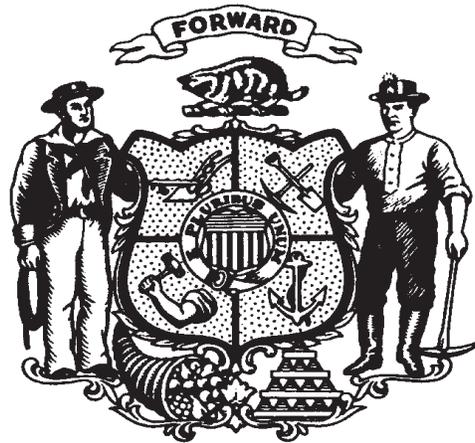


Wisconsin Administrative Register

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

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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

EmR1321 — The Department of Administration hereby adopts an order to repeal **section Adm 2.14 (2) (vr) c.**; to renumber and amend **section Adm 2.14 (2) (v) 9. a. and b.**; to amend **sections 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 **sections Adm 2.03 (3m), (3r) and (6m), 2.04 (1m), (2m), (2r), (2z), (9), and (10), and 2.14 (2) (vm) and (2) (vm) 5.**

The statement of scope for this rule, SS 131–13, was approved by the Governor on October 8, 2013, and published in Register No. 694 on October 31, 2013, and approved by Department of Administration Secretary Mike Huebsch on November 13, 2013. This emergency rule was approved by the Governor on November 21, 2013.

Finding of Emergency

Since 1979 the legislature has vested the department of administration with the responsibility and authority to manage various state buildings and grounds, including those of the Wisconsin state capitol. S. 16.84 (1), 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. s. 16.845, Stats., and s. Adm 2.04.

Each year, the Wisconsin state capitol police issue nearly 500 permits 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. Permits are given to any person free of charge.

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 person or persons, and the state cannot allow any person or persons to occupy the capitol in disregard of the rights of permit holders, public employees, or visitors. It is imperative that the department gain compliance in order to protect the public safety and welfare.

On October 24, 2013, a lawsuit was dismissed based upon a stipulation of and settlement agreement between the parties. The department is obligated under the settlement agreement to advance certain changes in procedure. The department seeks to fulfill its obligations in a timely manner, which is not possible without engaging in the emergency rule process.

Filed with LRB:	November 26, 2013
Publication Date:	November 27, 2013
Effective Dates:	November 27, 2013 through April 25, 2014
Hearing Date:	February 21, 2014
Extension Through:	August 23, 2014

Agriculture, Trade and Consumer Protection (2)

1. EmR1402 (DATCP Docket No. 13–R–17) — The Wisconsin department of Agriculture, Trade and Consumer Protection hereby adopts the following emergency rule to amend **sections ATCP 161.50 (3) (f), 161.60, and 161.62 (1) (intro.)**, relating to the “grow Wisconsin dairy processor” grant program created under ss. 20.115 (4) (dm) and 93.40 (1) (g), Stats.

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

The scope statement for this rule, SS 140–13, was approved by the Governor on October 29, 2013, published in register No. 695 on November 14, 2013, and approved by the Board of Agriculture, Trade & Consumer Protection on December 10, 2013.

Finding of Emergency

Enactment of a rule is necessary to establish criteria the department will use to make determinations for grants, loans or other forms of financial assistance to dairy processors to promote and develop the dairy industry. An emergency rule is needed to ensure that funds are used to assist dairy producers during the first year of the program as permanent

rules cannot be adopted in time to provide the basis for grant and loan determinations during that first year of the program.

Filed with LRB: January 21, 2014
Publication Date: January 20, 2014
Effective Dates: January 20, 2014 through June 18, 2014

2. EmR1407 — The Wisconsin Department of Agriculture, Trade and Consumer Protection hereby adopts the following emergency rule to amend **section ATCP 21.10 (1) (b)** and to create **section ATCP 21.10 (1) (c)**, relating to the quarantine of Iowa County for the gypsy moth.

This emergency rule was approved by the Governor on March 13, 2014.

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

Finding of Emergency

Gypsy moth is an exotic, invasive pest that poses a serious risk to Wisconsin's forest, shade and commercial trees. The 2013 DATCP survey in Iowa County shows that current and projected GM populations in that county have reached the threshold level to trigger implementation of further regulatory measures. Since 2011, multiple trap sites in Iowa County have caught over 100 individual moths, with an average trap count of 28 in 2013 (a five-fold increase from 2011). The survey data indicate that reproducing populations of GM now exist at significant levels in Iowa County and that eradication is not feasible. This evidence supports the need for a quarantine to limit movement from this infestation. When APHIS declares a quarantine, DATCP has regulatory authority for import controls and quarantine for GM under s. ATCP 21.10. It is anticipated that APHIS will declare a quarantine for Iowa County but that it will take six to eight weeks for APHIS to act. A six week delay until enactment of the federal quarantines leaves too much time for businesses or individuals to move potentially GM infested material out of this county to areas of Wisconsin or other states that are not infested with GM.

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

Filed with LRB: March 28, 2014
Publication Date: March 31, 2014
Effective Dates: March 31, 2014 through August 27, 2014
Hearing Date: April 29, 2014

Natural Resources (6)

Fish, Game, etc., Chs. NR 1—

1. EmR1210 (DNR # WM-09-12(E)) — The Wisconsin Natural Resources Board proposes an order to amend **sections NR 10.001 (25c), 10.02 (1), 10.06 (5) and (8) (intro.), 10.07 (2) (b) 2., 10.07 (2m) (intro.) and (e) (intro.), 10.07 (2m) (f) (intro.), 10.09 (1), 10.13 (1) (b) 9., 10.13 (1) (b) 15., 10.13 (1) (b) 16., 10.145 (intro), 10.145 (3) to (8), 12.10 (intro.), 12.10 (1) (a) 4., 12.10 (1) (b) 2., 12.15 (13) and 19.25** and to create **sections NR 10.001 (22q), 10.001 (23a), 10.001 (23am), 10.001 (23b), 10.001 (26g), 10.001 (33), 10.01 (3) (j), 10.07**

(1) (m), 10.07 (2m) (em), 10.07 (2m) (g) 3., NR 10.07 (4), 10.13 (1) (b) 15m., 10.13 (1) (b) 18., 10.145 (1m), (1u) and Note, sections NR 10.16 (5), 10.295, 12.15 (11) (e), 12.60 to 12.63, 12.64 (1) (a) and (b) (intro.) 1., 12.64 (1) (b) 2. and 3., 12.64 (1) (b) 4. and 5., 12.64 (2) (a) to (c), 12.64 (2) (d), 12.64 (3) and 12.65, relating to the wolf hunting and trapping season and regulations and a depredation program.

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

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

Finding of Emergency

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

Filed with LRB: August 15, 2012

Publication Date: August 18, 2012

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

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

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

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

Finding of Emergency

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

Filed with LRB: September 14, 2012

Publication Date: October 1, 2012

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

3. EmR1319 (DNR # WM-22-13(E)) — The Wisconsin Natural Resources Board proposes an order to amend **sections NR 10.275 (intro.) and 45.09 (1)** and to create **sections NR 10.13 (Note) and 10.275**, relating to hunting and trapping in state parks.

This rule was approved by the Governor on October 31, 2013.

The statement of scope for this emergency rule, SS 083–13, was approved by the Governor on July 15, 2013, published in Register No. 691 on July 31, 2013 and approved by the Natural Resources Board on August 14, 2013.

Finding of Emergency

The department finds that putting this rule into effect prior to the time it would take effect using the permanent rule process is necessary to protect the public safety and welfare. By restricting gun and archery hunting to certain areas, and trapping to certain areas and methods, this rule will prevent those activities in locations where they may jeopardize the

safety and welfare of visitors to the Wisconsin State Park System.

Filed with LRB: November 7, 2013
Publication Date: November 15, 2013
Effective Dates: November 15, 2013 through April 13, 2014
Extension Through: June 12, 2014

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

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

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

Finding of Emergency — Exemption

2013 Wisconsin Act 20, the 2013-15 state budget, included the following nonstatutory language: The department of natural resources may promulgate emergency rules under section 227.24 of the statutes implementing sections 29.739 and 29.740 of the statutes, as created by this act. Notwithstanding section 227.24 (1) (c) and (2) of the statutes, emergency rules promulgated for walleye population maintenance and enhancement grants remain in effect until June 30, 2016, or the date on which permanent rules take effect, whichever is sooner. Notwithstanding section 227.24 (1) (a) and (3) of the statutes, the department is not required to provide evidence that promulgating this rule as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under this subsection.

Filed with LRB: November 14, 2013
Publication Date: November 21, 2013
Effective Dates: November 21, 2013 through June 30, 2016, or the date on which permanent rules take effect, whichever is sooner.
Hearing Date: December 12, 2013 and December 19, 2013

5. EmR1401 (DNR # FH-26-13(E)) — The Wisconsin Natural Resources Board proposes an order to amend **sections NR 20.20 (73) (n) 4. and 25.06 (1) (a)**, Wis. Adm. Code, relating to lake trout harvest limits in Lake Superior.

This rule was approved by the Governor on December 30, 2013.

The statement of scope for this rule, SS 108-13, was approved by the Governor on August 13, 2013, published in Register No. 692 on August 31, 2013, and approved by the Natural Resources Board on September 25, 2013.

Finding of Emergency

Pursuant to s. 227.4, 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 2013 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: January 14, 2014
Publication Date: January 13, 2014
Effective Dates: January 13, 2014 through June 11, 2014
Extension Through: August 10, 2014

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

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

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

Finding of Emergency

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

Filed with LRB: February 25, 2014
Publication Date: March 7, 2014
Effective Dates: March 7, 2014 through June 30, 2015

Public Instruction

EmR1324 — The State Superintendent of Public Instruction hereby proposes to amend **sections PI 5.02 (6) and (11m), 5.035 (6), and 5.04**, relating to high school equivalency diplomas and certificates of general educational development.

Per the Dane County Circuit Court order issued in *Coyne, et al. v. Walker, et al.*, Case No. 11-CV-4573, the Department of Public Instruction is not required to obtain the Governor's approval for the statement of scope or this rule.

The scope statement for this rule, SS 093-13, was published in Register No. 692, on August 14, 2013, and

approved by State Superintendent Tony Evers on August 27, 2013.

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:

The number of subtests and the passing scores for the General Educational Development (GED) Test will be changing in January 2014 when a new test is implemented by the GED Testing Service.

Unless the rule is changed to reflect these new subtests and passing scores, the Department may be prevented from issuing credentials for test takers who pass the GED Test because the required passing scores will be incorrect.

Filed with LRB: December 27, 2013
Publication Date: December 27, 2013
Effective Dates: December 27, 2013 through May 25, 2014
Hearing Date: February 24, 2014
Extension Through: July 24, 2014

Safety and Professional Services

Uniform Dwelling Code, Chs. 320—325

EmR1403 — The Wisconsin Department of Safety and Professional Services adopts an order to amend **sections SPS 321.02 (1) (c), 321.23, Table 321.25–A, 321.25 (7) (d) and (8) (a) (Note), and Chapters 320 to 325 Appendix — Minimum Fastener Schedule Table**; and to repeal and recreate **section SPS 321.25 (8) (b) to (h) and (9)**, relating to wall bracing for one- and two-family dwellings.

This emergency rule was approved by the Governor on January 28, 2014.

The statement of scope for this rule, SS 139–13, was approved by the Governor on October 28, 2013, published in Register 695 on November 14, 2013, and approved by the Department on November 26, 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.

Some building designers find the current rules for wall bracing for one- and two-family dwellings are too difficult to understand and apply, which results in unnecessary costs and delays in home building. Promulgating revisions to the rules through the emergency rule process is needed in order to avoid these costs and delays as soon as possible. In addition, the report that the Dwelling Code Council is required to complete by July 1, 2014, under section 101.62 (4) of the Statutes is expected to include recommendations to clarify and simplify these rules through the emergency rule process.

Filed with LRB: February 13, 2014
Publication Date: February 19, 2014
Effective Dates: April 1, 2014 through August 28, 2014
Hearing Date: March 11, 2014

Transportation

EmR1404 — The Wisconsin Department of Transportation proposes an order to create **section Trans 327.14**, relating to motor carrier safety and affecting small businesses.

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

The statement of scope for this rule, SS 155–13, was approved by the Governor on December 16, 2013, published in Register 696, on December 31, 2013, and approved by Secretary Mark Gottlieb as required by s. 227.135 (2), Stats., on January 13, 2014.

Finding of Emergency

The welfare of commercial motor vehicle drivers who hold a commercial driver license (“CDL”) issued by the State of Wisconsin who operate commercial motor vehicles outside this state will be harmed beginning January 30, 2014, if they cannot demonstrate compliance with recent federal regulations because they will be treated by other states as unlicensed drivers. Beginning on January 1, 2014, federal regulations require CDL holders to have certified to DOT the type of commercial driving they do and, if required, to have submitted proof of medical fitness to drive, and to have their driving records updated by DOT to show these actions, before driving a commercial motor vehicle. The Department published the scope statement for permanent rulemaking in September 2011 to implement these federal requirements. The permanent rulemaking effort is ongoing but will not take effect before the January 30, 2014 deadline for compliance.

Filed with LRB: February 14, 2014
Publication Date: February 16, 2014
Effective Dates: February 16, 2014 through July 15, 2014

Workforce Development

Unemployment Insurance, Chs. DWD 100–150

EmR1316 — The Wisconsin Department of Workforce Development hereby adopts an order to repeal **sections DWD 126.02 (2), (3), and (4), 126.03 (1), 126.04, 126.05, 127.01 (2) (b), (f) to (i), and (3), 127.02 (intro.), (1), (2), (3), and (4), 127.02 (5) and (10), and 127.08**; to renumber and amend **section DWD 126.02 (1)**; to amend **sections DWD 126.01, 126.03 (intro.) and (2), 127 (title), 127.01 (1), (2) (intro.), (a), (c), and (d), 127.02 (7), (9), and (11), 127.04 (title), (1), and (2), 127.05, 127.06 (1), (2), and (3), 127.07 (title) and (1), 128.01 (2) (a), and 129.01 (1) and (2)**; to repeal and recreate **sections DWD 127.01 (2) (j) and 127.07 (2)**; and to create **sections DWD 126.02 (Note), 126.03 (3), (4), (5), (6), and (7), 127.01 (2) (em), 127.02 (12), 127.04 (1m) (e), and 127.06 (1) (c)**, relating to unemployment insurance work registration, work search, and benefit claiming procedures.

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

The statement of scope for this emergency rule, SS 106–13, was approved by the Governor on August 14, 2013, published in Register No. 692 on August 31, 2013, and approved by the Secretary of Workforce Development on September 11, 2013.

Finding of Emergency

The Department of Workforce Development finds that an emergency exists and that the attached rule is necessary for the immediate preservation of the public welfare. Statements of the facts constituting the emergency are:

- (1) In order to fulfill the new statutory directives to require claimants for unemployment insurance benefits to increase their number of weekly work search actions from two to at least four;
- (2) In order to simplify the process and compliance with respect to requirements for unemployment insurance claimants to register for work;
- (3) In order to execute the new statutory requirement to request additional information from claimants;
- (4) In order to improve the unemployment insurance trust fund balance and thereby relieve employers of the burden of additional taxation;
- (5) In order to better assist unemployment insurance benefit claimants to obtain gainful employment; and,
- (6) In order to promote the improvement in the Wisconsin economy as a result of the immediate implementation of legislative directives with respect to the unemployment insurance program contained in 2013 Wisconsin Act 20 and 2013 Wisconsin Act 36.

Adoption of the emergency rule will ensure that these legislative directives are implemented within the time–frame envisioned with enactment of 2013 Wisconsin Act 20 and 2013 Wisconsin Act 36.

Filed with LRB: September 25, 2013
Publication Date: September 29, 2013
Effective Dates: September 29, 2013 through February 25, 2014, except that changes to ss. DWD 126.03 and 127.02 take effect after the Secretary determines the Department has the technological ability to implement the changes.

Hearing Date: November 4, 2013
Extension Through: June 25, 2014

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

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

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

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

Finding of Emergency

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

- (1) Wisconsin currently has more than 2,100 employers participating in, and training individuals, under the apprenticeship program.
- (2) During 2013, Wisconsin had 9,723 valid apprenticeship contracts.

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

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

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

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

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

Workforce Development *Employment and Training, Ch. DWD 801*

EmR1317 — The Wisconsin Department of Workforce Development hereby adopts an order to create **Chapter DWD 801**, relating to workforce training grants under the Wisconsin Fast Forward program.

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

The statement of scope for this rule, SS 109–13, was approved by the Governor on August 15, 2013, published in Register No. 692 on August 31, 2013, and approved by the Department of Workforce Development on September 11, 2013.

Finding of Emergency

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

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

Filed with LRB: September 25, 2013
Publication Date: September 29, 2013
Effective Dates: October 1, 2013 through
February 27, 2014
Hearing Date: November 5, 2013
Extension Through: June 27, 2014

Scope Statements

Health Services

Health, Chs. 110—

SS 057–14

This statement of Scope was approved by the governor on June 5, 2014.

Rule No.

Chapter DHS 115 (revise).

Relating to

Screening newborns for congenital and metabolic disorders.

Rule Type

Permanent and emergency.

Type of Statement of Scope

Original

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

The department finds that an emergency exists and that the adoption of an emergency rule may be necessary for the immediate preservation of the public health, safety, and welfare. The facts constituting the emergency are as follows:

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

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

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

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

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

6. Prior to 2013 Wisconsin Act 135, adding pulse oximetry screening for CCHD to the mandatory panel was not permitted because testing for congenital and metabolic

disorders under s. 235.13 (1), Stats. (2011–12) was explicitly limited to blood testing. Section 253.13 (1), Stats., as amended by 2013 Wisconsin Act 135, now allows testing for congenital and metabolic disorders using other screening methods including blood testing.

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

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

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

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

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

2. Detailed Description of the Objective of the Proposed Rule

The objective of the proposed rule is to add CCHD as a condition for which newborns must be tested; define point of care testing; correct an omission on the list of conditions tested by the Wisconsin State Laboratory of Hygiene (WSLH) from a blood sample; and include reporting requirements associated with tests performed.

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

As provided in s. 253.13 (1), Stats. (2011–12), ch. DHS 115 specifies the congenital and metabolic disorders for which newborns must be screened by means of a blood sample shortly after birth and tested by the WSLH. 2013 Wisconsin Act 135 modified s. 253.13 (1), Stats., relating to infant blood tests so that the required screening may be performed by

methods in addition to blood testing. The department proposes to revise ch. DHS 115 to provide for point of care testing, which can be administered and interpreted at the bedside of the newborn in the hospital or birth delivery site, and to otherwise conform the rules to s. 253.13, Stats.

CCHD

To determine whether to add or remove a disorder, criteria for adding or deleting conditions must be considered and the department must seek the advice and guidance of medical consultants, WSLH, and other persons who have expertise and experience in dealing with congenital and metabolic disorders. The Secretary's Advisory Committee on Newborn Screening (Committee) recommends to the department whether to add or remove a condition. The Committee has voted to recommend the addition of CCHD, and the department has determined that CCHD should be added as one of the disorders for which newborns must be tested. CCHD is usually described as those congenital cardiac malformations in which surgical or catheter-based therapy is necessary within the first months of life. There are 12 lesions commonly considered as CCHD. In some circumstances, infants with CCHD may be asymptomatic and have a normal physical examination prior to routine hospital discharge or completion of home birth care. Unrecognized CCHD can result in death or disability shortly after hospital discharge. During 2002 to 2006, death due to unrecognized CCHD occurred in 1:38,397 Wisconsin births and death or rehospitalization occurred in 1:24,684 Wisconsin births before two weeks of age. The median age at death due to unrecognized CCHD was 4.5 days. The incidence of one of the 12 CCHD lesions is 2.3:1,000 live births. Pulse oximetry, a point of care testing, is the recognized screening method for CCHD.

