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Emergency Rules Now in Effect

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

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

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

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

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

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

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

Administration

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

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

Finding of Emergency

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

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

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

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

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

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

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

Children and Families

Early Care and Education, Chs. DCF 201–252

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

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

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

Finding of Emergency

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

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

Filed with LRB: November 13, 2012
Publication Date: November 15, 2012
Effective Dates: November 15, 2012 through April 13, 2013
Extension Through: August 11, 2013
Hearing Date: January 14, 2013

Insurance

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

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

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

Finding of Emergency

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

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

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

Natural Resources (2)

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

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

Finding of Emergency

Pursuant to s. 227.24, Stats., the department finds that an emergency exists and that this rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. The welfare of state-licensed commercial fishers, tribal commercial fishers, recreational anglers, and associated businesses is threatened by a decline in the lake trout population in the Apostle Islands vicinity of Lake Superior. The continued, persistent decline in lake trout population abundances and predicted further declines necessitate the current reductions in order to ensure a sustainable lake trout fishery over the long-term. Lake trout harvest limits were negotiated in October 2012 among the Department of Natural Resources and the Red Cliff and Bad River Bands of Lake Superior Chippewa and those changes must be ordered through administrative code. This emergency rule is needed to preserve the public welfare.

Filed with LRB: March 9, 2013
Publication Date: March 27, 2013
Effective Dates: March 27, 2013 through August 23, 2013
Hearing Date: April 11, 2013

Public Instruction

EmR1303 — The state superintendent of public instruction hereby creates **ch. PI 47**, relating to the equivalency process for approving alternative models to evaluate educator practice.

The scope statement for this rule, SS 013–13, was published in Register No. 686, on February 14, 2013, and approved by Superintendent Evers, on February 25, 2013. 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 get the Governor’s approval for the statement of scope or this rule.

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:

Section 115.415 (3), Stats., requires the department to establish an equivalency process for reviewing alternative educator effectiveness systems. The statute also specifies criteria on which the process shall be based, including alignment to the 2011 Interstate Teacher Assessment and Support Consortium and the 2008 Interstate School Leaders Licensure Consortium Educational Leadership Policy Standards. Additionally, the statute explains certain approval requirements.

The Educator Effectiveness System will be fully implemented and mandatory throughout the entire state by the 2014–15 school year. The pilot, which allows schools and districts to implement the system and inform modifications, will go into effect during the 2013–14 school year.

In order to have possible alternative models available for pilot use in 2013–14, there is an urgent need to get the equivalency process in place to approve other evaluation models. Districts intending on applying for an equivalency review of an alternative model must alert the department in writing by March 15, 2013, and January 15 each subsequent year. They must submit their application by April 15 of this year and March 15 each subsequent year in order to be approved.

Filed with LRB: March 4, 2013
Publication Date: March 8, 2013
Effective Dates: March 8, 2013 through August 4, 2013.

Safety and Professional Services (3) *Professional Services, Chs. SPS 1–299*

1. EmR1302 — The Wisconsin Department of Safety and Professional Services hereby adopts an order to amend **sections SPS 60.01; SPS 61.02 (1) (a), (2) (a), (3) (a), and (4) (a); 62.10 (title) and 62.10; 65.01; 65.02 (1); 65.07; and**

65.12 (1) (h) and (i) 6.; and to create **chapter SPS 205** relating to barbers and to barbering and cosmetology schools and instructors, and affecting small business.

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

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

Finding of Emergency

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

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

Filed with LRB: February 14, 2013
Publication Date: February 14, 2013
Effective Dates: February 14, 2013 through July 13, 2013

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

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

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

Finding of Emergency

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

Title XI of the Federal Financial Institutions Reform and Recovery Enforcement Act of 1989, as amended by the Dodd–Frank Act of 2010, dictates reciprocity requirements for real estate appraisers in each state. The federal body that oversees reciprocity requirements is the Appraisal Subcommittee (ASC). Currently, Wis. Admin. Code s. SPS 81.04 is not in compliance with the federal legislation. The Code must be brought into compliance by July 1, 2013. At that time, the ASC will conduct an audit to determine which states are in compliance. If Wisconsin is designated “out of compliance,” then federally regulated financial institutions may not engage a Wisconsin certified or licensed appraiser to perform an appraisal of property for a federally related transaction and other states will not be required to recognize Wisconsin credentialed appraisers seeking reciprocity. In order to implement the federally mandated reciprocity

requirements before July 1, 2013, an emergency rule is needed.

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

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

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

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

Finding of Emergency

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

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

received from a Department–approved firearms–proficiency certifier pursuant to section SPS 34.04.

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

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

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 November 9, 2013

Scope Statements

Agriculture, Trade and Consumer Protection

SS 064–13

This statement of Scope was approved by the governor on June 13, 2013.

Rule No.

Revises Chapters ATCP 70, 71, 75, and 88.

Relating to

Egg grading, handling, packaging, labeling, and retail sales.

Rule Type

Permanent.

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

N/A.

2. Description of the Objective of the Rule

This proposed rule would modify ch. ATCP 88, Wis. Adm. Code, related to egg grading, handling, and labeling, thereby addressing concerns related to the viability of small agricultural operations, assurance of accurate egg marketing, and protection of public health. This revision may also modify ch. ATCP 70, Food Processing Plants, ch. ATCP 71, Food Warehouses, and ch. ATCP 75, Retail Food Establishments, as needed to adopt appropriate provisions related to egg packaging and retail sales of eggs. The proposed rule would help businesses by clarifying licensing and inspection requirements, as well as safety and sanitation requirements applying to the collection, cleaning, grading, packaging, and distribution of eggs. In particular, the proposed rule would: define licensing, facility, and temperature-control requirements; remove obsolete provisions in the existing rule; provide explanatory text to improve rule clarity; and modernize requirements to ensure consistency with existing federal and state egg safety regulations.

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

History and background

Egg production is important to Wisconsin's agricultural economy. Wisconsin ranks 18th in the nation in egg production, producing 1.37 billion eggs each year. Wisconsin also ranks first in the nation in the number of farms producing organic eggs, a market that saw a 39 percent increase for Wisconsin farmers between 2008 and 2011.

Frequent phone and e-mail inquiries to DATCP indicate that ch. ATCP 88 should be revised to clarify licensing and inspection requirements, particularly for egg producers who sell eggs at farmers' markets. In order to sell eggs at a farmers' market, an egg producer must hold the retail food establishment license required for selling processed items at

retail. The retail food establishment regulations (ch. ATCP 75) require foods sold at retail to be obtained from approved sources that comply with law. This requirement is interpreted to mean that washing and packing of eggs for retail sale must be done in a licensed food processing plant (under ch. ATCP 70). However, this requirement is not clearly stated in statute or administrative rules and should therefore be clarified.

The existing ch. ATCP 88 (Egg Grading, Handling and Labeling), created in 1996, consolidated and replaced an earlier version of chs. ATCP 88 (Egg Grade and Quality Standards) and 89 (Eggs, Unfair Practices; which was repealed). The intent of consolidating egg-related rules is sound and will only be strengthened by the proposed rule. Chapter ATCP 88 should be revised to reflect the needs of egg processors, including the need to clarify jurisdictional boundaries between state regulations and new federal rules related to flock management, sanitation, microbiological testing, and evolving food safety concerns related to eggs in general (e.g. transovarian infection of eggs with *Salmonella enteritidis*).

Proposed policies

One goal of the rule revision is to clarify existing requirements. For example, the proposed rule will explicitly state licensing requirements and contain explanatory text added to improve the understanding of requirements associated with operating an egg processor (e.g., requirements related to wash water temperature, prohibiting the freezing of shell eggs, and minimizing condensation). The proposed rule would also include modernized sections to replace obsolete or confusing language (e.g., out-of-print citations, unclear differentiation between mechanical and visual egg-evaluation systems) and more comprehensive requirements, replacing those that are only partially stated in ch. ATCP 88 (e.g., control of domestic animals is mentioned in ch. ATCP 88, but other pest control is addressed in ch. ATCP 70) or are unclear (use of the undefined term "average ambient temperature"), making the rule difficult for producers to understand.

Working closely with industry representatives, DATCP will also explore whether specific facility, sanitation, and temperature-control requirements for eggs during post-collection handling, cleaning, grading, packaging, and distribution in the rule should be revised. DATCP will examine both federal regulations and egg-related regulations in force in other states to identify potential approaches that could be integrated into Wisconsin's egg rule to reduce health risks associated with egg processing and sales licensed by the department. DATCP will strive to ensure that any provision incorporated into a proposed rule is scale-appropriate and does not conflict or overlap with federal regulations generally applying to producers who sell eggs from egg-laying flocks of more than 3,000 birds. The consequences of flock infection, exacerbated by poor sanitation or temperature control, in these operations could have important public health implications. The department plans to continue to exempt licensing for eggs sold on the premises where the eggs are produced directly to household consumers and will

evaluate options for licensing and inspection of egg producers selling their eggs directly to consumers at farmers' markets.

Policy alternatives

If the department does not alter the current rules, there will continue to be confusion about licensing, facility, sanitation, and temperature-control requirements for the collection, cleaning, grading, packing, distribution, and off-farm sale of eggs. To the extent that sanitation and refrigeration are inadequate because of obsolete or unclear regulations, the risk of contaminated eggs causing salmonellosis increases.

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

Sections 93.07 (1), 97.09 (4), 97.29 (1) (g), and 97.30 (1) (b) 1. c., Stats.

93.07 Department duties. It shall be the duty of the department:

(1) REGULATIONS. To make and enforce such regulations, not inconsistent with law, as it may deem necessary for the exercise and discharge of all the powers and duties of the department, and to adopt such measures and make such regulations as are necessary and proper for the enforcement by the state of chs. 93 to 100, which regulations shall have the force of law.

97.09 Rules.

(4) The department may, by rule, establish and enforce standards governing the production, processing, packaging, labeling, transportation, storage, handling, display, sale, including retail sale, and distribution of foods that are needed to protect the public from the sale of adulterated or misbranded foods.

97.29 Food processing plants.

(1) DEFINITIONS. In this section:

(g) "Food processing" means the manufacture or preparation of food for sale through the process of canning, extracting, fermenting, distilling, pickling, freezing, baking, drying, smoking, grinding, cutting, mixing, coating, stuffing, packing, bottling or packaging, or through any other treatment or preservation process. "Food processing" includes the activities of a bakery, confectionary or bottling establishment, and also includes the receipt and salvaging of distressed food for sale or use as food. "Food processing" does not include any of the following:

8. Any other activity exempted by the department by rule.

97.30 Retail food establishments.

(1) DEFINITIONS. In this section:

(b) *Exemptions.* 1. A license is not required under this section for any of the following:

c. A retail food establishment which is exempted from licensing by the department by rule. If a restaurant or other establishment for which a permit has been issued under s. 254.64 is incidentally engaged in operating a retail food establishment at the same location, the department may exempt by rule the restaurant or establishment from licensing under this section. Rules under this subd. 1. c. shall conform to a memorandum of understanding between the department and the department of health services, under which the department of health services agrees to inspect the retail food establishment operations on behalf of the department.

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

DATCP estimates that it will use approximately 0.50 FTE staff to develop this rule. That includes time required for investigation and analysis, rule drafting, preparing related documents, coordinating advisory committee meetings, holding public hearings, and communicating with affected persons and groups. DATCP will use existing staff to develop this rule.

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

This rule will affect Wisconsin egg processors who sell eggs at locations other than where the eggs were produced. It will provide clear guidance for persons seeking to begin an egg business.

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

In general, rules designed to ensure egg safety and consistent egg quality cover activities that include ensuring the health of a flock and sanitation at the farm; egg grading, sanitation, temperature control, packaging, and labeling at egg processing facilities; and safe transportation, handling, and storage of eggs for the retail sale. Federal egg regulations consist of a patchwork of rules involving several agencies that are each responsible for different portions in the continuum of activities designed to promote egg safety and consistent egg quality. One objective of this rulemaking process will be to more clearly differentiate Wisconsin's role from the jurisdiction of federal agencies in regulating egg packaging and sales.

Federal egg regulations

The Egg Products Inspection Act (Title 21 USC, Chapter 15) authorized USDA to create regulations (7 CFR Part 57) for egg processing operations. Egg processing operations generally make products other than shell eggs, such as pasteurized whole eggs and dried egg whites. Additional USDA regulations created under this act authorize at least yearly inspection of hatcheries and at least quarterly inspection of businesses that pack shell eggs for the ultimate consumer. As part of these inspections, USDA assures that egg packages are labeled "Keep Refrigerated" and stored at 45°F or less. For eggs moving in interstate or foreign commerce, federal law and regulations pre-empt state law and regulations relating to temperature control, quality, or grade, condition, weight, or quantity. A voluntary egg grading service is administered by USDA, using essentially the same egg grading standards currently contained in ATCP 88. Regulations governing the voluntary grading of shell eggs are found in Title 7, Part 56 of the Code of Federal Regulations.

Under the Federal Food, Drug, and Cosmetic Act (Title 21 USC, Chapter 9), and the Public Health Service Act (Title 42 USC, Chapter 264), the FDA has enacted egg safety regulations that apply to shell egg producers (21 CFR 118) with 3,000 or more laying hens at a particular farm who are not selling all of the eggs directly to consumers. These regulations require egg producers to register with FDA and to develop a written *Salmonella enteritidis* prevention plan for each farm. The plan must address procurement of chicks, environmental testing, cleaning and disinfection, biosecurity,

pest control, and egg refrigeration. The regulations also require testing of eggs for *Salmonella enteritidis*.

Federal and state regulatory roles

Various federal agencies regulate egg quality and safety. Within USDA, the Animal and Plant Health Inspection Service (APHIS) is responsible for activities related to disease control in flocks of laying hens; the Agricultural Marketing Service (AMS) is responsible for quality grading for shell eggs and the Shell Egg Surveillance program, which ensures eggs for sale meet Grade B or better standards; and the Food Safety and Inspection Service (FSIS) is responsible for inspecting egg products sold in interstate commerce and re-inspecting imported egg products. The U.S. Food and Drug Administration (FDA), on the other hand, is responsible for ensuring sanitation and safety control measures at the farm, monitoring safe handling and good manufacturing practices in shell egg packaging plants that do not use USDA's shell egg grading service, and for issuing recalls involving shell eggs or egg products inspected by either FDA or USDA.

State and local agencies typically are responsible for working in cooperation with FDA to inspect shell egg packaging plants that do not use USDA's shell egg grading service and for inspecting retail food establishments. Wisconsin currently regulates voluntary egg grading in plants that do not use USDA's shell egg grading service, egg packaging and warehouse activities, and retail sales of eggs.

8. Anticipated Economic Impact

DATCP expects the proposed rule to have only a positive economic impact statewide and locally. The rule revision is expected to assist both new and existing egg production businesses by clarifying licensing and inspection requirements. Since most egg businesses that wash, pack, or sell eggs are already licensed and inspected, rule revisions are expected to result in no or minimal costs to these establishments. The rule will not increase licensing fees for egg washing, packaging, or sales and the department will continue to exempt from licensing eggs sold directly to a household consumer on the premises where the eggs are produced. The expected rule revisions will have no economic impact on local governmental units or public utility taxpayers.

Contact Person

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Agriculture, Trade and Consumer Protection

SS 066-13

This statement of Scope was approved by the governor on June 14, 2013.

Rule No.

Revises Chapter ATCP 82, Wis. Adm. Code.

Relating to

Partial collection of milk from bulk tanks on dairy farms and affecting small business.

Rule Type

Emergency.

1. Description of the Objective of the Rule

The department proposes an emergency rule adopting a provision of the Food and Drug Administration's (FDA) Pasteurized Milk Ordinance (PMO) allowing milk haulers to make partial collections of milk from bulk tanks on dairy farms under certain conditions. Currently, Wisconsin Administrative Code requires that bulk milk tanks must be emptied each time milk is collected. The department also plans to propose permanent rule changes to ch. ATCP 82 to incorporate this, along with other, rule changes.

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

Wisconsin ranks second nationally in milk production and operates the nation's largest state dairy inspection program. Wisconsin has by far the largest number of dairy farms operated by licensed dairy producers; the milk from each of these farms is shipped to one of the 400+ licensed dairy plants in the state, or to a licensed dairy plant in another state. Milk must be collected from each farm in a licensed bulk milk tanker, and a licensed bulk milk weigher sampler must properly record the amount of milk collected and sample the milk on each farm for testing.

Current Wisconsin regulations in ch. ATCP 82 require that all milk present in a bulk tank must be collected when a collection is made, i.e. partial collection is forbidden. The intent of this regulation was to ensure that a dairy producer's bulk tank(s) was regularly cleaned and sanitized, and to ensure that collection-to-collection transfers of illegal drug residues did not occur, which could result in increased financial losses to dairy producers forced to dump multiple loads of milk.

The requirement prohibiting partial collection of milk from a bulk tank is outdated. Farm sanitation methods have improved since Wisconsin's rule was first adopted. More frequent testing allows dairy plants to catch issues regarding bulk tank cleanliness faster than in the past. At the same time, the number of dairy farms has decreased, farms have become larger and per cow milk production has risen and many farms have purchased larger bulk tanks, creating new challenges for managing milk collection. For example, some farms now have bulk milk tanks that hold 7,000 or more gallons of milk, while other farms may have several smaller tanks. The average milk truck carries approximately 6,000 gallons of milk. Allowing partial collection of milk from bulk tanks will give dairy plants the tools they need to better manage milk collection from these farms and load trucks to full capacity. This rule will reduce the number of trips required to haul milk, thus saving fuel and reducing wear and tear on the roadway and potentially resulting in significant cost savings.

The PMO allows partial collection of milk provided that the bulk tank is emptied, cleaned and sanitized within at least 72 hours. The PMO also requires an acceptable temperature-recording device to be installed and operating on any bulk tank from which partial collections are made. The bulk milk weigher sampler, and regulatory personnel are required to observe temperature records to be sure that loss of temperature control, which can lead to unacceptable bacterial growth, did not occur following a partial collection. In absence of a temperature-recording device, partial pickups are permitted under the PMO as long as the bulk tank is emptied completely, cleaned and sanitized prior to the next milking. This proposed emergency rule adopts the PMO standards in order to allow partial collections, increase

flexibility for managing milk pickups, and potentially save fuel costs and decrease roadway damage.

Policy Alternatives

If the department does not alter the current rules, Wisconsin dairy plants will continue to lack the same flexibility as dairy plants in other states that adopt the PMO standard and allow plants to collect partial loads of milk. They will be prevented from managing their milk hauling practices in the most cost efficient and profitable manner and will be required to continue to empty bulk tanks each time they make a pickup, even if that means trucks are not filled to capacity or they have to dump over-capacity milk. Not changing this policy has the potential to negatively impact dairy plant and producer costs, causing companies to incur unnecessary fuel and other costs associated with hauling milk, putting them at an economic disadvantage to dairy producers in other states that have adopted the PMO standard. These unnecessary trips also may damage Wisconsin roads.

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

Statutory Authority: ss. 93.07 (1), 97.09 (4), and 97.21 (6), Stats.

93.07 Department duties. It shall be the duty of the department:

(1) REGULATIONS. To make and enforce such regulations, not inconsistent with law, as it may deem necessary for the exercise and discharge of all the powers and duties of the department, and to adopt such measures and make such regulations as are necessary and proper for the enforcement by the state of chs. 93 to 100, which regulations shall have the force of law.

97.09 Rules.

(4) The department may, by rule, establish and enforce standards governing the production, processing, packaging, labeling, transportation, storage, handling, display, sale, including retail sale, and distribution of foods that are needed to protect the public from the sale of adulterated or misbranded foods.

97.21 Milk haulers and milk distributors.

(6) RULE MAKING. The department may promulgate rules to establish amounts of fees required under sub. (4) or to regulate bulk milk tanker operators and milk distributors. The rules may include standards for the construction, maintenance and sanitary operation of bulk milk tankers, milk distribution vehicles and milk distribution facilities; the design, installation, cleaning, and maintenance of equipment and utensils; personnel sanitation; storage and handling of milk and fluid milk products; identification of bulk milk tankers and milk distribution vehicles; and record keeping.

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

DATCP estimates that it will use approximately 0.10 FTE staff to develop this rule. That includes time required for investigation and analysis, rule drafting, preparing related documents, coordinating advisory committee meetings, holding public hearings and communicating with affected persons and groups. DATCP will use existing staff to develop this rule.

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

Dairy producers will gain increased flexibility regarding volume of any bulk milk tanks they purchase to store increased milk volumes. For example, a producer may choose to install a second, smaller bulk tank (to reduce capital equipment costs) because the milk hauler could collect all the milk in the larger tank on the existing schedule and collect the additional milk accumulated in the smaller tank less often. Under the proposed rule, milk haulers will also gain increased flexibility in scheduling collections. For example, fewer milk tanker trips could be necessary for a producer who has two bulk tanks, one of which is completely emptied on the existing schedule and the other one which is used to "top up" a tanker for two consecutive days and is then emptied completely into a second tanker every third day. Reducing the number of milk tanker trips in situations like this could reduce damage to roadways and hauling costs for the dairy plant. Dairy producers and milk haulers would also benefit in the situation where the amount of milk in the farm bulk tank exceeds the remaining capacity of a milk tanker. Currently, the excess milk must be dumped. Under the proposed rule, the milk tanker could be filled to its limit, and the remaining milk held over for an additional collection by a truck with appropriate capacity.

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

The proposed rule would adopt federal PMO regulations related to partial collection of milk from bulk tanks. The federal guidelines in the PMO allow partial collection of milk, but compliance with the PMO is a voluntary effort by state regulatory agencies. Wisconsin's current regulations are more stringent than the PMO and do not allow for partial collection of milk from bulk tanks.

7. Anticipated Economic Impact

This proposed rule change is anticipated to have no negative impact, but rather a positive economic impact for Wisconsin's dairy industry. It will make Wisconsin's regulations regarding partial collection of milk from bulk tanks consistent with practices in other states, including those elsewhere in the Upper Midwest. It will allow dairy plants to manage their milk hauling practices more efficiently and profitably. Although the proposed rule will allow partial collection of bulk milk, it is not anticipated to be a widespread practice, but one tool that a dairy plant may use to manage milk hauling practices. The rule will not modify fees or have an economic impact on local governmental units or public utility taxpayers.

