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## WISCONSIN ADMINISTRATIVE REGISTER

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## Emergency Rules Now in Effect

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*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](http://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.*

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### Agriculture, Trade and Consumer Protection

**EmR1202** — Rule adopted to create **section ATCP 161.50 (3) (e)** and **subchapter VI of Chapter ATCP 161**, relating to the “grow Wisconsin dairy producer” grant and loan program created under sections 20.115 (4) (d) and 93.40 (1) (g), Stats.

This emergency rule was approved by the governor on March 27, 2012.

The scope statement for this rule, SS 002–12, was approved by the Governor on January 9, 2012, published in Register No. 673, on January 31, 2012, and approved by the Board of Agriculture, Trade and Consumer Protection on February 22, 2012.

#### Finding of Emergency

Enactment of a rule is necessary to establish criteria the department will use to make determinations for grants, loans or other forms of financial assistance to dairy producers to promote and develop the dairy industry. An emergency rule is needed to ensure that funds are used to assist dairy producers during the first year of the annual appropriation as permanent rules cannot be adopted in time to provide the basis for grant determinations for the first year appropriations.

**Publication Date:** March 30, 2012  
**Effective Dates:** March 30, 2012 through August 26, 2012

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### Children and Families

#### *Safety and Permanence, Chs. DCF 37–59*

**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

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### Employment Relations Commission (2)

**1. 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  
**Extension Through:** June 11, 2012  
**Hearing Date:** February 2, 2012

**2. EmR1203** — Rule adopted to create **Chapters ERC 90** and **100**, relating to the calculation and distribution of collectively bargained base wages.

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

The statement of scope for this rule, SS 005–11, was approved by the governor on August 31, 2011, published in Register No. 669, on September 14, 2011, and approved by the Employment Relations Commission on September 19, 2011.

#### **Finding of Emergency**

An emergency exists because the public peace, health, safety and welfare necessitate putting these rules in effect so that the State of Wisconsin and municipal employers can proceed to bargain over base wages with labor organizations that represent State and municipal employees.

**Publication Date:** April 19, 2012  
**Effective Dates:** April 19, 2012 through September 15, 2012

### **Health Services**

#### **Health, Chs. DHS 110—**

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

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

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

#### **Exemption from Finding of Emergency**

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

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

**Publication Date:** May 4, 2012  
**Effective Dates:** May 4, 2012 through September 30, 2012  
**Hearing Date:** May 25, 2012

### **Insurance (2)**

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

This emergency rule was approved by the governor on November 3, 2011.

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.

#### **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

**Repealed by EmR1119:** December 29, 2011

**2. EmR1119** — Rule to repeal EmR1117, which was to revise **Chapter Ins 18**, relating to grievances and

independent review requirements, and affecting small business.

This emergency rule was approved by the governor on December 27, 2011.

The statement of scope SS 045–11 was approved by the governor on December 1, 2011, and published December 14, 2011 in Register No. 672. The statement of scope was signed by Commissioner Nickel on December 24, 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. Emergency Rule 1117 (EmR1117), was effective November 16, 2011 and is to be first applicable on January 1, 2012. EmR1117 contained provisions modifying Wisconsin's insurance regulations governing grievances and independent review processes to comply with federal law provisions of 42 USC 300gg 19 (a) and (b), as implemented by 45 CR 147.136, as amended. It has been determined that this may not be in the best interest of the state.

The proposed emergency rule will repeal EmR1117 in its entirety and maintain Wisconsin's prior existing regulations and oversight of the grievance and independent review process. To avoid full implementation of EmR1117 and industry and consumer confusion, the Commissioner has determined that this emergency rule must be effective prior to January 1, 2012.

**Publication Date:** December 29, 2011  
**Effective Dates:** December 29, 2011 through May 26, 2012  
**Hearing Date:** January 26, 2012

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### Justice

**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  
**Extension Through:** May 28, 2012

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### Natural Resources (2)

#### *Fish, Game, etc., Chs. NR 1—*

**1. 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*

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

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

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

#### Finding of Emergency

The department is aware that several ATV trails in Wisconsin overlap existing roads. From the onset of the program, these overlapping paths were identified as trails, signed accordingly, and were eligible to receive ATV grant funds. A few years ago, the ORV Advisory Council and WI County Forestry Association proposed that the department revise Ch. NR 64 to accommodate paths used by both ATVs and motor vehicles. These trail-route combinations – also called hybrid trails but commonly referred to as “troutes” – will be eligible for future maintenance grant funding at the current rate if it can be shown that the hybrid trails (“troute”) existed prior to the effective date of this rule.

This emergency rule will establish a new category of all-terrain trail commonly called a “troute”, or a trail-route combination, that provides a connector between trails and allows grant funding for these unique trails. An emergency

rule is needed because we anticipate that the permanent rule revisions to Ch. NR 64 that will include troutes will not be effective until Sept 2012, at the earliest. Without this emergency rule, DNR will not be able to award grants to project sponsors for ATV “troutes” in July 2012, as is our practice. About one-third of the trails in northern Wisconsin are “troutes” and have been funded as trails since the program started. Our partners count upon grant funds for troute maintenance.

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

**Publication Date:** June 1, 2012  
**Effective Dates:** June 15, 2012 through  
 November 11, 2012  
**Hearing Date:** June 25, 2012

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### Revenue

**EmR1201** — Rule to revise **section Tax 7.23**, relating to the activities of brewers, bottlers, out-of-state shippers, and wholesalers.

The scope statement for this rule, SS 018–11, was approved by the governor on August 16, 2011, published in Register No. 669 on September 14, 2011, and approved by the Secretary of Revenue on September 26, 2011.

#### Finding of Emergency

The Department of Revenue finds that an emergency exists and that the 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 administer the provisions of ss. 125.28 (5) (e) and 125.29 (3), Stats., as created by 2011 Wisconsin Act 32, and reflect revisions made by the Act to the authorized activities of persons holding wholesalers’ and brewers’ permits.

It is necessary to promulgate this rule order so that the above provisions 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:** January 27, 2012  
**Effective Dates:** January 27, 2012 through  
 June 24, 2012  
**Hearing Date:** February 27, 2012

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

**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.

**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



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## Scope Statements

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### Agriculture, Trade and Consumer Protection

SS 031-12

This statement of scope was approved by the governor on May 11, 2012.

#### Rule No.

Chapter ATCP 34, Wis. Admin. Code (Existing)

#### Relating to

Chemical Container and Household Hazardous Waste Collection (“Clean Sweep”) Program.