The department proposes to add CCHD by emergency and permanent rules as one of the conditions for which newborns should be tested. To date, 35 states have added CCHD screening upon consideration of the federal Department of Health and Human Services' Discretionary Advisory Committee on Heritable Disorders in Newborns and Children addition of CCHD to its Recommended Uniform Screening Panel Core Conditions.

Organic Acidemias

The WSLH tests the blood samples of newborns for the conditions specified by the department in s. DHS 115.04. The WSLH also tests for OA including propionic acidemia, methylmalonic acidemia, and related organic acidemias. Though these conditions met the criteria under s. DHS 115.06 for being added to the list of congenital and metabolic disorders for which WSLH must test blood samples, the disorders were inadvertently omitted from subsequent revisions of s. DHS 115.04. The department proposes to promulgate emergency and permanent rules to include OA in the list of conditions for which WSLH must test to correct the oversight.

OA is a group of inherited disorders that lead to an abnormal buildup of particular acids known as organic acids in the body. In most cases, the features of propionic acidemia become apparent within a few days after birth. The initial symptoms include poor feeding, vomiting, loss of appetite, weak muscle tone (hypotonia), and lack of energy (lethargy). These symptoms sometimes progress to more serious medical problems, including heart abnormalities, seizures, coma, and possibly death. Propionic acidemia affects about 1 in 100,000 people in the United States. The effects of methylmalonic acidemia, which usually appear in early infancy, vary from

mild to life-threatening. Affected infants can experience vomiting, dehydration, weak muscle tone (hypotonia), developmental delay, excessive tiredness (lethargy), an enlarged liver (hepatomegaly), and failure to gain weight and grow at the expected rate (failure to thrive). Long-term complications can include feeding problems, intellectual disability, chronic kidney disease, and inflammation of the pancreas (pancreatitis). Without treatment, this disorder can lead to coma and death in some cases. This condition occurs in an estimated 1 in 50,000 to 100,000 people.

Reporting

Section 253.13 (4) (b), Stats., as created by 2013 Wisconsin Act 135 provides that the department may require reporting in connection with any required infant tests for use in statistical data compilation and for evaluation of infant screening programs. The department may create rules for such reporting.

Alternatives

Section 253.13 (1), Stats., requires that every infant born in each hospital or maternity home, prior to its discharge, be tested for congenital and metabolic disorders, as specified in rules promulgated by the department. Therefore, there are no reasonable alternatives to the proposed rulemaking.

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

Section 253.13 (1) and (4) (b), Stats., reads:

(1) TESTS; REQUIREMENTS. The attending physician or nurse licensed under s. 441.15 shall cause every infant born in each hospital or maternity home, prior to its discharge therefrom, to be subjected to tests for congenital and metabolic disorders, as specified in rules promulgated by the department. If the infant is born elsewhere than in a hospital or maternity home, the attending physician, nurse licensed under s. 441.15, or birth attendant who attended the birth shall cause the infant, within one week of birth, to be subjected to these tests.

(4) (b) The department may require reporting in connection with the tests performed under this section for use in statistical data compilation and for evaluation of infant screening programs.

Section 227.11 (2) (a), Stats., reads: Rule-making authority is expressly conferred on an agency as follows:

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

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

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

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

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

The department estimates that it will take approximately 160 hours to develop the proposed rules. This includes the time required for research and analysis, coordinating the advisory committee meetings, rule drafting, preparing any related documents, holding a public hearing, and communicating with affected persons and groups.

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

Newborns and their families, hospitals, clinics and laboratories on behalf of hospitals, nurse-midwives, midwives, other birth attendants, other birth facilities, physicians, nurses, insurers, the WSLH, the DHS Newborn Screening Umbrella Committee, and the Secretary's Advisory Committee on Newborn Screening.

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

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

8. Anticipated Economic Impact of Implementing the Rule

The department does not anticipate additional fees to cover the costs of testing for CCHD or acidemias. Thus, the proposed rules are anticipated to have little or no economic impact if promulgated.

Contact Person

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Natural Resources, Division of Forestry

Fish, Game, etc., Chs. 1—

SS 054-14

(DNR # FR-07-14)

This statement of Scope was approved by the governor on May 23, 2014.

Rule No.

Chapter NR 47 (revise).

Relating to

Gypsy moth suppression program.

Rule Type

Permanent.

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

The rules will be proposed as permanent rules.

2. Detailed Description of the Objective of the Proposed Rule

The Wisconsin gypsy moth suppression program was developed to serve communities, individuals, state lands, and

other public lands to prevent losses from gypsy moth defoliation at a time when the private sector was not able to meet that need and federal cost sharing was available for state suppression programs. In the 14 years since the start of the state suppression program, private aerial spraying has become more available in Wisconsin, the threat from gypsy moth outbreaks has been reduced, and the federal cost share program has become less dependable. Given this situation, it seems an appropriate time for the state to step back and allow the private sector full opportunity to serve the need for preventing defoliation from this manageable pest. We propose to close the state suppression program to all applicants except state lands, which does not require rule authority to implement. By keeping the rule in place of fully repealing it, we achieve two benefits: access to federal cost sharing for state lands, if available, and access to the federally supplied gypsy moth specific pesticide, Gypcheck. Additional changes to the rule may be pursued which are reasonably related to those discussed here.

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

The department currently offers participation to communities, individuals and public lands in a state organized and contracted aerial spray program to suppress defoliation from gypsy moth through the public cost share portion of the state suppression program. Landowners and communities must apply through their county which serves as the local coordinator, defining the spray blocks, ensuring they are eligible, collecting the funds for treatment and redistributing the reimbursement. Participants pay the entire cost of the treatment up front and the state applies to the USDA Forest Service for cost sharing. Cost share that is received is entirely passed onto participants in the program as reimbursement. The Department of Agriculture, Trade and Consumer protection holds the contract for treatment of all gypsy moth eradication, Slow The Spread, and suppression blocks.

The proposed rule change would limit participation in the state suppression program to state lands, which does not require rule authority to implement. Local governments and individuals will be provided guidance in contracting for appropriate treatment from arborists or aerial spray contractors. The public cost share portion of the state suppression program for treatments would no longer be available as that is provided by the federal government only to through public cost share portions of state suppression programs, which we would be de-activating under this rule proposal.

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

Section 26.30 (6m), Stats., states that if the department establishes a cost-shared suppression program for gypsy moth, and that program includes the awarding of federal cost sharing funds to counties, the department shall promulgate rules to implement the program. This statute contemplates that the cost-share suppression program include, but not be limited to, the awarding of federal cost sharing funds to counties. This broad grant of rulemaking authority is sufficient to provide the basis for the proposed de-activation rule language..." The federal cost-share fund grant language allows states to utilize the federal gypsy moth funds without establishing a cost-share program for private individuals or counties, and so the de-activation of public access to the state organized spray program under the new proposed authority in rule will not prevent the department from using these funds,

since the Department, under s. 26.30 (2), Stats., is “vested with authority and jurisdiction in all matters relating to the prevention, detection and control of forest pests on the forest lands of the state, and to do all things necessary in the exercise of such authority and jurisdiction”

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

200 hours

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

- Counties, local governments and individuals that would have participated in the state gypsy moth suppression program.
- Arborists and private aerial applicators that will provide suppression treatments in the absence of a state program.
- Department Forest Health team staff will be able to redirect time from gypsy moth to other invasive pests and diseases of increasing concern such as emerald ash borer.

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

The USDA Forest Service under the Cooperative Forestry Assistance Act of 1978 (appendix A) as amended (P.L. 95-313) and the 1990 Farm Bill offers a cost sharing program to states for the suppression of gypsy moth outbreaks. The federal government makes cost sharing available to state run suppression programs but does not require one to be offered. The federal cost sharing program also does not specify what lands may participate in a state program. Neither Illinois nor Michigan offer a state suppression program for gypsy moth. New Jersey has a state gypsy moth suppression program that only services state lands.

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

The proposed rule change will result in individuals and communities hiring arborists and private aerial spray applicators to prevent defoliation of their trees by gypsy moth instead of paying the state program to do the treatment. These business will benefit from the closure of the state suppression program in the years gypsy moth threaten to cause local defoliation. Communities and individuals that make their own contracts for treatment may be able to get a lower price for treatment than the state contract depending on their location relative to the contractor, the number of acres and any tailoring they require. However, if they are distant from the contractor, have few acres and/or have unusual requirements the price per acre could be more than the state contract. Communities and individuals will take on the workload associated with the contract which had previously been handled by the state.

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

The Department anticipates holding five public hearings in the month of December, 2014. Hearing cities will be: Madison, Milwaukee, Green Bay, Wausau, and Eau Claire.

The Department will hold these hearings in these locations to ensure potentially affected communities and individuals will have an opportunity to have their questions answered and provide input.

Contact Person

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Natural Resources

Fish, Game, etc., Chs. 1—

SS 056-14

(DNR # WM-08-14 (E))

This statement of Scope was approved by the governor on June 4, 2014.

Rule No.

Chapter NR 10 (revise).

Relating to

Issuance of antlerless permits through the Deer Management Assistance Program and implementation of the 2012 White-tailed Deer Trustee's Report.

Rule Type

Emergency.

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

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

2. Detailed Description of the Objective of the Proposed Rule

This emergency rule order will facilitate the issuance of antlerless deer permits through the Deer Management Assistance Program.

Additionally, the department will use this rule-making process to make non-controversial corrections or rule updates that may be identified during the process of fully implementing the larger package of emergency rules that result from the 2012 White-tailed Deer Trustee's Report.

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

Under current rules and statutes, with limited exceptions, deer hunting permits can only be used by the individual to whom the permit is issued. During the winter and spring of 2014 the department has been working with stakeholders to develop the Deer Management Assistance Program which was a recommendation of the 2012 White-tailed Deer Trustee's Report. During program development, the department has identified a need for more flexibility in the way that permits are issued and used in order to implement the program efficiently and to best serve customers.

These rules could allow issuance of antlerless deer hunting permits to a primary person who is enrolled in the Deer Management Assistance Program or their designee. The permits could then be transferred, for no more than face value cost, to hunters who would be able to use the tags on the enrolled property. These rules would not change existing requirements that the tags can only be used during the normal deer hunting seasons and in ways that are consistent with all other deer hunting regulations.

The Deer Management Assistance Program is designed to provide habitat and herd management assistance to landowners interested in managing their property for wildlife. The program is identified and defined under Wis. Stat. s. 29.020 and Wis. Admin. Code s. NR 10.70. Objectives of the program are to; promote sound land stewardship practices, provide outreach and educational information to landowners about wildlife habitat management practices, provide a means for site-specific deer management, and to improve relationships.

The program objective to provide site-specific deer management alternatives will benefit property managers in obvious ways by allowing them to work with the department to establish very specific harvest levels based on localized information.

Site specific deer management will benefit all hunters and people impacted by deer at the much larger management unit level as well. An example is that, in some situations, deer numbers that prevent forest regeneration or result in agricultural damage could be managed at a local, property specific level. This would eliminate a need to compromise with unit-wide antlerless deer permit levels that address pockets of over-abundance only minimally and which might also be perceived as allowing too much harvest of antlerless deer in other areas of the unit or county.

Maintaining the primary program enrollee's control over the use of permits by allowing the enrollee to distribute them may be an important feature to make participation attractive to property managers or owners. Allowing permit transfers creates efficiency for the department because we would not need to establish rules or automated license system processes to assure that permits are distributed in a manner preferred by the primary program enrollee. Only one contact with the department is all that would be needed to issue all antlerless permits for a property. If an antlerless tag is not filled by one person when they hunt, it might be possible under these rules for the tag to be used by another hunter on another day, increasing the perceived value of the permits and success rates for their use. Finally, it is possible that a landowner could be the primary program enrollee and not a hunter – but someone who would be interested in distributing the permits to family, friends, and others. Simplicity, value, and good success rates in the use of these antlerless deer permits will make an important contribution to the objective of site-specific deer management.

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

The department's ability to promulgate emergency rules to implement recommendations of the deer trustee report is established in non-statutory provisions of 2013 Act 20. The department is given authority to promulgate emergency rules that will implement recommendations of the assessment of this state's deer management plans and policies under s.

29.040 Stats. These emergency rules can remain in place until permanent rules are implemented. The department is not required to make a finding of emergency.

Additional authority related specifically to the issuance of hunting permits is found in s. 29.024 (2) (d), Stats. This statute establishes that it is illegal to transfer an approval or permit or allow its use by any other person. The law establishes limited exceptions and that the department can, by rule, allow the transfer of permits or approvals.

The primary authority to establish hunting regulations for deer and other species is established in s. 29.014, Stats. This section directs the department to establish and maintain open and closed seasons, bag limits, size limits, rest days, and other conditions for the taking of game that conserves the game supply and provides citizens with good hunting opportunities.

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

Approximately 40 hours will be needed by the department to promulgate these rules.

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

These rules will impact deer hunters in general, but especially property owners or primary enrollees in the Deer Management Assistance Program.

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

Federal regulations allow states to manage the wildlife resources located within their boundaries provided they do not conflict with regulations established in the Federal Register. None of these rule changes violate or conflict with the provisions established in the Federal Code of Regulations.

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

No economic impacts are anticipated. These rules will be similar to ones which are already in place for participants in the Wildlife Damage Claims and Abatement Program and may be expected to result in improved efficiency for the department and better customer service for enrollees in the Deer Management Assistance Program. These rules will not establish any additional requirements or exceptions that would have an economic impact.

9. Anticipated Number, Month, and Locations of Hearings

We do not plan to hold hearings on this emergency rules package but would hold hearings on a similar or identical provision in the department's permanent rule package implementing recommendations of the 2012 White-tailed Deer Trustee's Report. Under s. 227.24 (1) (a), Stats., an agency is not required to hold hearings on emergency rules. We anticipate that this rule modification or other corrections which may be identified will be non-controversial.

Contact Person

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Public Service Commission

SS 052-14
(PSC DOCKET 1-AC-245)

This statement of Scope was approved by the governor on May 15, 2014.

Rule No.

Chapter PSC 133 (revise).

Relating to

Natural gas public utility territorial agreements.

Rule Type

Permanent.

1. Description of the Objective of the Rule and Expected Financial Impact

This rulemaking is being done to bring the Commission's administrative rules relating to natural gas public utility territorial agreements into conformity with 2013 Wisconsin Act 300 (Act 300). That Act allows a gas utility to provide service in a municipality served by another gas utility without commission action, if: (1) the utilities have entered into a territorial agreement about which customers will be served by which utility, (2) the additional utility's service territory is adjacent to the municipality it now wants to serve, and (3) the additional utility will only serve a limited number of customers in the municipality it now wants to serve.

Any financial impact has already occurred due to the statutory change. This rule change will have no financial impact.

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

Before Act 300, a natural gas utility could not provide service in a municipality already served by a different gas utility unless it received a certificate from the commission. Act 300 changes this under the limited circumstances described in #1. The current administrative rules need to be modified to be consistent with the new statutory language

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

This rule is authorized under ss. 196.02 (1) and (3), 196.50 (1) (am), and 227.11, Stats.

Section 227.11, Stats., authorizes an agency to promulgate administrative rules. Section 196.02 (1), Stats., authorizes the Commission to do all things necessary and convenient to its jurisdiction. Section 196.02 (3), Stats., grants the Commission specific authority to promulgate rules. Section 196.50 (1) (am), Stats., as created by Act 300, specifically requires the Commission to develop rules in this matter.

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

It is estimated that 100 state employee hours will be needed to complete this rulemaking. No additional resources will be necessary.

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

All natural gas public utilities and municipalities served by natural gas public utilities.

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

None.

Contact Person

John Lorence
Public Service Commission of Wisconsin
608-266-8128
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Public Service Commission

SS 053-14
(PSC DOCKET 1-AC-244)

This statement of Scope was approved by the governor on May 15, 2014.

Rule No.

Chapters PSC 112, 118, 133, and 184 (revise).

Relating to

Amending relevant sections of chs. PSC 112, 133, and 184 to conform with 2011 Wisconsin Act 155, and amending relevant sections of ch. PSC 118 to conform with 2013 Wisconsin Act 300.

Rule Type

Permanent.

1. Description of the Objective of the Rule and Expected Financial Impact

Chapters PSC 112, 133, and 184

The purpose of the rulemaking is to amend chs. PSC 112, 133, and 184, relating to the requirement to obtain a certificate or approval prior to beginning a proposed project, to conform with the statutory changes in Wis. Stat. s. 196.49 (5g) made by 2011 Wisconsin Act 155. This will be accomplished by updating the revised cost thresholds for certification or approval in the rules.

Chapter PSC 118

The purpose of the rulemaking is to amend ch. PSC 118, relating to displacement facilities, to conform with the statutory changes made in Wis. Stat. s. 196.378 (3) (a) 1m. by 2013 Wisconsin Act 300. This will be accomplished in the following ways: (1) strike the requirement that a displacement facility be placed in service on or after June 3, 2010, to be consistent with the statute, and (2) revise the reference to "in the entire area served by the Midcontinent Independent System Operator" as a basis for the displacement percentage to streamline the process for determining the displacement percentage.

It will also address the description of the calculation to determine displaced conventional electricity.

This rulemaking is expected to have no or minimal financial impact.

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

The justification for this rulemaking is to conform with statutory changes in Wis. Stat. s. 196.49 (5g) made by 2011 Wisconsin Act 155 and to conform with statutory changes in Wis. Stat. s. 196.378 (3) (a) 1m. made by 2013 Wisconsin Act 300. The changes to chs. PSC 112, 133, and 184 relate to updating the revised cost thresholds for certification or approval in the rules.

Under the current language of ch. PSC 118, only a displacement facility placed in service on or after June 3, 2010, may create renewable resource credits. The statutory changes made in Wis. Stat. s. 196.378 (3) (a) 1m. by 2013 Wisconsin Act 300 eliminates the date restriction.

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

This rule is authorized under Wis. Stat. ss. 196.02 (1) and (3), 196.378 (3) (a) 1., and 227.11.

Section 227.11, Stats., authorizes agencies to promulgate administrative rules. Section 196.02 (1), Stats., authorizes the commission to do all things necessary and convenient to its jurisdiction. Section 196.02 (3), Stats., grants the commission specific authority to promulgate rules. Section 196.378 (3) (a) 1., Stats., requires the commission to promulgate rules that establish requirements for the creation and use of a renewable resource credit.

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

The Commission estimates 130 hours of state employee time to develop the rules. No extraordinary resources are anticipated.

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

Chapters PSC 112, 133, and 184

All electric, natural gas, and water public utilities.

Chapter PSC 118

All electric providers, customers or members of an electric provider, and renewable energy developers seeking to create renewable resource credits will be favorably impacted by this change.

There is no anticipated impact on utility ratepayers.

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

Chapters PSC 112, 133, and 184

No comparison with federal regulations can be made because there are none.

The intent of this rulemaking is to amend chs. PSC 112, 133, and 184, relating to the requirement to obtain a certificate or approval prior to beginning a proposed project, to conform with the statutory changes in Wis. Stat. s. 196.49 (5g) made by 2011 Wisconsin Act 155.

Chapter PSC 118

No comparison with federal regulations can be made because there is no federal renewable portfolio standard. In addition, there are no known federal regulations governing the creation of renewable resource credits or their equivalent.

The intent of this rulemaking is to amend ch. PSC 118, relating to displacement facilities, to conform with the statutory changes made in Wis. Stat. s. 196.378 (3) (a) 1m. by 2013 Wisconsin Act 300.

Contact Person

For questions relating to chs. PSC 112, 133, or 184, contact at Daniel Sage (608) 267-9486 or at Daniel.Sage@wisconsin.gov.

