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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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### Children and Families (3)

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

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

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

Section 14m (b) of 2009 Wisconsin Act 335 provides that the department is not required to provide evidence that promulgating a rule under s. 48.625 (1g), Stats., as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency.

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

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

**2. EmR1050** — Rule adopted to repeal **Chapter DCF 38** and revise **Chapter DCF 56**, relating to foster 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:

In the Child and Family Services Review of Wisconsin's child welfare system this past year, the federal Administration for Children and Families found that Wisconsin is not operating in substantial conformity with a number of federal requirements. In response to this review, the department has submitted a program improvement plan that commits the department to complete implementation of the levels of care system and the child assessment tool throughout the first quarter of 2011. Implementation must begin immediately to meet this deadline and subsequent dependent deadlines in the remaining 2 years of the program improvement plan.

**Publication Date:** January 1, 2011  
**Effective Dates:** January 1, 2011 through May 30, 2011  
**Extension Through:** July 29, 2011  
**Hearing Date:** February 8, 15, 28, 2011

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

#### **Finding of Emergency**

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

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

**Publication Date:** April 18, 2011  
**Effective Dates:** April 18, 2011 through September 16, 2011  
**Hearing Date:** May 18, 2011

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### Commerce

#### *Financial Resources for Businesses and Communities, Chs. Comm 100–149*

**EmR1041** — Rule adopted creating **Chapter Comm 103**, relating to certification of disabled-veteran-owned businesses, and affecting small businesses.



### Exemption From Finding of Emergency

The Legislature, by SECTION 101 (1) in 2009 Wisconsin Act 299, 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:** November 14, 2010  
**Effective Dates:** November 14, 2010 through April 12, 2011  
**Extension Through:** August 10, 2011  
**Hearing Date:** February 15, 2011

### Government Accountability Board

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

#### Finding of Emergency

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

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

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

In the lawsuit in the U.S. District Court for the Western District of Wisconsin, the parties previously executed a joint stipulation asking the Court to permanently enjoin application and enforcement of the second sentence of s. GAB 1.28 (3) (b). On October 13, 2010, the Court issued an Opinion and Order denying that injunction request. In denying the injunction, the Court noted that “G.A.B. has within its own power the ability to refrain from enforcing, or removing

altogether, the offending sentence from a regulation G.A.B. itself created” and emphasized that “removing the language — for example, by G.A.B. issuing an emergency rule — would be far more ‘simple and expeditious’ than asking a federal court to permanently enjoin enforcement of the offending regulation.” *Wisconsin Club for Growth, Inc. v. Myse*, No. 10–CV–427, slip op. at 2 (W.D. Wis. Oct. 13, 2010). The Court further noted that staying the case would give the Board time to resolve some or all of the pending issues through further rulemaking. *Id.*, slip op. at 14.

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

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

**Publication Date:** January 7, 2011  
**Effective Dates:** January 7, 2011 through June 5, 2011  
**Extension Through:** August 4, 2011  
**Hearing Date:** February 16, 2011

### Insurance (2)

**1. EmR1101** — Rule adopted to revise section Ins 6.07 (4) and (9), relating to readability and electronic access to insurance policies and affecting small business.

#### Finding of Emergency

The Commissioner of Insurance finds that an emergency exists and that an emergency rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. Facts constituting the emergency are as follows: the cost of implementing the Flesch scores and electronic access to policies significantly exceeded anticipated costs for the insurance industry; a review of state resources indicates insufficient staff to timely review the volume of health insurance policy filings resulting from the flesch score requirement; and it is anticipated the federal department of Health and Human Services (“HHS”) will use National Association of Insurance Commissioners recommendations for the development of standards for a uniform summary of benefits and coverage explanation for all potential policyholders and enrollees. Repealing these provisions now before costly system overhauls will save both the industry and the state significant resources. Further, although it was anticipated that the National Association of Insurance Commissioners was planning to implement a national readability standard, such movement has stalled negating the amendment to prior Flesch readability scores.

The changes contained in this emergency rule will restore prior standards and ease financial constraints for the insurance industry.



**Publication Date:** February 9, 2011  
**Effective Dates:** February 9, 2011 through July 8, 2011  
**Hearing Date:** May 3, 2011

**2. EmR1108** — Rule to amend sections Ins 17.01 (3) and 17.28 (3) (c), and to repeal and recreate section Ins 17.28 (6), Wis. Adm. Code, relating to annual injured patients and families compensation fund fees, medical mediation panel fees, and provider classifications for the fiscal year beginning July 1, 2011.

#### Finding of Emergency

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

These changes must be in place with an effective date of July 1, 2011 for the new fiscal year assessments. The fiscal year fees were established by the Board of Governors at meeting on February 16, 2011. Although the permanent version is currently under review by the Legislature, it cannot be published in time to meet the necessary effective date.

**Publication Date:** June 10, 2011  
**Effective Dates:** June 10, 2011 through November 6, 2011

### Natural Resources (5)

#### *Fish, Game, etc., Chs. NR 1—*

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

#### Exemption From Finding of Emergency

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

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

**2. EmR1039** (DNR # IS-49-10(E)) — Rule adopted to create sections NR 40.02 (7g), (7r), (25m), (28m) and (46m), 40.04 (3m) and 40.07 (8) relating to the identification, classification and control of invasive bat species.

#### Exemption From Finding of Emergency

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

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

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

#### Exemption From Finding of Emergency

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

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

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

#### Finding of Emergency

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

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

**Publication Date:** May 23, 2011 (corrected)  
**Effective Dates:** May 23, 2011 through October 19, 2011 (corrected)  
**Hearing Date:** June 27, 2011

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

#### Finding of Emergency

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to protect the public welfare. The rule is necessary in order to foster participation by hunters and landowners so they will continue to hunt and cooperate in CWD control and deer herd management. This rule proposal balances pressing social concerns about the quality of the deer hunt with the need for effective herd control measures such as additional antlerless deer harvest in management units that are more than 20% over population goals or simply over population goals in units that are part of the CWD Management Zone. This rule will increase harvest of bucks in the CWD zone which have a higher prevalence of CWD and, because of their greater dispersal distances, have a higher likelihood of spreading CWD. However, the rule retains a herd control tool which requires that antlerless deer be harvested before additional bucks (beyond the initial one) may be taken. The federal government and state legislature have delegated to the appropriate agencies rule-making authority to control and regulate hunting of wild animals. The State of Wisconsin must provide publications describing the regulations for deer hunting to more than 630,000 deer hunters prior to the start of the season. These regulations must be approved prior to printing nearly 1 million copies of the regulations publication.

**Publication Date:** To be determined  
**Effective Dates:** September 17, 2011 through February 13, 2012

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### Natural Resources

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

**EmR1046** (DNR # AM-48-10(E)) — The Wisconsin Natural Resources Board proposes an emergency order to amend section NR 407.02 (4) (b) (intro.), and Table 3 in 407.05 (5) and to create sections NR 400.02 (74m), 400.03 (3) (om), and (4) (go) and (ki), 405.02 (28m), 405.07 (9), 407.02 (8m) and 407.075, relating to major source permitting thresholds for sources of greenhouse gas emissions and affecting small business.

#### Finding of Emergency

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to protect the public welfare. Preservation of the public welfare necessitates putting the forgoing rules into effect prior to the time that it would take if the Department complied with normal procedures.

On April 1, 2010, the U.S. EPA promulgated the first emission standard for gases contributing to climate change, i.e., greenhouse gases or GHG, which will become effective on January 2, 2011. While these standards target automobile emissions, under the Clean Air Act, this action will unintentionally subject stationary sources across the country to complex prevention of significant deterioration (PSD) and Title V permitting and emission control requirements. U.S. EPA attempted to mitigate this unintended effect by promulgating additional rules, which became effective on June 3, 2010, limiting applicability of the permitting requirements. However, Wisconsin sources will not be affected by the new U.S. EPA rules since existing state statute and administrative code do not contain the same applicability limiting provisions. State rules consistent with those at the federal level must be in effect on January 2, 2011 in order to provide the relief U.S. EPA intended for Wisconsin sources. Without these proposed emergency rules, many sources, including municipal landfills, hospitals, asphalt plants, wastewater treatment plants, small wood fired boilers and agricultural digesters, will be considered major emissions sources of GHG, and therefore subject to the permit and emission control requirements for GHG. These permit and control requirements were never intended or designed to address the type or size of sources that could now be affected. Without the proposed changes, the existing rules would have the potential to overwhelm DNR permitting staff, divert resources away from significant environmental issues, and delay issuance of construction permits for critical projects for expanding businesses.

Therefore, the Department finds that the proposed emergency rules are necessary and appropriate for the preservation of the public welfare.

**Publication Date:** December 15, 2010  
**Effective Dates:** December 15, 2010 through May 15, 2011  
**Extension Through:** July 13, 2011  
**Hearing Date:** January 21, 2011

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### Regulation and Licensing (3)

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

#### Exemption From Finding of Emergency

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

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

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

#### Exemption From Finding of Emergency

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

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

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

#### Finding of Emergency

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

**Publication Date:** March 16, 2011  
**Effective Dates:** March 16, 2011 through  
 August 12, 2011  
**Hearing Date:** May 3, 2011

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### Regulation and Licensing —

#### Barbering and Cosmetology Examining Board

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

#### Finding of Emergency

The rule as currently promulgated fails to adequately protect the public to the extent that several provisions are

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

**Publication Date:** December 23, 2010  
**Effective Dates:** December 23, 2010 through  
 May 21, 2011  
**Extension Through:** July 20, 2011  
**Hearing Date:** April 4, 2011

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### Regulation and Licensing — Veterinary Examining Board

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

#### Finding of Emergency

As currently written, the veterinary examining board rules regarding licensure candidates' deadlines for submission of applications to take the North American Veterinary Licensing Examination (NAVLE) do not align with the deadlines established by the National Board of Veterinary Medical Examiners (NBVME). The rules thus also conflict with the deadlines defined in the board's NBVME NAVLE agreement. The rules state that a candidate shall file a completed NAVLE application with the board at least 60 days prior to the date of the scheduled examination. However, NAVLE's deadlines require submission of applications approximately 115 days ahead of the examination date. This inconsistency between the rules and NAVLE's deadlines will likely cause significant confusion for licensure candidates. At worst, it could preclude a candidate from taking the particular NAVLE he or she applies for due to missing the application deadline. In addition, recently-passed legislation now allows foreign veterinary graduates to show evidence of successful completion of the Program for the Assessment of Veterinary Education Equivalence (PAVE) as an alternative to the American Veterinary Medical Association (AMVA) Educational Commission for Foreign Veterinary Graduates Certification (ECFVGC) program. The board adopts this emergency rule effecting the necessary changes pending the promulgation of a similar permanent rule.

**Publication Date:** March 28, 2011  
**Effective Dates:** March 28, 2011 through  
 August 24, 2011  
**Hearing Date:** May 25, 2011

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### Revenue (2)

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

#### Finding of Emergency

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

The emergency rule is to reflect changes in Wisconsin's tax laws due to the creation of income and franchise tax credits and deductions for businesses that relocate to Wisconsin.

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

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

**Publication Date:** April 7, 2011  
**Effective Dates:** April 7, 2011 through  
September 3, 2011  
**Hearing Date:** June 14, 2011

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

### **Finding of Emergency**

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

The emergency rule is to reflect changes in Wisconsin's tax laws due to the creation of income and franchise tax deductions for job creation.

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

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

**Publication Date:** April 7, 2011  
**Effective Dates:** April 7, 2011 through  
September 3, 2011  
**Hearing Date:** June 14, 2011



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## Scope Statements

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### Commerce

*Fire Prevention, Ch. Comm 14*

*Gas Systems, Ch. Comm 40*

*Anhydrous Ammonia, Ch. Comm 43*

*Mechanical Refrigeration, Ch. Comm 45*

*Wisconsin Commercial Building Code, Chs. Comm 60–66*

#### Subject

Revises Chapters Comm 14, 40, 43, 45, 61 to 66, relating to Wisconsin Commercial Building Code.

#### Objective of the Rule

The primary objective of this rulemaking project is to evaluate and update provisions of the *Wisconsin Commercial Building Code*, chs. Comm 61–66. This rulemaking update is to keep the codes consistent with dynamic, contemporary regional and national construction and fire prevention practices and standards and legislative initiatives enacted during the 2009–2010 session relating to public buildings and places of employment. The update is also necessary for us to meet the timeliness requirements for the energy conservation provisions of the *Wisconsin Commercial Building Code* as spelled out in Section 101.027 (3) (b) 1 Stats.

In addition, the project will evaluate other administrative codes of the department that may be affected by the update of the *Wisconsin Commercial Building Code*, including at least chapters Comm 14, 40, 43 and 45 relating to fire prevention, gas systems, anhydrous ammonia and mechanical refrigeration. This evaluation may result in changes and the update of rules under these chapters. The objectives of this rule project may be incorporated to one or more rule packages.

#### Policy Analysis

The *Wisconsin Commercial Building Code* contains standards for the design, construction, maintenance, use and inspection of public buildings and places of employment. The most recent code updates are based upon the 2009 editions of model codes developed by the International Code Council. The *Wisconsin Commercial Building Code* adopts and references the International Building Code, IBC, the International Energy Conservation Code, IECC, the International Mechanical Code, IMC, the International Fuel Gas Code, IFGC, and the International Existing Buildings Code, IEBC.

The primary purpose of the codes under consideration is to protect public health, safety, and welfare. Periodic review and update of the Codes is necessary to ensure that the Codes still achieve that purpose. In addition, the review and update allows the opportunity to recognize and stay current with new construction products and practices. The review and update process will include evaluation of the 2012 editions of the above-mentioned national model codes for incorporation.