#### Rule Type

Permanent.

#### Detailed Description of the Objective of the Proposed Rule

This proposed rule would update and clarify current rules related to Wisconsin’s “Clean Sweep” program. In addition, this rule may also implement statutory changes authorizing a “Clean Sweep” program for the collection and disposal of unwanted prescription drugs.

#### Description of the Existing Policies Relevant to the Rule, New Policies Proposed to be Included in the Rule and an Analysis of Policy Alternatives

**Existing Policies.** Under the “Clean Sweep” program, DATCP distributes grants to county and local governments for hazardous waste collection events and some permanent waste collection sites. DATCP’s “Clean Sweep” grant program is very popular because it assists counties and other grant recipients by facilitating the disposal of certain hazardous wastes. Farmers, individuals, and certain businesses benefit by being allowed to dispose of unwanted pesticides and farm chemicals, used pesticide storage containers, specific types of household products (*e.g.*, turpentine, household pesticides, lighter fluid, *etc.*) and unwanted prescription drugs in an economical and convenient fashion.

DATCP has operated an agricultural waste “Clean Sweep” grant program since 1990. In 2003, a law was passed to transfer the state’s household “Clean Sweep” grant program for the collection of hazardous household wastes from the Department of Natural Resources to DATCP (*See* 2003 Wis. Act 33). In 2004, DATCP consolidated the household “Clean Sweep” program with the agricultural waste program. Since then, “Clean Sweep” grants have helped county and local governments to collect and dispose of more than three million pounds of farm chemical wastes and five million pounds of household hazardous wastes.

2007 Wis. Act 20 authorized DATCP to expand the “Clean Sweep” grant program to include grants for county and local projects to collect unwanted prescription drugs. DATCP has implemented a pilot prescription drug program since 2008 and now proposes to develop rules for a permanent program.

**Proposed Policies.** This rule may explore the feasibility of the following:

- Codifying the prescription drug component of the “Clean Sweep” grants program, which has been in development under a DATCP pilot program.
- Amending the rule to resolve any existing conflicts between the statute and rule concerning funding amounts for the grants and to take into consideration the overall needs of grant recipients.
- Reducing paperwork by permitting electronic applications for grants. Make changes to improve the administrative and operational efficiency of the “Clean Sweep” program.
- Updating provisions related to grant applications, grant evaluation and approval, grant contracts, reporting requirements, reimbursement procedures, selection of hazardous waste handlers, and other matters to keep up with developments to programs relating to the collection of hazardous wastes.

**Analysis of Policy Alternatives.** Do nothing. If DATCP takes no action, current rules will remain in effect. However, the current rules are outdated and inconsistent in certain respects. This rule would create permanent rules concerning the prescription drug component of the program and allow for the modernization and streamlining of the “Clean Sweep” program overall.

#### Detailed Explanation of Statutory Authority for the Rule (Including the Statutory Citation and Language)

DATCP has statutory authority under s. 93.07 (1), Stats., to promulgate rules relating to the administration of “Clean Sweep” grants programs for agricultural and household hazardous waste, including prescription drugs, authorized by sections 93.55 and 93.57, Stats.

**93.07 Departmental duties.** It shall be the duty of the department:

(1) REGULATIONS. To make and enforce such regulations, not inconsistent with law, as it may deem necessary for the exercise and discharge of all the powers and duties of the department, and to adopt such measures and make regulations as are necessary and proper for the enforcement by the state of chs. 93 to 100, which regulations shall have the force of law.

#### 93.55 Chemical and container collection grants.

(1) DEFINITIONS. In this section:

- (a) “Chemical” means a chemical, including a pesticide, that is used for agricultural purposes.
- (b) “Pesticide” has the meaning given in s. 94.67 (25).

(2) COLLECTION GRANTS. The department may award a grant to a county for a chemical and container collection program. A grant under this subsection may not fund more than 75 percent of the cost of a program. Costs eligible for funding include the cost of establishing a collection site for chemicals and chemical containers, the cost of transporting chemical containers to a dealer or distributor for refill and reuse or to a hazardous waste facility, as defined in s. 291.01

(8), and costs associated with the proper use and handling and disposal or recycling of chemicals and chemical containers. Grants shall be paid from the appropriation under s. 20.115 (7) (va).

(2m) **FARMER LIABILITY.** To the extent permitted under federal regulations, a county establishing a chemical and container collection program under sub. (2), in cooperation with the department, shall ensure that a farmer, as defined in s. 102.04 (3), who participates in the program is not liable for chemicals or chemical containers collected under the program after the farmer relinquishes control over the chemicals or chemical containers.

**93.57 Household hazardous waste.** The department shall administer a grant program to assist municipalities and regional planning commissions in creating and operating local programs for the collection and disposal of household hazardous waste. The department may also provide grants under this section for county, municipal, and regional planning commission programs to collect unwanted prescription drugs. The department may not make a grant under this section in an amount that exceeds 75 percent of the cost of a program. The department shall allocate two-thirds of the funds available from the appropriation account under s. 20.115 (7) (va) in each fiscal year for grants under this section.

The agency considers it necessary to adopt rules needed to establish the bases for grant determinations in order to effectuate the purposes of s. 93.55 and 93.57, Stats.

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

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

#### **List with Description of all Entities that may be Affected by the Proposed Rule**

This rule would assist local governments (counties, municipalities and regional planning commissions) and tribal nations who are eligible to apply for and receive “Clean Sweep” grants. This rule would continue to benefit farmers, homeowners and residential tenants, and businesses that generate limited quantities of hazardous wastes (who qualify as “very small quantity generators”) that use the hazardous waste collection events and sites that are funded in part by DATCP’s grants.

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

The United States Environmental Protection Agency (EPA) administers the Resource Conservation and Recovery Act (RCRA), which includes regulations affecting the collection, movement, and disposal of hazardous agricultural and household waste. EPA has also adopted universal waste management rules under 40 CFR 273. Wisconsin’s “Clean Sweep” grantees and vendors must comply with all applicable RCRA and universal waste provisions.

Prescription drugs that are controlled substances are regulated under the federal Controlled Substance Act (21 USC 801) and the Controlled Substances Import and Export Act (21 USC 951). Wisconsin’s prescription drug “Clean Sweep” program must comply with these and related federal laws.

