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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 (2)

1. **EmR1003** — Rule adopted revising **ss. ATCP 60.15 and 60.20**, relating to somatic cell standards for dairy goat milk.

#### Finding of Emergency

Recently, the National Conference of Interstate Milk Shippers voted to relax the standard for somatic cells in grade A goat milk, from 1,000,000 somatic cells per ml to 1,500,000 per ml. The United States Food and Drug Administration accepted this change and will include it in the next edition of the Interstate Pasteurized Milk Ordinance. The United States Department of Agriculture is adopting the same standard for grade B goat milk, as part of its standards for “Milk for Manufacturing Purposes and its Production and Processing.”

Wisconsin rules currently establish a limit of 1,000,000 somatic cells per ml in goat milk, which is more stringent than the new national standard of 1,500,000 per ml. The more stringent Wisconsin standard, if not modified to conform to the new national standard, will put Wisconsin dairy goat milk producers at a significant financial, operational, and competitive disadvantage compared to producers in other states.

This emergency rule modifies Wisconsin’s current standard, and makes it consistent with the new national standard. The department of agriculture, trade and consumer protection (DATCP) is adopting this rule as a temporary emergency rule, pending rulemaking proceedings to modify the standard on a more “permanent” basis. “Permanent” rulemaking proceedings normally require over a year to complete. This emergency rule is needed to mitigate a potential hardship to Wisconsin producers of dairy goat milk, pending the adoption of “permanent” rules.

**Publication Date:** February 4, 2010

**Effective Dates:** February 4, 2010  
through July 3, 2010

**Hearing Date:** June 15, 2010

(See the Notice in this Register)

2. **EmR1012** — Rule adopted to create **section ATCP 70.03 (7) (e) and (f)**, relating to food processing plant license exemptions for certain home-canners and maple sap processors.

#### Finding of Emergency

(1) The Department of Agriculture, Trade and Consumer Protection (DATCP) administers state food processing plant license requirements under s. 97.29, Stats.

(2) Recent legislation (2009 Act 101, enacted on February 4, 2010) created a limited exemption from food processing plant license requirements under s. 97.29, Stats., for persons who home-can limited quantities of acidic, acidified or fermented vegetable and fruit products for retail sale at community and social events or at farmers’ markets.

(3) Home-canned food products, if not properly canned, may pose a risk of serious food safety hazards such as botulism.

(4) DATCP has received many requests for clarification of the new license exemption under Act 101. In order to facilitate compliance and protect consumers from potentially serious food safety hazards, DATCP must adopt administrative rules to clarify the scope, application and terms of the new license exemption.

(5) Implementing rules are urgently needed because of the seriousness of the potential food safety hazards, and the seasonal nature of the farmers’ markets and other events at which home-canned products may be sold. The normal rulemaking process takes over a year to complete, and cannot be completed in time for this summer’s farmers’ markets (which begin as early as mid-April or May). Persons who wish to sell home-canned food products must clearly understand the scope of the license exemption, and the food safety standards that must be met in order to qualify.

(6) This temporary emergency rule clarifies the scope, application and terms of the new license exemption under Act 101, pending the completion of “permanent” rules by the normal rulemaking process. This emergency rule is needed to protect the public health, safety and welfare, and to facilitate fair and orderly implementation of the new license exemption.

(7) This emergency rule also exempts, from food processing plant license requirements under s. 97.29, Stats., a person who collects and processes relatively small quantities of maple sap to produce maple syrup or concentrated maple sap for sale to other processors for further

processing. These small-scale processing activities pose minimal food safety risks, and the current license requirement imposes an unnecessary cost and compliance burden. An emergency rule is needed to relieve these cost and compliance burdens for the maple sap collection and processing season that typically begins in March. This emergency rule creates a temporary license exemption, pending the completion of “permanent” rules by the normal rulemaking process. This emergency rule clearly defines the scope, application and terms of the exemption, in order to protect public health, safety and welfare.

**Publication Date:** April 22, 2010  
**Effective Dates:** April 22, 2010 through September 18, 2010  
**Hearing Date:** May 25, 2010

### Children and Families

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

**EmR0937** — Rule adopted revising **Chapters DCF 56 and 58**, relating to foster care and kinship care.

#### **Finding of Emergency**

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

2009 Wisconsin Act 28 assumes that court-ordered kinship care relatives will be applying for a license to operate a foster home beginning after January 1, 2010, and continuing throughout 2010. This rule creates the first two levels of the new levels of care system for foster care. The newly-licensed kinship care relatives will be incorporated into the foster care program. Licensing these relatives will allow the state to claim an additional \$6.5 million in Title IV-E funds for 2010. Act 28 appropriates this \$6.5 million to be expended in 2011.

**Publication Date:** December 30, 2009  
**Effective Dates:** January 1, 2010 through May 30, 2010  
**Extension Through:** July 29, 2010  
**Hearing Dates:** March 17, March 31, April 8, 2010

### Children and Families

#### *Early Care and Education, Chs. DCF 201–252*

**EmR1015** — Rule adopted revising **Chapter DCF 201**, relating to authorized hours of subsidized child care and affecting small businesses.

#### **Finding of Emergency**

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

2009 Wisconsin Act 28 assumes that implementation of s. 49.155 (6g), Stats., will save an estimated \$9 million over the 2009–2011 biennium.

**Publication Date:** May 17, 2010  
**Effective Dates:** May 17, 2010 through October 13, 2010  
**Hearing Date:** June 17, 2010

### Commerce (4)

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

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

#### **Finding of Emergency**

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

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

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

**Publication Date:** November 9, 2009  
**Effective Dates:** November 9, 2009 through April 7, 2010  
**Extension Through:** August 5, 2010  
**Hearing Date:** January 25, 2010

2. **EmR1006**— Rule adopted to create **Chapter Comm 137**, relating to reallocations for recovery zone facility bonds as established under the federal American Recovery and Reinvestment Act of 2009, and affecting small businesses.

#### **Exemption From Finding of Emergency**

The Legislature, by Section 5 (1) (b) in 2009 Wisconsin Act 112, exempts the Department from providing evidence that this emergency rule is necessary for the preservation of public peace, health, safety or welfare; and exempts the Department from providing a finding of emergency for the adoption of this rule.

**Publication Date:** March 5, 2010  
**Effective Dates:** March 5, 2010 through August 1, 2010  
 (subject to 2009 Wis. Act 112, s. 5)  
**Hearing Date:** May 13, 2010

3. **EmR1008** — Rule adopted to create **Chapter Comm 124** relating to the Forward Innovation Fund, and affecting small businesses.

#### Exemption From Finding of Emergency

The Legislature, by Section 9110 (8) of 2009 Wisconsin Act 28, exempts the Department from providing evidence that this emergency rule is necessary for the preservation of public peace, health, safety or welfare; and exempts the Department from providing a finding of emergency for the adoption of this rule.

**Publication Date:** March 22, 2010  
**Effective Dates:** March 22, 2010 through July 1, 2010  
**Hearing Date:** May 26, 2010

4. **EmR1013** — Creates **Chapter Comm 121**, relating to the small business innovation research assistance program, and affecting small businesses.

#### Exemption From Finding of Emergency

The Legislature, by Section 9110 (16u) of 2009 Wisconsin Act 28, exempts the Department from providing evidence that this emergency rule is necessary for the preservation of public peace, health, safety or welfare; and exempts the Department from providing a finding of emergency for the adoption of this rule.

**Publication Date:** April 21, 2010  
**Effective Dates:** April 21, 2010 through September 17, 2010  
**Hearing Date:** June 11, 2010

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### Corrections

**EmR0939** — Rule adopted revising **Chapter DOC 302**, relating to sentence calculations and prison release and to administrative review of inmate classification decisions.

#### Finding of Emergency

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

Under 2009 Wisconsin Act 28, the legislature provides for the release of inmates from prison if certain criteria are met. The Department is responsible for implementing several of those procedures. Specifically, the department is responsible for implementing the early release programs under: (1) s PAT (2) ERP/CIP (3) CER (4) Risk reduction (5) 75%/85%. In addition, the department is revising section 302.18 to facilitate the review of inmates for purposes of early release.

If the rule is not created promptly and immediately, the Department will not be able to proceed in reviewing inmates under these various release procedures. This could result in significant delay in the implementation of the statutory provisions which will negatively impact the ability of the Department to manage the inmate population in a safe and effective manner. In addition, a delay will affect the management and control of inmate population levels of correctional facilities with the resources necessary to maintain public safety.

The purpose of the emergency rule is to implement newly created statutory provisions providing for release of inmates under specified circumstances. The permanent rule process

has been started. However, the permanent rule process will take approximately nine months to complete. Emergency rules are necessary for a prompt implementation of the legislative mandates concerning the release of inmates meeting established criteria while the permanent rules are being developed.

**Publication Date:** December 31, 2009  
**Effective Dates:** December 31, 2009 through May 29, 2010  
**Extension Through:** July 28, 2010  
**Hearing Date:** February 25, 2010

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### Earned Release Review Commission

(Formerly Parole Commission)

**EmR0940** — Rule adopted revising **Chapter PAC 1**, relating to the release of inmates through parole or other procedures.

#### Finding of Emergency

The Wisconsin Earned Release Review Commission finds that an emergency exists and that emergency rules are necessary for the immediate preservation of public peace, health, safety and welfare. A statement of facts constituting the emergency is:

Under 2009 Wisconsin Act 28, the legislature provides for the release of inmates from prison if certain criteria are met. The Earned Release Review Commission (formerly the Parole Commission) is responsible for implementing several of those procedures. Specifically, the commission is responsible for considering the early release of inmates under: (1) section 304.06 (1) (bg)1. and 2., Stats., after the inmate has served the term of confinement of their bifurcated sentence less positive adjustment time, (2) section 304.06 (1) (bg) 3. and 4., Stats., after the inmate has served either 75 % or 85 % of their term of confinement, depending on the offense for which the inmate was sentenced, and (3) section 302.1135 (2) (a), (b), and (c), Stats., based on age or extraordinary health.

If the rule is not created promptly and immediately, the commission will not be able to proceed in reviewing inmates under these various release procedures. This could result in significant delay in the implementation of the statutory provisions which will negatively impact the ability of the department of corrections to manage the inmate population in a safe and effective manner. In addition, a delay will affect the management and control of inmate population levels of correctional facilities with the resources necessary to maintain public safety.

The purpose of the emergency rule is to implement newly created statutory provisions providing for release of inmates under specified circumstances. The permanent rule process has been started. However, the permanent rule process will take approximately nine months to complete. Emergency rules are necessary to respond to the legislatively recognized need to review inmates who meet the requirements under the statutes for potential release while the permanent rules are being developed.

**Publication Date:** December 31, 2009  
**Effective Dates:** December 31, 2009 through May 29, 2010  
**Extension Through:** July 28, 2010  
**Hearing Date:** February 23, 2010

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## Employee Trust Funds

**EmR0938** — Rule adopted revising **Chapters ETF 10, 20 and 40**, relating to the implementation of benefit changes mandated in 2009 Wisconsin Act 28; specifically, domestic partner benefits and the expansion of health insurance coverage to adult dependents up to the age of 27 years.

### Finding of Emergency

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

ETF cannot promulgate a permanent rule in compliance with the mandated changes by January 1, 2010, which is the effective date of the domestic partnership and the health insurance provisions of 2009 Wisconsin Act 28. Without an emergency rule in place, the ability of ETF to enroll and cover participants' domestic partners and to provide health insurance to adult dependents would be seriously impaired. ETF would be unable to provide health insurance and other benefits to domestic partners and adult dependents.

**Publication Date:** December 28, 2009  
**Effective Dates:** January 1, 2010  
 through May 30, 2010  
**Extension Through:** July 29, 2010  
**Hearing Date:** February 12, 2010

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## Government Accountability Board

**EmR1016** — Rule adopted to create **section GAB 1.91**, relating to organizations making independent disbursements.

### Finding of Emergency

Pursuant to s. 227.24, Stats., the Government Accountability Board finds an emergency exists as a result of the United States Supreme Court decision *Citizens United v. FEC*, 558 U.S. \_\_\_, (No. 08–205)(January 21, 2010). Within the context of ch. 11, Stats, the rule provides direction to organizations receiving contributions for independent disbursements or making independent disbursements. Comporting with *Citizens United*, this emergency rule order does not treat persons making independent disbursements as full political action committees or individuals under s. 11.05, Stats., for the purposes of registration and reporting. With respect to contributions or in-kind contributions received, this emergency rule order requires organizations to disclose only donations “made for” political purposes, but not donations received for other purposes.

The Board adopts the legislature’s policy findings of s. 11.001, Stats., emphasizing that one of the most important sources of information to voters about candidates is available through the campaign finance reporting system. The Board further finds that it is necessary to codify registration, reporting and disclaimer requirements for organizations receiving contributions for independent disbursements or making independent disbursements so that the campaign finance information is available to voters. The rule must be adopted immediately to ensure the public peace and welfare with respect to the administration of current and future elections.

**Publication Date:** May 20, 2010  
**Effective Dates:** May 20, 2010 through  
 October 16, 2010

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## Health Services (2)

*Health, Chs. DHS 110—*

1. **EmR1004** — Rule adopted to create **sections DHS 195.145 and 197.145**, relating to carbon monoxide detectors in hotels, motels, tourist rooming houses and bed and breakfast establishments, and affecting small businesses.

### Finding of Emergency

DHS finds that an emergency exists and that the adoption of an emergency rule is necessary for the immediate preservation of the public health, safety and welfare. The facts constituting the emergency are as follows:

Section 101.149 (2) and (3), Stats., requires the owners of lodging establishments, including hotels, tourist rooming houses, and bed and breakfast establishments that were constructed on or before October 1, 2008, or had plans reviewed by the department of commerce before October 1, 2008, to, not later than April 1, 2010, install carbon monoxide detectors in every residential building that has a fuel-burning appliance, unless, pursuant to s. 101.149 (5), Stats., the building does not have an attached garage and all fuel-burning appliances in the building have sealed combustion units that are either covered by the manufacturer’s warranty against defects or are inspected under rules promulgated by DHS.

Section 254.74 (1) (am), Stats., requires DHS to promulgate rules under which DHS would conduct inspections of sealed combustion units for carbon monoxide emissions, and rules that specify the conditions under which DHS may issue orders to correct violations of s. 101.149 (2) or (3), Stats.

**Publication Date:** March 1, 2010  
**Effective Dates:** April 1, 2010 through  
 August 28, 2010  
**Hearing Dates:** April 21, 23, 27, 28, 30, 2010

2. **EmR1009** — Rule adopted to revise **Chapter DHS 137**, relating to anatomical gifts and the Wisconsin Donor Registry.

### Finding of Emergency

The Department of Health Services finds that an emergency exists and that the adoption of an emergency rule is necessary for the immediate preservation of the public health, safety and welfare. The facts constituting the emergency are as follows:

There are over 105,000 people in the United States on the national waiting list for organ transplants including 1,500 in Wisconsin. Due to the limited availability of organs for transplantation, 18 people die each day in the United States.

As part of Wisconsin’s response to the need for increased organ and tissue donation, the department, as authorized under s. 157.06 (20), Stats., has established the Wisconsin Donor Registry (Donor Registry).

The Donor Registry will make it easier for Wisconsin residents to become donors and for procurement organizations to identify donors, and thus it should increase the supply of available organs and tissues, which may save the lives of persons awaiting transplant.

Promulgating the rules for the Donor Registry as emergency rules will enable department-authorized procurement organizations to quickly determine whether a person who is at or near death has a record of gift. In addition, the Donor Registry makes it possible for individuals to immediately make anatomical gifts.

The Donor Registry will become available for use by the public upon the effective date of these emergency rules and may be accessed by the public at [yesIwillwisconsin.com](http://yesIwillwisconsin.com). Substantially identical permanent rules are being proposed concurrent to this emergency order.

**Publication Date:** March 29, 2010  
**Effective Dates:** March 29, 2010 through August 25, 2010  
**Hearing Date:** May 5, 2010

**Insurance (3)**

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

**Exemption From Finding of Emergency**

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

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

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

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

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

- EmR0945** — Rule adopted revising **section Ins 3.75**, relating to the continuation of group health insurance policies.

**Exemption From Finding of Emergency**

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

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

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

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

**Publication Date:** January 7, 2010  
**Effective Dates:** January 8, 2010 through June 6, 2010  
**Hearing Date:** May 5, 2010

- EmR1005** — A rule adopted creating **section Ins 3.36**, relating to treatment of autism spectrum disorders and affecting small business.

**Exemption From Finding of Emergency**

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

**Publication Date:** March 8, 2010  
**Effective Dates:** March 8, 2010 through August 4, 2010  
 (subject to s. 632.895 (12m) (f), Stats.)  
**Hearing Date:** May 26, 2010

**Natural Resources**

*Fish, Game, etc., Chs. NR 1—*

- EmR1014** — Rule adopted to create **section NR 45.13 (1m) (d)**, relating to the establishment of a slow-no-wake zone on the Wisconsin River at the Dells of Wisconsin River state natural area.

**Finding of Emergency**

The Department of Natural Resources finds that an emergency exists and that an emergency rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. A statement of the facts constituting the emergency is: Based on information received by the Department, user conflicts are increasing. Failure to enact this rule could lead to additional boating accidents and potential for injury during the upcoming high use season.

**Publication Date:** May 20, 2010  
**Effective Dates:** May 20, 2010 through October 16, 2010  
**Hearing Date:** June 22, 2010

**Natural Resources*****Environmental Protection — Water Regulation, Chs. NR 300—***

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

**Finding of Emergency**

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

**Publication Date:** August 28, 2009  
**Effective Dates:** August 28, 2009 through January 24, 2010  
**Extension Through:** May 24, 2010  
**Hearing Date:** April 15, 2010

**Natural Resources*****Environmental Protection — Hazardous Waste Management, Chs. NR 600—***

**EmR1007** — A rule adopted revising **section NR 660.10**, relating to hazardous waste management.

**Exemption From Finding of Emergency**

Section 289.67 (2) (de), Stats., as created by 2009 Wisconsin Act 28 (the 2009–2011 biennial budget bill), requires the department to promulgate by rule definitions of “large quantity generator” and “small quantity generator” for purposes of the hazardous waste generator fees established by s. 289.67 (2) (b) 1., Stats., as amended by 2009 Wisconsin Act 28.