For questions relating to ch. PSC 118, contact Andrew Kell (608) 266-1124 or at Andrew.Kell@wisconsin.gov.

Transportation

SS 055-14

This statement of Scope was approved by the governor on May 23, 2014.

Rule No.

Chapter Trans 202 and section Trans 201.23 (revise).

Relating to

Wisconsin Scenic Byway Program.

Rule Type

Permanent.

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

N/A.

2. Detailed Description of the Objective of the Proposed Rule

The department proposes to specify which types of highways may be integrated into a scenic byway created under Wis. Stat. s. 84.106.

2011 Wisconsin Act 147 (“Act 147”) amended Wis. Stat. s. 84.106 so that any type of highway has the potential to be designated as a scenic byway. Prior to Act 147, only state and federal highways, other than interstates, could be incorporated into a scenic byway. This rulemaking proposes to incorporate this statutory change into Wis. Admin. Code ch. Trans 202 and to exclude those parts of the transportation network not designed or intended for regular use by the motoring public.

The department anticipates that the following types of highways will be eligible for inclusion as a scenic byway:

- State and federal highways (currently eligible);
- Connecting highways (currently eligible);
- County highways (new);
- Local streets (new).

The department anticipates that the following types of facilities that fall within the scope of the legal term “highway” shall not be eligible for inclusion as a scenic byway:

- Interstate highways (already excluded by rule);
- Alleys (new);
- Bike paths, sidewalks, and footpaths (new);
- ATV and snowmobile trails (new);
- Hiking trails (new);
- Railroad corridors that are not used for motor vehicle transportation purposes (new);
- Any other facility not intended for use by motor vehicles (new).

Because the Scenic Byways program will now include highways under county and local jurisdiction, to which the federal Highway Beautification Act and conforming state laws do not apply, state billboard regulations related to scenic highways found in Wis. Admin. Code s. Trans 201.23 need to be amended to make clear that state highway regulations are not being extended to apply to those local and county roads.

2011 Wisconsin Act 147 recreated Wis. Stat. s. 84.106 (3), related to Marking Highways. Act 147 specifies that the Wisconsin Department of Transportation (WisDOT) is responsible for the installation and maintenance of route marker signs along sections of the scenic highway that are part of the state trunk highway system. Act 147 also specifies that the local government with maintenance authority over the road or highway shall be responsible for the installation and maintenance of route-marking signs on these roads. The Department proposes to make clear in this rule-making that the cost of buying the route-marking signs is included in the installation and maintenance costs that must be paid by the unit of government with jurisdiction over the highway.

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

(a) Excluding bike paths, railroad corridors, alleys, sidewalks, unpaved roads, driveways and parking areas of school properties, state, county, or municipal parks or institutions, and other places incompatible with motor vehicle traffic from eligibility for inclusion as scenic byways.

Private roads and driveways, which include streets owned by the University of Wisconsin System, are not “highways” under s. 340.01 (22), and therefore are ineligible for inclusion as a scenic byway. s. 84.106 (1g) (b).

Including facilities on which motor vehicle traffic is inappropriate is consistent with the purpose of the scenic byway program. The national scenic byway program’s vision is to create a distinctive collection of American roads, their stories and treasured places, and to encourage motor vehicle travel on those routes. Unlike rustic roads, which are relatively short local road or highway segments, scenic byways provide a longer distance destination that has medium to high scenic characteristics visible from the roadway and a variety of tourist-oriented amenities and activities. The department believes that it is important that motor vehicle traffic be able to navigate the entire scenic byway route, which would become impossible if sections of highway that do not allow motor vehicle travel were included in a byway.

As another alternative, the department could allow all highways of any type to be eligible for inclusion as scenic byways. There has been no public request or demand to include interstate highways as scenic byways. Nor has there been demand for alleys, bike routes, and other similar facilities to be designated as scenic byways. The department does not propose to change that part of the rule.

The department believes the program is intended to serve the motoring public. Expanding the eligibility of certain highway types for inclusion as potential scenic byways, and excluding those which are not suitable for leisure driving or regular motor vehicle traffic, is consistent with the intent of the program.

(b) Incorporating Local Roads into the Scenic Byway System.

Recent amendments to Wis. Stat. s. 84.106 provide new opportunities to integrate county and local roads into scenic byway routes. The proposed rule will provide an opportunity for the potential designation of routes with scenic sites that are not on the State and Federal highway systems.

In the alternative, the department could allow ch. Trans 202 to remain as it is currently written. Failure to amend the chapter to take advantage of the additional latitude extended by the proposed amendments to Wis. Stat. s. 84.106 would be inconsistent with the legislative intent of Act 147.

(c) Application and Designation Process.

Policies and procedures regarding the application and designation process are anticipated to remain the same. The current application procedures have been successful in achieving the program’s goal of identifying and designating routes with medium to high scenic and complimentary features and resources with a minimum of detracting features. Additionally, local citizen groups or local governments understand the application procedures and are able to submit the necessary material for consideration without confusion. The Scenic Byways Advisory Committee (SBAC) reviews the completed local applications prepared for designation. The materials allow the SBAC to conduct an in-depth review and comment from its area of expertise (e.g. tourism and marketing, historic significance, etc.).

2011 Wisconsin Act 147 recreates Wis. Stat. s. 84.106 (3), related to Marking Highways. Act 147 specifies that the Wisconsin Department of Transportation (WisDOT) shall be responsible for the installation and maintenance of logo signs along the state trunk highway system. Act 147 also specifies that the local government with maintenance authority over the road or highway shall be responsible for the installation and maintenance of logo signs.

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

Authority for this rule-making is provided in Wis. Stat. s. 84.106 and Wis. Stat. ch. 227.

Wis. Stat. s. 84.106 (2) requires WisDOT to promulgate rules related to the scenic byway program:

84.106 Scenic byways program...

(1m) DESIGNATION. The department shall develop, implement, and administer a program to designate highways or portions of highways in this state, including, notwithstanding sub. (2), state trunk highways, connecting highways, and local highways, that have outstanding scenic, historic, cultural, natural, recreational, or archaeological qualities as scenic byways. The department may seek designation by the federal government of a highway designated as a scenic byway under this section as a national scenic byway or as an All-American Road.

(2) RULES. The department shall promulgate rules under this section consistent with 23 USC162 and regulations established under that section.

In addition, Wis. Stat. s. 227.11 (2) permits any agency to adopt rules interpreting statutes administered by that agency:

227.11 (2) Rule-making authority is expressly conferred as follows:

(a) Each agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate

the purpose of the statute, but a rule is not valid if the rule exceeds the bounds of correct interpretation.

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

Not less than 100 hours.

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

Entities that may be affected by the proposed rule include: Communities considering a scenic byways designation; residents and businesses located along scenic byway routes; outdoor advertisers; participants in the tourism industry.

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

Title 23 U.S.C. § 131 (s) and § 162. 2011 Wisconsin Act 147 is not inconsistent with existing federal regulations.

Under federal law, the national scenic byway program's vision is to create a distinctive collection of American roads, their stories and treasured places. FHWA Interim Policy (Volume 60, No. 96 Federal Register) set forth the criteria for the designation of roads as National Scenic Byways based on their scenic and other qualities, regardless of whether the highways are under state or local jurisdiction.

Federal law in 23 U.S.C. § 131 (2) does restrict billboard erection along scenic byways that are part of the interstate or national highway systems. Like the federal program, the Wisconsin Scenic Byways Program's current purpose is to identify, through local government initiatives, highway routes with outstanding scenic characteristics and other related qualities and resources that provide travelers with an exceptional travel experience. Consistent with federal law, Wis. Stat. § 84.106 (as amended by 2011 Wisconsin Act 147) now permits roads to be added to the scenic highways system,

regardless of whether the roads are under state or local jurisdiction.

Also consistent with federal law, this proposed rule-making will make clear that federal highway beautification act requirements (and corresponding state laws and regulations) will not be applied to highways to which federal law does not apply.

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 of implementing the proposed rule changes is as follows:

- The scenic byways designation provides an additional attraction for tourists. Therefore, more scenic byway designations will have a positive impact on tourism.
- Scenic byway designations provide brand differentiation (e.g. Come visit us; we are a scenic byway) and create additional avenues for promotion at the local level;
- In 2004, an Economic Impact study and Marketing Analysis of Wisconsin's first scenic byway—WIS 35 from Prescott, Wisconsin to Kieler, Wisconsin was conducted. The study showed that in 2003, recreational users along the Great River Road Scenic Byway generated an estimated \$337.5M in tourist expenditures. These expenditures supported an estimated 10,219 full-time equivalent jobs on the scenic byway. The full-time jobs generated an estimated additional \$145M in wages and proprietary income. No other studies or analyses have been done specifically in Wisconsin regarding the economic impact of scenic byways.

Contact Person

Jane Carrola, Rustic Roads and Scenic Byways Coordinator, (608) 266-0649.

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 14-037

(DATCP DOCKET # 13-R-05)

The Wisconsin Department of Agriculture, Trade and Consumer Protection announces that it has referred a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse, pursuant to s. 227.15, Stats. The proposed rule revises Chapters ATCP 70, 71, 75, and 88, relating to eggs.

Agency Procedure for Promulgation

The department will hold public hearings on this rule on July 15, 2014, in Wausau; July 18, 2014 in Mauston; August 4, 2014, in Madison; and August 6, 2014, in Fond du Lac.

Scope Statement

The scope statement for this rule, SS 064-13, was approved by the Governor on June 13, 2013, published in Register No. 690 on June 30, 2013, and approved by the Board of Agriculture, Trade and Consumer Protection as required by s. 227.135 (2), Stats., on July 16, 2013.

Contact Information

The department's Division of Food Safety is primarily responsible for this rule.

If you have questions, you may contact Peter Haase at (608) 224-4711.

Agriculture, Trade and Consumer Protection CR 14-038

(DATCP DOCKET # 14-R-02)

The Wisconsin Department of Agriculture, Trade and Consumer Protection announces has referred a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse, pursuant to s. 227.15, Stats. The proposed rule revises Chapter ATCP 134, relating to residential rental practices.

Agency Procedure for Promulgation

The department will hold a public hearing on this rule. The public hearing is scheduled for July 9, 2014.

Scope Statement

The scope statement for this rule, SS 005-14, was approved by the Governor on January 14, 2014, published in Register No. 697 on January 31, 2014, and approved by the Board of Agriculture, Trade and Consumer Protection as required by s. 227.135 (2), Stats., on February 19, 2014.

Contact Information

The department's Division of Trade and Consumer Protection is primarily responsible for this rule.

If you have questions, you may contact Jennifer Heaton-Amrhein at (608) 224-5164.

Agriculture, Trade and Consumer Protection CR 14-039

(DATCP DOCKET # 14-R-01)

The Wisconsin Department of Agriculture, Trade and Consumer Protection announces that it has referred a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse, pursuant to s. 227.15, Stats. The proposed rule repeals Chapter ATCP 104, relating to leaf tobacco, buying and selling.

Agency Procedure for Promulgation

The department will hold a public hearing on this rule on July 9, 2014.

Scope Statement

The scope statement for this rule, SS 006-14, was approved by the Governor on January 14, 2014, published in Register No. 697 on January 31, 2014, and approved by the Board of Agriculture, Trade and Consumer Protection as required by s. 227.135 (2), Stats., on February 19, 2014.

Contact Information

The department's Division of Trade and Consumer Protection is primarily responsible for this rule.

If you have questions, you may contact Jennifer Heaton-Amrhein at (608) 224-5164.

Natural Resources *Fish, Game, etc., Chs. 1—* CR 14-036

(DNR # FR-07-12)

The Department of Natural Resources has submitted a proposed rule to the Legislative Council Rules Clearinghouse.

The statement of scope for this rule, SS 018-12, was approved by the governor on March 14, 2012, published in Register No. 675, on March 31, 2012, and approved by the Natural Resources Board on April 25, 2012.

Date Submitted to the Rules Clearinghouse: May 19, 2014

Subject: County Forest Time Standards Grant

Administrative Codes: Creates section NR 47.65

Date of Public Hearing: June 25, 2014

Name and Organizational

Unit of Agency Contact: Linda Haddix
Department Administrative Rules Officer
Bureau of Legal Services
(608) 266-1959
Linda.haddix@wisconsin.gov

Rule-Making Notices

Notice of Hearings

Agriculture, Trade and Consumer Protection

CR 14-037

(DATCP DOCKET #: 13-R-05)

The Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) announces that it will hold public hearings on a proposed rule to revise Chapters ATCP 70, 71, 75, and 88, relating to eggs. DATCP will hold four public hearings at the times and places shown below.

Hearing Information

Date: Tuesday, July 15, 2014
Time: 10:00 a.m. to 1:00 p.m.
Location: Room CBI 110
 North Central Technical College
 1000 W. Campus Drive
 Wausau, Wisconsin 54401

Date: Friday, July 18, 2014
Time: 10:00 a.m. to 1:00 p.m.
Location: Hatch Public Library
 111 West State Street
 Mauston, Wisconsin 53984

Date: Monday, August 4, 2014
Time: 10:00 a.m. to 1:00 p.m.
Location: Room 106 (Board Room)
 Department of Agriculture, Trade and Consumer Protection
 2811 Agriculture Drive
 Madison, Wisconsin 53718

Date: Wednesday, August 6, 2014
Time: 10:00 a.m. to 1:00 p.m.
Location: Room D and E
 Fond du Lac City Hall
 160 South Macy Street
 Fond du Lac, Wisconsin 54935

Hearing impaired persons may request an interpreter for this hearing. Please make reservations for a hearing interpreter by July 3, 2014, by writing to Sandra Cleveland, Division of Food Safety, P.O. Box 8911, Madison, Wisconsin 53708-8911; by emailing sandy.cleveland@wisconsin.gov; or telephoning (608) 224-4712. Alternatively, you may contact the DATCP TDD at (608) 224-5058. The hearing facility is handicap accessible.

Appearances at the Hearing and Deadline for Submission of Comments

DATCP invites the public to attend the hearings and comment on the proposed rule. Following the public hearings, the hearing record will remain open until **August 20, 2014**, for additional written public comments. Comments may be sent to the Division of Food Safety at the address below, or to Peter.Haase@wisconsin.gov, or to <http://adminrules.wisconsin.gov>.

Copies of the Rule and Comments Relating to Small Business

You can obtain a free copy of this hearing draft rule and related documents including the economic impact analysis by contacting the Wisconsin Department of Agriculture, Trade and Consumer Protection, Division of Food Safety, 2811 Agriculture Drive, P.O. Box 8911, Madison, Wisconsin 53708. You can also obtain a copy by calling Sandra Cleveland at (608) 224-4670 or by emailing sandy.cleveland@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 proposed rule modifies: Ch. ATCP 88, Wis. Adm. Code, related to egg grading, handling, and labeling; Ch. ATCP 70, Wis. Adm. Code, related to food processing plants; and Ch. ATCP 75, Wis. Adm. Code, related to retail food establishments. The proposed rule comprehensively revises Ch. ATCP 88 to clarify the regulatory requirements applicable to egg producers and egg handlers. The proposed rule makes minor revisions to chs. ATCP 70 and 75, moving primary egg regulation to ch. ATCP 88. By placing requirements for licensing, facilities, equipment and utensils, egg handling operations, packing and labeling, recordkeeping, and recall planning in ch. ATCP 88, the proposed rule limits the need for small egg-business operators to consult multiple chapters of rules. The proposed rule will implement 2013 Wisconsin Act 245 by eliminating the requirement for small-scale egg producers to hold a food processing plant license when selling eggs to consumers at a farmers' market, on an egg sales route, or at the egg producer's farm. The proposed rule removes obsolete provisions in the existing rule. The proposed rule also provides explanations to improve rule clarity and spells out federal egg safety registration requirements that must also be met by some egg producers and egg handlers.

Statutes interpreted

Section 97.29 (1) (g) and 2 (a), Stats., (Food processing plants) and 97.28, Stats., (Direct sale of eggs).

Statutory authority

Sections 93.07 (1), 97.09 (4), 97.28, and 97.29 (1) (g), 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 (4), Stats., to establish and enforce rules that are needed to protect the public from the sale of adulterated or misbranded foods and govern the production, processing, packaging, labeling, transportation, storage, handling, display, sale, and distribution of foods. DATCP has general authority under s. 97.29 (1) (g), Stats., to exempt by

rule certain activities from the definition of “food processing.” It also has specific authority, pursuant to s. 97.28, Stats., to not require a food processing plant license for collection, packing, and storage of eggs by an egg producer, with a flock of not larger than 150 birds, who sells those eggs only to consumers at farmers’ markets, on egg sales routes, or at the egg producer’s premises.

Related statutes and rules

Section 97.28, Stats., requires DATCP to exempt small-scale egg producers who sell eggs directly to consumers on the premises where the eggs are laid, on egg sales routes, and at farmer’s markets from the requirement of holding a food processing plant license. Section 97.29, Stats., also authorizes DATCP to exempt certain food processing activities by rule. Section 97.10, Stats., prohibits the sale of adulterated or misbranded food as defined in ss. 97.02 and 97.03, Stats., including food for which the identity is misrepresented. Section 100.183, Stats., prohibits deceptive advertising of food.

Plain language analysis

This proposed rule repeals the existing Ch. ATPC 88, Egg Grading, Handling and Labeling, and creates a new rule, ch. ATPC 88, Eggs, to consolidate licensing, egg handling, grading, packing, and retail sale requirements into one rule. Specifically, the proposed rule addresses the following:

Food Processing Plant and Retail Establishment Rules

- The rule revises ch. ATPC 70, Food Processing Plants, to clarify that egg producers, with flocks of not more than 150 birds, are exempt from food processing plant licensing requirements, provided they only sell eggs directly to consumers on the premises where the eggs are laid, at a farmers’ market, or on an egg-sales route.
- The rule revises ch. ATPC 70, Food Processing Plants, to clarify that egg producers, with flocks of more than 150 birds, who only collect nest-run eggs to sell to licensed egg handlers, are exempt from food processing plant licensing requirements, provided they register with the department.
- The rule refers egg handlers who hold a food processing plant license to specific sections of ch. ATPC 88 that relate to construction, maintenance, sanitation, packaging and labeling requirements for egg handling.
- The rule also revises the Wisconsin Food Code found in the appendix of ch. ATPC 75, Retail Food Establishments, to clarify that eggs sold by egg handlers holding a food processing plant license issued by another state, or who are selling eggs directly to the consumer and exempted under s. ATPC 88.02, are allowed to sell eggs at retail. The rule also updates the cited location of restricted egg tolerances from ss. ATPC 88.06 to ATPC 88.26.

Title and Organization

- The rule retitles ch. ATPC 88 from “Egg Grading, Handling, and Labeling” to “Eggs”, reflecting the broader scope of the rule. The revised rule organizes provisions into six subchapters to improve ease of use, reorganizes and renumbers existing provisions that are retained from the current rule, and creates new provisions throughout the rule.

General Provisions

- Section ATPC 88.01 — Definitions. The rule adds definitions to Ch. ATPC 88 for “ambient temperature,” “balut,” “check,” “egg handler,” “egg

producer,” “egg sales route,” “farmers’ markets,” “incubator reject,” “leaker,” “loss,” “nest-run,” “official egg products plant,” “restricted egg,” “storage,” and “U.S. Consumer Grade B”. The rule also expands the definition of “egg”, now limited to chicken eggs, to include turkey, duck, goose, guinea, or other avian species whose eggs are used for human consumption. The rule also separates each federal regulation, related to eggs, into a discrete definition. These changes provide additional support and clarity to the regulatory requirements in the rule.

