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Emergency Rules Now in Effect

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

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

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

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

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

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

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

Agriculture, Trade and Consumer Protection (2)

1. **EmR0913** — Rule adopted revising s. ATCP 21.17, relating to the quarantines of Brown County and Kenosha County for emerald ash borer.

Finding of Emergency

On July 24, 2009, APHIS identified emerald ash borer in Brown County. On August 12, 2009, APHIS identified emerald ash borer in Kenosha County. Emerald ash borer 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 emerald ash borer under ATCP 21.17. It is anticipated that APHIS will declare quarantines for Brown County and Kenosha County but that it will take up to six 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 emerald ash borer infested material out of the county to areas of Wisconsin or other states that are not infested with emerald ash borer.

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

Publication Date: August 22, 2009
Effective: August 22, 2009 through January 18, 2010
Hearing Dates: September 29 and 30, 2009

2. **EmR0922** — Rule adopted revising s. ATCP 21.17, relating to the quarantines of Milwaukee County, Racine County and Waukesha County for emerald ash borer.

Finding of Emergency

On August 28, 2009, APHIS identified emerald ash borer in Milwaukee County, near the borders of Racine County and Waukesha County. Emerald ash borer 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 emerald ash borer under ATCP 21.17. It is anticipated that APHIS will declare quarantines for Milwaukee County, Racine County and Waukesha County but that it will take up to six 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 emerald ash borer infested material out of the county to areas of Wisconsin or other states that are not infested with emerald ash borer.

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

Publication Date: September 14, 2009
Effective: September 14, 2009 through February 10, 2010
Hearing Date: October 15, 2009

Children and Families

Family and Economic Security, Chs. DCF 101–153

- EmR0906** — Rule adopted revising ss. DCF 120.05, 120.07 and 120.08, relating to emergency assistance for needy families.

Finding of Emergency

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

The recent large increase in foreclosures has caused tenants living in rental properties that are in foreclosure to lose their housing. Under the current rule, these tenants are not eligible for Emergency Assistance due to impending homelessness and would only be able to receive assistance if they became homeless. This emergency rule will allow these tenants to receive assistance for impending homelessness and avoid the additional expense and trauma of homelessness.

The current maximum payment amounts for Emergency Assistance due to homelessness and impending homelessness are insufficient to allow a smaller family to obtain or retain a permanent living accommodation. Increasing the payments for smaller households immediately will help them obtain or retain a permanent living accommodation with fewer resources from other sources and may prevent homelessness for these families.

The current rule has no maximum payment amount for Emergency Assistance due to an energy crisis. All other categories of assistance have a maximum payment based on group size. This emergency rule requires that families first exhaust resources available through the Wisconsin Home Energy Program and sets a maximum payment amount for assistance available for Emergency Assistance due to energy crisis to make better use of the program’s limited funds.

Publication Date: April 9, 2009
Effective: April 22, 2009 through September 18, 2009
Extension Through: December 31, 2009
Hearing Date: June 11, 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.

Publication Date: September 5, 2009
Effective: September 5, 2009 through February 1, 2010
Hearing Date: October 21, 2009

Commerce

Uniform Dwelling, Chs. Comm 20–25

EmR0917 — Rule adopted revising **Ch. Comm 22**, relating to energy conservation.

Finding of Emergency

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.

Commerce (2)

Financial Resources for Businesses and Communities, Chs. Comm 104—

1. **EmR0910** — Rule adopted to create **Chapter Comm 100**, relating to tax benefits for job creation, capital investment, employee training, and corporate headquarters.

Exemption From Finding of Emergency

The Legislature, by section 9110 (4) in 2009 Wisconsin Act 2, exempts the Department from providing evidence that this emergency rule is necessary for the preservation of the public peace, health, safety or welfare; and exempts the Department from providing a finding of emergency for the adoption of this rule.

Publication Date: June 30, 2009
Effective: June 30, 2009 through July 1, 2010 or the date permanent rules take effect, whichever is sooner
Hearing Date: September 15, 2009

2. **EmR0931** — Rule adopted creating Chapter Comm 136, relating to midwestern disaster area bonds.

Finding of Emergency

The Department of Commerce finds that an emergency exists and that an emergency rule is necessary for the immediate preservation of public welfare. The facts constituting the emergency are as follows.

Between June 14 and July 9, 2008, thirty Wisconsin counties were declared major disaster areas by the President as a result of severe storms, tornados or flooding in 2008 that caused extensive damage to communities, residents, businesses, the economy and critical infrastructure. Subsequently, the federal Heartland Disaster Tax Relief Act of 2008 was enacted, authorizing the Governor of Wisconsin to designate up to \$3,830,112,000 in Qualified Midwestern Disaster Area Bonds, which must be issued before January 1, 2013, for the purpose of encouraging economic development and recovery in the 30 counties.

To implement the provisions this federal Act, Governor Jim Doyle issued Executive Order #288, directing the Department to promulgate rules for allocating Wisconsin’s Qualified Midwestern Disaster Area Bonding Authority, and including the necessary provisions to ensure that bonds are allocated to eligible projects on the basis of providing assistance to areas in the order in which the assistance is most needed. This rule is the result of that directive.

Publication Date: November 9, 2009
Effective: November 9, 2009 through April 7, 2010

Corrections

EmR0920 — Rule adopted revising s. DOC 309.466, relating to inmate release accounts.

Finding of Emergency

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

Under 2009 WI Act 28, an increased number of inmates are being considered for release. In addition, the department has developed a number of release initiatives to address an inmate's successful transition from incarceration to community life. As part of those initiatives, there are costs associated with that transition, including acquiring housing, employment, and transportation. For example, an inmate must have a social security card, a driver's license or state identification card, the first months rent and security deposit for an apartment, and civilian clothing.

Under the current rule, an inmate may only use release account funds for "adequate clothing for release" and for "out-of-state release transportation." In addition, the rule limits the maximum amount of money which can be saved in the release account to \$500.00. The emergency rule immediately permits the use of release account money for a wide variety of purchases, including fees associated with obtaining a driver's license or state identification card, housing, and a mode of transportation (bus tickets, vehicle, bicycle, etc.). In the past the Department has borne some of these costs, despite an inmate having the money in his or her release account. Given the initiatives of reentry and release, an inmate should be responsible for these expenditures.

In addition, the emergency rule raises the limit on release accounts from \$500.00 to \$5,000.00. Since the current limit was established, the cost of living in the community has risen. The department seeks this change to reflect the significant costs of housing, transportation, and food and other necessities.

If the rule is not created promptly and immediately, the department will not be able to use inmate release account funds to pay for items which inmates need in preparation for their release to the community. The purpose of the emergency rule is to permit inmates to use release account funds for a greater range of expenditures related to their release from incarceration and transition back into the community. The permanent rule process has been started. However, the permanent rule process will take approximately nine months to complete. Emergency rules are necessary to respond promptly to the need to use inmate funds, not state funds, while permanent rules are being developed.

Publication Date: September 10, 2009
Effective: September 10, 2009 through February 6, 2010
Hearing Date: October 14, 2009

Financial Institutions — Banking

EmR0907 — Rule adopted to create **Chapter DFI–Bkg 47** and to revise **Chapter DFI–Bkg 41**, relating to the transition from a registration system to a license system.

Exemption From Finding of Emergency

The legislature by section 9117 of 2009 Wisconsin Act 2 provides an exemption from a finding of emergency for the adoption of the rule.

Publication Date: May 4, 2009
Effective: *Section 1:*
5–4–09 through 7–1–11
Section 2:
9–1–09 through 7–1–11
Section 3:
1–10–10 through 7–1–11
Hearing Date: June 10, 2009

Health Services

Health, Chs. DHS 110—

EmR0928 — Rule adopted to revise **Chapter DHS 163**, relating to requirements for conducting lead–safe renovation activities in pre–1978 housing and child–occupied facilities, and affecting small businesses.

Finding of Emergency

The Department of Health Services (department) finds that an emergency exists and that the adoption of an emergency rule is necessary for the continuity of regulations relating to lead hazard exposure in Wisconsin. The facts constituting the emergency are as follows:

Under ch. DHS 163, the department, as Wisconsin's public health agency, regulates lead hazard reduction and lead management activities in pre–1978 housing (target housing) and child–occupied facilities. The rules include standards for certification of individuals and companies conducting these activities, accreditation of lead training courses and approval of instructors, and work practices. In addition to the department's authority under chs. 250 and 254, Stats., to regulate lead hazards, the department has authorization from the Environmental Protection Agency (EPA) to regulate lead hazard reduction and management activities in lieu of the EPA administering federal regulations in Wisconsin.

On April 22, 2008, the EPA issued rules under 40 CFR 745 to establish requirements for training renovators, other renovation workers, and dust sampling technicians; for certifying renovators, dust sampling technicians, and renovation firms; for accrediting providers of renovation and dust sampling technician training; and for renovation work practices (and associated recordkeeping requirements) that disturb paint in target housing and child–occupied facilities. Under the EPA regulations, beginning on April 22, 2010, persons who perform renovation activities for compensation, including repair and painting activities, that disturb paint in target housing and child–occupied facilities must be certified, properly trained, and follow specific work practices to prevent lead contamination. The EPA will begin accepting applications for certification from individuals and companies on October 22, 2009.

States that promulgate rules that conform to the EPA standards on or before October 22, 2009, may accept applications for certification in lieu of the EPA. Otherwise, on October 22, 2009, the EPA will begin accepting these applications and the associated fees from Wisconsin companies and individuals. Such an occurrence may cause confusion among the regulated community and property owners, and would impede the department’s ability to continue to administer a viable lead hazard reduction program if covered persons begin complying with the EPA certification requirements before state requirements are implemented. Promulgating rules before October 22, 2009, will help to avoid any unnecessary complexity for covered persons that may be caused by overlapping state and federal regulations that address lead–based paint hazards in target housing and child–occupied facilities.

Publication Date: October 16, 2009
Effective: October 19, 2009 through March 17, 2010
Hearing Date: November 18, 2009

Insurance (5)

- EmR0918** — Rule adopted to revise **Chapter Ins 6**, relating to exempting commercial umbrella and commercial liability policies covering only hired and non–owned autos from having to offer or include uninsured and underinsured motorist coverage.

Finding of Emergency

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

Act 28 (2009) modified the requirements for auto insurance in Wisconsin. Most of these new provisions go into effect on November 1, 2009. These modifications did not specifically address the issue of insurers who write commercial liability insurance and commercial umbrella policies which insure only hired and non–owned automobiles (“HNO”) under the policy but do not insure any automobiles owned by the insured.

If these new Act 28 requirements apply to commercial liability insurance and commercial umbrella policies which insure only hired and non–owned automobiles (“HNO”) under the policy, this creates a significant problem. Some of these insurers do not have authority to write auto insurance which is needed to write uninsured (“UM”) and underinsured coverage (“UIM”). Other insurers offering the commercial umbrella and commercial liability HNO have not ever written UM/UIM coverages because the current rules exempt them. Insurers have also stated that obtaining reinsurance for this is a problem.

This issue was addressed in 1997 when an emergency rule was promulgated and modifications to Ins 6.77 were enacted in response to various court cases. In that process, commercial insurers who wrote liability policies that covered only HNO were exempted from the requirement to offer or include UM/UIM coverage. This emergency rule would continue this exemption so that the market for commercial liability insurance and commercial umbrella policies is not disrupted.

Publication Date: September 9, 2009
Effective: November 1, 2009 through March 30, 2010
Hearing Date: December 8, 2009

- EmR0923** — Rule adopted to create **section Ins 3.36**, Wis. Adm. Code, relating to treatment of autism spectrum disorders and affecting small business.

Exemption From Finding of Emergency

The Commissioner of Insurance pursuant to s. 632.895 (12m) (f) 2., Stats., need not find that an emergency exists nor provide evidence that promulgating a rule is necessary for the preservation of the public peace, health, safety or welfare.