Section 9137 (2), a non-statutory provision in 2009 Wisconsin Act 28, authorizes the department to promulgate the required definitions using emergency rule making procedures, but is not required to provide evidence that promulgating a rule under that subsection as an emergency rule is necessary for the preservation of public peace, health, safety, or welfare and is not required to

**Publication Date:** March 17, 2010  
**Effective Dates:** March 17, 2010 through July 1, 2011  
**Hearing Date:** April 26, 2010

**Public Defender Board**

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

**Finding of Emergency**

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

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

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

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

**Publication Date:** October 3, 2009  
**Effective Dates:** October 3, 2009 through March 1, 2010  
**Extension Through:** June 29, 2010  
**Hearing Date:** November 16, 2009

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## Public Instruction

**EmR1018** — Rule adopted to create **Chapter PI 45**, relating to the use of race-based nicknames, logos, mascots, and team names by school boards.

### Finding of Emergency

Pursuant to Section 3 of the nonstatutory provisions of 2009 Wisconsin Act 250, the Department of Public Instruction is not required to provide evidence that this rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency.

**Publication Date:** June 1, 2010  
**Effective Dates:** June 1, 2010 through October 28, 2010

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## Regulation and Licensing (2)

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

### Exemption From Finding of Emergency

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

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

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

### Exemption From Finding of Emergency

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

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

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## Revenue (4)

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

### Finding of Emergency

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

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

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

**Publication Date:** October 19, 2009  
**Effective Dates:** October 19, 2009 through March 17, 2010  
**Extension Through:** July 15, 2010  
**Hearing Dates:** December 10 and 21, 2009

- EmR0935** — Rule adopted to create **section Tax 1.16**, relating to the financial record matching program.

### Finding of Emergency

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

The emergency rule is to reflect changes in Wisconsin's tax laws due to the creation of the financial record matching program.

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

**Publication Date:** December 22, 2009  
**Effective Dates:** December 22, 2009 through May 20, 2010  
**Extension Through:** July 19, 2010  
**Hearing Date:** February 11, 2010

- EmR0943** — Rule adopted to revise **Chapter Tax 2**, relating to apportionment and nexus.

### Finding of Emergency

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

In 2009, the Wisconsin Legislature enacted Acts 2 and 28, both of which contained substantial changes to Wisconsin's corporation franchise and income tax laws. Most of these changes are effective retroactively to taxable years beginning on or after January 1, 2009. Emergency rules are needed to add certainty about the scope and application of the newly

enacted statutes as soon as possible so that taxpayers can file their returns accordingly.

**Publication Date:** December 31, 2009  
**Effective Dates:** December 31, 2009 through May 29, 2010  
**Extension Through:** July 28, 2010  
**Hearing Date:** February 25, 2010

4. **EmR1002** — Rule adopted to create **section Tax 1.17**, relating to the ambulatory surgical center assessment.

#### Exemption From Finding of Emergency

The legislature by Section 9143 (4u) of 2009 Wisconsin Act 28 provides an exemption from a finding of emergency for the adoption of the rule.

**Publication Date:** January 19, 2010  
**Effective Dates:** January 19, 2010 through June 16, 2010  
 (Subject to 2009 Wis. Act 28, Section 9143 (4u))  
**Extension Through:** August 15, 2010  
**Hearing Date:** February 11, 2010

### Transportation

- EmR1017** — Rule adopted to create **section Trans 100.25**, relating to mandatory insurance exemptions.

#### Finding of Emergency

The Department of Transportation finds that an emergency exists and that an emergency rule is necessary for the immediate preservation of the public health and welfare. A statement of the facts constituting the emergency is the requirements of the mandatory insurance laws in Chapter 344, Stats., as created by 2009 Wis. Act 28, contain exceptions to furnishing proof of a motor vehicle liability insurance policy. This emergency rule defines the administration of those exceptions. These mandatory insurance requirements, and the exceptions, are effective June 1, 2010, thereby necessitating an emergency rule being put into place until the effective date of the permanent rule. Clarification of the mechanism to be used to qualify for an exception under the new statute will be useful to persons wishing to file for an exception. Persons whose religious beliefs preclude them from buying insurance will benefit from this rule making.

**Publication Date:** June 1, 2010  
**Effective Dates:** June 1, 2010 through October 28, 2010  
**Hearing Date:** June 24, 2010  
 (See the Notice in this Register)

### Veterans Affairs

- EmR0944** — Rule adopted to amend **section VA 2.02 (2)**, relating to the veterans tuition reimbursement program.

#### Finding of Emergency

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

The removal of the existing deadline for completing and receiving an application for the tuition fee reimbursement program has left the department unable to budget the available resources for this program to ensure maximum coverage for eligible veterans throughout the fiscal year. The department is requesting emergency rules to ensure applications can be processed in a responsive manner and to allow the department to properly manage the program's biennial budget and ensure the welfare of all eligible veterans. The emergency rule will address the need for an application deadline while the department completes the promulgation for a permanent rule for the program.

**Publication Date:** January 4, 2010  
**Effective Dates:** January 4, 2010 through June 2, 2010  
**Extension Through:** August 1, 2010  
**Hearing Date:** March 10, 2010

### Workforce Development

#### *Labor Standards, Chs. DWD 270–279*

- EmR1011** — Rule adopted to create **Chapter DWD 273**, relating to the regulation of traveling sales crews.

#### Finding of Emergency

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

The statute which provides for the regulation of traveling sales crews became effective on April 1, 2010. The Department has completed its work on the proposed administrative rule which implements the statute, and submitted the proposed rule in final form for legislative review on April 13, 2010. Putting the provisions of the proposed rule into effect during the legislative review period will allow the Department to take any enforcement action that might be needed if there are complaints during this period about the operation of traveling sales crews without the permits required by statute.

**Publication Date:** April 19, 2010  
**Effective Dates:** April 19, 2010 through September 15, 2010

### Workforce Development (2)

#### *Public Works Construction Contracts, Chs. DWD 290–294*

1. **EmR0941** — Rule adopted to create **section DWD 290.20**, relating to the thresholds for the requirement of prevailing wage rates.

#### Finding of Emergency

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

The most recent state budget legislation, 2009 Wisconsin Act 28, contained amendments to the state laws which require the payment of prevailing wage rates for work done on projects of public works and, in a new statute, for work done on private projects which receive more than \$1,000,000 of public direct financial assistance. The new provisions become effective on January 1, 2010.

The prevailing wage laws require that when a state agency or local governmental unit contracts for the erection, construction, remodeling, repairing, or demolition of a public works project it must obtain a prevailing wage rate determination from the Department of Workforce Development and require that the contractors and subcontractors on the project pay their employees in accordance with the wage rates established by the determination. Under the law as it existed before the enactment of 2009 Act 28, a prevailing wage rate determination was required for any project with an estimated cost of at least \$48,000 (for a single-trade project) or \$234,000 (for a multi-trade project). Act 28 changes these amounts to an estimated project cost of at least \$25,000. Act 28 has also created a new statute, s. 66.0904, Stats., which requires that a private developer obtain and comply with a prevailing wage rate determination for a private project that receives at least \$1,000,000 in direct financial assistance from a local governmental unit.

The state and local governmental units and private developers who may be subject to these new requirements of the prevailing wage laws need immediate guidance as to the manner in which the Department will apply the January 1, 2010 effective date to new projects. This rule provides that guidance by establishing that the new threshold requirements will apply to projects for which a request for bids is issued or a contract is negotiated after January 1, 2010.

**Publication Date:** December 29, 2009  
**Effective Dates:** January 1, 2010 through  
 May 30, 2010

2. **EmR0942** — Rule adopted to amend **section DWD 293.02**, relating to the adjustment of thresholds for payment and performance assurance bond requirements and affecting small businesses.

#### **Finding of Emergency**

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

The adjustment of the thresholds for the application of the project payment and performance assurance bond requirements ensures that the adjustments are effective on a date certain that is prior to the time of year that project requests are generally submitted to the Department and the need for obtaining bonding is determined. The adjustment avoids imposing an additional administrative burden on local governments and state agencies caused by an effective decrease of the thresholds due solely to inflation in the construction industry. If these new thresholds are not put into effect by emergency rule, the old thresholds will remain effective for approximately six to seven months, until the conclusion of the permanent rule-making process. The thresholds are based on national construction cost statistics and are unlikely to be changed by the rule-making process.

**Publication Date:** December 29, 2009  
**Effective Dates:** January 1, 2010 through  
 May 30, 2010  
**Hearing Date:** March 31, 2010

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## Scope Statements

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### Commerce

#### *Uniform Dwellings, Chs. Comm 20–25*

##### Subject

Revises Chapters Comm 20 to 25, relating to establishing statewide construction and inspection rules for one- and two-family dwellings, including manufactured and modular homes. This update may be incorporated into more than one rule package and may include revisions to other chapters affected by the proposal.

##### Objective of the Rule

The objective of the rule is to have a clearly understood, uniform code that reflects the application of current construction and remodeling practices, products, standards, model codes and materials. To ensure the health, safety and welfare of Wisconsin citizens using and residing in one- and two-family dwellings and manufactured and modular homes, it is important that the code and adopted standards are viable and current.

##### Policy Analysis

Chapters Comm 20–25 establish statewide, uniform construction, energy efficiency, and inspection rules for one- and two-family dwellings and include references to many national standards and reflect national building and energy efficiency trends. The last update of chapters Comm 20–25 began in 2005 and became effective April 1, 2009. Statutes require the department to review the Uniform Dwelling Code every 2 years, and to revise the rules after consulting with the Uniform Dwelling Code Council, which is appointed by the Governor.

Working with the UDC Code Council, the department will adopt current standards, correct code clarity problems, incorporate code interpretations that have developed since the last code change, incorporate new construction practices, products, standards or materials, and incorporate new code requirements into one or more rule packages. The target effective date for many of these code clarifications and updates is expected to be before or by summer 2011.

The alternative of not updating the rule would result in chapters Comm 20–25 not being current with nationally recognized construction and energy efficiency standards. Continuing to use the code as it stands now would create confusion among designers, builders and local inspectors about how newer materials and standards should be regulated and applied. Not updating the rules would conflict with s. 101.63 (5), Stats., and could jeopardize the health, safety and welfare of those citizens using and living in one- and two-family dwellings.

##### Statutory Authority

Chapter 101, Stats.

##### Comparison with Federal Regulations

An Internet-based search of the *Code of Federal Regulations* (CFR) and the *Federal Register* did not find any federal regulations relating to the activities to be regulated for one- and two-family dwellings. However, CFR Title 24 —

Housing and Urban Development, contains regulations in Chapter XX relating to the construction and installation of manufactured homes.

##### Entities Affected by the Rule

The rulemaking project will affect any entity that is involved in the construction, remodeling and inspection of one- and two-family dwellings, including manufactured and modular homes.

##### Estimate of Time Needed to Develop the Rule

The staff time needed to develop the rule is expected to be about 1,000 hours, depending upon the associated complexity. This time includes reviewing the current codes and related national standards, conducting other research as needed, drafting the rules, consulting and meeting with the UDC Code Council and processing the rules through public hearings, legislative review and adoption. There are no other resources necessary to develop the rules.

### Natural Resources

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

(DNR # WA–33–10)

##### Subject

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

##### Objective of the Rule

This proposed rulemaking would add numerical quality standards for compost derived from source separated yard materials, food scraps and nonrecyclable paper to ch. NR 518, Wis. Adm. Code. It would also modify existing compost facility standards in s. NR 502.12, Wis. Adm. Code, to facilitate composting these organic materials to meet the numerical quality standards while maintaining necessary environmental and public health protections.

##### Policy Analysis

The Associated Recyclers of Wisconsin (AROW) petitioned the department's Division of Air & Waste for rulemaking to establish compost use standards for compost made from certain well-defined and uncontaminated feedstocks such as food scraps—which may include certain compostable plastic food service items such as plates and cups—yard materials and compostable paper. AROW believes that a lack of numerical compost quality standards has created a significant barrier to increased diversion of these materials from landfills into higher value uses such as compost. Increasing diversion of materials from landfills is an important goal for Wisconsin, in part because composting organic materials results in a net reduction of greenhouse gas emissions. Current rules set siting and operation requirements for compost facilities but do not provide standards for the composted material.

The use of compost derived from mixtures of these source-separated materials is governed by a solid waste low-hazard exemption process. AROW maintains this has held back the expansion of composting in Wisconsin due to

the unwieldiness of the exemption process, the uncertainty regarding the quality standards that would be applied in each specific instance, and the stigma associated with the term “low-hazard waste.” Minnesota’s 10-year-old compost classification system is perceived to have facilitated an expansion in the compost industry’s ability to divert organic materials from that state’s landfills and create a high-value-added product, “Class I Compost,” for which there is strong demand.

#### Statutory Authority

Chapters 287 and 289, Wis. Stats.

#### Comparison with Federal Regulations

Comparable federal regulations that establish compost use or quality standards do not exist. The federal Clean Water Act, Part 503, contains numerical quality standards for wastewater biosolids destined for landspreading, which have served as the basis for Minnesota’s Class I Compost classification.

#### Entities Affected by the Rule

Parties most affected by the proposed rule changes include compost facility operators; generators of yard waste materials; large scale generators of food scraps such as grocery stores, restaurants and institutional food service providers; and landfill owners due to possible diversion of these materials away from landfill disposal. In addition, potential compost users such as landscaping and horticulture businesses, the agricultural industry, departments of transportation and public works, and home gardeners in Wisconsin would have an interest in these rule changes.

#### Estimate of Time Needed to Develop the Rule

Approximately 600 hours of staff time will be needed to complete the rule revision.

#### Contact Information

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## Revenue

#### Subject

Revises Chapters Tax 1, 2, and 3, relating to franchise and income tax, addback of related entity expenses, apportionment for broadcasting services, electronic funds transfer, and electronic filing.

#### Objectives of the Rule

- Reflect the changes in Wisconsin’s franchise and income tax laws affected by 2009 Act 2.
- Provide guidance to taxpayers and Department employees so they can properly apply the Wisconsin franchise and income tax laws.

- Provide guidance to the Broadcasting Industry on sourcing income to Wisconsin.
- Expand the taxes, fees, and other amounts required to be paid or deposited using electronic funds transfer (EFT) and the returns, reports, and refund claims the Department may require be filed electronically.
- Change a provision to specify that EFT payments made by automated clearing house (ACH) debit transfer must be initiated by 4:00 p.m. on or before the last business day prior to the due date.

#### Policy Analysis

A new policy is being proposed, whereby the Department will change and expand its EFT and electronic filing requirements. If the rules are not changed, they will be incorrect in that they will not reflect current law or current and proposed Department policy.

#### Statutory Authority

Sections 73.029 and 227.11 (2), Stats.

#### Comparison with Federal Regulations

There is no existing or proposed federal regulation that is intended to address the activities to be regulated by the rule.

#### Entities Affected by the Rule

- Corporations that do business in multiple states or are part of a larger controlled group that does business in multiple states. Some Wisconsin-only corporations or persons other than corporations may also be affected.
- Entities involved in the preparation and filing of information returns and franchise and income tax returns.
- Entities involved in the payment or deposit of income, franchise, excise, sales and use, local exposition, and premier resort area taxes and rental vehicle and dry cleaning facility fees.

#### Estimate of Time Needed to Develop the Rule

The Department estimates it will take approximately 200 hours to develop the rule orders relating to this scope statement.

#### Contact Information

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## Revenue

#### Subject

Revises Chapter Tax 11, relating to sales and use tax.

#### Objectives of the Rule

The objectives of the proposed rule changes are to reflect recent law changes relating to sales and use tax, make various other changes to improve readability, and add examples where needed for clarification purposes.

#### Policy Analysis

Existing policies are as set forth in the rules. No new policies are being proposed, other than to reflect law changes. If the rules are not changed, they will be incorrect in that they will not reflect current law or current Department policy.

#### Statutory Authority

Section 227.11 (2) (a), Stats.

**Comparison with Federal Regulations**

There is no existing or proposed federal regulation that is intended to address the activities to be regulated by the rule.

**Entities Affected by the Rule**

Persons selling and purchasing certain foods and beverages in the local exposition district, persons selling or buying direct mail, persons that give or receive exemption certificates, persons claiming bad debt deductions on their sales and use tax returns, and persons selling or buying certain foods and

food ingredients.

**Estimate of Time Needed to Develop the Rule**

The department estimates it will take approximately 300 hours to develop this rule order.

**Contact Information**

Dale Kleven

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# Submittal of Rules to Legislative Council Clearinghouse

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

## Administration CR 10–063

On May 27, 2010, the Department of Administration submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

### Analysis

The proposed order creates Chapter Adm 24, relating to debarment, suspension and ineligibility of Department of Administration contractors.

### Agency Procedure for Promulgation

A public hearing on the proposed rule is scheduled for June 30, 2010. The Department's Legal Services Office is primarily responsible for promulgation of the rule.

### Contact Information

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## Commerce

*Licenses, Certifications and Registrations, Ch. Comm 5  
Elevators, Escalators and Lift Devices, Ch. Comm 18  
Plumbing, Chs. Comm 81 to 87*

### CR 10–064

On May 27, 2010, the Department of Commerce submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

### Analysis

The proposed order revises Chapters Comm 5, 18, and 81 to 84, relating to the design, installation or construction, inspection and maintenance of plumbing.

### Agency Procedure for Promulgation

A public hearing is required and is scheduled for July 1, 2010.

### Contact Information

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## Financial Institutions — Securities CR 10–062

On May 27, 2010, the Department of Financial Institutions submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

### Analysis

The proposed order revises Chapters DFI–Sec 1, 2, 4, 5, 7, 8, and 32, relating to minor revisions to securities law and franchise law.

### Agency Procedure for Promulgation

A public hearing is required and is scheduled for June 28, 2010. The Department's Division of Securities is primarily responsible for promulgation of the rule.

### Contact Information

Mark Schlei, Deputy General Counsel  
Phone: (608) 267–1705

## Natural Resources

*Environmental Protection—General, Chs. NR 100—  
Environmental Protection—Water Supply, Chs. NR 800—  
CR 10–059*

(DNR # DG–25–10)

On May 26, 2010, the Department of Natural Resources submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

### Analysis

The proposed order revises Chapter NR 142 and creates Chapter NR 856, to clarify and further define new statutory requirements for withdrawals of waters of the state and diversions of water from the Great Lakes Basin.

### Agency Procedure for Promulgation

Public hearings are scheduled for June 28, 29, and 30, 2010. The Bureau of Drinking Water and Groundwater is primarily responsible for promulgation of the rule.

### Contact Information

Kristy Rogers  
Bureau of Drinking Water and Groundwater  
Phone: (608) 266–9254

## Natural Resources

*Environmental Protection—General, Chs. NR 100—  
Environmental Protection—Water Supply, Chs. NR 800—  
CR 10–061*

(DNR # DG–23–10)

On May 26, 2010, the Department of Natural Resources submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

**Analysis**

The proposed order revises Chapter NR 142, and creates Chapter NR 850, relating to an annual fee for persons to withdraw more than 50,000,000 gallons per year from the waters of the Great Lakes Basin.

