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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

EmR1112 — Rule adopted to create **sections ATCP 99.126 (6) and ATCP 99.235 (5)** and to amend **sections ATCP 99.126 (1) and ATCP 99.235 (1)**, relating to grain dealer and grain warehouse keeper agricultural producer security fund assessments.

This emergency rule was approved by the governor on July 14, 2011.

The statement of scope for this rule, SS 002-11, was approved by the governor on July 14, 2011, published in Register 667, on July 31, 2011, and approved by The Board of Agriculture, Trade and Consumer Protection on August 12, 2011.

Finding of Emergency

In Wisconsin, grain dealers (persons who purchase grain from producers), grain warehouse keepers (persons who store grain that is owned by others), milk contractors (persons who purchase milk from producers, and vegetable contractors (persons who purchase vegetables from producers for use in processing), must obtain a license to do these activities and are collectively referred to as “contractors”. Most contractors are “contributing contractors”, which means they must pay

annual assessments into the Wisconsin Agricultural Producer Security Fund. This fund is designed to help partially reimburse producers in the event that a contractor defaults on payment to producers. The annual assessments are calculated based on the total dollar value of commodities purchased or stored, the length of time that the contractor has participated in the fund, and certain financial ratios from the contractor’s balance sheet.

All else equal, a contractor who purchases small amounts will pay lower assessments than one who purchases large amounts. All else equal, a contractor who is in a conservative financial position will pay lower assessments than one who carries higher levels of liabilities relative to their assets or equity. All else equal, a contractor who has participated in the fund for more than five years will pay lower assessments than one who has participated for less than five years. The annual assessment, calculated from the factors discussed above, vary considerably from one contractor to another. An annual assessment may be as low as \$100, or as high as several hundred thousand dollars.

The grain dealer and grain warehouse keeper license years begin on September 1 of each year. At that point, DATCP calculates the assessment for the new license year that will be due in four quarterly payments over the course of that year. Calculations are based on purchase data and financial statement data for the grain dealer or grain warehouse keeper’s most recently completed fiscal year and annual financial statement.

For the license years that will begin on September 1, 2011, a very unusual combination of business financing and recent high commodity prices has led to unusually high assessment calculations for one grain company. In fact, if the existing rule remains unmodified, there will be one individual elevator that will be charged over \$1.2 million in assessments (for both grain dealer and grain warehouse combined). This is roughly four times greater than the previous highest annual assessment and roughly six times higher than the second highest annual assessment in the grain (dealer and warehouse combined) producer security fund program. Further, this potential assessment for next license year is more than double the highest assessment that has ever occurred in the milk contractor portion of the fund. This is significant because the dollar amount of a large milk contractor’s annual purchase of milk tends to be much higher the dollar amount of a large grain dealer’s annual purchase (or store) of grain.

In the majority of cases, the assessment calculation formulas reasonably charge contractors for the overall risk that they pose to the fund in the event that they should default on amounts owed to producers. However, at least in the short term, this is not true for this one elevator. DATCP will analyze whether or not it is appropriate for this emergency rule to also be promulgated as a permanent rule, and if so, begin a separate rulemaking process at a later date.

This temporary emergency rule is necessary to protect the welfare of the many hundreds of grain farmers who do business with this grain elevator, and to help prevent major disruptions in the grain industry.

Publication Date:	September 2, 2011
Effective Dates:	September 2, 2011 through January 29, 2012
Hearing Date:	October 5, 2011

Children and Families (2)

Safety and Permanence, Chs. DCF 37–59

1. EmR1034 — Rule adopted to create sections **DCF 57.485 and 57.49 (1) (am)**, relating to determination of need for new group homes.

Exemption From Finding of Emergency

Section 14m (b) of 2009 Wisconsin Act 335 provides that the department is not required to provide evidence that promulgating a rule under s. 48.625 (1g), Stats., 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.

Section 14m (b) also provides that notwithstanding s. 227.24 (1) (c) and (2), Stats., an emergency rule promulgated under s. 48.625 (1g), Stats., remains in effect until the permanent rules promulgated under s. 48.625 (1g), Stats., take effect.

Publication Date: September 2, 2010
Effective Dates: September 2, 2010 through the date permanent rules become effective
Hearing Date: October 21, 2010

2. EmR1106 — Rule adopted to revise **Chapters DCF 52, 54, and 57**, relating to regulation of rates charged by residential care centers for children and youth, child-placing agencies, and group homes.

Finding of Emergency

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

2009 Wisconsin Act 28 directed the department to implement rate regulation effective January 1, 2011. Implementation was delayed and this rule is phasing-in rate regulation at the earliest feasible date.

Publication Date: April 18, 2011
Effective Dates: April 18, 2011 through September 16, 2011
Hearing Date: May 18, 2011
Extension Through: October 14, 2011

Employment Relations Commission

EmR1113 — Rule adopted to create Chapters **ERC 70 to 74 and ERC 80**, relating to initial annual certification elections.

These emergency rules were approved by the Governor on September 13, 2011.

The statement of scope for this rule, SS 004–11, was approved by the governor on July 20, 2011, published in Register 667, on July 31, 2011, and approved by the Wisconsin Employment Relations Commission as required by s. 227.135 (2) on August 15, 2011.

Finding of Emergency

An emergency exists because the public peace, health, safety and welfare necessitate putting these rules into effect so that the Wisconsin Employment Relations Commission can

meet its election obligations under ss. 111.70 (4) (d) 3. b. and 111.83 (3) (b), Stats., and nonstatutory provisions ss. 9132 (1) (b) and 9155 (1) (b) of 2011 Wisconsin Act 10 as amended by nonstatutory provisions ss. 3570f and 3570h of 2011 Wisconsin Act 32.

Publication Date: September 15, 2011
Effective Dates: September 15, 2011 thru February 12, 2012

Government Accountability Board

EmR1049 — Rule adopted to amend section **GAB 1.28**, relating to the definition of the term “political purpose.”

Finding of Emergency

The Government Accountability Board amends s. GAB 1.28 (3) (b), Wis. Adm. Code, relating to the definition of the term “political purpose.” Section GAB 1.28 as a whole continues to clarify the definition of “political purposes” found in s. 11.01 (16) (a) 1., Stats., but repeals the second sentence of s. GAB 1.28 (3) (b) which prescribes communications presumptively susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate.

