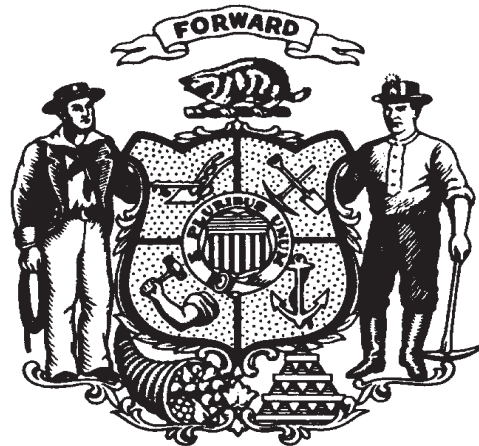


Wisconsin Administrative Register

No. 682



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WISCONSIN ADMINISTRATIVE REGISTER

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Table of Contents

Emergency Rules Now in Effect.**Pages 3 to 7**

Agriculture, Trade and Consumer Protection:

Revise section ATCP 21.17 (1) (b) and to create section ATCP 21.17 (1) (c), relating to the quarantines of Rock County and Walworth County for emerald ash borer. **EmR1209**

Revise section ATCP 21.17 (1) (b) and to create section ATCP 21.17 (1) (c), relating to the quarantine of Trempealeau County for emerald ash borer. **EmR1211**

Revise Chapter ATCP 55, relating to allowing certain selected Wisconsin state–inspected meat establishments to sell meat and meat products in other states and thereby affecting small business. **EmR1213**

Children and Families:

Safety and Permanence, Chs. DCF 37–59

Create Chapter DCF 55, relating to subsidized guardianship. **EmR1212**

Health Services:

Health, Chs. DHS 110—

Create section DHS 115.05 (3), relating to fees for screening newborns for congenital and metabolic disorders and other services. **EmR1204**

Insurance:

Revise section Ins 17.01 (3) and repeal and recreate section Ins 17.28 (6), relating to the Injured Patients and Families Compensation Fund annual fund fees and mediation panel fees for fiscal year 2013 and affecting small business. **EmR1208**

Justice:

Repeal and re–create Chapter Jus 17 and Chapter Jus 18, relating to licenses authorizing persons to carry concealed weapons; concealed carry certification cards for qualified former federal law enforcement officers; and the certification of firearms safety and training instructors. **EmR1206**

Natural Resources:

Fish, Game, etc., Chs. NR 1—

Revise Chapter NR 64, relating to the all–terrain vehicle grant programs and trail–route combinations. **EmR1205**

Revise section NR 10.01 (3) (d) 1., relating to the bobcat hunting and trapping season. **EmR1207**

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

Repeal and recreate sections NR 10.01 (1) (b), (g) and (u), 10.06 (9) (a) and 10.32, to amend section NR 10.01 (1) (v), and to create section 10.12 (3) (e), relating to hunting and the 2012 migratory game bird seasons and waterfowl hunting zones. **EmR1214**

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

Scope Statements.**Pages 8 to 12**

Financial Institutions—Banking:

Revises Chapter DFI–BKG 74, relating to Wisconsin collectors licensed under Chapter 218. **SS 072–12**

Revenue:

Revises Chapter Tax 11, relating to sales and use tax provisions relating to advertising and promotional direct mail and prosthetic devices. **SS 073–12**Revises Chapters Tax 1, 2, and 11, relating to general provisions of income taxation and sales and use tax. **SS 074–12**Revises Chapter Tax 7, relating to the manufacture, sale, and distribution of fermented malt beverages by brewpubs. **SS 075–12**Revises Chapters Tax 4, 8, and 9, relating general provisions of excise taxation and enforcement. **SS 077–12**Safety and Professional Services—Occupational Therapists
Affiliated Credentialing Board:Revises Chapters OT 1 to 5, relating to modernization of occupational therapy regulations. **SS 076–12****Submittal of Proposed Rules to Legislative Council
Clearinghouse.****Page 13**

Public Service Commission:

Revises Chapter PSC 135, relating to the adoption of federal pipeline safety regulations. **CR 12–042****Rule–Making Notices.****Pages 14 to 23**

Natural Resources:

*Fish, Game, etc., Chs. NR 1—*Revises Chapters NR 10, 12, and 19, relating to the wolf hunting and trapping season, regulations, and a depredation program. **EmR1210**Revises Chapter NR 10, relating to the 2012 migratory game bird seasons and waterfowl hunting zones **EmR1214**

Public Service Commission:

Revises PSC Chapter 135, relating to the adoption of federal pipeline safety regulations. **CR 12–042****Submittal of Proposed Rules to Legislature.****Page 24**

Technical College System Board:

Revises Chapter TCS 2.0, relating to District Board Member appointments. **CR 12–032****Rule Orders Filed with the Legislative Reference
Bureau.****Page 25**

Controlled Substances Board:

(Corrected) Create Chapter CSB 3, relating to the requirements and procedures for granting special use authorization **CR 12–010****Public Notices.****Pages 26 to 27**

Health Services:

Medical Assistance Reimbursement for Health Home Services

Emergency Rules Now in Effect

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

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

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

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

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

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

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

Agriculture, Trade and Consumer Protection (3)

1. EmR1209 — The state of Wisconsin department of agriculture, trade and consumer protection hereby adopts the following emergency rule to amend **section ATCP 21.17 (1) (b)** and to create **section ATCP 21.17 (1) (c)**, relating to the quarantines of Rock County and Walworth County for emerald ash borer.

This rule was approved by the governor on July 12, 2012.

The scope statement for this rule, SS 019–11, was approved by the governor on August 29, 2011, published in Register No. 669, on September 14, 2011, and approved by the Board of Agriculture, Trade and Consumer Protection on December 15, 2011.

Finding of Emergency

(1) On June 11, 2012, APHIS identified EAB in Walworth County, near the village of Walworth. Subsequently, APHIS also positively identified EAB in Rock County in the city of Janesville on June 25, 2012. EAB is an exotic pest that poses a dire risk to the ash forest. When APHIS declares quarantine, DATCP has regulatory authority for import controls and quarantine for EAB under s. ATCP 21.17. It is anticipated that APHIS will declare quarantines for Rock County and Walworth County but that it will take six to eight weeks for

APHIS to act. A six week delay until enactment of the federal quarantines leaves too much time for businesses or individuals to move potentially EAB infested material out of these counties to areas of Wisconsin or other states that are not infested with EAB.

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

Filed with LRB: July 16, 2012
Publication Date: July 17, 2012
Effective Dates: July 17, 2012 through December 13, 2012
Hearing Date: August 28, 2012

2. EmR1211 — The state of Wisconsin department of agriculture, trade and consumer protection hereby adopts the following emergency rule to amend **section ATCP 21.17 (1) (b)** and to create **section ATCP 21.17 (1) (c)**, relating to the quarantine of Trempealeau County for emerald ash borer.

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

The scope statement for this rule, SS 042–11, was approved by the governor on November 8, 2011, published in Register No. 671 on November 30, 2011, and approved by the Board of Agriculture, Trade and Consumer Protection on December 15, 2011.

Finding of Emergency

(1) On August 16, 2012, APHIS identified Emerald Ash Borer (EAB) in Trempealeau County, at Perrot State Park. EAB is an exotic pest that poses a dire risk to the ash forest. When APHIS declares quarantine, DATCP has regulatory authority for import controls and quarantine for EAB under s. ATCP 21.17. It is anticipated that APHIS will declare quarantines for Trempealeau County but that it will take six to eight weeks for APHIS to act. A six week delay until enactment of the federal quarantines leaves too much time for businesses or individuals to move potentially EAB infested material out of the county to areas of Wisconsin or other states that are not infested with EAB.

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

Filed with LRB: September 6, 2012
Publication Date: September 7, 2012
Effective Dates: September 7, 2012 through February 3, 2013
Hearing Date: October 12, 2012

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

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

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

Finding of Emergency

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

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

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

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

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

Children and Families

Safety and Permanence, Chs. DCF 37–59

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

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

The statement of scope for this rule, SS 040–12, was approved by the governor on June 8, 2012, published in

Register No. 678, on June 30, 2012, and approved by Secretary Eloise Anderson on July 16, 2012.

Finding of Emergency

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

Guardians who entered into subsidized guardianship agreements with an agency when the statewide subsidized guardianship program was implemented in August 2011 are now eligible for consideration of an amendment to increase the amount of the subsidized guardianship payments. The rule includes the process for determining eligibility for an amendment.

Filed with LRB: August 31, 2012
Publication Date: September 3, 2012
Effective Dates: September 3, 2012 through January 30, 2013

Health Services

Health, Chs. DHS 110—

EmR1204 — The Wisconsin Department of Health Services hereby adopts emergency rules to create **section DHS 115.05 (3)**, relating to fees for screening newborns for congenital and metabolic disorders and other services.

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

The statement of scope for this rule, SS 033–11, was approved by the governor on October 25, 2011, published in Register No. 671, on November 14, 2011, and approved by the Department of Health Services Secretary, Dennis G. Smith, effective November 25, 2011.

Exemption from Finding of Emergency

The legislature by 2011 Wisconsin Act 32, SECTION 9121 (9) provides an exemption from a finding of emergency to adopt these emergency rules. The exemption is as follows:

2011 Wisconsin Act 32, SECTION 9121 (9) CONGENITAL DISORDER TESTING FEES; RULES. Using the procedure under section 227.24 of the statutes, the department of health services shall promulgate rules required under section 253.13 (2) of the statutes, as affected by this act, for the period before the effective date of the permanent rules promulgated under section 253.13 (2) of the statutes, as affected by this act, but not to exceed the period authorized under section 227.24 (1) (c) of the statutes, subject to extension under section 227.24 (2) of the statutes. Notwithstanding section 227.24 (1) (a), (2) (b), and (3) of the statutes, the department of health services is not required to provide evidence that promulgating a rule under this subsection as an emergency rule is necessary for the preservation of public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under this subsection.