**Agency Procedure for Promulgation**

Public hearings are scheduled for June 28, 29, and 30, 2010. The Bureau of Drinking Water and Groundwater is primarily responsible for promulgation of the rule.

**Contact Information**

Kristy Rogers  
Bureau of Drinking Water and Groundwater  
Phone: (608) 266-9254

**Natural Resources*****Environmental Protection — Water Supply,  
Chs. NR 800—*****CR 10-060**

(DNR # DG-24-10)

On May 26, 2010, the Department of Natural Resources submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

**Analysis**

The proposed order creates Chapter NR 852, relating to mandatory water conservation and efficiency measures for

waters of the Great Lakes Basin and withdrawals statewide that require a water loss approval.

**Agency Procedure for Promulgation**

Public hearings are scheduled for June 28, 29, and 30, 2010. The Bureau of Drinking Water and Groundwater is primarily responsible for promulgation of the rule.

**Contact Information**

Steve Elmore  
Bureau of Drinking Water and Groundwater  
Phone: (608) 264-9246

**Public Instruction****CR 10-058**

On May 24, 2010, the Department of Public Instruction submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

**Analysis**

The proposed order amends s. PI 34.31 (2) and creates s. PI 34.01 (52m), relating to school nurse certification.

**Agency Procedure for Promulgation**

A public hearing is required and is scheduled for July 30, 2010. The Department's Division for Learning Support: Equity and Advocacy is primarily responsible for promulgation of the rule.

**Contact Information**

Douglas White, Director  
Student Services/Prevention and Wellness  
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Email: douglas.white@dpi.state.wi.us

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## Rule-Making Notices

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### Notice of Hearing

#### Administration

#### CR 10-063

NOTICE IS HEREBY GIVEN That pursuant to ss. 16.004 (1), 16.855 (15), and 227.11 (2) (a), Stats., the Department of Administration will hold a public hearing on the proposed rule order to create Chapter Adm 24, relating to debarment, suspension and ineligibility of Department of Administration contractors.

#### Hearing Information

**Date:** June 30, 2010  
**Time:** 11:00 a.m.  
**Location:** St. Croix Room, 1st Floor  
 Wisconsin Dept. of Administration  
 101 East Wilson Street  
 Madison, WI

#### Appearance at Hearing and Submittal of Written Comments

Interested persons are invited to appear at the hearing and present comments on the proposed rule. Persons appearing may make an oral presentation but are also urged to submit facts, opinions and arguments in writing as well. Facts, opinions and arguments may be submitted in writing without a personal appearance by mail addressed to: Donna Sorenson, Department of Administration, P.O. Box 7864, Madison, WI 53707-7864. Comments may also be made using the Wisconsin Administrative Rules Website at <http://adminrules.wisconsin.gov>. The deadline for submitting comments to the Department is **4:30 p.m. on July 2, 2010**.

#### Analysis Prepared by Department of Administration

##### *Statutes interpreted*

Sections 16.85 and 16.855 (15), Stats.

##### *Statutory authority*

Sections 16.004 (1) and 16.855 (15), Stats.

##### *Explanation of statutory authority*

The Department is responsible for the supervision of all engineering, architectural services, and construction work performed by, or for, the state in the construction and acquisition of new buildings and improvements, and additions to existing buildings, pursuant to ss. 16.85 and 16.855, Wis. Stats. Section 16.855 (15), Wis. Stats., further authorizes the Department to adopt rules to implement the advertising and award of contracts for construction projects.

##### *Related statutes or rules*

Chapters Adm 20 and 21, Wis. Adm. Code.

##### *Plain language analysis*

The Department solicits bids from, awards contracts to and approves subcontracts with only responsible businesses and individuals according to procedures specified in Chapters Adm 20 and 21. The proposed rule establishes the policies and procedures for the debarment and suspension of

contractors that have either had past contract performance problems, or have committed offenses under the law. For example, criminal offenses in connection with a public contract, violation of an antitrust statute relating to bids, theft, forgery, false statements and obstruction of justice. Debarment and suspension are appropriate means to effectuate this policy.

##### *Comparison with federal regulations*

Subpart 9.4 of Title 48 of the Federal Acquisition Regulations prescribes policies and procedures governing debarment and suspension of contractors for cause by federal government agencies. These regulations also provide for the listing of contractors debarred, suspended, proposed for debarment and declared ineligible, and sets forth the consequences of this listing.

##### *Comparison of similar rules in adjacent states*

Illinois, Iowa, Michigan and Minnesota all provide for the debarment and/or suspension of a contractor by statute, rule or policy. All of these states utilize procedures similar in design to proposed rule Adm 24. It is noteworthy that all these adjacent states have adopted debarment/suspension procedures under the auspices of their procurement laws, rather than under their state building program laws, as proposed Adm 24 does. However, all, with the possible exception of Iowa (with whom we were unable to confirm the practice), debar and suspend building construction contractors using their procurement debarment procedures.

##### *Illinois:*

Illinois provides for suspension of errant contractors through its administrative code. (Title 44, subtitle B; chapter XXI; Part 1400 of the Illinois Administrative Code.) Illinois has a separate debarment process specifically any contractor, including building contractors, who disregard their obligations under the Prevailing Wage Act. Suspensions may not be imposed without a due process hearing. The Illinois Code provides suspension sanctions for a number of bidding- and contract-related actions, similar to those listed under the Department's proposed rule in sections Adm 24.05(2) and 24.06(2). Illinois suspensions may be for an indefinite period of time.

##### *Minnesota:*

Minnesota enacted its suspension/debarment rule in its administrative code as well. (Chapter 1230 of the Minnesota Administrative Rules.) Minnesota also requires a due process hearing for suspension and debarment, with a list of causes also similar to those in proposed rule Adm 24. Minnesota has no specific term limit on either its suspensions or debarments.

##### *Iowa:*

Iowa also provides for a suspension/debarment procedure through its administrative code. (11-Chapter 105.18(2), Iowa Administrative Code.) Suspension or debarment may occur without a hearing, but the contractor may request a hearing through an appeal process. The offending contractor is allowed a time to cure the alleged cause before actual suspension/debarment is imposed. Suspensions may be up to one year; debarments have no limit.

*Michigan:*

Michigan has adopted a debarment procedure by written policy, not by statute or rule. (Debarment Policy; Purchasing Operations; Department of Management and Budget.) Its policy does not provide for a suspension, but does provide for an administrative hearing upon request. Again, the list of causes is similar to Illinois, Minnesota and the Department's proposed rule. Debarment is not to exceed 8 years with the policy specifically noting that 3 years is the usual maximum.

**Summary of factual data and analytical methodologies**

The proposed rules were drafted by Department staff in the Legal Services Office and the Division of State Facilities Development based upon similar rules adopted in 1983 by the Wisconsin Department of Transportation as Chapter Trans 504, as well as the rules from the adjacent states referenced above.

**Small Business Impact**

This rule is intended to address potential issues encountered by the Department of Administration's Division of State Facilities as it manages building contracts for the State of Wisconsin. The small businesses involved would be expected to include small building contractors and their subsidiaries and affiliates, as well as developers and other firms involved in the design and construction of state facilities.

The Department lacks salary and other necessary data to estimate the comparable costs incurred by private sector contractors in defending themselves during these proceedings. However, the staff time involved would be approximately the same as that required of the DOA staff attorney and staff. Differences in cost would be a function of the billing rate of the private sector legal counsel.

Based upon limited information from the WisDOT, and upon this Department's experience with problematic contractors, it is anticipated that no more than 6 suspensions or debarments will occur annually, making the impact on small businesses as a class negligible. The impact will be felt only on individual contractors, and then only due to their own contractual and legal behavior. In all cases, the Department will fund the cost of fact-finding hearings with no provision to recover those costs from the contractors involved.

**Fiscal Estimate****Summary**

In summary, on an annual basis, DOA anticipates that expenses for debarment proceedings will be \$5,508 and suspension proceedings will require a further \$2,656. The total estimated fiscal impact is \$8,146. The following chart summarizes these estimates. These costs will be absorbed by the Department as a cost of operations.

DOA lacks salary and other necessary data to estimate the comparable costs incurred by private sector contractors in defending themselves during these proceedings. However, it estimates that the time involved would be approximately the same as that required of DOA staff. Differences in cost would be a function of the billing rate of private sector legal counsel. In all cases, DOA will fund the cost of fact-finding hearings with no provision to recover those costs from the contractors involved.

**State fiscal effect**

Increase costs. May be possible to absorb within agency's budget.

**Fund sources affected**

PRO.

**Affected Ch. 20 appropriations**

Section 20.505 (1) (kr) — Legal services.

Section 20.505 (1) (kc) — Capital planning and building construction services.

**Local government fiscal effect**

None.

**Private sector fiscal effect**

Indeterminate.

**Text of Proposed Rule**

SECTION 1. Chapter Adm 24 is created to read:

**Chapter Adm 24****Debarment, Suspension and Ineligibility of Department of Administration Contractors**

**Adm 24.01 Scope and policy.** (1) SCOPE OF CHAPTER. This chapter:

(a) Prescribes certain policies and procedures governing the debarment and suspension of contractors from contracts pursuant to subchapter V, Chapter 16 of the Wisconsin Statutes.

(b) Provides for the listing of suspended or debarred contractors and subcontractors, and of contractors declared ineligible for department engineering-related contracts.

(c) Sets forth the treatment accorded contractors listed as debarred, suspended, or ineligible.

(2) POLICY. (a) The department shall solicit bids from, award contracts to, and approve subcontracts with only responsible, qualified business entities and individuals. Debarment and suspension are appropriate means to effectuate this policy.

(b) Debarment and suspension are serious actions imposed only to protect the public interest, not for punishment.

**Adm 24.02 Definitions.** In this chapter:

(1) "Adequate evidence" means information sufficient to support a reasonable belief that a particular act or omission has occurred.

(2) "Affiliate" means a business entity or individual having a relationship whereby one directly or indirectly controls or can control the other or whereby a third business entity or individual directly or indirectly controls or can control the subject business entity or individual.

(3) "Consolidated list" means a list compiled and maintained by the department and containing the names of contractors that have been debarred or suspended under this chapter or that have been declared ineligible under statute, rule, order or legal authority other than this chapter.

(4) "Contractor" means any individual or any legal entity, including its officers and directors, which submits bids or proposals for, or is awarded or may reasonably be expected to submit bids or proposals for or be awarded a department contract. This definition includes any subcontractor of a contractor that conducts business with the department as an agent or representative of a contractor and any individual or legal entity that conducts business with the department as an agent or representative of a contractor.

(5) "Conviction" means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea and includes a conviction entered upon nolo contendere plea.

(6) “Debarment” means action taken by the department under s. Adm 24.05 to exclude a contractor from contracting with the department and from department-approved subcontracting for a specified period. A contractor so excluded is “debarred.”

(7) “Department” means the Wisconsin department of administration.

(8) “Hearing examiner” means a designee of the secretary who is authorized to conduct a fact-finding hearing and to prepare written findings of fact and who may be authorized to issue debarment and suspension decisions pursuant to this chapter.

(9) “Ineligible” means excluded from contracting with the department and, if appropriate, from department-approved subcontracting, under statute, rule, order or legal authority other than this chapter.

Note: Examples of reasons for ineligibility are wage-rate violations, civil rights violations and deficient progress.

(10) “Indictment” includes an indictment for a criminal offense, an information or any other filing by a competent authority charging a criminal offense that results in finding probable cause to believe a felony has been committed and in binding the defendant over for trial.

(11) “Judgment” means a judgment in a civil action by any court of competent jurisdiction.

(12) “Secretary” means the secretary of the department or an authorized representative or designee.

(13) “Suspension” means action taken by the department under s. Adm 24.06 to exclude a contractor from contracting with the department or from department-approved subcontracting temporarily pending the completion of an investigation or of a debarment decision-making proceeding. A contractor so excluded is “suspended.”

**Adm 24.03 List and records of debarred and suspended contractors.** (1) LIST. (a) The department shall compile and maintain a current, consolidated list of debarred, suspended and ineligible contractors.

(b) The department shall use the consolidated list to ensure that it does not solicit offers from, award contracts to, or consent to subcontract with listed contractors, except as otherwise provided in this chapter.

(2) RECORDS. The department shall maintain records relating to each debarred or suspended contractor. Records shall contain the following:

(a) Names and addresses of all debarred or suspended contractors.

(b) Cause or causes for each debarment or suspension.

(c) Any limitations on or deviations from the normal effect of debarment or suspension.

(d) Effective date of the debarment or suspension and, in the case of a debarment, the contract termination date.

**Adm 24.04 Treatment of listed contractors.** (1) EFFECT. (a) The department may not knowingly solicit bids from, award contracts to, renew an existing contract with, or consent to subcontracts with a debarred or suspended contractor, unless the secretary determines, in writing, that a compelling reason for such dealing with the contractor exists.

(b) The department shall not enter a contract with an ineligible contractor and, if applicable, shall exclude ineligible contractors from subcontracts under the conditions and for the period set forth in the applicable statutes, rules,

orders or legal authorities. The department may not knowingly solicit bids from, award contracts to, renew an existing contract with, or consent to subcontract with these contractors except in accord with the applicable statutes, rules, orders or legal authorities.

(2) CURRENT CONTRACT CONTINUATION. (a) Notwithstanding the listing of a contractor, the department may continue contracts or subcontracts in existence at the time the contractor was debarred or suspended, unless the secretary determines that contract termination is in the public interest.

(b) Contract termination decisions under sub. (2) (a), if any, may be made only after review by and consultation with both department contracting personnel and department legal counsel to assure the propriety of the proposed contract termination.

(c) The department shall not renew existing contracts or subcontracts with debarred or suspended contractors, unless the secretary determines and states in writing a compelling reason for the contract renewal or extension.

(3) SUBCONTRACT RESTRICTIONS. When a debarred or suspended contractor is proposed as a subcontractor for any subcontract subject to department approval, the department may not give approval unless the secretary determines and states in writing a compelling reason for the approval.

**Adm 24.05 Debarment.** (1) GENERAL. (a) The department may, in the public interest, debar a contractor for any of the causes contained in sub. (2), using the procedures in sub (3). The existence of a cause for debarment as specified in sub. (2), however, shall not necessarily require that a contractor be debarred; the seriousness of any contractor’s acts or omissions and any mitigating factors shall be considered in making any debarment decision.

(b) Debarment of a contractor constitutes debarment of all divisions or other organizational elements of the debarred contractor, unless the debarment is explicitly limited to specific divisions, organizational elements or commodities.

(c) The department may extend the debarment to include any affiliates of a debarred contractor, if the affiliates are specifically named and are given written notice of the proposed debarment and an opportunity to respond pursuant to sub. (4).

(d) When no suspension is in effect pursuant to s. Adm 24.06 at the time the department contemplates debarment of a contractor, no contracts shall be awarded to, and no subcontracts shall be approved for, the contractor, pending a debarment decision by the department.

(2) CAUSES FOR DEBARMENT. The secretary may debar a contractor for any one or more of the following causes:

(a) Conviction, civil judgment or admission of:

1. Fraud, collusion or any criminal offense in connection with obtaining, attempting to obtain or performing a public contract or subcontract;

2. Violation of any federal or state antitrust statute relating to the submission of bids or proposals;

3. Embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property or obstruction of justice; or

4. Any other offense indicating a lack of business integrity or of business honesty which offense seriously and directly affects the responsibility of the contractor or subcontractor.

(b) Violation of the terms of any government contract or subcontract when that violation is so serious as to justify debarment, including:

1. Willful failure to perform in accordance with a contract; or

2. A history of failure to perform or of unsatisfactory performance of one or more contracts.

(c) Any other cause that is so serious or compelling that it affects the responsibility of a contractor or subcontractor.

(d) Debarment for any of the above causes listed in pars. (a) through (c) by another state or federal entity.

(3) PROCEDURES FOR DEBARMENT. (a) Referral. Department and other state employees having information appropriate for department consideration under this section shall promptly report that information to the secretary.

(b) Decision-making process; fact finding. 1. The debarment decision-making process shall be as informal as practicable, consistent with fundamental due process of law principles. The debarment decision-making process shall permit contractors and any specifically named affiliates to submit information and arguments in opposition to a proposed debarment. The department may require that a contractor's opposition be submitted in writing or may permit an oral presentation in person or through a representative.

2. Whenever a proposal to debar is based upon a conviction, judgment or debarment by another state or federal entity for any of the causes listed in sub. (2), the department need not conduct a fact-finding hearing.

3. Whenever a proposal to debar is not based upon a conviction, judgment, admission or debarment by another state or federal entity, and if the department finds that the contractor's opposition raises a genuine dispute over facts relevant to the proposed debarment, the department shall conduct a fact-finding hearing. A department hearing examiner shall:

a. Permit the contractor to appear with counsel, to submit documents, to present witnesses and to confront and cross-examine any person the department presents;

b. Ensure that a transcript of the hearing is prepared and made available to the contractor at a reasonable cost, unless the contractor and the department mutually waive the transcript requirement; and

c. Act in accord with and have the authority provided by s. 227.46, Stats.

(4) NOTICE OF PROPOSAL TO DEBAR. The department shall initiate a debarment proceeding by informing the involved contractor and any specifically named affiliate by certified mail return receipt requested. The mailed notice shall state:

(a) That the department is considering a debarment;

(b) The reasons for the proposed debarment in terms sufficient to notify the contractor of the conduct or transaction upon which debarment is proposed;

(c) The cause or causes under sub. (2) that the department relies upon for the proposed debarment;

(d) That the contractor may submit, within 15 days of the date of the department's mailed notice, a written response providing information or argument in opposition to the proposed debarment;

(e) The department's procedures governing debarment decision-making as specified in sub. (5);

(f) The potential effect of the proposed debarment as provided under s. Adm 24.04; and

(g) That pending a debarment decision, no contract will be awarded to, and no subcontracts will be approved for, the contractor.

(5) DEPARTMENT'S DEBARMENT DECISION. (a) In debarment actions based upon a conviction, judgment, or admission or upon debarment by another state or federal entity for any of the causes listed in sub. (2) or in debarment actions in which no dispute exists over facts relevant to the proposed debarment, the secretary shall make a debarment decision based upon the information in the administrative record, including any submission made by the affected contractor. If no suspension is in effect under s. Adm 24.06, the debarment decision shall be made within 30 days after the secretary receives the last written response providing information or argument in opposition to the proposed debarment as provided for in sub. (4) (d).

(b) In debarment actions in which a fact-finding hearing is necessary under sub. (3) (b) 3., the designated hearing examiner shall prepare written findings of fact, and the secretary or designee shall render a debarment decision based upon those written findings of fact. A cause for debarment must be established by a preponderance of the evidence. The debarment decision shall be made after the conclusion of the proceedings with respect to the disputed facts.