Contact Person

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Agriculture, Trade and Consumer Protection

SS 067-13

This statement of Scope was approved by the governor on June 14, 2013.

Rule No.

Revises Chapter ATCP 82, Wis. Adm. Code.

Relating to

Milk haulers and affecting small business.

Rule Type

Permanent.

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

N/A.

2. Description of the Objective of the Rule

Chapter ATCP 82 (Milk Haulers) regulates bulk milk tanker licensing, construction, maintenance, cleaning and sanitizing requirements; bulk milk weigher sampler requirements, and mandatory procedures for collecting milk from dairy farms, collecting milk samples for testing, and delivering milk from a dairy farm to a dairy plant. The department proposes a rule in ch. ATCP 82 adopting a provision of the Food and Drug Administration's (FDA) Pasteurized Milk Ordinance (PMO) which would allow milk haulers to make partial collections of milk from bulk tanks on dairy farms under certain conditions. Currently, bulk milk tanks must be emptied each time milk is collected. The proposed revision would allow partial collections and would necessarily also entail revision of requirements for milk agitation and cooling, bulk tank milk temperature measurement, the cessation of pumping milk to a bulk tank when a partial collection is being made from that tank, bulk tank cleaning and sanitizing, and the applicability of a positive drug residue test result to all partial loads containing milk from the same milking. The department also proposes to make other changes to ch. ATCP 82 dealing with an exemption of Wisconsin license requirements for trucks holding a Grade "A" permit from another state, exemption of tanker Grade "A" permit requirements for employees of an already permit-holding bulk milk tanker owner, bulk milk weigher sampler license renewal requirements, re-inspection of bulk milk weigher samplers, washing and sanitizing of bulk milk tankers and associated hoses and pumps, thermometer calibration, rinsing of bulk tank volume measurement rods, supplies required for milk collection and sampling, and sealing of the bulk milk tanker access port. The other changes proposed would be made to ensure consistency between ch. ATCP 82 and the PMO, and would reflect evolving industry standards.

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

Wisconsin ranks second nationally in milk production and operates the nation's largest state dairy inspection program. Wisconsin has by far the largest number of dairy farms operated by licensed dairy producers; the milk from each of these farms is shipped to one of the 400+ licensed dairy plants in the state, or to a licensed dairy plant in another state. Milk must be collected from each farm in a licensed bulk milk tanker, and a licensed bulk milk weigher sampler must properly record the amount of milk collected and sample the milk on each farm for testing.

Current Wisconsin regulations in ch. ATCP 82 require that all milk present in a bulk tank must be collected when a collection is made, i.e. partial collection is forbidden. The original intent of this regulation was to ensure that a dairy producer's bulk tank(s) was regularly cleaned and sanitized,

and to ensure that collection-to-collection transfers of illegal drug residues did not occur, which could result in increased financial losses to dairy producers forced to dump multiple loads of milk.

Despite the worthwhile intentions which led to it being written, the requirement prohibiting partial collection of milk from a bulk tank is outdated. Farm sanitation methods have improved since Wisconsin's rule was first adopted. Frequent testing allows dairy plants to quickly address problems related to bulk tank cleanliness. As the number of dairy farms has decreased, farms have become larger, and per cow milk production has risen, many farms have purchased larger bulk tanks, creating new challenges for managing milk collection. For example, some farms now have bulk milk tanks that hold 7,000 or more gallons of milk, while other farms may have several smaller tanks. A typical milk truck carries approximately 6,000 gallons of milk. Allowing partial collection of milk from bulk tanks will give dairy plants the tools they need to more efficiently manage milk collection from these farms and avoid loading trucks beyond legal capacity. In the long run, increased flexibility for collection of milk could result in fewer trips required to haul milk, with associated fuel savings, and less wear and tear on roadways.

The PMO allows partial collection of milk provided that the bulk tank is emptied, cleaned and sanitized within at least 72 hours. The PMO also requires an acceptable temperature-recording device to be installed and operating on any bulk tank from which partial collections are made. The bulk milk weigher sampler, and regulatory personnel are required to observe temperature records to be sure that loss of temperature control, which can lead to unacceptable bacterial growth, did not occur following a partial collection. In absence of a temperature-recording device, partial pickups are permitted under the PMO as long as the bulk tank is emptied completely, cleaned and sanitized prior to the next milking. This proposed rule adopts these PMO standards.

Approximately 4,000 bulk milk tankers from Wisconsin and other states deliver milk to Wisconsin dairy plants. By regulation each of these trucks must be licensed in Wisconsin and, if carrying Grade "A" milk, hold a Grade "A" permit. It is logistically challenging to license all of these tankers, particularly those which are infrequently in Wisconsin. The department will consider removing the licensing requirement and fee while accepting Grade "A" permits issued by any state and instituting a Grade "A" permit inspection fee for bulk milk tankers based in Wisconsin. This change would benefit the milk hauling industry and allow re-assignment of department sanitarians to other tasks. The department will also consider removing a confusing exemption of tanker Grade "A" permit requirements for employees of an already permit-holding bulk milk tanker owner. Removal of this exemption will bring Wisconsin requirements in line with the PMO and create a level playing field for milk haulers.

The department currently licenses about 3,700 bulk milk weigher samplers, who measure the weight of milk collected and obtain a representative sample of each producer's milk for mandatory testing. The PMO requires a biennial field examination of each bulk milk weigher sampler before license renewal to ensure that s/he is using proper sample collection technique. Wisconsin regulations make the field examination optional. In order to improve consistency with the PMO, the department will consider changing the current bulk milk weigher sampler examination regulations, along with the re-inspection procedure used to evaluate bulk milk

weigher samplers who have been found to be in violation of Wisconsin food safety law.

The department will also consider updating requirements for washing and sanitizing of bulk milk tankers and associated hoses and pumps, thermometer calibration, rinsing of bulk tank volume measurement rods, supplies required for milk collection and sampling, and sealing of the bulk milk tanker access port. These updates will improve consistency between Wisconsin rules and the PMO, while reflecting current industry standard practices.

Policy alternatives

If the department does not alter the current rules, Wisconsin dairy plants will lack the flexibility dairy plants have in other states that adopt the PMO standard and allow plants to collect partial loads of milk. Dairy plant operators will be prevented from managing their milk hauling practices in the most cost efficient and profitable manner and will be required to continue to empty bulk tanks each time they make a pickup, even if that means trucks are not filled to capacity or over-capacity milk is dumped. Not changing this policy has the potential to negatively impact dairy plant and producer costs, causing companies to incur unnecessary fuel and other costs associated with hauling milk, putting them at an economic disadvantage to dairy producers in other states that have adopted the PMO standard. These unnecessary trips also may damage Wisconsin roads. In addition, failure to update requirements, such as those related to tanker permits, bulk milk weigher sampler examination and re-inspection, and washing and sanitizing of bulk milk tankers and associated hoses and pumps, decreases the department's flexibility in assigning work while increasing the likelihood of obtaining an unacceptable score when the department's milk regulatory program is evaluated for PMO-compliance by the FDA.

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

Statutory Authority: ss. 93.07 (1), 97.09 (4), and 97.21 (6), Stats.

93.07 Department duties. It shall be the duty of the department:

(1) **REGULATIONS.** To make and enforce such regulations, not inconsistent with law, as it may deem necessary for the exercise and discharge of all the powers and duties of the department, and to adopt such measures and make such regulations as are necessary and proper for the enforcement by the state of chs. 93 to 100, which regulations shall have the force of law.

97.09 Rules.

(4) The department may, by rule, establish and enforce standards governing the production, processing, packaging, labeling, transportation, storage, handling, display, sale, including retail sale, and distribution of foods that are needed to protect the public from the sale of adulterated or misbranded foods.

97.21 Milk haulers and milk distributors.

(6) **RULE MAKING.** The department may promulgate rules to establish amounts of fees required under sub. (4) or to regulate bulk milk tanker operators and milk distributors. The rules may include standards for the construction, maintenance and sanitary operation of bulk milk tankers, milk distribution vehicles and milk distribution facilities; the design, installation, cleaning and maintenance of equipment and utensils; personnel sanitation; storage and handling of milk and fluid milk products; identification of bulk milk tankers and milk distribution vehicles; and record keeping.

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

DATCP estimates that it will use approximately 0.10 FTE staff to develop this rule. That includes time required for investigation and analysis, rule drafting, preparing related documents, coordinating advisory committee meetings, holding public hearings, and communicating with affected persons and groups. DATCP will use existing staff to develop this rule.

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

Dairy producers will gain increased flexibility regarding volume of bulk milk tanks they purchase to store increased milk volumes. For example, a producer may choose to install a second, smaller bulk tank (to reduce capital equipment costs) because the milk hauler could collect a truckload from the larger tank on the existing schedule and less often collect a partial load from the larger tank plus the additional milk accumulated in the smaller tank. Under the proposed rule, milk haulers will also gain increased flexibility in scheduling collections. For example, fewer milk tanker trips could be necessary for a producer who has two bulk tanks, one of which is completely emptied on the existing schedule and the other one which is used to "top up" a tanker for two consecutive days and is then emptied completely into a second tanker every third day. Reducing the number of milk tanker trips in situations like this could reduce damage to roadways and hauling costs for the dairy plant. Dairy producers and milk haulers would also benefit in the situation where the amount of milk in the farm bulk tank exceeds the remaining capacity of a milk tanker. Currently, the excess milk must be dumped. Under the proposed rule, the milk tanker could be filled to its limit, and the remaining milk held over for an additional collection by a truck with appropriate capacity. Dairy plant operators and milk haulers would benefit from Wisconsin recognizing other states' Grade "A" milk tanker permits. More consistent evaluation of bulk milk weigher samplers would reduce the likelihood of measurement error or invalid milk quality testing results – outcomes that could benefit dairy producers and dairy plant operators alike.

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

The proposed rule would adopt federal PMO regulations related to partial collection of milk from bulk tanks. The federal guidelines in the PMO allow partial collection of milk. Wisconsin's regulations are more stringent than the PMO and do not allow for partial collection of milk from bulk tanks. Several other provisions of the PMO would be adopted, thus decreasing the likelihood of inconsistencies in milk regulation between states. Although compliance with the PMO is technically a voluntary effort by state regulatory agencies, Wisconsin is periodically evaluated by the FDA for compliance with PMO standards. Failure to pass the FDA audit would jeopardize the state's interstate and international dairy industry.

7. Anticipated Economic Impact

This rule change is anticipated to have no negative impact, but a positive economic impact for Wisconsin's dairy industry. It will make Wisconsin's regulations regarding partial collection of milk from bulk tanks, and other milk hauling procedures, consistent with practices in other states,

including those elsewhere in the Upper Midwest. It will allow dairy plants to manage their milk hauling practices more efficiently and profitably. Although the proposed rule will allow partial collection of bulk milk, it is not anticipated to be a widespread practice, but one tool that a dairy plant may use to manage milk hauling practices. The rule may reduce milk tanker licensing costs to industry. The rule will not modify fees or have an economic impact on local governmental units or public utility taxpayers.

Contact Person

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Government Accountability Board

SS 065-13

This statement of Scope was approved by the governor on June 13, 2013.

Rule No.

Revises Chapter GAB 5.

Relating to

Ballot security and interpreting ss. 5.84, 5.86, 5.87, 5.90, 5.905, 5.91, 7.23, 7.51, and 9.01, Stats.

Rule Type

Permanent.

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

N/A.

2. Detailed Description of the Objective of the Proposed Rule

The Government Accountability Board's rule on ballot security, under ss. 7.23 and 7.51, Stats., has become outdated because of advances in technology and because of heightened administrative and public concerns about ballot security in light of recent security and chain-of-custody problems in elections both in Wisconsin and in other states. To address those concerns and to update ballot security procedures in Wisconsin, the Board proposes to repeal and re-create chapter GAB 5, the ballot security rule.

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

Existing policy

Chapter GAB 5 was originally published in 1992 and has not been amended except for renumbering and a correction in 2008. (Registers April 2008 No. 628 and June 2008 No. 630). Numerous statutory amendments have been made since 1992 for which ch. GAB 5 applies. For example, current ch. GAB 5 is silent as to the security of present-day electronic voting systems.

Proposed policy

Recreated Chapter GAB 5 will address the statutory changes that have occurred since 1992 and create security instructions for the safeguarding of electronic tabulating voting equipment memory devices for periods before, during,

and after elections. The rule also provides flexibility for counties to request approval to implement alternative security procedures.

Alternatives

A) Do Nothing — leave ch. GAB 5 as it is.

- 1) Pros: This alternative means that no rule revision is necessary and staff resources will not be diverted from other tasks and duties needing the attention of the GAB.
- 2) Cons: The absence of rule revision in this instance will perpetuate the already out of date security measures and instructions provided in ch. GAB 5 which are largely due to technological innovations. As the pace of technology ever quickens and ch. GAB 5 lags behind even further, the actual and perceived problems of ballot security will only become more egregious.

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

Section 7.23, Stats., establishes timelines for the destruction of election materials. Section 7.51, Stats., establishes requirements for securing ballots and electronic voting equipment and documenting their chain of custody.

Section 5.05 (1) (f), Stats., expressly authorizes the Board to promulgate rules under ch. 227, Stats., for the purpose of interpreting or implementing the laws regulating the conduct of elections or election campaigns or ensuring their proper administration.

Section 227.11 (2) (a), Stats., expressly authorizes the Board to promulgate rules to interpret the provisions of statutes the Board enforces or administers.

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

20 hours.

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

This rule will affect county and municipal election officials.

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

Federal law does not apply to the preparation, printing, or security of ballots. Federal law does require that materials, including ballots, relating to any election in which a federal office is on the ballot, must be preserved for not fewer than 22 months.

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

The anticipated economic impact from the implementation of the proposed order is minimal to none. There may be some minimal economic impact on local officials, but will not affect small businesses.

Contact Person

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Safety and Professional Services

Professional Services, Chs. 1–299

SS 063–13

This statement of scope was approved by the governor on June 10, 2013.

Rule No.

Revises Chapter SPS 34.

Relating to

Firearms and other dangerous weapons for private security personnel, private detectives, and private investigators or special investigators.

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 proposed rule revision is to update this chapter so that the chapter no longer conflicts with 2011 Wisconsin Act 35 (Wisconsin's Concealed Carry Law).

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

This chapter currently establishes (1) qualifications and other requirements that apply to private security personnel, private detectives, and private investigators or special investigators, who carry firearms or other dangerous weapons or who transport loaded firearms — and to the employers of those individuals; (2) qualifications and other requirements that apply to instructors who certify the firearms proficiency of the individuals who carry firearms; and (3) qualifications and other requirements that apply to entities which train and certify those firearms instructors. The Department enforces compliance with these qualifications and requirements primarily through (1) issuance and annual renewal of a firearms permit for each individual who carries a firearm; and (2) issuance and biennial renewal of a firearms–proficiency–certifier approval for each firearms instructor.

The rule revision under this Scope Statement is primarily expected to exempt all of the requirements in this chapter from applying to anyone who carries a concealed weapon in accordance with a permit issued under section 175.60 of the Statutes and Chapters Jus 17 and 18.

Alternatives to this revision include continuing to apply all of this chapter's requirements that currently determine *who* can carry a firearm — but updating the requirements that determine *how* these individuals can carry a firearm; that is, whether the firearm can be concealed rather than carried openly. This alternative would include modifying the current restrictions against concealed carry so that they no longer conflict with 2011 Act 35. The alternatives also include updating the chapter wherever needed so that it is consistent with contemporary industry and regulatory practices.

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

Section 227.11 (2) (a) of the Statutes authorizes the Department to “promulgate rules interpreting the provisions of any statute enforced or administered” by the Department, if the rule is considered necessary to effectuate the purpose of the statute.

Section 440.26 (2) (c) of the Statutes states “the Department shall prescribe, by rule, such qualifications as it deems appropriate” relating to the professional competence of private security personnel, private detectives, and private investigators or special investigators. To fulfill this duty, the Department has codified the qualifications described in section 3 above, along with qualifications that apply independent of whether a firearm is carried.

Section 440.26 (3m) of the Statutes states the “Department shall promulgate rules relating to the carrying of dangerous weapons by a person who holds a license or permit issued under [section 440.26] or who is employed by a person licensed under [section 440.26].” Section 440.26 (3m), Stats., also requires these rules to allow carrying concealed weapons in the manner permitted under section 175.60 of the Statutes.

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

The Department estimates approximately 100 hours will be needed to perform the review and develop the proposed rule revisions. This time includes meeting with stakeholders, drafting the rule revisions, and processing the revisions through public hearings, legislative review, and adoption. The Department will assign existing staff to perform the review and develop the rule revisions, and no other resources will be needed.

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

Private security personnel, private detectives, and private investigators or special investigators, who carry firearms or transport loaded firearms — and the employers of those individuals.

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

An Internet–based search found only the following two federal regulations that specifically address carrying of firearms by private security personnel, private detectives, and private investigators or special investigators: (1) under section 2201a of title 42 of the United States Code, private security personnel at nuclear power facilities may be authorized to carry standard weapons after passing a background check and successfully completing specified training in the use of firearms; and (2) appendix B of part 73 of title 10 of the Code of Federal Regulations contains the corresponding requirements for the weapons training, and requires demonstration of the specified firearms proficiency at least every 12 months. As Noticed in the *Federal Register* on February 3, 2011, and January 10, 2013, and as authorized under the Energy Policy Act of 2005, the Nuclear Regulatory Commission has proposed revising 10 CFR 73 to address (1) voluntary use of enhanced weapons — such as machine guns and semi–automatic, large capacity assault weapons — at these facilities, including at–reactor independent spent fuel storage installations; (2) preemption of any other federal,

state, or local requirements that would otherwise prohibit use of these enhanced weapons; and (3) screening all security personnel who use standard or enhanced weapons, through the National Instant Criminal Background Check System, as maintained by the U.S. Department of Justice.

Under sections 926B and 926C of title 18 of the United States Code, individual states and their political subdivisions are not allowed to restrict qualified current and former law enforcement officers from carrying concealed firearms, except on state- or local-government-owned property or on private property that is restricted against such carry by the property owner.

According to the rule analysis issued by the Wisconsin Department of Justice for Chapters Jus 17 and 18, there are no federal regulations that relate to the licensing of concealed carry by persons other than current and former law enforcement officers, nor are there any federal regulations governing the certification of firearms instructors for concealed-carry purposes.

Various sections of the U.S. Code and the Code of Federal Regulations, such as 18 U.S.C. 930, address possession of firearms or other dangerous weapons in federal facilities and on federal property, such as post offices, Internal Revenue Service offices, federal court buildings, military facilities, Veterans Administration facilities, federal correctional facilities, Amtrak trains and facilities, Corps of Engineers-controlled property, and national parks and wildlife preserves.

Under 18 U.S.C. 922 (d), felons, illegal aliens, and other specified persons are prohibited from purchasing or possessing firearms — and this prohibition is partly enforced

by States through background checks under part 25 of title 28 of the Code of Federal Regulations during an application process for a concealed-carry or other firearm permit. As Noticed in the April 23, 2013, *Federal Register*, the U.S. Department of Health and Human Services is considering rule revisions to reduce any unnecessary legal barriers relating to the Health Insurance Portability and Accountability Act and use of the federal National Instant Criminal Background Check System.

Under 18 U.S.C. 922 (q), possession of a firearm is prohibited in a school zone, except as authorized in that section.

None of the intended rule revisions are expected to conflict with the above federal regulations.

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

Since individuals other than former federal law enforcement officers who would obtain a concealed-carry permit under Chapters Jus 17 and 18 in lieu of obtaining a firearms permit under Chapter SPS 34 would renew their permit once every five years instead of demonstrating their firearms proficiency annually under Chapter SPS 34, those individuals and their employers would likely incur lower costs if this intended rule revision is implemented. However, firearms-proficiency certifiers for these individuals would likely receive lower revenues.

Contact Person

Sam Rockweiler, at telephone (608) 266-0797.

Submittal of Proposed Rules to Legislative Council Clearinghouse

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

Agriculture, Trade and Consumer Protection CR 13-043

On June 5, 2013, the Wisconsin Department of Agriculture, Trade and Consumer Protection referred a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse, pursuant to s. 227.15, Stats.

The scope statement for this rule, SS 089-12, was approved by the Governor on November 8, 2012, published in Register No. 683, on November 30, 2012, and approved by the Board of Agriculture, Trade and Consumer Protection on December 18, 2013.

Analysis

The proposed rules revise Chapters ATCP 90, 91, 92, 113, and 136, relating to fair packaging and labeling; selling commodities by weight, measure, or count; weights and measures; gasoline advertising; and mobile air conditioners — reclaiming or recycling refrigerant.

Agency Procedure for Promulgation

The department will hold a public hearing on this rule beginning August 7, 2013. The department's Division of Trade and Consumer Protection is primarily responsible for this rule.

Contact Person

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

Insurance CR 13-044

On June 10, 2013, the Office of the Commissioner of Insurance submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse, in accordance with ss. 227.14 (4m) and 227.15, Stats.

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

Analysis

These changes will affect ss. Ins 17.01, 17.28 (3), and 17.28 (6), Wis. Adm. Code, relating to the Injured Patients and Families Compensation Fund Annual Fund and Mediation Panel Fees, and ISO code amendments for the fiscal year beginning July 1, 2013, and affecting small business.

Agency Procedure for Promulgation

The date for the public hearing is July 23, 2013 for both this proposed permanent rule and the emergency rule effective June 12, 2013.

Contact Person

A copy of the proposed rule may be obtained from the website 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 Julie E. Walsh at (608) 264-8101 or e-mail at julie.walsh@wisconsin.gov in the OCI Legal Unit.

Workforce Development Employment and Training, Chs. DWD 805-830 CR 13-045

On June 14, 2013, the Wisconsin Department of Workforce Development submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse, pursuant to s. 227.15, Stats.

The scope statement for this rule, SS 046-13, was approved by the Governor on April 24, 2013, published in Register No. 689 on May 14, 2013, and approved by the DWD Secretary on May 24, 2013.

Analysis

The rule creates Chapter DWD 801, relating to workforce training grants under 2013 Wis. Act 9. The proposed rule concerns the procedures and criteria for the awarding of grants for workforce training programs under s. 106.27 (2g), Stats. A detailed analysis is included with the rule text and in the notice of hearing.

