acidemia affects about 1 in 100,000 people in the United States. The effects of methylmalonic acidemia, which usually appear in early infancy, vary from mild to life-threatening. Without treatment, this disorder can lead to coma and death in some cases. This condition occurs in an estimated 1 in 50,000 to 100,000 people.

10. Though OA was determined to have met the criteria under s. DHS 115.06 for being added to the list of congenital and metabolic disorders for which WSLH must test the blood samples of newborns, the conditions were inadvertently omitted from the list of conditions in s. DHS 115.04 during subsequent revisions.

11. The process for promulgating permanent rules may take 24 months to complete, or longer if the department is unable to submit the permanent rules to the legislature prior to its last general business floor period in 2016.

Filed with LRB: June 27, 2014

Publication Date: July 3, 2014
Effective Dates: July 3, 2014 through November 29, 2014
Hearing Date: August 15, 2014
Extension Through: January 28, 2015

Insurance

EmR1408 — The Commissioner of Insurance proposes an order to amend section Ins 17.01 (3); and to repeal and recreate section. Ins 17.28 (6), Wis. Admin. Code, relating to the Injured Patients and Families Compensation Fund Annual Fund and mediation panel fees, for the fiscal year beginning July 1, 2014 and affecting small business.

This emergency rule was approved by the Governor on June 12, 2014.

The statement of scope for this rule, SS 147–13, was approved by the Governor on November 18, 2013, published in Register No. 695, on November 30, 2013, and approved by the Commissioner on May 8, 2014.

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, 2014 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 18, 2013 and the mediation panel fees established by the Board of Governors at the meeting held on March 19, 2014.

Filed with LRB: June 13, 2014
Publication Date: June 18, 2014
Effective Dates: June 18, 2014 through November 14, 2014
Hearing Date: August 12, 2014
Extension Through: January 13, 2015

Natural Resources (9)

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. EmR1320 (DNR # FH–27–13(E)) — The Wisconsin Natural Resources Board proposes an order to create **Chapter NR 85**, relating to development of a competitive grant program for cities, villages, towns, counties, federally recognized Indian tribes or bands located in this state, and fish farms in order to increase the capacity to raise walleye for stocking in Wisconsin waters.

This rule was approved by the Governor on November 8, 2013.

The statement of scope for this emergency rule, SS 104–13, was approved by the Governor on August 12, 2013, published in Register No. 692 on September 1, 2013 (August 31, 2013), and approved by the Natural Resources Board on September 25, 2013.

Finding of Emergency — Exemption

2013 Wisconsin Act 20, the 2013–15 state budget, included the following nonstatutory language: The department of natural resources may promulgate emergency rules under section 227.24 of the statutes implementing sections 29.739 and 29.740 of the statutes, as created by this act. Notwithstanding section 227.24 (1) (c) and (2) of the statutes, emergency rules promulgated for walleye population maintenance and enhancement grants remain in effect until June 30, 2016, or the date on which permanent rules take

effect, whichever is sooner. Notwithstanding section 227.24 (1) (a) and (3) of the statutes, the department is not required to provide evidence that promulgating this rule as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under this subsection.

Filed with LRB: November 14, 2013

Publication Date: November 21, 2013

Effective Dates: November 21, 2013 through June 30, 2016, or the date on which permanent rules take effect, whichever is sooner.

Hearing Date: December 12, 2013 and December 19, 2013

4. EmR1405 (DNR # WM–24–13(E)) — The Wisconsin Natural Resources Board proposes an order to repeal sections **NR 10.01 (3) (ed), (es) 3., and (et), 10.07 (3), 10.09 (2), 10.28 (3), and 45.09 (9)**, to amend sections **NR 1.15 (1) (a), (b), and (c) 1., (2) (a) (intro.) and (at), and (3), 10.001 (2e), (6p), and (19e), 10.01 (3) (es) 1. and 2. and (3) (ev), 10.02 (3), 10.06 (8) (b) and (note), 10.07 (2m) (b) 1., 10.102 (1) (e) 4., 10.105 (1), (2), (4), and (7), 10.106 (intro.) and (1), 12.06 (1), (2), and (4), 12.16 (4), 13.38 (2) (b) and (Note), and 19.60 (2) (b) 1.**, to repeal and recreate sections **NR 1.15 (2) (a) 8., 10.01 (3) (e) and (em), 10.104, 10.106 (2), 10.28 (1) and (2), 10.28 (4), and 10.41**, and to create **Chapter NR 10 (Title.) and sections NR 10.001(1k) and (23a) and (b), 10.01 (2) (b) (Note) and (4) (dm) (Note), and Subchapter II**, relating to deer management, hunting, and implementation of the 2012 White–tailed Deer Trustee Report.

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

The statement of scope for this rule, SS 098–13, was approved by the Governor on July 23, 2013, published in Register No. 692, on August 14, 2013, and approved by the Natural Resources Board on September 25, 2013.

Finding of Emergency

A non–statutory provision, SECTION 9132 of 2013 Act 20, establishes that the department may promulgate rules to implement the 2012 final deer management report and that the department is not required to make a finding of emergency.

Filed with LRB: February 25, 2014

Publication Date: March 7, 2014

Effective Dates: March 7, 2014 through June 30, 2015

5. EmR1409 (DNR # FH–03–14(E)) — The Wisconsin Natural Resources Board proposes an order to amend sections **NR 20.36 (2) and 23.055 (2)**, relating to modifications in daily bag limits and minimum size limits in response to tribal harvest.

This emergency rule was approved by the Natural Resources Board on May 28, 2014, and by the governor on June 6, 2014.

The statement of scope for this rule was approved by the governor on February 14, 2014, published in Register No. 698 on February 28, 2014, and approved by the Natural Resources Board on March 19, 2014.

Statement of Emergency

This emergency rule is needed to promote the preservation and protection of public peace, health, safety, and welfare in the Ceded Territory of Wisconsin by minimizing regional social and economic disruption known to be associated with reductions in walleye bag limits on off–reservation waters.

Filed with LRB: June 16, 2014
Publication Date: June 14, 2014
Effective Dates: June 14, 2014 through November 10, 2014
Hearing Date: July 14, 2014 and July 16, 2014
Extension Through: March 10, 2015

6. EmR1418 (DNR # WM-11-14(E)) — The Wisconsin Natural Resources Board proposes an order to amend sections NR 10.01 (b) and 10.06 (5) and to create sections NR 10.01 (1) (a) and 10.06 (5) (a), related to establishing an early duck season for teal-only and the hunting regulations for teal and mourning doves.

The rule was adopted by the Natural Resources Board on June 25, 2014, approved by the Governor on August 27, 2014, and signed by Policy Director Michael L. Bruhn for Secretary Cathy Stepp, also on August 27, 2014.

The statement of scope for this rule, SS 020-14, was approved by the Governor on March 10, 2014, published in Register No. 699, on March 31, 2014, and approved by the Natural Resources Board on May 27, 2014.

Statement of Emergency

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to protect the public welfare. The federal government and state legislature have delegated to the appropriate agencies rule-making authority to control the hunting of migratory birds. The State of Wisconsin must comply with federal regulations in the establishment of migratory bird hunting seasons and conditions. Federal regulations are not made available to this state until late July of each year. This order is designed to bring the state hunting regulations into conformity with the federal regulations. Normal rule-making procedures will not allow the establishment of these changes by September 1. Failure to modify our rules will result in the failure to provide hunting opportunity and continuation of rules which conflict with federal regulations.

Filed with LRB: August 28, 2014
Publication Date: September 1, 2014
Effective Dates: September 1, 2014 through January 28, 2015
Hearing Date: October 29, 2014

7. EmR1419 (DNR # WM-04-14(E)) — The Wisconsin Natural Resources Board proposes an order to amend section NR 10.01 (1) (b) and (1) (g) 1. d. and to create section NR 10.01 (1) (g) 1. dm., related to migratory bird hunting regulations.

This rule was approved by the Governor on August 27, 2014.

The statement of scope for this rule, SS 020-14, was approved by the Governor on March 10, 2014, published in Register No. 699, on March 31, 2014, and approved by the Natural Resources Board on May 27, 2014.

Finding of Emergency

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to protect the public welfare. The federal government and state legislature have delegated to the appropriate agencies rule-making authority to control the hunting of migratory birds. The State of Wisconsin must comply with federal regulations in the establishment of migratory bird hunting

seasons and conditions. Federal regulations are not made available to this state until late July of each year. This order is designed to bring the state hunting regulations into conformity with the federal regulations. Normal rule-making procedures will not allow the establishment of these changes by September 1. Failure to modify our rules will result in the failure to provide hunting opportunity and continuation of rules which conflict with federal regulations.

Filed with LRB: September 8, 2014
Publication Date: September 11, 2014
Effective Dates: September 11, 2014 through February 7, 2015
Hearing Date: October 29, 2014

8. EmR1420 (DNR # WM-05-14(E)) — The Wisconsin Natural Resources Board proposes an order to repeal section NR 10.001 (2e), 10.09 (1) (c) 1. e. and (Note); to amend sections NR 10.06 (5), 10.06 (8) (a) and (b), 10.07 (1) (b) 3., 10.07 (2m) (g) 2., 10.09 (1) (c), 10.09 (3), 10.10 (2), 10.11 (5) (a), 10.103 (1), 10.104 (7), 10.104 (9r), 10.15 (1) (a), 10.15 (6), 10.16 (Intro.), 10.16 (2), 10.22 (1), 10.23 (2) (a), 10.24 (2), 10.25 (4) (a), 11.042 (intro.), 11.043 (intro.), 11.11 (intro.), 12.16 (4), 15.01 (intro.), 15.015 (intro.), 15.10 (1) (intro.) and 15.12 (intro.), 45.09 (1), and 45.13 (18), (21), and (24); and to create sections NR 10.01 (3) (em) (Note) and (3) (ep), 10.104 (7) (c), 10.15 (3m), and 10.16 (2m), related to establishing a season for hunting deer with crossbows-only.

This rule was approved by the governor on September 8, 2014.

The statement of scope for this rule, SS 018-14, was approved by the Governor on March 10, 2014, published in Register No. 699, on March 31, 2014, and approved by the Natural Resources Board on May 27, 2014.

Finding of Emergency

The department is not required to make a finding of emergency before promulgating these rules. The department is directed to promulgate these rules in 2013 Act 61 and is exempted from making a finding of emergency under non-statutory provisions of the ACT.

Filed with LRB: September 9, 2014
Publication Date: September 12, 2014
Effective Dates: September 12, 2014 through February 8, 2015
Hearing Date: October 29, 2014

9. EmR1422 (DNR # WM-08-14(E)) — The Wisconsin Natural Resources Board proposes an order to amend section NR 10.104 (8) (a) and to create sections NR 10.001 (7p) and (7w), 10.104 (9m) (a) and (b), 10.104 (5) (b) 8. and 10.104 (5) (c), related to implementation of the Deer Management Assistance Program and County Deer Management Advisory Committee.

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

The statement of scope for this rule, SS 056-14, was published in Register No. 702, on June 14, 2014 and approved by the Natural Resources Board at its June 25, 2014 meeting.

Finding of Emergency

The department is not required to make a finding of emergency before promulgating these rules. The department is directed to promulgate these rules in s. 29.040 Stats., established by 2013 ACT 20 and is exempted from making a finding of emergency under non-statutory provisions in Section 9132 of the ACT.

Filed with LRB: September 15, 2014
Publication Date: September 19, 2014
Effective Dates: September 19, 2014 through February 15, 2015
Hearing Date: October 29, 2014

Natural Resources

Environmental Protection — General, Chs. NR 100—

EmR1417 (DNR # OE-10-14(E)) — The Wisconsin Natural Resources Board proposes an order to repeal **sections NR 150.10 (1m) (b) and 150.20 (3) (a) 4. and 5.**; to amend **sections NR 150.03 (1), (15) (intro.), (19), (25), and (26), 150.10 (1) and (1m) (a), (c) (intro.), and (2) (a), 150.20 (1), (1m) (j), (k), and (L), (2) (a) (intro.), 4., 10., 11., and 16., (3) (a) (intro.), and (4) (b) (intro.), and 150.35**; and to create **section NR 150.20 (1) (Note), (1m) (k) (Note), (m) to (y), and (2) (a) 20. to 27.**, relating to the department's environmental analysis and review procedures under the Wisconsin Environmental Policy Act.

The emergency rule was adopted by the Natural Resources Board On August 13, 2014, approved by the Governor on August 27, 2014 and signed by Policy Director Michael L. Bruhn for Secretary Cathy Stepp, also on August 27, 2014.

The scope statement number is SS 051-14. The governor approved the scope statement on May 15, 2014, and the scope statement was published in register No. 701 on May 31, 2014.

Finding of Emergency

Significant revisions to ch. NR 150 became effective on April 1, 2014. The changes proposed are needed to clarify procedures for the review and analysis of new administrative rules and other actions and policies to assure that the intent of the recent revisions to ch. NR 150 is being met and potential procedural questions do not invalidate years of work and public engagement. Additionally, the changes will clarify the intent of the April 1, 2014 revisions for procedures for WEPA compliance determinations, publication requirements, and plan approvals for various actions and policies, to prevent any misunderstandings or resulting challenge or delay regarding that intent.

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary to allow timely processing and implementation of department rule proposals, actions, and policies. Preservation of the public welfare necessitates putting the forgoing rule into effect prior to the time that it would take if the Department complied with normal rule promulgation procedures.

Filed with LRB: August 28, 2014
Publication Date: August 31, 2014
Effective Dates: August 31, 2014 through January 27, 2015
Hearing Date: September 26, 2014

Public Instruction

EmR1411 — The State Superintendent of Public Instruction hereby creates **Chapter PI 80**, relating to community programs and services.

Per the Dane County Circuit Court order issued in Coyne, et al. v. Walker, et al., Case No. 11-CV-4573, the Department

of Public Instruction is not required to obtain the Governor's approval for the statement of scope or this rule.

The scope statement for this rule, SS 043-14, was published in Register No. 701, on May 14, 2014, and approved by State Superintendent Tony Evers, on May 27, 2014.

Finding of Emergency

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

Unless an emergency rule is promulgated, school districts will not know which activities would be considered ineligible costs for the Community Programs and Services Fund for the 2014-15 school year. Not having this information could result in school districts unintentionally making expenditures from the Community Programs and Services Fund in 2014-15 that are deemed "ineligible costs" after the school board has made budget decisions and set a tax levy for the 2014-15 school fiscal year. Such a finding would then result in a negative adjustment to the district's revenue limit authority for the following 2015-16 school year, per s. 121.91 (4) (r), Stats., as created by 2013 Wisconsin Act 306. A district's revenue limit authority controls the amount of combined State General Aid and local property taxes revenues for a district. Thus, a district's revenue limit authority for the 2015-16 school year could be negatively impacted based on a definition of "ineligible costs" that was not in place at the time the district made its 2014-15 budget decisions and set the 2014-15 tax levy (by November 2014) for the Community Programs and Services Fund.

Filed with LRB: June 27, 2014
Publication Date: July 1, 2014
Effective Dates: July 1, 2014 through November 27, 2014
Hearing Date: September 4, 2014
Extension Through: January 26, 2015

Safety and Professional Services

General Part I, Chs. 301—319

EmR1415 — An order of the Department of Safety and Professional Services to amend **section SPS 305.40 (2) (b), (3) (b), (4) (a) 1., (b), (c), and (d) 1., and (5)** and to create **sections SPS Table 305.02 Row 24r, Table 305.06 Row 19r, 305.40 (1) (bm), and 305.437**, relating to credentials for electricians.

This emergency rule was approved by the Governor on July 29, 2014.

The statement of scope for this rule, SS 041-14, was approved by the Governor on April 30, 2014, published in Register No. 701 on May 14, 2014, and approved by the Department on May 27, 2014.

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.

SECTION 15 of 2013 Wisconsin Act 143 exempts any electrician who was born on or before January 1, 1956, and who has at least 15 years of experience in installing, repairing, or maintaining electrical wiring, from the electrical licensure

and supervision requirements in sections 101.862 (2) and (3) of the Statutes. SECTION 15 also requires the Department to promulgate rules establishing criteria and procedures for issuing a corresponding credential to these grandfathered electricians.

Because of Act 143, the statutory requirements are now out of step with the Department's administrative rules – and the stakeholders who are affected by these statutory changes are confused by the differences. For example, there has been substantial confusion on what these grandfathered electricians can or need to do and how local governmental units should treat them. Promulgating revisions to the rules through the emergency rule process is needed in order to minimize the confusion and any hardship as soon as possible.

Filed with LRB: August 1, 2014
Publication Date: August 6, 2014
Effective Dates: August 6, 2014 through January 2, 2015
Hearing Date: September 12, 2014
Extension Through: March 3, 2015

Safety and Professional Services

Plumbing, Chs. SPS 381—387

EmR1423 — An order of the Department of Safety and Professional Services to renumber **Chapter SPS 384 Table 384.10 rows 1 to 5**, to renumber and amend **Chapter SPS 384 Table 384.10 row 6**, and to create **Chapter SPS 384 Table 384.10 rows 1 and 9 and (Note)**, relating to water-treatment devices.

This emergency rule was approved by the Governor on September 12, 2014.

The statement of scope for this rule, SS 037–14, was approved by the Governor on April 17, 2014, published in Register 701 on May 14, 2014, and approved by the Department on May 29, 2014.

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.

Under current rules, water treatment devices — including water softeners — may need two separate approvals before being used in Wisconsin. The first approval is typically from a third party, such as NSF International, and is based on an industry standard. The second approval is under SPS chapter 384, which addresses situations where a plumbing product must receive approval from the Department. Due to prolonged extreme weather conditions this past winter, spring, and summer, more private well owners than usual have chosen to upgrade their water supply systems this year. The Department has reason to believe that its secondary review is delaying some of these well owners from accessing plumbing products which would improve the safety of their drinking water. These products have been approved under industry standards and are available to consumers in other states but have not yet received approval from the Department. Promulgating revisions through the emergency rule process is needed to avoid further delays in using these products.

Filed with LRB: September 25, 2014

Publication Date: September 27, 2014
Effective Dates: September 27, 2014 through February 23, 2015
Hearing Date: October 27, 2014, 2014

Transportation (3)

1. EmR1421 — The Wisconsin Department of Transportation proposes an order to amend **Chapter Trans 102**, relating to operator's licenses and Identification cards.

This emergency rule was approved by the Governor on September 11, 2014.

The scope statement for this rule, SS 080–14, was approved by the Governor on August 19, 2014, and published in Wisconsin Administrative Register No. 704, on August 31, 2014 and approved by the Secretary of Transportation on September 10, 2014.

Finding of Emergency

On July 31, 2014, the Wisconsin Supreme Court upheld 2011 Wisconsin Act 23, which requires certain identification in order to vote at a polling place or obtain an absentee ballot. *NACCP v. Walker*, 2014 WI 98.

The Department of Transportation's Division of Motor Vehicles ("DMV") is required by 2011 Wisconsin Act 23 to issue an identification ("ID") card free of charge to any U.S. citizen who will be at least 18 years of age on the date of the next election and who requests the ID card free of charge for voting purposes, provided they meet statutory requirements.

This emergency rule may be necessary to preserve public welfare by ensuring that DMV will implement the requirements of 2011 Wisconsin Act 23 in a manner consistent with the requirements of *NAACP v Walker*, should the federal injunction against that act be lifted.

Filed with LRB: September 15, 2014
Publication Date: September 17, 2014
Effective Dates: September 17, 2014 through February 13, 2015
Hearing Date: December 11, 2014

2. EmR1425 — The Wisconsin Department of Transportation proposes an order to create **Chapter Trans 319**, relating to towing of vehicles.

This Emergency Rule was approved by the Governor on September 26, 2014.

The Statement of Scope for this Emergency Rule, SS 064–14, was approved by the Governor on July 1, 2014, published in Register No. 703 on July 14, 2014, and approved by Secretary of the State of Wisconsin Department of Transportation Mark Gottlieb, P.E., as required by s. 227.135(2), Stats, on July 28, 2014.

Exemption from Finding of Emergency

The Legislature by 2013 Wisconsin Act 76 s. 59 (2) provides an exemption from a finding of emergency for the adoption of the rule.

Filed with LRB: October 1, 2014
Publication Date: October 2, 2014
Effective Dates: October 2, 2014 through February 28, 2015
Hearing Date: November 11, 2014

3. EmR1426 — The Wisconsin Department of Transportation proposes an order to create **section Trans 327.14**, relating to motor carrier safety and affecting small businesses.

This emergency rule was approved by the Governor on November 26, 2014.

The statement of scope for this rule, SS 112–14, was approved by the Governor on October 16, 2014, published in Register 706B, on October 31, 2014, and approved by Secretary Mark Gottlieb as required by s. 227.135 (2), Stats., on November 11, 2014.

Finding of Emergency

The welfare of commercial motor vehicle drivers who hold a commercial driver license (“CDL”) issued by the State of Wisconsin who operate commercial motor vehicles outside this state will be harmed, if they cannot demonstrate compliance with recent federal regulations because they will be treated by other states as unlicensed drivers. Beginning on January 1, 2014, federal regulations require CDL holders to have certified to DOT the type of commercial driving they do and, if required, to have submitted proof of medical fitness to drive, and to have their driving records updated by DOT to show these actions, before driving a commercial motor vehicle. The Department published the scope statement for permanent rulemaking in September 2011 to implement these federal requirements. The permanent rulemaking effort is ongoing.

Filed with LRB: December 3, 2014
Publication Date: December 4, 2014
Effective Dates: December 4, 2014 through May 5, 2015
Hearing Date: January 13, 2015

Veterans Affairs

EmR1416 — The Department of Veterans Affairs hereby adopts an order to create **section VA 2.07**, relating to grants to non-profit organizations.

This emergency rule was reviewed by the Board of Veterans Affairs on July 15, 2014 and approved by the Governor on August 20, 2014.

The statement of scope for this rule, SS 038–14, was approved by the Governor on April 21, 2014, published in Register No. 701 on May 14, 2014, and approved by Secretary John A. Scocos on May 27, 2014.

Finding of Emergency

The Legislature by Section 9 of 2013 Act 190 provides an exemption from a finding of emergency for the adoption of this rule.

Filed with LRB: August 28, 2014
Publication Date: August 29, 2014
Effective Dates: August 29, 2014 through June 30, 2015 or the date on which permanent rules take effect, whichever is sooner. (corrected)
Hearing Date: November 12, 2014

Workforce Development *Apprenticeship, Chs. DWD 295–296*

EmR1406 — The Wisconsin Department of Workforce Development hereby adopts the following emergency rule to create **section DWD 295.25**, relating to apprenticeship completion awards.

The emergency rule was approved by the governor on March 21, 2014.

The statement of scope for this emergency rule was approved by the Governor on February 13, 2014, published in Register No. 698 on February 28, 2014, and approved by the Secretary of the Department of Workforce Development on March 11, 2014.

Finding of Emergency

The department of workforce development finds that an emergency exists and that the attached rule is necessary for the immediate preservation of the public welfare. Statements of facts constituting an emergency include:

(1) Wisconsin currently has more than 2,100 employers participating in, and training individuals, under the apprenticeship program.

(2) During 2013, Wisconsin had 9,723 valid apprenticeship contracts.

(3) Over the past ten years, the completion rate of the apprenticeship program averaged between 55–60%.

(4) 2013 Wisconsin Act 57 creates an apprenticeship completion award program to be administered by the department of workforce development to partially reimburse tuition costs incurred by an apprentice who has successfully completed part or all of the requirements of their apprenticeship contract, and is employed in the trade, occupation, or business under the apprenticeship contract, or the sponsor of the apprentice.

(5) The department of workforce development has received general purpose revenue (GPR) funds of \$225,000 in fiscal year 2013–14 and 2014–15, to distribute up to 25%, or \$1,000, whichever is less, of the tuition costs incurred by the apprentice and sponsor of the apprentice. The amount of the first payment upon successful completion by the apprentice of the first year of the contract may not exceed \$250.

(6) The department of workforce development is adopting this emergency rule to prevent a potential hardship to Wisconsin’s apprenticeship program participants. Adoption of this emergency rule will ensure those participating in an eligible apprenticeship contract may begin receiving apprenticeship completion awards as soon as possible. Because a permanent rule cannot be adopted in time, GPR funds for fiscal year 2013–14 would be lost if the emergency rule is not adopted.

Filed with LRB: March 26, 2014
Publication Date: March 27, 2014
Effective Dates: March 27, 2014 through August 23, 2014
Hearing Date: May 15, 2014
Extension Through: December 21, 2014

Scope Statements

Natural Resources

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

SS 127–14

(DNR # AM–15–14)

This statement of scope was approved by the governor on December 1, 2014.

Rule No.

Chapters NR 400, 404, 405, and 420 (revise).

Relating to

Maintaining consistency with U.S. Environmental Protection Agency air pollution control regulations and repealing obsolete rules.

Rule Type

Permanent.

1. Detailed Description of the Objective of the Proposed Rule

The Department of Natural Resources (Department) is proposing rulemaking related to state air pollution control rules affecting chs. NR 400, 404, 405, and 420, Wis. Adm. Code. The objective of this rulemaking is twofold; to address changes needed to maintain consistency with U.S. Environmental Protection Agency (EPA) regulations and to repeal obsolete rule provisions. During the rulemaking process the Department may identify a need for changes not specifically described but related and necessary to properly implement proposed changes included in this statement of scope.

The Department may also propose non-substantive corrections of a clean-up nature, such as punctuation, grammar and spelling, and changes necessary to ensure consistency with administrative rule drafting guidance issued by the Legislative Reference Bureau and the Legislative Council. Any such proposed changes would not affect Department policy.