Specifically, s. 632.895 (12m) (f), Wis. Stats., requires the commissioner to define “intensive–level services,” “nonintensive–level services,” “paraprofessional,” and “qualified” for purposes of providing services under this subsection. The statute further authorizes that the commissioner may promulgate rules governing the interpretation or administration of this subsection.

Publication Date: September 26, 2009
Effective: September 26, 2009 through February 22, 2010
Hearing Date: December 2, 2009

- EmR0925** — Rule adopted to create **section Ins 3.75**, relating to continuation of group health insurance policies.

Exemption From Finding of Emergency

Under 2009 Wisconsin Act 11, section 9126, a Finding of Emergency is not required for this emergency rule. The relevant portion of 2009 Act 11 reads as follows:

2009 Wisconsin Act 11, SECTION 9126. Nonstatutory provisions; Insurance.

(4) CONTINUATION COVERAGE RULES. (a) Notwithstanding section 632.897 of the statutes and subsections (1), (2), and (3), the commissioner of insurance may promulgate rules establishing standards requiring insurers to provide continuation of coverage for any individual covered at any time under a group policy who is a state eligible individual to whom subsection (2) or (3) applies or an assistance eligible individual, as defined under section 3001 (a) (3) of the federal act, including rules governing election or extension of election periods, notice, rates, premiums, premium payment, application of preexisting condition exclusions, and election of alternative coverage.

(b) The commissioner may promulgate the rules under paragraph (a) as emergency rules under section 227.24 of the statutes. Notwithstanding section 227.24 (1) (c) of the statutes, emergency rules promulgated under this paragraph may remain in effect for one year and may be extended under section 227.24 (2) of the statutes. Notwithstanding section 227.24 (1) (a) and (3) of the statutes, **the commissioner is not required to provide evidence that promulgating a rule under this paragraph 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 paragraph.** [Emphasis Added]

Publication Date: October 1, 2009
Effective: October 2, 2009 through October 1, 2010
Hearing Date: December 8, 2009

4. **EmR0927** — Rule adopted to create **Chapter Ins 57**, relating to care management organizations and affecting small business.

Finding of Emergency

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

Beginning January 1, 2010, care management organizations are required to obtain a permit from the commissioner to provide services under the Family Care program. In order to ensure no gap in services to enrollees, organizations and the office need to complete and accept applications for permits prior to January 1, 2010. Promulgation of this rule will permit the timely filing and review of permittees.

Publication Date: October 9, 2009
Effective: October 10, 2009 through March 10, 2010
Hearing Date: December 3, 2009

5. **EmR0930** — Rule adopted to create **section Ins 3.34**, relating to insurance coverage of dependents to age 27 and affecting small business.

Finding of Emergency

The Commissioner of Insurance finds that an emergency exists and that an emergency rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. Facts constituting the emergency are as follows: the Commissioner is aware that insurers, employers and consumers are interpreting the state mandate inconsistently so without this rule consumers will not be treated similarly when the law becomes effective on January 1, 2010; the Commissioner has received numerous inquiries from insurers, consumers and employers seeking clarity of terms and guidance on interpretation and implementation of the law as many employers are entering open enrollment for the 2010 plan year.

These changes will be effective the day following publication in the official state newspaper and a permanent rule will start the permanent rule process to achieve uniformity in interpretation therefore protecting the public, informing employers, and guiding insurers in the state.

Publication Date: October 30, 2009
Effective: October 31, 2009 through March 29, 2010
Hearing Date: December 9, 2009

Natural Resources

Fish, Game, etc., Chs. NR 1—

- EmR0914** — Rule adopted to revise **Chapter NR 10**, relating to hunting and the 2009 migratory game bird seasons and waterfowl hunting zones.

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 mid–August of each year. This order is designed to bring the state hunting regulations to 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.

Publication Date: August 22, 2009
Effective: September 1, 2009 through January 28, 2010
Hearing Date: November 4, 2009

Natural Resources

Environmental Protection — Water Regulation, Chs. NR 300—

- EmR0915** — A rule adopted revising **Chapters NR 335 and 336**, relating to grants for dam maintenance, repair, modification, or abandonment and removal.

Finding of Emergency

The substantial increase in bonding for the dam grant programs is a strong message from the legislature that concern for public welfare from unsafe dams is growing, as well as the desire to help dam owners, including the owners of the many dams damaged during the flooding in 2007 and 2008. In order to protect the public and provide this financial assistance, these additional funds should be put to work as soon as possible. The timeline for permanent rule promulgation will impede the Department's ability to accept applications and commit funding to dam safety projects until at least June 2010, which would delay most projects until late 2010 or 2011. The emergency rules will allow immediate implementation of modifications that will allow a grant application cycle to be conducted yet this fall and allow most projects to be constructed during the 2010 construction season or before.

Publication Date: August 28, 2009
Effective: August 28, 2009 through January 24, 2010

Public Defender Board

- EmR0926** — Rule adopted to create **Chapter PD 8**, Discovery Payments, relating to the maximum fees that the state public defender may pay for copies of discovery materials in criminal proceedings, proceedings under Chapter 980, Wis. Stats., and other proceedings in which the state public defender provides legal representation.

Finding of Emergency

These rules are promulgated under s. 227.24 (1) (a), Stats., because the magnitude of the shortfall in the state public defender's appropriation for transcripts, discovery, and interpreters in both years of the current biennium constitutes an emergency that requires implementation of a rule earlier than a permanent rule could take effect if the agency were to comply with the applicable notice, hearing, legislative-review, and publication requirements.

The state public defender was initially provided a base budget of \$60,000 in 1995 for discovery payments, which at that time consisted mostly of photocopies and some photographs. In the 1999–2001 budget act, this appropriation was increased to \$150,000, based on a presumptive rate for photocopies of \$0.20 per page. In the 2001–2003 biennial budget act, this appropriation was subjected to a five percent funding reduction, leaving a base budget for discovery payments of \$142,500.

The public defender received discovery bills totaling \$717,000 for the fiscal year that ended June 30, 2009. Although discovery costs are caseload driven, this represents a nearly five-fold increase since 2001 and is due primarily to two factors. First, in the past many counties and municipalities did not bill the state public defender for copies of discovery materials. Because local budgets have come under increasing pressure, most now do so. Second, 2005 Wisconsin Act 60 resulted in more widespread use of audio and video recordings of interrogations by law enforcement, copies of which must be provided to the defense.

The public defender board's requests for cost-to-continue budget increases for discovery payments in 2007–2009 and in 2009–2011 were not funded. Instead, the FY 2009–2011 budget act reduced this appropriation by 1%, leaving a base budget of \$141,100, and directed the board to promulgate rules to address the funding shortfall.

Publication Date: October 3, 2009
Effective: October 3, 2009 through March 1, 2010
Hearing Date: November 16, 2009

Public Instruction (2)

1. **EmR0916** — A rule adopted revising **ss. PI 35.03 and 35.05**, relating to establishing a fee under the Milwaukee Parental Choice Program.

Exemption From Finding of Emergency

Pursuant to Section 9139 (3) of the nonstatutory provisions of 2009 Wisconsin Act 28, the Department of Public Instruction is not required to provide evidence that this rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency.

Publication Date: September 1, 2009
Effective: September 1, 2009 through January 28, 2010

(Except Section 1)

Effective: October 1, 2009 through February 27, 2010
Hearing Date: October 26, 2009

2. **EmR0921** — Rule adopted to create **Chapter PI 15**, relating to revenue limit exemptions for energy efficiencies.

Exemption From Finding of Emergency

Pursuant to Section 9139 (2x) of the nonstatutory provisions of 2009 Wisconsin Act 28, the Department of Public Instruction is not required to provide evidence that this rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency.

Publication Date: September 4, 2009
Effective: September 4, 2009 through January 31, 2010
Hearing Date: November 9, 2009

Public Service Commission

EmR0919 — Rule adopted to create **Chapter PSC 172**, relating to the police and fire protection fee created under 2009 Wisconsin Act 28.

Finding of Emergency

The Commission finds that an emergency exists and that an emergency rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. The police and fire protection fee, which must go into effect September 1, 2009, (2009 Wisconsin Act 28 section 9441) will be used to replace shared revenue payments for such services. To ensure the public peace, health, safety, and welfare of the citizens of Wisconsin, it is vital for funding of police and fire protection services to continue smoothly, quickly, and unimpeded. Thus, it is necessary for the rule administering the fee to be implemented as soon as possible.

Publication Date: September 11, 2009
Effective: September 11, 2009 through February 7, 2010
Hearing Date: December 2, 2009

Regulation and Licensing (2)

1. **EmR0827** — Rule adopted creating **s. RL 91.01 (3) (k)**, relating to training and proficiency in the use of automated external defibrillators for certification as a massage therapist or bodyworker.

Exemption From Finding of Emergency

Section 41 (2) (b) of the nonstatutory provisions of 2007 Wisconsin Act 104 provides that notwithstanding section 227.24 (1) (a) and (3) of the statutes, the department of regulation and licensing is not required to provide evidence that promulgating a rule as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated to implement 2007 Wisconsin Act 104. Notwithstanding s. 227.24 (1) (c) and (2) of the statutes, these emergency rules will remain in effect until the date on which the final rules take effect.

Publication Date: September 10, 2008
Effective: September 10, 2008 through the date on which the final rules take effect
Hearing Dates: November 26, 2008
 April 13, 2009

2. **EmR0828** — Rules adopted to **amend s. RL 181.01 (2) (c); and to create ss. RL 180.02 (1m), (3m) and (11), 181.01 (1) (d), (2) (c) 1. and 2.**, relating to training and proficiency in the use of automated external defibrillators for licensure as a licensed midwife.

Exemption From Finding of Emergency

Section 41 (2) (b) of the nonstatutory provisions of 2007 Wisconsin Act 104 provides that notwithstanding section 227.24 (1) (a) and (3) of the statutes, the department of

regulation and licensing is not required to provide evidence that promulgating a rule as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated to implement 2007 Wisconsin Act 104. Notwithstanding s. 227.24 (1) (c) and (2) of the statutes, these emergency rules will remain in effect until the date on which the final rules take effect.

Publication Date: September 10, 2008
Effective: September 10, 2008 through the date on which the final rules take effect
Hearing Date: November 26, 2008

Revenue (3)

1. **EmR0912** — Rule adopted revising **Chapter Tax 2**, relating to combined reporting for corporation franchise and income tax purposes.

Finding of Emergency

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

The function of the Wisconsin Department of Revenue is to administer the Wisconsin tax laws. These laws, and tax policy for raising revenue, are determined by the State Legislature. The State Legislature recently enacted numerous items of tax legislation, affecting individuals and businesses alike. Some of these apply retroactively to January 1, 2009. Emergency rules are needed, not only to address the risk of revenue loss, but to add more clarity and certainty about the scope and application of the newly enacted statutes.

Publication Date: August 8, 2009
Effective: August 8, 2009 through January 4, 2010
Hearing Dates: September 25, 2009 and October 16, 2009

2. **EmR0924** — Rule adopted revising **Chapter Tax 11**, relating to sale and use tax.

Finding of Emergency

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

The changes made by the emergency rule must be effective October 1, 2009, to be in conformity with the Streamlined Sales and Use Tax Agreement. In order to meet this deadline, it is necessary to promulgate this rule as an emergency rule.

Publication Date: September 30, 2009
Effective: October 1, 2009 through February 27, 2010
Hearing Dates: December 1 and 15, 2009

3. **EmR0929** — Rule adopted to create sections **Tax 2.85 and 11.90**, relating to failure to produce records.

Finding of Emergency

The Department of Revenue finds that an emergency exists and that an emergency rule is necessary for the immediate

preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency is:

The emergency rule is to reflect changes in Wisconsin's tax laws due to the adoption of penalties for failure to produce records.

It is necessary to promulgate this rule order to provide guidance so that the penalties can be administered in a fair and consistent manner.

Publication Date: October 19, 2009
Effective: October 19, 2009 through March 17, 2010
Hearing Dates: December 10 and 21, 2009

Transportation

EmR0909 — Rule adopted amending section **Trans 315.03 (1) (a) and (c)**, relating to safety belt medical use exemption.