Filed with LRB: May 1, 2012
Publication Date: May 4, 2012
Effective Dates: May 4, 2012 through September 30, 2012
Hearing Date: May 25, 2012
Extension Through: November 29, 2012

Insurance

EmR1208 — The Commissioner of Insurance purposes an order to amend **section Ins 17.01 (3)** and repeal and recreate **section Ins 17.28 (6)**, relating to the Injured Patients and Families Compensation Fund annual fund fees and mediation panel fees for fiscal year 2013 and affecting small business.

This emergency rule was approved by the governor on May 25, 2012.

The statement of scope SS 001-12, was approved by the governor on January 4, 2011, published in Register No. 673, on January 31, 2012, and approved by the Commissioner of Insurance on February 14, 2012.

Finding of Emergency

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

These changes must be in place with an effective date of July 1, 2012 for the new fiscal year assessments in accordance with s. 655.27 (3), Wis. Stats. The permanent rule making process during an even-numbered year cannot complete the rule-making process prior to the effective date of the new fee schedule. The fiscal year fees were established by the Board of Governors at the meeting held on December 14, 2011.

Filed with LRB:	June 12, 2012
Publication Date:	June 14, 2012
Effective Dates:	June 14, 2012 through November 10, 2012
Hearing Date:	June 19, 2012

Justice

EmR1206 — The State of Wisconsin Department of Justice (“DOJ”) proposes an order to repeal and re-create **Chapter Jus 17** and **Chapter Jus 18**, relating to licenses authorizing persons to carry concealed weapons; concealed carry certification cards for qualified former federal law enforcement officers; and the certification of firearms safety and training instructors.

Governor Walker approved the final draft emergency rules on March 15, 2012. Attorney General Van Hollen signed an order approving the final emergency rules on March 15, 2012, and the emergency rules were published in the Wisconsin State Journal on March 21, 2012.

The statement of scope for these emergency rules, SS 010-12, was approved by Governor Walker on February 15, 2012, published in Administrative Register No. 674, on February 29, 2012, and approved by Attorney General J.B. Van Hollen on March 12, 2012.

Finding of Emergency

Under section 101 of 2011 Wis. Act 35, DOJ has been statutorily required to receive and process concealed carry license applications and to issue or deny licenses since November 1, 2011. The Legislature has thus determined that the public welfare requires the licensing system commenced on that date to remain continuously in effect. Emergency rules governing the licensing process were adopted on October 25, 2011, and have been in effect since November 1, 2011.

On November 7, 2011, JCRAR suspended certain portions of the emergency rules adopted on October 25, 2011. Since

that time, DOJ has implemented concealed carry licensing without enforcing the suspended provisions. DOJ is also in the process of developing proposed permanent rules that do not include the substance of any of the provisions in the emergency rules that were suspended by JCRAR.

Under Wis. Stat. s. 227.26 (2) (i), if a bill supporting JCRAR’s suspension action of November 7, 2011, is not enacted into law by the end of the current legislative session on March 15, 2012, then the suspension would be lifted and the original version of the emergency rules — including the previously suspended portions — would go back into legal effect. At that point, the emergency rules in effect would be inconsistent both with the emergency rules as they have been administered by DOJ since November 7, 2011, and with the proposed permanent rules, the scope of which has already been approved by the Governor and the Attorney General. Any such lack of continuity in the operation of DOJ’s concealed carry rules would be confusing and disruptive both for permit applicants and for DOJ staff administering the concealed carry permit program.

In order to prevent such a discontinuity in the operation of the concealed carry rules, it is necessary to re-promulgate the existing emergency rules in their entirety, with the exception of the portions that were suspended by JCRAR on November 7, 2011. Only if DOJ utilizes the emergency rulemaking procedures of s. 227.24, Stats., can the revised emergency rules be promulgated and in effect in time to prevent discontinuity in the operation of the existing rules. The public welfare thus necessitates that the rules proposed here be promulgated as emergency rules under s. 227.24, Stats.

Filed with LRB:	May 24, 2012
Publication Date:	March 21, 2012
Effective Dates:	March 21, 2012 through August 17, 2012
Hearing Date:	July 16, 24, 25, 2012
Extension Through:	December 15, 2012

Natural Resources (5)

Fish, Game, etc., Chs. NR 1—

1. EmR1205 (DNR # CF-26-11(E)) — The Wisconsin Department of Natural Resources proposes an emergency order to revise **Chapter NR 64**, relating to All-Terrain Vehicles, as follows: to renumber section NR 64.14 (9) (d); to amend section NR 64.12 (7) (a) and section NR 64.14 (9) (a) 1.; and to create sections NR 64.02 (9m), NR 64.02 (15), NR 64.12 (7) (am), NR 64.14 (2r) (a) and (b), and NR 64.14 (9) (d), relating to the all-terrain vehicle grant programs and trail-route combinations.

This emergency rule was approved by the governor on April 26, 2012.

The statement of scope for this rule, SS 046-11, was approved by the governor on December 2, 2011, published in Register No. 672 on December 31, 2011, and approved by the Natural Resources Board on February 22, 2012.

Finding of Emergency

The department is aware that several ATV trails in Wisconsin overlap existing roads. From the onset of the program, these overlapping paths were identified as trails, signed accordingly, and were eligible to receive ATV grant funds. A few years ago, the ORV Advisory Council and WI County Forestry Association proposed that the department revise Ch. NR 64 to accommodate paths used by both ATVs and motor vehicles. These trail-route combinations — also

called hybrid trails but commonly referred to as “troutes” – will be eligible for future maintenance grant funding at the current rate if it can be shown that the hybrid trails (“troute”) existed prior to the effective date of this rule.

This emergency rule will establish a new category of all–terrain trail commonly called a “troute”, or a trail–route combination, that provides a connector between trails and allows grant funding for these unique trails. An emergency rule is needed because we anticipate that the permanent rule revisions to Ch. NR 64 that will include troutes will not be effective until Sept 2012, at the earliest. Without this emergency rule, DNR will not be able to award grants to project sponsors for ATV “troutes” in July 2012, as is our practice. About one–third of the trails in northern Wisconsin are “troutes” and have been funded as trails since the program started. Our partners count upon grant funds for troute maintenance.

Without this Emergency Rule, the integrity and safety of troutes could be severely compromised. Our partners may be forced to close troutes without grant funding to maintain them until the permanent rule is effective. If troutes are closed, riders could be stranded in an unfamiliar location or be forced to turn around and ride back the same way they came instead of continuing onto their destination.

Filed with LRB: May 9, 2012
Publication Date: June 1, 2012
Effective Dates: June 15, 2012 through November 11, 2012
Hearing Date: June 25, 2012

2. EmR1207 — The Wisconsin Natural Resources Board proposes an order to amend **section NR 10.01 (3) (d) 1.**, relating to the bobcat hunting and trapping season.

This emergency rule was approved by the governor on May 4, 2012. This emergency rule, modified to reflect the correct effective date, was approved by the governor on May 25, 2012.

The statement of scope for this rule, SS 009–12, was approved by the governor on February 15, 2012, published in Register No. 674, on February 29, 2012, and approved by the Natural Resources Board on March 28, 2012.

This rule was approved and adopted by the State of Wisconsin Natural Resources Board on April 25, 2012.

Finding of Emergency

Pursuant to s. 227.24, Stats., the Department of Natural Resources finds that an emergency exists and that the attached rule is necessary for the immediate preservation of the public peace, health, safety, or welfare.

If emergency rules are not promulgated, the season automatically reverts back to a single permit period beginning on the Saturday nearest October 17 and continuing through December 31 in 2012. Frequent change of season dates and regulations for hunting and trapping can be confusing and disruptive to the public, can result in citations being issued, and is not necessary for protection of the bobcat population in this situation. Some people will view a reversion to the single season framework as a reduction of opportunity that is not socially acceptable. Therefore, this emergency rule is needed to preserve the public welfare.

Filed with LRB: May 30, 2012

Publication Date: June 10, 2012
Effective Dates: October 1, 2012 through February 27, 2013
Hearing Date: August 27, 2012

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

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

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

Finding of Emergency

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

Filed with LRB: August 15, 2012
Publication Date: August 18, 2012
Effective Dates: August 18, 2012 through January 14, 2013

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

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

The statement of scope for this rule, SS 011–12, was approved by the governor on February 15, 2012, published in Register No. 674, on February 29, 2012, and approved by the Natural Resources Board on May 23, 2012.

Finding of Emergency

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

by September 1. Failure to modify our rules will result in the failure to provide hunting opportunity and continuation of rules which conflict with federal regulations.

Filed with LRB: September 10, 2012
Publication Date: September 12, 2012
Effective Dates: September 13, 2012 through February 9, 2013

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

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

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

Finding of Emergency

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

Filed with LRB: September 14, 2012
Publication Date: October 1, 2012
Effective Dates: October 1, 2012 through February 27, 2013

Scope Statements

Financial Institutions — Banking

SS 072–12

This statement of scope was approved by the governor on September 6, 2012.

Rule No.

Chapter DFI–BKG 74.

Relating to

Wisconsin collectors licensed under Chapter 218.

Rule Type

(Permanent) Modifications.

Detailed Description of the Objective of the Proposed Rule

Currently, Rule s. DFI–BKG 74.11 (2) (d) allows a licensee to collect a fee not to exceed the lesser of \$25 or 3% of the payment amount when the debtor pays by credit card. This revision expands the rule to cover payments made using a debit card.

Also, as a result of a large volume of misdirected mail being sent to DFI, we are also proposing changing s. DFI–BKG 74.13 (1) to eliminate DFI’s address from initial communication with debtors.

