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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. 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 No. 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

2. EmR1118 — Rule adopted to revise **Chapter ATCP 53**, relating to agricultural enterprise areas (AEAs).

The statement of scope for this rule, published in Register No. 664, on April 30, 2011, was sent to the Legislative Reference Bureau prior to the effective date of 2011 Wis. Act 21.

Exemption From Finding of Emergency

Under s. 91.84 (2), the department may use the procedure under s. 227.24 to promulgate a rule designating an agricultural enterprise area or modifying or terminating the designation of an agricultural enterprise area. Notwithstanding s. 227.24 (1) (c) and (2), a rule promulgated under that subsection remains in effect until the department modifies or repeals the rule. Notwithstanding s. 227.24 (1) (a) and (3), the department is not required to determine that promulgating a rule under that subsection as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under that subsection.

Publication Date: November 14, 2011
Effective Dates: January 1, 2012 until modified or repealed by the department.
Hearing Date: December 12, 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

Insurance

EmR1117 — Rule adopted to revise **Chapter Ins 18**, relating to grievances and independent review requirements and affecting small business.

The statement of scope for this rule, SS 027–11 Ch. Ins 18, was approved by the governor on September 30, 2011, published in Register No. 670, on October 14, 2011, and approved by the Commissioner Theodore Nickel on October 26, 2011. The emergency rule was approved by the governor on November 3, 2011.

Finding of Emergency

The Commissioner of Insurance finds that an emergency exists and that the attached proposed emergency rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. Portions of Wisconsin's insurance law and regulations governing grievances and independent review processes are in conflict with federal law and regulation following the amendment of 42 USC 300gg 19 (a) and (b), as implemented by 45 CFR 147.136, as amended. Therefore, the Commissioner, pursuant to s. 631.01 (5), Stats., has determined that it is in the interest of the State of Wisconsin, Wisconsin insureds and the public to exempt insurers, certified independent review organizations and self-insured governmental health plans that elect to comply with ch. Ins 18, Wis. Adm. Code, as revised, from being required to comply with provisions contained in s. 632.83 and 632.835, Stats., that are inconsistent with 42 USC 300gg–19 (a) and (b), and 45 CFR 147.136 et seq., as amended.

Facts constituting the emergency arise from the desire for the State of Wisconsin to retain jurisdiction and regulatory control over the grievance and the independent review processes and independent review organizations operating in the state. The Secretary of the US Department of Health and Human Services issued interim final regulations and guidance, most recently released late June 2011. The regulations require states that desire to retain regulatory oversight of the grievance and independent external review processes, to demonstrate compliance with the federal internal appeal and external review laws and regulations to the Center for Consumer Information and Insurance Oversight (“CCIIO”). The Commissioner received notice on July 29, 2011, from CCIIO that Wisconsin's current regulatory oversight is not compliant.

The Commissioner has requested reconsideration of that initial determination, however, to ensure retention of regulatory oversight of the grievance and independent external review processes revisions to ch. Ins 18, Wis. Adm. Code, must be made and be applicable for claims arising on or after January 1, 2012. Assembly Bill 210 has been introduced, a bill that repeals inconsistent provisions in accordance with federal requirements, but it is unlikely that AB 210 will be enrolled within the reconsideration timeframe. Therefore the Commissioner is proposing this emergency rule to comply with the federal requirements in order to retain regulatory jurisdiction of grievance and independent review processes.

Publication Date: November 16, 2011
Effective Dates: November 16, 2011 through April 13, 2012

Justice (2)

1. EmR1114 — Rule to create **Chapter Jus 17** and **Chapter Jus 18**, relating to licenses authorizing persons to carry concealed weapons; concealed carry certification cards for qualified former federal law enforcement officers; and the certification of firearms safety and training instructors.

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

The statement of scope for this rule, SS 020–11, was approved by the governor on August 31, 2011, published in Register No. 669, on September 14, 2011, and approved by Attorney General J.B. Van Hollen on September 26, 2011.

Finding of Emergency

Under section 101 of 2011 Wis. Act 35, most of the provisions of that Act — including the provisions governing the licensing and certification processes covered by the rules proposed here and the provisions authorizing the carrying of a concealed weapon by the holder of a license, an out-of-state license, or a certification card — will have an effective date of November 1, 2011. In particular, s. 175.60 (9), Stats., will require DOJ to begin receiving and processing license applications and issuing or denying licenses as soon as that provision takes effect on November 1, 2011. The Legislature has thus determined that the public welfare requires the licensing system to take effect on November 1, 2011.

DOJ cannot comply with the requirements of s. 175.60 (9), Stats., and related statutory requirements until it has in effect administrative rules establishing the procedures and standards that will govern DOJ's enforcement and administration of those requirements. It follows that, in order for DOJ to meet its statutory duties that take effect on November 1, 2011, it must complete the promulgation of such administrative rules prior to that date.