1.1 The Department proposes to make changes to the following rules to maintain consistency with existing U. S. EPA regulations:

(I) Chapter NR 405, Wis. Adm. Code, establishes requirements and procedures for reviewing and issuing air pollution control construction permits for any new major stationary source and any major modification to an existing stationary source located in areas designated as in attainment with national ambient air quality standards or as unclassifiable. This permit program is referred to as prevention of significant deterioration or PSD and is based on U.S. EPA regulations in 40 CFR 51.166. The Department is the implementing authority in the state for this permit program and Department rules must be consistent with U.S. EPA regulations to maintain that authority. The Department proposes changes to the following rule provisions related to the PSD permit program to ensure that consistency:

(A) Section NR 405.02 (3), (21m), and (22m), Wis. Adm. Code, to include particulate matter with an aerodynamic diameter less than or equal to 2.5 micrometers, commonly referred to as PM_{2.5}, in the definitions of “baseline area”, “major source baseline date”, and “minor source baseline date”, respectively. These terms are defined by the U.S. EPA in 40 CFR 51.166 (b) (14) (i) and (ii) and (15) (i).

(B) Sections NR 405.02 (21) (a), (22) (b), (27) (a) (6), and 405.07 (8) 5., Wis. Adm. Code, to specifically identify that in addition to volatile organic compounds, nitrogen oxides (NO_x) are a precursor to ozone formation consistent with U.S. EPA requirements in 40 CFR 51.166 (b) and (i).

(C) Table B in s. NR 405.07 (9), Wis. Adm. Code, to update greenhouse gas global warming potentials (GWPs) consistent with those currently in affect at the federal level under Table A–1 of 40 CFR Part 98, Subpart A. Of the 70 greenhouse gases currently listed, the Department proposes to increase the GWPs for 19 greenhouse gases and decrease the GWPs for 4 greenhouse gases. Global warming potentials are used to quantify emissions of greenhouse gases on an equivalent basis for regulatory and reporting purposes.

(D) Section NR 404.05, Wis. Adm. Code, to establish ambient air increments for PM_{2.5}. Ambient air increments for pollutants with national ambient air quality standards, including PM_{2.5}, are establish by the U.S. EPA in 40 CFR 51.166 (c).

(2) Chapter NR 400, Wis. Adm. Code, establishes definitions for terms commonly used throughout chs. NR 401 to 499, Wis. Adm. Code. A definition for the term “volatile organic compounds” or “VOC” is included in s. NR 400.02 (162), Wis. Adm. Code. In the ambient air these compounds can participate in photochemical reactions to produce ozone, more commonly referred to as smog, and are therefore subject to emission control requirements and may trigger the need to obtain a construction or operation permit. The U.S. EPA has determined that certain organic compounds have negligible photochemical reactivity in the atmosphere and therefore excludes them from the federal definition of VOC in 40 CFR 51.100 (s). The Department proposes to add eight such compounds to the list of excluded compounds in the state definition. These compounds are:

- (A) trans–1,3,3,3–tetrafluoropropene (HFO–1234ze).
- (B) HCF₂OCF₂H (HFE–134).
- (C) HCF₂OCF₂OCF₂H (HFE–236cal2).
- (D) HCF₂OCF₂CF₂OCF₂H (HFE–238pcc13).
- (E) HCF₂OCF₂OCF₂CF₂OCF₂H (H–Galden 1040X or H–Galden ZT 130 or 150 or 180).
- (F) trans–chloro–3,3,3–trifluoroprop–1–ene (Solstice™ 1233zd(E)).
- (G) 2,3,3,3–tetrafluoropropene (HFO–1234yf).
- (H) 2–amino–2–methyl–1–propanol (AMP; CAS number 124–68–5).

1.2 The Department proposes to repeal s. NR 420.045, Wis. Adm. Code. This rule establishes stage 2 vapor recovery requirements at gasoline dispensing facilities in the counties of Kenosha, Kewaunee, Manitowoc, Milwaukee, Ozaukee, Racine, Sheboygan, Washington, and Waukesha. Stage 2 vapor recovery equipment captures volatile organic

compounds that evaporate into the air when vehicle gasoline tanks are filled and returns the vapors to the underground gasoline storage tank where they condense. Beginning with 1998 model year vehicles, the U.S. EPA began requiring manufactures to equip new vehicles with on-board gasoline vapor recovery systems. These systems serve the same purpose as the stage 2 vapor recovery equipment at gasoline dispensing facilities. The U.S. EPA therefore authorized states to remove stage 2 vapor recovery equipment requirements from their ozone state implementation plan (SIP). On November 4, 2013, the U.S. EPA approved, effective December 4, 2013, a request by the Department to remove stage 2 vapor recovery equipment requirements from Wisconsin's SIP .

In addition, the state legislature promulgated s. 285.31 (5), Wis. Stats., effective April 17, 2012, terminating the further implementation of stage 2 vapor recover equipment requirements under s. NR 420.045, Wis. Adm. Code.

The Department therefore proposes to repeal s. NR 420.045, Wis. Adm. Code.

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

The proposed rule changes are compatible with existing policy to maintain consistency between state rules and U.S. EPA regulations and between state rules and statutes, and are necessary to do so. The proposed rules do not include any new policies. Since the proposed rule changes are appropriate and necessary the Department did not consider alternatives to the proposed rulemaking.

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

Sections 285.11 (1), (6), (16), and 17, 285.21 (2) and (4), 285.25 (1), and 285.31 (5), Wis. Stats., establish the authority for promulgation of the proposed rules.

3.1 Section 285.11 (1), Wis. Stats., requires that the Department promulgate rules implementing and consistent with ch. 285, Wis. Stats., and thereby establishes authority for the proposed changes to ch. NR 405, Wis. Adm. Code, as described in section 1.1 (1) related to the PSD construction permit program as affected by ss. 285.60, 285.61, and 285.63, Wis. Stats. More specific authority for these proposed changes is established as follows:

(1) Section 285.25 (1), Wis. Stats., supports the Department's proposed changes described in section 1.1 (1) (A) to add PM2.5 to select definitions in ch. NR 405, Wis. Adm. Code, related to a pollutant's baseline concentration. This statute requires that the Department promulgate rules designating procedures and criteria to determine the allocation of available air resources in an attainment area. The terms affected are used in these procedures and the proposed inclusion of PM 2.5 in the relevant definitions is necessary and appropriate when the Department determines the allocation of air resources for PM2.5.

(2) Section 285.11 (16), Wis. Stats., requires that the Department promulgate rules, consistent with but no more restrictive than the federal clean air act, that specify the amounts of emissions that result in a stationary source being classified as a major source and limit the classification of a major source to specific air contaminants. Section 285.11 (17), Wis. Stats., requires the Department to promulgate rules, consistent with the federal clean air act, that modify the meaning of the term "modification" as it relates to specific air contaminants. The proposed changes to ch. NR 405,

Wis. Adm. Code, described in section 1.1 (1) (B) and (C) make Department rules consistent with federal clean air act requirements regarding what contaminants to consider when determining whether a source is a major source and describe when an increase in a given air contaminant is considered a modification.

(3) Section 285.21 (2) and (4), Wis. Stats., supports the Department's proposed change to s. NR 404.05 to establish ambient air increments for PM2.5 included in section 1.1 (1) (D). These statutory provisions require that the Department promulgate by rule ambient air increments for air contaminants consistent with and not more restrictive than those under the federal clean air act for attainment areas. The Department must keep these rules consistent with any modifications to these increments made under the clean air act.

3.2. Section 285.11 (6), Wis. Stats., establishes authority for the proposed change to s. NR 400.02 (162), Wis. Adm. Code, as described in section 1.1 (2), in that it requires that the Department develop a plan for the prevention, abatement, and control of air pollution. For control of atmospheric ozone, the plan, with limited exceptions, must conform with the federal clean air act. Since VOC are a precursor to ozone, the addition of the proposed compounds to the list of excluded compounds to ensure the state definition of VOC conforms to the federal definition is consistent with s. 285.11 (6), Wis. Stats.

3.3 The repeal of s. NR 420.045, Wis. Adm. Code, included in section 1.2 is consistent with the legislature's mandate under s. 285.31 (5), Wis. Stats., to terminate the further implementation of stage 2 vapor recover equipment requirements under s. NR 420.045, Wis. Adm. Code.

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 that up to 300 hours of state employee time will be needed to complete the promulgation of the proposed rules.

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

5.1 Under Section 1.1 (1) the Department is proposing changes related to the PSD permit program to ensure consistency with existing U.S. EPA regulations. Entities primarily affected by these proposed changes are as follows:

(1) The proposed changes described in Section 1.1 (1) (A) would have no effect since under current rules and implementation practices, the Department is consistent with U.S. EPA regulations and policy with regard to PM2.5

(2) The proposed change described in Section 1.1 (1) (B) would have no effect since under current rules and implementation practices, the Department already recognizes that nitrogen oxides are a precursor to ozone formation. The change is proposed to satisfy U.S. EPA state implementation plan requirements.

(3) The proposed changes to global warming potentials for certain greenhouse gases as described in Section 1.1 (1) (C) could affect the calculation of total facility greenhouse gas emissions, which would then be used for reporting and other regulatory purposes. Any effect on total facility calculated emissions from the proposed changes would depend on what greenhouse gases the source emitted or would emit, the amount of emissions of each greenhouse gas, how much the global warming potential changed, and whether the change was an increase or decrease.

(4) The proposed change described in Section 1.1 (1) (D) would have no effect since under current implementation

practices for the prevention of significant deterioration permit program under ch. NR 405, Wis. Adm. Code, the Department already recognizes the federal PM2.5 ambient air increments consistent with U.S. EPA requirements.

5.2 Under Section 1.1 (2) the Department is proposing to add certain compounds to the list of compounds excluded from the definition of volatile organic compounds. Entities primarily affected by this proposal are as follows:

(1) For the compound listed in Section 1.1 (2) (A), those entities involved in the manufacture or use of refrigerants, aerosol propellants, and blowing agents for insulating foams.

(2) For the compounds listed in Section 1.1 (2) (B) to (E), those entities involved in the manufacture or use of fire suppressants and specialized refrigerants.

(3) For the compound listed in Section 1.1 (2) (F), those entities involved in the manufacture or use of refrigerants, aerosol and non-aerosol solvents and blowing agents for insulating foams, and manufacturers of refrigeration equipment, hot water heaters and waste heat recovery equipment.

(4) For the compound listed in Section 1.1 (2) (G), those entities involved in the manufacture or servicing of automobiles or automotive air conditioning systems.

(5) For the compound listed in Section 1.1 (2) (H), those entities involved in the manufacture or use of pigments in water-based coatings, additives in metalworking fluids and in food contact paper, neutralizers in personal care products, and intermediates in chemical synthesis.

By taking this action those entities described above would no longer have to consider emissions of these compounds when determining applicability of emission control requirements relating to attaining the ozone national ambient air quality standards and the emissions would no longer be counted in determining whether a proposed new or modified source would exceed the volatile organic compound thresholds that trigger permit requirements. In addition, entities would no longer be required to report or pay fees based on the emissions of these compounds as volatile organic compounds.

5.3 Under Section 1.2, the Department is proposing to repeal s. NR 420.045, Wis. Adm. Code. No entities would be affected by this action since the state legislature has terminated further implementation of stage 2 vapor recover equipment requirements under s. NR 420.045, Wis. Adm. Code, under s. 285.31 (5), Wis. Stats., effective April 17, 2012.

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

One of the main objectives of this proposed rulemaking is to address changes needed to maintain consistency with U.S. EPA regulations. Section 1 contains descriptions of the specific changes the Department is proposing.

The second objective is to repeal Department rules that apply to gasoline dispensing facilities to control fumes that evaporate into the air when vehicle gasoline tanks are filled. The U.S. EPA has authorized states to remove these requirements from state ozone implementation plans. The proposed Department action is therefore consistent with federal regulatory policy.

7. Anticipated Economic Impact of Implementing the Rule

The Department anticipates that the statewide economic impact of the proposed rules will be minimal.

8. Anticipated Number, Month, and Locations of Public Hearings

If approved to develop the proposed rules, the Department anticipates holding one public hearing in Madison during the fall of 2015.

9. Contact Person:

Robert Eckdale
Bureau of Air Management
Wisconsin Department of Natural Resources
PO Box 7921 AM/7
Madison, WI 53703
(608) 266-2856
Robert.Eckdale@Wisconsin.gov

Safety and Professional Services — Optometry Examining Board

SS 128-14

This statement of scope was approved by the governor on November 18, 2014.

Rule No.

Chapter Opt 8 (revise).

Relating to

Continuing education

Rule Type

Permanent.

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

N/A

2. Detailed Description of the Objective of the Proposed Rule

The objective of the rule is to update the continuing education chapter to reflect the current practice of optometry, current continuing education programs, including technological methods of delivery.

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

Updating the continuing education requirements will create clarity, utilize current technological methods of delivery of the continuing education and ensure required topics reflect the current practice of optometry.

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

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

449.06 (2m) The examining board shall promulgate rules requiring a person who is issued a license to practice optometry to complete, during the 2-year period immediately preceding the renewal date specified in s. 440.08 (2) (a), not less than 30 hours of continuing education. The rules shall include requirements that apply only to optometrists who are allowed to use topical ocular diagnostic pharmaceutical agents under s. 449.17 or who are allowed to use therapeutic pharmaceutical agents or remove foreign bodies from an eye or from an appendage to the eye under s. 449.18.

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

Optometrists

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

None

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

None to minimal. It is not likely to have a significant economic impact on small businesses.

Contact Person

Sharon Henes, Administrative Rules Coordinator, (608) 261-2377

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

SS 129-14

This statement of scope was approved by the governor on November 18, 2014, 2014.

Rule No.

Chapters Opt 3, 5, and 7 (revise).

Relating to

Examination, unprofessional conduct, and renewal

Rule Type

Permanent.

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

N/A

2. Detailed Description of the Objective of the Proposed Rule

The objective of the rule is to update and reorganize the examination and unprofessional conduct chapters; remove obsolete provisions; reflect current practices and

technologies; clarify the procedures for renewal and reinstatement of licenses; and to implement 2013 Act 114 and 2013 Act 345.

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

Both examination and unprofessional conduct chapters have not had a comprehensive review in at least 15 years. There are provisions which will be removed because they are obsolete or consolidated for clarity. The renewal chapter will be updated to clarify the board procedures for renewal and reinstatement.

The rule will implement changes as a result of Act 114 to allow an applicant to take an exam prior to finishing their education. Act 345 will also be implemented to create a standard for informed consent.

In addition, there will be a review to ensure the rules are consistent with today's practices and technologies.

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

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

440.071 The department or a credentialing board or other board in the department may not require a person to complete any postsecondary education or other program before the person is eligible to take an examination for a credential the department or credentialing board or other board in the department grants or issues.

449.25 (2) The examining board shall promulgate rules implementing the reasonable optometrist standard of for the standard for informing a patient about the availability of reasonable alternate modes of treatment and about the benefits and risks of those treatments.

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

Optometrists and applicants for optometrist licensure.

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

None

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

None to minimal. It is not likely to have a significant economic impact on small businesses.

Contact Person

Sharon Henes, Administrative Rules Coordinator, (608) 261-2377

**Safety and Professional Services —
Podiatry Affiliated Credentialing Board**

SS 130–14

This statement of scope was approved by the governor on November 20, 2014.

Rule No.

Chapter Pod 6 (revise).

Relating to

Duty to obtain informed consent

Rule Type

Permanent

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

N/A

2. Detailed Description of the Objective of the Proposed Rule

The proposed rule will bring current Wisconsin Administrative Code into compliance with new legislation, 2013 Wisconsin Act 345.

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 duty of certain health care professionals, other than physicians, to obtain informed consent from their patients before conducting treatment had not been codified as a statutory duty prior to the passage of 2013 Wisconsin Act 345. Act 345 sets forth the podiatrist's duty to obtain informed consent from their patients and institutes the reasonable podiatrist standard as the standard for informing patients regarding their treatment options. The reasonable podiatrist standard requires disclosure only of the information that a reasonable podiatrist would know and disclose under the circumstances. The proposed rule will incorporate the new standard into the current rules governing podiatric practice and make any additional changes necessary to create consistency with the newly enacted legislation. The proposed rule will also provide clarity to the process of renewing a license after 5 years by updating provisions regarding licensure reinstatement.

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

Section 15.085 (5) (b), Stats., provides that affiliated credentialing boards, such as the Podiatry Affiliated Credentialing Board, “[s]hall promulgate rules for its own guidance and for the guidance of the trade or profession to which it pertains. . .” The proposed rule will provide guidance within the profession as to how podiatrists are to inform patients about treatment options.

Section 227.11 (2) (a), Stats., provides that “[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, but a rule is not valid if the rule exceeds the bounds of correct interpretation.”

Section 448.675 (4), Stats., states that “[t]he affiliated credentialing board may restore a license which has been voluntarily surrendered or revoked under this subchapter on such terms and conditions as it considers appropriate.”

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

State employees will spend approximately 60 hours developing the proposed rule.

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

The proposed rule will impact licensed podiatrists and their patients.

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

Although several federal agencies require investigators to obtain informed consent of human subjects participating in investigative trials, there are no specific federal regulations regarding podiatrists obtaining informed consent from their patients or the reasonable podiatrist standard.

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

The proposed rule is likely to have minimal or no economic impact on small businesses.

Contact Person

Shawn Leatherwood, Shancethea.Leatherwood@wisconsin.gov, 608–261–4438.

Submittal of Proposed Rules to Legislative Council Clearinghouse

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

Children and Families

Safety and Permanence, Chs. DCF 35—59 **CR 14-072**

On December 16, 2014, the Department of Children and Families submitted proposed rules to the Legislative Council Rules Clearinghouse.

The statement of scope for this rule, SS 045-14, was approved by the Governor on May 18, 2014, published in Register No. 701 on May 31, 2014, and approved by Secretary Eloise Anderson on June 20, 2014.

A related emergency rule affecting the same rule contained in this proposed rule and relating to the same purpose as this proposed rule is expected to be effective January 1, 2015.

Analysis

The proposed rules create ch. DCF 40, relating to review of a determination of child abuse or neglect.

Agency Procedure for Promulgation

A public hearing is required and will be held in Madison on January 27, 2015.

The organizational unit responsible for the promulgation of the proposed rules is the Division of Safety and Permanence.

Contact Information

Elaine Pridgen
Telephone: (608) 267-9403
Email: elaine.pridgen@wisconsin.gov

Health Services

Community Services, Chs. DHS 30— Medical Assistance, Chs. 101— **CR 14-066**

On December 3, 2014, the Department of Health Services submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse

Analysis

The proposed rule will repeal section DHS 35.16 (4) (b), 107.02 (2m) (a) 7., and 107.13 (2) (a) 2. and (b) 4. b; amend section DHS 107.13 (2) (a) (intro.) and (d) 1. to 4.; and create section DHS 107.13 (2) (a) 4. g., and (2) (d) 3. Note, relating to medical assistance (MA) coverage for outpatient mental health services.

Agency Procedure for Promulgation

A public hearing on this rule will be held on January 13, 2015 from 1:00 p.m. to 3:00 p.m. at the Wilson Street Office Building, 1 W. Wilson Street, Room 630, Madison, WI 53703.

The Department of Health Services, Division of Health Care Access and Accountability is responsible for the promulgation of these rules.

2011 Act 21 Statement

The statement of scope for this rule, SS 004-14, was approved by the governor on December 30, 2013, published in Register 697, on January 31, 2014, and approved by Deputy Secretary Moore on February 19, 2014.

Contact Information

Al Matano
Department of Health Services
1 West Wilson Street
Room 318
Madison, WI 53703.
(608) 267-6848
alfred.matano@dhs.wisconsin.gov

Insurance

CR 14-071

On December 5, 2014, the Office of the Commissioner of Insurance submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse in accordance with sections 227.14 (4m) and 227.15, Stats.

The statement of scope for this rule, SS 148-13, was approved by the governor on November 15, 2013, published in Register No. 691 on November 30, 2013, and approved by the commissioner on January 9, 2014.

Analysis

These changes will revise Chapters Ins 16 and 40, relating to holding company reporting for insurers and affecting small business.

Agency Procedure for Promulgation

The date for the public hearing is January 14, 2015.

Contact Person

A copy of the proposed rule may be obtained from the Web site at <http://oci.wi.gov/ocirules.htm> or by contacting Inger Williams, Public Information and Communications, Office of the Commissioner of Insurance, at (608) 264-8110. For additional information, please contact Richard B. Wicka at (608) 261-6018 or e-mail at richard.wicka@wisconsin.gov in the OCI Legal Unit.

This Notice of Submittal to Legislative Council Staff is prepared under s. 227.135, Stats., and approved on December 5, 2014.

Justice
CR 14-070

On December 5, 2014, the Department of Justice submitted proposed rules to the Wisconsin Legislative Council Rules Clearinghouse in accordance with Wis. Stat. ss. 227.14 (4m) and 227.15.

The scope statement for these rules was approved by the Governor on July 28, 2014, published in the Administrative Register on August 15, 2014, and given final written approval by Attorney General J.B. Van Hollen on August 25, 2014.

Analysis

The proposed rule will revise Chapter Jus 9, relating to procedures and standards for the submission of human biological specimens, the analysis of DNA in those specimens, the maintenance of a data bank of DNA analysis data, and the use and disposition of specimens and data in the data bank.

Agency Procedure for Promulgation

The Department of Justice will hold public hearings regarding these rules at a date and time to be determined.

The organizational unit of the Department of Justice that is responsible for the promulgation of these rules and their subject matter is the Department of Justice's Division of Law enforcement Services.

Contact Person

Assistant Attorney General Thomas C. Bellavia, (608) 266-8690.

Safety and Professional Services
Professional Services, Chs. SPS 1-299
CR 14-067

On December 12, 2014, the Department of Safety and Professional Services submitted a proposed rule to the Legislative Council Rules Clearinghouse.

The scope statement for this rule, SS 087-14, was approved by the Governor on August 22, 2014, published in Register No. 705 on September 14, 2014 and approved by Department of Safety and Professional Services on September 26, 2014.

Analysis

Statutory Authority: ss. 227.11 (2) (a) and 440.08 (3) (b).

This proposed rule-making order create ss. SPS 4.02 (5s) and 4.10, relating to credential renewal and reinstatement.

Agency Procedure for Promulgation

A public hearing is required and will be held on January 13, 2015 at 1400 East Washington Avenue, Room 121, Madison, Wisconsin (enter at 55 North Dickinson Street).

Contact Person

Katie Paff, Department of Safety and Professional Services, Division of Policy Development, 608-261-4472, Kathleen.Paff@wisconsin.gov.

Safety and Professional Services —
Chiropractic Examining Board
CR 14-068

On December 5, 2014, the Chiropractic Examining Board submitted a proposed rule to the Legislative Council Rules Clearinghouse.

The scope statement for this rule, SS 023-14, was approved by the Governor on March 7, 2014, published in Register No. 699 on March 31, 2014 and approved by the Chiropractic Examining Board on April 15, 2014.

Analysis

Statutory Authority:

This proposed rule-making order will repeal ss. Chir 2.03 (2), 2.07 (3), and 2.11 (2) and (3), amend ss. Chir 2.025, 2.03 (1), 2.07 (1), 3.03 (1) (e) and (f), and 3.03 (2) (f) and (g), repeal and recreate s. Chir 3.03 (1) (f), and create s. Chir 2.12, relating to practical exams for chiropractors.

Agency Procedure for Promulgation

A public hearing is required and will be held on January 15, 2015 at 1400 East Washington Avenue, Room 121A, Madison, Wisconsin (enter at 55 North Dickinson Street).

Contact Person

Shawn Leatherwood, Department of Safety and Professional Services, Division of Policy Development, 608-261-4438, Shancethea.L Leatherwood@wisconsin.gov.

Safety and Professional Services —
Chiropractic Examining Board
CR 14-069

On December 5, 2014, the Chiropractic Examining Board submitted a proposed rule to the Legislative Council Rules Clearinghouse.

The scope statement for this rule, SS 069-14, was approved by the Governor on July 16, 2014, published in Register No. 704 on August 14, 2014 and approved by the Chiropractic Examining Board on September 7, 2014.

Analysis

Statutory Authority:

This proposed rule-making order creates Chapter Chir 13 and relates to the duty to inform patients of treatment options.

Agency Procedure for Promulgation

A public hearing is required and will be held on January 15, 2015 at 1400 East Washington Avenue, Room 121, Madison, Wisconsin (enter at 55 North Dickinson Street).

Contact Person

Shawn Leatherwood, Department of Safety and Professional Services, Division of Policy Development, 608-261-4438, Shancethea.L Leatherwood@wisconsin.gov.

Rule-Making Notices

Notice of Hearings

Children and Families
Safety and Permanence, Chs. DCF 35—59
CR 14-072, EmR1427

NOTICE IS HEREBY GIVEN that pursuant to ss. 48.981 (3) (c) 5m. and 227.11 (2) (a), Stats., the Department of Children and Families proposes to hold a public hearing to consider emergency and proposed permanent rules to create Chapter DCF 40, relating to review of a determination of child abuse or neglect.

Hearing Information

Date: Tuesday, January 27, 2015
Time: 2:00 p.m.
Location: GEF 1 Building, Room H206
201 E. Washington Avenue
Madison, Wisconsin

Appearances at the Hearing

Interested persons are invited to appear at the hearing and will be afforded the opportunity to make an oral presentation of their positions. Persons making oral presentations are requested to submit their facts, views, and suggested rewording in writing.

If you have special needs or circumstances regarding communication or accessibility at a hearing, please call (608) 267-9403 at least 10 days prior to the hearing date. Accommodations such as ASL interpreters, English translators, or materials in audio format will be made available on request to the fullest extent possible.