The primary alternative would be to delay the rule-review process. This delay would reduce the public benefits that would otherwise occur by beginning this review now. Delaying also has the potential to violate the timeliness requirements associated with the energy conservation measures spelled out in Section 101.027(3) (b) 1 Stats.

#### Statutory Authority

Sections 101.02 (1) and (15), 101.027, 101.10, 101.13, 101.14 (1), (2) and (4) (a), 101.16, 101.17, 101.132, and 101.973 (1) and (2), Stats.

#### Comparison with Federal Regulations

##### *General Building Code*

- Code of Federal Regulations – An Internet-based search for “federal commercial building code” and “building code regulations” in the Code of Federal Regulations (CFR) did not identify any federal regulations pertaining to these topics.
- Federal Register – An Internet-based search for “federal commercial building code” and “building code regulations” in the 2010 to 2011 issues of the Federal Register did not identify any proposed federal regulations pertaining to these topics.

##### *Energy Conservation Requirements*

- Code of Federal Regulations – The portion of the CFR relating to energy conservation for commercial buildings and facilities is found under 10 CFR 420–State Energy Program. The purpose of this regulation is to promote the conservation of energy, to reduce the rate of growth of energy demand and to reduce dependence on imported oil through the development and implementation of comprehensive state energy programs. This regulation initially required that each state’s energy conservation rules for new buildings be no less stringent than the provisions of the 2004 edition of ASHRAE Standard 90.1, Energy Standard for Buildings Except Low-Rise Residential Buildings.
- Federal Register – According to the Federal Register dated September 3, 2010, “The Department of Energy (DOE) has preliminarily determined that the 2007 edition of the Energy Standard for Buildings, Except Low-Rise Residential Buildings, American National Standards Institute (ANSI)/American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) Illuminating Engineering Society of North America (IESNA) Standard 90.1–2007, (Standard 90.1–2007) would achieve greater energy efficiency in buildings subject to the code, than the 2004 edition (Standard 90.1–2004 or the 2004 edition). Also, DOE has preliminarily determined that the quantitative analysis of the energy consumption of buildings built to Standard 90.1–2007, as compared with buildings built to Standard 90.1–2004, indicates national source energy savings of approximately 3.7 percent of commercial building energy consumption. Additionally, DOE has preliminarily determined site energy savings are estimated to be approximately 4.4 percent. If these determinations are finalized, States would be required to certify that they have reviewed the provisions of their commercial building code regarding energy efficiency, and as necessary, updated their code to meet or exceed Standard 90.1–2007. Additionally, this Notice provides guidance to States on

Certifications, and Requests for Extensions of Deadlines for Certification Statements, should the preliminary determination be adopted as final.”

#### *Accessibility Requirements*

- Code of Federal Regulations – The portions of the CFR relating to accessibility in commercial buildings and facilities include the following:
  1. 28 CFR 35 – Nondiscrimination on the Basis of Disability in State and Local Government Services.
  2. 28 CFR 36 – Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities.
  3. 24 CFR 40 – Accessibility standards for design, construction, and alteration of publicly owned residential structures.
  4. 24 CFR 41 – Policies and procedures for the enforcement of standards and requirements for accessibility by the physically handicapped.

Both 28 CFR 35 and 28 CFR 36 require public buildings and commercial facilities – including government-owned and – operated buildings and facilities – be designed, constructed and altered in compliance with the accessibility construction regulations specified under the federal Americans with Disabilities Act Accessibility Guidelines (ADAAG). The purpose of 24 CFR 40 and 24 CFR 41 is to provide technical guidance on the design and construction of dwelling units as required by the federal Fair Housing Amendments Act of 1988.

The intent of the IBC and the amendments included under Chapter Comm 62 is to ensure the Wisconsin construction requirements related to accessibility are equivalent to these applicable federal laws and regulations.

- Federal Register – Proposed federal regulations and amendments to established federal regulations for accessibility are found in the following issues of the Federal Register:
  1. October 24, 2008 – Design and Construction Requirements; Compliance with ANSI A117.1 (2003) Standards.
  2. August 5, 2005 – ADAAG; Corrections.
  3. December 7, 2009 – Nondiscrimination on the Basis of Disability in Public Accommodations and Commercial Facilities.
  4. March 23, 2007 – ADAAG Supplementary Material.
  5. November 23, 2005 – ADAAG Public Rights-of-Way.
  6. April 17, 2006 – Multifamily Building Conformance with the Fair Housing Accessibility Guidelines: Improving the Methodology.

The ICC is actively monitoring the proposed changes to the federal standards affecting accessibility and will include these changes in future editions of the IBC and the corresponding ICC/ANSI A117.1–Accessible and Usable Buildings and Facilities Standard.

#### **Comparison with Rules in Adjacent States**

An Internet-based search of the four adjacent states found the following regulations that include similar requirements relating to public buildings and places of employment:

- *Illinois* – Illinois does not administer a statewide building code with the exception of the 2009 International Energy Conservation Code, as of May 2011. There is no information to indicate their intentions associated with the 2012 edition.
- *Iowa* – The Iowa Department of Public Safety administers the Iowa State Building Code. Effective January 1, 2010, the department adopted the 2009 editions of the IBC, IMC, IEBC and IECC with Iowa amendments. The proposed State Building Code also adopted by reference the National Electrical Code, and the State Plumbing Code, adopted by the Iowa Department of Public Health. There is no information to indicate their intentions associated with the 2012 editions.
- *Michigan* – The Michigan Department of Licensing and Regulatory Affairs, Bureau of Construction Codes administers the Michigan construction codes. The 2009 Michigan Building/Residential, Rehabilitation and Energy Code Rules were filed with the Secretary of State on November 8, 2010, and become effective March 9, 2011. These codes include (all 2009 Michigan) the Building Code, Mechanical Code, Plumbing Code, Residential Code, Rehabilitation Code, Uniform Energy Code, as well as the 2008 National Electrical Code with 2008 Michigan Part 8. There is no information to indicate their intentions associated with the 2012 editions.
- *Minnesota* – The Minnesota Department of Labor and Industry Construction Codes and Licensing Division (CCLD) oversees construction-related activities in the areas of licensing, plan review, education, code development, enforcement and inspection in Minnesota. Minnesota State Building Code, which adopted the 2006 editions of the IBC, IFGC and IMC. They chose to bypass the 2009 editions of the International Residential Code (IRC), International Building Code (IBC), and International Fire Code (IFC). Minnesota will strive to have their advisory committees and the state fire chief’s code committee ready to review the 2012 editions of these codes.

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

The Department estimates approximately 2000 hours will be needed to perform the review and develop any needed rule changes. This time includes drafting the changes – in consultation with the seven specialty advisory councils and the two overarching advisory councils, the Commercial Building Code Council and the Multifamily Dwelling Code Council – and processing the changes through public hearings, legislative review, and adoption. The Department will assign existing staff to perform the review and develop the rule changes, and no other resources will be needed.

### **Regulation and Licensing — Board of Nursing**

#### **Subject**

This scope statement relates to the amendment of the current administrative rule N 3.03 relating to nurse licensure through the endorsement process. Under the existing rule, nurses who are licensed in another state or jurisdiction may be eligible for licensure on the basis of the credential which they hold in that state.



**Objective of the Rule**

Currently, a person licensed as a nurse in another state, territory, province or other jurisdiction is prohibited from obtaining licensure as a registered nurse or licensed practical nurse through the endorsement process if there has been disciplinary action against their nurse license. The Wisconsin Board of Nursing seeks to exercise its authority to accept or deny applications for licensure through the endorsement process by allowing the board to consider the circumstances of the discipline and determine if licensure is warranted.

**Policy Analysis**

Promulgation of such a rule would facilitate the ability of nurses to obtain licensure to work in our state and increase the available workforce, as well as promote efficiency and fairness. The Wisconsin rule is inconsistent with the rules in the (4) four border states which allow the exercise of discretion when applying for licensure thru endorsement. The proposed rule change fosters continued mobility of the nurse

workforce and benefits employers by increasing access to qualified nurses.

**Statutory Authority**

Sections 15.08 (5) (b), 15.08 (6); 227.11 (2); 441.01, Stats.

**Comparison with Federal Regulations**

This area is not regulated by federal law.

**Entities Affected by the Rule**

This rule will affect nurse applicants seeking licensure in Wisconsin, employers and other health care facilities that hire nurses and the Wisconsin Department of Regulation and Licensing.

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

(50 hours). This estimate is based on the time spent by staff to prepare documents, coordinate public hearings, prepare fiscal estimates and conduct other work related to the promulgation of the administrative rules.

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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.*

## **Agriculture, Trade and Consumer Protection CR 11–037**

(DATCP # 09–R–20)

On June 3, 2011, the Department of Agriculture, Trade and Consumer Protection submitted proposed rules to the Legislative Council Rules Clearinghouse.

### **Analysis**

This proposed rule-making order revises Chapter ATCP 160, relating to county and district fairs.

### **Agency Procedure for Promulgation**

The department will hold public hearings on this rule after the Rules Clearinghouse completes its review. The departments Division of Agricultural Development is primarily responsible for promulgation of the proposed rule.

### **Contact Information**

Linda Merriman Hitchman  
(608) 224–5132

## **Agriculture, Trade and Consumer Protection CR 11–038**

(DATCP # 10–R–03)

On June 3, 2011, the Department of Agriculture, Trade and Consumer Protection submitted proposed rules to the Legislative Council Rules Clearinghouse.

### **Analysis**

This proposed rule-making order revises Chapters ATCP 87 and 157, relating to Wisconsin certified honey and the sale of products represented as honey.

### **Agency Procedure for Promulgation**

The department will hold public hearings on this rule. Public hearings will be held July 25, 2011 and July 28, 2011. The departments Division of Division of Food Safety is primarily responsible for promulgation of the proposed rule.

### **Contact Information**

Terri Wenger  
(608) 224–4714

## **Justice CR 11–036**

On June 3, 2011, pursuant to s. 227.15, Stats., the Wisconsin Department of Justice submitted a proposed rule to amend Jus 10.11 (1), and to create Jus 10.01 (4) (am) and 10.095, relating to firearms restriction records searches, to Legislative Council Staff for review.

### **Analysis**

A hearing on the proposed rule is not required unless the Wisconsin Department of Justice is petitioned for a public hearing by 25 natural persons who will be affected by the rule; a municipality that will be affected by the rule; or an association that is representative of a farm, labor, business, or professional group that will be affected by the rule.

### **Agency Procedure for Promulgation**

The organizational unit within the Wisconsin Department of Justice that is primarily responsible for the promulgation of the rule is the Crime Information Bureau in the Division of Law Enforcement Services.

### **Contact Information**

Walter Neverman, Director, Crime Information Bureau, Wisconsin Department of Justice, 17 West Main Street, Post Office Box 2718, Madison WI 53707–2718, (608) 264–6207, [nevermanwm@doj.state.wi.us](mailto:nevermanwm@doj.state.wi.us).

## **Public Service Commission CR 11–039**

(PSC # 1–AC–232)

On June 2, 2011, the Public Service Commission submitted proposed rules to the Legislative Council Rules Clearinghouse.

### **Analysis**

This proposed rule-making order revises Chapter PSC 185, relating to water conservation and efficiency and construction by water utilities and municipal combined water and sewer utilities.

### **Agency Procedure for Promulgation**

A public hearing will be held on July 26, 2011 at 10:00 a.m., at the Public Service Commission building at 610 North Whitney Way, Madison, Wisconsin. The Division of Water, Compliance and Consumer Affairs of the Commission is the organizational unit responsible for the promulgation of the rule.

### **Contact Information**

Jeff Ripp, Water Conservation Coordinator  
(608) 267–9813  
[jeffrey.ripp@wisconsin.gov](mailto:jeffrey.ripp@wisconsin.gov)

## **Regulation and Licensing — Dentistry Examining Board CR 11–033**

On June 3, 2011, the Department of Regulation and Licensing submitted proposed rules to the Legislative Council Rules Clearinghouse.

**Analysis**

This proposed rule-making order revises Chapters DE 2 and 13, relating to licensure renewal and continuing education for dentists and dental hygienists.

**Agency Procedure for Promulgation**

A public hearing is required and will be held.

**Contact Information**

Kris Anderson, Paralegal  
Department of Regulation and Licensing  
Division of Board Services  
(608) 261-2385  
[Kristine1.Anderson@wisconsin.gov](mailto:Kristine1.Anderson@wisconsin.gov)

**Regulation and Licensing —  
Dentistry Examining Board  
CR 11-034**

On June 3, 2011, the Department of Regulation and Licensing submitted proposed rules to the Legislative Council Rules Clearinghouse.

**Analysis**

This proposed rule-making order revises Chapters DE 1 and 2, relating to active practice of dentistry, specialty certification and faculty licenses.

**Agency Procedure for Promulgation**

A public hearing is required and will be held.

**Contact Information**

Kris Anderson, Paralegal  
Department of Regulation and Licensing  
Division of Board Services  
(608) 261-2385  
[Kristine1.Anderson@wisconsin.gov](mailto:Kristine1.Anderson@wisconsin.gov)

**Regulation and Licensing —  
Dentistry Examining Board  
CR 11-035**

On June 3, 2011, the Department of Regulation and Licensing submitted proposed rules to the Legislative Council Rules Clearinghouse.

**Analysis**

This proposed rule-making order revises Chapters DE 2, 6 and 7, relating to CPR training for licensure renewal for dentists and dental hygienists and related to certification of dental hygienists to administer local anesthesia and unprofessional advertising for dentists.

**Agency Procedure for Promulgation**

A public hearing is required and will be held.

