

Wisconsin Administrative Register

No. 664



Publication Date: April 14, 2011

Effective Date: April 15, 2011



Legislative Reference Bureau
<http://www.legis.state.wi.us/rsb/code.htm>



WISCONSIN ADMINISTRATIVE REGISTER

The Wisconsin Administrative Register is published twice monthly by the Legislative Reference Bureau.

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Emergency Rules Now in Effect

Under s. 227.24, Stats., state agencies may promulgate rules without complying with the usual rule-making procedures. Using this special procedure to issue emergency rules, an agency must find that either the preservation of the public peace, health, safety or welfare necessitates its action in bypassing normal rule-making procedures.

Emergency rules are published in the official state newspaper, which is currently the Wisconsin State Journal. Emergency rules are in effect for 150 days and can be extended up to an additional 120 days with no single extension to exceed 60 days.

Occasionally the Legislature grants emergency rule authority to an agency with a longer effective period than 150 days or allows an agency to adopt an emergency rule without requiring a finding of emergency.

Extension of the effective period of an emergency rule is granted at the discretion of the Joint Committee for Review of Administrative Rules under s. 227.24 (2), Stats.

Notice of all emergency rules which are in effect must be printed in the Wisconsin Administrative Register. This notice will contain a brief description of the emergency rule, the agency finding of emergency or a statement of exemption from a finding of emergency, date of publication, the effective and expiration dates, any extension of the effective period of the emergency rule and information regarding public hearings on the emergency rule.

Copies of emergency rule orders can be obtained from the promulgating agency. The text of current emergency rules can be viewed at www.legis.state.wi.us/rsb/code.

Beginning with rules filed with the Legislative Reference Bureau in 2008, the Legislative Reference Bureau will assign a number to each emergency rule filed, for the purpose of internal tracking and reference. The number will be in the following form: EmR0801. The first 2 digits indicate the year of filing and the last 2 digits indicate the chronological order of filing during the year.

Agriculture, Trade and Consumer Protection (2)

1. EmR1040 — Rule adopted to create **Chapter ATCP 53**, relating to agricultural enterprise areas.

Exemption from Finding of Emergency

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

The department views s. 91.84(2) as authority to adopt permanent rules that shall be published immediately in the Wisconsin Administrative Code.

Publication Date: November 9, 2010
Effective Dates: January 1, 2011 until the Department modifies or repeals the rule

2. EmR1048 — Rule adopted to repeal and recreate **Chapter ATCP 20**, relating to seed labeling and sales.

Finding of Emergency

Pursuant to sections 93.07(1) and 94.45(6), Stats. This emergency rule is also adopted pursuant to the nonstatutory provision in 2009 Wis. Act 28, section 9103(3).

2009 Wis. Act 28 repealed outdated seed standards effective January 1, 2011, and authorized DATCP to adopt new standards by rule. A non-statutory provision, contained in section 9103(3) of Act 28, authorized DATCP to adopt interim rules by the emergency rulemaking procedure under s. 227.24, Stats., without a finding of emergency. Under this non-statutory provision, the interim rules may remain in effect until July 1, 2011 or until the effective date of proposed “permanent” seed rules, whichever date is earlier.

Publication Date: January 1, 2011
Effective Dates: January 1, 2011 through July 1, 2011
Hearing Date: January 11, 2011

Children and Families (2)

Safety and Permanence, Chs. DCF 37–59

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

Exemption From Finding of Emergency

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

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

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

2. 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
Hearing Date: February 8, 15, 28, 2011

Commerce (4)

Financial Resources for Businesses and Communities, Chs. Comm 100—

1. EmR1019 — Rule adopted to create **Chapter Comm 135**, relating to tax credits for investments in food processing plants and food warehouses.

Finding of Emergency

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

The facts constituting the emergency are as follows. Under sections 71.07 (3rm), 71.28 (3rm) and 71.47 (3rm) of the Statutes, as created in 2009 Wisconsin Act 295, a taxpayer may claim a tax credit for investments in food processing plants and food warehouses during taxable years beginning after December 31, 2009.

Section 560.2056 (4) of the Statutes, as likewise created in 2009 Wisconsin Act 295, requires the Department to (1) implement a program for certifying taxpayers as eligible for the food processing plant and food warehouse investment credit, (2) determine the amount of credits to allocate to those taxpayers, and (3) in consultation with the Department of Revenue, promulgate rules to administer the program. No other provisions are established in the Statutes regarding the specific process for taxpayers to use in applying for the credits, and for the Department of Commerce to use in certifying eligible taxpayers and in allocating the credits.

Because of enactment of 2009 Wisconsin Act 295, a number of entities that may be eligible for the tax credits have contacted the Department with inquiries concerning the process for applying for the credits, for expenditures that have been or will be incurred during taxable years that began after December 31, 2009. In addition, section 71.07 (3rm) of the Statutes includes a \$1,000,000 tax-credit allocation that became available on May 27, 2010, and expires on June 30, 2010.

Although the Department of Commerce has begun promulgating the permanent rule that is required by 2009 Act 295, the time periods in chapter 227 of the Statutes for promulgating permanent rules preclude the permanent rule from becoming effective in time to accommodate allocating the tax credits for the 2009–10 fiscal year. This emergency rule will enable the Department of Commerce to establish an application, certification, and tax credit allocation process for

the entities that will be eligible for the allocation that expires on June 30, 2010.

Publication Date: June 8, 2010
Effective Dates: June 8, 2010 through November 4, 2010
Extension Through: March 11, 2011
Hearing Date: August 17, 2010

2. EmR1026 — Rule adopted creating **Chapter Comm 139**, relating to rural outsourcing grants.

Exemption From Finding of Emergency

The Legislature, by Section 45 (1) (b) of 2009 Wisconsin Act 265, 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: July 2, 2010
Effective Dates: July 2, 2010 through November 28, 2010
Extension Through: March 28, 2011
Hearing Date: October 13, 2010

3. 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 (corrected)
Hearing Date: February 15, 2011

4. EmR1044 — Rule adopted to revise **Chapter Comm 139**, relating to rural outsourcing grants.

Exemption From Finding of Emergency

The Legislature, by SECTION 45 (1) (b) of 2009 Wisconsin Act 265, 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 28, 2010
Effective Dates: November 28, 2010 through April 26, 2011
Hearing Date: February 16, 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
Hearing Date: February 16, 2011

Insurance (3)

1. EmR1042 — Rule to create **section Ins 3.35**, relating to colorectal cancer screening coverage 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:

Beginning December 1, insurers offering disability insurance policies and self-insured governmental plans are required to offer coverage for colorectal cancer screening. In order to ensure there is no gap in coverage the office needs to promulgate guidance as directed s. 632.895 (16m) (d), Stats., in advance of the initial implementation date.

Publication Date: November 29, 2010
Effective Dates: November 29, 2010 through April 27, 2011
Hearing Date: January 25, 2011

2. EmR1043 — Rule to amend **section Ins 3.37 (1) to (5) (intro)**; and to create **sections Ins 3.37 (2m), (3m), (4m) and (5m), and 3.375**, relating to health insurance coverage of nervous and mental disorders and substance use disorders, and affecting small business.

Exemption From Finding of Emergency

The legislature by s. 632.89 (4) (b) 2., Stats., provides an exemption from a finding of emergency for adoption of the rule. Section 632.89 (4) (b) 2., Stats., reads as follows:

632.89 (4) (b) 2. Using the procedure under s. 227.24, the commissioner may promulgate the rules under subd. 1., for the period before the effective date of any permanent rules promulgated under subd.1., but not to exceed the period authorized under 227.24 (1) (c) and (2). Notwithstanding s. 227.24 (1) (a), (2) (b), and (3), the commissioner is not required to provide evidence that promulgating a rule under this subdivision as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to make a finding of emergency for a rule promulgated under this subdivision.

Publication Date: November 29, 2010
Effective Dates: November 29, 2010 through April 27, 2011
Hearing Date: January 25, 2011

3. 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
 (See Notice this Register)

Natural Resources (3) *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*

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
Hearing Date: January 21, 2011

Public Instruction

EmR1051 — Rule adopted to create **Chapter PI 46**, relating to training requirements for individuals administering nonprescription and prescription drug products to pupils.

Finding of Emergency

The Department of Public Instruction finds an emergency exists and that a rule is necessary for the immediate preservation of the public welfare. A statement of the facts constituting the emergency is:

Section 118.29 (6), Stats., requires the department to approve training in administering nonprescription drug products and prescription drugs. The statute also specifies that no school bus driver, employee, or volunteer may administer a nonprescription drug product or prescription drug, use an epinephrine auto-injector, or administer

glucagon unless he or she has received such training. Because the statutory requirement becomes effective March 1, 2011, administrative rules must be in place as soon as possible so that training programs can be established prior to the effective date of the statutes.

Publication Date: December 28, 2010
Effective Dates: December 28, 2010 through May 26, 2011
Hearing Date: January 12, 2011

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

(See Notice this Register)

**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
Hearing Date: April 4, 2011

**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

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

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

Scope Statements

Commerce

Licenses, Certifications and Registrations, Ch. Comm 5 Boilers and Pressure Vessels, Ch. Comm 41

Subject

Revises Chapters Comm 5 and 41, relating to boilers and pressure vessels and corresponding credentials.

Objective of the Rule

The primary objective of this rule development is to update chapter Comm 41, relating to boilers and pressure vessels, to reflect current national standards and corresponding administrative and enforcement aspects. Minor changes to corresponding requirements for credentials in chapter Comm 5 are also expected.

Policy Analysis

Since 1957, chapter Comm 41 has primarily adopted by reference the boiler and pressure vessel code issued by the American Society of Mechanical Engineers. Currently, the 2007 edition is adopted. The 2010 edition is expected to be adopted instead during this rule development, and other related standards that are currently referenced in this chapter may likewise be updated to include the most recent edition.

Statutory Authority

Sections 101.02 (15) (h) to (j), 101.17 and 227.11 (2) (a).

Comparison with Federal Regulations

No existing or proposed federal regulations addressing this topic were found during the most recent update of this chapter in 2007, other than the Nuclear Regulatory Commission applying an earlier version of the ASME code to nuclear power plants. The Department is not aware of any such federal regulations being issued or proposed since then.

Entities Affected by the Rule

These rule changes may affect any entity involved with the design, construction, installation, inspection, operation, testing, maintenance, repair or alteration of boilers or pressure vessels.

Estimate of Time Needed to Develop the Rule

The staff time needed to develop the rule changes is expected to range from 200 to 400 hours, depending upon the associated complexity. This includes research, rule drafting, and processing the rule changes through public hearings, legislative review, and adoption. Also, copies of the referenced standards will need to be purchased. There are no other resources necessary to promulgate the rule changes.

Corrections

Subject

Repealing and recreating Chapter DOC 349, relating to municipal lockup facilities.

Objective of the Rule

The objective of the rule is to:

- Eliminate outdated provisions;
- Clarify language;
- Update citations to statutes for accuracy;
- Clarify and update standards for the physical plant of a lockup facility;
- Clarify and update standards for lockup operations; and
- Renumber and reorganize the rule chapter.

Policy Analysis

The department is responsible for establishing standards for the construction and operation of municipal lockup facilities. The department is also responsible for inspecting the facilities on an annual basis and as necessary. In 1990 the department last conducted a comprehensive review of the rule which establishes minimum standards in lockup operations. The department revised the rule in 1999 to address the housing of juveniles in municipal lockups. The issues addressed in the rule include: the review and approval of construction plans, physical plant requirements, occupancy limitations and requirements for single and double celling, juveniles, health care, including health screening upon admission, medication administration, suicide prevention, and crisis intervention, fire safety, security, administrative confinement, discipline, records and reporting, and variances.

Since the last time the rule was comprehensively reviewed, there have been changes in case law and correctional practices, relating to detention. There is a need to review the current rule to reflect the changes in the law and correctional practices. The alternatives to the proposed review would result in the department continuing to have outdated policies which do not adequately reflect the current state of the law and a rule which needs clarification and reorganization.

Statutory Authority

Sections 227.11 (2), 301.03 (5), 301.36, 301.37 (1), 302.365, 938.209 (2m), Statutes.

Comparison with Federal Regulations

There are no federal regulations that impact municipal, except with respect to the housing of juveniles. Specifically, the federal Juvenile Justice and Delinquency Act (JJDA), 42 USC 5601, et seq., and the implementing regulations (28 CRF Part 31) limit the housing of juveniles in municipal lockups.

Entities Affected by the Rule

The rule affects persons who are arrested or charged with criminal offenses; municipal entities, including police departments, and DOC staff.

Estimate of Time Needed to Develop the Rule

The Department estimates that it will take approximately 200 hours to develop this rule, including drafting the rule and complying with rulemaking requirements.

Agency Contact

Kathryn R. Anderson, Chief Legal Counsel, Wisconsin Department of Corrections, 3099 East Washington Avenue,

P.O. Box 7925, Madison, WI 53707-7925, (608) 240-5049,
kathryn.anderson@wisconsin.gov.

Natural Resources
Fish, Game, etc., Chs. NR 1—
 (DNR # WM-11-11)

Subject

Revises Chapter NR 10, relating to seasons and daily bag limits for migratory game bird hunting.

Objective of the Rule

Policy Analysis

This rule order will establish the 2011 migratory bird hunting seasons. In mid July Department staff attend the Mississippi Flyway Council (MFC) Technical and Council meetings where they will receive proposed season framework options from the U.S. Fish and Wildlife Service (USFWS). Staff will then work with other states in our Flyway to develop recommendations that are voted upon by the MFC. Proposals that are passed at the MFC meeting are forwarded to the FWS for consideration by the Service Regulations Committee (SRC) in late July. Department staff will contact the FWS following the SRC meeting to obtain the latest season recommendations.

Once the USFWS's final framework is available (approximately August 1), Department staff can summarize waterfowl status and regulation information for Wisconsin citizens. This information is presented and public comments are received from the Migratory Committee of the Conservation Congress and a public meeting (Post-Flyway Meeting) of interest groups and individuals. The following week, public hearings will be held around the state to solicit additional input. The Department then promulgates a permanent and emergency rule simultaneously in order to open the waterfowl seasons in September.

All the proposed modifications included in this rule order are consistent with the parameters and guidelines which are annually established by the Fish and Wildlife Service in 50 CFR, part 20.

Statutory Authority

Sections 29.014, 29.041, 29.192 and 227.11, Stats.

Comparison with Federal Regulations

Under international treaty and Federal law, migratory game bird seasons are closed unless opened annually through the USFWS regulations process. As part of the federal rule process, the service proposes a duck harvest-management objective that balances hunting opportunities with the desire to achieve waterfowl population goals identified in the North American Waterfowl Management Plan (NAWMP). Under this harvest-management objective, the relative importance of hunting opportunity increases as duck populations approach the goals in the NAWMP. Thus, hunting opportunity is maximized when the population is at or above goals. Other factors such as habitat are also considered.

Locally produced giant Canada geese are now a considerable portion of the harvest in states that also harvest Mississippi Valley Population birds from Canada. The Mississippi Flyway Council has been testing the use of a standard season framework for 5 years, ending after 2011. Season lengths and bag limits for each MVP harvest state have remained unchanged. In 2012, the MFC will conduct an

evaluation of harvest impacts of these stable regulations and establish a framework for future seasons.

Entities Affected by the Rule

These rules will impact migratory game bird hunters and those who enjoy viewing waterfowl in Wisconsin.

Estimate of Time Needed to Develop the Rule

Approximately 381 hours will be needed by the department prior to and following the hearings.

Agency Contact

Kent Van Horn, Migratory Birds Specialist, 101 South Webster Street, PO Box 7921, Madison, WI 53707-7921, (608) 266-8841, Kent.VanHorn@wisconsin.gov.

Natural Resources
Fish, Game, etc., Chs. NR 1—
 (DNR # FH-14-11)

Subject

This proposed rulemaking pertains to revising Chapter NR 25, relating to commercial gill netting in Wisconsin waters of Lake Michigan.

Objective of the Rule

It is in response to a petition for rule-making submitted November 5, 2010, by five of Wisconsin's licensed commercial fishers. The petitioners seek changes in the allowable mesh sizes in gill nets used to catch bloater chubs and yellow perch on Lake Michigan and yellow perch on Green Bay. Current rules provide minimum and maximum allowable mesh sizes and specify procedures for how compliance is to be assessed. The petitioners are requesting a 1/8 inch variance in the allowable mesh sizes. This may mean changes in the minimum and/or maximum mesh sizes or a change in how compliance is assessed.

Under s. 227.12 (3), Stats., the Department must either deny the petition in writing or proceed with the requested rule making. A petition may be denied because it is legally defective or because the NRB does not agree with the rule proposal on public policy grounds. In this case, despite minor legal deficiencies, the petition can be considered to be legally sufficient, and the Department will proceed with rule-making subject to NRB concurrence with the attached Rule Agenda/Board Action Checklist.

Policy Analysis

The primary policy issues are 1) the protection of young yellow perch and bloater chubs from commercial exploitation and 2) the development of gear restrictions that are realistic and enforceable.

Gill nets are highly selective, with the size of fish captured strongly affected by the size of meshes in the net. By specifying allowable mesh sizes the Department is able to control the size and age of fish harvested. The mesh size refers to the diagonal distance across a square of netting subjected to one-pound of strain. Current rules provide minimum and maximum mesh sizes for commercial gill nets used to capture bloater chubs and yellow perch, with the mesh size ranges varying by area and depth. For example, the allowable range is 2 3/8 inch to 2 3/4 inch in the southern chub fishing zone. Nets are considered to be in violation if a majority of 10 randomly selected meshes in a net are illegal.

Yellow perch and bloater chub populations in Lake Michigan and Green Bay are currently in a state of decline and

the enforcement of minimum gill net mesh requirements is one way of helping young fish survive to adulthood and replenish the populations. A decrease in the minimum allowable mesh size or tolerance of a larger fraction of non-conforming nets would place the struggling yellow perch and bloater chub populations at greater risk. On the other hand, the petitioners report that it is difficult to obtain gill netting that conforms to the regulations, and hence are asking for an increase in the allowable variance in mesh sizes.

The policy alternatives include 1) reducing the minimum allowable mesh sizes and/or increasing the maximum mesh sizes, 2) changing the fraction of randomly-selected meshes that must conform with the regulations, and 3) maintaining current regulations. Any reduction in allowable mesh sizes or relaxation of criteria defining compliance would result in an increased harvest of undersized fish.

Statutory Authority

Sections 29.041, 29.014 (1), 29.519 (1m) (b), and 227.11 (2) (a), Stats.

Comparison with Federal Regulations

If the Natural Resources Board concurs in this rule-making, the Department will draft rules for consideration in public hearing that decrease the allowable minimum mesh sizes and that change the allowable fraction of non-conforming meshes.

Entities Affected by the Rule

A rule change would affect licensed commercial fishers on Lake Michigan.

Estimate of Time Needed to Develop the Rule

One month.

Agency Contact

William Horns
Wisconsin Department of Natural Resources
101 South Webster St.
Madison, WI 53707-7921
608-266-8782
william.horns@wisconsin.gov

Natural Resources
Fish, Game, etc., Chs. NR 1—
(DNR # LF-13-11)

Subject

Revises Chapter NR 45, relating to the use of Department properties.

Objective of the Rule

Chapter NR 45 contains the administrative rules for the use of Department properties. Approximately every two years, Department staff review NR 45 and suggest revisions to ensure health and safety, protect natural resources, clarify existing regulations, and adjust fees.

Policy Analysis

The addition of a definition of “mobility disability” is being considered to aid in the implementation of a new federal rule regarding use of power-driven mobility devices by the mobility impaired.

A proposal is being considered to add the Rainbow Flowage in Oneida County to the list of northern flowage properties where the collection of driftwood and other down wood located below the ordinary high water mark is prohibited for habitat and aesthetic purposes.

A proposal is being considered which would allow State Trails to be opened during evening and early morning hours, unless posted otherwise. Currently all State Trails, except the Sugar River State Trail, are closed from 11 p.m.–6 a.m. This change is designed to accommodate users interested in State Trails being open for transportation, recreation, or physical activity during late evening and early morning hours. A rule change is also being explored dealing with crossing State Trails while carrying a firearm for legal hunting purposes on adjacent lands.

A proposal is being considered to give the Department the authority to issue permits for hunter education, civil war reenactment, and other special use events within areas that are closed by rule (NR45.09(1)) to hunting and the possession of loaded and uncased weapons. Permits would assure that safety considerations could be addressed. Without this rule change, these events cannot be authorized within these areas.

Code changes are being considered that would place limits on the number of consecutive days camping is permitted on state owned Mississippi River islands and would require that campsites not be left unattended for over 24 hours. The proposed time frame would be consistent with camping regulations on nearby federally owned islands.

A number of property specific proposals are being considered. A rule is being proposed that would prohibit hunting and trapping in a specified unit of Little Bear Hemlock-Hardwoods State Natural Area due to a condition of the property’s donation. Proposals are also being considered to prohibit boats from Puckett’s pond and Quarry Lake at Harrington Beach State Park and for prohibiting swimming and scuba diving at Quarry Lake and at the Kohler Andrae State Park fishing pond. A proposal being considered would allow boating use on Robinson Creek Pond in Jackson County.

A number of fee proposals are being evaluated. One proposal being considered would require that vehicles parking at the Cambrian Overlook at the Dells of the Wisconsin River State Natural Area have a valid Wisconsin State Park Sticker. Four properties are being considered for addition to the current list of properties able to charge an additional \$3.00/night for camping in response to local market conditions. The properties are Harrington Beach State Park, Kettle Moraine State Forest- Pike Lake unit, Brunet Island State Park and Lake Kegonsa State Park. Proposals are being considered that would raise fees for the indoor group camp at Black River State Forest due to the extent of amenities offered and to reduce fees for the enclosed shelter at Black River State Forest where use has dropped dramatically since prices were raised.

Other proposals being considered are designed to clarify or improve upon existing rules. The word “crossbow” is being considered for inclusion in four sections of the code where the use of bows and other weapons are prohibited but the law does not specifically reference crossbows. Two non-substantive changes are being considered to the firewood regulations to improve wording. A change is also being considered to the campfire section to clarify that wood collection is permitted for campfires occurring on the property. A rule is being considered which would place an additional restriction on altering camping reservations which is designed to improve the equitability of the reservation system. A rule is being

considered that would give priority use of equestrian campgrounds to customers that are in possession of a horse, or other equine animal.

Statutory Authority

Sections 23.09 (2) (intro), 23.091 (3), 23.28 (3), 23.293 (18), 27.01 (2) (j), 27.01 (7) (a), 27.01 (9), 27.01 (10) (b) and (f) and 227.11 (2) (a), Stats.

Comparison with Federal Regulations

Any proposed language limiting camping on state-owned islands in the Mississippi River would mirror camping regulations as established in Title 50 U.S. Code 23.46 regulating camping on islands within the Upper Mississippi River National Fish and Wildlife Refuge which is managed by the United States Fish and Wildlife Service so as not to confuse the camping public.

Entities Affected by the Rule

Hikers, hunters, campers and other users of Department properties are the primary entities affected by the rule. None of the proposals are known to be of interest to organized groups, or small businesses.

Estimate of Time Needed to Develop the Rule

140 hours.

Agency Contact

Kathryn Fitzgerald, DNR
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Madison, WI 53707-7921
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kathryn.fitzgerald@wisconsin.gov

Regulation and Licensing**Subject**

Revises Chapter RL 128, relating to approval of course

providers for auctioneers' continuing education (CE) and approval of a specific course for auctioneers, the 7 hour Uniform Standards of Professional Appraisal Practice (USPAP) update course.

Objective of the Rule

The Department seeks to add to its list of approved CE course providers appraisers that are approved by the Appraiser Qualifications Board (AQB) of the Appraisal Foundation to teach a 7 hour update course relating to the USPAP. [RL 128.04] Additionally, the Department seeks to specifically identify the USPAP 7 hour update course as a course "pertinent to the practice of auctioneering" for individuals who are licensed both as an auctioneer and as a real estate appraiser. [RL 128.03(1)]

Policy Analysis

The Department recognizes auctioneers registered in this state who are currently practicing auctioneering, and who have engaged in such practice for at least 5 years and attorneys who are engaged in the field of auctioneering-related law. The addition of another course provider would not diminish CE opportunities for auctioneers that are not appraisers, and it would expand CE options for dual licensees.

Statutory Authority

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

Comparison with Federal Regulations

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

Entities Affected by the Rule

Appraisers licensed as auctioneers, auctioneers, continuing education course providers, the Auctioneer Board and the Department of Regulation and Licensing.

Estimate of Time Needed to Develop the Rule

100 hours.

Submittal of Rules to Legislative Council Clearinghouse

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

Commerce

Licenses, Certifications and Registrations, Ch. Comm 5 CR 11–020

On March 24, 2011, the Department of Commerce submitted proposed rules to the Legislative Council Rules Clearinghouse.

Analysis

The proposed rule revises Chapter Comm 5, relating to licenses, certifications and registrations.

Agency Procedure for Promulgation

A public hearing will be held April 27, 2011. The Department's Safety and Buildings Division is primarily responsible for promulgation of the rule.

Contact Information

James Quast, Program Manager
Phone: (608) 266–9292
Email: jim.quast@wisconsin.gov

Corrections CR 11–022

On March 29, 2011, the Department of Corrections submitted proposed rules to the Legislative Council Rules Clearinghouse.

Analysis

The proposed rule revises Chapters DOC 302, 303, 303 Appendix, 304, 306, 308, 309, 310, 311, 313, 324 and 327 relating to discipline of inmates.

Agency Procedure for Promulgation

A public hearing will be held April 28, 2011. The Department's Division of Adult Institutions is primarily responsible for promulgation of the rule.