- Section ATPC 88.02 — Licensing and registration. The rule creates a provision describing food processing plant, food warehouse, and retail food establishment licensing and registration requirements for egg handling. The rule continues to require anyone who conducts egg handling activities to acquire a food processing plant license, but specifies two exemptions: 1) Egg producers who collect, pack, and store eggs, from a flock of not more than 150 birds, and only sell eggs directly to the consumer at the premises where the eggs are laid, a farmers’ market, or on an egg sales route. The rule requires those exempted producers to label packages of eggs, sold under this exemption, as ungraded and uninspected, and include the seller’s name, address, and pack date. 2) Egg producers who collect nest-run eggs from a flock of more than 150 birds, register with DATCP, and sell the nest-run eggs to a licensed egg handler. The revision clarifies that a retail food establishment license is required to sell eggs directly to consumers at sites other than the premises where the eggs were laid, including sales at farmers’ markets and on egg sales routes. A retail food establishment license is not required for eggs sold directly to consumers at the egg producer’s premises.
- Section ATPC 88.04 — Federal registrations and records. Under federal law, the Food and Drug Administration (FDA) and the United States Department of Agriculture (USDA) require registration for certain egg producers and handlers, so these agencies may identify those egg producers and handlers required by federal law to meet federal regulations designed to reduce the risk of *Salmonella enteritidis* contamination and ensure the sale of wholesome eggs in commerce. This revision to ATPC 88 requires egg producers to register with the FDA if they are required to do so under 21 CFR 118.11 of the federal egg safety rule. Generally, egg producers with flocks of 3,000 birds or more are required to register with the FDA and meet requirements designed to reduce the risk of *Salmonella enteritidis* contamination. To ensure Wisconsin egg producers are meeting critical safety requirements in the federal egg safety act, the revised rule also requires Wisconsin egg handlers, receiving eggs from producers who own 3,000 or more laying birds, to maintain records showing that the producers are registered with the FDA. The rule also requires egg handlers who grade and pack eggs for the ultimate consumer to register with the USDA, if required to do so under 7 CFR 57.690 of the federal egg products inspection act. Egg producers and egg handlers are not required to register if they are exempted under the federal egg safety rule or federal egg products inspection act.

Egg Facilities

- Section ATPC 88.06 — Egg handling and storage facilities. The rule lists requirements, consistent with those for all food processing plants, related to

construction and maintenance of egg handling and storage facilities, doors and windows, lighting, toilet facilities, cleaning facilities, garbage and refuse disposal, and control of pests.

- Section ATCP 88.08 — Egg handling rooms. The rule retains the requirement that egg storage areas maintain eggs at appropriate temperatures and be equipped with temperature measuring devices. The rule also retains the requirement that candling areas be dark enough to permit accurate determinations of egg quality. The rule adds cleanliness requirements for egg washing and egg grading rooms.
- Section ATCP 88.10 — Operations water. The rule specifies requirements to ensure water, used in egg handling facilities, is tested and meets drinking water standards. Egg handling facilities are required to keep the results of all health-related tests conducted on operations water.

Equipment and Utensils

- ATCP 88.12 — Equipment and utensil requirements. The rule presents requirements to ensure equipment and utensils used in egg handling establishments are of sanitary design and construction.
- ATCP 88.14 — Cleaning and sanitizing equipment and utensils. The rule requires that all egg contact surfaces of equipment and utensils be cleaned and sanitized after each day's use, or more frequently if necessary. It outlines the procedure for obtaining department approval for alternative cleaning and sanitizing procedures and methods for storing equipment and utensils.

Egg Handling Operations

- Section ATCP 88.16 — Personnel standards. The rule lists requirements for personnel, including cleanliness, clothing and jewelry, employee health, and prohibitions against consumption of food or beverages, or use of tobacco in egg handling rooms.
- Section ATCP 88.18 — Temperature standards. The current rule identifies temperature standards for eggs before and after packing. It prohibits the sale of shell eggs that have been frozen. The revised rule maintains those standards and adds temperature standards for eggs during transport and at retail sale, with retail sale temperature standards consistent with the Wisconsin Food Code. The revised rule adds temperature standards for baluts, which are edible fertile eggs.
- Section ATCP 88.20 — Egg cleaning and storage operations. The revised rule modifies requirements for egg cleaning and storage. It no longer cites the reference to the "List of Proprietary Substances and Nonfood Compounds", which is no longer published by USDA, as a reference for identifying acceptable egg-cleaning or -sanitizing compounds. Instead the rule requires that compounds meet requirements found in 21 CFR part 178.1010 and be registered with the U.S. Environmental Protection Agency (EPA). The revised rule adds provisions requiring that dirty eggs, which cannot be cleaned, shall be discarded and that eggs shall be handled and stored in a safe, sanitary and orderly manner to protect the safety of the eggs and allow for ready inspection and movement of eggs.
- Section ATCP 88.22 — Candling. The rule requires use of a candling light or automated grading equipment for determining the interior and exterior quality of eggs, and use of a candling light to verify the performance of automated grading equipment.

- Section ATCP 88.24 — Grading standards for chicken eggs. The revised rule clarifies that grading standards apply to chicken eggs only. The rule maintains the current requirement that graded eggs sold or distributed in Wisconsin shall be labeled for grade and meet grade B or better standards under the United States grade standards, unless they are clearly labeled as "ungraded." The rule maintains the current size or weight class requirement for chicken egg sizes. The rule adds a table illustrating weights for each size or weight class.
- Section ATCP 88.26 — Minimum tolerance standards. The revised rule maintains the prohibition against selling eggs graded as less than grade B, whether labeled as "graded" or "ungraded," unless the eggs are sold on the premises directly to a consumer and the eggs are labeled as "ungraded."
- Section ATCP 88.28 — Restricted eggs. The revised rule adds a prohibition against the sale of restricted eggs and provisions describing the disposition of restricted eggs.
- Section ATCP 88.30 — Shell egg protection. The rule maintains the current provision that oiling eggs, to protect shells, shall be performed in a manner that prevents egg contamination and preserves egg quality. The revised rule removes the requirement that oil used to protect eggs must be listed in the "List of Proprietary Substances and Nonfood Compounds", which USDA no longer publishes, and substitutes a requirement that oil must comply with 21 CFR parts 172.878 and 178.3620(a) relating to mineral oil.

Packing and Labeling

- Section ATCP 88.32 — Egg packing. The rule maintains current requirements related to egg packing, but revises the title of ATCP 82.32 (1) to clarify that mandatory packing practices maintain egg quality. The revised rule adds provisions that eggs may be packed in used, clean cartons as long as the seller obliterates all carton markings that do not pertain to the eggs being sold.
- Section ATCP 88.34 — Egg labeling. The rule maintains the current requirements related to egg labeling, except that it adds the requirement that egg cartons include a label with the statement "SAFE HANDLING INSTRUCTIONS: To prevent illness from bacteria: keep eggs refrigerated, cook eggs until yolks are firm, and cook foods containing eggs thoroughly." The rule specifies the font size and location of the safe handling label. The rule maintains requirements related to the packing date, expiration date, and use by date and requirements related to egg shipping containers.
- Section ATCP 88.36 — Labeling of baluts. The rule adds a provision establishing labeling requirements for baluts, including a label clearly indicating that baluts should be stored at a temperature of 41°F or colder.
- Section ATCP 88.38 — Deceptive practices. The rule retains the current provisions against deceptive practices, with an added prohibition against any nutrient content or health claims that do not comply with the requirements of 21 CFR part 101.
- Section ATCP 88.40 — Dealers buying eggs from producers; receipts. The revised rule maintains the provision related to receipts provided by dealers buying eggs from producers except that, for clarity, it reorganizes the provisions into three, rather than two provisions.

Section ATCP 88.42 — Recall plan. The revised rule requires egg handlers to develop a written plan for recalling eggs in the event of a foodborne illness linked to the eggs handled at the establishment. The rule identifies the recall plan contents, and requires the egg handler to update the plan as necessary and make it available to the department for inspection and copying upon request.

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

In general, rules designed to ensure egg safety and consistent quality and marketing of eggs cover activities related to flock health and farm sanitation; egg grading, sanitation, temperature control, packaging, and labeling at egg processing facilities; and transportation, handling, and storage of eggs for retail sale. Federal egg regulations involve two agencies, each responsible for different activities designed to promote egg safety and consistent egg quality and marketing. One objective of this rulemaking process is to clearly differentiate Wisconsin's requirements and those of federal agencies in regulating egg packaging and sales.

Federal Egg Regulations

The Egg Products Inspection Act (Title 21 USC, Chapter 15) authorized the USDA to create regulations (7 CFR Part 57) for egg processing operations. Egg processing operations, defined in the revised ch. ATCP 88 as "official egg products plants," 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 statutes and regulations relating to temperature control, quality or grade, condition, weight or quantity. A voluntary egg grading service is administered by USDA under the authority of the Agricultural Marketing Act of 1946 as amended (Title 7 USC, Chapter 1621 et seq.; referred to in revised Ch. ATCP 88 as the "federal egg grading act") and requirements formerly found in 7 CFR part 56, but now available as guidance from USDA's Agricultural Marketing Service (AMS 56), using essentially the same egg grading standards which are contained in revised ATCP 88.

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 US Food and Drug Administration (FDA) has enacted egg safety regulations (21 CFR parts 16.5 (a) (5) and 118, referred to in revised ATCP 88 as the "egg safety rule") applying to shell egg producers with 3,000 or more laying hens at a particular farm, who are not selling all of the eggs directly to consumers or are transporting eggs for processing. The regulations require these 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

Within USDA, the Animal and Plant Health Inspection Service (APHIS) is responsible for activities related to disease control in flocks of laying hens. In addition, 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. Finally, the Food Safety and Inspection Service (FSIS) is responsible for inspecting egg products sold in interstate commerce and re-inspecting imported egg products. The 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 the USDA's shell egg grading service, and for managing recalls involving shell eggs or egg products inspected by either the FDA or the USDA.

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

Comparison with rules in adjacent states

Illinois requires egg producers to hold a limited or full license, for \$15 and \$50, respectively. Illinois also assesses a per-case inspection fee on eggs sold in-state. Egg producers are not required to hold an Illinois egg license to sell nest-run eggs from the producer's flock to household consumers for the consumers' own personal use. The eggs must be sold on the premises where the flock is located. Producers who sell eggs to licensed grading stations also do not require an Illinois egg license. A limited producer-dealer egg license is required for producers selling graded eggs from their own flock of fewer than 3,000 birds when the eggs are sold off the premises from where the flock is located.

Iowa requires handlers of candled and graded eggs to hold a license, the cost of which is based on the number of eggs sold in a "snapshot" month. The fee ranges from \$15 for egg handlers who purchase or handle fewer than 125 cases in the month of April of a calendar year to \$250 for those who purchase or handle 10,000 cases or more during that month. Producers, who sell eggs exclusively from their own flocks directly to handlers, or to consumers, are exempt from licensing.

Michigan does not require a license for selling eggs obtained from flocks of fewer than 3,000 laying hens if the sales are made directly to consumers. Any other sales, including those transacted with consumers by internet, mail, or consignment, are only allowed if the seller holds a \$175 license.

Minnesota assesses an annual inspection fee, based on number of eggs sold, which ranges in cost from \$12.50 to \$312. A food handler license is also required for certain sales. The cost of a food handler license is based on the gross annual food sales and ranges from \$77 for establishments with gross annual food sales of less than \$50,000 to \$2,001 for establishments with gross food sales of over \$25 million. Producers may sell eggs directly from their farm, to individual customers, without meeting any licensing, registration, or inspection requirements. Producers may also sell eggs at farmers' markets without licensing or registration, but the eggs must be candled, labeled with the producer's name and address and kept at a temperature of 45°F or colder. Producers with fewer than 3,000 hens may sell eggs to grocery stores, restaurants or other food businesses without a license if they register with the Minnesota Department of Agriculture

(MDA). There is no fee for registration and no routine inspection of the producer, although MDA may inspect the premises if they receive a complaint about the producer.

Currently, Wisconsin egg handlers with flocks of more than 150 birds or who sell washed and graded eggs to other businesses must hold a food processing plant license (potentially hazardous foods category) with the license fee based on annual sales and ranging from \$95 for establishments with annual sales of less than \$25,000 to \$835 for food processors with annual sales of at least \$250,000. Wisconsin currently also requires egg producers who sell eggs directly to consumers at venues other than their farms, such as at a farmers' market, to hold a retail food establishment license. The fee for a retail food establishment license issued by DATCP ranges from \$45 to \$685, depending on the scope of the establishment and its total annual sales, with small egg producers typically paying \$45. If the retail sales occur in jurisdictions where local health agents are under contract with the department to conduct retail food establishment inspections, the fees may differ. This revision to ATCP 88 incorporates exemptions from the food processing plant license requirement for producers who sell eggs from small flocks directly to consumers at specified venues, and producers who sell only nest-run eggs to egg handlers. These exemptions were recently enacted in 2013 Wisconsin Act 245. This approach is consistent with that taken in neighboring states to minimize regulatory costs for small-scale direct-sale egg producers.

USDA grading standards are adopted in each of our neighboring states and those standards generally require that eggs sold to retailers must be Grade B or better. Illinois, Iowa, and Minnesota require candled eggs to be stored at 45°F or colder. Michigan requires eggs to be held and transported at no more than 45°F ambient temperature beginning 36 hours after the time of laying. Illinois requires nest-run eggs to be held at 60°F or less at all times. Since temperature control is an essential means of protecting the public from egg-borne illnesses, the Wisconsin rule requires eggs handled by licensed operators to be kept at 45°F or colder before and after packing and during transport, and 41°F or colder for retail sale. Wisconsin egg producers who are exempted under 2013 Wisconsin Act 245 from the requirement to hold a food processing plant license must hold at eggs at 41°F or colder for retail sale.

Illinois, Iowa, and Minnesota require record-keeping associated with graded-egg sales and retention of these records for varying lengths of time. Wisconsin's rule is consistent with neighboring states in this regard.

Summary of factual data and analytical methodologies

In developing this rule, DATCP reviewed rules which govern eggs in other states, reviewed the federal rules related to eggs, and sought input from egg industry personnel.

Effect on Small Business

This rule is expected to have a positive impact on small-scale egg producers, as it removes the requirement to obtain a food processing plant license for selling eggs at farmers' markets and on egg sales routes. Egg producers selling nest-run eggs to an egg handler will be required to register with DATCP, which will require a very small expenditure of time and, for some producers, postage. The rule will not increase licensing fees. Some licensed egg handling operations may need to upgrade facilities, *e.g.* sinks, walls, temperature monitoring devices, in order to meet

requirements in the rule. The rule will have no economic impact on local governmental units or public utility rate-payers.

Standards Incorporated by Reference

The rule incorporates FDA registration requirements (21 CFR 118.11) and USDA registration requirements (7 CFR part 57.690), the USDA standards for grades and weight classes of shell eggs (AMS 56), handling of restricted eggs (7 CFR parts 57.100, 57.200 and 57.720), and labeling of organic products (7 CFR part 250). The rule also incorporates FDA standards for oil used to protect shell eggs (21 CFR parts 172.878 and 178.3620(a)), and nutrient content or health claims (21 CFR parts 101.54 – 101.83).

DATCP Contact

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

Peter Haase, Director
Bureau of Food Safety and Inspection
Department of Agriculture, Trade and Consumer
Protection
P.O. Box 8911
Madison, WI 53708-8911
Telephone: (608) 224-4711
E-Mail: Peter.Haase@Wisconsin.gov

Initial Regulatory Flexibility Analysis

Rule Subject: Egg grading, handling, and labeling

Adm. Code Reference: Chs. ATCP 88, 70, and 75

Rules Clearinghouse #: CR 14-037

DATCP Docket #: 13-R-05

Rule summary

This proposed rule comprehensively revises Ch. ATCP 88, Wis. Adm. Code, to clarify the regulatory requirements applicable to egg producers and egg handlers. The proposed rule makes minor revisions to Chs. ATCP 70 and 75 and moves primary egg regulation to ATCP 88, thus limiting the need for egg business operators to consult multiple chapters of rules. The rule consolidates regulations regarding licensing egg processing and sales, and egg facilities, equipment and utensils, egg handling operations and packing and labeling requirements in ch. ATCP 88. The rule implements 2013 Wisconsin Act 245, by eliminating the requirement for small-scale egg producers to hold a food processing plant license when selling eggs at a farmers' market, on an egg route, or at the egg producer's farm. The proposed rule removes obsolete provisions in the existing rule and incorporates explanatory text to improve rule clarity. The rule spells out federal registration requirements that must also be met by some egg producers and egg handlers.

Small businesses affected

The rule will impact egg producers and egg handlers of all sizes. This rule is expected to have a positive impact on small-scale egg producers with flocks of not more than 150 birds as it removes the requirement to obtain and pay the license fee for a food processing plant license for selling eggs to consumers on the site where the eggs are produced, at farmers' markets, and on egg sales routes. It assists all egg-related businesses by clarifying and consolidating existing regulatory requirements specific to egg production establishments, making it easier for businesses to understand and meet critical requirements to protect the public from foodborne illness. Some licensed egg handling operations

may need to upgrade facilities, e.g. sinks, walls, temperature monitoring devices, in order to meet the requirements in the rule. The rule does not increase license fees.

Reporting, bookkeeping and other procedures

The rule does not require any additional reporting or bookkeeping procedures for small producers. The rule incorporates registration requirements for large producers, as required under federal law. The rule also requires Wisconsin egg handlers who receive eggs from producers who own 3,000 or more laying birds to maintain records showing that the producers are registered as required under federal egg safety rule with the Food and Drug Administration (FDA). The FDA requires producers with 3,000 or more laying birds to register and meet federal requirements to reduce the risk of *Salmonella enteritidis* (SE) contamination, which presents a significant food safety hazard associated with eggs. Registration allows FDA to identify and inspect these large-scale egg producers. By requiring egg handlers to maintain documentation demonstrating compliance with FDA registration requirements, Wisconsin inspectors will be able to quickly and efficiently ensure that eggs entering the

marketplace from these large-scale egg producers have implemented SE reduction practices consistent with federal law.

Professional skills required

The proposed rule does not require small businesses to acquire any new professional skills.

Accommodation for small business

The proposed rule creates a new exemption from food processing plant licensing for egg producers with not more than 150 laying birds who sell eggs at farmer’s markets, on egg-sales routes or at the location where the eggs are produced.

Conclusion

The provisions in this proposed rule will benefit Wisconsin’s egg production industry.

This rule will not have a significant adverse effect on “small business” and is not subject to the delayed “small business” effective date provided in s. 227.22 (2) (e), Stats.

DATCP will, to the maximum extent feasible, seek voluntary compliance with this rule.

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

ATCP 88–Egg Grading, Handling and Labeling; ATCP 70, Food Processing Plants; and ATCP 75, Retail Food Establishments

3. Subject

Regulation of Egg Grading, Handling, Packaging, Labeling, and Retail Sales, and affecting small business.

4. Fund Sources Affected

GPR FED PRO PRS SEG SEG–S

5. Chapter 20, Stats. Appropriations Affected

129

6. Fiscal Effect of Implementing the Rule

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

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

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

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

Yes No

9. Policy Problem Addressed by the Rule

This rule modifies ATCP 88, Wis. Adm. Code, related to egg grading, handling and labeling; ATCP 70, Wis. Adm. Code, related to food processing plants; and ATCP 75, Wis. Adm. Code, related to retail food establishments. The rule involves a comprehensive re-write of ATCP 88 to provide clarity for determining the regulatory requirements that an egg producer or egg handler must meet. Minor revisions in ATCP 70 and 75 defer primary egg regulation to ATCP 88. By setting forth requirements for licensing, facilities, equipment and utensils, egg handling operations, packing and labeling, recordkeeping and recall planning in ATCP 88, the rule practically eliminates the need for a small egg-business operator to read multiple chapters of rules. The rule will help businesses by eliminating the requirement for small-scale egg producers to hold a food processing plant license when selling eggs at a farmers' market, on an egg route, or at the egg producer's farm. The rule removes obsolete provisions in the existing rule. The rule provides explanatory text to improve rule clarity and spells out federal registration requirements which must also be met by some egg producers and egg handlers.