Agency Procedure for Promulgation

A public hearing on the proposed rule is required and has been scheduled for July 15, 2013. The Office of the Secretary of the Department of Workforce Development is primarily responsible for promulgation of the rules.

Contact Person

Howard Bernstein, Legal Counsel
Department of Workforce Development
P.O. Box 7946
Madison, WI 53707
(608) 266-9427
howard.bernstein@dwd.wisconsin.gov

Rule–Making Notices

Notice of Hearing

Administration

CR 13–041

EmR1305

NOTICE IS HEREBY GIVEN that pursuant to ss. 16.004 (1) and 227.11 (2) (a), Stats., the Department of Administration will hold a public hearing on the emergency rule and proposed permanent rule to amend Chapter Adm 2 relating to use of state buildings and facilities.

Hearing Information

Date: Friday, July 12, 2013
Time: 2:30 p.m. to 4:30 p.m.
Location: St. Croix Room
 WI Department of Administration Building
 101 East Wilson Street, 1st Floor
 Madison, WI 53702

Appearance at Hearing and Submission of Written Comments

Interested persons are invited to appear at the hearing and present comments on the proposed rule. Persons appearing may make an oral presentation but are also urged to submit facts, opinions, and arguments in writing as well. Facts, opinions, and arguments may also be submitted in writing without personal appearance. Written comments on the proposed rule may be submitted to:

Donna Sorenson
 Department of Administration
 P.O. Box 7864
 Madison, WI 53707–7864
 Email: donna.sorenson@wisconsin.gov
 Fax: (608) 267–3842

The deadline for submitting comments to the Department is **4:30 p.m. on July 15, 2013.**

Availability of Rules

Copies of this proposed rule and fiscal estimate are available upon request to Donna Sorenson, Department of Administration, P.O. Box 7864, Madison, WI 53707–7864, or by email at donna.sorenson@wisconsin.gov.

Analysis Prepared by the Department of Administration

Statutes interpreted

Section 16.846, Stats.

Statutory authority

Sections 16.004 (1), 16.846 (1) (a), and 227.11, Stats.

Explanation of agency authority

The Department is the managing authority of numerous state properties and is required to “Have charge of, operate and maintain...the state capitol building...and such other state properties as are designated by law.” Section 16.84 (1), Wis. Stats. “The department shall promulgate under ch. 227, and shall enforce or have enforced, rules of conduct for property leased or managed by the department.” Section 16.846 (1),

Wis. Stats. Additionally, “the managing authority of any facility owned by the state...may permit its use for free discussion of public questions, or for civic, social or recreational activities.” Section 16.845 (1), Wis. Stats. Further, “Whoever does or attempts an act for which a permit is required under this section without first obtaining a permit may be fined...or imprisoned...or both.”

The Legislature has vested management authority over various state buildings and grounds, including those of the Wisconsin State Capitol, in the Department of Administration since 1979. Section 16.84 (1), Wis. Stats. Since 1979, the Department has permitted the use of these buildings and grounds for the free discussion of public questions and other purposes, so long as such uses did not interfere with the prime uses of these facilities, or otherwise infringe on interests of the state. Section 16.845, Wis. Stats., and s. Adm 2.04, Wis. Adm Code.

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

Groups of persons continue to occupy rooms in the Wisconsin State Capitol building without permits, including the Capitol rotunda. These groups constitute an exception to the norm. The Wisconsin State Capitol Police (WSCP) issue more than 400 permits annually for the use of various state facilities. Permits are used for a variety of purposes, whether political, non–political, charitable, or commercial. Permits are issued regardless of political party, affiliation, or content.

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

The Department hereby proposes an order to repeal s. Adm 2.14 (2) (vr) c.; to renumber and amend s. Adm 2.14 (2) (vr) a. and b.; to amend ss. Adm 2.02 (1) (a), 2.04 (1), (2), (3), (5) and (7), 2.07 (2), 2.08 (1) and (1) (d), 2.11, 2.14 (2), (2) (v), (2) (vm), and (2) (vm) 5.; and to create ss. Adm 2.03 (3m), (3r), and (6m), 2.04 (1m) and (1r).

Related statute or rule

Section 16.84, Stats., and Chapter Adm 2.

Summary and plain language analysis

The objective of the rule is to obtain greater compliance from user groups regarding facility use. This objective will be achieved by codifying historical Department practices and more clearly detailing certain provisions of the administrative code as informed by judicial interpretations.

Section 1 — The proposed change, in combination with a change in Section 3, seeks to clarify the historical interpretation of the Wisconsin State Capitol Police, that the Administrative Rules can be applied in areas under the control of the Legislature, at the invitation of the Legislature.

Section 2 — The proposed changes incorporate definitions found in the Department's Facilities Access Policy, and harmonizes those definitions with existing rules.

Section 3 — There are three proposed changes occurring in this section. The first proposed change, in combination with the change in Section 1, seeks to clarify the historical interpretation of the Wisconsin State Capitol Police, that the Administrative rules can be applied in areas under the control of the Legislature, at the invitation of the Legislature. The second proposed change expands the types of persons who are allowed by rule to apply for a permit from only the listed persons (governmental bodies, non-profits, etc.) to any person, in accordance with the historical practice of the Wisconsin State Capitol Police. The third proposed change incorporates the use of the terms "event" and "exhibit," as found in Section 2 above.

Section 4 — There are two proposed changes in this section. The first proposed change codifies the ability of the Department to set reasonable time, place, and manner restrictions for particular buildings and facilities. Due to the fact that there are dozens of buildings and facilities under the jurisdiction of the Department, and due to the potential for changes to the use of those buildings and facilities, it would not be practicable to incorporate all such time, place, and manner restrictions into the Administrative Code. The second proposed change codifies additional restrictions on the exercise of discretion by the Wisconsin Capitol Police and creates a severability clause.

Section 5 — There are five proposed changes in this section. The first proposed change codifies the ability of the Department to waive the 72 hour application requirement on a neutral basis. The second proposed change removes from the code a provision giving the Department unlimited discretion to resolve conflicts between competing uses. The third proposed change allows the Department to provide additional explanation to the public regarding how costs are applied under the Administrative Code for informational purposes. The fourth change extends protection to persons based upon sexual orientation, which is not found in the existing rule. The fifth change incorporates the use of the terms "event" and "exhibit."

Section 6 — There are two proposed changes in this section. The first change incorporates the use of the terms "event" and "exhibit." The second seeks to further clarify the distinction between when a person is simply holding a sign as part of an event, as opposed to creating an exhibit, by creating a size distinction between the two.

Section 7 — There are two proposed changes to this section. The first change clarifies that a person who creates a hazard in a state building or facility may receive a citation if they refuse to correct or remove the hazard. The second

change clarifies that the prohibition applies to all types of decorations and the like, and not simply holiday decorations.

Section 8 — The proposed change is meant to clarify what occurs with confiscated materials given that there are two administrative code provisions dealing with this topic; the clarification is intended to follow the canon of construction that the more specific rule applies over the more general rule.

Section 9 — The proposed changes are organizational in nature, and are designed to clarify that there were multiple potential citations created under one administrative code subsection in the existing code, Wis. Adm. Code s. Adm 2.14 (2) (v), in accordance with recent judicial interpretations of that subsection. By dividing the existing subsection into multiple pieces, and by arranging the use of some language more appropriately, the new code section should require less technical expertise to interpret. Additionally, defined terms are incorporated and used in the new code sections.

Section 10 — The proposed changes in this section again continue the clarification of Wis. Adm. Code s. Adm 2.14 (2) by improving the organization of the subsection.

Section 11 — The proposed change eliminates language now rendered superfluous by improved organization of Wis. Adm. Code s. Adm 2.14 (2).

Summary of and comparison with, existing or proposed federal regulations

Existing federal regulations vary by agency, state, and facility, and are too numerous to permit meaningful comparative analysis.

Comparison with rules in adjacent states

All adjacent states have similar administrative code provisions. Illinois requires permits for demonstrations or other events to be submitted at least 48 hours in advance of the use, unless the requestor can provide by a preponderance of the evidence that the cause of the event was unknown or resulted from changed circumstances. Michigan does not permit demonstrations or other activities without written authorization. Michigan also requires written authorization for displays, and requires that such requests "normally" be submitted 30 days in advance. Likewise, Minnesota requires a permit, with agreements to be reached regarding topics including, "security, police protection, liability for damages, and cleanup of areas" prior to issuance of a permit. Iowa also requires a written application and approval by written letter or a memorandum of understanding signed by the event director.

Effect on Small Business

The proposed rule changes will have no impact upon small businesses.

Initial Regulatory Flexibility Analysis

The proposed rule will not affect small businesses.

Fiscal Estimate

Modification of the existing rules should decrease the costs of gaining compliance with the rules by reducing the number of issues currently subject to litigation. In the long term, modification of existing rules to conform to practice and to expand the legally recognized categories of permitted users should increase the legitimacy of the permitting process for the general public, leading to greater voluntary compliance and reduced costs.

Summary of Economic Impact Analysis

The rule modifications are expected to have no economic impact. A copy of the Economic Impact Analysis may be

obtained from the agency at no charge by contacting Donna Sorenson at:

Department of Administration
P.O. Box 7864
Madison, WI 53707-7864
Email: donna.sorenson@wisconsin.gov
Fax: (608) 267-3842

Small Business Regulatory Coordinator

Joe Knilans
sbrrb@wisconsin.gov
608-267-7873

Internet Link to Rule

http://docs.legis.wisconsin.gov/code/register/2013/688b/emergency_rules/1/1

Contact Person

Wendy Coomer
Department of Administration
101 E. Wilson Street, 10th Floor
Madison, WI 53702

Notice of Hearing

Agriculture, Trade and Consumer Protection CR 13-043

NOTICE IS HEREBY GIVEN that the Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) will hold a public hearing on a proposed rule to revise Chapters ATCP 90, 91, 92, 113, and 136, relating to fair packaging and labeling; selling commodities by weight, measure, or count; weights and measures; gasoline advertising; and mobile air conditioners — reclaiming or recycling refrigerant; various minor and technical rule changes; and affecting small business.

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

Hearing Information

Date: Wednesday, August 7, 2013
Time: 10:00 a.m. to 11:00 a.m.
Location: Board Room (1st Floor)
Department of Agriculture, Trade and Consumer Protection
2811 Agriculture Drive
Madison, WI 53718-6777

Hearing impaired persons may request an interpreter for this hearing. Please make reservations for a hearing interpreter by July 24, 2013, by writing to Kevin LeRoy, Division of Trade and Consumer Protection, P.O. Box 8911, Madison, WI 53708-8911; or by emailing kevin.leroy@wisconsin.gov; or by telephone at (608) 224-4928. Alternatively, you may contact the DATCP TDD at (608) 224-5058. The hearing facility is handicap accessible.

Copies of Proposed Rules and Submittal of Written Comments

DATCP invites the public to attend the hearing and comment on the proposed rule. Following the public hearings, the hearing record will remain open until **August 21, 2013**, for additional written comments. Comments may

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

You can obtain a free copy of this hearing draft rule and related documents including the Economic Impact Analysis by contacting the Wisconsin Department of Agriculture, Trade and Consumer Protection, Division of Trade and Consumer Protection, 2811 Agriculture Drive, P.O. Box 8911, Madison, WI 53708. You can also obtain a copy by calling (608) 224-4728 or by emailing kevin.leroy@wisconsin.gov. Copies will also be available at the hearing. To view the hearing draft rule online, go to: <http://adminrules.wisconsin.gov>.

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

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

This rule makes minor and technical changes to a number of current rules administered by the Department of Agriculture, Trade and Consumer Protection (DATCP).

Statutes interpreted

Sections 97.03, 100.20, and 100.45, and ch. 98, Stats.

Statutory authority

Sections 93.07 (1), 97.09 (1) and (4), 97.42 (4) (j), 98.03 (2), 98.07 (3) and (4), 98.16 (4), 98.18 (2), 98.224 (4), 98.245 (9), 100.20 (2), and 100.45 (5) (a) and (e), Stats.

Explanation of statutory authority

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

DATCP has authority under s. 97.09 (1), Stats., to define or adopt standards of identity, composition, quality, and fill of food containers. DATCP has general authority, under s. 97.09 (4), Stats., to adopt rules specifying standards to protect the public from the sale of adulterated or misbranded foods. DATCP has authority under s. 97.42 (4) (j), Stats., to administer inspections of animals, poultry and carcasses.

DATCP has authority under s. 98.03 (2), Stats., to issue rules governing the construction, installation, and use of commercial weights and measures and prescribing tolerances. DATCP has authority under s. 98.07 (3) and (4), Stats., to issue rules specifying tolerances for variations from quantities stated on packages. DATCP has authority under s. 98.16 (4), Stats., to regulate the construction, operation, testing, and maintenance of vehicle scales. DATCP has authority under s. 98.18 (2), Stats., to regulate the installation, servicing, testing, and certification of weights and measures. DATCP has authority under s. 98.224 (4), Stats., to promulgate rules that establish standards for the construction, operation, and maintenance of vehicle tank meters, and authority under s. 98.245 (9), Stats., to establish standards for liquefied petroleum gas meters.

DATCP has authority under s. 100.20 (2) (a), Stats., to forbid unfair methods of competition and unfair trade practices.

DATCP has authority under s. 100.45 (5) (a), Stats., to promulgate rules establishing standards for recycled refrigerant based on recognized national industry standards, and qualifications for individuals and businesses that service mobile air conditioners. However, s. 100.45 (5e) (b), Stats.,

prohibits DATCP from promulgating rules that prohibit the sale of refrigerant that is a substitute for ozone-depleting refrigerant in a container holding less than 15 pounds.

Related statutes and rules

This proposed rule updates a number of existing rule chapters and is related to several statutes and rules.

Chapter ATCP 90, Fair Packaging and Labeling, requires certain information be included on product labels. This rule is related to ch. 97, Stats., Food Regulation and ch. ATCP 98, Stats., Weights and Measures.

Chapter ATCP 91, Selling Commodities by Weight, Measure or Count, regulates how a seller communicates quantity of product to the buyer. This rule is related to ch. 98, Stats., Weights and Measures.

Chapter ATCP 92, Weights and Measures, regulates the accuracy of scales, tank meters, and other measuring devices. It contains license or certification programs for devices, technicians and service companies. This rule is related to ch. 98, Stats., Weights and Measures.

Chapter ATCP 113, Gasoline Advertising, prohibits gasoline sellers from misrepresenting the octane rating of gasoline. This rule is promulgated under s. 100.20, Stats., Unfair Trade Practices. Gasoline octane is also regulated under Ch. 168, Stats., Oil Inspection, and ch. SPS 348, Petroleum and Other Liquid Fuel Products.

Chapter ATCP 136, Mobile Air Conditioners; Reclaiming or Recycling Refrigerant, regulates the repair or service of motor vehicle air conditioners and trailer refrigeration equipment. This rule relates to s. 100.45, Stats., Mobile Air Conditioners.

Plain language analysis

Rule Content

General

This rule modifies existing rules with a number of technical updates and minor changes. It does not represent any significant shift in the overall goals or policies of the existing rules.

Chapter ATCP 90 — Fair Packaging and Labeling

Under current rules, the definition of “unreasonable shortage” as it relates to Fair Packaging and Labeling, refers to the maximum allowable variation specified for a commodity in the National Institute of Standards and Technology (NIST) Handbook 133, “Checking the Net Contents of Packaged Goods.” However, the current rule does not specify which edition of NIST Handbook 133 it is referencing. This rule modifies the definition of “unreasonable shortage” to specifically reference NIST Handbook 133, “Checking the Net Contents of Packaged Goods,” (2013 edition).

Chapter ATCP 91 — Selling Commodities by Weight, Measure or Count

The current rule lists a number of commodities and incorporates references to NIST Handbook 130, “Uniform Laws and Regulations in the Area of Legal Metrology and Engine Fuel Quality,” (2011 edition). This rule updates these references to the 2013 edition. It also corrects references to specific sections (in the case of liquid oxygen used for respiration and liquefied petroleum gases).

Chapter ATCP 92 — Weights and Measures

The current rule regulates weighing and measuring devices, state and municipal inspection programs, and licensing requirements for service companies. The current rule incorporates references to NIST Handbook 44, “Specifications, Tolerances and Other Technical Requirements for Weighing and Measuring Devices,” (2011 edition) This rule updates these references to the 2013 edition.

The current rule contains several “notes” informing the reader how to obtain license applications and similar documents from DATCP. This rule updates these notes to conform to changes in DATCP web pages and other changes.

Chapter ATCP 92, Subchapter IV, regulates vehicle scales and livestock scales. However, there are some significant differences between the two. Installing or relocating a vehicle scale requires a permit from DATCP. DATCP also collects installation reports for vehicle scales, and reviews request for variances on the construction standards contained in the rule. This rule clarifies that there is no need for operators to request variances for livestock scales (because there is no permit requirement and they are not required to submit their construction plans).

This rule also modifies the definition of “vehicle scale” to make it clear that ch. ATCP 92 does not apply to scales that are not in commercial service.

Chapter ATCP 113 — Gasoline Advertising

The current rule affirms that it is an unfair trade practice for sellers of gasoline to mislead buyers regarding the octane rating of gasoline, claim that the gasoline is suitable for aviation if it is not, or claim the gasoline is of greater value because it contains high octane components without clearly stating the octane value of the total product. The current rule references octane standards contained in “ASTM Manual for Rating Motor Fuels by Motor and Research Methods”, published 1956.

This rule updates references to ASTM standards.

Chapter ATCP 136 — Mobile Air Conditioners; Reclaiming or Recycling Refrigerant

Pursuant to s. 100.45, Stats., DATCP regulates the use of refrigerants in mobile air conditioners. Under the current rule, among other things, no person may buy, sell, or consign refrigerant in a container holding less than 15 pounds (this is sometimes informally referred to as the “small can ban”). However, 2011 Wisconsin Act 187 restricts DATCP’s authority to prohibit sales of non-ozone-depleting refrigerants. Therefore, under the proposed rule, only ozone depleting refrigerants are prohibited from being sold in containers less than 15 pounds.

The current rule regulates the types of equipment that can be used to reclaim or recycle refrigerants from mobile air conditioners. Recently, the Environmental Protection Agency (“EPA”) has approved a new type of refrigerant (“HFO-1234fy”). This rule updates the current rule to recognize the new product and associated specifications and equipment standards.

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

This rule updates references to weights and measures technical standards published by the National Institute of Standards and Technology (“NIST”). By incorporating the

latest NIST standards, this rule keeps Wisconsin standards consistent with applicable national standards.

The fuel octane standards incorporated by reference by this rule into ch. ATCP 113 are identical to standards used by the EPA to regulate fuel quality.

This rule updates Wisconsin's mobile air conditioner rules to conform to the most recent EPA standards.

Comparison with rules in adjacent states

Generally, this rule updates standards incorporated by reference contained in several chapters of the Wisconsin Administrative Code. Most states, including all of Wisconsin's neighbors, recognize the same accepted standards in their statutes and rules.

This rule brings Wisconsin's rules relating to mobile air conditioning refrigerants into conformity with neighboring states' rules.

Summary of factual data and analytical methodologies

This rule does not depend on any complex analysis of data. This rule makes minor or technical changes to current rules.

Analysis and supporting documents used to determine effect on small business or in preparation of an Economic Impact Analysis

This rule simply updates references and makes other technical changes to existing rules and does not make significant changes to existing policies. Therefore, this rule is not anticipated to have an economic impact.

Effect on Small Business

This rule updates references to technical standards to the most recent editions of those standards without significant changes. This rule simply continues policies already in place in current rules or updates rules to conform to recent changes in the statutes. Except as noted below, this rule does not have an effect on small businesses.

Chapter ATCP 113 — Gasoline Advertising, updating references to most recent standards may increase the enforceability of the rule. Chapter ATCP 113 relies on nationally recognized standards for octane rating published by ASTM. However, the current rule relies on standards that are outdated and is, therefore, difficult to enforce. Updating the standards, as proposed in this rule, will improve the enforceability. By making it easier to punish any business that might mislead consumers about the octane rating or value, this rule should benefit honest sellers of gasoline.

This rule will benefit businesses that service mobile air conditioners. Under this rule, these businesses can service units that require the new refrigerant HFO-1234yf. This product was only recently approved by EPA.

Environmental Impact

This rule does not have an environmental impact.

Standards Incorporated by Reference

This rule incorporates, by reference, the following standards:

- Air Conditioning, Heating and Refrigeration Institute (AHRI)
 - AHRI 740-1998 Refrigerant Recover / Recycling Equipment.
- ASTM International
 - ASTM D4814-12 Standard Specifications for Automotive Spark-Ignition Engine Fuel.
 - ASTM D2699-12 Standard Test Method for Research Octane Number of Spark Ignition Engine Fuel.
 - ASTM D2700-12 Standard Test Method for Motor Octane Engine Fuel.
- NIST (National Institute of Standards and Technology), 2013 editions:
 - Handbook 44, Specifications, Tolerances, and other Technical Requirements for Weights and Measures.
 - Handbook 130, Uniform Laws and Regulations in the Areas of Legal Metrology and Engine Fuel Quality.
 - Handbook 133, Checking the Net Contents of Packaged Goods.
- SAE International
 - SAE J2843-2013 (R-1234yf (HFO1234yf) Recovery/Recycling/Recharging Equipment for Flammable Refrigerants for Mobile Air-Conditioning Systems).
 - SAE J2851-2012 (Recovery Equipment for Contaminated Refrigerant from Mobile Automotive Air-Conditioning Systems).

DATCP will request consent from the Attorney General to incorporate these standards by reference. A copy of these documents will be kept on file with DATCP and the Legislative Reference Bureau. NIST publications are also available online at <http://www.nist.gov/index.html>. SAE International publications are also available online at <http://www.sae.org>. ASTM International publications are available online at <http://www.astm.org>. AHRI publications are available online at <http://www.ahrinet.org>.

Agency Contact

Kevin LeRoy, Division of Trade and Consumer Protection, P.O. Box 8911, Madison, WI 53708-8911; or by emailing kevin.leroy@wisconsin.gov; or by telephone at (608) 224-4928.