This amendment to s. GAB 1.28 (3) (b) is to the rule that was published on July 31, 2010 and effective on August 1, 2010, following a lengthy two year period of drafting, internal review and study, public comment, Legislative review, and consideration of U.S. Supreme Court decisions. Within the context of ch. 11, Stats, s. GAB 1.28 provides direction to persons intending to engage in activities for political purposes with respect to triggering registering and reporting obligations under campaign financing statutes and regulations. In addition, the rule provides more information for the public so that it may have a more complete understanding as to who is supporting or opposing which candidate or cause and to what extent, whether directly or indirectly.

Pursuant to s. 227.24, Stats., the Government Accountability Board finds an emergency exists as a result of pending litigation against the Board and two decisions by the United States Supreme Court: *Federal Election Commission (FEC) v. Wisconsin Right to Life, Inc. (WRTL II)*, 550 U.S. 549 (2007) and *Citizens United v. FEC*, 558 U.S. ___, (No. 08–205) (January 21, 2010). Following the effective date of the August 1, 2010 rule, three lawsuits were filed seeking a declaration that the rule was unconstitutional and beyond the Board’s statutory authority: one in the U.S. District Court for the Western District of Wisconsin, one in the U.S. District Court for the Eastern District of Wisconsin, and one in the Wisconsin Supreme Court. On August 13, 2010, the Wisconsin Supreme Court temporarily enjoined enforcement of the August 1, 2010 rule, pending further order by the Court.

In the lawsuit in the U.S. District Court for the Western District of Wisconsin, the parties previously executed a joint stipulation asking the Court to permanently enjoin application and enforcement of the second sentence of s. GAB 1.28 (3) (b). On October 13, 2010, the Court issued an Opinion and Order denying that injunction request. In denying the injunction, the Court noted that “G.A.B. has within its own power the ability to refrain from enforcing, or removing altogether, the offending sentence from a regulation G.A.B. itself created” and emphasized that “removing the language — for example, by G.A.B. issuing an emergency rule — would be far more ‘simple and expeditious’ than asking a federal court to permanently enjoin enforcement of the offending regulation.” *Wisconsin Club for Growth, Inc. v.*

Myse, No. 10–CV–427, slip op. at 2 (W.D. Wis. Oct. 13, 2010). The Court further noted that staying the case would give the Board time to resolve some or all of the pending issues through further rulemaking. *Id.*, slip op. at 14.

In addition, the Board, through its litigation counsel, has represented to the Wisconsin Supreme Court that it does not intend to defend the validity of the second sentence of s. GAB 1.28 (3) (b) and that it would stipulate to the entry of an order by that Court permanently enjoining the application or enforcement of that sentence.

This amendment brings s. GAB 1.28 (3) (b) into conformity with the above stipulation, with the representations that have been made to the Wisconsin Supreme Court, and with the suggestions made in the October 13, 2010, Opinion and Order of the U.S. District Court for the Western District of Wisconsin. The Board finds that the immediate adoption of this amendment will preserve the public peace and welfare by providing a simple and expeditious clarification of the meaning of s. GAB 1.28 for litigants, for the regulated community, and for the general public and by doing so in advance of the 2011 Spring Election and any other future elections.

Publication Date: January 7, 2011
Effective Dates: January 7, 2011 through June 5, 2011
Extension Through: October 3, 2011
Hearing Date: February 16, 2011

Natural Resources (6)

Fish, Game, etc., Chs. NR 1—

1. EmR1036 — Rule adopted to create **section NR 40.04 (2) (g)**, relating to the identification, classification and control of invasive species.

Exemption From Finding of Emergency

Section 227.24 (1) (a), Stats., authorizes state agencies to promulgate a rule as an emergency rule without complying with the notice, hearing and publication requirements under ch. 227, Stats., if preservation of the public peace, health, safety or welfare necessitates putting the rule into effect prior to the time it would take effect if the agency complied with the procedures. However, s. 23.22 (2t) (a), Stats., authorizes the department to promulgate emergency rules to identify, classify, or control an invasive species without having to provide evidence that an emergency rule is necessary for the preservation of public peace, health, safety, or welfare or to provide a finding of emergency. **In addition, such emergency rules may remain in effect until whichever of the following occurs first: the first day of the 25th month beginning after the effective date of the emergency rule, the effective date of the repeal of the emergency rule, or the date on which the permanent rule identifying, classifying, or controlling the invasive species, promulgated under s. 23.22 (2) (b) 6., Stats., takes effect.**

Publication Date: September 29, 2010
Effective Dates: September 29, 2010 through
See bold text above
Hearing Date: October 25 to 29, 2010

2. EmR1039 (DNR # IS–49–10(E)) — Rule adopted to create **sections NR 40.02 (7g), (7r), (25m), (28m) and (46m), 40.04 (3m) and 40.07 (8)**, relating to the

identification, classification and control of invasive bat species.

Exemption From Finding of Emergency

Section 227.24 (1) (a), Stats., authorizes state agencies to promulgate a rule as an emergency rule without complying with the notice, hearing and publication requirements under ch. 227, Stats., if preservation of the public peace, health, safety or welfare necessitates putting the rule into effect prior to the time it would take effect if the agency complied with the procedures. However, s. 23.22 (2t) (a), Stats., authorizes the department to promulgate emergency rules to identify, classify, or control an invasive species without having to provide evidence that an emergency rule is necessary for the preservation of public peace, health, safety, or welfare or to provide a finding of emergency. **In addition, such emergency rules may remain in effect until whichever of the following occurs first: the first day of the 25th month beginning after the effective date of the emergency rule, the effective date of the repeal of the emergency rule, or the date on which the permanent rule identifying, classifying, or controlling the invasive species, promulgated under s. 23.22 (2) (b) 6., Stats., takes effect.**

Publication Date: November 3, 2010
Effective Dates: November 3, 2010 through
See bold text above
Hearing Date: November 29, 2010

3. EmR1045 (DNR # IS–07–11(E)) — Rule to repeal **section NR 40.02 (28m)**, to amend **section NR 40.04 (3m)**, and to repeal and recreate **section NR 40.07 (8)**, (all as created by Natural Resource Board emergency order EmR1039, DNR # IS–49–10(E)), relating to the identification, classification and control of invasive species.