(6) NOTICE OF DEPARTMENT DECISION. (a) If debarment is imposed, the department shall promptly notify the contractor and any affiliates involved by certified mail return receipt requested. The notice shall contain the following:

1. Reference to the notice of proposed debarment that initiated the action under sub. (4);

2. Reasons for debarment; and

3. Period of debarment, specifying the effective date.

(b) If debarment is not imposed, the department shall give prompt notice of that fact to the contractor and any affiliates involved by certified mail return receipt requested.

(7) PERIOD OF DEBARMENT. (a) Debarments shall be for a period commensurate with the seriousness of the cause or causes for debarment. Generally, debarment shall not exceed 3 years. If suspension precedes a debarment, the suspension period shall be considered in determining the debarment period.

(b) After the department imposes a debarment period upon a contractor, the department may extend that period if it determines that an extension is necessary to protect the public interest. However, an extension may not be based solely on the facts and circumstances upon which the initial debarment was based. Any extension proposed shall follow the procedures in sub. (3) above.

(c) The department may terminate a debarment or may reduce the period or extent of a debarment, upon the contractor's request, for reasons considered appropriate by the department, such as:

1. Newly discovered relevant evidence;

2. Reversal of the conviction or judgment upon which debarment was based;

3. A bona fide change in ownership or management of the contractor; or

4. Elimination of the cause or causes for which debarment was imposed.

(8) **IMPUTED CONDUCT.** (a) The fraudulent, criminal or other seriously improper conduct of any officer, director, shareholder, partner, employee or other individual associated with a contractor may be imputed to the contractor when the conduct occurred in connection with the individual's performance of duties for or on behalf of the contractor, or with the contractor's knowledge, approval or acquiescence. The contractor's acceptance of the benefits derived from the conduct shall be evidence of the contractor's knowledge, approval or acquiescence.

(b) The fraudulent, criminal or other seriously improper conduct of a contractor may be imputed to any officer, director, shareholder, partner, employee or other individual associated with the contractor who participated in, knew of or had reason to know of the contractor's conduct.

(c) The fraudulent, criminal or other seriously improper conduct of one contractor participating in a joint venture or similar arrangement may be imputed to other participating contractors if the conduct occurred for or on behalf of the joint venture or similar arrangement or with the knowledge, approval or acquiescence of those contractors. Acceptance of the benefits derived from the conduct shall be evidence of the contractor's knowledge, approval or acquiescence.

**Adm 24.06 Suspension.** (1) **GENERAL.** (a) The department may, in the public interest, suspend a contractor for any of the causes contained in sub. (2), using the procedures in sub. (3).

(b) Suspension is to be imposed only on the basis of adequate evidence of one or more of the causes set out in sub. (2), pending completion of investigation or legal proceedings, when immediate action is necessary to protect the public interest. In assessing the adequacy of the evidence, the department may consider: the amount of available information, the credibility of that information, whether important allegations are corroborated, and what reasonable inferences can be drawn. The department's assessment may include examination of available basic documents such as: contracts, inspection reports and correspondence.

(c) Suspension of a contractor constitutes suspension of all divisions or other organizational elements of the suspended contractor, unless the suspension is explicitly limited to specific divisions, organizational elements or commodities.

(d) The department may extend the suspension to include any affiliates of a suspended contractor if the affiliates are specifically named and are given written notice of the proposed suspension and an opportunity to respond.

(2) **CAUSES FOR SUSPENSION.** (a) The department may suspend a contractor whenever it finds adequate evidence that the contractor has engaged in one or more of the following:

1. Fraud, collusion or any criminal offense in connection with obtaining, attempting to obtain or performing a public contract or subcontract;

2. Violation of any federal or state antitrust statute relating to the submission of bids or proposals;

3. Embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property or obstruction of justice; or

4. Any other offense indicating a lack of business integrity or of business honesty, seriously and directly affecting the responsibility of the contractor or subcontractor.

(b) An indictment for any of the causes set forth in par. (a) may constitute adequate evidence for suspension.

(c) The department may suspend a contractor whenever it finds adequate evidence of any other cause of so serious or compelling a nature that it affects the responsibility of a contractor or subcontractor.

(d) The department may suspend a contractor based upon a suspension or debarment imposed by another state or federal entity for any of the causes in par. (a), (b) or (c).

(3) **PROCEDURES FOR SUSPENSION.** (a) **Referral.** Department employees and all other persons having information appropriate for department consideration under this section shall promptly report that information to the secretary.

(b) **Decision-making process; fact-finding.** 1. The suspension decision-making process shall be as informal as practicable, consistent with fundamental due process of law principles. The suspension decision-making process shall permit contractors and any specifically named affiliates to submit information and arguments in opposition to a proposed debarment. The department may require that a contractor's opposition be submitted in writing or may permit an oral presentation in person or through a representative.

2. Whenever a proposal to suspend is not based upon an indictment or a suspension or debarment imposed by another state or federal entity, and if the department finds that the contractor's opposition raises a genuine dispute over facts relevant to the proposed suspension, and if no determination is made on the basis of advice from the department of justice or other prosecuting official that substantial interests of the government in pending or contemplated legal proceedings based upon the same facts as the suspension would be prejudiced, the department shall conduct a fact-finding hearing. A department hearing examiner shall conduct the fact-finding hearing and shall:

a. Permit the contractor to appear with counsel, to submit documents, to present witnesses and to confront and cross-examine any person the department presents;

b. Ensure that a transcript of the hearing is prepared and made available to the contractor at a reasonable cost, unless the contractor and the department mutually waive the transcript requirement; and

c. Act in accord with and have the authority provided by s. 227.46, Stats.

(c) **Notice of suspension.** If suspension is imposed, the department shall promptly notify the contractor and any affiliates involved by certified mail return receipt requested. The notice shall state the following:

1. A decision to suspend has been made, and it was made based upon one or more of the causes enumerated in sub. (2), which cause or causes shall be sufficiently described to notify the contractor but shall not disclose government evidence unnecessarily.

2. The suspension is temporary pending the completion of an investigation and of whatever legal proceedings may follow.

3. The effect of the suspension as provided for under s. Adm 24.04 (1).

4. The contractor may submit within 15 days, or such lesser time as the department shall state, of the date of the department's certified mailing a written response providing information or argument in opposition to the suspension.

5. A fact-finding hearing to determine disputed relevant facts shall be conducted under par. (b), unless:

a. The suspension is based upon an indictment or upon a suspension or debarment imposed by another state or federal entity; or

b. A determination is made, on the basis of advice from the department of justice or another prosecuting official, that substantial interests of the government in pending or contemplated legal proceedings based upon the same facts as the suspension would be prejudiced.

6. If a fact-finding hearing is required, the department shall schedule a hearing within 30 days after the secretary receives the last written response providing information or argument in opposition to the suspension, as provided for in subd. 4.

(d) Department's suspension decision. 1. In suspension actions based upon an indictment or a suspension by another state or federal entity for any of the causes enumerated in sub. (2), in suspension actions in which no dispute exists over facts relevant to the suspension or in suspension actions in which a fact-finding hearing to determine disputed relevant facts is denied on the basis of advice from the department of justice or other prosecuting official, the secretary shall make a decision based upon the information in the administrative record, including any submission made by the affected contractor. The suspension decision shall be made within 30 days after the secretary receives the last written response providing information or argument in opposition to the proposed suspension as provided in par. (c) 4.

2. In suspension actions in which a fact-finding hearing is necessary under par. (b) 2., the designated hearing examiner shall prepare written findings of fact, and the secretary or designee shall render a decision based upon those written findings of fact. The suspension decision shall be made as soon as can reasonably be done after the conclusion of the proceedings with respect to the disputed facts.

3. The department may modify, terminate or leave in effect a suspension for the reasons set forth in s. Adm 24.05 (7) (c) for modifying or terminating a debarment.

4. A prompt written notice of the department's decision shall be sent to the contractor by certified mail return receipt requested.

(4) PERIOD OF SUSPENSION. (a) Suspension shall be for a temporary period pending completion of investigation and any following legal proceedings unless sooner terminated by the department or as provided in par. (b).

(b) A suspension shall not continue for more than 6 months from its effective date, unless civil or criminal action regarding the violation or debarment proceedings have been initiated. The suspension may continue until the legal proceedings or debarment proceedings are completed.

(5) SCOPE OF SUSPENSION. The scope of suspension shall be the same as that set forth for debarment in s. Adm 24.05 (8).

#### Agency Contact Person

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## Notice of Hearing

### Agriculture, Trade and Consumer Protection

(Reprinted from May 31, 2010 Register)

**EmR1003, CR 10-055**

The Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) announces that it will hold a public hearing on rules revising Chapter ATCP 60, relating to goat milk somatic cell standards. DATCP adopted a temporary emergency rule effective February 5, 2010 and is also proposing a permanent rule. The hearing will cover the emergency rule as well as the proposed permanent rule.

#### Hearing Information

**Date:** June 15, 2010

**Time:** 10:00 a.m. – 12:00 p.m.

**Location:** WI Dept. of Agriculture, Trade & Consumer Protection  
2811 Agriculture Drive  
Conference Room 172, 1<sup>st</sup> Floor  
Madison, WI 53718

Hearing impaired persons may request an interpreter for these hearings. Please make reservations for a hearing interpreter by May 7, 2010, by writing to Deb Mazanec, Division of Food Safety, P.O. Box 8911, Madison, WI 53708-8911; e-mailing to [debbie.mazanec@wi.gov](mailto:debbie.mazanec@wi.gov) or by phone at (608) 224-4712. Alternatively, you may contact the DATCP TDD at (608) 224-5058. Handicap access is available at the hearings.

#### Submittal of Written Comments

DATCP will hold the public hearing at the time and location shown above. DATCP invites the public to attend the hearing and comment on the rules. Following the hearing, the hearing record will remain open until **Friday, June 25, 2010** for additional written comments. Comments may be sent to the Division of Food Safety at the address below, by email to [debbie.mazanec@wi.gov](mailto:debbie.mazanec@wi.gov) or online at <http://AdminRules.Wisconsin.gov/>.

#### Copies of Emergency Rules and Proposed Permanent Rules

You may obtain free copies of the temporary emergency rule and proposed permanent rule by contacting the Wisconsin Department of Agriculture, Trade and Consumer Protection, Division of Food Safety, 2811 Agriculture Drive, P.O. Box 8911, Madison, WI 53708. You may also obtain copies by calling (608) 224-4712 or e-mailing [debbie.mazanec@wi.gov](mailto:debbie.mazanec@wi.gov). Copies will also be available at the hearing. To view the proposed rule online, go to: <http://adminrules.wisconsin.gov/Keeley.Moll@datcp.state.wi.us>.

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

This rule relaxes Wisconsin's current standard for somatic cells in goat milk to conform to a new, less stringent, national standard. The Department of Agriculture, Trade and Consumer Protection (DATCP) adopted a temporary emergency rule on February 5, 2010, and gave notice that it would adopt a permanent rule on the same subject. The permanent rule is identical to the temporary emergency rule adopted by DATCP.

#### Statutes interpreted

Sections 97.22 and 97.24, Stats.

**Statutory authority**

Sections 93.07 (1), 97.22 (8), 97.24 (3) and 227.24, Stats.

**Explanation of statutory authority**

DATCP has broad general authority, under s. 93.07 (1), Stats., to interpret laws under its jurisdiction. DATCP also has authority, under ss. 97.22 (8) and 97.24 (3), Stats., to adopt regulations governing the operation of dairy farms and the production of milk and fluid milk products.

This rule will maintain the competitiveness of Wisconsin goat milk producers, relative to producers in other states, by conforming Wisconsin goat milk standards to new (less stringent) national standards.

**Related statutes and rules**

Dairy plant operators are required to test goat milk received from producers, to ensure that goat milk meets somatic cell and other standards. Milk must be tested in certified laboratories, and test results must be reported to DATCP. Serious or continued violations of milk quality standards may result in state enforcement action, including the suspension of a milk producer's grade A dairy farm permit. In some serious cases, dairy plant operators must take immediate action to reject milk shipments from the affected dairy farms until violations are eliminated. However, not all violations require such an "immediate response." See, generally, chs. ATCP 60 and 80, Wis. Adm. Code.

Wisconsin rules for grade A milk and fluid milk products (including goat milk and fluid goat milk products) must be in reasonable accord with the interstate pasteurized milk ordinance (PMO). See s. 97.24, Stats. The PMO is adopted by the National Conference on Interstate Milk Shipments (NCIMS) with the approval of the United States Food and Drug Administration (FDA), and is administered by FDA. Wisconsin rules must be at least as stringent as the PMO in order for Wisconsin to ship milk and fluid milk products in interstate commerce.

**Plain language analysis**

Recently, NCIMS and FDA relaxed the PMO standard for somatic cells in Grade A goat milk, from 1,000,000 somatic cells per ml to 1,500,000 per ml. The United States Department of Agriculture is making an equivalent change in its somatic cell standard for Grade B goat milk (Grade B milk may not be sold as fluid milk, but may be used to manufacture non-fluid dairy products such as cheese).

This permanent rule relaxes Wisconsin's standard for somatic cells in Grade A and Grade B goat milk, from 1,000,000 somatic cells per ml to 1,500,000 per ml, to conform to the new national standard. This rule also eliminates the current "immediate response" requirement, under which a dairy plant operator must immediately reject goat milk shipments from producer whenever a somatic cell count on any shipment from that producer exceeds 1,500,000 per ml.

**Comparison with federal regulations**

There is no federal law that compels this rule change. However this rule is consistent with recent changes in national standards (see above).

**Comparison with rules in adjacent states**

All surrounding states with dairy goat herds are likely to adopt the standard contained in this rule.

**Summary of factual data and analytical methodologies**

Somatic cell test methods for goat milk are currently prescribed by s. ATCP 60.22 (3), Wis. Adm. Code. This rule does not change current test methods.

**Small Business Impact**

This rule will benefit the Wisconsin dairy goat industry, by relaxing the current somatic cell standard for dairy goat milk to conform to the newly relaxed national standard. This rule will maintain parity with other states, and will relieve goat milk producers and dairy plant operators of certain problems associated with the current somatic cell standard.

To provide comments or concerns relating to small business, you may contact DATCP's small business regulatory coordinator Keeley Moll at the address below, or by emailing to [Keeley.Moll@wi.gov](mailto:Keeley.Moll@wi.gov) or by telephone at (608) 224-5039.

**Fiscal Estimate**

This rule will have no fiscal impact on the state of Wisconsin or on local units of government.

**Agency Contact Person**

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

Tom Leitzke  
Dept. of Agriculture, Trade and Consumer Protection  
P.O. Box 8911  
Madison, WI 53708-8911  
Phone: (608) 224-4711  
E-Mail: [tom.leitzke@wi.gov](mailto:tom.leitzke@wi.gov)

**Notice of Hearing  
Commerce**

*Licenses, Certifications and Registrations, Ch. Comm 5  
Elevators, Escalators and Lift Devices, Ch. Comm 18  
Plumbing, Chs. Comm 81 to 87  
CR 10-064*

NOTICE IS HEREBY GIVEN That pursuant to ss. 101.02 and 145.02, Stats., the Department of Commerce will hold a public hearing on proposed rules under Chapters Comm 5, 18, and 81 to 84, relating to the design, installation or construction, inspection and maintenance of plumbing.

**Hearing Information**

**Date:** Thursday, July 1, 2010  
**Time:** 10:00 a.m.  
**Location:** Thompson Commerce Building  
Third Floor Conference Room #3B  
201 W. Washington Avenue  
Madison, WI

This hearing is held in an accessible facility. If you have special needs or circumstances that may make communication or accessibility difficult at the hearing, please call (608) 266-8741 or (608) 264-8777 (TTY) at least 10 days prior to the hearing date. Accommodations such as interpreters, English translators, or materials in audio tape format will, to the fullest extent possible, be made available upon a request from a person with a disability.

**Appearances at the Hearing and Submittal of Written Comments**

Interested persons are invited to appear at the hearing and present comments on the proposed rules. Persons making oral

presentations are requested to submit their comments in writing. Persons submitting comments will not receive individual responses. The hearing record on this proposed rulemaking will remain open until **July 15, 2010**, to permit submittal of written comments from persons who are unable to attend the hearing or who wish to supplement testimony offered at the hearing. Written comments should be submitted to Lynita Docken, at the Department of Commerce, P.O. Box 2689, Madison, WI 53701-2689, or Email at lynita.docken@wisconsin.gov.

### Copies of Proposed Rules

The proposed rules and an analysis of the proposed rules are available on the Internet at the Safety and Buildings Division Web site at [www.commerce.wi.gov/SB/](http://www.commerce.wi.gov/SB/). Paper copies may be obtained without cost from Lynita Docken, at the Department of Commerce, P.O. Box 2689, Madison, WI 53701-2689, or Email: lynita.docken@wisconsin.gov, or telephone: (608) 785-9349 or (608) 264-8777 (TTY). Copies will also be available at the public hearing.

### Analysis Prepared by Department of Commerce

#### *Statutes interpreted*

Sections 101.02 and 145.02, Stats.

#### *Statutory authority*

Sections 101.02 and 145.02, Stats.

#### *Related statute or rule*

Section 145.13, Stats

Chapter Comm 18, Conveyance Systems

Chapters 20 to 25, Uniform Dwelling Code

Chapters Comm 60 to 66, Commercial Building Code

Chapters 81 to 87, Uniform Plumbing Code

#### *Explanation of agency authority*

Sections 101.02 and 145.02, Stats., grant the Department of Commerce general authority for protecting the health, safety and welfare of the public by establishing reasonable and effective safety standards for the design, installation or construction, inspection and maintenance of plumbing. In accordance with s. 145.13, Stats., the department is also responsible for safeguarding the waters of the state.

#### *Summary of proposed rules*

The primary revisions to chapters Comm 81 to 84 clarify the existing rules by modifying technical requirements within the standards, reorganizing current requirements and incorporating editorial changes. The following is a summary of the major proposed rule changes to these chapters:

- Include definitions for various types of wastewater and requirements for wastewater treatment and containment devices. [Comm 81.01 (154) and (160m) and Comm 82.34 (1) and (15) ]
- Lower the thresholds for the required submission and review of plumbing systems from 16 to 11 plumbing fixtures. [Comm 82.30 Table 82.20-1 and Table 82.20-2]
- Modify the identification requirements of water supply systems that pose different degrees of hazard within a building. [Comm 82.40 (3) (d) and Table 82.40-1]

In addition, the proposed rules require 6 hours of continuing education for the renewal of the cross connection control tester license. [Comm 5.99 (4) (c)]

The proposed rules also modify the requirements for sump pumps in elevator pits, and allow the use of standard-sized equipment to meet a more realistic pumping requirement. [Comm 18.1702 (1)]

### *Comparison with federal regulations*

There are several existing federal regulations that relate to the design, installation or construction, inspection and maintenance and repair of plumbing. Some of these regulations require compliance with the 2006 editions of the *International Plumbing Code* (IPC), a national model code developed by the International Code Council (ICC), and the *Uniform Plumbing Code* (UPC), a national model code developed by the International Association of Plumbing and Mechanical Officials.