**Contact Information**

Kris Anderson, Paralegal  
Department of Regulation and Licensing  
Division of Board Services  
(608) 261-2385  
[Kristine1.Anderson@wisconsin.gov](mailto:Kristine1.Anderson@wisconsin.gov)

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## Rule-Making Notices

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### Notice of Hearing

#### Agriculture, Trade and Consumer Protection

**CR 11-038**

(DATCP # 10-R-03)

The Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) announces that it will hold public hearings on a proposed rule revising Chapters ATCP 87 and 157, relating to certified honey and the sale of products represented as honey.

#### Hearing Information

DATCP will hold two public hearings at the times and locations shown below. DATCP invites the public to attend the hearings and comment on the proposed rule.

**Date:** Monday, July 25, 2011  
**Time:** 11:00 AM to 1:00 PM  
**Location:** Department of Agriculture, Trade and Consumer Protection  
 Board Room (1st Floor)  
 2811 Agriculture Drive  
 Madison, WI 53718-6777

**Date:** Thursday, July 28, 2011  
**Time:** 11:00 AM to 1:00 PM  
**Location:** Portage County Courthouse Annex  
 1462 Strongs Avenue  
 Room 2  
 Stevens Point, WI 54481

Hearing impaired persons may request an interpreter for this hearing. Please make reservations for a hearing interpreter by July 11, 2011, by writing to Skya Murphy, Division of Food Safety, P.O. Box 8911, Madison, WI 53708-8911; or by emailing [skya.murphy@wisconsin.gov](mailto:skya.murphy@wisconsin.gov); or by telephone at (608) 224-4712. Alternatively, you may contact the DATCP TDD at (608) 224-5058. The hearing facility is handicap accessible.

#### Copies of Proposed Rule

You can obtain a free copy of this hearing draft 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 can also obtain a copy by calling (608) 224-4712 or by emailing [skya.murphy@wisconsin.gov](mailto:skya.murphy@wisconsin.gov). Copies will also be available at the hearing. To view the hearing draft rule online, go to: <http://adminrules.wisconsin.gov>.

#### Submittal of Written Comments

Following the public hearings, the hearing record will remain open until **August 11, 2011** for additional written comments. Comments may be sent to the Division of Food Safety at the address below, or to [terri.wenger@wisconsin.gov](mailto:terri.wenger@wisconsin.gov), or to <http://adminrules.wisconsin.gov>.

Comments or concerns relating to small business may also be addressed to DATCP's small business regulatory coordinator Keeley Moll at the address above, or by email to [keeley.moll@wisconsin.gov](mailto:keeley.moll@wisconsin.gov), or by telephone at (608) 224-5039.

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

##### *Statutes interpreted*

Sections 93.06 (1m) and (1p), 97.09 (4) and 100.187, Stats.

##### *Statutory authority*

Sections 93.07 (1), 97.09 (4) and 100.187, Stats.

##### *Explanation of Statutory Authority*

DATCP has broad general authority, under s. 93.07 (1), Stats., to interpret laws under its jurisdiction. DATCP has authority under s. 93.06 (1m) and (1p), Stats., to evaluate farm products upon request for certification purposes, and to charge a fee to cover the cost of the service. DATCP has general authority, under s. 97.09 (4), Stats., to adopt rules specifying standards to protect the public from the sale of adulterated or misbranded foods. DATCP also has specific authority, under s. 100.187, Stats. (created by 2009 Wis. Act 169), to promulgate rules related to Wisconsin certified honey and the sale of products represented as honey.

##### *Related rules or statutes*

Section 97.09, Stats., currently incorporates federal food standards of identity by reference; however, there is currently no federal standard of identity for honey. Section 97.10, Stats., prohibits the sale of adulterated or misbranded food as defined in ss. 97.02 and 97.03, Stats., including food whose identity is misrepresented. Section 100.183, Stats., prohibits deceptive advertising of food.

##### *Plain language analysis*

###### *Background*

Wisconsin ranked 8<sup>th</sup> among the states in honey production in 2010 (total Wisconsin production increased by 15% compared to 2009). Wisconsin's 2010 honey crop had an estimated value of \$7.27 million. There are approximately 900 honey producers in the state.

This rule prohibits sellers from misrepresenting adulterated or non-honey products as "honey." Some products sold as "honey" have been found to contain non-honey ingredients such as rice syrup, high fructose corn syrup and other sweeteners. Dangerous contaminants such as the antibiotic chloramphenicol have also been detected in samples of honey imported from foreign countries. Approximately 2/3 of the honey consumed in the United States is imported from other countries.

This rule also creates a voluntary program under which qualifying Wisconsin honey producers may sell their honey "Wisconsin certified honey."

###### *Rule Content*

###### GENERAL

This rule does all of the following:

- Renumbers the current ch. ATCP 157 (Honey and Maple Syrup) as ch. ATCP 87.

- Creates a standard of identity for “honey” (see below).
- Creates a “Wisconsin certified honey” program (see below).

#### *Standard of Identity for “Honey”*

This rule creates a standard of identity for “honey,” in order to prevent the sale of adulterated or non–honey products as “honey.” The standard of identity conforms to the standard contained in the *Codex Alimentarius* adopted by the United Nations food and agriculture organization and the World Health Organization.

#### *“Wisconsin Certified Honey” Program*

Under this rule:

- No person may represent a product “Wisconsin certified honey” unless the product meets all of the following requirements:
  - It complies with the honey standard of identity under this rule.
  - It was collected from honeybee hives in this state.
  - Its producer holds a valid annual approval from DATCP (see below).
- A honey producer who wishes to sell “Wisconsin certified honey” may apply for annual DATCP approval (an annual approval expires on December 31). An annual application must include all of the following:
  - A statement certifying that all honey which the applicant proposes to sell or distribute as “Wisconsin certified honey” will meet all of the following requirements:
    - \* It will be collected from honeybee hives in this state.
    - \* It will comply with the honey standard of identity in this rule.
  - Laboratory test results (moisture, fructose and glucose, and sucrose) to document that the honey complies with the standard of identity in this rule. Testing must be performed on a representative sample of honey using methods prescribed in the *Codex Alimentarius*.
  - A fee of \$50.
- DATCP must grant or deny an application in writing, within 30 days after DATCP receives a complete application. If DATCP denies an application, it must specify the reasons for the denial.

#### *Comparison with federal regulations*

There are no federal regulations related to this rule.

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

There are no similar programs in surrounding states.

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

DATCP worked with the Wisconsin honey producers association to develop this rule. Analytical methodologies prescribed by this rule are those prescribed by the *Codex Alimentarius*.

#### **Environmental Impact**

This rule will not have any environmental impact.

#### **Small Business Impact**

This rule will prohibit the fraudulent sale of adulterated or non–honey products as “honey.” The prohibition will benefit honest producers and sellers of honey. This rule makes no exemption for small businesses, because small businesses as well as large businesses must refrain from fraudulent practices.

This rule also creates a “Wisconsin certified honey” program. Under this program, a honey producer may voluntarily apply to DATCP for approval to sell honey as “Wisconsin certified honey” (DATCP approval is not required to sell honey, unless the honey is represented “Wisconsin certified honey”). “Wisconsin certified honey” must be collected from hives in this state, and must comply with the honey standard of identity in this rule. The producer must submit annual lab test results to document compliance with the standard of identity. There is an annual fee of \$50.

DATCP estimates that 50 of the 900 honey producers in Wisconsin will apply each year for approval to sell their honey as “Wisconsin certified honey.” Most, if not all, of those producers are “small businesses.” Participating producers will pay for annual lab testing and must pay a \$50 annual fee to DATCP. However, participation is voluntary and there will not be a significant financial impact on participating producers.

#### **Fiscal Estimate**

This rule will not have a significant fiscal impact on state government. DATCP estimates that approximately 50 honey producers will apply each year for DATCP approval to sell their honey as “Wisconsin certified honey.” Participating producers must pay a \$50 annual fee, which will cover a portion of DATCP’s costs. DATCP will absorb any remaining costs (including any costs to investigate the sale of adulterated or misbranded honey) with current budget and staff. This

#### **Agency Contact Person**

Skya Murphy, Division of Food Safety, P.O. Box 8911, Madison, WI 53708–8911; email [skya.murphy@wisconsin.gov](mailto:skya.murphy@wisconsin.gov); or by telephone at (608) 224–4712.

#### **Notice of Hearing**

#### **Public Service Commission**

#### **CR 11–039**

The Public Service Commission of Wisconsin proposes an order to repeal sections PSC 185.815, 185.84 and 185.87; renumber sections PSC 185.21 (intro.) and 185.22 (5); renumber and amend section PSC 185.33 (2); repeal and re–create Chapters PSC 184 and 185.85; and create sections PSC 185.12 (3e), (3m), (3s), (4m), (10e), (10m), (10s), (12m), (17m), (20g), (20r), (22), 185.21 (1) (title) and (2), 185.33 (1m), 185.89, 185.90 and subchapter IX of Chapter PSC 185 regarding water conservation and construction by water utilities and municipal combined water and sewer utilities.

#### **Hearing Information**

NOTICE IS GIVEN that, pursuant to Wis. Stat. section 227.16 (2) (b), the Commission will hold a public hearing on these proposed rule changes as follows:



**Date:** Tuesday, July 26, 2011  
**Time:** 10:00 a.m.  
**Location:** Public Service Commission Building  
 Amnicon Falls Hearing Room  
 610 North Whitney Way  
 Madison, WI 53705

### Appearances at the Hearing

This building is accessible to people in wheelchairs through the Whitney Way (lobby) entrance. Handicapped parking is available on the south side of the building.

The Commission does not discriminate on the basis of disability in the provision of programs, services, or employment. Any person with a disability who needs accommodations to participate in this proceeding or who needs to get this document in a different format should contact the Water Conservation Coordinator, as indicated below, as soon as possible.

Jeff Ripp, Water Conservation Coordinator, at (608) 267-9813 or [jeffrey.ripp@wisconsin.gov](mailto:jeffrey.ripp@wisconsin.gov). Media questions should be directed to Matt Pagel, Interim Director of Public Affairs, at (608) 266-9600. Hearing – or speech-impaired individuals may also use the Commission's TTY number: If calling from Wisconsin, (800) 251-8345; if calling from outside Wisconsin, (608) 267-1479.

### Submittal of Written Comments

Any person may submit written comments on these proposed rules. The hearing record will be open for written comments from the public, effective immediately, and until **Tuesday, August 2, 2011**, at noon (**Monday, August 1, 2011**, at noon, if filed by fax). All written comments must include a reference on the filing to docket 1-AC-232. File by one mode only.

#### **Industry:**

File comments using the Electronic Regulatory Filing system. This may be accessed from the Commission's website at [www.psc.wi.gov](http://www.psc.wi.gov).

#### **Members of the Public:**

**If filing electronically:** Use the Public Comments system or the Electronic Regulatory Filing system. Both of these may be accessed from the Commission's website at [www.psc.wi.gov](http://www.psc.wi.gov).

**If filing by mail, courier, or hand delivery:** Address as shown above under Hearing Information.

**If filing by fax:** Send fax comments to (608) 266-3957. The fax filing cover sheet MUST state "Official Filing," the docket number 1-AC-232, and the number of pages (limited to 25 pages for fax comments).

#### **Comments Due:**

Tuesday, August 2, 2011 – Noon

#### **Fax Due:**

Monday, August 1, 2011 – Noon

#### **Address Comments To:**

Sandra J. Paske, Secretary of the Commission  
 Public Service Commission  
 P.O. Box 7854  
 Madison, WI 53707-7854  
 FAX: (608) 266-3957

### Analysis Prepared by the Public Service Commission

#### **Statute(s) interpreted**

The Great Lakes Compact, as promulgated in Chapter 281, Stats., and sections 196.02, 196.03, 196.10, 196.37, and 196.49, Stats.

#### **Statutory authority and explanation of agency authority**

This rule is authorized under ss. 196.02 (1) and (3), 196.12, 196.49, 227.11 and 281.346(8), Stats. Section 227.11, Stats., authorizes state agencies to promulgate administrative rules. Section 196.02 (1), Stats., authorizes the Public Service Commission (Commission) to do all things necessary and convenient to its jurisdiction. Section 196.02 (3), Stats., grants the Commission specific authority to promulgate rules. Section 196.12 authorizes the Commission to require utilities to report financial information, which includes expenditures on water conservation programs. Section 196.49 (3) authorizes the Commission to adopt rules regarding utility construction projects. Section 281.346 (8), Stats., directs the Commission to work in cooperation with the Departments of Natural Resources (DNR) and Commerce to develop and implement a statewide water conservation and efficiency program, including requirements for water public utilities.

#### **Related statute or rule**

The DNR and the Commission have overlapping jurisdiction for water conservation programs. Chapter NR 852 establishes a statewide water conservation program for all water users, including water public utilities. This program is implemented by the DNR and contains mandatory requirements for some water users, including water utilities in the Great Lakes watershed, as well as voluntary elements for other water users statewide. The DNR's regulatory authority extends beyond water public utilities to include any system that provides water for public use such as schools, mobile home parks, co-ops, and private wells that serve multiple homes or businesses. The Commission's authority is limited to water public utilities as defined under s. 196.01 (5) (a), Stats.

The DNR and the Commission also have overlapping jurisdiction in reviewing plans for the modification, extension, or construction of water public utility facilities. The DNR's regulatory authority is generally related to its role in protecting public health, while the Commission's authority is related to its role in regulating utilities generally. Under ch. NR 108, the DNR reviews any water utility extensions or alterations which may affect the quality or quantity of water delivered by an existing community water system, including wellhead protection plans for new wells serving municipal water systems. The Commission has the authority under s. 196.49, Stats., and ch. PSC 184, to review water public utility construction for public convenience and necessity. Utilities cannot proceed with construction unless the DNR approves the project and the Commission issues a certificate of public convenience and necessity. Further, s. 196.025 (2m), Stats., establishes a consultation process for the DNR and the Commission to cooperate on projects that require an environmental assessment or an environmental impact statement under s. 1.11, Stats.

