Publication Date: **September 5, 2009**
Effective Dates: **September 5, 2009 through February 1, 2010**

DEPARTMENT OF COMMERCE
EMERGENCY RULE RELATING TO ENERGY CONSERVATION
IN THE WISCONSIN UNIFORM DWELLING CODE

Finding of Emergency Rule

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

1. Recently, chapter Comm 22, relating to energy conservation, was repealed and recreated to bring the Wisconsin requirements in line with the national model energy code. Effective April 1, 2009, chapter Comm 22 incorporates new prescriptive requirements that apply to individual components such as walls, windows, skylights, doors and ceilings. Within that subsection is section Comm 22.31 (2) (a), that allows the use of a "total dwelling thermal envelope" method, and (2) (b), that allows the use of REScheck software, version 4.1.0, or later, to calculate compliance with the Uniform Dwelling Code thermal envelope requirements.

2. The U.S. Department of Energy's Building Energy Codes Program develops and distributes REScheck software. The software program simplifies and clarifies residential code compliance with the Model Energy Code (MEC) and the International Energy Conservation Code (IECC). REScheck software makes it easier for designers, builders, product manufacturers and code officials to comply with energy codes based on the IECC or ASHRAE/IESNA Standard 90.1 requirements. Also, REScheck can be tailored to meet state-specific codes.

3. The department included the REScheck software edition requirement in anticipation that Version 4.1.0 would be compatible with the current code. Working with Pacific Northwest Laboratories, who contracts with the U.S. Department of Energy to develop the REScheck software, the department developed state-specific energy calculations that were not incorporated into REScheck software until Version 4.2.2. The calculations that reflect the current code are identified in the software as "Wisconsin 2009." Versions prior to 4.2.2 do not have the code choice "Wisconsin 2009."

4. Previous versions of REScheck, including Version 4.1.0, do not meet nor support the requirements of Wisconsin's current energy code. In fact, Version 4.1.0 includes other values, such as gross wall trade-offs and appliance credits that are not included in chapter Comm 22 that became effective April 1, 2009.

5. The department recognizes that without promulgating this emergency rule, there would be confusion and miscalculations surrounding the use of Version 4.1.0 and other previous and out-of-date versions of REScheck software to calculate compliance with Uniform Dwelling Code thermal envelope requirements.

Analysis of Rule

1. Statutes Interpreted
Sections 101.02 (1), 101.63 (1), 101.64 (3), 101.72 and 101.74, Stats.

2. Statutory Authority
Sections 101.02 (1), 101.63 (1), 101.64 (3), 101.72 and 101.74, Stats.

3. Related Statute or Rule

4. Explanation of Agency Authority
Under the statute sections listed above, the Department of Commerce has the authority to promulgate rules that establish uniform, statewide standards for the construction of one- and 2-family dwellings. Sections 101.63 (5) and 101.73 (8), Stats., require the department to review these rules on a biennial basis. Currently, the department has fulfilled this responsibility by promulgating the Wisconsin Uniform Dwelling Code, chapters Comm 20 to 25, effective April 1, 2009.

5. Summary of Proposed Rule
The emergency rule amends a provision that requires a specific version of REScheck software be used to calculate compliance with the dwelling thermal envelope requirements in chapter Comm 22. The amendment is necessary because Version 4.1.0, and some subsequent versions, that are specified in s. Comm 22.31 (2) (b) do not meet nor support the requirements of Wisconsin's energy code. State-specific energy conversation provisions were not incorporated into REScheck software until Version 4.2.2.

6. Summary of, and Comparison with, Existing or Proposed Federal Regulations
An Internet-based search of the code of federal regulations and the federal register did not identify any federal requirements relating to REScheck software editions and their compatibility to state-specific codes. There are no existing or proposed federal regulations that address the specific issue or impact the activities to be regulated by this rule.

7. Comparison with Rules in Adjacent States
A search of the U.S. Department of Energy's Building Energy Codes Program's web site found that Illinois, Iowa and Michigan use REScheck to show compliance with their energy codes. Minnesota, which has a state-specific code, is not REScheck compatible. Illinois does not have a state residential code while Iowa has adopted the 2006 IECC and Michigan the 2003 International Residential Code (IRC).

An Internet-based search of the residential regulatory programs in the states of Illinois, Iowa, Michigan and Minnesota revealed that none of these states had rules regarding specific versions of REScheck as addressed by the Wisconsin rule being amended under this emergency rule.

8. Summary of Factual Data and Analytical Methodologies
The emergency rule was developed using information gathered when the department learned that Wisconsin-specific energy calculations were incorporated into REScheck Version 4.2.2. Previous versions, including Version 4.1.0 which is specified in Comm 22.31 (2) (b), do not include these state-specific calculations and formulas, and therefore, do not support chapter Comm 22 that became effective April 1, 2009.

9. Analysis and Supporting Documents used to Determine Effect on Small Business or in Preparation of Economic Impact Report
The department believes the rule will not increase the effect on small businesses from what the current rules impose on them. An economic impact report has not been required pursuant to s. 227.137, Stats.

10. Agency Contact.
Larry Swaziek, Program Manager, Larry.swaziek@wisconsin.gov, (608) 267-7701.

TEXT OF RULE

SECTION 1. Comm 22.31 (2) (b) is amended to read:

Comm 22.31 (2) (b) *Software* ~~*edition*~~ *version.* If ~~the~~ a REScheck software program is used to show compliance with this section, ~~the~~ a version approved by the department shall be ~~4.1.0, or later~~ used.

Note: ~~Any~~ The downloadable version of REScheck ~~with a beginning number of 3 or smaller will not support~~ 4.2.2, Wisconsin 2009 Code, meets the requirements of this code.

FISCAL ESTIMATE
DOA-2048 (R06/99)

[X] ORIGINAL [ ] UPDATED
[ ] CORRECTED [ ] SUPPLEMENTAL

LRB or Bill No./Adm. Rule No.
Comm 22.31 (2) (b)

Amendment No. if Applicable

Subject
Approved Software to Show Compliance with Uniform Dwelling Code Thermal Envelope Requirements

Fiscal Effect

State: [X] No State Fiscal Effect
Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation
[ ] Increase Existing Appropriation
[ ] Decrease Existing Appropriation
[ ] Create New Appropriation
[ ] Increase Existing Revenues
[ ] Decrease Existing Revenues

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

Local: [X] No local government costs

1. [ ] Increase Costs
   [ ] Permissive [ ] Mandatory
2. [ ] Decrease Costs
   [ ] Permissive [ ] Mandatory
3. [ ] Increase Revenues
   [ ] Permissive [ ] Mandatory
4. [ ] Decrease Revenues
   [ ] Permissive [ ] Mandatory
5. Types of Local Governmental Units Affected:
   [ ] Towns [ ] Villages [ ] Cities
   [ ] Counties [ ] Others _____
   [ ] School Districts [ ] WTCS Districts

Fund Sources Affected
[ ] GPR [ ] FED [X] PRO [ ] PRS [ ] SEG [ ] SEG-S

Affected Ch. 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate

The emergency rule repeals code language requiring a specific version of REScheck software be used to show compliance with Uniform Dwelling Code thermal envelope requirements. Amending s. Comm 22.31 (2) (b) will not affect department revenue or expenditures.

Long-Range Fiscal Implications
No long range fiscal implications are anticipated.

Agency/Prepared by: (Name & Phone No.)	Authorized Signature/Telephone No.	Date
Commerce/Larry Swaziek, 267-7701		