Finding of Emergency

The Department of Transportation finds that an emergency exists and that an emergency rule is necessary for the immediate preservation of public health and safety. Current federal law at 23 USC 406 provides safety belt performance grants to a state that has in effect and is enforcing a conforming primary safety belt use law for all passenger motor vehicles. A grant of federal funds estimated at roughly \$15,000,000 are available if this state is eligible on or before September 30, 2009; a secondary grant based on "share of unallocated funds," estimated at not more than \$1,000,000, may be available if this state is eligible on or before June 30, 2009. The Wisconsin Legislature is currently deliberating a primary safety belt use law as part of the executive biennial budget bill, 2009 Assembly Bill 75, with the aim of qualifying for safety belt performance grants. Were the law timely enacted, this state could remain ineligible for safety belt performance grants because Department rules allow persons other than physicians to grant medical exemptions from safety belt use requirements. Immediate action is necessary to avoid forfeiting approximately \$16,000,000 in federal funds for highway safety activities. Increased use of safety belts has been shown to reduce the severity of injuries sustained in motor vehicle collisions, and limiting the medical use exemption to physicians would increase use of safety belts.

Publication Date: June 25, 2009
Effective: June 25, 2009 through November 21, 2009
Extension Through: December 31, 2009
Hearing Date: September 8, 2009

Veterans Affairs

EmR0911 — Rule adopted to revise section VA 2.01, relating to the assistance to needy veterans grant program.

Finding of Emergency

The Wisconsin Department of Veterans Affairs finds that an emergency exists and that the rules are necessary for the immediate preservation of the public peace, health, safety, or welfare. A statement of facts constituting the emergency is: The economic recession in effect for the last fiscal year has adversely affected the veteran population. Many veterans have lost their employment or had their scope of employment reduced. In addition to losing employment, many veterans

have seen their health care reduced or eliminated. In order to serve the largest population of veterans and ensure minimal health care for that population, the department is requesting emergency rules to define “vision care and to limit the eligibility, by available funding, for “dental care”, “hearing care”, and “vision care”. These eligibility limitations, which address the cost, type and frequency of care available under the program, will allow more veterans in need to access the

limited resources of this program.

Publication Date: July 1, 2009
Effective: July 1, 2009 through
November 27, 2009
Extension Through: January 26, 2010
Hearing Date: August 14, 2009

Scope Statements

Agriculture, Trade and Consumer Protection

Subject

Creates Chapter ATCP 16, relating to the regulation of dog sellers.

Objective of the Rule

This rule will implement the licensure and regulation of dog sellers, as prescribed under s. 173.41, Stats. This includes licensing all persons selling 25 or more dogs in a year, coming from more than 3 litters, and establishing facility and care standards for the licensed entities.

Policy Analysis

The Legislature recently enacted s. 173.41, Stats., which requires DATCP to license persons selling 25 or more dogs per year. DATCP must establish facility standards and standards of care for dogs kept at the licensed facilities, and must inspect facilities for compliance.

This rule will implement the new requirements for dog sellers. This rule may address the following issues, among others:

- Dog seller licensing standards and process.
- Facilities standards for licensed facilities. These may include, among other things, standards for all of the following:
 - Indoor and outdoor enclosures.
 - Enclosure size.
 - Enclosure materials.
 - Cleanliness of enclosures.
 - Lighting and ventilation.
- Requirements related to the sale of dogs, including certificates of veterinary inspection.
- Recordkeeping requirements.
- Basic standards of care, including access to exercise, food and water.
- Other issues as appropriate.

Policy Alternatives

Section 173.41, Stats., requires DATCP to implement a dog sellers licensing program, and to adopt rules for that program. DATCP has no alternative but to adopt rules. The rule contents must be consistent with the policy directives contained in the legislation. DATCP rules will spell out the details of the program, consistent with those statutory directives.

There are no statutory alternatives at this time. DATCP intends to implement the dog seller licensing program mandated by the Legislature.

Statutory Authority

Section 173.41, Stats.

Comparison with Federal Regulations

Currently, the United States Department of Agriculture (USDA) licenses and inspects approximately 72 kennels in

Wisconsin that are selling puppies wholesale. USDA establishes minimum facility standards for those licensed facilities.

Entities Affected by the Rule

The following are entities which must obtain a dog seller license after the effective date of the statute.

- Any entity who sells 25 or more dogs in a year, coming from 3 or more litters (including a nonresident who brings dogs into this state for sale).
- Any entity which operates a dog breeding facility (a place at which dogs are bred and raised) from which 25 or more dogs, coming from 3 or more litters are sold in a year.
- Any entity which operates an auction at which 50 or more dogs are sold or offered for sale in a year.
- Any entity which operates an animal shelter that is used to shelter at least 25 dogs in a year.
- Any entity that operates an animal control facility under a contract with a city, village, town, or county.

Estimate of Time Needed to Develop the Rule

DATCP estimates that it will use approximately 1.0 FTE staff to develop this rule. This includes time required for investigation and analysis, rule drafting, preparing related documents, coordinating advisory committee meetings, holding public hearings and communicating with affected persons and groups. DATCP will use existing staff to develop this rule.

DATCP may not begin drafting this rule until the Board of Agriculture, Trade and Consumer Protection (Board) approves this scope statement. The Board may not approve this scope statement sooner than 10 days after this scope statement is published in the Wisconsin Administrative Register. If the Board takes no action on the scope statement within 30 days after the scope statement is presented to the Board, the scope statement is considered approved. Before DATCP holds public hearings on this rule, the Board must approve the hearing draft. The Board must also approve the final draft rule before the department adopts the rule.

Children and Families

Family and Economic Security, Chs. DCF 101–153

Subject

Revises Chapter DCF 101, relating to sanctions in the Wisconsin Works program.

Policy Analysis

Section 49.1515 (1), Stats., as created by 2009 Wisconsin Act 28, provides that the department shall by rule specify guidelines for determining when a Wisconsin Works (W–2) participant, or individual in the participant’s group, who engages in behavior in s. 49.151 (a) to (e), Stats., W–2 sanctions, is demonstrating a refusal to participate. Before determining under s. 49.151, Stats., that a participant is ineligible to participate in the W–2 program, the W–2 agency shall determine all of the following:

- Whether the failure of the participant or individual to participate is because the participant or individual refuses to participate or is unable to participate.
- Ensure that the services offered to the participant or individual are appropriate for him or her.
- Determine whether good cause exists for the failure to participate.

If a W–2 agency determines that a participant or individual has refused to participate without good cause, the W–2 agency shall allow the participant or individual a conciliation period during which he or she must participate in all assigned activities unless good cause exists that prevents compliance during the conciliation period. The department shall by rule establish the length of time for a conciliation period.

Section 49.153, Stats., as created by 2005 Wisconsin Act 25 and amended by 2009 Wisconsin Act 28, provides that before taking any action against a W–2 participant that would result in a 20 percent or more reduction in the participant’s benefits or in termination of the participant’s W–2 eligibility, a W–2 agency shall do all of the following:

- Explain to the participant orally in person or by phone, or make “reasonable attempts” to explain to the participant orally in person or by phone, the proposed action and the reasons for the proposed action.
- After providing the oral explanation, the W–2 agency shall provide to the participant written notice of the proposed action and of the reasons for the proposed action.
- After providing the explanation or the attempts to provide an oral explanation and the written notice, if the participant has not already been afforded a conciliation period under s. 49.1515 (3), Stats., allow the participant a “reasonable time” to rectify the deficiency, failure, or other behavior to avoid the proposed action.

Section 49.153 (2), Stats., provides that the department shall promulgate rules that establish the procedures for the notice and explanation and that define “reasonable attempts” and “reasonable time.”

The proposed rules will also make minor changes and technical corrections affecting Wisconsin Works.

Statutory Authority

Sections 49.1515, 49.153, and 227.11 (2), Stats.

Comparison with Federal Regulations

If an individual refuses to engage in work, the state must reduce or terminate the amount of payable to the family, subject to any good cause exceptions the state may establish. The state must, at a minimum, reduce the amount of assistance otherwise payable to the family pro rata with respect to any period during the month in which the individual refuses to work.

Entities Affected by the Rule

W–2 agencies and participants.

Estimate of Time Needed to Develop the Rule

175 hours.

Contact Information

Margaret McMahon
Bureau of Working Families
Email: margaret.mcmahon@wisconsin.gov
Phone: (608) 266–5899

Children and Families

Early Care and Education, Chs. DCF 201–252

Subject

Revises Chapters DCF 202, 250, 251, and 252, relating to transportation policies for child care programs.

Policy Analysis

The proposed rules will amend the following:

- Ch. DCF 202, 250, 251, and 252. Section 48.658 (2), Stats., as created by 2009 Wisconsin Act 19, requires any vehicle owned or leased by the child care provider or a contractor of the child care provider and used to transport children enrolled in the child care program to have a child safety alarm installed and in good working order each time the child care vehicle is used for transporting children. Section 48.658 (4), Stats., requires the department to promulgate rules that require the department or county department to inspect the child safety alarm of each child care vehicle whenever it inspects a child care provider. All rules affecting certified and licensed child care providers will be amended to reflect this requirement.
- Ch. DCF 202, 250, 251, and 252. All rules affecting certified and licensed child care providers will be amended to prohibit the driver of a child care vehicle from using a cellular phone or other wireless communication device while transporting children, except during an emergency.
- Ch. DCF 202 and 250. Rules affecting certified family child care operators, certified school age programs, and licensed family child care centers will be amended to require vehicle liability insurance. Effective June 1, 2010, vehicle liability insurance is required for all drivers by s. 344.62, Stats., as created by 2009 Wisconsin Act 28. DCF 251 and DCF 252 already require vehicle liability insurance.
- Ch. DCF 250, 251, and 252. Rules affecting all licensed child care providers will be amended to provide the following:
 - All persons driving a child care vehicle must attend a pre–driving and annual orientation.
 - A driver of a child care vehicle must complete a course in transportation safety.
 - A vehicle designed for 10 or more passengers may not be used, unless it is a school bus or other approved alternative vehicle. The rule will have a delayed effective date for vehicles currently owned by child care providers. The primary effect of this proposal will be to phase out the use of 12– or 15–passenger vans as child care vehicles. Under federal law, schools may not purchase these vehicles new if they will be used to transport children to or from school or school–related events. A National Highway Traffic Safety Administration interpretation prohibits a child care center from purchasing a new 12– or 15–passenger van to transport children to or from school. Also, state law prohibits schools or school districts from using these vans to transport children to or from school or school–related events. The National Highway Traffic Safety Administration has issued several studies and consumer advisories recommending that these vehicles not be used due to safety concerns, particularly for pre–school and school–aged children.

- Ch. DCF 202. Rules affecting certified child care operators and certified school age programs will be amended to provide the following:
 - A child’s emergency contact information must be carried in a child care vehicle when children are being transported.
 - Smoking is prohibited in a child care vehicle while children are being transported.
 - Child care operators must have written transportation policies, including procedures to ensure that each child exit the vehicle after being transported and a requirement that the driver wait until the child is in custody of an adult designated by the parent.
 - A driver must be at least 18 years of age and have at least one year of experience as a licensed driver.
 - A child care vehicle must be clean, uncluttered, and enclosed. No children may be transported in a truck, except in the cab.
 - Passenger doors shall be locked at all times when a vehicle is moving.

All of these proposed changes to DCF 202, affecting certified child care operators, are already in DCF 250, 251, and 252.

The proposed rules will also clarify various provisions and may incorporate changes regarding caregiver background checks in 2009 Wisconsin Act 76.

Statutory Authority

Sections 48.67 and 49.155 (1d), Stats., and s. 48.658 (4), Stats., as created by 2009 Wisconsin Act 19.

Comparison with Federal Regulations

None.

Entities Affected by the Rule

Chapter DCF 202: Certified family child care operators serving up to 6 children.

Chapter DCF 202: Certified school age programs.

Chapter DCF 250: Family child care centers licensed to care for between 4 and 8 children.

Chapter DCF 251: Group child care centers licensed to care for 9 or more children.