#### **Summary and analysis of the rule**

The Commission regulates approximately 585 water public utilities, including several private water utilities and municipal combined water and sewer utilities. The Commission does not regulate municipally-owned sewer utilities. The proposed changes to chs. PSC 184 and 185 are



intended to clarify the Commission's water conservation and construction requirements for water public utilities and to ensure that the Commission's rules are consistent with, but do not duplicate, DNR's programs. The proposed rules do all of the following:

- 1) Add definitions for commonly used terms.
- 2) Adopt a standardized water audit methodology and water loss reporting requirement for water utilities.
- 3) Establish criteria for voluntary utility-financed water conservation programs.
- 4) Establish or clarify requirements related to water supply shortages and service interruptions.
- 5) Update and clarify the Commission's rules and procedures for approving water utility construction projects.

#### *Water Utility Construction – Chapter PSC 184*

The Commission reviews and approves major utility construction projects to evaluate their impact on ratepayers. The proposed rule reorganizes, updates, and clarifies requirements for water utility construction authorization under ch. PSC 184. The proposed changes are intended to simplify the rules regarding review of construction projects by identifying the types of projects that require commission approval and listing the types of projects that are categorically exempt from review, such as *de minimus* cost projects, water main replacements, water meter replacement, routine maintenance, and repair.

The proposed rule identifies when a water utility is required to obtain Commission authorization before serving a new city, village or town. Under current practice, a water utility does not seek Commission authorization before it serves in a new township unless the township is already served by another water utility. This rule requires a water utility to receive Commission authorization before serving a new city, village or town, whether or not another utility is already serving the municipality.

The proposed rule requires a person to seek Commission authorization before deregulating utility sewer facilities.

The proposed rule codifies the information that must be included in the utility construction application. Among other specified requirements, a water utility will be required to provide information on any action the utility took, such as water conservation or water loss reduction measures, to mitigate the need for new construction.

The proposed rule increases the Commission's review time period from 60 days to 90 days for construction investigations that do not require a hearing to reflect the fact that projects require more time for approval. Finally, the proposed rule ensures coordination between the DNR and the PSC for projects that require an environmental impact statement or environmental analysis, as required by s. 196.025 (2m), Stats.

#### *Water Conservation and Efficiency – Chapter PSC 185*

The proposed rules amend or add a number of water conservation and efficiency provisions in chapter PSC 185, relating to water utility service rules.

#### DEFINITIONS

The proposed rules include several new definitions for water public utilities. Definitions for utility classes are incorporated, based on the number of customer connections. Class AB utilities have 4,000 or more connections, Class C utilities have between 1,000 and 4,000 connections, and Class D utilities have fewer than 1,000 connections. These are not

new definitions; the Commission uses these definitions for annual reporting and rate case processing, but the definitions are not included in a rule. The proposed rules also establish definitions for various customer classes used in water utility tariffs, including residential, commercial, industrial, public authority, non-residential, and irrigation-only customers. Several other commonly-used terms are also defined in the proposed rules.

#### WATER AUDITS AND WATER LOSS

Excessive water losses negatively affect utility finances because a water utility must purchase electricity and chemicals to produce the water but some of that water is lost before it can be sold to customers. These necessary costs are passed on to all utility customers. Moreover, excessive water loss often indicates a need for capital improvements to replace aging water mains and other infrastructure. Finally, by reducing water losses, a utility can delay the need for additional wells to meet growing demand.

The Commission currently requires water utilities to report annually the amount of water pumped, the amount of water sold, the amount of water lost in the distribution system through leaks and losses, the amount of water used within the system for utility purposes (e.g., hydrant and main flushing), and "unaccounted for" water. The Commission uses this information to benchmark performance and ensure that utilities are operating efficiently. The proposed rule standardizes the method that utilities use to conduct an annual system-wide water audit and specifies how this information is to be reported to the commission.

Current rules require water utilities to report water pumpage, sales, and some losses. However, the rules rely on the term "unaccounted for water" to measure losses from a utility system. This term is vague and its usage in the water utility industry is being phased out in favor of a more robust definition of water loss. Under the new definition, water loss includes any water that is pumped and treated to drinking water standards but that is not sold to utility customers due to leaks, theft, metering errors, and other factors. This rule adopts this new definition, which is consistent with the water audit methodology adopted by the American Water Works Association (AWWA).

Under existing rules, water utilities with excessive system losses or unaccounted for water are required to identify the reasons for the losses and submit a corrective action plan to the Commission. Under the proposed rules, utilities would still be required to identify the reasons for the losses and submit a corrective action plan to the Commission. However, the proposed rule changes the criteria that the Commission would use to determine excessive water loss. Under the proposed rules, Class AB and Class C utilities would be required to submit a correction action plan if their water loss exceeds 15% of the water entering the distribution system and Class D utilities would be required to submit a plan if their water loss exceeds 25%. The proposed rules also allow the Commission to require a water utility to conduct a leak detection survey of their entire distribution system if the utility's water loss exceeds the water loss standard for three consecutive years.

#### VOLUNTARY WATER CONSERVATION PROGRAMS

A number of Wisconsin water utilities have implemented water conservation programs to reduce customer demand. There are a variety of reasons why a utility would want to implement a water conservation program, including limitations on existing wells and supply, rapidly growing

demand, excessive outdoor water use in the summer, and new regulatory requirements, such as the Great Lakes Compact. There is no statewide funding equivalent to the Focus on Energy program for water conservation. These utilities have requested that the Commission approve the use of ratepayer funds to pay for these programs on a case-by-case basis. In previous individual rate case decisions, the Commission has established guidelines for utilities to follow when considering a water conservation program. The proposed rule codifies these guidelines, providing clear and consistent guidance to utilities who wish to offer customer incentives, such as toilet rebates. In addition, the proposed rule assists the Commission in evaluating whether a proposed conservation program is cost-effective and in the public interest.

The proposed rule does not establish any mandatory water conservation requirements. Rather, the rule sets up a procedure for utilities who wish to recover the costs of voluntary water conservation efforts through water rates. The proposed rule also requires utilities to report on conservation-related expenditures and program outcomes annually.

#### EMERGENCY OPERATIONS, INTERRUPTION OF SERVICE AND WATER SUPPLY SHORTAGES

The proposed rule would consolidate and update existing requirements in ch. PSC 185, related to providing a continuous and adequate water supply, procedures for interruption of service, and emergency operations.

The proposed rules create a new section to address a water supply shortage, which a utility may declare if the utility cannot adequately meet customer demand due to drought, insufficient source supply or excessive demand. Under the proposed rule, a water utility may adopt a water supply shortage curtailment plan and file it with the Commission. If a water utility has not adopted a plan, the proposed rule identifies a utility's responsibilities if facing a water supply shortage and permits temporary curtailments to customers other than essential use customers, such as hospitals. However, even essential use customers may face a curtailment if the utility receives prior Commission authorization.

#### WATER RATES AND BILL INFORMATION

The proposed rules require a water utility to adopt general service rates that reflect the cost of service for each customer class and that include a fixed and a variable charge. Also, the Commission may approve rates that promote efficient water use.

Under the proposed rules, a water utility that calculates usage in units of cubic feet shall provide customers consumption information in gallons, or a formula for converting usage from cubic feet to gallons.

#### *Summary of and preliminary comparison with existing or proposed federal regulation*

Rates and service rules for water public utilities are the exclusive jurisdiction of the States. There are no existing or proposed federal regulations pertaining to water quantity or water conservation that affect water public utilities. However, water public utilities must comply with regulations promulgated under the federal Safe Drinking Water Act, which may include conditions or restrictions on system design and construction to protect public health and ensure safe drinking water. The Great Lakes Compact, an interstate compact ratified by the U.S. Congress, applies to water public

utilities that withdraw surface or groundwater from the Lake Michigan and Lake Superior watersheds.

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

All eight Great Lakes States (New York, Pennsylvania, Ohio, Indiana, Illinois, Wisconsin, Michigan, and Minnesota) are party to the Great Lakes Compact, which requires each state to do all of the following:

1. Adopt a mandatory or voluntary water conservation program.
2. Regulate withdrawals from the Great Lakes watershed, both groundwater and surface water.
3. Prohibit the diversion of water from the Great Lakes watershed, with some limited exceptions.

Specifically, the Great Lakes Compact required each state to implement a water conservation and efficiency program by December 2010, including state-specific water conservation and efficiency goals and objectives and either voluntary or mandatory conservation requirements for water users. The Wisconsin DNR has adopted administrative rules to implement the Compact in chs. NR 850, NR 852, NR 856, and NR 860.

Because water utility regulation is a state matter, each state regulates its water public utilities differently. The Commission has the most comprehensive jurisdiction over both municipal and privately-owned water utilities in the upper Great Lakes region. State commission jurisdiction in the surrounding states varies from partial regulation of regional and privately-owned systems to a completely deregulated water industry. Some of the surrounding states have enacted more comprehensive water conservation programs than Wisconsin. The requirements in the surrounding states are described below.

#### *Minnesota:*

Neither municipal nor investor-owned water utilities are subject to Minnesota Public Utilities Commission oversight. Instead, rates and charges are subject to the oversight of the local municipal or regional governing body. Nonetheless, Minnesota statutes require each water utility serving more than 1,000 people to adopt a water rate structure by 2013 that promotes conservation, including seasonal rates, time of use rates, water budget rates, excess use rates, or inclining block rates. Water utilities are also required to provide educational information about water conservation to their customers. The Minnesota DNR also recommends that utilities meter all customer usage and conduct a water audit, and implement a leak detection and repair program if unaccounted for water is greater than 10 percent of pumpage.

#### *Illinois:*

The Illinois Commerce Commission (ICC) regulates investor-owned utilities, including 33 water, 5 sewer, and 14 combined water and sewer utilities. Municipally owned utilities are not regulated by the ICC. Communities that are served by Lake Michigan, including the City of Chicago and many suburbs, are subject to special requirements known as the Lake Michigan Water Allocation Program, which authorizes the Illinois DNR to manage the allocation of water among regional organizations and municipalities. These requirements include water conservation as a condition of their allocation permit and are intended to fulfill the state's requirement under a U.S. Supreme Court Decree. The requirements include metering for all new construction and remodeling; reducing unaccounted-for water to less than 8 percent of annual pumpage; establishing ordinances for

water-saving fixtures; adopting water rate structures based on metered usage and which discourage excessive use; and restricting non-essential outdoor usage.

*Iowa:*

The Iowa Utilities Board regulates investor-owned water utilities but not municipally owned water utilities. The Iowa DNR may, in any permit granted to a community public water supply, include conditions requiring water conservation practices and require emergency conservation practices after notification by the department. Generally, water conservation practices are not required, although individual permits may have conservation requirements added to them by the state.

*Michigan:*

The Michigan Public Service Commission does not regulate water utilities. Michigan does not have other water conservation requirements for public water utilities outside of its responsibilities under the Great Lakes Compact.

*Indiana:*

The Indiana Utility Regulatory Commission (IURC) regulates the rates, terms, and conditions of service for both municipal- and investor-owned water and wastewater utilities. However, all municipal utilities and investor-owned wastewater utilities serving fewer than 300 customers can opt out of IURC regulation. Indiana does not have other water conservation requirements for public water utilities outside of its responsibilities under the Great Lakes Compact.

**Small Business Impact**

The proposed rules will not affect small businesses. The s. 227.114 (12), Stats., definition of “small business” states that to be considered a small business, the business must not be dominant in its field. Most water and sewer utilities are publicly owned and are not businesses. Further, water utilities and municipal combined water and sewer utilities are monopolies in their service territories, and therefore dominant in their markets.

**Initial regulatory flexibility analysis**

This rule will not affect small businesses. The Wis. Stat. section 227.114 (12) definition of “small business” states that to be considered a small business, the business must not be dominant in its field. The vast majority of water and combined water and sewer utilities are publicly owned and are not businesses. Further, since water utilities and combined water and sewer utilities are monopolies in their service territories, they are dominant in their fields.

**Fiscal Estimate**

There are no long-term fiscal impacts on state or local governments. However, some municipal water utilities may see a small reduction in costs as a result of the proposed streamlining of construction rules. Additional fiscal information is as follows:

**State fiscal effect**

None.

**Local fiscal effect**

Increase costs – Mandatory

Increase Revenues – Mandatory

Types of local governmental units affected: Others – Public Water Utilities

**Assumptions used in arriving at fiscal estimate**

*State Fiscal Effects*

There are no estimated state fiscal effects from the proposed changes to administrative rules for water utilities under PSC 184 and 185.

The proposed changes primarily implement water conservation and efficiency measures, as directed under Wisconsin State Statute s. 281.346 (8), in a way that is consistent with PSC’s current authority under Chapter 196, Wis. Stats. The proposed revisions clarify current rule requiring water utilities to minimize water losses by specifying the timeline and method for measuring water loss, establish a water loss threshold above which a utility must submit a water loss control plan to the Commission, and require water utilities to establish uniform or inclining volumetric rates for residential customers that reflect the cost of service for this customer class. Also, the proposed rules allow a water utility to implement a voluntary water conservation program that includes customer rebates or other financial incentives to customers after the utility has received Commission approval.

In addition, the proposed changes renumber rules on adequacy of water supply, emergency operations and interruption of service; clarify current rule by specifying steps utilities must take to prevent and minimize interruptions; and require utilities notify the Commission after an emergency curtailment of service. The proposed changes simplify rules regarding review of construction projects, for example, by identifying projects explicitly exempt from review, and the proposed changes increase the typical construction project review period, from 60 days to 90 days.