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. Existing Rule: s. DFI–BKG 74.11 (2) (d) A fee not to exceed the lesser of \$25 or 3% of the payment amount, not including the fee, may be added to the account of the debtor when the debtor makes a payment using a credit card.

Proposed Rule: s. DFI–BKG 74.11 (2) (d) A fee not to exceed the lesser of \$25 or 3% of the payment amount, not including the fee, may be added to the account of the debtor when the debtor makes a payment using a credit card or debit card.

B. Existing Rule: s. DFI–BKG 74.13 (1) Unless the initial communication is written and contains the following notice or the debtor has paid the debt, a licensee shall send the debtor the following notice within 5 days after the initial communication with a debtor: “This collection agency is licensed by the Division of Banking, P.O. Box 7876, Madison, Wisconsin 53707.” This notice shall be in at least 8 point type and shall be typed or printed on either a collection notice or on the validation of any debt directed to the debtor by the licensee pursuant to Section 809 of the Federal Fair Debt Collection Practices Act.

Proposed Rule: DFI–BKG 74.13 (1) Unless the initial communication is written and contains the following notice or the debtor has paid the debt, a licensee shall send the debtor the following notice within 5 days after the initial communication with a debtor: “This collection agency is licensed by the Division of Banking, www.wdfi.org.” This notice shall be in at least 8 point type and shall be typed or printed on either a collection notice or on the validation of any

debt directed to the debtor by the licensee pursuant to Section 809 of the Federal Fair Debt Collection Practices Act.

Detailed explanation of statutory authority for the rule (including the statutory citation and language)

The statutory authority for the rule is as follows: “It shall be the duty of the division and the division shall have power, jurisdiction and authority to investigate the conditions and ascertain the facts with reference to the collection of accounts and upon the basis thereof [t]o make all necessary or proper orders, rules and regulations for the administration and enforcement of this chapter.” Section 218.04 (7) (d), Stats.

Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule

120 hrs

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

Wisconsin collectors licensed under Chapter 218, Stats.

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

N/A

There is no federal regulation in regards to collection agencies.

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

This change should have a positive impact on Wisconsin collectors licensed under Chapter 218, Stats. They will now be able to access a fee on both credit card and debit card transactions.

Contact Person

Eric Knight, Executive Assistant
Department of Financial Institutions
Office of the Secretary
(608) 267–1718
Eric.Knight@wisconsin.gov

Revenue

SS 073–12

This scope statement was approved by the governor on September 18, 2012.

Rule No.

Chapter Tax 11.

Relating to

Sales and use tax provisions relating to advertising and promotional direct mail and prosthetic devices.

Rule Type

Permanent. (Revisions)

Detailed description of the objective of the proposed rule

The objectives of the rule are to:

- Reflect the creation of s. 77.54 (59), Stats., by 2011 Wisconsin Act 32 to provide a sales and use tax exemption for advertising and promotional direct mail. This requires the creation of a new exemption in Subchapter III of Chapter Tax 11 and updates to the provisions of ss. Tax 11.19, 11.56, 11.70, and 11.945.
- Amend the second note at the end of s. Tax 11.72 to correctly reflect the effective date of the repeal of the sales and use tax exemption for cloth diapers.
- Amend the list of taxable and exempt purchases contained s. Tax 11.17 (3) to move “Splints and cast materials” and “Rib belts and supports” from the taxable list to the exempt list so that it is consistent with the information in ss. Tax 11.08 (4) and 11.45 (3) (b) 9. and current law.

Description of existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives

Existing policies are as set forth in the rules. A new policy is being proposed to reflect a law change concerning advertising and promotional direct mail. If the rules are not changed, they will be incorrect in that they will not reflect current law or current department policy.

With respect to the change to s. Tax 11.17 (3), the information currently contained in this rule is incorrect and/or inconsistent with s. Tax 11.45 (3) (b) 9. This change would make these rules consistent with each other and current law.

Detailed explanation of statutory authority for the rule (including the statutory citation and language)

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

Section 227.11 (2) (a), Stats., provides “[e]ach agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute...”

Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule

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

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

Purchasers and sellers of advertising and promotional direct mail, splints and cast materials, and rib belts and supports.

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

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

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

No economic impact is anticipated.

Contact Person

Dale Kleven
(608) 266–8253

Revenue**SS 074–12**

This scope statement was approved by the governor on September 18, 2012.

Rule No.

Chapters Tax 1, 2, and 11.

Relating to

General provisions of income taxation and sales and use tax.

Rule Type

Permanent. (Revisions)

Detailed description of the objective of the proposed rule

The objectives of the rule are to:

- Amend s. Tax 1.11 (4) (d) to reflect the Lottery Board no longer exists and the lottery is instead a division of the department.
- Repeal s. Tax 2.085 (2) to reflect the form specified is no longer used.
- Add a note to s. Tax 2.50 (1) explaining that a public utility that is a corporation may be in a combined group.
- Repeal s. Tax 2.90 (6) to reflect retirement pay or pension are not part of the statutory definition of “wages” for withholding purposes.
- Repeal s. Tax 2.97, which is out–of–date and thus obsolete.
- Amend s. Tax 2.98 (1) (b) to update a reference to the Internal Revenue Code.
- Amend ss. Tax 11.04 (1), 11.05 (4) (a), and 11.49 (2) (b) to reflect the addition of the Wisconsin Economic Development Corporation as an exempt entity (2011 Wisconsin Act 7).
- Amend s. Tax 11.70 (2) (e) to correct a grammatical error.

Description of existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives

2012 Executive Order 61 and 2011 Wisconsin Act 46 requires state agencies to work with the Small Business Regulatory Review Committee to review the agency’s administrative rules that may be particularly onerous to small businesses in Wisconsin. In response, the department recently initiated a comprehensive review of all of its administrative rules. The changes described above were identified as part of that review. If the rules are not changed, they will be incorrect in that they will not reflect current law or current department policy.

Detailed explanation of statutory authority for the rule (including the statutory citation and language)

Section 227.11 (2) (a), Stats., provides “[e]ach agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute...”

In addition, under s. 71.80 (1) (c), Stats., the department may make such regulations as it shall deem necessary in order to carry out chapter 71 of the Wisconsin Statutes, relating to income and franchise taxes. This authority pertains to all of the proposed changes in this rule, except those concerning Chapter Tax 11.

Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule

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

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

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

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

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

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

No economic impact is anticipated.

Contact Person

Dale Kleven
(608) 266–8253

Revenue

SS 075–12

This scope statement was approved by the governor on on September 18, 2012.

Rule No.

Chapter Tax 7.

Relating to

The manufacture, sale, and distribution of fermented malt beverages by brewpubs.

Rule Type

Permanent. (Revisions)

Detailed description of the objective of the proposed rule

The objective of the rule is to administer the provisions of s. 125.295 (5), Stats., as created by 2007 Wisconsin Act 20, and reflect the requirements for persons holding brewpub permits.

Description of existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives

2012 Executive Order 61 and 2011 Wisconsin Act 46 requires state agencies to work with the Small Business Regulatory Review Committee to review the agency's administrative rules that may be particularly onerous to small businesses in Wisconsin. In response, the department recently

initiated a comprehensive review of all of its administrative rules.

Part of the department's review focused on the provisions of 2007 Wisconsin Act 20. Section 125.295, Stats., as created by 2007 Wisconsin Act 20, requires the department to promulgate rules and prescribe forms to ensure strict compliance with its requirements. Although the department has prescribed forms, issued brewpub permits, and taken other compliance measures, it was determined that in furtherance of compliance the provisions of 2007 Wisconsin Act 20 should be reflected in Chapter Tax 7, the administrative rules regulating the sale, distribution, trade practices, and taxation of fermented malt beverages.

Detailed explanation of statutory authority for the rule (including the statutory citation and language)

Section 125.03, Stats., provides “[t]he department, in furtherance of effective control, may promulgate rules consistent with this chapter and ch. 139.”

Section 125.295 (5), Stats., as created by 2007 Wisconsin Act 20, provides “[t]he department shall promulgate rules and prescribe forms to ensure strict compliance with the requirements under this section.”

Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule

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

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

Holders of state–issued brewpub permits and fermented malt beverage wholesaler permits and municipally–issued retailer licenses.

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 Federal Alcohol Administration Act, Title 27 United States Code, provides the Alcohol and Tobacco Tax and Trade Bureau of the United States Department of the Treasury (TTB) with broad provisions regarding the manufacture, sale and marketing of alcohol beverages (distilled spirits, wines and fermented malt beverages). Each person before commencing business as a brewer must give notice to the TTB on a prescribed Brewer's Notice form. Chapter 51 of the Internal Revenue Code of 1986 (IRC) sets forth excise tax collection and related provisions pertaining to distilled spirits, wines and beer. 26 U.S.C. 5051 imposes a tax on all beer brewed or produced, and removed for consumption or sale within the United States, or imported into the United States. 26 U.S.C. 5412 provides that beer may be sold only in specified containers, marked, branded, or labeled in such manner as the Secretary of the Treasury may require. The rule will be influenced by these provisions, but will not interfere with or duplicate them.

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

No economic impact is anticipated.

Contact Person

Dale Kleven
(608) 266–8253

Revenue**SS 077–12**

This scope statement was approved by the governor on September 18, 2012

Rule No.

Chapters Tax 4, 8, and 9.

Relating to

General provisions of excise taxation and enforcement.