In 2009, the U.S. Department of Justice Drug Enforcement Administration proposed a rule (DEA–316A: Disposal of Controlled Substances by Person Not Registered with the Drug Enforcement Administration) seeking options for the safe and responsible disposal of controlled substances in a manner consistent with the Controlled Substances Act (CSA). This federal regulation has not yet been enacted. If it is enacted, the rule may impact “Clean Sweep” prescription drug collection programs themselves, but it would not likely affect this proposed rule, which provides grants for those kinds of programs.

#### **Anticipated Economic Impact of Implementing the Rule (Note if the Rule is Likely to have a Significant Economic Impact on Small Businesses)**

DATCP expects the proposed changes to the existing rule to have minimal to no economic impact statewide or locally.

#### **Contact Person**

Jane Larson, Clean Sweep program manager, DATCP  
Telephone: 608–224–4545  
E–mail: [jane.larson@wisconsin.gov](mailto:jane.larson@wisconsin.gov)

#### **Financial Institutions — Banking**

SS 030–12

This statement of scope was approved by the governor on May 9, 2012.

#### **Rule No.**

Chapter DFI–Bkg 75

#### **Relating to**

Payday lending.

#### **Rule Type**

Permanent.

#### **Detailed Description of the Objective of the Proposed Rule**

As a result of the passage of 2011 Wisconsin Act 32, changes to the existing payday lending rule are necessary to address conflicts that may exist between the current law and the existing rule.

A further objective is to provide clarity and direction for lenders making payday loans, as well as create clear guidance for the Department of Financial Institutions (“DFI”), who is charged with enforcing s. 138.14, Stats.

#### **Description of Existing Policies Relevant to the Rule, New Policies Proposed to be Included in the Rule, and an Analysis of Policy Alternatives**

A.) *Current policy:* The existing rule identifies the statutory citation for the repayment plan as s. 138.14 (11g). As a result of 2011 WI Act 32, the repayment plan requirement was moved from s. 138.14 (11g) to s. 138.14 (11g) (a).

*Proposed change:* Change the rule to reference the appropriate statutory citation.

B.) *Current policy:* “Subsequent loan” is used in s. 138.14, but is not currently defined in s. 138.14 or the existing rule.

The law permits a customer to repay a payday loan with the proceeds of a subsequent loan, but does not allow the subsequent loan to be repaid with the proceeds of another payday loan (one rollover limit). The repayment of a subsequent loan and the origination of a new payday loan within a 24-hour period is proof of a violation of the statute.

*Proposed change:* Define “subsequent loan,” and include in that definition any loan that is made within 24 hours after the customer pays off a previous loan in full. To not include such loans would permit a loan made one minute after the prior loan was paid to not be considered a subsequent loan.

- C.) *Current policy:* The existing rule excludes from the definition of “payday loan” certain transactions of 6 months or more.

*Proposed change:* With the passage of 2011 WI Act 32, the definition of “payday loan” was changed, and now only includes transactions with terms of 90 days or less. As a result, a change to the existing rule is needed to eliminate superfluous language.

- D.) *Current policy:* A s. 138.09 lender cannot make a loan of \$1,500 or less that has a term of less than 90 days.

*Proposed change:* With the passage of 2011 WI Act 32, a payday loan is now defined as a transaction that has a term of 90 days or less, not less than 90 days. To be consistent, s. 75.03 (3) (c) should be changed to state “90 days or less” instead of “less than 90 days.”

- E.) *Current policy:* A s. 138.09 lender cannot make a loan of \$1,500 or less that is open-ended, has a term of less than 90 days, or is payable in anything other than substantially equal monthly or biweekly installments. This includes loans secured by the title to the customer’s vehicle.

*Proposed change:* As a result of 2011 WI Act 32, a s. 138.09 lender can now make a title loan, which is defined as a loan secured by a vehicle (not purchase money) where the original term is not more than 6 months. A change to the existing rule is necessary to allow a s.138.09 lender to make a title loan of \$1,500 or less that has a term of less than 90 days, is open-ended, or is payable in anything but substantially equal monthly or biweekly installments.

- F.) *Current policy:* Pursuant to s. 138.14 (12) (b), a payday loan must be limited to the lesser of \$1,500 or 35% of a customer’s gross monthly income. Some s. 138.14 licensees that are also licensed to make loans under s. 138.09, are making a payday loan and a s. 138.09 loan to the same customer on the same date as a way to avoid the limitations set forth in s. 138.14 (12) (b). For example, if a customer wants a \$1,000 payday loan but only qualifies for a \$400 payday loan, the licensee will make the customer a \$400 payday loan and a \$600 s. 138.09 loan. While DFI believes this practice violates Rule s. 75.03 (1), which indicates a licensee shall not engage in conduct that is an attempt to evade or undermine the purpose and intent of s. 138.14, there is no specific rule addressing multiple agreements.

*Proposed change:* Create a rule that specifically identifies as a prohibited practice the originating of a s. 138.09 loan at the same time, or within the 24 hour period before or after, the licensee originates a payday loan with the same customer.

- G.) *Current policy:* Pursuant to s. 138.14 (12) (a), a customer may not repay a subsequent payday loan with the proceeds of a new payday loan that is made at the same time or

within 24 hours after the subsequent loan is paid. To circumvent this law, a lender might originate a s. 138.09 loan, instead of a payday loan, immediately before or after a payday loan has been paid off. While DFI believes this practice violates Rule s. 75.03 (1), which indicates a licensee shall not engage in conduct that is an attempt to evade or undermine the purpose and intent of s. 138.14, there is no specific rule addressing using a s. 138.09 loan to pay a payday loan.

*Proposed change:* Create a rule that applies to lenders who hold both a loan company and payday lender license, establishing a 24-hour wait period around the pay off of a payday loan.

- H.) *Current policy:* Prior to making a payday loan, a licensee must obtain certain items from the customer to verify the customer’s gross monthly income.

*Proposed change:* The passage of 2011 WI Act 32 indicates a licensee may rely on a consumer report to verify a customer’s gross monthly income. As a consumer report may not include the customer’s gross monthly income, a rule indicating a licensee using consumer reports must collect the gross monthly income figure from the customer is necessary to comply with the statutory requirement that a loan may not exceed 35% of a customer’s gross monthly income.

- I.) *Current policy:* Each loan agreement must include language that informs the borrower of the lender’s obligation to offer the borrower an opportunity to repay, in 4 equal installments, the outstanding balance of a loan that the borrower fails to repay in full upon maturity.