Copies and Place Where Comments are to be Submitted and Deadline for Submission

A copy of the rules is available at <http://adminrules.wisconsin.gov>. This site allows you to view documents associated with this rule's promulgation, register to receive email notification whenever the department posts new information about this rulemaking order, and submit comments and view comments by others during the public comment period. You may receive a paper copy of the rules or fiscal estimate by contacting:

Elaine Pridgen
Department of Children and Families
201 E. Washington Avenue
Madison, WI 53707
(608) 267-9403
dcfpublichearing@wisconsin.gov

Written comments on the rules received at the above address, email, or through the <http://adminrules.wisconsin.gov> website no later than **January 28, 2015**, will be given the same consideration as testimony presented at the hearing.

Analysis Prepared by the Department of Children and Families

Explanation of agency authority

Section 48.981 (3) (c) 5m., Stats., as affected by 2013 Wisconsin Act 20, provides that if the county department, department, or licensed child welfare agency makes an initial determination that a specific person has abused or neglected a child, the county department, department, or licensed child welfare agency shall provide that person with an opportunity for a review of that initial determination in accordance with rules promulgated by the department before the county department, department, or licensed child welfare agency may make a final determination that the person has abused or neglected a child.

Section 227.11 (2) (a), Stats., expressly confers rule-making authority on each agency to promulgate rules interpreting the provisions of any statute enforced or administered by the agency.

Summary of the rule

Section 48.981 (3) (c) 5m. and 5p., Stats., as affected by 2013 Wisconsin Act 20, creates a new statewide process for appeals of determinations by a county department or the Bureau of Milwaukee Child Welfare that a specific person has abused or neglected a child. The statutory changes creating the new appeal process will be effective January 1, 2015. The proposed rules specify the appeal notice requirements, procedures for review of an initial determination that a specific person has abused or neglected a child, and other policies necessary to implement the new appeal process.

Review of an initial determination

The proposed rules provide that if an agency makes an initial determination that a specific person has abused or neglected a child, the agency shall send by first class mail all of the following information to the person by the next working day:

- A summary of the initial determination that includes the name of the child involved in the alleged incident and the reasons for the agency's determination that the person has abused or neglected the child.
- Information on the administrative appeal process, including the procedures for review of an initial determination and a contested case hearing before the division of hearings and appeals if the final determination upholds the initial determination.
- Information on the effect of a final determination on record checks under ss. 48.685 and 50.065, Stats.

The person may request a review of the initial determination by submitting a request for review to the agency within 15 days after the date of the notice of initial determination. Within 15 days after receiving the review request, the agency shall send a written notice to the person with the review date, time, and place. The notice shall be sent at least 7 days before the review. If the person does not request a review within 15 days after the date of the notice of initial determination, the agency shall send the person a notice of final determination within 5 days.

The review of the initial determination may be by an individual or panel. If a panel is used, the panel shall be comprised of at least 3 members, and the final determination shall be the decision of the majority of the panel. The individual or panel conducting the review of the initial determination shall have authority to make the final determination.

The proposed rules also provide that any person who conducts the review of the initial determination shall have knowledge of child protective services in Wisconsin and no person who conducts the review of the initial determination may have had any prior involvement in the investigation or determination for the case that is being reviewed.

The review of the initial determination shall be held within 45 days after the person's request for review. The person may request one rescheduling of the review date or time, and the agency shall grant the request if the review of the initial determination can be rescheduled within 45 days after the person's initial request for review. The notice of the rescheduled review date may be sent less than 7 days before the review if that is necessary to complete the review within 45 days after the person's request for review.

An agency may not hold the review of the initial determination in abeyance pending the outcome of any criminal proceedings or any proceedings under s. 48.13 or 938.12, Stats., based on the alleged abuse or neglect or the outcome of any investigation that may lead to the filing of a criminal complaint or petition under s. 48.13 or 938.12, Stats., based on the alleged abuse or neglect.

The review of the initial determination shall be scheduled for at least one hour. When the review is scheduled, the agency shall provide the reviewing individual or panel with information related to the initial determination. The person may be represented by an attorney. The person may present information that is relevant to whether the person has abused or neglected a child as specified in the initial determination. The person may not present witnesses and may not question any agency staff who may be present. The agency is not required to present evidence or witnesses to support the determination beyond the materials provided under par. (j).

Final determination

Under the proposed rules, the individual or panel conducting the review of the initial determination shall make a final determination on whether the specific person has abused or neglected a child within 10 days after the date of the review of the initial determination. The agency shall send a written notice of final determination to the person within 5 days after the date of the final determination. If the final determination upholds the initial determination or the person did not request a review of the initial determination, the notice shall include a summary of the reasons for the final determination and information on appealing the final determination.

Sections 48.685 and 50.065, Stats., require that information regarding a final determination that a person has abused or neglected a child be obtained for caregiver record checks. The agency shall ensure that authorized information regarding a final determination is available for caregiver record checks within 15 days after the agency's final determination.

Division of Hearings and Appeals contested case hearing

Under s. 48.891 (3) (c) 5p., Stats., a person who is a subject of a final determination that the person has abused or

neglected a child has the right to a contested case hearing before the Division of Hearings and Appeals (DHA) on that determination. To receive the hearing, the person must send a written request to DHA within 10 days after the date of the notice of the final determination.

DHA shall commence the contested case hearing within 90 days after the receipt of the request unless the hearing is rescheduled by the person requesting it or DHA holds the case proceeding in abeyance. DHA can hold the case proceeding in abeyance pending the outcome of any criminal proceedings or any proceedings under s. 48.13, Stats., based on the alleged abuse or neglect or the outcome of any investigation that may lead to the filing of a criminal complaint or a petition under s. 48.13, Stats., based on the alleged abuse or neglect. DHA shall issue a final decision within 60 days after the close of the hearing.

The proposed rules provide that a person may request that the division of hearings and appeals expedite his or her appeal if any of the following apply:

- The person currently has, or has applied for, a license or certification that may be revoked or denied as provided in s. 48.685 or 50.065, Stats.
- The person is currently employed by or contracts with, or the person is actively engaged in seeking employment or a contract with, an entity for duties subject to the record check requirements under s. 48.685 or 50.065, Stats.
- The person is enrolled in an academic program that leads to license, certification, or employment or contract position that will be subject to the record check requirements under s. 48.685 or 50.065, Stats., and the person can be expected to complete the academic program within 150 days after the date of his or her request for a hearing with the division of hearings and appeals.

A person who requests that the division of hearings and appeals expedite his or her appeal shall indicate the request on his or her request for hearing and provide documentation that he or she qualifies for an expedited appeal. The division of hearings and appeals shall provide an expedited hearing and decision for a qualified person as soon as practicable.

If the contested case hearing or judicial review overturns the agency determination that a specific person has abused or neglected a child, the agency shall update the authorized information available for record checks within 15 days after the decision.

Summary of factual data and analytical methodologies

The rules were developed with an advisory group of representatives from the Wisconsin County Human Services Association.

The framework for the rules is based on the appellate opinion *Dupuy v. Samuels*, 397 F.3d 493 (7th Cir. 2005) and the district court opinions *Dupuy v. McDonald*, 141 F. Supp. 2d 1090 (N.D. Ill. 2001); *Dupuy v. McDonald*, 2003 Westlaw 2155791 (N.D. Ill. July 10, 2003); and *Dupuy v. Samuels*, 2005 Westlaw 1498468 (N.D. Ill. June 10, 2005). The 7th Circuit is a federal court with appellate jurisdiction over courts in Illinois, Wisconsin, and Indiana.

Dupuy is a class action case that found that specified workers subject to a background check that presumes disqualification based on a determination of child abuse or neglect have a constitutionally protected property interest in pursuing employment in their chosen occupation and are entitled to due process before being deprived of that interest.

The series of opinions set forth decision-making, notice and hearing, and disclosure policies that were acceptable to the 7th Circuit of the U.S. Court of Appeals.

Summary of related federal requirements

The Child Abuse Prevention and Treatment and Adoption Reform Act provides that the federal Department of Health and Human Services shall provide grants to states for the purpose of assisting states in improving their child protective services system. A state plan describing the activities that the state will carry out using funds received under the grant must include an assurance that the state has provisions, procedures, and mechanisms by which individuals who disagree with an official finding of child abuse or neglect can appeal the finding. 42 USC 5106a (b) (2) (B) (xv) (II).

Comparison to rules in adjacent states

Illinois: Illinois has a 2-track process. Persons with an employment interest may request a pre-disclosure conference and a post-disclosure contested case hearing based on the procedures developed in the *Dupuy* opinions. Persons without an employment interest may request a contested case hearing.

Minnesota: Both persons with an employment interest and persons with no employment interest may request a reconsideration of the agency's determination. A person with an employment interest has more time to request a reconsideration of the agency's determination than a person without an employment interest. For a person with an employment interest, the reconsideration may be based on whether the information that the agency relied on to disqualify is incorrect or on whether the individual poses a risk of harm to persons served by the program, or both. The agency has more time to respond if more issues are involved. Following the reconsideration, a person may request a contested case hearing.

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

Iowa: Following the conclusion of an assessment, a subject of a child abuse report has the right to examine the report and provide additional information and request that the department revise the report. At the time the report is issued, the department shall provide notice of the right to a contested case hearing to the person named as having abused a child.

Michigan: After a person's name is placed on the Central Registry, the person may write a letter requesting that his or her name be removed from the Central Registry. If that request is denied, the person may request an administrative hearing.

Effect on Small Business

The proposed rule may have an effect on small businesses as defined in s. 227.114 (1), Stats., in the future, but currently does not.

Analysis Used to Determine Effect on Small Business or in Preparation of Economic Impact Analysis

Section 48.981(3) (cm), Stats., allows the department to contract with a licensed child welfare agency to fulfill the department's duties on the review of an initial determination under s. 48.981 (3) (c) 5m., Stats. The Bureau of Milwaukee Child Welfare has been administering appeals of child abuse or neglect determinations itself and has no plans to contract with a licensed child welfare agency for duties under s. 48.981 (3) (c) 5m., Stats., upon implementation of this rule. Section 48.981 (3) (cm), Stats., does not allow counties to contract out its duties under s. 48.981 (3) (c) 5m., Stats.

Agency Contact Person

John Elliott, Deputy Division Administrator, Division of Safety and Permanence, john.elliott@wisconsin.gov, (608) 266-8988.

1. Type of Estimate and Analysis

Original Updated Corrected

2. Administrative Rule Chapter, Title and Number

DCF 40, Review of a determination of child abuse or neglect

3. Subject

Review of a determination of child abuse or neglect

4. Fund Sources Affected

GPR FED PRO PRS SEG SEG-S

5. Chapter 20, Stats. Appropriations Affected

20.437(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
- Local Government Units
- Specific Businesses/Sectors
- Public Utility Rate Payers
- Small Businesses (if checked, complete Attachment A)

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

- Yes No

9. Policy Problem Addressed by the Rule

To implement Section 48.981 (3) (c) 5m., 5p., and 5r., Stats., as affected by 2013 Wisconsin Act 20.

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

The department solicited comments from the Wisconsin County Human Services Association.

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

No comments were received regarding development of the economic impact analysis.

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)

Pursuant to s. 48.981 (3) (c) 5m., Stats., as affected by 2013 Wisconsin Act 20, if a final determination has been made that a person has abused or neglected a child, that person has a right to a contested case hearing under ch. 227, Stats. Act 20 provided funding for the Department of Children and Families to compensate the Department of Administration's Division of Hearings and Appeals to conduct these hearings. The annualized cost is \$175,400 GPR.

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

Section 48.981 (3) (c), Stats., directs the department to implement the rule.

14. Long Range Implications of Implementing the Rule

NA

15. Compare With Approaches Being Used by Federal Government

The Child Abuse Prevention and Treatment and Adoption Reform Act provides that the federal Department of Health and Human Services shall provide grants to states for the purpose of assisting states in improving their child protective services system. A state plan describing the activities that the state will carry out using funds received under the grant must include an assurance that the state has provisions, procedures, and mechanisms by which individuals who disagree with an official finding of child abuse or neglect can appeal the finding.

42 USC 5106a (b) (2) (B) (xv) (II).

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

Illinois

Illinois has a 2-track process. Persons with an employment interest may request a pre-disclosure conference and a post-disclosure contested case hearing based on the procedures developed in the Dupuy opinions. Persons without an employment interest may request a contested case hearing.

Minnesota

Both persons with an employment interest and persons with no employment interest may request a reconsideration of the agency's determination. A person with an employment interest has more time to request a reconsideration of the agency's determination than a person without an employment interest. For a person with an employment interest, the reconsideration may be based on whether the information that the agency relied on to disqualify is incorrect or on whether the individual poses a risk of harm to persons served by the program, or both. The agency has more time to respond if more issues are involved. Following the reconsideration, a person may request a contested case hearing.

Iowa

Following the conclusion of an assessment, a subject of a child abuse report has the right to examine the report and provide additional information and request that the department revise the report. At the time the report is issued, the department shall provide notice of the right to a contested case hearing to the person named as having abused a child.

Michigan

After a person's name is placed on the Central Registry, the person may write a letter requesting that his or her name be removed from the Central Registry. If that request is denied, the person may request an administrative hearing.

17. Contact Name DCF/Kim Swissdorf	18. Contact Phone Number 261-0616
---------------------------------------	--------------------------------------

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

ATTACHMENT A

1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

not applicable

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

not applicable

3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- Less Stringent Compliance or Reporting Requirements
- Less Stringent Schedules or Deadlines for Compliance or Reporting
- Consolidation or Simplification of Reporting Requirements
- Establishment of performance standards in lieu of Design or Operational Standards
- Exemption of Small Businesses from some or all requirements

Other, describe:

not applicable

4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

not applicable

5. Describe the Rule's Enforcement Provisions

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

Yes No

Notice of Hearings

Health Services

*Community Services, Chs. DHS 30—
Medical Assistance, Chs. DHS 101—*

CR 14–066

NOTICE IS HEREBY GIVEN that pursuant to ss. 49.45 (10), Stats., and 227.11 (2) (a) 1. to 3., Stats., the Department of Health Services will hold a public hearing to consider the amendment of Chapters DHS 35 and 107, relating to medical assistance (MA) coverage for outpatient mental health services.

Hearing Information

Date: Tuesday, January 13, 2015
Time: 1:00 p.m. to 3:00 p.m.
Location: 1 West Wilson Street
 Room 630
 Madison, Wisconsin

Accessibility

English

The Department of Health Services is an equal opportunity employer and service provider. If you need accommodations because of a disability or need an interpreter or translator, or if you need this material in another language or in an alternate format, you may request assistance to participate by contacting Al Matano at (608) 267–6848. You must make your request at least 7 days before the activity.

Spanish

The Department of Health Services es una agencia que ofrece igualdad en las oportunidades de empleo y servicios. Si necesita algún tipo de acomodaciones debido a incapacidad o si necesita un interprete, traductor o esta información en su propio idioma o en un formato alterno, usted puede pedir asistencia para participar en los programas comunicándose con Al Matano al número (608) 267–6848. Debe someter su petición por lo menos 7 días de antes de la actividad.

Hmong

The Department of Health Services yog ib tus tswv hauj lwm thiab yog ib qhov chaw pab cuam uas muab vaj huam sib luag rau sawv daws. Yog koj xav tau kev pab vim muaj mob xiam oob qhab los yog xav tau ib tus neeg pab txhais lus los yog txhais ntaub ntawv, los yog koj xav tau cov ntaub ntawv no ua lwm hom lus los yog lwm hom ntawv, koj yuav tau thov kev pab uas yog hu rau Al Matano ntawm (608) 267–6848. Koj yuav tsum thov qhov kev pab yam tsawg kawg 7 hnub ua ntej qhov hauj lwm ntawd.

Copies of Rule and Fiscal Estimate–Economic Impact Analysis

A copy of the rules, fiscal estimate and economic impact analysis may be obtained from the Department of Health Services at no charge by downloading the documents from www.adminrules.wisconsin.gov or by contacting Al Matano, alfred.matano@dhs.wisconsin.gov, Department of Health Services, 1 West Wilson Street, Room 318, Madison, WI 53703.

Place Where Comments are to be Submitted and Deadline for Submission

Comments may be submitted to Al Matano, alfred.matano@dhs.wisconsin.gov, Department of Health Services, 1 West Wilson Street, Room 318, Madison, WI 53703, or to the Wisconsin Administrative Rules Website at www.adminrules.wisconsin.gov until **January 13, 2015**, 4:30 p.m.

Analysis Prepared by the Department of Health Services

Statute interpreted

Sections 49.45 (30f) and 49.46 (2) (b) 6. f., fm., k., and Lr., Stats.

Statutory authority

The department’s authority to revise the referenced rules is as follows:

Sections 49.45 (10) and 227.11 (2) (a) 1. to 3., Stats.

Explanation of agency authority

The department’s authority to revise the proposed rules is as follows:

Section 49.45 (10), Stats., reads: RULE-MAKING POWERS AND DUTIES. The department is authorized to promulgate such rules as are consistent with its duties in administering medical assistance.

Section 227.11 (2) (a) 1. to 3., Stats. reads: Rule-making authority is expressly conferred as follows:

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

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

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

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

Related statute or rule

See the “Statute interpreted” section.

Plain language analysis

Section DHS 35.16 (4) (b) requires as a condition for MA reimbursement, a physician’s prescription for psychotherapy services. Similarly, ss. DHS 107.02 (2m) (a) 7. and 107.13 (2) (a) (intro.) and 2. and (b) 4. b., require a physician’s prescription for mental health services, alcohol and other drug abuse services, and psychotherapy services as a condition for MA reimbursement. Pursuant to ss. 49.45 (30f) and 49.46 (2)

(b) 6. f., fm., k., and Lr., Stats., the department is prohibited from requiring a prescription from a physician or other health care provider for psychotherapy services, medical day treatment services, or mental health and alcohol and other drug abuse services as a condition for MA reimbursement. Thus, the department proposes to conform ss. DHS 35.16 (4) (b), 107.02 (2m) (a) 7., and 107.13 (2) (a) (intro.) and 2. and (b) 4. b. to existing state law.

2013 Wisconsin Act 20 included funding to expand MA outpatient mental health coverage to in-home psychotherapy services for children. See, *LFB Budget Summary*. To effectuate this, the department proposes to revise s. DHS 107.13 (2) (a) 4. and (d) 3. to permit in-home psychotherapy services as a covered service for children.

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

There appear to be no existing or proposed federal regulations that address the activities to be regulated by the rules.

Comparison with rules in adjacent states

Illinois: In-home psychotherapy services as a MA covered service for children is implemented by Illinois statutes only. There are no administrative rules.

Iowa: The Iowa Administrative Code provides broad latitude as to the location of service. Iowa administrative code section 441 IAC 78.1 permits payments for all medically necessary services and supplies provided by the physician including services rendered in the physician's office or clinic, the home, in a hospital, nursing home or elsewhere.

Michigan: In-home psychotherapy services as a MA covered service for children is implemented by Michigan statutes only. There are no administrative rules.

Minnesota: In-home psychotherapy services as a MA covered service for children is implemented by Minnesota statutes only. There are no administrative rules.

Summary of factual data and analytical methodologies

The department reviewed ss. 49.45 (30f) and 49.46 (2) (b) 6. f., fm., k., and Lr., Stats.; 2013 Wisconsin Act 20 relating to expansion of the MA outpatient mental health coverage to in-home psychotherapy services for children (see, *LFB Budget Summary*); and the existing rules affected by this proposed rule to determine the changes required to conform the rules to statute and to effectuate the changes necessary to permit the provision of in-home psychotherapy services for children.

Analysis and supporting documents used to determine effect on small business

The proposed rules do not impose regulatory requirements on businesses, including small businesses.

Effect on Small Business

The proposed rules do not impose requirements on businesses, including small businesses.

Agency Contact Person

Dan Zimmerman, Daniel.Zimmerman@wisconsin.gov, 608-266-7072,

Jami Crespo, jami.crespo@wisconsin.gov, 608-267-9697

Statement on Quality of Agency Data

To prepare the text and analysis of the proposed rules, the department relied on the language in ss. 49.45 (30f) and 49.46

(2) (b) 6. f., fm., k., and Lr., Stats.; 2013 Wisconsin Act 20 relating to expansion of the MA outpatient mental health coverage to include in-home psychotherapy services for children (see, *LFB Budget Summary*); and the existing rules affected by this proposed rule to determine the changes required to conform the rules to statute and to effectuate the changes necessary to permit the provision of in-home psychotherapy services for children.

Initial Regulatory Flexibility Analysis

The proposed rule will not have an effect on small business.

Small Business Regulatory Review Coordinator

Rosie Greer

rosie.greer@dhs.wi.gov

608-266-1279

Fiscal Estimate – Economic Impact Analysis

The department has found no fiscal effect from implementing the rule.

Agency Contact Person

Al Matano

Department of Health Services

1 West Wilson Street

Room 318

Madison, WI 53703.

(608) 267-6848

alfred.matano@dhs.wisconsin.gov

Text of Proposed Rule

SECTION 1. DHS 35.16 (4) (b) is repealed.

SECTION 2. DHS 107.02 (2m) (a) 7. is repealed.

SECTION 3. DHS 107.13 (2) (a) (intro.) is amended to read:

DHS 107.13 (2) OUTPATIENT PSYCHOTHERAPY SERVICES. (a) *Covered services*. Except as provided in par. (b), outpatient psychotherapy services shall be covered services when ~~prescribed by a physician, when~~ provided by a provider certified under s. DHS 105.22, and when the following conditions are met:

SECTION 4. DHS 107.13 (2) (a) 2. and (b) 4. b. are repealed.

SECTION 5. DHS 107.13 (2) (a) 4. g. is created to read:

DHS 107.13 (2) (a) 4. g. The home.

SECTION 6. DHS 107.13 (2) (d) 1. to 4. are amended to read:

DHS 107.13 (2) (d) *Non-covered services*. 1. Collateral interviews with persons not stipulated in par. (c) 1., and consultations, except as provided in s. DHS 107.06 (4) (d);

2. Psychotherapy for persons with the primary diagnosis of developmental disabilities, including mental retardation, except when they experience psychological problems that necessitate psychotherapeutic intervention;

3. Psychotherapy For individuals age 21 and over, psychotherapy provided in a person's home;

4. Self-referrals. For purposes of this paragraph, "self-referral" means that a provider refers a recipient to an agency in which the provider has a direct financial interest, or to himself or herself acting as a practitioner in private practice; ~~and.~~

SECTION 7. DHS 107.13 (2) (d) 3. Note is created to read:

DHS 107.13 (2) (d) 3. Note: Section 49.45 (45), Stats., provides for in-home community mental health and alcohol and other drug abuse (AODA) services for individuals age 21 and over. However, these services are available to an individual only if the county, city, town or village in which the individual resides elects to make the services available and agrees to pay the non-federal share of the cost of those

services.

SECTION 8. EFFECTIVE DATE. This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register, as provided in s. 227.22 (2), Stats.

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

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

ADMINISTRATIVE RULES

Fiscal Estimate & Economic Impact Analysis

1. Type of Estimate and Analysis

Original Updated Corrected

2. Administrative Rule Chapter, Title and Number

Chapters DHS 35, Outpatient Mental Health Clinics and 107, Covered Services (Medical Assistance).

3. Subject

Outpatient psychotherapy services

4. Fund Sources Affected

GPR FED PRO PRS SEG SEG-S

5. Chapter 20, Stats. Appropriations Affected

No fiscal impact.

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

Section DHS 35.16 (4) (b) requires as a condition for MA reimbursement, a physician's prescription for psychotherapy services. Similarly, ss. DHS 107.02 (2m) (a) 7. and 107.13 (2) (a) (intro.) and 2. and (b) 4. b., require a physician's prescription for mental health services, alcohol and other drug abuse services, and psychotherapy services as a condition for MA reimbursement. Pursuant to ss. 49.45 (30f) and 49.46 (2) (b) 6. f., fm., k., and Lr., Stats., the department is prohibited from requiring a prescription from a physician or other health care provider for psychotherapy services, medical day treatment services, or mental health and alcohol and other drug abuse services as a condition for MA reimbursement. Thus, the department proposes to conform ss. DHS 35.16 (4) (b), 107.02 (2m) (a) 7., and 107.13 (2) (a) (intro.) and 2. and (b) 4. b. to existing state law.

2013 Wisconsin Act 20 included funding to expand MA outpatient mental health coverage to in-home psychotherapy services for children. See, LFB Budget Summary. To effectuate this, the department proposes to revise s. DHS 107.13 (2) (a) 4. and (d) 3. to permit in-home psychotherapy services as a covered service for children.

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.

A request for comments was sent to approximately 200 persons or organizations, including mental health consumers, various department staff, representatives of mental health advocacy agencies, county departments of human services, and provider organizations, such as the Wisconsin Hospital Association, and other interested parties. In addition, those contacted include county staff who work in the areas of human services and mental health, and who are involved with the department in learning and applying a system change process.

The Wisconsin Association of Family and Children's Agencies (WAFCA) represents many of the larger organizations that own and operate outpatient mental health clinics. Among these are Lutheran Social Services, Catholic Charities, and others.

The Wisconsin Coalition of Behavioral Health Providers represents a number of smaller outpatient mental health clinics.

The Wisconsin Association of Marriage and Family Therapy was also contacted.

One comment was received from a private mental health services provider. Don Rosenberg, a licensed psychologist, is the President of Shorehaven Behavioral Health, Inc. Mr. Rosenberg had no concerns with the economic impact of the rule.

Another comment was received from a representative of a local governmental unit, as described in the next item.

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

The Western Region Recovery & Wellness Consortium (WRRWC) provided a comment on this EIA. The Western Region Recovery & Wellness Consortium (WRRWC) is a consortium of counties working together to improve the mental health and substance abuse service delivery system for public sector recipients. A staffer with Chippewa County, Jill Chaffee, was the author of the comment. Ms. Chaffee had no concerns with the economic impact of the rule.

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

The proposed rules do not impose requirements on businesses, including small businesses.