Rule Type

Permanent. (Revisions)

Detailed description of the objective of the proposed rule

The objectives of the rule are to:

- Amend s. Tax 4.05 (1) to provide a definition of taxicab consistent with the statutory definition.
- Update notes and examples throughout Chapter Tax 4 to provide current rates of tax and department contact information.
- Repeal s. Tax 8.11 concerning the submission of paper reports, as all reports are electronically filed.
- Update notes throughout Chapter Tax 8 to provide current contact information for the department.
- Amend s. Tax 9.19 to reflect that, due to advances in technology, machines other than fusion machines may be used to affix cigarette stamps.
- Amend s. Tax 9.21 (3) to be consistent with s. 139.34 (3), Stats., which prohibits out-of-state distributors from shipping unstamped cigarettes to other distributors.
- Repeal s. Tax 9.26 (1) to ensure compliance with Master Settlement Agreement requirements concerning the level of trade or transfer of unstamped cigarettes between distributors among themselves and also with manufacturers.
- Amend ss. Tax 9.47 (4) and 9.51 (1) to be consistent with s. 995.12 (2) and (4), Stats., which requires records be kept for 5 years.
- Update notes and examples throughout Chapter Tax 9 to provide current rates of tax and department contact information.

Description of existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives

2012 Executive Order 61 and 2011 Wisconsin Act 46 requires state agencies to work with the Small Business Regulatory Review Committee to review the agency's administrative rules that may be particularly onerous to small businesses in Wisconsin. In response, the department recently initiated a comprehensive review of all of its administrative rules. The changes described above were identified as part of that review. If the rules are not changed, they will be incorrect in that they will not reflect current law or current department policy.

Detailed explanation of statutory authority for the rule (including the statutory citation and language)

Section 125.03, Stats., provides “[t]he department, in furtherance of effective control, may promulgate rules consistent with this chapter and ch. 139.”

Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule

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

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

Manufacturers, wholesalers, retailers, tax professionals, and other businesses and individuals who rely on clear, current, and concise rules

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

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

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

No economic impact is anticipated.

Contact Person

Dale Kleven
(608) 266–8253

Safety and Professional Services—Occupational Therapists Affiliated Credentialing Board**SS 076–12**

This statement of scope was approved by the governor on September 28, 2012.

Rule No.

Chapters OT 1 to 5.

Relating to

Modernization of occupational therapy regulations.

Rule Type

Permanent. (Revisions)

Finding/nature of emergency (Emergency Rule only):

N/A

Detailed description of the objective of the proposed rule:

Modernize the rules governing licensed occupational therapists and occupational therapist assistants to reflect current practice in the profession.

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 Occupational Therapists Affiliated Credentialing Board (Board) has undertaken a review of its current rules as a response to changes within their profession. The majority

of the current rules have been in place since January 2003. A great deal has changed within the profession since the initial promulgation of the rules. Specifically, as of April 14, 2011 the American Occupational Therapy Association (AOTA) redefined the definition of Occupational Therapy Practice. The profession has expanded and grown past much of the current language in the rules. Definitions such as evaluation, occupational performance areas, occupational performance components, occupational performance contexts, prevention and screening need updating to reflect profession specific terminology that's in step with the today's practice of occupational therapy. Also, the Biennial Registration date should be corrected to reflect the accurate date. These are a few examples of how outdated the current rules are.

The Board's review will be comprehensive identifying specific sections of Chapter OT 1 to OT 5 for revision. However, although the Board's review of terminology, practice standards, and licensing requirements will be comprehensive, it will not result in a major policy change. With these revisions, the Board seeks to clarify the existing rules. In the alternative, if new rules are not promulgated the current rules will continue to lag behind standards and terminology presently used in the profession.

Detailed explanation of statutory authority for the rule (including the statutory citation and language):

The legislature has granted general statutory authority to affiliated credentialing boards for rule writing in the following sections ss. 15.085 (5) (b), 227.11 (2) (a), and 403.035 (1), Stats. The legislature has granted specific rule writing authority to the Occupational Therapists Affiliated Credentialing Board via s. 448.965 (1) and (2), Stats. The Board may write rules that set forth standards for passing examination for occupational therapists and occupational therapy Assistants, continuing education requirements, standards for unprofessional conduct, and rules that define the scope of practice for the profession.

(1) The affiliated credentialing board shall promulgate rules that establish each of the following:

(a) Standards for acceptable examination performance by an applicant for licensure as an occupational therapist or occupational therapy assistant.

(b) Continuing education requirement for license renewal for an occupational or occupational therapist or occupational therapy assistant under s. 448.967 (2), Stats.

(c) Standards of practice for occupational therapy, including a code of ethics and criteria for referral.

(2) The affiliated credentialing board may promulgate rules that define the scope of practice of occupational therapy or the scope of assisting in the practice of occupational therapy.

Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:

250

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

Individuals that will be affected by the rule include licensed occupational therapist and occupational therapists assistants, OT instructors, applicants for licensure as an occupational therapist or occupational therapist assistant and occupational therapist professional associations. Persons and entities employing occupational therapists may be impacted as well.

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

None.

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

It is anticipated that the implementation of this rule will have no economic impact on small businesses.

Contact Person

Shawn Leatherwood
608–261–4438

Submittal of Proposed Rules to Legislative Council Clearinghouse

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

Public Service Commission CR 12–042

NOTICE IS GIVEN, pursuant to s. 227.14 (4m), Stats., that on this date, the Public Service Commission of Wisconsin submitted a proposed rule to the Joint Legislative Council Staff (Rules Clearinghouse) for review. The proposed rule, commission docket 1–AC–241, revises s. PSC 135.019 (1) regarding the adoption of federal pipeline safety regulations.

Analysis

The commission's latest version of ch. PSC 135 adopts the federal pipeline safety code up to July 1, 2007. As a result, the commission needs to amend its rule to include those federal regulation changes made since then.

Agency Procedure for Promulgation

This rulemaking will be done without a hearing because, under s. 227.16 (2) (b), Stats., no hearing is required when an

existing rule is being brought into conformity with a statute that has changed. However, written comments will be accepted. Comments on this rule may be submitted by noon on Monday, October 22, 2012, as outlined in the Notice of Rulemaking without Hearing and Request for Comments.

Contact Information

The Office of General Counsel of the commission is the organizational unit responsible for the promulgation of the rule. The contact person is Joyce M. Dingman, Docket Coordinator, (608) 267–6919 or joyce.dingman@wisconsin.gov.

Scope

The Statement of Scope for this rule, SS 051–12, PSC 135 – Statement of Scope – Pipeline Safety Regulations, was approved by the Governor on July 11, 2012, published in Wisconsin Administrative Register No. 679 on July 31, 2012, and approved by the commission on August 13, 2012.

Rule–Making Notices

Notice of Hearing Natural Resources

Fish, Game, etc., Chs. NR 1— EmR1210

(DNR # WM–09–12(E))

NOTICE IS HEREBY GIVEN that pursuant to SECTION 21 of 2011 ACT 169, ss. 227.11(2), and 227.24 Stats., interpreting 2011 ACT 169 and ss. 29.014, and 29.885, Wis. Stats., the Department of Natural Resources will hold public hearings on revisions to chs. NR 10, 12, and 19 Wis. Adm. Code, relating to the wolf hunting and trapping season, regulations, and a depredation program. This emergency order took effect upon publication in the official state paper on August 18, 2012.

Hearing Information

Date: Monday, October 29, 2012
Time: 2:00 p.m.
Location: Natural Resources State Office Building
 (GEF–2)
 Room G09
 101 South Webster St.
 Madison, WI 53707

Accessibility

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

Written Comments and Copy of Rule

The proposed rule and fiscal estimate may be reviewed and comments electronically submitted at the following Internet site: <http://adminrules.wisconsin.gov>. Written comments on the proposed rule may be submitted via U.S. mail to Mr. Scott Loomans, Bureau of Wildlife Management, P.O. Box 7921, Madison, WI 53707 or by email to scott.loomans@wisconsin.gov. Comments may be submitted until October 29, 2012. Written comments whether submitted electronically or by U.S. mail will have the same weight and effect as oral statements presented at the public hearings. A personal copy of the proposed rule and fiscal estimate may be obtained from Mr. Loomans.

Plain Language Analysis

The Bureau of Wildlife Management recommends promulgating rules modifying chapters NR 10, 12 and 19 Wis. Admin. Code related to the wolf hunting and trapping season and regulations and a depredation program.

SECTIONS 1, 3 to 5, and 7 contribute to defining “reservation wolf” pack for the purposes of establishing wolf harvest quotas.

SECTION 2 defines “point of kill”, a term used to describe when a flashlight can legally be used at night while hunting species for which there are no hunting hour restrictions.

SECTION 6 clarifies, in the definition, that wolves are not small game.

SECTIONS 8 and 30 define and establish Wolf Harvesting Zones.

SECTION 9 locates the statutorily established wolf hunting and trapping season dates in the table where other season dates are established.

SECTIONS 10 and 44 strike wolves from the list of protected species for which hunting and trapping seasons are not established and relocates a provision allowing landowners, lessees and occupants of lands to kill nuisance wolves in certain situations.

SECTIONS 11 and 12 establish normal daytime hours for hunting wolves but eliminates hunting hour restrictions for the portion of the wolf season beginning on the day following the traditional 9–day November firearm deer season each year.

SECTION 13 prohibits the use of radio telemetry receivers to aid in locating wolves for any purpose unless specifically authorized by the department.

SECTIONS 14 to 18 establish that baiting is allowed as a method of hunting wolves and the conditions under which bait may be placed for hunting wolves.

SECTION 19 establishes special regulations for hunting wolves at night including a prohibition of using dogs at night. This section also establishes regulations related to dog tags, identification, and the number of dogs that may be used.

SECTION 20 updates code language for consistency with 2011 ACT 168 and 2011 ACT 169 regarding the allowed types of firearms, ammunition, and crossbow use for hunting wolves.

SECTION 21 prohibits the use of steel jawed foothold traps with a jaw spread of greater than seven inches for non–water sets during the early part of the wolf trapping season to reduce the incidental capture of certain non–target species.

SECTIONS 22 and 23 establish a period during the wolf hunting and trapping season when cable restraints may be used in order to reduce the incidental capture of non–target species and create standards for the use of cable restraints placed to capture wolves.