ADMINISTRATIVE RULES		
Fiscal Estimate & Economic Impact Analysis		
Type of Estimate and Analysis		
<input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected		
Administrative Rule Chapter, Title and Number		
Ch. ATCP 90, Fair Packaging and Labeling Ch. ATCP 91, Selling Commodities by Weight, Measure or Count Ch. ATCP 92, Weights and Measures Ch. ATCP 113, Gasoline Advertising Ch. ATCP 136, Mobil Air Conditioners; Reclaiming or Recycling Refrigerant		
Subject		
Various minor and technical updates to existing rules.		
Fund Sources Affected		Chapter 20 , Stats. Appropriations Affected
<input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S		
Fiscal Effect of Implementing the Rule		
<input checked="" type="checkbox"/> No Fiscal Effect <input type="checkbox"/> Indeterminate	<input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Decrease Existing Revenues	<input type="checkbox"/> Increase Costs <input type="checkbox"/> Could Absorb Within Agency's Budget <input type="checkbox"/> Decrease Costs
The Rule Will Impact the Following (Check All That Apply)		
<input type="checkbox"/> State's Economy <input type="checkbox"/> Local Government Units	<input type="checkbox"/> Specific Businesses/Sectors <input type="checkbox"/> Public Utility Rate Payers <input type="checkbox"/> Small Businesses (if checked, complete Attachment A)	
Would Implementation and Compliance Costs Be Greater Than \$20 million?		
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
Policy Problem Addressed by the Rule		
<p>This rule simply updates references and makes other technical changes to existing rules and does not make significant changes to existing policies.</p> <p>This rule updates existing rules in several ways:</p> <ul style="list-style-type: none"> • ATCP 90 — Fair Packaging and Labeling <ul style="list-style-type: none"> ○ Updates the existing rule's references to NIST Handbook 133 — Checking the Net Contents of Packaged Goods to the most recent edition of the standards. • ATCP 91 — Selling Commodities by Weight, Measure or Count <ul style="list-style-type: none"> ○ Updates the existing rule's references to NIST Handbook 130 — Uniform Laws and Regulations in the Area of Legal Metrology and Engine Fuel Quality to the most recent edition of the standards. ○ Corrects certain references to specific sections of Handbook 130. • ATCP 92 — Weights and Measures <ul style="list-style-type: none"> ○ Updates the existing rule's references to NIST Handbook 44 — Specifications, Tolerances and Other Technical Requirements for Weighing and Measuring Devices to the most recent edition of the standards. ○ Updates several "notes" in current rule regarding instructions on how to contact DATCP for additional information. ○ Clarifies existing regulations regarding vehicle scales and livestock scales ○ Clarifies that ch. ATCP 92 does not apply to vehicle scales that are not in commercial service. 		

- ATCP 113 — Gasoline Advertising
 - Updates the existing rule’s reference to ASTM standards for octane rating test methods.
- ATCP 136 — Mobile Air Conditioners; Reclaiming or Recycling Refrigerant
 - Revises the current rule’s prohibition on buying and selling containers of any refrigerant in containers holding less than 15 pounds in order to conform to 2011 Wisconsin Act 187. Under this rule (and Act 187), only ozone depleting refrigerants are prohibited from being sold in containers less than 15 pounds.
 - Updates rule to incorporate a new type of refrigerant (HFO–1234fy) that is now recognized by EPA.

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 simply updates references and makes other technical changes to existing rules and does not make significant changes to existing policies. Therefore, this rule is not expected to have a material economic or fiscal impact on specific businesses, business sectors, utility rate payers, local governments, or the state’s economy as a whole.

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

Benefits

This rule keeps several chapters of the Wisconsin administrative code up-to-date with the latest editions of nationally recognized technical standards for package labeling, selling bulk commodities, technical specifications for scales and other measuring devices, and gasoline octane ratings.

This rule also brings ch. ATCP 136 into conformity with the statutes. Specifically, 2011 Wisconsin Act 187 invalidated the existing prohibition against buying or selling any mobile air conditioner refrigerant in containers of less than 15 pounds. This rule conforms to Act 187 by prohibiting the buying or selling of only ozone-depleting refrigerant.

Alternatives

This rule helps maintain regulatory consistency between Wisconsin, its neighboring states, and other jurisdictions that rely on universal technical standards. If DATCP does not adopt this rule, some of this consistency would be lost.

Long Range Implications of Implementing the Rule

This rule makes minor technical updates to existing rules and does not represent any significant change in long range implications.

Compare With Approaches Being Used by Federal Government

This rule updates references to weights and measures technical standards published by the National Institute of Standards and Technology (“NIST”). By incorporating the latest NIST standards, this rule keeps Wisconsin standards consistent with applicable national standards.

The fuel octane standards incorporated by reference by this rule into ch. ATCP 113 are identical to standards used by the EPA to regulate fuel quality.

This rule update’s Wisconsin’s mobile air conditioner rules to conform to the most recent EPA standards.

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

Generally, this rule updates standards incorporated by reference contained in several chapters of the Wisconsin Administrative Code. Most states, including all of Wisconsin’s neighbors, recognize the same accepted standards in their statutes and rules.

This rule brings Wisconsin’s rules relating to mobile air conditioning refrigerants into conformity with neighboring states’ rules.

Notice of Hearing

Insurance CR 13-044 EmR1306

NOTICE IS HEREBY GIVEN that pursuant to the authority granted under s. 601.41 (3), Stats., and the procedures set forth in under ss. 227.18, and 227.24, Stats., OCI will hold a public hearing to consider the emergency rule issued on June 12, 2013, and the adoption of the attached proposed rulemaking order affecting sections Ins 17.01 (3), 17.28 (3) (c) and (6), Wis. Adm. Code, relating to Injured Patients and Families Compensation Fund Annual Fund and Mediation Panel Fees, and ISO code amendments for the fiscal year beginning July 1, 2013, and affecting small business.

Hearing Information

Date: Tuesday, July 23, 2013
Time: 1:30 p.m., or as soon thereafter as the matter may be reached
Location: OCI
 Room 227
 125 South Webster St 2nd Floor
 Madison, WI

Submittal of Written Comments

Written comments can be mailed to

Julie E. Walsh
 Legal Unit — OCI Rule Comment for Rule Ins 1728
 Office of the Commissioner of Insurance
 PO Box 7873
 Madison WI 53707-7873

Written comments can be hand delivered to

Julie E. Walsh
 Legal Unit — OCI Rule Comment for Rule Ins 1728
 Office of the Commissioner of Insurance
 125 South Webster St — 2nd Floor
 Madison WI 53703-3474

Comments can be emailed to

Julie E. Walsh
julie.walsh@wisconsin.gov

Comments submitted through the Wisconsin Administrative Rule Website at: <http://adminrules.wisconsin.gov> on the proposed rule will be considered.

The deadline for submitting comments is **4:00 p.m. on August 6, 2013.**

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.

Analysis Prepared by the Office of the Commissioner of Insurance (OCI)

Statutes interpreted

Sections 655.27 (3), and 655.61, Wis. Stats.

Statutory authority

Sections 601.41 (3), 655.004, 655.27 (3) (b), and 655.61, Wis. Stats.

Explanation of OCI's authority to promulgate the proposed rule

The injured patients and families compensation fund ("fund"), was established by and operated under Ch. 655, Stats. The commissioner of insurance with approval of the board of governors ("board") is required to annually set the fees for the fund and the medical mediation panel by administrative rule. The proposed fees comply with the limitation delineated in s. 655.27 (3) (br), Stats. Section 655.04, Stats., provides that the director of state courts and the commissioner may promulgate rules necessary to enable them to perform their responsibilities under this chapter. Pursuant to s. 655.27 (3) (b), Stats., the commissioner, after approval by the board, shall by rule set the fees to the fund and s. 655.61, Stats., requires the board, by rule, to set the fees charged to health care providers at a level sufficient to provide the necessary revenue to fund the medical mediation panels. Further, s. 601.41 (3), Stats., provides that the commissioner shall have rule-making authority pursuant to s. 227.11 (2), Stats.

Related statutes or rules

None.

Plain language analysis

This proposed rule establishes the fees that participating health care providers must pay to the fund for the fiscal year beginning July 1, 2013. These fees represent a 5% decrease from fees paid for the 2012-2013 fiscal year. The board approved these fees at its meeting on December 19, 2012, based on the recommendation of the board's actuarial and underwriting committee and reports of the fund's actuaries.

The board is also required to promulgate by rule the annual fees for the operation of the injured patients and families compensation medical mediation system, based on the recommendation of the director of state courts. The recommendation of the director of state courts was reviewed by the board's actuarial and underwriting committee. This rule implements the funding level approved by the board on March 20, 2013 by establishing mediation panel fees for the next fiscal year at \$0 for physicians and \$0 per occupied bed for hospitals, representing a decrease of \$22.50 per physician and a decrease of \$4.50 per occupied bed for hospitals from 2012-13 fiscal year mediation panel fees.

Finally, this rule includes changes to the Insurance Services Office (ISO) code listing to address corrections to several classification specialties as well as new classification specialties. ISO codes are the numerical designation for a health care provider's specialty and are used to classify the provider for assessment purposes. Errors identified in the ISO codes or specialty narratives for three specialties have been corrected. A third specialty had duplicate listings resulting in the exclusion of another specialty which has now been added. The Doctor of Osteopathy (D.O.) designated ISO codes have been added for two specialties previously listed only under the Doctor of Medicine (M.D.) ISO codes.

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

To the fund board's and OCI's knowledge there is no existing or proposed federal regulation that is intended to address fund rates, administration or to fund medical mediation panel activities.

Comparison with rules in adjacent states

To the fund board's and OCI's knowledge there are no similar rules in the adjacent states to compare this rule to as none of adjacent states have a fund created by statute where rates are directed to be established yearly by rule as is true in Wisconsin.

A summary of the factual data and analytical methodologies that OCI used in support of the proposed rule

None. This rule establishes annual fund fees pursuant to the requirements of the above-noted Wisconsin statutes. The recommendation to the board regarding the fund fee and the medical mediation panel assessment is developed and reviewed annually by the fund's actuaries and the board's actuarial and underwriting committee. The actuarial and underwriting committee after review and discussion with the fund's actuaries present the information and the actuaries report to the board for consideration. This proposed rule reflects the rates approved by the board at the December 19, 2012, and March 20, 2013, board meetings.

Analysis and supporting documentation that OCI used in support of OCI's determination of the rule's effect on small business or in preparation of an economic impact analysis

This decrease in fund fees will have a positive effect on small businesses in Wisconsin, particularly those that employ physicians and other health care professionals. The mediation panel fee is assessed only on physicians and hospitals, not on corporations or other health care entities that will also benefit from the reduction to zero fees for fiscal year 2014. The fund fee decrease will affect only those small businesses that pay the fund fees and mediation panel fees on behalf of their employed physicians. The fund fee decrease will not have a significant effect nor should it negatively affect the small business's ability to compete with other providers.

Effect on Small Business

This rule will have little or no effect on small businesses. The decrease contained in the proposed rule will require providers to pay reduced fund fees which will decrease the operational expenses for the providers. The decrease in fees promulgated by this rule should not result in a significant fiscal effect on the private sector.

Initial Regulatory Flexibility Analysis

This rule does not impose any additional requirements on small businesses.

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:

Administrative Medicine	80120
Aerospace Medicine	80230
Allergy	80254
Allergy (D.O.)	84254
Cardiovascular Disease — no surgery or catheterization	80255
Cardiovascular Disease — no surgery or catheterization (D.O.)	84255
Dermatology—no surgery	80256
Dermatology—no surgery (D.O.)	84256
Diabetes—no surgery	80237
Endocrinology—no surgery	80238
Endocrinology—no surgery (D.O.)	84238
Family or General Practice—no surgery	80420

- a. Types of small businesses affected:
 - Small businesses that employ physicians or other health care professionals participating in the fund.
- b. Description of reporting and bookkeeping procedures required:
 - None beyond those currently required.
- c. Description of professional skills required:
 - None beyond those currently required.

OCI Small Business Regulatory Coordinator

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

Fiscal Estimate

This rule change will have no significant effect on the private sector as this proposed rule reduces fees to participants in the fund and reduces mediation panel fees to zero. The fund is a segregated account and does not impact state funds. The rule decreases fees and therefore does not have an effect on county, city, village, town, school district, technical college district, and sewerage district fiscal liabilities and revenues.

A Copy of any Comments and Opinions Prepared by the Board Of Veterans Affairs Under s. 45.03 (2m), Stats., for Rules Proposed by the Department of Veterans Affairs

None.

Agency Contact Person

A copy of the full text of the proposed rule changes, analysis and fiscal estimate may be obtained from the website 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

Proposed Rule Changes**SECTION 1. Ins 17.01 (3) is amended to read:**

Ins 17.01 (3) FEE SCHEDULE. The following fee schedule shall be effective July 1, ~~2012~~ 2013:

- (a) For physicians— \$22.50\$0.
- (b) For hospitals, per occupied bed— \$4.50\$0.

SECTION 2. Ins 17.28 (3) (c) 1., 2., and 3., are amended to read:

Ins 17.28 (3) (c) 1. Class 1:

Family or General Practice—no surgery (D.O.)	84420	
Forensic Medicine—Legal Medicine	80240	
Forensic Medicine—Legal Medicine (D.O.)	84240	
Gastroenterology—no surgery	80241	
Gastroenterology—no surgery (D.O.)	84241	
General Preventive Medicine—no surgery	80231	
General Preventive Medicine—no surgery (D.O.)	84231	
Geriatrics—no surgery	80243	
Geriatrics—no surgery (D.O.)	84243	
Gynecology—no surgery	80244	
Gynecology—no surgery (D.O.)	84244	
Hematology—no surgery	80245	
Hematology—no surgery (D.O.)	84245	
Hypnosis	80232	
Infectious Diseases—no surgery	80246	
Infectious Diseases—no surgery (D.O.)	84246	
Internal Medicine—no surgery	80257	
Internal Medicine—no surgery (D.O.)	84257	
Laryngology—no surgery	80258	
Manipulator (D.O.)	84801	
Neoplastic Disease—no surgery	80259	
Nephrology—no surgery	80260	
Nephrology – no surgery (D.O.)	84260	
Neurology—no surgery	80261	
Neurology—no surgery (D.O.)	84261	
Nuclear Medicine	80262	
Nuclear Medicine (D.O.)	84262	
Nutrition	80248	
Occupation Medicine	80233	
Occupation Medicine (D.O.)	84233	
Oncology – no surgery	80302	
Oncology – no surgery (D.O.)	84302	
Ophthalmology—no surgery	80263	
Ophthalmology—no surgery (D.O.)	84263	
Osteopathy—manipulation only	84801	
Otology – no surgery	80247	<u>80264</u>
Otorhinolaryngology—no surgery	80265	
Otorhinolaryngology—no surgery (D.O.)	84265	
Pain Management – no surgery	80208	
Pain Management – no surgery (D.O.)	84208	
Pathology—no surgery	80266	
Pathology—no surgery (D.O.)	84266	
Pediatrics—no surgery	80267	
Pediatrics—no surgery (D.O.)	84267	
Pharmacology—Clinical	80234	
Physiatry—Physical Medicine (D.O.)	84235	
Physiatry—Physical Medicine & Rehabilitation	80235	
Physicians—no surgery	80268	
Physicians—no surgery (D.O.)	84268	
Psychiatry	80249	
Psychiatry—(D.O.)	84249	
Psychoanalysis	80250	
Psychosomatic Medicine	80251	
Psychosomatic Medicine (D.O.)	84251	
Public Health	80236	
Pulmonary Disease—no surgery	80269	
Pulmonary Disease—no surgery (D.O.)	84269	
Radiology—diagnostic	80253	
Radiology—diagnostic (D.O.)	84253	
Radiopaque dye	80449	
Radiopaque dye (D.O.)	84449	
Rheumatology—no surgery	80252	
Rheumatology—no surgery (D.O.)	84252	
Rhinology – no surgery	80264	<u>80247</u>
Shock Therapy	80431	
Shock Therapy (D.O.)	84431	

Shock Therapy—insured	80162
Urgent Care—Walk-in or After Hours	80424
Urgent Care—Walk-in or After Hours (D.O.)	84424
Urology— <u>no surgery</u>	80121

2. Class 2:

Acupuncture	80437	
Acupuncture (D.O.)	84437	
Anesthesiology	80151	
Anesthesiology (D.O.)	84151	
Angiography—Arteriography—catheterization	80422	
Angiography—Arteriography—catheterization (D.O.)	84422	
Broncho—Esophagology	80101	
Cardiovascular Disease—minor surgery	80281	
Cardiovascular Disease—minor surgery (D.O.)	84281	
Colonoscopy—ERCP—Pneu or mech esoph dil (D.O.)	84443	
Colonoscopy—ERCP—pneu. or mech.	80443	
Dermatology—minor surgery	80282	
Dermatology – minor surgery (D.O.)	84282	
Diabetes – minor surgery	80271	
Dermatology Diabetes—minor surgery (D.O.)	84282	<u>84271</u>
Emergency Medicine—No Major Surgery	80102	
Emergency Medicine—No Major Surgery (DO)	84102	
Employed Physician or Surgeon	80177	
Employed Physician or Surgeon (D.O.)	84177	
Endocrinology—minor surgery	80272	
Endocrinology—minor surgery (D.O.)	84272	
Family Practice—and general practice minor surgery— No OB	80423	
Family Practice—and general practice minor surgery— No OB (D.O.)	84423	
Family or General Practice—including OB	80421	
Family or General Practice – including OB (D.O.)	84421	
Gastroenterology—minor surgery	80274	
Gastroenterology—minor surgery (D.O.)	84274	
Geriatrics—minor surgery	80276	
Geriatrics—minor surgery (D.O.)	84276	
Gynecology—minor surgery	80277	
Gynecology—minor surgery (D.O.)	84277	
Hematology—minor surgery	80278	
Hematology—minor surgery (D.O.)	84278	
Hospitalist	80296	
Hospitalist (D.O.)	84296	
Infectious Diseases—minor surgery	80279	
Intensive Care Medicine	80283	
Intensive Care Medicine (D.O.)	84283	
Internal Medicine—minor surgery	80284	
Internal Medicine—minor surgery (D.O.)	84284	
Laparoscopy	80440	
Laparoscopy (D.O.)	84440	
Laryngology—minor surgery	80285	
Myelography – Discogram—Pneumoencephalo	80428	
Myelography—Discogram—Pneumoencephalo (D.O.)	84428	
Needle Biopsy	80446	
Needle Biopsy (D.O.)	84446	
Nephrology—minor surgery	80287	
Neonatology	80298	
Neonatology (D.O.)	84298	
Neoplastic Disease—minor surgery	80286	
Neurology—minor surgery	80288	
Neurology—minor surgery (D.O.)	84288	
Oncology – minor surgery	80301	
Oncology – minor surgery (D.O.)	84301	
Ophthalmology—minor surgery	80289	
Ophthalmology—minor surgery (D.O.)	84289	

Otology – minor surgery	80290
Otorhinolaryngology—minor surgery	80291
Otorhinolaryngology—minor surgery (D.O.)	84291
Pain Management – Basic procedures	80182
Pain Management – Basic procedures (D.O.)	84182
Pathology—minor surgery	80292
Pathology—minor surgery (D.O.)	84292
Pediatrics—minor surgery	80293
Pediatrics—minor surgery (D.O.)	84293
Phlebography—Lymphangeography	80434
Phlebography—Lymphangeography (D.O.)	84434
Physicians—minor surgery	80294
Physicians – minor surgery (D.O.)	84294
Radiation Therapy—lasers	80425
Radiation Therapy—lasers (D.O.)	84425
Radiation Therapy – other than lasers	80165
Radiology—diagnostic—interventional procedures	80280
Radiology—diagnostic—interventional procedures (D.O.)	84280
Rhinology – minor surgery	80270
Surgery—Colon & Rectal	80115
Surgery —Endocrinology	80103
Surgery—Gastroenterology	80104
Surgery – Gastroenterology (D.O.)	84104
Surgery—General Practice or Family Practice	80117
Surgery—General Practice or Family Practice (D.O.)	84117
Surgery—Geriatrics	80105
Surgery—Neoplastic	80107
Surgery—Nephrology	80108
Surgery—Ophthalmology	80114
<u>Surgery—Ophthalmology (D.O.)</u>	<u>84114</u>
Surgery—Urological	80145
Surgery—Urological (D.O.)	84145

3. Class 3:

Emergency Medicine—includes major surgery	80157
Emergency Medicine—includes major surgery (D.O.)	84157
Otology—surgery	80158
Radiation Therapy – employed physician	80163
Radiation Therapy – employed physician (D.O.)	84163
Shock Therapy – employed physician	80161
Shock Therapy – employed physician (D.O.)	84161
Surgery—Abdominal	80166
Surgery – Bariatrics	80476
Surgery – Bariatrics (D.O.)	84476
Surgery—Cardiac	80141
Surgery—Cardiovascular Disease	80150
Surgery—Cardiovascular Disease (D.O.)	84150
Surgery—General	80143
Surgery—General (D.O.)	84143
Surgery—Gynecology	80167
Surgery—Gynecology (D.O.)	84167
Surgery—Hand	80169
Surgery—Head & Neck	80170
Surgery – Laryngology	80106
Surgery—Orthopedic	80154
Surgery—Orthopedic (D.O.)	84154
Surgery—Otorhinolaryngology—no plastic surgery	80159
Surgery—Plastic	80156
Surgery—Plastic (D.O.)	84156
Surgery—Plastic—Otorhinolaryngology	80155
Surgery—Plastic—Otorhinolaryngology (D.O.)	84155
Surgery—Rhinology	80160
Surgery—Thoracic	80144

Surgery—Thoracic (D.O.)	84144
Surgery—Traumatic	80171
<u>Surgery—Traumatic (D.O.)</u>	<u>84171</u>
Surgery—Vascular	80146
Surgery – Vascular (D.O.)	84146
Weight Control—Bariatrics	80180

SECTION 3. Ins 17.28 (6) is repealed and recreated to read:

(6) FEE SCHEDULE. The following fee schedule is in effect from July 1, 2013 to June 30, 2014:

(a) Except as provided in pars. (b) to (f) and sub. (6e), for a physician for whom this state is a principal place of practice:

Class 1....\$1,457	Class 3....\$5,828
Class 2....\$2,623	Class 4....\$9,616

(b) For a resident acting within the scope of a residency or fellowship program:

Class 1....\$729	Class 3....\$2,916
Class 2....\$1,312	Class 4....\$4,811

(c) For a resident practicing part-time outside the scope of a residency or fellowship program:

All classes.....\$874

(d) For a Medical College of Wisconsin, Inc., full-time faculty member:

Class 1....\$583	Class 3....\$2,332
Class 2....\$1,049	Class 4....\$3,848

(e) For physicians who practice part-time:

1. For a physician who practices fewer than 500 hours during the fiscal year, limited to office practice and nursing home and house calls, and who does not practice obstetrics or surgery or assist in surgical procedures:....\$364

2. For a physician who practices 1040 hours or less during the fiscal year, including those who practice fewer than 500 hours during the fiscal year whose practice is not limited to office practice, nursing homes or house calls or who do practice obstetrics, surgery or assist in surgical procedures:

Class 1....\$874	Class 3....\$3,496
Class 2....\$1,573	Class 4....\$5,768

(f) For a physician for whom this state is not a principal place of practice:

Class 1....\$729	Class 3....\$2,916
Class 2....\$1,312	Class 4....\$4,811

(g) For a nurse anesthetist for whom this state is a principal place of practice:....\$358

(h) For a nurse anesthetist for whom this state is not a principal place of practice:....\$179

(i) For a hospital, all of the following fees:

1. Per occupied bed.....\$87
2. Per 100 outpatient visits during the last calendar year for which totals are available:.....\$4.35

(j) For a nursing home, as described under s. 655.002 (1) (j), Stats., that is wholly owned and operated by a hospital and that has health care liability insurance separate from that of the hospital by which it is owned and operated:

Per occupied bed.....\$17

(k) For a partnership comprised of physicians or nurse anesthetists, organized for the primary purpose of providing the medical services of physicians or nurse anesthetists, all of the following fees:

1. a. If the total number of partners and employed physicians and nurse anesthetists is from 2 to 10.....\$51
- b. If the total number of partners and employed physicians and nurse anesthetists is from 11 to 100.....\$503
- c. If the total number of partners and employed physicians and nurse anesthetists exceeds 100.....\$1,252

2. The following fee for each full-time equivalent allied health care professional employed by the partnership as of the most recent completed survey submitted:

<u>Employed Health Care Professionals</u>	<u>Fund Fee</u>
Nurse Practitioners.....	\$ 364
Advanced Nurse Practitioners.....	510
Nurse Midwives.....	3,205
Advanced Nurse Midwives.....	3,351
Advanced Practice Nurse Prescribers.....	510
Chiropractors.....	583
Dentists.....	291
Oral Surgeons.....	2,186
Podiatrists—Surgical.....	6,192
Optometrists.....	291
Physician Assistants.....	291

(L) For a corporation, including a service corporation, with more than one shareholder organized under ch. 180, Stats., for the primary purpose of providing the medical services of physicians or nurse anesthetists, all of the following fees:

1. a. If the total number of shareholders and employed physicians and nurse anesthetists is from 2 to 10.....\$51
- b. If the total number of shareholders and employed physicians and nurse anesthetists is from 11 to 100.....\$503
- c. If the total number of shareholders and employed physicians or nurse anesthetists exceeds 100.....\$1,252

2. The following fee for each full-time equivalent allied health care professional employed by the corporation as of the most recent completed survey submitted:

<u>Employed Health Care Professionals</u>	<u>Fund Fee</u>
Nurse Practitioners.....	\$ 364
Advanced Nurse Practitioners.....	510
Nurse Midwives.....	3,205
Advanced Nurse Midwives.....	3,351
Advanced Practice Nurse Prescribers.....	510
Chiropractors.....	583
Dentists.....	291
Oral Surgeons.....	2,186
Podiatrists—Surgical.....	6,192
Optometrists.....	291
Physician Assistants.....	291

(m) For a corporation organized under ch. 181, Stats., for the primary purpose of providing the medical services of physicians or nurse anesthetists, all of the following fees:

1. a. If the total number of employed physicians and nurse anesthetists is from 1 to 10.....\$51
- b. If the total number of employed physicians and nurse anesthetists is from 11 to 100.....\$503

c. If the total number of employed physicians or nurse anesthetists exceeds 100.....\$1,252

2. The following fee for each full-time equivalent allied health care professional employed by the corporation as of the most recent completed survey submitted:

<u>Employed Health Care Professionals</u>	<u>Fund Fee</u>
Nurse Practitioners.....	\$ 364
Advanced Nurse Practitioners.....	510
Nurse Midwives.....	3,205
Advanced Nurse Midwives.....	3,351
Advanced Practice Nurse Prescribers.....	510
Chiropractors.....	583
Dentists.....	291
Oral Surgeons.....	2,186
Podiatrists–Surgical.....	6,192
Optometrists.....	291
Physician Assistants.....	291

(n) For an operational cooperative sickness care plan as described under s. 655.002 (1) (f), Stats., all of the following fees:

1. Per 100 outpatient visits during the last calendar year for which totals are available.....\$0.11

2. 2.5% of the total annual fees assessed against all of the employed physicians.

3. The following fee for each full-time equivalent allied health care professional employed by the operational cooperative sickness plan as of the most recent completed survey submitted:

<u>Employed Health Care Professionals</u>	<u>Fund Fee</u>
Nurse Practitioners.....	\$ 364
Advanced Nurse Practitioners.....	510
Nurse Midwives.....	3,205
Advanced Nurse Midwives.....	3,351
Advanced Practice Nurse Prescribers.....	510
Chiropractors.....	583
Dentists.....	291
Oral Surgeons.....	2,186
Podiatrists–Surgical.....	6,192
Optometrists.....	291
Physician Assistants.....	291

(o) For a freestanding ambulatory surgery center, as defined in s. DHS 120.03 (13), per 100 outpatient visits during the last calendar year for which totals are available:....\$22.73

(p) For an entity affiliated with a hospital, the greater of \$100 or whichever of the following applies:

1. 7.0% of the amount the entity pays as premium for its primary health care liability insurance, if it has occurrence coverage.

2. 10.0% of the amount the entity pays as premium for its primary health care liability insurance, if it has claims-made coverage.

(q) For an organization or enterprise not specified as a partnership or corporation that is organized and operated in this state for the primary purpose of providing the medical services of physicians or nurse anesthetists, all of the following fees:

1. a. If the total number of employed physicians and nurse anesthetists is from 1 to 10.....\$51

b. If the total number of employed physicians and nurse anesthetists is from 11 to 100.....\$503

c. If the total number of employed physicians or nurse anesthetists exceeds 100.....\$1,252

2. The following for each full-time equivalent allied health care professional employed by the organization or enterprise not specified as a partnership, corporation, or an operational cooperative health care plan as of the most recent completed survey submitted:

<u>Employed Health Care Professionals</u>	<u>Fund Fee</u>
Nurse Practitioners.....	\$ 364
Advanced Nurse Practitioners.....	510
Nurse Midwives.....	3,205
Advanced Nurse Midwives.....	3,351
Advanced Practice Nurse Prescribers.....	510
Chiropractors.....	583
Dentists.....	291
Oral Surgeons.....	2,186
Podiatrists–Surgical.....	6,192
Optometrists.....	291
Physician Assistants.....	291

SECTION 4. These changes may be enforced under s. Ins 17.01 (2) (d) and (e).

SECTION 5. 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) (intro.), Stats.

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

Section Ins 17.28

3. Subject

Injured Patients and Families Compensation Fund Annual fund and Mediation Panel Fees and ISO code amendments for the fiscal year beginning July 1, 2013 and affecting small business.

4. State Fiscal Effect:

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

5. Fund Sources Affected:

GPR FED PRO PRS SEG SEG-S

6. Affected Ch. 20, Stats. Appropriations:

None

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: None

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

<input checked="" type="checkbox"/> No Fiscal Effect	<input type="checkbox"/> Increase Revenues	<input type="checkbox"/> Increase Costs	May have significant economic impact on a substantial number of small businesses
<input type="checkbox"/> Indeterminate	<input checked="" type="checkbox"/> Decrease Revenues	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Decrease Costs	

10. Types of Small Businesses Affected:

Small businesses that employ physicians or other health care professionals participating in the Fund.

11. Fiscal Analysis Summary

No significant impact. Slight decrease in fund fees and zero medical mediation fees.

12. Long-Range Fiscal Implications

None

13. Name – Prepared by	Telephone Number	Date
Julie E. Walsh	(608) 264-8101	June 5, 2013
14. Name – Analyst Reviewer	Telephone Number	Date
Signature—Secretary or Designee	Telephone Number	Date
	(608) 267-3782	June 7, 2013

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

Agency 145, ss. Ins 17.01 (3), and 17.28 (3) and (6)

3. Subject

Injured Patients and Families Compensation Fund Annual Fund fees and Mediation Panel Fees, and ISO code amendments for fiscal year beginning July 1, 2013.

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 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

To establish the annual fees that participating health care providers must pay to the Injured Patients and Families Compensation Fund ("Fund") as required by s. 655.27 (3), Wis. Stats., for fiscal year beginning July 1, 2013. The proposed rule will also establish the mediation panel fees for fiscal year 2014 commencing on July 1, 2013. This rule provides the Fund with appropriate and adequate funding and solvency for future years. This is the main vehicle for achieving and maintaining the Fund's solvency.

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. Additionally OCI solicited comments from businesses, individuals, and local government units related to the implementation and compliance costs. Solicitations were sent to health insurance members of OCI's Health and Life Insurance Advisory Council and interested parties. Members included health insurance companies, health insurance agent representatives, consumer representatives, provider representatives and representatives of small business. Additional solicitations were made to associations representing various affected parties and local government representatives including:

- Wisconsin Association of Health Plans
 - Wisconsin Association of Health Underwriters
 - Independent Insurance Agents Association of Wisconsin
 - National Federation of Independent Business — Wisconsin
 - Wisconsin Association of Nurse Anesthetists
 - Wisconsin Manufacturers and Commerce
 - Wisconsin Dental Association
 - Wisconsin Medical Society
-

- Professional Insurance Agents of Wisconsin
- National Association of Insurance and Financial Advisors — Wisconsin
- Wisconsin Hospital Association
- Wisconsin Association for Justice
- The League of Wisconsin Municipalities
- Wisconsin Counties Association
- Wisconsin Towns Association
- Wisconsin Association of School Boards
- Wisconsin Association of School District Administrators

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

None beyond solicitation for comments.

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)

All health care provider participants in the Fund as set forth in s. 655.002 (1), Wis. Stat., will be required to pay a 5% reduced assessment for their medical malpractice coverage under Ch.655, Wis. Stat. The impact is considered to be minimal and in fact positive to the participants. In addition the reduction of mediation panel fees to zero is also beneficial.

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

The proposed rule will benefit Fund participants by ensuring that fee revenue is adequate to cover anticipated administrative, operating and claims payments costs. The alternatives to this rule would be to establish a Fund fee increase, to maintain current fee amounts or to assess fees lower than the proposed 5% reduction in Fund fees. A greater reduction in fees would leave the Fund with inadequate funding to cover actuarially-based projected costs, while a fee increase or static fee level would present an unnecessary cost to Fund participants. The proposed rule does not significantly impact Wisconsin's economy, productivity, jobs or the overall economic competitiveness of Wisconsin. Wisconsin's health care marketplace is strengthened with an affordable layer of medical malpractice coverage. The Fund has existed in Wisconsin since 1975. Fund participants will benefit from a stable and solvent fund. Additionally, Fund participants should not experience increased compliance costs with the reduction of fund and mediation panel fees.

14. Long Range Implications of Implementing the Rule

The long-range implication of the rule as proposed will be an adequately funded and solvent Fund.

15. Compare With Approaches Being Used by Federal Government

Federal government does not address this subject matter.

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

None of the neighboring states have a patient compensation fund or a general program of state-sponsored liability insurance for physicians.

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 agency does not anticipate any implementation costs or additional compliance costs for fund participants. All health care provider participants in the Fund as set forth in s. 655.002 (1), Wis. Stat., will be required to pay the reduced assessment for their medical malpractice coverage under ch. 655, Wis. Stat. The impact will be further reduced by the reduction to zero for mediation panel fees.

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

The Fund contracts for actuarial services to develop the documentation and analysis necessary for the Actuarial and Underwriting Committee of the Fund. The documentation includes an actuarially indicated rate level for break even financial projections against expected claims reflective of all physician classifications. Since some physicians are small employer practices this information does relay information to the Committee and Board for the impact on small businesses directly impacted by the proposal. The actuarial firm presents its analysis to the Actuarial and Underwriting Committee of the Fund Board of Governors. The Committee reviews all documentation and projections and makes a recommendation to the full Board of Governors for consideration. The Fund Board of Governors reviewed the Committee's recommendation at its December 19, 2012 meeting as well as the underlying analysis by the actuarial firm. Following deliberation, the Board of Governors affirmed the Committee's recommendation of a decrease of 5% for Fund fees and at the March 20, 2013 meeting affirmed the change to the mediation panel fees to zero for both physicians and hospitals.

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 Board of Governors discussed maintaining fees at 2013 levels but determined that such action was unnecessary in light of the Fund's present financial condition and the reduced fees would adequately fund the Fund for claims incurred during fiscal year 2014 without shifting the burden of funding to future years and providers.

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

The proposed increase is below break-even financing for the Fund but sufficient to cover anticipated claims, administrative and operating expenses.

5. Describe the Rule's Enforcement Provisions

This rule proposes fees. Failure to pay Fund fees is governed by s. Ins 17.01, Wis. Adm. Code, which requires the Fund to notify the medical examining board of each physician who has not paid the fee and notify the Department of Health Services of each hospital that has not paid the fee as required.

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

Yes No

Notice of Hearing

Revenue CR 13-034

NOTICE IS HEREBY GIVEN that, pursuant to s. 565.02 (4) (a), Stats., the Department of Revenue will hold a public hearing to consider permanent rules revising Chapter Tax 61, relating to lottery retailers.

Hearing Information

Date: Friday, July 12, 2013
Time: 3:00 p.m.
Location: Events Room
 State Revenue Building
 2135 Rimrock Road
 Madison, WI 53713

Handicap access is available at the hearing location.

Appearances at the Hearing and Submittal of Written Comments

Interested persons are invited to appear at the hearing and may make an oral presentation. It is requested that written comments reflecting the oral presentation be given to the department at the hearing. Written comments may also be submitted to the contact person listed below or to adminrules.wisconsin.gov no later than **July 12, 2013**, and will be given the same consideration as testimony presented at the hearing.

Dale Kleven
 Department of Revenue
 Mail Stop 6-40
 2135 Rimrock Road
 P.O. Box 8933
 Madison, WI 53708-8933
 Telephone: (608) 266-8253
 E-mail: dale.kleven@revenue.wi.gov

Analysis by the Department of Revenue

Statute interpreted

Sections 565.10 (1) and 565.17 (2), Stats.

Statutory authority

Section 565.02 (4) (a), Stats.

Explanation of agency authority

Section 565.02 (4) (a), Stats., provides the department may promulgate rules “[i]mplementing the provisions of this chapter.”

Related statute or rule

There are no other applicable statutes or rules.

Plain language analysis

The proposed rule makes the following changes:

- Amends s. Tax 61.08 (11) (h) and (k) to eliminate discretionary authority of the Lottery Administrator that is not provided by law.
- Creates a provision in s. Tax 61.08 (13) to allow a retailer’s account to be credited for the value paid for instant scratch tickets that have been stolen.

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

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

Comparison with rules in adjacent states

The department is not aware of a similar rule in an adjacent state.

Summary of factual data and analytical methodologies

2012 Executive Order 61 and 2011 Wisconsin Act 46 requires state agencies to work with the Small Business Regulatory Review Committee to review the agency’s administrative rules that may be particularly onerous to small businesses in Wisconsin. In response, the department initiated a comprehensive review of all of its administrative rules. The changes described above were identified as part of that review. No other data was used in the preparation of this rule order or this analysis.

Analysis and supporting documents used to determine effect on small business

This rule order makes changes to reflect current law and current department policy. It makes no policy or other changes having an effect on small business.

Anticipated costs incurred by private sector

This rule order does not have a fiscal effect on the private sector.

Effect on Small Business

This rule order does not affect small business.

Agency Contact Person

Please contact Dale Kleven at (608) 266-8253 or dale.kleven@revenue.wi.gov, if you have any questions regarding this rule order.

Text of Proposed Rule

SECTION 1. Tax 61.08 (11) (h) and (k) and (13) (a) are amended to read:

Tax 61.08 (11) (h) The retailer may not add any service fee, handling fee or other expense to the purchase of a ticket or share ~~without the written permission of the administrator.~~

(k) The retailer may not conduct sales of lottery tickets or shares to off-premises customers by telephone, email, instant messaging or similar electronic means, or by mail, parcel, delivery service or similar service, ~~without the written permission of the administrator.~~

(13) (a) The retailer shall be responsible for the condition and security of lottery tickets received. If the retailer’s lottery tickets are lost, stolen, mutilated, damaged, unaccountable or otherwise unsalable, the retailer shall be solely responsible for those tickets. ~~The Except as provided in pars. (c) and (cm), the administrator may not reimburse the retailer for those losses other than unsalable tickets under par. (e).~~

SECTION 2. Tax 61.08 (13) (cm) is created to read:

Tax 61.08 (13) (cm) 1. The administrator may credit the retailer’s account for the value the retailer paid for instant scratch tickets that are stolen. In determining whether to provide credit, the administrator may consider the following factors:

- a. Compliance with the reporting requirement under par. (b).
- b. Whether the theft has been reported to law enforcement.

- c. Final return date of the game to which the stolen tickets belong.
- d. Validation of any ticket that is reported stolen.
- e. The retailer’s prior record of reporting stolen tickets to the department.
- f. Security of the retailer’s business and the place where tickets are stored.
- g. Any other facts and circumstances the administrator

believes pertinent.

2. Credit under this paragraph shall be the retailer’s purchase price, and any credit shall be made to the retailer’s electronic fund transfer account.

SECTION 3. 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) (intro.), Stats.

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis		
Type of Estimate and Analysis		
<input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected		
Administrative Rule Chapter, Title and Number		
Chapter Tax 61 — Retailers		
Subject		
Lottery retailers		
Fund Sources Affected		Chapter 20 , Stats. Appropriations Affected
<input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input checked="" type="checkbox"/> SEG <input type="checkbox"/> SEG–S		
Fiscal Effect of Implementing the Rule		
<input type="checkbox"/> No Fiscal Effect <input type="checkbox"/> Indeterminate	<input type="checkbox"/> Increase Existing Revenues <input checked="" type="checkbox"/> Decrease Existing Revenues	<input checked="" type="checkbox"/> Increase Costs <input checked="" type="checkbox"/> Could Absorb Within Agency’s Budget <input type="checkbox"/> Decrease Costs
The Rule Will Impact the Following (Check All That Apply)		
<input type="checkbox"/> State’s Economy <input type="checkbox"/> Local Government Units	<input type="checkbox"/> Specific Businesses/Sectors <input type="checkbox"/> Public Utility Rate Payers	
Would Implementation and Compliance Costs Be Greater Than \$20 million?		
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
Policy Problem Addressed by the Rule		
The rule does not create or revise policy, other than to reflect current law and department policy.		
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)		
As indicated in the attached fiscal estimate, the proposed rule is expected to result in no significant change to total ticket sales or lottery operations, and has minimal fiscal effect. No comments concerning the economic effect of the rule were submitted in response to the department’s solicitation.		
Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule		
Clarifications and guidance provided by administrative rules may lower the compliance costs for lottery retailers. If the rule is not implemented, Chapter Tax 61 will be incomplete in that it will not reflect current law or department policy.		
Long Range Implications of Implementing the Rule		
No long–range implications are anticipated.		

Compare With Approaches Being Used by Federal Government
N/A
Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)
N/A

FISCAL ESTIMATE FORM

2013 Session

- ORIGINAL UPDATED
- CORRECTED SUPPLEMENTAL

LRB #
INTRODUCTION #
Admin rule # Tax 61: Lottery retailers

Subject
Proposed order of the Department of Revenue relating to lottery retailers.

Fiscal Effect

State: No State Fiscal Effect
 Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation

<input type="checkbox"/> Increase Existing Appropriation	<input type="checkbox"/> Increase Existing Revenues	<input checked="" type="checkbox"/> Increase Costs — May be Possible to Absorb Within Agency’s Budget <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Decrease Existing Appropriation	<input checked="" type="checkbox"/> Decrease Existing Revenues	
<input type="checkbox"/> Create New Appropriation	<input type="checkbox"/> Decrease Costs	

Local: No Local Government Costs

1. <input type="checkbox"/> Increase Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	3. <input type="checkbox"/> Increase Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	5. Types of Local Governmental Units Affected: <input type="checkbox"/> Towns <input type="checkbox"/> Villages <input type="checkbox"/> Cities <input type="checkbox"/> Counties <input type="checkbox"/> Others <input type="checkbox"/> School Districts <input type="checkbox"/> WTCS Districts
2. <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	4. <input type="checkbox"/> Decrease Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	

Fund Sources Affected <input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input checked="" type="checkbox"/> SEG <input type="checkbox"/> SEG-S	Affected Ch. 20 Appropriations
--	---------------------------------------

Assumptions Used in Arriving at Fiscal Estimate

The proposed rule updates Chapter Tax 61 of the Administrative Code, pertaining to the state lottery, to eliminate discretionary authority provided to the lottery administrator that is not allowed under current law. The proposed rule also amends ch. Tax 61 provisions to provide the administrator authority to reimburse retailers for stolen tickets.

Specifically, the proposed rule includes:

- Removing the administrator’s authority to allow retailers to add any service fee, handling fee, or other expenses to the purchase of a ticket.
- Removing the administrator’s authority to permit

retailers to sell lottery tickets to customers by phone, mail, email, similar electronic means, delivery, or similar service.

- Providing the administrator with the authority to credit a retailer’s account for the value the retailer paid for instant scratch tickets that are stolen.

The department has the ability to cancel tickets that are reported lost or stolen. The administrative costs of providing retailers credit for stolen game tickets would be minimal and absorbed by the department. Since stolen tickets represent only a very small fraction of total ticket sales, and since it is anticipated that retailers will purchase tickets to replace stolen tickets, the proposed rule is expected to result in no significant change to total ticket sales or lottery operations.

Notice of Hearing

Revenue CR 13-035

NOTICE IS HEREBY GIVEN that, pursuant to ss. 73.10 (2) (b) 1. and 79.05, Stats., the Department of Revenue will hold a public hearing to consider permanent rules revising Chapters Tax 16 and 19, relating to local financial reporting and expenditure restraint payments.