An Internet-based search of the *United States Code* (USC) found the following existing federal rules that impact plumbing. The Wisconsin Uniform Plumbing Code reflects the requirements currently contained in these federal laws.

- USC Title 24, Volume 5, Chapter XX, Part 3289, Subpart G – The Manufactured Home Construction and Safety Standards revises the plumbing materials, fixtures and equipment installed within or on manufactured homes as of April 1, 2009.
- USC Title 40, Volume 22, Chapter I, Part 141 – The National Primary Drinking Water Regulations established primary drinking water regulations pursuant to section 1412 of the Public Health Service Act, as amended by the Safe Drinking Water Act. Regulated by the Environment Protection Agency (EPA), the regulations were revised July 1, 2009, and are applicable to public water systems. Subpart I established monitoring requirements for lead and copper in tap water.
- Assembly Bill No. 1953, Chapter 853 – The Lead Solder, Pipe and Flux Law expands Section 116875 of the Health and Safety Code as contained in USC Title 42, Chapter 6A, Subchapter XII, Part B, Section 300g-6 relating to lead plumbing to include any pipe or plumbing fitting, or fixture intended to convey or dispense water for human consumption. The law, which became effective January 1, 2010, passed both the Assembly and the Senate in 2006 and also revises the term “lead free.”
- USC Title 42, Chapter 6A, Subchapter XII, Part F, Section 300j-24 – Lead contamination in school drinking water outlines the testing protocol for lead contamination in drinking water from coolers and other sources at educational agencies, private nonprofit elementary or secondary schools and day care centers. The law became effective in 1999. Currently, legislation is being proposed that would amend this section of the Safe Drinking Water Act.
- USC Title 33, Chapter 26, Subchapter IV, Section 1342 – National Pollutant Discharge Elimination System (NPDES) established Phase I of the storm water program in 1990. Nine years later, Phase II of the program was signed into law and requires smaller communities to develop and implement a comprehensive storm water management program.

An Internet-based search of the 2008 through 2010 issues of the *Federal Register* found a proposed rule relating to energy conservation standards for residential water heaters in the December 11, 2009, issue (Vol. 74, No. 237). The U.S. Department of Energy announced a public meeting to receive comments on its proposed amended energy conservation standards.

**Comparison with rules in adjacent states**

An Internet-based search of the four adjacent states found the following:

**Illinois:**

The Illinois Department of Public Health administers a state-written uniform plumbing code with exceptions for cities that existed prior to Illinois statehood.

**Iowa:**

The Iowa Department of Public Health administers the Iowa Uniform Plumbing Code that recently adopted the 2009 edition of the IPC with amendments.

**Michigan:**

The Michigan Department of Consumer and Industry Services, Bureau of Construction Codes developed the 2003 Michigan Plumbing Code that became effective December 31, 2003. Based on the IPC, the code includes state amendments, and is undergoing its third update and revision in 2010.

**Minnesota:**

The Minnesota Department of Labor and Industry, Building Codes and Standards Division administers the Minnesota Plumbing Code, a state written uniform code that was revised in 2009.

**Summary of factual data and analytical methodologies**

The methodology for the proposed revisions of the Wisconsin Uniform Plumbing Code, chapters Comm 81 to 84, which became effective March 1, 2009, includes a review and assessment by staff of code issues that require clarification.

In addition, the review and assessment process involved the participation of the Plumbing Advisory Code Council (PACC). The members of that Council represent the many stakeholders involved in the plumbing industry including designers, inspectors, labor and building contractors. (A listing of the Plumbing Advisory Code Council is provided at the end of this analysis.)

An assessment of the department's resources relating to the review of plumbing plans indicates that the department has the capacity to review more projects at this time. The department estimates that lowering of the threshold from 16 plumbing fixtures to 11 fixtures requiring plan review would result in an average annual revenue increase of \$198,000.

The proposal to require continuing education for the renewal of a cross connection control tester license was developed by a special task force and approved by the PACC. Stakeholders from across the state served as members of the CCC task force.

The proposed revision relating to sump pump size in elevator pits comes from the Conveyance Safety Code Council and is endorsed by the PACC and the Wisconsin Chapter of the American Society of Sanitary Engineering. All three organizations concur that the current requirement is excessive, and recommend a more practical sump pump size to accommodate ground water seepage into elevator pits.

**Analysis and supporting documents used to determine effect on small business**

The department used the Plumbing Advisory Code Council (PACC) to gather and analyze information on potential impacts in complying with both the technical and administrative requirements of the codes. Many small

businesses belong to the industry associations that sit on the advisory council. A responsibility of council members is to bring forth concerns that their respective organizations may have with the requirements including economic impact. (A list of the members serving on the PACC is provided at the end of this analysis.)

In addition to posting rule development and council activities on the department's web site, the department offers an Email subscription service that is available to all small businesses. This service provides Email notification of council meetings, meeting agendas and council meeting progress reports so small businesses can follow proposed code changes.

The proposed rules relating to plan review and thresholds would have a minimal direct impact on small business. Plan review fees for a plumbing plan project involving 11 to 16 plumbing fixtures will vary on several factors, including the type of fixtures involved and the size of the building drain and water service. The department estimates that a plan submitter of these types of projects may incur fees of \$200 to \$300.

The department believes the rules will not increase the effect on small businesses from what the current rules impose on them. An economic impact report is not required pursuant to s. 227.137, Stats.

**Environmental Impact**

The Department has prepared a preliminary Environmental Assessment (EA) on the proposed rules. The preliminary recommendation is a finding of no significant impact. Copies of the preliminary EA are available from the Department on request and will be available at the public hearings. Requests for the EA and comments on the EA should be directed to:

Department of Commerce  
P.O. Box 2689  
Madison, Wisconsin 53701  
Telephone (608) 266-8741 or TTY (608) 264-8777

Written comments will be accepted until July 15, 2010

**Small Business Impact****Initial regulatory flexibility analysis**

*Types of small businesses that will be affected by the rules.*

The proposed rules will affect any business involved with the ownership, design, construction and installation, inspection, repair and maintenance of plumbing.

*Reporting, bookkeeping and other procedures required for compliance with the rules.*

There are no additional reporting, bookkeeping or other procedures required for compliance with the rules.

*Types of professional skills necessary for compliance with the rules.*

There are no additional professional skills necessary for compliance with the rules.

*Rules have a significant economic impact on small businesses?*

No.

**Small business regulatory coordinator**

The small business regulatory coordinator for the Department of Commerce is Carol Dunn, who may be contacted at telephone (608) 267-0297, or Email at carol.dunn@wisconsin.gov.

**Fiscal Estimate*****Assumptions used in arriving at fiscal estimate***

The proposed rules relating to plan review and thresholds would have a minimal direct impact on small business. Plan review fees for a plumbing plan project involving 11 to 15 plumbing fixtures will vary on several factors, including the type of fixtures involved and the size of the building drain and water service. The department estimates that a plan submitter of these types of projects may incur fees of \$200 to \$300.

An assessment of the department's resources relating to the review of plumbing plans indicates that the department has the capacity to review more projects at this time. The department estimates that lowering of the threshold from 16 plumbing fixtures to 11 fixtures requiring plan review would result in an average annual revenue increase of \$198,000.

The department anticipates that the workload associated with the proposed code change can be managed with current information technology and within current staff levels. In addition, the proposed rule do not increase or decrease the administrative and enforcement aspects at the state and local level.

***State fiscal effect***

Increase existing revenues.

***Local government fiscal effect***

None.

***Fund sources affected***

PRO.

***Affected Ch. 20 appropriations***

N/A.

***Private sector fiscal effect***

No significant effect.

***Long-range fiscal implications***

None are anticipated.

**Agency Contact Person**

Lynita Docken, Program Manager  
Phone: (608) 785-9349  
Email: lynita.docken@wisconsin.gov

**Notice of Hearing****Financial Institutions — Securities****CR 10-062**

NOTICE IS HEREBY GIVEN That pursuant to ss. 551.406 (5), 551.412 (5), 551.605 (1), 553.31 (1), 553.58 (1) and 227.11 (2), Stats., the Department of Financial Institutions, Division of Securities will hold a public hearing to consider a rule revising Chapters DFI-Sec 1, 2, 4, 5, 7, 8, and 32, relating to minor revisions to securities law and franchise law administrative code sections.

**Hearing Information**

**Date:** Monday, June 28, 2010  
**Time:** 9:00 a.m.  
**Location:** Department of Financial Institutions  
345 W. Washington Ave., 5th Floor  
Madison, WI

**Copies of Proposed Rule and Submittal of Written Comments**

To obtain a copy of the proposed rule or fiscal estimate at no charge, to submit written comments regarding the proposed rule, or for questions regarding the agency's internal processing of the proposed rule, contact Mark Schlei, Deputy General Counsel, Department of Financial Institutions, Office of the Secretary, P.O. Box 8861, Madison, WI 53708-8861, tel. (608) 267-1705, e-mail mark.schlei@wisconsin.gov. A copy of the proposed rule may also be obtained and reviewed at the Department of Financial Institution's website, www.wdfi.org. Written comments must be received by the conclusion of the department's hearing regarding the proposed rule.

**Analysis Prepared by the Department of Financial Institutions, Division of Securities*****Statute interpreted***

Section 551.615, Stats.

***Statutory authority***

Sections 551.406 (5), 551.412 (5), 551.605 (1), 553.31 (1), 553.58 (1) and 227.11 (2), Stats.

***Related statute or rule***

None.

***Explanation of agency authority***

Pursuant to chs. 551 and 553, Stats., the division regulates securities and franchise investment.

***Summary of proposed rule***

The objective of the rule is to repeal and recreate s. DFI-Sec 1.02 (7), create s. DFI-Sec 1.02 (8), amend s. DFI-Sec 1.02 (14) (intro) and (c), amend ss. DFI-Sec 2.02 (5) (d) 1., (9) (c), and 2.028 (intro.), repeal s. DFI-Sec 4.01 (4) (g), create s. DFI-Sec 4.04 (7) (d), create ss. DFI-Sec 5.01 (2) (f) 3., 5.04 (5) (d), and 5.06 (25), repeal and recreate ss. DFI-Sec 5.01 (4) (a), 5.10, and 5.13 (2), amend s. DFI-Sec 5.04 (6) (b), repeal s. DFI-Sec 5.05 (8) (i), amend s. DFI-Sec 7.01 (3) (a), repeal s. DFI-Sec 8.03 (note), and amend s. DFI-Sec 32.07 (1), relating to minor revisions to securities law and franchise law administrative code sections.

The purpose of the rule is as follows:

Section 1: The branch office definition for broker-dealers has been harmonized with FINRA and other state regulators for many years. However, with the change in the Uniform Securities Act in 2009, the branch office definition in the rule was changed to refer to a slightly different statutory definition of "place of business." The statutory definition works for investment advisers but not broker-dealers, hence the change in this rule.

Section 2: This is a new definition to accompany the solicitor rules proposed for s. DFI-Sec 5.06 (25) based on language developed by the NASAA IA Regulatory Policy and Review Project Group.

Section 3: These changes clarify that the definition applies to investment advisers as well as investment adviser representatives and the nature of the solicitations made by third party solicitors.

Section 4: This amendment changes the terminology used in the current rule (which limits applicability of its coverage solely to limited partnerships) by substituting the term "entity" to thereby have the rule apply to any type of business organization.

Section 5: Incident to the Division's 2008 rules revision to coordinate with the adoption of the new Wisconsin Securities Law effective January 1, 2009, current rule DFI-Sec 2.02 (9) (c) inadvertently cross-referenced statute section 551.102 (11) rather than the proper corresponding statute in section 551.202 (13) [which specifically refers to "accredited investors," whereas section 551.102 (11) does not]. This amendment corrects that cross-referencing error.

Section 6: This amendment would limit use of this registration exemption to sales of equity securities by Wisconsin-based entities meeting the exemption's requirements. This exemption provision was originally created in 1986 for use by early-stage Wisconsin businesses to raise risk capital for its operations. As such, the exemption's original language was specifically limited to sales of common stock of the business (which don't obligate a business to redeem/payback the invested funds). Debt securities — which require payback to investors — could not be sold under the original language of this exemption. The original language of the exemption restricting its use to sales of common stock was changed in 1991 to read "securities," thus enabling the exemption to be used for sales of debt as well as equity securities. Subsequently, some filings have been made by Wisconsin businesses for the purpose of selling their debt securities, including sales by a Wisconsin finance company of several million dollars of its Notes that currently are in default, and the company is in bankruptcy. To restore the exemption's use back to its original purpose of enabling Wisconsin businesses to raise risk capital — not capital from debt securities requiring repayment — the language of the preamble is changed to permit only sales of equity securities.

Section 7: In a FINRA rule change comment published as Notice 09-70, FINRA recommended the repeal of the S47 Japan Module of the General Securities Representative examination. However, FINRA indicated that the examination was never actually implemented and therefore is not an available examination anyone can take in lieu of the Series 7 exam.

Section 8: This new section clarifies that a notice of the opening of a branch office is not complete and therefore, not deemed "filed" until all fees, including any applicable late filing fees, are received. This parallels the fee payment component in the broker-dealer application rule in s. DFI-Sec 4.01 (2) (b) and the agent rule in s. DFI-Sec 4.01 (2) (c).

Section 9: Section DFI-Sec 4.01 (6) currently provides the same review authority as s. DFI-Sec 5.01 (2) (f) except for the ability to perform a pre-registration examination of the adviser's records. This provision was inadvertently left out of the investment adviser rules.

Section 10: This amendment clarifies that the Series 65 and 66 exams referred to are the post-1999 version as specified in subd. 2. It also adds clarification that if the applicant was registered as an agent of a broker-dealer within two years of the application and the approval of that registration was based on passage of the Series 7 and 66 exams, those exams would still be considered active for purposes of meeting the exam requirement in subd. 3.

Section 11: This new section clarifies that a notice of the opening of a branch office is not complete and therefore, not deemed "filed" until all fees, including any applicable late filing fees, are received. This parallels the fee payment component in the investment adviser application rule in s. DFI-Sec 5.01 (2) (a) and the investment adviser representative rule in s. DFI-Sec 5.01 (2) (b).

Section 12: Because applications are effective 30 days after filing, a renewal for January 1 effectiveness must be filed by December 1<sup>st</sup>. The date of November 30<sup>th</sup> is incorrect.

Section 13: This provision was instituted to require all investment advisers to deliver updated disclosure documents to clients by January 1, 2002 to comply with changes to the law at that time. This subsection has met its sunset date and is no longer applicable.

Section 14: This section specifies what activity constitutes solicitation on behalf of an investment adviser and parallels the disclosure and agreement requirements found in U.S. Securities & Exchange Commission rule 206(4)-3 under the Investment Advisers Act of 1940 but with much more clarity and is based on language developed by the NASAA IA Regulatory Policy and Review Project Group.

Section 15: The Division currently requires only the ADV Part I to be filed electronically. This rule change will require advisers to file their initial and updated Form ADV Part II electronically via the Investment Adviser Registration Depository rather than in paper. Sub. 1 is the general requirement to file both parts of the form via the Investment Adviser Registration Depository and sub. (3) mandates existing registrants to have their Part II filed electronically by July 1, 2011. The software is available for free to convert their Part II disclosure document for electronic filing. Because this is the public disclosure portion of the application, it is in the interest of investors in Wisconsin to be able to review this document via the Investment Adviser Public Disclosure website. Requiring all advisers to make such filings will automatically add them to the public disclosure website. It will also relieve Division staff from processing paper applications, especially since all application materials are now retained by the Division in electronic format only.

Section 16: This rule changes the exemption provision for investment adviser solicitors following an exemption developed by the NASAA IA Regulatory Policy and Review Project Group. This exemption is based on "impersonal investment advice" and eliminates the de minimis exemption that was unique to Wisconsin and in effect permitted an unlimited total number of solicitations so long as no more than 9 per year were for any one adviser.

Section 17: Corrects a statutory citation.

Section 18: This amendment deletes the Note at the end of rule DFI-Sec 8.03 (which deals with appearances and defaults before the Division of Securities) because the 2003 *Krahenbuhl* case cited in the Note has been superseded by Supreme Court Rule 40.05 (effective January 1, 2009) which establishes new criteria/requirements regarding the ability of non-Wisconsin attorneys to represent clients in contested case proceedings before Wisconsin state agencies.

Section 19: This rule contains the following amendments: (1) specifies that the application to amend should use the Uniform Franchise Registration Application Form (Form A); and (2) changes the franchise statute cross-referenced in the rule to be section 553.31 (1), Stats., which is the statute specifically dealing with amendments.

#### ***Comparison with federal regulations***

There are no newly-developed or proposed federal regulations addressed by this rule. However, Wisconsin Securities Law and rules are generally coordinated with corresponding federal requirements, pursuant to s. 551.615, Stats.

**Comparison with rules in adjacent states**

These rule chapters reflect the 2002 Uniform Securities Act which Iowa and Minnesota have adopted and written rules; Illinois and Michigan have not.

**Summary of factual data and analytical methodologies**

The division applied its own experience in its regulation of securities generally for the minor clarifications, corrections, revisions and other matters addressed by the rule.

**Analysis and supporting documentation used to determine effect on small business**

The rule makes minor clarifications, corrections and revisions for conformity with existing statutes; imposes no additional substantive requirements; and reduces the same.

**Small Business Impact**

This proposed rule will have no adverse impact on small businesses.

**Fiscal Estimate**

The rule places no additional duties or burdens on state or local government, and hence has no affect on costs to either.

**Agency Contact Information**

For questions regarding the agency's internal processing of the proposed rule, contact:

Mark Schlei, Deputy General Counsel  
Dept. of Financial Institutions, Office of the Secretary  
P.O. Box 8861, Madison, WI 53708-8861  
Phone: (608) 267-1705  
Email: mark.schlei@wisconsin.gov.

For substantive questions on the rule, contact:

Randall Schumann, Attorney  
Dept. of Financial Institutions, Division of Securities  
P.O. Box 1768, Madison, WI 53701-1768  
Phone: (608) 266-3414  
Email: randall.schumann@wisconsin.gov.