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.

We contacted Wisconsin egg producers, including those represented by the Wisconsin Poultry and Egg Industries Association. We contacted an officer of the Wisconsin Association of Local Health Departments and Boards (WALHDAB) to solicit information regarding local health department agents who carry out retail food establishment oversight.

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

Some local governmental units operate under contract with DATCP to inspect retail food establishments, which includes egg producers selling eggs directly to consumers on egg sales routes and at farmers' markets. WALHDAB was consulted as a representative of local government as part of developing this EIA. However, since the rule will not change current requirements for retail food establishment licensing, there is no impact on local governmental units.

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

Very small egg producers: This rule will benefit small egg producers as it removes the requirement to obtain a food processing plant license to sell eggs to consumers at farmers' markets and on egg sales routes. Under the Wisconsin Food Code, any food sold at a licensed retail food establishments, which includes farmers' markets and egg sales routes, must be acquired from an approved source. To be considered an approved food source, the food effectively must come from a licensed food processing plant. This rule will no longer require egg producers with flocks of not more than 150 birds to obtain a food processing plant license in addition to a retail food establishment license. Annual food processing plant licenses fees for small establishments are \$95. Under the rule, very small egg producers will have to label eggs and maintain eggs for sale at a temperature of 41 degrees or less.

Egg producers as a whole: The rule does not include new regulatory requirements, but consolidates and clarifies requirements that were previously located in multiple administrative rule chapters in one rule, making it easier for egg producers to meet important food safety regulations. Some licensed egg handling operations may need to upgrade facilities, e.g. sinks, walls, temperature monitoring devices, in order to meet requirements in the rule. The rule will not increase licensing fees.

Local governmental units: This rule is not anticipated to have a fiscal impact on local government units. Forty-four local health agents issue retail food establishment licenses and conduct retail food establishment inspections under contract with DATCP. The rule exempts small egg producers from food processing plant licensing if they sell eggs directly to consumers at the location where the eggs are laid, at a farmers' market, or on an egg sales route. However, food processing plant licenses are administered by DATCP and this exemption will not impact local governmental units. DATCP also issues retail food establishment licenses and conducts retail food establishment inspections in jurisdictions not covered by a local health agent contract and the rule will have no impact on local governmental units in these jurisdictions. The rule may encourage some very small egg producers to seek a retail food establishment license to sell eggs directly to consumers. The number of very small egg producers who may seek licensure cannot be determined.

Public Utility Rate Payers: The rule will have no impact on public utility rate payers.

State's economy: According to USDA, egg production is growing in Wisconsin. Wisconsin produced 1.48 billion eggs in 2013, representing an 8 percent increase in egg production from 2012. Wisconsin also increased its rank nationally one place to become the 17th largest egg producer in the country in 2013. Simplified regulations will support this important contribution to the state's agricultural economy.

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

The rule clarifies existing requirements for egg producers by consolidating regulations related to the safe handling and proper labeling of eggs into one rule. The rule will make it easier for egg production businesses to meet requirements that are designed to protect public health and prevent foodborne illness outbreaks. The rule exempts very small egg producers from acquiring two licenses to sell eggs directly to consumers.

14. Long Range Implications of Implementing the Rule

These rules will reduce regulatory requirements faced by businesses while still protecting the public from foodborne illness. Many consumers prefer to buy locally-produced foods, in particular directly from a farmer. The rule exemptions will increase access to locally-produced eggs. Nevertheless, eggs are a potentially-hazardous food, meaning they must be handled properly and stored at a proper temperature to avoid contamination and growth by pathogens. Salmonella Enteritidis (SE) is the most common pathogen associated with eggs and the risk of SE infection is increased when proper refrigeration is not practiced. The rule retains refrigeration requirements for egg producers exempted from food processing plant licensing. The rule consolidates regulations related to eggs, making it easier for egg producers to meet requirements.

15. Compare With Approaches Being Used by Federal Government

In general, rules designed to ensure egg safety and consistent quality and marketing of eggs cover activities related to flock health and farm sanitation; egg grading, sanitation, temperature control, packaging, and labeling at egg processing facilities; and transportation, handling and storage of eggs for the retail sale. Federal egg regulations consist of several rules involving two agencies, each responsible for different activities designed to promote egg safety and consistent egg quality and marketing. One objective of this rulemaking process is to clearly differentiate Wisconsin's requirements and those of federal agencies in regulating egg packaging and sales.

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

Illinois requires egg producers to hold a limited or full license, costing \$15 and \$50, respectively. Illinois also assesses a per-case inspection fee on eggs sold in-state. Egg producers are not required to hold an Illinois egg license to sell nest-run eggs from the producer's flock to household consumers for the consumers' own personal use. The eggs must be sold on the premises where the flock is located. Producers who sell eggs to licensed grading stations also do not require an Illinois egg license. A limited producer-dealer egg license is required for producers selling graded eggs from their own flock of fewer than 3,000 birds when the eggs are sold off the premises from where the flock is located.

Iowa requires handlers of candled and graded eggs to hold a license, the cost of which is based on the number of eggs sold in a "snapshot" month. The fee ranges from \$15 for egg handlers who purchase or handle fewer than 125 cases in the month of April of a calendar year to \$250 for those who purchase or handle 10,000 cases or more during that month. Producers who sell eggs exclusively from their own flocks directly to handlers, or to consumers, are exempt from licensing.

Michigan does not require a license for selling eggs obtained from flocks of fewer than 3,000 laying hens if the sales are made directly to consumers. Any other sales, including those transacted with consumers by internet, mail, or consignment, are only allowed if the seller holds a license costing \$175.

Minnesota assesses an annual inspection fee, based on number of eggs sold, which ranges in cost from \$12.50 to \$312. A food handler license is also required for certain sales. The cost of a food handler license is based on the gross annual food sales and ranges from \$77 for establishments with gross annual food sales of less than \$50,000 to \$2,001 for establishments with gross food sales of over \$25 million. Producers may sell eggs directly from their farm to individual customers without meeting any licensing, registration, or inspection requirements. Producers may also sell eggs at farmers' markets without licensing or registration, but the eggs must be candled, labeled with the producer's name and address and kept at a temperature of 45°F or colder. Producers with fewer than 3,000 hens may sell eggs to grocery stores, restaurants or other food businesses without a license if they register with the Minnesota Department of Agriculture (MDA). There is no fee for registration and no routine inspection of the producer, although MDA may inspect the premises if they receive a complaint about the producer.

Minnesota assesses an annual inspection fee, based on number of eggs sold, which ranges in cost from \$12.50 to \$312. A food handler license is also required for certain sales. The cost of a food handler license is based on the gross annual food sales and ranges from \$77 for establishments with gross annual food sales of less than \$50,000 to \$2,001 for establishments with gross food sales of over \$25 million. Producers may sell eggs directly from their farm to individual customers without meeting any licensing, registration, or inspection requirements. Producers may also sell eggs at farmers' markets without licensing or registration, but the eggs must be candled, labeled with the producer's name and address and kept at a temperature of 45° F or colder. Producers with fewer than 3,000 hens may sell eggs to grocery stores, restaurants or other food businesses without a license if they register with the Minnesota Department of Agriculture (MDA). There is no fee for registration and no routine inspection of the producer, although MDA may inspect the premises if they receive a complaint about the producer.

Currently, Wisconsin egg handlers must hold a food processing plant (potentially hazardous foods category), with the license fee based on annual sales and ranging from \$95 for establishments with annual sales of less than \$25,000 to \$835 for food processors with annual sales of at least \$250,000. Wisconsin currently also requires egg producers who sell eggs directly to consumers at venues other than their farms, such as at a farmers' market, to hold a retail food establishment license. The fee for a retail food establishment license issued by DATCP ranges from \$45 to \$685, depending on the scope of the establishment and its total annual sales. Small egg producers typically pay \$45. If the retail sales occur in jurisdictions where local health agents are under contract with the department to conduct retail food establishment inspections, the fees may differ. This revision to ATCP 88 features exemptions from the food processing plant license requirement for producers who sell eggs from small flocks, and producers who sell only nest-run eggs to egg handlers. This approach is consistent with that taken in neighboring states to minimize regulatory costs for small-scale direct-sale egg producers.

USDA grading standards are adopted in each of our neighboring states and those standards generally require that eggs sold to retailers must be Grade B or better. Illinois, Iowa, and Minnesota require candled eggs to be stored at 45° F or colder. Michigan requires eggs to be held and transported at no more than 45° F ambient temperature beginning 36 hours after the time of laying. Illinois requires nest-run eggs to be held at 60° F or less at all times. Since temperature control is an essential means of protecting the public from egg-borne illnesses, the Wisconsin rule requires eggs handled by licensed operators to be kept at 45° F or colder before and after packing and during transport, and 41° F or colder for retail sale. Illinois, Iowa and Minnesota require record-keeping associated with graded-egg sales and retention of these records for varying lengths of time. Wisconsin's rule is consistent with neighboring states in this regard.

17. Contact Name Pete Haase, Director-Bureau of Food Safety and Inspection	18. Contact Phone Number 608 224-4711
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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)

Small egg producers. The rule is expected to benefit small egg producers and reduce the financial and regulatory burden of acquiring a food processing plant license.

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

Solicited input on the economic impact from the Wisconsin Poultry and Egg Industries Association.

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:

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

The rule reduces the impact of meeting full-scale food processing plant regulations for egg producers with flocks of not more than 150 birds by exempting these small-scale egg producers from acquiring a food processing plant license if they sell eggs directly to consumers at farmers' markets, on egg-sales routes, or on the premises where the eggs are laid.

5. Describe the Rule's Enforcement Provisions

The rule does not modify existing enforcement provisions related to egg handling, labeling, grading or sales. All food, dairy and state-inspected meat businesses are regulated under Chapter 97 of the Wisconsin Statutes. Enforcement provisions for these businesses are outlined in s. 97.72 and 97.73 and apply to both small and large businesses.

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

Yes No

Notice of Hearings

Agriculture, Trade and Consumer Protection CR 14-038

(DATCP DOCKET #: 14-R-02)

The Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) announces that it will hold a public hearing on a proposed rule to revise Chapter ATCP 134, relating to residential rental practices. DATCP will hold one public hearing at the time and place shown below:

Hearing Information

Date: Wednesday, July 9, 2014
Time: 10:00 a.m. to 3:00 p.m.
Location: Board Room (1st Floor)
 Department of Agriculture, Trade and Consumer Protection
 2811 Agriculture Drive
 Madison, Wisconsin, 53718-6777

Hearing impaired persons may request an interpreter for this hearing. Please make reservations for a hearing interpreter by July 7, 2014, by writing to Jennifer Heaton-Amrhein, Division of Trade and Consumer Protection, P.O. Box 8911, Madison, WI 53708-8911; or by emailing jennifer.heatonamrhein@wisconsin.gov; or by telephone at (608) 224-5164. Alternatively, you may contact the DATCP TDD at (608) 224-5058. The hearing facility is handicap accessible.

Attendance at the Hearing and Submission of Written Comments

DATCP invites the public to attend the hearings and comment on the proposal. Following the public hearing, the hearing record will remain open until July 23, 2014 for additional written comments. Comments may be sent to the Division of Trade and Consumer Protection at the address below, or to jennifer.heatonamrhein@wisconsin.gov, or to <http://adminrules.wisconsin.gov>.

Copies of the Rule and Comments Relating to Small Business

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) 224-5164 or by emailing jennifer.heatonamrhein@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 regulates transactions between landlords and residential tenants.

Statutes interpreted

Sections 100.20 (1), 704.05 (5) (bf), 704.07 (2) (bm), 704.11, 704.28 (1), (2), and (4) (b), and 704.44, Stats.

Statutory authority

Sections 93.07 (1), 100.20 (2) (a), and 704.95, Stats.

Explanation of statutory authority

DATCP has broad general authority, under s. 93.07 (1), Stats., to interpret laws under its jurisdiction. DATCP has authority under s. 100.20 (2) (a), Stats., to promulgate administrative rules prohibiting trade practices determined by the department to be unfair, and prescribing trade practices determined by the department to be fair.

Section 704.95, Stats., (created by 2011 Wisconsin Act 143 and amended by 2013 Wisconsin Act 76) provides that a violation of ch. 704, Stats., may also be a violation of ch. ATCP 134, Wis. Adm. Code. But this section also states that the department may not enforce a violation of ch. ATCP 134, Wis. Adm. Code, in a way that changes a right or duty provided in ch. 704, Stats.

Related statutes and rules

Chapter 704, Stats., regulates transactions between landlords and both residential and non-residential tenants. The department does not administer ch. 704, Stats. (except for s. 704.90, Stats., relating to self-service storage facilities).

Chapter ATCP 125, Wis. Adm. Code, regulates rental transactions for sites upon which the tenant places a manufactured home owned by the tenant.

Plain language analysis

Background

The department enacted ch. ATCP 134, Wis. Adm. Code, in 1980 and the rule was revised in 1998. The existing rule regulates rental transactions between landlords and residential tenants as follows:

- Requires the landlord to provide to the tenant before entering into the rental agreement copies of the rental agreement and a receipt for any earnest money or security deposits that the tenant has paid to the landlord.
- Requires the landlord to disclose to the tenant before entering into the rental agreement the names and addresses of the owners and managers, code violations and other conditions affecting habitability, and any utility charges that the tenant may be required to pay.
- Prescribes procedures for accepting and withholding earnest money fees and credit check fees.

- Prescribes procedures for handling security deposits.
- Prescribes procedures for promises to repair.
- Prohibits a landlord from including in rental agreements provisions that do the following:
 - Authorize unlawful eviction.
 - Accelerate rent payments in event of tenant default.
 - Require the tenant to pay attorney’s fees.
 - Authorize the landlord to enter a plea in a court action on behalf of the tenant in which the tenant agrees to accept a judgment against the tenant.
 - Relieve the landlord from liability for property damage or personal injury caused by the landlord.
 - Impose liability on the tenant for property damage or personal injury not caused by the tenant.
 - Waive statutory or legal obligations of the landlord.
- Prohibits a landlord from:
 - Advertising or renting condemned premises.
 - Unauthorized entries.
 - Automatically renewing a lease without notice.
 - Unlawfully confiscating personal property.
 - Engaging in retaliatory or self–help eviction.
 - Charging late rental fees and other penalties not set out in the lease.
 - Misrepresenting the dwelling units offered or the amount of all rent and non–rent charges.
 - Failing to disclose all non–rent charges in connection with the representation of any rent amount.

Rule content

2011 Wisconsin Act 143 was enacted on March 21, 2012. Act 143 made changes to ch. 704, Stats., that affect some of the provisions of the current rule relating to:

- Disclosures required before entering into a rental agreement.
- Returning security deposits.
- Withholding security deposits.
- Prohibiting certain rental agreement provisions.
- Disposing of personal property left behind by a tenant.
- Violations of Landlord Tenant law may constitute a violation of Unfair Trade Practices Law.

2013 Wisconsin Act 76 was enacted on December 12, 2013. Act 76, among other things, made additional changes to landlord tenant requirements in ch. 704, Stats., including:

- Disposing of personal property left behind by a tenant.
- Damage to premises due to action or inaction of the tenant.
- Check–in sheets.
- Requiring notice of domestic abuse protections.
- Prohibition on rental agreement terms that allows landlord to terminate tenancy if a crime is committed in or on the rental property.

This rule makes revisions to ch. ATCP 134 that are necessary to conform the rule to provisions of ch. 704, Stats. (as amended), and ensure that enforcement of the rule will not change a right or duty provided by ch. 704, Stats.

Definitions

The proposed rule makes a minor, technical revision to the existing rule definition of “dwelling unit” to conform to recent changes in ch. ATCP 125, Wis. Adm. Code.

The proposed rule revises existing rule definitions of “premises” and “rental agreement” to conform them to the most recent version of ch. 704, Stats.

Disclosures required before entering into a rental agreement

The current rule requires a landlord to make certain disclosures to the prospective tenant before entering into a rental agreement or accepting any earnest money or security deposit. These disclosures relate to various conditions affecting habitability, including uncorrected building code violations.

2011 Act 143 created s. 704.07 (2) (bm), Stats., which requires disclosures relating to building code violations that are generally similar to the disclosures prescribed by the current rule.

This rule repeals and recreates the building code violation disclosure requirement to conform it to the disclosure required by the statute.

Returning security deposits

The current rule establishes a deadline for return of security deposits to the tenant. In most cases, the landlord must return the security deposit with 21 days of the tenant vacating the property.

2011 Act 143 created, and 2013 Act 76 amended, s. 704.28 (4), Stats., which incorporates similar security deposit return requirements. Under the new statutory requirements, if the tenant vacates the property before the end of the rental agreement, and the landlord does not re–rent the property, the landlord must return the security deposit within 21 days of the last day of the rental agreement.

This rule amends the requirement to a return a security deposit to conform to the statutory provision.

Withholding security deposits

Under the current rule, a landlord may withhold a tenant’s security deposit only for specific reasons listed in the rule such as damage to the premises; unpaid rent; unpaid utilities or assessments for which the landlord is liable; or other reasons specifically listed in the rental agreement as “nonstandard rental provisions.”

Act 143 created s. 704.28 (1), Stats., which incorporates very similar (but not identical) provisions into the statute.

This rule makes minor changes to the provisions relating to withholding a tenant’s security deposit to conform to the statute, but does not substantially change the requirements from the current rule. It also makes slight changes related to “nonstandard rental provisions” to conform to s. 704.28 (2), Stats., as created by 2011 Act 143 and amended by 2013 Act 76.

Prohibited rental agreement provisions

The current rule describes provisions that a landlord is prohibited from placing in a rental agreement, such as:

- Authorizing eviction by other than judicial procedure.
- Acceleration of rent payments if tenant breaches obligations.
- Requiring the tenant to pay landlord’s attorney’s fees in the event of a dispute.
- Authorizing landlord to confess judgment against the tenant.

- Relieving the landlord from liability for damage or injury caused by negligent acts or omissions of the landlord.
- Imposing liability on the tenant for personal injury arising from causes clearly beyond the tenant's control.
- Waiving the obligation of the landlord to deliver and maintain the premises in fit or habitable condition.

2011 Act 143 created and 2013 Act 76 revised portions of s. 704.44, Stats., which identify prohibited rental agreement provisions that are similar, but not identical, to provisions in the current rule. In addition, 2011 Act 143 created two new prohibited rental agreement provisions — allowing the landlord to do certain things because a tenant contacted law enforcement, health, or safety services; or allowing the landlord to terminate the tenancy if a crime is committed on the rental property. 2013 Act 76 refined this particular prohibition to clarify that it applies to a termination of tenancy based solely on the commission of a crime. 2013 Act 76 also adds an additional prohibition against rental provisions that allow termination for a crime committed in relation to the rental property.

Further, Act 143 states that the entire rental agreement is void and unenforceable if it contains any of the prohibited provisions. The current rule does not have such a provision, but instead relies on a test established by the courts to determine whether the entire rental agreement is void based on the inclusion of a prohibited provision.

This rule revises the prohibition on certain rental agreement provisions so that the rule is identical to the new statute. This rule also incorporates the provision in s. 704.44, Stats., that declares the entire rental agreement is void and unenforceable if it contains any of the prohibited rental agreement provisions.

Confiscating personal property left behind by the tenant

The current rule prohibits the landlord from confiscating the tenant's personal property except as authorized by law or in accordance with a written lien agreement. The current rule also prescribes the form and manner in which the landlord and tenant may execute the lien agreement.

2011 Act 143 and 2013 Act 76 revised s. 704.05 (5), Stats., to give a landlord the discretion to dispose of personal property left behind by the tenant without a written lien agreement, as long as certain conditions are met. For example, there must not be a written agreement to the contrary, and the landlord must provide notice to the tenant of his or her intent not to store the property before the tenant enters into or renews a rental agreement.