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

The department's proposal would conform the department's administrative code to the Wisconsin statutes, which prohibit the department from requiring a prescription from a physician or other health care provider for psychotherapy services, medical day treatment services, or mental health and alcohol and other drug abuse services as a condition for MA reimbursement. In addition, the department would expand MA outpatient mental health coverage to in-home psychotherapy services for children. The Legislature provided funding to do so in 2013 Wisconsin Act 20, the biennial budget act.

14. Long Range Implications of Implementing the Rule

There are no known long range implications of implementing the rule.

15. Compare With Approaches Being Used by Federal Government

There appear to be no existing or proposed federal regulations that address the activities to be regulated by the rules.

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

Illinois:

In-home psychotherapy services as a MA covered service for children is implemented by Illinois statutes only. There are no administrative rules.

Iowa:

The Iowa Administrative Code provides broad latitude as to the location of service. Iowa administrative code section 441 IAC 78.1 permits payments for all medically necessary services and supplies provided by the physician including services rendered in the physician's office or clinic, the home, in a hospital, nursing home or elsewhere.

Michigan:

In-home psychotherapy services as a MA covered service for children is implemented by Michigan statutes only. There are no administrative rules.

Minnesota:

In-home psychotherapy services as a MA covered service for children is implemented by Minnesota statutes only. There are no administrative rules.

17. Contact Name

Al Matano

18. Contact Phone Number

(608) 267-6848

Notice of Hearings

Insurance CR 14-071

Notice is hereby given that pursuant to the authority granted under s. 601.41 (3), Stats., and the procedures set forth in under s. 227.18, Stats., OCI will hold a public hearing to consider the adoption of the attached proposed rulemaking order affecting Chapters Ins 16 and 40, Wis. Adm. Code, relating to holding company reporting requirements for insurers and affecting small business.

Hearing Information

Date: Wednesday, January 14, 2015
Time: 10:00 a.m., or as soon thereafter as the matter may be reached
Location: Office of the Commissioner of Insurance
 Room 227
 125 South Webster St., 2nd Floor
 Madison, Wisconsin

Submission of Written Comments

Written comments can be mailed to:

Richard B. Wicka
 Legal Unit — OCI Rule Comment for Rule Ins 40
 Office of the Commissioner of Insurance
 PO Box 7873
 Madison WI 53707-7873

Written comments can be hand delivered to:

Richard B. Wicka
 Legal Unit — OCI Rule Comment for Rule Ins 40
 Office of the Commissioner of Insurance
 125 South Webster St – 2nd Floor
 Madison WI 53703-3474

Comments can be emailed to:

Richard B. Wicka
richard.wicka@wisconsin.gov

Comments submitted through the Wisconsin Administrative Rule Web site at:

<http://adminrules.wisconsin.gov> on the proposed rule will be considered.

The deadline for submitting comments is 4:00 p.m. on **January 21, 2015**.

Copies of Rule

A copy of the proposed rule may be obtained from the Web site at: <http://oci.wi.gov/ocirules.htm> or by contacting Inger Williams, Public Information and Communications, Office of the Commissioner of Insurance, at (608) 264-8110. For additional information, please contact Richard B. Wicka at (608) 261-6018 or e-mail at richard.wicka@wisconsin.gov in the OCI Legal Unit.

Analysis Prepared by the Office of the Commissioner of Insurance

Statutes interpreted

Sections 600.01, 601.45, 601.48 (1) and (2), 617.11 (1), 617.12 (2), 617.21 (1) (d), (2) (a), (b), and 617.215, Stats.

Statutory authority

Sections 227.11 (2) (a), 601.41 (3), 601.45, 601.48 (1) and (2), 617.11 (1), 617.12 (2), 617.21 (1) (d), (2) (a), (b), and 617.215 (3), Stats.

Explanation of OCI's authority to promulgate the proposed rule under these statutes

The statutory authority for these rules are ss. 227.11 (2) (a) and 601.41 (3), Wis. Stats., which provide for the commissioner's rule making authority in general, and specifically, ss. 617.11 (1), 617.21 (1) (d), (2) (a), (b), 617.215 (3), 601.48 (1), (2), and 601.45 (1), Wis. Stats. Section 617.11 (1), Wis. Stats., provides that an insurer shall report "information concerning the insurer and its affiliates that the commissioner requires by rule" and "the commissioner may promulgate rules prescribing the timing of reports under this subsection, including, but not limited to, requiring periodic reporting and the form and procedure for filing reports." Section 617.21 (1) (d), Wis. Stats., provides that regarding transactions with affiliates, the transaction must comply "with any other standard that the commissioner prescribes by rule." Section 617.21 (2) (a), Wis. Stats., provides that "the commissioner may promulgate rules requiring a domestic insurer, a person attempting to acquire or having control of a

domestic insurer and affiliates of a domestic insurer to report a transaction or a group or series of transactions” that are material and involve a domestic insurer or an affiliate. Section 617.21 (2) (b), Wis. Stats., provides that transactions with affiliates may not be entered into unless the transaction is reported “to the commissioner in the form and by the date before the effective date of the transaction that are prescribed by the commissioner by rule.” Section 601.48, Wis. Stats., states that the commissioner may participate in the activities and affairs of “organizations so far as it will, in the judgment of the commissioner, enhance the purposes of chs. 600 to 655” and the commissioner “may exchange information and data and consult with other persons in order to improve and carry out insurance regulation.” Section 601.45 (1), Wis. Stats., provides that the reasonable costs of examination “shall be paid by examinees . . . either on the basis of a system of billing for actual salaries and expenses of examiners and other apportionable expenses, including office overhead, or by a system of regular annual billings to cover the costs relating to a group of companies, or a combination of such systems, as the commissioner may by rule prescribe.” Section 617.215 (3), Wis. Stats., states that insurers that are the subject of a supervisory college “shall pay the reasonable expenses related to the commissioner’s participation in supervisory colleges, including reasonable travel expenses. The commissioner may impose a regular assessment on insurers to cover the expenses.”

Related statutes or rules

None

The plain language analysis and summary of the proposed rule

The objective of the proposed rule is to modify the reporting requirements for licensed insurers that are a part of an insurance holding company system. Wisconsin’s current rule generally follows the NAIC Insurance Holding Company System Regulatory Model Act (Model Act) and Insurance Holding Company System Model Regulation (Model Regulation). The NAIC recently made changes to its Model Act and Model Regulation to modernize the regulation by better addressing transactions involving complex insurance holding company organizations and insurers licensed in multiple jurisdictions. Wisconsin must adopt certain of those changes in substantively the same form as the NAIC Model Act and Model Regulation if the Wisconsin Office of the Commissioner of Insurance (OCI) is to remain a state insurance regulatory agency that is accredited by the NAIC. It is a goal of the OCI and a benefit to domestic insurers for OCI to maintain its accreditation because as an NAIC accredited state, domestic insurers are only subject to certain filing requirements with OCI and financial examination by OCI. Without accreditation, domestic insurers could be subject to financial examination and filing requirements for all jurisdictions in which they operate. This could include examination from all 51 U.S. jurisdictions for some insurers. Without accreditation, the cost of doing business for Wisconsin’s domestic insurance industry would increase because their regulation by other states would increase. In order to maintain accreditation, OCI must adopt certain standard regulations developed by the NAIC. In addition, the changes are similar to those adopted or that will be adopted in other states and work to promote uniformity for insurance holding company systems operating across multiple states.

The proposed changes to the rule include the development of a preacquisition notice to be filed in acquisitions involving insurers. The rule also requires the annual filing of a confidential enterprise risk report by insurers who are part of a holding company group. The enterprise risk report identifies the material risks within the insurance holding company system that could pose enterprise risk to the insurer. The proposed rule also includes small modifications and clarifications to current reporting requirements. Finally, the rule implements assessments to insurers who are subject to a supervisory college.

Summary of and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule

There are no federal regulations which address these activities.

Comparison of similar rules in adjacent states as found by OCI

Adjacent states have substantially similar provision which may be found at the citations listed below.

Illinois: 215 Ill Comp. Stat. §§ 5/131.1–131.30

Iowa: Iowa Code ch. 521A

Michigan: Mich. Comp. Laws §§ 500.1301–1379

Minnesota: Minn. Stat. ch. 60D

A summary of the factual data and analytical methodologies that OCI used in support of the proposed rule and how any related findings support the regulatory approach chosen for the proposed rule

OCI based this rule on the model law and regulations that were adopted by the NAIC and that have been enacted or are in the process of being enacted by all 51 jurisdictions in the United States and Puerto Rico.

Any analysis and supporting documentation that OCI used in support of OCI’s determination of the rule’s effect on small businesses under s. 227.114

See the attached Private Sector Fiscal Analysis.

Description of the Effect on Small Business

This rule will have little or no effect on small businesses. The enterprise risk report filing must only be made by companies who register as a holding company. The vast majority of companies who have a holding company system would not qualify as a small business. Small insurers, such as town mutual insurers, who also have a captive insurance agency do register as holding companies and would have to file the enterprise risk report. However, because the substance of the enterprise risk reports scales with the complexity of the organization, the effect on small insurers should be minimal and will not require additional resources to comply.

Agency Contact Person

A copy of the full text of the proposed rule changes, analysis and fiscal estimate may be obtained from the Web site at: <http://oci.wi.gov/ocirules.htm> or by contacting Inger Williams, OCI Services Section, at:

Phone: (608) 264–8110

Email: inger.williams@wisconsin.gov

Address: 125 South Webster St — 2nd Floor,
Madison WI 53703–3474

Mail: PO Box 7873, Madison, WI 53707–7873

Summary of Proposed Rule and Fiscal Estimate

For a summary of the rule see the analysis contained in the attached proposed rulemaking order. There will be no state or

local government fiscal effect. The full text of the proposed changes, a summary of the changes and the fiscal estimate are attached to this Notice of Hearing.

Initial Regulatory Flexibility Analysis

Notice is hereby further given that pursuant to s. 227.114, Stats., the proposed rule may have an effect on small businesses. The initial regulatory flexibility analysis is as follows:

- a. Types of small businesses affected:
Town Mutual Insurers and other small insurers.
- b. Description of reporting and bookkeeping procedures required:
The proposed rule adds a new annual enterprise risk report filing for insurers that must register as a holding company.

- c. Description of professional skills required:
None beyond those currently required.

OCI Small Business Regulatory Coordinator

The OCI small business coordinator is Louis Cornelius and may be reached at phone number (608) 264-8113 or at email address louie.cornelius@wisconsin.gov.

Contact Person

A copy of the full text of the proposed rule changes, analysis and fiscal estimate may be obtained from the OCI internet Web site at <http://oci.wi.gov/ocirules.htm> or by contacting Inger Williams, Public Information and Communications, OCI, at: inger.williams@wisconsin.gov, (608) 264-8110, 125 South Webster Street — 2nd Floor, Madison WI or PO Box 7873, Madison WI 53707-78.

STATE OF WISCONSIN
DEPARTMENT OF ADMINISTRATION
DOA-2049 (C04/2011)

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

1. Fiscal Estimate Version

Original Updated Corrected

2. Administrative Rule Chapter Title and Number

INS 40

3. Subject

holding company reporting requirements for insurers

4. State Fiscal Effect:

<input checked="" type="checkbox"/> No Fiscal Effect	<input type="checkbox"/> Increase Existing Revenues	<input type="checkbox"/> Increase Costs
<input type="checkbox"/> Indeterminate	<input type="checkbox"/> Decrease Existing Revenues	<input type="checkbox"/> Yes <input type="checkbox"/> No May be possible to absorb within agency's budget.
		<input type="checkbox"/> Decrease Costs

5. Fund Sources Affected:

GPR FED PRO PRS SEG SEG-S

6. Affected Ch. 20, Stats. Appropriations:

7. Local Government Fiscal Effect:

<input checked="" type="checkbox"/> No Fiscal Effect	<input type="checkbox"/> Increase Revenues	<input type="checkbox"/> Increase Costs
<input type="checkbox"/> Indeterminate	<input type="checkbox"/> Decrease Revenues	<input type="checkbox"/> Decrease Costs

8. Local Government Units Affected:

Towns Villages Cities Counties School Districts WTCS Districts Others:

9. **Private Sector Fiscal Effect (small businesses only):**

- No Fiscal Effect Increase Revenues Increase Costs
 Indeterminate Decrease Revenues Yes No May have significant economic impact on a substantial number of small businesses
 Yes No May have significant economic impact on a substantial number of small businesses Decrease Costs

10. Types of Small Businesses Affected:

See Fiscal Estimate & Economic Impact Analysis

11. Fiscal Analysis Summary

See Fiscal Estimate & Economic Impact Analysis

12. Long-Range Fiscal Implications

None

13. Name – Prepared by	Telephone Number	Date
Richard B. Wicka	(608) 261-6018	12/5/2014
14. Name – Analyst Reviewer	Telephone Number	Date
Signature—Secretary or Designee	Telephone Number	Date

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

Ins 16.01 and ch. 40

3. Subject

Holding Company Reporting for Insurers

4. Fund Sources Affected

- GPR FED PRO PRS SEG SEG-S

5. Chapter 20, Stats. Appropriations Affected

None

6. Fiscal Effect of Implementing the Rule

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

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

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

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

- Yes No

9. Policy Problem Addressed by the Rule

This rule will adopt two new reporting requirements related to insurance holding company systems. First, the proposed rule will create a new enterprise risk report that will be filed for insurers that register as a holding company. This confidential report will identify risks within the holding company system that may have an effect on the solvency of the insurer. Currently there is no reporting with OCI that directly addresses the risk related entities could have on an effect on insurer's solvency. The second reporting requirement added is a preacquisition notice. The preacquisition notice is a filing made prior to a person obtaining control of an insurer. The preacquisition notice will identify when an acquisition may cause market concentration and have a substantial effect on competition. OCI currently has the authority to consider how a change in control will affect competition in determining whether to approve a change in control. The preacquisition notice will add specific market concentration standards for determining whether there is market concentration. One additional change in the rule is to add a small surcharge to examination fees for insurers that are subject to a supervisory college. Supervisory colleges are a forum for domestic and international regulators to discuss the regulation of a holding company system with domestic and international operations. The surcharge is intended to capture the additional costs bore by the office in participating in a supervisory college.

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.

OCI solicited comments generally through publication requesting comments from the public utilizing the OCI website. In addition, OCI solicited comments from the following businesses and associations:

Alliance of Health Insurers;
 American Family Insurance;
 Benefit Services Group;
 Blue Cross Blue Shield of Wisconsin/Wellpoint;
 Capitol Consultants;
 Capitol Navigators;
 Catholic Financial Life;
 Hamilton Consulting;
 Humana;
 Independent Insurance Agents of Wisconsin
 Johnson Insurance;
 Liberty Mutual Insurance;
 Martin Schreiber Associates;
 Medical College of Wisconsin;
 Ministry Health Care;
 National Association of Insurance and Financial Advisors;
 National Federation of Independent Businesses;
 Network Health;
 Northwestern Mutual Insurance
 Professional Insurance Agents of Wisconsin;
 Sentry Insurance;
 State Farm Insurance;
 The Alliance;
 Thrivent Financial;
 WEA Trust;
 Wisconsin Association of Health Plans;
 Wisconsin Association of Health Underwriters;
 Wisconsin Chiropractic Association;

Wisconsin Council of Life Insurers;
Wisconsin Counties Association;
Wisconsin Hospital Association;
Wisconsin Insurance Alliance;
Wisconsin Manufacturers and Commerce;
Wisconsin Municipal Mutual Insurance Corporation;
Wisconsin Physicians Service Insurance Corporation;
Wisconsin Primary Health Care Association; and
Wisconsin Restaurant Association.

OCI received two comments. One comment received from the Wisconsin Council of Life Insurers indicated that the new filing requirement would have a small fiscal cost for insurers and overall the economic impact of the rule would be minimal. A second comment received from Sentry Insurance made no comment on the economic impact of the rule but did make two comments on the substance of the rule. Those comments will be addressed after the text of the rule is exposed for comment and hearing.

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

None

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

The proposed rule will have small implementation and compliance costs. With regard to the enterprise risk filing, holding companies required to make the filing will have an additional form to file annually. Initially, they will have to familiarize themselves with the information needed and collect that information. This will have a small cost in terms of staff time for the insurers required to make the filing. It is unlikely that insurers will have to hire additional staff or contract with outside entities to comply. The Wisconsin Council of Life Insurers indicated in its comments that the fiscal cost for making the new filing will be small.

With regard to the new preacquisition notice, this filing will only be made by parties who are seeking to acquire an insurer and only if the result of the acquisition would be an increase in the market share as the result of the proposed transaction above certain thresholds. The information that needs to be provided, i.e. information on market concentration, will likely be information that the acquirer obtains while conducting due diligence prior to the transaction. Obtaining the information and filing the form will add additional time to the process of acquiring control of an insurer but the effect is anticipated to be minimal. The filing should not require the hiring of additional staff or consultants and the economic effect of this filing requirement is expected to be minimal.

With regard to the surcharge to examination fees for supervisory colleges, the surcharge is anticipated to be less than 1% of the annual examination charge imposed on insurers. The total examination fees that are charged to the industry are based on the costs incurred by the office in conducting financial oversight. Thus, the total examination fees on the industry will not change only the method for allocating those expenses will change. For insurers subject to the surcharge they will see a relatively small increase in their annual examination assessment. Insurers who are not subject to a supervisory college will see a small decrease in their annual examination assessment. The impact of the surcharge on the insurance industry as a whole will be zero and the impact on individual insurers will be minimal.

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

The objective of the implementation of the enterprise risk report and other reporting changes is to better evaluate the risks to an insurer's solvency in an insurance holding company system. Wisconsin's current rule generally follows the NAIC Insurance Holding Company System Regulatory Model Act (Model Act) and Insurance Holding Company System Model Regulation (Model Regulation). The NAIC recently made changes to its Model Act and Model Regulation to modernize the regulation by better addressing transactions involving complex insurance holding company organizations and insurers licensed in multiple jurisdictions. Wisconsin must adopt certain of those changes in substantively the same form as the NAIC Model Act and Model Regulation if the Wisconsin Office of the Commissioner of Insurance (OCI) is to remain a state insurance regulatory agency that is accredited by the NAIC. It is a goal of the OCI and a benefit to domestic insurers for OCI to maintain its accreditation because as an NAIC accredited state, domestic insurers are only subject to certain filing requirements with OCI and financial examination by OCI. Without accreditation, domestic insurers could be subject to financial examination and filing requirements for all jurisdictions in which they operate. This could include examination from all 51 U.S. jurisdictions for some insurers. As an accredited state, domestic insurers are only subject to certain filing requirements with OCI and financial examination by OCI. Without accreditation, domestic insurers could be subject to financial examination and filing requirements for all jurisdictions in which they operate. This could include examination from all 51 U.S. jurisdictions for some insurers. In addition, the changes are similar to those adopted or that will be adopted in other states and work to promote uniformity for insurance holding company systems operating across multiple states.

The alternative would be to not adopt the changes and for OCI to forfeit its accreditation. Without accreditation, the cost of doing business for Wisconsin's domestic insurance industry would increase because their regulation by other states would increase including the requirement that they file an enterprise risk report in other jurisdictions.

The objective of the addition of a preacquisition notice is to provide standards for determining when a market is concentrated, i.e. dominated by a few insurers, and to determine when an insurer acquisition will substantially lessen competition. OCI may currently consider the effect a change of control of an insurer will have on competition but there are no standards as to when a market is considered concentrated. The adoption of this rule will promote transparency as it will outline when a market is presumed to be concentrated. A concentrated market does not automatically mean that OCI will not approve a transaction but will subject the proposed acquisition to greater scrutiny regarding its effect on competition.

The alternative is for OCI to continue with its current law which allows the effect on competition to be considered in a change in control but does not outline any standards as to how OCI will determine when there will be a lessening of competition.

The object of the addition of the supervisory college surcharge is to apportion the examination costs associated with OCI participation in a supervisory college to those insurers who are subject to a supervisory college. This will lead to a more fair distribution of examination costs. The alternative is to keep with the current examination cost allocation which will lead to insurers who are not part of a supervisory college absorbing a portion of the cost for OCI's participation in a supervisory college.

14. Long Range Implications of Implementing the Rule

None

15. Compare With Approaches Being Used by Federal Government

OCI is not aware of any existing or proposed federal regulations intended to address the activities to be regulated by the proposed rule change.

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

Similar requirements have been enacted in neighboring states.

Illinois: 215 Ill Comp. Stat. §§ 5/131.1–131.30

Iowa: Iowa Code ch 521A

Michigan: Mich. Comp. Laws §§ 500.1301–1379

Minnesota: Minn. Stat. ch. 60D

17. Contact Name

Louie Cornelius

18. Contact Phone Number

608–264–8113

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

ATTACHMENT A

1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

The proposed reporting requirements in the rule would only apply to insurers that are part of a holding company system and insurers that are part of a holding company system would not usually meet the definition of a small business. There are a few small insurers that own insurance agencies that may meet the definition of a small business but the number of insurers in this category is small. To the extent there are small insurers that are required to file the enterprise risk report, the economic impact on those insurers is expected to be minor. The information that needs to be reported on the enterprise risk report scales with the complexity of the holding company system. For the small insurers who only own an insurance agency, the enterprise risk report should be very basic. OCI received no comments specifically addressing the potential financial impact of the rule on small business and OCI believes the compliance costs incurred would be similar to those incurred by other insurers. For these reasons, the impact of the rule should be minimal for small businesses.

With regard to the proposed preacquisition report, any insurer that met the market share threshold for having to file this report would not meet the definition of a small business. This portion of the rule change will have no effect on small business.

With regard to the surcharge for insurers subject to a supervisory college, no insurer subject to a supervisory college would meet the definition of a small business. This portion of the rule would have no effect on small business.

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

Section 227.114, Wis. Stat., defines a "small business" as "a business entity, including its affiliates, which is independently owned and operated and not dominant in its field, and which employs 25 or fewer full-time employees or which has a gross annual sales of less than \$5,000,000."

3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- Less Stringent Compliance or Reporting Requirements
- Less Stringent Schedules or Deadlines for Compliance or Reporting
- Consolidation or Simplification of Reporting Requirements
- Establishment of performance standards in lieu of Design or Operational Standards
- Exemption of Small Businesses from some or all requirements
- Other, describe:

The proposed rule allows the commissioner to exempt an insurer from filing the enterprise risk report if they demonstrate undue financial or organizational hardship. This will allow the commissioner to exempt a small insurer from filing the report if the insurer shows it would cause undue hardship.

4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

OCI has incorporated the ability for the commissioner to exempt any small insurer from the enterprise risk report filing requirement if they establish undue hardship.

5. Describe the Rule's Enforcement Provisions

The proposed rule adds no new enforcement provisions and will be enforced with OCI's general enforcement authority.

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

- Yes No
-

Notice of Hearings

Natural Resources

Fish, Game, etc., Chs. NR 1— **CR 13–071**

(DNR # WM–11–13)

NOTICE IS HEREBY GIVEN that pursuant to ss. 29.014, 29.041 and 227.11 (2) (a), Stats., interpreting ss. 29.014, 29.041 and 29.192, Stats., the Department of Natural Resources will hold public meetings on revisions to Chapters NR 1, 10, 11, 12, 13, 15, and 45, Wis. Adm. Code, related to deer management, hunting, and implementation of the 2012 White-tailed Deer Trustee Report.

The January 2015 hearings will begin at 6:00 p.m. and continue until 8:00 p.m. at each of the following locations and on the following dates:

Hearing Information

- Date:** Tuesday, January 20, 2015
Time: 6:00 p.m. to 8:00 p.m.
Location: La Crosse DNR Service Center
 Room B19
 3550 Mormon Coulee Road
 La Crosse, Wisconsin
- Date:** Tuesday, January 20, 2015
Time: 6:00 p.m. to 8:00 p.m.
Location: Fitchburg DNR Service Center
 Gathering Waters Conference Room
 3911 Fish Hatchery Road
 Fitchburg, Wisconsin
 (Fitchburg snow date is January 22)
- Date:** Wednesday, January 21, 2015
Time: 6:00 p.m. to 8:00 p.m.
Location: Dodgeville DNR Service Center
 Conference Room
 1500 N. Johns St.
 Dodgeville, Wisconsin
 (Dodgeville snow date is January 28)
- Date:** Thursday, January 22, 2015
Time: 6:00 p.m. to 8:00 p.m.
Location: Chippewa Valley Technical College
 Business Education Center
 Room 103A
 620 West Clairmont Avenue
 Eau Claire, Wisconsin
- Date:** Thursday, January 22, 2015
Time: 6:00 p.m. to 8:00 p.m.
Location: DC Everest Middle School
 Auditorium
 9302 Schofield Avenue
 Schofield, Wisconsin
 (Schofield snow date is January 29)
- Date:** Monday, January 26, 2015
Time: 6:00 p.m. to 8:00 p.m.
Location: Waukesha DNR Service Center
 Room 151 (West entrance)
 141 NW Barstow St.
 Waukesha, Wisconsin
 (WAUkesha snow date is January 27)
- Date:** Tuesday, January 27, 2015
Time: 6:00 p.m. to 8:00 p.m.
Location: James Williams Middle School

Auditorium
 915 Acacia Lane
 Rhinelander, Wisconsin

Additional hearings are planned for the Spooner, and Green Bay areas but locations and dates were not finalized at the time of notice publication. The times and locations for those hearings can be found on the department's website at <http://dnr.wi.gov/news/input/>.

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

Copies of the Rule and Submission of Written Comments

The proposed rule and fiscal estimate may be reviewed and comments electronically submitted at the following Internet site: <http://adminrules.wisconsin.gov> or by searching the keywords "administrative rules" on the department's website.

Written comments on the proposed rule may be submitted via U.S. mail to Mr. Scott Loomans, Bureau of Wildlife Management, P.O. Box 7921, Madison, WI 53707 or by email to scott.loomans@wisconsin.gov. Comments may be submitted through **January 31, 2015**. Written comments, whether submitted electronically or by U.S. mail, will have the same weight and effect as oral statements presented at the public hearings. A personal copy of the proposed rule and fiscal estimate may be obtained from Mr. Loomans.