Exemption From Finding of Emergency

Section 227.24 (1) (a), Stats., authorizes state agencies to promulgate a rule as an emergency rule without complying with the notice, hearing and publication requirements under ch. 227, Stats., if preservation of the public peace, health, safety or welfare necessitates putting the rule into effect prior to the time it would take effect if the agency complied with the procedures. However, s. 23.22 (2t) (a), Stats., authorizes the department to promulgate emergency rules to identify, classify, or control an invasive species without having to provide evidence that an emergency rule is necessary for the preservation of public peace, health, safety, or welfare or to provide a finding of emergency. **In addition, such emergency rules may remain in effect until whichever of the following occurs first: the first day of the 25th month beginning after the effective date of the emergency rule, the effective date of the repeal of the emergency rule, or the date on which the permanent rule identifying, classifying, or controlling the invasive species, promulgated under s. 23.22 (2) (b) 6., Stats., takes effect.**

Publication Date: December 13, 2010
Effective Dates: December 13, 2010 through
See bold text above

4. EmR1107 — Rule to amend **section NR 25.09 (2) (b) 2. a. and f.**, and create **section NR 25.09 (1) (b) 11.**, relating to commercial fishing in outlying waters.

Finding of Emergency

The Department of Natural Resources finds that an emergency exists and the foregoing rules are necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of facts constituting the emergency is: Commercial trap nets in Lake Michigan pose a hazard to the

safety of recreational fishermen trolling submerged fishing lines. The preservation of public safety requires appropriate measures to assure that recreational boaters can know the location of trap nets and are able to release themselves from entanglement with the commercial nets. Accordingly, this NRB Order requires that 1) boat operators engaged in trolling with downriggers carry wire cutters on board capable of severing fishing line or downrigger cable, 2) the enhanced net marking requirements on Lake Michigan be applied to trap nets on Lake Superior, 3) all parts of trap nets set in Zone 3 of Lake Michigan between June 29 and Labor Day be within designated areas, and 4) the marking of trap nets in Lake Michigan be enhanced by the use of reflective tape on buoy staffs.

Publication Date: May 23, 2011
Effective Dates: May 23, 2011 through October 19, 2011
Hearing Date: June 27, 2011

5. EmR1109 — Rule to amend sections NR 10.01 (3) (ed) 1. a., 10.01 (3) (et) 2., 10.104 (7) (a) 1., and 10.104 (7) (b), relating to deer hunting seasons and carcass tag use.

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 rule is necessary in order to foster participation by hunters and landowners so they will continue to hunt and cooperate in CWD control and deer herd management. This rule proposal balances pressing social concerns about the quality of the deer hunt with the need for effective herd control measures such as additional antlerless deer harvest in management units that are more than 20% over population goals or simply over population goals in units that are part of the CWD Management Zone. This rule will increase harvest of bucks in the CWD zone which have a higher prevalence of CWD and, because of their greater dispersal distances, have a higher likelihood of spreading CWD. However, the rule retains a herd control tool which requires that antlerless deer be harvested before additional bucks (beyond the initial one) may be taken. The federal government and state legislature have delegated to the appropriate agencies rule-making authority to control and regulate hunting of wild animals. The State of Wisconsin must provide publications describing the regulations for deer hunting to more than 630,000 deer hunters prior to the start of the season. These regulations must be approved prior to printing nearly 1 million copies of the regulations publication.

Publication Date: July 2, 2011
Effective Dates: September 17, 2011 through February 13, 2012

6. EmR1111 — Rule to repeal and recreate sections NR 10.01 (1) (b), (g) and (u) and 10.32 and to amend section NR 10.01 (1) (v), relating to hunting and the 2011 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 late July of each year. This order is designed to bring the state hunting regulations into conformity with the federal regulations. Normal rule-making procedures will not allow the establishment of these changes by September 1. Failure to modify our rules will result in the failure to provide hunting opportunity and continuation of rules which conflict with federal regulations.

Publication Date: September 3, 2011
Effective Dates: September 3, 2011 through January 30, 2012
Hearing Date: October 3, 2011

Revenue (3)

1. EmR1104 — Rule adopted creating section Tax 2.957, relating to income and franchise tax credits and deductions for businesses that relocate to Wisconsin.

Finding of Emergency

The Department of Revenue finds that an emergency exists and that the attached rule order 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 creation of income and franchise tax credits and deductions for businesses that relocate to Wisconsin.

It is necessary to promulgate this rule order so that these credits and deductions, created to help bring much needed jobs to Wisconsin, may be administered in a fair and consistent manner.

This rule is therefore promulgated as an emergency rule and shall take effect upon publication in the official state newspaper. Certified copies of this rule have been filed with the Legislative Reference Bureau, as provided in s. 227.24, Stats.

Publication Date: April 7, 2011
Effective Dates: April 7, 2011 through September 3, 2011
Extension Through: November 2, 2011
Hearing Date: June 14, 2011

2. EmR1105 — Rule adopted creating section Tax 3.05, relating to income and franchise tax deductions for job creation.

Finding of Emergency

The Department of Revenue finds that an emergency exists and that the attached rule order 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 creation of income and franchise tax deductions for job creation.

It is necessary to promulgate this rule order so that these deductions, created to help bring much needed jobs to Wisconsin, may be administered in a fair and consistent manner.

This rule is therefore promulgated as an emergency rule and shall take effect upon publication in the official state newspaper. Certified copies of this rule have been filed with the Legislative Reference Bureau, as provided in s. 227.24, Stats.

Publication Date: April 7, 2011
Effective Dates: April 7, 2011 through September 3, 2011
Extension Through: November 2, 2011
Hearing Date: June 14, 2011

3. EmR1110 — The Wisconsin Department of Revenue hereby adopts an emergency rule interpreting s. 77.54 (56), Stats., creating **section Tax 11.10**, relating to wind, solar, and certain gas powered products.

The statement of scope for this emergency rule, SS 001-11, was approved by the governor on June 17, 2011, and published in Register 667 on July 14, 2011. This emergency rule was approved by the governor on June 20, 2011

Finding of Emergency

The Department of Revenue finds that an emergency exists and that the attached rule order 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 creation of a sales and use tax exemption for certain energy-producing wind, solar, and gas powered products and the electricity or energy they produce.

It is necessary to promulgate this rule order so that this exemption, which is effective July 1, 2011, may be administered in a fair and consistent manner.

This rule is therefore promulgated as an emergency rule and shall take effect upon publication in the official state newspaper. Certified copies of this rule have been filed with the Legislative Reference Bureau, as provided in s. 227.24, Stats.

Publication Date: June 29, 2011
Effective Dates: June 29, 2011 through November 25, 2011

Safety and Professional Services (3) (Formerly Regulation and Licensing)

1. EmR0827 — Rule adopted creating **section 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 Dates: September 10, 2008 through the date on which the final rules take effect
Hearing Date: November 26, 2008
April 13, 2009

2. EmR0828 — Rules adopted to amend **section RL 181.01 (2) (c)**; and to create **sections 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 Dates: September 10, 2008 through the date on which the final rules take effect
Hearing Date: November 26, 2008

3. EmR1102 — Rule adopted creating **Chapters RL 200 to 202**, relating to governing professional conduct of individuals licensed as sign language interpreters, and for the treatment of state resident licensure exemption requests.