**Notice of Hearings****Natural Resources**

**Environmental Protection—General, Chs. NR 100—  
Environmental Protection—Water Supply, Chs. NR 800—**

**CR 10-059** — (DNR # DG-25-10)

**CR 10-060** — (DNR # DG-24-10)

**CR 10-061** — (DNR # DG-23-10)

NOTICE IS HEREBY GIVEN That pursuant to ss. 227.11 (2) (a) and 281.346 (3), (4) (g), (8) and (12), and 281.35 (10) (b), Stats., the Department of Natural Resources will hold public hearings on revisions to Chapter NR 142, Wis. Adm. Code, and the creation of Wis. Adm. Code Chapter NR 850 Water Use Fees, Chapter NR 852 Water Conservation and Water Use Efficiency, and Chapter NR 856 Water Use Registration and Reporting, relating to implementation of the Great Lakes Compact and associated water use regulations.

**Hearing Information**

The hearings will be held on:

**June 28, 2010, Monday, 6:00 p.m.**

Ramada Plaza Terrace 1 & 2  
6331 South 13<sup>th</sup> Street  
Milwaukee, WI

**June 29, 2010, Tuesday, 6:00 p.m.**

Concurrent sessions will be held at the following **two** locations:

University of Wisconsin Green Bay  
Instructional Services Building, Room 1034  
2420 Nicolet Drive  
Green Bay, WI  
(<http://www.uwgb.edu/team/maps/index.htm#is1034>)

Wisconsin Indianhead Technical College (WITC)  
Ashland Room 306, Conference Center  
2100 Beaser Avenue  
Ashland, WI  
(<http://www.witc.edu/ashland/map.htm>).

**June 30, 2010, Wednesday, 6:00 p.m.**

Concurrent sessions will be held at the following **two** locations:

Pyle Center, Room 121  
(Gayle VanDeBerg Auditorium)  
702 Langdon Street  
Madison, WI  
(<http://conferencing.uwex.edu/location.cfm>)

Northcentral Technical College (NTC)  
David Obey Center for Health Sciences Auditorium  
1000 Campus Drive  
Wausau, WI 54401  
(<http://www.ntc.edu/pdf/CentralCampusMap.pdf>).

Pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call James McLimans at (608) 266-2726 with specific information on your request at least 10 days before the date of the scheduled hearing.

**Copies of Proposed Rules and Submittal of Written Comments**

The order in which the three rule proposals will be considered will be decided at the time of hearing. The proposed rules and supporting documents, including the fiscal estimates, may be viewed and downloaded and comments electronically submitted at the following Internet site: <http://adminrules.wisconsin.gov>. (Search this Web site using the Natural Resources Board Order Nos. DG-23-10 (NR 850 Water Use Fees), DG-24-10 (Water Conservation and Water Use Efficiency), and DG-25-10 (NR 856 Water Use Registration and Reporting)).

Written comments on the proposed rules may be submitted via U.S. mail to Ms. Kristy Rogers, Bureau of Drinking Water and Groundwater, P.O. Box 7921, Madison, WI 53707 or by e-mail to [Kristy.Rogers@wisconsin.gov](mailto:Kristy.Rogers@wisconsin.gov). Comments may be submitted until **July 7, 2010**.

Written comments whether submitted electronically or by mail will have the same weight and effect as oral statements presented at the public hearings. If you do not have Internet access, a personal copy of the proposed rule and supporting

documents may be obtained from Kristy Rogers, Bureau of Drinking Water and Groundwater, P.O. Box 7921, Madison, WI 53707 or by calling (608) 266-9254.

**Analysis Prepared by Department of Natural Resources**

*CR 10-061, DNR # DG-23-10  
NR 850 — Water Use Fees*

**Plain language analysis**

The proposal contained in this order repeals a provision of an existing rule that provided authority to assess water withdrawal fees on persons making withdrawals from the waters of the state in amounts averaging 100,000 gallons per day or more in any 30-day period. Those fees ranged from \$35 to \$500 dollars depending on the amount of the withdrawal. However, the fee program and the associated registration program associated with it were not implemented by the Department.

Under the provisions of s. 281.346 (12), as created in 2009 Wisconsin Act 28, beginning in 2011, any person with a water supply system anywhere in the state with the capacity to withdraw an average of 100,000 gallons per day or more in any 30-day period must pay to the Department an annual fee of \$125. This rule clarifies that the annual \$125 fee will cover all water supply systems on one property or a single public water supply. Section 281.346 (12)(c) further directs the Department to promulgate a rule specifying an additional annual fee for persons who withdraw more than 50,000,000 gallons per year from the waters of the Great Lakes basin—that is, from surface water or groundwater within the land area of the state draining to Lakes Michigan or Superior,

or from those lakes. The proposed fee would increase per 50 million gallon increment as shown in the following table:

Amount Withdrawn	Fee Per Million Gallons
50 MGY to 100 MGY	\$1.50
100 MGY to 150 MGY	\$2.00
150 MGY to 200 MGY	\$2.50
200 MGY to 250 MGY	\$3.00
250 MGY to 300 MGY	\$3.50
300 MGY to 350 MGY	\$4.00
350 MGY to 400 MGY	\$4.50
400 MGY to 450 MGY	\$5.00
450 MGY to 500 MGY	\$5.50
500 MGY +	\$6.00

The fee would not exceed \$9,500 annually for withdrawals from a water supply system on a contiguous property or a public water system. The fees specified in this rule will be assessed on a calendar year basis and will be due to the Department by June 30<sup>th</sup> of the following calendar year.

**Comparison with federal regulations**

There are no comparable federal regulations pertaining to fees for water withdrawals.

**Comparison with rules in adjacent states**

The following table compares water withdrawal fees in adjacent states.

**Water Withdrawal Fee Comparison**

Wisconsin	Illinois	Iowa	Michigan	Minnesota
<p>\$125 statutory fee—statewide — for water supply systems with the capacity to withdraw an average of 100,000 gallons—per-day or more in any 30-day period.</p> <p>Proposed additional annual fee for Great Lakes Basin withdrawals exceeding 50 million gallons per year. The proposed fee would be assessed at an inclining rate in tiers of 50 million gallons as follows:</p> <p>(50 – 100) \$1.50/mil. (100 – 150) \$2/mil. (150 – 200) \$2.50/mil. (200 – 250) \$3/mil. (250 – 300) \$3.50/mil. (300 – 350) \$4 /mil. (350 – 400) \$4.50/mil. (400 – 450) \$5/mil. (450 – 500) \$5.50/mil.</p> <p>(Above 500) \$6/mil.</p> <p>The fee would not exceed \$9,500 annually for withdrawals from one property or public water system.</p>	<p>No annual water use fee.</p>	<p>Iowa charges an annual water use fee to each water use permittee designed to generate \$500,000 each year. Permits are required for persons that withdraw at least 25,000 gallons in a 24-hour period during a calendar year; and the same fee is charged to each permittee. For 2009, the annual fee was \$135 for each permittee.</p>	<p>\$200 annual reporting fee for withdrawals exceeding 100,000 gallons per day averaged over a consecutive 30-day period. (No annual fee for withdrawals for agricultural use.)</p>	<p>\$140 minimum annual water use fee for withdrawals between 0 and 50 million gallons.</p> <p>Marginal fee rates for withdrawals exceeding 50 million gallons per year as follows: (50 – 100) \$3.50/mil. (100 – 150) \$4/mil. (150 – 200) \$4.50/mil. (200 – 250) \$5/mil. (250 – 300) \$5.50/mil. (300 – 350) \$6/mil. (350 – 400) \$6.50/mil. (400 – 450) \$7/mil. (450 – 500) \$7.50/mil. (Above 500) \$8/mil.</p> <p>Maximum Annual water use fees: \$750 for any single agric. Irrigation permit; \$50,000 for an entity w/3 or fewer permits; \$75,000 for an entity w/4 to 5 permits; \$250,000 for an entity with &gt; 5 permits; \$250,000 for a city of the first class; \$10,000 for a municipality that furnishes electric service and steam for home heating.</p>

### ***Summary of factual data and analytical methodologies***

Based on available data and assumptions, the Department projects that the \$125 annual fee will apply to approximately 4900 properties and generate just over \$600,000 annually; and the proposed fee on withdrawals exceeding 50 million gallons per year will apply to approximately 200 to 250 properties in the Great Lakes basin and generate approximately \$390,000 annually.

### ***Analysis and supporting documentation used to determine rule's effect on small business***

The Department lacks complete data on the number and nature of all operations withdrawing water above the threshold amount of 50 million gallons per year. However, based on the withdrawal data that does exist (e.g. high capacity well pumpage data), comparatively few small businesses will be affected by the rule.

### **Small Business Impact**

The \$125 annual fee will affect hundreds of small business throughout the state. However, the fee imposed on withdrawals exceeding 50 million gallons per year is expected to primarily affect public water systems, power companies, and large industrial operations in water-intensive industries. The rule will affect an unknown number of small businesses that withdraw more than 50 million gallons of water per year from waters within the Great Lakes basin; however the Department estimates that there are relatively few small businesses that withdraw water at levels exceeding the threshold amounts.

### **Fiscal Estimate**

#### ***Rule summary***

Section 281.346 (12) (c), directs the Department to promulgate a rule specifying an additional annual fee for persons who withdraw more than 50 million gallons per year (MGY) from the waters of the Great Lakes basin—that is, from surface water or groundwater within the land area of the state draining to Lakes Michigan or Superior, or from those lakes. The proposed fee would be assessed on marginal increments of withdrawals over 50 million gallons per year starting @ \$1.50 per million gallons over 50 million, and would increase \$0.50 per million gallons for each 50 million gallon increment as follows:

- For amounts withdrawn between 50 MGY to 100 MGY \$1.50/million gallons withdrawn
- For amounts withdrawn between 100 MGY to 150 MGY \$2.00/million gallons withdrawn
- For amounts withdrawn between 150 MGY to 200 MGY \$2.50/million gallons withdrawn
- For amounts withdrawn between 200 MGY to 250 MGY \$3.00/million gallons withdrawn
- For amounts withdrawn between 250 MGY to 300 MGY \$3.50/million gallons withdrawn
- For amounts withdrawn between 300 MGY to 350 MGY \$4.00/million gallons withdrawn
- For amounts withdrawn between 350 MGY to 400 MGY \$4.50/million gallons withdrawn
- For amounts withdrawn between 400 MGY to 450 MGY \$5.00/million gallons withdrawn
- For amounts withdrawn between 450 MGY to 500 MGY \$5.50/million gallons withdrawn

- For amounts withdrawn in excess of 500 MGY \$6.00/million gallons withdrawn

The fee would not exceed \$9,500 annually for withdrawals from a water supply system on a contiguous property or a public water system. The fee would take effect in 2011. Fee revenue will be deposited in a program revenue appropriation supporting Great Lakes Compact implementation. The Department anticipates that between 200 and 300 persons will pay the fee annually.

### ***State fiscal impact***

Revenues that will be generated as a result of the annual withdrawal fee are the result of the fee provisions enacted in to law in 2009 Wisconsin Act 28. The Department assumes that the statutory statewide base fee of \$125 on persons with water supply systems with the capacity to withdraw an average of 100,000 gallons per day or more in any 30-day period will be imposed on approximately 4900 persons and will generate approximately \$612,500 annually. (Revenue from this base fee is not included on the attached fiscal estimate worksheet.)

Based on actual withdrawal data from public water supply systems and high capacity well owners, and assumptions related to surface water withdrawals, the Department expects that the fee will generate between \$38000 and \$400,000 annually. In addition, state-owned facilities (e.g., state fish hatcheries) that withdraw over 50 million gallons per year in the Great Lakes Basin would have to pay the fee. The Department lacks accurate data on total amounts of water withdrawn from state-owned facilities, therefore costs to the state are indeterminate at this time.

### ***Local government fiscal impact***

Based on 2009 data, there are approximately 180 public water systems in the Great Lakes Basin. Of those 180 systems, approximately 90 systems withdraw in excess of 50 million gallons per year and will be affected by this rule—e.g., systems withdrawing 100 million gallons of water per year will pay approximately \$75 under the rule; systems withdrawing 1 billion gallons of water per year will pay approximately \$4,600; and systems withdrawing 2.3 billion gallons of water per year will pay \$9,500 per year. The Department anticipates that approximately 9 public water systems in the Great Lakes basin will pay the maximum \$9,500 fee, 60 public water systems will pay a fee under \$1,000, and more than 90 public water systems in the Great Lakes basin would pay no additional fee over the \$125 statutory base fee.

### ***Private sector fiscal impact***

The Department lacks complete data on the number and nature of all operations withdrawing water above the threshold amount of 50 million gallons per year. However, based on the withdrawal data that does exist (e.g. high capacity well pumpage data), comparatively few small businesses will be affected by the rule.

### ***Summary for state fiscal effect***

Increase existing revenues.

Increase costs. May be possible to absorb within agency's budget.

### ***Summary for local government fiscal effect***

Increase costs — Mandatory.

### ***Types of local government units affected***

Towns, Villages, Cities, Counties, Water Utilities, School Districts, WTCS Districts.

**Fund sources affected**

PRO.

**Affected Ch. 20 appropriations**

Section 20.370 (4) (ai), Stats.

**Long-range fiscal implications**

None are expected.

**Agency Contact Person**

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**CR 10-060, DNR # DG-24-10****NR 852 — Water Conservation and Water Use Efficiency****Plain language analysis**

This board order creates a new rule that clarifies and further defines new statutory requirements for water conservation and water use efficiency for withdrawals of waters of the state within the Great Lakes Basin, diversions of water from the Great Lakes Basin, and water withdrawals statewide that require a water loss approval. The new law implements the following:

1. Specifies mandatory water conservation and efficiency measures for waters of the Great Lakes Basin and withdrawals statewide that require a water loss approval.
2. Promotes voluntary statewide water conservation through the identification of water conservation and efficiency measures.
3. Guides other department regulatory, planning, resource management, liaison and financial aid determinations.

Persons subject to this chapter are categorized into one of 3 levels:

1. Tier 1 includes new and increased withdrawals in the Great Lakes Basin that average 100,000 gallons per day or more in any 30-day period but that do not equal at least 1,000,000 gallons per day for any 30 consecutive days.
2. Tier 2 includes new and increased withdrawals in the Great Lakes Basin that equal 1,000,000 gallons per day or more for any 30 consecutive days.
3. Tier 3 includes new and increased diversions in a community or county that straddles the sub-continental divide and new and increased withdrawals statewide that will result in a water loss averaging more than 2,000,000 gallons per day in any 30-day period.

This tiered approach is being used to differentiate between the requirements for different types and levels of regulated

activities. The level of water conservation and efficiency requirements are increased from Tier 1, to Tier 2, to Tier 3.

In addition to completing a Water Conservation Plan, there are four mandatory water conservation and efficiency measures (CEMs) for all persons for whom water conservation and efficiency requirements are mandatory under this chapter. These CEMs have been determined to be cost-effective, environmentally sound and economically feasible for all water use sectors. Implementation of additional CEMs are required for Tier 2 and Tier 3 only.

The rule sets forth definitions, sector specific water conservation and efficiency measures, elements of a water conservation plan, procedures for conducting an environmentally sound and economically feasible analysis, process for approval and reporting, and process for enforcement.

**Comparison with federal regulations**

There are no comparable federal regulations pertaining to water conservation and water use efficiency. However, in passing the Great Lakes – St. Lawrence River Basin Water Resources Compact (Compact), each of the Great Lakes states have similar requirements to establish a water conservation and efficiency program that is consistent with the goals and objectives identified by the Great Lakes Compact Council.

**Summary of factual data and analytical methodologies**

Published scientific literature, industry manuals, information from other states, consultation with the Department of Commerce and Public Service Commission, and input from an advisory committee were used as the basis for developing the water conservation plan requirements and required water conservation and efficiency measures.

**Analysis and supporting documentation used to determine rule's effect on small business**

Any person who diverts any amount of water, has a new or increased withdrawal averaging 100,000 gallons per day or more in any 30-day period from the Great Lakes Basin, or a withdrawal with a water loss over 2,000,000 gallons per day must complete a water conservation plan and implement water conservation and efficiency measures. To comply, small businesses follow the same requirements as other persons who withdraw water in the same quantity. The water conservation and water use efficiency requirements are clearly identified in this rule and do not include requirements to retrofit existing equipment. Water conservation and efficiency measures that are not environmentally sound or economically feasible do not need to be implemented.

**Comparison with rules in adjacent states**

The following table compares regulatory requirements for water conservation and efficiency in adjacent states:

**Water Conservation and Water Use Efficiency Comparison**

Wisconsin	Illinois	Iowa	Michigan	Minnesota
Specifies mandatory water conservation and water use efficiency measures within user sectors for certain levels of new or increased withdrawals and diversions from waters of the Great Lakes Basin and for water withdrawals statewide that require a water loss approval. Promotes voluntary statewide water conservation through the identification of water conservation and efficiency measures.	Specifies all water withdrawals over 100,000 gallons per day in the Great Lakes Basin to obtain a permit. Conservation practices within the user category are specified through permitting process. Requires permittees to submit a plan to reduce wasteful water and unaccounted for water by 8 percent. Requires permittees to submit an annual water use audit form.	Specifies all persons making a water withdrawal of at least 25,000 gallons per day to obtain a water use permit. Iowa statute provides for a water allocation (permit) system based on beneficial use preventing waste, unreasonable use and unreasonable methods of use of water resources. Conservation is expected.	Specifies all persons making large quantity withdrawals averaging 100,000 gallons a day for 30-days to evaluate generic water conservation measures applicable to their sector for review and acceptance by the Department of Environmental Quality. Requires legislative review of the status and preparation and acceptance of water user sector conservation measures by April 1, 2010.	Specifies mandatory efficient use and conservation of water through permitting process for all water users withdrawing water at a rate of 10,000 gallons a day or a million gallons per year. Water conservation must be addressed in water supply plans required for public water systems serving more than 1000 people. Requires mandatory conservation rate structures for all public water utilities located within the basin. Specifies voluntary measures including information and education, retrofitting water fixtures and encouraging water reuse.

**Small Business Impact**

This rule will affect small businesses located in the Great Lakes Basin that supply their own water with water supply systems that actually withdraw water averaging 100,000 gallons per day or more in any 30-day period or have a new or increased withdrawal statewide that will result in a water loss averaging more than 2,000,000 gallons per day in any 30-day period. Water conservation and efficiency measures that are not environmentally sound or economically feasible do not need to be implemented. Small businesses that receive water from a public water supply will not be impacted by this rule.

**Fiscal Estimate**

**Water conservation and water use efficiency rule summary**

This new rule clarifies and further defines new statutory requirements for water conservation and water use efficiency for withdrawals of waters of the state within the Great Lakes Basin, diversions of water from the Great Lakes Basin, and water withdrawals statewide that require a water loss approval. The new law implements the following:

- Specifies mandatory water conservation and efficiency measures for waters of the Great Lakes Basin and withdrawals statewide that require a water loss approval (i.e. withdrawals resulting in a water loss averaging more than 2,000,000 gallons per day in any 30-day period).
- Promotes voluntary statewide water conservation through the identification of water conservation and efficiency measures.
- Guides other Department regulatory, planning, resource management, liaison and financial aid determinations.