Contact Information

Kathryn R. Anderson, Chief Legal Counsel, Department of Corrections, 3099 East Washington Avenue, P.O. Box 7925, Madison, WI 53707–7925, telephone: (608) 240–3306, email: kathryn.anderson@wisconsin.gov.

Insurance

CR 11–021

On March 31, 2011, the Office of the Commissioner of Insurance, submitted proposed rules to the Legislative Council Rules Clearinghouse.

Analysis

The proposed rule revises section 6.07, relating to readability and electronic access to insurance policies and affecting small business.

Agency Procedure for Promulgation

A public hearing will be held May 3, 2011.

Contact Information

Julie E. Walsh, OCI Legal Unit
Phone: (608) 264–8101
Email: julie.walsh@wisconsin.gov

Regulation and Licensing — Chiropractic Examining Board CR 11–019

On March 21, 2011, the Chiropractic Examining Board submitted proposed rules to the Legislative Council Rules Clearinghouse.

Analysis

The proposed rule-making order revises Chapter Chir 5, relating to continuing education for chiropractors, CT's and CRT's.

Agency Procedure for Promulgation

A public hearing is required and will be held April 27, 2011 at 8:30 a.m. at 1400 East Washington Avenue, Room 121A, Madison, Wisconsin (enter at 55 North Dickinson Street).

Contact Information

Kris Anderson, Paralegal, Department of Regulation and Licensing, Division of Board Services, (608) 261–2385, KristineI.Anderson@wisconsin.gov.

Rule–Making Notices

Notice of Hearing — Rehearing Children and Families

Safety and Permanence, Chs. DCF 35–59
CR 10–148

(Original Notice Published in Mid–January 2011
Register No. 661)

NOTICE IS HEREBY GIVEN that pursuant to sections 48.62 (1) and (8), 48.67 (intro.) and (4), 48.975, 49.155, 895.485 (4) (a), and 227.11 (2) (a), Stats., the Department of Children and Families proposes to hold a public hearing to consider proposed permanent rules revising Chapters DCF 37, 38, 50, 56 201 and 250, relating to foster care.

Hearing Information

<u>Date and Time</u>	<u>Location</u>
May 3, 2011	GEF 1 Building
Tuesday	Room D203
at 1:30 P.M.	201 E. Washington Avenue Madison, WI 53703

If you have special needs or circumstances regarding communication or accessibility at a hearing, please call (608) 267–9403 at least 10 days prior to the hearing date. Accommodations such as ASL interpreters, English translators, or materials in audio format will be made available on request to the fullest extent possible.

Appearances at the Hearing and Submittal of Written Comments

Interested persons are invited to appear at the hearing and will be afforded the opportunity to make an oral presentation of their positions. Persons making oral presentations are requested to submit their facts, views, and suggested rewording in writing.

Written comments on the proposed rules received at the above address, email, or through the <http://adminrules.wisconsin.gov> website no later than **May 3, 2011**, will be given the same consideration as testimony presented at the hearing.

Copies of Proposed Rule

A copy of the proposed rules is available at <http://adminrules.wisconsin.gov>. This site allows you to view documents associated with this rule’s promulgation, register to receive email notification whenever the Department posts new information about this rulemaking order, and submit comments and view comments by others during the public comment period.

You may receive a paper copy of the rule or fiscal estimate by contacting:

Elaine Pridgen
Office of Legal Counsel
Department of Children and Families
201 E. Washington Avenue
Madison, WI 53703
(608) 267–9403
dcfpublichearing@wisconsin.gov

Analysis Prepared by the Department of Children and Families

Statute(s) interpreted

Sections 48.62, 48.67, and 48.975, Stats.

Statutory authority

Sections 48.62 (1) and (8), 48.67 (intro.) and (4), 48.975 (5), 49.155, 895.485 (4) (a), and 227.11 (2) (a), Stats.

Related statute or rule

Chapter 48, Stats., and Chapters DCF 37 and 54.

Explanation of agency authority

Section 48.62 (1), Stats., provides that any person who receives, with or without transfer of legal custody, 4 or fewer children or, if necessary to enable a sibling group to remain together, 6 or fewer children or, if the department promulgates rules permitting a different number of children, the number of children permitted under those rules, to provide care and maintenance for those children shall obtain a license to operate a foster home from the department, a county department or a licensed child welfare agency as provided in s. 48.75, Stats.

Section 48.62 (8), Stats., as created by 2009 Wisconsin Act 28 and affected by 2009 Wisconsin Act 71, provides that the department shall promulgate rules relating to foster homes as follows:

- Rules providing levels of care that a licensed foster home is certified to provide. Those levels of care shall be based on the level of knowledge, skill, training, experience, and other qualifications that are required of the licensee, the level of responsibilities that are expected of the licensee, the needs of the children who are placed with the licensee, and any other requirements relating to the ability of the licensee to provide for those needs that the department may promulgate by rule.
- Rules establishing a standardized assessment tool to assess the needs of a child placed or to be placed outside the home, to determine the level of care that is required to meet those needs, and to place the child in a placement that meets those needs. A foster home that is certified to provide a given level of care may provide foster care for any child whose needs are assessed to be at or below the level of care that the foster home is certified to provide. A foster home that is certified to provide a given level of care may not provide foster care for any child whose needs are assessed to be above that level of care unless the department, county department, or child welfare agency issuing the foster home license determines that support or services sufficient to meet the child’s needs are in place and grants an exception to that prohibition.
- Rules providing monthly rates of reimbursement for foster care that are commensurate with the level of care that the foster home is certified to provide and the needs of the child who is placed in the foster home. Those rates shall include rates for supplemental payments for special needs, exceptional circumstances, and initial clothing allowances for children placed in a foster home that is receiving an age–related monthly rate under s.

48.62 (4), Stats. In promulgating the rules, the department shall provide a mechanism for equalizing the amount of reimbursement received by a foster parent prior to the promulgation of those rules and the amount of reimbursement received by a foster parent under those rules so as to reduce the amount of any reimbursement that may be lost as a result of the implementation of those rules.

- Rules providing a monthly retainer fee for a foster home that agrees to maintain openings for emergency placements.

Section 48.67 (intro.), Stats., provides that the department shall promulgate rules establishing minimum requirements for the issuance of licenses to, and establishing standards for the operation of child welfare agencies, day care centers, foster homes, group homes, shelter care facilities, and county departments. Those rules shall be designed to protect and promote the health, safety, and welfare of the children in the care of all licensees.

Section 48.67 (4), Stats., requires that all foster parents successfully complete training in the care and support needs of children who are placed in foster care that has been approved by the department. The training shall be completed on an ongoing basis, as determined by the department. The department shall promulgate rules prescribing the training that is required under this subsection and shall monitor compliance with this subsection according to those rules.

Section 48.975 (5), Stats., provides that the department shall promulgate rules to implement adoption assistance that include the following:

- A rule defining a child with special needs, which shall include a child who the department determines has, at the time of placement for adoption, moderate or intensive difficulty-of-care problems, as defined by the department, or who the department determines is, at the time of placement for adoption, at high risk of developing those problems.
- A rule defining the substantial change in circumstances under which adoptive or proposed adoptive parents may request that an agreement made be amended to increase the amount of adoption assistance for maintenance. The definition shall include all of the following:
 - Situations in which a child who was defined as a child with special needs based solely on being at high risk of developing moderate or intensive difficulty-of-care problems has developed those problems.
 - Situations in which a child's difficulty-of-care problems have increased from the moderate level to the intensive level as set forth in the department's schedule of difficulty-of-care levels promulgated by rule.
- A rule establishing requirements for submitting a request to increase adoption assistance based on a substantial change in circumstances, criteria for determining the amount of the increase in adoption assistance for maintenance that the department shall offer if there has been a substantial change in circumstances and if there has been no substantiated report of abuse or neglect of the child by the adoptive or proposed adoptive parents, and the procedure to appeal the decision of the department regarding the request.

Under ss. 49.155 and 227.11, Stats., the department may promulgate rules relating to administration of the child care subsidy program.

Section 895.485 (4) (a), Stats., specifies the kinds of information about all foster children that the child's placing agency is to provide to the child's foster parent or family-operated group home parent.

Summary of proposed rules

Levels of Care

Section 48.62 (8) (a), Stats., directs the department to create rules providing levels of care for foster homes. The purpose of levels of care is to improve the placement stability, safety, and permanence of children placed in foster homes by matching their assessed needs with the skills, abilities, and capacities of caregivers.

The Department has implemented the rules on levels of care in two phases. The first level of care rule was effective January 1, 2010, and created a process to certify foster homes at Level 1 or 2 and created training requirements for foster parents who operate foster homes with a Level 1 or 2 certification. A Level 1 foster home is available only to foster parents with a child-specific license. The creation of Level 1 foster homes coincided with implementation of the statutory requirement that relative caregivers of a child placed in the caregiver's home under court order who received kinship care payments under ch. DCF 58 apply for and obtain a foster care license if they are licensable. A Level 2 foster home is a basic foster home.

This rule creates a process to certify foster homes at Level 3 to 5. Chapter DCF 38, Treatment Foster Care for Children, is repealed and most of the requirements in ch. DCF 38 are integrated into ch. DCF 56, Foster Home Care for Children, to create a single foster care rule with progressive requirements for all foster parents and agencies. Requirements from ch. DCF 38 that have been integrated into ch. DCF 56 with minor modifications include requirements regarding the characteristics and responsibilities of foster parents, physical environment of foster homes, care of foster children, responsibilities of supervising and licensing agencies, and responsibilities of the treatment team.

Treatment Foster Parent Requirements under Chapter DCF 38. Under ch. DCF 38, a treatment foster parent had to have the following qualifications:

- Experience: An applicant had to meet at least 2 criteria from a list of 5 types of education, skills, abilities, and work or personal experience with children.
- Training:
 - 18 hours of pre-placement training.
 - 24 hours of training in the second 12-month period following licensure.
 - 18 hours of ongoing training in every subsequent 12-month period.
- Three favorable references.

Level 3 Moderate Treatment Foster Homes. For new Level 3 foster homes, a foster parent must have the following qualifications:

- Experience: An applicant must meet at least 3 criteria from a list of 7 types of education, skills, abilities, and work or personal experience with children.
- Training:
 - 36 hours of pre-placement training.
 - 24 hours of training during the initial licensing period, which is generally 2 years.

- 18 hours of ongoing training in each 12-month period subsequent to initial licensing period.
- Four favorable references.

Emergency rule, EmR 1050, directs licensing agencies to issue a modified license with a certification to operate a Level 3 foster home without determining the eligibility of the foster parent if on December 31, 2010, the foster parent had a license to operate a treatment foster home under ch. DCF 38.

Level 4 Specialized Treatment Foster Homes. For new Level 4 foster homes, a foster parent must have the following qualifications:

- Experience: An applicant must meet at least 4 criteria from a list of 7 types of education, skills, abilities, and work or personal experience with children.
- Training:
 - 40 hours of pre-placement training.
 - 30 hours of training during the initial licensing period, which is generally 2 years.
 - 24 hours of ongoing training in each 12-month period subsequent to initial licensing period.
- Four favorable references.

Emergency rule, EmR 1050, provides that no licensing agency may issue a certification to operate a Level 4 foster home without first determining the eligibility of the foster parent under the new Level 4 requirements.

Level 5 Exceptional Treatment Foster Homes. Certification to operate a Level 5 foster home is available only when an exception is granted by the department exceptions panel. An applicant for certification to operate a Level 5 foster home, in conjunction with a licensing agency, may apply for Level 5 certification if the following conditions are met:

- A placement is needed for a child with the following conditions:
 - The child has behaviors or conditions that require a high degree of supervision and overnight awake care that is provided by program staff who rotate shifts within a 24-hour period.
 - The child will benefit from a home-like environment that has fewer children than a group home or residential care center for children and youth.
 - The child is expected to need long-term care or has needs agreed to by the department.
- All other community placement options have been investigated and determined to be unavailable or not in the best interest of the child.

A Level 5 foster home must have a program manager who is the foster parent and licensee of the foster home. A program manager must have specified education or experience and must complete 40 hours of pre-placement training, 30 hours of initial licensing training, and 24 hours of ongoing training in each 12-month period subsequent to the initial licensing period.

A Level 5 foster home must have program staff who are responsible for daily supervision of the children and direct care to the children to ensure their safety and well-being. The minimum staff ratios for program staff are one program staff person for every 2 children during waking hours and one program staff person for every 4 children during sleeping hours. An applicant for a program staff position must have specified education and experience and have a background

check, favorable references, and, if hired, a health exam. Before working independently with a child, program staff must complete 40 hours of pre-placement training and work with qualified experienced program staff or similar professionals for at least the first 80 hours of employment. Program staff must also complete 24 hours of ongoing training in each year of employment subsequent to the initial year of employment.

The department exceptions panel has been granting exceptions to operate shift-staffed treatment foster homes under DCFS Memo Series 2006-15. Emergency rule, EmR 1050, directs licensing agencies to issue a modified license with a certification to operate a Level 5 foster home to a foster parent who, on December 31, 2010, had been granted an exception to operate a shift-staffed treatment foster home by the department exceptions panel.

Assessment of Needs and Strengths

Section 48.62 (8) (b), Stats., directs the department to create rules establishing a standardized assessment tool to assess the needs of a child placed or to be placed outside the home, to determine the level of care that is required to meet those needs, and to place the child in a placement that meets those needs.

The rule provides that a placing agency shall assess each foster child before placement in a foster home or within 30 days after the child's placement. A placing agency shall assess each foster parent in relation to the child placed within 30 days after the child's placement in the foster home. A placing agency shall reassess each foster child and the child's foster parent within 6 months after the child's last assessment or reassessment. The placing agency, licensing agency, or foster parent may request a reassessment more frequently. The person who will administer the tool will first review the child's case record; interview or collect information from an individual who has interviewed the child, child's family, foster parent or other out-of-home care provider, the child's team or treatment team, and the licensing agency; and review information gathered in collaboration with the child's team or treatment team and the licensing agency. The person administering the standardized assessment tool will rate the child's needs and strengths relative to what is developmentally appropriate for a child of a similar age and the foster parent's needs in relation to that child to determine how to support the placement stability of the child with that foster parent.

The placing agency will use information from the assessment of a child, child's family, the foster parent, the supervising agency, and the licensing agency for all of the following:

- To communicate information about the needs and strengths of the child and child's family.
- To assist with determining the child's service needs and developing the child's plan of care.
- To determine a level of need of 1/2, 3, 4, 5, or 6 for the child.
- To inform decisions regarding a placement at a level of care that is appropriate to meet the child's level of need.
- To evaluate the match between the knowledge, skills, and abilities of a foster parent and the needs and strengths of a child.
- To assist in the development of services and supports needed for a specific child and foster parent to promote the stability of the placement.

- To provide a mental health screen to all children entering foster care.
- To determine any supplemental payments for a child's special needs.
- To determine any supplemental payments for purposes of an adoption assistance agreement under s. 48.975, Stats., and ch. DCF 50.

A placing agency, in accordance with a licensing agency, may place a child in a foster home that is certified to provide a given level of care if the child's level of need is at or below the level of care that the foster home is certified to provide. A placing agency may place a child with a level of need that is higher than the level of care that a foster home is certified to provide if the placing agency grants an exception and documents in the child's electronic case record what services and supports will be provided to meet the child's needs. A child whose level of need is lower than 5 may not be placed in a Level 5 foster home, except for continuation of an existing placement during planning for the child's transition to a less restrictive setting following a reassessment.

Supplemental Payments, Exceptional Payments, and Retainer Fee

Supplemental Payments. A placing agency shall make supplemental payments to a foster parent for a child's special needs. The placing agency shall determine the amount of a supplemental payment based the total of the following:

- 'Identified needs and strengths.' A dollar amount determined by the department multiplied by the total points assigned to represent items in which a child has moderate and intensive special needs and items in which a child has no strengths and an identified strength. Points assigned in the following areas are considered in determining a supplemental payment:
 - Adjustment to trauma.
 - Life functioning, including physical, mental, and dental health; relationships with family members; and social skills.
 - Functioning in a child care or school setting.
 - Strengths.
 - Behavioral and emotional needs.
 - Risk behaviors.
 - Child's language.
- 'Level of care higher than level of need.' An amount determined by the department if a foster home's level of care certification is higher than the level of need of a child placed in the foster home and the foster home has a Level 3 or 4 certification.

Exceptional Payments. A placing agency may make exceptional payments to a foster parent to accomplish any of the following:

- Enable the child to be placed or remain in a foster home instead of being placed or remaining in a more restrictive setting.
- Enable the placement of siblings or minor parent and minor children together.
- Assist with transportation costs to the school the child was attending prior to placement in out-of-home care.
- Replace a child's basic wardrobe that has been lost or destroyed in a manner other than normal wear and tear.
- For a child placed in a foster home before February 21, 2011, and who remains placed in that foster home, equalize the total monthly payment amount lost by the

child's foster parent due to implementation of the new method of determining supplemental payments.

The Fostering Connections to Success and Increasing Adoptions Act of 2008 allows the state to claim federal funds for expenses to assist a foster child with transportation costs to the school the child was attending prior to placement in out-of-home care.

Retainer Fee. A placing agency may provide a monthly retainer fee to a foster parent to maintain openings in a foster home for emergency placements. This fee may not be considered part of the foster care payment for a specific child.

Other

- A foster parent may not smoke or allow another person to smoke in a foster home or in a vehicle when a foster child is present.
- The rule incorporates provisions of DSP Memo Series 2009-05 that was jointly issued by the Department of Health Services and the Department of Children and Families. It provides that a foster parent may not use any type of physical restraint on a foster child unless the foster child's behavior presents an imminent danger of harm to self or others and physical restraint is necessary to contain the risk and keep the foster child and others safe. If physical restraint is necessary, the rule provides certain prohibited practices.
- Supplemental payments for adoption assistance agreements entered into before February 21, 2011, will continue to use the method of determining supplemental payments under s. DCF 56.11 (3), which is renumbered to be s. DCF 50.042 (3). Supplemental payments for adoption assistance agreements entered into on or after February 21, 2011, will use the new method of determining supplemental payments under s. DCF 56.23.

Summary of factual data and analytical methodologies

The non-statutory requirements of the rule are based on recommendations from the Out-of-Home Care/Adoption Committee and the Foster Parent Training Committee. The committees have worked with the department for the past 5 years to incorporate new federal laws into state law and policy by referring to other state models and national standards of child welfare practice. For the past 2 years, both committees have focused on developing policy to implement the levels of care and foster parent training initiatives in 2009 Wisconsin Act 28. Both committees have statewide membership of staff from counties, tribes, private child-placing agencies, foster and treatment foster parents, court personnel, advocacy agencies, and state government.

The department had two hearings on emergency rule EmR1050, which corresponds with this proposed permanent rule. The following substantive changes have been made to this proposed rule:

- Added "a college degree in the area of the child's treatment needs" as a criteria that can be combined with parenting or a substantial relationship as a qualification to operate a Level 3 or 4 foster home under ss. DCF 56.13 (5) (a) 2. and (6) (a) 2.
- Revised ss. DCF 56.13 (5) (c) 1. a. and (6) (c) 1. a. regarding reference letters for applicants for Level 3 and 4 to require that one of the reference letters be regarding the applicant's specified qualifications, excluding a high school diploma.

- Revised language at s. DCF 56.13 (7) (f) 7. regarding the health exam required for program staff in a Level 5 foster home.
- Added ss. DCF 56.14 (6d) (b) 2. and (6h) (b) 2. to allow a Level 3 or 4 foster parent to attend a pre-placement training for which no foster or adoptive parent is a trainer if the licensing agency approves and provides opportunities for the foster parent attending the training to participate in activities or programs that promote networking among foster parents and provide an opportunity for an experienced foster parent to answer questions from the new foster parent. The same provision was also added regarding initial licensing training for a Level 2 foster parent at s. DCF 56.14 (7) (b) 2.
- Added ss. DCF 56.14 (6d) (a) 2. and (6h) (a) 2. to allow a licensing agency to use a curriculum for pre-placement training for Level 3 and 4 foster parents that has been approved by the department.
- Added s. DCF 56.15 (1m) to provide that if more than one agency is performing supervising responsibilities, the agencies shall specify in writing which agency is responsible for each requirement.
- Added supervising agency caseworker as a person who can be a 24-hour crisis contact for Level 3 to 5 at s. DCF 56.15 (1) (b) 1.
- Revised s. DCF 56.15 (1) (b) 4. to require that if required medical supplies and services are not included in a child's treatment plan, the supervising agency and placing agency shall revise the treatment plan to include the required medical supplies and services and to determine financial responsibility.
- Added language at s. DCF 56.15 (1) (b) 5. to allow a person with a degree and certification in Marriage and Family Therapy or Professional Counseling to be a clinical consultant.
- Added s. DCF 56.16 (1) (m) on licensing agency participation in rate determination.
- Added language at s. DCF 56.22 (4) (b) 3. and 4. on licensing agency involvement in gathering and reviewing information before the assessment tool is administered.
- Added information from the supervising agency and the licensing agency that the placing agency must consider for various uses under s. DCF 56.22 (5) (a).
- Clarified language on determination of a supplemental payment under s. DCF 56.23 (2).
- Modified s. DCF 56.23 (3) (a) 1. to allow an exceptional payment to be used to enable a child to remain in a foster home instead of being placed or remaining in a more restrictive setting.

Summary of related federal requirements

Under 45 CFR 1355.32 and 1355.33, the federal Administration for Children and Families conducts a Child and Family Services Review of each state's child welfare system every 5 years. States found not to be operating in substantial conformity with federal requirements shall develop a program improvement plan. The program improvement plan must set forth the goals, the action steps required to correct each identified weakness or deficiency, and dates by which each action step is to be completed in order to improve the specific areas.

42 USC 671(a)(24) requires that the state plan for foster care and adoption assistance include a certification that, before a child in foster care under the responsibility of the state is placed with prospective foster parents, the prospective foster parents will be prepared adequately with the appropriate knowledge and skills to provide for the needs of the child, and that such preparation will be continued, as necessary, after the placement of the child.

42 USC 675 (1) (G) defines "case plan" to include a plan for ensuring the educational stability of the child while in foster care, including an assurance that the state agency has coordinated with appropriate local educational agencies to ensure that the child remains in the school in which the child is enrolled at the time of placement or if remaining in such school is not in the best interests of the child, assurances by the state agency and the local educational agencies to provide immediate and appropriate enrollment in a new school, with all of the educational records of the child provided to the school.

42 USC 674 (4) (A) defines "foster care maintenance payments" as payments to cover the cost of (and the cost of providing) food, clothing, shelter, daily supervision, school supplies, a child's personal incidentals, liability insurance with respect to a child, reasonable travel to the child's home for visitation, and reasonable travel for the child to remain in the school in which the child is enrolled at the time of placement.

As part of the Fostering Connections to Success and Increasing Adoptions Act of 2008, 42 USC 675 (1) (G) was created and 42 USC 674 (4) (A) was amended to add the phrase "reasonable travel for the child to remain in the school in which the child is enrolled at the time of placement."

Comparison with similar rules in adjacent states

The assessment tool prescribed by the department is used statewide in Iowa and Illinois and is used parts of Minnesota and Michigan. Michigan and Illinois have a levels of care system for foster homes.

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

The proposed rule will affect private child-placing agencies, some of which are small businesses. The policies in the rule were developed in collaboration with members of the Foster Parent Training Committee and the Out-of-Home Care/Adoption Committee, which included representatives from child-placing agencies.

Much of the rule is based on current practices of the majority of agencies supporting treatment foster care. The sections on agency responsibilities were part of DCF 38 and have been rewritten into DCF 56 with few changes. Representatives from child-placing agencies indicated that their agencies already require foster parents to have as much or more than the training hours in the proposed rule. Many agencies that serve treatment foster parents and treatment foster children with higher needs already have a levels or intensity system with different foster parent qualifications, training, and payments. The rule will put structure and consistency to the levels of care that will help counties know what services they are purchasing as they work with different private agencies that provide similar services. Existing treatment foster homes will be grandfathered in as Level 3 foster homes and existing shift-staffed treatment foster homes will be grandfathered in as Level 5 foster homes. Some private child-placing agencies will choose to offer Level 4

foster homes and will certify these foster parents under the emergency and proposed rules. The administrative cost will be minimal.

In addition, the department will be providing 6 hours of the new pre-placement training without charge to the agencies. The department is also creating online training to allow agency staff to receive certification and recertification in administering the standardized assessment tool without charge.

Effect on Small Business

The rule will affect small businesses, but will not have a significant economic effect on a substantial number of small businesses.

Small business regulatory coordinator

The Department's Small Business Regulatory Coordinator is Elaine Pridgen, elaine.pridgen@wisconsin.gov; (608) 267-9403.

Fiscal Estimate

Assumptions used in arriving at fiscal estimate

This rule incorporates the administrative rule under Chapter 38 into Chapter 56 to create one universal licensing code for foster care and treatment foster care providers. This is the second phase of creating the Levels of Care system passed in 2009 Wisconsin Act 28. This rule establishes the requirements for certification at levels 3, 4, and 5. A foster home is licensed at these levels based on a number of factors, including the level of knowledge, skill, training, and experience of the licensee. This rule establishes the minimum amount of training at each of these levels. In addition, this rule mandates the use of the Child and Adolescent Needs and Strengths (CANS) rating tool. This rating tool is designed to consistently identify the needs of children, ensure that providers are addressing those needs, and determine reimbursements to foster and treatment foster parents.

The rule will affect counties and the Department, which operates the child welfare program in Milwaukee County. The rule is not anticipated to affect current foster care and treatment foster care providers. Most existing providers meet the qualifications in the rule and existing providers are grandfathered into the rule.