*Proposed change:* As a result of the passage of 2011 WI Act 32, a payday lender is only required to offer the repayment plan if the borrower has not been offered a repayment plan within the 12 month period prior to the maturity date of the loan. A change to the existing rule is needed to indicate the repayment plan will only be offered once in a 12 month period.

- J.) *Current policy:* The repayment plan offer must be delivered to the customer when the lender receives notice of insufficient funds in the customer’s account or within 10 days after the maturity date of the loan. Industry has questioned if the repayment plan offer must be issued on the 10<sup>th</sup> day if the lender presented the check or initiated the electronic fund transfer but does not know by the 10<sup>th</sup> day if it has cleared.

*Proposed change:* Change the existing rule to clarify that the repayment plan offer must be issued on or before the 10<sup>th</sup> day after the maturity date unless the lender is still waiting for notification from the bank as to whether a deposited check has cleared.

- K.) *Current policy:* If a customer fails to repay a payday loan in full at the end of the loan term, the licensee shall offer the customer the opportunity to repay the outstanding balance in 4 equal installments. The current rule describes specifically how the offer of the repayment plan must be given if the customer fails to repay the subsequent loan, but does not describe how the offer must be given if the customer fails to repay the initial loan.

*Proposed change:* With the passage of 2011 WI Act 32, instead of having to offer a repayment plan after every unpaid loan, the lender is only required to offer a repayment plan if the borrower has not been offered a repayment plan within a 12 month period prior to the maturity of the loan. Because the new statute only requires a repayment plan be offered once within a 12

month period, the rule should be changed to describe how the offer must be made each time it must (by statute) be offered.

L.) *Current policy:* The due dates of the 4 equal installments on a repayment plan must coincide with the customer's pay period schedule, as verified by items that would have been used to verify income (i.e. – paycheck stub).

*Proposed change:* With the passage of 2011 WI Act 32, a lender may use a customer's consumer report to verify income. In order to accommodate lenders who use consumer reports, "other documentation" needs to be added to the list of acceptable verification for a customer's pay period schedule. If no documentation regarding the pay period schedule is available, the lender must base the repayment plan installments on a monthly pay schedule.

M.) *Current policy:* The existing rule indicates the division shall, by December 1<sup>st</sup> of each year, determine and post the database transaction fee for the following calendar year.

*Proposed change:* With the passage of 2011 WI Act 32, the division is required to specify, by order or rule, a database transaction fee of no more than \$1. The fee has been specified by order, eliminating the need for reference in the rule.

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

The statutory authorities for the rule are the following:

Section 138.14 (8) (b), Stats., which states that "[t]he division may promulgate such rules as it considers necessary for the administration of this section, including rules establishing database transaction fees under sub. (14) (h) and other fees considered reasonable and necessary by the division," and

Section 138.14 (14) (h), Stats., which states that "[t]he division shall, by order or rule, specify a database transaction fee of no more than \$1 that the database provider shall charge to licensees to cover the costs of developing and implementing the database, and accessing the database to verify that a customer does not have any payday loans with the licensee or others that in combination with a new transaction will create a violation of this section."

#### **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 120 hours.

#### **Description of all Entities that may be Impacted by the Rule**

The proposed rule change would impact lenders licensed s. 138.09, lenders licensed under s. 138.14 lenders, and consumers obtaining loans from such licensees. No impact is expected for business associations, public utility rate payers, or local government units.

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

DFI is aware that the Consumer Financial Protection Bureau intends to focus some of its resources on payday lending, but is unaware of any currently proposed regulation or rule.

#### **Anticipated Economic Impact of Implementing the Rule**

The division anticipates that any economic impact of implementing the rule would be minimal.

#### **Contact Person**

Eric Knight  
Executive Assistant  
Department of Financial Institutions  
345 W. Washington Avenue, 5th Floor  
P.O. Box 8861  
Madison, WI 53708-8861  
Tel. 608-267-1718

#### **Natural Resources**

##### *Fish, Game, etc., Chs. NR 1—*

##### **SS 029-12**

This statement of scope was approved by the governor on May 2, 2012.

#### **Rule No.**

FH-10-12

#### **Relating to**

Chapter NR 25 Great Lakes commercial fishing harvest limits.

#### **Rule Type**

Permanent.

#### **Finding/nature of Emergency (Emergency Rule only)**

Not applicable.

#### **Detailed Description of the Objective of the Proposed Rule**

This rule would revise the total allowable annual commercial harvests for bloater chubs from Lake Michigan (s. NR 25.06 (2) (a), Wis. Adm. Code). The current harvest limit of 3.6 million pounds was established by the department in 1991. Since then the bloater chub population in Lake Michigan has declined steadily and the reported total annual harvest now falls below 50,000 pounds. The proposed rule may use objective criteria by which harvest limits would be adjusted as fish abundance changes.

We will also consider establishing criteria for automatic adjustment of harvest limits of other Lake Michigan commercial species, possibly including yellow perch, lake whitefish, round whitefish, and rainbow smelt (s. NR 25.06 (2) (b-e), Wis. Adm. Code). Those harvest limits have been adjusted many times over the past 30 years as populations have fluctuated.

Finally, we will seek advice from the Lake Michigan Commercial Fishing Board (LMCFB) regarding the allocation of a reduced bloater chub harvest limit among commercial fishing license holders and, based on that advice, may seek to update the allocation formula (s. NR 25.07 (2) (a), Wis. Adm. Code).

#### **Description of the Existing Policies Relevant to the Rule, New Policies Proposed to be Included in the Rule and an Analysis of Policy Alternatives**

Section NR 1.04, Wis. Adm. Code, provides the guiding department policy related to harvest limits and quota allocations: "(4) The fishery resources of the Great Lakes, though renewable, experience dynamic changes and are

limited. The resources will be managed in accordance with sound management principles to attain optimum sustainable utilization. Management measures may include but are not limited to seasons, bag and harvest limits, limitations on the type and amount of fishing gear, limitation as to participation in the fisheries and allocation of allowable harvest among various users and the establishment of restricted areas.”

Although the development of objective criteria by which harvest limits would be automatically adjusted is a departure from past practice of periodic *ad hoc* adjustments of harvest limits, it is fully consistent with the existing policy. Under existing practice, harvest limits may be adjusted by rule at any time that assessment data indicate that a fish population is either growing or declining. Use of an objective measure for fish population changes will allow the department to respond in a timely and predictable manner when quota adjustments are necessary. Automatic adjustment of harvest limits will have two advantages: 1) It will protect fish populations by reducing harvests promptly when fish abundance declines. 2) It will support commercial fisheries by allowing immediate harvest increases when fish populations recover.