Chapter DCF 252: Day camps for children licensed to care for 4 or more children in a seasonal program oriented to the out–of–doors.

Estimate of Time Needed to Develop the Rule

120 hours.

Contact Information

For licensed child care:

Anne Carmody
Bureau of Early Care Regulation
anne.carmody@wisconsin.gov
(608) 267–9761

For certified child care:

Pirkko Moilanen
Bureau of Early Childhood Education
pirkko.moilanen@wisconsin.gov
608–261–4595

Commerce

Financial Resources for Businesses and Communities, Chs. Comm 104—

Subject

Creates Chapter Comm 121, relating to small business innovation and research assistance.

Objective of the Rule

This rulemaking is intended to create chapter Comm 121 for administering the small business innovation and research grants established in subchapter III of chapter 560 of the Statutes, as enacted in 2009 Wisconsin Act 28.

Policy Analysis

The Department has various rules for administering several economic development programs, including criteria in chapter Comm 129 for grants or loans to fund professional services related to completing an application to be submitted to the federal government for obtaining early stage research and development funding. However, those rules do not include the expected rule text for grants that will specifically assist small businesses in the phase of development which precedes the eligibility of the businesses in the federal Small Business Innovation Research program, or small businesses that are participating in Phase III of this program.

Section 560.45 (3), Stats., requires the Department to promulgate these rules. The alternative of not promulgating these rules would disregard that directive.

Statutory Authority

Sections 227.11 (2) (a) and 560.45 (3), Stats.

Comparison with Federal Regulations

The U.S. Small Business Administration (SBA) Office of Technology administers the federal Small Business Innovation Research (SBIR) Program, which was established under the Small Business Innovation Development Act of 1982. Federal agencies with extramural research and development budgets over \$100 million are required to administer SBIR programs using an annual set–aside of 2.5% for small companies to conduct innovative research or research and development that has potential for commercialization and public benefit. Through this competitive program, SBA ensures that the nation’s small, high–tech, innovative businesses are a significant part of the federal government’s research and development efforts. Eleven federal departments participate in the SBIR program, and as of May 2007, over \$12 billion had been awarded to various small businesses. The Department is not aware of any federal grants that provide funding for assistance with submitting applications or otherwise participating in the SBIR program.

Entities Affected by the Rule

These rules may affect any small business that elects to pursue financial assistance from the Department for submitting applications or otherwise participating in the federal Small Business Innovation Research program.

Estimate of Time Needed to Develop the Rule

The staff time needed to develop the rules is expected to range from 80 to 160 hours, depending upon the associated complexity. This includes research, rule drafting, and processing the rules through public hearings, legislative review, and adoption. There are no other resources necessary to promulgate the rules.

Commerce

Financial Resources for Businesses and Communities, Chs. Comm 104—

Subject

Creates Chapter Comm 124, relating to the Forward Innovation fund.

Objective of the Rule

This rulemaking is intended to create chapter Comm 124 for administering the Forward Innovation Fund established in subchapter II of chapter 560 of the Statutes, as enacted in 2009 Wisconsin Act 28.

Policy Analysis

The Department has various rules for administering several economic development programs, but those rules do not specifically include the expected rule text for providing grants and loans that will fund innovative proposals to strengthen inner cities, rural municipalities, entrepreneurship and industry clusters.

Under 2009 Act 28, the Department's current Minority Business Development Fund and Community–Based Economic Development Fund are merged into the Forward Innovation Fund – and the corresponding expected rule text should foster start–up, expansion or retention of minority businesses and businesses in economically distressed areas.

Section 560.301 of the Statutes requires the Department to promulgate these rules. The alternative of not promulgating these rules would disregard that directive.

Statutory Authority

Sections 227.11 (2) (a) and 560.301, Stats.

Comparison with Federal Regulations

The U.S. Commerce Department is creating an Office of Innovation and Entrepreneurship and launching a National Advisory Council on Innovation and Entrepreneurship, to promote high–growth entrepreneurship in America. The mission is to maximize the economic potential of new ideas by removing barriers to entrepreneurship, and to foster the development of high–growth and innovation–based businesses. The Office will drive policies that help entrepreneurs translate new ideas, products and services into economic growth. The Office will focus on the following areas:

- Encouraging entrepreneurs through education, training, and mentoring.
- Improving access to capital.
- Accelerating technology commercialization of federal research and development.
- Strengthening interagency collaboration and coordination.
- Providing data, research and technical resources for entrepreneurs.
- Exploring policy incentives to support entrepreneurs and investors.

The Minority Business Development Agency in the U.S. Commerce Department has recently allocated \$900,000 to seven minority business centers across the country to increase minority business access to American Recovery and Reinvestment Act (ARRA) contracting opportunities. The funding will allow each center to hire at least one business development specialist to focus exclusively on ARRA to

ensure minority businesses have access to federal, state and local contracting opportunities that are expected to create jobs, jumpstart growth and rebuild the economy.

Entities Affected by the Rule

These rules may affect any business, municipality, community–based organization, cooperative, association, local development corporation or nonprofit organization that elects to pursue a grant or loan from the Department for eligible activities such as implementing innovative proposals to strengthen inner cities, rural municipalities, industry clusters or entrepreneurship; developing minority businesses; or addressing economic distress.

Estimate of Time Needed to Develop the Rule

The staff time needed to develop the rules is expected to range from 120 to 180 hours, depending upon the associated complexity. This includes research, rule drafting, and processing the rules through public hearings, legislative review, and adoption. There are no other resources necessary to promulgate the rules.

Commerce

Financial Resources for Businesses and Communities, Chs. Comm 104—

Subject

Creates Chapter Comm 126, relating to the Wisconsin Venture fund.

Objective of the Rule

This rulemaking is intended to create chapter Comm 126 for administering the Wisconsin Angel Network grants established in section 560.255 of the Statutes, and the capital connections grants and the venture seed grants established in section 560.277 of the Statutes, as enacted in 2009 Wisconsin Act 28.

Policy Analysis

The Department has various rules for administering several economic development programs, but those rules do not specifically include the expected rule text for (1) funding the Wisconsin Angel Network, (2) funding eligible institutions that connect business ventures and entrepreneurs with capital, (3) providing matching funds to eligible institutions that fund new businesses or determine proof of concept and feasibility of new business ideas, and (4) establishing a Venture Fund Advisory Council.

Sections 560.255 and 560.277 (4) and (5) of the Statutes require the Department to promulgate these rules. The alternative of not promulgating these rules would disregard that directive.

Statutory Authority

Sections 227.11 (2) (a), 560.255 and 560.277 (4) and (5), Stats.

Comparison with Federal Regulations

The Department is not aware of any existing or proposed federal regulation that addresses these expected rules.

Entities Affected by the Rule

These rules may affect the Wisconsin Angel Network, and any research institution or nonprofit organization that elects to pursue funding from the Department for (1) administering a project that connects business ventures and entrepreneurs with capital, (2) funding new businesses, or (3) determining proof of concept and feasibility of new business ideas.

Estimate of Time Needed to Develop the Rule

The staff time needed to develop the rules is expected to range from 80 to 160 hours, depending upon the associated complexity. This includes research, rule drafting, and processing the rules through public hearings, legislative review, and adoption. There are no other resources necessary to promulgate the rules.

Commerce

Financial Resources for Businesses and Communities, Chs. Comm 104—

Subject

Creates Chapter Comm 136, relating to the Midwestern Disaster Area bonds.

Objective of the Rule

These permanent rules are expected to identically replace current emergency rules that (A) establish a procedure for the designation by the Governor of bonds issued by, or on behalf of, the State of Wisconsin, or any political subdivision thereof, as qualified Midwestern disaster area (MDA) bonds for the purposes of 26 USC 1400N(a), as modified and applied by section 702(d)(intro.) and (1) of the federal Heartland Disaster Tax Relief Act of 2008, Public Law 110–343, title VII, subtitle A; and (B) implement allocation of the qualified MDA bonding authority for eligible projects in affected counties, with a basis of providing assistance to areas in the order in which such assistance is most needed.

The affected counties are Adams, Calumet, Columbia, Crawford, Dane, Dodge, Fond du Lac, Grant, Green, Green Lake, Iowa, Jefferson, Juneau, Kenosha, La Crosse, Manitowoc, Marquette, Milwaukee, Monroe, Ozaukee, Racine, Richland, Rock, Sauk, Sheboygan, Vernon, Walworth, Washington, Waukesha and Winnebago.

Policy Analysis

The Department currently administers chapter Comm 113 for the allocation of volume cap on tax–exempt private activity bonds, which relates to the Department’s annual allocation of bonding authority for its Industrial Revenue Bond program, pursuant to 26 USC 146.

Those rules, however, do not address Wisconsin’s one–time allocation of bonding authority for issuance of MDA bonds. These are private activity bonds that are designed to facilitate the recovery and rebuilding of areas which in 2008 were declared by the President as being major disaster areas because of severe storms, tornados or flooding.

The alternative of not promulgating these rules would conflict with a directive in Executive Order #288 that requires this rulemaking.

Statutory Authority

Sections 227.11 (2) (a) and 560.03, Stats.

Comparison with Federal Regulations

In the Emergency Economic Stabilization Act of 2008 (Public Law 110–343), subtitle A of title VII is the Heartland Disaster Tax Relief Act of 2008 (HDTRA). HDTRA modified section 1400N(a) of the Internal Revenue Code of 1986 to establish tax–exempt qualified MDA bonds for areas that in 2008 were declared by the President as being major disaster areas because of severe storms, tornados or flooding. HDTRA limits the aggregate face amount of bonds that may be designated in Wisconsin as MDA bonds, to

\$3,830,112,000 — and establishes a deadline of January 1, 2013, for issuing the bonds. HDTRA also delegates to the Governor the power to make certain designations in connection with the issuance of MDA bonds, including designation of the bonds as MDA bonds and designation of a trade or business as replacing another trade or business for these purposes.

Entities Affected by the Rule

The proposed rules may affect (1) owners and developers of nonresidential real property such as manufacturing facilities, retail businesses, office buildings, and warehouses; (2) owners and developers of residential rental properties; and (3) public utilities.

Estimate of Time Needed to Develop the Rule

The staff time needed to develop these rules is expected to range from 40 to 80 hours, depending upon the associated complexity. This includes processing the rules through public hearings, legislative review, and adoption. There are no other resources necessary to promulgate the rules.

Employee Trust Funds

Subject

Revises Chapters ETF 10, 20, 40, and 41, relating to domestic partner benefits and the expansion of health insurance coverage to adult dependents up to the age of 27 years.

Objective of the Rule

New administrative rules and amendments to existing rules are required in regard to the domestic partner benefits legislation and the expansion of health insurance coverage to dependents to the age of 27 that were passed into law by 2009 Wisconsin Act 28. The new law provides that domestic partners are to be treated in the same manner as spouses with respect to pension benefits provided to public employees participating in the Wisconsin Retirement System (WRS), and other benefits provided to state employees and certain local government employees participating in state group insurance programs. 2009 Wisconsin Act 28 also mandates health insurance coverage of adult children up to age 27 years where the adult child has no coverage or has employer–provided coverage that is more expensive than the parent’s coverage.

Policy Analysis

New Rules

2009 Wisconsin Act 28 provides in essence that domestic partners that meet the statutory requirements for domestic partnership in Chapter 40, Wis. Stats., are to be considered as equivalent to spouses for the purpose of the benefits administered by ETF. Domestic partnerships have not previously been recognized for Chapter 40 benefit purposes. 2009 Wisconsin Act 28 also mandates the extension of health insurance coverage to eligible adult children up to the age of 27 years. ETF previously covered eligible adult children up to the age of 25 years if the child was a full time student. Many new rules and amendments are necessary to effectuate the new provisions, including but not limited to:

- A rule that the statutory definition of “decree date” applies to a termination of a domestic partnership for qualified domestic relations order purposes.
- A rule that for the purpose of determining a beneficiary under the statutory standard sequence (in the absence of

a beneficiary designation or where the named beneficiary(ies) are deceased), a divorce, legal separation, or annulment terminates the marital relationship, and a domestic partnership terminates as defined by this rule.