Analysis Prepared by the Department of Natural Resources

Plain language rule analysis

Gubernatorial candidate Scott Walker made a promise to appoint a "Deer Trustee" to review white-tailed deer management programs and hunting in Wisconsin. In October of 2011 Dr. James C. Kroll, officially known as Wisconsin's white-tailed deer trustee, entered into a contract with the State of Wisconsin to conduct an independent, objective and scientifically-based review of Wisconsin's deer management practices. The White-tailed Deer Trustee's report was released to the public in July, 2012.

The objective of these proposed rules is to implement ideas and solutions from the Deer Trustee's report to forge a new age for deer management.

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

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

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

SECTION 9 eliminates the definition of an "archery hunt" because it is no longer consistent with current law or a necessary provision in this chapter.

SECTIONS 10, 11, 29, 42, 57, 60, 65, and 72 establish that CWD management zones will be identified as CWD-affected areas and are based on counties, consistent with proposed deer management unit boundaries.

SECTIONS 12 and 13 establish definitions of “private” and “public-access lands” so that bonus deer hunting permits can be issued as valid only for use on land not open to public hunting or as valid only for use on lands which are open to hunting by members of the public, but not valid on both types of land. Lands which are privately owned but open to public hunting under the managed forest law program and other

government agreements are considered public access lands for purposes of this provision.

SECTIONS 14, 24, and 37 update cross references related to sharp-tailed grouse, fisher, and bear management zones or subzones so that the deer management unit map in effect in 2013 continues to be the one cross referenced.

SECTIONS 15 to 22 of this proposal establish the deer hunting season dates for gun, archery, muzzleloader, and deer hunting by youth hunters. The standard deer hunting season framework established in these sections is:

Bow & Arrow/Archery	Saturday nearest September 15 and continuing through the Sunday nearest January 6. Hunting is for antlerless deer only at times when a firearm season for antlerless deer only is also open.
Youth	Two consecutive days beginning on the Saturday nearest October 8.
Traditional 9-day November firearm deer season	Saturday before Thanksgiving Day Holiday and continuing for 9 days.
Muzzleloader only	Beginning on the day after the traditional November firearm deer season and continuing for 10 days.
December 4-day antlerless season in central forest and central farmland zone counties only. This is season that the department may also implement in the southern farmland zone upon recommendation of two-thirds of county deer advisory councils in that zone.	Beginning on the second Thursday following the Thanksgiving Day holiday.
Holiday antlerless firearm deer season in southern farmland zone counties. This is an optional season that the department may also implement in the central farmland zone upon recommendation of two-thirds of county deer advisory councils in that zone. County deer advisory councils may also recommend that buck harvest be allowed during this season and the department can implement if two-thirds of councils support.	Beginning on December 24 and continuing through January 1.
Additional non-standard season framework options are described in SECTION 23 below.	

Noteworthy changes to current rule are that there is no longer a 4-day December antlerless-only, any-firearm-type deer season in the northern forest and the season is not part of the standard framework in the southern farmland zone. These sections establish that a season commonly referred to as the December holiday hunt will now begin on December 24 and continue through January 1 and the standard bag limit is antlerless deer only unless two-thirds of the county deer advisory councils recommend also allowing the harvest of bucks. The holiday hunt will be held in all areas of the former CWD management zone and the entire portion of counties which had previously been partially located in the CWD management zone. The department could extend the holiday season to the central farmland zone and this could happen after a recommendation by two-thirds of the county deer management advisory councils in the zone. This section eliminates references to state park hunting seasons which are no longer needed because state statute has established that deer hunting is generally allowed in state parks. This section retains language which establishes the seasons for certain state parks when it is still needed because the existing seasons are different than the general statewide seasons. Muzzleloader only seasons are an example of the type season variations that have existed at some state parks. Finally, this section eliminates state park deer management unit designations and limited entry state park deer hunts.

These sections establish a general bag limit of one buck during firearm deer seasons and one buck during the archery

seasons, plus additional antlerless deer where permits are available.

SECTION 23 establishes three additional season framework options which the department could implement upon the recommendation of two-thirds of the county deer management advisory councils in a management zone. Those options include an antlerless deer only season framework for all archery or firearm seasons. The second option is restrictions on the harvest of bucks during a holiday season to only those with four antler points on a side or an antler spread that is wider than the spread of the deer’s ears in an alert position. The third is that the harvest of bucks during the traditional nine-day firearm season, and other deer seasons which are open during that period, could be limited to the first two days of the season.

SECTION 25 restores the protected status of white deer in a CWD affected area so that they will again be protected statewide.

SECTIONS 26 and 27 update provisions related to hunting hours to include references to crossbows and maintain cross-references related to hunting hours for species that have no hunting hour restrictions except at times when a firearm deer season is open.

SECTIONS 28, 30, 32, 33, 35, 36, 38, and 45 to 55 add the word “crossbow” to provisions where appropriate because firearms, bows, or handguns are currently listed. These sections also add a description or cross-reference to a

crossbow license or season as appropriate in locations where archer or firearm licenses or seasons are already listed or cross-referenced.

SECTION 31 repeals a cross-reference related to blaze orange requirements during deer seasons in CWD zones which is not necessary because blaze orange requirements are already established in statute.

SECTION 34 repeals a historic prohibition of the possession of firearms in the field on the day before the traditional 9-day firearm deer season.

SECTION 39 revises population goals so that they will be expressed as management objectives to increase, maintain, or decrease the deer population density in a management unit. Deer management units will generally be the same as counties with exceptions for metropolitan subunits and areas within the exterior boundaries of the Bad River, Lac Courte Oreilles, Lac du Flambeau, Menominee, and Red Cliff reservations. This section establishes county deer management councils which will be advisory to the department. This section also establishes antlerless permits and their allowable uses and methods of distribution. This section establishes a \$12.00 fee for bonus permits which are issued for a CWD-affected area and a \$6.00 fee for bonus permits issued under the deer management assistance program. Finally, this section eliminates additional buck harvest opportunities commonly referred to as "earn-a-buck" and "bonus buck" would no longer be part of the standard season framework. "Bonus buck" regulations could be implemented in a farmland zone upon a recommendation by at least two-thirds of the county deer management advisory councils in a zone and would normally remain in effect for three years. When antlerless deer which authorize harvest of a bonus buck are registered, registration must take place in-person so that harvest can be verified by the department.

SECTION 40 modifies the tagging procedures so that a deer possessed in the field must be accompanied by the person who tagged it, even if the deer has already been registered. Deer which have been registered may be possessed and transported on roadways or possessed at a home or established businesses (taxidermist, butcher shop, etc.) by someone other than the person who tagged it, consistent with current rules.

SECTION 41 updates language to reflect elimination of "earn-a-buck" regulations and newer "bonus buck" "bonus buck" opportunities which will be available.

SECTION 43 establishes that a harvest registration confirmation number must be legibly printed on the carcass tag to show proof that a deer has been registered with the department under an electronic or telephone registration system. This section also maintains the current prohibition of processing a deer while in the field, except that it may be divided into as many as 5 parts to help with removing it from the field.

SECTION 44 modifies deer registration procedures to allow telephone or electronic recording of harvest. The ability to require in-person registration in areas is retained if the department determines that is necessary for research, collecting tissue samples, or during transition periods. Deer and bear harvest must be registered with the department by 5:00 p.m. of the day after the deer or bear is taken into possession. Registration requirements will be the same statewide for both firearm and bow-and-arrow harvested deer. This section also clarifies that an antlerless deer may not be possessed in the field outside of the unit of harvest except

on a public highway or at a dwelling or established business such as a butcher shop or taxidermist's place of business, and then only after first being registered. This is similar to current restrictions which prohibit transportation of a deer outside the unit of harvest prior to registration but is amended so the rule remains effective to enforce restrictions on illegal use of tags when electronic harvest registration is allowed.

SECTION 56 establishes deer management units which will generally be based on counties and establishes metropolitan deer management subunits and identifies tribal units. This section preserves the current metropolitan deer management units as subunits within county units. The note in this section also maintains the deer management unit map that was in effect in 2013 because those boundaries continue to be used for other purposes such as the basis for the fisher management zone map.

SECTION 58 repeals the existing deer management regions map and replaces it with a comparable but simplified zone map that is more aligned along county boundaries. This map also identifies where certain antlerless tags can be used and to describe deer season frameworks.

SECTION 59 establishes that buck tags may only be used to tag bucks and southern farmland zone antlerless deer tags, which are available to all firearm and archery license buyers, may be used statewide by participants in firearm deer hunts for hunters with disabilities. In the past, buck tags could be used for deer of either sex during these hunts. This provision is intended to reduce confusion about how tags can be used by disabled permit holders during the variety of deer seasons. This section also modifies the note for consistency with new rules allowing the use of rifles statewide during firearm deer seasons.

SECTION 61 establishes the deer management assistance program to assist with specialized management of deer in localized areas and for specific purposes. This section establishes fees and other conditions for participation in the program.

SECTIONS 62 and 63 establish crossbow hunting seasons which are consistent with archery deer hunting seasons at a number of waterfowl hunting closed areas where some archery deer hunting is currently allowed.

SECTION 64 establishes that crossbow deer hunting is not allowed at times when archery deer hunting is not allowed under current rules at the Buckhorn wildlife area.

SECTION 66 eliminates the prohibition on shooting deer under an agricultural deer damage shooting permit on the day before the traditional 9-day November firearm deer season.

SECTION 67 updates a cross-reference related to establishing the harvest quota for tribal members in the ceded territories.

SECTIONS 68 to 71 add "crossbow" to provisions which already restrict possession of bows and firearms at 37 game refuges and notes that possession of loaded, uncased handguns is allowed by people who are licensed to possess a concealed handgun.

SECTIONS 73 and 75 to 76 update language to include crossbows in various provisions where it is currently only required that bows and arrows be unstrung or enclosed in a carrying case on certain department managed lands.

SECTION 74 repeals the requirement to obtain a special permit before hunting deer in a state park in the CWD management zone.

Federal regulatory analysis

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

Comparison with rules in adjacent states

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

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

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

Michigan: Michigan has one firearm season, two archery seasons, and one muzzleloader season, as well as two antlerless-only seasons and a youth hunt. The firearm season runs November 15 – 30. The archery seasons runs October 1 – November 14 and December 1 – January 1, 2014.

Michigan's muzzleloader-only season is split into three zones with each zone's season occurring in December and lasting for either 10 or 17 days. The antlerless-only seasons run from September 21–22 and December 23 – January 1, 2014 and the youth hunt occurs on Sept 21–22. Hunters interested in harvesting an antlerless deer must purchase an antlerless license that is valid within a specific DMU for use on either public access lands or private land. In some DMUs, these licenses may only be purchased over the counter, whereas in others there is an application process and drawing.

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

Summary of factual data and analytical methodologies

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

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

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

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

change the department's current requirement to evaluate deer management unit boundaries and population goals or objectives on a recurring three year basis.

Under these rules the department will be able to modify antlerless harvest quotas and permit levels on an annual basis. These rules establish that the department will seek input from groups or representatives for certain deer related interests in establishing quotas by creating *county deer management advisory councils*. Through these councils, the department will seek comment from members of the public on the status of the deer herd. The councils will usually be chaired by the chairperson for the county delegation of the Conservation Congress. Other members of the council can also include a representative of Wisconsin's Chippewa bands if in ceded territories and a representative for; agriculture, forestry, tourism, transportation, a local organization representing hunting interests, and local government. Membership on a county deer management advisory council may also include a participant in the deer management assistance program. The department will establish guidance for the operation of county deer management advisory councils and that background checks of volunteer council members may be conducted.

The county deer management advisory councils will have the ability to recommend a number of deer hunting season framework modifications which may be implemented by the department by an order of the secretary. In order to assure season frameworks which are consistent throughout the units in an entire zone, many modifications would require a recommendation by two-thirds of the councils in a zone and would be implemented throughout the entire zone. Those modifications include bonus buck opportunities, a four day December firearm season for antlerless deer only in the southern farmland zone, a holiday antlerless deer hunt in the central farmland zone, and buck harvest during the holiday firearm season in either farmland zone. Season frameworks recommended by the councils and implemented by the department would normally remain in place for three years in order to assure a level of season consistency. Additionally, councils could make recommendations on the number of farmland zone antlerless deer permits which are included with the purchase of a license. Permit level recommendations could be implemented at the county/unit level and would not need to be consistent throughout the entire zone.

Under this proposal, hunters in most of the state will continue to receive an antlerless deer tag with the purchase of a firearm or archery license. This tag will be comparable to the current "herd control unit" tag which is issued in units that are 20% or more over the established population goal. Under the proposal, these tags will be valid in many but potentially not all farmland units. There is flexibility to establish that antlerless tags issued automatically with deer hunting licenses are not valid in farmland units that have a population objective to increase or stabilize the deer population. The department would establish this after natural resources board approval of a secretary's order, and following evaluation and a recommendation from county deer management advisory councils and the department. The department currently issues additional herd control tags for the cost of a \$2.00 issuance fee but those tags will be discontinued by this rule. Under this proposal, the standard fee of \$12.00, also the current fee for a bonus permit, will apply for most antlerless permits which are in addition to the one that was issued with hunting licenses. These rules also establish a \$12.00 fee for additional antlerless tags which allow harvest of deer in the

CWD-affected area. Under statute, \$5.00 of the fee for bonus permits issued for use in a CWD-affected area will be credited to an account for management and testing of chronic wasting disease. Through the deer management assistance program, these rules allow establishing separate fees and unique antlerless deer permits that are specific for use on properties enrolled in the deer management assistance program and those are explained where that program is described.

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

A variety of related hunting regulations changes are proposed in these rules. Some of them are simplifications to current rules. Changes include the names for permits and the allowable use of various deer permits. Deer carcass tags, tagging, and transportation requirements are modified where possible in order to simplify regulations or where needed in anticipation of a new automated licensing system. The current requirement to register deer is replaced in these rules with a more customer-friendly harvest reporting procedure using telephone or internet. Black bear are another species for which in-person registration of harvested animals is required. These rules will modify bear harvest recording requirements because deer and bear registration occur at the same locations and through the same process under current rules. These rules will eliminate deadlines to register deer and bear that currently vary by season, harvest method, and location. Instead, a simple statewide requirement to register deer and bear harvest by 5:00 p.m. of the day after is established. The department can make exceptions where in-person registration may still be required for sampling purposes. This allows fewer hours to register an animal than under current law but electronic registration will be significantly more convenient. Faster registration of deer will provide the department, and others who may be interested, with very timely harvest information. The shorter deadline may also help with enforcing bag limit, tagging, transportation, and possession restrictions. The option to require in-person registration of deer carcasses is preserved in areas that are part of a CWD affected area or where necessary for deer population and herd health monitoring purposes. The department could take advantage of this authority in order to collect tissue specimens for sampling for a wide variety of diseases or biometrics associated with deer populations. Finally, in order to assure hunter accountability and compliance with group bagging restrictions, these rules establish that a deer carcass possessed in the field must be accompanied by the person who tagged it. These rules maintain the restriction that deer and bear can only be "quartered" while in the field, even if they have already been registered. Both of these regulations essentially maintain current requirements because in-the-field registration of

harvested deer was not possible previously. Now that deer could be registered while in the field by using a cellular phone or other electronic means, these rules will continue to require that the person who tagged the carcass accompany it during dragging or other field transport or possession by others. Deer that have been registered could be possessed and transported by other people on public highways or possessed at a residence or business, such as a taxidermist or butcher shop. These requirements will also assure sex or size of deer or bear are identifiable in the field.

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

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

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

Under current rule, numerous state parks are listed in the table that establishes deer seasons because the department was required to establish hunting seasons in state parks by administrative rule. Under 2011 ACT 168, hunting is allowed at state parks except where, or at times when, the Natural Resources Board has prohibited the activity in order to protect public safety or a unique plant or animal community. Because the old presumption that state parks are closed unless opened by rule has been replaced by a presumption that state parks are open unless board action has been taken to close them, most state park names have been removed from the table. Those

parks will be open to deer hunting under normal statewide regulations at times when hunting has not been prohibited for safety related purposes by natural resources board order. A number of parks, which had deer hunting seasons or regulations which are not the same as the ones that apply statewide are still found in the season table in order to preserve those unique seasons or regulations. All state park deer management unit number designations have been repealed and state parks are simply referred to by their name. Current rules require that deer hunters in state parks in the CWD management zone obtain a free access permit to a park. The number of access permits is not restricted. This rule repeals that requirement because it is no longer needed considering that access to other parks will not be monitored to this extent. Finally, the deer hunt at the Loew Lake Unit of the Kettle Moraine State Forest, which had been a limited entry/draw hunt, will now be open to participation by any licensed hunter. However, this season will continue to be muzzleloader only. These changes are made for consistency with other changes made at state parks which previously had limited entry hunts.

These rules establish three additional season framework options which the department could implement upon the recommendation of two-thirds of the county deer management advisory councils in a management zone. Those options include an antlerless deer only season framework for all archery or firearm seasons. The second option is restrictions on the harvest of bucks during a holiday season to only those with four antler points on a side or an antler spread that is wider than the spread of the deer's ears in an alert position. The third is that the harvest of bucks during the traditional nine-day firearm season, and other deer seasons which are open during that period, could be limited to the first two days of the season.

The trustee's report generally recommends a more passive approach than current department policy to the management of chronic wasting disease. This approach is reflected by the establishment of deer seasons in CWD affected areas that are similar to other areas of the state. Management of CWD in the state's deer herd is still important under these rules. These rules retain the firearm deer season occurring over the Christmas holiday, although it will now end on January 1. These rules modify the current CWD zone management system by designating it as the CWD-affected area using county boundaries to describe the zone instead of the previous DMU configuration based on roads and natural features such as rivers. A process for efficiently adding new counties as CWD-affected areas when the disease is discovered in new areas is created. The department currently establishes numeric population goals for deer units that are in a CWD zone. Those goals are modified by these rules so that they are consistent with the manner in which objectives for other units are expressed.

This rulemaking establishes a deer management assistance program that will allow landowners and hunters to work together with the department to manage deer on a site-specific basis. The program will actively involve members of the public in the collection, analysis, and reporting of deer harvest information and improve management of the deer herd at the local level. The rule establishes enrollment fees for participation in the program and statute has established that revenue will be credited back to implementation of the program. This proposal establishes a separate half-price fee of \$6.00 for antlerless deer hunting permits obtained through participation in the program. The

lower fee is intended to be an incentive for participation. These rules allow the sales of antlerless deer hunting permits to a landowner or primary contact who is enrolled in the deer management assistance program or their authorized representative. The permits could then be transferred, for no more than the actual cost, to hunters who would be able to use the tags on the enrolled property. The program is a central feature of the report which recommended that the department establish: a) applicability to private and publicly accessible lands, b) initial areas eligible to participate, c) administration of DMAP, d) funding, e) personnel and training, f) minimum property size to participate, g) fees, h) participation requirements, i) data collection requirements, j) registration of deer harvested on DMAP properties, k) data analysis and reporting, and l) assessment of DMAP effectiveness.

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

A significant portion of this board order is dedicated to updating administrative code so that it is consistent with 2013 ACT 61 which establishes deer hunting seasons in 2014 and 2015 where the use of crossbows is allowed. Under the Act, the crossbow season must be identical to the archery season. Other substantive provisions of this rule related to the use of crossbows, such as the allowable uses of carcass tags, are also written as directed by the ACT. The department has limited discretion in rulemaking for the 2014 and 2015 seasons. Beginning in 2016, the department will have much greater statutory authority and more decision making ability. This board order does make numerous remedial revisions to reflect the new status of crossbows as generally allowed for hunting. Throughout the rule, references to “archery” and “crossbow” are intended to reflect statutory language which creates an “archer hunting” license and a “crossbow hunting” license.

Additional remedial revisions reflect that statutes now allow the possession of loaded, uncased handguns by people who are licensed to possess a concealed handgun, including in department closed areas and game refuges where possession of other weapons is restricted.

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

The department estimates that the economic impact of these rules will be none or minimal and, pursuant to 2011 Executive Order 50, facilitated a 14 day period for comment on a draft economic impact analysis. The comment period began on October 7 and ended on October 21, 2013. Although s. Ch. 227.14 Stats., does not require an economic impact analysis for emergency rules, an analysis was prepared for companion emergency rules as well as for this board order.

This proposal modifies rules that establish the department’s habitat and deer harvest management strategies. Examples of the new management efforts include: increased emphasis of habitat management on private land through the deer management assistance program, eliminating the requirement to use a specific method of measuring and

estimating deer populations even though that model may still be used and considered, and new ways to describe desired deer population levels. These rules will result in moderate revisions to regulations that apply to individual deer hunters. Examples of the types of changes proposed include adjustments to deer management unit boundaries, simplified harvest registration procedures, different deer hunting regulations on private versus public access lands, and different uses and changes in the availability of antlerless deer harvest permits.

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

The department anticipates there will be no or a minimal effect on the financial health of industries, governments, and groups. The department anticipates there will be no economic effects of these regulations for individual hunters and landowners.

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

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

The department anticipates that there will be no or very few implementation and compliance costs for the affected entities. These rules will not establish reporting or compliance requirements or other regulations for small business. A possible outcome of these rules is the elimination of deer registration stations at local businesses throughout the state. The department has summarized the value of registration fees paid by the department to businesses, and related impacts of this voluntary program, in the economic impact analysis.

This is not a complete estimate of economic impacts but, rather, a summary which indicates that these rules will have no or minimal economic effects. The final economic analysis for these rules includes a description of the specific impacts of deer and deer hunting in this state based on surveys and research done by the department and other state and federal agencies. However, even though significant research exists, the impact of wild deer on the environment and to people under various conditions cannot be anticipated with exact precision. The final analysis includes significant narrative descriptions of anticipated economic impacts.

Anticipated Private Sector Costs

These rules, and the legislation which grants the department rule making authority, do not have a significant fiscal effect on the private sector. Additionally, no costs are associated with compliance to these rules.

Effects on Small Business

These rules are applicable to individual sportspersons and impose no compliance or reporting requirements for small businesses, and no design or operational standards are contained in the rule. Because this rule does not add any regulatory requirements for small businesses, the proposed rules will not have a significant economic impact on a substantial number of small businesses under 227.114(6) or 227.14(2g).

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

Environmental Impact

The rulemaking process for Board Order WM-11-13 constitutes an equivalent analysis action, under the current s. NR 150.20 (2) (b), Wis. Adm. Code, and additional environmental analysis is not required.

Economic Impact on Small Business

Pursuant to s. 227.114, Stats., it is not anticipated that the proposed rule will have an economic impact on small businesses. The Department's Small Business Regulatory Coordinator may be contacted at SmallBusiness@dnr.state.wi.us or by calling (608) 266-1959.

Contact Information

Scott Loomans, (608) 267-2452.

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. NR 1 Natural Resources Board Policies, NR 8 License and Permit Procedures, NR 10 Game and Hunting, NR 11 Closed Areas, NR 15 Game Refuges, NR 12 Wildlife Damage and Nuisance Control, NR 13 Chippewa Treaty Rights Participants, NR 19 Miscellaneous Fur, Fish, Game and Outdoor Recreation, and NR 45 Use of Department Properties.

3. Subject

Deer management, hunting, and implementation of the 2012 White-tailed Deer Trustee's Report, Board Orders WM-11-13 and WM-24-13 (E).

4. Fund Sources Affected

GPR FED PRO PRS SEG SEG-S

5. Chapter 20, Stats. Appropriations Affected

20.370 (Lv), (Hs), (Hx) and (Fq).

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

There was dissatisfaction with various aspects of white-tailed deer management and hunting in Wisconsin following the 2009 season. Gubernatorial candidate Scott Walker made a promise to appoint a "Deer Trustee" to review programs. In October of 2011 Dr. James C. Kroll entered into a contract with the State of Wisconsin to conduct an independent, objective and scientifically-based review of Wisconsin's deer management practices. The White-tailed Deer Trustee's report was released to the public in July, 2012.

The objective of the process that resulted in these rules is to integrate the work of the Deer Trustees and the publicly driven action teams into the policies and procedures to enhance deer research, management and hunting in Wisconsin.

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

The department solicited comments on the fiscal and economic impacts of these rules during a specific comment period from October 7 through October 21, 2013, at 35 administrative rules hearings held between October 22 and October 31, through written comments on the rule and a survey which was available to the public on the department's website from October 14 through November 8.

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

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

It is important to note that the department is statutorily prohibited from utilizing management tools or regulations that had previously been implemented at times when deer populations were 20% or more above established overwinter population goals and not likely to be reduced to goal under standard season frameworks and regulations. Notably, this includes regulations that require a hunter to first harvest an antlerless deer before harvesting a buck. The department also lacks rulemaking authority for certain deer hunting early season frameworks except when a finding of emergency is made under s. 227.24 Stats. These changes to the department's regulatory authority are a result of 2011 ACT 50 and they are not considered as part of an economic analysis prepared for these rules. While deer may have significant positive or negative impacts to different entities, removal of these harvest regulations likely changes the department's ability to manage deer populations in farmland regions. A result is that any economic impact of rule changes the department currently has statutory authority to establish is minimized, especially in farmland regions.

Prior to drafting rule language the department anticipated, in its scope statements for permanent and emergency rules, that the proposal could have a moderate level of economic impact, as described in 2011 Executive Order 50. Upon completion of the public involvement and rule drafting process, the department has revised its estimate and anticipates that these rules will have no or a minimal economic impact locally or statewide.

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

During a comment period beginning in September the department solicited comments from local governments using an email distribution list and through posting on a website.

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)

– Economic Impacts –

The department anticipates that there will be no implementation and compliance costs for the affected entities. These rules will not establish reporting or compliance requirements or other regulations for small business.