Finding of Emergency

2009 Wisconsin Act 360 created laws regulating the practice of sign language interpreting, and became effective on December 1, 2010. Under the act, codified at s. 440.032, Stats., individuals practicing as sign language interpreters must now be licensed by the department, and must comply with a code of professional conduct to be promulgated by the department. The new law also provides for exemptions from the licensure requirement under certain circumstances, and requires the council to promulgate rules establishing the criteria and procedures for granting state resident exemptions. As s. 440.032, Stats., is already in effect, an emergency rule is necessary to implement the law pending promulgation of a similar permanent rule.

Publication Date: March 16, 2011
Effective Dates: March 16, 2011 through August 12, 2011
Extension Through: October 11, 2011
Hearing Date: May 3, 2011

Safety and Professional Services — Barbering and Cosmetology Examining Board

EmR1047 — Rule adopted to revise **Chapters BC 9 and 11**, relating to late renewal and continuing education.

Finding of Emergency

The rule as currently promulgated fails to adequately protect the public to the extent that several provisions are underdeveloped, ambiguous or silent. As a result, inconsistent interpretations and contradictory information has led to significant confusion within the profession. Given that the rules require licensees to comply by March 31, 2011, the errors and omissions need to be addressed immediately so licensees can receive adequate training to provide safe and competent services to the public, and comply with the requirements for renewal of a license.

Publication Date: December 23, 2010
Effective Dates: December 23, 2010 through
 May 21, 2011
Extension Through: September 18, 2011
Hearing Date: April 4, 2011

**Safety and Professional Services —
 Veterinary Examining Board**

EmR1103 — Rule adopted to revise **sections VE 2.01 (2), 3.03 (intro) and (5)**, relating to the requirements for the initial licensure of veterinarians, specifically, the procedures for, and the types of examinations required.

Finding of Emergency

As currently written, the veterinary examining board rules regarding licensure candidates' deadlines for submission of applications to take the North American Veterinary Licensing Examination (NAVLE) do not align with the deadlines established by the National Board of Veterinary Medical Examiners (NBVME). The rules thus also conflict with the deadlines defined in the board's NBVME NAVLE agreement.

The rules state that a candidate shall file a completed NAVLE application with the board at least 60 days prior to the date of the scheduled examination. However, NAVLE's deadlines require submission of applications approximately 115 days ahead of the examination date. This inconsistency between the rules and NAVLE's deadlines will likely cause significant confusion for licensure candidates. At worst, it could preclude a candidate from taking the particular NAVLE he or she applies for due to missing the application deadline. In addition, recently-passed legislation now allows foreign veterinary graduates to show evidence of successful completion of the Program for the Assessment of Veterinary Education Equivalence (PAVE) as an alternative to the American Veterinary Medical Association (AMVA) Educational Commission for Foreign Veterinary Graduates Certification (ECFVGC) program. The board adopts this emergency rule effecting the necessary changes pending the promulgation of a similar permanent rule.

Publication Date: March 28, 2011
Effective Dates: March 28, 2011 through
 August 24, 2011
Extension Through: October 23, 2011
Hearing Date: May 25, 2011

Scope Statements

Agriculture, Trade and Consumer Protection

SS 022–11

In accordance with 2011 Wisconsin Act 21 and Act 32 (s. 227.24 (1) (e) 1d., Stats.) this scope statement was approved by the Governor on September 2, 2011 before DATCP took any action in proceeding with this proposed emergency rule including submission of this scope statement for publication.

The Department of Agriculture, Trade and Consumer Protection (DATCP) gives notice, pursuant to s. 227.24, Wis. Stats., that it proposes to promulgate an emergency administrative rule as follows:

Subject

Farmland Preservation Program – Agricultural Enterprise Area (AEA) Designation.

Administrative Code Reference

ATCP 53.

Statutory Authority

Section 91.84, Stats.

Preliminary Objectives

This emergency rule may designate new Agricultural Enterprise Areas (AEAs) and modify existing AEAs under s. 91.84, Wis. Stats. Under s. 91.84 (2), Wis. Stats., the agency is granted authority to use the emergency rule process to promulgate this rule without the finding that the rule is necessary for the preservation of the public peace, health, safety, or welfare, and the agency is not required to provide a finding of emergency for this rule. An AEA is a contiguous land area, devoted primarily to agricultural use, which is locally targeted for agricultural preservation and agricultural development. DATCP may designate AEAs based on local petitions.

The designation of an AEA does not, by itself, control or restrict land use. However, farmers within a designated AEA are eligible to enter into voluntary farmland preservation agreements with DATCP under s. 91.60, Wis. Stats. Under a farmland preservation agreement, the farmer may claim income tax credits under s. 71.613, Wis. Stats., in return for keeping land in agricultural use. Under current law, *only* farmers located within an AEA are eligible to enter into farmland preservation agreements with DATCP.

Preliminary Policy Analysis

AEAs are designed to preserve agricultural land and promote agricultural development, including agriculture-related business, investment and innovation. An AEA may be part of a broader local strategy to promote agriculture and related development.

The land area comprising an AEA must be located within a farmland preservation area designated in the county's certified farmland preservation plan. An AEA may include non-agricultural as well as agricultural land, but must be primarily devoted to agricultural use.

DATCP may designate an AEA based on a local petition. The petition must be signed by at least 5 farm owners within the AEA and by the authorized representative of each political subdivision in which any part of the proposed area is located (other interested persons, including other farmers, businesses and community groups, may also sign the petition as cooperators). A resolution in support of the AEA petition must be passed by every affected county, town and municipality. Other farms may be included within the AEA, and the owners of those farms may enter into farmland preservation agreements with DATCP, regardless of whether the farm owners signed the original petition to create the AEA.

A petition must comply with s. 91.86, Wis. Stats., and must show that the proposed AEA complies with applicable requirements under s. 91.84, Wis. Stats. DATCP will issue a Request for Petitions after this scope statement receives the required approvals under sec. 227.24 (1) (e) 1d.

This emergency rule may designate AEAs selected by DATCP based on competing local petitions. DATCP may designate AEAs in consultation with a panel that includes independent reviewers. DATCP may choose among competing petitions, and may reject petitions as it deems appropriate.

Relevant Federal Law

None.