The proposed change to establish class-based volumetric rates has no state fiscal effect. Water utilities routinely request the Commission review rate changes, and this change is not expected to increase the Commission’s workload.

The revisions regarding water loss reporting also have no state fiscal effect. Commission staff currently track and analyze water loss as reported by utilities in their annual reports, but these data have been inconsistent. The rules would improve reporting consistency by adopting current water industry standards, practices, and terminology as recommended by the American Water Works Association (AWWA). The new reporting requirements and control plans will streamline analysis of utility water loss and reduce the need for Commission action addressing water loss. Potential Commission review of voluntary water conservation programs will be new workload for state staff, but the workload is not expected to be significant such that it cannot be absorbed within current operations.

Commission review of reports from water utilities on emergency interruptions in water service will also not result in a net change to state staff workload. Workload associated with review of reports is offset by saved workload in investigating service interruptions after complaints have been filed with the Commission.

And finally, proposed changes that exempt some construction projects from review and increase the review period may reduce overall Commission review time and allow staff to focus on larger and more significant projects that have an impact on ratepayers. Under the proposed changes, the Commission will also review more applications for utilities to serve municipalities; but this increase in the number of reviews may not entirely offset the savings due to review exemptions.



### *Local Fiscal Effects*

Some local governments will have increased costs in the short term under the proposed rules, but these costs are anticipated to be offset in the long term through reduced operating costs and reduced infrastructure needs through water loss control and water conservation savings. If needed, local governments could offset increased costs in the short term through increased water rates.

All but six of the over 580 water utilities in the State of Wisconsin are municipally owned; and the local government costs are costs to municipal water utilities for complying with the proposed rules. Most of the proposed rule changes reflect currently accepted best practices for utilities. However, the proposed rules requiring water loss control plans and leak detection surveys may result in new costs in the short term for water utilities. It is estimated that 15% to 20% of municipal water utilities have water loss levels that would require development of a water loss control plan and, potentially, a leak detection survey. These are new activities required under the proposed rule, and the potential cost for these activities is not known at this time. However these costs would be offset in the long term through water conservation savings, i.e. avoidance of the cost to develop new water resources. In the short term, water utilities could offset increased costs through water rates.

Some municipal water utilities may see a small reduction in costs from the proposed changes to construction review rules. Utilities will avoid future costs of Commission review for construction projects that will be exempt from review under the proposed rules. Also, by increasing Commission review time for construction projects, Commission staff will have more time to communicate issues to utilities which will help municipal utilities avoid costs from a denial of a construction project. However, these potential savings will be offset somewhat by the requirement that a utility may not serve a new municipality without Commission authorization.

### *Fiscal Effects for Small Businesses*

The proposed rules may benefit small businesses. The proposed rule allowing utilities to implement water conservation incentive programs, with Commission approval, will benefit small businesses that choose to adopt conservation measures. The proposed rule changes regarding service curtailments may also be beneficial by avoiding unplanned interruptions of service that can be costly to small businesses.

### *Long-range fiscal implications*

By implementing water conservation measures, the proposed rules will reduce costs in the long term not only for consumers, but also for the Commission and water utilities. Water conservation reduces water demand and the need to develop new water resources and to make capital investments in expensive wells, storage, and other facilities. Development of new water resources increases the cost of water service, resulting in increasing costs to ratepayers, and development of new water resources often requires new construction which requires Commission review, creating costs for water utilities and the Commission. Any reduction in the amount of new water resource development needed in Wisconsin results in reduced long-term costs and will help mitigate future water rate increases.

### **Contact Person**

Questions regarding this matter, including small business questions, should be directed to Jeff Ripp, Water Conservation Coordinator, at (608) 267-9813 or [jeffrey.ripp@wisconsin.gov](mailto:jeffrey.ripp@wisconsin.gov).

Media questions should be directed to Matt Pagel, Interim Director of Public Affairs, at (608) 266-9600. Hearing-impaired individuals may also use the Commission's TTY number: If calling from Wisconsin, (800) 251-8345; if calling from outside Wisconsin, (608) 267-1479.

### **Text of Rule**

SECTION I. Chapter PSC 184 repealed and recreated to read:

#### **Chapter PSC 184**

#### **Construction of and Placing into Operation Facilities by Water Public Utilities and by Municipal Combined Water and Sewer Public Utilities**

- PSC 184.01 Scope.
- PSC 184.02 Definitions.
- PSC 184.03 Activities requiring commission authorization.
- PSC 184.04 Applications for commission authorization.
- PSC 184.05 Commission procedures.
- PSC 184.06 Emergency work.

**PSC 184.01. Scope.** (1) **APPLICABILITY.** This chapter applies to a water public utility, as defined in s. 196.01 (5) (a), Stats., a combined water and sewer public utility under s. 66.0819, Stats., and to any person, except a governmental unit, who furnishes services by means of a sanitary sewerage system.

(2) **INDIVIDUAL SITUATIONS.** Nothing in this chapter precludes the commission from giving individual consideration to exceptional or unusual situations or, upon investigation, from establishing requirements for a utility or service that are different from those provided in this chapter.

**184.02 Definitions.** In this chapter:

- (1) "Acquire" means the acquisition of a unit of plant or mains in place and ready for operation, but does not include the purchase of materials or equipment for later installation.
- (2) "Certificate" means a certificate issued by the commission under ss. 196.49 or 196.50, Stats.
- (3) "Commission" means the public service commission.
- (4) "Department" means the department of natural resources.
- (5) "Municipality" means a city, village or town.
- (6) "Plant" means all equipment, property, or facilities included in the utility plant accounts under the uniform system of accounts prescribed by the commission.
- (7) "Project cost" means the total estimated costs of a proposed project including land acquisition, construction, pilot testing, test wells, inspection, and fees for professional services.
- (8) "Service area" means the geographic area within which a utility has an obligation to provide service.
- (9) "Utility" means a water public utility, as defined in s. 196.01 (5) (a), Stats., a combined water and sewer public

utility under s. 66.0819, Stats., or any person, except a governmental unit, who furnishes service by means of a sewerage system.

**184.03** Activities requiring commission authorization. (1) **NEW UTILITY.** A person intending to operate as a utility may not begin construction of, install, or place in operation any facilities for furnishing water or sewer service in a municipality in which the person is not currently furnishing water or sewer service as a utility without the commission's prior approval.

(2) **EXPANSION, ACQUISITION, AND INTERCONNECTION.** A utility shall obtain a certificate from the commission before undertaking any of the following:

(a) Constructing facilities or initiating service in a municipality not currently served by the utility.

(b) Constructing facilities or initiating service in an area that is currently served by another utility.

(c) Acquiring or placing in operation existing plant from another person or utility.

(d) Establishing an interconnection with another utility with which it has no existing interconnection.

(e) Combining or consolidating with another utility.

(3) **SEWER DEREGULATION.** A person shall receive commission approval before deregulating utility sewer facilities. The commission shall hold a hearing on an application to deregulate sewer facilities.

(4) **CONSTRUCTION OF FACILITIES.** (a) Except as provided in sub. (5), a utility shall obtain a certificate from the commission before constructing, purchasing, installing, modifying, replacing, or placing in operation any of the following projects, if the project cost exceeds \$25,000:

1. Groundwater wells, surface water intakes, and other sources of water supply.

2. Water treatment, purification, and disinfection facilities.

3. Elevated tanks, reservoirs, and other storage facilities.

4. Pumping stations, pressure-reducing stations, and associated facilities.

5. Utility buildings.

6. A regional pipeline.

7. Sewer facilities, including any pumping facilities, sewage treatment and disposal plant.

(b) A utility shall obtain a certificate from the commission before constructing or purchasing, any water or sewer project and associated plant not identified in par. (a) if the project cost exceeds \$250,000 or 25 percent of the utility's gross water or sewer operating revenue received during the previous calendar year, whichever is less.

(5) **EXEMPTIONS.** Unless a necessary component of a project under sub. (4) (a), a utility does not need a certificate to do any of the following:

(a) Install, replace, or repair water mains, sewer mains, service laterals, hydrants, or valves within the utility's service area.

(b) Install, replace, or repair meters or automated metering systems.

(c) Install, replace, or repair supervisory control and data acquisition (SCADA) systems, telemetry equipment, or other electronic monitoring and control systems.

(d) Replace or repair existing pumps, motors, or associated equipment.

(e) Conduct routine maintenance or repair to utility facilities, including buildings used for utility purposes.

(f) Replace or repair filtration media used in existing water treatment purification and disinfection facilities.

(g) Install plant in accordance with filed extension rules and rates.

(h) Install plant in compliance with a commission order.

(i) Relocate or modify existing plant to accommodate highway or airport construction.

**184.04 Applications for commission authorization.** (1) **TIMING AND COST INCREASES.** (a) For any project requiring commission authorization under s. PSC 184.03, a utility shall submit the information required in this section at least 90 days, but no earlier than 2 years, before beginning the project.

(b) For any project receiving commission authorization under s. PSC 184.05 that is not completed within 2 years from the date of the authorization, a utility shall notify the commission of revised project costs, the schedule for completion, and any other changes to the proposed project. The commission may reconsider its authorization for a revised project under s. PSC 184.05.

(c) If the scope, design or location of a project receiving commission authorization under s. PSC 184.05 changes significantly, or if it is discovered or identified that the project cost, including *force majeure* costs, may exceed the estimated project cost by more than 25 percent, the utility shall promptly notify the commission as soon as the utility becomes aware of the possible change or cost increase. The commission may reconsider its authorization for a revised project under s. PSC 184.05.

(2) **CONSULTATION.** For projects subject to s. 196.025 (2m), Stats., before submitting an application for a certificate, a utility shall consult with commission staff, in cooperation with staff from the department, on the scope of the proposed project, the alternatives that must be considered in the application, and additional information that the commission may require as part of the application.

(3) **CONTENTS OF APPLICATION.** A person or utility seeking authorization for any activity under s. PSC 184.03 (1) to (3) or a utility seeking a certificate under s. PSC 184.03 (4) shall submit an application to the commission that includes all of the following, where applicable:

(a) A description of the project including all project components, phases, and a schedule of construction.

(b) Information supporting the purpose and necessity of the project.

(c) An analysis and description of alternatives to the project.

(d) An analysis of the effect of the project on the quality and reliability of service.

(e) The project cost itemized by major plant accounts as identified in the uniform system of accounts, including all administrative, overhead, engineering, legal, construction, and inspection costs.

(f) Identification of the proposed project funding sources, including utility or municipal sources and outside grants or loans. If the project will be financed, the utility shall include expected financing rates and terms.

(g) An estimate of annual operating costs of the project, by major expense accounts as identified in the uniform system of accounts.

(h) A description of any plant being retired or replaced and the year it was placed in service, if known.

(i) A map showing the location of the project and all proposed facilities by Public Land Survey System (PLSS) quarter–quarter section or by another methodology approved by the commission.

(j) A list of any permits or approvals required by other units of government and a statement indicating whether the permits or approvals have been applied for or obtained.

(k) For a project under s. PSC 184.03 (4), information on any action the utility has taken to mitigate the need for the project.

(L) Any other information relevant to the project requested by the commission.

(4) ENVIRONMENTAL REVIEW. A person or utility shall provide sufficient information in an application under this section for the commission to determine environmental effects under s. 1.11, Stats. For a project subject to ss. PSC 4.10 (1) or (2), a person or utility shall submit all of the information required by the commission to prepare an environmental assessment or environmental impact statement under ch. PSC 4.

(5) GROUPING OF PROJECTS. As an alternative to requesting prior authorization for each project separately, a utility may submit on an annual basis a list of projects requiring approval under s. PSC 184.03 (4) (a) that the utility intends to begin constructing within one year. For each project on this list, the utility shall include the information required by this section.

(6) APPLICATION SUBMITTAL. A utility shall submit an application under this section using the commission's Electronic Regulatory Filing (ERF) system.

**184.05 Commission procedures.** (1) APPLICATION REVIEW. (a) Except as provided in par. (b), upon receipt of an application under s. PSC 184.03, the commission shall issue a notice of investigation or proceeding. The commission may approve, modify and approve, or deny the application.

(b) Upon receipt of an application from a utility for a proposed project under s. PSC 184.03 (4) that has a cost of less than \$500,000, the commission may acknowledge receipt of the application and accept the information for filing, in which case the utility may proceed with the construction work.

(2) TIME FOR REVIEW. If no action is taken by the commission within 90 days after the commission issues a notice of investigation under sub. (1) (a), the application is considered approved.

(3) HEARING. The commission is not required to hold a hearing on a utility application for a certificate unless any of the following apply:

(a) A statute or rule otherwise requires a hearing.

(b) The commission treats the application as a contested case, as defined in s. 227.01 (3), Stats.

(c) The proposed project requires the preparation of an environmental impact statement under s. 1.11, Stats.

(d) The commission determines a hearing is appropriate.

**184.06 Emergency work.** In case of an emergency, a utility may begin necessary repair work without receiving

prior commission authorization. The utility shall promptly notify the commission of the emergency work and shall, within 30 days after commencing the work, furnish the commission with the information required under s. PSC 184.04 (3).

SECTION 2. Section PSC 185.12 (3e), (3m) and (3s) are created to read:

**PSC 185.12 (3e)** “Class AB utility” means a public utility that has 4,000 or more service connections.

**185.12 (3m)** “Class C utility” means a public utility that has between 1,000 and 4,000 service connections.

**185.12 (3s)** “Class D utility” means a public utility that has less than 1,000 service connections.

SECTION 3. Section PSC 185.12 (4m) is created to read:

**PSC 185.12 (4m)** “Commercial customer” means any business, not–for–profit organization, or other institution that provides goods or services and that takes service for non–residential purposes, except that multiple–family apartments and condominiums with three or more dwelling units and that share service through a single water meter are classified as commercial.