The state's economy as a whole will continue to benefit from the presence of a well managed deer herd. The management tools established in these rules will ensure that continued opportunities for good hunting and wildlife-based recreation are available well into the future. Like previous rules, a significant purpose for establishing deer population management objectives, managing antlerless deer harvest levels, and focusing hunting activities through programs such as the Deer Management Assistance Program, landowner permits in CWD zones, and the Agricultural Damage Abatement and Assistance program is to maintain a deer herd that is in balance with the needs of industries such as agriculture, forestry, and others as well as with the desires of hunters. In certain urban and agricultural regions the department estimates that deer herds are already increasing under current rules. While increasing deer herds may have negative impacts on industries such as agriculture, the impacts are currently occurring and are in part a result of a lack of hunting access in certain areas and less authority under statutes to implement certain harvest regulations. Increasing deer herds in certain areas following implementation of these rules cannot necessarily be attributed to these rules and is a primary reason for a finding of no or a minimal economic impact.

Health concerns for Wisconsin deer include diseases such as bovine tuberculosis, hemorrhagic disease, and chronic wasting disease (CWD). Of particular interest in Wisconsin is that CWD was first detected in the state on February 28, 2002. The department's goal has been to minimize the negative impact of CWD on deer and elk populations and the state's economy, hunters, landowners and others. The available evidence indicates that CWD has the potential for significant, negative impacts on the future of deer hunting and the related economic benefits of white-tailed deer in Wisconsin. The proposals contained in these rules are not likely to result in a reduction in the rate of infection in deer or geographic location of infected animals. However, the department continues to have the ability to implement strategies recommended in its CWD management plan which could result in reduced deer numbers in affected areas and could help control disease spread. Those include an additional firearm hunting opportunity following the traditional 9-day firearm season, the option to issue landowner permits allowing deer harvest by landowners and their agents following the end of regular seasons, and the option to adopt population objectives and antlerless permit levels that could decrease the density of the deer herd. Under the proposal, the department will continue to provide a free antlerless deer permit which can be used in a CWD-affected county designated by the department. While additional harvest permits will need to be purchased for a fee, part of that fee is earmarked for CWD testing of hunter harvested deer. Continuing to provide low cost CWD testing for hunters may be an important feature to keep hunters interested in harvesting and utilizing their deer. Considering these factors, the department estimates that these rules are unlikely to have a significant impact on the management of CWD. Deer herd monitoring indicates that the prevalence and distribution of the disease has been increasing under current rules – the proposed rules are not likely to have an impact on this trend.

Conflict has occurred between farmers (traditional crop farmers, Christmas tree farmers, orchard growers, cranberry growers, and many other agriculturalists) who are trying to protect their crops and a public who wants abundant deer for viewing and hunting. With the population above state management objectives in certain areas under current rules, deer will likely continue to create agricultural problems. Deer damage complaints outnumber the other three program eligible species combined. Corn, soybeans, sweet corn and hay account for the majority of acreage damaged by deer. The creation of a Deer Management Assistance Program provides another opportunity for management of deer in specific areas which may assist in reducing agricultural damage. Overall, however, the department does not anticipate significant impacts to agriculture specifically from these rule proposals. Additional analysis of the Agricultural Damage and Nuisance Abatement program is found below under the section on fiscal impacts to the department.

White-tailed deer range throughout the state, adapting to every habitat type in Wisconsin. Their ability to live in close proximity to people has allowed deer to flourish in environments with significant human development, thus the agriculture damage they cause is no longer restricted to traditional rural areas. Additionally, damage is not restricted to agricultural products. Again, the department does not anticipate significant impacts from these proposals. Where hunting access is available in proximity to urban areas, the Deer Management Assistance Program may provide additional opportunities for hunters to act as deer managers.

Forest landowners may be economically impacted by white-tailed deer, depending upon their goals and objectives for the land. Economic impacts of deer on forest vegetation focus primarily on the foraging of plants, although antler rubbing on high value forest crops such as Christmas trees can have significant economic impacts as well. There is evidence found in research documenting site specific examples of deer impacts on forest vegetation. The effects of deer on desirable forest vegetation for a specific site can be detrimental and can create economic losses. However, a cumulative approach to assessing the impact of deer on forest landowners and desirable vegetation has not been done. Research to increase our understanding of forest habitat and white-tailed deer, in response to a recommendation of the Deer Trustee's report, is ongoing. The department's estimate that these rules will have no or a minimal effect on the forest products industry is based on estimates that these rules will not result in significant increases of deer population density. These rules maintain existing methods of controlling deer populations including a flexible system for the issuance of antlerless deer harvest permits and a Wildlife Damage Abatement and Claims Program for which certain forest products producers are eligible. Additionally, owners of industrial forest may benefit from the services that will be available through the Deer Management Assistance Program.

Vehicle deer collisions are a factor in determining how many deer the public will accept and are a cause of millions of dollars of property damage and personal injury in this state. The total number of deer salvaged after traffic accidents or removed from roadways by contractors was 26,114 in 2011. The actual number of collisions is estimated to be greater. Significant increases in deer numbers may be expected to result in higher numbers of vehicle deer collisions, particularly considering that traffic volume is not likely to decline. A goal of these rule proposals, however, is to continue managing deer herds to be in balance with ecological and social tolerances. The department's estimate that these rules will have none or a minimal effect on the economy as a result of vehicle deer collisions is based on estimates that these rules will not result in a significant increase or decrease in deer population density.

Deer impacts on the ecological composition and function of Wisconsin's ecosystems may be occurring and may have resulting impacts on tourism, gathering wild plants, species other than deer which have economic significance, and other effects. Land use by agriculture, development, silviculture, cessation of fire, and invasive species may be having more wide-sweeping impacts compared to deer.

An outcome of these rules would be the elimination of 626 deer registration stations, most at local businesses such as convenience and sporting goods stores throughout the state. It was noted during the public review periods that taverns also commonly volunteer as registration stations. These rules will relieve businesses of implementation costs they may have voluntarily incurred as registration stations. While these rules will not have any implementation or compliance costs for former registration stations, there may be an economic impact to the businesses whose customers may not come to stores to register deer and spend money on other transactions which are incidental to registering deer. Representatives of tavern owners indicated that this is a concern that they had.

Department payments and distribution of materials to registration stations totalled approximately \$182,000 in 2012, a value of approximately \$290 on average to an individual registration station. Many stations employ extra help to register deer meaning that direct payments for services may cover costs to register deer but may not have a direct financial benefit. The value of incidental purchases made by deer hunters are likely the primary reason stations volunteer to register deer. Even without registration stations, the economic benefits of deer hunting for convenience stores and other businesses will continue to be significant. This can be seen by the heavy traffic at convenience stores as early as 4:30 a.m., before the season has opened, and the need some stores have to employ extra staff. A likely benefit to convenience stores in general is that spending activity may be distributed more equally between stores, as certain ones will not have the unique selling point of being a registration station. It may be true of taverns as well that customer visits will be distributed more evenly among area businesses. However, the department agrees that individual taverns which had previously been department registration cooperators will see a reduction in business resulting from sales incidental to deer registration. The department is considering ways to help registration stations take advantage of traditions hunters have adopted by stopping at particular businesses to register deer. The department suggests that businesses could continue to assist hunters by advertising that they can register deer electronically using a computer at their location. The department anticipates a continuing need for some in-person registration to collect biological data. Finally, the department plans to phase-in electronic registration which will provide some time for many businesses to plan for the transition. Department staff have heard both positive and negative comments from registration stations about an electronic registration system. At this time, we anticipate the impacts will be minimal under the criteria established in 2011 Executive Order 50.

– Fiscal Impacts on the Department –

Mandatory, in-person registration for deer began in Wisconsin in 1953. A subset of the 626 stations (~110) collect age- and sex-structure data from 20–30,000 deer annually during the traditional 9-day gun season. In-person registration provides accurate counts of annual harvest, recruitment, adult buck mortality rates and sex ratios, deer health assessments, buck antler characteristics, and allows for the collection of biological samples that are used to determine the age structure of the population and for CWD monitoring.

Eliminating or reducing in-person registration of deer will result in savings of approximately \$180,000 in supplies and services for maintaining registration stations each year for the department. The department's expenditure authority will not change, allowing a shift of financial resources and staff time to other purposes such as implementation of the Deer Trustee Report recommendation to establish a Deer Management Assistance Program. Based upon a budget analysis for FY13 (through 6/11/13) on all expenditures department wide for the activity codes WMAP (Registration of Deer, Bear, and Turkey) and WMUB (Deer Registration/CWD Sampling), in-person registration costs totaled \$674,042.30. Electronic registration costs may be half the amount of in-person during the initial year, and less than \$50,000 in future years. This total includes the following expenditures (estimates of potential savings do not include CWD zone expenditures because the department will continue to place an emphasis on contacting hunters and collecting samples in CWD areas):

- Permanent labor & fringe – (\$125,158)
 - Permanent labor allocables – (\$21,353)
 - LTE labor & fringe – (\$22,767)
 - LTE labor allocables – (\$327)
 - Total supplies & services – mileage, station materials, station payments, aging materials, and stipends (\$182,056)

 - CWD registration and sampling expense – (\$322,381)
 - CWD permanent labor & fringe*
 - CWD LTE labor & fringe*
 - Total supplies & services* – CWD carcass tags, bonus buck tags, rent, mileage, electric bills, cell phone bills, CWD samples, and stipends
-

The department evaluated the following benefits and drawbacks to eliminating in person registration of deer. The benefit of increased convenience to deer hunters was seen as a significant improvement.

Pros:

- Significant reduction in staff time and costs
- Increase in customer convenience
- Immediate collection and tabulation of harvest data

Cons:

- Alternative methods (potentially less accurate) of collecting age data would have to be considered
- CWD samples would become difficult to collect
- Economic impact to registration stations (loss of revenue from payments and business)
- The face-to-face interaction between DNR staff and hunters and the social aspect of hunting would be lost
- Potential enforcement issues
- Potential loss in public trust of population estimates

The department currently administers an Wildlife Damage Abatement and Claims Program which reimburses participating farmers for damage caused by certain wildlife species, including deer. These rules do not impact the organization of the program or rules for participation. The program is currently funded in part from the sales of bonus antlerless deer permits. It is likely that bonus antlerless deer permit sales will increase under this proposal, resulting in an increase in available funding to reimburse farmers for damage and for the costs of abatement measures. Under the proposal, the department will charge a fee of \$12.00 for antlerless permits issued in a CWD management zone which are free under current rule. While \$5.00 of the cost of those permits is now statutorily earmarked for CWD management, the remaining \$7.00 is earmarked for the damage program. Another possible opportunity for increased funding exists in units which are designated herd control under current rules, antlerless deer permits are free except for a \$2.00 issuance fee. Under the proposal, one free antlerless deer permit for farmland units would still be included with the purchase of a deer hunting license, but additional permits would cost \$12.00 and the revenue is earmarked for the damage and abatement program. Charging a fee for additional antlerless permits may result in hunters obtaining fewer antlerless permits and harvesting fewer deer overall, potentially offsetting economic benefits to farmers of increased damage program funding. However, decreased antlerless harvest is not an assured outcome. Hunters may be more motivated to utilize permits they have spent money on versus free permits. When statutes were changed to allow the sales of additional turkey hunting permits for \$10.00 each to residents, versus issuing them for free, demand for extra turkey hunting permits remained very high. Under these proposed rules, the department anticipates continuing to generate enough revenue to reimburse farmers for the full amount of damage allowed under the program. The department anticipates that it will not need to prorate the amount paid for claims at current or a slightly increased level of agricultural damage claims.

In the past, changes in the issuance of hunting licenses and permits have resulted in fiscal impacts from the expenses of revising automated license system programming. However, the department's current contract already contains many options for the issuance of \$12.00 bonus permits and free permits with the issuance of archery and firearm deer licenses. Implementation of these rules will require name changes and updates to descriptions of the allowable use of tags, but may not require extensive or expensive programming to create new license types. Additionally, these rule revisions may occur concurrently or will be phased in with a new contract for administration of an automated licensing system and can be included in the initial construction of a new system without additional expense.

These proposed rules will establish that bonus deer hunting permits are valid either on lands which are open to public hunting or on private lands not open to public hunting, but not both. This will be more restrictive than current rules on where bonus permits may be used. A result of this restriction is that many hunters will need to purchase more permits in order to be able to hunt antlerless deer where in locations they have previously hunted than under current rules. While this could result in an increase in the number of bonus permits sold, it is also likely that hunters will limit the locations of their hunting activity to one type of land only. The impact of this proposal on bonus permit sales is undetermined at this time but is not likely to be significant or significantly impact the wildlife damage abatement and claims program or funding for CWD testing which are partially funded with this revenue.

The fiscal impact to the department of these proposed rules is expected to be an effect that can be absorbed under the department's current budget. These rules will result in savings of staff time with reduced duties to set up registration stations, keep them supplied through the season, collect registration stubs, and enter data. These savings in staff time will be offset by new emphasis on consulting with owners of private and public land through the newly established Deer Management Assistance Program. The level of offset will be a result of the level of landowner and manager interest and will vary as the program becomes established and cannot be anticipated at this time. The department's Bureau of Law Enforcement has established a flexible system of conservation and environmental law enforcement and already places a significant emphasis on the most popular activities like deer hunting. Deer hunting and deer herd management has historically been a significant source of segregated funds for department management, licensing, and enforcement activities and will continue to be a significant expenditure under these proposed rules.

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

These proposed rules establish an additional method of managing deer harvest, particularly at the local level, through the deer management assistance program. This management authority may be important considering that the department is prevented from using previously successful, but less popular, deer management regulations under s. 29.016 Stats. The department is proposing season frameworks in these rules that are more likely to be accepted by hunters but which will still result in deer hunting opportunities and provide deer herd management opportunities.

Not implementing these rules will result in maintaining the current deer season frameworks. Maintaining the current deer season framework will not address dissatisfaction that some members of the public have expressed to the department, legislators, and governor. The establishment of a Deer Management Assistance Program is statutorily required.

14. Long Range Implications of Implementing the Rule

White-tailed deer will still be a prominent feature of Wisconsin's landscape whose presence generates economic activity from the related expenditures of hunters and other wildlife enthusiasts. Deer have historically impacted small and large businesses, and will continue to do so. However, the negative economic impacts of deer abundance on agriculture, forestry, and other industries is not expected to increase as a result of these rules.

15. Compare With Approaches Being Used by Federal Government

Federal regulations allow states to manage the wildlife resources located within their boundaries provided they do not conflict with regulations established in the Federal Register. None of these rule changes violate or conflict with the provisions established in the Federal Code of Regulations and the federal government is not involved in any large scale way with deer herd management in Wisconsin.

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

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

Illinois

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

Iowa

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

Michigan

Michigan has one firearm season, two archery seasons, and one muzzleloader season, as well as two antlerless-only seasons and a youth hunt. The firearm season runs November 15 – 30. The archery seasons run October 1 – November 14 and December 1 – January 1, 2014. Michigan’s muzzleloader-only season season is split into three zones with each zone’s season occurring in December and lasting for either 10 or 17 days. The antlerless-only seasons run from September 21–22 and December 23 – January 1, 2014 and the youth hunt occurs on Sept 21–22. Hunters interested in harvesting an antlerless deer must purchase an antlerless license that is valid within a specific DMU for use on either public land or private land. In some DMUs, these licenses may only be purchased over the counter, whereas in other DMU’s there is an application process and drawing.

Minnesota

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

17. Contact Name Scott Loomans	18. Contact Phone Number (608) 267-2452
-----------------------------------	--

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

ATTACHMENT A

1. Summary of Rule’s Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

Wisconsin’s deer hunting opportunities are enthusiastically enjoyed by more than 600,000 participants each year, resulting in significant economic and fiscal benefits for small business. Additionally, high deer populations impact the agriculture, forestry, and other industries in ways that may not be positive. The department anticipates that this will continue to be true after implementation of these rules. The department will continue to manage the deer herd with a goal to obtain a balance between the positive and negative impacts of white-tailed deer. Some management strategies which may have been viewed as aggressive are no longer available to the department. New management strategies proposed in this rule will be viewed by some as a more cooperative effort to manage deer herds. Improved cooperation between hunters, landowners, other stakeholders, and the department will have a beneficial impact for everyone who is affected by white-tailed deer, although the specific economic impact cannot be measured. Over all, the department anticipates none or a minimal impact on small businesses.

A minimal impact to certain small businesses could be a loss of incidental sales at taverns, convenience stores, or sporting good shops who currently volunteer to register deer for the department. A corresponding increase in sales for other area stores as that type of shopping effort is dispersed among stores that do not register deer, will negate overall impact to small businesses.

However, the department agrees that individual taverns which had previously been department registration cooperators will see a reduction in business resulting from sales incidental to deer registration. The department is considering ways to help registration stations take advantage of traditions hunters have adopted by stopping at particular businesses to register deer. The department suggests that businesses could continue to assist hunters by advertising that they can register deer electronically using a computer at their location. The department anticipates a continuing need for some in-person registration to collect biological data. Finally, the department plans to phase-in electronic registration which will provide some time for many businesses to plan for the transition. Department staff heard both positive and negative comments from registration stations about an electronic registration system. We anticipate the impacts will be minimal under the criteria established in 2011 Executive Order 50.

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

Deer Population Goals and Harvest Management Environmental Assessment, 1995.

Information related to registration of deer at private businesses such as convenience and sporting goods stores is from an analysis of department's own budget information for FY 2013.

Wisconsin's Chronic Wasting Disease Management Plan: 2010 – 2025

The 2011 Wisconsin Deer Hunting Summary records that firearm deer hunter numbers exceeded 600,000 for the first time in 1977 and have remained above that number since then. This information provides a basis for the estimate that deer hunting and related economic and fiscal benefits for small business will continue to exist after implementation of these rules.

USDA–APHIS–Wildlife Services Wisconsin Wildlife Damage Abatement and Claims Program – 2012 Summary Report.

Project Summary – Evaluating the interdependency between white-tailed deer and northern hardwood habitat; increasing our understanding of forest management and white-tailed deer health.

Reported Vehicle Killed Deer Removed from Wisconsin Roadways – FY 2011

DNR Spring Turkey Harvest Report – 2011. This document contains information on sales of leftover turkey permits.

3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- Less Stringent Compliance or Reporting Requirements
- Less Stringent Schedules or Deadlines for Compliance or Reporting
- Consolidation or Simplification of Reporting Requirements
- Establishment of performance standards in lieu of Design or Operational Standards
- Exemption of Small Businesses from some or all requirements
- Other, describe:

These rules are applicable to individual deer hunters and impose no compliance or reporting requirements for small businesses.

4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

These rules are applicable to individual sportspersons and impose no compliance or reporting requirements for small businesses, and no design or operational standards are contained in the rule. Because this rule does not add any regulatory requirements for small businesses, the proposed rules will not have a significant economic impact on a substantial number of small businesses under 227.114(6) or 227.14(2g). Note that the cooperation of small businesses with the department as deer and bear registration stations has been completely voluntary.

5. Describe the Rule's Enforcement Provisions

These rules do not establish any new enforcement provisions. The department has determined that existing enforcement efforts and penalties will continue to be effective at assuring a level of compliance with hunting regulations which results in a fair distribution of resources among hunters and other deer enthusiasts, safe hunting seasons, and effective deer herd management.

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

Yes No

Safety and Professional Services
Professional Services, Chs. SPS 1—299
CR 14–067

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Department of Safety and Professional Services in ss. 227.11 (2) (a) and 440.08 (3) (b), Wis. Stats., and interpreting ss. 227.11 (2) (a) and 440.08 (3) (b), Wis. Stats., the Department of Safety and Professional Services will hold a public hearing at the time and place indicated below to consider an order to create sections SPS 4.02 (5s) and 4.10, relating to credential renewal and reinstatement.

Hearing Information

Date: Tuesday, January 13, 2015
Time: 1:00 p.m.
Location: 1400 East Washington Avenue
Room 121B
(Enter at 55 North Dickinson St.)
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. All submittals must be directed to Katie Paff, Program and Policy Analyst, at Kathleen.Paff@wisconsin.gov; or by mail addressed to the Department of Safety and Professional Services, Division of Policy Development, P.O. Box 8366, Madison, Wisconsin 53708. Written comments must be received at or before the public hearing to be included in the record of rule-making proceedings.

Place Where Comments are to be Submitted and Deadline for Submission

Comments may be submitted to Katie Paff, Program and Policy Analyst, Department of Safety and Professional Services, Division of Policy Development, 1400 East Washington Avenue, Room 151, P.O. Box 8366, Madison, WI 53708–8935, or by email to Kathleen.Paff@wisconsin.gov. Comments must be received at or before the public hearing to be held on **January 13, 2015** at 1:00 p.m. to be included in the record of rule-making proceedings.

Copies of Rule

Copies of this proposed rule are available upon request to Katie Paff, Program and Policy Analyst, Department of Safety and Professional Services, Division of Policy Development, 1400 East Washington Avenue, P.O. Box 8366, Madison, Wisconsin 53708, by email at Kathleen.Paff@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

Sections 227.11 (2) (a) and 440.08 (3) (b)

Statutory authority

Sections 227.11 (2) (a) and 440.08 (3) (b)

Explanation of agency authority

Section 227.11 (2) (a), Wis. Stats. Rule-making authority is expressly conferred as follows: (a) Each agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute, but a rule is not valid if the rule exceeds the bounds of correct interpretation. All of the following apply to the promulgation of a rule interpreting the provisions of a statute enforced or administered by an agency: 1. A statutory or nonstatutory provision containing a statement or declaration of legislative intent, purpose, findings, or policy does not confer rule-making authority on the agency or augment the agency's rule-making authority beyond the rule-making authority that is explicitly conferred on the agency by the legislature. 2. A statutory provision describing the agency's general powers or duties does not confer rule-making authority on the agency or augment the agency's rule-making authority beyond the rule-making authority that is explicitly conferred on the agency by the legislature. 3. A statutory provision containing a specific standard, requirement, or threshold does not confer on the agency the authority to promulgate, enforce, or administer a rule that contains a standard, requirement, or threshold that is more restrictive than the standard, requirement, or threshold contained in the statutory provision.

Section 440.08 (3) (b), Wis. Stats. The department or the interested examining board or affiliated credentialing board,

as appropriate, may promulgate rules requiring the holder of a credential who fails to renew the credential within 5 years after its renewal date to complete requirements in order to restore the credential, in addition to the applicable requirements for renewal established under chs. 440 to 480, that the department, examining board or affiliated credentialing board determines are necessary to protect the public health, safety or welfare. The rules may not require the holder to complete educational requirements or pass examinations that are more extensive than the educational or examination requirements that must be completed in order to obtain an initial credential from the department, the examining board or the affiliated credentialing board.

Related statute or rule

The Department and attached rulemaking authorities have established in rule the requirements for credential reinstatement and expired credential renewal for some of the professions. The Department and attached rulemaking authorities are currently or will be promulgating rules to establish the requirements for the remaining professions

Plain language analysis

Current Department rules relating to application procedures need clarification with regards to the appropriate processes for renewing an expired credential and reinstating a surrendered credential, revoked credential, or suspended credential that has not been renewed within 5 years of the renewal date. The proposed rule explicitly states that the initial application process cannot be used for credential reinstatement or expired credential renewal. Credential holders must use the credential reinstatement process or the renewal after 5 years process, as applicable.

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

None

Comparison with rules in adjacent states

Illinois: The Illinois Department of Financial and Professional Regulation (IDFPR) does not have a codified definition of reinstatement or a renewal process for expired credentials that applies across professions. 20 ILCS Sec. 2105–125 gives the IDFPR the authority to restore any credential at any time after the suspension, revocation, placement on probationary status, or other disciplinary action taken by the Department with reference to any certificate upon recommendation of the appropriate board.

Iowa: The Iowa Professional Licensing Bureau uses the term “reinstatement” to refer to the reinstatement of a suspended license and the issuance of a new license following the revocation or voluntary surrender of a license. If the order of revocation or suspension did not establish terms upon which reinstatement might occur, or if the license was voluntarily surrendered, an initial application for reinstatement may not be made until at least one year has elapsed from the date of the order or the date the board accepted the voluntary surrender IAC 193–7.38. The Iowa Professional Licensing Bureau does not have a codified renewal process for expired credentials that applies across professions.

Michigan: “Reinstatement” is defined as the granting of a license or registration, with or without limitations or conditions, to a person whose license or registration has been revoked. “Relicensure” or “reregistration” is defined as the granting of a registration or license to a person whose license

or registration has lapsed for failure to renew within 60 days after the expiration date (Michigan Statutes 339.402).

Minnesota: Minnesota does not have a codified definition of reinstatement or a renewal process for expired credentials that applies across professions.

Summary of factual data and analytical methodologies

The Department is codifying the appropriate processes for reinstating credentials and renewing expired credentials. Adjacent states’ rules were also reviewed.

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

The rule was posted for public comment on the economic impact of the proposed rule, including how this proposed rule may affect businesses, local government units, and individuals, for a period of 14 days. No comments were received relating to the economic impact of the rule.

Fiscal Estimate and Economic Impact Analysis

The Fiscal Estimate and Economic Impact Analysis are below.

Initial Regulatory Flexibility Analysis or Summary

These proposed rules do not have an economic impact on small businesses, as defined in s. 227.114 (1), Stats. The Department’s Regulatory Review Coordinator may be contacted by email at Tom.Engels@wisconsin.gov, or by calling (608) 266–8608.

Agency Contact Person

Katie Paff, Program and Policy Analyst, Department of

Safety and Professional Services, Division of Policy Development, 1400 East Washington Avenue, Room 151, P.O. Box 8935, Madison, Wisconsin 53708; telephone 608–261–4472; email at Kathleen.Paff@wisconsin.gov.