Hearing Information

Date: Friday, July 12, 2013
Time: 1:00 p.m.
Location: Events Room
 State Revenue Building
 2135 Rimrock Road
 Madison, WI 53713

Handicap access is available at the hearing location.

Appearances at the Hearing and Submittal of Written Comments

Interested persons are invited to appear at the hearing and may make an oral presentation. It is requested that written comments reflecting the oral presentation be given to the department at the hearing. Written comments may also be submitted to the contact person listed below or to adminrules.wisconsin.gov no later than **July 12, 2013**, and will be given the same consideration as testimony presented at the hearing.

Dale Kleven
 Department of Revenue
 Mail Stop 6-40
 2135 Rimrock Road
 P.O. Box 8933
 Madison, WI 53708-8933
 Telephone: (608) 266-8253
 E-mail: dale.kleven@revenue.wi.gov

Analysis by the Department of Revenue

Statute interpreted

Sections 73.10 and 79.05, Stats.

Statutory authority

Sections 73.10 (2) (b) 1. and 79.05, Stats.

Explanation of agency authority

Section 73.10 (2) (b) 1., Stats., provides that “[t]he department may require by rule all of the following:

- a. That the information it needs under par. (a) be submitted as annual financial statements, notes to the financial statements, and supporting schedules.
- b. That the statements, notes, and schedules under subd. 1. a. conform to generally accepted accounting principles promulgated by the Governmental Accounting Standards Board or its successor bodies.
- c. That the statements, notes, and schedules under subd. 1. a. be audited in accordance with generally accepted auditing standards.”

Section 79.05, Stats., is the underlying statutory basis for Chapter Tax 19.

Related statute or rule

There are no other applicable statutes or rules.

Plain language analysis

The proposed rule makes the following changes:

- Amends s. Tax 16.04 (2) to reflect current reporting requirements. With the availability of electronic filing and department forms on the Internet, there is no longer a need for local governments to submit their own forms.
- Amends s. 16.06 (4) to reflect current address information.
- Revises s. Tax 19.03 (1) (c) to correct a typographical error.

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

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

Comparison with rules in adjacent states

The department is not aware of a similar rule in an adjacent state.

Summary of factual data and analytical methodologies

2012 Executive Order 61 and 2011 Wisconsin Act 46 requires state agencies to work with the Small Business Regulatory Review Committee to review the agency’s administrative rules that may be particularly onerous to small businesses in Wisconsin. In response, the department initiated a comprehensive review of all of its administrative rules. The changes described above were identified as part of that review. No other data was used in the preparation of this rule order or this analysis.

Analysis and supporting documents used to determine effect on small business

This rule order makes changes to reflect current law and current department policy. It makes no policy or other changes having an effect on small business.

Anticipated costs incurred by private sector

This rule order does not have a fiscal effect on the private sector.

Effect on Small Business

This rule order does not affect small business.

Agency Contact Person

Please contact Dale Kleven at (608) 266-8253 or dale.kleven@revenue.wi.gov, if you have any questions regarding this rule order.

Text of Proposed Rule

SECTION 1. Tax 16.04 (2) is amended to read:

Tax 16.04 (2) The required schedules shall be prepared on the forms provided by the department and in accordance with instructions issued by the department. ~~Local governments may elect to submit the required schedules on their own forms so long as those forms meet the specifications established by the department. Local governments electing to submit their own forms shall submit an example of their forms for review and approval by the department prior to December 31 of the year for which the schedules are to be prepared.~~

SECTION 2. Tax 16.06 (4) (Note 1) is amended to read:

Tax 16.06 (4) (Note 1) Copies of the draft schedules required by s. Tax 16.04 (1) ~~and the specifications referenced in s. Tax 16.04 (2)~~ may be obtained from:

Wisconsin Department of Revenue
 Division of State/Local Finance
 125 South Webster Street
 P.O. Box 8933 8971
 Madison, WI 53708-8971
 Telephone (608) 266-1611 264-6892

~~These schedules are new forms that substitute for the current annual financial report form filed by governmental~~

~~units with the department of revenue.~~

SECTION 3. Tax 19.03 (1) (c) (intro.) is amended to read:

Tax 19.03 (1) (c) (intro.) “Municipal operating budget increase” means an amount, expressed as a percentage and rounded to 2 places beyond the decimal, which results from dividing:

SECTION 4. 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) (intro.), Stats.

ADMINISTRATIVE RULES		
Fiscal Estimate & Economic Impact Analysis		
Type of Estimate and Analysis		
<input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected		
Administrative Rule Chapter, Title and Number		
Chapters Tax 16 and 19 — Local financial reporting and expenditure restraint payments		
Subject		
Local financial reporting and expenditure restraint payments		
Fund Sources Affected		Chapter 20 , Stats. Appropriations Affected
<input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S		
Fiscal Effect of Implementing the Rule		
<input checked="" type="checkbox"/> No Fiscal Effect <input type="checkbox"/> Indeterminate	<input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Decrease Existing Revenues	<input type="checkbox"/> Increase Costs <input type="checkbox"/> Could Absorb Within Agency’s Budget <input type="checkbox"/> Decrease Costs
The Rule Will Impact the Following (Check All That Apply)		
<input type="checkbox"/> State’s Economy <input type="checkbox"/> Local Government Units	<input type="checkbox"/> Specific Businesses/Sectors <input type="checkbox"/> Public Utility Rate Payers	
Would Implementation and Compliance Costs Be Greater Than \$20 million?		
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
Policy Problem Addressed by the Rule		
The rule does not create or revise policy, other than to reflect current law and department policy.		
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)		
As indicated in the attached fiscal estimate, the proposed rule has no fiscal effect on municipalities, counties, or the Department of Revenue.		
No comments concerning the economic effect of the rule were submitted in response to the department’s solicitation.		
Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule		
Clarifications and guidance provided by administrative rules may lower the compliance costs for municipalities and counties.		
If the rule is not implemented, Chapters Tax 16 and 19 will be incomplete in that they will not reflect current law or department policy.		

Long Range Implications of Implementing the Rule
No long-range implications are anticipated.
Compare With Approaches Being Used by Federal Government
N/A
Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)
N/A

FISCAL ESTIMATE FORM

2013 Session

- ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

LRB #	
INTRODUCTION #	
Admin rule #	Tax 16: Local Financial Reporting Tax 19: Expenditure Restraint Payment

Subject

Proposed order of the Department of Revenue relating to local financial reporting and expenditure restraint payments

Fiscal Effect

State: No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation

- Increase Existing Appropriation Increase Existing Revenues
 Decrease Existing Appropriation Decrease Existing Revenues
 Create New Appropriation

- Increase Costs — May be Possible to Absorb Within Agency’s Budget Yes No
 Decrease Costs

Local: No Local Government Costs

- | | | |
|--|---|---|
| 1. <input type="checkbox"/> Increase Costs
<input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory | 3. <input type="checkbox"/> Increase Revenues
<input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory | 5. Types of Local Governmental Units Affected:
<input type="checkbox"/> Towns <input type="checkbox"/> Villages <input type="checkbox"/> Cities
<input type="checkbox"/> Counties <input type="checkbox"/> Others |
| 2. <input type="checkbox"/> Decrease Costs
<input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory | 4. <input type="checkbox"/> Decrease Revenues
<input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory | <input type="checkbox"/> School Districts <input type="checkbox"/> WTCS Districts |

Fund Sources Affected

- GPR FED PRO PRS SEG SEG-S

Affected Ch. 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate

Summary

The proposal makes a number of updates and technical corrections to certain DOR administrative rules. These changes have no fiscal effect on municipalities, counties, or the DOR.

Detail of provisions

Sections 1 and 2 of the proposal affect only those municipalities or counties that have a population of 25,000 or more, or had a population of 25,000 or more on December 31, 1986, and now have a population of less than 25,000.

The current rule allows municipalities and counties to file

the required annual financial report on either the form provided by Department of Revenue (DOR) or on a locally designed form approved by DOR. Under the proposal, the option of using a locally designed form is eliminated. The use of locally designed forms has decreased significantly, and using a uniform report form will permit increased automation of the processing of the information from these forms.

The address given in the rules for local governments to obtain the necessary forms is no longer occupied by DOR. The address is updated to the current address.

Section 3 of the proposal corrects a typographical error in the definition of “municipal operating budget” for purposes of determining eligibility for the expenditure restraint payment.

Notice of Hearing

Revenue CR 13-036

NOTICE IS HEREBY GIVEN that, pursuant to ss. 70.32 (2) (c) 1i. and 73.09 (1), Stats., the Department of Revenue will hold a public hearing to consider permanent rules revising Chapters Tax 12 and 18, relating to property tax and assessment of agricultural property.

Hearing Information

Date: Friday, July 12, 2013
Time: 11:00 a.m.
Location: Events Room
 State Revenue Building
 2135 Rimrock Road
 Madison, WI 53713

Handicap access is available at the hearing location.

Appearances at the Hearing and Submittal of Written Comments

Interested persons are invited to appear at the hearing and may make an oral presentation. It is requested that written comments reflecting the oral presentation be given to the department at the hearing. Written comments may also be submitted to the contact person listed below or to adminrules.wisconsin.gov no later than **July 12, 2013**, and will be given the same consideration as testimony presented at the hearing.

Dale Kleven
 Department of Revenue
 Mail Stop 6-40
 2135 Rimrock Road
 P.O. Box 8933
 Madison, WI 53708-8933
 Telephone: (608) 266-8253
 E-mail: dale.kleven@revenue.wi.gov

Analysis by the Department of Revenue

Statutes interpreted

Sections 70.11 (21), 70.111 (18), 70.32 (2) (c) 1i., 70.365, 70.64, and 70.995 (12), Stats.

Statutory authority

Sections 70.32 (2) (c) 1i. and 73.09 (1), Stats.

Explanation of agency authority

Section 70.32 (2) (c) 1i. Stats., provides that agricultural use “means agricultural use as defined by the department of revenue by rule...” This provision applies to the proposed change to ch. Tax 18.

Section 73.09 (1), Stats., provides “[t]he department of revenue shall establish by rule the level of certification under sub. (3), the continuing education requirements under sub. (4), examinations under sub. (5), and the requirements for and responsibilities associated with temporary certification under sub. (6) for all assessors and assessment personnel of each local unit of government and for county assessor systems under s. 70.99.” This provision applies to ch. Tax 12.

Related statute or rule

There are no other applicable statutes or rules.

Plain language analysis

The proposed rule makes the following changes:

- Amends s. Tax 12.06 to eliminate redundancy with the Wisconsin Property Assessment Manual.
- Revises s. Tax 12.065 (2) (b) to remove a dated reference to a transitional period.
- Revises s. Tax 12.07 to provide for more frequent update of assessment districts through the Wisconsin Property Assessment Manual.
- Repeals ss. Tax 12.075, 12.08, 12.10, 12.40, and 12.50 (4), which have been made obsolete by statute.
- Updates address and other references in ss. Tax 12.05 (1) (b) and (c), 12.065 (1) (c), (2) (b), and (6), and 12.50 (1) and (3) (b).
- Repeals subchapter I of Chapter Tax 18 and removes other references throughout the chapter to an agricultural assessment transitional period that lasted from 1996 to 1997.
- Amends s. Tax 18.05 (1) (a) so that the definition of agricultural use is consistent with s. 70.32 (2) (c) 1i., Stats.

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

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

Comparison with rules in adjacent states

The department is not aware of a similar rule in an adjacent state.

Summary of factual data and analytical methodologies

2012 Executive Order 61 and 2011 Wisconsin Act 46 requires state agencies to work with the Small Business Regulatory Review Committee to review the agency’s administrative rules that may be particularly onerous to small businesses in Wisconsin. In response, the department initiated a comprehensive review of all of its administrative rules. The changes described above were identified as part of that review. No other data was used in the preparation of this rule order or this analysis.

Analysis and supporting documents used to determine effect on small business

This rule order makes changes to reflect current law and current department policy. It makes no policy or other changes having an effect on small business.

Anticipated costs incurred by private sector

This rule order does not have a fiscal effect on the private sector.

Effect on Small Business

This rule order does not affect small business.

Agency Contact Person

Please contact Dale Kleven at (608) 266-8253 or dale.kleven@revenue.wi.gov, if you have any questions regarding this rule order.

Text of Proposed Rule

SECTION 1. Tax 12.05 (1) (b) and (c) (intro.) are amended to read:

Tax 12.05 (1) (b) The applicant shall have a job commitment from an elected or appointed assessor, from a firm contracting to make the assessment under s. 70.05 (2), 70.055, or 70.75, Stats., or a job commitment from the bureau of property tax department.

(c) (intro.) The certified individual signing the assessment roll for a local tax unit of government or county assessor

system under s. 70.99, Stats., or the applicant's immediate supervisor if in the ~~bureau of property tax department~~, shall be responsible to see that the following conditions are met:

SECTION 2. Tax 12.06 (1) (a) 1. (intro.) is renumbered Tax 12.06 (1) (a) 1. and amended to read:

Tax 12.06 (1) (a) 1. Assessment technician shall be authorized to perform, duties in accordance with the Wisconsin Property Assessment Manual, ~~and under the direct supervision of a property appraiser or an assessor, the following duties:~~

SECTION 3. Tax 12.06 (1) (a) 1. a. to g. are repealed.

SECTION 4. Tax 12.06 (1) (b) 1. (intro.) is renumbered Tax 12.06 (1) (b) 1. and amended to read:

Tax 12.06 (1) (b) 1. Property appraiser shall be authorized to perform, duties in accordance with the Wisconsin Property Assessment Manual, ~~and under the direct supervision of an assessor, the duties of an assessment technician and the following duties:~~

SECTION 5. Tax 12.06 (1) (b) 1. a. to e. are repealed.

SECTION 6. Tax 12.065 (1) (c), (2) (b), and (6) are amended to read:

Tax 12.065 (1) (c) "Committee" means the advisory committee appointed by the department from, but not limited to, the following groups: the department; league of Wisconsin municipalities, the assessor's section; the Wisconsin association of assessing officers; county assessor systems; the ~~vocational technical school program~~ Wisconsin technical college system; the ~~alliance of cities~~ University of Wisconsin Extension; the Wisconsin towns association; private appraisal firms or individuals.

(2) (b) The program shall be attended and completed not earlier than 5 years preceding the expiration of the applicant's current certification period. ~~For certifications issued after January 1, 1981, the earliest program attended may not begin prior to the date of issuance of the applicant's current certification.~~

(6) ADDRESS. All correspondence to the department shall be sent to:

Wisconsin Department of Revenue
Committee on Continuing Assessor Education Division of State and Local Finance
~~e/o Assessor Certification and Training Unit~~
PO Box 8933 8971
2135 Rimrock Road
Madison, WI 53708-8933 ~~53708-8971~~

SECTION 7. Tax 12.07 is repealed and recreated to read:

Tax 12.07 **Assessment districts. (1) LEVELS OF CERTIFICATION.** Based on the complexity of assessment functions and the various classes of property within each taxation district, the department has established the levels of certification required for statutory assessors of counties and municipalities as follows:

- (a) Assessor 1
- (b) Assessor 2
- (c) Assessor 3

Note: See s. Tax 12.06 (2) for a description of the duties of an assessor 1, 2, and 3.

(2) COUNTIES AND MUNICIPALITIES. (a) The department shall establish the level of certification under sub. (1) required for

statutory assessors of each county and municipality and publish this information in the Wisconsin Property Assessment Manual.

(b) The department shall review the levels of certification under par. (a) after every decennial census of the United States of America and revise them as needed. The levels of certification as revised under this paragraph shall be published by the department in the Wisconsin Property Assessment Manual.

(c) A revision under par. (b) shall take effect January 1 of the second year after publication in the Wisconsin Property Assessment Manual.

SECTION 8. Tax 12.075, 12.08, and 12.10 are repealed.

SECTION 9. Tax 12.40 is repealed.

SECTION 10. Tax 12.50 (1) and (3) (b) are amended to read:

Tax 12.50 (1) APPLICABILITY. The general property tax exemption applies whether the solar and wind energy systems ~~certified by the department of commerce under s. 101.57 (4), Stats.,~~ are deemed personal property or are so affixed to the realty as to be classified as real estate.

(3) (b) The claim for exemption shall be submitted to the assessor no later than the ~~April~~ March 1 immediately following the assessment date for which the exemption is claimed.

SECTION 11. Tax 12.50 (4) is repealed.

SECTION 12. Subchapter I of ch. Tax 18 is repealed.

SECTION 13. Subchapter II (title) of ch. Tax 18 is repealed.

SECTION 14. Tax 18.04 is amended to read:

Tax 18.04 **Purpose.** The purpose of this ~~subchapter~~ chapter is to provide definitions and procedures for the department and municipal assessors to classify certain real property as agricultural or other, and to value such property for property tax purposes, ~~beginning in 1998.~~

SECTION 15. Tax 18.05 (intro.) and (1) (a) are amended to read:

Tax 18.05 (intro.) **Definitions.** In this ~~subchapter~~ chapter:

(1) (a) Activities included in subsector 111 Crop Production, set forth in the North American Industry Classification System (NAICS), United States, 1997, published by the executive office of the president, U.S. office of management and budget. ~~"Agricultural use" does not include growing short rotation woody trees with a growing and harvesting cycle of 10 years or less for pulp or tree stock under NAICS industry 111421.~~

SECTION 16. Tax 18.07 (2) is amended to read:

Tax 18.07 (2) Not later than January 1, ~~1998,~~ and each January 1 thereafter of each year, the department shall provide assessors with the use value per acre for each category of agricultural land in each municipality, calculated under sub. (1). The use value per acre for each category of agricultural land in each municipality shall be published annually in the Wisconsin property assessment manual.

SECTION 17. Tax 18.08 is repealed.

SECTION 18. 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) (intro.), Stats.

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis		
Type of Estimate and Analysis		
<input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected		
Administrative Rule Chapter, Title and Number		
Chapters Tax 12 and 18 — Property tax and assessment of agricultural property		
Subject		
Property tax and assessment of agricultural property		
Fund Sources Affected		Chapter 20 , Stats. Appropriations Affected
<input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S		
Fiscal Effect of Implementing the Rule		
<input checked="" type="checkbox"/> No Fiscal Effect <input type="checkbox"/> Indeterminate	<input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Decrease Existing Revenues	<input type="checkbox"/> Increase Costs <input type="checkbox"/> Could Absorb Within Agency's Budget <input type="checkbox"/> Decrease Costs
The Rule Will Impact the Following (Check All That Apply)		
<input type="checkbox"/> State's Economy <input type="checkbox"/> Local Government Units	<input type="checkbox"/> Specific Businesses/Sectors <input type="checkbox"/> Public Utility Rate Payers	
Would Implementation and Compliance Costs Be Greater Than \$20 million?		
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
Policy Problem Addressed by the Rule		
The rule does not create or revise policy, other than to reflect current law and department policy.		
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)		
As indicated in the attached fiscal estimate, the proposed rule has no fiscal effect on municipalities, counties, or the Department of Revenue. No comments concerning the economic effect of the rule were submitted in response to the department's solicitation.		
Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule		
Clarifications and guidance provided by administrative rules may lower the compliance costs for municipalities and counties. If the rule is not implemented, Chapters Tax 12 and 18 will be incomplete in that they will not reflect current law or department policy.		
Long Range Implications of Implementing the Rule		
No long-range implications are anticipated.		
Compare With Approaches Being Used by Federal Government		
N/A		
Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)		
N/A		

FISCAL ESTIMATE FORM

2013 Session

- ORIGINAL UPDATED
- CORRECTED SUPPLEMENTAL

LRB #	
INTRODUCTION #	
Admin rule #	Tax 12: Property Tax
	Tax 18: Assessment of Agricultural Property

Subject

Proposed order of the Department of Revenue relating to property tax and assessment of agricultural property

Fiscal Effect

State: No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation

- Increase Existing Appropriation Increase Existing Revenues
- Decrease Existing Appropriation Decrease Existing Revenues
- Create New Appropriation

- Increase Costs — May be Possible to Absorb Within Agency's Budget Yes No
- Decrease Costs

Local: No Local Government Costs

- | | | |
|--|--|--|
| 1. <input type="checkbox"/> Increase Costs

<input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory
2. <input type="checkbox"/> Decrease Costs

<input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory | 3. <input type="checkbox"/> Increase Revenues

<input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory
4. <input type="checkbox"/> Decrease Revenues

<input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory | 5. Types of Local Governmental Units Affected:
<input type="checkbox"/> Towns <input type="checkbox"/> Villages <input type="checkbox"/> Cities
<input type="checkbox"/> Counties <input type="checkbox"/> Others
<input type="checkbox"/> School Districts <input type="checkbox"/> WTCS Districts |
|--|--|--|

Fund Sources Affected

- GPR FED PRO PRS SEG SEG-S

Affected Ch. 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate

Summary

The proposal makes a number of updates and technical corrections to certain DOR administrative rules. These changes have no fiscal effect on municipalities, counties, or the DOR.

Detail of provisions

Section 1 of the proposal replaces a reference to a bureau in the Department of Revenue (DOR) that no longer exists with a reference to the department.

Sections 2 to 5 of the proposal update the descriptions of what an assessment technician and a property appraiser are allowed to do in the property assessment process. The current rule does not reflect the range of duties that persons in such positions are permitted to do under the Wisconsin Property Assessment Manual.

Section 6 of the proposal updates the list of persons who sit on the advisory committee that makes recommendations to the DOR on continuing education requirements for licensed assessors and assessment staff.

Sections 7 and 8 of the proposal relate to the licensure level (there are 3 such levels) required by assessors. The levels are set such that the more complex a job the assessor must complete, the higher level of licensure that is needed. These levels are currently specified in rule by county and for certain municipalities. The revision would no longer specify these levels in rule, but instead require DOR to publish these levels in the Wisconsin Property Assessment Manual, and to change these levels every 10 years to reflect changes in local populations as determined by the decennial federal census.

Sections 9 and 10 of the proposal repeal rules regarding notification of increased assessment, county review of equalized values, the confidentiality of manufacturing assessment forms, and the waste treatment exemption. These repeals remove obsolete and unnecessary provisions. Current statutes provide sufficient direction to carry out these duties.