This rule amends the current rule to more closely align it with s. 704.05 (5), Stats. It replaces references to a "written lien agreement" with a more general "written agreement" and imposes conditions on an agreement that allows a landlord to seize or hold a tenant's personal property.

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

Federal law does not generally regulate landlord and tenant relationships or residential rental practices. The Federal Fair Housing Act of 1968 makes it illegal for a landlord to discriminate against a potential tenant because of a person's race, sex, national origin, or religion, and it prohibits certain discriminatory conduct.

Comparison with rules in adjacent states

Illinois, Iowa, Michigan, and Minnesota all have statutes or administrative rules governing residential rental practices. These laws address common topics such as rental agreements, security deposits, and other duties of landlords and tenants.

Summary of factual data and analytical methodologies

This rule modifies the current rule only to conform it to recent changes to the Wisconsin statutes. DATCP did not conduct any factual or data analysis.

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

DATCP has carefully reviewed the provisions of ch. 704, Stats., (as amended by 2011 Wisconsin Act 143 and 2013 Wisconsin Act 76) to ensure that changes to the rule align with the provisions of ch. 704. DATCP will also review the public comments on this rule before preparing a final analysis.

Effect on Small Business

DATCP anticipates that this rule will not have an economic impact on business. This rule makes changes to the current rule to align the rule with recent statutory changes to ch. 704, Stats. Accordingly, there are no changes in the rights or duties prescribed by current law.

DATCP Contact

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

Jennifer Heaton-Amrhein
Department of Agriculture, Trade and Consumer
Protection
P.O. Box 8911
Madison, WI 53708-8911
Telephone (608) 224-5164
E-Mail: jennifer.heatonamrhein@wisconsin.gov.

Initial Regulatory Flexibility Analysis

Rule Subject: Residential Rental Practices
Adm. Code Reference: ATCP 134
Rules Clearinghouse #: CR 14-038
DATCP Docket #: 14-R-01

Rule summary

Wisconsin Act 143 was enacted on March 21, 2012. Act 143 made changes to ch. 704, Stats., that affect some of the provisions of the current rule relating to:

- Disclosures required before entering into a rental agreement.
- Returning security deposits.
- Withholding security deposits.
- Prohibiting certain rental agreement provisions.
- Disposing of personal property left behind by a tenant.
- Violations of Landlord Tenant law may constitute a violation of Unfair Trade Practices Law.

Wisconsin Act 76 was enacted on December 12, 2013. Act 76, among other things, made additional changes to landlord tenant requirements in ch. 704, Stats., including:

- Disposing of personal property left behind by a tenant.
- Damage to premises due to action or inaction of the tenant.
- Check-in sheets.
- Requiring notice of domestic abuse protections

- Prohibition on rental agreement terms that allows landlord to terminate tenancy if a crime is committed in or on the rental property.

This rule makes revisions to ch. ATCP 134 as necessary to conform to provisions of ch. 704, Stats., as amended, and ensure that enforcement of the rule will not change a right or duty provided by ch. 704, Stats.

Definitions

The proposed rule makes a minor, technical revision to the existing rule definition of “dwelling unit” to conform to recent changes in ch. ATCP 125, Wis. Adm. Code.

The proposed rule revises existing rule definitions of “premises” and “rental agreement” to bring them into exact alignment with the most recent version of ch. 704, Stats.

Disclosures required before entering into a rental agreement

The current rule requires certain disclosures a landlord must make to the tenant before entering into a rental agreement with, or accepting any earnest money or security deposit from, a prospective tenant. These disclosures relate to various conditions affecting habitability, including uncorrected building code violations.

Act 143 created s. 704.07 (2) (bm), Stats., which requires disclosures relating to building code violations that are generally similar to the disclosures prescribed by the current rule.

This rule repeals and recreates the building code violation disclosure requirement to make it identical to the disclosure required by the statute.

Returning security deposits

The current rule establishes a minimum timeline for when security deposits must be returned to the tenant. In most cases, the landlord must return the security deposit with 21 days of the tenant vacating the property.

Act 143 created, and Act 76 amended s. 704.28 (4), Stats., which incorporates similar security deposit return requirements. Although under the statutory requirements, if the tenant vacates the property before the end of the rental agreement, and the landlord does not re-rent the property, the landlord must return the security deposit within 21 days of the last day of the rental agreement.

This rule amends the requirement to a return a security deposit to be identical to the statutory provision.

Withholding security deposits

Under the current rule, a landlord may withhold a tenant’s security deposit only for specific reasons listed in the rule such as damage to the premises; unpaid rent; unpaid utilities or assessments that the landlord is liable for unpaid amounts; or other reasons specifically listed in the rental agreement as “nonstandard rental provisions.”

Act 143 created s. 704.28 (1), Stats., which incorporates very similar (but not identical) provisions into the statute.

This rule makes minor changes to the wording of the provisions relating to withholding a tenant’s security deposit to conform to the statute, but does not substantially change the requirements from the current rule. It also makes slight changes related to “nonstandard rental provisions” to conform to s. 704.28 (2), Stats., as created by Act 143 and amended by Act 76.

Prohibited rental agreement provisions

The current rule describes provisions that a landlord is prohibited from placing in a rental agreement, such as:

- Authorizing eviction by other than judicial procedure.
- Acceleration of rent payments if tenant breaches obligations.
- Requiring the tenant to pay landlord’s attorney’s fees in the event of a dispute.
- Authorizing landlord to confess judgment against the tenant.
- Relieving the landlord from liability for damage or injury caused by negligent acts or omissions of the landlord.
- Imposing liability on the tenant for personal injury arising from causes clearly beyond the tenant’s control.
- Waive obligation on the part of the landlord to deliver and maintain the premises in fit or habitable condition.

Act 143 created and Act 76 revised portions of s. 704.44, Stats., which describe prohibited rental agreement provisions that are similar, but not identical, to provisions in the current rule. In addition, Act 143 created two new prohibited rental agreement provisions — allowing the landlord to do certain things because a tenant contacted law enforcement, health, or safety services; or allowing the landlord to terminate the tenancy if a crime is committed on the rental property. Act 76 refined this particular prohibition to clarify that it apply to a termination of tenancy based solely on the commission of a crime. Act 76 also adds an additional prohibition against rental provisions that allow termination for a crime committed in relation to the rental property and the rental agreement did not include the notice requirement relating to certain domestic abuse protections.

Further, Act 143 states that the entire rental agreement is void and unenforceable if it contains any of the prohibited provisions. The current rule does not have such a provision, but instead relies on a test established by the courts to determine whether the entire rental agreement is void based on the inclusion of a prohibited provision.

This rule revises the prohibition on certain rental agreement provisions so that the rule is identical to the new statute. This rule also incorporates the provision in s. 704.44, Stats., that declares the entire rental agreement is void and unenforceable if it contains any of the prohibited rental agreement provisions.

Confiscating personal property left behind by the tenant

The current rule prohibits the landlord from confiscating the tenant’s personal property except as authorized by law or in accordance with a written lien agreement. The current rule also prescribes the form and manner in which the landlord and tenant may execute the lien agreement.

Act 143 created and Act 76 revised s. 704.05 (5), Stats., which allows a landlord to dispose of personal property left behind by the tenant at the landlord’s discretion, as long as certain conditions are met. For example, there must not be a written agreement to the contrary, and the landlord must provide notice to the tenant of his or her intent not to store the property before the tenant enters into or renews a rental agreement.

This rule amends the current rule to more closely align with s. 704.11, Stats. It also replaces references to a written lien agreement with a more general written agreement. As with

the current rule, this rule prescribes certain requirements and limitations on any agreement allowing the landlord to seize or hold a tenant’s personal property.

Small Businesses Affected

The current rule and the proposed rule regulate transactions between landlords and tenants. Many landlords are small businesses. However, this proposed rule does not have any effect on any small business. The proposed rule does not change the duties and responsibilities of landlords in relation to their tenants. Instead, the proposed rule states the duties and responsibilities of the landlord and eliminates inconsistencies between the ch. 704, Stats., and ch. ATCP 134, Wis. Admin. Code.

Reporting, Bookkeeping, and other Procedures

The proposed rule does not create any new reporting, bookkeeping or other procedures for small businesses.

Professional Skills Required

The proposed rule does not require any new professional skills by small businesses.

Accommodation for Small Business

Many of the businesses affected by this rule are “small businesses.” For the most part, this rule does not make special exceptions for “small businesses”. The nature of the subject matter does not lend itself to differentiating between types of businesses.

Conclusion

This rule will not have a significant adverse effect on “small business,” and is not subject to the delayed “small business” effective date provided in s. 227.22 (2) (e), Stats.

DATCP will, to the maximum extent feasible, seek voluntary compliance with this rule.

ADMINISTRATIVE RULES FISCAL ESTIMATE AND ECONOMIC IMPACT ANALYSIS		
Type of Estimate and Analysis		
<input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected		
Administrative Rule Chapter, Title and Number		
Ch. ATCP 134, Residential Rental Practices		
Subject		
Residential Rental Practices		
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 department enacted ch. ATCP 134, Wis. Adm. Code, in 1980 and the rule was revised in 1998. The existing rule regulates rental transactions between landlords and residential tenants as follows:

- Requires the landlord to provide to the tenant before entering into the rental agreement copies of the rental agreement and a receipt for any earnest money or security deposits that the tenant has paid to the landlord.
- Requires the landlord to disclose to the tenant before entering into the rental agreement the names and addresses of the owners and managers, code violations and other conditions affecting habitability, and any utility charges that the tenant may be required to pay.
- Prescribes procedures for accepting and withholding earnest money fees and credit check fees.
- Prescribes procedures for handling security deposits.
- Prescribes procedures for promises to repair.
- Prohibits a landlord from including in rental agreements provisions that do the following:
 - Authorize unlawful eviction.
 - Accelerate rent payments in event of tenant default.
 - Require the tenant to pay attorney's fees.
 - Authorize the landlord to enter a plea in a court action on behalf of the tenant in which the tenant agrees to accept a judgment against the tenant.
 - Relieve the landlord from liability for property damage or personal injury caused by the landlord.
 - Impose liability on the tenant for property damage or personal injury not caused by the tenant.
 - Waive statutory or legal obligations of the landlord.
- Prohibits a landlord from:
 - Advertising or renting condemned premises.
 - Unauthorized entries.
 - Automatically renewing a lease without notice.
 - Unlawfully confiscating personal property.
 - Engaging in retaliatory or self-help eviction.
 - Charging late rental fees and other penalties not set out in the lease.
 - Misrepresenting the dwelling units offered or the amount of all rent and non-rent charges.
 - Failing to disclose all non-rent charges in connection with the representation of any rent amount.

2011 Wisconsin Act 143 was enacted on March 21, 2012. Act 143 made changes to ch. 704, Stats., that affect some of the provisions of the current rule relating to:

- Disclosures required before entering into a rental agreement.
- Returning security deposits.
- Withholding security deposits.
- Prohibiting certain rental agreement provisions.
- Disposing of personal property left behind by a tenant.
- Violations of Landlord Tenant law may constitute a violation of Unfair Trade Practices Law.

2013 Wisconsin Act 76 was enacted on December 12, 2013. Act 76, among other things, made additional changes to landlord tenant requirements in ch. 704, Stats., including:

- Disposing of personal property left behind by a tenant.
- Damage to premises due to action or inaction of the tenant.
- Check-in sheets.
- Requiring notice of domestic abuse protections.
- Prohibition on rental agreement terms that allows landlord to terminate tenancy if a crime is committed in or on the rental property.

This rule makes revisions to ch. ATCP 134 that are necessary to conform the rule to provisions of ch. 704, Stats. (as amended) and ensure that enforcement of the rule will not change a right or duty provided by ch. 704, Stats.

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)
<p>This proposed rule makes a number of minor modifications to the existing rule. However, these modifications simply align the rule with policy changes dictated by the legislature in 2011 Act 143 and 2013 Act 76. Therefore, any economic or fiscal impact would have been caused by that legislation, not this proposed rule.</p> <p>Landlords and Tenants Generally, relationships between landlords and tenants are governed by Chapter 704, Stats. and the existing ATCP 134, Adm. Rule. The legislature recently made a number of changes to Chapter 704, Stats. – some of which relating to subjects that are currently in Chapter ATCP 134, Adm. Code. This rule modifies the existing rule to ensure that there is no confusion between the rule and the recently revised statute.</p> <p>Utility Rate Payers The rule will have no impact on utility rate payers.</p> <p>Local Governments This rule will not impact local governments. Local governments will not have any implementation or compliance costs.</p>
Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule
<p style="text-align: center;"><i>Benefits</i></p> <p>This rule benefits landlords, tenants, and other interested parties by ensuring that the rule follows policies recently adopted by the legislature.</p> <p style="text-align: center;"><i>Alternatives</i></p> <p><u>Not make changes to existing rule.</u> This would mean a number of provisions of the existing rule would be similar to the statute; but worded slightly differently; which could cause confusion.</p>
Long Range Implications of Implementing the Rule
Same as Economic and Fiscal Impact discussed above.
Compare With Approaches Being Used by Federal Government
Federal law does not generally regulate landlord and tenant relationships or residential rental practices. The Federal Fair Housing Act of 1968 makes it illegal for a landlord to discriminate against a potential tenant because of a person's race, sex, national origin, or religion, and it prohibits certain discriminatory conduct.
Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)
Illinois, Iowa, Michigan, and Minnesota all have statutes or administrative rules governing residential rental practices. These laws address common topics such as rental agreements, security deposits, and other duties of landlords and tenants.
Comments Received in Response to Web Posting and DATCP Response
DATCP received no comments related to the economic impact in response either to the posting on the DATCP external website or the statewide administrative rules website. DATCP did, however, receive comments on the content of the proposed rule. DATCP will consider those comments as part of the public hearing process.

Notice of Hearings

Agriculture, Trade and Consumer Protection CR 14-039

(DATCP DOCKET #: 14-R-01)

The Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) announces that it will hold a public hearing on the proposed repeal of Chapter ATCP 104, relating to leaf tobacco, buying and selling. DATCP will hold one public hearing at the time and place shown below.

Hearing Information

Date: Wednesday, July 9, 2014
Time: 9:00 a.m. to 11:00 a.m.
Location: Board Room (1st Floor)
 Department of Agriculture, Trade and Consumer Protection
 2811 Agriculture Drive
 Madison, Wisconsin, 53718-6777

Hearing impaired persons may request an interpreter for this hearing. Please make reservations for a hearing interpreter by July 7, 2014, by writing to Jennifer

Heaton-Amrhein, Division of Trade and Consumer Protection, P.O. Box 8911, Madison, WI 53708-8911; or by emailing jennifer.heatonamrhein@wisconsin.gov; or by telephone at (608) 224-5164. Alternatively, you may contact the DATCP TDD at (608) 224-5058. The hearing facility is handicap accessible.

Appearances at the Hearing and Deadline for Submission of Comments

DATCP invites the public to attend the hearings and comment on the proposal. Following the public hearing, the hearing record will remain open until **July 23, 2014**, for additional written comments. Comments may be sent to the Division of Trade and Consumer Protection at the address below, or to jennifer.heatonamrhein@wisconsin.gov, or to <http://adminrules.wisconsin.gov>.

Copies of the Rule and Comments Relating to Small Business

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) 224-5164 or by emailing jennifer.heatonamrhein@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 regulates transactions between tobacco growers and tobacco buyers. The department is proposing to repeal the rule.

Statutes interpreted

Section 100.20 (1), Stats.

Statutory Authority

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

Explanation of statutory authority

DATCP has broad general authority, under s. 93.07 (1), Stats., to interpret laws under its jurisdiction. DATCP has authority under s. 100.20 (2) (a), Stats., to promulgate administrative rules forbidding trade practices which are determined by the department to be unfair and prescribing trade practices that are determined by the department to be fair.

Related statutes and rules

There are no Wisconsin Statutes or other rules that regulate transactions between tobacco growers and tobacco buyers.

Plain language analysis

Background

The existing ch. ATCP 104, Wis. Adm. Code, prohibits leaf tobacco buyers from engaging in certain practices:

- Attempting to induce another tobacco buyer to engage in specific activities that would artificially manipulate the market price for tobacco.
- Refusing to negotiate with any grower for the purchase of tobacco because such tobacco was previously graded or submitted for grade.
- Falsely representing in negotiations with a grower that any particular lot or crop of tobacco was purchased at less than the price actually paid, or that another tobacco buyer has or will cease buying tobacco.
- Purchasing tobacco under any contract which does not include a specific time within which delivery and payment are to be made.
- Giving or offering to give any grower any secret or separately stated bonus, commission, payment, or other consideration.

The existing rule also prohibits tobacco growers or sellers from soliciting or receiving any secret or separately stated bonus, commission, payment or other consideration.

This rule was originally promulgated as Department of Agriculture General Order #138 in 1952. At that time, tobacco farming was a prominent business in Wisconsin, and much of the crop was sold in cash markets at the conclusion of the growing season. This rule was necessary to ensure fair transactions between growers and buyers.

Today, the crop is generally produced and sold under contract (as opposed to a cash market at the end of the season). This means that ch. ATCP 104, Wis. Adm. Code, as it is currently written, is irrelevant to the current industry.

Rule Content

This rule would repeal chapter ATCP 104, Leaf Tobacco, Buying and Selling, in its entirety.

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

There are no known federal statutes or regulations (existing or proposed) that are comparable to ch. ATCP 104, Wis. Adm. Code.

Comparison with rules in adjacent states

There are no known rules in adjacent states that are comparable to ch. ATCP 104, Wis. Adm. Code.

Summary of factual data and analytical methodologies

This proposed rule simply deletes an unused chapter from the administrative code. It does not rely on factual or analytical data other than anecdotal information that growing under contract has replaced cash markets.

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

Since repealing the rule has no effect on business (see above), no analysis is required under this section.

Effect on Small Business

This proposed rule would simply delete an outdated and obsolete chapter of the administrative code. DATCP does not anticipate any effect on small business.

DATCP Contact Person

Questions and comments related to this rule may be directed to

Jennifer Heaton–Amrhein
 Department of Agriculture, Trade and Consumer Protection
 P.O. Box 8911
 Madison, WI 53708–8911
 Telephone (608) 224–5164
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Initial Regulatory Flexibility Analysis

Rule Subject: Leaf Tobacco Buying and Selling
Adm. Code Reference: Ch. ATCP 104
Rules Clearinghouse #: CR 14–039
DATCP Docket #: 14–R–01

Rule summary

This rule would repeal chapter ATCP 104, Leaf Tobacco, Buying and Selling, in its entirety.

Background

The existing ch. ATCP 104, Wis. Adm. Code, prohibits leaf tobacco buyers from engaging in certain practices:

- Attempting to induce another tobacco buyer to engage in specific activities that would artificially manipulate the market price for tobacco.
- Refusing to negotiate with any grower for the purchase of tobacco because such tobacco was previously graded or submitted for grade.
- Falsely representing in negotiations with a grower that any particular lot or crop of tobacco was purchased at less than the price actually paid, or that another tobacco buyer has or will cease buying tobacco.
- Purchasing tobacco under any contract which does not include a specific time within which delivery and payment are to be made.
- Giving or offering to give any grower any secret or separately stated bonus, commission, payment, or other consideration.

The existing rule also prohibits tobacco growers or sellers from soliciting or receiving any secret or separately stated bonus, commission, payment, or other consideration.

This rule was originally promulgated as Department of Agriculture General Order #138 in 1952. At that time, tobacco farming was a prominent business in Wisconsin, and much of the crop was sold in cash markets at the conclusion of the growing season. This rule was necessary to ensure fair transactions between growers and buyers.