Persons subject to this chapter are categorized into one of 3 tiers:

- Tier 1 includes new and increased withdrawals in the Great Lakes Basin that average 100,000 gallons per day or more in any 30-day period but that do not equal at least 1,000,000 gallons per day for any 30 consecutive days.

- Tier 2 includes new and increased withdrawals in the Great Lakes Basin that equal 1,000,000 gallons per day or more for any 30 consecutive days.
- Tier 3 includes new and increased diversions in a community or county that straddles the sub-continental divide and new and increased withdrawals statewide that will result in a water loss averaging more than 2,000,000 gallons per day in any 30-day period.

This tiered approach is being used to differentiate between the requirements for different types and levels of regulated activities. The level of water conservation and efficiency requirements are increased from Tier 1, to Tier 2, to Tier 3.

In addition to completing a Water Conservation Plan, there are four mandatory water conservation and efficiency measures (CEMs) for all persons for whom water conservation and efficiency requirements are mandatory under this chapter. These CEMs have been determined to be cost effective, environmentally sound and economically feasible for all water use sectors. Implementation of additional CEMs are required for Tier 2 and Tier 3 only.

The rule sets forth definitions, sector-specific water conservation and efficiency measures, elements of a water conservation plan, procedures for conducting an analysis of whether a conservation and efficiency measure is environmentally sound and economically feasible, a process for approval and reporting, and a process for enforcement.

**State fiscal impact**

All costs that the Department will incur are the result of the water conservation and efficiency requirements enacted in 2007 Wisconsin Act 227.

The primary financial impact to the state will be the review of water conservation plans, which include documentation of the implementation of water conservation and efficiency measures. This review will be done internally by a Water Supply Specialist-Advanced. Annually, an estimated 30 water withdrawers will be impacted by this rule. Additionally, there will be annual costs associated with outreach on the voluntary water conservation and efficiency program, which will be done internally by a Natural

Resources Staff Specialist. There will be a one-time cost to develop tools for water users to conduct a economical feasibility analysis.

Additionally, state facilities with new or increased withdrawals in the Great Lakes basin will have to comply with this rule. For example, the state operates several fish hatcheries that may be financially impacted if they expand or a new hatchery is established and need a new or increased water withdrawal. However, the Department cannot reliably predict the number of state-owned facilities in the Great Lakes basin that will require a new or increased water withdrawal above the threshold levels, therefore the assumptions included for the state fiscal effect below do not include dollar amounts for fiscal impacts for state fish hatcheries or other state-owned facilities.

#### *Annual State Fiscal Impact*

- Estimated number of persons annually subject to NR 852 = 30 water withdrawers
- Hours for the Department to review and approve water conservation plans = 20 hrs x 30 plans = 600
- Annual fiscal impact to the Department for water conservation plan review = \$35/hr x 600 hours = \$21,000
- Full time equivalent (FTE) for water conservation plan review = 600 hrs / 1820 hrs/FTE = 0.3 FTE
- Annual fiscal impact to the Department for water conservation outreach = \$35/hr x 420 hrs = \$14,700
- Full time equivalent (FTE) for water conservation outreach = 420 hrs / 1820 hrs/FTE = 0.2 FTE
- TOTAL ANNUAL STATE FISCAL IMPACT = \$35,700 or 0.50 FTE

#### *One-Time State Fiscal Impact*

- Estimated number of hours to complete economically feasible analysis tools = 1040 hrs
- Economically feasible analysis tool development (developed internally) = 1040 hrs/ 1820 hrs/FTE = 0.6 FTE
- One-time state fiscal impact for tool development (developed internally) = \$35/hr x 1040 hrs = \$36,400
- One-time state fiscal impact for tool development (contracted out) = \$70/hr x 1040 hrs = \$72,800
- TOTAL ONE-TIME STATE FISCAL IMPACT = \$109,200

#### *Local government fiscal impact*

The Department assumes that approximately 5 municipal water systems per year will apply for a new or increased withdrawal and will be required to complete a water conservation plan and implement water conservation and efficiency measures. The number of permittees may increase in the long term along with continued population growth and increased economic activity.

Water conservation and efficiency measures do not include retrofitting requirements, but rather, the required elements include planning and operational changes to achieve water savings. CEMs included in this rule are designed to be revenue neutral; planning costs incurred should be offset by capital and operational costs avoided. If an element is not economically feasible as determined by a prescribed analysis, the water system will not be required to implement it. The cost to the permittee will primarily be an up front cost to complete

a water conservation plan and establish CEMs. In subsequent years, water savings can be achieved with minimal capital and operational costs.

Public water systems regulated by the Public Service Commission have the ability to recover conservation and efficiency related costs through rates charged to customers.

#### *Annual Local Government Fiscal Impact*

- Number of hours for permittee to complete requirements = 160
- Fiscal impact to each individual permittee = \$50/hr x 160 = \$8,000
- Local government permittees affected = 15% of 30 = 5 water withdrawers
- Total annual impact to local government sector = 5 x \$8000 = \$40,000

#### *Private sector fiscal impact*

The private sector will be impacted by this rule in 6 areas: (1) Privately owned "public" water supply systems; (2) Commercial and institutional businesses with their own water supply; (3) Dairy farm and livestock operations (including aquaculture) with their own water supply; (4) Agricultural irrigation operations with their own water supply; (5) Industrial operations on their own water supply; (6) Electric power production using water in their process; and (7) Other water users with their own water supply. It is estimated that the number of hours for a permittee to complete the water conservation plan and applicable water conservation and efficiency measures would be equivalent to the hours required of a public water system (local government) permittee (160 hours/permittee).

Annually, approximately 25 private sector water withdrawers are estimated to trigger a new or increased withdrawal and will be required to complete a water conservation plan and implement water conservation and efficiency measures. The number of permittees may increase in the long term along with continued population growth and increased economic activity.

Water conservation and efficiency measures do not include retrofitting requirements, but rather, the required elements include planning and operational changes to achieve water savings. CEMs included in this rule are designed to be revenue neutral; planning costs incurred should be offset by capital and operational costs avoided. If an element is not economically feasible as determined by a prescribed analysis, the water system will not be required to implement it. The cost to the permittee will primarily be an up front cost to complete a water conservation plan and establish CEMs. In subsequent years, water savings can be achieved with minimal capital and operational costs.

#### *Annual Private Sector Fiscal Impact*

- Number of hours for permittee to complete requirements = 160 hours
- Fiscal impact to each individual permittee = \$50/hr x 160 = \$8,000
- Privately owned permittees affected = 85% of 30 = 25 water withdrawers
- Total annual impact to private sector = 25 x \$8000 = \$200,000

#### *Summary for state fiscal effect*

Increase costs. May be possible to absorb within agency's budget.

**Summary for local government fiscal effect**

Increase costs — Mandatory.

**Types of local government units affected**

Towns, Villages, Cities, Counties, Water Utilities, School Districts, WTCS Districts.

**Fund sources affected**

PRO.

**Affected Ch. 20 appropriations**

Section 20.370 (4) (cg), (ai), Stats.

**Long-range fiscal implications**

None are expected.

**Agency Contact Person**

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**CR 10-059, DNR # DG-25-10**  
**NR 856 — Water Use Registration and Reporting**

**Plain language analysis**

This rule rescinds a portion of an existing rule related to registration of water withdrawals and creates a new rule that clarifies and further defines new statewide statutory requirements for withdrawals of waters of the state and diversions of water from the Great Lakes Basin. The new law requires the following:

1. Registration for any person who has or proposes to have a water supply system with the capacity to withdraw 100,000 gallons per day or more in any 30-day period or who diverts water in any amount from the Great Lakes Basin.

2. Annual reporting for any person who makes a withdrawal in excess of 100,000 gallons per day or more in any 30-day period or who diverts any amount from the Great Lakes Basin.

The rule sets forth definitions, procedures and information requirements for registrations, procedures for amending and terminating registrations, methods for measuring withdrawals, and procedures for annual reporting.

**Comparison with federal regulations**

There are no comparable federal regulations pertaining to water withdrawals. However, in passing the Great Lakes – St. Lawrence River Basin Water Resources Compact (Compact), each of the Great Lakes states now have similar regulations requiring the registration and permitting of certain levels of water withdrawals within the Great Lakes Basin.

**Summary of factual data and analytical methodologies**

Published scientific literature and manuals were used as the basis for developing the withdrawal measurement standards. Existing state statutes, department rules, and department procedures were used to guide the development of the registration and reporting process.

**Analysis and supporting documentation used to determine rule's effect on small business**

Any person with a water supply system with the capacity to make a withdrawal from the waters of the state of 100,000 gallons per day is required to register. In addition, any person who makes a withdrawal averaging 100,000 gallons per day or more in any 30-day period must also report their water withdrawals to the department annually. To comply, small businesses follow the same requirements as other persons who withdraw water. The registration and reporting requirements are straightforward and can be accomplished by most individuals with no specific professional background.

**Comparison with rules in adjacent states**

The following table compares regulatory requirements for water withdrawals in adjacent states.

	<b>Wisconsin</b>	<b>Illinois</b>	<b>Iowa</b>	<b>Michigan</b>	<b>Minnesota</b>
<b>Registration</b>	Registration is required for persons with the capacity to withdraw an average of 100,000 gallons per day or more in any 30-day period.	An allocation permit is required for withdrawals from the Lake Michigan Basin.	Water use permits are required of any person or entity that withdraws at least 25,000 gallons in a 24-hour period during any calendar year.	Registration is required for a new withdrawal averaging over 100,000 gallons per day in any 30-day period or an increase averaging over 100,000 gallons per day in any 30-day period beyond the baseline capacity of a withdrawal.	Water Use permits are required for withdrawals greater than or equal to 10,000 gallons per day or 1 million gallons per year from surface or groundwater.
<b>Reporting</b>	Monthly water withdrawal volumes are reported annually by March 1 for withdrawals averaging 100,000 gallons per day or more in any 30-day period.	Annual reporting is required for all withdrawals from the Lake Michigan basin and statewide for withdrawals over 100,000 gallons per day.	Monthly water withdrawal volumes are reported by all water use permit holders annually by January 31.	Monthly water withdrawal volumes are reported by all registrants annually by April 1.	Monthly water withdrawal volumes are reported by all water use permit holders annually by February 15.

### Small Business Impact

This rule will affect small businesses that supply their own water with water supply systems that have the capacity to withdraw over 100,000 gallons per day. Small businesses, like other entities that are affected by this rule, will have to determine the amount of water used on a monthly basis and report that water use annually. Small businesses that receive water solely from a public water supply will not be impacted by this rule. Specific standards will provide clarity and consistency in the registration and reporting process.

Pursuant to s. 227.114, Stats., it is not anticipated that the proposed rules will have an economic impact on small businesses.

The Department's Small Business Regulatory Coordinator may be contacted at [SmallBusiness@wisconsin.gov](mailto:SmallBusiness@wisconsin.gov) or by calling (608) 266-1959.

### Environmental Impact

The Department has made a preliminary determination that this action does not involve significant adverse environmental effects and does not need an environmental analysis under ch. NR 150, Wis. Adm. Code. However, based on the comments received, the Department may prepare an environmental analysis before proceeding with the proposal. This environmental review document would summarize the Department's consideration of the impacts of the proposal and reasonable alternatives.

### Fiscal Estimate

#### State fiscal impact

##### Annual Costs:

All costs that the Department will incur are the result of the registration and reporting requirements enacted in 2007 Wisconsin Act 227.

Annual costs to the Department are expected to increase by an estimated \$145,700 for salary, supplies, and related expenditures. This estimate is based upon the following expected costs associated with administering the new requirements:

1) Salary and fringe for 2.0 FTEs classified as Water Supply Specialists at an estimated cost of approximately \$136,200 [2,080 hours x \$32.73/hour (salary and fringe) x 2 FTE]. The FTEs will provide compliance assistance, develop information and education materials, review and accept registration submittals, review reporting information, prepare summary reports and analysis, investigate complaints and non-compliance with the rules, and maintain the data system.

2) Travel and supply costs of \$6,000 (\$3,000 x 2 FTE). The travel will include field investigations of complaints and non-compliance and travel associated with providing training and customer service to the regulated community.

3) Database/IT costs of \$3,500 (50 hours x \$70/hour) for an outside contractor to maintain the data system and online registration and reporting system.

##### One-Time Costs:

One time costs are estimated to be \$128,650. These costs are for developing a database and online system to accept registration and reporting information. This includes computer contractor costs of \$44,900 (1 IS contractor @ 350 hours x \$70/hour and 1 GIS contractor @ 300 hours x \$68/hour) and DNR staff time at a cost of \$83,750 (1,675 hours x \$50/hour average salary and fringe). DNR staff time

is required from a GIS Coordinator, IS Systems Developer, and Water Supply Specialist-Advanced.

#### Local government fiscal impact

The new requirements will impact local units of government that have or propose a water supply system that withdraws water at the level regulated by the new rule. The fiscal impact is expected to be minimal, since measuring and reporting water withdrawal information is already required by other Department programs. The additional reporting requirement of the new rule may be accomplished by the withdrawer and is expected to take, on average, less than 2 hours per year. Department staff are committed to eliminating duplicative reporting requirements with the development of new data systems.

#### Private sector fiscal impact

##### A. Existing Withdrawers

The fiscal impact on persons in the private sector that have existing withdrawals regulated by the new rule is expected to be minimal. Most existing withdrawers are already required to measure and report withdrawal information to the Department. The additional reporting requirement of the new rule may be accomplished by the withdrawer and is expected to take, on average, less than 2 hours per year. Department staff are committed to eliminating duplicative reporting requirements with the development of new data systems.

For existing withdrawers that are not currently required to measure and report their withdrawals, the fiscal impact is expected to be the same as for new withdrawers, as explained below.

##### B. New Withdrawers

The fiscal impact on persons in the private sector that are starting new withdrawals is not expected to be significant. Initial costs include withdrawal measurement and registration. The rule provides options for measuring withdrawals that vary in cost. There are options that may be completed by the withdrawer at little to no cost. Other options require the purchase of a meter and some options—for example, measuring flow through a weir, may require hiring a professional consultant. Standard meters range in cost from \$400 to \$5,000. Consultant costs vary and may range between \$500 and \$2,000.

Completing the initial registration is expected to take, on average, less than 2 hours and may be completed by the withdrawer. Withdrawers that are hiring consultants or contractors, such as well drillers, as part of their project may choose to have them also complete the registration.

Annual costs are expected to be minimal. Documenting the volumes of withdrawal by month and then reporting the information annually to the Department is expected to take, on average, less than 2 hours per year and may be completed by the withdrawer.

#### Summary for state fiscal effect

Increase costs. May be possible to absorb within agency's budget.

#### Types of local government units affected

Towns, Villages, Cities, Counties, Water Utilities, School Districts, WTCS Districts.

#### Fund sources affected

PRO.

#### Affected Ch. 20 appropriations

Section 20.370 (4) (cg), (ai), Stats.

**Long-range fiscal implications**

None are expected.

**Agency Contact Person**

Kristy Rogers, Water Supply Specialist  
Wis. Dept. of Natural Resources  
Bureau of Drinking Water & Groundwater  
Phone: (608) 266-9254  
Email: [Kristy.Rogers@wisconsin.gov](mailto:Kristy.Rogers@wisconsin.gov)

**Notice of Hearing  
Public Instruction  
CR 10-058**

NOTICE IS HEREBY GIVEN That pursuant to ss. 115.001 (11) and 227.11 (2) (a), Stats., the Department of Public Instruction will hold a public hearing as follows to consider proposed permanent rules amending Chapter PI 34, relating to school nurse certification. The hearing will be held as follows:

**Hearing Information**

**Date:** July 30, 2010  
**Time:** 1:00 – 3:30 p.m.  
**Location:** Madison  
GEF 3 Building  
125 South Webster Street  
Room 041

The hearing site is fully accessible to people with disabilities. If you require reasonable accommodation to access any meeting, please call Douglas White, Director, Student Services/Prevention and Wellness at [douglas.white@dpi.wi.gov](mailto:douglas.white@dpi.wi.gov), (608) 266-5198 or leave a message with the Teletypewriter (TTY) at (608) 267-2427 at least 10 days prior to the hearing date. Reasonable accommodation includes materials prepared in an alternative format, as provided under the Americans with Disabilities Act.

**Copies of Proposed Rule and Submittal of Written Comments**

The administrative rule and fiscal note are available on the internet at <http://dpi.wi.gov/pb/rulespg.html>. A copy of the proposed rule and the fiscal estimate also may be obtained by sending an email request to [lori.slauson@dpi.wi.gov](mailto:lori.slauson@dpi.wi.gov) or by writing to:

Lori Slauson, Administrative Rules and Federal Grants  
Coordinator  
Department of Public Instruction  
125 South Webster Street  
P.O. Box 7841  
Madison, WI 53707

Written comments on the proposed rules received by Ms. Slauson at the above mail or email address no later than **August 4, 2010**, will be given the same consideration as testimony presented at the hearing.

**Analysis Prepared by Department of Public Instruction****Statute interpreted**

Section 115.001 (11), Stats.

**Statutory authority**

Sections 115.001 (11) and 227.11 (2) (a), Stats.

**Explanation of agency authority**

Section 115.001 (11), Stats., requires the department to prescribe the qualifications for school nurses by rule.

Section 227.11 (2) (a), Stats., gives an agency rule-making authority to interpret the provisions of any statute enforced or administered by it, if the agency considers it necessary to effectuate the purpose of the statute.

**Related statute or rule**

N/A.

**Plain language analysis**

2009 Wisconsin Act 160 requires the department to prescribe the qualifications for school nurses by rule. To meet the requirements under the Act, the department is modifying Chapter PI 34, relating to Teacher Education Program Approval and Licenses, by creating a definition of "school nurse" under s. PI 34.01 (52m) and by modifying the school nurse licensing information under s. PI 34.31 (2).

The DPI school nurse license which requires completion of a school nurse practicum and an institutional endorsement, is still an optional license and is not required for a nurse to work in a school. In the past, a school nurse only had to hold a license as a registered nurse under the Department of Regulation and Licensing. The rule will require a school nurse to hold a bachelor's degree as well.

An individual employed by, or under contract with, a school board, a CESA, a CCDEB, or charter school as a school nurse on January 1, 2011, shall be considered a school nurse, regardless of whether or not that individual holds a bachelor's degree.

To coincide with the Act's effective date, the rule will become effective January 1, 2011.

**Comparison with federal regulations**

N/A.

**Comparison with rules in adjacent states****Iowa:**

Iowa does not have rules relating to the qualification of school nurses.