- A rule that a completed and notarized *Affidavit of Domestic Partnership* must be received by the department before the domestic partnership becomes effective for Chapter 40 benefit purposes.
- A rule permitting the department to reject any Affidavit that is illegible or missing necessary information, and requiring rejection of Affidavits that are not notarized and/or signed by both partners.
- A rule clarifying that the registration of domestic partnership under Chapter 770, Wis. Stats., does not create a domestic partnership for Chapter 40 benefit purposes. ETF needs a separate affidavit because there are differences between the definitions of domestic partnership in Chapter 40 and in Chapter 770. For example, ETF's definition of domestic partnership permits same–sex and opposite–sex domestic partners, while Chapter 770 permits only same–sex domestic partners.
- A rule establishing the effective date of Chapter 40 domestic partnerships based on ETF's Affidavit receipt date. The rule determines exactly when and how domestic partnerships are created and terminated for Chapter 40 benefit purposes. For example, upon ETF's receipt of a properly executed *Affidavit of Termination of Domestic Partnership*, ETF will consider the domestic partnership to be irrevocably dissolved.
- A rule that permits ETF to consider a domestic partnership to be terminated based on evidence that the partnership no longer meets the statutory definition of a domestic partnership, such as failing to share a common residence or marrying, or that the Chapter 40 domestic partnership terminates at such time as neither partner has any benefit rights under Chapter 40.

Amendments to Existing Rules

ETF must amend existing administrative rules to comply with 2009 Wisconsin Act 28. Most changes are technical, such as including “domestic partner” where “spouse” or “dependent” are referenced. Administrative rules requiring amendment include:

Ch. ETF 10 ADMINISTRATION

- 10.01 (2) definition of ‘dependent’ to include domestic partners and any child of the domestic partner, as well as any adult child up to age 27 years in accordance with s. 632.885, Stats.
- 10.01 (3m) definition of ‘medical record’ to include confidentiality of information about condition of a spouse or domestic partner.
- 10.01 (9) delete definition of ‘widow or widower’.
- 10.70 (1) definition of ‘individual personal information’ to include both marital and domestic partnership status.

Ch. ETF 20 WISCONSIN RETIREMENT SYSTEM

- 20.055 Spouse's signature on annuity application amended to include domestic partner's signature when applicable, except when a participant is prohibited by federal law from selecting a joint and survivor annuity option with the domestic partner as the named survivor.

Ch. ETF 40 HEALTH CARE BENEFITS

- 40.01 (2m) (a) Responsible Person. *Multiple surviving insured dependents, with surviving spouse.*
- 40.01 (2m) (b) Responsible Person. *Multiple surviving insured dependents, without surviving spouse.*
- 40.01 (3) (a) Duration of Continuing Coverage. *Surviving spouse.*

Ch. ETF 41 LONG–TERM CARE INSURANCE

- 41.02 (1) (a) Standards for long–term care policies.

Statutory Authority

Sections 40.03 (2) (i), (ig), (ir), and 227.11 (2) (a), Stats.

Comparison with Federal Regulations

If an employee or retiree covers a domestic partner or an adult dependent under age 27 on an employer health insurance plan, the fair market value of the coverage of the partner must be added to the employee's salary for tax purposes, unless the employee's partner is a qualifying dependent under IRC Section 152.

There are no existing federal regulations that specifically address benefits for the domestic partners of state and local government employees/retirees. However, there is pending federal legislation relating to easing the tax effect on domestic partnerships and on the extension of health insurance to adult dependents to the age of 27 years.

- *America's Affordable Health Choices Act of 2009 (HR 3200)*: a provision has been added to the health care reform bill (H.R. 3200) that would allow adults up to 27 years old to be covered by a parent's health insurance policy.
- *Domestic Partnership Benefits and Obligations Act (S. 1102, H.R. 2517)*: provides to domestic partners of federal employees (excluding military) health insurance and enhanced dental and vision benefits, retirement and disability benefits, family, medical, and emergency leave, group life insurance, long–term care insurance, compensation for work injuries, and benefits for disability, death, or captivity. Last action on the bill was in July 2009, with the bill going to the Oversight and Government Reform Committee.
- *Tax Equity for Health Plan Beneficiaries Act (S. 1153, H.R. 2625)*: The bill would exclude the value of employer–provided health insurance for a domestic partner or other non–spouse beneficiary from an eligible employee's income, as it does for benefits provided for a spouse or dependent. Last action on the bill was in May 2009, with the bill going to the House Ways and Means Committee.

Entities Affected by the Rule

The rules will directly affect participants and annuitants who desire that their domestic partner receive retirement and insurance benefits. Also affected are members who elect to cover their adult dependents who are under the age of 27 years. The rules will affect the administration of coverage under the group health insurance programs by ETF staff, the third–party administrative contractor and the private Health Maintenance Organizations and similar insurers who agree to participate in the group health insurance program.

Estimate of Time Needed to Develop the Rule

State employees will spend an estimated 200 hours to develop these rules.

Natural Resources

Fish, Game, etc., Chs. NR 1—

Subject

Revises Chapter NR 40, relating to invasive species identification, classification and control.

Objective of the Rule

With the recent enactment of 2009 Wisconsin Act 55, effective Nov. 12, 2009, two provisions of ch. NR 40 (relating to overland transport and launching of a vehicle, boat, trailer or equipment with aquatic plants or animals attached) became unnecessary and duplicative of statutory language, and must be removed from the rule. In addition, ch. NR 40 has some species classification boundary descriptions that are incomplete or incorrectly described, some species scientific names that are incorrect, some definitions and notes that need editing or clarification, and some other style and format corrections and "housekeeping" changes that should be made in order to better communicate the department's intent and purpose in adopting the chapter.

Policy Analysis

No policy changes are involved — the proposed rule revisions are intended to address "housekeeping" changes only.

Statutory Authority

Sections 23.09 (2) (intro), 23.091, 23.11 (1), 23.22 (2) (a) and (b) 6., 23.28 (3), 27.01 (2) (j), 29.014 (1), 29.039 (1) 29.041, and 227.11 (2) (a), Stats.

Comparison with Federal Regulations

There are no comparable existing or proposed federal regulations.

Entities Affected by the Rule

Interested parties may include the plant nursery industry, seed and agriculture industries, fish farmers, bait dealers, aquarium and ornamental fish dealers, land owners and managers, commercial fishers, anglers, gardeners, county and municipal governments, lake districts, government agencies, environmental and conservation organizations, and the Wisconsin Invasive Species Council.

Estimate of Time Needed to Develop the Rule

It is estimated that 34 hours of staff time will be needed to develop the rule.

Contact Information

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Natural Resources

Environmental Protection — Wisconsin Pollutant Discharge Elimination System, Chs. NR 200—

Subject

Revises Chapter NR 207, relating to water quality antidegradation.

Objective of the Rule

The Department of Natural Resources is proposing to revise administrative rules pertaining to implementation of the state's antidegradation policy. The antidegradation policy is found in Chapter NR 102.05(1)(a), Wisconsin Administrative Code, and establishes that no waters shall be lowered in water quality unless it has been demonstrated that the change is justified as a result of necessary economic and social development. In no case, however, can water quality be lowered to the point where it becomes injurious to any assigned uses (or existing uses) of the receiving water. Chapter NR 207, Wisconsin Administrative Code, establishes procedures to implement the antidegradation policy including when proposed new or increased discharges are significant enough to invoke antidegradation procedures, what procedures must be followed, and how the antidegradation analysis will be evaluated.

Policy Analysis

Chapter NR 207 was originally developed to address point source pollution discharges from industrial processes or from municipal wastewater treatment facilities. Since the rule was first promulgated in 1989, changes to Federal guidance and concomitant changes to state regulations require certain storm water discharges to be permitted through the Clean Water Act, and therefore are subject to antidegradation requirements. However, the nature of stormwater discharge is similar to nonpoint source discharges and the definitions and implementation procedures currently in Chapter NR 207 do not apply well. The Department proposes to add sections in Chapter NR 207 to establish implementation procedures and to add or revise certain definitions to allow for application of the state antidegradation policy to general permits, stormwater discharges, and to consider whether additional procedures are needed for concentrated animal feeding operations (CAFOs).

In conjunction with the revisions being considered as related to the general permits, stormwater, and CAFOs, other issues were raised regarding consistency between the current language in Chapter NR 207 for point source discharges and the changes in Federal regulations. Those issues are as follows:

1. Language in Chapter NR 207 must be reviewed to insure antidegradation is applied based on both the existing and designated uses of receiving waters in order to be consistent with the water quality standards goals in Chapter NR 102.
2. An evaluation of the current public participation process for input on antidegradation decisions is needed to determine if it is timely and sufficient, with suggested additional measures if it is determined to be insufficient.
3. Existing language in Chapter NR 207 requires a specific evaluation of alternatives when a proposed discharge would result in significant lowering of water quality. Recent Federal guidance provides for the alternatives analysis at a tighter threshold than is currently provided in Chapter NR 207, so this language must be reviewed and revised as necessary.
4. Chapter NR 207 currently contains language that exempts an increased limit from antidegradation when the increase is solely the result of changes in water quality criteria. Chapter NR 207 must be reviewed to determine if this exemption is consistent with Federal regulations and those in effect in other States.
5. Increases in existing discharges to receiving waters are subject to antidegradation only insofar as such increases

would exceed limits in existing discharge permits. Questions were raised about the need to apply antidegradation to discharges where the mass loading of a regulated substance increases, but the permit has no limitations on the mass discharge of that substance.

6. As noted earlier, the antidegradation policy allows lowering of water quality when such a change is necessary based on necessary economic and social development. Chapter NR 207 lists a number of general conditions relating to employment, production, efficiency, community growth and benefit, and correction of environmental problems on which these development questions are to be judged. The Department was requested to re–evaluate this approach based on Federal regulations and to consider more specific guidelines on how those conditions are to be assessed.

Statutory Authority

Sections 281.15, 283.13 (5), 283.33 (8), and 227.11(2), Wis. Stats.

Comparison with Federal Regulations

The counterpart Federal regulation is 40 CFR 131.12. This regulation requires antidegradation review for all point source discharges that have the potential to lower water quality. It imposes a necessity test and an important social and economic development test before the discharge can be approved. When Chapter NR 207 was first promulgated in 1989, stormwater discharges were not regulated under federal law, so the rule did not address them. Federal regulations now require permits for stormwater discharges, so antidegradation provisions need to be updated to include them. The proposed revision will address this issue, as well as the others issues mentioned above.

Entities Affected by the Rule

Owners or operators of facilities or activities that must obtain Wisconsin Pollution Discharge Elimination System (WPDES) stormwater discharge permits (approximately 240) will be required to conform to the revised antidegradation implementation procedures. CAFOs, builders, developers and environmental organizations may also be affected. In addition, since revisions to the language pertaining to new or increased point source discharges are also being considered, the revised antidegradation implementation procedures may also impact municipal wastewater treatment systems and industries with specific or general WPDES permits. Any additional public participation procedures may impact permittees as well as Department staff since it may result in additional workload and time needed to process and issue WPDES permits.

Estimate of Time Needed to Develop the Rule

Approximately 1000 hours of staff time, primarily within the Bureau of Watershed Management.

Contact Information

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Natural Resources

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

Subject

Revises Chapter NR 410, relating to fees for reviewing applications for construction of air pollution sources.

Objective of the Rule

The Bureau of Air Management proposes to increase the fees for reviewing applications to construct or modify sources of air pollution and to change the present policy of not collecting fees for review work performed when an application is withdrawn. These proposed changes are necessary to ensure that the new source review program has adequate funding to perform its duties in accordance with requirements and deadlines mandated under s. 285.61, Wis. Stats.

Policy Analysis

The Bureau of Air Management operates a new source review program under Wisconsin's State Implementation Plan (SIP) approved by the U.S. Environmental Protection Agency (EPA).

Existing policy allows for the collection of fees to fund review of applications for, and issuance of, construction permits for air pollution sources under this program.