The implementation of the CANS rating tool may identify some unmet needs for children, which could increase the costs of providing services to these children. Also, the CANS rating tool could more appropriately identify a lesser level of need for children who already are receiving special services, which may decrease costs to serve these children. Additionally, providing children with adequate services may reduce the length of stay for children in out-of-home care, reducing long-term costs. The net effect of these scenarios cannot be determined.

State fiscal effect

Indeterminate.

Local fiscal effect

Indeterminate.

Long-range fiscal implications

None.

Agency Contact Person

Jonelle Brom, Bureau of Permanence and Out-of-Home Care, Division of Safety and Permanence, (608) 264-6933, jonelle.brom@wisconsin.gov.

Notice of Hearing Commerce

Licenses, Certifications and Registrations, Ch. Comm 5 CR 11-020

NOTICE IS HEREBY GIVEN that pursuant to sections 101.02 (1), 101.02 (15) (j), 101.09, 101.63, 101.654, 101.82, 101.951, 101.985, 145.02, and 145.17 Stats., the Department of Commerce will hold a public hearing on proposed rules under Chapter Comm 5, relating to licenses, certifications and registrations.

Hearing Information

The public hearing will be held as follows:

<u>Date and Time</u>	<u>Location</u>
April 27, 2011 Wednesday at 10:00 A.M.	Conference Room 3B Tommy G. Thompson Center 201 W. Washington Avenue Madison, WI 53703

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

Appearances at the Hearing and Submittal of Written Comments

Interested persons are invited to appear at the hearing and present comments on the proposed rules. Persons making oral presentations are requested to submit their comments in writing. Persons submitting comments will not receive individual responses. The hearing record on this proposed rulemaking will remain open until **May 6, 2011**, to permit submittal of written comments from persons who are unable to attend the hearing or who wish to supplement testimony offered at the hearing. Written comments should be submitted to James Quast, at the Department of Commerce, P.O. Box 2689, Madison, WI 53701-2689, or Email at jim.quast@wisconsin.gov.

Copies of Proposed Rule

The proposed rules and an analysis of the proposed rules are available on the Internet at the Safety and Buildings Division Web site at www.commerce.wi.gov/SB/. Paper copies may be obtained without cost from Norma McReynolds, at the Department of Commerce, Program Development Bureau, P.O. Box 2689, Madison, WI 53701-2689, or Email norma.mcreeynolds@wisconsin.gov, or at telephone (608) 267-7907 or TDD Relay dial 711 in Wisconsin or (800) 947-3529. Copies will also be available at the public hearing.

Analysis Prepared by the Department of Commerce

Statute(s) interpreted

Sections 101.02 (1), 101.02 (15) (j), 101.09, 101.63, 101.654, 101.82, 101.951, 101.985, 145.02, and 145.17.

Statutory authority

Sections 101.02 (1), 101.02 (15) (j), 101.09, 101.63, 101.654, 101.82, 101.951, 101.985, 145.02, and 145.17

Explanation of agency authority

Chapter 101, Stats., authorizes the Department of Commerce to adopt reasonable and proper rules relative to the exercise of its powers and authorities, including the issuance and renewal of various credentials to businesses and individuals related to building construction and petroleum storage tanks. Chapter 145, Stats., grants the Department authority to promulgate rules governing plumbers and automatic fire sprinkler system installers.

Related statute or rule

None known.

Summary of proposed rules

For the most part the proposed rule revisions are non-substantive in nature; correcting or providing consistent format, eliminating irrelevant dates, updating referenced national standards to current editions; clarifying registration obligations; and revising terminology to reflect statutory changes (2009 Wisconsin Act 291).

There are three substantive revisions:

- Establishing qualifying provisions for individuals applying to take the certification exam for automatic sprinkler fire sprinkler system testers. Applicants would be required to complete either level II NICET certification in the inspection and testing of water-based automatic fire sprinkler systems, or level I or II fire protection system contractor license issued by the Florida state fire marshal.
- Establishing 12 hours of continuing education obligations for automatic fire sprinkler system testers for the renewal of the certifications on and after January 1, 2014.
- Reducing the continuing education obligations for utility contractor license renewal from 12 hours to 6 hours.

Comparison with existing or proposed federal regulations

Relative to the substantive provisions of the proposed rules revisions, the federal government does not license plumbers or individuals who test automatic fire sprinkler systems.

Comparison with similar rules in adjacent states

An Internet based search relative to the proposed substantive revisions concerning automatic fire sprinkler system testers and utility contractors did not find any credentialing provisions for these specific categories in Illinois, Iowa, Michigan or Minnesota, although the states do have licensing provisions for automatic fire sprinkler systems and plumbing.

Summary of factual data and analytical methodologies

There are currently 101 individuals certified by the Department as automatic fire sprinkler system testers and 427 individuals licensed as utility contractors. The proposed revisions relating to automatic fire sprinkler testers and utility contractors were developed after evaluating their respective scope of activities performed under their credentials.

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

The proposed revisions relating to the automatic fire sprinkler testers were recommended by the **Automatic Fire Sprinkler Contractor and Journeymen** Licensing Council. Council members are responsible for bringing forth the concerns that their respective organizations may have with the requirements including economic impacts.

The Department also offers an e-mail subscription service to anyone who is interested in rule development and/or council activities. The service provides e-mail notification of council meetings, meeting agendas and council meeting progress reports.

E-mail notifications for revisions under chapter Comm 5 typically are sent to the subscription service subscribers who are affected by the changes. Notifications will be sent to subscribers who are interested in manufactured homes, welding, electrical, automatic fire sprinkler systems, plumbing and elevators. E-mail notifications would be sent to approximately 6,000 subscribers.

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

Effect on Small Business**Initial regulatory flexibility analysis**

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

The proposed rules involve the licenses, certifications and registrations of individuals associated with various building construction components, activities or structures including manufactured homes, welding, automatic fire sprinkler systems, electrical construction wiring, plumbing, petroleum tanks, and elevators. The proposed rules do directly affect small businesses, but rather individuals who undertake specific activities.

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

Other than establishing continuing education obligations for the renewal automatic fire sprinkler system tester registration, the proposed rules do not require any new or additional reporting, bookkeeping or other procedures for compliance.

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

The proposed rules do not require any new or additional skills for compliance.

4. Rules have a significant economic impact on small businesses.

No.

Small business regulatory coordinator

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

Environmental Analysis

Notice is hereby given that the Department has considered the environmental impact of the proposed rules. In

accordance with chapter Comm 1, the proposed rules are a Type III action. A Type III action normally does not have the potential to cause significant environmental effects and normally does not involve unresolved conflicts in the use of available resources. The Department has reviewed these rules and finds no reason to believe that any unusual conditions exist. At this time, the Department has issued this notice to serve as a finding of no significant impact.

Fiscal Estimate

Assumptions used in arriving at fiscal estimate

For the most part the proposed rule revisions are non-substantive in nature; correcting or providing consistent format, eliminating irrelevant dates, updating referenced national standards to current editions; clarifying registration obligations; and revising terminology to reflect statutory changes such as 2009 Wisconsin Act 291. The proposed rules do not establish or revise any of the credentials fees under chapter Comm 5.

State fiscal effect

No state fiscal effect.

Fund sources affected

Pro.

Local fiscal effect

No local government costs.

Long-range fiscal implications

None.

Agency Contact Person

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Notice of Hearing

Corrections

CR 11-022

NOTICE IS HEREBY GIVEN that pursuant to section 227.11 (2), Stats., and interpreting sections 301.03 (2), 302.04, 302.07, 302.08 and 302.11 (2), Stats., the Department of Corrections will hold public hearings to consider a proposed permanent rule revising Chapters DOC 302, 303, 303 Appendix, 304, 306, 308, 309, 310, 311, 313, 324 and 327, relating to discipline of inmates.

Hearing Information

Date and Time

Location

April 28, 2011
Thursday
at 10:00 A.M.

Conference Room 116
State Office Building
819 North 6th Street
Milwaukee, WI 53203

April 28, 2011
Thursday
at 2:30 P.M.

Department of Administration
Yahara Conference Room – First Floor
101 East Wilson Street
Madison, WI 53703

The public hearing sites are accessible to people with disabilities. If you have special needs or circumstances that may make communication or accessibility difficult at the hearing, please contact Kathryn Anderson, DOC, P.O. Box 7925, Madison, WI 53707-7925, email kathryn.anderson@wisconsin.gov, telephone (608) 240-5049 by April 20, 2011.

Appearances at the Hearing and Submittal of Written Comments

Interested persons are invited to appear at the hearing and present comments on the proposed rules. Persons making oral presentations are requested to submit their comments in writing. Written comments on the proposed rule will be accepted into the record and receive the same consideration as testimony presented at the hearing if they are received by Friday, **May 6, 2011**. Written comments should be addressed to: Kathryn R. Anderson, DOC, P.O. Box 7925, Madison, WI 53707-7925, or by email kathryn.anderson@wisconsin.gov.

Analysis Prepared by Department of Corrections

Statute(s) interpreted

Sections 301.03 (2), 302.04, 302.07, 302.08 and 302.11 (2), Stats.

Statutory authority

Section 227.11 (2), Stats.

Explanation of agency authority

The Department of Corrections is responsible for the supervision of all inmates, including their discipline for violations of institution and department regulations.

Related statute or rule

Chapters DOC 302, 304, 306, 308, 309, 310, 311, 313, 314, 316, 324, 325, 326, and 327, relating to the supervision of inmates.

Plain language analysis

1. Reorganizes and updates the rule chapter.
2. Repeals the following definitions: administrative committee, bodily injury, consent, disruptive conduct, fight, inmate gang, public, riot, staff, and steals.
3. Amends the following definitions: authorized, case record, communicate, contraband, gambling, intoxicating substance, possession, and sexual contact.
4. Creates the following definitions: bodily harm, body specimen, close family member, corporal punishment, department policy, disciplinary committee, disciplinary separation, disturbance, employee, great bodily harm, member of a household, personally identifiable information, record, security threat group, serious mental illness, stalking, substantial bodily harm, substantial involvement, suffer serious emotional distress, targeted person, and victim.
5. Moves definitions which were in the body of the rule into the definition section: contraband, evidence, and gambles.
6. Repeals the following offenses: battery, fighting, inciting a riot, participating in a riot, arson, causing an explosion or fire, creating a hazard, and violation of institution policies and procedures.
7. Creates the following offenses: assault, aggravated assault, assault on staff, sexual contact or intercourse, sexual assault, sexual assault aggravated, stalking, endangering safety, inciting a disturbance, participating in a disturbance, taking a hostage, possession of tobacco, and possession of electronic communication or data storage devices.
8. Modifies the table of automatic major offenses to reflect changes in practice and technologies.
9. Modifies the schedule of penalties to allow more flexibility and use of disciplinary segregation in place of adjustment segregation.

10. Requires the retention of property until a final decision is made on a complaint.
11. Modifies the current rule to allow Temporary Lock up (TLU) to await placement in appropriate security level.
12. Changes battery and fighting to assault, aggravated assault and assault on staff to increase consistency in application of the rule and ensure decision makers have accurate information about dynamics of the offense.
13. Changes charges related to sexual behavior and assault to sexual conduct, sexual contact or intercourse, sexual assault, and sexual assault aggravated to more accurately reflect changes related to PREA and improve communication of actual dynamics of the offense.
14. Creates the offense of stalking to clearly identify inmate misconduct.
15. Creates the offense of taking a hostage in response to inmate conduct that was not currently addressed.
16. Modifies the elements of “disruptive conduct” as a violation to better capture behaviors that are disruptive to the orderly operation of facilities.
17. Modifies the elements of “unauthorized forms of communication” to better identify problematic conduct.
18. Modifies the elements of “possession, manufacture, or use of weapons” to include the use of an otherwise allowable property item as a weapon as a violation.
19. Creates the offense of “possession of tobacco” to reflect the ban on smoking and use of tobacco products.
20. Creates the offense of “possession of electronic communication or data storage devices” to address the added threat to security that the possession of this type of property poses.
21. Expands the elements of the offense of “unauthorized use of the mail” to include sending any item not allowed under this chapter and falsifying the name of the receiver or address.
22. Expands the coverage of the misuse of medications to include both prescription and nonprescription medications.
23. Requires consideration of an inmate’s serious mental illness during due process hearings and disposition stage.
24. Clarifies how to impose a requirement for restitution when the actual amount is not known at the time of disposition.
25. Deletes the use of program segregation and adjustment segregation as penalties. The loss of good time associated with these penalties has not had a sufficient deterrent effect to warrant the extra work to recalculate release dates and the deletion eliminates a liberty interest and simplifies due process requirements.
26. Modifies the processes and terminology for disciplinary transactions from summary through full due process. Permits summary disposition for major violations. Modifies minor hearing process to be more similar to summary disposition. Limits inmate statements to 500 words on 2 sheets of paper. More clearly describes what an inmate may appeal.
27. Corrects references to DOC 303 in other DOC chapters.

Comparison with existing or proposed federal regulations

There are no federal regulations that regulate the activities addressed by the proposed rule.

Comparison with similar rules in adjacent states

Illinois:

Illinois rules concerning discipline apply to both incarcerated adults and juveniles. The rules in some cases have different requirements, depending on whether they apply to adults or juveniles. For example, disciplinary proceedings against an adult must be commenced within 8 days of service of a disciplinary report but only 4 days against a juvenile offender. (20 ILAC 504.30 (f)) Wisconsin has a separate set of rules which addresses incarcerated juveniles.

Illinois prohibits corporal punishment and disciplinary restrictions on diet, medical or sanitary facilities, mail, or access to legal materials. (730 ILCS 5/3–8–7 (b) (1); 20 ILAC 504.20 (c)) Wisconsin rules prohibit corporal punishment. (DOC 306.07 (1)) Illinois rules also require that the disciplinary restrictions on visitation, work, education, or program assignments and use of the library be as closely related as practicable to the abuse of such privileges. But the Illinois rule specifically excludes the applicability of this section to segregation or isolation of offenders for purposes of institutional control. (20 ILAC 504.20 (d))

Illinois requires that disciplinary actions resulting in the loss of good time credit or the eligibility to earn good time credit or disciplinary actions resulting in the imposition of disciplinary segregation and isolation are heard by a disciplinary board appointed by the director of prisons. Other disciplinary actions are heard at the institution level. (730 ILCS 5/3–8–7 (d) and (e)) Illinois prohibits any person who initiated a disciplinary charge from determining the disposition of the charge. (730 ILCS 5/3–8–7 (e) (1)) Wisconsin prohibits any person who has substantial involvement in the incident which is the subject matter of the hearing from serving on the disciplinary committee. (DOC 303.85 (2))

Illinois rules specify in detail the content of a disciplinary report. (20 ILAC 504.30 (d)) Wisconsin rules provide a more general description of the content of a conduct report. (DOC 303.67) The department has policies and procedures which specify the content of the report.

Illinois rules require service of the disciplinary report on the inmate within 8 days of the incident giving rise to the report. (20 ILAC 504.30 (f)) Wisconsin rules require service of a conduct report for a major offense within 2 working days of the security director’s approval of the report. (DOC 303.80)

Illinois rules require that an inmate placed in temporary lockup (TLU) be reviewed within 3 days following placement. Illinois also requires that the inmate be interviewed regarding the placement within 14 days. The maximum period of time in TLU is 30 days. (20 ILAC 504.05 (b) and (c) (3) and (4)) Wisconsin requires a review of a TLU placement within 2 working days. The maximum period of time in TLU status is 21 days. This period may be extended by an additional 21 days by the administrator of the division of adult institutions. The status of an inmate placed in TLU must be reviewed every 7 days by the security director. (DOC 303.10)

Illinois rules require that if an inmate is found not guilty of a disciplinary offense, placement in TLU shall be terminated and the disciplinary report expunged from the inmate’s

records. A copy of the report shall be maintained in an expungement file. (20 ILAC 504.50 (4)) There is a comparable provision requiring the expungement of the disciplinary report following a hearing and a finding that the inmate did not commit the offense. (20 ILAC 504.80 (k) (1)) Wisconsin does not have a similar provision. (cf. DOC 303.88 (1) (b))

Illinois rules have a different procedure for inmates at correctional centers. (20 ILAC 504.60) Wisconsin does not have a similar provision.

Illinois rules provide for the composition of its adjustment committee (“to extent possible, a person representing the counseling staff; and at least one minority staff”) and the composition of its program unit (employees who serve as hearing officers) (“at least one member of the unit shall be a minority staff member”). (20 ILAC 504.70) Wisconsin has no similar provision.

Illinois rules require that a disciplinary hearing be commenced within 14 days after commission of the offense unless the inmate is unable to participate in the hearing. (20 ILAC 504.80 (a)) Wisconsin requires that the hearing be held between 2 working days following the inmate being served with the approved or amended conduct report and 21 calendar days. The 21 calendar day period may be extended for any reason by the security director. (DOC 303.80 (3))

Illinois rules provide that questioning of witnesses is done by the submission of written questions which the hearing officer asks. Questions which are cumulative, irrelevant, or a threat to the safety of individuals or the security of the institution are not allowed. Similarly, an inmate’s request to call witnesses may be denied if the testimony is deemed to be cumulative, irrelevant, or would jeopardize the safety or disrupt the security of the institution. (20 ILAC 504.80 (h) (2), (4), and (5)) Wisconsin permits the direct questioning of witnesses and the submission of written questions but prohibits repetitive, disrespectful, or irrelevant questions. (DOC 303.80 (5))

Illinois rules specifically state that an inmate is not entitled to retained or appointed counsel. Also, an inmate may only request the assistance of a staff member in the preparation of his or her defense if the inmate is illiterate or does not speak English or when other circumstances exist that preclude the inmate from adequately preparing his or her defense. (20 ILAC 504.80 (i)) Wisconsin does not limit the assignment of staff representatives. (DOC 303.83)

Illinois rules specify that the provisions dealing with penalties following a hearing do not restrict or limit the Illinois department of corrections from administratively changing an inmate’s job, educational, program, or housing assignment, to restrict privileges, or to transfer the inmate to another institution. (20 ILAC 504.80 (k) (5)) Wisconsin has a similar provision.

Illinois rules provide for the director, deputy director or chief administrative officer to remand a decision to the administrative committee for new proceedings if the proceedings are found to be defective due to: procedural error, lack of impartiality, improper exclusion of witnesses, failure to provide exonerating information to the inmate prior to the hearing. In addition, a new proceeding may be ordered in other circumstances as determined by one of the named officials. Finally, one of the named officials may request clarification, correction, or additional information. (20 ILAC 504.90) Wisconsin has no similar provision. However,

Wisconsin provides for an inmate appeal process (DOC 303.82). In addition, if an inmate is not satisfied with the decision following appeal, the inmate may file an inmate complaint (Ch. DOC 310). At any time, the warden may review the conduct report (DOC 303.91).

Illinois rules limit the penalty for multiple offenses arising out of one incident to the maximum penalty for the most serious offense of which the inmate is found guilty. (20 ILAC 504.110 (a)). Wisconsin has a similar provision (DOC 303.87(2)).

Illinois has a provision for the placement of an inmate into indeterminate segregation. (20 ILAC 504.115) Wisconsin has a provision for administrative confinement which is a non-punitive status (Ch. DOC 308).

Illinois rules provide for credit against the term of segregation placement for the time spent in TLU. (20 ILAC 504.120 (a)) Wisconsin specifically does not permit the crediting of time spent in TLU. (DOC 303.87 (2) (f)) Wisconsin has a process to reduce time spent in segregation based on adjustment.

Illinois rules provide for the reduction in grade for inmates in centers who are found guilty of a disciplinary offense. (20 ILAC 504.130) Wisconsin has no similar provision.

Illinois rules list offenses in Appendix A and penalties in Appendix B. (20 ILAC 504 App. A and B) Wisconsin lists and defines offenses and sets maximum penalties based on major and minor offenses.

Iowa:

Iowa statutes have one provision which addresses inmate disciplinary procedures. ICA s. 904.505 (1) provides that inmates who disobey disciplinary rules of the institution shall be punished in accordance with the following: (1) to ensure that sanctions are imposed only at such times and to such a degree as is necessary to regulate inmate behavior and to promote a safe and orderly institution; (2) to control inmate behavior in an impartial and consistent manner; (3) to ensure that disciplinary procedures are fair and that sanctions are not capricious or retaliatory; (4) to prevent the commission of offenses through the deterrent effect of available sanctions; (5) to define the elements of each offense and the penalties which may be imposed for violations, in order to give a fair warning of prohibited conduct; and (6) to provide procedures for preparation of report or disciplinary actions, for conducting disciplinary hearings, and for processing of disciplinary appeals.

ICA s. 904.505 (2) requires the warden to maintain a register of all penalties imposed on inmates and the penalties imposed.

ICA s. 904.505 (4) provides that a reasonable administrative fee for tiling a report of a major disciplinary rule infraction for which an inmate is found guilty may be charged. The fee must be deposited in the general fund of the state.

Iowa does not have administrative rules which govern the discipline of inmates in prison. The Iowa department of corrections has issued a policy and procedure which addresses rules and discipline in institutions. (Policy Number IO-RD-01 (eff. 4/2009))

Michigan:

Michigan rules provide that a violation of department rules by an inmate is classified as a major or minor misconduct on the basis of the seriousness of the act and the disciplinary sanction imposed. (Mich. Admin. Code R. 791.5501 (1))

Wisconsin has a similar provision. An inmate charged with a major misconduct is entitled to a formal hearing. An inmate charged with a minor misconduct is entitled to a fact-finding hearing. (Mich. Admin. Code R. 791.5501 (2)) The Michigan department of corrections has a hearings division which conducts administrative hearings regarding inmates. (Mich. Admin. Code R. 791.3301) Wisconsin also differentiates between the processes for handling major and minor violations.

All hearings have two phases: fact determination phase and disposition phase. (Mich. Admin. Code R. 791.3305) At a fact finding hearing, an inmate shall be permitted to be present and speak on his or her own behalf and to receive a copy of any department document specifically relevant to the hearing unless disclosure of the document would threaten the order and security of the institution or a person. An inmate may waive the fact finding phase. (Mich. Admin. Code R. 791.3310) While Wisconsin's rules are not identical, there is a similarity between the two processes.

At least 24 hours prior to a formal hearing, an inmate shall receive written notice of a formal disciplinary hearing. The notice shall include the charges, a description of the circumstances giving rise to the hearing, and the date of the hearing. The inmate shall identify necessary witnesses the inmate wishes to have interviewed, request documents specifically relevant to the issue for the hearing, and request assistance of a staff investigator to gather evidence or speak for the inmate. An inmate may waive the 24 hour notice requirement in writing. (Mich. Admin. Code R. 791.3315 (1) – (3))

At a formal hearing the inmate has the right to be present and offer evidence, to compel disclosure of documents specifically relevant to the issue being heard, unless disclosure poses a threat to safety and security, to call witness who can give necessary, relevant, and material evidence, unless to do so would be unduly hazardous to institutional or safety goals, to present the report of the staff investigator, to submit questions to the hearing officer to ask of witnesses, and to request disqualification of a hearing officer for personal bias based on an affidavits containing specific evidence of personal bias. (Mich. Admin. Code R. 791.3315 (6)) The hearing officer shall render a written decision or recommendation in every case, setting forth the reasons for the decision, a statement of facts, and the evidence relied upon, and any sanctions imposed. Within 48 hours of the conclusion of a hearing on a major misconduct charge the decision shall be post for staff information the name of the inmate charged, the violations charged and whether the inmate was found guilty. The information should be posted in an area accessible to staff but not usually accessible to inmates. (Mich. Admin. Code R. 791.3315 (8) and (9))

An inmate may appeal a determination made at a fact finding or informal hearing. The inmate must indicate orally his or her intention to appeal at the conclusion of the hearing and within 24 hours of receiving the written decision file a written appeal. The procedures are found in policies and procedures, not the rules. (Mich. Admin. Code R. 791.3320 (1)) An inmate may appeal a determination made at a formal hearing within 30 days of the determination. Appeals shall be reviewed based on a written summary or record of the hearing. The decision may be affirmed, reversed, or remanded for a new hearing. (Mich. Admin. Code R. 791.3320 (2) and (4))

Michigan rules provide for the earning of good time and disciplinary credit. Violations of prison rules may result in the

forfeiture of additional earned and special good time and disciplinary credits. (Mich. Admin. Code R. 791.5513 (1)) In addition, an inmate may be subject to disciplinary time when he or she is found guilty of a violation of prison rules. The range of time includes: all disciplinary time for a homicide; 180 days of disciplinary time for any act that constitutes a felony under state law, assault resulting in serious physical injury, escape, possession of a weapon, inciting a riot or a strike or rioting or striking, and sexual assault; 35 days of disciplinary time for assault and battery, creating a disturbance, possession of dangerous contraband, possession of money, substance abuse, failure to disperse; 15 days of disciplinary time for bribery, fighting, sexual misconduct, threatening behavior, and smuggling; 10 days disciplinary time for destruction or misuse of property with value of \$10.00 or more, disobeying a direct order, insolence, theft or possession of stolen property, and unauthorized occupation of a cell or room; 7 days of disciplinary time for failure to maintain employment, gambling or possession of gambling paraphernalia, interference with the administrative rules, out of place, possession of forged documents or forgery. (Mich. Admin. Code R. 791.5515 (2))

If an inmate is found guilty of more than one violation arising from the same incident, the disciplinary time must run concurrently. (Mich. Admin. Code R. 791.5515 (3)) Disciplinary time may be reduced for exemplary good conduct. However, the director of the department of corrections must establish the amount of disciplinary time that may be reduced for exemplary good conduct. (Mich. Admin. Code R. 791.5515 (4)) If an inmate is subsequently found guilty of a major misconduct, the some portion of the reduced time may be restored. (Mich. Admin. Code R. 791.5515 (5))

Minnesota:

Minnesota statutes permit the imposition of a sanction on an inmate who refuses to perform an available work assignment either through the loss of good time or by the serving of disciplinary confinement period. (MSA s. 243.18) Minnesota statutes also permit the development of disciplinary sanctions for an inmate who submits a frivolous or malicious claim to a court or licensing agency or who is determined by a court or licensing agency to have testified falsely or to have submitted false evidence. The sanctions may include loss of privileges, punitive segregation, loss of good time, or adding discipline confinement time. (MSA s. 244.035) The department of corrections operating statute authorizes the commissioner of corrections to enact rules and procedures that govern the operations of prisons. (MSA s. 241.01)

Minnesota does not have administrative rules which govern the discipline of inmates in prison. The Minnesota department of corrections has issued a policy which addresses rules and discipline in prisons. (Policies, Directives and Instructions Manual, Policy 303.010 (eff. 9/1/2005))

Summary of factual data and analytical methodologies

The department of corrections has determined that the rule will not have a significant economic impact on a substantial number of small businesses since the rule does not regulate small businesses as that term is defined in s. 227.114, Stats.