Sections 11 and 12 of the proposal deal with the rules on the exemption for solar and wind energy systems. The proposal deletes a reference to a department of commerce certification that no longer exists, changes the exemption request date to conform to current law, and deletes an obsolete sunset provision.

Section 13 of the proposal deletes the rules which governed how agricultural land was to be assessed for 1996 and 1997. These rules are no longer needed. Sections 14 and 16 remove obsolete effective date references.

Section 15 of the proposal deletes a reference to the growing of short rotation woody trees since the statutes have been changed so that such activity now qualifies for agricultural assessment.

Section 17 of the proposal deletes a redundant provision.

Notice of Hearing

**Revenue
CR 13-037**

NOTICE IS HEREBY GIVEN that, pursuant to ss. 15.03, 15.435, 70.395 (2) (hg), 76.07 (5) (b), and 77.30, Stats., the Department of Revenue will hold a public hearing to consider permanent rules revising Chapters Tax 6, 13, and 15, relating to public utility taxation, investment and local impact fund, and real estate transfer fee.

Hearing Information

Date: Friday, July 12, 2013
Time: 9:00 a.m.
Location: Events Room
 State Revenue Building
 2135 Rimrock Road
 Madison, WI 53713

Handicap access is available at the hearing location.

Appearances at the Hearing and Submittal of Written Comments

Interested persons are invited to appear at the hearing and may make an oral presentation. It is requested that written comments reflecting the oral presentation be given to the department at the hearing. Written comments may also be submitted to the contact person listed below or to adminrules.wisconsin.gov no later than **July 12, 2013**, and will be given the same consideration as testimony presented at the hearing.

Dale Kleven
 Department of Revenue
 Mail Stop 6-40
 2135 Rimrock Road
 P.O. Box 8933
 Madison, WI 53708-8933
 Telephone: (608) 266-8253
 E-mail: dale.kleven@revenue.wi.gov

Analysis by the Department of Revenue

Statute interpreted

Section 77.25 (14), Stats.

Statutory authority

Sections 15.03, 15.435, 70.395 (2) (hg), 76.07 (5) (b), and 77.30, Stats.

Explanation of agency authority

The Investment and Local Impact Fund Board, as created by s. 15.435, Stats., and attached to the department under s. 15.03, Stats., is required under s. 70.395 (2) (hg), Stats., to "...by rule, establish fiscal guidelines and accounting procedures for the use of payments under pars. (d), (f), (fm) and (g), sub. (3) and s. 293.65 (5)." These provisions apply to the proposed revision to s. Tax 13.05 (1) (b).

Section 76.07 (5) (b), Stats., provides "[t]he department shall promulgate rules relating to the general principles of the indicators of value..." This provision applies to the proposed changes to Chapter Tax 6.

Section 77.30, Stats., provides "[t]he secretary of revenue may adopt, pursuant to ch. 227, such rules as the secretary deems necessary in the administration of this subchapter..." This provision applies to the proposed repeal of ss. Tax 15.03 (2) (b) and (c) and 15.05 (5).

Related statute or rule

There are no other applicable statutes or rules.

Plain language analysis

The proposed rule makes the following changes:

- Amends s. Tax 6.50 (4) (b) to be consistent with national unit valuation standards.
- Updates department contact and form references throughout Chapter Tax 6.

- Revises s. Tax 13.05 (1) (b) to reflect the repeal of the Badger Fund by 1997 Wis. Act 27.
- Repeals ss. Tax 15.03 (2) (b) and (c) and 15.05 (5) to reflect the creation of s. 77.25 (14), Stats., by 1985 Wis. Act 39.

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

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

Comparison with rules in adjacent states

The department is not aware of a similar rule in an adjacent state.

Summary of factual data and analytical methodologies

2012 Executive Order 61 and 2011 Wisconsin Act 46 requires state agencies to work with the Small Business Regulatory Review Committee to review the agency's administrative rules that may be particularly onerous to small businesses in Wisconsin. In response, the department initiated a comprehensive review of all of its administrative rules. The changes described above were identified as part of that review. No other data was used in the preparation of this rule order or this analysis.

Analysis and supporting documents used to determine effect on small business

This rule order makes changes to reflect current law and current department policy. It makes no policy or other changes having an effect on small business.

Anticipated costs incurred by private sector

This rule order does not have a fiscal effect on the private sector.

Effect on Small Business

This rule order does not affect small business.

Agency Contact Person

Please contact Dale Kleven at (608) 266-8253 or dale.kleven@revenue.wi.gov, if you have any questions regarding this rule order.

Text of Proposed Rule

SECTION 1. Tax 6.02 is amended to read:

Tax 6.02 **Returns for public utilities.** Forms that are used in the administration of the various taxes levied according to ch. 76, Stats., may be obtained from the Wisconsin Department of Revenue, ~~Bureau of Utility and Special Taxes Division of State and Local Finance~~, P.O. Box 8933 8971, Madison, WI 53708-8971.

SECTION 2. Tax 6.40 (2) (a) and (b) are amended to read:

Tax 6.40 (2) (a) Requests for approval by public utilities subject to taxation under s. 76.13, Stats., for each waste treatment facility shall be made by completing the form entitled "~~Application for Exemption of~~ **Report of Exempted Waste Treatment Facility-Utility.**" All actual costs of purchase or construction of the facility must be reflected on this form. The completed form is due January 15 of each year and is to be filed annually except in years subsequent to purchase or construction where no capital changes have occurred to the waste treatment facility, in which case a summary sheet may be submitted for these facilities. For good cause shown upon application by the applicant, the department may grant an extension of time not exceeding 120 days in which to file the application form.

(b) The completed form "~~Application for Exemption of Report of Exempted Waste Treatment Facility-Utility~~" should be sent to the ~~Bureau of Utility and Special Taxes Division of State and Local Finance~~.

Note: The address for mailing the application form is Wisconsin Department of Revenue, ~~Bureau of Utility and Special Taxes, Division of State and Local Finance, PO Box 8971, Madison WI 53708-8971.~~

SECTION 3. Tax 6.50 (4) (b) is amended to read:

Tax 6.50 (4) (b) The department shall make adequate and reasonable allowances for loss of value due to all causes including physical depreciation, functional and economic obsolescence, regulatory required write-offs and utility plant acquisition adjustments. ~~The department shall also make required allowances for property which is not taxable under ch. 76, Stats., which includes but is not limited to, future use property, except when included in the rate base, approved waste treatment facilities, licensed motor vehicles, nonoperating property, property allocable outside the state and property leased to others.~~ The cost indicator for regulated public utilities shall recognize that an asset's value generally is limited by its value for ratemaking purposes. The cost

indicator shall include construction work in-progress regardless of the treatment for ratemaking purposes.

SECTION 4. Tax 13.05 (1) (intro.) is renumbered Tax 13.05 (1) and amended to read:

Tax 13.05 (1) NET PROCEEDS TAX. Fifteen days after collection of the tax, the department of administration, upon certification of the department of revenue, shall transfer the ~~amount collected as follows: first dollar payment and the taxes collected to the impact fund.~~

SECTION 5. Tax 13.05 (1) (b) is repealed.

SECTION 6. Tax 15.03 (2) (intro.) is renumbered Tax 15.03 (2) and amended to read:

Tax 15.03 (2) Conveyances by means of a sheriff's sale: where the grantee is a third party with no prior interest in the deed or mortgage.

SECTION 7. Tax 15.03 (2) (a) to (c) are repealed.

SECTION 8. Tax 15.05 (5) is repealed.

SECTION 9. 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) (intro.), Stats.

ADMINISTRATIVE RULES	
Fiscal Estimate & Economic Impact Analysis	
Type of Estimate and Analysis	
<input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected	
Administrative Rule Chapter, Title and Number	
Chapters Tax 6, 13, and 15 — Public utility taxation; investment and local impact fund; and real estate transfer fee	
Subject	
Public utility taxation, investment and local impact fund, and real estate transfer fee	
Fund Sources Affected	Chapter 20 , Stats. Appropriations Affected
<input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S	
Fiscal Effect of Implementing the Rule	
<input checked="" type="checkbox"/> No Fiscal Effect <input type="checkbox"/> Indeterminate	<input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Decrease Existing Revenues <input type="checkbox"/> Increase Costs <input type="checkbox"/> Could Absorb Within Agency's Budget <input type="checkbox"/> Decrease Costs
The Rule Will Impact the Following (Check All That Apply)	
<input type="checkbox"/> State's Economy <input type="checkbox"/> Local Government Units	<input type="checkbox"/> Specific Businesses/Sectors <input type="checkbox"/> Public Utility Rate Payers
Would Implementation and Compliance Costs Be Greater Than \$20 million?	
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
Policy Problem Addressed by the Rule	
The rule does not create or revise policy, other than to reflect current law and department policy.	

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)
As indicated in the attached fiscal estimate, the proposed rule has no fiscal effect on municipalities, counties, or the Department of Revenue. No comments concerning the economic effect of the rule were submitted in response to the department's solicitation.
Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule
Clarifications and guidance provided by administrative rules may lower the compliance costs for municipalities and counties. If the rule is not implemented, Chapters Tax 6, 13, and 15 will be incomplete in that they will not reflect current law or department policy.
Long Range Implications of Implementing the Rule
No long-range implications are anticipated.
Compare With Approaches Being Used by Federal Government
N/A
Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)
N/A

FISCAL ESTIMATE FORM

2013 Session

- ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

LRB #	
INTRODUCTION #	
Admin rule #	Tax 6: Public Utility Taxation Tax 13: Investment & Local Impact Fund Tax 15: Real Estate Transfer Fee

Subject

Proposed order of the Department of Revenue relating to public utility taxation, investment and local impact fund, and real estate transfer fee

Fiscal Effect

State: No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation

- Increase Existing Appropriation Increase Existing Revenues
 Decrease Existing Appropriation Decrease Existing Revenues
 Create New Appropriation

Increase Costs — May be Possible to Absorb Within Agency's Budget Yes No

Decrease Costs

Local: No Local Government Costs

1. Increase Costs

 Permissive Mandatory
2. Decrease Costs
 Permissive Mandatory

3. Increase Revenues

 Permissive Mandatory
4. Decrease Revenues
 Permissive Mandatory

5. Types of Local Governmental Units Affected:
 Towns Villages Cities
 Counties Others
 School Districts WTCS Districts

Fund Sources Affected

- GPR FED PRO PRS SEG SEG-S

Affected Ch. 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate

Summary

The proposal makes a number of updates and technical corrections to certain DOR administrative rules. These

changes have no fiscal effect on municipalities, counties, or the DOR.

Detail of provisions

Section 1 of the proposal updates the address from which utilities can obtain the forms they are required to use in their annual filings with the Department of Revenue (DOR).

Section 2 of the proposal changes the name of a report form to the current name and updates the DOR address from which the required form can be obtained.

Section 3 of the proposal is not consistent with current practices under which certain utilities are valued on a unit basis. The proposal would make the rule consistent with current DOR practices.

Sections 4 and 5 of the proposal update the rules to reflect the repeal (in 1997 Wisconsin Act 27) of the Badger Fund. The Badger Fund was a segregated fund into which 40% of the collections from the mining net proceeds tax (after certain allocations) were deposited.

Sections 6 to 8 of the proposal update the real estate transfer fee rules to reflect how sheriff's sales are handled under current law. Under current law, a conveyance by or in lieu of foreclosure to a person holding a mortgage or to a seller under a land contract is specifically exempt from the transfer fee. However, a conveyance by or in lieu of foreclosure to someone with no prior interest in the mortgage or deed is not exempt.

Notice of Hearing**Workforce Development****Employment and Training, Chs. DWD 805–830
CR 13–045**

NOTICE IS HEREBY GIVEN that pursuant to ss. 103.005 (1) and 106.27 (2g), Stats., the Department of Workforce Development proposes to hold a public hearing to consider the creation of Chapter DWD 801, relating to workforce training grants under the Wisconsin Fast Forward program.

Hearing Information

Date: Monday, July 15, 2013
Time: 10:00 a.m.
Location: G.E.F. 1 Building, B 103
 201 E. Washington Avenue
 Madison, WI

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.

Visitors to the GEF 1 building are requested to enter through the left East Washington Avenue door and register with the customer service desk. The entrance is accessible via a ramp from the corner of Webster Street and East Washington Avenue. If you have special needs or circumstances regarding communication or accessibility at the hearing, please call (608) 266–9427 at least 10 days prior to the hearing date. Accommodations such as ASL interpreters, English translators, or materials in audiotape format will be made available on request to the fullest extent possible.

Written Comments and Deadline for Submission

Written comments may be submitted to Howard Bernstein, Office of Legal Counsel, Dept. of Workforce Development, P.O. Box 7946, Madison, WI 53707–7946 or by email to

howard.bernstein@dwd.wisconsin.gov. The deadline for submission is July 17, 2013. Written comments will be given the same consideration as testimony presented at the hearing.

Availability of Rules

The proposed rules are available at the website <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 rule by contacting Howard Bernstein at the addresses given above or by telephone at (608) 266–9427.

Analysis Prepared by the Department of Workforce Development**Statutory authority**

Sections 103.005 (1) and 106.27 (2g), Stats.

Statute interpreted

Section 106.27, Stats.

Explanation of agency authority

2013 Wisconsin Act 9 creates a program in the Department of Workforce Development (DWD) for the development and implementation of workforce training grants to be used for the training of unemployed and underemployed workers in this state or for the training of incumbent employees of businesses in this state.

Act 9 mandates that grantees report to DWD regarding how grant money was used and the outcomes achieved, and requires DWD to promulgate rules prescribing the information to be contained in these reports. It also requires DWD to create grant application forms, procedures, and criteria, and permits DWD to audit and inspect the records of grantees.

Summary of the proposed rule

This rule establishes the general criteria, procedures, requirements and conditions for the award of Wisconsin Fast Forward workforce training grants. It allows for grant applications from any public or private organization, including an employer or an economic development agency or training provider that is working with an employer.

The rule provides for the solicitation of applications for grants in the form of Grant Program Announcements (GPAs).

Each grant applicant will be asked to provide information about itself and a description of its proposed training program, including the proposed program budget and the proposed matching funds to be provided by the applicant.

The proposed rule provides that grant applications shall receive a preliminary review to ensure that they meet the basic requirements of the GPA. Applications which satisfy this review shall then be evaluated and ranked in relation to a series of factors relating to the capability of the applicant, the specifics of the proposal, and the potential economic and workforce capacity impacts of the proposal. The Department may also consider factors such as underserved populations and geographic areas.

The rule establishes an overall procedure for awarding grants and guidelines for grant administration, the use of grant funds and the provision of matching funds by grantees. Each grantee will be required to report on the use and effect of the grant funds in terms of information on the number of trainees,

the trainees that have completed the program, and whether trainees have obtained new employment with increased wages or increased hours of work.

Summary of analytical methodology

The rules of other public grant programs were reviewed as part of the process for developing this proposed rule. No other data or analysis was needed.

Comparison to federal law

The federal Workforce Investment Act of 1998 provides funding for employment and training programs to the state with the guidance of the State Council for Workforce Investment. Grant allocations go to 11 regional workforce development boards, which fund and supervise local programs. Programs for employment placement and retention, job training, and education-related training are delivered through the Wisconsin Job Centers.

Comparison with statutes and rules in adjacent states

Minnesota

The Minnesota Job Skills Partnership Program is a state grant program which links state businesses with colleges, technical colleges, and universities to provide skill development training to workers. Approximately 70% of the grants go to state manufacturers; the next most numerous category is health care industries. It is a financial match program in which employers provide approximately 2 dollars for every public dollar provided. Partnership grants are awarded in amounts up to \$400,000. About 80% of the grants are awarded to Colleges and Technical Colleges within the Minnesota State Community and Technical College system.

Illinois

The Illinois Department of Commerce and Economic Opportunity, Office of Business Development, offers a grant program entitled Employer Training Investment Program. Grants may be awarded to individual businesses or to intermediary organizations operating multi-company training programs. The grants are intended to enable companies to remain competitive, expand into new markets or introduce more efficient technology. ETIP grants may reimburse Illinois companies for up to 50 percent of the eligible cost of training their employees. In fiscal year 2010, this program gave out 15 grants totaling \$6.4 million ranging from \$60,000 to \$1.1 million.

Iowa

The Skilled Iowa Initiative offers assessments, certification programs, and internships in cooperation with public schools, community colleges, and universities, to work with employers seeking to expand the number of available “middle-skill” workers.

Michigan

The Michigan Industry Cluster Approach strategy focuses on five industry clusters (agriculture, energy, healthcare, information technology, and manufacturing) and works with employers to identify industry demand and vacancies, and provide input into the design of educational program offerings and skills requirements. The state’s policy is to align services and programs with the identified needs for workers and skills. Programs are listed on Michigan’s “WIA Eligible Training Provider List” based on input from employers.

Analysis used to determine effect on small business

The analysis is based upon the text of 2013 Wisconsin Act 9 and the proposed rule.

Effect on Small Business

The proposed rule has no effect on a small business that does not apply for a workforce training grant. Any business that chooses to apply for a grant, with or without partners, will have to comply with the administration and reporting requirements of the rule and the grant agreement.

Agency Contact for Program Issues

Dennis C. Schuh, Program Manager
 DWD Office of Skills Development
 P.O. Box 7946
 Madison, WI 53707
 (608) 267-3803
dennisc.schuh@dwd.wisconsin.gov

Agency Contact for Rulemaking Issues

Howard Bernstein, DWD Legal Counsel
 P.O. Box 7946
 Madison, WI 53707
 (608) 266-9427
howard.bernstein@dwd.wisconsin.gov

STATE OF WISCONSIN DOA 2049 (R 07/2011)	
ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis	
Type of Estimate and Analysis	
<input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected	
Administrative Rule Chapter, Title and Number	
ch. DWD 801	
Subject	
Workforce Training Grants under s. 106.27 (2g), Stats.	
Fund Sources Affected	Chapter 20 , Stats. Appropriations Affected
<input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S	

Fiscal Effect of Implementing the Rule		
<input checked="" type="checkbox"/> No Fiscal Effect <input type="checkbox"/> Indeterminate	<input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Decrease Existing Revenues	<input type="checkbox"/> Increase Costs <input type="checkbox"/> Could Absorb Within Agency's Budget <input type="checkbox"/> Decrease Costs
The Rule Will Impact the Following (Check All That Apply)		
<input type="checkbox"/> State's Economy <input type="checkbox"/> Local Government Units	<input type="checkbox"/> Specific Businesses/Sectors <input type="checkbox"/> Public Utility Rate Payers	
Would Implementation and Compliance Costs Be Greater Than \$20 million?		
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
Policy Problem Addressed by the Rule		
The proposed rule implements the requirement in s. 106.27(2g), Stats., that DWD promulgate rules prescribing procedures and criteria for awarding grants and the information that must be contained in the reports that are required from the grantees.		
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 does not create any costs in the administration of the workforce training grants program that are independent of the fiscal effect of 2013 Wisconsin Act 9 (2013 Assembly Bill 14), which created the program. A copy of the fiscal estimate for AB 14/Act 9 is attached.		
Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule		
The rule simply carries out the instructions of the statute.		
Long Range Implications of Implementing the Rule		
None distinct from the statute.		
Compare With Approaches Being Used by Federal Government		
The rule analysis contains a comparison to the federal Workforce Investment Act.		
Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)		
These comparisons are also in the rule analysis.		
Name and Phone Number of Contact Person		
Howard Bernstein, Legal Counsel, DWD (608) 266-9427		

Submittal of Proposed Rules to Legislature

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

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

On June 7, 2013, the Department of Safety and Professional Services 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 rule revises Chapter A–E 4, relating to requirements for registration as a professional engineer.

This rule is not subject to s. 227.185, Stats. The statement of scope for this rule was published in Register No. 662 on

February 14, 2011, and was sent to the LRB prior to the effective date of 2011 Wis. Act 21.

**Transportation
CR 12–046**

On June 17, 2013, the Department of Transportation submitted a rule-making order to the Chief Clerks of the Senate and Assembly for referral to the appropriate standing committees under s. 227.19, Stats. The proposed rule revises Chapter Trans 200, relating to the erection of signs on public highways.

The Governor approved the rule under s. 227.185, Stats., on June 13, 2013.

Rule Orders Filed with the Legislative Reference Bureau

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

Natural Resources

Fish, Game, etc. Chs. NR 1—

CR 12-031

(DNR # WM-09-11)

An order to amend s. NR 10.01 (3) (d) 1., relating to the bobcat hunting and trapping season.
Effective 8-1-13.

Natural Resources

Fish, Game, etc. Chs. NR 1—

CR 13-005

(DNR # ER-19-10)

An order to revise Chapter NR 18 relating to the sport of falconry.
Effective 8-1-13.

Rules Published with this Register and Final Regulatory Flexibility Analyses

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

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

Agriculture, Trade and Consumer Protection

CR 12-033

(DATCP# 09-R-01)

The Wisconsin Department of Agriculture, Trade and Consumer Protection adopts an order to amend Chapter ATCP 75 Appendix, relating to retail food establishments and affecting small business. Effective 9-1-13.

Effect on Small Business

This rule is not expected to have a significant impact on business, including small business, because the food sanitation requirements contained in this rule are similar to those that currently apply. This rule will require some additional training of retail food establishment personnel. However, it should not be necessary for retail food establishments to hire additional professional services to comply with this rule. A Business Impact Analysis is attached.

The FDA develops and publishes the FDA Model Food Code based on the best available science and information related to food safety. The FDA Model Food Code encourages consistent state and local regulation of food establishments.

Because the FDA Model Food Code establishes minimum requirements for safe food handling, DATCP is unable to lessen or exempt food establishments from those requirements. However, the department may grant a variance in cases where it is impractical for a food establishment to achieve strict adherence to the Wisconsin Food Code, if the variance does not jeopardize the public's health, safety, or welfare. DATCP will provide training, fact sheets, and handouts to Wisconsin retail food establishments, including small businesses, to help explain and implement the modified requirements contained in this rule.

Comments of Legislative Standing Committees

No comments were reported.

Corrections

CR 10-125

The Wisconsin Department of Corrections proposes an order to repeal and recreate ch. DOC 331, relating to the revocation of probation, parole, or extended supervision. Effective 7-1-13.

Final Regulatory Flexibility Analysis

The Department of Corrections has determined that the rule will not have a significant economic impact on a substantial number of small businesses since the rule does not regulate small businesses as that term is defined in s. 227.114., Stats.