Entities Affected

Farmers and Other Landowners

This emergency rule may benefit farmers and landowners in the designated AEAs. The designation of an AEA does not, by itself, control or restrict land use. However, an owner of farmland in an AEA may enter into a voluntary farmland preservation agreement with DATCP. Under a farmland preservation agreement, the landowner may claim income tax credits under s. 71.613, Wis. Stats., in return for keeping land in agricultural use and implementing soil and water conservation practices. An agreement remains in effect for 15 years, and applies only to the land covered by the agreement.

Designation of an AEA may be part of a broader local strategy to protect farmland and promote agricultural development. Designation may foster agricultural investment, and promote collaborative working relationships among landowners, agriculture-related businesses and local governments. It may also promote a more secure and attractive climate for agricultural continuity and agriculture-related investment. Farmland preservation and conservation practices may also benefit other landowners.

Counties, Towns and Municipalities

This emergency rule may benefit counties, towns and municipalities in which AEAs are designated. DATCP will only designate AEAs in counties, towns and municipalities that affirmatively support the AEA designation, as shown by the signatures of the authorized representatives on the submitted petition and the resolution passed in support of the designation.

An AEA designation may be part of a broader local strategy to protect farmland and promote agricultural and related

development. County and local governments can use the AEA designation to support local farmland preservation and development plans. County and local governments may adopt zoning ordinances, offer economic development incentives, and take other local actions to supplement the AEA and foster agricultural preservation and development.

Agriculture–Related Business

This emergency rule may benefit a wide range of agriculture–related businesses. This emergency rule may benefit businesses, such as food processing and farm supply businesses, which may be located in or attracted to a designated AEA. By protecting and promoting agriculture, this emergency rule may also benefit a wide range of agricultural service providers, regardless of whether those providers maintain facilities in the AEA. For example, this emergency rule may benefit farm supply organizations, nutrient management planners, soil testing laboratories, agricultural engineers, construction contractors, food processors, testing laboratories, and agri–tourism interests.

Policy Alternatives

The AEA program is a key part of the Working Lands Initiative enacted in 2009 Wis. Act 28. If DATCP takes no action to implement the AEA program, the full benefits of the Working Lands Initiative will not be realized. The Working Lands Initiative is designed to preserve farmland, promote agricultural and related development, encourage sound land use planning, minimize land use conflicts, promote soil and water conservation, encourage agricultural investment, and help farms stay economically viable.

Under current law, only farmers in designated AEAs may enter into farmland preservation agreements with DATCP and obtain tax credits under those agreements. If DATCP fails to designate AEAs by emergency rule, as contemplated by current law, farmers will be deprived of that opportunity. Local governments and agriculture–related businesses will also be deprived of a significant land use and business development tool.

Statutory Alternatives

None at this time.

Staff Time Required

DATCP estimates that it could use the equivalent of 0.5 FTE staff to develop this emergency rule. This anticipates investigation and analysis, rule drafting, preparing related documents, holding public hearings and communicating with affected persons and groups. DATCP will use existing staff to develop this emergency rule.

Datcp Board Authorization

DATCP may not begin drafting this emergency 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.

Natural Resources

Fish, Game, etc., Chs. NR 1—

SS 023–11

(DNR # FH–22–11(E))

This statement of scope was approved by the governor on September 15, 2011.

Subject

Revises Chapter NR 25, relating to Lake Michigan and Green Bay Commercial Harvest Season Change for Whitefish – Emergency Rule.

Description of the Objective of the Rule

Add six days to the Lake Michigan and Green Bay whitefish commercial harvest season.

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

Current policy under NR 25.05 (1) (c), Wis. Adm. Code, specifies the open seasons for commercial fishing in the outlying waters of Green Bay, Lake Michigan, and Lake Superior. The existing open season for whitefish in Green Bay and Lake Michigan is December 1 through October 25, both dates inclusive.

In August 2011, the Lake Michigan Commercial Fishing Board and Lake Michigan Fisheries Team approved a motion to propose adding six days to the Lake Michigan and Green Bay commercial fishing season for whitefish. The current commercial season for whitefish from Wisconsin waters of Lake Michigan and Green Bay closes one week before the season closure for state–licensed fishers in the State of Michigan. This limitation on fishing opportunities threatens the welfare of state–licensed commercial fishers in Wisconsin.

Department biologists have reviewed the proposal and believe the change would likely not threaten the whitefish population.

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

Section 23.11 (1), Stats., grants the department such powers as may be necessary or convenient to enable it to exercise the functions and perform the duties required of it by ch. 23, Stats., and by other provisions of law.

Section 29.014 (1), Stats., directs the department to establish and maintain conditions governing the taking of fish that will conserve the fish supply and ensure the citizens of this state continued opportunities for good fishing.

Section 29.041, Stats., provides that the department may regulate fishing on and in all interstate boundary waters and outlying waters.

Section 29.519 (1m) (b), Stats., authorizes the department to limit the number of Great Lakes commercial fishing licenses, designate the areas in the outlying waters under the jurisdiction of this state where commercial fishing operations are restricted, and designate the kind, size, and amount of gear to be used in the harvest.

Section 227.11 (2) (a), Stats., expressly confers rulemaking authority on the department to promulgate rules interpreting any statute enforced or administered by it, if the agency considers it necessary to effectuate the purpose of the statute.

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

Approximately 40 hours.

Description of all Entities that may be Impacted by the Rule

The proposed rule change would expand opportunities for commercial fishing businesses and was initiated in response to the expressed concerns of commercial fishers.

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

The department is not aware of any existing or proposed federal regulation that would govern commercial fishing in Wisconsin's waters of Lake Michigan and Green Bay or Lake Superior.

Contact Person

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E-mail: William.Horns@wisconsin.gov

**Safety and Professional Services
(formerly Regulation and Licensing)**

SS 024-11

The statement of scope for this rule was approved by the governor on September 6, 2011.

Rule No.

RL 84.04 (1) (b)

Relating to

Revises section RL 84.04 (1) (b), relating to certified general appraiser equivalent education semester credit hours.

Description of the Objective of the Rule

To correct an error in Clearinghouse Rule 10-135 which will go into effect on September 1, 2011. The Federal Institutions Reform, Recovery, and Enforcement Act requires a certified general appraiser credential to have a bachelor's degree or equivalent education of at least 30 semester credit hours.