Analysis and supporting documents used to determine effect on small business

Not applicable.

Effect on Small Business

Not applicable.

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

DOC Rule 303 is the Administrative Rule relating to inmate conduct, inmate discipline, and procedures for the imposition of discipline. This rule has not been updated since December 2000.

This revision repeals, amends, and creates several definitions related to offenses for which inmates may be disciplined to increase consistency in application of the rule and to more clearly identify inmate misconduct. Additional offenses for which inmates may be disciplined are created to reflect changes in practice and technologies. The use of program segregation and adjustment segregation as penalties is eliminated, as the loss of good time associated with these penalties has had an insufficient deterrent effect. The revised rule eliminates due process hearings for minor offenses and allows inmates to voluntarily waive the right to due process hearings for major offenses, consistent with due process requirements established by the courts. Finally, the rule requires consideration of an inmate's serious mental illness during due process hearings and the disposition stage.

In FY10, the Division of Adult Institutions incurred \$27,663,400 in overtime costs. While the Department can not

Text of Rule

SECTION 1. DOC 303 is repealed and recreated to read:

Chapter DOC 303

DISCIPLINE**Subchapter I — General Provisions**

- DOC 303.01 Applicability and purposes.
- DOC 303.02 Definitions.
- DOC 303.03 Lesser included offenses.
- DOC 303.04 Conspiracy.
- DOC 303.05 Attempt.
- DOC 303.06 Aiding and abetting.
- DOC 303.07 Institutional regulations and procedures.
- DOC 303.08 Notice of disciplinary rules.
- DOC 303.09 Seizure and disposition of contraband.
- DOC 303.10 Temporary lockup: use.

Subchapter II — Offenses Against Bodily Security

- DOC 303.11 Assault.
- DOC 303.12 Aggravated assault.
- DOC 303.13 Assault on staff.
- DOC 303.14 Sexual conduct.
- DOC 303.15 Sexual contact or intercourse.
- DOC 303.16 Sexual assault.
- DOC 303.17 Sexual assault—aggravated.
- DOC 303.18 Threats.
- DOC 303.19 Stalking.

Subchapter III — Offenses Against Institutional Security

- DOC 303.20 Endangering safety.
- DOC 303.21 Inciting a disturbance.
- DOC 303.22 Participating in a disturbance.
- DOC 303.23 Taking a hostage.
- DOC 303.24 Group resistance and petitions.

identify the exact amount of Salary & Fringe cost avoided through passage of this rule, in each case, the proposed rule may result in more effective allocation of DOC staff time.

In calendar year 2010, 34 lawsuits occurred arising from disciplinary actions. Each lawsuit filed requires the use of DOC staff time to collect information as part of a court record. It is anticipated that the proposed revised rule clarifying definitions related to disciplinary actions may result in fewer lawsuits, lawsuits resolving more quickly, or due process hearing outcomes which are more defensible in a court of law.

State fiscal effect

Decrease costs.

Fund sources affected

GPR.

Affected Chapter 20 Appropriations

20.410 (1) (a).

Local fiscal effect

No local government costs.

Agency Contact Person

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- DOC 303.25 Cruelty to animals.
- DOC 303.26 Escape
- DOC 303.27 Disguising identity.

Subchapter IV — Offenses Against Order

- DOC 303.28 Disobeying orders.
- DOC 303.29 Disrespect.
- DOC 303.30 Soliciting staff.
- DOC 303.31 Lying.
- DOC 303.32 Lying about staff.
- DOC 303.33 Disruptive conduct.
- DOC 303.34 Unauthorized forms of communication.
- DOC 303.35 False names and titles.
- DOC 303.36 Enterprises and fraud.

Subchapter V — Offenses Against Property

- DOC 303.37 Theft.
- DOC 303.38 Damage or alteration of property.
- DOC 303.39 Misuse of state or federal property.
- DOC 303.40 Unauthorized transfer of property.
- DOC 303.41 Counterfeiting and forgery.

Subchapter VI — Contraband Offenses

- DOC 303.42 Possession or use of money or negotiable instruments.
- DOC 303.43 Possession of intoxicants.
- DOC 303.44 Possession of drug paraphernalia.
- DOC 303.45 Possession, manufacture or use of weapons.
- DOC 303.46 Possession of tobacco.
- DOC 303.47 Possession of contraband—miscellaneous.
- DOC 303.48 Possession of electronic communication or data storage devices.
- DOC 303.49 Unauthorized use of the mail.

Subchapter VII — Movement Offenses	DOC 303.69	Minor offenses.
DOC 303.50 Punctuality and attendance.	DOC 303.70	Minor penalties.
DOC 303.51 Loitering.	DOC 303.71	Major offenses.
DOC 303.52 Leaving assigned area.	DOC 303.72	Major penalties.
DOC 303.53 Being in an unassigned area.	DOC 303.73	Major penalties: disciplinary separation.
DOC 303.54 Entry into another inmate's assigned living area.	DOC 303.74	Controlled segregation.
Subchapter VIII — Offenses Against Safety And Health	DOC 303.75	Other penalties.
DOC 303.55 Improper storage.	DOC 303.76	Referral for prosecution.
DOC 303.56 Dirty assigned living area.	DOC 303.77	Uncontested minor disposition.
DOC 303.57 Poor personal hygiene.	DOC 303.78	Contested minor disposition.
DOC 303.58 Misuse of medication.	DOC 303.79	Uncontested major disposition.
DOC 303.59 Disfigurement.	DOC 303.80	Contested major disposition.
Subchapter IX — Miscellaneous Offenses	DOC 303.81	Contested major disposition: waiver of due process hearing.
DOC 303.60 Use of intoxicants.	DOC 303.82	Appeal of contested major disposition or contested major waiver.
DOC 303.61 Gambling.	DOC 303.83	Due process: staff representative.
DOC 303.62 Refusal to work or attend school.	DOC 303.84	Due process hearing: witnesses.
DOC 303.63 Inadequate work or school performance.	DOC 303.85	Disciplinary committee.
DOC 303.64 Violating conditions of leave.	DOC 303.86	Disposition considerations.
Subchapter X — Disciplinary Procedure And Penalties	DOC 303.87	Dispositions and schedule of penalties.
DOC 303.65 Disciplinary violation dispositions.	DOC 303.88	Recordkeeping.
DOC 303.66 Offenses that do not require a conduct report.	DOC 303.89	Evidence.
DOC 303.67 Conduct report.	DOC 303.90	Harmless error.
DOC 303.68 Review by security office.	DOC 303.91	Warden initiated review.
	DOC 303.92	Administrative assignment or transfer.

Subchapter I — General Provisions

DOC 303.01 Applicability and purposes. (1) Pursuant to authority vested in the department of corrections by s. 227.11 (2), Stats., the department adopts this chapter which applies to all inmates in its legal custody regardless of the inmates' physical custody. This subsection does not preclude another jurisdiction that has physical custody of the inmate from enforcing its rules related to inmate behavior. This section implements ss. 301.03 (2), 302.04, 302.07, 302.08 and 302.11 (2), Stats. The rules governing inmate conduct under this chapter describe the conduct for which an inmate may be disciplined and the procedures for the imposition of discipline.

(2) Discipline includes the dispositions described in s. DOC 303.70 and DOC 303.72. The objectives of the disciplinary rules under this chapter are the following:

- (a) The maintenance of order in correctional facilities.
 - (b) The maintenance of a safe setting in which inmates can participate in constructive programs.
 - (c) The rehabilitation of inmates through the development of their ability to live with others, within rules.
 - (d) Fairness in the treatment of inmates.
 - (e) The development and maintenance of respect for authority, the correctional system, and for our system of government through fair treatment of inmates.
 - (f) Punishment of inmates for misbehavior.
 - (g) Deterrence of misbehavior.
- (3) Corporal punishment of inmates is prohibited.

DOC 303.02 Definitions. In this chapter:

- (1) "Administrator" means an administrator of a division of the department, or designee.
- (2) "Authorized" means any of the following:
 - (a) According to departmental rules.
 - (b) According to policies, procedures and handbooks.
 - (c) According to the direction of an employee.
 - (d) According to established institution custom.
 - (e) With permission from the appropriate employee.
- (3) "Bodily harm" means physical pain or injury, illness, or any impairment of physical condition.
- (4) "Body specimen" means biological specimen, including but not limited to a sample of urine, breath, blood, stool, hair, finger nails, saliva, semen, skin cells, or DNA.
- (5) "Case record" means a method of storing information which is accessible by the use of an individual inmate's name or number.

- (6) "Close family member" means natural, adoptive, step and foster parents; spouse, domestic partner, children, grandparents, grandchildren, or siblings. A parent surrogate is within the definition of parent if it is substantiated that a claimed surrogate did in fact act as a parent, although the parent surrogate was not an adoptive, foster, or stepparent.
- (7) "Communicate" means to express verbally, in writing, or by means of a gesture or other action, to include electronic transmission.
- (8) "Contraband" means any of the following:
- Any item which inmates may not possess under this chapter or is not authorized by policy or procedure.
 - Any item which is not state property and is on the institution grounds but not in the possession of any person.
 - Any allowable item which comes into an inmate's possession through unauthorized means or is required to be on the inmate's property list and is not.
 - Stolen property.
 - Damaged or altered property
 - Items deemed contraband by the disciplinary committee or hearing officer.
 - Items directly or indirectly derived from or realized through the commission of any offense under this chapter.
 - Item used in the commission of any offense under this chapter.
- (9) "Corporal punishment" means the deliberate infliction of pain as retribution for an offense or requiring the performance of tasks meant to humiliate or degrade.
- (10) "Department" means the department of corrections.
- (11) "Department policy" means any department or division policy, facility procedure, inmate or unit handbook, or other official notice available to the inmate.
- (12) "Disciplinary committee" means a committee of one, two or three employees appointed by the warden to conduct disciplinary hearings. At least one member of every disciplinary committee shall be a supervisor.
- (13) "Disciplinary separation" means a punitive, segregated status which is the result of a major penalty.
- (14) "Disturbance" means a riot or other disturbance to institutional order caused by a group of two or more inmates that may include one of the following:
- An assault on any person by two or more inmates
 - The taking of one or more hostages.
 - The destruction of state property or the property of another by two or more inmates.
 - The refusal by two or more inmates, acting in concert, to comply with an order.
 - Any words or acts which incite or encourage inmates to do any of the above.
- (15) "Division" means the division of adult institutions, department of corrections.
- (16) "Employee" means any current department employee/staff member, an employee of a contract facility, an independent contractor, or a volunteer of the department or institution.
- (17) "Evidence" means any statement or object which could be presented at a disciplinary hearing or in a court of law, whether or not it is admissible.
- (18) "Gambling" means betting on the outcome of all or any part of any game of skill or chance or an athletic contest or on the outcome of any event, or participation in any lottery or sweepstakes.
- (19) "Great bodily harm" means bodily injury which creates a substantial risk of death, or which causes serious permanent disfigurement, or which causes a permanent or protracted loss or impairment of the function of any bodily member or organ or other serious bodily injury.
- (20) "Harass" means to annoy or irritate persistently.
- (21) "Institution" means a correctional institution or correctional facility defined under s. 302.01, Stats.
- (22) "Intimate parts" means breast, penis, buttocks, scrotum, or vaginal area or any other parts of the body that may result in sexual arousal or gratification for either party.
- (23) "Intoxicating substance" means anything which if taken into the body may alter or impair normal mental or physical functions.
- (24) "Member of a household" means a person who regularly resides in the household of another or who within the previous 6 months regularly resided in the household of another.
- (25) "Negotiable instrument" is a writing, signed by the maker or drawer, which contains a promise to pay which is payable on demand or at a specified time, and which is payable to the order of the bearer.
- (26) "Personally identifiable information" means information that can be associated with a particular individual through one or more identifiers or other information or circumstances.
- (27) "Possession" means on one's person, in any assigned area, or under one's control.
- (28) "Record" means any material on which written, drawn, printed, spoken, visual, electromagnetic, electronic or other information recorded or preserved, regardless of physical form or characteristics, which as been created or is being kept by an authority.
- (29) "Security director" means the security director at an institution or designee.
- (30) "Security threat group" means a group of individuals which threatens, intimidates, coerces or harasses others or engages in activities which violates or encourages the violation of statutes, administrative rules or departmental policies or institutional procedures.

- (31) “Serious mental illness” means a diagnosed major mental disorder (e.g., schizophrenia, bipolar disorder, major depressive disorder) that is usually characterized by psychotic symptoms and/or significant functional impairments.
 - (32) “Sexual contact” means any of the following:
 - (a) Touching by the intimate parts of one person to any part of another person whether clothed or unclothed.
 - (b) Any touching by any part of one person or with any object or device of the intimate parts of another person or any other parts of the body that may result in sexual arousal or gratification for either party.
 - (33) “Sexual intercourse” means any penetration, however slight, by the penis into the mouth, vagina, or anus of another person, or any penetration by any part of the body or an object into the anus or vagina of another person.
 - (34) “Stalking” is an act by an inmate with the purpose of causing that person to suffer emotional distress or to fear bodily injury or death of himself or herself or a member of his or her family or household.
 - (35) “Substantial bodily harm” means bodily injury that causes a laceration that requires stitches, staples, or a tissue adhesive; any fracture of a bone; a broken nose; a burn; a petechia; a temporary loss of consciousness, sight or hearing; a concussion; or a loss or fracture of a tooth.
 - (36) “Substantial involvement” means direct involvement with an alleged infraction, such as being a witness or victim or serving as an investigator of an incident.
 - (37) “Suffer serious emotional distress” means to feel terrified, intimidated, threatened, harassed, or tormented. For an offense to be proved, it is not required that a victim has received or will receive treatment from a mental health professional in order to prove that the victim suffered serious emotional distress.
 - (38) “Targeted person” means a person who is the subject of stalking. Targeted person includes close family member, friend, co-worker or household member of the targeted person.
 - (39) “Temporary lock up” or “TLU” means a temporary nonpunitive segregated status allowing an inmate to be separated from the general population pending further administrative action.
 - (40) “Victim” means a person, other than the actor, against whom a violation under this chapter or a crime has been committed.
 - (41) “Warden” means the warden of an institution, or designee.
 - (42) “Without consent” means no consent in fact or that consent is given for any of the following reasons:
 - (a) Because the actor put the victim in fear.
 - (b) Because the actor purported to be acting under legal authority.
 - (c) Because the victim did not understand the nature of the act, conduct, or other matter, to which the victim consented.
 - (43) “Working days” means all days except Saturdays, Sundays, and state legal holidays.
- DOC 303.03 Lesser included offenses. (1) If an offense is a lesser included offense of another and the reporting employee charges an inmate with the greater offense, the inmate is also charged with the lesser included offense.
- (2) The disciplinary committee may find an inmate guilty of a lesser included offense even if the reporting employee did not expressly charge the inmate with the lesser included offense.
 - (3) The disciplinary committee may not find an inmate guilty of 2 offenses or punish the inmate for 2 offenses based on a single incident if one offense is a lesser included offense of the other
 - (4) The disciplinary committee may not find an offense a lesser included offense of another unless it is so listed in the following table:

Table DOC 303.03

Greater Offense	Lesser Included Offense
303.11 Assault	303.33 Disruptive conduct
303.12 Aggravated Assault	303.11 Assault
	303.33 Disruptive conduct
303.13 Assault on staff	303.33 Disruptive conduct
303.16 Sexual assault	303.14 Sexual conduct
	303.12 Aggravated Assault
	303.11 Assault
303.17 Sexual assault—aggravated	303.16 Sexual assault
	303.14 Sexual conduct
	303.15 Sexual contact or intercourse
	303.45 Possession, manufacture or use of weapons
303.19 Stalking	303.18 Threats

	303.34	Unauthorized forms of communication
	303.49	Unauthorized use of the mail
303.20 Endangering safety	303.47	Possession of contraband—miscellaneous
	303.38	Damage or alteration of property
	303.39	Misuse of state or federal property
303.21 Inciting a disturbance	303.22	Participating in a disturbance
	303.24	Group resistance and petitions
	303.33	Disruptive conduct
303.22 Participating in a disturbance	303.24	Group resistance and petitions
	303.33	Disruptive conduct
303.26 Escape	303.52	Leaving assigned area
	303.53	Being in an unassigned area
303.37 Theft	303.40	Unauthorized transfer of property
	303.47	Possession of contraband—miscellaneous
303.42 Possession or use of money or negotiable instruments	303.47	Possession of contraband—miscellaneous
303.43 Possession of intoxicants	303.40	Unauthorized transfer of property
	303.47	Possession of contraband—miscellaneous
303.44 Possession of drug paraphernalia	303.47	Possession of contraband—miscellaneous
303.45 Possession, manufacture or use of weapons.	303.47	Possession of contraband—miscellaneous
303.46 Possession of tobacco	303.47	Possession of contraband—miscellaneous
303.48 Possession of electronic communication or 303.34 Unauthorized forms of communication data storage devices.	303.47	Possession of contraband—miscellaneous
303.58 Misuse of medication	303.40	Unauthorized transfer of property
	303.47	Possession of contraband—miscellaneous
Any substantive offense	303.04	Conspiracy
	303.05	Attempt
	303.06	Aiding and abetting

(5) After each note to a substantive offense under this chapter, all offenses which are lesser included offenses of the offense are listed, except that aiding and abetting, attempt, and conspiracy are not listed. They are always lesser included offenses of the completed offense.

DOC 303.04 Conspiracy. (1) If 2 or more inmates or others plan or agree to commit one or more acts which are prohibited under this chapter, all inmates may be guilty of an offense.

(2) An inmate who plans or agrees with individuals to commit one or more acts which are forbidden under this chapter is guilty of an offense.

(3) The penalty for conspiracy may be the same as the penalty for the most serious of the planned offenses.

(4) The number used for conspiracy, in recordkeeping and conduct reports, shall be the number of the offense plus the suffix C.

DOC 303.05 Attempt. (1) An inmate is guilty of attempt to violate a rule if either of the following is true:

- (a) The inmate planned to commit one or more acts which would have been a rule violation if actually committed.
- (b) The inmate committed one or more acts which showed a plan to violate the rule when the act or acts occurred.
- (2) The number used for attempt, in recordkeeping and conduct reports, shall be the offense's number plus the suffix

A.

- (3) The penalty for an attempt may be the same as for the completed offense. See Table DOC 303.87.

DOC 303.06 Aiding and abetting. (1) An inmate who does any of the following is guilty of aiding and abetting a rule violation:

- (a) Directs, requests, or hires another to commit a rule violation.
- (b) Assists another in planning or preparing for a rule violation.
- (c) Assists another during commission of an offense, whether or not the assistance was planned in advance.
- (d) Assists another to prevent discovery of a violation or the identity of the person who committed it.
- (e) Has knowledge of a major violation under this chapter that may also violate a criminal law and fails to report such information to an employee.

(2) The reporting employee may charge and the disciplinary committee may find an inmate guilty of aiding and abetting even if no one is charged or found guilty of committing the offense. The principal should, if possible, be identified when the inmate is charged.

(3) The disciplinary committee may impose the same penalty for aiding and abetting as for the substantive offense. See Table DOC 303.87.

(4) The penalty for aiding and abetting shall be based on an appropriate assessment of the facts and the individual's involvement and need not be the same for all participants.

(5) The number used for aiding and abetting, in recordkeeping and conduct reports, shall be the offense's number plus the suffix B.

DOC 303.07 Institutional regulations and procedures. (1) Institutions may make specific rules and procedures for the operation of the facility. Inmates may be disciplined for violations of institution regulations or procedures.

(2) Each institution shall maintain at least one official method for notifying inmates about notices of general applicability.

DOC 303.08 Notice of disciplinary rules. (1) The department shall provide inmates with a copy of this chapter when they enter the prison system.

- (2) The department shall provide notice of any published changes to this chapter.

DOC 303.09 Seizure and disposition of contraband. (1) SEIZURE. Any employee who believes that an item is contraband may seize the item. The institution shall return property which is not contraband to the owner or dispose of the property in accordance with department policy.

(2) DISPOSITION. The disciplinary committee or security director shall dispose of items in accordance with department policy and facility procedure. If an inmate files a complaint under ch. DOC 310 regarding the seizure or disposition of property, the institution shall retain the property until the final decision is made on the complaint. Contraband funds shall be transmitted to the state general fund.

- (3) INMATE REPORTING. Inmates shall immediately report to staff any property item that becomes damaged.

DOC 303.10 Temporary lockup: use. (1) A security supervisor, security director, correctional center superintendent or warden may place an inmate in TLU.

(2) If the security supervisor places an inmate in TLU, the security director or correctional center superintendent shall review this action within 2 working days. Before this review and the review provided for in sub. (3), the institution shall provide the inmate with the reason for confinement and with an opportunity to respond, either orally or in writing. If upon review, the security director determines that TLU is not appropriate, the institution shall release the inmate from TLU as soon as practicable.

(3) The institution shall not allow any inmate to remain in TLU more than 21 days, except that the warden may extend this period for up to 21 additional days. The administrator may extend an inmate's time in TLU for a second time. The security director or correctional center superintendent shall review the status of each inmate in TLU every 7 days to determine whether TLU continues to be appropriate.

- (4) The institution may place or retain an inmate in TLU for one or more of the following reasons:

- (a) The inmate's presence in general population may impede a pending investigation or disciplinary action.
- (b) The inmate's presence in general population may be disruptive to the operation of the institution.
- (c) The inmate's presence in general population may create a danger to the physical safety of the inmate or another.
- (d) The inmate's presence in general population may create a risk that the inmate will try to escape from the institution.

(e) If the inmate completes disciplinary separation or administrative confinement and is awaiting placement at the appropriate security level or status.

- (5) Institution staff shall document the reasons for TLU placement and shall notify the inmate of the reasons.

(6) The institution shall continue to compensate an inmate who had been earning institution compensation at the rate earned in the inmate's previous status, except that the institution shall compensate an inmate employed by prison industries in accordance with ch. DOC 313.

(7) If 1983 Wis. Act 528 does not apply to the inmate, the inmate shall continue to earn extra good time credit. Inmates who are eligible for positive adjustment time may earn positive adjustment time while in this status.

(8) TLU time shall not be considered time served for disciplinary penalty purposes.

Subchapter II — Offenses Against Bodily Security

DOC 303.11 Assault. An inmate who does any of the following is guilty of assault: (1) Causes bodily harm to another.

(2) Engages in a physical altercation with another person.

DOC 303.12 Aggravated Assault. An inmate who does any of the following is guilty of aggravated assault: (1) Causes substantial bodily harm or great bodily harm to another.

(2) Impedes the normal breathing or circulation of blood by applying pressure on the throat or neck or by blocking the nose or mouth of another person.

(3) Spits, throws or uses body fluids or waste or any substance on another.

(4) Causes the death of another.

(5) Uses any item as a weapon to cause bodily harm to another.

DOC 303.13 Assault on Staff. An inmate who does any of the following is guilty of assault on staff: (1) Causes bodily injury or harm to a staff member.

(2) Impedes the normal breathing or circulation of blood by applying pressure on the throat or neck or by blocking the nose or mouth of a staff member.

(2) Spits, throws or uses bodily fluids or waste or any substance on a staff member.

(3) Causes the death of a staff member.

(4) Uses any item as a weapon to cause bodily harm to a staff member.

DOC 303.14 Sexual conduct. (1) An inmate who does any of the following is guilty of sexual conduct:

(a) Requests, hires or tells another person to have sexual intercourse, sexual contact, or engage in sexual conduct.

(b) Exposes the inmate's own intimate parts to another person for the purpose of sexual arousal or gratification.

(c) Has contact with or performs acts with an animal that would be sexual intercourse or sexual contact if with another person.

(d) Clutches, fondles, or touches the inmate's own intimate parts, whether clothed or unclothed, while observable by another.

(e) Simulates a sexual act while observable by another.

(f) Kissing, hand holding, hugging, stroking or other physical displays of affection except for that allowed under DAI policy or facility procedure.

(2) Consensual acts are prohibited under this section.

DOC 303.15 Sexual contact or intercourse. (1) An inmate who does any of the following is guilty of sexual contact or intercourse:

(a) Has sexual intercourse.

(b) Has sexual contact.

(c) Commits an act of sexual gratification with another person.

(2) Consensual acts are prohibited under this section.

DOC 303.16 Sexual assault. An inmate who does the following is guilty of sexual assault:

(1) With force or threat of force has sexual intercourse, sexual contact or commits an act of sexual gratification with another person.

(2) Consensual acts are prohibited under this section.