Comments of Legislative Standing Committees

There were no comments received from the public.

Corrections

CR 10-126

The Wisconsin Department of Corrections proposes an order to repeal and recreate ch. DOC 328, relating to offender field supervision, and to amend s. DOC 332.18 (3) (b). Effective 7-1-13.

Final Regulatory Flexibility Analysis

The Department of Corrections has determined that the rule will not have a significant economic impact on a substantial number of small businesses since the rule does not regulate small businesses as that term is defined in s. 227.114., Stats.

Comments of Legislative Standing Committees

There were no comments received from the public.

Health Services

CR 12-038

The Wisconsin Department of Health Services (DHS) proposes to amend s. DHS 196.03 (7), Table DHS 196.05 A, ss. 196.05 (7), 196.12, and DHS 196 Appendix; and to create s. DHS 196.03 (2g), (2r), (3m), (4f), and (4i), relating to restaurants and the Wisconsin Food Code, and affecting small businesses. Effective 9-1-13.

Final Regulatory Flexibility Analysis or Summary

DHS does not expect any increase in costs with the implementation of this rule by business.

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

Comments of Legislative Standing Committees

No comments were received.

Natural Resources

CR 12-029

(DNR# FR-19-11)

The Wisconsin Department of Natural Resources adopts an order to revise Chapter NR 47, relating to the administration of the Wisconsin Forest Landowner Grant Program and to create Chapter NR 47, subchapter XIII, relating to the administration of the Weed Management Area Private Forest Grant Program. Effective 7-1-13.

Regulatory Flexibility Analysis

This rule positively affects small business as a secondary benefit, specifically contractors (restoration consultants,

cooperating foresters, loggers) and retailers who provide services or equipment for controlling terrestrial invasive plants or forest stewardship plan development and implementation.

Comments of Legislative Standing Committees

No comments were reported.

Safety and Professional Services
Safety, Buildings, and Environment — Plumbing,
Chs. SPS 381–387
CR 11–031

The Wisconsin Department of Safety and Professional Services proposes an order to revise Chapters SPS 381, 382, 383, 383 Appendix, and 384, relating to private onsite wastewater treatment systems (POWTS). Effective 7–1–13.

Effect on Small Business

These rule changes are not expected to impose significant additional costs or other impacts on a substantial number of businesses because the primary effect of the changes make changes to operations at the county-level.

Sections Affected by Rule Revisions and Corrections

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

Revisions

Agriculture, Trade and Consumer Protection

Ch. ATCP 75

Appendix

NR 47.82 (2m), (4)

NR 47.83

NR 47.84 91) (c), (1m), (2) (b) 4. to 8.

NR 47.86 (1), (3) (a), (c), (e) 8.

NR 47.87 (1), (3), (6)

NR 47.895 (2), (3)

NR 47 Subchapter XIII

Corrections

Ch. DOC 328

Entire chapter

Appendix

Ch. DOC 331

Entire chapter

Appendix

Ch. DOC 332

DOC 332.18 (3) (b)

Safety and Professional Services

Ch. SPS 381

SPS 381.01 (51), (51m), (209m)

Ch. SPS 382

SPS 382.40 (8) (b) 2. to 4., 5. (intro.), 7., (Note [2]), 8.

Ch. SPS 383

SPS 383.02 (1) (Note [1])

SPS 383.21 (10) (a) to (c)

SPS 383.255 (1) (a) 1., (2) (a)

SPS 383.32 (1) (h), (3) (b), (Note)

SPS 383.33 (2), (3) (Note)

SPS 383.43 Table 1

SPS 383.54 (3) (c), (d), (Note), (4) (b) 1., 2., (Note), (d) 2. c. to g.

SPS 383.55 (1) (a), (b)

Appendix

Ch. SPS 384

SPS 384.10 (3) (e) 3.

Health Services

Ch. DHS 196

DHS 196.03 (2g), (2r), (3m), (4f), (4i), (7)

DHS 196.05 Table A, (7)

DHS 196.12

Appendix

Natural Resources

Ch. NR 47

NR 47.80

Editorial Corrections

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

Agriculture, Trade and Consumer Protection

Ch. ATCP 3

ATCP 3.02 (1) (b)

Ch. ATCP 55

ATCP 55.02 (History Note)

ATCP 55.03 (History Note)

ATCP 55.04 (History Note)

ATCP 55.06 (History Note)

ATCP 55.07 (History Note)

Ch. ATCP 161

ATCP 161.50 (History Note)

ATCP 161.60 (History Note)

ATCP 161.63 (History Note)

ATCP 161.64 (History Note)

ATCP 161.65 (History Note)

ATCP 161.66 (History Note)

Corrections

Ch. DOC 328

DOC 328.03 (38)

Emergency Management

Ch. WEM 8

WEM 8.02 (5)

WEM 8.08

Health Services

Ch. DHS 196

DHS 196.01

DHS 196.02
 DHS 196.03 (intro.), (2r) (c), (4), (5) (h) (Note)
 DHS 196.05 (4) (h) (Note)
 DHS 196.10 (1)
 DHS 196.12

Natural Resources

Ch. NR 47

NR 47.954 (2) (Note)
 NR 47.955 (2) (d)
 NR 47.967 (6)

Ch. NR 420

NR 420 (1) (a) (Note)

Ch. NR 542

NR 542.02 (Note)
 NR 542.03 (6)

Ch. NR 543

NR 543 (Note)

Ch. NR 544

NR 544.01 (Note)
 NR 544.03 (38)
 NR 544.11 (Note)
 NR 544.20 (Note)
 NR 544.21 (Note)
 NR 544.22 (Note)
 NR 544.23 (Note)
 NR 544.24 (Note)
 NR 544.25 (Note)
 NR 544.26 (Note)
 NR 544.27 (Note)

Ch. NR 700

NR 700.03 (21) (Note)

Ch. NR 706

NR 706.02 (3)

Ch. NR 714

NR 714.02 (Note)
 NR 714.05 (1) (a) (Note)

Ch. NR 718

NR 718.09 (8) (d) 3. g.

Ch. NR 722

NR 722.07 (4) (a) 4. h. (Note)

Ch. NR 726

NR 726.05 (2) (b) 4.
 NR 726.05 (2) (a) 1., 2. d., 3.d., (am) 2. (Notes)

Ch. NR 728

NR 728.05 (Note)

Ch. NR 734

NR 734.03 (4)

Ch. NR 736

NR 736.03 (7)

Ch. NR 738

NR 738.01 (Note)

Ch. NR 746

NR 746.07 (4) (c) 1., 2.
 NR 746.08 (4) (d) 1., 2.

Ch. NR 750

NR 750.05 (1) (Note)

NR 750.07 (1) (c)

Public Instruction

Ch. PI 29

PI 29 (Note)

Ch. PI 31

PI 31 (Note)

Ch. PI 32

PI 32.01 (Note)
 PI 32.03 (2) (intro.) (Note), (4) (a) (Note)

Ch. PI 33

PI 33 (Note)

Safety and Professional Services

Ch. SPS 381

SPS 381.01 (60e) (Note), (159) (Note)

Ch. SPS 382

SPS 382.20 (1) (Note), (b) (Note [1]), (2) (a) 2. (Note), (4) (b) 4. b. (Note), (11) (a) (Note [2]), (b) (Note), (13) (Note)
 SPS 382.21 (1) (b) 1. c. (Note)
 SPS 382.30 (4) (a) 2. (Note [2]), (c) 5. (Note), Table 3, (5) (c) 2. (Note), (6) (b) 5. b. (Note), (7) (b) (Note), (8) (a) (Note), (10) (a) 2. e. (Note), (b) 3. (Note [1]), (Note [2]), (11) (b) 1. b. (Note), (c) 3. b. (Note), (d) (Note [2]), (f) 2. c. (Note), (h) (Note)
 SPS 382.31 (4) (b) 4. (Note), (7) (b) (Note), (9) (b) (Note), (10) (b) 2. (Note), (11) (b) (Note), (12) (d) (Note), (13) (a) 1. e. (Note), (c) 4. (Note), (14) (a) 2. (Note), (b) 2. (Note), (c) (Note), (d) (Note), (15) (b) 3. (Note), (16) (g) (Note), (17) (a) 1. e. (Note), (b) 6. (Note), (c) 7. (Note)
 SPS 382.32 (4) (b) 2. c. (Note)
 SPS 383.33 (6) (Note), (7) (b) (Note), (8) (d) 7. (Note), (9) (c) 3. b. (Note), (f) 5. (Note), (g) 6. (Note)
 SPS 382.34 (3) (g) 3. (Note), (4) (b) (Note), (5) (c) 1. j. (Note), 3. (Note), 3. e. (Note)
 SPS 382.34 (5) (d) 4. b. (Note), (6) (b) 2. (Note), (7) (b) (Note), (8) (c) 2. (Note), (13) (b) (Note), (14) (b) 2. (Note), (15) (a) (Note)
 SPS 382.35 (3) (a) 3. (Note), (L) (Note), (5) (a) 2. d. (Note), (8) (b) (Note [2])
 SPS 382.36 (3) (c) (Note [1]), (4) (b) 3. (Note [1]), (Note [3]), (5) (a) 2. (Note), (b) (Note [1]), (6) (a) 2. b. (Note), (8) (a) 3. (Note), (9) (b) 3. c. (Note)
 SPS 382.365 (1) (Note), (3) (b) 2. (Note), (f) 2. (Note)
 SPS 382.37 (1) (c) (Note), (2) (a) (Note), (3) (b) 3. (Note)
 SPS 382.40 (3) (d) 4. c. (Note), (4) (a) 2. b. (Note), (b) 3. b. (Note), (7) (a) 6. (Note), (b) (Note), (8) (b) 7. (Note [1])
 SPS 382.41 (5) (a) (Note), (f) 5. (Note)
 SPS 382. 50 (3) (b) 5. (Note)
 SPS 382.51 (3) (c) (Note)
Ch. SPS 383
 SPS 383.03 (1) (a) (Note)
 SPS 383.21 (1) (a), (2) (a) (Note), (c) 7. (Note), (3) (e) (Note), (4), (Note)
 SPS 383.22 (2) (b) 1. a. (Note), 6. c., d.
 SPS 383.25 (2) (a) (Note), (b) 1. (Note), (f) 2. c. (Note [2])
 SPS 383.43 (6) (b) (Note), (7) (Note [1]), (8) (g) (Note)

Ch. SPS 384

SPS 384.10 (3) (b) (Note)

SPS 384.11 (Note)

SPS 384.20 (5) (L) 4. (Note), (m) 2. (Note), (o) 4.
(Note), (p) (Note)

SPS 384.25 (11) (b) 1. c. (Note)

SPS 384.30 (4) (c) (Note), (e) 2. (Note [2])

Appendix

Ch. SPS 385

SPS 385.40 (2) (a) (Note)

SPS 385.60 (3) (j) (Note), (4) (c) 5. (Note), (d) 3.
(Note)

Ch. SPS 386

SPS 386.03 (2) (Note)

SPS 386.07 (Note)

Ch. SPS 387

SPS 387.05 (1) (b) (Note)

Executive Orders

The following are recent Executive Orders issued by the Governor.

Executive Order 104. 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 Memorial Day. **(May 22, 2013)**

Public Notices

Health Services

Annual Adjustment to Fees That May be Charged by a Health Care Provider for Providing Copies of a Patient's Health Care Records

Statutory Authority

Pursuant to Wis. Stat. §146.83 (3f) (c) 2., each July 1, beginning on July 1, 2012, the Department of Health Services is required to adjust, by the percentage difference between the consumer price index for the 12-month period ending on December 31 of the preceding year and the consumer price index for the 12-month period ending on December 31 of the year before the preceding year, the dollar amounts specified under Wis. Stat. §146.83 (3f) (b) that a health care provider may charge for providing copies of a patient's health care records.

Under the methods prescribed in Wis. Stat. §146.83 (3f) (c) 2., the adjusted dollar amounts that a health care provider may charge for providing copies of a patient's health care records are as follows:

Schedule of Health Care Provider Records Fees

July 1, 2013 – June 30, 2014

	% difference from Dec 2011 to Dec 2012	Previous charges 2012	Adjustment for CPI % increase	New Charges 2013
	1.70%			
Paper Copies				
First 25 pages		\$ 1.02	\$ 0.02	\$ 1.04
Pages 26 to 50		\$ 0.76	\$ 0.01	\$ 0.77
Pages 51 to 100		\$ 0.51	\$ 0.01	\$ 0.52
Pages 101 and above		\$ 0.30	\$ 0.01	\$ 0.31
Microfiche or Microfilm (per page)		\$ 1.52	\$ 0.03	\$ 1.55
Print of an X-ray (per image)		\$ 10.15	\$ 0.17	\$ 10.32
If the requestor is not the patient or a person authorized by the patient				
Certification of Copies		\$ 8.12	\$ 0.14	\$ 8.26
Retrieval Fee		\$ 20.30	\$ 0.35	\$ 20.65
Actual Shipping Costs and Any Applicable Taxes				
For fee related questions: Please contact the Bureau of Fiscal Services at 608-266-8217				
For statute interpretation questions: Please contact the Office of Legal Counsel at 608-266-0885				

Health Services
(Medical Assistance Reimbursement of Nursing Homes)
State of Wisconsin Medicaid Nursing Facility Payment Plan:
July 1, 2013 through June 30, 2014

The State of Wisconsin reimburses Medicaid-certified nursing facilities for long-term care and health care services provided to eligible persons under the authority of Title XIX of the Federal Social Security Act and ss. 49.43 to 49.47, Wisconsin Statutes. This program, administered by the State's Department of Health Services, is called Medical Assistance (MA) or Medicaid. Federal Statutes and regulations require that a state plan be developed that provides the methods and standards for setting payment rates for nursing facility services covered by the payment system. A plan that describes the nursing home reimbursement system for Wisconsin is now in effect as approved by the Centers for Medicare and Medicaid Services (CMS).

The Department is proposing changes in the methods of payment to nursing homes and, therefore, in the plan describing the nursing home reimbursement system. The changes proposed would be effective July 1, 2013.

The proposed changes would update the payment system and make various payment-related policy changes. Some of the changes are necessary to implement various budget policies enacted in the Wisconsin 2013-2015 Biennial Budget, and update the payment system and methodology. Some of the changes are technical in nature; some clarify various payment plan provisions.

The estimated net decrease in annual aggregate expenditures attributable to these changes for skilled nursing homes serving MA residents is approximately \$(12,717,300) (All Funds), or \$(7,630,400) (FFP), excluding patient liability.

The proposed changes are being implemented to comply with Wisconsin Statutes governing Medicaid payment systems, particularly s. 49.45 (6m), Wis. Stats. This notice represents information known as of June 12, 2013. The changes may be modified by later legislative mandates.

The proposed changes are as follows:

1. Modify the methodology to adjust the reimbursement for nursing homes within the parameters of 2013-2015 Biennial Budget Bill. These parameters are divided into two parts. First, the Department will disburse the additional \$13,128,600 AF (\$7,877,200 FFP) that was appropriated to fund an assumed acuity increase of approximately 2.0% for nursing homes. Second, the number of Medicaid-funded patient days is projected to decline, which generates the overall funding decrease identified above. These modifications will include adjustments to the maximums, per diems, and other payment parameters in Sections 5.400, 5.500, 5.700, 5.800 and 5.900, the inflation and deflation factors in Section 5.300, and targets in Sections 3.000 and 5.000.
2. Modify Sections 3.655 (Nursing Home Modernization Incentive Program) to reflect the Department's enhanced focus on addressing behavioral and cognitive impairment issues, including dementia-related needs.
3. The methodology will factor in the effect on patient liability of the 1.7% cost of living adjustment (COLA) increases in Social Security and Supplemental Security Income programs, which were effective January 1, 2013.
4. Potentially incorporate changes into the Behavioral/Cognitive Impairment Incentive, as a result of further study the Department is carrying out in this area.
5. Correct an obsolete reference in Section 1.120 relative to the statutory basis for Nursing Home Payment Rates.
6. Modify Section 1.134 to provide for the possibility of alternate payment arrangements under certain circumstances.
7. Correct an obsolete reference in Section 1.315.
8. Clarify Section 1.530 regarding the proper calculation of the Bed Hold billing threshold.
9. Clarify the status of new resident admissions and re-admissions in the CMI.
10. Correct an obsolete reference to certain types of equipment rental expenses in Section 2.251.
11. Correct obsolete references to "Bed Banks" in Sections 3.040, 3.060, 3.061, and 3.062.
12. Clarify the time period in which corrections to a facility's case mix index are allowable under Section 3.150.
13. Clarify that the final rate determination is the sum of calculations made for each cost center under Section 3.700.
14. Merge two duplicative sections relating to separately billable ancillary items by moving portions of Section 6.310 into Section 3.801 and Section 3.802, and a portion of Section 6.320 into Section 3.803, and deleting Section 6.300.

15. Update the ventilator rate for SFY14 and correct obsolete references to a rate for extensive care patients by adding the updated rate and deleting portions of Section 4.691.
16. Correct an obsolete reference to a special fixed rate for residents with HIV/AIDS in Section 4.694.
17. Correct an obsolete reference to approval of uniform chart of accounts in Section 6.110.
18. Modify Sections 3.775 and 3.780 to reflect possible changes in the Medicare Upper Payment Limit (UPL) calculations. This shall reflect any potential changes to bring the State's approach to calculating the UPL into alignment with the requirements of the recently-released SMD# 13-003.
19. Update the Reporting Period, Picture Dates, and Dates Available in Section 5.421.
20. Update the Picture Dates, and Dates Available as of Dates and Rate Effective Dates in Section 5.422.
21. Update the dates in Section 4.720.
22. Update contact names and addresses, as necessary.
23. Update references to previous years for descriptive reasons, and correct typographical errors as necessary.
24. Update the labor factors listed in Section 5.410.
25. Update the case mix weight listed in Section 5.420.
26. Change the dates of the definitions of base cost reporting period.
27. Make any potential changes required by findings of an ongoing federal audit of ICF-IID rate-setting by the Office of Inspector General of the Department of Health and Human Services.

Copies of the Proposed Changes

Copies of the available proposed changes and proposed rates may be obtained free of charge by writing to:

Division of Long Term Care
Bureau of Financial Management
Attention: Nursing Home Medicaid Payment Plan
P.O. Box 7851
Madison, WI 53703-7851

or by faxing Dave Varana at 608-266-2713.

Written Comments/Meetings

Written comments on the proposed changes may be sent to the Division of Long Term Care, at the above address. The comments will be available for public review between the hours of 7:45 a.m. and 4:30 p.m. daily in Room B274 of the State Office Building, 1 West Wilson Street, Madison, Wisconsin. Revisions may be made in the proposed changes based on comments received. There will also be public meetings to seek input on the proposed plan amendment. If you would like to be sent a public meeting notice, please write to the above address. Revisions may, also, be made in the proposed changes based on comments received at these forums.

Health Services

Medicaid Reimbursement for Inpatient Hospital Services:

Acute Care Hospitals, Children's Hospitals, Rehabilitation Hospitals, Critical Access Hospitals

State of Wisconsin Medicaid Payment Plan for State Fiscal Year 2013-2014

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

The Wisconsin Medicaid program uses a reimbursement system which is based on Diagnosis Related Groupings (DRGs). Under the current Medicaid Inpatient Hospital State Plan, effective February 1, 2013, the rate-setting methodology for Acute Care, Major Border Status and Children's Hospitals is a provider specific, DRG payment system

adjusted by case mix that assigns each hospital a unique hospital specific DRG base rate. This rate includes adjustments for differences in wage levels, includes an amount for capital expenditures, and payment enhancements for qualifying Rural Hospitals and facilities with Graduate Medical Education programs. In addition, a cost outlier payment will be made when the cost of providing services exceeds a predetermined trimpoint. Payments are adjusted as necessary to ensure budget compliance using a statewide base rate as the starting point of the rate setting process. Non State Public and Private Psychiatric and Rehabilitation Hospitals are paid on a provider specific, cost based per diem rate adjusted as necessary to ensure budget compliance.

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

- Access Payments for Acute Care Hospitals, Children's Hospitals, and Rehabilitation Hospitals will be updated and made in addition to the base payments.
- Access Payments for Critical Access Hospitals will be updated and made in addition to the DRG base payments.
- The methodology used to distribute disproportionate share payments to hospitals in state fiscal year 2013–14 will be defined.

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

Proposed Change

It is estimated that these changes will have a projected impact of an increase of expenditures in the amount of \$36,792,000 all funds, composed of \$15,000,000 general purpose revenue, or GPR, and \$21,792,000 federal match, annual aggregate Medicaid expenditures in state fiscal year 2013–14.

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

In addition to this public notice, Wisconsin's tribes were consulted at a meeting of the Tribal Health Directors.

Copies of the Proposed Change

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

Regular Mail

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

State Contact

Krista Willing, Deputy Director
Bureau of Fiscal Management
(608) 266–2469 (phone)
(608) 266–1096 (fax)
kristae.willing@wisconsin.gov

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

Written Comments

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

Health Services

Medicaid Reimbursement for Outpatient Hospital Services:

Acute Care Hospitals, Children's Hospitals, Rehabilitation Hospitals, Critical Access Hospitals

State of Wisconsin Medicaid Payment Plan for State Fiscal Year 2013–2014

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

Effective April 1, 2013, DHS implemented the Enhanced Ambulatory Patient Groupings (EAPG) reimbursement system as the new rate setting methodology for all outpatient hospital services. This is a discrete cost-specific reimbursement methodology that will allow DHS to reimburse providers more accurately based on case mix. Acute Care, Psychiatric, Rehabilitation, Children's, Out-of-State, and new hospitals will be paid under the EAPG system using a statewide base rate, which will be adjusted to stay within the State's available funding for outpatient hospital services. Critical Access Hospitals will also be paid using the EAPG system, but the base rate will be based on each hospital's specific, prospective costs.

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

- Access Payments for Acute Care Hospitals, Children's Hospitals, and Rehabilitation Hospitals will be updated and made in addition to the EAPG payments.
- Access Payments for Critical Access Hospitals will be updated and made in addition to the EAPG payments.

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

Proposed Change

It is estimated that these changes will have no impact on projected annual aggregate Medicaid expenditures in state fiscal year 2013–14.

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

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The State of Wisconsin
Department of Administration
Bureau of Document Services
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Madison, Wisconsin 53705-2156



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