SECTION 24 allows the possession and retention of coyotes, foxes, and bobcat captured incidentally to wolf trapping in cable restraints that are not otherwise legal to place for coyotes or bobcat, if the respective season is open and the person has an valid unfilled permit and tag, in the case of an incidental bobcat.

SECTION 25 establishes that only a firearm may be used as a method of dispatching a live wolf that has been captured in a trap or cable restraint.

SECTION 26 and 27 establish that a wolf harvesting license is required to hunt or trap wolves and create guidelines and criteria that must be considered by the department when establishing harvest quotas and issuing permits.

SECTION 28 explains how applications for wolf harvesting licenses are made and successful applicants are selected. This Section also establishes the manner for tagging, reporting and registering harvested wolves with the department. Finally, this section creates language that is consistent with 2011 ACT 169 regarding a process for closing the wolf hunting and trapping seasons.

SECTION 29 establishes that the U.S. Fish and Wildlife Service may allow wolf hunting at the Necedah National Wildlife Refuge. This does not require the service to allow wolf hunting. Trapping furbearers such as wolves is already possible under current rules, at the service’s discretion.

SECTIONS 31 to 34 re–establish, following delisting of the species, that department authorization is required to remove wolves causing damage or which constitute a nuisance and establish conditions and requirements for removal.

SECTION 35 clarifies that dogs may not be used to pursue wolves under a wolf damage shooting permit unless specifically authorized by the department, similar to permits issued for bear damage.

SECTIONS 36 to 43 establish a wolf depredation program that is in effect only at times when wolves are not listed as a threatened or endangered species.

Summary of, and Comparison with, Existing or Proposed Federal Regulations

These state rules and statutes do not relieve individuals from the restrictions, requirements and conditions of federal statutes and regulations.

Wolves are currently a state managed species. The US Department of Interior announced in December, 2011 that gray wolf populations in the Great Lakes region have recovered and no longer require the protection of the Endangered Species Act (EAS). The U.S. Fish and Wildlife Service published a final rule in the Federal Register that removed wolves in Michigan, Minnesota and Wisconsin, and in portions of adjoining states, from the list of endangered and threatened wildlife and plants. The rule went into effect on January 27, 2012.

The states of Wisconsin, Minnesota and Michigan are required to monitor wolf populations for at least five years to ensure the species continues to thrive. If it appears, at any time, that the gray wolf cannot sustain itself without the protections of the ESA, the service can initiate the listing process, including emergency listing.

Comparison with Rules in Adjacent States

The only adjacent state that has established a wolf hunting and trapping season is Minnesota. Michigan is likely to allow hunting or trapping in the future but has not established a season framework that can be evaluated at this time.

Minnesota will allow hunting and trapping, but not with the assistance of dogs, for the first time in 2012. The application fee will be \$5.00 and the harvest permit will cost \$50.00. Minnesota will issue 6,000 harvest permits with the intention of harvesting a quota of 400 wolves from a population of approximately 3,000 animals. Because 2012 will be Minnesota’s first wolf hunting and trapping season, they have no experience with their season framework.

Summary of Factual Data and Analytical Methodologies

This rule proposal will guide management activities by the department, establish regulations that apply to individual

hunters and trappers, and establish a wolf depredation program. In all cases, these rule proposals are consistent with existing management guidelines and regulations for other species that are currently hunted or trapped in Wisconsin. The wolf depredation program is similar to and consistent with the existing program for gray wolves when they are listed as threatened or endangered and the wildlife damage, claims and abatement program.

The proposal creates a definition of “reservation wolf packs” for the purposes of establishing wolf harvest quotas. The department proposes not including wolves on tribal lands when establishing quotas.

This rule establishes a definition of the term “point of kill”. The definition is important because the term describes when a flashlight can legally be used at night while hunting and when a light may not be used because shining while in possession of a firearm is not legal. This definition is consistent with past department policy.

With the removal of endangered and threatened species protections for wolves, they will automatically be classified as small game unless the exemption in SECTION 2 of this rule is created. Small game is not the appropriate designation for wolves because it will not be legal to hunt them with a license that authorizes hunting of small game, such as an archery, small game, sports, patrons or non–resident fur–bearer license.

This proposal establishes that hybridized variations of true wolves are also considered to be wolves. This broad definition resolves potential questions about the use of harvesting licenses and eligibility for the depredation program when animals that appear not to be true wolves are involved.

This rule proposal establishes wolf harvesting zones. The department will establish harvest quotas for each zone and hunters and trappers are allowed to pursue wolves only in the zone indicated on the license. Under the rule, the department will have the ability to list more than one zone or subzone on a license, providing flexibility for hunters if one zone they intended to hunt is closed early. An alternative might be to allow hunters to obtain a new license with a new zone designation when the season in a hunter’s original zone choice is closed early. Managing harvest by the use of zones allows harvest to be focused in certain locations or regions for purposes such as reducing incidents of wolf depredation or keeping populations low in areas determined not suitable for wolves. Zones can also be used to decrease harvest pressure in certain areas where it is needed to maintain or rebuild populations in suitable habitat. The ability to focus harvest pressure allows managers to safely maximize hunting opportunity. However, geographically smaller zones have the disadvantages of regulatory complexity and reducing the area available to individual hunters and trappers. Larger zones reduce the amount of fine tuning of management that is possible. The wolf harvesting zones in this proposal represent a compromise that takes advantage of the opportunity to utilize zones but minimizes the number of zones.

This rule making will establish that harvest quotas for wolves will be based in part on the wolf population, population trends and established population goals. The number of permits issued to reach a harvest quota will be based in part on the trends of hunter and trapper success rates and is consistent with the department’s harvest management strategy for other species. In establishing harvest permit

levels, the department will also consider the likelihood of a season being open for its entire allotted number of days.

A final consideration will be managing wolf conflict with agriculture and land use in an area, and maintaining a sustainable population in core habitat areas. For wolves, a population goal at which public harvest and proactive control could occur is currently, and will continue to be, established in a species management plan prepared by the department and approved by the Natural Resources Board.

Requiring reporting or registration of individual animals harvested by hunters and trappers is a commonly used method of gathering information for harvest management, population monitoring, and to aid in enforcing regulations. Requirements of this rule will provide the department with more timely harvest information than is possible with registration requirements for some other species because there are two required actions that a successful hunter or trapper needs to make. First, this rule requires a hunter or trapper to report harvest by phone or other method authorized by the department within 24 hours of the harvest, allowing the department to monitor harvest activity as it occurs during the season. If reporting information indicates that the harvest quota for wolves has or will be met, the department will use this information to implement an early season closure to prevent exceeding the harvest quota in a particular zone. Similar reporting requirements are already in place for bobcat and Canada geese, two other species for which the department possesses emergency season closure authority.

There is an additional requirement to present wolf carcasses and pelts to the department for inspection and registration purposes at a later time. At registration, the department will collect samples from carcasses that can be used to determine age and reproductive information and for health monitoring of the animals. Detailed information on the location of harvest will also be collected. The time of registration is when registration tags will be issued indicating that the animal has been registered with the department and is now the property of the hunter or trapper. Many hunters and trappers will be familiar with these requirements because they are similar or identical to other species that are currently hunted or trapped such as bear, bobcat, otter, fisher, and deer.

The department anticipates that compliance with reporting and registration requirements will be good. Wolf hunters and trappers will have significant incentive to report and register in order to obtain the state registration tag that allows possession, transfer and sale of the wolf pelt or carcass. Possessing the attached registration tag is also necessary in order to obtain the services of a taxidermist or tannery.

Another important feature of tagging, transportation, and registration requirements are that they are a primary way of enforcing harvest regulations and preventing illegal harvest. Effective enforcement of harvest restrictions by conservation wardens and tribal wardens is intended to protect the wolf population overall and also preserves opportunities for legal harvest. Federal involvement can occur when illegally killed wolves are transported across state lines or killed on federal lands (National Park Service land, National Wildlife Refuges, National Forests, Federal military bases, or Indian reservations).

A number of wolves have been captured and fitted with radio telemetry gear by the department for research purposes. Under the proposal, the use of radio telemetry gear for locating wolves will be prohibited unless specifically

authorized by the department. The prohibition would apply to locating wolves for any purpose. People who hunt with the aid of dogs and train hunting dogs also commonly use this technology for monitoring their dogs. Individuals using dogs are specifically exempted from the prohibition of possessing radio telemetry gear as long as it is not used to locate wolves that are fitted with transmitters. Harvest of a collared wolf is legal.

This rule proposal establishes regulations on the use of bait for hunting, firearm and crossbow use, and hunting hours. Many of these regulations are similar to provisions established in statute and are reproduced in administrative code to assure enforceability of the statutory provisions and to increase ch. NR 10's usefulness to department staff and the public. Also under this proposal, baiting for wolves would be allowed beginning on the day after bear season closes and continuing through the close of the wolf season in a zone. Regulations for baiting in this proposal are similar in many respects to current bear baiting regulations. For hunting wolves statewide, 10 gallons of bait is allowed and it must be covered to prevent access by deer. Additionally, it will be legal to hunt wolves over baits that were lawfully placed for hunting deer. Similar to the restrictions on hunting deer and bear, animal parts and by-products are not allowed as bait for hunting wolves, as established in the ACT.

Current statute establishes that it is illegal to use baits containing poison of any description where it might cause the destruction of wild animals. This proposal creates a similar provision where baiting regulations are established in administrative code and which is specific to canine animals. Doing so locates more of the baiting regulations in one place, for convenience and rule use ability. It also recognizes that there are food substances which are known to be toxic to canines and may not be used in a way that will poison canine animals.