Text of Rule

Section 1. SPS 4.02 (5s) is created to read:

SPS 4.02 (5s) “Reinstatement” means the process established in rule by the credentialing authority by which a credential holder who has unmet disciplinary requirements and failed to renew the credential within 5 years after the renewal date or whose credential has been surrendered or revoked, may apply to have the credential reinstated, with or without conditions. A credential may not be reinstated through the initial application process.

Section 2. SPS 4.10 is created to read:

SPS 4.10 Failure to renew within 5 years after the renewal date. A credential holder who has failed to renew a credential within 5 years after the renewal date holds an expired credential. A credential holder with an expired credential may not reapply for the credential using the initial application process. A credential holder renews an expired credential in accordance with the applicable requirements established in rule by the credentialing authority. This section does not apply to credential holders who have unmet disciplinary requirements or whose credentials have been surrendered or revoked.

Section 3. **EFFECTIVE DATE.** The rules adopted in this order shall take effect on the first day of the month following publication in the Wisconsin administrative register, pursuant to s. 227.22 (2) (intro.), Stats.

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

SPS 4

3. Subject

Credential renewal and reinstatement

4. Fund Sources Affected

GPR FED PRO PRS SEG SEG–S

5. Chapter 20, Stats. Appropriations Affected

20.165(1)(g)

6. Fiscal Effect of Implementing the Rule

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

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

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

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

- Yes No

9. Policy Problem Addressed by the Rule

Current Department rules relating to application procedures need clarification with regards to the appropriate processes for renewing an expired credential and reinstating a surrendered credential, revoked credential, or suspended credential that has not been renewed within 5 years of the renewal date.

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

This rule was posted for 14 days for economic impact comments and none were received.

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

None. This rule does not affect local government units.

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)

This rule will not have an economic or fiscal impact on businesses, business sectors, public utility rate payers, local government units, or the state's economy as a whole.

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

The proposed rule provides greater clarity with regards to application procedures for credential holders. It explicitly states that the initial application process cannot be used for credential reinstatement or expired credential renewal. Credential holders must use the credential reinstatement process or the renewal after 5 years process, as applicable. The alternative to implementing the proposed rule is to continue with the current rules that are unclear for credential holders.

14. Long Range Implications of Implementing the Rule

The long range implication of the proposed rule is greater clarity with regards to application procedures for credential holders

15. Compare With Approaches Being Used by Federal Government

None

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

The Illinois Department of Financial and Professional Regulation (IDFPR) does not have a codified definition of reinstatement or a renewal process for expired credentials that applies across professions.

The Iowa Professional Licensing Bureau uses the term “reinstatement” to refer to the reinstatement of a suspended license and the issuance of a new license following the revocation or voluntary surrender of a license. If the order of revocation or suspension did not establish terms upon which reinstatement might occur, or if the license was voluntarily surrendered, an initial application for reinstatement may not be made until at least one year has elapsed from the date of the order or the date the board accepted the voluntary surrender IAC 193–7.38. The Iowa Professional Licensing Bureau does not have a codified renewal process for expired credentials that applies across professions.

In Michigan, “reinstatement” is defined as the granting of a license or registration, with or without limitations or conditions, to a person whose license or registration has been revoked. “Relicensure” or “reregistration” is defined as the granting of a registration or license to a person whose license or registration has lapsed for failure to renew within 60 days after the expiration date (Michigan Statutes 339.402).

Minnesota does not have a codified definition of reinstatement or a renewal process for expired credentials that applies across professions.

17. Contact Name

Kathleen Paff

18. Contact Phone Number

(608) 261-4472

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

Notice of Hearings

Safety and Professional Services — Chiropractic Examining Board CR 14-068

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Chiropractic Examining Board in ss. 15.08 (5) (b) and 227.11 (2) (a), Wis. Stats., and interpreting s. 446.02 (3)(b), Wis. Stats., the Chiropractic Examining Board will hold a public hearing at the time and place indicated below to consider an order to repeal sections Chir 2.03 (2), 2.07 (3), and 2.11 (2) and (3), to amend sections Chir 2.025, 2.03 (1), 2.07 (1), and 3.03 (1) (e) and (f) and (2) (f) and (g), to repeal and recreate section Chir 3.03 (1) (f), and to create section Chir 2.12, relating to practical exams for chiropractors.

Hearing Information

Date: Thursday, January 15, 2015
Time: 8:40 a.m.
Location: 1400 East Washington Avenue
 Room 121A
 (Enter at 55 North Dickinson St.)
 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 8366, Madison, Wisconsin 53708. Written comments must be received at or before the public hearing to be included in the record of rule-making proceedings.

Place Where Comments are to be Submitted and Deadline for Submission

Comments may be submitted to Shawn Leatherwood, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 1400 East Washington Avenue, Room 151, P.O. Box 8366, Madison, WI 53708-8935, or by email to Shancethea.L Leatherwood@wisconsin.gov. Comments must be received at or before the public hearing to be held on **January 15, 2015**, to be included in the record of rule-making proceedings.

Copies of Rule

Copies of this proposed rule are available upon request to Shawn Leatherwood, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 1400 East Washington Avenue, P.O. Box 8366, Madison, Wisconsin 53708, by email at Shancethea.L Leatherwood@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 446.02 (3) (b), Stats.

Statutory authority

Sections 15.08 (5) (b) and 227.11 (2) (a), Stats., and 2013 Wisconsin Act 20

Explanation of agency authority

The Chiropractic Examining Board, is generally empowered by ss. 15.08 (5) (b) and 227.11 (2) (a), Stats., to promulgate rules that provide guidance within the profession and that interpret the provision of any statute it enforces or administers. This proposed rule was prompted by the passage of 2013 Wisconsin Act 20 which repealed the practical examination requirement for chiropractors. This change

required the Chiropractic Examining Board to promulgate rules which interpret s. 446.02 (3) (b), Stats., and will provide guidance within the profession regarding examination requirements for chiropractors.

Related statute or rule

None.

Plain language analysis

The proposed rule seeks to amend provisions of Wis. Admin. Code chs. Chir 2 and 3 to reflect a change in examination requirements due to the passage of 2013 Wisconsin Act 20. Prior to the Act, chiropractors seeking licensure in Wisconsin had to take and pass a practical examination administered by the Chiropractic Examining Board in accordance with s. 446.02 (3) (a), Stats. 2013 Wisconsin Act 20 eliminated the practical exam requirement for chiropractors by repealing s. 446.02 (3) (a), Stats. Act 20 replaced the practical exam with the requirement to successfully complete Parts I, II, III, and IV of the National Board of Chiropractic Examination administered by the National Board of Chiropractic Examiners. (NBCE) The passing score was set by the legislature at 438 for Part III and at least 475 for Part IV. Having eliminated the practical exam, Act 20 carved out a grandfather clause consisting of a class of applicants that had taken the practical exam between January 1, 2012 and June 30, 2013, the effective date of the Act. The grandfather provision stipulated applicants that had taken the practical exam under s. 446.02 (3) (a), Stats., were not required to successfully complete the practical exam. However, applicants must have achieved a passing score of 375 or higher on Part III and 375 or higher on Part IV of the NBCE Exam and must have successfully completed the exam testing the applicant's knowledge of Wisconsin laws related to the practice of chiropractic. The proposed rules will amend selected provisions of ch. Chir 2 and 3 to bring the current Wisconsin Administrative Code in alignment with the statutory requirements.

SECTION 1. removes the practical examination requirement from the time for completing application provision.

SECTION 2. strikes the parenthetical phrase "but not limited to".

SECTION 3. repeals the practical examination requirement.

SECTION 4. amends the passing grade provision to reflect that the passing grade is set by the legislature.

SECTION 5. repeals the practical examination requirement.

SECTION 6. creates a new provision exempting applicants who have taken the practical exam between January 1, 2012 and June 30, 2013 from passing the practical exam.

SECTION 7. sets forth the practical exam equivalents for endorsement candidates.

SECTION 8. sets forth the special purpose examination equivalents for endorsement candidates.

SECTION 9. amends the provisions regarding verifying completion of a practical or special purpose exam and their equivalents.

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

None.

Comparison with rules in adjacent states

Illinois: Illinois requires applicants to pass Parts I, II, and III of the National Board of Chiropractic Examination with a score of at least 375 on all 3 parts of the test. 68 ILL. ADMIN. CODE 1285.60 b).

Iowa: Licensure in Iowa requires passing Parts I, II, III, and IV of the National Board of Chiropractic Examination. 645 IAC 41.2.

Michigan: Michigan requires applicants to pass Parts I, II, III, and IV of the National Board of Chiropractic Examination and has adopted the NBCE's recommended passing score. MICH. ADMIN. CODE R. 338.12003 and 338.12005.

Minnesota: The prerequisites for licensure in Minnesota include passing the National Board of Chiropractic Examination Parts I and II, the Written Clinical Competency Examination, and the Physiotherapy Examination. Applicants must also pass the NBCE Part IV and an exam on jurisprudence/ethics. Minn. R. 2500.0720.

Summary of factual data and analytical methodologies

No factual data or analytical methodologies were used in the preparation of the proposed rule due to the changes being necessitated by 2011 Wisconsin Act 20.

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

These proposed rules do not have an economic impact on small businesses, as defined in s. 227.114 (1), Stats. The Department's Regulatory Review Coordinator may be contacted by email at Tom.Engels@wisconsin.gov, or by calling (608) 266-8608.

Fiscal Estimate and Economic Impact Analysis

The Fiscal Estimate and Economic Impact Analysis are below.

Agency Contact Person

Shawn Leatherwood, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 1400 East Washington Avenue, Room 151, P.O. Box 8366, Madison, Wisconsin 53708; telephone 608-261-4438; email at Shancethea.L Leatherwood@wisconsin.gov.

Text of Rule

SECTION 1. Chir 2.025 is amended to read:

Chir 2.025 Time for completing applications and taking examination. An application is incomplete until all materials described in s. Chir 2.02 are filed with the board. All application materials described in s. Chir 2.02 shall be filed with the board within one year from the date the first item is filed. If an application is incomplete for more than one year, or if an applicant fails to take an examination within one year from the date the application is complete first item was filed, the applicant shall begin the application process anew ~~in order to take the practical examination demonstrating clinical competence for a license as a chiropractor.~~

SECTION 2. Chir 2.03 (1) is amended to read:

Chir 2.03 (1) STATE LAW EXAMINATION. An applicant shall pass an examination on state laws including ~~but not limited to~~ ch. 446, Stats. and chs. Chir 1 to 44 12.

SECTION 3. Chir 2.03 (2) is repealed.

SECTION 4. Chir 2.07(1) is amended to read: Chir 2.07 (1) NATIONAL EXAMINATION. To pass the examination of the national board of chiropractic

examiners, each applicant for licensure by exam shall receive a grade determined by the board legislature to represent minimum competence to practice. ~~The board may adopt the passing grade recommended by the national board of chiropractic examiners.~~

SECTION 5. Chir 2.07 (3) and 2.11 (2) and (3) are repealed.

SECTION 6. Chir 2.12 is created to read:

Chir 2.12 Practical examination demonstrating clinical competence. An applicant who applied for licensure as a chiropractor between January 1, 2012 and June 30, 2013, and who took the practical exam shall not be required to have successfully completed the practical exam and shall be considered to have satisfied all examination requirements to obtain a license to practice as a chiropractor in this state if the person has completed all of the following:

(a) Achieved a score of 375 or higher on Part III of the examination administered by the National Board of Chiropractic Examiners.

(b) Achieved a score of 375 or higher on Part IV of the examination administered by the National Board of Chiropractic Examiners.

(c) Successfully completed the exam on Wisconsin laws related to the practice of chiropractic.

SECTION 7. Chir 3.03 (1) (e) is amended to read:

Chir 3.03 (1) (e) Has successfully completed a practical examination demonstrating clinical competence which, ~~in the board's judgment, is substantially equivalent to the practical examination demonstrating clinical competence is accepted~~ acceptable by to the board. The board will find acceptable any one of the following as an equivalent to a practical examination: Part IV of the examination administered by the National Board of Chiropractic

Examiners, the state practical exam from the endorsement candidate's jurisdiction or the special purpose examination in chiropractic.

SECTION 8. Chir 3.03 (1) (f) is repealed and recreated to read:

Chir 3.03 (1) (f) Has successfully completed the special purpose examination in chiropractic, if the applicant has not completed one of the following:

1. Passed Parts I and II of the examination administered by the National Board of Chiropractic Examiners and a state practical exam from the endorsement candidate's jurisdiction.

2. Passed Parts I, II, III and IV of the examination administered by the National Board of Chiropractic Examiners.

SECTION 9. Chir 3.03 (2) (f) and (g) are amended to read:

Chir 3.03 (2) (f) Verification of successful completion of a practical examination, or its equivalent, demonstrating clinical competence which, in the board's judgment, is substantially equivalent to the practical examination demonstrating clinical competence is accepted by the board. ~~The verification shall be forwarded directly to the board from the state that administered the examination or from the national board.~~

Chir 3.03 (2) (g) Proof of successful completion of the special purpose examination in chiropractic or the initial licensure Parts I, II, III, and IV of the examination of the national board of chiropractic examiners. ~~The proof of completion shall be forwarded directly to the board from the institution that administered the examination.~~

Section 10. Effective Date. The rules adopted in this order shall take effect on the first day of the month following publication in the Wisconsin Administrative Register, pursuant to s. 227.22 (2) (intro.), Stats.

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

Chir 2, 3

3. Subject

Practical exams for chiropractors

4. Fund Sources Affected

GPR FED PRO PRS SEG SEG-S

5. Chapter 20, Stats. Appropriations Affected

20.165(1)(g)

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

2013 Wisconsin Act 20 repealed the practical exam requirement for persons seeking licensure as a chiropractor in Wisconsin. The proposed rule seeks to amend current administrative code to reflect that change. Prior to the passage of Act 20, applicants for licensure to practice as a chiropractor in Wisconsin were required to successfully complete a practical exam testing clinical skills offered by the Chiropractic Examining Board. Now applicants must successfully complete parts I, II, III, IV of the examination administered by the National Board of Chiropractic Examiners (NBCE). Act 20 set the passing score of 438 for Part III and at least 475 on Part IV. The proposed rule will amend pertinent provisions of Chir 2 and 3 to reflect the changes made by Act 20.

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

The rule was posted on the Department of Safety and Professional Service's website for 14 days in order to solicit comments from businesses, associations representing businesses, local governmental units and individuals that may be affected by the rule. No comments were received.

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

No local governmental units participated in the development of this EIA.

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

This proposed rule will have minimal or no impact on specific businesses, business sectors, public utility rate payers, local governmental units or the state's economy as a whole.

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

By replacing the practical exam with the nationally administered NBCE Exam, the Chiropractic Examining Board will be able to objectively identify individuals who have the knowledge and skills to be safe and effective practitioners. There is no alternative to implementing the rule due to the change in standard was brought about by the passage of 2013 Wisconsin Act 20.

14. Long Range Implications of Implementing the Rule

Consistent administration of the NBCE exam will result in identifying highly skilled and qualified persons becoming licensed chiropractors in Wisconsin.

15. Compare With Approaches Being Used by Federal Government

None.

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

Illinois: Illinois requires applicants to pass Parts I, II, and III of the National Board of Chiropractic Examination test with a score of at least 375 on all 3 parts of the exam. 68 ILL. ADMIN. CODE 1285.60 b).

Iowa: Licensure in Iowa requires passing Parts I, II, III and IV of the National Board of Chiropractic Examination exam. 645 IAC 41.2.

Michigan: Michigan requires applicants to pass Parts I, II, III, and IV of the National Board of Chiropractic Examination test and adopts the test's recommended passing score. MICH. ADMIN. CODE R. 338.12003 and 338.12005.

Minnesota: The prerequisites for licensure in Minnesota include passing the National Board of Chiropractic Examiner's test: Parts I and II, the Written Clinical Competency Examination, and the Physiotherapy Examination. Applicants must also pass the NBCE Part IV and an exam on jurisprudence/ethics. Minn. R. 2500.0720.

17. Contact Name
Shawn Leatherwood

18. Contact Phone Number
608-261-4438

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

**Safety and Professional Services —
Chiropractic Examining Board
CR 14-069**

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Chiropractic Examining Board in ss. 15.08 (5) (b), 227.11 (2) (a), and 446.02 (11), Wis. Stats., and interpreting s. 446.08, Wis. Stats., the Chiropractic Examining Board will hold a public hearing at the time and place indicated below to consider an order to create Chapter Chir 13, relating to the duty to inform patients of treatment options.

Hearing Information

Date: Thursday, January 15, 2015
Time: 8:35 a.m.
Location: 1400 East Washington Avenue
Room 121A
(Enter at 55 North Dickinson St.)
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 8366, Madison, Wisconsin 53708. Written comments must be received at or before the public hearing to be included in the record of rule-making proceedings.

**Place Where Comments are to be Submitted and
Deadline for Submission**

Comments may be submitted to Shawn Leatherwood, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 1400 East Washington Avenue, Room 151, P.O. Box 8366, Madison, WI 53708-8935, or by email to Shancethea.L Leatherwood@wisconsin.gov. Comments must be received at or before the public hearing to be held on **January 15, 2015**, to be included in the record of rule-making proceedings.

Copies of Rule

Copies of this proposed rule are available upon request to Shawn Leatherwood, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 1400 East Washington Avenue, P.O. Box 8366, Madison, Wisconsin 53708, by email at Shancethea.L Leatherwood@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 446.08, Stats.

Statutory authority

Sections 15.08 (5) (b), 227.11 (2) (a), and 446.02 (11), Stats., and 2013 Wisconsin Act 345

Explanation of agency authority

Pursuant to ss. 15.08 (5) (b) and 227.11 (2) (a), Stats., the Chiropractic Examining Board is generally empowered by the legislature to promulgate rules that will provide guidance within the profession and that interpret the statutes it enforces or administers. Section 446.02 (11), Stats., gives express authority to the Chiropractic Examining Board to promulgate rules implementing s. 446.08, Stats., concerning informed consent. The legislature granted this express rule-making provision with the passage of 2013 Wisconsin Act 345. The proposed rule seeks to carry out this legislative mandate by incorporating the new standard regarding informed consent into the current chiropractic rules.

Related statute or rule

None.

Plain language analysis

On April 23, 2014, the Legislature enacted 2013 Wisconsin Act 345, which granted express rule-making authority to the Chiropractic Examining Board to promulgate rules concerning chiropractors and informed consent. This proposed rule codifies what was previously a common law duty under *Hannemann v. Boyson*, 2005 WI 94. Under the common law standard, chiropractors were to advise their patients of all alternate viable medical modes of treatment. Chiropractors were held to the reasonable person standard which required chiropractors to inform their patients of

information necessary for a reasonable person to make an intelligent decision with regard to treatment. 2013 Wisconsin Act 345 changed the standard for chiropractors from the reasonable person standard to the reasonable chiropractor standard which requires disclosure only of the information that a reasonable chiropractor would know and disclose under the circumstances. The proposed rule creates a new chapter codifying the new standards into the current Chiropractic rules.

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

None.

Comparison with rules in adjacent states

Illinois: Illinois does not have comparable statutory requirement for chiropractors to obtain informed consent from their patients.

Iowa: Iowa does not have comparable statutory requirement for chiropractors to obtain informed consent from their patients.

Michigan: Michigan does not have comparable statutory requirement for chiropractors to obtain informed consent from their patients.

Minnesota: Minnesota does not have comparable statutory requirement for chiropractors to obtain informed consent from their patients.

Summary of factual data and analytical methodologies

No factual data or analytical methodologies were used in drafting the proposed rule due to the proposed rule being prompted by the passage of 2013 Wisconsin Act 345.

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

These proposed rules do not have an economic impact on small businesses, as defined in s. 227.114 (1), Stats. The Department's Regulatory Review Coordinator may be contacted by email at Tom.Engels@wisconsin.gov, or by calling (608) 266-8608.

Fiscal Estimate and Economic Impact Analysis

The Fiscal Estimate and Economic Impact Analysis are below.

Agency Contact Person

Shawn Leatherwood, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 1400 East Washington Avenue, Room 151, P.O. Box 8366, Madison, Wisconsin 53708; telephone

608-261-4438; email Shancethea.Leatherwood@wisconsin.gov at

Text of Rule

SECTION 1. Chapter Chir 13 is created to read:

CHAPTER CHIR 13
INFORMED CONSENT

Chir 13.01 Authority and purpose. (1) AUTHORITY. The rules in this chapter are adopted pursuant to the authority delegated by ss. 15.08 (5) (b), 227.11 (2) (a), and 446.08, Stats.

(2) PURPOSE. The purpose of the rules is to define the obligation of a chiropractor to communicate alternate modes of treatment to a patient.

Chir 13.02 Informed Consent. Any chiropractor who treats a patient shall inform the patient about the availability of reasonable alternate modes of treatment and about the benefits and risks of these treatments. The reasonable chiropractor standard is the standard for informing a patient. The reasonable chiropractor standard requires disclosure only of information that a reasonable chiropractor would know and disclose under the circumstances.

Chir 13.03 Exceptions to communication of alternate modes of treatment. (1) The chiropractor's duty to inform patients of alternate modes of treatment does not require disclosure of any of the following:

- (a) Detailed technical information that in all probability a patient would not understand.
- (b) Risks apparent or known to the patient.
- (c) Extremely remote possibilities that might falsely or detrimentally alarm the patient.
- (d) Information in emergencies where failure to provide treatment would be more harmful to the patient than treatment.
- (e) Information in cases where the patient is incapable of consenting.
- (f) Information about alternate modes of treatment for any condition the chiropractor has not included in their diagnosis at the time the chiropractor informs the patient.

Chir 13.04 Recordkeeping. A chiropractor's patient record shall include documentation that he or she has communicated alternate modes of treatment to their patient and has obtained informed consent from their patient in keeping with Chir 11.02 (5).

Section 2. **EFFECTIVE DATE.** The rules adopted in this order shall take effect on the first day of the month following publication in the Wisconsin Administrative Register, pursuant to s. 227.22 (2) (intro.), Stats.

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

Chir 11

3. Subject

Duty to inform patients of treatment options

4. Fund Sources Affected

GPR FED PRO PRS SEG SEG-S

5. Chapter 20, Stats. Appropriations Affected

20.165(1)(g)

6. Fiscal Effect of Implementing the Rule

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

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

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

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

Yes No

9. Policy Problem Addressed by the Rule

This proposed rule is a result of recent legislation. 2013 Wisconsin Act 345 instituted a new standard regarding how chiropractors are to obtain informed consent from their patients. Before Act 345, chiropractors were held to the reasonable person standard which required chiropractors to inform their patients of information necessary for a reasonable person to make an intelligent decision with regard to treatment. As a result of Act 345, chiropractors must obtain informed consent from their patients by advising them of reasonable alternate medical modes of treatment and the benefits and risks of those treatments in a manner consistent with the reasonable chiropractor standard. The reasonable chiropractor standard requires disclosure only of information that a reasonable chiropractor would know and disclose under the circumstances. The proposed rule will incorporate this new standard into the current chiropractic rules.

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

The proposed rule was posted on the Department and Professional Services website for 14 days in order to solicit comments from businesses, associations representing of Safety businesses, local governmental units and individuals that may be affected by the rule. No comments were received

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

No local governmental units participated in the development of this EIA.

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

This proposed rule will not have a significant impact on specific businesses, business sectors, public utility rate payers, local governmental units or the state's economy as a whole.

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

Chiropractors will advise their patients in a manner that is consistent with current law. There is no alternative to implementing the proposed rule due to the changes being necessitated by passage of legislation.

14. Long Range Implications of Implementing the Rule

Chiropractors consistently advising patients of reasonable alternate medical modes of treatment options will result in chiropractors upholding their duty to inform patients in accordance with s. 446.08, Stats.

15. Compare With Approaches Being Used by Federal Government

None.

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

Illinois: Illinois does not have comparable statutory requirement for chiropractors to obtain informed consent from their patients.

Iowa: Iowa does not have comparable statutory requirement for chiropractors to obtain informed consent from their patients

Michigan: Michigan does not have comparable statutory requirement for chiropractors to obtain informed consent from their patients

Minnesota: Minnesota does not have comparable statutory requirement for chiropractors to obtain informed consent from their patients

17. Contact Name
Shawn Leatherwood

18. Contact Phone Number
608-261-4438

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

Notice of Hearing

Transportation EmR1426

NOTICE IS HEREBY GIVEN that, pursuant to ss. 227.17 and 227.24 (4), Stats., the State of Wisconsin Department of Transportation ("WisDOT") will hold a public hearing on Tuesday, January 13, 2015, on an emergency rule that will amend Wis. Admin. Code Chapter Trans 327, relating to motor carrier safety.

Hearing Information

Date: Tuesday, January 13, 2015
Time: 2:00 p.m. to 4:00 p.m.
Location: Wisconsin Department of Transportation
4802 Sheboygan Ave., Room 144B
Madison, Wisconsin 53707

If you have special needs or circumstances regarding communication or accessibility at a hearing, please call Jennifer Peters, Administrative Rulemaking Coordinator, at (608) 267-6979 prior to the hearing date. Accommodations such as ASL interpreters, English translators, or materials in audio format will be made available on request to the fullest extent possible.

Appearances at the Hearing, Submission of Written Comments, and Deadline for Submission

Interested persons are invited to appear at the hearing and will be afforded the opportunity to make an oral presentation of their positions. Persons making oral presentations are requested to submit their written comments. WisDOT will accept written comments until **January 16, 2015**, at 4:30 p.m. Written comments may be sent to: Alison Lebwohl, Bureau of Driver Services Section, Division of Motor Vehicles, WisDOT, 4802 Sheboygan Avenue, Room 809, Madison, Wisconsin 53705, or sent by email to: alison.lebwohl@dot.wi.gov.