Today, the crop is generally produced and sold under contract (as opposed to a cash market at the end of the season). This means that ch. ATCP 104, Wis. Adm. Code, as it is currently written, is irrelevant to the current industry.

Small Business affected

The existing rule regulates certain transactions between tobacco growers and tobacco manufacturing or brokerage firms. Tobacco growers are likely to be small businesses. However, the existing rule is limited to regulating cash–market transactions for tobacco leaves (which would occur after the crop is harvested). Wisconsin grown tobacco is no longer traded with this type of transaction. Instead, Wisconsin tobacco growers generally grow and sell on contracts that are negotiated before the growing season begins. Therefore, the existing rule is obsolete and has no effect on small business.

This proposed rule would simply delete an outdated and obsolete chapter from the administrative code. DATCP does not anticipate any effect on small business.

Reporting, bookkeeping, and other procedures

The proposed rule does not require any additional reporting, bookkeeping or other procedures.

Professional skills required

The proposed rule does not require and additional professional skills.

Accommodation for small business

This proposed rule would simply delete an outdated and obsolete chapter of the administrative code, and does not have any effect on small business. Therefore, no accommodation is necessary.

Conclusion

This rule does not have any impact on businesses, including “small businesses.” It is not subject to the delayed “small business” effective date provided in s. 227.22 (2) (e), Stats.

ADMINISTRATIVE RULES FISCAL ESTIMATE AND ECONOMIC IMPACT ANALYSIS	
Type of Estimate and Analysis	
<input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected	
Administrative Rule Chapter, Title and Number	
Ch. ATCP 104 Leaf Tobacco Buying and Selling	
Subject	
Leaf Tobacco Buying and Selling	
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 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		
<p>The existing rule regulates certain transactions between tobacco growers and tobacco manufacturing or brokerage firms. However, the existing rule is limited to regulating cash-market transactions for tobacco leaves (which would occur after the crop is harvested). Wisconsin grown tobacco is no longer traded with this type of transaction. Instead, Wisconsin tobacco growers generally grow and sell on contracts that are negotiated before the growing season begins. Therefore, the existing rule is obsolete.</p> <p>This proposed rule would simply delete an outdated and obsolete chapter from the administrative code.</p>		
Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)		
<p>This proposed rule would simply delete an outdated and obsolete chapter from the administrative code. DATCP does not anticipate that it would have any economic or fiscal impact on specific businesses, business sectors, public utility rate payers, local governmental units, or the state's economy as a whole.</p>		
Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule		
<i>Benefits</i>		
This proposed rule removes an obsolete and unneeded chapter from the Administrative Rules.		
<i>Alternatives</i>		
DATCP could leave ch. ATCP 104, Wis. Stats. in place. The rule is obsolete, and does not impose any costs or benefits on tobacco growers or tobacco buyers.		
DATCP could also modify the rule to make it more relevant to contemporary leaf-tobacco transactions.		
Long Range Implications of Implementing the Rule		
See the discussions above.		
Compare With Approaches Being Used by Federal Government		
There are no known federal statutes or regulations (existing or proposed) that are comparable to ch. ATCP 104, Wis. Adm. Code.		
Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)		
There are no known rules in adjacent states that are comparable to ch. ATCP 104, Wis. Adm. Code.		
<u>Comments Received in Response to Web Posting and DATCP Response</u>		
No comments were received in response either to the posting on the DATCP external website or the statewide administrative rules website.		

Notice of Rulemaking Pursuant to s. 186.118 (2), Stats.

Financial Institutions — Credit Unions

The Department of Financial Institutions has promulgated a rule creating Chapter DFI-CU 75, as required by Section 186.118 (2), Wis. Stats., which reads as follows:

186.118 (2) (a) The office of credit unions shall promulgate a rule establishing a list of activities and powers incidental to the business of a credit union that are authorized for federally chartered credit unions as of April 18, 2014.

(b) The office of credit unions shall submit the proposed rule under par. (a) to the legislative reference bureau in an electronic format approved by the legislative reference bureau, and the legislative reference bureau shall publish the proposed rule in the notice section of the Wisconsin administrative register under s. 35.93, Stats.

(c) Sections 227.114 (4) and (6), 227.115, 227.135, 227.137, 227.14 (2) (a) 6., (2g), (4), and (4m), 227.15, 227.16, 227.17, 227.18, 227.185, 227.19, and 227.30 do not apply to the office of credit unions in promulgating a rule under par. (a) or to any rule promulgated by the office of credit unions under par. (a). Guidelines prescribed by executive order of the governor do not apply to the office of credit unions in promulgating a rule under par. (a).

The rule will be published June 30, 2014, in Register June 2014 No. 702, effective July 1, 2014.

Text of Rule

The text of Chapter DFI-CU is as follows:

Chapter DFI-CU 75

AUTHORIZED INCIDENTAL POWERS ACTIVITIES

DFI-CU 75.01 Purpose. The purpose of this chapter is to set forth a list of incidental powers activities that are authorized for federally chartered credit unions and in which Wisconsin-chartered credit unions may engage, pursuant to s. 186.118, Stats.

DFI-CU 75.02 Interpretation. The interpretation of rules in this chapter shall be coordinated with and parallel to the interpretation of federal laws and regulations from which these rules are derived, except as otherwise provided for by Wisconsin law.

DFI-CU 75.03 Definitions. In this chapter:

(1) “Certification services” has the meaning set forth in 12 C.F.R. s. 721.3(a).

(2) “Charitable contributions and donations” has the meaning set forth in 12 C.F.R. s. 721.3(b)(1).

(3) “Charitable donation accounts” has the meaning set forth in 12 C.F.R. s. 721.3(b)(2).

(4) “Correspondent services” has the meaning set forth in 12 C.F.R. s. 721.3(c).

(5) “Electronic financial services” has the meaning set forth in 12 C.F.R. s. 721.3(d).

(6) “Excess capacity” has the meaning set forth in 12 C.F.R. s. 721.3(e).

(7) “Financial counseling services” has the meaning set forth in 12 C.F.R. s. 721.3(f).

(8) “Finder activities” has the meaning set forth in 12 C.F.R. s. 721.3(g).

(9) “Loan-related products” has the meaning set forth in 12 C.F.R. s. 721.3(h).

(10) “Marketing activities” has the meaning set forth in 12 C.F.R. s. 721.3(i).

(11) “Monetary instrument services” has the meaning set forth in 12 C.F.R. s. 721.3(j).

(12) “Operational programs” has the meaning set forth in 12 C.F.R. s. 721.3(k).

(13) “Stored value products” has the meaning set forth in 12 C.F.R. s. 721.3(l).

(14) “Trustee or custodial services” has the meaning set forth in 12 C.F.R. s. 721.3(m).

DFI-CU 75.04 Incidental powers activities. The following incidental powers activities are preapproved for Wisconsin-chartered credit unions:

- (1) Certification services.
- (2) Charitable contributions and donations.
- (3) Charitable donation accounts.
- (4) Correspondent services.
- (5) Electronic financial services.
- (6) Excess capacity.
- (7) Financial counseling services.
- (8) Finder activities.
- (9) Loan-related products.
- (10) Marketing activities.
- (11) Monetary instrument services.
- (12) Operational programs.
- (13) Stored value products.
- (14) Trustee or custodial services.

Notice of Hearings

Natural Resources

Fish, Game, etc., Chs. 1—

CR 14-036

(DNR #: FR-07-12)

NOTICE IS HEREBY GIVEN THAT pursuant to ss. 227.16 and 227.17, Stats, the Department of Natural Resources, hereinafter the Department, will hold a public hearing on the creation of section NR 47.65, relating to a new County Forest time standards grant, which would allow county forests additional flexibility in selecting the optimal combination of resources provided by the department on the date(s) and at the time and location listed below.

Hearing Information

Date: Wednesday, June 25, 2014
Time: 4:15 p.m.
Location: Avalon Hotel & Conference Center
 1009 West Park Avenue
 Chippewa Ballroom
 Chippewa Falls, WI 54729

Reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Contact Joe Schwantes, Madison, WI 53707; by E-mail to Joseph.Schwantes@wisconsin.gov or by calling (608) 264-9217. A request must include specific information and be received at least 10 days before the date of the scheduled hearing.

Availability of the Proposed Rules and Fiscal Estimate

The proposed rule and supporting documents, including the fiscal estimate, may be viewed and downloaded from the Administrative Rules System Web site which can be accessed through the link <https://health.wisconsin.gov/admrules/public/Home>. If you do not have Internet access, a printed copy of the proposed rule and supporting documents, including the fiscal estimate, may be obtained free of charge by contacting Joe Schwantes, Department of Natural Resources, Bureau of Forest Management 101 S. Webster St, Madison, WI, 53703, or by calling (608) 264-9217.

Written Comments and Deadline for Submission

Comments on the proposed rule must be received on or before Wednesday **July 2, 2014**. Written comments may be submitted by U.S. mail, fax, E-mail, or through the Internet and will have the same weight and effect as oral statements presented at the public hearing. Written comments and any questions on the proposed rules should be submitted to:

Joe Schwantes
 Department of Natural Resources
 Bureau of Forest Management
 101 S Webster St, Madison, WI 53703
 Phone: (608) 264-9217
 Fax: (608) 266-8576
 E-mail: Joseph.Schwantes@wisconsin.gov
 Internet: Use the Administrative Rules System Web site accessible through the link provided.

Analysis Prepared by the Department of Natural Resources

Statutes interpreted

Section 28.11 (5r), Wis. Stats.

Statutory authority

Section 28.11 (5r), Wis. Stats.

Explanation of agency authority

DNR's responsibilities for oversight of the County Forest program can be found in s. 28.11 (5), Wis. Stats., and the authority for sustainable forestry funding is included in 28.11 (5r), Wis. Stats. Section 28.11 (5r) (b), Wis. Stats., states: "The department may make grants, from the appropriation under s. 20.370 (5) (bw), to counties having lands entered under sub.(4) to fund the cost of activities designed to improve sustainable forestry on the lands. Finally, Wis. Stat. s. 227.11 (2) (a) allows the DNR to promulgate rules for any statute if the DNR considers it necessary to effectuate the purpose of the statute. Without rulemaking authority for this rule, the DNR will not be able to administer or enforce the grant program authorized by statute, since the DNR would not be able to establish criteria that would uniformly apply across grant applicants without running afoul of the definition of "rule" found under Wis. Stat. s. 227.01 (13).

Related statutes or rules

Section NR 47.75 — Sustainable Forestry Grant For County Forests, establishes standards and procedures for implementation of a grant program to contribute funds to sustainable forestry practices on county forests under s. 28.11 (5r), Wis. Stats., specifically for projects that are suitable as a short term and unanticipated workload item consistent with a county's comprehensive county forest land use plan under s. 28.11 (5) (a), Wis. Stats.

Plain language analysis

This proposed rule would create a new grant program, which would allow additional flexibility for County Forests to select the optimal combination of resources provided to each by the Department. Presently the DNR Division of Forestry (DOF) provides assistance to County Forests, aligning workload with the statutory role of the DNR in oversight of the County Forest program. An agreed upon number of hours are provided to each county based on the workload for that particular county. The DOF's Strategic Direction process in 2011-12 realigned forest resources to better accomplish the DOF's mission in Wisconsin's Statewide Forest Plan. As part of that process, each County Forest was given the opportunity to request a modification of the allocation of resources provided by the Department among a suite of grants and the hours of technical forestry assistance the DOF provides to best meet their individual needs. Several counties (Clark, Eau Claire, Iron, Jackson, and Langlade) desire to reduce their technical assistance from DNR in exchange for funding that would allow them to hire contractors or seasonal staff to accomplish similar forestry work. The thought is that some of the forestry tasks may be done adequately using potentially lesser paid seasonal or contracted staff, with the end result being the ability to get more work done with the same amount of resources. The proposed grant program is structured to focus on accomplishing tasks already identified in the time standards agreement for each county, which guides what activities have typically been accomplished by DOF staff. This funding would provide for on-the-ground sustainable forestry practices with the reallocation of funding into appropriation s. 20.370 (5) (bw), Wis. Stats.

Summary and comparison with existing and proposed federal regulations

This rule/grant does not impact and is not impacted by any federal regulations.

Comparison of similar rules in adjacent states

This rule/grant is not similar to rules in any adjacent states. The County Forest Program, as established by ss. 28.10 and 28.11 Wis. Stats., is unique in the nation, in terms of the partnership and roles of the State and participating counties in the management of County Forest lands.

Summary of factual data and analytical methodologies

This new rule/grant will be consistent with the goals established in the Division of Forestry's Strategic Direction conducted in 2011-12, which realigned forest resources to better accomplish the DOF's mission in Wisconsin's Statewide Forest Plan. The proposed rule/grant language was developed by a team that included several DOF staff members, the Executive Director of the Wisconsin County Forests Association, and three County Forest Administrators. The proposed language has been vetted and approved by the DOF's Leadership and Operations Team as well as the Wisconsin County Forests Association's Legislative & Certification Committee.

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

The Division of Forestry is directly contacting County Forest Administrators, who would be most directly affected group affected by this proposed rule/grant to solicit their input in the development of the Economic Impact Analysis (EIA). The County Forest Administrators are the individuals that

would be responsible for completing and submitting grant applications under the proposed rule, and therefore are in the best position to describe the potential impacts of the rule on their budgets and the small businesses they may potentially hire to complete sustainable forestry projects.

Effect on small business

This rule/grant would provide an option for counties to receive grant funding as an alternative to DNR staff assistance, which could be used to hire temporary staff or contractors to accomplish sustainable forestry projects. As such, there could potentially be a minor economic impact on small businesses, if counties received grant funding and subsequently hired contractors for that work. The actual overall economic impact to small businesses in Wisconsin will be minimal, although a few small businesses may see significant benefits if selected to do contract work on County Forest projects.

The Small Business Regulatory Coordinator may be contacted at SmallBusiness@dnr.state.wi.us, or by calling (608) 266-1959.

Environmental Analysis

The Department has made a preliminary determination that adoption of the proposed rules would not involve significant adverse environmental effects and would not need an environmental analysis under ch. NR 150, Wis. Adm. Code. However, based on comments received, an environmental

analysis may be prepared before proceeding. This analysis would summarize the Department’s consideration of the impacts of the proposal and any reasonable alternatives.

Fiscal Estimate Summary

There is expected to be an insignificant fiscal effect on state and local government. This rule would allow the Department to shift resources provided to counties from staff time to financial assistance, the resulting overall value of assistance being provided would remain constant. Depending on the level of grant funding utilized by individual County Forests under this grant program, this rule would have minor impacts on those individual County Forest budgets to accomplish the activities identified. This rule would have no negative fiscal impact on counties. This rule would have no fiscal impact on other local governments. The fiscal effect of this rule is anticipated to be insignificant, as the overall level of assistance provided by the Department to counties will remain the same.

Contact Person

Joe Schwantes
 Department of Natural Resources
 Bureau of Forest Management
 101 S Webster St, Madison, WI 53703
 Phone: (608) 264-9217
 Fax: (608) 266-8576
 E-mail: Joseph.Schwantes@wisconsin.gov

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

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

**ADMINISTRATIVE RULES
 Fiscal Estimate & Economic Impact Analysis**

1. Type of Estimate and Analysis

Original Updated Corrected

2. Administrative Rule Chapter, Title and Number

DRAFT – NR47.65 (new) County Forest Time Standards Grant

3. Subject

County forest time standards grant. Grant that would allow additional flexibility for County Forests to select the optimal combination of resources provided to each by the Department.

4. Fund Sources Affected

GPR FED PRO PRS SEG SEG-S

5. Chapter 20, Stats. Appropriations Affected

20.370 (5) (bw)

6. Fiscal Effect of Implementing the Rule

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

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

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

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

- Yes No

9. Policy Problem Addressed by the Rule

This proposed rule would create a new grant program, which would allow additional flexibility for County Forests to select the optimal combination of resources provided to each by the Department. Presently the DNR Division of Forestry (DOF) provides assistance to County Forests, aligning workload with the statutory role of the DNR in oversight of the County Forest program. The DOF's Strategic Direction process in 2011-12 realigned forest resources to better accomplish the DOF's mission in Wisconsin's Statewide Forest Plan. As part of that process, each County Forest was given the opportunity to request a modification of the allocation of resources provided by the Department among a suite of grants and the hours of technical assistance the DOF provides to best meet their individual needs. Several counties desire to reduce their assistance from DNR in exchange for funding that would allow them to hire contractors or seasonal staff to accomplish similar forestry work. The thought is that some of the forestry tasks may be done adequately using potentially lesser paid seasonal or contracted staff, with the end result being the ability to get more work done with the same amount of resources. The proposed grant program is structured to focus on accomplishing tasks already identified in the time standards agreement for each county, which guides what activities have typically been accomplished by DOF staff. This funding would provide for implementation of on-the-ground sustainable forestry practices.

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.

County Forestry Administrators (29 individuals), which is the group that would be the most affected by this rule.

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

County Forestry Administrators (29 individuals), which is the group that would be the most affected by this rule.

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

Minimal impacts are expected. Depending on the level of grant funding utilized by County Forests under this grant program and whether grant funds are utilized to hire temporary employees or independent forestry contractors, there could potentially be a small positive impact on the forestry consultant business sector.

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

This proposed rule would allow additional flexibility for County Forests to select the optimal combination of resources provided to each by the Department. Each County Forest would periodically be given the opportunity to request a modification of the allocation of resources provided by the Department among a suite of grants and the hours of technical assistance the DOF provides to best meet their individual needs. The shift to additional grant funds would allow them to hire contractors or seasonal staff to accomplish similar forestry work. The thought is that some of the forestry tasks may be done adequately using potentially lesser paid seasonal or contracted staff, with the end result being the ability to get more work done with the same amount of resources.

The alternative to implementing the rule would be to continue offering County Forests the current suite of technical assistance and grant funding that is provided, without offering additional flexibility to customize the resources provided.

14. Long Range Implications of Implementing the Rule

The long range fiscal implications of implementing the rule are minimal, as the rule would simply allow the same funding to be utilized for a wider range of grant programs and would not necessarily increase or decrease actual financial resources dedicated to the suite of grants for County Forests.

15. Compare With Approaches Being Used by Federal Government

Not applicable.

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

Not applicable. Neighboring states do not have similar county forest programs, which have the unique relationship between the state and county forest programs that exists in Wisconsin.

17. Contact Name

Joe Schwantes

18. Contact Phone Number

608-264-9217

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

Notice of Hearings

Safety and Professional Services — Psychology Examining Board CR 13-103

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Psychology Examining Board in ss. 15.08 (5) (b) and 455.065 (1) and (3), Wis. Stats., and interpreting ss. 455.06 and 455.065, Wis. Stats., the Psychology Examining Board will hold a public hearing at the time and place indicated below to consider an order to renumber and amend section Psy 4.03; amend Chapter Psy 4 (title); repeal section Psy 4.02; and create sections Psy 4.015, 4.025, 4.03, 4.04, and 4.05, relating to psychology continuing education.

This is a **second hearing** on Clearinghouse Rule 13-103. This Notice of Public Hearing reflects modifications the Psychology Examining Board has made to the proposed rulemaking order since the first hearing which was held on January 15, 2014.

Hearing Information

Date: Tuesday, July 8, 2014
Time: 9:30 a.m.
Location: 1400 East Washington Avenue
Room 121A
Madison, Wisconsin

Appearances at the Hearing

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but are urged to submit facts, opinions and argument in writing as well. Facts, opinions and argument may also be submitted in writing without a personal appearance by mail addressed to the Department of Safety and Professional Services, Division of Policy Development, P.O. Box 8366, Madison, Wisconsin 53708. Written comments must be received at or before the public hearing to be included in the record of rule-making proceedings.