DOC 303.17 Sexual assault—aggravated. An inmate who does any of the following is guilty of sexual assault—aggravated. (1) Causes physical injury as a result of a sexual assault.

(2) Uses a weapon in the commission of a sexual assault.

(3) Has sexual contact or sexual intercourse with a person who has not attained the age of 16 years.

(4) Consensual acts are prohibited under this section.

DOC 303.18 Threats. An inmate who communicates intent to do any of the following is guilty of threats:

(1) Physically harm, harass or intimidate that person or another;

(2) Cause damage to or loss of that person's or another person's property.; or

(3) Make an accusation he or she knows is false.

DOC 303.19 Stalking. An inmate who engages in, causes, or requests a person to engage in any of the acts described in subs.

(1) to (13) directed at a targeted person is guilty of stalking

(a) The date, time, and place of the hearing;

(1) Maintaining a visual or physical proximity to the targeted person.

(2) Approaching or confronting the targeted person.

(3) Appearing at the targeted person's residence, place of employment, or places they frequent

(4) Contacting the targeted person, the person's neighbors, friends, co-workers, household member or family members.

- (5) Causing the targeted person's telephone to ring repeatedly or continuously, regardless of whether a conversation ensues.
- (6) Contacting in any way any person outside the institution not acquainted with the inmate who did not request such communication.
- (7) Photographing, videotaping, audio taping, or, through any other means, monitoring, recording, or logging the activities of the targeted person, regardless of where the act occurs and regardless of the means by which the monitoring, recording, or logging is conducted.
- (8) Sending material by any means to the targeted person.
- (9) Making information available about the targeted person by any means, whether true or false, to any person or in a manner in which the information would become available to any person.
- (10) Touching or placing an object on or delivering an object to property owned, leased, or occupied by the targeted person.
- (11) Seeking out in any way or possessing documents with personal identifying information pertaining to the targeted person.
- (12) Possessing a photograph of, or media article pertaining to a targeted person whom the inmate has previously been found guilty of stalking. This section shall not apply to an inmate who possesses a photograph of or media article pertaining to the inmate's child, so long as it is not otherwise prohibited.
- (13) Falsely representing himself or herself as the current or former spouse, boyfriend, girlfriend, close family member, relative, or household member of the targeted person.

Subchapter III — Offenses Against Institutional Security

DOC 303.20 Endangering safety. An inmate who endangers the health or safety of staff, inmates, others, or property by any means is guilty of endangering safety.

DOC 303.21 Inciting a disturbance. An inmate who encourages, directs, commands, coerces or signals one or more other persons to participate in a disturbance is guilty of inciting a disturbance.

DOC 303.22 Participating in a disturbance. An inmate who participates in a disturbance, or who remains in a group where some members of the group are participating in a disturbance, is guilty of participating in a disturbance.

DOC 303.23 Taking a hostage. An inmate who seizes, confines, or restrains one or more persons is guilty of taking a hostage.

DOC 303.24 Group resistance and petitions. An inmate who does any of the following is guilty of group resistance and petitions:

- (1) Participates in any group activity which is not approved by the warden or is contrary to provisions of this chapter.
- (2) Joins in or solicits another to join in any group petition or statement. The following activities are not prohibited:
 - (a) Authorized activity by groups approved by the warden
 - (b) Group petitions to the courts.
 - (c) Complaints properly prepared under ch. DOC 310.
- (3) Participates in any activity associated with any security threat group or possesses any written materials, symbols or symbolism related to a security threat group.

DOC 303.25 Cruelty to animals. An inmate who causes bodily injury or the unauthorized death of an animal is guilty of cruelty to animals.

DOC 303.26 Escape. (1) An inmate who does any of the following without permission is guilty of escape:

- (a) Leaves an institution.
- (b) Leaves the custody of an employee or law enforcement personnel while outside of the institution.
- (c) Does not follow the inmate's assigned schedule.
- (d) Leaves the authorized area to which the inmate is assigned.
- (e) Leaves a work or study release site.
- (2) Any inmate who makes or possesses any material for use in escape is guilty of an offense.
- (3) Any inmate who removes restraints or tampers with doors, locks, or other security devices while outside the institution is guilty of an offense.

DOC 303.27 Disguising identity. Any inmate who conceals or disguises the inmate's usual appearance is guilty of an offense.

Subchapter IV — Offenses Against Order

DOC 303.28 Disobeying orders. (1) Any inmate who disobeys a verbal or written directive or order from any employee, directed to the inmate or to a group of which the inmate is or was a member is guilty of an offense.

(2) Any inmate who commits an act which violates an order, whether the inmate knew or should have known that the order existed is guilty of an offense.

(3) Any inmate who violates any department policy, facility procedure or rule is guilty of an offense.

DOC 303.29 Disrespect. Any inmate who shows disrespect to any person is guilty of an offense, whether or not the subject of the disrespect is present and even if the expression of disrespect is in writing. Disrespect includes derogatory or profane writing, remarks or gestures, name calling, yelling, and other acts which are made outside the formal complaint process, which are expressions of disrespect, and which have a reasonable potential to negatively affect institution security, safety, order, and/or inmate discipline.

DOC 303.30 Soliciting staff. An inmate who does any of the following is guilty of an offense:

- (1) Offers or gives anything to a staff member, an acquaintance of a staff member, or family of a staff member. This subsection does not apply to anything authorized by these rules or department policy.
- (2) Requests or accepts anything from a staff member, an acquaintance of a staff member, or family of a staff member. This subsection does not apply to anything authorized by these rules or department policy.
- (3) Buys anything from, or sells anything to, a staff member, an acquaintance of a staff member, or family of a staff member. This subsection does not apply to items for sale in accordance with department policy.
- (4) Requests a staff member, an acquaintance of a staff member, or family of a staff member to purchase anything for the inmate. This subsection does not apply to anything authorized by these rules or department policy.
- (5) Requests another person to give anything to a staff member, or agrees with another person to give anything to a staff member, or an acquaintance of a staff member, or family of a staff member.
- (6) Conveys affection to, or about staff verbally or in writing whether personally written or commercially written or by drawings; or asks for addresses, phone numbers, favors or requests special attention of a staff member, or an acquaintance of a staff member, or family of a staff member.

DOC 303.31 Lying. Any inmate who makes a false written or oral statement which may affect the orderly operation, safety or security of the institution is guilty of an offense.

DOC 303.32 Lying about staff. Any inmate who makes a false written or oral statement about a staff member outside the complaint review system is guilty of an offense.

DOC 303.33 Disruptive conduct. Any inmate who engages in, causes or provokes disruptive conduct, or whose actions disrupt the orderly operation of the institution, is guilty of an offense. Disruptive conduct includes physically resisting an employee, horseplay, arguing, any behavior which is loud, offensive or vulgar, or passive behavior which disrupts the orderly operation of the institution.

DOC 303.34 Unauthorized forms of communication. Any inmate who does any of the following is guilty of an offense:

- (1) Communicates with another person by a method or with a device not authorized by the institution.
- (2) Communicates with persons where a court order exists prohibiting contact.
- (3) Communicates with persons whom the department has prohibited contact.
- (4) Communicates with a victim of a crime for which the inmate has been convicted, or a read-in offense, or victim's family unless approved by the warden.
- (5) Communicates in a manner that harms, harasses or intimidates any person.
- (6) Communicates with any person that has not attained the age of 18 unless the person is on the approved visiting list, is approved by the warden, is the inmate's minor child, or is the minor child of a close family member and the person is not the victim of the inmate's crime.
- (7) Communicates in a manner that is intended to be in code or in a manner that hinders staff's ability to readily translate, understand or interpret the communication.

DOC 303.35 False names and titles. Any inmate who uses any of the following is guilty of an offense:

- (1) A title for the inmate other than Mr., Ms., Miss, or Mrs., as appropriate.
- (2) A name other than the name by which the inmate was committed to the department, unless the name was legally changed.
- (3) The legally changed name without including the name by which the inmate was committed to the department.

DOC 303.36 Enterprises and fraud. (1) Any inmate who engages in a business or enterprise, whether or not for profit, or who sells anything except as specifically allowed under other sections is guilty of an offense, except for the following situations:

An inmate who was owner or part owner of any business or enterprise prior to sentencing may communicate with the inmate's manager or partner concerning the management of the enterprise or business.

An inmate may write and seek publication of works in accordance with these rules and department policies.

- (2) Any inmate who offers to buy or orders any item with the intention of not paying for it or buys it on credit is guilty of an offense.
- (3) Any inmate who obtains anything of value through any of the following is guilty of an offense.
 - (a) Violating federal or state laws, local ordinances or the rules of the department.
 - (b) The fraudulent use of information.
- (4) Any inmate who provides or possesses information that could be used to receive access to telephone or other telecommunication services that are not authorized for use by the Department is guilty of an offense.
- (5) Any inmate who provides or possesses false, fraudulent or unauthorized information that could be used to obtain money, property items, or other services of value, is guilty of an offense.
- (6) Any inmate who obtains or possesses personally identifiable information of any other person with the intent to fraudulently acquire goods or services, or to cause loss or harm, is guilty of an offense.

Subchapter V — Offenses Against Property

DOC 303.37 Theft. Any inmate who steals the property of another person or of the state is guilty of an offense.

DOC 303.38 Damage or alteration of property. (1) Any inmate who damages, destroys or alters any property of the state or of another person without written authorization by staff is guilty of an offense.

(2) Any inmate who damages, destroys, alters, or disposes of the inmate's own property, contrary to department policy is guilty of an offense.

DOC 303.39 Misuse of state or federal property. Any inmate who uses government property in an unauthorized manner is guilty of an offense.

DOC 303.40 Unauthorized transfer of property. Any inmate who gives, receives, sells, buys, exchanges, barter, lends, borrows or takes any property from another inmate or someone not on the inmate's approved visiting list without prior written authorization by the Warden is guilty of an offense.

DOC 303.41 Counterfeiting and forgery. Any inmate who makes, uses, possesses, or alters any document so it appears that the document was made or signed by a different person; or that the document was signed at a different time or with different provisions is guilty of an offense.

Subchapter VI — Contraband Offenses

DOC 303.42 Possession or use of money or negotiable instruments. Except as specifically authorized, any inmate who has in the inmate's possession or who uses any of the following is guilty of an offense:

- (1) Coins or paper money.
- (2) A check.
- (3) A money order.
- (4) A savings bond.
- (5) A credit card, debit card, gift card, phone card, or information allowing access to or use of such cards or accounts.
- (6) Any other negotiable instrument.

DOC 303.43 Possession of intoxicants. Except as specifically authorized, any inmate who possesses any intoxicating substance is guilty of an offense.

DOC 303.44 Possession of drug paraphernalia. Any inmate who possesses any device used in the manufacture of an intoxicating substance or any device used or intended for use in taking an intoxicating substance into the body, is guilty of an offense.

DOC 303.45 Possession, manufacture or use of weapons. (1) Any inmate who makes or alters an item making it suitable for use as a weapon is guilty of an offense.

- (2) Any inmate who possesses an item which is designed to be used as a weapon is guilty of an offense.
- (3) Any inmate who possesses an item which could be used in the manufacture of a weapon is guilty of an offense.
- (4) Any inmate who uses an item as a weapon is guilty of an offense.

DOC 303.46 Possession of tobacco. (1) Any inmate who possesses a tobacco product is guilty of an offense.

- (2) Any inmate who possesses materials to facilitate the use of tobacco is guilty of an offense.

DOC 303.47 Possession of contraband—miscellaneous. (1) Each institution shall maintain and make available to inmates a list of property which inmates are allowed to possess in accordance with department policies relating to personal property.

- (2) Any inmate who possesses any of the following is guilty of an offense:
 - (a) Items which are not allowed.
 - (b) Items in excess of the quantity allowed.
 - (c) Items which are required to be listed but are not listed on the inmate's property list.
 - (d) Items which do not belong to the inmate, except state property issued to the inmate.
 - (e) Personally identifiable information relating to any employee or the employee's close family member.

DOC 303.48 Possession of electronic communication or data storage devices. Except as specifically authorized, any inmate who possesses any electronic communication, data storage device or related accessories is guilty of an offense.

DOC 303.49 Unauthorized use of the mail. Any inmate who does any of the following is guilty of an offense:

- (1) Uses a postal service to communicate with a person with whom the inmate has been denied correspondence privileges.
- (2) Sends through the mail anything which the inmate may not have in the inmate's possession under this chapter.
- (3) Makes or alters any postage stamp or alters or erases a postal cancellation mark or possesses any postage stamp that has been altered.
- (4) Mails any letter or parcel on which is affixed a canceled postage stamp.
- (5) Uses a forged, counterfeit, or altered document, postage stamp or postal cancellation mark.
- (6) Attempts to circumvent the rules under s. DOC 309.04 related to mail by sending a letter to a destination with the intent it be forwarded to a destination other than the address on the mailing envelope.
- (7) Sends food through the mail.
- (8) Sends a foreign substance, body fluids, or body wastes, including hair, through the mail.
- (9) Sends correspondence which harms, harasses or intimidates any person.
- (10) Falsifies the identity or location of the actual recipient of a letter or parcel.
- (11) Mailing or attempting to mail items using a non-institution mailbox or mail collection.

Subchapter VII — Movement Offenses

DOC 303.50 Punctuality and attendance. Inmates shall attend and be on time for scheduled activities. An inmate who violates this section is guilty of an offense, unless one of the following exists:

- (1) The inmate is sick and reports this fact as required by department policy.
- (2) The inmate is authorized to be in another location.
- (3) The inmate is authorized to be absent from the activity.

DOC 303.51 Loitering. Inmates shall proceed at a normal pace and without stopping or delay, following a designated route when going to and from all activities. Any inmate who violates this section or department policy relating to this section is guilty of an offense.

DOC 303.52 Leaving assigned area. Any inmate who leaves a room or area either inside or outside the institution where the inmate is required to be is guilty of an offense, unless one of the following exists:

- (1) The inmate receives permission to leave from an employee supervising the activity.
- (2) The inmate has authorization to be elsewhere at that time.

DOC 303.53 Being in an unassigned area. Any inmate who, without an employee's permission, enters or remains in a room or area either inside or outside the institution other than the one to which the inmate is assigned is guilty of an offense.

DOC 303.54 Entry into another inmate's assigned living area. Any inmate who reaches, leans or puts any object or part of the body into the assigned living area of another inmate or permits another to do the same in their assigned living area, is guilty of an offense, unless such entry is the result of one of the following:

- (1) Part of a work assignment and under the supervision of an employee.
- (2) Allowed according to department policy.

Subchapter VIII — Offenses Against Safety And Health

DOC 303.55 Improper storage. Any inmate shall keep toiletries, hobby materials, medications, cleaning supplies, food and any other items in the original containers, and in a designated area. Any inmate who stores any of these items in a different container or in an unauthorized area is guilty of an offense.

DOC 303.56 Dirty assigned living area. Any inmate who does not comply with department policy for orderly and clean assigned living area is guilty of an offense, provided the inmate had knowledge of the condition of their assigned living area and had the opportunity to clean or rearrange it.

DOC 303.57 Poor personal hygiene. (1) Any inmate whose personal hygiene is a health risk to the inmate or others, or is offensive to others, and who has knowledge of this condition and the opportunity to correct it, but does not, is guilty of an offense.

- (2) Any inmate who fails to comply with department policy regarding personal hygiene is guilty of an offense.

DOC 303.58 Misuse of medication. Any inmate who does any of the following is guilty of an offense:

- (1) Takes more of a prescription medication than prescribed.
- (2) Takes a prescription medication more often than prescribed.
- (3) Takes a prescription medication which was not prescribed for the inmate.
- (4) Possesses or takes any prescription medication except at the time and place specified by the department.
- (5) Improperly stores or disposes of medication.
- (6) Deceives or attempts to deceive staff as to whether medication has been consumed.
- (7) Takes a non prescribed medication more often than recommended by the medications label or Health Service Unit employees.

Unit employees.

- (8) Gives to or receives from a person any medication without authorization.
- (9) Uses or takes medication in a manner that is not prescribed or intended.

DOC 303.59 Disfigurement. (1). Any inmate who disfigures, cuts, pierces, removes, mutilates, discolors or tattoos any part of their or another person's body, is guilty of an offense.

(2) Any inmate who possesses any item which has been used, altered, or intended to be used to disfigure cut, pierce, remove, mutilate, discolor or tattoo is guilty of an offense.

Subchapter IX — Miscellaneous Offenses

DOC 303.60 Use of intoxicants. (1) Any inmate who takes into the inmate's body any intoxicating substance, except prescription medication in accordance with the prescription, is guilty of an offense.

(2) (a) When a test on an inmate's body specimen or a physical examination of an inmate indicates use of an intoxicating substance, the inmate is guilty of an offense.

(b) The institution shall confirm results of a test conducted under par. (a) by a second test if the inmate requests a confirmatory test in accordance with department policy.

(c) An inmate who requests a confirmatory test shall pay for the cost of the test. If the inmate does not have sufficient funds to pay for the cost of the test, the institution in which the inmate is confined shall loan the inmate the necessary funds. If the confirmatory test does not validate the results of the first test, the institution shall refund any money the inmate contributed to the cost of the confirmatory test.

(3) An inmate who fails to provide a body specimen within a prescribed time frame, refuses to provide a body specimen, submit to a physical examination, or a breathalyzer test, substitutes or attempts to substitute the specimen, or introduces or attempts to introduce a foreign substance into the specimen, is guilty of an offense.

DOC 303.61 Gambling. Any inmate who gambles, is involved in gambling, or possesses any gambling material is guilty of an offense.

DOC 303.62 Refusal to work or attend school. Any inmate who refuses to perform a work assignment or attend school, is guilty of an offense.

DOC 303.63 Inadequate work or school performance. Any inmate whose work fails to meet the standards set for performance on a work assignment, including a work release placement and project crew, or school program, including study release, and who has the ability to meet those standards, or an inmate who fails to follow work/school rules or safety standards, is guilty of an offense.

DOC 303.64 Violating conditions of leave. Any inmate who violates conditions of leave imposed under ch. DOC 326 is guilty of an offense.

Subchapter X — Disciplinary Procedure And Penalties

DOC 303.65 Disciplinary violation dispositions. The institution may deal with a violation of ss. DOC 303.11 to 303.64 in the following ways:

- (1) If an employee determines that a conduct report is not required, the employee may counsel and warn the inmate under s. DOC 303.66.
- (2) The employee may dispose of a minor violation under s. DOC 303.77 and 303.78.
- (3) Employees may refer any violation to the security director by writing a conduct report as provided under s. DOC 303.67 or an incident report if further investigation is necessary. The security director may deal with these reports as follows:
 - (a) Dismiss, alter or correct the conduct report as provided under s. DOC 303.68.
 - (b) Refer the matter to a supervisor to be disposed of in accordance with s. DOC 303.77 or 303.78 if the violation is a minor one.
 - (c) Refer the matter to a hearing officer to be disposed of in accordance with ss. DOC 303.79 to 303.81 if the violation is a major one.
 - (d) Assign the report for further investigation.
- (4) The security director may refer violations of criminal law to law enforcement authorities. The institution may continue the disciplinary process under this chapter regardless of action taken by law enforcement.
- (5) If the disciplinary committee finds an inmate guilty, the disciplinary committee may refer the inmate to classification to review the inmate's custody level, or location.

DOC 303.66 Offenses that do not require a conduct report. (1) The department does not require employees to write conduct reports on all observed violations of the disciplinary rules. Under any of the following conditions, employees may inform the inmate that the inmate's behavior is against the rules, discuss the inmate's behavior, offer an informal resolution and give a warning if:

- (a) The inmate is unfamiliar with the rule.
 - (b) The inmate has not violated the same or a closely related rule within the previous year (whether or not a conduct report was made).
 - (c) The inmate is unlikely to repeat the offense if warned and counseled.
 - (d) Although the inmate's acts were a technical violation of a rule, the purposes of this chapter would not be served by writing a conduct report in the particular situation.
- (2) The employee shall write a conduct report if an inmate commits a major offense listed under s. DOC 303.71.

DOC 303.67 Conduct report. (1) Except as provided under s. DOC 303.66, any employee who observes or becomes aware of a rule violation will verify that a violation has occurred and will write a conduct report. If more than one employee knows of the same incident, only one of them will write a conduct report.

- (2) In the conduct report, the employee shall describe the facts and list the sections of this chapter which were allegedly violated.
- (3) If more than one conduct report is written for an inmate for the same incident, the institution shall only complete the disciplinary process on one conduct report.

DOC 303.68 Review by security office. (1) The security director shall review any conduct report not processed under ss. DOC 303.77 or 303.78 within 5 working days and do any of the following:

- (a) Dismiss a conduct report.
- (b) Strike any section number if the statement of facts could not support a finding of guilty of violating that section.
- (c) Add any section number if the statement of facts could support a finding of guilty of violating that section and the addition is appropriate.
- (d) Refer a conduct report for further investigation.
- (e) Determine whether the conduct report should be processed as a major or minor offense. In deciding whether an alleged violation should be treated as a major or minor offense, the security director shall consider the following criteria and shall indicate in the record of disciplinary action the reason for the decision based on these criteria:
 1. Whether the inmate has previously been found guilty of the same or a similar offense, how often, and how recently.
 2. Whether the inmate has recently been warned about the same or similar conduct.

3. Whether the alleged violation created a risk of serious disruption at the institution or in the community.
4. Whether the alleged violation created a risk of serious injury.
5. The value of the property involved.
6. Whether the alleged violation created a risk of serious financial impact.
7. Psychological services input for seriously mentally ill inmates.
- (2) The security office shall treat any alleged violation of a rule which may result in a suspension of visiting or correspondence privileges, work or study release, or leave, as a major offense.
- (3) The security office shall treat any conduct report containing at least one charge of a major offense as a major offense, even if it also includes minor offenses.
- (4) The security director shall only process one conduct report for an inmate for the same incident.
- (5) The security director's decision under sub. (1) is final.

DOC 303.69 Minor offenses. A minor offense is any violation of a disciplinary rule which is not a major offense under s. DOC 303.71 or which the security director has not classified as a major offense.

DOC 303.70 Minor penalties. Minor penalties are limited to one or more of the following:

- (1) Reprimand
- (2) Loss of recreation privileges for 1 to 60 calendar days for an inmate in general population
- (3) Loss of recreation privileges for 1 to 8 calendar days for inmates in segregation
- (4) Building confinement for 1 to 30 days
- (5) Room/cell confinement for 1 to 15 days
- (6) Loss of a specific privilege for 1 to 60 days or for 1 to 8 days for inmates in disciplinary separation.
- (7) Extra duty for up to 80 hours,
- (8) Restitution in accordance with ss. DOC 303.75 (5) and 303.87 (1) (i).

DOC 303.71 Major offenses. (1) A major offense is a violation of a disciplinary rule for which a major penalty may be imposed.

(2) Any violation of the following sections is a major offense:

Section	Title
DOC 303.11	Assault.
DOC 303.12	Aggravated assault.
DOC 303.13	Assault on staff.
DOC 303.14	Sexual conduct.
DOC 303.16	Sexual assault.
DOC 303.17	Sexual assault—aggravated.
DOC 303.19	Stalking.
DOC 303.20	Endangering safety.
DOC 303.21	Inciting a disturbance.
DOC 303.22	Participating in a disturbance.
DOC 303.23	Taking a hostage.
DOC 303.25	Cruelty to animals.
DOC 303.26	Escape.
DOC 303.27	Disguising identity.
DOC 303.30	Soliciting staff.
DOC 303.43	Possession of intoxicants.
DOC 303.44	Possession of drug paraphernalia.
DOC 303.45	Possession, manufacture or use of weapons.
DOC 303.46	Possession of tobacco.
DOC 303.48	Possession of electronic communication or data storage devices.
DOC 303.58	Misuse of medications.
DOC 303.59	Disfigurement
DOC 303.60	Use of intoxicants

(3) Except for an offense listed under sub. (2), an offense may be designated as either a major or a minor offense.

DOC 303.72 Major penalties. A major penalty is limited to one or more of the following:

- (1) Loss of earned good time.
- (2) Extension of mandatory release date under s. DOC 303.87.
- (3) Disciplinary separation under s. DOC 303.73.
- (4) Room/cell confinement of 16 to 30 calendar days.
- (5) Loss of recreation privileges for over 60 calendar days for inmates in the general population.
- (6) Loss of out of cell recreation privileges for over 8 calendar days for inmates in disciplinary separation.

- (7) Building confinement for over 30 calendar days.
- (8) Loss of specific privileges for over 60 calendar days for inmates in the general population.
- (9) Loss of specific privileges for over 8 calendar days for inmates in disciplinary separation.

DOC 303.73 Major penalty: disciplinary separation. (1) CONDITIONS. Disciplinary separation may not exceed the period specified in s. DOC 303.87 (2). The disciplinary committee or the hearing officer may impose disciplinary separation for a major offense. The institution shall provide inmates in disciplinary separation the following:

- (a) Clean mattress.
- (b) Sufficient light to read by at least 12 hours per day.
- (c) Sanitary toilet and sink.
- (d) Adequate ventilation and heating.

(2) NECESSITIES. The institution shall allow the following for each inmate in disciplinary separation, but the items need not be kept in the cell, as determined by the warden based on safety and security concerns:

- (a) Adequate clothing and bedding.
- (b) A toothbrush, toothpaste, soap, a towel, a face cloth and a small comb, unless the inmate is allowed to use personal hygiene supplies.
- (c) Religious texts.
- (d) Meals that are nutritionally adequate.

(3) OTHER PROPERTY. The institution may allow inmates in disciplinary separation access to material pertaining to legal proceedings, law books, and other property allowed by the institution.

(4) VISITS AND TELEPHONE CALLS. The institution shall permit inmates in disciplinary separation visitation and telephone calls in accordance with ch. DOC 309.