Copies of the Rule

You may receive a paper copy of the rules or fiscal estimate by contacting Jennifer Peters, Administrative Rulemaking Coordinator at WisDOT Office of General Counsel, 4802 Sheboygan Avenue, Room 115B, Madison, Wisconsin 53705, or Jennifer.Peters@dot.wi.gov. A copy of the rule is available at <http://adminrules.wisconsin.gov>. This site allows you to view documents associated with this emergency rule promulgation.

Analysis Prepared by the Department of Transportation *Statutes interpreted*

Sections 343.06 (3), 343.065 (3), 343.14 (2) (i) 1., 343.23 (2) (a), 343.265 (1r), and 343.27, Stats.

Statutory authority

Section 343.065 (3), Stats.

Explanation of agency authority

Current law requires the Department of Transportation to administer the driver license law for commercial motor vehicles contained in ch. 343, Wis. Stats. The state has declared its purpose and intent to implement and enforce the federal driver license laws so as to ensure receipt by this state of any federal highway aids. Federal law requires states to conform to federal regulations affecting commercial motor vehicles and their drivers, or face withholding of federal highway funds. See 49 CFR 384.401. The amounts to be withheld from a state that fails to conform to federal regulations affecting commercial motor vehicles or their drivers are 5% of federal highway aid for the first year of substantial nonconformity, and 10% per year of nonconformity thereafter. Current Wisconsin law also requires department rules affecting driver licenses not to conflict with, and be at least as stringent as, standards set by the federal commercial motor vehicle safety act, 49 USC 31301 to 31317 and the regulations adopted under that act.

On December 1, 2008, the federal motor carrier and safety administration (“FMCSA”) issued its final rule concerning “Medical Certification Requirements as Part of the CDL [Commercial Driver License]” at 73 Federal Register 73096. Among other changes, the federal regulation requires commercial motor vehicle drivers to declare whether they intend to engage in driving operations that require the driver to maintain proof of medical examination showing the driver meets fitness qualifications, and requires the state driver licensing agency to “downgrade” the CDL of any driver that fails to timely make such certification or to maintain such proof on file. In response, Wisconsin enacted conforming statutory requirements as part of 2011 Wisconsin Act 32 (the 2011–13 biennial budget act), and required the Department of Transportation to: promulgate rules to define “downgrade” in accordance with federal law and regulations or guidance from the applicable federal agency; establish the process for downgrading a CDL, and whether or not a new CDL document will be issued after a CDL is downgraded; and to establish the process for reinstating a downgraded CDL after the department receives a valid medical certification or other appropriate certification of physical qualifications from the licensee. See s. 343.065 (3), Stats.

This rulemaking implements s. 343.065 (3), Stats. The objective of this rule is to: implement federal requirements for commercial drivers to declare their intended driving type; obtain from drivers federally required medical examiner’s certificates to the department; electronically enter the driver’s self-certification of driving type and the status of their federal medical examiner’s certification online for access by the driver, employers and other state; and for the department to timely make those certificates available for inspection by other states in which the driver may drive.

Related statute or rule

See the “Statutes interpreted”: section; chs. Trans 112 and 327, Wis. Adm. Code.

Plain language analysis

This proposed rule-making would bring Wisconsin into conformity with federal regulations requiring that commercial drivers certify where they drive in commerce

(“Tier of Operation”), and require drivers engaged in non-excepted interstate commerce to keep a valid federal medical certificate on file with the licensing state. The federal medical examiner’s certificate (“FedMed Card”) is proof of a qualified medical examination that determined the driver meets federal medical qualifications for operating a commercial motor vehicle. This rule does not change the requirements for when commercial drivers must hold a valid FedMed Card. Specifically, under this rule-making:

- All commercial drivers must certify their Tier of Operation to the Department. This may be: 1) interstate non-excepted (Tier 1); 2) interstate excepted (Tier 2); 3) intrastate non-excepted (Tier 3); or 4) intrastate excepted (Tier 4). Drivers can make the certification by mail, fax, online or by email, using a computer or a Smartphone, or at a DMV service center.
- All commercial drivers certifying their tier of operations as Tier 1 must file a FedMed Card with the department, and keep it up-to-date. Drivers can file FedMed Cards by mail, fax, online or by email, using a computer or a Smartphone, or at a DMV service center.
- The department will update that commercial driver’s record shown on the Commercial Driver License Information System (CDLIS) within 10 days, showing the self-certified tier of operation and whether the driver has filed any required FedMed Card or medical variance.
- The department will “downgrade” the CDL of any commercial driver who: 1) Does not certify his or her tier of operation by January 30, 2014; 2) Self-certifies himself or herself as a Tier 1 driver and does not provide a valid FedMed Card; or 3) Is a Tier 1 driver whose FedMed Card expires, or is removed or rescinded by FMCSA. Federal regulations require downgrading for these reasons. The department will “downgrade” the CDL by removing the CDL privilege from the holder’s driver’s license, and the driver cannot drive commercial motor vehicles again until he or she certifies a tier of driving other than Tier 1, or submits a valid FedMed Card or medical variance. The driver may reinstate the CDL privilege without additional testing by correcting the cause for the downgrade.
- The department will notify commercial drivers by mail or another method, and notify enrolled employers through Employer Notify, no more than 55 days before a FedMed Card filed with the department expires, upon expiration of that FedMed Card, and immediately upon downgrade.
- Drivers will be able to use the online application – and employers who have signed up to use Employer Notify will be able to use Employer Notify – to verify: downgrade or reinstatement of commercial privileges; tier of operation; and, for Tier 1 drivers, the expiration date of FedMed Cards.
- Fraudulent FedMed Cards – whether presented online, in a DMV field station, or at a safety and weight enforcement facility operated by the Division of State Patrol scale – will be considered a false application and treated accordingly.
- If future federal rule-making provides FedMed information directly to states, then commercial drivers are required to certify only their tier of operation, but not necessarily provide a copy of a current FedMed Card to the department.

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

This rule-making implements the final federal regulations concerning, “Medical Certification Requirements as part of the CDL” at 73 FR 73096 (Dec. 1, 2008). The rulemaking is intended to ensure Wisconsin’s conformity with federal regulations in 49 CFR Part 383 and 391, requiring drivers of commercial motor vehicles to certify their type of driving to the department and submit a copy of their federal medical certificate to the department. All states are required to comply with these regulations.

Comparison with rules in the following states

The four states bordering Wisconsin all have requirements in place similar to those proposed herein. Specifically, all four states: require all CDL holders to certify their commercial driving as 1 of 4 types specified in federal law; require those drivers certifying their driving as “non-excepted interstate” to provide and maintain on file with the state driver licensing authority a valid federal medical certification or medical variance; “downgrade” a CDL by removing all commercial driving privileges, for all commercial drivers that do not complete the self-certification or do not provide the federal medical certificate, by January 30, 2014; and reinstate the downgraded driver that self-certifies a driving type other than non-excepted interstate, or provides a federal medical certification or medical variance. Iowa alone allows a grace period of 60 days after federally required deadlines before downgrading a CDL for noncompliance.

Illinois. Illinois administrative code requires all CDL holders on or after January 30, 2012 to self-certify one of four types of driving before January 30, 2014. Failure to self-certify will result in cancellation of the CDL privileges, per. Drivers who certify their driving as non-excepted interstate driving must submit and maintain on file a medical examiner’s certificate and, if appropriate, a medical variance issued by the federal motor carrier safety administration (FMCSA). The removal of privileges remains in effect until the driver provides valid federal medical certification or medical variance, or certifies that the driver is not engaged in non-excepted interstate driving. These provisions of Illinois law are found at 92 Ill. Admin. Code 1030.22.

Iowa. Iowa requires all CDL holders to self-certify the type of commercial driving as one of four types, not later than January 30, 2014. Drivers who certify their operations as non-excepted interstate must provide the department of transportation a valid federal medical examiner’s certificate. Iowa law prevents the licensing of any applicant for initial or renewal of a CDL who does not self-certify their driving or does not provide a federal medical certificate. Iowa law requires the downgrade of any driver certified as non-excepted. Iowa deems a CDL expired upon the expiration of a federal medical certificate, and 60 days thereafter will entirely remove the commercial driving privileges if the driver does not provide an updated federal medical certificate or self-certifies a type of driving other than non-excepted interstate. Similarly, Iowa does not remove the driving privileges from a driver who fails to make that self-certification until 60 days after that deadline. Drivers that are downgraded may reinstate a CDL by providing a valid federal medical certification or medical variance, or by self-certifying as driving something other than non-excepted interstate. These provisions of Iowa law are found at Iowa Admin. Code 761-607.50(321), and Iowa Statute at 321.182 and Iowa Code Supplement at 321.188 and 321.207.

Michigan. Michigan requires all CDL holders to declare one of four types of driving, and requires driver’s who certify their driving as “non-excepted interstate” to provide a valid federal medical examiner’s certificate”. Michigan will remove all commercial driving privileges from the driver license if a driver fails to certify the type of driving or fails to provide and maintain a valid medical examiner’s certificate or maintain. Although the Department was unable to find Michigan statutes or administrative code provisions related to this, the Michigan Secretary of State’s website includes FAQs that describe the process summarized above, at: <http://www.michigan.gov/sos/0,1607,7-127-48296---f00.html#5.1> under the heading “Commercial Drivers — Self and Medical Certification”. According to the Michigan Secretary of State website, “You will lose your privilege to operate a CMV if you fail to provide a self-certification to the Secretary of State’s Office before your CDL expires or by January 30, 2014, whichever date comes first.” and “If you self-certify as a non-excepted interstate driver, you must present a completed and signed Medical Examiner’s Certificate, which is also known as a DOT Medical Card, to the Secretary of State to continue your CDL application.”

Minnesota. Minnesota statutes require CDL applicants to self-certify one of four types of driving and, if required by federal law (i.e. certifies as a non-exempt interstate driver) to provide and maintain with the driver licensing authority a valid federal medical examiner’s certificate. Minnesota downgrades the commercial driving privileges of any driver who has certified himself or herself as being required by federal law to provide a federal medical examiner’s certificate, unless within 30 days following written notice to the driver that the medical examiner’s certificate is expired, the driver self-certifies as not engaged in non-exempt interstate driving, or provides the required a federal medical examiner’s certificate or medical waiver. Minnesota accomplishes the downgrade by removing the commercial driving privileges from the person’s driver license. These provisions are found at Minnesota Statutes Annot. 171.162. Minnesota administrative rules allow a downgraded CDL driver to reinstate commercial driving privileges within one year or less by submitting a valid federal medical certificate or by self-certifying as driving in something other than non-excepted interstate driving. However, if the commercial driving privileges are downgraded for more than one year the CDL driver must apply as a new CDL applicant and retake the knowledge and driving skills tests. These provisions are found at Minnesota Admin. Code 7421.0800.

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

Wisconsin considered several options for implementing this federal rule: require all commercial drivers, regardless of their tier of operation, to keep a current FedMed Card on record with the department; require that certification or provision of FedMed Cards could only be done in DMV service centers, or only online; require downgraded drivers to appear at service centers to reinstate or repeat some or all of the CDL licensing process. The current approach was selected because it is the most flexible and driver-friendly, yet still meets the letter and spirit of the federal requirements.

Analysis and supporting documentation used to determine effect on small businesses

This rule-making will have a minor fiscal impact on independent truckers and small trucking companies. The new

burdens placed on drivers include having to declare a type of operation to the department and, for drivers that declare themselves to be engaged in non-excepted interstate travel, to file and maintain a FedMed Card with the department. FMCSA estimates that 74% of all CDL holders are engaged in non-excepted interstate commerce. Neither the federal regulations nor this rulemaking change the requirements that drivers engaged in non-excepted interstate commerce maintain a FedMed Card on their person when driving a CMV in interstate commerce, so the burden of this rule is largely a reporting burden. However, this rule will simplify the process of drivers providing proof of a FedMed Card, as the federal regulations will make this information available to all employers, drivers and states through a national database, CDLIS. The department has minimized the driver's compliance costs in a variety of ways.

Effect on Small Business

The department has attempted to identify flexible and business-friendly methods of implementing and enforcing this rule, and has included them in this rule. The department expects the long-term effect on small business to be relatively minor. The requirements of self-certifying a CDL driver's tier of operation, and of Tier 1 drivers maintaining valid FedMed Cards with the department, will be jointly enforced by the Division of State Patrol (through implementation of the federal motor carriers safety regulations) and by DMV. Commercial drivers and trucking companies will need to ensure that they and their drivers have certified their tier of operation, and that Tier 1 drivers have a current FedMed Card on file with the department. FedMed requirements remain unchanged. There is no fee: to certify a tier of operation; to change a certification at any time to another tier of operation; to provide a FedMed Card; to verify one's own tier of operation or the expiration of a FedMed Card, or; to reinstate a CDL after being downgraded. Employers and drivers can check a driver's status online or through employer notification, for no charge. Both drivers and employers are notified 60 days before expiration of a FedMed Card, upon expiration and, if the driver does not provide a new, valid FedMed card or declare a tier of driving other than "non-excepted interstate", upon downgrade. The department has been providing outreach to individual drivers and to trucking companies to inform them of these new requirements, and will continue to do so.

Fiscal Effect

This rule imposes costs in three ways. First, applicants for a CDL are now required to self-certify the type of driving in which they intend to engage. The department estimates that this part of the application process can be completed in less than 1 minute.

Next, the rule requires current CDL holders to self-certify the type of driving in which they intend to engage. Because certification by existing drivers will not be done in conjunction with a CDL application, the department estimates this will take approximately 5 to 10 minutes to complete.

Last, drivers who certify that they engage in non-excepted interstate commerce will be required to file proof of their FedMed Card with the Department, and to refile proof at least once every 2 years when the FedMed card expires. The department believes this can be done in conjunction with the

self-certification process, or separately, in no more than 5 minutes per driver.

In December 2012, there were 299,221 CDLs issued by this state, of which 235,808 were valid and 63,413 were withdrawn or expired. Assuming for purposes of estimating the greatest impact that each of 299,221 CDL holders will comply, and that each driver spends 5 minutes complying with the self-certification requirements of this rule, the aggregate compliance time will be 24,935 hours. CDLs are valid for 8 years, so assuming an even rate of CDL issuance and renewals, the aggregate compliance time may be 3,116 hours per year statewide. FMCSA estimates that 74% of CDL holders engage in non-excepted interstate commerce [See, 71 FR 66743 (Nov 16, 2006)]. If that is correct, as many as 221,423 drivers will also be required to file FedMed Cards with the department. If compliance takes 5 minutes to file a FedMed Card, the aggregate time spent on initial compliance may be 18,451 hours. The FedMed Card is generally valid for 2 years, but drivers with specific medical conditions may require more frequent medical fitness certification (for example, a FedMed Card for a driver with the following diagnoses is valid for one year: high blood pressure, heart disease, diabetes and vision exemption or waiver programs). Assuming that each FedMed Card is valid for 2 years, the aggregate annual time spent on compliance may be 9,226 hours. Taken together, the aggregate time spent to self-certify (3,116 hours) and file FedMed Cards (9,226 hours) could be 12,342 hours annually.

This rule requires the department to enter the self-certification on the CDLIS driving record of each driver. If each record entry can be completed in 2 minutes, the aggregate time to enter may be 1,246 hours, or 0.6 FTE. This figure assumes only one entry per driver every 8 years, which will increase if drivers change their self-certified type of driving during the 8-year CDL duration.

The rule also requires the department to enter a record on CDLIS for each FedMed Card it receives. If each record entry can be completed in 2 minutes, the aggregate time to complete those entries is 7,977 hours every two years, or 3,989 hours per year, or 1.9 FTE.

In all, it appears the department will require 2.5 FTE annually to complete the work required by this rule.

The department will incur ongoing costs to provide written notices to drivers that: 1) a FedMed card will expire within 60 days; 2) that a FedMed Card has expired; and 3) that a CDL is downgraded. It is unknown how many of the estimated 239,336 non-excepted interstate drivers will require such notices from the department, but these notices could be required for each driver every 2 years to coincide with the valid period of a FedMed Card. If 10% of all estimated 221,423 drivers required to file FedMed Cards require all 3 notices every 2 years the department will mail 33,213 notices per year as result of this rule. If half of those drivers have employers on file, mailing those notices to employers will require an additional 16,606 mailed notices.

Anticipated Costs Incurred by Private Sector

See the discussion above for the anticipated time required to comply with this rule. The department has identified flexible and business-friendly methods of implementing and enforcing this rule. As with small businesses, the department expects compliance with this rule to take no more than 10 minutes per driver, at no charge by the department, so overall costs incurred by the private sector are believed to be minimal

per driver, and are the consequence of federal regulations. All commercial drivers and trucking companies will need to ensure that they and their drivers have certified their tier of operation and that Tier 1 drivers have a current FedMed Card on file with the department. FedMed Card requirements remain unchanged. There is no charge by the department to a driver to certify a tier of operation, to change one's tier of operation at any time, to provide a FedMed Card, to verify a tier of operation or the expiration of a FedMed Card, or to reinstate a CDL after being downgraded. Drivers and employers can verify a driver's status online or through employer notification, free of charge. Both drivers and employers are notified 60 days before expiration, upon expiration and upon downgrade. The department is also

providing outreach to individual drivers and to trucking companies.

Agency Contact Person

Alison Lebwohl
Bureau of Driver Services Section, Division of Motor
Vehicles
Wisconsin Department of Transportation
4802 Sheboygan Avenue, Room 809
P. O. Box 7995
Madison, WI 53707-7995
Phone: (608) 266-0054
E-mail: alison.lebwohl@dot.wi.gov

Submittal of Proposed Rules to Legislature

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

Natural Resources
Fish, Game, etc., Chs. NR 1—

CR 14-036

(DNR # FR-07-12)

The Department of Natural Resources has submitted a proposed rule in final draft form to the chief clerk of the Senate and Assembly pursuant to s. 227.19 (2), Stats.

Subject of Rule: County forest time standards grant,
Ch. NR 47

Natural Resources Board Order: FR-07-12

Date Submitted: December 11, 2014

This rule was approved by the Governor on November 7,

2014, pursuant to s. 227.185, Stats.

Safety and Professional Services —
Podiatry Affiliated Credentialing Board

CR 14-035

On December 5, 2014, the Podiatry Affiliated Credentialing Board submitted a rule-making order to the chief clerks of the Senate and the Assembly for referral to appropriate standing committees for review under s. 227.19, Stats. The proposed order revises sections Pod 3.01 and 3.04, relating to continuing education audits of podiatrists.

The Governor approved the rule under s. 227.185, Stats., on November 20, 2014.

Administrative Code Sections Affected by Rule Revisions, Legislative Acts, and Corrections

*The following administrative code provisions were revised by rule orders, modified or repealed by legislative act, or corrected by the Legislative Reference Bureau in **December 2014**. Revised, modified, and corrected administrative code chapters are published in this Register. Repealed chapters of the administrative code are removed from the code on the first day of the first month following publication of this Register. For additional information, contact the Legislative Reference Bureau at (608) 266-3651.*

Revisions by Rule Order

Corrections

Ch. DOC 302

Reprinted to remove pre 1-1-15 text

Ch. DOC 303

Reprinted to remove pre 1-1-15 text
Appendix (Repealed eff. 1-1-15)

Ch. DOC 304

Reprinted to remove pre 1-1-15 text

Ch. DOC 306

Reprinted to remove pre 1-1-15 text

Ch. DOC 308

Reprinted to remove pre 1-1-15 text

Ch. DOC 309

Reprinted to remove pre 1-1-15 text
Appendix

Ch. DOC 310

Reprinted to remove pre 1-1-15 text

Ch. DOC 311

Reprinted to remove pre 1-1-15 text
Appendix

Ch. DOC 313

Reprinted to remove pre 1-1-15 text

Ch. DOC 324

Reprinted to remove pre 1-1-15 text

Ch. DOC 327

Reprinted to remove pre 1-1-15 text

Safety and Professional Services

Ch. SPS 80

Renumbered into SPS 85 eff. 1-1-15

Ch. SPS 81

Renumbered into SPS 85 eff. 1-1-15

Ch. SPS 82

Renumbered into SPS 85 eff. 1-1-15

Ch. SPS 83

Renumbered into SPS 85 eff. 1-1-15

Ch. SPS 84

Renumbered into SPS 85 eff. 1-1-15

Ch. SPS 85

Reprinted to remove pre 1-1-15 text

Ch. SPS 86

Reprinted to remove pre 1-1-15 text

Ch. SPS 87

Reprinted to remove pre 1-1-15 text

Repeals and Modifications of Rules by Legislative Act

Repeals and modifications by legislative act under authority of s. 227.265, Stats.

Editorial Corrections

Corrections by the Legislative Reference Bureau under the authority of s. 13.92 (4) (b) or 35.17 (2), Stats.

Corrections

Ch. DOC 302

DOC 302.03 (1t) (Note), (15g) (Note), (15r) (Note)

DOC 302.23 (5) (Note)

DOC 302.24 (6) (Note)

DOC 302.33 (2) (f), (i) (Note)

DOC 302.34 (1) (Note)

DOC 302.41 (1) (Note)

Ch. DOC 306

DOC 306.21

Ch. DOC 309

Appendix

Ch. DOC 311

Appendix

Ch. DOC 327

DOC 327.09 (2) (p)

Employment Relations Commission**Ch. ERC 91**

Chapter renumbered from PC 1

ERC 91.01

ERC 91.02 (6), (9) (Note)

ERC 91.05 (1)

ERC 91.07

Ch. ERC 92

Chapter renumbered from PC 3

ERC 92.02 (1) and (Notes), (4) (b) 2. (Note)

Ch. ERC 93

Chapter renumbered from PC 4

ERC 93.02 (Note)

ERC 93.05 (3) (a)

Ch. ERC 94

Chapter renumbered from PC 5

ERC 94.03 (8) (b)

ERC 94.10 (Note)

Ch. ERC 95

Chapter renumbered from PC 6

ERC 95.01 (4)

ERC 95.02 (2) (Note)

ERC 95.03 (1)

ERC 95.05

Natural Resources**Ch. NR 214**

NR 214.01

Ch. NR 216

NR 216.02 (3) (Note)

NR 216.07 (6) (b) (Note)

NR 216.21 (3) (b) 3. (Note)

NR 216.22 (4) (Note)

NR 216.29 (1) (e) (Note)

NR 216.32 (4) (Note)

NR 216.43 (1) (Note)

NR 216.44 (2) (Note)

NR 216.55 (2) (Note)

Personnel Commission**Ch. PC 1**

Chapter renumbered to ERC 91

Ch. PC 3

Chapter renumbered to ERC 92

Ch. PC 4

Chapter renumbered to ERC 93

Ch. PC 5

Chapter renumbered to ERC 94

Ch. PC 6

Chapter renumbered to ERC 95

Safety and Professional Services**Ch. SPS 34**

SPS 34.04 (7) (Note)

Ch. SPS 85

SPS 85.230 (1) (c) 3. (Note)

Executive Orders

The following are recent Executive Orders issued by the Governor.

Executive Order 144. Relating to a Proclamation that the Flag of the United States and the Flag of the State of Wisconsin Be Flown at Half-Staff on National Pearl Harbor Remembrance Day. **(December 5, 2014)**

Executive Order 145. Relating to a Special Election for the Twentieth Senate District. **(December 16, 2014)**

Public Notices

Department of Health Services Medicaid Reimbursement for Residential Care Centers

The State of Wisconsin reimburses providers for services provided to Medical Assistance recipients 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 (the Department), is called Medical Assistance (MA) or Medicaid. In addition, Wisconsin has expanded this program to create the BadgerCare Plus program under the authority of Title XIX and Title XXI of the Social Security Act and ss. 49.471 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.

Among the services provided to recipients of services under Medical Assistance and BadgerCare Plus are a group of services which fall under the rubric of Early and Periodic Screening, Diagnosis and Treatment (EPSDT). In Wisconsin these services are referred to as HealthCheck. EPSDT services are authorized under section 1905(a)(13) of the Social Security Act, which describes "other diagnostic, screening, preventive, and rehabilitative services."

Within EPSDT services, Wisconsin provides services in Residential Care Centers (RCCs). RCCs provide treatment to children for whom all other treatment options have failed. Children receiving this treatment are severely traumatized from abuse and neglect and have behavioral health disorders. RCCs provide comprehensive behavioral health treatment to children in out-of-home-care who are in need of services in a structured setting. They provide a pathway for children receiving these services to receive care back in the community, through foster parents or parents.

Change in Payment Methods

The Department is not proposing to change the benefits provided under the RCC benefit, nor is it proposing to change the rate methodology for these services. Rather, the Department is documenting the benefit and the rate methodology in the Medicaid state plan, based on conversations with staff of the Centers for Medicare and Medicaid Services. While the services have been provided under the rubric of EPSDT services as described in the state plan, they were not heretofore specifically enumerated in the state plan. With this change, and amendment to the Medicaid state plan will be submitted to CMS for its review and approval to specifically document RCC services and the rate methodologies employed to reimburse providers for those services.

Copies of Changes

Copies of the state plan pages implementing this change may be obtained free of charge by calling or writing as follows:

Regular Mail:

Al Matano
Bureau of Fiscal Management
Division of Health Care Access and Accountability
P.O. Box 309
Madison, WI 53701-0309

Fax:

(608) 266-1096
Attention: [name]

Telephone:

Al Matano
Bureau of Fiscal Management
(608) 267-6848

E-Mail:

alfred.matano@dhs.wisconsin.gov

Copies of the state plan change will be made 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 changes may be sent by FAX, e-mail, or regular mail to the Division of Health Care Access and Accountability. The FAX number is (608) 266-1096. The e-mail address

is alfred.matano@dhs.wisconsin.gov. Regular mail can be sent to the above address. All written comments will be reviewed and considered.

The written comments will be available for public review between the hours of 7:45 a.m. and 4:30 p.m. daily in Room 318 of the State Office Building, 1 West Wilson Street, Madison, Wisconsin. Revisions may be made in the proposed changed methodology based on comments received.

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



First Class Mail

Dated Material. Please Do Not Delay!