Under the non-emergency rulemaking procedures of ch. 227, Stats., before the proposed rules could be promulgated, numerous notice, hearing, and publication requirements would have to be fulfilled — including, but not limited to a public hearing on the proposed rules, preparation of a detailed report including a summary of public comments and DOJ's responses to those comments, and legislative review of the proposed rules. DOJ has determined that it is impossible for all of the required steps in that non-emergency rulemaking process to be completed by November 1, 2011. Only if DOJ utilizes the emergency rulemaking procedures of s. 227.24, Stats., can the requisite rules be promulgated and in effect in time for DOJ to meet its statutory duties that take effect on November 1, 2011. The public welfare thus necessitates that the proposed rules be promulgated as emergency rules under s. 227.24, Stats. Once the proposed emergency rules have been promulgated, DOJ will promptly follow up with the promulgation of a permanent version of the rules under the full rulemaking procedures.

Publication Date: **October 25, 2011**

Effective Dates: **November 1, 2011 through March 29, 2012**

Suspended in Part: **November 9, 2011**

2. EmR1115 — Rule to create **section Jus 17.13**, relating to the recognition by Wisconsin of concealed carry licenses issued by other states.

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

The statement of scope for this rule, SS 009–11, was approved by the governor on August 4, 2011, published in Register No. 668, on August 31, 2011, and approved by Attorney General J.B. Van Hollen on September 12, 2011.

Finding of Emergency

Section 100 (1) of 2011 Wis. Act 35 expressly authorizes and requires DOJ to use the emergency rulemaking procedures of s. 227.24, Stats., to promulgate the emergency rule required under s. 165.25 (12), Stats., and further provides that DOJ is not required to provide evidence that promulgating this rule as an emergency rule is necessary for the preservation of public peace, health, safety, or welfare.

Publication Date: **October 25, 2011**

Effective Dates: **November 1, 2011 through March 29, 2012**

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. 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

5. 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

6. EmR1116 — Rule to amend section NR 25.05 (1) (c), relating to commercial fishing in outlying waters.

This emergency rule was approved by the governor on October 19, 2011.

The statement of scope for this rule, SS 023–11, was approved by the governor on September 15, 2011, published in Register No. 669, on September 30, 2011, and approved by The Natural Resources Board on October 26, 2011.

Finding of Emergency

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

The current commercial season for whitefish from 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 and makes these Wisconsin businesses less competitive with counterparts in Michigan. The additional business revenue, approximately \$161,300, and improved competitiveness of the commercial fishing industry, rises to the standard of preservation and improvement of the public welfare required for emergency rule making.

The number of commercial fishers has been declining over the last 20 years from 145 to 57. While some of this decline has been due to consolidation, some of the reduction is due to adverse economics of the industry. This rule requires emergency action to enhance public welfare as it applies to the

economic health of the commercial fishing industry, which requested this rule change.

Publication Date: October 26, 2011
Effective Dates: October 26, 2011 through
 March 23, 2012

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

Safety and Professional Services (2)
(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 section 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.

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

Scope Statements

Insurance

SS 045–11

This statement of scope was approved by the governor on December 1, 2011.

Rule No.

Agency 145 Chapter Ins 18.

Subject

Repeal of EmR1117. Revises Ch. Ins 18, relating to grievances and independent review requirements and affecting small business.

Description of the Objective of the Rule

The Office of the Commissioner of Insurance's objective for an emergency rule is to repeal the amendments made to ch. Ins 18, Wis. Adm. Code, in EmR 1117 that was published November 16, 2011. Repeal is necessary in order to return the Wisconsin grievance and independent review provisions to the prior form.

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

Wisconsin currently regulates the conduct of insurers and independent review organizations relating to an insured's right to file grievances with his or her insurer and seek independent review of coverage denial determinations. Sections 632.83 and 632.835, Stats., as implemented by Ch. Ins 18, Wis. Adm. Code, provide the structure and requirements for processing grievances and requests for independent review. The law and regulations have provided structure for insurers, guidance for insureds and oversight of independent review organizations.

Despite amendments to the Public Health Service Act and promulgation of regulations to implement those changes regarding internal appeals and independent external review, states can choose whether or not to demonstrate compliance with the amended federal law and regulations. Subsequent to the issuance of the emergency rule implementing modifications to Ch. Ins 18, Wis. Adm. Code, it has been determined that it is in the interest of the State of Wisconsin to rescind its position regarding implementation of the federal changes to handling grievances and independent review requests.

Since Wisconsin had grievance and independent review laws and regulations prior to March 13, 2010, the State was eligible to delay implementation of the amended grievance and independent review requirements related to the Patient Protection and Affordable Care Act, as amended, to January 1, 2012. Although the Office implemented the modifications on November 16, 2011, the commissioner has determined that it is in the best interest of the consumers and insurers to retain prior regulations and not exempt insurers and independent review organizations from s. 632.83 and 632.835, Stats. To minimize confusion for the insurance industry and Wisconsin

consumers, the Office intends to promulgate this rule as an emergency rule.

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

The statutory authority for this rule is s. 601.41 (3), 609.20, 628.34, 632.73, 632.76, 632.81, 632.83, and 632.835, Wis. Stat.

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

100 hours and no other resources are necessary.