**Note:** Churches, private schools, private colleges and universities, co–ops, and associations are non–governmental entities and are considered commercial customers.

SECTION 4. Section PSC 185.12 (10e), (10m) and (10s) are created to read:

**PSC 185.12 (10e)** “Industrial customer” means a customer who is engaged in the manufacture or production of goods.

**185.12 (10m)** “Irrigation” means the use of water to sustain crops, lawns, or landscapes, including water used on athletic fields, parks, and golf courses.

**185.12 (10s)** “Irrigation customer” means any customer who has water service provided primarily for irrigation and other outdoor uses. Irrigation customers may include persons who have multiple meters installed on a single lateral for the purpose of measuring water that is not discharged to the sanitary sewer system.

SECTION 5. Section PSC 185.12 (12m) is created to read:

**PSC 185.12 (12m)** “Non–residential customer” includes commercial, industrial, and public authority customers.

SECTION 6. Section PSC 185.12 (17m) is created to read:

**PSC 185.12 (17m)** “Public authority customer” means any department, agency, or entity of the local, state, or federal government, including a public school, college, or university.

SECTION 7. Section PSC 185.12 (20g) and (20r) are created to read:

**PSC 185.12 (20g)** “Residential customer” means any customer taking service for residential or domestic purposes, except that multi–family buildings that house three or more dwelling units and that are served by a single meter are classified as commercial unless otherwise specified by tariff.

**185.12 (20r)** “Station meter” means any meter used to measure the volume or flow of water within a utility's distribution system and not used to measure customer use. Station meters include any meter used to measure water pumped from groundwater wells, surface water intakes, storage facilities, treatment facilities, and booster pumps.

SECTION 8. Section PSC 185.12 (22) is created to read:

**PSC 185.12 (22)** “Water conservation” means practices, techniques, and technologies that result in a reduction of water use, water loss, or waste, or that improve water use efficiency.



SECTION 9. Section PSC 185.21 (intro.) is renumbered PSC 185.21 (1) (intro.).

SECTION 10. Section PSC 185.21 (1) (title) is created to read:

**PSC 185.21 (1)** (title) INCLUDED IN SCHEDULES.

SECTION 11. Section PSC 185.21 (2) is created to read:

**PSC 185.21 (2) RATES FOR WATER SERVICE.** (a) A public utility shall adopt general service water rates that do all of the following:

1. Reflect the cost of service for each class of customer.
2. Include a fixed charge based on the size of the meter.
3. Include a volume charge based on actual customer consumption.

(b) A public utility may not adopt a rate under par. (a) if the commission finds that the rate is discriminatory or otherwise not in the public interest.

(c) The commission may approve rates that promote efficient water use.

SECTION 12. Section PSC 185.22 (5) is renumbered PSC 185.22 (5) (a).

SECTION 13. Section PSC 185.33 (1m) is created to read:

**PSC 185.33 (1m)** A public utility that calculates its volume charges in units of cubic feet shall include customer usage in both cubic feet and gallons on the customer bill or provide a formula for converting usage in cubic feet to gallons on the customer bill. In lieu of providing the information on the customer bill, a public utility may provide the information in a document provided to each customer under sub. (1) (f).

SECTION 14. Section PSC 185.33 (2) is renumbered PSC 185.22 (5) (b) and, as renumbered, amended to read:

**PSC 185.22 (5) (b)** Upon a residential customer request, the public utility shall provide consumption information by billing periods for at least the last year and information and instructions needed by the customer to make consumption comparisons to similar residential customers in the same class and to evaluate water conservation efforts.

SECTION 15. Section PSC 185.815 is repealed.

SECTION 16. Section PSC 185.84 is repealed.

SECTION 17. Section PSC 185.85 is repealed and re-created to read:

**PSC 185.85 Water audits and water loss control.** (1) DEFINITIONS. In this section:

(a) "Apparent loss" means the volume of water attributable to customer and station meter inaccuracies, billing and data transfer errors, unauthorized consumption, and theft.

(b) "Authorized consumption" means the volume of water used by metered and unmetered customers and the volume of water used for other purposes that is implicitly or explicitly authorized by the utility, including water used for flushing water mains and sewers, fire protection and training, street cleaning, public fountains, freeze prevention, and other municipal purposes regardless of whether the use is metered.

(c) "Non-revenue water" means the volume of water equal to the difference between the volume of water entering the distribution system and the volume of water that is sold.

(d) "Real loss" means the volume of water attributable to leaks and losses in the pressurized distribution system up to the customer meter, including water lost due to main breaks, service breaks, and tank and reservoir overflows.

(e) "Revenue water" means the volume of water entering the distribution system that is billed and for which the utility receives revenue.

(f) "Unaccounted for water" means the volume of water entering the distribution system for which a specific use or purpose cannot be determined.

(g) "Water loss" means the difference between the volume of water entering the distribution system and authorized consumption.

**Note:** Water loss equals the sum of real and apparent losses that are caused by unauthorized consumption, meter inaccuracies, accounting errors, data processing errors, leaks in transmission and distribution mains, leaks in service connections up to the customer meter, seepage, overflow, evaporation, theft, malfunctioning distribution system controls, and other unaccounted for water, as described in the American Water Works Association M36 manual.

(2) UTILITY PRACTICES. Each public utility shall do all of the following:

- (a) Meter all water uses and sales, where practicable.
- (b) Maintain and verify the accuracy of customer meters.
- (c) Maintain and verify the accuracy of station meters.
- (d) Identify and repair leaks in its distribution system to the extent that it is cost-effective for the public utility to do so.
- (e) Control water usage from hydrants.
- (f) Maintain a continuing record of system pumpage and metered consumption.
- (g) Conduct an annual water audit.

(3) WATER AUDITS. (a) A public utility shall conduct an annual water audit on a calendar year basis and submit the results of the audit to the commission in a format specified by the commission no later than April 1 of each year.

(b) A public utility water audit shall include the measured or estimated volume of all of the following:

1. Water purchased or pumped from all sources.
  2. Water used in treatment or production processes.
  3. Water entering the distribution system.
  4. Water sold, including both metered and unmetered sales.
  5. Water not sold but used for utility-authorized purposes, including flushing mains, fire protection, freeze prevention, and other authorized system uses.
  6. Water loss.
  7. Unknown or unaccounted for water.
- (c) The components of a water audit are shown as follows:

System Input Volume (Finished Water + Purchased Water)	Authorized Consumption	Billed Authorized Consumption	Billed Metered Consumption (including water exported, wholesale sales)	Revenue Water
			Billed Unmetered Consumption (Bulk water sales, utility uses)	
		Unbilled Authorized Consumption	Unbilled Metered Consumption	Non-revenue Water
			Unbilled Unmetered Consumption	
	Water Losses	Apparent Loss	Unauthorized Consumption (Theft, uncontrolled hydrants, etc.)	
			Metering Inaccuracies (Customer, station meters)	
			Data Handling Errors	
		Real Losses	Leakage on Transmission and Distribution Mains	
			Leakage and Overflows at Utility's Storage Tanks	
			Leakage on Service Connections (Up to point of customer meter)	

(3) WATER LOSS CONTROL. (a) Each public utility shall calculate its annual percentage of non-revenue water and its percentage of water loss, based on the volume of water entering its distribution system.

(b) A public utility shall submit to the commission a water loss control plan if a water audit shows the public utility has any of the following:

1. A percentage of non-revenue water that exceeds 30 percent.
2. A percentage of water loss that exceeds 15 percent for a Class AB or Class C utility or 25 percent for a Class D utility.

(c) A water loss control plan under par. (b) shall include all of the following:

1. The reasons for the excessive non-revenue water or water loss.
2. A description of the measures that the utility plans to undertake to reduce water loss to acceptable levels within a reasonable time period.
3. An analysis of the costs of implementing a water loss control program, including a comparison of lost sales revenue and the costs that would be avoided by reducing leaks and losses.
4. Any additional information required by the commission.

(d) The commission may require a public utility to conduct a leak detection survey of its entire distribution system if for three consecutive years the public utility's percentage of water loss exceeds 15 percent for a Class AB and Class C utility or 25 percent for a Class D utility.

SECTION 18. Section PSC 185.87 is repealed.

SECTION 19. Section PSC 185.89 is created to read:

**PSC 185.89 Adequacy of Water Supply, Emergency Operations and Interruptions of Service.** (1) ADEQUACY OF WATER SUPPLY. A public utility shall exercise reasonable diligence to furnish a continuous and adequate supply of water to its customers.

(2) EMERGENCY OPERATION. (a) A public utility shall make reasonable provisions to meet an emergency resulting from the failure of power supply or from fire, storm, or similar events. A public utility shall inform its employees of procedures to be followed in an emergency to prevent or mitigate the interruption or impairment of water service.

(3) INTERRUPTIONS OF SERVICE. (a) A public utility shall make all reasonable efforts to prevent interruptions of service. If an interruption occurs, the public utility shall re-establish service with the shortest possible delay, consistent with safety to its employees, customers, and the general public.

(b) If an emergency interruption significantly affects fire-protection service, a public utility shall immediately notify the fire chief or other responsible local official.

(c) A public utility shall make reasonable efforts to schedule planned interruptions at times that minimize customer inconvenience. A public utility shall make reasonable efforts to notify customers of the time and anticipated duration of a planned interruption.

SECTION 20. Section PSC 185.90 is created to read:

**PSC 185.90 Water Supply Shortage.** (1) DECLARATION. A public utility may declare a water supply shortage if the public utility cannot adequately meet customer demand due to drought, insufficient source capacity, or excessive demand.

(2) **PLAN.** A public utility may adopt a water supply shortage curtailment plan and file the plan with the commission under s. PSC 185.21.

(3) **APPLICABILITY.** Unless a public utility has adopted a water supply shortage curtailment plan under sub. (2), the provisions of this section apply.

(4) **TEMPORARY CURTAILMENT.** Except as provided in sub. (6), a public utility may temporarily curtail water service to some or all of its customers during a water supply shortage, if the curtailment is necessary to protect public utility facilities, to prevent a dangerous condition, or to alleviate a condition that presents an imminent threat to public health, welfare, or safety.

(5) **UTILITY RESPONSIBILITIES.** If a public utility determines that it is necessary to curtail service under this section, the public utility shall do all of the following:

(a) Make reasonable efforts to notify customers affected by the water supply shortage.

(b) Request all customers to enact voluntary water conservation measures to reduce water consumption, including limiting irrigation and other non-essential uses.

(c) Implement any curtailment in an equitable manner that allows the public utility to maintain reasonably adequate service to the greatest number of customers.

(d) Promptly restore service.

(6) **APPROVAL TO CURTAIL ESSENTIAL USE CUSTOMERS.** A public utility may not curtail service to a customer under this section without the commission's prior approval if the customer provides essential public health, welfare, or safety functions that require consistent water service or if any of the conditions described in s. PSC 185.37 (8) (h), (8m), (9), or (10) apply.

(7) **REPORT.** A public utility shall report to the commission within 7 days of declaring a water supply shortage. The public utility shall include in the report the reasons for any curtailment, the number of customers affected, the duration of the curtailment, and any other information requested by the commission.

**SECTION 21.** Subchapter IX of chapter PSC 185 is created to read:

**Subchapter IX – Water Conservation and Efficiency**

**PSC 185.95 Definitions.** In this subchapter:

(1) “Net cost–effectiveness” means the extent to which a water conservation program or measure is cost–effective, after being adjusted for all of the following:

1. The amount of water savings that would have been achieved in the absence of the water conservation program or measure.

2. The amount of water savings directly attributable to the influence of the water conservation program or measure but that is not specifically included in the program or measure.

(2) “Voluntary program” means a water conservation program that a public utility voluntarily proposes for commission approval.

**185.96 Customer Education Requirements.** Upon a residential customer request, a public utility shall provide information to the residential customer that may assist the customer in reducing outdoor water use, repairing residential water leaks, and implementing other water conservation measures. This information may be provided on the public utility's web site.

**185.97 Voluntary Water Conservation Programs.** (1) **REQUEST TO ADMINISTER OR FUND A VOLUNTARY PROGRAM.** (a) A public utility may file a request with the commission to administer or fund one or more voluntary programs within its service area. A utility requesting such a program shall provide all of the following information:

1. A description of the proposed program, including the target market, eligible measures, delivery strategy, marketing and communications strategy, incentive strategy, and potential market effects for programs that include rebates or other financial incentives.

2. The proposed annual program budget, including administrative costs, and source of funding.

3. Annual and multi–year performance targets that are consistent with commission goals and policies.

4. A portfolio and program level net cost–effectiveness analysis.

5. A description of the public utility's proposed tracking and reporting system.

6. A description of the public utility's proposed evaluation, measurement, and verification plan.

7. A description of how the public utility will coordinate its voluntary program with any statewide water conservation programs.

8. Any other information the commission requests.

(b) A public utility may not administer or fund a voluntary program that provides rebates or other direct financial incentives to its customers for water efficient products or services without the commission's approval.

(2) **APPROVAL OF VOLUNTARY PROGRAMS.** (a) The commission shall consider each of the following when deciding whether to approve a voluntary program:

1. Whether the program is in the public interest.

2. The likelihood the public utility will achieve its program goals.

3. The inclusion of appropriate water conservation measures.

4. The adequacy of the proposed budget.

5. The net cost–effectiveness of the program.

6. The adequacy of the public utility's evaluation, measurement, and verification plan.

7. The level of coordination with any statewide water conservation programs.

(b) Unless the voluntary program is included in a general rate proceeding, the commission shall issue its decision to approve, deny, or modify a proposed voluntary program in writing within 40 working days after receiving the proposal. If the commission denies or modifies a proposed voluntary program it shall explain its reasons for the denial or modification. If the commission denies a voluntary program, the public utility may revise and resubmit a request for approval of a voluntary program at any time.