Increases in these fees are necessary in order to allow the new source review program to continue to operate and meet its mandated obligations in a timely manner. For a number of years fees collected have not been adequate to fully support this program. This deficit has been covered by spending a revenue surplus that had been built up in earlier years. This surplus has been shrinking and is projected to be gone by the end of FY 2010. The Bureau of Air Management projects that the new source review program will have a growing deficit starting next year even though numerous process changes and technology improvements have been successfully implemented to improve efficiencies. No other alternatives to the proposed fee changes have been identified that will adequately address this projected funding deficit. The fees that applicants pay for new source review were last increased in December 1999.

This proposal will also allow the Bureau of Air Management to collect review fees in addition to the current initial application fee from applicants in situations where a permit is not issued. Other than the non–refundable initial application fee, fees cannot currently be collected from an applicant if the permit is not issued, regardless of the time spent on the review. Since there is no significant cost for submitting permit applications, it is not uncommon for companies to submit an application prior to obtaining adequate project financing, or to submit multiple applications for the same, or similar, project while still evaluating the pros and cons of the various project locations. Because the Department is required under current statutory and rule provisions to act timely on each individual application, these practices often result in unnecessary application processing and review. In 2008 and 2009 it is estimated that nearly \$300,000 in fees were not realized due to applications being withdrawn. The Department will consider and evaluate different approaches to existing policy in order to collect fees to fund review work.

Statutory Authority

Section 285.69, Wis. Stats.

Comparison with Federal Regulations

The New Source Review and Prevention of Significant Deterioration permit program are required under Title I of the Clean Air Act. However there are no specific federal regulations that state how rules to collect fees for these programs are to be written or the specific content of these rules.

This proposal will allow adequate fees to be collected to support the new source application review program. The review process continues to grow more complex each year. At the same time, greater expectations to conduct these reviews faster in order to help businesses adapt to the current economic situation, also grow. Numerous measures have been implemented over the last few years to improve efficiencies. Nonetheless, the new source review program is expected to experience deficits as early as next year if fees are not increased. Implementing this proposal will help ensure that the Bureau of Air Management meets its existing obligations as a SIP approved new source review program.

Entities Affected by the Rule

Owners of facilities, including small businesses, in all industrial sectors that propose to construct or modify air pollution sources will be affected by this rule.

Estimate of Time Needed to Develop the Rule

Approximately 300 hours of staff time will be needed to develop this rule.

Contact Information

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Transportation

Subject

Creates Chapter Trans 75, relating to requiring bicycle and pedestrian accommodations in transportation projects funded in whole or part with state or federal funds.

Objective of the Rule

A new state law, s. 84.01 (35), Stats., requires bicycle and pedestrian accommodations to be included in all new and reconstruction projects funded in whole or part with state or federal funds. The statute provides five exceptions when bicycle or pedestrian accommodations are not required. These exceptions contain subjective elements that are vague and the statute requires the Department of Transportation to interpret these exceptions by rule making.

Policy Analysis

Section 84.01 (35), Stats., is patterned after the Federal Highway Administration’s (“FHWA”) Bicycle and Pedestrian Mainstreaming Policy. That policy contains three exceptions, not five as included in state law. The federal policy is not required by federal law and only covers federally–aided projects. The FHWA language is as follows:

“Bicycle and pedestrian ways shall be established in new construction and reconstruction projects in all urbanized areas unless one or more of three conditions are met:

- Bicyclists and pedestrians are prohibited by law from using the roadway. In this instance, a greater effort may be necessary to accommodate bicyclists and pedestrians

elsewhere within the right of way or within the same transportation corridor.

- The cost of establishing bikeways or walkways would be excessively disproportionate to the need or probable use. Excessively disproportionate is defined as exceeding twenty percent of the cost of the larger transportation project.
- Where sparsity of population or other factors indicate an absence of need.”

Wisconsin intends to follow the FHWA policy to the extent practicable. However, the Wisconsin law includes two new exceptions: “Establishing bikeways or pedestrian ways would have excessive negative impacts in a constrained environment” and “the community where pedestrian ways are to be located refuses to accept an agreement to maintain them.”

Regarding policy alternatives, WisDOT is required by state statutes to promulgate administrative rules so a “do nothing” alternative is not viable. Since the law requires the Department to promulgate rules specifically and only as they relate to the stated exceptions, alternatives exist only in how broadly or tightly the exceptions are developed. Less stringent language would make it easier to omit bicycle and pedestrian accommodations from projects which might thwart the evident purpose of the legislation, which is to expand the number of projects that incorporate accommodations for bicyclists and pedestrians. More stringent language could make it exceedingly difficult to omit bicycle and pedestrian facilities from a project where those facilities impose significant negative impacts or unreasonable costs. More stringent language also could unreasonably lengthen the time a project takes to be developed before determining whether bicycle and pedestrian accommodations are required on the project.

Statutory Authority

Section 84.01 (35) (c), Stats., as created by 2009 Wis. Act 28.

Comparison with Federal Regulations

There is only an existing federal policy and no existing federal legislation. There are two proposed bills in congress — H.R. 1443 and S. 584. These are companion bills that propose “Complete Street” language. They would require a state to either pass a law or establish a policy for the inclusion of accommodations for bicyclists, pedestrians, and transit users whenever federal funds are used. By comparison, it represents an expansion of the recently passed state statute language in Wisconsin as it explicitly cites the need to make facilities accessible to people with disabilities. It would also expand the requirement to Metropolitan Planning Organizations and all projects under their jurisdiction. Notably, the bills would expand the coverage of project types in which accommodations would be made. State law applies to new and reconstruction projects while these bills also require it under rehabilitation, maintenance, and operations as well.

The three exceptions as presented in the federal policy would remain basically the same, but it is more explicit in the process that must be followed to apply one of the exceptions. States and MPOs would be required to promote the law or policy.

Unlike the federal policy, there are certification measures imposed upon states and MPOs to ensure proper compliance and a penalty for not meeting key dates — up to 3% of the federal highway safety program funds in the 3rd year of non–compliance and beyond.

Entities Affected by the Rule

Communities in Wisconsin, WisDOT, counties, bicyclists, pedestrians.

Estimate of Time Needed to Develop the Rule

200 hours.

Transportation**Subject**

Revises Chapter Trans 131, relating to the allowance of a “cost waiver” in certain circumstances, programmatic operational changes, refining references to testing requirements for diesel vehicles, and other minor changes reflecting current operations.

Objective of the Rule

Chapter Trans 131 governs the vehicle emission inspection process. Section Trans 131.05 establishes the items that must be inspected, and their condition, that are evidence of tampering. If tampering is evident, the Department may not issue a “cost waiver” (a waiver of emission inspection based on the vehicle owner having spent an amount of money for repairs exceeding thresholds established in s. NR 485.045 and the vehicle still failing emission inspection). This rule making amends s. Trans 131.05 (1) (j) to allow a “cost waiver” in certain circumstances even if a vehicles’ Malfunction Indicator Light (MIL) is unable to be turned off.

In addition, this rule making will make some changes in references to the Technical Assistance Center to reflect programmatic operational changes that the Department is making, and will refine some references to testing requirements for diesel vehicles, which will begin being tested in the near future.

Finally, this rule making will make some minor changes to reflect current operations and eliminate some inconsistent language and numbering in the rule.

Policy Analysis

The Department has interpreted s. Trans 131.05 (1) (j) to mean that, to pass an anti–tampering inspection, an MIL must be operational and non–active (that is, not lit). It is expected that an adequate vehicle repair will cause the MIL to turn off, since the underlying condition is corrected. In prior years, the Department also provided an alternative test allowing a vehicle to be inspected regardless of the MIL status. However, now that the Department administers only the OBD II test, the Department has determined that this interpretation is contrary to s. 110.20 (13), Stats., since it prevents issuing a cost waiver to all tested vehicles, regardless of the amount spent on repairs. This is because a properly functioning MIL light will always be illuminated for every vehicle that cannot meet emission standards and cannot be made to meet those standards without exceeding the repair cost limit.

The Department is considering some programmatic operational changes to functions of the Technical Assistance Centers, and has determined that some refinements need to be made to diesel testing procedures, and proposes to change rule references accordingly.

Finally, the Department will streamline language with eliminating inconsistent wording and numbering language in the rule.

Statutory Authority

Sections 110.06, 110.20 (9) and 227.11 (2) (a), Stats.

Comparison with Federal Regulations

Federal EPA laws and regulations govern vehicle emission inspection to achieve air pollution reduction, and address tampering of emission equipment.

Entities Affected by the Rule

Emission inspection area vehicle owners, and the Legislature, will be assured of a limit to how much vehicle owners must spend to comply with emission inspection. Wisconsin Department of Natural Resources is affected, as DNR administers federal air quality — vehicle emission regulations in Wisconsin.

Estimate of Time Needed to Develop the Rule

100 hours.

Transportation**Subject**

Creates Chapter Trans 151, relating to eligibility requirements and procedures for a 3–year vehicle fleet registration option.

Objective of the Rule

2009 Wis. Act 28 created s. 341.307, Stats., authorizing a registration option of 3 years for certain vehicle fleets. Section 341.307 (6), Stats., requires the Department to promulgate rules specifying the minimum number of vehicles that must be in a fleet for the fleet to be eligible for 3–year registration and establishing procedures for registration under the 3–year registration option. This rule making will carry out that statutory requirement.

Policy Analysis

Under s. 341.307, Stats., several provisions relating to 3–year registration are specified. In addition, all other statutory requirements for vehicles prior to successful registration and registration renewal apply. Three–year vehicle registration is new in Wisconsin. Most statutory provisions contemplate annual registration or, in a few cases, biennial registration. This rule will clarify how statutory requirements will be applied to vehicles registered under s. 341.307, Stats., for a 3–year registration period. The rule will also clarify how fleets registered under the 3–year registration option may comply with Department policies and procedures relating to fleets of any size and registered under other registration periods available by law.

Statutory Authority

Section 341.307 (6), Stats.

Comparison with Federal Regulations

No federal rules address this subject.

Entities Affected by the Rule

Owners and managers of fleets that would be eligible for registration under s. 341.307, Stats.

Estimate of Time Needed to Develop the Rule

200 hours.

Workforce Development

Public Works Construction Contracts, Chs. DWD 290–294

Subject

Revises Chapters DWD 290 and 294, relating to changes and new provisions in 2009 Wisconsin Act 28 which relate to the requirement to obtain and apply determinations of prevailing wage rates in public works contracts entered into by state agencies, local government units, or the owners or developers of publicly funded private construction projects.

Objective of the Rule

2009 Wisconsin Act 28 makes changes in the prevailing wage statutes which need to be reflected in the administrative rules for the program. The principal changes are:

(a) Definitions of the terms “bona fide economic benefit,” “direct financial assistance,” “minor service and maintenance work,” and “supply and installation contract;”

(b) An amendment to the threshold provision which provides that the requirement for a prevailing wage determination applies to every project of public works for which the estimated cost of completion is \$25,000 or more;

(c) The requirement that project contractors electronically submit to DWD a certified record of payroll information specified in the statute, which DWD will post on its Internet site, without including any personally identifiable information; and

(d) A new statute, section 66.0904, Stats., which provides that a private construction project which receives \$1,000,000 in direct financial assistance from public funds is covered by the requirements of the prevailing wage law.

Policy Analysis

The proposed rule will contain amendments that reflect the statutory changes described above. The proposed rule may also contain amendments to Chapter DWD 294 (debarment of contractors that violate the prevailing wage statutes) change which the definition of “contractor” to include a unit of local government or a state agency.

Statutory Authority

Sections 66.0903 (3) (dm) and (12) (e), 66.0904 (2) (b) and (10) (e), 103.49 (2), (4r) and (7) (e), 103.005 (1) and 227.11 (2), Wis. Stats.

Comparison with Federal Regulations

The federal prevailing wage law, often referred to as the Davis Bacon Act, requires the determination and payment of federally–determined prevailing wages in projects with federal funding. DWD does not administer the federal prevailing wage law, which is the responsibility of the U.S. Department of Labor, other federal agencies, and state units of government which receive federal funds, such as the Wisconsin Department of Transportation. The federal prevailing wage law applies to any project with an estimated cost of more than \$2,000, and it does not require the posting of payroll information.