The Lake Michigan Commercial Fishing Board is directed by s. 29.519 (7), Stats., to “recommend to the department species harvest limits and formulas for the allotment of individual licensee catch quotas when the department establishes species harvest limits for allocation among licensees.” We have held preliminary discussions with the Board members and are aware of some concerns they have raised, including the need to fully consider LMCFB advice during rule development, to find objective criteria that reliably reflect the status of the fish populations, and to consider incorporating more than one data source into the criteria.

#### **Detailed Explanation of Statutory Authority for the Rule (Including the Statutory Citation and Language)**

Section 29.014 (1), Stats., directs the department to “establish and maintain open and closed seasons for fish and game and any bag limits, size limits, rest days and conditions governing the taking of fish and game that will conserve the fish and game supply and ensure the citizens of this state continued opportunities for good fishing hunting and trapping.” Section 29.041, Stats., provides that the department “may regulate fishing and fishing on and in all

interstate boundary waters, and outlying waters.” Section 29.519 (1m) (b), Stats., provides that “After giving due consideration to the recommendations made by the commercial fishing boards under sub. (7), the department may establish species harvest limits and promulgate rules to establish formulas for the allocation of the species harvest limits among commercial fishing licensees or for the allotment of individual licensee catch quotas.”

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

Employees may spend approximately 200 hours developing the rule. This will require some within-state travel to meet with the Lake Michigan Commercial Fishing Board and interested members of the public.

#### **List with Description of all Entities that may be Affected by the Proposed Rule**

The rule will affect commercial fishing license holders, fish wholesalers, and others whose interests or businesses are affected by commercial fishing.

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

No federal regulations apply.

#### **Anticipated Economic Impact of Implementing the Rule**

Adjustments in harvest limits always affect the livelihoods of commercial fishers and associate businesses, but such adjustments are a necessary part of fisheries management. Because this rule will cause those adjustments to be more timely and responsive to fish population changes it will support stability in fish populations and in the fishery. Harvest limit adjustments can result in economic benefit to commercial fishers or, when the fish population is in decline, economic losses. We expect that the economic analysis will reveal a moderate impact (Level 2) of between \$50,000 and \$2,000,000.

#### **Contact Person**

William Horns, Great Lakes Fisheries Specialist,  
608-266-8782

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## Submittal of Proposed Rules to Legislative Council Clearinghouse

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

### **Insurance CR 12-026**

In accordance with sections 227.14 (4m) and 227.15, Stats., the Office of the Commissioner of Insurance submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse on May 14, 2012.

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

#### **Analysis**

These changes will affect sections Ins 17.01 and 17.28 (6), Wis. Adm. Code, relating to injured patients and families compensation fund annual fund fees and mediation panel fees

for fiscal year 2013 and affecting small business.

#### **Agency Procedure for Promulgation**

The date for the public hearing is June 19, 2012.

#### **Contact Information**

A copy of the proposed rule may be obtained from the Web site at: <http://oci.wi.gov/ocirules.htm> or by contacting Inger Williams, Public Information and Communications, Office of the Commissioner of Insurance, at (608) 264-8110. For additional information, please contact Julie E. Walsh at (608) 264-8101 or e-mail at [julie.walsh@wisconsin.gov](mailto:julie.walsh@wisconsin.gov) in the OCI Legal Unit.

This Notice of Submittal to Legislative Council Staff is prepared under s. 227.135, Stats., and approved on May 11, 2012.

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## Rule–Making Notices

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### Notice of Hearing

#### Insurance

#### CR 12–026

Notice is hereby given that pursuant to the authority granted under section 601.41 (3), Stats., and the procedures set forth in under sections 227.18 and 227.24 (4), Stats., OCI will hold a public hearing to consider the adoption of the attached proposed rulemaking order affecting sections Ins 17.01 (3) and 17.28, Wis. Adm. Code, relating to Injured Patients and Families Compensation Fund annual fund fees and mediation panel fees for fiscal year 2013 and affecting small business.

#### Hearing Information

**Date:** Tuesday, June 19, 2012  
**Time:** 10:00 a.m.  
 (or as soon thereafter as the matter may be reached)  
**Location:** OCI  
 2<sup>nd</sup> Floor Room 227  
 125 South Webster St.  
 Madison, WI 53703

#### Comments

Written comments can be mailed to:

Julie E. Walsh  
 Legal Unit – OCI Rule Comment for Rule Ins 1728  
 Office of the Commissioner of Insurance  
 PO Box 7873  
 Madison WI 53707–7873

Written comments can be hand delivered to:

Julie E. Walsh  
 Legal Unit – OCI Rule Comment for Rule Ins 1728  
 Office of the Commissioner of Insurance  
 125 South Webster St – 2<sup>nd</sup> Floor  
 Madison WI 53703–3474

Comments can be emailed to:

Julie E. Walsh  
[julie.walsh@wisconsin.gov](mailto:julie.walsh@wisconsin.gov)

Comments submitted through the Wisconsin Administrative Rule Web site at <http://adminrules.wisconsin.gov> on the proposed rule will be considered.

The deadline for submitting comments is **4:00 p.m. on the 14<sup>th</sup> day after the date for the hearing** stated in this Notice of Hearing.

#### Copies

A copy of the full text of the proposed rule changes, analysis and fiscal estimate may be obtained from the OCI internet Web site at <http://oci.wi.gov/ocirules.htm> or by contacting Inger Williams, Public Information and Communications, OCI, at: [inger.williams@wisconsin.gov](mailto:inger.williams@wisconsin.gov), (608) 264–8110, 125 South Webster Street – 2<sup>nd</sup> Floor, Madison WI or PO Box 7873, Madison WI 53707–7873.

### Analysis Prepared by the Office of the Commissioner of Insurance

#### *Statutes interpreted*

Sections 655.27 (3), and 655.61, Wis. Stats.

#### *Statutory authority*

Sections 601.41 (3), 655.004, 655.27 (3) (b), and 655.61, Wis. Stats.

#### *Explanation of OCI's authority to promulgate the proposed rule under these statutes*

The injured patients and families compensation fund (fund), was established by and operated under ch. 655, Stats. The commissioner of insurance with approval of the board of governors (board) is required to annually set the fees for the fund and the medical mediation panel by administrative rule. Section 655.04, Stats., provides that the director of state courts and the commissioner may promulgate rules necessary to enable them to perform their responsibilities under this chapter. Pursuant to s. 655.27 (3) (b), Stats., the commissioner, after approval by the board, shall by rule set the fees to the fund and s. 655.61, Stats., requires the board, by rule, to set the fees charged to health care providers at a level sufficient to provide the necessary revenue to fund the medical mediation panels. Further, s. 601.41 (3), Stats., provides that the commissioner shall have rule–making authority pursuant to s. 227.11 (2), Stats.