(5) CORRESPONDENCE. (a) Inmates in disciplinary separation may receive and send first class mail in accordance with departmental rules relating to mail.

(b) Indigent inmates in disciplinary separation may, upon request, receive writing materials and postage in accordance s. DOC 309.51 and department policy.

(6) SHOWERS. The institution shall allow inmates in disciplinary separation to shower at least once every 4 calendar days.

(7) SERVICES AND PROGRAMS. The institution shall provide social services, psychological and medical services, program opportunities and an opportunity to exercise for inmates in disciplinary separation, but the institution shall provide these services at the individual's cell, unless otherwise authorized by the warden.

(8) LEAVING CELL. Inmates in disciplinary separation may not leave their cells except as needed for urgent medical or psychological attention, showers, visits, recreation and emergencies endangering their safety in the cell or other reasons as authorized by the warden. The warden may require inmates in disciplinary separation to wear mechanical restraints, as defined in s. DOC 306.02 (13), while outside their cells.

(9) GOOD TIME. Inmates in disciplinary separation continue to earn good time,

(10) PAY. Inmates in disciplinary separation shall not earn compensation.

(11) CANTEEN. Inmates in disciplinary separation may have approved items brought in from the canteen but may not go to the canteen in person.

(12) SPECIAL PROCEDURES. Institutions may establish procedures for the orderly operation of facilities for inmates in disciplinary separation.

(13) REVIEW OF DISCIPLINARY SEPARATION. The warden may review an inmate's status in disciplinary separation at any time and may place the inmate in the general population at any time. The warden shall review inmates in disciplinary separation at least every 30 days.

DOC 303.74 Controlled segregation. (1) USE. A security supervisor may order into controlled segregation any inmate in segregated status who exhibits disruptive, destructive, or out of control behavior. Employees shall not place an inmate in controlled segregation unless a conduct report or incident report is written for the conduct giving rise to the use of controlled segregation.

(a) A security supervisor may not order controlled segregation for more than 72 hours for a single inmate, but the security director may extend the placement for out of control behavior.

(b) The security director shall review extensions every 24 hours. When the inmate's behavior is brought under control, a security supervisor shall remove the inmate from controlled segregation.

(2) CONDITIONS. The institution shall provide inmates in controlled segregation the following:

- (a) Clean mattress.
- (b) Sufficient light to read by at least 12 hours per day.
- (c) Sanitary toilet and sink.
- (d) Adequate ventilation and heating.
- (e) Clothing consistent with the level of risk.
- (f) Essential hygiene supplies.
- (g) Nutritionally adequate meals.

(h) While an inmate is acting in a disruptive manner, the institution shall maintain close control of all property in par. (a), (e), and (f).

(3) VISITS. Inmates in controlled segregation may not receive visits, except from their attorney or with permission from the security director or warden.

(4) SPECIAL RULES. (a) The inmate may not possess any property in the cell except that described in subs. (2) and (3), letters received while in controlled segregation, legal materials, and writing materials as long as the property does not pose a security risk. Institutions may establish procedures for the orderly operation of the facilities for inmates in controlled segregation.

(b) Inmates in controlled segregation may not leave their cells except in emergencies endangering the inmate's safety in the cell or with permission from the security director or warden. The warden may require inmates in controlled segregation to wear mechanical restraints, as defined in s. DOC 306.02 (13), while outside their cells if the use of mechanical restraints is necessary to protect staff or inmates or to maintain the security of the institution.

(5) GOOD TIME. If 1983 Wis. Act 528 does not apply to the inmate, the inmate shall continue to earn extra good time credit. Inmates who are eligible for positive adjustment time may earn positive adjustment time while in this status.

(6) PAY An inmate in controlled segregation shall earn compensation if the inmate earned compensation in the previous status.

(7) RECORDS. Staff shall visually check inmates in controlled segregation at least once every 30 minutes and make a written record or log entry at each such interval noting the condition of the inmate.

(8) CREDIT. The institution shall give an inmate in controlled segregation credit toward a term of disciplinary separation during such period of confinement.

DOC 303.75 Other penalties. The disciplinary committee, hearing officer or supervisor may impose any of the following penalties in addition to or in lieu of the penalties in ss. DOC 303.72 and 303.87:

(1) REPRIMAND. A reprimand is any oral statement to an inmate when the inmate is found guilty of an offense. The disciplinary committee, hearing officer or supervisor shall only record the reprimand if no other penalty is given.

(2) LOSS OF RECREATION PRIVILEGES. (a) Loss of recreation privileges for 1 to 60 days as a minor penalty and for over 60 days as a major penalty for inmates in the general population. Recreation privileges include sports and leisure activities outside the cell, either on grounds or off grounds.

(b) Loss of recreation privileges for 1 to 8 days as a minor penalty and for 9 to 60 days as a major penalty for inmates in disciplinary separation.

(3) ROOM / CELL CONFINEMENT. Room and cell confinement for 1 to 15 days as a minor penalty and for 16 to 30 days as a major penalty. During the hours of confinement, the inmate may not leave the inmate's quarters without specific permission. The warden may grant permission for attendance at religious services, medical appointments, showers, and visits from outside persons, if these must occur during the hours of confinement.

(4) LOSS OF A SPECIFIC PRIVILEGE. Loss of a specific privilege for a period of 1 to 60 days as a minor penalty and for a period of over 60 days as a major penalty. Specific privileges that may be taken away include but are not limited to: use of inmate electronics, phone calls; participation in off grounds activities; eating meals in the dining area; and canteen privileges.

(5) RESTITUTION. Full or partial restitution may be imposed as a penalty. Restitution is payment to reimburse for the replacement or repair of stolen, destroyed and damaged property, medical bills, expenses related to an escape, or any expenses caused by the inmate's actions. Restitution will be taken from an inmate's account to satisfy the requirements to make restitution. When the amount of restitution is unknown at the time of the hearing, the hearing officer may impose an estimated maximum restitution amount. If the actual amount of restitution is less than the estimated amount only the actual amount will be assessed. Restitution may not exceed the estimated amount.

(6) EXTRA DUTY. An inmate may be assigned extra work or school duty for a maximum of 80 hours or be required to report as ordered to a school or a work assignment for as long as 80 hours, without pay, as a minor penalty.

(7) BUILDING CONFINEMENT. Building confinement may be imposed for a period of 1 to 30 days as a minor penalty and for a period of over 30 days as a major penalty. Building confinement is confinement to the building in which the inmate resides. During the period of confinement, the inmate may not leave the building without specific permission. The warden may grant permission for attendance at religious services, medical appointments, showers, and visits from outside persons, and other areas as authorized.

DOC 303.76 Referral for prosecution. Notwithstanding the provisions of this chapter, the department shall work with local law enforcement and the district attorney so that violations of criminal statutes may be investigated and appropriately referred for prosecution.

DOC 303.77 Uncontested minor disposition. An employee may write a conduct report and summarily find an inmate guilty and punish the inmate for minor rule infractions in accordance with this section.

(1) Notice. Before an inmate is found guilty and punished under this section, an employee shall do the following:

(a) Inform the inmate of the nature of the alleged infraction and the contemplated disposition.

(b) Inform the inmate that a supervising officer will review the contemplated disposition, and may impose a different disposition.

(c) Inform the inmate that the incident may be handled under this section or s. DOC 303.78.

(d) Inform the inmate that a disposition under this section must be agreed to and is not appealable.

(2) Procedure. (a) If the inmate consents to the disposition, the employee shall obtain the oral or written approval of the supervisor. If the supervisor approves, the inmate shall be notified and sign the conduct report agreeing to the disposition.

- (b) If the supervisor disapproves of the disposition under this section, the supervisor may do one of the following:
1. Recommend a different disposition.
 2. Refer the alleged infraction for review under s. DOC 303.68.
- (c) If the supervisor approves of a different disposition, the employee will inform the inmate of the supervisor's recommendation. If the inmate agrees to the disposition the inmate shall sign the conduct report.
- (d) If the inmate disagrees, the report will be disposed of under s. DOC 303.78.
- (3) If the matter is not referred for processing under s. DOC 303.78, the employee shall then impose the disposition or dispositions approved by the supervisor and agreed to by the inmate in accordance with s. DOC 303.70.
- (4) The reporting employee shall document dispositions under this section in the record indicating the disposition and approval by the supervisor.
- (5) Uncontested minor dispositions are not appealable.
- DOC 303.78 Contested minor disposition
- (1) An employee may process a conduct report for a minor rule infraction in accordance with this section when an inmate refuses to accept an uncontested minor disposition.
- (2) The employee shall:
- (a) Inform the inmate of the nature of the alleged infraction.
 - (b) Inform the inmate the conduct report will be forwarded to the supervisor for review and determination of disposition.
 - (c) Offer the inmate an opportunity to provide a statement documented by the employee on the appropriate form.
 - (3) The supervisor will render a decision and notify the inmate within 5 working days.
 - (4) If there is a finding of guilt, the supervisor will impose one or more dispositions in accordance with s. DOC 303.70.
 - (5) The inmate may appeal the disposition to the security director within 10 days after the inmate receives a copy of the decision. The decision of the security director is final.
- DOC 303.79 Uncontested major dispositions. An employee may write a conduct report and a supervisor may summarily find an inmate guilty and discipline the inmate for major rule infractions in accordance with this section.
- (1) Notice. Before an inmate is found guilty and disciplined under this section, a supervisor shall do the following:
- (a) Inform the inmate of the nature of the alleged infraction and the contemplated disposition.
 - (b) Inform the inmate that the security director will review the contemplated disposition, and may impose a different disposition.
 - (c) Inform the inmate that a disposition under this section must be agreed to and is not appealable.
 - (2) Procedure. (a) If the inmate consents to the disposition, the supervisor shall obtain the written approval of the security director. If the security director approves, the inmate shall be notified and sign the conduct report agreeing to the disposition.
 - (b) If the security director disapproves of the disposition under this section, the security director may do one of the following:
 1. Recommend a different disposition.
 2. Refer the alleged infraction for review under s. DOC 303.68.
 - (c) If the security director approves of a different disposition, the supervisor will inform the inmate of the security director's recommendation. If the inmate agrees to the disposition, the inmate shall sign the conduct report.
 - (d) If the inmate disagrees, the report will be disposed of under s. DOC 303.80.
 - (3) The supervisor shall document dispositions under this section in the record indicating the disposition and approval by the security director.
 - (4) Uncontested major dispositions are not appealable.
- DOC 303.80 Contested major dispositions. (1) NOTICE. When an inmate is alleged to have committed a major violation and the security director has reviewed the conduct report pursuant to s. DOC 303.68, staff shall give the inmate a copy of the conduct report within 2 working days after review. Anytime prior to the hearing, the security director may amend the conduct report to either correct or add information or evidence to be considered at the hearing. The institution shall inform the inmate of all of the following:
- (a) The rules which the inmate is alleged to have violated.
 - (b) The potential dispositions that may be imposed or other results that may occur, including but not limited to removal from programming or work release.
 - (c) The right the inmate has to a full due process hearing or to waive this right in writing.
 - (d) If the inmate waives the right to a full due process hearing, the inmate will be given a hearing under s. DOC 303.81.
 - (e) If a full due process hearing is chosen, the inmate shall be informed of all of the following:
 1. The inmate may present oral, documentary and physical evidence, and testimony from witnesses in accordance with this section and s. DOC 303.84. No written statement from a witness may be submitted unless the person has been approved as a witness under s. DOC 303.84 and the person is unavailable to testify. No written statement by the accused inmate may be

submitted. Any written statement by a witness presented in lieu of testimony must be legibly printed on no more than two sheets of paper. The disciplinary committee will reject any written statement that fails to conform to this specification and return the statement to the inmate.

2. The inmate may have the assistance of a staff representative in accordance with this section and s. DOC 303.83.
3. The disciplinary committee may permit direct questions or require the inmate or the inmate's representative to submit questions to the disciplinary committee to be asked of the witness.
4. The disciplinary committee may prohibit repetitive, disrespectful or irrelevant questions.
5. If the inmate refuses to attend a hearing or is disruptive, the disciplinary committee may conduct the hearing without the inmate being present.

(2) **WAIVER.** An inmate may waive the right to a due process hearing in writing at any time. If the inmate waives a due process hearing, the institution shall dispose of the conduct report under s. DOC 303.81. A waiver does not constitute an admission of the alleged violation. A waiver may not be retracted without the security director's approval.

(3) **TIME LIMITS.** The institution may not hold the hearing until at least 2 working days after the inmate receives notice of disciplinary hearing rights and a copy of either the approved conduct report or amended conduct report, whichever is later. Unless otherwise authorized by the security director, the institution may not hold the hearing more than 21 calendar days after the inmate receives the hearing rights notice and conduct report. The security director may authorize a hearing beyond the 21 day time limit, either before or after the 21st day. The 21 day time limit is not jurisdictional. The inmate may also request more time to prepare, and the security director may grant the request. An inmate may waive in writing the time limits provided in this section. The institution shall toll time for observation and control placements and for any full or partial day when the inmate is out of the institution on a temporary release order.

(4) **PLACE.** The due process hearing may be held in person, by telephone, video conferencing or other virtual communication means at the discretion of the hearing officer.

(5) **HEARING.** The disciplinary committee shall conduct the due process hearing by doing all of the following:

- (a) Read the conduct report aloud.
- (b) Permit the questioning of approved witnesses.
- (c) Permit the offering of relevant physical evidence.
- (d) Permit relevant direct questions or require the inmate or the inmate's staff representative to submit questions to the disciplinary committee to be asked of the witness.
- (e) Prohibit repetitive, disrespectful or irrelevant questions.
- (f) Mark all documentary and physical evidence received into evidence from the accused as "Submitted By The Inmate."

(g) If an inmate refuses to attend the hearing or disrupts the hearing and is removed, the inmate forfeits the right to present a defense or to call witnesses. The disciplinary committee will administratively review the conduct report and render a decision based upon the evidence available.

(6) **DECISION.** After the hearing the disciplinary committee:

- (a) May deliberate in private.
- (b) Shall consider all relevant information.
- (c) Shall establish guilt based on a finding that it was more likely than not that the inmate committed the act.
- (d) May find the inmate guilty or not guilty on each charge and impose a disposition if found guilty. A committee of three may make a decision if at least two of the three members agree. If the committee is comprised of two members, the decision must be unanimous.
- (e) May refer the matter to the warden for a decision if the disciplinary committee members do not agree on a finding of guilt or a disposition.
- (f) Shall consider any of the inmate's defenses or other mitigating factors.
- (g) Shall inform the inmate of the decision.
- (h) Provide the accused inmate and the inmate's staff representative, if any, a written copy of the decision with reasons for the decision.

DOC 303.81 Contested major dispositions: waiver of due process hearing. (1) **NOTICE.** If an inmate has waived a due process hearing under s. DOC 303.80 and the violation is not disposed of in accordance with s. DOC 303.79, the institution shall dispose of it in accordance with this section.

(2) **TIME LIMITS.** The institution may not hold the hearing until at least 2 working days after the inmate receives notice of disciplinary hearing rights and a copy of either the approved conduct report or amended conduct report, whichever is later. Unless otherwise authorized by the security director, the institution may not hold the hearing more than 21 calendar days after the inmate receives the hearing rights notice and conduct report. The security director may authorize a hearing beyond the 21 day time limit, either before or after the 21st day. The 21 day time limit is not jurisdictional. The inmate may also request more time to prepare, and the security director may grant the request. An inmate may waive in writing the time limits provided in this section. The institution shall toll time for observation and control placements and for any full or partial day when the inmate is out of the institution on a temporary release order.

(3) **HEARING OFFICER.** The warden shall appoint one or more employees to serve as hearing officers. A hearing officer with substantial involvement in the conduct report may not hold a hearing on that conduct report.

(4) HEARING. The inmate has no right to a staff representative, to confront witnesses or to have witnesses testify on the inmate's behalf. The hearing officer shall conduct the hearing by doing all of the following:

- (a) Read the conduct report aloud.
- (b) Shall provide the inmate with an opportunity to respond to the report and make a verbal statement about the alleged violation. No written statement by the accused inmate may be submitted.
- (c) Permit the offering of relevant evidence.
- (d) Mark all documentary and physical evidence received into evidence from the accused as "Submitted By The Inmate."

(5) If an inmate refuses to attend the hearing or disrupts the hearing and is removed, the inmate forfeits the right to provide a statement or evidence. The hearing officer will administratively review the conduct report and render a decision based upon the evidence available.

(6) PLACE. The due process hearing may be held in person, by telephone, video conferencing or other virtual communication means at the discretion of the hearing officer.

(7) DECISION. After the hearing the hearing officer:

- (a) Shall consider all relevant information.
- (b) Shall render a decision on each charge.
- (c) Determines guilt based on a finding that it was more likely than not that the inmate committed the act.
- (d) Shall consider any of the inmate's defenses or other mitigating factors.
- (e) Shall inform the inmate of the decision.
- (f) Provide the accused inmate a written copy of the decision with reasons for the decision.

DOC 303.82 Appeal of contested major disposition or contested major waiver. (1) The inmate may appeal a disciplinary decision under s. DOC 303.80 or 303.81, including procedural errors, to the warden within 10 days after the inmate receives a copy of the decision.

(2) The warden shall review all records and forms pertaining to the appeal and make the decision within 60 days following receipt of the request for appeal.

(3) The warden's decision shall be one or more of the following:

- (a) Affirm the disciplinary committee or hearing officer's decision.
- (b) Modify all or part of the disciplinary committee or hearing officer's decision.
- (c) Reverse the disciplinary committee or hearing officer's decision, in whole or in part.
- (d) Return the case to the disciplinary committee or hearing officer for further consideration, to complete or correct the record, to correct any procedural error, or for rehearing.

(4) The warden's decision is final regarding the sufficiency of the evidence. An inmate may appeal claims of procedural error as provided under s. DOC 310.08 (3).

DOC 303.83 Due process: staff representative. (1) (a) At each institution, the warden shall designate employees to serve as staff representatives for inmates in disciplinary hearings at the institution.

(b) If an inmate or staff representative demonstrates to the warden that there is a conflict of interest in the case that would impair an staff representative's ability to perform his or her duties, the warden may assign a different employee to serve as the inmate's staff representative.

(2) The staff representative's purpose is to help the accused inmate to understand the charges against the inmate and to help in the preparation and presentation of any defense the inmate has, including gathering evidence and testimony and preparing the inmate's own statement. The staff representative may speak on behalf of the accused inmate at a disciplinary hearing or may help the inmate prepare to speak.

DOC 303.84 Due process hearing: witnesses. (1) The accused inmate may make a request to the security director for no more than two identified witnesses in addition to the reporting employee and shall explain the relevance of the witness testimony. The inmate shall make this request within two days of the service of notice of major disciplinary hearing rights. The security director may waive the two day time limit for good cause.

(2) After all witness requests have been received, the security director shall review them to determine whether the witnesses possess relevant information and shall be called.

(3) Witnesses requested by the accused who are staff or inmates shall attend the disciplinary hearing unless one of the following exist:

- (a) The risk of harm to the witness if the witness testifies.
- (b) The testimony is irrelevant to the question of guilt or innocence.
- (c) The testimony is merely cumulative of other evidence and would unduly prolong the hearing.

(4) If a witness is unavailable to testify, the disciplinary committee may consider a legibly printed written statement limited to 500 words on no more than two sheets of paper, a transcript of an oral statement, or a recorded statement. Unavailability means death, transfer, release, hospitalization, or escape in the case of an inmate; death, illness, vacation, no longer being employed at that location, or being on a different shift in the case of an employee.

(5) If the security director finds that testifying would pose a risk of harm to the witness, the disciplinary committee may consider a corroborated, confidential statement signed under oath from that witness without revealing the witness's identity

or a corroborated signed statement from an employee getting the statement from that witness. The disciplinary committee shall reveal the contents of the statement to the accused inmate, except the disciplinary committee may edit or summarize the statement to avoid revealing the identity of the witness. The committee may question the witnesses, if they are available. A statement can be corroborated in any of the following ways:

- (a) By other evidence which substantially corroborates the facts alleged in the statement such as an eyewitness account by an employee or circumstantial evidence.
- (b) By evidence of a very similar violation by the same person.
- (c) Two confidential statements by different persons may be used to corroborate each other.
- (6) If it is not possible to get a signed statement in accordance with subs. (4) and (5), the disciplinary committee may consider other evidence of what the witness would say if present.
- (7) After determining which witnesses will be called for the accused inmate, staff shall notify the inmate of the decision in writing.
- (8) Witnesses other than inmates or employees may not attend hearings but the staff representative with the disciplinary committee's permission may contact them. The disciplinary committee may designate an employee to interview any such witness and report to the committee.
- (9) The disciplinary committee may call additional witnesses as deemed necessary.
- (10) After a decision has been reached by the disciplinary committee, and if a finding of guilt results, the disciplinary committee shall forward restricted or confidential information to the security director for retention in a restricted file.

DOC 303.85 Disciplinary committee. (1) A disciplinary committee shall conduct due process disciplinary hearings. At least one member of every disciplinary committee shall be a supervisor.

(2) No person who has substantial involvement in the incident which is the subject of a hearing may serve on the committee for that hearing. Committee members shall determine the subject matter of the hearing in advance in order to allow replacement of committee members if necessary and thereby avoid the necessity of postponing the hearing.

(3) A disciplinary committee may hold a hearing even if the inmate has waived due process.

DOC 303.86 Disposition considerations. (1) In deciding the disposition for a violation or group of violations, the supervisor making uncontested dispositions or the disciplinary committee or hearing officer who is holding the hearing may consider any of the following:

- (a) The inmate's overall disciplinary record, especially during the previous 12 months.
 - (b) The inmate's disciplinary record of the same or similar offenses.
 - (c) The risk of serious disruption at the institution or in the community caused by the violation.
 - (d) The risk of serious injury created by the violation.
 - (e) The value of the property involved.
 - (f) The risk of serious financial impact caused by the violation
 - (g) Whether the inmate was actually aware that the inmate was committing a crime or offense at the time of the offense.
 - (h) The motivation for the offense.
 - (i) The inmate's attitude toward the offense and toward the victim, if any.
 - (j) Mitigating factors, such as coercion, family difficulties which may have created anxiety and any special circumstances.
 - (k) Psychological input as appropriate regarding mental health status of seriously mentally ill inmates at the time of the behavior.
 - (l) The risk to the security of the institution, inmates, employees or the community caused by the violation.
 - (m) Any other relevant factors.
- (2) A minor penalty may be imposed for a violation where a major penalty could be imposed.
- (3) Restitution may be imposed in addition to any other penalty.
- (4) Any combination of penalties may be imposed.

DOC 303.87 Dispositions and schedule of penalties. (1) When an inmate is found guilty of one or more violations of the disciplinary rules, one or more of the following dispositions shall be imposed, except as provided in sub. (2) and subject to the limitations under ss. DOC 303.70 and 303.72:

- (a) Reprimand.
- (b) Loss of recreational privilege.
- (c) Room /cell confinement.
- (d) Building confinement.
- (e) Loss of a specific privilege.
- (f) Extra duty without pay.
- (g) Disciplinary separation.
- (h) Loss of good time for an inmate whose crime was committed before June 1, 1984, and who did not choose to have 1983 Wis. Act 528 apply, or extension of the mandatory release date for an inmate whose crime was committed on or after

June 1, 1984, and for other inmates who chose to have 1983 Wis. Act 528 apply, or an inmate subject to s. 302.113 (3), Wis. Stats.

(i) Restitution.

(2) The maximum disposition which may be imposed is the most severe disposition the inmate could receive for any individual offense of which the inmate is found guilty. The duration of a penalty may not exceed the duration shown in Table 303.87.

TABLE DOC 303.87**SCHEDULE OF PENALTIES****(Maximum in days)**

	Disciplinary separation	Good Time Loss	Extension of MR Date Under 1983 WI Act 528*
Offenses against bodily security			
303.11 Assault	360	20	40
303.12 Aggravated assault	360	20	40
303.13 Assault on staff	360	20	40
303.14 Sexual conduct	360	20	40
303.16 Sexual assault	360	20	40
303.17 Sexual assault–aggravated	360	20	40
303.18 Threats	180	15	30
303.19 Stalking	360	20	40
Offenses against institutional security			
303.20 Endangering safety	360	20	40
303.21 Inciting a disturbance	360	20	40
303.22 Participating in a disturbance	360	20	40
303.23 Taking a hostage	360	20	40
303.24 Group resistance and petitions	360	20	40
303.25 Cruelty to animals	360	20	40
303.26 Escape	360	20	40
303.27 Disguising identity	180	15	30
Offenses against order			
303.28 Disobeying orders	360	15	30
303.29 Disrespect	180	15	30
303.30 Soliciting staff	360	20	40
303.31 Lying	180	15	30
303.32 Lying about staff	360	20	40
303.33 Disruptive conduct	360	20	40
303.34 Unauthorized forms of communication	360	20	40
303.35 False names and titles	180	15	30
303.36 Enterprises and fraud	360	20	40
Offenses against property			
303.37 Theft	360	20	40
303.38 Damage or alteration of property	360	20	40
303.39 Misuse of state or federal property	180	10	20
303.40 Unauthorized transfer of property	180	10	20
303.41 Counterfeiting and forgery	360	20	40
Contraband offenses			
303.42 Possession or use of money or negotia- ble instruments	360	20	40
303.43 Possession of intoxicants	360	20	40
303.44 Possession of drug paraphernalia	360	20	40
303.45 Possession, manufacture or use of weapons	360	20	40
303.46 Possession of tobacco	360	20	40
303.47 Possession of contraband – miscella- neous	180	10	20

303.48 Possession of electronic communication or data storage devices	360	20	40
303.49 Unauthorized use of the mail	360	20	40
Movement offenses			
303.50 Punctuality and attendance	180	10	15
303.51 Loitering	180	10	15
303.52 Leaving assigned area	180	15	30
303.53 Being in unassigned area	180	15	30
303.54 Entry of another inmate's quarters	360	20	40
Offenses against safety and health			
303.55 Improper storage	90	5	10
303.56 Dirty quarters	90	5	10
303.57 Poor personal hygiene	90	5	10
303.58 Misuse of medication	360	20	40
303.59 Disfigurement	360	20	40
Miscellaneous			
303.60 Use of intoxicants	360	20	40
303.61 Gambling	180	15	30
303.62 Refusal to work or attend school	90	5	10
303.63 Inadequate work or school	120	10	20
Performance			
303.64 Violating conditions of leave	360	20	40
303.04 Conspiracy		Maximum for completed offense	
303.05 Attempt		Maximum for completed offense	
303.06 Aiding and abetting		Maximum for completed offense	

* Does not include the mandatory extension of 50% of the number of days spent in segregation status required under par. (e).