(3) **MODIFYING OR DISCONTINUING A VOLUNTARY PROGRAM.** A public utility may request that the commission authorize the modification or discontinuation of a voluntary program at any time. A public utility may not modify or discontinue a voluntary program without commission approval.

(4) **RETURN OF FUNDS.** The commission may require a public utility to return any unspent funds collected for a voluntary program approved under this section to its ratepayers.

(5) ANNUAL REPORTS. A public utility receiving commission approval for a voluntary program under this section shall submit an annual report to the commission no later than April 1 each year. The report shall be in a format specified by the commission and shall include all of the following:

(a) A summary of program activities in the previous calendar year.

(b) An itemized accounting of administrative and program costs.

(c) The program balance or deficit at the end of the year.

(d) Estimated water savings attributable to the program, by customer class.

(e) The number of customers receiving rebates or other incentives.

(f) Estimated non-water benefits, including energy savings.

(g) Other performance metrics identified by the public utility.

(h) Any other information requested by the commission.

(6) AUDITS AND VERIFICATION. The commission may conduct an audit, or contract with an independent third-party evaluator to conduct an audit, to verify the performance of a public utility's voluntary program. The public utility shall pay for the costs of the evaluation, as determined by the commission.

### **Notice of Hearing Regulation and Licensing CR 11-029**

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Department of Regulation and Licensing in sections 227.11 (2) and 480.08 (6), Stats. and interpreting section 480.08 (6), Stats., the Department of Regulation and Licensing will hold a public hearing at the time and place indicated below to consider an order to amend section RL 128.03 (1) (b); and to create section RL 128.04 (6) (c), relating to continuing education.

#### **Hearing Information**

**Date:** Tuesday, July 19, 2011  
**Time:** 9:00 a.m.  
**Location:** 1400 East Washington Avenue  
 Room 121A  
 Madison, Wisconsin 53703

#### **Appearances at the Hearing**

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but are urged to submit facts, opinions and argument in writing as well. Facts, opinions and argument may also be submitted in writing without a personal appearance by mail addressed to the Department of Regulation and Licensing, Division of Board Services, P.O. Box 8935, Madison, Wisconsin 53708.

#### **Submittal of Written Comments**

Comments may be submitted to Sharon Henes, Paralegal, Department of Regulation and Licensing, Division of Board Services, 1400 East Washington Avenue, Room 151, P.O. Box 8935, Madison, WI 53708-8935, or by email to

[sharon.henes@wisconsin.gov](mailto:sharon.henes@wisconsin.gov). Comments must be received at or before the public hearing to be held on **July 19, 2011** to be included in the record of rule-making proceedings.

#### **Copies of Proposed Rule**

Copies of this proposed rule are available upon request to Sharon Henes, Paralegal, Department of Regulation and Licensing, Division of Board Services, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708, or by email at [sharon.henes@wisconsin.gov](mailto:sharon.henes@wisconsin.gov).

#### **Analysis Prepared by the Department of Regulation and Licensing**

##### *Statute(s) interpreted*

Section 480.08 (6).

##### *Statutory authority*

Sections 227.11 (2) and 480.08 (6), Wis. Stats.

##### *Explanation of agency authority*

The Department of Regulation and Licensing has the authority under section 480.08 (6) to promulgate rules relating to auctioneer continuing education.

##### *Related statute or rule*

There are no other statutes or rules other than those listed.

##### *Plain language analysis*

Section 1 amends RL 128.03 (1) (b) to allow the 7 hours update Uniform Standards of Professional Appraisal Practice (USPAP) course be approved as continuing education for those individuals licensed as both auctioneers and real estate appraisers.

Section 2 creates RL 128.04 (6) (c) which adds appraisers, who are approved by the Appraiser Qualifications Board of the Appraisal Foundation, to the list of those who are approved to be continuing education instructors.

##### *Summary of and preliminary comparison with existing or proposed federal regulation*

No existing or proposed federal regulation.

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

###### *Illinois:*

Courses must be provided by a school approved and licensed in accordance with the Auction License Act and the rules for the Administration of the Auction License Act. Courses must be developed and presented by persons with education or experience in the subject of the continuing education courses. "Real Estate School Approved under Article 30 of the Real Estate License Act of 2000" is one type of approved school. Section 1440.310, Rules for Administration of the Auction Act.

###### *Iowa:*

Does not require a license for auctioneers.

###### *Michigan:*

Registered auctioneer license is available but voluntary. No CE requirement.

###### *Minnesota:*

Requires a license in the county of residence. No CE requirement.

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

Many auctioneers are dually-licensed as real estate appraisers. Licensed and certified real estate appraisers are required to take a 7-hour national Uniform Standards of Professional Appraisal Practice (USPAP) update course



every biennium to maintain their license status. Auctioneers who are also dually licensed as real estate appraisers would like to be able claim credit for the USPAP course to assist in meeting their biennial continuing education credits as auctioneers. This is business–friendly as independent practitioners and businesses will be able to reduce the costs of complying with continuing education requirements. It also benefits dually–licensed auctioneers as it provides a greater variety of continuing education courses that they may take to meet their biennial requirements.

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

Section 227.137, Stats., requires an “agency” to prepare an economic impact report before submitting the proposed rule–making order to the Wisconsin Legislative Council. The Department of Regulation and Licensing is not included as an “agency” in this section.

**Small Business Impact**

These proposed rules were reviewed by the Small Business

Review Advisory Committee and it was determined that the rules will not have a significant economic impact on a substantial number of small businesses, as defined in s. 227.114 (1), Stats. The Department’s Regulatory Review Coordinator may be contacted by email at [john.murray@wisconsin.gov](mailto:john.murray@wisconsin.gov), or by calling (608) 266–8608.

**Fiscal Estimate**

The department estimates that the proposed rule will have no significant fiscal impact.

***Anticipated costs incurred by the private sector***

The department finds that this rule has no significant fiscal effect on the private sector.

**Contact Person**

Sharon Henes, Paralegal, Department of Regulation and Licensing, Division of Board Services, 1400 East Washington Avenue, Room 151, P.O. Box 8935, Madison, Wisconsin 53708; telephone 608–261–2377; email at [sharon.henes@wisconsin.gov](mailto:sharon.henes@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.*

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

(DATCP # 10-R-02)

Revises Chapter ATCP 70, relating to food processing plant license exemptions for certain small processors.

## **Insurance** **CR 11-021**

Revises section Ins 6.07, relating to readability and electronic access to insurance policies.

## **Natural Resources** ***Fish, Game, etc., Chs. NR 1—*** **CR 11-006**

(DNR # FH-03-11)

Revises Chapters NR 20, 23 and 26, relating to fishing regulation changes presented at the 2011 Spring Fish and Wildlife Rules hearings.

## **Regulation and Licensing** **CR 11-018**

Revises Chapters RL 200 to 202, relating to sign language interpreters.

## **Regulation and Licensing —** **Marriage and Family Therapy, Professional** **Counseling and Social Work Examining Board** **CR 11-028**

Revises Chapter MPSW 3, relating to social work training certificate.

## **Regulation and Licensing —** **Veterinary Examining Board** **CR 11-025**

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

This rule is not subject to s. 227.185, Stats. The statement for this rule, published on March 14, 2011 in Register No. 663, was sent to the Legislative Reference Bureau prior to the effective date of 2011 Wis. Act 21.

## **Revenue** **CR 10-129**

Revises Chapter Tax 20 and repeals Chapter Tax 20 Appendix and Tax 53, relating to the lottery and gaming and school levy tax credits and plat review fees.

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## Rule Orders Filed with the Legislative Reference Bureau

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*The following administrative rule orders have been filed with the Legislative Reference Bureau and are in the process of being published. The date assigned to each rule is the projected effective date. It is possible that the publication date of these rules could be changed. Contact the Legislative Reference Bureau at [bruce.hoesly@legis.wisconsin.gov](mailto:bruce.hoesly@legis.wisconsin.gov) or (608) 266-7590 for updated information on the effective dates for the listed rule orders.*

**Agriculture, Trade and Consumer Protection**  
**CR 10-106**

(ATCP # 09-R-17)

Creates section ATCP 69.01, relating to buttermaker license qualifications.  
Effective 8-1-11.

57, 90, 91, 92 and 161, relating to various minor and technical rule changes.  
Effective 8-1-11.

**Agriculture, Trade and Consumer Protection**  
**CR 11-001**

(ATCP # 10-R-6)

Creates section ATCP 21.21, relating to restricting the import of certain plants, wood and wood products to prevent the introduction of thousand cankers disease of walnut trees into this state.  
Effective 8-1-11.

**Agriculture, Trade and Consumer Protection**  
**CR 10-122**

(ATCP # 09-R-05)

Revises Chapters ATCP 21 Appendix A, 29, 30, 35, 50, 55,

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# Rules Published with this Register and Final Regulatory Flexibility Analyses

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

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

## **Agriculture, Trade and Consumer Protection**

### **CR 10-107**

(ATCP # 10-R-08)

Revises Chapter ATCP 20, relating to agricultural and vegetable seed germination, labeling and sale. Effective 7-1-11.

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

##### ***Business Impact***

This rule will promote fair competition in the seed industry, for the benefit of seed businesses and seed purchasers. It will update obsolete seed standards, and will ensure that all seed labelers use the same standards for seed labeling and analysis. It will facilitate interstate commerce by making Wisconsin standards more consistent with current standards used by the United States department of agriculture ("USDA") and other states. This rule will not have any significant adverse impact on affected businesses.

##### ***Accommodation for Small Business***

Many of the businesses affected by this rule are small businesses. This rule ensures a fair marketplace for all businesses, including small businesses, by requiring all agricultural and vegetable seed sold in Wisconsin to meet certain standards. DATCP estimates that small businesses will incur minimal or no additional compliance costs to meet these updated standards. Although this rule will affect some small businesses, it will have a positive, rather than adverse, impact on them.

This rule also creates a mechanism by which DATCP may, for good cause, grant individual variances from labeling requirements under this rule if the variance is consistent with the purposes of this rule and is necessary to avoid unfairness or unnecessary hardship.

##### ***Conclusion***

This rule will benefit Wisconsin seed businesses, and will have no significant adverse impact on small businesses or other businesses.

#### **Summary of Comments by Legislative Review Committees**

No comments were reported.

## **Commerce**

### ***Movable Soccer Goals, Ch. Comm 9***

#### **CR 11-003**

Revises Chapter Comm 9, relating to anchoring and securing of movable soccer goals. Effective 7-1-11.

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

Pursuant to s. 227.19 (3m), Stats., the Department of

Commerce has determined that the proposed rules to create chapter Comm 9 will not have a significant impact on a substantial number of small businesses. The proposed rules implement the mandates imposed by 2009 Wisconsin Act 390 regarding the anchoring or securing of movable soccer goals. The Department does not believe the rules will increase the effect on small businesses more than that imposed by the Act. The Department did not receive any comments by individuals indicating that they represented a small business.

#### **Summary of Comments by Legislative Review Committees**

No comments were received.

## **Insurance**

### **CR 10-149**

Revises section Ins 3.37 and creates section Ins 3.375, relating to health insurance coverage of nervous and mental disorders and substance use disorders. Effective 7-1-11.

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

The Office of the Commissioner of Insurance has determined that this rule will not have a significant economic impact on a substantial number of small businesses and therefore a final regulatory flexibility analysis is not required.

#### **Summary of Comments by Legislative Review Committees**

No comments were received.

## **Insurance**

### **CR 10-150**

Revises section Ins 3.35, relating to colorectal cancer screening. Effective 7-1-11.

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

The Office of the Commissioner of Insurance has determined that this rule will not have a significant economic impact on a substantial number of small businesses and therefore a final regulatory flexibility analysis is not required.

#### **Summary of Comments by Legislative Review Committees**

No comments were received.

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## Sections Affected by Rule Revisions and Corrections

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

### Revisions

#### Agriculture, Trade and Consumer Protection

##### Ch. ATCP 20

(Entire Chapter)

#### Commerce

##### Ch. Comm 9

(Entire Chapter)

#### Commissioner of Insurance

##### Ch. Ins 3

Ins 3.35

Ins 3.37 (1), (2), (2m), (3), (3m), (4), (4m), (5), (5m)

Ins 3.375

### Editorial Corrections

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

#### Agriculture, Trade and Consumer Protection

##### Ch. ATCP 20

ATCP 20.01 (28) (a), (b)

ATCP 20.06 (4) (b), (c)

##### Ch. ATCP 99

ATCP 99.135 (2) (intro.)

ATCP 99.255 (2) (intro.)

##### Ch. ATCP 100

ATCP 100.13 (1) (f)

ATCP 100.135 (6) (b) (intro.)

ATCP 100.16 (1) (intro.)

ATCP 100.21 (Note)

##### Ch. ATCP 101

ATCP 101.20 (3m)

ATCP 101.245 (2) (a) 2., (b) 2., (c) 2., (3) (a)

ATCP 101.255 (2) (intro.)

##### Ch. ATCP 102

ATCP 102.11 (2) (a)

#### Corrections

##### Ch. DOC 311

DOC 311.03 (4)

##### Ch. DOC 314

DOC 314.02 (3)

##### Ch. DOC 348

DOC 348.07 (intro.)

##### Ch. DOC 349

DOC 349.08 (3)

##### Ch. DOC 350

DOC 350.08 (intro.)

##### Ch. DOC 396

DOC 396.10 (1) (b)



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## Executive Orders

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

**Executive Order 33.** Relating to a Special Session of the Legislature and Amending Executive Orders #1, #4, #14, and #25.