Description of all Entities that may be Impacted by the Rule

Nearly all entities related to health insurance are affected by the changes to the Public Health Service Act, as amended, including intermediaries, insurers, independent review organizations and third-party administrators. Affected entities will have to comply with federal regulations and state regulations.

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 Public Health Service Act, as amended, (42 USC 300gg et seq.) provides insureds a right to grieve an adverse benefit determination and request an independent external review of the determination. The US Department of Health and Human Services (DHHS) in conjunction with the National Association of Insurance Commissioners (NAIC) issued and amended federal regulations (45 CFR 147.136) implementing portions of the Public Health Service Act as amended. The regulations in large part incorporate the NAIC Uniform Health Carrier External Review Model Act (NAIC Model Act). In addition to the regulations, the DHHS issued four technical guidance documents between July 2010 and June 2011 to assist states, insurers and consumers with understanding the requirements for compliant internal appeal and external independent review processes.

Sections 632.83 and 632.835, Stats., provide Wisconsin's framework for grievances and independent review while Ch. Ins 18, Wis. Adm. Code, implements the statutes while providing unique options for insureds, insurers and independent review organizations not contained in the NAIC Model Act. Although Wisconsin's former version of the administrative code contains provisions may be interpreted to conflict with the federal law, the state prefers to maintain its grievance and independent review process to the extent it is able under the law.

An emergency rule will be needed in order to provide sufficient time for insurers to draft forms, policies and procedures that comply with federal and state requirements and give sufficient notice to consumers for handling grievances or independent review requests after January 1, 2012.

Agency Contact Person

Julie E. Walsh, Attorney, 608–264–8101.

Submittal of Proposed Rules to the Legislature

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

Natural Resources

*Environmental Protection — Solid Waste Management,
Chs. NR 500—*

CR 10–128

(DNR # WA–33–10)

Revises Chapters NR 500, 502 and 518 relating to compost use standards.

This rule is not subject to s. 227.185, Stats. The statement of scope for this rule, published in Register No. 654, on June 14, 2010, was sent to the Legislative Reference Bureau prior to the effective date of 2011 Wisconsin Act 21.

**Safety and Professional Services—
Real Estate Examining Board
(formerly Regulation and Licensing)**

CR 10–136

Revises Chapter REEB 24, relating to definitions, duties of brokers, broker disclosure requirements, written proposals, ethical requirements, and educational requirements.

This rule–making proposal is not subject to s. 227.185, Stats. The statements of scope for this combined proposal, were published on July 31, 2007, in Register No. 619, was sent to the Legislative Reference Bureau prior to the effective date of 2011 Wisconsin Act 21.

Public Notices

Agriculture, Trade and Consumer Protection Mechanic Liens Under Wis. Stat. 779.41

Notice of Dollar Amount Adjustments for Repair Charges Subject to Mechanic's Liens

Under Wis. Stat. s. 779.41 (1m), the Department is required to annually adjust the dollar amounts identified under ss. 779.41 sub. (1) (intro), (a), (b) and (c) 1. to 4. by the annual change in the consumer price index, all items, U.S. city average, as determined by the Bureau of Labor Statistics of the U.S. Department of Labor, and publish the adjusted figures.

The Department has determined that current dollar amounts specified under Wis. Stats. ss. 779.41 sub. (1) (intro), (a), (b) and (c) 1. to 4. shall be increased by 1.6%, according to the prior year annual change in the consumer price index.

The dollar amount contained in Wis. Stats. s. 779.41 (1) (intro), is adjusted to \$2,120. The dollar amounts contained in Wis. Stats. ss. 779.41 (1) (a) (b), and (c) 1.to 4. are adjusted to the following dollar amounts:

- (a) A trailer or semitrailer designed for use with a road tractor for charges in excess of \$6,360.
- (b) Road machinery, including mobile cranes and trench hoes, farm tractors, machines of husbandry, or off-highway construction vehicles and equipment for charges in excess of \$10,585.
- (c) A motor vehicle not included under par. (a) or (b) with a manufacturer's gross weight rating, including, with respect to road tractors, a manufacturer's gross weight rating for the combined carrying capacity of the tractor and trailer, of:
 1. More than 10,000 and less than 20,000 pounds, for charges in excess of \$4,235.
 2. 20,000 pounds or more, but less than 40,000 pounds, for charges in excess of \$8,355.
 3. 40,000 pounds or more, but less than 60,000 pounds, for charges in excess of \$13,665.
 4. 60,000 pounds or more, for charges in excess of \$16,445.

These revised dollar amounts under the mechanic's lien law shall apply to work commenced on or after January 1, 2012 for which a lien is claimed. These revised dollar amounts shall remain in effect until the first day of the first month following publication of new adjusted dollar amounts in the *Wisconsin Administrative Register*.

Contact Information:

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Department of Financial Institutions Division of Banking

Notice of Interest Rate on Required Residential Mortgage Loan Escrow Accounts For 2012

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 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 **0.26%** for 2012. This interest rate shall remain in effect through December 31, 2012.

Contact Person:

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Division of Banking
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