(b) Disciplinary separation shall be given for a specific term of 1 to 30 days, and thereafter in increments of 30 days not to exceed the maximum penalty under Table 303.84.

(c) More than one minor or major disposition may be imposed for a single offense and both a major and minor disposition may be imposed for a major offense.

(d) Loss of accumulated good time or extension of the mandatory release date may be imposed as a disposition only where the violation is listed as a major offense under s. DOC 303.68 (2) or is designated as a major offense by the security director because of its nature or the inmate's prior record.

(e) For those inmates to whom 1983 Wis. Act 528 does not apply, the number of days of good time lost on one occasion may be based on the number of prior occasions on which the inmate lost good time but shall not exceed the following:

Number of prior occasions good time lost	Maximum number of days good time lost
None	10
One	10
2 or more	20

(f) For those inmates to whom 1983 Wis. Act 528 or s. 302.113(3) Wis. Stats. applies, the number of days the mandatory release date or term of confinement portion of a bifurcated sentence is extended on one occasion may be based on the number of prior occasions on which the inmate lost good time or had his or her mandatory release date or term of confinement extended but shall not exceed the following:

Number of prior occasions good time lost or mandatory Release date/ confinement time extended	Maximum number of days mandatory release date extended
None	10
One	20
2 or more	40

(g) TLU time may not be considered as time served for disciplinary disposition purposes.

DOC 303.88 Recordkeeping. (1) The Department may keep records of disciplinary infractions in an inmate's case record only in the following situations:

(a) If the inmate was found guilty by uncontested disposition procedure.

- (b) If the inmate was found guilty by a supervisor, hearing officer or disciplinary committee.
- (c) The department shall make necessary corrections to the record as required by appeal.
- (d) The department shall take necessary steps to remove any record of a conduct report if there is an order to expunge.

(2) The department may keep conduct reports which have been dismissed or in which the inmate was found not guilty for statistical purposes, and security reasons, but the department may not consider them in making program assignment, transfer, or release decisions, nor may the department include them in any inmate's case record.

DOC 303.89 Evidence. (1) Evidence is relevant if that evidence makes it appear more likely or less likely that the inmate committed the offense of which the inmate is accused.

(2) (a) A disciplinary committee may consider any relevant evidence, whether or not it would be admissible in a court of law and whether or not any violation of any state law or any DOC administrative code provision occurred in the process of gathering the evidence.

(b) A disciplinary committee may refuse to hear or admit relevant evidence for any of the following reasons:

1. The evidence is not reliable.
2. The evidence, even if true, would be of marginal relevance.
3. The evidence is unduly cumulative or repetitious.
4. The evidence is requested more than two days after the service of notice of major disciplinary hearing rights.

(3) The institution shall place the original conduct report and all due process documents in the inmate's record.

DOC 303.90 Harmless error. If staff does not adhere to a procedural requirement under this chapter, the error is harmless if it does not substantially affect a finding of guilt or the inmate's ability to provide a defense.

DOC 303.91 Warden-initiated review. The warden may at any time initiate a review of the decision and disposition of a conduct report and act on it unilaterally.

DOC 303.92 Administrative assignment or transfer. Notwithstanding any action taken under this chapter, the department may administratively change an inmate's work, program, or housing assignment, restrict privileges, or transfer the inmate to another institution.

SECTION 2. DOC 303 Appendix is repealed.

SECTION 3. DOC 302.17 (11) (c), 302.21 (3) (b) 1., 302.33 (1) (b), 302.34 (1) (a), 302.35 (1) (a), 304.04 (2), 306.05 (4) (a), 308.03 (4) (intro), (b), and (d), 308.04 (4) (e) 5., (5) (a) 2., and (10), 308.04 Note to sub. (4), 309.02 (5), 309.04 (4) (e) 2. and (6), 309.20 (4) (a) 5., (4) (b) 3., (4) (c) 3., (4) (d) 2., and (7), 309.65 (5) (c) 2., 310.08 (3), 310.10 (7), 303 APPENDIX DOC 310.16, PARA 3, 311.07 (2) (f) 3., 313.08 (10), 324.12 (1) (j), 324.13 (6), 327.09 (1) (a), (2) (intro), (2) (b), (2) (c), (2) (d) (intro), (2) (e) (intro), (2) (f), (2) (h), (2) (i), (2) (m) 1., (2) (q) (intro), (2) (r), (2) (s), (2) (t), (2) (u), (2) (v), (2) (w), (2) (x) (intro), (2) (y), (2) (z) (intro), (3), 327.13 (intro), (2), (3), (4), (5), (6), (7), (8), (9), and (10), are amended to read:

DOC 302.17 (11) (c) Referral by the ~~institution adjustment committee~~ disciplinary committee as defined in s. DOC ~~302.21(1)~~ 303.02(12).

DOC 302.21 (3) (b) 1. The projected mandatory release date is the date on which the inmate is to be released from the institution, if not granted parole earlier, unless that date is extended pursuant to s. ~~DOC 303.84~~ DOC 303.87.

DOC 302.33 (1) (b) The inmate has not received a major penalty under s. ~~DOC 303.68(1)(a)~~ DOC 303.72.

DOC 302.34 (1) (a) The inmate has not received a major penalty under s. ~~DOC 303.68(1)~~ DOC 303.72.

DOC 302.35 (1) (a) The inmate has not received a major penalty under s. ~~DOC 303.68(1)~~ DOC 303.72 on any day counted toward positive adjustment time.

DOC 304.04 (2) Inmates who otherwise meet the eligibility requirements of this section may be assigned to the secure work program as a disciplinary disposition under s. ~~DOC 303.72(9)~~ DOC 303.75(6).

DOC 306.05 (4) (a) Inmates in protective confinement shall have privileges and property at least equivalent to privileges and property allowed to inmates in program segregation under s. ~~DOC 303.70~~ DOC 303.73.

DOC 308.03 (4) (intro) "Disturbance" means a riot or other disturbance to institutional order caused by a group of 2 or more inmates that may include one any of the following:

DOC 308.03 (4) (b) The taking of a one or more ~~hostage~~ hostages ~~by an inmate~~.

DOC 308.03 (4) (d) The refusal by 2 or more inmates, acting in concert, to comply with an order, ~~to return to cells or rooms~~.

DOC 308.04 (4) (e) 5. The right to assistance of ~~an advocate~~ staff representative in accordance with s. ~~DOC 303.78~~ DOC 303.83.

DOC 308.04 (5) (a) 2. Attempt to obtain a signed statement under oath from the witness and determine that the statement is corroborated in accordance with s. ~~DOC 303.86(4)~~ DOC 303.84(5) if the designated staff member finds a significant risk of bodily injury.

DOC 308.04 (10) An inmate's progress in administrative confinement shall be reviewed by the ACRC at least every 6 months following the procedures for review under this section. Monthly progress will be reviewed consistent with the segregation review process as outlined in s. ~~DOC 303.70(12)~~ DOC 303.73(13).

DOC 308.04 Note to sub. (4). Sub (4) gives the inmates certain rights. It requires that adequate written notice of the review be given the inmate. If necessary, a verbal explanation of the notice should be made in accordance with the inmate's needs. The rights also include the right to present and question a witness in the same manner as for due process hearings, s. ~~DOC 303.81~~ DOC 303.84.

DOC 309.02 (5) Contraband has the meaning given in s. ~~DOC 303.10~~ DOC 303.02(8).

DOC 309.04 (4) (e) 2. If the letter is outgoing mail, the department shall provide he sender a notice stating why the letter was not delivered. Correctional staff shall dispose of the letter consistent with s. ~~DOC 303.10~~ DOC 309.20 (4).

DOC 309.04 (6) The department shall dispose of contraband found through inspections conducted pursuant to this section in accordance with s. ~~DOC 303.10~~ DOC 309.20 (4).

DOC 309.20 (4) (a) 5. Unclaimed property shall be held for a one year period after the date of release, after which time the property shall be disposed of in accordance with s. ~~DOC 303.10 (3)~~ DOC 303.09 (2). The institution shall not be responsible for damage due to prolonged storage.

DOC 309.20 (4) (b) 3. Unclaimed property shall be held for a one year period after the date of death, after which time the property shall be disposed of in accordance with s. ~~DOC 303.10 (3)~~ DOC 303.09 (2). The institution shall not be responsible for damage due to prolonged storage.

DOC 309.20 (4) (c) 3. Unclaimed property shall be held for a one year period after the date of death, after which time the property shall be disposed of in accordance with s. ~~DOC 303.10 (3)~~ DOC 303.09 (2).

DOC 309.20 (4) (d) 2. Items which are contraband shall be disposed of in accordance with s. ~~DOC 303.10~~ DOC 303.09 (2).

DOC 309.20 (7) Contraband. The institution shall consider items not permitted at an institution or permitted but not on an inmate's property list under sub (2) contraband and subject the items to seizure and disposition under s. ~~DOC 303.10~~ DOC 303.09 (2). The institution may subject an inmate to discipline for possessing contraband under ss. DOC 303.43 through ~~303.48~~ 303.49.

DOC 309.65 (5) (c) 2. A group that he or she has reasonable grounds to believe is a ~~inmate gang~~ security threat group as defined in s. ~~DOC 303.02 (9)~~ DOC 303.02 (30).

DOC 310.08 (3) After exhausting the appeal process in s. DOC 302.18, ~~303.75, 303.76~~ 303.78, 303.80, 308.04, or 326.06, an inmate may use the ICRS to challenge only the procedure used in the program review process, the disciplinary process, the administrative confinement review process, or by any decisionmaker acting on a request for authorized leave.

DOC 310.10 (7) The department shall not consider group complaints filed in accordance with this section a group petition within the meaning of s. ~~DOC 303.20~~ DOC 303.24 and shall not subject the complainants to discipline under that section.

DOC 303 APPENDIX DOC 310.16, PARA 3 This is not to say that inmates are free to make threatening or false statements about staff, knowing they are false, especially if those false statements are made public. There have been malicious lies about staff corruption and sexual behavior made in the ICRS. This rule does not prohibit disciplinary action for the bad faith use, or rather abuse, of the ICRS under ~~DOC 303.274~~ DOC 303.32.

DOC 311.07 (2) (f) 3. The right to ~~an advocate~~ a staff representative in accordance with s. ~~DOC 303.78~~ DOC 303.83.

DOC 313.08 (10) Reporting for work or while at work manifesting any evidence of having used or being under the influence of an intoxicating substance, as defined in s. ~~DOC 303.02 (11)~~ DOC 303.02 (23), or in possession of an intoxicating substance or drug paraphernalia or device as defined in ~~under~~ s. DOC 303.44.

DOC 324.12 (1) (j) Failure to report o return from a work or study placement may be referred for prosecution as an escape under s. 946.42(3), Stats., and may be administratively charged with an escape under s. ~~DOC 303.22~~ DOC 303.26.

DOC 324.13 (6) A hearing shall be conducted in accordance with the procedures under ss. ~~DOC 303.75 to 303.84~~ DOC 303.78, 303.80 to 303.87, modified as follows:

(a) In accordance with s. ~~DOC 303.84~~ DOC 303.80 with the permission of the hearing officer, the work release coordinator shall interview employers or school officials who have relevant evidence and report to the hearing officer.

(b) A penalty listed in s. ~~DOC 303.84~~ DOC 303.87 need not be imposed as a result of a finding of guilt.

DOC 327.09 (1) (a) An inmate may not possess or use any form of alcohol, or other intoxicating substance as defined under s. ~~DOC 302.02 (14)~~ DOC 303.02 (23) except as authorized and directed by an approved physician.

DOC 327.09 (2) (intro) All offenses listed in ss. ~~DOC 303.12 to 303.634~~ DOC 303.11 to 303.64 apply to inmates in community residential confinement placement with the following exceptions, substitutions and modifications;

DOC 327.09 (2) (a) Section ~~DOC 303.15~~ DOC 303.14 on sexual conduct does not apply.

DOC 327.09 (2) (b) The following is substituted for s. ~~DOC 303.18~~ DOC 303.21 on inciting a ~~riot~~ disturbance: Any inmate who intentionally encourages, directs, commands, coerces or signals one or more other persons to participate in a ~~riot~~ disturbance is guilty of an offense. "Disturbance" means a serious disturbance caused by a group of 2 or more persons which creates a serious risk of injury to persons or property has the meaning given in s. DOC 303.02 (14).

DOC 327.09 (2) (c) Section ~~DOC 303.20~~ DOC 303.24 on group resistance and petitions does not apply.

DOC 327.09 (2) (d) (intro) The following is substituted for s. ~~DOC 303.05~~ DOC 303.04 on conspiracy:

DOC 327.09 (2) (e) (intro) The following is substituted for s. ~~DOC 303.22~~ DOC 303.26 on escape:

DOC 327.09 (2) (f) The following is substituted for s. ~~DOC 303.27~~ DOC 303.31 on lying: Any inmate who knowingly makes a false written or oral statement to a staff member is guilty of an offense.

DOC 327.09 (2) (h) Section ~~DOC 303.30~~ DOC 303.34 on unauthorized forms of communication does not apply.

DOC 327.09 (2) (i) The following is substituted for s. ~~DOC 303.32~~ DOC 303.36 on enterprises and fraud: Any inmate who offers to buy or orders any item with the intention of not paying for it or incurs debt without permission is guilty of an offense.

DOC 327.09 (2) (m) 1. Except as specifically authorized by CRC staff, any inmate who knowingly has in his or her possession any intoxicating substance as defined under s. ~~DOC 303.02(14)~~ DOC 303.02(23) is guilty of an offense; ~~and~~.

DOC 327.09 (2) (q) (intro) The following is substituted for s. ~~DOC 303.49~~ DOC 303.50 on punctuality and attendance: Inmates shall attend and be on time for all events, classes, meetings, appointments, job and other activities for which they are scheduled. Any inmate who violates this section is guilty of an offense, unless one of the following applies:

DOC 327.09 (2) (r) Section ~~DOC 303.50~~ DOC 303.51 on loitering does not apply;

DOC 327.09 (2) (s) The following is substituted for s. ~~DOC 303.54~~ DOC 303.52 on leaving assigned area: Any inmate who leaves an area where he or she is attending a scheduled activity other work or school assignment before the activity or the work or school assignment is over is guilty of an offense, unless absence from the assigned area has been approved by an appropriate CRC member;

DOC 327.09 (2) (t) Section ~~DOC 303.52~~ DOC 303.50 entry of into another inmate's quarters assigned living area does not apply.

DOC 327.09 (2) (u) Section ~~DOC 303.54~~ DOC 303.55 on improper storage does not apply.

DOC 327.09 (2) (v) Section ~~DOC 303.55~~ DOC 303.56 on dirty quarters assigned living area does not apply.

DOC 327.09 (2) (w) Section ~~DOC 303.56~~ DOC 303.57 on poor grooming personal hygiene does not apply.

DOC 327.09 (2) (x) (intro) The following is substituted for s. ~~DOC 303.57~~ DOC 303.58 on misuse of ~~prescription~~ medication: Any inmate who knowingly does any of the following is guilty of offense:

DOC 327.09 (2) (y) Section ~~DOC 303.59~~ DOC 303.60 on use of intoxicants applies except that subs. (2) and (3) are modified to include tests, examinations and specimens requested in accordance with this chapter.

DOC 327.09 (2) (z) (intro) The following is substituted for s. ~~DOC 303.63~~ DOC 303.28 (3) on violations of institution policies and procedures:

DOC 327.09 (3) In addition to the rules listed under sub. (1) and the list of offenses under ss. ~~DOC 303.12 to 303.631~~ DOC 303.11 to 303.64 as affected by sub. (2), CRC staff may develop additional written rules and specific conditions for an inmate's CRC placement. These specific rules and conditions may be modified at any time with written notice to the inmate.

DOC 327.13 (intro) Disciplinary procedure and penalties. The due process fact finding hearing to determine if the inmate has committed a violation under s. DOC 327.12 shall be conducted in accordance with the procedures under ss. ~~DOC 303.64 to 303.87~~ DOC 303.65 to 303.92.

DOC 327.13 (2) Under s. ~~DOC 303.67~~ DOC 303.68 on review by the security office the person who wrote the conduct report shall send it to the department supervisory staff person designated to review conduct reports in his or her area within 24 hours after writing the conduct report. The staff person who is designated to review the conduct report shall review it under s. ~~DOC 303.67~~ DOC 303.68 within 24 hours after receipt.

DOC 327.13 (3) Under s. ~~DOC 303.68 (3)~~ DOC 303.71(2) in addition to the listed offenses, the violation of any of the following sections is a major offense: s. DOC 303.43 on possession of intoxicants; s. DOC 303.44 on possession of drug paraphernalia; s. ~~DOC 303.54~~ DOC 303.52 on leaving assigned area; and s. ~~DOC 303.54~~ DOC 303.53 on being in an unassigned area.

DOC 327.13 (4) Under ~~DOC 303.76(4)~~ DOC 303.80(1) on hearing procedure for major violations, a copy of the approved conduct report shall be given to the inmate within 4 working days after approval under s. ~~DOC 303.67~~ DOC 303.68.

DOC 327.13 (5) Under ~~DOC 303.76(4)~~ DOC 303.80 (5) the due process hearing may take place at the CRC residence, any state correctional institution, a county jail or other facility designated by the department.

DOC 327.13 (6) Section ~~DOC 303.78(4)~~ DOC 303.83 is modified to read: The superintendent may designate or hire staff members to serve as advocates staff representatives for inmates in disciplinary hearings at the institution, or staff members may volunteer to serve as advocates staff representatives. The superintendent shall assign advocates staff representatives to inmates. If an inmate objects to the assignment of a particular advocate staff representative because the advocate staff representative has a known and demonstrated conflict of interest in the case, the superintendent shall assign a different staff member to serve as the inmate's advocate staff representative.

DOC 327.13 (7) Under s. ~~DOC 303.81 (3)~~ DOC 303.84 (4), if an inmate witness must be transported to another institution or facility to testify, the inmate does not have to attend the disciplinary hearing. However, the hearing officer shall attempt to get a signed statement from the witness to be used at the disciplinary hearing or the advocate staff representative shall attempt to interview the witness and report on the testimony to the committee in lieu of a personal appearance by the witness.

DOC 327.13 (8) Under ss. ~~DOC 303.75 (3)~~ and ~~303.82~~ DOC 303.78 and ~~303.85~~, any department staff member designated by the superintendent may serve on an adjustment-disciplinary committee or serve as a hearing officer.

DOC 327.13 (9) A penalty listed in s. ~~DOC 303.84~~ DOC 303.87 need not be imposed as a result of a finding of guilt.

DOC 327.13 (10) Under ss. ~~DOC 303.69~~ and ~~303.70~~ s. DOC 303.73 adjustment segregation or program segregation may be served in any state correctional institution, a county jail or other facility designated by the department to hold CRC adjustment segregation or program segregation status.

DOC 327.15 (6) (d) Items not permitted under this section or under an inmate's special conditions of CRC placement are contraband. They may be seized in accordance with s. ~~DOC 303.10~~ DOC 303.09. An inmate may be subject to discipline for possessing contraband.

SECTION 4. DOC 308.03 (6) and (8), 309.02 (13), 309.55 (e) 4., 5., and 6., 327.09 (2) (g), (j), and (n) are repealed.

SECTION 5. DOC 308.03 (8m), 309.55 (4) (e) 4. and 5. are created to read:

DOC 308.03 (8m) "Security threat group" means a group of individuals which threatens, intimidates, coerces or harasses others or engages in activities which violates or encourages the violation of statutes, administrative rules or departmental policies or institutional procedures

DOC 309.55 (4) (e) 4. Disciplinary separation under s. DOC 303.73.

DOC 309.55 (4) (e) 5. Controlled segregation under s. DOC 303.74.

SECTION 6. Effective date: This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22 (2) (intro), Stats.

Notice of Hearing

Insurance

EmR1101, CR 11-021

NOTICE IS HEREBY GIVEN that pursuant to the authority granted under section 601.41 (3), Stats., and the procedures set forth in under section 227.18, and 227.24 (4), Stats., OCI will hold a public hearing to consider the adoption of a proposed permanent rule and the emergency rule (EmR1101) published February 9, 2011, affecting section Ins 6.07, Wis. Adm. Code, relating to readability and electronic access to insurance policies and affecting small business.

Hearing Information

<u>Date and Time</u>	<u>Location</u>
May 3, 2011 Tuesday at 10:00 A.M.	OCI, 2nd floor, Room 227 125 South Webster Street Madison, WI 53703

Submittal of Written Comments

Written comments can be mailed to:

Julie E. Walsh
Legal Unit – OCI Rule Comment for Rule Ins 607
Office of the Commissioner of Insurance
PO Box 7873
Madison WI 53707-7873

Written comments can be hand delivered to:

Julie E. Walsh
Legal Unit – OCI Rule Comment for Rule Ins 607
Office of the Commissioner of Insurance
125 South Webster St – 2nd Floor
Madison WI 53703-3474

Comments can be emailed to:

Julie E. Walsh
julie.walsh@wisconsin.gov

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

The deadline for submitting comments is 4:00 p.m. on the 10th day after the date for the hearing stated in this Notice of Hearing.

Copies of Proposed Rule

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

Analysis Prepared by the Commissioner of Insurance

Statute(s) interpreted

Sections 600.01, 628.34 (12), Stats.

Statutory authority

Sections 600.01 (2), 601.41 (3), 601.42, 628.34 (12), 631.20, 631.21, 631.22, 631.61, Stats.

Explanation of agency authority

Section 631.22 (2), Stats., requires insures to provide policies that are coherent, written in commonly understood language, legible, appropriately divided and captioned by its various sections and presented in a meaningful sequence. This proposed rule returns the administrative standards back to requirements previously used.

Related statute or rule

This proposed rule revises the current rules, s. Ins 6.07, Wis. Adm. Code, governing filing readability and access to electronic versions of policy forms.

Plain language analysis

The proposed rule returns the readability score, Flesch or equivalent, back to 40 across product lines unless other provisions regulate the readability of the policy, i.e. Medicare supplement policy requirements. The proposed rule also repeals requirements related to use of active voice in policy forms, requirement to contain all exclusions and limitations within one section and replaces those provisions with language in place in 2010. Finally the proposed rule repeals the requirement that insurers make available an insured's complete insurance policy and production timeframes. Statutory requirements already exist that require insurers to provide the insured or policyholder a copy of their policy. Although s. Ins 6.07 (9) provided more detail and delineated process for obtaining copies of policies OCI believes the existing laws are sufficient without further rule.

Comparison with existing or proposed federal regulations

There are no existing or proposed federal regulations that address the topic of this proposed rule.

Comparison with similar rules in adjacent states

Illinois:

Illinois requires products to be readable but does not set a score. Illinois is pending legislative changes to participate in the interstate insurance product regulation compact and for those product lines subject to the compact the Flesch required is 50. Illinois does not have a website notice provision for insureds to access a complete copy of their policy.

Iowa:

Iowa requires products to be readable but does not set a score. Iowa participates in the interstate insurance product regulation compact and for those product lines subject to the compact the Flesch required is 50. Iowa does not have a website notice provision for insureds to access a complete copy of their policy.

Michigan:

Michigan requires forms to achieve a Flesch score of not less than 45 under Mich. Admin. Code s. 500.2236 r. 2003 (1956). Michigan participates in the interstate insurance product regulation compact and for those product lines subject to the compact the Flesch required is 50. Michigan does not have a website notice provision for insureds to access a complete copy of their policy.

Minnesota:

Minnesota requires under Minn. Stat. Ch. 72C, a Flesch score of more than 40 for life and health forms. Minnesota participates in the interstate insurance product regulation compact and for those product lines subject to the compact the Flesch required is 50. Minnesota does not have a website notice provision for insureds to access a complete copy of their policy.

Summary of factual data and analytical methodologies

OCI proposes this rule will ease financial constraints not anticipated with prior rule-making. The OCI has received numerous inquiries regarding implementation and concerns related to cost of implementation. By returning to prior requirements the OCI is able to balance consumer protection and appropriate level of industry oversight without being overly burdensome.

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

The effect of the proposed rule on small business is positive as it reverts back to prior requirements thereby negating the need to modify existing policies or means of accessing prior copies of an insured's policy.

Effect on Small Business

This rule will have little to no fiscal effect on regulated small businesses as the proposed rule imposes no new requirements and returns all Flesch scores and access requirements back to 2010 standards.

Initial regulatory flexibility analysis

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

a. Types of small businesses affected:

Insurance agents, LSHO, Town Mutuals, Small Insurers, etc.

b. Description of reporting and bookkeeping procedures required:

None beyond those currently required.

c. Description of professional skills required:

None beyond those currently required.