Meat or other animal parts and by-products can be used as bait for trapping, as they are not prohibited by the ACT, and no rule change regarding the use of baits for trapping is required or proposed in this order. Allowing the use of meat or other animal parts and by-products as bait for trapping may be important to prevent the incidental capture of non-target species such as deer when using cable restraints. The disposal of the carcasses of domestic animals is regulated by the Department of Agriculture, Trade and Consumer Protection and they are not legal for use as bait for trapping wolves.

Hunting at night is authorized under ACT 169 and this rulemaking, however, the rule addresses safety concerns about hunting in the dark with large caliber rifles and shotguns shooting slugs or buckshot by reducing the likelihood that someone will shoot a firearm without being certain of what lies beyond their target. By requiring that a person hunt from a stationary position and prohibiting hunting with hounds at night, shooting opportunities are more likely to occur in directions where the hunter has been able to anticipate and avoid possible unsafe shooting scenarios. It is anticipated that this extra precaution will help assure public safety.

This proposal will restrict the size of steel jawed traps not placed as water sets when used during the early part of the wolf season, through November 30, from a maximum jaw spread of 8 inches to a maximum of 7 inches. This is intended to prevent the incidental catch and retention of bears at times when they are normally still active. This rule would establish regulations on the allowable times for use and the dimensions

and mechanical requirements of cable restraints to capture wolves. A cable restraint is a device used for restraining furbearers without injuring them which consists of a non–spring activated galvanized aircraft cable which includes a relaxing mechanical lock, stops, and swivel set in a non–entanglement manner. Cable restraints meeting certain specifications are currently legal for use at certain times for fox, coyote and bobcat. Under this proposal, cable restraint use for wolves is restricted to times when black bears are normally not active to prevent incidental capture and retention of bears.

Hunting and trapping are currently prohibited by DNR in the Necedah National Wildlife Refuge but there are a number of exceptions. As the landowner, the Fish & Wildlife Service already has the ability to allow or prohibit hunting and trapping and service staff people can enforce federal regulations. The significance of current rule is that it also allows enforcement of special closed area regulations by the department. This proposal includes wolves in a way that is consistent with language for species that are currently hunted and trapped at Necedah. The proposal does not require the service to allow wolf hunting or trapping but is necessary if the service decides to allow wolf hunting.

Wolf depredation management is an important aspect of wolf management in Wisconsin. The department is charged with protecting and maintaining a viable population of wolves, but also must protect the interests of people who suffer losses due to wolf depredation. Wolves occasionally kill livestock, poultry, and pets. Although wolf depredation does not impact a significant portion of livestock growers, poultry producers, and pet owners, it brings hardship to individuals who experience incidents of depredation. In 2010 the department paid approximately \$204,000 in claims to owners of animals under the existing program for depredation caused by wolves. The existing program will remain in place under this proposal but will only apply at times when wolves are listed as endangered or threatened. Most aspects of the current program are recreated by this proposal in a new section that will be in effect at times when wolves are not listed as protected or threatened.

Several new features are also created that will apply only when wolves are not listed as endangered or threatened. This rule creates a requirement that landowners must allow access to the public for hunting and trapping wolves to be eligible for depredation compensation. Landowners could restrict the use of hunting with dogs if trespass on neighboring lands is perceived to be an issue. In order to minimize the use of lethal control, the proposal creates a requirement that individuals seeking wolf depredation compensation must cooperate with the implementation of any recommended abatement. These rules clarify that anyone seeking wolf depredation compensation must allow access to the department or its agent to inspect property and any abatement techniques being used. The proposal establishes that the panel of three representatives from Dept. of Agriculture, Trade and Consumer Protection, UW–Extension, and Wisconsin Farm Bureau Federal can defer the establishment of maximum payments amounts to another expert in the event the type of animal whose value is being evaluated is outside of their area of expertise. The proposal establishes that the department will not pay any wolf depredation claims until after December 31 of each year so that the level of

program funding is known when payments are made. The department will also pro–rate claims if funds are not sufficient to pay all claims. These rules establish that someone with a valid hunting license of any kind can assist a person who has a wolf removal permit. For most species the appropriate license for that species is required to assist someone with a removal permit, however, because wolf harvesting licenses will be limited by a drawing, expanding the types of licenses needed to assist permittees under the damage program is needed. Individuals assisting a permittee using trapping methods would need to possess a valid WI trapping license. Finally, this proposal revises the current missing calf rules to create a “one–for–five” rule under which producers would be eligible to receive compensation for up to 5 additional calves for every verified or probable wolf depredation. This provision is based on the department’s actual payment history for missing calves and continues to acknowledge that there is not always verifiable evidence of depredation on calves.

Analysis and Supporting Documents Used To Determine Effect on Small Business or in Preparation of Economic Impact Report

Anticipated Private Sector Costs and effects on Small Business: These rules, and the legislation which grants the department rule making authority, do not have a significant fiscal effect on the private sector or small businesses. Additionally, no significant costs are associated with compliance to these rules. The department does not have experience yet to gauge the level of public participation and interest in this new activity. People who hunt or trap wolves may reside anywhere in the state but are likely to hunt and trap in the northern third of the state where most wolves are found. This will result in increased purchases of lodging services. Some hunters/trappers will need to be assisted by paid guides in order to have a high likelihood of success. The gear used for wolf hunting will be similar to that used for deer and that, combined with the low number of hunters, means there will be limited new retail expenditures even though this is a new opportunity. Successful hunters and trappers will contribute economically through the sales of wolf pelts or, more often, the purchase of taxidermy services. These will be minor contributions overall but for an individual taxidermist, guide, or motel owner who receives extra work, the impact is worth noting.

The ACT and this rulemaking will allow Wisconsin to manage wolves to population levels that will be lower than the current population. As a result, there will likely be less wolf depredation on domestic animals. Under previous requirements of law and under the ACT, the department reimburses owners for the fair market value of domestic animals killed, or veterinary services, in wolf depredation incidents. A reduction in depredation will result in less time investigating damage, filling claims, and working with agency staff who administer the program. Individual producers who are concerned about livestock depredation are likely to view a hunting season as very important to them economically. In 2010, the department investigated and made damage payments for depredations of 84 cattle or missing cattle and six sheep.

The department does not anticipate that there will be significant conflict in the field between people pursuing different outdoor recreational opportunities. It is possible that some wildlife watchers who seek wolves for viewing opportunities may be concerned about user conflict, however,

and will be less active. They may initially spend less money travelling and pursuing these activities.

Fiscal Estimate

State: Increase Costs — May be possible to absorb within agency's budget.

Local: No Local Government Costs.

Effect on Small Business

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

Environmental Impact

The department has determined these emergency rule revisions are a Type IV action which is exempt under Chapter NR 150, Wis. Adm. Code, and no environmental analysis is required.

Agency Contact Person

Scott Loomans
Bureau of Wildlife Management
P.O. Box 7921
Madison, WI 53707
email to scott.loomans@wisconsin.gov

Notice of Hearing

Natural Resources

Fish, Game, etc., Chs. NR 1—

EmR1214

(DNR # WM–02–12(E))

NOTICE IS HEREBY GIVEN that pursuant to ss. 29.014, 29.041 and 227.11(2)(a), and 227.24 Stats., interpreting ss. 29.014, 29.041 and 29.192, Stats., the Department of Natural Resources will hold public hearings on revisions to ch. NR 10, Wis. Adm. Code, relating to the 2012 migratory game bird seasons and waterfowl hunting zones. This emergency order took effect upon publication in the official state paper on September 10, 2012.

Hearing Information

Date: Friday, October 29, 2012
Time: 1:00 p.m.
Location: Natural Resources State Office Building
(GEF–2)
Room 608
101 South Webster St.
Madison, WI 53707

Accessibility

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

Written Comments and Copy of Rule

The proposed rule and fiscal estimate may be reviewed and comments electronically submitted at the following Internet site: <http://adminrules.wisconsin.gov>. Written comments on the proposed rule may be submitted via U.S. mail to Mr. Scott Loomans, Bureau of Wildlife Management, P.O. Box 7921, Madison, WI 53707 or by email to scott.loomans@wisconsin.gov. Comments may be submitted until October 29, 2012. Written comments whether submitted electronically or by U.S. mail will have the same weight and effect as oral statements presented at the public hearings. A personal copy of the proposed rule and fiscal estimate may be obtained from Mr. Loomans.

Plain Language Analysis

SECTION 1 of this rule order establishes the season length and bag limits for the 2012 Wisconsin migratory game bird seasons. For ducks, the state is divided into three zones, each with 60–day seasons. The proposed seasons in each zone are:

North duck zone – the season begins at 9:00 a.m. September 22 and continues through November 4, followed by a 5 day split, and reopens on November 10 and continues through November 25.

South duck zone – the season begins at 9:00 a.m. on September 29 and continues through October 7, followed by a 5–day split, and then reopens on October 13 and continues through December 2.

Mississippi River duck zone – the season begins at 9:00 am on September 22 and continues through September 30, followed by a 12 day split, reopening on October 13 and continuing through December 2.

The daily bag limit is 6 ducks including no more than: 4 mallards, of which only 1 may be a hen, 1 black duck, 1 canvasback, 3 wood ducks, 4 scaup, 2 pintails and 2 redheads.

For Canada geese, the state is apportioned into 2 goose hunting zones, Horicon and Exterior, each with a 92 day season. The Mississippi River Subzone is a special goose management subzone within the Exterior Zone. Season lengths are:

Horicon Zone – Two hunting periods, the first period beginning September 16 and the second on October 29

Exterior Zone in the northern duck zone – September 16 to November 4 and November 10 to December 21

Exterior Zone in the southern duck zone – September 16 to October 7 and October 13 to December 21

Mississippi River subzone – September 22 to September 30 and October 13 to January 3.

The statewide daily bag limit for Canada geese in all zones is 2 birds per day during the open seasons within the zones.

SECTION 2 establishes that the youth waterfowl hunting season will be held on September 15 and 16.