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

Under the Federal Institutions Reform, Recovery and Enforcement Act (FIRREA), the state criteria for the

qualifications of certified real estate appraisers must meet the minimum qualifications criteria for certification established by the Appraiser Qualifications Board (AQB) of the Appraisal Foundation. The education requirement is a bachelor's degree or equivalent education from an accredited college or university. Equivalent education shall consist of at least 30 semester credit hours successfully completed at an accredited college or university or completed through the CLEP, which cover ten specified subject matter courses.

Prior to Clearinghouse Rule 10-135 which inadvertently changed the education requirement to 10 semester hours instead of 30, RL 84.04 (1) (b) required the equivalent education to consist of at least 30 semester credit hours. This rule is to correct the error which occurred with Clearinghouse Rule 10-135.

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

The Department of Safety and Professional Services has specific rule making authority pursuant to:

- 458.03 (1) (b) Subject to the procedure under s. 458.05, promulgate rules establishing criteria for the approval of educational and continuing educational programs and courses of study for appraisers and establishing criteria for the approval of the courses required under ss. 458.06 (2) (d) and 458.08 (2) (d).
- 458.085 The department shall promulgate rules establishing educational requirements for general and residential appraiser certification and for appraiser licensure under this chapter.

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

5 hours.

Description of all Entities that may be Impacted by the Rule

Applicants for a certified general appraiser credential.

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

Pursuant to FIRREA, the state criteria for the qualifications of certified real estate appraisers must meet the minimum qualifications criteria established by AQB. This rule will bring Wisconsin in line with the FIRREA and AQB requirements.

Contact Person

Sharon Henes, Paralegal
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Department of Safety and Professional Services
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(608) 261-2377
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Submittal of Rules to Legislative Council Clearinghouse

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

Employee Trust Funds CR 11-044

On September 8, 2011, the Department of Employee Trust Funds submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

This rule is not subject to s. 227.135 (2), as affected by 2011 Wis. Act 21. The statement of scope for this rule, published in Register No. 662, on February 14, 2011, was sent to the Legislative Reference Bureau prior to the effective date of 2011 Wis. Act 21.

Analysis

The proposed rule revises Chapter ETF 11 to update the department appeal procedures, improve and clarify the appeal process for members, the hearing examiner, the boards that decide appeals, the department, and others who are involved in the process.

Agency Procedure for Promulgation

A public hearing is required and will be held on October 21, 2011, at 10:00 a.m. in the downstairs Conference Room GB at the offices of the Department of Employee Trust Funds, 801 West Badger Road, Madison, Wisconsin. The Department's General Counsel is primarily responsible for this rule.

Contact Information

David H. Nispel, General Counsel
Email: david.nispel@etf.state.wi.us
Telephone: (608) 264-6936

Employee Trust Funds CR 11-045

On September 9, 2011, the Department of Employee Trust Funds (ETF) submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse. The rule is in relation to compliance with the Internal Revenue Code.

This rule is not subject to s. 227.135 (2), as affected by 2011 Wis. Act 21. The statement of scope for this rule, submitted to the Legislative Reference Bureau on January 05, 2011 and published in the Administrative Register No. 661, on January 31, 2011, was received by the Legislative Reference Bureau prior to the effective date of 2011 Wis. Act 21.

Analysis

The proposed rule revises Chapters ETF 10 and 20, relating to maintaining the tax-qualified status of the Wisconsin Retirement System.

As the administrator of the Wisconsin Retirement System (WRS), ETF is responsible for ensuring the the WRS complies with all applicable provisions of the Internal Revenue Code (IRC) in order to maintain the tax-qualified status of the WRS. IRC s. 401 (a) (16) provides that a trust is not a qualified trust under IRC s. 401 (a) if the plan of which

such trust is a part provides for benefits or contributions that exceed the s. 415 limits. In addition, ETF must ensure that the limits on annual compensation used to calculate benefits are applied in accordance with IRC s. 401 (a) (17).

Agency Procedure for Promulgation

A public hearing is required for this rule. The hearing date, once scheduled, will be preceded by a notice of public hearing pursuant to ss. 227.17 and 227.18, Stats. The departments Office of Policy Privacy and Compliance is primarily responsible for this rule.

Contact Information

Mary Alice McGreevy, Compliance Officer
Email: maryalice.mcgreevy@etf.state.wi.us
Telephone: (608) 267-2354

(Correction of notice published in September 14, 2011 Register No. 669)* Transportation CR 11-043

On August 31, 2011, the Department of Transportation submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

This rule is not subject to s. 227.135 (2), as affected by 2011 Wis. Act 21. The statement of scope for this rule, published in Administrative Register No. 665 on May 31, 2011 was sent to the Legislative Reference Bureau prior to the effective date of 2011 Wis. Act 21.

Analysis

The proposed rule revises section Trans 100.02, relating to changes to motor vehicle liability insurance limits.

Agency Procedure for Promulgation

A public hearing is not required for this rule. According to the procedure set forth in s. 227.16 (2) (b), Stats., the Wisconsin Department of Transportation proposes to adopt the rule amending Ch. Trans 100 without public hearing. The proposed rulemaking will bring Ch. Trans 100 into conformity with a statute that has been changed or enacted, namely the provisions of ch. 344, Stats., as amended by 2011 Wis. Act 14. The departments Division of Motor Vehicles, Safety Responsibility is primarily responsible for promulgation of the rule.

Contact Information

Jane Dederich, Accident Records Unit Supervisor,
Division of Motor Vehicles
Room 804
P.O. Box 7983
Madison, WI 53707-7983
Email: dotuninsuredmotorist@dot.wi.gov
Telephone: (608) 264-7236

*NOTE: The notice incorrectly stated:
"The rule is in relation to rehired annuitants and separation of employment."

Rule–Making Notices

Notice of Hearing Employee Trust Funds CR 11–044

The Wisconsin department of employee trust funds proposes an order to revise Chapter ETF 11, relating to the ETF appeals process.

Hearing Information

Date: Friday, October 21, 2011
Time: 10:00 A.M.
Location: 801 W. Badger Road
 Conference Room GB
 Madison, WI 53713

Persons wishing to attend should come to the reception desk up the stairs (or by elevator) from the main entrance to the building.

Submittal of Written Comments

Written comments on the proposed rule may be submitted to David Nispel, General Counsel, Department of Employee Trust Funds, 801 West Badger Road, P.O. Box 7931, Madison, WI 53707. Written comments must be received at the Department of Employee Trust Funds no later than 4:30 p.m. on October 21, 2011.

Copies of Proposed Rule

Copies of the proposed rule are available without cost from David Nispel, General Counsel, Department of Employee Trust Funds, P.O. Box 7931, Madison, WI 53707–7931. The telephone number is: (608) 264–6936.