#### *Related statutes or rules*

None.

#### *Plain language analysis and summary of the proposed rule*

This proposed rule establishes the fees that participating health care providers must pay to the fund for the fiscal year beginning July 1, 2012. These fees represent a 5% increase from fees paid for the 2011–12 fiscal year. The board approved these fees at its meeting on December 14, 2011, based on the recommendation of the board's actuarial and underwriting committee and reports of the fund's actuaries.

The board is also required to promulgate by rule the annual fees for the operation of the injured patients and families compensation medical mediation system, based on the recommendation of the director of state courts. The recommendation of the director of state courts was reviewed by the board's actuarial and underwriting committee. This rule implements the funding level approved by the board by establishing mediation panel fees for the next fiscal year at \$22.50 for physicians and \$4.50 per occupied bed for hospitals, representing a decrease of \$2.50 per physician and a decrease of \$0.50 per occupied bed for hospitals from 2011–12 fiscal year mediation panel fees.

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

To the fund board's and OCI's knowledge there is no existing or proposed federal regulation that is intended to address fund rates, administration or to fund medical mediation panel activities.

**Comparison of similar rules in adjacent states as found by OCI**

To the fund board’s and OCI’s knowledge there are no similar rules in the adjacent states to compare this rule to as none of adjacent states have a fund created by statute where rates are directed to be established yearly by rule as is true in Wisconsin.

**Summary of the factual data and analytical methodologies that OCI used in support of the proposed rule and how any related findings support the regulatory approach chosen for the proposed rule**

This rule establishes annual fund fees and mediation panel fees pursuant to the requirements of the above-noted Wisconsin statutes. The recommendation to the board regarding the fund fee and the medical mediation panel assessment is developed by an actuarial firm under contract with the fund. The actuarial firm outlines its assumptions and trending data in a report to the board’s actuarial and underwriting committee. After information is presented, the report and supporting documentation is discussed and results in a recommendation to the board. The chair of the actuarial and underwriting committee presents the information and the actuary’s report to the board for consideration. This proposed rule reflects the rates approved by the board at the December 14, 2011 board meeting.

**Analysis and supporting documentation that OCI used in support of OCI’s determination of the rule’s effect on small business under s. 227.114**

This increase in fund fees will have an effect on some small businesses in Wisconsin, particularly those that employ physicians and other health care professionals. The mediation panel fee is assessed only on physicians and hospitals, not on corporations or other health care entities. The fund fee increases will affect only those small businesses that pay the fund fees and mediation panel fees on behalf of their employed physicians. However, the fund fee increase will not have a significant effect nor should it negatively affect the small business’ ability to compete with other providers. Specifically for providers in the highest risk classification the fees will increase by \$482 and for those in the lowest risk classification the increase is \$73 for the fiscal year.

**Summary of Fiscal Estimate**

There will be no state or local government fiscal effect.

The increase in fees promulgated by this rule does not result in a significant fiscal effect on the private sector. Although a health care provider may pass this increase on to its patients, there will not be a significant fiscal effect on the private sector as a result of this proposed rule.

**Effect on Small Business**

This rule will have little or no effect on small businesses. The increase contained in the proposed rule will require providers to pay an increased fund fee which will increase the operational expenses for the providers. However, this increase is not considered to be significant and will have no effect on the provider’s competitive abilities.

**Initial regulatory flexibility analysis**

This rule does not impose any additional requirements on small businesses.

Notice is hereby further given that pursuant to s. 227.114, Stats., the proposed rule may have an effect on small businesses. The initial regulatory flexibility analysis is as follows:

- a. Types of small businesses affected:  
Health care providers and possibly businesses to the extent any increase in fund fees is forwarded to employers.
- b. Description of reporting and bookkeeping procedures required:  
None beyond those currently required.
- c. Description of professional skills required:  
None beyond those currently required.

**OCI Small business regulatory coordinator**

The OCI small business coordinator is Louie Cornelius and may be reached at phone number (608) 264–8113 or at email address [louie.cornelius@wisconsin.gov](mailto:louie.cornelius@wisconsin.gov).

**Agency Contact Person**

A copy of the full text of the proposed rule changes, analysis and fiscal estimate may be obtained from the Web site at: <http://oci.wi.gov/ocirules.htm> or by contacting Inger Williams, OCI Services Section, at:

Phone: (608) 264–8110  
 Email: [inger.williams@wisconsin.gov](mailto:inger.williams@wisconsin.gov)  
 Address: 125 South Webster St – 2<sup>nd</sup> Floor, Madison  
 WI 53703–3474  
 Mail: PO Box 7873, Madison, WI 53707–7873

**Fiscal Estimate & Economic Impact Analysis**

1. Type of Estimate and Analysis						
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Administrative Rule Chapter, Title and Number						
Agency 145 Sections Ins 17.01 and 17.28 (6)						
3. Subject						
Injured Patients and Families Compensation Fund Annual Fund fees and Mediation Panel Fees for fiscal year 2013.						
4. Fund Sources Affected				5. Chapter 20, Stats. Appropriations Affected		
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. Fiscal Effect of Implementing the Rule						
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7. The Rule Will Impact the Following (Check All That Apply)						



State's Economy  
Local Government Units

Specific Businesses/Sectors  
 Public Utility Rate Payers  
 Small Businesses (if checked, complete Attachment A)

8. Would Implementation and Compliance Costs Be Greater Than \$20 million?

Yes  No

9. Policy Problem Addressed by the Rule

To establish the annual fees that participating health care providers must pay to the Injured Patients and Families Compensation Fund ("Fund") as required by s. 655.27 (3), Wis. Stats., for fiscal year beginning July 1, 2012. The proposed rule will also establish the mediation panel fees for fiscal year 2013 commencing on July 1, 2012. This rule provides the Fund with appropriate and adequate funding and solvency for future years. This is the main vehicle for achieving and maintaining the Fund's solvency.

10. Summary of the businesses, business sectors, associations representing business, local governmental units, and individuals that may be affected by the proposed rule that were contacted for comments.