SECTION 3 lifts a sunset of special migratory bird hunting regulations at the Mead and Zeloski Marsh Wildlife Management Areas.

SECTION 4 relaxes the prohibition on hunting waterfowl in open water for holders of permits for hunters with disabilities.

SECTION 5 reestablishes a duck hunting zone that consists of the Wisconsin portions of the Mississippi River west of the Burlington Northern Santa Fe Railroad tracks. This is the same zone configuration that was in place for the 2011 season and has been approved by the USFWS for a five year period.

Summary of, and Comparison with, Existing or Proposed Federal Regulations

Under international treaty and Federal law, migratory game bird seasons are closed unless opened annually via the U.S. Fish and Wildlife Service (USFWS) regulations process. As part of the Federal rule process, the USFWS proposes a duck harvest–management objective that balances hunting opportunities with the desire to achieve waterfowl population goals identified in the North American Waterfowl Management Plan (NAWMP). Under this harvest–management objective, the relative importance of hunting opportunity increases as duck populations approach the goals in the NAWMP. Thus, hunting opportunity would be maximized when the population is at or above goals. Additionally, while USFWS believes that the NAWMP’s population goals would tend to exert a conservative influence on overall duck harvest–management. Other factors, such as habitat, are to be considered.

Wisconsin Canada goose harvest is supported by 2 different Canada goose populations; the local giant Canada geese which are part of the Temperate Breeding Population (TBP) of the Mississippi Flyway provide about 40% of our fall harvest while the Mississippi Valley Population (MVP) that breeds in northern Ontario provide about 60% of the fall harvest. These 2 populations are managed under cooperative management plans developed by several states and provinces. The TBP population has steadily grown and management goals are to provide additional harvest opportunity and control population growth. In contrast, the MVP population has been on a slow decline so management objectives are to maintain a lower rate of harvest and have a stable or increasing population. These contrasting goals create a challenge in the development of hunting regulations. In order to improve our harvest management, the Mississippi Flyway Council tested the use of a standard season framework for 5 years while monitoring population size and harvest rates for the MVP and TBP. From 2007 – 2011, season lengths and bag limits for each MVP harvest state were unchanged. Each state retained the flexibility to schedule the timing of their Canada goose season. In addition, if the MVP spring population numbers dropped to a predetermined low level during the 5–year period, the stable season framework could be adjusted. At the winter 2012 flyway meeting, analysis of the impacts of these 5 years of stable regulation were reviewed and the results were mixed with regard to the management objectives. It was decided among the member states that a cautious and slow approach be taken toward continued liberalization of Canada goose hunting seasons.

The proposed modifications included in this rule order are consistent with these parameters and guidelines which are annually established by the USFWS in 50 CFR 20.

Comparison with Rules in Adjacent States

Since migratory bird species are managed under international treaty, each region of the country is organized in a specific geographic flyway which represents an individual migratory population of migratory game birds. Wisconsin along with Minnesota, Michigan, Illinois and Iowa are members of the Mississippi Flyway. Each year the states included in the flyways meet to discuss regulations and guidelines offered to the flyways by the USFWS. The USFWS regulations and guidelines apply to all states within the Flyway and therefore the regulations in the adjoining states closely resemble the rules established in this rule order, and only differ slightly based on hunter desires, habitat and

population management goals. However, these variations fall within guidelines and sideboards established by the USFWS.

Summary of Factual Data and Analytical Methodologies

For the regular duck season, a data based process called Adaptive Harvest Management is used annually by the USFWS and the Flyways to determine which of 3 framework alternatives best matches the current year’s data on populations and habitat (data from the spring pond and duck survey). The option of a closed season is also possible if survey conditions indicated that this is necessary for the management of duck populations. The determination of which alternative is selected is based in part on the spring wetland conditions on the breeding grounds and the Mid–Continent Mallard population. These data come from the May Pond and Breeding Waterfowl Population Surveys conducted by the USFWS and Canadian Wildlife Service on traditional survey areas as well as surveys from select states, including Wisconsin.

In 2011 the USFWS gave our state the option of reconfiguring duck hunting zones and after an 11 month public input process Wisconsin implemented changes for a 5 year period. Waterfowl hunters appear to have been supportive of the new zone configuration and this proposal contains the same zone configuration that was in effect for the 2011 season. The department’s position has been that the configuration of duck zones is an issue of hunter opportunity and satisfaction which does not have significant impact on duck populations.

The parameters of Wisconsin’s regular goose seasons are guided by the Mississippi Flyway management plans for the MVP and TBP Canada goose populations and approved by the Mississippi Flyway Council and the USFWS. The health of these populations was measured with spring breeding population surveys, survival data and harvest rates obtained from banding and production studies. The surveys and studies are conducted annually and are supported by the State of Wisconsin as part of the MFC. The result of this work is reviewed annually by the MFC committee and the USFWS to measure the impact of the stable season framework trial period.

The primary elements of Wisconsin’s waterfowl regulatory process include conducting spring waterfowl surveys, participation in MFC meetings, commenting on federal proposals, and soliciting input from the public. The state process begins with Flyway meetings in February and March each year where staff provide input to the development of federal framework alternatives and requests related to the early seasons. In spring and summer, breeding waterfowl surveys and banding are conducted in support of the regulatory process.

In early July, staff conducted a public meeting to solicit input from interest groups, including representatives of the Conservation Congress Migratory Committee. At this meeting, staff provided the attendees with breeding status information and asked for any items that they wish the department to pursue at the MFC meeting in mid July. Department staff then attended the MFC Technical and Council meetings. At these meetings, staff were provided status information and the proposed framework alternative from the USFWS. Department staff worked with the other states in our Flyway to discuss and develop proposals and recommendations that were voted upon by the MFC. Proposals that passed at the MFC meeting were forwarded to

the USFWS for consideration by the Service Regulations Committee (SRC) at their meeting. The USFWS announced its final waterfowl season framework recommendation at the end of July. Department staff then summarized waterfowl status and regulation information for Wisconsin citizens and presented this information to the Migratory Committee of the Conservation Congress and at a public meeting (Post–Flyway Meeting) of interest groups and individuals on July 28. Staff gathered public input and citizen suggestions at those meetings for the development of Wisconsin’s waterfowl regulations, given the federal framework. Public hearings were held from July 30–August 2 around the state to solicit additional input on the proposed annual waterfowl rule.

This rule will expand opportunity for waterfowl hunters with disabilities. Open water waterfowl hunting is currently prohibited on all but a handful of lakes in WI. A hunter who is “concealed” in emergent vegetation under current rules is not considered to be in open water. The concern is that those with disabilities may physically not be able to get into a smaller John boat, skiff, or blind and that it may be difficult or impossible to place an accessible boat or blind near vegetation capable of meeting the concealment requirements. This proposal will make it possible for disabled permit holders, and their companions, to hunt from a craft such as a pontoon boat, which may be impossible to conceal in emergent vegetation.

Closing migratory bird hunting hours early on managed public hunting areas in some states has been shown to provide good hunting across an entire property rather than just near refuges, hold ducks in an area for a longer period of time, and provide better hunting opportunities throughout the season. An experimental early closure has been applied at the Mead Wildlife Area in Marathon and Wood counties and at Zeloski Marsh in Jefferson. The regulation has been in place only during the early part of the season when hunting pressure is heaviest. The regulation has sunset after a three year trial period. There continues to be support for the special regulations and reauthorization by rule is needed for them to remain in effect.

Analysis and Supporting Documents Used to Determine Effect on Small Business or in Preparation of Economic Impact Report

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

Effects on Small Businesses

These rules are applicable to individual sportspersons and impose no compliance or reporting requirements for small businesses, and no design or operational standards are contained in the rule. Because this rule does not add any regulatory requirements for small businesses, the proposed rules will not have a significant economic impact on a substantial number of small businesses under 227.24(3m).

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

Environmental Impact

The Department has made a determination that this action does not involve significant adverse environmental effects and does not need an environmental analysis under ch. NR 150, Wis. Adm. Code.

Fiscal Estimate:

State: No State Fiscal Effect.

Local: No Local Government Costs.

Agency Contact Person

Scott Loomans

Bureau of Wildlife Management

P.O. Box 7921

Madison, WI 53707

email to scott.loomans@wisconsin.gov

Notice of Rulemaking Without Public Hearing Public Service Commission CR 12–042

(PSC Docket # 1–AC–241)

The Public Service Commission of Wisconsin proposes an order to amend PSC s. 135.019 (1) regarding the adoption of federal pipeline safety regulations.

This rulemaking will be done without a hearing because, under s. 227.16 (2) (b), Stats., no hearing is required when an existing rule is being brought into conformity with a statute that has changed. However, written comments will be accepted.

Accommodation

The commission does not discriminate on the basis of disability in the provision of programs, services, or employment. Any person with a disability who needs accommodations to participate in this proceeding or who needs to receive this document in a different format should contact the Docket Coordinator, as indicated in the following paragraph, as soon as possible.

Written Comments

Any person may submit written comments on these proposed rules. The record will be open for written comments from the public, effective immediately, and until **Monday, October 22, 2012, at noon**. All written comments must include a reference on the filing to docket 1–AC–241. File by one mode only.

Industry: File comments using the Electronic Regulatory Filing system. This may be accessed from the commission’s website (psc.wi.gov).

Members of the Public:

Please submit your comments in one of the following ways:

- **Electronic Comment.** Go to the commission’s web site at <http://psc.wi.gov>, and click on the “ERF – Electronic Regulatory Filing” graphic on the side menu bar. On the next page, click on “Need Help?” in the side menu bar for instructions on how to upload a document.
- **Web Comment.** Go to the commission’s web site at <http://psc.wi.gov>, click on the “Public Comments” button on the side menu bar. On the next page select the “File a comment” link that appears for docket number 1–AC–241.