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# Public Notices

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## Department of Health Services

### (Medical Assistance Reimbursement of Nursing Homes) State of Wisconsin Medicaid Nursing Facility Payment Plan: FY 11–12

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, 2011.

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 2012–2013 Biennial Budget. Some of the changes are technical in nature; some clarify various payment plan provisions.

The estimated net decrease in annual aggregate expenditures attributable to these changes for skilled nursing homes serving MA residents is approximately \$18,220,112 (All Funds), 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 changes may be modified by later legislative mandates.

The proposed changes are as follows:

1. Modify the methodology to adjust the reimbursement for nursing homes within the parameters of the 2012–2013 Biennial Budget Bill. These parameters are divided into three parts. One will disburse the \$14,569,107 decrease in the budget for Medicaid skilled nursing home funding. A second is a \$332,753 increase for traumatic brain injury programs. The third is a 4.5% increase in rates for members with Developmental Disabilities in institutions. A projected decrease in patient days for this category causes a net decrease for the category of \$3,983,758. 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 2011–2012 period.
5. Modify contact names and addresses.
6. Delete reference to the “9–bed test” in Section 1.512.
7. Delete the 1994 hold–harmless test in Sections 3.721, 3.722, item 1 and 3.760 while re–numbering Section 3.722.
8. Delete Section 4.695 and modify Sections 4.691 and 6.310 to specify that exceptional supplies are included in the ventilator rate in Section 4.691.
9. Clarify the parameters for bed hold in Section 1.510 to exclude billing bedhold for Medicare Part A residents and clarify the bedhold test in 1.512.
10. Modify Sections 2.145, 3.100, 3.122, 5.422, 5.430 and related sections to allow for changing to the MDS 3.0/RUGs IV system and clarify the definition of “all–resident CMI.”
11. Clarify Sections 1.304, 4.401 and 4.501 to exclude restricted use beds from beds used for rate setting.

12. Modify Sections 3.651 and 3.654 for the Exceptional Medicaid/Medicare Utilization Incentive and the Medicaid Access Incentive.
13. Modify Section 5.422 to reflect changes in the “as of” dates.
14. Modify Section 3.775 to reflect a \$1 million increase in supplemental payments.

**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 550 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.

**Department of Health Services**  
**(Medical Assistance Reimbursement for Transportation Services)**

The state of Wisconsin reimburses providers for services provided to low-income persons under the authority of Title XIX of the Social Security Act and sections 49.43 to 49.47, Wisconsin Statutes. The Wisconsin Department of Health Services administers this program, which is called Medical Assistance or Medicaid. In addition, Wisconsin has expanded this program to create the BadgerCare Plus programs under the authority of Title XIX and Title XXI of the Social Security Act and chapters 49.43 to 49.47 of Wisconsin Statutes. Together the Medical Assistance and BadgerCare Plus programs are referred to as ForwardHealth.

Among the providers reimbursed under the Medicaid and BadgerCare Plus programs are providers of transportation services. Recipients of medically necessary services are entitled to reimbursement for transportation services to medical appointments. Currently providers of these transportation services are individually reimbursed for each ride provided. This is referred to as “fee-for-service” reimbursement.

The Department currently proposes to make a change in reimbursement for providers of transportation services to Medicaid and BadgerCare Plus recipients. Effective for dates of service on and after July 1, 2011, Wisconsin Medicaid and BadgerCare Plus will provide transportation services through the use of a transportation manager. The Department of Health Services has gone through a request for proposal (RFP) process and has selected LogistiCare, LLC (LogistiCare) to provide transportation services through the transportation broker system. The transportation manager will provide transportation services to Medicaid and BadgerCare Plus recipients in all but six Wisconsin counties. Individuals who are enrolled in managed care in Milwaukee, Waukesha, Kenosha, Racine, Ozaukee, and Washington counties will receive transportation services through the managed care organizations who currently provide their health care services.

The transportation manager system will be a more efficient way to deliver transportation services by providing a centralized way to provide these services. By centralizing administration of these services, it will also make it possible for the Department to control fraud or misuse of these services.

Although the cost of providing these services in all funds will not change, the Department will receive increased federal revenues for providing the services. Currently transportation is billed to the federal Centers for Medicare and Medicaid Services as an administrative cost. Under the transportation manager system, the services will be billed as a medical service. Due to the higher match rate available for medical services, this change will result in an increase in costs to the federal government (FED) of \$600,000 per state fiscal year (SFY). For purposes of this public notice, the fiscal impact is \$600,000 in FED for SFY 2012, which begins July 1, 2011 and ends June 30, 2012, and \$600,000 in FED for SFY 2013, which begins July 1, 2012 and ends June 30, 2013.

**Written Comments and Copies of the Proposed Change:**

A copy of the proposed change may be obtained free of charge at your local county agency or by calling or writing as follows:

**Regular Mail**  
 Greg DiMiceli  
 Division of Health Care Access and Accountability  
 PO Box 309  
 Madison, WI 53701-0309

**Phone**  
 Greg DiMiceli  
 Division of Health Care Access and Accountability  
 (608) 266-9815

**Fax**  
 (608) 266-1096  
 Attention: Greg DiMiceli

**E-Mail**  
[gregory.dimiceli@dhs.wisconsin.gov](mailto:gregory.dimiceli@dhs.wisconsin.gov)

A copy of the proposed change is available for review at the main office of any county department of social services or human services.

**Written Comments:**

Written comments are welcome. Written comments on the proposed change may be sent by FAX, e-mail, or regular mail to the Division of Health Care Access and Accountability. The FAX number is (608) 261-7792. The e-mail address is [gregory.dimiceli@dhs.wisconsin.gov](mailto:gregory.dimiceli@dhs.wisconsin.gov). Regular mail can be sent to the above address. All written comments will be reviewed and considered.

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

**Health and Family Services**  
**Medicaid Reimbursement for Outpatient Hospital Services:**  
**Acute Care Hospitals, Children's Hospitals, Major Border Status Hospitals,**  
**Non State Public and Private Psychiatric Hospitals**  
**State of Wisconsin Medicaid Payment Plan for State Fiscal Year 2011-2012**

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

Under the current Medicaid Outpatient Hospital State Plan, effective July 1, 2011, the rate setting methodology for Acute Care, Major Border Status and Children's Hospitals is a provider specific, cost-based rate per visit. Out of state and new hospitals without cost reports are paid at a statewide average percent of charges.

The following changes will be contained in the July 1, 2011 outpatient hospital state plan amendment:

- The budget neutrality factor will be updated to ensure outpatient hospital spending is properly aligned with the Medicaid budget.
- The laboratory cost settlement methodology will be modified to be consistent with the new methodology recently approved by the Centers for Medicare and Medicaid Services (CMS) throughout the state fiscal year 2011 Medicaid state plan process.
- One percent of funding will be withheld for pay-for-performance payments.

**Proposed Change**

It is estimated that these changes will have no impact on projected annual aggregate Medicaid expenditures in state fiscal year 2011-12.

The Department's proposals involves no change in the definition of those eligible to receive benefits under Medicaid, and the benefits available to eligible recipients remains the same. The effective date for these proposed changes will be July 1, 2011.



### Copies of the Proposed Change

A copy of the proposed change may be obtained free of charge at your local county agency or by calling or writing as follows:

#### Regular Mail

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

#### State Contact

Krista Willing, Section Chief  
Hospital Rate Setting  
(608) 266-2469 (phone)  
(608) 266-1096 (fax)

[KristaE.Willing@wisconsin.gov](mailto:KristaE.Willing@wisconsin.gov)

A copy of the proposed change is available for review at the main office of any county department of social services or human services.

### Written Comments

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

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

### Health and Family Services

#### Medicaid Reimbursement for Inpatient Hospital Services: Acute Care Hospitals, Children's Hospitals, Major Border Status Hospitals, Non State Public and Private Psychiatric Hospitals State of Wisconsin Medicaid Payment Plan for State Fiscal Year 2011-2012

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

Under the current Medicaid Inpatient Hospital State Plan, effective July 1, 2011, the rate-setting methodology for Acute Care, Major Border Status and Children's Hospitals is a provider specific, DRG payment system adjusted by case mix that assigns each hospital a unique hospital specific DRG base rate. This rate includes adjustments for differences in wage levels, includes an amount for capital expenditures, and payment enhancements for qualifying Rural Hospitals and facilities with Graduate Medical Education programs. In addition, a cost outlier payment will be made when the cost of providing services exceeds a pre-determined tripoint. Payments are adjusted as necessary to ensure budget compliance using a statewide base rate as the starting point of the rate setting process. Non State Public and Private Psychiatric and Rehabilitation Hospitals are paid on a provider specific, cost based per diem rate adjusted as necessary to ensure budget compliance.

The following will be new for 2011-2012 and not reflected in the 2010-2011 rate methods:

- The base rate will be updated to ensure inpatient hospital spending is properly aligned with the Medicaid budget.
- One percent of funding will be withheld for pay-for-performance payments.
- The tripoint which is used to determine outlier payments will increase by 2.95% for all hospitals reimbursed under the DRG methodology. The previous tripoint for hospitals with over 100 beds was \$31,410 and for hospitals with less than 100 beds was \$5,235. The new tripoints are outlined below. Please note, the increase is not applicable to Critical Access Hospitals or hospitals reimbursed under a per diem methodology.

<u>Type of Hospital / Bed Size</u>	<u>—Tripoint Amount—</u>	
	<u>Less than 100 Beds</u>	<u>100 Beds or Greater</u>
General Medical & Surgical Hospitals	\$5,389	\$32,337
Critical Access Hospital	\$300	N/A

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

### **Proposed Change**

It is estimated that these changes will have no impact on projected annual aggregate Medicaid expenditures in state fiscal year 2011–12.

The Department's proposals involves no change in the definition of those eligible to receive benefits under Medicaid, and the benefits available to eligible recipients remains the same. The effective date for these proposed changes will be July 1, 2011.

### **Copies of the Proposed Change**

A copy of the proposed change may be obtained free of charge at your local county agency or by calling or writing as follows:

#### **Regular Mail**

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

#### **State Contact**

Krista Willing, Section Chief  
Hospital Rate Setting  
(608) 266–2469 (phone)  
(608)266–1096 (fax)

[KristaE.Willing@wisconsin.gov](mailto:KristaE.Willing@wisconsin.gov)

A copy of the proposed change is available for review at the main office of any county department of social services or human services.

### **Written Comments**

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

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

## **Department of Workforce Development Publication of Adjusted Amounts Limits to Damage Awards Under Section 111.397 (2), Stats.**

Section 111.397 (2), Stats., was created by 2009 Wisconsin Act 20 and provides that, in an action brought after the completion of administrative proceedings before the DWD Equal Rights Division, the plaintiff may recover compensatory and punitive damages, plus reasonable costs and attorney fees, in addition to any amounts awarded under the administrative proceeding. (This right to bring a claim for additional damages does not apply if the employer is a unit of local government or an entity that has fewer than 15 employees.)

The statute sets the following upper limits on any total award of damages under this provision:

Defendant employing 100 or fewer employees for each working day in each of 20 or more calendar weeks in the current or preceding year	\$50,000
Defendant employing more than 100 but fewer than 201 employees for each working day in each of 20 or more calendar weeks in the current or preceding year	\$100,000
Defendant employing more than 200 but fewer than 501 employees for each working day in each of 20 or more calendar weeks in the current or preceding year	\$200,000
Defendant employing more than 500 employees for each working day in each of 20 or more calendar weeks in the current or preceding year	\$300,000

The statute provides that, beginning on July 1, 2010 and continuing on each July 1 after that, DWD shall adjust these amounts by calculating the percentage difference between the Consumer Price Index for the 12-month period ending on December 31 of the preceding year and the Consumer Price Index for the 12-month period ending on December 31 of the year before the preceding year and adjusting those amounts by that percentage difference. (This provision does not apply if the CPI does not increase over the 12-month period.)

The statute further provides that DWD shall publish the adjusted amounts calculated under this subdivision in the Wisconsin Administrative Register, and the adjusted amounts shall apply to actions commenced under sec. 111.397 (1) (a) beginning on July 1 of the year of publication.

DWD found that there was a decrease in the CPI between December 31, 2008 and December 31, 2009, and accordingly did not publish any adjustment to the damage limit amounts in 2010.

DWD has now found that there was an increase of 1.64% in the CPI between December 31, 2009 and December 31, 2010, and accordingly publishes these adjusted limits to damage awards under s. 111.397, Stats., effective July 1, 2011:

Defendant employing 100 or fewer employees for each working day in each of 20 or more calendar weeks in the current or preceding year	\$50,082
Defendant employing more than 100 but fewer than 201 employees for each working day in each of 20 or more calendar weeks in the current or preceding year	\$100,164
Defendant employing more than 200 but fewer than 501 employees for each working day in each of 20 or more calendar weeks in the current or preceding year	\$200,328
Defendant employing more than 500 employees for each working day in each of 20 or more calendar weeks in the current or preceding year	\$300,492

**For further information, interested parties may contact:**

Pamela Rasche, Director  
Bureau of Civil Rights  
Wis. DWD Equal Rights Division  
(414) 227-4376  
[Pamela.Rasche@dwd.wisconsin.gov](mailto:Pamela.Rasche@dwd.wisconsin.gov)

Howard Bernstein, Legal Counsel  
Wis. Dept. Of Workforce Development  
(608) 266-9427

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## Notice of Objection to Proposed Rule

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### Motion on CR 10-087

That the Joint Committee for Review of Administrative Rules objects to Clearinghouse Rule 10-087, pursuant to s. 227.19 (5) (d), Stats., on the grounds that the proposed rule imposes an undue hardship as stated in s. 227.19 (4) (d) 6., Stats.

Motion Adopted



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Department of Administration  
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