Copies of Rule

Copies of this proposed rule are available upon request to Sharon Henes, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 1400 East Washington Avenue, P.O. Box 8366, Madison, Wisconsin 53708, by email at Sharon.Henes@wisconsin.gov or on our website at <http://dsps.wi.gov/Default.aspx?Page=44e541e8-abdd-49d-a-8fde-046713617e9e>

Analysis Prepared by the Department of Safety and Professional Services

Statutes interpreted

Sections 455.06 and 455.065, Wis. Stats.

Statutory authority

Sections 15.08 (5) (b) and 455.065 (1) and (3), Wis. Stats.

Explanation of agency authority

The examining board shall promulgate rules for its own guidance and for the guidance of the profession to which it pertains and define and enforce professional conduct and unethical practices not inconsistent with the law relating to the particular profession.

Specifically, the board shall promulgate rules establishing the minimum number of hours of continuing education, the topic areas that the continuing education must cover, the criteria for the approval of continuing education programs and courses required for renewal of a license, the criteria for the approval of the sponsors and cosponsors of those continuing education programs and courses, and the criteria for the approval of continuing education programs and courses required for the exemptions from the examination requirements under s. 455.04 (1) (e) and (4) (f).

Related statute or rule

Plain language analysis

The rule reorganizes and clarifies the continuing education requirements for psychologists.

SECTION 1 inserts the words “continuing education” into the title in order to provide an easy reference for licensees.

SECTION 2 creates a definition section.

SECTION 3 repeals the current continuing education requirements in order to reorganize and create clarity.

SECTION 4 This section is created to include the general continuing education requirements.

SECTION 5 moves the current Psy 4.03 section to the end of the chapter. In addition, the section is amended to specify the number of continuing education hours which must be completed to renew a license which expired less than five years before the application for renewal.

SECTION 6 creates three new sections. The first section specifies approved continuing education. A psychologist may obtain continuing education as follows: completing courses from an organization approved by the American Psychological Association, National Association of School Psychologists or Canadian Psychological Association, courses sponsored by Wisconsin Psychological Association or Wisconsin School Psychologists Association, category I courses approved by the American Medical Association or the American Osteopathic Association, or courses approved in another state in which the licensee holder also holds a license or graduate level courses from an accredited college or university; teaching and presenting programs or courses; serving on a professional board or committee; authorship of a book, book chapter or article in peer reviewed journal; completing board certification; completion of a master’s or doctoral degree in psychopharmacology; providing supervision to trainees; and evaluation of community outpatient mental health programs. The second section

provides postponement, waiver and exemptions to the continuing education requirements based upon hardship or retirement. The third section specifies records of continuing education must be kept for a minimum period of six years. In addition, the third section revises the current requirement for a mandatory audit of compliance with the continuing education requirements to instead allow a general audit to be conducted in the board's discretion.

SECTION 7 states an effective date of October 1, 2015, which is the start of the next biennium.

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

None

Comparison with rules in adjacent states

Illinois: Illinois requires each biennial 24 hours of continuing education and of those 24 hours at least 3 hours must be related to the ethics. Continuing education may be earned by participating in a course or program by an approved continuing education sponsor; completing postgraduate training programs; and for teaching in the field of psychology in an accredited college, university, graduate school or as an instructor of a program by approved sponsors. Postgraduate course and teaching courses have maximums as to the number to be counted towards the required 24 hours. Continuing education records are to be maintained for the previous 8 years. Illinois has provisions for waivers of continuing education for hardship.

Iowa: Iowa requires 40 hours of continuing education each biennium. For the second renewal period, licensees' continuing education must include 6 hours in either Iowa mental health laws and regulations or risk management. For all subsequent renewals, licensees' continuing education must include 6 hours in any of the following: ethics, federal mental health laws, Iowa mental health laws or risk management. Board members may obtain continuing education hours based upon attendance and participation at board meetings. Continuing education may be earned as follows: mandatory reporter training; programs sponsored by the American Psychological Association or Iowa Psychological Association; approved workshops, conferences or symposiums; academic coursework; home study or electronically transmitted courses; scholarly research published in recognized professional publication; and preparing and teaching courses or programs. Iowa does not have provisions on hardship waivers.

Michigan: Michigan does not require continuing education for psychologists.

Minnesota: Minnesota requires 40 hours of continuing education each biennium. Continuing education may be earned as follows: developing and teaching an academic course; attending courses or presentations based on scientific, practice or professional standards foundations; graduate level courses in psychology; developing presentation, or taped or computerized materials based on scientific, practice or professional standards foundations; and authoring, editing or reviewing a psychological publication. Continuing education records must be maintained for 8 years after the renewal date. Variances may be granted for completion of continuing education outside the biennium. The board randomly audits a percentage of renewing licensees each month for compliance with continuing education.

Summary of factual data and analytical methodologies

The Board considered the Association of State and Provincial Psychology Board's recommendations for continuing education and the continuing education requirements of other states. In addition, the Board reviewed recent audit results to determine what issues required clarification for the credential holders.

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

This rule was posted for 14 days for economic comments and none were received. The Board determines that the modification of existing rules to clarify continuing education requirements, which does not increase the requirement, does not create an effect on small business nor have an economic impact.

Fiscal Estimate and Economic Impact Analysis

The Fiscal Estimate and Economic Impact Analysis follows.

Initial Regulatory Flexibility Analysis or Summary

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

Agency Contact Person

Sharon Henes, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 1400 East Washington Avenue, Room 151, P.O. Box 8366, Madison, Wisconsin 53708; telephone 608-261-2377; email at Sharon.Henes@wisconsin.gov.

Text of Rule

Section 1. Chapter Psy 4 (title) is amended to read:

REQUIREMENTS FOR RENEWAL AND CONTINUING EDUCATION

Section 2. Psy 4.015 is created to read:

Psy 4.015 Definitions. In this chapter:

(1) "Board" means Wisconsin Psychology Examining Board.

(1) "Continuing education hour" means a period of continuing education consisting of not less than 50 minutes.

(2) "Ethics" means content consistent with one or more of the American Psychological Association's ethical principles of psychologists.

(3) "Jurisprudence" means content relating to state and federal laws and regulations affecting the practice of psychology.

(4) "Risk management" means content relating to the reduction of probability of incurring legal, regulatory or malpractice actions in the practice of psychology.

(5) "Trainee" means a person who is obtaining appropriate experience in psychological work under supervision per s. 455.04 (1) (d), Wis. Stats.

Section 3. Psy 4.02 is repealed

Section 4. Psy 4.025 is created to read:

Psy 4.025 Continuing education. (1) Unless granted a postponement or waiver under s. 4.04 every licensee shall complete at least 40 board approved continuing education

hours in each biennial registration period, beginning October 1 of each odd-numbered year.

(a) A minimum of six hours of the required 40 continuing education hours shall be in ethics, risk management or jurisprudence.

(b) Continuing education hours completed in the topics of supervision or suicide prevention shall be calculated as 1.5 times the numbers of continuing education hours obtained.

(2) Continuing education hours may apply only to the registration period in which the hours are acquired. If a license has been allowed to lapse, the board may grant permission to apply continuing education hours acquired after lapse of the license to a previous biennial period of licensure during which required continuing education was not acquired. In no case may continuing education hours be applied to more than one biennial period.

(3) During the time between initial licensure and commencement of a full 2-year licensure period, in Wisconsin, initial licensees shall not be required to meet continuing education requirements.

(4) Applicants from other states applying under s. 455.04 (1) (e) or (4) (f), Stats., shall submit proof of completion of at least 40 board approved continuing education hours obtained within 2 years prior to application. An applicant who first obtained licensure as a psychologist or private practice school psychologist less than 2 years prior to submitting the Wisconsin application is not required to meet this subsection

Section 5. Psy 4.03 is renumbered to Psy 4.06 and amended to read:

Psy 4.06 Renewal of a lapsed license. Failure to renew a license by September 30 of odd-numbered years shall cause the license to lapse. A licensee who allows the license to lapse may apply to the board for renewal of the license as follows:

(1) If the licensee applies for renewal of the license less than 5 years after its expiration, the license shall be renewed upon payment of the renewal fee and fulfillment of the 40 continuing education hours completed within 2 years prior to renewal.

(2) If the licensee applies for renewal of the license more than 5 years after its expiration, the board shall make an inquiry as it finds necessary to determine whether the applicant is competent to practice as a psychologist or private practice school psychologist in this state, and shall impose any reasonable conditions on renewal of the license that the board considers appropriate. An applicant under this subsection is presumed to be competent to practice as a psychologist or private practice school psychologist in this state if at the time of application the applicant is licensed by a similar examining board of another state or territory of the United States or of a foreign country or province whose standards, in the opinion of the board, are equivalent to or higher than the requirements for licensure as a psychologist under s. 455.04 (1), Stats., or as a private practice school psychologist under s. 455.04 (4), Stats. The examining board shall require each applicant under this subsection to have completed at least 40 hours of continuing education obtained within 2 years preceding the application for renewal and to pass the appropriate examination specified under s. 455.045 (1) (b) or (2) (b), Stats.

Section 6. Psy 4.035, 4.04 and 4.05 are created to read:

Psy 4.035 Approved continuing education. (1) The board shall approve all of the following programs and courses, if relevant to the professional practice of psychology:

(a) Continuing education programs and courses sponsored by an organization approved by one of the following:

1. American Psychological Association.
2. National Association of School Psychologists.
3. Canadian Psychological Association.

(b) Continuing education programs and courses sponsored by one of the following:

1. Wisconsin Psychological Association.
2. Wisconsin School Psychologists Association.

(c) Educational programs recognized as approved at the time of attendance as "category I" continuing medical education programs by the council on medical education of the American Medical Association or the American Osteopathic Association.

(d) Continuing education courses approved by the psychology licensing board in another state where the psychologist is also licensed.

(e) Graduate level courses of two semester or three quarter credits, or more, relevant to the professional practice of psychology offered by an accredited college or university in which a person receives a passing grade shall be granted 20 continuing education hours.

(f) No more than eight hours of continuing education hours may be credited per day for courses and programs in par. (a) through (d).

(2) Continuing education hours shall be granted for teaching or presenting any of the programs or courses in sub. (1) but no credit will be granted for any subsequent presentations of the same program or course. A teacher or presenter shall receive 2 continuing education hours for each hour of presentation with a maximum of 20 continuing education hours.

(3) A licensee shall be granted 6 hours of continuing education for each professional activity, with a maximum of 12 continuing education hours. Continuing education hours shall be granted for professional activities as follows:

(a) Serving on the American Psychological Association or its affiliated state psychological association committee or board.

(b) Serving on a state Psychology Examining Board.

(c) Serving on the National Association of School Psychologists or its affiliated state association committee or board.

(d) Serving on the American Board of Professional Psychology committee or board.

(e) Serving on the Association of Psychology Postdoctoral Internship Centers committee or board.

(f) Serving on the Association of State and Provincial Psychology Boards committee or board.

(g) Serving as a reviewer for a peer reviewed publication.

(4) Continuing education hours shall be granted for first or second authorship of a publication relevant to psychology if the publication is contained in an academic or professional book or book chapter or peer-reviewed journal article. A licensee shall receive 10 continuing education hours per authorship, with a maximum of 20 continuing education hours.

(5) Continuing education hours shall be granted for earning board certification by the American Board of Professional Psychology. A licensee who successfully completes board certification shall receive 40 continuing education hours. The ethics, risk management or

jurisprudence requirement may not be met unless the board certification process included at least six hours on those topics.

(6) Continuing education hours shall be granted for completion of a master’s or doctoral degree in psychopharmacology from an accredited college or university. Licensees who complete a master’s or doctoral degree in psychopharmacology shall receive 40 continuing education hours. The ethics, risk management or jurisprudence requirement may not be met unless the coursework included those topics.

(7) Continuing education hours shall be granted for providing supervision to one or more psychological trainees. Continuing education hours for providing supervision shall be calculated as .25 times the number of hours of supervision with a maximum of 20 continuing education hours.

(8) (a) Continuing education hours shall be granted for the evaluation of a community mental health program, as defined in s. 51.01 (3n), Stats., and approved by the department of health services according to rules promulgated under s. 51.42 (7) (b), Stats. Four hours of assistance, including hours in training required by the department of health services, are equal to one continuing education hour for the purposes of this section.

(b) A licensee wishing to apply for continuing education credit under this subsection shall register in advance with the board, and shall notify the board on a form provided by the board

of the dates and the total number of hours in any biennium for which the applicant will be available to provide assistance. The board shall make referrals to the department of health services in the order applicants are received.

Psy 4.04 Postponement, Waiver and Exemptions (1) A licensee may apply to the board for a postponement or waiver of the requirements of this chapter on grounds of prolonged illness or disability, or on other grounds constituting extreme hardship. The board shall consider each application individually on its merits, and the board may grant a postponement, partial waiver or total waiver as deemed appropriate.

(2) The board may grant an exemption from the requirements of this section to a licensee who certifies to the

board that the licensee has permanently retired from the practice of psychology or the private practice of school psychology.

(3) A licensee who has been granted an exemption from the requirements of this chapter based on retirement from the practice of psychology or the private practice of school psychology may not return to active practice without submitting evidence satisfactory to the board of having completed 40 credits of continuing education hours obtained within 2 years prior to the return to the practice of psychology.

Psy 4.05 Record Keeping and Audits (1) A licensee shall retain for a minimum period of 6 years and shall make available to the board or its agent upon request the following proof of continuing education:

(a) Certificate of attendance issued by the program sponsor. The certificate shall include the name of the licensee, date of attendance, sponsor name, hours and title of course.

(b) Unofficial transcript for graduate level courses or psychopharmacology degree.

(c) Documentation of publication.

(d) Verification from the organization, on organization letterhead, documenting professional activities including the dates of service.

(e) Documentation of board certification from the American Board of Professional Psychology.

(f) Documentation verifying the dates and number of hours of voluntary, uncompensated services provided in assisting the department of health services using a form provided by the department of safety and professional services.

(g) Attestation form, provided by the department of safety and professional services, documenting supervision including the dates of supervision and total number of hours per day.

(2) The board may conduct a random audit of licensees on a biennial basis for compliance with continuing education requirements. The board may conduct an audit on any licensee who has come under investigation by the board for alleged misconduct.

Section 7. EFFECTIVE DATE. The rules adopted in this order shall take effect on October 1, 2015.

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

Psy 4

3. Subject

Continuing education

4. Fund Sources Affected

5. Chapter 20, Stats. Appropriations Affected

GPR FED PRO PRS SEG SEG-S

20.165(1)(g)

6. Fiscal Effect of Implementing the Rule

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

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

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

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

Yes No

9. Policy Problem Addressed by the Rule

Recent continuing education audits have revealed confusion in the continuing education requirements, including whether specific topic areas, if any, must be addressed by their continuing education.

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

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

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

None

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

This rule will not have an economic or fiscal impact on specific businesses, business sectors, public utility rate payers, local governmental units or the state's economy as a whole. The rule addresses the licensee's continuing education.

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

The benefits of implementing the rule is to streamline the approval process for continuing education, reflect current continuing education programs and create clarity in the continuing education requirements.

The alternate is the rule will not be in conformity with the statutory requirements as it relates to required topics.

14. Long Range Implications of Implementing the Rule

The long range implication is to create clarity in the continuing education requirements.

15. Compare With Approaches Being Used by Federal Government

None

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

Illinois requires 24 hours of continuing education with 3 hours in ethics. Iowa requires 40 hours of continuing education including designating topics for 6 hours. Minnesota requires 40 hours of continuing education. Michigan does not require continuing education for psychologists.

17. Contact Name

Sharon Henes

18. Contact Phone Number

(608) 261-2377

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

Rule Orders Filed with the Legislative Reference Bureau

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

Financial Institutions — Credit Unions

Rule Filed Pursuant to s. 186.118 (2), Stats.

A rule promulgated as required by Section 186.118 (2), Wis. Stats., creating Chapter DFI-CU 75, relating to authorized incidental powers activities.
Effective 7-1-14.

Natural Resources

Fish, Game, etc., Chs. 1—

CR 13-054

(DNR # WT-29-09)

An order to repeal sections NR 114.03 (8), (9), (14), and

(16), 114.05 (8), 114.08, 114.09, 114.12 (1), and 114.14 (1) (c) and (d); to amend subch. I NR 114 (title) and sections 114.01, 114.02, 114.03 (2), (3), and (5), 114.03 (10), (11), (12), and (13), 114.04, 114.05 (1), 114.06 (1) (b), 114.07 (5) (c), 114.10 (intro), 114.12 (title), and 114.14 (1) (h); to repeal and recreate sections NR114.03 (6) and 114.07 (5) (b); and to create subch. IV of ch. NR 114, relating to certification of waterworks and wastewater treatment plant operators by the Department of Natural Resources.
Effective 7-1-14, in part, and 7-1-15, in part.

Public Notices

Health Services

Medicaid Reimbursement for Inpatient Hospital Services: Acute Care, Children's, Rehabilitation, and Critical Access Hospitals State of Wisconsin Medicaid Payment Plan for State Fiscal Year 2015

The State of Wisconsin reimburses hospitals for inpatient services provided to Medical Assistance recipients under the authority of Title XIX of the Social Security Act and Chapter 49 of the Wisconsin Statutes. This program, administered by the State's Department of Health Services (the Department), is called Medical Assistance or Medicaid. In addition, Wisconsin has expanded this program to create the BadgerCare Plus program under the authority of Title XIX and Title XXI of the Social Security Act and Chapter 49 of the Wisconsin Statutes. Collectively, these programs are herein referred to as the Wisconsin Medicaid Program (WMP). Federal statutes and regulations require that a State Plan be developed that provides the methods and standards for reimbursement of covered services. Such a plan is currently in effect.

The WMP uses a reimbursement system for inpatient hospital services which is based on Diagnosis Related Groupings for acute care, children's, and critical access hospitals and on provider-specific, cost-based per diem rates for rehabilitation hospitals. These methodologies are used to provide hospital "base payments" to providers which serve WMP members. To promote WMP member access to these hospitals throughout the state, the WMP additionally provides hospital "access payments" per eligible WMP inpatient discharge. The amount of the hospital access payment per discharge is based on an available funding pool appropriated in the state budget and aggregate hospital upper payment limits. Critical access hospitals receive a different access payment per discharge than do acute care, children's, and rehabilitation hospitals. Effective July 1, 2014, the Department is updating the inpatient access payment amounts for state fiscal year 2015 (July 1, 2014 – June 30, 2015).

The following changes will be contained in the July 1, 2014 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 base 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 material impact on projected annual aggregate Medicaid expenditures in state fiscal year 2015. The Department maintains the same hospital and assessment budgets approved by the Legislature.

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 is July 1, 2014.

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

David Hoffert, Hospital Policy and Rate Setting Section Chief
Bureau of Fiscal Management
(608) 261-8397(phone)
(608) 266-1096 (fax)

David.Hoffert@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 per the above information. All written comments received will be reviewed, considered, and made 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 to the proposed change based on comments received.

Health Services

Medicaid Reimbursement for Outpatient Hospital Services: Acute Care, Children's, Rehabilitation, and Critical Access Hospitals State of Wisconsin Medicaid Payment Plan for State Fiscal Year 2015

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The WMP uses a reimbursement system for outpatient hospital services which is based on Enhanced Ambulatory Patient Groupings. This methodology is used to provide hospital "base payments" to providers which serve WMP members. To promote WMP member access to these hospitals throughout the state, the WMP additionally provides hospital "access payments" per eligible WMP outpatient claim. The amount of the hospital access payment per claim is based on an available funding pool appropriated in the state budget and aggregate hospital upper payment limits. Critical access hospitals receive a different access payment per claim than do acute care, children's, and rehabilitation hospitals. Effective July 1, 2014, the Department is updating the outpatient access payment amounts for state fiscal year 2015 (July 1, 2014 – June 30, 2015).

The following changes will be contained in the July 1, 2014 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 base payments.
- Access Payments for Critical Access Hospitals will be updated and made in addition to the base 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.

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