- Mail Comment. All comments submitted by U.S. Mail must include the phrase “Docket 1–AC–241 Comments” in the heading, and shall be addressed to:
Joyce Dingman
Public Service Commission
P.O. Box 7854
Madison WI 53707–7854

The commission does not accept comments submitted via e–mail or facsimile (fax). Any material submitted to the commission is a public record and may appear on the commission’s web site.

Analysis prepared by the Public Service Commission of Wisconsin

Statutory authority and explanation of authority

This rule is authorized under ss. 196.02 (1) and (3), 196.745 (1) (a), and 227.11, Stats.

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 196.745 (1) (a), Stats., grants the commission specific authority to adopt rules requiring that the construction and operation of gas facilities be done in a reasonably adequate and safe manner.

Statutes interpreted

This rule interprets s. 196.745, Stats., and, under a contract with the U.S. Department of Transportation, Office of Pipeline Safety, the federal pipeline safety regulations (49 CFR 190 to 199).

Related statutes or rules

The federal pipeline safety statutes may be found in 49 USC 60101 to 60133. The federal pipeline safety regulations may be found in 49 CFR 190 to 199. Under an agreement with the U.S. Department of Transportation, Office of Pipeline Safety, the commission enforces the federal pipeline safety regulations for Wisconsin’s natural gas pipeline operators, primarily public utilities. Under this agreement, the commission has the authority to make additions to the federal code that are more stringent than the federal standards.

Chapter PSC 134 is the rule that deals with gas service standards. That rule also has some requirements concerning safe interactions between pipeline operators and their customers.

Brief summary of rule

Under an agreement with the U.S. Department of Transportation, Office of Pipeline Safety, the commission is authorized to enforce federal natural gas pipeline safety requirements as set out in the Code of Federal Regulations, 49 CFR Parts 192, 193, and 199. As part of the agreement, the commission adopts the federal pipeline safety code in Wis. Admin. Code s. PSC 135.019. The commission’s latest version of that rule adopts the federal code up to July 1, 2007. New gas pipeline safety code requirements are generally enacted in October of each year. As a result, the commission needs to amend its rule to include those federal regulation changes made since October 2007. Adoption of these amendments will keep the commission in compliance with its obligation to adopt all federal changes in the pipeline safety area.

Comparison with existing or proposed federal regulations

As this is the adoption of the federal regulations, it is the same as the federal regulations.

Comparison with similar rules in adjacent states

All states, including Michigan, Iowa, Illinois, and Minnesota, adopt the federal pipeline regulations.

Effect on small business

This rule has no effect on small businesses since gas utilities, as monopolies and unlike small businesses, are all dominant in their field. Further, the contract between the federal department of transportation and the commission requires that treatment be uniform across the state and across gas pipeline operators. As a result, the commission cannot make special provisions for small business.

Agency contacts

Questions regarding this matter, including small business questions, should be directed to Docket Coordinator Joyce Dingman at (608) 267–6919 or joyce.dingman@wisconsin.gov. Media questions should be directed to Kristin Ruesch, Communication Director, at (608) 266–9600. Hearing– or speech–impaired individuals may also use the commission’s TTY number. If calling from Wisconsin, use (800) 251–8345; if calling from outside Wisconsin, use (608) 267–1479.

Initial Regulatory Flexibility Analysis

This rule has no effect on small businesses since gas utilities, as monopolies and unlike small businesses, are all dominant in their field. Further, the contract between the federal department of transportation and the commission requires that treatment be uniform across the state and across gas pipeline operators. As a result, the commission cannot make special provisions for small business.

Fiscal Estimate

This rule will result in no fiscal impact since pipeline operators are already required, under federal law, to follow the federal regulations. Any economic impact of those federal regulations has already occurred. This rulemaking just updates the state’s enforcement authority.

The Economic Impact Analysis for this rulemaking is attached.

Contact Person

Questions regarding this matter, including small business questions, should be directed to Joyce Dingman at (608) 267–6919 or joyce.dingman@wisconsin.gov. Media questions should be directed to Kristin Ruesch, Communications Director, at (608) 266–9600. Hearing– or speech–impaired individuals may also use the commission’s TTY number. If calling from Wisconsin, use (800) 251–8345; if calling from outside Wisconsin, use (608) 267–1479.

Text of Proposed Rule

SECTION 1. PSC s. 135.019 (1) is amended to read:

PSC 135.019 (1) The federal department of transportation, office of pipeline safety, pipeline safety standards, as adopted through July 1, 2007 the effective date of these rules ... [LRB to insert date]..., and incorporated in 49 CFR Parts 192, 193 and 199, including the appendices, are adopted as state pipeline safety standards and incorporated by reference into this chapter.

SECTION 2. Effective date. This rule shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22 (2) (intro.), Stats.

STATE OF WISCONSIN
DEPARTMENT OF ADMINISTRATION
DOA-2049 (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

155 – PSC 135 – Pipeline Safety Regulations

1. Type of Estimate and Analysis

Original Updated Corrected

2. Administrative Rule Chapter, Title and Number

PSC 135, Gas Safety

3. Subject

Adoption of federal gas pipeline regulations

4. Fund Sources Affected

GPR FED PRO PRS SEG SEG-S

5. Chapter 20, Stats. Appropriations Affected

6. Fiscal Effect of Implementing the Rule

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

c

Under an agreement with the U.S. Department of Transportation, Office of Pipeline Safety, the commission is authorized to enforce federal natural gas pipeline safety requirements as set out in the Code of Federal Regulations, 49 C.F.R. Parts 192, 193, and 199. As part of the agreement, the commission adopts the federal pipeline safety code in Wis. Admin. Code s. PSC 135.019. The commission's latest version of that rule adopts the federal code up to July 1, 2007. New gas pipeline safety code requirements are generally enacted in October of each year. As a result, the commission needs to amend its rule to include those federal rule changes made since October 2007. Adoption of these amendments will keep the commission in compliance with its obligation to adopt all federal changes in the pipeline safety area.

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.

All gas utilities, Wisconsin Utilities Association, Utility Workers' Association, Wisconsin Manufacturers and Commerce, National Federation of Independent Businesses, and Metropolitan Milwaukee Association of Commerce.

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

N/A

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 result in no economic impact since pipeline operators are already required, under federal law, to follow the federal regulations. Any economic impact of those federal regulations has already occurred. This rulemaking just updates the state's enforcement authority.

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

Adoption of these amendments will keep the commission in compliance with its obligation to adopt all federal changes in the pipeline safety area. Being in compliance increases the amount of federal money received by the state.

14. Long Range Implications of Implementing the Rule

The only long–range implication is that the state’s enforcement authority will be updated.

15. Compare With Approaches Being Used by Federal Government

As this is the adoption of the federal regulations, it is the same approach as the federal government.

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

All states, including the neighboring states, adopt the federal pipeline regulations.

17. Contact Name
Sarah Klein

18. Contact Phone Number
(608) 266–3587

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)

N/A

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

N/A

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

N/A

5. Describe the Rule’s Enforcement Provisions

N/A

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

Yes No

Submittal of Proposed Rules to Legislature

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

Technical College System Board
CR 12-032

Modifies Ch. TCS 2.0 relating to District Board Member appointments.

This proposed rule was reviewed and approved by the governor on September 28, 2012, pursuant to Wis. Stat. s. 227.185.

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.

Controlled Substances Board

CR 12-010

(Corrected)

An order of the Controlled Substances Board to create Chapter CSB 3, relating to the requirements and procedures for granting special use authorization.
Effective 11-1-12.

Public Notices

Department of Health Services (Medical Assistance Reimbursement for Health Home Services)

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

Section 1945 of the Social Security Act provides authority for a State, at its option as a State plan amendment, to provide health home services to individuals with chronic conditions. This authority allows states to pay a designated provider, a team of health care professionals operating with such a provider, or a health team as the individual’s health home for purposes of providing the individual with health home services. Wisconsin has elected to use the designated provider approach for this benefit. Health home services will be available to individuals with HIV infection, starting October 1, 2012. A previous public notice describing this and other health home initiatives was published on November 30, 2011.

The health home model of care is a comprehensive approach to care management, integrating primary care, behavioral health, acute and long–term care. The patient’s primary care physician and others involved in the patient’s care collaborate on the development of a single plan of care. The patient is central to this care management approach. The primary goals are to improve the patient’s experience of care, health outcomes and reduce costs.

Wisconsin Medicaid and BadgerCare Plus members with HIV infection and at least (or is at risk of developing) one other co–occurring chronic condition will be eligible for these services. The designated providers for these services are AIDS Service Organizations that are funded by Wisconsin Department of Health Services to provide life care services to individuals with HIV infection. The Department will pilot the benefit in the counties of Milwaukee, Kenosha, Dane and Brown.

This initiative is projected to result in increased annual expenditures of \$727,982 all funds (AF), composed of \$655,184 of federal match (FED) and \$72,798 of state funds, which are from existing Michael Johnson state grant funds. The start date, October 1, 2012, is the first day of federal fiscal year 2013 and is the first day of the second quarter of state fiscal year 2013.

Written Comments and Copies of the Proposed Change

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

Regular Mail
Eileen McRae
Division of Health Care Access and Accountability
PO Box 309
Madison, WI 53701–0309
Phone
Eileen McRae
Division of Health Care Access and Accountability
(608) 266–4498
FAX
(608) 266–1096
Attention: Eileen McRae
E–Mail
Eileen.McRae@dhs.wisconsin.gov

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

Written Comments

Written comments are welcome. Written comments on the proposed change may be sent by FAX, e–mail, or regular mail to the Division of Health Care Access and Accountability. The FAX number is (608) 266–1096. The e–mail address

is Eileen.McRae@dhs.wisconsin.gov. Regular mail can be sent to the above address. All written comments will be reviewed and considered.

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

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