OCI solicited comments generally through publication requesting comments from the public utilizing the OCI website. Additionally OCI solicited comments from businesses, individuals, and local government units related to the implementation and compliance costs. Solicitations were sent to health insurance members of OCI's Health and Life Insurance Advisory Council and interested parties. Members included health insurance companies, health insurance agent representatives, consumer representatives, provider representatives and representatives of small business. Additional solicitations were made to associations representing various affected parties and local government representatives including:

- Wisconsin Association of Health Plans
- Wisconsin Association of Health Underwriters
- Independent Agents of Wisconsin
- National Federation of Independent Business–Wisconsin
- America's Health Insurance Plans
- Wisconsin Manufacturers and Commerce
- Wisconsin Dental Association
- Wisconsin Medical Society
- Professional Insurance Agents of Wisconsin
- National Association of Insurance and Financial Advisors–Wisconsin
- Wisconsin Hospital Association
- The League of Wisconsin Municipalities
- Wisconsin Counties Association
- Wisconsin Towns Association
- Wisconsin Association of School Boards
- Wisconsin Association of School District Administrators

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

None beyond solitiation for comments.

12. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)

All health care provider participants in the Fund as set forth in s. 655.002 (1), Wis. Stat., will be required to pay an additional 5% assessment for their medical malpractice coverage under Ch.655, Wis. Stat. The impact is considered to be minimal in that the majority of the Fund's participants are physicians, the majority of which are assessed fees in Class 1 and 2. The change in fund fees will result in an increase of \$73 and \$131, respectively, in Fund fees for fiscal year 2013.

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

The proposed rule will benefit Fund participants by ensuring that fee revenue is adequate to cover anticipated administrative, operating and claims payments costs. The alternatives to this rule would be to establish a Fund fee increase that is higher or lower than the proposed 5%, to maintain current fee amounts or to lower Fund fees. A lower proposed increase, a static fee level, or a lowered fee would leave the Fund with inadequate funding to cover actuarially-based projected costs, while a higher fee increase would present an unnecessary cost to Fund participants.

The proposed rule does not significantly impact Wisconsin's economy, productivity, jobs or the overall economic competitiveness of Wisconsin. Wisconsin's health care marketplace is strengthened with an affordable layer of medical malpractice coverage. The Fund has existed in Wisconsin since 1975. Fund participants will benefit from a stable and solvent fund. Additionally, Fund participants should not experience increased compliance costs.

14. Long Range Implications of Implementing the Rule

The long-range implication of the rule as proposed will be an adequately funded and solvent Fund.

15. Compare With Approaches Being Used by Federal Government

Federal government does not address this subject matter.

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

None of the neighboring states have a patient compensation fund or a general program of state-sponsored liability insurance for physicians.

**17. Contact Name**

Louie Cornelius

**18. Contact Phone Number**

608-264-8113

This document can be made available in alternate formats to individuals with disabilities upon request.

**ATTACHMENT A****1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)**

The agency does not anticipate any implementation costs or additional compliance costs for fund participants. All health care provider participants in the Fund as set forth in s. 655.002 (1), Wis. Stat., will be required to pay an additional 5% assessment for their medical malpractice coverage under Ch. 655, Wis. Stat. The impact is considered to be minimal in that the majority of the Fund's participants are physicians, the majority of which are assessed fees in Class 1 and 2. The change in fees will result in an increase of \$73 and \$131, respectively, in Fund fees for fiscal year 2013.

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

The Fund contracts for actuarial services to develop the documentation and analysis necessary for the Actuarial and Underwriting Committee of the Fund. The data includes the change, if any is proposed, at the physician level. Since many physicians are small employer practices this information does relay information to the Committee and Board for the impact on small businesses directly impacted by the proposal. The actuarial firm presents its analysis to the Actuarial and Underwriting Committee of the Fund Board of Governors. The Committee reviews all data and projections and makes a recommendation to the full Board of Governors for consideration. The Fund Board of Governors reviewed the Committee's recommendation at its December 14, 2011 meeting as well as the underlying analysis by the actuarial firm. Following deliberation, the Board of Governors affirmed the Committee's recommendation of an increase of 5% for Fund fees and affirmed the change to the mediation panel fees of a decrease per physician of \$2.50 and \$0.50 per hospital bed.

**3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?**

Less Stringent Compliance or Reporting Requirements

Less Stringent Schedules or Deadlines for Compliance or Reporting

Consolidation or Simplification of Reporting Requirements

Establishment of performance standards in lieu of Design or Operational Standards

Exemption of Small Businesses from some or all requirements

Other, describe:

The Board of Governors discussed a lower or neutral increase in Fund fees but determined that such action would inadequately fund the Fund for claims incurred during fiscal year 2013 and shift the burden of funding to future years and providers.

**4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses**

The proposed increase is below breakeven financing for the Fund but sufficient to cover anticipated claims, administrative and operating expenses.

**5. Describe the Rule's Enforcement Provisions**

This rule proposes fees. Failure to pay Fund fees is governed by s. Ins 17.01, Wis. Adm. Code, which requires the Fund to notify the medical examining board of each physician who has not paid the fee and notify the Department of Health Services of each hospital that has not paid the fee as required.

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

Yes  No

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# Rules Published with this Register and Final Regulatory Flexibility Analyses

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*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.*

## Natural Resources

### *Environmental Protection, Solid Waste Management,*

#### *Chs. NR 500—*

(DNR # WA-33-10)

#### **CR 10-128**

The Department of Natural Resources hereby submits the following rule for publication revising Chapters NR 500, 502 and 518, relating to composting of solid waste. Effective 6-1-12.

#### **Summary of Final Regulatory Flexibility Analysis**

The rule regulates compost facilities. Wisconsin has fewer than 250 licensed compost facilities, three-quarters of which are municipally owned facilities. The remainder are commercial facilities, of which some are owned by large waste disposal companies and the rest are small businesses of one to 10 employees. The current rule and the proposed revisions also apply to farmers engaging in large-scale composting of crop residues, manure or animal carcasses on their property, but they would remain exempt from plan review, certain facility design requirements, and reporting requirements. The current and proposed rules generally do not apply to home and small-scale (less than 50 cubic yards) composting. Neither the current nor the proposed rules mandate composting.

Under existing rules, compost facility operators must manage their compost piles or windrows (through moisture and feedstock mixtures and proper turning) to maintain temperatures that break down the raw materials and reduce the pathogen content in the compost. The proposed rule would increase public safety by requiring most compost operators to adopt the best management practice of maintaining records of temperature and turning to ensure that pathogen reduction is occurring.