Entities Affected by the Rule

State agencies and local units of government that carry out public works projects, private developers that carry out publicly funded private construction projects which receive \$1,000,000 or more in direct financial assistance, contractors that work on prevailing wage projects and the employees of these contractors.

Estimate of Time Needed to Develop the Rule

120 hours.

Submittal of Rules to Legislative Council Clearinghouse

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

Agriculture, Trade and Consumer Protection **CR 09–105**

On November 30, 2009, the Department of Agriculture, Trade and Consumer Protection submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed order revises Chapter ATCP 92, relating to weights and measures licensing and fees.

Agency Procedure for Promulgation

Public hearings will be held on January 11, 12 and 15, 2010. The department's Office of Legal Counsel is primarily responsible for promulgation of the rules.

Contact Information

Michelle Reinen
(608) 224–5160

Public Instruction **CR 09–106**

On December 3, 2009, the Department of Public Instruction submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed order creates Chapter PI 39, relating to grants for tribal language revitalization.

Agency Procedure for Promulgation

The Division for Academic Excellence is primarily responsible for promulgation of the rule. Public hearings will be scheduled at a later time.

Contact Information

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Rule–Making Notices

Notice of Hearings

Agriculture, Trade and Consumer Protection

CR 09–105

The Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) announces that it will hold public hearings on a proposed rule to revise Chapter ATCP 92, Wis. Adm. Code, relating to weights and measures licensing and fees.

Hearing Information

DATCP will hold the public hearings at the times and locations shown below.

Monday, January 11, 2010

10:00 a.m. to 12:00 p.m.

Dept. of Agriculture, Trade and Consumer Protection

2811 Agriculture Drive, Board Room (CR–106)

Madison, Wisconsin 53718–6777

Tuesday, January 12, 2010

10:30 a.m. to 12:30 p.m.

Marathon County Public Library – Wausau Library

300 North First Street

Wausau, Wisconsin 54403

Friday, January 15, 2010

11:00 a.m. to 1:00 p.m.

Havenwoods State Forest

6141 North Hopkins Street

Milwaukee, Wisconsin 53209–3565

Hearing impaired persons may request an interpreter for these hearings. Please make reservations for a hearing interpreter by January 8, 2010, by writing to Michelle Reinen, Division of Trade and Consumer Protection, P.O. Box 8911, Madison, WI 53708–8911, Michelle.reinen@wi.gov, telephone (608) 224–5160. Alternatively, you may contact the DATCP TDD at (608) 224–5058. Handicap access is available at the hearings.

Submission of Written Comments

DATCP invites the public to attend the hearing and comment on the rule. Following the hearing, the hearing record will remain open until Friday, January 29, 2010 for additional written comments. Comments may be sent to the division of Trade and Consumer Protection at the address below, by email to michelle.reinen@wi.gov, or online at <https://apps4.dhfs.state.wi.us/admrules/public/Home>.

To provide comments or concerns relating to small business, you may also contact DATCP’s small business regulatory coordinator Keeley Moll at the address above, or by emailing to Keeley.Moll@datcp.state.wi.us or by telephone at (608) 224–5039.

Copies of Proposed Rules

You may obtain a free copy of this rule, fiscal estimate, and business impact analysis by contacting the Wisconsin Department of Agriculture, Trade and Consumer Protection, Division of Trade and Consumer Protection, 2811 Agriculture

Drive, P.O. Box 8911, Madison, WI 53708. You can also obtain a copy by calling (608) 224–5160 or emailing michelle.reinen@wi.gov. Copies will also be available at the hearings. To view the proposed rule online, go to <http://adminrules.wisconsin.gov>.

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

The Department of Agriculture, Trade and Consumer Protection (DATCP) administers state laws to ensure the accuracy of commercial weights and measures. DATCP adopts weights and measures rules, and licenses persons who operate or service weighing and measuring devices. DATCP may establish certain license fees and other fees by rule.

This rule modifies current DATCP weights and measures rules. Among other things, this rule implements 2009 Wis. Act 28 (biennial budget act). Act 28 changed state weights and measures laws, including laws related to vehicle scales, weights and measures service companies, vehicle tank meters and liquefied petroleum (LP) gas meters. Act 28 created new license requirements, and authorized DATCP to establish certain license fees and surcharges by rule. Act 28 also authorized DATCP to charge reinspection fees to help pay for reinspections made necessary by weights and measures law violations.

Statutes interpreted

Sections 93.06 (1p), 93.07 (1), 97.30 (3m) (c) 3., 98.03 (2), 98.16, 98.18, 98.224, 98.245 and 98.255, Stats.

Statutory authority

Sections 93.07 (1), 97.30 (5), 98.03 (2), 98.16 (4), 98.18 (2), 98.224 (4), 98.245 (9) and 98.255 (2), Stats.

Explanation of agency authority

General

DATCP has general authority, under s. 93.07 (1), Stats., to interpret laws under its jurisdiction. Under s. 93.06 (1p), Stats., DATCP may charge for certain services (including analytical services) provided in response to a voluntary request (in this case, fees to analyze and process voluntary requests for livestock scale construction variances).

Weights and Measures; General

DATCP administers ch. 98, Stats., related to commercial weights and measures. Under s. 98.03 (2), Stats., DATCP has broad authority to adopt rules governing the construction, installation and use of commercial weights and measures (including scales and other weighing and measuring devices).

Retail Food Establishments

DATCP licenses and inspects retail food establishments for food safety purposes under s. 97.30, Stats. However, DATCP also conducts weights and measures inspections of retail food establishments. Licensed establishments must pay an annual weights and measures fee under s. 97.30 (3m) (c) 3., Stats. DATCP may establish that fee by rule (s. 97.30 (5), Stats.).

Vehicle Scales

Vehicle scales are regulated by s. 98.16, Stats. Under s. 98.16 (as modified by Act 28), a vehicle scale operator must:

- Be annually licensed by DATCP and pay an annual license fee for each vehicle scale (DATCP may adjust license fees by rule).
- Pay a license fee surcharge for each vehicle scale if the operator is found operating that scale without a license (Act 28 authorizes DATCP to adjust that surcharge by rule).
- Obtain a permit from DATCP before installing or relocating a vehicle scale (Act 28 authorizes DATCP to charge a permit fee).
- Comply with scale construction standards, unless DATCP grants a variance (Act 28 authorizes DATCP to charge a fee for processing variance requests).
- Pay reinspection fees for reinspections made necessary by law violations (DATCP may adopt reinspection fees by rule under s. 98.255, Stats.).
 DATCP may adopt rules to establish and adjust fees, and regulate the construction and operation of vehicle scales (s. 98.16 (3), Stats.).

Weights and Measures Service Companies and Technicians

Section 98.18, Stats., regulates persons engaged in the business of installing, servicing, testing or calibrating scales and other weighing and measuring devices (weights and measures service companies). Under that section:

- Weights and measures service companies must:
 - Be annually licensed by DATCP and pay an annual license fee (DATCP may adjust license fees by rule).
 - Pay a license fee surcharge if the weights and measures service company is found operating without a license (DATCP is *not* authorized to adjust that surcharge by rule).
- DATCP may adopt rules to regulate weights and measures service companies and establish license fees (s. 98.18(2), Stats.).

DATCP rules currently exempt individual weights and measures technicians from licensing if they are employed by a licensed weights and measures service company. However, individual technicians must be certified for competence (there is a certification examination fee of \$25). A certification is good for 5 years.

Vehicle tank meters

Vehicle tank meters are regulated by s. 98.224, Stats., as created by Act 28. Under that section, a vehicle tank meter operator must:

- Be annually licensed by DATCP and pay an annual license fee for each vehicle tank meter (DATCP must establish license fees by rule). An operator must pay a license fee surcharge if the operator is found operating a vehicle tank meter without a license (DATCP may establish the surcharge by rule).
- Comply with testing and reporting requirements. An operator who fails to do so must pay a license fee surcharge that DATCP must establish by rule.
- Pay reinspection fees for reinspections made necessary by law violations (DATCP may adopt reinspection fees by rule under s. 98.255, Stats.).

DATCP may adopt rules to establish and license fees and surcharges; testing, reporting and recordkeeping requirements; and standards for the construction, operation and maintenance of vehicle tank meters (s. 98.16 (4), Stats.).

LP Gas Meters

LP gas meters are regulated by s. 98.245, Stats., as modified by Act 28. Under that section, LP gas meter operators must:

- Be annually licensed by DATCP and pay an annual license fee for each LP gas meter (DATCP must establish license fees by rule). An operator must pay a license fee surcharge if the operator is found operating an LP gas meter without a license (DATCP must establish the surcharge by rule).
- Comply with testing and reporting requirements. An operator who fails to do so must pay a license fee surcharge that DATCP must establish by rule.
- Pay reinspection fees for reinspections made necessary by law violations (DATCP may adopt reinspection fees by rule under s. 98.255, Stats.).

DATCP may adopt rules to establish and license fees and surcharges; testing, reporting and recordkeeping requirements; and standards for the construction, operation and maintenance of vehicle tank meters (s. 98.245 (9), Stats.).

Reinspection Fees

Under s. 98.255, Stats. (as created by Act 8), DATCP may charge a reinspection fee to cover DATCP reinspection costs incurred because of a law violation found on an initial inspection of a weight or measure (including a scale or other weighing or measuring device). DATCP may establish reinspection fee amounts by rule (s. 98.255 (2), Stats.). DATCP may specify different reinspection fees for different types of weighing or measuring devices. The fee for each type of device may not exceed DATCP's average cost to reinspect that type of device.

Related statutes and rules

Among other things, this rule establishes annual weights and measures fees for retail food establishments, which are licensed and regulated (for food safety purposes) under s. 97.30, Stats., and ch. ATCP 75, Wis. Adm. Code.

Content of rule

The Department of Agriculture, Trade and Consumer Protection (DATCP) administers Wisconsin's weights and measures program which ensures the accuracy of commercial weights and measures. DATCP inspects commodities, scales and measuring devices to ensure that businesses and consumers get what they pay for. The weights and measures program is partially funded by weights and measures license fees. The biennial budget act expanded licensing of weights and measures devices, and authorized certain fee adjustments by rule, in order to improve weights and measures regulation and help remedy a severe budget shortfall. The budget act affects vehicle scales, vehicle tank meters and LP gas meters, among other things. It also authorizes DATCP to charge fees for reinspections made necessary by weights and measures law violations.

This rule is designed to implement the budget act. However, this rule also updates and clarifies other weights and measures rule provisions under ch. ATCP 92, Wis. Adm. Code. This rule establishes different fees for different weights and measures program and license categories, based upon an analysis of program costs associated with each category. Fees are generally proportionate to program costs in each category. Specifically, this rule does all of the following:

Retail Food Establishments

This rule increases the annual *weights and measures* inspection fees paid by licensed retail food establishments (it

does *not* change *food safety* inspection fees). This rule does all of the following:

- Increases, from \$100 to \$420, the annual fee for a retail food establishment that has annual food sales of at least \$1 million and processes potentially hazardous food.
- Increases, from \$45 to \$55, the annual fee for a retail food establishment that has annual food sales of at least \$25,000 but less than \$1 million and processes potentially hazardous food.
- Increases, from \$25 to \$45, the annual fee for a retail food establishment that has annual food sales of at least \$25,000 and is engaged in food processing, but does not process potentially hazardous food.
- Establishes a fee of \$30 for a retail food establishment that is not engaged in food processing.