Analysis Prepared by Department of Employee Trust Funds

Statutes interpreted

Sections 40.03 (1) (j), (2) (m), (3), (6) (j), (7) (f), (8) (f), (9), 40.06 (1) (e), 40.80 (2), (2m), and 227.44 to 227.48, 227.485, 227.49, and 227.50, Stats.

Statutory authority

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

Explanation of statutory authority

By statute, the DETF Secretary is expressly authorized, with appropriate board approval, to promulgate rules required for the efficient administration of any benefit plan established in ch. 40 of the Wisconsin statutes. Also, each state agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency if the agency considers it necessary to effectuate the purpose of the statute.

Related rules or statutes

There are no other related statutes or administrative rules directly related to this rule.

Plain language analysis

The purpose of this rule is to update the department's appeal procedures, to improve and clarify the process for members, the administrative law judge, the boards that decide

appeals, the department, and others who are involved in the process.

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

There are no existing or proposed federal regulations that directly pertain to this proposed rule.

Comparison with rules in adjacent states

Many other retirement systems in adjacent states promulgate rules to provide an appeals process for their members. The appeals process established by the department of employee trust funds is consistent with those other retirement systems in Illinois, Iowa, Michigan, and Minnesota.

Summary of factual data and analytical methodologies

The department is proposing this rule to clarify and improve the existing appeals process established by this department.

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

This rule does not have an effect on small businesses because private employers and their employees do not participate in, and are not covered by, the Wisconsin Retirement System.

Effect on Small Business

The rule has no effect on small businesses.

Fiscal Estimate

The proposed rule has no direct fiscal impact. The proposed rule generates no revenues for any employer. The proposed rule itself has no effect on the fiscal liabilities of any county, city, village, town, school district, technical college district or sewerage. The rule has no state fiscal effect during the current biennium and no fiscal impact on state funds.

Economic impact analysis

This rule does not have an economic effect on specific businesses, business sectors, public utility ratepayers, local governmental units, and the state's economy as a whole. Because this technical rule does not have an economic impact, ETF has not solicited information and advice from businesses, associations representing businesses, local governmental units, and individuals that may be affected by the proposed rule.

The policy problem that the proposed rule is intended to address is to improve and clarify the ETF appeals process for members, the administrative law judge, the boards that decide appeals, the department, and others involved in the process. The federal government and the various retirement systems in the states of Illinois, Iowa, Michigan, and Minnesota have administrative rules concerning an appeals process.

There is no economic impact of this proposed rule and therefore no implementation and compliance costs reasonably expected to be incurred by or passed along to businesses, local governmental units, and individuals that may be affected by the proposed rule.

The alternative of not promulgating the proposed rule would result in the policy problem being ineffectively addressed with a lower level of customer service.

Since the proposed rule does not adversely affect in a material way the economy, a sector of the economy, productivity, jobs, or the overall economic competitiveness of the state, the department did not consult with businesses, local governmental units, and individuals that may be affected by the proposed rule when preparing this economic impact

analysis.

Agency Contact Person

Please direct any questions about the proposed rule to David Nispel, General Counsel, Department of Employee Trust Funds, P.O. Box 7931, Madison, WI 53707. The email address: david.nispel@etf.state.wi.us. The telephone number is: (608) 264-6936.

Submittal of Proposed Rules to the Legislature

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

Agriculture, Trade and Consumer Protection
CR 11-038

(DATCP # 10-R-03)

Revises Chapter ATCP 157, relating to Wisconsin certified honey and the sale of products represented as honey.

This rule is not subject s. 227.185, Wis. Stats. The statement of scope for this rule, published in Register No. 652 on April 30, 2010, was sent to the Legislative Reference Bureau prior to the effective date of 2011 Wisconsin Act 21.

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.

Agriculture, Trade and Consumer Protection **CR 10-121**

Revises Chapter ATCP 70, relating to food processing plant license exemptions for certain maple sap processors.
Effective 11-1-11.

Natural Resources ***Fish, Game, etc., Chs. NR 1—*** **CR 11-007**

Revises Chapters NR 10 and 45, relating to game and

hunting, wildlife damage and nuisance control, and DNR managed lands.
Effective 11-1-11 in part and 2-1-12 in part.

Safety and Professional Services — **Veterinary Examining Board** **CR 11-025**

Revises Chapters VE 2 and 3, relating to the requirements for the initial licensure of veterinarians.
Effective 11-1-11.

Rules Published with this Register and Final Regulatory Flexibility Analyses

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

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

Administration

CR 11-004

(Authority for this rule was transferred to Department of Administration by 2011 Wisconsin Act 32)

Revises Chapter Comm 103, relating to disabled veteran-owned business certification program. Effective 10-1-11.

Summary of Final Regulatory Flexibility Analysis

Less stringent requirements are not proposed for small businesses because the statutory directives under which these rules are proposed do not provide such flexibility.

The proposed rules are not expected to impose a negative effect on any small businesses because the rules only address applying for, receiving, and maintaining voluntary credentials.

Comments from Legislative Committees (Summary)

No comments received.

Marriage and Family Therapy, Professional Counseling and Social Work Examining Board

CR 11-028

Revises Chapter MPSW 3, relating to social work training certificate. Effective 10-1-11.

Summary of Final Regulatory Flexibility Analysis

These proposed rules have been reviewed by the department's Small Business Review Advisory Committee. It was determined the rules will not have any significant economic impact on a substantial number of small businesses, as defined in s. 227.114 (1), Stats.

Summary of Comments by Legislative Review Committees

No comments reported.

Natural Resources

Environmental Protection – Water Supply, Chs. NR 800–

CR 10-109

(DNR # DG-34-10)

Creates Chapter NR 860, relating to the application and permit process for withdrawals of water from the Great Lakes basin. Effective 10-1-11.

Summary of Final Regulatory Flexibility Analysis

The proposed rule is not expected to have a significant economic impact on small businesses. The rule affects small businesses that supply their own water with water supply systems that on average withdraw over 100,000 gallons per

day in any 30-day period. Small businesses, like other entities that are affected by this rule, will have to obtain a permit, follow the permit conditions, measure the amount of water used on a monthly basis, and report that water use annually. Small businesses that receive water solely from a public water supply will not be directly impacted by this rule. Most small businesses regulated by this rule are expected to fall within the general permit category. The general permit requirements are straightforward and can be accomplished by most individuals with no specific professional background. The application for an individual permit may require the hiring of a professional environmental consultant to assist with the evaluation of impacts from a proposed withdrawal.