The reporting requirements in the rule would not require additional records to be kept by compost operators beyond those already necessary for conducting business (e.g., volume or tonnage records). For owners opting to make Class A compost, periodic sampling of the compost would be required. The producers most likely to produce Class A compost are those who already keep such records and sample their compost for quality testing.

The proposed rule would not require skills any different than those required by the current rule. Compost facility operators will need to understand the principles of composting, how to move large quantities of materials, how to control drainage and traffic, how to make basic physical measurements such as volume, temperature and bulk density, and how to calculate carbon-to-nitrogen ratios using standard recipe calculators. These skills are currently necessary to the business of composting. Under both the current and proposed rules, operators of the largest (i.e., non-exempt) new or expanding non-exempt compost facilities would need to obtain the help of an engineer for facility design and plan preparation.

#### **Summary of Comments of Legislative Standing Committees**

No comments reported.

## Safety and Professional Services

### *Safety, Buildings, and Environment, General Part II,*

#### *Ch. SPS 326-360*

#### **CR 11-047**

An order to revise Chapters SPS 341 and 345, relating to boilers and pressure vessels. Effective 6-1-12.

#### **Summary of Final Regulatory Flexibility Analysis**

Less stringent requirements are not proposed for small businesses because (1) the equipment manufacturers that the included nationwide construction standards are directed at are not small businesses, and (2) the included nationwide inspection standards would be more difficult to understand and comply with if they were modified and applied differently in Wisconsin for small businesses.

None of the proposed rule changes are expected to significantly increase the current cost of installing and operating boilers and pressure vessels because the primary effect of the changes is to make Chapter SPS 341 consistent with current regional and national-level standards for boilers and pressure vessels, and with current industry and regulatory practices.

#### **Summary of Comments of Legislative Standing Committees**

No comments received.

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## Sections Affected by Rule Revisions and Corrections

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The following administrative code sections had rule revisions and corrections take place in **May 2012**, 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

#### Barbering and Cosmetology

##### Ch. BC 3

BC 3.01 (14) (Note)

#### Children and Families

##### Ch. DCF 52

Appendix D

##### Ch. DCF 54

Appendix A

##### Ch. DCF 57

Appendix A

##### Ch. DCF 59

Appendix A

#### Natural Resources

##### Ch. NR 500

NR 500.03 (20r), (29), (30g), (30r), (44m), (45), (86m), (88m), (155m), (185), (219m), (253), (253m), (262)

##### Ch. NR 502

NR 502.12 (title), (1) (intro.), (a) to (f), (2), (3) (title), (intro.), (a), (4) (title), (intro.), (c), (e) (intro.), 1. to 4., (5) (title), (intro.), (b) to (e), (f) (intro.), 1., 2., (6) (title), (intro.), (b), (c), (e), (7) (title), (intro.), (a) to (c), (e), (f), (8) (title), (a) (intro.), 4. to 8., (b), (c), (9), (10) (intro.), (a) to (e), (h) 1., 3., (11) (intro.), (a), (b), (d), (e), (12) (a), (b), (13) (title), (intro.), (b), (e) to (h), (k), (m) to (p), (14) (a), (15), (16), Tables 1 and 2

##### Ch. NR 518

NR 518.04 (1) (intro.), (b), (i)

#### Safety and Professional Services

##### Ch. SPS 341

SPS 341.01

SPS 341.02 (1) (a), (b)

SPS 341.03

SPS 341.04 (intro.), (1) (a), (b), (4), (6) to (8), (10) to (40)

SPS 341.05

SPS 341.06

SPS 341.07

SPS 341.08

SPS 341.09

SPS 341.10

SPS 341.11

SPS 341.15 (1) (intro.), (a), (3) to (5)

SPS 341.16 (title), (1) (a), (b), (c), (e), (2) (a) to (g), (3) (title), (a), (b)

SPS 341.17 (1), (title), (a), (3) to (5), (7)

SPS 341.18 (1) (a) to (c), (i), (k), (o)

SPS 341.19 (1), (2) (a)

SPS 341.23 (1), (2) (a), (3) (a)

SPS 341.27

SPS 341.28 (3)

SPS 341.29 (1), (2) (a), (b)

SPS 341.30 (1) (a), (c), (2)

SPS 341.31 (1) (b), (2), (4) (intro.) to (d)

SPS 341.32 (2)

SPS 341.33 (intro.) to (3)

SPS 341.34 (2) (c)

SPS 341.35

SPS 341.36 (2), (title)

SPS 341.37 (2)

SPS 341.38 (1), (3), (4)

SPS 341.41 (1) (a), (b) (intro.), (2) (a) to (c), (4) (title), (a), (b)

SPS 341.42 (1), (2) (a), (3), (b), (4)

SPS 341.44

SPS 341.45 (1) (a) to (d), (3) (b)

SPS 341.46 (1), (2)

SPS 341.47 (intro.), (1) to (3)

SPS 341.48

SPS 341.49 (title) to (3)

SPS 341.53 (1), (2)

SPS 341.54 (1)

SPS 341.55 (1), (a) (title), (b), (2), (3) (a), (b), (4)

SPS 341.56 (1), (title), (2)

SPS 341.57

SPS 341.60

SPS 341.62 (title), (1), (b), (2) (a), 2., 3.

SPS 341.63 (2), (3)

SPS 341.64 (1) (a), (3) (intro.), (4) (a)

SPS 341.70

SPS 341.73

SPS 341.90

SPS 341.91 (title), (1)

SPS 341.92 (title), (2) (a)

SPS 341.93

SPS 341 Appendix

##### Ch. SPS 345

SPS 345.31 (2) (d)

SPS 345 Appendix

### **Editorial Corrections**

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

#### **Natural Resources**

##### **Ch. NR 405**

NR 405.02 (25i) (Note)

#### **Safety and Professional Services**

##### **Ch. SPS 348**

SPS 348.300 (1) (b) 4. (Note)

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## Executive Orders

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**The following are recent Executive Orders issued by the Governor.**

**Executive Order 66.** Relating to the Wisconsin “Lean Government” Initiative. **(May 2, 2012)**

**Executive Order 67.** Relating to a Proclamation that the Flag of the United States and the Flag of the State of Wisconsin be Flown at Half-Staff as a Mark of Respect for Corporal Benjamin H. Neal of the United States Army Who Lost His Life While Serving His Country During Operation Enduring Freedom. **(May 4, 2012)**

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