**Illinois and Minnesota:**

Illinois and Minnesota require a school nurse to be a registered professional nurse with a bachelor's degree.

**Michigan:**

Michigan requires that a professional school nurse be a registered professional nurse with a bachelor's degree. Michigan also offers a standard school nurse certificate requiring the applicant to be a registered nurse.

**Summary of factual data and analytical methodologies**

2009 Wisconsin Act 160 clarifies that a nurse may be employed by a school district without being "certified" by the department but rather "meets the qualifications prescribed by the department." The DPI school nurse license under s. PI 34.31 (2) requires the applicant to have, in part, a school nursing practicum and an institutional endorsement. This DPI license is optional and is not required for a nurse to work in a school. The Act removes the department's certification requirement and replaces it with the qualifications for school nurses prescribed by the department in rule. The qualifications specified in this rule will better reflect current practice without reducing the qualifications of the state's school nurses.

**Analysis and supporting documents used to determine effect on small business**

N/A.

**Anticipated costs incurred by private sector**

N/A.

**Small Business Impact**

The proposed rules are not anticipated to have a fiscal effect on small businesses as defined under s. 227.114 (1) (a), Stats.

**Fiscal Estimate**

The proposed rules require a nurse to hold a bachelor's degree in addition to a license issued by the Department of Regulation and Licensing in order to become a school nurse. The rules allow a nurse that was employed or under contract as a school nurse in a school board, CESA, CCDEB or charter school established under s. 118.40 (2r) Stats., on or before the effective date of the rule to be considered a school nurse.

Any fiscal effect to local school districts is indeterminate. A school nurse with a bachelor's degree may command more money for his or her salary. However, it is unknown how many school nurses will be hired under this new requirement as the grandfathering provision allows school nurses currently employed without a bachelor's degree to remain employed.

The proposed rules will make it easier for school districts to receive partial state aid reimbursement for school nurses under s. 115.88 (1m) (a), Stats., special education aid, because a school nurse must meet the qualifications in this rule rather than meet DPI certification requirements which require a practicum and an institutional endorsement in addition to a bachelor's degree. (Prior law required school nurses to be certified by DPI to receive special education aid.)

These proposed rules may result in a redistribution of state special education aid but will not change the total amount of aid distributed.

The proposed rules will have no significant economic impact on small businesses, as defined in s. 227.114 (1) (a), Stats.

**Agency Contact Person**

Douglas White, Director  
Student Services/Prevention and Wellness  
Phone: (608) 266-5198  
Email: [douglas.white@dpi.wi.gov](mailto:douglas.white@dpi.wi.gov)

**Notice of Hearing**  
**Transportation**  
**EmR1017**

NOTICE IS HEREBY GIVEN that pursuant to ss. 85.16 (1), 227.11, 343.02 and 344.66, Stats., the Department of Transportation will hold a public hearing to consider emergency rules to create section Trans 100.25, Wis. Adm. Code, relating to mandatory insurance exemptions.

**Hearing Information**

**Date:** June 24, 2010  
**Time:** 10:00 a.m.  
**Location:** Hill Farms State Transportation Bldg.  
Room 144-B  
4802 Sheboygan Avenue  
Madison, WI

This hearing is held in an accessible facility. If you have special needs or circumstances that may make communication or accessibility difficult at the hearing, please call Reggie Paradowski at (608) 264-7002 with specific information on your request at least 10 days before the date of the scheduled hearing. Accommodations such as interpreters, English translators, or materials in alternative format will, to the fullest extent possible, be made available upon a request from a person with a disability to accommodate your needs.

**Copies of Emergency Rule**

A copy of the rule may be obtained upon request from Reggie Paradowski, Section Chief, Division of Motor Vehicles, Driver Information Section, Room 301, P. O. Box 7983, Madison, WI 53707-7983. You may also contact Mr. Paradowski via e-mail: [reginald.paradowski@wisconsin.gov](mailto:reginald.paradowski@wisconsin.gov), or by calling (608) 264-7002 to obtain copies of the emergency rule. Copies will also be available at the hearing.

To view the emergency rule, you may visit the following website:

<http://www.dot.wisconsin.gov/library/research/law/rulenotices.htm>

**Analysis Prepared by the Department of Transportation****Statutes interpreted**

Sections 344.37 and 344.61 to 344.67, Stats.

**Statutory authority**

Sections 85.16 (1), 227.11, 343.02 and 344.66, Stats.

**Explanation of agency authority**

The Department is charged with administering the safety responsibility, damage judgment and mandatory insurance laws contained in Chapter 344, Stats. This rule making deals with exceptions to the mandatory insurance provisions of Subchapter VI to Chapter 344, Stats.

**Related statute or rule**

Section 344.01 (2) (d), Stats.

**Plain language analysis**

The purpose of this emergency rule making is to set interim standards for filings made in lieu of insurance with the Department pursuant to s. 344.63, Stats., as created by 2009 Wis. Act 28.

One deposit accepted in lieu of insurance under s. 344.63, Stats., is \$60,000 cash. The \$60,000 amount is set in the statutes and is far less than the minimum insurance required under the law. U.S. currency, cashiers and certified checks, money orders, bank checks, and attorney trust fund checks may be accepted as a cash deposit by the Department. In addition to depositing cash, the depositor must prove no judgments are outstanding against the depositor in the depositor's county of residence. s. 344.37(1), Stats.

A second deposit accepted by the Department is a bond. There are two types of bonds. First, a bond issued by a surety company for the minimum liability coverage amounts required by law (currently \$15,000 property, \$50,000 personal injury to one person, \$100,000 personal injury of multiple persons). The bond will need to be in a form approved by the Department. The other form of bond permitted under the statutes is a judicial bond. If requested, judges will have to approve or disapprove of applications to create a bond secured by \$330,000 in real estate (twice the amount of the bond).

The third mechanism available under the statute is posting securities. Securities are the most problematic from an

administrative and enforcement standpoint. The value of securities can vary greatly over time. The Department cannot and will not know the value of securities after deposit. The burden will be on the depositor to be able to prove the value of any securities deposited with the Department to police when asked. Deposits of securities must be accompanied by an opinion of counsel verifying that the securities meet the statutory requirements for use in lieu of insurance. The depositor will need to provide an affidavit as to the value of the securities at the time of deposit and will need to pledge the securities in a manner that permits the Department to sell them in order to use the proceeds to satisfy damages resulting from accidents. The share or bond certificates will need to be physically deposited with the Department.

#### ***Comparison with federal regulations***

There are no existing or proposed federal regulations on this issue.

#### ***Comparison with rules in adjacent states***

##### ***Michigan:***

All motorists must carry liability coverage also referred to as "Michigan no fault insurance." Insurance certificate must be kept in vehicle at all times when operating vehicle.

##### ***Minnesota:***

Drivers must provide proof of insurance upon request by a peace officer.

##### ***Illinois:***

All motor vehicles operated in Illinois must be covered by liability insurance. Vehicle owners are required to provide insurance information at the time of registration renewal.

##### ***Iowa:***

Motorists must prove financial responsibility if involved in an accident or stopped by law enforcement.

#### ***Summary of factual data and analytical methodologies***

Section 344.63, Stats., as created by 2009 Wis. Act 28, provides exceptions to the requirement of having a motor vehicle liability insurance policy to operate a motor vehicle on Wisconsin highways. The exceptions defined in the statutes are nearly identical to those provided for under Wisconsin's Safety Responsibility Law. The administration of the exceptions, as defined in this emergency rule, are purposely drafted to closely mirror the procedures currently in place under the Safety Responsibility Law.

#### ***Analysis and supporting documentation used to determine effect on small businesses***

This regulatory change has no impact on small business. The Department does not anticipate any fiscal effect upon small businesses from this codification.

#### **Small Business Impact**

This regulatory change has no impact on small business. The Department does not anticipate any fiscal effect upon small businesses from this codification. The Department's Regulatory Review Coordinator may be contacted by e-mail at [ralph.sanders@dot.state.wi.us](mailto:ralph.sanders@dot.state.wi.us), or by calling (414) 438-4585.

#### **Fiscal Estimate**

The Department does not anticipate any fiscal effect from this codification. The statutes already impose the requirement that the Department accept these filings. This rule making

merely creates an efficient framework for performing that required work.

#### ***Anticipated costs incurred by private sector***

The Department estimates that there will be no fiscal impact on private sector revenues or liabilities.

#### **Text of Emergency Rule**

SECTION 1. Trans 100.25 is created to read:

**Trans 100.25 Mandatory insurance.** (1) EXCEPTIONS. The purpose of this section is to implement and administer the provisions of Subch. VI of Chapter 344, Stats., relating to mandatory insurance requirements and exceptions to the requirement of having automobile insurance in Wisconsin.

(2) DEPOSITS IN LIEU OF MANDATORY INSURANCE. A person making a deposit with the department under s. 344.63, Stats., shall file a complete application with the department containing all required information. In addition, the person shall provide the additional materials or information and deposit in the form required in subs. (3) to (5).

(3) CASH DEPOSITS. (a) For purposes of s. 344.63 (1) (d), Stats., any of the following shall be considered a deposit of cash with the department:

1. United States currency.
2. A cashier's check or draft.
3. A money order.
4. A financial institution check or draft.
5. A certified personal or business check or draft.
6. An attorney trust account check or draft.

(b) Any person attempting to file cash in lieu of maintaining automobile liability insurance with the department pursuant to s. 344.63 (1) (d), Stats., shall file, with the deposit, a certification from the clerk of courts in the county where the depositor resides dated no later than 15 calendar days prior to the date the deposit is received by the department, that indicates the clerk has searched the official records of the county and that no records of unsatisfied judgments of any character against the depositor exist in that county.

Note: ss. 344.63 (1) (d) and 344.37 (1), Stats.

(4) BOND. (a) *Surety bonds.* Any person attempting to file a surety company bond in lieu of maintaining automobile liability insurance with the department pursuant to s. 344.63(1)(a), shall file a bond of a surety company duly authorized to transact business within this state that is conditioned for the payment of the amounts specified in s. 344.01(2)(d), Stats. The bond may not be cancelable except after 10 days written notice to the secretary. The bond shall be in the form specified by the department.

(b) *Judicial bonds.* Any person attempting to file a judicially authorized bond in lieu of maintaining automobile liability insurance with the department pursuant to s. 344.63 (1) (a), Stats., shall file a bond with at least 2 individual sureties each owning real estate within this state and together having equities equal in value to at least twice the amount of the bond, which real estate shall be scheduled in the bond approved by a judge of a Wisconsin circuit or appellate court. The bond must be conditioned for the payment of the amounts specified in s. 344.01(2)(d), Stats., and may not be cancelable except after 10 days written notice to the secretary.

Note: ss. 344.63 (1) (a) and 344.36 (1), Stats.

(5) SECURITIES. Any person attempting to file securities with the department pursuant to s. 344.63(1)(d), Stats., shall file all of the following:

1. A certification from the clerk of courts in the county where the depositor resides dated no later than 15 calendar days prior to the date the deposit is received by the department, that indicates the clerk has searched the official records of the county and that no records of unsatisfied judgments of any character against the depositor exist in that county.

2. An opinion of counsel, for the benefit of the department and persons intended to be protected by the filing described in s. 344.37(2), Stats., that the securities to be filed by the depositor are securities that may legally be purchased by savings banks or for trust funds of in this state. The opinion shall identify the state or federal statute or regulation permitting the purchase of each deposited security.

3. An affidavit that the securities have a fair market value in excess of \$60,000.

4. A pledge of the securities to the department in the form required by the department pledging the securities for the payment of damages resulting from the ownership, maintenance, use or operation of a motor vehicle after such deposit was made, including damages for care and for loss of services because of bodily injury to or death of any person and damages because of injury to or destruction of property and the consequent loss of use thereof. The pledge shall assign all rights to sell or redeem the securities or any coupons associated with the securities to the department in trust for the purposes set forth in this subdivision. The pledge shall exempt the department from any liability for selling or not selling the securities at any time, and shall specify that the depositor relinquishes all rights to sell the securities or to demand their sale by the department. The pledge shall remain

effective until the earlier of the return of the deposit pursuant to s. 344.63(3), Stats., or of the sale of the securities, whether made so that the proceeds of sale can be applied to the payment of judgments and assignments relating to motor vehicle accidents, following the procedure described in s. 344.20 (2), Stats., or made for any other reason.

5. The share certificates, bonds, including all bond coupons, if any, or other certificate.

Note: ss. 344.63 (1) (d) and 344.37 (1), Stats.

#### **Finding of Emergency**

The Department of Transportation finds that an emergency exists and that the attached rule is necessary for the immediate preservation of the public health and welfare. A statement of the facts constituting the emergency is the requirements of the mandatory insurance laws in Chapter 344, Stats., as created by 2009 Wis. Act 28, contain exceptions to furnishing proof of a motor vehicle liability insurance policy. This emergency rule defines the administration of those exceptions. These mandatory insurance requirements, and the exceptions, are effective June 1, 2010, thereby necessitating an emergency rule being put into place until the effective date of the permanent rule. Clarification of the mechanism to be used to qualify for an exception under the new statute will be useful to persons wishing to file for an exception. Persons whose religious beliefs preclude them from buying insurance will benefit from this rule making.

#### **Agency Contact Person**

Reginald Paradowski, Section Chief  
Division of Motor Vehicles  
Driver Information Section, Room 301  
P. O. Box 7983, Madison, WI 53707-7983  
Phone: (608) 264-7002  
Email: reginald.paradowski@wisconsin.gov

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## Submittal of Proposed Rules to the Legislature

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

**Administration**  
**CR 08-025**

A rule-making order to revise Chapter Adm 21, relating to advertising, bidding, and awarding of construction contracts.

**Health Services**  
*Medical Assistance, Chs. DHS 101—*  
*Health, Chs. DHS 110—*  
**CR 09-107**

A rule-making order to revise Chapters DHS 105, 106, and 133, relating to personal care agencies and providers.

**Health Services**  
*Health, Chs. DHS 110—*  
**CR 10-037**

A rule-making order to revise Chapter DHS 137, relating to anatomical gifts and the Wisconsin donor registry.

**Justice Assistance**  
**CR 10-010**

A rule-making order to create Chapter OJA 1, relating to the collection and analysis of motor vehicle traffic stop information.

**Natural Resources**  
*Environmental Protection — Air Pollution Control,*  
*Chs. NR 400—*  
**CR 10-012**

(DNR # AM-27-09)

A rule-making order to revise s. NR 400.02 (162), relating to the definition of volatile organic compound.

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## Public Notices

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### Department of Health Services

#### State of Wisconsin Medicaid Nursing Facility Payment Plan: FY 10–11

#### (Medical Assistance Reimbursement of Nursing Homes)

The State of Wisconsin reimburses Medicaid-certified nursing facilities for long-term care and health care services provided to eligible persons under the authority of Title XIX of the Federal Social Security Act and ss. 49.43 to 49.47, Wisconsin Statutes. This program, administered by the State's Department of Health Services, is called Medical Assistance (MA) or Medicaid. Federal Statutes and regulations require that a state plan be developed that provides the methods and standards for setting payment rates for nursing facility services covered by the payment system. A plan that describes the nursing home reimbursement system for Wisconsin is now in effect as approved by the Centers for Medicare and Medicaid Services (CMS).

The Department is proposing changes in the methods of payment to nursing homes and, therefore, in the plan describing the nursing home reimbursement system. The changes are effective July 1, 2010.

The proposed changes would update the payment system and make various payment-related policy changes. Some of the changes are necessary to implement various budget policies in the Wisconsin 2009–2011 Biennial Budget. Some of the changes are technical in nature; some clarify various payment plan provisions.

The estimated increase in annual aggregate expenditures attributable to these changes for nursing homes serving MA residents is approximately \$ 777,774,199 all funds, (\$ 508,634,090 FFP), excluding patient liability.

The proposed changes are being implemented to comply with Wisconsin Statutes governing Medicaid payment systems, particularly s. 49.45 (6m), Wis. Stats.

The proposed changes are as follows:

1. Modify the methodology to adjust the reimbursement for nursing homes within the parameters of the 2009–2011 Biennial Budget Bill and to disburse the \$ 777,774,199 allotted in the bills to a rate increase of approximately 2% for nursing homes and 2% for ICF-MRs. These modifications will include adjustments to the maximums, per diems, and other payment parameters in Sections 5.400, 5.500, 5.700, 5.800 and 5.900, the inflation and deflation factors in Section 5.300, and targets in Sections 3.000 and 5.000.
2. Modify references to previous years for descriptive reasons where necessary.
3. Modify the labor factors listed in Section 5.410.
4. Change the dates of the definitions of base cost reporting period, common period, and rate payment year in Sections 1.302, 1.303, and 1.314 to reflect the 2010–2011 periods.
5. Modify contact names and addresses.
6. Revise Section 3.775 to conform with current practice.
7. Modify Section 3.655 to clarify the Department's approval procedure for innovative projects.
8. Modify Section 4.920 to stipulate that only total replacement facilities that were approved by the Department in State Fiscal Year 2008–2009 are eligible for a higher URC maximum.
9. Modify the parameters for bed hold in Section 1.510 by eliminating language that provided for a fixed number of vacant beds to be used in calculating eligibility for bed hold.
10. Modify Section 3.122, 5.422 and related sections to allow for an averaging of the Case Mix Index changes for the four "picture dates" over the rate year.

11. Modify Section 5.422 and related sections to allow for semi-annual rate changes based on new Case Mix Indices instead of quarterly changes.
12. Modify Section 3.520 and related sections to exclude "wound type" therapy from the property or other portions of the rate.
13. Change reference to "T2" to "T1" in Sections 3.532 and 5.810.
14. Change the reference to "ISN" to an acuity measure in Section 4.694 relating to special payments for residents with AIDS.
15. Modify Section 3.710 to reflect current practice.
16. Change Section 6.320 to clarify transportation billing is done on a claim form separate from the rate claim form.

### **Copies of the Proposed Changes**

Copies of the available proposed changes and proposed rates may be obtained free of charge by writing to:

Division of Long Term Care  
Attention: Nursing Home Medicaid Payment Plan  
P.O. Box 7851  
Madison, WI 53703-7851

or by faxing James Cobb at 608-264-7720.

### **Written Comments/Meetings**

Written comments on the proposed changes may be sent to the Division of Long Term Care, at the above address. The comments will be available for public review between the hours of 7:45 a.m. and 4:30 p.m. daily in Room B274 of the State Office Building, 1 West Wilson Street, Madison, Wisconsin. Revisions may be made in the proposed changes based on comments received. There will also be public meetings to seek input on the proposed plan amendment. If you would like to be sent a public meeting notice, please write to the above address. Revisions may also be made in the proposed changes based on comments received at these forums.

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