Summary of Comments of Legislative Standing Committees

No comments received.

Safety and Professional Services — (formerly Regulation and Licensing)

CR 11-018

Creates Chapters RL 200 to 202, relating to sign language interpreters. Effective 10-1-11.

Summary of Final Regulatory Flexibility Analysis

The department finds that this rule will have no significant effect on small business.

Summary of Comments of Legislative Standing Committees

No comments received.

Safety and Professional Services — Chiropractic Examining Board

CR 11-019

Revises Chapter Chir 5, relating to continuing education for chiropractors, chiropractic technicians and chiropractic radiological technicians. Effective 10-1-11.

Summary of Final Regulatory Flexibility Analysis

These proposed rules have been reviewed by the department's Small Business Review Advisory Committee to determine whether the rules will have any significant economic impact on a substantial number of small businesses, as defined in s. 227.114 (1), Stats. The department finds that these proposed rules will not have a significant economic impact on a substantial number of small businesses.

Summary of Comments of Legislative Standing Committees

No comments reported.

Sections Affected by Rule Revisions and Corrections

The following administrative code sections had rule revisions and corrections take place in **September 2011**, and will be effective as indicated in the history note for each particular section. For additional information, contact the Legislative Reference Bureau at (608) 266-7590.

Revisions

Chiropractic Examining Board

Ch. Chir 5

Chir 5.01 (title), (1) (a), (c), (d), (e), (f), (g), (h), (1g), (1r), (2) (a), (b), (3)

Chir 5.02 (1) (b) (title), (bm), (c), (e), (2) (am), (4) (a) 5m.

Chir 5.03 (2)

4., 5., 7., 8., 9., (c), (3) (a), (intro.), 1., (b) (intro.), 1., 2., (3m), (4), (6) (b)

Natural Resources

Ch. NR 860

Entire Chapter

Commerce

Ch. Comm 103

Entire Chapter

Regulation and Licensing

Ch. RL 200

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Ch. RL 201

Entire Chapter

Ch. RL 202

Entire Chapter

Marriage & Family Therapy, Professional Counseling & Social Work Examining Board

Ch. MPSW 3

MPSW 3.13 (1) (a) 1., (2) (intro.), (b) (intro.), 1., 2., 3.,

Editorial Corrections

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

Commerce

Ch. Comm 103

Comm 103.10

Comm 103.12 (1), (4), (8), (15), (16), (22), (26)

Comm 103.22

Comm 103.50 (1) (b), (d)

Comm 103.52 (3)

Comm 103.65 (3) (a) 2., (d)

Comm 103.70 (1)

Comm 103.75 (1), (6)

Natural Resources

Ch. NR 860

NR 860.22 (1)

NR 860.31 (1)

Regulation and Licensing

Ch. RL 202

RL 202.01 (title)

RL 202.02 (title)

Marriage & Family Therapy, Professional Counseling & Social Work Examining Board

Ch. MPSW 3

MPSW 3.13 (3) (a) 1.

Executive Orders

The following are recent Executive Orders issued by the Governor.

Executive Order 40. Relating to a Declaration of a State of Emergency for Recurring Straight-Line Wind and Rain Storms in Northwestern Wisconsin.

Executive Order 41. Relating to a Special Election for the Ninety-Fifth Assembly District.

Executive Order 42. Relating to a Proclamation that the Flag of the United States and the Flag of the State of Wisconsin be Flown at Half-Staff to Honor the Victims of the September 11, 2001 Terrorist Attacks and the Members of the Armed Forces Defending Our Freedoms Overseas.

Public Notices

Department of Health Services (Medicaid Drug Reimbursement)

The state of Wisconsin covers legend and non-legend drugs and drug products and reimburses pharmacies for services provided to low-income persons under the authority of Title XIX of the Federal Social Security Act and sections 49.43 to 49.47 and 49.688, Wisconsin Statutes. The Wisconsin Department of Health Services administers this program, which is called Medical Assistance or Medicaid.

Federal statutes and regulations require a state plan that indicates Medicaid covered services and limits to coverage.

A state plan is in effect that indicates coverage of drugs and drug products for medically needy and categorically needy Medicaid recipients and reimbursement policy for pharmacy services. Pursuant to legal action against First DataBank regarding the validity of the Average Wholesale Price (AWP) benchmark, the Department of Health Services is proposing to make changes in the provisions contained in the state plan that apply to pharmacy reimbursement.

Change in Payment Methods

Federal law requires Medicaid programs to reimburse pharmacy providers at their estimated acquisition cost for pharmacy products. For brand name drugs and generic drugs without a State Maximum Allowed Cost (SMAC) rate, Wisconsin Medicaid has used a discount to AWP to estimate pharmacy acquisition cost.

As a result of a lawsuit settlement, AWP will no longer be reported to the State by its vendor First DataBank after September 28, 2011. The Department will implement Wholesale Acquisition Cost (WAC) as the pricing benchmark for brand name drugs and generic drugs without a SMAC rate. Dispensing fee amounts paid to pharmacies are not affected by the change from AWP to WAC. The Department will continue to reimburse pharmacies for the drug ingredient cost plus a dispensing fee.

Effective October 1, 2011, the Department will reimburse pharmacies for brand name drugs at a rate of WAC + 2%; the Department will reimburse pharmacies for generic drugs without a SMAC rate at a rate of WAC - 3.8%. For drugs without a WAC rate reported by the manufacturer or SMAC rate established, the Department will establish an Expanded Maximum Allowed Cost (EMAC) rate.

In most circumstances, for drugs with multiple rates on file, e.g., WAC and EMAC or WAC and SMAC, the Department will reimburse the pharmacy at the lower of the rates on file.

The change from AWP to WAC reimbursement is projected to decrease expenditures \$3.06 million GPR in state fiscal year 2012.

Copies of Proposed Changes:

A copy of the proposed Medicaid program changes may be obtained free of charge by calling or writing as follows:

Regular Mail

James Vavra
Division of Health Care Access and Accountability
Wisconsin Department of Health Services
P. O. Box 309
Madison, WI 53701-0309

Phone

James Vavra
(608) 261-7838

FAX

(608) 266-1096
Attn: James Vavra

E-Mail

James.Vavra@dhs.wisconsin.gov

Written Comments:

Written comments are welcome. Written comments on the changes may be sent by FAX, e-mail, or regular mail to the Division of Health Care Access and Accountability. The FAX number is (608) 266-1096. The e-mail address is james.vavra@dhs.wisconsin.gov. Regular mail can be sent to the above address.

The written comments 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.

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