Vehicle and Livestock Scales

This rule does all of the following:

- Increases, from \$100 to \$140, the annual fee for a vehicle scale operator license (does *not* apply to livestock scales other than vehicle scales).
- Increases, from \$200 to \$350, the license fee surcharge for a person found operating a vehicle scale without a license (does *not* apply to operators of livestock scales other than vehicle scales, because those operators are not licensed).
- Establishes a license fee surcharge of \$350 for an operator who, during the previous year, failed to comply with vehicle scale testing and reporting requirements (does *not* apply to operators of livestock scales other than vehicle scales, because those operators are not licensed).
- Establishes a fee of \$160 for a permit to install or relocate a vehicle scale. This fee does *not* apply to livestock scale permits (other than vehicle scales) because the statutes do not authorize DATCP to charge fees for livestock scale permits mandated by DATCP.
- Establishes a fee of \$360 to process a request, by a vehicle scale operator *or* livestock scale operator, for a variance from an applicable scale construction standards (this rule does not change current construction standards). See ss. 93.06 (1p) and 98.16 (2m) (b) and (4), Stats.
- Updates and clarifies current requirements for annual testing of vehicle scales *and* livestock scales, and reporting test results to DATCP.
- Establishes a vehicle scale operator license surcharge of \$350 for an operator who fails to comply with annual scale testing and reporting requirements (does *not* apply to operators of livestock scales other than vehicle scales, because those operators are not licensed).

Weights and Measures Service Companies and Technicians

This rule increases current annual license fees for weights and measures service companies, as follows:

- Increases the basic license fee from \$250 to \$325.
- Increases the supplementary license fee for companies operating more than one business location. The fee for each additional business location is increased from \$75 to \$100.

This rule increases, from \$25 to \$35, the current examination fee for certification of an individual weights and measures technician (5–year certification). The examination fee may be paid by the weights and measures service company that employs the technician.

LP Gas Meters

This rule does all of the following:

- Implements statutory licensing requirements for operators of LP gas meters.
- Establishes an annual license fee of \$140.
- Establishes a license fee surcharge of \$350 for an applicant who was found operating an LP gas meter without a required license during the previous year.
- Establishes basic annual testing and test reporting requirements related to LP gas meters, and establishes a license fee surcharge of \$350 for an applicant who failed to comply with those basic requirements in the previous year.

Vehicle Tank Meters

This rule does all of the following:

- Implements statutory licensing requirements for vehicle tank meter operators.
- Establishes an annual license fee of \$140.
- Establishes a license fee surcharge of \$350 for an applicant who was found operating a vehicle tank meter without a required license during the previous year.
- Establishes basic annual testing and test reporting requirements related to vehicle tank meters, and establishes a license fee surcharge of \$350 for an applicant who failed to comply with those basic requirements in the previous year.

Reinspection Fees

This rule establishes reinspection fees to cover DATCP reinspection costs incurred because of law violations found on an initial inspection of a weight or measure (including a scale or other weighing or measuring device). This rule establishes the following reinspection fees for the following types of weights and measures, based on DATCP's average cost to reinspect that type of weight or measure:

- Large capacity scale (over 5,000 lbs), \$300.
- Medium capacity scale (300–5,000lbs), \$185.
- Small capacity scale (up to 300 lbs), \$150.
- Vehicle tank meter, \$230.
- Liquified petroleum gas meter, \$360.
- Loading rack meter, \$300.
- Retail motor fuel device (or similar liquid measuring device), \$150.
- Timing device, \$150.
- Grain moisture meter, \$200.
- Package labeling accuracy, \$185.
- Price accuracy, \$255.
- Other reinspections, \$175.

Comparison with federal regulations

States have the primary responsibility for regulating weights and measures. The National Institute of Standards and Technology (NIST) provides model regulations and standards which may be adopted and enforced by the states. This rule is not mandated by federal law.

Comparison of rules in adjacent states

Wisconsin has a well–developed weights and measures program. Wisconsin statutes authorize DATCP to license persons who operate or service weights and measures in the state and also authorize DATCP to adopt rules prescribing standards for the construction, operation and maintenance of

weights and measures and to establish the fees for inspections and licenses.

Some surrounding states have less comprehensive weights and measures programs, and fewer administrative options for standardizing and regulating weights and measures. Surrounding states tend to regulate weights and measures on a more *ad hoc* basis. However, several surrounding states have established weights and measures fees to help fund their state programs.

Retail Food Establishments

Illinois and Minnesota charge retail food establishment scale fees, and Minnesota charges fees for package checking. Comparable Illinois scale fees range from \$20–\$900 annually per establishment, depending upon number of scales. Minnesota scale fees range from \$35–\$1125 annually per establishment, depending upon number of scales (the fee is \$25 per scale). Minnesota package checking fees range from \$35–\$330 depending on lot size.

Weights and Measures Service Companies and Technicians

Illinois and Michigan license weights and measures service companies. Illinois has an annual license fee of \$50. Michigan has a \$300 biennial license fee. Minnesota does not have a licensing program (funding comes from general program revenue).

Illinois and Michigan both license service company technicians. Illinois has an annual technician license fee of \$25. Michigan has a \$100 technician license fee every 2 years. Minnesota does not have a licensing program (funding comes from general program revenue).

Vehicle Scales

Illinois and Minnesota both license vehicle scales. Illinois has an annual license fee of \$200. Minnesota charges a range of \$170–\$250 per license with a Place in Service fee of \$110. Michigan does not have a licensing program (funding comes from general program revenue).

LP Gas Meters

Illinois and Minnesota both license LP gas meters. Illinois has an annual license fee of \$165. Minnesota has a \$150 license fee with a “place-in-service” fee of \$110. Michigan does not have a licensing program (funding comes from general program revenue).

Vehicle Tank Meters

Illinois and Minnesota both license vehicle tank meters. Illinois charges a range of \$100 to \$200 for an annual license. Minnesota’s program funding comes from other sources, but does have a “place-in-service” fee of \$110. Michigan does not have a licensing program (funding comes from general program revenue).

Reinspection Fees

Device	Illinois fees	Michigan fees	Minnesota fees
Vehicle Scale (large capacity)	\$200	GPR (no fee)	Avg \$388
Medium Capacity Scale	\$75–200	GPR	\$145–270
Small Capacity Scale	\$20–50	GPR	\$125–\$250
Vehicle Tank Meter	\$100–200	GPR	SEG
LPG Meter	\$165	GPR	\$250
Loading Rack Meter	\$200	GPR	SEG
Retail Motor Fuel	\$50	GPR	SEG
Timing Device	N/A	GPR	\$175/hr
Grain Moisture Meter	\$100	GPR	N/A
Package Labeling	N/A	GPR	\$235–\$530
Price Accuracy	N/A	GPR	\$175–\$190 /hour
Other	N/A	GPR	\$175–190/ hour

Small Business Impact

This rule will affect businesses that operate or service weights and measures in Wisconsin. Many affected businesses will pay higher fees, or will pay fees for the first time. However, the fee increases are not expected to have a major impact on overall business costs. Fees for each business category are proportionate to weights and measures program costs for that business category, and cover only a portion of program costs. A complete business impact analysis is available from DATCP.

Fiscal Estimate

This rule will increase annual DATCP revenues by an estimated \$400,000 and will allow DATCP to cover a larger share of its costs to administer Wisconsin’s weights and measures program. This rule will have no significant impact on local units of government. A complete fiscal estimate is available from DATCP.

Agency Contact Person

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

Michelle Reinen, Program & Policy Analyst
 Dept. of Agriculture, Trade and Consumer Protection
 P.O. Box 8911
 Madison, WI 53708–8911
 Telephone: (608) 224–5160
 E–Mail: hearingcomments@datcp.state.wi.us

Submittal of Proposed Rules to the Legislature

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

Commerce

Uniform Dwelling, Chs. Comm 20–25

CR 09–072

A rule-making order to amend s. Comm 22.31 (2) (b), relating to approved software to show compliance with the Uniform Dwelling Code thermal envelope requirements.

Public Instruction

CR 09–071

A rule-making order to create Chapter PI 15, relating to revenue limit exemptions for energy efficiencies.

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.

Insurance **CR 09-038**

Rule revising Chapters Ins 6 and 28, relating to the use of designations or certifications purporting to demonstrate special expertise in the financial or retirement needs of seniors.
Effective 2-1-10.

Natural Resources ***Fish, Game, etc., Chs. NR 1—*** **CR 09-016**

Rule revising Chapter NR 25, relating to commercial fishing in outlying waters.
Effective 2-1-10.

Natural Resources

Environmental Protection — Air Pollution Control, ***Chs. NR 400—*** **CR 09-020**

Rule revising Chapters NR 406, 407, 409, 419, 439, and 484, relating to federal hazardous air pollutant regulations, biodiesel fuel, incorporation of statutory changes, and air permit applications, and affecting small business.
Effective 2-1-10.

Public Notices

Department of Financial Institutions Division of Banking

Notice of Interest Rate on Required Residential Mortgage Loan Escrow Accounts for 2010

Under Section 138.052 (5) (a), Stats., with some exceptions, a bank, credit union, savings bank, savings and loan association, or mortgage banker, which originates a residential mortgage loan requiring an escrow account to assure the payment of taxes or insurance, shall pay interest on the outstanding principal of the escrow.

Section 138.052 (5) (am) 2., Stats., directs the division of banking to determine annually the required interest rate. The rate is based on the average of interest rates paid on regular passbook deposit accounts by institutions under the division of banking's or office of credit unions' jurisdiction.

The Department of Financial Institutions, Division of Banking, has calculated the interest rate required to be paid on escrow accounts under Section 138.052 (5), Stats., to be **0.46%** for 2010. This interest rate shall remain in effect through December 31, 2010.

Contact Person

Mr. Michael J. Mach, Administrator
Department of Financial Institutions
Division of Banking
Telephone (608) 261–7578

Department of Health Services

Medical Assistance Reimbursement for Inpatient and Outpatient Hospital Services: State of Wisconsin Hospital Medicaid Hospital Payment Plans beginning January 1, 2010

The State of Wisconsin reimburses hospitals for services provided to Medical Assistance recipients under the authority of Title XIX of the Social Security Act and Chapter 49 of Wisconsin Statutes. This program, administered by the State's Department of Health Services (DHS), is called Medicaid or Medical Assistance.

Under the current Medicaid Inpatient and Outpatient Hospital State Plans (i.e., proposed effective date of July 1, 2009), the rate-setting methodology for hospitals is a provider specific, cost based DRG payment system adjusted by case mix. Payments are adjusted as necessary to ensure budget compliance. The current Medicaid hospital reimbursement methodology also involves a retroactive cost settlement process.

Proposed Change

About half of the hospitals in Wisconsin are deemed Critical Access Hospitals (CAHs). CAHs currently receive rates estimated to provide 100% of CAH facility-specific costs including a retroactive settlement process. The 2009–2011 Wisconsin Biennial Budget, 2009 Wisconsin Act 28, requires the Department of Health Services (DHS) to reduce Medicaid spending by about \$600 million (all funds) in the biennium. This proposal helps to implement the savings contained in the DHS plan that was originally proposed, and publicly released, in September 2009.

Therefore, the Department is proposing to implement a rate setting methodology change for CAH inpatient and outpatient hospital services, i.e., reimbursing 90% of facility-specific CAH costs. The change is proposed to take effect for services provided on or after January 1, 2010.

The Department's proposals involves no change in the definition of those eligible to receive benefits under Medicaid, and the benefits available to eligible recipients remains the same. The effective date for these proposed changes will be January 1, 2010.

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

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:

By Mail

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

State Contact

Curtis Cunningham, Section Chief
Hospital Rate Setting
(608) 261-6858 (phone)
(608) 266-1096 (FAX)
Curtis.cunningham@wisconsin.gov (e-mail)

A copy of the proposed change is available for review at the main office of any county department of social services or human services. A copy of the proposed state plan(s) may also become available on the Wisconsin Medicaid ForwardHealth web site circa January 1, 2010 at:

https://www.forwardhealth.wi.gov/WIPortal/Tab/42/icscontent/provider/medicaid/hospital/resources_01.htm.spage

Written Comments

Written comments are welcome. Written comments on the proposed change may be sent by FAX, email, or regular mail to the Division of Health Care Access and Accountability. The FAX number is (608) 266-1096. The email address is curtis.cunningham@wisconsin.gov. Regular mail can be sent to the above address. All written comments will be reviewed and considered.

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

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