Small business regulatory coordinator

The OCI small business coordinator is Eileen Mallow and may be reached at phone number (608) 266-7843 or at email address eileen.mallow@wisconsin.gov.

Fiscal Estimate**State fiscal effect**

No State Fiscal Effect.

Local fiscal effect

No local government costs.

Long-range fiscal implications

None.

Private sector fiscal analysis

These changes will not have a significant fiscal effect on the private sector as the proposed rule reverts back to prior requirements thereby imposing no costs on insurers or intermediaries that could be passed on to the private sector.

Agency Contact Person

Inger Williams, OCI Services Section, at:

Phone: (608) 264-8110

Email: inger.williams@wisconsin.gov

Address: 125 South Webster St – 2nd Floor, Madison WI 53703-3474

Mail: PO Box 7873, Madison, WI 53707-7873

**Notice of Hearing
Regulation and Licensing
EmR1102, CR 11-018**

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Department of Regulation and Licensing, in conjunction with the Sign Language Interpreters Council, will hold a public hearing at the time and place indicated below to consider an emergency order and an order adopting permanent rules to create Chapters RL 200-202, governing the professional conduct of individuals licensed as sign language interpreters, and for the treatment of state resident licensure exemption requests.

Hearing Information

<u>Date and Time</u>	<u>Location</u>
May 3, 2011 Tuesday at 9:30 A.M.	Room 121A 1400 East Washington Avenue Madison, WI 53703

Appearances at the Hearing

Interested persons are invited to present information at the hearing. Even if appearing at the hearing in person, you 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. Written comments must be received by the date and time of the hearing to be included in the record of rule-making proceedings.

Submittal of Written Comments

Comments may be submitted to Kris Anderson, Paralegal, Department of Regulation and Licensing, 1400 East Washington Avenue, Room 1521, P.O. Box 8935, Madison, Wisconsin 53708-8935, or by email to kristine1.anderson@wisconsin.gov. Comments must be received on or before May 3, 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 Kris Anderson, 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 Kristine1.Anderson@wisconsin.gov.

Analysis Prepared by the Department of Regulation and Licensing**Statute(s) interpreted**

Section 440.032, Stats.

Statutory authority

Sections 227.11 (2), Stats., and ss. 440.032 (6) (d) and (7) (b), Stats.

Explanation of agency authority

The department is authorized under s. 440.032 (7) Stats., to promulgate rules defining a code of ethics for the professional conduct of individuals licensed under s. 440.032 (3), Stats. The council is authorized under s. 440.032 (6) (d) to promulgate rules establishing a process and criteria for granting exemptions to licensure under s. 440.032 (2) (c) 2.

Plain language analysis

These proposed rules will implement the statutory provisions created by 2009 Wisconsin Act 360.

SECTION 1 creates ch. RL 200, “Authority and Definitions.” Section RL 200.01 identifies the statutory authority under which chapters RL 200 to 202 are adopted. Section RL 200.02 provides the definitions of “advocate,” “conflict of interest,” “consumer,” “family member,” “interpreter,” “interpreting situation,” “interpreting,” and “unlicensed interpreter” as those terms are used in chapters RL 200 to 202.

SECTION 2 creates ch. RL 201, “Unprofessional Conduct.” Section RL 201.01 sets forth 25 different types of unprofessional conduct that are prohibited for individuals licensed as sign language interpreters.

SECTION 3 creates ch. RL 202, “State Resident Exemption.” Section RL 202.01 first establishes the criteria for a temporary or permanent licensure exemption under s. 440.032 (2) (c) 2., Stats., which allows the requestor to provide interpreter services either to a specific person, s. RL 202.01 (1), or for a specific time period, s. RL 202.01 (2), without a license.

Section RL 202.01 (3) requires individuals requesting a state resident exemption to submit a written request to the council stating the rationale for the request and providing supporting documentation, if any.

Section RL 202.01 (4) provides a list of 12 items of information a requestor under subs. (1) must include in his or her exemption request. Section RL 202.01 (5) provides a list of 11 items of information a requestor under subs. (2) must include in his or her exemption request. Section RL 202.01 (6) provides three examples of supportive documentation that may be included with an exemption request, if appropriate.

Section RL 202.01 (7) allows the council to require an individual seeking a state resident exemption to appear before the council to provide further information supporting the request.

Section RL 202.01 (8) provides that the council may not grant an exemption under subs. (2) to individuals waiting to take a test given by, or for test results from, the National Association for the Deaf, Inc., or for certification by Registry of Interpreters for the Deaf, or for verification by Wisconsin Interpreting and Transliterating Assessment, or for other certification or verification required for licensure under s. 440.032 (3), Stats.

Comparison with existing or proposed federal regulations

There is no existing or proposed federal regulation addressing the practice of sign language interpreting.

Comparison with similar rules in adjacent states

Illinois:

Illinois’s Interpreter for the Deaf Licensure Act of 2007 requires the licensure of individuals who provide interpreting or transliterating services to deaf or hard-of-hearing consumers. 225 ILCS 443/15. The Illinois Deaf and Hard of Hearing Commission administers the Act, and has licensing and rule-making authority. 225 ILCS 443/10, 30, 50.

All individuals subject to the Illinois Act must abide by the Act and Code unless specifically exempted by the Act. 68 Illinois Admin. Code 1515.20 The Act exempts from its purview individuals who provide interpreting services in seven (7) specified scenarios. 225 ILCS 443/25 (1)–(7). Subsections (1)–(5) describe scenarios that are similar to those for which Wisconsin does not require a license, such as for educational interpreters and in emergency situations. (Wisconsin’s general licensure exemptions may be found at

ss. 440.032 (2) (b) 1.–5., Stats.) Subsection (6) of 225 ILCS 443/25 exempts non-residents who are licensed in another jurisdiction, and who either provide interpreting services for not more than 14 days in a calendar year, or who engage in interpreting by teleconference, video conference, or other technological means. Subsection (7) of 225 ILCS 443/25 exempts individuals who provide sign language interpreting services when teleconference, video conference, other technological means, or a licensed Illinois interpreter are unavailable. Illinois law does not otherwise address exemptions for state residents.

[225 ILCS 443/ Interpreter for the Deaf Licensure Act of 2007.](#)

Illinois licensees must comply with standards of professional conduct. 68 Illinois Admin. Code 1515.130. The code provides a non-exclusive list of six instances of unprofessional conduct: (1) interpreting beyond the skill level indicated in the interpreter’s certification; (2) accepting interpreting assignments the interpreter either should or does know he or she is not competent to perform; (3) interjecting personal opinions during an assignment regarding the assignment; (4) delegating an assignment to an individual, for which that individual is either not qualified or lacks the appropriate certification; (5) extending an assignment solely for financial gain; and (6) taking advantage of, or causing harm to, the person to whom the interpreter is providing services. 68 Illinois Admin. Code 1515.130 (1)–(6). In addition to the six listed standards, the Illinois rules incorporate by reference the NAD–RID Code of Professional Conduct of the Registry of Interpreters for the Deaf. 68 Illinois Admin. Code 1515.130 (b).

<http://www.ilga.gov/commission/jcar/admincode/068/06801515sections.html>

Iowa:

In Iowa, no individual may engage in the practice of sign language interpreting without a license from the board of sign language interpreters and transliterators, unless the individual qualifies for one of the licensure exceptions. Iowa Code ss. 147.2(1), 154E.4 (2) (a)–(e). Subsections (2) (b)–(e) of s. 154E.4 describe scenarios that are similar to the Wisconsin and Illinois general exemptions. Subsection (2) (a) of Iowa Code s. 154E.4 exempts non-residents who are licensed in another state, and who provide interpreting services for not more than 14 days in a calendar year. Iowa law does not otherwise address exemptions for state residents.

<http://search.legis.state.ia.us/NXT/gateway.dll?f=templates&fn=default.htm>

The Iowa Board of Sign Language Interpreters and Translitterators is responsible for enforcement of the licensee rules. The board may sanction a licensee upon finding that he or she has committed, among other things, various types of fraud and fraudulent activities, professional incompetency, practice outside the scope of the profession, untruthful advertising, habitual intoxication or addiction to drugs, failure to pay costs assessed in any disciplinary proceeding, or failure to comply with a board order. 645 Iowa Admin. Code 363.2(1) – (31).

The board may impose a range of sanctions including: revocation or suspension of a license, additional education and training, civil penalties not exceeding \$1,000, or a citation or warning. 645 Iowa Admin. Code 363.3.

http://www.legis.state.ia.us/aspx/ACODOCS/DOCS/645_362.pdf

<http://www.legis.state.ia.us/asp/ACODOCS/DOCS/645.363.pdf>

Michigan:

Michigan's Deaf Persons' Interpreters Act requires sign language interpreters to become registered with the state as "qualified interpreter[s]." The Act, codified at ss. 393.501–509, Michigan Compiled Laws (MCL), defines "qualified interpreter" as "a person who is certified through the National Registry of Interpreters for the Deaf [(NRID)] or certified through the state by the [Division of Deaf and Hard of Hearing (DODHH)]." MCL s. 393.502 (f). The Act mandates that in all situations in which state or federal law requires accommodations for a deaf person, the interpreter shall be a "qualified interpreter." MCL s. 393.503a. Section 393.508b, MCL, makes it a misdemeanor for any individual to falsely represent him or herself as qualified under the Act. An individual applying for registration as a qualified interpreter, or an individual already so certified, who violates the Act is subject to application denial, or revocation, suspension, or limitation of his or her certification. MCL ss. 393.508b (2) (a), (b).

Michigan Legislature – Act 204 of 1982

The Act also provides that DODHH, with advice from the Michigan Department of Education, shall promulgate rules to govern application procedures, certification testing, revocation, suspension, or limitation of certification, registration renewal, minimum credential requirements and levels, continuing education, minimum standards of practice, and grievances. MCL s. 393.508a (1). DODHH has drafted such rules, but they have yet to be promulgated. The rules draft is available at http://www.michigan.gov/documents/dleg/DELEG_CDC_QualifiedInterpreter_315325_7.pdf. Other information related to registration of sign language interpreters in Michigan is available at [MDCD – Commission for Disability Concerns](#).

Minnesota:

Minnesota does not regulate sign language interpreters other than those employed in schools and by courts. Minn. Stats. ss. 122A.31, Minn. Court Rule 8. Wisconsin specifically exempts those two categories of interpreters when they are licensed by the Department of Public Instruction as an educational interpreter and certified by the supreme court to act as a qualified interpreter in court proceedings, under s. 885.38(2), Stats., respectively.

122A.31, 2010 Minnesota Statutes 8710.5200 Minnesota Rule; <https://www.revisor.mn.gov/rules/?id=8710.5200>; https://www.revisor.mn.gov/data/revisor/court_rules/gp/2011-01-20_12-31-18/gp_chapterpdf, at pp. 18–26.

Summary of factual data and analytical methodologies

The Sign Language Interpreters Council used the NAD–RID Code of Professional Conduct, as required by statute, as a starting point for creating the rules regarding the sign language interpreter's code of conduct. The council met several times to discuss the NAD–RID standards and modifications to those standards to specifically meet the needs of Wisconsin interpreters and Wisconsin residents. The Council then provided its recommendations to the department. Such recommendations were reviewed and considered by the Secretary of the Department. Changes were made to the recommended code of conduct and approved by the Secretary.

Under s. 440.032 (6) (d), Stats., the council is responsible for promulgating rules regarding licensure exemptions for state residents. Membership in the council is as follows: five (5) deaf or hard of hearing individuals who have used sign language interpreting services, two (2) active sign language interpreters, and one individual not deaf or hard of hearing who has obtained sign language interpreting services for another. Wis. Stat. s. 15.407 (9). Based on the new licensure requirements and the council members' collective experience, the council formulated state–resident exemption criteria that will ensure the minimal competence of an unlicensed interpreter and the safety of consumers of such services.

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

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

Effect on Small Business

These proposed rules will be reviewed by the department's Small Business Review Advisory Committee to determine whether the rules will have any significant economic impact on a substantial number of small businesses, as defined in s. 227.114 (1), Stats.

Small business regulatory coordinator

The Department's Regulatory Review Coordinator may be contacted by email at john.murray@wisconsin.gov, or by calling (608) 266–8608.

Fiscal Estimate

The department estimates that this rule will require staff time in the Division of Enforcement. The total on–going salary and fringe costs are estimated at \$47,400.

Private sector fiscal analysis

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

Agency Contact Person

Kris Anderson, Paralegal, Department of Regulation and Licensing, Office of Legal Counsel, 1400 East Washington Avenue, Room 151, P.O. Box 8935, Madison, Wisconsin 53708; telephone 608–261–2385; email at kristine.l.anderson@wisconsin.gov.

**Notice of Hearing
Regulation and Licensing
Chiropractic Examining Board
CR 11–019**

NOTICE IS HEREBY GIVEN that pursuant to the authority vested in the Chiropractic Examining Board, the board will hold a public hearing at the time and place indicated below to consider an order of the board to adopt amendments to Wis. Admin. Code Chapter Chir 5, which amendments will implement the provisions of 2009 Wis. Act 28, relating to continuing education requirements for chiropractic radiological technicians and chiropractic technicians, and to update provisions related to continuing education for chiropractors.

Hearing Information

Date and Time Location

April 27, 2011 Room 121A
 Wednesday 1400 East Washington Avenue
 at 9:00 A.M. Madison, WI 53703

Appearances at the Hearing

Interested persons are invited to present information at the hearing. Even if appearing at the hearing in person, you 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 Chiropractic Examining Board at the Department of Regulation and Licensing, Division of Board Services, P.O. Box 8935, Madison, Wisconsin 53708. Written comments must be received by the date and time of the hearing to be included in the record of rule-making proceedings.

Submittal of Written Comments

Comments may be submitted to Kristine Anderson, Paralegal, Department of Regulation and Licensing, Division of Board Services, 1400 E. Washington Ave., Room 152, P.O. Box 8935, Madison, WI 53708-8935, or by email to kristine.l.anderson@wisconsin.gov. Comments must be received on or before 8:30 a.m. on **April 27, 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 Kris Anderson, 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 Kristine.L.Anderson@wisconsin.gov.

Analysis Prepared by the Department of Regulation and Licensing

Statute(s) interpreted

Sections 446.01, 446.02, 446.025, 446.026, 446.028, 446.03, 446.04, 446.05, 446.07, Stats.

Statutory authority

Sections 446.02 (2), (3), 446.025, 446.026, 446.028, 446.03, 446.04, 446.05, 446.07, Stats.

Explanation of agency authority

The chiropractic examining board has authority under ss. 446.02, 446.025, 446.026, 446.028; 446.03, 446.05, and 446.07, Stats., to promulgate rules implementing the provisions of 2009 Wis. Act 28.

Plain language analysis

This proposed rule-making modifies continuing education requirements for license renewal for chiropractors, chiropractic radiological technicians and chiropractic technicians. It also modifies the criteria for the approval of continuing education programs.

SECTION 1 amends the title of s. Chir 5.01, changing it from “Continuing education requirements for license renewal” to “Continuing education requirements for credential renewal.”

SECTION 2 amends s. Chir 5.01 (1) (a) to change the ending date of a 2 year license registration period from January 1 of each odd-numbered year to December 14 of each even-numbered year.

SECTION 3 repeals ss. Chir 5.01 (1) (c) and (d), and renumbers current ss. Chir 5.01 (1) (e), (f), (g), and (h) to ss. Chir 5.01 (1) (c), (d), (e), and (f).

SECTION 4 creates ss. Chir 5.01 (1g) (a) and (b). Paragraph (a) requires chiropractic radiological technicians to complete at least 12 continuing education credit hours during every 2-year registration period ending on December 14 of each even-numbered year. It further specifies that a chiropractic radiological technician who has received an initial certificate during a licensing biennium is not required to satisfy the continuing education requirement for the rest of that biennium.

Paragraph (b) allows the chiropractic examining board to waive, either fully or partially, or to postpone a chiropractic radiological technician’s continuing education requirements in cases of hardship.

SECTION 5 creates ss. Chir 5.01 (1r) (a) and (b). Paragraph (a) requires chiropractic technicians to complete at least 6 continuing education credit hours during every 2-year registration period ending on December 14 of each even-numbered year. It further specifies that a chiropractic technician who has received an initial certificate during a licensing biennium is not required to satisfy the continuing education requirement for the rest of that biennium.

Paragraph (b) allows the chiropractic examining board to waive, either fully or partially, or to postpone a chiropractic technician’s continuing education requirements in cases of hardship.

SECTION 6 amends ss. Chir 5.01 (2) (a) and (b) to include chiropractic radiological technicians and chiropractic technicians within the scope of both paragraphs (a) and (b). Paragraph (b) also changes the date, from January 1 of each odd-numbered year to December 14 of each even-numbered year, on or after which continuing education hours will apply to the preceding licensing biennium only.

SECTION 7 amends s. 5.01 (3) to include chiropractic radiological technicians and chiropractic technicians within its scope, and to change the term “renewal of license registration” to “credential renewal.”

SECTION 8 amends s. Chir 5.01 (1) (a) to include colleges with board-approved chiropractic radiological technician and chiropractic technician programs as potential providers of required continuing education courses.

SECTION 9 adds the title “*Chiropractors*” to s. Chir 5.01 (1) (b).

SECTION 10 creates s. Chir 5.02 (1) (bm), requiring that the subject matter of continuing education programs for chiropractic radiological technicians and chiropractic technicians relate to improving the clinical skills of such practitioners, as applicable.

SECTION 11 amends s. Chir 5.02 (1) (c) to include chiropractic radiological technicians and chiropractic technicians within its scope.

SECTION 12 amends s. Chir 5.02 (1) (e) to require that sponsors of continuing education programs for chiropractic radiological technicians and chiropractic technicians ensure their programs’ compliance with the requirements of s. Chir 5.02 (1) (bm).

SECTION 13 creates s. Chir 5.02 (2) (am), providing that continuing education programs for chiropractic radiological technicians and chiropractic technicians may include subjects other than the clinical skills of such practitioners, but that only

those parts of a program related to improving clinical skills, as applicable, will be eligible for credit.

SECTION 14 creates s. Chir 5.02 (4) (a) 5m., requiring applicants for approval of continuing education programs for chiropractic radiological technicians and chiropractic technicians to include evidence of a program sponsor's verification to the board's satisfaction that the program's subject matter relates to improving the clinical skills of such practitioners. This section also requires such applicants to attach detailed course outlines or syllabi to an application for program approval.

SECTION 15 amends s. Chir 5.03 (2) to include continuing education programs for chiropractic radiological technicians and chiropractic technicians within its scope.

Comparison with existing or proposed federal regulations

There is no existing or proposed federal regulation addressing the subject matter of this proposed rule-making.

Comparison with similar rules in adjacent states

Illinois:

Illinois does not regulate chiropractic radiological technicians or chiropractic technicians.

Iowa:

Iowa does not regulate chiropractic radiological technicians or chiropractic technicians.

Michigan:

Michigan does not regulate chiropractic radiological technicians or chiropractic technicians.

Minnesota:

Minnesota does not regulate chiropractic radiological technicians or chiropractic technicians.

Summary of factual data and analytical methodologies

The Chiropractic Examining Board used the current continuing education rules governing Chiropractors as the basis for the continuing education rules to govern Chiropractic Radiological Technicians and Chiropractic Technicians.

The comparison information with the rules in adjacent states was obtained directly from contact with those states

and/or a review of their laws. Because Wisconsin is the only jurisdiction regulating Chiropractic Radiological Technicians and Chiropractic Technicians, the comparison to adjacent states provides no insight.

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

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.

Effect on Small Business

These proposed rules have been reviewed by the department's Small Business Review Advisory Committee to determine whether the rules will have any significant economic impact on a substantial number of small businesses, as defined in s. 227.114 (1), Stats.

Small business regulatory coordinator

The Department's Regulatory Review Coordinator may be contacted by email at john.murray@wisconsin.gov, or by calling (608) 266-8608.

Fiscal Estimate

The department estimates that this rule will require staff time in the Office of Exams, Division of Board Services and Division of Professional Credentialing. The total one-time salary and fringe costs are estimated at \$10,960. The total on-going salary and fringe costs are estimated at \$9,260.

Private sector fiscal analysis

The department finds that these proposed rules will have no significant fiscal effect on the private sector.

Agency Contact Person

Kristine Anderson, Paralegal, Department of Regulation and Licensing, Division of Board Services, 1400 East Washington Avenue, Room 151, P.O. Box 8935, Madison, Wisconsin 53708; telephone 608-261-2385; email at kristine.l.anderson@wisconsin.gov.

Submittal of Proposed Rules to the Legislature

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

Agriculture, Trade and Consumer Protection

CR 11-001

(DATCP # 10-R-6)

Revises Chapters ATCP 21, relating to Thousand Cankers Disease.

securing movable soccer goals.

Commerce

Fee Schedule, Ch. Comm 2

Gas Systems, Ch. Comm 40

CR 11-002

Revises Chapters Comm 2 and 40, relating to gas systems.

Corrections

CR 10-126

Repeals and recreates Chapter DOC 328, relating to offender field supervision.

Commerce

Anchorage of Movable Soccer Goals, Ch. Comm 9

CR 11-003

Creates Chapter Comm 9, relating to anchoring and

Corrections

CR 10-125

Repeals and recreates Chapter DOC 331, relating to the revocation of probation, parole, or extended supervision.

Rule Orders Filed with the Legislative Reference Bureau

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

Agriculture, Trade and Consumer Protection **CR 10-110**

(ATCP # 9-R-13)

Revises Appendix A of Chapter ATCP 30, relating to pesticide product restrictions.
Effective 5-1-11.

Natural Resources *Fish, Game, etc., Chs. NR 1—* **CR 10-114**

(DNR # ER-35-10)

Creates section NR 27.03, relating to adding cave bats to Wisconsin's threatened species list.
Effective 6-1-11.

Natural Resources *Fish, Game, etc., Chs. NR 1—* **CR 10-115**

(DNR # IS-41-10)

Creates section NR 40.04 (2) (g), relating to identification, classification and control of invasive species.
Effective 6-1-11.

Natural Resources *Fish, Game, etc., Chs. NR 1—* **CR 10-118**

(DNR # PR-36-10)

Revises section NR 45.10 (2) (g), relating to the Ice Age and North Country Trails.
Effective 6-1-11.

Natural Resources *Fish, Game, etc., Chs. NR 1—* **CR 10-123**

(DNR # IS-47-10)

Creates sections NR 40.02 (7g), (7r), (25m) and (46m), 40.04 (3m) and 40.07 (8) relating to identification, classification and control of invasive species.
Effective 6-1-11.

Public Instruction **CR 10-140**

Revises section PI 6.03, relating to public librarian certification.
Effective 6-1-11.

Public Instruction **CR 10-139**

Revises section PI 6.06, relating to public library system audit requirements.
Effective 6-1-11.

Regulation and Licensing **CR 10-101**

Revises Chapters RL 110 to 116, relating to regulation of professional boxing contests.
Effective 5-1-11.

Regulation and Licensing **CR 10-102**

Creates Chapters RL 192 to 196, relating to regulation of mixed martial arts sporting events.
Effective 5-1-11.

Public Notices

Department of Children and Families (Child Care Development Fund Plan)

Public Hearing: On Monday, May 16, 2011 from 1:00 to 4:00 PM, the Wisconsin Department of Children and Families (DCF), will hold a Public Hearing on Wisconsin's Plan for Providing Child Care Services under the 2011–2013 Child Care and Development Fund (CCDF) Draft Plan. The Public Hearing will take place in Conference Room D203 at the GEF 1 State Office Building, 201 East Washington Avenue, Madison, WI 53703. Visitors to GEF 1 must use the main entrance at 201 East Washington Avenue and register at the customer service desk in the lobby.

Background: The purpose of the Public Hearing is to solicit verbal or written comments from the public on Wisconsin's proposed plan for the use of federal CCDF dollars for the period of 10/01/11 through 09/30/13.

Every two years, DCF must submit a plan to the Administration for Children and Families for the use of CCDF funds over the next two years. This is an important source of funding for financing child care subsidy in Wisconsin and related programs as well as quality improvement initiatives in early care and education. Broadly speaking, the purpose of CCDF is to:

- Help low income families through offsetting the costs of child care when they are working or preparing for work;
- Support child care for participants in the Wisconsin Works (W-2) program;
- Support ongoing fraud detection efforts; and,
- To provide support that improves the quality of child care programs and services.

In the area of improving quality, funding is used to pay for the Quality Rating Improvement System, scholarships and support for child care workers, licensing staff, to support child care resource and referral services, and to support technical assistance for child care providers. In Wisconsin, the legislative process provides direction and decisions for the use of this fund, and the DCF/Division of Early Care and Education (DECE) is responsible for its administration.

Opportunity for Public Comment: After April 19, 2011, interested parties can access the 2011–2013 CCDF Draft Plan on the Department of Children and Families Child Care web page under the heading, Other Child Care Resources, at <http://dcf.wisconsin.gov/childcare/default.htm>

Individuals who plan to testify about the CCDF Draft Plan on May 16 should submit a copy of the text of their comments to ensure clarity in the recording of comments. Staff will also receive other written comments at the hearing or through the mail for inclusion in the public comment summary document. Written comments will receive equal consideration to the testimony given at the hearing.

Contact Person: Please send your comments about the 2011–2013 State CCDF Draft Plan or any questions about the web page location to Jane Penner–Hoppe by e–mail at jane.pennerhoppe@wisconsin.gov or contact her at: Division of Early Care and Education, Department of Children and Families, PO Box 8916, Madison, WI 53708–8916, 608.261–6725. All comments must be received no later than 5/19/11. Specific accommodation requests for the Public Hearing must be made to Jane Penner–Hoppe by May 9, 2011.

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